

KERRVILLE CITY COUNCIL AGENDA
REGULAR COUNCIL MEETING, DECEMBER 11, 2018, 6:00 PM
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION:

Offered by Councilmember Judy Eychner.

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. 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:

2.A Joint election agreement between the City of Kerrville and Kerr County for the May 4, 2019, City General Election.

Attachments:

[AB_2019 Joint Election Agreement between City and Kerr County.docx](#)
[Election Contract 2019.pdf](#)
[Copy of Copy_of_2019_Election_Costs-CKV__002_.xls](#)

2.B Authorize purchase of 2019 Sutphen Monarch Pumper.

Attachments:

[AB_2019_Sutphen_Pumper.docx](#)
[2019SutphenPumper.pdf](#)

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: December 7, 2018 at 7:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

2.C Minutes for the regular City Council meeting held on November 13, 2018 and November 27, 2018.

Attachments:

[2018 1113.docx](#)

[2018 1127.docx](#)

END OF CONSENT AGENDA

3. CONSIDERATION AND POSSIBLE ACTION:

3.A First Amendment to Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the design of and improvement to the City's H-E-B Tennis Center.

Attachments:

[AB_Tennis_FA_1st_Amendment.docx](#)

[Tennis Center Agmt Amendment - EIC - 20181211.pdf](#)

[EIC Project Funding Agreement_Tennis Center_1st](#)

[Amendment_112718.pdf](#)

3.B Authorize execution of a construction contract for the HEB Tennis Center Renovation with JK Bernhard Construction Co., LLC in the amount of \$1,453,939.00.

Attachments:

[AB_Tennis_Center_Construction - Burow.docx](#)

[Tennis Center Renovation_Received Bids.pdf](#)

3.C Report on granular activated carbon (GAC) benchtop study and third party review of TTHM mitigation options.

Attachments:

[AB_GAC_TTHM_Mitigation.docx](#)

[Kerrville WTP THM Bench Test Memo Draft.pdf](#)

[Kerrville GAC Study - Arcadis Review.pdf](#)

[Kerrville Electrocoagulation Memo.pdf](#)

3.D Third Amendment to Development Agreement by and between Comanche Trace Ranch and Golf Club, LLLP, a Colorado Limited Liability Limited Partnership and the City of Kerrville, Texas, for Comanche Trace Ranch and Golf Club.

Attachments:

[AB_CT_Third_Amendment_to_the_DA \(2\).docx](#)

[Third Amendment to Development Agreement-CT.pdf](#)

3.E Economic Development Grant Agreement between Thompson Drive Partners, LLC, the City of Kerrville, Texas Economic Improvement Corporation, and the City of Kerrville, Texas.

Attachments:

[AB_EIC_Thompson_EDG_Agreement_20181211_2_.docx](#)

[Thompson Rd Grant Agreement - EIC - 20181211.pdf](#)

[MacDonald-EIC Presentation 112618 \(002\).pdf](#)

[Thompson Drive.pdf](#)

3.F Economic Development Incentive Agreement between the City of Kerrville, Texas, and Thompson Drive Partners, LLC.

Attachments:

[AB_Thompson_380_20181211 \(2\).docx](#)

[Thompson 380 attachments - 20181211.pdf](#)

[Thompson Dr Partners_120718 DRAFT.pdf](#)

3.G Deferred Annexation Agreement with Ocaso LLC , for the property known as Ocaso Mobile Home park at 102 Vogues Road at Blue Ridge.

Attachments:

[AB_Ocaso_sewer-annex_deferred.docx](#)

[Deferred Annexation Agreement Ocaso Mobile Home Park.pdf](#)

[Ocaso_2.JPG](#)

3.H Discussion and possible action regarding an appeal by Councilmember Baroody whether a City Council has the authority to prohibit one of its members from participating in all future discussion or communication regarding any matter to be considered by the full body of the City Council.

Attachments:

[AB_Councilmember Baroody Prohibition of Councilmembers from discussions.docx](#)

[20181211_BarringCouncilmember_AgendaBill.docx](#)

[20181211_BarringCouncilmember_BackupDetail.pdf](#)

3.I Discussion and possible action regarding an alleged rent rebate offer in return for proof of voting in the most recent City of Kerrville municipal election held on May 5, 2018.

Attachments:

[AB_Councilmember Baroody Rent rebate..docx](#)

[20181211_RentRebateOfferForVoting_AgendaBill.docx](#)

[20181211_RentRebateOfferForVoting_BackupDetail.pdf](#)

3.J Discussion and possible action to consider modifying the TIRZ #1, City of Kerrville Project Plan to include language prohibiting the use of eminent domain or condemnation in order to support implementation of the project plan within the boundaries of the TIRZ #1.

Attachments:

[AB_Councilmember Baroody TIRZ.docx](#)

[20181211_TIRZEminentDomain_AgendaBill.docx](#)

[20181211_TIRZEminentDomain_BackupDetail1.pdf](#)

[20181211_TIRZEminentDomain_BackupDetail2.pdf](#)

3.K Discussion and Possible Action: Follow up on citizens' request to examine the discussion and actions taken by City Council on November 8th, 2018 to determine if they constituted a procedural and/or ethical violation, review ethics and procedural rules, and possible action moving forward.

Attachments:

[AB_CM_Voelkel_12-11-18.docx](#)
[CM Voelkel's additional attachments.pdf](#)

3.L On November 27, 2018, the approval of the minutes for the regular meeting of the City Council that was held on October 23, 2018 was tabled. Councilmember Baroody requested changes to the minutes. Both the original version and Mr. Baroody's red-lined version of the minutes are attached.

Attachments:

[AB_Minutes 10-23-18.docx](#)
[2018 1023.docx](#)
[2018 1023 Mr. Baroody's redline.docx](#)

3.M Minutes for the special City Council meeting held on November 8, 2018.

Attachments:

[AB_Minutes 11-08-18.docx](#)
[2018 1108 Special.doc](#)

4. BOARD APPOINTMENTS

4.A Appointment to the Library Advisory Board.

Attachments:

[AB_Library_appointment.docx](#)
[Library Advisory Board.docx](#)

4.B Appointments to the Recovery Community Coalition.

Attachments:

[AB_RCC appointments.docx](#)
[Recovery Community Coalition.docx](#)

5. ITEMS FOR FUTURE AGENDAS

6. 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.

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

ADJOURNMENT.



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

SUBJECT: Joint Election Agreement between the City of Kerrville and Kerr County for the May 4, 2019 City General Election.

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/4/2018

SUBMITTED BY: Cheryl Brown
Interim City Secretary

EXHIBITS: Joint election Agreement
Estimated election costs

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$5,644.56	\$8,700.00	\$8,700.00	01-0102-4920

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

The City will reimburse the County for the actual expenses attributable to the cost of the City Election, rental of equipment and supplies, plus 10% of the cost incurred, and a \$50 administrative fee. The agreement is the same as in previous years.

It should be noted that the attachment to the agreement is only an estimate of the election costs and may vary based on the needs of the election, which are currently unknown, for example, printing of additional ballots, and the potential need to hire additional workers. The County Elections Office works diligently to keep the City's costs to a minimum and will inform the City Secretary prior to purchasing additional ballots, hiring additional workers, or any adjustments that may significantly increase the cost estimate.

RECOMMENDED ACTION:

Approve Agreement.

**THE STATE OF TEXAS
COUNTY OF KERR**

**JOINT ELECTION AGREEMENT
BETWEEN
CITY OF KERRVILLE AND KERR COUNTY**

THIS AGREEMENT is made and entered into by and between Bob Reeves Tax Assessor/Collector (or designated employee) on behalf of Kerr County, Texas duly constituted and acting as County Elections Officer, and the City of Kerrville by and through Bill Blackburn, its Mayor, hereinafter referred to as “CITY OF KERRVILLE” and by authority of Section 31.092, Vernon’s Texas Civil Statutes, Election Code for conducting and supervision of the elections for the CITY OF KERRVILLE in conjunction with the Election.

Bob Reeves, Tax Assessor/Collector (or designated employee) shall order all supplies for the election and distribute those supplies to the election personnel. Election forms and all records of the election shall be combined for use in this election on the Tally Equipment.

THIS AGREEMENT is entered into in consideration of the mutual covenants and agreement hereinafter set out. **IT IS AGREED AS FOLLOWS:**

I. DUTIES AND SERVICES OF KERR COUNTY

Bob Reeves Tax Assessor/Collector (or designated employee) agrees to coordinate, supervise, and handle all aspects in administering the CITY OF KERRVILLE elections in accordance with the provisions of the Texas Election Code and as outlined in this Agreement.

Bob Reeves, Tax Assessor/Collector (or designated employee) in connection with the holding and supervision of said election shall assume the following responsibilities:

- a. Shall be responsible for notifying each election judge and alternate judge of his or her appointment and for determining the number of clerks and other election workers authorized to work at each voting location. Arrange for the notification, including writ of election, and compensation of all presiding judges and alternate judges.
- b. Election judges shall be responsible for picking up election supplies and materials at the time and place determined by Bob Reeves, Tax Assessor/Collector (or designated employee). This responsibility will be set forth in the election judges’ letter notifying the judge of his/her appointment.

Election Contract – CITY OF KERRVILLE

- c. Procure, prepare, proof, and distribute ballots.
- d. Procure, prepare, and distribute election judge's kits.
- e. Arrange for the use and compensation of the Cailloux City Center as the polling locations.
- f. Use Optical scanning Verity Scan (Version Number 2.02) and DAU Verity Touch w/Access (Version Number 2.0.3) for counting of ballots as certified by the Secretary of State to comply with HAVA for early voting and election day.
- g. Assemble the list of registered voters to be used in conducting the election in conformity with the election precincts established for the election.
- h. Publish the legal notice of the date, time and place of the testing of the electronic tabulation equipment and conduct such testing.
- i. Supervise the handling and disposition of election returns, voted ballots, etc., and tabulate unofficial returns and assist in preparing the tabulation for the official canvass.
- j. Bob Reeves, Tax Assessor/Collector (or designated employee) will prepare the unofficial tabulation report after all city ballots have been counted, and will provide a copy of the report to the CITY OF KERRVILLE as soon as possible after all returns have been tabulated, but in no event later than 2:00 p.m. on the 10th day following the election. The CITY OF KERRVILLE will be responsible for the official canvass of its General Election.
- k. All early voting ballots (those cast by mail and those cast by personal appearance) will be prepared for counting by an Early Voting Ballot Board.
- l. Handle all aspects of Early Voting including those voting by mail.
- m. Prepare the results of the election for CITY OF KERRVILLE to conduct its own canvass of the election as prescribed by law.
- n. Provide at no cost for the storage of all election records as provided by law.
- o. As the general custodian of election records shall conduct a criminal background check for relevant election officials, staff, and temporary workers upon hiring.

Election Contract – CITY OF KERRVILLE

p. Hart Intercivic certifies that a criminal background check on all employees, including temporary employees that may program, test, perform maintenance, transport equipment, or perform technical support on the voting system equipment for KERR COUNTY has been performed. The Company has determined there are no findings that would prevent the employees from performing their assigned duties.

II. DUTIES AND SERVICES OF CITY OF KERRVILLE

CITY OF KERRVILLE in connection with the holding and supervision of said election shall assume the following responsibilities and shall directly bear any cost for the same:

- a. Shall receive from their candidates all documents filed under Title 15 of the Texas Election Code relating to campaign contributions and expenditures.
- b. Preparation of election orders, resolutions, notices, and other pertinent documents for adoption or execution by the appropriate office or body and post or publish in the required time frame.
- c. Prepare and send out “Notice of Drawing” for a place on the Ballot to all eligible candidates.
- d. Election Officers with a list provided by Bob Reeves, Tax Assessor/Collector (or designated employee) shall be appointed and approved thru the governing body of the CITY OF KERRVILLE. The Election Officers are as follows: Early Voting Judge, Election Day Judge, Election Day Alternate Judge, Central Counting Station Manager, Tabulation Supervisor, Presiding Judge, and Early Voting Ballot Board Judge.
- e. Polling Location shall be appointed and approved thru the governing body of the CITY OF KERRVILLE.
- f. Deliver to Bob Reeves, Tax Assessor/Collector or designated employee as soon as possible, a list showing the official wording for the Election titles that is to be printed on the ballot with the exact form, orders, wording, and spelling that is to be used.
- g. Pay any additional costs incurred by Bob Reeves, Tax Assessor/Collector or designated employee if a recount for the election is required, or the election is contested in any manner.

Election Contract – CITY OF KERRVILLE

- h. Shall issue “Certificates of Election” to candidates elected after the Official Canvass.
- i. CITY OF KERRVILLE will be responsible for the official canvass of its Election.

III. PAYMENT FOR SERVICES

- a. CITY OF KERRVILLE shall pay to Kerr County the actual expenses directly attributable to the Contract including ten percent (10%) of the budget cost for Election Service Contract Fee pursuant to the Texas Election Code, Section 31.100 and the administrative fee of \$50.00 per election. (See attached Estimated Cost Sheet.)
- b. After the date of election and completion of all duties required, the Tax Assessor/Collector (or designated employee) shall then compute the final statement for all expenses including ten percent (10%) of the budget cost for Election Service Contract Fee, the \$50.00 Administration Fee and mail payment for the election services to Kerr County. CITY OF KERRVILLE shall be responsible for paying this amount within thirty (30) days from the Final Cost Report.
- c. **If Election is cancelled a \$75.00 administration fee is due.**

IN WITNESS WHERE OF, the parties hereto have made and entered into this agreement this _____ day of _____, _____.

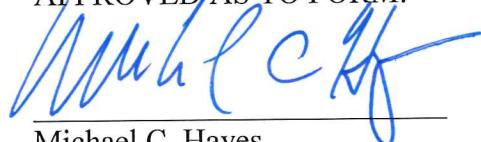
Bob Reeves, Tax Assessor/Collector
Or Designated Employee
Kerr County, Texas

Bill Blackburn, Mayor
CITY OF KERRVILLE

ATTEST:

Cheryl Brown
Interim City Secretary

APPROVED AS TO FORM:



Michael C. Hayes
City Attorney

ESTIMATED COST of May 2019 Election					
for the City of Kerrville					
County Election Services Contract Costs					
1	Ballot Printing Cost			Estimate	Actual
	First 1000 Ballots Free				
2	Electronic Voting System Programming				
	Test and Sample Ballots	1000 free + 1000 ballots		\$2,000.00	
		Extra Ballots			
* 3	Publication of Test of Electronic Voting Equipment				
	Newspaper-Kerrville Daily Times			\$ 40.00	
	Other Newspapers as requested	per their fees			
4	Charge for Wireless Internet			\$ -	
* 5	Lease of Voting Machines				
	Early Voting and Election Day				
		# of Units	Lease Cost		
	eSlates	2	\$37.50		
	JBC	2	\$37.50		
	eScans	2	\$67.50		
* Tally Computer		1	\$57.75		
* Lap Top Computer		1	\$52.50		
* 6	Precinct Election Judges and Clerks				
	\$10.00 per Hour				
	Early Voting Clerks (2)	2	80 hours	\$ 1,600.00	
	Election Day Judge & Alternate Judge	2	15 hours	\$ 300.00	
	Election Day Clerks	1	14 hours	\$ 140.00	
* Early Ballot Board Clerks		3	1 hour	\$ 30.00	
* Tabulation Supervisor & Personnel		3	2 hours	\$ 60.00	
Election Night Workers				\$ -	
7	Fee for Pickup of Supplies before Election Day and				
	Delivery of Supplies after Polls Close Per Election Day Judge			\$ 25.00	
8	Technical Support Personnel			\$ -	
9	Miscellaneous Election Costs				
	Elections Kits	2	\$ 50.00	\$ 100.00	
	Central Counting Station Kit	1	\$ 12.00	\$ 12.00	
	Shipping of MBB's for programming			\$ 60.00	
	Postage - Appointment of Judges & Clerks	4	\$ 0.60	\$ 2.40	
	Postage - Writ of Election to Judge	1	\$ 0.60	\$ 0.60	
* Postage - Mail Ballots Application		35	\$ 0.60	\$ 21.00	
* Postage- Mail Ballots		25	\$ 0.60	\$ 15.00	
* Mail Ballot Kits		25	\$ 2.00	\$ 50.00	
	SUBTOTAL EXPENSES - Cost of the Election			\$ 4,851.25	
10	Election Service Contract Fee (10% of Cost)			\$ 454.53	
	Administrative Fee			\$ 50.00	
11	TOTAL COST OF ELECTION			\$ 5,355.78	
	Balance due 30 days after Final Cost Report				
* The following items may be divided with the different entities having the election					
3	Publication - Newspaper	shared costed with all Entities			
5	Lease - Election Machines	shared costed of Tally & Lap Top Computer w/all Entities			
5	Lease - Election Machines	Equipment costed shared with City of Kerrville			
6	Cost - Election Judge-Clerks	City of Kerrville & KISD share /City of Ingram & Ingram ISD share			
9	Shipping on MBB, Election Kits, & Ballots	Shared with all Entities			
9	Postage - Applications, Ballots, Mail Ballot Kits	Shared with City of Kerrville & KISD			

Name City of Kerrville
Address: 701 Main St.
City Kerrville, State TX ZIP 78028
Phone

Order No.
Rep
FOB

	Description	Unit Price
	Ballots	\$1,920.48
	Extra Ballots	\$0.00
	Newspaper	\$58.00
	Lease Equipment	\$395.25
	Judges and Clerks	\$2,322.25
	Pickup fee	\$25.00
	Miscellaneous	\$364.98
Subtotal		\$5,085.96
	10% of Cost of Electiong	508.60
	Administration Fee	\$50.00
	Total Paid to Kerr County	\$5,644.56



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

SUBJECT: Purchase of 2019 Sutphen Monarch Pumper in the amount of \$578,000.00.

AGENDA DATE OF: 12/11/2018

DATE SUBMITTED: 11/27/2018

SUBMITTED BY: Dannie Smith, Fire Chief

EXHIBITS: Sutphen Corporation Proposal

Expenditure Required: \$578,000	Current Balance in Account: \$650,000	Amount Budgeted: \$650,000	Account Number: 18-1800-5200
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PAYMENT TO BE MADE TO: Sutphen Corporation

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area		
Guiding Principle		
Action Item		

SUMMARY STATEMENT:

The National Fire Protection Association (NFPA) recommends a life span for front-line fire apparatus of 15 years. After front line service they recommend moving these units to a reserve status for an additional 5 years. The NFPA recommends a total life span of 20 years for fire apparatus. The City of Kerrville has followed the NFPA's recommendation in our vehicle replacement policy.

The fire department's current Engine #3 is a seventeen year old 2001 KME, which has exceeded the recommended 15 year front line service life. The fire department seeks to replace this unit with a 2019 Sutphen Monarch, 1,500 GPM Pumper. Sutphen is the manufacturer of our 2015, 100 ft. Aerial Platform, and our recently purchased 2018 Sutphen Monarch Pumper. Our Fleet Department has said: "Sutphen is one of the most reliable and easiest units to work on in our fire department fleet." Sixty percent of the fire department's frontline heavy duty fleet will be Sutphen with the purchase of this unit.

The vehicle is available for purchase through BuyBoard, a Local Government Purchasing Cooperative. By purchasing through BuyBoard, the City obtains a low bid price and ensures compliance with state purchasing laws.

The cost of the unit is \$578,000, and delivery time is approximately 10 – 12 months. Due to 2018 tariffs placed on steel, the unit cost has increased

approximately \$24,000.00 since our previous 2018 purchase. In addition, Sutphen projects an additional 3-5% price increase if the unit is purchased after December 31, 2018.

The unit meets the replacement criteria outlined in the City of Kerrville vehicle and equipment replacement policy. Replacing the vehicle is consistent with our business plan Objective #1; maintain a robust capital equipment replacement plan, and funding was approved in the FY19 budget.

RECOMMENDED ACTION:

Authorize the purchase of one 2019 Sutphen Monarch, 1,500 GPM Pumper at a price not to exceed \$578,000 through BuyBoard.



PROPOSAL

TO THE:

Kerrville Fire Department
Attn: Chief Smith & Batt Chief Vanhoozer
87 Coronado Dr
Kerrville, TX 78028

DATE: November 27, 2018

We hereby propose and agree to furnish the following firefighting equipment upon your acceptance of this proposal:

**One (1) Sutphen Heavy Duty Custom Pumper Complete and Delivered for the
Total Sum of\$578,000.00**

The unit shall be manufactured completely in accordance to the following proposal and delivered in approximately **10-12** months from the date of the contract signing or purchase order, subject to delays from all causes beyond our control.

This proposal shall be valid until December 31, 2018. If the contract or purchase order is not received within this proposed duration, we reserve the right to extend, withdraw, or modify our proposal, including pricing, delivery times, and prepayment discounts as applicable.

Respectfully submitted,

Zach Rudy
Director of Sales and Marketing
Sutphen Corporation

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
NOVEMBER 13, 2018

On November 13, 2018, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Mr. Baroody, followed by the Pledge of Allegiance led by Mr. Mario Garcia.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
Delayne Sigerman	Mayor Pro Tem
Vincent Voelkel	Councilmember
George Baroody	Councilmember
Judy Eychner	Councilmember

COUNCILMEMBERS ABSENT: None.

CITY EXECUTIVE STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Cheryl Brown	Interim City Secretary
Amy Dozier	Director of Finance
Kim Meismar	Executive Director of General Operations
David Knight	Police Chief
Stuart Cunyus	Public Information Officer
Dannie Smith	Fire Chief
Drew Paxton	Executive Director of Development Services

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

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

1A. Items of Interest to the Community were made.

A Proclamation was presented to the Kerrville Public Utility Board's Apprentice Program, declaring the week of November 12-17, 2018 as Apprentice Week.

2. VISITORS/CITIZENS FORUM:

The following persons spoke:

- John Brown spoke regarding the conditions on Riverhill Blvd.
- Linda Bullard spoke regarding the removal of Mr. Baroody as Mayor Pro Tem
- Mario Garcia spoke regarding the Kerrville Youth Advisory Committee
- Roman Garcia spoke regarding the Kerrville Youth Advisory Committee
- Barbara Dewell regarding the removal of Mr. Baroody as Mayor Pro Tem

3. CONSENT AGENDA:

Mr. Baroody asked that item 3C be pulled from the Consent agenda.

Mr. Baroody moved to approve the items 3A and 3B on the consent agenda as presented. Ms. Sigerman seconded, and the motion passed 5-0.

3A. Resolution No. 45-2018 canceling the regular meeting of the City Council scheduled for December 25, 2018.

3B. Resolution No. 46-2018 adopting the FEMA-approved Kerr County, Texas Multi-Jurisdiction Hazard Mitigation Plan.

END OF CONSENT AGENDA.

3C. Resolution No. 47-2018 representing that the City of Kerrville, Texas, is capable of being designated as a management agency for wastewater collection and treatment within the City limits in accordance with federal law. Approval of this resolution is required prior to approval of the funding ordinances.

The Resolution was read into the record by title only by Ms. Brown.

Mr. Hoppe presented the Resolution, and responded to questions from the Council.

Mr. Baroody moved to approve Resolution No. 47-2018 as presented. Mr. Voelkel seconded, and the motion passed 5-0.

4. ORDINANCES, FIRST READING

4A. Ordinance No. 2018-34, authorizing the issuance, sale and delivery of \$8,000,000 in aggregate principal amount of City of Kerrville, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2018A, to be purchased by the Texas Water Development Board; 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, and escrow agreement, and all other instruments and procedures related thereto.

The Ordinance was read into the record by title only by Ms. Brown.

Ms. Dozier presented the Ordinance.

Gabriela Brisenio from Hill Top Security, made a presentation regarding the Ordinance.

Tom Spurgeon, the Bond Counsel for the City, also spoke regarding the Ordinance.

Ms. Sigerman moved to approve Ordinance No. 2018-34. Ms. Eychner seconded, and the motion passed 5-0.

4B. Ordinance No. 2018-35 authorizing the issuance, sale and delivery of \$5,000,000 in aggregate principal amount of City of Kerrville, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2018B, to be purchased by the Texas Water

Development Board; 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 escrow agreement, and all other instruments and procedures related thereto.

The Ordinance was read into the record by title only by Ms. Brown.
Ms. Dozier presented the Ordinance.

Mr. Baroody moved to approve Ordinance No. 2018-35, Ms. Eychner seconded, and the motion passed 5-0.

5. ORDINANCE, SECOND READING:

5A. Ordinance No. 2018-32, amending Chapter 2 "Administration," Article IV "Boards and Commissions" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Section 2-91, to create a Senior Services Advisory Committee; providing the functions of said committee; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject.

The Ordinance was read into the record by title only by Ms. Brown.

Ms. Eychner moved to approve Ordinance No. 2018-32 as presented. Ms. Sigerman seconded, and the motion passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Authorize execution of a construction contract for the Water Treatment Plant Clarifier Rehab with Keystone Construction in the amount of \$796,000.00.

The item was read into the record by title only by Ms. Brown.
Mr. Hoppe presented the item.

Mr. Baroody moved to approve the execution of the construction contract with Keystone Construction for the Water Treatment Plant Clarifier Rehab in the amount of \$796,000.00. Ms. Eychner seconded, and the motion passed 5-0.

6B. Interlocal Contract with South Central Planning and Development Commission for development services software.

The item was read into the record by title only by Ms. Brown.
The item was presented by Mr. Paxton.

The following person spoke:
Mario Garcia

Ms. Sigerman moved to approve the Interlocal Contract with South Central Planning and Development Commission for development services software. Ms. Eychner seconded, and the motion passed 5-0.

6C. Amendments to Chapter 18 “Animals” of the Code of Ordinances.

The item was read into the record by title only by Ms. Brown. Mr. Baroody presented the item.

The following persons spoke:

- Tyra Thompson Lux
- Shelly Sandy

No action was taken on this item by consensus of the Council.

6D. Amendments to the City’s purchasing policy to prohibit award of a contract to any person or entity who is being investigated for, or has been convicted of, a felony.

The item was read into the record by title only by Ms. Brown. Mr. Baroody presented the item.

Mr. Baroody moved to edit the City’s purchasing policy by adding Section 11.1(f) that says that the City will not enter into a contract or funding agreement with any vendor to cover its principals, investors, employees, or agents, including subcontractors, which have been previously convicted, or is at the time of award under investigation for a felony. Mr. Voelkel seconded, and the motion failed 2-3, with Mr. Voelkel and Mr. Baroody voting in favor, and Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting against.

The following person spoke:

- Mike Sigerman
- John Harrison

7. INFORMATION AND DISCUSSION:

7A. Financial update for the month ended September 30, 2018.

Ms. Dozier gave the update for different funds that make up the City’s budget.

7B. Report on status of flood damage assessment at reuse line bridge structure located near Loop 534 bridge.

Mr. Hoppe reported on the progress of clean-up of the debris and damages near the Loop 534 bridge. He reported that the Kerrville Fire Department Rescue Dive Team did search underwater to locate the broken infrastructure.

All parties visited the damage site, and FEMA was scheduled to have an on-site visit on 11-14-18.

Forensic deconstruction and item inventory/storage protocol was being developed.

The following person spoke:

- Peggy McKay

8. **ITEMS FOR FUTURE AGENDAS:** None

9. **EXECUTIVE SESSION:** None

10. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY**

None

ADJOURNMENT.

The meeting was adjourned at 7:56 p.m.

APPROVED: _____

ATTEST: _____

Bill Blackburn, Mayor

Cheryl Brown, Interim City Secretary

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
NOVEMBER 27, 2018

On November 27, 2018, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Ms. Sigerman, followed by the Pledge of Allegiance led by Fire Chief Dannie Smith.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
Delayne Sigerman	Mayor Pro Tem
Vincent Voelkel	Councilmember
George Baroody	Councilmember

COUNCILMEMBERS ABSENT:

Judy Eychner	Councilmember
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CITY EXECUTIVE STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Cheryl Brown	Interim City Secretary
Amy Dozier	Director of Finance
Kim Meismar	Executive Director of General Operations
David Knight	Police Chief
Stuart Cunyus	Public Information Officer
Dannie Smith	Fire Chief
Drew Paxton	Executive Director of Development Services
Guillermo Garcia	Executive Director for Strategic Initiatives

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

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

1A. Items of Interest to the Community were made.

2. VISITORS/CITIZENS FORUM:

The following persons spoke:

- Bruce Stracke spoke about the benefits of the River Trail, and other Kerrville amenities.

3. CONSENT AGENDA:

Mr. Baroody asked the item be pulled from the Consent Agenda.

END OF CONSENT AGENDA.

3A. Minutes for the regular City Council meeting held on October 23, 2018.

Mr. Baroody stated he wanted the changes made that he requested, a copy of which was at the council places.

Ms. Sigerman asked that the approval of the minutes be tabled.

Mr. Baroody moved to table the approval of the minutes to the next meeting. Mr. Voelkel seconded, and the motion passed 4-0.

4. PUBLIC HEARING AND RESOLUTIONS:

4A. Resolution No. 50-2018 granting a conditional use permit for an approximate 4.372 acres, part of the Samuel Wallace Survey No. 114, Abstract No. 348, and within the City of Kerrville, Kerr County, Texas; and being a portion of a 31.40 acre tract conveyed as Tract 1 to Schreiner University; and more commonly known as part of the Schreiner University Campus, and located in the 2000 block of Singing Wind Drive; said property is located within the Public and Institutional (PI) Zoning District; by permitting said property to be used for an electric facility (solar) and transmission and distribution substation; and making said permit subject to certain conditions and restrictions contained herein.

Mr. Blackburn opened the public hearing at 6:13 p.m.

The Resolution was read into the record by title only by Ms. Brown.

The Resolution was presented by Mr. Paxton.

Mike Wittler and Conner Goodson with RES-Group also presented details of the project.

Mr. Blackburn closed the public hearing at 6:28 p.m.

Ms. Sigerman moved to approve Resolution No. 50-2018. Mr. Blackburn seconded, and the motion passed 4-0.

4B. Resolution No. 49-2018 approving a Development Site Plan located in a Residential Cluster "RC" Zoning District for Lots 1-6, Block D of Comanche Tract, Phase 13 Addition Subdivision; more commonly known as 3001, 3003, 3005, 3007, 3009, and 3011 Club House Drive.

Mr. Blackburn opened the public hearing at 6:31 p.m.

The Resolution was read into the record by title only by Ms. Brown.

Mr. Paxton presented the Resolution.

Ms. Sigerman moved to approve Resolution No. 49-2018, Mr. Voelkel seconded, and the motion passed 4-0.

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Consideration of Charge to and Schedule for the Charter Review Commission.

The item was read into the record by title only by Ms. Brown.

Mr. Hayes presented the Charge to and Schedule for the Charter Review Commission.

Ms. Sigerman moved to direct staff to begin the process to accept applications for the seven positions on the Charter Review Commission through the month of December, to approve the Charge to and Schedule for the Charter Review Commission, and review each application as it is received, and to make the appointments to the Commission at the first Council meeting in January. Mr. Voelkel seconded, and the motion passed 4-0.

6. INFORMATION AND DISCUSSION:

6A. Financial update for the month ended October 31, 2018.

Ms. Dozier gave the update.

6B. Council Chamber Audio Video and Recording Upgrades.

Mr. Garcia reviewed the upcoming audio sound system improvements for the Council Chambers, and recurring captioning, the new component of the agenda software that will caption each meeting video to allow viewers to do word searches.

7. BOARD APPOINTMENTS:

7A. Appointments to the Recovery Community Coalition.

Mr. Blackburn moved to table the appointments to the Recovery Community Coalition to the December 11, 2018 meeting. Mr. Baroody seconded, and the motion passed 4-0.

8. CITY MANAGER'S REPORT:

Mr. McDaniel gave the report.

9. ITEMS FOR FUTURE AGENDAS:

- Allowing Kerrville Youth Advisory Committee to present the results of the survey they conducted last school year.
- A joint City/County workshop to discuss roads and details of chip seal.
- A workshop on hosting a music event and festival.
- Possible discussion regarding audio recording the executive sessions.
- Providing shelter and assistance to the homeless, and the number of homeless in Kerrville.

10. EXECUTIVE SESSION:

Mr. Voelkel moved for the city council to go into executive closed session under Section 551.072 (deliberation regarding real property) of Chapter 551 of the Texas Government Code; the motion was seconded by Ms. Sigerman and passed 4-0 to discuss the following matters:

Section 551.072:

10A. Update on workforce housing.

At 7:23 p.m. the regular meeting recessed. Council went into executive closed session at 7:23 p.m. At 8:17 p.m. the executive closed session recessed and council returned to open session at 8:17 p.m. No action was taken in executive session.

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

None

ADJOURNMENT.

The meeting was adjourned at 8:17 p.m.

APPROVED: _____

ATTEST: _____

Bill Blackburn, Mayor

Cheryl Brown, Interim City Secretary



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

SUBJECT: First Amendment to the Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the design of and improvements to the City's H-E-B Tennis Center

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/3/2018

SUBMITTED BY: E.A. Hoppe
Deputy City Manager

EXHIBITS: First Amendment to the Project Funding Agreement

Expenditure Required: \$1,750,000	Current Balance in Account: \$1,370,075.57	Amount Budgeted: \$1,500,000	Account Number: 70-7000-5100 Project: 70-17002
---	--	--	--

PAYMENT TO BE MADE TO: City of Kerrville, TX

Kerrville 2050 Item?	Yes:	No: <input type="checkbox"/>
Key Priority Area	P - Parks/Open Space/River Corridor	
Guiding Principle	P5 - Focus on enhancing/investing in existing parks, their purpose or repurpose and improving accessibility before acquiring land for new parks	
Action Item	N/A	

SUMMARY STATEMENT:

The EIC entered into a \$1.5 million Project Funding Agreement with the City of Kerrville in January 2017 to assist with a master planning and reconstruction effort of the City's H-E-B Tennis Center. The City subsequently engaged a design-engineering firm to conduct a master plan for the property, including a significant public engagement effort, as well as develop construction documents for the initial phase of the reconstruction effort. That design-engineering contract totaled \$161,500 with Shrickel Rollins and Associates (SRA). The public engagement effort was completed over the course of 2017 and the project bid documents were released at the end of Summer 2018. In addition, the City let a \$57,304 contract for a portion of the reconstruction effort, to resurface a portion of the courts, to help expedite the reconstruction effort and minimize the anticipated downtime of the facility in Spring and Summer 2019 during the larger construction effort of Phase 1.

On November 13th the City received four bids to complete the Phase 1 portion of the Master Plan. The apparent low bid is \$1,453,939. In conjunction with the resurfacing effort (\$57,304) and the initial design-engineering contract (\$161,500), and some degree of project contingency (5% = \$73,000) the Phase 1 effort will likely total approximately \$1,750,000. The City would like to respectfully request an additional \$250,000 to the original Project Funding Agreement of \$1,500,000 in order to complete Phase 1 of the

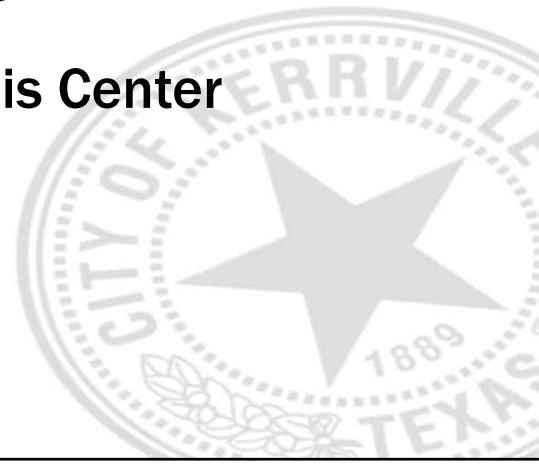
Tennis Center Reconstruction effort. Any unused contingency funds not utilized will be refunded to the EIC at the end of the project.

The EIC unanimously approved this item at their November 26, 2018 meeting.

RECOMMENDED ACTION:

Approve the First Amendment to the Project Funding Agreement.

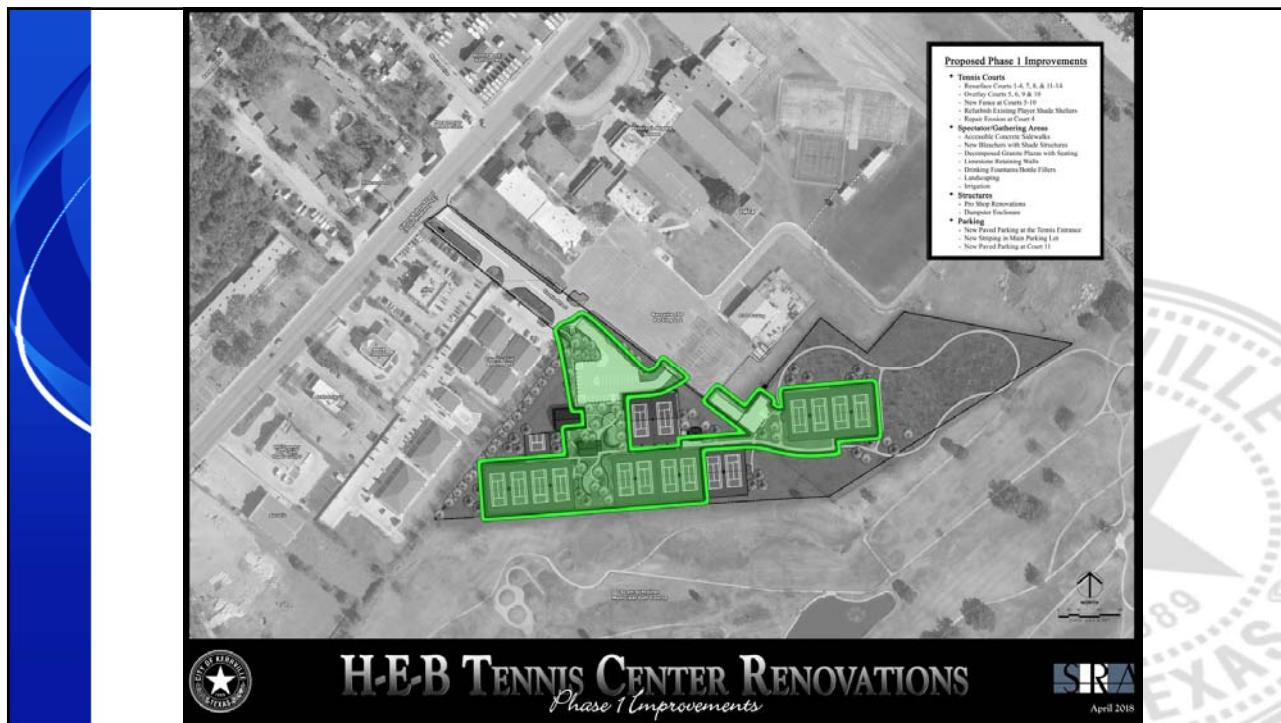
Amendment to Funding Agreement with City of Kerrville for H.E.B. Tennis Center



Project Summary

- EIC originally budgeted \$1.5 million for project in 2013
- Funding Agreement in January 2017
 - Included funding for Feasibility/Public Input/Design/Engineering
 - (\$161,500)
 - Resurfacing of courts contracted separately to accelerate project (\$57,304)
- Recently bid project
 - 4 proposals, apparent low bid is for \$1,453,939
- Request for Amendment to Agreement for total funding from EIC of \$1,750,000 (from \$1,500,000)

Master Plan Rendering



**FIRST AMENDMENT TO PROJECT FUNDING AGREEMENT
BETWEEN THE CITY OF KERRVILLE, TEXAS, ECONOMIC
IMPROVEMENT CORPORATION AND THE CITY OF KERRVILLE,
TEXAS FOR THE DESIGN OF AND IMPROVEMENTS TO THE CITY'S
H-E-B TENNIS CENTER**

THIS FIRST AMENDMENT TO PROJECT FUNDING AGREEMENT is entered into this _____ day of _____, 2018, by and between the City of Kerrville, Texas, Economic Improvement Corporation ("EIC"), a Texas non-profit corporation under 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 the City of Kerrville, Texas ("City"), a Texas home-rule municipality.

WITNESSETH:

WHEREAS, on January 24, 2017, the EIC and City entered into an agreement titled *Project Funding Agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the Design of and Improvements to the City's H-E-B Tennis Center* (hereafter "the Funding Agreement") in which the EIC agreed to provide to City an amount up to and not to exceed \$1,500,000.00 in EIC's sales tax revenues to be used to pay for costs to design and provide improvements to the City's H-E-B Tennis Center, as specifically defined in the Funding Agreement; and

WHEREAS, based upon increased costs, the City has asked to amend the Funding Agreement to increase the amount of EIC's funding from \$1,500,000.00 to \$1,750,000.00;

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

1. Section 2 of the Funding Agreement is amended to add the language that is underlined (added) and to delete the language that is bracketed and stricken (~~deleted~~) as follows:

"2. Agreement to Fund Project: The EIC agrees to provide City an amount up to and not to exceed \$1,750,000.00 ~~\$1,500,000.00~~ in 4B Revenues to be used for the design, bidding and/or request for proposals, acquisition, construction, and installation of the Project."

2. Except as amended by this First Amendment, the provisions of the Funding Agreement remain in full force and effect.

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

(signatures begin on following page)

CITY OF KERRVILLE, TEXAS

Bill Blackburn, Mayor

ATTEST:

Cheryl Brown, Interim City Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for the EIC

CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION

Kenneth Early, President

ATTEST:

Sana Waller, Secretary for the EIC



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

SUBJECT: Authorize execution of a construction contract for the HEB Tennis Center Renovation with JK Bernhard Construction Co., LLC in the amount of \$1,453,939.00.

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/3/2018

SUBMITTED BY: Kyle Burow
Director of Engineering

EXHIBITS: Tennis Center Renovation Received Bids

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$1,453,939.00	\$1,370,075.57	\$1,750,000.00	70-7000-5100 Project: 70-17002

PAYMENT TO BE MADE TO: JK Bernhard Construction Co., LLC
2546 Goat Creek Rd.
Kerrville, TX 78028

Kerrville 2050 Item?	Yes:	No: <input type="checkbox"/>
Key Priority Area	P - Parks/Open Space/River Corridor	
Guiding Principle	P5 - Focus on enhancing/investing in existing parks, their purpose or repurpose and improving accessibility before acquiring land for new parks	
Action Item	Click or tap here to enter text.	

SUMMARY STATEMENT:

The renovation of the H-E-B tennis Center was initially included in the EIC FY14 annual budget. The EIC entered into a \$1.5 million Project Funding Agreement with the City of Kerrville in January 2017 to assist with a master planning and reconstruction effort of the City's H-E-B Tennis Center. The City subsequently engaged a design consultant to conduct a master plan for the property, including a significant public engagement effort, as well as develop construction documents for the initial phase of the reconstruction effort. That master planning & design contract totaled \$161,500 with Schrickel Rollins and Associates (SRA). The public engagement effort was completed over the course of 2017 and the project bid documents were released at the end of Summer 2018. In addition, the City let a \$57,304 contract for a portion of the reconstruction effort, to resurface a portion of the courts, to help expedite the reconstruction effort and minimize the anticipated downtime of the facility in Spring and Summer 2019 during the larger construction effort of Phase 1.

The renovation project scope of work will address drainage issues, tennis court and building needs, and Code compliance. Design was completed and bids were received on November 13, 2018. The City received four bids to complete the Phase 1 portion of the Tennis Center Master Plan. The apparent low bid is with JK Bernhard Construction

Co., LLC, a local contractor, in the amount of \$1,439,639.00. The consultant and City staff evaluated the contractor and recommend award to JK Bernhard Construction Co., LLC for the base bid and alternate (entry monument sign) for a total construction contract amount of \$1,453,939.00.

RECOMMENDED ACTION:

Authorize execution of a construction contract with JK Bernhard Construction Co., LLC.

Project Name : Tennis Center Renovation Project

Engineering Number: PW#17-011

Bid Opening: November 13, 2018



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

SUBJECT: Report on granular activated carbon (GAC) benchtop study and third party review of TTHM mitigation options

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/3/2018

SUBMITTED BY: Stuart Barron
Public Works Director

EXHIBITS: TTHM Benchtop Study Memorandum
GAC Study – Third-party Review Memorandum
Electrocoagulation Memorandum

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A
			Project: NA

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes:	No: <input type="checkbox"/>
Key Priority Area	W - Water/Waste-Water/Drainage	
Guiding Principle	W3 - Address water quality challenges with proven solutions	
Action Item	W3.1 - Examine all solution for improving water quality W3.2 – Explore electrocoagulation as a treatment method W3.3 – Examine pre-treatment options W3.5 – Improve water quality by addressing TTHM	

SUMMARY STATEMENT:

Staff and the consulting engineer for the project will provide the results of three water quality reports that have been conducted. These reports are the result of water testing and a bench top study that has been completed over the course of 2018. The results verify the proposed Granular Activated Carbon (GAC) treatment process is effective at removing Total Trihalomethane (TTHM). The reports include:

1. Electrocoagulation Memorandum - Concludes electrocoagulation is not used, recommended, or approved for treatment of potable water in the state of Texas.
2. The second report is an evaluation from Freese and Nichols, Inc. (FNI) regarding Calgon Carbon Corporation's (Calgon) bench top study for the granular activated carbon (GAC) treatment process. The report indicates the proposed GAC design will be effective at removing enough Total Organic Carbon (TOC) to bring Kerrville's TTHMs within regulatory TCEQ limits.
3. The third report is from Arcadis. They performed an independent, third-party review of Freese and Nichols and Calgon Carbon's bench top study results. They confirmed the GAC system should be sufficient to bring the City of Kerrville back into compliance with TCEQ regulations regarding TTHMs.

RECOMMENDED ACTION:

Receive report and authorize GAC project bidding.

MEMO



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www.freese.com

TO:	City of Kerrville
FROM	Mark Graves, P.E.
SUBJECT:	GAC Bench Test Analysis
PROJECT:	Kerrville WTP THM Control Facility
DATE:	November 15, 2018
CC:	

DRAFT
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF <u>MARK GRAVES</u> , P.E., TEXAS NO. <u>90151</u> ON <u>NOVEMBER 15, 2018</u> . IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES. FREESE AND NICHOLS, INC. TEXAS REGISTERED ENGINEERING FIRM F- 2144

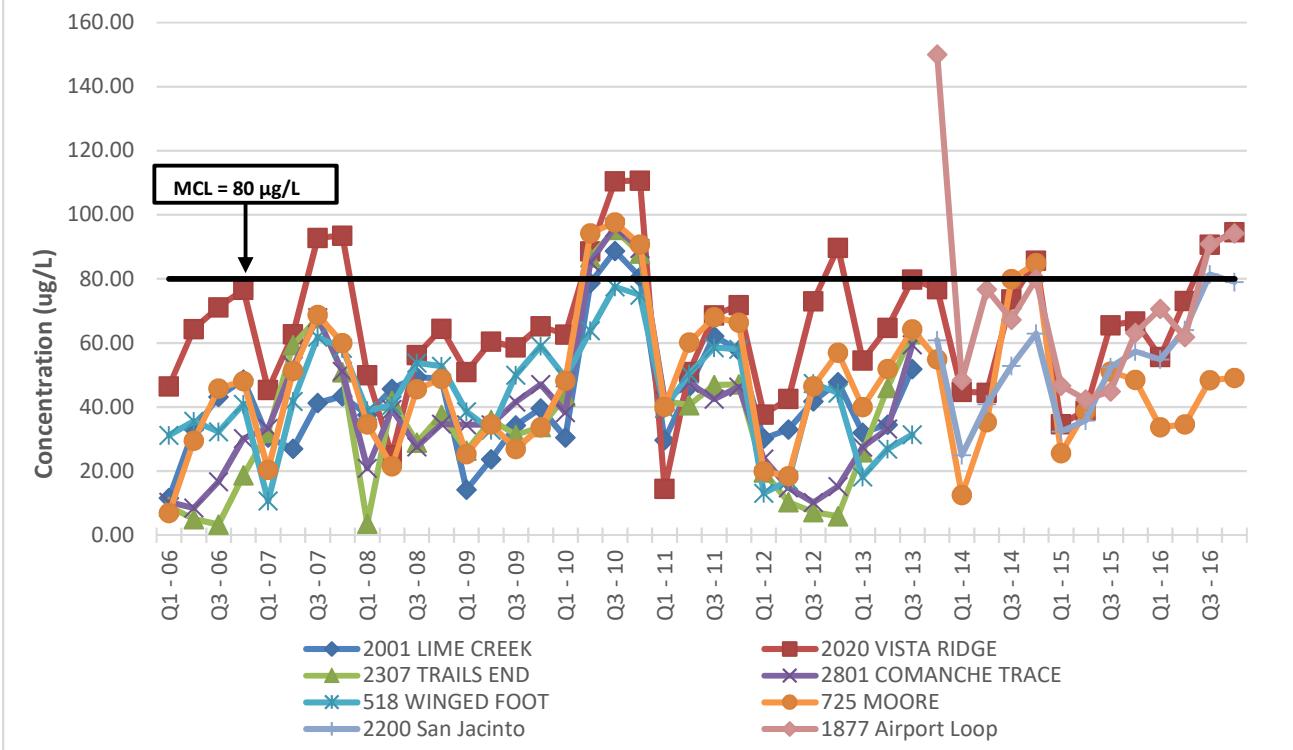
1.00 BENCH TEST ANALYSIS

The bench scale testing conducted by Calgon Carbon Corporation (Calgon) demonstrated that the percent reduction in total organic carbon (TOC) was roughly equivalent to the reduction in Total Trihalomethanes (TTHM) formation potential. The Calgon report utilized the bench test results to project a GAC change out frequency of 59 days based on several conservative assumptions that do not accurately reflect conditions for the Kerrville distribution system. The TTHM formation potential tests are representative of worst-case conditions with high chlorine residual for a period of 7 days. Kerrville has a complicated water distribution system with groundwater that has no organics mixed in the distribution system along with the treated surface water. The Calgon report is based on looking only at the TTHM formation potential that first exceeds the 80 ug/L level. The acceptable regulatory level for TTHM is based on the locational running annual average (LRAA). The TOC in the tested water was 2.38 mg/L while the historical average is lower at 1.80 mg/L. Additionally, there is some aeration in the distribution system that will decrease the actual TTHM levels observed. Therefore, a more accurate depiction is an evaluation of percent reduction in TTHM formation that can be anticipated with the GAC system.

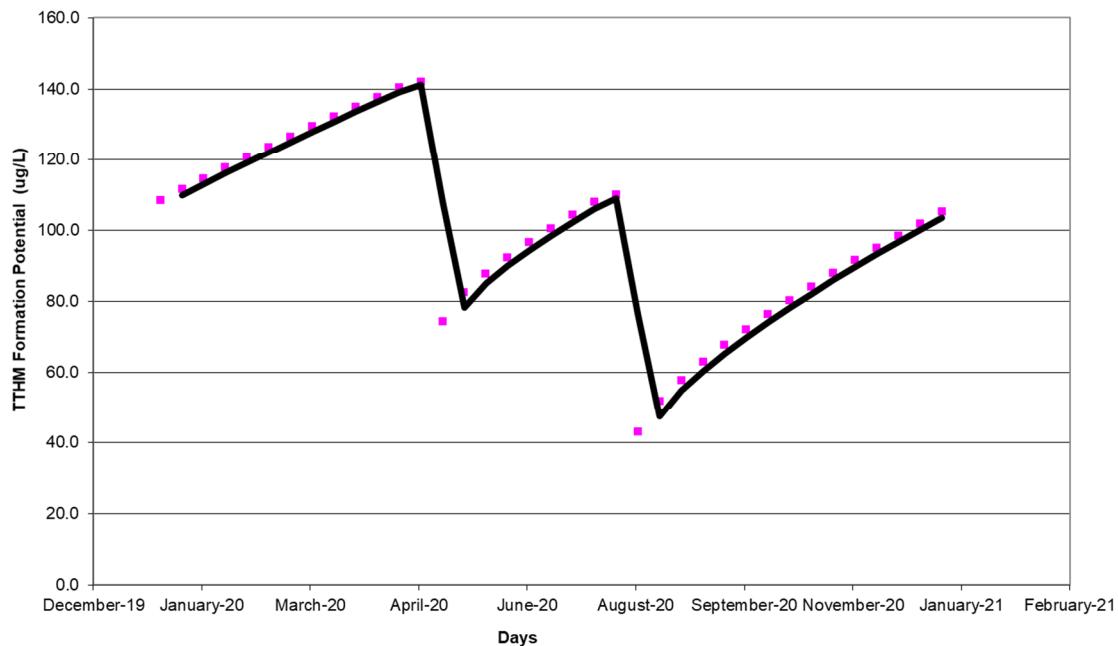
The original design report evaluating GAC for reduction of TTHM at Kerrville showed that the highest running annual average TTHM experienced was one site (Vista Ridge) that reached 110 ug/L TTHM. Therefore, a reduction in the annual average formation potential of about 36% is needed to keep the worst case TTHM LRAA below 70 ug/L. Figure 1 shows the summarized historical TTHM data showing the 110 ug/L TTHM LRAA worst case scenario. An analysis was conducted of GAC operations with the current configuration of four vessels each 1 MGD for a total treatment capacity of

4 MGD. For the final design the treatment capacity was increased from 3 MGD to 4 MGD by providing a fourth GAC contactor to provide a more conservative treatment capacity. The annual average surface water treatment is about 3 MGD so the full flow will be treated most of the time. The operations analysis shown in Figure 2 and Appendix A assumes that two GAC vessels will be changed out before summer and the other two vessels will be changed out at the end of summer to provide the most TOC/TTHM reduction during the higher temperature periods that showed the highest quarterly historical TTHM. The overall reduction in TTHM formation potential is 36% in this scenario where the GAC vessels are changed out once per year meeting the target reduction to keep the worst case TTHM LRAA below 70 ug/L. This analysis does not include the impact of the targeted change out times that should have a greater actual annual reduction because there will be a higher percent reduction when TTHM formation potential is at the highest point. Note also that the winter data shown in Figure 2 is not representative of actual historical TTHM formation during the colder winter months when TTHM formation is historically below 50 ug/L.

Figure 1. TTHM Locational Running Annual Average Data



**Figure 2. One Change Out Per Year
GAC Performance in Controlling Total Trihalomethanes (TTHM)**



A more conservative analysis is shown in Figure 3 and Appendix B where the GAC vessels are changed out twice per year reducing annual TTHM formation by 56%. Like the one change out per year analysis, this analysis assumes that two GAC vessels will be changed out at a time resulting in a total of four change out events to replace the GAC in the four vessels. This more conservative analysis keeps the TTHM yearly average conservatively below 70 ug/L all year long without considering other impacts. The impact of historically lower TTHM during the non-summer sampling periods will result in lower TTHM formation in actual operation. This analysis also does not include the impacts of blending groundwater without any TTHM formation potential which would further decrease the annual average TTHM values.

**Figure 3. Two Change Outs Per Year
GAC Performance in Controlling Total Trihalomethanes (TTHM)**

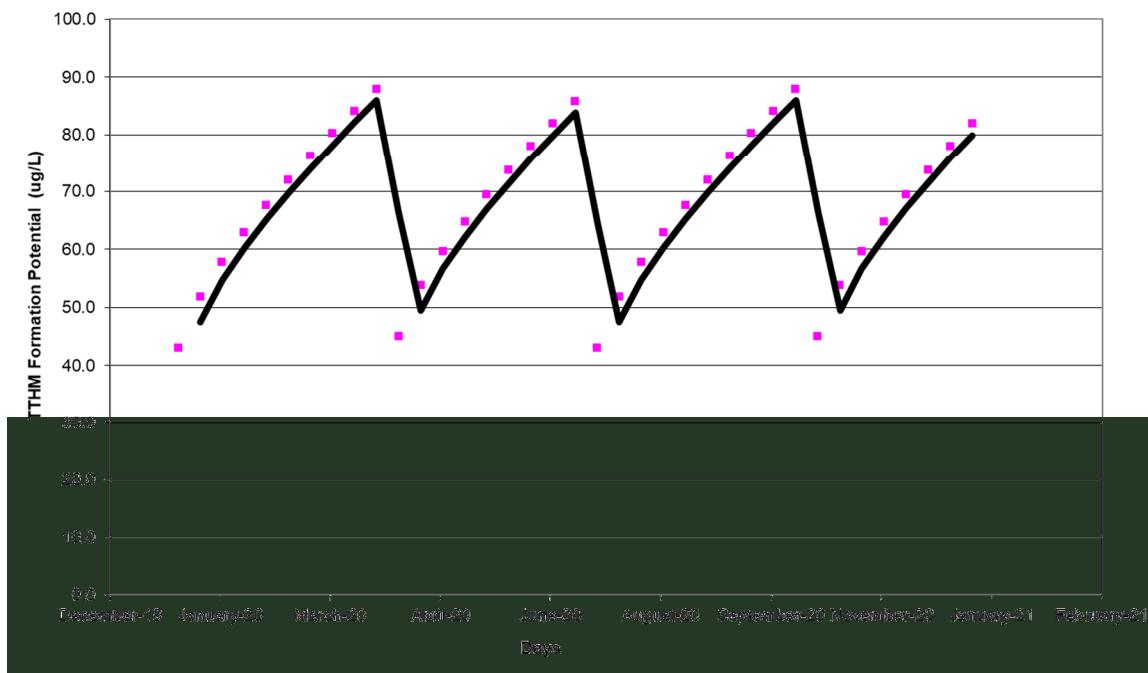
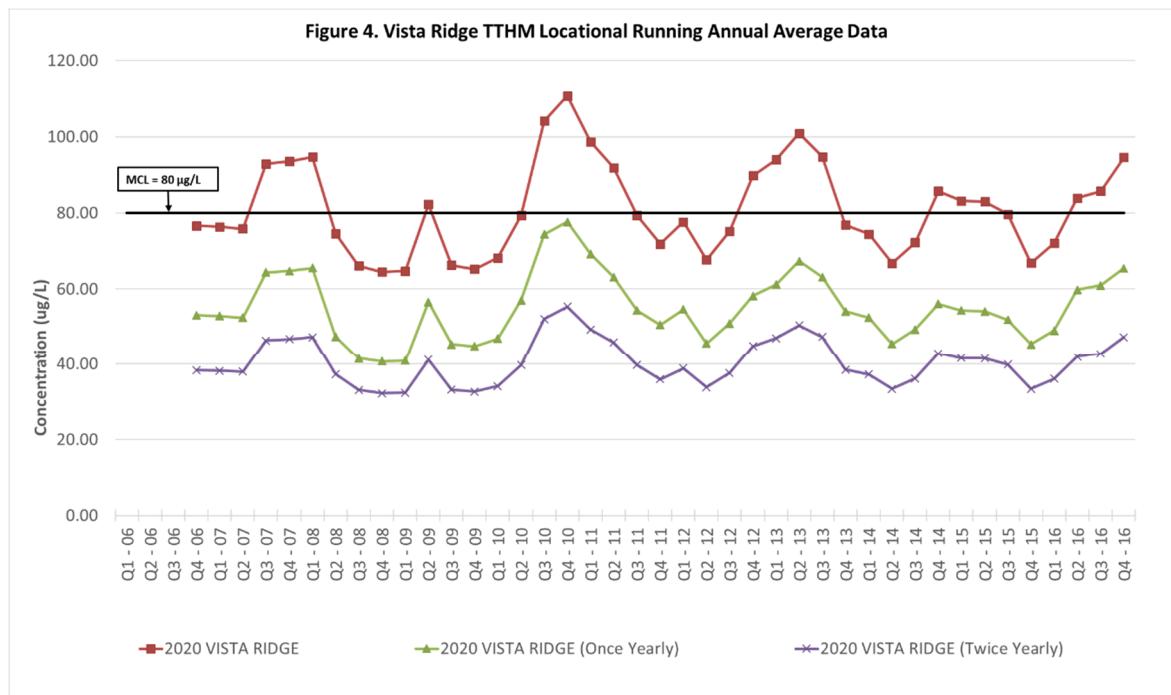


Figure 4 shows the actual Vista Ridge location TTHM locational running annual averages for the historical data compared to the levels projected during those historical periods if the GAC system was operational with change out once per year and change out twice per year. As shown a change out once per year would be adequate to maintain the level below 80 ug/L. During periods of higher TOC and therefore higher TTHM formation potential change out more frequently up to twice per year may be warranted to keep TTHM conservatively below the regulatory limit.



2.00 RECOMMENDATION

The analysis of the Calgon bench test results indicate that GAC can effectively be utilized to decrease TTHM annual average concentrations to below the regulatory limit. The GAC change out period in practical application could range from once to twice per year depending on water quality and distribution system conditions. A replacement GAC cost of \$1.70 per pound of GAC is assumed based on vendor information. The cost to replace the GAC in the four 40,000 lb vessels is projected to range from \$272,000 to \$544,000 per year. Targeted use of the GAC system that corresponds to the highest formation potential periods may further decrease the required GAC change out frequency.

3.00 APPENDICES

- Appendix A. Calculations for Analysis with One Change Out Per Year
- Appendix B. Calculations for Analysis with Two Change Out Per Year

Appendix A - One Change Out per Year

RAW TOC = TOC Removal Equation
2.38 Equation TTHM TOC = 0.0219*Day^0.6508
TTHM = 58.61*TOC+14.46

Date	Days	Vessel 1 & 2		Vessel 3 & 4		Average	% Reduction	% Reduction
		Day	TOC	Day	TOC			
1/1/2020	0	240	1.85	150	1.36	108	32.68%	30.09%
1/11/2020	10	250	1.89	160	1.42	112	30.41%	28.05%
1/21/2020	20	260	1.94	170	1.47	115	28.19%	26.04%
1/31/2020	30	270	1.99	180	1.53	118	26.00%	24.07%
2/10/2020	40	280	2.04	190	1.59	121	23.84%	22.13%
2/20/2020	50	290	2.09	200	1.64	124	21.72%	20.23%
3/1/2020	60	300	2.13	210	1.69	127	19.63%	18.35%
3/11/2020	70	310	2.18	220	1.74	129	17.58%	16.49%
3/21/2020	80	320	2.23	230	1.79	132	15.54%	14.67%
3/31/2020	90	330	2.27	240	1.85	135	13.54%	12.86%
4/10/2020	100	340	2.31	250	1.89	138	11.56%	11.08%
4/20/2020	110	350	2.36	260	1.94	141	9.60%	9.32%
4/30/2020	120	350	2.36	270	1.99	142	8.59%	8.41%
5/10/2020	130	0	0.00	280	2.04	74	57.14%	52.10%
5/20/2020	140	10	0.23	290	2.09	82	51.25%	46.80%
5/30/2020	150	20	0.37	300	2.13	88	47.48%	43.41%
6/9/2020	160	30	0.48	310	2.18	92	44.19%	40.45%
6/19/2020	170	40	0.57	320	2.23	97	41.17%	37.73%
6/29/2020	180	50	0.66	330	2.27	100	38.34%	35.18%
7/9/2020	190	60	0.75	340	2.31	104	35.64%	32.75%
7/19/2020	200	70	0.83	350	2.36	108	33.06%	30.43%
7/29/2020	210	80	0.90	350	2.36	110	31.48%	29.01%
8/8/2020	220	90	0.97	0	0.00	43	79.52%	72.24%
8/18/2020	230	100	1.04	10	0.23	52	73.17%	66.53%
8/28/2020	240	110	1.11	20	0.37	58	68.97%	62.75%
9/7/2020	250	120	1.18	30	0.48	63	65.29%	59.44%
9/17/2020	260	130	1.24	40	0.57	68	61.91%	56.39%
9/27/2020	270	140	1.30	50	0.66	72	58.74%	53.54%
10/7/2020	280	150	1.36	60	0.75	76	55.72%	50.82%
10/17/2020	290	160	1.42	70	0.83	80	52.84%	48.23%
10/27/2020	300	170	1.47	80	0.90	84	50.06%	45.73%
11/6/2020	310	180	1.53	90	0.97	88	47.38%	43.31%
11/16/2020	320	190	1.59	100	1.04	91	44.77%	40.97%
11/26/2020	330	200	1.64	110	1.11	95	42.24%	38.69%
12/6/2020	340	210	1.69	120	1.18	98	39.77%	36.47%
12/16/2020	350	220	1.74	130	1.24	102	37.36%	34.29%
12/26/2020	360	230	1.79	140	1.30	105	35.00%	32.17%
		Average	1.45		1.45	99	39.23%	35.98%
				Base TTHM =	155			
				Reduction =	36%			

Appendix B - Two Change Out per Year

RAW TOC = 2.38 TOC Removal Equation TOC = 0.0219*Day^0.6508
 Equation TTHM TTHM = 58.61*TOC+14.46

Date	Days	Vessel 1 & 2		Vessel 3 & 4		Average TTHM	TOC	% Reduction	% Reduction
		Day	TOC	Day	TOC				
1/1/2020	0	0	0.00	90	0.97	43	79.52%	72.24%	
1/11/2020	10	10	0.23	100	1.04	52	73.17%	66.53%	
1/21/2020	20	20	0.37	110	1.11	58	68.97%	62.75%	
1/31/2020	30	30	0.48	120	1.18	63	65.29%	59.44%	
2/10/2020	40	40	0.57	130	1.24	68	61.91%	56.39%	
2/20/2020	50	50	0.66	140	1.30	72	58.74%	53.54%	
3/1/2020	60	60	0.75	150	1.36	76	55.72%	50.82%	
3/11/2020	70	70	0.83	160	1.42	80	52.84%	48.23%	
3/21/2020	80	80	0.90	170	1.47	84	50.06%	45.73%	
3/31/2020	90	90	0.97	180	1.53	88	47.38%	43.31%	
4/10/2020	100	100	1.04	0	0.00	45	78.07%	70.94%	
4/20/2020	110	110	1.11	10	0.23	54	71.77%	65.26%	
4/30/2020	120	120	1.18	20	0.37	60	67.62%	61.53%	
5/10/2020	130	130	1.24	30	0.48	65	63.97%	58.25%	
5/20/2020	140	140	1.30	40	0.57	69	60.62%	55.23%	
5/30/2020	150	150	1.36	50	0.66	74	57.48%	52.41%	
6/9/2020	160	160	1.42	60	0.75	78	54.50%	49.72%	
6/19/2020	170	170	1.47	70	0.83	82	51.64%	47.15%	
6/29/2020	180	180	1.53	80	0.90	86	48.89%	44.67%	
7/9/2020	190	0	0.00	90	0.97	43	79.52%	72.24%	
7/19/2020	200	10	0.23	100	1.04	52	73.17%	66.53%	
7/29/2020	210	20	0.37	110	1.11	58	68.97%	62.75%	
8/8/2020	220	30	0.48	120	1.18	63	65.29%	59.44%	
8/18/2020	230	40	0.57	130	1.24	68	61.91%	56.39%	
8/28/2020	240	50	0.66	140	1.30	72	58.74%	53.54%	
9/7/2020	250	60	0.75	150	1.36	76	55.72%	50.82%	
9/17/2020	260	70	0.83	160	1.42	80	52.84%	48.23%	
9/27/2020	270	80	0.90	170	1.47	84	50.06%	45.73%	
10/7/2020	280	90	0.97	180	1.53	88	47.38%	43.31%	
10/17/2020	290	100	1.04	0	0.00	45	78.07%	70.94%	
10/27/2020	300	110	1.11	10	0.23	54	71.77%	65.26%	
11/6/2020	310	120	1.18	20	0.37	60	67.62%	61.53%	
11/16/2020	320	130	1.24	30	0.48	65	63.97%	58.25%	
11/26/2020	330	140	1.30	40	0.57	69	60.62%	55.23%	
12/6/2020	340	150	1.36	50	0.66	74	57.48%	52.41%	
12/16/2020	350	160	1.42	60	0.75	78	54.50%	49.72%	
12/26/2020	360	170	1.47	70	0.83	82	51.64%	47.15%	
		Average	0.90		0.92	68	61.82%	56.31%	
				Base TTHM =	155				
				Reduction =	56%				

MEMO

To: Arcadis U.S., Inc.
Mark Graves, P.E. 1717 West 6th Street
Copies: Suite 210
Fred Blumberg Austin
From: Texas 78703
Ashley Evans, PE Tel 512 451 1188
Kirk Nowack, PhD
Date: Arcadis Project No.:
11/29/18 09012000.0000
Subject: City of Kerrville Water Treatment Plant GAC Bench Test – 3rd Party Review

Freese and Nichols, Inc. (FNI) recently evaluated granular activated carbon (GAC) treatment for controlling total trihalomethane (TTHM) concentrations in the City of Kerrville (the City) distribution system. As part of that evaluation, Calgon Carbon Corporation (Calgon) performed an accelerated column test (ACT) that predicted the TTHM formation potential of the City's water following GAC treatment. Arcadis reviewed both the FNI memo that summarizes the GAC evaluation and the ACT report from Calgon.

The FNI memo explains that to-date, the highest locational running annual average (LRAA) TTHM concentration in the City's distribution system was 110 µg/L, which occurred in 2010. FNI indicated that reducing the average TTHM formation potential (TTHMFP) of the City's finished water by 36% would lower this worst-case result to about 70 µg/L. This percent reduction was then established as a treatment target and used in assessing two GAC treatment strategies (as discussed below). It is important to note that a TTHM LRAA of 110 µg/L may not be the worst-case result for the City's distribution system, and planning for a 36% average reduction in TTHMFP may not protect against future LRAA exceedances if more severe TTHM formation conditions arise (i.e., more severe than what occurred in 2010). Additionally, while this yearly average approach does not explicitly consider that the GAC system may be offline in the winter due to disinfection requirements, TTHM reductions are not as critical during the winter and the GAC adsorption capacity will be reserved for use when temperatures are higher. Although this is not explicitly spelled out in the FNI memo, the memo does indicate that more conservative GAC treatment conditions may become necessary and shows that by increasing the GAC replacement frequency, lower TTHMFPs can easily be achieved.

Using the ACT results, FNI demonstrated that by installing four 40,000-lb GAC vessels at the City's water treatment plant and replacing the GAC in two of the vessels at the beginning of the summer, and in the other two vessels at the end of the summer, the TTHM formation potential (TTHMFP) of the Kerrville

finished water would be reduced by an average of 36% (as compared to the TTHMFP without GAC treatment). They also demonstrated that by increasing the GAC replacement frequency to twice per year, the average reduction in TTHMFP would increase to 56%. These analyses assumed the following:

- A GAC influent total organic carbon (TOC) concentration of 2.38 mg/L (which was the TOC level in the water used for the ACT);
- The TOC removal performance of the full-scale GAC vessels will mimic the performance predicted by the ACT; and
- TTHM formation will conform to the TTHM/TOC correlation presented in the ACT report.

Given that the average TOC level in the City's finished water is about 1.8 mg/L, conducting the evaluation using an influent TOC concentration of 2.38 mg/L is a conservative approach. The rate of TOC breakthrough during the ACT was likely higher than it would be at full-scale, since the full-scale GAC influent TOC concentration would often be less than 2.38 mg/L. It should be mentioned that the ACT was designed to simulate an empty-bed contact time (EBCT) of 14.8 minutes, and that there was no mention in the FNI memo of the EBCT that would be achieved by installing four 40,000-lb GAC vessels at the City's water treatment plant. However, the memo does mention that the average flow at the City's water treatment plant is about 3 MGD, and at this rate, four 40,000-lb GAC vessels allow for an EBCT of approximately 20 minutes. This is yet another reason to assume that the full-scale GAC system will perform at least as well as the ACT with respect to TOC removal.

The TTHM/TOC correlation presented in the ACT report was based on bench-scale TTHM formation tests performed under "standard conditions." This normally means that the pH of the samples was adjusted to 7.0 and the samples were stored at 25 °C, although this was not provided in the ACT report. The ACT report does indicate that the final chlorine residual was 3 to 5 mg/L and the incubation period was seven days. Formation tests conducted under these conditions would be expected to represent near-worst-case TTHM levels (due to the high final chlorine residuals), and thus, it is reasonable to predict full-scale TTHM levels in the City's distribution system using the TTHM/TOC correlation presented in the ACT report.

FNI also explain that their bench-scale analysis does not account for the groundwater being pumped into the City's distribution system (which blends with the surface water and thereby lowers TTHMFP) or the TTHM reductions that may occur in the distribution system tanks due to aeration. This further suggests that the predicted reductions in TTHMFP that appear in the FNI memo are conservative.

Arcadis believes that the method used by FNI to evaluate the effect of GAC treatment on the TTHMFP of the City's finished water is sufficiently conservative, and thus Arcadis agrees that installing four 40,000-lb GAC vessels at the City's water treatment plant and replacing the GAC as described in the FNI memo (i.e., two vessels at the beginning of the summer and two at the end of the summer) will likely allow for TTHM LRAAs to remain below the regulatory limit of 80 µg/L. Arcadis also agrees that if full-scale TTHM levels (after GAC treatment is installed) end up higher than predicted, increasing the GAC replacement frequency to twice per year would likely be adequate to prevent TTHM LRAAs from exceeding 80 µg/L. Additional full-scale studies will be required to determine the optimal replacement frequency and timing. Further additional analysis of anticipated TTHM performance based upon quarterly TTHM results and expected quarterly removal would further refine this analysis. Although this additional analysis is not likely to change the overall recommendation that GAC contactors will be effective for TTHM reduction, it may increase the overall understanding of how the system can be expected to perform through each year.

For context, FNI also shared the "Kerrville WTP THM Design Report" with Arcadis. Arcadis did not peer review this report in detail. However, Arcadis does note that a conversion to chloramines was also

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evaluated, but not recommended partially due to concerns related to the use of chloramines in an ASR system. Chloramines have been successfully used in ASR systems and will be used in two ASR systems under evaluation in Texas. Prior studies have noted TTHM attenuation completed after a few weeks of storage and the added benefit of ASR to cool water in the distribution system during warmer summer months. Additional information on successful implementation of ASR systems with chloraminated water can be provided upon request. Additionally, the report noted plans for moving the chlorination feed point downstream of the filters. Although disinfection implications were discussed, the report did not include discussion of potential impacts on water quality (e.g., metals removal / release) or due to allowing for increased biological growth on the filters and/or plans for monitoring these impacts. Arcadis recommends these factors be evaluated, if they have not already.

Thank you for the opportunity to review this critical project. Should any further information be requested, please contact Arcadis Project Manager Ashley Evans at 512-527-6080 or ashley.evans@arcadis.com.

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www.freese.com

TO:	City of Kerrville
FROM	Mark Graves, P.E.
SUBJECT:	Electrocoagulation Evaluation
PROJECT:	Kerrville WTP THM Control Facility
DATE:	November 20, 2018
CC:	

DRAFT
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF <u>MARK GRAVES</u> , P.E., TEXAS NO. <u>90151</u> ON <u>NOVEMBER 20, 2018</u> . IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES. FREESE AND NICHOLS, INC. TEXAS REGISTERED ENGINEERING FIRM F- 2144

1.00 ELECTROCOAGULATION EVALUATION

System vendors were contacted and a literature review was conducted to develop information on the treatment process electrocoagulation. The search resulted in the summary contained in Appendices A and B. The search found no instances of electrocoagulation being implemented in full-scale potable municipal applications for removal of organics for mitigation of total trihalomethanes (TTHM). The application of electrocoagulation in Texas was limited to challenging industrial wastewater treatment and in the oil and gas industry. There were not applications identified treating municipal potable water at capacities comparable to the 6 MGD capacity of the Kerrville water treatment plant.

2.00 RECOMMENDATION

The literature review and system vendor contacts indicate that electrocoagulation is primarily utilized for challenging wastewater and industrial treatment applications. There was no indication that electrocoagulation has been utilized in Texas for municipal potable water treatment.

Electrocoagulation systems were not found to operate on a scale that approaches the existing Kerrville water treatment plant capacity of 6 MGD for municipal potable water treatment.

Furthermore, there was no information on an electrocoagulation system being utilized in an application similar to the Kerrville WTP for removal of organics for control of TTHM. The existing Kerrville water treatment plant operates with coagulation followed by flocculation and clarification in an existing solids contact clarifier that is dependent on coagulant addition to function properly for turbidity removal. Retrofitting the existing plant with electrocoagulation which is unproven in this

application is a significant risk. For these reasons electrocoagulation is not recommended for implementation at the Kerrville water treatment plant for organics removal to control TTHM.

3.00 APPENDICES

Appendix A. List of Vendors and Applied Locations

Appendix B. Vendors and Research References

Appendix A - Electrocoagulation for Water Treatment

Vendor	Applied Locations	Application	Treatment goal	Reference/link
GPI (Gerber Pumps International) Inc.				
	Website mentions benefits of electrocoagulation in treatment of water for potable use. Contacted for details.			http://www.gerberpumps.com/electrocoagulation-applications.html
BAKERCORP		Contacted for info. Website advertises for wastewater treatment. acopa@bakercorp.com		http://www.bakercorp.com/en-us/products/filtration/kaselco-systems/electrocoagulation-technology/
Powell Water		requested information, received information. scottpowell@powellwater.com		http://powellwater.com
	Several outside Texas. A few in Texas as well including El paso and San Antonio (Brochure linked below)	Multiple applications including Potable Water (page 6 in their manual linked below)	Includes TOC. Analysis in their report on pages 28 and 29 (link below)	
Details	Email Correspondence\Powell	orrespondence\Powell Water\Powell Tech Mar	Email Correspondence\Powell Water\ONR	
WATERTECTONICS				http://www.watertectonics.com
	Houston, TX, 2011	ELG Metals	treatment of stormwater runoff before direct discharge to the Houston Ship Channel	http://www.watertectonics.com/project/elg-metals/
	Houston, TX, 2011	CleanWave Mobile Flowback Treatment Systems	treating frac and flowback water for reuse	http://www.watertectonics.com/project/cleanwave-mobile-flowback-treatment-systems/
	San Antonio, TX, 2014	Custom Media Filtration Trailer	treat water from oil & gas operations	http://www.watertectonics.com/project/frack-flow-back-water-treatment/
	Dallas, TX, 2013	Mobile Disinfection Pilot Project	high-flow, mobile disinfection	http://www.watertectonics.com/project/mobile-disinfection-pilot-project/
	Fort Worth, TX, 2009	Barnett Shale Treatment Project	recycle flowback and produced water from shale gas completion operations	http://www.watertectonics.com/project/barnett-shale-treatment-project/
	Multiple outside TX	Industrial, Mining, Construction and Oil/Gas	-	http://www.watertectonics.com/project-map/?industryid=107
F&T Water Solutions				http://www.ftwatersolutions.com
	Colorado Springs, CO	Variable Electro Precipitation™ of Produced/Flowback Water	Total Suspended Solids (TSS) Dissolved Iron Dissolved Boron Other Dissolved Metals (Barium, Magnesium, Strontium) Dissolved Calcium and Hardness Organic Material	http://www.ftwatersolutions.com/electrocoagulation/electro-precipitation-of-produced-flowback-water
	Connecticut	Electrocoagulation Treatment of Municipal Waste Water	Ammonia (Nitrogen) Phosphorus TSS (Total Suspended Solids) Copper Zinc	http://www.ftwatersolutions.com/electrocoagulation/connecticut-wastewater-treatment

	Anadarko, OK	Variable Electro Precipitation™ Treatment of Oil/Gas Exploration Produced Water	Suspended Solids Total Suspended Solids (TSS) Bacteria	http://www.ftwatersolutions.com/electrocoagulation/Variable-Electro-Precipitation-Treatment-Oil-Gas.php
	Debuque, CO	Variable Electro Precipitation™ of Shale Produced Water	Suspended Solids Barium, Iron, Strontium (divalent ions) Bacteria Scaling (calcium, magnesium, silicone)	http://www.ftwatersolutions.com/electrocoagulation/variable-electro-precipitation-of-shale-produced-water
BOYDEL Wastewater Technologies Inc	Based in Canada, but has projects in AZ, IL and CA. (Details in Technology Booklet - Link below)	Sewage, Septage, Commercial and Industrial (Details in Technology Booklet - Link below)	BOD, TSS, Phosphorus, Oil & Grease. (Details in Technology Booklet - Link below)	http://www.boydel.ca
		Email Correspondence\Boydel Wastewater Technologies\Boydel technology Intro Booklet - May 17.pdf		
ECOLOGIX Environmental Systems	Vendor recommended Integrated Treatment System (ITS - website link on the side) instead of EC. Reason- Would be enough to treat TSS, heavy metals and organics of the river and would be cost effective - Installation cost 1.5-2 millions vs 6 million for EC. Electricity cost for EC at this scale (6 MGD) will be too high.			http://www.ecologixsystems.com/system-its.php
E.floc Wastewater Solutions	<p>Currently preparing to begin fabrication of a 1.5 MGD system to remove toxicity at a drinking water facility in Wanaque, New Jersey. Toxicity is a result of polymer remnants left over from dewatering operations at the facility. No chemicals whatsoever are allowed. Other applications and goals include -</p> <ul style="list-style-type: none"> • Heavy Metals, especially multivalent ions that require reduction (Cr / Va / As / Se), Rare Earths (Co / Ni) RCRA (Cu / Pb / Zn / Cd / Hg, etc.). • Mixed metals may be reduced and precipitated in one step at one pH. • Emulsion splitting and removal of FOG / TPH. • Oxidation of VOC associated with hydrocarbons (BTEX). • Suspended colloidal material. • Destruction of bacteria (SRB / lactic acid / Total Aerobic) • Excellent and economical treatment of Produced Water and Frac Flowback in the oilfield. 			http://ecolotron.com/electrocoagulation-solutions/
LEDCOR Group	Kingman, Arizona (And multiple locations in Canada)	Mobile Electrocoagulation Wastewater Treatment; <i>Clear Choice Wastewater Treatment, LLC</i>	Biochemical Oxygen Demand Total Suspended Solids Phosphorus Several types of dissolved metals Fats Oils Grease	http://www.ledcor.com/our-projects/environmental/waste-water-treatment/mobile-electrocoagulation-wastewater-treatment?from=list&categoryid=20

Genesis Water Technologies, Inc	Serves Texas. Tried to contact for details. Will try again.	<ul style="list-style-type: none"> – Energy (including mining, power generation and oil & gas production) – Agriculture/Aquaculture <ul style="list-style-type: none"> – Food & Beverage – Textile – Pharmaceuticals – Pulp & Paper – Potable Drinking Water – Municipal Waste Water 	<ul style="list-style-type: none"> – TSS (Total Suspended Solids) – Organics including arsenic, volatile and colloidal organic particulate including silica <ul style="list-style-type: none"> – Emulsified oils & hydrocarbons – Heavy Metals including chromium 6, fluoride, lead, and radioactive particulates – Fats – Bacteria, viruses, cysts and parasites – Odor causing compounds such as hydrogen sulfide – Hardness minerals such as calcium and magnesium – Color – Certain Radioactive compounds 	http://genesiswatertech.com/electrocoagulation/#
		Website with a list of all EC Technology vendors, a little inaccurate		https://www.environmental-expert.com/companies/keyword-electrocoagulation-1230

Appendix B - Electrocoagulation Treatment for Potable Water – Vendors and Research References

A. Summary of Vendors providing EC Technology:

Details of 10 EC Technology vendors were researched as listed in Appendix A spreadsheet - [List and details of vendors.xlsx](#).

These vendors can be categorized as follows:

1. Based in Texas/Served before in Texas:
 - 1) BakerCorp
 - 2) Powell Water
 - 3) WaterTectonics
 - 4) Genesis Water Technologies
2. EC Technology discussed as application for potable water:
 - 1) Powell Water
 - 2) Genesis Water Technologies
 - 3) E.floc Wastewater Solutions
 - 4) Boydel Wastewater Technologies
3. Others:
 - 1) ECOLOGIX Environmental Systems - Vendor recommended Integrated Treatment System (ITS) instead of EC. Reason- Would be enough to treat TSS, heavy metals and organics of the river and would be cost effective - Installation cost 1.5-2 million vs 6 million for EC. Electricity cost for EC at this scale (6 MGD) will be too high.
 - 2) LEDCOR Group
 - 3) F&T Water Solutions
4. Contacted for information and waiting for the details:
 - 1) GPI Inc
 - 2) BakerCorp (meeting request)

B. Summary of research material on Electrocoagulation for Water/Wastewater Treatment:

1. Research articles
 - 1) [Research papers and material\Electrocoagulation for wastewater.pdf](#) –
 - EC for removal of COD, BOD5, TSS, Nitrate, Nitrogen, Phosphate and Fecal Coliform from urban wastewater.
 - Comparison of natural vs industrial flocculants.
 - 2) [Research papers and material\EC for various applications - includes surface water.pdf](#) –
 - 7 EC applications discussed including surface water.
 - Overview of optimum process conditions (treatment times, current densities and initial pH) and removal efficiencies.
 - 3) [Research papers and material\EC for Treating Groundwater with High Organic and Arsenic loading.pdf](#)
 - EC optimization for groundwater with high organic loading and arsenic.

- Various treatment scenarios in relation to raw water characteristics and operating conditions were applied to determine optimal conditions correlated to the range of water characteristics for drinking water treatment.

- 4) [Research papers and material\A Shocking Approach To Wastewater Treatment.html](#)
 - An article explaining different stages of EC process.
 - Applications, benefits and potential scope discussed.
- 5) [Research papers and material\waste water treatment using Electrocoagulation Technology - Methodology and Applications.html](#)
 - Article on EC methodology and applications.
 - Use of EC for treating surface water for potable use by removing bacteria, viruses, and cysts mentioned along with other applications.
- 6) [Research papers and material\Removal of trace metal contaminants from potable water by electrocoagulation _ Scientific Reports.html](#)
 - Removal of trace metal contaminants from potable water by EC with emphasis on arsenic, cadmium, chromium, lead, and nickel.
 - Optimization of EC for removal of each trace metal.

C. Research article abstracts only (Paper needs to be purchased):

- 1) [Research papers and material\A comprehensive review of electrocoagulation for water treatment Potentials and challenges - ScienceDirect.html](#)
 - A comprehensive review of EC with current successes and future applications.
 - Review of economic concerns associated with EC.
- 2) [..\..\2N0NCX~W\2026FK~O\EU00MI~C\RRVTL6~3\EIVNMF~R](#)
 - Optimization of conditions in EC for removal of TOC, oil, and ammonia.
- 3) [Research papers and material\Electrocoagulation in Water Treatment _ SpringerLink.html](#)
 - The basic principle of EC; comparison of EC and chemical coagulation.
 - Factors affecting EC;
 - Applications of EC in water treatment.
- 4) [Research papers and material\Electrocoagulation of potable water - ScienceDirect.html](#)
 - EC of potable water – removal of aquatic humus.
 - Correlation between current density and aluminum dosing.

D. Vendor websites:

- 1) [Research papers and material\GPI_potable_water_effectiveness.pdf](#)
 - Summary of various contaminants' initial and final concentrations, and removal efficiency by GPI Inc.
- 2) [Research papers and material\ELECTROCOAGULATION vs CHEMICAL COAGULATION _ F&T Water Solutions.html](#)
 - EC vs Chemical Coagulation.
 - Comparison of various costs and removal efficiencies.
- 3) [Research papers and material\Alternate method - Integrated Treatment Systems.html](#)
 - Details of a vendor recommended an alternative of EC – Integrated Treatment System (ITS).
 - Specifications, configuration and potential discussed.



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

SUBJECT: Third Amendment to Development Agreement by and between Comanche Trace Ranch and Golf Club, LLLP, a Colorado Limited Liability Limited Partnership and the City of Kerrville, Texas, for Comanche Trace Ranch and Golf Club.

AGENDA DATE OF: 12/11/2018

DATE SUBMITTED: 12/3/2018

SUBMITTED BY: Mike Hayes
City Attorney

EXHIBITS: Third Amendment to Development Agreement

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes:	No: <input type="checkbox"/>
Key Priority Area	H - Housing	
Guiding Principle	H2 - Maintain the quality and value of existing neighborhoods	
Action Item	H2.10 – Renew the existing Comanche Trace dev. agreement	

SUMMARY STATEMENT:

The Comanche Trace development entered into a Development Agreement with the City of Kerrville in the late 1990's. Several subsequent Amendments were completed in the 1999 timeframe. That agreement is set to expire at the end of January 2019. The developer and the City have begun discussion about a renegotiated Development Agreement, but desire additional time to complete the negotiations. Both parties have agreed to a one year extension, to December 31, 2019, to provide time to complete this negotiation effort.

RECOMMENDED ACTION:

Authorize execution of the Third Amendment.

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT BY
AND BETWEEN COMANCHE TRACE RANCH AND GOLF CLUB,
LLLP, A COLORADO LIMITED LIABILITY LIMITED
PARTNERSHIP; AND THE CITY OF KERRVILLE, TEXAS, FOR
COMANCHE TRACE RANCH AND GOLF CLUB**

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT ("Third Amendment") is made and entered into as of the _____ day of December, 2018, by and between Comanche Trace Ranch and Golf Club, LLLP, a Colorado limited liability limited partnership, acting by and through its General Partner, ("Developer"), whose offices are located at 3074 Bandera Highway, Kerrville, Texas 78028; and the City of Kerrville, whose offices are located at 701 Main Street, Kerrville, Texas 78028, ("City"), a Texas home rule municipal corporation.

I. RECITALS

WHEREAS, on or about January 26, 1999, City and Developer entered into that certain *Development Agreement by and Between Comanche Trace Ranch and Golf Club, LLLP, a Colorado Limited Liability Limited Partnership and the City of Kerrville, Texas, for Comanche Trace Ranch and Golf Club*, which the parties have amended on two previous occasions (hereafter collectively referred to as "the Agreement"); and

WHEREAS, pursuant to Article VII of the Agreement, the term of the agreement is twenty (20) years, which means the Agreement will expire on January 26, 2019; and

WHEREAS, the parties are interested in extending the term and have begun negotiations to accomplish this, however such negotiations have not concluded; and

WHEREAS, the parties have agreed to extend the term of the Agreement so as to conclude their negotiations;

NOW, THEREFORE, in consideration of the recitals stated above, and the covenants, conditions, and promises contained herein, the properties and rights hereby vested and created as herein provided and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City hereby agree that the Agreement shall be amended as follows:

1. Pursuant to Article VII, Section A. of the Agreement, the Agreement is hereby extended through December 31, 2019.
2. Except as amended hereby, City and Developer agree that the provisions of the Agreement are not otherwise amended and are hereby agreed to be in full force and effect.

EXECUTED in duplicate the day and year first above written.

CITY OF KERRVILLE, TEXAS

COMANCHE TRACE RANCH AND
GOLF CLUB, LLLP, a Colorado limited
liability limited partnership BY:
COMANCHE TRACE, LLC, a Colorado
limited liability company, General Partner

By: _____
Mark McDaniel, City Manager

By: _____
Trevor Hyde, President

ATTEST:

Cheryl Brown, Interim City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney



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

SUBJECT: Economic Development Grant Agreement between Thompson Drive Partners, LLC, the City of Kerrville, Texas Economic Improvement Corporation, and the City of Kerrville, Texas in an amount not to exceed \$850,000 for public infrastructure extension along Thompson Road related to a private development..

AGENDA DATE OF: 12/11/2018

DATE SUBMITTED: 12/3/2018

SUBMITTED BY: E.A. Hoppe
Deputy City Manager

EXHIBITS: Economic Development Grant Agreement

Expenditure Required: \$850,000	Current Balance in Account: \$0	Amount Budgeted: \$2,000,000 (ED Set Aside)	Account Number: 75-7500-4355 Project: N/A
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PAYMENT TO BE MADE TO: Thompson Drive Partners, LLC

Kerrville 2050 Item?	Yes:	No: <input type="checkbox"/>
Key Priority Area Guiding Principle	E - Economic Development E6 - Support access to the infrastructure necessary to accommodate the future growth of housing and business (water, wastewater, power, communications, roads)	
Action Item	E6.1 – Develop budgets and capital improvement plans that address the infrastructure required to accommodate both existing and future needs	

SUMMARY STATEMENT:

Thompson Road, LLC (The MacDonald Companies) have conceptualized a multi-phase, mixed-use development called "The Landing" along Thompson Drive on an approximate 59-acre tract of land they own that was annexed into the Kerrville City limits this fall. The property is not currently served by centralized water or wastewater utilities. The developer has made an \$850,000 request for EIC assistance in installing \$1.85 million in off-site water and wastewater public infrastructure.

The developer intends to develop the property for market rate multi-family and mixed-use purposes; with the initial phase intended to provide a 120 unit multi-family complex and later phases having additional multi-family (120 units), townhome (48 units), and mixed-use office, retail, & restaurant potential (91,000 sq. ft.). Overall, the project is intended to have a 30-year fiscal impact to the City of over \$22 million in additional property and sales tax revenue (Over \$63 million to the community overall, including \$6.6 million to the EIC). The proposed public infrastructure is intended to be turned over to the City of Kerrville once constructed. River trail easements, trail heads, and parkland dedication are also a component of the deal.

One key impediment to development within this corridor of Thompson Drive is the lack of water and wastewater utility services. The extension of utility services in this corridor should catalyze development not only for this 60 acre property, but throughout much of the vacant land within that corridor. It was identified as a public project in the 2012 Wastewater Master Plan, but has not yet been achieved due to cost. The developer has received bids for the utility service extensions as described, and intends to install infrastructure that has approximately 20% more wastewater capacity than needed for the anticipated full build out of their 60 acres of land. Current estimates for the engineering and construction costs to extend utilities to this site are \$1,850,000, and the developer is asking for \$850,000 in EIC assistance to accomplish the construction. Upon completion of the utility project, the utilities will be turned over to the City of Kerrville for ownership, operation, and maintenance.

PROJECT HISTORY

August 4, 2017: City receives EIC application from MacDonald Associates Inc.

Early August 2017: City staff and KEDC discussed the application and additional information was sought by KEDC

September 12, 2017: KEDC completed an initial Economic Impact Analysis based off of the project assumptions at that time (full mixed-use development of the 60 acres in phases over 10 years) indicating over \$12 Million in Net Benefits.

September 18, 2017: EIC was presented with the initial EIC application and conducted an Executive Session discussion to discuss the preliminary project details and economic impact analysis. Direction was provided to staff to proceed with negotiating preliminary terms.

October 16, 2017: EIC conducted an Executive Session discussion to discuss the preliminary negotiated deal points.

November 27, 2017: EIC conducted an Executive Session discussion to discuss the renegotiated deal points.

January 22, 2018: EIC conducted an Executive Session discussion to discuss the project and directed staff to reanalyze the economic impact analysis under the assumption that only the initial phase of 120 multifamily units would occur, yielding a Net Benefit to the community of \$1,354,448 over the first 10 years.

March 6, 2018: City staff reviewed the project proforma with the applicant.

March 12, 2018: The GO Team (Gary Cooper, Walt Koenig, Mark McDaniel, E.A. Hoppe) met to review the current status of the project and the revised Economic Impact Analysis. The GO Team unanimously recommended the project.

March 19, 2018: EIC conducted an Executive Session discussion to review the revised Economic Impact Analysis and the terms of a draft Funding Agreement. The EIC voted to direct staff to set a Public Hearing on the project.

April 16th, 2018: A Public Hearing was conducted regarding the Economic Development Grant Agreement and the EIC voted to direct staff to

finalize changes to the Agreement and set a Special called meeting on April 23rd, 2018.

April 23rd, 2018:

The Special called meeting was canceled due to EIC member absences. Subsequently, the developer requested that consideration of the funding request be delayed until after the property completes the annexation process into the Kerrville City limits.

October 29, 2018:

EIC conducted an Executive Session discussion to review the status of the project and the EIC funding request. EIC provided direction to City staff to draft a revised Economic Development Agreement based on their latest feedback and set a Public Hearing to be held on November 26th, 2018.

November 26, 2018: EIC conducted a Public Hearing and approved the Economic Development Grant Agreement.

ECONOMIC DEVELOPMENT AGREEMENT SUMMARY

Developer will:

- Engineer and install the \$1,850,000 in public water and wastewater infrastructure as described
- Upon completion of the utility project, the utilities will be turned over to the City of Kerrville for ownership, operation, and future maintenance
- Agree to dedicate a 20' river trail easement across the property near the river/lakefront and in an agreeable location with the City (~0.90 acres). Will provide dedicated park space on the property accessible to the public (1.5 acres) in addition to working with the City to create a Trailhead/Shared Parking Agreement for trail and park users.
- Conduct a traffic impact analysis for the development site

City will:

- Provide \$850,000 in total EIC 4A/4B funding in three equal installments of \$283,333:
 - Installment 1: Payable upon completion of the annexation and zoning of the property into the Kerrville City limits (Planned Development District or adjacent zoning designation consistent with Kerrville 2050 Comprehensive Plan) as well as the letting of the contract, by Developer, for the completion of the infrastructure improvements
 - Installment 2: Payable upon substantial completion of the construction, and acceptance from the City, of the proposed infrastructure in addition to commencement of construction of the 120 unit multifamily complex (First two installments to be refunded to City if developer does not construct development within a set period of time)
 - Installment 3: Payable upon Certificates of Occupancy being issued for 120 units of workforce housing
- Evaluate a Chapter 380 Agreement directly with the City (not EIC) to pay for the requested upsizing of the HDPE bore pipe, gravity sewer main, and other desired features for regional service extension. This funding will be payable via a rebate of property taxes collected by the City from the taxable improvements installed on the property.
- Reserve 80% of the installed wastewater capacity for the proposed development for up to five (5) years from the date of annexation into the City

- Reserve up to 40% of the installed wastewater capacity for the proposed development for up to ten (10) years
- After 10 years the City will have full access to the original capacity provided by the original installed infrastructure and can assign said capacity to the general public via any regular policy or practice adopted by the City Council/staff

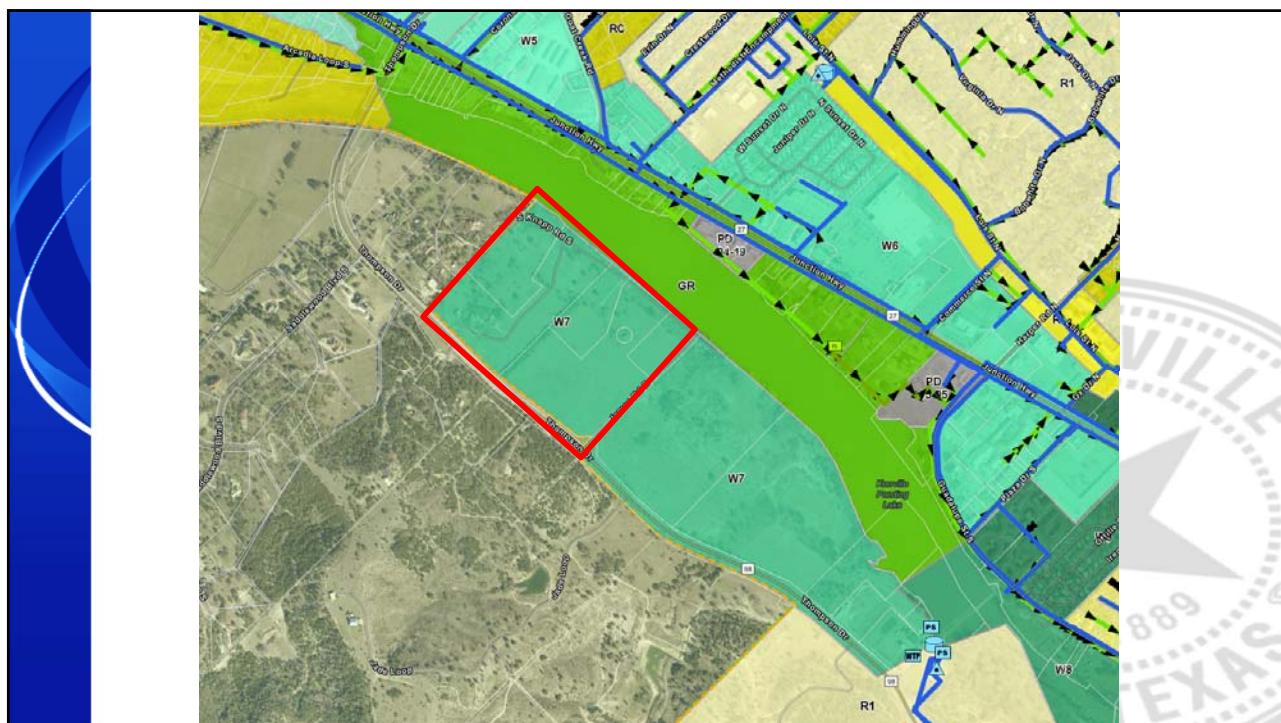
RECOMMENDED ACTION:

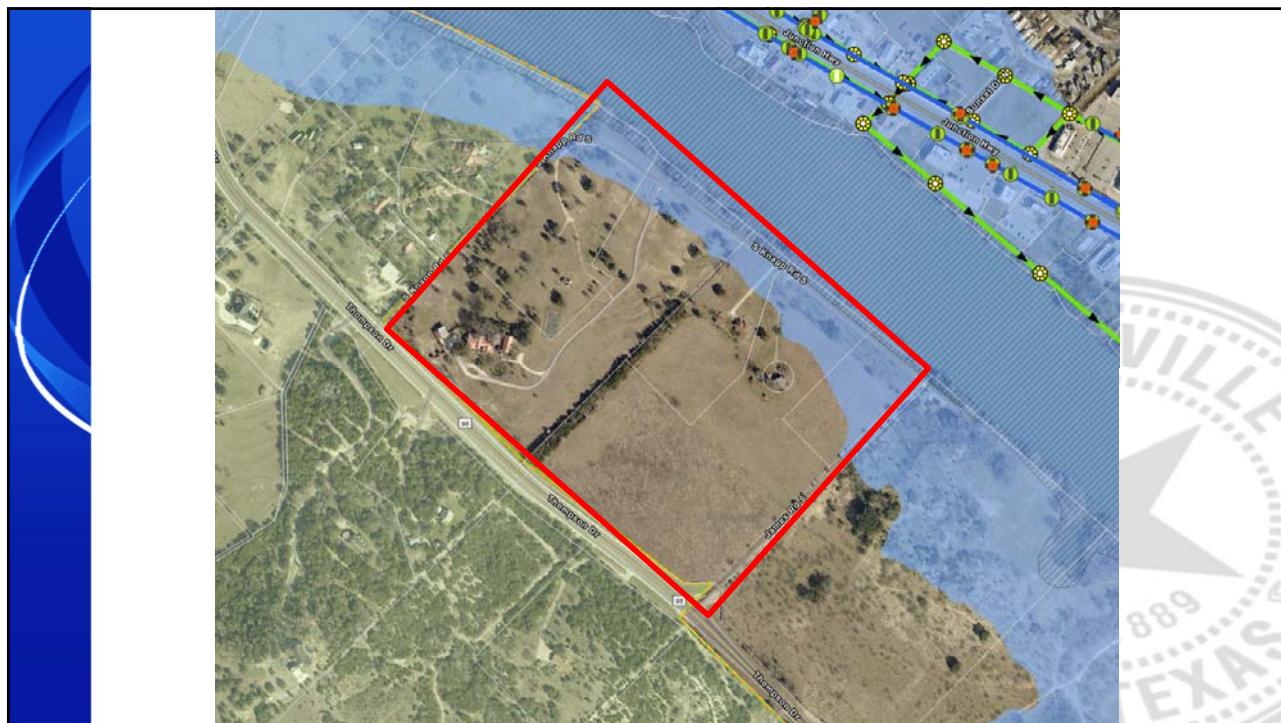
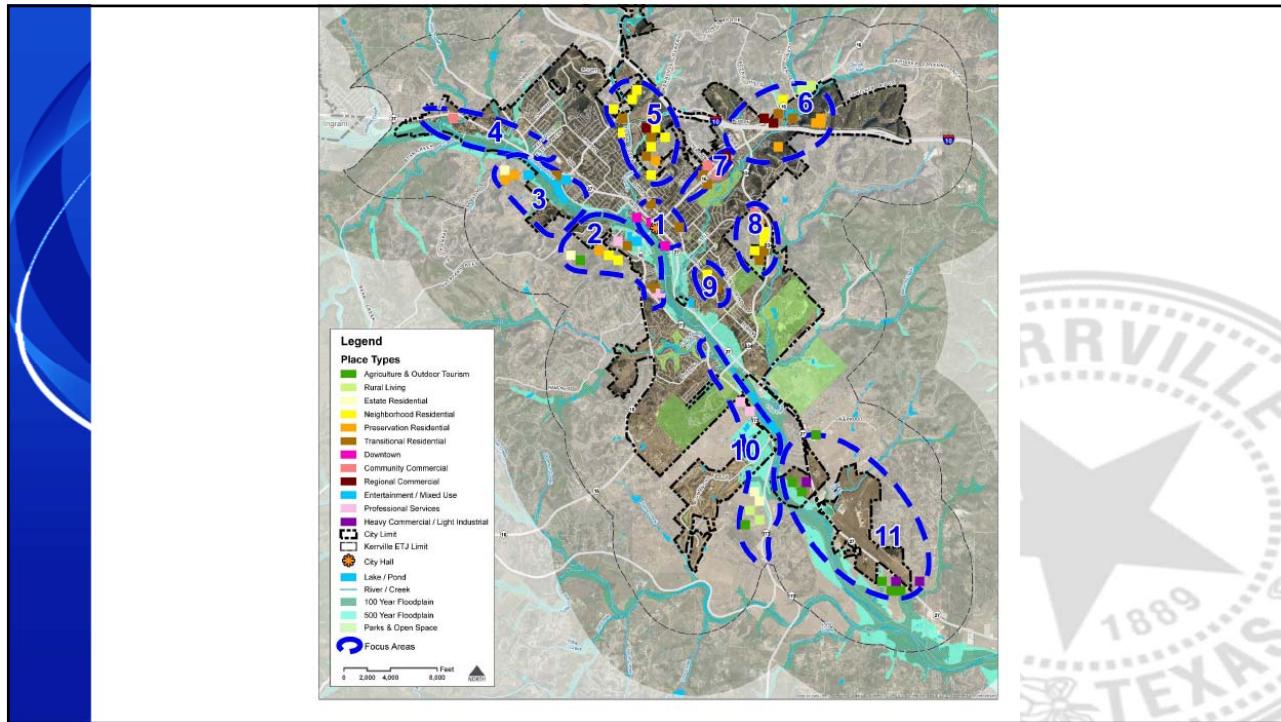
Approve Economic Development Grant Agreement

Economic Development Grant Agreement with Thompson Partners, LLC. and Kerrville EIC for Public Infrastructure Extension on Thompson Rd.

Project Summary

- Apprx. 60-acre mixed-use, phased development
- Recently annexed into City limits along Thompson Rd.
- **\$1.85+ million off-site infrastructure investment**
 - Sewer force main and gravity main, lift station, water main
 - Project was conceptually identified in City's 2012 WW Masterplan
- Request from EIC of \$850,000





EIC Discussion History

<u>August 4, 2017:</u>	City receives EIC application from MacDonald Associates Inc.
<u>Early August 2017:</u>	City staff and KEDC discussed the application and additional information was sought
<u>September 12, 2017:</u>	KEDC conducted an initial Economic Impact Analysis based off of the project assumptions at that time (full mixed-use development of the 60 acres in phases over 10 years) indicating over \$12 Million in Net Benefits to community.
<u>September 18, 2017:</u>	EIC was presented with the initial EIC application. Direction was provided to staff to proceed with negotiating preliminary terms.
<u>October 16, 2017:</u>	EIC conducted an Executive Session discussion to discuss the preliminary negotiated deal points.
<u>November 27, 2017:</u>	EIC conducted an Executive Session discussion to discuss the renegotiated deal points.
<u>January 22, 2018:</u>	EIC directed staff to reanalyze the economic impact analysis under the assumption that only the initial phase of 120 multifamily units would occur, yielding a Net Benefit to the community of \$1,354,448 over the first 10 years.
<u>March 6, 2018:</u>	City staff reviewed the project proforma with the applicant.
<u>March 12, 2018:</u>	The GO Team met to review the current status of the project and the revised Economic Impact Analysis and unanimously recommended the project.
<u>March 19, 2018:</u>	The EIC directed staff to set a Public Hearing on the draft project Economic Development Grant Agreement for April 16th.

EIC Discussion History (continued)

<u>April 16, 2018:</u>	A Public Hearing was conducted regarding the Economic Development Grant Agreement and the EIC voted to direct staff to finalize changes to the Agreement and set a Special called meeting on April 23 rd , 2018.
<u>April 23rd, 2018:</u>	The Special called meeting was canceled due to EIC member absences. Subsequently, the developer requested that consideration of the funding request be delayed until after the property completes the annexation process into the Kerrville City limits.
<u>Fall 2018:</u>	Property annexation into the Kerrville City limits is completed.
<u>October 29, 2018:</u>	EIC conducted an Executive Session discussion to review the status of the project and the EIC funding request. EIC provided direction to City staff to draft a revised Economic Development Agreement based on their latest feedback and set a Public Hearing to be held on November 26 th , 2018.
<u>November 26, 2018:</u>	Public Hearing for revised Economic Development Grant Agreement. Approved by EIC.
<u>December 11, 2018:</u>	Economic Development Grant Agreement on City Council Agenda.

ED Grant Agreement Summary

- **Developer will:**
 - Annex and zone property into the City limits
 - Engineer and install \$1.85+ million in off-site water and wastewater infrastructure to be deeded to City
 - Provide river trail easements and park dedication/trail head
 - Conduct traffic impact analysis

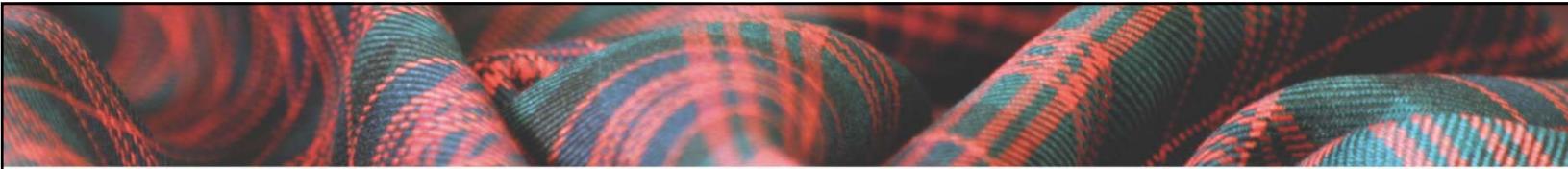
ED Grant Agreement Summary

- **City/EIC will:**
 - Provide \$850,000 to developer in 3 equal installments:
 1. At completion of annexation/zoning, and letting of construction proj.
 2. At completion of infrastructure install and commence work on dev. Phase I
 3. At completion of Phase I and Certificate of Occupancy issued
 - “Clawbacks” initiated if no development initiated within 2 years or Phase 1 not completed within 5 years
 - Provide phased reservation of utility capacity:
 - Year 1 – 5: City 20%, Dev. 80%
 - Year 6-10: City 60%, Dev. 40%
 - Year 10+: City 100%



The Landing

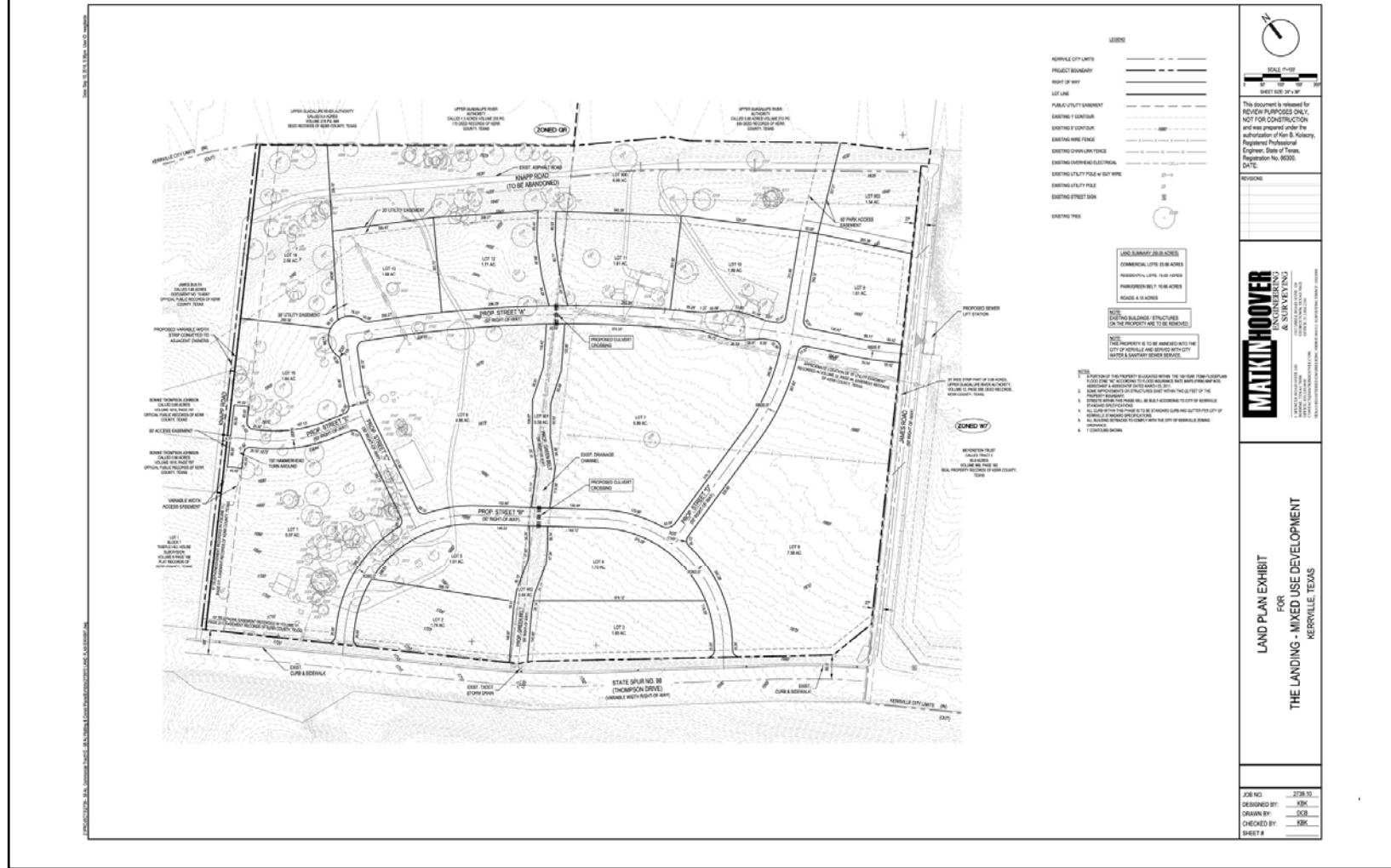
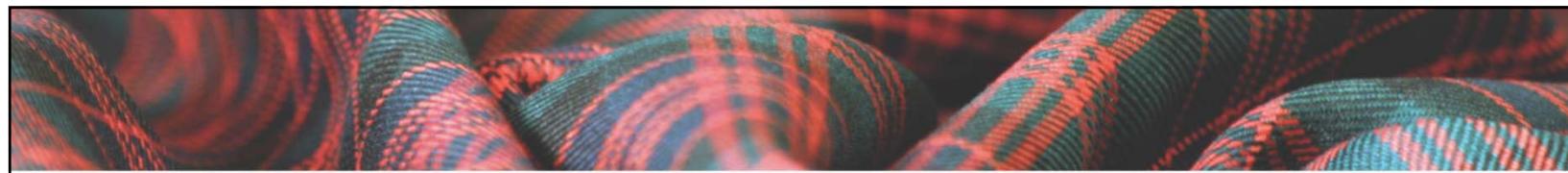
Presentation to
City of Kerrville
Economic Improvement Corporation
November 26, 2018



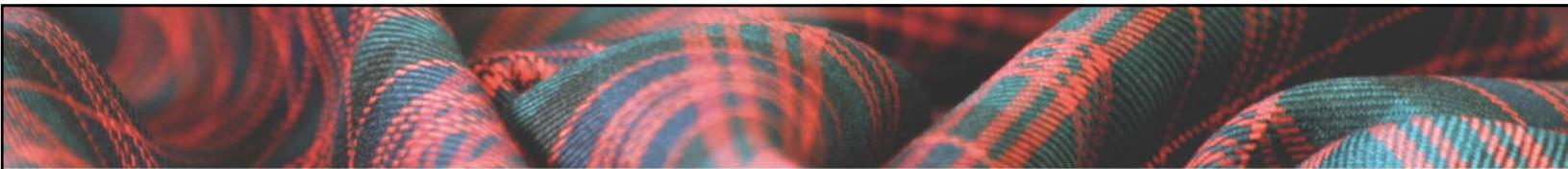
Summary

- The Landing is a roughly 60-acre, mixed-use development planned along the banks of the Guadalupe River/Nimitz Lake
- Planned uses include:
 - Luxury Apartments
 - Townhomes
 - Office/Commercial Space
 - Restaurants
 - Bar/Entertainment Venues
 - Craft Artisans
 - Boutique Retail

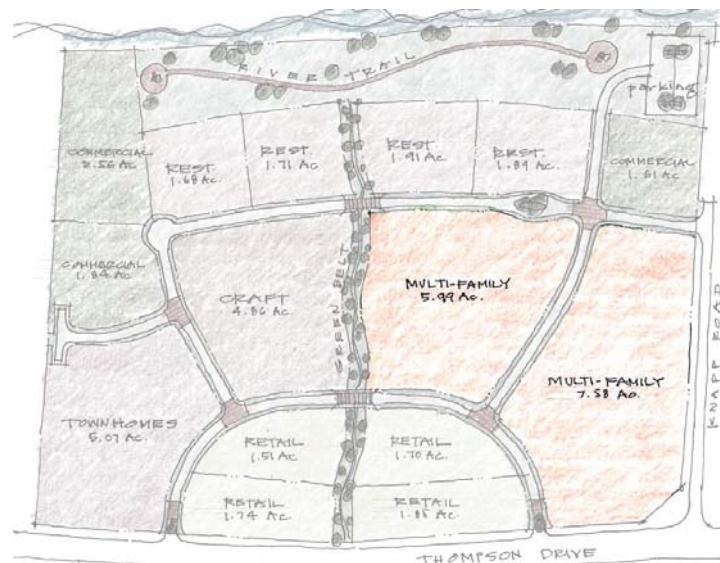
Affordable Lifestyles. Community Values.



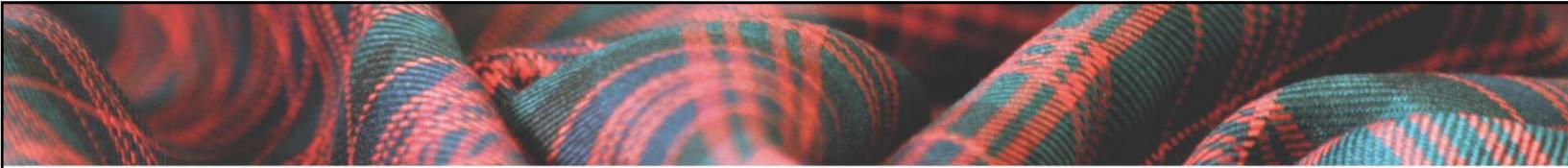




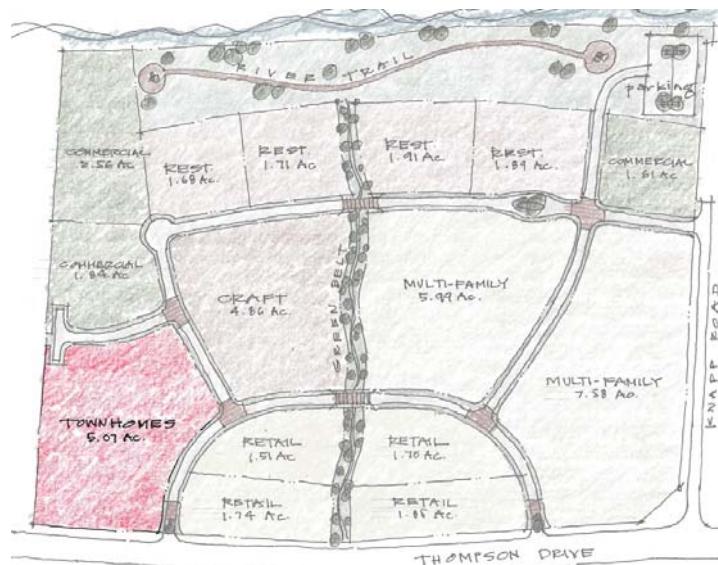
Luxury Apartments



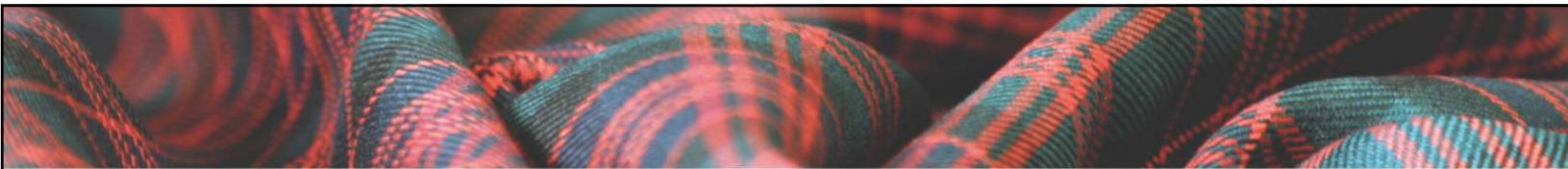
Affordable Lifestyles. Community Values.



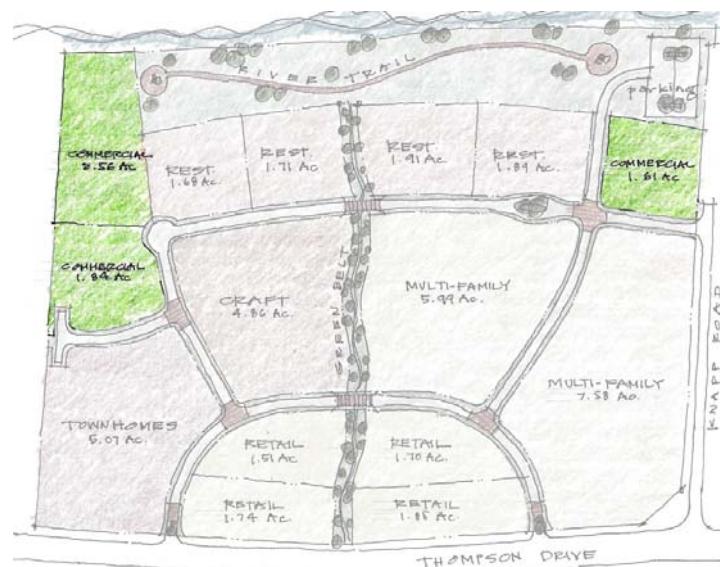
Townhomes



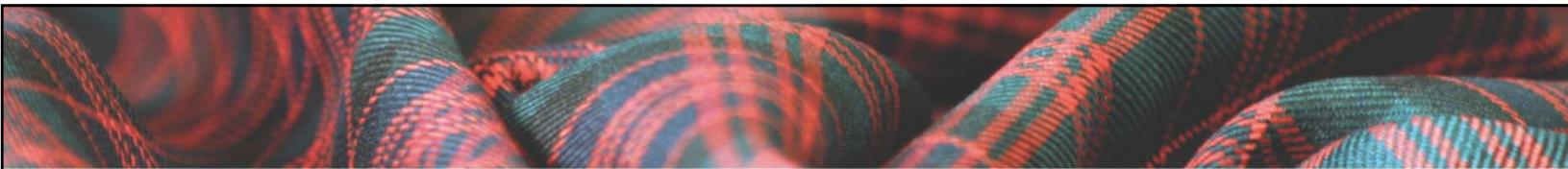
Affordable Lifestyles. Community Values.



Office/Commercial



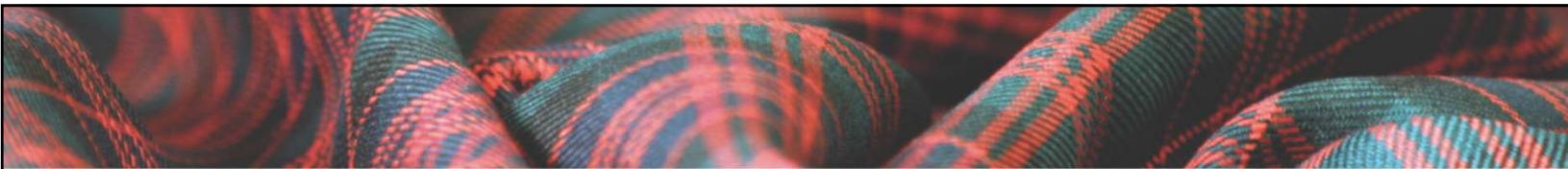
Affordable Lifestyles. Community Values.



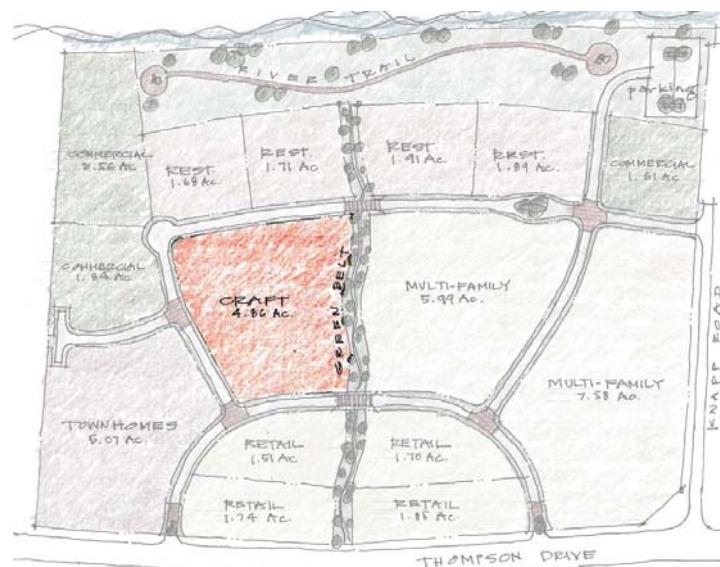
Restaurants



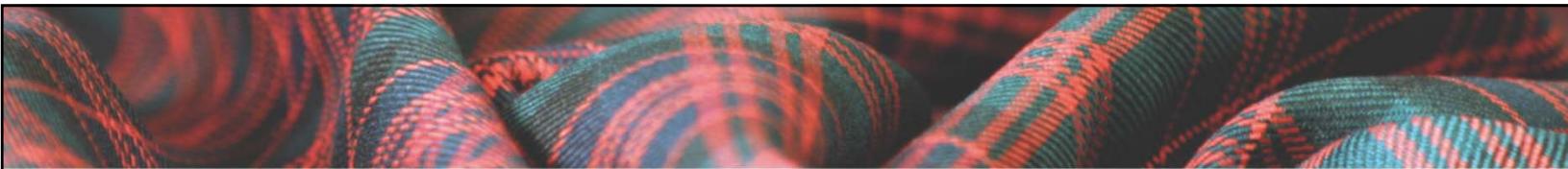
Affordable Lifestyles. Community Values.



Craft Artisans



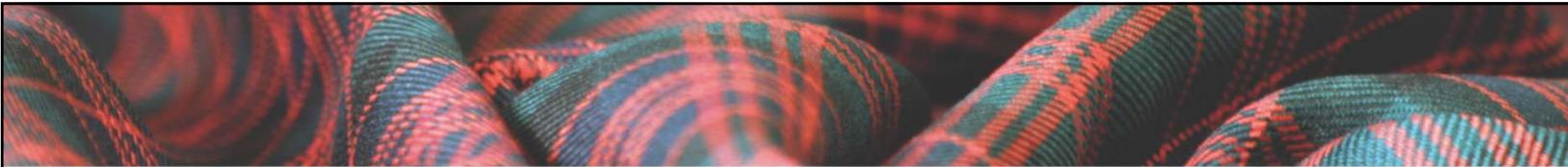
Affordable Lifestyles. Community Values.



River Park/Trail



Affordable Lifestyles. Community Values.



About MacDonald Companies

- Based in Kerr County
- Third-generation Family Business
- Owners & Operators, not Speculators
- Own/Manage more than 3,500 Units in Texas, including more than 1,200 within the Hill Country
- More than 130 employees, including 30 in Kerr County
- More information available at:
<http://www.macdonald-companies.com>

Affordable Lifestyles. Community Values.

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN
THOMPSON DRIVE PARTNERS, LLC, THE CITY OF
KERRVILLE, TEXAS ECONOMIC IMPROVEMENT
CORPORATION, AND THE CITY OF KERRVILLE, TEXAS**

This Economic Development Grant Agreement (“Agreement”) is entered into as of the Effective Date by and between **THOMPSON DRIVE PARTNERS, LLC**, a Texas limited liability company (“Company”), acting herein by and through its duly authorized Managing Member; the **CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION** (“EIC”), a Type B Economic Development Corporation established pursuant to Chapters 501, 502, and 505 of the Texas Local Government Code, as amended (*i.e.*, the Development Corporation Act and hereafter referred to as “the Act”), acting by and through its duly authorized President; and the City of Kerrville, Texas (“City”), acting by and through its duly authorized City Manager. Company, EIC, and City are sometimes collectively referred to herein as “Parties” and individually as “Party”.

WITNESSETH:

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

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

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, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements as provided by Section 501.103 of the Act; and

WHEREAS, Company, whose headquarters is in Kerr County, Texas, is part of a group of companies specializing in developing, building, and managing multifamily neighborhoods across Texas, which includes over 5,700 units in 48 communities within 25 Texas cities, and has become one of the nation’s leading homebuilders specializing in multifamily developments; and

WHEREAS, Company owns the Land (as defined below) which is located within the City’s incorporated limits; and

WHEREAS, Company desires to develop the Land and to have the Land served by public water and wastewater service provided through a connection to

City's water and wastewater systems and in so doing, will need to design, construct, and extend the closest water and wastewater mains to the Land (the "Improvements", as defined below) as part of its initial multifamily project; and

WHEREAS, Company has advised City that a contributing factor that would induce Company to develop the Land and construct the Improvements would be an agreement with EIC to provide an economic development grant to Company to defray a portion of the costs of the construction of the Improvements; and

WHEREAS, Company has also requested, and by this Agreement the City agrees, to reserve capacity in the Water System and Wastewater System (as defined below) that Company constructs and extends to the Land per the terms contained herein;

WHEREAS, Company is expected to initially invest over 8 Million Dollars (\$8,000,000.00) to develop the Property (as defined below); and

WHEREAS, Company plans to build a multifamily housing project on the Land consisting of no fewer than 120 multifamily housing units within an initial phase, with subsequent construction phases that may include a mixed-use development on the remainder of the Land; and

WHEREAS, upon completion, the Improvements will not only provide service to the Land, but will provide access to service to additional property that the Improvements will extend over or be near to, which may generate and enable future development in the area; and

WHEREAS, finding that providing a grant to fund construction of the Improvements in support of the Development (as defined below) is required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises by promoting the expansion of additional housing stock needed to encourage the relocation to the City of people entering the local employment pool, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures; and

WHEREAS, based upon the terms of this Agreement, EIC believes that a return on its investment will occur within the next ten (10) years; and

WHEREAS, EIC finds that it will be in the public interest to enter into this Agreement with Company to provide a grant of 4B Revenues, as defined below, to Company for a portion of its cost necessary for the construction of the Improvements; and

WHEREAS, on November 26, 2018, 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, Company, EIC, and City agree as follows:

Article I **Definitions**

For purposes of this Agreement, each of the following terms has the meaning set forth herein unless the context clearly indicates otherwise:

“*4B Sales Tax*” means the one-half of one percent (0.5%) sales and use tax imposed pursuant to the Development Corporation Act, Title 12, Subt. C-1, Ch. 501-505, Texas Government Code, and collected by City for the benefit of EIC.

“*Affiliate*” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“*Bankruptcy or Insolvency*” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“*Commencement of Construction*” means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Development on the Land; (ii) all necessary permits for the construction of the Development on the Land pursuant to the plans have been issued by all applicable governmental authorities; and (iii) grading of the Land and construction of the vertical elements of the Development have begun.

“*Completion of Construction*” means the date that the certificates of occupancy for all buildings and other improvements comprising the Development have been issued by City.

“*Control*,” or any derivation thereof, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by contract or otherwise.

“*Development*” means a multifamily housing development with no fewer than 120 dwelling units and associated utilities, landscaping, parking, and other associated improvements of Class A quality and characteristics, similar to that of Company’s “Orchard Grove” development located in Fredericksburg, Texas.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns, or work stoppages.

“Grant” means the amount of Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00) paid by EIC to Company in installments as provided in this Agreement.

“Improvements” means collectively the Water System and Wastewater System each of which will provide public water and wastewater services to the Land, as more fully described in the submittals filed with and approved by City, from time to time.

“Land” means the real property described in **Exhibit A**.

“Local Sales and Use Tax” means (i) the one percent (1%) sales and use tax imposed by the City pursuant to Chapter 321, Texas Tax Code and (ii) the 4B Sales Tax.

“Person” means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“Project” means the design and construction of the Improvements extending to and terminating at the Land.

“Property” means, collectively, the Improvements and the Land.

“Related Agreement” means that certain Economic Development Incentive Agreement between City and Company dated as of the approximate date of this Agreement.

“Required Use” means Company’s and its assigns, as permitted by this Agreement, continuous use for occupancy of the Development on the Land.

“Substantial Completion of Construction” means City is able to use the Improvements for their intended purpose and thereby approves and accepts the Improvements in accordance with its standards.

“Wastewater System” includes an approximate 8,000 linear foot sewer force main, an approximate 2,000 linear foot gravity sewer main, and a lift station culminating in a base design capacity of 110,000 gallons of wastewater per day as more fully described in the submittals filed with and approved by City, from time to time.

“*Water System*” includes an approximate 4,000 linear foot, twelve inch (12.0”) public water main as more fully described in the submittals filed with and approved by City, from time to time.

Article II Term

2.1. Effective Date and Termination. Subject to approval by City’s City Council, the term of this Agreement (the “Term”) commences on December 12, 2018 (the “Effective Date”), and terminates on the earlier of:

- (a) December 31, 2030;
- (b) when terminated by mutual agreement of the Parties;
- (c) if Commencement of Construction does not occur by the date set forth in Section 4.5 and, EIC elects to terminate this Agreement by providing notice to Company before Commencement of Construction actually occurs;
- (d) if Completion of Construction does not occur by the date set forth in Section 4.5 and, EIC elects to terminate this Agreement by providing notice to Company before Completion of Construction actually occurs;
- (e) when terminated pursuant to Articles VIII or IX; or
- (f) at Company’s sole and absolute discretion, upon Company’s return of the Grant, or the portion of the Grant it has received, to EIC.

2.2 Rights upon Termination. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect except to the extent such obligations expressly survive the termination of this Agreement.

Article III 4B Revenue Grant

3.1 Payment of Grant. Subject to the obligation of Company to repay the Grant pursuant to Section 4.4 or other provisions of this Agreement, and the continued satisfaction of all the terms and conditions of this Agreement by Company, EIC agrees to provide Company with an amount up to and not to exceed the Grant, which EIC shall pay in three equal installments of Two Hundred Eighty-three Thousand Three Hundred Thirty-three and No/100 Dollars (\$283,333.00) each, as follows:

- (a) EIC shall pay the first installment of the Grant to Company not later than thirty (30) days after Company has delivered documentation to City,

in a form acceptable to City, that Company has incurred or contractually obligated itself to incur not less than the full price of the cost for the Improvements;

(b) EIC shall pay the second installment of the Grant to Company not later than thirty (30) days after Company's delivery to City of a request for payment of said installment (i) following Substantial Completion of Construction; and (ii) Commencement of Construction for the Development has occurred; and

(c) The third installment of the Grant shall be paid not later than thirty (30) days after City's issuance, in compliance with its applicable building codes and development regulations, of a certificate of occupancy for the Development.

3.2 Grant Limitations. Under no circumstances shall the obligations of EIC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, EIC shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by Company.

3.3 Current Revenue. The Grant will be paid solely from lawfully available funds that have been appropriated by EIC. EIC shall have no obligation or liability to pay any installment of the Grant except as allowed by law. EIC shall not be required to pay any installment of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 Grant Limited to "Costs". Payments made by EIC to Company from 4B Sales Taxes will be limited to the payments of "costs" as defined by the Act and as specified above for the Project; provided, however, for purposes of this Agreement, "costs" do not include funds spent by Company relating to the purchase of the Land or interest or other fees paid by Company related to borrowing funds for the purpose of paying for the Project or the Development.

3.5 Reservation of Wastewater System Capacity. Capacity in the Wastewater System will be allocated as follows between City and Company:

(a) Upon acceptance of the Wastewater System by City, Company may immediately use 80% of the capacity of the Wastewater System to provide sanitary sewer service to City's sanitary sewer customers within the Land, whether existing on the Effective Date or who connects to the Wastewater System thereafter.

(b) Commencing on the fifth (5th) anniversary of City's acceptance of Wastewater System, City's capacity shall increase in the Wastewater System for City's wastewater customers other than those located within the Land, up to a capacity equal to the lesser of: (i) 60% of the capacity of the Wastewater

System or (ii) the capacity in the Wastewater System not being used by wastewater customers located on the Land; provided in no case shall City's capacity in the Wastewater System for wastewater customers not located on the Land be less than 20%, unless otherwise as agreed to in writing by the parties.

(c) Commencing on the tenth (10th) anniversary of City's acceptance of the Wastewater System, City shall have the right to use any and all remaining capacity of the Wastewater System for wastewater customers not located on the Land that is not being used as of said date by wastewater customers located on the Land.

3.6 Reservation of Water System Capacity. Capacity in the Water System will be allocated as follows between City and Company:

(a) Upon acceptance of the Water System by City, Company may immediately use 80% of the capacity of the Water System to provide water service to City's water customers within the Land, whether existing on the Effective Date or who connects to the Water System thereafter.

(b) Commencing on the fifth (5th) anniversary of City's acceptance of Water System, City's capacity shall increase in the Water System for City's water customers other than those located within the Land, up to a capacity equal to the lesser of: (i) 60% of the capacity of the Water System or (ii) the capacity in the Water System not being used by water customers located on the Land; provided in no case shall City's capacity in the Water System for water customers not located on the Land be less than 20%, unless otherwise as agreed to in writing by the parties.

(c) Commencing on the tenth (10th) anniversary of City's acceptance of the Water System, City shall have the right to use any and all remaining capacity of the Water System for water customers not located on the Land that is not being used as of said date by water customers located on the Land.

Article IV **Conditions to the Economic Development Grant**

4.1 Generally. The obligation of EIC to provide the Grant and the right of Company to retain the Grant without an obligation to repay all or any portion of the Grant to EIC shall be conditioned upon continued compliance with, and satisfaction of, each of the terms and conditions of this Agreement by Company and specifically, each of the conditions set forth in this Article IV.

4.2 Good Standing. Company shall not have incurred a breach or default of this Agreement or any Related Agreement beyond any applicable notice and cure period.

4.3 Development Regulations. Prior to and following annexation of the Land, Company shall comply with all applicable development regulations of the City, to include building codes, subdivision regulations, and zoning, in its development and construction of the Development. In addition, Company shall cause to be developed a traffic impact analysis for any proposed or future impact from vehicle use or access to or from the Land and mitigate any impact as required by the study, Texas Department of Transportation, and/or City irrespective of vesting rights. Company shall engage a firm or professional to conduct the study that is licensed to do so by the state. Company's failure to comply with this provision constitutes a breach of this Agreement should Company, following notice from City, fail to fully comply.

4.4 Required Use. Commencing on the Completion of Construction of the Development and continuing thereafter until the termination of this Agreement, the Development shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Development in conformance with the Required Use shall not cease for more than six (6) months, except in connection with and to the extent of an event of Force Majeure.

4.5 Commencement and Completion of Construction. Subject to events of Force Majeure, Commencement of Construction of the Development shall commence not later than January 1, 2020. Subject to events of Force Majeure, Completion of Construction of the Development shall occur not later than December 31, 2023. If Commencement of Construction or Completion of Construction of the Development does not occur prior to the foregoing dates, Company shall immediately following written demand return to EIC the first and second installments of the Grant Revenue in the amount of Five Hundred Sixty-six Thousand Six Hundred and Sixty-Six and No/100 dollars (\$566,666.00).

4.6 River Trail Easements and Parkland Dedication. In conjunction with the platting of the Land, Company, upon request from City, shall convey to City:

- a. A twenty foot (20.0') wide easement in an agreed upon location adjacent to the Guadalupe River across the entire width of the Land for the possible future extension of the City's River Trail; and/or
- b. Via deed, 1.5 acres of parkland in an agreed upon location adjacent to the River Tail easement for public use as a City park and River Trail trailhead facility.

These conveyances will be in accordance with the City's Parkland Dedication Ordinance ("Ordinance"), and the acreage conveyed in the easement and deed shall apply to its requirements. Following City's request, Company shall convey such easement and/or deed to the City within one-hundred and eighty days. Company will satisfy any additional parkland dedication required by the Ordinance by cash deposit. Company agrees to work with City to consider creating additional public open space, including a shared parking agreement. Upon request from City, Company shall work

with adjacent property owners to the development to encourage additional extensions of the river trail.

4.7 Records. Company shall keep and maintain complete and accurate records relating to its costs of designing and constructing the Project for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect Company's records related to the Project during the term of this Agreement and for three (3) years thereafter, upon reasonable notice at Company's offices at the address identified in Section 10.4, below.

Article V **Sale of Project, Merger or Consolidation of Company**

5.1 Sale of Company Assets. A sale of all or any of the assets of Company shall not release Company from its duties and responsibilities to EIC under the terms of this Agreement and shall not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that Company's proposed successor shall have the financial condition to fully satisfy Company's duties and responsibilities hereunder and agrees to assume Company's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.

5.2 Merger. In the event of any proposed merger or other consolidation of Company with any third party not affiliated with Company, not later than thirty (30) days prior to any such merger or consolidation, Company shall provide EIC with information and assurance reasonably acceptable to EIC regarding: (i) the surviving entity's assumption and satisfaction of the Company's obligations hereunder; and (ii) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy Company's duties and responsibilities under this Agreement.

5.3 EIC Rights. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no rights to approve or disapprove any sale or merger transaction of any kind involving Company. In the event of any sale or merger involving Company or its affiliates, the surviving entity shall assume Company's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

Article VI **Company's Representations and Warranties**

Company represents and warrants as of the date hereof:

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

(b) Execution of this Agreement has been duly authorized by Company and this Agreement is not in contravention of Company's corporate charter, or any agreement or instrument to which Company is a party or by which it may be bound as of the date hereof;

(c) No litigation or governmental proceeding is pending, or, to the knowledge of Company, threatened against or affecting Company, which may result in a material adverse change in Company's business, properties, or operations sufficient to jeopardize Company's legal existence or for-profit viability; and

(d) No written application, written statement, or correspondence submitted by Company to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of Company, 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.

(e) Except as expressly set forth in this Article VI, Company makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

Article VII **EIC'S Representations and Warranties**

EIC represents and warrants as of the date hereof:

(a) 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;

(b) Execution of this Agreement has been duly authorized by EIC;

(c) 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

(d) 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.

(e) Except as expressly set forth in this Article VII, EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

Article VIII
Conditions under which EIC May Suspend Performance
of Its Obligations Under This Agreement

EIC may, at its sole option and after thirty (30) days written notice to Company, suspend EIC's performance under this Agreement until such time as Company shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

- (a) Company becomes insolvent;
- (b) The appointment of a receiver of Company, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter;
- (c) The adjudication of Company as bankrupt; or
- (d) The filing by Company 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 the foregoing conditions not be cured by Company within ninety (90) days after the onset of the condition, Company will be considered to have breached this Agreement and EIC may, at its option, with written notice to Company, terminate this Agreement and Company shall be obligated to refund the Grant to EIC.

Article IX
Remedies

9.1 Notice and Opportunity to Cure. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any Party, 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. This provision and specifically the notice and time to cure shall not apply to the obligation of Company found within Article IV.

9.2 Termination. Upon breach of this Agreement by either Party and the failure to cure as permitted by Section 9.1, the non-breaching Party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each Party acknowledges and agrees that no Party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement.

9.3 Delay Not Waiver. 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 X General Provisions

10.1 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.

10.2 Amendment. This Agreement may be amended only by written amendment signed by both Parties.

10.3 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 a state court of competent jurisdiction 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.

10.4 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:

For Company

G. Granger MacDonald, Managing Member
Thompson Drive Partners, LLC
2951 Fall Creek Road
Kerrville, Texas 78028

For EIC

President

City of Kerrville, Texas, Economic Improvement Corporation
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

For City

City Manager

City of Kerrville
701 Main Street
Kerrville, Texas 78028
Facsimile: (830) 792-3850

10.5 Assignment. This Agreement is binding upon the Parties and their successors and assigns. Except as set forth in Article V, 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, the assigning Party shall be relieved of any and all obligations and liabilities on the part of such assigning Party under this Agreement. Company may, without written consent of EIC, assign this Agreement to any entity controlled and 100% owned by Company or by the parent, subsidiary, or affiliate of Company provided the entity assumes all of Company'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 Company and Company 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.

10.6 Parties In Interest. Nothing in this Agreement shall entitle any party other than Company or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IX.

10.7 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 arm's length, with the advice and participation of

counsel, and will be interpreted in accordance with its terms without favor to any Party.

10.8 No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties.

10.9 Survival of Terms. All rights, duties, liabilities, and obligations accrued prior to termination shall survive termination.

10.10 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof.

10.11 Recitals. The recitals to this Agreement are incorporated herein.

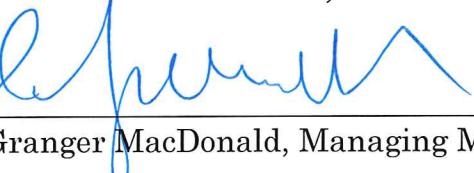
10.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

10.13 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Grants and any other funds received by Company from EIC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by EIC of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, Affiliate, contractor, subcontractor, or franchisee of Company or any other Person other than Company.

(signatures begin on following page(s))

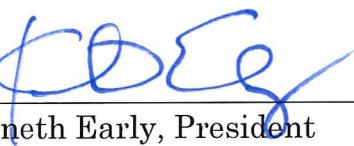
SIGNED AND AGREED on this 3 day of December, 2018.

THOMPSON DRIVE PARTNERS, L.L.C.

BY: 
G. Granger MacDonald, Managing Member

SIGNED AND AGREED on this _____ day of _____, 2018.

CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION

BY: 
Kenneth Early, President

ATTEST:

BY: _____
Cheryl Brown, Recording Secretary

APPROVED AS TO FORM:

BY: _____
Michael C. Hayes, Attorney for EIC

SIGNED AND AGREED on this _____ day of _____, 2018.

CITY OF KERRVILLE

BY: _____
Mark McDaniel, City Manager

ATTEST:

BY: _____
Cheryl Brown, Interim City Secretary

EXHIBIT A

LAND

EXHIBIT A

MATKIN HOOVER ENGINEERING & SURVEYING

8 SPENCER ROAD, SUITE 100, BOERNE, TEXAS 78006
PHONE: 830-249-0600 FAX: 830-249-0099
TEXAS REGISTERED SURVEYING FIRM F-10024000

FIELD NOTES FOR A 58.74 ACRE TRACT OF LAND

A 58.74 ACRE TRACT OF LAND OUT OF THE JOSEPH S. ANDERSON SURVEY NO. 141, ABSTRACT NO. 2, AND THE J. S. SAYDER SURVEY NO. 142, ABSTRACT NO. 290, KERR COUNTY, TEXAS, AND BEING A PORTION OF THE CALLED 27.52 ACRE TRACT RECORDED IN DOCUMENT NO. 18-01649, OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS, ALL OF THE CALLED 21.16 ACRE TRACT DESIGNATED AS "TRACT ONE", ALL OF THE CALLED 6.03 ACRE TRACT DESIGNATED AS "TRACT TWO", RECORDED IN DOCUMENT NO. 12-00573, OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS, AND ALL OF THE CALLED 4.01 ACRE TRACT RECORDED IN DOCUMENT NO. 12-00575, OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS. SAID 59.09 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at a point in the northeast right-of-way line of State Spur No. 98 (Thompson Drive), the southwest boundary line of the called 27.52 acre tract, said point bears S 45°04'05" E, a distance of 12.30' from a $\frac{1}{2}$ " iron rod with red plastic cap stamped "Cude" found at the west corner of the called 27.52 acre tract, the south corner of Lot 1, Block 1, Thistle Hill House Subdivision No. 1, recorded in Volume 6, Page 186, Plat Records of Kerr County, Texas;

(1) Thence, departing the northeast right-of-way line of State Spur No. 98 (Thompson Drive), over and across the called 27.52 acre tract the following three (3) courses and distances:

- a. N 45° 06' 40" E, a distance of 380.08' to a point for angle;
- b. N 45° 06' 47" E, a distance of 336.45' to a point for angle;
- c. N 45° 06' 23" E, a distance of 627.25' to a point for corner in the northeast boundary line of the called 27.52 acre tract, the southwest boundary line of Upper Guadalupe River Authority (UGRA) and recorded in Volume 218, Page 849, Deed Records, Kerr County, Texas, said point being near the 1622' contour line of the Guadalupe River (Kerrville Lake), said point bears S 51° 01' 14" E, a distance of 10.95' from a calculated point in the southeast boundary line of a called 7.85 acre tract of land recorded in Document No. 12-8067, Official Public Records of Kerr County, Texas, the north corner of the called 27.52 acre tract and the west corner of the called 0.5 acre tract;

(2) Thence, along the meanders of the 1622' contour line, the northeast boundary line of the called 27.52 acre tract, the called 6.03 acre tract, the called 21.16 acre tract, and the called

4.01 acre tract, the southwest meander line of the Guadalupe River (Kerrville Lake), the following courses and distances:

- a. **S 51° 01' 14" E, 330.07'** to a point for angle;
- b. **S 51° 14' 22" E, 535.10'** to a point for angle;
- c. **S 56° 26' 37" E, 261.88'** to a point for angle;
- d. **S 40° 47' 22" E, 57.54'** to a point for angle;
- e. **S 50° 32' 38" E, 342.61'** to a point for angle;
- f. **S 50° 32' 38" E, 72.99'** to a point for angle;
- g. **S 44° 36' 51" E, 165.42'** to a point for angle;
- h. **S 54° 03' 44" E, 84.53'** to a point for corner at the east corner of the called 4.01 acre tract;

(3) **Thence, S 46° 39' 46" W**, along the southeast boundary line of the called 4.01 acre tract, **a distance of 51.20'** to a cotton spindle set for corner in the centerline of Knapp Road at the east corner of a 20' wide strip (portion of James Road) which is part of a called 5.98 acre tract recorded in Volume 212, Page 558, Deed Records of Kerr County, Texas;

(4) **Thence, N 45° 04' 29" W**, along a southwest boundary line of the called 4.01 acre tract, the centerline of Knapp Road, the northeast line of the 20' wide strip (portion of James Road), **a distance of 20.00'** to a cotton spindle found for interior corner at an interior corner of the called 4.01 acre tract and at the north corner of the 20' wide strip (portion of James Road), in the northwest line of James Road;

(5) **Thence, S 44° 55' 31" W**, along the northwest line of the 20' wide strip (portion of James Road), the northwest line of James Road, the southeast boundary line of the called 4.01 acre tract, **a distance of 539.81'** to a $\frac{1}{2}$ " iron rod found for angle at the south corner of the called 4.01 acre tract, the east corner of the called 21.16 acre tract;

(6) **Thence**, continuing along the northwest line of the 20' wide strip (portion of James Road), the northwest line of James Road, the southeast boundary line of the called 21.16 acre tract, the following courses and distances:

- a. **S 44° 54' 29" W, 725.61'** to a Texas Department of Transportation (TxDot) Type 1 concrete marker found for angle;

- b. **S 46° 17' 03" W, 4.81'** to a $\frac{1}{2}$ " iron rod found for angle at the east end of a cutback line at the intersection of the northwest line of the 20' wide strip (portion of James Road), the northwest line of James Road, with the northeast right-of-way line of State Spur No. 98;

(7) Thence, **S 89° 56' 21" W**, along said cutback line, a **distance of 135.09'** to a $\frac{1}{2}$ " iron rod found for angle;

(8) Thence, along the northeast right-of-way line of State Spur No. 98, the following courses and distances:

- a. **N 52° 27' 24" W, 828.91'** to a $\frac{1}{2}$ " iron rod found for angle;
- b. **N 61° 11' 52" W, 38.67'** to a TxDot Type 2 concrete marker found for angle;
- c. **N 45° 04' 50" W**, at 21.53' pass the surveyed south corner of the called 27.52 acre tract, a **total distance of 865.17'** to the **POINT OF BEGINNING** and containing **58.74** acres of land, more or less.

Note: This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



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

SUBJECT: Economic Development Grant Agreement between the City of Kerrville, Texas, and Thompson Drive Partners, LLC

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/3/2018

SUBMITTED BY: E.A. Hoppe
Deputy City Manager

EXHIBITS: Economic Development Grant Agreement

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$1,050,000	\$0	\$0	N/A Project: N/A

PAYMENT TO BE MADE TO: Thompson Drive Partners, LLC

Kerrville 2050 Item?	Yes:	No: <input type="checkbox"/>
Key Priority Area	E - Economic Development	
Guiding Principle	E6 - Support access to the infrastructure necessary to accommodate the future growth of housing and business (water, wastewater, power, communications, roads)	
Action Item	E6.1 – Develop budgets and capital improvement plans that address the infrastructure required to accommodate both existing and future needs	

SUMMARY STATEMENT:

Thompson Road, LLC (The MacDonald Companies) have conceptualized a multi-phase, mixed-use development called “The Landing” along Thompson Drive on an approximate 59-acre tract of land they own that was annexed into the Kerrville City limits this fall. The property is not currently served by centralized water or wastewater utilities. The developer has made an \$850,000 request for EIC assistance in installing \$1.85 million in off-site water and wastewater public infrastructure to bring utilities to that site. In addition, the City has explored various options to “upscale” the infrastructure to help promote additional growth in the region.

One key impediment to development within this corridor of Thompson Drive is the lack of water and wastewater utility services. The extension of utility services in this corridor should catalyze development not only for this 59 acre property, but throughout much of the vacant land within that corridor. It was identified as a public project in the 2012 Wastewater Master Plan, but has not yet been achieved due to cost. The 2012 Wastewater Master Plan was a conceptual document, and was never fully engineered, but did assist the City in laying out a basic plan for the needs identified at the time. In addition, it must be recognized that the plan cannot foresee the timing of all development activity within a given corridor/region, and therefore sometimes requires modification to the overall concept as further engineering occurs. The developer has received bids for the utility service extensions that have been

contemplated for their site location. In addition, they have also produced engineer estimates of probable cost for the additional upgrades that the City has requested. Upon completion of the utility project, the utilities will be turned over to the City of Kerrville for ownership, operation, and maintenance.

The City has asked the developer to explore several infrastructure upgrade options, as further illustrated in the attached exhibits of the Agreement. Option 1 would be a basic upgrade of increasing the bore pipe sizing for future upgrades of pipe infrastructure, as well as the gravity sewer main outfalls to Francisco Lemos. This option would require the City to provide \$100,000 in additional funding to the developer to add these elements to the project. Option 2A would allow for the enhancement of additional gravity sewer to further expand the sewershed area that could utilize the proposed lift station along James Rd. Option 2B proposes a system that would require additional lift stations at the water treatment plant and at James Rd., and is not recommended by staff due to the enhanced long-term maintenance costs that would be required. Both option 2A and 2B are estimated to cost an additional \$850,000, and the City would be responsible for additional right of way acquisition. Option 2A-ROW contemplates a scenario that does not require an easement for the gravity wastewater main on the property adjacent to The Landing, but does require a deeper and wider trench cut for the sewer main within the right of way. Consequently, the cost is increased to an estimate of \$1,050,000. The agreement has been drafted to provide a maximum reimbursement of up to \$1,050,000 based upon the final project design agreed upon, engineered, and constructed, but only for actual costs incurred.

It should be noted that per State Law and the City's subdivision ordinance, the City is granted the authority to partner with a developer to enhance proposed infrastructure installations that have a benefit to the overall utility system, beyond the capacity that is required by the developer for their specific development. The question at hand is how these upgrades are funded by the City. The agreement that has been negotiated provides that, in this case, the developer will finance and construct the project upgrade, and the City will reimburse the developer with future property taxes generated by the development.

Basic Economic Development Grant Agreement Terms

Developer will:

- Engineer and install the \$1,850,000 in public water and wastewater infrastructure as described in the EIC Funding Agreement (110,000 GPD avg. excess capacity).
- Engineer, acquire easements, and install "Upsizing" infrastructure described in Option #1 (Exhibit), estimated to cost approximately \$100,000, to better serve the regional sewershed in the future (760 LF extension of gravity outfall, oversize force main bore pipe, oversize gravity sewer outfall).
- Possibly engineer and install infrastructure described in Option #2A or Option #2A-ROW to serve adjacent sewersheds beyond "The Landing" (approximately 370,000 GPD).
- Upon completion of the utility project, the utilities will be turned over to the City of Kerrville for ownership, operation, and future maintenance

City will:

- Provide up to \$1,050,000 in total Property Tax Abatements via a Chapter 380

Agreement to pay for the requested upsizing of the offsite improvements over a 10 year period.

- 100% of property taxes increment (the increase above the current land values) generated from the property will be rebated to the developer for the 1st 10 years of the agreement, once the site begins to generate property taxes from new improvements (post the 1st Certificate of Occupancy), up to a maximum of \$1,050,000.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and Execute the Agreement.

**THOMPSON DRIVE
REGIONAL SEWER COLLECTION SYSTEM**

***Preliminary Opinion of Probable Cost
(For Comparison of Options Only)***

Updated: 12/5/2018

Description	Developer's Portion	EIC Portion	380 Agreement Portion	Total Estimated Cost
Option #1 -Serves "The Landing" sewersheds only, with approx. 43% excess capacity (110,000 GPD avg. inflow) -Includes 760 LF extension of gravity sewer outfall main. -Includes over-sizing force main bore pipe from 6" to 10" diameter (see note 3. below). -Includes over-sizing gravity sewer outfall main from 8" to 12" diameter (see note 3. below).	\$1,000,000	\$850,000	\$100,000	\$1,950,000
Option #2A or #2B -Serves "The Landing" and the "Eckard" sewersheds (approx. 370,000 GPD avg. inflow)	\$1,000,000	\$850,000	\$850,000	\$2,700,000
Option #2A-ROW -Same as Option #2A above, except the Gravity Sewer Main is routed along the Spur 98 and James Rd rights-of-way.	\$1,000,000	\$850,000	\$1,050,000	\$2,900,000

Notes:

1. Approximate costs used in this estimate are based on prior bids for similar work. These prices are for preliminary budgeting purposes only. Actual costs may vary considerably.
2. The quantities used in this cost estimate are approximate only and are not based on an actual engineering design. Final quantities may differ significantly from those used in this estimate.
3. The force main bore pipe and gravity sewer outfall main over-sizing have been identified as additional elements to help reduce impediments for increasing the capacity of the public wastewater infrastructure system in the future, and are included in the 380 Agreement reimbursement portion of Option #1.
4. The above costs include approx. \$200,000 for a 12" water main extension from the City Water Plant to the corner of Thompson Dr. and James Rd.
5. The "Eckard" sewersheds noted above is as described/defined in the City's Master Sewer Plan prepared by Freese & Nichols.

**THOMPSON DRIVE
REGIONAL SEWER COLLECTION SYSTEM**

OPTION #2A - SINGLE LIFT STATION ON JAMES ROAD

***Preliminary Opinion of Probable Cost
(For Comparison of Options Only)***

<i>Description</i>	<i>Approx. L.F.</i>	<i>Approx. cost per l.f.</i>	<i>Date: 10/18/2018</i>	<i>Total Cost</i>
1. 12" Gravity Main -from City Water Plant on Thompson Dr. to Lift Station on James Rd.	3,200	\$85		\$272,000
2. 1,000 gpm Lift Station on James Road	-	-		\$850,000
3. 8" Force Main along Thompson Dr.	9,200	\$75		\$690,000
4. 12" Gravity Main -from end of FM to exist. main at Francisco-Lemos St.	1,900	\$85		\$161,500
5. Miscellaneous (Mobilization, Engineering, SWP3, etc.)	-	-		\$300,000
6. Contingency (10%)	n/a	n/a		\$227,350
Total:				\$ 2,500,850

Notes:

1. Approximate costs per linear foot used in this estimate are based on prior bids for similar work. These prices are for preliminary budgeting purposes only. Actual costs may vary considerably.
2. The quantities used in this cost estimate are approximate only and are not based on an actual engineering design. Final quantities may differ significantly from those used in this estimate.

**THOMPSON DRIVE
REGIONAL SEWER COLLECTION SYSTEM**

OPTION #2B - SECOND LIFT STATION NEAR WATER PLANT

***Preliminary Opinion of Probable Cost
(For Comparison of Options Only)***

<i>Description</i>	<i>Approx. L.F.</i>	<i>Approx. cost per L.F.</i>	Date: 10/18/2018	<i>Total Cost</i>
1. 300 gpm Lift Station on James Road	-	-		\$535,000
2. 6" Force Main to Lift Station near Water Plant	3,800	\$45		\$171,000
3. 700 gpm Lift Station near Water Plant	-	-		\$750,000
4. 8" Force Main along Thompson Dr.	5,400	\$75		\$405,000
5. 12" Gravity Main -from end of FM to exist. main at Francisco-Lemos St.	1,900	\$85		\$161,500
6. Miscellaneous (Mobilization, Engineering, SWP3, etc.)	-	-		\$300,000
7. Contingency (10%)	n/a	n/a		\$232,250
Total:				\$ 2,554,750

Notes:

1. Approximate costs per linear foot used in this estimate are based on prior bids for similar work. These prices are for preliminary budgeting purposes only. Actual costs may vary considerably.
2. The quantities used in this cost estimate are approximate only and are not based on an actual engineering design. Final quantities may differ significantly from those used in this estimate.

**THOMPSON DRIVE
REGIONAL SEWER COLLECTION SYSTEM**

OPTION #2A-ROW - SINGLE LIFT STATION ON JAMES ROAD
(Gravity Sewer Main in Street R.O.W.)

***Preliminary Opinion of Probable Cost
(For Comparison of Options Only)***

<i>Description</i>	<i>Approx. L.F.</i>	<i>APPROX. cost per L.F.</i>	<i>Date: 12/5/2018</i>
1a. 12" Gravity Main (normal depth) -from City Water Plant on Thompson Dr. to Lift Station on James Rd.	1,900	\$85	\$161,500
1b. 12" Gravity Main (extra deep) -from City Water Plant on Thompson Dr. to Lift Station on James Rd.	1,800	\$160	\$288,000
2. 1,000 gpm Lift Station on James Road	-	-	\$850,000
3. 8" Force Main along Thompson Dr.	9,200	\$75	\$690,000
4. 12" Gravity Main -from end of FM to exist. main at Francisco-Lemos St.	1,900	\$85	\$161,500
5. Miscellaneous (Mobilization, Engineering, SWP3, etc.)	-	-	\$300,000
6. Contingency (10%)	n/a	n/a	\$245,100
Total:			\$ 2,696,100

Notes:

1. Approximate costs per linear foot used in this estimate are based on prior bids for similar work. These prices are for preliminary budgeting purposes only. Actual costs may vary considerably.
2. The quantities used in this cost estimate are approximate only and are not based on an actual engineering design. Final quantities may differ significantly from those used in this estimate.



EXHIBIT OF APPROXIMATE SEWERSHED BOUNDARY
FOR
THOMPSON DRIVE MIXED USE DEVELOPMENT
KERRVILLE, TEXAS

MATKIN HOOVER ENGINEERING & SURVEYING

JOB NO.	274002
DESIGNED BY:	RBK
DRAWN BY:	RCG
CHECKED BY:	RBK
Sheet #	01

EXHIBIT 2

EXHIBIT OF APPROXIMATE SEWERSHED BOUNDARY
FOR
THOMPSON DRIVE MIXED USE DEVELOPMENT
KERRVILLE, TEXAS

PROPERTY
BOUNDARY
APPROXIMATE
SEWERSHED
BOUNDARY

448

100



OVERALL UTILITY PLAN
FOR
THOMPSON DRIVE - MIXED USE DEVELOPMENT
KEPPIVILLE, TEXAS

MATKIN HOOVER
ENGINEERING
& SURVEYING

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STATE OF TEXAS § **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**
COUNTY OF KERR §§

This Economic Development Incentive Agreement (“Agreement”) is made by and between the **CITY OF KERRVILLE, TEXAS** (“City”), a Texas home rule municipality, and **THOMPSON DRIVE PARTNERS, LLC** (“Company”), a Texas limited liability company, acting by and through their respective authorized officers and representatives. City and Company are hereafter collectively referred to herein as “Parties” and individually as “Party.”

WITNESSETH:

WHEREAS, Company, whose headquarters is in Kerr County, Texas, is part of a group of companies specializing in developing, building, and managing multifamily neighborhoods across Texas, which to date includes over 5,700 units in 48 communities within 25 Texas cities, and has become one of the nation's leading homebuilders specializing in multifamily developments; and

WHEREAS, Company owns the Land (as defined below) which is located within City's incorporated limits; and

WHEREAS, Company plans to build a multifamily housing project on the Land consisting of no fewer than 120 multifamily housing units within an initial phase (the “Development”, as defined below), with subsequent construction phases that may include a mixed-use development on the remainder of the Land; and

WHEREAS, Company desires to develop the Land and to have the Land served by public water and wastewater service provided through a connection to City's water and wastewater systems and, in so doing, will need to design, construct, and extend the closest water and wastewater mains to the Land (the "Improvements", as defined below); and

WHEREAS, Company has advised City that a contributing factor that would induce Company to develop the Land and construct the Improvements would be an agreement with City to provide economic development grants to Company to defray a portion of the costs of the construction of the Improvements, specifically the costs of oversizing the Improvements to serve the anticipated development of the Land, but in particular, the surrounding areas; and

WHEREAS, per the City's subdivision code and state law, the City may only require developers, like Company, to pay costs of municipal infrastructure improvements that do not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development; and

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WHEREAS, Company is expected to initially invest over Eight Million Dollars (\$8,000,000.00) to develop the Land; and

WHEREAS, City has adopted programs for promoting economic development, including a Chapter 380 Economic Development Program; and

WHEREAS, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380, to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

WHEREAS, City has determined that making economic development grants to Company in accordance with this Agreement will further the objectives of City, will benefit City and City's inhabitants, and will promote local economic development and stimulate business and commercial activity in City;

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

Article I Definitions

For purposes of this Agreement, each of the following terms have the meanings set forth herein unless the context clearly indicates otherwise:

“*Affiliate*” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“*Annual Real Property Grant*” means an annual economic development grant to be provided by City to Company in an amount equal to the portion of ad valorem taxes assessed by City against the Development above the amount of such taxes assessed against the Land for each Grant Year and collected by City for said Grant Year, to be paid as set forth herein.

“*Appraisal District*” means the Kerr Central Appraisal District, or its successor entity.

“*Bankruptcy or Insolvency*” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general

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assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“*Commencement Date*” means the later of: (i) January 1 of the calendar year immediately following the date the certificate of occupancy is issued by City for Company’s occupancy of the Development; and (ii) January 1, 2024.

“*Commencement of Construction*” means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Development on the Land; (ii) all necessary permits for the construction of the Development on the Land pursuant to the plans have been issued by all applicable governmental authorities; and (iii) grading of the Land and construction of the vertical elements of the Development has commenced.

“*Completion of Construction*” means the date that the certificates of occupancy for all buildings and other improvements comprising the Development have been issued by City.

“*Control*,” or any derivation thereof, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by contract or otherwise.

“*Development*” means collectively, the Land, the Improvements, Dwelling Units, and mixed-used development.

“*Dwelling Units*” means a multifamily housing development consisting of least 120 dwelling units, associated utilities, landscaping, parking, and other associated improvements of Class A quality and characteristics constructed on the Land, and similar to that of Company’s “Orchard Grove” development located in Fredericksburg, Texas

“*Effective Date*” means December 12, 2018 (so as to coincide with the Related Agreement).

“*Expiration Date*” means the tenth (10th) anniversary of the Commencement Date.

“*Force Majeure*” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful

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acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“*Grant Year*” means a given tax year except that the first Grant Year shall mean January 1 of the calendar year that follows the year that the City issues a certificate of occupancy upon the Land.

“*Grants*” means all Annual Real Property Grants.

“*Impositions*” means all ad valorem and property taxes, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or an Affiliate or any property or any business owned by Company or an Affiliate within City, and any Texas state or local sales and use taxes.

“*Improvements*” means collectively the Oversizing Components to the Water System and Wastewater System, each of which will provide public water and wastewater services to the Land, and surrounding areas, as more fully described in the submittals filed with and approved by City, from time to time.

“*KEIC*” means the Kerrville Economic Improvement Corporation.

“*Land*” means the real property described in **Exhibit A**.

“*Maximum Total Grant*” means \$1,050,000.00.

“*Oversizing Components*” mean municipal infrastructure improvements exceeding the amount required for the Development, and as more specifically detailed in **Exhibit A**.

“*Payment Request*” means a written request from Company to City for payment of an Annual Real Property Grant accompanied by a copy of tax receipt(s) indicating that Company has paid the ad valorem taxes assessed against the Development for the Tax Year to which the Payment Request applies.

“*Person*” means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“*Property*” means, collectively, the Improvements and the Land.

“*Related Agreement*” means that certain Economic Development Grant Agreement between KEIC and Company, dated as of approximate date herewith.

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“*Required Use*” means Company’s continuous use for occupancy of the Development on the Land.

“*Taxable Value*” means the appraised value as certified by the Appraisal District for a given year.

“*Wastewater System*” includes an approximate 8,000 linear foot wastewater force main, an approximate 1,000 linear foot gravity wastewater main, and a lift station culminating in a base design capacity of 110,000 gallons of wastewater per day as more fully described in the submittals filed with and approved by City, from time to time.

“*Water System*” includes an approximate 4,000 linear foot, twelve-inch (12.0”) public water main as more fully described in the submittals filed with and approved by City, from time to time.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III Economic Development Grants

3.1 Annual Real Property Grants. Subject to the obligation of Company to repay the Grants pursuant to Section 5.2 hereof, and the continued satisfaction of all the terms and conditions of this Agreement by Company, City agrees to provide Company with ten (10) Annual Real Property Grants to be paid not later than thirty (30) days after receipt of a Payment Request applicable to the prior Grant Year, but in no case earlier than April 1 of each calendar year (or the immediately following business day if April 1 is not a business day) beginning with the first full calendar year following the Commencement Date, provided Company has timely paid City ad valorem taxes assessed against the Development in full for the respective Grant Year (*i.e.*, the tax year immediately preceding the year in which an Annual Real Property Grant is to be paid). For illustration purposes, assume that the first Grant Year is 2022, and that City ad valorem taxes assessed (and collected) against the Development for tax year 2022 is \$100,000.00, then the amount of the first Annual Real Property Grant of \$100,000.00 would be paid not later than thirty (30) days later than the later of (i) thirty (30) days after receipt of the Payment Request for Grant Year 2022 and (ii) April 1, 2022. Notwithstanding the foregoing, in the event that the ad valorem taxes assessed against the Property are not paid to City by April 1 of the calendar year, City agrees that it will pay Company any Annual Real Property

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Grant owed to Company not later than ten (10) days after receipt of the applicable ad valorem taxes.

3.2 Grant Limitations. Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of City's obligations under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

3.3 Current Revenue. The Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by City; provided, however, City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Grants for the then ensuing fiscal year. Further, City shall have no obligation or liability to pay any Grants except as allowed by law. City shall not be required to pay any Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 Tax Protest. In the event Company timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Development (or any portion thereof), with the Appraisal District (or its successor), the obligation of City to provide the Grants with respect to the Development (or portion thereof), as the case may be, for such Tax Year shall be abated until a final determination has been made of such protest or contest. In the event Company protests and/or contests results in a final determination that changes the appraised value and/or the Taxable Value of the Development or the amount of ad valorem taxes assessed and due for the Development (or portion thereof), as the case may be, after a Grant has been paid for such property for such Grant Year, the Grant for such Grant Year for such property shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Grant payment date for such property, or within thirty (30) days after such determination in the event no further Annual Grant payments are due with respect to such property under the Agreement.

3.5 Refunds and Underpayments of Grants. In the event City reasonably determines that the amount of one or more of the Grants paid by City to Company is incorrect, not later than sixty (60) days after receipt of written notification thereof from City specifying the amount by which such Grant exceeded the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such determination), Company shall pay such amount to City. If City reasonably determines that the amount by which such Grant was less than the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such determination), not

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later sixty (60) days after making such determination, City shall pay the adjustment to Company. If Company disputes City's determination, the Parties shall seek to amicably resolve the matter, subject to either Party's right to pursue any available rights or remedies in connection therewith.

3.6 Limits on Annual Grant Payments. Notwithstanding the amount of ad valorem assessed against the Development and collected by City during any Grant Year, the total amount of the Grants shall collectively not exceed the Maximum Total Grant.

Article IV Conditions to the Economic Development Grant

The obligation of City to provide the Grants shall be conditioned upon the continued compliance with, and satisfaction of each of the terms and conditions of this Agreement by Company, and each of the conditions set forth in this Article IV below:

4.1 Good Standing. Company shall not have an uncured breach or default of this Agreement or any Related Agreement beyond any applicable notice and cure period.

4.2 Development Regulations. Company shall comply with all applicable development regulations of the City, to include building codes, subdivision regulations, public improvement specifications, and zoning in its development and construction of the Improvements. Company shall design and construct the Water System and Wastewater System to comply with the Oversizing Component. Company shall convey such property interests as are necessary for the City to own and operate the Improvements. Company's failure to comply with this provision constitutes a breach of this Agreement.

4.3 Required Use. Commencing on the Commencement Date and continuing thereafter until the Expiration Date, the Development shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Development in conformance with the Required Use shall not cease for more than six (6) months, except in connection with and to the extent of an event of Force Majeure.

4.4 Commencement and Completion of Construction. Subject to events of Force Majeure, Commencement of Construction of the Development shall commence not later than April 1, 2020. Subject to events of Force Majeure, Completion of Construction of the Development shall occur not later than April 1, 2023.

4.5 Tax Payments. Company timely pays to City, through City's designated tax collector, the ad valorem taxes assessed by City against the Development in full

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prior to the delinquency date (each a “Tax Payment”)(subject to the notice and cure provision in Section 5.1(c) below). The failure of Company to timely pay a Tax Payment shall be considered an event of default subject to termination and repayment pursuant to Article V hereof (subject to the notice and cure provision in Section 5.1(c) below).

Article V Termination

5.1 Basis for Termination. This Agreement terminates upon the occurrence of any one or more of the following events:

- (a) Upon written agreement of the Parties;
- (b) Upon the Expiration Date with no further action by the Parties;
- (c) Except as provided in paragraph (d), below, if a Party defaults or breaches any of the terms or conditions of this Agreement or a Related Agreement and such default or breach is not cured within thirty (30) days after delivery of written notice thereof by the other Party (or if such default or breach is not reasonably curable within such 30-day period, is cured within ninety (90) days after such default or breach provided that the defaulting Party is diligently pursuing a cure of such default or breach);
- (d) If City provides a written notice of termination to Company upon Company’s failure to cause Commencement of Construction or Completion of Construction to occur within the time provided in Section 4.4, above;
- (e) If any Impositions owed by Company to City or the State of Texas are delinquent and such delinquency has not been cured within thirty (30) days after delivery by City to Company of written notice demanding payment of the delinquency; provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions and the time for curing such delinquency shall be extending to the tenth (10th) day following the final, non-appealable ruling on such protest or contest;
- (f) If Company suffers an event of Bankruptcy or Insolvency and fails to reaffirm this Agreement in accordance with applicable bankruptcy laws and continue to perform Company’s obligations as set forth this Agreement, City may terminate this Agreement subject to applicable bankruptcy laws; or
- (g) If any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; provided, however, if any final, non-appealable decision by a

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court of competent jurisdiction declares this Agreement invalid, illegal or unenforceable, then City shall use its best efforts in working with Company to restructure this Agreement (or City's obligations described herein) to be enforceable.

5.2 Repayment. In the event the Agreement is terminated by City pursuant to Section 5.1(c) or (d), Company shall immediately refund to City an amount equal to all Annual Grants paid by City to Company prior to the date of termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the date on which each respective Annual Grant is paid by the City until each such Annual Grant is refunded by the Company. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination.

5.3 Offsets. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court.

Article VI Miscellaneous

6.1 Relocation of Knapp Road. City agrees, in accordance with state law, to evaluate the relocation or closure of Knapp Road as part of Company's development of the Land.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties.

6.3 Limitation on Liability. It is understood and agreed between the Parties that Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of Company's performance of the conditions under this Agreement.

6.4 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

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6.5 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of Kerrville, Texas
City Hall
701 Main Street
Kerrville, Texas 78028

If intended for Company:

Granger MacDonald, CEO
Thompson Drive Partners, LLC
2951 Fall Creek Road
Kerrville, Texas 78028

6.7 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except the Related Agreement and as provided in any Exhibits attached hereto.

6.8 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and venue for any action concerning this Agreement shall be in the State District Court of Kerr County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.9 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.10 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not

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affect other provisions, and it is the intention of the Parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.11 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.12 Successors and Assigns. Except as provided in this Section 6.12, this Agreement may not be assigned by Company without the prior written consent of City, which consent shall not be unreasonably denied, delayed, or withheld. This Agreement may be assigned by Company to any Affiliate of Company, provided Company shall have provided City with thirty (30) days prior written notice thereof, and such assignee assumes in writing the obligations and liabilities of Company in a form reasonably approved by City.

6.13 Recitals. The recitals to this Agreement are incorporated herein.

6.14 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.15 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.16 Conditions Precedent. This Agreement is subject to and conditioned on City having issued a certificate of occupancy for Company's occupancy of the Development on or before April 24, 2023.

6.17 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Grants and any other funds received by Company from EIC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by EIC of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, Affiliate, contractor, subcontractor, or franchisee of Company or any other Person other than Company.

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SIGNED AND AGREED on this _____ day of _____, 2018.

CITY OF KERRVILLE, TEXAS

By: _____
Mark McDaniel, City Manager

Attest:

By: _____
Cheryl Brown, Interim City Secretary

Approved as to Form:

By: _____
Michael C. Hayes, City Attorney

SIGNED AND AGREED on this _____ day of _____, 2018.

THOMPSON DRIVE PARTNERS, LLC

BY: _____
GRANGER MACDONALD, CEO

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EXHIBIT A

LEGAL DESCRIPTION OF LAND



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

SUBJECT: Deferred Annexation Agreement with Ocaso LLC, for the property known as Ocaso Mobile Home park at 102 Vogues Road at Blue Ridge.

AGENDA DATE OF: 11/27/2018 **DATE SUBMITTED:** 11/16/2018

SUBMITTED BY: Drew Paxton

EXHIBITS: Deferred Annexation Agreement

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

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

The Ocaso Mobile Home Park has a previous agreement with the City of Kerrville to allow for a portion of the mobile home park to tie on to the sanitary sewer system due to failing on-site sewage facilities. This was done through UGRA and the City of Kerrville with grant funding in the mid 2000's. Currently, another portion of the mobile home park has failing septic systems. The Kerr County Environmental Health Department has been working with the owners and the city staff to solve the issue with the septic systems.

The property is not contiguous to the current city limits and is not identified as a prime area for annexation at this time. In lieu of annexation, the owners are requesting an agreement with the City of Kerrville to allow for connection onto the sanitary sewer and agree to annexation in the future, should the City see a need.

RECOMMENDED ACTION:

Approve Deferred Annexation Agreement.

DEFERRED ANNEXATION AGREEMENT
(Ocaso Mobile Home Park)

STATE OF TEXAS §
§
COUNTY OF KERR §

This Deferred Annexation Agreement (the "Agreement") is made and entered into as of this _____ day of _____, 2018 ("Execution Date"), by and between the **CITY OF KERRVILLE, TEXAS**, ("City") and **OCASO, L.L.C.** ("Owner"), a Texas limited liability company. City and Owner are referred to at times as "Party" or collectively as the "Parties".

WHEREAS, Owner is the owner of record of real property currently located outside the City's corporate limits and within the extraterritorial jurisdiction of the City, which property is addressed as 102 and 110 Voges Road (the "Property"); and

WHEREAS, part of the Property currently receives wastewater services from the City and Owner is seeking additional connections; and

WHEREAS, Owner is the sole customer on the current wastewater account with the City and will remain as the sole customer; and

WHEREAS, per Resolution No. 91-144, as adopted by City Council on December 10, 1991 ("Resolution No. 91-144"), City Council must review and approve each request for City wastewater service outside the corporate limits of the City; and

WHEREAS, per Resolution No. 91-144, annexation is required of any land to which wastewater service is requested, though exceptions are provided; and

WHEREAS, one exception is where a property owner outside the City's limits has a failed private on-site sewage Facility(s) (OSSF) and the City Council finds it is not in the best interests of the City to annex the property, though the owner must agree to annexation should the City later be in a position to annex the property; and

WHEREAS, City Council has considered Owner's request and finds that it is in the City's best interests not to annex the Property but instead, enter into this Agreement; and

WHEREAS, Owner, after due and careful consideration, accepts the terms and conditions specified within this Agreement due to the advantages and benefits resulting from the possibility of a deferred annexation of the Property; and

WHEREAS, City Council, after due and careful consideration, finds that the possibility of deferred annexation of the Property on the terms and conditions specified within this Agreement is in the best interest of the City to protect and provide for the public health, safety, morals, and general welfare;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree as follows:

SECTION ONE. Findings. The facts and matters set forth in the preamble to this Agreement are hereby found to be true and correct and are hereby adopted.

SECTION TWO. Request for Wastewater Service. Owner submitted a request for additional wastewater service connections to the Property due to a failing on-site sewage facility (OSSF) (septic system). The Property is not within the current City limits and the City has no immediate plans to annex the Property. However, should City Council, in its sole discretion, desire to annex the Property at some future date, Owner agrees to be voluntarily annexed at that time and will not dispute or challenge such annexation regardless of whether state law now or in the future gives it the right to do so. Should City Council act to authorize the initiation of annexation at some future time, City shall thereafter provide written notice to the Owner of such action. The annexation of the Property shall then occur pursuant to the terms of this Agreement and state law existing at the time of the Execution Date, including Section 43.028 of the Texas Local Government Code; in any event, the City's annexation shall not occur earlier than thirty (30) days following notice to Owner.

SECTION THREE. Connection, Costs, Rate, Pre-treatment, Termination of Service.

- a. City, pursuant to the terms of this Agreement and in accordance with Resolution No. 91-144, agrees to provide wastewater service to the Property, but limited to the eleven (11) existing service connection(s) and twenty (20) new service connections for buildings or structures currently existing on the Property, all of which is depicted on the map attached as **Exhibit A**. Owner shall remain the sole customer for the wastewater service account with the City. Besides the connection or connections specified above, Owner may not connect additional buildings, structures, or

space or change the use of any part of the Property from its use as of the Execution Date, without prior written approval by the City.

- b. Owner shall, at his sole cost, provide for the extension of the wastewater line(s) for new service connections in accordance with City law, submit a deposit to the City for wastewater services for \$1,000.00, and pay for all other applicable fees, deposits, and costs charged by the City for such connections. In addition, Owner shall comply with all rules and regulations of the City with respect to construction of and connection to wastewater service.
- c. Owner shall provide verification, in a form acceptable to City, of its abandonment and sealing and/or removal of the on-site sewage facility(s) in accordance with state and local law.
- d. Following each connection and where the Property remains outside the City's limits, Owner shall pay the existing wastewater rate applicable to wastewater customers not within the City's limits. Pursuant to City's current Fee Schedule, the rate for such services located outside the City limits amount to 150% of the current rate charged for the same service within the City limits. City may change such rate at any time, with or without personal notice to Owner.
- e. Owner shall ensure that the Property continues to meet all pre-treatment, grease trap, and other City regulations for connecting to City wastewater services, including the City's regulations with respect to food establishments and waste discharges, as if the Property were located within the City. Pursuant to the City's regulations, Owner agrees to allow periodic inspections of the Property from the City, its health inspectors, its agents, or other inspectors to ensure that the installation, connection, use, and operation of the wastewater service complies with applicable law. In addition, Owner agrees to make repairs to its Property and wastewater service connection as may be required by law.
- f. Owner's violation of this Agreement may result in termination of service.

SECTION FOUR. Billing. The Parties acknowledge that the Property is currently served with potable water service by a private water supply company and that the City does not and will not provide water services at this time. The City calculates wastewater charges and account fees for customers outside the City's limits based upon rates set annually by City Council. Owner will receive one bill per

month for the total number of wastewater connections on the Property multiplied by the base rate for wastewater customers outside the City's limits. In addition, the City imposes a monthly account fee on each customer account. Per Section 3a., above, Owner shall immediately notify the City prior to the addition or subtraction of any connections. The City has the right to audit the number of service connections at any time. In the event that Owner fails to report an additional connection(s) to City, City shall automatically back-bill Owner for the additional connection(s) for three months of service per unit, plus applicable late penalties. Owner shall pay the monthly wastewater bills when due and failure to do so will result in the City's imposition of applicable late penalties.

SECTION FIVE. Easement(s) to City. Where necessary, Owner shall grant and convey to the City a general public utility easement(s) for the extension, construction, establishment, and maintenance of the City's wastewater utility and other public utilities. Toward that end, Owner shall have prepared all necessary documentation and survey work for such easement(s), to include a metes and bounds description. Owner shall execute and deliver any such easement(s) to City, and the City is not responsible for any such costs or work contemplated by this section.

SECTION SIX. Service Conditions. Following connection to City's wastewater system (main), City shall provide wastewater service pursuant to the same terms, conditions, and requirements as are applied to all similarly situated areas and customers of City, subject to all the ordinances, regulations, and policies of City.

SECTION SEVEN. Term. The term of this Agreement is twenty (20) years from the Execution Date. The Parties may mutually agree to terminate this Agreement at any time by executing their written intent thereof.

SECTION EIGHT. Miscellaneous.

(a) Notice. Any notice required by this Agreement shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either Party, as the case may be, at the addresses contained below:

City: City of Kerrville
 701 Main Street
 Kerrville, Texas 78028
 Attn: City Manager (or designee)

Mark.mcdaniel@kerrvilletx.gov

Owner: OCASO, L.L.C.
Jairo Riveros, _____
PO Box 291001
Kerrville, TX 78028

- (b) Owner's Warranty of Capacity.** Owner warrants and represents that he or she owns the Property and has the legal capacity and authority to enter into this Agreement. This Agreement constitutes the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms. Owner has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.
- (c) City's Warranty of Capacity.** City warrants and represents to Owner, its successors and assigns, that this Agreement has been duly adopted and that this Agreement is within the scope of the City's authority and the provisions of its charter and further that the City is duly authorized and empowered to enter into this Agreement. This Agreement constitutes the legal, valid, and binding obligation of City, enforceable against City in accordance with its terms. City has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.
- (d) Authority to Execute.** The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- (e) Representations.** Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.

(f) Assignment. This Agreement is assignable. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee. If all or any portion of the Property is transferred, sold, or conveyed, Owner shall give notice immediately to City of the name, address, telephone number and contact person of the person or entity acquiring an interest in the Property. This Agreement and all covenants, rights, benefits and privileges hereunder shall run with the land and shall be binding on and inure to the benefit of the Owner's successors and assigns. Any future conveyance of the Property shall contain the restrictions, conditions, and covenants and shall embody this Agreement by express reference. Notwithstanding the authority granted to assign this Agreement, nothing within this paragraph creates or is intended to create any right with respect to any person or entity that is not a party to this Agreement. Prior to connection to the wastewater service, Owner shall record this Agreement in the real property records of Kerr County, Texas, and provide proof thereof to City.

(g) Entire Agreement. This Agreement contains the entire agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, resolutions, and understandings, if any, by and/or between the Parties respecting such matters. This Agreement may be amended only by written agreement signed by each Party.

(h) Nonwaiver of Rights. By entering this Agreement, neither Owner nor City waives any rights granted under any laws, nor do they make any admissions regarding the subject matter of this Agreement. Each Party specifically reserves any and all rights to pursue any action or remedy to protect its interests and rights. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such Party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

(i) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Kerr County, Texas.

- (j) Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- (k) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- (l) Additional Acts. The Parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.
- (m) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- (n) Savings/Severability. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal or ineffective.
- (o) Enforcement. This Agreement may be enforced by Owner or City through any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.
- (p) Sovereign Immunity. The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- (q) Joint Venture. It is acknowledged and agreed by the Parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture between the Parties.
- (r) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

- (s) Incorporation of Recitals. The Recitals above are incorporated herein as if repeated verbatim.
- (t) Exhibit(s). The following exhibit(s), which are attached to this Agreement, are incorporated by reference and expressly made part of this Agreement as if copied verbatim:

Exhibit A – Depiction of Existing and Proposed Structures Receiving or to Receive Service

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below, which shall then be reflected by the Execution Date.

CITY OF KERRVILLE, TEXAS:

By: _____
Mark McDaniel, City Manager
Date: _____

OWNER:

By: _____
Jairo Riveros, _____
Date: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS §
COUNTY OF KERR §

BEFORE ME, the undersigned authority, on this day personally appeared Mark L. McDaniel, City Manager of the City of Kerrville, Texas, being the person whose name is subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the City of Kerrville, Texas and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2018.

NOTARY PUBLIC, STATE OF TEXAS
Printed Name: _____
My Commission Expires: _____

STATE OF TEXAS §
COUNTY OF KERR §

BEFORE ME, the undersigned authority, on this day personally Jairo Riveros,
_____, OCASO, LLC, being the person whose name is subscribed to the
foregoing instrument; he acknowledged to me that he has executed said instrument
for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of
_____, 2018.

NOTARY PUBLIC, STATE OF TEXAS
Printed Name: _____
My Commission Expires: _____





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

SUBJECT: Discussion and possible action regarding an appeal by councilmember Baroody whether a City Council has the authority to prohibit one of its members from participating in all future discussion or communication regarding any matter to be considered by the full body of the City Council.

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/6/2018

SUBMITTED BY: Councilmember George Baroody

EXHIBITS: Attachments received from Councilmember Baroody

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

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

Please see attached.

RECOMMENDED ACTION:

Please see attached.

Agenda Item:

Discussion and possible action on appeal by councilmember Baroody whether a City Council has the authority to prohibit one of its members from participating in all future discussion or communication regarding any matter to be considered by the full body of the City Council.

Agenda Bill:

At a special meeting on November 8, 2018 the City Council voted 3-2 in favor of removing councilmember Baroody "from any further discussion or communication regarding the Lotus White Peer Recovery lawsuit."

City Charter rule 3.04, cited as the source of Council authority for this punishment, states,

"The Council shall determine its own rules and order of business and keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior, and by vote of not less than a majority of all its members, expel from a meeting a member for disorderly conduct for the violation of its rules; but no member shall be expelled from a meeting unless notified of the charge against him and given an opportunity to be heard in his own defense."

This charter rule (as well as similarly worded Rule 4.4 from the Procedural Rules for Meetings Kerrville City Council) appears to be based on Texas Penal Code 42.05 which provides authority to remove any person, whether a councilmember or otherwise, from a meeting where such person is being disruptive or hindering the proceedings. However, it does not grant authority for punitive measures preventing a person from any future proceedings based on a prior disruption.

No local, state or federal statute can be found that explicitly authorizes a City Council to prohibit one of its members the opportunity to participate in Council discussions or meetings under these circumstances. In fact, a common law rule has firmly established that any governmental body must act as a body. The continued force of this particular common law has been proven over the years by being regularly cited in numerous court cases and Texas Attorney General opinions, for example AG Opinion JM-1004 (1989) which states:

"A board which exercises authority delegated to it by the legislature 'must act thereon as a body at a stated meeting, or one properly called, and of which all the members of such board have notice, or of which they are given an opportunity to attend. 'Webster v. Texas & Pacific Motor Transport Co., 166 S.W.2d 75, 76 (Tex. 1942). The purpose of this rule is

to afford each member of the body opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision...may be the composite judgment of the body as a whole."

Recommendation:

Councilmember Baroody is requesting that Council void the action it took at the November 8, 2018 special meeting based on the action being inappropriate and in direct conflict with established law.

City Charter Section 3.04. - Council Rules.

The Council shall be the judge of the election and qualifications of its members, and in such cases, shall have the power to subpoena witnesses and compel the production of all pertinent books, records, and papers; but the decision of the Council in any such case shall be subject to review by the courts. The Council shall determine its own rules and order of business and keep a journal of its proceedings. **It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior, and by vote of not less than a majority of all its members, expel from a meeting a member for disorderly conduct for the violation of its rules;** but no member shall be expelled from a meeting unless notified of the charge against him and given an opportunity to be heard in his own defense. (Ord. No. 2014-10, § 3(Exh. A), 6-10-2014)

Procedural Rules for Meetings Kerrville City Council

Rule 4.4. Control of Discussion. The presiding officer shall control discussion of the Council on each agenda item to assure full participation in accordance with these rules, the City Charter and the Code of Ordinances. The presiding officer will preserve order and decorum, preventing the impugning of any member's motives or other personal comment not relevant to the orderly conduct of business. The presiding officer shall request that all speakers keep comments brief and relevant to the question before the Council. **All persons present in the meeting room should eschew abusive, rude or inappropriate conduct. See Chapter 38 and Section 42.05 of the Texas Penal Code regarding the "hindering" or "disrupting" of official proceedings.**

Texas Penal Code

Sec. 42.05. DISRUPTING MEETING OR PROCESSION.

- (a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.
- (b) An offense under this section is a Class B misdemeanor.

RE: General Question

Zindia Thomas [zthomas@tml.org]

Sent: Wednesday, November 28, 2018 4:14 PM

To: George Baroody

Good Afternoon,

I have answered your questions below. You will need to discuss this issue with your city attorney before making a final decision on this matter.

Sincerely,

Zindia T. Thomas

Assistant General Counsel

Texas Municipal League

1821 Rutherford Lane, Suite 400

Austin, Texas 78754

512-231-7400

www.tml.org

zthomas@tml.org

Empowering Texas cities to serve their citizens.

Please be advised that the information in this e-mail is provided for informational purposes only. Neither this communication, nor any other communication with the Texas Municipal League (TML), creates an attorney-client relationship between the TML legal department or its attorneys and you or your city or any third party. Once received by a city official, this communication may be subject to public release. Every city official and employee should consult with local legal counsel to ensure that any information or documents comply with current law and the particular facts of each situation.

From: George Baroody [<mailto:George.Baroody@kerrvilletx.gov>]

Sent: Wednesday, November 28, 2018 2:47 PM

To: Zindia Thomas

Subject: General Question

Good Afternoon,

Are there any rules or specific rulings/AG opinions regarding expulsion of councilmembers from future proceedings of a City Council in a home rule city?

There is case law that states that a board which exercises authority delegated to it by the legislature "must act thereon as a body at a stated meeting, or one properly called, and of which all the members of such board have notice, or of which they are given an opportunity to

attend." *Webster v. Texas & Pacific Motor Transport Co.*, 166 S.W.2d 75, 76 (Tex. 1942). The case continues stating the purpose of this rule is "to afford each member of the body an opportunity to be present and to impart to his associates the benefits of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision ... may be the composite of the body as a whole."

Other than a conflict of interest recusal, can you point me to any rules/codes whereby a Council is explicitly permitted or explicitly prohibited from barring any of its members from future discussions of any one (or all) of its agenda topics?

There are not any rules or codes that explicitly permit or prohibit a council from barring any of its members from future discussion of any or all agenda topics. However, the answer above still applies.

If the answer is that a Council can in fact exclude one of its members from all future discussions relating to one topic, wouldn't it logically follow that a Council might have the ability to exclude the same member from all future discussions of ALL topics, essentially removing the member from Council?

The city council does have the ability to remove a council member for disruption of a meeting, or from a closed meeting if the council member is suing the council and council members. But, permanent removal of a council member from a council of a home rule city will depend on the city charter.

Here is the link to the OMA Made Easy article: <https://www.tml.org/p/The%20Texas%20Open%20Meetings%20Act%20Made%20Easy%202017%20updated%207-2018.pdf>. Please see Questions 54 & 85 concerning when a council member can be removed from a meeting.

Which leads me to my next question. Are there any rules/codes/rulings showing examples of when it is permissible under any circumstances for a home rule Council, as a body, to remove a duly elected/appointed councilmember from their position on a City Council?

Removal of a council member of a home rule city will depend on the city charter. Generally, a recall election is how a council member of a home rule city is removed depending on if the city charter allows for it. Here is a link to a legal Q&A on recall elections: <https://www.tml.org/legal-qna/2010May-SH.pdf>.

Lastly, if any of the actions described above are permissible, namely removal from future proceedings, is there a due process appeal process in effect if none are outlined/listed in the home rule charter?

Any removal of a council member of a home rule city or appeals process will depend on the city charter.

Thanks,
George Baroody
Kerrville City Council

830.542.9210

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TEXAS OPEN MEETINGS ACT LAWS MADE EASY



2017 Editor

Zindia Thomas
Assistant General Counsel
Texas Municipal League
www.tml.org

Updated August 2017

53. *May a governing body limit its members to a set amount of time for their testimony or remarks at an open meeting?*

The Act does not address whether a governing body may set time limits on the remarks of its members at an open meeting. However, the governing body may adopt procedural rules for its meetings that are not inconsistent with the state or federal constitution, state or federal statutes, or with a home rule city charter.¹³⁸ Within these parameters, a governing body may arguably set reasonable time limits for its members' remarks in an open meeting.¹³⁹

54. *May members of the governing body be removed from an open meeting for causing a disturbance?*

The Act does not specifically address removal of a member of a governing body from an open meeting for causing a disturbance. Nonetheless, local entities have the power to take actions to promote an orderly meeting. Accordingly, if a member's conduct were to constitute disorderly conduct, the member could be warned and then, if necessary, the presiding officer or the governing body as a whole could require that the member be removed.¹⁴⁰ A governing body should consult with its legal counsel if it wants to adopt rules of conduct for its members.

Keeping a Record of Open Meetings

55. *What duty does a governing body have to keep minutes or recording of open meetings?*

A governing body must either keep minutes or make a recording¹⁴¹ of every open meeting.¹⁴² If the body chooses to keep minutes rather than make a recording, the Act requires that the minutes indicate the subject of each deliberation and indicate every action that is taken.¹⁴³

56. *What access does the public have to the minutes or recording of an open meeting?*

The minutes or recording of an open meeting are open to the public and must be available for inspection or copying.¹⁴⁴ It should be noted that exceptions to required

¹³⁸ *Id.*

¹³⁹ Tex. Att'y Gen. LO-96-111; Tex. Att'y Gen. Op. No. H-188 (1973).

¹⁴⁰ See Tex. Penal Code § 42.05 (disrupting meeting or procession); *State v. Markovich*, 77 S.W.3d 274 (Tex. Crim. App. 2002) (the best way to ensure that the rights of all individuals are protected is to determine whether the actor's behavior substantially impaired the conduct of the meeting before his or her actions could be criminalized).

¹⁴¹ See Tex. Gov't Code Ann. § 551.001(7) (definition of recording).

¹⁴² Tex. Govt Code Ann. § 551.021(a).

¹⁴³ *Id.* § 551.021(b).

¹⁴⁴ *Id.* § 551.022. See also Tex. Att'y Gen. ORD-225 (1979) (tapes of meetings used to assist in writing minutes are open records).

the local entity's attorney as to the legality of the meeting. Attendance at an unauthorized closed meeting may be a criminal offense.²⁰² If an official reasonably relies on a written opinion concerning whether a closed meeting is permitted from the governing body's attorney, the attorney general or a court, then the official has an affirmative defense to any criminal prosecution for violation of the Act.²⁰³ Simply objecting or not speaking during an illegal closed meeting will not relieve the member of potential criminal liability for participating in the meeting.

84. Who is permitted to attend a closed meeting?

The Act does not specify who may or may not attend a closed meeting.²⁰⁴ Generally, a governmental body has discretion to determine who may attend closed meetings. Members of the public may not be selectively admitted to an executive session.²⁰⁵ When a governmental body holds a closed meeting to discuss a lawsuit under the attorney consultation exception, section 551.071 of the Government Code, the governmental body's attorney must be present, but an opposing party may not be present.²⁰⁶ In considering whether to admit any nonmember to a closed meeting held under this section, a governmental body should consider:

1. whether the person's interests are adverse to the governmental body's;
2. whether the person's presence is necessary to the issues to be discussed; and
3. whether the governmental body may waive the attorney-client privilege by including the nonmember.²⁰⁷

With respect to closed meetings held under other exceptions in the Act, a governmental body has the right to determine which nonmembers may attend and may include a nonmember if the person's interests are not adverse to the governmental body's and the person's participation is necessary to the anticipated deliberation.²⁰⁸

85. May a governing body prevent a member from attending a closed meeting?

A governmental body can prevent one of its members from attending a closed meeting when that member is suing the governing body or entity.²⁰⁹ In Attorney General Opinion JM-1004, a school board had been sued by one of its own members and wanted to

²⁰² Tex. Gov't Code Ann. § 551.144.

²⁰³ *Id.*

²⁰⁴ Tex. Att'y Gen. Op. No. JC-375 (2001).

²⁰⁵ Tex. Att'y Gen. Op. No. GA-0511 (2007).

²⁰⁶ See Tex. Att'y Gen. Op. Nos. JC-506 (2002), JC-375 (2001), JM-238 (1984).

²⁰⁷ Tex. Att'y Gen. Op. No. JC-506 (2002).

²⁰⁸ *Id.*

²⁰⁹ Tex. Att'y Gen. Op. No. JM-1004 (1989).

discuss the lawsuit with its attorney in an executive session. The attorney general concluded that the school board could exclude the member who had sued the district. The purpose of the exception for consultations with an attorney is, in part, to allow a governmental body to receive legal advice from its attorney without revealing attorney-client confidences to the opposing side. Admitting a member of a governing body who is on the opposing side of litigation to such an executive session would defeat the purpose of holding it.

86. *May a governing body prevent its staff from attending a closed meeting?*

As mentioned above, a governing body may exclude all nonmembers from attending a closed meeting.²¹⁰ Thus, a governing body may exclude its staff from attending a closed meeting. There are attorney general opinions that have concluded that the county commissioners' court could exclude the county clerk from an executive session of the commissioners' court where no statute required the presence of the county clerk.²¹¹ Another opinion concluded that a contractual provision requiring a superintendent of schools to attend all executive sessions of her school board of trustees was valid under the Act, but would not preclude her exclusion by the board.²¹² However, some city charters and certain statutory provisions provide that the city secretary shall attend all city meetings.²¹³

87. *May a governing body approve items or take a straw poll in a closed meeting?*

A court has held that a member of a governing body may indicate during an executive session how he or she plans to vote on an item.²¹⁴ However, the governing body may not conduct a straw vote or a formal vote during such a session.²¹⁵ The Act requires that any final action, decision or vote be taken in an open meeting.²¹⁶

²¹⁰ See Tex. Att'y Gen. Op. Nos. JM-6 (1983), JC-506 (2002); Tex. Att'y Gen. LO-97-017.

²¹¹ Tex. Att'y Gen. Op. Nos. JM-6 (1983), GA-277 (2004).

²¹² Tex. Att'y Gen. Op. No. JC-375 (2001).

²¹³ See Tex. Loc. Gov't Code Ann. § 22.073 (requires a city secretary in Type A city to attend all meetings and keep required minutes).

²¹⁴ *Bd. of Trustees v. Cox Enters., Inc.*, 679 S.W.2d 86, 89 (Tex. App. — Texarkana 1984), *aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986); *Nash v. Civil Serv. Comm'n*, 864 S.W.2d 163, 166 (Tex. App. — Tyler 1993, no writ).

²¹⁵ *Id.*

²¹⁶ Tex. Gov't Code Ann. § 551.102.

Texas Attorney General Opinions

AG Opinion DM-95 1992:

"It is a well established rule, predating the Open Meetings Act, that a governmental body must act as a body. Webster v. Texas & Pacific Motor Transport Co., 166 S. W.2d 75 (Tex. 1942). The purpose of this rule

is to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision, when finally promulgated, may be the composite judgement of the body as a whole.

...When a majority of a governmental body acts on a matter of public policy under its jurisdiction, even in a way that is not binding upon the governmental entity served by the body, the policy enunciated by the Texas Supreme Court in *Webster* suggest that such action must be taken by the governmental body as a whole, subject to the laws, including the Open Meetings Act, governing behavior of the governmental body."

AG Opinion JM-1004 1989:

"A board which exercises authority delegated to it by the legislature "must act thereon as a body at a stated meeting, or one properly called, and of which all the members of such board have notice, or of which they are given an opportunity to attend." Webster v. Texas & Pacific Motor Transport Co., 166 S.W.2d 75, 76 (Tex. 1942). The purpose of this rule is

is to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision, when finally promulgated, may be the composite judgement of the body as a whole.

This is a common law rule which applies to the board of trustees of a school district. See Garcia v. Angelini, 412 S.W.2d 949 (Tex. Civ. App. - Eastland 1967, no writ) (trustees of school district could not remove other trustees from office nor bar them from participation in meetings and proceedings of school board);"

LO-94-028 1994:

"A common-law rule prevents a member of a governmental body from submitting a written vote without attending the meeting of the body. In *Webster v. Texas & Pac. Motor Transp. Co., 166 S.W.2d 75 (Tex. 1942)*, the Texas Supreme Court stated as follows:

It is a well established rule in this State, as well as in other States, that where the Legislature has committed a matter to a board, bureau, or commission, or other administrative agency, such board, bureau, or commission must act thereon as a body at a stated meeting, or one properly called...Consent or acquiescence of, or agreement by the individual members acting separately, and not as a body . . . is not sufficient.

166 S.W.2d at 76-77 (emphasis added). The court held that the three-member railroad commission, acting as a body at a meeting, had the authority to grant or refuse applications for permits to operate as common carriers, and that this power could not be exercised by the commissioners acting individually

by circulating the application and voting sheet, or by an informal conversation between two commissioners. *Id.* at 78. The purpose of the rule requiring the board to act as a body at a meeting is

to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision . . . may be the composite judgment of the body as a whole.

Id. at 77. A school board member who does not attend the meeting will not hear the board's discussion about the issue, and his written vote cannot contribute to a decision that must be reached by the board acting as a body."



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

SUBJECT: Discussion and possible action regarding an alleged rent rebate offer in return for proof of voting in the most recent City of Kerrville municipal election held on May 5, 2018.

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/6/2018

SUBMITTED BY: Councilmember George Baroody

EXHIBITS: Attachments received from Councilmember Baroody.

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

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

Please see attached.

RECOMMENDED ACTION:

Please see attached.

Agenda Item:

Discussion and possible action regarding an alleged rent rebate offer in return for proof of voting in the most recent City of Kerrville municipal election held on May 5, 2018.

Agenda Bill:

During the most recent municipal election held in Kerrville on May 5, 2018, information was disclosed involving an alleged offer of \$20 apartment rental rebates as an incentive for apartment tenants to vote in the election. If confirmed, this alleged offer could be a violation of the Texas Penal Code and would represent an attack on a fair and free election.

The alleged incident was reportedly sent to the Texas Attorney General's office for review in late April. (Kerrville Daily Times (KDT) 4/27/2018 "Attorney General's Office Reviewing Voter Rent Rebate Complaint") It remains under review.

The City Council does not have jurisdiction to enforce such a law or the authority to punish such transgressions, however this matter continues to remain relevant locally. This incident not only occurred in the most recent election but as each councilmember takes an oath to defend the laws of the city, the state and the nation, City Council would appear obligated, at a minimum, to review alleged attacks on its own fair and free democratic elections.

Confirmation of 'rent rebate-for-voting' offer:

A letter to the editor was published in the Kerrville Daily Time (KDT) on April 18, 2018 that first made note of the 'rent rebate for vote' offer.

In a KDT article published 4/23/2018 ("Rescinded Rent Rebate Offer Raises Election Questions") the offer of rent rebate for voting was confirmed to have been made to tenants living at The Meadows Apartments at 2300 Junction Highway. This article further reported,

"The rebate offer was rescinded Wednesday, according to a notice distributed to tenants that was provided to The Times by Steve Schulte, general counsel for MacDonald Companies — an umbrella entity for the limited partnership that owns and operates The Meadows, as well as three other LPs that operate similar Kerrville communities. The other communities are Heritage Oaks Apartments, The Gardens at Clearwater Apartments and Paseo de Paz Apartments. Schulte said the rebate program was intended to be offered at all the communities, but, on Friday afternoon, he could not confirm if it had been."

... 'The intention was to get people to vote in this town,' Schulte said of the proposed rent discount."

Texas Penal Code Section 36.02. BRIBERY.

a. A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

1. any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

2. any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

- e. An offense under this section is a felony of the second degree.

Conclusions:

The bribery statute affirmatively states that a person commits an offense if he intentionally or knowingly offers any benefit as consideration for the recipient's vote as a voter. The statute further states that any commission of this offense is a second degree felony.

The notice provided to KDT by Steve Schulte, general counsel for MacDonald Companies, stated that the rebate offer had been rescinded. Because an offer cannot be rescinded without previously being extended, it appears general counsel was confirming the MacDonald Company 'knowingly and intentionally' made the original offer.

While not a conviction of a crime, it is difficult to ignore as an admission of committing an offense that is a second degree felony.

Recommendation:

Councilmember Baroody would like for Council to discuss the matter and consider making an affirmative statement about this Council's stance on defense of democracy. Councilmember Baroody recommends Council draft a letter to the Texas Attorney General stating its support of enforcement in voter bribery cases.

Texas Penal Code Section 36.02. BRIBERY.

- a. A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:
 - 1. any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
 - 2. any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;
 - 3. any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or
 - 4. any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.
- b. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.
- c. It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:
 - 1. the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or
 - 2. the public servant ceases to be a public servant.
- d. It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.
- e. An offense under this section is a felony of the second degree.



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

SUBJECT: Discussion and possible action to consider modifying the TIRZ #1, City of Kerrville Project Plan to include language prohibiting the use of eminent domain or condemnation in order to support implementation of the project plan within the boundaries of the TIRZ #1.

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/6/2018

SUBMITTED BY: Councilmember George Baroody

EXHIBITS: Attachments received from Councilmember Baroody.

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

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

Please see attached.

RECOMMENDED ACTION:

Please see attached.

Agenda Item:

Discussion and possible action to consider modifying the TIRZ #1, City of Kerrville Project Plan to include language prohibiting the use of eminent domain or condemnation in order to support implementation of the project plan within the boundaries of the TIRZ #1.

Agenda Bill:

At the September 25, 2018 City Council meeting the TIRZ #1, City of Kerrville Project Plan was officially created by ordinance 2018-19. During public input sessions prior to adoption, many citizens, both inside and outside the TIRZ #1 boundary, expressed concerns regarding possible wide ranging power and use of eminent domain and condemnation to acquire property in support of implementing the TIRZ #1 project plan.

In response to the concerns, the creation ordinance was modified at the last minute to include the following language in SECTION TWO (c):

"(For purposes of clarification, these findings and declarations are not intended to declare any particular property in the zone as blighted, are not intended to support a finding that property is a slum or blighted area for purposes of Section 2206 of the Texas Government Code and will require an independent future finding by a governmental entity that a property is a slum or blighted area for purposes of Section 2206 of the Texas Government Code.); "

While the language chosen does clarify intent, it stops short of prohibiting the use of eminent domain or condemnation in order to implement the project plan adopted for the TIRZ #1. According to the consultant Jim Plummer, the language does not have any binding effect on the TIRZ rules and regulations that already exist and therefore the fears and concerns of the citizens raising such concerns, remain unaddressed.

Recommendation:

Councilmember Baroody wishes for Council to discuss and consider amending the TIRZ #1 creation ordinance 2018-19 to contain an explicit prohibition against utilization of eminent domain or condemnation in implementing the project plan within TIRZ #1 boundary.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2018-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS, DESIGNATING A CONTIGUOUS GEOGRAPHIC AREA WITHIN THE CITY AS A REINVESTMENT ZONE PURSUANT TO CHAPTER 311 OF THE TEXAS TAX CODE, TO BE KNOWN AS “REINVESTMENT ZONE NUMBER ONE, CITY OF KERRVILLE”; DESCRIBING THE BOUNDARIES OF THE ZONE; CREATING A BOARD OF DIRECTORS FOR THE ZONE; ESTABLISHING A TAX INCREMENT FUND FOR THE ZONE; CONTAINING FINDINGS RELATED TO THE CREATION OF THE ZONE; PROVIDING A DATE FOR THE TERMINATION OF THE ZONE; PROVIDING THAT THE ZONE TAKE EFFECT IMMEDIATELY UPON PASSAGE OF THE ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Kerrville, Texas (the “City”), pursuant to Chapter 311 of the Texas Tax Code as amended (known as the Tax Increment Financing Act and herein referred to as the “Act”), may designate a geographic area within the City as a tax increment reinvestment zone if the area satisfies the requirements of the Act; and

WHEREAS, the Act provides that the governing body of a municipality by ordinance may designate a noncontiguous geographic area that is in the corporate limits of the municipality to be a reinvestment zone if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, City Council desires to promote the development of a certain contiguous geographic area in the City, which is more specifically described in **Exhibits A and B** of this Ordinance (the “Zone”), through the creation of a new reinvestment zone as authorized by and in accordance with the Act; and

WHEREAS, pursuant to and as required by the Act, the City has prepared a *Preliminary Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number One, City of Kerrville*, attached as **Exhibit C** (hereinafter referred to as the “Preliminary Project and Finance Plan”) for a proposed tax increment reinvestment zone containing the real property within the Zone; and

WHEREAS, notice of the public hearing on the creation of Zone was published in a newspaper having general circulation in the City on September 4, 2018, which date is before the seventh (7th) day before the public hearing, held on September 11, 2018; and

WHEREAS, at the public hearing on September 11, 2018, interested persons were allowed to speak for or against the creation of the Zone, the boundaries of the Zone, and the concept of tax increment financing, and owners of property within the proposed Zone were given a reasonable opportunity to protest the inclusion of their property in the Zone; the public hearing was held in full accordance with Section 311.003(c) of the Act; and

WHEREAS, evidence was received and presented at the public hearing on September 11, 2018, and in favor of the creation of the Zone; and

WHEREAS, after all comments and evidence, both written and oral, were received by City Council, the public hearing was closed on September 11, 2018; and

WHEREAS, the City has taken all actions required to create the Zone including taking all actions required by the home-rule Charter of the City, the Act, the Texas Open Meetings Act (defined herein), and all other laws applicable to the creation of the Zone; and

WHEREAS, the percentage of the property in the proposed zone, excluding property that is publicly owned, that is used for residential purposes is less than thirty percent; and

WHEREAS, a Preliminary Project and Finance Plan has been prepared for the proposed reinvestment zone;

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

SECTION ONE. RECITALS INCORPORATED. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

SECTION TWO. FINDINGS. City Council, after conducting the above described hearing and having heard the evidence and testimony presented at the hearing, has made the following findings and determinations based on the evidence and testimony presented to it:

- (a) That the public hearing on creation of the proposed reinvestment zone has been properly called, held, and conducted and that notice of such hearing has been published as required by law; and
- (b) That the creation of the proposed reinvestment zone with boundaries as described and depicted in **Exhibits A and B** will result in benefits to the City, its residents and property owners, in general, and to the property, residents, and property owners within the reinvestment zone; and
- (c) That the proposed reinvestment zone, as defined in **Exhibits A and B**, meets the criteria for the creation of a reinvestment zone set forth in the Act in that:
 - 1. It is a geographic area located wholly within the City limits of the City; and
 - 2. City Council further finds and declares that the proposed reinvestment zone meets the criteria and requirements of Section 311.005 of the Act, which ~~may~~ include that property within the zone substantially arrests or impairs the sound growth of the City; retards the provision of housing accommodations; constitutes an economic or social liability; and may be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of any of the following: the predominance of defective or inadequate sidewalk or street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; the deterioration of site or other improvements; and is predominantly open and undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, and substantially impairs or arrests the sound growth of the City. (For purposes of clarification, these findings and declarations are not intended to declare any particular property in the zone as blighted, are not intended to support a finding that property is a slum or blighted area for purposes of Section 2206 of the Texas Government Code and will require an independent future finding by a governmental entity that a property is a slum or blighted area for purposes of Section 2206 of the Texas Government Code.); and
- (d) 30 percent or less of the property in the proposed reinvestment zone, excluding property dedicated to public use, is currently used for residential purposes; and
- (e) The total appraised value of all taxable real property in the proposed reinvestment zone according to the most recent appraisal rolls of the City, together with the total appraised value of taxable real property in all other

existing reinvestment zones within the City, if any, according to the most recent appraisal rolls of the City, does not exceed 50 percent of the current total appraised value of taxable real property within the City and in the industrial districts created by the City, if any; and

- (f) The improvements in the proposed reinvestment zone will significantly enhance the value of all taxable real property in the proposed reinvestment zone and will be of general benefit to the City; and
- (g) The development or redevelopment of the property within the proposed reinvestment zone will not occur solely through private investment in the reasonable foreseeable future.

SECTION THREE. DESIGNATION AND NAME OF THE ZONE. Pursuant to the authority of, and in accordance with the requirements of the Act, City Council hereby designates the area described and depicted in **Exhibits A and B** hereto as a tax increment reinvestment zone. The name assigned to the zone for identification is “Reinvestment Zone Number One, City of Kerrville, Texas” (hereinafter referred to as the “Zone”).

SECTION FOUR. BOARD OF DIRECTORS. A board of directors for the Zone (“Board”) is hereby created. The Board shall consist of five (5) members comprised of Councilmembers from Places 1 through 4 and the Mayor. The Mayor shall serve as chair of the Board and the Board may elect a vice chair and such other officers as the Board sees fit. Additionally, each taxing unit that levies taxes within the Zone and chooses to contribute all or part of the tax increment produced by the unit into the tax increment fund may appoint one member of the Board. The number of directors on the Board shall be increased by one for each taxing unit that appoints a director to the Board; provided, that the maximum number of directors shall not exceed fifteen (15). The Board shall make recommendations to City Council concerning the administration, management, and operation of the Zone. The Board shall prepare and adopt a project plan and a reinvestment zone financing plan for the Zone and submit such plans to City Council for its approval. The Board shall perform all duties imposed upon it by Chapter 311 of the Texas Tax Code and all other applicable laws. Notwithstanding anything to the contrary herein, the Board, pursuant to Section 311.010 of the Act, is not authorized to (i) issue bonds; (ii) impose taxes or fees; (iii) exercise the power of eminent domain, or (iv) give final approval to the Zone’s project plan and financing plan. (For purposes of clarification, City Council is not authorizing the Board to initiate any zoning changes, authorize any changes in land use or modify the procedure to obtain the same, all of which must continue to comply with the ordinances, codes and procedures of the City of Kerrville.)

SECTION FIVE. DURATION OF THE ZONE. The Zone shall take effect immediately upon the passage and approval of this Ordinance, consistent with Section 311.004(a)(3) of the Act, and termination of the Zone shall occur upon any of the following: (i) on December 31, 2049; (ii) at an earlier time designated by subsequent ordinance; (iii) at such time, subsequent to the issuance of tax increment bonds, if any, that all project costs, tax increment bonds, notes, and other obligations of the Zone, and the interest thereon, have been paid in full, in accordance with Section 311.017 of the Act.

SECTION SIX. TAX INCREMENT BASE AND TAX INCREMENT. A tax increment fund for the Zone (the “TIF Fund”) is hereby established. The TIF Fund may be divided into additional accounts and sub-accounts authorized by resolution or ordinance of City Council. The TIF Fund shall consist of (i) the percentage of the tax increment, as defined by Section 311.012(a) of the Act, that each taxing unit which levies real property taxes in the Zone, other than the City, has elected to dedicate to the TIF Fund under an agreement with the City authorized by Section 311.013(f) of the Act, plus (ii) one-hundred percent (100%) of the City’s available portion of the tax increment, as defined by section 311.012(a) of the Act, subject to any binding agreement executed at any time by the City that pledges a portion of such tax increment or an amount of other legally available funds whose calculation is based on receipt of any portion of such tax increment. The TIF Fund shall be maintained in an account at the depository bank of the City and shall be secured in the manner prescribed by law for Texas cities. In addition, all revenues from (i) the sale of any obligations hereafter issued by the City and secured in whole or in part from the tax increments; (ii) the sale of any property acquired as part of a tax increment financing plan adopted by the Board; and (iii) other revenues dedicated to and used in the Zone shall be deposited into the TIF Fund. Prior to the termination of the Zone, money shall be disbursed from the Tax Increment Fund only to pay project costs, as defined by the Texas Tax Code, for the Zone, to satisfy the claims of holders of tax increments bonds or notes issued for the Zone, or to pay obligations incurred pursuant to agreements entered into to implement the project plan and reinvestment zone financing plan and achieve their purpose pursuant to Section 311.010(b) of the Act.

SECTION SEVEN. TAX INCREMENT FUND. There is hereby created and established a “Tax Increment Fund” for the Zone which may be divided into such subaccounts as may be authorized by subsequent ordinance, into which all tax increments of the City, as such increments are described in the final project plan and reinvestment zone financing plan and may include administration costs, less any of the amounts not required to be paid into the Tax Increment Fund pursuant to the Act, are to be deposited. The Tax Increment Fund and any subaccounts are to be maintained in an account at the affiliated depository bank of the City and shall be secured in the manner prescribed by law for funds of Texas cities. In addition, all revenues to be dedicated to and used in the Zone shall be deposited

into such fund or subaccount from which money will be disbursed to pay project costs, plus interest, for the Zone.

SECTION EIGHT. SEVERABILITY CLAUSE. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION NINE. OPEN MEETINGS. It is hereby found, determined, and declared that sufficient written notice of the date, hour, place, and subject of the meetings of City Council at which this Ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding its meeting, as required by Chapter 551 of the Texas Government Code, and that the meetings were open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

SECTION TEN. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the City Charter.

PASSED AND APPROVED ON FIRST READING, this _____ day of _____, 2018.

PASSED AND APPROVED ON SECOND AND FINAL READING, this _____ day of _____, 2018.

Bill Blackburn, Mayor

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

ATTEST:

Cheryl Brown, Interim City Secretary

(A) improvements in the zone will significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the municipality or county; and

(B) the area meets the requirements of Section 311.005.

(b) For purposes of complying with Subsection (a)(7)(A), the ordinance or order is not required to identify the specific parcels of real property to be enhanced in value.

(c) To designate a reinvestment zone under Section 311.005(a)(4), the governing body of a municipality or county must specify in the ordinance or order that the reinvestment zone is designated under that section.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 17, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 983 (H.B. 2684), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 1162 (H.B. 3006), § 1, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 36, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.002, effective September 1, 2007.

Sec. 311.005. Criteria for Reinvestment Zone.

(a) To be designated as a reinvestment zone, an area must:

(1) substantially arrest or impair the sound growth of the municipality or county designating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalk or street layout;

(C) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title;

(H) conditions that endanger life or property by fire or other cause; or

(I) structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more;

(2) be predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality or county;

(3) be in a federally assisted new community located in the municipality or county or in an area immediately adjacent to a federally assisted new community; or

(4) be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

(a-1) Notwithstanding Subsection (a), if the proposed project plan for a potential zone includes the use of land in the zone in connection with the operation of an existing or proposed regional commuter or mass transit rail system, or for a structure or facility that is necessary, useful, or beneficial to such a regional rail system, the governing body of a municipality may designate an area as a reinvestment zone.

(b) In this section, “federally assisted new community” means a federally assisted area that has received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act, if a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 14.05(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1106 (S.B. 1205), § 27, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 18, effective September 1, 1989; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 37, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1347 (S.B. 771), § 1, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.003, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1361 (H.B. 2092), § 1, effective June 15, 2007; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 3, effective June 17, 2011.

Sec. 311.006. Restrictions on Composition of Reinvestment Zone.

(a) A municipality may not designate a reinvestment zone if:

(1) more than 30 percent of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes; or

(2) the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds:

(A) 25 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality has a population of 100,000 or more; or

(B) 50 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality has a population of less than 100,000.

(b) A municipality may not change the boundaries of an existing reinvestment zone to include property in excess of the restrictions on composition of a zone described by Subsection (a).

- (c) [Repealed by Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), § 21, effective June 17, 2011.]
- (d) For purposes of this section, property is used for residential purposes if it is occupied by a house having fewer than five living units, and the appraised value is determined according to the most recent appraisal rolls of the municipality.
- (e) Subsection (a)(1) does not apply to a reinvestment zone designated under Section 311.005(a)(4).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 19, effective September 1, 1989; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 14.004, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 543 (S.B. 1633), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 910 (H.B. 1770), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), §§ 4, 21, effective June 17, 2011.

Sec. 311.007. Changing Boundaries or Term of Existing Zone.

(a) Subject to the limitations provided by Section 311.006, if applicable, the boundaries of an existing reinvestment zone may be reduced or enlarged by ordinance or resolution of the governing body of the municipality or by order or resolution of the governing body of the county that created the zone.

(b) The governing body of the municipality or county may enlarge an existing reinvestment zone to include an area described in a petition requesting that the area be included in the zone if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located. The composition of the board of directors of the zone continues to be governed by Section 311.009(a) or (b), whichever applied to the zone immediately before the enlargement of the zone, except that the membership of the board must conform to the requirements of the applicable subsection of Section 311.009 as applied to the zone after its enlargement. The provision of Section 311.006(b) relating to the amount of property used for residential purposes that may be included in the zone does not apply to the enlargement of a zone under this subsection.

(c) The governing body of the municipality or county that designated a reinvestment zone by ordinance or resolution or by order or resolution, respectively, may extend the term of all or a portion of the zone after notice and hearing in the manner provided for the designation of the zone. A taxing unit other than the municipality or county that designated the zone is not required to participate in the zone or portion of the zone for the extended term unless the taxing unit enters into a written agreement to do so.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 191 (S.B. 888), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1137 (S.B. 1312), § 20, effective September 1, 1989; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 38, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1032 (H.B. 2853), §§ 5, 6, effective June 17, 2011.

Sec. 311.008. Powers of Municipality or County.

(a) In this section, “educational facility” includes equipment, real property, and other facilities, including a public school building, that are used or intended to be used jointly by the municipality or county and an independent school district.

(b) A municipality or county may exercise any power necessary and convenient to carry out this chapter, including the power to:

(1) cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;

(2) acquire real property by purchase, condemnation, or other means and sell real property, on the terms and conditions and in the manner it considers advisable, to implement project plans;

(3) enter into agreements, including agreements with bondholders, determined by the governing body of the municipality or county to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and

(4) consistent with the project plan for the zone:

(A) acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area or in a federally assisted new community in the zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes;

(B) acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking facilities, but not including educational facilities; or

(C) in a reinvestment zone created on or before September 1, 1999, acquire, construct, or reconstruct educational facilities in the municipality.

(c) The powers authorized by Subsection (b)(2) prevail over any law or municipal charter to the contrary.

(d) A municipality or county may make available to the public on request financial information regarding the acquisition by the municipality or county of land in the zone when the municipality or county acquires the land.

(e) The implementation of a project plan to alleviate a condition described by Section 311.005(a)(1), (2), or (3) and to promote development or redevelopment of a reinvestment zone in accordance with this chapter serves a public purpose.



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

SUBJECT: Discussion and Possible Action: Follow up on citizens' request to examine the discussion and actions taken by City Council on November 8th, 2018 to determine if they constituted a procedural and/or ethical violation, review ethics and procedural rules, and possible action moving forward.

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 11/20/2018

SUBMITTED BY: Vincent Voelkel

EXHIBITS: Attachments from Councilmember Voelkel

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

Please see attached.

RECOMMENDED ACTION:

Judy Eychner – Mr. Mayor, I requested that we, you call this special meeting because I am extremely disappointed and extremely outraged over the actions exhibited by Councilman Baroody following the Council’s Executive Session on Tuesday October 23rd. In that session we were specifically told by the TML appointed Counsel not to talk with opposing legal Counsel or anyone involved with the Lotus Peer Recovery Lawsuit. The very next day Mr. Baroody took it upon himself and went to see opposing Counsel Mr. Patrick O’fiel. That was totally, completely, and absolutely inappropriate. Mr. Baroody put this Council and the City of Kerrville in a position that could have had potential and serious legal consequences. He also put Mr. O’fiel in a very awkward and uncomfortable situation. Luckily for all of us, Mr. O’fiel knew what he should and should not do. He refused to talk to Mr. Baroody and reported by email to both City Attorney Mr. Hayes and Mr. McKamie who is representing the City. Now I know what Mr. Baroody will say that he did not actually talk to Mr. O’fiel but his intent, his intent was to talk to him. I do not know what was behind these inappropriate actions and it’s really not relevant, but I do know that it was not the right thing to do and it was not right for Kerrville. Mr. Baroody acted on his own volition without authority from this Council and in a manner contrary to the City’s Position. But most importantly what he did, he violated the ethics policy for the City of Kerrville. In the interest of time I will paraphrase the four violations, and they are all found in Number IV Standards of Conduct of the Ethics Policy.

Paragraph A, act in the public interest. City Officials shall work for the common good of the whole City and not for any personal interest. Mr. Baroody’s actions indicated that he was not working for the common good of the entire City, he was working for himself with no thought of the possible consequences for the City.

Paragraph C, Civility. Professional conduct of all City Officials must be above reproach and avoid even the appearance of impropriety, I repeat, even the appearance of impropriety. Mr. Baroody’s actions were not above reproach and had impropriety written all over them.

Paragraph D, Respect the Process. City Officials shall perform their duties in accordance with the processes and rules of order established by the City Council. Mr. Baroody took it upon himself to set his own rules and put the City in jeopardy.

Paragraph I, Strict Confidentiality. In the course of performing official duties, City Officials will be privy to confidential information. Every City Official shall maintain the strictest confidence of all such information. No City Official shall divulge any confidential information to any person not included in the communication. Mr. Baroody’s actions clearly indicated that he intended to discuss confidential information.

In summary, Mr. Baroody’s actions showed one, his intent was to discuss the case. Two, his actions gave the appearance of impropriety. Three, his actions did not respect the process. Four, he was willing to share confidential information and put the City and opposing Counsel in a compromising position regarding that information.

Mr. Baroody, six months ago I nominated you to serve as Mayor Pro Tem. At that time I felt that that was the right decision. But times have changed. And your actions have not met my expectations of a Mayor Pro Tem. But most importantly, you have violated the Code of Ethics of which we have all agreed to carry out our duties. I would really like to ask you to resign your position, but I don’t have the authority to do that. But I do have the responsibility and the duty to ask that you be relieved as Mayor Pro Tem as a result of Ethics Violations.

Therefor Mr. Mayor, I am making a three-part motion. One, to remove Mr. Baroody as Mayor Pro Tem. Number Two, to remove Mr. Baroody from any further discussion or communication regarding the Lotus White Peer Recover Lawsuit. And Three, to appoint Councilman Sigerman as Mayor Pro Tem.

Mayor – That is a motion is there a second? I will second that for the primary purpose for discussion.

George Baroody Speaks...

Delayne Sigerman – That’s what he said in his letter... (a statement from the confidential letter that was read during the meeting)... That’s the letter that we got on October 24th. What are we to assume?

Sigerman – What I am trying to say is I do feel like what we are here today to do is represent the people. And if I feel like one of our Councilmembers, could very well in the absence of our current Mayor, be in charge, someone I can’t trust, I don’t have confidence in, might go behind my back with an active case talking to the attorney involved in the case, that brings me great concern. So in my opinion, its not my actions or desire, it is the actions of Councilmember Baroody who brings me to the place I am today. Like I said I would rather be talking about something much more productive with our City, housing, flood management, whatever, but today we have to take care of this and this is what we are here to do.

Procedural Rule 4.6. Discussion; referenced document. A Councilmember shall speak only after being recognized by the presiding officer. A Councilmember recognized for a specific purpose shall limit remarks to that purpose. A Councilmember, after being recognized shall not be interrupted except by the presiding officer to enforce these rules. Anyone speaking shall be recognized by the presiding officer. Where a Councilmember plans to reference or cite a document that was not included as part of the agenda packet, the Councilmember should make copies for each Councilmember and provide the document to the entire Council as soon as possible and prior to the meeting. The Councilmember may seek the aid of the City Manager in complying with this provision.

ETHICS

IV. Standards of Conduct.

C. Civility: The professional and personal conduct of City Officials must be above reproach and avoid even the appearance of impropriety. City Officials shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of the public or other City Officials and employees. Each Official should strive to promote and maintain courtesy, civility, and collegiality.

D. Respect the Process: City Officials shall perform their duties in accordance with the processes and rules of order established by the City Council, which govern the public deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

E. Meeting Attendance: City Officials are obligated to attend meetings and come prepared with an awareness and a fairly good and well-informed understanding of the agenda issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. City Officials shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or to otherwise interfere with the orderly conduct of meetings, all of which is in accordance with Council's applicable meeting rules and procedures.

F. Meeting Preparation: Where a question arises during the preparation for meetings and with the goal of making meetings as efficient as possible, City Officials should submit their question to the appropriate staff person for research and response prior to the meeting. The question and response may certainly be discussed during the upcoming meeting. In the case of City Council, the question should be submitted to the City Manager.

I. Strict Confidentiality:

1. In the course of performing official duties, City Officials may, and City Council will, be privy to confidential information, defined as any information that the City Official is notified is confidential at the time it is shared with the member or that a reasonable person would understand to be confidential from the totality of the circumstances surrounding how the member is made aware of the information. Every City Official shall maintain the strictest confidentiality of all such information received, regardless of whether said information is discussed in an Executive Session. No City Official shall divulge or cause or permit to be disclosed any confidential information to any person not included in the communication by which the City Official received the confidential information.

2. Legal counsel from and matters discussed with the City Attorney are confidential and legally protected by the attorney-client privilege. This privilege belongs to the entire City Council or Board and may be waived only by majority vote of the Council or Board. No member of Council or Board member shall divulge or disclose any such privileged matter unless the Council or Board has voted to waive the privilege.

L. Confidential Information: City Officials shall respect the confidentiality of information concerning City property, personnel, or proceedings of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal interests.

V. Implementation.

As an expression of the expected standards of conduct for City Officials, the Policy is self-enforcing. It therefore is most effective when City Officials are thoroughly familiar with it and embrace its provisions. Ethical standards will be included in the orientation for new Councilmembers and new Board members. City Officials entering office must sign the attached statement affirming that they have read, understood, and agree to follow this Policy. City Council shall periodically review this Policy and consider any revisions.

VI. Compliance and Enforcement.

The Policy expresses standards of ethical conduct expected for City Officials. City Officials have the primary responsibility to assure that ethical standards are understood and met and that the public maintains full confidence in the integrity of City government. Councilmembers, as well as Board members, have the responsibility to intervene when a City Official's actions appear to be in violation of the Policy and such actions or inactions are brought to their attention. The City Council may impose sanctions, such as reprimand, formal censure, or loss of assignment on a City Official whose conduct does not comply with this Policy. The City Council also may act to remove members of Boards from office.

About 1:05:00 City Council Workshop Ethics and Procedural Rules 9-18-18 from youtube video

DS – Delayne Sigerman

GB – George Baroody

Mayor – Now we move to what? We move to Ethics.

Vincent – Does anyone have any issues with the ethics policy? I didn't have any.

DS – Well, yes.

Delayne Sigerman brings up ethics.

DS - I just think that when we are in the public and around people, what we say and do we should be careful that it's not harmful or divisive and always in the best interest of the City. I think I have seen some questionable things happen which is why I went to this particular part and highlighted it. I don't want to change anything I am just saying it is in there, so we need to attempt at least... I think the June 11th meeting is what kicked this all off for me. Of course I wasn't there. I don't know exactly what was said.

GB – Isn't that divisive in itself? Saying that something was divisive, and you weren't there and didn't hear it?

DS – Well actually I did hear it. I heard from people some of the things that were said. And I think they were divisive and could have been harmful. They were not as productive as last night's meeting, I will put it that way.

GB – See that's kind of the thing. What you are really talking about is what is divisive to you. That's the problem of getting into this, you sat up there and said you didn't have a problem with a town hall meeting you had a problem with the content. And the issue ends up being what right do any of us have to talk about that, if the truth is being said, and if it isn't being said, then that's the only choice you have. I challenge you to tell anything that was said at that particular meeting that wasn't true.

DS – Well let me ask you a question. Was race brought up in your meeting?

GB – I didn't bring it up. Sure, it was brought up.

DS – Well that's what I'm saying...

GB – Are you saying there is no issue of race in this country?

DS – No.

GB – Ok then there wasn't anything untruthful said. I gave factual information. So, if you heard the meeting, what facts were false? If they were false, then there is a problem. If they were true, then basically that is just speech and civil disobedience is a form of democracy, it is a part of democracy. One person's version of divisiveness is another's civil disobedience. You are kind of walking a fine line here.

DS – Well it's in our ethics already.

GB – I know that, and I understand that but you are highlighting it because you are trying to call out a particular reason.

DS – If that meeting wouldn't have happened, I wouldn't have it highlighted.

GB - What was divisive, what was untruthful at that meeting.

DS – It's not that untruthful. You are a councilmember and you represent the City.

GB – I represent the people.

DS – And the City...The people and the City.

GB – No I represent the citizens.

DS – What's the best interest of the City is all I am saying.

GB – The citizens.

DS – And that's what is says right here.

GB – Divisiveness, if I tell something truthful how can it be divisive? If I tell something that the City Government has done that you don't like then I am not a team player on the City Government, but I'm not supposed to be. I am the team player for the Citizens. If the Government and the citizens are together then I am on the same team, but I am not going to choose between them. So, if I am telling the truth to the people then you shouldn't have a problem with that.

DS – I guess as long as your facts are accurate as they can possibly be...

GB – I am asking you. You heard the meeting.

DS – I did not hear the whole meeting I wasn't there.

GB – Ok so you heard it and you are making the claim it was divisive. It is only divisive if its false.

DS – You know I am actually just pointing out what our ethics already says.

GB – I understand that you are pointing it out because you just told me, you highlighted this because of a particular meeting. So I am asking you, what was divisive and untruthful at that meeting?

DS – Well I think some of the things you left out about the 2050 plan would be one thing to start with.

GB – Well that's not what I said. So what about what I said was divisive?

DS – We were about to vote on that at the very next evening so I would have thought that you would have wanted to bring the whole picture of the 2050 plan to the public.

GB – We have been doing that already.

DS – What was the purpose of the meeting?

GB – The purpose of the meeting was to inform the public about portions, a very small portion of the plan. That portion stood on its own. It wasn't actually intertwined in the whole thing. It was a particular issue and we all know what it was. So it still gets back to what about what I said was untruthful?

DS – I think it's more of what you didn't say.

GB – Nonspeech isn't divisive.

DS – Well.

Mayor – George we can go back and dissect that.

GB – We are not going to dissect this because she is making a claim that needs to be addressed.

DS – I didn't say I was making a claim.

GB – Sure you are, you said you highlighted it because of that meeting. So what in that meeting was unethical?

Mayor – We have gone back and forth on that...

GB – It makes you uncomfortable but you know what, I am being attacked integrity wise as being unethical and you are saying move on and I am saying don't drop a bomb and run away and say you didn't do it. So, its being claimed that this particular meeting was unethical, because she has highlighted this particular part...

Mayor – I can say to you all day, we can go back and forth all day and dissect that...We are not going to do it.

DS – It was not intended to do that.



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

SUBJECT: City Council Minutes for the regular meeting held on October 23, 2018

AGENDA DATE OF: 12/11/2018

DATE SUBMITTED: 12/7/2018

SUBMITTED BY: Cheryl Brown
Interim City Secretary

EXHIBITS: 10/23/18 City Secretary's version
10/23/18 Councilmember Baroody's version

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

On November 27, 2018, the approval of the minutes for the regular meeting of the City Council that was held on October 23, 2018 was tabled. Councilmember Baroody requested changes to the minutes. Both the original version and Mr. Baroody's red-lined version of the minutes are attached.

RECOMMENDED ACTION:

Approve minutes.

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
OCTOBER 23, 2018

On October 23, 2018, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Mr. Voelkel, followed by the Pledge of Allegiance led by Kerrville Firefighters.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
George Baroody	Mayor Pro Tem
Vincent Voelkel	Councilmember
Judy Eychner	Councilmember
Delayne Sigerman	Councilmember

COUNCILMEMBERS ABSENT: None.

CITY EXECUTIVE STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Cheryl Brown	Interim City Secretary
Amy Dozier	Director of Finance
Kim Meismar	Executive Director of General Operations
Curtis Thomason	Assistant Police Chief
Stuart Cunyus	Public Information Officer
Dannie Smith	Fire Chief
Drew Paxton	Executive Director of Development Services
Ashlea Boyle	Director of Parks and Recreation

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

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

1A. Items of Interest to the Community.

Mr. Cunyus made the following announcements:

- Donna Ingram, humorist and folklorist, was scheduled to be at the Butt Holdsworth Memorial Library on 10-24-18.
- Movies in the Park was scheduled for 10-26-18, showing Hotel Transylvania in Louise Hays Park.
- Family Fright Night was scheduled to take place on 10-31-18 at Louise Hays Park.
- Applications were still being accepted for The Holiday Lighted Parade, to take place on 11-17-18.
- A new City newsletter was set to debut in the 10-24-18 editions of the Kerrville Daily Times and the Hill Country Community Journal, as well as on the City's website.

- No hunting was allowed in City parks. Mr. Cunyus reviewed the City hunting regulations.
- Mr. Baroody announced that Mr. Voelkel was to appear in the play "Witness for the Prosecution" at the Cailloux Theater.

1B. Report to the Council with regard to flood damages.

Fire Chief Dannie Smith reviewed the amount of recent rainfall in the area, and showed several pictures of areas around the City that were flooded. There was one water rescue.

Mr. Hoppe showed pictures of the damage to areas in the City due to the flooding.

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

3. **PRESENTATIONS:**

3A. Certificate of Recognition for Roger Lampman on his retirement from Kerrville Fire Department.

Mr. McDaniel recognized retiring Division Fire Chief Roger Lampman.

3B. Proclamation declaring October 2018 as Domestic Violence Awareness Month.

Mr. Blackburn presented the Proclamation to the staff and board of the Hill Country Crisis Council.

4. **CONSENT AGENDA:**

Ms. Eychner moved to approve the items on the consent agenda as presented. Ms. Sigerman seconded, and the motion passed 5-0.

4A. Minutes of the regular meeting of the City Council held on October 9, 2018.

4B. Resolution No. 44-2018 amending the City of Kerrville Fee Schedule by adopting a waiver for the parade permit fee for each annual Veterans Day Parade.

END OF CONSENT AGENDA.

By request of the Mayor, Item 7C was moved up.

7C. Interlocal Agreement with Kerr County for Library and Animal Services.

Mr. McDaniel reviewed the agreement

Commissioner Letz also spoke regarding the agreement

Ms. Sigerman moved to approve the Interlocal Agreement with Kerr County for Library and Animal Services as presented, with a review of the ordinances within 6 month. Mr. Voelkel seconded, and the motion passed 4-1, with Mr. Blackburn, Mr. Voelkel, Ms. Eychner and Ms. Sigerman voting in favor, and Mr. Baroody voting against.

5. ORDINANCE, FIRST READING

5A. Ordinance No. 2018-32, amending Chapter 2, "Administration," Article IV "Boards and Commissions" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Section 2-91, to create a Senior Services Advisory Committee; providing the functions of said committee; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject.

Mr. Baroody moved to approve Ordinance No. 2018-32, with the following amendments: The terms will be staggered, with half expiring in 2019 and the other half expiring in 2020; and the Chair and Vice Chair will be appointed by the members of the committee after the first appointments by the Mayor. Ms. Eychner seconded, and the motion passed 5-0.

6. ORDINANCES, SECOND READING:

6A. Ordinance No. 2018-25, annexing an approximate 5.335 acre tract out of the William Watt Survey No. 65, Abstract No. 264, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and generally located adjacent to property within the Comanche Trace Residential Subdivision, which is located along State Highway 173; further describing the property to be annexed; adopting a service plan for the property annexed; establishing the zoning for the property annexed; and making findings.

The Ordinance was read into the record by title only by Ms. Brown.
Mr. Paxton presented the Ordinance.

Mr. McDaniel and Mr. Hayes responded to questions and comments from Council with regard to "donut holes" in the annexation of the subject property.

Ms. Eychner moved to approve Ordinance No. 2018-25 on second reading. Ms. Sigerman seconded, and the motion passed 3-2, with Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting in favor, and Mr. Voelkel and Mr. Baroody voting against.

6B. Ordinance No. 2018-26 annexing an approximate 3.669 acre tract of land out of the J.D. Leavell Survey No. 1862, Abstract No. 1435, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and addressed as 884 Farm to Market Road 783 (Harper Road); further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning for the property annexed.

The Ordinance was read into the record by title only by Ms. Brown. Mr. Paxton presented the Ordinance.

Mr. Baroody moved to approve Ordinance No. 2018-26 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6C. Ordinance No. 2018-27 annexing an approximate 0.885 acre tract of land, a portion being out of the Jesus Hernandez Survey No. 548, Abstract No. 189 and another part being out of M.K. and T.E. RY. Co. survey No. 1862, Abstract No. 1435, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and addressed as 874 Farm to Market Road 783 (Harper Road); further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning for the property annexed.

The Ordinance was read into the record by title only by Ms. Brown.

Mr. Baroody moved to approve Ordinance No. 2018-27 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6D. Ordinance No. 2018-27 annexing an approximate 58.74 acre tract of land, out of the Joseph S. Anderson Survey No. 141, Abstract No. 2 and the J.S. Sayder Survey No. 142, Abstract No. 290, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and addressed as 1515 Knapp Road S.; further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning for the property annexed.

The Ordinance was read into the record by title only by Ms. Brown. Mr. Paxton responded to comments from the Council.

Mr. Baroody moved to approve Ordinance no. 2018-23 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6E. Ordinance No. 2018-29 amending the City's "Zoning Code" by changing the Zoning District for an approximate 0.28 acre tract of land; said tract being part of a 7.964 acre tract, generally located in the 300 block of Holdsworth Drive, north of the intersection of Holdsworth Drive and Norfolk Lane, and within the City of Kerrville, Kerr County, Texas; by removing the area from a Residential Cluster District (RC) and placing it within the 24-N Zoning District; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of Two Thousand Dollars (\$2000.00); ordering publication; and providing other matters relating to the subject.

The Ordinance was read into the record by title only by Ms. Brown. Mr. Paxton responded to questions from Council.

Mr. Baroody moved to approve Ordinance No. 2018-28 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6F. Ordinance 2018-29 authorizing the City Manager to execute a Special Warranty Deed for an approximate 0.078 acre tract land out of the B.F. Cage Survey No. 116, Abstract No. 106, within the City of Kerrville, Kerr County, Texas; said property consists of part of the City Hall site, located at 701 Main Street (SH27); authorizing the City Manager to take other reasonable and necessary action, if any, to convey the property, repealing all conflicting ordinances, providing for severability and declaring an effective date.

The Ordinance was read into the record by title only by Ms. Brown.

Mr. Hayes responded to questions from the Council.

Mr. Voelkel moved to authorize the City Manager and City Attorney to negotiate the restrictions on the parking lot for City Hall, with Council member Voelkel joining in the negotiation. Mr. Baroody seconded, and the motion passed 5-0.

6G. Ordinance No. 2018-31, amending the budget for Fiscal Year 2018 to authorize the transfer of funds between different funds to account for a General Fund balance; and to make other amendments as provided herein.

The Ordinance was read into the record by title only by Ms. Brown.

Mr. Baroody moved to approve Ordinance No. 2018-31 on second reading. Ms. Sigerman seconded, and the motion passed 5-0.

6H. Ordinance No. 2018-24 approving a project and financing plan for Tax Increment Reinvestment Zone Number One, City of Kerrville, Texas; making various findings related to such plan; providing for severability; and providing an effective date.

Mr. Voelkel recused himself due to a conflict of interest.

The Ordinance was read into the record by title only by Ms. Brown.

David Pettit presented the Ordinance. He responded to questions from Council. Mr. McDaniel also responded to questions from the Council.

Ms. Eychner moved to approve Ordinance No. 2018-24 on second reading. Ms. Sigerman seconded, and the motion passed 3-1, with Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting in favor, and Mr. Baroody voting against.

After the vote was taken, Mr. Voelkel came back in to the Council Chambers

7. CONDIDERATION AND POSSIBLE ACTION:

7A. Interlocal Agreement with South Central Planning and Development Commission for development services software.

This item was postponed to the next Council meeting.

7B. Resolution No. 43-2018 approving the updated Kerrville River Trail Master Plan.

The Resolution was read into the record by title only by Ms. Brown. Ms. Boyle and Mr. McDaniel responded to questions from the Council.

Mr. Voelkel moved to approve Resolution No. 43-2018, with the added language stating that the City will not use eminent domain to acquire easements or rights-of-way for the River Trail or any project related to it. Mr. Baroody seconded, and the motion passed 3-2, with Mr. Blackburn, Mr. Baroody and Mr. Voelkel voting in favor, and Ms. Eychner and Ms. Sigerman voting against.

8. CITY MANAGER'S REPORT:

Mr. McDaniel made the report.

9. ITEMS FOR FUTURE AGENDAS:

- A workshop with the County for road work.
- Councilmembers should not come to meetings if they are ill.

The meeting was adjourned by Mr. Blackburn at 8:06 p.m.

Mr. Baroody requested the Council reconvene to discuss the evaluations of the City Attorney and City Manager that were done in a special executive session meeting on 10-22-18.

The meeting was reconvened by Mr. Blackburn at 8:07 p.m.

Mr. Baroody moved to go in to executive session under Section 551.074 to discuss the evaluations of the City Attorney and City Manager. Mr. Voelkel seconded, and the motion failed 2-3, with Mr. Voelkel and Mr. Baroody voting in favor, and Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting against.

10. EXECUTIVE SESSION:

None

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

None

ADJOURNMENT.

Mr. Blackburn adjourned the meeting at 8:08 p.m.

APPROVED: _____

ATTEST:

Bill Blackburn, Mayor

Cheryl Brown, Interim City Secretary

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
OCTOBER 23, 2018

On October 23, 2018, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Councilmember Voelkel, followed by the Pledge of Allegiance led by Kerrville Firefighters.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
George Baroody	Mayor Pro Tem
Vincent Voelkel	Councilmember
Judy Eychner	Councilmember
Delayne Sigerman	Councilmember

COUNCILMEMBERS ABSENT: None.

CITY EXECUTIVE STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney (arrived at 7:19 p.m.)
Cheryl Brown	Interim City Secretary
Amy Dozier	Director of Finance
Kim Meismer	Executive Director of General Operations
Curtis Thomason	Assistant Police Chief
Stuart Cunyus	Public Information Officer
Dannie Smith	Fire Chief
Drew Paxton	Executive Director of Development Services
Ashlea Boyle	Director of Parks and Recreation

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

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

1A. Items of Interest to the Community.

Mr. Cunyus made the following announcements:

- Donna Ingham, humorist and folklorist, was scheduled to be at the Butt Holdsworth Memorial Library on 10-24-18.
- Movies in the Park was scheduled for 10-26-18, showing Hotel Transylvania in Louise Hays Park.
- Family Fright Night was scheduled to take place on 10-31-18 at Louise Hays Park.
- Applications were still being accepted for The Holiday Lighted Parade, to take place on 11-17-18.
- A new City newsletter was set to debut in the 10-24-18 editions of the Kerrville Daily Times and the Hill Country Community Journal, as well as on the City's website.

- No hunting was allowed in City parks. Mr. Cunyus reviewed the City hunting regulations.
- Mr. Baroody announced that Mr. Voelkel was to appear in the play "Witness for the Prosecution" at the Cailloux Theater.

2A. Report to the Council with regard to flood damages.

Fire Chief Dannie Smith reviewed the amount of recent rainfall in the area, and showed several pictures of areas around the City that were flooded. There was one water rescue.

Mr. Hoppe showed pictures of the damage to areas in the City due to the flooding.

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

3. **PRESENTATIONS:**

3A. Certificate of Recognition for Roger Lampman on his retirement from Kerrville Fire Department.

Mr. McDaniel recognized retiring Division Fire Chief Roger Lampman.

3B. Proclamation declaring October 2018 as Domestic Violence Awareness Month.

Mr. Blackburn presented the Proclamation to the staff and board of the Hill Country Crisis Council.

4. **CONSENT AGENDA:**

Ms. Eychner moved to approve the items on the consent agenda as presented. Ms. Sigerman seconded, and the motion passed 5-0.

4A. Minutes of the regular meeting of the City Council held on October 9, 2018.

4B. Resolution No. 44-2018 amending the City of Kerrville Fee Schedule by adopting a waiver for the parade permit fee and deposit for each annual Veterans Day Parade.

END OF CONSENT AGENDA.

By request of the Mayor, Item 7C was moved up.

7C. Interlocal Agreement with Kerr County for Library and Animal Services.

Mr. McDaniel reviewed the agreement.

County Commissioner Letz also spoke regarding the agreement.

Ms. Sigerman moved to approve the Interlocal Agreement with Kerr County for Library and Animal Services as presented, with a review of the ordinances within 6 months. Mr. Voelkel seconded, and the motion passed 4-1, with Mr. Blackburn,

Mr. Voelkel, Ms. Eychner and Ms. Sigerman voting in favor, and Mr. Baroody voting against.

5. ORDINANCE, FIRST READING

5.A Ordinance No. 2018-32, amending Chapter 2, "Administration," Article IV "Boards and Commissions" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Section 2-91, to create a Senior Services Advisory Committee; providing the functions of said committee; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject.

Mr. Baroody moved to approve Ordinance No. 2018-32, with the following amendments: The terms will be staggered, with half expiring in 2019 and the other half expiring in 2020; and the Chair and Vice Chair will be appointed by the members of the committee after the first appointments by the Mayor. Ms. Eychner seconded, and the motion passed 5-0.

6. ORDINANCES, SECOND READING:

6A. Ordinance No. 2018-25, annexing an approximate 5.335 acre tract out of the William Watt Survey No. 65, Abstract No. 264, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and generally located adjacent to property within the Comanche Trace Residential Subdivision, which is located along State Highway 173; further describing the property to be annexed; adopting a service plan for the property annexed; establishing the zoning for the property annexed; and making findings.

The Ordinance was read into the record by title only by Ms. Brown.
Mr. Paxton presented the Ordinance.

Mr. McDaniel and Mr. Hayes responded to questions and comments from Council with regard to "donut holes" in the annexation of the subject property.

Ms. Eychner moved to approve Ordinance No. 2018-25 on second reading. Ms. Sigerman seconded, and the motion passed 3-2, with Mr. Blackburn, Ms. Eychner and Ms. Sigerman voting in favor, and Mr. Voelkel and Mr. Baroody voting against.

6B. Ordinance No. 2018-26 annexing an approximate 3.669 acre tract of land out of the J.D. Leavell Survey No. 1862, Abstract No. 1435, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and addressed as 884 Farm to Market Road 783 (Harper Road); further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning for the property annexed.

The Ordinance was read into the record by title only by Ms. Brown
Mr. Paxton presented the Ordinance.

Mr. Baroody moved to approve Ordinance No. 2018-26 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6C. Ordinance No. 2018-27 annexing an approximate 0.885 acre tract of land, a portion being out of the Jesus Hernandez Survey No. 548, Abstract No. 189 and another part being out of M.K. and T.E. RY. Co. Survey No. 1862, Abstract No. 1435, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and addressed as 874 Farm to Market Road 783 (Harper Road); further describing the property to be annexed; adopting a service plan, for the property annexed; and establishing the zoning for the property annexed.

The Ordinance was read into the record by title only by Ms. Brown.

Mr. Baroody moved to approve Ordinance No. 2018-27 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6D. Ordinance No. 2018-23, annexing an approximate 58.74 acre tract of land, out of the Joseph S. Anderson Survey No. 141, Abstract No. 2 and the J.S. Sayder Survey No. 142, Abstract No. 290, into the corporate limits of the City of Kerrville, Texas; said tract being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and addressed as 1515 Knapp Road S.; further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning for the property annexed.

The Ordinance was read into the record by title only by Ms. Brown.
Mr. Paxton responded to comments from Council.

Mr. Baroody moved to approve Ordinance No. 2018-23 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6E. Ordinance No. 2018-28 amending the City's "Zoning Code" by changing the Zoning District for an approximate 0.28 acre tract of land; said tract being part of a 7.964 acre tract, generally located in the 300 block of Holdsworth Drive, north of the intersection of Holdsworth Drive and Norfolk Lane, and within the City of Kerrville, Kerr County, Texas; by removing the area from a Residential Cluster District (RC) and placing it within the 24-N Zoning District; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of Two Thousand Dollars (2000.00); ordering publication; and providing other matters relating to the subject.

The Ordinance was read into the record by title only by Ms. Brown.
Mr. Paxton responded to questions from Council.

Mr. Baroody moved to approve Ordinance No. 2018-28 on second reading. Ms. Eychner seconded, and the motion passed 5-0.

6F. Ordinance No. 2018-29 authorizing the City Manager to execute a Special Warranty Deed for an approximate 0.078 acre tract of land out of the B.F. Cage Survey No. 116, Abstract No. 106, within the City of Kerrville, Kerr County, Texas; said property consists of part of the City Hall site, located at 701 Main Street (SH27); authorizing the City Manager to take other reasonable and necessary action, if any, to convey the property, repealing all conflicting ordinances, providing for severability and declaring an effective date.

The Ordinance was read into the record by title only by Ms. Brown.

Mr. Hayes responded to questions from Council.

Mr. Voelkel moved to approve Ordinance No. 2018-29 on second reading. Mr. Baroody seconded, and the motion passed 5-0.

Mr. Voelkel moved to authorize the City Manager and City Attorney to negotiate the restrictions on the parking lot for City Hall, with Council member Voelkel joining in the negotiations. Mr. Baroody seconded, and the motion passed 5-0.

6G. Ordinance No. 2018-31, amending the budget for Fiscal Year 2018 to authorize the transfer of funds between different funds to account for a General Fund balance; and to make other amendments as provided herein.

The Ordinance was read into the record by title only by Ms. Brown.

Mr. Baroody moved to approve Ordinance No. 2018-31 on second reading. Ms. Sigerman seconded, and the motion passed 5-0.

6H. Ordinance No. 2018-24 approving a project and financing plan for Tax Increment Reinvestment Zone Number One, City of Kerrville, Texas; making various findings related to such plan; providing for severability; and providing an effective date.

Mr. Voelkel recused himself due to a conflict of interest.

The Ordinance was read into the record by title only by Ms. Brown.

David Pettit presented the Ordinance. He responded to questions from Council. Mr. McDaniel also responded to questions from Council.

Ms. Eychner moved to approve Ordinance No. 2018-24 on second reading. Ms. Sigerman seconded, and the motion passed 3-1, with Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting in favor, and Mr. Baroody voting against.

Mr. Voelkel came back in to the Council Chambers.

7. CONSIDERATION AND POSSIBLE ACTION:

7.A Interlocal Agreement with South Central Planning and Development Commission for developmental services software.

This item was postponed to the next Council meeting.

7B. Resolution No. 43-2018 approving the updated Kerrville River Trail Master Plan.

The Resolution was read into the record by title only by Ms. Brown.

The Resolution was presented by Ms. Boyle.

Ms. Boyle and Mr. McDaniel responded to questions from Council.

Mr. Voelkel moved to approve Resolution No. 43-2018, with the added language added to the Resolution that states the City will not use eminent domain to acquire easements or rights-of-way for the River Trail or any project related to it. Mr. Baroody seconded, and the motion passed 3-2, with Mr. Blackburn, Mr. Baroody and Mr. Voelkel voting in favor, and Ms. Eychner and Ms. Sigerman voting against.

8. CITY MANAGER'S REPORT:

Mr. McDaniel made the report.

11. ITEMS FOR FUTURE AGENDAS:

- A workshop with the County for road work.
- Councilmembers should not come to meetings if they are ill.

The [Mayor adjourned the](#) meeting ~~was adjourned~~ at 8:06 p.m.

Mr. Baroody requested the Council reconvene to [address the two posted agenda items 10A and 10B that had not yet been addressed.](#) ~~discuss the evaluations of the City Attorney and City Manager that were done in a special executive session meeting on 10-22-18.~~

The [Mayor meeting was](#) reconvened [the meeting](#) at 8:07 p.m.

~~Mr. Baroody moved to go in to executive session under Section 551.074 to discuss the evaluations of the City Attorney and City Manager. Mr. Voelkel seconded, and the motion failed 2-3, with Mr. Voelkel and Mr. Baroody voting in favor, and Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting against.~~

12. EXECUTIVE SESSION:

~~None~~

Mr. Baroody moved to go into executive session under Section 551.074 to discuss agenda items 10A-Evaluation of the City Attorney and 10B-Evaluation of City Manager. Mr. Voelkel seconded, and the motion to enter executive session failed 2-3, with Mr. Voelkel and Mr. Baroody voting in favor, and Mr. Blackburn, Ms. Eychner, and Ms. Sigerman voting against.

10A. Annual City Attorney Evaluation

10B. Annual City Manager Evaluation

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

None

ADJOURNMENT.

Mr. Blackburn adjourned the meeting at 8:08 p.m.

APPROVED: _____

ATTEST: _____

Bill Blackburn, Mayor

Cheryl Brown, Interim City Secretary



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

SUBJECT: City Council Minutes for the special meeting held on November 8, 2018

AGENDA DATE OF: 12/11/2018

DATE SUBMITTED: 12/7/2018

SUBMITTED BY: Cheryl Brown
Interim City Secretary

EXHIBITS: 11/08/18 City Secretary's version
11/08/18 Councilmember Baroody's version

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

Councilmember Baroody requested changes to the minutes for the special meeting held on November 8, 2018. Both the version from the City Secretary, and Mr. Baroody's red-lined version of the minutes are attached.

RECOMMENDED ACTION:

Approve minutes.

City Secretary's Version
November 20, 2018

CITY COUNCIL MINUTES

KERRVILLE, TEXAS
NOVEMBER 8, 2018

On November 8, 2018, the Kerrville City Council special called meeting was called to order at 9:00 a.m. by Mayor Blackburn in the City Council Chambers at City Hall, 701 Main Street.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
George Baroody	Mayor Pro Tem
Vincent C. Voelkel	Councilmember
Judy Eychner	Councilmember
Delayne Sigerman	Councilmember

COUNCILMEMBER ABSENT:

None

CITY STAFF PRESENT:

Mark McDaniel	City Manager
Mike Hayes	City Attorney
E.A. Hoppe	Deputy City Manager
Cheryl Brown	Interim City Secretary
Kim Meismar	Director of General Operations
Stuart Cunyus	Public Information Officer

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

1. EXECUTIVE SESSION :

1A. Deliberation regarding behavior, duties, and/or discipline of Councilmember Place 2, per Section 551.074, Texas Gov't Code.

Ms. Eychner moved to go into executive session. Ms. Sigerman seconded.

Mr. Baroody stated the matter on the agenda should be discussed in open session, not closed. The rest of the Council agreed.

Ms. Eychner made the following motion:

1. To remove Mr. Baroody as Mayor Pro Tem;
2. To remove Mr. Baroody from any further discussion or communication regarding the Lotus Peer Recovery lawsuit; and
3. To appoint Ms. Sigerman as Mayor Pro Tem.

Mr. Blackburn seconded. The motion passed 3-2, with Mr. Blackburn, Ms. Eychner and Ms. Sigerman voting in favor, and Mr. Baroody and Mr. Voelkel voting against.

The following people spoke:

- Nikki Saurage
- Peggy McKay
- Glenn Andrew
- Cheryl Fitch
- Mario Garcia

ADJOURNMENT. The meeting adjourned at 11:55 a.m.

APPROVED: _____

Bill Blackburn, Mayor

ATTEST:

Cheryl Brown, Interim City Secretary

CITY COUNCIL MINUTES

KERRVILLE, TEXAS
NOVEMBER 8, 2018

On November 8, 2018, the Kerrville City Council special called meeting was called to order at 9:00 a.m. by Mayor Blackburn in the City Council Chambers at City Hall, 701 Main Street.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
George Baroody	Mayor Pro Tem
Vincent C. Voelkel	Councilmember
Judy Eychner	Councilmember
Delayne Sigerman	Councilmember

COUNCILMEMBER ABSENT:

None

CITY STAFF PRESENT:

Mark McDaniel	City Manager
Mike Hayes	City Attorney
E.A. Hoppe	Deputy City Manager
Cheryl Brown	Interim City Secretary
Kim Meismar	Director of General Operations
Stuart Cunyus	Public Information Officer

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

1. EXECUTIVE SESSION :

1A. Deliberation regarding behavior, duties, and/or discipline of Councilmember Place 2, per Section 551.074, Texas Gov't Code.

Ms. Eychner moved to go into executive session. Ms. Sigerman seconded.

Citing Texas Government Code 551.074(b), Mr. Baroody requested the matter be given a public hearing. ~~stated the matter on the agenda should be discussed in open session, not closed. Council complied and Ms. Eychner withdrew her motion and ms. Sigerman withdrew her second to go into executive session. The rest of the Council agreed.~~

Ms. Eychner opened Council discussion by laying out ethics charges against Mr. Baroody.

The following people spoke:

- Nikki Saurage
- Peggy McKay
- Glenn Andrew

- Cheryl Fitch
- Mario Garcia

Ms. Eychner made the following motion:

1. To remove Mr. Baroody as Mayor Pro Tem based on ethics violation paragraph A, C, D and I under Standards of Conduct IV of the Ethics Policy;
2. To remove Mr. Baroody from any further discussion or communication regarding the Lotus Peer Recovery lawsuit; and
3. To appoint Ms. Sigerman as Mayor Pro Tem.

Mr. Blackburn seconded. The motion passed 3-2, with Mr. Blackburn, Ms. Eychner and Ms. Sigerman voting in favor, and Mr. Baroody and Mr. Voelkel voting against.

~~The following people spoke:~~

- ~~Nikki Saurage~~
- ~~Peggy McKay~~
- ~~Glenn Andrew~~
- ~~Cheryl Fitch~~
- ~~Mario Garcia~~

ADJOURNMENT. The meeting adjourned at 11:55 a.m.

APPROVED: _____

Bill Blackburn, Mayor

ATTEST:

Cheryl Brown, Interim City Secretary



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

SUBJECT: Appointment to the Library Advisory Board.

AGENDA DATE OF: 12/11/2018

DATE SUBMITTED: 12/5/2018

SUBMITTED BY: Cheryl Brown
Interim City Secretary

EXHIBITS: Board Sheet

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

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

There is one regular member position with a term that expired 11-22-18. Applicant is a member already on the Library Advisory Board who wishes to be reappointed.

RECOMMENDED ACTION:

Make appointment to the Library Advisory Board.

LIBRARY ADVISORY BOARD

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
BOX, ASTRID 504 Rees Street	896-7662	01-26-16	01-09-18	11-22-19
WICHMAN, CAROL 740 Royal Oaks Loop Fredericksburg, TX 78624	937-776-1761	01-09-18		11-22-18
LIPSCOMB, DAVID 909 Lake Drive	895-4232 (H)	01-26-16	01-09-18	11-22-19
** MOSER, TOM County Commissioner Pct. 2 700 Main St. #101	792-2214 (O)	01-09-18		11-22-19
* SMITH, JANE 2009 Crown View Dr.	792-9144 (H)	04-22-13		11-22-18

CITY STAFF:

Laura Bechtel 258-1260 (O)
Library Director
505 Water Street

Kim Meismer 258-1140 (O)
Director of Gen.Operations 370-0748 (C)
701 Main Street

Qualifications:	Members must maintain a library card in good standing.
Powers and Duties:	The Board is an advisory board to the city council; shall have the 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. Upon a majority vote of the total membership.
Term of Office:	All Board appointments shall serve two (2) year terms. No Board member shall serve more than two (2) consecutive two (2) year term on the Board without having at least one (1) full year off of the Board between terms. A majority of the members' terms shall expire in even-number years with the remaining members' terms expiring in odd-numbered years.
Quorum:	Three members

Number of Members: Five members

Meeting Time & Place: Quarterly, on the Third Tuesday of the Month; 3:00 pm; Butt-Holdsworth Memorial Library

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: Ordinance No. 1967-17; amended by Ordinance Nos. 80-5, 84-14, 84-58, 85-01, 87-24, 87-60, 87-61, and 2005-19 (in its entirety); Resolution Nos. 045-2006, 107-2006, 076-2007, and 122-2007 did not change this board. Code of Ordinances: Chapter 66 - Article II – Sections 66-31 through 66-34; Amended by Ordinance No. 2010-05; Amended by Ordinance No. 2011-16; amended by Ordinance 2017-11.

Revised: January 10, 2018

* Appointed by Friends of the Butt-Holdsworth Memorial Library

** Appointed by Kerr County



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

SUBJECT: Appointments to the Recovery Community Coalition.

AGENDA DATE OF: 12/11/2018 **DATE SUBMITTED:** 12/5/2018

SUBMITTED BY: Cheryl Brown
Interim City Secretary

EXHIBITS: Board Sheet

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

Kerrville 2050 Item?	Yes: <input type="checkbox"/>	No:
Key Priority Area	N/A	
Guiding Principle	N/A	
Action Item	N/A	

SUMMARY STATEMENT:

There are two positions due to expire December 31, 2018 that are vacant due to resignations.

RECOMMENDED ACTION:

Make appointments.

RECOVERY COMMUNITY COALITION

	<u>Telephone</u>	<u>Appt.</u> <u>Date</u>	<u>Exp.</u> <u>Date</u>
(8) TREES, DALE Chairperson 115 Plaza Dr. #2007	928-5420 (H) 238-4222 (W) Ext. 510	1-10-17	12-31-18
(4) DRIGGERS, SHAWN 613 Wheless Ave.	285-4536 (H) 895-5969 (W)	01-10-17	12-31-19
(4) ELDER, DAWN 14189 River Vista N. San Antonio, TX 78216	210-289-8662	02-13-18	12-31-19
(5) FITZPATRICK, LEIGHANN 1920 Weston Loop	956-371-5095 (H) 258-5288 (W)	03-13-18	12-31-18
(3) GEISLER, BLAIR 381 A Guadalupe St.	713-972-5001 (C)	01-10-17	12-31-19
(2) GODWIN, LAURA 312 Lytle St.	214-293-7353 (H)	01-10-17	12-31-18
(3) KUENZEL, SABINE 305 Japonica Road P.O. Box 824 Hunt, TX 78024	832-361-2849 (C)	08-28-18	12-31-18
(1) LEICHT, CECIL CODY 134 Loop 13	377-4451 (H)	09-12-17	12-31-18
(8) McCARRICK, CAROL 119 Fawn Ridge Trail	257-9487 (H) 238-4222 Ext. 363	09-12-17	12-31-19
(6) PAUTLER, STEVE 113 Los Cedros Loop	258-7054 (W)	01-10-17	12-31-19
(4) RICHNER, CLAUDIA 3864 Rock Barn Dr.	816-532-0078 (H)	01-10-17	12-31-19
(7) VACANT			12-31-18

(2) VACANT			12-31-18
(3) STOLPMAN, RICHARD	777-9153 (H) 115 Plaza Dr. #205	01-10-17 320-304-0736 (C)	12-31-19
(8) YOUNG, KENDALL	257-2212 (W) 3509 La Cumbre Dr.	2-13-18 377-5911 (H)	12-31-19

Purpose:	The purpose of the Coalition is to enhance the opportunities for the recovery community to become fully integrated into the fabric of Kerrville. The Coalition shall work toward considering and identifying strategies and techniques for reducing barriers for the recovery community to be fully integrated into the local community as well as to identify and advocate goals and ideas for enhancing positive relationships by and amongst the recovery community.
Qualifications:	At least one member from each of the following, but any of which may include more than one member: (1) owner of a male boarding home facility with a valid permit issued by the City; (2) owner of a female boarding home facility with a valid permit issued by the City; (3) member of the recovering community; (4) citizen of Kerrville with interest in these issues; (5) representative of mental health support organizations such as Kerrville State Hospital; (6) representative of Peterson Health; (7) representative of Hill Country MHDD Centers; (8) representative from a residential addiction treatment facility located within Kerr County.
Powers and Duties:	On an annual basis, or more frequently as deemed proper by the Coalition or City Council, the Coalition should attend and report its conclusions, achievements, ideas, desires, and plans to the City Council. It is recommended that the initial issue with which the Coalition is charged to review is Ordinance No. 2013-06 (Chapter 30, Article I, Code of Ordinances), which addresses the operation of group homes and boarding home facilities operating within the City.
Term of Office:	Each member shall be subject to two-year terms; provided, however, that at the Coalition's organizational meeting, the members shall draw lots to establish the duration of the initial terms, with an exact majority of the members serving an initial term of two years and the remaining members serving a one-year term. The expiration date of all terms shall be December 31 of the year corresponding with the results of the drawing of lots.
Quorum:	Seven members
Number of Members:	Thirteen
Absences:	Any member who misses 25% of the regular meetings or three consecutive regular meetings may be replaced by City Council.
Meeting Time & Place:	Meetings are to be held every other Monday at 4:00 p.m., but at least once each calendar quarter in the upstairs conference room at City Hall.
Established by:	Resolution No. 26-2016
Revised Date:	August 29, 2018