

**FIRST AMENDMENT TO KYLE 57
PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT**

THIS FIRST AMENDMENT TO KYLE 57 PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT (“First Amendment”) is made and entered into by and between the **CITY OF KYLE, TEXAS**, a home rule municipal corporation, acting by and through its duly authorized representative (the “City”), and **KYLE 57 DEVELOPMENT, INC**, a Texas corporation (the “Owner”), to be effective as of May 17, 2022 (the “Effective Date”).

RECITALS

WHEREAS, the Owner and the City are sometimes individually referred to as a “Party” and collectively as the “Parties”; and

WHEREAS, the City and the Owner previously entered into the Kyle 57 Public Improvement District Financing Agreement, effective as of October 4, 2021, as amended by the letter agreement, effective as of March 1, 2022 between the Owner and the City (the “Financing Agreement”) for the development of approximately 57.293 acres of land located within the corporate limits of the City in Hays County, Texas, as described by metes and bounds in Exhibit A attached hereto (the “Property”); and

WHEREAS, capitalized terms used in this First Amendment herein but not otherwise defined shall have the meanings assigned to them in the Financing Agreement; and

WHEREAS, the Parties desire to amend the Financing Agreement to increase the estimated costs of the Authorized Improvements from \$8,000,000 to \$9,000,000; and

WHEREAS, the Parties acknowledge and agree that, except to the extent amended by this First Amendment herein, all provisions and terms contained in the Financing Agreement shall remain in full force and effect; and

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this First Amendment, and for good and valuable consideration the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

AGREEMENT

1. Defined Terms. All capitalized terms used in this First Amendment, to the extent not otherwise expressly defined herein, shall have the meanings assigned to them in the Financing Agreement.

2. Amendment to Section 2.01(f). The Parties agree to amend Section 2.01(f) of the Financing Agreement to read as follows:

(f) The District will fund no more than \$9,000,000 in Authorized Improvements, including Bond Issuance and financing costs.

3. Miscellaneous.

(a) This First Amendment amends the Financing Agreement in no other manner except as expressly set forth herein. Except as amended herein, the terms, provisions, agreements, covenants and conditions of the Financing Agreement shall continue in full force and effect. In the event of a conflict between this First Amendment and the Financing Agreement, the terms of this First Amendment shall control.

(b) This First Amendment together with the Financing Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this First Amendment and the Financing Agreement. This First Amendment and the Financing Agreement shall not be modified or amended except in writing signed by the Parties.

(c) If any provision of this First Amendment is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this First Amendment; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this First Amendment shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

(d) This First Amendment may be executed in one (1) or more counterparts, each of which when taken together shall constitute one and the same instrument.

(e) The City represents and warrants that the individual executing this First Amendment on behalf of the City has been duly authorized to do so. The Owner represents and warrants that the individual executing this First Amendment on behalf of Owner has been duly authorized to do so.

4. No Boycott of Israel.

To the extent this First Amendment constitutes a contract for goods or services for which a written verification statement is required, the Owner hereby verifies that it and its parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this First Amendment is a contract for goods or services, will not boycott Israel during the term of this First Amendment. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Owner understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

5. No Business With Sanctioned Countries.

The Owner represents that neither it nor any of its respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable federal law and excludes the Owner and any of its respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Owner understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

6. Verification Regarding Energy Company Boycotts.

To the extent this First Amendment constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislative Session), Texas Government Code, as amended, the Owner hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of this First Amendment. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable State or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. The Owner understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

7. Verification Regarding Discrimination Against Firearm Entity or Trade Association.

To the extent this First Amendment constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislative Session, "SB 19"), Texas Government Code, as amended, the Owner hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any,

(1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and

(2) will not discriminate during the term of this First Amendment against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable State or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3) (as added by SB 19), Texas Government Code. The Owner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

[Signature Page to Follow]

EXECUTED BY THE PARTIES TO BE EFFECTIVE ON THE EFFECTIVE DATE:

CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

This instrument was acknowledged before me on the ____ day of May, 2022 by Travis Mitchell, Mayor of the City of Kyle, Texas on behalf of said City.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires: _____

OWNER:

KYLE 57 DEVELOPMENT, INC.,
a Texas corporation

By: _____
Name: Garrett S. Martin
Title: President

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of May, 2022 by Garrett S. Martin, President of Kyle 57 Development, Inc., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT A
PROPERTY DESCRIPTION

PROPERTY DESCRIPTION

BEING 57.293 ACRES OF LAND LOCATED IN THE SAMUEL PHARASS SURVEY, ABSTRACT 360 IN HAYS COUNTY, TEXAS AND BEING THE SAME LAND AS A CALLED 57.260 ACRE TRACT DESCRIBED IN A IN VOLUME 3416, PAGE 791, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.), SAID 57.293 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS WITH ALL BEARINGS BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE NAD83 4204.

BEGINNING at an iron rod with aluminum cap stamped "PRO TECH ENG." found on the southwesterly line of FM 150 for the east corner of Quail Meadows Subdivision, as recorded in Cabinet 7, Slide 47 of the Plat Records of Hays County, Texas, said point being the northeast corner of the herein described tract;

THENCE, with said southwesterly line of FM 150, the following courses and distances:

1. S46°07'35"E, for a distance of 1415.01 feet to a TxDOT Type 1 monument found for the beginning of a curve to the left;
2. with said curve to the left an arc length of 95.70 feet, said curve having a radius of 5769.65 feet, a central angle of 00°57'01", and having long chord which bears S46°31'52"E, for a distance of 95.70 feet to An iron rod with cap (unreadable) found for the north corner of a called 4.847 acre tract as described in Document No. 17041944, O.P.R.H.C.T.;

THENCE, with the line common to said 57.260 acre tract and said 4.847 acre tract, the following courses and distances:

1. S43°40'27"W, for a distance of 425.23 feet to an iron rod with cap stamped "LA" found for the westerly corner of said 4.847 acre tract;
2. S46°20'32"E, for a distance of 516.25 feet to a 1/2 inch iron rod found on the northwesterly line of a call 10.00 acre tract described in Document No. 19046058, O.P.R.H.C.T.;

THENCE, with the line common to said 57.260 acre tract and said 10.00 acre tract, S35°54'59"W, for a distance of 507.96 feet to a fence post found for a west corner of said 10.00 acre tract, said point also being the north corner of a called 2.62 acre tract described in Volume 245, Page 347, O.P.R.H.C.T., and being an angle point in the southeasterly line of said 57.260 acre tract;

THENCE, with the line common to said 57.260 acre tract and said 2.62 acre tract, S52°59'34"W, for a distance of 402.16 feet to a fence corner post found on the northeasterly line of a called 9.752 acre tract described in Volume 5322, Page 1 O.P.R.H.C.T., said point being the most westerly corner of said 2.62 acre tract and the most southerly corner of said 57.260 acre tract;

THENCE, with the line common to said 9.752 acre tract and said 57.260 acre tract, N45°49'57"W, for a distance of 134.08 feet to an iron rod with aluminum cap stamped "KENT McMILLAN" found for the north corner of said 9.752 acre tract, same being the east corner of a called 608.70 acre tract described in Document No. 17034180 O.P.R.H.C.T.;

THENCE, with the line common to said 57.260 acre tract and said 608.70 acre tract, the following courses and distances:

1. N46°33'10"W, for a distance of 1447.00 feet to a fence post found for angle point;
2. N45°43'46"W, for a distance of 436.59 feet to a 1/2 inch iron rod found for the south corner of said Quail Meadows Subdivision;

THENCE, with the southeasterly line of said subdivision and the northwesterly line of said 57.260 acre tract, the following courses and distances:

1. N43°14'17"E, for a distance of 609.84 feet to a 50d found stamped "PRO TECH ENG";
2. N42°48'25"E, for a distance of 252.56 feet to an iron rod set with cap stamped "ATWELL LLC";
3. N43°08'44"E, for a distance of 467.53 feet to the POINT OF BEGINNING and containing 57.293 acres of land, more or less.

DATED THIS THE 15th DAY OF NOVEMBER, 2020



ROBERT J. GERTSON, RPLS# 6367
Atwell LLC
3815 S Capital of Texas Hwy, Ste. 300
Austin, Texas 787404
(512)904-0505
rgertson@atwell-group.com



K:\2020\2020\1\img\Base\534319\EXH-BOUNDARY-SURVEY-03.dwg

LEGEND

- 100' x 100' AC WITH IMP ATWELL, LLC
- 1/2" DIA BAR FENCE UNLESS OTHERWISE NOTED
- BAY
- SURVEY LINE
- NEW FENCE
- EXISTING FENCE
- EXISTING UTILITY
- EXISTING INFRASTRUCTURE
- EXISTING RECORD OF TRANS 100'X100' TRACT
- EXISTING RECORD OF TRANS 100'X100' TRACT
- EXISTING RECORD OF TRANS 100'X100' TRACT

1. SURVEY BASED ON THE STATE WAVE FLARE COORDINATE SYSTEM OF 1983 (NAD83) TRANS CENTRAL (NAD83) ZONE.

DESCRIPTION:

PROPERTY DESCRIPTION:

57.293 ACRES OF LAND LOCATED IN THE SEASIDE PLANNED SURVEY, ABSTRACT 350 IN HAYS COUNTY, TEXAS, AND BEING THE SAME AS CALLED IN THE TRACT DESCRIBED IN A DEED VOLUME 2419, PAGE 781, PUBLIC RECORDS OF HAYS COUNTY, TEXAS, COMMENCED IN 1984, 57.293 ACRES, THAT HAVE BEEN PROFESSIONALLY SURVEYED AND PLATTED AS FOLLOWS: NEW AC. BEARING BOUND ON THE WEST CORNER OF THE SOUTH CENTRAL ZONE, NAD83.

BEARING ON AN IRON ROD WITH ALUMINUM CAP, LATEST YEAR FROM 1984, FOUND AT THE INTERSECTION OF THE 1/2" DIA BAR FENCE FOR THE WEST CORNER OF QUAIL BENDERS SUBDIVISION, AS DESCRIBED IN DEED NO. 1094 OF THE PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND POINT BEING THE SOUTHWEST CORNER OF THE TRACT DESCRIBED IN DEED NO. 1094 OF THE PUBLIC RECORDS OF HAYS COUNTY, TEXAS, BY THE FOLLOWING COURSE AND DISTANCE:

1. S46°42'35" E, for a distance of 415.21 feet to a 1/2" dia iron rod found at the beginning of a curve to its left;

2. With said curve to the left in an arc length of 35.70 feet, said curve having a radius of 377.01 feet, a central angle of 0°47'41", and having long chord about 36.42 feet;

3. S42°31'52" E, for a distance of 45.70 feet to an iron rod with cap (conventional found for the north corner of a 100' x 100' acre tract as described in Deed No. 1741894, S.P. 1997);

THENCE with the line common to said 17,000 acre tract and said 4847 acre tract, the following courses and distances:

1. S44°47'27" E, for a distance of 418.81 feet to an iron rod with cap (stamped "S") found for the westerly corner of said 4847 acre tract;

2. S44°22'21" E, for a distance of 518.25 feet to a 1/2" dia iron rod found on the northerly line of a 100' x 100' acre tract described in Deed No. 1741894, S.P. 1997;

THENCE with the line common to said 51,350 acre tract and said 10,000 acre tract, 33°09'44" E, for a distance of 499.14 feet to a 1/2" dia iron rod found on the northerly line of a 100' x 100' acre tract, described in Volume 5320, Page 1 007777-01, said point being the north corner of said 10,000 acre tract and the first southerly corner of said 51,350 acre tract;

THENCE with the line common to said 51,350 acre tract and said 282 acre tract, 33°09'44" E, for a distance of 499.14 feet to a 1/2" dia iron rod found on the northerly line of a 100' x 100' acre tract, described in Volume 5320, Page 1 007777-01, said point being the north corner of said 10,000 acre tract and the first southerly corner of said 51,350 acre tract;

THENCE with the line common to said 51,350 acre tract and said 57,293 acre tract, 184°42'27" E, for a distance of 1,214.00 feet to an iron rod with aluminum cap (stamped "S") found for the south corner of said 57,293 acre tract, same being the east corner of a 100' x 100' acre tract described in Deed No. 1741894, S.P. 1997;

THENCE with the line common to said 57,293 acre tract and said 4847 acre tract, the following courses and distances:

1. N44°37'37" E, for a distance of 1447.00 feet to a 1/2" dia iron rod found for the south corner of said Quail Benders Subdivision;

THENCE with the southerly line of said subdivision and the westerly line of said 57,293 acre tract, the following courses and distances:

1. S44°47'27" E, for a distance of 418.81 feet to an iron rod with cap (stamped "S") found for the west corner of said 4847 acre tract;

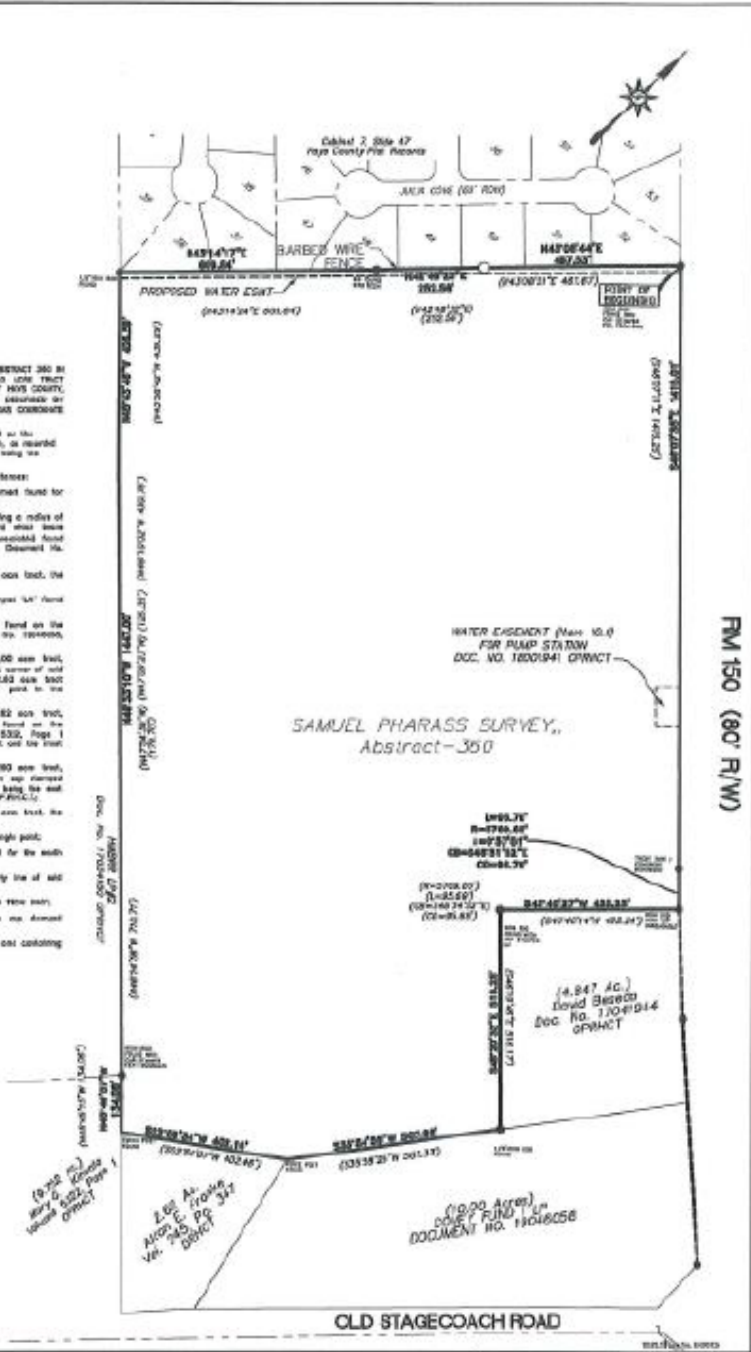
2. S44°22'21" E, for a distance of 518.25 feet to a 1/2" dia iron rod with cap (stamped "S") found for the west corner of said 4847 acre tract;

3. N41°09'41" E, for a distance of 447.20 feet to the POINT OF BEGINNING on a bearing 53,300 acres of land, more or less.



DATE THIS THE 16th DAY OF NOVEMBER, 2023

ROBERT J. GERTSON, RPLS# 6367
 ATWELL, LLC
 3815 S. Central Expressway, Suite 300
 Austin, Texas 78746
 (817) 804-0105
 rjgertson@atwell-group.com



BOUNDARY SURVEY

PROJECT: 57.293 ACRES (2,495,709 SQUARE FEET)
 OUT OF THE SAMUEL PHARASS SURVEY, A-300
 HAYS COUNTY, TEXAS

ATWELL
 05E35C420 www.atwell-group.com
 380 S. GARCIA ST., SUITE 300
 AUSTIN, TX 78704
 512.894.0020