

# 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. **\*\*Special Note\*\*** This meeting was originally posted for 2/16/2021, but due to the Winter Storm 2021 it is being rescheduled for 2/23/2021.

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on February 23, 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 20th day of February, 2021, prior to 1:30 p.m.

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### **I. Call Meeting to Order**

### **II. Approval of Minutes**

1. City Council Special Meeting Minutes - February 2, 2021. ~ *Jennifer Holm, City Secretary*
2. City Council Meeting Minutes - February 2, 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. Consider nomination and take action for appointment to the Planning and Zoning Commission to fill unexpired term. ~ *Howard J. Koontz, Director of Planning and Community Development*
  - Brandon James (Seat 6)
5. Consider nominations and take possible action for reappointment to the Kyle Parks and Recreation Board to fill expired terms. ~ *Mariana Espinoza, Director of Parks & Recreation*
  - Roman Wommack (Seat 4)
  - Victor Medina (Seat 6)

#### **V. Presentation**

6. President George Washington Day Proclamation. ~ *Travis Mitchell, Mayor*
7. Presentation on Parks and Recreation Department Annual Report and Upcoming Programs and Activities ~ *Mariana Espinoza, Director of Parks & Recreation.*
8. Kyle Area Senior Zone Presentation. ~ *Larry Simone, President*
9. Presentation of the 2020 Annual Racial Profiling Report. ~ *Jeff Barnett, Chief of Police*
10. Emergency Cash Assistance Program "ECAP" Report. ~ *Barbara Thompson, Greater San Marcos Partnership*
11. CIP/Road Projects and Consent Agenda Presentation. ~ *Travis Mitchell, Mayor*

#### **VI. Consent Agenda**

12. Approve Amendment No. 3 to LJA ENGINEERING, INC., Austin, Texas, in the amount of \$11,702.00 increasing the total contract amount not to exceed \$244,682.91 for the Schlemmer & Porter St. Wastewater Project. ~ *Leon Barba, P.E., City Engineer*
13. Approve Amendment No. 9 to ESPEY CONSULTANTS, INC. dba RPS,



Austin, Texas, in the amount of \$79,481.00 for a total contract amount not to exceed \$1,010,481.85 for additional engineering services associated with the Southside Wastewater Improvements Project. ~ *Leon Barba, P.E., City Engineer*

14. Approve the conveyance of a 15 foot wastewater line easement to the City of Kyle from Mountain Plum, Ltd. ~ *Leon Barba, P.E., City Engineer*
15. Approve the conveyance of two (2) 15 foot wastewater line easements to the City of Kyle from Majestic Kyle, LLC. ~ *Leon Barba, P.E., City Engineer*
16. Assignment of Agreement Regarding Roadway and Drainage Improvements – Spooner Tract between the City of Kyle and Sandera Land Development Company, LLC. ~ *J. Scott Sellers, City Manager*
17. Plum Creek Phase 1, Section 7B - Final Plat (SUB-20-0132) 23.492 acres; 2 mixed-use lots for property located north and along Kohler's Crossing, east of and along existing and future Marketplace Ave. ~ *Howard J. Koontz, Director of Planning and Community Development*

*Planning and Zoning Commission voted 6-0 to approve the final plat.*

18. Plum Creek Uptown Central Park - Final Plat (SUB-20-0164) 1.672 acres; 1 lot for property located approximately 580-feet north of Doherty. ~ *Howard J. Koontz, Director of Planning and Community Development*

*Planning and Zoning Commission voted 6-0 to approve the final plat.*

## **VII. Consider and Possible Action**

19. *(First Reading)* An Ordinance of the City of Kyle, Texas, Amending the City of Kyle Code of Ordinances; Amending Chapter 29, “Sign Standards And Permits”, to Amend the Definition of Billboard; Amending Provisions Related to Prohibited Signs; Establishing Maximum Size and Height of Signs; Providing a Severability Clause; Providing an Effective Date; and Providing for Related Matters. ~ *Paige Saenz, City Attorney*
20. *[POSTPONED 2/2/2021] (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

21. *(First Reading)* An ordinance amending Chapter 53 (Zoning) for City of Kyle,

Texas, for the purpose of assigning original zoning to approximately 29.8 acres of land from Agriculture 'AG' to Single Family Residential-3 'R-1-3' for property located southeast of Lehman Road and south of Lehman High School, in Hays County, Texas. (Clayton Properties Group, Inc D/B/A Brohn Homes - Z-21-0070) ~ *Howard J. Koontz, Director of Planning and Community Development*

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

- Public Hearing

22. A Resolution of Support for a Housing Tax Credit Application for The Katherine, a 55+ Affordable Rental Housing Development, and Commitment of Development Funding by a Local Political Subdivision. ~ *Robert Rizo, Council Member*
23. Consider & Possible Action to Direct the Planning & Zoning Commission to Revise the CBD 1 & CBD 2 zoning codes. ~ *Dex Ellison & Michael Tobias, Council Members*
24. *(First Reading)* An Ordinance of the City of Kyle, Texas Regulating Sex Offender Residency within the City and Establishing Child Safety Zones; Amending Chapter 23 of the Code of Ordinances Entitled “Miscellaneous Offenses” by adding Article XI to be Entitled “Child Safety Zones;” Making it Unlawful for Certain Sex Offenders to Reside within 1500 feet of Premises where Children Commonly Gather; Providing Exceptions to the Ordinance; Prohibiting Property Owners from Renting Real Property to Certain Sex Offenders; Providing Penalties for Violations of the Ordinance; Repealing Ordinances or Parts of Ordinances in Conflict Therewith; Providing a Severability Clause, Findings of Fact and Providing for Open Meetings. ~ *Jeff Barnett, Chief of Police*
25. Discussion and Possible Action to Recognize Kyle City Employees for their Extraordinary Efforts During Winter Storm Uri. ~ *Rick Koch, Mayor Pro Tem*

### **VIII. City Manager's Report**

26. 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*
  - Great Texas River Cleanup - March 6th
  - COVID Testing and Vaccine info

### **IX. Executive Session**

27. 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.
  - Pipeline Ordinance
  - City Lights and Kyle Marketplace Subdivision/Development
  - Zoning Application Process
  - Plum Creek Land Dedication
  - Water Well Agreement
  - Texas Lehigh Lease
  - Parks Bond Interlocal Agreement with Hays County
  - 104 S. Burleson
  - Tax Credit Housing
2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
  - Plum Creek Land Dedication
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.
  - 104 S. Burleson
  - Project Space Shuttle

28. 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 0202 Minutes

Meeting Date: 2/23/2021  
Date time: 7:00 PM

**Subject/Recommendation:** City Council Special Meeting Minutes - February 2, 2021. ~ *Jennifer Holm, City Secretary*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

❏ 2021 0202 DRAFT Special Council Meeting Minutes

## SPECIAL CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Special Session on February 2, 2021 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  
Council Member Dex Ellison (v)  
Council Member Yvonne Flores-Cale  
Council Member Robert Rizo  
Council Member Ashlee Bradshaw  
Council Member Michael Tobias (v)  
Scott Sellers, City Manager  
James Earp, Assistant City Manager (v)  
Paige Saenz, City Attorney (v)  
Jerry Hendrix, Chief of Staff (v)  
Jennifer Holm, City Secretary  
Matt Dawson, IT Director  
Grant Bowling, Video Production Specialist

### **I. Call Meeting to Order**

Mayor Mitchell called the meeting to order at 5:31 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 5:32 p.m.

With no one wishing to speak, Mayor Mitchell closed citizen comments at 5:33 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 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.
    - Bird Scooters
    - City Lights and Kyle Marketplace Subdivision/Development
    - Chapter 43 Non-Annexation agreement on property located at the intersection of Bunton Lane and Goforth Road
    - Planned Unit Development Zoning
    - Cause Number 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas
  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.
    - SUFC
  5. Deliberation Regarding Security Devices or Security Audits pursuant to Section 551.089.
    - Deployment of security devices and critical infrastructure related to billing program

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 - Bird Scooters, City Lights and Kyle Marketplace Subdivision/Development, Chapter 43 Non-Annexation agreement on property located at the intersection of Bunton Lane and Goforth Road, Planned Unit Development Zoning, Cause Number 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas; 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 - SUFC; and Deliberation Regarding Security Devices or Security Audits pursuant to Section 551.089 - Deployment of security devices and critical infrastructure related to billing program.”

The City Council convened into executive session at 5:34 p.m.

3. Take action on items discussed in Executive Session.

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

The City Council reconvened into open session at 7:01 p.m. Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

**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 7:02 p.m.

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Travis Mitchell, Mayor

Attest:

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Jennifer Holm, City Secretary



# CITY OF KYLE, TEXAS

2021 0202 Minutes

Meeting Date: 2/23/2021  
Date time: 7:00 PM

**Subject/Recommendation:** City Council Meeting Minutes - February 2, 2021. ~ *Jennifer Holm, City Secretary*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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## ATTACHMENTS:

### **Description**

- 2021 0202 DRAFT Regular Council Meeting Minutes



## REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on February 2, 2021 and due to COVID-19, some members attended virtually (v) at <https://www.cityofkyle.com/kyletv/kyle-10-live>; Spectrum 10 with the following persons present:

Mayor Travis Mitchell	Kerman Hammon
Mayor Pro Tem Rick Koch	Peter Parcher
Council Member Dex Ellison (v)	Amanda Stark (v)
Council Member Yvonne Flores-Cale	Suzi Mitchell
Council Member Robert Rizo	Michelle Ducote (v)
Council Member Ashlee Bradshaw	Sandy Gonzalez (v)
Council Member Michael Tobias (v)	Vanessa Westbrook
Scott Sellers, City Manager	DerryAnn Krupinsky (v)
James Earp, Assistant City Manager (v)	Christie Banduch (v)
Paige Saenz, City Attorney (v)	
Jerry Hendrix, Chief of Staff (v)	
Samantha Armbruster, Communications Dir.	
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	
Grant Bowling, Video Production Specialist	
Mariana Espinoza, PARD Director (v)	
Howard Koontz, Community Dev Director (v)	
Steven Clamons, GIS Analyst (v)	
Jeff Barnett, Chief of Police (v)	
Dago Pates, Police Office (v)	
Briana Brecher, Animal Control Officer (v)	
Harper Wilder, Director of Public Works (v)	

### **I. Call Meeting to Order**

Mayor Mitchell called the meeting to order at 7:02 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 - January 19, 2021. ~ *Jennifer Holm, City Secretary*
2. City Council Meeting Minutes - January 19, 2021. ~ *Jennifer Holm, City Secretary*

Mayor Mitchell brought forward the minutes for discussion.

Council Member Tobias moved to approve the minutes of the January 19, 2021 Special Council Meeting and the minutes of the January 19, 2021 Council Meeting. Council Member Ellison seconded the motion. All votes aye; motion carried 7-0.

### **III. Citizen Comment Period with City Council**

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.

Mayor Mitchell opened citizen comments at 7:04 p.m.

Kerman Hammon was called to speak as registered in favor of Item No. 7. He stated that the AMVETS would like to express their public support of renaming Rebel Drive to Veteran's Drive. Mr. Hammon said he would like to recognize the Blue Star and Gold Star Mothers and said they were active in the Veteran community. He continued saying, Blue Star Mothers are members who have son's or daughter's serving and the Gold Star Mothers had a son or daughter that gave their life, for our freedom. Mr. Hammon stated if Council approved the name change, he would like to see the official naming coincide with Memorial Day, the 4th of July, or Veteran's Day. He spoke about the upcoming blood drive March 28th and COVID testing February 8th, at their location.

Peter Parcher was called to speak as registered. He stated that he has been following the recent rezoning's and wondered about a comprehensive plan because he cannot find a pattern. He also asked about a Veteran's Day parade group. He would like to work with the City to put on this parade.

Mayor Mitchell stated that Matt Greene submitted written testimony to Council and Carla Seeley-Greene registered a position regarding Item No. 16, but not testifying.

With no one else wishing to speak, Mayor Mitchell closed citizen comments at 7:09 p.m.

### **IV. Appointments**

4. Consider nominations and take possible action for reappointment to the Kyle Parks and Recreation Board to fill expired terms. ~ *Mariana Espinoza, Director of Parks & Recreation*
  - Seat 2 - Lana Nicholson

Mayor Mitchell brought forward Item No. 4 for discussion. Ms. Espinoza introduced the Chair, Amanda Stark who presented the item.

Council Member Ellison moved to approve the reappointment of Lana Nicholson to Seat 2 of the Parks and Recreation Board. Mayor Pro Tem Koch seconded the motion.

There was discussion on the motion. Council Member Rizo thanked Ms. Nicholson for her continued service to the City.

All votes aye; motion carried 7-0.

## **V. Presentation**

### **5. Black History Month Proclamation. ~ *Dex Ellison, Council Member***

Mayor Mitchell brought forward Item No. 5 for discussion and gave the floor to Council Member Ellison who presented the proclamation. No action was taken.

After this proclamation, Mayor Mitchell mentioned that there were three proclamations but only two made the agenda. He proceeded with the Career and Technical Education (CTE) Month proclamation. Suzi Mitchell spoke on behalf of the program, thanking the city for the partnership hosting interns and for the serving members on the advisory board. She appreciated Council Member Ellison updating the Proclamation he presented. She introduced Avery Barrera instructional coordinator who works with teachers on the curriculum and spoke about the many different types of programs offered. She also introduced Ryan Merritt, Workforce Development Coordinator and mentioned the responsibilities and duties of said position coordinating between the students and businesses. No action was taken.

### **6. Dating Violence Awareness and Prevention Month. ~ *Travis Mitchell, Mayor***

Mayor Mitchell brought forward and presented Item No. 6. Michelle Ducote and Sandy Gonzalez thanked Mayor Mitchell and Council for the proclamation, bringing awareness, and recognizing February as Dating Violence Awareness Month. No action was taken.

### **7. Presentation and possible direction regarding renaming of W RM 150. ~ *Vanessa Westbrook, Chair of the W RM 150 Naming Committee***

Mayor Mitchell brought forward Item No. 7 for discussion. Ms. Vanessa Westbrook presented the item. Steven Clamons, GIS Analyst for the City, spoke about 9-1-1 standards. He stated that abbreviations are not supported at all, such as "U.S." No action was taken.

Mayor Mitchell called a recess at 8:03 p.m.

Mayor Mitchell moved to reconvene. Council Member Rizo seconded the motion. A vote was not held. The City Council reconvened at 8:13 p.m.

### **8. Presentation by San Marcos Animal Shelter on the Trap Neuter and Release (TNR) program. ~ *DerryAnn Krupinsky, Assistant Director of Neighborhood Enhancement-WIC, City of San Marcos***

Mayor Mitchell brought forward Item No. 8 for discussion. Ms. DerryAnn Krupinsky presented the item. Christie Banduch also provided information. No action was taken.

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

Mayor Mitchell brought forward Item No. 9 for discussion. Mr. Barba presented the updates. No action was taken.

## VI. Consent Agenda

Mayor Mitchell brought forward the Consent Agenda.

10. *(Second 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.*

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

11. Declaring parks maintenance equipment as surplus and directing city staff to identify the equipment to be placed on the surplus property listing and the equipment to be declared without value to be disposed or recycled. ~ *Mariana Espinoza, Director of Parks & Recreation*
12. Consider and approve Assignment and Novation of a contract from EDMONDSON REED & ASSOCIATES, INC., to the City of Kyle for the 104 S. Burleson Street and City Square Park capital improvement projects. ~ *Leon Barba, PE, City Engineer*
13. Approve a purchase order to FUGRO USA LAND, INC., Austin, Texas, in the amount of \$25,250.00 for providing geotechnical and environmental services for the 104 S. Burleson Street and City Square Park capital improvement projects. ~ *Leon Barba, PE, City Engineer*
14. Approve and ratify a purchase order to BYRN AND ASSOCIATES SURVEYING, San Marcos, Texas in the amount of \$16,000.00 for providing topographic services for the 104 S. Burleson Street and City Square Park capital improvement projects. ~ *Leon Barba, P.E., City Engineer*
15. Approve an interlocal agreement between Hays County and the City of Kyle authorizing reimbursement in the amount of \$700,000.00 by the City to Hays County for road construction materials required in the reconstruction of Old Post Road (CR 134) from CR 158 to FM 150. ~ *Leon Barba, P.E., City Engineer*

Council Member Rizo moved to approve Consent Agenda Item Nos. 10, 11, 12, 13, 14, and 15. Council Member Ellison seconded the motion.

There was discussion on the motion. Council Member Flores-Cale had a question about Item No. 10. She stated that the backup material seems to be missing information. Mr. Koontz stated that the backup material is the result of applications having gone online, and that the rest of the information is in the CSS Portal. He also stated that the applicant is not available. Mayor Mitchell stated that this issue could have been dealt with before this moment, after planning & zoning and a first reading before Council.

Council Member Rizo amended his motion to approve Consent Agenda Item Nos. 11, 12, 13, 14, and 15. Mayor Mitchell spoke about parliamentary procedure. The motion was withdrawn instead of making an amendment to the motion.

Council Member Rizo moved to approve Consent Agenda Item Nos. 11, 12, 13, 14, and 15. Council Member Flores-Cale seconded the motion. All votes aye; motion carried 7-0.

Council Member Rizo moved to approve Consent Agenda Item No. 10. Mayor Mitchell seconded the motion.

There was discussion on the motion. Council Member Ellison asked Council Member Flores-Cale what her concern is about this item and the information that is allegedly missing. Council Member Flores-Cale stated that at first reading she made a mistake, with that said she would like to see the application. She mentioned she should have written staff beforehand but did not. She said she wanted to see the application. Council Member Bradshaw asked if she's interested in who the developer is. Council Member Flores-Cale stated that she would like to be knowledgeable upon taking a vote. Council Member Ellison asked what information she feels like she is missing and whether staff could rectify that right now. Council Member Flores-Cale asked the name of the owner, submittal date, whether fees had been paid and basic information. Mr. Koontz stated that he couldn't get the information without the assistance of his staff tomorrow when City Hall opens. More discussion took place.

Mayor Mitchell called for the vote. Motion carried 6-1 with Council Member Flores-Cale dissenting.

## **VII. Consider and Possible Action**

16. *(Second 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.*

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

Mayor Mitchell brought forward Item No. 16 for discussion. Mr. Koontz presented the item.

Council Member Rizo moved to approve 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 Council Member Ellison seconded the motion. All votes aye; motion carried 7-0.

17. *(Second 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.*

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

Mayor Mitchell brought forward Item No. 17 for discussion. Mr. Koontz presented the item.

Council Member Ellison moved to approve 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. Council Member Tobias seconded the motion. Motion carried 6-1, with Council Member Flores-Cale dissenting.

18. *[POSTPONED 1/19/2021] (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

Mayor Mitchell brought forward Item No. 18 for discussion. Mayor Mitchell stated that the public hearing is still open and will be kept open at 9:10 p.m.

Mayor Mitchell moved to postpone the item until the next regularly scheduled Council meeting. Council Member Rizo seconded the motion. All votes aye; motion carried 7-0.

19. Discussion and Update of activity related to the Texas Downtown Association plan for Kyle. ~ *Michael Tobias and Dex Ellison, Council Members*

Mayor Mitchell brought forward Item No. 19 for discussion and gave the floor to Council Members Tobias and Ellison who presented the item. No action was taken.

20. *(First Reading)* An Ordinance of the City of Kyle, Texas, Amending the City of Kyle, TX Code of Ordinances Appendix A - Fee Schedule, to Reflect an Increase in Building Inspection Fees to Cover Costs Associated with Third Party Inspections. ~ *James R. Earp, Assistant City Manager*

Mayor Mitchell brought forward Item No. 20 for discussion. Mr. Earp presented the item.

Mayor Pro Tem Koch left the dais at approximately 9:34 p.m.

Council Member Ellison moved to approve an Ordinance of the City of Kyle, Texas, Amending the City of Kyle, TX Code of Ordinances Appendix A - Fee Schedule, to Reflect an Increase in Building Inspection Fees to Cover Costs Associated with Third Party Inspections. Council Member Flores-Cale seconded the motion. All votes aye; motion carried 6-0. Mayor Pro Tem Koch was absent for the vote.

21. Consider a Request to Remove the Required Public Utility Easement for the Plum Creek Uptown Central Park (SUB-20-0164). ~ *Howard J. Koontz, Director of Planning and Community Development*

Mayor Mitchell brought forward Item No. 21 for discussion. Mr. Koontz presented the item.

Council Member Rizo moved to approve a request to remove the required Public Utility Easement for the Plum Creek Uptown Central Park. Council Member Ellison seconded the motion. All votes aye; motion carried 6-0. Mayor Pro Tem Koch was absent for the vote.

22. Presentation on a proposed Ordinance of the City of Kyle, Texas Regulating Sex Offender Residency within the City and Establishing Child Safety Zones. ~ *Jeff Barnett, Chief of Police*

Mayor Mitchell brought forward Item No. 22 for discussion. Chief Barnett presented the item. Mayor Pro Tem Koch returned at 9:38 p.m. No action was taken.

After Item No. 22 concluded, Mayor Mitchell expressed a desire to bring back Item No. 20 since not all members were present for the vote.

Mayor Mitchell moved to reconsider Item No. 20. Council Member Flores-Cale seconded the motion. All votes aye; motion carried 7-0.

20. *(First Reading)* An Ordinance of the City of Kyle, Texas, Amending the City of Kyle, TX Code of Ordinances Appendix A - Fee Schedule, to Reflect an Increase in Building Inspection Fees to Cover Costs Associated with Third Party Inspections. ~ *James R. Earp, Assistant City Manager*

Council Member Ellison moved to approve Item No. 20. Council Member Bradshaw seconded the motion. All votes aye; motion carried 7-0. There were no objections to having the item finally passed.

## **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*
  - Mass Food Distribution events
  - Black History Month programming
  - President's Day holiday
  - COVID Testing and Vaccine information
  - Timeline & key dates for City's Fiscal Year 2021-2022 budget development and adoption

Mr. Sellers spoke about Mass Food Distribution events - volunteers are needed. He stated that the City offices are closed for President's Day holiday. He continued, speaking of Black History Month programming. Mr. Sellers asked Council whether there are any conflicts or questions on the timeline & key dates for City's Fiscal Year 2021-2022 budget development and adoption. He provided information regarding COVID Testing and Vaccine 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.
  - Bird Scooters
  - City Lights and Kyle Marketplace Subdivision/Development
  - Chapter 43 Non-Annexation agreement on property located at the intersection of Bunton Lane and Goforth Road
  - Planned Unit Development Zoning
  - Cause Number 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas
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.
  - SUFC
5. Deliberation Regarding Security Devices or Security Audits pursuant to Section 551.089.
  - Deployment of security devices and critical infrastructure related to billing program

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 - City Lights and Kyle Marketplace Subdivision/Development, and Planned Unit Development Zoning."

The City Council convened into executive session at 10:26 p.m.



25. Take action on items discussed in Executive Session.

Mayor Mitchell called the meeting back to order in open session at 11:35 p.m. Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

**X. Adjourn**

Mayor Mitchell moved to adjourn. Council Member Bradshaw seconded the motion. All votes aye; motion carried 4-0. Council Members Flores-Cale, Rizo, and Tobias were absent for the vote.

With no further business to discuss, the City Council adjourned at 11:36 p.m.

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Travis Mitchell, Mayor

Attest:

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Jennifer Holm, City Secretary



# CITY OF KYLE, TEXAS

## P&Z Appointment - Brandon James

Meeting Date: 2/23/2021

Date time: 7:00 PM

**Subject/Recommendation:** Consider nomination and take action for appointment to the Planning and Zoning Commission to fill unexpired term. ~ *Howard J. Koontz, Director of Planning and Community Development*

- Brandon James (Seat 6)

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

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### ATTACHMENTS:

#### Description

- ☐ Cover page
- ☐ Application
- ☐ Resume

Kyle City Staff,

I am writing to you today to state my interest in the Planning and Zoning Commission vacancy. In the 1.5 years that I have lived here in Kyle, I have been incredibly proud to call our community home. After moving to Texas from Kansas, and living in both Austin and San Marcos, the growing community that we have here, while not sacrificing the values that made this place desirable, has been incredibly refreshing. I believe that it is important that as we grow we continue to grow with our values in mind and with our community at the heart of what we do. When I saw the position open, I knew that the seven years of experience that I have in solving planning and zoning issues would come in handy to the City of Kyle. I believe I can leverage my experience to help in an important time as we are experiencing both the resources strain of COVID and from the rapid growth. In addition, I'm genuinely interested in Planning and Zoning as the classes that interested me the most come from the planning aspect of the Masters of Public Administration degree that I have been working to achieve and I'm not planning to use this board as a way to run for office, which I know from my work experience that some people use it for. I believe that the above makes me the best candidate for this opportunity. I look forward to serving our great community.

Thanks,

Brandon M. James



## Employment Application | Submitted: 10-Dec-2020

AAA

**Brandon James**

☎ (512) 213-8664  
✉ brandonmjames316@gmail.com  
🏠 4700 Cromwell Dr Apt. 5304  
Kyle, TX 78640  
United States

**Planning & Zoning Commissioner**

**Job Location** - Kyle, TX  
**Boards or Commissions** - Planning and Zoning  
Commission

### Application Instructions

#### Instructions

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## City of Kyle Board and Commission Member Application

### ***TeamKyle Core Values:***

***Knowledge, Yes-Attitude, Leading Edge and Employee Accountability***

Thank you for volunteering to be considered for serving on a City of Kyle board or commission. The boards and commissions serve various functions to help the City Council and City Staff provide the best possible service to our citizens. Please be sure to read the position description for board(s) or commission(s) you are applying for and respond to the questions below with those responsibilities in mind.

To serve as a volunteer on a board or commission, you must be:

- At least 18 years of age or older
- You must be a Citizen of the United States
- Not a current City of Kyle employee

An individual shall not be eligible for appointment to a board unless the individual meets the following qualifications on the day prior to the date of appointment:

- Have been a resident of the State of Texas and the City of Kyle for at least 12 consecutive months or have significant presence in the community
- Not be delinquent on any indebtedness to the City of Kyle

If any appointee ceases to possess any of these qualifications, such position to which the appointee was appointed shall, upon such fact being determined by the council, immediately become vacant.

#### REQUIRED DOCUMENTS TO BE UPLOADED:

- Statement of Interest

**Item # 4**

- Resume

Statement of Interest and Resume

Please upload both documents, either separately or in a combined document upload.

- Statement of Interest
- Resume

If uploading separately, once you upload the first document you will be provided the opportunity to upload another document.

Click on the link to open the resume file if you wish to print the formatted resume.

File Name	Link
BrandonJames_RES2021_3_.pdf	<div><div>Preview</div><div>Download</div></div>
Statement of Interest - City of Kyle.pdf	<div><div>Preview</div><div>Download</div></div>

Admin Uploaded Files

There are no admin uploaded files for this applicant.

Application Questions

Personal Questions |

Question	Answer	Disqualifier?
What Board(s) and/or Commission(s) are you applying for? *	Planning and Zoning Commission	
What prompted you to apply? *	I saw a vacancy and after being interested last year but having a conflict I decided to apply. Planning and Zoning is really important to a city and serving in this capacity is a way I feel like I can serve effectively in my community.	
Have you ever been employed by the City of Kyle? *	No	
Have you ever been employed by any other government body? *	No	
What experiences do you have that would be useful in the board or commission? *	I served 7 years on a similar board in Wichita, where I am from.	
Do you possess any professional licenses? *	No	
If yes, please list any that would be applicable to the board or commission you are applying for.	This question was not answered.	

The City of Kyle is looking for people that share and promote our TeamKyle Core Values of Knowledge, Yes-Attitude, Leading Edge and Employee Accountability. How will you apply these core values to your service to the city? \*

Knowledge - I have extensive experience around P&Z, though I am excited to learn some new facets of this as it relates to Kyle. Yes-Attitude - Making sure that we work to create successful outcomes for folks who come to us to help build their success and life in our city. Leading Edge - I believe that we can build upon the opportunity of so many people moving here to Kyle to lead our city into a better future. Accountability - Attending all of our meetings and doing the prep work necessary to be an effective member of the board.

What other skills and/or experience would you like to add?

This question was not answered.

### Board Member Qualifications |

The following are qualifications to be able to service as a board or commission member in Kyle. Please check the box that applies:

Question	Answer	Disqualifier?
Legal Resident of the United States? *	Yes	
At least 18 years of age? *	Yes	
Have been a resident of the State of Texas and the city for at least 12 consecutive months or have significant presence in the community: *	Yes	
Are you currently delinquent on any indebtedness to the city? *	No-Not Delinquent	
Not currently a city employee: *	No-Not a City Employee	

### Ex Officio Member Qualifications |

Additionally if interested in Ex-Officio an individual shall not be eligible for appointment as an Ex Officio Member to a board unless the individual meets the following qualifications on the day prior to the date of appointment. Please check the box that applies:

Question	Answer	Disqualifier?
Currently a qualified voter of Hays County or contiguous counties: *	Yes	
Have been a resident of the State of Texas and the city or Hays County or contiguous county for at least 12 consecutive months or own or employed in a business in the community. *	Yes	

Application Status History

No Application Status Update History

Application Note History

No Application Note History

Application Viewed History

Date	Time	User
17-Dec-2020	9:05:51 AM	Taylor Teis

Assigned to Screener History

No Assigned to Screener History

Application Email History

Date	Sender	Template Name
10-Dec-2020	System Generated	Thank You Email - Automatically Sent

Application Forward History

No Application Forward History

# Brandon James

EXPERIENCED POLITICAL PRO

## PROFILE

I am a veteran political and organizing professional hosting over a decade of experience at local, state, and federal levels focusing building power across American communities and ensuring civic values are a part of this American generation and future generations.

## FORMAL EDUCATION

- 2016**    **Wichita State University**  
Bachelors- Business Administration  
Focus: Financial Engineering
- 2021**    **Wichita State University**  
Masters- Public Administration  
Focus: Organizational Development

## SELECT EARLY ROLES

Obama (2008) - Block Captain  
Sanders (2016) - KS-4 District Director

## TECH EXPERTISE

VAN Administration, Targeting, Data Analysis,  
Salesforce, Spreadsheet CRM, Mobilize,  
EveryAction, Google Suite

## CONTACT

**Phone:** (512) 213-8664  
**Email:** brandonmjames316@gmail.com  
**Address:** 4700 Cromwell Drive #5304  
Kyle, TX 78640

## RECENT EXPERIENCE

### MOVE Texas

Field Organizer  
Regional Organizing Manager  
*January 2019 - Present*

- Built infrastructure across our San Marcos region, then ran field operations as part of the largest youth GOTV effort in the American South turning out over a million young voters.

### Young Democrats of America

Nat'l Campus Political Director  
*August 2017 - July 2019*

- Served as the National Political Director for Young Democrats of America's Collegiate arm. Ran a small team that worked with chapters, candidates, electeds, and groups across all 50 states and some US Territories to achieve the political aims of the Young Democrats of America's college members.

### VOTELAB

Founder / Chief Executive  
*November 2014 - January 2019*

- Founded the company after working Kansas gubernatorial campaign. Managed operations of varying degrees for 30 campaigns across the Midwest and most recently in Texas. Ran operations for an organizing and operations team of around 15 staff. Achieved campaign success at a rate of 90% over the time of existence

### Wichita State University

Student Legislative Director  
*July 2012 - June 2014*

- Served three successive Student Government administrations as the dual role of Chief of Staff and Legislative Director for our students. Worked inside the Kansas Capitol and City Hall to achieve policy goals of the student body, including fighting off three consecutive tuition raises from the State of Kansas.

### City of Wichita, Kansas

First District  
*May 2011 - March 2018*

- Elected at 18 as the City's youngest district advisor. Served approximately 63,000 constituents in policy making regarding zoning, planning, and land use. Led initiative on retaining Wichita's 18-30 population as well as affordable housing and zoning policy initiatives in the city.





# CITY OF KYLE, TEXAS

## Park Board Appointment

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Consider nominations and take possible action for reappointment to the Kyle Parks and Recreation Board to fill expired terms. ~ *Mariana Espinoza, Director of Parks & Recreation*

- Roman Wommack (Seat 4)
- Victor Medina (Seat 6)

**Other Information:** Parks Board member, Lana Nicholson, is eligible to serve another 2-year term, has stated that she would like to serve another 2 years and has been recommended by the Chairman of the Parks Board to serve another 2 years. Her current term has expired, and she would like to serve her community another 2 years.

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**



# CITY OF KYLE, TEXAS

## President George Washington Day Proclamation

**Meeting Date: 2/23/2021**  
**Date time: 7:00 PM**

**Subject/Recommendation:** President George Washington Day Proclamation. ~ *Travis Mitchell, Mayor*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Parks Presentation

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Presentation on Parks and Recreation Department Annual Report and Upcoming Programs and Activities ~ *Mariana Espinoza, Director of Parks & Recreation.*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Kyle Area Senior Zone Presentation

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Kyle Area Senior Zone Presentation. ~ *Larry Simone, President*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Annual Racial Profiling Report

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Presentation of the 2020 Annual Racial Profiling Report. ~ *Jeff Barnett, Chief of Police*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

- ☐ Brazos Citation System Racial Profiling Report 2020
- ☐ Lt Griffith Analysis of 2020 Racial Profiling Data and Practices
- ☐ Racial Profiling 2020 TCOLE Report
- ☐ Racial Profiling and Bias Policy 2.2 KPD
- ☐ 2020 Racial Profiling Summary and Analysis

Kyle, TX PD

Jan 1, 2020 - Dec 31, 2020

## Racial Profiling Report

PLEASE NOTE: The official form does not allow for Other and Unknown in the Race or Ethnicity boxes on the TCOLE website. Please contact TCOLE for instructions on how to resolve these issues. This report only includes traffic stops resulting in a citation, traffic stops resulting in a citation with an arrest, traffic stops resulting in a warning with an arrest, and field interviews that resulted in an arrest. This report does not include any stops from traffic collisions.

### 1. Gender

FEMALE	ALASKA NATIVE/AMERICAN INDIAN	14
	ASIAN/PACIFIC ISLANDER	42
	BLACK	281
	HISPANIC/LATINO	1,214
	WHITE	1,252

**2,803**

MALE	ALASKA NATIVE/AMERICAN INDIAN	38
	ASIAN/PACIFIC ISLANDER	65
	BLACK	692
	HISPANIC/LATINO	2,603
	WHITE	1,978

**5,376**

**Total 8,179**

### 2. Race or Ethnicity

ALASKA NATIVE/AMERICAN INDIAN	52
ASIAN/PACIFIC ISLANDER	107
BLACK	973
HISPANIC/LATINO	3,817
WHITE	3,230

### 8. Was Contraband Discovered?

N	ALASKA NATIVE/AMERICAN INDIAN	1
	ASIAN/PACIFIC ISLANDER	1
	BLACK	26
	HISPANIC/LATINO	111
	WHITE	79

**218**

Y	ALASKA NATIVE/AMERICAN INDIAN	3
	ASIAN/PACIFIC ISLANDER	3
	BLACK	77
	HISPANIC/LATINO	253
	WHITE	154

**490**

**Total 708**

### 9. Description of Contraband

ALCOHOL	ASIAN/PACIFIC ISLANDER	1
	BLACK	10



Kyle, TX PD

Jan 1, 2020 - Dec 31, 2020

## Racial Profiling Report

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2. Race or Ethnicity		
Total		8,179
3. Was Race or Ethnicity Known Prior to Stop?		
N		8,094
Y		85
Total		8,179
4. Reason for Stop?		
	HISPANIC/LATINO	2
		2
MOVING TRAFFIC VIOLATION	ALASKA NATIVE/AMERICAN INDIAN	35
	ASIAN/PACIFIC ISLANDER	67
	BLACK	511
	HISPANIC/LATINO	1,903
	WHITE	1,819
		4,335
OTHER	HISPANIC/LATINO	1
		1
PRE EXISTING KNOWLEDGE	BLACK	10
	HISPANIC/LATINO	35
	WHITE	34
		79

9. Description of Contraband		
ALCOHOL	HISPANIC/LATINO	44
	WHITE	30
		85
CURRENCY	BLACK	1
	HISPANIC/LATINO	1
		2
DRUGS	ALASKA NATIVE/AMERICAN INDIAN	2
	ASIAN/PACIFIC ISLANDER	2
	BLACK	65
	HISPANIC/LATINO	196
	WHITE	120
		385
OTHER	ALASKA NATIVE/AMERICAN INDIAN	1
	BLACK	5
	HISPANIC/LATINO	22
	WHITE	9
		37
STOLEN PROPERTY	BLACK	3
	HISPANIC/LATINO	1
	WHITE	1

Kyle, TX PD

Jan 1, 2020 - Dec 31, 2020

## Racial Profiling Report

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### 4. Reason for Stop?

VEHICLE TRAFFIC VIOLATION	ALASKA NATIVE/AMERICAN INDIAN	17
	ASIAN/PACIFIC ISLANDER	39
	BLACK	443
	HISPANIC/LATINO	1,822
	WHITE	1,327

**3,648**

VIOLATION OF LAW	ASIAN/PACIFIC ISLANDER	1
	BLACK	9
	HISPANIC/LATINO	54
	WHITE	50

**114**

**Total 8,179**

### 5. Street Address or Approximate Location of the Stop

CITY STREET	3,654
COUNTY ROAD	270
PRIVATE PROPERTY OR OTHER	44
STATE HIGHWAY	928
US HIGHWAY	3,283

**Total 8,179**

### 9. Description of Contraband

		<b>5</b>
WEAPONS	BLACK	2
	HISPANIC/LATINO	7
	WHITE	5

**14**

**Total 528**

### 10. Result of the Stop

ARREST	ALASKA NATIVE/AMERICAN INDIAN	1
	ASIAN/PACIFIC ISLANDER	1
	BLACK	60
	HISPANIC/LATINO	207
	WHITE	151

**420**

CITATION	ALASKA NATIVE/AMERICAN INDIAN	13
	ASIAN/PACIFIC ISLANDER	22
	BLACK	171
	HISPANIC/LATINO	991
	WHITE	785

**1,982**



Kyle, TX PD

Jan 1, 2020 - Dec 31, 2020

## Racial Profiling Report

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6. Was a Search Conducted?		
N	ALASKA NATIVE/ AMERICAN INDIAN	48
	ASIAN/PACIFIC ISLANDER	103
	BLACK	870
	HISPANIC/LATINO	3,453
	WHITE	2,997
	7,471	
	Y	ALASKA NATIVE/ AMERICAN INDIAN
ASIAN/PACIFIC ISLANDER		4
BLACK		103
HISPANIC/LATINO		364
WHITE		233
708		
Total8,179		
7. Reason for Search?		
CONSENT	ALASKA NATIVE/ AMERICAN INDIAN	1
	ASIAN/PACIFIC ISLANDER	1
	BLACK	12

10. Result of the Stop		
CITATION AND ARREST	BLACK	9
	HISPANIC/LATINO	21
	WHITE	21
		51
VERBAL WARNING	ALASKA NATIVE/ AMERICAN INDIAN	31
	ASIAN/PACIFIC ISLANDER	72
	BLACK	645
	HISPANIC/LATINO	2,265
	WHITE	1,809
	4,822	
	WRITTEN WARNING	ALASKA NATIVE/ AMERICAN INDIAN
ASIAN/PACIFIC ISLANDER		12
BLACK		88
HISPANIC/LATINO		330
WHITE		464
900		
WRITTEN WARNING AND ARREST		ALASKA NATIVE/ AMERICAN INDIAN
	HISPANIC/LATINO	3

Kyle, TX PD

Jan 1, 2020 - Dec 31, 2020

## Racial Profiling Report

PLEASE NOTE: The official form does not allow for Other and Unknown in the Race or Ethnicity boxes on the TCOLE website. Please contact TCOLE for instructions on how to resolve these issues. This report only includes traffic stops resulting in a citation, traffic stops resulting in a citation with an arrest, traffic stops resulting in a warning with an arrest, and field interviews that resulted in an arrest. This report does not include any stops from traffic collisions.

7. Reason for Search?		
CONSENT	HISPANIC/LATINO	61
	WHITE	46
		<b>121</b>
CONTRABAND IN PLAIN VIEW	ALASKA NATIVE/AMERICAN INDIAN	1
	BLACK	13
	HISPANIC/LATINO	32
	WHITE	22
		<b>68</b>
INCIDENT TO ARREST	BLACK	5
	HISPANIC/LATINO	16
	WHITE	9
		<b>30</b>
INVENTORY	BLACK	8
	HISPANIC/LATINO	43
	WHITE	52
		<b>103</b>
NO SEARCH	ALASKA NATIVE/AMERICAN INDIAN	48
	ASIAN/PACIFIC ISLANDER	103
	BLACK	870
	HISPANIC/LATINO	3,453

10. Result of the Stop		
		<b>4</b>
<b>Total</b>		<b>8,179</b>
11. Arrest Based On		
OUTSTANDING WARRANT	ASIAN/PACIFIC ISLANDER	1
	BLACK	16
	HISPANIC/LATINO	40
	WHITE	21
		<b>78</b>
VIOLATION OF CITY ORDINANCE	WHITE	1
		<b>1</b>
VIOLATION OF PENAL CODE	ALASKA NATIVE/AMERICAN INDIAN	2
	BLACK	47
	HISPANIC/LATINO	164
	WHITE	122
		<b>335</b>
VIOLATION OF TRAFFIC LAW	BLACK	6
	HISPANIC/LATINO	27
	WHITE	28
		<b>61</b>
<b>Total</b>		<b>475</b>

Kyle, TX PD

Jan 1, 2020 - Dec 31, 2020

## Racial Profiling Report

PLEASE NOTE: The official form does not allow for Other and Unknown in the Race or Ethnicity boxes on the TCOLE website. Please contact TCOLE for instructions on how to resolve these issues. This report only includes traffic stops resulting in a citation, traffic stops resulting in a citation with an arrest, traffic stops resulting in a warning with an arrest, and field interviews that resulted in an arrest. This report does not include any stops from traffic collisions.

7. Reason for Search?		
NO SEARCH	WHITE	2,997
		<b>7,471</b>
PROBABLE CAUSE	ALASKA NATIVE/ AMERICAN INDIAN	2
	ASIAN/PACIFIC ISLANDER	3
	BLACK	65
	HISPANIC/LATINO	212
	WHITE	104
		<b>386</b>
<b>Total</b>		<b>8,179</b>

12. Was Physical Force Resulting in Bodily Injury Used During Stop?		
N	ALASKA NATIVE/ AMERICAN INDIAN	52
	ASIAN/PACIFIC ISLANDER	107
	BLACK	973
	HISPANIC/LATINO	3,814
	WHITE	3,227
		<b>8,173</b>
Y	HISPANIC/LATINO	3
	WHITE	3
		<b>6</b>
<b>Total</b>		<b>8,179</b>

13. Was Arrest Due to Contraband Found?		
N	ALASKA NATIVE/ AMERICAN INDIAN	1
	ASIAN/PACIFIC ISLANDER	1
	BLACK	50
	HISPANIC/LATINO	170
	WHITE	133
		<b>355</b>
Y	BLACK	14
	HISPANIC/LATINO	55



Kyle, TX PD

Jan 1, 2020 - Dec 31, 2020

## Racial Profiling Report

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### 13. Was Arrest Due to Contraband Found?

Y	WHITE	31
		100
Total		455



# KYLE POLICE

111 North Front Street, Kyle, TX 78640

Non-Emergency: 512-268-3232

Admin: 512-268-0859

Fax: 512-268-2330

Date: February 10<sup>th</sup>, 2021  
To: Chief Jeff Barnett  
CC: Captain Pedro Hernandez  
From: Lieutenant Tim Griffith

Re: 2020 Racial Profiling Statistics

I have compiled analyzed our racial profiling data from calendar year 2020. This data was compiled from our vehicle and pedestrian stops in compliance with the Sandra Bland Act.

I observed that our total number of stops fell from over 13,000 in 2019 to 8,179 for the year. This is due to the COVID-19 pandemic and the efforts to limit contact during the several months of shutdown that took place. In an effort to protect our staff and to protect the citizens we are required to make contact with on a daily basis, we directed our staff to limit non-essential officer-initiated enforcement activity. This caused a vast reduction in our traffic stop numbers for the year to include citations issued.

Though our number of overall stops decreased, the percentage of stops across race and gender remained the same and there was no noted difference in our demographic breakdown percentages as it pertains to stops. There was an increase in arrests over the previous year despite the lower number of overall stops. This appears to be due to our population increase which has caused an increase in the overall need for police service. There is also a national crime increase during this year due to multiple factors, not the least of which is the economic effects of the pandemic.

Though our crime has increased, and our arrests accordingly, the percentage of citizens we initiated contact with by race was consistent with our population and previous years. In my opinion, there is no indication or evidence of department wide racially motivated bias displayed by our staff.

Lt. Tim Griffith  
Patrol Commander



☎ 512-268-3232    🖨 512-268-2330

111 North Front Street, Kyle, TX 78640

[www.cityofkyle.com/police](http://www.cityofkyle.com/police)

Item # 9

# Racial Profiling Report | Full

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Agency Name: KYLE POLICE DEPT.

Reporting Date: 02/10/2021

TCOLE Agency Number: 209202

Chief Administrator: JEFFREY B. BARNETT

Agency Contact Information:

Phone: (512) 268-0859

Email: kylepd@cityofkyle.com

Mailing Address:

111 North Front Street

KYLE, TX 78640

This Agency filed a full report

KYLE POLICE DEPT. has adopted a detailed written policy on racial profiling. Our policy:

- 1) clearly defines acts constituting racial profiling;
- 2) strictly prohibits peace officers employed by the KYLE POLICE DEPT. from engaging in racial profiling;
- 3) implements a process by which an individual may file a complaint with the KYLE POLICE DEPT. if the individual believes that a peace officer employed by the KYLE POLICE DEPT. has engaged in racial profiling with respect to the individual;
- 4) provides public education relating to the agency's complaint process;
- 5) requires appropriate corrective action to be taken against a peace officer employed by the KYLE POLICE DEPT. who, after an investigation, is shown to have engaged in racial profiling in violation of the KYLE POLICE DEPT. policy;
- 6) requires collection of information relating to motor vehicle stops in which a warning or citation is issued and to arrests made as a result of those stops, including information relating to:
  - a. the race or ethnicity of the individual detained;
  - b. whether a search was conducted and, if so, whether the individual detained consented to the search;
  - c. whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
  - d. whether the peace officer used physical force that resulted in bodily injury during the stop;
  - e. the location of the stop;
  - f. the reason for the stop.
- 7) requires the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
  - a. the Commission on Law Enforcement; and
  - b. the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

The KYLE POLICE DEPT. has satisfied the statutory data audit requirements as prescribed in Article 2.133(c), Code of Criminal Procedure during the reporting period.

Executed by: Pedro F. Hernandez Jr.  
Police Captain

Date: 02/10/2021

# Total stops: 8179

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**Street address or approximate location of the stop**

City street	3654
US highway	3283
County road	270
State highway	928
Private property or other	44

**Was race or ethnicity known prior to stop?**

Yes	85
No	8094

**Race / Ethnicity**

Alaska Native / American Indian	52
Asian / Pacific Islander	107
Black	973
White	3230
Hispanic / Latino	3817

**Gender**

<b>Female</b>	<b>2803</b>
Alaska Native / American Indian	14
Asian / Pacific Islander	42
Black	281
White	1252
Hispanic / Latino	1214
<b>Male</b>	<b>5376</b>
Alaska Native / American Indian	38
Asian / Pacific Islander	65
Black	692
White	1978
Hispanic / Latino	2603

**Reason for stop?**

<b>Violation of law</b>	<b>114</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	1
Black	9
White	50



Hispanic / Latino	54
<b>Preexisting knowledge</b>	<b>79</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	10
White	34
Hispanic / Latino	35
<b>Moving traffic violation</b>	<b>4335</b>
Alaska Native / American Indian	35
Asian / Pacific Islander	67
Black	511
White	1819
Hispanic / Latino	1903
<b>Vehicle traffic violation</b>	<b>3648</b>
Alaska Native / American Indian	17
Asian / Pacific Islander	39
Black	443
White	1327
Hispanic / Latino	1822
<b>Was a search conducted?</b>	
<b>Yes</b>	<b>708</b>
Alaska Native / American Indian	4
Asian / Pacific Islander	4
Black	103
White	233
Hispanic / Latino	364
<b>No</b>	<b>7471</b>
Alaska Native / American Indian	48
Asian / Pacific Islander	103
Black	870
White	2997
Hispanic / Latino	3453
<b>Reason for Search?</b>	
<b>Consent</b>	<b>121</b>
Alaska Native / American Indian	1
Asian / Pacific Islander	1
Black	12
White	46



<b>Description of contraband</b>	
<b>Drugs</b>	<b>385</b>
Alaska Native / American Indian	2
Asian / Pacific Islander	2
Black	65
White	120
Hispanic / Latino	196
<b>Weapons</b>	<b>14</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	2
White	5
Hispanic / Latino	7
<b>Currency</b>	<b>2</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	1
White	0
Hispanic / Latino	1
<b>Alcohol</b>	<b>85</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	1
Black	10
White	30
Hispanic / Latino	44
<b>Stolen property</b>	<b>5</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	3
White	1
Hispanic / Latino	1
<b>Other</b>	<b>37</b>
Alaska Native / American Indian	1
Asian / Pacific Islander	0
Black	5
White	9
Hispanic / Latino	22
<b>Result of the stop</b>	
Verbal warning	<b>4822</b>

Alaska Native / American Indian	31
Asian / Pacific Islander	72
Black	645
White	1809
Hispanic / Latino	2265
<b>Written warning</b>	<b>900</b>
Alaska Native / American Indian	6
Asian / Pacific Islander	12
Black	88
White	464
Hispanic / Latino	330
<b>Citation</b>	<b>1982</b>
Alaska Native / American Indian	13
Asian / Pacific Islander	22
Black	171
White	785
Hispanic / Latino	991
<b>Written warning and arrest</b>	<b>4</b>
Alaska Native / American Indian	1
Asian / Pacific Islander	0
Black	0
White	0
Hispanic / Latino	3
<b>Citation and arrest</b>	<b>51</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	9
White	21
Hispanic / Latino	21
<b>Arrest</b>	<b>420</b>
Alaska Native / American Indian	1
Asian / Pacific Islander	1
Black	60
White	151
Hispanic / Latino	207
<b>Arrest based on</b>	
<b>Violation of Penal Code</b>	<b>335</b>
Alaska Native / American Indian	2
Asian / Pacific Islander	0

Black	47
White	122
Hispanic / Latino	164
<b>Violation of Traffic Law</b>	<b>61</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	6
White	28
Hispanic / Latino	27
<b>Violation of City Ordinance</b>	<b>1</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	1
Hispanic / Latino	0
<b>Outstanding Warrant</b>	<b>78</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	1
Black	16
White	21
Hispanic / Latino	40

**Was physical force resulting in bodily injury used during stop?**

<b>Yes</b>	<b>6</b>
Alaska Native / American Indian	0
Asian / Pacific Islander	0
Black	0
White	3
Hispanic / Latino	3
<b>No</b>	<b>8173</b>
Alaska Native / American Indian	52
Asian / Pacific Islander	107
Black	973
White	3227
Hispanic / Latino	3814


**Number of complaints of racial profiling**

<b>Total</b>	<b>0</b>
<b>Resulted in disciplinary action</b>	<b>0</b>
<b>Did not result in disciplinary action</b>	<b>0</b>

Submitted electronically to the



The Texas Commission on Law Enforcement

<p>GENERAL ORDER</p>  <p>Kyle Police Department</p>	Effective: 07-09-15	<b>Chapter 2.2</b>
	Section: Professional Standards and Conduct	Subject: <b>Racial Profiling and Bias Reduction</b>
	Approved: <u>Jeff Barnett</u>	
	Revised: 08-30-17 Reference TBP: 2.01	

## I. POLICY

We are committed to the support of constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, national origin, ethnicity, age, or religion. All people carry biases: in law enforcement, however, the failure to control our biases can lead to illegal arrests, searches, and detentions, thus thwarting the mission of our department. Most importantly, actions guided by bias destroy the trust and respect essential for our mission to succeed. We live and work in communities very diverse in population. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of individuals (for traffic and other purposes), investigative detentions, arrests, searches and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. Officers shall base all such actions on a reasonable suspicion that the person or an occupant of a vehicle committed an offense.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement contacts between officers and the public.

## II. PURPOSE

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

## III. DEFINITIONS

Most of the following terms appear in this order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. **Bias:** Prejudice or partiality which may be based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. **Biased policing:** Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- C. **Ethnicity:** A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history.



- D. Gender: The state of being male or female (typically used with reference to social and cultural differences rather than biological ones).
- E. Probable cause: Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense is about to be, has been, or is being committed, and that the suspect has committed it.
- F. Race: A category of people of a particular decent, including Caucasian, African, Hispanic, Middle Eastern, Asian, or Native American descent. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.
- G. Racial profiling: A law-enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
- H. Reasonable suspicion: Articulate, objective facts which lead an experienced officer to suspect that a person has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."
- I. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- J. Stop: The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is an investigative detention.

#### IV. PROCEDURES

##### A. General responsibilities

1. Officers are prohibited from engaging in bias based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age or cultural group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP: 2.01)
2. Reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall only be subjected to stops, seizures, or detention upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
3. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
  - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a traffic stop may be crucial to a person's perception of fairness or discrimination.
  - b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.



4. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
  - a. Personnel shall facilitate an individual's access to other governmental services whenever possible, and should actively provide referrals to other appropriate agencies.
  - b. Personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the department.
5. When feasible, personnel should offer explanations of the reasons for enforcement actions or other decisions that bear on an individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety. When concluding an encounter, personnel may thank him or her for cooperating.
6. When feasible, all personnel shall identify themselves by rank and name. When a person requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.
7. All personnel are accountable for their actions. Personnel shall justify their actions when required.

**B. Requirements for Traffic Stops:**

1. A peace officer who makes a traffic stop which results in the issuance of a warning, citation, or an arrest shall record and report the following information:
  - a. The race or ethnicity of the individual detained; and
  - b. Whether the officer conducted a search as a result of the stop, and if so, whether the authorized person consented to the search.
  - c. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual.
  - d. Response to resistance that resulted in bodily injury during a traffic stop.
  - e. Location of the stop
  - f. Reason for the stop

**C. Retention Period:**

- a. The Department shall retain the video and audio equipment documentation of each traffic or pedestrian stop for at least 180 days after the date of the stop.
- b. If a complaint is filed with the department alleging that a Kyle Police Officer has engaged in racial profiling with respect to a traffic or pedestrian stop, the department shall retain the video and audio recording of the stop until final disposition of the complaint.

**D. Review Process:**



1. Sworn supervisors and the Patrol Lieutenant shall periodically review randomly selected sampling of video and audio recordings made recently by all peace officers employed by this department.
2. In addition to reviewing stops and arrests pursuant to the statutory requirements, reviewing supervisors will also assess the individual officer's violator approach, interpersonal skills, officer safety skills, positioning of the patrol vehicle etc. for training purposes, employee coaching or discipline. Any specific incident meriting further consideration for racial profiling review by this process shall be forwarded to the Chief of Police for an Internal Affairs unit review.
3. By March 1 of each year, an annual administrative review of agency practices, collected data, and citizen complaints of racial profiling will be performed by the Chief of Police or his designee.

**E. Supervisory responsibilities**

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify, document and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.
4. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of control over bias also exposes the department to liability consequences. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
5. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.
6. Supervisors shall facilitate the filing of any complaints about law enforcement service.

**F. Disciplinary consequences**

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

**G. Training (TBP: 2.01)**

1. Officers shall complete all training required by state law regarding bias based profiling.

**V. COMPLAINTS**

- A. The department shall publish "How to Make a Complaint" information and make this available at the police department. The department's complaint process will be posted on the department's

website. Whenever possible, the media will be used to inform the public of the department's policy and complaint process.

1. Racial-Profilng complaints may be made in the following manner:

a. In person:

Kyle Police Department  
111 N Front Street  
Kyle, TX 78640

b. By telephone (512)268-0859

c. By email: [kylepd@cityofkyle.com](mailto:kylepd@cityofkyle.com)

d. By mail:

Kyle Police Department  
P.O. Box 40  
Kyle, TX 78640

B. Written and signed complaints alleging incidents of bias based profiling will be fully investigated as described under Policy 2.4.

C. Complainants will be notified of the results of the investigations when such investigation is completed.

## VI. RECORD KEEPING

A. The department will maintain all required records on traffic stops where a citation is issued or where an arrest is made subsequent to a traffic stop pursuant to state law.

B. The information collected above will be reported to the city council annually.

C. The information will also be reported to TCOLE in the required format.



# **KYLE POLICE**

111 North Front Street, Kyle, TX 78640

Non-Emergency: 512-268-3232

Admin: 512-268-0859

Fax: 512-268-2330

To: Scott Sellers, City Manager

Cc: James Earp, Assistant City Manager

Jerry Hendrix, Chief of Staff

Jennifer Vetrano, City Secretary

From: Jeff Barnett, Chief of Police

Date: February 10, 2021

Re: 2020 Annual Racial Profiling Report

The Kyle Police Department is submitting the 2020 Racial Profiling Report as required by the Texas Code of Criminal Procedure. This report is required to be submitted to the governing body on or before March 1st of each year. Please find the following documents for your review and presentation to the City Council:

- Kyle Police Department Racial Profiling Policy Chapter 2.2
- Kyle Police Department Annual Report – 20120 Data
- Memorandum from Captain Hernandez
- Memorandum from Lt. Griffith

As you may recall, the State of Texas enacted a law requiring certain actions on behalf of the local agency and the individual law enforcement officers when conducting traffic or pedestrian stops. The Kyle Police Department has a policy that clearly defines racial profiling and prohibits officers from engaging in racial profiling as defined by state law, and our officers are directed to capture certain types of data pertaining to traffic and pedestrian detentions with members of the public. The Kyle Police Department police vehicles that routinely engage in traffic and pedestrian stops are outfitted with audio and video recording equipment. Additionally, patrol and traffic officers are outfitted with body worn cameras for additional recording. These videos are retained for a period of not less than 90 days, and they are reviewed throughout the year by supervisory staff as required by the statute.

 512-268-3232  512-268-2330

111 North Front Street, Kyle, TX 78640



The Kyle Police Department does have a publicly promoted process by which an individual may file a complaint if the individual believes that a Kyle Police Officer has engaged in racial profiling. Information on the process may be obtained from a variety of sources, to include the City's webpage, the front lobby of the Police Department, and from Kyle Police Department staff. In addition, every person that receives a written citation is provided information on how to file a complaint. Furthermore, the Kyle Police Department did not receive any complaints pertaining to racial profiling during this reporting period. Please see the email included with this report from Captain Hernandez.

In reviewing the data, the Kyle Police Department conducted a total of 8,179 motor vehicle and pedestrian stops. The following table represents the percentage of individuals stopped by race/ethnicity as categorized and defined by the State of Texas:

<b>Race/Ethnicity</b>	<b>Percent of Total Stops</b>
Black	11.89%
Asian/Pacific Islander	1.31%
Caucasian	39.49%
Hispanic/Latino	46.67%
Alaska Native/ American Indian	0.06%
Total (Rounding)	99.42%

An analysis of the data was conducted by Lt. Griffith and is included for your review. His findings of adherence to policies and state law are outlined in his memorandum. A brief overview and analysis of the data collected is described below.

Of the 8,179 stops that resulted in an arrest, citation, or written or verbal warning, 708 vehicle searches were conducted. Of those 708 searches, 121 were consensual while 386 of them were based upon probable cause and 30 were incident to arrest. 68 of the searches were due to contraband in plain view of the officer and 103 were inventory searches. Of the same 708 searches, 528 items of contraband were located and as identified in the following categories: alcohol (85); currency (2); drugs (385); other (37); stolen property (5); and weapons (14).

Of the same 8,179 traffic stops, only in 85 of the instances was the race/ethnicity of the vehicle operator known to the police officer prior to the vehicle stop. The results of the traffic stops were as follows: arrest (420); citation (1982); citation and arrest (51); verbal warning (4822); written warning (900); and written warning with arrest (4). Of those 420 arrests, the reason for arrest was based on the following: outstanding warrant (78); violation of penal code (335); and violation of traffic law (61).

Of the same 85 instances where the race/ethnicity was known, 60 were male and 25 were female. 40 were white, 37 were Hispanic, and 8 were black. 40 were white, and 37 were Hispanic. Of the 8 that were black, 3 were arrested, 3 were issued a warning, and 2 were issued a citation. Of the 40 that were white, 13 were arrested, 9 were issued citations, and 18 were issued warning. Of the 36 that were Hispanic, 11 were arrested, 15 were issued citations, and 11 were issued warnings.

Of the 85 instances where race/ethnicity was known, a search was conducted in 31 of those instances. Of those 31, 2 were black, 16 were Hispanic, and 13 were white. Of the remaining 54 instances where no search was conducted, 6 were black, 26 white, and 22 were Hispanic.

Officers both work and regularly respond to calls for service on areas and on all roadways within our city. This includes city streets, county roads, state highways, US highways, and private property (such as parking lots and commonly used but privately maintained roadways, etc. Of the 8,179 stops, the stops were indicated in the follow categories: US Highway (3,283); State Highway (928); Private Property or Other (44); County Road (270); and City Street (3654).

The Racial Profiling report has been filed with the Texas Commission on Law Enforcement as required. It is my understanding that this report will be provided to the City Council prior to the March 1st deadline, and I am prepared to make any presentations as directed by you in the future.

Please let me know if you would like any further information concerning this report. Thank you very much.





# CITY OF KYLE, TEXAS

## ECAP Report

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Emergency Cash Assistance Program "ECAP" Report. ~ *Barbara Thompson, Greater San Marcos Partnership*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## CIP/Road Projects Update

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

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

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available





# CITY OF KYLE, TEXAS

Amendment No. 3 to Task Order  
No. 2 to LJA Engineering for  
additional services -  
Schlemmer/Porter St. WW Project.

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Approve Amendment No. 3 to LJA ENGINEERING, INC., Austin, Texas, in the amount of \$11,702.00 increasing the total contract amount not to exceed \$244,682.91 for the Schlemmer & Porter St. Wastewater Project. ~ *Leon Barba, P.E., City Engineer*

**Other Information:** This amendment to Task Order 2 is for appraisal services on the original scope for Schlemmer & Porter St WW Project. This amendment will include:

- Coordination with Union Pacific Railroad
- Plan and profile adjustments
- Appraisal and Closing Services
- Mileage

**Legal Notes:** N/A

**Budget Information:** Funding is available in the approved CIP budget for Fiscal Year 2020-2021 as follows:

- 3410-87400-571311 = \$11,702.00

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## **ATTACHMENTS:**

### **Description**

- ☐ LJA Amendment No. 3

## Amendment 3 To Task Order No. 2

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### 1. Background Data:

- a. Effective Date of Task Order: 2-2-2021
- b. Owner: City of Kyle
- c. Engineer: LJA Engineering, Inc.
- d. Specific Project: Schlemmer & Porter St WW Project

### 2. Description of Modifications

- a. This amendment to Task Order 2 is for appraisal services on the original scope for Schlemmer & Porter St WW Project. This amendment will include:
  - Coordination with Union Pacific Railroad
  - Plan and profile adjustments
  - Appraisal and Closing Services
  - Mileage
- b. See attached Supplemental Fee Schedule

### 3. Task Order Summary (Reference only)

- a. Original Task Order amount: \$[170,022.50]
- b. Net change for prior amendments: \$[232,980.91]
- c. This amendment amount: \$[11,702.00]
- d. Adjusted Task Order amount: \$[244,682.91]

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Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is February 2, 2021.

**OWNER:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

**ENGINEER:**

By:  \_\_\_\_\_

Title: Vice President

Date  
Signed: 2/2/2021

**Exhibit "A"**  
**Supplemental Work Authorization No. 3 for**  
**Schlemmer & Porter St Wastewater Project and**  
**ROW Acquisition for Downtown Wastewater Easements**  
**Scope of Services**

**Modifications:**

The Engineer will perform the following items listed below, as described:

**TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION**

The Engineer will perform:

1. Invoicing, Contract Document Coordination, Progress Reports
  - Supplemental Task Order creation
2. Coordination with City and Union Pacific Railroad

**TASK 4 – PLANS, SPECIFICATIONS, AND ESTIMATE**

The Engineer will develop the following modifications:

- Plan and profile modifications within the Union Pacific Railroad
- Address City 100% comments
- Provide schedule update

**TASK 8 ROW AQUISITION**

**I. Appraisal Services**

- A. Contact property owners or their designated representative to offer opportunity to accompany the appraiser on the appraiser's inspection of subject property. Maintain record of contact in file.
- B. Prepare complete appraisal report for each parcel to be acquired. These reports will be developed and prepared in conformity with and subject to the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and Code of Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- C. As necessary, prepare written notification to Client of any environmental concerns observed within the right of way to be acquired, which could require environmental remediation. Environmental site assessments are not included in this scope of services.

**II. Closing Services**

- A. Facilitate closing by exchanging closing funds for the executed easement.

\*\*\*Any additional services needed, beyond the items listed above, are not included in this scope of services. Any additional services that may be needed or requested by the Client, is subject to the preparation of a Supplemental to include additional scope items and/or funding.\*\*\*

**Exhibit C: TO#2 (LUMP SUM)**

TASK DESCRIPTION		Senior PM /Engineer	Project Engineer	Senior Engineering Tech	Admin	Total
		175.00	150.00	100.00	60.00	
		HOURS	HOURS	HOURS	HOURS	HOURS
<b>TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION</b>						
1.1	Invoicing, Contract Document Coordination, Progress Reports					
	Supplemental Task Order Creation	1.0	1.0			2.0
1.2	Coordination					
	Coordination with City and Union Pacific Railroad		20.0			20.0
SUB TOTAL HOURS		1.0	21.0	0.0	0.0	22.0
SUB TOTAL FEE		\$175.00	\$3,150.00	\$0.00	\$0.00	\$3,325.00
<b>TASK 4 – PLANS, SPECIFICATIONS, AND ESTIMATE</b>						
4.1	Plans Update					
	Plan and Profile Modifications within Union Pacific Railroad	2.0	18.0	0.0	0.0	20.0
	Comment Resolution	2.0	4.0			6.0
	Project Schedule Update	2.0				2.0
SUB TOTAL HOURS		6.0	22.0	0.0	0.0	28.0
SUB TOTAL FEE		\$1,050.00	\$3,300.00	\$0.00	\$0.00	\$4,350.00
TOTAL Project Tasks						
TOTAL HOURS		7.0	43.0	0.0	0.0	50.0
TOTAL FEE		\$1,225.00	\$6,450.00	\$0.00	\$0.00	\$7,675.00
Project Totals						
	LJA ODC					\$0.00
	PROJECT TOTAL					<b>\$7,675.00</b>

Expenses	Units	Rate	Totals
Appraisals	1	\$4,000	<b>\$4,000</b>
Mileage	47	Current IRS Rate	<b>\$27</b>
<b>SUB TOTALS (\$)</b>			<b>\$4,027</b>

**Total (Not to Exceed):        \$4,027**

Work performed is to be billed monthly on a time and material basis. Hours estimated above for each position are approximate only. The Not To Exceed total is the maximum to be charged under this scope of work.

**Assumptions:**

Project requires acquisition of a maximum of 2 parcels.

**Other Miscellaneous expenses can include:**

Texas Secretary of State research fees on corporations, Courthouse Direct fees on copies of recorded instruments, parking fees, tolls, certified copies of recorded instruments, etc.



# CITY OF KYLE, TEXAS

## Amendment No. 9, Southside Wastewater Improvements Project to Espey Consultants, Inc. dba RPS

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Approve Amendment No. 9 to ESPEY CONSULTANTS, INC. dba RPS, Austin, Texas, in the amount of \$79,481.00 for a total contract amount not to exceed \$1,010,481.85 for additional engineering services associated with the Southside Wastewater Improvements Project. ~ *Leon Barba, P.E., City Engineer*

**Other Information:**

**Task 1.1 – Monthly Project Progress Meetings**

RPS will continue to attend one construction progress meeting per month to coordinate construction activities between the City, Engineer, and Contractor. The budget estimate is based on time to prepare for, attend and follow-up the meeting as necessary including meeting minutes preparation and distribution. For budgeting purposes, RPS assumes 8 additional progress meetings.

**Task 1.2 – Monthly Project Site Visits**

RPS will perform one site visit per month to observe construction activities, document progress of

Work, and to determine, in general, if the Work is proceeding in accordance with the contract documents. Each site visit will be documented with a field report.

**Task 1.3 – Miscellaneous Meetings**

RPS will attend up to 4 additional miscellaneous meetings which may include meetings with the Contractor, with City staff, utility providers, or attendance at public meetings. The budget estimate includes preparation for and attendance at the meeting as well as meeting minute preparation and distribution and follow-up, if necessary. It is assumed meetings with the public will be administered by the City staff.

**Task 1.4 - Submittal Review**

Most submittals required from the Contractor have been submitted and reviewed. We anticipate an additional 12 submittals and re-submittals, and an additional 8 pay application reviews. RPS will receive and review shop drawings, samples, and other data, which the Contractor is required to submit, and take appropriate action on the submittals.

**Task 1.5 – Requests for Information** RPS will continue to receive, log, review and respond in writing to Contractor's formal requests for information (RFI) and as directed by City. RPS will maintain a file of all RFI's and responses.

**Task 1.6 – Change Orders**

RPS will review proposed allowance directives, change orders, supplemental agreements, and time

extension requests from the Contractor as directed by the City.

**Task 1.7 – Substantial Completion Inspection**

After receipt from the Contractor that the Work is substantially complete, RPS will conduct a "walk through" of the project and assist the City in preparing a "Final Punch

List”.

**Task 1.8 – Final Completion Inspection**

After notification from the Contractor that punch list items have been addressed and the project is ready for final inspection, RPS will conduct a final completion walk through with the City and Contractor to confirm the project is complete. Any remaining work items will be summarized in a written punch list.

**Task 1.9 – Record Drawings**

RPS will prepare record drawings using information provided by the Contractor and City Inspector, incorporating all field directives and change orders. A “Record Drawing” stamp shall be affixed on each document, signifying the field changes have been transferred. One set of record documents on paper 24” X 36” format with a CD-ROM scan will be submitted to the City.

**Task 1.10 – Warranty Inspection**

RPS will walk the project with the City and contractor 11 months after substantial completion and prepare a punch list of items to be addressed by contractor.

**Task 1.11 – Additional Design Services**

RPS will perform additional design services to accommodate design revisions associated with easement acquisition and utility assignment changes along the properties known as Murray, Alexander and Edwards Drive. Design services will include coordination with the City; coordination with TxDOT and utility companies; preparation of design drawings and site-specific traffic control plans; and addressing review comments.

**Legal Notes:**

N/A

**Budget Information:**

Funding is available in the approved CIP budget for Fiscal Year 2020-2021 as follows:

- 3420-88800-573130 = \$79,481.00

---

**ATTACHMENTS:**

**Description**

- ☐ Amendment No. 9 - Southside WW Improvements

**Our ref: Project No. 05609**

4801 Southwest Parkway  
Suite 150  
Austin, Texas 78735  
T +1 512 328 5771

## **EXHIBIT A - PROJECT AMENDMENT NO. 9 SCOPE OF SERVICES SOUTHSIDE WASTEWATER IMPROVEMENTS**

### **Project Description**

Construction Phase services for the Southside Wastewater Improvements were previously authorized in Contract Amendment No. 4 and Amendment No. 8. Amendment No. 8 anticipated a construction contract completion of December 2020. The updated construction schedule estimates the project to be complete in August 2021. This schedule change will require additional construction phase services to be performed including continuing with monthly progress meetings, other miscellaneous meetings, review and response of RFIs, and potential change order support. As detailed below, this amendment also includes additional services for design of utilities associated with easement acquisition and design changes required along select properties.

### **1 Scope of Additional Services**

#### **Task 1.1 – Monthly Project Progress Meetings**

RPS will continue to attend one construction progress meeting per month to coordinate construction activities between the City, Engineer, and Contractor. The budget estimate is based on time to prepare for, attend and follow-up the meeting as necessary including meeting minutes preparation and distribution. For budgeting purposes, RPS assumes 8 additional progress meetings.

#### **Task 1.2 – Monthly Project Site Visits**

RPS will perform one site visit per month to observe construction activities, document progress of Work, and to determine, in general, if the Work is proceeding in accordance with the contract documents. Each site visit will be documented with a field report.

#### **Task 1.3 – Miscellaneous Meetings**

RPS will attend up to 4 additional miscellaneous meetings which may include meetings with the Contractor, with City staff, utility providers, or attendance at public meetings. The budget estimate includes preparation for and attendance at the meeting as well as meeting minute preparation and distribution and follow-up, if necessary. It is assumed meetings with the public will be administered by the City staff.

#### **Task 1.4 - Submittal Review**

Most submittals required from the Contractor have been submitted and reviewed. We anticipate an additional 12 submittals and re-submittals, and an additional 8 pay application reviews. RPS will receive and review shop drawings, samples, and other data, which the Contractor is required to submit, and take appropriate action on the submittals.



**Our ref: 005609**

**Task 1.5 – Requests for Information**

RPS will continue to receive, log, review and respond in writing to Contractor's formal requests for information (RFI) and as directed by City. RPS will maintain a file of all RFI's and responses.

**Task 1.6 – Change Orders**

RPS will review proposed allowance directives, change orders, supplemental agreements, and time extension requests from the Contractor as directed by the City.

**Task 1.7 – Substantial Completion Inspection**

After receipt from the Contractor that the Work is substantially complete, RPS will conduct a "walk through" of the project and assist the City in preparing a "Final Punch List".

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RPS will prepare record drawings using information provided by the Contractor and City Inspector, incorporating all field directives and change orders. A "Record Drawing" stamp shall be affixed on each document, signifying the field changes have been transferred. One set of record documents on paper 24" X 36" format with a CD-ROM scan will be submitted to the City.

**Task 1.10 – Warranty Inspection**

RPS will walk the project with the City and contractor 11 months after substantial completion and prepare a punch list of items to be addressed by contractor.

**Task 1.11 – Additional Design Services**

RPS will perform additional design services to accommodate design revisions associated with easement acquisition and utility assignment changes along the properties known as Murray, Alexander and Edwards Drive. Design services will include coordination with the City; coordination with TxDOT and utility companies; preparation of design drawings and site-specific traffic control plans; and addressing review comments.

## **Project Fees**

We propose to perform the continuing work described above in accordance with the applicable terms and conditions of our existing contract for professional services for a not to exceed fee of \$79,481. A detailed level of effort spreadsheet itemizing the fees is attached.

## **Closing**

If this proposal meets with your approval, please sign on the following page and return to our office.

Thank you.

Our ref: 005609

To the CITY:

Travis Mitchell  
Mayor  
City of Kyle  
100 West Center Street  
Kyle, Texas 78640  
Fax: (512) 262-3987

**CITY OF KYLE, TEXAS**

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

To the ENGINEER:

Sylvester Johnson, P.E.  
Project Manager  
RPS  
4801 Southwest Parkway, Parkway 2, Suite 150  
Austin, Texas 78735  
Fax: (512) 326-5659

**ESPEY CONSULTANTS, INC. dba RPS**

Signature



Printed Name Ralph E. Cox, P.E.

Title Vice President

Date \_\_\_\_\_

## ATTACHMENT B-1 FEE ESTIMATE

City of Kyle  
Construction Phase Services (Contract Ammend. No. 4)  
January 11, 2021

Yellow = data input  
Green, orange = calculated

### Fee Breakdown

Task	No	Task Name	Comments	RPS Labor									Other Direct Costs (ODCs)					Total Fee
				Principal	Project Manager	Sr. Project Engineer	Project Engineer	Engineer Staff	CAD	Project Admin	RPS Hours	Labor Cost	Miles	Mileage Cost	Other Misc.	Markup on ODCs	Total ODCs	
			Average Rates	\$320.00	\$180.00	\$165.00	\$140.00	\$130.00	\$125.00	\$90.00				\$0.575		10%		
1		Construction Phase Services		4	114	24	0	228	176	18	564	\$79,020	800	\$460	\$0	0	\$460	\$79,481
	1	Project Progress Meetings (8)			16			16			32	\$4,960		\$0		\$0	\$0	\$4,960
	2	Site Visits (8)			8			24			32	\$4,560	450	\$259		\$0	\$259	\$4,819
	3	Miscellaneous Meetings (4)		2	12			12			26	\$4,360	200	\$115		\$0	\$115	\$4,475
	4	Submittal Review			8			40		8	56	\$7,360		\$0		\$0	\$0	\$7,360
	5	RFIs			10			24	24	4	62	\$8,280		\$0		\$0	\$0	\$8,280
	6	Change Orders		2	16			32	8	4	62	\$9,040		\$0		\$0	\$0	\$9,040
	7	Substantial Completion Insp./ Punch List			8			8		2	18	\$2,660	50	\$29		\$0	\$29	\$2,689
	8	Final Completion Insp./ Punch List			4			4			8	\$1,240	50	\$29		\$0	\$29	\$1,269
	9	Record Drawings			4			16	24		44	\$5,800		\$0		\$0	\$0	\$5,800
	10	11 Month Warranty Inspection			4			4			8	\$1,240	50	\$29		\$0	\$29	\$1,269
	11	Additional Design Services and Coordination for Murray, Alexander, and Edwards, including Site-Specific Traffic Control Plans			24	24		48	120		216	\$29,520		\$0		\$0	\$0	\$29,520
		TOTAL CPS SERVICES		4	114	24	0	228	176	18	564	\$79,020	800	\$460	\$0	\$0	\$460	\$79,481



## CITY OF KYLE, TEXAS

### Acceptance of a Wastewater Line Easement from Mountain Plum, Ltd.

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Approve the conveyance of a 15 foot wastewater line easement to the City of Kyle from Mountain Plum, Ltd. ~ *Leon Barba, P.E., City Engineer*

**Other Information:** Approve the conveyance of a 15 foot wastewater line easement to the City of Kyle, Hays County, Texas from Mountain Plum, Ltd. 0.3098 acres of land in the Jesse Day Survey No. 162, Abstract No. 152 and the Jesse Day Survey, Abstract No. 159, Hays County, Texas; being a portion of a called 185.77 acre tract of land designated as tract 4 and described in the deed to MOUNTAIN PLUM, LTD. of record in Volume 2297, Page 139, Official Public Records of Hays County, Texas; said 0.3098 acres of land, as surveyed by LANDDEV CONSULTING, LLC and shown on the accompanying sketch, being more particularly described by metes and bounds.

“Exhibit A” dated July 2020 shows the metes and bounds and land survey exhibit.

**Legal Notes:** N/A

**Budget Information:** N/A

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#### **ATTACHMENTS:**

##### **Description**

- ☐ Mountain Plum - Wastewater Line Easement Documents

**NOTICE OF CONFIDENTIALITY RIGHTS:** If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

## **WASTEWATER LINE EASEMENT**

**Date:** \_\_\_\_\_, 2021

**Grantor:** **MOUNTAIN PLUM, LTD.**, a Texas limited liability company

**Grantor's Address:** 4040 Broadway, Suite 501  
San Antonio, Texas 78209

**City:** **CITY OF KYLE, TEXAS**, situated in Hays County, Texas

**City's Address:** 100 W. Center Street  
Kyle, Hays County, Texas 78640

**Easement Tract:** All that parcel of land situated in Hays County, Texas, described in the attached **Exhibit A**.

**Easement Duration:** Perpetual or until the Facilities (as defined below) are abandoned.

**Easement Purpose:** To install, construct, operate, use, maintain, repair, modify, upgrade, monitor, inspect, replace, make connections with, remove, and decommission the Facilities.

**Facilities:** Wastewater lines with all associated appurtenances

**Permitted Encumbrances:** Any easements, liens, encumbrances, and other matters that are valid, existing and affect the Easement Tract as of the Date set forth herein and of record in the Real Property Records of Hays County, Texas, in which the Easement Tract is located.

**Eligible Improvements:** Irrigation systems which are installed perpendicular to the Facilities, walkways made of concrete, asphalt, granite or any other similar materials, sidewalks, driveways, curbs, parking areas, and access roads at grade level, barbed-wire, chain-link, metal or wooden fences, landscaping items such as plants, flowers, shrubs, bushes, hardscapes, rocks, pathways, and movable structures such as benches, gazebos and other similar items, signage, lighting and all other similar improvements which do not interfere in any material way or are not inconsistent



with the rights granted to the City under this Wastewater Line Easement for the Easement Purpose.

Grantor, for **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration paid to Grantor, the receipt and sufficiency of which is acknowledged by Grantor, **GRANTS, SELLS, AND CONVEYS** to the City a non-exclusive easement in, over, under, on, and across the Easement Tract for the Easement Purpose as may be necessary or desirable subject to the Permitted Encumbrances, together with (i) the right of ingress and egress at all times over, on, and across the Easement Tract for use of the Easement Tract for the Easement Purpose, (ii) the right to eliminate encroachments in the Easement Tract that interfere in any material way or are inconsistent with the rights granted to the City under this instrument for the Easement Purpose as determined by the City in its reasonable discretion, and (iii) any and all rights and appurtenances pertaining to use of the Easement Tract (collectively, the "**Easement**").

**TO HAVE AND TO HOLD** the Easement to the City and the City's successors and assigns for the Easement Duration and Easement Purpose; provided, however, Grantor reserves the right to enter upon and use any portion of the Easement Tract and to install, construct, operate, use, maintain, repair, inspect, modify, upgrade, replace and/or relocate within the Easement Tract the Eligible Improvements and the right to grant additional easements or rights-of-way upon or across the Easement Tract to other parties for any purposes which do not endanger the Facilities or unreasonably interfere with the City's use of the Facilities, but in no event shall Grantor, except with respect to the Eligible Improvements, enter upon or use any portion of the Easement Tract in any manner that interferes in any material way or is inconsistent with the rights granted the City under this Easement for the Easement Purpose as determined by the City in its reasonable discretion.

The City, at its sole cost and expense, shall be obligated to restore, repair or replace the portions of the Easement Tract and Grantor's adjacent land and the Eligible Improvements therein that do not interfere in any material way or are not inconsistent with the City's use of the Easement for the Easement Purpose as determined by the City in its reasonable discretion, which have been removed, relocated, altered, damaged, or destroyed as a result of the City's use of the Easement Tract, in each case to equal or better than the condition which existed immediately prior to such removal, relocation, alteration, damage or destruction.

Grantor reserves its interest in all oil, gas and other minerals in and under and that may be produced from the Easement Tract.

This Wastewater Line Easement constitutes a dedication of the Wastewater Easement as defined in that certain Wastewater Easement and Temporary Construction Easement dated as of July 17, 2018, by and between Grantor and Majestic Kyle, LLC, recorded under Instrument No. 18025710 in the Official Public Records of Hays County, Texas (the "**Prior Easement**"). Accordingly, the Prior Easement shall automatically expire and terminate and shall no longer affect the Grantor

063750.00016 353621

Wastewater Line Easement

Property, as defined in the Prior Easement, as of the date of the recording of this Wastewater Line Easement.

Grantor binds Grantor and Grantor's heirs, successors, and assigns to **WARRANT AND FOREVER DEFEND** the title to the Easement, subject to the Permitted Encumbrances, to the City against every person whomsoever lawfully claiming or to claim the Easement Tract or any part of the Easement Tract when the claim is by, through, or under Grantor, but not otherwise.

Except where the context otherwise requires, Grantor includes Grantor's heirs, successors, and assigns, and City includes City's employees, agents, consultants, contractors, successors, and assigns; and where the context requires, singular nouns and pronouns include the plural.

This Wastewater Line Easement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Wastewater Line Easement.

*--- The remainder of this page is intentionally blank ---*

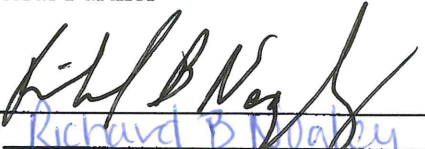


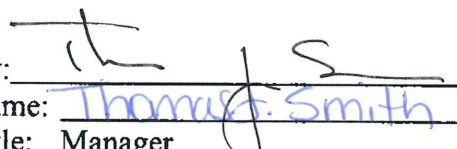
IN WITNESS WHEREOF, this instrument to be executed as of the Effective Date.

GRANTOR:


**MOUNTAIN PLUM, LTD.,**  
a Texas limited partnership

By: MP General, L.L.C.,  
a Texas limited liability company,  
its General Partner

By:   
Name: Richard B. Nagley  
Title: Manager

By:   
Name: Thomas J. Smith  
Title: Manager

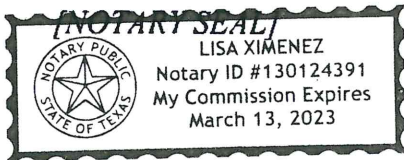
By: MountainCityLand, LLC,  
a Texas limited liability company,  
its Manager

By:   
Name: Laura N. Gill  
Title: Manager

ACKNOWLEDGEMENT

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF BEXAR   §

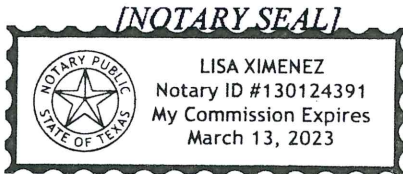
This instrument was acknowledged before me on the 27 day of January, 2021, by Richard B. Moly, Manager of MP General, L.L.C., a Texas limited liability company, the general partner of Mountain Plum, Ltd., for and on behalf of said limited liability company and limited partnership.



Lisa Jimenez  
Notary Public, State of Texas

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF BEXAR   §

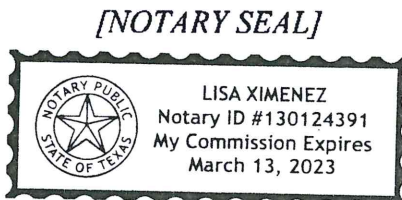
This instrument was acknowledged before me on the 27 day of January, 2021, by Thomas J. Smith, Manager of MP General, L.L.C., a Texas limited liability company, the general partner of Mountain Plum, Ltd., for and on behalf of said limited liability company and limited partnership.



Lisa Jimenez  
Notary Public, State of Texas

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF BEXAR   §

This instrument was acknowledged before me on the 27 day of January, 2021, by Laura N. Gill, Manager of MountainCityLand, LLC, a Texas limited liability company, Manager of MP General, L.L.C., a Texas limited liability company, the general partner of Mountain Plum, Ltd., for and on behalf of said limited liability company and limited partnership.



Lisa Jimenez  
Notary Public, State of Texas

**CITY OF KYLE, TEXAS,**  
a municipal corporation and political subdivision of  
the State of Texas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF HAYS       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by  
\_\_\_\_\_. \_\_\_\_\_ of the City of Kyle, a municipal  
corporation and political subdivision of the State of Texas, for and on behalf of said city.

*[NOTARY SEAL]*

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit A to Wastewater Line Easement**  
**Easement Tract**

[See Attached]

## EXHIBIT A

Hays County, Texas  
Jesse Day Survey No. 162, Abstract No. 152  
Jesse Day Survey, Abstract No. 159

0.3098 Acre  
Page 1 of 3

DESCRIPTION OF 0.3098 OF ONE ACRE (13,496 SQUARE FEET) OF LAND IN THE JESSE DAY SURVEY NO. 162, ABSTRACT NO. 152 AND THE JESSE DAY SURVEY, ABSTRACT NO. 159, HAYS COUNTY, TEXAS; BEING A PORTION OF A CERTAIN CALLED 185.77 ACRE TRACT DESIGNATED AS TRACT 4 AND DESCRIBED IN THE DEED TO MOUNTAIN PLUM, LTD. OF RECORD IN VOLUME 2297, PAGE 139, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 0.3098 OF ONE ACRE (13,496 SQUARE FEET) OF LAND, AS SURVEYED BY LANDDEV CONSULTING, LLC AND SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a ½-inch iron rod with a plastic cap stamped "BCG" (Grid Coordinates: N= 13,923,136.11', E= 2,328,590.55') found at the intersecting south right-of-way line of Kohlers Crossing (County Road 171), a varying width right-of-way, and the east right-of-way line of Marketplace Avenue, an 80-foot right-of-way, as shown on the Plum Creek Phase I, Lot 1, Block A, Business Park, a subdivision according to the map or plat of record in Cabinet 14, Pages 34 and 35, Plat Records of Hays County, Texas, at the southwest corner of that certain called 1.347 acre tract, designated as Parcel 5, Tract 2 and described in the Special Warranty Deed to the City of Kyle, Texas, of record in Volume 3218, Page 810, Official Public Records of Hays County, Texas;

THENCE S 01°07'35" E, leaving the south right-of-way line of said Kohlers Crossing, crossing the said 185.77 acre tract, with the east right-of-way line of said Marketplace Avenue, a distance of 1,525.47 feet to a calculated point for the northwest corner and POINT OF BEGINNING of the tract described herein;

THENCE leaving the east right-of-way line of said Marketplace Avenue, crossing the said 185.77 acre tract, with the north line of the tract described herein, the following two (2) courses and distances:

1. N 88°33'45" E, a distance of 169.32 feet to a calculated angle point, and
2. N 46°04'15" E, a distance of 733.10 feet to a calculated point in the west line of Lot 3, Majestic Industrial Park, a subdivision according to the plat or map of record in Instrument No. 18025013, Official Public Records of Hays County, Records, for the northeast corner of the tract described herein, from which a ½-inch iron rod with a plastic cap stamped "GEOMATICS RPLS 5516" found in the south right-of-way line of said Kohlers Crossing, and the south line of the said 1.347 acre tract, at the northwest corner of said Lot 3, Majestic Industrial Park bears N 04°37'25" E, a distance of 1,016.65 feet;

THENCE S 04°37'25" W, continuing across the said 185.77 acre tract, with the west line of said Lot 3, Majestic Industrial Park, with the east line of the tract described herein, a distance of 22.66 feet to a ½-inch iron rod found at an angle point in the south line of the said 185.77 acre tract, at the southwest corner of said Lot 3, Majestic Industrial Park, same being the north corner of a certain called 126.130 acres, designated as Tract 1, and described in the deed to Sheldon - Tanglewood, Ltd. of record in Volume 2495, Page 677, Official Public Records of Hays County, Texas;

THENCE S 46°04'15" W, leaving the southwest corner of said Lot 3, Majestic Industrial Park, with the south line of the said 185.77 acre tract, with the northwest line of the said 126.130 acre tract, with the south line of the tract described herein, a distance of 721.95 feet to a calculated angle point of the tract described herein, from which a ½-inch iron rod with a plastic cap stamped "LAI" found at the southern terminus of the east right-of-way line of said Marketplace Avenue bears S 46°04'15" W, a distance of 238.83 feet;

THENCE S 88°33'45" W, leaving the northwest line of the said 126.130 acre tract, crossing the said 185.77 acre tract, with the south line of the tract described herein, a distance of 175.23 feet to a calculated point in the east right-of-way line of said Marketplace Avenue, for the southwest corner of the tract described herein, from which the said ½-inch iron rod with a plastic cap stamped "LAI" found at the southern terminus of the east right-of-way line of said Marketplace Avenue bears S 01°07'35" E, a distance of 161.33 feet;

THENCE N 01°07'35" W, continuing across the said 185.77 acre tract, with the east right-of-way line of said Marketplace Avenue, with the west line of the tract described herein, a distance of 15.00 feet to the POINT OF BEGINNING and containing 0.3098 of one acre (13,496 square feet) of land, more or less.

BEARING BASIS: Texas Coordinate System, South Central Zone, NAD83, Grid.

LandDev Consulting, LLC • 5508 Highway 290 West, Suite 150, Austin, TX 78735 • (512) 872-6696  
TBPE Firm No. 16384 | TBPLS Firm No. 10194101

063750.00016 353621

Wastewater Line Easement

Hays County, Texas  
Jesse Day Survey No. 162, Abstract No. 152  
Jesse Day Survey, Abstract No. 159

0.3098 Acre  
Page 2 of 3

THE STATE OF TEXAS

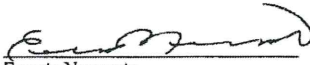
KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

That I, Ernesto Navarrete, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the parcel of land described herein is based upon a survey performed upon the ground under my direct supervision during the months of May and June, 2020.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 1<sup>st</sup> day of July 2020 A.D.

LANDDEV CONSULTING, LLC  
5508 Highway 290 West, Suite 150  
Austin, Texas 78735

  
Ernesto Navarrete  
Registered Professional Land Surveyor  
No. 6642 – State of Texas

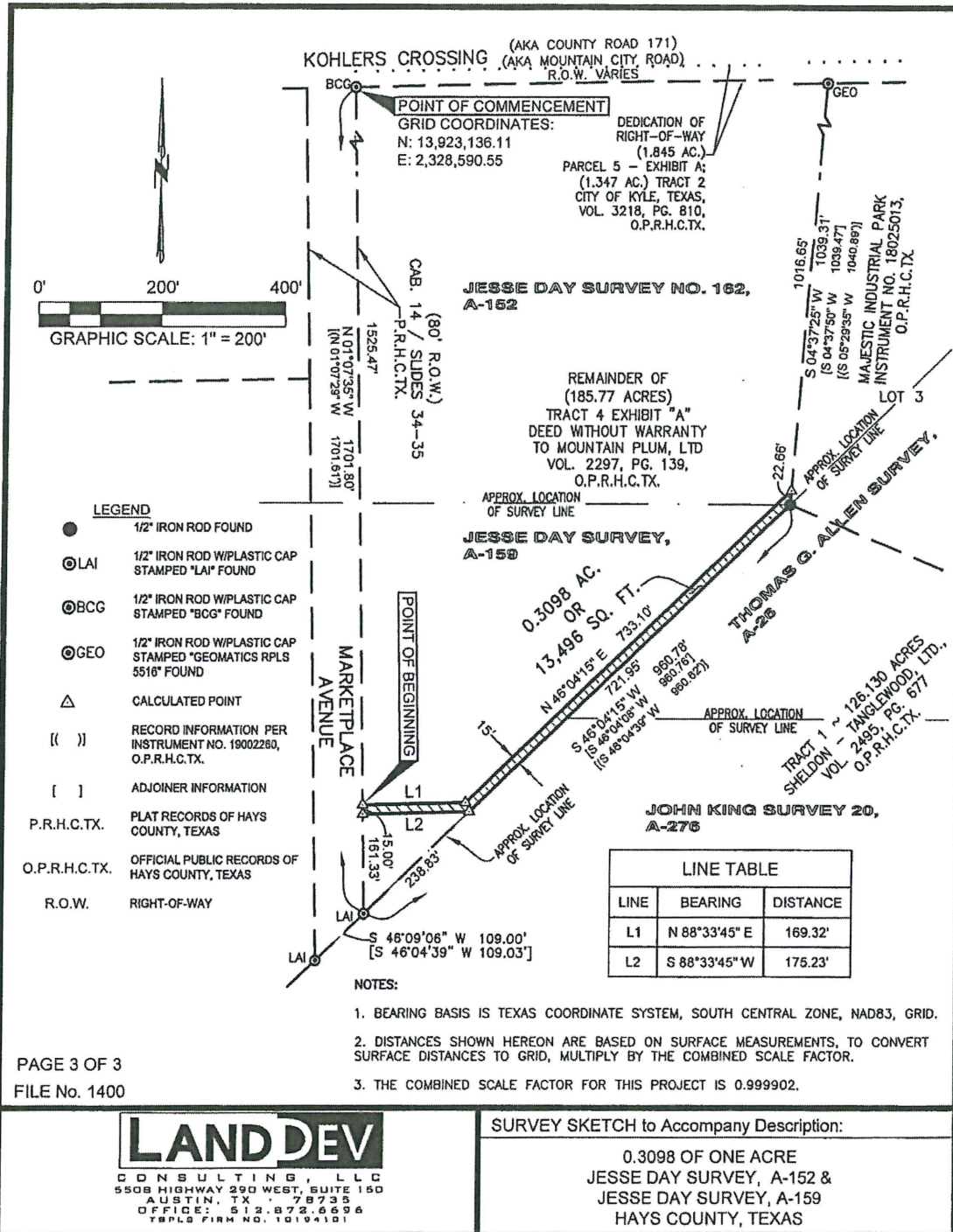


LandDev Consulting, LLC • 5508 Highway 290 West, Suite 150, Austin, TX 78735 • (512) 872-6696  
TBPE Firm No. 16384 | TBPLS Firm No. 10194101

Wastewater Line Easement

063750.00016 353621





L:\Projects\141409 Plum Creek Area 2A\600 Survey\600 L&L\Survey\88 Easement\Plum 75 15 11 WSE.dwg  
 PLOT DATE: Jul 01, 2020 12:26pm

Wastewater Line Easement

063750.00016 353621



# CITY OF KYLE, TEXAS

## Acceptance of two Wastewater Line Easements from Majestic Kyle, LLC

Meeting Date: 2/23/2021

Date time: 7:00 PM

**Subject/Recommendation:** Approve the conveyance of two (2) 15 foot wastewater line easements to the City of Kyle from Majestic Kyle, LLC. ~ *Leon Barba, P.E., City Engineer*

**Other Information:** Approve the conveyance of two (2) 15 foot wastewater line easements to the City of Kyle, Hays County, Texas from Majestic Kyle, LLC.

Of 7,283 square foot (0.167 acre) tract of land in the Jesse Day Survey No. 152, Hays County, Texas; said tract being part of Lot 2A, Block 1 Majestic Industrial Park Replat of Lots 2 & 3, an addition to the City of Kyle, Texas according to the plat recorded in Instrument No. 20027536 of the Official Public Records of Hays County, Texas; said tract also being part of that certain tract of land described in Special Warranty Deed to MAJESTIC KYLE, LLC. recorded in Instrument No. 18025706 of the Deed Records of Hays County, Texas; said 7,283 square foot tract being more particularly described as follows (Bearing basis for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas South Central Zone 4204. Distances reported have been scaled by applying the Hays County TxDOT surface adjustment factor of 1.000130000.)

Of a 4,704 square foot (0.108 acre) tract of land situated in the Jesse Day Survey, Abstract No. 159 and the Jesse Day Survey, Abstract No. 152 Hays County, Texas; said tract being part of Lot 3A, Block 1 Majestic Industrial Park Replat of Lots 2 & 3, an addition to the City of Kyle, Texas according to the plat recorded in Instrument No. 20027536 of the Official Public Records of Hays County, Texas; said tract also being part of that certain tract of land described in Special Warranty Deed to MAJESTIC KYLE, LLC. recorded in Instrument No. 18025706 of the Deed Records of Hays County, Texas; said 4,704 square foot tract being more particularly described as follows (Bearing basis for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas South Central Zone 4204. Distances reported have been scaled by applying the Hays County TxDOT surface adjustment factor of 1.000130000.)

“Exhibit A” dated December 2020 shows the metes and bounds and land survey exhibits for both easements.

**Legal Notes:** N/A

**Budget Information:** N/A

**ATTACHMENTS:**

**Description**

📎 Majestic Kyle - Wastewater Line Easement Documents

**NOTICE OF CONFIDENTIALITY RIGHTS:** If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

## **WASTEWATER LINES EASEMENT**

**Date:** \_\_\_\_\_, 2021

**Grantor:** MAJESTIC KYLE, LLC, a Delaware limited liability company

**Grantor's Address:** 13191 Crossroads Parkway North, 6<sup>th</sup> Floor  
Industry, Los Angeles County, California 91746-3497

**City:** CITY OF KYLE, TEXAS, situated in Hays County, Texas

**City's Address:** 100 W. Center Street  
Kyle, Hays County, Texas 78640

**Easement Tract:** All that parcel of land situated in Hays County, Texas,  
described in the attached **Exhibit A**

**Easement Duration:** Perpetual

**Easement Purpose:** To access, install, construct, operate, use, maintain, repair,  
modify, upgrade, monitor, inspect, replace, make connections  
with, remove, and decommission the Facilities

**Facilities:** Wastewater lines with all associated appurtenances

**Permitted Encumbrances:** Any easements, liens, encumbrances, and other matters not  
subordinated to the Easement Tract and of record in the Real  
Property Records of the Texas county in which the Easement  
Tract is located that are valid, existing, and affect the Easement  
Tract as of the Date



**Repairable Improvements:** Irrigation systems which are installed perpendicular to the Facilities, asphalt or concrete walkways, driveways, parking areas, and access roads at grade level, and barbed-wire, chain-link, or wooden fences which are installed parallel to the Facilities that do not interfere in any material way or are not inconsistent with the rights granted the City under this Easement for the Easement Purpose as determined by the City in its reasonable discretion

Grantor, for **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration paid to Grantor, the receipt and sufficiency of which is acknowledged by Grantor, **GRANTS, SELLS, AND CONVEYS** to the City a non-exclusive easement in, over, under, on, and across the Easement Tract for the Easement Purpose as may be necessary or desirable subject to the Permitted Encumbrances, together with (i) the right of ingress and egress at all times over, on, and across the Easement Tract for use of the Easement Tract for the Easement Purpose, (ii) the right to eliminate any encroachments in the Easement Tract that interfere in any material way or are inconsistent with the rights granted the City under this instrument for the Easement Purpose as determined by the City in its reasonable discretion, and (iii) any and all rights and appurtenances pertaining to use of the Easement Tract (collectively, the "**Easement**").

**TO HAVE AND TO HOLD** the Easement to the City and City's successors and assigns for the Easement Duration and Easement Purpose; provided, however, Grantor reserves the right to enter upon and use any portion of the Easement Tract, but in no event shall Grantor enter upon or use any portion of the Easement Tract in any manner that interferes in any material way or is inconsistent with the rights granted the City under this Easement for the Easement Purpose as determined by City in its reasonable discretion. City shall be obligated to restore or replace to a good and functioning condition as determined by the City in its reasonable discretion only the Repairable Improvements which have been removed, relocated, altered, damaged, or destroyed as a result of City's use of the Easement Tract.

Grantor binds Grantor and Grantor's heirs, successors, and assigns to **WARRANT AND FOREVER DEFEND** the title to the Easement, subject to the Permitted Encumbrances, to the City against every person whomsoever lawfully claiming or to claim the Easement Tract or any part of the Easement Tract when the claim is by, through, or under Grantor, but not otherwise.


Except where the context otherwise requires, *Grantor* includes *Grantor's heirs, successors, and assigns* and *City* includes *City's employees, agents, consultants, contractors, successors, and assigns*; and where the context requires, singular nouns and pronouns include the plural.

--- The remainder of this page is intentionally blank ---

Executed effective the Date first above stated.

**MAJESTIC KYLE, LLC,**  
a Delaware limited liability company

By: Majestic Realty Co.,  
a California corporation,  
Manager's Agent

By:   
Name: \_\_\_\_\_  
Title: **EDWARD P. ROSKI, JR.**  
**President and Chairman of the Board**


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

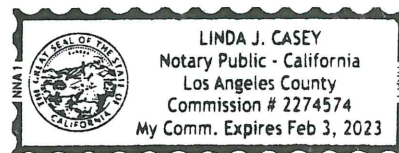
STATE OF CALIFORNIA       §  
  §  
COUNTY OF LOS ANGELES   §

On February 2, 2021 before me, Linda J. Casey, Notary Public, personally appeared Edward P. Roski, Jr., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Notary Public





**CITY OF KYLE, TEXAS,**  
a municipal corporation and political subdivision of  
the State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGEMENT

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF HAYS       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by  
\_\_\_\_\_. \_\_\_\_\_ of the City of Kyle, a municipal  
corporation and political subdivision of the State of Texas, for and on behalf of said city.

*[NOTARY SEAL]*

\_\_\_\_\_  
Notary Public, State of Texas

**15-FOOT PRIVATE SANITARY SEWER EASEMENT**

Part of Lot 2A, Block 1  
Majestic Industrial Park  
Replat of Lots 2 & 3  
Jesse Day Survey, Abstract No. 159,  
Jesse Day Survey, Abstract No. 152  
*City of Kyle, Hays County, Texas*

**DESCRIPTION**, of a 7,283 square foot (0.167 acre) tract of land situated in the Jesse Day Survey, Abstract No. 159, Jesse Day Survey, Abstract No. 152, Hays County, Texas; said tract being part of Lot 2A, Block 1 Majestic Industrial Park Replat of Lots 2 & 3, an addition to the City of Kyle, Texas according to the plat recorded in Instrument No. 20027536 of the Official Public Records of Hays County, Texas; said tract also being part of that certain tract of land described in Special Warranty Deed to Majestic Kyle, LLC. recorded in Instrument No. 18025706 of the Deed Records of Hays County, Texas; said 7,283 square foot tract being more particularly described as follows (Bearing basis for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas South Central Zone 4204. Distances reported have been scaled by applying the Hays County TxDOT surface adjustment factor of 1.000130000.)

**COMMENCING**, at a 1/2-inch iron rod found for corner at the southwest corner of Lot 3A, Block 1 of said Majestic Industrial Park Replat of Lots 2 & 3, and a southeast corner of that certain tract of land described in Deed without Warranty to Mountain Plum, Ltd. Recorded in Volume 2297, Pg. 139 of said Deed Records;

**THENCE**, North 04 degrees, 37 minutes, 34 seconds East, along the west line of said Lot 3A and the east line of said Mountain Plum tract, a distance of 4.04 feet to a point for corner;

**THENCE**, departing the said west line of Lot 3A and the said east line of Mountain Plum tract, and into and across said Lot 3A, the following two (2) calls:

North 44 degrees, 21 minutes, 24 seconds East, a distance of 276.56 feet to a point for corner;

North 45 degrees, 40 minutes, 53 seconds East, at a distance of 39.63 feet to the **POINT OF BEGINNING**; said point being a point for corner on the east line of said Lot 3A and the west line of said Lot 2A;

**THENCE**, North 04 degrees, 29 minutes, 35 seconds West, along the said east line of Lot 3A and the said west line of Lot 2A and the said southwest line of Lot 2A, a distance of 19.53 feet to a point for corner;

**THENCE**, departing the said east line of Lot 3A, said west line of Lot 2A, and into and across said Lot 2A, the following two (2) calls:

North 45 degrees, 40 minutes, 53 seconds West, a distance of 166.55 feet to a point for corner;

North 23 degrees, 08 minutes, 39 seconds East, a distance of 309.68 feet to a point for corner, in the northeast line of said Lot 2A and the southwest line of Lot 1, Majestic Industrial Park, an addition to the City of Kyle, Texas according to the plat recorded in Instrument No. 18025013 of said Official Public Records;

# 15-FOOT PRIVATE SANITARY SEWER EASEMENT

(Continued)

**THENCE**, South 67 degrees, 21 minutes, 37 seconds East, along the said northeast line of Lot 2A and the said southwest line of Lot 1, a distance of 15.00 feet to a point for corner;

**THENCE**, departing the said northeast line of Lot 2A, the said southwest line of Lot 1, and into and across said Lot 2A, the following two (2) calls:


South 23 degrees, 08 minutes, 39 seconds West, a distance of 312.80 feet to a point for corner;

South 45 degrees, 40 minutes, 53 seconds West, at a distance of 182.05 feet to **POINT OF BEGINNING**;

**CONTAINING**: 7,283 square feet or 0.167 acres of land, more or less.

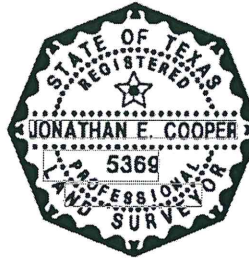
*(A survey plat of even survey date herewith accompanies this description.)*

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the easement tract described.

  
Jonathan E. Cooper  
Registered Professional Land Surveyor No. 5369  
Pacheco Koch Consulting Engineers, Inc.  
7557 Rambler Road, Suite 1400, Dallas TX 75231  
(972) 235-3031  
TX Reg. Surveying Firm LS-10008000

12-21-2020

Date

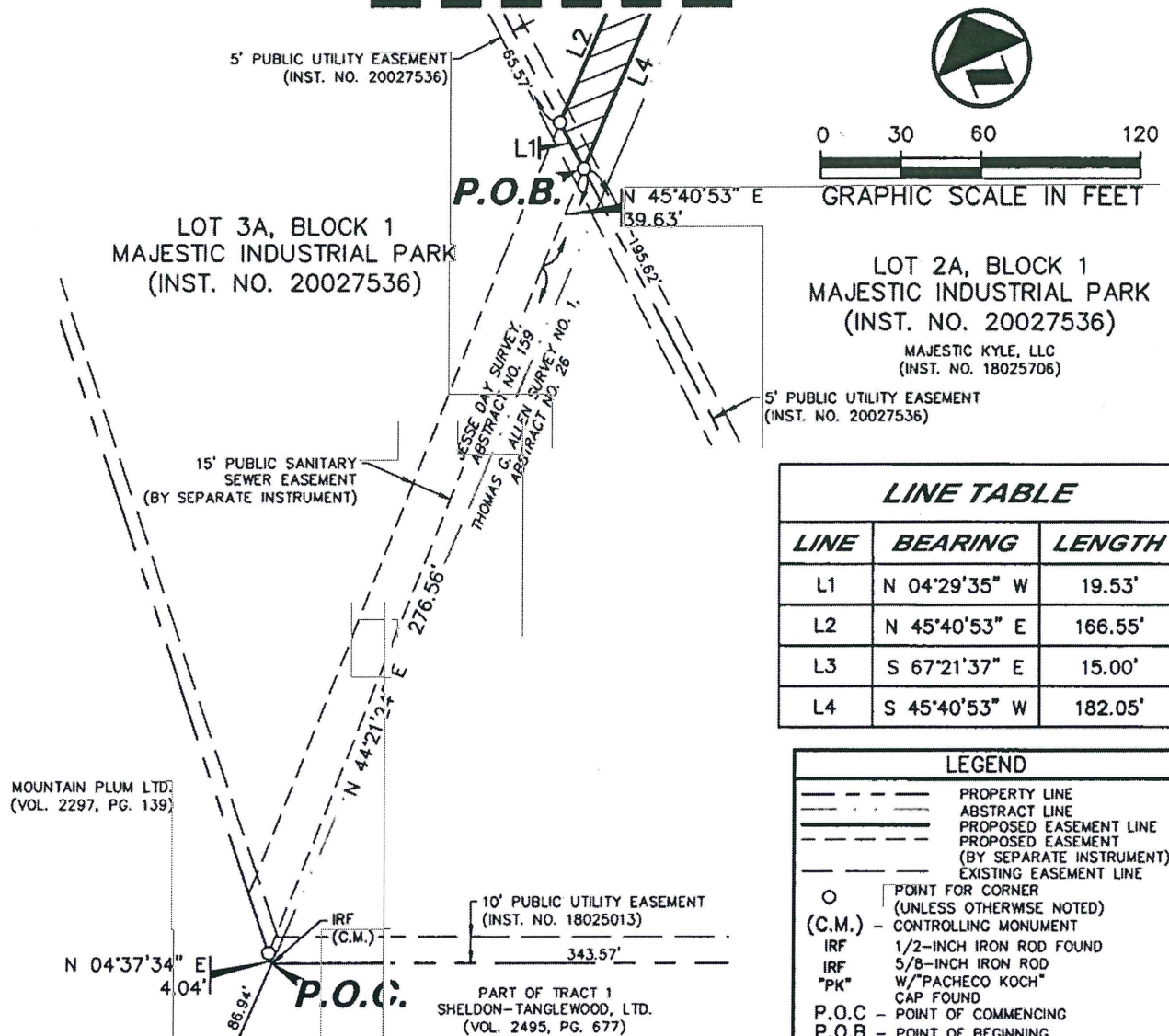


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MATCH LINE (SEE PAGE 4)

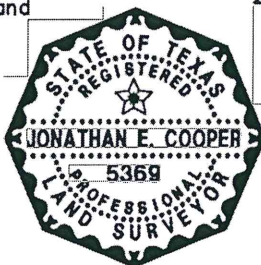


NOTES:

1. A metes and bounds description of even survey date herewith accompanies this plat of survey.
2. Bearing system for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (Adjustment Realization 2011), Texas South Central Zone (4204). Distances shown have been scaled by applying the Hays County TxDOT surface combined factor of 1.000130000.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this plat of survey accurately sets out the metes and bounds of the easement tract described.

Jonathan E. Cooper  
Registered Professional  
Land Surveyor No. 5369  
12-21-2020  
Date



**Pacheco Koch**

7557 RAMBLER ROAD SUITE 1400  
DALLAS, TX 75231 972.235.3031  
TX REG. ENGINEERING FIRM F-469  
TX REG. SURVEYING FIRM LS-10008000

DRAWN BY	CHECKED BY	SCALE	DATE	JOB NUMBER
JMC	MWW/JEC	1"=60'	DEC. 2020	4385-20.136

## 15-FOOT PRIVATE SANITARY SEWER EASEMENT

PART OF LOT 2A, BLOCK 1  
MAJESTIC INDUSTRIAL PARK  
REPLAT OF LOTS 2 & 3  
JESSE DAY SURVEY, ABSTRACT NO. 159,  
JESSE DAY SURVEY, ABSTRACT NO. 152,  
CITY OF KYLE, HAYS COUNTY, TEXAS  
PAGE 3 OF 4

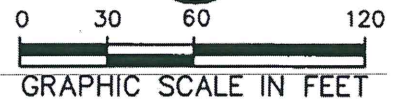
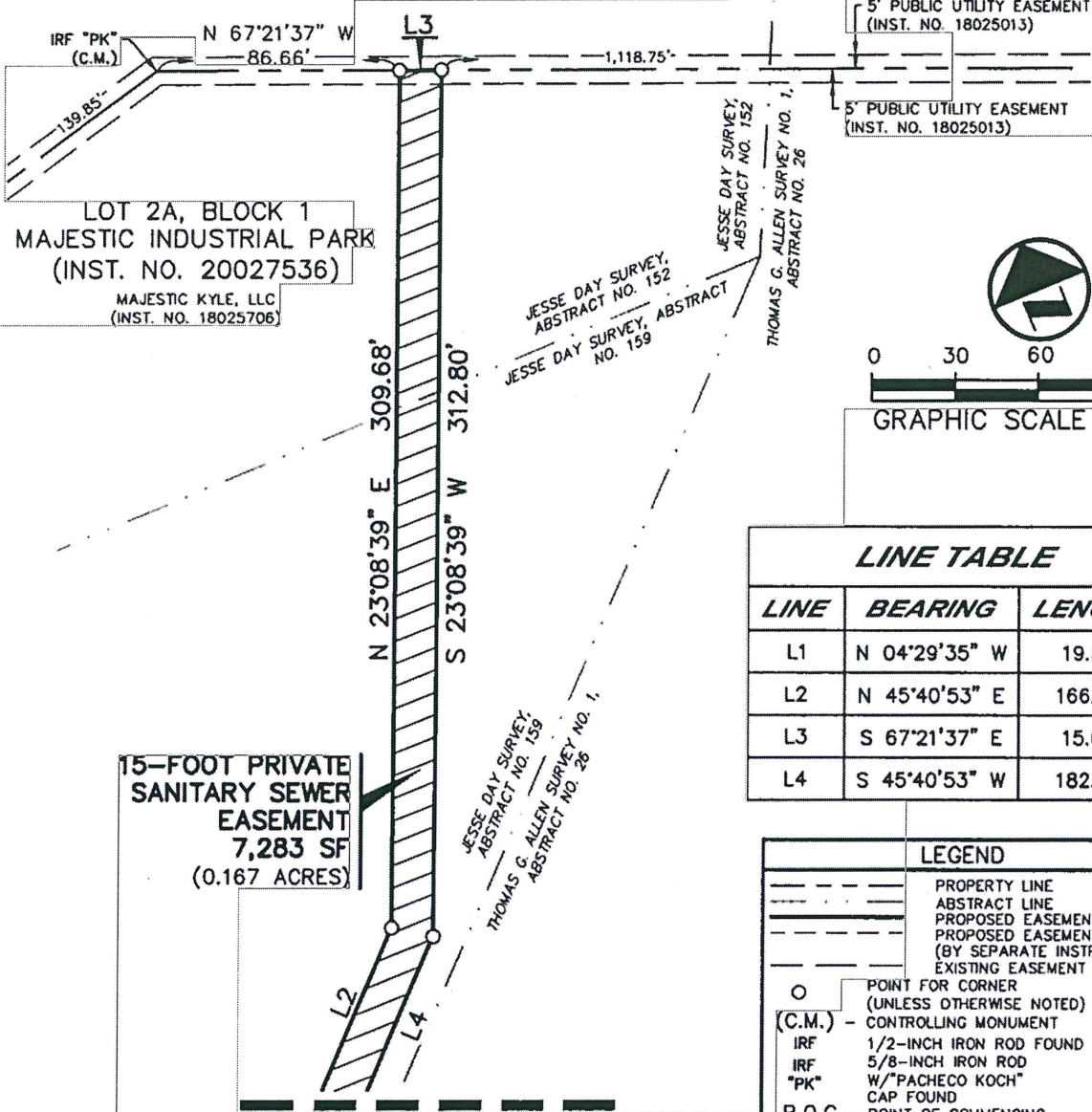
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LOT 1  
MAJESTIC INDUSTRIAL PARK  
(INST. NO. 18025013)

MAJESTIC KYLE LLC  
(INST. NO. 18025706)



**LINE TABLE**

LINE	BEARING	LENGTH
L1	N 04°29'35" W	19.53'
L2	N 45°40'53" E	166.55'
L3	S 67°21'37" E	15.00'
L4	S 45°40'53" W	182.05'

**LEGEND**

---	PROPERTY LINE
---	ABSTRACT LINE
---	PROPOSED EASEMENT LINE
---	PROPOSED EASEMENT (BY SEPARATE INSTRUMENT)
---	EXISTING EASEMENT LINE
O	POINT FOR CORNER (UNLESS OTHERWISE NOTED)
(C.M.)	CONTROLLING MONUMENT
IRF	1/2-INCH IRON ROD FOUND
IRF	5/8-INCH IRON ROD
"PK"	W/"PACHECO KOCH" CAP FOUND
P.O.C	POINT OF COMMENCING
P.O.B	POINT OF BEGINNING

**NOTES:**

1. A metes and bounds description of even survey date herewith accompanies this plat of survey.
2. Bearing system for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (Adjustment Realization 2011), Texas South Central Zone (4204). Distances shown have been scaled by applying the Hays County TxDOT surface combined factor of 1.000130000.



7557 RAMBLER ROAD SUITE 1400  
DALLAS, TX 75231 972.235.3031  
TX REG. ENGINEERING FIRM F-489  
TX REG. SURVEYING FIRM LS-10008000

DRAWN BY	CHECKED BY	SCALE	DATE	JOB NUMBER
JMC	MWW/JEC	1"=60'	NOV. 2020	4385-20.136

**15-FOOT PRIVATE  
SANITARY SEWER  
EASEMENT**

PART OF LOT 2A, BLOCK 1  
MAJESTIC INDUSTRIAL PARK  
REPLAT OF LOTS 2 & 3  
JESSE DAY SURVEY, ABSTRACT NO. 159,  
JESSE DAY SURVEY, ABSTRACT NO. 152,  
CITY OF KYLE, HAYS COUNTY, TEXAS  
PAGE 4 OF 4



## **15-FOOT PUBLIC SANITARY SEWER EASEMENT**

Part of Lots 2A & 3A, Block 1  
Majestic Industrial Park  
Replat of Lots 2 & 3  
Jesse Day Survey, Abstract No. 159,  
Jesse Day Survey, Abstract No. 152  
*City of Kyle, Hays County, Texas*

**DESCRIPTION**, of a 4,704 square foot (0.108 acre) tract of land situated in the Jesse Day Survey, Abstract No. 159 and the Jesse Day Survey, Abstract No. 152 Hays County, Texas; said tract being part of Lot 3A, Block 1 Majestic Industrial Park Replat of Lots 2 & 3, an addition to the City of Kyle, Texas according to the plat recorded in Instrument No. 20027536 of the Official Public Records of Hays County, Texas; said tract also being part of that certain tract of land described in Special Warranty Deed to Majestic Kyle, LLC. recorded in Instrument No. 18025706 of the Deed Records of Hays County, Texas; said 4,704 square foot tract being more particularly described as follows (Bearing basis for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas South Central Zone 4204. Distances reported have been scaled by applying the Hays County TxDOT surface adjustment factor of 1.000130000.):

**COMMENCING**, at a 1/2-inch iron rod found for corner at the southwest corner of said Lot 3A and a southeast corner of that certain tract of land described in Deed without Warranty to Mountain Plum, Ltd. Recorded in Volume 2297, Pg. 139 of said Deed Records;

**THENCE**, North 04 degrees, 37 minutes, 34 seconds East, along the west line of said Lot 3A and the east line of said Mountain Plum tract, a distance of 4.04 feet to the **POINT OF BEGINNING**; said point being a point for corner;

**THENCE**, North 04 degrees, 37 minutes, 34 seconds East, along the said west line of Lot 3A and the said east line of Mountain Plum tract, a distance of 23.47 feet to a point for corner;

**THENCE**, departing the said west line of Lot 3A and the said east line of Mountain Plum tract, and into and across said Lot 3A, the following two (2) calls:

North 44 degrees, 21 minutes, 24 seconds East, a distance of 258.68 feet to a point for corner;

North 45 degrees, 40 minutes, 53 seconds East, a distance of 52.32 feet to a point for corner, said point being the east line of said Lot 3A and the west line of Lot 2A, Block 1 of said plat;

**THENCE**, South 04 degrees, 29 minutes, 35 seconds East, along the said northeast line of Lot 3A and the said southwest line of Lot 2A, a distance of 19.53 feet to a point for corner;

**THENCE**, departing the said northeast line of Lot 3A and the said southwest line of Lot 2A, and into and across said Lot 3A, the following two (2) calls:

South 45 degrees, 40 minutes, 53 seconds West, at a distance of 39.63 feet to a point for corner;



# 15-FOOT PRIVATE SANITARY SEWER EASEMENT


(Continued)

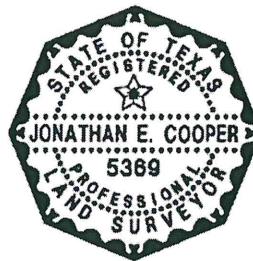
South 44 degrees, 21 minutes, 24 seconds West, a distance of 276.56 feet to the **POINT OF BEGINNING;**

**CONTAINING:** 4,704 square feet or 0.108 acres of land, more or less.

*(A survey plat of even survey date herewith accompanies this description.)*

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the easement tract described.

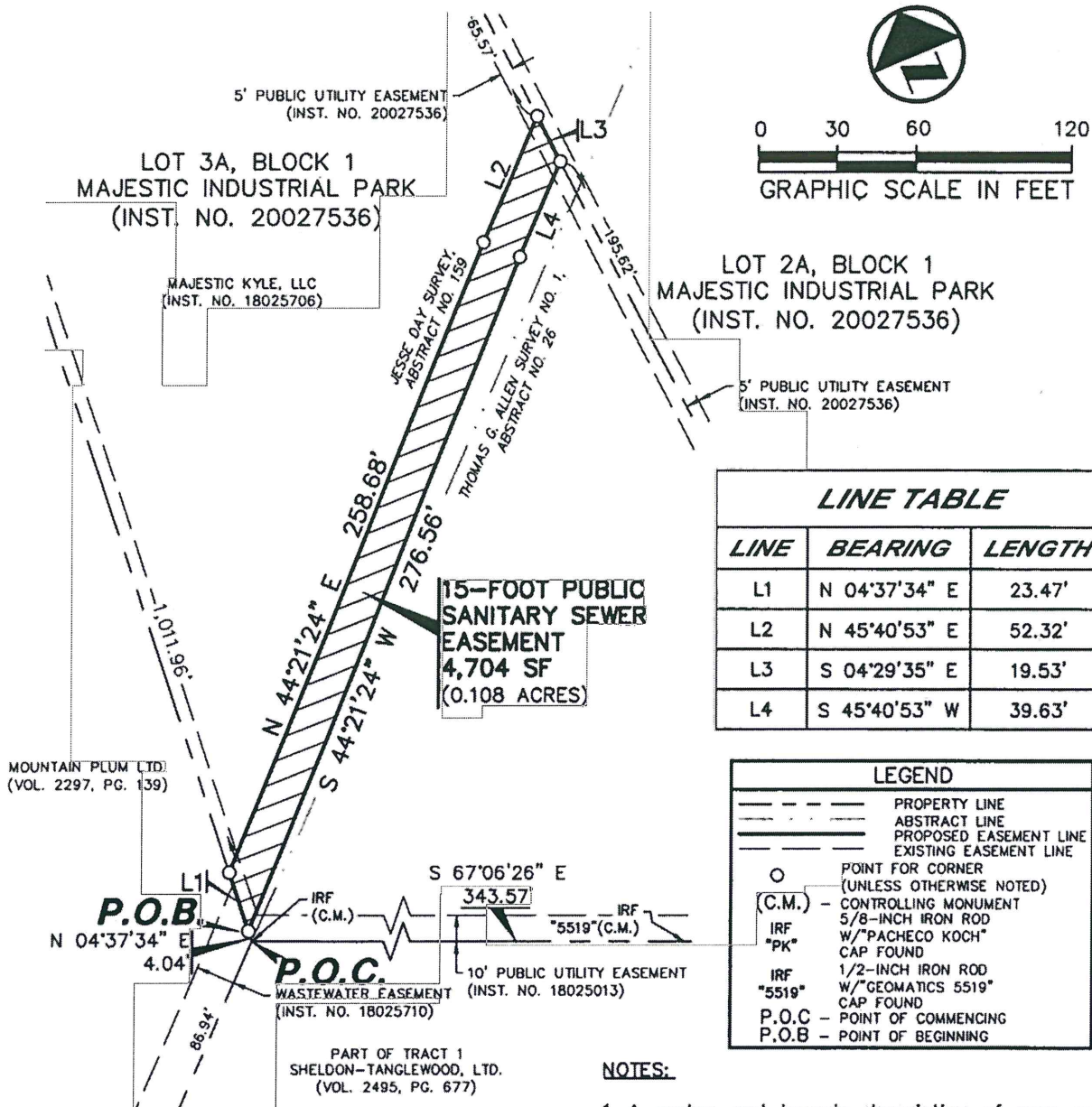
  
Jonathan E. Cooper  
12-21-2020 Date  
Registered Professional Land Surveyor No. 5369  
Pacheco Koch Consulting Engineers, Inc.  
7557 Rambler Road, Suite 1400, Dallas TX 75231  
(972) 235-3031  
TX Reg. Surveying Firm LS-10008000



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4385-20.136EX3.dwg JMC

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### LINE TABLE

LINE	BEARING	LENGTH
L1	N 04°37'34" E	23.47'
L2	N 45°40'53" E	52.32'
L3	S 04°29'35" E	19.53'
L4	S 45°40'53" W	39.63'

### LEGEND

---	PROPERTY LINE
---	ABSTRACT LINE
---	PROPOSED EASEMENT LINE
---	EXISTING EASEMENT LINE
O	POINT FOR CORNER (UNLESS OTHERWISE NOTED)
(C.M.)	CONTROLLING MONUMENT
IRF	5/8-INCH IRON ROD
"PK"	W/"PACHECO KOCH" CAP FOUND
IRF	1/2-INCH IRON ROD
"5519"	W/"GEOMATICS 5519" CAP FOUND
P.O.C.	POINT OF COMMENCING
P.O.B.	POINT OF BEGINNING

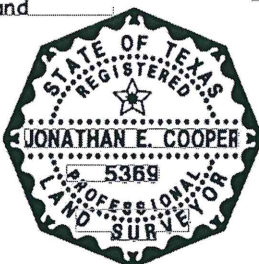
### NOTES:

1. A metes and bounds description of even survey date herewith accompanies this plat of survey.
2. Bearing system for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (Adjustment Realization 2011), Texas South Central Zone (4204). Distances shown have been scaled by applying the Hays County TxDOT surface combined factor of 1.000130000.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this plat of survey accurately sets out the metes and bounds of the easement tract described.

Jonathan E. Cooper  
Registered Professional  
Land Surveyor No. 5369

12-21-2020  
Date



**Pacheco Koch**

7557 RAMBLER ROAD SUITE 1400  
DALLAS, TX 75231 972.235.3031  
TX REG. ENGINEERING FIRM F-469  
TX REG. SURVEYING FIRM LS-10008000

DRAWN BY	CHECKED BY	SCALE	DATE	JOB NUMBER
JMC	MWW/JEC	1"=60'	DEC. 2020	4385-20.136

## 15-FOOT PUBLIC SANITARY SEWER EASEMENT

PART OF LOT AND 3A, BLOCK 1  
MAJESTIC INDUSTRIAL PARK  
REPLAT OF LOTS 2 & 3  
JESSE DAY SURVEY, ABSTRACT NO. 159,  
JESSE DAY SURVEY, ABSTRACT NO. 152,  
CITY OF KYLE, HAYS COUNTY, TEXAS  
PAGE 3 OF 3



# CITY OF KYLE, TEXAS

## Assignment of Sandera Agreement

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Assignment of Agreement Regarding Roadway and Drainage Improvements – Spooner Tract between the City of Kyle and Sandera Land Development Company, LLC.  
~ *J. Scott Sellers, City Manager*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

- ☐ Form. Assignment and Assumption of Development Agreement
- ☐ 2020 1215 Sandera Roadway and Drainage Improvements Agreement - Spooner Tract

## ASSIGNMENT AND ASSUMPTION OF

STATE OF TEXAS                               §  
COUNTY OF                                 §

This Assignment and Assumption of \_\_\_\_\_ (this “Assignment”) is executed and delivered on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_ (“Assignor”), to and in favor of \_\_\_\_\_ (“Assignee”).

- A. The City of \_\_\_\_\_, Texas (the “City”), and Assignor entered into that certain \_\_\_\_\_ Agreement dated \_\_\_\_\_ (the “Agreement”).
- B. \_\_\_\_\_ (*explain reason for assignment*).
- C. Assignor desires to assign all of Assignor’s rights in the Agreement, to Assignee, and Assignee desires to acquire and accept the same from Assignor, subject to the terms, conditions and limitations herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee do hereby agree as follows:

1. Assignment. Assignor has ASSIGNED, TRANSFERRED AND CONVEYED and by these premises does hereby ASSIGN, TRANSFER AND CONVEY to Assignee all of Assignor's right, title and interest in, to and under the Agreement.
2. Assumption. Assignee, by its acceptance hereof, hereby agrees to all terms and conditions of the Agreement and covenants and agrees to assume and perform all duties and obligations to be performed and/or discharged by Assignor under the Agreement.
3. Mutual Indemnity. Assignor hereby agrees to indemnify, defend and hold Assignee harmless for, from and against any and all obligations, responsibilities, duties, liabilities, damages, costs and expenses (including, without limitation, intended and by way of example only, reasonable attorneys' fees, disbursements and amounts paid in settlement of claims) which are the obligation of the "Assignor" under the Agreement and/or which arise out of the failure of the Assignor or its predecessors-in-interest to fulfill their respective obligations under the Agreement, and which have accrued or been incurred prior to the date of this Assignment. Assignee hereby agrees to indemnify, defend and hold Assignor harmless for, from and against any and all obligations, responsibilities, duties, liabilities, damages, costs and expenses (including, without limitation, intended and by way of example only, reasonable attorney's fees, disbursements and amounts paid in settlement of claims) which arise out of the failure of the Assignee or its successors-in-interest to fulfill their respective obligations under the

Agreement assumed pursuant to this Assignment, and which have accrued or been incurred on or after the date of this Assignment.

4. Entire Agreement. This Assignment constitutes the entire agreement and understanding between the parties and supersedes all prior agreements and understandings, if any, concerning the subject matter hereof.

5. Binding Effect. All of the terms, provisions, covenants and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6. Headings. The headings and captions in this Assignment are for convenience only, and shall not control or affect the meaning or construction of any provision of this Assignment.

7. Counterparts; Facsimile Signatures. Facsimile signatures appearing hereon shall be deemed an original, and this Assignment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be a complete executed document for all purposes.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

**ASSIGNOR:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNEE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, on behalf of said company.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

(SEAL)

STATE OF TEXAS

§

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

(SEAL)

**CONSENT:**

CITY OF \_\_\_\_\_, TEXAS,  
a Texas home-rule municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
City of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Texas \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Secretary

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, \_\_\_\_\_, as Mayor of the City of \_\_\_\_\_, Texas, a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

(SEAL)



## **AGREEMENT REGARDING ROADWAY AND DRAINAGE IMPROVEMENTS -- SPOONER TRACT**

This Agreement Regarding Roadway and Drainage Improvements – Spooner Tract (the "Agreement") is made and entered into, effective as of the 15<sup>th</sup> day of December, 2020 (the "Effective Date"), by and between the **City of Kyle, Texas**, a Texas home rule municipal corporation (the "City"), and the **Sandera Land Development Company, LLC**, a Texas limited liability company (the "Developer"). The City and the Developer are sometimes referred to herein as the "Parties." The Parties agree as follows.

### **RECITALS**

**WHEREAS**, the Developer has under contract to acquire that certain 179.33 acre parcel, commonly known as the Spooner tract, located in Kyle, Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Property");

**WHEREAS**, the Developer intends to develop the Property for a residential and commercial development (the "Development");

**WHEREAS**, after acquisition of that certain 7.87 acre tract of land described in **Exhibits B and C** attached hereto for all purposes (the "ROW Land"), the La Salle Municipal Utility District No. 1 (the "District") will construct two lanes of the public roadway referred to as Waterstone Boulevard (the "Phase 1 Road") in accordance with that certain Agreement regarding Roadway and Drainage Improvements between the City and the District dated Dec. 15, 2020 (the "District Agreement") and will convey the ROW to the City;

**WHEREAS**, the District will construct additional drainage improvements described in the District Agreement in connection with the construction of the Phase 1 Road;

**WHEREAS**, Waterstone Boulevard will ultimately be a four-lane roadway; and

**WHEREAS**, the City and the Developer wish to coordinate on the timing and obligations related to the Developer's construction of the additional two lanes of Waterstone Boulevard as described in Section 4(a) (the "Phase 2 Road") as well as drainage improvements described herein (the "Drainage Improvements");

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the Parties agree as follows.

**Section 1. Purpose; Consideration.** The purpose of the Agreement is to address the construction of the Phase 2 Road and the Drainage Improvements (referred to collectively as the "Improvements") as provided herein. The Developer will benefit from this Agreement by having certainty regarding the City standards and regulations applicable to the design and construction of the Improvements.

The City will benefit from this Agreement by ensuring that the Improvements are completed and are designed and constructed to City standards and the conveyance of the ROW Land to the City for future expansion of Waterstone Boulevard. The benefits to the Parties set forth in this Section 1, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

**Section 2. Term; Termination.** The term of this Agreement shall be in full force and effect from the Effective Date hereof. Unless earlier terminated as provided in this Agreement, this Agreement shall terminate upon the completion and City's acceptance of the Improvements and satisfaction of the requirements under Section 5.

**Section 3. Design and Construction of the Drainage Improvements.**

- (a) The Developer shall design and construct a berm along the southern boundary of the Property generally in the location shown in **Exhibit D** (the "Drainage Improvements") and in accordance with construction plans approved by the City, applicable City regulations, applicable state and federal law, and good engineering practices.
- (b) Prior to commencing construction of the Drainage Improvements, the Developer shall submit to the City and obtain City approval of the construction plans for the Drainage Improvements. The construction plans shall be submitted to the City within 45 days of the District notification to the City of Kyle for full approval of construction plans for the Phase 1 Road (particularly beginning at I-35 and traversing to the east boundary of the Spooner Property).
- (c) Construction of the Drainage Improvements shall commence upon the commencement of construction of the Phase 1 Road, after the City of Kyle approves the Drainage Improvement Plans, and shall be completed no later than the earlier to occur of (1) eighteen (18) months from the City's approval of the construction plans for the Drainage Improvements or (2) twenty-four (24) months from the Effective Date.
- (d) The Developer shall post a letter of credit in a form and from an issuer acceptable to the City within 90 days of the Effective Date to guarantee the construction and completion of the Drainage Improvements.
- (e) The Drainage Improvement shall be maintained in perpetuity by the property owners' association ("POA") for the Development, which obligation shall be noted on the plats for the Development. The Developer shall establish a POA at the time that the Developer plats the Development and shall cause the POA to collect sufficient assessments to satisfy the maintenance obligations for the Drainage Improvements.
- (f) The Drainage Improvements shall be located in a municipal utility easement using a form acceptable to the City granted to the City upon the earlier to occur of: (1) the approval of the final plat for the first phase of the Development; or (2) completion of the Drainage Improvements.
- (g) The Developer shall review the drainage needs for the Property in light of proposed Development and work in good faith with the City to resolve those needs. The plan for addressing drainage shall be submitted with the preliminary plat.

**Section 4. Design and Construction of the Phase 2 Road.**

- (a) The Developer shall design and construct the Phase 2 Road within the existing ROW and on adjacent property as needed to construct the Phase 2 Road in accordance with this Agreement and the approved construction plans, being two additional lanes of Waterstone Boulevard beginning at East Post Oak Road and traversing easterly, parallel to the Phase 1 Road to the eastern boundary of the Property, and shall install curb, gutter, and sidewalks along both the north and south portions of the Phase 2 Road for Phase 2 of Waterstone Boulevard, in accordance with construction plans approved by the City, applicable City regulations, applicable state and federal law, and good engineering practices. With respect to the sidewalks, the sidewalk on one side of Waterstone Boulevard shall be a minimum of eight (8) feet wide and on the other side shall be a minimum of six (6) feet wide when adjacent to commercial properties and a minimum of four (4) feet wide when adjacent to residential properties.
- (b) The Phase 2 Road shall commence upon the earlier to occur of the following: 1) completion of fifty percent (50%) of the subdivision improvements for fifty percent (50%) of the Property (approximately 80 platted acres have been final platted); or 2) three (3) years from the date of approval of the preliminary plat.
- (c) Prior to commencing construction of the Phase 2 Road, the Developer shall submit to the City and obtain City approval of the construction plans for the Phase 2 Road and shall enter into a license agreement in a form acceptable to the City authorizing the Developer to enter the ROW Land to construct the Phase 2 Road.
- (d) The Developer shall post with the City a letter of credit or surety bond in a form and from an issuer acceptable to the City to guarantee construction and completion of the Phase 2 roadway within 30 days after approval of the preliminary plat.
- (e) The Phase 2 Road shall be completed within 365 days after commencement pursuant to Section 4(b).

**Section 5. City Obligations.** The City will acquire drainage easements over the land generally shown in **Exhibit E.** or adjacent land (the “*Drainage Easements*”). Such Drainage Easements are necessary and required for conveyance of stormwater runoff in the Eastern portion of the Quail Ridge subdivision to assist in re-establishing historic drainage patterns. It is acknowledged there is and exists a public necessity for the drainage easements. The City agrees to use its power of eminent domain to acquire such Drainage Easements as may be necessary. The reasonable costs and expenses of the City obtaining the Drainage Easements shall be paid by Developer. The City may require that the drainage easements be conveyed to the City in the form of a municipal utility easement using an instrument acceptable to the City.

**Section 6. Assignment of Commitments and Obligations.** Developer’s rights and obligations under this Agreement may be assigned by Developer; provided the City Council must first approve and consent to any such assignment by Developer of this Agreement or of any right or duty of Developer pursuant to this Agreement, which consent shall not be unreasonably withheld, delayed, or conditioned, and if the letters of credit or surety bonds referenced in 3(d) and 4(d), above remain pledged, or an assignee provides equivalent security, then the City Council will not unreasonably withhold consent to assignment of such rights and obligations.

**Section 7. Default.** Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party

of notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy. In addition to the other remedies set forth herein, the City may withhold approval of a development-related permits and approvals for the Development until the Developer cures the default.

**Section 8. Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

**Section 9. Attorneys Fees.** In the event of action pursued in court to enforce rights under this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

**Section 10. Waiver.** Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

**Section 11. Force Majeure.**

- (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; 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 reasonably within the control of the party claiming such inability.
- (b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

- (c) 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 that the settlement be unfavorable in the judgment of the party having the difficulty.

**Section 12. Notices.** Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, Texas 78640

with copy to:

The Knight Law Firm, LLP  
Attn: Paige Saenz  
223 W. Anderson Lane, Suite A105  
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed:

Mr. Stephen Jenkins  
Sander Land Development Co., LLC  
5800 One Perkins Place, Suite 9A  
Baton Rouge, LA 70808

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

**Section 13. Waiver of Alternative Benefits.** The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

**Section 14. Severability.** Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore,

in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

**Section 15. Agreement and Amendment.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

**Section 16. No Joint Venture.** The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

**Section 17. No Third Party Beneficiaries.** 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 provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Developer.

**Section 18. Effective Date.** The Effective Date of this Agreement is the defined date set forth in the first paragraph.

**Section 19. Texas Law Governs.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue of any legal proceedings under this Agreement shall lie exclusively in Hays County, Texas.

**Section 20. Anti-Boycott Verification.** To the extent this Agreement constitutes 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 Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (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.

**Section 21. 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, Developer represents that Developer nor any wholly owned subsidiary, majority-owned



subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**Section 22. Time is of the Essence.** It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

**Section 23. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A** – The Property
- Exhibits B and C** – The ROW Land
- Exhibit D** – Location of the Drainage Improvements
- Exhibit E** – Offsite Drainage Easement Areas

EXECUTED in multiple originals this the 15th day of December, 2020.

**CITY:**

**City of Kyle, Texas**

a Texas home-rule municipal corporation

**Attest:**

By: Jennifer Holm  
Name: Jennifer Holm  
Title: City Secretary

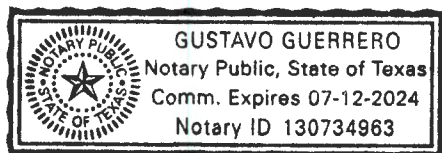
By: Travis Mitchell  
Name: Travis Mitchell  
Title: Mayor

**THE STATE OF TEXAS                   §**  
**COUNTY OF HAYS                   §**

This instrument was acknowledged before me on this 22<sup>nd</sup> day of January, 2021, by Travis Mitchell, Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Gustavo Guerrero  
Notary Public, State of Texas



**DEVELOPER:**

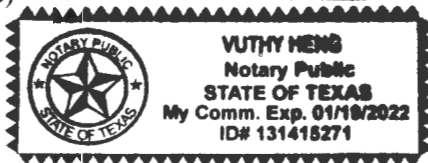
**Sandera Land Development Co., LLC**

By: [Signature]  
Name: J. Grant Jenkins  
Title: Manager

**THE STATE OF TEXAS           §  
COUNTY OF HARRIS       §**

This instrument was acknowledged before me on this 22 day of January, 2021, by J. Grant Jenkins, Manager of Sandera Land Development Co., LLC a Texas limited liability company, on behalf of said company.

(SEAL)



[Signature]  
Notary Public, State of Texas

**EXHIBIT “A”**

**Description of the Property**



**EXHIBIT “B”**  
**ROW Land**



**Proposed Right-of-Way  
Kyle, Texas**

**D&A Job No. 913-004  
November 20, 2020**

**PROPOSED R.O.W. DESCRIPTION**

**BEING A 7.87-ACRE [342,953 SQUARE FEET] TRACT OUT OF THE JAMES WILLIAMS SURVEY, ABSTRACT NUMBER 473, HAYS COUNTY, TEXAS, BEING A PORTION OF A CALLED 179.33-ACRE TRACT OF LAND, ALSO KNOWN AS FIRST AND SECOND TRACTS DESCRIBED IN A DEED TO JOHN H. SPOONER REVOCABLE TRUST, RECORDED IN DOCUMENT NUMBER 6016877, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS [O.P.R.H.C.T.], SAID 7.87-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**COMMENCING** at a 1/2-inch iron rod found on the south right-of-way line of County Road (CR) 140 (deed of record not found), for the north corner of Quail Ridge Subdivision, a subdivision of record in Volume 2, Page 337, Plat Records of Hays County, Texas [P.R.H.C.T.], same being the west corner of said 179.33-acre tract;

**THENCE**, N43°16'02"E, with the south right-of-way line of said CR 140, a distance of 16.70 feet to the **POINT OF BEGINNING** and the most westerly corner of the tract described herein;

**THENCE** N43°16'02"E, continuing with the south right-of-way line of said CR 140, a distance of 106.18 feet to a calculated point for the most northeasterly corner of the tract described herein;

**THENCE** departing the south right-of-way line of said CR 140, over and across said 179.33-acre tract, the following six (6) courses and distances:

- 1) S10°17'05"E, a distance of 17.42 feet to a calculated point for an angle corner of the tract described herein,
- 2) S55°36'03"E, a distance of 114.06 feet to a calculated point of curvature to the left of the tract described herein,
- 3) with said curve to the left, an arc length of 529.19 feet, a radius of 960.25 feet, a delta angle of 31°34'31", a chord bearing of S71°23'26"E, a chord distance of 522.51 feet to a calculated point for an angle corner of the tract described herein,
- 4) S86°49'32"E, a distance of 678.20 feet to calculated point for the beginning of a curve to the right of the tract described herein
- 5) with said curve to the right, an arc length of 719.46 feet, a radius of 1,040.74 feet, a delta angle of 39°36'30", a chord bearing of S67°01'14"E, a chord distance of 705.22 feet to a calculated point for an angle corner of the tract described herein,

**CONTINUED ON NEXT PAGE**



- 6) S47°10'05"E, a distance of 2,229.65 feet to a calculated point on the line common to said 179.33-acre tract and a called 236.1 acre tract recorded in Document No. 18007777 [O.P.R.H.C.T.], for the most southeasterly corner of the tract described herein,

**THENCE** S43°23'05"W with the line common to said 236.1-acre tract and said 179.33-acre tract, distance of 80.00 feet to a calculated point for the most southwesterly corner of the tract described herein, from which a 1/2-inch iron rod with cap stamped "Pro-Tech" found for the west corner of said 236.1-acre tract bears S43°23'05"W, a distance of 1,641.87 feet;

**THENCE**, departing the common line to said 236.1-acre tract and said 179.33-acre tract, over and across said 179.33-acre, tract the following six (6) courses and distances:

- 1) N47°10'05"W, a distance of 2,228.88 feet to a calculated point of curvature to the left of the tract described herein,
- 2) with said curve to the left, an arc length of 664.09 feet, a radius of 960.65 feet, a delta angle of 39°36'30", a chord bearing of N67°01'21"W, a chord distance of 650.94 feet to a calculated point for an angle corner of the tract described herein,
- 3) N86°49'32"W, a distance of 677.96 feet to a calculated point of curvature to the right of the tract described herein,
- 4) with said curve to the right, an arc length of 575.03 feet, a radius of 1,040.13 feet, a delta angle of 31°33'55", a chord bearing of N71°23'01"W, a distance of 565.81 feet to a calculated point for an angle corner of the tract described herein,
- 5) N55°36'03"W, a distance of 126.49 feet to a calculated point for an angle corner of the tract described herein, and

**CONTINUED ON NEXT PAGE**



- 6) S86°40'31"W, a distance of 20.47 feet to the **POINT OF BEGINNING** of the herein described tract, containing 7.87-acres [342,953 square feet], more or less.

Basis of bearings is the Texas Coordinate System, South Central Zone [4204], NAD83 (2011), Epoch 2010, observed using the Leica Smartnet Network. All distances shown are adjusted to surface values using a combined scale factor of 1.000081, units: US survey feet.

The herein described easement is together with an additional one hundred foot (100') wide temporary workspace strip 4.12 acre [179,436 square feet] to be used only during construction, the 100-foot wide strip of land will be parallel to and coincident with the above described right-of-way, as shown on the accompanying exhibit.

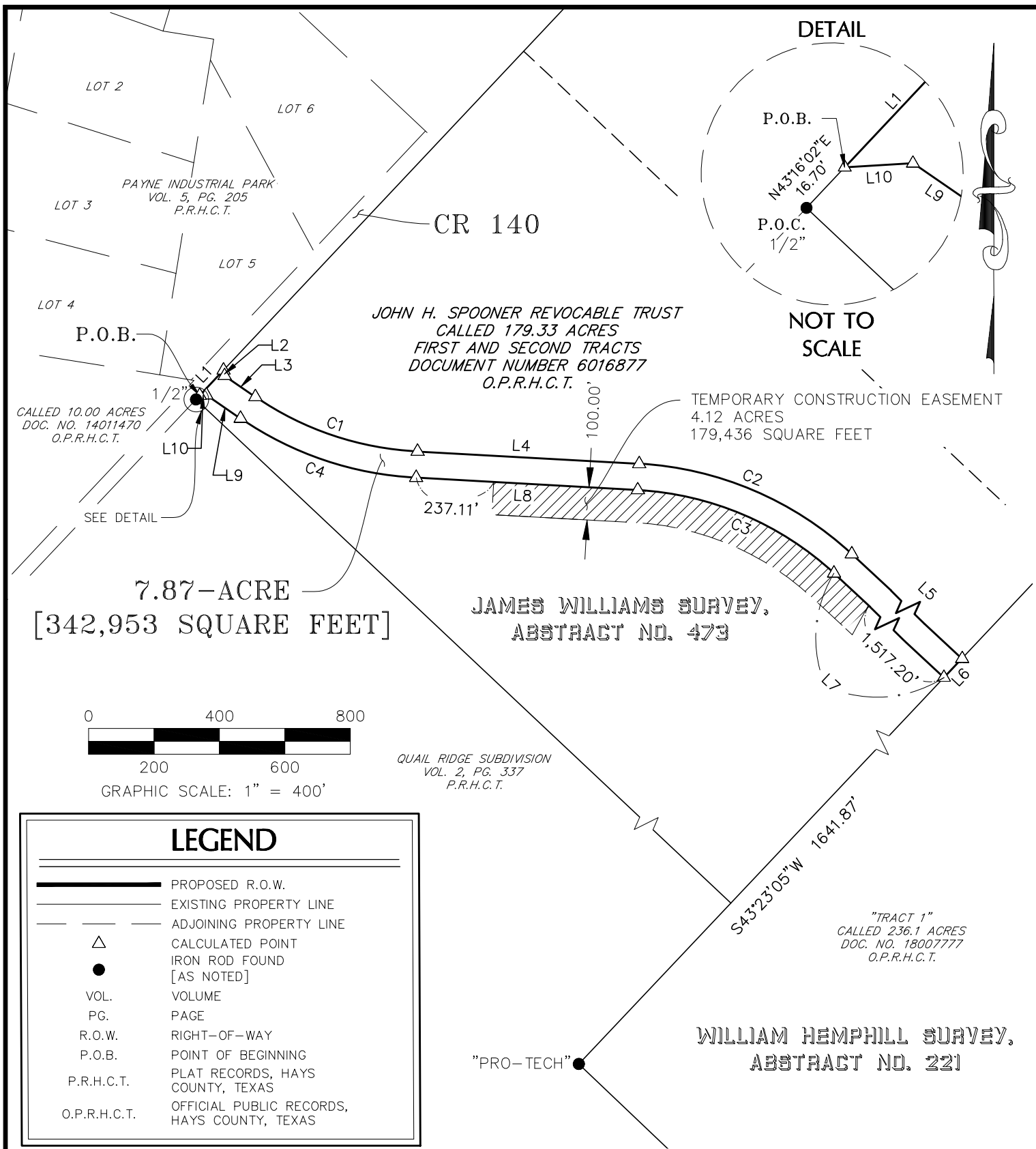
I, Garrett Cavauiolo, Registered Professional Land Surveyor, hereby certify that this description and accompanying plat of even date represent an actual survey performed on the ground.

11/20/2020

Garrett Cavauiolo  
Registered Professional Land Surveyor  
Texas Registration No. 6714  
Doucet & Associates  
gcavauiolo@doucetengineers.com  
TBPLS Firm No. 10105800

Date





**7.87-ACRE**  
**(342,953 SQUARE FEET)**  
**PROPOSED R.O.W.**  
**EXHIBIT**  
**HAYS COUNTY, TEXAS**

**DA DOUCET & ASSOCIATES**  
Civil Engineering - Planning - Geospatial  
7401 B. Highway 71 W, Suite 160  
Austin, Texas 78735, Phone: (512)-583-2600  
www.doucetandassociates.com  
TBPLS Firm No.: 10105800  
TBPE Firm No.: F-3937

Date:	11/20/2020
Scale:	1" = 400'
Drawn by:	JWF/PD
Reviewer:	GC
Project:	1743-001
Sheet:	4 of 5
Field Book:	513
Party Chief:	AM
Survey Date:	Item #16

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N43°16'02"E	106.18'
L2	S10°17'05"E	17.42'
L3	S55°36'03"E	114.06'
L4	S86°49'32"E	678.20'
L5	S47°10'05"E	2,229.65'
L6	S43°23'05"W	80.00'
L7	N47°10'05"W	2,228.88'
L8	N86°49'32"W	677.96'
L9	N55°36'03"W	126.49'
L10	S86°40'31"W	20.47'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	529.19'	960.25'	31°34'31"	S71°23'26"E	522.51'
C2	719.46'	1,040.74'	39°36'30"	S67°01'14"E	705.22'
C3	664.09'	960.65'	39°36'30"	N67°01'21"W	650.94'
C4	573.03'	1,040.13'	31°33'55"	N71°23'01"W	565.81'

**NOTES:**

BASIS OF BEARING IS THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE [4204], NAD 83 (2011), EPOCH 2010. ALL DISTANCES SHOWN ARE ADJUSTED TO SURFACE VALUES USING A COMBINED SCALE FACTOR OF 1.000081. UNITS: US SURVEY FEET.

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. EASEMENTS OR OTHER MATTERS OF RECORD MAY EXIST WHERE NONE ARE SHOWN.

I, GARRETT CAVAIUOLO, REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT AND ACCOMPANYING LEGAL DESCRIPTION OF EVEN DATE REPRESENT AN ACTUAL SURVEY PERFORMED ON THE GROUND.

 11/20/2020  
 GARRETT CAVAIUOLO DATE  
 REGISTERED PROFESSIONAL LAND SURVEYOR  
 TEXAS REGISTRATION NO. 6714  
 DOUCET & ASSOCIATES  
 GCAVAIUOLO@DOUCETENGINEERS.COM



**7.87-ACRE  
 (342,953 SQUARE FEET)  
 PROPOSED R.O.W.  
 EXHIBIT  
 HAYS COUNTY, TEXAS**

**DA DOUCET  
 & ASSOCIATES**  
 Civil Engineering - Planning - Geospatial  
 7401 B. Highway 71 W, Suite 160  
 Austin, Texas 78735, Phone: (512)-583-2600  
[www.doucetandassociates.com](http://www.doucetandassociates.com)  
 TBPLS Firm No.: 10105800  
 TBPE Firm No.: F-3937

Date: 11/20/2020  
 Scale: 1" = 400'  
 Drawn by: JWF  
 Reviewer: GC  
 Project: 1743-001  
 Sheet: 5 of 5  
 Field Book: 513  
 Party Chief: AM  
 Survey Date: 11/20/2020  
**Item #16**

**EXHIBIT “C”**  
**ROW Land**

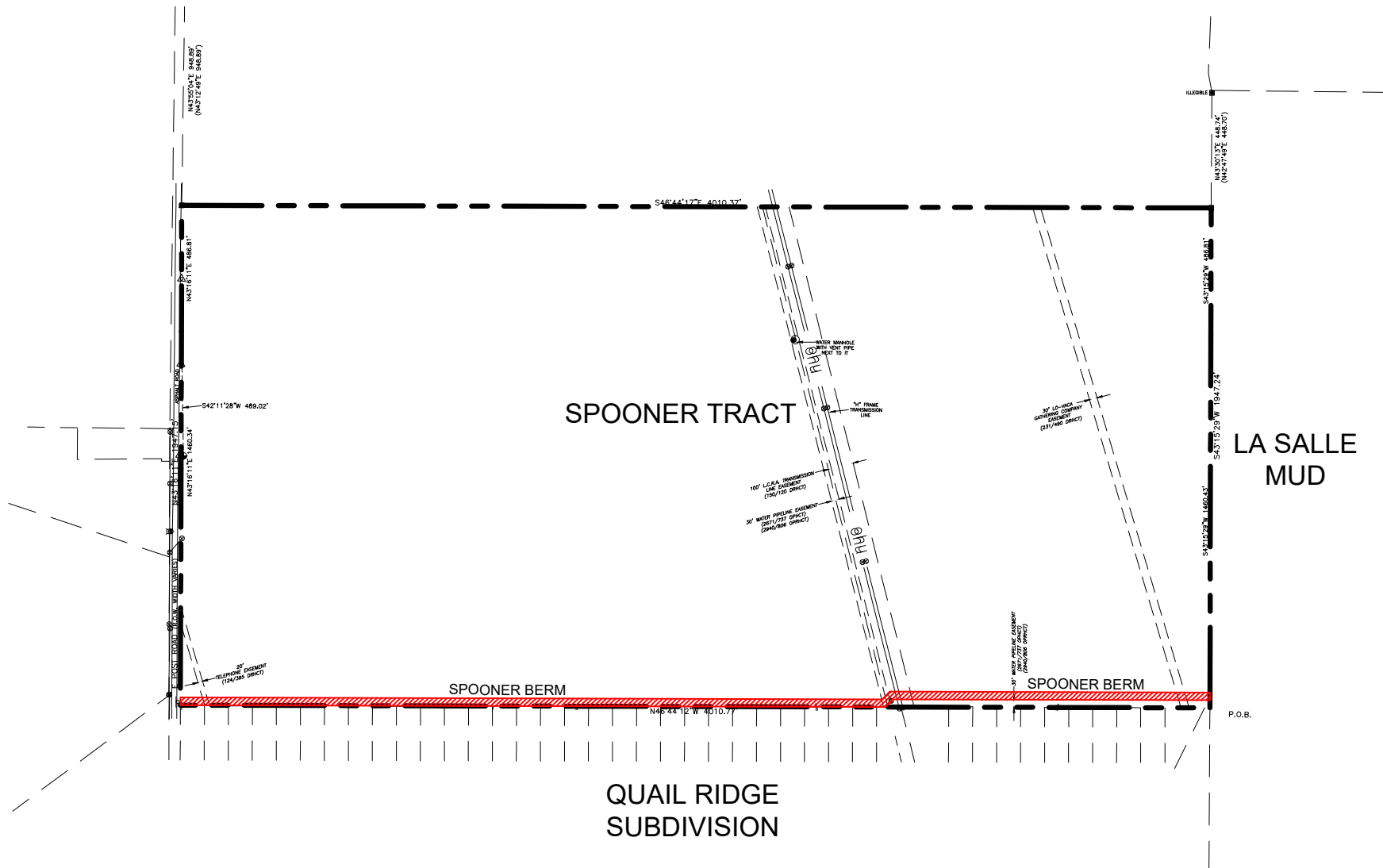




**EXHIBIT “D”**  
**Location of Drainage Improvements**

COUNTY ROAD 158

# EXHIBIT D - LOCATION OF THE DRAINAGE IMPROVEMENTS



LIMESTONE CREEK

Kyle, TX

02 December 2020

SCALE: 1"=500'

CUDE ENGINEERS  
1620 La Jaita Dr. Ste. 250  
Cedar Park, Texas 78631  
P: (512) 260.9100





# CITY OF KYLE, TEXAS

## Plum Creek Phase 1, Section 7B - Final Plat (SUB-20-0132)

**Meeting Date: 2/23/2021**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Plum Creek Phase 1, Section 7B - Final Plat (SUB-20-0132) 23.492 acres; 2 mixed-use lots for property located north and along Kohler's Crossing, east of and along existing and future Marketplace Ave. ~ *Howard J. Koontz, Director of Planning and Community Development*

*Planning and Zoning Commission voted 6-0 to approve the final plat.*

**Other Information:** See attachment.

**Legal Notes:** N/A

**Budget Information:** N/A

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### ATTACHMENTS:

#### Description

☐ Final Plat

FINAL PLAT
PLUM CREEK PHASE 1, SECTION 7B
HAYS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, THAT WE, MOUNTAIN PLUM, LTD., A LIMITED PARTNERSHIP ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS, WITH ITS HOME ADDRESS AT 4040 BROADWAY, SUITE 501, SAN ANTONIO, TEXAS 78209, BEING THE OWNER OF 23.492 ACRES IN THE JOHN COOPER SURVEY, ABSTRACT 100, THE JESSE DAY SURVEY NO. 162, ABSTRACT 152 AND THE JESSE DAY SURVEY, ABSTRACT 159, BEING A PORTION OF A CERTAIN CALLED 185.77 ACRE TRACT DESIGNATED AS TRACT 4, EXHIBIT "A" AND DESCRIBED IN VOLUME 2297, PAGE 139, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE SAID 23.492 ACRES AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE PLUM CREEK PHASE 1, SECTION 7B SUBDIVISION TO THE CITY OF KYLE, TEXAS, AND HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER PUBLIC RIGHT OF WAY AND DRAINS, EASEMENTS (EXCLUDING LANDSCAPE AREA WITHIN EASEMENTS), PARKS AND PUBLIC PLACES THEREON SHOWN, EXCEPT AREAS IDENTIFIED AS PRIVATE OR CREATED BY SEPARATE INSTRUMENT, FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

WHEREOF THE SAID MOUNTAIN PLUM, LTD., OWNER, HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS GENERAL PARTNER, MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THEREUNTO DULY AUTHORIZED, GENERAL PARTNER HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS MANAGERS, AND MOUNTAINCITYLAND, LLC HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS MANAGER, THEREUNTO DULY AUTHORIZED.

MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP

BY: MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER

BY: NAME, MANAGER

BY: NAME, MANAGER

BY: MOUNTAINCITYLAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, MANAGER

BY: NAME, MANAGER

STATE OF TEXAS
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE DAY OF 20 A.D. DID PERSONALLY APPEAR MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOW TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED BEFORE ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANY AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE DAY OF 20 A.D. DID PERSONALLY APPEAR MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOW TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED BEFORE ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANY AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS
COUNTY OF HAYS

I, THE UNDERSIGNED AUTHORITY, ON THIS THE DAY OF 20 A.D. DID PERSONALLY APPEAR MANAGER OF MOUNTAINCITYLAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, MANAGER OF MP GENERAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, THE GENERAL PARTNER OF MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, KNOW TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED BEFORE ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, ON BEHALF OF SAID LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIP.

NOTARY PUBLIC

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS

THAT, ELAINE H. CARDENAS, CLERK OF HAYS COUNTY COURT DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON

THE DAY OF 20 A.D., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS UNDER

CLERK'S FILE NUMBER WITNESS MY HAND AND SEAL OF OFFICE OF HAYS

COUNTY ON THIS THE DAY OF 20 A.D.

FILED FOR RECORD AT O'CLOCK M. THIS THE DAY OF 20 A.D.

ELAINE H. CARDENAS
COUNTY CLERK
HAYS COUNTY, TEXAS

APPROVAL CITY OF KYLE

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING COMMISSION OF THE CITY OF KYLE HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: CHAIRPERSON

THIS PLAT (PLUM CREEK PHASE 1, SECTION 7B) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS DAY OF 20

BY: ATTEST:

SECRETARY

REVIEWED BY:

LEON BARBA, CITY ENGINEER DATE

REVIEWED BY:

HARPER WILDER, DIRECTOR OF PUBLIC WORKS DATE

STATE OF TEXAS §
COUNTY OF HAYS §

I THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

BY: ANTHONY J. ENNIS, P.E.
REGISTERED PROFESSIONAL ENGINEER
NO. 125658- STATE OF TEXAS
LANDDEV CONSULTING, LLC.
FIRM# F-16384
4201 WEST PARMER LANE, SUITE C-100
AUSTIN, TEXAS 78727
(512) 872-6696

SURVEYOR'S CERTIFICATION:

I, ERNESTO NAVARRETE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

ERNESTO NAVARRETE, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 6642 - STATE OF TEXAS
LANDDEV CONSULTING, LLC.
FIRM# 10194101
5508 HIGHWAY 290 WEST, SUITE 150
AUSTIN, TEXAS 78735
(512) 872-6696

NOTES:

- 1. TOTAL ACREAGE: 23.492 ACRES.
- 2. THE TOTAL AREA OF PUBLIC STREET RIGHT-OF-WAY TO BE DEDICATED IN THIS SUBDIVISION IS: 0.0 ACRES.
- 3. TOTAL NUMBER OF LOTS: 2.
- 4. PLAT COMPLETELY CONFORMS WITH PLUM CREEK P.U.D. MASTER PLAN & CITY OF KYLE ORDINANCE 308 AND 311 AS AMENDED.
- 5. SETBACKS NOT SHOWN ON LOTS SHALL CONFIRM TO THE CITY OF KYLE ZONING ORDINANCES.
- 6. A 7.5 FOOT PUBLIC UTILITY EASEMENT ADJACENT TO PUBLIC RIGHT-OF-WAY IS HEREBY DEDICATED AS SHOWN AND DEPICTED HEREON.
- 7. NO OBJECT INCLUDING BUILDING, ACCESSORY BUILDING, FENCING OR LANDSCAPING WHICH WOULD INTERFERE WITH THE CONVEYANCE OF STORM WATER SHALL BE PLACED OR ERECTED WITHIN DRAINAGE EASEMENTS, EXCEPT AS APPROVED BY THE CITY OF KYLE.
- 8. ALL UTILITIES WITHIN THIS SUBDIVISION SHALL BE UNDERGROUND.
- 9. ALL OPEN SPACES, DRAINAGE EASEMENT AND LANDSCAPE EASEMENT AREAS DEPICTED HEREON SHALL BE MAINTAINED, KEPT NEATLY CUT, FREE FROM DEBRIS AND, WITH RESPECT TO DRAINAGE EASEMENTS, FREE FROM TREE/BRUSH RE-GROWTH. TYPICAL LANDSCAPE MAINTENANCE, CUTTING AND TRIMMING WITHIN THE SUBDIVISION, ALL EASEMENTS AND RIGHT-OF-WAYS TO THE PAVEMENT TO BE THE RESPONSIBILITY OF THE PROPERTY OWNERS.
- 10. THE OWNER OF LOT 1 AND LOT 2, BLOCK A, ARE REQUIRED TO SUBMIT THE SITE DEVELOPMENT PLAN FOR LOT 1 AND LOT 2, BLOCK A, TO THE CITY OF KYLE, PLUM CREEK DEVELOPMENT PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP, AND, IF NOT THE SAME PARTIES AS ARE IN PLUM CREEK DEVELOPMENT PARTNERS, THEN THE ARCHITECTURAL REVIEW COMMITTEE FOR THE PLUM CREEK HOME OWNER'S ASSOCIATION, FOR THEIR RESPECTIVE REVIEW AND APPROVALS PRIOR TO COMMENCING ANY CONSTRUCTION ACTIVITY ON OR AROUND LOT 1 AND LOT 2, BLOCK A, INCLUDING, WITHOUT LIMITATION, THE INSTALLATION OF THE SIDEWALK AND ANY OTHER IMPROVEMENTS REQUIRE HEREIN.
- 11. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOT 1 AND LOT 2, BLOCK A, IN THIS SUBDIVISION, A SITE DEVELOPMENT AND/OR BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF KYLE.
- 12. THIS SUBDIVISION LIES WITHIN THE BUNTON BRANCH-PLUM CREEK WATERSHED.
- 13. EASEMENTS SHOWN HEREON WHICH ARE CREATED BY SEPARATE INSTRUMENTS AND NOT DEDICATED PER THIS PLAT ARE GOVERNED BY THE TERMS OF SUCH SEPARATE INSTRUMENTS.
- 14. SIDEWALKS ALONG PUBLIC RIGHT-OF-WAY ADJACENT TO LOT 1 AND LOT 2, BLOCK A, SHALL BE INSTALLED BY THE OWNER OF LOT 1 AND LOT 2, BLOCK A, AT THE TIME OF SITE DEVELOPMENT AND PRIOR TO SUCH OWNER'S OCCUPANCY OF LOT 1, LOT 2, LOT 3 AND LOT 4, BLOCK A. SIDEWALKS, PEDESTRIAN CROSSING AND OTHER PUBLIC AMENITIES THAT ARE TO BE DEDICATED 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.
- 15. THE OWNER OF THE LAND DEDICATED BY THIS PLAT RESERVES THE RIGHT TO USE AND ENJOY THE SURFACE OF ALL EASEMENT AREAS FOR ALL PURPOSES THAT DO NOT INTERFERE WITH THE USE OF SAID EASEMENT AREAS FOR THE PURPOSE OF SAID EASEMENT, INCLUDING BUT NOT LIMITED TO THE RIGHT TO PLACE SURFACING MATERIALS OVER AND ACROSS THE EASEMENT AREA AND TO USE THE SAME FOR PARKING AREAS, DRIVEWAYS, WALKWAYS, SIDEWALK, LANDSCAPING AND LIGHTING.
- 16. FLOODPLAIN ANALYSIS MAY BE REQUIRED PER CITY ADOPTED RAINFALL DEPTH AT THE TIME OF SITE DEVELOPMENT.

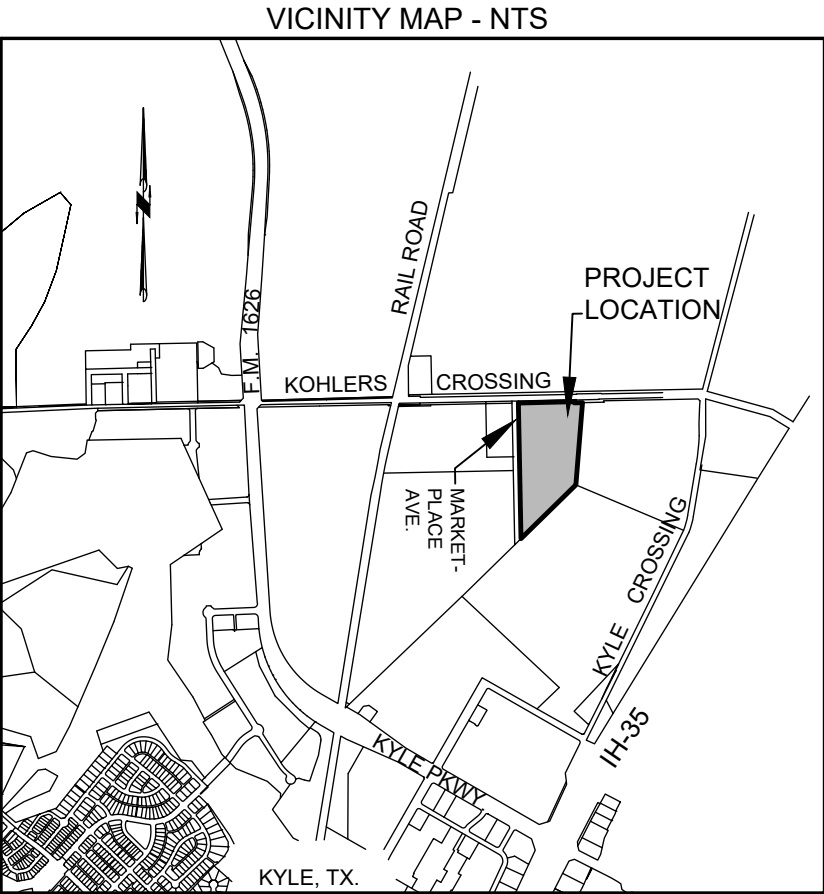
NOTES:

- 1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.
- 2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS, TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
- 3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.999902.

PUBLIC UTILITY INFORMATION:
THIS SUBDIVISION IS SERVICED BY THE FOLLOWING UTILITIES:

WATER: CITY OF KYLE
100 W. CENTER ST.
KYLE, TEXAS 78640
WASTEWATER: CITY OF KYLE
100 W. CENTER ST.
KYLE, TEXAS 78640

ELECTRIC: PEDERNALES ELECTRIC COOPERATIVE
1819 RANCH TO MARKET RD 150
KYLE, TX 78640

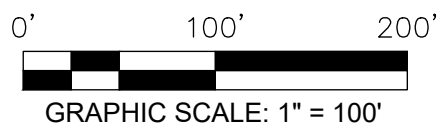


"PRELIMINARY"
This Document shall not be Recorded
for any purpose

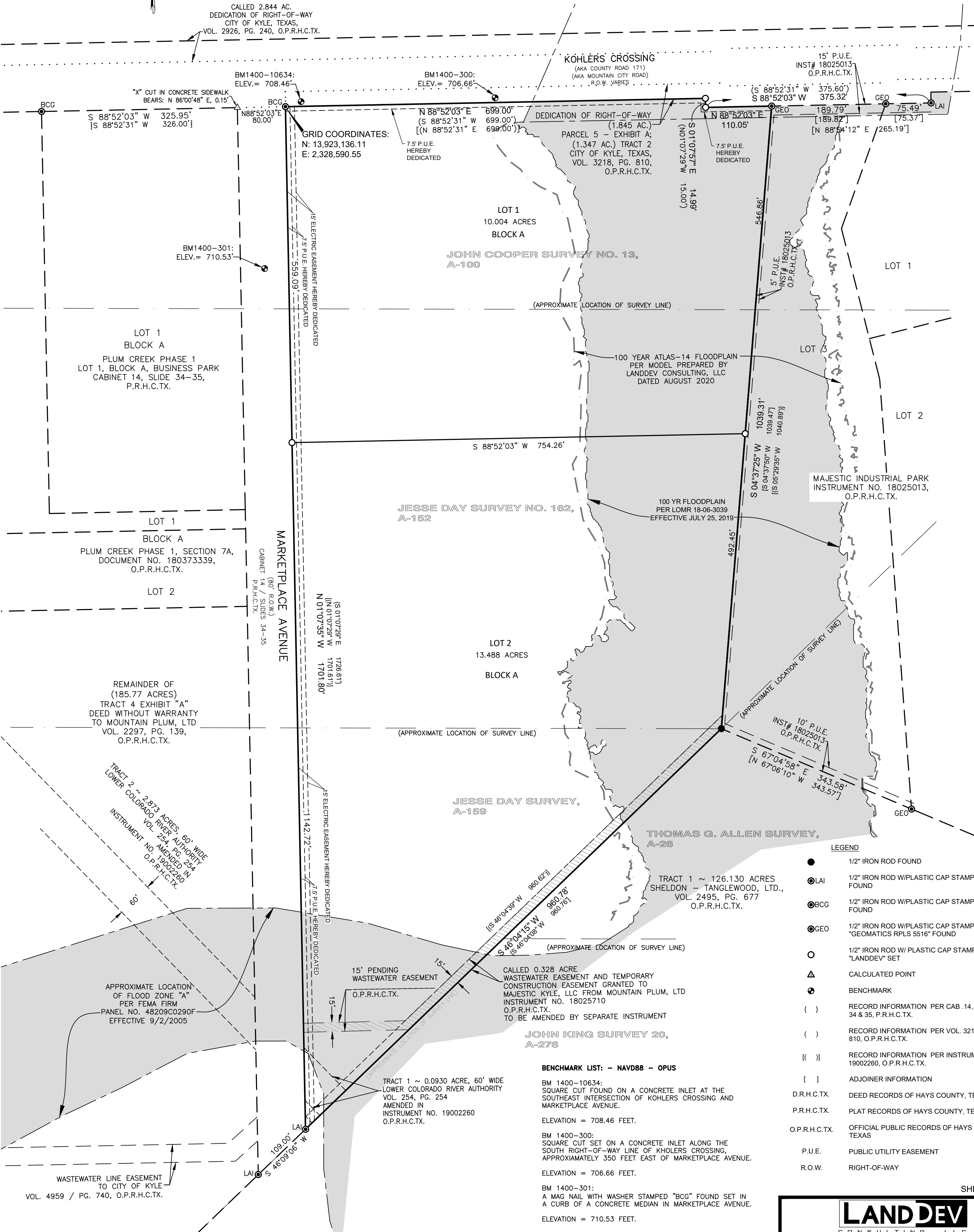


FINAL PLAT  
PLUM CREEK PHASE 1, SECTION 7B  
HAYS COUNTY, TEXAS

"PRELIMINARY"  
This Document shall not be Recorded  
for any purpose



CALLLED 2.844 AC.  
DEDICATION OF RIGHT-OF-WAY  
CITY OF KYLE, TEXAS,  
VOL. 2926, PG. 240, O.P.R.H.C.TX.



- LEGEND
- 1/2" IRON ROD FOUND
  - ⊙ LAI 1/2" IRON ROD W/PLASTIC CAP STAMPED "LAI" FOUND
  - ⊙ BCG 1/2" IRON ROD W/PLASTIC CAP STAMPED "BCG" FOUND
  - ⊙ GEO 1/2" IRON ROD W/PLASTIC CAP STAMPED "GEOMATICS RPLS 5516" FOUND
  - 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LANDDEV" SET
  - △ CALCULATED POINT
  - ⊙ BENCHMARK
  - { } RECORD INFORMATION PER CAB .14, SLIDES 34 & 35, P.R.H.C.TX.
  - ( ) RECORD INFORMATION PER VOL. 3218, PG. 810, O.P.R.H.C.TX.
  - [ ( ) ] RECORD INFORMATION PER INSTRUMENT NO. 19002260, O.P.R.H.C.TX.
  - [ ] ADJOINER INFORMATION
  - D.R.H.C.TX. DEED RECORDS OF HAYS COUNTY, TEXAS
  - P.R.H.C.TX. PLAT RECORDS OF HAYS COUNTY, TEXAS
  - O.P.R.H.C.TX. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
  - P.U.E. PUBLIC UTILITY EASEMENT
  - R.O.W. RIGHT-OF-WAY

**BENCHMARK LIST: - NAVD88 - OPUS**

BM 1400-10634:  
SQUARE CUT FOUND ON A CONCRETE INLET AT THE  
SOUTHEAST INTERSECTION OF KOHLERS CROSSING AND  
MARKETPLACE AVENUE.  
ELEVATION = 708.46 FEET.

BM 1400-300:  
SQUARE CUT SET ON A CONCRETE INLET ALONG THE  
SOUTH RIGHT-OF-WAY LINE OF KOHLERS CROSSING,  
APPROXIMATELY 350 FEET EAST OF MARKETPLACE AVENUE.  
ELEVATION = 706.66 FEET.

BM 1400-301:  
A MAG NAIL WITH WASHER STAMPED "BCG" FOUND SET IN  
A CURB OF A CONCRETE MEDIAN IN MARKETPLACE AVENUE.  
ELEVATION = 710.53 FEET.

PLAT PREPARATION DATE: JUNE 3, 2020  
APPLICATION SUBMITTAL DATE: \_\_\_\_\_, 2020

CITY PROJECT  
NUMBER





# CITY OF KYLE, TEXAS

## Plum Creek Uptown Central Park - Final Plat (SUB-20-0164)

**Meeting Date: 2/23/2021**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Plum Creek Uptown Central Park - Final Plat (SUB-20-0164) 1.672 acres; 1 lot for property located approximately 580-feet north of Doherty. ~ *Howard J. Koontz, Director of Planning and Community Development*

*Planning and Zoning Commission voted 6-0 to approve the final plat.*

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

---

### ATTACHMENTS:

#### **Description**

❏ Final Plat

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, THAT WE, MOUNTAIN PLUM, LTD., A TEXAS LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS, WITH ITS HOME ADDRESS AT 4040 BROADWAY, SUITE 501, SAN ANTONIO, TEXAS, 78209, BEING THE OWNER OF 1.672 ACRES OF LAND, MORE OR LESS, BEING ALL OF THAT A REMAINDER OF TRACT 2 OF EXHIBIT "A" IN A DEED WITHOUT WARRANTY TO MOUNTAIN PLUM, LTD., OF RECORD IN VOL. 2297, PG. 139, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

DO HEREBY SUBDIVIDE SAID 1.672 ACRES AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS **PLUM CREEK UPTOWN CENTRAL PARK** TO THE CITY OF KYLE, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER EASEMENTS (EXCLUDING LANDSCAPE AREA WITHIN EASEMENTS), PARKS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

WHEREOF THE SAID MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP, OWNER, HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS GENERAL PARTNER, MP GENERAL, LLC., A TEXAS LIMITED LIABILITY COMPANY

MP GENERAL, LLC., A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER

BY: \_\_\_\_\_, MANAGER

BY: \_\_\_\_\_, MANAGER

BY: MOUNTAINCITYLAND, LLC., A TEXAS LIMITED LIABILITY COMPANY, MANAGER

BY: \_\_\_\_\_, MANAGER

STATE OF TEXAS  
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY

APPEARED, \_\_\_\_\_ OF MP GENERAL, LLC., A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

BY: \_\_\_\_\_, NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY

APPEARED, \_\_\_\_\_ OF MP GENERAL, LLC., A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

BY: \_\_\_\_\_, NOTARY PUBLIC

STATE OF TEXAS  
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY

APPEARED, \_\_\_\_\_ OF MOUNTAINCITYLAND, LLC., A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

BY: \_\_\_\_\_, NOTARY PUBLIC

BEARING BASIS:

THE BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH, AND ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983 (2011). THE COORDINATES SHOWN HEREON ARE GRID.

FLOODPLAIN NOTE:

THIS TRACT IS LOCATED WITHIN FLOOD ZONE "X", (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN), AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, AS SHOWN ON COMMUNITY-PANEL MAP NUMBER 482090220F, WITH AN EFFECTIVE DATE OF SEPTEMBER 2, 2005. THERE MAY BE ADDITIONAL INFORMATION (LETTER OF MAP REVISIONS, LETTER OF MAP AMENDMENTS, OR LETTER OF MAP CHANGES) NOT PROVIDED TO, NOR RESEARCHED BY THE UNDERSIGNED SURVEYOR, THAT COULD AFFECT THE SUBJECT PROPERTY. IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

SURVEYOR'S CERTIFICATION:

I, COLEEN M. JOHNSON, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER MY DIRECTION AND SUPERVISION, COMPLIES WITH ORDINANCE #439, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

*Coleen M. Johnson*  
COLEEN M. JOHNSON  
TEXAS REGISTRATION NO. 4871  
WGI, INC.  
2021 EAST 5TH STREET, SUITE 200  
AUSTIN, TEXAS 78702  
TBPELS SURVEY FIRM NO. 10194509  
Phone No. 512.669.5560

*Feb. 3, 2021*  
DATE



FINAL PLAT  
PLUM CREEK UPTOWN CENTRAL PARK  
CITY OF KYLE, HAYS COUNTY, TEXAS

ENGINEER'S CERTIFICATION:

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS AND RELEVANT STATE STANDARDS.

BRIAN JAMES PARKER, P.E.  
TEXAS REGISTRATION NO. 90248  
KIMLEY-HORN  
2600 VIA FORTUNA, SUITE 300  
AUSTIN, TEXAS 78746  
(512) 646-2248

NOTES:

1. TOTAL ACREAGE: 1.672 ACRES
2. TOTAL NUMBER OF LOTS: 1
3. THIS PLAT COMPLETELY CONFORMS WITH PLUM CREEK P.U.D. MASTER PLAN & CITY OF KYLE ORDINANCES 308 AND 311.
4. NO OBJECTS INCLUDING BUILDINGS, ACCESSORY BUILDINGS, FENCING OR LANDSCAPING WHICH WOULD INTERFERE WITH CONVEYANCE OF STORM WATER SHALL BE PLACED OR ERECTED WITHIN DRAINAGE EASEMENTS.
5. OFFSITE WATER AND WASTEWATER LINES MUST BE CONSTRUCTED AND ACCEPTED BY CITY PRIOR TO OCCUPANCY OF ANY BUILDING(S) ON THIS PROPERTY.
6. THIS SUBDIVISION SHALL COMPLY WITH THE CENTRAL BUSINESS DISTRICT OF THE CITY OF KYLE.
7. SETBACKS NOT SHOWN ON LOTS SHALL CONFORM TO THE CITY OF KYLE ZONING ORDINANCE.
8. SIDEWALKS SHALL BE INSTALLED ON THE SUBDIVISION SIDE OF BURNHAM. THOSE SIDEWALKS NOT ABUTTING A RESIDENTIAL, COMMERCIAL OR INDUSTRIAL LOT SHALL BE INSTALLED WHEN THE ADJOINING STREET IS CONSTRUCTED. WHERE THERE ARE DOUBLE FRONTAGE LOTS, SIDEWALKS ON THE STREET TO WHICH ACCESS IS PROHIBITED ARE ALSO REQUIRED TO BE INSTALLED WHEN THE STREETS IN THE SUBDIVISION ARE CONSTRUCTED. (ORD. # 439, ARTICLE V, SEC. 10; KYLE CODE).
9. AT THE FEBRUARY 2, 2021 CITY COUNCIL MEETING, THE CITY COUNCIL VOTED 6-0 TO APPROVE A WAIVER TO REMOVE THE REQUIRED 7.5-FOOT PUBLIC UTILITY EASEMENT, PER THE PLUM CREEK SUBDIVISION CODE.

PUBLIC UTILITY INFORMATION:

THIS SUBDIVISION IS SERVICED BY THE FOLLOWING UTILITIES:

WATER:  
CITY OF KYLE  
100 W. CENTER STREET  
KYLE, TEXAS 78640

WASTEWATER:  
CITY OF KYLE  
100 W. CENTER STREET  
KYLE, TEXAS 78640

TELEPHONE:  
VERIZON  
6601 F.M. 3237  
WIMBERLEY, TEXAS 78738

ELECTRIC:  
PEDERNALES ELECTRIC COOP.  
1810 F.M. 150 WEST  
KYLE, TEXAS 78640

GAS:  
RELIANT ENERGY  
326 CHEATAM STREET  
SAN MARCOS, TEXAS 78666

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING & ZONING COMMISSION OF THE CITY OF KYLE, HEREBY CERTIFIES THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: \_\_\_\_\_  
CHAIRPERSON

REVIEWED BY:

LEON BARBA, CITY ENGINEER

REVIEWED BY:

HARPER WILDER, DIRECTOR OF PUBLIC WORKS

THIS PLAT (PLUM CREEK UPTOWN CENTRAL PARK) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

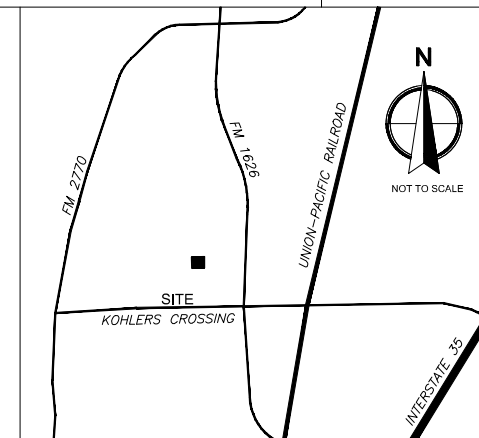
BY: \_\_\_\_\_  
ATTEST:

SECRETARY



2021 East 5th Street Suite 200 Austin, TX 78702  
Phone No. 512.669.5560  
TBPELS Survey Firm No. 10194509

DATE: 07-28-20  
PROJECT: 03205833.00  
SCALE: 1" = 100'  
CHECK/QC: CMJ  
TECH: RA  
FIELD CREW: DS  
SURVEY DATE: 07-18-20  
SHEET: 1 OF 2



LOCATION MAP  
PROJECT LOCATED IN  
CITY OF KYLE, HAYS COUNTY, TEXAS

BY: OWNERS: \_\_\_\_\_ MOUNTAIN PLUM, LTD., A TEXAS LIMITED PARTNERSHIP.  
ADDRESS: \_\_\_\_\_ 4040 BROADWAY STREET, SUITE 501  
\_\_\_\_\_ SAN ANTONIO, TEXAS 78209

PHONE: (512) 391-1789 FAX: \_\_\_\_\_  
BY: MP GENERAL, LLC., A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_, MANAGER

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_, MANAGER

BY: MOUNTAINCITYLAND, LLC., A TEXAS LIMITED LIABILITY COMPANY, MANAGER

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_, MANAGER

ACREAGE: 1.672

SURVEY: M. M. MCCARTHER, SURVEY NO. 4, ABST. NO. 10

NUMBER OF LOTS AND PROPOSED USE (IF MORE THAN ONE USE IS PLANNED FOR THE LOTS, PROVIDE LAND USE SUMMARY SHOWING # OF LOTS ARE PLANNED FOR EACH USE): 1 LOT - PARK

DATE: \_\_\_\_\_

SURVEYOR: COLEEN M. JOHNSON, R.P.L.S. #4871

PHONE: 512-669-5560 FAX: \_\_\_\_\_

ENGINEER: BRIAN JAMES PARKER, P.E.

PHONE: 512-646-2248 FAX: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS:

THAT, ELAINE H. CARDENAS, CLERK OF HAYS COUNTY COURT, DOES HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND THE CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORDS IN MY

OFFICE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020, A.D., IN THE PLAT

RECORDS OF SAID COUNTY AND STATE IN DOCUMENT # \_\_\_\_\_  
WITNESS MY HAND AND SEAL OF OFFICE OF COUNTY CLERK OF SAID COUNTY ON

THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020 A.D. FILED FOR RECORD AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M. THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020, A.D.

BY:

ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS

Item # 18



Drawing Name: P:\5600\5633.00 Plum Creek Uptown Central Park\05 - Geospatial\Drawings\563300\_Plum Creek Uptown Central Park.dwg User: Coleen.Johnson Dec 16, 2020 - 11:04am

FINAL PLAT  
PLUM CREEK UPTOWN CENTRAL PARK  
CITY OF KYLE, HAYS COUNTY, TEXAS

WGI

WGInc.com

2021 East 5th Street Suite 200 Austin, TX 78702  
Phone No. 512.669.5560  
TBPELS Survey Firm No. 10194509

DATE: 07-28-20

PROJECT: 03205833.00

SCALE: 1" = 100'

CHECK/QC: CMJ

TECH: RA

FIELD CREW: DS

SURVEY DATE: 07-18-20

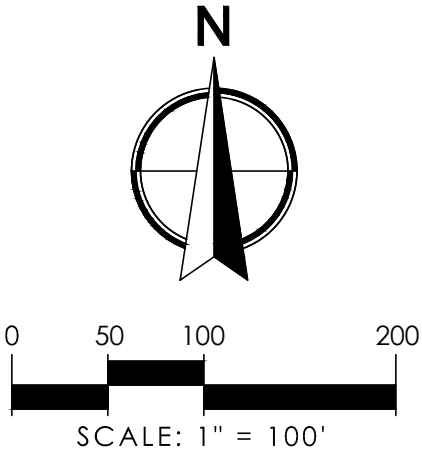
SHEET: 2 OF 2

SYMBOLS LEGEND:

- FOUND 1/2" IRON ROD (AS NOTED)
- SET 5/8" IRON ROD AND CAP STAMPED "WGI 10194509" UNLESS NOTED
- ⊕ BENCHMARK

ABBREVIATIONS LEGEND:

- BM BENCHMARK
- CAB. CABINET
- E EASTING
- ELEV. ELEVATION
- IR IRON ROD
- IR&C IRON ROD AND CAP
- N NORTHING
- OPRHCTX OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
- PRHCTX PLAT RECORDS OF HAYS COUNTY, TEXAS
- PG. PAGE
- P.O.B. POINT OF BEGINNING
- RPLS REGISTERED PROFESSIONAL LAND SURVEYOR
- R/W RIGHT-OF-WAY
- VOL. VOLUME



CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C2	213.14'	311.00'	39°15'58"	S20°44'43"E	208.99'
C3	190.72'	215.00'	50°23'16"	N24°13'34"E	184.52'
C4	252.81'	285.00'	50°23'16"	S24°13'34"W	244.60'

LEGAL DESCRIPTION

BEING 1.672 ACRES OF LAND OUT OF AND A PART OF THE M.M. McCARVER SURVEY NO. 4, ABSTRACT NO. 10, IN THE CITY OF KYLE, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT DESCRIBED AS TRACT NO. 2 IN A DEED WITHOUT WARRANTY TO MOUNTAIN PLUM, LTD. OF RECORD IN VOLUME 2297, PAGE 139, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.); SAID 1.672 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

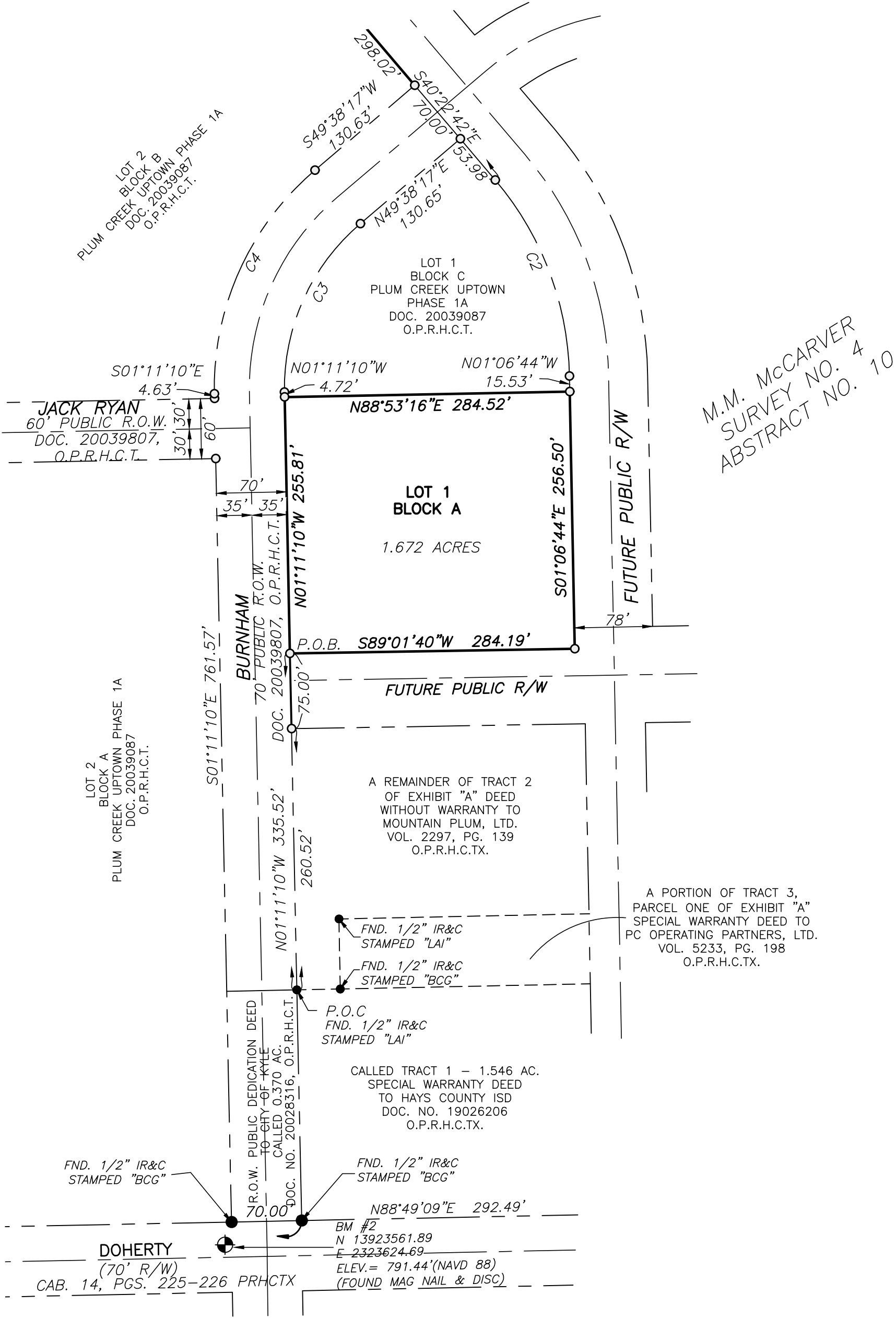
COMMENCING FOR REFERENCE at a 1/2-inch iron rod found with cap stamped "LAI" at the intersection of the north Right-of-way line of that certain 0.370 acre tract described in a ROW Public Dedication Deed of record in Document No. 20028316, O.P.R.H.C.T. and the east right-of-way line of Burnham (a 70 foot wide public right-of-way dedicated by Plum Creek Uptown Phase 1A, a subdivision plat of record in Document No. 20039087, O.P.R.H.C.T.; THENCE, North 01°11'10 West, along said east right-of-way line, at a distance of 260.52 feet passing a 5/8-inch iron rod set with a plastic cap stamped "WGI 10194509", in all a total distance of 335.52 feet to a 5/8-inch iron rod set with a plastic cap stamped "WGI 10194509", for the southwest corner and POINT OF BEGINNING of the tract described herein;

THENCE, with the west line of the tract described herein, continuing with the east right-of-way line of Burnham, North 01°11'10 West, a distance of 255.81 feet to a 5/8-inch iron rod set with a plastic cap stamped "WGI 10194509 for northwest corner of the tract described herein, from which a 5/8-inch iron rod set with a plastic cap stamped "WGI 10194509 bears North 01°11'10 West, a distance of 4.72 feet;

THENCE, with the north line of the tract described herein, with the south line of Lot 1, Block C, Plum Creek Uptown Phase 1A, North 88°53'16" East, a distance of 284.52 feet to a 5/8-inch iron rod set with a plastic cap stamped "WGI 10194509 for northeast corner of the tract described herein, from which point a 5/8-inch iron rod set with a plastic cap stamped "WGI 10194509 in the east line of said Lot 1, Block C, Plum Creek Uptown Phase 1A bears, North 01°06'44 West, a distance of 15.53 feet;

THENCE, with the east line of the tract described herein, South 01°06'44 East, a distance of 256.50 feet to a 5/8-inch iron rod set with a plastic cap stamped "WGI 10194509 for the southeast corner of the tract described herein;

THENCE, with the south line of the tract described herein, South 89°01'40 West, a distance of 284.19 feet to the POINT OF BEGINNING and containing 1.672 acres of land within these metes and bounds.





# CITY OF KYLE, TEXAS

## Sign Ordinance Amendment

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** *(First Reading)* An Ordinance of the City of Kyle, Texas, Amending the City of Kyle Code of Ordinances; Amending Chapter 29, "Sign Standards And Permits", to Amend the Definition of Billboard; Amending Provisions Related to Prohibited Signs; Establishing Maximum Size and Height of Signs; Providing a Severability Clause; Providing an Effective Date; and Providing for Related Matters. ~ *Paige Saenz, City Attorney*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

- ☐ Sign Ordinance Amendment

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE CITY OF KYLE CODE OF ORDINANCES; AMENDING CHAPTER 29, “SIGN STANDARDS AND PERMITS”, TO AMEND THE DEFINITION OF BILLBOARD; AMENDING PROVISIONS RELATED TO PROHIBITED SIGNS; ESTABLISHING MAXIMUM SIZE AND HEIGHT OF SIGNS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR RELATED MATTERS.**

**Whereas,** Chapter 216 of the Texas Local Government Code provides for the municipal regulation of signage;

**Whereas,** Section 216.901, Texas Government Code, authorizes a home rule city to prohibit billboards;

**Whereas,** the City Council of the City of Kyle, Texas, a Texas home rule city, has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens of the City; and to achieve the City’s economic development goals, that the Code of Ordinances provisions relative to the regulation of signs be amended relative to the maximum size and height of signs and billboards;

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

**Section 1. Findings.** The foregoing 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. Definitions.** The definition of “billboard” set forth in Section 29-4 of the City of Kyle Code of Ordinances (the “Code”) is hereby amended to read as follows:

*Billboard.* A sign that is defined by industry standards as a billboard, including changeable electronic variable messaging signs, and in the absence of an industry standard definition, billboard shall mean a sign having a height greater than twelve (12) feet and a surface area greater than three hundred seventy-eight square feet.

**Section 3. Prohibited Signs.**

- (a) The first paragraph of Section 29-9 of the Code is hereby amended in its entirety to read as follows, and the subsections of Section 29-9 shall remain in full force and effect:

**Sec. 29-9. Prohibited Signs.**

The following signs are prohibited from installation, construction, repair, alteration, location or relocation within the city, except as otherwise specifically permitted in this chapter or by agreement approved by the City Council only during the term of the agreement:

(b) Section 29-9 of the Code is hereby amended to add subsection 12

(12) Signs with a surface area that exceeds the lesser of (a) the maximum size established for the category or definition that applies to the sign or 160 square feet; or (b) the maximum height established for the category or definition that applies to the sign or 12 feet.

**Section 4. Effective Date.** This Ordinance shall be published in the official newspaper of the City, as required by law and shall become effective after publication as provided by law.

**Section 5. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance, Chapter 29 of the Code, or any other sign regulations of the City, as amended (the "Sign Regulations"), are severable and, if any phrase, sentence, paragraph or section of the Sign Regulations should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of the Sign Regulations, since the same would have been enacted by the City Council without the incorporation in the Sign Regulations of any such invalid phrase, clause, sentence, paragraph or section. If any provision of the Sign Regulations shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of the Sign Regulations which can be given effect without the invalid provision, and to this end the provisions of the Sign Regulations are declared to be severable.

**Section 6. 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, *Chapt. 551, Tex. Gov't. Code*.

**PASSED AND APPROVED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**FINALLY PASSED AND APPROVED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**ATTEST:**

**THE CITY OF KYLE, TEXAS**

\_\_\_\_\_  
Jennifer Holm, City Secretary

\_\_\_\_\_  
Travis Mitchell, Mayor





# CITY OF KYLE, TEXAS

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

Meeting Date: 2/23/2021

Date time: 7:00 PM

**Subject/Recommendation:** *[POSTPONED 2/2/2021] (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

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## **ATTACHMENTS:**

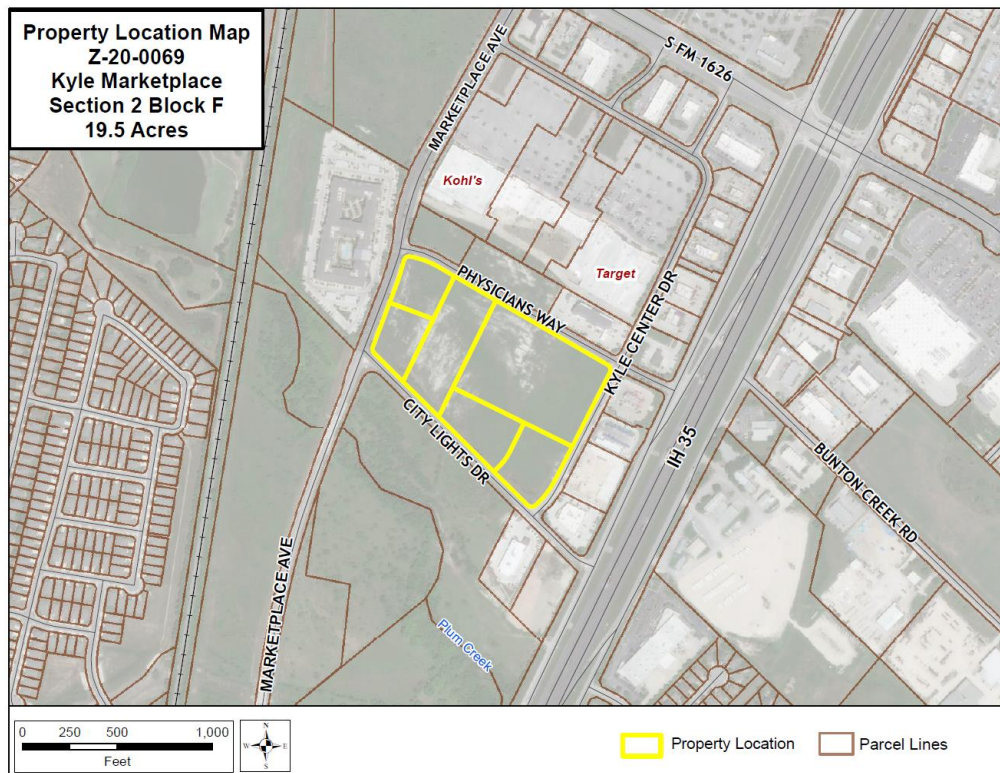
### **Description**

- ☐ 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



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. 5 <sup>th</sup> , Ste. 850 Austin, TX 78750
Request	Rezone 19.4681-Acres "RS" (Retail Services) to "R-3-3" (Apartments Residential 3)

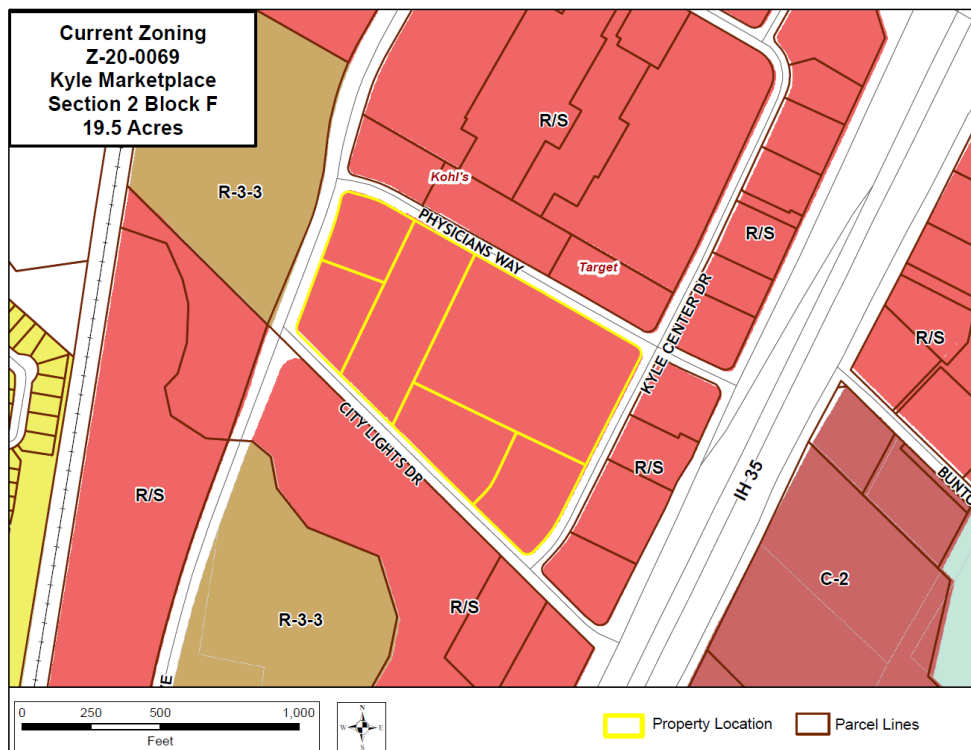
### Vicinity Map



## **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

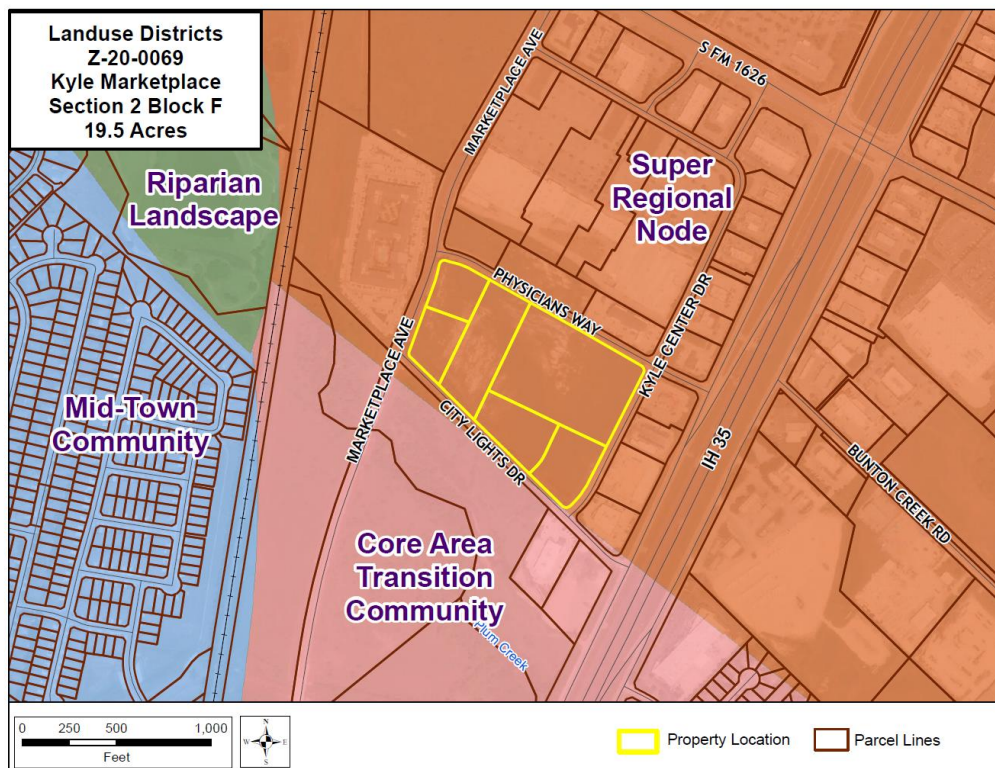
(d)

*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 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); 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

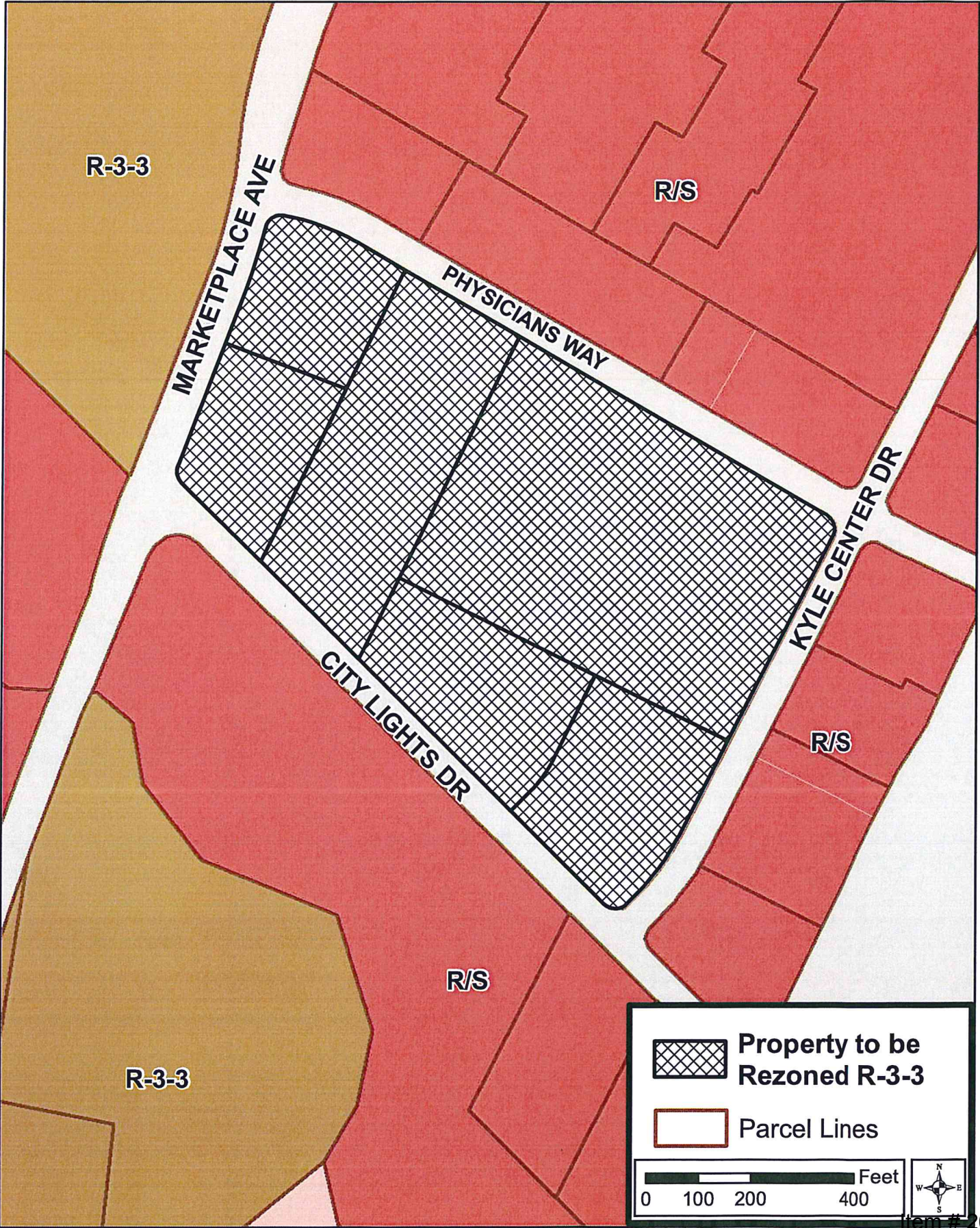
**“EXHIBIT A”**

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 Exhibit 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,

A handwritten signature in black ink, appearing to read "Rob O'Farrell", written in a cursive style.

Robert O'Farrell

President



D: 512.368.7025

[rofarrell@cswdevelopment.com](mailto:rofarrell@cswdevelopment.com)

[www.cswdevelopment.com](http://www.cswdevelopment.com)





## 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](http://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: \$815.81

- ☒ 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 Co.  
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. 5<sup>th</sup>, 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.ill.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: \_\_\_\_\_

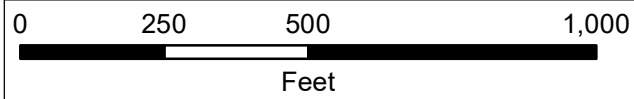
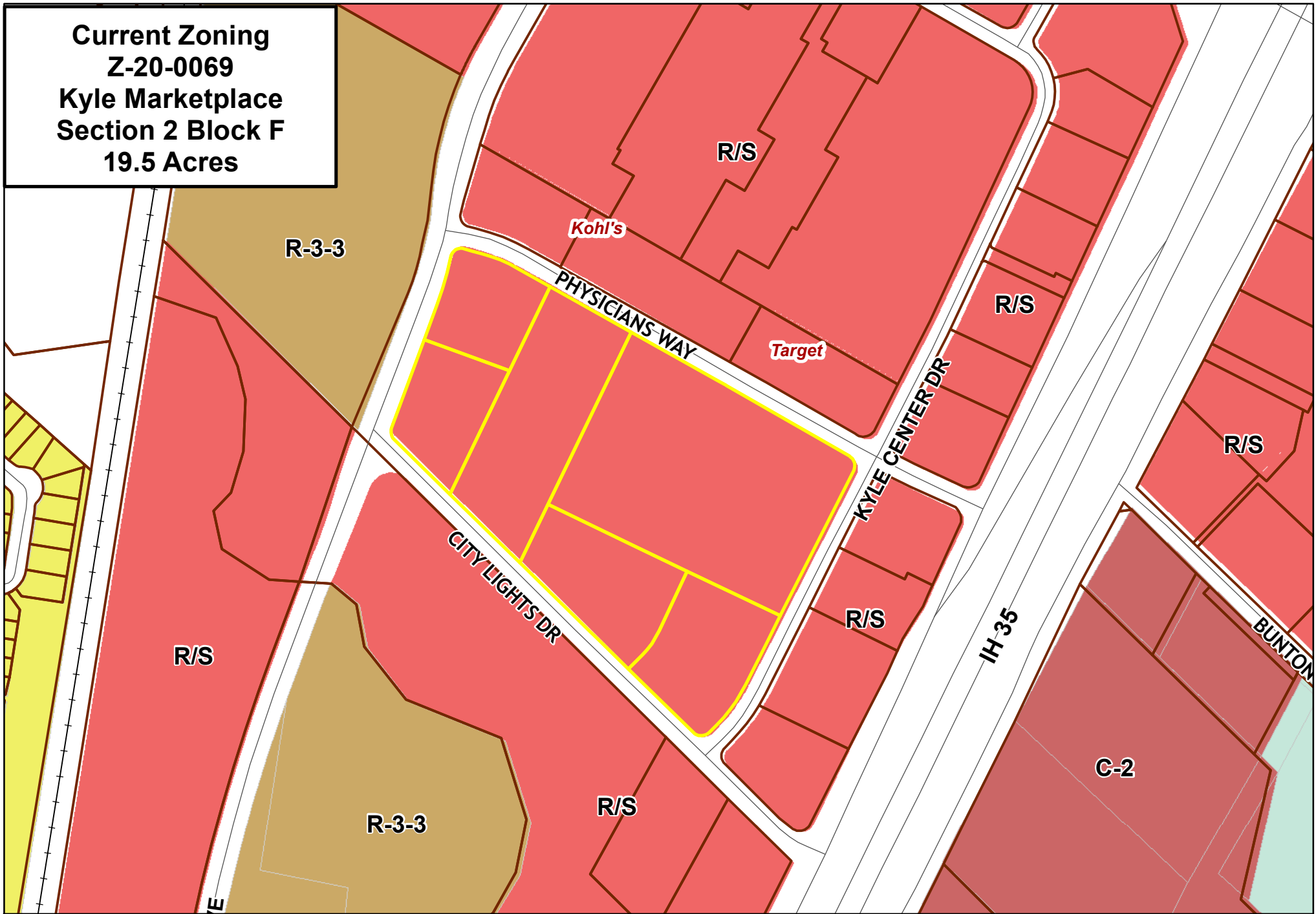


**Proposed Rezoning**  
**Kyle Marketplace Section 2,**  
**LOT 1, 1B, 1C, 2, 3, 4,**  
**Block F**





**Current Zoning**  
**Z-20-0069**  
**Kyle Marketplace**  
**Section 2 Block F**  
**19.5 Acres**



 Property Location  
Item # 20

 Parcel Lines

Landuse Districts  
Z-20-0069  
Kyle Marketplace  
Section 2 Block F  
19.5 Acres

Riparian  
Landscape

Super  
Regional  
Node

Mid-Town  
Community

Core Area  
Transition  
Community

MARKETPLACE AVE

S FM 1626

PHYSICIANS WAY

KYLE CENTER DR

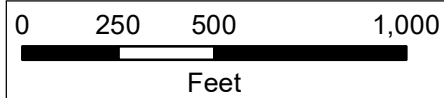
MARKETPLACE AVE

CITY LIGHTS DR

IH 35

BUNTON CREEK RD

Plum Creek



Property Location  
Item # 20

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: **Ahmed 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.**

☐ 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

Clayton Properties Group, Inc  
D/B/A Brohn Homes - Zoning (Z-  
21-0070)

Meeting Date: 2/23/2021

Date time: 7:00 PM

**Subject/Recommendation:** *(First Reading)* An ordinance amending Chapter 53 (Zoning) for City of Kyle, Texas, for the purpose of assigning original zoning to approximately 29.8 acres of land from Agriculture 'AG' to Single Family Residential-3 'R-1-3' for property located southeast of Lehman Road and south of Lehman High School, in Hays County, Texas. (Clayton Properties Group, Inc D/B/A Brohn Homes - Z-21-0070) ~ *Howard J. Koontz, Director of Planning and Community Development*

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

- Public Hearing

**Other Information:** Please see the attachments.

**Legal Notes:** N/A

**Budget Information:** N/A

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### ATTACHMENTS:

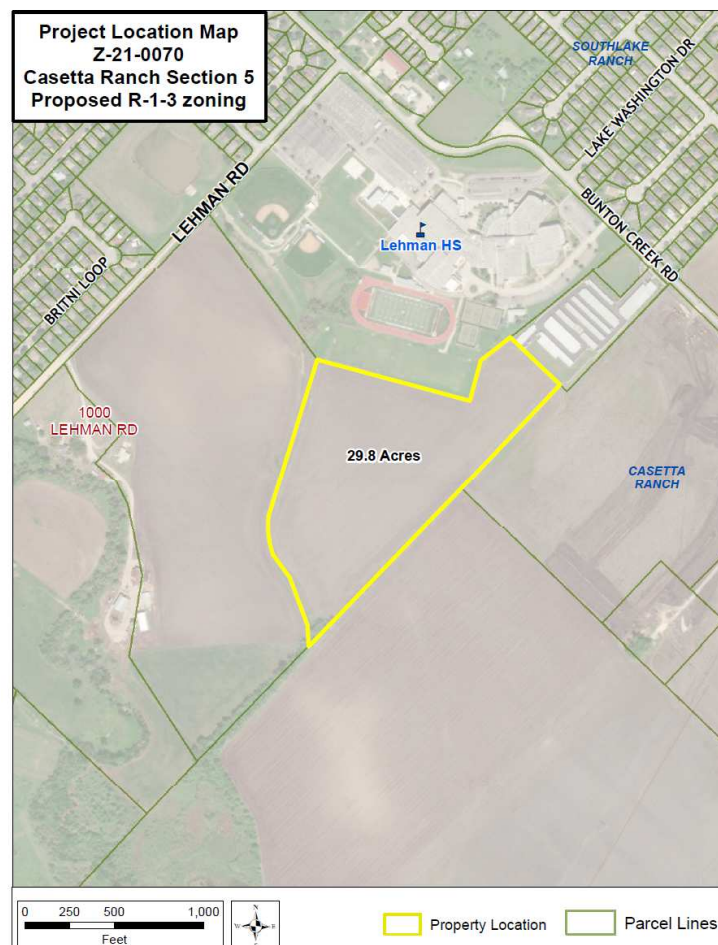
#### **Description**

- ☐ Z-21-0070 (Cassetta Ranch Phase 5)\_MC
- ☐ Ordinance with Exhibit's A & B
- ☐ Application
- ☐ Plan Detail Report Summary
- ☐ Legal Description
- ☐ Deed
- ☐ Letter of Request
- ☐ Development Agreement
- ☐ Project Location Map
- ☐ Current Zoning Map
- ☐ Land Use Districts Map



<b>Property Location</b>	<b>Southeast of Lehman Road, South of Lehman High School, Kyle, Texas 78640</b>
<b>Owner</b>	<b>Clayton Properties Group/Brohn Homes 6720 Vaught Ranch Rd, Ste. 200 Austin, TX 78730</b>
<b>Agent</b>	<b>Adam Berry 101 W. Louis Henna Blvd, Ste. 400 Austin, TX 78728</b>
<b>Request</b>	<b>Rezone 29.792-Acres A (Agriculture) to R-1-3 (Single Family Residential 3).</b>

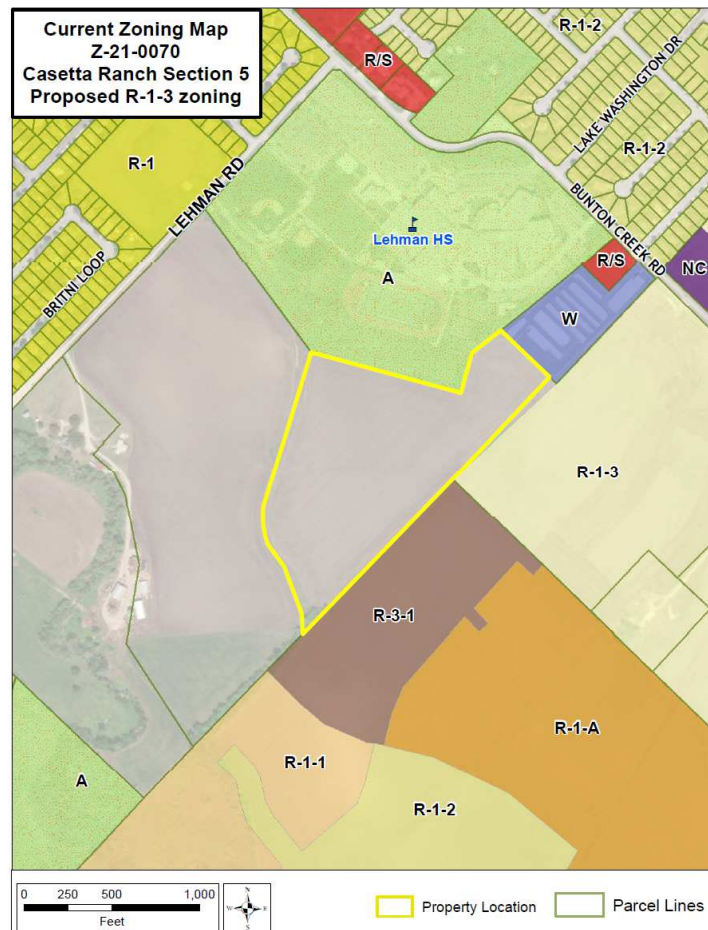
### Vicinity Map





## Site Description

The 29.292-acre parcel is located southeast of Lehman Road and directly south of Lehman High School. The site is undeveloped, was last used for agriculture purposes and recently zoned Agriculture. To the north is Lehman High School (Agriculture zoning) and to the northeast is Safe-N-Sound Storage (Warehouse zoning). To the east is the Cassetta Ranch project zoned R-1-3 (Phases 1-4). To the south is property owned by the Walton Group and zoned R-3-1 and undeveloped (multifamily - 5-12 units per buildable acre). To the west and northwest is land owned by "Jansen Equipment LLC", and utilized for agriculture (not in the city's limits).



The applicant seeks to rezone the property from A (Agriculture) to the R-1-3 (Single-Family Residential), a zoning category that allows the following:

### R-1-3 (Single Family Residential District 3)

#### Sec. 53-101. - Purpose and permitted uses.

The R-1-3 single-family residential 3 district allows detached single-family residences with a minimum of 1,000 square feet of living area and permitted accessory structures on a minimum lot size of 5,540 square feet\*. There shall be no more than 5.5 houses per buildable acre.

*[\*Per the "Development Agreement Between City of Kyle, Texas and Clayton Properties Group, Inc. D/B/A Brohn Homes (11/19/19)" the lot sizes are allowed to be reduced for alley loaded design. -Staff]*

Front Setback (feet)	Side Setback (feet)	Corner lot at Side Street or Alleyway Setback (feet)	Street Side Setback (feet)	Rear Setback (feet)	Min. Lot Square Footage Area	Min. Lot Street Width (feet)	Height Limit (Feet)
20	5	10	5	10	5,540	50	35

### **Conditions of the Zoning Ordinance**

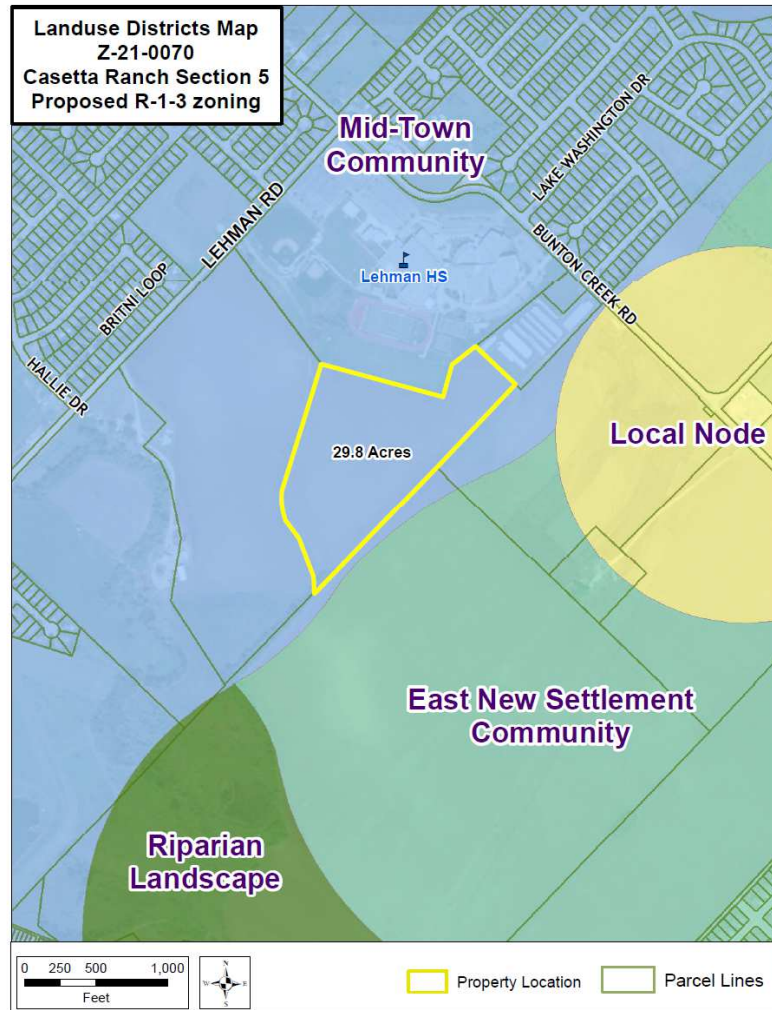
#### Sec. 53-1205 Amendments

(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

### COMPREHENSIVE PLAN TEXT

The subject site is located in the “Mid-Town Community District”. The “R-1-3” zoning district is recommended per the comprehensive plan.

#### 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

## **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.

## **Analysis**

The site to be rezoned is largely surrounded by undeveloped agricultural fields to the west and south. Lehman High School is to the north, and Cassetta Ranch is to the northeast. The parcel was in the City's ETJ until it was annexed per the associated development agreement (see development agreement in back up material). It's currently zoned "A" or "Agriculture", and per the terms of the development agreement will be rezoned to "R-1-3" (single family residential). Per state law and the terms of the development agreement, the standard process for zoning is to be followed.

When constructed, the site will have vehicular access through Phase 2 of Cassetta Ranch (west corner of property). A portion of Grist Mill Road will also traverse this parcel, eventually connecting to Lehman Road to the west. Grist Mill Road will continue to the east, through the Walton Group property (unbuilt), and eventually

connecting to the existing section of Grist Mill Road in the Bunton Creek neighborhood. Water and wastewater will be served by the City of Kyle, and the project will have to follow requirements for the Residential Style Guide.

## **Recommendation**

At the February 9, 2021 Planning & Zoning Commission meeting, the Commission vote 5-1 to recommend approval of the request. As this rezoning request follows the process required in the development agreement, and state law, staff asks the Mayor & Council to support a vote to approve the zoning change.

---

## **Attachments**

- Application
- Location Map
- Surrounding Zoning Map
- Land Use District Map
- Development Agreement



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 29.8 ACRES OF LAND FROM AGRICULTURE 'AG' TO SINGLE FAMILY RESIDENTIAL-3 'R-1-3' FOR PROPERTY LOCATED SOUTHEAST OF LEHMAN ROAD AND SOUTH OF LEHMAN HIGH SCHOOL, IN HAYS COUNTY, TEXAS. (CLAYTON PROPERTIES GROUP, INC., DBA BROHN HOMES – Z-21-0070); 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 29.8 acres of land from Agriculture 'AG' to Single Family Residential-3 'R-1-3', 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"

## Land



www.payne-llc.com  
 (817) 441-9143

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 324.14 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;

Payne Industries, LLC | 302 W. Hopkins, Suite 111 | San Marcos, TX 78666 | 512.749.2878

**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-T1

  
8/29/19  
Eric J. Dannheim, RPLS  
State of Texas #6075

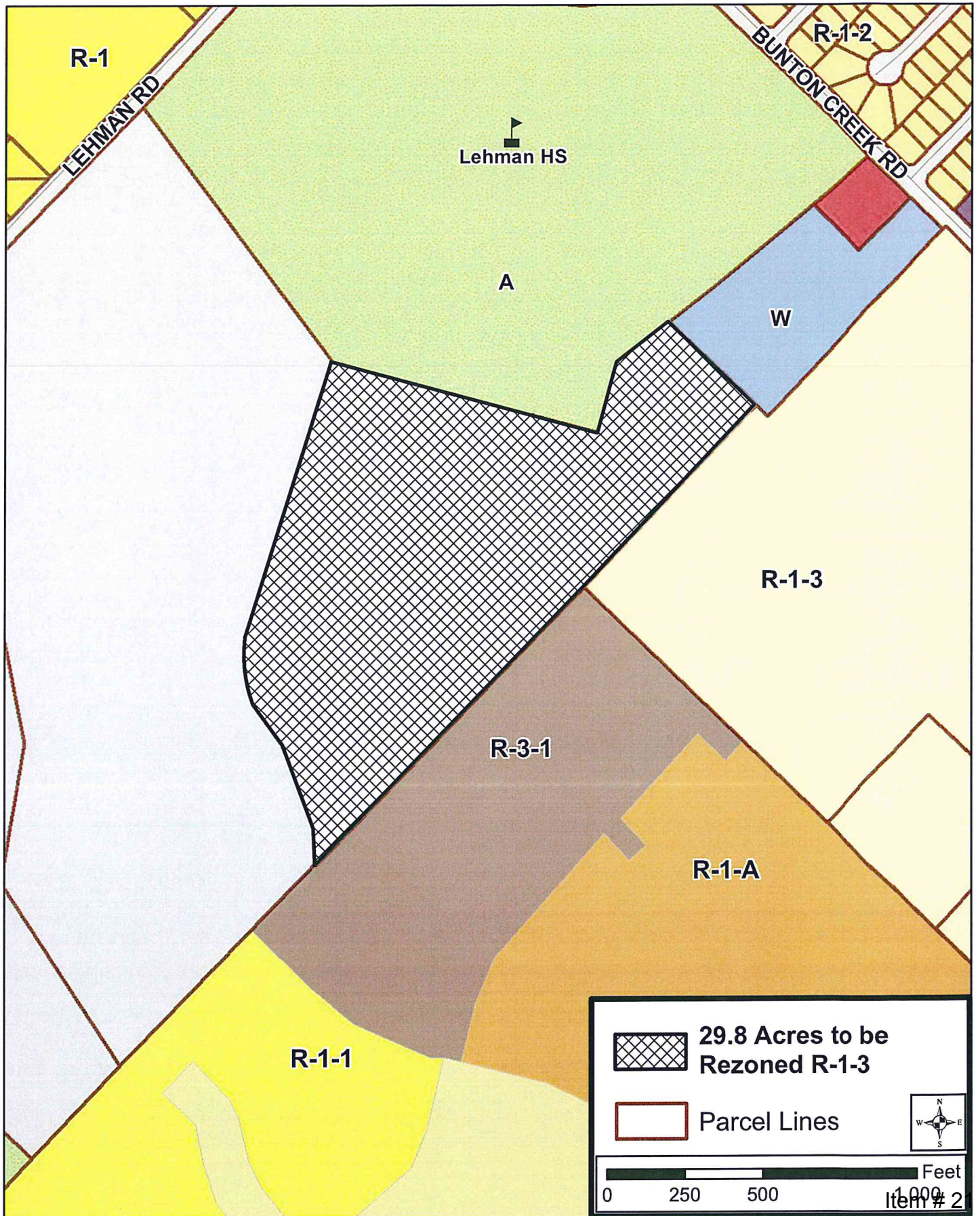


Payne Industries, LLC | Page 2 of 2



# Exhibit B

Z-21-0070    Casetta Ranch Section 5    29.8 Acres



## APPLICATION & CHECKLIST – ZONING CHANGE

**Zoning:** Clayton Properties Group, Inc., dba Brohn Homes

(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](http://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:** \$853.12

- ☒ 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: Development Agreement

Proposed Zoning Classification: R-1-3

Proposed Use of the Property: Single family Subdivision

Acreage/Sq. Ft. of Zoning Change: 29.792 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: Lehman Rd, Kyle, TX 78640

Subdivision Name/Lot & Block Nos.: \_\_\_\_\_

Property Recording Information: ☒ Hays County

Volume/Cabinet No. deed doc. no. 20023441

Page/Slide No. \_\_\_\_\_

3. **Ownership Information:**

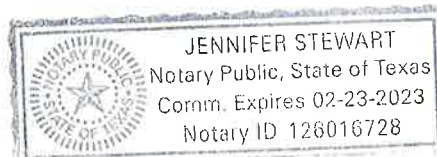
Name of Property Owner(s): Clayton Properties Group, Inc., doing business as Brohn Homes  
Adam Boenig, Vice President

**Certified Public Notary:**

This document was acknowledged before me on the 8 day of January, 2021 by  
Adam Boenig, Vice President (Owner(s)).

[Signature]  
Notary Public State of Texas

(Seal)



(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: 6720 Vaught Ranch Rd, Suite 200  
Austin, TX 78730

Phone Number: 512-551-1670

Fax Number: \_\_\_\_\_

Email Number: tylerg@brohnhomes.com

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

Signed: [Signature]

Date: 1-8-21



**4. Agent Information:**

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

Agent's Name: Adam Berry

Agent's Address: 101 West Louis Henna Blvd, Suite 400  
Austin, TX 78728

Agent's Phone Number: 980-221-1553

Agent's Fax Number: \_\_\_\_\_

Agent's Mobile Number: 512-507-4361

Agent's Email Number: aberry@bgeinc.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: 1-8-21



## PLAN DETAILED REPORT Z-21-0070 FOR CITY OF KYLE, TX

<b>Plan Type:</b> Zoning	<b>Project:</b> Casetta Ranch	<b>App Date:</b> 01/11/2021
<b>Work Class:</b> Zoning	<b>District:</b> KYLE	<b>Exp Date:</b> NOT AVAILABLE
<b>Status:</b> In Review	<b>Square Feet:</b> 0.00	<b>Complete Date:</b> NOT COMPLETED
<b>Description:</b> CLAYTON PROPERTIES GROUP, INC DBA BROHN HOMES - CASETTA RANCH 5	<b>Valuation:</b> \$0.00	<b>Assigned To:</b> Debbie Guerra

15751-R70300	Main	<b>Address:</b> 1000 Lehman Rd Kyle,	Main
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<b>Owner/Builder</b> Adam Boenig 6720 Vaught Ranch, Ste 200 Rd Austin, TX 78730	<b>Applicant</b> Adam Berry W 101 Louis Henna Blvd Suite: Ste 400 Austin, TX 78728	<b>Owner/Builder</b> Tyler Gatewood 6720 Vaught Ranch, Ste. 200 Rd Austin, TX 78730
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Business: 512-551-1670	Business: 980-221-1553 Mobile: 512-507-4361	Business: 512-551-1670
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<b>Note</b>	<b>Created By</b>	<b>Date and Time Created</b>
1. Zoning change per development agreement recorded as doc. #20030094	Debbie Guerra	01/13/2021

Invoice No.	Fee	Fee Amount	Amount Paid
INV-00014914	Zoning Change Application Fee	\$428.06	\$428.06
	Site Signage	\$127.00	\$127.00
	Zoning Change Fee - Per Acre	\$107.85	\$107.85
	Newspaper Publication Fee	\$190.21	\$190.21
	Total for Invoice INV-00014914	\$853.12	\$853.12
	<b>Grand Total for Plan</b>	<b>\$853.12</b>	<b>\$853.12</b>

<b>Condition</b>	<b>Comments</b>	<b>Date Created</b>	<b>Satisfied</b>
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Exhibit "A"

## Land



www.payne-ind.com  
TBP: 5-70194453

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;

Payne Industries, LLC | 302 W. Hopkins, Suite 1A | San Marcos, TX 78666 | 512.749.2878

**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-T1



8/29/19

Eric J. Dannheim, RPLS  
State of Texas #6075



Payne Industries, LLC | Page 2 of 2

15/ITC/1932341-com/IB

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF HAYS       §

KNOW ALL PERSONS BY THESE PRESENTS: THAT

JANSEN EQUIPMENT, INC., a Texas corporation (collectively, "Grantor"), for the and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration paid to it by CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation doing business in Texas as BROHN HOMES ("Grantee"), whose mailing address is 6720 Vaught Ranch Road, Suite 200, Austin, Texas 78730, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, as Grantee's sole and separate property, and subject to all of the reservations, exceptions and other matters set forth or referred to in this deed, the following described property:

- (1) That certain real property in Hays County, Texas, which is described on Exhibit "A" attached to and incorporated in this deed by reference, together with all oil, gas, and other minerals in or under the surface thereof, and all executory leasing rights with respect thereto (the "Land");
- (2) All of Grantor's right, title and interest in and to all utility lines, utility facilities, utility improvements, street and drainage improvements, and other improvements of any kind or nature located in, on, or under the Land (all of the foregoing being referred to in this deed collectively as the "Improvements"); and
- (3) All of Grantor's right, title and interest in and to all appurtenances benefiting or pertaining to the Land and/or the Improvements, including, without limitation, all of Grantor's right, title and interest in and to all streets, alleys, rights-of-way, or easements adjacent to or benefiting the Land, and all strips or pieces of land abutting, bounding, or adjacent to the Land (all of the foregoing being referred to in this deed collectively as the "Appurtenances").

The Land, Improvements and Appurtenances are collectively referred to in this deed as the "Property."

**TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to in this deed, Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, or under Grantor, but not otherwise; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on Exhibit "B" attached to and incorporated in this deed by reference, to the extent the same are valid, subsisting, and affect the Property; and (b) all

standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all liens securing the payment of any of the foregoing.

[SIGNATURE PAGE FOLLOWS]

Unofficial Copy



EXECUTED AND DELIVERED the 12 day of June, 2020.

JANSEN EQUIPMENT, INC.,  
a Texas corporation

By: James P. Jansen  
James P. Jansen, President

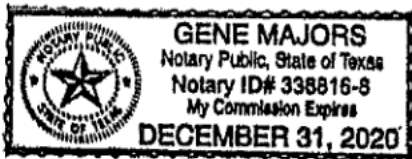
THE STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me this 12 day of June, 2020 by James P. Jansen, President of Jansen Equipment, Inc., a Texas corporation, on behalf of said corporation.

(SEAL)

Gene Majors  
Notary Public Signature



(W0944393.1)

Exhibit "A"

## Land



www.payne-ind.com  
TBP: 5-10194453

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8/29/19

Eric J. Dannheim, RPLS  
State of Texas #6075



Payne Industries, LLC | Page 2 of 2

Exhibit "B"

Permitted Exceptions

1. Easement:  
Recorded: Volume 229, Page 172, Deed Records, Hays County, Texas.  
To: Goforth Water Supply Corporation  
Purpose: water pipeline (blanket type)
2. Terms, conditions and stipulations as set forth in that certain Addendum to the Amended and Restated Development Agreement recorded in Document No. 18036141, Official Public Records, Hays County, Texas.
3. Inclusion within the Plum Creek Conservation District.
4. Inclusion within the Plum Creek Underground Water District.
5. Encroachment or protrusion of the boundary line of the adjacent 105.744 acre tract onto or over the most westerly property lot line as reflected on survey prepared by Eric J. Dannheim, R.P.L.S. No. 6075, dated 8/29/19.

**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.

20023441 DEED  
06/16/2020 12:18:14 PM Total Fees: \$46.00

Elaine H. Cárdenas, MBA, PhD, County Clerk  
Hays County, Texas

*Elaine H. Cárdenas*





January 8, 2021

City of Kyle  
Attn: Planning Department  
100 W. Center Street  
Kyle, TX 78640

Re: Zoning Request - 29.792 Acres – Clayton Properties Group, Inc. dba Brohn Homes

City of Kyle Planning Department,

Clayton Properties Group, Inc. dba Brohn Homes (Brohn) owns 29.792 acres located south of Lehman High School and west of the current Casetta Ranch subdivision off Bunton Lane.

This letter shall serve to request the zoning of all the property referenced herewith. The proposed change is to zone the Property to R-1-3 in compliance with and subject to the Development Agreement between City of Kyle, Texas and Clayton Properties Group, Inc. dba Brohn Homes, approved by the City Council and entered into on June 16, 2020. The Development Agreement is recorded in the Hays County Public Records as document # 20030094.

Brohn requests the Zoning Change Application be processed for approval under the terms of the Development Agreement.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Adam Boenig', with a large, stylized flourish extending from the end of the name.

Adam Boenig  
Vice President  
Clayton Properties Group Inc. (dba Brohn Homes)



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 uncoded 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 SUBDIVISION 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 I; 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.

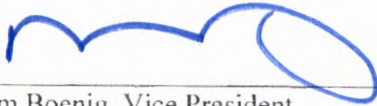
**9.09 Anti-Boycott Verification.** To the extent this Agreement constitute a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal 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 16<sup>TH</sup> day of JUNE, 2019. 2020

Clayton Properties Group Inc. (dba – Brohn Homes)

By:

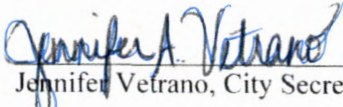
  
Adam Boenig, Vice President

CITY OF KYLE, TEXAS

By:

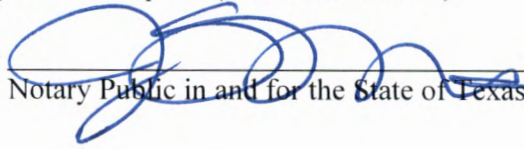
  
Travis Mitchell, Mayor

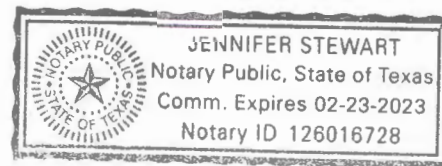
ATTEST:

  
Jennifer Vetrano, City Secretary

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF Travis   §

This instrument was acknowledged before me on 4/16/20, 2019, by Adam Boenig, Vice President of Clayton Properties Group Inc (dba Bohn Homes).

  
\_\_\_\_\_  
Notary Public in and for the State of Texas





**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**



**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:

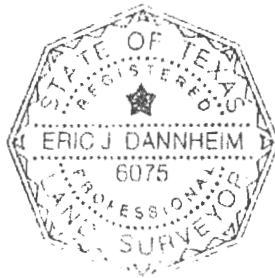
- 1) **S75°00'47"E**, a distance of **883.03** feet to a 1/2-inch iron rod with "Chaparral" cap found;
- 2) **N15°03'42"E**, a distance of **233.76** feet to a 1/2-inch iron rod with "Chaparral" cap found;
- 3) **N52°15'15"E**, a distance of **209.77** feet to the **POINT OF BEGINNING** hereof, and containing 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



**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;

**WHEREAS**, 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:

May 5, 2015

## 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 180<sup>th</sup> 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 180<sup>th</sup> 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.

May 5, 2015

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

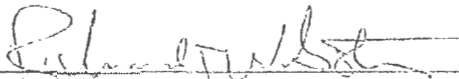
May 5, 2015

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ACKNOWLEDGEMENT

CITY OF KYLE, TEXAS

By:   
R. Todd Webster, Mayor

ATTEST:

  
Amelia Sanchez, City Secretary

May 5, 2015

**EXHIBIT A**  
**PRIOR AGREEMENT**

May 5, 2015

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Item # 21

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 October, 2009.**

**ATTEST:**

**THE CITY OF KYLE, TEXAS**

  
Amelia Sanchez, City Secretary

  
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 as 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 5<sup>th</sup> day of October, 2009.

Owner (s)

Harold Lehman  
Printed Name: Harold Lehman

Printed Name: \_\_\_\_\_

City of Kyle, Texas

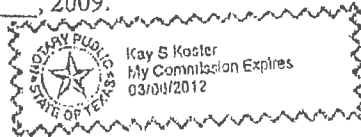
Miguel Gonzalez  
Miguel Gonzalez, Mayor

STATE OF TEXAS §

COUNTY OF HAYS §

Hazel Lehman 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 5<sup>th</sup> day of October, 2009.



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

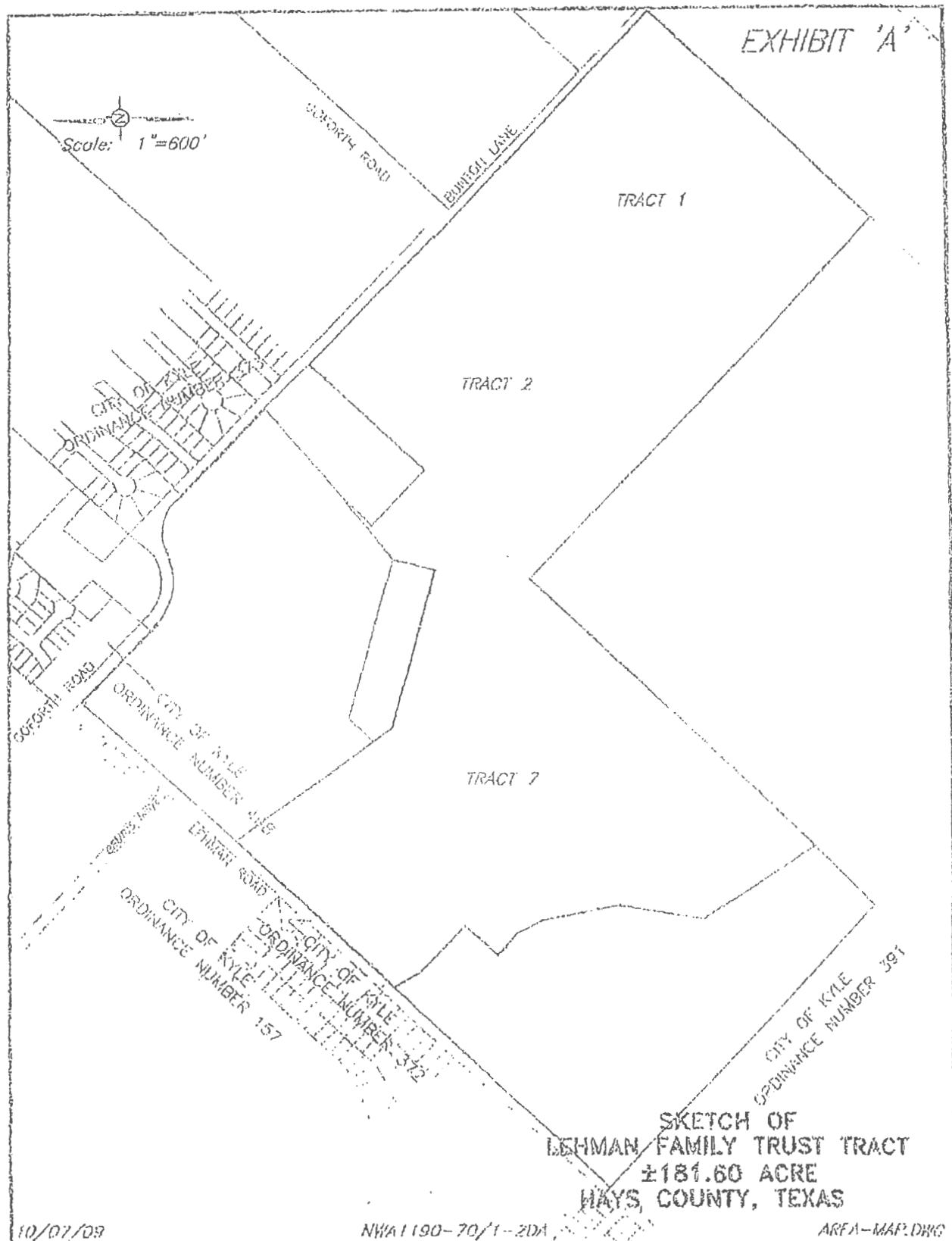
STATE OF TEXAS §  
COUNTY OF HAYS §

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 20<sup>th</sup> day of October, 2009.



Amelia L. Sanchez  
Notary Public - State of Texas





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 176 Official Public Records of Hays County, Texas.

19/13/2021

# 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 (00082197)  
HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197)  
HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Quick Ref ID: R70300  
Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) - 100%  
Owner Address: HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Property: 10-0263-0009-00000-2  
Legal Description: A0263 JOHN JONES SURVEY, ACRES 84.4273

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

Page 1 of 1

# 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 (00082197)  
HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197)  
HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Quick Ref ID: R12600  
Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) - 100%  
Owner Address: HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Property: 10-0021-0010-00000-2  
Legal Description: A0021 MILTON B ATKINSON SURVEY, ACRES 50.06

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
<b>2008</b>					
Plum Creek	10,760	0.018000	1.94	1.94	1.94
Hays Consolidated	10,760	1.481300	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 (00082197)  
HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197)  
HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Quick Ref ID: R12590  
Owner: HLP LEHMAN FAMILY LIMITED PARTNERSH (00082197) - 100%  
Owner Address: HAZEL M LEHMAN TRUSTEE  
1000 LEHMAN RD  
KYLE, TX 78640

Property: 10-0021-0009-00000-2  
Legal Description: A0021 MILTON B ATKINSON SURVEY, ACRES 48.68

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 Garaway 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

## ENTITIES

R11514 : ABS 14 JOHN STUART SURVEY 38.93 AC	FHA Hays Co ESD #5
R12599 : A0021 MILTON B ATKINSON SURVEY, ACRES 48.68	SHA Hays Consolidated ISD
R12600 : A0021 MILTON B ATKINSON SURVEY, ACRES 50.11	GHA Hays County
R70073 : ABS 14 JOHN STUART SURVEY 20.00 AC	PCC Plum Creek Conservation District
R70300 : A0263 JOHN JONES SURVEY, ACRES 111.6283	WPC Plum Creek Groundwater District
R70301 : ABS 263 JOHN JONES SURVEY 1.00 AC GEO#90602151	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

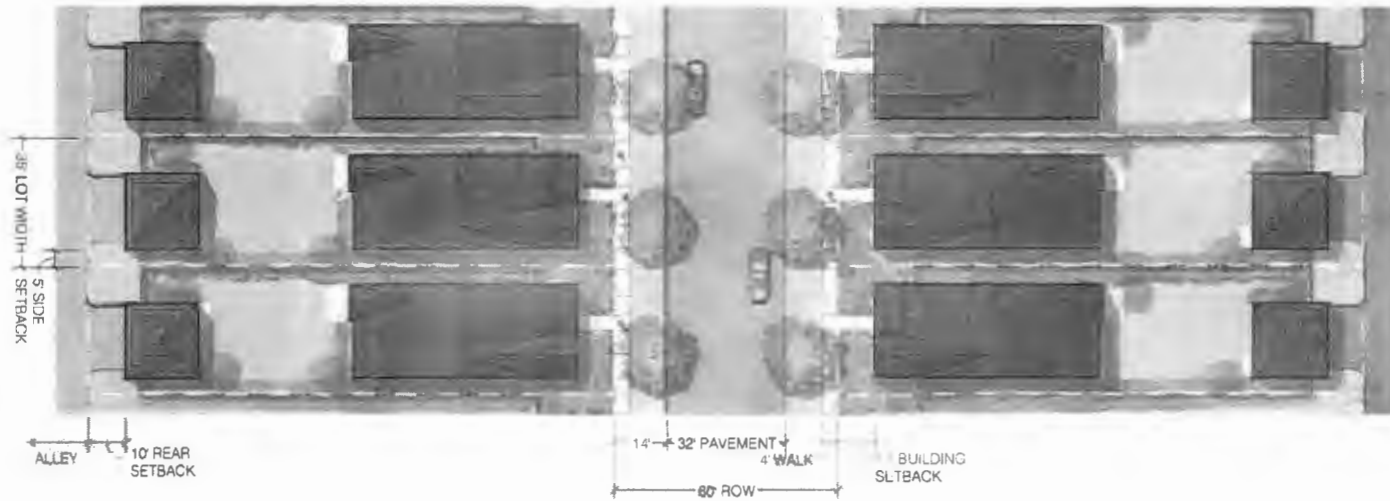
R12600 - LEHMAN, HAZEL LIPPE (O0022441)  
1000 LEHMAN RD KYLE, TX 78640

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**





KYLE, TEXAS

## CASSETTA RANCH

TYPICAL STREET PLAN - 35' LOTS

FEBRUARY 26, 2019

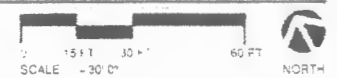




PHOTO  
STUDIO

KYLE, TEXAS

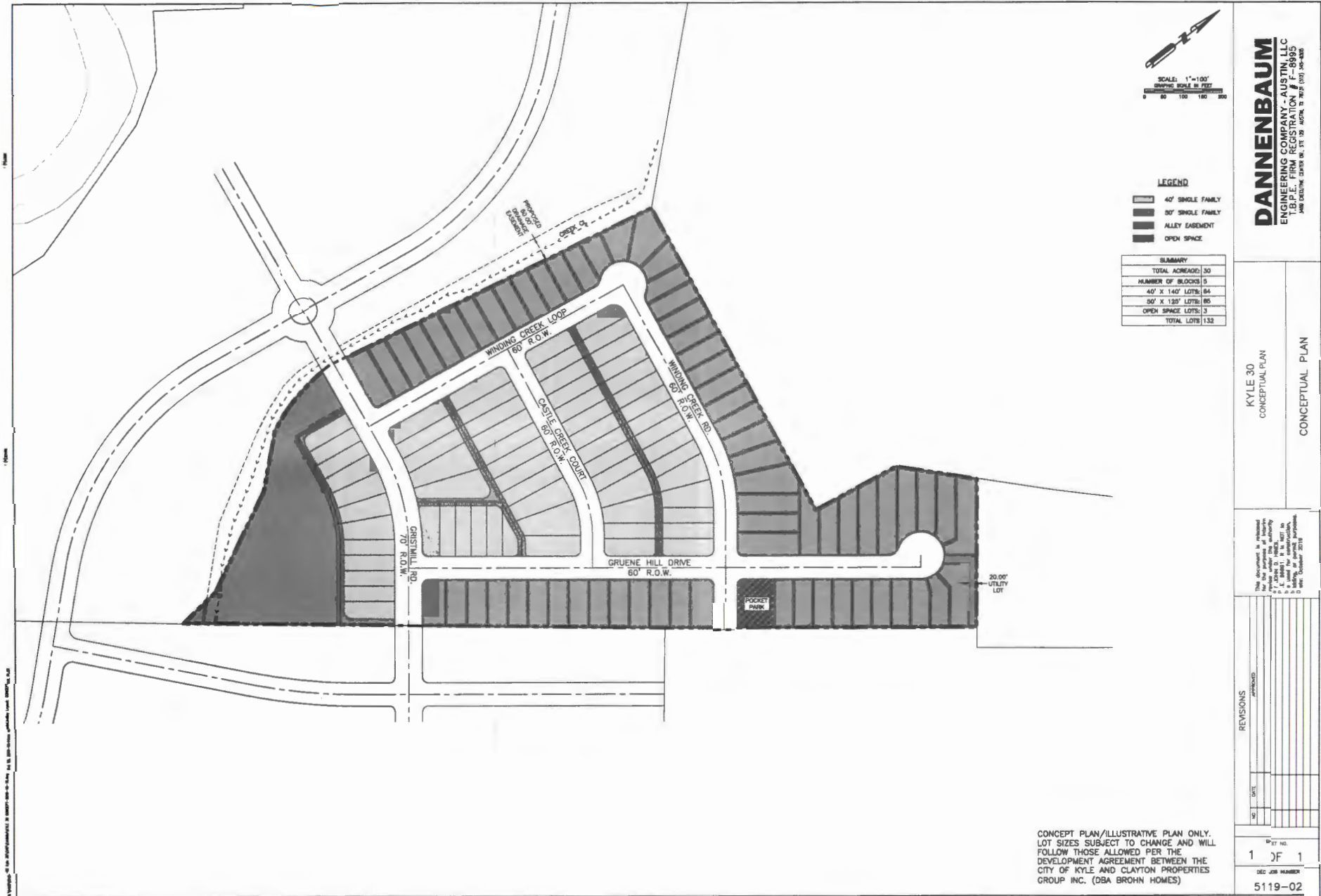
CASSETTA RANCH

TYPICAL STREET VIEW - 35' LOTS

FEBRUARY 20, 2019

BROHN  
HOMES

**EXHIBIT D**  
**CONCEPT PLAN**



**DANNENBAUM**  
ENGINEERING COMPANY - AUSTIN, LLC  
T.E.P.E. FIRM REGISTRATION # F-8995  
AND LICENSED UNDER THE TEXAS PROFESSIONAL ENGINEERING ACT

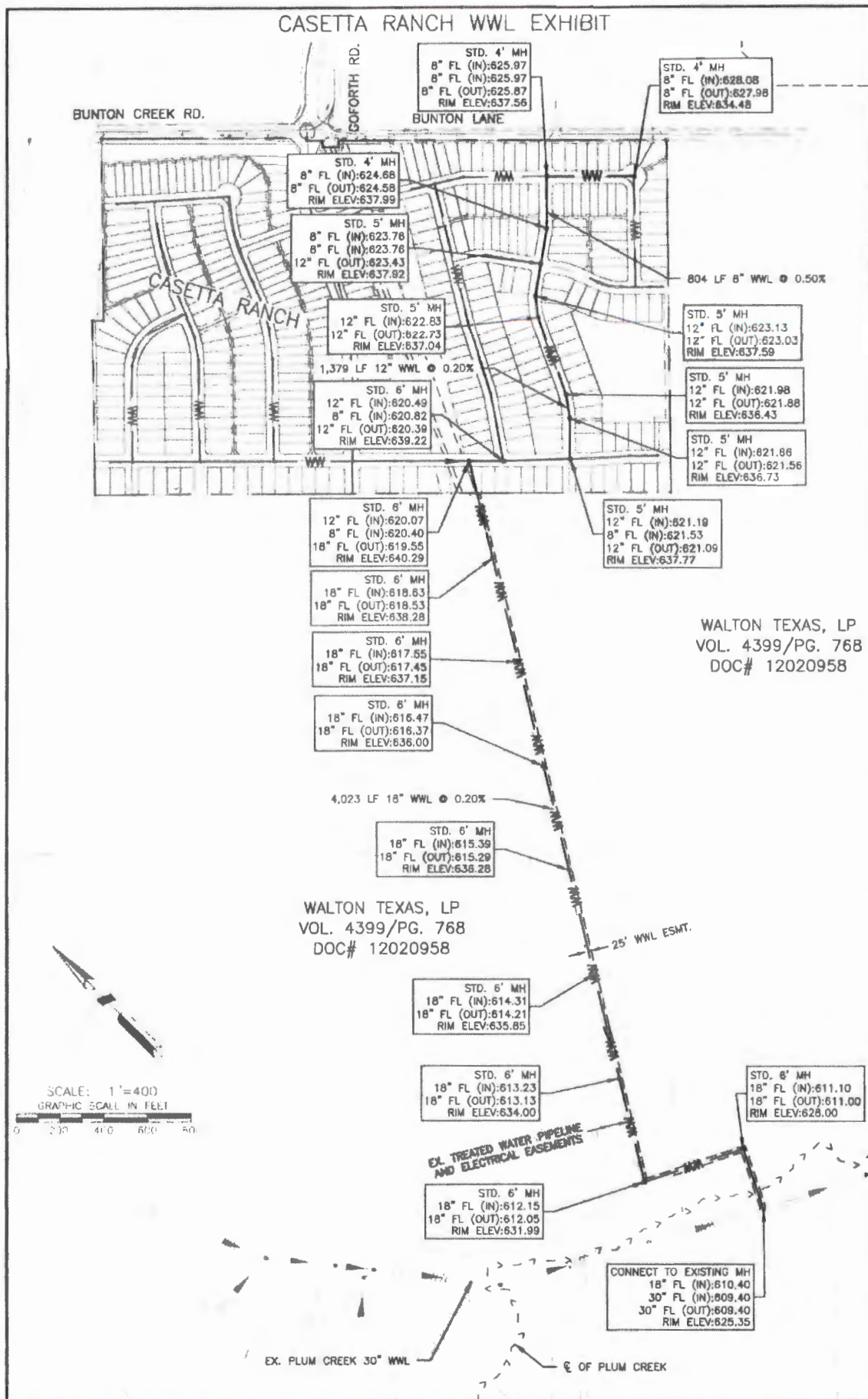
KYLE 30  
CONCEPTUAL PLAN

This document is submitted for the purpose of being recorded in the public records of the State of Texas. It is not to be used for any other purpose without the written consent of the engineer.

REVISIONS	
DATE	DESCRIPTION
9/1/19	1

1 OF 1  
DEC JOB NUMBER  
5119-02

**EXHIBIT E**  
**WALTON LINE**





## 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:

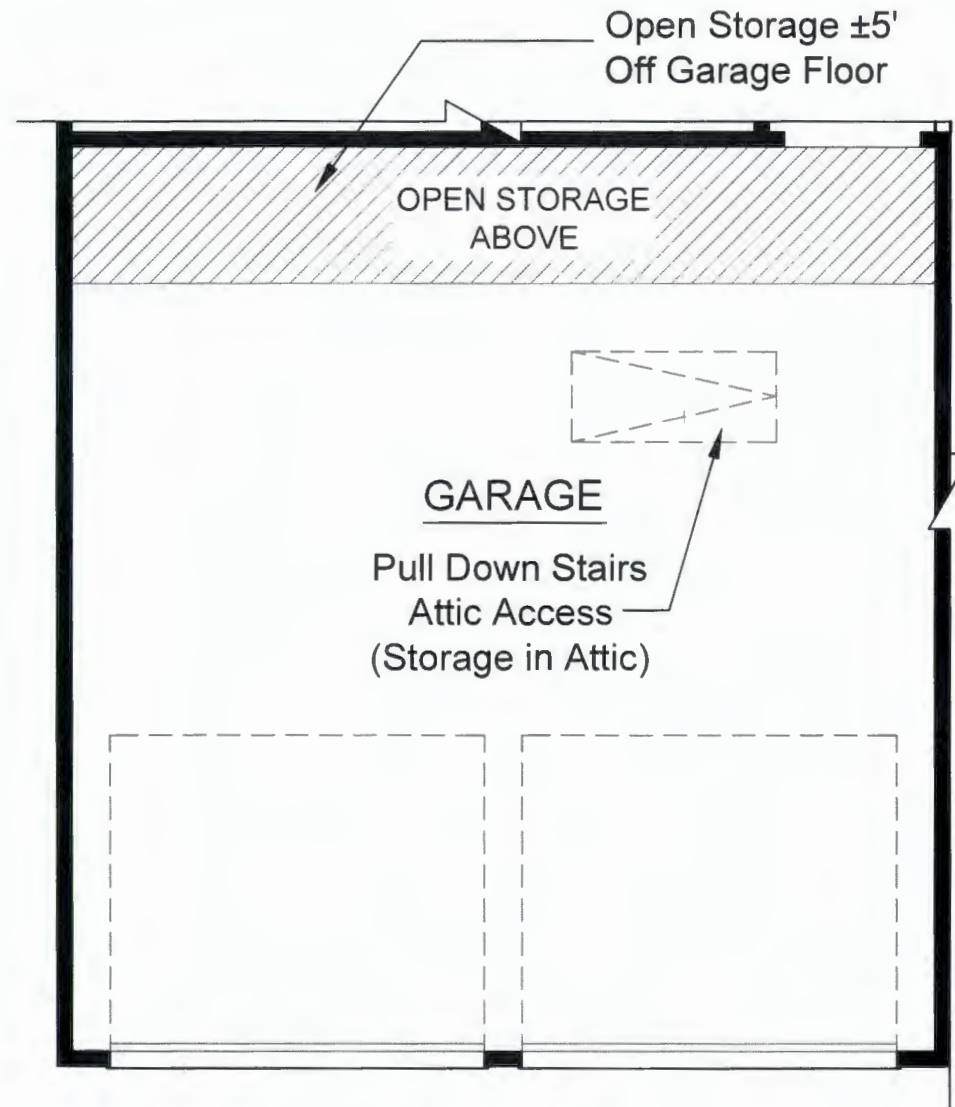
- (1) the difference between the dollar amount of the approved bid for Wastewater Line Project Alternate #1 and the dollar amount of the approved bid for Wastewater Line Project Alternate #2; and

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 OPEN STORAGE @ GARAGE TYP.  
A

*\*Location and Dimensions of Storage and Attic Access May Vary*

Item # 21



## 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**

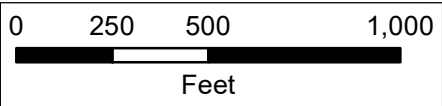
**07/22/2020 03:01:17 PM      Total Fees: \$270.00**

 *Elaine H. Cardenas*

**Elaine H. Cárdenas, MBA, PhD, County Clerk  
Hays County, Texas**



**Project Location Map**  
**Z-21-0070**  
**Casetta Ranch Section 5**  
**Proposed R-1-3 zoning**



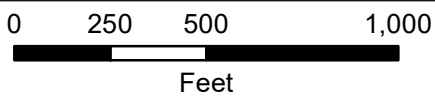
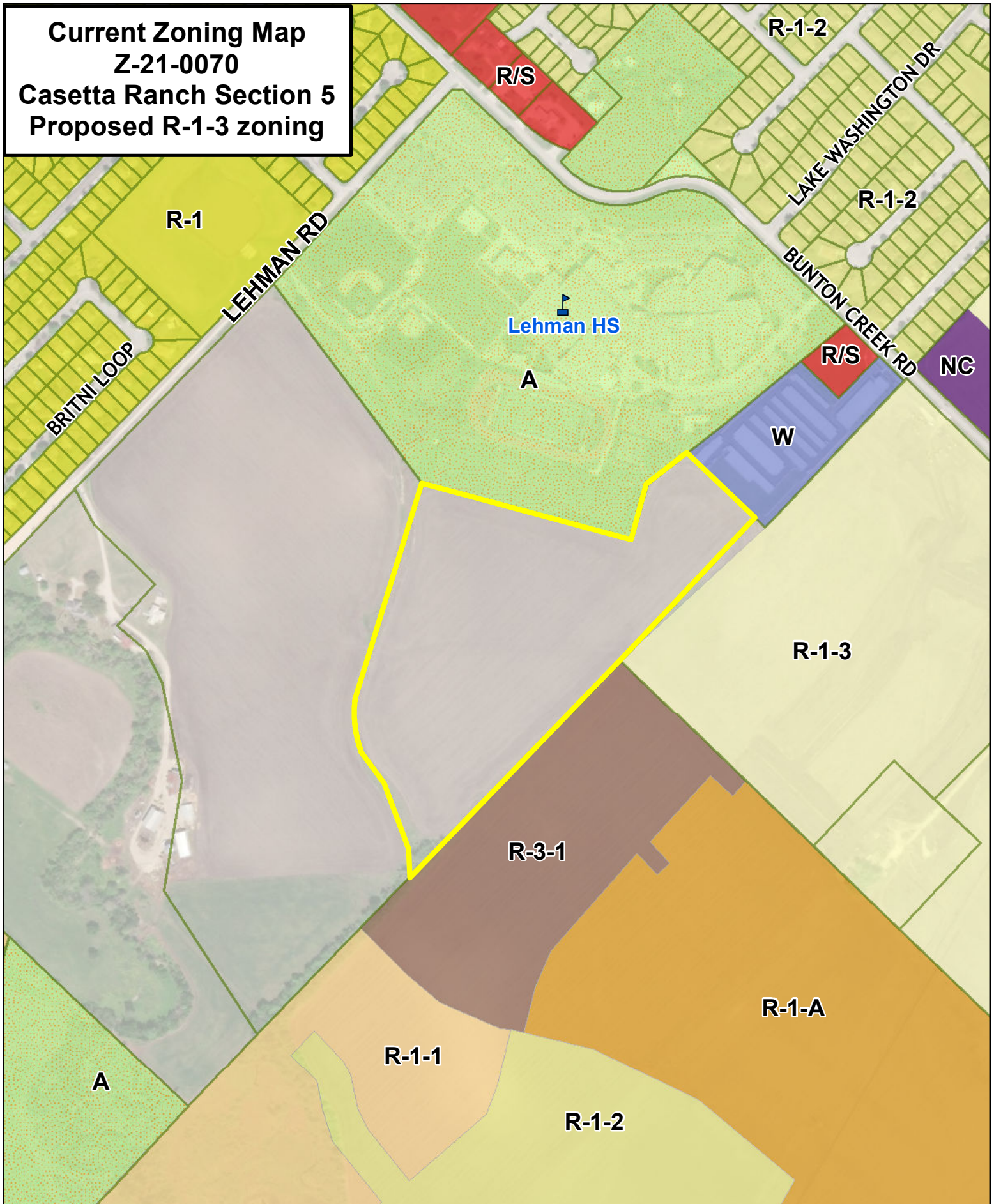
Property Location



Parcel Lines



**Current Zoning Map**  
**Z-21-0070**  
**Casetta Ranch Section 5**  
**Proposed R-1-3 zoning**

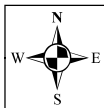
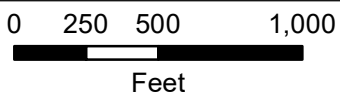
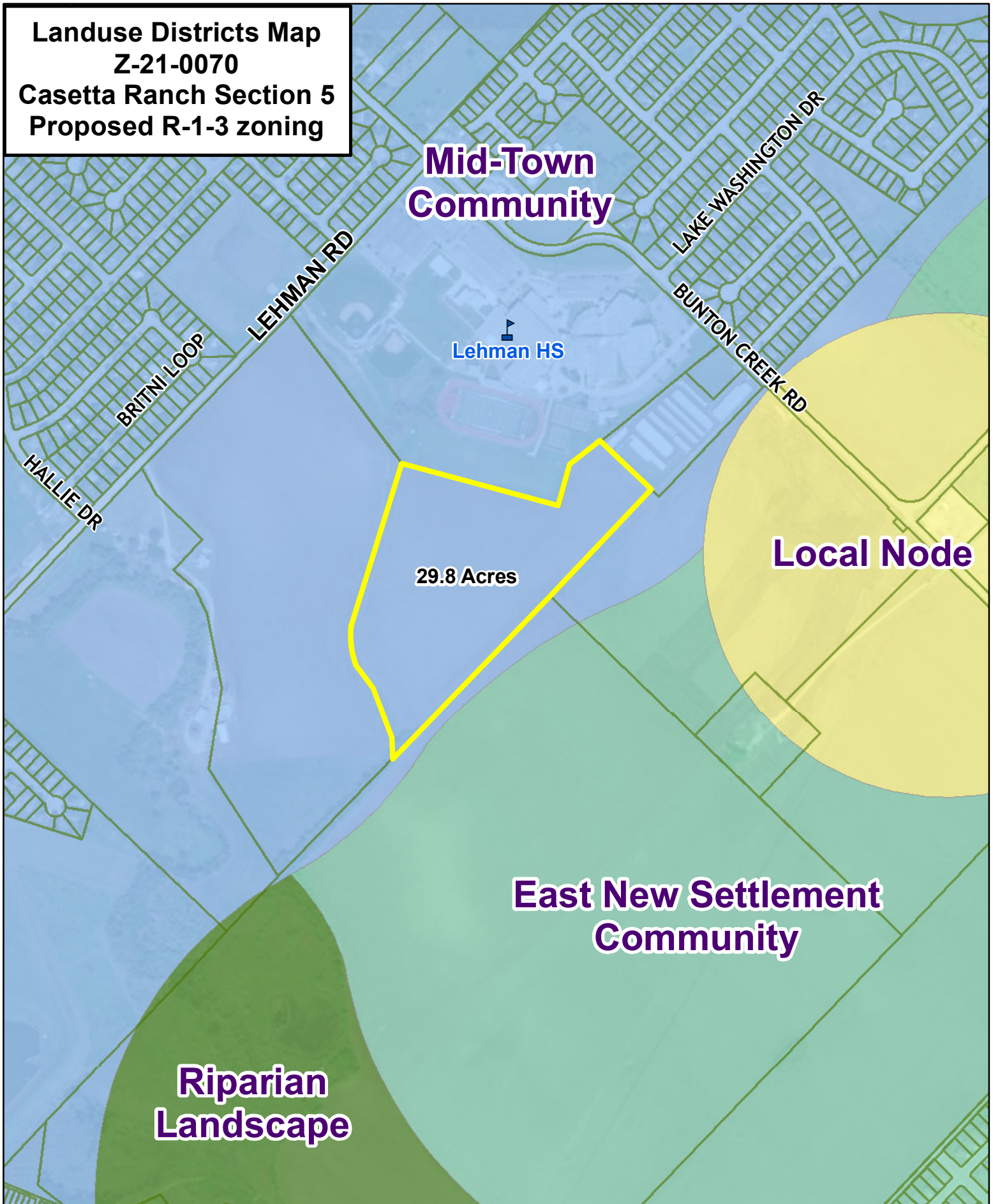


 Property Location

 Parcel Lines



**Landuse Districts Map  
Z-21-0070  
Casetta Ranch Section 5  
Proposed R-1-3 zoning**



Property Location



Parcel Lines

Item # 21



# CITY OF KYLE, TEXAS

## Katherine Support and Development Funding

**Meeting Date: 2/23/2021**  
**Date time: 7:00 PM**

**Subject/Recommendation:** A Resolution of Support for a Housing Tax Credit Application for The Katherine, a 55+ Affordable Rental Housing Development, and Commitment of Development Funding by a Local Political Subdivision. ~ *Robert Rizo, Council Member*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

- ☐ The Katherine - Resolution of Support
- ☐ KCG presentation - The Katherine REV01

RESOLUTION NO: \_\_\_\_\_

RESOLUTION OF SUPPORT FOR A HOUSING TAX CREDIT APPLICATION FOR THE KATHERINE AND  
COMMITMENT OF DEVELOPMENT FUNDING BY A LOCAL POLITICAL SUBDIVISION

WHEREAS, KCG DEVELOPMENT, LLC , and/or it's assigns, has proposed a development for affordable rental housing at 1351 Bunton Creek Road, named THE KATHERINE, in the City of Kyle in Hays County, Texas; and

WHEREAS, KCG DEVELOPMENT, LLC and/or it's assigns, has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2021 Competitive 9% Housing Tax Credits for The Katherine.

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

It is hereby

RESOLVED, that the City of Kyle, acting through its governing body, hereby confirms that it SUPPORTS the proposed THE KATHERINE, at 1351 Bunton Creek Road., and that this formal action has been taken to put on record the opinion expressed by the City of Kyle on February 16<sup>th</sup>, 2021 and

RESOLVED, that the City of Kyle, acting through its governing body, additionally confirms that it will commit to fee waivers in an amount no less than \$500 to The Katherine, conditioned upon its receipt of Housing Tax Credits.

FURTHER RESOLVED that for and on behalf of the Governing Body, Travis Mitchell, the Mayor of the City of Kyle, is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

PASSED AND APPROVED by the City Council of the City of Kyle, Texas, on this the 16<sup>th</sup> day of February, 2021.

ATTEST:

CITY OF KYLE, TEXAS

\_\_\_\_\_  
Jennifer Holm, City Secretary

\_\_\_\_\_  
Travis Mitchell, Mayor



# THE KATHERINE

*Proposed Active 55+ Housing Community*

***“Building better lives through better communities”***

**KCG**

COMPANIES

Item # 22



# About KCG

- Named nation's 16<sup>th</sup> Largest Affordable Housing Developer in 2019
- Currently have developed, constructed and own 14 developments
- Communities consist of New Construction, Acquisition Rehabs, Historic Adaptive Reuse, and Brownfields
  - Five communities are in Texas

KCG Organization is vertically integrated

*Development*

→ *Design*

→ *Construction*

→ *Asset Management*

My experience: I have been helping develop workforce/affordable communities in Texas since 2008 (1,700 units and over \$250M in total development costs).



Austin, TX | Legacy Ranch (NC) | 4% 232 units senior (55+)



Houston MSA:  
Amarillo MSA:

Houston | Bellfort Park (Acq/Rehab) | 9% 64 units family  
Hereford | Blue Water Garden (Acq/Rehab) | 4% 132 units family

# The Katherine

“The Katherine” naming was selected as an homage to Kyle’s Pulitzer Prize-winning author, Katherine Anne Porter.

Site is ~5.13 acres on Bunton Creek Road

Proposing ~105 units total

Elevator served 3-story buildings

Site currently zoned Ag (needs rezoning). Proposed Land Use of R-3-2 comports with Comprehensive Plan for New Town District/Community as a recommended use.

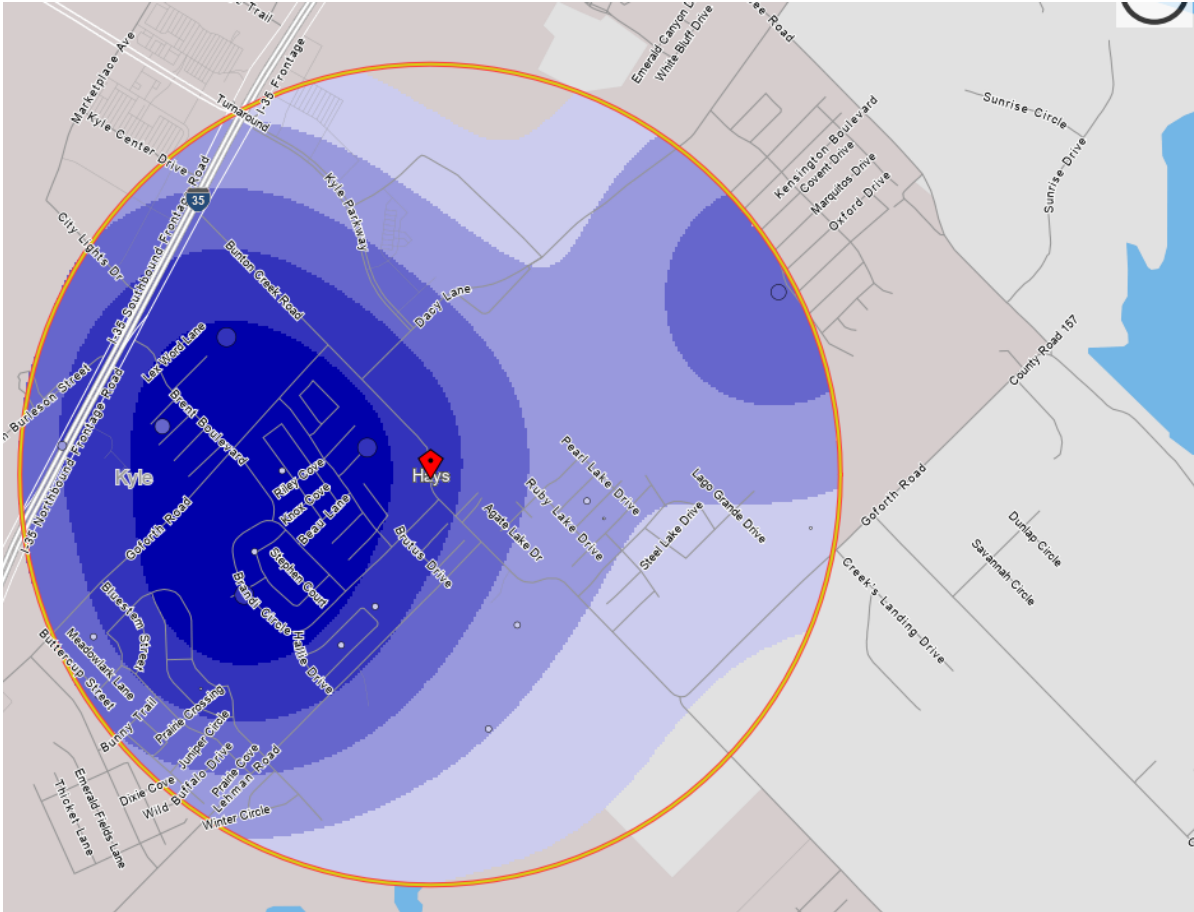
East end of site would have access to future Kyle Parkway extension.

The Katherine will add much needed housing inventory. Currently only one other affordable senior community exists in Kyle (The Overlook at Plum Creek), which was built in 2012 and has 94 units (80 affordable and 14 market rate).

Why Kyle: Rapidly expanding market with huge population and retail/commercial/residential growth over the past decade. Diversity in economy and business requires diversity in housing options.



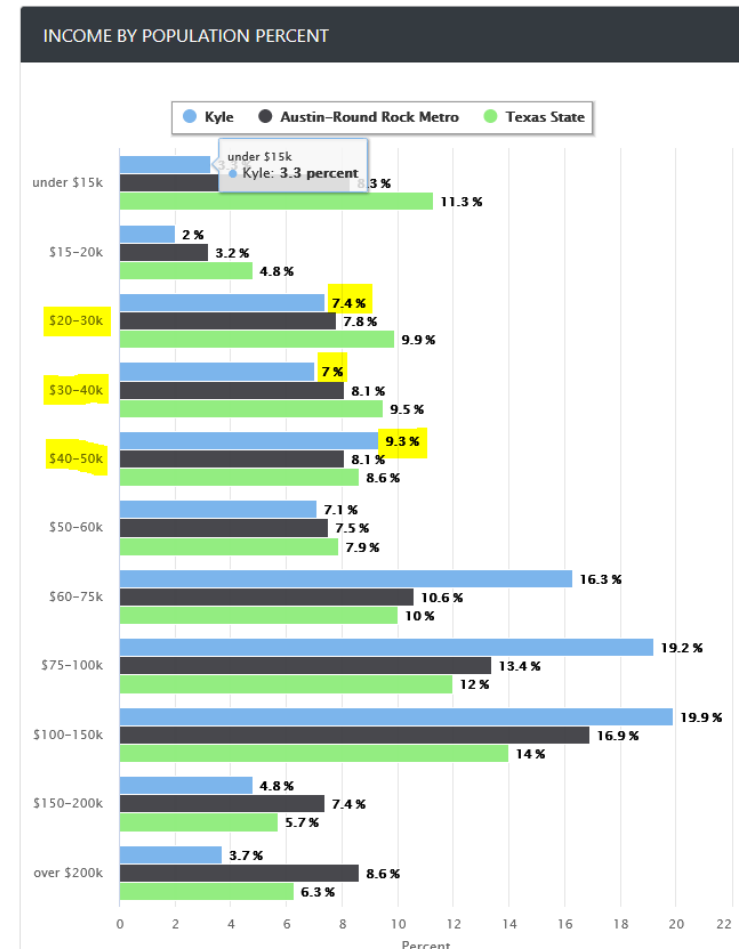
# Work/Income Profile Analysis



1 mile Radius of proposed site

Source: <https://onthemap.ces.census.gov/>

NAICS Industry Sector		
	Count	Share
Agriculture, Forestry, Fishing and Hunting	2	0.3%
Mining, Quarrying, and Oil and Gas Extraction	0	0.0%
Utilities	0	0.0%
Construction	80	11.6%
Manufacturing	118	17.1%
Wholesale Trade	47	6.8%
Retail Trade	13	1.9%
Transportation and Warehousing	19	2.7%
Information	0	0.0%
Finance and Insurance	8	1.2%
Real Estate and Rental and Leasing	12	1.7%
Professional, Scientific, and Technical Services	40	5.8%
Management of Companies and Enterprises	0	0.0%
Administration & Support, Waste Management and Remediation	15	2.2%
Educational Services	0	0.0%
Health Care and Social Assistance	206	29.8%
Arts, Entertainment, and Recreation	41	5.9%
Accommodation and Food Services	45	6.5%
Other Services (excluding Public Administration)	46	6.6%
Public Administration	0	0.0%

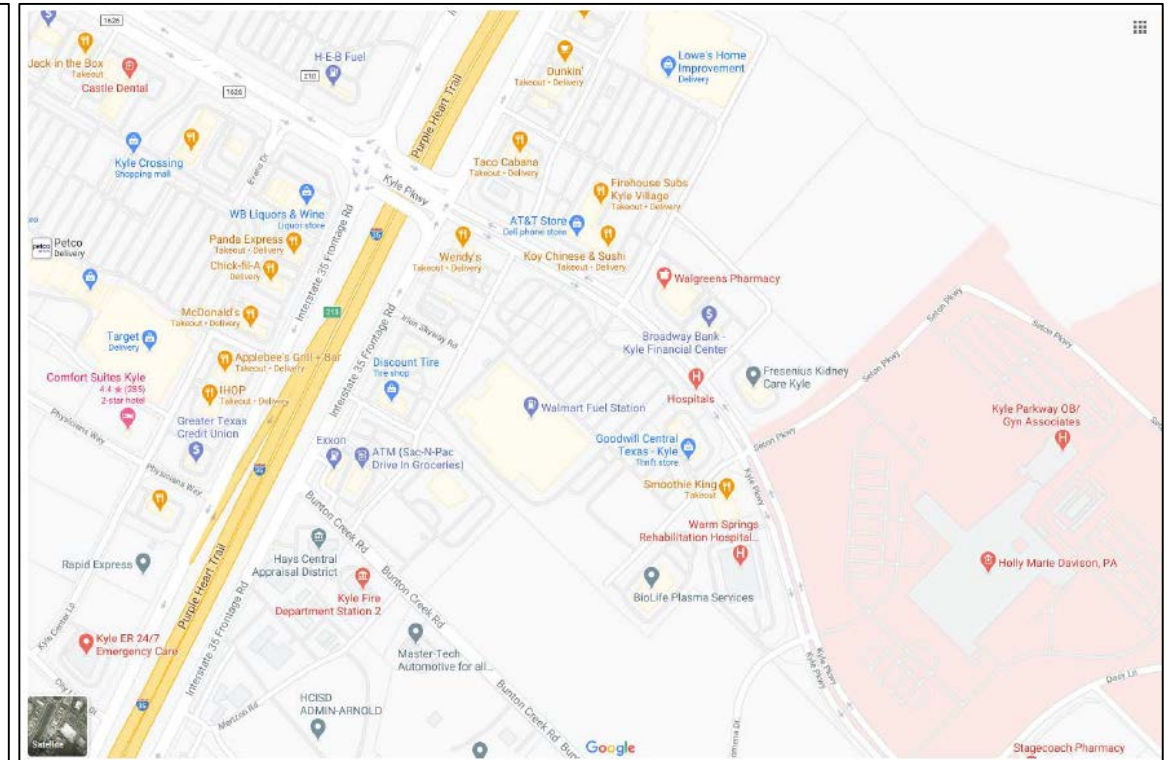
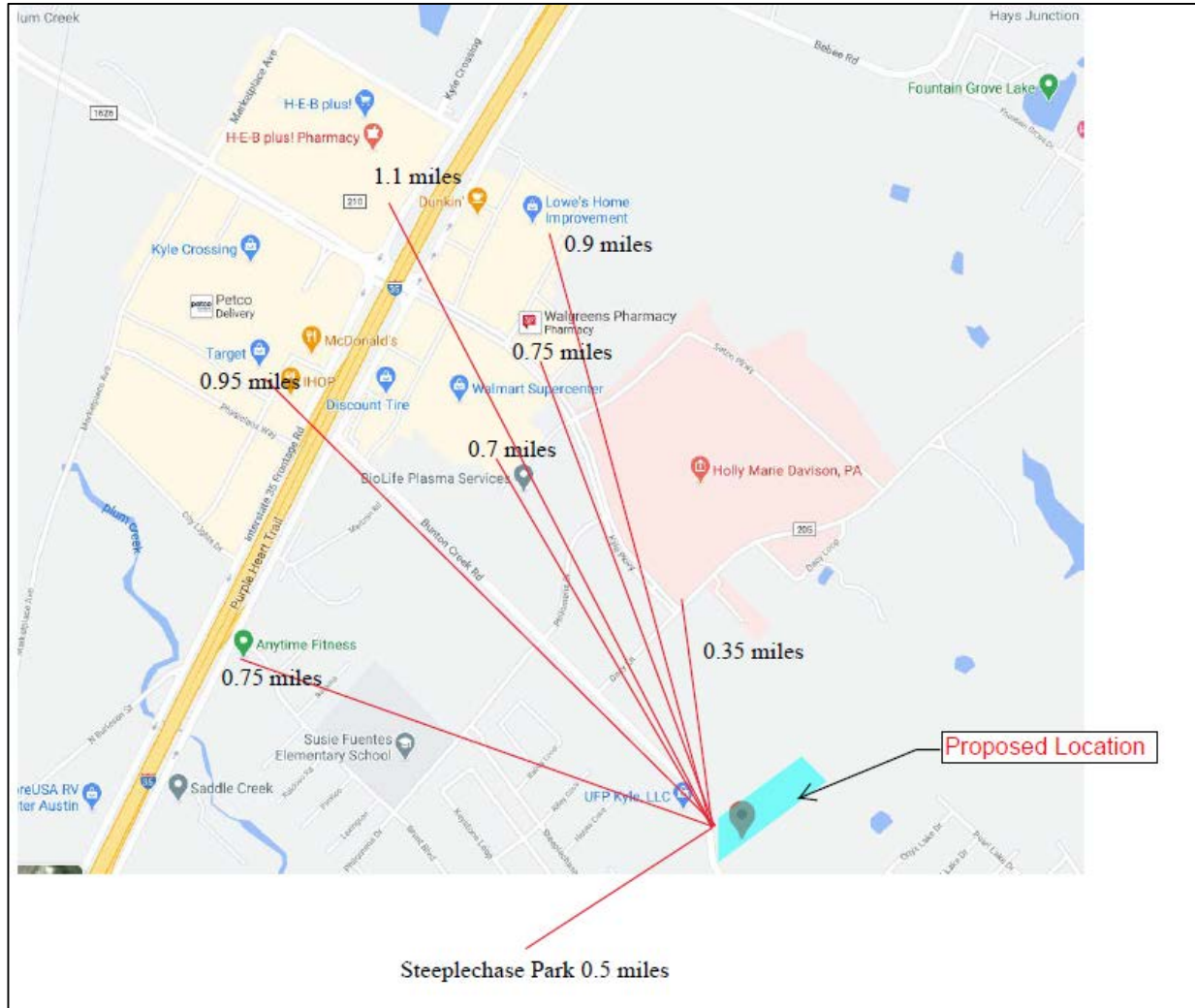


~24% of the population within "affordable housing" earnings

Source: <https://www.bestplaces.net/economy/city/texas/kyle>



# Proximity to Services

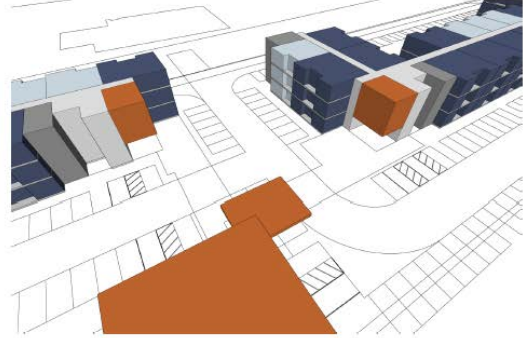


The Katherine is well located within a mile of many medical, retail, and commercial businesses.





# Design – Style



## ENTRY TOWERS & AMENITY

Three-story tower elements capped by extended roof mark the entry to each building and the connection between the units and the common areas / clubhouse / entry.

Envisioning these as three-story porches, enclosed on the upper levels, possibly open on the ground floor. Tower elements, but with voids.



Different material aesthetic, but shows a little bit of the shared porch idea and the void cut into the building to make an entry. Note stair tower immediately adjacent. We have the same condition.



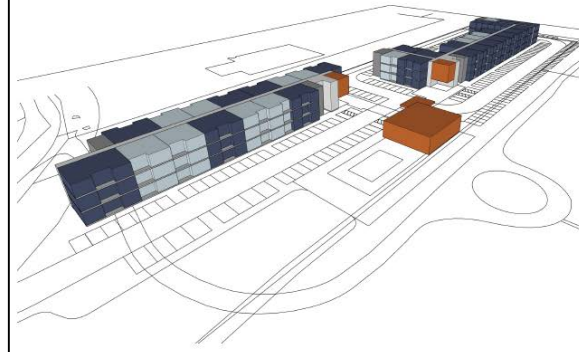
Takes the deep overhang even further. Possibly for the connections between the clubhouse and exterior amenity areas. Also porte-cochere.



Tower element, but in our case would be larger and the voids would be larger as well. Also, windows on the left are a nice composition that could play into these areas.



Previous h2uo project. Warmer and more rural materials.



## GENERAL CONCEPTS

Massing of distinct vertical blocks with deep articulated eaves and small vertical elements at corners.

Amenity / common area towers of shared front porches to serve as entries, elevator lobbies, and informal gathering spaces. Link the two residential buildings to the green space and amenity center.

Base details and embellishment from Texas interpretations of mediterranean renaissance architecture: deep articulated eaves and texture at the top; symmetrical windows in bays with hierarchy between floors; rustic base, etc.



Initial image from KCG. Tower element with deep overhangs. White / slate color palette with dark trim. 2-story base course on one facade and darker/more articulated top floor course throughout gives great proportion and contrast to lower.



More for general approach to palette, materials, and details than a specific precedent. High brand under upper windows, very dramatic eaves, dark trim and light palette. Clubhouse and entry towers (orange in the massing diagrams) would have a little more development in this direction.



Similar but of 4 stories. Incorporates gable on returns. May not be necessary here, but if missing seems too heavy, particularly around ends of U shaped building...

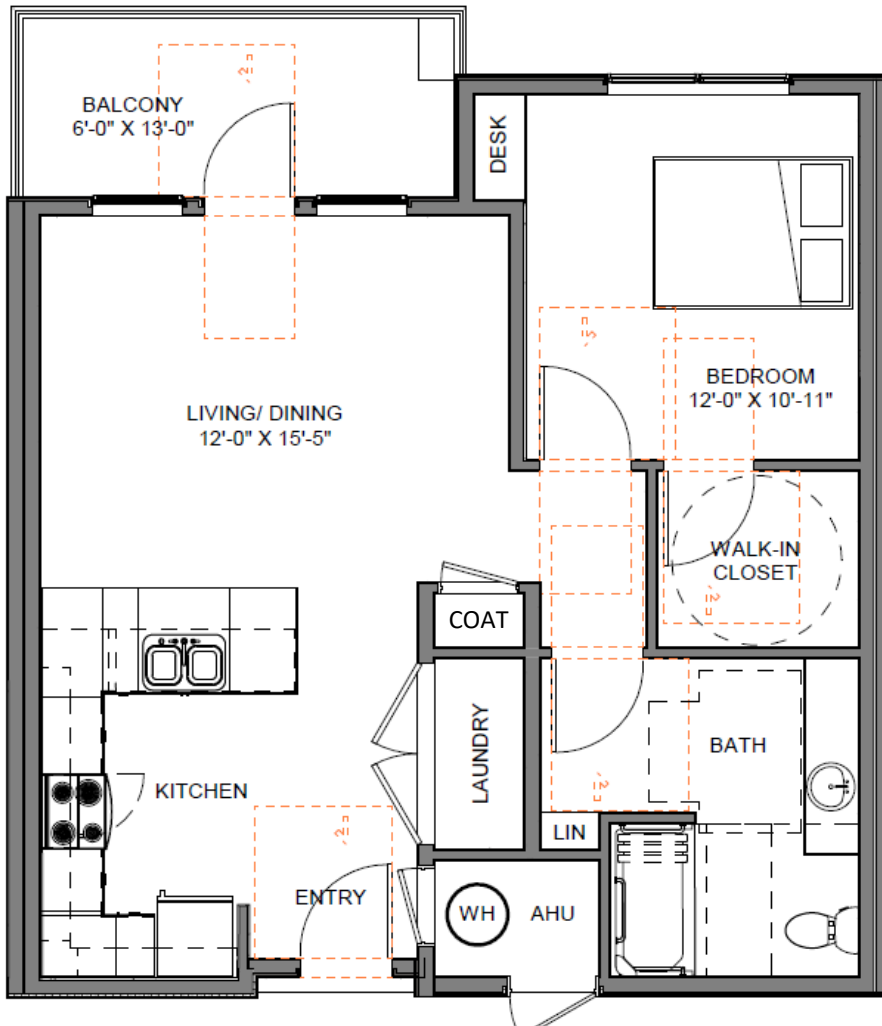


Different approach to vertical massing with differentiation between levels. Deep eaves throughout.

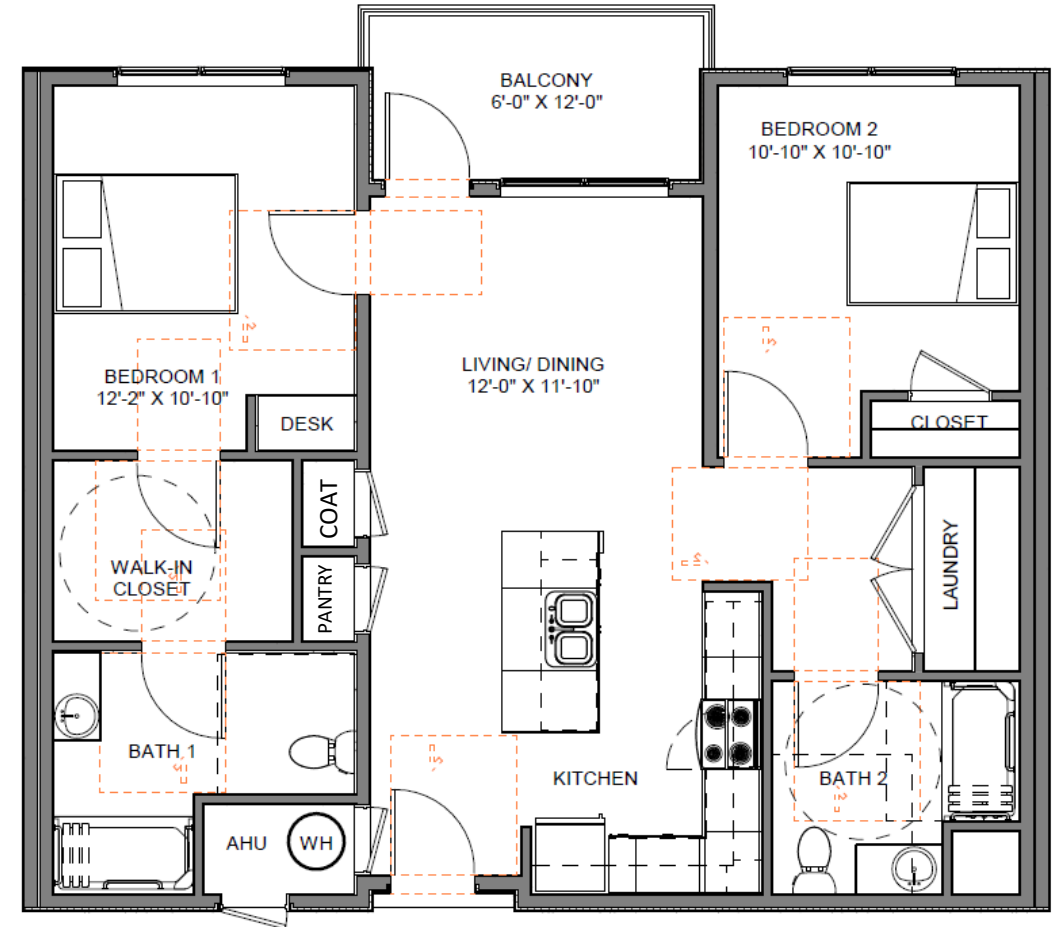


# Design – Unit Layout

1BR / 1BA – 725 sf



2BA / 2BR – 950sf



# Affordability of Units

HUD publishes Income and Rent Limits annually by county, which are based on the Area's Median Income.

Rents then correspond to an affordable level based on where a tenant falls within these lower workforce income bands.

## INCOME LIMITS

2020 Area Median Income:

\$97,600

AMFI %	Number of Household Members							
	1	2	3	4	5	6	7	8
20	\$ 13,680	\$ 15,620	\$ 17,580	\$ 19,520	\$ 21,100	\$ 22,660	\$ 24,220	\$ 25,780
30	\$ 20,520	\$ 23,430	\$ 26,370	\$ 29,280	\$ 31,650	\$ 33,990	\$ 36,330	\$ 38,670
40	\$ 27,360	\$ 31,240	\$ 35,160	\$ 39,040	\$ 42,200	\$ 45,320	\$ 48,440	\$ 51,560
50	\$ 34,200	\$ 39,050	\$ 43,950	\$ 48,800	\$ 52,750	\$ 56,650	\$ 60,550	\$ 64,450
60	\$ 41,040	\$ 46,860	\$ 52,740	\$ 58,560	\$ 63,300	\$ 67,980	\$ 72,660	\$ 77,340
70	\$ 47,880	\$ 54,670	\$ 61,530	\$ 68,320	\$ 73,850	\$ 79,310	\$ 84,770	\$ 90,230
80	\$ 54,720	\$ 62,480	\$ 70,320	\$ 78,080	\$ 84,400	\$ 90,640	\$ 96,880	\$ 103,120
120	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

## RENT LIMITS

AMFI %	Number of Bedrooms					
	0	1	2	3	4	5
20	\$342	\$366	\$439	\$507	\$527	\$625
30	\$513	\$549	\$659	\$761	\$849	\$937
40	\$684	\$732	\$879	\$1,015	\$1,133	\$1,250
50	\$855	\$915	\$1,098	\$1,269	\$1,416	\$1,562
60	\$1,026	\$1,098	\$1,318	\$1,523	\$1,699	\$1,875
65						
70	\$1,197	\$1,281	\$1,538	\$1,777	\$1,846	\$2,187
80	\$1,368	\$1,465	\$1,758	\$2,031	\$2,266	\$2,500

Income Bracket	1br /1ba (~725sf)	Rent before U/A	2br/2ba (~950sf)	Rent before U/A	Total
30%	3	\$549	6	\$659	9
50%	13	\$915	23	\$1,098	36
60%	16	\$1,098	29	\$1,318	45
MKT	7	\$1,281	8	\$1,538	15
Total	39		66		105

Utility Allowances estimated to be: 1br - \$68; 2br - \$87

These are from Hays County Housing Authority

# Financials

Development will utilize proceeds from 9% Low Income Housing Tax Credits ("LIHTC"), conventional debt and developer contributions as sources of funding.

## Uses:

Construction Costs	\$12,510,000
Land and Soft Costs	\$3,075,000
Construction loan Interest and Lender Costs	\$1,400,000
Permanent Financing Costs and Reserves	\$1,000,000
Permits  Contingency   All Other	<u>\$3,315,000</u>
Total:	\$21,300,000

## **Sources:**

Permanent Loan (conventional debt)	\$ 8,400,000
LIHTC equity proceeds	\$12,400,000
Owner Contribution	<u>\$ 500,000</u>
Total:	\$21,300,000

Property Taxes are estimated annual property taxes are ~\$1,000 / unit

Taxing Entity	Tax Rate	Est \$105,000
AUSTIN COMMUNITY COLLEGE	0.1049000	\$4,006
CITY OF KYLE	0.5416000	\$20,682
HAYS CO ESD #9	0.0598000	\$2,284
HAYS CO FIRE ESD #5	0.1087000	\$4,151
HAYS COUNTY	0.3899000	\$14,889
PLUM CREEK CONSERVATION DIST	0.0225000	\$859
SPECIAL ROAD	0.0338000	\$1,291
HAYS CISD	1.4677000	\$56,048
PLUM CREEK GROUND WATER CONSERVATION DISTRICT	0.0207000	\$790
Total	2.7496000	

# Ensuring Operational Success

- Long Term Owner-Investors Mindset
  - KCG will own and operate The Katherine for decades to come, typically for at least 30 years.
  - This results in a direct alignment between KCG's success with the investment and The Katherine's ability to serve as a community asset over the long term.
  - Affordability aspect of this development is committed to for 45 years thru a record Land Use Regulatory Agreement ("LURA").
- Sustainable Construction Standards
  - The Katherine will be built to last and designed to ensure the community's long term integrity.
  - We must meet and will build to the same industry standards and local codes and ordinances.
- On Site Activities & Resources
  - Property Management will coordinate a variety of recreational, educational and health focused activities for residents on site.
  - KCG has an Asset Manager on staff that oversees all 3<sup>rd</sup> party property management.
- Connections with Local Community Resources
  - Connections with local businesses, nonprofit organizations, and community resources is a critical component of success.
  - The Katherine's integration with local resources will enable residents to age-in-place and with independence.

# Timeline

2021	January 8	LIHTC Pre-Applications due to state agency
	January 28	City of Kyle Pre-Development meeting
	February 16 <sup>th</sup>	Kyle City Council meeting
	March 1	LIHTC full Applications due to state agency
	June/July	LIHTC awards finalized
	July	if awarded, start construction plan designs for site and buildings
2022	Q1	Building Permit Ready / Site Development Permit Ready Close on financing
	Q2	Start Construction
	Q3	Completion of first buildings / start leasing
2023	Q1	Completion of last buildings
	Q3	



# Questions?



# CITY OF KYLE, TEXAS

## CBD 1 & 2

**Meeting Date: 2/23/2021**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Consider & Possible Action to Direct the Planning & Zoning Commission to Revise the CBD 1 & CBD 2 zoning codes. ~ *Dex Ellison & Michael Tobias, Council Members*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Child Safety Zones Ordinance

Meeting Date: 2/23/2021

Date time: 7:00 PM

**Subject/Recommendation:** *(First Reading)* An Ordinance of the City of Kyle, Texas Regulating Sex Offender Residency within the City and Establishing Child Safety Zones; Amending Chapter 23 of the Code of Ordinances Entitled “Miscellaneous Offenses” by adding Article XI to be Entitled “Child Safety Zones;” Making it Unlawful for Certain Sex Offenders to Reside within 1500 feet of Premises where Children Commonly Gather; Providing Exceptions to the Ordinance; Prohibiting Property Owners from Renting Real Property to Certain Sex Offenders; Providing Penalties for Violations of the Ordinance; Repealing Ordinances or Parts of Ordinances in Conflict Therewith; Providing a Severability Clause, Findings of Fact and Providing for Open Meetings. ~ *Jeff Barnett, Chief of Police*

### Other Information:

### Legal Notes:

### Budget Information:

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### ATTACHMENTS:

#### Description

- ☐ Memorandum on Regulation of Sex Offender Residency Establishing Child Safety Zones Maps and Affected Percentage 11Feb21
- ☐ Memorandum on Regulation of Sex Offender Residency Establishing Child Safety Zones and Background Information 14Jan21
- ☐ Regulation of Sex Offender Residency\_Establishing Child Safety Zones\_Ordinance\_Final\_02.11 - Redline
- ☐ Regulation of Sex Offender Residency\_Establishing Child Safety Zones\_Ordinance\_Final\_02.11.21\_JTU CLEAN
- ☐ Child Safety Zones 500 Ft
- ☐ Child Safety Zones 1000 Ft
- ☐ Child Safety Zones 1500 Ft
- ☐ Child Safety Zones 2000 Ft



Date: February 11, 2021  
To: Jeff Barnett, Chief of Police  
From: Dago Pates, Officer

Re: Regulation of Sex Offender Residency Establishing Child Safety Zones Ordinance Map Comparisons and Affected Percentage

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Today, there are 67 registered sex offenders in Kyle. The proposed ordinance would not apply to homeowners or those with a current rental lease, however, would upon renewal.

To assist in providing a clearer picture of the impact this ordinance would have on the current 67 registered sex offenders, I contacted each person to confirm if they own or rent (and if so, when their lease expires).

Of the total 67, only 9 individuals would eventually be affected by this ordinance when their lease expires (6 of those have a lease that expires in 2021). 9 of 67 is 7% of the group that would eventually be affected by this ordinance.

\*\*\*

Attached you will find four Child Safety Zone maps for comparison:

- 500 ft
- 1,000 ft
- 1,500 ft
- 2,000 ft

The original proposed map has a 1,500 ft buffer zone which is the average of the central Texas cities with similar ordinances, which range from 1,000-2,000 ft.

\*\*\*

One new proposal was made to our draft ordinance to account for a sex offender living in a medical facility. The addition was added under Sec. 23.294 Affirmative defenses:

*(b) It shall be an affirmative defense under Sec. 23.291(a) if the person required to register on the database lives in a medical facility for care where services are designed to meet a person's health or personal care needs during a short or long period of time. Medical facilities are defined as hospitals or inpatient facilities.*



Date: January 14, 2020  
To: Jeff Barnett, Chief of Police  
From: Dago Pates, Officer

Re: Regulation of Sex Offender Residency Establishing Child Safety Zones Ordinance and Background Information

Drafting this ordinance for the city of Kyle began with researching ordinances in place with other cities within central Texas. After eight similar ordinances were reviewed, a draft was created mirroring Cedar Park's ordinance and the portions in red were added from Pflugerville's Ordinance (Section 1).

Section 2 shows current statistics of local cities, showing population, registered sex offenders, if they have a related ordinance and if so, how many feet. The distance of Child Safety Zones ranged from 1,000-2,000 ft. The median of 1,500 ft was selected for the Kyle ordinance draft.

Section 3 is a variety of information that was gathered or located while researching Child Safety Zones.

## Section 1:

### ARTICLE CHILD SAFETY ZONES

**Finding and Intent** *\*(This portion is for the online format of the ordinance, that does not have the "where as" portion listed)\**

(1) The city council finds that repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the health, safety and welfare of children. Sexual offenders are extremely likely to use physical violence and to repeat their offense and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(2) It is the intent of this section to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residences.



## Definitions

**Child sex offender.** A person who is required to register on the Texas Department of Public Safety's Sex Offender Database (the "database") because of a conviction(s) involving a minor.

**Day-care center.** A facility providing care, training, education, custody, treatment, or supervision for 13 or more children for less than 24 hours a day.

**Minor.** A person under the age of 17.

**Park.** A parcel of land, community park, neighborhood park, playground, swimming pool, indoor facility, outdoor facility, recreation center, field, athletic field, hike and bike trails, greenbelt areas and any other area in the City-owned, leased and/or used by the City, and devoted to active or passive recreation, including any related facilities, parking lots and/or amenities, save and except any of the foregoing that has a stadium, arena and/or permanent seating and primarily used for sporting events, special events and/or other entertainment any of which is not managed by the City.

**Permanent residence.** A place where a person abides, lodges, or resides for 14 or more consecutive days.

**Premises where children commonly gather.** Areas including all improved and unimproved lots where the following are located or planned to be located: a public park, private or public school (excluding in-home schools), day-care center, or private recreational facility, including a park, pool, playground, skate park, or youth athletic field owned by a residential property owners association, or for which an entrance, admission, or rental fee is charged.

**Recurring visitor.** A person who on at least three (3) occasions during any month spends more than 48 consecutive hours in the city.

**Temporary residence.** A place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where a person routinely abides, resides, or lodges for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

## Residency requirements

(a) It shall be unlawful for a child sex offender to establish a permanent residence, establish a temporary residence **or to be a recurring visitor at a residence, located** within 1,500 feet of any premises where children commonly gather.

(b) It shall be unlawful to let or rent any place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence, temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this article, if such place, structure or part thereof, manufactured home, trailer, or other conveyance, is located within 1,500 feet of any premises where children commonly gather.

## Halloween

A child sex offender shall not on each October 31st leave an exterior porch light on or otherwise invite trick-or-treaters to the premises.

## Solicitation Permit

A child sex offender shall not solicit or be permitted to receive a permit for soliciting in the City of Kyle

## Evidentiary matters; measurement

(a) For the purpose of determining the minimum distance of separation under this article, the distance shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather, as described hereinabove, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.

(b) A map depicting the prohibited areas shall be maintained by the City, and it shall be reviewed and updated not less than annually for changes. Said map will be available to the public on the City's website at the Kyle Police Department.

(c) Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined in this article.

## Affirmative defenses

The following shall be affirmative defenses to prosecution under this article that any of the following conditions apply:

(1) It shall be an affirmative defense under [section 8.09.002](#) if the person required to register on the database established the permanent or temporary residence and has complied with all of the child sex offender registration laws of the State, prior to the date of the adoption of this article, provided, however that if the person required to register on the database established the permanent or temporary residence through a lease or other rental arrangement in effect on the effective date of this article, this affirmative defense shall not apply upon termination of the lease/rental arrangement that is in effect on the effective date of this article.

(2) It shall be an affirmative defense under [section 8.09.002](#) if the premises where children commonly gather was designated, declared and/or determined after the child sex offender established the permanent or temporary residence and complied with all child sex offender registration laws of the State provided, however, that if the person required to register on the database established the permanent or temporary residence through a lease or other rental arrangement in effect on the effective date of this article, this affirmative defense shall not apply upon termination of the lease/rental arrangement that is in effect on the effective date of this article.

(3) It shall be an affirmative defense under [sections 8.09.002](#) and [8.09.003](#) if the information on the database is incorrect, and, if corrected, this article would not apply to the person who was erroneously listed on the database.

### Penalty provision

Any person who violates the provisions of this article shall be charged with a class C misdemeanor; and upon conviction shall be fined as provided for in [section 1.01.009](#) of this Code for each day that a violation exists, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**\*\*code sections would have to be updated to reflect where it falls in city code.**

### Section 2:

#### Comparisons:

Town	Ordinance	*Population	Reg. Sex Off.	Res. To S.O.	Distance
Leander	Yes	65,000	33	1,970:1	1,000 ft
Seguin	None	30,000	53*	566:1	N/A
New Braunfels	None	88,000	106	830:1	N/A
Kyle	None	56,500	68	830:1	N/A
San Marcos	None	64,000	57	1,122:1	N/A
Pflugerville	Yes	64,000	20	3,200:1	2,000 ft
West Lake Hills	Yes	4,000	1	4,000:1	1,000 ft
Cedar Park	Yes	77,000	23	3,347:1	1,500 ft
Cibolo	Yes	31,066	10	3,106:1	2,000 ft
League City	Yes	106,244	41	2,591:1	2,000 ft
Giddings	Yes	5,200	6	866:1	1,000 ft
Fate	Yes	18,500	1	18,500:1	2,000 ft

\*approximate current numbers

### Section 3:

Ofc. Pates asked a handful of recent sex offenders how they ended up in Kyle, one was from here, one said housing is cheaper here then up north, others said their family lives here and some said because we don't have a city ordinance.

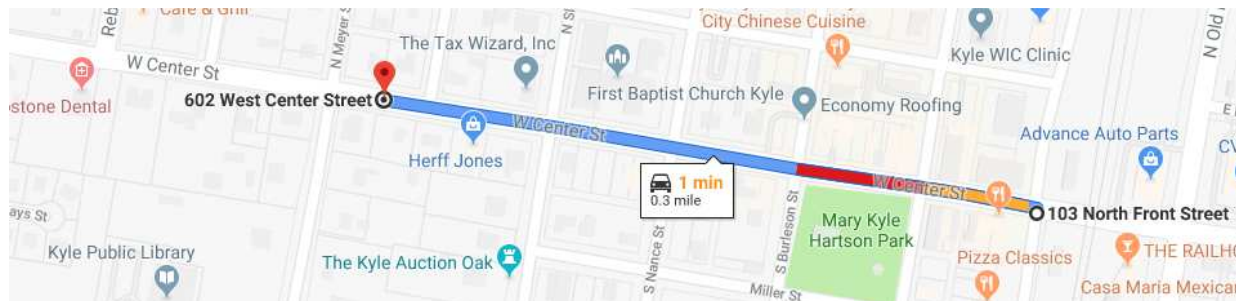
60 of Kyle's current 68 sex offenders would be "child offenders" as worded in the draft.

Of the 68 registered sex offenders in Kyle, the victims are grouped as follows: 57 - Female victims, 11 - Male victims, 11 - Adult victims, 4 - Possession of Child pornography (some offenders have multiple charges so this add up to more then 68).

### Distance:

Comparisons range from 1000-2000 ft. Examples of this distance using Center Street:

- Front Street to just past Burleson Street is about 1000ft
- Front Street to just past Sledge St is about 1500 ft



### Online Research:

From DPS website: [https://www.dps.texas.gov/administration/crime\\_records/pages/faq.htm#a1](https://www.dps.texas.gov/administration/crime_records/pages/faq.htm#a1)

**Question: Are registered sex offenders allowed to live or go near places frequented by children such as schools and playgrounds?**

**Answer:** The Texas Sex Offender Registration Program itself does not prohibit registered sex offenders from living or going near places frequented by children. However, Texas community supervision and parole laws, as well as city ordinances, may require the imposition of a "child safety zone." A "child safety zone" prohibits certain individuals from going in, on, or within a specified distance of a premise where children commonly gather (i.e. schools, day care facilities, or playgrounds). A violation of the "child safety zone" can result in the revocation of the offender's probation or parole, or a citation.

**Question: Are there any state laws that provide guidance or limitations on local city ordinances regarding registered sex offenders?**

**Answer:** Section 341.906, Subchapter Z, Chapter 341, Local Government Code, allows for the governing body of a general-law municipality by ordinance to restrict a registered sex offender from going in, on or within a specified distance of a child safety zone in the municipality. In addition it limits the distance requirement an ordinance may have and requires procedures for an exemption from the ordinance. Questions regarding any local city ordinance should be directed to the local law enforcement registrar's office at the Police Department or the city attorney's office in the jurisdiction of the ordinance.

\*\*\*\*\*

Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)  
[https://smart.gov/SOMAPI/sec1/ch5\\_recidivism.html](https://smart.gov/SOMAPI/sec1/ch5_recidivism.html)

☎ 512-268-3232 📠 512-268-2330

111 North Front Street, Kyle, TX 78640

[www.cityofkyle.com/police](http://www.cityofkyle.com/police)

Item # 24

*Recidivism Rates for Child Molesters:*

*Study showed sex offenders released from state prisons in 1994 that were studied in 2003 had a large sample of child molesters. The study shows 5.1% were rearrested within three years for a new sex crime. 14.1% were arrested for a violent crime and 39.4% were rearrested for a crime of any kind. Child Molesters with more than one prior arrest had an overall recidivism rate of 44.3% compared to 23.3% to that of a child molester with only 1 prior arrest. **Study shows specifically Child Molesters are more likely than any other type of offender to be arrested for a sex crime against a child following release from prison.** (from: <https://www.smart.gov/pdfs/RecidivismofAdultSexualOffenders.pdf>)*



512-268-3232



512-268-2330

111 North Front Street, Kyle, TX 78640



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS REGULATING SEX OFFENDER RESIDENCY WITHIN THE CITY AND ESTABLISHING CHILD SAFETY ZONES; AMENDING CHAPTER 23 OF THE CODE OF ORDINANCES ENTITLED “MISCELLANEOUS OFFENSES” BY ADDING ARTICLE XI TO BE ENTITLED “CHILD SAFETY ZONES”; MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 1500 FEET OF PREMISES WHERE CHILDREN COMMONLY GATHER; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROHIBITING PROPERTY OWNERS FROM RENTING REAL PROPERTY TO CERTAIN SEX OFFENDERS; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERABILITY CLAUSE, FINDINGS OF FACT AND PROVIDING FOR OPEN MEETINGS.**

**WHEREAS**, the City of Kyle, Texas (herein the “City”) is a home rule city having authority to utilize police power regulation for the health, safety and general welfare of the citizens of the City; and

**WHEREAS**, the City Council of the City is deeply concerned about the numerous and recent occurrences in our state and elsewhere whereby sex offenders convicted of sexual offenses involving children have been released from custody and repeat the unlawful acts for which they had been originally convicted; and

**WHEREAS**, the City Council finds from evidence and statistical reports reveal that the recidivism rate for released sex offenders alarmingly high, especially for those who commit their crimes against children; and

**WHEREAS**, the City is becoming an increasingly attractive place for families with young children; and

**WHEREAS**, the City Council finds that regulating sex offender residency within the City and establishing child safety zones provide better protection for children gathering in the City and is necessary to protect the health, safety and general welfare of children; and

**WHEREAS**, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code and the City Charter, provide the City authority to adopt ordinances for the good government, peace, order and welfare of the City;

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

**SECTION 1. FINDINGS OF FACT.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

**SECTION 2. AMENDMENT OF CHAPTER 23.** Chapter 23 of the Code of Ordinances of the City is hereby amended by adding Article XI. - Child Safety Zones to read as follows:

## ARTICLE XI. - CHILD SAFETY ZONES

### Sec. 23-290. - Definitions.

“*Child sex offender*” means a person who is required to register on the Texas Department of Public Safety's Sex Offender Database (the “database”) because of a conviction(s) involving a minor.

“*Day-care center*” is a facility providing care, training, education, custody, treatment, or supervision for 13 or more children for less than 24 hours a day.

“*Medical facility*” means a hospital or inpatient facility housing individuals who are incapable of caring for themselves and require assistance with activities of daily living.

“*Minor*” is a person under the age of 17.

“*Park*” is a parcel of land, community park, neighborhood park, playground, swimming pool, indoor facility, outdoor facility, recreation center, field, athletic field, hike and bike trails, greenbelt areas and any other area in the City-owned, leased and/or used by the City, and devoted to active or passive recreation, including any related facilities, parking lots and/or amenities, save and except any of the foregoing that has a stadium, arena and/or permanent seating and primarily used for sporting events, special events and/or other entertainment any of which is not managed by the City.

“*Permanent residence*” is a place where a person abides, lodges, or resides for 14 or more consecutive days.

“*Premises where children commonly gather*” means areas including all improved and unimproved lots where the following are located or planned to be located: a public park, private or public school (excluding in-home schools), day-care center, or private recreational facility, including a park, water park, pool, playground, skate park, arcade or youth athletic field owned by a residential property owners association, or for which an entrance, admission, or rental fee is charged.

“*Recurring visitor*” is a person who on at least three (3) occasions during any month spends more than 48 consecutive hours in the city.

“*Temporary residence*” is a place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where a person routinely abides, resides, or lodges for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

### Sec. 23.291. - Residency requirements.

(a) It shall be unlawful for a child sex offender to establish a permanent residence, establish a temporary residence or to be a recurring visitor at a residence, located within 1,500 feet of any premises where children commonly gather.

(b) It shall be unlawful to let or rent any place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence, temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this article, if such place, structure or part thereof, manufactured home, trailer, or other conveyance, is located within 1,500 feet of any premises where children commonly gather.

#### **Sec. 23.292. – Halloween.**

A child sex offender shall not on each October 31st leave decorations or an exterior porch light on or otherwise invite trick-or-treaters to the premises.

#### **Sec. 23.293. - Evidentiary matters; measurement.**

(a) For the purpose of determining the minimum distance of separation under this article, the distance shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather, as described hereinabove, or, in the case of multiple residences on one property, measuring from the nearest property line of the premises to the nearest property line of the premises where children commonly gather, as described herein.

(b) A map depicting the prohibited areas shall be maintained by the City, and it shall be reviewed and updated not less than annually for changes. Said map will be available to the public on the City's website at the Kyle Police Department.

(c) Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined in this article.

#### **Sec. 23.294. - Affirmative defenses.**

The following shall be affirmative defenses to prosecution under this article if any of the following conditions apply:

(a) It shall be an affirmative defense under Sec. 23.291(a) if the person required to register on the database established the permanent or temporary residence and has complied with all of the child sex offender registration laws of the State, prior to the date of the adoption of this article,<sup>5</sup> ~~provided, however that if the person required to register on the database established the permanent or temporary residence through a lease or other rental arrangement in effect on the effective date of this article, this affirmative defense shall not apply upon termination of the lease/rental arrangement that is in effect on the effective date of this article.~~

(b) It shall be an affirmative defense under Sec. 23.291(a) if the premises where children commonly gather was designated, declared and/or determined after the child sex offender established the permanent or temporary residence and complied with all child sex offender registration laws of the State. ~~provided, however, that if the person required to register on the database established the permanent or temporary residence through a lease or other rental arrangement in effect on the effective date of this article, this affirmative defense shall not apply upon termination of the lease/rental arrangement that is in effect on the effective date of this article.~~

(c) It shall be an affirmative defense under Sec. 23.291 if the person required to register on the database lives in a medical facility for care where services are designed to meet a person's health or personal care needs during a short or long period of time.

(ed) It shall be an affirmative defense under Sec. 23.291 if the information on the database is incorrect, and, if corrected, this article would not apply to the person who was erroneously listed on the database.

(de) The person required to register as a sex offender was a minor when he/she committed the offense requiring such registration and was not convicted as an adult.

(ef) The person was within a child safety zone performing community service ruled by a magistrate.

**SECTION 3. PENALTY PROVISION.** Any person who violates the provisions of this article shall be charged with a class C misdemeanor; and upon conviction shall be fined as provided for in Sec 1-14(a) of this Code for each day that a violation exists, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**SECTION 4. SAVINGS CLAUSE.** All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting sex offender regulations and child safety zones that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 5. AMENDMENT OF ORDINANCES.** The City Code of Ordinances, Chapter 23, is hereby amended to the extent of any conflict or inconsistency herewith only and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the city, the terms and provisions of this Ordinance shall govern.

**SECTION 6. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared void.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall take effect immediately from and after publication in accordance with the provisions of the City Charter and the Local Government Code.

**SECTION 8. 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.

**PASSED AND APPROVED** on First Reading this \_\_\_\_ day of \_\_\_\_\_, 2021.

**FINALLY PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**THE CITY OF KYLE, TEXAS**

\_\_\_\_\_  
Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary

\_\_\_\_\_



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS REGULATING SEX OFFENDER RESIDENCY WITHIN THE CITY AND ESTABLISHING CHILD SAFETY ZONES; AMENDING CHAPTER 23 OF THE CODE OF ORDINANCES ENTITLED “MISCELLANEOUS OFFENSES” BY ADDING ARTICLE XI TO BE ENTITLED “CHILD SAFETY ZONES”; MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 1500 FEET OF PREMISES WHERE CHILDREN COMMONLY GATHER; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROHIBITING PROPERTY OWNERS FROM RENTING REAL PROPERTY TO CERTAIN SEX OFFENDERS; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERABILITY CLAUSE, FINDINGS OF FACT AND PROVIDING FOR OPEN MEETINGS.**

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**PASSED AND APPROVED** on First Reading this \_\_\_\_ day of \_\_\_\_\_, 2021.

**FINALLY PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**THE CITY OF KYLE, TEXAS**

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Travis Mitchell, Mayor

ATTEST:

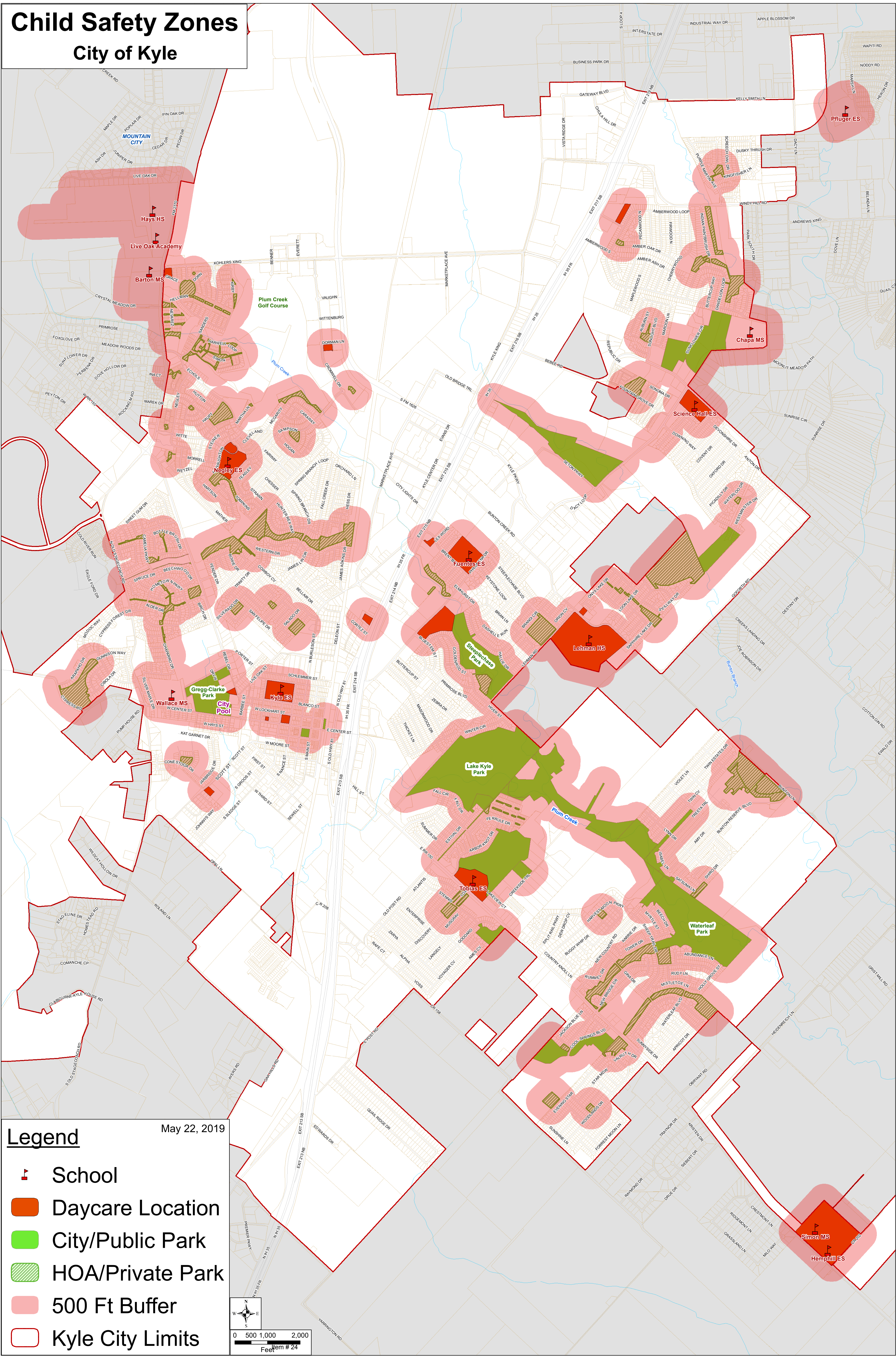
Jennifer Holm, City Secretary

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# Child Safety Zones

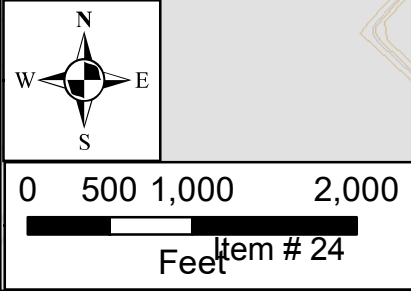
## City of Kyle



May 22, 2019

### Legend

- School
- Daycare Location
- City/Public Park
- HOA/Private Park
- 500 Ft Buffer
- Kyle City Limits



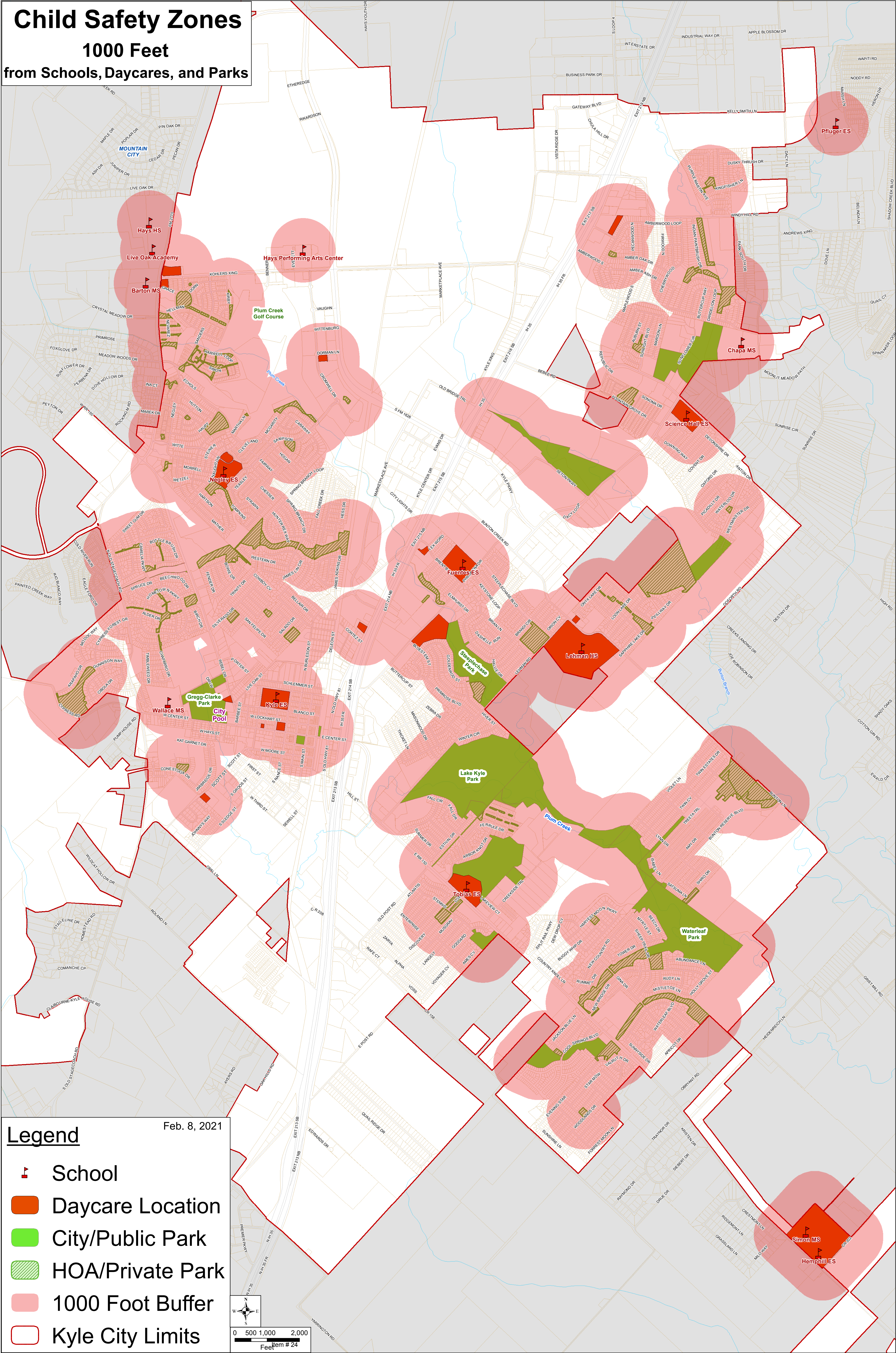
Item # 24



# Child Safety Zones

1000 Feet

from Schools, Daycares, and Parks

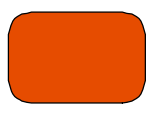


## Legend

Feb. 8, 2021



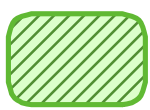
School



Daycare Location



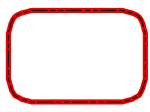
City/Public Park



HOA/Private Park



1000 Foot Buffer



Kyle City Limits



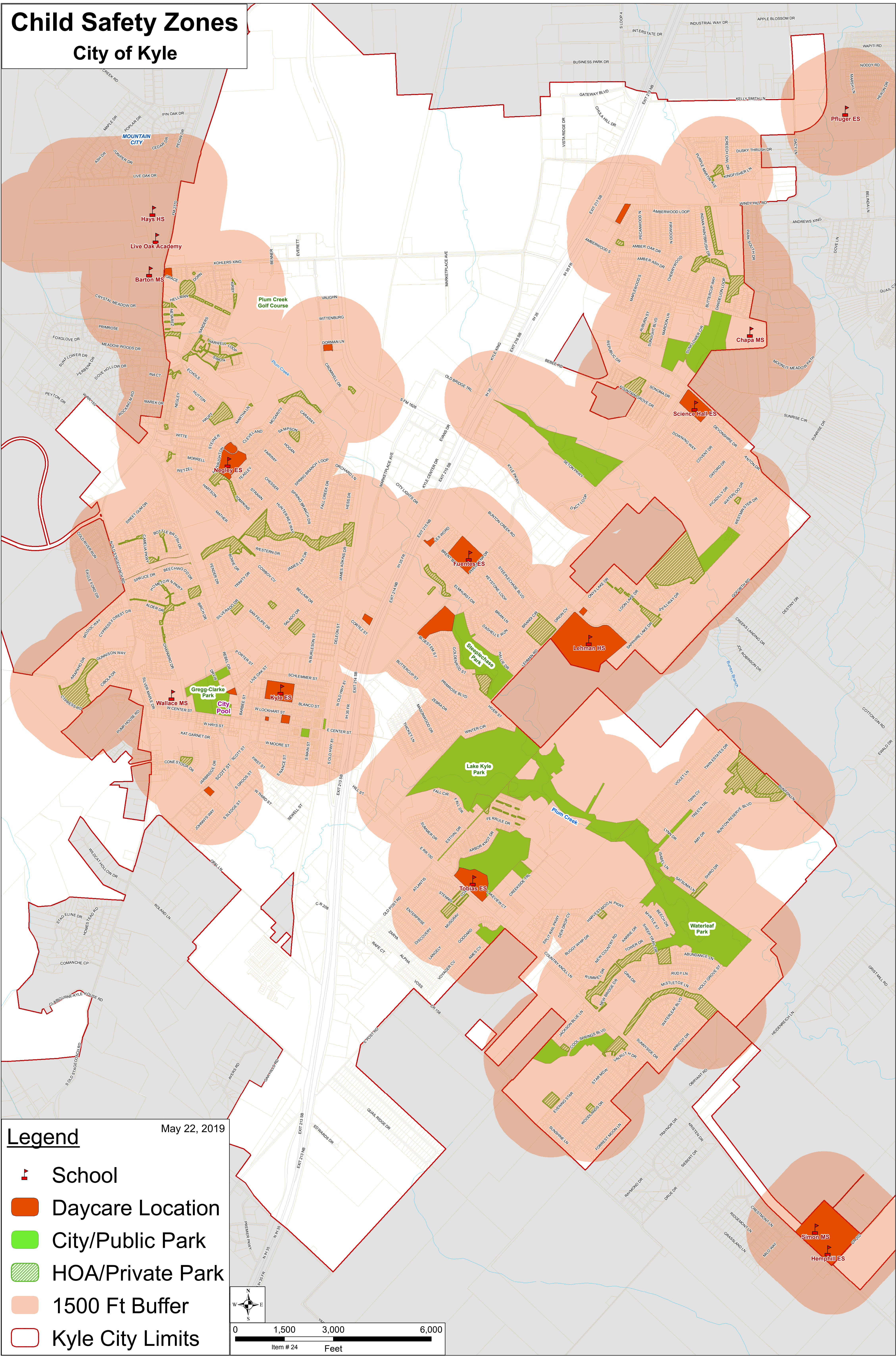
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Feet

Item # 24




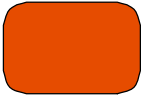




# Child Safety Zones

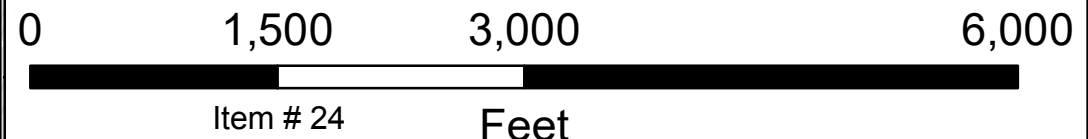
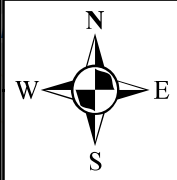
## City of Kyle



May 22, 2019

### Legend

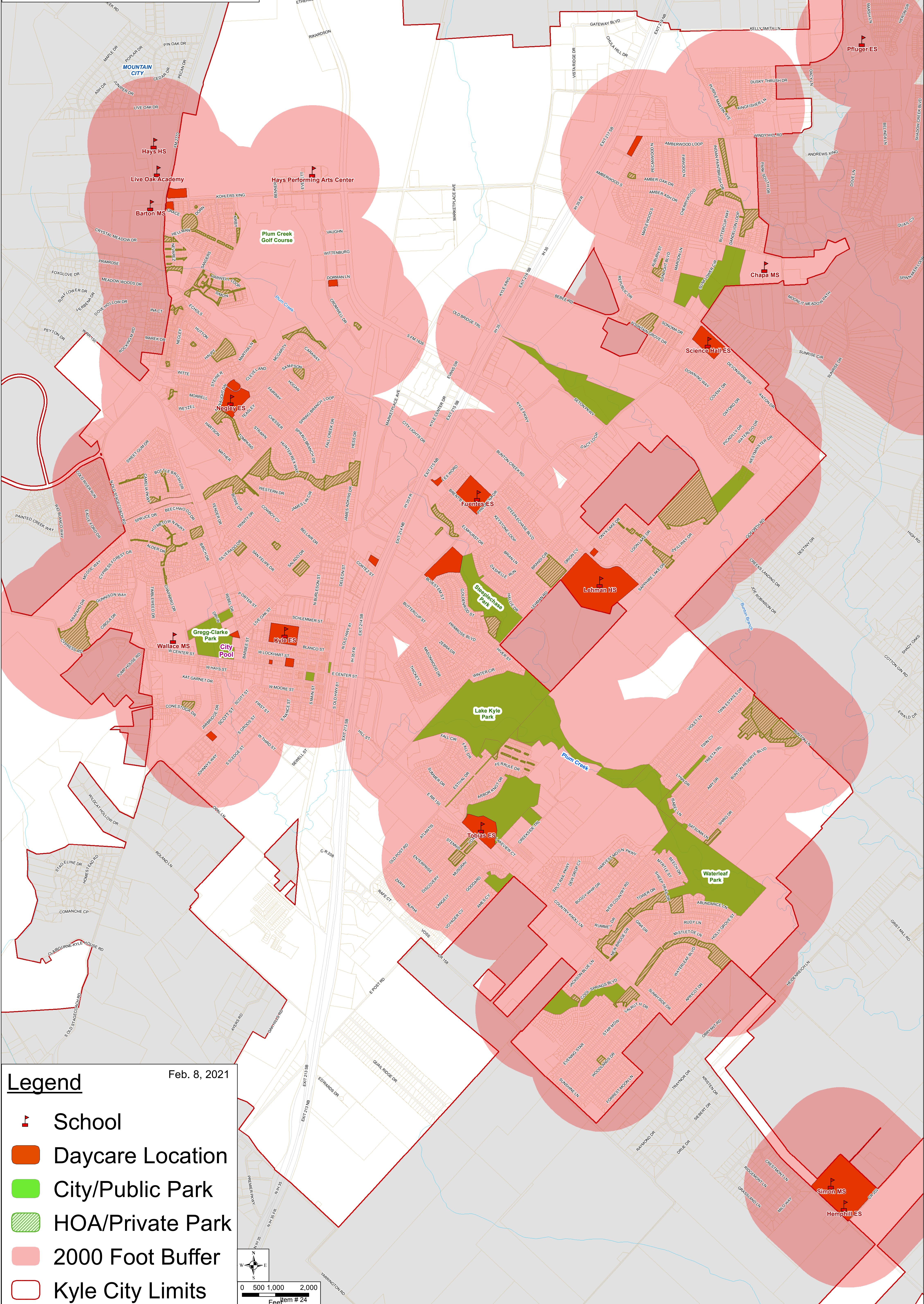
-  School
-  Daycare Location
-  City/Public Park
-  HOA/Private Park
-  1500 Ft Buffer
-  Kyle City Limits





# Child Safety Zones

2000 Feet  
from Schools, Daycares, and Parks



## Legend

- School
- Daycare Location
- City/Public Park
- HOA/Private Park
- 2000 Foot Buffer
- Kyle City Limits

Feb. 8, 2021

0 500 1,000 2,000  
Feet

Item # 24





# CITY OF KYLE, TEXAS

## Winter Storm Uri

**Meeting Date: 2/23/2021**

**Date time: 7:00 PM**

**Subject/Recommendation:** Discussion and Possible Action to Recognize Kyle City Employees for their Extraordinary Efforts During Winter Storm Uri. ~ *Rick Koch, Mayor Pro Tem*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## City Manager's Report

**Meeting Date: 2/23/2021**

**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*

- Great Texas River Cleanup - March 6th
- COVID Testing and Vaccine info

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available





# CITY OF KYLE, TEXAS

## Executive Session - Convene

Meeting Date: 2/23/2021

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.
  - Pipeline Ordinance
  - City Lights and Kyle Marketplace Subdivision/Development
  - Zoning Application Process
  - Plum Creek Land Dedication
  - Water Well Agreement
  - Texas Lehigh Lease
  - Parks Bond Interlocal Agreement with Hays County
  - 104 S. Burleson
  - Tax Credit Housing
2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
  - Plum Creek Land Dedication
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.
  - 104 S. Burleson
  - Project Space Shuttle

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Reconvene

**Meeting Date: 2/23/2021**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Take action on items discussed in Executive Session.

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available