CITY OF KYLE

Notice of Regular City Council Meeting

Kyle City Hall, 100 W. Center Street, Kyle, TX 78640; Spectrum 10; https://www.cityofkyle.com/kyletv/kyle-10-live
SPECIAL NOTE: Pursuant to the March 16, 2020 proclamation issued by Governor Abbott, this meeting will be held in-person and by videoconference in order to advance the public health goal of limiting face-to-face meetings (also called 'social distancing') to slow the spread of COVID-19. Some City Council members will be present in the chamber while others will attend the meeting via videoconferencing. This meeting can be viewed live online at https://www.cityofkyle.com/kyletv/kyle-10-live OR Spectrum10.

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on January 19, 2021, at Kyle City Hall, 100 W. Center Street, Kyle, TX 78640; Spectrum 10; https://www.cityofkyle.com/kyletv/kyle-10-live, for the purpose of discussing the following agenda.

Posted this 14th day of January, 2021, prior to 7:00 p.m.

I. Call Meeting to Order

II. Approval of Minutes

1. City Council Special Meeting Minutes - January 5, 2021. ~ *Jennifer Holm, City Secretary*
2. City Council Meeting Minutes - January 5, 2021. ~ *Jennifer Holm, City Secretary*

III. Citizen Comment Period with City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak are encouraged to sign in before the meeting begins. Speakers may be provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit.

3. Members of the public that wish to provide citizen comment have the following options:

1. In-Person at Kyle City Hall
2. Virtual Attendance - Submit the online registration form found at: https://www.cityofkyle.com/council/citizen-comment-sign. Registration must be received by 12 p.m. on the day of the meeting.

IV. Appointments

4. Appoint nominee for position on City of Kyle Ethics Commission. ~ *Ashlee Bradshaw, Council Member*
   - Amanda McCullough

V. Presentation

5. Martin Luther King, Jr. Day Council Proclamation. ~ *Dex Ellison, Council Member*

6. CIP/Road Projects and Consent Agenda Presentation. ~ *Travis Mitchell, Mayor*

VI. Consent Agenda

7. Approve a two-year service agreement with GOVERNMENTJOBS.COM, INC., DBA NEOGOV of El Segundo, California, in the amount of $20,181.00 for online employee onboarding solutions to include EForms for document and workflow management software subscription services. ~ *Sandra Duran, Director of Human Resources*

8. Authorize award and execution of a Purchase Order to T-MOBILE in an amount not to exceed $38,879.30 for the purchase of 70 mobile phones for the Kyle Police Department. The devices support the joining of T-Mobile's "Heroes Connected" program which provides 10 years of free service for all First Responders. ~ *Jeff Barnett, Chief of Police*

9. Approve a payment in the amount of $207,543.00 to the Hays County registry of the Court for payment of the Special Commissioner's Award related to acquisition of property from Alexander Family Trust. ~ *J. Scott Sellers, City Manager*

10. Approval of contract in the amount of $15,850 to PARALLEL, A Brand Agency for PR Services. ~ *Sarah Watson, Events & Programs Coordinator*

11. *(Second Reading)* An Ordinance granting Acadian Ambulance Service of Texas, LLC, D/B/A Acadian Ambulance Service, a franchise to provide non-emergency and rollover emergency ambulance services within the boundaries of the City of Kyle, Texas; providing an agreement prescribing conditions, terms, and regulations governing the operation of the non-emergency ambulance services; providing penalties for noncompliance with franchise. ~ *Jerry Hendrix, Chief of Staff*

    City Council voted 7-0 to approve on first reading.

12. Approve Howerton Plum Creek - Site Plan (SD-20-0079) 2.976 acres; 1 commercial lot for property located at 4282 S. FM 1626. ~ *Howard J. Koontz, Director of Planning and Community Development*

    Planning and Zoning Commission voted 6-0 to approve the site plan.

13. Approve Silberberg Phase 2 - Site Plan (SD-20-0086) 2.427 acres; 1 commercial lot for property located at 4210 Benner Road. ~ *Howard J. Koontz, Director of Planning and Community Development*

    Planning and Zoning Commission voted 6-0 to approve the site plan.

14. Plum Creek Phase 1, Section 11G Replat of Lot 1B, Block A (SUB-20-0156) 2.139 acres; 2 commercial lots for property located at 4600 FM 1626. ~ *Howard J. Koontz, Director of Planning and Community Development*

    Planning and Zoning Commission voted 6-0 to approve the Replat.

VII. Consider and Possible Action

15. Owners Representative Consultant Services Contract Between the City of Kyle and AG|CM, Inc. in the amount of $32,292.00 monthly for a period of twenty-two months. ~ *J. Scott Sellers, City Manager*

16. Consider and Possible action to amend the Brooks Crossing Development Agreement to accept negotiated language regarding a buffer strip between Brooks Crossing and Plum Creek HOA. ~ *James R. Earp, Assistant City Manager*

17. (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 1.4 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 101 Sunflower Circle, in Hays County, Texas. (Jimmy and Diana Owen - Z-20-0066) ~ *Howard J. Koontz, Director of Planning and Community Development*

    Planning and Zoning Commission voted 6-0 to recommend approval of the request.

    - Public Hearing

18. (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 5.87 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 1400 E. RR 150, in Hays County, Texas. (1400 E. FM 150, LLC - Z-20-0068) ~ *Howard J. Koontz, Director of Planning and Community Development*

    Planning and Zoning Commission voted 6-0 to recommend approval of the request.

- Public Hearing

19. (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, to rezone approximately 19.5 acres of land from Retail Service District 'RS' to Multi-Family Residential-3 'R-3-3' for property located at 5492 Kyle Center Drive, in Hays County, Texas. (DDR DB Kyle LP - Z-20-0069)~ *Howard J. Koontz, Director of Planning and Community Development*

    Planning and Zoning Commission voted 5-1 to deny the request.

    - Public Hearing

20. (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas for the purpose of rezoning approximately 57-acres of land from Single Family Residential-2 'R-1-2' (42.3-acres) and Retail Service District 'RS' (15-acres) to Planned Unit District 'PUD' (Single Family Attached 'R-1-A', 54-acres) and (Retail Service District 'RS', 3.3-acres) for property located at 1821 W. RR 150, in Hays County, Texas. Kyle Mortgage Investors, LLC (Z-20-0067) ~ *Howard J. Koontz, Director of Planning and Community Development*

    Planning and Zoning Commission voted 4-2 to recommend approval of the request.

    - Public Hearing

21. *(Second Reading)* An Ordinance of the City of Kyle, Texas annexing 29.792 acres of land, more or less, located in Hays County, including the abutting streets, roadways, and rights-of-way into the corporate limits of the City, at the request of the property owner; approving a service plan for the annexed area; making findings of fact; providing a severability clause and an effective date; and providing for open meetings and other related matters. ~ *Howard J. Koontz, Director of Planning and Community Development*

    City Council voted 6-1 to approve on first reading.

22. Direct staff and possibly a task force to restart the Comprehensive Plan revision process and hiring a firm to assist. ~ *Dex Ellison, Council Member*

VIII. City Manager's Report

23. Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *J. Scott Sellers, City Manager*
    - Black History Month Programming
    - National Pie Day
    - COVID Vaccine and Testing Information

IX. Executive Session

24. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
    1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
        - PGAL Contract
        - Parallel Contract
        - Workforce housing on Philomena
        - Marketplace Development Agreement
        - Sign Regulations
    2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
    3. Personnel matters pursuant to Section 551.074.
        - City Manager Consulting Opportunity
    4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
        - Project Goldfish
        - Project Carnation Pink

25. Take action on items discussed in Executive Session.

X. Adjourn

At any time during the Regular City Council Meeting, the City Council may adjourn into an Executive Session, as needed, on any item listed on the agenda for which state law authorizes Executive Session to be held

*Per Texas Attorney General Opinion No. JC-0169; Open Meeting & Agenda Requirements, Dated January 24, 2000: The permissible responses to a general member communication at the meeting are limited by 551.042, as follows: "SEC. 551.042. Inquiry Made at Meeting. (a) If, at a meeting of a government body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by the subchapter, the notice provisions of this subchapter, do not apply to:(1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry. (b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting."

CITY OF KYLE, TEXAS

2021 0105 Minutes

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: City Council Special Meeting Minutes - January 5, 2021. ~ *Jennifer Holm, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2021 0105 DRAFT Special Council Meeting Minutes

SPECIAL CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Special Session on January 5, 2021 at Kyle City Hall and due to COVID-19, some members attended virtually (v) at Spectrum 10; https://www.cityofkyle.com/kyletv/kyle-10-live with the following persons present:

Mayor Travis Mitchell
Mayor Pro Tem Rick Koch (v)
Council Member Dex Ellison (v)
Council Member Yvonne Flores-Cale
Council Member Robert Rizo (v)
Council Member Ashlee Bradshaw
Council Member Michael Tobias
Scott Sellers, City Manager
James Earp, Assistant City Manager (v)
Paige Saenz, City Attorney (v)
Jerry Hendrix, Chief of Staff (v)
Samantha Armbruster, Communications Dir. (v)
Jennifer Holm, City Secretary
Diana Torres, Economic Dev Director (v)
Perwez Moheet, Finance Director (v)
Matt Dawson, IT Director
Grant Bowling, Video Production Specialist
Harper Wilder, Director of Public Works (v)

I. Call Meeting to Order

Mayor Mitchell called the meeting to order at 5:34 p.m. Mayor Mitchell asked the city secretary to call roll.

Present were: Mayor Mitchell, Mayor Pro Tem Koch, Council Member Ellison, Council Member Flores-Cale, Council Member Rizo, Council Member Bradshaw, and Council Member Tobias. A quorum was present.

II. Citizen Comment Period with City Council

1. Members of the public that wish to provide citizen comment have the following options:
    1. In-Person at Kyle City Hall
    2. Virtual Attendance - Submit the online registration form found at: https://www.cityofkyle.com/council/citizen-comment-sign. Registration must be received by 12 p.m. on the day of the meeting.

Mayor Mitchell opened citizen comments at 5:35 p.m. With no objections and no one wishing to speak, Mayor Mitchell closed citizen comments at 5:35 p.m.

III. Executive Session

2. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful

DRAFT

exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.

1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
   - 1000 West RM 150 Utility Connection
2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
3. Personnel matters pursuant to Section 551.074.
4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
   - Project Goldfish
   - Project Eburnean

Council Member Flores-Cale read into the record, "Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics: Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071 - 1000 West RM 150 Utility Connection; Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City - Project Goldfish, Project Eburnean."

The City Council convened into executive session at 5:36 p.m.

3. Take action on items discussed in Executive Session.

Mayor Mitchell moved to reconvene into open session. Council Member Tobias seconded the motion. All votes aye; motion carried 7-0.

The City Council reconvened into open session at 7:06 p.m.

Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

DRAFT

IV. Adjourn

Mayor Mitchell moved to adjourn. Council Member Rizo seconded the motion. All votes aye; motion carried 7-0.

With no further business to discuss, the City Council adjourned at 7:06 p.m.

_____
Travis Mitchell, Mayor

Attest:

_____
Jennifer Holm, City Secretary

DRAFT

CITY OF KYLE, TEXAS

2021 0105 Minutes

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: City Council Meeting Minutes - January 5, 2021. ~ *Jennifer Holm, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2021 0105 DRAFT Council Meeting Minutes

REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on January 5, 2021 at Kyle City Hall and due to COVID-19, some members attended virtually (v) at Spectrum 10; https://www.cityofkyle.com/kyletv/kyle-10-live with the following persons present:

Mayor Travis Mitchell
Mayor Pro Tem Rick Koch (v)
Council Member Dex Ellison (v)
Council Member Yvonne Flores-Cale
Council Member Robert Rizo
Council Member Ashlee Bradshaw
Council Member Michael Tobias
Scott Sellers, City Manager
James Earp, Assistant City Manager (v)
Paige Saenz, City Attorney (v)
Jerry Hendrix, Chief of Staff (v)
Samantha Armbruster, Communications Dir. (v)
Jennifer Holm, City Secretary
Leon Barba, City Engineer (v)
Kathy Roecker, SWMP Administrator (v)
Diana Torres, Economic Dev Director (v)
Perwez Moheet, Finance Director (v)
Sandra Duran, HR Director (v)
Matt Dawson, IT Director (v)
Grant Bowling, Video Production Specialist
Paul Phelan, Library Director (v)
Mariana Espinoza, PARD Director (v)
Jeff Barnett, Chief of Police (v)
Tracy Vrana, Police Sergeant (v)
Harper Wilder, Director of Public Works (v)
Scott Egbert, Div. Mgr. - Street Operations (v)
James Seydler
Tyler Gatewood

I. Call Meeting to Order

Mayor Mitchell called the meeting to order at 7:08 p.m. The Pledge of Allegiance was recited. Mayor Mitchell asked the city secretary to call roll.

Present were: Mayor Mitchell, Mayor Pro Tem Koch, Council Member Ellison, Council Member Flores-Cale, Council Member Rizo, Council Member Bradshaw, and Council Member Tobias. A quorum was present.

II. Approval of Minutes

1. City Council Special Meeting Minutes - December 15, 2020 5:00 p.m. ~ *Jennifer Holm, City Secretary*

2. City Council Special Meeting Minutes - December 15, 2020 5:30 p.m. ~ *Jennifer Holm, City Secretary*

3. City Council Meeting Minutes - December 15, 2020. ~ *Jennifer Holm, City Secretary*

DRAFT

Mayor Mitchell brought forward the minutes for discussion.

Council Member Tobias moved to approve the minutes of the 5:00 p.m. Special December 15, 2020 Council Meeting, the 5:30 p.m. Special December 15, 2020 Council Meeting, and the December 15, 2020 Council Meeting. Council Member Bradshaw seconded the motion. All votes aye; motion carried 7-0.

III. Citizen Comment Period with City Council

4. Members of the public that wish to provide citizen comment have the following options:
    1. In-Person at Kyle City Hall
    2. Virtual Attendance - Submit the online registration form found at: https://www.cityofkyle.com/council/citizen-comment-sign. Registration must be received by 12 p.m. on the day of the meeting.

Mayor Mitchell opened citizen comments at 7:10 p.m.

James Seydler was called to speak as registered. He is a resident of Bunton Creek. He stated that he will not be speaking on an agenda item. He spoke about masking mandates. He spoke about COVID-19, and the imminent threat beginning March 13, 2020. He questioned the authority of some of the state orders. He stated that the Health Commissioner provides for one 30-day declaration and one 30-day extension. He asked to update GA 29 and GA-32 Executive Orders. He stated that he is a frustrated citizen and we are not meant to be muzzled.

With no one else wishing to speak, Mayor Mitchell closed citizen comments at 7:13 p.m.

IV. Appointments

5. Appoint nominee for position on City of Kyle Ethics Commission. ~ *Yvonne Flores-Cale, Council Member*
    - Rebecca Chapa

Mayor Mitchell brought forward Item No. 5 for discussion and gave the floor to Council Member Flores-Cale.

Council Member Flores-Cale moved to approve the appointment of Rebecca Chapa to the City of Kyle Ethics Commission. Council Member Tobias seconded the motion.

Mayor Mitchell requested a roll call vote. Council Member Flores-Cale voted aye; Mayor Pro Tem Koch voted nay; Mayor Mitchell voted nay; Council Member Rizo voted aye; Council Member Ellison voted aye; Council Member Tobias voted aye; and Council Member Bradshaw voted nay. Motion carried 4-3.

6. Appoint nominee for position on City of Kyle Ethics Commission. ~ *Travis Mitchell, Mayor*
    - Mike Rubsam

Mayor Mitchell brought forward Item No. 6 and presented the item.

DRAFT

Mayor Mitchell moved to approve the appointment of Mike Rubsam to the City of Kyle Ethics Commission. Council Member Tobias seconded the motion.

There was discussion on the motion. Council Member Ellison expressed his gratitude for Mr. Rubsam and described him as a straight shooter. He further stated that Mr. Rubsam is an ultimate umpire. Council Member Rizo stated that he appreciates Mr. Rubsam's passion for our city and law enforcement.

All votes aye; motion carried 7-0.

7. Consider appointing Derrick Turley to the Alliance Regional Water Authority Board of Directors to replace Tracy Scheel. ~ *Harper Wilder, Director of Public Works*

Mayor Mitchell brought forward Item No. 7 for discussion. Harper Wilder presented the item

Council Member Ellison moved to approve the appointment of Derrick Turley to the Alliance Regional Water Authority Board of Directors. Council Member Rizo seconded the motion.

There was discussion on the motion. Council Member Tobias stated that Mr. Turley has a lot of experience and while the City could appoint an elected official, this person knows the work.

All votes aye; motion carried 7-0.

V. Presentation

8.CIP/Road Projects and Consent Agenda Presentation. ~ *Travis Mitchell, Mayor*

Mayor Mitchell brought forward Item No. 8 for discussion. Mr. Barba presented the updates. Mr. Tyler Gatewood with Casetta Ranch/Brohn Homes spoke about the roundabout and proposed solutions for it. No action was taken.

VI. Consent Agenda

Mayor Mitchell brought forward the Consent Agenda.

10. Authorize award and execution of a Purchase Order to SANTEX TRUCK CENTERS, LTD., in an amount not to exceed $221,190.00 for the purchase of two (2) International 15 Cubic Yard Tandem Axle Dump Trucks through the H G A C Purchasing Cooperative for street construction in Public Works Department. ~ *Harper Wilder, Director of Public Works*

11. Authorize award and execution of a Purchase Order to SANTEX TRUCK CENTERS, LTD., in an amount not to exceed $162,958.00 for the purchase of two (2) International 8 Cubic Yard Single Axle Dump Trucks through the HGAC Purchasing Cooperative for street construction in Public Works Department. ~ *Harper Wilder, Director of Public Works*

Council Member Rizo moved to approve Consent Agenda Item Nos. 10 and 11. Council Member Flores-Cale seconded the motion. All votes aye; motion carried 7-0.

DRAFT

Council Member Rizo stated that he was pulling the remaining items.

9. A Resolution of the City Council of the City of Kyle, Texas accepting the Sunset Hills, Phase Two subdivision improvements; finding and determining that the meeting at which this Resolution is passed was noticed and is open to the Public as required by law. ~ *Leon Barba, P.E., City Engineer*

Mayor Mitchell brought forward Item No. 9 and gave the floor to Council Member Rizo, who pulled the item. As Council Member Rizo asked his question he realized that he was speaking on a different item and pulled this item by mistake.

Council Member Rizo moved to approve Item No. 9, a Resolution of the City Council of the City of Kyle, Texas accepting the Sunset Hills, Phase Two subdivision improvements; finding and determining that the meeting at which this Resolution is passed was noticed and is open to the Public as required by law. Council Member Tobias seconded the motion. All votes aye; motion carried 7-0.

12. Authorize the City Manager to apply for a STEP CMV grant in an amount no greater than $12,000.00 from TXDOT and authorize matching funding from the Police Department's approved operating budget for FY 2021-2022 in an amount not to exceed $3,500 to fund a STEP Grant Program for one year beginning October 1, 2021 and ending September 30, 2022. ~ *Jeff Barnett, Chief of Police*

Mayor Mitchell brought forward Item No. 12 and gave the floor to Council Member Rizo, who pulled the item. Council Member Rizo asked Chief Barnett to present the item. Chief Barnett F both Item Nos. 12 and 13 simultaneously. Sgt. Vrana also provided information related to the items.

13. Authorize the City Manager to apply for a STEP Comprehensive grant in an amount no greater than $12,000.00 from TXDOT and authorize matching funding from the Police Department's approved operating budget for FY 2021-2022 in an amount not to exceed $3,500 to fund a STEP Grant Program for one year beginning October 1, 2021 and ending September 30, 2022. ~ *Jeff Barnett, Chief of Police*

Council Member Rizo moved to approve Consent Agenda Item Nos. 12 and 13. Council Member Bradshaw seconded the motion.

There was discussion on the motion. Council Member Tobias asked if the grant is approved, whether the City has enough officers to use it. Chief Barnett stated there is a sufficient number of officers to make use of the grant.

All votes aye; motion carried 7-0.

VII. Consider and Possible Action

14. *(First Reading)* An Ordinance of the City of Kyle, Texas annexing 29.792 acres of land, more or less, located in Hays County, including the abutting streets, roadways, and rights-of-way into the corporate limits of the City, at the request of the property owner;

DRAFT

approving a service plan for the annexed area; making findings of fact; providing a severability clause and an effective date; and providing for open meetings and other related matters. ~ *Howard J. Koontz, Director of Planning and Community Development*

- PUBLIC HEARING

Mayor Mitchell brought forward Item No. 14 for discussion. Mr. Earp presented the item.

Mayor Mitchell opened the public hearing at 8:20 p.m. Mayor Mitchell stated that Council has received written comments by Max Cleaver of Hays CISD. Mayor Mitchell stated that in conversation with Mr. Sellers, discussions are ongoing with the school district, including a meeting currently scheduled for Thursday. Mayor Mitchell stated he has concerns as well and looks forward to hearing about the conversations.

Tyler Gatewood with Brohn Homes spoke about his conversations with Mr. Cleaver. He stated that Mr. Cleaver has reached out concerning pedestrian access to the school through the development. He said in terms of lot configuration and how that lays out next to the school, is new news to him but hopes to learn of any potential additional concerns during Thursday's meeting.

City Attorney Paige Saenz provided information related to the development agreement as provided in the agenda packet. Mr. Earp provided more presentation, as well as Mr. Gatewood.

With no one else wishing to speak, Mayor Mitchell closed the public hearing at 8:34 p.m.

Mayor Mitchell moved to approve an Ordinance of the City of Kyle, Texas annexing 29.792 acres of land, more or less, located in Hays County, including the abutting streets, roadways, and rights-of-way into the corporate limits of the City, at the request of the property owner; approving a service plan for the annexed area; making findings of fact; providing a severability clause and an effective date; and providing for open meetings and other related matters. Council Member Tobias seconded the motion. Motion carried 6-1 with Council Member Flores-Cale dissenting.

15. *(First Reading)* An Ordinance granting Acadian Ambulance Service of Texas, LLC, D/B/A Acadian Ambulance Service, a franchise to provide non-emergency and rollover emergency ambulance services within the boundaries of the City of Kyle, Texas; providing an agreement prescribing conditions, terms, and regulations governing the operation of the non-emergency ambulance services; providing penalties for noncompliance with franchise. ~ *Jerry Hendrix, Chief of Staff*

- PUBLIC HEARING

Mayor Mitchell brought forward Item No. 15 for discussion. Mr. Hendrix presented the item.

Mayor Mitchell opened the public hearing at 8:36 p.m. With no one wishing to speak, Mayor Mitchell closed the public hearing at 8:36 p.m.

Council Member Tobias moved to approve an Ordinance granting Acadian Ambulance Service of Texas, LLC, D/B/A Acadian Ambulance Service, a franchise to provide non-emergency and

DRAFT

rollover emergency ambulance services within the boundaries of the City of Kyle, Texas; providing an agreement prescribing conditions, terms, and regulations governing the operation of the non-emergency ambulance services; providing penalties for noncompliance with franchise. Council Member Bradshaw seconded the motion.

Mayor Mitchell asked whether there were any objections to the item being finally passed. Mr. Hendrix stated that the Charter requires two readings for a franchise.

All votes aye; motion carried 7-0.

VIII. City Manager's Report

16. Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *J. Scott Sellers, City Manager*
    - COVID Testing and Vaccine
    - Kyle Mass Food Distribution Event
    - TIRZ Board Meeting
    - Doctor Martin Luther King, Jr. Holiday

Mr. Sellers spoke about COVID Testing and Vaccine, Kyle Mass Food Distribution Event, which has moved to ACC Hays Campus, City offices will be closed for Doctor Martin Luther King, Jr. Holiday, and there will be a TIRZ Board Meeting on Thursday at 7:00 p.m.

IX. Executive Session

17. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
    1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
        - 1000 West RM 150 Utility Connection
    2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
    3. Personnel matters pursuant to Section 551.074.
    4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
        - Project Goldfish
        - Project Eburnean

18. Take action on items discussed in Executive Session.

There was no Executive Session.

DRAFT

X. Adjourn

Mayor Mitchell moved to adjourn. Council Member Flores-Cale seconded the motion. Mayor Mitchell stated that he will stop calling for a vote on motion to adjourn and announced that the Council meeting is adjourned.

With no further business to discuss, the City Council adjourned at 8:43 p.m.

_____
Travis Mitchell, Mayor

Attest:

_____
Jennifer Holm, City Secretary

DRAFT

CITY OF KYLE, TEXAS

Ethics Commission Appointment - Seat 4

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Appoint nominee for position on City of Kyle Ethics Commission. ~ *Ashlee Bradshaw, Council Member*

- Amanda McCullough

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available

CITY OF KYLE, TEXAS

MLK Day Council Proclamation

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Martin Luther King, Jr. Day Council Proclamation. ~ *Dex Ellison, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2021 0119 MLK Jr Day Proclamation

CITY OF KYLE

City Council Proclamation

WHEREAS, The City of Kyle encourages and promotes strong and inclusive communities that recognize and celebrate efforts to bring people together for a greater good; and

WHEREAS, The City of Kyle pauses in remembrance of the life and efforts of Rev. Dr. Martin Luther King Jr. and the observance of the day in his honor. King was the first modern private citizen to be recognized with a federal holiday. Although, this was not without significant pushback and a colossal effort started in 1968 (four days after his assassination) by not only members of Congress and the Congressional Black Caucus, but also Americans from across the country marching, advocating, and obtaining 6 million signatures. Fifteen years later (1983), the same legislation that was proposed each year was finally signed into law for the holiday to be first federally celebrated in January 1986. However, it still took years for states to adopt the observation and finally in the year 2000 every state in the Union officially observed the national holiday; and

WHEREAS, Dr. Rev. King encouraged us to commit in service for others. Reminding us if we every doubt what we can do, let us remember the words of King, "Everybody can be great… because anybody can serve. You don't have to have a college degree to serve. You don't have to make your subject and verb agree to serve. You only need a heart full of grace. A soul generated by love." and

THEREFORE, be it proclaimed by the City of Kyle that, January 18, 2021 should be remembered as

"Martin Luther King Jr. Day"

in recognition of Martin Luther King Jr. and celebrating the life he lived working tirelessly for victims of racism, poverty, and injustice while promoting love, compassion, and unity with your neighbors and all members of your communities.

SIGNED AND ENTERED THIS 19th DAY OF JANUARY, 2021.

Travis Mitchell, Mayor

Dex Ellison, Council District 1

Rick Koch, Mayor Pro Tem, Council District 5

Yvonne Flores-Cale, Council District 2

Robert Rizo, Council District 3

Ashlee Bradshaw, Council District 4

Michael Tobias, Council District 6

CITY OF KYLE, TEXAS

CIP/Road Projects Update

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: CIP/Road Projects and Consent Agenda Presentation. ~ *Travis Mitchell, Mayor*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available

CITY OF KYLE, TEXAS

NeoGov Contract

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Approve a two-year service agreement with GOVERNMENTJOBS.COM, INC., DBA NEOGOV of El Segundo, California, in the amount of $20,181.00 for online employee onboarding solutions to include EForms for document and workflow management software subscription services. ~ *Sandra Duran, Director of Human Resources*

Other Information: This platform will greatly improve Kyle Human Resources' ability to complete onboarding/offboarding in an effective and efficient manner, track hiring manager follow up, and provide digital storage and retrieval of employee files.

Why it is needed?

- Lower EE turnover- Effective onboarding lowers the ee turnover rate by 29%.
- Streamline new hire paperwork, processes, and training on one easy to use platform. Electronic forms vs paper. Essential now during COVID pandemic.
- Handles pre-boarding and off-boarding

Web Site: https://www.neogov.com

Video Overview: https://neogov-2.wistia.com/medias/3tua2tt0k8

Legal Notes: Contract has been reviewed by legal.

Budget Information: This approval request is for a two-year service agreement. The annual cost breakdown is as follows:

- Year 1 - (FY 2021): $10,098.00 ($7,598.00 plus $2,500.00 for one-time implementation & training)
- Year 2 - (FY 2022): $10,083.00

Total 2-Years: $20,181.00. Funding for Year 1 is available in the Fiscal Year 2020-2021 approved budget of the Human Resources Department.

ATTACHMENTS:

Description

- Service Agreement - NEOGOV
- Price Quote - NEOGOV

NEOGOV

NEOGOV SERVICES AGREEMENT

V09012020

You agree that by placing an order through a NEOGOV standard ordering document (the "Order" or "Ordering Document") you agree to follow and be bound by the terms and conditions set forth herein. "Governmentjobs.com", "NEOGOV", "we", and "our" means Governmentjobs.com, Inc.(dba "NEOGOV") and, where applicable, its affiliates; "Customer", "you", "your" means the Governmentjobs.com client, customer, or subscriber identified in the Ordering Document.

If you are placing such an Order on behalf of a legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Ordering Document and these terms and, in such event, "you" and "your" as used in these agreement terms shall refer to such entity. "Agreement" shall be used to collectively refer to this NEOGOV Services Agreement (the "Services Agreement"), documents incorporated herein including the applicable Ordering Document and Schedule(s), and Special Conditions (if any).

1. Provision of Services. Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the applicable Ordering Document (collectively referred to as the "Services"). Customer hereby acknowledges and agrees that NEOGOV's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the date of your signature on an applicable Ordering Document or use of the Services commences (the "Effective Date"). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.

2. SaaS Subscription.

   a) Subscription Grant. "SaaS Applications" means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order and subsequently made available by NEOGOV to Customer, and associated components as described in the Service Specifications made available to Customer by NEOGOV. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) access and use, and to permit Authorized Users to access and use, the SaaS Applications specified in the Order solely for Customer's internal, non-commercial purposes; (b) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription") . "Authorized Users" means (i) Customer employees, agents, contractors, consultants who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Services Agreement and (ii) for whom access to the Services has been purchased hereunder. You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.

   b) Delivery and Subscription Term. NEOGOV delivers each SaaS Application by providing Customer with online access. When you access NEOGOV SaaS Applications, you are accepting it for use in accordance with this Agreement. Unless otherwise specified in an applicable Ordering Document, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, SaaS Subscriptions shall automatically renew for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. NEOGOV shall provide Customer access to the SaaS Applications within a reasonable time following the Effective Date unless otherwise agreed.

   c) Content and Program Documentation. Should Customer purchase access to SaaS Applications containing audio-visual content ("Licensed Content"), NEOGOV grants to Customer a non-exclusive, non-transferable, and non-sublicensable license, during the applicable Term, for Authorized Users to access and view the Licensed Content within the SaaS Application. Customer shall not permit the Licensed Content to be, or appear to be, reproduced, performed, displayed, or distributed on, as part of or in connection with any website or other online area other than the SaaS Application. Customer shall not edit, alter, modify, combine with other

content, or create any derivative works of the Licensed Content. "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

3. Professional Services. "Professional Services" shall mean consulting, training services purchased by Customer in an applicable Ordering Document or NEOGOV Scope of Work (SOW) relating to assistance, training, deployment, usage, customizations, accessory data processing, and best practices of and concerning the SaaS Applications. NEOGOV shall provide the Professional Services purchased in the applicable Order Form or SOW, as the case may be. Professional Services may be ordered by Customer pursuant to a SOW and Service Specifications describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by both parties before NEOGOV shall commence work. If the parties do not execute a separate Statement of Work, the Services shall be provided as stated on the Order Form and this Agreement and documents incorporated herein shall control.

4. Payment Terms. Unless otherwise stated in an Ordering Document, Customer shall pay all Subscription fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees", collectively the "Fees") within thirty (30) days of Customer's receipt of NEOGOV's invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Invoices shall be delivered to the stated "Bill To" party on the Ordering Document. Unless explicitly provided otherwise, once placed the Ordering Document is non-cancellable and sums paid nonrefundable. Subscription Fees are based upon the Customer's employee count. Customer shall not exceed the employee amount its Subscription Fees are based off of unless applicable supplemental Subscription Fees are paid. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service. If Customer issues a purchase order, then it shall be for the full amount set forth in the applicable NEOGOV invoice or Ordering Document. Failure to provide NEOGOV with a corresponding purchase order shall not relieve Customer of its payment obligations. Except as otherwise specifically stated in the Ordering Document, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by giving Customer at least thirty (30) day notice prior to commencement of a Renewal Term. Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption with ten (10) days of NEOGOV's request therefor.

5. Term and Termination.

   a) Term. Unless otherwise specified in an applicable Ordering Document, this Agreement shall commence on the Effective Date. This Agreement shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services or other services detailed in a SOW, unless it is terminated earlier in accordance with this Agreement.

   b) Termination for Cause; Effect of Termination. Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV intellectual property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. Unless otherwise specified, after expiration or termination of this Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice.

6. Service Specifications. "Service Specifications" means Program Documentation, Service Schedules, Security Statements, and Service Level Warranties if applicable. The Service Specifications describe and govern the Services and are incorporated herein by reference. Online Service Specifications may be made available at https://www.neogov.com/service-specifications or provided upon Customer request. Excluding Service Schedules, NEOGOV may update the Service Specifications to reflect changes in, among other things, laws, regulations,

rules, technology, industry practices, patterns of system use, Updates and Upgrades, and availability of third-party services.

7. Maintenance; Modifications; Support Services.

   a) Maintenance, Updates, Upgrades. NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation and NEOGOV database security. NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

   b) Training Materials; Support. Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.

   c) Implementation. For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Ordering Document. NEOGOV personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and ensure Authorized User Admins grasp the system.

   d) Support. Phone support for the Services is available to Customer Monday through Friday, excluding NEOGOV holidays. Online support for the Services is available 24 hours a day, seven days a week. The length of time for a resolution of any problem is dependent on the type of case.

   e) Limitations. Unless otherwise specified in the Ordering Document, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.

8. NEOGOV Intellectual Property. NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the "NEOGOV Intellectual Property"). This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV Trademarks must be pre-approved by NEOGOV prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.

9. Data Processing and Privacy.

   a) Customer & Platform Data. "Customer Data" shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV's provision of Services to Customer, including Personnel or Job Seeker Profile Data collected, loaded into, or located in Customer data files maintained by NEOGOV. NEOGOV intellectual property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data". Customer exclusively own all right, title, and interest in and to all Customer Data. Customer grants NEOGOV a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. "Platform Data" shall mean any data reflecting the access or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and

operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data. or other analysis, information, or data based on or derived from any of the foregoing. NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. NEOGOV grants to Customer a limited, non-perpetual, non-exclusive, non-transferable, and non-sublicensable license during the Term to use and access, and to permit Authorized Users to use and access, Platform Data of which NEOGOV makes available through the SaaS Applications solely for Customer's internal purposes. Customer acknowledges NEOGOV may compile Platform based on Customer Data input into the Services. Customer agrees that NEOGOV may (i) make Platform Data publicly available in compliance with applicable law, and (ii) use Platform Data to the extent and in the manner permitted under applicable law.

b) Privacy Policy; Data Processing Agreement. NEOGOV shall process all data in accord with the NEOGOV Privacy Policy available at https://www.neogov.com/privacy-policy. The defined terms in the Privacy Policy shall have the same meaning in this Agreement unless otherwise specified herein. To the extent Customer uses the Services to target and collect personal information form users located in the European Union, European Economic Area, or Switzerland (the "EU"), or has Authorized Users accessing the Services from the EU, the NEOGOV Data Processing Addendum ("DPA") available at https://www.neogov.com/service-specifications is incorporated herein by reference.

c) Data Responsibilities. Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless vital to provide the Services or otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.

d) Breach Notice. In the event of a data or security breach, as defined by applicable law, by anyone other than your employee, contractor, or agent, upon discovery of such breach, NEOGOV will initiate remedial actions and notify Customer of the breach as required by and in compliance with applicable law. NEOGOV's notification of, or response to, a data breach under this Section will not be construed as an acknowledgement by NEOGOV of any fault or liability with respect to the breach. In the event of a security breach, as defined by applicable law, by your Personnel, Authorized, or unauthorized user, contractor or agent, you shall have sole responsibility for initiating remedial actions and you shall notify NEOGOV of the breach and steps you will take to remedy the breach as soon as possible. Customer is solely responsible for complying with data breach notification laws applicable to the Customer and fulfilling any third-party notification obligations related to any data breach(es).

10. Subcontractors; Third Party Products. NEOGOV may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor"). "Third-Party Products" means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Services. The Services may permit access to Third-Party Products. For purposes of this Services Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products. NEOGOV cannot guarantee the continued availability of such Third-Party Products and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third-Party Product ceases to make the third-party application available for interoperation with the corresponding NEOGOV Service in a manner acceptable to NEOGOV.

11. Nondisclosure. Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data in written, oral, electronic, magnetic, photographic, and/or other forms, including, but not limited to (a) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified, (b) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret, and (c) trade secrets (collectively, "Confidential Information"). In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data

constituting Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, (x) without the express prior written consent of the other party, (y) except as permitted or authorized herein or, (z) except as required by law including the Public Records Act of the Customer's State, redistribute, market, publish, disclose, or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the Term and for a period of three (3) years thereafter or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law. In association with NEOGOV's concern for the protection of trade secrets, Confidential Information, and fair market competition, Customer acknowledges all photos, "screen captures", videos, or related media of NEOGOV products, pages, and related documentation shall be approved by NEOGOV prior to any publicly accessible disclosure of such media.

12. Representations, Warranties, and Disclaimers.

a) Service Performance Warranty. NEOGOV warrants that it provides the Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND NEOGOV STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

b) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

c) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

d) Services Do Not Constitute Advice or Credit Reporting. NEOGOV does not provide its customers with legal advice regarding compliance, data privacy, or other relevant applicable laws in the jurisdictions in which you use the Services. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY YOU AS EITHER LEGAL, FINANCIAL, INSURANCE, OR TAX ADVICE. TO THE EXTENT YOU REQUIRE ANY SUCH ADVICE, YOU REPRESENT THAT YOU WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR OTHER PROFESSIONALS. YOU SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE YOU OPERATE AND HAVE EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE. YOU ACKNOWLEDGE THAT NEOGOV IS NOT A "CONSUMER REPORTING AGENCY" AS THAT TERM IS DEFINED IN THE FAIR CREDIT REPORTING ACT AS AMENDED.

e) Configurable Services. The Services can be used in ways that do not comply with applicable laws and it is Customer's sole responsibility to monitor the use of the Services to ensure that such use complies with and is in accordance with applicable law. In no event shall NEOGOV be responsible or liable for Customer failure to comply with applicable law in connection with your use of the Services. NEOGOV is not responsible for any harm caused by users who were not authorized to have access to the Services but who were able to gain access because usernames, passwords, or accounts were not terminated on a timely basis by Customer. Customer acknowledges that NEOGOV exercises no control over specific human resource practices implemented using the Service or Customer's decisions as to employment, promotion, termination, or compensation of any personnel or Authorized User of the Services. Customer further agrees and acknowledge that NEOGOV does not have a direct relationship with Customer employees and that Customer is responsible for all contact, questions, Customer Data updates and collection, with Customer employees.

13. Customer Compliance. Customer shall be responsible for ensuring that Customer's use of the Services and the performance of Customer's other obligations hereunder comply with all applicable rules, regulations, laws, codes, and ordinances. Customer is responsible for Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services equipment and facilities required to access the Services. All users of the Services are obligated to abide by the Terms of Use available at https://www.neogov.com/terms-of-use. Customer shall be responsible for procuring all licenses of third-party software necessary for Customer's use of the Services. Customer is responsible and liable for all uses of the Services, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.

14. Indemnification.

    a) Indemnity. Subject to subsections (b) through (d) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV, if Customer does the following:

        i) Notifies NEOGOV promptly in writing, not later than thirty (30) days after Customer receives notice of the claim (or sooner if required by applicable law);
        ii) Gives NEOGOV sole control of the defense and any settlement negotiations; and
        iii) Gives NEOGOV the information, authority, and assistance NEOGOV needs to defend against or settle the claim.

    b) Alternative Resolution. If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.

    c) No Duty to Indemnify. NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.

    d) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.

15. Limitations of Liability.

    a) EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b) CAP ON MONETARY LIABILITY. WITHOUT LIMITATION OF THE PREVIOUS SECTION, EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF NEOGOV INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

16. E-Signatures.

a) E-Signature Provisioning & Consent. NEOGOV E-Forms and other electronically signed services ("E-Signatures") are provided by NEOGOV for two counterparties (generally a government employer (the "sending party") subscribing to NEOGOV Services and Personnel or Job Seekers) to electronically sign documents. If you use E-Signatures offered by NEOGOV, you agree to the statements set forth in this Section. Whenever you sign a document using E-Signatures you affirmatively consent to using electronic signatures via the E-Signatures and consent to conducting electronic business transactions. You also confirm that you are able to access the E-Signatures and the document you are signing electronically. When using E-Signatures for a document, your consent applies only to the matter(s) covered by that particular document.

b) Right to Opt-Out of E-Signatures. You are not required to use E-Signatures or accept electronic documents provided thereby. Personnel and Job Seekers can choose to not use E-Signatures and may sign the document manually instead by notifying the sending party they are choosing to do so and by obtaining a non-electronic copy of the document. NEOOGV assumes no responsibility for providing non-electronic documents. In the event a non-sending party elects to sign the document manually, do not use E-Signatures to sign the document.

c) Electronic Download. If you have signed a document electronically using E-Signatures and transmitted it back to the sending party, NEOGOV provides the opportunity to download and print a paper copy of the document at no charge. If you later withdrawn your consent to using E-Signatures, please notify the sending party and stop using E-Signatures. Note that the decision to stop using E-Signatures after you have already used it does not change the legality of the documents you have previously signed using an electronic signature.

d) E-Signature Validity. PLEASE NOTE THAT NEOGOV'S STATEMENTS CONTAINED HEREIN OR ELSEWHERE CONCERNING THE VALIDITY OF ELECTRONIC DOCUMENTS AND/OR THE SIGNATURE LINES OF DOCUMENTS THAT ARE ELECTRONICALLY SIGNED ARE FOR INFORMATIONAL PURPOSES ONLY; THEY SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. UNDER FEDERAL AND STATE LAWS GOVERNING ELECTRONIC SIGNATURES, ELECTRONIC SIGNATURES ON CERTAIN TYPES OF AGREEMENTS ARE NOT ENFORCEABLE. NEOGOV HEREBY DISCLAIMS ANY RESPONSIBILITY FOR ENSURING THAT DOCUMENTS ELECTRONICALLY SIGNED THROUGH E-SIGNATURE'S ARE VALID OR ENFORCEABLE UNDER THE LAWS OF THE UNITED STATES OF AMERICA, ANY PARTICULAR STATE, OR ANY OTHER LEGAL JURISDICTION. YOU SHOULD CONSULT WITH LEGAL COUNSEL CONCERNING THE VALIDITY OR ENFORCEABILITY OF ANY DOCUMENT YOU MAY SIGN ELECTRONICALLY USING NEOGOV'S E-SIGNATURE'S.

17. Text Message Communications. NEOGOV may offer Job Seekers and Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may

be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.

18. Cooperative Agreement. As permitted by law, it is understood and agreed by Customer and NEOGOV that any (i) federal, state, local, tribal, or other municipal government (including all administrative agencies, departments, and offices thereof); (ii) any business enterprise in which a federal, state, local, tribal or other municipal entity has a full, majority, or other controlling interest; and/or (iii) any public school (including without limitation K-12 schools, colleges, universities, and vocational schools) (collectively referred to as the "New Entity") may purchase the Services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section, Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity.

19. Publicity. Each party hereto may advertise, disclose, and publish its relationship with the other party under this Agreement.

20. Force Majeure. NEOGOV shall not be liable for any damages, costs, expenses or other consequences incurred by Customer or by any other person or entity as a result of delay in or inability to deliver any Services due to circumstances or events beyond NEOGOV's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, military action or usurped power; or (h) actions or failures to act on the part of a governmental authority.

21. Independent Contractor; Third Party Agreements. The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

22. Entire Agreement; Amendment. This Services Agreement and documents incorporated herein, the applicable Ordering Document, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. "Special Conditions" means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Ordering Document. Any Customer proposal for additional or different terms, or Customer attempt to vary in any degree any of the terms of this Agreement is hereby objected to and rejected but such proposal shall not operate as a rejection of this Service Agreement and Ordering Document unless such variances are in the terms of the description, quantity, or price but shall be deemed a material alteration thereof, and this Service Agreement and the applicable Ordering Document shall be deemed accepted by the Customer without said additional or different terms. It is expressly agreed that the terms of this Agreement and any NEOGOV Ordering Document shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOGOV Ordering Document, 3) the NEOGOV Services Agreement and incorporated documents, 4) Customer terms and conditions (if any). This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This

Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound.

23. General. This Agreement shall be governed by and construed in accordance with the laws of Customer's State, without giving effect to conflict of law rules. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to limitation of liability, payment, and others which by their nature are intended to survive. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Ordering Document and (ii) NEOGOV at 300 Continental Blvd., Suite 565, El Segundo, CA 90245. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it. Customer may not assign this Agreement without the express written approval of NEOGOV and any attempt at assignment in violation of this Section shall be null and void. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

NEOGOV™

NEOGOV ORDER FORM			
NEOGOV: Governmentjobs.com, Inc. (dba "NEOGOV") 300 Continental Blvd., Suite 565 El Segundo, CA 90245 accounting@neogov.com		Customer Name & Address: City of Kyle (TX) 100 W. Center Street Kyle, TX 78640	
Quote Creation Date:	12/15/20	Contact Name:	Sandra Duran
Quote Expiration Date:	01/31/21	Contact Email:	sduran@cityofkyle.com
Payment Terms	Annual. Net 30 from NEOGOV invoice.		

Fee Summary

Service Description	Term	Term Fees
BOGO Incentive modified: Onboard Subscription (ON) E-Forms Subscription (EF) Emp Form Data Export – Incode 10 Integration	12 Months	$7,598.00
Bogo Incentive modified: Onboard Subscription (ON) E-Forms Subscription (EF) Emp Form Data Export – Incode 10 Integration	12 Months	$10,083.00
Professional Services – Implementation and Training (one-time fee)	-	$2,500.00
	Total:	**$20,181.00**

A. Terms and Conditions

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement affixed hereto Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated, all SaaS Subscriptions shall commence on the Effective Date. This Order Form may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

B. Special Conditions (if any).

1. Initial Term: 24 Months
2. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to conflict of law rules. Venue shall lie exclusively in Hays County, Texas.
3. The following Sections shall be added to the NEOGOV Services Agreement:
   25. Customer's financial obligations under this Agreement shall be paid from current funds. Interest, if any, on a past due invoice is governed by Texas Government Code chapter 2251.
   26. In the event Customer does not appropriate funds to complete payments due under this Agreement, the

amount due for the fiscal year not appropriated shall be terminated; provided, however, the Customer shall have given NEOGOV thirty (30) days prior written notice of the unavailability of funding, and further provided that any other payments due to NEOGOV are fully paid, and further provided that NEOGOV's obligations and services under this Agreement shall also be terminated.

27. Israel Verification. For purposes of Chapter 2271 of the Tex. Gov't Code, NEOGOV represents that neither the NEOGOV nor any wholly owned subsidiary, majority- owned subsidiary, parent company or affiliate of NEOGOV (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
28. Foreign Terrorist Organization. NEOGOV represents and warrants that, neither NEOGOV, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same, if any, are companies identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Gov't Code §§ 2252.153 or 2270.0201, and posted on any of the following pages of such entity's internet website:

    https://comptroller.texas.gov/purchasing/docs/sudanlist.pdf
    https://comptroller.texas.gov/purchasing/docs/iran-list.pdf,
    https://comptroller.texas.gov/purchasing/docs/ftolist.pdf

    The foregoing representation is made solely to comply with Gov't Code § 2252.152, and to the extent such section does not contravene applicable federal law and excludes NEOGOV and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the same, 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. NEOGOV understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with NEOGOV and exists to make a profit.

IN WITNESS WHEREOF, the parties have caused this Order to be executed by their respective duly authorized officers as of the date set forth below, and consent to the Agreement.

City of Kyle	Governmentjobs.com, Inc. (DBA "NEOGOV")
Signature:	Signature:
Print Name: Travis Mitchell Mayor Date:	Print Name: Date:

CITY OF KYLE, TEXAS

KPD - T-Mobile

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Authorize award and execution of a Purchase Order to T-MOBILE in an amount not to exceed $38,879.30 for the purchase of 70 mobile phones for the Kyle Police Department. The devices support the joining of T-Mobile's "Heroes Connected" program which provides 10 years of free service for all First Responders. ~ *Jeff Barnett, Chief of Police*

Other Information:

Legal Notes:

Budget Information: Funding is available in the Fiscal Year 2020-2021 approved budget of the Police Department.

ATTACHMENTS:

Description

- Quote

T-MOBILE FOR GOVERNMENT

Customer Information	
Customer Name:	City of Kyle
Financial Contact Name:	Matt Dawson
Address:	
City:	
State:	
Zip:	
Financial Contact Phone:	
Email Address:	
Acct # (if applicable):	new Hero's account

Sales Representative Information	
Name & Title:	Nancy Anderson & John Bratcher
Phone:	512-848-4900
Email Address:	nancy.anderson@t-mobile.com
T-Mobile Inc.	
Remit To Address:	T-Mobile Inc.
Vendor PO Address:	PO Box 742596, Cincinatti. OH, 45274-2596
Tax ID#	
Contract Number:	DIR-TSO-3416

QUOTE DATE:	Promo Discount Offer Expiration Date:	Contract Vehicle:	Discounts MRC
01/12/21	01/30/21	DIR-TSO-3416	NET

Equipment Options: Note: promotions only apply per device with the purchase of an associated service plans for 2yr term

Qty.	T-Mobile Model	MSRP	DIR 2YR Flat Rate Price	Additional Discount	Net Equipment Cost	Equipment Subtotal
60	Phone XR 64GB	$539.99			$539.99	$32,399.40
10	Phone 11 64 GB	$647.99			$647.99	$6,479.90
					Total Equipment Cost	**$38,879.30**

Monthly Recurring Rate Plan Charges - DIR-TSO-3416 Billed Monthly

Qty.	T-Mobile Rate Plan	MRC	MRC Discount	Net Price	# of Months	Subtotal
70	T-Mobile Connecting Hero's with 1GB Hotspot	$0.00	NET	$0.00	0	$0.00
					**Subtotal for monthly recurring service	**$0.00**
					Etimated Monthly Service for 1 Month	
					Etimated Monthly Service for 24 Months	**$0.00**

Change the way agencies and communities connect.

Start your wireless transformation today.

T-MOBILE FOR GOVERNMENT

This proposal is a budgetary estimate of the plans, equipment, and services that have been communicated to the T-Mobile sales team to provide you with the proposed cost of your mobile communication requirements. This 13+ line proposal pricing is for budgetary estimation and may not reflect the actual cost of the plans, equipment, and services at the time of a contracted purchase. Pricing for all items in this proposal are subject to change and may change at any time. A final order with actual pricing included is available upon demand.

Item # 8

CITY OF KYLE, TEXAS

Alexander Family Trust Acq of Property

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Approve a payment in the amount of $207,543.00 to the Hays County registry of the Court for payment of the Special Commissioner's Award related to acquisition of property from Alexander Family Trust. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description
Notice of Deposit

NO. 20-0797-C

CITY OF KYLE, TEXAS,	§ **CONDEMNATION PROCEEDING**
	§
v.	§
	§ **COUNTY COURT AT LAW**
ALEXANDER FAMILY TRUST, MARY JANE ALEXANDER, TRUSTEE; AND BJ-MJ ALEXANDER LTD., A TEXAS LIMITED LIABILITY PARTNERSHIP, MARY JANE ALEXANDER GP INC., ITS GENERAL, PARTNER, THROUGH MARY JANE ALEXANDER, ITS DIRECTOR	§
	§
	§ **N0.2**
	§
	§
	§ **HAYS COUNTY, TEXAS**
	§

NOTICE OF DEPOSIT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE CITY OF KYLE, TEXAS, PLAINTIFF (hereinafter referred to as "Plaintiff" or the "City") in the above entitled and numbered cause, files this its *Notice of Deposit,* and respectfully shows and submits to the Court as follows:

1. That the written Award of Special Commissioners has been filed with the Judge in these Proceedings, whereby the amount of damages awarded or adjudged against City by the Special Commissioners is Two Hundred Seven Thousand Five Hundred Forty-Three Dollars ($207,543.00).

2. That Plaintiff desires to enter upon and take possession of the property sought to be taken in these Proceedings, pending litigation; and in order that they may do so, the City herewith deposits the said amount into the Registry of the Court, by herewith delivering to the Clerk of this Court City's following described check in said amount, to wit: same being numbered _____, dated _____ payable to "Clerk of the Hays County Court" subject to the order of the Judge, County Court of Law #2, Hays County, Texas.

3. That by reason of the premises Plaintiffs are now entitled to enter upon and take possession of said property as requested.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF CITY OF KYLE, TEXAS

prays that this Honorable Court issue such Order as to it may appear necessary and proper for the enforcement of Plaintiffs' said right to enter upon and take possession of same property.

Respectfully submitted,

Barbara Boulware-Wells
The Knight Law Firm, LLP
SBN 02703800
barbara@cityattorneytexas.com
223 West Anderson Lane, Suite Al05
Austin, Texas 78752
(512) 323-5778
(512) 323-5773 Fax

APPROVED, AND WRIT OF POSSESSION ORDERED ISSUED TO THE STATE OF TEXAS AND THE CITY OF KYLE THIS _____ DAY OF _____ _____.

_____
Judge of Hays County Court at Law No. 2,
Hays County, Texas

CITY OF KYLE, TEXAS

Parallel Contract for PR

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Approval of contract in the amount of $15,850 to PARALLEL, A Brand Agency for PR Services. ~ *Sarah Watson, Events & Programs Coordinator*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Contract - Parallel Brand Agency

City of Kyle: "Birthplace of the Fajita" Festival & Repositioning Campaign

parallel
A BRAND AGENCY

FROM
Ali Palmerson
Parallel, A Brand Agency
9910 Huebner Rd.
Suite 222
San Antonio, TX 78240
www.thinkparallel.com

PHONE
210-908-7272

FOR
City of Kyle

TO
Sarah Watson

EMAIL
swatson@cityofkyle.com

QUOTE NUMBER
883

DATE
November 4, 2020

VALID UNTIL
February 2, 2021 at 7:46AM

INTRODUCTION

We propose the following combination of services as a starting place to develop a strategic plan and creative ideas to reposition the City of Kyle as the "Birthplace of the Fajita."

Our proposal below covers strategy and creative concepts to meet the following objectives, as determined from our initial consultation:

- Reposition the City of Kyle as the "Birthplace of the Fajita"
- Establish and launch the inaugural "Fajita Festival (name TBD)" to take place on May 8th and become an annual event
- Create a temporary historical exhibit to showcase the history of the Fajita

---

OUR APPROACH

Our recommended approach can be summarized into four phases, with more information about each phase outlined later in the proposal.

- **Phase 1: Discovery:** We'll conduct a discovery process to learn about the City of Kyle, conduct research, get a holistic understanding of the repositioning opportunity, and solidify goals and measurements of success.

PHASE 1: DISCOVERY & RESEARCH

15,850.00
x 1
15,850.00
Not selected

Because a repositioning effort touches many facets of an organization, we'll start with some research and on-site consultation with key STEAKholders (sorry, can't help ourselves...) to gather information and gain a comprehensive understanding of:

- the goals and vision of this effort
- the City's unique personality, qualities and differentiators
- existing demographics of residents
- current marketing and brand efforts
- project limitations and budgetary considerations
- city history and storytelling opportunities
- key locations for preliminary festival planning

Research
Please note that, while we cannot predict how much additional volume or detail will result from additional research hours, it will allow for a more thorough, extensive search, covering a wider variety of sources.

- Approximately 40 hours of remote research into primary and secondary sources, includinghistorical newspaper and trade publication newspapers, JSTOR, Google Books, and other onlineresources
- Delivery of a spreadsheet tracking all findings and files for all collected documents

Please note that this does not include any licensing of collected documents for public use—if desired, that can be included in the scope.

The results of this research will drive our strategic approach for the messaging and branding for the city as well as the May 8th festival.

ESTIMATED PROJECT TIMELINE
--- Phases 1&2 ---

- December: Proposal negotiations & deposit
- January/February: Phase 1
- March: Begin Phase 2

THE TEAM

Creative Parc/BradfordLawton is strategic branding and advertising partnership based out of San Antonio, Texas. The two agencies have recently joined forces to provide full-service advertising and creative marketing support for regional, national, and international clients.

Creative Parc (creativeparc.com)
Creative Parc is a strategic branding and design firm based out of San Antonio. We have a dynamic team of 8 designers and strategists with a large network of contractors to be able to offer a comprehensive list of offerings with regards to creative, design, marketing, communications and strategy. The agency has done branding and design work for local area clients such as The Boerne Public Library, The Boerne Chamber of Commerce, The Dienger, The Cibolo Nature Center, UTSA, VIA, Texas State University, and the DoSeum.

BradfordLawton, LLC (bradfordlawton.com)
Bradford's career spans over 35 years in the advertising and design fields and encompasses branding work for local, national, and international clients such as The City of Alamo Heights, Paesanos, Taco Cabana, Kennedy Space Center, St. David's Healthcare, Astra Zeneca Europe.

CASE STUDIES

While these are varied in price and scope, these are samples of the kind of work that we do and our overall capabilities. We are happy to discuss any of these past project with the team.

- City of Alamo Heights Rebranding
- Taco Cabana Rebrand & Campaigns
- Cibolo Nature Center Rebranding

3276.684 BL_City of AH Creative Presentation_Legal_0920

Taco Cabana Story

CNC_Rebrand

TERMS

PAYMENT TERMS

- A deposit of 50% of the is required to start the project.
- The remaining 50% will be invoiced upon completion of allotted revisions and must be received before final deliverables are released. If work extends beyond established timelines, progress invoicing of balance due may be required.
- We are open to discussing alternate payment plans, if that is preferred.
- Changes to specifications may result in additional fees. Additional designs or revisions at the Client's request may be subject to an hourly rate of $150.00.

STANDARD TERMS OF AGREEMENT
I approve of the work outlined in this proposal. By accepting this proposal, I also acknowledge that I have read and understood Creative Parc's standard terms of the agreement.

2020_Terms

CITY OF KYLE, TEXAS

Acadian Ambulance

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: *(Second Reading)* An Ordinance granting Acadian Ambulance Service of Texas, LLC, D/B/A Acadian Ambulance Service, a franchise to provide non-emergency and rollover emergency ambulance services within the boundaries of the City of Kyle, Texas; providing an agreement prescribing conditions, terms, and regulations governing the operation of the non-emergency ambulance services; providing penalties for noncompliance with franchise. ~ *Jerry Hendrix, Chief of Staff*

City Council voted 7-0 to approve on first reading.

Other Information: The current franchise agreement for Acadian Ambulance Services was approved on second reading on February 19th, 2019, and included a term of two years with an option to renew for an additional two years with council approval.

The attached ordinance will replace the existing agreement which expires in February 2021.

The term of two years and franchise fee of 3.5% in the existing franchise is also renewed in the attached ordinance.

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Ordinance-Franchise_Agrmnt-Acadian_2021
- Acadian Fee Schedule
- Acadian Franchise Fee Payments
- Acadian Public Hearing Notice

AN ORDINANCE GRANTING ACADIAN AMBULANCE SERVICE OF TEXAS, LLC, D/B/A ACADIAN AMBULANCE SERVICE, A FRANCHISE TO PROVIDE NON-EMERGENCY AND ROLLOVER EMERGENCY AMBULANCE SERVICES WITHIN THE BOUNDARIES OF THE CITY OF KYLE, TEXAS; PROVIDING AN AGREEMENT PRESCRIBING CONDITIONS, TERMS, AND REGULATIONS GOVERNING THE OPERATION OF THE NON-EMERGENCY AMBULANCE SERVICES; PROVIDING PENALTIES FOR NONCOMPLIANCE WITH FRANCHISE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE OPEN MEETINGS ACT; ESTABLISHING AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

RECITALS

WHEREAS, Article XI of the City's charter gives the City council the power to grant by ordinance a non-exclusive franchise of all providers of public services, including ambulance services, for an effective period not to exceed ten (10) years; and,

WHEREAS, except as specifically authorized and provided otherwise by state law, the City's charter mandates that no provider of ambulance services shall provide any service within the City requiring the use or occupancy of any street, public right-of-way, or property without the City council's determination to grant a franchise or permit the use of such City facilities; and,

WHEREAS, the City's charter provides that all grants of franchise as authorized in the charter shall be subject to the right of the city council to impose regulations and restrictions on the franchise as enumerated in Sec. 11.06 of the charter as may be deemed desirable or conducive to the health, safety, welfare and accommodation of the public; and,

WHEREAS, this ordinance shall be passed only on two readings held after a public hearing for which ten (10) days' notice is given; and,

WHEREAS, Acadian Ambulance Service of Texas, LLC, D/B/A Acadian Ambulance Service ("Acadian"), has requested and desires to be granted a franchise from the City of Kyle for the purpose of providing non-emergency and roll-over emergency ambulance services originating or terminating within the boundaries of the City of Kyle or outside the boundaries of Kyle with a destination within the City of Kyle;

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

Section 1. Findings. The above foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Franchise granted; scope and purpose. A non-exclusive franchise is hereby granted vis-à-vis this ordinance to Acadian Ambulance Service of Texas, LLC d/b/a Acadian Ambulance Service ("Acadian") to operate Non-Emergency and Emergency Rollover Ambulance Services as described herein originating within the service area of Acadian that is located in the City limits and extraterritorial jurisdiction of the City of Kyle, Texas (hereinafter the "City") or origination outside of the City limits and extraterritorial jurisdiction of the City of Kyle, Texas with a destination within such area. Acadian may use and occupy the City's streets, avenues, alleys and any and all public property belonging to or under the control of the City for the purpose of operating its Non-Emergency Ambulance Services as described herein.

Section 3. Franchise recognized as a contract. In accordance with Article XI of the City's charter, the franchise being granted by this ordinance is recognized as a contract ("Agreement") between the City and Acadian, and the contractual rights as contained herein shall not be impaired by the provisions of Article XI. The terms and conditions set forth in the Agreement, which is attached hereto as EXHIBIT "A" and incorporated herein by reference, shall govern and regulate the operation by Acadian of its Non-Emergency Ambulance Services as described herein.

Section 4. Codification. This ordinance shall be codified in the City of Kyle Code of Ordinances at Appendix B, FRANCHISES.

Section 5. Conflict. Any and all ordinances, and parts thereof, that are in conflict herewith are hereby repealed to the extent of the conflict only.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion will be deemed a separate, distinct, and independent portion. Such declaration will not affect the validity of the remaining portions hereof, which other portions will continue in full force and effect. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision will thereupon return to full force and effect without further action by the City and will thereafter be binding on Acadian and the City.

Section 7. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Ch. 551, Local Gov't Code.

Section 8. Effective Date. This Ordinance shall be in full force and take effect from and after the date of its final passage and publication as required by law.

PASSED AND APPROVED on First Reading the_____day of January, 2021.

PASSED AND ADOPTED on Second Reading the_____day of_____, 2021.

ATTEST:

The City of Kyle, Texas

_____
Jennifer A. Vetrano, City Secretary

_____
Travis Mitchell, Mayor

EXHIBIT "A"

ACADIAN AMBULANCE SERVICE OF TEXAS, LLC, DBA ACADIAN AMBULANCE SERVICE
FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF KYLE, TEXAS, a home rule city and political subdivision of the State of Texas ("City") and ACADIAN COMPANIES DBA ACADIAN AMBULANCE SERVICE ("Acadian").

RECITALS

WHEREAS, Acadian agrees to provide Non-Emergency and roll-over emergency Ambulance Services in the City pursuant to this Agreement; warrants that it holds all required permits for the required services; has all the necessary emergency vehicle permits issued by the State of Texas; and employs emergency medical technicians who are duly licensed by the Health District to perform Non-Emergency Ambulance Services; and

WHEREAS, the City hereby finds and determines that Acadian is able to own and operate suitable certified equipment and employ qualified, licensed personnel in connection with its Ambulance Services as defined herein; and,

WHEREAS, the City's charter incorporates that an agreement be entered into between the City and a franchisee;

NOW THEREFORE, the City of Kyle and Acadian mutually agree as follows:

Section 1
Definitions

The following definitions shall apply in the interpretation and enforcement of this Agreement and in compliance with the ordinance:

Ambulance. Any privately or publicly owned motor vehicle that is specially designed, constructed, or modified and equipped; and is intended to be used for and is maintained or operated, for the transportation, on the streets or highways of this state; of persons who are sick, injured, wounded, or otherwise incapacitated or helpless.

Non-Emergency Ambulance Operator. A person with personnel and equipment in the business of transporting patients not in need of immediate medical treatment between various locations.

Non-Emergency Ambulance Operator Franchise. A franchise granted to a person with personnel trained at the Emergency Medical Technician (EMT) level and certified by NCOEMS. This franchise is to transport patients between health care facilities and other locations in non-emergent situations within Hays County. The use of warning lights and

audible warning devices is prohibited during vehicle operation except for the following:

1) transporting a patient who during the transport becomes critical or otherwise unstable to the closest most appropriate facility with an emergency room capable of treating the patient; or,

2) while stopped on a public roadway to render aid to motorists and/or pedestrians involved in a traffic or other incident that has potential to cause injury while waiting for emergency responders to arrive.

Non-Emergency Ambulance Services. The operation of an ambulance for any purpose other than transporting emergency patients.

Operator. An individual in actual physical control of an ambulance which is in motion or which has the engine running.

Patient. Individual receiving services under this Agreement and in compliance with the ordinance.

Person. Any individual, firm, partnership, association, corporation or organization of any kind, including any governmental agency other than the United States.

Rollover emergency. A situation in which the primary provider of 911 Services is unable to timely respond to an emergency and the dispatch requests a response by a secondary provider.

Section 2
Contents of Application to Provide Non-Emergency Services

1. Representations; warranties; revocation of franchise. In making this grant of non-exclusive franchise, the City has relied upon information provided by Acadian to the City, and the City's expectations of the operations and performance of any and all franchisees. Acadian agrees that all statements, representations and warranties provided to the City are true and correct to the best of Acadian's knowledge at the time of submission; and further agrees that the City's grant of franchise may be revoked upon discovery of any material misstatement of fact contained therein.

2. Application. Acadian shall complete an application if required by the City to operate within the City and its extraterritorial jurisdiction. An application shall contain the following:

a. The name and address of the provider or franchisee of the ambulance services for which a franchise is being granted;

b. the trade and all other names, if any, under which the applicant does business, along with a certified copy of an assumed name certificate stating such name or names or articles of incorporation stating such name or names;

c. a complete resume of the training and experience of the applicant in the transportation and care of patients;

d. a description in the manner in which the public will be able to obtain assistance and how the non-emergency vehicles will be dispatched; and

e. a description of the non-emergency ambulance applicant's capability to provide regular transportation services in the City.

Section 4
Term of Agreement

This Agreement will remain in full force and effect for a period of two (2) years, commencing on the effective date the ordinance is passed on second reading by the Kyle city council. The City shall have the sole option to renew this franchise for an additional two (2) years upon the written request of Acadian.

Section 5
Service Area

Acadian may provide in all areas originating or terminating within the City limits and extraterritorial jurisdiction Non-Emergency Ambulance Service that is not dispatched or required to be dispatched in accordance with 9-1-1-Dispatched Ambulance Service.

Section 6
Disclosure of Patient Information

Acadian as a franchisee agrees that any unauthorized disclosure of specific patient-related information to the public is forbidden. If Acadian as a franchisee is determined to have disclosed specific patient related information to the public without the permission of the patient or authorized patient representative, the City may terminate this agreement and forfeit Acadian's franchise status.

Section 7
Minimum Standards for Non-Emergency Ambulance Franchisees

The City shall be the enforcing agency for the terms contained in this Agreement and may take the following actions:

1. inspect the premises, vehicles, equipment, and personnel of Acadian to assure compliance to this Agreement and perform any other inspections as deemed necessary by law or for the benefit of the public safety, health or welfare;

2. recommend to the city council the temporary or permanent suspension of a franchise in the event of non-compliance with the terms of this Agreement;

3. receive complaints from the public, other enforcing agencies, and others regarding any infractions allegedly committed by Acadian, and review or otherwise investigate any complaints, and recommend corrective action after Acadian has had a responsible time to respond to said allegations;

4. maintain all records of compliance with this Agreement and other applicable State and County regulations;

5. require Acadian to restore at its expense all public or private property to a condition equal to or better than that before being damaged or destroyed by Acadian.

Section 8
Violations; Penalties

The city council shall have the power and authority to review this franchise Agreement at anytime and to assess a penalty against Acadian for its failure to comply with the franchise Agreement, this charter, the ordinances of the City or the laws of the state. If in the opinion of the city council the requirements of the franchise Agreement, charter, ordinances or state law are not being complied with, the city council shall so notify Acadian in writing stating the provisions Acadian has failed to comply with and setting a time for a hearing and deadline for correction of the noncompliance. The city council may assess and enforce a reasonable penalty based upon the facts, issues and circumstances determined at the hearing if noncompliance is found. If Acadian does not correct the noncompliance within a reasonable time established by the city council for correction, the city council may impose penalties, place Acadian on probation, suspend the franchise or repeal or cancel the franchise. Penalties may be imposed and fines collected by the City as follows:

1. First offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed five hundred dollars ($500.00) levied against Acadian, for which Acadian is responsible to pay or otherwise said franchise may be terminated by the city council.

2. Second offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed one thousand dollars ($1,000.00) if within one (1) year of the first offense, levied against Acadian, for which Acadian is responsible to pay or otherwise said franchise may be terminated by the city council.

3. Third offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed two thousand dollars ($2,000.00) if within one (1) year of the second offense, levied against Acadian, for which Acadian is responsible to pay or otherwise said franchise may be terminated by the city council.

4. Fourth and subsequent offenses: If within one (1) year of the third offense, City staff shall recommend to the city council permanent termination of the franchise, upon which city council may accept or deny staff recommendation, or at is discretion, the city council

may impose suspension, probation, or termination of the franchise and this Agreement.

Section 9
Default

Exclusive of the penalties set forth hereinabove, Acadian shall be declared to be in default of this Agreement at the discretion of the city council if Acadian violates or contravenes in any of the terms or conditions of the Ordinance or this Agreement. The city council may terminate the franchise if Acadian is found to be in default.

Section 10
Majority vote

Acadian may be liable for fines or other penalties set forth in this Agreement, including termination of its franchise, or found to be in default, only upon a finding by majority vote of the city council.

Section 11
State Permits and City Franchise Requirements

Acadian, either as owner, agent, or otherwise, shall furnish, operate, conduct, maintain, advertise, or otherwise be engaged in or profess to be engaged in the non-emergency transportation of patients within the City unless and until Acadian holds a valid permit for each ambulance used in such ambulance service operation and has a valid franchise for the operation of such service by the City pursuant to this Agreement.

Section 12
Exemptions from Franchise Requirements

No franchise shall be required for:

1. any entity rendering assistance to Acadian in the case of a disaster, major catastrophe, mutual aid, or emergency when the services franchised by the City are insufficient or unable to cope, and assistance has been requested by the City;

2. any entity other than the franchisee operated from a location or headquarters outside of the City limits, but transporting to facilities located within the City limits, or transporting patients within the City limits to locations outside of the City limits;

3. ambulances owned and operated by an agency of the United States Government;

4. vehicles owned and operated by EMS providers chartered by the State of Texas as corporations to operate in the City limits to provide emergency

medical services, or municipal EMS providers; or,

5. any entity other than franchisee providing emergency transportation services within the meaning of this ordinance that provides trauma transportation services in connection with a state-certified trauma transportation program.

Section 13
Franchise Fees to City

Acadian shall, during the life of said franchise, pay to the City, to the attention of the City's director of finance, three and one-half percent (3.5%) of the total amount billed to and collected from patients or customers for the non-emergency ambulance service fees and any other income derived from the operation of the non-emergency ambulance service within the City limits, which said remittance shall be made monthly on or before the tenth (10th) day of each calendar month. The compensation provided for in this Section shall be in lieu of any other fees or charges imposed by any other ordinance now or hereinafter in force during the life hereof, but shall not release Acadian from the payment of ad valorem taxes levied or to be levied on local property it owns. The purpose of the franchise fee is to fund the City monitoring Acadian's operations and for the cost of administrative staff, vehicle inspections, and wear and tear upon the City's roadways.

Section 14
Quarterly Reports

It shall be the duty of Acadian to file with the City's director of finance a sworn statement for each calendar quarter, which said statement shall report the total amount billed and collected for non-emergency ambulance service within the City limits for the preceding three (3) months, which statement shall be filed within ten (10) days following the end of the third month. Acadian herein shall be required to adequately maintain a system of bookkeeping, which books shall be subject to reasonable audits by the City in executive session and such skilled person or persons as the City may designate so as to enable the City to periodically check the accuracy of the accounts kept and to compute fairly and accurately the percentage of the amounts privately billed that may be due to the City from Acadian.

Section 15
Cessation of Activity upon Termination of Franchise

1. Upon cancellation, suspension, or termination of Acadian's franchise, by actions taken by either the city council or Acadian, Acadian shall immediately cease operations that are granted under the franchise.

2. Upon revocation, suspension, or termination of a driver's license or attendant's certification or Emergency Medical Technician certificate, such attendant shall cease to drive an ambulance, perform service, or attend an ambulance under the direction or authority of Acadian.

3. Acadian shall not permit any individual whose license or credentials are invalid to drive an ambulance or provide medical care in conjunction with the ambulance operator.

Section 16
Rates and Charges to Patients or Customers

1. Acadian shall comply with the schedule of rates that Acadian has attached to this Agreement as EXHIBIT "B" and which is incorporated herein by reference. Acadian may amend the schedule of rates only upon the adoption of an ordinance approving said amendment.

2. On non-emergency calls, or calls where a person requires transportation to a non-emergency facility, collection for service (payment) may, at the option of Acadian, be made before the ambulance begins the trip.

Section 17
Insurance

Prior to providing any Ambulance Services in the City limits, Acadian will provide proof of insurance coverage in the types, forms and amounts required by state law and this Agreement. Failure to maintain such insurance through the term of this Agreement will be cause for termination of the franchise granted herein. Acadian shall be required to obtain and maintain in effect throughout the term of this Agreement a public liability insurance policy in an amount of not less than $1,000,000. A copy of the insurance policy shall be filed with the City's finance director within 10 days of the grant of the franchise. Acadian shall not operate its service during any periods for which insurance lapses for any reason.

Section 18
Nondiscrimination

No individual shall be denied or subjected to discrimination in the receipt of services for activities made possible by or resulting from this Agreement on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age or marital status. Material violation of this provision shall be considered a default of this Agreement.

Section 19
Records, Reports

Acadian shall maintain the following records:

1. record of dispatch showing time call for transport was received, time ambulance dispatched, time arrived on scene, time arrived at destination, time in service, and time returned to base;

2. a trip record that shall be so designed as to provide the patient or customer with

a copy of it and that may serve as a receipt for any charges paid;

3. maintenance of a daily report log for the purpose of identifying all individuals transported in any given day;

4. daily driver and attendant checklist and inspection report which shall list contents and description of operations for each vehicle, signed by the individual verifying vehicle operations and equipment; and,

5. if private records are kept, including operational, vehicular maintenance, driver/attendant training certifications, insurance certifications, traffic compliance, accident records, financial, tax and related records, shall be open at any reasonable time for inspection and audit by the city manager or designee, or any professionally trained accountant/auditor; but Acadian may deem and mark certain materials as proprietary and confidential or protected by state or federal law, which may still be viewed by the city manager, designee or accountant/auditor representing the City but not disclosed to the general public unless a Texas Attorney General Ruling or court of competent jurisdiction so orders such a public release.

Section 20
Transfer and Assignment

This non-exclusive franchise Agreement and the rights, privileges, permissions, and authorities granted herein are personal to Acadian and cannot be sold, transferred, leased, assigned, or otherwise disposed without prior written approval from the City.

Section 21
Private Ambulance Services Personnel

Attendants and drivers employed by Acadian shall be:

1. at least eighteen (18) years of age;

2. a citizen of the United States;

3. licensed by the State of Texas to operate the vehicle occupied; and,

4. certified as having obtained any legally required training as may be required by any regulatory bodies having jurisdiction over the provision of private ambulance services to the general public.

Section 22
Indemnification

As a condition of the grant of this Agreement, and in consideration thereof, Acadian shall

defend, indemnify, and hold the City harmless against all claims for damages to persons, individuals or property by reason of its franchise operations, or any way arising out of performance under this Agreement, directly, or indirectly, when or to the extent injury is caused, or alleged to have been caused, wholly or in part, by any act, omission, negligence, or misconduct of Acadian or any of its contractors, subcontractors, officers, agents, or employees, or by any person for whose act, omission, negligence, or misconduct, Acadian is by law responsible. This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of Acadian and the City. In the event any claim is made against the City that falls under this indemnity provision, the City shall promptly but no later than five (5) business days, provide Acadian with the a copy of the claim with a written notice that such is deemed to fall under this provision. Acadian shall then take over the defense of the claim with attorneys of its and/or its insurer's choosing. Acadian shall indemnify and hold the City harmless of and from any such liability, including any court costs, expenses, and reasonable attorney fees incurred by the City in defense thereof and incurred at any stage. Upon commencement of any suit, proceeding at law or in equity against the City relating to or covering any matter covered by this indemnity, wherein Acadian has agreed by accepting this Agreement to indemnify and hold the City harmless, or to pay said settlement, final judgment, and costs, as the case may be, the City shall provide Acadian immediate written notice of such suit or proceeding, whereupon Acadian shall provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay as aforesaid, any settlement, costs or judgments that may be rendered against the City by reason of such damage suit.

Section 23
Compliance with Laws and Regulations

During the term of this Agreement, the City and Acadian agree they will comply with all applicable state, federal and local laws and regulations. Failure to comply on the part of Acadian may be grounds for the imposition of penalties or sanctions, including up to termination of this Agreement. Failure to comply of the part of the City may be grounds for Acadian to terminate this Agreement without prior consent or approval by the City.

Section 24
No Waiver; Cumulative Remedies

Acadian will not be excused from complying with any of the terms of conditions of this Agreement because of failure of the City, on one or more occasions, to insist upon or to seek compliance with any such terms or conditions, or because of any failure on the part of the City or Acadian to exercise, or delay in exercising, any right or remedy hereunder, nor will any single or partial exercise of any right or remedy preclude any other right or remedy. Acadian agrees that the City will have the specific rights and remedies set forth herein. These rights and remedies are in addition to any and all other rights or remedies now or hereafter available to the City, and will not be deemed waived by the exercise of any other right or remedy. The rights and remedies provided in this Agreement and in the Ambulance Service Ordinance are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement will impair any of the rights or remedies of the City under applicable law. The exercise of any such right or remedy by the City will not release Acadian from its obligations or any liability under this

Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by Acadian. Neither the provision of performance security, nor the receipt of any damages recovered by the City thereunder, will be construed to excuse faithful performance by Acadian or limit the liability of Acadian for damages, either to the full amount of the posted security or otherwise.

Section 25
Administration

The city manager or designee will administer or direct the administration of this Agreement.

Section 26
Notices

Any notice, request, or demand which may be or is required to be given under this Agreement will be delivered in person at the address stated below or may be deposited with the United States Postal Service, certified or registered mail, postage prepaid, to the party and address stated below:

FRANCHISEE:

Acadian Ambulance Service of Texas, LLC
D/B/A Acadian Ambulance Service
ATTN: Mr. Richard Zuschlag, CEO & Chairman of the Board
P. O. Box 98000
Lafayette, LA 70509-8000

CITY OF KYLE, TEXAS ("CITY"):

City of Kyle
ATTN: City Manager
100 W. Center Street
P.O. Box 40
Kyle, TX 78640
Fax: (512) 262-3987

Section 27
Governing Law

This Agreement will be deemed to be executed in the City of Kyle in the State of Texas, and will be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Texas, as applicable to contracts entered into, and to be performed entirely with this State.

Section 28
Modification or Amendment

This Agreement may not be modified, amended, or changed in any way unless such modification, amendment or change is approved by the city council, and the terms and conditions thereof expressed in a written document, signed by both parties.

Section 29
Entire Agreement

The preparation, execution, and delivery of this Agreement by the parties have been induced by no representations, statements, warranties or agreements other than those expressed herein. This Agreement embodies the entire understanding by and between the City and Acadian. There are no further or other agreements or understandings, written or oral, in effect between the City and Acadian relating to the subject matter of this Agreement unless such agreements or understandings are expressly refereed to and incorporated herein.

Section 30
Corporate Authority

The undersigned warrant that each has the requisite corporate authority to execute this Agreement and bind each party to the terms of this Agreement.

Section 31
Severability

If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion will be deemed a separate, distinct, and independent portion. Such declaration will not affect the validity of the remaining portions hereof, which other portions will continue in full force and effect. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision will thereupon return to full force and effect without further action by the City and will thereafter be binding on Acadian and the City.

Section 32
Effective Date

This Agreement shall be in full force and take effect from and after the date of the final passage or the ordinance in which the Agreement is incorporated and upon the signing and attesting of said Agreement as witnessed below.

THE CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

ATTEST:

_____
Jennifer Vetrano, City Secretary

ACADIAN COMPANIES
D/B/A ACADIAN AMBULANCE SERVICE ("FRANCHISEE")

By: _____
James Mayer
Title: _____

EXHIBIT "B"

ACADIAN SCHEDULE OF RATES

(SEE ATTACHED)

ACADIAN AMBULANCE SERVICE, INC.
PRICING CATALOG

Description	Texas 2021 Rates Amount		Effective Dates
Transports			
ALS2 Emergency	$ 1,804.00		January 1, 2021
ALS1 Emergency	1,321.00		January 1, 2021
ALS1 Non-Emergency	1,283.00		January 1, 2021
BLS Emergency	1,321.00		January 1, 2021
BLS Non-Emergency	868.00		January 1, 2021
Specialty Care Base	2,763.00		January 1, 2021
Ambulance Response, treatment without transport	287.00		January 1, 2021
Mileage			
Mileage - 0 - 50 miles	$ 26.49	per mile	January 1, 2021
51 - 100 miles	26.49		January 1, 2021
101 and over	26.49		January 1, 2021
Ancillaries			
Airvo device	$ 1,260.00		January 1, 2021
Airway Mgmt-Disposable Supplies	92.00		January 1, 2021
Bariatric Stretcher	374.00		January 1, 2021
BiPAP	1,260.00		January 1, 2021
Burn Sheet	67.00		January 1, 2021
Capnometer	131.00		January 1, 2021
C-Collar	92.00		January 1, 2021
CPAP devise with Manometer	340.00		January 1, 2021
Disaster Bag	425.00		January 1, 2021
Disposable BVM	171.00		January 1, 2021
Disposable Splint	29.00		January 1, 2021
Disposable Supplies/Environ. Protection	112.00		January 1, 2021
EKG Monitor	211.00		January 1, 2021
EKG Monitor-Disposable Supplies	29.00		January 1, 2021
EKG Monitor Pace Pads	261.00		January 1, 2021
EKG 12 Lead	211.00		January 1, 2021
Endotracheal Intubation	112.00		January 1, 2021
Extra Ambulance Attendant	309.00		January 1, 2021
Extra Unit Assistance Fee	309.00		January 1, 2021
EZ-IO Intraosseous Infusion - disposable needle	514.00		January 1, 2021
Glutose	29.00		January 1, 2021
IV Set Up/Disposables	112.00		January 1, 2021
IVAC Pump	211.00		January 1, 2021
King-LTD	81.00		January 1, 2021
Out of Service Area	211.00		January 1, 2021
Oxygen Mask/Set Up	206.00		January 1, 2021
O.B. Kit	131.00		January 1, 2021
Poison Antidote Kit	105.00		January 1, 2021
Pulse Oximeter	131.00		January 1, 2021
SAM Pelvic Sling II	92.00		January 1, 2021
Sterile Water	42.00		January 1, 2021

ACADIAN AMBULANCE SERVICE, INC.
PRICING CATALOG

	Texas 2021 Rates	
Description	**Amount**	**Effective Dates**
Suction Equipment	29.00	January 1, 2021
Throplex Chest Drainage System	311.00	January 1, 2021
Ventilator	1,260.00	January 1, 2021
Visidex Strip / Regeant Strip	29.00	January 1, 2021
Medication		
Adenocard 12 mg	$ 92.00	January 1, 2021
Amidate 2mg/ ml 20cc vial	58.00	January 1, 2021
Amiodarone	62.00	January 1, 2021
Aspirin	9.00	January 1, 2021
Atropine Sulfate	62.00	January 1, 2021
Benadryl	62.00	January 1, 2021
Calcium Chloride	62.00	January 1, 2021
Calcium Gloconte, 10%	41.00	January 1, 2021
Cardene 20mg (Nicardipine)	323.00	January 1, 2021
D5W 1,000 CC	92.00	January 1, 2021
Dextrose	70.00	January 1, 2021
Diltiazem	64.00	January 1, 2021
Dobutamine	30.00	January 1, 2021
Dopamine	92.00	January 1, 2021
Epinephrine	62.00	January 1, 2021
Epinephrine 30mg	92.00	January 1, 2021
Famotidine	9.00	January 1, 2021
Fentanyl	64.00	January 1, 2021
Glucagon	311.00	January 1, 2021
Heparin	9.00	January 1, 2021
Ipratropium Bromide	62.00	January 1, 2021
Ketamine Hcl, 10mg/ ml 20 ml vial	92.00	January 1, 2021
Labetalol	92.00	January 1, 2021
Lasix	9.00	January 1, 2021
Levetiracetam	9.00	January 1, 2021
Lidocaine	62.00	January 1, 2021
Lidocaine, 20%	70.00	January 1, 2021
Magnesium Sulfate	62.00	January 1, 2021
Mannitol, 20%	18.00	January 1, 2021
Metoprolol	62.00	January 1, 2021
Morphine Sulfate	13.00	January 1, 2021
Narcan, 2mg	146.00	January 1, 2021
Nitro Tab	9.00	January 1, 2021
Nitroglycerin Injection	92.00	January 1, 2021
Nitrol Ointment	62.00	January 1, 2021
Nitropress	62.00	January 1, 2021
Norepinephrine	66.00	January 1, 2021
Normal Saline 1,000 cc	92.00	January 1, 2021
Ondansetron	64.00	January 1, 2021
Oxymetazoline	66.00	January 1, 2021
Pitocin	9.00	January 1, 2021

ACADIAN AMBULANCE SERVICE, INC.
PRICING CATALOG

	Texas	
	2021 Rates	
Description	**Amount**	**Effective Dates**
Potassium Chloride	18.00	January 1, 2021
Propofol, 1g	53.00	January 1, 2021
Albuterol (Nebulizer always used)	62.00	January 1, 2021
Ringers Lactate 1,000 cc	112.00	January 1, 2021
Sodium Bicarbs, 8.4%	70.00	January 1, 2021
Sodium Bicarbs, 4.2%	41.00	January 1, 2021
Solu-Cortef	110.00	January 1, 2021
Solu-Medrol 1 gram	92.00	January 1, 2021
Succinylcholine 20 mg	9.00	January 1, 2021
Tranexamic Acid	98.00	January 1, 2021
Vecuronium	66.00	January 1, 2021
Versed, 5mg/ ml 1 ml vial	47.00	January 1, 2021
Zemuron 10 mg/ ml 10ml vial	92.00	January 1, 2021

Kyle, TX

Detail Report
Account Detail
Date Range: 02/01/2019 - 12/29/2020

Account	Name	Beginning Balance	Total Activity	Ending Balance
Fund: 1100 - General Fund				
1100-31500-411340	Ambulance Service Franchise	-863.16	-4,557.82	-5,420.98

Post Date	Packet Number	Source Transaction	Pmt Number	Description	Vendor	Project Account	Amount	Running Balance
03/08/2019	CLPKT00038	R00000184		Acadian Ambulance Service Ambulance Se...			-92.04	-955.20
03/20/2019	CLPKT00042	R00000261		Miscellaneous Receipt Ambulance Service...			-122.33	-1,077.53
04/16/2019	CLPKT00060	R00000368		Acadian Ambulance Service, Inc Ambulanc...			-124.55	-1,202.08
05/17/2019	CLPKT00074	R00000473		Acadian Ambulance Service Ambulance Se...			-138.67	-1,340.75
06/21/2019	CLPKT00092	R00000666		Acadian Ambulance Service, Inc Ambulanc...			-299.17	-1,639.92
07/19/2019	CLPKT00154	R00001071		Acadian Ambulance Service Franchise June..			-233.19	-1,873.11
08/23/2019	CLPKT00203	R00002061		Acadian Ambulance Service Ambulance Se...			-301.87	-2,174.98
09/20/2019	CLPKT00244	R00002990		Acadian Ambulance Service Ambulance Se...			-184.83	-2,359.81
10/21/2019	CLPKT00276	R00003803		Acadian Ambulance Service Ambulance Se...			-256.82	-2,616.63
11/22/2019	CLPKT00321	R00004723		Acadian Ambulance Service Ambulance Se...			-225.62	-2,842.25
12/26/2019	CLPKT00358	R00005393		Acadian Ambulance Service Ambulance Se...			-286.71	-3,128.96
01/24/2020	CLPKT00402	R00006106		Acadian Ambulance Service, Inc. Ambulan...			-175.13	-3,304.09
02/29/2020	CLPKT00456	R00006794		Acadian Ambulance Service Ambulance Se...			-142.00	-3,446.09
03/31/2020	CLPKT00491	R00007647		Acadian Ambulance Service Ambulance Se...			-418.43	-3,864.52
04/30/2020	CLPKT00563	R00008065		Acadian Ambulance Service Ambulance Se...			-431.12	-4,295.64
05/31/2020	CLPKT00564	R00008308		Acadian Ambulance Service Ambulance Se...			-275.75	-4,571.39
06/30/2020	CLPKT00598	R00008878		Acadian Ambulance Service Ambulance Se...			-291.08	-4,862.47
07/31/2020	CLPKT00680	R00009317		Acadian Ambulance Service Ambulance Se...			-132.33	-4,994.80
08/31/2020	CLPKT00701	R00009600		Acadian Ambulance Service Ambulance Se...			-198.90	-5,193.70
10/31/2020	CLPKT00743	R00010337		Acadian Ambulance Service Ambulance Se...			-227.28	-5,420.98

Total Fund: 1100 - General Fund: **Beginning Balance: -863.16** **Total Activity: -4,557.82** **Ending Balance: -5,420.98**

Grand Totals: **Beginning Balance: -863.16** **Total Activity: -4,557.82** **Ending Balance: -5,420.98**

Fund Summary

Fund		Beginning Balance	Total Activity	Ending Balance
1100 - General Fund		-863.16	-4,557.82	-5,420.98
	Grand Total:	**-863.16**	**-4,557.82**	**-5,420.98**

NOTICE OF PUBLIC HEARING ON INTENTION TO GRANT A FRANCHISE TO ACADIAN AMBULANCE SERVICE OF TEXAS, LLC

NOTICE IS HEREBY GIVEN THAT THE CITY COUNCIL OF THE CITY OF KYLE WILL CONVENE AT 7:00 P.M. ON THE 5TH DAY OF JANUARY, 2021, AND, DURING SUCH MEETING, THE CITY COUNCIL WILL CONDUCT A HEARING TO RECEIVE PUBLIC COMMENTS ON AN ORDINANCE GRANTING ACADIAN AMBULANCE SERVICE OF TEXAS, LLC, D/B/A ACADIAN AMBULANCE SERVICE, A FRANCHISE TO PROVIDE NON-EMERGENCY AND ROLLOVER EMERGENCY AMBULANCE SERVICES WITHIN THE BOUNDARIES OF THE CITY OF KYLE, TEXAS; PROVIDING AN AGREEMENT PRESCRIBING CONDITIONS, TERMS, AND REGULATIONS GOVERNING THE OPERATION OF THE NON- EMERGENCY AMBULANCE SERVICES; PROVIDING PENALTIES FOR NONCOMPLIANCE WITH FRANCHISE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE OPEN MEETINGS ACT; ESTABLISHING AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

THIS IS PLANNED AS A VIRTUAL MEETING TAKING PLACE AT HTTPS://WWW.CITYOFKYLE.COM/KYLETV/KYLE-10-LIVE. SHOULD THE COVID-19 DISASTER BE REPEALED BETWEEN THE DATE OF THIS NOTICE AND THE DATE OF THE PUBLIC HEARING, THE LOCATION WILL BE AT KYLE CITY HALL, 100 W. CENTER STREET, KYLE, TX 78640. PLEASE CHECK THE AGENDA FOR THE PROPER LOCATION.

THIS NOTICE IS GIVEN PURSUANT TO SEC. 11.02 OF THE CHARTER OF THE CITY OF KYLE, TEXAS, WHICH REQUIRES THAT NO FRANCHISE OR PERMIT SHALL BE PASSED EXECPT ON TWO READINGS HELD AFTER A PUBLIC HEARING FOR WHICH TEN (10) DAYS NOTICE IS GIVEN.

AFTER THE CONCLUSION OF THE HEARING, THE CITY COUNCIL MAY CONSIDER AND TAKE POSSIBLE ACTION TO APPROVE THE ORDINANCE GRANTING THE FRANCHISE.

JENNIFER VETRANO
CITY SECRETARY
CITY OF KYLE, TEXAS

DECEMBER 21ST, 2020

CITY OF KYLE, TEXAS

Howerton Plum Creek - Site Plan (SD-20-0079)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Approve Howerton Plum Creek - Site Plan (SD-20-0079) 2.976 acres; 1 commercial lot for property located at 4282 S. FM 1626. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 6-0 to approve the site plan.

Other Information: See attached.

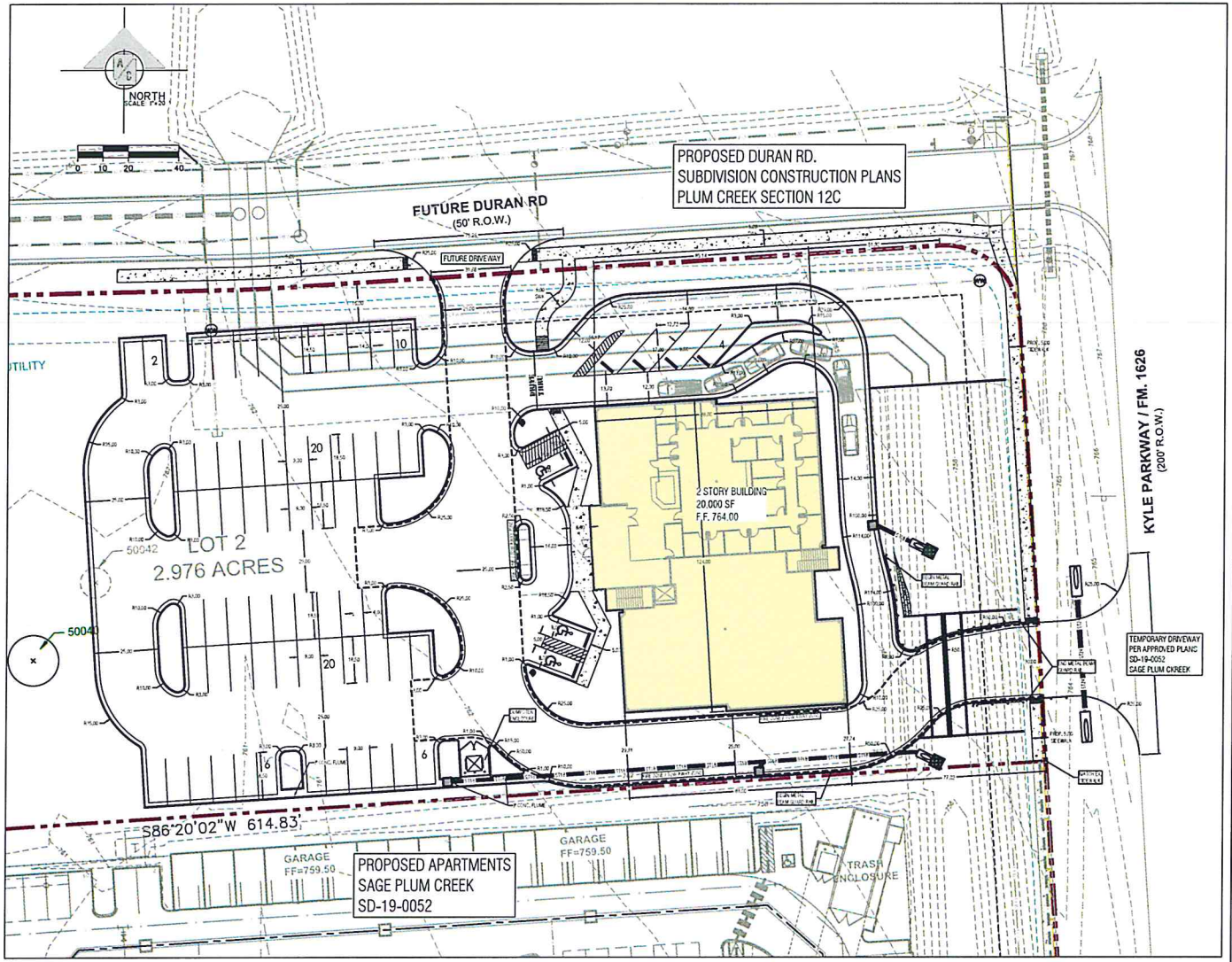
Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Site and Landscape Plan



LEGEND

PROPOSED	DESCRIPTION
•	BOLLARD
	SIGN POST
-OE-	OVER HEAD ELEC. LINE
-OT-	OVER HEAD TELEPHONE
-ST-	STORM SEWER LINE
-WL-	WATER LINE
-WW-	WASTE WATER LINE
-FM-	FORCE MAIN
-EX. WL-	EXISTING WATER LINE
-EX. WW-	EXISTING WASTEWATER LINE
-GAS-	GAS LINE
	PROPERTY LINE
	EASEMENT
O	FOUND IRON PIN
	POWER POLE
	DOWN GUY
	FIRE HYDRANT
	WATER VALVE
	WATER METER
	GATE VALVE
	REDUCER
	GAS METER
	GAS VALVE
	METAL FENCE
	WIRE FENCE
WW	WASTEWATER MANHOLE
MH	MANHOLE
CO	CLEAN OUT
	DRAINAGE INLET
	HANDICAP PARKING
	ELECTRIC PULL BOX
	ELECTRIC METER
	ELECTRIC TRANSFORMER
	TELEPHONE SERVICE BOX
10	9' X 17.5' PARKING SPACE
528.8	PROPOSED SPOT GRADE
	PROPOSED FINISHED GRADE
	PROPOSED DRAINAGE AREA
LOC	LIMITS OF CONSTRUCTION
	SPOILS AND STORAGE AREA
	TREE FENCE TYP.
	SILT FENCE TYP.
	CONSTRUCTION ENTRANCE
	ACCESSIBLE ROUTE
	TREE TO BE SAVED
	TREE TO BE REMOVED

THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

Howerton Eye Clinic		PROPOSED	
Impervious Cover Table:		TOTAL	percent
Gross Site Area =	2.976 acres	Sq. ft.	%
	129,635 square feet		
Buildings =		10,807	8.34%
Parking and Drives =		46,094	35.56%
Sidewalk/other =		1,677	1.29%
Total Proposed Impervious Cover =		58,578	45.19%
		1.34	AC

Howerton Eye Clinic				
Parking Requirements:	sq. ft.	ratio	Total Required Parking
General Retail	20,000	3.5 to 1,000 sq ft	70
			0
		Total Required =	70
Handicap Requirements:			
Total Required Handicap			3
Proposed HC Spaces =			3
Proposed Regular Spaces =			68
Proposed Compact Space =			0
Total Parking Provided =			71

CASE NO: SD-20-0079

AUSTIN CIVIL ENGINEERING, INC.
TBPE FIRM # F-9010
9500 B MERCHACA RD. SUITE 220
AUSTIN, TX 78748
PH: (512) 306-0018

12/3/20

HOWERTON PLUM CREEK
FM 1626
KYLE, TEXAS.

REVISIONS		
REV. DATE	DESCRIPTION	APPROVED BY

JOB: 20-027 DATE: 12/3/20
CAD: DT/CL/AW DR'D BY:
SHEET: 15 CHK'D BY:
SCALE:

DIMMENSIONAL SITE & FIRE LANE PLAN

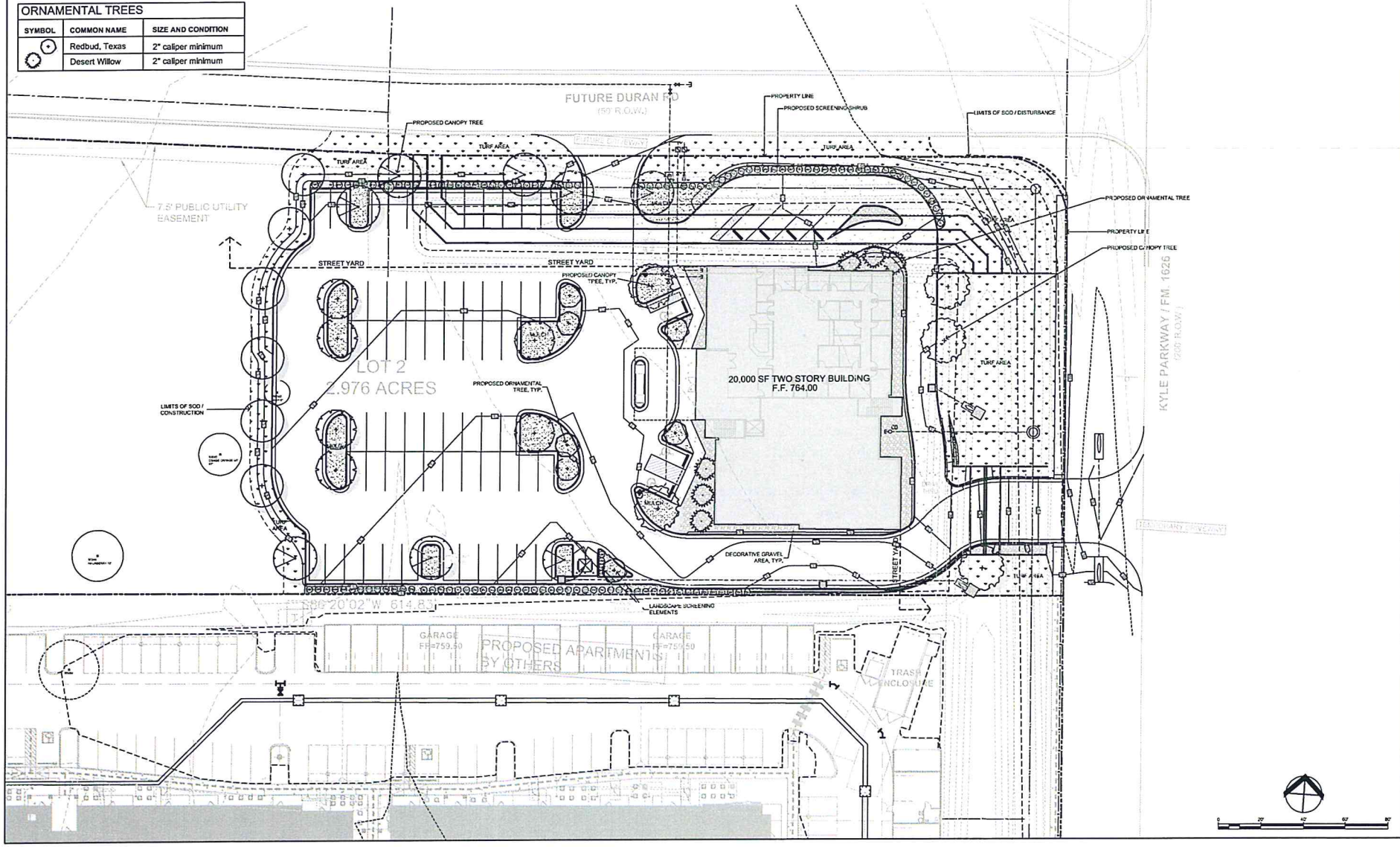
SITE CIVIL PLAN

8 of 20

Item # 12

LARGE SHADE TREES		
SYMBOL	COMMON NAME	SIZE AND(SHADE)
	Mexican Sycamore	3" caliper minimum
	Shumard Red Oak	3" caliper minimum
	Live Oak	3" caliper minimum
	Cedar Elm	3" caliper minimum

ORNAMENTAL TREES		
SYMBOL	COMMON NAME	SIZE AND CONDITION
	Redbud, Texas	2" caliper minimum
	Desert Willow	2" caliper minimum



REVISIONS

Date	Description

11/02/20

HOWERTON CLINIC - PLUM CREEK
CITY OF KYLE, TEXAS
LANDSCAPE SUBMITTAL PLAN

DATE: 11-02-20

SCALE: 1"=20'-0"

ECOLAND DESIGN GROUP

Sheet: L1 of L2

JOB#: E106-13

Item # 12

LARGE SHADE TREES

SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND(SHADE)
	8	Mexican Sycamore	Platanus mexicana	3" caliper minimum
	5	Shumard Red Oak	Quercus shumardii var. Texana	3" caliper minimum
	6	Live Oak	Quercus virginiana var. Cathedral	3" caliper minimum
	6	Cedar Elm	Ulmus crassifolia	3" caliper minimum

ORNAMENTAL TREES

SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
	7	Redbud, Texas	Cercis canadensis var. texensis	2" caliper minimum
	6	Desert Willow	Chilopsis linearis	2" caliper minimum

SHRUBS

SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
BM	68	Big Muhly	Muhlenbergia lindheimeri	3 gallon, 30" ht. minimum
Kr	26	Double Knockout Rose	Rosa x 'Radtko'	3 gallon, 30" ht. minimum
Ro	24	Rosemary, Upright	Rosmarinus officinalis	3 gallon, 30" ht. minimum
Sy	11	Soft Yucca	Yucca recurvifolia	3 gallon, 30" ht. minimum

TURF GRASS / MISC

SYMBOL	QUANTITY	COMMON NAME	SCIENTIFIC NAME	SIZE AND CONDITION
	ref. plan	Tiffway 419 Bermuda grass	Cynodon 'TIFF 419'	solid sod
	ref. plan	3" Cafe River Rock		Installed a min. of 4" depth w. weed mat

LANDSCAPE CALCULATIONS

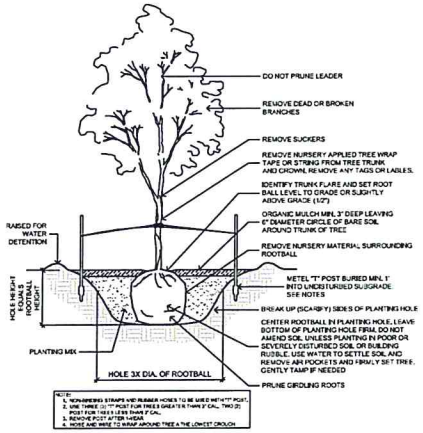
	Required	Provided
Total Site Area	N / A	79,539 (LOC)
Total Req. Landscape Area (10%)	7,954 s.f.	21,209 s.f.
STREETYARD LANDSCAPE	**Required**	**Provided**
Streetyard Landscape Area (35%)	11,411 s.f.	14,952 s.f.
ADDITIONAL LANDSCAPE REQ.	**Required**	**Provided**
7,954 s.f. / 600 = 19		
19 x 2 = 38 trees	38 Trees	38 Trees
19 x 4 = 76 shrubs	76 Shrubs	129 Shrubs

TREE MITIGATION

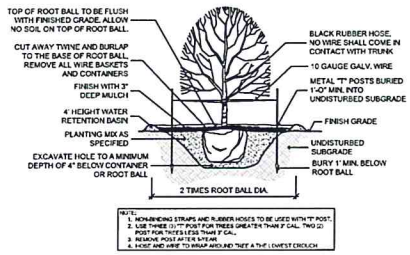
No trees removed on this site.

GENERAL LANDSCAPE CONSTRUCTION NOTES

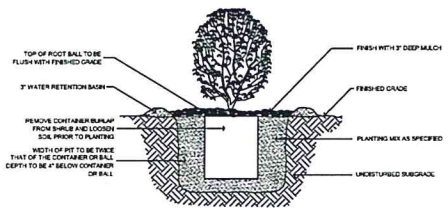
1. Contractor shall provide all labor and materials necessary to complete the work shown on the plans.
2. All proposed landscaping is to be installed as per local city ordinances and codes. Notify owner's representative and landscape architect of any discrepancies prior to construction.
3. All plant material shall comply with plant size per container as stated by the American Association of Nurseryman.
4. Plants are subject to inspection and approval by the landscape architect. Plants required for the site may be inspected and tagged at growing site before delivery.
5. Groundcover bed preparation shall be 2 inches of planting mix tilled 8 inches into bed areas.
6. Shrubs and trees shall be pocket planted. Excavate planting hole 1-1/2 times the width and height of the root ball. Backfill with 1/3 planting mix, 1/3 native soil and 1/3 sandy loam.
7. Grading shall provide positive drainage away from buildings and other structures. Fine grade for positive drainage to prevent ponding.
8. Quantities provided in the plant list are for general use only, contractor is responsible for verification of all plant quantities.
9. Contractor is responsible for quality of workmanship, superintendence and scheduling of work.
10. Contractor is responsible for removal of trash and job safety conditions.
11. Contractor to provide (1) year warranty on all plant material.



A SECTION TREE PLANTING DETAIL SCALE: N.T.S.



B SECTION ORNAMENTAL TREE PLANTING DETAIL SCALE: N.T.S.



C SECTION SHRUB PLANTING DETAIL SCALE: N.T.S.

REVISIONS

Date	Description

REGISTERED LANDSCAPE ARCHITECT BRADLEY T. HAYES 2838 STATE OF TEXAS
11/02/20

HOWERTON CLINIC - PLUM CREEK
CITY OF KYLE, TEXAS
LANDSCAPE SUBMITTAL NOTES AND DETAILS

DATE: 11-02-20

SCALE: AS SHOWN

ECOLAND DESIGN GROUP

Sheet:

L2 of L2

JOB#: E106-13

CITY OF KYLE, TEXAS

Silberberg Phase 2 - Site Plan (SD-20-0086)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Approve Silberberg Phase 2 - Site Plan (SD-20-0086) 2.427 acres; 1 commercial lot for property located at 4210 Benner Road. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 6-0 to approve the site plan.

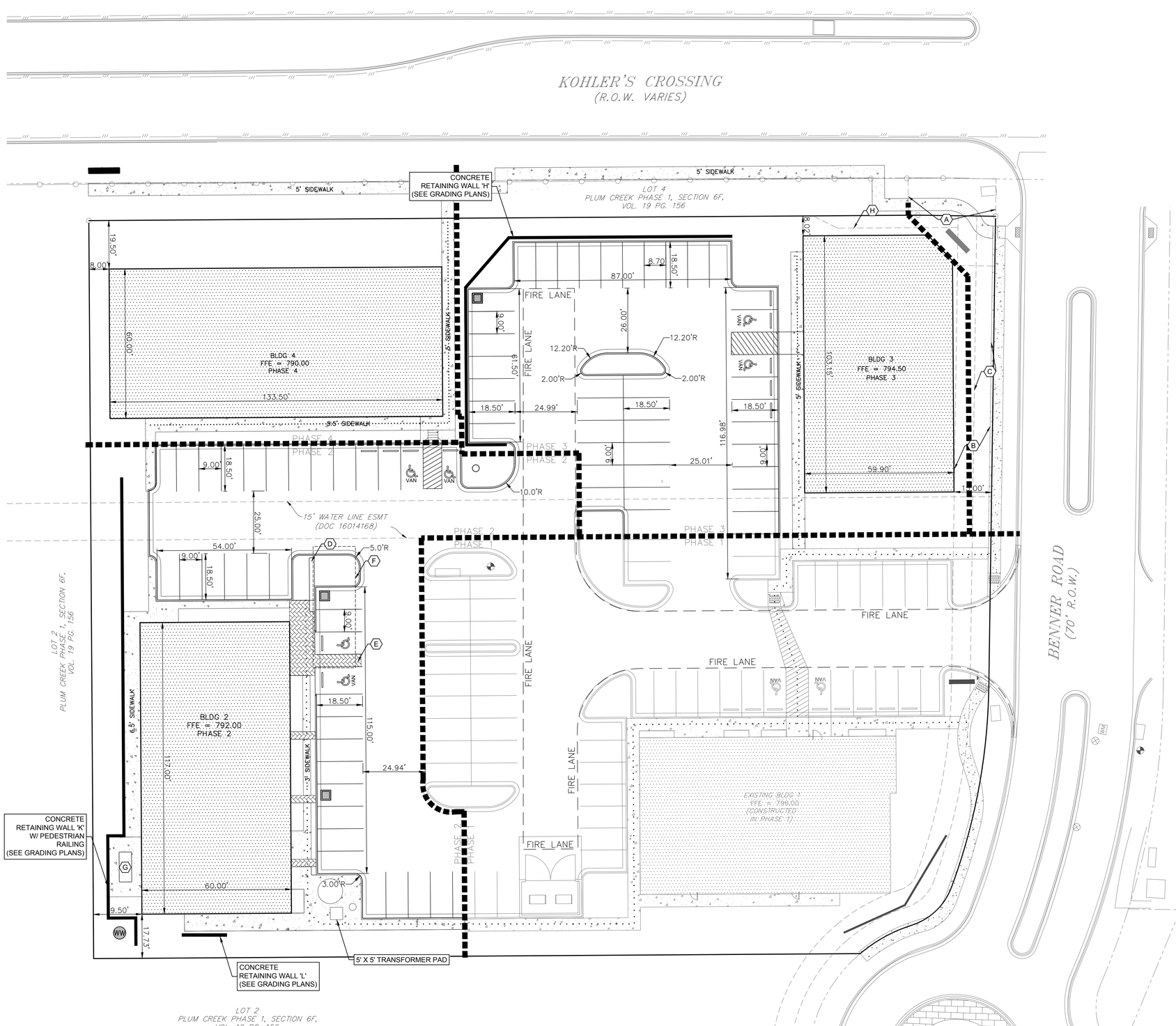
Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description
Site Plan
Landscape Plan



LEGEND

- PROPERTY LINE
- EXIST POWER POLE
- EXIST GUY WIRE ANCHOR
- LIGHT POLE
- ELECTRIC RISER POLE
- EXISTING TREE (4224)
- CURB AND GUTTER
- FIRE LANE
- PROPOSED SIGN
- HANDICAP SYMBOL
- HANDICAP ACCESSIBLE ROUTE

0 20 40 Feet

TAG #	CALLOUT
A	SIGN EASEMENT - VOL. 19, PG. 156
B	15' LANDSCAPE AND PEDESTRIAN EASEMENT - VOL. 19, PG. 156
C	7.5' P.U.E. - VOL. 19, PG. 156
D	BUILDING SIGN WALL (SEE ARCH PLANS)
E	BRICK PAVERS ON CONCRETE (SEE ARCH PLANS)
F	DASHED LINE REPRESENTS PORTE COCHERE (SEE ARCH PLANS)
G	BACKUP GENERATOR ENCLOSURE (SEE ARCH AND MEP PLANS)
H	LANDSCAPE EASEMENT - VOL. 19, PG. 156

NOTES:

1. SEE EXISTING RECORDED PLAT FOR SITE BOUNDARY AND EASEMENT INFORMATION.
2. SEE LANDSCAPE PLANS FOR LOCATIONS OF PROPOSED PLANTINGS, BENCHES, TRASH RECEPTACLES, FURNITURE AND BICYCLE RACKS.
3. ALL DIMENSIONS ARE TO FACE OF CURB, FACE OF BUILDING AND FACE OF RETAINING WALL UNLESS OTHERWISE NOTED.
4. UNLESS OTHERWISE NOTED, ALL PARKING LOT RADII ARE 3'.
5. ALL SIGNS SHALL COMPLY WITH THE CURRENT EDITION OF THE TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
6. CONTRACTOR SHALL CALL ONE-CALL CENTER (1-800-545-6005) FOR UTILITY LOCATIONS PRIOR TO ANY WORK IN EASEMENTS OR STREET R.O.W.
7. A MINIMUM VERTICAL CLEARANCE OF 14'-0' IS REQUIRED FOR ALL DRIVEWAYS AND INTERNAL CIRCULATION AREAS ON SITE.
8. EVERY ACCESSIBLE PARKING SPACE MUST BE IDENTIFIED BY A SIGN, CENTERED AT THE HEAD OF THE PARKING SPACE.
9. SEE ARCHITECTURAL PLANS FOR COMPLETE BUILDING DIMENSIONS.
10. ALL THOROUGHFARES DESIGNATED "FIRE LANE" ON THIS SITE PLAN SHALL HAVE RED CURB WITH WHITE STENCILING READING "FIRE LANE / NO PARKING" IN LETTERING AT LEASE 3-INCHES HIGH, THE STENCILING SHALL BE AT INTERVALS 30 FEET OR LESS. PAINT ASPHALT IN FRONT OF DUMPSTER LOCATION ONLY.
11. SEE ARCHITECTURAL PLANS FOR SITE LIGHTING PLAN AND DETAILS.
12. WATER AND WASTEWATER SERVICE WILL BE PROVIDED BY THE CITY OF KYLE.
13. SEE SHEET 21 FOR PAVEMENT PLAN.
14. ALL SIDEWALKS SHALL BE CONSTRUCTED WITH CROSS SLOPES OF LESS THAN 2.0% AND RUNNING SLOPES OF LESS THAN 5.0% SLOPES FOR ALL SIDEWALKS ADJACENT TO ALL PROPOSED DOORS, HANDICAPPED PARKING AREAS AND AT ALL SIDEWALK INTERSECTIONS AND/OR TURNS SHALL BE LESS THAN 2.0% IN ALL DIRECTIONS.
15. EACH BUILDING SHALL HAVE AN INDIVIDUAL KNOX BOX. IN ADDITION TO BUILDING KEYS, THE OWNER SHALL PROVIDE A KEY TO THE LOCK ON THE LADDER FOR EACH BUILDING.
16. REAR DOORS OF EACH SUITE SHALL BE LABELED WITH THE SUITE NUMBER AND BUSINESS NAME FOR FIRE DEPARTMENT IDENTIFICATION.

	PHASE 1	PHASES 1 & 2	PHASES 1, 2 & 3	PHASES 1, 2, 3 & 4
TOTAL AREA (S.F.)		105,720		
TOTAL AREA (AC.)		2,427		
PROPOSED CONDITIONS:				
TOTAL FLOOR AREA (SF)	6,382	13,402	19,535	27,545
FLOOR AREA RATIO	.06 : 1.00	.13 : 1.00	0.18 : 1.00	0.26 : 1.00
TOTAL IMPERVIOUS COVER (SF)	28,866	51,831	71,016	80,202
TOTAL IMPERVIOUS COVER (AC)	0.66	1.19	1.63	1.84
TOTAL IMPERVIOUS COVER (%)	27.3	49.0	67.2	75.9
BUILDING COVERAGE (SF)	6,382	13,402	19,535	27,545
BUILDING COVERAGE (%)	6.0	12.7	18.5	26.1
PARKING SUMMARY:				
ACCESSIBLE SPACES	2	6	8	8
STANDARD SPACES	49	81	119	119
TOTAL SPACES	51	87	127	127
PARKING RATIO	128	152	153	215

LEGAL DESCRIPTION: LOT 3, BLOCK A, PLUM CREEK PHASE 1, SECTION 6F

PER SECTION 53-33 (N)(4) OF CITY OF KYLE CODE, UP TO 50% OF THE STANDARD PARKING SPACES MAY BE BETWEEN 8.5' AND 9.0' IN WIDTH. THIS PROJECT PROPOSES 61 STANDARD SPACES 9.0' OR WIDER AND 59 STANDARD SPACES BETWEEN 8.7' AND 9.0' IN WIDTH (49%)

ACCESSIBILITY NOTES:

1. SLOPES ON ACCESSIBLE ROUTES MAY NOT EXCEED 1:20 UNLESS DESIGNED AS A RAMP.
2. ACCESSIBLE PARKING SPACES MUST BE LOCATED ON A SURFACE WITH A SLOPE NOT EXCEEDING 1:50.
3. ACCESSIBLE ROUTES MUST HAVE A CROSS-SLOPE NO GREATER THAN 1:50.
4. GROUND SURFACES ALONG ACCESSIBLE ROUTES SHALL BE STABLE, FIRM AND SLIP RESISTANT.

MillerGRAY
Consulting • Engineering • Infrastructure
7320 N. MoPac Expressway, Suite 203
Austin, Texas 78731
Phone (512) 861-5300
www.miller-gray.com
TBPE FIRM REG. NO. F-16302

STATE OF TEXAS
J. TRAVIS WILSON
97307
LICENSED
PROFESSIONAL ENGINEER
12/3/2020

P:\00286 Woodbridge Enterprises\001 Silberberg Dev Kyle\05_CAD\00286-001spn.dwg 12/3/2020 4:06 PM

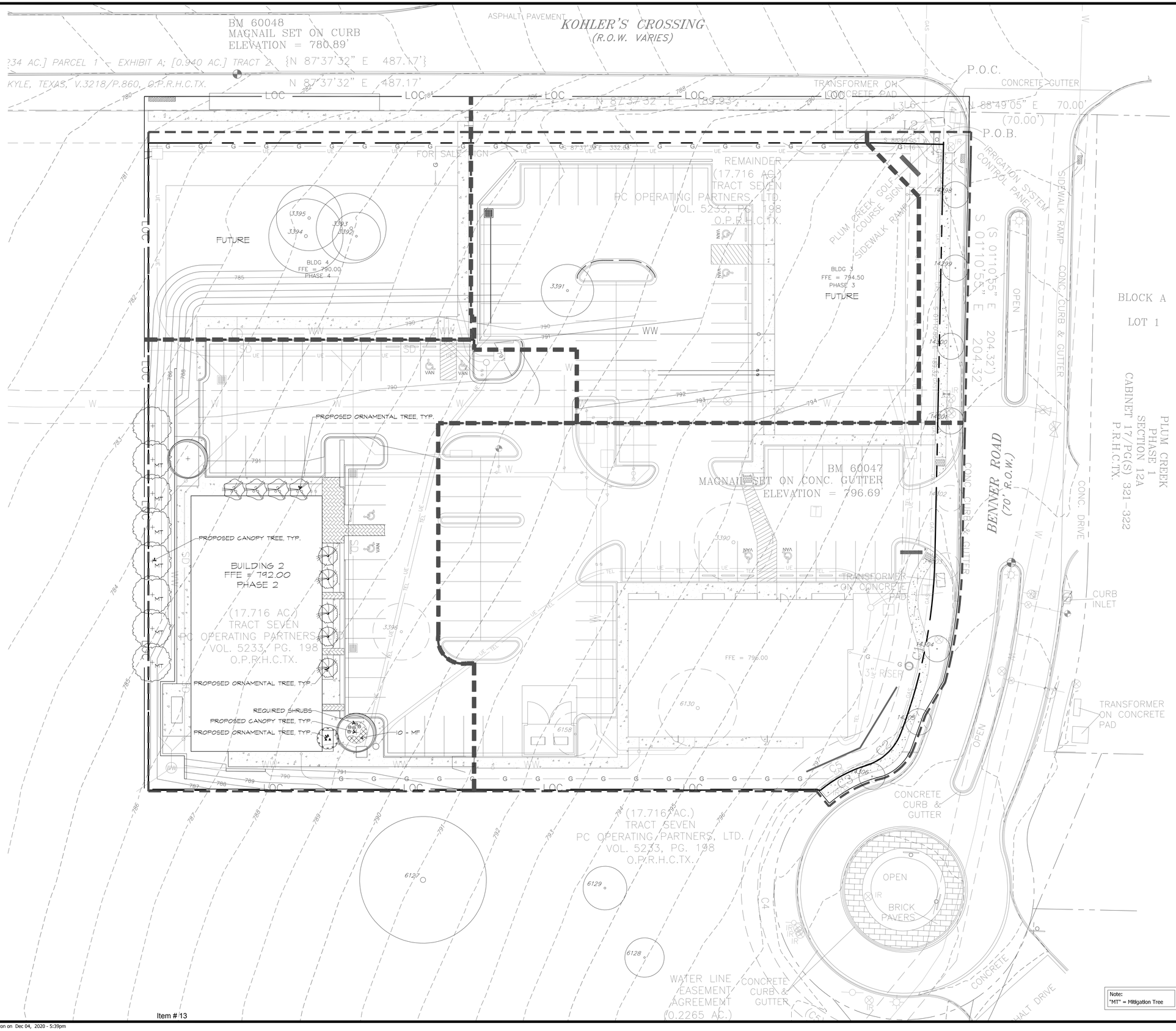
SILBERBERG DEVELOPMENT
4210 BENNER, KYLE TEXAS

SITE PLAN

REVISIONS/CORRECTIONS

NO.	DATE	DESCRIPTION	BY
R2	10/13/20	REPLACEMENT SHEET	JTW

PROJECT NUMBER 00286-001
DATE: 12/3/2020
DESIGNED: KKE
CHECKED: JTW



Item # 13

L:\073\05\City Submittal\L0.01.dwg modified by aaron on Dec 04, 2020 - 5:39pm

REVISIONS

DATE	COMMENTS
10/14/20	REPLACEMENT SHEET
12/04/20	REPLACEMENT SHEET

REGISTERED LANDSCAPE ARCHITECT BENKENDORFER STEVEN A. 2178 STATE OF TEXAS 12/04/20

SILBERBERG DEVELOPMENT

4210 BENNER ROAD, KYLE, TEXAS

CITY SUBMITTAL LANDSCAPE PLAN

SCALE:

0 20 30

DATE:

10/14/20

BENKENDORFER + ASSOCIATES
LANDSCAPE ARCHITECTURE/SITE PLANNING
2901 Bee Cave Road
Heritage Square, Ste P
Austin, TX 78746
P 512 366 5359
F 512 369 3486

Copyright © 2020
Benkendorfer+Associates, LLC

PROJECT # 073-05

FOR THE CITY OF KYLE USE ONLY

PHASE 2 LANDSCAPE REQUIREMENTS

ZONING: MXD - Commercial

LANDSCAPE CALCULATIONS

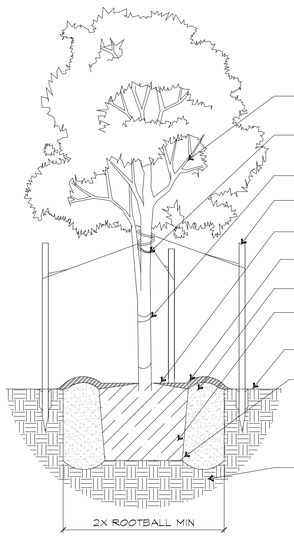
	Required	Provided
Total Site Area		30,608 sf.
Minimum percentage of the total lot area devoted to landscape (10%)	3,061 sf.	> 3,061 sf.

REQUIRED PLANTINGS	Required	Provided
For every 600 square feet of landscape area required by this article, two trees and four shrubs shall be planted.		
3,061 sf. / 600 sf. = 5		
5 x 2 = 10 Trees	10 Trees	10 Ornamental Trees
5 x 4 = 20 Shrubs	20 Shrubs	20 Shrubs
Case 1: Required landscape area less than 10,000 square feet = One three-inch caliper tree and three one-gallon shrubs per 1,000 square feet (maximum ten trees and 30 shrubs).		
3,061 sf. / 1,000 sf. = 3		
3 x 1 = 3 Three-Inch Caliper Trees	3 Three-Inch Caliper Trees	3 Three-Inch Caliper Trees
3 x 3 = 9 One-Gallon Shrubs	9 One-Gallon Shrubs	9 One-Gallon Shrubs

REPLACEMENT TREES	Required	Provided
Tree 3396 is to be removed in Phase 2.		
Tree 3396 is a 13" Live Oak. Replace 1" removed with 1.5" proposed trees.		
13" x 1.5" = 19.5"	19.5"	21" 7 Three-Inch Caliper Trees

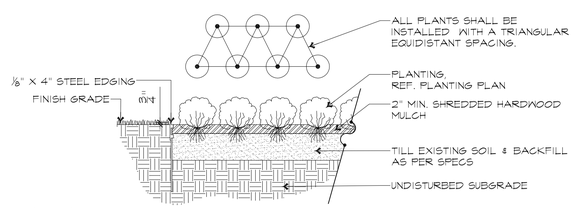
PLANT SCHEDULE

CANOPY TREES	QTY	COMMON NAME	BOTANICAL NAME	CONT	CAL	SIZE
	2	Live Oak	Quercus virginiana	B & B or Container	3"	12' Ht./ 4' Sprd.
	8	Cedar Elm	Ulmus crassifolia	B & B or Container	3"	12' Ht./ 5' Sprd.
ORNAMENTAL TREES	**QTY**	**COMMON NAME**	**BOTANICAL NAME**	**CONT**	**CAL**	**SIZE**
	4	Yaupon Holly	Ilex vomitoria	#30		6' Ht./ 4' Sprd.
	1	White Crape Myrtle	Lagerstroemia indica 'Natchez'	#30		8' Ht. / 5' Sprd.
	5	Southern Wax Myrtle	Myrica cerifera	#30		8' Ht. / 5' Sprd.
SHRUBS	**QTY**	**COMMON NAME**	**BOTANICAL NAME**	**CONT**	**-**	**SIZE**
SS	5	Pink Skullcap	Scutellaria suffrutescens	#1		6" Ht. / 12" Sprd.
GROUND COVERS	**QTY**	**COMMON NAME**	**BOTANICAL NAME**	**CONT**	**-**	**SIZE**
MF	10	Mexican Feather Grass	Nassella tenuissima	#1		

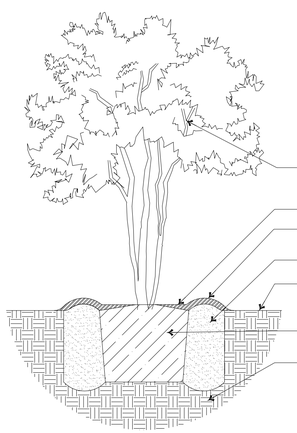


NOTES:
1. IDENTIFY TRUNK FLARE AND SET ROOTBALL LEVEL SLIGHTLY ABOVE GRADE.
2. DO NOT ALLOW MULCH TO COVER BARK OF TRUNK.
3. UNLESS NOTED, ALL TREES SHALL BE STAKED WITH 3 T-POSTS.
4. TREES PLANTED ADJACENT TO AN ACCESSIBLE ROUTES AND/OR ACCESSIBLE AREAS SHALL NOT HAVE LIMBS BELOW 80" ABOVE FINISH GRADE.

TREE PLANTING
SECTION / ELEVATION — N.T.S

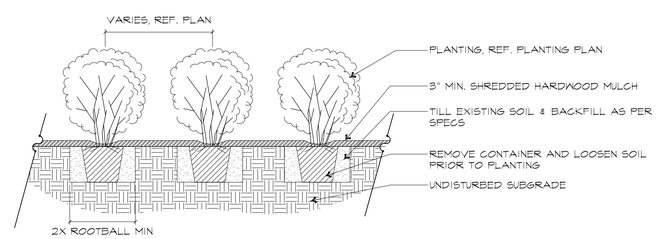


GROUNDCOVER / SEASONAL COLOR PLANTING
SECTION / ELEVATION — SCALE: 3/4 "= 1'-0"



NOTES:
1. TOP ROOTBALL 2" ABOVE GRADE
2. DO NOT ALLOW MULCH TO COVER BARK OF TRUNK
3. TREES PLANTED ADJACENT TO ACCESSIBLE ROUTES AND ACCESSIBLE AREAS SHALL NOT HAVE LIMBS BELOW 80" ABOVE FINISH GRADE.

ORNAMENTAL TREE PLANTING
SECTION / ELEVATION — SCALE: 1/2 "= 1'-0"



SHRUB "POCKET" PLANTING DETAIL W/ BED PREPARATION
SECTION / ELEVATION — N.T.S

CITY OF KYLE NOTES

Sec. 53-986. - Maintenance.

(a) The owner of the landscaped property shall be responsible for the maintenance of all landscape areas. Said areas shall be maintained so as to present a healthy, neat and orderly appearance at all times and shall be kept free of refuse and debris. All planted areas shall be provided with a readily available water supply and watered as necessary to ensure continuous healthy growth and development. Maintenance shall include the replacement of all dead plant material if that material was used to meet the requirements of this article. Landscape material must be trimmed and maintained for roadway visibility.

(b) All property within the city limits will adhere to city drought management program when watering.

Sec. 53-987. - Planting criteria.

(a) *Trees.* Trees shall be a minimum of three inches in caliper measured six inches above the root flare immediately after planting. A list of recommended landscape trees may be obtained from the city. If the developer chooses to substitute trees not included on the recommended list, those trees shall have an average mature crown greater than 15 feet in diameter to meet the requirements of this article. Trees having an average mature crown less than 15 feet in diameter may be substituted by grouping trees so as to create at maturity the equivalent of a 15-foot diameter crown if the drip line area is maintained. A minimum area three feet in radius is required around the trunks of all existing and proposed trees.

(b) *Tree selection.*

(1) Trees selected for planting must meet minimum requirements as provided below and in the American Standard of Nursery Stock.

(2) Trees selected for planting must be free from injury, pests, disease, or nutritional disorders.

(3) Trees selected for planting must be of good vigor. The determination of vigor is a subjective evaluation, and dependent upon species variability. The following criteria is generally used for the determination of vigor:

a. Foliage should have a green or dark green color. Vigorous trees will have large leaves and dense foliage when compared to trees with poor vigor.

b. Shoot growth for most vigorous trees will be at least one foot per year. At least one-half of the branches should arise from the top one-third and one-half from the center one-third.

c. Bark texture can denote vigor. Smooth or shiny bark on the trunk and branches of a young tree usually signifies good vigor; conversely, rough and dull bark could indicate poor vigor.

d. Trunk taper. The trunks of vigorous trees will generally have an increase in diameter with a decrease in height. Trees with reverse tapers or no taper should be avoided.

e. Root color. Young roots of most trees will be light in color.

(1) Trees selected for planting must be free of root defects. Two types of root defects generally occur:

a. Kinked roots, in which taproots, major branch roots, or both are bent more than 90 degrees with less than 20 percent of the root system originating above the kink. A tree with such roots will probably bend at the soil line when released from a supporting stake.

b. Circling or girdling roots which circle 80 percent or more of the root system by 360 degrees or more. A tree with such roots would ultimately have less than 20 percent of its system available for support.

(c) *Shrubs and ground cover.* Shrubs, vines and ground cover planted pursuant to this section shall be good, healthy nursery stock. Shrubs must be, at a minimum, a one-gallon container size, but shall average two-gallon for the entire project, and be drought resistant species. This applies to all zoning classifications.

(d) *Turf grass.* In order to limit the volume of water required for the turf, it is required that grass areas be planted with drought resistant species normally grown as permanent lawns, such as Bermuda, Zoysia, Buffalo or other similar drought resistant grasses. Grass areas may be sodded, plugged, sprigged or seeded except that solid sod shall be used in areas subject to erosion. This applies to all zoning classifications.

(1) Other low water requirement turf products will be considered and may be approved by a designated city official or body on a case-by-case basis.

(2) These requirements for specific types of turf are adopted to establish conservation practices under the drought management plan of the city.

(3) The requirements set forth in this subsection shall not prohibit the installation or planting of any turf not described in this section (nonconforming turf) if at least 50 percent of the nonimpervious cover area of the lot or parcel was planted with a nonconforming turf prior to the effective date of the ordinance from which this chapter is derived and the same nonconforming turf is being installed or planted.

(e) *Synthetic plants.* Synthetic or artificial lawns or plants shall not be used in lieu of plant requirements in this section.

(f) *Architectural planters.* The director of planning and community development or his/her designee is authorized to approve the use of architectural planters when he/she determines the overall intent of the division and/or specific guidelines can be met.

(g) *Other.* Approved decorative aggregate or pervious brick pavers shall qualify for landscaping credit if contained in planting areas, but no credit shall be given for concrete or other impervious surfaces. No more than 50 percent of the required total landscape area may covered in aggregate and/or pervious pavers.

REVISIONS

DATE	COMMENTS
10/14/20	REPLACEMENT SHEET
12/04/20	REPLACEMENT SHEET

REGISTERED LANDSCAPE ARCHITECT — STATE OF TEXAS — 12/04/20

SILBERBERG DEVELOPMENT
4210 BENNER ROAD, KYLE, TEXAS
CITY SUBMITTAL LANDSCAPE PLAN

SCALE:
AS SHOWN

DATE:
10/14/20

BENKENDORFER+ASSOCIATES
LANDSCAPE ARCHITECTURE/SITE PLANNING
2901 Bee Cave Road
Heritage Square, Ste P
Austin, TX 78746
P 512 346 5359
F 512 349 3495

Copyright © 2020
Benkendorfer+Associates, LLC

PROJECT # 073-05

L:\073\05\City Submittal\L0.02.dwg modified by aaron on Dec 04, 2020 - 5:40pm

CITY OF KYLE, TEXAS

Plum Creek Phase 1, Section 11G Replat of Lot 1B, Block A (SUB-20-0156)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Plum Creek Phase 1, Section 11G Replat of Lot 1B, Block A (SUB-20-0156) 2.139 acres; 2 commercial lots for property located at 4600 FM 1626. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 6-0 to approve the Replat.

Other Information: See attached.

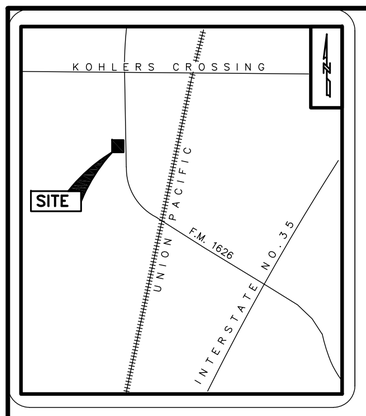
Legal Notes: N/A

Budget Information: N/A

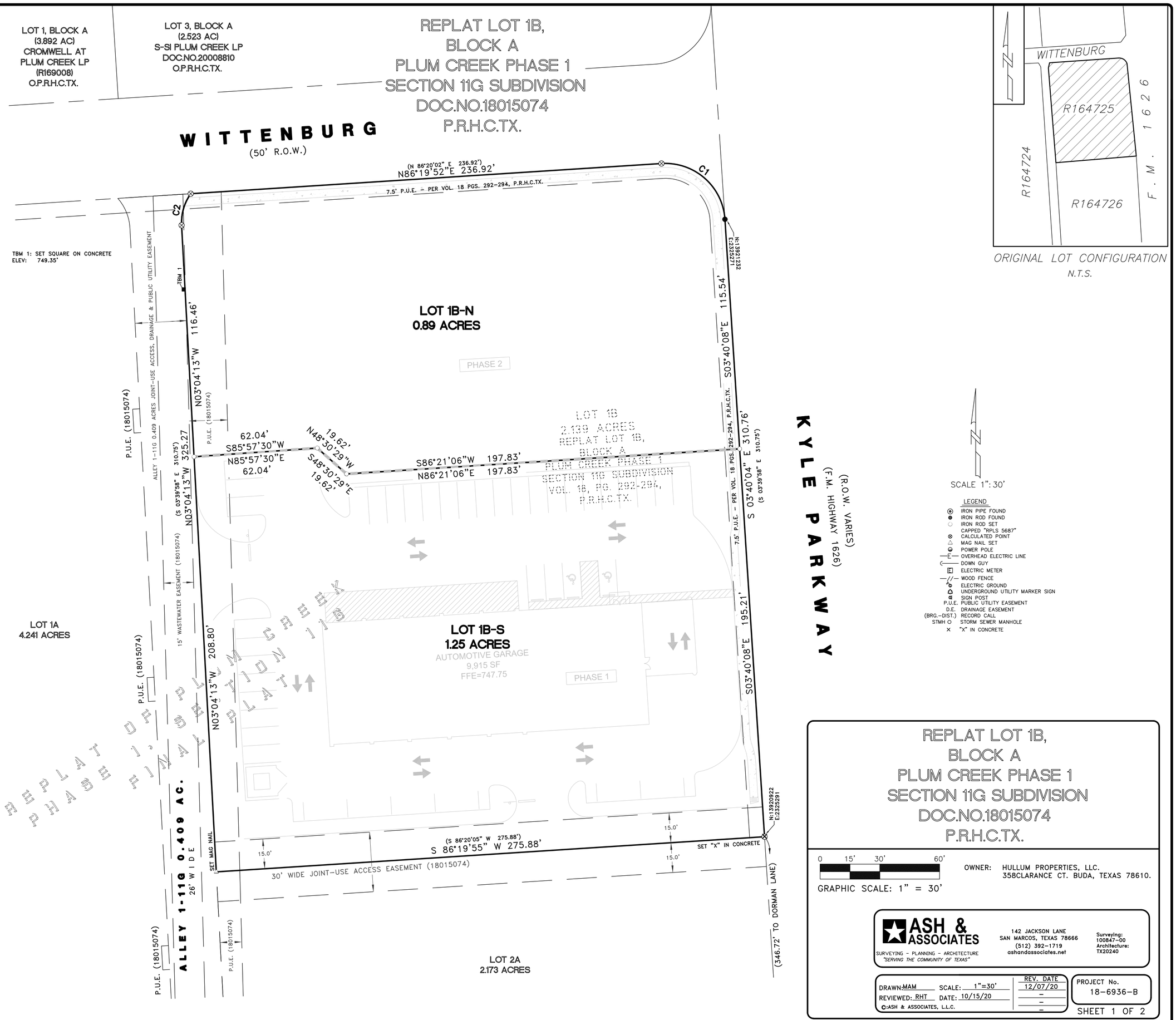
ATTACHMENTS:

Description

- Plat



VICINITY MAP
N.T.S.



ORIGINAL LOT CONFIGURATION
N.T.S.

SCALE 1": 30'

LEGEND

- IRON PIPE FOUND
- IRON ROD FOUND
- IRON ROD SET CAPPED "RPLS 5687"
- CALCULATED POINT
- MAG NAIL SET
- POWER POLE
- OVERHEAD ELECTRIC LINE
- DOWN GUY
- ELECTRIC METER
- WOOD FENCE
- ELECTRIC GROUND
- UNDERGROUND UTILITY MARKER SIGN
- SIGN POST
- P.U.E. PUBLIC UTILITY EASEMENT
- D.E. DRAINAGE EASEMENT
- (BRG.-DIST.) RECORD CALL
- STMH O STORM SEWER MANHOLE
- × "X" IN CONCRETE

REPLAT LOT 1B, BLOCK A PLUM CREEK PHASE 1 SECTION 11G SUBDIVISION DOC.NO.18015074 P.R.H.C.TX.

0 15' 30' 60'
GRAPHIC SCALE: 1" = 30'

OWNER: HULLUM PROPERTIES, LLC.
358CLARANCE CT. BUDA, TEXAS 78610.

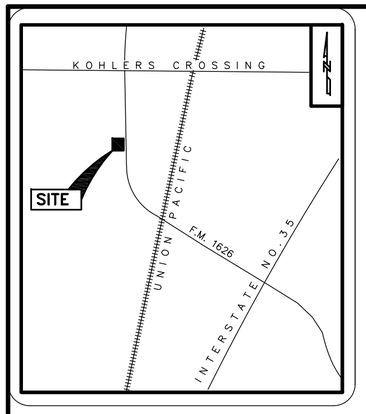
ASH & ASSOCIATES
SURVEYING - PLANNING - ARCHITECTURE
"SERVING THE COMMUNITY OF TEXAS"
142 JACKSON LANE
SAN MARCOS, TEXAS 78666
(512) 392-1719
ashandassociates.net
Surveying: 100847-00
Architecture: TX20240

DRAWN: MAM	SCALE: 1"=30'	REV. DATE	PROJECT No.
REVIEWED: RHT	DATE: 10/15/20	12/07/20	18-6936-B
		–	
		–	
		–	

©:ASH & ASSOCIATES, L.L.C.

SHEET 1 OF 2

OWNER:	HULLUM PROPERTIES, LLC. 358CLARANCE CT. BUDA, TEXAS 78610.
ACREAGE:	2.139 ACRES
SURVEY:	JESSE DAY, ABS. NO. 159
NUMBER OF LOTS:	LOT 2
PROPOSED USE:	COMMERCIAL
DATE:	10/15/2020
SURVEYOR:	ASH AND ASSOCIATES RICHARD H. TAYLOR 512 392 1719



VICINITY MAP
N.T.S.

CURVE TABLE				
CURVE #	ARC LENGTH	RADIUS	BEARING	CHORD LENGTH
C1	47.13'	30.00'	S48°40'08"E	42.43'
(C1)	(47.12')	(30.00')	(S48°39'58"E)	(42.43')
C2	16.81'	24.50'	N16°05'03"E	16.48'
(C2)	(16.81')	(24.50')	(N16°05'13"E)	(16.48')

STATE OF TEXAS *
COUNTY OF HAYS *
KNOW ALL MEN BY THESE PRESENTS

THAT, HULLUM PROPERTIES, LLC., OWNER OF 2.139 ACRES OF LAND, LOT 1B, BLOCK A, REPLAT OF PLUM CREEK PHASE 1, SECTION 11G, FINAL PLAT, RECORDED IN DOCUMENT NO. 18015074, PLAT RECORDS, HAYS COUNTY, TEXAS, SITUATED IN THE JESSE DAY SURVEY, ABSTRACT NO. 159, HAYS COUNTY, TEXAS, SAME BEING CONVEYED BY WARRANTY DEED TO SAID HULLUM PROPERTIES, LLC., DATED OCTOBER 24, 2018 AND RECORDED IN DOCUMENT NO. 18037944, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, DO HEREBY REPLAT SAID LOT 1B, BLOCK A, 2.139 ACRES OF LAND, INTO "REPLAT OF LOT 1B – BLOCK A, PLUM CREEK, PHASE 1, SECTION 11G", AND DEDICATE TO THE USE OF ALL PUBLIC STREETS, ALLEYS, PARKS, DRAINS, WATERCOURSES, EASEMENTS AND PUBLIC PLACES SHOWN ON THIS PLAT. WE FURTHER CERTIFY THAT THE DEDICATIONS AND/OR EXACTIONS MADE HEREIN ARE PROPORTIONAL TO THE IMPACT OF THE SUBDIVISION UPON PUBLIC SERVICES REQUIRED IN ORDER THAT THE DEVELOPMENT WILL COMPORT WITH THE PRESENT AND FUTURE GROWTH NEEDS OF THE CITY; WE, OUR SUCCESSORS AND ASSIGNS HEREBY WAIVE ANY CLAIM, DAMAGE, OR CAUSE OF ACTION THAT WE MAY HAVE AS A RESULT OF THE DEDICATION OF EXACTIONS MADE HEREIN.

_____ _____ _____
HULLUM PROPERTIES LLC DATE
358 CLARENCE CT. BUDA, TEXAS 78610.

STATE OF TEXAS *
COUNTY OF HAYS *

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED BRADLEY HULLUM, OWNER OF HULLUM PROPERTIES LLC., KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE _____ DAY OF

_____, A.D., 2020.

_____
NOTARY PUBLIC
STATE OF TEXAS

REPLAT LOT 1B, BLOCK A PLUM CREEK PHASE 1 SECTION 11G SUBDIVISION DOC.NO.18015074 P.R.H.C.TX.

REPLAT NOTES:

1) THIS SUBDIVISION IS SUBJECT TO ALL NOTES, COVENANTS AND RESTRICTIONS OF REPLAT OF PLUM CREEK PHASE 1, SECTION 11G, FINAL PLAT, RECORDED IN DOCUMENT NO.18015074, HAYS COUNTY PLAT RECORDS.
2) ACCORDING TO THE NATIONAL FOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP FOR HAYS COUNTY, TEXAS AND INCORPORATED AREAS, MAP NO. 48209C0290F, DATED SEPTEMBER 2, 2005, THIS PROPERTY IS LOCATED IN ZONE "X"(UNSHADED), WHICH IS AN AREA OUTSIDE THE 100-YEAR FLOODPLAIN.
3) BEARING BASIS DERIVED BY GPS MEASUREMENTS ADJUSTED BY HARIN (HIGH ACCURACY REFERENCE NETWORK) & PROJECTED TO TEXAS STATE PLANE COORDINATES & NAD83 (HORIZONTAL) & NAVD88 (VERTICAL).
4) NO BUILDING, ACCESSORY BUILDING, FENCING OR LANDSCAPING WHICH INTERFERE WITH THE FLOW OF STORM WATER SHALL BE PLACED OR ERECTED WITHIN A NATURAL DRAINAGE WAY OR DRAINAGE EASEMENT.
5) THE PURPOSE OF THIS REPLAT IS TO SUBDIVIDE ONE (1) LOT INTO TWO (2) LOTS BY REPLATTING LOT 1B, BLOCK A, OF REPLAT OF PLUM CREEK SECTION 11G SUBDIVISION, RECORDED IN DOCUMENT NO.18015074, OF THE PLAT RECORDS, HAYS COUNTY, TEXAS.
6) COMPLIANCE WITH EDWARDS AQUIFER PROTECTION PROGRAM REQUIREMENTS DURING ANY DEVELOPMENT OF THIS PROPERTY.
7) NO LOTS ARE TO BE OCCUPIED UNTIL OSSF PERMIT OR PUBLIC SEWER, WATER AND ELECTRICITY AND ROADS HAVE BEEN PROVIDED AND CONSTRUCTION IS COMPLETED AND APPROVED.
8) SIDEWALKS ALONG PUBLIC RIGHT-OF-WAY ADJACENT TO LOT 1A, LOT 1B , AND LOT 2A, BLOCK A SHALL BE INSTALLED BY THE OWNER OF LOT 1A, LOT 1B, AND LOT 2A, BLOCK A AT THE TIME OF SITE DEVELOPMENT AND PRIOR TO SUCH OWNER'S OCCUPANCY OF LOT 1A, LOT 1B, AND LOT 2A, BLOCK A. SIDEWALKS, PEDESTRIAN CROSSINGS AND OTHER PUBLIC AMENITIES THAT ARE TO DEDICATE TO THE CITY OF KYLE SHALL MEET OR EXCEED ALL 2010 ADA STANDARDS OF ACCESSIBILITY DESIGN AND ALL CURRENT FEDERAL AND STATE LAWS REGARDING ACCESS FOR PEOPLE WITH DISABILITIES FOR TITLE II ENTITIES.
9) NO OBJECT INCLUDING BUILDING, ACCESSORY BUILDING, FENCING OR LANDSCAPING WHICH WOULD INTERFERE WITH CONVEYANCES OF STORM WATER SHALL BE PLACES OR ERECTED WITHIN DRAINAGE EASEMENTS.
10) ALL UTILITIES WITHIN THIS SUBDIVISION SHALL BE UNDERGROUND.
11) ALL OPEN SPACES, DRAINAGE EASEMENT AND LANDSCAPE EASEMENTS AREAS DEPICTED HEREON SHALL BE MAINTAINED, KEPT NEATLY CUT, FREE FROM DEBRIS, AND WITH RESPECT TO DRAINAGE EASEMENTS, FREE FROM TREE/BRUSH RE-GROWTH BY THE COMMERCIAL PROPERTY OWNER'S ASSOCIATION (THE "POA") OR ITS SUCCESSORS OR ASSIGNS. TYPICAL LANDSCAPE MAINTENANCE, CUTTING AND TRIMMING WITHIN THE SUBDIVISION, ALL EASEMENTS, DETENTION PONDS AND RIGHTS-OF-WAY TO THE PAVEMENT TO BE THE RESPONSIBILITY OF PROPERTY OWNERS AND/OR PROPERTY AND/OR HOME OWNERS ASSOCIATIONS.
12) THE OWNER OF LOT 1A, LOT 1B, AND LOT 2A, BLOCK A ARE REQUIRED TO SUBMIT THE SITE DEVELOPMENT PLAN FOR LOT 1A, LOT 1B, AND LOT 2A, BLOCK A TO THE CITY OF KYLE, PCDP, AND IF NOT THE SAME PARTIES AS ARE IN PCDP, THEN THE ARCHITECTURAL REVIEW COMMITTEE FOR THE POA, FOR THEIR RESPECTIVE REVIEWS AND APPROVALS PRIOR TO COMMENCING ANY CONSTRUCTION ACTIVITY ON OR AROUND LOT 1A, LOT 1B, AND LOT 2A, BLOCK A, INCLUDING WITHOUT LIMITATION, THE INSTALLATION OF THE SIDEWALKS AND ANY OTHER IMPROVEMENTS REQUIRED HEREIN.
13) PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOT 1A, LOT 1B, AND LOT 2A, BLOCK A IN THIS SUBDIVISION, SITE DEVELOPMENT AND/OR BUILDING PERMITS WILL BE OBTAINED FORM THE CITY OF KYLE.
14) THE LOTS SHALL BE ALLOWED TO UTILIZE MFR PARKING WHEN THE STRUCTURES ARE USED AS RENTAL PRODUCTS ON A SINGLE LOT (A SINGLE RESIDENTIAL OPERATION), BUT IF AND WHEN THE STRUCTURES ARE EITHER (1) SUBDIVIDED ONTO THEIR OWN LOTS OR (2) SOLD CONDOMINIUM FOR PRIVATE OCCUPANCY (MULTIPLE SINGLE OPERATIONS), THEN THE PARKING FOR EACH DWELLING NEEDS TO MEET THE CITY'S STANDARD FOR SFR.

ALL MAILBOXES LOCATED IN THE RIGHT OF WAY SHALL BE OF AN APPROVED TXDOT OR FHWA APPROVED DESIGN

EDWARDS AQUIFER NOTE:
THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE TRANSITION ZONE OF THE EDWARDS AQUIFER.

PLAT INFORMATION:

TOTAL AREA: 2.139 ACRES	NUMBER OF LOTS OVER 10 ACRES:	0
TOTAL NUMBER OF LOTS: 2	NUMBER OF LOTS 5-10 ACRES:	0
	NUMBER OF LOTS 2-5 ACRES:	0
	NUMBER OF LOTS 1-2 ACRES:	1
AVERAGE SIZE OF LOTS: 1.07 ACRES	NUMBER OF LOTS LESS THAN 1 ACRES:	1

SERVICE NOTES:

THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE CITY OF KYLE TEXAS.

UTILITY INFORMATION:
WATER: CITY OF KYLE
SEWER: CITY OF KYLE
ELECTRICITY: PEDERNALES ELECTRIC
TELEPHONE: SPECTRUM

DISTRICTS:
THIS SUBDIVISION LIES WITHIN THE AUSTIN COMMUNITY COLLEGE DISTRICT
THIS SUBDIVISION LIES WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT
THIS SUBDIVISION LIES WITHIN THE SOUTH HAYS FIRE DEPARTMENT/ EMERGENCY SERVICE DISTRICT NO. 5 & NO. 9 AND IS SUBJECT TO THE FIRE CODES OF HAYS COUNTY.
PLUM CREEK GROUND WATER CONSERVATION DISTRICT

PLANNING AND COMMUNITY DEVELOPMENT CERTIFICATION.

THIS PLAT HAS BEEN SUBMITTED TO AND CONSIDERED BY THE DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT OF THE CITY OF KYLE, TEXAS, AND IS HEREBY APPROVED BY THE DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT.

DATED THIS ____ DAY OF _____ , 2020.

_____
MAYOR TRAVIS MITCHELL
CITY COUNCIL

_____ _____ _____ _____
JENNIFER HOLM DATE MICHELLE CHRISTIE DATE
CITY SECRETARY CHAIRPERSON

REVIEWED BY;

_____ _____
CITY ENGINEER DATE

_____ _____
DIRECTOR OF PUBLIC WORKS DATE

STATE OF TEXAS *
COUNTY OF HAYS *

I, RICHARD H. TAYLOR, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE FROM AN ACTUAL SURVEY ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON, AND THAT THERE ARE NO APPARENT DISCREPANCIES, CONFLICTS, OVERLAPPING OF IMPROVEMENTS OR VISIBLE UTILITY LINES OR ROADS IN PLACE UNLESS SHOWN ON THE ACCOMPANYING PLAT, AND THAT THE CORNER MONUMENTS SHOWN HEREON WERE PROPERLY PLACED UNDER MY SUPERVISION IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF KYLE.

PRELIMINARY SUBJECT TO REVIEW 12/07/2020

_____ _____
RICHARD H. TAYLOR DATE
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS, NO. 3986

STATE OF TEXAS *
COUNTY OF HAYS *

I, ELAINE H. CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE ON THE ____ DAY OF _____, 2020, AT _____O'CLOCK __.M., AND RECORDED ON THE ____DAY OF _____, 2020 AT _____O'CLOCK __.M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, IN INSTRUMENT # _____.

_____
ELAINE H. CARDENAS
COUNTY CLERK
HAYS COUNTY, TEXAS

REPLAT LOT 1B, BLOCK A PLUM CREEK PHASE 1 SECTION 11G SUBDIVISION DOC.NO.18015074 P.R.H.C.TX.

0 15' 30' 60'
GRAPHIC SCALE: 1" = 30'

OWNER: HULLUM PROPERTIES, LLC.
358CLARANCE CT. BUDA, TEXAS 78610.

ASH & ASSOCIATES
SURVEYING - PLANNING - ARCHITECTURE
"SERVING THE COMMUNITY OF TEXAS"
142 JACKSON LANE
SAN MARCOS, TEXAS 78666
(512) 392-1719
ashandassociates.net
Surveying: 100847-00
Architecture: TX20240

DRAWN: MAM SCALE: 1"=30'
REVIEWED: RHT DATE: 10/15/20
©:ASH & ASSOCIATES, L.L.C.

REV.	DATE
	12/07/20
	–
	–
	–

PROJECT No. 18-6936-B

SHEET 2 OF 2

CITY OF KYLE, TEXAS

AG|CM Owners Representative Contract

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Owners Representative Consultant Services Contract Between the City of Kyle and AG|CM, Inc. in the amount of $32,292.00 monthly for a period of twenty-two months. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Kyle Public Safety FINAL Contract

City of Kyle Owners Representative Consultant Services
Kyle, Texas

OWNERS REPRESETNATIVE CONSULTANT SERVICES CONTRACT

BETWEEN THE CITY OF KYLE

AND

AG|CM, INC.

This Agreement is made by and between **The City of Kyle**, hereinafter referred to by name, or as the "Owner", and **AG|CM, Inc.**, a Texas corporation, hereinafter referred to by name, or as the "Project Manager", collectively referred to as the "Parties." The Project is defined as follows:

- Public Safety Building

In consideration of the mutual promises set forth below, the Parties agree as follows:

1. RECITALS

The Project Manager shall be the Owner's Representative in providing the services described in this Agreement. The Project Manager and the Owner shall perform all duties as stated in this Agreement.

In respect to such work or services, the Parties agree as follows:

2. TERM OF AGREEMENT

This Agreement shall be effective upon execution of this document by the Parties and ends on November 27, 2022. This Agreement may be extended for additional time periods subject to mutual approval by both Parties. This Agreement shall remain in full force and effect during the above referenced time period unless properly terminated by either party, as provided by this Agreement.

3. MAJOR RESPONSIBILITIES AND DUTIES

3.1. Work Schedule:

The Project Manager shall provide personnel to assist in the oversight of the design and construction process. The Project Manager will act as an extension of the Owner's staff to facilitate and assist in the management of various aspects of the Project. The Project Manager will report directly to and work under the direction of the Owner's Designated Representative (ODR), to be identified to Project Manager in writing by Owner**.**

3.2. Scope of Work:

The Project Manager shall assist the Owner in the project management for the City of Kyle Public Safety Project, from and after the date of this Agreement.

The Project Manager's primary responsibilities will be to assist the Owner in managing the design and construction phases of the Project, as described and attached hereto and made a part hereof for all purposes as **Exhibit A**.

The Project Manager will not be responsible for, nor does the Project Manager control, the means, methods, techniques, sequences and procedures of construction for the Project. It is understood that the Project Manager's action in providing quality review under this Agreement is a service of the Project Manager for the sole benefit of the Owner and, by performing as provided herein, the Project Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the design or construction for this Project or its compliance with the Contract Documents. No action taken by the Project Manager shall relieve the Architect or General Contractor for the Project from its obligation to perform the work in strict conformity with the requirements of the Contract Documents, and in strict conformity with all other applicable laws, codes, rules and regulations.

The Project Manager shall endeavor to ensure substantial conformity of the construction with plans and specifications. The Project Manager shall utilize this information to create periodic reports generated from on-site visits.

Project Manager will endeavor to assure that all Operation and Maintenance ("O&M") manuals, as-built drawings, warranties and appropriate certifications have been received, assembled by Contractor, reviewed by the Design Team, and delivered to the Owner.

The Project Manager shall report to the Owner in writing any decisions it is aware of concerning disputes between any interested party and the Owner relating to the acceptability of the work, or the interpretation of the requirements of the Contract Documents pertaining to the furnishing and performing of the work.

The Owner will provide the Project Manager access to all Facilities where construction activities are planned or being constructed.

3.3. Facilities:

The City of Kyle will provide Project Manager with full access to existing construction related contracts and documents.

The Project Manager is responsible for the following:

- Personal computer(s).
- Software to perform services being requested.
- Transportation.

- Any necessary office supplies.
- Any other materials or equipment required to fulfill the terms of this Agreement.

4. EMPLOYER IDENTIFICATION NUMBER

- Social Security Number or
  (EIN) Employer Identification Number 74-2775067.

5. PAYMENT FOR SERVICES

The Owner will compensate the Project Manager on the basis of a fixed fee, to be billed monthly in equal payments of **THIRTY TWO THOUSAND, TWO HUNDRED and NINETY TWO dollars ($32,292.00)** over the course of **Twenty-Two (22) Months**. These payments are inclusive of all profit (fee), general administrative overhead costs, and personnel expense for each employee. Personnel expense shall include and be limited to: base hourly wage, payroll taxes, employee benefits and Workers' Compensation insurance. The Project Managers total fee is **SEVEN HUNDRED TEN THOUSAND, FOUR HUNDRED and TWENTY FOUR dollars ($710,424.00)** ("Maximum Project Fee").

The Project Manager shall notify Owner within thirty (30) business days if the expected duration is to be exceeded and additional fee may be warranted.

The Owner shall pay Project Manager no later than thirty (30) days after the date of receipt of the invoice from Project Manager. Delinquent payments are subject to the Texas Prompt Pay Act, Texas Government Code Chapter 2251

6. INDEPENDENT CONTRACTOR RELATIONSHIP

In the performance of the services hereby contemplated, the Project Manager is an independent contractor, and neither the Project Manager nor the principals, partners, employees or subcontractors of the Project Manager shall be deemed employees of the Owner. Nothing herein shall be construed to create a partnership, joint venture or employment arrangement between the Owner and Project Manager.

7. TERMINATION

Either Party may terminate this Agreement for convenience with thirty (30) days written notice of termination. In the event of termination by either Party, Project Manager shall only be paid for work performed up to the date of termination.

8. DISPUTE RESOLUTION

In the event that the Owner or the Project Manager shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, notify the breaching party describing the breach and demanding corrective action. The breaching party has five business days from its receipt of the notice to correct the breach, or to begin and

continue with reasonable diligence and in good faith to correct the breach. If the breach cannot be corrected within a reasonable time, despite the breaching party's reasonable diligence and good faith effort to do so, either party may invoke the dispute resolution process. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. In the event the Owner and the Project Manager are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

9. PROPRIETARY INFORMATION

It is understood between the Parties hereto that during the term of this Agreement, Project Manager may be dealing with confidential information and processes which are the property of Owner used in the course of its business. Project Manager agrees that Project Manager will not disclose, directly or indirectly, any such matters, or use them other than in the course of work under this Agreement unless withholding such information would violate the law or create the risk of significant harm to the public.

10. ASSIGNMENT

Neither this Agreement nor any duties or obligations hereunder shall be assignable by the Project Manager or Owner without prior written consent of the other. In the event of an assignment by the Project Manager to which the Owner has consented, the assignee or its legal representative shall agree in writing with the Owner to personally assume, perform and be bound by the covenants, obligations, and agreements contained herein.

11. SUCCESSORS AND ASSIGNS

Subject to the provisions regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective Parties.

12. GOVERNING LAW AND VENUE

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of Texas. Any legal action brought in state court shall have venue in Hays County, Texas.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter that is not contained herein shall be valid or binding.

14. AMENDMENT

This Agreement may be amended only by the mutual agreement of the Parties hereto in writing and incorporated into this Agreement. The duly appointed representative of each party must sign any such amendment.

15. INDEMNIFICATION

To the fullest extent permitted by law, the Project Manager shall indemnify and hold harmless the Owner, its employees, officers, directors and partners from and against damages arising from third party claims for bodily injury or property damage and reasonable attorneys' fees incurred by the Owner but only to the extent solely caused by the negligent act, error or omission of the Project Manager, or the Project Manager's consultants, in performance of services under this Agreement.

16. NOTICES

All written notices provided to the Parties pursuant to this Agreement shall be forwarded to each party at the address indicated below. Such notices shall be considered duly and properly given when delivered in person or actually deposited by either party via U.S. mail or any other delivery service.

17. APPROPRIATIONS

Notwithstanding any provision contained herein, the financial obligations of the Owner contained herein are subject to and contingent upon appropriations by the Owner of such funds or other revenues being available, received and appropriated by the Owner in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of the Owner.

18. GOVERNMENTAL IMMUNITY

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the Owner or its officers and employees. Neither the Owner, nor its officers and employees waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

19. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

20. NO WAIVER OF ANY CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. A signature transmitted by facsimile or similar equipment shall be deemed an original signature.

22. NO THIRD PARTY BENEFICIARY

This Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

23. HEADINGS

The description headings used in this Agreement are inserted for reference only and do not and shall not be deemed to modify the construction of any of the provisions of this Agreement.

24. TEXAS GOVERNMENT CODE CHAPTER 2270

Pursuant to Texas Government Code Chapter 2270, the Project Manager represents and warrants to the Owner that the Project Manger does not boycott Israel and will not boycott Israel during the term of this Agreement.

WHEREAS, the Parties hereto agree to the terms of this Agreement as set forth above, the duly designated representatives of the **CITY OF KYLE** and **AG|CM, Inc.,** hereby execute this Agreement. The Parties hereto acknowledge that they have read this Agreement, understand its contents, and agree to be legally bound by the terms and conditions of this Agreement.

Executed and Dated as of the _____ day of January, 2021.

PROJECT MANAGER: **AG|CM**
PO Box 2682
Corpus Christi, TX 78403
(361) 882-0469

By: _____ Date: _____
Mr. Ryan Rosborough, CCM
Vice President

OWNER: **City of Kyle**
100 W. Center Street
Kyle, TX 78640

By: _____ Date: _____
Travis Mitchell
Mayor

EXHIBIT A - SCOPE

AG|CM, Inc. – Kyle Public Safety Building Scope of Services

Pre-Construction Phase

- Establish milestone schedule and budget for overall program design and construction.
- Manage coordination and correspondence between Owner, Architect and General Contractor/CM At Risk.
- Review design documents, drawings and specifications for constructability, scheduling, consistency and coordination.
- Monitor and maintain all party's efforts for conformance to schedule and budget.
- Notify Owner of Design and Budget concerns throughout design process.
- Assist in development of value engineering options as requested.
- Assist in development of contract negotiation process and aid in review, approval or disapproval of CM At Risk's guaranteed maximum price.
- Coordinate with local Utilities, Cities, Entities, etc on Owners behalf.

Construction Phase

- Establish and maintain communication protocol between the Owner, Architect and General Contractor/CM At Risk.
- Monitor overall budget and schedule and advise the Owner of any trends that affect the timely procedures and cost effective completion of the Project.
- Maintain basic knowledge of the plans and specifications.
- Observe major assemblies placed in the construction for general compliance to the contract documents, supplemental instructions from the Architect, and support the quality assurance efforts of the Inspector(s).
- Coordinate construction logistics between the General Contractor/CM At Risk and the Owner.
- Review General Contractor/CM At Risk's schedule of values/cost breakdown and construction schedule and recommend approval/changes and disapproval.
- Attend, arrange and conduct a variety of meetings, as requested by the Owner.
- Review and verify the contractor's monthly application for progress payments.
- Review and analyze proposed change orders and make recommendations to Owner.
- Assess and evaluate pricing on all change order requests taking the lead in negotiating fair and equitable resolutions and reviewing schedule impacts.
- Review requests for information (RFI) and architect's supplemental instructions (ASI). Track submittals as required through completion of the process.
- Generate periodic site visit reports describing general events, noting problems and unusual events.
- Take appropriate photographs that document construction progress and conformity with Contract Documents.
- Review and verify General Contractor/CM At Risk's Project record drawings and schedule

are updated to reflect all changes and work completed before each monthly progress payment.

- Provide and monitor observations of the construction as follows:
    - Periodically observe the work for progress, workmanship, and conformance with the Contract Documents.
    - Coordinate and track all Owner testing.
    - Review special inspection and material testing reports to verify conformance with the Contract Documents.
    - When work is found to be in non-conformance, document the deficiencies and promptly provide notification of the deficiencies to the Architect, Owner and General Contractor/CM At Risk.
    - Verify that deficiencies have been corrected and/or approved by applicable party.
    - Issue inspection deficiency list to the Architect, Owner and General Contractor/CM At Risk. Conduct inspections and track deficiencies through correction.
- Coordinate preparation of the punch-list and implement corrective work.
- Coordinate Owner Activities (Occupancy, FFE procurement, Technology, etc).
- Drone Flyover Photos/Video as requested.
- Provide a Monthly Report to the Owner documenting issues, photos, schedule updates, etc.

Closeout Phase

- Verify all Project Record Documents are transmitted from Contractor to Design Team to Owner.
- Verify all O&M Manuals are transmitted from Contractor to Design Team to Owner.
- Verify all Warranties are Transmitted from Contractor to Design Team to Owner.
- Ensure staff has received all necessary training for operation of new building and systems.
- Maintain a presence and provide support, followup and track completion on warranty requests.

CITY OF KYLE, TEXAS

Brooks Crossing DA Amendment

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Consider and Possible action to amend the Brooks Crossing Development Agreement to accept negotiated language regarding a buffer strip between Brooks Crossing and Plum Creek HOA. ~ *James R. Earp, Assistant City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- First Amendment to Brooks Ranch Development Agreement
- Brooks Ranch letter of agreement

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
City of Kyle, Texas, City
D & L Brooks Investments
Blackburn Communities LLC
Dated January 15, 2020

This document is the First Amendment to the Development Agreement entered into on January 15, 2020 by and among the City of Kyle Texas (the "City"), D & L Brooks Investments LLC, a Texas and Blackburn Communities LLC (the "Development Agreement"). This document is referred to as the "First Amendment" and is effective on the ____ day of December, 2020.

Recitals. D & L Brooks Investments LLC (referred to in the Development Agreement as "Developer") assigned and transferred all of its right, title and interest in and to the Development Agreement to Brooks Ranch at Kyle LLC on February 18, 2020. The Assignment is of record as Document No. 20006308 in the Official Public Records of Hays County, Texas. The Assignment transferred the rights and obligations of D & L Brooks Investments LLC as Developer to Brooks Ranch at Kyle LLC (referred to in this First Amendment as "Developer"). Prior to the date of the Assignment, Blackburn Communities LLC ("Blackburn") exercised the right granted to it in Article 5.01 of the Development Agreement to assign all of its right, title and interest in and to the Development Agreement to Developer, an entity that is affiliated with Blackburn. The parties to the Development Agreement now want to modify and amend Articles 2.02 (12) and 2.02(13). The purpose of this First Amendment is make those modifications.

Agreement. For and in consideration of the mutual covenants and agreements set out below, the sufficiency of which is acknowledged, and incorporating the above Recitals, the Parties agree as follows:

1. Article 2.02(12) is deleted in its entirety and replaced with the following:

   "Developer must create a buffer along the Mathers Road alley that is at a minimum ten feet (10') wide, which must remain undeveloped (the "Buffer Strip"). The Developer is authorized to convey, transfer and assign ownership of the Buffer Strip to Brooks Ranch Residential Community, Inc., a not for profit corporation organized under the laws of the State of Texas, (the "Grantee"). The deed to the Buffer Strip to Grantee must include a restriction on the use of the Buffer Strip to being that of a landscape buffer and must require the Grantee to assume responsibility for the maintenance of the Buffer Strip. The Buffer Strip counts towards the Developer's landscaping and open space requirements for the Project."

2. Article 2.02(13) is deleted in its entirety and replaced with the following:

   "No more than 50% of the homes constructed on the portion of the Property that borders the Mathers Road alley may be two-story homes."

3. Miscellaneous:

a. If there is any inconsistency between this First Amendment and the terms or provisions of the Development Agreement, this First Amendment takes priority. Except as expressly amended by this First Amendment, the Agreement remains in full force and effect and is ratified and confirmed by the Parties.

b. This First Amendment may be signed in one or more counterparts, which will collectively be considered as one document. For the purposes of the signing of this First Amendment, electronic signatures may be treated as originals.

c. This First Amendment is binding upon and inures to the benefit of each of the Parties and their respective successors, assigns, heirs and receivers and may only be modified or amended by written instrument signed and dated by all Parties.

SIGNED in multiple copies with separate signature pages on this the ___ day of December, 2020.

CITY:

CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

ATTEST:

_____
Jennifer Vetrano, City Secretary

SIGNED in multiple copies with separate signature pages on this the ___ day of December, 2020.

DEVELOPER:

BROOKS RANCH AT KYLE LLC

By: _____
David B. Blackburn, Manager

STATE OF TEXAS
COUNTY OF KYLE

This instrument was acknowledged before me on the _____ day of December, 2020 by Travis Mitchell, Mayor, City of Kyle, a Texas home rule municipality on behalf of the City.

_____
Notary Public for Texas

STATE OF MISSISSIPPI
COUNTY OF LAFAYETTE

This instrument was acknowledged before me on the ___ day of December, 2020 by David B. Blackburn, Manager of Brooks Ranch at Kyle LLC on behalf of the entity.

_____
Notary Public for Mississippi

APPROVAL LETTER OF FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR BROOKS RANCH

Plum Creek HOA
4100 Everett, Suite 150
Kyle, TX 78640

January 5, 2021
City of Kyle
100 W. Center Street
Kyle, Texas 78640

Dear City of Kyle,
This letter is in regards to the First Amendment to the Development Agreement (the "Amendment") related to the Brooks Ranch development, which is attached as Exhibit A, by and among the City of Kyle Texas, D & L Brooks Investments, LLC, and Blackburn Communities, LLC. It is understood that the rights and obligations of D & L Brooks Investments, LLC as Developer have been transferred to Brooks Ranch at Kyle LLC, an affiliated entity of Blackburn Communities, LLC.
As Article 2.02(12) and Article 2.02(13) of the Development Agreement relate to Plum Creek, Brooks Ranch at Kyle and the Plum Creek HOA have worked together to propose a change to the Development Agreement, the Amendment, that better meets everyone's needs. After reviewing the Amendment, the Plum Creek HOA has agreed that we are in support of the proposed changes and recommends that the City vote in favor of this proposed Amendment. Please let this letter serve as Plum Creek's approval for the Amendment.

Sincerely,

Nica Knepp

Nica Knepp
President of the Board
Plum Creek HOA

EXHIBIT A

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
City of Kyle, Texas, City
D & L Brooks Investments
Blackburn Communities LLC
Dated January 15, 2020

This document is the First Amendment to the Development Agreement entered into on January 15, 2020 by and among the City of Kyle Texas (the "City"), D & L Brooks Investments LLC, a Texas and Blackburn Communities LLC (the "Development Agreement"). This document is referred to as the "First Amendment" and is effective on the ____ day of December, 2020.

Recitals. D & L Brooks Investments LLC (referred to in the Development Agreement as "Developer") assigned and transferred all of its right, title and interest in and to the Development Agreement to Brooks Ranch at Kyle LLC on February 18, 2020. The Assignment is of record as Document No. 20006308 in the Official Public Records of Hays County, Texas. The Assignment transferred the rights and obligations of D & L Brooks Investments LLC as Developer to Brooks Ranch at Kyle LLC (referred to in this First Amendment as "Developer"). Prior to the date of the Assignment, Blackburn Communities LLC ("Blackburn") exercised the right granted to it in Article 5.01 of the Development Agreement to assign all of its right, title and interest in and to the Development Agreement to Developer, an entity that is affiliated with Blackburn. The parties to the Development Agreement now want to modify and amend Articles 2.02 (12) and 2.02(13). The purpose of this First Amendment is make those modifications.

Agreement. For and in consideration of the mutual covenants and agreements set out below, the sufficiency of which is acknowledged, and incorporating the above Recitals, the Parties agree as follows:

1. Article 2.02(12) is deleted in its entirety and replaced with the following:

   "Developer must create a buffer along the Mathers Road alley that is at a minimum ten feet (10') wide, which must remain undeveloped (the "Buffer Strip"). The Developer is authorized to convey, transfer and assign ownership of the Buffer Strip to Brooks Ranch Residential Community, Inc., a not for profit corporation organized under the laws of the State of Texas, (the "Grantee"). The deed to the Buffer Strip to Grantee must include a restriction on the use of the Buffer Strip to being that of a landscape buffer and must require the Grantee to assume responsibility for the maintenance of the Buffer Strip. The Buffer Strip counts towards the Developer's landscaping and open space requirements for the Project."

2. Article 2.02(13) is deleted in its entirety and replaced with the following:

   "No more than 50% of the homes constructed on the portion of the Property that borders the Mathers Road alley may be two-story homes."

3. Miscellaneous:

a. If there is any inconsistency between this First Amendment and the terms or provisions of the Development Agreement, this First Amendment takes priority. Except as expressly amended by this First Amendment, the Agreement remains in full force and effect and is ratified and confirmed by the Parties.

b. This First Amendment may be signed in one or more counterparts, which will collectively be considered as one document. For the purposes of the signing of this First Amendment, electronic signatures may be treated as originals.

c. This First Amendment is binding upon and inures to the benefit of each of the Parties and their respective successors, assigns, heirs and receivers and may only be modified or amended by written instrument signed and dated by all Parties.

SIGNED in multiple copies with separate signature pages on this the ___ day of December, 2020.

CITY:

CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

ATTEST:

_____
Jennifer Vetrano, City Secretary

SIGNED in multiple copies with separate signature pages on this the ___ day of December, 2020.

DEVELOPER:

BROOKS RANCH AT KYLE LLC

By: _____
David B. Blackburn, Manager

STATE OF TEXAS
COUNTY OF KYLE

This instrument was acknowledged before me on the _____ day of December, 2020 by Travis Mitchell, Mayor, City of Kyle, a Texas home rule municipality on behalf of the City.

_____
Notary Public for Texas

STATE OF MISSISSIPPI
COUNTY OF LAFAYETTE

This instrument was acknowledged before me on the ___ day of December, 2020 by David B. Blackburn, Manager of Brooks Ranch at Kyle LLC on behalf of the entity.

_____
Notary Public for Mississippi

CITY OF KYLE, TEXAS

Jimmy and Diana Owen - Zoning (Z-20-0066)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 1.4 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 101 Sunflower Circle, in Hays County, Texas. (Jimmy and Diana Owen - Z-20-0066) ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 6-0 to recommend approval of the request.

- Public Hearing

Other Information: Please see attachments.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

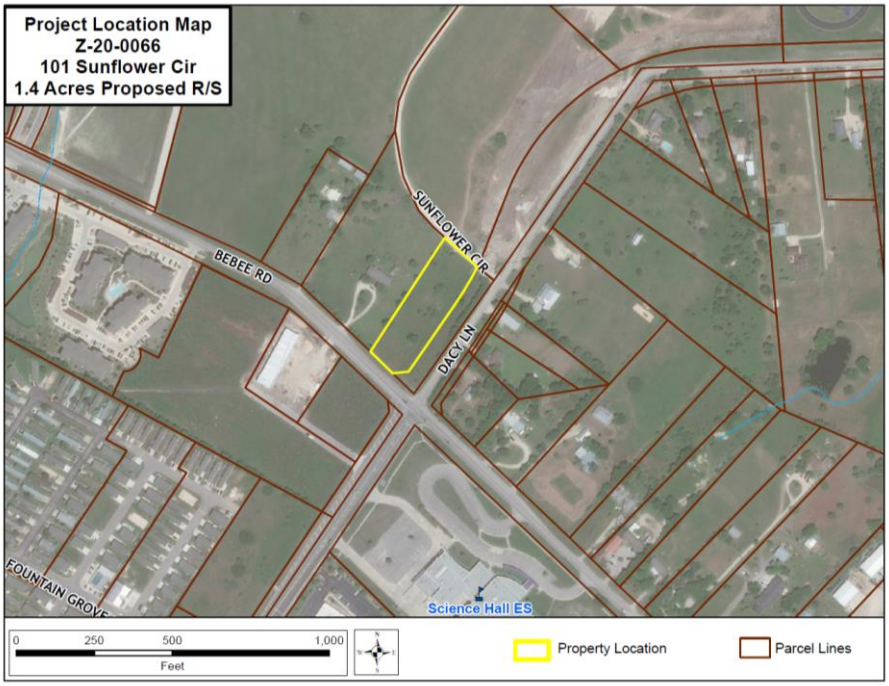
Description

- Staff Memo
- Ordinance with Exhibit's A & B
- Letter of Request
- Application
- Location Map
- Current Zoning Map
- Land Use Districts Map

Petition No. Z-20-0066

Property Location	**101 Sunflower Circle (North corner of Dacy Lane & Bebee Rd Intersection), Kyle, TX 78640**
Owner	**Jimmy C. & Diana L. Owen** **115 Robin Way** **San Marcos, TX 78666**
Agent	**David Glover** **P.O. Box 786** **San Marcos, TX 78667**
Request	**Rezone 1.399-Acres A (Agriculture) to RS (Retail Services)**

Vicinity Map

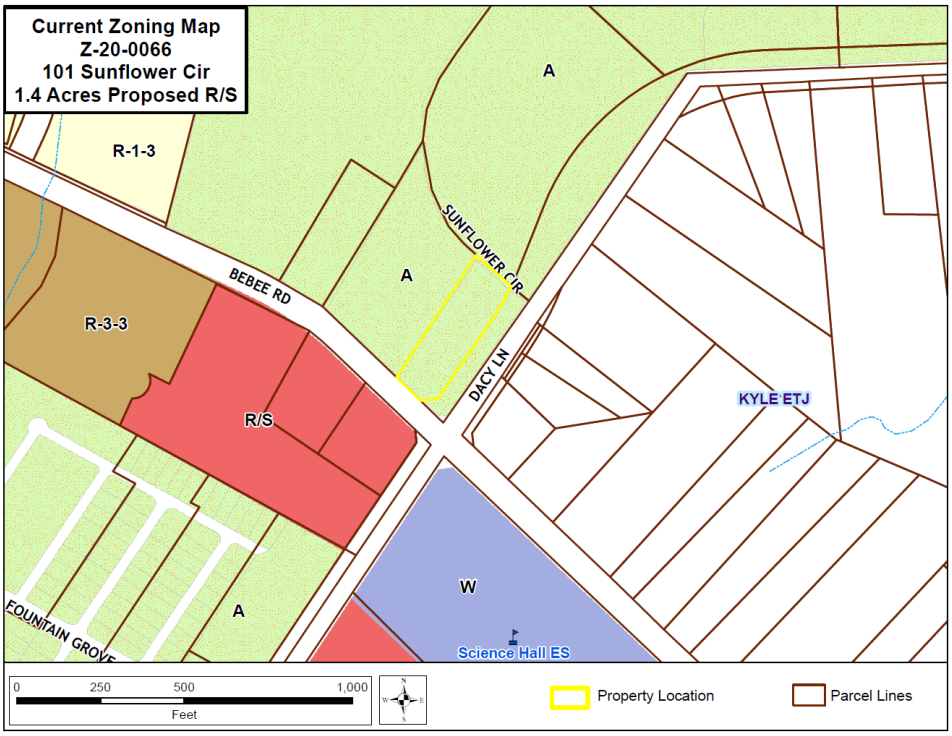


Site Description

101 Sunflower Circle is an undeveloped parcel zoned "A" (Agriculture). The site previously had a single-family residence on site, prior to Hays County purchasing rights-of-way for the Dacy Lane widening project. To the north and northwest is land zoned "A" with single-family residences and the City of Kyle's PARD property (vacant). To the east and northeast are mostly single-family residences/parcels in the City of Kyle's Extra-Territorial Jurisdiction (outside the city limits). To the south is Science Hall Elementary School (zoned Warehouse). Southwest of and across Bebee Road, are parcels zoned "RS", with a convenience store/fuel station under construction, and a restaurant on the hard corner (in review).

The applicant seeks to rezone the property from "A" (Agriculture) to "RS" (Retail Services).

Current Zoning



Existing Zoning

Sec. 53-36. - Agricultural district A.

The permitted uses in the agricultural district A allow farming, ranching, pasturage, detached single-family residences and related accessory structures, on a minimum one-acre tract. Parks, playgrounds, greenbelts and other public recreational facilities, owned and/or operated by the municipality or other public agency are permitted.

(Ord. No. 438, § 23, 11-24-2003)

Requested Zoning

RS (Retail Services)

Sec. 53-480. - Purpose and permitted uses.

This district allows general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes, including most in-store retail sales of goods and products that do not pose a fire or health hazard to neighboring areas, e.g., clothing, prescription drugs, furniture, toys, hardware, electronics, pet supply, variety, department, video rental and antique stores, art studio or gallery, hobby shops and florist shops., and the retail sale of goods and products (in the following listed use areas) to which value has been added on site, including sales of goods and services outside of the primary structure as customary with the uses specifically listed, and the following: Any use permitted in CBD-1 or CBD-2 and RS districts as provided in section 53-1230.

(Ord. No. 438, § 42(a), 11-24-2003)

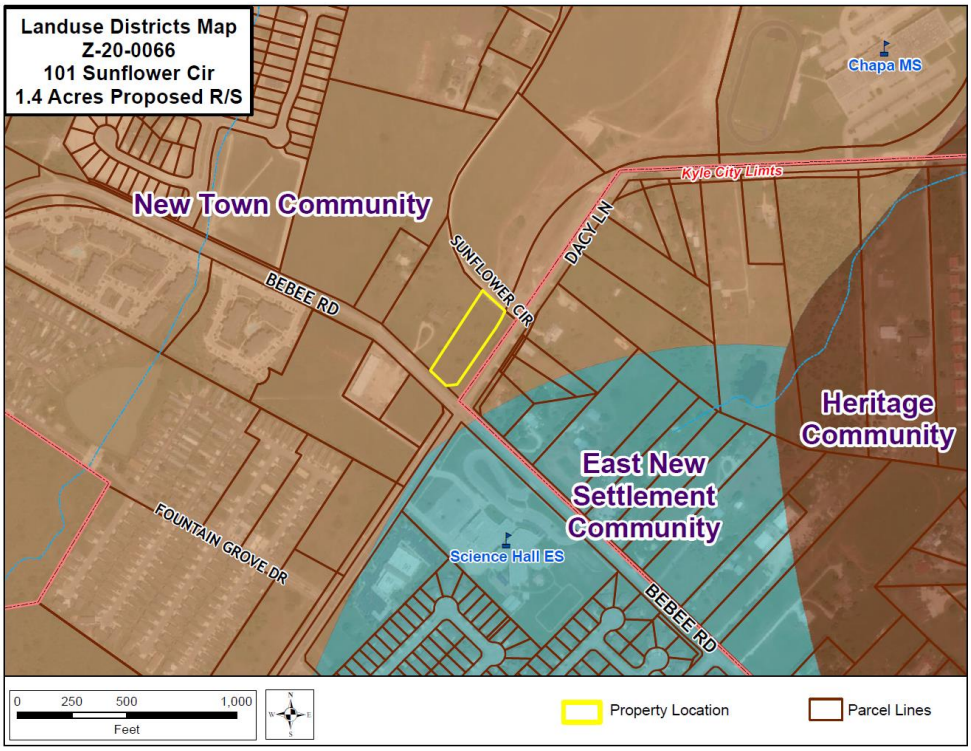
Conditions of the Zoning Ordinance

Sec. 53-1205 Amendments

(d) *Referral of amendment to planning and zoning commission.* Upon its own motion, a request by the planning and zoning commission, or the receipt of an administratively complete petition and application to zone or rezone a lot, tract or parcel of land, which petition and application has been examined and approved as to form by the city manager, shall be referred to the planning and zoning commission for consideration, public hearing, and recommendation to

the city council. The council may not enact a rezoning amendment until the planning and zoning commission has held a public hearing and made its recommendation to the city council, or has made a final vote on the matter without obtaining a majority, on the zoning or rezoning of the property.

(e) *Action by the planning and zoning commission.* The planning and zoning commission shall cause such study and review to be made as advisable and required, shall give public notice and hold a public hearing as provided by state law, and shall recommend to the council such action as the planning and zoning commission deems proper…



Comprehensive Plan Text

The subject site is located in the "New Town Community" District. The RS zoning district is recommended in the "New Town Community" District.

Current Land Use Chart

New Town Community

Recommended Zoning Categories: R-1-1, R-1-2, R-1-3, R-1-C, R-1-T, R-2, R-3-2, R-3-3, CC, NC, **RS**, MXD, O/I
Conditional Zoning Categories: E, A, C/M, R-1-A, R-3-1, RV, T/U, UE, HS, W

New Town Community

'Character': Currently consisting of primarily residential uses, open fields, some commercial uses along I-35, and the City's new Performing Arts Center, the New Town District will likely experience significant development pressures in the near future. This District straddles both I-35 and FM 1626, and growth from Austin and Buda is spreading south along these roadways. These land uses and the forms that follow are wide ranging and varying according to the existing development pattern in place today, and the availability for utility service to as-yet undeveloped lands. The New Town District includes undeveloped residential areas, the proposed site for an 'Uptown' shopping/activity center, proposed and existing commercial along higher classified roadways, and legacy residential that has existed for many years. This District should be livable, comfortable, and convenient for all residents of Kyle and surrounding region. Elements of form and design are critical to ensuring transitions between neighboring uses.

'Intent': The New Town District is designed to contain a horizontal mix of land uses that should be integrated across the area to express a cohesive community form. Many differing uses are encouraged throughout the District, but are distributed in autonomous land parcels instead of vertically aggregated in fewer land parcels. Horizontal mixed uses provide a transition to integrate the community form of New Town with surrounding communities, landscapes and nodes.

As parcels along major roadways and along side high capacity wet utilities come available, the development density of those parcels should be established higher than other areas of the city, especially any properties in proximity to either I-35, FM 1626 or both. The purpose of the New Town District is to harness economic development potential and establish its position as the sustainable center of surrounding growth. The leading way to

make this a reality is to build off the strength of the urban form supported in the Core Area Transition District, make use of the transportation network already in place that runs through and along this district, and enable more uses and architectural types that blend well into the urban design form. This District should provide economic support to Kyle based on locational advantages gained by access to growth advancing from south Austin and nodal developments on the northern side of Kyle. Mixed-Use development should be encouraged, not only permitted, to maximize economic development. This can be achieved by aggregating appropriate densities in order to support a mixture of uses. Development patterns and employment opportunities should be created in the New Town District that do not conflict with the surrounding community fabric. Establishing mixed use zoning districts and employment districts will compliment the existing retail and service uses present today, and should be supported by the adjacent residential and future integrated multi-family residential.

Analysis

101 Sunflower Circle sits at the north corner of Dacy Lane and Bebee Road. The site is zoned "A" and is currently vacant. At one point, the parcel had a single-family residence. However, with the Dacy Lane widening project, Hays County purchased additional rights-of-way and demolished the residence.

The applicant is asking for the "RS" zoning district, allowing general point-of-sale retail and service type uses. Typical types of businesses may include, but are not limited to retail, office, restaurants, hotels, convenience stores and fuel stations. The site is in the New Town Community District which recommends the "RS" zoning district.

Relating to location of commercial properties, hard corners (of intersections) are frequently sought after by retail developers. This is especially true for intersections of major roads, both Dacy Lane and Bebee Road function as such. Both Dacy Lane and Bebee Road function as arterial roads, seeing high volumes of vehicular traffic. This, in turn is good for commercial business. Additionally, Dacy Lane will be widened with the Phase 2 project by Hays County.

Both water and wastewater is adjacent and available for the site, and any new development will be required to tie into the public system. Additionally, standard site development requirements will be required, per city code (parking ratios, landscaping, appropriate vehicular circulation, building setbacks, etc.). Furthermore, developing the site will contribute to both property and sales tax

Recommendation

In conclusion, staff supports the rezoning from “A” (Agriculture) to “RS” (Retail Services). At the January 12, 2021 Planning & Zoning Commission meeting, the Commission voted 6-0 to recommend approval of the request. Staff asks the Mayor & Council to vote in support of the rezoning application.

Attachments

- Application
- Location Map
- Existing Zoning Map
- Land Use Districts Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 1.4 ACRES OF LAND FROM AGRICULTURE 'AG' TO RETAIL SERVICE DISTRICT 'RS' FOR PROPERTY LOCATED AT 101 SUNFLOWER CIRCLE, IN HAYS COUNTY, TEXAS. (JIMMY AND DIANA OWEN – Z-20-0066); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the zoning district map of the City of Kyle adopted in Chapter 53 (Zoning) be and the same is hereby amended to assign original zoning to approximately 1.4 acres of land from Agriculture 'AG' to Retail Service District 'RS', as shown on the property location map labeled Exhibit B.

SECTION 2. That the City Secretary is hereby authorized and directed to designate the tract of land zoned herein as such on the zoning district map of the City of Kyle and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2021, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the _____day of _____, 2021, at which a quorum

was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____day of _____, 2021.

_____
Travis Mitchell, Mayor

ATTEST:

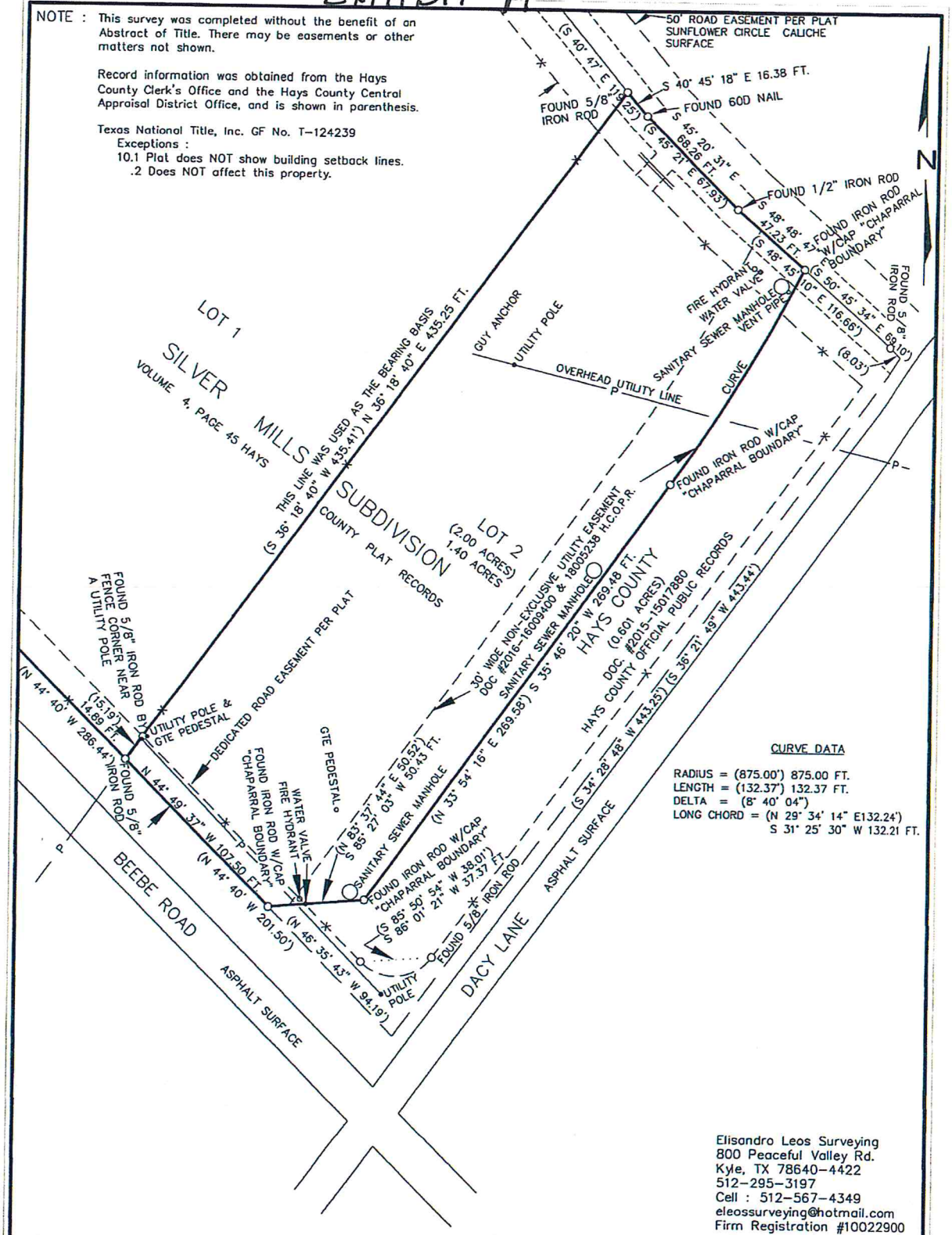
_____
Jennifer Holm, City Secretary

"EXHIBIT A"

NOTE : This survey was completed without the benefit of an Abstract of Title. There may be easements or other matters not shown.

Record information was obtained from the Hays County Clerk's Office and the Hays County Central Appraisal District Office, and is shown in parenthesis.

Texas National Title, Inc. GF No. T-124239
Exceptions :
10.1 Plat does NOT show building setback lines.
.2 Does NOT affect this property.



CURVE DATA

RADIUS = (875.00') 875.00 FT.
LENGTH = (132.37') 132.37 FT.
DELTA = (8° 40' 04")
LONG CHORD = (N 29° 34' 14" E132.24')
S 31° 25' 30" W 132.21 FT.

Elisandro Leos Surveying
800 Peaceful Valley Rd.
Kyle, TX 78640-4422
512-295-3197
Cell : 512-567-4349
eleossurveying@hotmail.com
Firm Registration #10022900

I, Elisandro Leos, do hereby certify that the above plat represents a survey made on the ground, by me, and shows the facts as found at the time of the survey, that there are no visible and or apparent easements or encroachments other than shown. This survey is NULL AND VOID without the original signature, in blue ink, and impression seal.

Elisandro Leos

ELISANDRO LEOS RPLS 3959, LSLS

STATE OF TEXAS
REGISTERED
ELISANDRO LEOS
3959
PROFESSIONAL
LAND SURVEYOR

SURVEY PLAT

OF

ALL OF LOT 2 (2.00 ACRES) SILVER MILLS SUBDIVISION AS RECORDED IN VOLUME 4, PAGE 45 HAYS COUNTY PLAT RECORDS SAVE AND EXCEPT A (0.601 ACRES), BEING THE SOUTHEAST PART OF LOT 2 CONVEYED TO HAYS COUNTY BY DEED OF RECORD IN DOCUMENT NUMBER 2015-15017880 HAYS COUNTY OFFICIAL PUBLIC RECORDS.

IN HAYS COUNTY, TEXAS
SURVEYED : DECEMBER 20, 2019
SURVEYED FOR : JIMMY CHARLES & DIANA LOUISE OWEN
TITLE COMPANY : TEXAS NATIONAL TITLE, INC.
GF NO. T-124239
ADDRESS : 101 SUNFLOWER CIRCLE
SCALE : 1" = 60 FEET

Exhibit B

Z-20-0066 101 Sunflower Cir 1.4 Acres

11-11-2020

To Whom It May Concern:

Since the City of Kyle and the County of Hays have purchased a portion of our land and tore down our home, at 101 Sunflower Circle, Kyle Texas, to widen Dacy Lane and run a sewer line through said land. we would like to re-zone our land for commercial use. This seems to be a more suitable use for the remaining property.

We would appreciate your help and consideration to our request.

Thank you

Jimmy C Owen

APPLICATION & CHECKLIST – ZONING CHANGE

Zoning: JIMMY C. OWEN / DIANA L. OWEN _____
(Name of Owner) (Submittal Date)

INSTRUCTIONS:

- Fill out the following application and checklist completely prior to submission.
- Place a check mark on each line when you have complied with that item.
- Use the most current application from the City's website at www.cityofkyle.com or at City Hall. City ordinances can be obtained from the City of Kyle.

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the Zoning Application to be accepted.

✓ 1. Completed application form with owner's original signature.

✓ 2. Letter explaining the reason for the request.

___ 3. **Application Fee**: $428.06, plus $3.62 per acre or portion thereof.

Newspaper Publication Fee: $190.21 **Sign Notice Fee**: $127.00

Total Fee: _____

✓ 4. A map or plat showing the area being proposed for rezoning.

___ 5. A clear and legible copy of field notes (metes and bounds) describing the tract (when not a subdivided lot).

✓ 6. Certified Tax certificates: County ✓ School ✓ City ✓

✓ 7. Copy of Deed showing current ownership.

*** ***A submittal meeting is required. Please contact Debbie Guerra at (512) 262-3959 to schedule an appointment.***

1. Zoning Request:

Current Zoning Classification: AGRICULTURE

Proposed Zoning Classification: RETAIL / SERVICES

Proposed Use of the Property: _____

Acreage/Sq. Ft. of Zoning Change: 1.399 ACRES

2. Address and Legal Description:

Provide certified field notes describing the property being proposed for rezoning.
Provide complete information on the location of the property being proposed for rezoning.

Street Address: 101 SUNFLOWER CIRCLE, KYLE, TX 78640

Subdivision Name/Lot & Block Nos.: LOT 2, SILVER MILLS SUBDIVISION

Property Recording Information: ☒ Hays County
Volume/Cabinet No. 969 Page/Slide No. 35

3. Ownership Information:
Name of Property Owner(s): JIMMY C. OWEN
DIANA L. OWEN

Certified Public Notary:

This document was acknowledged before me on the 12 day of November, 2020, by Jim Owens Diana Owens (Owner(s)).

Notary Public State of Texas

(Seal)

NOTARY PUBLIC STATE OF TEXAS
Jodie Glover Bryson
My Commission Expires
01/20/2024
ID No. 11846915

(If property ownership is in the name of a partnership, corporation, joint venture, trust or other entity, please list the official name of the entity and the name of the managing partner.)

Address of Owner: 115 ROBIN WAY
SAN MARCOS, TX 78666

Phone Number: 512 787-8496

Fax Number:

Email Number: PAPAABBY@ADL.COM

I hereby request that my property, as described above, be considered for rezoning:

Signed: Jimmy C. Owen Diana L. Owen

Date: 11-12-20

4. Agent Information:

If an agent is representing the owner of the property, please complete the following information:

Agent's Name: DAVID GLOVER

Agent's Address: P.O. BOX 786

Agent's Phone Number: 512 757-1717

Agent's Fax Number: 512 396-2943

Agent's Mobile Number: 512 757-1717

Agent's Email Number: SMRE@AGGIENETWORK.COM

I hereby authorize the person named above to act as my agent in processing this application before the Planning and Zoning Commission and City Council of the City of Kyle:

Owner's Signature: Jerry C Owen Diana L. Owen

Date: 11-12-20

Do Not Write Below This Line
Staff Will Complete

Tax Certificates: ☐ County ☐ School ☐ City

Certified List of Property Owners Within 200" ☐

All Fees Paid: ☐ Filing/Application ☐ Mail Out Costs

Attached Map of Subject Property ☐

Accepted for Processing By: _____ Date: _____

Date of Public Notification in Newspaper: _____

Date of Public Hearing Before Planning and Zoning Commission: _____

Date of Public Hearing Before City Council: _____

Project Location Map
Z-20-0066
101 Sunflower Cir
1.4 Acres Proposed R/S

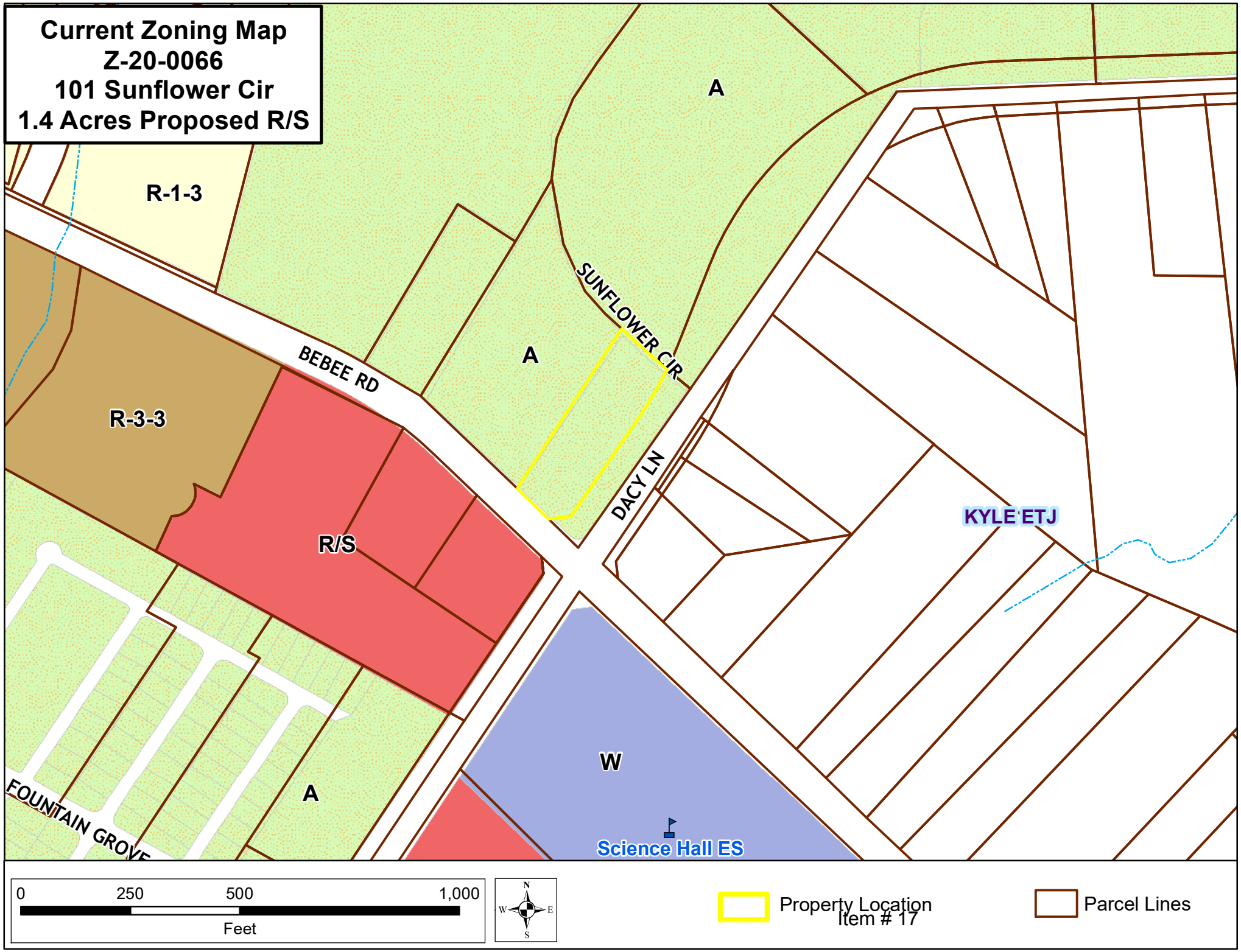
0 250 500 1,000
Feet

N W E S

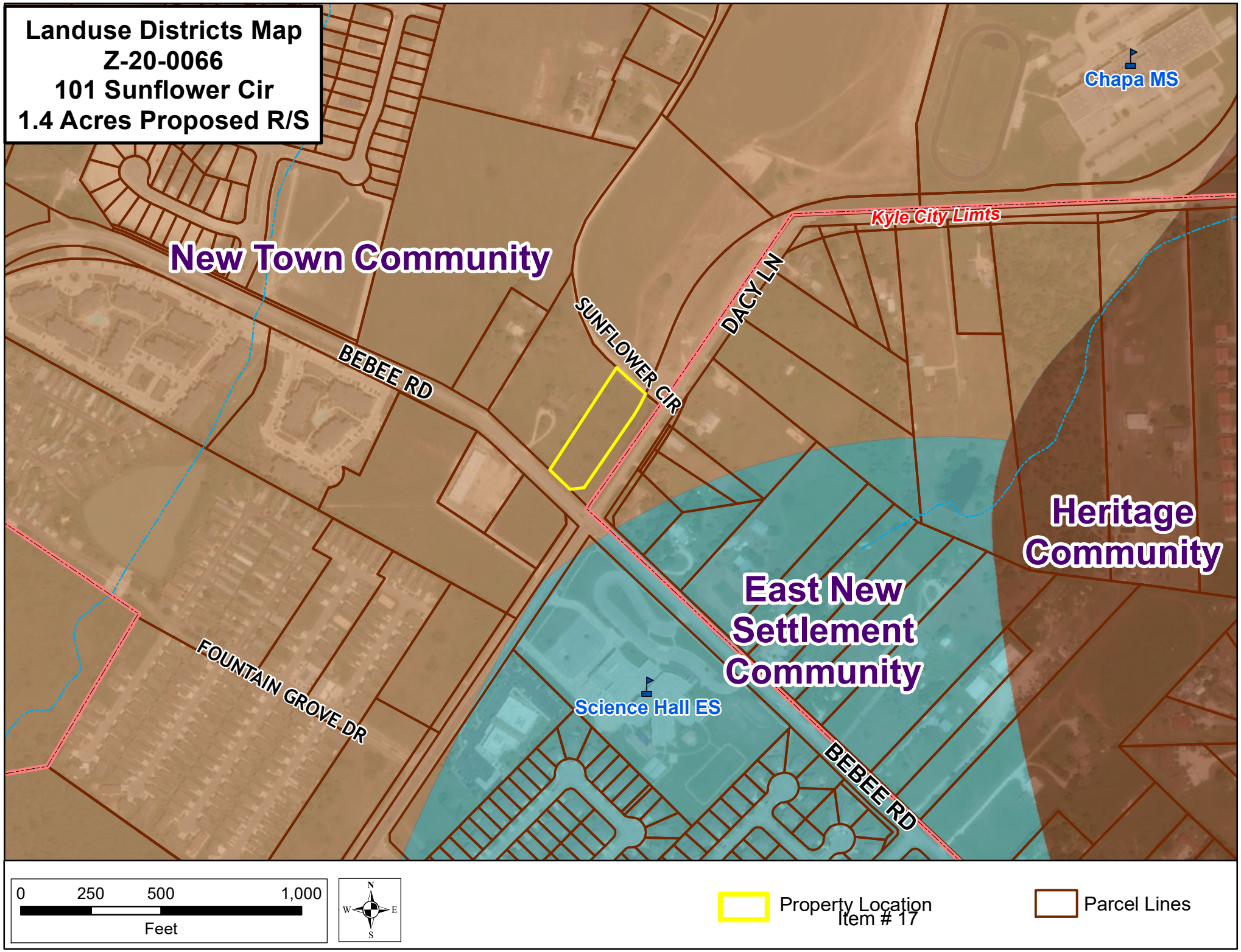
Property Location

Parcel Lines

Item # 17


Current Zoning Map
Z-20-0066
101 Sunflower Cir
1.4 Acres Proposed R/S
R-1-3
A
A
SUNFLOWER CIR
BEBEE RD
R-3-3
R/S
DACY LN
KYLE ETJ
W
A
FOUNTAIN GROVE
Science Hall ES
0
250
500
1,000
Feet
N
W
E
S
Property Location
Parcel Lines

Item # 17


Landuse Districts Map
Z-20-0066
101 Sunflower Cir
1.4 Acres Proposed R/S
Chapa MS
Kyle City Limts
New Town Community
DACY LN
SUNFLOWER CIR
BEBEE RD
Heritage Community
East New Settlement Community
FOUNTAIN GROVE DR
Science Hall ES
BEBEE RD
0 250 500 1,000
Feet
N
W
E
S
Property Location
Parcel Lines

Item # 17

CITY OF KYLE, TEXAS

1400 E. FM 150, LLC - Zoning (Z-20-0068)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 5.87 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 1400 E. RR 150, in Hays County, Texas. (1400 E. FM 150, LLC - Z-20-0068) ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 6-0 to recommend approval of the request.

- Public Hearing

Other Information: See attachments.

Legal Notes: N/A

Budget Information: N/A

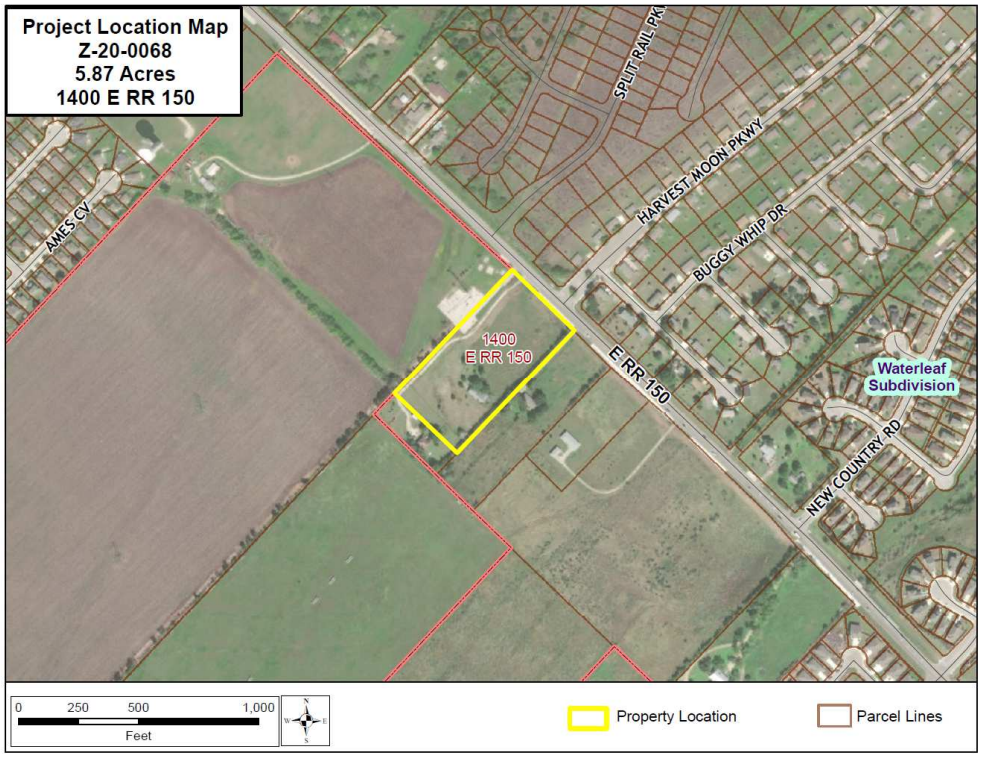
ATTACHMENTS:

Description
Staff Memo
Ordinance with Exhibit's A & B
Application
Location Map
Current Zoning Map
Land Use Districts Map

Petition No. Z-20-0068

Property Location	**1400 E. FM 150, Kyle, Texas 78640**
Owner	**Najib Wehbe**
Agent	**Glen Coleman** **P.O. Box 25** **Junction, TX 78649**
Request	**Rezone 5.87 Acres "A" (Agriculture) to "RS" (Retail Services)**

Vicinity Map

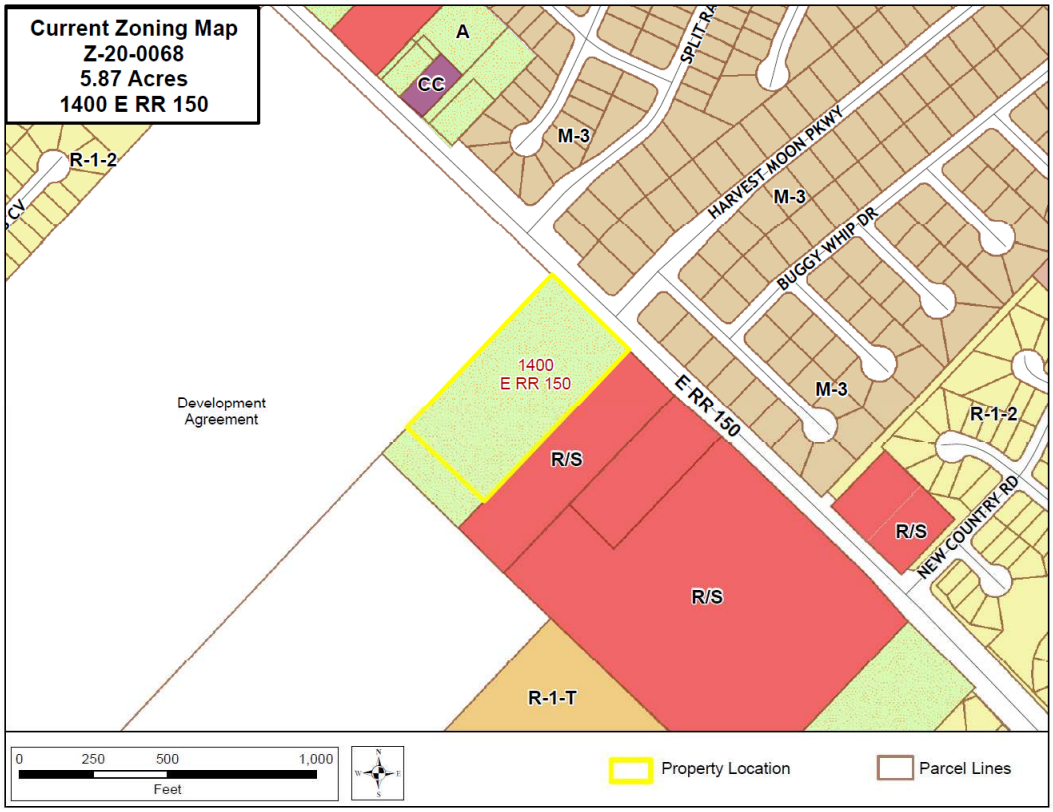


Site Description

The site is located on one parcel, currently zoned "A" (Agriculture). The site has one single-family residence located on it. Across E FM 150 and to the north/northeast lies the Sunset Ridge Manufacture Home subdivision. To the east/southeast lies parcels zoned "RS" (Retail Services) and typically have only one single-family residence per property. To the south is a parcel zoned "A" with one single-family residence. To the west and northwest lies property in the City of Kyle's ETJ and utilized for agriculture.

The applicant seeks to rezone the property from "A" (Agriculture) to "RS" (Retail Services).

Current Zoning



Sec. 53-36. - Agricultural district A.

The permitted uses in the agricultural district A allow farming, ranching, pasturage, detached single-family residences and related accessory structures, on a minimum one acre tract. Parks, playgrounds, greenbelts and other public recreational facilities, owned and/or operated by the municipality or other public agency are permitted.

(Ord. No. 438, § 23, 11-24-2003)

Requested Zoning

RS (Retail Services District)

Sec. 53-480. - Purpose and permitted uses.

This district allows general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes, including most in-store retail sales of goods and products that do not pose a fire or health hazard to neighboring areas, e.g., clothing, prescription drugs, furniture, toys, hardware, electronics, pet supply, variety, department, video rental and antique stores, art studio or gallery, hobby shops and florist shops., and the retail sale of goods and products (in the following listed use areas) to which value has been added on site, including sales of goods and services outside of the primary structure as customary with the uses specifically listed, and the following: Any use permitted in CBD-1 or CBD-2 and RS districts as provided in section 53-1230.

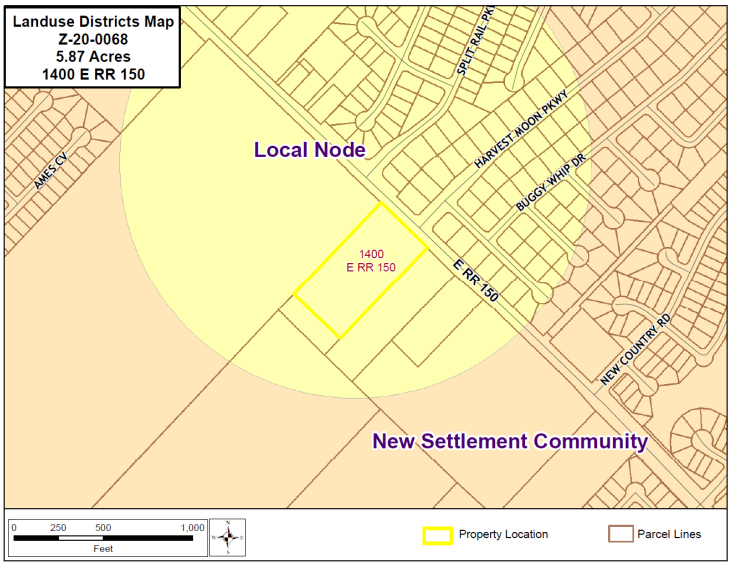
(Ord. No. 438, § 42(a), 11-24-2003)

Conditions of the Zoning Ordinance

Sec. 53-1205 Amendments

(d) *Referral of amendment to planning and zoning commission.* Upon its own motion, a request by the planning and zoning commission, or the receipt of an administratively complete petition and application to zone or rezone a lot, tract or parcel of land, which petition and application has been examined and approved as to form by the city manager, shall be referred to the planning and zoning commission for consideration, public hearing, and recommendation to the city council. The council may not enact a rezoning amendment until the planning and zoning commission has held a public hearing and made its recommendation to the city council, or has made a final vote on the matter without obtaining a majority, on the zoning or rezoning of the property.

(e) *Action by the planning and zoning commission.* The planning and zoning commission shall cause such study and review to be made as advisable and required, shall give public notice and hold a public hearing as provided by state law, and shall recommend to the council such action as the planning and zoning commission deems proper…



Comprehensive Plan Text

The subject site is located in the "Local Node" District. The RS zoning district is recommended conditionally in the "Local Node" District

Current Land Use Chart

<u>Local Node</u>

Recommended Zoning Categories: R-1-C, R-3-2, R-3-3, CC, NC, MXD
Conditional Zoning Categories: R-1-T, R-3-1, **R/S**

<u>Local Node</u>

<u>'Character':</u>

Some Local Nodes occur at existing intersections, where a greater intensity of use should be fostered to take advantage of the benefits conferred by that intersection. Other Local Nodes are located at points where new corridors will create significant local intersections in the future. Local Nodes should be comprised of neighborhood-scale retail uses, small public gathering spaces, such as plazas, playgrounds, and trails, and some higher intensity residential opportunities where appropriate. Local Nodes should be designed to serve the local population living within or adjacent to the individual Node. For this reason, Local

Nodes should provide goods and services that enhance convenience and, therefore, quality of life for local residents. A central gathering location should be created within each Local Node to foster a sense of community for the surrounding residents.

Intent':

The anchor of each Local Node should be service retail, and, of all the Nodes, the Local Nodes should have the lowest level of non-residential development intensity. General goods and services required on a daily basis by residents should be located in Local Nodes, including small food markets, restaurants, banks, and small shops. These Nodes should be connected to the surrounding communities with sidewalks and trails to encourage walking, minimize traffic congestion, and increase safety.

Analysis

The property requesting to be rezoned is sited in an area that is likely to develop from low intensity residential (Agriculture zoning) into a higher intensity area of commercial and residential activity, mostly centered on E FM 150 and Creekside Trail. The project associated with the requested zoning is across E FM 150 from Harvest Moon Parkway (main entrance into the Sunset Ridge community).

This site is immediately northwest and adjacent to several tracts zoned "RS". The Retail Services zoning district allows for a large number of uses relating to "point of sale" service. This include, but are not limited to retail uses, restaurants, offices, convenience store/fuel stations. This site is currently close to the "edge" of the Local Node and is likely to be dependent on vehicular traffic. This is due to E FM 150 being an arterial highway with little to no pedestrian access to it. Commercial uses closer to the center of nodal areas, would be expected to have a greater emphasis on pedestrian or cyclist modes of transportation, as they should be within walking distance of higher density residential uses. Per city code, this site will be code compliant when a site plan is submitted for review. This will include sidewalks, parking, building location, landscaping, detention, etc.

Recommendation

In conclusion, staff supports the rezoning from "A" (Agriculture) to RS (Retail Services) for the property located at 1400 E FM 150, as requested. At the January 12, 2021 Planning & Zoning Commission meeting, the Commission voted 6-0 to recommend approval of the request. Staff asks the Mayor & Council to vote to recommend approval of the request.

Attachments

- Application
- Location Map
- Existing Zoning Map
- Land Use Districts Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 5.87 ACRES OF LAND FROM AGRICULTURE 'AG' TO RETAIL SERVICE DISTRICT 'RS' FOR PROPERTY LOCATED AT 1400 E. RR 150, IN HAYS COUNTY, TEXAS. (1400 E. FM 150, LLC – Z-20-0068); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the zoning district map of the City of Kyle adopted in Chapter 53 (Zoning) be and the same is hereby amended to assign original zoning to approximately 5.87 acres of land from Agriculture 'AG' to Retail Service District 'RS', as shown on the property location map labeled Exhibit B.

SECTION 2. That the City Secretary is hereby authorized and directed to designate the tract of land zoned herein as such on the zoning district map of the City of Kyle and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2021, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the _____day of _____, 2021, at which a quorum

was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____day of _____, 2021.

_____
Travis Mitchell, Mayor

ATTEST:

_____
Jennifer Holm, City Secretary

EXHIBIT "A"

HOLT CARSON, INC.
PROFESSIONAL LAND SURVEYORS
1904 FORTVIEW ROAD
AUSTIN, TEXAS 78704
TELEPHONE: (512) 442-0990
www.hciaustin.com

FIELD NOTE DESCRIPTION OF 5.87 ACRES OF LAND OUT OF THE MILTON B. ATKINSON SURVEY ABSTRACT No. 21 IN HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN (6.87 ACRE) TRACT OF LAND AS CONVEYED TO SARA LOUISE FRANK BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 480 PAGE 663 OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS, AND AS FURTHER DESCRIBED IN DEED TO CECIL MANUEL AND SARA MANUEL AS RECORDED IN VOLUME 275 PAGE 505 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" iron rod set with a plastic cap imprinted with "Holt Carson, Inc." in the Southwest right-of-way line of F.M. Highway 150 for the North corner of that certain (37.99 acre) tract of land as conveyed to Henry Crews Armbruster and William M. Johnson by deed recorded in Volume 230 Page 402 of the Deed Records of Hays County, Texas, and for the North corner of that certain (6.87 acre) tract of land as conveyed to Sara Louise Frank by Special Warranty Deed recorded in Volume 480 Page 663 of the Real Property Records of Hays County, Texas, and as further described in deed to Cecil Manuel and Sara Manuel as recorded in Volume 275 Page 505 of the Deed Records of Hays County, Texas, and being the North corner and **PLACE OF BEGINNING** of the herein described tract of land, and from which a broken concrete monument found (at centerline HWY Station 78+92.7) bears N 46 deg. 27' 00" W 712.96 ft.;

THENCE with the Southwest right-of-way line of F.M. Highway 150 and with the Northeast line of said Armbruster and Johnson (37.99 acre) tract and with the Northeast line of said Frank (6.87 acre) tract, S 46 deg. 27' 00" E 359.00 ft. to a ½" iron rod set with a plastic cap imprinted with "Holt Carson, Inc." for the East corner of said Frank (6.87 acre) tract and being the East corner of this tract of land, and from which a ½" iron rod found for the monumented East corner of that certain (4.207 acre) tract of land as conveyed to Sheerghar Investments, Inc. by Special Warranty Deed recorded in Instrument No. 19028436 of the Official Public Records of Hays County, Texas, bears S 46 deg. 16' 20" E 218.11 ft., and also from which a broken concrete monument found (at centerline HWY Station 100+75.4) bears S 46 deg. 27' 00" E 503.91 ft., and S 46 deg. 14' 00" E 606.53 ft.;

end of Page 1

Unofficial Copy

5.87 ACRES

THENCE leaving the Southwest right-of-way line of F.M. Highway 150 and entering the interior of said Armbruster and Johnson (37.99 acre) tract with the Southeast line of said Frank (6.87 acre) tract, S 43 deg. 31' 00" W 712.03 ft. to a ½" iron rod set with a plastic cap imprinted with "Holt Carson, Inc." for the East corner of that certain (one acre) tract of land as conveyed to Rick J. Castille and Terrie L. Castille by Warranty Deed recorded in Volume 769 Page 119 of the Real Property Records of Hays County, Texas, and being the South corner of this tract of land, and from which a capped iron rod found (marked "Hinkle") in the Southwest line of said Armbruster and Johnson (37.99 acre) tract for the South corner of said Frank (6.87 acre) tract and for the South corner of said Castille (one acre) tract bears S 43 deg. 31' 00" W 121.34 ft., and also from which a ½" iron rod found bears N 43 deg. 31' E 0.96 ft.;

THENCE continuing through the interior of said Armbruster and Johnson (37.99 acre) tract and crossing through the interior of said Frank (6.87 acre) tract with the Northeast line of said Castille (one acre) tract, N 46 deg. 29' 00" W 359.00 ft. to a ½" iron rod set with a plastic cap imprinted with "Holt Carson, Inc." in the Northwest line of said Armbruster and Johnson (37.99 acre) tract and in the Northwest line of said Frank (6.87 acre) tract for the North corner of said Castille (one acre) tract, and being the West corner of this tract of land, and from which a capped iron rod found (marked "Hinkle") bears N 81 deg. E 1.29 ft., and from which a calculated point for the East corner of said Armbruster and Johnson (37.99 acre) tract and for the West corner of said Frank (6.87 acre) tract bears S 43 deg. 31' 00" W 121.34 ft.;

THENCE with the Northwest line of said Armbruster and Johnson (37.99 acre) tract and with the Northwest line of said Frank (6.87 acre) tract, N 43 deg. 31' 00" E 712.24 ft. to the **PLACE OF BEGINNING**, containing 5.87 acres of land.

SURVEYED: May 13, 2020

Holt Carson
Registered Professional Land Surveyor No. 5166

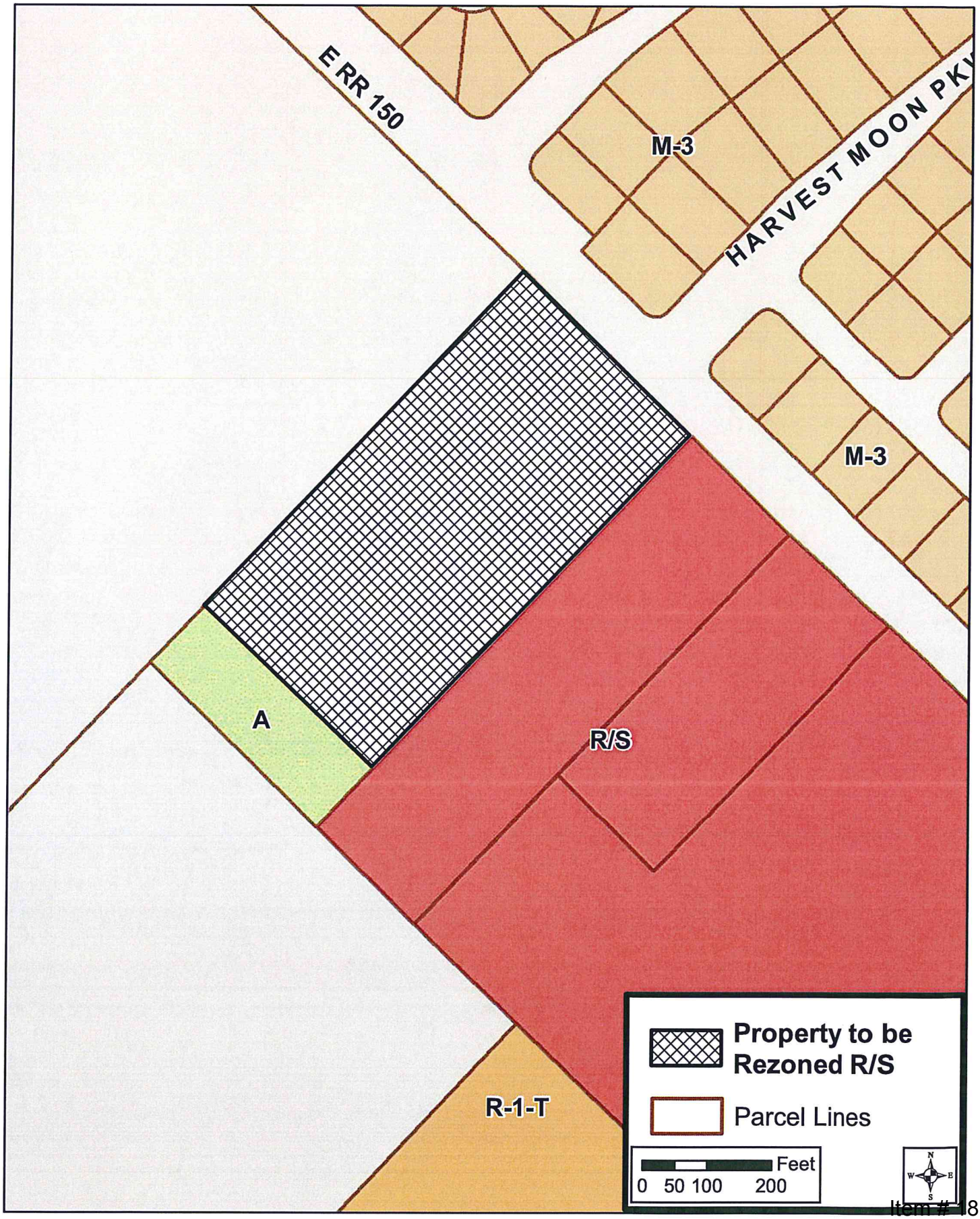
see accompanying map: A 1065046

STATE OF TEXAS
REGISTERED
HOLT CARSON
5166
PROFESSIONAL
LAND SURVEYOR

Unofficial Copy

Exhibit B

Z-20-0068 1400 E RR 150 5.87 Acres



APPLICATION & CHECKLIST – ZONING CHANGE

Zoning:_____ _____

(Name of Owner) (Submittal Date)

INSTRUCTIONS:

- Fill out the following application and checklist completely prior to submission.
- Place a check mark on each line when you have complied with that item.
- Use the most current application from the City's website at www.cityofkyle.com or at City Hall. City ordinances can be obtained from the City of Kyle.

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the Zoning Application to be accepted.

___ 1. Completed application form with owner's original signature.

___ 2. Letter explaining the reason for the request.

___ 3. **Application Fee**: $428.06, plus $3.62 per acre or portion thereof.

Newspaper Publication Fee: $190.21 **Sign Notice Fee**: $127.00

Total Fee: $766.99

___ 4. A map or plat showing the area being proposed for rezoning.

___ 5. A clear and legible copy of field notes (metes and bounds) describing the tract (when not a subdivided lot).

___ 6. Certified Tax certificates: County __ School __ City __

___ 7. Copy of Deed showing current ownership.

**** **A submittal meeting is required. Please contact Debbie Guerra at (512) 262-3959 to schedule an appointment.***

1. Zoning Request:

Current Zoning Classification:	Agriculture
Proposed Zoning Classification:	Retail Services
Proposed Use of the Property:	Service Station and Retail
Acreage/Sq. Ft. of Zoning Change:	5.87 ac

Provide certified field notes describing the property being proposed for rezoning.
Provide complete information on the location of the property being proposed for rezoning.

Street Address: 1400 E FM 150, Kyle, Texas 78640

Subdivision Name/Lot & Block Nos. 5.87 acres of land out of the Milton B. Atkinson Survey

Property Recording Information: ☐Hays County
Document No. 20023141

3. Ownership Information:
Name of Property Owner(s): _____

_____

Certified Public Notary:

This document was acknowledged before me on the 14th day of September, 2020 by Najib Wehbe (Owner(s)).

Randi Shapiro

Notary Public State of Texas

(Seal)

RANDI SHAPIRO
Notary Public
State of Texas
ID # 12946074-1
My Comm. Expires 06/17/2021

RS

(If property ownership is in the name of a partnership, corporation, joint venture, trust or other entity, please list the official name of the entity and the name of the managing partner.)

Address of Owner: _____

_____

Phone Number: _____

Fax Number: _____

Email Number: _____

I hereby request that my property, as described above, be considered for rezoning:

Signed: _____

Date: _____

4. Agent Information:

If an agent is representing the owner of the property, please complete the following information:

Agent's Name:	Glen Coleman
Agent's Address:	PO Box 25
	Junction, Texas 76849
Agent's Phone Number:	512-407-9357
Agent's Fax Number:	_____
Agent's Mobile Number:	_____
Agent's Email Number:	glen.colemantx@gmail.com

I hereby authorize the person named above to act as my agent in processing this application before the Planning and Zoning Commission and City Council of the City of Kyle:

Owner's Signature: _____

Date: _____

Do Not Write Below This Line
Staff Will Complete

Tax Certificates: ☐ County ☐ School ☐ City

Certified List of Property Owners Within 200" ☐

All Fees Paid: ☐ Filing/Application ☐ Mail Out Costs

Attached Map of Subject Property ☐

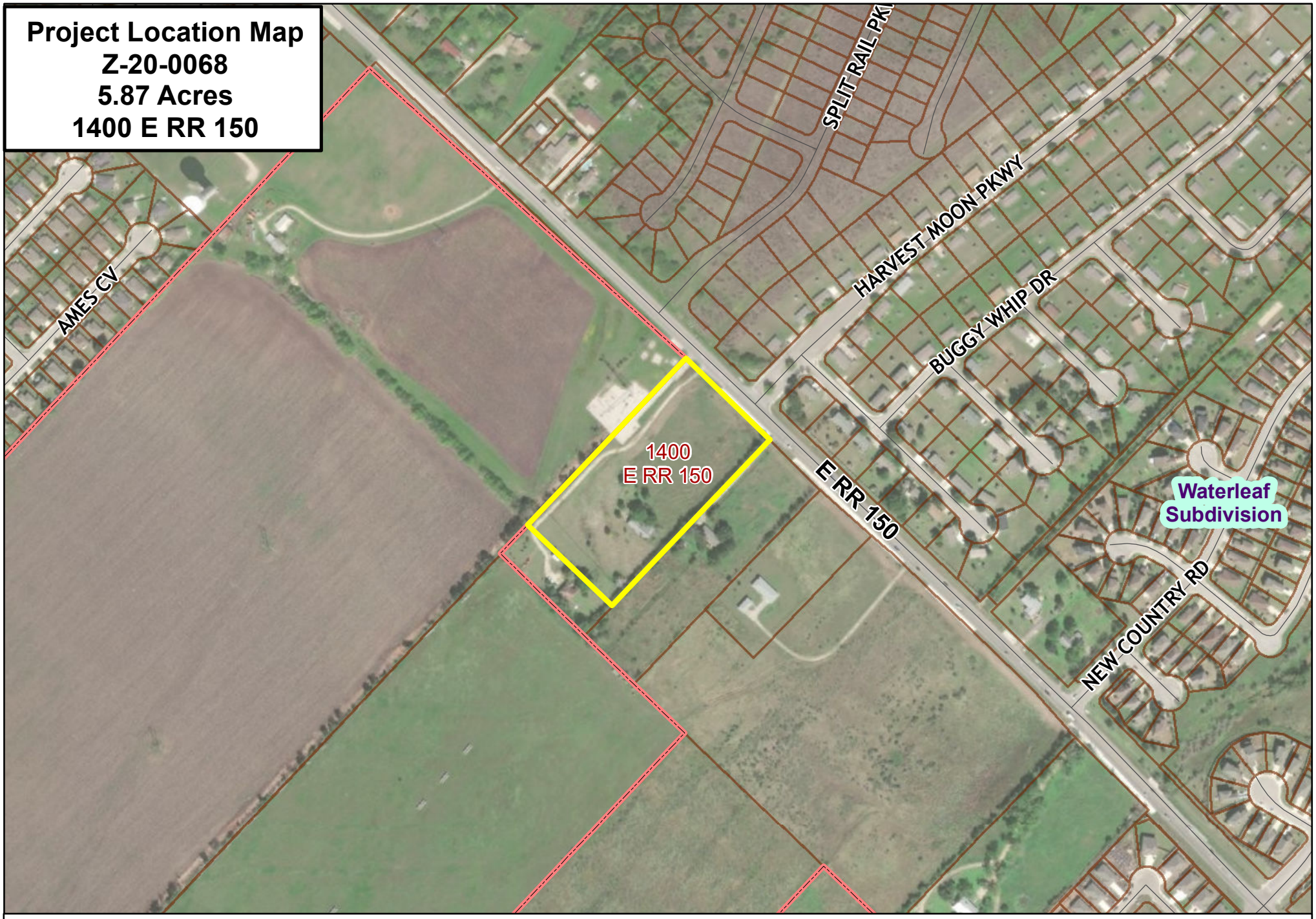
Accepted for Processing By: _____ Date: _____

Date of Public Notification in Newspaper: _____

Date of Public Hearing Before Planning and Zoning Commission: _____

Date of Public Hearing Before City Council: _____

Project Location Map
Z-20-0068
5.87 Acres
1400 E RR 150

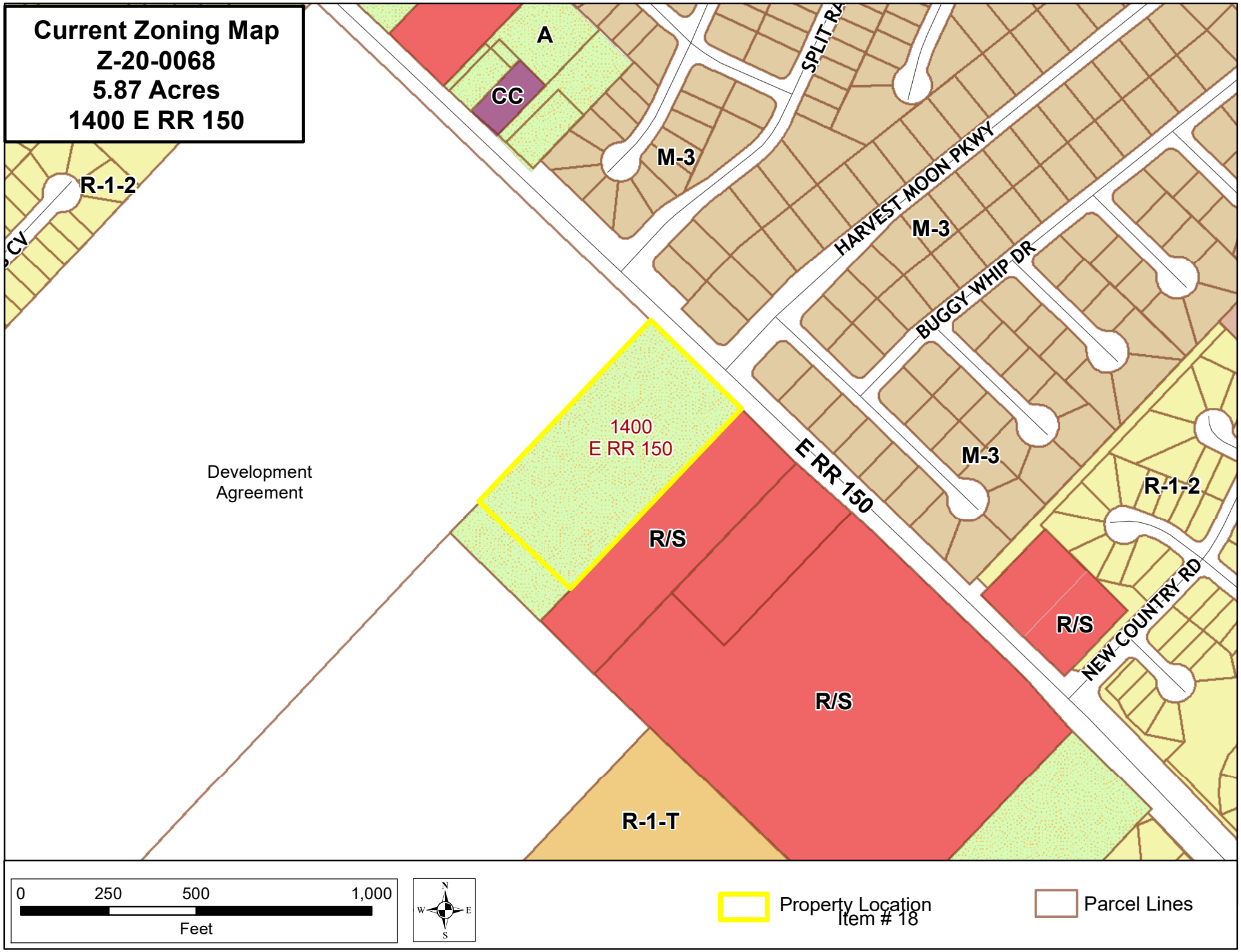


0 250 500 1,000
Feet

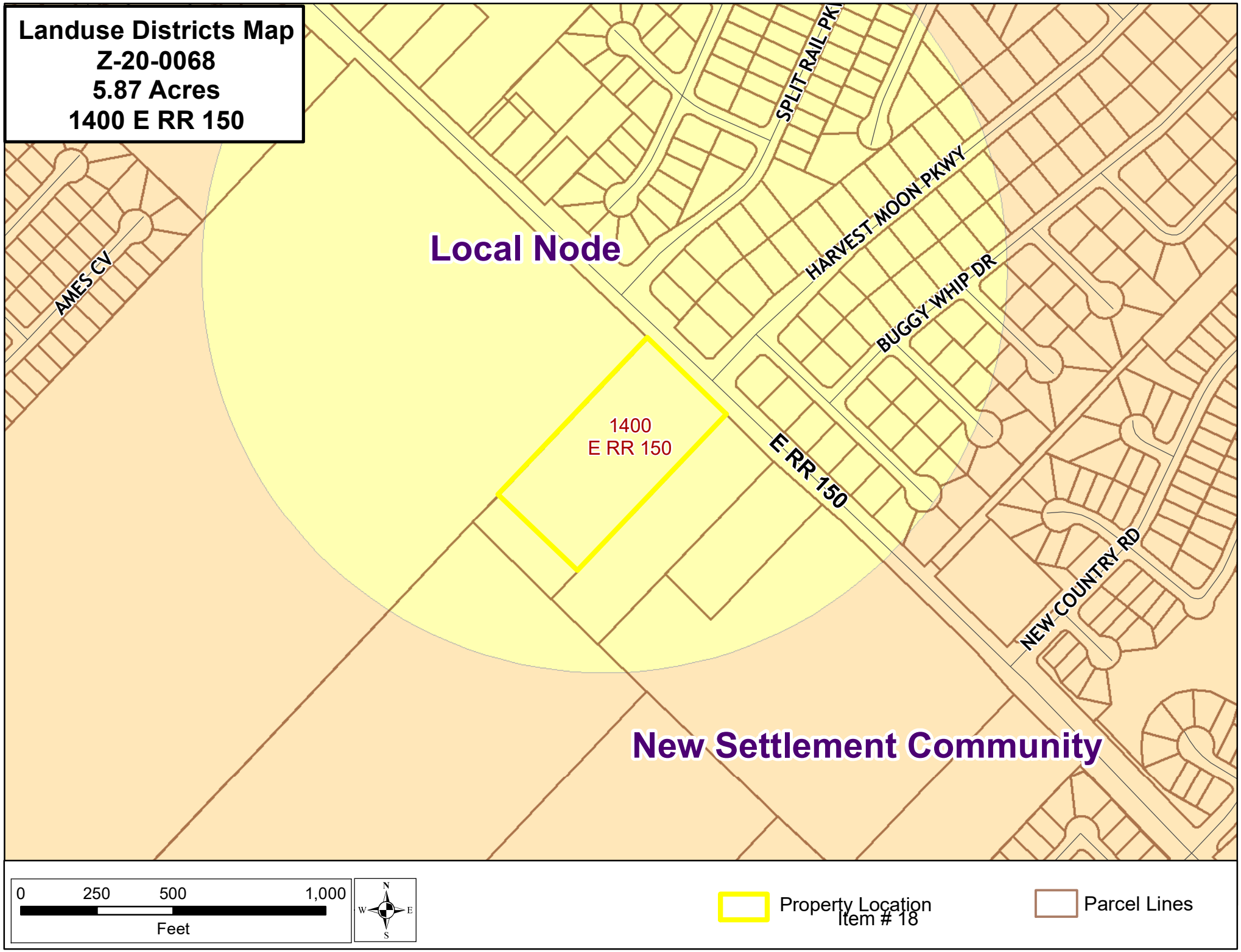
N W E S

Property Location

Parcel Lines


Current Zoning Map
Z-20-0068
5.87 Acres
1400 E RR 150
A
CC
M-3
SPLIT RA
HARVEST MOON PKWY
M-3
BUGGY WHIP DR
M-3
R-1-2
CV
1400
E RR 150
Development
Agreement
E RR 150
R/S
R/S
R/S
R-1-2
NEW COUNTRY RD
R-1-T
0
250
500
1,000
Feet
N
W
E
S
Property Location
Parcel Lines

Item # 18


Landuse Districts Map
Z-20-0068
5.87 Acres
1400 E RR 150
Local Node
New Settlement Community
1400
E RR 150
E RR 150
SPLIT RAIL PKWY
HARVEST MOON PKWY
BUGGY WHIP DR
NEW COUNTRY RD
AMES CV
0
250
500
1,000
Feet
N
W
E
S
Property Location
Parcel Lines

Item # 18

CITY OF KYLE, TEXAS

DDR DB Kyle LP - Zoning (Z-20-0069)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, to rezone approximately 19.5 acres of land from Retail Service District 'RS' to Multi-Family Residential-3 'R-3-3' for property located at 5492 Kyle Center Drive, in Hays County, Texas. (DDR DB Kyle LP - Z-20-0069)~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 5-1 to deny the request.

- Public Hearing

Other Information: See attachments.

Legal Notes: N/A

Budget Information: N/A

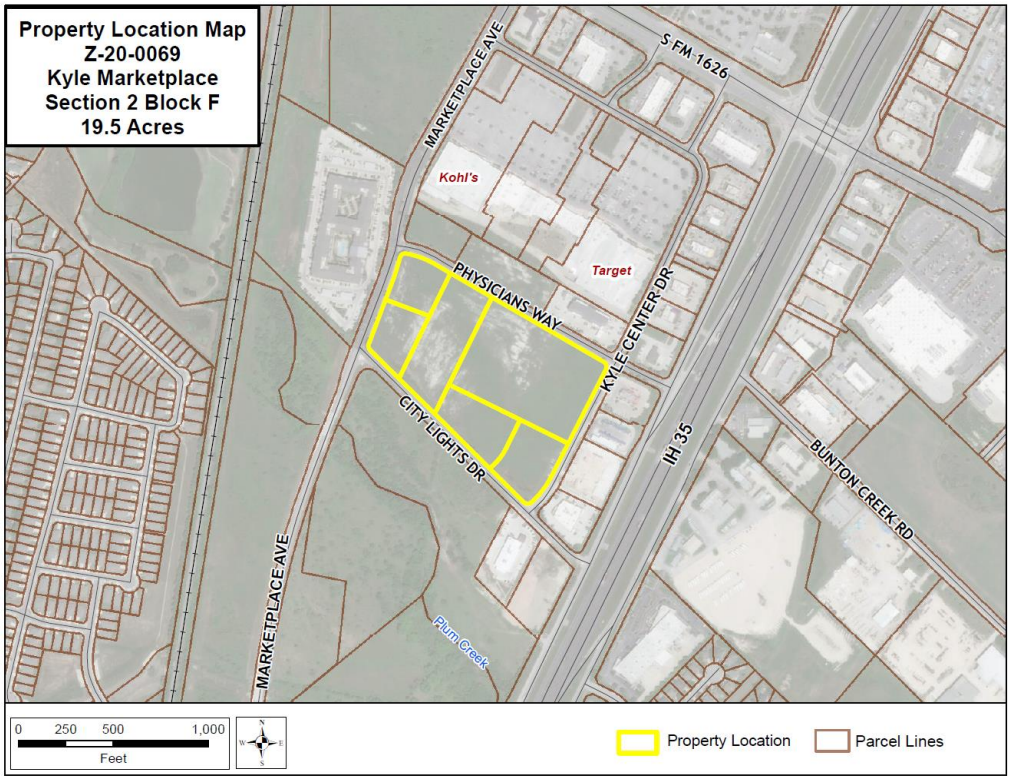
ATTACHMENTS:

Description
Staff Memo
Ordinance with Exhibit's A & B
Request Letter
Application
Location Map
Current Zoning Map
Land Use Districts Map
Letter in favor of request
Letter of Opposition

Petition No. Z-20-0069

Property Location	**Kyle Marketplace Section 2, Lots 1, 1B, 1C, 2, 3, & 4, Block F**
Owner	**DDR DB Kyle LP. Michael S. Owendoff, Deputy General Counsel 3300 Enterprise Pkwy Beechwood, OH 44122**
Agent	**Travis Sawvell 1703 W. 5th, Ste. 850 Austin, TX 78750**
Request	**Rezone 19.4681-Acres "RS" (Retail Services) to "R-3-3" (Apartments Residential 3)**

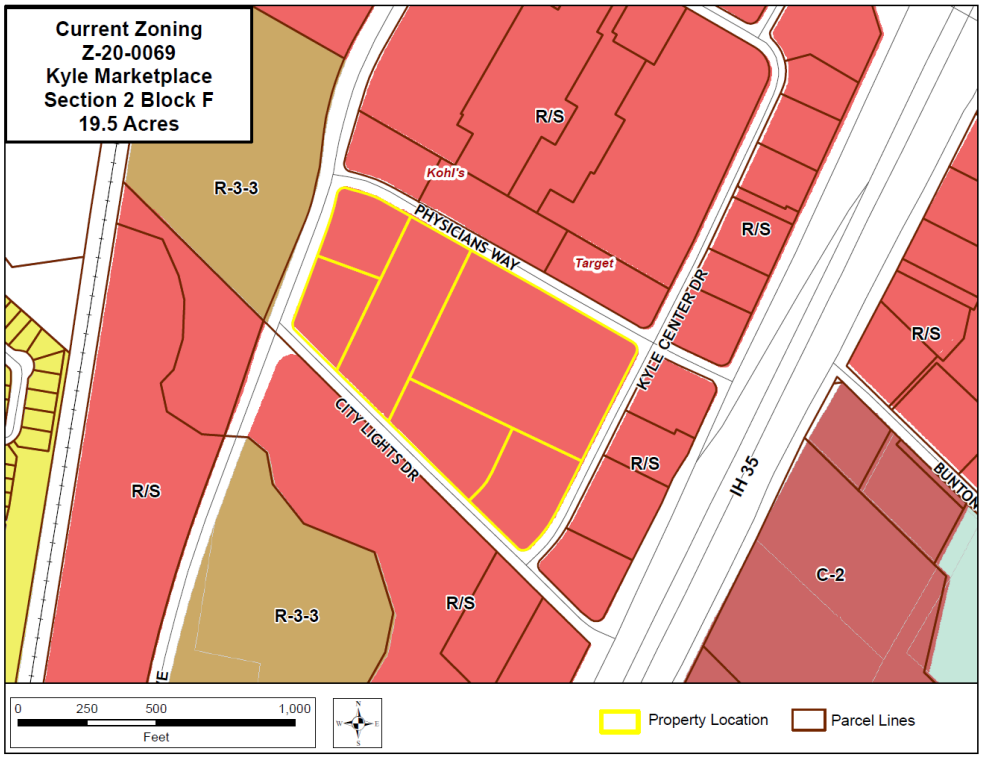
Vicinity Map



SITE DESCRIPTION

The site is located on an undeveloped pad site, surrounded on four sides by public streets (Marketplace Ave., Kyle Center Dr., Physicians Way, City Lights Dr.). The parcel is generally behind the Target/Kohl's shopping center, with the Comfort Suites hotel between the shopping center and the pad site. To the east of the block, are Chicken Express, Rapid Express Car Wash, a two-story office and Kyle ER. To the south lie Caliber Collision and a future fuel station and strip center (under construction). To southwest lies undeveloped land, zoned "RS". To the west is undeveloped land zoned "RS" (across Marketplace Ave.). To the west and northwest lies the Oaks of Marketplace apartment complex (zoned R-3-3).

Current Zoning Map



Existing Zoning

RS (Retail Services District)

Sec. 53-480. - Purpose and permitted uses.

This district allows general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes, including most in-store retail sales of goods and products that do not pose a fire or health hazard to neighboring areas, e.g., clothing, prescription drugs, furniture, toys, hardware, electronics, pet supply, variety, department, video rental and antique stores, art studio or gallery, hobby shops and florist shops., and the retail sale of goods and products (in the following listed use areas) to which value has been added on site, including sales of goods and services outside of the primary structure as customary with the uses specifically listed, and the following: Any use permitted in CBD-1 or CBD-2 and RS districts as provided in section 53-1230.

Requested Zoning

R-3-3 (Apartments Residential 3)

Sec. 53-292. - Purpose and permitted uses.

The multifamily residential district R-3-3 permits typical apartment development with buildings not exceeding three stories, nor more than 28 units per buildable acre, and with apartments or units having a minimum living area of 500 square feet; provided that not more than 25 percent of the units in any such apartment development or project shall have less than 750 square feet of living area.

CONDITIONS OF THE ZONING ORDINANCE

Sec. 53-1205 Amendments

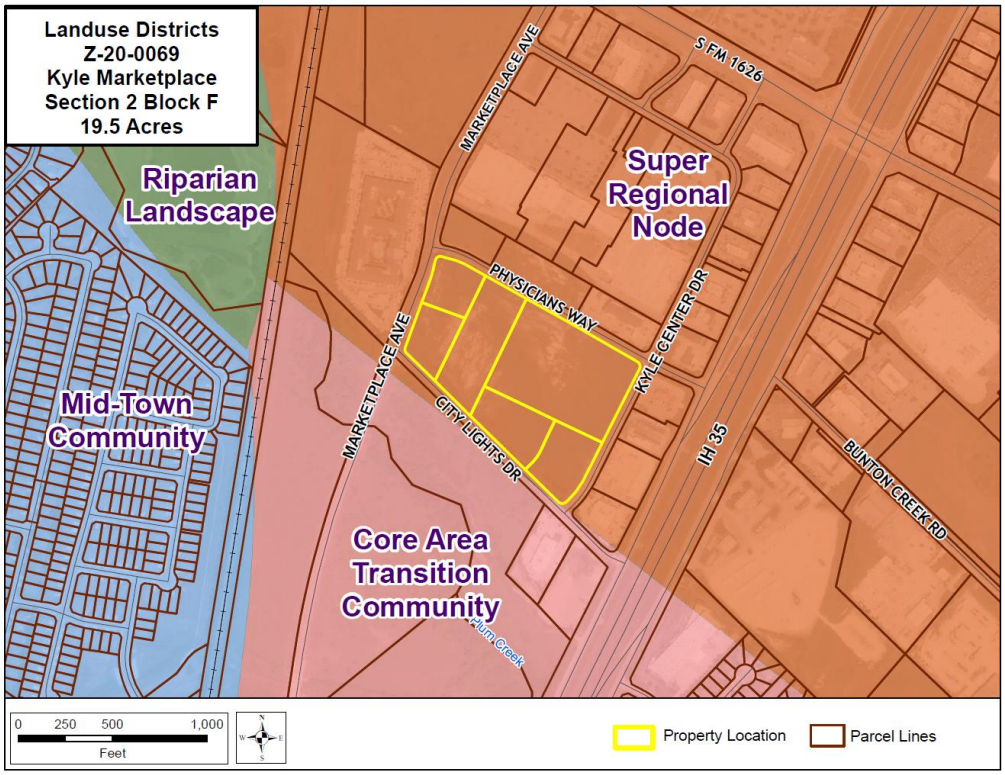
(d)

Referral of amendment to planning and zoning commission. Upon its own motion, a request by the planning and zoning commission, or the receipt of an administratively complete petition and application to zone or rezone a lot, tract or parcel of land, which petition and application has been examined and approved as to form by the city manager, shall be referred to the planning and zoning commission for consideration, public hearing, and recommendation to the city council. The council may not enact a rezoning amendment until the planning and

zoning commission has held a public hearing and made its recommendation to the city council, or has made a final vote on the matter without obtaining a majority, on the zoning or rezoning of the property.

(e)

Action by the planning and zoning commission. The planning and zoning commission shall cause such study and review to be made as advisable and required, shall give public notice and hold a public hearing as provided by state law, and shall recommend to the council such action as the planning and zoning commission deems proper…



COMPREHENSIVE PLAN TEXT

The subject site is located within the "Super Regional Node". The "R-3-3" zoning district is a recommended district in the "Super Regional Node".

Recommended: E, HS, R-3-2, **R-3-3**, R/S, MXD, O/I
Conditional: ----

Super Regional Node

'Character': The Super Regional Node should contain large-scale institutional, commercial, retail, and where appropriate, high density multifamily land uses to create the highest classification activity center in Kyle. The Seton Medical Center should serve as the key distinguishing employment component, serving as the primary institutional use in the district upon which support enterprises can base their business locations. The Super Regional Node is in the early stages of development, and care should be taken to ensure that as development processes, it is in keeping with the character and intent outlined below for this Node. Seton Hospital serves as a regional attractor and, in large part, alongside destination retail and business services, defines the Super Regional Node. Associated health providers and goods and service providers should be attracted to this area and encouraged to create a diverse commercial and employment center. The aggregation of commercial square footage in this Node creates a significant commercial destination that will be visible to regional travelers along the I-35 corridor. This proximity to highway infrastructure results in the rare instance of a district primarily designed to be automobile oriented, with patrons arriving and inter-locating primarily by car. The commercial focus of this Node should be on acting as an economic activity center, generating much needed real estate, sales and hotel occupancy tax revenue for the city while fulfilling the retail and service needs of patrons from a targeted distance of no less than 10-15 mile away. Additionally, ancillary entertainment uses, such as movie theaters or bowling alleys, may be appropriate in this Node. This Node should serve as a destination for Kyle, attracting people due to the hospital and/or commercial offerings, and encouraging them to extend their stay due to unique and diverse uses and connections to other areas of Kyle.

'Intent': The purpose of the Super Regional Node is to capture employment opportunities and create a commercial destination within Kyle. Situated at the intersection of I-35 and Texas State Highway 1626, these high classification roadways are best suited to bring in out-of-region patrons with the least impact to Kyle's local street network. This Node should take advantage of the medical center and of I-35 traffic to increase Kyle's competitiveness in the surrounding region. Existing employment opportunities should be referenced when targeting complimentary commercial uses and opportunities for increased value capture. Due to the concentration and diversity of uses in this Node, appropriate land use transitions to adjacent Communities is critical. The anchor of the Super Regional Node should be employment and they daytime population created by those positions, and the Super Regional Node should have the highest level of development intensity of all Nodes.

ANALYSIS

The subject property is located on approximately 19.5-acres, south (behind) of the Target/Kohl's shopping center. It is bounded on four sides by existing streets and has water and wastewater services available to it. The site is currently zoned "RS" (Retail Services), and the "R-3-3" (Apartments Residential 3) is recommended per the "Super Regional Node" land use district.

The 19.5-acre parcel has been vacant for some time. The pad site has never been developed and being setback from both southbound IH-35 and FM 1626, the 19.5-acre site is partially hidden from both of those thoroughfares. This site, however, has received significant interest for multi-family, residential development. In several instances, planning staff has met with potential developers to develop the site with a high-density, mixed-use activity center use in mind.

The R-3-3 district allows for up to 28 residential units per buildable acre, in structures of a maximum of 3-stories and 45-feet in height. Theoretically, this property could develop 546 dwelling units, while in reality building setbacks, surface parking lots and drive aisles, and utility corridors and easements will ultimately mean fewer dwellings will actually be built. That stated, other than vertical mixed-use (MXD zoning), this is the City of Kyle's highest density multifamily zoning category. One item of note is the developer and the City Council are drafting a development agreement to further refine the R-3-3 zoning district. It will mostly relate to building façade requirements and building setbacks. The intent is to make it more of an urban style project.

PLANNING COMMISSION

At the January 12, 2021 Planning & Zoning Commission meeting, the Commission heard this application and held a Public Hearing. One commenter sent in a letter in support of the project; the other commenter, Mike Rubsam (former chair of the P&Z Commission), voice opposition to the project, due to his preference for this area to remain a high-activity area that features vertical mixed-use projects with longer periods of activity and operation that will benefit both Kyle residents and out-of-town patrons. After discussion among the remaining commissioners, most of whom voiced opposition to the idea of this project being developed as solely an apartment complex, the Commission voted 5-1 to **recommend denial** of the rezoning request (Commissioner McCall was the sole dissenting vote). Reasons cited include both a preference for vertical mixed use (MXD zoning) or keep it as retail (RS zoning). The Commission largely believes that the City has an overabundance of multifamily and would like ground floor commercial to activate the streetscapes.

RECOMMENDATION

Because the site has sufficient utilities and road infrastructure, city staff supports the rezoning to R-3-3. City staff asks the Mayor & Council to vote to approve the zoning amendment.

Attachments

- Application
- Location Map
- Current Zoning Map
- Land Use Districts Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE TO REZONE APPROXIMATELY 19.5 ACRES OF LAND FROM RETAILSERVICE DISTRICT 'RS' TO MULTI-FAMILY RESIDENTIAL-3 'R-3-3' FOR PROPERTY LOCATED AT 5492 KYLE CENTER DRIVE, IN HAYS COUNTY, TEXAS. (DDR DB KYLE LP– Z-20-0069); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the zoning district map of the City of Kyle adopted in Chapter 53 (Zoning) be and the same is hereby amended to rezone approximately 19.5 acres of land from Retail Service District 'RS' to Multi-Family Residential-3 'R-3-3', as shown on the property location map labeled Exhibit B.

SECTION 2. That the City Secretary is hereby authorized and directed to designate the tract of land zoned herein as such on the zoning district map of the City of Kyle and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2021, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the _____day of _____, 2021, at which a quorum

was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____day of _____, 2021.

_____
Travis Mitchell, Mayor

ATTEST:

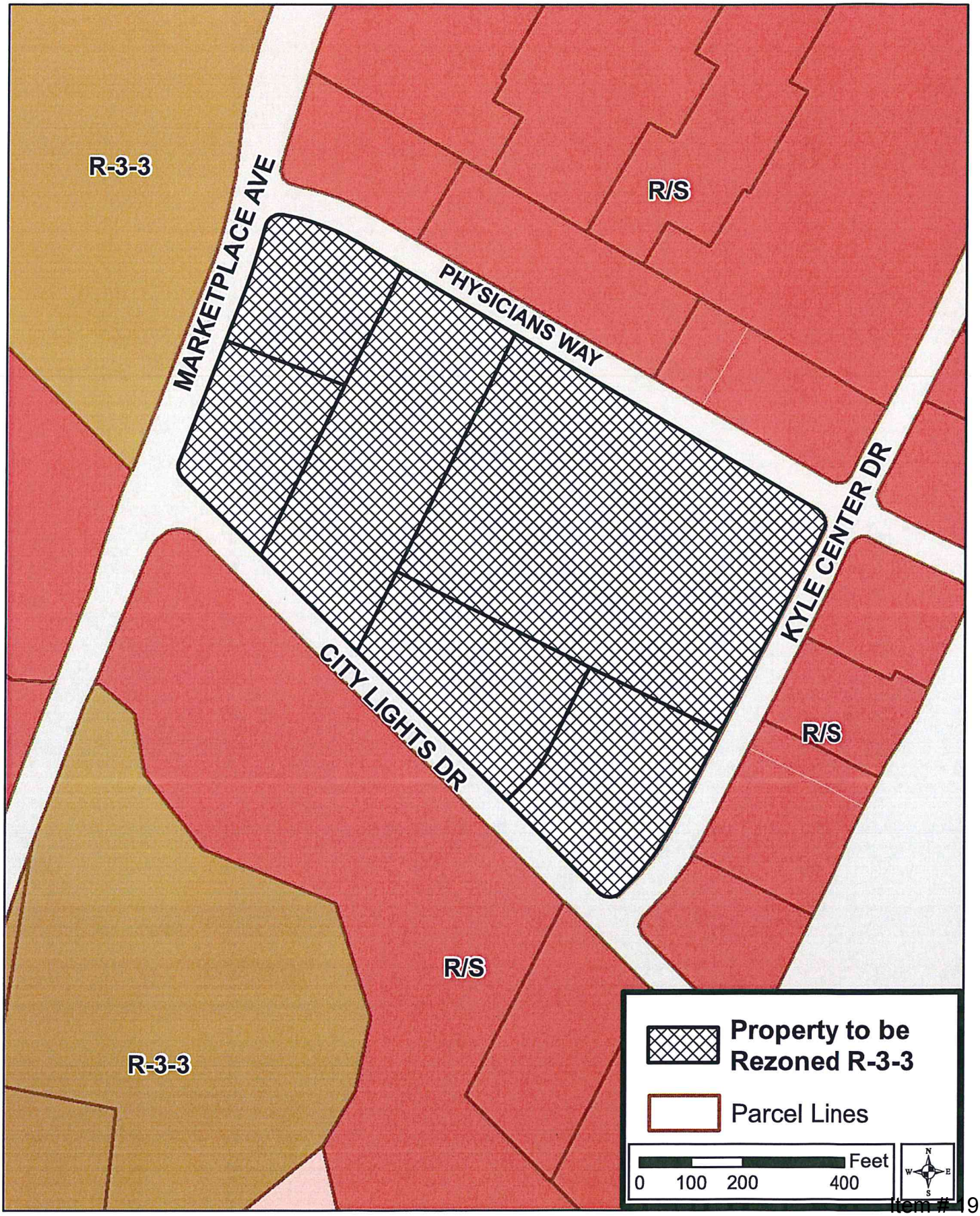
_____
Jennifer Holm, City Secretary

"EXHIBIT A"

KYLE MARKETPLACE SECTION 2, LOTS 1, 1B, 1C, 2, 3 & 4, BLOCK F

Exhibit B

Z-20-0069 Physicians Way at Kyle Center Dr 19.5 Acres



To whom it may concern,

Central Southwest Development (CSW) is seeking the rezoning of Kyle Marketplace Section 2, LOT 1, 1B, 1C, 2, 3, & 4, BLOCK F, consisting of 19.4861 AC, as shown in Exbibit A. CSW has come to this conclusion after actively marketing the property for over 16 months for users that are allowable with the current zoning of RS. Unfortunately, the land no longer lends itself to that zoning and therefor the request is for the land to be rezoned to allow multi-family (R-3-3).

Sincerely,

Robert O'Farrell

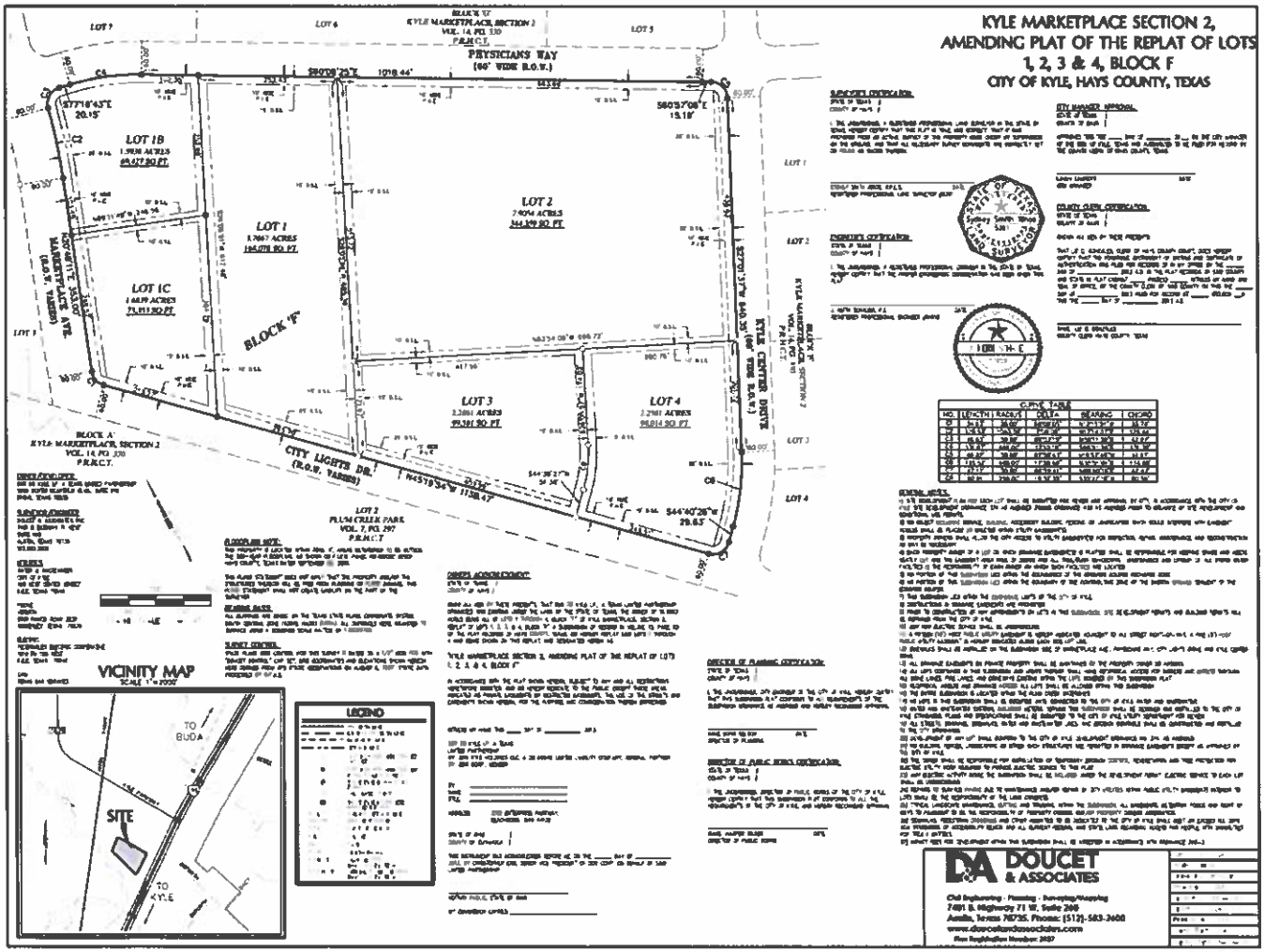
President

D: 512.368.7025
rofarrell@cswdevelopment.com
www.cswdevelopment.com

CSW DEVELOPMENT

Exhibit "A"

Kyle Marketplace Section 2,
LOT 1, 1B, 1C, 2, 3, & 4,
Block F



APPLICATION & CHECKLIST – ZONING CHANGE

Zoning: DDR DB KYLE LP (Name of Owner) 11/30/2020 (Submittal Date)

INSTRUCTIONS:

- Fill out the following application and checklist completely prior to submission.
- Place a check mark on each line when you have complied with that item.
- Use the most current application from the City's website at www.cityofkyle.com or at City Hall. City ordinances can be obtained from the City of Kyle.

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the Zoning Application to be accepted.

_X_ 1. Completed application form with owner's original signature.

_X_ 2. Letter explaining the reason for the request.

_X_ 3. **Application Fee**: $428.06, plus $3.62 per acre or portion thereof.

Newspaper Publication Fee: $190.21 **Sign Notice Fee**: $127.00

Total Fee: $815.81

_X_ 4. A map or plat showing the area being proposed for rezoning.

___ 5. A clear and legible copy of field notes (metes and bounds) describing the tract (when not a subdivided lot).

___ 6. Certified Tax certificates: County __ School __ City __

___ 7. Copy of Deed showing current ownership.

*** ***A submittal meeting is required. Please contact Debbie Guerra at (512) 262-3959 to schedule an appointment.***

1. Zoning Request:

Current Zoning Classification: RS – Retail Services

Proposed Zoning Classification: R-3-3

Proposed Use of the Property: Multi-Family

Acreage/Sq. Ft. of Zoning Change: 19.4861 AC

2. Address and Legal Description:

Provide certified field notes describing the property being proposed for rezoning.
Provide complete information on the location of the property being proposed for rezoning.

Street Address: _____

Subdivision Name/Lot & Block Nos.: Kyle Marketplace Section 2, LOT1, 1B, 1C, 2, 3, 4, Block F

Property Recording Information: ☐ Hays County
Volume/Cabinet No. _____ Page/Slide No. _____

3. Ownership Information:
Name of Property Owner(s): DDR DB KYLE LP
By DDR Kyle Holdings LLC, its General Partner

Certified Public Notary:

This document was acknowledged before me on the 30th day of November, 2020, by DDR Kyle Holdings LLC, the General Partner of DDR DB Kyle LP (Owner).

Elizabeth A. Berry

Notary Public State of Ohio

(Seal)

ELIZABETH A. BERRY
Notary Public, State of Ohio, Geauga Cty
My Commission Expires 4/18/23

(If property ownership is in the name of a partnership, corporation, joint venture, trust or other entity, please list the official name of the entity and the name of the managing partner.)

Address of Owner: 3300 Enterprise Pkwy
Beachwood, OH 44122

Phone Number: _____

Fax Number: _____

Email Number: _____

I hereby request that my property, as described above, be considered for rezoning:

Signed: Michael S. Owendoff

Date: Nov. 30, 2020 Michael S. Owendoff, Deputy General Counsel

4. Agent Information:
If an agent is representing the owner of the property, please complete the following information:

Agent's Name: Travis Sawvell

Agent's Address: 1703 W. 5th, Suite 850, Austin, TX 78750

Agent's Phone Number: (512) 368-7086

Agent's Fax Number: (737)346-3555

Agent's Mobile Number: (512) 810-8154

Agent's Email Number: travis.sawvell@am.jll.com

I hereby authorize the person named above to act as my agent in processing this application before the Planning and Zoning Commission and City Council of the City of Kyle:

Owner's Signature: Michael S. Owendoff

Date: Nov. 30, 2020 Michael S. Owendoff, Deputy General Counsel

Do Not Write Below This Line
Staff Will Complete

Tax Certificates: ☐ County ☐ School ☐ City

Certified List of Property Owners Within 200" ☐

All Fees Paid: ☐ Filing/Application ☐ Mail Out Costs

Attached Map of Subject Property ☐

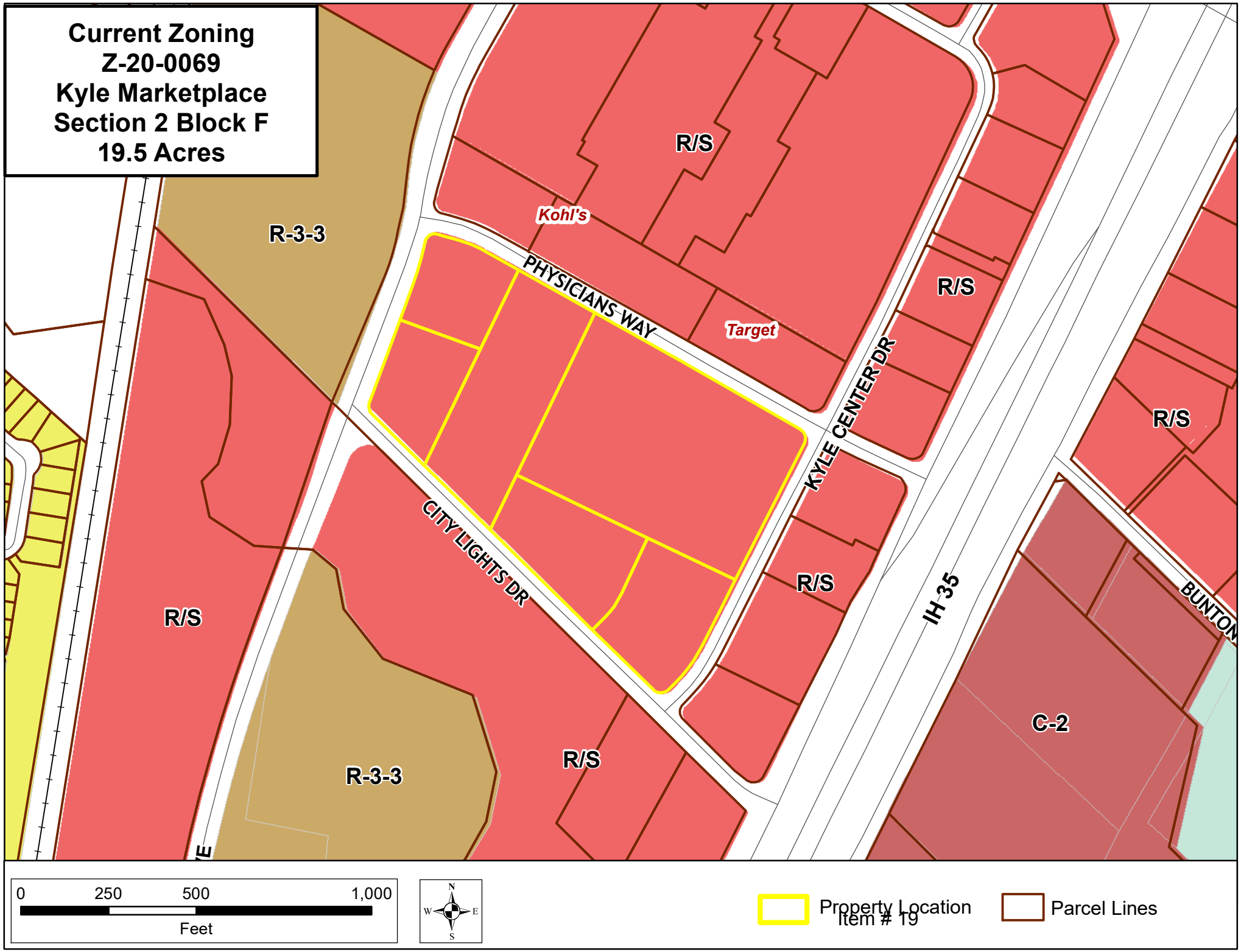
Accepted for Processing By: _____ Date: _____

Date of Public Notification in Newspaper: _____

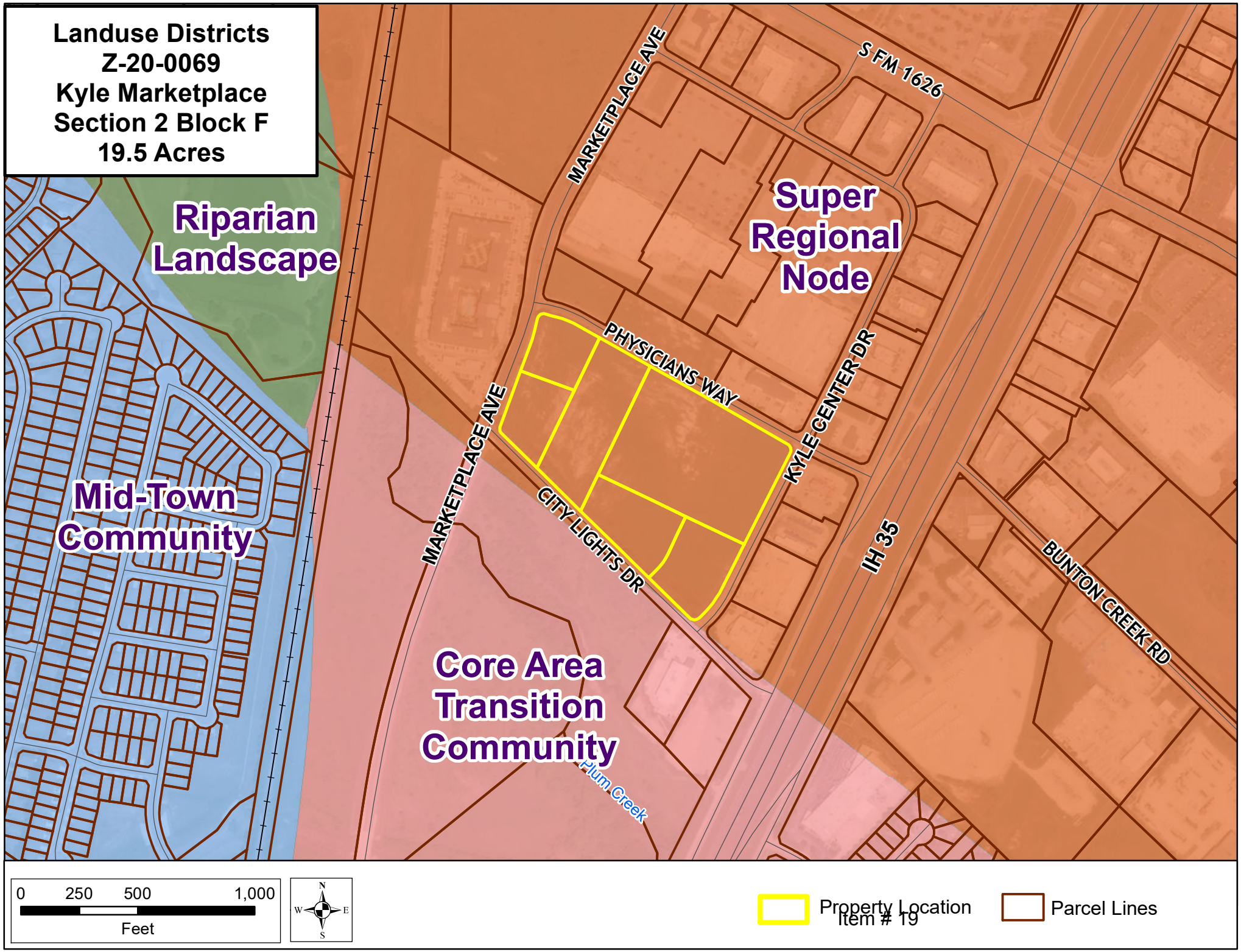
Date of Public Hearing Before Planning and Zoning Commission: _____

Date of Public Hearing Before City Council: _____

Proposed Rezoning
Kyle Marketplace Section2,
LOT 1, 1B, 1C, 2, 3, 4,
Block F
Old Bridge Trail
Kyle Crossing
Bebee Rd
122
H-E-B
WELLS FARGO
CHASE
Firestone
TACO BELL
LOWE'S
Arby's
SUPERCUTS
GameStop
210
1626
FIVE GUYS
FIREHOUSE SUBS
cicis
KOHL'S
PETCO
Chick-fil-A
Wendy's
BROADWAY BANK
IHOP
Walmart
GREATER TEXAS
Seton
Seton Pkwy
Kyle Pkwy
205
City Lights Dr
Interstate 35 Frontage Rd
Market Ave
Caraway
Fall Creek Dr
Keegans Way
Bacy Ln
Item # 19


Current Zoning
Z-20-0069
Kyle Marketplace
Section 2 Block F
19.5 Acres
R/S
Kohl's
R-3-3
PHYSICIANS WAY
Target
R/S
KYLE CENTER DR
R/S
CITY LIGHTS DR
R/S
IH 35
BUNTON
R/S
C-2
R-3-3
R/S
0
250
500
1,000
Feet
N
W
E
S
Property Location
Parcel Lines

Item # 19


Landuse Districts
Z-20-0069
Kyle Marketplace
Section 2 Block F
19.5 Acres
Riparian Landscape
Mid-Town Community
Core Area Transition Community
Super Regional Node
MARKETPLACE AVE
S FM 1626
PHYSICIANS WAY
KYLE CENTER DR
CITY LIGHTS DR
IH 35
BUNTON CREEK RD
Plum Creek
0 250 500 1,000
Feet
N
W
E
S
Property Location
Parcel Lines

CITY OF KYLE

Planning Department

100 W. Center Street, Kyle, Texas 78640 (512) 262-1010

NOTICE OF PUBLIC HEARINGS
ON A PROPOSED ZONING CHANGE (Z-20-0069)

NOTICE IS HEREBY GIVEN TO ALL INTERESTED PERSONS

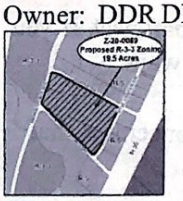
The City of Kyle shall hold a public hearing on a request by DDR DB Kyle LP (Z-20-0069) to rezone approximately 19.5 acres of land from Retail Service District 'RS' to Multi-Family Residential-3 'R-3-3' for property located at 5492 Kyle Center Drive, in Hays County, Texas.

A public hearing will be held by the Planning and Zoning Commission on **Tuesday, January 12, 2021 at 6:30 P.M.**

A public hearing will be held by the Kyle City Council on **Tuesday, January 19, 2021 at 7:00 P.M.**

This is planned as a virtual meeting taking place at **www.cityofkyle/kyletv/kyle10-live.** Should the COVID-19 disaster be repealed between the date of this notice and the date of the public hearing, the location will be at Kyle City Hall, 100 W. Center Street, Kyle, Texas, 78640. Please check the agenda for the proper location.

Owner: DDR DB Kyle LP - Agent: Robert O'Farrell, CSW Development (512) 368-7025



You may send your written comments to the Planning Department, 100 W. Center St., Kyle, Texas 78640 (attention: Zoning File # **Z-20-0069**)

Name: Ahmad H. Jefferally Address: 5537 Kyle Center Drive Kyle TX 78640

✓ I am in favor, this is why It would be a Great addition to the Area.

o I am not if favor, and this is why _____

My name is Mike Rubsam, I serve on the Kyle Ethics Commission and served 4 terms as a P&Z Commissioner for the city beginning in 2007 when Kyle was commencing it's accelerated growth spurt.

I was on the Commission when the final plat and zoning was assigned to that very large tract of land bounded by the railroad, 1626, I35 and just north of Plum Creek. We all gave it a lot of thought and decided to set it aside for future RS zone development as Kyle's population continued to grow. Well, it is still growing and that area is the logical spot for new retail business to locate.

It is true that extending Marketplace through the western region of that area did change things a bit and I'm glad to have it there but can we please confine the expansion of new apartments to the west side of Marketplace Ave. and maintain RS zoning for the property east of Marketplace?

This was the original vision for that tract of land and I see no reason to change it while our city is still growing and new retail development space will continue to be in demand. Please keep the new apartment development land west of Marketplace Avenue.

CITY OF KYLE, TEXAS

Kyle Mortgage Investors, LLC - Zoning (Z-20-0067)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas for the purpose of rezoning approximately 57-acres of land from Single Family Residential-2 'R-1-2' (42.3-acres) and Retail Service District 'RS' (15-acres) to Planned Unit District 'PUD' (Single Family Attached 'R-1-A', 54-acres) and (Retail Service District 'RS', 3.3-acres) for property located at 1821 W. RR 150, in Hays County, Texas. Kyle Mortgage Investors, LLC (Z-20-0067) *~ Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 4-2 to recommend approval of the request.

- Public Hearing

Other Information: See attachments.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Staff Memo
- Ordinance with Exhibit's A & B
- Letter of Request
- Location Map
- Current Zoning Map
- Land Use Districts Map
- Conceptual Land Plan
- PUD Development Standards
- Letter of Opposition
- Letter of Opposition 2
- Letter of Opposition 3

Petition No. Z-20-0067

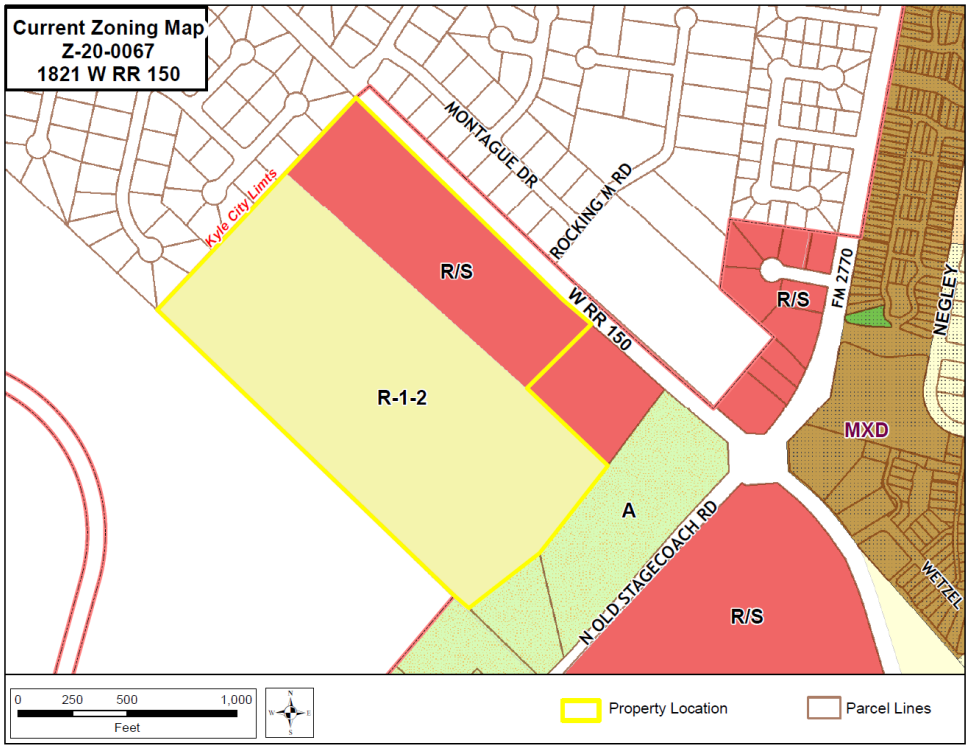
Property Location	**W FM 150, Kyle, Texas (900' NW of FM 2770 & W FM 150)**
Owner	**Kyle Mortgage Investors, LLC** **10800 Wilshire Blvd, Ste. 2101** **Los Angeles, CA 90024**
Agent	**Jeffrey S. Howard** **McLean & Howard** **901 S. MoPac Expy, Ste. 225** **Austin, TX 78746**
Request	**Rezone 41.5-Acres (R-1-2) & 14.89-Acres (RS) to 57-Acres PUD (R-1-A & RS)**

VICINITY MAP

SITE DESCRIPTION

The parcel is approximately 950-feet northwest of the FM 150 & FM 2770 intersection. The site is largely vacant, with one manufactured home on site, and split-zoned both R-1-2 (Single-Family Residential Detached 2) and RS (Retail Services). To the northwest is the Quail Meadows subdivision and to the north, across W FM 150, is the Dove Hollow subdivision. Both neighborhoods are in the City of Kyle's ETJ. To the northeast across W FM 150 is the local PEC office, with a convenience store and fuel station on the corner of FM 2770 and W FM 150. Additionally, a vacant property zoned RS sits adjacent and to the east of the 57-acre property. To the southeast and south lies property zoned "A" with single-family residences. To the west is a future phase of the Six Creeks neighborhood (ETJ).

The applicant is requesting the property to be rezoned to a Planned Unit Development (PUD) that encapsulates the RS and R-1-A zoning districts.



Existing Zoning

R-1-2 (Single Family Residential Detached 2), 41.5-Acres

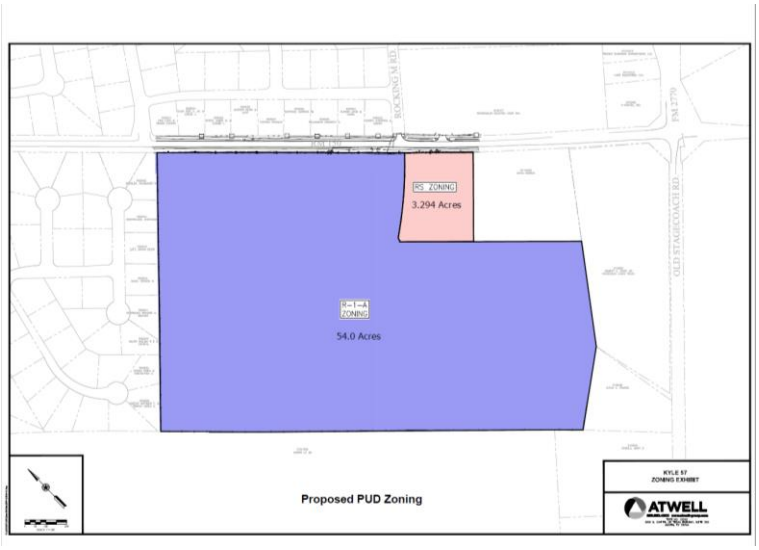
Sec. 53-89. - Purpose and permitted uses.

The single-family residential 2 district permits detached single-family dwellings with a minimum of 1,200 square feet of living area, and related accessory structures, on a minimum lot size of 6,825 square feet. There shall be no more than 4.7 houses per buildable acre.

R/S (Retail Services District) – 14.89-Acres

Sec. 53-480. - Purpose and permitted uses.

This district allows general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes, including most in-store retail sales of goods and products that do not pose a fire or health hazard to neighboring areas, e.g., clothing, prescription drugs, furniture, toys, hardware, electronics, pet supply, variety, department, video rental and antique stores, art studio or gallery, hobby shops and florist shops., and the retail sale of goods and products (in the following listed use areas) to which value has been added on site, including sales of goods and services outside of the primary structure as customary with the uses specifically listed, and the following: Any use permitted in CBD-1 or CBD-2 and RS districts as provided in section 53-1230.



Proposed Zoning

PUD (3.294-Acres RS & 54-Acres R-1-A)

R/S (Retail Services District), 3.294-Acres

Sec. 53-480. - Purpose and permitted uses.

This district allows general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes, including most in-store retail sales of goods and products that do not pose a fire or health hazard to neighboring areas, e.g., clothing, prescription drugs, furniture, toys, hardware, electronics, pet supply, variety, department, video rental and antique stores, art studio or gallery, hobby shops and florist shops., and the retail sale of goods and products (in the following listed use areas) to which value has been added on site, including sales of goods and services outside of the primary structure as customary with the uses specifically listed, and the following: Any use permitted in CBD-1 or CBD-2 and RS districts as provided in section 53-1230.

R-1-A (Single Family Attached District), 54-Acres

Sec. 53-111. - Purpose and permitted uses.
The single-family attached district R-1-A, garden home allows attached single-family structures with a minimum of 1,000 square feet of living area per dwelling unit and permitted accessory structures on a minimum lot size of 4,800 square feet. There shall be no more than 6.8 houses per buildable acre. The single-family attached residences authorized in this zoning district include those generally referred to as garden homes, paired homes, patio homes and zero lot line homes. Additionally, single family detached structures are permitted in this district as a conditional use, as provided in V.T.C.A., Local Government Code ch. 211; provided that a conditional use permit may only be approved after a public hearing is held by the city council after having received a report and recommendation from the planning and zoning commission concerning the effect of the proposed use on the adjacent and neighboring properties and neighborhoods.

CONDITIONS OF THE ZONING ORDINANCE

Sec. 53-1205 Amendments

(d)

Referral of amendment to planning and zoning commission. Upon its own motion, a request by the planning and zoning commission, or the receipt of an administratively complete petition and application to zone or rezone a lot, tract or

parcel of land, which petition and application has been examined and approved as to form by the city manager, shall be referred to the planning and zoning commission for consideration, public hearing, and recommendation to the city council. The council may not enact a rezoning amendment until the planning and zoning commission has held a public hearing and made its recommendation to the city council, or has made a final vote on the matter without obtaining a majority, on the zoning or rezoning of the property.

(e)

Action by the planning and zoning commission. The planning and zoning commission shall cause such study and review to be made as advisable and required, shall give public notice and hold a public hearing as provided by state law, and shall recommend to the council such action as the planning and zoning commission deems proper…

DIVISION 2. - PLANNED UNIT DEVELOPMENT DISTRICT (PUD)

Subdivision I. - In General

Sec. 53-699. - Purpose and objectives.

(a) The purpose and intent of the planned unit development district is to provide a flexible, alternative procedure to encourage imaginative and innovative designs for the unified development of property in the city consistent with this chapter and accepted urban planning, with overall mixed-use regulations as set forth below and in accordance with the city's comprehensive plan. The planned unit development rules are designed to:

(1) Allow development which is harmonious with nearby areas;

(2) Enhance and preserve areas which are unique or have outstanding scenic, environmental, cultural or historic significance;

(3) Provide an alternative for more efficient use of land, resulting in smaller utility networks, safer streets, more open space, and lower construction and maintenance costs;

(4) Encourage harmonious and coordinated development, considering natural features, community facilities, circulation patterns and surrounding properties and neighborhoods;

(5) Facilitate the analysis of the effect of development upon the tax base, the local economy, population, public facilities and the environment;

(6) Provide and result in an enhanced residential and/or work environment for those persons living and/or working within the district; and

(7) Require the application of professional planning and design techniques to achieve overall coordinated mixed-use developments and avoid the negative effects of piecemeal, segregated, or unplanned development.

(b) Toward these ends, rezoning of land and development under this district will be permitted only in accordance with the intent and purpose of the city's comprehensive plan and this chapter, and to that end the planned unit development plan must be prepared and approved in accordance with the provisions of this chapter.

(Ord. No. 438, § 39(a), 11-24-2003)

Sec. 53-703. - Flexible planning.

(a) When considering a planned unit development (PUD), the unique nature of each proposal for a PUD may require, under proper circumstances, the departure from the strict enforcement of certain present codes and ordinances, e.g., without limitation, the width and surfacing of streets and highways, lot size, parking standards, set backs, alleyways for public utilities, signage requirements, curbs, gutters, sidewalks and streetlights, public parks and playgrounds, drainage, school sites, storm drainage, water supply and distribution, sanitary sewers, sewage collection and treatment, single use districts, etc.

(b) Final approval of a PUD by the city council shall constitute authority and approval for such flexible planning to the extent that the PUD as approved, departs from existing codes and ordinances.

(c) The flexibility permitted for a PUD does not imply that any standard or requirement will be varied or decreased.

(Ord. No. 438, § 39(d), 11-24-2003)

Sec. 53-704. - Rules applicable.

The city council, after public hearing and proper notice to all parties affected and after recommendation from the planning and zoning commission, may attach a planned unit

development district designation to any tract of land equal to or greater than three buildable acres. Under the planned development designation the following rules apply:

(1) The approval of any proposed PUD or combination of uses proposed therein shall be subject to the discretion of the city council, and no such approval will be inferred or implied.

(2) Permitted uses are those listed under the applicable zoning districts for the base zoning to be applied to the PUD (for example, the permitted uses in a PUD proposed to be developed as CBD-2, RS, W, CM districts). In addition, a planned unit development district may be established where the principal purpose is to serve as a transitional district, or as an extension of an existing district whereby the provision of off-street parking, screening walls, fences, open space and/or planting would create a protective transition between a lesser and more restrictive district. In approving a planned unit development, additional uses may be permitted, and specific permitted uses may be prohibited from the base district.

(3) Standards required by the base zoning apply in a planned unit development except that the following regulations and standards may be varied in the adoption of the planned unit development; provided that the plan is consistent with sound urban planning and good engineering practices.

a. Front, side and rear setbacks.

b. Maximum height.

c. Maximum lot coverage.

d. Floor area ratio.

e. Off-street parking requirements.

f. Special district requirements pertaining to the base zoning.

g. Number of dwelling units per buildable acre.

h. Accessory building regulations.

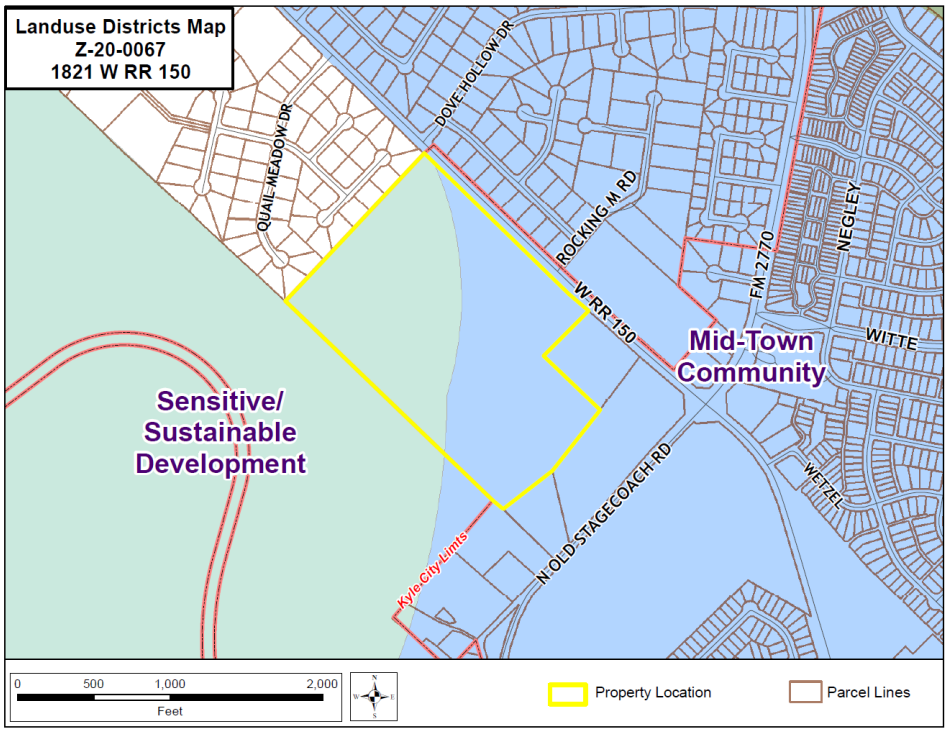
i. Sign standards.

(4) In approving a planned unit development, no standards may be modified unless such modification is expressly permitted by this chapter, and in no case may standards be modified when such modifications are prohibited by this chapter.

(5) In approving a planned unit development, the city council may require additional standards deemed necessary to create a reasonable transition to, and protection of, adjacent property and public areas, including but not limited to, light and air, orientation, type and manner of construction, setbacks, lighting, landscaping, management associations, open space, and screening.

(6) The planning and zoning commission and city council, in approving modifications to standards and regulations, shall be guided by the purpose intended by the base zoning and general intent of this chapter.

(Ord. No. 438, § 39(e), 11-24-2003)



COMPREHENSIVE PLAN TEXT

The subject site is located in the "Mid-Town Community District" and the "Sensitive/Sustainable Development" District.

Mid-Town Community District

Recommended: R-1-1, R-1-2, R-1-3**,** NC
Conditional: E, **R-1-A**, R-1-T, R-3-1, R-3-2, CC, **R/S**, MXD, O/I

Sensitive/Sustainable Development District

Recommended: A, UE
Conditional: R-1-1, R-1-2, **R-1-A**, R-2, R-1-T, R-3-3, T/U, NC, **RS**

MID-TOWN COMMUNITY LAND USE DISTRICT

Character: The Mid-Town District contains sites of recent residential development in Kyle and will continue to predominantly feature residential uses. Those residential uses in this District are organized around the curvilinear streets of suburban neighborhood design, rather than the regular, rectilinear grid that characterizes the Old Town District. The Plum Creek waterway flows through and adjacent to the Mid-Town District, offering opportunities for recreation and a responsibility for environmental conservation. This District has a neighborhood-oriented form built around shared spaces such as streets, yards, porches and common areas. Neighborhood legibility and continuity is enhanced through these shared spaces. Distinctive landscape forms, including creekways, vistas, and rolling hills, give identity to this District and should be preserved, protected, and incorporated into development plans.

Intent: The purpose of the Mid-Town District is to maximize the value capture of new residential development in Kyle. This District enjoys unusual proximity to amenities, such as open space, Downtown, commercial nodes, and transit options. The area is therefore well-positioned to define an economic and lifestyle pattern that is unique to Kyle. New development should accommodate low- to mid-density detached residential uses within the unique landscape forms that are present in the District. Higher density residential, attached residential, and non-residential projects like employment and retail sales should be considered based on their proximity to higher classification streets, higher capacity water and waste water availability, and likelihood of compatibility of adjacent uses. Legibility of neighborhood identity, definition, and transportation should be improved

within the Mid-Town District through such elements as trails, sidewalks, signage, and interconnected shared spaces.

SENSITIVE/SUSTAINABLE DEVELOPMENT DISTRICT

Character: Although the Sensitive/Sustainable Development District is currently lacking in roadway connections and therefore somewhat isolated from the rest of Kyle, the newly planned RR 150 bypass will open up a new corridor through this region, as well as new roads extending from the southwest to the northeast, around which natural residential expansion into the hill country will continue. The Sensitive/Sustainable Development District should be characterized primarily by Low-Impact Development. To this end, development and build forms must minimize visual intrusion into the landscape, as well as environmental impact, similar to the Ranch Landscape development pattern. Natural landscape elements should be incorporated into site design and shared/common spaces. Cluster development, conservation subdivisions, and certified resilient building standards are ideal and should be encouraged in this District. These types of development will preserve natural features and amenities while still absorbing an appropriate amount of development pressure.

Intent: The purpose of the Sensitive/Sustainable Development District, is to manage and direct growth toward forms of development that recognize the inherent natural systems and preserve the existing environmental assets. The two districts, bifurcated by the Ranch and Riparian landscapes will develop with low density residential, and light service and retail master planned communities, located along the new RR 150 bypass (which will extend from Arroyo Ranch to the west side of the Yarrington Road interchange with I-35). Suitably scaled retail and commercial opportunities should be encouraged for the provision of goods and services to residents, to keep that portion of the population from having to make cross-region trips for provisions. Development should be directed towards unique, creative, and site-specific forms that will protect the natural landscapes and create a beneficial community for local residents, and low impact development practices should be encouraged. Although a broad range of uses could be manifested in this District, most of the uses are conditional, affording the City opportunity to enforce sustainable development practices.

ANALYSIS

The 57-acre site sits approximately 900-feet northwest of the intersection of W FM 150 and FM 2770. The site is near what is the existing northwest edge of the City of Kyle's corporate limits. Most of this area is low density, rural, single-family residential, serviced by septic tank facilities, with the occasional commercial facility. To the southeast is

higher density commercial and residential (Plum Creek), made possible due to wastewater availability.

The applicant for the 57-acre parcel is requesting a PUD (Planned Unit Development) zoning district. The PUD district will incorporate both the R-1-A and RS zoning districts. Both the R-1-A and RS zoning districts are only recommended conditionally in both the Mid-Town and Sensitive/Sustainable land use districts, as a majority of the uses existing/expected are single family residential. Therefore it would be expected that community design should condition the development patterns. Secondarily, smaller scale retail can be considered, especially those uses servicing the surrounding residential uses. However, it needs to be designed in a manner to "mesh" with the adjacent residential land uses.

Per the City of Kyle's PUD zoning requirements, greater attention is paid to the unified design of a project, and a mix of uses/zoning districts are encouraged. Concurrent variances are allowed, because they're sometimes required to help transition types of land uses and design standards (for a unified result). These variances allowed upon City Council approval (See the "PUD Development Standards" document).

Currently, the site is zoned for 14.89-acres of RS zoning, and 41.5-acres of R-1-2 zoning. The applicant will be reducing the commercial portion to 3.294-acres (RS) and rezoning the remaining 54-acres to R-1-A.

Per the Comprehensive Plan, the site is in both the Mid-Town Community and Sensitive/Sustainable Development land use districts. The R-1-A and RS zoning districts are to be considered "conditionally" in each of these land use districts. This typically means that sufficient/adequate infrastructure must exist or be installed to be allowed. In the case of the proposed Kyle 57 PUD, a significant portion of the site is within the Sensitive/Sustainable Development district. This emphasizes and encourages unique, natural design for the project (yet the City of Kyle does not have "green building" requirements in the development code). Additionally, if any part of the property intersects with the Edward's Aquifer recharge or contributing zone, the developer will be required to design the project to state code for water quality. Last, in an effort to properly review/protect existing resources on site, the City will require coordination between the developer and the State of Texas, relating to appropriate permits for a potential, pre-existing well site and any archeological remains.

Currently, wastewater is unavailable to the tract. However, an agreement exists between the Blanco River Ranch, this Kyle 57 project, Anthem Development, among

other entities. The agreement will help provide much needed water service improvements and wastewater availability to this portion of Kyle.

The attached "PUD Development Standards" document is a tool that allows flexibility for the project, primarily where the City of Kyle's development code falls short or doesn't consider certain aspects. The document is a collaboration between city staff and the developer, and as such is presented to improve upon the foundation of the City's development code. With exception of the development standards, all requirements in the City of Kyle development code, must be implemented. Per Sec. 53-699, Sec. 53-703 and Sec. 53-704, concurrent variances are allowed if approved by Council.

Within the "PUD Development Standards" a significant portion of the modifications to the development code are related to building setbacks and garage placement. The City of Kyle's residential code places emphasis on reducing homes that are dominated by garages (architecturally). The idea and requirement is to design homes that look like a house and not a garage with a front door attached to the side. Examples will include garages facing alleys, and forward-facing garages, but placed in the backyard.

The remainder of the modifications relate to subdivision code requirements (alley pavement width, parkland dedication & maintenance and timing of construction. Following approval of the zoning, standard subdivision review and approval processes will be followed. Additionally, the amenities of the project will be subject to the public hearing aspect as required in the Residential Style Guide.

PLANNING COMMISSION

At their regular voting meeting on January 12, 2021, the Planning Commission heard this application and held a Public Hearing to solicit comments from the public. At the Public Hearing, adjacent property owners submitted letters both in opposition, and in

the case of Mr. Greene, a letter that sought some refinements to the plans presented. Also, Mrs. Kate Johnson of the Hays County Historical Society spoke against the proposal. After the Public Hearing ended, there was brief conversation among the commissioners about the proposal, with some discussion about gross residential density, and the location of the project as it relates to the city's limits. Ultimately, the Commission voted 4-2 to **recommend approval** of the PUD, with Commissioner Voss and Chairperson Christie in dissent.

RECOMMENDATION

City staff has reviewed the application and believes the proposed PUD district is appropriate for the 57-acre site. City staff asks the Mayor & Council to **vote to approve** the zoning district, as presented.

Attachments

- Letter of Explanation
- Location map
- Surrounding Zoning Map
- Land Use Districts Map
- Conceptual Land Plan
- PUD Development Standards

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 57 ACRES OF LAND FROM SINGLE FAMILY RESIDENTIAL-2 'R-1-2' (42.3-ACRES) AND RETAIL SERVICE DISTRICT 'RS' (15-ACRES) TO PLANNED UNIT DEVELOPMENT 'PUD' (SINGLE FAMILY ATTACHED 'R-1-A', 54-ACRES) AND (RETAIL SERVICE DISTRICT 'RS', 3.3-ACRES) FOR PROPERTY LOCATED AT 1821 W. RR 150, IN HAYS COUNTY, TEXAS. (KYLE MORTAGE INVESTORS, LLC – Z-20-0067); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the zoning district map of the City of Kyle adopted in Chapter 53 (Zoning) be and the same is hereby amended to rezone approximately 57 acres of land from Single Family Residential-2 'R-1-2' (42.3-acres) and Retail Service District 'RS' (15-acres) to Planned Unit Development PUD' (Single Family Attached 'R-1-A', 54-acres) and (Retail Service District 'RS', 3.3-acres), as shown on the property location map labeled Exhibit B.

SECTION 2. That the City Secretary is hereby authorized and directed to designate the tract of land zoned herein as such on the zoning district map of the City of Kyle and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2021, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the _____day of _____, 2021, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____day of _____, 2021.

_____
Travis Mitchell, Mayor

ATTEST:

_____
Jennifer Holm, City Secretary

57.260 Acres
Samuel Pharass Sur., A-360
Kyle, Hays County, Texas

EXHIBIT A

LAI Job No 020607
FN0573R1(wdo)
Page 1 of 4

FIELD NOTES DESCRIPTION

DESCRIPTION OF 57.260 ACRES OF LAND IN THE SAMUEL PHARASS SURVEY, A-360, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT CERTAIN CALLED 62.10 ACRE TRACT DESCRIBED IN THE DEED DATED SEPTEMBER 2, 2003 FROM MIKE GOSSETT, SPECIAL ADMINISTRATOR OF THE ESTATE OF AUGUST HESSLER, JR. TO S.T. KYLE, LTD, OF RECORD IN VOLUME 2305, PAGE 674, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, SAID 62.10 ACRE TRACT BEING A PORTION OF THAT CERTAIN CALLED 79.5 ACRE TRACT OF LAND DESCRIBED IN A DEED FILED FOR RECORD JUNE 19, 1914 FROM MRS. LEOMA STEPHENSON NEE COCREHAM, ET AL TO AUGUST HESSLER OF RECORD IN VOLUME 66, PAGE 129, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 57.260 ACRE TRACT OF LAND, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a Texas Department of Transportation (TxDOT) Type I concrete right-of-way monument found in the southeast right-of-way line of FM Highway No. 150, same being the northwest line of Lot 53, Quail Meadows Subdivision, a subdivision of record in Cabinet/Volume 7, Page 47, Plat Records of Hays County, Texas, said monument being 40-feet left of Engineer's centerline station 320+02.6;

THENCE S 46° 07' 22" E, with the southeast right-of-way line of said F.M. Highway No. 150, same being the northwest line of said Lots 53 and 52, said Quail Meadow Subdivision, a distance of 115.15 feet to an iron rod with aluminum cap stamped "PRO-TECH" found for the north corner and POINT OF BEGINNING of the tract described herein, same being the north corner of said 62.10 acre tract, being in the western line of said 79.5 acre tract, being the southwestern corner of that certain 2.16 acre tract of land described in the Right-of-Way Deed filed for record February 22, 1952 from Gus Hessler to the State of Texas recorded in Volume 152, Page 236, Deed Records of Hays County, Texas, and being in the approximate common line of the said Samuel Pharass Survey and the Caleb W. Baker Survey;

THENCE, continuing with the southern right-of-way line of said F.M. Highway No. 150, same being the southern line of said 2.16 acre tract, being the northern line of said 62.10 acre tract, and the northern line of the tract described herein, the following two (2) courses and distances:

1. S 46° 07' 11" E a distance of 1,415.29 feet to a TxDOT Type I concrete right-of-way monument found at a point of curvature being 40-ft right of Engineer's centerline station 335+33.1, and

2. with the arc of a curve to the left, having a radius of 5,769.65 feet, an arc distance of 95.69 feet and a chord bearing S 46° 34' 52" E a distance of 95.68 feet to a ½-inch iron rod with plastic cap stamped "LAI" set for the most northern east corner of the tract described herein, same being the north corner of a 4.847 acre tract remaining from said 62.10 acre tract, from which a TxDOT Type I concrete right-of-way monument found bears with the arc of said curve to the left, having a radius of 5,769.65 feet, an arc distance of 258.58 feet and a chord bearing S 48° 20' 25" E a distance of 258.56 feet

EXHIBIT A

57.260 Acres
Samuel Pharass Sur., A-360
Kyle, Hays County, Texas

LAI Job No. 020607
FN0573R1(wdo)
Page 2 of 4

THENCE S 43° 40' 14" W, leaving the southern right-of-way line of said F.M. Highway No. 150 and crossing said 62.10 acre tract with the north line of said 4.847 acre remainder tract, a distance of 425.24 feet to a ½-inch iron rod with plastic cap stamped "LAI" set for a re-entrant corner of the tract described herein, same the being west corner of said 4.847 acre tract;

THENCE S 46° 19' 46" E, continuing across said 62.10 acre tract with the south line of said 4.847 acre tract, a distance of 516.17 feet to a ½-inch iron rod with plastic cap stamped "LAI" set in the southeast line of said 62.10 acre tract, same being the northwest line of that certain 10.00 acre tract called "Exhibit A" vested into Robert C. Edge and described in the Amended Final Decree Confirming Commissioners' Report and Partitioning Property dated November 14, 2001, being Cause No. 7405 in the Probate Court of Hays County, Texas and filed for record in Volume 2305, Page 645, Official Public Records of Hays County, Texas, for the south corner of said 4.847 acre tract and being the most southern east corner of the tract described herein, from which a ½-inch iron rod found in the southern right-of-way line of said F.M. Highway No. 150 for the east corner of said 62.10 acre tract, same being the north corner of said 10.00 acre tract bears N 35° 58' 25" E a distance of 449.80 feet;

THENCE S 35° 58' 25" W, with the eastern line of said 62.10 acre tract, same being the western line of said 10.00 acre tract, a distance of 507.33 feet to a fence corner post found for an angle point in the eastern line of said 62.10 acre tract and of the tract described herein, same being the west corner of said 10.00 acre tract and being the north corner of that certain called 2.62 acre tract described in a deed dated August 19, 1971, from Gus Hessler, Jr., and Edwards Hessler to Alton E. Franke and Deanna K. Franke of record in Volume 243, Page 347, Deed Records of Hays County, Texas;

THENCE S 52° 54' 07" W, with the eastern line of said 62.10 acre tract, same being the western line of said 2.62 acre tract, a distance of 402.46 feet to a fence corner post found for the south corner of said 62.10 acre tract and of the tract described herein, same being the west corner of said 2.62 acre tract, and being in the north line of a called 1,938.67 acre tract described in the deed dated August 1, 1960, from A.W. Gregg and wife Robie Gregg, to Ky-Tex Properties, Inc. of record in Volume 185, Page 391, Deed Records of Hays County, Texas;

THENCE with the fenced southwest line of said 62.10 acre tract, same being the northeast line of said 1,938.67 acre tract, the following six (6) courses and distances:

1. N 45° 45' 15" W a distance of 134.06 feet to a fence post found for an angle point,
2. N 46° 24' 58" W a distance of 710.71 feet to a 10-in live oak tree for an angle point,
3. N 47° 04' 36" W a distance of 179.70 feet to a fence post found for an angle point,
4. N 47° 09' 23" W a distance of 126.39 feet to a fence post found for an angle point,
5. N 46° 10' 02" W a distance of 430.76 feet to a fence post found for an angle point, and
6. N 45° 58' 42" W a distance of 436.29 feet to a ½-inch iron rod found near a fence corner post at the western base of an old rock wall for the west corner of said 62.10 acre tract and of the tract described herein, same being the south corner of Lots 35 and 36, said Quail Meadows Subdivision;

EXHIBIT A

57.260 Acres
Samuel Pharass Sur., A-360
Kyle, Hays County, Texas

LAI Job No. 020607
FN0573R1(wdo)
Page 3 of 4

THENCE with the western line of said 62.10 acre tract and of the tract described herein, same being the southeastern line of said Quail Meadows Subdivision, said line marked by an old fence, the following three (3) courses and distances:

1. N 43° 14' 24" E a distance of 609.84 feet to a fence post found for an angle point,
2. N 42° 48' 32" E a distance of 252.56 feet to a fence post found for an angle point, and
3. N 43° 08' 51" E a distance of 467.67 feet to the POINT OF BEGINNING and containing 57.260 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, NAD 83, South Central Zone, Grid.

LAI WORD FILE: FN0573R1 (wdo)

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS
COUNTY OF TRAVIS §

That I, William D. O'Hara, a Registered Professional Land Surveyor, do hereby certify that the above description and the accompanying sketch is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during the months of June and July 2002, and March 2005, under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas on this 7th of April 2005 A.D.

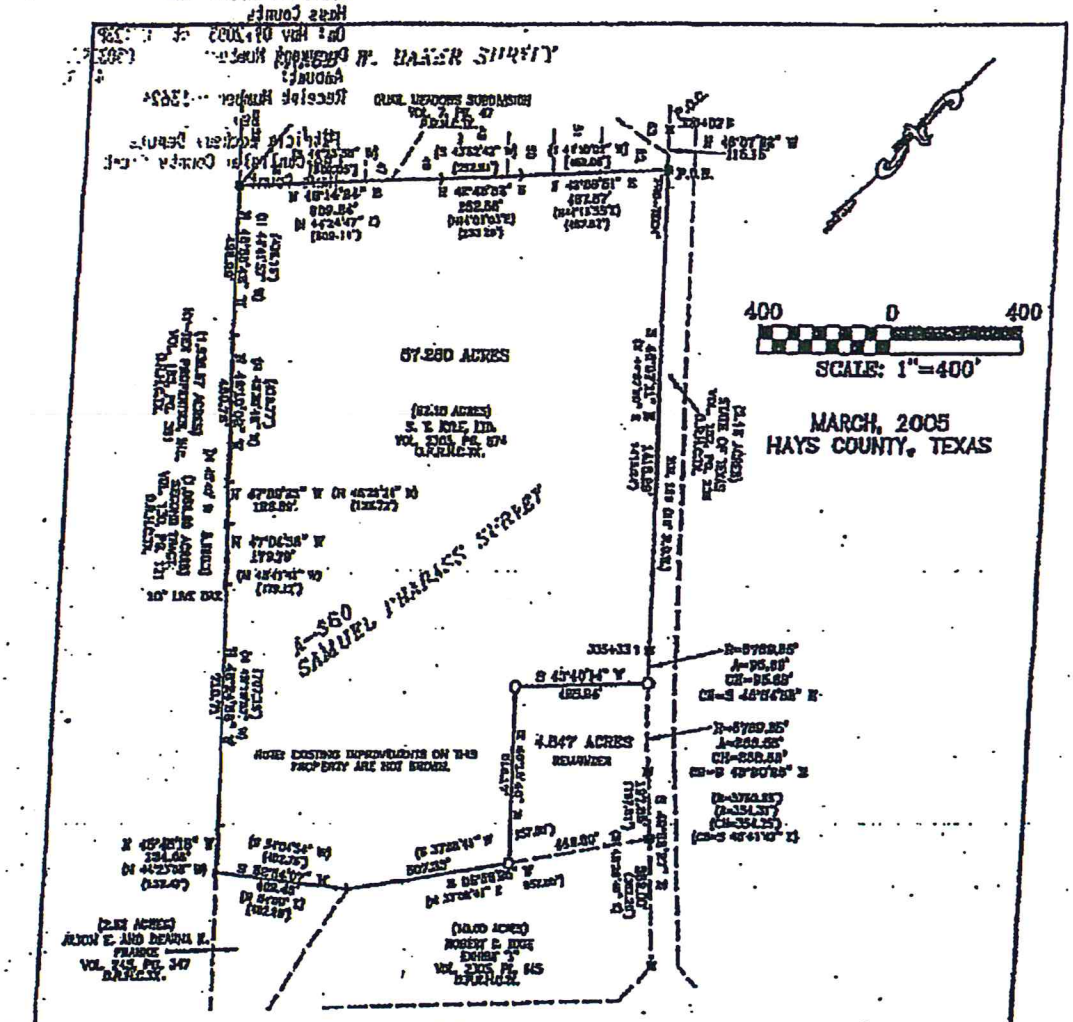
Loomis Austin, Inc.
Austin, Texas 78746

STATE OF TEXAS REGISTERED WILLIAM D. O'HARA 4878 PROFESSIONAL LAND SURVEYOR

William D. O'Hara
William D. O'Hara
Registered Professional Land Surveyor
No. 4878, State of Texas

H:\Survey_FieldNotes\FN-0500s\FN0573R1(wdo).doc

EXHIBIT A



LEGEND

⊕	1/2" IRON ROD FOUND	P.O.C.	POINT OF COMMENCING
▲	FENCE POST FOUND (UNLESS OTHERWISE NOTED)	P.O.B.	POINT OF BEGINNING
■	CONC. MONUMENT FOUND	D.R.H.C.TX.	DEED RECORDS OF HAYS COUNTY, TEXAS
○	1/2" IRON ROD W/ PLASTIC CAP STAMPED "LAI" SET	P.R.H.C.TX.	PLAT RECORDS OF HAYS COUNTY, TEXAS
( )	RECORD INFORMATION (PER VOL.2305, PG.574, O.P.R.H.C.TX.)	O.P.R.H.C.TX.	OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
[ ]	ADJOINER INFORMATION		

PAGE 4 OF 4

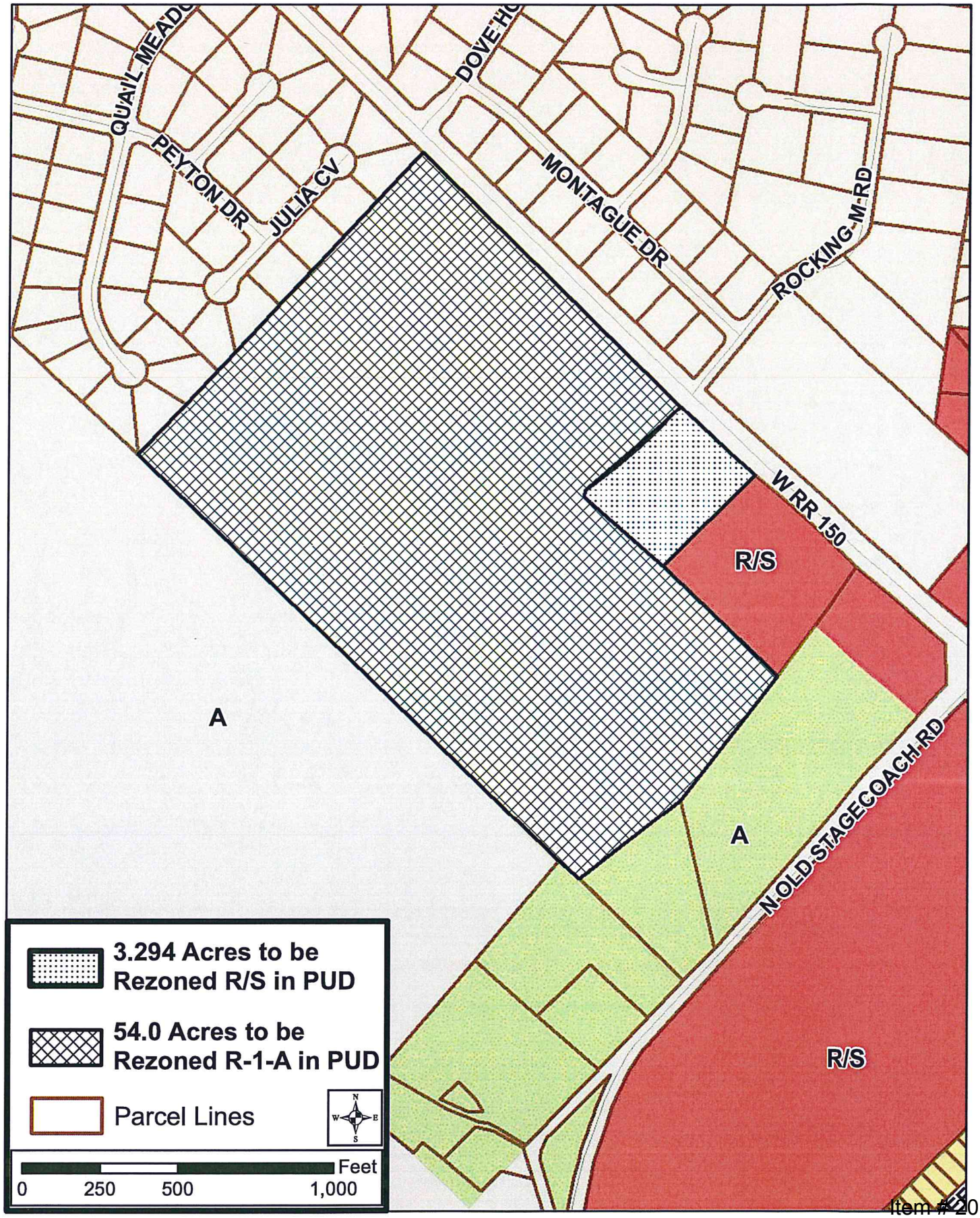
LOOMIS AUSTIN
LAND • WATER • PROPERTY
3103 Bee Caves Road, Suite 222, Austin Texas 78746
Phone (512) 327-1180 Fax (512) 327-4062 www.loomisaustin.com

SKETCH TO ACCOMPANY
FIELD NOTES
FN0578

FILE: N:\Survey\6246_SPearsonSur_Kyle\Work\sketch-4of4
DATE: Mar 23,2005-3:15pm

Exhibit B

Z-20-0067 1915 W RR 150 57.294 Acres



M&H
McLEAN & HOWARD, L.L.P.
Real Property Lawyers

Barton Oaks Plaza, Building II
901 South MoPac Expy | Ste 225
Austin, Texas 78746
phone 512.328.2008
fax 512.328.2409
www.mcleanhowardlaw.com

November 18, 2020

Howard J. Koontz, Director
Planning Department
100 W. Center Street
Kyle, Texas 78640

via online submittal

RE: Zoning Request – Kyle 57 PUD

Dear Mr. Koontz:

As agent for Kyle Mortgage Investors, LLC (the "Applicant"), owner of approximately 57.29 acres of land, more or less, located at West FM 150 and Old Stagecoach Road, Hays County, Texas (the "Property"), we are hereby submitting an application to request a zoning change. The Owner intends to develop the Property as a mixed use project consisting of single-family residential, open space and trails, and commercial uses (the "Project").

To successfully construct this unique and harmonious Project, greater flexibility is required than would be permitted under the standard zoning categories. Therefore, pursuant to the Chapter 53, Article III, Division 2 of the City of Kyle (the "City") Code of Ordinances (the "Code"), the Owner requests that the zoning for the property be changed from Single-Family Residential 2 District 'R-1-2' and Retail and Services District 'RS' to Planned Unit Development 'PUD', to be known as the "Kyle 57 PUD". Development within the Kyle 57 PUD shall be subject to the use and development regulations attached to this letter.

We look forward to working with the City and all applicable stakeholders on this zoning case. If you have any questions or comments, please do not hesitate to contact me at 512-328-2008.

Sincerely,

Jeffrey S. Howard
McLean & Howard

Kyle 57 PUD
Development Standards

Section 1. General Provisions

(A) **Project Described**. Kyle 57 PUD shall include compatible residential and commercial uses as more particularly depicted on **Exhibit B** (the "Concept Plan"). The Property shall be development as a single family residential community with over 11 acres of open space, trail system and public park that includes a pool and amenity site. Commercial endeavors will serve and provide convenience to the residential tract and general public. The remainder will be necessary infrastructure and right of way.

(B) **Project Enhancements**. The Developer will provide the following improvements within the project:

(1) Entry improvements including an entry monument constructed from durable materials such as concrete, metal, and masonry, with lighting and landscaping, a landscaped median, a landscaped roundabout, and street trees.

(2) A landscaped frontage along FM 150 including a fence constructed from masonry or concrete, trees, and other landscaping.

(3) Landscape improvements in common areas throughout the community including trails, open lawns, natural areas, seating areas, playscape and a dog park.

(4) A private amenity site including a swimming pool and restrooms.

(5) All landscape improvements will include permanent irrigation.

(C) **Applicability**. Development of and uses within the Kyle 57 PUD shall conform to the limitations and conditions set forth herein. If the regulations of the Kyle 57 PUD and the attached exhibits conflict with the City Code, the regulations set forth herein shall control. Except as otherwise specifically modified by the Kyle 57 PUD, all other rules, regulations, and ordinances of the City in effect at the time of permit application apply to development within the Kyle 57 PUD.

Section 2. Residential Tract

(A) The use and development of the Residential Tract, as more particularly depicted on Concept Plan, shall be subject to the use and development standards of Single-Family Attached District 'R-1-A' as the base zoning district, except as modified below.

(1) Detached single-family structures are permitted.

(2) The minimum residential lot width as measured at the front yard setback shall be forty feet (40') and the minimum lot size shall be four thousand four hundred (4,400) square feet.

(3) A minimum of ten percent (10%) of the residential lots with detached single-family structures shall be at least sixty feet (60') wide as measured at the front yard setback.

(4) A minimum of twenty percent (20%) of the residential lots with detached single-family structures shall be between fifty feet (50') and sixty feet (60') wide as measured at the front yard setback.

(5) The minimum front setback for lots under sixty feet (60') wide shall be ten feet (10') and municipal utility easements located on front lot lines shall be a minimum of ten feet (10') wide.

(6) The minimum front setback for lots sixty feet (60') wide or greater shall be twenty feet (20').

(7) The minimum side setback for lots under sixty feet (60') wide with detached single-family structures shall be five feet (5') and municipal utility easements located on side lot lines shall be a minimum of five feet (5') wide.

(8) The minimum rear setback for residential lots with front-loaded detached garages shall be five feet (5'). The minimum rear setback for all other residential lots shall be ten feet (10').

(9) The minimum side setback for detached garages constructed on residential lots shall be zero feet (0'). Municipal utility easements shall not be required on side lot lines for lots on which a detached rear garage will be constructed. Detached single-family living structures must comply with Section 2(A)(7) above.

(10) The minimum size of garages shall be four hundred (400) square feet. No additional on-site storage (attached to house or detached) shall be required.

(11) The overhang of an eave of a residential building is permitted to encroach within the setbacks and municipal utility easements.

(12) The minimum parking required for each residential dwelling unit is two (2) spaces. No additional spaces shall be required for dwelling units with more than two bedrooms.

(B) The same house plan may be built on every other detached single-family residential lot on either side of the street so long as the house is differentiated by elevation, material and colors. An elevation may only be used once per five (5) consecutive houses. Developer shall be responsible for tracking and ensuring the arrangement of house plans comply, and in the event the house plan configuration is not in compliance, Developer will be solely responsible for any changes necessary to achieve compliance.

(C) Residential lots may be accessed from (1) a public right of way or (2) by an alley only. Blocks with lots that are accessed only by an alley shall contain no more than forty (40) such lots on a single block face and shall be of such configuration that no portion of any building on any such lot will be more than one thousand fifty (1,050) feet from the right-of-way of an internal street to which the alley is connected.

(D) Lots under sixty feet (60') wide shall have either:

(1) Rear-loaded garages with access from a shared alley,

(2) Detached rear garages with access from a fourteen foot (14') wide shared-use driveway, measured from edge of pavement to edge of pavement, on alternating lot lines, or

(3) Side access if on a corner lot.

(E) Detached rear garages may be built with a shared wall, so long as it is built to a two-hour fire rating standard.

Section 3. Commercial Tract

The use and development of the Commercial Tract, as more particularly depicted on the Concept Plan, shall be subject to the use and development standards of Retail and Services District 'RS' as the base zoning district.

Section 4. Parkland and Open Space

(A) Owner shall develop a privately maintained public open space and trail system to be dedicated to the City ("Public Parkland"). Open space less than five (5) contiguous acres may be dedicated to the City without a variance. The Public Parkland shall be maintained by a property owners' association.

(B) The Public Parkland is an eligible improvement under a Public Improvement District.

Section 5. Subdivision Infrastructure

(A) The maximum number of living units equivalent (LUEs) for the Residential and Commercial Tracts is two hundred and fifty (250) LUEs.

(B) Except as otherwise provided below for the Kyle 57 PUD, all streets, roads, sidewalks, drainage, water, and wastewater lines and facilities and all other infrastructure within the Property (the "Subdivision Infrastructure") will be constructed by Owner to meet City Code.

(C) The width of the alley right of way shall be twenty feet (20'). The minimum pavement width for alleys, measured from edge of pavement to edge of pavement, shall be sixteen feet (16').

(D) The City shall coordinate with adjacent landowners to ensure that internal streets that are designed to access adjacent properties are connected in a manner that creates a safe and City Code compliant street network.

(E) The City shall accept completed Subdivision Infrastructure for ownership, operation, and maintenance in compliance with City Code. The City shall not unreasonably deny, delay, or condition its acceptance of the Subdivision Infrastructure.

Section 6. Landscaping

(A) Except as provided herein, all entry collector and internal streets will be planted with street trees at an average spacing of fifty feet (50') on center.

(1) Street trees will not be required in locations in which they would conflict with the canopies of existing shade trees. Street trees shall have a minimum three-inch (3") caliper, measured six inches (6") above the root ball.

(2) In order to maximize the preservation of existing trees and to allow for the creation of a more natural, park-like environment along Parkway Street, as depicted on the Concept Plan, the placing of street trees shall not be required along Parkway Street. No formal street design for tree placement will be required and street trees may be planted along Parkway Street to supplement existing trees as the Developer deems appropriate.

(B) Street trees planted on or immediately adjacent to a residential lot shall also count toward the minimum (2) trees required for that lot under Section 54-5 of the City Code. Any other street trees required pursuant to this section of the Kyle 57 PUD shall also count fully as replacement trees under Section 54-12 of the City Code. Under no circumstance shall any provision of this Section reduce the total number of trees that would otherwise be required under Sections 54-5 and 54-12 of the City Code. The street tree requirement continues to apply even after all other requirements of Section 54-5 and 54-12 of the City Code have been satisfied.

Section 7. Permits and Approvals

(A) Mass grading of the Property may begin before final approval of the plats is received from the City.

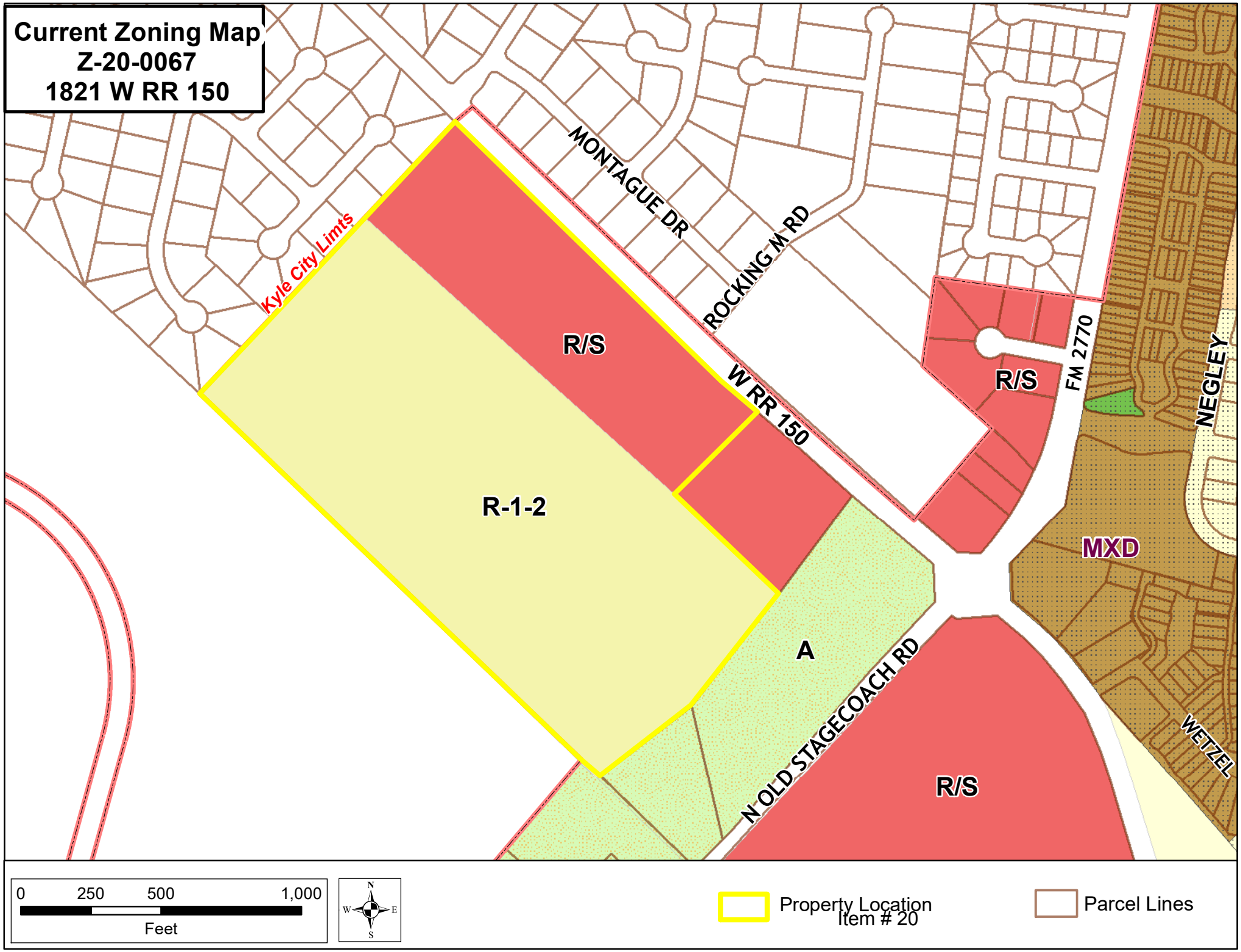
(B) Development of the Residential Tract shall utilize the City's process which allows for vertical construction to commence once asphalt for street improvements is poured and properly cured and before formal acceptance is received.

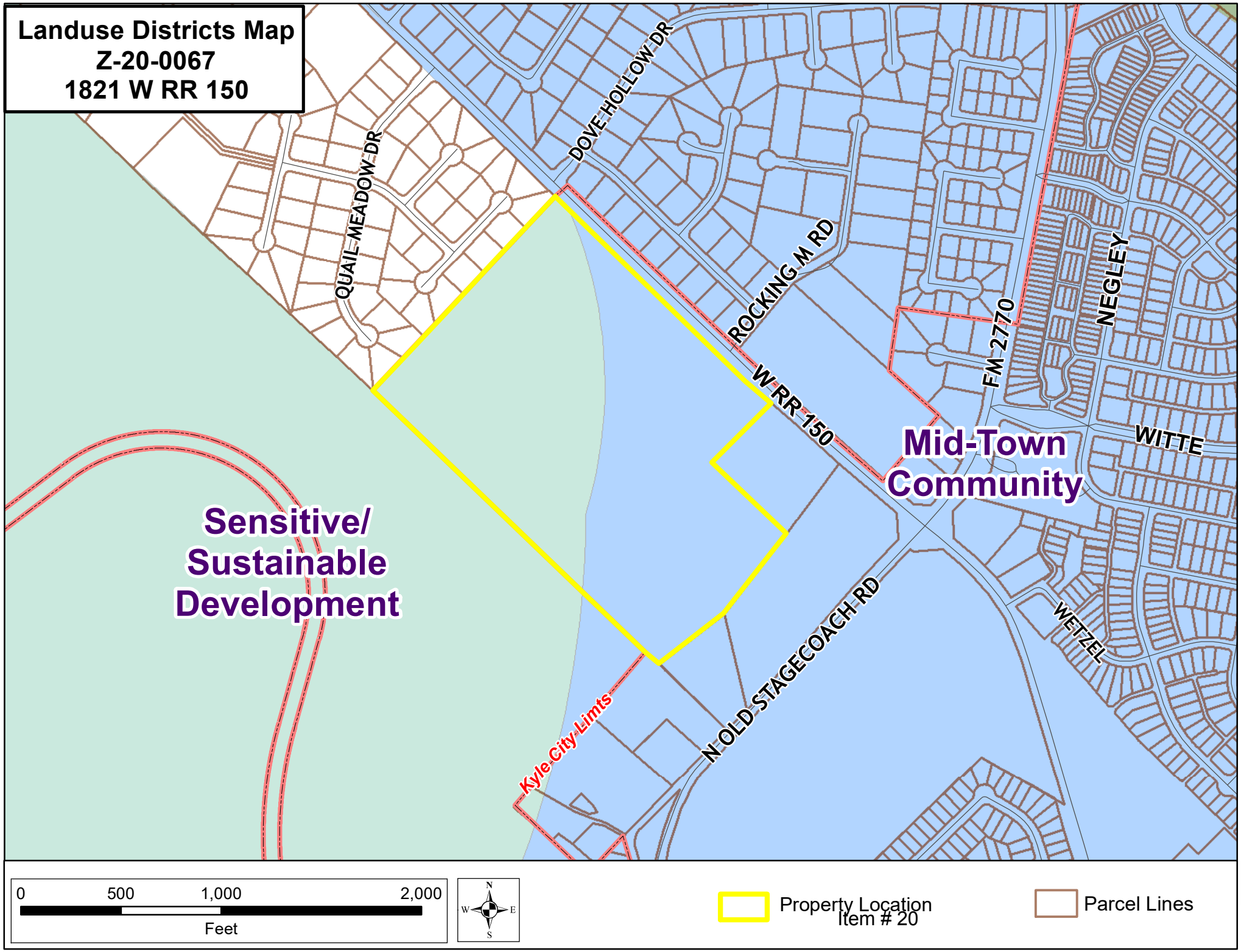
(C) Construction of model homes may commence before water and wastewater infrastructure is formally accepted by the City. However, in no event shall the model homes be connected to City water and wastewater facilities before the infrastructure is properly constructed and fully functional.

(D) Development of the Residential Tract shall utilize the City's alterative process for review and approval of required development permit applications which allows development permit applications to run concurrently.

Project Location Map
Z-20-0067
57.3 Acres
1821 W RR 150
QUAIL MEADOW DR
DOVE HOLLOW DR
ROCKING M RD
W RR 150
FM 2770
NEGLEY
FAIRWAY
WITTE
Plum Creek Subdivision
WETZEL
N OLD STAGECOACH RD
Kyle City Limts
MATHER
Hometown Kyle
0
550
1,100
2,200
Feet
N
W
E
S
Property Location
Parcel Lines

Item # 20


Current Zoning Map
Z-20-0067
1821 W RR 150
Kyle City Limts
MONTAGUE DR
ROCKING M RD
W RR 150
FM 2770
NEGLEY
WETZEL
N OLD STAGECOACH RD
R/S
R-1-2
A
MXD
0
250
500
1,000
Feet
N
W
E
S
Property Location
Item # 20
Parcel Lines


Landuse Districts Map
Z-20-0067
1821 W RR 150
DOVE HOLLOW DR
QUAIL MEADOW DR
ROCKING M RD
W RR 150
FM 2770
NEGLEY
WITTE
WETZEL
N OLD STAGECOACH RD
Kyle City Limts
Mid-Town Community
Sensitive/ Sustainable Development
0
500
1,000
2,000
Feet
N
W
E
S
Property Location
Parcel Lines

Item # 20

PAGE 1 of 2

DATE 06/09/2020

TITLE Conceptual Site Plan

PROJECT Kyle 57

Rialto Studio, Inc.
7719 Wood Hollow Dr. Suite 240
www.rialtostudio.com

RIALTO STUDIO
LANDSCAPE ARCHITECTURE

M&H
McLEAN & HOWARD, L.L.P.
Real Property Lawyers

Barton Oaks Plaza, Building II
901 South MoPac Expy | Ste 225
Austin, Texas 78746
phone 512.328.2008
fax 512.328.2409
www.mcleanhowardlaw.com

November 18, 2020

Howard J. Koontz, Director
Planning Department
100 W. Center Street
Kyle, Texas 78640

via online submittal

RE: Zoning Request – Kyle 57 PUD

Dear Mr. Koontz:

As agent for Kyle Mortgage Investors, LLC (the "Applicant"), owner of approximately 57.29 acres of land, more or less, located at West FM 150 and Old Stagecoach Road, Hays County, Texas (the "Property"), we are hereby submitting an application to request a zoning change. The Owner intends to develop the Property as a mixed use project consisting of single-family residential, open space and trails, and commercial uses (the "Project").

To successfully construct this unique and harmonious Project, greater flexibility is required than would be permitted under the standard zoning categories. Therefore, pursuant to the Chapter 53, Article III, Division 2 of the City of Kyle (the "City") Code of Ordinances (the "Code"), the Owner requests that the zoning for the property be changed from Single-Family Residential 2 District 'R-1-2' and Retail and Services District 'RS' to Planned Unit Development 'PUD', to be known as the "Kyle 57 PUD". Development within the Kyle 57 PUD shall be subject to the use and development regulations attached to this letter.

We look forward to working with the City and all applicable stakeholders on this zoning case. If you have any questions or comments, please do not hesitate to contact me at 512-328-2008.

Sincerely,

Jeffrey S. Howard
McLean & Howard

Kyle 57 PUD
Development Standards

Section 1. General Provisions

(A) **Project Described**. Kyle 57 PUD shall include compatible residential and commercial uses as more particularly depicted on **Exhibit B** (the "Concept Plan"). The Property shall be development as a single family residential community with over 11 acres of open space, trail system and public park that includes a pool and amenity site. Commercial endeavors will serve and provide convenience to the residential tract and general public. The remainder will be necessary infrastructure and right of way.

(B) **Project Enhancements**. The Developer will provide the following improvements within the project:

(1) Entry improvements including an entry monument constructed from durable materials such as concrete, metal, and masonry, with lighting and landscaping, a landscaped median, a landscaped roundabout, and street trees.

(2) A landscaped frontage along FM 150 including a fence constructed from masonry or concrete, trees, and other landscaping.

(3) Landscape improvements in common areas throughout the community including trails, open lawns, natural areas, seating areas, playscape and a dog park.

(4) A private amenity site including a swimming pool and restrooms.

(5) All landscape improvements will include permanent irrigation.

(C) **Applicability**. Development of and uses within the Kyle 57 PUD shall conform to the limitations and conditions set forth herein. If the regulations of the Kyle 57 PUD and the attached exhibits conflict with the City Code, the regulations set forth herein shall control. Except as otherwise specifically modified by the Kyle 57 PUD, all other rules, regulations, and ordinances of the City in effect at the time of permit application apply to development within the Kyle 57 PUD.

Section 2. Residential Tract

(A) The use and development of the Residential Tract, as more particularly depicted on Concept Plan, shall be subject to the use and development standards of Single-Family Attached District 'R-1-A' as the base zoning district, except as modified below.

(1) Detached single-family structures are permitted.

(2) The minimum residential lot width as measured at the front yard setback shall be forty feet (40') and the minimum lot size shall be four thousand four hundred (4,400) square feet.

(3) A minimum of ten percent (10%) of the residential lots with detached single-family structures shall be at least sixty feet (60') wide as measured at the front yard setback.

(4) A minimum of twenty percent (20%) of the residential lots with detached single-family structures shall be between fifty feet (50') and sixty feet (60') wide as measured at the front yard setback.

(5) The minimum front setback for lots under sixty feet (60') wide shall be ten feet (10') and municipal utility easements located on front lot lines shall be a minimum of ten feet (10') wide.

(6) The minimum front setback for lots sixty feet (60') wide or greater shall be twenty feet (20').

(7) The minimum side setback for lots under sixty feet (60') wide with detached single-family structures shall be five feet (5') and municipal utility easements located on side lot lines shall be a minimum of five feet (5') wide.

(8) The minimum rear setback for residential lots with front-loaded detached garages shall be five feet (5'). The minimum rear setback for all other residential lots shall be ten feet (10').

(9) The minimum side setback for detached garages constructed on residential lots shall be zero feet (0'). Municipal utility easements shall not be required on side lot lines for lots on which a detached rear garage will be constructed. Detached single-family living structures must comply with Section 2(A)(7) above.

(10) The minimum size of garages shall be four hundred (400) square feet. No additional on-site storage (attached to house or detached) shall be required.

(11) The overhang of an eave of a residential building is permitted to encroach within the setbacks and municipal utility easements.

(12) The minimum parking required for each residential dwelling unit is two (2) spaces. No additional spaces shall be required for dwelling units with more than two bedrooms.

(B) The same house plan may be built on every other detached single-family residential lot on either side of the street so long as the house is differentiated by elevation, material and colors. An elevation may only be used once per five (5) consecutive houses. Developer shall be responsible for tracking and ensuring the arrangement of house plans comply, and in the event the house plan configuration is not in compliance, Developer will be solely responsible for any changes necessary to achieve compliance.

(C) Residential lots may be accessed from (1) a public right of way or (2) by an alley only. Blocks with lots that are accessed only by an alley shall contain no more than forty (40) such lots on a single block face and shall be of such configuration that no portion of any building on any such lot will be more than one thousand fifty (1,050) feet from the right-of-way of an internal street to which the alley is connected.

(D) Lots under sixty feet (60') wide shall have either:

(1) Rear-loaded garages with access from a shared alley,

(2) Detached rear garages with access from a fourteen foot (14') wide shared-use driveway, measured from edge of pavement to edge of pavement, on alternating lot lines, or

(3) Side access if on a corner lot.

(E) Detached rear garages may be built with a shared wall, so long as it is built to a two-hour fire rating standard.

Section 3. Commercial Tract

The use and development of the Commercial Tract, as more particularly depicted on the Concept Plan, shall be subject to the use and development standards of Retail and Services District 'RS' as the base zoning district.

Section 4. Parkland and Open Space

(A) Owner shall develop a privately maintained public open space and trail system to be dedicated to the City ("Public Parkland"). Open space less than five (5) contiguous acres may be dedicated to the City without a variance. The Public Parkland shall be maintained by a property owners' association.

(B) The Public Parkland is an eligible improvement under a Public Improvement District.

Section 5. Subdivision Infrastructure

(A) The maximum number of living units equivalent (LUEs) for the Residential and Commercial Tracts is two hundred and fifty (250) LUEs.

(B) Except as otherwise provided below for the Kyle 57 PUD, all streets, roads, sidewalks, drainage, water, and wastewater lines and facilities and all other infrastructure within the Property (the "Subdivision Infrastructure") will be constructed by Owner to meet City Code.

(C) The width of the alley right of way shall be twenty feet (20'). The minimum pavement width for alleys, measured from edge of pavement to edge of pavement, shall be sixteen feet (16').

(D) The City shall coordinate with adjacent landowners to ensure that internal streets that are designed to access adjacent properties are connected in a manner that creates a safe and City Code compliant street network.

(E) The City shall accept completed Subdivision Infrastructure for ownership, operation, and maintenance in compliance with City Code. The City shall not unreasonably deny, delay, or condition its acceptance of the Subdivision Infrastructure.

Section 6. Landscaping

(A) Except as provided herein, all entry collector and internal streets will be planted with street trees at an average spacing of fifty feet (50') on center.

(1) Street trees will not be required in locations in which they would conflict with the canopies of existing shade trees. Street trees shall have a minimum three-inch (3") caliper, measured six inches (6") above the root ball.

(2) In order to maximize the preservation of existing trees and to allow for the creation of a more natural, park-like environment along Parkway Street, as depicted on the Concept Plan, the placing of street trees shall not be required along Parkway Street. No formal street design for tree placement will be required and street trees may be planted along Parkway Street to supplement existing trees as the Developer deems appropriate.

(B) Street trees planted on or immediately adjacent to a residential lot shall also count toward the minimum (2) trees required for that lot under Section 54-5 of the City Code. Any other street trees required pursuant to this section of the Kyle 57 PUD shall also count fully as replacement trees under Section 54-12 of the City Code. Under no circumstance shall any provision of this Section reduce the total number of trees that would otherwise be required under Sections 54-5 and 54-12 of the City Code. The street tree requirement continues to apply even after all other requirements of Section 54-5 and 54-12 of the City Code have been satisfied.

Section 7. Permits and Approvals

(A) Mass grading of the Property may begin before final approval of the plats is received from the City.

(B) Development of the Residential Tract shall utilize the City's process which allows for vertical construction to commence once asphalt for street improvements is poured and properly cured and before formal acceptance is received.

(C) Construction of model homes may commence before water and wastewater infrastructure is formally accepted by the City. However, in no event shall the model homes be connected to City water and wastewater facilities before the infrastructure is properly constructed and fully functional.

(D) Development of the Residential Tract shall utilize the City's alterative process for review and approval of required development permit applications which allows development permit applications to run concurrently.

==You may send your written comments to the Planning Department, 100 W. Center St., Kyle, Texas 78640 (attention: Zoning File # **Z-20-0067**).

Name: Alton + Deanna Franke Address: 1501 N. Old Stagecoach Rd. Kyle, Texas 786

o I am in favor, this is why _____

X I am not if favor, and this is why See Attachment

Attachment: Zoning File #Z-20-0067
Alton E. and Deanna K. Franke

Our property joins the subject property. Our concerns are as follows:

1. No reasonable notice – We received notice on Monday, December 21, 2020 during the Christmas and New Year's Holidays.
2. Rezoning to a PUD - A PUD is different than standard zoning. It provides for variances than would be provided under standard zoning categories.
3. Flat clearing – Mass grading of the property with existing natural lay of the land (drainage, trees, environmental, historical, etc.) replaced with a high the density development. Flat clearing will damage the wooded area behind our home. Under the rezoning plan, mass grading of the property may begin before final approval of the plats is received from the City. Many of the subdivisions in the area incorporate the natural and historical features of the land into the subdivision plan rather than destroying them.
4. Increased density - A decrease in lot, rear setback, and residence size. The decrease in the rear setback will place new homes closer to our property line and those of other existing property owners.
5. Increased traffic – Traffic currently backs up on nearby 2770 in the area of schools. This would only increase.
6. Decreased absorption area – Increased drainage on the subject property, and for property owners down the creek.
7. Variance to tree ordinance – Lessor older trees, and risk of spreading oak wilt. The area behind our home is wooded with the fear that oak trees removed may be connected by root systems to our trees thereby damaging them. Oak wilt may be transmitted through root systems.
8. Height of new homes

Thank you for your consideration

January 12, 2021

To whom it may Concern,

My Wife and I are residents and homeowners at 431 Quail Meadow Dr. Kyle, Tx 78640. Our property is adjacent to the proposed Planned Unit Development along FM 150 W (case-# z-20-0067).

We are against the Planned Unit development …mainly because we feel the traffic along F.M. 150 is already heavy throughout the day and extremely unsafe. We must wait several minutes upon exiting the neighborhood as traffic is constant and traveling at a high rate of speed along F.M. 150. When approaching our neighborhood, the light at the intersection of Jack C. Hays Dr and F.M. 150 is backed up in all directions in the mornings and evenings even with Hays CISD having limited students during our Covid-19 Pandemic.

With the existing developments in the area(6 creeks and the new development further down F.M. 150 we just feel with nothing being done to improve the traffic flow this will only make matters worse and unsafe to the public and kids who are walking to and from Barton and Hays Highschool. We are parents of 2 future HAYS CISD students and I myself was one and would like to continue to see the community grow in the most positive of ways.

We would rather the land be used for a type of wildlife preservation, park, trails or nature intended use. These types of areas are lacking within the City and would be put to good use. As residents of property that is adjacent to the land, I can tell you that many Deer and other wildlife are often seen on the property and use the area frequently or reside in it.

As far as concerns with the development I can say that I have seen Matt Greene's (Homeowner at 430 Quail Meadow Dr. and my Neighbor) responses to some issues and as that is his expertise working for the city of New Braunfels he has pointed out some very good and strong points that we absolutely agree with.

I am a Deputy with Travis County and have seen firsthand how the City of Austin has treated their county residents when developments have moved in. I hope to see the City of Kyle continue to support the county residents and work with us rather than against us. This opportunity to have our responses and voices heard is defiantly positive. I will be attaching Mr. Greene's responses that have already been submitted just for reference purposes.

If this Planned Unit Development is to move forward, **I STRONGLY ASK THAT YOU PLEASE TAKE INTO CONSIDERATION ALL OF THE POINTS THAT MR. GREENE HAS STATED IN HIS RESPONSE.**

Thank you, Kyle City Council, Planning Commission and Staff, for your time in this matter and allowing those an opportunity to respond to the matter it is greatly appreciated.

Sincerely, Residents and Homeowners of 431 Quail Meadow Dr. (Kristopher & Erika Beasley)

January 12, 2021

Thank you Kyle City Council, Planning Commission and Staff, for your consideration of my comments regarding the proposed Planned Unit Development (Case #Z-20-0067).

I am a resident of the Quail Meadows Subdivision adjacent to the subject property and am in favor of the proposed zone change to the Planned Unit Development, as the current residential zoning in place(R-1-2) allows the possibility for too many small lots to be developed adjacent to our ½ acre + lots. **Though I am in favor, I do ask that the following comments be taken seriously and into consideration:**

1. The Quail Meadows Subdivision consists of lots that are a minimum ½ acre in area. There are 60-foot wide lots proposed adjacent to the Quail Meadows Subdivision lots. I ask that you please consider a minimum lot width requirement of 70 feet to 80 feet with a minimum lot area of 8,000 square feet to 10,000 square feet for lots abutting the Quail Meadow Subdivision. Larger lots adjacent to the Quail Meadow Subdivision would allow a more cohesive and compatible transition between the two subdivisions.

2. All lots within the Quail Meadows Subdivision abutting the subject property are developed with single-story homes. Please limit the homes adjacent the Quail Meadows Subdivision to one story, as the proposed PUD development is much denser with smaller lots and very minimal rear building setback requirements. I also request you consider an increased minimum rear yard setback requirement than what is currently proposed between the lots in the Quail Meadows Subdivision and the lots in the Planned Unit Development. A 20-foot to 30-foot rear yard setback would be more consistent with current development of the Quail Meadows Subdivision which have minimum rear yard setbacks of approximately 50 feet. This would also help in making a smooth transition between the two neighborhoods.

3. The area is still somewhat rural in nature and the current residents of the area enjoy dark skies. Please consider limiting the number and intensity of any street lights within the Planned Unit Development. At a minimum, please require the source of the street lights and any subdivision entry signage to be shielded.

4. Traffic on FM 150 is obviously getting worse and there are multiple subdivisions currently under construction in the area that will contribute to the traffic problem as well. Please ensure a Traffic Impact Analysis is submitted for this project and

if right-in, right-out or left-in turn lanes are warranted, please ensure they are installed at the required phases of development.

5. I am not familiar with the City of Kyle's sidewalk requirements when it comes to subdivision construction, but with this being a Planned Unit Development request, you can and should make public sidewalks a requirement adjacent to FM 150. Many students from this area walk to the nearby schools, businesses and neighborhoods and so will the future residents of this proposed development. The cost of sidewalk construction should not be paid for by the City or TxDOT, but by the developer.

6. Drainage from the subject property is also a concern. There is a significant amount of sheet flow runoff that comes from a portion of the subject property and covers part of my rear yard, my neighbor's yard and the remaining undeveloped portion of 6 Creeks Subdivision, with runoff several inches deep with as little as a 1" to 2" rainfall. Drainage is usually addressed with the construction plans associated with the subdivision plat, but as part of the PUD development standards, you can require the inclusion of additional measures up front that will ensure drainage is properly addressed.

7. **I strongly oppose the developer's request to mass grade the property before final approval of the subdivision plats is received from the City (Section 7(A) of the proposed Development Standards).** Full review and approval of this project's construction plans and final plats should occur prior to altering the property's contours or mass removal of vegetation. Should the mass grading occur prior to construction plan and plat approvals and the project ceases to move toward fruition for any reason, we are left with a huge drainage and erosion problem and beneficial trees and vegetation that can't be replaced will have been removed for no reason.

I thank you for taking the time to review and consider my concerns regarding Case# Z-20-0067.

Thank you kindly,

Matt Greene
430 Quail Meadow Drive
Kyle, TX 78640

CITY OF KYLE, TEXAS

Casetta Ranch 5 - Annexation (ANNX-20-0007)

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: *(Second Reading)* An Ordinance of the City of Kyle, Texas annexing 29.792 acres of land, more or less, located in Hays County, including the abutting streets, roadways, and rights-of-way into the corporate limits of the City, at the request of the property owner; approving a service plan for the annexed area; making findings of fact; providing a severability clause and an effective date; and providing for open meetings and other related matters. *~ Howard J. Koontz, Director of Planning and Community Development*

City Council voted 6-1 to approve on first reading.

Other Information: See attachments.

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Ordinance with Exhibit A & B
- Annexation Schedule
- Development Agreement

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS ANNEXING 29.792 ACRES OF LAND, MORE OR LESS, LOCATED IN HAYS COUNTY, INCLUDING THE ABUTTING STREETS, ROADWAYS, AND RIGHTS-OF-WAY INTO THE CORPORATE LIMITS OF THE CITY, AT THE REQUEST OF THE PROPERTY OWNER; APPROVING A SERVICE PLAN FOR THE ANNEXED AREA; MAKING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the City of Kyle, Texas, (the "City") is a home rule municipality authorized by State law to annex territory lying adjacent and contiguous to the City;

WHEREAS, the owner of the property, as hereinafter described, made written request for the City to annex such property in compliance with the *Tex. Loc. Gov't. Code*;

WHEREAS, the property is adjacent and contiguous to the present city limits;

WHEREAS, the City Council heard and has decided to grant the owner's request that the City annex said property;

WHEREAS, a public hearing was conducted prior to consideration of this Ordinance in accordance with §*43.0673 of the Tex. Loc. Gov't. Code*;

WHEREAS, notice of the public hearing was published not more than twenty (20) nor less than ten (10) days prior to the public hearing;

WHEREAS, the City and the owner of the subject property entered into that certain Development Agreement dated June 16, 2020 and filed and recorded in the Records of Hays County, Texas on July 22, 2020 as instrument no. 20030094;

WHEREAS, the Development Agreement sets forth the terms by which the subject property will be annexed into the City;

WHEREAS, the City intends to provide services to the property to be annexed according to the Service Plan attached hereto as Exhibit "B".

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

SECTION 1. That all of the above premises and findings of fact are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. All portions of the following described property (hereinafter referred to as the "Annexed Property"), not previously annexed into the City, including the abutting streets, roadways and rights-of-way, are hereby annexed into the corporate limits of the City:

All that certain area of land being 29.792 acres, more or less, out of the John Jones Survey, Abstract No. 263, in Hays County, Texas being a portion of a called 83.3633 acre tract of land conveyed to Jansen Equipment, Inc. in Volume 4335, page 867 of the Official Public Records of Hays County, Texas, and being a portion of a called 105.744 acre tract of land conveyed to Theodore H. Lehman and Hazel L. Lehman in Volume 195, Page 93 of the Deed Records of Hays County, Texas; and being more particularly described by metes and bounds in the Exhibit "A" attached hereto and incorporated herein for all purposes.

SECTION 3. That the Service Plan submitted herewith is hereby approved as part of this Ordinance, made a part hereof and attached hereto as Exhibit "B".

SECTION 4. That the future owners and inhabitants of the Annexed Property shall be entitled to all of the rights and privileges of the City as set forth in the Service Plan attached hereto as Exhibit "B", and are further bound by all acts, ordinances, and all other legal action now in full force and effect and all those which may be hereafter adopted.

SECTION 5. That the official map and boundaries of the City, heretofore adopted and amended be and hereby are amended so as to include the Annexed Property as part of the City of Kyle.

SECTION 6. That the Annexed Property shall be temporarily zoned agricultural district A as provided in the City Zoning Ordinance, as amended, until permanent zoning is established therefore.

SECTION 7. The Annexed Property shall be assigned to Council District No. 6.

SECTION 8. That if any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 9. That this Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

SECTION 10. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED on First Reading this _____ day of _____, 2021.

FINALLY PASSED AND APPROVED on this _____ day of _____, 2021.

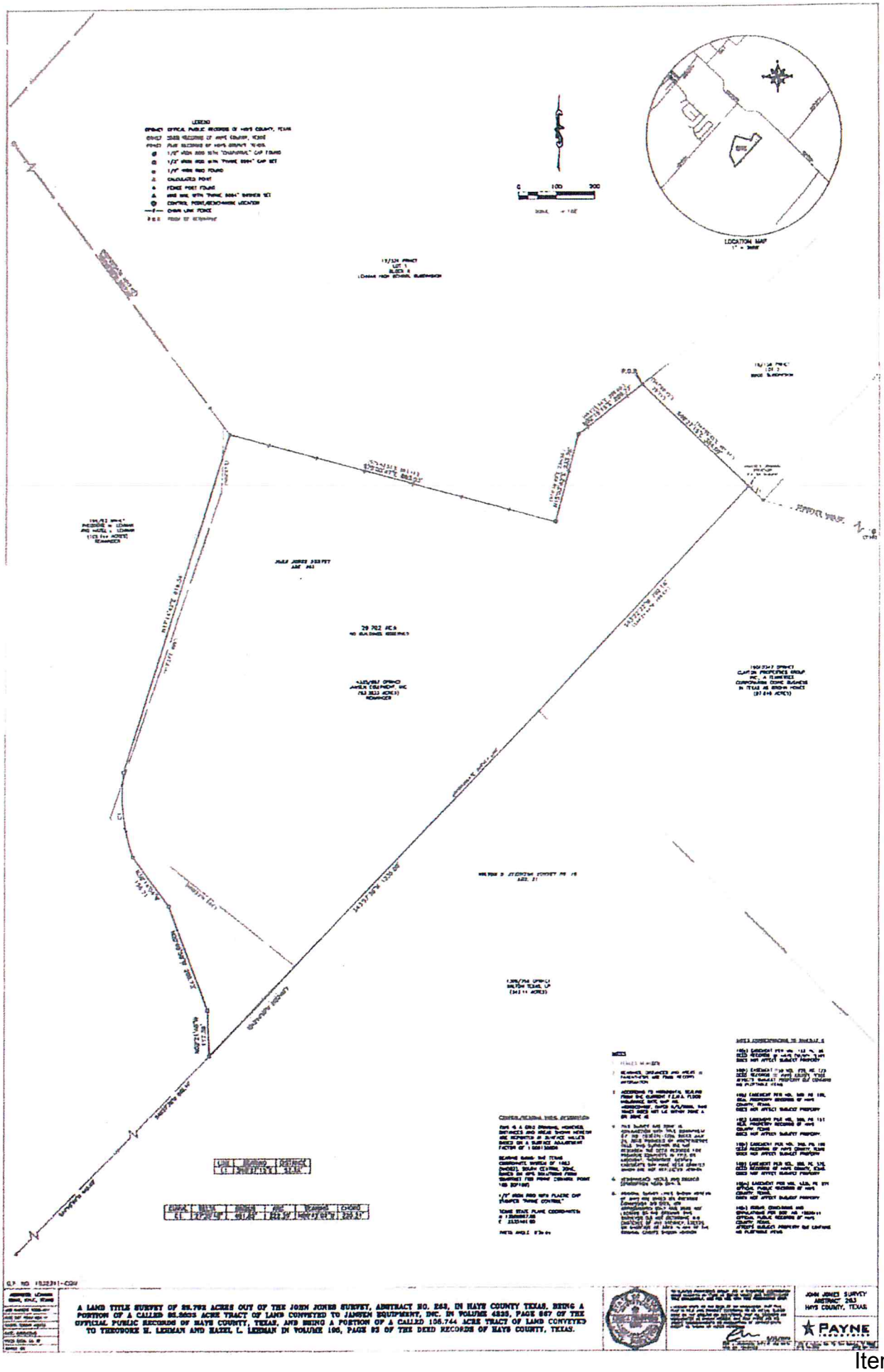
ATTEST: **CITY OF KYLE, TEXAS**

_____ _____

Jennifer Holm City Secretary Travis Mitchell, Mayor

Exhibit "A"

ANNEXED PROPERTY DESCRIPTION


LEGEND
LOCATION MAP
0 100 200
P.O.B.
29.702 ACS
NO BUILDING RESTRICTIONS
JOHN JONES SURVEY
ABS 263
CENTER/MONUMENT DESCRIPTION
NOTES
LINE BEARING DISTANCE
CURVE DELTA RADIUS ARC BEARING CHORD
A LAND TITLE SURVEY OF 29.702 ACRES OUT OF THE JOHN JONES SURVEY, ABSTRACT NO. 263, IN HAYS COUNTY TEXAS, BEING A PORTION OF A CALLED 85.2603 ACRE TRACT OF LAND CONVEYED TO JANSEN EQUIPMENT, INC. IN VOLUME 4238, PAGE 867 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING A PORTION OF A CALLED 106.744 ACRE TRACT OF LAND CONVEYED TO THEODORE H. LEHMAN AND HAZEL L. LEHMAN IN VOLUME 196, PAGE 93 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS.
JOHN JONES SURVEY
ABSTRACT 263
HAYS COUNTY, TEXAS
PAYNE

Item # 21

A DESCRIPTION OF 29.792 ACRES OUT OF THE JOHN JONES SURVEY, ABSTRACT NO. 263, IN HAYS COUNTY TEXAS, BEING A PORTION OF A CALLED 83.3633 ACRE TRACT OF LAND CONVEYED TO JANSEN EQUIPMENT, INC. IN VOLUME 4335, PAGE 867 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (OPRHCT), AND BEING A PORTION OF A CALLED 105.744 ACRE TRACT OF LAND CONVEYED TO THEODORE H. LEHMAN AND HAZEL L. LEHMAN IN VOLUME 195, PAGE 93 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS (DRHCT); SAID 29.792 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found within said 83.3633 acre tract, at the west corner of Lot 2, Brod Subdivision, a subdivision recorded in Volume 16, Page 156 of the Plat Records of Hays County, Texas (PRHCT), and being in the southeast line of Lot 1, Block A, Lehman High School Subdivision, a subdivision recorded in Volume 12, Page 324 (PRHCT), for the northernmost corner hereof;

THENCE, crossing said 83.3633 acre tract with the southwest line of said Lot 2, **S46°27'15"E**, a distance of **384.09** feet to a Mag nail with "Payne 6064" washer set in the concrete footer of a concrete drainage structure, in the southeast line of said 83.3633 acre tract, for the easternmost corner hereof, same being an angle point in the northwest line of a called 97.646 acre tract of land conveyed to Clayton Properties Group, Inc., a Tennessee Corporation doing business in Texas as Brohn Homes, in Document No. 19010347 (OPRHCT), from which a 1/2-inch iron rod found for another angle point in the northwest line of said 97.646 acre tract, same being the south corner of said Lot 2, bears S46°27'15"E, a distance of 52.28 feet;

THENCE, with the northwest line of said 97.646 acre tract, same being the southeast line of said 83.3633 acre tract, **S43°22'22"W**, a distance of **799.16** feet to a 1/2-inch iron rod found for the west corner of said 97.646 acre tract, same being the westerly north corner of a called 324.14 acre tract of land conveyed to Walton Texas, LP in Volume 4399, Page 768 (OPRHCT);

THENCE, with the northwest line of said 342.14 acre tract, in part being the southeast line of said 83.3633 acre tract and in part being the southeast line of said 105.744 acre tract, **S43°57'38"W**, a distance of **1235.00** feet to a 1/2-inch iron rod with "Payne 6064" cap set in the southeast line of said 105.744 acre tract, for the southernmost corner hereof, from which a fence post found bears S43°57'38"W a distance of 848.14 feet, and S44°18'49"W a distance of 448.66 feet;

THENCE, crossing said 105.744 acre tract and said 83.3633 acre tract, the following five (5) courses and distances:

1) **N02°21'48"W**, a distance of **117.39** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

2) **N20°40'58"W**, a distance of **286.73** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

3) **N36°14'04"W**, a distance of **156.71** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

4) With a curve to the right, having a radius of **461.85** feet, a delta angle of **27°35'18"**, an arc length of **222.39** feet, and a chord which bears **N06°42'07"W**, a distance of **220.24** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

5) **N17°14'42"E**, a distance of **919.34** feet to a 1/2-inch iron rod found within said 83.3633 acre tract, at an angle point in the southwest line of said Lot 1, for the northwest corner hereof, from which a 1/2-inch iron rod with "Chaparral" cap found for the west corner of said Lot 1 bears N36°42'55"W, a distance of 1017.46 feet;

THENCE, continuing across said 83.3633 acre tract with the south line of said Lot 1, the following three (3) courses and distances:

1) **S75°00'47"E**, a distance of **883.03** feet to a 1/2-inch iron rod with "Chaparral" cap found;

2) **N15°03'42"E**, a distance of **233.76** feet to a 1/2-inch iron rod with "Chaparral" cap found;

3) **N52°15'15"E**, a distance of **209.77** feet to the **POINT OF BEGINNING** hereof, and containing 29.792 acres, more or less.

Surveyed on the ground August 21, 2019. Bearing Basis: The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions from SmartNet. Attachments: drawing 1850-001-TI

8/29/19

Eric J. Dannheim, RPLS
State of Texas #6075

Property Location Map
ANNX-20-0007
29.8 Acres
Casetta Ranch Section 5
Voluntary Annexation

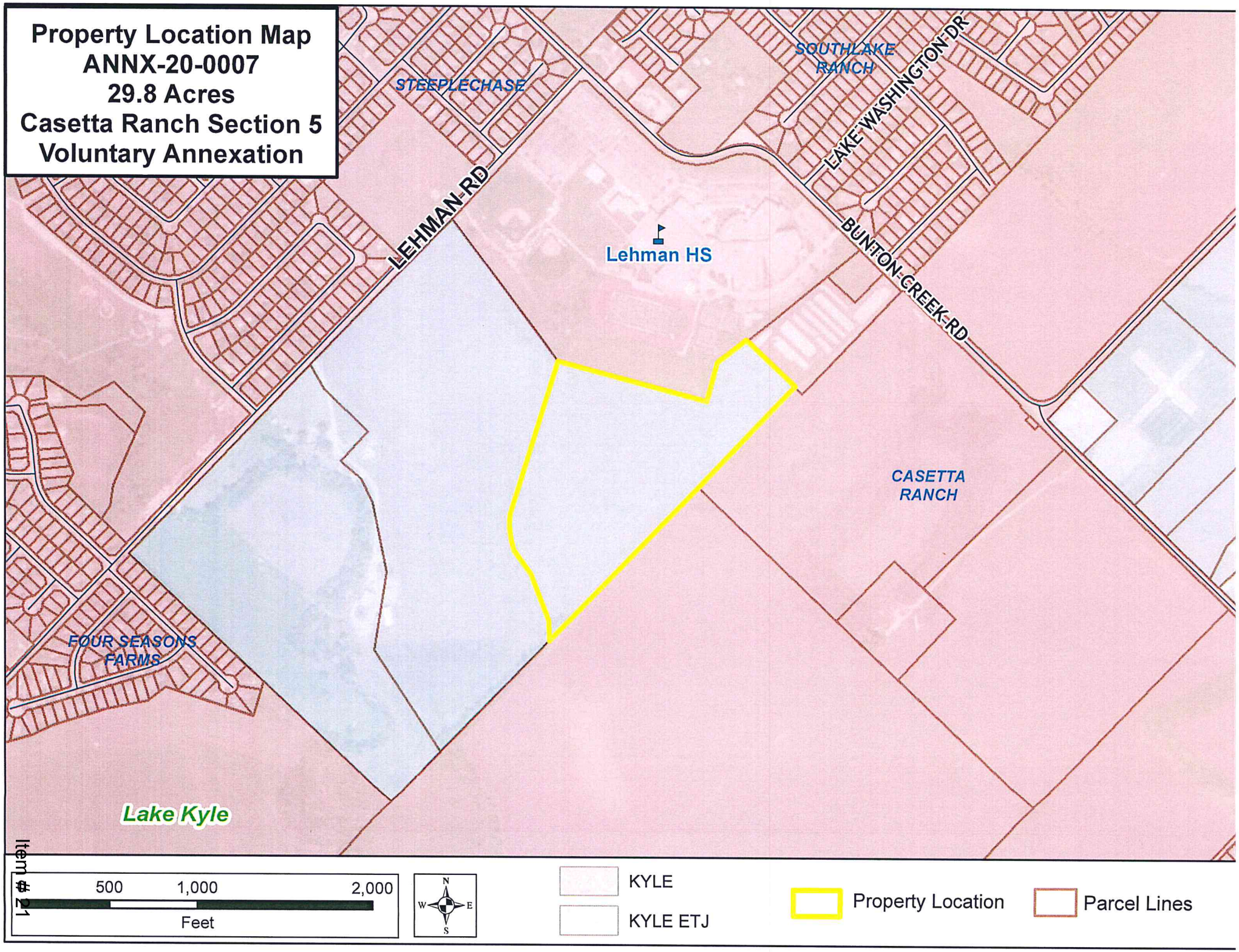


Exhibit "B"

MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED INTO THE CITY OF KYLE

WHEREAS, the City of Kyle, Texas (the "City") intends to institute annexation proceedings for an area of land described more fully hereinafter (referred to herein as the "subject property");

WHEREAS, *Section 43.0672, Loc. Gov't. Code*, requires the City to negotiate and enter into a written agreement with the owner(s) of land in the area for the provision of services in the area;

WHEREAS, the subject property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that existing are sufficient to service the subject property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements by the City are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City;

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapter 43, Loc. Gov't. Code*, to annex the subject property into the City;

WHEREAS, the subject property will benefit from the City's development restrictions and zoning requirements, as well as other municipal services provided by the City, which are good and valuable consideration for this service plan; and

WHEREAS, the City and Clayton Properties Group, Inc. d/b/a Brohn Homes ("Developer") on June 16, 2020 entered into that one certain Development Agreement ("Development Agreement") to which reference is made for all purposes;

NOW, THEREFORE, the following services will be provided for the subject property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to the requests of the owner and this Plan, the following services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned agricultural district "A" with the intent to rezone the subject property upon request of the landowner or staff. The Planning & Zoning Commission and the City Council will consider rezoning the subject property at future times in response to requests submitted by the landowner(s) or authorized city staff.

(2) **Scheduled Municipal Services.** Due to the size and vacancy of the subject property, the plans and schedule for the development of the subject property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) In accordance with the Development Agreement.

(ii) As set forth in the Development Agreement, the Property owner(s) shall construct the internal and off-site water lines and facilities (the "Water System") and, as agreed to in the Development Agreement, pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Water System, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to the Development Agreement, and to the extent not in conflict with the Development Agreement, all the ordinances, regulations and policies of the City in effect from time to time. The Water System will be accepted and maintained by the City in accordance with its usual policies. Requests for new water extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers

of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

B. Wastewater service and maintenance of wastewater service as follows:

(i) In accordance with the Development Agreement.

(ii) As set forth in the Development Agreement, the Property owner(s) shall construct the internal and off-site sewer lines and facilities (the "Sewer System") and, as agreed to in the Development Agreement, pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Sewer System, sewer service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to the Development Agreement, and to the extent not in conflict with the Development Agreement, all the ordinances, regulations and policies of the City in effect from time to time. The Sewer System will be accepted and maintained by the City in accordance with its usual policies. Requests for new sewer extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

C. Maintenance of public streets and rights-of-way as appropriate as follows:

(i) Except is set forth in the Development Agreement, the City will provide maintenance services on public streets within the Property that are dedicated and finally accepted by the City. The maintenance of such public streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.;

(B) Routine maintenance as presently performed by the City; and

(C) The Property owner(s) have specifically agreed that maintenance services will be of little benefit and will not be required or needed on the Property, prior to the Property owner(s), its grantees, successors and assigns completing the construction and dedication of streets to the City in compliance with City subdivision regulations.

(ii) Following installation of the roadways, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain the public streets, roadways and rights-of-way within, and adjacent to, the boundaries of the Property if dedicated and accepted, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the subject property abut existing roadways. The property owner agrees that no improvements are required on such roadways to service the property except as set forth in the Development Agreement. If the owner(s) develop the Property so as to impact abutting roadways pursuant to the City's subdivision regulation, the owner(s) agree to comply with such ordinances as set forth in the Development Agreement.

(3) **Special Services and Actions.** Although the City reserves all its governmental authority, powers and discretion, if the City shall unreasonably refuse to grant the permits and approvals above provided in (2)(A), (B) & (C), then in that event the owner(s) may request and obtain disannexation of the Property pursuant to this service plan; provided that if the City shall, in the exercise of its discretion and authority, approve the permits and events set forth in (2)(A), (B) & (C) above, the Property shall be and remain within the corporate limits of the City.

(4) **Capital Improvements.** Construction of capital improvements shall be initiated after the effective date of the annexation as set forth in the Development Agreement: Water and wastewater facilities that are identified in the Development Agreement, as and when funded pursuant to the Development Agreement. Upon development of the Property or redevelopment, the landowner(s) will be responsible for the development costs the same as a developer or landowner in a similarly situated area under the ordinances in effect at the time of development or redevelopment, except as set forth in the Development Agreement. No additional capital improvements are necessary at this time to service the Property, except those specifically enumerated in the Development Agreement. The Property owner(s) for itself, its grantees, successors, and assigns agree that no capital improvements are required to service the Property, except as set forth in the Development Agreement, the same as similarly situated properties already within the City.

(5) **Term.** If not previously expired under the term set out in state law, this service plan expires at the expiration of the Development Agreement.

(6) **Property Description.** The legal description of the subject property is as set forth in the Annexation Ordinance and exhibits attached to the Annexation Ordinance to which this Service Plan is attached.

SCHEDULE FOR VOLUNTARY ANNEXATION
CASSETTA RANCH SECTION 5 +/- 29.792 ACRES

DATE	ACTION/EVENT	LEGAL AUTHORITY
December 15, 2020	COUNCIL CONSIDERS ACCEPTANCE OF ANNEXATION PETITION REQUEST FROM LANDOWNER(S) AND INITIATION OF ANNEXATION - AND SETS A PUBLIC HEARING FOR JANUARY 5, 2021	Loc. Gov't Code, §43.0671
December 17, 2020 – December 26, 2020**	**NEWSPAPER NOTICE** RE: PUBLIC HEARING; (Certified Notice to Railroad - if railroad company's right-of-way is in the area proposed for annexation.)	Not less than 10 days nor more than 20 days before public hearing. Loc. Gov't Code, §43.0673
Publish notice of Public Hearing.	**POST NOTICE OF HEARING ON CITY'S WEBSITE AND MAINTAIN UNTIL HEARINGS COMPLETE.**	
&	**SCHOOL DISTRICT NOTICE**. Notify each school district of possible impact w/in the period prescribed for publishing the notice of the Public Hearing.	
Send notice to school district and to each public entity.	**PUBLIC ENTITY NOTICES**. Notify each public entity that is located in or provides services to the area proposed for annexation. Public Entity includes: a county (Hays), a fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or special district (MUD, WCID, or other district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution) - of possible impact w/in the period prescribed for publishing the notice of the Public Hearing.	Loc. Gov't Code, §§43.905 & 43.9051; send notice to school district and to each public entity not less than 10 days nor more than 20 days before the Public Hearing.
January 5, 2021*	**PUBLIC HEARING** – *REGULAR MEETING*	The governing body must provide persons interested in the annexation the opportunity to be heard. Loc. Gov't Code, §43.0673
January 5, 2021*	**FIRST READING** OF ORDINANCE *REGULAR MEETING*	Loc. Gov't Code, §43.0673
January 19, 2021 Or at a special called meeting after the First Reading; Or within 90 days of First Reading.	**SECOND & FINAL READING** OF ORDINANCE *REGULAR MEETING (if 7-0 affirmative vote at January 5th meeting, second reading not required)*	Second reading of annexation Ordinance – City Charter, Section 4.06(c)
Within 30 days of Second Reading	**CITY SENDS COPY OF MAP** showing boundary changes to County Voter Registrar in a format that is compatible with mapping format used by registrar	Elec. Code §42.0615
Within 60 days of Second Reading	**CITY PROVIDES CERTIFIED COPY OF ORDINANCE AND MAPS TO:** 1. County Clerk 2. County Appraisal District 3. County Tax Assessor Collector 4. 911 Addressing 5. Sheriff's Office 6. City Department Heads 7. State Comptroller 8. Franchise Holders 9. ESD - if annexed area located in district and city intends to remove the area from the district and be the sole provider of emergency services; See Health and Safety Code, Section 775.022	Hays County ESD No. 5: Notice must be sent to the secretary of the ESD board by certified mail, return receipt requested.

***Dates in BOLD are MANDATORY dates to follow. Please advise of schedule deviation.**
****Newspaper notice to paper by 5 p.m. one week prior to publication**

20030094 AGREEMENT Total Pages: 63
Filed and Recorded: 7/22/20 3:01 Pm

STATE OF TEXAS §
§
COUNTY OF HAYS §

DEVELOPMENT AGREEMENT BETWEEN CITY OF KYLE, TEXAS AND CLAYTON PROPERTIES GROUP, INC. DBA BROHN HOMES

This Development Agreement ("Agreement") is by and between the City of Kyle, Texas, a home rule city situated in Hays County, Texas (the "City") and Clayton Properties Group, Inc. d/b/a Brohn Homes ("Developer"). The term "Parties" or "Party" means the City and the Developer collectively or singularly.

RECITALS

WHEREAS, Developer has or will purchase a parcel of real property (the "Property" or "Parcel") in Hays County, Texas, which is more particularly described in the attached Exhibit "A";

WHEREAS, on May 5, 2015, the City and the Lehman Family Trust, owner of the Property, entered into that one certain Amended and Restated Section 212.172 Texas Local Government Code Development Agreement recorded in the Official Public Records of Hays County, Texas ("Prior Agreement") attached as Exhibit "B";

WHEREAS, the City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

WHEREAS, the City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area;

WHEREAS, the Parties agree that the extension of centralized utilities to new development provides superior environmental protections to those available from individual water wells and septic systems;

WHEREAS, the City council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interests and welfare of the public; and,

WHEREAS, for the above reasons Developer and the City desire to enter into this agreement.

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed

herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

ARTICLE 1
PURPOSE, AUTHORITY, TERM AND BENEFITS

1.01 Purpose. This Agreement modifies, and amends any Prior Agreement as agreed upon herein by the Parties.

1.02 Authority. Authority for Developer and the City to enter into this Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; Chapter 212, Subchapter G, Tex. Local Government Code, ("Subchapter G"), Chapter 395 of the Tex. Local Government Code; and such other statutes as may be applicable.

1.03 Project Defined. The Project established by the Agreement includes a master-planned residential subdivision that will include single family lots, amenity/park area(s) with recreational facilities. The Project includes the subdivision of the Property and Subdivision Infrastructure (defined below) to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (the "Project"). The Project may include multiple phases for platting and construction purposes.

1.04 Benefits.

(a) The City desires to enter into this Agreement to provide additional control to the development standards for the Property, to allow potential purchasers, or owners, of the Property to submit preliminary plan and final plat applications to the City for review, and to assess the development viability of the Property without requiring or causing the annexation of the Property except as provided for under ARTICLE 5 of this Agreement.

(b) This Agreement provides: (i) for the submittal and review of preliminary plans and final plats for the Property without submitting a request for voluntary annexation of the Property; (ii) alternative standards under certain City ordinances for the benefit of the Property but only as allowed under Section 212.172 of the Tex. Local Government Code; and (iii) the City's commitment to provide water and wastewater service to Property based on the Concept Plan. The City's execution of this Agreement constitutes a valid and binding obligation of the City under State Law. Developer's execution of this Agreement constitutes a valid and binding obligation of the Developer.

1.05 Term. The term of this Agreement will commence on the Effective Date and continue fifteen (15) years from the Effective date ("Term" or "Initial Term"). After the Initial Term, this Agreement may be extended for five successive five-year periods upon written agreement signed by Developer and the City; provided that the total term of the agreement, including the Initial Term and extensions, does not exceed 45 (forty-five) years.

1.06 Control of Development. Developer intends to develop the Property in a manner which results in enhancing the tax base of the City. Notwithstanding any provision of the Code of Ordinances or uncodified ordinances of the City (the "Code") to the contrary, the timing and

sequencing of the development of the Property will be based on market demand and conditions and will be completed as and when Developer determines it to be economically feasible.

ARTICLE 2
DEVELOPMENT STANDARDS AND REVIEW PROCEDURES

2.01 **Generally**. Except as provided in this Agreement, all development applications and development of the Property will comply with the Code, as if the Property were inside the corporate limits of the City. The preceding sentence controls even if the Property has not been annexed by the City. If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control.

2.02 **Residential**. The Parties agree that the Property shall be subject to and developed pursuant to the ordinances, rules, regulations, use and development standards as if subject to the City's R-1-3 zoning district, except as otherwise provided for herein. Notwithstanding the requirements in Chart 1 in Chapter 53 of the Code, the Project will be allowed;

(a) Lots in the Project may be Alley Loaded Lots with thirty-five (35') foot and/or forty (40') foot widths.

(b) Lots in the Project may be Front Load Lots with fifty (50') foot, sixty (60') foot and/or greater widths. Lots with widths less than fifty (50') feet must be alley loaded.

No lots will be less than thirty-five feet (35') in width and any such lot shall be alley loaded, and the maximum number of thirty-five foot (35') wide single family residential lots allowed to be subdivided on the Property will be no greater than fifteen percent (15%) of the total number of single family residential lots shown on the preliminary plan approved for the Property. The City agrees that the residential lots may be all forty foot wide (40') wide lots, fifty foot wide (50') lots or sixty foot wide (60') lots or a combination of forty foot wide (40') wide lots, fifty foot wide (50') lots and sixty foot wide (60') lots or a combination of thirty-five foot wide (35') lots, forty foot wide (40') lots, fifty foot wide (50') lots, sixty foot wide (60') or greater width lots, so long as the total percentage of thirty-five (35') foot lots does not exceed 15% of all single family lots. For purposes of clarifying the preceding sentence, there is no limit to the number of thirty-five foot (35') wide lots that may be contained in an individual final plat so long as the cumulative total of thirty-five foot (35') wide single family residential lots contained in all recorded final plats of the Property do not exceed fifteen percent (15%) of all single family lots shown on the approved preliminary plan. Also, there is no limit on the maximum width of residential lots within the Project. A property owners' association neighborhood park, including, an amenity center and swimming pool for the residents living on the Property, is a permitted use of the Property. Plan View and Street Scape illustrations (Reflecting 35' wide alley load lots) are attached as Exhibit" C".

(c) Alley Load Lots with a width of thirty-five (35') feet will have a 10 foot front yard building set-back, 10 foot rear yard building set-back, 5 foot side yard building set-back and 10 foot street side yard building set back. Alley Load Lots with a width of forty (40') feet will have a

10 foot front yard building set-back, 10 foot rear yard building set-back, 5 foot side yard building set-back and 10 foot street side yard building set back

(d) Local streets within the Project may be designed, engineered and constructed with twenty-eight (28) feet of pavement width measured from face of curb to face of curb with right of way, as required by applicable Code requirements, or with intermittent wider sections of pavement to allow for on-street parking, at intervals and sufficient widths to allow for adequate clearance for fire protection vehicles approved by the City Engineer and the Emergency Services District with reviewing authority over the Property.

(e) The City acknowledges that Park Land Dedication fees shall be computed on the basis of $750 per dwelling lot and shall be collected at the time of final plat recording. Park Development fees shall be computed on the basis of $750 per dwelling lot and shall be collected at the time final plat recording. All Park Land Dedication and Park Development fees shall be paid in phases in an amount not to exceed $1,500 per final platted dwelling lot as sections of the development are final platted and recorded. In as much as the Developer is dedicating and developing active parks and hike and bike trails, $300 per final platted lot, of the total Park Land Dedication and Park Development fees will be dedicated to and used, by the City, for traffic improvements to Bunton Lane, west of the intersection with Go Forth Lane.

(f) Block lengths within the Project shall be allowed up to 1,200 feet (per ordinance) as a result of using curvilinear streets and paved.

(g) In the event the City requires the extension of a water line to and through the Project, (the "Water Line Project"), and a water line is in excess of the size and capacity of a water line that is necessary for the delivery of water service to the Project as required by the City Code, the City will either reimburse the Developer, or take whatever steps necessary to insure that subsequent users of the water infrastructure, reimburse Developer for the cost of the design, engineering and construction of that portion of the water infrastructure over and above that which is necessary for the Project as provided in Section 4.05(b) and Exhibit "G". In the event that the City requires the water line to be oversized, the City's cost-participation amount shall be determined in accordance with Section 4.05(b) and Exhibit "G".

(h) In the event the City requires the extension of wastewater infrastructure inside or outside of the boundaries of the Project in a size and/or capacity required by the City Code in excess of that which is necessary for the delivery of wastewater service to the Project, the City will either reimburse the Developer, or take whatever steps necessary to insure that subsequent users of the wastewater infrastructure reimburse Developer, for the cost of the design, engineering and construction of that portion of the wastewater infrastructure over and above that which is necessary for the Project, as provided in Section 4.05(b) and Exhibit "G". In the event that the City requires the wastewater line to be oversized, the City's cost-participation amount shall be determined in accordance with Section 4.05(b) and Exhibit "G".

(i) Fifteen percent (15%) of all lots in the Project may be Alley Load Lots with a minimum lot area of 4200 square feet. All other Alley Load Lots within the Project shall have a minimum lot area of 4690 square feet.

(j) All alleys within the Project will be private and maintained by a properly formed property owners association. The City shall have no responsibility for the maintenance of alleys within the Project.

(k) All garages in the project shall have a minimum enclosed area of 360 square feet.

(l) All alley load lots will be developed to provide two durably surfaced, off-street parking spaces of no less than (nine (9') feet by eighteen and one-half (18 ½') feet) each for a combined square footage of approximately three hundred and thirty-three (333') square feet, located adjacent to each garage, hereinafter ("Guest Parking"). Up to four hundred (400') square feet of durably surfaced off-street Guest Parking located on alley load lots shall be excluded from the computation of impervious cover on a per lot basis. Section 53-934D of the Style Guide and related Code requirement, as to on-site storage, may be satisfied with alternative compliance by providing a combination of (a) garage storage as shown on the attached Exhibit "H" and (b) attic storage with a pull-down ladder, so long as the totals on-site storage is no less than one hundred forty (140') square feet.

2.03 **Concept Plan** A copy of the concept plan, which illustrates a combination of forty (40') foot wide alley load lots and fifty (50') foot wide front load lots, is attached hereto and incorporated herein for all purposes as Exhibit "D" ("Concept Plan"). The Concept Plan will be allowed to be developed and platted in multiple phases for platting. Pursuant to Section 212.172, Tex. Local Government Code, Developer hereby confirms that the Concept Plan for the subdivision of the Property complies with the City's Subdivision Ordinance requirements for concept plans, the zoning district regulations applicable to the Property as set forth in this Agreement, the Style Guide and the City's Comprehensive Master Plan. The Concept Plan constitutes a development plan for the Property, as provided in Subchapter G, Texas Local Government Code.

Subject to the allowable uses set forth in Sections 2.02 and 2.03 hereof, a) the total allowable density of development of the Property shall be limited by the number of Living Unit Equivalents ("LUEs") as measured for water and wastewater service connections, and b) the intensity and timing of development within the Property will be determined solely by Developer; provided, however, that the density of development of the Property shall not exceed one hundred and forty (140) LUEs. So long as Developer does not increase the total density of allowable development, as measured by water and wastewater service connections, Developer may amend the Concept Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Agreement. The Concept Plan will expire upon the expiration or termination of this Agreement.

2.04 **Preliminary Plan**. Developer may submit to the City an application for a preliminary plan for the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property. The preliminary plan must comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth in Sections 2.02 and 2.03. The preliminary plan may show lot layouts and street alignments different than shown in the Concept Plan so long as the total level of development, as measured by water and wastewater service connections, does not increase above one hundred and forty 140 LUEs. Developer may request the City, including the City's Planning and Zoning Commission, to make a written determination that the preliminary plan complies with all applicable regulations; provided, however, that such determination shall not constitute the final approval of the preliminary plan. If the preliminary plan application complies with the terms of this Agreement, the City will approve the preliminary plan upon the request of Developer;

provided that the Developer has submitted to the City a request or petition for voluntary annexation as provided in Section 5.02(a) or (b).

2.05 **Subdivision Plats**. Subdivision plats may be approved and constructed in one or more sections. Developer may submit to the City an application for a subdivision plat for a portion of the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property. Developer may submit subdivision construction plans concurrently with a subdivision plat application.

2.06 **City Review and Approval**. This Agreement shall govern the review and approval of preliminary plans, subdivision plats, subdivision construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Developer. In anticipation of the voluntary annexation of the Property, the City does not require Developer to submit any application to Hays County for review or approval. The City will accept and review applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth herein. The City will approve applications for preliminary plans, subdivision plats and site development permits for the Property if Developer has made a request or petition for voluntary annexation pursuant to Sections 5.02(a) or (b) below, and said applications are in accordance with the requirements of this Agreement. Preliminary plans, subdivision plats, subdivision construction plans, and site development plans hereafter approved pursuant to this Agreement shall expire on the latter of the expiration of the Initial Term of this Agreement, unless the parties agree in writing otherwise, or the date established by the Code.

2.07 **Other Fees**. Except for fees or expenses otherwise specifically provided for in this Agreement, all fees required by the Code will be paid in accordance with the Code as established on the date that the fee is paid, unless the fee is established at another point in time under State Law or the City Code.

2.08 **Fencing**. Owner shall construct and the Owner, or a properly formed property owners association, will maintain, repair or replace at minimum a six foot (6') tall decorative metal fence along parkland, open space and drainage facilities that are fenced. This does not include the portion of a back yard fence that may front one of these public improvements or places, but refers to any fencing put in place for benefit of parkland, open space or drainage facilities. In no case shall these fences be dedicated or conveyed to the City. Developer shall assign to a property and/or property owners association the obligation to maintain, repair or replace said fence as required by the Code.

2.09 **Additional Amenities.** Developer shall provide additional amenities to the Property as follows. Such amenities shall be provided for each phase of development as it is developed. Additional amenities include:

(a) Developer shall form a property owners association as a non-profit corporation ("POA") at the completion of the first phase of development, and the POA shall require dues and be responsible for the maintenance, repair and replacement of any and all amenities, including all

common spaces and any other improvements required to be maintained by the POA under this Agreement or the City Code, made available to occupants of the Property.

(b) Decorative street lighting or street lighting in compliance with Pedernales Electric Cooperative standards, as published on the Effective Date (the "Street Lighting Plan") will be maintained by the POA. The Street Lighting Plan will not require approval by the Planning and Zoning Commission. Street lighting will not be maintained by the City.

(c) The Landscaping Plan will comply with the City Code will be agreed upon by the Developer and the City and will be subject to approval by the city arborist, which approval will not be unreasonably denied, delayed or conditioned.

(d) The Project will abide by all applicable City Codes as if the project were developed inside the City limits, except where the terms of this Agreement modify such Code. To the extent there are conflicts between the terms of the Code, including the zoning regulations, and the terms of this Agreement, this Agreement will control.

ARTICLE 3
PUBLIC STREETS AND SUBDIVISON INFRASTRUCTURE

3.01 **Open and Common Space**. The duly formed POA shall have the responsibility or obligation to maintain, operate, repair or replace all Open and Common Space in accordance with the Code and with the approved Landscaping plan submitted as a part of the Subdivision Construction Plans.

3.02 **Subdivision Infrastructure**.

(a) All public streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property or outside the boundaries of the Property required to serve the Property (the "Subdivision Infrastructure") will be constructed by Developer to meet Code standards, except as provided for herein, and will be dedicated and conveyed to the City at no cost to the City; unless otherwise provided herein.

(b) Pavement width from curb face to curb face shall be twenty-eight feet (28'). Alleys and alley access shall remain private, and be the responsibility of a duly formed and mandatory dues paying POA.

(c) Variances from the Code are hereby granted to allow for the widths of private alleys, restricted to one-way traffic, in the Project to be constructed with twelve (12) feet of pavement within an (18) foot wide access easement and private alleys, providing for two-way traffic, to be constructed with of twenty-four (24) feet of pavement within a thirty (30) foot wide access easement.

3.03 **Satisfactory Completion of Developer Improvements**. The term "Developer Improvements" includes Subdivision Infrastructure and Utility Improvements, as defined herein. Upon completion of construction of each of Developer Improvements in accordance with the City-approved construction plans, good engineering practices, and Section 41-53(h) and (j), the City

shall accept the Developer Improvements for ownership, maintenance, and operation, except for any such improvements that are required to be owned and/or maintained by the Developer or the POA under this Agreement or the City Code. The City shall not unreasonably deny, delay, or condition its acceptance of such Developer Improvement.

3.04 **City Acceptance of Developer Improvements**. As a precondition to the City's final acceptance of a Developer Improvement, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to Developer Improvement to be accepted will also be delivered to the City and any other items required by the City Code. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of Developer Improvement.

3.05 **City to Own, Operate and Maintain Developer Improvements**. From and after the time of the City's final acceptance of a Developer Improvement, the City will own, operate, and maintain each Developer Improvement and shall be responsible for all costs associated with same; provided, however, alleys, decorative street lights, joint use areas, multiuse trails and any other improvements that are required to be owned and/or maintained by the Developer or the POA under this Agreement or the City Code will be maintained by Developer or the POA. Upon the City's acceptance of all the Developer Improvements within a particular subdivision plat and the City's acceptance of water and wastewater service lines within said recorded final plat, Developer shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that the City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements.

ARTICLE 4
WATER AND WASTEWATER SERVICE

4.01 **Intent of the Parties Regarding Utility Services**. As of the Effective Date, and again at the time of final plat approval, the City represents that the City has and will have sufficient water and wastewater treatment capacity to allow service connections for one hundred and forty 140 LUEs water and wastewater service to the Property. The City represents that it has rights to sufficient raw water to meet its overall service obligations, including providing water service to the Property in accordance with the terms of this Agreement. The Parties acknowledge that the Property will be built out over a number of years and that the City may decide to incrementally construct additional utility system improvements over time. Developer acknowledges that it is the City's responsibility to determine if the City's utility system needs to be expanded and how the City will expand its utility system to enable the City to meet its utility service obligations under this Agreement. Developer further acknowledges the City's desire to retain flexibility on deciding which City utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Developer requires

certainty regarding the City's plans for meeting the City's utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City's water and wastewater utility systems for the purpose of the City meeting its Utility Service obligations in accordance with the terms of this Agreement. The Parties acknowledge that the design engineering and construction of an operational utility improvement can require two (2) or more years. Notwithstanding, the City agrees and warrants that it will take whatever steps are necessary to insure that the City can and will provide one hundred and forty (140) LUEs of water and wastewater service incrementally to the Project as and when final plats are approved within the Project.

4.02 General Conditions For Connections to the City Utility System.

(a) The City hereby expressly authorizes and approves the Walton Line, shown on the attached Exhibit "E", as the sole and exclusive method by which wastewater service will be provided to the Project by the City by and through the adjacent development to the east (Casetta Ranch) also owned and developed by Clayton Properties Group, Inc dba Brohn Homes). In the event the City should require that the Walton Line be designed, engineered and constructed to a size greater than that which is necessary to serve the Project and required by the City Code and the Walton property ("Oversized Walton Line"), all costs and expenses of Developer in the design, engineering and construction of the oversized portion of the Oversized Walton Line shall be reimbursed to Developer by the City through the collection, and payment to Developer, of capital recovery fees from other users of the Walton Line or a lump sum payment in the City's sole discretion, in accordance with Exhibit "G". If reimbursement through subsequent user fees has not result in the 100% reimbursement to Developer within 2 years of the completion of the Walton Line, the City will pay the outstanding unreimbursed amount.

(b) If the City modifies: (i) the definition of an LUE as compared to the LUE definition incorporated into this Agreement; (ii) water pressure requirements for a service connection to land within the Property; (iii) fire flow requirements for the issuance of building permits and certificates of occupancy without the installation of a sprinkler system; (iv) a Utility or Developer Improvement required for the City to provide water and wastewater service to any portion of the Property; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be necessary for the City to meet its water and wastewater service obligations under this Agreement, unless such modification by the City is in response to a request for more than one hundred and forty 140 LUEs of water and wastewater service. If the modifications described in the preceding sentence are required by federal or state law or regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications.

4.03 Service Commitment. The City hereby commits one hundred and forty 140 LUEs of water and wastewater service to the Property.

4.04 Service Connections. The City will timely provide water and wastewater service to Lots within the Project, and will connect each residential unit or structure for another permitted use to the City's water and wastewater system upon completion and City acceptance of the Utility Improvements, payment of applicable fees, establishment of a utility account, and a Certificate of Occupancy being issued for the residential unit or structure and provide water and wastewater

service for the residential unit or structure on the same terms and conditions as provided to all other areas of the City.

4.05 Utility Improvement Construction Obligations.

(a) **Developer**. Developer shall be solely responsible for the engineering and construction of all water and wastewater lines and facilities within the Property and any offsite utility extensions needed to serve the property, including but not limited to the Water Line Project and the Wastewater Line Project described in Exhibits "J" and "K" (collectively, the "Utility Improvements").

(b) **City Oversizing**. City may, at its discretion, require the oversizing of certain Utility Improvements, and if the City exercises this right during or before plan review, so long as the design, engineering and construction of such oversized Utility Improvements does not unreasonable delay Developer's development, Developer will be responsible for the costs associated with providing the appropriate sized infrastructure to the Project. The City will pay costs associated with the upsizing, the cost of which shall be determined by the Developer and City Engineer generally in accordance with Exhibits "F" and "G".

4.06 Service Units Defined. The size of a water meter required for any particular residential or non-residential structure shall be determined according to the City's applicable construction and plumbing standards in effect at the time that the building permit for that structure is approved, and the number of LUEs per meter to be accounted for hereunder shall be based on Chapter 50 ("Utilities"), Article VI, of the Code, which is incorporated into this Agreement for the limited purposes set forth in this Agreement.

4.07 Use of City Property and Easements. The City hereby consents, at no cost to Developer, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct a Developer Improvement, or for Developer to perform its obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements. The City agrees to cooperate and support Developer's acquisition of necessary easements from third parties as determined by the city council.

4.08 Easement Acquisition. The Utility Improvements and related easements are necessary and required by the City for the City to provide water and wastewater service to the Property. The City further agrees that there exists a public necessity for the construction of the Utility Improvements; therefore, the City agrees to cooperate and support Developer's acquisition of necessary easements from third parties.

ARTICLE 5
ANNEXATION

5.01 Annexation. The City agrees that the Property will be annexed in accordance with this Agreement.

5.02 Voluntary Annexation.

(a) Developer may submit, at any time, a petition requesting the annexation of all or a portion of the Property; provided that submission of an annexation petition shall be submitted prior to, and shall be a condition precedent to, the City finally approving any preliminary plan, final plat, or related development document as provided in Section 2.06.

(b) If the city council begins annexation proceedings pursuant to this Section 5.02, Developer acknowledges that Section 43.052, Texas Local Government Code does not apply to the City's annexation of the Property. Further, Developer agrees that a request for voluntary annexation pursuant to Section 5.02 (a) or (b) will constitute Developer's waiver of all rights Developer may have under Section 43.052, Texas Local Government Code; save and except the terms of this Development Agreement shall survive.

5.03 Municipal Service Plan. The Parties agree to be bound and obligated to a municipal service plan ("Plan") negotiated by and between the Parties that is sufficient and adequate and hereby binds and obligates Developer, its grantees, successors, purchasers or assigns to install water, wastewater and drainage infrastructure required by this Agreement to service the Property and upon acceptance by the City, the City shall be obligated from such dedication and acceptance to maintain the infrastructure and to provide services. The Plan will be used as the municipal service plan when the City annexes the Property, in accordance with Exhibit "I". The City intends to annex the Property within ninety (90) days after the date of the first reading on the ordinance annexing the Property, if such annexation is approved and adopted by the city council. If the Plan conflicts with this Agreement, this agreement shall rule.

5.04 Land Use Upon Annexation. On the effective date of the annexation of the Property, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered for the uses and development standards set forth in this Agreement; unless Developer substantially amends or abandons the Project, defaults under this Agreement, or permits its Chapter 245, Local Government Code rights to expire. Developer may make application for the zoning of the Property at any time but not later than thirty (30) days after the effective date of the annexation. Upon the adoption of permanent zoning for the Property, the applicable City Code provisions will be subject to the terms, provisions and conditions of this Agreement.

ARTICLE 6
ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

6.01 Assignment of Developer Rights. Developer may assign in whole or part its rights and obligations under this Agreement to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat; provided that the City has consented to the assignment, which will not be unreasonably withheld, delayed, or conditioned. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective. This Agreement may be assigned by Developer without the consent of the City to any Developer-affiliated or related entity and Developer will be released from its obligations under

this Agreement upon delivery of a notice of assignment to the City. Any assignment of Developer's rights and obligations hereunder to an entity that is not affiliated with or related to Developer will not release Developer of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

6.02 **Lot Conveyance Not an Assignment**. The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein.

6.03 **Agreement Binding on Assigns**. This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developer or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

ARTICLE 7
DEFAULT AND NOTICE

7.01 **Notice and Opportunity to Cure**. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period, provided that the default must be cured within six months.

7.02 **Remedies for Default**. Whether in contract or tort or otherwise, Developer agrees to waive all claims to damages and other remedies, with the exception of specific or strict performance, such as lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever; provided, however, Developer may enforce this Agreement as provided under §245.006 of the Texas Local Government Code.

7.03 **Enforcement**. The Parties may enforce this Agreement by any proceeding at law or equity except the City is not waiving its right to sovereign immunity nor may this paragraph 7.03 be interpreted as or otherwise construed to be a waiver except as to an action for specific or strict performance. Failure of either Party to enforce this Agreement shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

7.04 **Litigation**. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Developer and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such specific action by the city council. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

7.05 **Notices**. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section 1; or (iii) one (1) business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

Adam B. Boenig
Vice President
Clayton Properties Group Inc. d/b/a Brohn Homes
6720 Vaught Ranch Rd, Suite 200
Austin, Texas 78730
P 512.320.8833
Email Address: adamb@brohnhomes.com

Any Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 8
PROPERTY AND MORTGAGEE OBLIGATIONS

8.01 **Mortgagee Acceptance**. Developer shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property

with notice of and subject to this Agreement. Developer shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

8.02 Mortgagee Protection. This Agreement will not affect the right of Developer to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property ("Lender") may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to cooperate with Developer and its Lenders' representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

(a) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 7.05, provide the Lender with a copy of any written notice of default given to Developer under this Agreement within ten (10) days of the date such notice is given to Developer.

(b) Upon default by Developer under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.

(c) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that Property until all delinquent fees and other obligations of Developer under this Agreement that relate to the Property have been paid or performed.

8.03 Certificate of Compliance. Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

(a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;

(b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and

(c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

ARTICLE 9
MISCELLANEOUS

9.01 **Multiple Originals**. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

9.02 **Entire Agreement**. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

9.03 **Recordation**. A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas.

9.04 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable in Hays County, Texas.

9.05 **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceability under the present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

9.06 **Termination or Amendment By Agreement**. This Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Developer, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developer of only the portion of the Property affected by the amendment or termination. The City may terminate this Agreement if the Developer does not obtain preliminary plat approval within five (5) years of the Effective Date. This Agreement will terminate if the preliminary plat expires during the term of this Agreement pursuant to the provisions governing expiration of preliminary plats set forth in the City Code.

9.07 **No Oral or Implied Waiver.** The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

9.08 **No Third-Party Beneficiary**. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

9.09 Anti-Boycott Verification. To the extent this Agreement constitute a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law the Company represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (a) boycotts Israel or (b) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

9.10 Iran, Sudan and Foreign Terrorist Organizations. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law the Developer represents that the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

SIGNED and executed this 16TH day of JUNE, ~~2019~~ 2020

Clayton Properties Group Inc. (dba – Brohn Homes)

By: _____
Adam Boenig, Vice President

CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

ATTEST:

_____
Jennifer Vetrano, City Secretary

THE STATE OF TEXAS §
§
COUNTY OF Travis §

This instrument was acknowledged before me on 6/16/20, 2019, by Adam Boenig, Vice President of Clayton Properties Group Inc (dba Brohn Homes).

Notary Public in and for the State of Texas

JENNIFER STEWART
Notary Public, State of Texas
Comm. Expires 02-23-2023
Notary ID 126016728

EXHIBIT A
DESCRIPTION OF PROPERTY

A LAND TITLE SURVEY OF 88.788 ACRE OUT OF THE JOHN JONES SURVEY, ABSTRACT NO. 244, IN HAYS COUNTY TEXAS, BEING A PORTION OF A CALLED 88.8888 ACRE TRACT OF LAND CONVEYED TO JAMESON EQUIPMENT, INC. IN VOLUME 4238, PAGE 697 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING A PORTION OF A CALLED 106.744 ACRE TRACT OF LAND CONVEYED TO THEODORE R. LEHMAN AND BAZEL L. LEHMAN IN VOLUME 196, PAGE 93 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS.
JOHN JONES SURVEY
ABSTRACT 243
HAYS COUNTY, TEXAS
PAYNE
LOCATION MAP

Item # 21

A DESCRIPTION OF 29.792 ACRES OUT OF THE JOHN JONES SURVEY, ABSTRACT NO. 263, IN HAYS COUNTY TEXAS, BEING A PORTION OF A CALLED 83.3633 ACRE TRACT OF LAND CONVEYED TO JANSEN EQUIPMENT, INC. IN VOLUME 4335, PAGE 867 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (OPRHCT), AND BEING A PORTION OF A CALLED 105.744 ACRE TRACT OF LAND CONVEYED TO THEODORE H. LEHMAN AND HAZEL L. LEHMAN IN VOLUME 195, PAGE 93 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS (DRHCT); SAID 29.792 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found within said 83.3633 acre tract, at the west corner of Lot 2, Brod Subdivision, a subdivision recorded in Volume 16, Page 156 of the Plat Records of Hays County, Texas (PRHCT), and being in the southeast line of Lot 1, Block A, Lehman High School Subdivision, a subdivision recorded in Volume 12, Page 324 (PRHCT), for the northernmost corner hereof;

THENCE, crossing said 83.3633 acre tract with the southwest line of said Lot 2, **S46°27'15"E**, a distance of **384.09** feet to a Mag nail with "Payne 6064" washer set in the concrete footer of a concrete drainage structure, in the southeast line of said 83.3633 acre tract, for the easternmost corner hereof, same being an angle point in the northwest line of a called 97.646 acre tract of land conveyed to Clayton Properties Group, Inc., a Tennessee Corporation doing business in Texas as Brohn Homes, in Document No. 19010347 (OPRHCT), from which a 1/2-inch iron rod found for another angle point in the northwest line of said 97.646 acre tract, same being the south corner of said Lot 2, bears S46°27'15"E, a distance of 52.28 feet;

THENCE, with the northwest line of said 97.646 acre tract, same being the southeast line of said 83.3633 acre tract, **S43°22'22"W**, a distance of **799.16** feet to a 1/2-inch iron rod found for the west corner of said 97.646 acre tract, same being the westerly north corner of a called 324.14 acre tract of land conveyed to Walton Texas, LP in Volume 4399, Page 768 (OPRHCT);

THENCE, with the northwest line of said 342.14 acre tract, in part being the southeast line of said 83.3633 acre tract and in part being the southeast line of said 105.744 acre tract, **S43°57'38"W**, a distance of **1235.00** feet to a 1/2-inch iron rod with "Payne 6064" cap set in the southeast line of said 105.744 acre tract, for the southernmost corner hereof, from which a fence post found bears S43°57'38"W a distance of 848.14 feet, and S44°18'49"W a distance of 448.66 feet;

THENCE, crossing said 105.744 acre tract and said 83.3633 acre tract, the following five (5) courses and distances:

1) **N02°21'48"W**, a distance of **117.39** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

2) **N20°40'58"W**, a distance of **286.73** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

3) **N36°14'04"W**, a distance of **156.71** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

4) With a curve to the right, having a radius of **461.85** feet, a delta angle of **27°35'18"**, an arc length of **222.39** feet, and a chord which bears **N06°42'07"W**, a distance of **220.24** feet to a 1/2-inch iron rod with "Payne 6064" cap set;

5) **N17°14'42"E**, a distance of **919.34** feet to a 1/2-inch iron rod found within said 83.3633 acre tract, at an angle point in the southwest line of said Lot 1, for the northwest corner hereof, from which a 1/2-inch iron rod with "Chaparral" cap found for the west corner of said Lot 1 bears N36°42'55"W, a distance of 1017.46 feet;

THENCE, continuing across said 83.3633 acre tract with the south line of said Lot 1, the following three (3) courses and distances:

1) **S75°00'47"E**, a distance of **883.03** feet to a 1/2-inch iron rod with "Chaparral" cap found;

2) **N15°03'42"E**, a distance of **233.76** feet to a 1/2-inch iron rod with "Chaparral" cap found;

3) **N52°15'15"E**, a distance of **209.77** feet to the **POINT OF BEGINNING** hereof, and containing 29.792 acres, more or less.

Surveyed on the ground August 21, 2019. Bearing Basis: The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions from SmartNet. Attachments: drawing 1850-001-TI

8/29/19

Eric J. Dannheim, RPLS
State of Texas #6075

STATE OF TEXAS
REGISTERED
ERIC J DANNHEIM
6075
PROFESSIONAL
LAND SURVEYOR

EXHIBIT B
PRIOR AGREEMENT

STATE OF TEXAS §
§
COUNTY OF HAYS §

AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN CITY OF KYLE, TEXAS, AND LEHMAN FAMILY LIMITED PARTNERSHIP AND LEHMAN FAMILY TRUST

This Amended and Restated Development Agreement ("Restated Agreement") is by and between the City of Kyle, Texas, a home rule City situated in Hays County, Texas (the "City") and Lehman Family Limited Partnership and Lehman Family Trust, the undersigned property owner(s) (the "Owner"). The term "Owner" includes all owners of the Property described herein. The term "Parties" means the City and the Owner.

WHEREAS, the Owner owns a parcel of real property (the "Property") in Hays County, Texas, which is more particularly described in the attached Exhibit "A" incorporated herein by reference;

WHEREAS, in October 2009, the City and the Owner entered into that one certain Chapter 43 Texas Local Government Code Development Agreement shown in the attached Exhibit "A" ("Prior Agreement");

WHEREAS, the recitals to the Prior Agreement state that the City had initiated the annexation of the Property before the City and the Owner entered into the Agreement pursuant to Sections 43.035 and 212.172, Texas Local Government Code;

WHERAS, the Prior Agreement provides that if the Owner sells the Property, the Property shall be voluntarily annexed to the City if the Property is intended to be used for development purposes; and,

WHEREAS, the Owner has the Property under contract to sell but does not want to lose the extra-territorial jurisdiction status of the Property if the sale does not close; and,

WHEREAS, due to changed circumstances, the Parties desire to amend and restate the Prior Agreement by terminating and removing the applicability of Section 43.035, Texas Local Government Code, except for subsection (d) of Section 43.035, to the Prior Agreement and by making the Restated Agreement pursuant to only Section 212.172, Texas Local Government Code.

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Restated Agreement, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

ARTICLE 1
PURPOSES AND TERM

1.01 Purpose. This Restated Agreement modifies, amends and replaces the Prior Agreement in its entirety as of the effective date of this Restated Agreement.

1.02 Authority. Authority for the Owner and the City to enter into this Restated Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; Chapter 212, Subchapter G, Tex. Local Government Code, ("Subchapter G"); and Chapter 395, Tex. Local Government Code ("Chapter 395") and other statutes as may be applicable.

1.03 Owner Execution. The Owner acknowledges that each and every owner of the Property must sign this Restated Agreement in order for the Restated Agreement to take full effect, and the Owners who sign this Restated Agreement covenant and agree, jointly and severally, to indemnify, hold harmless, and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Restated Agreement.

1.04 Term. The term of this Restated Agreement will commence on the Effective Date and continue for nine (9) years thereafter, unless sooner terminated under this Restated Agreement as provided herein, (the "Term"). After the first Term, this Restated Agreement may be extended for successive five-year periods upon written agreement signed by the Owner and the City.

ARTICLE 2
PRELIMINARY AND FINAL PLATS

2.01 Generally. All development applications relating to the Property will comply with the Code of Ordinances and other ordinances not codified of the City of Kyle ("Code") as if the Property were inside the corporate limits of the City. The preceding sentence controls even if the Property has not been annexed by the City.

2.02 Preliminary Plan. The Owner may submit to the City an application for a preliminary plan for the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property subject to 3.02 below. Pursuant to Section 41-45 of the City Code, the Owner may request the City, including the City's Zoning and Planning Commission, to make a written determination that the preliminary plan complies with all applicable regulations; provided, however, that such determination shall not constitute the final approval of the preliminary plan.

2.03 Subdivision Plats. The Owner may submit to the City an application for a subdivision plat for a portion of the Property without submitting to the City a request for the annexation of the Property and without submitting a zoning application for the Property subject to 3.02 below. Owner may submit subdivision construction plans concurrently with a subdivision plat application.

2.04 City Review and Approval. In anticipation of the voluntary annexation of the Property, the City will not require the Owner to submit any development applications to Hays County for review or approval. The City will accept and review applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property.

ARTICLE 3
ANNEXATION

3.01 Involuntary Annexation. Except as provided in Section 3.02, the City guarantees the continuation of the extraterritorial status of the Property, its immunity from annexation by the City, and its immunity from City property taxes for the term of this Restated Agreement. Except as provided in this Restated Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan during the term of this Restated Agreement.

3.02 Voluntary Annexation.

(a) Owner may submit, at any time, a signed petition requesting the annexation of all or a portion of the Property.

(b) If an application for a preliminary plan under 2.02 of this agreement, final plat under 2.03 or any related development permit relating to the Property is filed and such application is not withdrawn by the 180th day after the day of the City's acceptance of such application, then Owner's failure to withdraw any such application will constitute and be deemed a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council. The Owner agrees that such annexation shall be deemed voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

(c) If a preliminary plan, final plat or related development permit relating to the Property is approved by the City, such approval will constitute and be deemed a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council. The Owner agrees that such annexation shall be deemed voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

(d) If an application for a preliminary plan, final plat or related development permit relating to the Property is filed and such application is withdrawn on or before the 180th day after the day of the City's acceptance of such application, then such withdrawn application will not constitute or be deemed a petition for voluntary application.

3.03 Waiver of Owner's Rights Under § 43.035. If the City Council begins annexation proceedings pursuant to Section 3.02, the Owner acknowledges and agrees that Section 43.052, Texas Local Government Code, does not apply to the City's annexation of the Property. Further, Owner agrees that voluntary annexation pursuant to Section 3.02 (a), (b) or (c) will constitute Owner's waiver of all rights Owner may have under Section 43.052, Texas Local Government Code.

3.04 Change in Annexation Law. No subsequent change in the law regarding annexation shall affect the enforceability of this Restated Agreement or the City's ability to annex the Property pursuant to the terms of this Restated Agreement.

ARTICLE 4
EXISTING USE

4.01 Existing Use. Until a request for voluntary annexation is made in accordance with Section 3.02, Owner covenants and agrees not to use the Property for any use other than for agriculture or wildlife management, except for any now-existing single family residential use of the Property, without the prior written consent of the City. The City will not enforce any planning and development authority and regulations that interfere with the use of the Property for agriculture and wildlife management purposes. Until a request for voluntary annexation is made in accordance with Section 3.02, the Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the City limits, subject to the exceptions set forth herein. The Owner reserves the right to construct, repair, or renovate buildings on the Property that are consistent with its agricultural use without obtaining a building permit or triggering annexation. Further, the Owner may construct an accessory structure to an existing single-family dwelling. Additionally, Owner reserves the right to construct a new residence on the Property, provided that Owner provides written notice of the construction to the City so that the Parties can modify the description of the land subject to this Restated Agreement. This Section 4.01 expires upon the annexation of the Property by the City.

4.02 Eminent Domain. The City reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Section 212.172 Texas Local Government Code development agreement.

ARTICLE 5
ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

5.01 Notice to Purchaser. The Owner shall give written notice of this Restated Agreement to a prospective purchaser or grantee of any portion of the Property prior to such sale or conveyance. The Owner shall give the City written notice of such sale or conveyance; provided, however, this sentence will not apply to a sale or conveyance among the owners of the Property.

5.02 Assignment of Owner Rights. The Owner's rights and obligations under this Restated Agreement may be assigned in whole or part, subject to the prior written consent of the City, which shall not be unreasonably withheld, to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event the Owner assigns all of its respective rights under this Restated Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective.

5.03 **Agreement Binding on Assigns.** This Restated Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by the Owner, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Restated Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to the Owner or the City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Restated Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

ARTICLE 6
MISCELLANEOUS

6.01 **Notices.** Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to a particular Party, as the case may be, at the address hereinafter stated; or (iii) one business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any notice mailed to the Owner shall be addressed:

_____
_____
_____
_____

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

6.02 **Multiple Originals.** The Parties may execute this Restated Agreement in one or more duplicate originals, each of equal dignity.

6.03 **Recordation.** This Restated Agreement shall be a covenant running with the Property and a copy of this Restated Agreement will be recorded in the Official Public Records of Hays County, Texas.

6.04 **Governing Law.** This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Restated Agreement shall remain in full force and effect. This Restated Agreement is performable in Hays County, Texas.

6.05 **Termination or Amendment By Agreement.** This Restated Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Owner, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the owner of only the portion of the Property affected by the amendment or termination.

6.06 **Damages; Waiver.** Whether in contract or tort or otherwise, the Owner agrees to waive all claims to damages and other remedies, including specific or strict performance, lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever. Damages, if any, will be limited to amounts recoverable under §271.153 of the Texas Local Government Code.

6.07 **Enforcement.** This Restated Agreement may be enforced by the Owner but only as provided under §271.153 of the Texas Local Government Code or by the City by any proceeding at law or equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Restated Agreement thereafter.

6.08 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

6.09 **No Third Party Beneficiary.** This Restated Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

6.10 **Effective Date.** This Restated Agreement will be effective as of the date upon which all Parties have executed the Restated Agreement.

6.11 **Entire Agreement.** This Restated Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

OWNER:

Lehman Family Trust

By: Peggy Jensen

ACKNOWLEDGEMENT

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

_____
Amelia Sanchez, City Secretary

EXHIBIT A
PRIOR AGREEMENT

RESOLUTION NO. 688

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH LEHMAN FAMILY LIMITED PARTNERSHIP AND LEHMAN FAMILY TRUST, TEXAS LOCAL GOVERNMENT CODE; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City of Kyle, Texas (the "City") has initiated several annexations for the purpose of filling gaps and providing for greater continuity within the city limits; and

Whereas, pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, the City has offered to enter a development agreement titled "Development Agreement Under Section 43.035, Texas Local Government Code" (the "Agreement") attached hereto and incorporated herein as Exhibit A, with landowners owning land currently appraised for ad valorem tax purposes as land for agricultural use;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, HAYS COUNTY, TEXAS, THAT:

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Agreement Approved. The City Council hereby approves the Development Agreement Under Section 43.035, Texas Local Government Code attached hereto as Exhibit "A", and authorizes the Mayor to execute said Agreement.

Section 3. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Local Government Code.

FINALLY PASSED AND APPROVED on this the 6th **day of** Ocotber, **2009.**

ATTEST:

Amelia Sanchez, City Secretary

THE CITY OF KYLE, TEXAS

Miguel Gonzalez, Mayor

STATE OF TEXAS §
COUNTY OF HAYS §

DEVELOPMENT AGREEMENT
UNDER SECTION 45.035, TEXAS LOCAL GOVERNMENT CODE

This Development Agreement Under Section 45.035, Texas Local Government Code is entered between the City of Kyle, Texas (the "City") and the undersigned property owner(s) (the "Owner") (the "Agreement"). The term Owner shall include all owners of the Property. The City and the Owner are collectively referred to as the Parties.

WHEREAS, the Owner owns a parcel of real property in Hays County, Texas, which is more particularly described in the attached Exhibit "A" (the "Property") that is appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Tax Code;

WHEREAS, the City has begun the process to institute annexation proceedings on all or portions of Owner's Property;

WHEREAS, under Section 43.035, Texas Local Government Code, the City is required to offer to make a development agreement with the Owner that will provide for the continuation of the extraterritorial status of the area and authorize the enforcement of all regulations and planning authority of the City that do not interfere with the use of the area for agriculture, wildlife management, or timber;

WHEREAS, Section 43.035 provides that the restriction or limitation on the City's annexation of all or part of the Property under this Agreement is void if the Owner files any type of subdivision plat or related development document for the Property, regardless of how the area is appraised for ad valorem tax purposes;

WHEREAS, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Sections 43.035 and 212.172, Texas Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. Extraterritorial Jurisdiction Status of Property. The City agrees that the Property shall remain in the City's extraterritorial jurisdiction (the "ETJ") and the City shall discontinue the pending annexation proceedings as to the Property. The City further agrees that it shall not annex the Property during the term of this Agreement, subject to the terms and conditions of this Agreement.

Section 2. Owner's Obligations. In consideration of the City's agreement not to annex the

Property and as a condition of the Property remaining in the City's ETJ, the Owner covenants and agrees to the following:

(a) The Owner shall use the Property only for agriculture, wildlife management, and/or timber land use, as defined by Chapter 23 of the Texas Tax Code, that are existing on the Effective Date of this Agreement, except for single-family residential use existing on the Effective Date or as otherwise provided by this Agreement, without the prior written consent of the City. The Owner's use of the property as of the Effective Date includes the following:

(1) Raising and selling of livestock, including pigs, hogs, and cattle.
(2) The planting, cultivation, harvesting, and destruction of crops, plowing of the land and application of herbicides, insecticides, fertilizers, and other chemical performed by ground rigs, airplanes, and helicopters; and
(3) Storage and selling of grains, crops, chemicals, fertilizer, and feed.

(b) The Owner shall not subdivide the Property, or file for approval of a subdivision plat, site plan, or related development document for the Property with Hays County or the City until the Property is annexed into and zoned by the City; provided that the Property may be subdivided into two parcels that are greater than five acres in size if required by a lender to finance the construction of a new single family home or other building or structure that is authorized to be constructed on the Property under Section 2(c).

(c) The Owner shall not construct, or allow to be constructed, any building or structure on the Property that requires a building permit until the Property is annexed into and zoned by the City. Accessory structures authorized under the Agricultural District (District "A") (including but not limited to barns, sheds, fences, and corrals) and buildings or structures that are related to and necessary for the use of the Property as authorized under Section 2(a) (excluding new single family residences, except as authorized in this Section 2(c)) are exceptions to this Section 2(c). One additional new single family residence may be constructed on the Property if the residence is to be occupied by family members of the Owner who participate in the ownership or operation of the agricultural, timberland, or wildlife management uses of the Property. Proof of qualification for this exception must be presented at the time of application for a building permit.

(d) The City's Agricultural District (District "A") zoning regulations shall apply to the Property, and in addition to the uses authorized under District "A", the Property may also be used for wildlife management or timber land, as defined by Chapter 23 of the Texas Tax Code, if such uses existed on the Effective Date of this Agreement. Structures that exist on the Property on the Effective Date shall not be subject to setback requirements. Fences shall not be subject to setback requirements. The City's building codes and regulations shall apply to the Property except a provided otherwise in this Section 2(d). Any buildings or structures constructed on the Property after the Effective Date shall be constructed

in compliance with the regulations for the Agricultural District (District "A") and applicable building codes and regulations, provided that building permits and related inspections shall only be required for the construction of a new single family residence and additions to an existing single family residence that are authorized to be located on the Property under this Agreement. Building permits and related inspections shall not be required for accessory structures related to the existing use of the Property.

Section 3. Development and Annexation of Property.

(a) The following occurrences shall be deemed the Owner's petition for voluntary annexation of the Property, and the Property may subsequently be annexed at the discretion of the City Council:

(1) The filing of any application for plat approval, site plan approval , building permit (excluding building permit applications for construction of a new single family residence or additions to an existing single family residence authorized to be located on the Property under Section 2), or related development document for the Property, or the commencement of development of the Property, except as specifically authorized herein.

(2) The Owner's failure to comply with Sections 2(a), 2(b), or 2(c).

(3) The Property is no longer appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Texas Tax Code, or successor statute, unless the Property is no longer appraised for such purposes because the Legislature has abolished agricultural, wildlife management, or timberland exemptions, provided that the Owner is in compliance with Section 2.

(4) The filing for voluntary annexation of the Property into the City by the Owner.

(5) The expiration of this Agreement.

(b) The Owner agrees that annexation initiated due to an occurrence under Section 3(a) shall be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner. Upon annexation, municipal services shall be provided to the Property in accordance with the adopted municipal services plan.

Section 4. Application of City Regulations. Pursuant to Section 43.035(b)(1)(B), Texas Local Government Code, the Property is subject to all of the City's regulations, as they are amended from time to time, and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries and the Owner acknowledges and agrees that the City is hereby authorized to enforce said regulations and planning authority except as

specifically provided otherwise herein; provided that fees that are applicable to properties located within the ETJ shall apply to the Property. A City regulation shall be deemed to materially interfere with the use of the Property for agriculture, wildlife management, or timber if the regulation prohibits one of the uses of Property listed in Section 2(a) or a use authorized by Chapter 23, Texas Tax Code; provided that the City may regulate hunting to the extent authorized by Chapter 229, Texas Local Gov't Code. It is the intent of the parties that the enforcement of City regulations during the term of this Agreement does not prevent the Owner from continuing the Owner's agricultural operation under current practices that are compliant with applicable state and federal law or under future practices that occur due to changes in technology, methods, or applicable state or federal law and that are compliant with applicable state and federal law.

Section 5. Term. The term of this Agreement (the "Term") is fifteen (15) years from the Effective Date. The Agreement may be extended for two additional fifteen year terms upon the agreement of both parties and approval by the City Council

Section 6. Vested Rights Claims. This Agreement is not a permit for the purposes of Chapter 245, Texas Local Government Code. The Owner hereby waives any and all vested rights and claims that the Owner may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Section 2 herein. The Owner further waives any and all vested rights and claims that the Owner may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction the Owner may initiate following the expiration of this Agreement and the institution of annexation proceedings by the City; provided that the City initiates annexation proceedings within one year following the expiration of this Agreement.

Section 7. Authorization.

(a) All parties and officers signing this Agreement warrant to be duly authorized to execute this Agreement.

(b) The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect. The failure of each and every owner of the Property to sign this Agreement at the time of approval and execution by the City shall result in the Agreement being void, and the City may, within its discretion, annex the Property in accordance with applicable law.

Section 8. Notice. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. A copy of the notices required by this Section shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Notices required to be sent to the Owner shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

_____
_____
_____
_____

Section 9. Covenant Running with the Land. This Agreement shall run with the Property, and this Agreement or a memorandum of this Agreement acceptable to City and the Owner shall be recorded in the Official Public Records of Hays County, Texas. The Owner and the City acknowledge and agree that this Agreement is binding upon the City and the Owner and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement. Conveyance of the Property, or portions thereof, to subsequent owners does not trigger a request for voluntary annexation unless Section 2 is also violated.

Section 10. Severability. If any provision of this Agreement is held by a court of competent and final jurisdiction to be invalid or unenforceable for any reason, then the remainder of the Agreement shall be deemed to be valid and enforceable as if the invalid portion had not been included.

Section 11. Amendment and Modifications. This Agreement may be amended or modified only in a written instrument that is executed by both the City and the Owner after it has been authorized by the City Council.

Section 12. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

Section 13. Governmental Immunity; Defenses. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either the City or Owner, including governmental immunity, nor to create any legal rights or claims on behalf of any third party.

Section 14. Enforcement; Waiver. This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

Section 15. Effect of Future Laws. No subsequent change in the law regarding annexation

shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 16. Venue and Applicable Law. Venue for this Agreement shall be in Hays County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

Section 17. Counterparts. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Section 18. Effective Date. This Agreement shall be in full force and effect as of the date of approval of this Agreement by the City Council, from and after its execution by the parties.

Section 19. Sections to Survive Termination. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions related to annexation of the Property into the City.

Entered into this 5th day of October, 2009.

Owner (s)

Hazel Lehman
Printed Name: Hazel Lehman

Printed Name: _____

City of Kyle, Texas

Miguel Gonzalez, Mayor

STATE OF TEXAS §

COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Hazel Lehman, Owner of the Property, and acknowledged that s/he is fully authorized to execute the foregoing document and that s/he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 5th day of October, 2009.

NOTARY PUBLIC STATE OF TEXAS
Kay S Koster
My Commission Expires
03/08/2012

Kay S. Koster
Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared _____, Owner of the Property, and acknowledged that s/he is fully authorized to execute the foregoing document and that s/he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2009.

_____
Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Miguel Gonzalez, Mayor, City of Kyle, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 20th day of October, 2009.

AMELIA L. SANCHEZ
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
DECEMBER 3, 2009

Amelia L. Sanchez
Notary Public - State of Texas

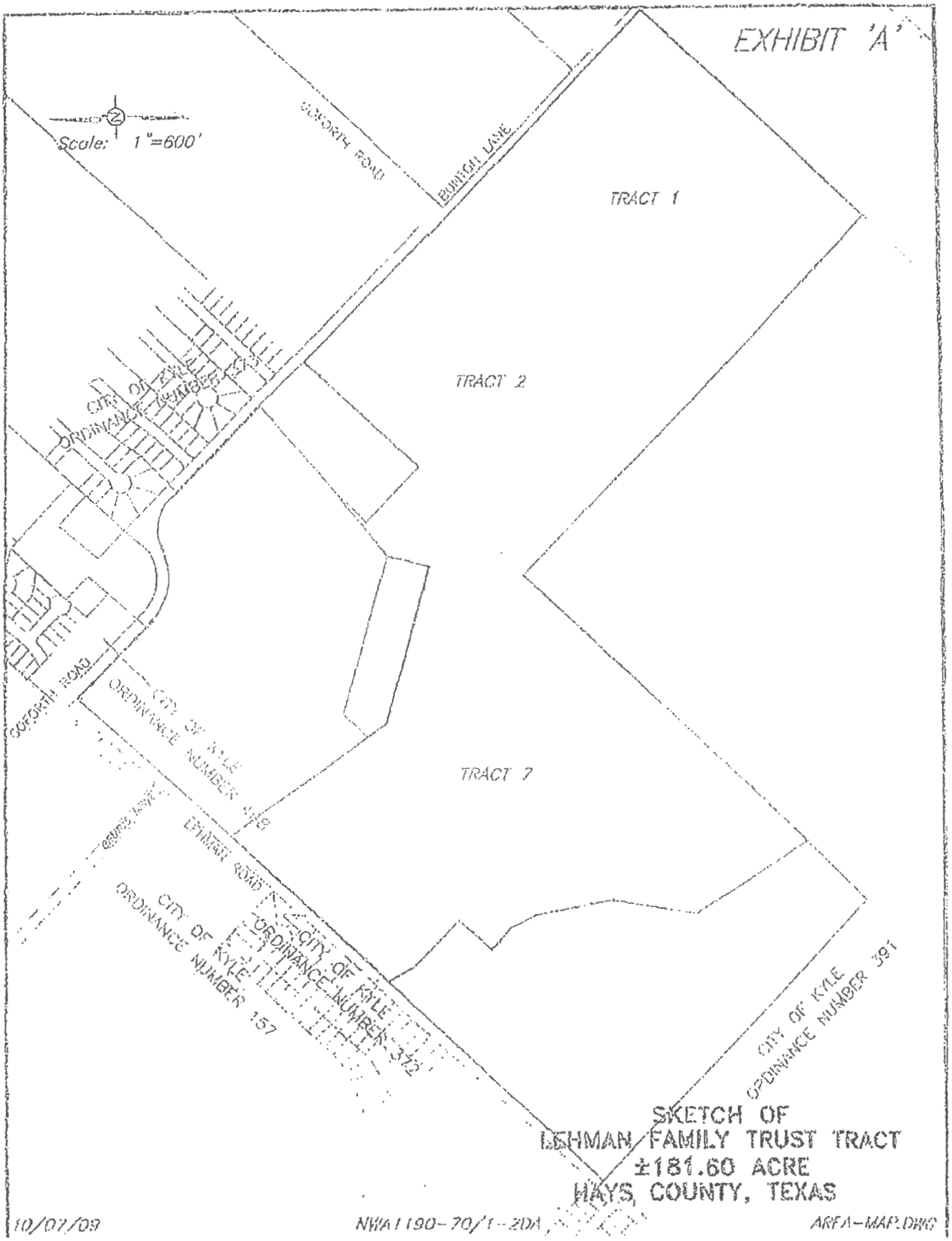


EXHIBIT 'A'
Scale: 1"=600'
SOUTH ROAD
BURLEIGH LANE
TRACT 1
TRACT 2
TRACT 3
CITY OF KYLE ORDINANCE NUMBER 175
CITY OF KYLE ORDINANCE NUMBER 346
LEHMAN ROAD
CITY OF KYLE ORDINANCE NUMBER 157
CITY OF KYLE ORDINANCE NUMBER 391
SKETCH OF
LEHMAN FAMILY TRUST TRACT
±181.60 ACRE
HAYS COUNTY, TEXAS
10/07/09
NWA1190-70/1-2DA
AREA-MAP.DWG

LEHMAN FAMILY TRUST

DEVELOPMENT AGREEMENT

CITY OF KYLE, TEXAS

TRACT 1

All that certain tract or parcel of land, called 46.68 acres, conveyed to Hazel M. Lehman, Trustee of the Lehman Family Trust by Will of Theodore H. Lehman, as recorded in Volume 280, Page 213 Official Public Records of Hays County, Texas.

TRACT 2

All that certain tract or parcel of land, called 50.11 acres, conveyed to Hazel M. Lehman, Trustee of the Lehman Family Trust by Will of Theodore H. Lehman, as recorded in Volume 285, Page 171 Official Public Records of Hays County, Texas.

TRACT 7

All that certain tract or parcel of land, called 83.4273 acres, conveyed to Lehman Family Limited Partnership and Lehman Family Trust, Hazel M. Lehman, Trustee, by deed recorded in Volume 3352, Page 175 Official Public Records of Hays County, Texas.

10/13/2006

TAX RECEIPT

Luanne Caraway Tax Assessor-Collector, Hays County
102 N. LBJ Dr.
San Marcos, TX 78666
Ph: 512-393-5545 Fax: 512-393-5517

Receipt Number: SM-2009-343211

Payor:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	Owner:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640

Quick Ref ID:	R70300	Property:	10-0263-0009-00000-2
Owner:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) - 100%	Legal Description:	A0263 JOHN JONES SURVEY, ACRES 84.4273
Owner Address:	HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640		

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
2008					
Plum Creek	18,150	0.018000	3.27	3.27	3.27
Hays Consolidated	18,150	1.461300	265.23	265.23	265.23
Special Road Dist	18,150	0.080100	14.54	14.54	14.54
Plum Creek	18,150	0.018000	3.27	3.27	3.27
Hays County	18,150	0.374900	68.05	68.05	68.05
Hays Co ESD #5	18,150	0.085000	15.43	15.43	15.43

Total Payment Amount	369.79
Check Payment Tendered	369.79
Total Tendered	369.79

Date Paid:	01/08/2009
Effective Date:	01/08/2009
Station:	Luanne
Cashier:	LuanneC

TAX RECEIPT

Luanne Caraway Tax Assessor-Collector, Hays County
102 N. LBJ Dr.
San Marcos, TX 78666
Ph: 512-393-5545 Fax: 512-393-5517

Receipt Number: SM-2009-343213

Payor:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	Owner:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640

Quick Ref ID:	R12600	Property:	10-0021-0010-00000-2
Owner:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) - 100%	Legal Description:	A0021 MILTON B ATKINSON SURVEY, ACRES 50.06
Owner Address:	HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640		

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
2008					
Plum Creek	10,760	0.018000	1.94	1.94	1.94
Hays Consolidated	10,760	1.461300	157.23	157.23	157.23
Special Road Dist	10,760	0.080100	8.62	8.62	8.62
Plum Creek	10,760	0.018000	1.94	1.94	1.94
Hays County	10,760	0.374900	40.34	40.34	40.34
Hays Co ESD #5	10,760	0.085000	9.15	9.15	9.15

Total Payment Amount	219.22
Check Payment Tendered	219.22
Total Tendered	219.22

Date Paid:	01/08/2009
Effective Date:	01/08/2009
Station:	Luanne
Cashier:	LuanneC

TAX RECEIPT

Luanne Caraway Tax Assessor-Collector, Hays County
102 N. LBJ Dr.
San Marcos, TX 78666
Ph: 512-393-5546 Fax: 512-393-5517

Receipt Number: SM-2009-343214

Payor:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640	Owner:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640

Quick Ref ID:	R12599	Property:	10-0021-0009-00000-2
Owner:	HLP LEHMAN FAMILY LIMITED PARTNERSH (O0082197) - 100%	Legal Description:	A0021 MILTON B ATKINSON SURVEY, ACRES 48.68
Owner Address:	HAZEL M LEHMAN TRUSTEE 1000 LEHMAN RD KYLE, TX 78640		

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
2008					
Plum Creek	10,470	0.018000	1.88	1.88	1.88
Hays Consolidated	10,470	1.461300	153.00	153.00	153.00
Special Road Dist	10,470	0.080100	8.39	8.39	8.39
Plum Creek	10,470	0.018000	1.88	1.88	1.88
Hays County	10,470	0.374900	39.25	39.25	39.25
Hays Co ESD #5	10,470	0.085000	8.90	8.90	8.90

Total Payment Amount	**213.30**
Check Payment Tendered	213.30
Total Tendered	213.30

Date Paid:	01/08/2009
Effective Date:	01/08/2009
Station:	Luanne
Cashier:	LuanneC

TAX RECEIPT

HAYS COUNTY TAX OFFICE
Luanne Caraway Tax Assessor-Collector
102 N. LBJ Drive
San Marcos, TX 78666
(512) 393-5545

This is a receipt for taxes paid as of 11/16/2007 based upon the tax records of the County Tax Office.

Station	: dianec	Receipt Number	: SM-2007-233926	
Cashier	: DianeC	Date Paid	: 11/16/2007	Effective Date: 11/16/2007
Tax Years	: 2007	Tender Method	: Check Payment - 1621	
Payor	: LEHMAN, HAZEL LIPPE	Total Paid	: 1,656.53	

Payor: LEHMAN, HAZEL LIPPE (O0022441)
1000 LEHMAN RD
KYLE, TX 78640

Owner: Multiple Owners

LEGAL DESCRIPTION

R11514	: ABS 14 JOHN STUART SURVEY 38.93 AC
R12599	: A0021 MILTON B ATKINSON SURVEY, ACRES 48.68
R12600	: A0021 MILTON B ATKINSON SURVEY, ACRES 50.11
R70073	: ABS 14 JOHN STUART SURVEY 20.00 AC
R70300	: A0263 JOHN JONES SURVEY, ACRES 111.6263
R70301	: ABS 263 JOHN JONES SURVEY 1.00 AC GEO#90602151

ENTITIES

FHA	Hays Co ESD #5
SHA	Hays Consolidated ISD
GHA	Hays County
PCC	Plum Creek Conservation District
WPC	Plum Creek Groundwater District
RSP	Special Road Dist

PAYMENT SUMMARY

R11514 - LEHMAN, HAZEL LIPPE (O0022441)
1000 LEHMAN RD KYLE, TX 78640
10-0014-0078-00000-2

Tax Year / Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Penalty&Int	Coll. Penalty	Amount Paid
2007 FHA	7,880.00	0.077000	6.07	6.07	0.00	0.00	6.07
2007 SHA	7,880.00	1.461300	115.15	115.15	0.00	0.00	115.15
2007 GHA	7,880.00	0.371400	29.26	29.26	0.00	0.00	29.26
2007 PCC	7,880.00	0.017800	1.40	1.40	0.00	0.00	1.40
2007 WPC	7,880.00	0.018000	1.42	1.42	0.00	0.00	1.42
2007 RSP	7,880.00	0.086000	6.78	6.78	0.00	0.00	6.78
					Total Payment for Property R11514		160.08

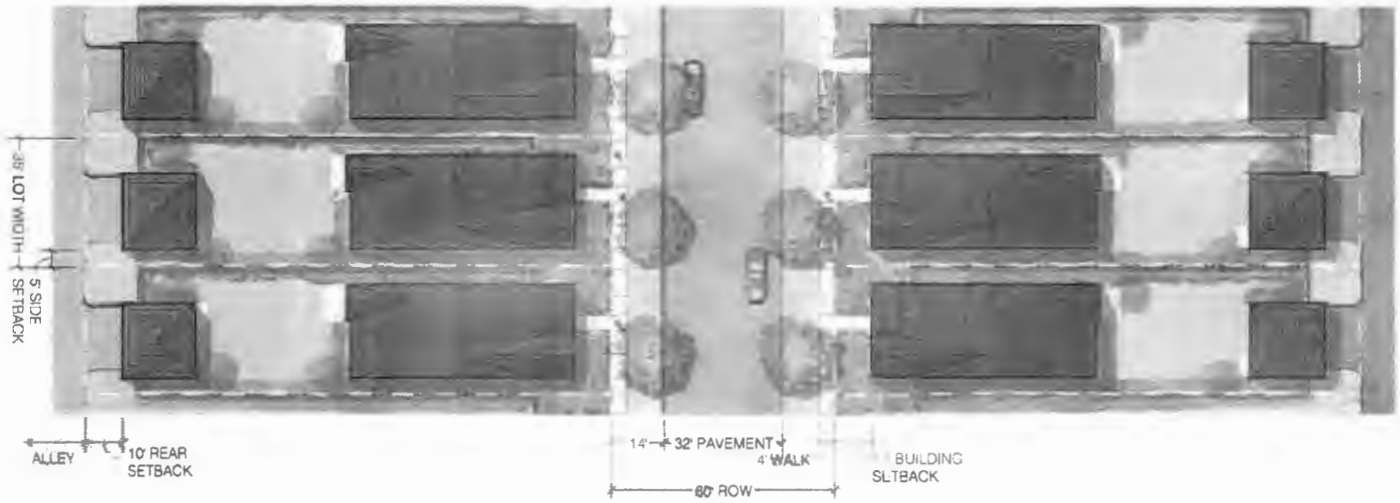
R12599 - LEHMAN, HAZEL LIPPE (O0022441)
1000 LEHMAN RD KYLE, TX 78640
10-0021-0009-00000-2

Tax Year / Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Penalty&Int	Coll. Penalty	Amount Paid
2007 FHA	9,850.00	0.077000	7.58	7.58	0.00	0.00	7.58
2007 SHA	9,850.00	1.461300	143.94	143.94	0.00	0.00	143.94
2007 GHA	9,850.00	0.371400	36.59	36.59	0.00	0.00	36.59
2007 PCC	9,850.00	0.017800	1.75	1.75	0.00	0.00	1.75
2007 WPC	9,850.00	0.018000	1.77	1.77	0.00	0.00	1.77
2007 RSP	9,850.00	0.086000	8.47	8.47	0.00	0.00	8.47
					Total Payment for Property R12599		200.10

R12600 - LEHMAN, HAZEL LIPPE (O0022441)
1000 LEHMAN RD KYLE, TX 78640
10-0021-0010-00000-2

Tax Year / Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Penalty&Int	Coll. Penalty	Amount Paid
2007 FHA	10,140.00	0.077000	7.81	7.81	0.00	0.00	7.81
2007 SHA	10,140.00	1.461300	148.18	148.18	0.00	0.00	148.18
2007 GHA	10,140.00	0.371400	37.66	37.66	0.00	0.00	37.66
2007 PCC	10,140.00	0.017800	1.80	1.80	0.00	0.00	1.80
2007 WPC	10,140.00	0.018000	1.83	1.83	0.00	0.00	1.83
2007 RSP	10,140.00	0.086000	8.72	8.72	0.00	0.00	8.72
					Total Payment for Property R12600		206.00

EXHIBIT C
PLAN VIEW AND STREET SCAPE ILLUSTRATIONS



BROHN HOMES

STUDIO

KYLE, TEXAS

FEBRUARY 26, 2019

CASSETTA RANCH

TYPICAL STREET PLAN - 35' LOTS

SCALE 1" = 30' 0"

NORTH

KYLE, TEXAS

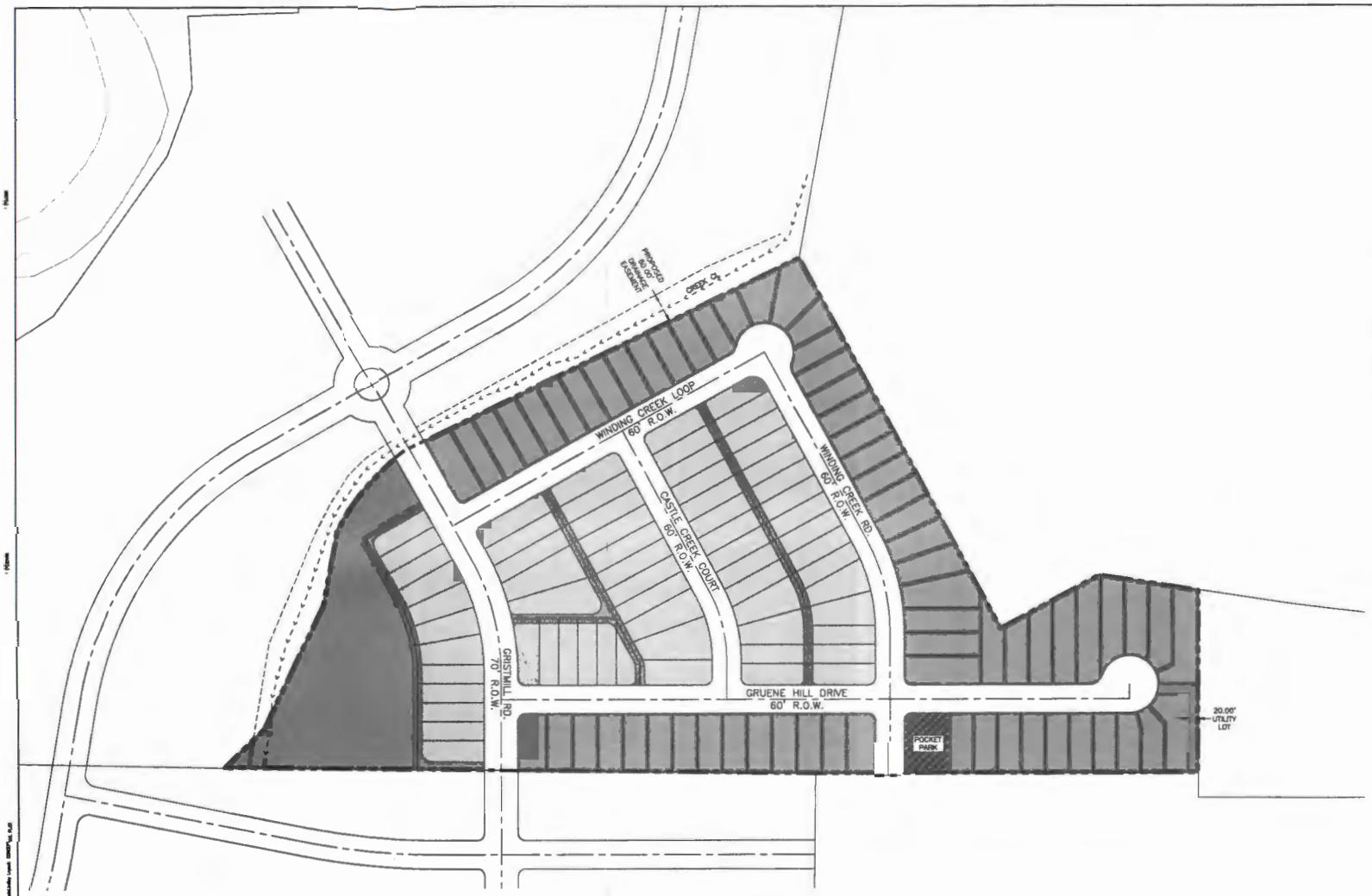
FEBRUARY 26, 2019

CASSETTA RANCH

TYPICAL STREET VIEW - 35' LOTS

BROHN HOMES

EXHIBIT D
CONCEPT PLAN



SCALE: 1"=100'
GRAPHIC SCALE IN FEET
0 50 100 150 200

LEGEND

- 40' SINGLE FAMILY
- 50' SINGLE FAMILY
- ALLEY EASEMENT
- OPEN SPACE

SUMMARY	
TOTAL ACREAGE:	30
NUMBER OF BLOCKS:	5
40' X 140' LOTS:	84
50' X 125' LOTS:	85
OPEN SPACE LOTS:	3
TOTAL LOTS:	132

CONCEPT PLAN/ILLUSTRATIVE PLAN ONLY. LOT SIZES SUBJECT TO CHANGE AND WILL FOLLOW THOSE ALLOWED PER THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KYLE AND CLAYTON PROPERTIES GROUP INC. (DBA BROHN HOMES)

DANNENBAUM
ENGINEERING COMPANY - AUSTIN, LLC
T.B.P.E. FIRM REGISTRATION # F-8995
2448 CUELLAR CENTER DR., STE 100 AUSTIN, TX 78717 (512) 243-8305

KYLE 30
CONCEPTUAL PLAN

CONCEPTUAL PLAN

This document is released for review under the authority of J. John D. Hinck, P.E. 8995 and is not to be used for construction, bidding, or permit purposes. Date: October 2018

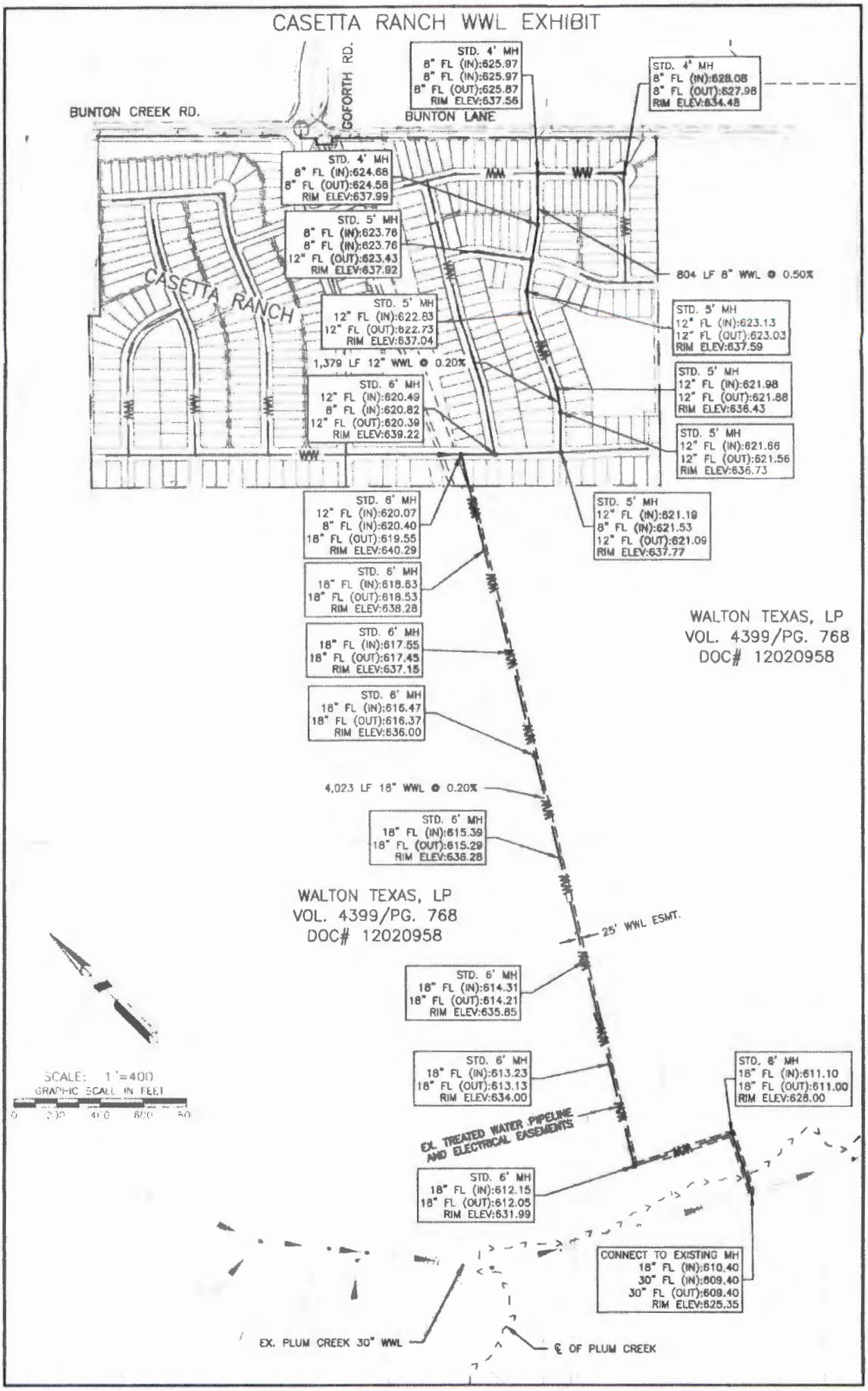
REVISIONS

NO.	DATE	APPROVED

SHEET NO.
1 OF 1

DEC JOB NUMBER
5119-02

EXHIBIT E
WALTON LINE


CASETTA RANCH WWL EXHIBIT
BUNTON CREEK RD.
GOFORTH RD.
BUNTON LANE
CASETTA RANCH
STD. 4' MH
8" FL (IN):625.97
8" FL (IN):625.97
8" FL (OUT):625.87
RIM ELEV:637.56
STD. 4' MH
8" FL (IN):628.08
8" FL (OUT):627.98
RIM ELEV:634.48
STD. 4' MH
8" FL (IN):624.68
8" FL (OUT):624.58
RIM ELEV:637.99
STD. 5' MH
8" FL (IN):623.78
8" FL (IN):623.76
12" FL (OUT):623.43
RIM ELEV:637.92
804 LF 8" WWL @ 0.50%
STD. 5' MH
12" FL (IN):622.83
12" FL (OUT):622.73
RIM ELEV:637.04
STD. 5' MH
12" FL (IN):623.13
12" FL (OUT):623.03
RIM ELEV:637.59
1,379 LF 12" WWL @ 0.20%
STD. 5' MH
12" FL (IN):621.98
12" FL (OUT):621.88
RIM ELEV:636.43
STD. 6' MH
12" FL (IN):620.49
8" FL (IN):620.82
12" FL (OUT):620.39
RIM ELEV:639.22
STD. 5' MH
12" FL (IN):621.86
12" FL (OUT):621.56
RIM ELEV:636.73
STD. 6' MH
12" FL (IN):620.07
8" FL (IN):620.40
18" FL (OUT):619.55
RIM ELEV:640.29
STD. 5' MH
12" FL (IN):621.19
8" FL (IN):621.53
12" FL (OUT):621.09
RIM ELEV:637.77
STD. 6' MH
18" FL (IN):618.63
18" FL (OUT):618.53
RIM ELEV:638.28
WALTON TEXAS, LP
VOL. 4399/PG. 768
DOC# 12020958
STD. 6' MH
18" FL (IN):617.55
18" FL (OUT):617.45
RIM ELEV:637.15
STD. 6' MH
18" FL (IN):616.47
18" FL (OUT):616.37
RIM ELEV:636.00
4,023 LF 18" WWL @ 0.20%
STD. 6' MH
18" FL (IN):615.39
18" FL (OUT):615.29
RIM ELEV:636.28
WALTON TEXAS, LP
VOL. 4399/PG. 768
DOC# 12020958
25' WWL ESMT.
STD. 6' MH
18" FL (IN):614.31
18" FL (OUT):614.21
RIM ELEV:635.85
SCALE: 1"=400
GRAPHIC SCALE IN FEET
STD. 6' MH
18" FL (IN):613.23
18" FL (OUT):613.13
RIM ELEV:634.00
STD. 6' MH
18" FL (IN):611.10
18" FL (OUT):611.00
RIM ELEV:628.00
EX. TREATED WATER PIPELINE AND ELECTRICAL EASEMENTS
STD. 6' MH
18" FL (IN):612.15
18" FL (OUT):612.05
RIM ELEV:631.99
CONNECT TO EXISTING MH
18" FL (IN):610.40
30" FL (IN):609.40
30" FL (OUT):609.40
RIM ELEV:625.35
EX. PLUM CREEK 30" WWL
℄ OF PLUM CREEK

Item # 21

EXHIBIT F

(a) In the event that the City authorizes oversizing of a water line, the Developer shall solicit private bids for the Water Line Project based on the City Engineer-approved design, plans and specifications for the Water Line Project, and recommend the lowest qualified bidder/contractor to the City. The Water Line private bids will be stated or quoted with alternate bids being required for a water line sized to serve the Project as required by the City Code ("**Alternate #1**") and the size water line required by the City ("**Alternate #2**"), together with all equipment and related facilities and structures shown on the City approved plans and specifications for the Water Line Project.

(b) Prior to bidding the Water Line Project, the Developer shall provide the City Engineer and the purchasing agent with a copy of the documents soliciting the bids. Within seven (7) business days, the City Engineer will review the description of the Project for compliance with this Agreement and notify the Project Engineer of any corrections to be made.

(c) After bids are solicited, the Project Engineer will provide the City Engineer and the City's purchasing agent with copies of the bids. Within ten business days of receipt of the bids, the City Engineer shall evaluate the alternate bids to determine whether the bids are fair and balanced and shall notify the Project Engineer and the purchasing agent that (i) the bids are approved; or (ii) the bids are rejected due to being unbalanced or skewed. If the City Engineer rejects the bids, the Project Engineer shall cause the bids to be corrected and resubmitted to the City Engineer. The City Engineer will review the corrected bids and either approve the bids or reject the bids and seek additional corrections in accordance with the procedures set forth in this subsection (c), or submit the bid to the City Council for approval.

(d) The Reimbursable Costs for the Water Line Project, which shall be:

(1) the difference between the dollar amount of the approved bid for Water Line Project Alternate #1 and the dollar amount of the approved bid for Water Line Project Alternate #2; and

provided that all such sums and amounts shall have been paid by Developer and are reasonable, necessary and documented to and approved by the City Engineer.

(e) It is estimated that the Reimbursable Costs for the Water Line Project will be less than $50,000. In the event that the difference between Alternate #2 and Alternate #1 exceeds $50,000, the Parties shall confer to determine whether (i) the Water Line Project should be rebid; (ii) there is a lawful exception to publicly bidding the Water Line Project; or (iii) the Water Line Project should be bid in accordance with Chapter 252, Texas Local Gov't Code, and thereafter the Parties shall work in good faith to cause the Water Line Project to be rebid and this Addendum amended, if required.

(f) The City will pay for the Reimbursable Costs of the Water Line Project from any funds available from the City, including but not limited to water impact fees, either in a lump sum payment

or through water impact fee reimbursements from customers who connect to the water Line Project. The method of payment for the Reimbursable Costs of the Water Line Project shall be at the City's sole discretion.

EXHIBIT G

(a) This Exhibit shall govern City cost-participation in the oversizing of the Walton Line or another wastewater line in the Project. The Developer shall solicit private bids for the Wastewater Line Project based on the City Engineer-approved design, plans and specifications for the Wastewater Line Project, and recommend the lowest qualified bidder/contractor to the City. The Wastewater Line private bids will be stated or quoted with alternate bids being required for Wastewater line sized to serve the Project as required by the City Code ("**Alternate #1**") and a Wastewater line in the size required by the City line ("**Alternate #2**"), together with all equipment and related facilities and structures shown on the City approved plans and specifications for the Wastewater Line Project.

(b) Prior to bidding the Wastewater Line Project, the Developer shall provide the City Engineer and the purchasing agent with a copy of the documents soliciting the bids. Within seven (7) business days, the City Engineer will review the description of the Project for compliance with this Agreement and notify the Project Engineer of any corrections to be made.

(c) After bids are solicited, the Project Engineer will provide the City Engineer and the City's purchasing agent with copies of the bids. Within ten business days of receipt of the bids, the City Engineer shall evaluate the alternate bids to determine whether the bids are fair and balanced and shall notify the Project Engineer and the purchasing agent that (i) the bids are approved; or (ii) the bids are rejected due to being unbalanced or skewed. If the City Engineer rejects the bids, the Project Engineer shall cause the bids to be corrected and resubmitted to the City Engineer. The City Engineer will review the corrected bids and either approve the bids or reject the bids and seek additional corrections in accordance with the procedures set forth in this subsection (c) or submit the bid to the City Council for approval .

(d) The Reimbursable Costs for the Wastewater Line Project, which shall be:

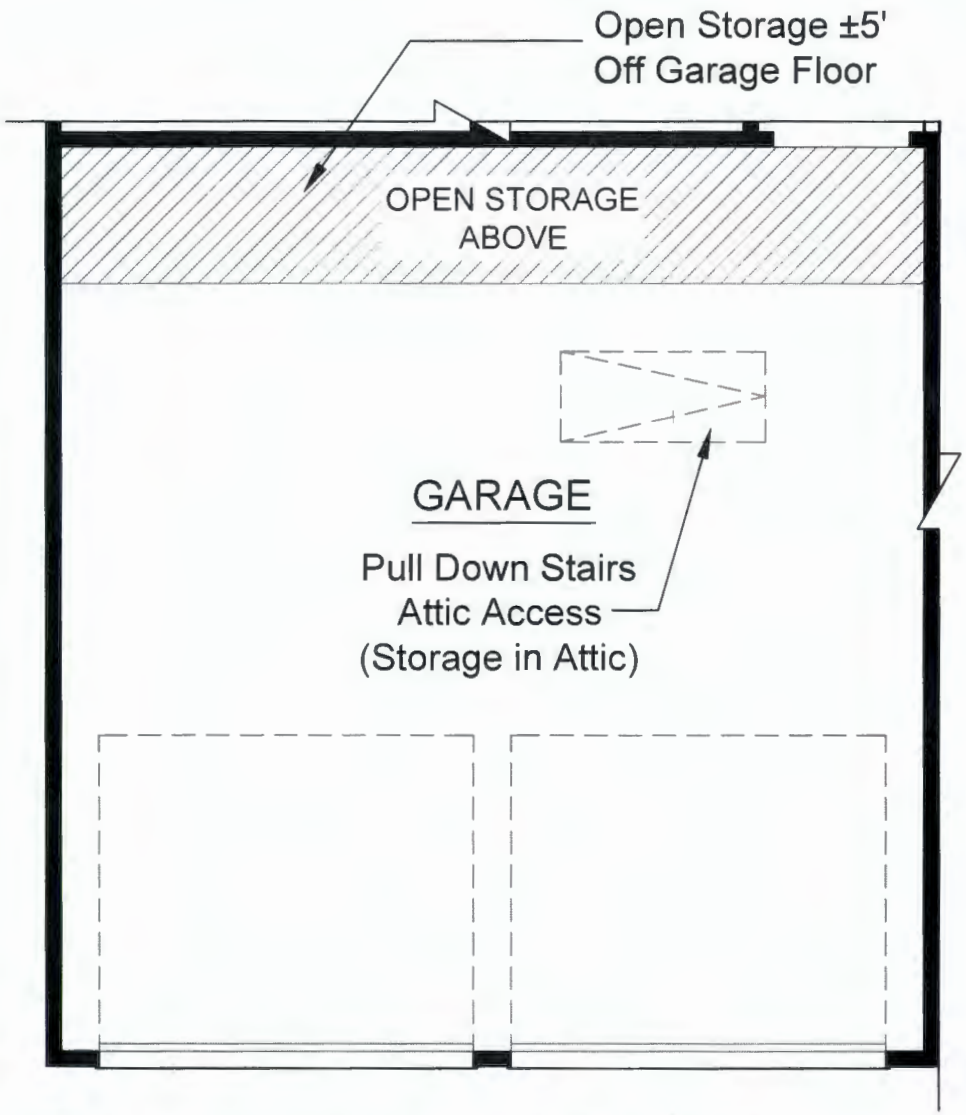
(1) the difference between the dollar amount of the approved bid for Wastewater Line Project Alternate #1 and the dollar amount of the approved bid for Wastewater Line Project Alternate #2; and

provided that all such sums and amounts shall have been paid by Developer and are reasonable, necessary and documented to and approved by the City Engineer.

(e) It is estimated that the Reimbursable Costs for the Wastewater Line Project will be less than $50,000. In the event that the difference between Alternate #2 and Alternate #1 exceeds $50,000, the Parties shall confer to determine whether (i) the Wastewater Line Project should be rebid; (ii) there is a lawful exception to publicly bidding the Wastewater Line Project; or (iii) the Wastewater Line Project should be bid in accordance with Chapter 252, Texas Local Gov't Code, and thereafter the Parties shall work in good faith to cause the Wastewater Line Project to be rebid and this Addendum amended, if required.

(f) The City will pay for the Reimbursable Costs of the Wastewater Line Project from any funds available from the City, including but not limited to wastewater impact fees, either in a lump sum payment or through wastewater impact fee reimbursements from customers who connect to the Wastewater Line Project. The method of payment for the Reimbursable Costs of the Wastewater Line Project shall be at the City's sole discretion.

EXHIBIT H
GARAGE STORAGE



1/A OPEN STORAGE @ GARAGE TYP.

*Location and Dimensions of Storage and Attic Access May Vary

EXHIBIT I

MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED TO THE CITY OF KYLE

WHEREAS, the City of Kyle, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "Property");

WHEREAS, *Section 43.056, Loc. Gov't. Code*, requires a municipal service plan be adopted with the annexation ordinance;

WHEREAS, the Property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that are existing are sufficient to service the Property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements by the City are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City;

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the Property into the City;

WHEREAS, the Property will benefit from the City's development restrictions and zoning requirements, as well as other municipal services provided by the City, which are good and valuable consideration for this service plan; and

WHEREAS, the City of Kyle, a home rule city situated in Hays County, Texas (the "City") and Clayton Properties Group, Inc. d/b/a Brohn Homes ("Developer") on ___ ___ entered into that one certain Development Agreement ("Development Agreement") to which reference is made for all purposes;

NOW, THEREFORE, the following municipal services will be provided for the Property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to this Plan, the following municipal services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City volunteer fire fighting force and emergency services district with the limitations of water available. Radio response for Emergency Medical Services with the personnel serving the area and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned Agricultural District "A" with the intent to rezone the Property upon request of the landowner(s) or city staff. The Planning & Zoning Commission and the City Council will consider rezoning the Property at future times in response to requests submitted by the landowner(s) or requested by city staff.

(2) **Scheduled Municipal Services.** Depending upon the Property owner's plans and schedule for the development of the Property or redevelopment of the Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) In accordance with the Development Agreement.

(ii) As set forth in the Development Agreement, the Property owner(s) shall construct the internal and off-site water lines and facilities (the "Water System") and, as agreed to in the Development Agreement, pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Water System, water service will be provided by the City utility department on the same terms, conditions and requirements as are

applied to all similarly situated areas and customers of the City, subject to the Development Agreement, and to the extent not in conflict with the Development Agreement, all the ordinances, regulations and policies of the City in effect from time to time. The Water System will be accepted and maintained by the City in accordance with its usual policies. Requests for new water extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

B. Wastewater service and maintenance of wastewater service as follows:

(i) In accordance with the Development Agreement.

(ii) As set forth in the Development Agreement, the Property owner(s) shall construct the internal and off-site sewer lines and facilities (the "Sewer System") and, as agreed to in the Development Agreement, pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Sewer System, sewer service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to the Development Agreement, and to the extent not in conflict with the Development Agreement, all the ordinances, regulations and policies of the City in effect from time to time. The Sewer System will be accepted and maintained by the City in accordance with its usual policies. Requests for new sewer extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

C. Maintenance of public streets and rights-of-way as appropriate as follows:

(i) Except is set forth in the Development Agreement, the City will provide maintenance services on public streets within the Property that are dedicated and finally accepted by the City. The maintenance of such public streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.;

(B) Routine maintenance as presently performed by the City; and

(C) The Property owner(s) have specifically agreed that maintenance services will be of little benefit and will not be required or needed on the

Property, prior to the Property owner(s), its grantees, successors and assigns completing the construction and dedication of streets to the City in compliance with City subdivision regulations.

(ii) Following installation of the roadways, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain the public streets, roadways and rights-of-way within, and adjacent to, the boundaries of the Property if dedicated and accepted, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the Property abut existing roadways. The Property owner(s) agree that no City improvements are required on such roadways to service the Property except as set forth in the Development Agreement. If the owner(s) develop the Property so as to impact abutting roadways pursuant to the City's subdivision regulation, the owner(s) agree to comply with such ordinances as set forth in the Development Agreement.

(3) **Special Services and Actions.** Although the City reserves all its governmental authority, powers and discretion, if the City shall unreasonably refuse to grant the permits and approvals above provided in (2)(A), (B) & (C), then in that event the owner(s) may request and obtain disannexation of the Property pursuant to this service plan; provided that if the City shall, in the exercise of its discretion and authority, approve the permits and events set forth in (2)(A), (B) & (C) above, the Property shall be and remain within the corporate limits of the City.

(4) **Capital Improvements.** Construction of capital improvements shall be initiated after the effective date of the annexation as set forth in the Development Agreement: Water and wastewater facilities that are identified in the Development Agreement, as and when funded pursuant to the Development Agreement. Upon development of the Property or redevelopment, the landowner(s) will be responsible for the development costs the same as a developer or landowner in a similarly situated area under the ordinances in effect at the time of development or redevelopment, except as set forth in the Development Agreement. No additional capital improvements are necessary at this time to service the Property, except those specifically enumerated in the Development Agreement. The Property owner(s)

for itself, its grantees, successors, and assigns agree that no capital improvements are required to service the Property, except as set forth in the Development Agreement, the same as similarly situated properties already within the City.

(5) **Term.** If not previously expired under the term set out in state law, this service plan expires at the expiration of the Development Agreement.

(6) **Property Description.** The legal description and map of the Property are as set forth in Exhibit "A" that is attached to the Development Agreement to which this negotiated municipal service plan is attached as Exhibit "N".

THE STATE OF TEXAS

COUNTY OF HAYS

I hereby certify that this instrument was FILED on the date and the time stamped hereon by me and was duly RECORDED in the Records of Hays County, Texas.

20030094 AGREEMENT
07/22/2020 03:01:17 PM Total Fees: $270.00

Elaine H. Cárdenas

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas

CITY OF KYLE, TEXAS

Comprehensive Plan revision

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Direct staff and possibly a task force to restart the Comprehensive Plan revision process and hiring a firm to assist. ~ *Dex Ellison, Council Member*

Other Information: https://www.cityofkyle.com/planning/2017-comprehensive-plan-july-2-2019-comprehensive-plan-september-3-2019-comprehensive-plan

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Comp Plan RFQ - Kyle Texas v1.2

GENERAL INFORMATION
CITY OF KYLE, TEXAS

REQUEST FOR QUALIFICATIONS
COMPREHENSIVE PLAN

~~~
~~~

FOR ADDITIONAL INFORMATION CONCERNING THIS REQUEST FOR QUALIFICATIONS PLEASE CONTACT:

Howard J. Koontz, AICP
Director, Planning & Community Development
City of Kyle, Texas
100 West Center Street, Rm. 229
Kyle, Texas 78640
hkoontz@cityofkyle.com

Please, no phone calls

CITY OF KYLE REQUEST FOR QUALIFICATIONS

COMPREHENSIVE PLAN

ver. 100119

RESPONDENTS MUST PROVIDE SUBMITTALS ON A PORTABLE STORAGE DRIVE PLUS EIGHT (8) HARD COPIES TO FACILITATE EVALUATION. IF THE HARD COPIES ARE NOT SUBMITTED WITH THE ELECTRONIC MEDIA, YOUR SUBMITTAL MAY BE CONSIDERED AS "NON-RESPONSIVE TO SPECIFICATIONS" AND MAY NOT BE CONSIDERED FOR FURTHER EVALUATION.

The City of Kyle (the "City") is accepting Requests for Qualifications for a Comprehensive Plan. The City is seeking the services of a professional land planning firm with extensive experience, skill, and success in the development of comprehensive plans, community visioning services, and similar processes. The selected consultant will be responsible for facilitating the creation of the City's *2040 Comprehensive Plan*.

SUBMITTALS MUST BE RECEIVED BY NOVEMBER 15, 2019, BEFORE 2:00 PM CDT BY THE DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT'S OFFICE. NO SUBMITTAL WILL BE ACCEPTED AFTER THAT DATE AND TIME. ALL SUBMITTALS RECEIVED AFTER THIS DATE AND TIME MAY BE CONSIDERED NONRESPONSIVE.

Submittals will be publicly opened, and names and business addresses of those that submitted will be read aloud at Kyle City Hall, located at 100 West Center Street, Kyle, Texas 78640 on November 1, 2019, immediately following the posted deadlines for submittal.

Print 'Comprehensive Plan 2040', the name of submitter, and the name and contact information of your organization on the outer envelope(s).

Qualifications are to be submitted in accordance with the attached City specifications and the "General Conditions of Submitting" attached hereto. Each Submitter must be respondent to every blank; failure to do so may result in the rejection of a Submittal. The City reserves the right to reject any or all Submittals, to waive formalities, or to proceed otherwise when in the best interest of the City.

GENERAL CONDITIONS OF SUBMITTING

1. INSTRUCTIONS: These instructions apply to all Submittals and become a part of the terms and conditions of any Submittal and any agreement entered into subsequent thereto, unless exception is taken in writing by Submitter when submitting.

SUBMITTING RESPONSES

2. FORM: Submitters must submit an original on a portable storage drive, and eight (8) hard copies of the sealed Submittal to the office of the Director of Planning & Community Development (the Director) prior to response due date/time. Failure to submit the additional hard copies may result in the Submittal being declared nonresponsive to the specification and may not be further evaluated.

3. SUBMITTER SHALL PROVIDE: With this Submittal response, the Submitter shall provide all documentation required. Failure to provide this information may result in rejection of the Submittal.

4. ALTERING/WITHDRAWAL OF SUBMITTALS: Submittals cannot be altered or amended after submission deadline. The signer of the Submittal, guaranteeing authenticity, must initial any interlineations, alterations, or erasures made before opening time. No Submittal may be withdrawn after opening time without first submitting a written reason to the Director and obtaining the Director's approval.

5. PRESENTATION OF SUBMITTALS: No oral, telegraphic, telephonic, e-mailed, or facsimile Submittals will be considered at this time. All Submittals must be submitted in a sealed envelope. Any indication of pricing, pricing structures, costs, unit costs, or any other subject matter related to compensation **MUST** be made in a separate, sealed envelope, **CLEARLY** marked as 'Supplemental Costs and Pricing Information'.

6. CORRESPONDENCE: The Submitter's contact information must appear on ALL correspondence, inquiries, submittal documents, etc. pertaining to this Request for Qualifications.

7. ADDENDA: Any interpretations, corrections or changes to this Request for Qualifications and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Kyle Community Development Department. An attempt will be made to mail, fax, or email any addenda to all who are known to have received a copy of this Request for Qualifications, in addition to being posted on the City's website. Submitters shall acknowledge receipt of all addenda on the bid document. It is the responsibility of the Submitter to ensure receipt and acknowledgement of all addenda and to include the changes in this Submittal document.

8. LATE SUBMITTALS: Submittals received by the City after submission deadline may be returned unopened and will be considered void and unacceptable. The City is not responsible for lateness of mail, carrier, etc.

9. SUBMITTAL OPENINGS: Names of all Respondents submitting will be read aloud at the City's scheduled Submittal opening for the designated project; however, the reading of a Submittal at opening should not be construed as a comment on the responsiveness of such Submittal or as any indication that the City accepts such Submittal as responsive.

   The City will make a determination as to the responsiveness of Submittals based upon adherence to all applicable laws, City of Kyle Guidelines, and project documents and, including but not limited to, the project specifications and contract documents contained herein.

The City will notify the successful Submitters upon award of any task order(s).

10. SUBMITTAL TABULATION: A panel of City elected/appointed officials (and/or their designee(s)), staff, and/or stake holders) will evaluate the submittals in the weeks following the submittal deadline. Evaluation criteria may include but will not be limited to: 1) completeness and compliance with the terms of this RFQ; 2) Professional qualifications of the respondent firm and individual team members assigned to the project; 3) Past Comprehensive Plans completed, especially as they relate to the City of Kyle for such characteristics as city size and population, development patterns, regional location, immediate past history and future development potential, etc.; 4) Community engagement, including success rates and methods of data acquisition; 5) Letters of recommendation from past clients.

11. PROTESTS: All protests relating to staff recommendations must be submitted to the Kyle City Manager within in seven (7) days of the panel recommendation memo. This includes all protests related to the advertising of notices, deadlines, opening, and all other related procedures, as well as any protests relating to alleged improprieties or ambiguities in the specifications. Unless otherwise provided by law, all staff recommendations will be made available for public review prior to consideration by the City Council.

12. SUBMITTAL AWARD: The City reserves the right to negotiate (a) separate task order(s) to separate Submitters for each item/group, or to award one task order for the entire Submittal.

13. CHANGE ORDERS: No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in any resulting contract/task order. All change orders to any contract/task order will be made in writing by the City, and agreed upon by all parties involved.

PERFORMANCE

14. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE SUBMITTERS: A prospective Submitter must affirmatively demonstrate Submitter's responsibility. A prospective Submitter must meet the following requirements:

    A. Have adequate financial resources or the ability to obtain such resources as required;

    B. Be able to comply with the required or proposed delivery schedule;

    C. Have a satisfactory record of performance;

    D. Have a satisfactory record of integrity and ethics; and

    E. Be otherwise qualified and eligible, as determined by the City, to receive an award.

    The City may request representation and other information sufficient to determine Submitter's ability to meet these minimum standards listed above.

15. ASSIGNMENT: The successful Submitter shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City.

16. TITLE AND RISK OF LOSS: The title and risk of loss of goods shall not pass to the City until the City actually receives and takes possession of the goods at the point(s) of delivery.

17. INTELLECTUAL PROPERTY/ RIGHTS: The Submitter agrees to indemnify and hold the City harmless from any claim involving patent rights infringement, trademarks, service marks, and/or copyrights on goods supplied.

PURCHASE ORDERS AND PAYMENT

18. PURCHASE ORDERS: A purchase order(s) shall be generated by the City Director of Finance, and/or his/her designee, to the successful Submitter. The purchase order number must appear on all itemized invoices and packing slips. The City will not be held responsible for any work orders placed and/or performed without a valid current purchase order number. Payment will be made for all services rendered and accepted by the contract administrator for which a valid invoice has been received.

19. FUNDING: The City is a home-rule municipal corporation operated and funded on an October 1 to September 30 basis, accordingly, the City reserves the right to terminate, without liability to the City, any contract for which funding is not available.

20. TAXES: The City is exempt from Federal Manufacturer's Excise, and State sales taxes. TAX MUST NOT BE INCLUDED IN ANY SUBMITTAL PRICING. Tax exemption certificates will be executed by the City and furnished upon request by the Finance Division.

21. PAYMENT TERMS: Payment will be governed by the Texas Prompt Payment Act, Chapter 2251, Texas Government Code, and the terms of the agreement between the selected submitter and the City. Prompt payment discounts may be negotiated by the City in determining the award of task order(s).

22. INVOICES: Invoices must be submitted by the successful Submitter to the City of Kyle, Finance Division.

CONTRACT

23. CONTRACT PERIOD/RENEWAL OPTIONS: In the case of an annual contract or multiple year Submittal, the contract shall be for a predetermined period as specified in the Request for Qualifications. If a clause for option to renew for additional period(s) is (are) included, renewal(s) will be based solely upon the option and written agreement between both the City and the Contractor. Either party dissenting will terminate the contract in accordance with its initial specified term.

24. AUDIT: The City reserves the right to audit the records and performance of successful SUBMITTER during the term of the contract or contract extensions and for three (3) years thereafter.

25. INDEMNIFICATION: Successful submitter shall defend, indemnify and save harmless the City and all its officers, agents and employees and all entities, their officers, agents and employees who are participating in this contract from all suits, actions or other claims of any character, name and description brought for or on account of any injuries, including death, or damages received or sustained by any person, persons, or property on account of any negligent act or

fault of the successful bidder, or of any agent, officer, director, representative, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from Submittal award. Successful Submitter shall pay any judgment with cost which may be obtained against the City and participating entities growing out of such injury or damages.

26. TERMINATION FOR DEFAULT: The City reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the contract immediately in the event the successful Submitter fails to: (1) meet delivery schedules; or (2) otherwise performs in accordance with these specifications. Breach of contract or default authorizes the City to, among other things, award to another Submitter, purchase elsewhere and charge the full increase in cost and handling to the defaulting successful Submitter.

27. ACCEPTABILITY: All articles enumerated in the Submittal shall be subject to inspection by a City officer or employee designated for the purpose. If found inferior to the quality called for, or not equal in value to the specifications, deficient in workmanship or otherwise, this fact shall be certified to the Project Manager who shall have the right to reject the whole or any part of the same. Work determined to be contrary to specifications must be replaced by the Submitter and at its expense. All disputes concerning quality of supplies utilized in the performance of this Submittal will be determined solely by the City Project Manager or designated representative.

28. REMEDIES: The successful Submitter and the City agree that each party has all rights, duties, and remedies available, and any other available remedy, whether in law or equity.

29. VENUE: This contract will be governed and construed according to the laws of the State of Texas. This contract is performable in Hays County, Texas.

30. SILENCE OF SPECIFICATION: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

31. NO PROHIBITED INTEREST: The SUBMITTER acknowledges and represents they are aware of the laws and City Charter regarding conflicts of interest. The City Charter states as follows:

    A. Sec. 12.02. - Acceptance of Gifts. No officer or employee of the city shall accept directly or indirectly, any gift, favor or privilege exceeding a nominal value, or employment, from any utility, corporation, person or entity having or seeking a franchise or contract with, or doing business with, the city. If any utility, corporation, person or entity contracting with the city shall make any gift, or give any favor, privilege or employment to an officer or employee in violation of this section such action shall render the contract voidable.

    B. Sec. 12.03. - Interest in City Contract. No officer or employee of the city shall have a financial interest direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the city, or be financially interested directly or indirectly in the sale to the city of any land, materials, supplies or services except on behalf of the city as an officer or employee; provided, however, that the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one percent of the total capital stock of the corporation. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the city shall render the contract voidable.

C. Sec. 12.04. - Conflict of Interest. No officer or employee of the city shall participate in the deliberation or decision on any issue, subject or matter before the council or any board or commission, if the officer or employee has a personal financial or property interest, direct or indirect, in the issue, subject or matter, that is different from that of the public at large. An interest arising from job duties, compensation or benefits payable by the city shall not constitute a personal financial interest.

32. FORCE MAJEURE: *If, by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract, then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonable within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.*

33. DISCLOSURE OF CERTAIN RELATIONSHIPS: *Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government officer. By law, this questionnaire must be filed with the records administrator of the City of Kyle not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. Chapter 176 and the questionnaire may be found at www.cityofkyle.com. By submitting a response to this request, vendor represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.*

A questionnaire must be submitted at the time of submission of the bid, and within seven business days after the date the submitter becomes aware of facts that require the statement to be filed.

The members of the City Council can be found at: https://www.cityofkyle.com/council.

Members of the City's Administrative staff can be found at:
https://www.cityofkyle.com/cityadministration

Other persons who may be involved in the planning, contracting, selecting, or contracting of the successful submitter include:

Howard J. Koontz, Planning Director	Leon Barba, City Engineer
James Earp, Assistant City Manager	Will Atkinson, City Planner
Paul Phelan, Library Services Director	Jerry Hendricks, Chief of Staff

CITY OF KYLE CONTRACTOR INSURANCE REQUIREMENTS

Contractors providing goods, materials, and/or services for the City of Kyle shall, during the term of the contract with the City or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage with the exception of workers compensation insurance.
2. Provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change or modification of any policies, evidenced by return receipt or United States Mail. The words “endeavor to” and “but failure” (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
3. Provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
4. Endorsement applicable to each policy provided.

INSURANCE COMPANY QUALIFICATION: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s).

CERTIFICATE OF INSURANCE: A certificate of insurance evidencing the required insurance shall be submitted with the contractor’s bid or response to SUBMITTAL. If the contract is renewed or extended by the City, a certificate of insurance shall also be provided to the City prior to the date the contract is renewed or extended.

TYPE OF CONTRACT	TYPE AND AMOUNT OF INSURANCE
Professional Services	Professional Liability Insurance with a minimum of $1 Million Dollars per occurrence and $2 Million Dollars aggregate. (If size or scope of project warrant) Umbrella Coverage or Excess Liability Coverage of $2 Million Dollars Statutory Workers compensation insurance as required by state law

SUPPLEMENTAL INFORMATION

Please provide the following information for contract development.

Is your firm?

1. Sole Proprietorship _____YES_____NO
2. Partnership _____YES_____NO
3. Corporation _____YES_____NO

If company is a sole proprietorship, list the owner's full legal name:

_____

If company is a partnership, list the partners' full legal names:

_____

_____

_____

_____

If company is a corporation, list the full legal name as listed on the corporate charter, and the state in which the firm is incorporated:

_____

AFFIDAVIT OF NO PROHIBITED INTEREST

(Supplemental Information)

(I) (WE), the undersigned declare and affirm that no person or officer in (my) (our) firm, business, corporation, or board has or will have during the term of this contract a prohibited interest as that is defined in City Charter.

(I) (WE) further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Name of Contractor: _____

Title of Officer: _____

Signature of Contractor: _____

Date: _____

ACKNOWLEDGMENT

STATE OF_____*
*
COUNTY OF_____*

BEFORE ME, the undersigned authority, on this day personally appeared, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of (company name) _____, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the_____day of_____, 2013

_____

Signature of Notary Public in and for the State of_____ STAMP

CIQ Form - To be completed by the SUBMITTER and Submitted with SUBMITTAL

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____
Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____
Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

SUBMITTAL REMINDER LIST:

- ☐ **REQUESTED DOCUMENTATION INCLUDED?**
- ☐ **ORIGINAL ON A PORTABLE STORAGE DRIVE AND EIGHT (8) HARD COPIES INCLUDED?**
- ☐ **ALL BLANKS COMPLETED ON ALL FORMS?**
- ☐ **COMPLETED SIGNATURE?**

SCHEDULE OF EVENTS

Public Notification/Advertisement	**September 19, 2019**
Pre-Submittal Meeting	**N/A**
Deadline for Submitting Questions	**October 25, 2019 @2:00PM CDT**
RFQ Responses Due	**November 15, 2019 @ 2:00PM CST**

Questions Concerning this RFQ are due in writing, either via U.S. Mail or email, to The City of Kyle before the deadline for submitting questions stated above.

Address for written correspondence:

Howard J. Koontz, AICP
Director, Planning & Community Development
City of Kyle, Texas
100 West Center Street, Rm. 229
Kyle, Texas 78640

E-mail address for electronic correspondence:

hkoontz@cityofkyle.com

No phone calls, please.

CITY OF KYLE

REQUEST FOR QUALIFICATIONS (RFQ)

COMPREHENSIVE PLAN

I. PROJECT BACKGROUND

Project Description

The purpose of this Request for Qualification (RFQ) is to select a qualified comprehensive land planning consultant for the preparation of a local Comprehensive Plan pursuant to Texas standards and procedures and the best management practices for comprehensive planning. Proposers shall submit a Proposal to the City which will be based on instructions and specifications provided herein.

The existing 2020 Comprehensive Plan was adopted in 2010, updated in 2017, and is the long-range planning document that has helped guide the City of Kyle over the last nine years. The Comprehensive Plan is a policy document that assists decision-making and administrative actions in an effort to guide the City of Kyle towards the community's preferred future. Subsequent to the original Comprehensive Plan adoption, the City has also adopted a Comprehensive Transportation Plan, Parks and Recreation Master Plan, and Economic Development Strategic Plan as addenda, demonstrating the City's continued commitment and efforts toward establishing an encompassing guiding policy document.

Background of Kyle

Geographically, the City of Kyle is prominently located along U.S. Interstate Highway 35 in eastern Hays County, Texas, bordered by the City of Buda to the north, the City of San Marcos to the south, unincorporated Hays County to the west, and both the City of Uhland and unincorporated Hays County to the east. With its unique development pattern separate from other areas and cities in Hays County and the Texas Hill Country at-large, the residents in this area have always identified themselves as living in "Kyle." The official City limits do not extend beyond the Hays County line.

Kyle has a Council-Manager form of government. The elected seven-member City Council appoints a City Manager who is charged with implementing the policies of the Council as well as overseeing the day to day operations of City government. An appointed Planning & Zoning Commission has the authority to take action on site plans, plats, and conditional use petitions, and makes recommendations to the City Council regarding amendments to the Comprehensive Plan, Zoning Ordinance, and Zoning Map.

In the 21st Century, Kyle has grown rapidly in both population and land area. Kyle's population has grown over 800% since the 2000 Census, from 5,000 citizens to just over 47,500 in 2019. The original Town of Kyle was just 640 acres (one square mile), but today covers roughly 30 square miles and is surrounded by a 2.5-mile extra-territorial jurisdiction. As noted in Kyle's 2020 Comprehensive Plan, "Kyle has undergone significant growth and development over the past decade [*Through the 2000-2010 period, Kyle grew by 22,700.*]. As corridor-associated growth continues along IH-35 between Austin and San Antonio, this pressure will continue to influence Kyle." These words have proven prophetic, and the trend continues with no indication of any slow down to this pattern of spatial and population growth, and of course the opportunities and challenges therein.

II. SCOPE OF WORK

The Consultant shall assist the City of Kyle to develop and adopt an all new 'Comprehensive Plan 2040' that meets or exceeds jurisdictional requirements and common standards for local comprehensive planning. **Said Plan shall be transmitted to the City no later than October 31, 2020, unless otherwise indicated by the City of Kyle.** This takes into account the full adoption process that extends approximately two-months for two (2) Public Hearings before the Planning Commission, and two (2) readings of the ordinance adopting the plan before the Mayor and City Council. The Plan is expected to be approved and in effect as of December 31, 2020.

TASK 1: COMMUNITY PARTICIPATION PLAN

The following provides a 'Task by Task' outline of the key steps in the development of the Comprehensive Plan. The City of Kyle's Comprehensive Plan 2040 needs to be developed to effectively hear the City's population and to understand the community's desires regarding the required elements of the plan and the intent of the community's citizens to establish an orderly plan to prioritize and accomplish diverse goals and objectives.

1.1. Comprehensive Plan Sounding Board

1.1.1. Kyle staff shall establish a Comprehensive Plan Sounding Board, made up of local stakeholders and officials. The Sounding Board will meet with the Consultant on a periodic basis to review draft materials, provide guidance regarding local preferences, and make recommendations regarding the various components of the Comprehensive Plan.

1.1.2. The agenda for the initial meeting of the Sounding Board will include four items:

1.1.2.1. The State's requirements for comprehensive planning;
1.1.2.2. The Sounding Board will be asked to discuss their understanding of the setting, relationships, and history of the area that forms the City of Kyle, and consider the utilization or adaptation of some elements of the existing 2020 Comprehensive Plan;
1.1.2.3. The Sounding Board will be asked to review potential methods to engage the public in the comprehensive planning process; and identify a broad array of possible community participation techniques, locations to collect this input, and select the ones that seem most appropriate to the local jurisdiction.
1.1.2.4. A schedule for these meetings will be developed by the consultant and presented to the Board.

1.1.3 Periodic Review Meetings: Sounding Board will continue to meet on a periodic basis and will be asked to represent local stakeholders as they facilitate the preparation of the Community Participation Plan, the Community Assessment, and the Community Agenda elements of the Comprehensive Plan. The Sounding Board will be asked to review the City's statements of policies, goals and objectives and make recommendations about issues and opportunities, conceptual scenarios and alternatives, project lists, and priorities. The second meeting will be prior to completion of the Community Assessment to serve as a check on the planning data and following meetings will be at key points of the Community Agenda process. Up to ten (10) meetings with the Sounding Board are anticipated. Meetings should be concentrated in the Vision, Goals and Policies phase. Additional meetings will be scheduled, as needed at the discretion of the Client.

1.1.4 Sounding Board meetings may occasionally occur remotely, via electronic means such as

video conferencing, telephone conferencing and/or internet-based call-in media.

1.2. Other Public Input Engagement Methods. Community input and visioning are **core** and **critical** elements of the Comprehensive Plan process. Offeror shall propose additional public engagement that will be effective in communicating the process and gathering input. Kyle places a **premium** on multiple, in-person, public engagement activities that elicit raw data points from the community at-large from which the policy of the Comprehensive Plan will be written. The consultant will work with the city's Project Manager to develop an **extensive** public involvement plan. The plan should take advantage of new and existing technologies to make it easy for the public to access information and promote participation by all segments of the community. The City of Kyle is particularly interested in the firm's experience in successfully engaging the community through a variety of **innovative** methods.

The consultant team must demonstrate extensive expertise and experience in the public participation and facilitation processes. Regarding public participation, the consultant team must have strong leadership and creativity to provide clear direction in participation techniques that result in inclusive yet timely decisions. Please note your experience in developing and managing visioning and public input.

1.3. Timeline & Schedule. A detailed timeline and written schedule will be prepared by Consultant and approved by the Client to establish the schedule for planning meetings and delivery dates throughout the planning process.

TASK 2: MINIMUM CONTENT FOR COMPREHENSIVE PLANS

Kyle's Charter outlines the minimum requirements for the content of the City's Comprehensive Plan in Section 10.02:

> "The comprehensive plan adopted by ordinance shall constitute the master and general plan for the development of the city. The comprehensive plan shall contain the council's policies for growth, development and beautification of the land within the corporate limits and the extraterritorial jurisdiction of the city, or for geographic portions thereof including neighborhood, community or area wide plans. The comprehensive plan shall include the following elements: (1) a future land use element; (2) a traffic circulation and/or mass transit element; (3) a wastewater, solid waste, drainage and potable water element; (4) a conservation and environmental resources element with strong emphasis on water conservation; (5) a recreation and open space element; (6) a housing element; (7) a public services and facilities element, which shall include but not be limited to a capital improvement program; (8) a public buildings and related facilities element; (9) an economic element for commercial and industrial development and redevelopment; (10) a health and human service element; and such other elements as are necessary or desirable to establish and implement policies for growth, development and beautification within the city, its extraterritorial jurisdiction, or for geographic portions thereof, including neighborhood, community, or area wide plans."

Some aspects of this list can be adopted by reference in the text of specialized strategic and master plans already created and adopted by Kyle's City Council. Such plans include the City's Parks Master Plan, Economic Development Strategic Plan, and Transportation Master Plan.

In addition to the above minimum standards, the Consultant will collect and analyze a range of information about existing conditions and the potential for the future of the City of Kyle, including a review and analysis of the Community Assessment adopted in 2010 and subsequent addenda. Information will be based on a thorough understanding of existing plans and programs affecting the city, and on input, inventories, and analyses undertaken by the Consultant. Previously compiled data will be

used and incorporated where possible. Emphasis will be on the identification of features and conditions that may influence or affect the planning process, rather than extensive documentation of existing conditions other than what is necessary to comply with State standards. All spatial data and analysis shall be produced and delivered to include ESRI GIS layers as apprpriate.

2.1 Identification of Community Goals. The City of Kyle's Community Goals element needs to be established to effectively represent the community's vision and direction for the future. The consultant will lead multiple interactive discussions with the community, staff, and Sounding Board to gain meaningful participation and input in order to either prepare a new vision statement, list of community goals and/or policies, or Character Area-specific goals along with a defining narrative. This should be an organic process that allows the community to actively participate in setting the City's direction for the future.

2.2 Needs and Opportunities. The Consultant will review the current Needs and Opportunities list for the community and work with City staff and community stakeholders to make recommendations for additions, revisions or deletions. The list must be reviewed by the Sounding Board with new or revised items going through the SWOT (strengths, weaknesses, opportunities, and threats) or similar analysis of the community and then prioritized as community objectives. Needs and Opportunities that the community identified as high priority must be followed-up with corresponding implementation measures in the Community Work Program (CWP).

2.3 Community Work Program. The final product will not be an academic analysis but will be a plan for the next 10 years with metrics for work to be completed and timelines that should be followed to complete the goals of the plan. The Consultant will not only create a Community Work Program to incorporate any new or revised Needs and Opportunities identified during the process, but also revise any implementation measures and specific activities the community plans to undertake during the next five and ten years so as to address the priority Needs and Opportunities, identified Target Areas (if applicable), or to achieve portions of the Community Goals. This includes any activities, initiatives, programs, ordinances, administrative systems (such as site plan review, design review, etc.) to be put in place to implement the plan. The Community Work Program will include the following information for each listed activity:

- Brief description of the activity;
- Legal authorization for the activity, if applicable;
- Timeframe for initiating and completing the activity;
- Responsible party for implementing the activity;
- Estimated cost (if any) of implementing the activity; and
- Funding source(s), if applicable.

2.4. Identification of other potential issues and opportunities:

2.4.1. Population: Demographic statistics will be inventoried and assessed. The primary data source to be used will be the 2010 U.S. Census and subsequent updates. More recent estimates will be used to supplement the Census data and identify where immediate trends have shifted or accelerated.

2.4.2. Economic development: The Economic Development Element provides the opportunity to inventory and assess the community's economic base, labor force characteristics (including its spatial distribution over time), tax gap, and local economic development opportunities and resources; to determine economic needs and goals; and to merge this information with

information about population trends and characteristics, natural resources, community facilities and services, housing and land use so that a strategy for the economic well-being of the community can be developed. The analysis shall include the following, at a minimum:

- Demographics overview and analysis
- Socio economic analysis
- Business base/business sector analysis (could include a Target Industry Analysis)
- Real estate analysis (commercial nodes)
- Tax Gap analysis
- Downtown District/Corridor analysis
- Education performance data – K-12 and Higher Ed
- Infrastructure and commuting analysis
- Daytime population/workers
- Strategic organization inventory

2.4.3. The remaining elements shall be reviewed and updated as determined necessary through the process. Where available, subsequent master plans shall be consulted and incorporated into the Five-Year Update.

2.5. Analysis of existing development patterns (existing land use), existing Overlays, and Character Area review.

2.5.1. Existing Land Use Map: The consultant will conduct an existing land use inventory of the City of Kyle and areas in the immediate fringe around the city, based on standard categories described in the existing Comprehensive Plan for the City, in addition to any new categories developed in the new plan which will be produced in Geographic Information Systems (GIS) and produced in color. The maps will be revised based on input from staff, stakeholders, and the general public as may be received. The method for producing the existing land use maps shall be a combination of field survey, review and interpretation of aerial photographs, analysis of prior city land use maps, and -if necessary- tax assessor records. Consultant shall also produce estimates of acreage within each existing land use category.

2.5.2. Existing Overlays and Character Areas (subject to refinement): The consultant will evaluate existing Overlays and Character Areas and draft and present in map form, along with text descriptions, recommendations for “Character Areas” that identify unique sub-areas of the City. These recommendations could re-establish the existing character areas, amend them, or delete them in favor of new areas. Possibilities include, but are not limited to, the existing character areas from the 2010 Comprehensive Plan and its 2017 update.

2.6. GIS Data Collection and Organization. The Client anticipates the use of spatial data compiled in GIS, including all data layers necessary to develop the Existing Land Use Map. Population and demographic trends, political jurisdictions, natural and cultural resources areas, and community facilities and services will be located and compiled into spatial data layers to allow the creation of data overlays that will be used to create the Existing Land Use Plan and the Future Development Map, and to facilitate discussion in Sounding Board meetings, public meetings, meetings with the staff and other officials, and future use of the plan. Mapping will be coordinated with Kyle staff to ensure that the plan addresses local priorities, as well as any regional and State-wide concerns. Data layers will be provided in the form of ESRI Shapefiles, and the Consultant will coordinate with the projection information for the Shapefiles with the City. Existing GIS data will be utilized in order to take advantage of the knowledge and experience currently imbedded in existing database schemas. Other database objects that will be

addressed are the transportation network and other components, which will have the opportunity to interact with these databases. The purpose of the database design is to ensure that the design looks at the big picture.
Taking this approach will help to identify as many database objects as possible in order to produce a design that will be thorough while still retaining the ability to scale the design in the future.

- Key GIS Maps for Production or Updates:
    - Location Map
    - Existing Land Use Map
    - Future Land Use Map
    - Character Area Map
    - Entitlements Map
    - Areas Requiring Special Attention Map
    - Natural Features Map — Water Resources: showing rivers and streams, wetlands, 100-year flood plain, groundwater recharge areas, and water supply basins.
    - Natural Features Map — Conservation Areas: showing planned Green-space areas, major parks and recreation areas, and scenic views and sites.
    - Existing Transportation Facilities Map: showing the road network and classifications, bicycle/pedestrian and other transportation facilities as appropriate.
    - Transportation Plan Map: showing the proposed improvements to the road network and other transportation facilities as appropriate (including pedestrian and bike facilities).
    - Community Service Facilities Map: showing existing and proposed public safety facilities, hospitals and other public health facilities, parks and recreation facilities, general governmental administrative facilities, educational facilities, libraries, and other cultural facilities within the City of Kyle.

TASK 3: ADOPTION PROCESS

3.1. Adoption by the City. The City's elected decision-makers are charged with the responsibility to adopt the Comprehensive Plan. Consultant will draft a resolution for the Kyle City Council to adopt the Comprehensive Plan. The Consultant will attend the meeting associated with the adoption process to respond to any questions or comments, and where appropriate, make presentations regarding the Plan.

3.2. Planning Commission Review and Recommendation. Two (2) public hearings will be held before the Planning Commission and shall occur to allow additional public input. The board will review and make a recommendation prior to adoption of the transmittal resolution to the City Manager for the Plan by approval of City Council.

3.3. Adopting Resolution. An ordinance will be prepared by Consultant for the elected officials for adoption of the Plan. The final transmittal shall be conducted in advance of the deadline of October 31, 2020.

3.4. Documentation. After adoption of the Comprehensive Plan by the City, the consultant will provide digital and hardcopy of the originals (including all maps, charts, tables, etc) for the City in addition to three (3) copies of printed and bound versions of the completed plan.

III. Submission and Evaluation

1.1. Response Format

1.1.1. Economy of Presentation

Submittals shall be prepared simply and economically, providing straight-forward, concise

delineation of the Offeror's capabilities to satisfy the requirements of this RFQ. Elaborate bindings, colored displays, and promotional material are not required. Emphasis on each statement must be on completeness and clarity of content. There is no expectation that submittal materials will be returned to the Offeror during or after the selection process. To expedite the evaluation of proposals, it is essential that Offerors follow the format and instructions contained herein.

1.1.2. Organization and Content of Proposals

The response package shall be organized in a manner such that the following requirements in the RFQ are cross-referenced in the submittal materials. **The locations within the applicant's response where each requirement is met must be identified.**

The Offeror MUST provide this information in the submittal which will be evaluated and assigned points as determined by the evaluation committee, by way of preparation of an evaluation worksheet(s) that will follow the RFQ stated requirements. Evaluation worksheets are not available during the solicitation process, but are available after award, as are all other solicitation documentation.

1.1.3. Sheet Count

The Technical Proposal shall have a maximum sheet count of 30 sheets, including all required material detailed herein, tabs, covers, etc. The Cost Proposal, if attached, shall have a maximum sheet count of five (5) sheets, including all required material detailed herein, tabs, covers, etc. Proposals that exceed the maximum page count may not be reviewed; responses which include pricing or costs estimates integral to the technical proposal may not be reviewed; <u>financial proposals and costs estimates submitted by respondents must be under separate, sealed submittal, or the entire response may be rejected as non-responsive.</u>

1.2. Technical Proposal Content

1.2.1. Cover Letter

This letter will summarize in a brief and concise manner the firm's understanding of the Scope of Work. The letter must name all persons authorized to represent the firm, and include the titles, addresses and telephone numbers of such persons.

1.2.2. Technical Experience

Detail no fewer than three (3) example projects (1 page maximum for each example) that best illustrate the team's ability to provide the requested services. Explain how these projects are similar to this request and similar to Kyle's size and provenance, and what the anticipated differences might be. Provide client reference names and telephone numbers.

1.2.3. Scope of Services

1.2.3.1. Statement of understanding

1.2.3.2. Methodology to complete tasks

1.2.3.3. Work Schedule/Proposed timeline

1.2.4. Organization profile and qualifications

1.2.5. Qualifications of key personnel

1.2.6. Forms as required by the Finance Department.

1.3. Cost Proposal – fee proposals shall be submitted **<u>in a separate, sealed envelope</u>** and include the following:

1.3.1. A schedule of fees broken down by work task;
1.3.2. Hourly rates for project personnel to be used as the basis for payment;
1.3.3. Total estimated cost for the work; and
1.3.4. List of deliverables.

1.4. Proposal Submittal. Proposals must be submitted at the specified location no later than the date and time specified herein, and if required presented in two parts: a Technical Proposal (eight (8) printed originals and one electronic copy) and if applicable a Cost Proposal (eight (8) original and one electronic copy). The proposal packages shall be sealed in separate envelopes (may be same box) and identified as follows:

Technical Proposal or Cost Proposal (as applicable)
Title: Comprehensive Plan 2040
Address: 100 West Center Street, Rm. 229, Kyle, Texas 78640
Submittal Date and Time: November 15, 2019 @ 2:00 p.m. CDT

2.1. Evaluation Criteria and Process

2.1.1. Administrative Review of Proposals
All proposals received will be reviewed to ensure that all administrative requirements of the RFQ package have been met by the Offerors. Each proposal will be reviewed to ensure that the Offeror submitted a separately packaged cost proposal and technical proposal, that only technical information is included in the technical proposal and only cost information is included in the cost proposal, and that all documents requiring a signature have been signed. Proposals failing to meet these requirements or to include all the required statements and affirmations may be automatically rejected as not being responsive. All technical proposals that meet the administrative requirements will then be forwarded to the technical evaluation team members for further evaluation.

2.1.2. Evaluation Committee
The Evaluation Committee will review all proposals received and determine a ranking. Additionally, the Committee may, in its sole discretion and in the course of its evaluation, request additional information in writing, hold additional in-person or teleconference interviews, arrange a site visit, or request presentations/demonstrations with one or more selected Offerors.

2.1.3. Evaluation of Qualifications
The criteria for evaluating the qualifications and selecting a consultant will include but not be limited to:

2.1.3.1 The responsiveness of the offeror, and completeness and compliance with the terms of this RFQ
2.1.3.2 The firm's specific approach to the project. Although the City has identified the general nature of services required, the consultant is encouraged to provide an innovative approach and methodology to provide the requested services.
2.1.3.3 Capabilities and previous experience in comparable projects of this type, and the specialized experience and technical competence of the consultant to adequately engage the public.
2.1.3.4 Past record of performance on contracts with other governmental agencies, including such factors as quality of work, control of costs, letters of recommendation from past clients, and ability to meet established schedules.
2.1.3.5 Capacity of the personnel to perform the work in a timely manner.
2.1.3.6 Qualifications of individuals who will have direct involvement in tasks on this

project.

2.1.4 Consultants may contract with sub-consultants on the Update, but a lead consultant must be identified and must take responsibility of all the deliverables. The City reserves the right to request substitution of firms. A response to this RFQ should not be deemed to be construed as a contract or an indication of a commitment of any kind on the part of the City of Kyle. Upon review of the responses to this RFQ, City staff will prepare a short list of consultants to interview. A firm will be selected for recommendation to the City Council for the purpose of negotiating contract terms, including a fair and reasonable price. Additional copies of the response to this RFQ may be required for presentation to the City Council. If a satisfactory contract cannot be negotiated with that firm, the City shall formally end negotiations with that firm and select the next most favored provider and attempt to negotiate with that firm.

The City reserves the right to request additional information from individual consultants submitting responses. All responses are considered public records; each page deemed proprietary and confidential must be marked as such, but the final interpretation of public information will rest with the Attorney General. The City reserves the right to reject any or all responses and the right, in its sole discretion, to accept the responses it considers most favorable to the City's interest. The City further reserves the right to reject all responses and seek new responses when such procedure is deemed reasonable and in its best interest.

2.2. Award of Task Order(s)

No guarantee is made by the City that any action or task order will be issued as a function of this RFQ and its responses, if any. Award of task order(s)/contract(s) shall be made to- and negotiated with- the responsible Offeror(s) whose Proposal is determined to be the most advantageous for the City, taking into account all of the evaluation factors set forth in this RFQ. The City of Kyle reserves the right to reject any and all Proposals submitted in response to this RFQ.

2.2.1 RFQ Timeline (subject to change):

- Questions due by: 2 p.m. CDT October 25, 2019
- Proposals due by: 2 p.m. CDT November 15, 2019
- Proposal review: November-December 2019
- Interviews conducted: December 2019

Contract(s)/task order(s) discussion and approval by the Mayor and City Council is expected in December 2019.

2.3 Method of Compensation

Upon selection, the consultant will provide the necessary information for a task order to the City. The task order with the consultant is to be for a not-to-exceed amount for Comprehensive Plan services, as described herein, with reimbursement upon completion of agreed upon components of work, with a fee schedule for the remainder of requested services. The Director of Planning & Community Development and/or his designee will review and approve for payment all invoices submitted by the consultant under the contract.

CITY OF KYLE, TX
SIGNATURE FORM

COMPREHENSIVE PLAN

The undersigned certifies that the information contained in this Submittal have been carefully reviewed and are submitted as correct and final.

"I hereby certify that the foregoing Submittal has not been prepared in collusion with any other Submitter or other person or persons engaged in the same line of business prior to the official opening of this Submittal. Further, I certify that the Submitter is not now, nor has been for the past six (6) months, directly or indirectly concerned in any pool or agreement or combination to control the product/service proposed on, or to influence any person or persons to propose or not to propose thereon."

Name of Submitter:_____

Address of Submitter:_____

_____

City: _____ State: _____ Zip Code: _____

Telephone Number:_____Fax:_____

E-mail address: _____

By (print name)_____

Title:_____

Signature: _____

Acknowledgement of Addenda: #1____#2_____#3_____#4_____#5_____

CITY OF KYLE, TEXAS

City Manager's Report

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *J. Scott Sellers, City Manager*

- Black History Month Programming
- National Pie Day
- COVID Vaccine and Testing Information

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available

CITY OF KYLE, TEXAS

Executive Session - Convene

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.

1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
    - PGAL Contract
    - Parallel Contract
    - Workforce housing on Philomena
    - Marketplace Development Agreement
    - Sign Regulations
2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
3. Personnel matters pursuant to Section 551.074.
    - City Manager Consulting Opportunity
4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
    - Project Goldfish
    - Project Carnation Pink

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available

CITY OF KYLE, TEXAS

Reconvene

Meeting Date: 1/19/2021
Date time:7:00 PM

Subject/Recommendation: Take action on items discussed in Executive Session.

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available