

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, JUNE 25, 2024, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

The Community Vision

Kerrville will be a vibrant, welcoming and inclusive community that:

- *Respects and protects the natural environment that surrounds it;*
- *Seeks to attract economic growth and development;*
- *Provides opportunities for prosperity, personal enrichment and intellectual growth for people of all ages; and*
- *Does so while preserving the small-town charm, heritage, arts and culture of the community.*



Kerrville2050



CITY COUNCIL MEETING AGENDA
JUNE 25, 2024 6:00 PM
CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



**Council Meeting Procedures, City Council and City Staff Safety,
And Citizen Participation Guidelines**

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-stream via the City's website (www.kerrvilletx.gov). City Council meetings are recorded and the recordings are posted on the City's website. Citizens wishing to speak during a meeting shall submit a completed "speaker request form" to the City Secretary before the item is introduced, but are encouraged to submit the form before the meeting begin. Each speaker is limited to four minutes.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property.

Thank you for your participation!

CALL TO ORDER: *By Mayor Joe Herring, Jr.*

INVOCATION AND PLEDGE OF ALLEGIANCE: *Led by Councilmember Place 4 Brenda Hughes.*

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. **PRESENTATIONS:**
 - 2.A Kerrville Kindness Award: Life jacket project, *presented by Mayor Herring.*
 - 2.B Proclamation: Peterson Health's 75th Anniversary, *presented by Mayor Herring.*
3. **VISITORS/CITIZENS FORUM:** *Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.*
4. **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:*
 - 4.A Non-Exclusive License Agreement between City of Kerrville and Kerrville Urban Trails System for hanging of string lighting over intersection of Hays and Jefferson Streets, *presented by M Hornes, Assistant City Manager.*
Attachment: [20240625_Contract KUTS for string lights.pdf](#)
 - 4.B City Council workshop minutes June 11, 2024. (S McElhannon, City Secretary)
Attachment: [20240625_Minutes CC workshop 6-11-24 4pm.pdf](#)

- 4.C City Council meeting minutes June 11, 2024. (S McElhannon, City Secretary)
Attachment: [20240625 Minutes CC meeting 6-11-24 6pm.pdf](#)
- 4.D City Council retreat minutes June 14, 2024. (S McElhannon, City Secretary)
Attachment: [20240625_Minutes CC retreat 6-14-24.pdf](#)
- 4.E City Council budget workshop minutes June 18, 2024. (S McElhannon, City Secretary)
Attachment: [20240625_Minutes CC budget workshop 6-18-24.pdf](#)

END OF CONSENT AGENDA.

5. ORDINANCE(S), FIRST READING:

- 5.A Ordinance No. 2024-15. An Ordinance amending Chapter 70 "Offenses and Miscellaneous Provisions", Article III "Electioneering at polling locations", of the City's Code of Ordinances to revise this article as to regulations applicable to electioneering and other conduct on city-owned or city-controlled property being used as a polling place; containing a savings and severability clause; providing for penalties not to exceed \$500.00; ordering publication; providing an effective date; and providing other matters related to the subject, *presented by M Hayes, City Attorney.*
Attachment: [20240625_Ord 2024-15 Electioneering -Polling locations.pdf](#)
- 5.B Ordinance No. 2024-16. An Ordinance amending Chapter 30 "Business", Article VI "Solicitations" of the City's Code of Ordinances to revise regulations applicable to peddlers, solicitors, and canvassers; containing a savings and severability clause; providing for penalties not to exceed \$500.00; ordering publication; providing and effective date; and providing other matters related to the subject, *presented by M Hayes, City Attorney.*
Attachment: [20240625_Ord 2024-16 Door-to-door solicitations.pdf](#)

6. CONSIDERATION AND POSSIBLE ACTION:

- 6.A Resolution No. 28-2024. A Resolution authorizing and approving creation of Kerrville Public Utility Board Public Facility Corporation and approving certificate of formation and bylaws therefor and appointing Directors thereof, *presented by D Rice, City Manager and Amy Dozier, KPUB Finance Director.*
Attachment: [20240625_Reso 28-2024 KPUB PFC.pdf](#)
- 6.B Resolution No. 26-2024. A Resolution for the release of an area from the City's Extraterritorial Jurisdiction, such property generally located south of Lower Turtle Creek Rd. and consisting of approximately 163.2 acres, *presented by D Paxton, Director of Development Services.*
Attachment: [20240625 Reso 26-2024 Release from ETJ 845 LowerTurtleCreek 214 acres.pdf](#)
- 6.C Resolution No. 27-2024. A Resolution for the release of an area from the City's Extraterritorial Jurisdiction, such property generally located south of Lower Turtle Creek Rd. and consisting of approximately 45.3 acres, *presented by D Paxton, Director of Development Services.*
Attachment: [20240625 Reso 27-2024 Release from ETJ 845 LowerTurtleCreek 558 acres.pdf](#)
- 6.D Resolution No. 29-2024. A Resolution for the release of an area from the City's Extraterritorial Jurisdiction, such property generally located adjacent to Cypress Creek Rd. and consisting of approximately 30.5 acres.
Attachment: [20240625 Reso 29-2024 Release from ETJ 1325 Cypress Creek Rd.pdf](#)
- 6.E Request for "major waiver" of requirements of Subdivision Code for property located adjacent to and between Highway 27 and Peterson Farm Road, such property consisting of approximately 15.24 acres, *presented by D Paxton, Director of Development Services.*
Attachment: [2024-029_Proposed Minor Plat.pdf](#)
- 6.F Brightly Software Inc. Agreement for work orders and asset management by various Public Works departments/divisions, not to exceed \$30,960.00, *presented by D Barrera, Director of Utilities.*
Attachment: [20240625_Agreement_BrightlySoftwareinc.pdf](#)

7. INFORMATION & DISCUSSION:

7.A Presentation regarding cost recovery billing for vehicle accidents and responses from the Kerrville Fire Department, *presented by Fire Chief E Maloney.*

Attachment: [20240625_Letter_Cost Recovery Services 6-20-24.pdf](#)

7.B Proposed Stormwater Drainage Fee, *presented by A Zanoni, Management Intern and S Barron, Executive Director Public Works & Engineering.*

Attachment: [20240625 Stormwater_Fee_Executive_Summary.pdf](#)

7.C Monthly Financial Report for month-ended May 31, 2024, *presented by J Behrens, Director of Finance.*

Attachment: [20240625_Presentation Finance.pdf](#)

8. **EXECUTIVE SESSION:** *City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above if meeting qualifications of the Texas Government Code, Chapter 551, including 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), 551.086 (certain Public Power Utilities: competitive matters), and 551.087 (deliberation regarding economic development negotiations).*

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

10. **ITEMS FOR FUTURE AGENDAS:** *City Council may suggest items or topics for future agendas.*

ADJOURN.



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

SUBJECT: Kerrville Kindness Award: Life jacket project, *presented by Mayor Herring.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Mayor Joe Herring, Jr.

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:

The City of Kerrville recognizes and honors individuals or entities for acts of kindness. Peterson Health's Emergency Department partnered with Gibson's Discount Center and the Salvation Army Kroc Center to expand Peterson's Save-A-Life, Give-A-Jacket Program, which distributes free life jackets to area children.

According to the CDC, drowning is the leading cause of death in children between one and four years old, and the Save-A-Life, Give-A-Jacket Program was started in an effort to prevent such tragedies.

To date, the program has distributed more than 400 life jackets to Kerrville youth.

RECOMMENDED ACTION:

Present award.



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

SUBJECT: Proclamation: Peterson Health's 75th Anniversary, *presented by Mayor Herring.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Mayor Joe Herring, Jr.

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:

Recognizing and honoring the 75th Anniversary to Peterson Health.

RECOMMENDED ACTION:

Present proclamation.



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

SUBJECT: Non-Exclusive License Agreement between City of Kerrville and Kerrville Urban Trails System for hanging of string lighting over intersection of Hays and Jefferson Streets, *presented by M Hornes, Assistant City Manager.*

AGENDA DATE OF: June 25, 2024 **DATE SUBMITTED:** June 13, 2024

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	C - Community / Neighborhood Character and Place Making
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute the agreement.

ATTACHMENTS:

[20240625_Contract KUTS for string lights.pdf](#)

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN
CITY OF KERRVILLE AND KERRVILLE URBAN TRAILS SYSTEM
FOR HANGING OF STRING LIGHTING
OVER INTERSECTION OF HAYS AND JEFFERSON STREETS**

This Non-Exclusive License Agreement ("License") is made and entered into by and between the **CITY OF KERRVILLE, TEXAS** ("City"), and **KERRVILLE URBAN TRAILS SYSTEM**, a nonprofit entity ("KUTS"), as follows:

1. **Grant of Non-Exclusive License.** In consideration of and subject to the terms, provisions, and covenants herein contained, City hereby grants to KUTS a license to use the aerial space over the intersection of Hays and Jefferson Streets, as indicated in **EXHIBIT A** and within the City of Kerrville, Kerr County, Texas ("Licensed Premises").

2. **Term.** The term of this License shall begin upon execution of this License by both parties and end September 30, 2029.

3. **Extensions.** Not later than thirty (30) days prior to the termination date of this License or any renewal thereof, KUTS may notify the City whether it wants to renew this License. Where such renewal notice is given, this License will automatically renew for a successive one-year period, such renewal not to exceed five such one-year renewals. If notification of renewal is not received by City, this License shall expire and terminate, as provided herein.

4. **Termination Election.** City and KUTS each shall have the right, either with or without cause and at any time, to terminate this License upon not less than sixty (60) days' prior written notice to the other party. Upon such termination, City and KUTS shall be relieved of all further obligations hereunder except only for obligations accruing prior to the effective date of termination and KUTS' obligation to remove the lights upon termination.

5. **Use.** KUTS's use of the Licensed Premises shall comply with the following:

- a. KUTS shall use the Licensed Premises for hanging a section of string lighting not to exceed 60 feet x 100 feet and for no other purpose;
- b. KUTS shall ensure that the string lighting is installed at least twenty (20) feet above the surface of the roadway to ensure that there is clearance for the passage of traffic under the string lighting.
- c. KUTS shall maintain the string lighting in adequate working order. If at any time, more than five percent (5%) of the total number of individual lights are inoperable, the string lighting will be deemed to be in inadequate working order.
- d. KUTS shall be responsible for the costs associated with the installation and removal of the string lights.
- e. KUTS shall be responsible for the costs of operating the string lights.

6. **No Warranties.** City makes no warranty or representation concerning the condition of the Licensed Premises or its suitability for any use. The Licensed Premises are accepted "AS IS." In addition, City shall not be liable or responsible to KUTS in any manner for any interruption as a result of casualty, acts of God, utility failure, or other occurrence.

7. **Access.** City shall maintain its access to and use of the Licensed Premises at all times for any purpose.

8. **Termination for Unlawful Use.** KUTS shall not use or occupy nor permit the Licensed Premises or any part thereof to be used or occupied for any unlawful purpose, or for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. KUTS shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal, or other agencies or bodies having any jurisdiction thereof relating to the use, condition, or occupancy of the Licensed Premises. Notwithstanding any other provision of this License, any violation of this provision, or a gross violation of any safety-related provision herein, shall entitle the City to terminate this License immediately.

9. **Termination for Condition of String Lights.** Should the string lights become inoperable, City shall notify KUTS of the inoperability by writing and provide KUTS 30 days to cure the inoperability. Should KUTS fail to cure the inoperability within 30 days of the date on the City's written notice, City shall be entitled to terminate this License immediately. If City provides KUTS with written notice that the License is terminated, KUTS shall be required to remove the string lights within 30 days.

10. **INDEMNIFICATION.** KUTS AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS OFFICIALS, EMPLOYEES, AND AGENTS HARMLESS OF AND FROM ALL CLAIMS, DEMANDS, LIABILITY, LOSS, COST AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COST OF LITIGATION) IN ANY MANNER ARISING OUT OF OR RESULTING FROM LIVE ACTION'S USE OF THE LICENSED PREMISES, INCLUDING BUT NOT LIMITED TO ANY AND ALL LIABILITY, LOSS, COST AND EXPENSE ARISING FROM CLAIMS OR DEMANDS BY KUTS OR ITS AGENTS AND/OR VOLUNTEERS.

11. **Assignment or Sublicense.** KUTS shall not assign or sublicense the Licensed Premises or any of its rights hereunder, in whole or in part, without the express prior written consent of the City Manager or designee.

12. **No Other Relationship.** This License constitutes the entire agreement between City and KUTS. Nothing contained herein shall be construed to create any principal/agent, employer/employee, joint venture, partnership, or other arrangement between City and KUTS.

13. **Default.** If either party hereto shall fail to perform any obligation of such party as herein set forth, and such failure shall continue for a period of (10) days after written notice of

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

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

CITY:

City of Kerrville, Texas
Attention: City Manager
701 Main Street
Kerrville, Texas 78028

COPY TO:

City of Kerrville, Texas
Attention: Senior Management Specialist
701 Main Street
Kerrville, Texas 78028

KUTS:

Kerrville Urban Trails System
Jeremy Walther
332 Clay Street
Kerrville, Texas 78028

15. City Responsibilities. City's point of contact to KUTS is the Senior Management Specialist. Where such person is unavailable, KUTS may contact Assistant City Manager Michael Hornes. City shall provide KUTS with contact information for both.

16. Warrant of Capacity. Each individual and entity executing this License hereby represents and warrants that he, she, or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she, or it is executing this License to the terms hereof.

17. Approval Authority. In this License, wherever an act requires approval by or consent of the City, such approval or consent may be obtained from the City Manager, or designee.

18. Governing Law and Enforcement. This License shall be governed by the laws of the State of Texas and shall be performable in Kerr County. Venue for any dispute arising between the parties to this License shall be in Kerr County, Texas

SIGNED and agreed by the authorized representatives of City and KUTS on the dates indicated below.

CITY OF KERRVILLE, TEXAS

KERRVILLE URBAN TRAILS SYSTEM

By: _____
Dalton Rice, City Manager

By: _____
Jeremy Walther, President


Date: _____

Date: _____

ATTEST:

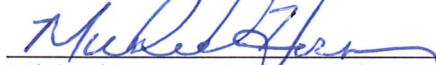
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:



William L. Tatsch, City Attorney

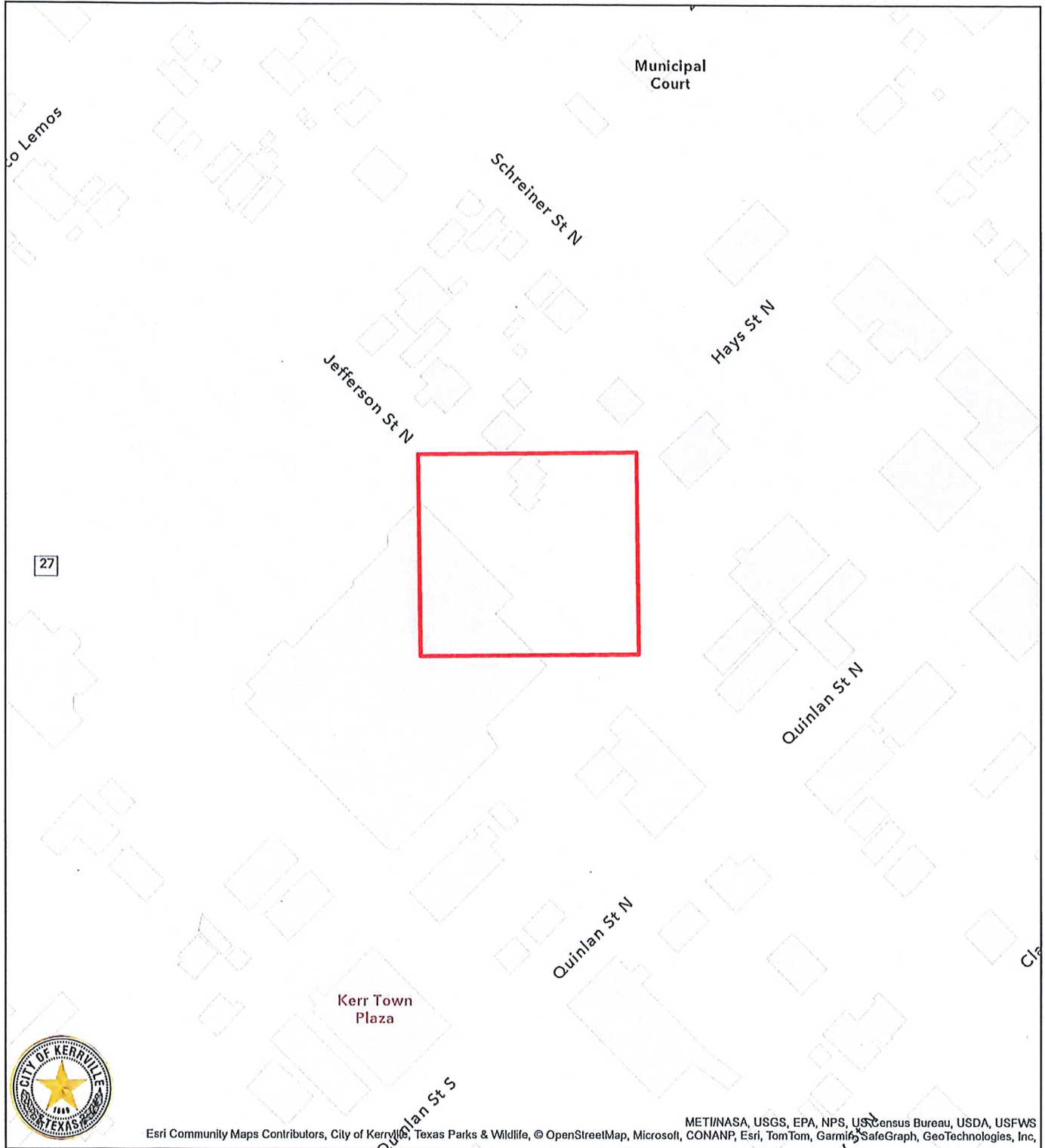
APPROVED AS TO CONTENT:



Michael Hornes, Assistant City Manager

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EXHIBIT A



 Intersection of Hays Street & Jefferson Street



06/07/2024 08:23 AM

joyoung

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



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

SUBJECT: City Council workshop minutes June 11, 2024. *(S McElhannon, City Secretary)*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Shelley McElhannon, 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:

City Council workshop minutes June 11, 2024 at 4:00 p.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240625_Minutes CC workshop 6-11-24 4pm.pdf](#)

**CITY COUNCIL WORKSHOP MINUTES
CITY HALL COUNCIL CHAMBERS**

**JUNE 11, 2024 4:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On June 11, 2024 at 4:00 p.m., the City Council workshop was called to order by Mayor Joe Herring, Jr. at City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Joe Herring, Jr., Mayor
Delayne Sigerman, Council Place 1
Jeff Harris, Council Place 2
Kent McKinney, Council Place 3
Brenda Hughes, Council Place 4/Mayor Pro Tem

COUNCILMEMBERS ABSENT:

None

CITY STAFF PRESENT:

Dalton Rice, City Manager	Stuart Barron, Executive Director
Mike Hayes, City Attorney	Julie Behrens, Director of Finance
Michael Hornes, Asst City Manager	Jacob Bogusch, Finance Compliance
Kim Meisner, Asst City Manager	Kyle Burow, Director of Engineering
Shelley McElhannon, City Secretary	Anello Zononi, Management Intern

VISITOR(S) PRESENT: No visitors

1. PUBLIC COMMENT: No speakers

2. CONSIDERATION AND POSSIBLE ACTION:

2A. Capital Improvement Project update.

Kyle Burow provided information and responded to questions.

2B. Introduction to Balancing Act, and online simulation for facilitating budget input.

Julie Behrens and Dalton Rice provided information and responded to questions.

Councilmember Delayne Sigerman made a motion to convene Executive Session under 551.071 (consultation with attorney) and 551.087 (deliberation regarding economic development negotiations), seconded by Councilmember Jeff Harris. The motion passed 5-0. At 4:36 p.m., the open workshop recessed and Council convened into closed Executive Session.

3. EXECUTIVE SESSION:

3A. Update regarding City's discussions with Headwater Groundwater Conservation District (55.071).

3B. Liberty in Action Network, Terri Hall, and Rachel Vickers, Plaintiffs v. City of Kerrville, Texas, Defendant, Civil Action No. 5:24-CV-00403, US court for the Western District of Texas, San Antonio Division. (551.071)

3A. Bluewood apartment project (551.087).

At 6:00 p.m., the closed Executive Session adjourned and open workshop reconvened. No action taken during Executive Session.

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY: None

ADJOURN. The workshop adjourned at 6:00 p.m.

APPROVED BY COUNCIL: _____ ATTEST:

Joe Herring, Jr., Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: City Council meeting minutes June 11, 2024. (*S McElhannon, City Secretary*)

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Shelley McElhannon, 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:

City Council meeting minutes June 11, 2024 at 6:00 p.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240625 Minutes CC meeting 6-11-24 6pm.pdf](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
JUNE 11, 2024 6:00 PM**

On June 11, 2024 at 6:00 p.m., Mayor Joe Herring, Jr. called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Councilmember Kent McKinney provided the invocation, and led the Pledge of Allegiance.

COUNCILMEMBERS PRESENT:

Joe Herring, Jr., Mayor
Delayne Sigerman, Councilmember Place 1
Jeff Harris, Councilmember Place 2
Kent McKinney, Councilmember Place 3
Brenda Hughes, Councilmember Place 4/Mayor Pro Tem

COUNCILMEMBER ABSENT:

None

CITY EXECUTIVE STAFF:

Dalton Rice, City Manager	Ashlea Boyle, Director of Parks & Recreation
Mike Hayes, City Attorney	Stuart Cunyus, Public Information Officer
Michael Hornes, Asst City Manager	Eric Maloney, Fire Chief
Kim Meisner, Asst City Manager	Chris McCall, Police Chief
Shelley McElhannon, City Secretary	Drew Paxton, Director of Planning
Julie Behrens, Director of Finance	Anello Zaroni, Management Intern

VISITORS PRESENT: A list of the citizen speakers present during the meeting is on file in the City Secretary's Office for the required retention period.
Amy Dozier, CFO Kerrville Public Utility Board

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Community announcements provided by Stuart Cunyus and Councilmember Brenda Hughes.

2. PRESENTATION(S):

2A. Proclamation recognizing June 2024 as Great Outdoors Month in Kerrville, Texas.

Mayor Herring recognized June 2024 as Great Outdoors month in Kerrville, Texas, received by Ashlea Boyle, Parks & Recreation personnel, and Parks and Records Advisory Board members.

2B. Commendation of Recognition: Texas Municipal Clerk Association – Office of Achievement of Excellence award.

Kim Meisner provided information regarding the Award. Mayor Herring honored the Kerrville City Secretary Office receiving the Office of Achievement of Excellence Award by the Texas Municipal Clerk Association (TMCA). The award was accepted by City Secretary Shelley McElhannon and Deputy City Secretary Kesha Franchina.

3. VISITORS FORUM:

The following person(s) spoke:

- Mr. Rock (speaker did not respond when called)
- Daniel Lowery

4. CONSENT AGENDA:

Councilmember Delayne Sigerman pulled item 4C. Councilmember McKinney made a motion to approve the consent agenda items 4A, 4B, 4D, and 4E, seconded by Councilmember Hughes. The motion passed 5-0.

4A. Resolution No. 22-2024. A Resolution authorizing the use of internal combustion engines on Nimitz Lake upstream of the City's impoundment dam for the Kerrville Triathlon, and the safety of competitors.

4B. General Contract – Small Project; Petrosswift, LLC/Kerrville Schreiner Park Water Line Replacement Project Phase 4, in the amount of \$76,900.

4D. City Council workshop minutes May 28, 2024.

4E. City Council meeting minutes for May 28, 2024.

END OF CONSENT AGENDA.

4C. Agreement between the City of Kerrville, Texas, and Arcadia Live, Inc. for use of Hotel Occupancy Tax Funds.

Ashlea Boyle presented information and responded to questions.

Councilmember Sigerman made a motion to approve item 4C, seconded by Councilmember Jeff Harris. The motion passed 5-0.

Mayor Herring announced regarding item 6C, the applicant has tabled the variance request and has withdrawn the item from the agenda. Mayor Herring explained that speakers who are signed up to speak about item 6C will not be heard tonight.

5. PUBLIC HEARINGS AND RESOLUTIONS:

5A. Resolution No. 23-2024. A Resolution granting a Conditional Use Permit to authorize an Automobile Service and Repair Shop, Minor, on the property located at 209 Sidney Baker S (HWY 16); the property located within a Light Commercial Zoning District (C-2); and making the permit subject to certain conditions and restrictions.

Shelley McElhannon read Resolution No. 23-2024 caption into record.

Anello Zanoni and Drew Paxton provided information and responded to questions.

Mayor Herring opened the public hearing at 6:20 p.m.

No person(s) spoke.

Mayor Herring closed the public hearing at 6:20 p.m.

Councilmember Hughes made a motion to approve Resolution No. 23-2024 with conditions, seconded by Councilmember Jeff Harris. The motion passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Interlocal Agreement for Firefighting and Emergency Medical Services between the City of Kerrville and Kerr County.

Chief Eric Maloney and Dalton Rice provided information and responded to questions.

Councilmember Hughes made a motion to authorize the City Manager to negotiate and finalize the Interlocal Agreement, seconded by Councilmember McKinney. The motion passed 5-0.

6B. Authorization to submit a funding application to the City of Kerrville, Texas, Economic Improvement Corporation for the development of Granger McDonald Park in an amount not to exceed \$2,200,000.

Michael Hornes provided information and responded to questions.

The following person(s) spoke:

- John Anderson
- Celeste Hamman
- Peter Lewis
- Lisa Nye-Sallidin
- Judy Eychner

Councilmember Sigerman made a motion to authorize to submit a funding application to the EIC for 2.2 million which includes the cost for the Engineering, if approved it will be presented at the June EIC meeting, seconded by Councilmember Hughes. The motion passed 5-0.

6C. Request for variance from distance requirement applicable to the sale of alcoholic beverages per Section 10-3, Code of Ordinances; for the property located at 305 Washington Street and otherwise known as the VK Garage Theater.

Two persons had signed up to speak on this item:

- Phil Jackson
- Will Lawrence

These persons were not called to speak as this item has been withdrawn from the agenda.

Mayor Herring reiterated item 6C has been tabled per request by the applicant.

7. INFORMATION & DISCUSSION:

7A. Proposed creation of a Public Facility Corporation for the Kerrville Public Utility Board.

Kerrville Public Utility Board CFO Amy Dozier provided information and responded to questions.

The following person(s) spoke:

- George Baroody

No action by City Council at this time. Next steps is taking this item to the Kerrville Public Utility Board of Directors for a vote, and if approved, presenting a Resolution to City Council at the June 25, 2024 meeting.

8. APPOINTMENT(S):

8A. Removal of member, and appointment of member to Main Street Advisory Board.

Councilmember Sigerman, who is an active member of the Main Street Advisory Board announced that she will step down as the board Chair but will continue on the board as Council liaison.

Councilmember Sigerman made a motion to remove Travis Lindner from the Main Street Advisory Board, and to appoint Dr. Bill Rector and Jimmy Mullins, seconded by Councilmember Hughes. The motion passed 5-0.

8B. Appointment(s) to the Recovery Community Coalition.

Councilmember Sigerman made a motion to appoint Brian Brannon and Tony Morales, seconded by Councilmember McKinney. The motion passed 5-0.

9. EXECUTIVE SESSION:

Item 9A was listed as an executive session item if needed, however executive session was not called nor convened.

9A. Proposed creation of a Public Facility Corporation for the Kerrville Public Utility Board (551.071).

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

11. **ITEM(S) FOR FUTURE AGENDAS:** None.

ADJOURN. The meeting adjourned at 7:08 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Joe Herring Jr., Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: City Council retreat minutes June 14, 2024. *(S McElhannon, City Secretary)*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 17, 2024

SUBMITTED BY: Shelley McElhannon, 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:

City Council retreat minutes June 14, 2024 at 8:30 a.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240625_Minutes CC retreat 6-14-24.pdf](#)

CITY COUNCIL ANNUAL RETREAT MINUTES

JUNE 14, 2024 8:00 AM

RICHTER TAVERN, 153 S. MAIN STREET, BOERNE, TEXAS

CALL TO ORDER: On June 14, 2024 at 8:30 a.m., the City Council retreat was called to order by Mayor Joe Herring, Jr. at the Richter Tavern, 153 S. Main Street, Boerne, Texas.

COUNCILMEMBERS PRESENT:

Joe Herring, Jr., Mayor
Delayne Sigerman, Councilmember Place 1
Jeff Harris, Councilmember Place 2
Kent McKinney, Councilmember Place 3
Brenda Hughes, Councilmember Place 4/Mayor Pro Tem

COUNCILMEMBER ABSENT:

None

CITY STAFF PRESENT:

Dalton Rice, City Manager	Stuart Cunyus, Public Info Officer
Michael Hornes, Assistant City Manager	Kelly Hagemeyer, Executive Assistant
Kim Meisner, Assistant City Manager	Yesenia Luna, Municipal Court Coordinator
Shelley McElhannon, City Secretary	Eric Maloney, Fire Chief
David Barrera, Director of Utilities	Chris McCall, Police Chief
Stuart Barron, Exec Dir PW & Eng	Drew Paxton, Dir Planning & Development
Julie Behrens, Director of Finance	Charvy Tork, Director of IT
Ashlea Boyle, Director of Parks & Rec	Anello Zanoni, Management Intern
Kyle Burow, Director of Engineering	

FACILITATOR: Alysia Cook, Opportunity Strategies, LLC

VISITORS PRESENT: None.

WORKSESSION (No action will be taken): The facilitated workshop was scheduled for the City Council and senior staff to discuss and develop governance policies and skills for the City Council. The Council discussed numerous broad topics such as public safety, infrastructure, development, community services, parks and recreation, water resources, public works, finance, Council priorities, policies, and procedures and other matters related to Council's desired direction and plans for the City, as well as general issues and matters related to the current and future needs and expectations for the City. The Council provided broad consensus on the mission, values, priorities, expectations, milestones, funding options and opportunities for the City however no final decision nor vote occurred. See attached agenda.

ADJOURN. The retreat adjourned at 5:00 p.m.

APPROVED BY COUNCIL: _____ ATTEST:

Joe Herring, Jr., Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: City Council budget workshop minutes June 18, 2024. (*S McElhannon, City Secretary*)

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Shelley McElhannon, 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:

City Council budget workshop minutes June 18, 2024 at 10:00 a.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240625_Minutes CC budget workshop 6-18-24.pdf](#)

**CITY COUNCIL MINUTES
WORKSHOP, COUNCIL CHAMBERS**

**KERRVILLE, TEXAS
JUNE 18, 2024 10:00 AM**

CALL TO ORDER: June 18, 2024 at 10:02 a.m., the Kerrville City Council workshop was called to order by Mayor Joe Herring, Jr. in the City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Joe Herring, Jr. Mayor
Jeff Harris Place 2
Kent McKinney Place 3
Brenda Hughes Mayor Pro Tem, Place 4

COUNCILMEMBER ABSENT:

Delayne Sigerman Place 1

CITY STAFF PRESENT:

Dalton Rice	City Manager	Chris Clark, Asst Director Utilities
Mike Hayes	City Attorney	Maya Johnson, Human Resource Manager
Michael Hornes	Asst City Manager	Yesenia Luna, Municipal Court Coordinator
Kim Meismer	Asst City Manager	Eric Maloney, Fire Chief
Shelley McElhannon	City Secretary	Chris McCall, Chief of Police
David Barrera	Director of Utilities	Klarissa Nava, Finance Intern
Stuart Barron	Exec Dir PW & Eng	Drew Paxton, Dir Planning & Dev Srvs
Julie Behrens	Director Finance	Trina Rodriguez, Asst Director Finance
Jacob Bogusch	Finance Compliance	Charvy Tork, Director IT
Ashlea Boyle	Director Parks & Rec	Anello Zanoni, Management Intern
Danielle Brigati	Director Library	

VISITORS PRESENT: None

1. PUBLIC COMMENTS: None

2. CONSIDERATION AND POSSIBLE ACTION:

2.A. Fiscal Year 2025 Budget (General Fund).

Dalton Rice introduced the item. Dalton Rice, Julie Behrens, David Barrera, Michael Hornes, Chief Eric Maloney, and Trina Rodriguez presented information and responded to questions by City Council.

ADJOURN: The workshop adjourned at 11:38 a.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Joe Herring, Jr., Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: Ordinance No. 2024-15. An Ordinance amending Chapter 70 "Offenses and Miscellaneous Provisions", Article III "Electioneering at polling locations", of the City's Code of Ordinances to revise this article as to regulations applicable to electioneering and other conduct on city-owned or city-controlled property being used as a polling place; containing a savings and severability clause; providing for penalties not to exceed \$500.00; ordering publication; providing an effective date; and providing other matters related to the subject, *presented by M Hayes, City Attorney.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 19, 2024

SUBMITTED BY: Mike Hayes, City Attorney

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:

Upon review of the City's existing regulations, the City Attorney has revised Ch. 70, Art. III "Electioneering at Polling Locations" and submitted a proposed ordinance with amendments for Council's review. The City Attorney will review the amendments with Council during the meeting.

RECOMMENDED ACTION:

Approve Ordinance No. 2024-15 on first reading.

ATTACHMENTS:

[20240625_Ord 2024-15 Electioneering -Polling locations.pdf](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2024-15**

AN ORDINANCE AMENDING CHAPTER 70 “OFFENSES AND MISCELLANEOUS PROVISIONS”, ARTICLE III “ELECTIONEERING AT POLLING LOCATIONS”, OF THE CITY’S CODE OF ORDINANCES TO REVISE THIS ARTICLE AS TO REGULATIONS APPLICABLE TO ELECTIONEERING AND OTHER CONDUCT ON CITY-OWNED OR CITY-CONTROLLED PROPERTY BEING USED AS A POLLING PLACE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES NOT TO EXCEED \$500.00; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, City Council seeks to provide for the orderly use of City property and other property where City elections may be held; and

WHEREAS, Chapter 61 of the Texas Election Code (the “Code”) provides regulations as to the conduct of elections, to include Section 61.003, which makes it unlawful for any person to loiter or to electioneer within 100 feet of an outside door through which a voter may enter the building in which a polling place is located; and

WHEREAS, Section 61.003 of the Code states that an entity that owns or controls a public building being used as a polling place may not, at any time during the voting period, prohibit electioneering on the building’s premises outside of a 100 foot buffer zone surrounding an outside door through which a voter may enter the building being used as a polling place, but the entity that owns or controls the public building being used as a polling place may enact reasonable regulations concerning the time, place, and manner of such activities; and

WHEREAS, Section 61.003 of the Code defines “electioneering” to include the posting, use, or distribution of political signs or literature; and

WHEREAS, Section 61.003 of the Code defines “voting period” to mean the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later; and

WHEREAS, the City, in conjunction with the election services that it receives pursuant to a contract with Tax Assessor/Collector with Kerr County, uses the Kathleen C. Cailloux City Center for the Performing Arts (“Auditorium”) as its polling place for most City elections; and

WHEREAS, the City uses or allows uses of the Auditorium for other purposes for which the City must maintain and ensure adequate and safe parking and access for all users; and

WHEREAS, except during the voting period as defined by the Code, the City limits the use of the Auditorium parking lot to parking for patrons attending events at the Auditorium, participants in events at the Auditorium, and individuals working at or within the Auditorium; and

WHEREAS, except during the voting period as defined by the Code, the City prohibits members of the public from loitering, picnicking, carrying signs, posting signs, or installing signs on or in the greenspace between the Auditorium and Jefferson Street; and

WHEREAS, the City prohibits members of the public from loitering, carrying signs, posting signs, or installing signs within the medians and islands within the Auditorium parking lot, many of which contain trees and/or other landscaping; and

WHEREAS, the City prohibits members of the public from obstructing access to the Auditorium parking lot; and

WHEREAS, the City's sign ordinance (Ch. 92, City Code) generally prohibits members of the public from installing signs on City property or above any City property, including public rights-of-way, and provides restrictions on sign heights and locations to preserve sight lines and to protect access to sidewalks, recreational trails, streets, drives, and parking areas; and

WHEREAS, City Council recognizes that the right to vote is at the heart of our democracy; and

WHEREAS, Section 43.034 of the Code requires polling places to be accessible to and usable by the elderly and persons with physical disabilities; and

WHEREAS, the City's residents include a significant number of retirees, and the median voter age was 70 years old for the elections held during the Spring of 2024; and

WHEREAS, Section 62.0115 of the Code recognizes that voters have the right to vote in secret and free from intimidation; and

WHEREAS, City Council seeks to secure its citizens' right to vote in an environment free from intimidation, harassment, confusion, and obstruction; and

WHEREAS, City Council recognizes that the right to engage in political discourse is also a fundamental constitutional right; and

WHEREAS, City Council seeks to accommodate both the right to engage in political discourse and the right to vote in an environment free from intimidation, harassment, confusion, and obstruction with regulations that balance these rights and provide clear guidance for compliance and where necessary, enforcement; and

WHEREAS, prior to the elections held during the Spring of 2024, City personnel received multiple complaints from citizens about experiencing intimidation, harassment, and difficulty getting from their vehicles to the polling place; and

WHEREAS, prior to the elections held during the Spring of 2024, City personnel received reports of citizens deciding not to vote due to concerns about intimidation, harassment, and obstruction at the polling place; and

WHEREAS, City personnel received several compliments from voters who participated in the elections held during the Spring of 2024 for having the ability to park in such a way that they could enter the polling place without being bothered or even accosted by campaign supporters in the parking lot; and

WHEREAS, in order to operate the Auditorium in a safe and effective manner and to further the general health, safety, and welfare of the community, City Council finds that signs and literature brought by members of the public should not be present on the grounds of the Auditorium outside of the time for voting except for a limited period to put up and remove the signs and that the signs should not be attached to improvements and landscaping; and

WHEREAS, City Council also believes that signs brought by members of the public onto the grounds of the Auditorium when it is being used as a polling place should be set back from the public roadway in order not to impact traffic safety or voter safety; and

WHEREAS, City Council finds it to be in the best interest of the health, safety, morals, and general welfare of the City of Kerrville, Texas, to amend the City's electioneering regulations to address concerns that may result from election activities conducted on public property, including interference with voter access, traffic safety, visual clutter, and property damage;

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

SECTION ONE. Chapter 70 “Offenses and Miscellaneous Provisions”, Article III “Electioneering at Polling Locations” is amended to provide in its entirety as follows:

“ARTICLE III. - ELECTIONEERING AND OTHER CONDUCT AT POLLING LOCATIONS

Sec. 70-41. - Purpose.

The purpose of this article is to provide reasonable time, place, and manner regulations for electioneering on the grounds of City-owned or City-controlled public property when such property is used as an election polling place and to provide reasonable regulations for conduct on City property surrounding a public building being used as a polling place during an election. These regulations are intended to: preserve citizens’ ability to engage in political discourse; prevent interference with citizens’ right to vote; protect voters from intimidation, harassment, and obstruction; preserve peace and order around polling places located on public property; encourage citizens to vote; mitigate safety concerns; prevent damage to public property; and ensure that such property is sufficiently available for patrons who use the facilities other than for election purposes.

Sec. 70-42. - Definitions.

The following words, terms, and phrases, when used in this article, have the meanings ascribed to them in this section:

Kathleen C. Cailloux City Center for the Performing Arts (“auditorium”) means the building and its grounds, including parking areas, owned by the City and at times used as a polling place for the City’s and other elections and located at 910 Main Street, Kerrville, Texas.

Electioneering means the posting, use, or distribution of political signs or literature.

Polling place means a City-owned or City-controlled public building that is being used for voting during an election.

Voting period means the period each day beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.

Sec. 70-43. - Regulations and exceptions.

- (a) The following regulations apply to electioneering and other conduct on the grounds of a City-owned or City-controlled public building being used as a polling place during an election:
- (1) It is prohibited for a member of the public to leave any sign or literature/written materials for distribution on the grounds of a City-owned or City-controlled public building being used as a polling place other than during the voting period each day and for 30 minutes before and after the voting period each day.
 - (2) It is prohibited for a person to engage in electioneering or to loiter or congregate in driveways leading into the parking lot, medians within the parking lot, driving or walking lanes within the parking lot, or within parking spaces on the grounds of a City-owned or City-controlled public building being used as a polling place. This restriction does not apply to areas within the parking lot specifically designated for electioneering or to electioneering signs that are attached to vehicles that are lawfully parked on the grounds of a City-owned or City-controlled public building being used as a polling place. For elections held at the Auditorium, electioneering within the parking lot may only occur in the designated area(s) shown on the map below and may only occur during the voting period each day and for 30 minutes before and after the voting period each day. For elections held at the Auditorium, electioneering may take place on the sidewalks beyond the 100 foot buffer zone required by section 61.003 of the Code. Additionally, for elections held at the Auditorium, electioneering may take place on the greenspace between the Auditorium and Jefferson Street during the voting period each day and for 30 minutes before and after the voting period each day. For elections held at the Auditorium, members of the public may set up shade structures only within the greenspace between the Auditorium and Jefferson Street beginning 30 minutes before and continuing until 30 minutes after the voting period each day, provided that they do not install such structures using posts in ways that may damage any underground utility or irrigation lines. The City Manager is authorized to identify spaces within the areas specified for electioneering and assign these to persons based upon a rotating lottery system that changes daily. Shade structures are not permitted anywhere within the Auditorium parking lot. For elections held at the Auditorium, up to 50 parking spaces will be reserved for use by voters who will not remain on the grounds for more than 15 minutes after they have voted. The map below shows 49 parking spaces that will be reserved for such voters when the Auditorium is used as a polling place unless circumstances prevent these parking spaces from being used during any voting period. Should conditions at the Auditorium prevent the use of

this area, such as construction activities, the City Manager is authorized to designate a comparable area. Upon making this decision, the City Manager shall notify the City Council and candidates. In addition, if a different public building belonging to the City is used as a polling place, and for which the City controls the election, the City Manager shall communicate to the candidates and the public the boundaries of the area(s) where electioneering is permitted on the grounds of the public building as well as the parking spaces reserved for use by voters who will not remain on the grounds for more than 15 minutes after they have voted. The City Manager will physically mark the boundaries of these areas and will clearly mark the parking spaces reserved for voters who will not remain on the grounds more than 15 minutes after they have voted.

- (3) It is prohibited for a person to disrupt, or attempt to disrupt, the voting process by accosting, harassing, obstructing, or intimidating any person traveling to or from the building being used as the polling place.
- (4) It is prohibited for a member of the public to attach, place, or otherwise affix any sign, literature, or written material to any building, tree, shrub, pole, or other improvement on the grounds of a City-owned or City-controlled public building being used as a polling place. In addition, it is prohibited for a member of the public to install or place a sign, table, chair, shade structure, or any other device using posts, in ways that may damage underground utility or irrigation lines on the grounds of a City-owned or City-controlled public building being used as a polling place. "Posts" include wooden, metal, rebar, or plastic stakes.
- (5) It is prohibited for a member of the public to hold or place a sign in a way that obstructs the free passage of vehicles or persons or interferes with traffic sight lines or visibility on the grounds of a City-owned or City-controlled public building being used as a polling place.
- (6) It is prohibited for a member of the public, within 1,000 feet of a building in which a polling place is located, to operate a sound amplification device or a vehicle with a loudspeaker while the device or loudspeaker is being used.
- (7) The City Manager or designee may, without notice, remove and provide for temporary storage of sign(s) which violates a provision of this Article. Thereafter, the City Manager or designee shall attempt to contact the sign owner and arrange a time during normal work hours for the owner or representative to pick-up the sign. If the owner fails to pick up the sign(s) within five business days, the City shall dispose of the signs.

- (8) Except as provided in this Article, members of the public are prohibited from engaging in electioneering, loitering, congregating, setting up shade structures, and installing signs on the grounds of the Auditorium or the grounds of any other City-owned building which is used as a polling place.
- (b) The regulations set forth in (a) above do not apply to any City authorized signs, materials, or other messages on property the City owns or controls.”

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

SECTION THREE. The provisions of this Ordinance repeal and replace all previous ordinances concerning the subject matter provided herein, to include Ordinance No. 2023-20 and Ordinance No. 2014-02.

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

SECTION FIVE. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-8, or its successor section, of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding FIVE HUNDRED DOLLARS (\$500.00).

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

SECTION SEVEN. This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____ A.D., 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this
the ____ day of _____, A.D., 2023.

Joe Herring Jr., Mayor

APPROVED AS TO FORM:

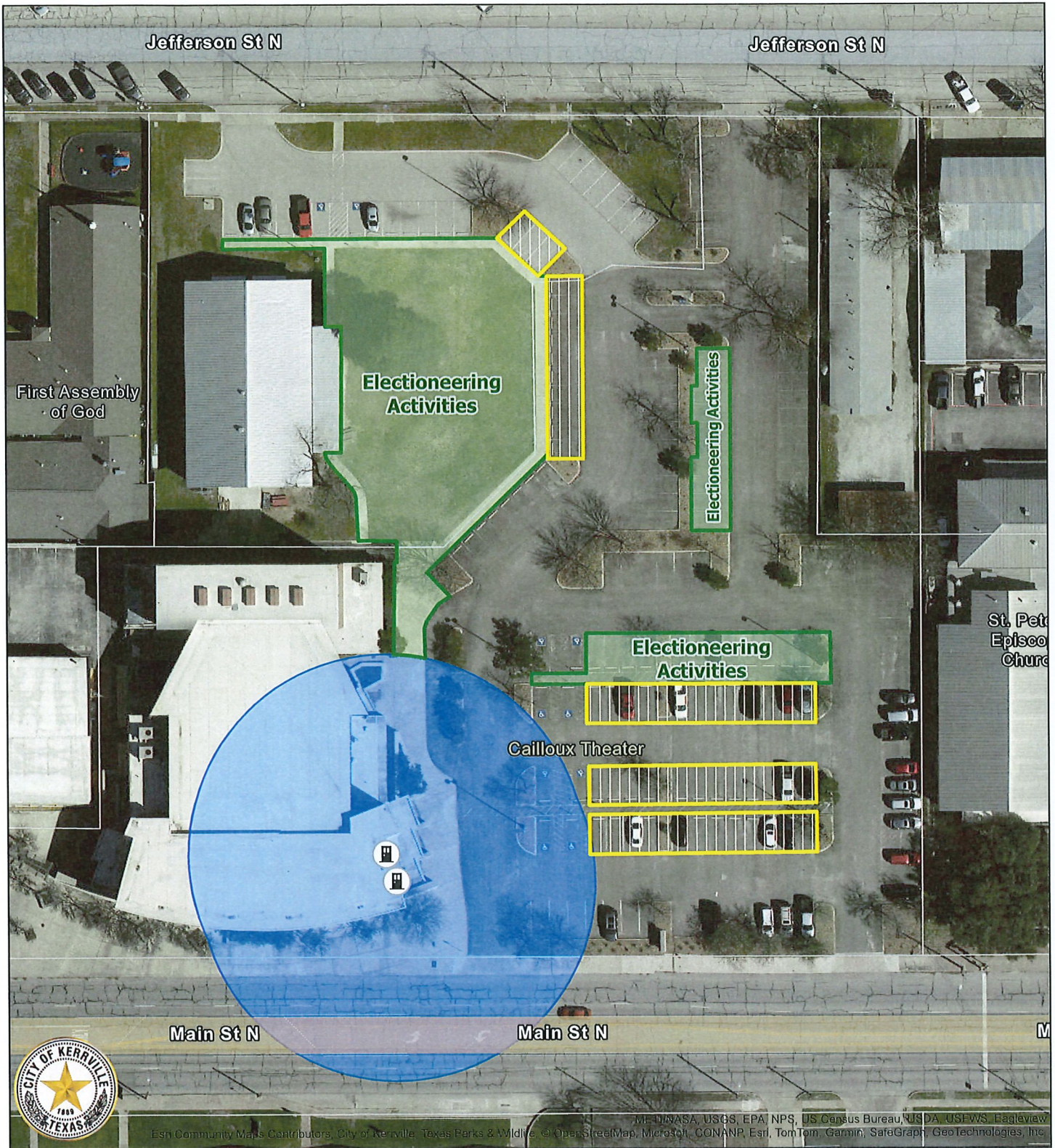
ATTEST:



Michael C. Hayes, City Attorney

Shelley McElhannon, City Secretary

EXHIBIT A



-  Theater Front Door
-  Electioneering Activities
-  100-ft Buffer
-  Voter Parking
-  Tax Parcel



0 50 100
US Feet

06/20/2024 12:35 PM

joyoung

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



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

SUBJECT: Ordinance No. 2024-16. An Ordinance amending Chapter 30 "Business", Article VI "Solicitations" of the City's Code of Ordinances to revise regulations applicable to peddlers, solicitors, and canvassers; containing a savings and severability clause; providing for penalties not to exceed \$500.00; ordering publication; providing and effective date; and providing other matters related to the subject, *presented by M Hayes, City Attorney.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 19, 2024

SUBMITTED BY: Mike Hayes, City Attorney

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:

Upon review of the City's existing regulations, the City Attorney has revised Ch. 30, Art. VI "Solicitations" and submitted a proposed ordinance with amendments for Council's review. The City Attorney will review the amendments with Council during the meeting.

RECOMMENDED ACTION:

Approve Ordinance No. 2024-16 on first reading.

ATTACHMENTS:

[20240625_Ord 2024-16 Door-to-door solicitations.pdf](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2024-16**

AN ORDINANCE AMENDING CHAPTER 30 “BUSINESS”, ARTICLE VI “SOLICITATIONS” OF THE CITY’S CODE OF ORDINANCES TO REVISE REGULATIONS APPLICABLE TO PEDDLERS, SOLICITORS, AND CANVASSERS; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES NOT TO EXCEED \$500.00; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City of Kerrville, Texas (“City”) is a home-rule municipality possessing the full power of local self-government, pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code, as amended, and the City’s Charter; and

WHEREAS, regulations on peddlers and other solicitation activities in the City were adopted as early as 1968, and have since been amended and modified multiple times by the City Council as it deemed fit; and

WHEREAS, City residents expect their local government to assist them in preserving their privacy and avoiding petty annoyances that disrupt their quiet enjoyment of their homes; and

WHEREAS, other persons often desire to interrupt and intrude into the quiet enjoyment of a person’s home to solicit donations for causes believed to be worthy of support; to canvas for support for particular religious, ideological, or political causes; or for reasons for securing sales of products or services; and

WHEREAS, per the United States Census Bureau, 27% of the City’s population is aged 65 or over, while this same category for Texas is 13.4%; and

WHEREAS, pursuant to Section 215.075, Texas Local Government Code, City Council has the power and authority to license any lawful business or occupation; and

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference; and

WHEREAS, the United States Supreme Court consistently recognizes the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when the solicitation of money is involved; and

WHEREAS, a responsibility of government, to include local governments such as cities, is to balance these competing interests in a manner consistent with both the United States and Texas Constitutions, while protecting the privacy of its citizens and attempting to prevent crime and minimize fraud; and

WHEREAS, City Council finds that the regulation of solicitations and similar activities within the City is in the best interest of the health, safety, and welfare of the citizens of the City; and

WHEREAS, based upon the important public policies expressed above, City Council finds it to be in the public interest to amend Chapter 30 of the City's Code of Ordinances as provided herein;

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

SECTION ONE. The facts, recitations, and findings contained in the preamble of this Ordinance are found to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

SECTION TWO. Chapter 30 "Business", Article VI "Solicitations" of the Code of Ordinances of the City of Kerrville, Texas, is amended as provided for in **Exhibit A**, which is attached, included herein for all purposes, and hereby adopted.

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

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

SECTION FIVE. It is officially found and determined that the meetings at which this Ordinance is passed were open to the public as required and that public notice of the time, place, and purpose of said meetings was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

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

SECTION SEVEN. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7 of the Code of Ordinances of the City of Kerrville, Texas and specifically a fine not exceeding FIVE HUNDRED DOLLARS (\$500.00) per day for each violation hereof.

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

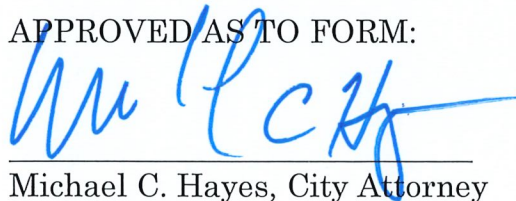
SECTION NINE. This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____ A.D., 2024.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, A.D., 2024.

Joe Herring Jr., Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

EXHIBIT A

“CHAPTER 30 BUSINESSES

ARTICLE VI. - SOLICITATIONS

Sec. 30-176. - Purpose.

The purpose of this article is to protect against criminal activity, including fraud and burglary, minimize the unwelcome disturbance of citizens and the disruption of privacy, and to otherwise preserve the public health, safety, and welfare by regulating, controlling, and/or licensing peddlers, solicitors, and canvassers.

Sec. 30-177. - City Manager.

The City Manager shall administer the provisions of this article, unless otherwise indicated.

Sec. 30-178. - Definitions.

Business day means any calendar day except Saturday, Sunday, or any City holiday.

Canvasser means a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident for the primary purpose of attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, or candidate, even if incidental to such purpose the canvasser accepts the donation for money for or against such cause. Distributing a handbill or flyer advertising an event or service is not considered a “canvasser” where there is no intent to make personal contact with the resident.

City Manager means the City Manager or designee.

Official means the City Manager, City’s Peace Officers, or Code Enforcement Officers.

Peddler means a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident for the primary purpose of attempting to sell goods, merchandise, wares, or other personal property of any nature or service.

Peddle and any form of the word means all activities ordinarily performed by a peddler.

Solicitation, soliciting, solicited, or any form of the word solicit means any activities ordinarily performed by a solicitor.

Solicitor means a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident for the primary purpose of taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for future delivery, or for services to be performed in the future. This definition includes a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident for the primary purpose of requesting a contribution of funds or anything of value, or sell goods or services for educational, political, charitable, religious, or other non-commercial purposes. Distributing a handbill or flyer advertising a service, requesting a contribution of funds or anything of value, advertising services for educational, political, charitable, religious, or other purposes, is not considered a "solicitor" where there is no intent to make personal contact with the resident.

Sec. 30-179. - Hours of Peddling, Soliciting, or Canvassing at Private Residences.

It is unlawful for any person, whether permitted or exempted from needing a permit, to peddle, solicit, or canvass at residences between the hours of 8:00 p.m. and 8:00 a.m. unless permission is otherwise posted by the private property owner or by someone with apparent authority to act for the owner. This section does not apply where the peddler, solicitor, or canvasser is on the property by express, prior invitation of the owner of the property or a person residing on the premises.

Sec. 30-180. - Entry upon Premises Unlawful.

It is unlawful for any person to peddle, solicit, or canvass upon any private property in the City where the owner, occupant, or person legally in charge of the premises has posted at the entry to the premises, or at an entry or entries to the principal building on the premises, and in a visible manner to persons entering the property, a sign bearing the words "No Solicitors", "No Trespassing", or words of similar intent.

Sec. 30-181. - Penalty for violation.

- (a) Any person, firm, partnership, corporation, association, agent, or employee thereof who violates any of the provisions of this article shall be

guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not less than \$50.00 nor more than \$500.00 for each offense. Each and every hour that such violation shall continue shall be deemed to constitute a separate offense.

- (b) The culpable mental state required by Section 6.02, Texas Penal Code, is hereby specifically negated. The offenses under this article shall be strict liability offenses.

Sec. 30-182. - Permit Requirements and Exemptions.

It is unlawful for any person to engage in peddling or solicitation activities within the City without first obtaining a permit issued by the City Manager. The following activities are exempted from the provisions of this section:

- (1) a canvasser;
- (2) a peddler or solicitor currently licensed by the state to engage in the activity;
- (3) mobile food establishments and temporary food establishments that are required to get a food establishment permit from the City to sell food; and
- (4) temporary sales sponsored by charitable, non-profit organizations including, Boy Scouts and Girl Scouts, service clubs, and school organizations.

Sec. 30-183. - Solicitation on public property.

- (a) It is unlawful for any person to peddle, hawk, sell, solicit, distribute, or take orders for any services, wares, merchandise, or goods, including magazines, encyclopedias, tools, photographs, flowers, candy, or plants on the streets, street rights-of-way, or medians of the City. This prohibition does not include sidewalks or similar areas within the right-of-way but for which vehicles do not travel or use. This prohibition shall apply to and include any institution or group organized for a political, religious, or charitable purpose, or individuals engaging in such commercial activities on behalf of any such institution or group.
- (b) No permit provided for herein shall be issued for selling in the above manner.
- (c) An exception applies to vendors authorized to sell within the City's parks and recreational areas pursuant to permission granted by the City

Manager, authorized by law, or where similarly authorized by other public entities.

Sec. 30-184. - Exhibition of Permit Required.

- (a) It is unlawful for any peddler or solicitor to fail to conspicuously display on or about their person the permit issued by the City.
- (b) "Conspicuously displayed" shall mean displayed to the front and visible to whomever the permit holder is conversing at all times they are engaged in a permitted activity.

Sec. 30-185. - Permits for Minor Peddlers and Solicitors.

- (a) It is unlawful for any person under the age of 18 to engage in peddling or soliciting except as provided in this section.
- (b) A permit shall be obtained by a sponsoring person, company, or organization for the conduct of any peddling or soliciting activities involving in whole or in part a sales force of one or more persons under the age of eighteen years of age.
- (c) The sponsor shall be responsible for supervising and controlling all persons peddling or soliciting under the sponsor's permit.
- (d) The sponsor shall provide to each individual peddling or soliciting under its authority a badge or other easily readable form of identification that identifies the name of the sponsor and the name of the individual. The sponsor shall require all individuals to wear the identification so that it is clearly visible at all times while peddling or soliciting.

Sec. 30-186. - Application.

Applicants for permits under this article shall file with the City Manager an application in writing on a form obtained from the City which provides information to include the following:

- (1) A valid Texas driver's license or state issued photo identification;
- (2) The number of the limited sales tax permit issued to the business by the state comptroller's office, if applicable;
- (3) A brief description of the activity or business to be conducted; and
- (4) The appropriate fee.

Sec. 30-187. - Investigation by the police department.

- (a) Upon the initial submission of permit application, the police department shall obtain the applicant's fingerprints and run a background check on the applicant. If the applicant returns to renew the application within the calendar year of the initial submission, the retaking of fingerprints will not be required as long as the individual can present valid identification that corresponds with the initial identification. A background check will be conducted each time the permit is renewed and fingerprints will be retaken during the first application process in each calendar year.
- (b) The police department is authorized to investigate the affairs of any person peddling or soliciting in violation of this article.
- (c) The police department may recommend denial of a permit to any applicant for good cause, which may include the following:
 - (1) being a fugitive from justice;
 - (2) providing false and/or misleading statements on the permit application; or
 - (3) conducting peddling or soliciting activities contrary to regulations contained herein.

Sec. 30-188. - Application fee.

The City shall charge a nonrefundable fee for the administration and investigation of the application. Such fee shall not be prorated and shall be paid at the time the application is made and shall not be returned to the applicant, regardless of whether a permit is issued. The fees and charges for permits furnished by the City are established by City Council and adopted as part of the City's annual fee schedule.

Sec. 30-189. - Exceptions to fee.

The following organizations are exempt from paying a permit fee; however, all peddlers and solicitors are required to comply with all other applicable provisions of this article unless otherwise exempted:

- (1) Any local church or other religious group, or to ministers or agents thereof soliciting funds for the support of such religious group;
- (2) Any established society, association, or corporation that is organized and operated exclusively for educational, philanthropic, benevolent,

fraternal, or charitable purposes, not operated for pecuniary profit, where no part of the net earnings inures to the benefit of any person, private shareholder, or individual, where the peddling or soliciting of such organization is:

- a. conducted among the members thereof by other members or officers thereof, voluntarily and without remuneration for the activity; or
 - b. in the form of collections or contributions at the regular exercises or services of any society, lodge, benevolent order, or fraternity or similar organization, or any branch thereof;
- (3) Sales of goods, wares, and merchandise donated by the owners thereof, the proceeds of which are to be used and applied to some charitable, religious, or philanthropic purposes; or
- (4) Sales of goods, wares, and merchandise by any bonafide charitable, religious, or philanthropic organization.

Sec. 30-190. - Issuance.

Upon presentation of an administratively complete application, the City shall issue a permit to the applicant within 10 business days unless grounds for denial exist under Section 30-194.

Sec. 30-191. - Contents.

- (a) Each permit issued under this article shall show the name of the permitted individual, business address, a description of the type of peddling or soliciting, product, or activity, the date of issuance, and the expiration date of such permit.
- (b) The City will number each permit and include the following language prominently displayed: *"The issuance of this Permit is not an endorsement by the City of Kerrville, or any of its officers or employees, and expires _____."*

Sec. 30-192. - Expiration.

All permits issued under the provisions of this article shall expire 90 days from the date of issuance.

Sec. 30-193. - Transfer.

No permit issued under the provisions of this article shall be transferred or assigned.

Sec. 30-194. - Denial.

The City Manager may deny issuing a permit to a person under this article for the following reasons:

- (1) Because of a person's conviction of a felony or misdemeanor if the crime directly relates to the conduct of a business or results from an assault against a person.
- (2) An investigation reveals that the applicant falsified information on the application.
- (3) The applicant is a registered sex offender.

Sec. 30-195. - Revocation.

(a) Permits issued under the provision of this article may be revoked for any of the following causes by any official other than the City Manager:

1. Fraud, misrepresentation, or false statement contained in the application for permit;
2. Fraud, misrepresentation, or false statement made in the course of carrying out business or other activities;
3. Any violation of this article;
4. Conviction of a misdemeanor or any felony if the crime directly relates to the conduct of business; or
5. Conducting the business of peddling or soliciting in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, and general welfare of the public.

(b) The official revoking the permit shall provide notice of the revocation both verbally and in writing and shall specify the basis of a revocation.

(c) When the peddler or solicitor receives notice that his/her permit has been revoked, said person shall immediately surrender the permit to the City.

Sec. 30-196. Appeals.

- (a) A permit holder may appeal the act of denial or revocation of any permit to the City Manager within 5 business days from the date of denial or revocation.
- (b) Such appeal shall be taken by filing with the City Manager a written statement setting forth fully the grounds for the appeal.
- (c) The City Manager shall issue a decision on the denial or revocation in writing within 5 business days of receipt of the appeal.
- (d) The revocation or denial is not stayed pending the City Manager's decision.
- (e) The decision and order of the City Manager on such appeal is final and conclusive."



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

SUBJECT: Resolution No. 28-2024. A Resolution authorizing and approving creation of Kerrville Public Utility Board Public Facility Corporation and approving certificate of formation and bylaws therefor and appointing Directors thereof, *presented by D Rice, City Manager and Amy Dozier, KPUB Finance Director.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Dalton Rice, 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?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

Memorandum to the Kerrville Public Utility Board of Directors and the Kerrville City Council, by CEO Mike Wittler:

Attached is a resolution recommending that the City of Kerrville create the Kerrville Public Utility Board Public Facility Corporation (KPUB PFC) for the purpose of supporting KPUB's potential effort to build and own a peaking generation resource. Exhibits for the resolution include a resolution for the City Council to pass along with a Certificate of Formation and Bylaws for the new KPUB PFC.

The recommendation to form the KPUB PFC is based on consultation with our bond counsel, Stephanie Leibe with Norton Rose Fulbright US LLP, and our financial advisor, Steven Adams with Specialized Public Finance LLC.

The KPUB PFC provides financing and procurement benefits. On the financing side, there is additional flexibility because a lien can be placed on the asset of a PFC, unlike regular municipal debt. Also, by having the PFC issue the debt, the debt covenants are placed on the PFC rather than on KPUB. That means we should be able to structure an agreement between KPUB and KPUB PFC to guarantee the debt service using the funds that KPUB would already need to spend to purchase power. However, there would not be additional requirements on KPUB around debt coverage ratios, reserve funds, etc. This may be

beneficial if KPUB needs to issue debt in the future. Also, it should mean that KPUB can use a rate setting process that is basically the same as what we are using now because it would be paying to purchase power rather than paying for debt. On the procurement side, KPUB already has broad procurement powers granted in Texas to municipal utilities with respect to contracting in general, but the PFC may add additional flexibility depending on how the generation resource is developed.

Staff is recommending approval of the attached Resolution 24-13 with Exhibits.

Please let me know if you have any questions or concerns.

Sincerely, Mike Wittler, CEO KPUB

RECOMMENDED ACTION:

Approve Resolution No. 28-2024.

ATTACHMENTS:

[*20240625_Reso 28-2024 KPUB PFC.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 28-2024**

**A RESOLUTION AUTHORIZING AND APPROVING CREATION
OF KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY
CORPORATION AND APPROVING CERTIFICATE OF
FORMATION AND BYLAWS THEREFOR AND APPOINTING
DIRECTORS THEREOF**

WHEREAS, the City of Kerrville, Texas (the "City"), wishes to aid the Kerrville Public Utility Board ("KPUB") obtain access to sources of electric power supplies at reasonable costs in order to support the operations of the City's electric, light and power system (the "System"); and

WHEREAS, KPUB has requested that the City create a public facility corporation in accordance with the Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended (the "Act"), to facilitate the financing, refinancing, or providing, owning and operating public facilities, as defined in the Act, including electric power supply facilities to be devoted to public use by KPUB as part of the System; and

WHEREAS, KPUB expects that it may benefit the System for such public facility corporation, or KPUB acting on behalf of such public facility corporation, to enter into, from time to time, one or more agreements regarding the sale of power generated by electric power supply facilities owned by such public facility corporation, including, without limitation, agreements with other municipal corporations, political subdivisions, or state agencies; and

WHEREAS, pursuant to the Act, such public facility corporation shall have the rights and powers necessary or convenient to accomplish such public facility corporation's purposes, including all those powers set forth in the Act; and

WHEREAS, the KPUB trustees, the City Manager, and the Chief Executive Officer of KPUB will be appointed as directors of the public facility corporation and will manage the public facility corporation to ensure that it can construct, finance, refinance, provide, and operate electric power supply projects for the benefit of the System, provided, however, the City Manager and the Chief Executive Officer of KPUB shall be non-voting members of the public facility corporation; and

WHEREAS, to such ends the City Council of the City has received and reviewed a proposed certificate of formation and bylaws for an additional non-member, non-stock, non-profit public facility corporation proposed to be created for the purpose of financing and acquiring power supply facilities for the benefit of the System as described above; and

WHEREAS, it is in the public interest and to the benefit of its residents and the citizens of the State of Texas that a corporation be created under the Act to finance, refinance, or provide the costs of public facilities, as defined in the Act, including electric power supply facilities to be devoted to public use by KPUB as part of the System;

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

SECTION ONE. Authorization. The City Council authorizes and approves creation of a public facility corporation under the Act to act on behalf of the City.

SECTION TWO. Certificate of Formation; Bylaws. The City Council approves the proposed certificate of formation for such corporation attached hereto as **Exhibit A** and the proposed bylaws for such corporation attached hereto as **Exhibit B**.

SECTION THREE. Directors. The City Council appoints the persons specified as initial directors in such certificate of formation as the initial directors of such corporation for the respective terms specified therein.

SECTION FOUR. Authority. The City Council authorizes such corporation to act on behalf of the City to further the public purpose set forth in the certificate of formation of such corporation, but such corporation shall have no authority to act as agent for the City or to bind or obligate the City in any manner.

SECTION FIVE. Further Action. The Mayor, the KPUB trustees, and other officers and employees of the City are authorized to take all actions necessary or advisable to effect creation and organization of such corporation.

SECTION SIX. Repealer. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION SEVEN. Separability. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remaining provisions and applications of this Resolution shall nevertheless be valid, and the City Council of the City hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION EIGHT. Open Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and that public notice of the time, place, and subject matter of the public

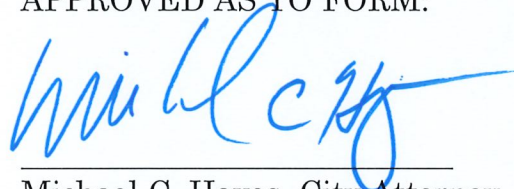
business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION NINE. Effective Date. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED ON this the ____ day of _____, A.D., 2024.

Joe Herring Jr., Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

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EXHIBIT A

Certificate of Formation

EXHIBIT B

Bylaws

EXHIBIT A

CERTIFICATE OF FORMATION

of

KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION

We, the undersigned natural persons, each of whom has power to contract for himself or herself, acting as incorporators and organizers of a public facility corporation under the Texas Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended (the "*Act*"), with the approval of the City Council of the City of Kerrville, Texas (the "*Sponsor*"), do hereby adopt the following certificate of formation for such corporation:

ARTICLE ONE NAME

The name of the corporation is the "Kerrville Public Utility Board Public Facility Corporation."

ARTICLE TWO CHARACTER

The corporation is a nonprofit public corporation.

ARTICLE THREE DURATION

The period of duration of the corporation is perpetual.

ARTICLE FOUR PURPOSE AND LIMITATIONS

(a) The corporation is organized to assist the Sponsor in financing, refinancing, and providing public facilities, as defined in the Act, including power supply projects to support the Kerrville Public Utility Board. For so long as any indebtedness of the corporation issued to acquire any such public facilities is outstanding, (1) the corporation shall provide such assistance solely by acquiring, constructing, rehabilitating, renovating, repairing, equipping, furnishing, placing into service, financing, refinancing, or providing, owning and operating public facilities, as defined in the Act, including electric power supply facilities to be devoted to public use by the Sponsor's electric, light and power system (the "*System*"), as managed by the Kerrville Public Utility Board ("*KPUB*"), (2) the corporation shall not incur, assume, or guarantee any obligations except indebtedness permitted by the indenture or other contracts executed in connection with such indebtedness, and (3) the corporation shall not consolidate or merge with or into any other entity or convey or transfer all or substantially all of its assets or properties unless the entity formed by or surviving such consolidation or merger or to which such assets or properties are conveyed or transferred (i) is organized pursuant to a charter, articles of incorporation, certificate of formation, trust instrument, bylaws, or other governing instrument that contains provisions substantially the

same as this sentence and (ii) has expressly assumed all of the obligations of the corporation secured by any such indenture or contract. The corporation is a public corporation, a constituted authority, and a public instrumentality within the meaning of the Act, the United States Treasury Department, the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Sections 103 and 141 of the Internal Revenue Code of 1986, as amended. The corporation is authorized to act on behalf of KPUB for the benefit of the System.

(b) The corporation is authorized to issue "bonds," as defined and permitted by the Act, provided, however, no such bonds, notes, interim certificates, or other evidence of indebtedness may be issued by the corporation unless such obligations are first approved by a resolution of the Sponsor and KPUB. Notwithstanding the foregoing, the corporation may enter into any contracts and agreements, and incur such other obligations, as permitted under the Act, without first receiving Sponsor and KPUB approval.

(c) In the fulfillment of its corporate purpose, the corporation shall have and may exercise the powers described in paragraph (a) of this Article, together with all of the other powers granted to the corporations that are incorporated under the Act and to the extent not in conflict with the Act. The corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State of Texas to nonprofit corporations under the Texas Nonprofit Corporation Law, Chapter 22 of the Texas Business Organizations Code, as amended, or any other applicable laws of the State.

(d) The corporation shall have the purposes and powers permitted by the Act, but the corporation does not have, and shall not exercise the powers of sovereignty of the City, including the power to tax, eminent domain, and police power. However, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code, as amended) the Corporation is a governmental unit and its actions are governmental functions.

(e) No bonds or other obligations, contracts, or agreements of the corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, other debt instruments, or other obligations or the lending of credit, or a grant of the public money or things of value, of, belonging to, or by the States of Texas, the City, KPUB, or any other political corporation, subdivision or agency of the States of Texas, or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, bonds, other debt instruments, and other obligations, contracts, and agreements shall be payable solely and exclusively from the revenues and funds received by the corporation from the sources authorized by the Act and from such other sources as may be otherwise lawfully available and belonging to the corporation from time to time.

(f) The Sponsor, in its sole discretion, may alter the corporation's structure, name, organization, programs, or activities, consistent with the Act and subject to limitations provided by law relating to the impairment of contracts entered into by the corporation.

ARTICLE FIVE MEMBERS

The corporation shall have no members and is a non-stock corporation.

**ARTICLE SIX
REGISTERED OFFICE AND AGENT**

The street address of the initial registered office of the corporation is 2250 Memorial Boulevard, Kerrville, Texas 78028. The name of the initial registered agent of the corporation at that address is Kerrville Public Utility Board.

**ARTICLE SEVEN
DIRECTORS**

The number of directors on the initial board of directors of the corporation shall be seven. The board shall consist entirely of the members of the KPUB Board of Trustees, the City Manager of the City of Kerrville, Texas, and the Chief Executive Officer of KPUB. The names and addresses of the initial board of directors are set forth below, and they shall serve for terms ending, as follows:

<u>Name</u>	<u>Address</u>	<u>Expiration of Term</u>
Larry Howard	2250 Memorial Blvd., Kerrville, TX 78028	April 21, 2025
Bill Thomas	2250 Memorial Blvd., Kerrville, TX 78028	April 21, 2026
Glenn Andrew	2250 Memorial Blvd., Kerrville, TX 78028	April 21, 2027
Rachel Johnston	2250 Memorial Blvd., Kerrville, TX 78028	April 21, 2029
Joe Herring, Jr.	701 Main Street, Kerrville, TX 78028	Concurrent with Mayoral Seat
Dalton Rice	701 Main Street, Kerrville, TX 78028	April 21, 2027
Michael Wittler	2250 Memorial Blvd., Kerrville, TX 78028	April 21, 2027

**ARTICLE EIGHT
INCORPORATORS/ORGANIZERS**

The name and street address of each incorporator and organizer of the corporation is:

<u>Name</u>	<u>Address</u>
Dalton Rice, City Manager	701 Main Street, Kerrville, TX 78028
Shelly McElhannon, City Secretary	701 Main Street, Kerrville, TX 78028

**ARTICLE NINE
SPONSOR**

The name of the corporation's sponsor, as defined in the Act, is the City of Kerrville, Texas. Its address is 701 Main Street, Kerrville, Texas 78028.

**ARTICLE TEN
SPONSOR APPROVAL**

The Sponsor has specifically authorized the corporation to act on its behalf to further the public purpose set forth in this certificate of formation and has approved this certificate of formation.

**ARTICLE ELEVEN
NOT FOR PROFIT**

No part of the corporation's net earnings shall inure to the benefit of, or be distributable to, any director, officer, or other private person, but the corporation may pay reasonable compensation for services rendered or property provided. No part of the corporation's net earnings remaining after payment of its bonds and expenses in accomplishing its public purpose may benefit any person other than the Sponsor.

No substantial part of the corporation's activities shall be carrying on propaganda or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

**ARTICLE TWELVE
INDEMNIFICATION**

The corporation shall indemnify each director, officer, employee, agent, and former director, officer, employee, or agent of the corporation for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with a claim asserted against the person, by action in court or other forum, because of the person's being or having been a director, officer, employee, or other agent, except that the corporation may not provide indemnity in a matter if the director, officer, employee, or agent is guilty of negligence or misconduct in relation to the matter. The corporation shall also indemnify each director as required by law, including Section 8.051 and 8.052, Texas Business Organizations Code.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, we have hereunto set our hands this _____, 2024.

[Incorporator]

[Incorporator]

THE STATE OF TEXAS §
 §
COUNTY OF KERR §

Before me, the undersigned authority, on this day personally appeared [Incorporator] and [Incorporator], whose names are subscribed to the foregoing instrument and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this the ____ day of _____, 2024

Name: _____
Notary Public in and for the State of Texas

[NOTARY]

EXHIBIT B

BYLAWS

of

KERRVILLE PUBLIC UTILITY BOARD PUBLIC FACILITY CORPORATION

ARTICLE 1 GENERAL

1.1. Name. The name of the corporation is Kerrville Public Utility Board Public Facility Corporation.

1.2. Sponsor. The corporation is created under the authority of the Texas Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended (the "*Act*"). The sponsor of the corporation, within the meaning of the Act, is the City of Kerrville, Texas (the "*Sponsor*").

1.3. Purpose. The corporation is organized pursuant to the Act to assist the Sponsor in financing, refinancing, or providing, owning and operating public facilities, as defined in the Act, including electric power supply facilities to be devoted to public use by the Sponsor's electric, light and power system, as managed by the Kerrville Public Utility Board ("*KPUB*"), and, from time to time, one or more other municipal corporations, political subdivisions, or state agencies with which the corporation or KPUB, acting on behalf of the corporation for the benefit of the Sponsor, may contract. For so long as any indebtedness of the corporation issued to acquire any such electric power supply facilities or interests is outstanding, the corporation shall provide such assistance solely by acquiring, owning, operating, maintaining, selling, transferring, and assigning electric power supply facilities and output therefrom and other interests therein, and similar property and engaging in activities that are incidental or convenient thereto. The corporation shall have and possess the broadest possible powers to enter into contracts and agreements to acquire, construct, rehabilitate, renovate, repair, equip, furnish, place into service, finance, refinance, own and operate electric power supply facilities, in accordance with existing law, including the Act. The corporation is a public corporation, a constituted authority, and a public instrumentality within the meaning of the Act, the United States Treasury Department, the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 and 141 of the Internal Revenue Code of 1986, as amended, and the Corporation is authorized to act on behalf of KPUB as provided in the Certificate of formation.

1.4. Nonprofit Corporation. No part of the corporation's net earnings shall inure to the benefit of, or be distributable to, any director, officer, or other private person, but the corporation may pay reasonable compensation for services rendered or property provided. No part of the net earnings of the corporation remaining after payment of its bonds and expenses in accomplishing its public purpose may benefit any person other than the Sponsor.

No substantial part of the corporation's activities shall be carrying on propaganda or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

1.5. Limitation on Action. For so long as any indebtedness of the corporation issued to acquire public facilities, as defined in the Act, is outstanding, (1) the corporation shall not incur, assume, or guarantee any obligations except indebtedness permitted by the indenture or other contracts executed in connection with such indebtedness, and (2) the corporation shall not consolidate or merge with or into any other entity or convey or transfer all or substantially all of its assets or properties unless the entity formed by or surviving such consolidation or merger or to which such assets or properties are conveyed or transferred (a) is organized pursuant to a charter, articles of incorporation, certificate of formation, trust instrument, bylaws, or other governing instrument that contains provisions substantially the same as this sentence and (b) has expressly assumed all of the obligations of the corporation secured by any such indenture or contract.

ARTICLE 2 BOARD OF DIRECTORS

2.1. Authority, Number, Term, Removal, and Vacancy.

(a) **Authority.** The corporation's affairs shall be governed by a board of directors.

(b) **Number.** The board of directors shall be comprised of seven directors.

(c) **Terms.** The seven directors of the board shall consist of the five members of the KPUB Board of Trustees, the City Manager of the City of Kerrville, Texas, and the Chief Executive Officer of KPUB; provided, however, the City Manager of the City of Kerrville, Texas and the Chief Executive Office of KPUB shall be non-voting members of the board of directors. The directors constituting the initial board shall be the directors named in the Certificate of Formation. Successor directors shall have the qualifications and shall be appointed to the terms set forth in the Certificate of Formation.

(d) **Removal.** Any director may be removed from office by the governing body of the Sponsor for cause or at any time without cause.

(e) **Vacancies.** Any seat on the board of directors shall be vacant when the incumbent of such seat has resigned, died, or been removed or the board of directors has determined that the incumbent has become so disabled that he or she will be incapable of participating in the governance of the corporation for a continuous period of six months or more.

2.2. Appointment. Each successor to a director whose term shall have expired or who shall have died, resigned, been removed, or become incapacitated, and each new director whose seat has been created by increase in the number of directors, shall be appointed by the governing body of the Sponsor. Any director whose term of office has expired may succeed himself or herself.

2.3. Meetings of Directors.

(a) **Place.** Meetings of the board of directors may be held at such place or places in the State of Texas as the board of directors may from time to time determine. In

the absence of any such determination, meetings of the board of directors shall be held at the City Hall of the Sponsor.

(b) **Regular Meetings.** Regular meetings of the board of directors shall be held annually or more frequently on such dates and at such times as the board of directors may determine. Regular meetings of the board of directors may be held without notice to directors. Subject to applicable law, any matter may be considered and acted upon at a regular meeting.

(c) **Special Meetings.** Special meetings of the board of directors shall be held whenever called by or at the request of the president of the corporation or any two directors. Except in the event of an emergency, at least three days notice of the date, time, and place of each special meeting of the board of directors shall be given to each director. At least two hours notice of each emergency meeting of the board of directors shall be given to each director. Unless otherwise indicated in the notice thereof and subject to applicable law, any matter may be considered and acted upon at a special meeting. At any meeting at which every director shall be present, any matter may be considered and acted upon consistent with applicable law.

(d) **Notices.** Whenever any notice is required to be given to a director, such notice shall be deemed to be given when deposited in a post office box in a sealed postpaid wrapper addressed to the director at his or her post office address as it appears on the books of the corporation or when successfully transmitted by facsimile to the facsimile number of the director as it appears on the books of the corporation or by email to the most recent email address provided to the secretary by the director. Notice may also be delivered in person or by delivery service or orally by telephone. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, *except* attendance of a director at a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice to directors or waiver of notice of such meeting, unless required by the board of directors. A waiver of notice in writing, signed by the person or persons entitled to the notice, whether before or after the time that would have been stated therein, shall be deemed equivalent to the giving of notice.

(e) **Open Meetings Act.** All meetings and deliberations of the board of directors shall be called, convened, held, and conducted, and notice thereof shall be given to the public, in accordance with Chapter 551, Texas Government Code, as amended.

2.4. Quorum. A majority of the number of directors fixed by these bylaws shall constitute a quorum to transact business at all meetings convened in accordance with these bylaws. The act of a majority of the directors present at a meeting at which a quorum is present shall constitute the act of the board of directors; provided, however, the City Manager of the City of Kerrville, Texas and the Chief Executive Office of KPUB shall not be entitled to vote on matters before the board of directors.

2.5. Conduct of Business.

(a) **Procedures.** At meetings of the board of directors, matters pertaining to the business of the corporation shall be considered in accordance with rules of procedure as from time to time prescribed by the board of directors.

(b) **Presiding Officer.** At all meetings of the board of directors, the president of the corporation shall preside. In the absence of the president, the vice president of the corporation shall preside. In the absence of both the president and vice president, a director selected by the board of directors shall preside.

(c) **Chair Votes.** The presiding officer or director shall be entitled to vote on all matters before the board of directors.

(d) **Minutes.** The secretary of the corporation shall act as secretary of all meetings of the board of directors. In the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting. The secretary of the meeting or his or her designee shall keep minutes of the meetings of the board of directors.

2.6. Committees of the Board of Directors.

(a) **Executive Committees.** By resolution adopted by a majority of the number of directors fixed by these bylaws, the board of directors may designate one or more committees consisting of two or more directors to exercise the authority of the board in the management of the corporation to the extent provided by the resolution.

(b) **Other Committees.** The president or the board of directors may appoint other committees without power to exercise the authority of the board of directors. Such committees need not be limited to directors.

(c) **Committee Meetings.** Each committee of the corporation shall keep minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the corporation. Any such meetings shall be called, convened, held, and conducted, and notice thereof shall be given to the public, in accordance with Chapter 551, Texas Government Code, as amended.

2.7. Compensation of Directors. Directors shall not receive any salary or compensation for their services as directors, but shall be reimbursed for actual expenses incurred by them in the performance of their duties as directors.

ARTICLE 3 OFFICERS

3.1. Offices Generally.

(a) **Offices.** The officers of the Corporation shall be a president, a vice president, a secretary, an executive director and such other officers as the board of directors may from time to time determine to be necessary. A person may simultaneously hold more

than one office, *except* that same person may not simultaneously hold the offices of president and secretary.

(b) **Term.** Each officer shall serve for a term of two years ending simultaneously with the term of one or more directors. At the expiration of their terms, officers may be reappointed or re-elected to the same or different offices.

(c) **Qualifications.** Only directors shall be eligible to serve as president or vice president. A member of the governing body or officer or employee of the Sponsor who serves as a director of the corporation may serve as an officer of the corporation.

(d) **Election.** All officers shall be elected by the board of directors.

(e) **Removal.** Officers may be removed from office at any time by the board of directors if it believes that the best interests of the corporation will be served by the removal.

3.2. President. The president shall be the chief executive officer of the corporation and, subject to the authority of the board of directors, shall have general charge of the properties and affairs of the corporation. The president shall see that all orders and resolutions of the board of directors are given effect. The president shall execute all legal documents and instruments in the name of the corporation when authorized to do so by the board of directors and shall perform such other duties as may be prescribed from time to time by the board of directors or these bylaws.

3.3. Vice President. The vice president shall have such powers and duties as may be prescribed from time to time by the board of directors and shall perform the duties of the president during the president's absence or disability. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or disability of the president at the time such action is taken.

3.4. Secretary. The secretary shall give and serve all notices required by these bylaws, may attest to the signature and office of other officers signing any legal document or instrument, shall have charge of the corporate books, records, legal documents, and instruments of the corporation, and shall discharge such other duties as shall be prescribed from time to time by the board of directors or these bylaws. The board of directors or the president may appoint one or more assistant secretaries to perform the duties of the secretary during the absence or disability of the secretary.

3.5. Executive Director. The executive director of the corporation shall provide administrative support services to the corporation and shall perform such other duties as shall be prescribed from time to time by the board of directors.

3.6. Compensation. Officers who are directors shall not receive any salary or compensation for their services, but shall be reimbursed for reasonable and necessary actual expenses incurred by them in the performance of their official duties as officers.

ARTICLE 4 MISCELLANEOUS

4.1. **Principal Office.** The principal office and registered office of the corporation shall be the office of KPUB, 2250 Memorial Blvd, Kerrville, Texas 78028.

4.2. **Fiscal Year.** The fiscal year of the corporation shall be each 12-month period ending September 30.

4.3. **Resignations.** Any director or officer may resign at any time by written notice to the president or the secretary of the corporation. The resignation shall take effect at the time specified therein or, if no time is specified, at the time of its receipt by the president or secretary. Acceptance of the resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

4.4. **Indemnification.** The corporation shall indemnify each director, officer, employee, agent, and former director, officer, employee, or agent of the corporation to the fullest extent provided in the certificate of formation. The corporation shall also indemnify each member of the governing body, officer, and employee of the Sponsor as if such person was a director, officer, or employee of the corporation, respectively, to the fullest extent provided in the certificate of formation.

4.5. **Dissolution.** In the event of the dissolution of the corporation, its assets shall be applied and distributed as follows:

(a) **Discharge of Liabilities.** All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, as set forth in the Texas Non-Profit Corporation Law, Chapters 20 and 22 (and the provisions of Title 1 applicable to non-profit corporations), Texas Business Organization Code, as amended.

(b) **Residual Interests.** Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with those requirements.

(c) **Distribution to Sponsor.** The remaining assets shall be distributed to the Sponsor.

ARTICLE 5 AMENDMENTS

5.1. **Amendments.** These bylaws may be amended by the board of directors with the approval of the governing body of the Sponsor.

Adopted: _____, 2024



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

SUBJECT: Resolution No. 26-2024. A Resolution for the release of an area from the City's Extraterritorial Jurisdiction, such property generally located south of Lower Turtle Creek Rd. and consisting of approximately 163.2 acres, *presented by D Paxton, Director of Development Services.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

The City of Kerrville has a one-mile extra-territorial jurisdiction (ETJ) which allows for limited regulation outside of the city limits. Through state law, the city may enforce subdivision regulations, sign codes, and annex land within the ETJ. In the last legislative session, SB 2038 amended Chapter 42 of the Texas Local Government Code and gave property owners the ability to petition a release of their property from the city's ETJ. Below are a few specifics that are notable to this petition: "the municipality shall immediately release the area from the municipality 's extraterritorial jurisdiction" 42.105(c) "If a municipality fails to take action to release the area ... by the later of the 45th day after the date the municipality receives the petition or the next meeting of the municipality 's governing body that occurs after the 30th day after the date the municipality receives the petition, the area ... released by operation of law" -

On July 18th, 2024 if no action is taken, the property will be released from the ETJ. Once released, "an area released from a municipality's ETJ ...may not be included in the ETJ or the corporate boundaries of a municipality, unless the owner or owners of the area subsequently request that the area be included in the municipality's ETJ or corporate boundaries." 105(e) This resolution will formally acknowledge the release of the property from the City's ETJ.

The request is to release an approximately 214-acre tract of land, however, only 163.2 acres is within the ETJ. See the attached map for more details.

RECOMMENDED ACTION:

Approve Resolution No. 26-2024.

ATTACHMENTS:

[*20240625 Reso 26-2024 Release from ETJ 845 LowerTurtleCreek 214 acres.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 26-2024**

**A RESOLUTION FOR THE RELEASE OF AN AREA FROM
THE CITY'S EXTRATERRITORIAL JURISDICTION,
SUCH PROPERTY GENERALLY LOCATED SOUTH OF
LOWER TURTLE CREAK RD. AND CONSISTING OF
APPROXIMATELY 163.2 ACRES**

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City of Kerrville, Texas ("City") has general authority to adopt an ordinance, resolution, or police regulation that is for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Senate Bill 2038 passed by the Texas State Legislature in the 88th Legislative Session, Texas Local Government Code Chapter 42 now allows for the release of an area from the City's extraterritorial jurisdiction ("ETJ") by petition of landowners or by election; and

WHEREAS, pursuant to Texas Local Government Code Section 42.102, a resident of an area or the owners of the majority in value of an area in the City's ETJ may file a petition with the City Secretary for the area to be released from the ETJ; and

WHEREAS, the City has received a petition for the release of a tract of land generally located south of Lower Turtle Creek Rd., which petition and property description is found at **Exhibit A** and references a tract that contains 214.23 acres; and

WHEREAS, of the 214.23 acres, only 163.2 acres, more or less, currently exists within the City's ETJ and will be subject of a release; and

WHEREAS, City Council finds the attached *Petition of Landowner for Release of Area from City of Kerrville Extraterritorial Jurisdiction* (the "Petition") is valid and this Resolution is necessary and proper for the good government, peace, or order of the City to release the Property from the City's ETJ;

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

SECTION ONE. The foregoing recitals are incorporated into this Resolution by reference as findings of fact.

SECTION TWO. The Petition is hereby considered verified, and after adoption of this Resolution, the property described in the Petition and which currently exists within the City's ETJ and consists of approximately 163.2 acres, shall be released from the City's ETJ.

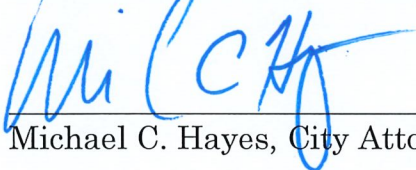
SECTION THREE. The City Secretary is directed to file a certified copy of this Resolution and an updated map of the City's ETJ boundary with the County Clerk of Kerr County, Texas.

SECTION FOUR. This Resolution shall take effect upon the date of final passage noted below.

PASSED AND APPROVED on this ____ day of _____, 2024, A.D.

Joe Herring Jr., Mayor

APPROVED AS TO FORM:



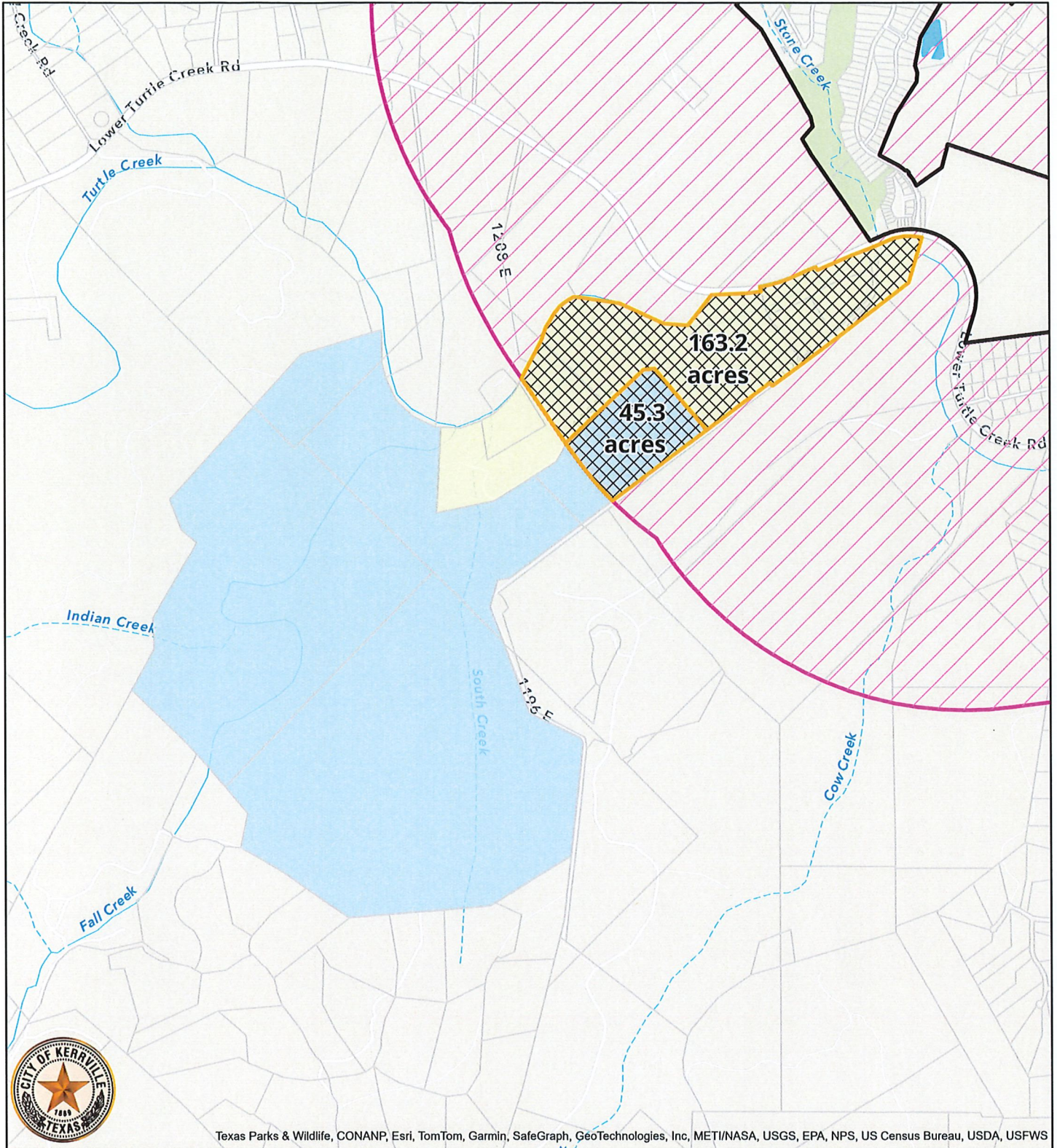
Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

ETJ Removal Request

845 Lower Turtle Creek Road



Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

- Kerrville City Limit
- Kerrville ETJ
- Tax Parcel
- Proposed ETJ Removal Area
- ETJ Removal Request 214-acres
- ETJ Removal Request 858-acres



0 1,000 2,000
US Feet

06/14/2024 04:27 PM

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

EXHIBIT:

A

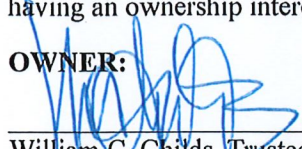
**PETITION OF LANDOWNER FOR RELEASE OF AREA FROM CITY OF KERRVILLE
EXTRATERRITORIAL JURISDICTION**

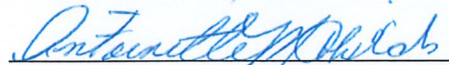
TO: THE MAYOR AND CITY COUNCIL MEMBERS OF THE CITY OF KERRVILLE, TEXAS:

I, William C. Childs, acting on behalf of Childs Family Trust, whose address is 845 Lower Turtle Creek Road, Kerrville, Texas 78028, the owner of the tract or parcel of land described in the deed attached hereto as Exhibit "A" for all purposes, containing 214.23 acres (the "Property"), hereby petition the City Council of the City of Kerrville, Texas, to release the Property from the extraterritorial jurisdiction of the City of Kerrville, Texas.

I certify that this petition is signed and duly acknowledged by each and every person, corporation, or entity having an ownership interest in said Property.

OWNER:


William C. Childs, Trustee of the Childs Family Trust

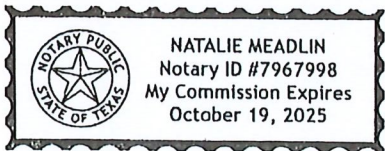

Antoinette M. Childs, Trustee of the Childs Family Trust


STATE OF TEXAS

§
§
§

COUNTY OF KENDALL

This instrument was acknowledged before me on June 3, 2024 by WILLIAM C. CHILDS as Grantor and as Trustee of the CHILDS FAMILY TRUST.



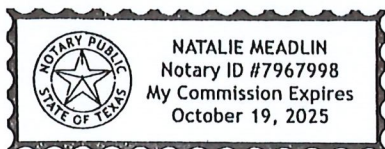

Notary Public, State of Texas

STATE OF TEXAS

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§

COUNTY OF KENDALL

This instrument was acknowledged before me on June 3, 2024 by ANTOINETTE M. CHILDS as Grantor and as Trustee of the CHILDS FAMILY TRUST.



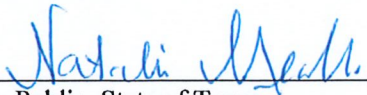

Notary Public, State of Texas

Exhibit A

FIELD NOTES DESCRIPTION OF .23 ACRES OF THE SHONTO RANCH IN KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land comprising, approximate acreage out of various Original Patent Surveys in Kerr County, Texas as follows:

Survey No.	Survey	Abstract No.	Acres
64	Wm. Watt	363	15.70
393	John W. Hinch	184	91.20
394	Thomas Jackson	212	38.00
396	John Cronkrite	93	69.33

part of 1072.60 acres conveyed to William C. Childs from Dorothy Dean Tate by a Warranty Deed executed the 18th day of September, 1992 and recorded in Volume 656 at Page 793 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/4" iron stake set in the southerly right-of-way line of F. M. Highway No. 2771 at the northerly common corner of said 1072.60 acres and 156 acres described in a Warranty Deed from Emilio Irone Neill, et al, to Meta Reel Alderdice executed the 20th day of August, 1952 and recorded in Volume 110 at Page 631 of the Deed Records of Kerr County, Texas, the easterly terminus of a Boundary Agreement between N. L. Hazelhurst, Jr., et ux, and Hrn. J. A. Alderdice, et al, executed the 24th day of November, 1973 and recorded in Volume 169 at Page 318 of the Deed Records of Kerr County, Texas; which point bears, approximately, 2173 ft. N.45°E. from the south corner of said Survey No. 394;

THENCE, along the common line between said 1072.60 acres and said 156 acres along said Boundary Agreement: S.44°55'08"W., at 2.2 ft. passing a fence cornerpost, then with or near a fence for a total distance of 281.97 ft. to a cornerpost; with or near a fence S.44°57'27"W. 143.01 ft. to an iron stake at the base of a 22" diameter Live Oak tree; and southeast of and diverging from said fence, S.44°59'10"W. 171.44 ft. to an unmarked point in the approximate center of Turtle Creek;

THENCE, continuing along the common line between said 1072.60 acres and said 156 acres along said Boundary Agreement, up the approximate center of said Turtle Creek: N.84°40'01"W. 342.83 ft.; N.65°18'06"W. 704.75 ft. to a point in a fence crossing said Turtle Creek; N.81°41'02"W. 575.98 ft.; S.60°49'08"W. 300.20 ft. to an existing 1/4" iron stake; S.35°25'42"W. 298.35 ft. to an existing 1/4" iron stake; S.21°02'11"W. 291.19 ft.; S.28°20'11"W. 825.51 ft.; S.44°51'11"W. 398.15 ft. to an existing 1/4" iron stake; S.62°00'25"W. 235.43 ft. to a point on the west side of a concrete bridge; S.71°27'30"W. 304.65 ft. to an existing 1/4" iron stake; and N.87°18'25"W. 306.08 ft. to the westerly northwest corner of the herein described tract;

THENCE, upon, over and across said 1072.60 acres, each point marked with a 1/4" iron stake [set]: S.02°52'30"W. 1284.75 ft. to the westerly southwest corner of the herein described tract; N.78°25'08"E. 878.46 ft.; N.60°40'48"E. 395.92 ft.; N.56°49'19"E. 667.01 ft.; N.34°58'45"E. 445.68 ft.; N.47°00'49"E. 1373.50 ft.; N.80°53'36"E. 189.17 ft.; and S.40°32'15"E. 1127.20 ft. to a fencepost in the common line between said 1072.60 acres and 324.62 acres conveyed as TRACT II to H. L. Risinger from W. F. Roden by a Warranty Deed with Vendor's Lien executed the 7th day of June, 1985 and recorded in Volume 328 at Page 401 of the Real Property Records of Kerr County, Texas;

THENCE, along the common line between said 1072.60 acres and said 324.62 acres, each point being an anglepost marked with a 1/4" iron stake unless stated otherwise: with or near a fence, N.33°39'13"E. 1139.00 ft. to a cornerpost for a reentrant corner of the herein described tract and said 1072.60 acres, the most northerly corner of said 324.62 acres; and southeast of and diverging from a fence, S.33°32'47"E. 59.77 ft. to an existing 1/4" iron stake for the southeasterly common corner of said 1072.60 acres and said 324.62 acres in a fence along the northwest line of 1294.816 acres conveyed to Hubert Lee Risinger, et ux, from Boyd L. Farr, et ux, by a Deed of Exchange executed the 13th day of December, 1973 and recorded in Volume 169 at Page 295 of the Deed Records of Kerr County, Texas;

THENCE, with or near a fence along the common line between said 1072.60 acres and said 1294.816 acres: N.53°54'11"E. 2473.11 ft. to an anglepost marked with a 1/4" iron stake; and N.16°42'11"E., at 692.1 ft. passing a cornerpost, then continuing not along a fence for a total distance of 696.48 ft. to a 1/4" iron stake set for the northeast corner of the herein described tract, the northerly common corner of said 1072.60 acres and said 1294.816 acres, in the southwesterly right-of-way line of said F. M. Highway No. 2771, in a 06°41'17" curve concave to the south having a radius of 856.74 ft.;

THENCE, with or near a fence along the north line of said 1072.60 acres, the southerly right-of-way line of said F. H. Highway No. 2771: 522.75 ft. along an arc of said 06°41'17" curve subtended by a central angle of 34°57'35" (long chord = S.86°35'30"W. 514.68 ft.) to a concrete right-of-way marker at its end; and S.67°07'02"W. 1101.50 ft. to a reentrant corner of the herein described tract and said 1072.60 acres;

THENCE, continuing along the north line of said 1072.60 acres: N.31°06'58"W. 50.52 ft. to the centerline of said F. H. Highway No. 2771; along the centerline of said F. H. Highway No. 2771, S.67°07'02"W. 392.85 ft. to the beginning of a 03°00'24" curve concave to the north having a radius of 1905.78 ft.; and continuing along the centerline of said F. H. Highway No. 2771, 459.60 ft. along an arc of said 03°00'24" curve subtended by a central angle of 13°49'03" (long chord = S.74°01'34"W. 458.49 ft.); and S.09°03'55"E. 50.00 ft. to the south right-of-way line of said F. H. Highway No. 2771, in a 02°55'47" curve concave to the north having a radius of 1955.78 ft.;

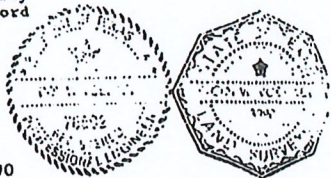
THENCE, with or near a fence continuing along the north line of said 1072.60 acres, the south right-of-way line of said F. H. Highway No. 2771: 237.22 ft. along an arc of said 02°55'47" curve subtended by a central angle of 06°56'58" (long chord = S.84°24'35"W. 237.07 ft.) to a concrete right-of-way marker at its end; S.87°53'04"W. 409.01 ft. to a concrete right-of-way marker at the beginning of a 04°47'14" curve concave to the north having a radius of 1196.92 ft.; and 47.79 ft. along an arc of said 04°47'14" curve subtended by a central angle of 02°17'16" (long chord = S.89°01'42"W. 47.79 ft.) to the PLACE OF BEGINNING containing 214.23 acres of land, more or less, within these metes and bounds, INCLUDING 1.0 acre within the right-of-way of F. H. Highway No. 2771.

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

Dated this 5th day of May, 1995

Don V. Voelkel

Don V. Voelkel
Registered Professional Engineer No. 76502
Registered Professional Land Surveyor No. 3990



Provisional map shall not be a part of a survey or map of the recorded property unless it is filed in the Public Records of the County of Kerr, Texas, and is duly recorded in the Public Records of the County of Kerr, Texas.

RECORDED
Vol. 881 Pg. 100
RECORDING DATE

JUN 2 1995



Patricia Rye
COUNTY CLERK, KERR COUNTY, TEXAS



Patricia Rye
COUNTY CLERK, KERR COUNTY

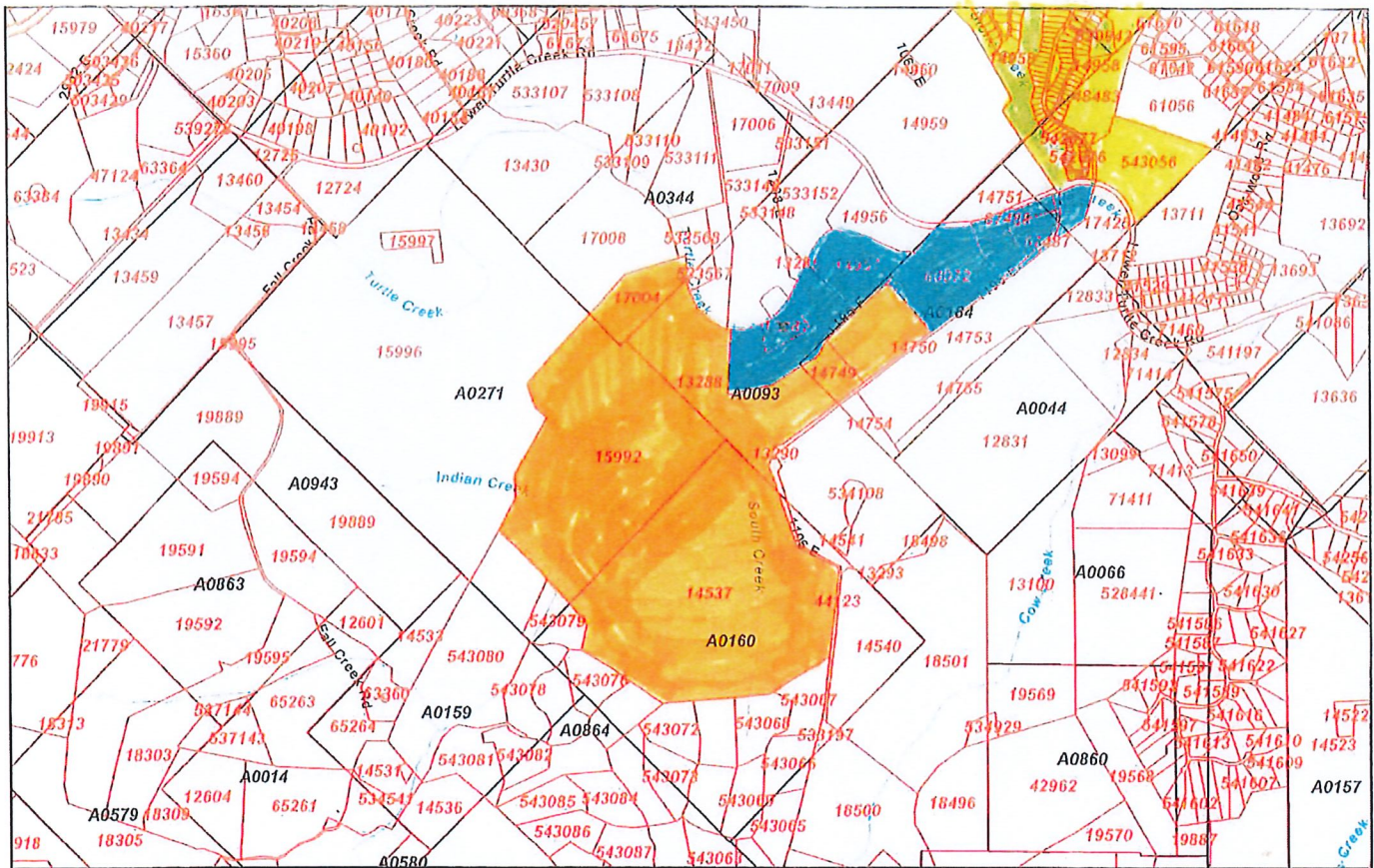
RECORDER'S NOTE
AT TIME OF RECORDATION INSTRUMENT FOUND
TO BE INADEQUATE FOR BEST PHOTOGRAPHIC
REPRODUCTION DUE TO DEPTH & DARKNESS OF
PRINT, COLOR OF PRINT OR INK, BACKGROUND OF
PAPER, ILLEGIBILITY, CARBON OR PHOTO COPY, ETC.



FILED AND RECORDED
At 3:20 o'clock
STATE OF TEXAS
COUNTY OF KERR
June 14, 2013

I hereby certify that this instrument was filed in the numbered sequence on the date and time stamped above by me and was duly recorded in the Official Public Records of Kerr County, Texas.
Michael R. Rye
Deputy

Kerr CAD Web Map

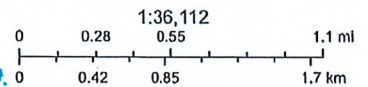


5/30/2024, 12:56:57 PM

- Parcels
- Abstracts

214 CHilos Family Trust

858 CHILDS Family Limited Part.



Texas Parks & Wildlife, COANP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau,

Kerr County Appraisal District, BIS Consulting - www.bisconsulting.com

Disclaimer: This product is for informational purposes only and has not been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of boundaries.

CURVE C1

$\Delta = 13.49.07''$	$(13.49.03'')$	N26.7°
$R = 1902.27'$	$(1905.78')$	
$A = 458.79'$	$(459.60')$	
L.C. = N73.36.52E 457.68'	(N74.01.34E 458.49')	

Tax Cert # 0-227
MVA
MVA
MVA
MVA
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MVA

APPROXIMATE LOCATION OF ZONE IN
AS DIGITIZED FROM SAID FLOOD
INSURANCE RATE MAP: NO ENGINEERING
STUDY DONE BY ME

10' WIDE TELEPHONE EASEMENT; WILLIAM C. CHILDS, ET AL. TO THE KERNVILLE TELEPHONE CO.; JUNE 8, 1966. VOLUNTARY REC'D PAGE 419. RE: PROPERTY REC.

William C. Hall

Facility is used or operated.
 Dated this 1 day of May, 2001.

Water Conservation District regarding private or public water supply provisions.

I hereby certify that this is a true and correct copy of the original as the same appears in the records of the County of _____ State of _____

statement is applicable to the Kent County

Dated this 1 day of MAY, 2001.

Academic Achievement

Don H. Voelkel

DON W VOELKEL
NOTARY PUBLIC

OWNER/DEVELOPER: MR. & MRS. WILLIAM CHILDS
KERRVILLE, TEXAS

GENERAL NOTES:

THIS PROPERTY IS LOCATED IN KERRVILLE SCHOOL DISTRICT,
KERRVILLE, TEXAS. THE PROPERTY IS OWNED BY KERRVILLE
ELECTRIC CO-OP AND KERRVILLE TELEPHONE CO.
THE PROPERTY IS APPROXIMATELY 60' X 70' IN SIZE.

THIS LOT PLATED HEREON IS SIXTY (60) FT. IN WIDTH AND
SEVENTY (70) FT. IN DEPTH. THIS PROPERTY IS NOT TO BE
USED FOR ANY OTHER PURPOSES THAN AS A HOMEOWNERS
ASSOCIATION AND NOT MAINTAINED BY KERR COUNTY.

THIS PROPERTY IS LOCATED IN ZONES "A" & "C" AS SHOWN ON
FLUOR INSURANCE RATE MAP NO. 48565C00275 E DATED JULY
19, 2000

ADDRESS: TURNER CREEK BEANS 10651 FT. N15351 E FROM
RANGE 106 S. SECTION 36 T15N R15E. ACRES 1.00
ESTABLISHED BY 1970 PLAN 2, ADMINISTRATOR LOT NO. 1 =
1988.7; LOT NO. 2 = 1593.5; LOT NO. 3 = 1598.3

DECEASED INTERESTS PART OF 1970-75 AGES CONVEYED TO WILLIAM
H. CHILDS FROM PROBATE COURT DATE SEPTEMBER 18, 1992;
VOLUNTARY 656 PAGE 793, REAL PROPERTY RECORDS

ALL RIGHTS ARE VESTED ON THE PROPERTY BY BLIND REFRON

[illegible]

KEEP COUNTY NOT RESPONSIBLE FOR ROAD MAINTENANCE

I hereby certify that this plot is an accurate representation of the property shown and described herein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as shown.

Beating base = True north based on GPS observations)

February 23 - October 19, 2000

Reported this join day of April, 2001

Answer: $\frac{1}{2}$

Registered Professional Land Surveyor No. 3330

STATE OF

© DON W. VOELK



101

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REC. MAY 2001
V-2216

SHDNTOPP.DWG



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

SUBJECT: Resolution No. 27-2024. A Resolution for the release of an area from the City's Extraterritorial Jurisdiction, such property generally located south of Lower Turtle Creek Rd. and consisting of approximately 45.3 acres, *presented by D Paxton, Director of Development Services.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 19, 2024

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

The City of Kerrville has a one-mile extra-territorial jurisdiction (ETJ) which allows for limited regulation outside of the city limits. Through state law, the city may enforce subdivision regulations, sign codes, and annex land within the ETJ. In the last legislative session, SB 2038 amended Chapter 42 of the Texas Local Government Code and gave property owners the ability to petition a release of their property from the city's ETJ. Below are a few specifics that are notable to this petition: "the municipality shall immediately release the area from the municipality 's extraterritorial jurisdiction" 42.105(c) "If a municipality fails to take action to release the area ... by the later of the 45th day after the date the municipality receives the petition or the next meeting of the municipality 's governing body that occurs after the 30th day after the date the municipality receives the petition, the area ... released by operation of law" -

On July 18th, 2024 if no action is taken, the property will be released from the ETJ. Once released, "an area released from a municipality's ETJ ...may not be included in the ETJ or the corporate boundaries of a municipality, unless the owner or owners of the area subsequently request that the area be included in the municipality's ETJ or corporate boundaries." 105(e) This resolution will formally acknowledge the release of the property from the City's ETJ.

The request is to release an approximately 858-acre tract of land, however, only 45.3 acres is within the ETJ. See the attached map for more details.

RECOMMENDED ACTION:

Approve Resolution No. 27-2024.

ATTACHMENTS:

[*20240625 Reso 27-2024 Release from ETJ 845 LowerTurtleCreek 858 acres.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 27-2024**

**A RESOLUTION FOR THE RELEASE OF AN AREA FROM
THE CITY'S EXTRATERRITORIAL JURISDICTION,
SUCH PROPERTY GENERALLY LOCATED SOUTH OF
LOWER TURTLE CREAK RD. AND CONSISTING OF
APPROXIMATELY 45.3 ACRES**

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City of Kerrville, Texas ("City") has general authority to adopt an ordinance, resolution, or police regulation that is for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Senate Bill 2038 passed by the Texas State Legislature in the 88th Legislative Session, Texas Local Government Code Chapter 42 now allows for the release of an area from the City's extraterritorial jurisdiction ("ETJ") by petition of landowners or by election; and

WHEREAS, pursuant to Texas Local Government Code Section 42.102, a resident of an area or the owners of the majority in value of an area in the City's ETJ may file a petition with the City Secretary for the area to be released from the ETJ; and

WHEREAS, the City has received a petition for the release of a tract of land generally located south of Lower Turtle Creek Rd., which petition and property description is found at **Exhibit A** and references a tract that contains 858.37 acres; and

WHEREAS, of the 858.37 acres, only 45.3 acres, more or less, currently exists within the City's ETJ and will be subject of a release; and

WHEREAS, City Council finds the attached *Petition of Landowner for Release of Area from City of Kerrville Extraterritorial Jurisdiction* (the "Petition") is valid and this Resolution is necessary and proper for the good government, peace, or order of the City to release the Property from the City's ETJ;

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

SECTION ONE. The foregoing recitals are incorporated into this Resolution by reference as findings of fact.

SECTION TWO. The Petition is hereby considered verified, and after adoption of this Resolution, the property described in the Petition and which currently exists within the City's ETJ and consists of approximately 45.3 acres, shall be released from the City's ETJ.

SECTION THREE. The City Secretary is directed to file a certified copy of this Resolution and an updated map of the City's ETJ boundary with the County Clerk of Kerr County, Texas.

SECTION FOUR. This Resolution shall take effect upon the date of final passage noted below.

PASSED AND APPROVED on this ____ day of _____, 2024, A.D.

Joe Herring Jr., Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

EXHIBIT A

**PETITION OF LANDOWNER FOR RELEASE OF AREA FROM CITY OF KERRVILLE
EXTRATERRITORIAL JURISDICTION**

TO: THE MAYOR AND CITY COUNCIL MEMBERS OF THE CITY OF KERRVILLE, TEXAS:

I, William C. Childs, acting on behalf of Childs Family Limited Partnership, a Texas limited partnership, whose address is 845 Lower Turtle Creek Road, Kerrville, Texas 78028, the owner of the tract or parcel of land described in the deed attached hereto as Exhibit "A" for all purposes, containing 858.37 acres (the "Property"), hereby petition the City Council of the City of Kerrville, Texas, to release the Property from the extraterritorial jurisdiction of the City of Kerrville, Texas.

I certify that this petition is signed and duly acknowledged by each and every person, corporation, or entity having an ownership interest in said Property.

OWNER:

CHILDS FAMILY LIMITED PARTNERSHIP,
a Texas limited partnership

By: Childs Capital, LLC,
a Texas limited liability company,
Its General Partner

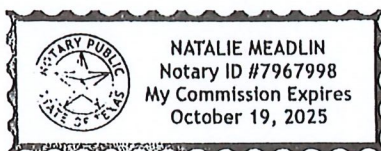
By: [Signature]
William C. Childs, Manager

STATE OF TEXAS

§
§
§

COUNTY OF KENDALL

This instrument was acknowledged before me on June 3, 2024 by WILLIAM C. CHILDS as Manager of Childs Capital, LLC, a Texas limited liability company, General Partner of CHILDS FAMILY LIMITED PARTNERSHIP, a Texas limited partnership for and on behalf of said partnership.



[Signature]
Notary Public, State of Texas

EXHIBIT "A"

Being all of a certain tract or parcel of land comprising, approximate acreage out of various Original Patent Surveys in Kerr County, Texas as follows:

Survey No.	Survey	Abstract No.	Acres
1	John H. Gibson	160	365.20
64	Wm. Watt	363	15.70
393	John W. Hinch	184	148.30
394	Thomas Jackson	212	38.00
396	John Cronkrite	93	175.60
397	Chas. Veich	344	30.30
404	Joseph Purcell	271	299.50

1072.60
TOTAL
Acres

comprising 1) part of 1018.10 acres conveyed to Dorothy Dean Hawn from D. L. Hazelhurst, Jr., et ux, by a Deed executed the 28th day of January, 1981 and recorded in Volume 244 at Page 83, 2) all of 52.12 acres conveyed to Dorothy Dean Hawn from W. F. Roden by a Warranty Deed executed the 15th day of July, 1983, and recorded in Volume 280 at Page 556, and 3) all of 3.19 acres conveyed to Dorothy Dean Hawn from Shelton Ranch Corporation by a Warranty Deed executed the 15th day of July, 1983 and recorded in Volume 280 at Page 562, all recordings in the Deed Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a 4" iron stake set in the southerly right-of-way line of F. M. Highway No. 2771 at the northerly common corner of said 1018.10 acres and 156 acres described in a Warranty Deed from Emilie Irene Neill, et al, to Meta Real Alderdice executed the 20th day of August, 1952 and recorded in Volume 110 at Page 631 of the Deed Records of Kerr County, Texas, the easterly terminus of a Boundary Agreement between D. L. Hazelhurst, Jr., et ux, and Mrs. J. A. Alderdice, et al, executed the 24th day of November, 1973 and recorded in Volume 169 at Page 318 of the Deed Records of Kerr County, Texas; which point bears, approximately, 2173 ft. N.45°E. from the south corner of said Survey No. 394;

THENCE, along the common line between said 1018.10 acres and said 156 acres along said Boundary Agreement: S.44°35'08"W., at 2.2 ft. passing a fence cornerpost, then with or near a fence for a total distance of 281.97 ft. to a cornerpost; with or near a fence S.44°57'27"W. 143.01 ft. to an iron stake at the base of a 22" diameter Live Oak tree; and southeast of and diverging from said fence, S.44°59'10"W. 171.44 ft. to an unmarked point in the approximate center of Turtle Creek;

THENCE, continuing along the common line between said 1018.10 acres and said 156 acres along said Boundary Agreement, up the approximate center of said Turtle Creek: N.84°40'01"W. 342.83 ft.; N.65°18'06"W. 704.75 ft. to a point in a fence crossing said Turtle Creek; N.61°41'02"W. 575.98 ft.; S.60°49'08"W. 300.20 ft. to an existing 4" iron stake; S.35°25'42"W. 298.35 ft. to an existing 4" iron stake; S.21°02'11"W. 291.19 ft.; S.28°20'11"W. 825.51 ft.; S.44°51'11"W. 398.15 ft. to an existing 4" iron stake; S.62°00'25"W. 235.43 ft. to a point on the west side of a concrete bridge; S.71°27'30"W. 304.65 ft. to an existing 4" iron stake; N.87°18'25"W. 364.64 ft.; N.66°27'16"W. 347.33 ft.; N.45°41'05"W. 329.69 ft.; N.24°46'54"W. 386.11 ft.; and N.11°50'48"W. 214.09 ft. to the southwest corner of 1.17 acres conveyed to Emilia Real Neill, et al, from D. L. Hazelhurst, Jr., et ux, by a Warranty Deed executed the 13th day of December, 1973 and recorded in Volume 169 at Page 312 of the Deed Records of Kerr County, Texas;

THENCE, along the common line between said 1018.10 acres and said 1.17 acres, continuing along said Boundary Agreement, N.00°17'43"W. 468.05 ft. to the northwest corner of said 1.17 acres, a northeasterly corner of said 1018.10 acres, a southeasterly corner of the Naunhoffer property;

THENCE, along the common line between said 1018.10 acres and said Neunhoffer property, partially with or near a fence, S.75°58'30"W, 149.44 ft. to a cornerpost at the easterly southeast corner of 1254.37 acres conveyed to Julius R. Neunhoffer, et ux, from Oscar Neunhoffer, Jr., et ux, by a Warranty Deed with Vendor's Lien executed the 4th day of December, 1967 and recorded in Volume 131 at Page 295 of the Deed Records of Kerr County, Texas;

THENCE, with or near a fence along the common line between said 1018.10 acres and said 1254.37 acres: S.73°06'58"W, 227.92 ft. to a post; S.75°22'07"W, 23.26 ft. to a 35" diameter Live Oak tree; S.73°08'23"W, 799.83 ft. to a 26" diameter Live Oak tree; S.43°04'05"W, 2856.07 ft. to a cornerpost marked with a 4" iron stake; S.24°39'34"E, 482.14 ft. to a post marked with a 4" iron stake; S.48°32'02"E, 274.90 ft. to an anglepost; S.31°14'52"W, 1232.26 ft. to an anglepost; S.00°35'57"E, 483.67 ft. to an anglepost; and S.29°34'32"W, 642.92 ft. to a cornerpost marked with a 4" iron stake for the most westerly corner of the herein described and said 1018.10 acres, the northwest corner of 858.07 acres conveyed to Lester Maris Dyke, III, et al, from Susan Sims, Trustee, by a Warranty Deed with Vendor's Lien executed the 17th day of June, 1992 and recorded in Volume 643 at Page 169 of the Real Property Records of Kerr County, Texas;

THENCE, with or near a fence along the common line between said 1018.10 acres and said 858.07 acres, S.45°51'51"E, 762.21 ft.;

THENCE, not along a fence along the southwest line of said 1018.10 acres, N.80°20'09"E, 16.70 ft. and S.41°10'32"E, 164.86 ft. to a point in a fence along the northeast line of said 858.07 acres;

THENCE, upon, over and across said 1018.10 acres, with or near a fence along the northeast line of said 858.07 acres: S.45°51'51"E, 67.01 ft. to an anglepost; S.42°29'52"E, 603.87 ft. to an anglepost; and S.39°50'38"E, 835.39 ft. to an anglepost in the southwest line of said 1018.10 acres;

THENCE, with or near a fence along the common line between said 1018.10 acres and said 858.07 acres, each point marked with an anglepost: S.13°04'27"W, 507.20 ft.; S.59°09'29"E, 694.64 ft.; S.55°06'57"E, 1172.29 ft.; N.85°37'34"E, 2049.64 ft.; and N.59°06'06"E, 1359.03 ft. to the southeast corner of the herein described tract and said 1018.10 acres in the west line of 324.62 acres conveyed as TRACT II to H. L. Risinger from W. F. Roden by a Warranty Deed with Vendor's Lien executed the 7th day of June, 1985 and recorded in Volume 328 at Page 401 of the Real Property Records of Kerr County, Texas;

THENCE, with or near a fence along the common line between said 1018.10 acres and said 324.62 acres, each point marked with an anglepost marked with a 4" iron stake unless stated otherwise: N.06°51'41"E, 1656.77 ft.; N.33°00'32"W, 46.50 ft.; N.62°19'04"W, 849.77 ft.; N.16°14'19"W, 432.38 ft.; N.26°07'37"W, 158.27 ft.; N.20°27'06"W, 1046.40 ft.; N.20°23'25"E, 405.31 ft. to a cornerpost; N.82°38'56"E, 165.00 ft.; and N.53°39'13"E, 4690.62 ft. to a cornerpost for a reentrant corner of the herein described tract, the most westerly corner of said 1018.10 acres, the most northerly corner of said 324.62 acres, in the southwest line of said 52.12 acres;

THENCE, southeast of and diverging from a fence along the common line between said 52.12 acres and said 324.62 acres, S.33°32'47"E, 59.77 ft. to a 4" iron stake set for the southwesterly common corner of said 52.12 acres and said 324.62 acres, in a fence along the northwest line of 1294.816 acres conveyed to Hubert Lee Risinger, et ux, from Boyd L. Farr, et ux, by a Deed of Exchange executed the 13th day of December, 1973 and recorded in Volume 169 at Page 295 of the Deed Records of Kerr County, Texas;

THENCE, with or near a fence along the common line between said 52.12 acres and said 1294.816 acres; N.53°54'11"E. 2473.11 ft. to an anglepost marked with a 4" iron stake; and N.16°42'11"E. 430.97 ft. to the southeast corner of said 3.19 acres;

THENCE, with or near a fence along the common line between said 3.19 acres and said 1294.816 acres, N.16°42'11"E., at 261.1 ft. passing a cornerpost, then continuing not along a fence for a total distance of 265.51 ft. to a 4" iron stake set for the northeast corner of the herein described tract, the northerly common corner of said 3.19 acres and said 1294.816 acres, in the southwesterly right-of-way line of said F. M. Highway No. 2771, in a 06°41'17" curve concave to the south having a radius of 856.74 ft.;

THENCE, with or near a fence along the north line of said 3.19 acres, the southerly right-of-way line of said F. M. Highway No. 2771; 522.75 ft. along an arc of said 06°41'17" curve subtended by a central angle of 34°57'35" (long chord = S.84°35'50"W. 514.68 ft.) to a concrete right-of-way marker at its end; and S.67°07'02"W. 205.18 ft. to the northerly common corner of said 3.19 acres and said 52.12 acres;

THENCE, with or near a fence along the north line of said 52.12 acres, the southerly right-of-way line of said F. M. Highway No. 2771, S.67°07'02"W. 896.32 ft. to a reentrant corner of the herein described tract and said 52.12 acres;

THENCE, continuing along the north line of said 52.12 acres; N.31°06'58"W. 50.52 ft. to the centerline of said F. M. Highway No. 2771; along the centerline of said F. M. Highway No. 2771, S.67°07'02"W. 392.85 ft. to the beginning of a 03°00'24" curve concave to the north having a radius of 1905.78 ft.; and continuing along the centerline of said F. M. Highway No. 2771, 459.60 ft. along an arc of said 03°00'24" curve subtended by a central angle of 13°49'03" (long chord = S.74°01'34"W. 458.49 ft.) to the northwest corner of said 52.12 acres;

THENCE, along the west line of said 52.12 acres, S.09°03'55"E. 50.00 ft. to the northeast corner of said 1018.10 acres in the south right-of-way line of said F. M. Highway No. 2771, in a 02°55'47" curve concave to the north having a radius of 1955.78 ft.;

THENCE, with or near a fence along the north line of said 1018.10 acres, the south right-of-way line of said F. M. Highway No. 2771; 237.22 ft. along an arc of said 02°55'47" curve subtended by a central angle of 06°56'58" (long chord = S.84°24'35"W. 237.07 ft.) to a concrete right-of-way marker at its end; S.87°53'04"W. 409.01 ft. to a concrete right-of-way marker at the beginning of a 04°47'14" curve concave to the north having a radius of 1196.92 ft.; and 47.79 ft. along an arc of said 04°47'14" curve subtended by a central angle of 02°17'16" (long chord = S.89°01'42"W. 47.79 ft.) to the PLACE OF BEGINNING containing 1072.60 acres of land, more or less, within these metes and bounds, INCLUDING 1.0 acre within the right-of-way of F. M. Highway No. 2771.

SAVE AND EXCEPT THE FOLLOWING TRACT OF LAND:

Being all of a certain tract or parcel of land comprising, approximate acreage out of various Original Patent Surveys, in Kerr County, Texas as follows:

Survey No.	Survey	Abstract No.	Acreage
64	Wm. Watt	363	15.70
393	John W. Hinch	184	91.20
394	Thomas Jackson	212	38.00
396	John Cronkite	93	69.33

part of 1072.60 acres conveyed to William C. Childs from Dorothy Dean Tate by a Warranty Deed executed the 18th day of September, 1992 and recorded in Volume 656 at Page 793 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a 4" iron stake set in the southerly right-of-way line of F. M. Highway No. 2771 at the northerly common corner of said 1072.60 acres and 156 acres described in a Warranty Deed from Emilie Irene Neill, et al, to Meta Real Alderdice executed the 20th day of August, 1952 and recorded in Volume 110 at Page 631 of the Deed Records of Kerr County, Texas; the easterly terminus of a Boundary Agreement between D. L. Hazelhurst, Jr., et ux, and Mrs. J. A. Alderdice, et al, executed the 24th day of November, 1973 and recorded in Volume 169 at Page 318 of the Deed Records of Kerr County, Texas; which point bears, approximately, 2173 ft. N.45°E. from the south corner of said Survey No. 394;

THENCE, along the common line between said 1072.60 acres and said 156 acres along said Boundary Agreement: S.44°55'08"W., at 2.2 ft. passing a fence cornerpost, then with or near a fence for a total distance of 281.97 ft. to a cornerpost; with or near a fence S.44°57'27"W. 143.01 ft. to an iron stake at the base of a 22" diameter Live Oak tree; and southeast of and diverging from said fence, S.44°59'10"W. 171.44 ft. to an unmarked point in the approximate center of Turtle Creek;

THENCE, continuing along the common line between said 1072.60 acres and said 156 acres along said Boundary Agreement, up the approximate center of said Turtle Creek: N.84°40'01"W. 342.83 ft.; N.65°18'06"W. 704.75 ft. to a point in a fence crossing said Turtle Creek; N.81°41'02"W. 575.98 ft.; S.60°49'08"W. 300.20 ft. to an existing 4" iron stake; S.35°25'42"W. 298.33 ft. to an existing 4" iron stake; S.21°02'11"W. 291.19 ft.; S.28°20'11"W. 825.51 ft.; S.44°51'11"W. 398.15 ft. to an existing 4" iron stake; S.62°00'25"W. 235.43 ft. to a point on the west side of a concrete bridge; S.71°27'30"W. 304.65 ft. to an existing 4" iron stake; and N.67°18'25"W. 306.08 ft. to the westerly northwest corner of the herein described tract;

THENCE, upon, over and across said 1072.60 acres, each point marked with a 4" iron stake [set]: S.02°52'30"W. 1284.75 ft. to the westerly southwest corner of the herein described tract; N.78°25'08"E. 878.46 ft.; N.60°40'48"E. 395.92 ft.; N.56°49'19"E. 667.01 ft.; N.34°58'45"E. 445.68 ft.; N.47°00'49"E. 1373.50 ft.; N.80°53'36"E. 189.17 ft.; and S.40°32'15"E. 1127.20 ft. to a fencepost in the common line between said 1072.60 acres and 324.62 acres conveyed as TRACT II to H. L. Risinger from W. F. Roden by a Warranty Deed with Vendor's Lien executed the 7th day of June, 1985 and recorded in Volume 328 at Page 401 of the Real Property Records of Kerr County, Texas;

THENCE, along the common line between said 1072.60 acres and said 324.62 acres, each point being an anglepost marked with a 1/2" iron stake unless stated otherwise: with or near a fence, N.53°39'13"E. 1139.00 ft. to a cornerpost for a reentrant corner of the herein described tract and said 1072.60 acres, the most northerly corner of said 324.62 acres; and southeast of and diverging from a fence, S.33°32'47"E. 59.77 ft. to an existing 1/2" iron stake for the southeasterly common corner of said 1072.60 acres and said 324.62 acres in a fence along the northwest line of 1294.816 acres conveyed to Hubert Lee Risinger, et ux, from Boyd L. Farr, et ux, by a Deed of Exchange executed the 13th day of December, 1973 and recorded in Volume 169 at Page 293 of the Deed Records of Kerr County, Texas;

THENCE, with or near a fence along the common line between said 1072.60 acres and said 1294.816 acres: N.53°54'11"E. 2473.11 ft. to an anglepost marked with a 1/2" iron stake; and N.16°42'11"E., at 692.1 ft. passing a cornerpost, then continuing not along a fence for a total distance of 696.48 ft. to a 1/2" iron stake set for the northeast corner of the herein described tract, the northerly common corner of said 1072.60 acres and said 1294.816 acres, in the southwesterly right-of-way line of said F. M. Highway No. 2771, in a 06°41'17" curve concave to the south having a radius of 856.74 ft.;

THENCE, with or near a fence along the north line of said 1072.60 acres, the southerly right-of-way line of said F. M. Highway No. 2771: 522.75 ft. along an arc of said 06°41'17" curve subtended by a central angle of 34°57'35" (long chord = S.84°35'50"W. 514.68 ft.) to a concrete right-of-way marker at its end; and S.67°07'02"W. 1101.50 ft. to a reentrant corner of the herein described tract and said 1072.60 acres;

THENCE, continuing along the north line of said 1072.60 acres: N.31°06'58"W. 50.52 ft. to the centerline of said F. M. Highway No. 2771; along the centerline of said F. M. Highway No. 2771, S.67°07'02"W. 392.85 ft. to the beginning of a 03°00'24" curve concave to the north having a radius of 1905.78 ft.; and continuing along the centerline of said F. M. Highway No. 2771, 459.60 ft. along an arc of said 03°00'24" curve subtended by a central angle of 13°49'03" (long chord = S.74°01'34"W. 458.49 ft.); and S.09°03'55"E. 50.00 ft. to the south right-of-way line of said F. M. Highway No. 2771, in a 02°55'47" curve concave to the north having a radius of 1955.78 ft.;

THENCE, with or near a fence continuing along the north line of said 1072.60 acres, the south right-of-way line of said F. M. Highway No. 2771: 237.22 ft. along an arc of said 02°55'47" curve subtended by a central angle of 06°56'58" (long chord = S.84°24'33"W. 237.07 ft.) to a concrete right-of-way marker at its end; S.87°53'04"W. 409.01 ft. to a concrete right-of-way marker at the beginning of a 04°47'14" curve concave to the north having a radius of 1196.92 ft.; and 47.79 ft. along an arc of said 04°47'14" curve subtended by a central angle of 02°17'16" (long chord = S.89°01'42"W. 47.79 ft.) to the PLACE OF BEGINNING containing 214.23 acres of land, more or less, within these metes and bounds, INCLUDING 1.0 acre within the right-of-way of F. M. Highway No. 2771.

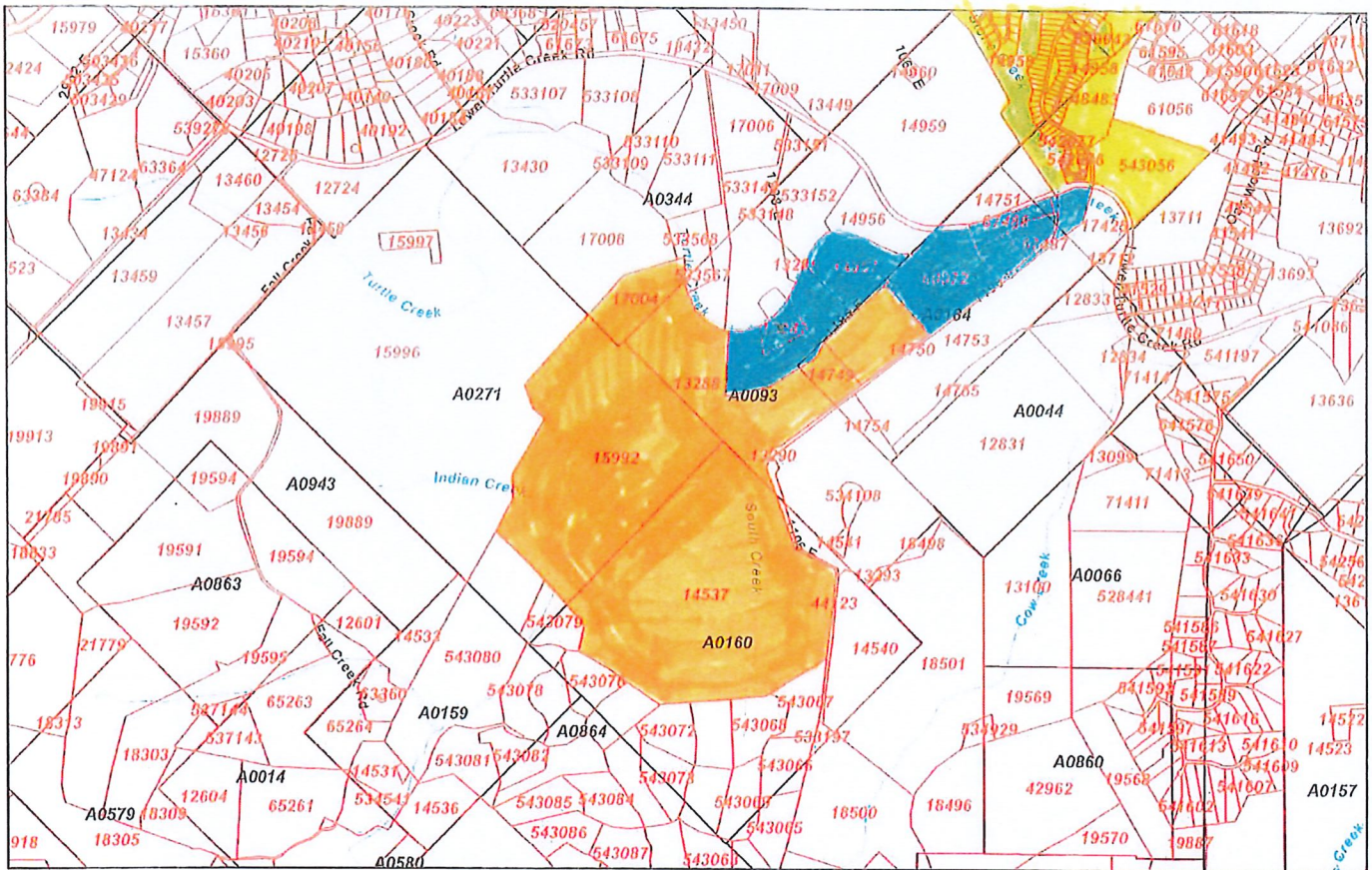
EXCEPTIONS:

1. Easement in favor of Bandera Electric Cooperative as condemned in Cause No. 79-90A, 216th District Court, Kerr County, Texas, Recorded in Volume 25 at Page 639.
2. Mineral reservation retained in Deed dated January 28, 1981, executed by D. L. Hazelhurst, Jr. and wife, Joan Potter Hazelhurst to Dorothy Dean Hawn and Dorothy Dean Hawn and John D. Hawn, Co-Executors and Co-Trustees under the Last Will and Testament of Gladys C. Porter, deceased, recorded in Volume 244, Page 83, Deed Records of Kerr County, Texas.
3. Electrical and telephone utility easements in favor of Bandera Electric Cooperative, Inc. and Kerrville Telephone Company, which are visible and apparent on the ground and that are shown on current title survey.
4. Terms of Boundary Agreement dated November 24, 1973, between D. L. Hazelhurst, Jr. and wife, Joan Potter Hazelhurst and Mrs. J. A. Alderdice, Emilie Irene Neill and Jeannete Elaine Boster, recorded in Volume 169, Page 318, Deed Records of Kerr County, Texas.
5. Rights of the Public, if any, in and to the water known as Turtle Creek.
6. Channel easement to State of Texas, dated July 30, 1963, recorded in Volume 3, Page 382, Easement Records of Kerr County, Texas.
7. 30' wide roadway easement in place on subject property, together with the right of ingress and egress thereto, as reserved by W. F. Roden in deed dated July 15, 1983, recorded in Volume 280, Page 556, Deed Records of Kerr County, Texas, and the rights of W. F. Rhoden to maintain the easement described herein.
8. Agreement to provide and maintain a gate at the intersection of FM Highway No. 2771, and a gate at the southern boundary of roadway easement as reserved in deed dated July 15, 1983, recorded in Volume 280, Page 556, Deed Records of Kerr County, Texas.
9. One sixteenth (1/16) of all oil, gas and other minerals of every kind and character as reserved in deed dated February 12, 1977, executed by D. L. Hazelhurst, Jr. and wife, Joan Potter Hazelhurst to W. F. Roden, recorded in Volume 194, Page 441, Deed Records of Kerr County, Texas.

10. Two channel easements to the State of Texas from Carl D. Meek et ux by a Channel Easement for Highway purposes executed the 30th day of July, 1963, and recorded in Volume 3, Page 412, Easement Records of Kerr County, Texas.
11. Easements as shown on plat dated September 14, 1992, by Don W. Voelkel, Registered Professional Land Surveyor No. 3990.
12. This Deed does not convey the approximate one acre of property lying in FM Hwy 2771 right of way, as shown on plat dated September 14, 1992, by Don W. Voelkel, Registered Professional Land Surveyor No. 3990.
13. This Deed does not convey any rights of third parties in any fences encroaching across Turtle Creek from the property of the neighbors on the north side of said creek in Abstract 212, as shown on plat dated September 14, 1992, by Don W. Voelkel, Registered Professional Land Surveyor No. 3990, and any obligation or liability of Owner for the repair, removal, replacement, and/or maintenance of said fences; provided, however, that nothing contained in this exception shall be deemed to except from the warranty of this deed any portion of the land lying between Owner's fence and the center of the said Turtle Creek, except the land that the fence is actually erected on.
14. This Deed does not convey the property lying inside the fence and outside the property line along the southeasterly boundary line lying in Abstract 184, as shown on plat dated September 14, 1992, by Don W. Voelkel, Registered Professional Land Surveyor No. 3990.
15. This Deed does not convey the property that lies inside the fence line and outside the property line, or the property that is fenced outside the fence line but that lies within the property line along the southwest boundary line in Abstract No. 271 and 160, as shown on plat dated September 14, 1992, by Don W. Voelkel, Registered Professional Land Surveyor No. 3990.

RECORDER'S NOTE
AT TIME OF RECORDATION INSTRUMENT FOUND
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Kerr CAD Web Map



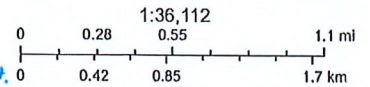
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- Parcels
- Abstracts



214 CHilos Family TRUST

858 CHilos Family Limited Part.



Texas Parks & Wildlife, COMAP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METINASA, USGS, EPA, NPS, US Census Bureau,

Kerr County Appraisal District, BIS Consulting - www.bisconsulting.com

Disclaimer: This product is for informational purposes only and has not been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of boundaries.



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

SUBJECT: Resolution No. 29-2024. A Resolution for the release of an area from the City's Extraterritorial Jurisdiction, such property generally located adjacent to Cypress Creek Rd. and consisting of approximately 30.5 acres.

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 19, 2024

SUBMITTED BY: Drew Paxton, Planning Director

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

The City of Kerrville has a one-mile extra-territorial jurisdiction (ETJ) which allows for limited regulation outside of the city limits. Through state law, the city may enforce subdivision regulations, sign codes, and annex land within the ETJ. In the last legislative session, SB 2038 amended Chapter 42 of the Texas Local Government Code and gave property owners the ability to petition a release of their property from the city's ETJ. Below are a few specifics that are notable to this petition: "the municipality shall immediately release the area from the municipality 's extraterritorial jurisdiction" 42.105(c) "If a municipality fails to take action to release the area ... by the later of the 45th day after the date the municipality receives the petition or the next meeting of the municipality 's governing body that occurs after the 30th day after the date the municipality receives the petition, the area ... released by operation of law" -

On July 18th, 2024 if no action is taken, the property will be released from the ETJ. Once released, "an area released from a municipality's ETJ ...may not be included in the ETJ or the corporate boundaries of a municipality, unless the owner or owners of the area subsequently request that the area be included in the municipality's ETJ or corporate boundaries." 105(e) This resolution will formally acknowledge the release of the property from the City's ETJ.

RECOMMENDED ACTION:

Approve Resolution No. 29-2024.

ATTACHMENTS:

[20240625 Reso 29-2024 Release from ETJ 1325 Cypress Creek Rd.pdf](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 29-2024**

**A RESOLUTION FOR THE RELEASE OF AN AREA FROM
THE CITY'S EXTRATERRITORIAL JURISDICTION,
SUCH PROPERTY GENERALLY LOCATED ADJACENT
TO CYPRESS CREEK RD. AND CONSISTING OF
APPROXIMATELY 30.5 ACRES**

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City of Kerrville, Texas ("City") has general authority to adopt an ordinance, resolution, or police regulation that is for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Senate Bill 2038 passed by the Texas State Legislature in the 88th Legislative Session, Texas Local Government Code Chapter 42 now allows for the release of an area from the City's extraterritorial jurisdiction ("ETJ") by petition of landowners or by election; and

WHEREAS, pursuant to Texas Local Government Code Section 42.102, a resident of an area or the owners of the majority in value of an area in the City's ETJ may file a petition with the City Secretary for the area to be released from the ETJ; and

WHEREAS, the City has received a petition for the release of a tract of land generally located adjacent to Cypress Creek Rd., with a current address of 1325 Cypress Creek Rd., which petition and property description is found at **Exhibit A** and references a tract that contains 30.5 acres; and

WHEREAS, City Council finds the attached *Petition of Landowner for Release of Area from City of Kerrville Extraterritorial Jurisdiction* (the "Petition") is valid and this Resolution is necessary and proper for the good government, peace, or order of the City to release the Property from the City's ETJ;

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

SECTION ONE. The foregoing recitals are incorporated into this Resolution by reference as findings of fact.

SECTION TWO. The Petition is hereby considered verified, and after adoption of this Resolution, the property described in the Petition and which

currently exists within the City's ETJ and consists of approximately 30.5 acres, shall be released from the City's ETJ.

SECTION THREE. The City Secretary is directed to file a certified copy of this Resolution and an updated map of the City's ETJ boundary with the County Clerk of Kerr County, Texas.

SECTION FOUR. This Resolution shall take effect upon the date of final passage noted below.

PASSED AND APPROVED on this ____ day of _____, 2024, A.D.

Joe Herring Jr., Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

**PETITION OF LANDOWNER FOR RELEASE FOR RELEASE OF AREA FROM THE CITY OF KERRVILLE
EXTRATERRITORIAL JURISDICTION**

TO: THE MAYOR AND CITY COUNCIL MEMBERS OF THE CITY OF KERRVILLE, TEXAS:

I, Taylor Clay Barton, have life ownership of two adjoining tracts of land totaling 30.5 acres out of the Emil Josse Survey No. 1377. This is further described in attachment #2, attached hereto, (the PROPERTY). I hereby petition the City Council of the City of Kerrville, Texas, to release the PROPERTY from the extraterritorial jurisdiction of City of Kerrville as set forth in the Local Government Code Chapter 42.

I certify that this petition is signed by myself and have provided the following documents as exhibits:

1. Portion of the Will of Sam Houston Taylor establishing my authority to act
2. Description of two parcels totaling 30.5 acres by metes and bounds
3. Map of location
4. 2024 Notice of Appraised Value letter from Kerr County Appraisal District addressed to Taylor Clay Barton for this property

Signed: _____

T. Clay Barton
Taylor Clay Barton

NOTARY ACKNOWLEDGEMENT

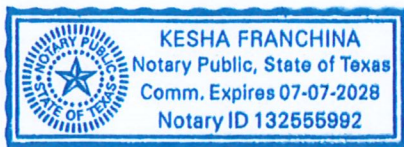
STATE OF TEXAS

COUNTY OF KERR

BEFORE ME, the undersigned authority, appeared Taylor Clay Barton, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the Owner through a life estate.

Given under my hand and seal this the 20th day of June, 2024.

(SEAL)




NOTARY PUBLIC in and for the
STATE OF TEXAS

KESHA FRANCHINA
Printer Name

My Commission expires 7/7/2028

Exhibit 2

Tract No. Three: All that certain tract or parcel of land, lying and being situated in Kerr County, Texas, out of Survey 1377, E. Jossee, Abstract No. 695, and described as follows, to-wit: BEGINNING at the N. corner of Survey 1377, and the W. corner of Survey 678, B. Michon; THENCE S. 45 deg. W. with line of Survey 678, 672 varas, corner; THENCE N. 45 deg. W. 358 varas, corner, corner in line of Survey 114, Samuel Wallace; THENCE N. 67 deg. 15' E. 231 varas, corner on side of Cypress Creek Road; THENCE N. 29 3/4 deg. E. 75 varas, corner on road; THENCE N. 73 deg. 10' E. 390 varas corner on road; THENCE N. 60 deg. 15' E. 36 varas to corner Survey 738, W. H. Woodward; THENCE S. 45 deg. E. 90 varas with line of Survey No. 738 to the place of BEGINNING, together with all improvements situated thereon. Containing 30 acres of land, and being the same property described in a deed of L. T. Davis to Sam H. Taylor, dated September 1, 1956, and recorded in Volume 100, page 372, Deed Records of Kerr County, Texas, to which said deed and the record thereof reference is here made for all purposes.

FIELD NOTES DESCRIPTION FOR A 0.50 ACRE TRACT OF LAND
ABUTTING F.M. HIGHWAY NO. 1341, IN KERR COUNTY, TEXAS

Being all of a certain 0.50 acre, more or less, tract or parcel of land out of Emil Josse Survey No. 1377, Abstract No. 695, in Kerr County, Texas; part of a one (1) acre tract of land described in a Quit Claim Deed from George H. Gaston, Jr. to Chester H. Borchers executed the 1st day of October, 1960 and recorded in Volume 108 at Page 217 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a fence cornerpost for the southwest corner of the herein described tract, the most westerly corner of 30 acres of land conveyed to Sam H. Taylor from L. T. Davis by a Warranty Deed with Vendor's Lien executed the 1st day of September, 1956 and recorded in Volume 100 at Page 372 of the Real Property Records of Kerr County, Texas; which point bears, approximately, 1866.7 ft. S.45°W. and 944.4 ft. N.45°W. from the north corner of Survey No. 1377 and the west corner of B. Michon Survey No. 678;

THENCE, with a fence along the northerly boundary of said Taylor tract: N.67°29'E. 378.15 ft. to an anglepost, and N.56°21'E. 24.17 ft. to a 1/2" iron stake set for the east or northeast corner of the herein described tract in the southerly right-of-way line of F.M. Highway No. 1341;

THENCE, with a fence along or near the southerly right-of-way line of said highway: S.78°39'W. 52.65 ft., S.84°30'W. 90.85 ft., N.88°19'W. 116.33 ft. and N.81°33'W. 65.56 ft. to a cornerpost for the northwest corner of the herein described tract;

THENCE, along a fence, S.16°55'W. 159.02 ft. to the PLACE OF BEGINNING.

Exhibit 3





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

SUBJECT: Request for "major waiver" of requirements of Subdivision Code for property located adjacent to and between Highway 27 and Peterson Farm Road, such property consisting of approximately 15.24 acres, *presented by D Paxton, Director of Development Services.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 14, 2024

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

The applicant requests a waiver of the City's Subdivision Code (Ch. 82, Code of Ordinances, "Code"). The request is for a "major waiver" of the application of the Code pursuant to Section 82-37 of the Code.

Determinations on request for waivers will be handled in the following manner:

(1) Minor waivers. Request for waivers that will be considered minor amendments to the subdivision regulations may only include minor adjustments in street or alley alignments, and lengths, and minor adjustments to lot lines that do not result in creation of additional lots or any non-conforming lots, provided that such amendments are consistent with applicable approved prior plats and subdivision plans. Minor waivers may be approved by the director. However, if the plat or subdivision plan goes to the commission, then the waiver shall be decided in the commission's report with the recommendation of the director. If a minor waiver is requested in an application for a replat, the minor waiver shall be approved by the commission following the procedures in subsection 82-35(b), above.

(2) Major waivers. All other proposed changes that do not meet the criteria to be a minor waiver to the subdivision regulations shall be deemed major amendments that require approval of the major waiver by city council.

82-37 (b) Criteria for approval of waiver.

(1) In deciding a major waiver request, council shall consider the hardship of the applicant in complying with the standards for which the waiver is sought, the nature of the proposed use of land involved and existing uses of the land in the vicinity, and the probable effect of such waivers upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity. No major waiver will be granted unless council finds that: There are special circumstances or conditions affecting the land to be platted such that the strict application of the provisions of these subdivision regulations would result in unnecessary hardship to the applicant and/or the waiver accomplishes one of the following: To preserve environmental features that would be otherwise be affected by a strict application of these regulations, including tree preservation, geologic formations, steep slopes, springs, or similar conditions; To enable more efficient use of the land; To minimize or correct previous adverse effects from placement of drainage courses, transmission lines, or septic systems; or To enable orientation of lots for greater solar advantage; and The granting of the waiver will not be detrimental to the public health, safety, general welfare, or injurious to surrounding properties; and The granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accordance with these subdivision regulations.

(2) The director or the commission may grant a minor waiver utilizing the criteria in subsection (a)(1), above.

(3) No waiver may be granted that would constitute a violation of a city ordinance.

82-37 (c) Decision and effect. Council or the director, as the case may be, or in the event of a minor waiver for a replat, the commission, shall provide the applicant with its written decision on the waiver request. Where council grants a major waiver, the applicant is authorized to submit an application for plat or subdivision plan approval that incorporates the major waiver(s), which shall not be altered by the director or commission, as the case may be, nor shall an approved waiver be the basis for a denial of the application.

Staffs' analysis: The property is adjacent to a sewer force main. There are no gravity sewer mains within 2000 feet of the property. The applicant is requesting to utilize on-site septic facilities. Although construction of a short sewer main and additional lift station could provide wastewater services to the property, the construction is not proportionate to the lots being served. Staff supports the use of OSSF for these four lots. Should traditional gravity sewer be available in the area in the future, connection to the City service is recommended.

If the waiver is approved, a plat note will be added related to the OSSF Permits and Building Permits.

RECOMMENDED ACTION:

TBD

ATTACHMENTS:

[2024-029_Proposed Minor Plat.pdf](#)



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

SUBJECT: Brightly Software Inc. Agreement for work orders and asset management by various Public Works departments/divisions, not to exceed \$30,960.00, *presented by D Barrera, Director of Utilities.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: David Barrera, Assistant Director of Public Works

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$30,959.04	\$30,959.04	\$30,959.04	N/A

PAYMENT TO BE MADE TO: Brightly Software Inc.

Kerrville 2050 Item?	Yes
Key Priority Area	F - Public Facilities and Services
Guiding Principle	N/A
Action Item	F1.2 - Enhance the use of technology for work order tracking, inspections, etc.

SUMMARY STATEMENT:

This software is currently being utilized for work orders and asset management by various departments. Originally this was a renewal contract with annual increases of up to 10%. This agreement is a 36-month agreement locked in with 3% increases. The term begins on 10/01/2024 and ends on 9/30/2027. The expenditure required will be invoiced in FY25.

RECOMMENDED ACTION:

Authorize City Manager to execute 3-year agreement.

ATTACHMENTS:

[20240625_Agreement_BrightlySoftwareinc.pdf](#)



PREPARED FOR

City Of Kerrville ("Subscriber")

PREPARED BY

Brightly Software Inc ("Company")

11000 Regency Parkway, Suite 300

Cary, NC 27518

Dude Solutions is now Brightly. Same world-class software, new look and feel.

Meet Brightly at brightlysoftware.com

PUBLISHED ON

May 20, 2024



Q-401160

March 16, 2024
City Of Kerrville

Thank you for your continued support of our market leading solutions for improving efficiency in operations. We are excited about providing you with online tools that will help you save money, increase efficiency and improve services. Brightly Software, Inc. is dedicated to providing best in class solutions, including the following for City Of Kerrville.

Subscription Term: 36 months (10/01/2024 - 09/30/2027)

Cloud Services			
Item	Start Date	End Date	Investment
Facilities/Physical Plant Module	10/1/2024	9/30/2025	\$0.00
Treatment Plants Module	10/1/2024	9/30/2025	\$0.00
Streets/Signs/ Sidewalks Module	10/1/2024	9/30/2025	\$0.00
Storm Water Module	10/1/2024	9/30/2025	\$0.00
Water Distribution and Waste Water Collection Module	10/1/2024	9/30/2025	\$0.00
Sanitation Module	10/1/2024	9/30/2025	\$0.00
Parks, Recreation and Forestry Module	10/1/2024	9/30/2025	\$0.00
Fleet Module	10/1/2024	9/30/2025	\$0.00
Asset Essentials Enterprise	10/1/2024	9/30/2025	\$30,959.04
AE Safety	10/1/2024	9/30/2025	\$0.00
Asset Essentials Inventory	10/1/2024	9/30/2025	\$0.00
Asset Essentials Citizen Portal	10/1/2024	9/30/2025	\$0.00
Annual Renewal:			\$30,959.04 USD

*Your Sourcewell discount has been applied.



Cloud Services Subscription		
Item	Investment Year 2 Start Date: 10/01/2025	Investment Year 3 Start Date: 10/01/2026
Facilities/Physical Plant Module		
Treatment Plants Module		
Streets/Signs/Sidewalks Module		
Storm Water Module		
Water Distribution and Waste Water Collection Module		
Sanitation Module		
Parks, Recreation and Forestry Module		
Fleet Module		
Asset Essentials Enterprise	31,887.81 USD	32,844.45 USD
AE Safety		
Asset Essentials Inventory		
Asset Essentials Citizen Portal		
Total:	31,887.81 USD	32,844.45 USD



Order terms

- By accepting this Order, and notwithstanding anything to the contrary in any other purchasing agreement, Subscriber agrees to pay all relevant Subscription Fees for the full Subscription Term defined above.
- Payment terms: Net 30
- Billing frequency for Cloud Services will be Annual.
- First Cloud Services invoice to be sent on or around .
- The "Effective Date" of the Agreement between Subscriber and Company is the date Subscriber accepts this Order.
- This Order and its Offerings are governed by the terms of the Brightly Software, Inc. Master Subscription Agreement found at <http://brightlysoftware.com/terms> (<http://brightlysoftware.com/terms>) ("Agreement"), unless Subscriber has a separate written agreement executed by Brightly Software, Inc. ("Company") for the Offerings, in which case the separate written agreement will govern. Acceptance is expressly limited to the terms of the Agreement. No other terms and conditions will apply. The terms of any purchase order or similar Subscriber document are excluded and such terms will not apply to the Order and will not supplement or modify the Agreement irrespective of any language to the contrary in such document.
- To the extent professional services are included in the Professional Services section of this Order, the Professional Services Addendum found at <http://brightlysoftware.com/terms> (<http://brightlysoftware.com/terms>) is expressly incorporated into the Agreement by reference.
- During the Subscription Term, Company shall, as part of Subscriber's Subscription Fees, provide telephone and email support ("Support Services") during the hours of 8:00 AM and 6:00 PM EST, (8:00 am – 8:00 pm EST for Community Development Services) Monday through Friday ("Business Hours"), excluding Company Holidays.
- Company maintains the right to increase Subscription Fees within the Subscription Term by an amount not to exceed the greater of prices shown in the investment table or the applicable CPI and other applicable fees and charges every 12 months. Any additional or renewal Subscription Terms will be charged at the then-current rate.
- Acceptance of this Order on behalf of a company or legal entity represents that you have authority to bind such entity and its affiliates to the order, terms and conditions herein. If you do not have such authority, or you do not agree with the terms set forth herein, you must not accept this Order and may not use the Offerings.
- Proposal expires in sixty (60) days.
- Subscriber shall use reasonable efforts to obtain appropriation in the full amount required under this Order annually. If the Subscriber fails to appropriate funds sufficient to maintain the Offerings described in this Order, then the Subscriber may terminate the Offerings at no additional cost or penalty by giving prior written notice documenting such non-appropriation. Subscriber shall use reasonable efforts to provide at least thirty (30) days prior written notice of non-appropriation. Subscriber agrees non-appropriation is not a substitute for termination for convenience, and further agrees Offerings terminated for non-appropriation may not be replaced with functionally similar products or services prior to the expiration of the Services Term set forth in this Order. Subscriber will not be entitled to a refund or offset of previously paid, but unused Fees.



Special terms

- Termination of Prior Agreements. Upon the commencement of the Subscription Term set forth in this Order, this Agreement terminates and supersedes any and all prior agreements and understandings between the parties with respect to City's use of Brightly Software, Inc. software, services, and goods.
- Company hereby verifies that it is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.
- Where this Agreement pertains to "critical infrastructure," as defined by Section 2275.0101, Texas Government Code, Company verifies (1) that it is not owned by or the majority of stock or other ownership interest of the company is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or other designated countries; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or other designated countries; or (2) headquartered in China, Iran, North Korea, Russia, or other designated countries.

Additional information

- Prices shown above do not include any taxes that may apply. Any such taxes are the responsibility of Subscriber. This is not an invoice. For customers based in the United States, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To" location provided by Subscriber. Tax exemption certifications can be sent to accountsreceivable@brightlysoftware.com (<mailto:accountsreceivable@brightlysoftware.com>).
- Billing frequency other than annual is subject to additional processing fees.
- Please reference Q-401160 on any applicable purchase order and email to Purchaseorders@Brightlysoftware.com (<mailto:Purchaseorders@Brightlysoftware.com>)
- Brightly Software, Inc. can provide evidence of insurance upon request.

8

Signature

Presented to:

Q-401160

March 16, 2024, 8:24:03 PM

Accepted by:


Printed Name

Signed Name

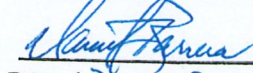
Title

Date

APPROVED AS TO FORM

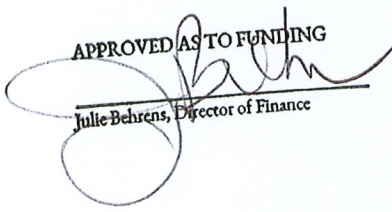

William L. Tatsch, Assistant City Attorney

APPROVED AS TO CONTENT



Printed: *David Barrera, Director of Utilities*

APPROVED AS TO FUNDING


Julie Behrens, Director of Finance



A Siemens Company

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement, together with any addenda, (this "Agreement") shall govern Subscriber's (as defined below) access and use of the Cloud Services (as defined below) provided by Brightly Software ("Company"). This Agreement may be accepted by either clicking a box indicating acceptance, by reseller purchase, by executing an Order that references this Agreement or by otherwise accessing or using an Offering. In the electronic service or Offering, Subscriber will be prompted to accept these terms by clicking a button. Clicking the button or using any Offering indicates that Subscriber has read, understood, and accepted this Agreement. If Subscriber does not accept, Subscriber must not use any Offering and must return any Offering to Company or its authorized reseller or partner prior to use.

IF THE INDIVIDUAL ENTERING INTO THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS "ACCOUNT" OR "SUBSCRIBER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY OR DOES NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, THE INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE OFFERING.

Section 1.0 Ordering and Use of Offerings

1.1 Company Cloud Service; Subscriber-Hosted Software.

(a) **Company Cloud Service.** Unless otherwise specified on an applicable Order, an Offering of Cloud Service shall be provided as Company-hosted, online cloud service. Company grants Subscriber a non-exclusive and non-transferable right to access and use the Offering for Subscriber's internal business purposes during the Subscription Term solely in accordance with this Agreement.

(b) **Subscriber-Hosted Software.** Where an applicable Order sets forth a Subscriber-Hosted Software Offering, subject to the provisions of this Agreement, Company grants Subscriber a non-exclusive and non-transferable license (with no right to sublicense) to install and use the Offering for the Subscription Term. In respect of such Subscriber-Hosted Software Offering:

(i) Subscriber is responsible for installing and implementing the Subscriber-Hosted Software and any updates, enhancements or modifications, except for any Professional Services set forth on an applicable Order (i.e., implementation).

(ii) Subject to the terms of this Agreement, Subscriber may create copies of the Subscriber-Hosted Software to the extent strictly necessary to install and operate the Subscriber-Hosted Software for use in accordance with this Agreement, and to create backup and archival copies to the extent reasonably required in the normal operation of Subscriber systems. All such copies must include a reproduction of all copyright, trademarks or other proprietary notices contained in the original copy of the Subscriber-Hosted Software.

(iii) Subscriber is responsible for providing the Environment and ensuring the Environment functions properly, and for implementing appropriate data backup and security measures. "Environment" means the systems, networks, servers, equipment, hardware, software and other material specified in Documentation or an Order on which, or in connection with which, the Subscriber-Hosted Service will be used.

1.2 Ordering.

(a) **Ordering.** The parties may enter into one or more Orders under this Agreement. Each Order is binding on the parties and is governed by the terms of this Agreement and all applicable addenda. Pursuant to an Order, Company shall grant Subscriber Account Users access or use of the Offerings during the applicable Subscription Term, including all Content contained in or made available through the Cloud Service(s). Affiliates of either party may conduct business under this Agreement by executing an Order that references this Agreement's terms.

(b) **Account Setup.** To subscribe to the Cloud Service, Subscriber must establish its Account, which may only be accessed and used by its Account Users in accordance with any number and categories of users as set forth on the Order. To setup an Account User, Subscriber agrees to provide true and accurate information for such Account Users. Each Account User must establish and maintain personal, non-transferable Access Credentials, which shall not be shared with, or used by, any other individual. Subscriber must not create Account User(s) in a manner that intends to or has the effect of avoiding Fees, circumvents thresholds with the Account, or intends to violate the Agreement. Subscriber acknowledges that Account Users that submit declarations, notifications or orders to Company are acting on Subscriber's behalf.

(c) **Subscriber Responsibilities.** Subscriber agrees that it shall use the Offering(s) solely for internal business purposes, and access and use of the Cloud Service(s) shall be limited to Account Users. Subscriber will ensure that its Account Users shall comply with Subscriber's obligations under this Agreement whether they are accessing Cloud Services on Subscriber's behalf, at Subscriber's invitation or by invitation of a Subscriber Account User. If Subscriber becomes aware of any violation of this Agreement by a user or any unauthorized access to any user account, Subscriber will immediately notify Company and terminate the relevant Account User or user account's access to the Cloud Service. Subscriber is responsible for any act or failure to act by any Account User or any person using or accessing the account of a user in connection with this Agreement. Subscriber acknowledges and agrees that Account Users who submit declarations, notifications or orders to Company are acting on behalf of Subscriber's behalf. Further, Subscriber shall: (i) be solely responsible for the accuracy, and appropriateness of all Subscriber Data and Subscriber Content created by Account Users using the Cloud Service; (ii) access and use the Cloud Service solely in compliance with any applicable Documentation and all applicable laws, rules, directives and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy); (iii) allow e-mail notifications generated by the Cloud Service on behalf of Subscriber's Account Users to be delivered to Subscriber's Account Users; and (vi) take responsibility for the security of Subscriber's systems, including the software on Subscriber's systems, and take commercially reasonable steps to exclude malware, viruses, spyware and trojans from Cloud Services.

(d) **Usage Restrictions.** Subscriber agrees that it shall not, and shall not permit any Account User or Third Party accessing by, through or at Subscriber direction, or on its behalf to, directly or indirectly: (i) modify, copy, create derivative works or attempt to derive the source code of the Cloud Service; (ii) assign, sublicense, distribute or otherwise make available the Cloud Service, to any Third Party, including on a timesharing, software-as-a-service or other similar basis; (iii) share Access Credentials or otherwise allow access or use the Cloud Service to provide any service bureau services or any services on a similar basis; (iv) use the Cloud Service in a way not authorized in writing by Company or for any unlawful purpose; (v) use the Cloud Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of Third Party privacy rights; (vi) attempt to tamper with, alter, disable, override, or circumvent any security, reliability, integrity, accounting or other mechanism, restriction or requirement of the Cloud Service; (vii) remove, obscure or alter any copyright, trademark, patent or proprietary notice affixed or displayed by or in the Cloud Service; (viii) perform load tests, network scans, penetration tests, ethical hacks or any other security auditing procedures on the Cloud Service; (ix) interfere with or disrupt the integrity or performance of the Cloud Service or the data contained therein; (x) access or use the Cloud Service in order to replicate applications, products or services offered by Company and/or otherwise build a competitive product or service, copy any features, functions or graphics of the Cloud Service or monitor the availability and/or functionality of the Cloud Service for any benchmarking or competitive purposes; (xi) under any circumstances, through a Third Party application, a Subscriber application or otherwise, repackaging or resell the Cloud Service, or any Company Content; (xii) store, manipulate, analyze, reformat, print, and display Company Content for personal use; and (xiii) upload or insert code, scripts, batch files or any other form of

scripting or coding into the Cloud Service. Notwithstanding the foregoing restrictions, in the event Subscriber has purchased a Cloud Service for Commercial Use (as such term is defined below), Subscriber shall be permitted to use the Cloud Service to provide Third Party services in cases where such Third Parties access the Subscriber provided applications or services, but where such Third Parties do not have the ability to install, configure, manage or have direct access to the Cloud Services. Company hereby agrees, subject to payment of the applicable fees, to permit such use and the terms of this Agreement, including references to "internal use" and/or "internal business operations" shall be deemed to include and permit such use (hereafter referred to as "Commercial Use").

(e) **Additional Guidelines.** Company reserves the right to establish, modify, discontinue or substitute its Cloud Service offerings, general practices and limits concerning use of the Cloud Service from time to time. Company also reserves the right to block IP addresses originating a Denial of Service (DoS) attack. Company shall notify Subscriber should this condition exist and inform Subscriber of its action. Once blocked, an IP address shall not be able to access the Cloud Service and the block may be removed once Company is satisfied corrective action has taken place to resolve the issue.

(f) **Use of Messaging Services.** Subscriber may use Cloud Service to send emails and messages to users and third parties. Subscriber is solely responsible for any such message and their content. Messages may be blocked, delayed, or prevented from being delivered by destination servers and other reasons outside Company's control, and there is no warranty that messages will reach their intended destination in a given timeframe.

(g) **Previews, No-Charge Offerings.** From time to time, Company may make Offerings available to Subscribers at no charge or allow features or services at no extra charge as part of Cloud Services prior to their general release that are labeled or communicated as "Previews". Subscriber may choose to try such Previews or not in its sole discretion. Use of Previews is at Subscriber's sole risk and may contain bugs or errors. Subscriber may discontinue use of the Previews at any time, in its sole discretion. Further, Company may discontinue all Previews availability at any time in its sole discretion without notice. Previews and No-Charge Offerings are provided on an "as-is" basis and "as available" basis, without any warranties of any kind.

1.3 **Proprietary Rights.**

(a) All Cloud Service, non-public Documentation and Company Content are trade secrets of Company and its licensors. Company or its licensors retains all ownership right, title, and interest in and to Brightly IP, including the Cloud Service, its Documentation and Company Content, and all corrections, enhancements, improvements to, or derivative works thereof without limitation (collectively, "Derivative Works"), and in all Brightly IP therein or thereto. To the extent any Derivative Work is developed by Company based upon ideas or suggestions submitted by Subscriber to Company, Subscriber hereby irrevocably assigns all rights to use and incorporate Subscriber's feedback, including but not limited to suggestions, enhancement requests, recommendations and corrections (the "Feedback") relating to the Cloud Service, together with all Brightly IP related to such Derivative Works. Nothing contained in this Agreement shall be construed to convey to Subscriber (or to any party claiming through Subscriber) any Brightly IP rights other than the rights expressly set forth in this Agreement. Company reserves all rights in the Offerings and Brightly IP not expressly granted in this Agreement.

(b) Company acknowledges and agrees that Subscriber retains all ownership right, title, and interest in and to the Subscriber Data and Subscriber Content, including all intellectual property rights therein or thereto. Notwithstanding the foregoing, Subscriber hereby grants Company and its Affiliates a non-exclusive, royalty-free license to access, display, copy, distribute, transmit, publish, disclose and otherwise use all or any portion of Subscriber Data and Subscriber Content to fulfill its obligations under this Agreement. Company recommends Subscriber confirm the geographic area in which Subscriber Data will be stored, which may be outside the country in which Subscriber is located. Subscriber will ensure that Subscriber Data can be processed and used as contemplated by this Agreement without violating any rights of others or any laws or regulations.

(c) Subscriber acknowledges the Cloud Services may utilize, embed or incorporate Third Party software and/or tools (each, a "Third Party Tool") under a license granted to Company by one or more applicable Third Parties (each, a "Third Party Licensor"), which licenses Company the right to sublicense the use of the Third Party Tool solely as part of the Cloud Services. Third Party Tools shall be specified in any applicable Documentation, Offering or statement of work. In the event of a conflict between the Third Party terms and conditions and this Agreement, the Third Party terms and conditions control with regard to the relevant Third Party Tool. Each such sublicense is nonexclusive and solely for Subscriber's internal use and Subscriber shall not further resell, re-license, or grant any other rights to use such sublicense to any Third Party. Subscriber further acknowledges that each Third Party Licensor retains all right, title, and interest to its applicable Third Party Tool and all documentation related to such Third Party Tool. All confidential or proprietary information of each Third Party Licensor is Confidential Information of Company under the terms of this Agreement and shall be protected in accordance with the terms of Section 7.

Section 2.0 **Company Responsibilities**

2.1 **Professional Services.** To the extent Professional Services are included in the applicable Order and/or described in one or more statements of work, Subscriber agrees to abide by Company's Professional Services Addendum. Each statement of work shall be effective, incorporated into and form a part of this Agreement when duly executed by an authorized representative of each of the parties. Each statement of work shall (i) describe the fees and payment terms with respect to the Professional Services being provided pursuant to such statement of work, (ii) identify any work product that will be developed pursuant to such statement of work, and (iii) if applicable, set forth each party's respective ownership and proprietary rights with respect to any work product developed pursuant to such statement of work.

2.2 **Service Levels.** Company shall use commercially reasonable efforts to make the Cloud Service available 99.9% of the time for each full calendar month during the Subscription Term, determined on twenty-four (24) hours a day, seven (7) days a week basis (the "Service Standard"). The Service Standard availability for access and use by Subscriber(s) excludes unavailability when due to: (a) any access to or use of the Cloud Service by Subscriber or any Account User that does not strictly comply with the terms of the Agreement or the Documentation; (b) any failure of performance caused in whole or in part by Subscriber's delay in performing, or failure to perform, any of its obligations under the Agreement; (c) Subscriber's or its Account User's Internet connectivity; (d) any Force Majeure Event; (e) any failure, interruption, outage, or other problem with internet service or non-Cloud Service; (f) Scheduled Downtime; or (g) any disabling, suspension, or termination of the Cloud Service by Company pursuant to the terms of the Agreement. "Scheduled Downtime" means, with respect to any applicable Cloud Service, the total amount of time (measured in minutes) during an applicable calendar month when such Cloud Service is unavailable for the majority of Subscribers' Account Users due to planned Cloud Service maintenance. To the extent reasonably practicable, Company shall use reasonable efforts to provide eight (8) hours prior electronic notice of Cloud Service maintenance events and schedule such Cloud Service maintenance events outside the applicable business hours.

2.3 **Security and Data Privacy.** Each party shall comply with applicable data privacy laws governing the protection of personal data in relation to their respective obligations under this Agreement. Where Company acts as Subscriber's processor of personal data provided by Subscriber, the data is subject to Company's Privacy Policy, which can be viewed by clicking the "Privacy" hyperlink located within the Cloud Service. By using the Cloud Service, Subscriber accepts and agrees to be bound and abide by such Privacy Policy. At all times during the Subscription term and upon written request of Subscriber within thirty (30) days after the effective date of termination or expiration of this Agreement, Subscriber Content shall be available for Subscriber's export and download. In accordance with applicable data privacy laws following that initial period, Company shall not be obligated to maintain Subscriber Data nor Subscriber Content and may delete or destroy what remains in its possession or control.

(a) If applicable in the United States, if Subscriber is a "Covered Entity" under the Health Insurance Portability and Accountability Act of 1996 (as amended from time to time, "HIPAA"), and if Subscriber must reasonably provide protected health information as defined by HIPAA in order to use the Cloud Services, Company shall be Subscriber's "Business Associate" under HIPAA, and Company and Subscriber shall enter into a Business Associate Agreement (the form of which shall be reasonably

satisfactory to Company).

(b) If applicable in the United Kingdom, Switzerland or European Economic Area (EEA), both parties will comply with the applicable requirements of Data Protection Legislation. "Data Protection Legislation" means (i) the United Kingdom's Data Protection Act 2018, and (ii) the General Data Protection Regulation ("GDPR") and any national implementing laws, regulations or secondary legislation. Company and Subscriber agree that Company will not be processing any personal data on behalf of the Subscriber as "Data Controller" (defined in accordance with the Data Protection Legislation). Company will collect, use, disclose, transfer and store personal information when needed to administer this Agreement and for its operational and business purposes, in accordance with Data Protection Legislation. To the extent personal data from the UK, Switzerland or the EEA are processed by Company, the terms of a data processing addendum ("DPA") must be signed by the parties. To the extent Company processes personal data, its binding corporate rules and the standard contract clauses shall apply, as set forth in the DPA. For standard contract clauses, Subscriber and Company agree that Subscriber is the data exporter and Subscriber's acceptance of this Agreement or applicable Order shall be treated as its execution of the standard contract clauses.

Section 3.0 Third Party Interactions

3.1 Relationship to Third Parties. In connection with Subscriber's use of the Cloud Service, at Subscriber's discretion, Subscriber may: (i) participate in Third Party promotions through the Cloud Service; (ii) purchase Third Party goods and/or services, including implementation, customization, content, forms, schedules, integration and other services; (iii) exchange data, integrate, or interact between Subscriber's Account, the Cloud Service, its application programming interface ("API") and a Third Party provider; (iv) receive additional functionality within the user interface of the Cloud Service through use of the API; and/or (v) receive content, knowledge, subject matter expertise in the creation of forms, content and schedules. Any such activity, and any terms, conditions, warranties or representations associated with such Third Party activity, shall be solely between Subscriber and the applicable Third Party. Company shall have no liability, obligation or responsibility for any such Third Party correspondence, purchase, promotion, data exchange, integration or interaction. Company does not warrant any Third Party providers or any of their products or services, whether or not such products or services are designated by Company as "certified," "validated," "premier" and/or any other designation. Company does not endorse any sites on the Internet that are linked through the Cloud Service.

3.2 Ownership. As between Subscriber and Company, Subscriber is the owner of all Third Party Content loaded into the Subscriber Account. As the owner, it is Subscriber's responsibility to make sure it meets its particular needs. Company shall not comment, edit or advise Subscriber with respect to such Third Party Content in any manner.

Section 4.0 Fees and Payment.

4.1 Fees. Subscriber shall pay to Company all fees specified in Orders. Except as otherwise stated on the Order: (i) Subscription Fees are based on Cloud Services subscriptions purchased; (ii) all Subscription Fee payment obligations are non-refundable and non-cancelable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. The Subscription Fee for such Cloud Service subscription shall be invoiced upon commencement of the Term. Thereafter, Company shall make reasonable efforts to invoice Subscriber for each applicable Subscription Fee sixty (60) days prior to its commencement. Unless Subscriber provides written notice of termination in accordance with Section 5.1, Subscriber agrees to pay all fees. Subscriber is responsible for providing complete and accurate billing and contact information to Company and notifying Company promptly of any changes to such information.

4.2 Automatic Payments. If Subscriber is paying by credit card or Automated Clearing House ("ACH"), Subscriber shall establish and maintain valid and updated credit card information or a valid ACH auto debit account (in each case, the "Automatic Payment Method"). Upon establishment of such Automatic Payment Method, Company is hereby authorized to charge any applicable Subscription Fee using such Automatic Payment Method.

4.3 Overdue Charges. If any invoiced amount is not received by Company by the due date, without limiting Company's rights or remedies, those overdue charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum amount permitted by law, whichever is lower. Company reserves the right to condition an overdue Account's future subscription renewals and Orders on shorter payment terms than those stated herein.

4.4 Taxes. Company's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Subscriber is responsible for paying all Taxes associated with its purchases hereunder. If Company has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this Section 4.4, Company shall invoice Subscriber and Subscriber shall pay that amount unless Subscriber provides Company with a valid tax exemption certificate, direct pay permit, or other government-approved documentation. Notwithstanding the foregoing, Customer is responsible for, and, to the extent permitted by law, will indemnify Company for: 1) any encumbrance, fine, penalty or other expense which Company may incur as a result of Subscriber's failure to pay any Taxes required hereunder; and 2) any Taxes, including withholding taxes, resulting from making an Offering available to Users in geographic locations outside the country in which Subscriber is located as per the Order. For clarity, Company is solely responsible for taxes assessable against Company based on its income, property and employees.

4.5 Purchases through Resellers. In the event Subscriber purchases the Cloud Services (including any renewals thereof) through an authorized reseller of Company, the terms and conditions of this Agreement shall apply and supersede any other agreement except for any terms and conditions related to fees, payment or Taxes. Such terms and conditions shall be negotiated solely by and between Subscriber and such authorized reseller. In the event Subscriber ceases to pay the reseller, or terminates its agreement with the reseller, Company shall have the right to terminate Subscriber's access to the Cloud Services at any time upon thirty (30) days' prior written notice to Subscriber unless Subscriber and Company have agreed otherwise in writing.

Section 5.0 Term and Termination

5.1 Subscription Term. This Agreement will commence on the Effective Date set forth on the Order and continues until the Offerings hereunder have expired or have been terminated (the "Subscription Term"). Thereafter, except as stated on an applicable Order, the Subscription Term shall automatically renew for additional periods equal to the expiring Subscription Term or one year, whichever is longer, unless either party has provided written notice of its intent to terminate the Cloud Service subscription not less than forty-five (45) days prior to the expiration of the then-current Subscription Term applicable to the Cloud Service subscription.

5.2 Termination. Neither party will terminate an Order for convenience during the applicable Subscription Term. Either party may terminate this Agreement (in whole or with respect to an Order or purchased from a reseller) by notice to the other party if (i) the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days (except in the case of a breach of Section 7 in which case no cure period will apply) or (ii) the other party becomes the subject of a petition in bankruptcy or other similar proceeding. Company may, at its option, and without limiting its other remedies, suspend (rather than terminate) any Cloud Services if Subscriber breaches the Agreement (including with respect to payment of Fees) until the breach is remedied.

5.3 Effect of Termination. Upon expiration of the applicable Subscription Term, or termination of any Order for one or more Offerings or this Agreement for any reason, Subscriber's right to access, use or receive the affected Order or Offering automatically terminates. Subscriber shall immediately cease using the Order or Offering, remove and destroy all Offerings and other Company Confidential Information relating to the Order in its possession or control, and certify such removal and destruction in writing to Company. Termination or suspension of an individual Order or reseller purchase will not terminate or suspend any other Order, reseller

purchase or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Order(s) and reseller purchases will terminate. If this Agreement, any Order or reseller purchase is terminated, Subscriber agrees to pay all Fees owed up to the effective date of termination.

5.4 Survival. The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: Sections 1, 2.3, 5.3, 6, 7, 8 and 9.

Section 6.0 Representations, Warranties and Disclaimers

6.1 Representations. Each party represents that: (i) it has full right, title and authority to enter into this Agreement; and (ii) this Agreement constitutes a legal, valid and binding obligation of Subscriber, enforceable against it in accordance with its terms.

6.2 Warranties.

(a) Company warrants that Cloud Service will perform in accordance with the features and functions described in the applicable Documentation. To the extent permitted by law, Subscriber's exclusive remedy and Company's entire liability for a breach of this warranty in Section 6.2(a), at its option: (i) will use commercially reasonable efforts to restore the non-conforming Cloud Services so that they comply with this warranty, or (ii) if such restoration would not be commercially reasonable, Company may terminate the Order for the non-conforming Offering and refund any prepaid fees paid for such Offering. The warranty excludes: (a) no charge Offerings or Previews, and (b) issues, problems or defects arising from Third Party Content, Subscriber Data or Content, or use of Cloud Service not in accordance with this Agreement.

(b) Company represents and warrants that all such Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 6.2(b), Subscriber's exclusive remedy and Company's entire liability shall be the re-performance of the applicable Professional Services.

(c) Company makes only the limited warranties expressly stated in this Agreement, and disclaims all other warranties, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. Company does not warrant or otherwise guarantee that: (i) reported errors will be corrected or support requests will be resolved to meet Subscribers' needs, (ii) any Order or Third Party Content will be uninterrupted, error free, fail-safe, fault-tolerant, or free of harmful components, or (iii) any Content, including Subscriber and Third Party Content, will be secure or not otherwise lost or damaged. Representations about Orders or features or functionality in any communication with Subscriber constitutes technical information, not a warranty or guarantee.

(d) Company's Cloud Services have not been tested in all situations under which they may be used. Subscriber is solely responsible for determining the appropriate uses for the Cloud Services and the results of such use; Company will not be liable for the results obtained through Subscriber's use of the Cloud Services. Company's Cloud Services are not specifically designed or intended for use in (i) storage of sensitive, personal information, (ii) direct life support systems, (iii) nuclear facility operations, or (iv) any other similar hazardous environment.

6.3 Intellectual Property Indemnification.

(a) Indemnity by Company. Company shall defend and indemnify Subscriber from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Subscriber, in connection with any Third Party claim (each, a "Claim") alleging that Subscriber's use of the Cloud Service as expressly permitted hereunder infringes upon any intellectual property rights, patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Subscriber: (x) promptly gives Company written notice of the Claim; (y) gives Company sole control of the defense and settlement of the Claim; and (z) provides to Company all reasonable assistance, at Company's expense. If Company receives information about an infringement or misappropriation claim related to the Cloud Service, Company may in its sole discretion and at no cost to Subscriber: (i) modify the Cloud Service so that it no longer infringes or misappropriates, (ii) obtain a license for Subscriber's continued use of the Cloud Service, or (iii) terminate this Agreement (including Subscriber's Cloud Service subscriptions and Account) upon prior written notice and refund to Subscriber any prepaid Subscription Fee covering the remainder of the Term of the terminated Cloud Service subscriptions. Notwithstanding the foregoing, Company shall have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the Cloud Service in combination with any software or hardware not expressly authorized by Company, (B) any modifications or configurations made to the Cloud Service by Subscriber without the prior written consent of Company, and/or (C) any action taken by Subscriber relating to use of the Cloud Service that is not permitted under the terms of this Agreement. This Section 6.3(a) states Subscriber's exclusive remedy against Company for any Claim of infringement or misappropriation of a Third Party's intellectual property rights related to or arising from Subscriber's use of the Cloud Service.

(b) To the extent permitted by law, Subscriber shall defend and indemnify Company from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Company, in connection with any Claim alleging that the Subscriber Data or Content, or Subscriber's use of the Cloud Service in breach of this Agreement, infringes upon any intellectual property rights, patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; unless applicable laws prohibit public entities from such indemnification and provided that Company (x) promptly gives Subscriber written notice of the Claim; (y) gives Subscriber sole control of the defense and settlement of the Claim; and (z) provides to Subscriber all reasonable assistance, at Subscriber's expense. This Section 6.3(b) states Company's exclusive remedy against Subscriber for any Claim of infringement or misappropriation of a Third Party's intellectual property rights related to or arising from the Subscriber Data or Subscriber's use of the Cloud Service.

6.4 Limitation of Liability.

(a) The entire, aggregate liability of Company is limited to the amount of Subscription Fees paid by Subscriber to Company pursuant to this applicable Order during the twelve (12) months prior to the first act or omission giving rise to the liability. This does not apply to the Company's intellectual property indemnification obligations in Section 6.3.

(b) Under no circumstances will Company be liable for (i) any indirect, incidental, consequential, special exemplary or punitive damages, loss of production or data, interruption of operations or lost revenue or profits, even if such damages were foreseeable, or (ii) any Previews or No-Charge Offerings.

(c) Company will not be liable for any claim in connection with this Agreement if such claim is brought more than two (2) years after the first event giving rise to such claim is or should have been discovered by Subscriber.

(d) The limitations and exclusions of this Section 6.4 apply to: (i) benefit of Company and its affiliates, and their respective officers, directors, licensors, subcontractors and representatives, and (ii) regardless of the form of action, whether based in contract, statute, tort (including negligence), or otherwise.

(e) The foregoing limitations and exclusions will not apply to the extent that liability cannot be limited or excluded in accordance with applicable law. Nothing in this Section shall limit Subscriber's payment obligations under Section 4.

Section 7.0 Confidentiality

7.1 Definition of Confidential Information. "Confidential Information" means any non-public information and/or materials maintained in confidence and disclosed in any form or medium by a party under this Agreement (the "Disclosing Party") to the other party (the "Receiving Party"), that is identified as confidential, proprietary or that a reasonable person should have known, was the Confidential Information of the other party given the nature of the circumstances or disclosure, or as otherwise defined as Confidential Information, trade secrets, proprietary business information as provided under applicable state law and any information marked by a party as exempted from disclosure by the applicable statute. Confidential Information may include without limitation: information about clients, services, products,

software, data, technologies, formulas, processes, know-how, plans, operations, research, personnel, suppliers, finances, pricing, marketing, strategies, security audits, penetration tests, opportunities and all other aspects of business operations and any copies or derivatives thereof. Confidential Information includes information belonging to a Third Party that may be disclosed only under obligations of confidentiality. Notwithstanding the foregoing, Confidential Information shall not include information that Receiving Party can demonstrate: (a) is or becomes generally known to the public without breach of any obligation by Receiving Party; (b) is received from a Third Party without breach of any obligation owed to Disclosing Party; or (c) is or has been independently developed by Receiving Party without the benefit of Confidential Information.

7.2 Protection of Confidential Information. The Receiving Party agrees that it shall: (i) use the Confidential Information solely for a purpose permitted by this Agreement, (ii) use the same degree of care as Receiving Party uses with its own Confidential Information, but no less than reasonable care, to protect Confidential Information and to prevent any unauthorized access, reproduction, disclosure, or use of any of Confidential Information; and (iii) restrict access to the Confidential Information of the Disclosing Party to those of its Affiliates and its and their employees, contractors and agents who need such access for purposes consistent with this Agreement and who are prohibited from disclosing the information by a contractual, legal or fiduciary obligation no less restrictive than this Agreement. Receiving Party shall not use, reproduce, or directly or indirectly allow access to the Confidential Information except as herein provided or export Confidential Information to any country prohibited from obtaining such information under any applicable laws or regulations.

7.3 Compelled Disclosure. If Receiving Party is required to disclose any Confidential Information to comply with law, to the extent legally permitted, Receiving Party shall: (a) give the Disclosing Party reasonable prior written notice to permit Disclosing Party to challenge or limit any such legally required disclosure; (b) disclose only that portion of the Confidential Information as legally required to disclose; and (c) reasonably cooperate with Disclosing Party, at Disclosing Party's request and expense, to prevent or limit such disclosure.

7.4 Records Requests. To the extent permitted by law, Subscriber shall treat as exempt from treatment as a public record, and shall not unlawfully disclose in response to a request made pursuant to any applicable public records law, any of Company's Confidential Information. Upon receiving a request to produce records under any applicable public records or similar law, Subscriber shall immediately notify Company and provide such reasonable cooperation as requested by Company and permitted by law to oppose production or release of such Company Confidential Information.

7.5 Remedies. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any unauthorized use or disclosure of Disclosing Party's Confidential Information and agrees to reasonably cooperate with Disclosing Party in its efforts to mitigate any resulting harm. Receiving Party acknowledges that Disclosing Party would have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

Section 8.0 Export Control Compliance

8.1 General. Subscriber shall comply with all applicable sanctions, embargoes and (re-)export control regulations, and, in any event, with those of the European Union, the United States of America and any locally applicable jurisdiction(s) (collectively "Export Regulations").

8.2 Checks. Prior to any transfer of Offerings (including all kinds of technical support and/or technology) to a Third Party, Subscriber shall check and ensure by appropriate measures that (i) there will be no infringement of an embargo imposed by the European Union, the United States of America and/or by the United Nations by such transfer, by brokering of contracts concerning Offerings or by provision of other economic resources in connection with Offerings, also taking into account any prohibitions to circumvent these embargos (e.g., by undue diversion); (ii) such Offerings are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization has been obtained; (iii) the regulations of all applicable sanctioned party lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered and (iv) Offerings within the scope of the respective Annexes to EU Regulations Nos. 833/2014 and 765/2006 as well as of Annex I to EU Regulation No. 2021/821 (in their current versions, respectively), will not, unless permitted by EU law, be (a) exported, directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries), to Russia or Belarus, or (b) resold to any third party business partner that does not take a prior commitment not to export such Offerings to Russia or Belarus.

8.3 Non-Acceptable Use of Offerings and Cloud Services. Subscriber shall not, unless permitted by the Export Regulations or respective governmental licenses or approvals, (i) download, install, access or use the Cloud Services, Content and/or Documentation from or in any location prohibited by or subject to comprehensive sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk and Luhansk regions of Ukraine) or to license requirements according to the Export Regulations; (ii) grant access to, transfer, (re-)export (including any 'deemed (re-)exports'), or otherwise make available the Cloud Services, Content and/or Documentation to any individual or entity designated on a sanctioned party list of the Export Regulations; (iii) use the Cloud Services, Content and/or Documentation for any purpose prohibited by the Export Regulations (e.g. use in connection with armaments, nuclear technology or weapons); (iv) upload to the Cloud Services platform any Subscriber Data or Content unless it is non-controlled (e.g. in the EU: AL = N; in the U.S.: ECCN = N or EAR99); (v) facilitate any of the aforementioned activities by any user. Subscriber shall provide any user(s) with all information necessary to ensure compliance with the Export Regulations.

8.4 Information. Upon request by Company, Subscriber shall promptly provide Company with all information pertaining to user(s), the intended use and the location of use of the Offerings.

8.5 Export Control Indemnification. To the extent permitted by law, Subscriber shall indemnify and hold harmless Company from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with (re) Export Regulations by Subscriber and/or user(s) and/or Subscriber's Third Parties business partner re-exporting Offerings in violation of embargoes or sanctions referred to in 8.2 above, and Subscriber shall compensate Company for all losses and expenses resulting thereof.

8.6 Reservation. Company shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. Subscriber acknowledges that Company may be obliged under the Export Regulations to limit or suspend access by Subscriber and/or user(s) to the Offerings.

Section 9.0 Miscellaneous

9.1 Compliance with Laws. Each party will comply with all laws and applicable government rules and regulations insofar as they apply to such party in its performance of this Agreement's rights and obligations.

9.2 Publicity. Company is permitted to: (i) include Subscriber's name and logo in accordance with Subscriber's trademark guidelines; and (ii) list the Cloud Services and Professional Services selected by Subscriber, in public statements and client lists. Subscriber agrees to participate in press releases, case studies and other collateral using quotes or requiring active participation, the specific details of which shall be subject to mutual consent.

9.3 Relationship of the Parties. Company is performing pursuant to this Agreement only as an independent contractor. Company has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between Company and Subscriber. Company shall not act or attempt to act or represent itself, directly or by implication, as an agent of Subscriber or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Subscriber or its affiliates.

9.4 Waiver. No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently

enforce any of its rights, whether relating to the same or a subsequent matter.

9.5 **Assignment.** This Agreement will extend and be binding upon the successors, legal representatives, and permitted assignees of the parties. However, this Agreement and the rights granted under this Agreement may not be assigned, sublicensed or otherwise transferred (by operation of law or otherwise) by Subscriber without the prior written consent of Company. Any attempted assignment in violation of this Section will be void.

9.6 **Force Majeure.** Subject to the limitations set forth below and except for fees due for Orders rendered, neither party shall be held responsible for any delay, default, or failure to perform any obligations under this Agreement due to any cause beyond its reasonable control. The delayed party will promptly notify the other party of any such event.

9.7 **Entity, Governing Law, Notices and Venue.** All notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, with notice deemed given as indicated in parentheses: (a) by personal delivery (when actually delivered); (b) by overnight courier (upon written verification of receipt); (c) by business mail (upon written verification of receipt); or (d) except for notice of indemnification claims, via electronic mail to Subscriber at the e-mail address maintained on Subscriber's Account and to Company at notice@brightlysoftware.com. Any dispute arising out of or in connection with this Agreement will be resolved as set forth in the table below: The Company entity entering into this Agreement, the address to which notices shall be directed under this Agreement and the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement shall depend upon where Subscriber is domiciled:

(a) In the United States and all other domiciles not otherwise mentioned, the Company entity is Brightly Software, Inc., a Delaware corporation, and the notice address shall be Corporate Trust Center, 1209 Orange Street, Wilmington, DE 19801 USA, Attn: Brightly Software. The applicable law will be the laws of the state of Delaware, USA; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Delaware, USA unless Subscriber is a public entity in which case the applicable law will be the state law where it is domiciled and any dispute will be subject to the jurisdiction of the applicable courts where it is domiciled. Each party hereby irrevocably submits itself to the personal jurisdiction of the relevant court for any such disputes.

(b) In Canada, the Company entity is Brightly Software Canada, Inc., an Ontario corporation, and the notice address shall be 1577 North Service Road East, Oakville, Ontario, Canada L6H 0H6 Canada, Attn: Brightly Software. The applicable law will be the laws of Ontario; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Ontario, Canada, without regard to the principles of conflicts of law.

(c) In the United Kingdom or a country in Europe, the Company entity is Brightly Software Limited, a limited company in England, the notice address shall be Pinehurst 2, Pinehurst Road, Farnborough, Hampshire, GU14 7BF Attn: Brightly Software. The applicable law will be the laws of England; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be London, England.

(d) In Australia, New Zealand, a country in Asia/Oceania, the Company entity is Brightly Software Australia Pty Ltd, a proprietary limited company in Australia, and the notice address shall be Level 9, 257 Collins Street, Melbourne, VIC 3000 Australia, Attn: General Counsel. The applicable law will be the laws of Victoria, Australia; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be Melbourne, Victoria, Australia.

If a dispute is subject to arbitration as described in this Section 9.7, arbitrators will be appointed in accordance with the ICC Rules, the language used for proceedings will be English, and orders for the production of documents will be limited to the documents on which each party specifically relies in its submission. Nothing in this Section 9.7 will restrict the right of the parties to seek interim relief intended to preserve the status quo or interim measures in any court of competent jurisdiction. Notwithstanding the foregoing, to the extent permissible under applicable law and to the extent it would not result in the invalidity or inapplicability of this Section 9.7, the parties agree that Company, at its sole discretion, may bring an action in the courts of the jurisdiction(s) where the Offering is being used or Subscriber has its place of business, to: (i) enforce Brightly IP rights, or (ii) for the payment of amounts due for any Offering.

9.8 **Company Affiliates and Subcontractors.** Company or its Affiliates may exercise Company's rights and fulfill Company's obligations under this Agreement. Company may use resources in various countries to provide Offerings, including unaffiliated subcontractors. Company remains responsible for its obligations under this Agreement.

9.9 **Interpretation of Agreement.** The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

9.10 **No Third Party Beneficiaries.** No person or entity not a party to the Agreement shall be deemed to be a Third Party beneficiary of this Agreement or any provision hereof.

9.11 **Severability.** The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

9.12 **Entire Agreement.** This Agreement, including any applicable Order, constitutes the full and complete agreement between Subscriber and Company with respect to the subject matter thereof and supersedes any previous or contemporaneous agreements or communications, whether written or verbal, relating to such subject matter. The reference to a document that refers to another document will be deemed to also include such other document, unless otherwise stated therein. This Agreement may not be varied except as set out in an Order or otherwise executed in writing by manual signatures or electronic signatures of authorized representatives of both parties or via an online mechanism, if so provided explicitly for such purposes by Company. No other terms and conditions will apply. The terms of any purchase order or similar Subscriber document are excluded and such terms will not apply to any order, and will not supplement or modify this Agreement irrespective of any language to the contrary in such document. In the event of any conflict or inconsistency between the documents, the order of precedence shall be (1) the applicable Order, (2) any schedule or addendum to this Agreement, and (3) the content of this Agreement.

9.13 **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. If Subscriber learns of any violation of the above restriction, Subscriber shall immediately notify Company.

9.14 **Cooperative Use.** With Subscriber's approval, the market research conducted by Subscriber during its selection process for the Cloud Services may be extended for use by other jurisdictions, municipalities, and government agencies of Subscriber's state. Any such usage by other entities must be in accordance with ordinance, charter, and/or procurement rules and regulations of the respective political entity.

9.15 **Modifications.** Company may revise the terms of this Agreement from time-to-time and shall post the most current version of this Agreement on its website. If a revision meaningfully reduces Subscriber's rights, Company shall notify Subscriber.

9.16 **USA Government Subscribers.** The Cloud Service and its Documentation and Content are "Commercial Items," "Commercial Computer Software" and "Computer Software Documentation" as defined 48 C.F.R. § 2.101 and 48 C.F.R. § 252.227-7014(a)(1) and (a)(5), as applicable. Pursuant to 48 C.F.R. § 12.212, and 48 C.F.R. § 227.7202, as revised, the U.S. Government acquires the Cloud Service and its Documentation and Company Content subject to the terms of this Agreement. Company will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.

Section 10.0 Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

- 10.1 "Access Credentials" means any user's name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Cloud Service.
- 10.2 "Account" means Subscriber's specific account where Subscriber subscribes to access and use Cloud Service(s).
- 10.3 "Account User" means each person or entity that access an Offering under this Agreement, whether such access is given by Subscriber, by Company at Subscriber's request, or by a third party authorized by Subscriber.
- 10.4 "Affiliate" means, with respect to any legal entity, any other legal entity that (i) controls, (ii) is controlled by or (iii) is under common control of such legal entity. A legal entity shall be deemed to "control" another legal entity if it has the power to direct or cause the direction of the management or policies of such legal entity, whether through the ownership of voting securities, by contract, or otherwise.
- 10.5 "Brightly IP" means all patents, patent applications, copyrights, trade secrets and other intellectual property rights in, related to, or used in the provision or delivery of any Order or technical solution underlying an Order, and any improvement, modification, or derivative work of any of the foregoing.
- 10.6 "Cloud Service" or "Cloud Services" means Company's branded offerings of cloud-based online services and associated cloud-based API (application programming interfaces) made available by Company, as updated, enhanced or otherwise modified from time-to-time. Cloud Service excludes Subscriber Data and Third Party Content.
- 10.7 "Content" means audio and visual information, documents, content, materials, products and/or software.
- 10.8 "Documentation" means the user instructions, learning material, functional or technical documentation, and API information relating to the Cloud Service made available to Subscriber by Company in print, online or embedded as part of help functions, which may be updated from time to time.
- 10.9 "Brightly Software" or "Company" means Brightly Software, Inc., Brightly Software Canada Inc., Brightly Software Australia Pty Ltd, and Brightly Software Limited, together with their affiliates, successors and assigns.
- 10.10 "Order" means Company's ordering document, online purchasing form, statement of work, or end user license agreement (EULA) used to order Company Cloud Services and/or Professional Services. By entering into an Order, Affiliate(s) agree to be bound by the terms of this Agreement as if an original party.
- 10.11 "Offering" means an individual offering made available by Company and identified on an Order, which consists of Cloud Services, Professional Services or a combination of any of the foregoing, and any associated maintenance and support services and Documentation.
- 10.12 "Previews" means Cloud Service or functionality that may be made available to Subscriber to try at its option at no additional charge that is clearly designated as beta, preview, pre-release, pilot, limited release, early adoption, non-production, sandbox, evaluation or a similar description.
- 10.13 "Professional Service" means the training, technical, consulting and/or other services, excluding Cloud Services, to be performed by Company that are ordered by Subscriber on an Order or provided without charge (if applicable).
- 10.14 "Subscriber" means the legal entity identified on the Account, on behalf of itself and its Affiliates and its and their employees, consultants, and (sub)contractors.
- 10.15 "Subscriber Data" means all data, information and other content provided by or on behalf of Subscriber, including that which the Account Users input or upload to the Cloud Service.
- 10.16 "Subscriber-Hosted Software" means Company's suite of software applications, as updated, enhanced or otherwise modified from time-to-time that are: (i) ordered by Subscriber on an Order or provided without charge (if applicable) and made available by Company, including mobile components, and (ii) granted a non-exclusive and non-transferable license (with no right to sublicense) to install and use software for the Term.
- 10.17 "Subscription Fee" means the fee invoiced to Subscriber by Company prior to the Subscription Term, which is required to be paid in order for Subscriber to be permitted to access and use the Cloud Service.
- 10.18 "Third Party" means a party other than Subscriber or Company.
- 10.19 "Third Party Content" means Content, applications and services owned or controlled by a Third Party and made available to Subscriber by the Third Party through or in connection with Cloud Services.

PROFESSIONAL SERVICES ADDENDUM

THIS PROFESSIONAL SERVICES ADDENDUM ("Addendum") is an addendum to the Master Subscription Agreement (the "Agreement") between Brightly Software ("Company") and Subscriber, as defined in the Agreement. This Addendum applies to the extent that Subscriber and Company execute an Order that includes Professional Services to be provided by Company for Subscriber.

1. PROFESSIONAL SERVICES.

1.1 Scope. Company will provide such Professional Services and supply Deliverables to Subscriber in accordance with the terms of this Addendum, the Agreement, and all applicable Orders, including any statement of work contained therein. Unless otherwise specified in an applicable Order: (i) Company will perform the Professional Services during workdays, Monday through Friday, up to 8 hours a day; (ii) any estimate of hours or costs are reasonable, good faith estimates only; and (iii) each task is performed as firm fixed price work or time and materials as described in the Order. Company is only obliged to supply Professional Services and/or Deliverables as expressly stated in the Order. Company shall not be obliged to supply any Professional Services and/or Deliverables without a valid Order.

1.2 Scheduling. Company requires at least 6 weeks advanced notice from the acceptance of an Order to schedule Professional Services delivery dates when travel is required. Onsite Professional Services shall be delivered consecutively in a single onsite visit unless the applicable Order includes the additional fees and incidental expenses associated with multiple visits.

1.3 Unused Professional Services. Unless otherwise specified in the Order, Company reserves the right to expire any unused Professional Services 6 months from the Effective Date set forth on the Order, and Subscriber will not be entitled to receive a refund for any fees prepaid for such expired Professional Services.

1.4 Relationship to Other Offerings. The Addendum is limited to Professional Services and does not convey any right to use any other Company Offerings. Except for Deliverables set forth in an Order, Subscriber agrees that Professional Services are not contingent on the delivery of any future Cloud Service functionality, or on any oral or written public comments by Company regarding future Cloud Service functionality or features.

1.5 Subscriber Cooperation. Subscriber will cooperate reasonably and in good faith with Company in its performance of Professional Services by: (i) providing access to any necessary Subscriber Data, (ii) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Company to perform its obligations under the Order, and (iii) actively participate in scheduled project meetings. Any delays in the performance of Professional Services or delivery of Deliverables caused by Subscriber may result in additional applicable charges for resource time.

1.6 Acceptance. Any Deliverables are stated in the Order. Unless otherwise specified in the applicable Order, Deliverables will be considered accepted upon the sooner of Subscriber's written acceptance notice (e-mail is sufficient) or five (5) business days from delivery. In the event Subscriber rejects the Deliverables, Subscriber shall provide a written rejection notice within five (5) business days from delivery which must specifically disclose the material failure to conform to the specifications set forth in the Order. In response to rejection notice, Company may revise and redeliver the Deliverable(s), and thereafter the procedures of this Section will repeat.

1.7 Change Order. Changes to Professional Service defined in an Order shall require a written Change Order signed by the parties prior to implementation of such change(s). Changes may include, for example, alterations to the Professional Service scope of work, Deliverables or changes to fees or schedule.

2. FEES & PAYMENT TERMS.

2.1 Payment. Subscriber will pay Company the fees specified in the Order. Unless the Order provides otherwise, Subscriber will pay Company within thirty (30) calendar days from the date of invoice.

2.2 Incidental Expenses. Subscriber will reimburse Company for travel and related business expenses incurred in connection with Professional Services. If an estimate of incidental expenses is included in the Order, Company will not exceed a 5% inflation of such estimate without the written consent of Subscriber.

3. TERM AND TERMINATION.

3.1 Term. Each Order term shall begin on the effective date specified in the applicable Order and end on the date that the Professional Services are completed or Subscriber is notified of expiration of the Order pursuant to Section 1.3 of this Addendum. Unless earlier terminated as set forth below, the terms of this Addendum will continue until termination or expiration of the applicable Order.

3.2 Termination. Either party may terminate an Order for the other's material breach on thirty (30) days' written notice, provided that if the other party cures the breach before expiration of such notice period, the Order will not terminate. Additionally, all Orders will immediately terminate upon termination or expiration of the Agreement.

3.3 Effect of Termination. Upon termination of an Order: (1) if such Order provides for an hourly or per unit fee, Subscriber will pay Company such fee for the work performed up to the date of termination; and (2) if the Order provides for a fixed fee, Subscriber will pay Company the reasonable value of the Professional Services rendered by Company up to the termination date. Termination of an Order for any reason, including without limitation for cause, will not terminate any other Order.



4. LICENSE FOR DELIVERABLES.

License for Deliverables. Upon payment of fees due under an applicable Order, Company grants Subscriber a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, and use any Deliverables created by Company solely for Subscriber as described in the Order. Company and Subscriber each retain all right, title and interest in their respective Intellectual Property and Company retains all ownership rights in the Deliverables.

5. NON-EXCLUSIVITY OF PROFESSIONAL SERVICES.

Notwithstanding the Confidentiality obligations set forth in Section 7 of the Agreement, Subscriber acknowledges and agrees that (i) multiple Subscribers may require similar Professional Services or Deliverables and that Company may be developing similar Professional Services and Deliverables for other third parties, (ii) Company may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information of Subscriber, (iii) nothing will prohibit Company from developing or having developed for it customizations, configurations, feature, concepts, systems or techniques that are similar to the Deliverables, and (iv) nothing will prohibit Company from re-using with another Subscriber or making generally available as part of Cloud Services all or part of any customization, configuration, feature, concept, system or technique developed hereunder.

6. MISCELLANEOUS

6.1 Independent Contractor. The parties are independent contractors and nothing in this Agreement should be construed to create a partnership, agency, joint venture, fiduciary or employment relationship between the parties. Neither party is authorized to make any representation or commitment on behalf of the other party. Each party assumes full responsibility for the actions of its personnel while performing Professional Services and such party will be solely responsible for the supervision, daily direction, control of its personnel and for the payment of all compensation.

6.2 Non-Solicitation. Except where prohibited by law, during the Term and for twelve (12) months thereafter, Subscriber will not solicit for employment, nor knowingly employ (either as an employee, contractor or agent), any of Company's employees or subcontractors without Company's prior written consent. For the purposes herein, "solicit" does not include broad-based recruiting efforts, including without limitation help wanted advertising and general posting open positions.

7. DEFINITIONS.

7.1 "Change Order" means a Company change order that changes the Professional Services as set forth on an Order or defined in a reseller purchase. Change Orders executed by both parties shall be incorporated by reference into the applicable Order. A Change Order cannot change Cloud Services, as defined in the Agreement to include SaaS applications.

7.2 "Deliverable" means a deliverable described in an Order.

All other capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.



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

SUBJECT: Presentation regarding cost recovery billing for vehicle accidents and responses from the Kerrville Fire Department, *presented by Fire Chief E Maloney.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 13, 2024

SUBMITTED BY: Eric Maloney, Fire Chief

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$0.00	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:

FireRecovery USA is a 3rd party vendor that invoices Auto Insurance for a fire and rescue response to specific call types. The charges are for specific call types to include Motor Vehicle Crash, HazMat response, Extrication, etc. and not for structure fires. The auto insurance provides a means to pay for these charges that is no cost to the customer since they were already in an accident, etc.. This is a common practice with many Texas municipalities to collect revenue to offset the rising cost of fire and rescue equipment. We recommend these charges be applied to non-city and county residents.

RECOMMENDED ACTION:

Recommend Council approve the Fire Recovery Services to adopt an ordinance in July.

ATTACHMENTS:

[20240625_Letter_Cost Recovery Services 6-20-24.pdf](#)



CITY OF KERRVILLE FIRE DEPARTMENT

Office of the Fire Chief
87 Coronado Drive
Kerrville, Texas 78028
830.257.8449 / www.kerrvilletx.gov



June 20, 2024

RE: Cost recovery billing for vehicle accidents and responses from the Kerrville Fire Department.

Mayor Herring and City Council,

Background: The Fire Department is constantly balancing the rising cost of fire apparatus, extrication tools, rescue equipment, specialized supplies and personnel. We provide incident stabilization, extrication, fluid cleanup, hazardous material management, and other extended operations that are high risk of damaging equipment, high demand of limited specialized supplies and require additional personnel to manage the incident. The replacement of specialized supplies and damaged equipment for motor vehicle accidents, car fires, and hazardous material spills can dramatically impact our budget. A portion of these motor vehicle accidents and hazardous material cleanup are allocated to visitors, travelers and trucking companies on Interstate 10 or on our city roadways.

Proposal: The additional expenses for fire responses requires an alternate means to generate revenue for asset replacement and supplies. A fee for service would be assessed for Motor Vehicle Accidents involving non-Kerr County residents and Hazardous Material spills for companies. The fee for services is paid through the at-fault customer's auto insurance property damage liability coverage. These charges are considered usual, customary and reasonable charges to include services, personnel, supplies, and equipment.

FireRecovery USA provides cost recovery services for over 200 fire departments in Texas to include Fredericksburg FD, Leon Valley FD, Converse FD, San Angelo FD, and New Braunfels FD. Their software automatically identifies billable runs through our fire department Records Management System (RMS). We manage each account through a record review process to submit accounts for billing that meet our qualifications.

The cost of the service is 22% of the monies collected and there are no monthly fees for FireRecovery USA to manage our account. The preliminary estimate of additional net revenue is \$40,000 per year based on our average calls for service. FireRecovery USA has a 94% average collection rate with an average billing of \$600 per call for service.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric W. Maloney".

Eric W. Maloney,
Fire Chief



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

SUBJECT: Proposed Stormwater Drainage Fee, *presented by A Zaroni, Management Intern and S Barron, Executive Director Public Works & Engineering.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 17, 2024

SUBMITTED BY: Stuart Barron, Director of Public Works

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	W - Water / Waste-Water / Drainage
Guiding Principle	N/A
Action Item	W7.1 - Take a holistic approach to stormwater/drainage management based on the level of growth anticipated in the Kerrville 2050 plan

SUMMARY STATEMENT:

Currently the City has identified thirteen drainage projects in our Stormwater Master Plan. The cost for these projects is approximately \$21 million and there is no allocated funding source. The master plan also lays out a process for evaluating additional drainage projects and ranking them against exiting projects to help staff prioritize work.

The implementation of a stormwater drainage fee will create a dedicated source of funding for these projects. If implemented, fees generated from this source would go into a separate restricted fund to address stormwater drainage projects.

Lower Lois Drain was the highest-ranking project in the master plan and was recently funded through the last street bond package. The project is now complete and is working well. Additional projects are being reviewed against other city priority projects funded through the general fund and utility fund. With a dedicated funding source, we can begin planning for the implementation of the stormwater master plan in a more predictable manner.

RECOMMENDED ACTION:

Direct staff to develop a Stormwater Drainage Fee.

ATTACHMENTS: [20240625 Stormwater_Fee_Executive_Summary.pdf](#)



Executive Summary

Stormwater Utility Fee Proposal

PURPOSE

The proposal is to evaluate the need of a Stormwater Utility Fee to generate sustainable revenue separate from the General Fund for maintaining the city's storm drainage system and funding essential capital projects. This initiative is crucial for protecting public health, sustaining community infrastructure, and supporting the city's growth and development goals.

Funding Options

1. Tier Rate

- This fee is based on runoff contribution **(recommended)**.
- Proposed pricing is between **\$3-\$10** monthly.
- Engineering study to determine Equivalent Residential Unit (ERU).
- Hiring an external consultant is recommended, with an estimated cost of **\$70,000**.
- Typical methods for fee assignment include using impervious area by aerial imagery (48%), building footprint (32%), gross parcel area (10%), and other methods (10%).

2. Set Rate:

- Charge 11,000 units/utility customers **\$3.79**, which will equate to **\$500,000** annually with a 40-year turnaround.

Equitable Distribution

- Ensuring equitable fee distribution and addressing potential financial hardships for residents is a key challenge.
- Public engagement and education efforts will be undertaken to ensure transparency and address community concerns.
- Effects all Residential & Commercial properties.

Positive Community Impact

- The proposed program will enhance the reliability and effectiveness of stormwater infrastructure.
- It will have a positive impact on the community by addressing critical infrastructure needs.

Priority Projects

- Projects are identified in the Stormwater Master Plan. (Contains the formula to prioritize a new project)
- Identifying funding and selecting priority projects are essential steps.
- Projects are ranked based on public safety, economic viability, project timing, and environmental impacts.

Conclusion

The Stormwater Utility Fee proposal represents a sustainable solution for funding the maintenance and improvement of the city's storm drainage system. By ensuring dedicated revenue, the city can better protect public health, support infrastructure, and foster community development.



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

SUBJECT: Monthly Financial Report for month-ended May 31, 2024, *presented by J Behrens, Director of Finance.*

AGENDA DATE OF: June 25, 2024

DATE SUBMITTED: June 17, 2024

SUBMITTED BY: Julie Behrens , Director of Finance

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:

Monthly Financial Report for month-ended May 31, 2024.

RECOMMENDED ACTION:

NA

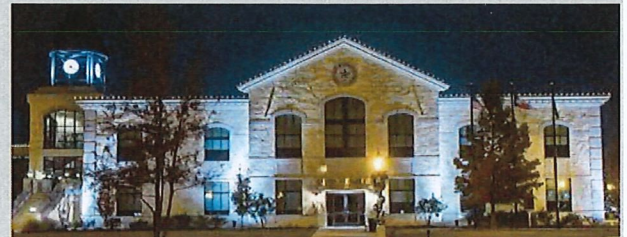
ATTACHMENTS:

[20240625_Presentation Finance.pdf](#)

2024

FINANCIAL REPORT MONTH ENDING MAY 31, 2024

CITY COUNCIL MEETING JUNE 25, 2024



GENERAL FUND

GENERAL FUND - BUDGET SUMMARY MAY 31, 2024

	FY2024 Original Budget	FY2024 Current Budget	FY2024 YTD Budget Estimate	FY2024 YTD Actual	Better/Worse Than Estimated
REVENUES					
Property Tax	11,957,339	11,957,339	11,622,534	12,015,501	392,968
Sales Tax	10,523,261	10,523,261	6,776,980	6,633,046	(143,934)
Franchise Fees	2,233,534	2,233,534	1,293,216	1,137,087	(156,129)
Total Taxes	24,714,134	24,714,134	19,692,730	19,785,635	92,905
Permits and Fees	235,610	235,610	165,398	136,864	(28,535)
Intergovernmental Revenue	1,872,507	1,872,507	1,443,703	1,524,941	81,238
Service Revenue	5,621,288	5,621,288	3,653,837	3,684,944	31,107
Recreation Revenue	1,876,551	1,876,551	1,133,437	1,107,326	(26,111)
Fines and Forfeitures	429,500	429,500	282,611	229,239	(53,372)
Grant & Donation Revenue	44,902	44,902	26,222	19,362	(6,861)
Interest and Miscellaneous	432,724	932,724	606,271	736,897	130,626
Operating Transfer In	2,411,858	2,411,858	1,607,905	1,607,905	-
TOTAL REVENUES	\$ 37,639,074	\$ 38,139,074	\$ 28,612,115	\$ 28,833,112	\$ 220,997
EXPENDITURES					
Personnel	26,841,827	27,152,445	17,812,004	17,545,133	266,871
Supplies	1,865,153	1,864,153	1,193,058	1,168,697	24,361
Maintenance	4,098,039	4,098,039	2,196,549	1,935,907	260,643
Services	3,082,478	3,067,278	2,134,826	2,048,153	86,672
Other Expenses	703,193	701,993	556,680	304,434	252,246
Capital Outlay	-	-	-	-	-
Operating Transfers Out	1,048,384	1,810,160	1,527,365	1,527,365	-
TOTAL EXPENDITURES	\$ 37,639,074	\$ 38,694,069	\$ 25,420,482	\$ 24,529,689	\$ 890,794

Revenues:

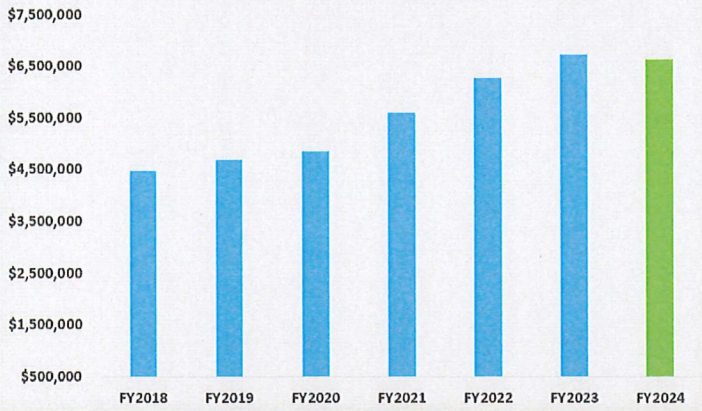
- Taxes and Franchise fees are \$93K better than budget estimate
 - Sales Tax is \$144K behind budget estimate (more detail in coming slides)
 - Franchise Fees \$156K behind budget estimate primarily because of KPUB shortfall
- Other Revenues
 - Intergovernmental better than budget – variance related to actual KISD-KPD expenses for SRO Program
 - Service Revenue \$31K better than budget estimate
 - Recreation Revenue \$26K behind budget estimate
 - Interest Income averaging 5% - budgeted at 3%

Expenses:

- Personnel \$267K better than budget estimate
 - Includes salaries, overtime, benefits, training, travel
- Maintenance \$261K better than budget estimate
 - Street Paving timing
- Services \$87K ahead estimate
- Other \$252K better than estimate but contingency is in this category and is difficult to predict until closer to year-end

GENERAL FUND- SALES TAX

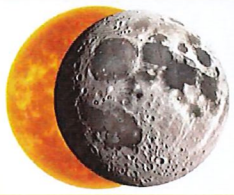
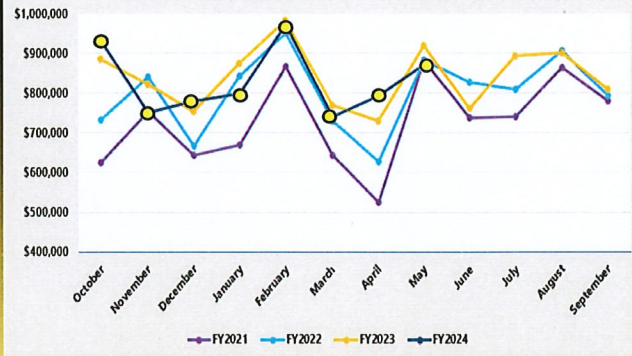
HISTORICAL SALES TAX REVENUE COMPARISONS
YEAR-TO-DATE THROUGH MAY



SALES TAX HISTORICAL INFORMATION

- FY2024 is budgeted slightly less than FY2023 based on trends and other economic factors
- Graph on left illustrates YTD revenues with FY2024 a little behind FY2023
- \$144K behind budget estimate
 - FY2024 through April:
 - 41% higher than FY2019
 - 18% higher than FY2021
- The graph on the bottom right illustrates a historical view of monthly sales tax

HISTORICAL SALES TAX REVENUE MONTHLY TRENDS



WATER FUND

WATER FUND - BUDGET SUMMARY MAY 31, 2024

	FY2024 Original Budget	FY2024 Current Budget	FY2024 YTD Budget Estimate	FY2024 YTD Actual	Better/Worse Than Estimated
REVENUES					
Water	7,550,971	7,550,971	4,446,012	3,941,033	(504,979)
Sewer	6,856,655	6,856,655	4,521,278	4,548,671	27,393
Reuse	175,000	175,000	75,180	91,534	16,354
Waste Disposal	350,000	350,000	230,090	198,037	(32,053)
Interest & Misc	139,500	274,500	183,146	229,924	46,778
Taps & Meters / Other Fees	471,800	471,800	264,114	295,274	31,160
Total Revenue	\$ 15,543,926	\$ 15,678,926	\$ 9,719,820	\$ 9,304,473	\$ (415,347)
EXPENDITURES					
Personnel	4,431,141	4,476,066	2,775,161	2,724,569	50,592
Supplies	911,280	911,280	538,020	488,667	49,352
Maintenance	1,197,068	1,164,271	775,754	442,974	332,779
Services	1,096,981	1,056,981	684,289	763,410	(79,121)
Other Expenses	338,292	378,292	249,673	64,487	185,186
Capital	144,980	177,778	119,111	101,849	17,262
Operating Transfers Out	7,424,183	7,424,183	5,057,788	5,057,788	-
TOTAL EXPENDITURES	\$ 15,543,926	\$ 15,588,851	\$ 10,199,796	\$ 9,643,745	\$ 556,051

Revenues:

- Water \$505K behind budget estimate
- Sewer \$27K ahead of budget estimate
- Reuse \$16K better than budget estimate
- Interest Income averaging 5% - budgeted @ 3%

Expenses:

- Personnel \$51K better than budget estimate
- Supplies better than estimate by \$49K
- Maintenance \$332K better than budget estimate.
 - Large GAC expense hitting maintenance in June
- Services behind estimate by \$79K
 - Legal services impacting this category
- Other \$185K better than estimate but contingency is in this category and is difficult to predict until closer to year-end

DEVELOPMENT SERVICES FUND

DEVELOPMENT SERVICES FUND - BUDGET SUMMARY MAY 31, 2024

	FY2024 Original Budget	FY2024 Current Budget	FY2024 YTD Budget Estimate	FY2024 YTD Actual	Better/Worse Than Estimated
REVENUES					
Permits & Fees	926,648	926,648	602,321	374,158	(228,163)
Interest & Misc	5,000	5,000	3,300	1,981	(1,319)
Transfers-In	247,980	259,756	177,096	177,096	-
Total Revenue	\$ 1,179,628	\$ 1,191,404	\$ 782,717	\$ 553,235	\$ (229,482)
EXPENDITURES					
Personnel	1,056,458	1,068,368	720,614	719,323	1,291
Supplies	13,180	12,966	8,298	6,626	1,672
Maintenance	41,694	41,694	22,348	22,522	(174)
Services	63,443	63,443	44,156	44,437	(281)
Other Expenses	4,854	4,934	3,715	2,883	832
TOTAL EXPENDITURES	\$ 1,179,628	\$ 1,191,405	\$ 799,132	\$ 795,791	\$ 3,341

- Permits and Fees \$228K behind budget estimate. Impacted by Stage 4 Water Restrictions & slower development happening at this time.
- Expenses tracking right on budget. Heavily personnel driven so hard to reduce expenses.

HOTEL OCCUPANCY TAX

HOTEL OCCUPANCY TAX FUND - BUDGET SUMMARY MAY 31, 2024

	FY2024 Original Budget	FY2024 Current Budget	FY2024 YTD Budget Estimate	FY2024 YTD Actual	Better/Worse Than Estimated
REVENUES					
Taxes	1,719,032	1,719,032	1,111,022	1,079,282	(31,740)
Merchandise Sales & Other	25,000	87,126	87,126	201,929	114,803
Eclipse Sponsors/Donations	40,000	40,000	40,000	94,950	54,950
CAP Grant	100,000	100,000	150,000	150,000	-
Interest & Misc	35,086	35,086	24,560	71,369	46,809
Total Revenue	\$ 1,919,117	\$ 1,981,243	\$ 1,412,707	\$ 1,597,529	\$ 184,822
EXPENDITURES					
Supplies	-	-	-	2,678	(2,678)
Maintenance	-	-	2,969	2,969	-
Services (including CVB)	1,432,602	1,432,602	1,095,941	1,095,493	448
Other (including events)	454,500	1,014,500	588,410	576,316	12,094
Transfers	85,000	1,085,001	56,667	56,667	-
	\$ 1,972,102	\$ 3,532,103	\$ 1,743,986	\$ 1,734,123	\$ 9,864

Revenue overall \$184K better than the budget estimate primarily due to eclipse merchandise sold

- Occupancy Tax \$32K behind budget estimate (includes \$60K in audit payments)

Expenses \$10K better than the budget estimate

- Paid CVB Quarter 3 Payment \$277K

Finance Tentative Schedule of Activities

July

July 11th City Council Budget Workshop
July 25th Certified roll from KCAD
July 28th Effective Tax Rate Calculation from Kerr County
July 31st Proposed Budget Filed with Secretary

August

August 13th Proposed Tax Rate Resolution
August 21st Audit Pre-work Begins

September

September 10th Public Hearing & First Reading Proposed Budget & Tax Rate
September 24th Second Reading Proposed Budget & Tax Rate
September 30th Year-end close

October

October 1st Begin FY2025

2024

QUESTIONS?



LOOKING UP

