



ECONOMIC IMPROVEMENT CORPORATION AGENDA
MONDAY, MARCH 20, 2023, 4:00 PM
Kerrville City Hall Council Chambers
701 Main Street, Kerrville, Texas

- 1. CALL TO ORDER:**
- 2. INVOCATION:**
- 3. VISITORS / CITIZENS FORUM:** Any citizen with business not scheduled on the agenda may speak to the Economic Improvement Corporation. No deliberation or action can be taken on these items because the Open Meetings Act requires an item be posted on an agenda 72 hours before the meeting. Visitors are asked to limit their presentation to three minutes.
- 4. APPROVAL OF MINUTES:**
4.A Minutes from the regular Economic Improvement Corporation (EIC) meeting held on February 13, 2023.
Attachment: [EIC Minutes 2-13-2023.pdf](#)
- 5. MONTHLY REPORTS:**
5.A Kerr Economic Development Corporation (KEDC) update.

5.B Kerrville Economic Improvement Corporation (EIC) project status update including the following:
 - Tranquility Island Electrical Infrastructure
 - KERV Airport Improvements
 - Killdeer Mountain Manufacturing
 - Peterson Medical Center Campus Infrastructure Improvements
 - Louise Hays Park Fitness Court
 - Downtown Area Streetscape
 - Downtown River Trail Extension
 - River Trail, Nimitz Lake
5.C Monthly Financial Report.
Attachment: [20230320 EIC February 2023 financial presentation.pdf](#)
- 6. CONSIDERATION AND POSSIBLE ACTION:**
6.A Update on Phase 1 completion and remaining budget balance of the Tranquility Island Lighting Project and possible next steps for Phase 2.
Attachment: [2021-41 EIC PFA Kerrville Christmas Lighting Corporation -Tranquility Island.pdf](#)
- 7. EXECUTIVE SESSION:** The Economic Improvement Corporation 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 Section 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code, including the following matters:
 - 7.A Project Mount Saddle (551.071, 551.073, 551.087).
 - 7.B Workforce Housing development projects (551.071, 551.072, 551.087)

8. **POSSIBLE ACTION FOR ITEMS DISCUSSED IN EXECUTIVE SESSION:**

9. **ITEMS FOR FUTURE AGENDAS:**

10. **ADJOURN.**



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

SUBJECT: Minutes from the regular Economic Improvement Corporation (EIC) meeting held on February 13, 2023.

AGENDA DATE OF: March 20, 2023 **DATE SUBMITTED:** March 1, 2023

SUBMITTED BY: Kesha Franchina, Deputy City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A
Guiding Principle N/A
Action Item N/A

SUMMARY STATEMENT:

Approve minutes from the regular Economic Improvement Corporation (EIC) meeting held on February 13, 2023.

RECOMMENDED ACTION:

Approve minutes from the regular Economic Improvement Corporation (EIC) meeting held on February 13, 2023.

ATTACHMENTS:

[*EIC Minutes 2-13-2023.pdf*](#)

**CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION (EIC)
REGULAR MEETING – February 13, 2023**

On Monday, February 13, 2023, at 4:00 p.m., the regular meeting of the City of Kerrville, Texas Economic Improvement Corporation, was called to order by President Gregory Richards, in the Council Chambers at City Hall, 701 Main Street, Kerrville, Texas.

MEMBERS PRESENT:

Gregory Richards, President
Danny Almond, Vice-President
John Anderson
Gregg Appel
Kyle Bond
Gary Cochrane

MEMBERS ABSENT:

Kim Clarkson, Councilmember Place 2 (Arrived at 4:03 p.m.)

CHIEF EXECUTIVE STAFF PRESENT:

Michael Hornes, Assistant City Manager
Kim Meismer, Assistant City Manager
Mike Hayes, City Attorney
Kesha Franchina, Deputy City Secretary
Jacob Bogusch, Accounting Intern
Ashlea Boyle, Director of Parks and Recreation
Trina Rodriguez, Assistant Director of Finance

VISITORS PRESENT: No citizen speakers registered to speak during the Visitors/Citizens forum item 3.

1 CALL TO ORDER: President Richards called the meeting to order at 4:00 p.m.

2 INVOCATION: Danny Almond led the invocation.

3 VISITORS / CITIZENS FORUM: None.

4 APPROVAL OF MINUTES:

4.A Minutes from the regular Economic Improvement Corporation (EIC) meeting held on January 9, 2023.

Gary Cochrane motioned to approve the minutes, and Gregg Appel seconded. The motion passed 6-0.

5 MONTHLY REPORTS:

5.A Kerr Economic Development Corporation (KEDC) update.

Gil Salinas and Katie Milton Jordan presented the KEDC update, and responded to questions.

Kim Clarkson arrived to the meeting at 4:03 p.m.

5.B Kerrville Economic Improvement Corporation (EIC) project status update including the following:

- Tranquility Island Electrical Infrastructure
- KERV Airport Improvements
- Killdeer Mountain Manufacturing
- Peterson Medical Center Campus Infrastructure Improvements Louise
- Hays Park Fitness Court
- Downtown Area Streetscape
- Downtown River Trail Extension
- River Trail, Nimitz Lake

Michael Hornes presented the EIC Project Status Update. There were no questions.

5.C Monthly Financial Report.

Trina Rodriguez presented the Monthly Financial Report. There were no questions.

6 CONSIDERATION AND POSSIBLE ACTION:

6.A Amendment to the Economic Development Grant Agreement between Kerr Economic Development Corporation and the City of Kerrville Texas Economic Improvement Corporation.

Michael Hornes presented the amendment to the grant agreement. Michael Hornes and Gil Salinas responded to questions. No action was taken.

6.B Update on Phase 1 completion and remaining budget balance of the Tranquility Island Lighting Project and possible next steps for Phase 2.

Michael Hornes presented the update on phase 1 and introduced the Christmas Lighting Committee members. Michael Hornes and Ashlea Boyle responded to questions.

Christmas Lighting Committee Speakers were as follows:

- Charlie McIlvain
- Sergio Marcos Lopez

EIC requested the Christmas Lighting Committee to return with a detailed plan and ask match to complete phase 2 of the Tranquility Island Lighting Project, in a future meeting. No action was taken.

EA Hoppe joined the meeting at 4:58 p.m.

Kim Clarkson motioned to go into closed executive session under (551.071, 551.073, 551.087), Gary Cochrane seconded, and the motion passed 7-0. President Richards adjourned into closed executive session at 4:59 p.m.

7 EXECUTIVE SESSION:

7.A Project Mount Saddle.

President Richards adjourned the closed executive session, and the meeting returned to open session at 5:18 p.m.

Danny Almond made a motion authorizing execution of the LOI for the Mount Saddle Project in accordance with the discussion conducted in Closed Session. Gary Cochrane seconded, and the motion passed 7-0.

8 POSSIBLE ACTION FOR ITEMS DISCUSSED IN EXECUTIVE SESSION: None.

9 ITEMS FOR FUTURE AGENDAS: None.

10 ADJOURN. President Richards adjourned the meeting at 5:19 p.m.

Minutes Approved: _____

President Gregory Richards: _____

Attest: Kesha Franchina, Deputy City Secretary: _____



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

SUBJECT: Kerr Economic Development Corporation (KEDC) update.

AGENDA DATE OF: March 20, 2023 **DATE SUBMITTED:** February 6, 2023

SUBMITTED BY: Kesha Franchina, Deputy City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

Information only; no action required.



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

SUBJECT: Kerrville Economic Improvement Corporation (EIC) project status update including the following:

- Tranquility Island Electrical Infrastructure
- KERV Airport Improvements
- Killdeer Mountain Manufacturing
- Peterson Medical Center Campus Infrastructure Improvements
- Louise Hays Park Fitness Court
- Downtown Area Streetscape
- Downtown River Trail Extension
- River Trail, Nimitz Lake

AGENDA DATE OF: March 20, 2023

DATE SUBMITTED: March 1, 2023

SUBMITTED BY: Michael Hornes, Assistant City Manager

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

Information only; no action.



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

SUBJECT: Monthly Financial Report.

AGENDA DATE OF: March 20, 2023 **DATE SUBMITTED:** March 1, 2023

SUBMITTED BY: Trina Rodriguez, Accounting Manager

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

Information only; no action.

ATTACHMENTS:

20230320 EIC February 2023 financial presentation.pdf



Financial update for the month ended February 28, 2023

Economic Improvement Corporation Meeting
March 20, 2023

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Economic Improvement Corporation Statement of Activities Month Ended February 28, 2023					
	Annual Budget	Current Period	YTD Actual	YTD Budget Estimate	Better/Worse
Revenues					
Sales and Use Tax	\$ 5,262,270	\$ 491,396	\$ 2,157,653	\$ 2,127,118	\$ 30,536
Interest Income	28,373	23,712	107,425	10,991	96,434
Investment Maturity	3,000,000	-	1,000,000	1,000,000	-
Total Revenues	8,290,643	515,108	3,265,078	3,138,109	126,969
Expenditures					
Administrative					
Supplies and Miscellaneous	650	-	-	-	-
Legal Services	10,000	-	-	-	-
Professional Services	200,000	16,667	83,333	83,333	-
Kerr Economic Development Corp.	312,500	78,125	156,250	156,250	-
Total Administrative	523,150	94,792	239,583	239,583	-
Debt Service					
Debt Service - Series 2019 Ref (River Trail)	251,291	20,941	104,704	104,704	-
Debt Service - Series 2020 Ref (River Trail)	231,000	19,250	96,250	96,250	-
Debt Service - Series 2015 (KSC)	602,850	50,238	251,188	251,188	-
Total Debt Service	1,085,141	90,428	452,142	452,142	-
Investment Purchases	2,500,000	-	980,161	980,161	-
Projects					
Airport Projects	95,901	*	475	475	-
Sid Peterson Memorial Hospital	800,000	-	-	-	-
Outdoor Fitness Court	100,000	*	100,000	100,000	-
Downtown Utilities/Streetscape	400,000	*	-	-	-
Downtown River Trail	1,020,280	*	125,000	125,000	-
Total Projects	2,416,181	-	225,475	225,475	-
Total Expenditures	6,524,472	185,220	1,897,362	1,897,362	-
Change in Net Position	\$ 1,766,171	\$ 329,888	\$ 1,367,717		

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Economic Improvement Corporation
Cash Flow Forecast
As of February 28, 2023

	FY2023 Actual Oct 2022 to Feb 2023	FY2023 Estimate Mar 2023	FY2023 Projection		
			Apr 2023 to Jun 2023	Jul 2023 to Sep 2023	
			\$ 3,606,229	\$ 4,941,431	\$ 5,025,400 \$ 4,966,814
Beginning Cash Balance					
Revenue					
Sales Tax	2,157,653	378,656	1,244,462	1,512,034	
Interest Income	107,425	25,024	66,293	66,757	
Investment Maturity	1,000,000	1,000,000	-	500,000	
Total Revenue	3,265,078	1,403,680	1,310,755	2,078,791	
Expenditures					
Administrative					
Supplies and Miscellaneous	-	163	163	163	
Legal Services	-	2,500	2,500	2,500	
Professional Services	83,333	16,667	50,000	50,000	
Kerr Economic Development Corp.	156,250	-	78,125	78,125	
Total Administrative	239,583	19,329	130,788	130,788	
Debt Service	452,142	90,428	271,285	271,285	
Projects					
Airport Projects	475	23,975	23,975	47,475	
Sid Peterson Memorial Hospital	-	-	800,000	-	
Outdoor Fitness Court	100,000	-	-	-	
Downtown Utilities/Streetscape	-	200,000	-	200,000	
Downtown River Trail	125,000	-	125,000	125,000	
Total Projects	225,475	223,975	948,975	372,475	
Investment Purchase	980,161	976,954	-	500,000	
Total Expenditures	1,897,362	1,310,687	1,351,048	1,274,548	
Interest Receivable	32,514	9,024	18,293	18,757	
Ending Cash Balance	\$ 4,941,431	\$ 5,025,400	\$ 4,966,814	\$ 5,752,300	

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Financial Analysis

Cash Analysis as of February 28, 2023		
Type	Placement	Amount
Pool	EIC TexPool	\$ 4,941,431
ST Investment	MUFG Bank CP-62479MQP1	\$ 997,094
ST Investment	Toyota Motor Credit CP-8923A1VR9	\$ 487,725
ST Investment	FHLB Call Note-3130ATRA7	\$ 498,262
Total Cash and Investments		\$ 6,924,513

Sales Tax Revenue Analysis - FY2023					
Month	Actual FY2022	Budget FY2023	Actual FY2023	FY2022 vs. FY2023	Budget vs. Actual
October	\$ 365,850	\$ 385,387	\$ 442,046	20.83%	14.70%
November	420,172	432,879	411,128	-2.15%	-5.02%
December	333,189	378,611	376,754	13.08%	-0.49%
January	421,736	413,564	436,330	3.46%	5.50%
February	474,948	516,676	491,396	3.46%	-4.89%
March	366,033	378,656	382,982	4.63%	1.14%

Project Analysis as of February 28, 2023			
Project Description	EIC Commitment	Disbursed Funding	Remaining Funding
Committed Projects:			
Airport Projects	132,767	37,341	95,426
Sid Peterson Memorial Hospital	1,600,000	-	1,600,000
Outdoor Fitness Court	100,000	100,000	-
Downtown Utilities/Streetscape	400,000	-	400,000
Downtown River Trail	1,020,280	125,000	895,280
Committed Project Total	\$ 3,253,047	\$ 262,341	\$ 2,990,706

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Questions?



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

SUBJECT: Update on Phase 1 completion and remaining budget balance of the Tranquility Island Lighting Project and possible next steps for Phase 2.

AGENDA DATE OF: March 20, 2023 **DATE SUBMITTED:** March 1, 2023

SUBMITTED BY: Michael Hornes, Assistant City Manager

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area D - Downtown Revitalization

Guiding Principle N/A

Action Item D1.12 - Expand/Grow Christmas light installation to the entire Downtown area and Louise Hays Park

SUMMARY STATEMENT:

Attached is the current funding agreement between the City of Kerrville, TX (City), the City of Kerrville Economic Improvement Corporation (EIC), and the Kerrville Christmas Lighting Corporation (KCLC), for electrical infrastructure improvements on Tranquility Island in the amount not to exceed \$100,000. The original scope of this project was to light approximately 105 Cypress Trees that border the river in this area, at a shared estimated cost of \$200,000. These improvements allow for additional trees to be lit with LED "up lights", in addition to ground pedestals and features. Phase 1 was completed for a total cost of \$155,727 which included engineering and construction. This completed approximately half of the project.

This project is consistent with K2050's action item to expand Christmas lighting in Louise Hays Park. The City has engaged an electrical engineer for design services, and as of the writing of this agenda bill, we have yet to receive their probably cost estimate for Phase 2. The request from KCLC is to utilize the remaining \$45,000, plus \$5,000 they have in their account and split the cost of the remainder between KCLC and the EIC.

RECOMMENDED ACTION:

Provide feedback and direct staff on recommendations for next steps.

ATTACHMENTS:

[*2021-41 EIC PFA Kerrville Christmas Lighting Corporation -Tranquility Island.pdf*](#)

PROJECT FUNDING AGREEMENT BETWEEN THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION; THE CITY OF KERRVILLE, TEXAS; AND KERRVILLE CHRISTMAS LIGHTING CORPORATION; FOR THE INSTALLATION OF ELECTRICAL INFRASTRUCTURE TO SERVE TRANQUILITY ISLAND WITHIN LOUISE HAYS PARK

THIS PROJECT FUNDING AGREEMENT (the "Agreement") is entered into this 31st day of March, 2021, by and between the **City of Kerrville, Texas Economic Improvement Corporation** ("EIC"), a Texas non-profit corporation established by City pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 and now codified in Chapters 501, 502, and 505 of the Texas Local Government Code; otherwise known as the Development Corporation Act of 1979 ("the Act"); the **City of Kerrville, Texas** ("City"), a Texas home-rule municipality; and **Kerrville Christmas Lighting Corporation** ("KCLC"), a Texas nonprofit corporation. EIC, City, and KCLC may be 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 definitions of "Projects", as that word is defined by Chapters 501 and 505 of the Act; and

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

land, buildings, *equipment, facilities, and improvements* found by the EIC to be required or suitable for use for professional and amateur sports, including children's sports, athletic, *entertainment, tourist, convention, and public park purposes and events*, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, *parks and park facilities, open space improvements*, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, *and other related improvements* that enhance any of the items described by Section 505.152 of the Act (emphasis supplied); and

WHEREAS, KCLC mission is to enhance Christmas lighting within the greater Kerrville area in order to promote Christmas spirit, tourism, and the quality of life; and

WHEREAS, after a successful fundraising and lighting project in 2020, KCLC's focus has shifted toward a project to improve the electrical infrastructure and lighting on Tranquility Island within the City's Louise Hays Park by flood-proofing the electrical grid as a means of supporting additional lighting and other uses in this area (the "Project"); and

WHEREAS, following completion of the Project, the City plans to oversee the installation of programmable floodlights on approximately 105 Cypress Trees that border the river in this area, and in doing so, foster the development of a gathering spot for Kerrville residents and tourists; and

WHEREAS, City has hired and is currently overseeing an engineering consultant for design services related to the Project; and

WHEREAS, the Project is estimated to cost \$200,000.00, with KCLC fundraising and contributing \$100,000.00 toward this cost; and

WHEREAS, KCLC seeks grant funding from the EIC in the amount of \$100,000.00, for the remaining portion of the cost for the Project; and

WHEREAS, once KCLC provides its portion of the Project's costs to the City, City will then proceed with the Project, to including bidding a construction contract; and

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

WHEREAS, more specifically, EIC finds that the Project includes facilities and improvements required or suitable for use for entertainment and tourist purposes and events and other related improvements that enhance any of the items described here; and

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

WHEREAS, on March 15, 2021, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, the EIC held a public hearing pursuant to Section 501.072 of the Act related to the proposed expenditure of 4B Revenues for the Project;

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

1. **“Project” Defined:** When used in this Agreement, the phrase “Project” means the project summary and approximate cost itemization, to date, as specified in **Exhibit A**, attached hereto, and included herein for all purposes. City will manage the funding it receives from KCLC and EIC and the bidding, management, and construction of the Project. Other than continuing to prepare design documents, City will not proceed with the Project until it receives KCLC’s full contribution for \$100,000.00 (“KCLC’s Contribution”). City shall not substantively alter the description of the Project in any respect without the prior approval of the EIC. In addition, City shall provide periodic reports to the EIC with respect to the Project, its design, timing, and costs. Where the bidding process determines that the cost of the Project will exceed \$200,000.00, the City is under no obligation to proceed but may choose to suspend its performance until discussing this issue with the parties and/or terminate this Agreement.
2. **Agreement to Fund Project:** EIC agrees to provide City an amount up to and not to exceed \$100,000.00 in 4B Revenues for the Project. EIC will provide the funding only after City confirms that it has received KCLC’s Contribution.
3. **Payments Authorized:** City is authorized to make payments for the Project directly from the General Capital Projects Fund.
4. **Eligible Costs:** Payments made by City from 4B Revenues as authorized by Section 3, above, are limited to the payment of “costs” as defined in the Act.
5. **City’s Receipt of KCLC’s Contribution:** Prior to bidding, City must receive KCLC’s Contribution. Should City fail to receive this amount on or before December 31, 2021, City shall report this event to EIC and the EIC and/or City may terminate this Agreement.
6. **Project’s Timeline:** City has begun work toward the design of the Project. Thereafter, construction activities will begin on or before March 15, 2022. Should such activities not occur by these dates, EIC may elect to terminate this Agreement.
7. **Conditions Under which City may Suspend Performance of its Obligations under this Agreement:** Under any of the following conditions, the City may, at its option, after at least fifteen (15) days written notice to EIC and KCLC, suspend further performance under this Agreement until such time as KCLC shall have cured the condition(s) and so notified the City, in writing, that the condition(s) have been cured:
 - a. KCLC becomes insolvent. “Insolvent” is defined to mean one either has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

b. The appointment of a receiver of KCLC, 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 KCLC as bankrupt.

d. The filing by KCLC 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.

e. Should any of these conditions not be cured by KCLC within ninety (90) days, KCLC will be considered to have breached this Agreement and City may, at its option, with written notice to KCLC, terminate this Agreement.

8. **KCLC's Representations, Warranties, and Performance:**

a. KCLC represents and warrants as of the date hereof:

(i) KCLC is a Texas nonprofit corporation existing in good standing and authorized to do business in the State of Texas;

(ii) Execution of this Agreement has been duly authorized by KCLC and this Agreement is not in contravention of KCLC's governing authority or any agreement or instrument to which KCLC is a party or by which it may be bound as of the date hereof;

(iii) No litigation or governmental proceeding is pending, or, to the knowledge of KCLC, threatened against or affecting KCLC, which may result in a material adverse change in KCLC's business; properties, to include KCLC's Property; or operations sufficient to jeopardize KCLC's legal existence;

(iv) No written application, written statement, or correspondence submitted by KCLC to EIC or the City in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KCLC, 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;

(v) Following completion of the Project and then the subsequent lighting, KCLC shall help promote the Project to the community; and

(vi) KCLC shall pay City \$100,000.00 on or before December 31, 2021, which City shall use for Project costs. Should the overall cost of the Project end up being less than \$200,000.00, City is not obligated to refund any part of this amount to KCLC.

b. Except as expressly set forth in this section, KCLC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

9. **Severability:** The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

10. **Amendment:** This Agreement may be amended only by written amendment signed by the parties.

11. **Notices:** All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

For EIC

President

City of Kerrville, Texas, Economic Improvement Corporation

City Hall, 701 Main Street

Kerrville, Texas 78028

Facsimile: (830) 792-3850

For City

City Manager, City of Kerrville

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

KCLC

George Eychner, President
KCLC
2108 Sidney Baker St.
Kerrville, Texas 78028

12. **Applicable Law:** This Agreement is governed by and construed in accordance with the laws of the State of Texas. The Agreement is entered into and fully performable within Kerr County, Texas. Accordingly, venue for any cause of action arising pursuant to this Agreement is proper only in Kerr County, Texas.
13. **Interpretation:** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.
14. **No Joint Venture:** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between any or all of the parties.
15. **Parties in Interest:** Nothing in this Agreement shall entitle any party other than EIC, City, or KCLC to any claim, cause of action, remedy, or right of any term of this Agreement.
16. **Survival of Terms:** All rights, duties, liabilities, and obligations accrued prior to termination will survive termination.
17. **Entire Agreement:** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

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

CITY OF KERRVILLE, TEXAS

By: Bill Blackburn
Bill Blackburn, Mayor

ATTEST:

Shelley McElhannon
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes
Michael C. Hayes, City Attorney

CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION

By: Greg Richards
Greg Richards, President

ATTEST:

Kesha Franchina
Kesha Franchina, Secretary for the EIC

KCLC

By: George Eychner
George Eychner, President