

CITY OF KYLE

Notice of Regular City Council Meeting



Kyle City Hall, 100 W. Center Street, Kyle, TX 78640
The public can watch remotely at: Spectrum 10;
<https://www.cityofkyle.com/kyletv/kyle-10-live>. One or more members of the governing body may participate in the meeting by videoconference pursuant to Section 551.127, Texas Government Code, provided that a quorum of the governing body will be present at Kyle City Hall.

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on June 7, 2022, at Kyle City Hall, 100 W. Center Street, Kyle, TX 78640, for the purpose of discussing the following agenda.

Posted this 4th day of June, 2022, prior to 2:00 p.m.

I. Call Meeting to Order

II. Approval of Minutes

1. City Council Special Meeting Minutes - May 3, 2022. ~ *Jennifer Holm, City Secretary*
2. City Council Regular Meeting Minutes - May 3, 2022. ~ *Jennifer Holm, City Secretary*
3. City Council Special Meeting Minutes - May 12, 2022. ~ *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.

IV. Presentation

4. Memorial Day/D-Day Proclamation. ~ *Robert Rizo, Mayor Pro Tem*
5. Women Veterans Day (June 12th) City Council Proclamation. ~ *Dex Ellison, Council Member*

6. Presentation of Graduates of the 2022 Team Kyle Academy. ~ *James R. Earp, Assistant City Manager*
7. Spring Creek Trail Presentation. ~ *Allen Ross, Schaumburg & Polk, Inc.*
8. 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*
 - Budget Workshops
 - Boards and Commissions Openings
 - National Trails Day - June 4th
 - Movie in the Park - June 7th
 - Juneteenth Celebration/First Market Day - June 11th
 - Family Skate Night - June 17th
 - James Adkins Pool Public Swim Day open June 24th
 - AMVETS Walker Event - June 12th
 - Juneteenth Dialogue - June 17th
 - State of the City - June 28th
 - 4th of July Fireworks
 - Summer Reading Program
9. CIP/Road Projects and Consent Agenda Presentation. ~ *Leon Barba, P.E., City Engineer*

V. Consent Agenda

10. Approve an Interlocal Agreement Between Hays County and the City of Kyle related to the Dacy Lane Project from Bebee Rd. to Amberwood Loop. ~ *Leon Barba, P.E., City Engineer*
11. Approve Task Order No. 14 to LJA ENGINEERING, INC., Austin, Texas in an amount not to exceed \$48,499.00 for the Dacy Lane Illumination and Shared Use Path Design Project ~ *Leon Barba, P.E., City Engineer*
12. (*Second Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 87.694 acres of land from 'A' to 'R-1-C' (Residential Condominium, 30.565 acres), 'R-1-3' (Single Family Residential – 3, 26.322 acres), 'R-1-2' (Single Family Residential – 2, 19.130 acres) & 'CC' (Community Commercial, 11.677 acres) for property located at 1111 & 1113 Roland Lane, in Hays County, Texas. (Edward Coster Bullock Jr. - Zoning -Z-22-0094) ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 7-0 to recommend approval the request contingent on full annexation.

City Council voted 5-1 to approve on first reading on 5/17/2022.

13. (*Second Reading*) An ordinance amending Chapter 53 (Zoning) of the City of

Kyle, Texas, for the purpose of rezoning approximately 259 acres of land from Agriculture 'A' to Planned Unit Development 'PUD' for property located at 5260 Hillside Terrace, in Hays County, Texas. (Hillside Terrace Development LLC - Zoning - Z-21-0090) ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 7-0 to recommend approval the request contingent on full annexation.

City Council voted 6-0 to approve on first reading on 5/17/2022.

14. Approve a professional services agreement with P3WORKS, LLC, Austin, Texas, to provide Public Improvement District (PID) formation and administration services to the City of Kyle in association with the Porter Country Public Improvement District PID. All costs incurred for services under this agreement will be paid through future PID assessments collected. ~ *J. Scott Sellers, City Manager*
15. Approval of a Resolution of the City Council of the City of Kyle, Texas accepting the Talavera Phase 1 Subdivision improvements; finding and determining that the meeting at which this Resolution is passed was noticed and is open to the Public as required by law. ~ *Leon Barba, P.E., City Engineer*
16. Approve a Resolution of the City of Kyle, Texas, Authorizing the submission of a Hazard Mitigation Assistance Grant Application for DR-4485, appointing the city manager as the chief executive officer and authorized representative to act in all matters in connection with the FEMA mitigation grants. ~ *James R. Earp, Assistant City Manager*
17. Approve a Resolution of the City of Kyle, Texas, Committing the City of Kyle to provide local matching funds to secure and complete the FEMA Hazard Mitigation Grant Projects. ~ *James R. Earp, Assistant City Manager*
18. Consider and possible action to approve contract with Lone Star Trapping for feral hog removal on city-owned property. ~ *Kathy Roecker, Stormwater Management Plan Administrator*
19. Authorize the City Manager to execute the TDEM DR-4485 Application Certification. ~ *James R. Earp, Assistant City Manager*
20. Authorize the City Manager to execute acceptance of DR-4485 Grant Terms and Conditions required should grant funds be awarded. ~ *James R. Earp, Assistant City Manager*
21. *(First Reading)* An ordinance of the City of Kyle, Texas, Amending Part II, Chapter 2, Article III Boards, Committees and Commissions, Division 1 Generally, Subdivision I Boards, Section 2-42. Appointment; Repealing conflicting ordinances and providing for related matters. ~ *James R. Earp, Assistant City Manager*

22. Approve Task Order No. 15 to LJA ENGINEERING, INC., Austin, Texas in an amount not to exceed \$150,913.20 for designing a new 16" waterline within the new FM 110 right of way. ~ *Leon Barba, P.E., City Engineer*
23. Approval of Change Order No. 8 to SKYBLUE UTILITIES, INC., Kingsland, Texas, in an additional amount of \$546,675.37, increasing the total contract amount, not to exceed, \$6,756,882.60 for City requested changes and unforeseen conditions. ~ *Leon Barba, P.E., City Engineer*
24. Authorize the Mayor to execute a contract for professional services with Halff and Associates for the DR-4485 Hazard Mitigation grant. ~ *James R. Earp, Assistant City Manager*

VI. Items Pulled from Consent Agenda

VII. Consider and Possible Action

25. Consider and possible action to waive the requirement of the 12-month waiting period in Sec. 53-1205(i)(2) of the City's Code of Ordinances with regard to the application for zoning or property located at 5839 Kyle Parkway, in Hays County, Texas. CTC Residential LLC (Z-21-0091). ~ *Daniela Parsley, Council Member*

City Council voted 1-6 to approve on 1/18/2022.
26. Discussion regarding possible text amendments and/or alternative traffic calming measures to be considered in single residential zoned areas (including but not limited to R-1-1, R-1-2, R-1-3, R-1-A, M-1, M-2, M-3). ~ *Dex Ellison, Council Member*
27. Discussion and possible action regarding the City of Kyle's process of creating the Comprehensive Plan. ~ *Yvonne Flores-Cale, Council Member*
28. Discussion and possible action regarding a change in the City of Kyle's homestead exemption. ~ *Yvonne Flores-Cale, Council Member*
29. *(First Reading)* An ordinance granting to Universal Natural Gas, LLC (d/b/a Universal Natural Gas, Inc.) and its successors and assigns, for a period of ten (10) years from the effective date of this ordinance, a non-exclusive franchise and right to enter the public ways to install, operate and maintain a distribution system within, along, across, over and under the public ways of the city of Kyle, Texas for the transportation, distribution and/or sale of gas to customers and the public in the city; defining the words and phrases therein; providing for assignment, sale or lease of the franchise; providing for use and repair of the public ways; providing for regulation of service; establishing depth of pipelines; establishing rights and duties in the movement and alteration of pipelines; providing for indemnification of the city of Kyle; providing for inspection of grantee's records; requiring grantee to pay a franchise fee; providing for conditions of the franchise; providing for construction of this ordinance upon the invalidity of any part thereof; providing for acceptance of this franchise by grantee and both an effective and an operative date thereof; repealing all other ordinances directly in

conflict herewith; providing for severability; providing for publication and prescribing an effective date. ~ *Jerry Hendrix, Assistant City Manager*

- Public Hearing

30. Consideration and possible action on an Ordinance of the City of Kyle Making a Finding of Special Benefit to the Property in the Kyle 57 Public Improvement District; Providing for the Method of Assessment of Special Assessments Against Property in the District; Approving an Assessment Roll for the District; Levying Assessments Against Property within the District; Providing for Payment of the Assessments; Providing for Penalties and Interest on Delinquent Assessments; Establishing a Lien on Property within the District; Approving a Service and Assessment Plan; Approving Landowner Agreements; Providing for Related Matters in Accordance with Chapter 372, Texas Local Government Code; Providing an Effective Date; and Providing for Severability. ~ *Jon Snyder, P3Works, LLC, City's PID Administrator*

- Public Hearing

31. Consideration and possible action on an Ordinance Authorizing the Issuance of the City of Kyle, Texas Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District); Approving and Authorizing an Indenture of Trust, a Bond Purchase Agreement, a Limited Offering Memorandum, a Continuing Disclosure Agreement, and Other Agreements and Documents in Connection Therewith; Making Findings with Respect to the Issuance of Such Bonds; Providing an Effective Date. ~ *Jon Snyder, P3Works, LLC, City's PID Administrator*

- Public Hearing

32. Consider and possible action to approve an Infrastructure and Property Conveyance Agreement, a Property Conveyance Escrow Agreement, the Transportation Improvement Design, and Permitting and Construction Agreement in the Brick and Mortar District by and between Plum Creek Development Partners, LTD., Mountain Plum, LTD., and the City of Kyle, Texas, and the First and Second Amendments to Letter Agreement confirming Allocation of Land to Satisfy Land Dedication of Plum Creek Land to the City of Kyle, Texas. ~ *J. Scott Sellers, City Manager*

33. Consider and possible action on a Resolution of the City Council of the City of Kyle, Texas accepting a Petition for Creation of the Porter Country Public Improvement District; Setting a public hearing under Sec. 372.009 of the Texas Local Government Code on the advisability of the creation of the Porter Country Public Improvement District within the City of Kyle, Texas; and Authorizing the issuance of Notice by the City Secretary of Kyle, Texas regarding the public hearing. ~ *Amber Lewis, Assistant City Manager*

34. Consider and possible action to retain services of Mark McCliney from SAMCO Capital as the city's financial advisor. ~ *J. Scott Sellers, City Manager*

35. Consideration and approval of a resolution approving an engagement agreement for Bond Counsel Legal Services with Norton Rose Fulbright US LLP; and other matters in connection therewith
- A. The City Council of the City intends to engage Norton Rose Fulbright US LLP to provide the City with bond counsel legal services pertaining to the City's issuance of public securities, including advising the City on its "official statement" to potential investors pursuant to Federal securities law and issuing a legal opinion as to the same.
- B. Norton Rose Fulbright US LLP has consistently demonstrated its competence, qualifications, and experience as an industry leader in public finance matters through the provision of bond counsel legal services, the representation of local governments on federal income tax matters, the publication of disclosure policies and the representation of state agencies and political subdivisions within the State of Texas on public finance matters.
- C. Accessing the public markets through the issuance of public securities and providing an "official statement" of the City to potential investors is governed by Federal securities law requires the advice of legal advisors that specialize in public finance matters and are well versed in Federal securities law.
- D. Engaging an attorney in private practice who specializes in public finance matters and is well versed in all aspects of public finance matters (including state law, federal income tax law and federal securities law) pursuant to an hourly fee arrangement would likely result in higher fees paid by the City and such fees incurred would be payable by the City through amounts in the City's General Fund, whether or not the public securities is issued.
- E. Fees for professional services in public finance matters, including bond counsel services, have traditionally been paid pursuant to a contingent fee contract, where such fees become payable only upon the successful issuance of the public securities and out of the public securities proceeds. Entering into a contract for bond counsel legal services with Norton Rose Fulbright US LLP (a firm that specializes in public finance matters and is well versed in Federal tax and securities law) payment of which is contingent on the City's successful issuance of public securities and payable out of public securities proceeds, provides the City a superior level of bond counsel legal services and fee(s) payable under the contract is reasonable in the public finance market and would likely be less than if such services were conducted pursuant to an hourly rate contract with an attorney specializing in public finance matters. This high level of bond counsel legal services pursuant to a contingent fee contract is in the best interest of the residents of the City. ~ *J. Scott Sellers, City Manager*
36. Consider and possible action to approve a resolution of the City of Kyle, Texas, Amending Resolution Number 1273 and Restating the City of Kyle Rules of City Council. ~ *Travis Mitchell, Mayor*

VIII. Executive Session

37. 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.
 - Greentrails HOA
 - Combined Emergency Communications Center
 - Cause No. 18-1282; Jesse Espinoza v. the City of Kyle, Texas, in the 22nd Judicial District, Hays County, Texas
 - SOAH Docket No. 407-18-3098.F5, Jesus Espinosa v. Kyle Police Department, Before the State Office of Administrative Hearings
 - Cause No. 22-0873 The State of Texas, Ex. Rel. 1200 S. Old Stagecoach Road, LLC vs. City of Kyle, Texas
 - Nonconforming uses and structures
 2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
 - Greentrails HOA
 3. Personnel matters pursuant to Section 551.074.
 4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
 - Project Fire Engine Red
 - Project Tropical Green
 - Project French Lime
 - Project Goldfish
 - Project Titanium
 - Project Bullseye
 - Project MBA
38. Take action on items discussed in Executive Session.

IX. 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

2022 0503 Special Minutes

Meeting Date: 6/7/2022

Date time:7:00 PM

Subject/Recommendation: City Council Special Meeting Minutes - May 3, 2022. ~ *Jennifer Holm, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2022 0503 DRAFT Special

SPECIAL CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Special Session on May 3, 2022 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell
Mayor Pro Tem Robert Rizo
Council Member Dex Ellison*
Council Member Yvonne Flores-Cale
Council Member Ashlee Bradshaw
Council Member Daniela Parsley
Council Member Michael Tobias
Scott Sellers, City Manager
Jerry Hendrix, Assistant City Manager
Amber Lewis, Assistant City Manager
Paige Saenz, City Attorney
Samantha Armbruster, Communications Dir.
Grant Bowling, Video Production Specialist
Jennifer Holm, City Secretary
Diana Torres, Economic Dev Director
Perwez Moheet, Finance Director
Gary Stubbins, Building Official
Jeff Barnett, Chief of Police
Duarte Pamplona, Code Enforcement Officer
Humberto Vega, Code Enforcement Officer

Randy Pillifant

I. Call Meeting to Order

Mayor Mitchell called the meeting to order at 5:32 p.m. Mayor Mitchell asked the city secretary to call roll.

Present were: Mayor Mitchell, Council Member Flores-Cale, Council Member Bradshaw, Council Member Parsley, and Council Member Tobias. A quorum was present. Council Member Ellison and Mayor Pro Tem Rizo were absent. Mayor Pro Tem Rizo arrived at 5:34 p.m. during Citizen Comment Period. Council Member Ellison arrived virtually at approximately 5:35 p.m. during Citizen Comment Period.

II. Citizen Comment Period with City Council

Mayor Mitchell opened citizen comments at 5:33 p.m.

Randy Pillifant was called to speak as registered. He spoke about the underground tunnel. He stated he thinks there are a lot of things the City can do before entering into a \$50,000 contract with multiple people to see what the City can do. He suggested the City request as-built plans from the railroad to save money. He also asked about a memorandum of understanding with the developer, and stated that he doesn't see a benefit to the entire city, but rather just to Plum Creek residents. He continued that there are other areas of the trail that have not yet been addressed – Kohlers Crossing and Exit 213.

With no one else wishing to speak, Mayor Mitchell closed citizen comments at 5:37 p.m.

III. Executive Session

1. 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.
 - Communication protocol with city attorney and city manager
 - Kyle Housing Authority
 - 1119 N. Old Hwy 81
 - Kyle Pie in the Sky
 2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
 3. Personnel matters pursuant to Section 551.074.
 4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
 - Project Fire Engine Red

Council Member Tobias 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 - Communication protocol with city attorney and city manager; Kyle Housing Authority; 1119 N. Old Hwy 81; Kyle Pie in the Sky; Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072; Personnel matters pursuant to Section 551.074; and Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City - Project Fire Engine Red.”

The City Council did not have any discussions regarding possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 or personnel matters pursuant to Section 551.074.

The City Council convened into executive session at 5:39 p.m.

2. Take action on items discussed in Executive Session.

Mayor Mitchell called the meeting back to order at 7:05 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 Flores-Cale seconded the motion. No vote was held.

With no further business to discuss, the City Council adjourned at 7:05 p.m.

Travis Mitchell, Mayor

Attest:

Jennifer Holm, City Secretary

DRAFT



CITY OF KYLE, TEXAS

2022 0503 Regular Minutes

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: City Council Regular Meeting Minutes - May 3, 2022. ~ *Jennifer Holm, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- ☐ 2022 0503 DRAFT Regular

REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on May 3, 2022 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell	Chap Ambrose
Mayor Pro Tem Robert Rizo	Jay Koltermann
Council Member Dex Ellison*	Golam Kibria
Council Member Yvonne Flores-Cale	Shasta Bell-Osborn
Council Member Ashlee Bradshaw	Andrew Crawford
Council Member Daniela Parsley	Brian Ziegler
Council Member Michael Tobias	Tony Spano
Scott Sellers, City Manager	Kelly Curbow
James Earp, Assistant City Manager	Brad Towrey
Jerry Hendrix, Assistant City Manager	Sean Kemp
Amber Lewis, Assistant City Manager	
Paige Saenz, City Attorney	
Samantha Armbruster, Communications Dir.	
Grant Bowling, Video Production Specialist	
Jennifer Holm, City Secretary	
Leon Barba, City Engineer	
Kathy Roecker, SWMP Administrator	
Diana Torres, Economic Dev Director	
Victoria Vargas, Economic Dev. Project Mgr.	
Lauren Lyons, Economic Dev. Coordinator	
Perwez Moheet, Finance Director	
Sandra Duran, HR Director	
Mariana Espinoza, Parks & Recreation Director	
William Atkinson, Senior Planner	
Jeff Barnett, Chief of Police	
Pedro Hernandez, Police Captain	
Tim Griffith, Police Lieutenant	
Harper Wilder, Director of Public Works	
Julie Crookston, Asst. Director of Public Works	
Will Paiz-Tabash, Emerg. Mgmt. Coord.	

I. Call Meeting to Order

Mayor Mitchell called the meeting to order at 7:06 p.m. The Pledge of Allegiance was recited. Mayor Mitchell asked the city secretary to call roll.

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

*One or more members of the governing body may participate in the meeting by videoconference pursuant to Section 551.127, Texas Government Code, provided that a quorum of the governing body will be present at Kyle City Hall.

II. Approval of Minutes

1. City Council Regular Meeting Minutes - April 5, 2022. ~ *Jennifer Holm, City Secretary*

Council Member Tobias moved to approve the minutes of the April 5, 2022 Mayor Pro Tem Rizo seconded the motion. Motion carried 7-0.

III. Citizen Comment Period with City Council

Mayor Mitchell opened citizen comments at 7:08 p.m.

Chap Ambrose was called to speak as registered as a resource for Item No. 13. He stated that he has more experience negotiating with The Boring Company than anyone in the room. He spoke about his experience with working with them as neighbors. He stated that they have a pattern of building without the proper permits and then when authorities are involved, they bully their way to exceptions and cut in line. Mr. Ambrose gave examples about their illegal septic system and failure to obtain a permit from a textile engineer.

Jay Koltermann was called to speak as registered regarding Item No. 25. He spoke about living in the Stagecoach Crossing neighborhood. He spoke about people cutting through their neighborhood at a high rate of speed to cut through to Scott Street and others. He is hoping Council can come up with a permanent solution, beyond a squad car or stop sign to curb the traffic that is going through their neighborhood.

Golam Kibria, representing Arias, was called to speak as registered. He is a geotechnical engineer and spoke about the Kyle pedestrian project. He stated that he can talk about the soil and continued that if it is built with proper permits and with the acknowledgement of all the bodies involved, he thinks it is going to be a very good project. He went on to say that the tunnel will provide a multimodal system for transportation and flexibility for the pedestrian to cross through the rail crossing.

Shasta Bell-Osborn was called to speak as registered in favor of Item No. 13. She spoke about her family having been Austinites for seven generations and how excited she and her husband are about doing this project locally, as he works for The Boring Company. She believes it will bring a lot of good things for the community.

Andrew Crawford was called to speak as registered in favor of Item No. 13. He stated that he is the HR Manager in Texas for The Boring Company. He stated that he lives close by, and his father-in-law lives in Kyle. He stated that his kids and his father-in-law will use the tunnel often. He stated that this is a Texas built tunnel, a boring machine digging a Texas tunnel with no new taxes added. He thinks this is a great project that puts Kyle at the forefront of innovation for an innovative company.

James Earp was called to speak. He called recognition to Municipal Clerks Week, and specifically the work done by Jennifer Holm, City Secretary.

With no one else wishing to speak, Mayor Mitchell closed citizen comments at 7:20 p.m.

IV. Presentation

2. Air Quality Awareness Week Proclamation. ~ *Robert Rizo, Mayor Pro Tem*

No action was taken.

3. National Economic Development Week Proclamation. ~ *Dex Ellison, Council Member*

No action was taken.

4. Asian Pacific American Heritage Month City Council Proclamation. ~ *Dex Ellison, Council Member*

This proclamation will be brought back on May 17, 2022.

5. Presentation from AT&T regarding its general build plan, the services offered, procedures for notifying residents, and how it will address any issues. ~ *Kelly Curbow, AT&T External & Legislative Affairs*

Kelly Curbow, Brad Towrey and Sean Kemp presented the item. No action was taken.

6. 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*
- La Verde project wins Texas Chapter of the American Society Landscape Architects award
 - Nitro Swimming Groundbreaking May 10th
 - Budget Worksession May 12th
 - City Council Workshop re: TIRZ – May 16th
 - Downtown Master Plan
 - Translation available on website
 - Hays County Torch Run May 6th
 - Photo opportunities at Mary Kyle Hartson Park
 - Invasive Plant Removal May 7th
 - Youth Basketball Clinic May 7th
 - Seeking Vendors for Market Days

No action was taken.

7. CIP/Road Projects and Consent Agenda Presentation. ~ *Leon Barba, P.E., City Engineer*

No action was taken.

V. Consent Agenda

Mayor Mitchell pulled Item No. 16 to postpone until later. Council Member Parsley pulled Item Nos. 10 and 13. Council Member Ellison wanted to pull Item No. 13 as well. Council Member Flores-Cale pulled Item Nos. 12, 20 and 21. Mayor Mitchell brought forward Item Nos. 8, 9, 11, 14, 15, 17, and 19 for consideration.

8. Approve Amendment No. 1 to Task Order No. 7 to LJA ENGINEERING, INC., Austin, Texas, in the amount not exceed \$10,020.00, increasing the total contract amount not to exceed \$128,587.00 for the Schlemmer & Porter St Wastewater Phase 2 Project. ~ *Leon Barba, P.E., City Engineer*
9. Approval of Change Order No. 7 to SKYBLUE UTILITIES, INC., Kingsland, Texas, in an additional amount of \$147,306.16, increasing the total contract amount, not to exceed, \$6,219,781.24 for the purpose of constructing an 8" wastewater line to serve businesses on Edwards Drive. ~ *Leon Barba, P.E., City Engineer*
11. 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*
14. Approve an interlocal agreement (ILA) between the City of Kyle and Capital Area Council of Governments (CAPCOG) to allow the City of Kyle to use the Everbridge Regional Notification System. ~ *William Paiz-Tabash, Emergency Management Coordinator*
15. (*Second Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas for the purpose of assigning original zoning to approximately 1 acre of land from Agriculture 'A' to Retail Service District 'RS' for property located at 23451 IH-35, in Hays County, Texas. (Winn Family LP - Z-22-0095) ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 7-0 to recommend approval of the request.

City Council voted 7-0 to approve on first reading.
17. (*Second Reading*) An Ordinance Amending Section 47-28 of the Code of Ordinances, Kyle, Texas and Amending the Tow-Away Zone Under Said Section, Relating to the Removal of Vehicles in No Parking Zones, Fire Access Roads, and Fire Lanes; Providing for Enforcement; Containing Findings and Other Provisions Relating to the Foregoing Subject; Providing for Severability; and Providing for Related Matters. ~ *Paige Saenz, City Attorney*

City Council voted 6-1 to approve on first reading.
18. Approve a Memorandum of Understanding between Rural Capital Area Workforce Development Board, Inc., Hays CISD and City of Kyle to work in partnership to implement the Teacher Externship Program. ~ *Amber Lewis, Assistant City Manager*
19. Authorize the City Manager to apply for and accept a STEP (Selective Traffic Enforcement Program) enforcement grant in an amount no greater than \$5,000.00 from the Texas Department of Transportation and authorize matched funding from the Police Department's approved operating budget for FY 2021-2022 in an amount not to exceed \$1,000 to fund a STEP Grant Program for an enforcement period beginning May 23, 2022 through June 5, 2022. ~ *Jeff Barnett, Chief of Police*

Mayor Mitchell moved to approve Consent Agenda Item Nos. Item Nos. 8, 9, 11, 14, 15, 17, 18, and 19. Council Member Flores-Cale seconded the motion. Motion carried 7-0.

VI. Items Pulled from Consent Agenda

10. Authorize award and execution of a purchase order to BRZ COATINGS, INC., Watauga, Texas, in an amount not to exceed \$275,000.00, which includes a 10% contingency to perform all work required for the rehabilitation of the Plum Creek Elevated Storage Tank.
~ *Leon Barba, P.E., City Engineer*

Council Member Parsley moved to authorize award and execution of a purchase order to BRZ Coatings, Inc., Watauga, Texas, in an amount not to exceed \$275,000.00, which includes a 10% contingency to perform all work required for the rehabilitation of the Plum Creek Elevated Storage Tank. Mayor Pro Tem Rizo seconded the motion. Motion carried 7-0.

12. Approve a lease agreement between CAPCOG and the City of Kyle for an Air Quality Monitoring Station to be placed at Lake Kyle. ~ *Kathy Roecker, Stormwater Management Plan Administrator*

Council Member Flores-Cale moved to approve a lease agreement between CAPCOG and the City of Kyle for an Air Quality Monitoring Station to be placed at Lake Kyle. Mayor Pro Tem Rizo seconded the motion. Motion carried 7-0.

13. Approve a professional services agreement by and between The Boring Company and the City of Kyle. ~ *J. Scott Sellers, City Manager*

Mayor Mitchell moved to approve a professional services agreement by and between The Boring Company and the City of Kyle. Council Member Bradshaw seconded the motion. Motion carried 6-1 with Council Member Flores-Cale dissenting.

Mayor Mitchell called for a recess at 8:34 p.m. Mayor Mitchell called the meeting back to order at 8:47 p.m.

16. Authorize award and execution of a purchase order to ILLUMINATION HOLIDAY LIGHTING, Austin, TX in an amount not to exceed \$29,679.00 for holiday lights for the the KRUG Activity Center and the largest Oak Tree at Mary Kyle Hartson City Square Park. This Council approval will also authorize staff to reprogram funds from the Historic Water Tower Festive Lighting project to provide funding for this expenditure. ~ *Mariana Espinoza, Director of Parks & Recreation*

No action was taken.

20. Approval of an Interlocal Agreement between the City of Kyle ("City"), a Home Rule municipality located in Hays County, Texas, and Crosswinds Municipal Utility District. ~ *James R. Earp, Assistant City Manager*

Council Member Flores-Cale moved to approve an Interlocal Agreement between the City of Kyle ("City"), a Home Rule municipality located in Hays County, Texas, and Crosswinds Municipal Utility District. Council Member Tobias seconded the motion. Motion carried 7-0.

21. (*First Reading*) An ordinance of the City of Kyle, Texas Providing for withholding of Water Taps and Water Meters or Other Reasonable Enforcement Actions to be taken for

Crosswinds Municipal Utility District Properties that are out of Compliance with the Rules on Erosion and Sediment Control. ~ *James R. Earp, Assistant City Manager*

Council Member Flores-Cale moved to approve an ordinance of the City of Kyle, Texas Providing for withholding of Water Taps and Water Meters or Other Reasonable Enforcement Actions to be taken for Crosswinds Municipal Utility District Properties that are out of Compliance with the Rules on Erosion and Sediment Control. Mayor Pro Tem Rizo seconded the motion. Motion carried 7-0.

VII. Consider and Possible Action

22. Discussion on requirement for Council to report and update the rest of council after traveling for the City on the following meeting after the trip, to include possible amendment to the rules of council. ~ *Daniela Parsley, Council Member*

No action was taken.

23. Discussion and update from meeting with lobbyist in Washington DC. ~ *Daniela Parsley, Council Member*

No action was taken.

24. Discussion and possible action regarding overhead lines on 150 East. ~ *Yvonne Flores-Cale, Council Member*

No action was taken.

25. Discussion and possible action regarding safety issues on S. Old Stagecoach Road, Conestoga Dr. and Scott Street, to include discussion regarding amendments to the City of Kyle's Transportation Master Plan. ~ *Yvonne Flores-Cale, Council Member*

Council Member Tobias moved to direct staff to conduct a traffic warrant to also include recommendations by the HOA. Council Member Ellison seconded the motion. Motion carried 7-0.

Council Member Flores-Cale moved to direct staff to evaluate Old Stagecoach Road and Scott Street for future plans and/or amendments to the Transportation Master Plan to confirm that four lanes would be ideal in those areas. Council Member Parsley seconded the motion. Motion carried 7-0.

26. Discussion and possible action regarding the City implementing a "conflicts check" policy for staff and elected officials. ~ *Yvonne Flores-Cale, Council Member*

Council Member Flores-Cale moved to direct staff to research and bring back a conflicts check software by the first meeting in June. Council Member Parsley seconded the motion.

Mayor Mitchell requested a roll call vote. Council Member Flores-Cale voted aye; Council Member Parsley voted aye; Mayor Pro Tem Rizo voted aye, Mayor Mitchell voted nay, Council

Member Ellison voted nay, Council Member Tobias voted nay, and Council Member Bradshaw voted nay. Motion failed 3-4.

28. Consider and possible action on an RFP for Construction Manager at Risk for the building project at 104 S. Burluson. ~ *Amber Lewis, Assistant City Manager*

Mayor Mitchell moved to approve an RFP for Construction Manager at Risk for the building project at 104 S. Burluson. Council Member Tobias seconded the motion. Motion carried 7-0.

29. (*Second Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas for the purpose of assigning original zoning to approximately 1.503 acres of land from Agriculture 'A' to Central Business District-1 'CBD-1' for property located at 1400 W. Center Street, in Hays County, Texas. (Richard and Rita Cuellar Sr. - Z-22-0096) ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 7-0 to recommend approval of the request.

City Council voted 5-2 to approve on first reading.

Mayor Mitchell moved to approve an ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas for the purpose of assigning original zoning to approximately 1.503 acres of land from Agriculture 'A' to Central Business District-1 'CBD-1' for property located at 1400 W. Center Street, in Hays County, Texas. Council Member Bradshaw seconded the motion. Motion carried 6-1 with Council Member Tobias dissenting.

27. Consider and possible action on a Request for Proposal (RFP) seeking to hire an experienced and qualified vendor that can provide a turnkey solution of all equipment, corresponding software and networking, accessories, warranties, and deliveries required to install Electric Vehicle Charging Stations (EVCSs) at City owned facilities, as well as identify prime city-owned locations. ~ *Kathy Roecker, Stormwater Management Plan Administrator & Julie Crookston, Assistant Director of Public Works*

Mayor Mitchell brought forward Item No. 27 out of order, after Item No. 29.

Council Member Tobias moved to approve a Request for Proposal (RFP) seeking to hire an experienced and qualified vendor that can provide a turnkey solution of all equipment, corresponding software and networking, accessories, warranties, and deliveries required to install Electric Vehicle Charging Stations (EVCSs) at City owned facilities, as well as identify prime city-owned locations. Mayor Mitchell seconded the motion. Motion carried 7-0.

31. (*Second Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 201.4 acres of land from Agriculture 'A' to Single Family Residential-1 'R-1-1' for property located at 1899 Six Creeks Blvd, in Hays County, Texas. (Blanco River Ranch Properties, LP - Z-22-0097) ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 5-0 to recommend approval conditioned on full annexation completed first.

City Council voted 4-3 to approve on First Reading.

Mayor Mitchell moved to approve an ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 201.4 acres of land from Agriculture 'A' to Single Family Residential-1 'R-1-1' for property located at 1899 Six Creeks Blvd, in Hays County, Texas. Council Member Tobias seconded the motion. Motion carried 6-1 with Council Member Flores-Cale dissenting.

32. *(Second Reading)* An ordinance of the City of Kyle, Texas annexing 119.703 acres of land, more or less located at 1111 and 1113 Roland Lane, approximately 3,000' northwest of the intersection of IH-35 & Roland Lane in Hays County, Texas including the abutting streets, roadways, and rights-of-way into the corporate limits of the City. *(Edward Bullock - ANNX-22-0017) ~ Will Atkinson, Senior Planner*

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

Mayor Mitchell moved to approve an ordinance of the City of Kyle, Texas annexing 119.703 acres of land, more or less located at 1111 and 1113 Roland Lane, approximately 3,000' northwest of the intersection of IH-35 & Roland Lane in Hays County, Texas including the abutting streets, roadways, and rights-of-way into the corporate limits of the City. Council Member Tobias seconded the motion. Mr. Atkinson stated that this item was requested to be delayed until May 17, 2022. Mayor Mitchell rescinded his motion. No action was taken.

30. *(Second Reading)* An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of modifying Section 53-1230 to restrict certain uses, and amend the zoning use chart. ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 4-1 to deny Restrictions for Gas stations.

Planning and Zoning Commission voted 4-1 to deny Restrictions for Car washes.

Planning and Zoning Commission voted 5-0 to approve Restrictions Self-storage.

Planning and Zoning Commission voted 4-1 to deny Bar without restaurant in CBD-2.

Planning and Zoning Commission voted 5-0 to Approve Brew pub in CBD-2. Planning and Zoning Commission voted 5-0 to restrict Self-storage.

City Council voted 6-1 to deny microbreweries in CBD-2.

City Council voted 5-2 to approve the recommended amendments and P&Z recommendation for self-storage on 2/15/22.

City Council voted on 5-1 to approve restrictions for gas stations.

City Council voted on 5-1 to approve restrictions for car washes.

Mayor Mitchell recused himself from this item.

Council Member Flores-Cale moved to approve an ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of modifying Section 53-1230 to restrict certain uses, and amend the zoning use chart. Council Member Bradshaw seconded the motion. Motion carried 5-1 with Council Member Ellison dissenting and Mayor Mitchell's recusal.

VIII. Executive Session

33. 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.
 - Communication protocol with city attorney and city manager
 - Kyle Housing Authority
 - 1119 N. Old Hwy 81
 - Kyle Pie in the Sky
 2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
 3. Personnel matters pursuant to Section 551.074.
 4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
 - Project Fire Engine Red

There was no executive session.

34. Take action on items discussed in Executive Session.

IX. Adjourn

Mayor Mitchell moved to adjourn. Council Member Tobias seconded the motion. No vote was held.

With no further business to discuss, the City Council adjourned at 9:57 p.m.

Travis Mitchell, Mayor

Attest:

Jennifer Holm, City Secretary



CITY OF KYLE, TEXAS

2022 0512 Special Minutes

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: City Council Special Meeting Minutes - May 12, 2022. ~ *Jennifer Holm, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2022 0512 DRAFT Special

SPECIAL CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Special Session on May 12, 2022 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell
Mayor Pro Tem Robert Rizo
Council Member Dex Ellison
Council Member Yvonne Flores-Cale
Council Member Ashlee Bradshaw
Council Member Daniela Parsley
Council Member Michael Tobias
Scott Sellers, City Manager
James Earp, Assistant City Manager
Jerry Hendrix, Assistant City Manager
Amber Lewis, Assistant City Manager
Audrey Guthrie, Assistant City Attorney
Samantha Armbruster, Communications Dir.
Rachel Sonnier, Communications Manager
Jennifer Holm, City Secretary
Leon Barba, City Engineer
Diana Torres, Economic Dev Director
Perwez Moheet, Finance Director
Andy Alejandro, Accounting Manager
Connie Campa, Staff Accountant
Sandra Duran, HR Director
Matt Dawson, IT Director
Grant Bowling, Video Production Specialist
Paul Phelan, Library Director
Mariana Espinoza, PARD Director
Benito Pereda, Parks & Trails Maint. Supervisor
Gary Stubbins, Building Official
Will Atkinson, Senior Planner
Jeff Barnett, Chief of Police
Tim Griffith, Police Lieutenant
Philip Cleary, Police Officer
Briana Geddes, Animal Control Officer
Duarte Pamplona, Code Enforcement Officer
Laura Hernandez, Police Secretary
Harper Wilder, Public Works Director
Julie Crookston, Assistant Public Works Director
Tim Samford, Division Mgr. - Treatment Ops
Warren Christian, Division Mgr. - W/WW
Scott Egbert, Division Manager of Streets
Tim Cropley, Facilities Division Manager
Will Paiz-Tabash, , Emerg. Mgmt. Coord.

Evangelina Chapa

I. Call Meeting to Order

Mayor Mitchell called the meeting to order at 5:33 p.m. Mayor Mitchell asked the city secretary to call roll.

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

II. Citizen Comment Period with City Council

Mayor Mitchell opened citizen comments at 5:33 p.m.

Evangelina Chapa was called to speak as registered. She spoke about the May 3, 2022 meeting, Item No. 26, the vote was unsuccessful for the conflict check item. She stated her disappointment that it did not go through.

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

III. Consider and Possible Action

1. *(First Reading)* An Ordinance of the City of Kyle, Texas, Amending Chapter 8 Building Regulations, Article III Unsafe Building Abatement of the City of Kyle Code of Ordinances, Amending regulation of dangerous buildings and structures within the City in its entirety; Adopting the International Property Maintenance Code and making amendments thereto; Adopting Chapter 214 of the Texas Local Government Code by reference; Amending penalty provisions, providing for inspection and securing of property, providing for diligence and notice; Providing for hearings before city council; Providing for appeals to district court; Providing for repair and demolition of buildings; Providing an effective date, repeal of conflicting ordinances, savings, and open meetings clauses; and Providing for related matters.

Mayor Mitchell moved to approve an Ordinance of the City of Kyle, Texas, Amending Chapter 8 Building Regulations, Article III Unsafe Building Abatement of the City of Kyle Code of Ordinances, Amending regulation of dangerous buildings and structures within the City in its entirety; Adopting the International Property Maintenance Code and making amendments thereto; Adopting Chapter 214 of the Texas Local Government Code by reference; Amending penalty provisions, providing for inspection and securing of property, providing for diligence and notice; Providing for hearings before city council; Providing for appeals to district court; Providing for repair and demolition of buildings; Providing an effective date, repeal of conflicting ordinances, savings, and open meetings clauses; and Providing for related matters. Council Member Flores-Cale seconded the motion. Motion carried 7-0.

With no objections, the ordinance was finally passed.

2. The City Manager and Department Directors will present new budget requests for operating and capital budgets to City Council for consideration and discussion, budget prioritization, and policy direction for the development of the City's proposed operating

and capital improvement program (CIP) budgets for fiscal year 2022-2023. ~ *J. Scott Sellers, City Manager*

Mayor Mitchell brought forward Item No. 2 for discussion. Mr. Sellers opened the presentation with the overview of today's meeting. Items to be discussed include: Objectives for Budget Worksession, City Council's Program Priorities, New Budget Needs by City Department (presented in alphabetical order).

- Building Department, *presented by Gary Stubbins.*
- City Council Change in Budget Structure, *presented by Scott Sellers.*
- City Manager's Office, *presented by James Earp.*
- City Secretary's Office, *presented by Jennifer Holm.*
- Communications Department, *presented by Rachel Sonnier*
- Economic Development, *presented by Diana Torres.*
- Emergency Management, *presented by Will Paiz-Tabash.*
- City Engineer, *presented by Leon Barba.*
- Environmental Services & Trades, *presented by Jerry Hendrix and Tim Cropley.*
- Facilities Maintenance, *presented by Tim Cropley.*
- Financial Services Department, *presented by Perwez Moheet.*
- Human Resources Department, *presented by Sandra Duran.*
- Information Technology Department, *presented by Matt Dawson.*
- Library Department, *presented by Paul Phelan.*
- Parks & Recreation Department, *presented by Mariana Espinoza.*
- Planning Department, *presented by Will Atkinson.*
- Police Department, *presented by Jeff Barnett.*
- Public Works Department, *presented by Harper Wilder, Tim Samford, and Scott Egbert.*

Mayor Mitchell called a recess at 9:16 p.m. Mayor Mitchell called the meeting back to order at 9:24 p.m. The presentation continued.

- High Priority Projects, *presented by Scott Sellers, Mariana Espinoza, and Leon Barba.*
- November 2022 GO Bond Election, *presented by Scott Sellers.*

- Estimated New Revenue, *presented by Scott Sellers.*
- Summary of New Budget Needs & New Revenue & Funding Sources for 2023, *presented by presented by Scott Sellers.*

No action was taken.

IV. Executive Session

3. 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.
 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.

There was no executive session.

4. Take action on items discussed in Executive Session.

V. Adjourn

Mayor Mitchell moved to adjourn. Mayor Pro Tem Rizo seconded the motion. No vote was held.

With no further business to discuss, the City Council adjourned at 9:58 p.m.

Travis Mitchell, Mayor

Attest:

Jennifer Holm, City Secretary



CITY OF KYLE, TEXAS

Memorial Day/D-Day Proclamation

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Memorial Day/D-Day Proclamation. ~ *Robert Rizo, Mayor Pro Tem*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Women Veterans Day Proclamation

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Women Veterans Day (June 12th) City Council Proclamation. ~ *Dex Ellison, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

2022 Team Kyle Academy

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Presentation of Graduates of the 2022 Team Kyle Academy. ~ *James R. Earp, Assistant City Manager*

Other Information: Graduates include:

- Neil Stegall
- GayLynne Carson
- Priscilla Cruz
- Susan Jean Reyna
- Michael Harellick
- Mary Landrum
- Larry Simone
- Kenneth Rocha
- Sylvia Diaz
- Frank Schultz

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Spring Creek Trail Presentation

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Spring Creek Trail Presentation. ~ *Allen Ross, Schaumburg & Polk, Inc.*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

City Manager's Report

Meeting Date: 6/7/2022

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*

- Budget Workshops
- Boards and Commissions Openings
- National Trails Day - June 4th
- Movie in the Park - June 7th
- Juneteenth Celebration/First Market Day - June 11th
- Family Skate Night - June 17th
- James Adkins Pool Public Swim Day open June 24th
- AMVETS Walker Event - June 12th
- Juneteenth Dialogue - June 17th
- State of the City - June 28th
- 4th of July Fireworks
- Summer Reading Program

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

CIP/Road Projects Update

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: CIP/Road Projects and Consent Agenda Presentation. ~ *Leon Barba, P.E., City Engineer*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

ILA Between Hays County And The City Of Kyle

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Approve an Interlocal Agreement Between Hays County and the City of Kyle related to the Dacy Lane Project from Bebee Rd. to Amberwood Loop. ~ *Leon Barba, P.E., City Engineer*

Other Information: The City desires to add street lights at certain locations on the Dacy Lane Project from Bebee Rd. to Amberwood Loop.

The City also desires to expand the width of the shared use sidewalk from 10' to 12' on the west side of the Project from Bebee Rd. to Chapa Middle School and add a 10' Shared Use Path from Chapa to Amberwood Loop.

The City will also appropriate funds to pay for the additional engineering associated with added enhancements and sidewalk widening.

Legal Notes: N/A

Budget Information:

ATTACHMENTS:

Description

- Dacy Lane ILA

**INTERLOCAL AGREEMENT BETWEEN
HAYS COUNTY AND THE CITY OF KYLE
RELATED TO THE DACY LANE PROJECT
FROM
BEBEE RD. TO AMBERWOOD LOOP**

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF HAYS §

This Interlocal Agreement (the “**Agreement**”) is entered into as of this _____ day of _____, 2022, by and between Hays County, a political subdivision of the State of Texas (the “**County**”) and the City of Kyle, a Texas home-rule municipality (the “**City**”) (collectively, the “**Parties**”). In this Agreement, the City and the County are sometimes individually referred to as “**a Party**” and collectively referred to as “**the Parties**”.

RECITALS

WHEREAS, V.T.C.A., Government Code, Chapter 791, cited as the Texas Interlocal Cooperation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

WHEREAS, the City desires to add street lights at certain locations on the Dacy Lane Project from Bebee Rd. to Amberwood Loop (the “**Project**”); and

WHEREAS, the City also desires to expand the width of the shared use sidewalk from 10’ to 12’ on the west side of the Project from Bebee Rd. to Chapa Middle School and add 10’ Shared Use Path from Chapa to Amberwood Loop; and

WHEREAS, the City will also appropriate funds to pay for the additional engineering and construction costs associated with added enhancements and sidewalk widening; and

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

**I.
PURPOSE**

1.02 General. The purpose of this Agreement is to provide an understanding between the Parties that facilitates the installation of streetlights and the expansion of the shared use path as shown on **Exhibit A**.

II.
CITY OBLIGATIONS

2.01 Design and Construction Costs. The City shall be solely responsible for the additional design and construction costs associated with the changes required to expand the proposed sidewalk to 12' and for the added streetlights and related appurtenances.

2.02 Encroachment on City Property. In order to widen the shared use path, grading may be required on City property and the City will approve this encroachment on the section from Bebee Rd. to Chapa Middle School.

2.03 Construction Plans. The City and the County or its delegee will approve the plans and specifications related to the Project. Any changes or modifications to the plans will be submitted to the County prior to commencing construction and the City shall pay for any additional costs associated with any changes, if required.

2.04 Construction Administration Costs. The City will pay for any additional construction administration costs associated with processing the change order for the Project.

2.05 Anticipated Costs. The following are the preliminary anticipated costs for the Project to be paid by the City:

Item 1 – Illumination - \$375,000.00

Item 2 – Shared Use Path (SUP) - \$135,000.00

Item 3 – Construction Administration - \$7,500.00

Item 4 – Design Costs - \$50,000.00 (Paid for directly by City, not included in ILA)

Item 5 – Place one metal pole with lighting fixture for temporary lighting at the intersection of Dacy Lane and Bebee Rd. - \$3,181.50

Item 6 – Recoating of traffic poles - \$37,000.52

Item 7 – There may be construction delays associated with the addition of the items listed above that are not known at this time. The City agrees to pay all costs associated with construction delays for the items listed above only.

Item 8 – City will be responsible for providing electrical service for both the illumination and temporary lighting.

III.
COUNTY OBLIGATIONS

3.01 Design Reimbursements. The County shall contract with the Design Firm and be responsible for the payment of all Design Firm invoices. The County shall also manage and pay for the construction of the Project. Related invoices paid by the County shall be fully reimbursed

by the City. The anticipated amounts cited in Section 2.05, above, are estimates that may not be cover the full costs of the improvements, which the City shall be obligated to pay, even if the actual costs exceed the anticipated amounts. In order to be reimbursed the County shall invoice the City with an itemized bill reflecting the materials, equipment, and/or labor to be reimbursed. The City shall reimburse any invoices provided under this Agreement within thirty (30) days of receiving said invoice. Design costs for any changes requested by the City shall be addressed in an Amendment to this Interlocal Agreement, as appropriate.

IV. DISPUTES

4.01 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. Notwithstanding the foregoing, any matters specified in the default notice which may be cured solely by the payment of money must be cured within 10 days after receipt of the notice. This applicable time period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting party due to such breach.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

4.02 Equitable Relief. In recognition that failure in the performance of the Parties' respective obligations could not be adequately compensated in money damages alone, the Parties agrees that after providing notice and an opportunity to cure in accordance with Section 4.01 above, the Parties shall have the right to request any court, agency or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorney's fees, and for any penalties or fines as a result of the failure to comply with the terms including, without limitation, the right to obtain a writ of mandamus or an injunction requiring the governing body of the defaulting party to levy and collect rates and charges or other revenues sufficient to pay the amounts owed under this Agreement.

4.03 Agreement's Remedies Not Exclusive. The provisions of this Agreement providing remedies in the event of a Party's breach are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement.

V.
GENERAL PROVISIONS

5.01 Authority. This Agreement is made in part under the authority conferred in Chapter 791, *Texas Government Code*.

5.02 Term. This Agreement shall commence upon execution of this Agreement and shall end upon the acceptance of the project and/or full reimbursement by the City, whichever occurs later.

5.03 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

5.04 Default and Remedies. If City fails to pay for Services under this Agreement and continues such failure for thirty (30) days after the County provides written notice to cure, City shall be deemed to be in default under this Agreement. In the event that the County defaults under this Agreement, and such default is not cured, City may, in addition to any other remedy at law or in equity, immediately terminate this Agreement or seek specific performance of this Agreement.

5.05 Payments from Current Revenues. Any payments required to be made by a Party under this Agreement will be paid from current revenues or other funds lawfully available to the Party for such purpose.

5.06 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

5.07 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter and only relates to those portions of the Project shown in the map attached hereto as Exhibit "A."

5.08 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

5.9 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Hays County, Texas.

5.10 Notices. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

CITY: 100 W. Center St.
Kyle, Texas 78640
Attn: Travis Mitchell, Mayor
Telephone: 512-262-1010
Email: mayormitchell@cityofkyle.com

COUNTY: Hays County Dept. of Transportation
2171 Yarrington Road
San Marcos, Texas 78666
Attn: Jerry Borcharding, P.E.
Telephone: (512) 393-7385
Facsimile: (512) 393-7393

5.11 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

5.12 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

5.13 Effective Date. This Agreement is executed to be effective on the date the last Party signs this Agreement.

5.15 No Joint Venture. The County Project is a sole project of the County and is not a joint venture or other partnership with the City.

(SIGNATURES ON FOLLOWING PAGE)

HAYS COUNTY

By: [Signature]
Ruben Becerra, County Judge

Date: May 24, 2022

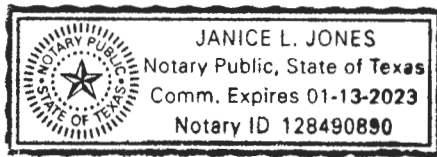
ATTEST:

By: [Signature]
County Clerk



THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this day of May 24th, 2022, by County Judge Ruben Becerra of Hays County, Texas, on behalf of said County.



[Signature]
Notary Public, State of Texas

CITY OF KYLE, TEXAS

By: _____

Date: _____

ATTEST:

By: _____

_____, _____ City Secretary

THE STATE OF TEXAS §

§

COUNTY OF HAYS §

§

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2022, by Travis Mitchell, Mayor of the City of Kyle, a Texas home-rule city, on behalf of said city.

Notary Public, State of Texas

EXHIBIT A

Exhibit A

Project Area

End Project. End
Illumination. End SUP

End Widening 10'
SUP to 12'. Begin
new SUP

Begin Project. Begin
Illumination. Begin
Widening 10' SUP to
12'





CITY OF KYLE, TEXAS

Task Order No. 14 LJA Dacy Lane
Illumination/Shared Use Path

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Approve Task Order No. 14 to LJA ENGINEERING, INC., Austin, Texas in an amount not to exceed \$48,499.00 for the Dacy Lane Illumination and Shared Use Path Design Project ~ *Leon Barba, P.E., City Engineer*

Other Information: Please see attached map for more information.

Legal Notes: N/A

Budget Information: Funding in the amount of \$48,499.00 is available in the approved CIP budget for Fiscal Year 2021-2022 as follows:

- 1110-64800-573130

ATTACHMENTS:

Description

- Agreement
- Project Map Details

TASK ORDER #14

This is Task Order No. 14,
consisting of 9 pages.

Task Order

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services – Task Order Edition, ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: 04/20/2022
- b. Owner: City Of Kyle
- c. Engineer: LJA Engineering, Inc.
- d. Specific Project (title): Dacy Lane Illumination and Shared Use Path Design
- e. Specific Project (description): Design Illumination and a Shared Use Path from Bebee Road to Amberwood Loop

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:
 - Set forth in Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.
- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

All work to be completed by October 30, 2022

5. Payments to Engineer

- A. Owner shall pay Engineer for services rendered under this Task Order as follows:
 - For the scope of services outlined in Exhibit A, a total fee would be \$48,499.00

Exhibit K – Amendment to Task Order

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

6. Attachments:

- a. Exhibit A – Engineer’s Scope
- b. Exhibit B - Owner's Responsibilities
- c. Exhibit C – Project Schedule
- d. Exhibit D – Engineer’s Fee

7. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is 04/20/2022

OWNER:

By: _____

Print Name: Travis Mitchell

Title: Mayor

ENGINEER:

By: 

Print Name: Zach Ryan, PE

Title: Vice President

Engineer License or Firm’s Certificate No. (if required): F-1386
State of: Texas

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

ATTEST _____
Jennifer Holm, City Secretary

Name: Zach Ryan, PE

Title: Vice President

Address: 7500 Rialto Blvd Building 2 Suite 100
Austin, Texas 78735

E-Mail Address: zryan@lja.com

Exhibit K – Amendment to Task Order

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

Exhibit A - Scope of Services

SERVICES TO BE PROVIDED BY THE ENGINEER

Roadway: Dacy Lane
County: Hays
Limits: **PS&E:** from Bebee Road to Amberwood Loop (0.7 miles).

General Work Description: Provide plans, specifications, and estimate (PS&E) development to develop Dacy Lane Illumination and Shared Use Path plans (SUP)

LJA Engineering, Inc. (The Engineer) will perform the following tasks listed below:

TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION PLAN

The Engineer will:

1.1 Develop Project Management Plan

- Develop a Project Management Plan that establishes all the responsibilities and roles of the team members. The plan will also detail the procedure process for all submittals, QAQC and project communication protocols.

1.2 Meetings

- Hold staff/team meetings at the Engineers office. The staff attending will be appropriate based upon the current assignments (up to 2 meetings).
- Hold Progress Meetings with City of Kyle PM. Up to two (2) progress meetings lasting up to 1 hour each and involving appropriate personnel from the Engineer’s staff (depending on the topics to be discussed). Provide Exhibits if required. Meeting Minutes will be completed by the Engineer after each meeting.
- Milestone Meetings will be held for each of the following submittals: 90%, Final PS&E. These meeting will include City of Kyle and the Engineer’s staff and are estimated to last up to 1 hour.

1.3 Invoicing, Contract Document Coordination, Progress Reports

- Prepare monthly progress reports and send with invoice to the City, anticipate three (3) months.
- Prepare monthly invoices for submission to the City for all requests for payment.

1.4 Management and Coordination

- Coordinate with the City and County throughout the PS&E development.
- Coordinate with the County Rep and Contractor.

1.5 Produce Project Scheduling

- Prepare a schedule in Microsoft Project format for approval by the City. Maintain schedule through design process.

Task 2 –Plans, Specifications, and Estimate (PS&E) Development

The Engineer will develop the following plan sheets or perform the following engineering in accordance with TxDOT and/or AASHTO guidelines. It is assumed that there will be two (2) PS&E submittals, 90%, Final.

2.1 Roadway Plans

- Revise Current Index Sheet
- Revise General Notes
- Quantity Summary
- Revise Typical Sections; existing and proposed
- Revise Roadway Plan and Profile Sheets
- SUP Details
- Revise Cross Sections
- Standards

2.2 Drainage Design – Hydraulics & Plan Sheets

- Revise Ditch Design for SB outside ditch between Bebee Road and Chapa Middle School
- Revise Ditch Summary Sheets

2.3 Erosion Control and SW3P Plans

Revise Temporary Erosion Control Devices

2.4 Illumination Plans

- Provide Illumination Layouts for City of Kyle preferred luminaires along both sides of Dacy Lane.
- Locate Electric Service
- Quantity Summary
- Standards

2.5 QA/QC & Comment Resolution

- Require these reviews: Detailed Check Review for all designs, Inter-discipline coordination review, detailed plan and construction reviews, and City oversight review.
- PM will maintain documentation of the reviews and it will be made available to the City at their request. All submittals will include a red line set if requested.
- Compile and provide responses to City review comments at each submittal

2.6 Construction Schedule

Coordinate with the County Representative and Contractor to determine construction schedule.

2.7 Construction Estimates

Develop a construction estimate of for 90% and Final Submittals. The estimate will be in Microsoft Excel spreadsheet format, reflect current contractor bid items. Current TxDOT unit bid prices will be used for all items not currently in the Dacy Lane contract.

Exhibit B

**Owner's Responsibilities for
Dacy Lane Illumination and SUP**

The City will perform the following:

- Promptly execute contract documents and amendments as necessary so as not to delay the prosecution of work.
- Promptly review and process all requests for payment.
- Prompt plan review of all interim and milestone deliverables

	2022											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Notice To Proceed (April 20, 2022)				◆								
90% PS&E				■	◆	■						
Final PS&E					■	◆						

Legend	
Various Work Tasks	■
Reviews / Comment Periods	■ ■ ■ ■ ■ ■ ■ ■
Milestones / Submittals / Approvals	◆

ATTACHMENT D

SERVICES FOR: Dacy Lane Illumination and Shared Use Path (SUP)	
LJA Engineering (Prime)	\$48,499.00
TOTAL FOR Dacy Lane Illumination and Shared Use Path (SUP)	\$48,499.00

Dacy Lane Illumination and Shared Use Path (SUP)

TASK DESCRIPTION	Senior Project Manager	Senior Engineer	Project Engineer	E.I.T.	Senior Engineering Tech	CADD Operator	Admin	Total
	225.00	180.00	155.00	130.00	115.00	85.00	70.00	
	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS
TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION PLAN								
1.1 Develop Project Management Plan								
Prepare PMP	1.0							1.0
1.2 Meetings								
Kick-Off Meeting with City	1.0		1.0					2.0
Staff Meetings (2)	2.0		2.0	2.0				6.0
Progress Meetings with City (2)	2.0		2.0					4.0
Milestone Meetings (90%, Final)	2.0		2.0					4.0
1.3 Invoicing, Contract Documents, Progress Reports								
Monthly Progress Reports	1.0							1.0
Monthly Invoices	2.0						3.0	5.0
1.4 Management and Coordination								
Coordinate with City of Kyle & County	8.0							8.0
Coordinate with County Rep and Contractor	4.0							4.0
1.5 Produce & Update Project Schedule								
Develop & Maintain Project Schedule	1.0							1.0
SUB TOTAL HOURS	24.0	0.0	7.0	2.0	0.0	0.0	3.0	36.0
SUB TOTAL FEE	\$5,400	\$0	\$1,085	\$260	\$0	\$0	\$210	\$6,955
TASK 2 – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) DEVELOPMENT								
2.1 Roadway Plans								
Revise Index Sheet				2.0		1.0		3.0
Revise General Notes	1.0		2.0					3.0
Quantity Summary			2.0	4.0				6.0
Revise Typical Sections Sheets			2.0	6.0				8.0
Revise Roadway Plan and Profile	2.0		8.0	32.0		8.0		50.0
SUP Details	1.0	2.0	4.0	16.0		4.0		27.0
Revise Cross Section			8.0	24.0				32.0
Standards			1.0	2.0				3.0
2.2 Drainage Design - Hydraulics & Plan Sheets								
Revise Ditch Design			4.0	4.0				8.0
Revise Ditch Summary Sheets			1.0	2.0				3.0
2.3 Erosion Control and SW3P Plans								
Revise Temporary Erosion Control Design (shown on TCP)			1.0	2.0		2.0		5.0
2.4 Illumination Plans								
Illumination Layouts (100 scale)	2.0		30.0	64.0		12.0		108.0
Quantity Summary			4.0	8.0				12.0
Standards			1.0	2.0				3.0
2.5 QA/QC & Comment Resolution								
QA/QC 90% comments	2.0	4.0						6.0
QA/QC Final comments	1.0	2.0						3.0
Respond to City 90% comments	1.0		2.0	4.0				7.0
Respond to City Final comments	1.0		2.0	4.0				7.0
2.6 Construction Schedule								
Construction Schedule (90% and Final)	1.0		1.0					2.0
2.7 Construction Cost Estimate								
Estimate (90%, Final)	1.0		2.0	2.0				5.0
SUB TOTAL HOURS	13.0	8.0	75.0	178.0	0.0	27.0	0.0	301.0
SUB TOTAL FEE	\$2,925	\$1,440	\$11,625	\$23,140	\$0	\$2,295	\$0	\$41,425
TOTAL Dacy Lane Illumination & SUP Tasks								
TOTAL HOURS (LJA)	37.0	8.0	82.0	180.0	0.0	27.0	3.0	337.0
TOTAL LABOR FEE (LJA)	\$8,325	\$1,440	\$12,710	\$23,400	\$0	\$2,295	\$210	\$48,380

LJA'S OVERHEAD DIRECT COSTS

DIRECT REIMBURSABLE EXPENSES	Rate	Quantity	Cost
Mileage	\$0.59	100	\$59.00
Meals	\$25.00		
Standard Postage	\$0.42		
Overnight Mail - letter size	\$16.00		
Overnight Mail - oversized box	\$30.00		
Courier Services (Deliveries)	\$30.00		
CADD Plotting (per SQ/FT)	\$1.50		
Photocopies B/W (8.5 X 11)	\$0.10	25	\$2.50
Photocopies B/W (11 X 17)	\$0.15	50	\$7.50
Photocopies Color (8.5 X 11)	\$0.75		
Photocopies Color (11 X 17)	\$1.00	50	\$50.00
Blueline/Blackline Prints (11" X 17")	\$0.20		
Blueline/Blackline Prints (22" X 34")	\$0.50		
Binding and Reproduction (Plan Set)	\$750.00		
Plots (B/W on Bond)	\$0.25		
Plots (Color on Bond)	\$2.00		
Plots (Color on Photographic Paper)	\$5.50		
Mylar (11" X 17")	\$3.00		
Flash Drive Archive	\$1.50		
TDLR Registration and Inspection	\$1,500.00		
	TOTAL LJA DIRECT COSTS		\$119.00

Exhibit A

Project Area

End Project. End
Illumination. End SUP

End Widening 10'
SUP to 12'. Begin
new SUP

Begin Project. Begin
Illumination. Begin
Widening 10' SUP to
12'





CITY OF KYLE, TEXAS

Edward Coster Bullock Jr. - Zoning
(Z-22-0094)

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: *(Second Reading)* An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 87.694 acres of land from 'A' to 'R-1-C' (Residential Condominium, 30.565 acres), 'R-1-3' (Single Family Residential – 3, 26.322 acres), 'R-1-2' (Single Family Residential – 2, 19.130 acres) & 'CC' (Community Commercial, 11.677 acres) for property located at 1111 & 1113 Roland Lane, in Hays County, Texas. (Edward Coster Bullock Jr. - Zoning -Z-22-0094) ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 7-0 to recommend approval the request contingent on full annexation.

City Council voted 5-1 to approve on first reading on 5/17/2022.

Other Information: See attached.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Staff Report
- Request Letter
- Landowner Authorization Form
- Deed #1
- Deed #2
- Survey
- Zoning Ordinance

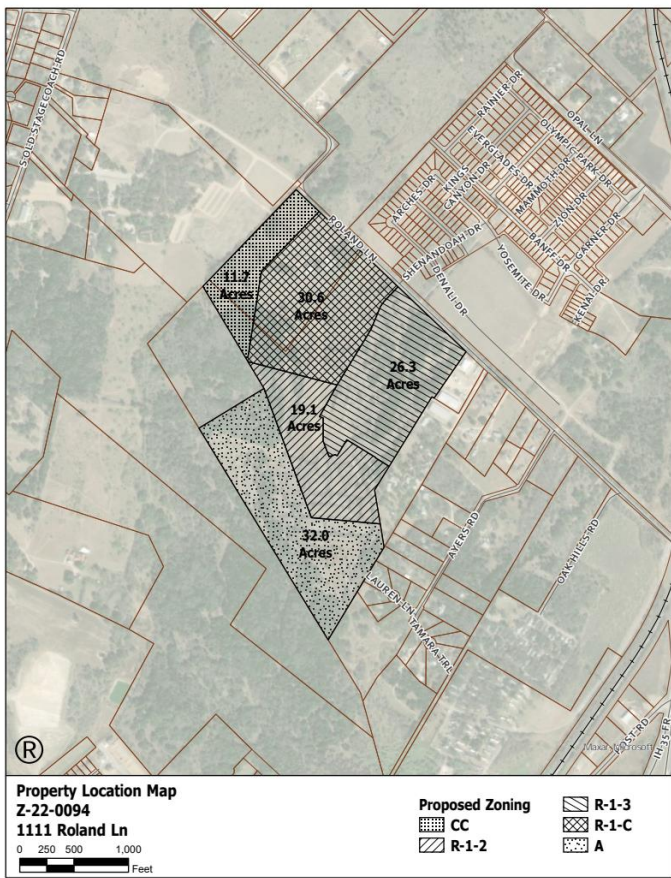
Property Location 1111 & 1113 Roland Lane, Kyle, TX 78640

Owner Edward Coster Bullock, Jr.
1111 & 1113 Roland Lane
Kyle, TX 78640

Agent Kristal L. Harris, P.E.
BGE, Inc.
1700 Director's Blvd, Ste. 1000
Austin, TX 78744

Request Assign 30.565-Acres (R-1-C), 26.322-Acres (R-1-3),
19.130-Acres (R-1-2), 11.677-Acres (CC), 32.009-Acres
(A)

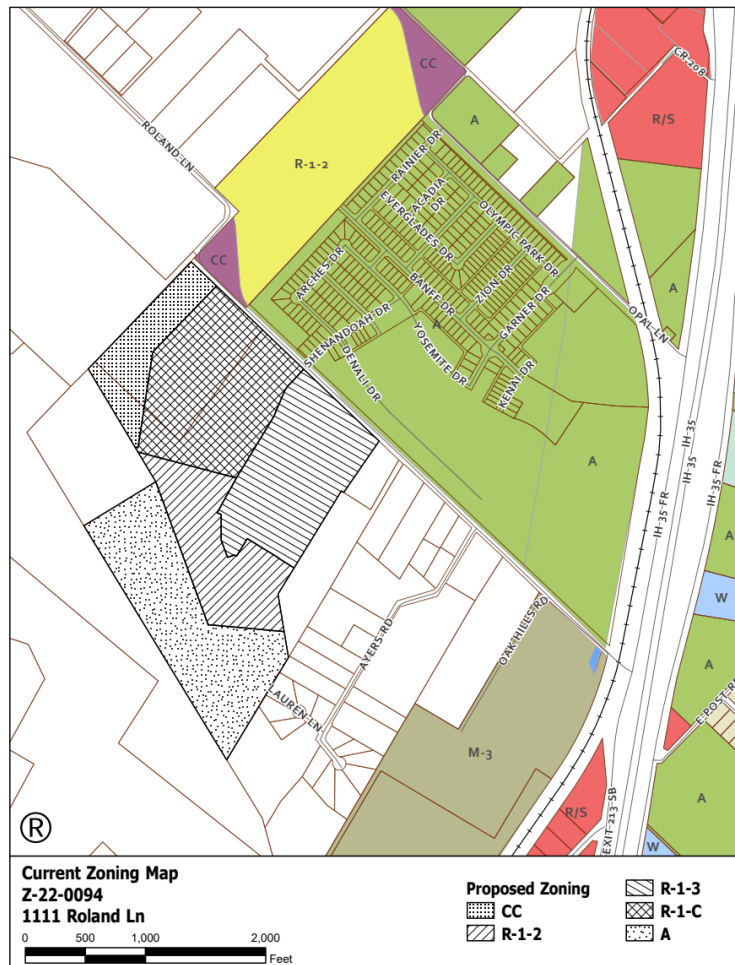
Vicinity Map



Site Description

The site is located on mostly vacant land with a residence and is currently in the City of Kyle's ETJ. To the south, southwest, west and northwest, are properties outside the city limits of Kyle. The uses have a range of event venues (Texas Old Town, Thistlewood Manor & Gardens), low density single family residential, and agriculture. To the north is property zoned CC (Community Commercial) and R-1-2 (SFR, 65' wide lots) across Roland Lane. To the northeast is the Paramount project (Single-Family detached residential (R-1-A). Paramount is currently under construction.

The applicant seeks to rezone the property from as shown in the location map.



Current Zoning – Upon completion of annexation on May 17, 2022

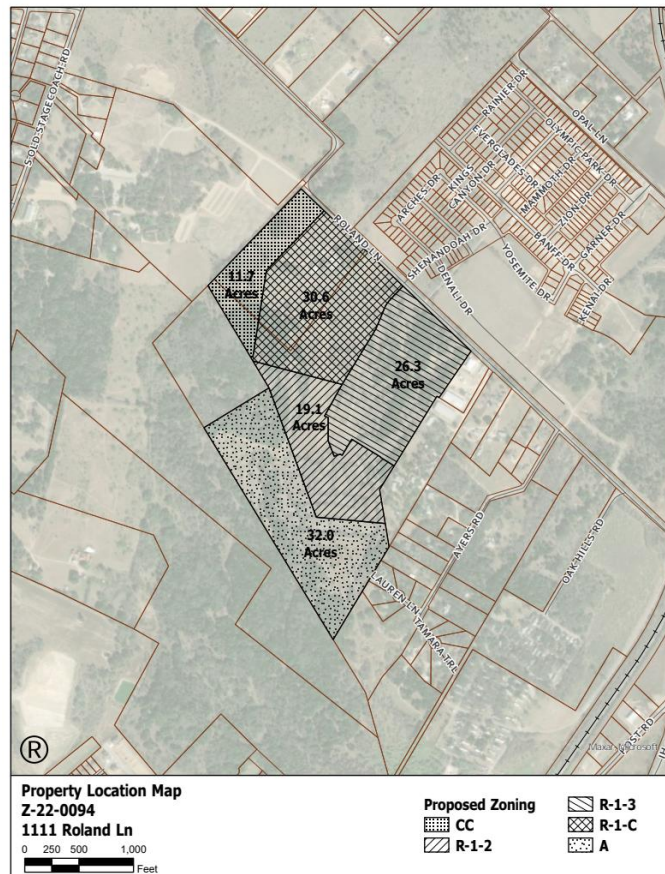
A (Agriculture)

Sec. 53-36. – Agricultural district A.

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

(Ord. No. 438, § 23, 11-24-2003)

Requested Zoning



A (Agriculture)

Sec. 53-36. – Agricultural district A.

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

(Ord. No. 438, § 23, 11-24-2003)

R-1-2 (Single Family Residential 2)

Sec. 53-89. - Purpose and permitted uses.

The single-family residential 2 district permits detached single-family dwellings with a minimum of 1,200 square feet of living area, and related accessory structures, on a minimum lot size of 6,825 square feet. There shall be no more than 4.7 houses per buildable acre.

(Ord. No. 438, § 26(a), 11-24-2003)

R-1-3 (Single-Family Residential 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.

([Ord. No. 928](#), § 1(Exh. A), 1-17-2017)

R-1-C (Residential Condominium)

Sec. 53-172. - Purpose and permitted use.

The residential condominium district R-1-C allows the establishment of a residential housing in compliance with the Texas Uniform Condominium Act, V.T.C.A., Property Code ch. 82, with individual apartments or units having a minimum of 500 square feet living area, inclusive of separate sleeping, living and kitchen facilities.

(Ord. No. 438, § 29(a), 11-24-2003)

CC (Community Commercial)

Sec. 53-667. - Purpose.

The purpose of the community commercial district [CC] is to provide for slightly more intense commercial uses than allowed in the neighborhood commercial zoning district. The district is established to provide areas for quality retail establishments and service facilities. This district should generally consist of retail nodes located along or at the intersection of major collectors or thoroughfares to accommodate higher traffic volumes.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

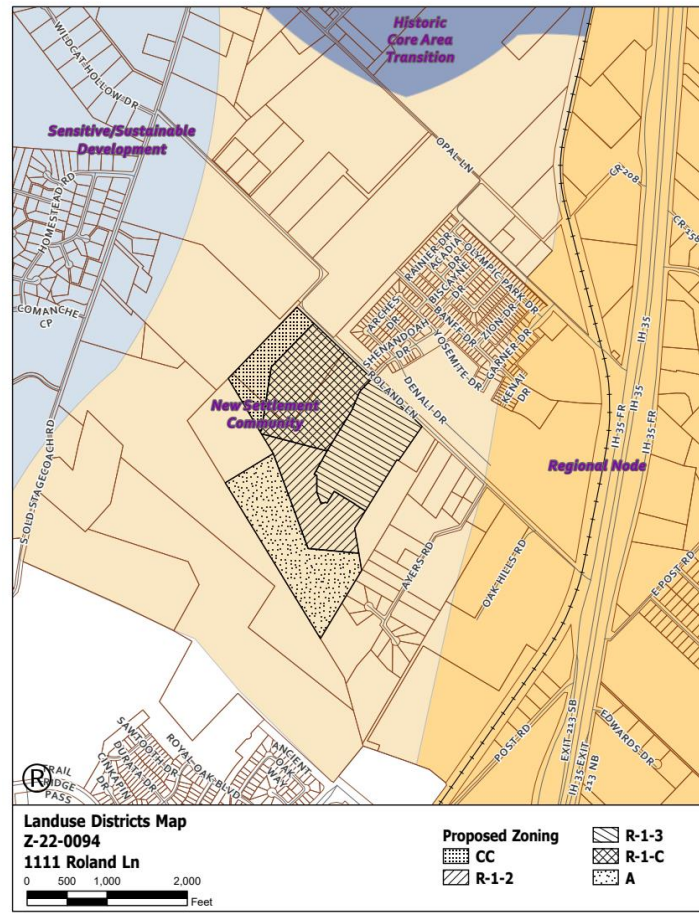
Conditions of the Zoning Ordinance

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 in the “New Settlement” land use district. The proposed zoning districts are conditional in the "New Settlement” district. While the “A” district is not technically considered in this part of the City, the temporary zoning of “A” will be applied to the southern portion of the property, until the time the owner wishes to develop.

New Settlement Community

Recommended Zoning Categories: O/I

Conditional Zoning Categories: E, R-1-A, R-1-1, **R-1-2, R-1-3, R-1-C**, R-1-T, R-2, T/U, UE, NC, CC, MXD, R/S, W

New Settlement Community District

'Character':

The New Settlement District is comprised primarily of farm fields and new residential developments that are being carved out of former farm fields in an area that stretches across the city's southern-most region, from Old Stagecoach Road on the west, across I-35 toward the east, to the western border of the Plum Creek Riparian Landscape. The character of the district is as diverse as the district is expansive, as the New Settlement District spans the largest portion of the southern region of Kyle. For this reason, owing to such a diverse cross-section of Kyle's landscape, the character of the district is defined more by the function of the streets and neighborhoods that serve any particular block being examined, and less by the multiple landforms characteristic of the region as a whole. Northwest to southeast roadway patterns are strong, while northeast to southwest connections are lacking. Traditional residential enclaves predominate in the New Settlement District, aggregated in neighborhoods of unique housing forms. Some landscapes are bisected by I-35, others are permeated by feeder creeks and tributaries which should require heightened standards for physical development going forward. The region is dominated by legacy agricultural lands which feature old growth stands of trees and sparse one-family residences. However, there are areas experiencing significant development pressures to fulfill the current need for single family residential, and with few barriers to development, the region is growing popularity for new housing, held back in the western region by the large portion of the district being under-served by public waste water utilities. Private and public spaces are clearly separate, with the public domain by shared neighborhood amenities and the private domain defined by privatized landscapes. Acreage tracts abound in the Districts, some of which are uniquely suited for high turnover, high density retail and service uses by their location close to available roadways and wet utilities. Other properties are not yet ripe for development for their location along under-performing roadways, or from being so far removed from sewer and/or sufficient water supply. Public space is not encroached on by private functions. The New Settlement District has a lower density and intensity of development than the adjacent Mid-Town District, and the open character of the landscape removed from the interstate corridor, should evoke the agricultural heritage of the District. Physical and visual portioning and division of land should be avoided where possible in this District.

'Intent':

The flat land and large parcel size in the New Settlement District result in a high level of development potential, which is beginning to be realized through market-driven demand for new housing stock. The City of Kyle should seek to capitalize on this “developability”, while emphasizing community amenities, enhancing the neighborhood lifestyle through shared spaces, and improving connectivity within and without the District. The unique water features, such as creek ways and detention/retention facilities, in the New Settlement District should be utilized as form-giving elements and corridors for connections. Future development will occur along the roadways best suited for access, and in the best proximity to the emerging water and wastewater infrastructure expansion planned for in the city’s capital improvement plan. Use patterns should be established that complement residential development and facilitate beneficial land use transitions. In this way, the New Settlement District should serve as a transition between the higher intensity of use within the core Districts and the low intensity of use of the Farm District.

Analysis

The subject property is located approximately halfway between Old Stagecoach Road & IH-35 on Roland Lane. Roland Lane runs in a northwest to southeast direction, is bounded by Old Stagecoach Road to the west and IH-35 to the east. Except for the Paramount subdivision to the northeast (R-1-A zoning), all of the surrounding properties are rural in nature, with a scattering of homes, and multiple wedding and event venues. Approval of the adjacent Paramount project will partially serve as a development catalyst for this part of the city (the other being the South Side Wastewater Line project).

Per the “Character” section of the “New Settlement” land use district, development patterns happen at smaller scale, or on a per parcel level. This is due to the expansive size of the “New Settlement” land use district (encompassing both sides of IH-35). Types of development are decided per availability of utilities, existing surrounding land forms, and natural landscapes/topography. For the portion of the parcel taking access from Roland Lane, the parcel is far enough away from high visibility corridors and is expected to be some form of housing. The western edge will be zoned “Community Commercial” as this area will flank the future FM 110 Bypass (in design by Hays County).

The “CC” zoning district is intentionally designed for commercial development in transition areas. It tends to fit best at the edge of residential areas, along streets or roads with higher traffic counts. The “CC” district will provide local goods and services for the surrounding residents, but not allow uses such as car dealerships, big box retail, or other potentially unwanted land uses. The district also has certain architectural style requirements, that help it fit into adjacent residential areas.

The “Intent” portion of the land use district reflects the topographically “flat” area of the City of Kyle. Residential development typically considers flat or land with shallow gradients as ideal locations to construct projects. This helps save costs across the board, which is then past on to families when purchasing homes.

Regarding infrastructure, water is readily available. Wastewater (sewer) services will be constructed/extended offsite to the south, to intersect with the Southside Wastewater project on Old Post Road. The project is also expected to make drainage improvements at Roland Lane, as well as build a portion of the Vybe trail internal to the property.

As part of the permitting process, the residential project will be required to receive pre-approvals related to site design, street trees, pocket parks, etc., as required per the Residential Style Guide. It will also have to follow standard subdivision design to account for properly built streets, stormwater detention, water and wastewater infrastructure, etc.

As the project is currently undergoing annexation, a development agreement relating to infrastructure is being drafted. The agreement along with annexation and zoning is expected to be approved on May 17, 2022.

Recommendation

At the May 10, 2022 Planning & Zoning Commission meeting, the Commission voted 7-0, recommending approval of the zoning request. The vote was conditioned to require full annexation prior to zoning approval by Council. Staff supports the rezoning request and asks the Mayor & Council to approve the request.

February 17, 2022

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

RE: Zoning Request Letter
Bullock Tract
1111/1113 Roland Lane
Kyle, Texas 78640

The purpose of this letter is to request a zoning change for a multi-faceted development that will encompass 87.694 acres of the total 119.703-ac tract. The proposed development includes the following proposed uses: single family, multifamily, commercial, and mixed use. The proposed development is 87.694 acres located south of Roland Lane, about 2,600 feet west of the intersection with I-35. The request is to change from the current zoning, Agricultural (A) District, to Residential Condominium (R-1-C), Single-Family Residential 2 (R-1-2), Single-Family Residential 3 (R-1-3), and Community Commercial (CC). The portion of the total 119.703 ac tract that will not be developed (32.009 acres) shall remain Agricultural zoning. Associated acreage allocations per zoning is shown in the table below.

Current Zoning	Requested Zoning	Total Acreage	# of Lots
Agricultural (A)	R-1-C	30.565	174
Agricultural (A)	R-1-3	26.322	101
Agricultural (A)	R-1-2	19.130	51
Agricultural (A)	CC	11.677	NA
Agricultural (A)	Agricultural (A)	32.009	NA

Please see enclosed land plan and zoning exhibit for more details.

Thank you,

Edward Coster Bullock, Jr.
1111/1113 Roland Lane
Kyle, TX 78640

LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided: See survey; Vol. 1127, Pg 630&633
of lots (if subdivided): NA # of acres: 119.703
Site APN/Property ID #(s): 14869, 18869, 14870
Location: 1111/1113 Roland Lane County: Hays
Development Name: Bullock Tract

OWNER

Company/Applicant Name: Edward Coster Bullock, Jr.
Authorized Company Representative (if company is owner):
Type of Company and State of Formation: NA
Title of Authorized Company Representative (if company is owner):
Applicant Address: 1111/1113 Roland Lane, Kyle, TX 78640
Applicant Fax:
Applicant Phone:
Applicant/Authorized Company Representative Email:

APPLICANT REPRESENTATIVE

Check one of the following:

I will represent the application myself; or

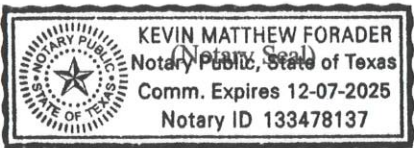
X I hereby designate Kristal L. Harris (name of project representative) to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

I hereby certify that the above-named owner is the rightful owner of the Property. I am either the owner of the property identified above or a partner/manager/officer/director/member of the company who is authorized to act on behalf of the company. I further certify that the information provided herein and in the application for the development is true and correct. By signing below, I agree that the City of Kyle (the "City") is authorized and permitted to provide information contained within this application, including the email address, to the public.

Owner's Signature: [Signature] Date: 2-2-22

State of Texas §
County of Hays §

This instrument was acknowledged before me on (date) by (name of authorized company representative) who is a(n) (member, manager, authorized officer, etc.) of (name of company), a (Texas) (limited liability company, corporation, partnership, etc.).



SUBSCRIBED AND SWORN TO before me, this the 2nd day of February, 2022

[Signature]
Notary Public's Signature
12-07-2025
My Commission Expires

PROJECT REPRESENTATIVE

Representative Name: Kristal L. Harris, P.E.

Representative Address: 1700 Directors Blvd., Suite 1000, Austin, TX 78744

Representative Phone: (512) 686-3564

Representative Email: KHarris@BGEinc.com

Representative's Signature: *Kristal L. Harris*

Date: 2/1/2022

WARRANTY DEED

1127 830

Date: January 30, 1995

Grantor: Leta G. Hale, a single woman

Grantor's Mailing Address:

38 Roland Lane
Kyle, Hays County,
Texas, 78640

DOC# 373802

FILED FOR RECORD
DOC# 373802 #13
01-30-1995 02:24:19
RONNIE DANIELLEY
HAYS COUNTY

Grantee: Edward Coster Bullock, Jr.

Ret:

Grantee's Mailing Address:

400 Homestead Road
Kyle, Hays County,
Texas, 78640

Consideration:

Ten (\$10.00) Dollars and other good and valuable consideration receipt of which is hereby acknowledged, and further, for and in consideration of the love, affection, care, maintenance, hard work, and improvements provided by Grantee.

Property:

My twenty-five (25) acres of land in Hays County, Texas more particularly described in Exhibit "A" attached hereto, AND SUBJECT TO the reservation in this instrument.

Reservations from and Exceptions to Conveyance and Warranty:

1. SUBJECT to any and all covenants, easements, rights of ways, etc. of record
2. SUBJECT to any taxes, penalties and interest which are the responsibility of grantee.
3. LIFE ESTATE - Grantor reserves to himself the exclusive possession, use, and enjoyment of the above-granted premises, as well as the rents, issues, and profits of such premises, for and during the natural lifetime of grantor.
4. FURTHER SUBJECT TO A LIFE ESTATE HEREIN GRANTED TO MELVIN EDISON HALE in said twenty-five (25) acres - Grantor reserves to Melvin Edison Hale the joint possession, use, and enjoyment of the above-granted premises, as well as the rents, issues, and profits of such premises, for and during the natural lifetime of Melvin Edison Hale.

Grantor, for the consideration and subject to the reservations from and exceptions to

conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

Unofficial Copy

Leta G. Hale
LETA G. HALE

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on the 30th day of January, 1995 by LETA G. HALE.

(SEAL)



Lise Morse
Notary Public in and for
the State of Texas

PREPARED IN THE LAW OFFICE OF:

DAVID H. MORRIS
Attorney at Law
130 E. San Antonio
San Marcos, Texas 78666

Unofficial Copy

EXHIBIT "A"

1127 632

Being a twenty-five (25) acre tract of land, together with improvements, situated partly in the Z. Hinton Survey No. 12, and partly in the James W. Williams Survey of 1/3rd League, Patent No. 68, Vol. 5, all in Hays County, Texas, described by metes and bounds as follows:

BEGINNING at the North corner of a tract of land conveyed by Jason Wilson and wife to Julius Giesecke by deed dated May 22nd, 1896, recorded in Vol. 35, pages 434-436, Hays County Deed records; THENCE S. 45° W. 716 varas with fence to a cedar post; THENCE S. 29° 20' E. 1147 varas with the S. W. line of the said tract to a stake for corner; THENCE N. 32° 45' E. 1049 varas to a stake in the N. E. line of said Jason Wilson tract, from which stake a Live Oak 18" in dia. mkd. X bears due S. 10 vrs; THENCE N. 45° W. 881.7 varas with the line of said Jason Wilson tract to the place of beginning, and containing 150.1 acres of land, more or less, and being the identical land conveyed by and described in a deed from W. E. Welge, Guardian of the Estates of Norma Dell Welge and Marvin Charles Welge, Minors, to A. A. Hale, recorded in Volume 132, pages 216-218, Deed Records of Hays County, Texas.

There is excepted from the above-described parcel of land and not conveyed hereby, that tract of 125 acres conveyed by A. A. Hale and wife, Leta G. Hale, to the Veterans' Land Board of the State of Texas, by deed dated June 22, 1959, and of record in Volume 178, page 27, Deed Records of Hays County, Texas, which 125 acres of land is fully described by metes and bounds in said deed, to which instrument, and the record thereof, reference is here made and same made a part hereof for further description of said excepted tract, and further described as the tract of land described in a deed dated February 28, 1963, recorded in Vol. 195, page 210 of the Real Property Records of Hays County, Texas, from Robert Agee Hale et al to Leta G. Hale.

STATE OF TEXAS
COUNTY OF HAYS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me and was duly
RECORDED, in the Volume and Page of the named RECORDS
of Hays County, Texas, as stamped hereon by me.

JAN 30 1995



Doris Dammley
COUNTY CLERK
HAYS COUNTY, TEXAS

WARRANTY DEED

1127 633

Date: January 30, 1995

Grantor: Melvin Edison Hale, a single man

DOC# 373803

Grantor's Mailing Address:

38 Roland Lane
Kyle, Hays County,
Texas, 78640

FILED FOR RECORD
DOC# 373803 #13
01-30-1995 02:24:20
RONNIE DANIELLEY
HAYS COUNTY

Grantee: Edward Coster Bullock, Jr.

Grantee's Mailing Address:

400 Homestead Road
Kyle, Hays County,
Texas, 78640

Consideration:

Ten (\$10.00) Dollars and other good and valuable consideration receipt of which is hereby acknowledged, and further, for and in consideration of the love, affection, care, maintenance, hard work, and improvements provided by Grantee.

Property:

My one hundred twenty-five (125) acres of land in Hays County, Texas more particularly described in Exhibit "A" attached hereto, AND SUBJECT TO the reservation in this instrument.

Reservations from and Exceptions to Conveyance and Warranty:

1. SUBJECT to any and all covenants, easements, rights of ways, etc. of record
2. SUBJECT to any taxes, penalties and interest which are the responsibility of grantee.
3. LIFE ESTATE - Grantor reserves to himself the exclusive possession, use, and enjoyment of the above-granted premises, as well as the rents, issues, and profits of such premises, for and during the natural lifetime of grantor.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators,

OFFICIAL PUBLIC RECORDS
Hays County, Texas

1127 634

successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

Melvin Hale
MELVIN EDISON HALE

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on the 30th day of January, 1995 by MELVIN EDISON HALE.

(SEAL)



Lise Morse
Notary Public in and for
the State of Texas

PREPARED IN THE LAW OFFICE OF:

DAVID H. MORRIS
Attorney at Law
130 E. San Antonio
San Marcos, Texas 78666

EXHIBIT "A"

1127 635

That certain real property lying and being situated in the County of Hays and State of Texas, being 60.7 acres out of the Z. Hinton Survey #12 and 64.3 acres out of the James W. Williams Survey #11, a portion of that tract described as 150.1 acres of land in deed from Will H. Schaefer et al to A.A. Hale, said deed dated June 5, 1945, and recorded in Vol. 132, page 218, Hays County Deed Records.

BEGINNING at a concrete monument set at a corner post for the most Easterly corner of the tract herein described, same being the most Easterly corner of the aforementioned Hale 150.1 acre tract and the most Northerly corner of that tract of 82.0 acres of land conveyed to Frank A. Stampert by Walter J. Vaughn and wife by deed dated May 14, 1945, and recorded in Volume 137, page 316, Hays County Deed Records. Said beginning corner being also on the S.W. side of a county road;

THENCE with S.W. side of county road and fence N. 44° 59' W. 281.7 vs. (Record) crossing the S.E. line of the Z. Hinton Survey No. 12 and the N.W. line of the James W. Williams Survey #11, and continuing on in all 580.4 varas to a concrete monument for the most Easterly North corner of the tract herein described;

THENCE leaving county road S. 38° 37' W. 417.6 varas to a concrete monument for a re-entrant corner of the tract herein described;

THENCE N. 44° 59' W. 350.7 varas to a concrete monument set under the fence for most Westerly North corner of the tract herein described, same being on the Southeast line of that tract of 300 acres of land described in a deed from Mrs. Mattie C. Parke to Cecil Hughson, said deed dated November 45, 1930, and recorded in Vol. 102, page 169, Hays County Deed Records;

THENCE with fence and Northeast line of Hughson tract, S. 45° 40' W. 116.7 varas to an angle point;

THENCE continuing with fence and Northeast line of Hughson tract S. 45° 12' W. 177.2 varas to a concrete monument for the most Westerly corner of the tract herein described, same being a re-entrant corner in the aforementioned Hughson tract as fenced and used upon the ground; THENCE continuing with Hughson line and fence S. 29° 35' E. 976.1 varas to angle point; THENCE with fence and Hughson line S. 31° 25' E. 56.9 varas to angle point; THENCE continuing with fence and Hughson line S. 30° 40' E. 116.6 varas to a concrete monument at corner post for the most Southerly corner of the tract herein described same being the most Westerly corner of the aforementioned Frank A. Stampert 82.0 acre tract, and on the line of the aforementioned Hughson 300 acre tract; THENCE with fence and Northwest line of Stampert 82.0 acre tract leaving Hughson tract N. 32° 32' E. 1034.8 varas to the place of beginning, containing 125.00 acres of land according to survey made on the ground in February, 1959, by James R.

1127 636

Hall, Registered Hays County Public Surveyor #408.

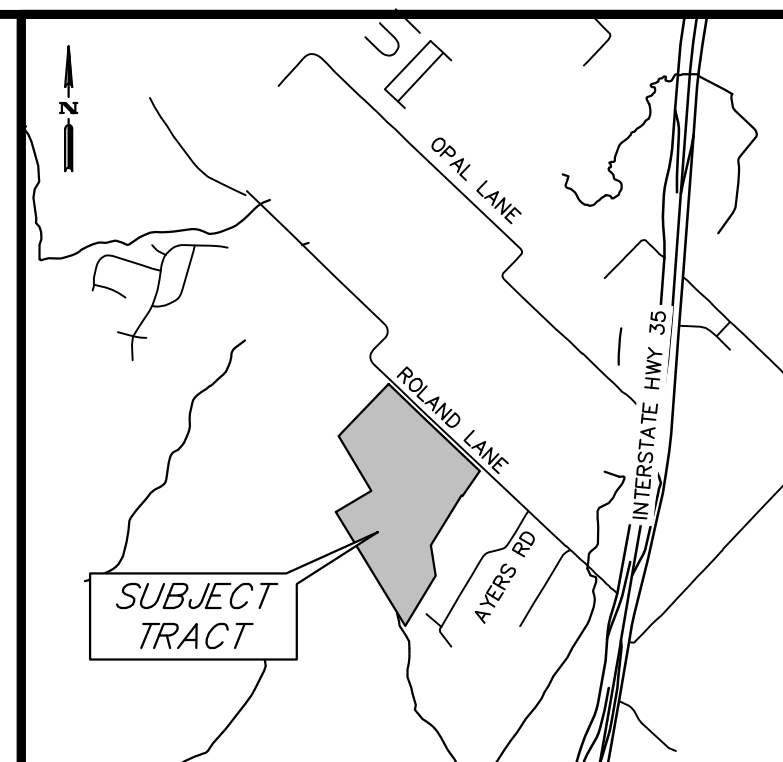
Being the same tract of land as described in a deed dated April 5, 1972, recorded in Vol. 250, page 33 of the real property records of Hays County, Texas, from the Veteran's Land Board of the State of Texas to Melvin Edison Hale.

STATE OF TEXAS
COUNTY OF HAYS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me and was duly
RECORDED, in the Volume and Page of the named RECORDS
of Hays County, Texas, as stamped hereon by me.

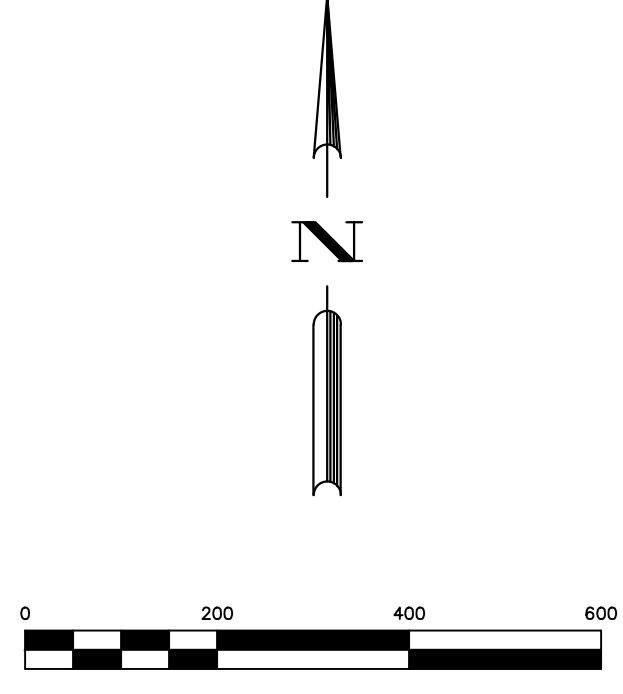
JAN 30 1995



Donnie Dammally
COUNTY CLERK
HAYS COUNTY, TEXAS



LINE TABLE				
NUMBER	BEARING	DISTANCE	RECORD BEARING	RECORD DIST.
L1	S 34°34'52" W	518.55'	[S 34°35'26" W]	[518.44']
L2	N 58°49'56" W	23.21'	[N 58°50'34" W]	[23.08']
L3	N 44°09'57" E	82.44'	[(N 43°37'39" E)]	[(82.39)']



FRONTIER ESTATES, LLC
 FG2, LLC, A TEXAS LIMITED LIABILITY COMPANY
 CALLED 59.30 AC.
 VOL. 4579, PG. 414
 O.P.R.H.C.

TEXAS OLD TOWN, INC.,
 A TEXAS CORPORATION
 CALLED 50.912 AC.
 VOL. 1802, PG. 353
 O.P.R.H.C.

FG2, LLC
 TRACT- CALLED 16.24 AC.
 VOL. 4813, PG. 780
 O.P.R.H.C.

FG2, LLC
 CALLED 82.18 AC.
 VOL. 4520, PG. 489
 O.P.R.H.C.

FG2, LLC
 CALLED 82.18 AC.
 VOL. 4520, PG. 489
 O.P.R.H.C.

RAY WOLBRECHT
 CALLED 10.00 AC.
 VOL. 3687, PG. 262
 O.P.R.H.C.

RYAN'S WOODS
 BLOCK ONE
 VOL. 5, PG. 161
 P.R.H.C.

AYERS ADDITION
 VOL. 6, PG. 214
 P.R.H.C.

LAUREN LANE

- LEGEND**
- B.L.G. BUILDING
 - B.W.F. BARBED WIRE FENCE
 - C.L.F. CHAIN LINK FENCE
 - C.M.P. CORRUGATED METAL PIPE
 - C.O. CLEAN OUT
 - C.O.C. CONCRETE
 - H.W.F. HOG WIRE FENCE
 - N.O. NUMBER
 - O.P.R.H.C. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY
 - P.G. PAGE
 - P.B. POINT OF BEGINNING
 - P.A. POWER POLE
 - P.R.H.C. PLAT RECORDS OF HAYS COUNTY
 - S.R.W. STONE RETAINING WALL
 - S.R.F. SPLIT RAIL FENCE
 - S.S. STOP SIGN
 - S.V. SPRINKLER VALVE
 - TEL. TELEPHONE
 - T.R.W. TIMBER RETAINING WALL
 - VOL. VOLUME
 - W.O. WATER FAUCET
 - W.V. WATER VALVE
 - W.W. WATER WELL
 - FOUND 1/2" IRON PIPE
 - FOUND 1/2" IRON ROD (UNLESS OTHERWISE NOTED)
 - FOUND 1/2" IRON ROD W/CAP "CMR PRO-TECH RPLS 4288"
 - FOUND 1/2" IRON ROD W/CAP "TRI-TECH SURVEYING"
 - FOUND 4" DIAMETER CONCRETE MONUMENT
 - 8" CEDAR FENCE POST
 - CALCULATED POINT
 - SET 1/2" IRON ROD W/CAP STAMPED "BGE INC"
 - () RECORD INFORMATION, VOLUME 1127, PAGE 630
 - () RECORD INFORMATION, VOLUME 5408, PAGE 758
 - () RECORD INFORMATION, VOLUME 3687, PAGE 262
 - () RECORD INFORMATION, VOLUME 4813, PAGE 780
 - () RECORD INFORMATION, VOLUME 6, PAGE 214

87.693 ACRES

METES AND BOUNDS DESCRIPTION

FIELD NOTES FOR 87.693 ACRES OF LAND OUT OF THE Z. HINTON SURVEY ABSTRACT NO. 220 AND THE JAMES W. WILLIAMS SURVEY ABSTRACT NO. 473, HAYS COUNTY, TEXAS; BEING ALL OF A CALLED 25 ACRE TRACT OF LAND AS CONVEYED TO EDWARD COSTER BULLOCK BY WARRANTY DEED RECORDED IN VOLUME 1127, PAGE 630 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS AND A PORTION OF THE REMAINDER OF A CALLED 125 ACRE TRACT OF LAND AS CONVEYED TO EDWARD COSTER BULLOCK, JR. BY WARRANTY DEED RECORDED IN VOLUME 1127, PAGE 633 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 87.693 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an 8-inch cedar fence post found on the southwest right-of-way line of Roland Lane (right-of-way varies), also known as County Road No. 137, on the southeast line of a called 50.912-acre tract of land as conveyed to Texas Old Town, Inc., a Texas corporation by special warranty deed recorded in Volume 1802, Page 353 of the Official Public Records of Hays County, Texas, at the north corner of the above described Bullock 25-acre tract, for the north corner and the POINT OF BEGINNING of the herein described tract;

THENCE, with the southwest right-of-way line of said Roland Lane, S 45° 21' 12" E passing at a distance of 840.37 feet a calculated point for the common north corner of said Bullock 25-acre tract and the above described Bullock remainder tract, continuing on for a total distance of 2,159.15 feet to a 1/2-inch iron rod with cap stamped "TRI-TECH SURVEYING" found on the said right-of-way line of said Roland Lane, at the north corner of a called 2.80 acre tract of land conveyed to Ray Wolbrecht and Sharon Wolbrecht by general warranty deed recorded in Volume 5408, Page 758 of the Official Public Records of Hays County, Texas, being the east corner of said Bullock remainder tract, for the east corner of the herein described tract, from which a 4-inch diameter concrete monument found at the east corner of a called 10.00 acre tract of land conveyed to Ray Wolbrecht by general warranty deed recorded in Volume 3687, Page 262 of the Official Public Records of Hays County, Texas, bears S 45° 21' 12" E a distance of 288.77 feet;

THENCE, leaving the southwest right-of-way line of said Roland Lane, with the westerly line of said Wolbrecht 2.80-acre tract, S 34° 34' 52" W a distance of 518.55 feet to a 1/2-inch iron rod with cap stamped "CMR PROTECH RPLS 4288" found at the southwest corner of said Wolbrecht 2.80-acre tract, on the north line of said Wolbrecht 10.00-acre tract, at an exterior corner on the southeast line of said remainder tract, for an exterior corner of the herein described tract;

THENCE, with a north line of said Wolbrecht 10.00-acre tract, N 58° 49' 56" W a distance of 23.21 feet to a 1/2-inch iron rod with aluminum cap stamped "CMR PROTECH RPLS 4288" found at the most westerly northwest corner of said Wolbrecht 10.00-acre tract at an interior corner of said Bullock remainder tract, for an interior corner of the herein described tract;

THENCE, with the westerly line of said Wolbrecht 10.00-acre tract, S 31° 35' 55" W a distance of 1,006.59 feet to a 1/2-inch iron rod with cap stamped "CMR PROTECH RPLS 4288" at a southwesterly corner of said Wolbrecht 10.00-acre tract, at an angle point in the easterly line of said Bullock remainder tract, for an angle point in the herein described tract;

THENCE, with the southwesterly line of said Wolbrecht 10.00-acre tract, S 09° 28' 15" E a distance of 316.61 feet to a 1/2-inch iron rod with cap stamped "BGE INC" set, for the southeast corner of the herein described tract, from which a 1/2-inch iron rod found at the southeast corner of said Wolbrecht 10.00-acre tract, at the common west corner of Lot 1 and Lot 3, Ayers Addition, a subdivision as recorded in Volume 6, Page 214 of the Plat Records of Hays County, Texas, being the easterly corner of said Bullock remainder tract, bears S 09° 28' 15" E a distance of 212.30 feet;

THENCE, departing the southwesterly line of said Wolbrecht 10.00-acre tract, over and across said Bullock remainder tract, N 84° 43' 47" W a distance of 635.72 feet to a 1/2-inch iron rod with cap stamped "BGE INC" set, for the southwest corner of the herein described tract;

THENCE, continuing over and across said Bullock remainder tract, N 20° 08' 03" W a distance of 1,265.24 feet to a 1/2-inch iron rod with aluminum cap stamped "CMR PROTECH RPLS 4288" found at the east corner of a called 16.24 acre tract of land as conveyed to FG2, LLC, a Texas limited liability company by general warranty deed recorded in Volume 4813, Page 780 of the Official Public Records of Hays County, Texas, being an interior corner of said Bullock remainder tract, for an angle point of the herein described tract, from which a 1/2-inch iron rod with aluminum cap stamped "CMR PROTECH RPLS 4288" found on the northeast line of called 82.18 acre tract of land conveyed to FG2, LLC, a Texas limited liability company by special warranty deed with vendor's lien recorded in Volume 4520, Page 489 of the Official Public Records of Hays County, Texas, at the south corner of said FG2, LLC, 16.24-acre tract, bears S 59° 05' 06" W a distance of 708.57 feet;

THENCE, with the northeast line of said FG2, LLC 16.24-acre tract and a southwest line of said Bullock remainder tract, N 30° 55' 47" W a distance of 1,094.80 feet to a 1/2-inch iron rod with aluminum cap stamped "CMR PROTECH RPLS 4288" found at the most westerly common corner of said FG2 and Bullock remainder tracts, in the southeast line of said Texas Old Town 50.912-acre tract, for the west corner of the herein described tract;

THENCE, with the southeast line of said Texas Old Town 50.912-acre tract and the northwest line of said Bullock remainder tract, N 44° 09' 57" E a distance of 82.44 feet to a 4-inch diameter concrete monument found at the most westerly corner of said Bullock remainder tract, and said Bullock 25-acre tract, for an angle point the herein described tract;

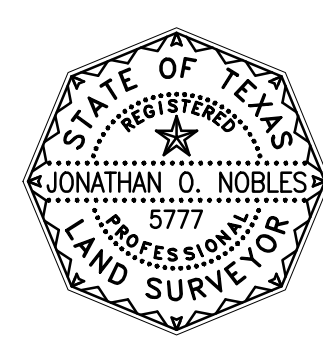
THENCE, continuing with the southeast line of the said Texas Old Town 50.912-acre tract, N 43° 58' 12" E a distance of 1,153.63 feet to the POINT OF BEGINNING and containing 87.693 acres of land, more or less.

To Tri Pointe Homes Texas, Inc., First American Title Guaranty Company and First American Title Insurance Company:

This is to certify that this map or plot and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 3, 4, 9, 14 and 16 of Table A thereof. The field work was completed on November 9, 2021.

Date of Plot or Map: January 13, 2022

Jonathan O. Nobles
 JONATHAN O. NOBLES RPLS NO. 5777
 BGE, INC.
 101 WEST LOUIS HENNA BLVD., SUITE 400
 AUSTIN, TEXAS 78728
 TELEPHONE: (512) 879-0400



- GENERAL NOTES**
- BEARING ORIENTATION IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE 4204, NAD83. DISTANCES SHOWN HEREON ARE SURFACE VALUES COMBINED SCALE FACTOR = 0.99989465.
 - THE PROPERTY LIES IN UNSHADED ZONE "X" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS DELINEATED ON THE FLOOD INSURANCE RATE MAPS FOR HAYS COUNTY, TEXAS, AND INCORPORATED AREAS, MAP NUMBER 48209C0385F, REVISED SEPTEMBER 2, 2005.
 - THIS SURVEY WAS MADE IN RELIANCE UPON THAT CERTAIN COMMITMENT FOR TITLE INSURANCE ISSUED BY FIRST AMERICAN TITLE GUARANTY COMPANY AND COUNTERSIGNED BY FIRST AMERICAN TITLE INSURANCE COMPANY UNDER G.F. NO. 2875985-FW26, DATED EFFECTIVE SEPTEMBER 16, 2021 AND ISSUED ON OCTOBER 13, 2021.
 - NO EVIDENCE OF RECENT EARTH MOVING WORK, BUILDING CONSTRUCTION, OR BUILDING ADDITIONS WAS OBSERVED AT TIME OF SURVEY.
- RESTRICTIVE COVENANT AND EASEMENT NOTES:**
- TERMS, CONDITIONS AND STIPULATIONS IN THE DEVELOPMENT AGREEMENT RECORDED JUNE 29, 2016 IN COUNTY CLERK'S FILE NO. 16020572, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, DOES AFFECT THE SUBJECT TRACT (NOT PLOTTABLE).

BGE, Inc.
 101 West Louis Henna Blvd, Suite 400, Austin, TX 78728
 Tel: 512-879-0400 • www.bgeinc.com
 TBPELS Licensed Surveying Firm No. 10106502

ALTA/NSPS LAND TITLE SURVEY OF 87.693 ACRES OUT OF THE Z. HINTON SURVEY A-220 AND THE JAMES W. WILLIAMS SURVEY A-473 CITY OF KYLE, HAYS COUNTY, TEXAS

PARTY CHIEF: M.G.	ISSUE DATE: 01/13/2022	SHEET 1
TECHNICIAN: M.G.	SCALE: 1"=200'	
R.P.L.S.: J.N.	JOB NUMBER: 9558-00	OF 1
FIELD BOOK NAME: 91		
BASE FILE: C:\TDC\Projects\Tpointe\9558-00-Bullock-Tract\SV\04_Final\Drawings\9558-00-Bullock-Tract-87-693-Ac		

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 87.694 ACRES OF LAND FROM ‘A’ (AGRICULTURE) TO ‘R-1-C’ (RESIDENTIAL CONDOMINIUM, 30.565 ACRES), ‘R-1-3’ (SINGLE FAMILY RESIDENTIAL – 3, 26.322 ACRES), ‘R-1-2’ (SINGLE FAMILY RESIDENTIAL – 2, 19.130 ACRES) & ‘CC’ (COMMUNITY COMMERCIAL, 11.677 ACRES) FOR PROPERTY LOCATED AT 1111 & 1113 ROLAND LANE, IN HAYS COUNTY, TEXAS; AUTHORIZING THE CITY SECRETARY TO AMEND THE CITY OF KYLE CODE OF ORDINANCES 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 87.694 Acres from ‘A’ (Agriculture) to ‘R-1-C’ (Residential Condominium, 30.565 acres), ‘R-1-3’ (Single Family Residential – 3, 26.322 acres), ‘R-1-2’ (Single Family Residential – 19.130 acres) & ‘CC’ (Community Commercial, 11.677 acres) for property located at 1111 & 1113 Roland Lane, Hays County, Texas and the property location map labeled ‘Exhibit 1’.

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, as shown in ‘Exhibit 1’ and by proper endorsement indicate the authority for said notation.

SECTION 3. The metes & bounds and survey are attached as ‘Exhibit 2’.

SECTION 4. 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 5. 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 6. 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 _____, 2022, 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 _____, 2022, 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 _____, 2022.

ATTEST:

Jennifer Holm, City Secretary

Travis Mitchell, Mayor

Exhibit 1

Zoning Map

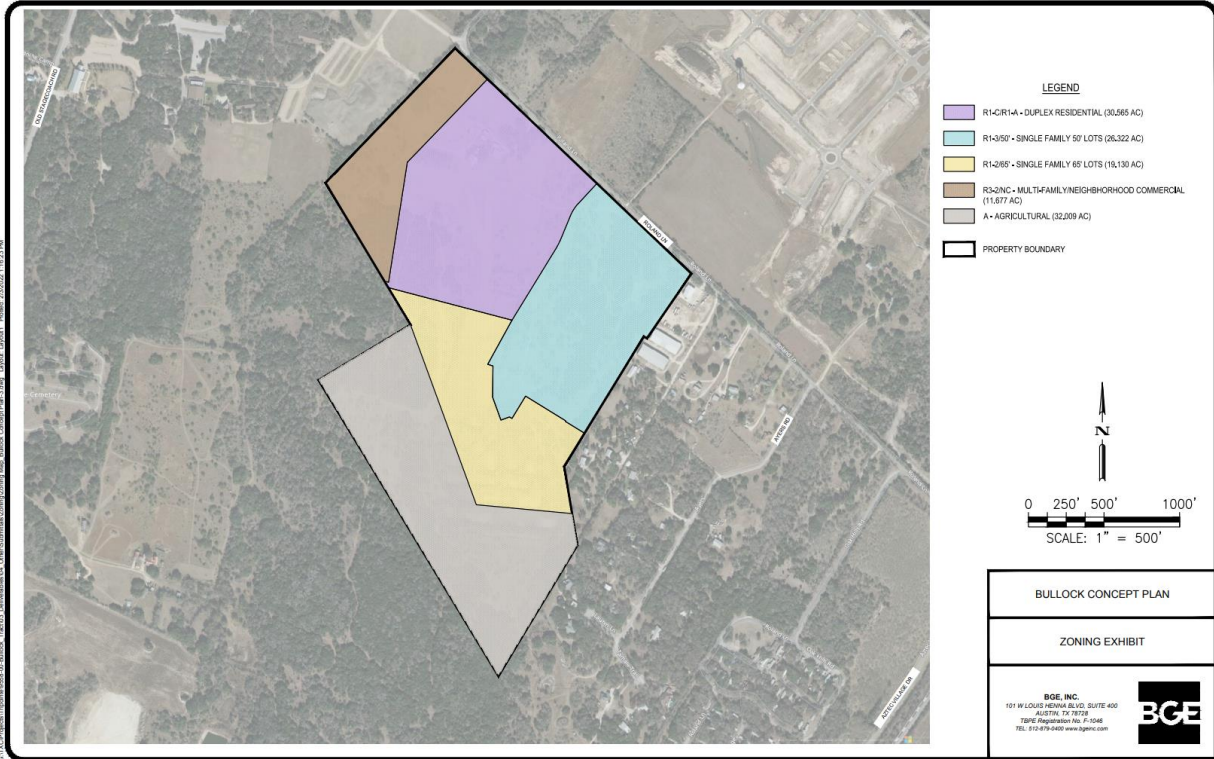


Exhibit 2

SUBJECT PROPERTY DESCRIPTION

+/- 119.703 Acres

EXHIBIT "A"

1127 632

Being a twenty-five (25) acre tract of land, together with improvements, situated partly in the Z. Hinton Survey No. 12, and partly in the James W. Williams Survey of 1/3rd League, Patent No. 68, Vol. 5, all in Hays County, Texas, described by metes and bounds as follows:

BEGINNING at the North corner of a tract of land conveyed by Jason Wilson and wife to Julius Giesecke by deed dated May 22nd, 1896, recorded in Vol. 35, pages 434-436, Hays County Deed records; THENCE S. 45° W. 716 varas with fence to a cedar post; THENCE S. 29° 20' E. 1147 varas with the S. W. line of the said tract to a stake for corner; THENCE N. 32° 45' E. 1049 varas to a stake in the N. E. line of said Jason Wilson tract, from which stake a Live Oak 18" in dia. mkd. X bears due S. 10 vrs; THENCE N. 45° W. 881.7 varas with the line of said Jason Wilson tract to the place of beginning, and containing 150.1 acres of land, more or less, and being the identical land conveyed by and described in a deed from W. E. Welge, Guardian of the Estates of Norma Dell Welge and Marvin Charles Welge, Minors, to A. A. Hale, recorded in Volume 132, pages 216-218, Deed Records of Hays County, Texas.

There is excepted from the above-described parcel of land and not conveyed hereby, that tract of 125 acres conveyed by A. A. Hale and wife, Leta G. Hale, to the Veterans' Land Board of the State of Texas, by deed dated June 22, 1959, and of record in Volume 178, page 27, Deed Records of Hays County, Texas, which 125 acres of land is fully described by metes and bounds in said deed, to which instrument, and the record thereof, reference is here made and same made a part hereof for further description of said excepted tract, and further described as the tract of land described in a deed dated February 28, 1963, recorded in Vol. 195, page 210 of the Real Property Records of Hays County, Texas, from Robert Agee Hale et al to Leta G. Hale.

STATE OF TEXAS
COUNTY OF HAYS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me and was duly
RECORDED, in the Volume and Page of the named RECORDS
of Hays County, Texas, as stamped hereon by me.

JAN 30 1995



[Signature]
COUNTY CLERK
HAYS COUNTY, TEXAS

EXHIBIT "A"

1127 035

That certain real property lying and being situated in the County of Hays and State of Texas, being 60.7 acres out of the Z. Hinton Survey #12 and 64.3 acres out of the James W. Williams Survey #11, a portion of that tract described as 150.1 acres of land in deed from Will H. Schaefer et al to A.A. Hale, said deed dated June 5, 1945, and recorded in Vol. 132, page 218, Hays County Deed Records.

BEGINNING at a concrete monument set at a corner post for the most Easterly corner of the tract herein described, same being the most Easterly corner of the aforementioned Hale 150.1 acre tract and the most Northerly corner of that tract of 82.0 acres of land conveyed to Frank A. Stampert by Walter J. Vaughn and wife by deed dated May 14, 1945, and recorded in Volume 137, page 316, Hays County Deed Records. Said beginning corner being also on the S.W. side of a county road;

THENCE with S.W. side of county road and fence N. 44° 59' W. 281.7 vs. (Record) crossing the S.E. line of the Z. Hinton Survey No. 12 and the N.W. line of the James W. Williams Survey #11, and continuing on in all 580.4 varas to a concrete monument for the most Easterly North corner of the tract herein described;

THENCE leaving county road S. 38° 37' W. 417.6 varas to a concrete monument for a re-entrant corner of the tract herein described;

THENCE N. 44° 59' W. 350.7 varas to a concrete monument set under the fence for most Westerly North corner of the tract herein described, same being on the Southeast line of that tract of 300 acres of land described in a deed from Mrs. Mattie C. Parke to Cecil Hughson, said deed dated November 45, 1930, and recorded in Vol. 102, page 169, Hays County Deed Records;

THENCE with fence and Northeast line of Hughson tract, S. 45° 40' W. 116.7 varas to an angle point;

THENCE continuing with fence and Northeast line of Hughson tract S. 45° 12' W. 177.2 varas to a concrete monument for the most Westerly corner of the tract herein described, same being a re-entrant corner in the aforementioned Hughson tract as fenced and used upon the ground; THENCE continuing with Hughson line and fence S. 29° 35' E. 976.1 varas to angle point; THENCE with fence and Hughson line S. 31° 25' E. 56.9 varas to angle point; THENCE continuing with fence and Hughson line S. 30° 40' E. 116.6 varas to a concrete monument at corner post for the most Southerly corner of the tract herein described same being the most Westerly corner of the aforementioned Frank A. Stampert 82.0 acre tract, and on the line of the aforementioned Hughson 300 acre tract; THENCE with fence and Northwest line of Stampert 82.0 acre tract leaving Hughson tract N. 32° 32' E. 1034.8 varas to the place of beginning, containing 125.00 acres of land according to survey made on the ground in February, 1959, by James R.

1127 636

Hall, Registered Hays County Public Surveyor #408.

Being the same tract of land as described in a deed dated April 5, 1972, recorded in Vol. 250, page 33 of the real property records of Hays County, Texas, from the Veteran's Land Board of the State of Texas to Melvin Edison Hale.

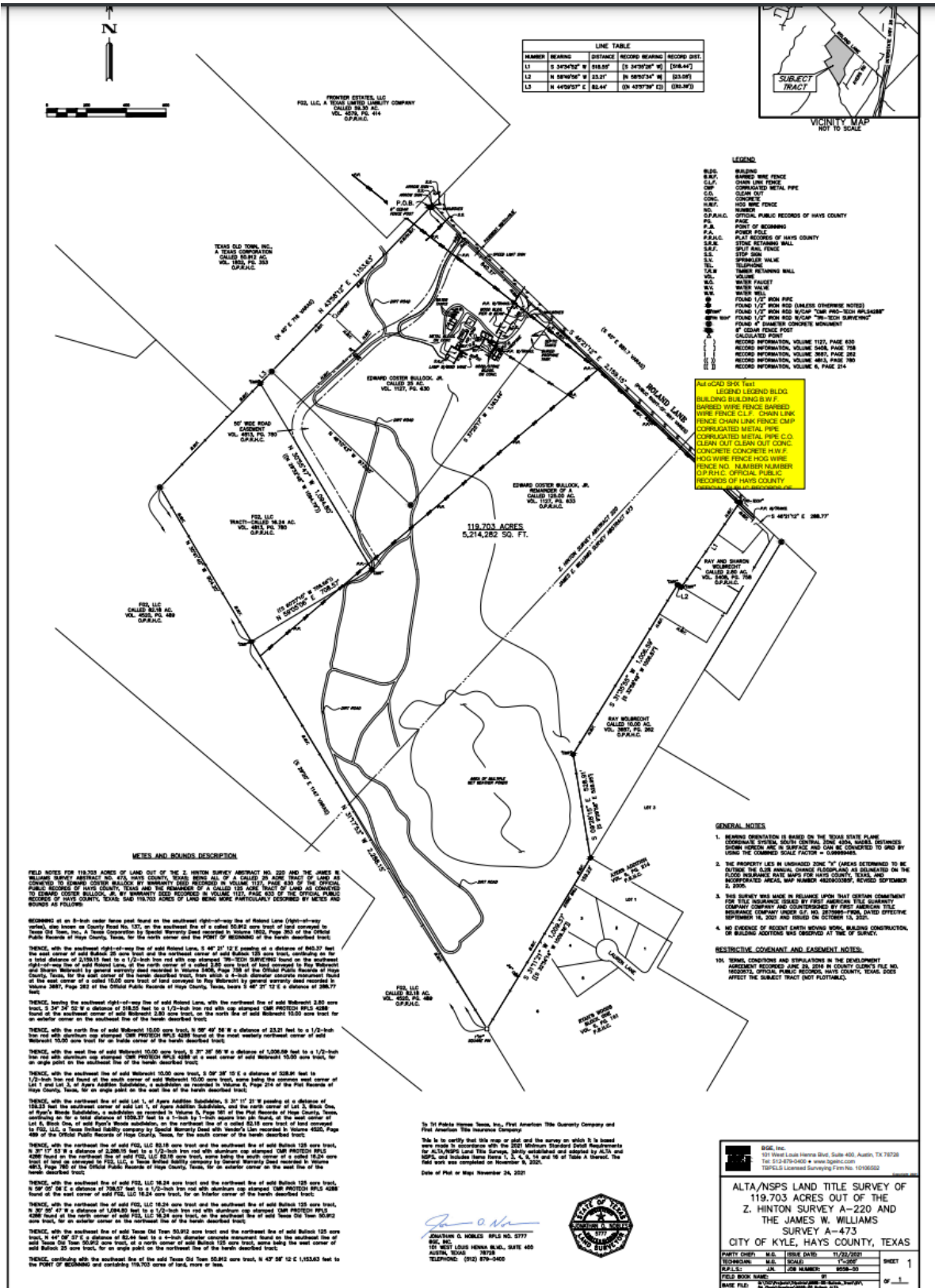
Unofficial

STATE OF TEXAS
COUNTY OF HAYS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me and was duly
RECORDED, in the Volume and Page of the named RECORDS
of Hays County, Texas, as stamped hereon by me.

JAN 30 1995



David D. Dumbly
COUNTY CLERK
HAYS COUNTY, TEXAS



NUMBER	BEARING	DISTANCE	RECORD NUMBER	RECORD DIST.
L1	S 16°07'00" W	128.87'	(S 4879734' 01)	(24.047)
L2	N 88°07'34" W	23.21'	(N 8879734' 01)	(23.097)
L3	N 44°07'57" E	82.44'	(N 4479734' 01)	(23.047)



- LEGEND**
- BLDG. BUILDING
 - B.S.P. BURNED WIRE FENCE
 - C.F.P. CHAIN LINK FENCE
 - C.M.P. CORRUGATED METAL PIPE
 - C.S. CLEAR CUT
 - CONC. CONCRETE
 - H.W.F. HOOD WIRE FENCE
 - NO. NUMBER
 - S.P.A.R.C. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY
 - P.A. POINT OF BEGINNING
 - P.F.A.L. PLAT RECORDS OF HAYS COUNTY
 - S.E.R. STONE EXTERIOR WALL
 - S.P.F. SHIP PAUL FENCE
 - S.P. STOP SIGN
 - S.P. SPRINKLER VALVE
 - T.S. TYPING MACHINE WALL
 - V.C. VALVE CURB
 - V.F. VALVE FRASET
 - W.V. WATER VALVE
 - W.M. WIRE MESH
 - W.P. FOUND 1/2" IRON PIPE
 - W.P. FOUND 1/2" IRON PIPE (UNLESS OTHERWISE NOTED)
 - W.P. FOUND 1/2" IRON PIPE 8/8" DIA. "TOP PRO-TECH ANCHOR"
 - W.P. FOUND 1/2" IRON PIPE 8/8" DIA. "TOP PRO-TECH ANCHOR"
 - W.P. FOUND 4" SQUARE CONCRETE MONUMENT
 - C. CEMENT CURB
 - R.I. RECORD INFORMATION, VOLUME 1127, PAGE 630
 - R.I. RECORD INFORMATION, VOLUME 1128, PAGE 708
 - R.I. RECORD INFORMATION, VOLUME 1129, PAGE 282
 - R.I. RECORD INFORMATION, VOLUME 1130, PAGE 214

NOTED 2014 YEAR LEGEND BLDG. BUILDING BLDG. TO W/F BURNED WIRE FENCE BURNED WIRE FENCE C.L.F. CHAIN LINK FENCE CHAIN LINK FENCE CORRUGATED METAL PIPE CORRUGATED METAL PIPE CLEAR CUT CLEAR CUT CONC. CONCRETE CONCRETE H.W.F. HOOD WIRE FENCE H.W.F. WIRE FENCE H.W.F. WIRE FENCE NO. NUMBER NUMBER OF H.C. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY

VETES AND BOUNDS DESCRIPTION

BEARING AND DISTANCE FROM THE S. 1/2 CORNER OF THE 1/2 AC. TRACT TO THE S. 1/2 CORNER OF THE 1/2 AC. TRACT...

- GENERAL NOTES**
- BEARING ORIENTATION IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM...
 - THE PROPERTY LIES IN UNIMPAVED ZONE "X" (AREAS DETERMINED TO BE OUTSIDE THE CITY ANNUAL CHURCH FLOODPLAIN AS DETERMINED ON THE FLOOD HAZARD MAP FOR HAYS COUNTY, TEXAS, AND...
 - THIS SURVEY WAS MADE IN RELIANCE UPON THAT CERTAIN COMMITMENT FOR TITLE INSURANCE ISSUED BY FIRST AMERICAN TITLE COMPANY COMPANY AND CONTAINED BY FIRST AMERICAN TITLE COMPANY COMPANY AND CONTAINED BY FIRST AMERICAN TITLE COMPANY COMPANY...
 - NO EXCESSIVE OF ADJACENT EARTH MOVING WORK, BUILDING CONSTRUCTION, OR BUILDING ADDITIONS WAS OBSERVED AT TIME OF SURVEY.
- RESTRICTIVE COVENANT AND EASEMENT NOTES:**
- LEGAL CONDITIONS AND EASEMENTS IN THE DEVELOPMENT AGREEMENT RECORDED AINE 20, 2004 IN COUNTY CLERK'S FILE NO. RECORDS, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, DOES AFFECT THE SUBJECT TRACT (NOT PLATTED).

This is to certify that this map of said land and the survey on which it is based were made in accordance with the 2003 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, as amended and adopted by ALTA and NSPS, and includes items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Date of Plot or Map: November 24, 2021

James O. Nokes
 JAMES O. NOKES, RPLS NO. 5777
 2011 STATE HOUSE BLDG., SUITE 405
 AUSTIN, TEXAS 78755
 TELEPHONE: (512) 478-4600

ALTA/NSPS LAND TITLE SURVEY OF 119.703 ACRES OUT OF THE Z. HINTON SURVEY A-220 AND THE JAMES W. WILLIAMS SURVEY A-473 CITY OF KYLE, HAYS COUNTY, TEXAS

DATE: 11/24/2021
 TIME: 1:00 PM
 SHEET: 1 OF 1

Exhibit B



CITY OF KYLE, TEXAS

Hillside Terrace Development LLC - Zoning (Z-21-0090)

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: *(Second Reading)* An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 259 acres of land from Agriculture 'A' to Planned Unit Development 'PUD' for property located at 5260 Hillside Terrace, in Hays County, Texas. (Hillside Terrace Development LLC - Zoning - Z-21-0090) ~ *Will Atkinson, Senior Planner*

Planning and Zoning Commission voted 7-0 to recommend approval the request contingent on full annexation.

City Council voted 6-0 to approve on first reading on 5/17/2022.

Other Information: See attached.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Staff Report
- Zoning Ordinance
- Landowner Authorization Form
- Franchise Tax Account Status - 2
- Deed- FM 2001
- Deed - Hillside Terrace #1
- Deed - Hillside Terrace #2

Property Location 5260 Hillside Terrace, Buda, TX 78640

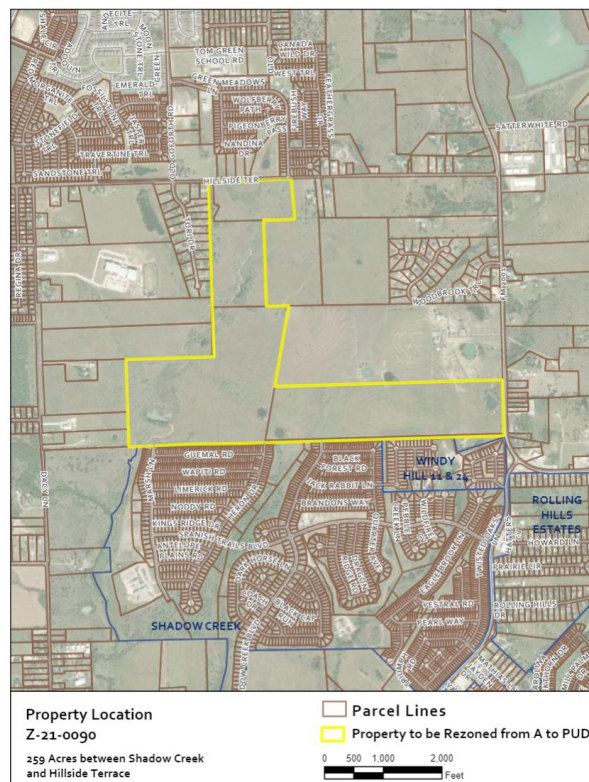
Owner Hillside Terrace Development, LLC
Terry LaGrone
2100 Northland Drive, Austin, TX 78756

Rio Oso Holdings, LLC
Todd Burek
22711 Fossil Park, San Antonio, TX 78261

Agent McLean & Howard LLP
Jeffrey Howard
901 S. MoPac Expy, Bldg II, Ste. 225
Austin, TX 78746

Request Rezone 259 - Acres "A" (Agriculture) to "PUD"
(Planned Unit Development)

Vicinity Map



Site Description

The site is located at 5260 Hillside Terrace, Buda, TX. The parcel is not yet fully annexed, but will be on May 17, 2022. At this time zoning will also be assigned. 5260 Hillside Terrace is a combination of two parcels with a total of 259-acres. It is entirely surrounded by a mix of residential uses that are also in the City's Extra-Territorial Jurisdiction.

The applicant seeks to rezone the property from "A" (Agriculture) to "PUD" (Planned Unit Development - R-1-A & RS).

Current Zoning

Zoning will be in place following City Council final vote of annexation on May, 17, 2022.

Sec. 53-36. - Agricultural district A.

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

(Ord. No. 438, § 23, 11-24-2003)

Requested Zoning

R-1-A (Single Family Residential Attached)

Sec. 53-111. - Purpose and permitted uses.

The single-family attached district R-1-A, garden home allows attached single-family structures with a minimum of 1,000 square feet of living area per dwelling unit and permitted accessory structures on a minimum lot size of 4,800 square feet. There shall be no more than 6.8 houses per buildable acre. The single-family attached residences authorized in this zoning district include those generally referred to as garden homes, paired homes, patio homes and zero lot line homes. Additionally, single family detached structures are permitted in this district as a conditional use, as provided in V.T.C.A., Local Government Code ch. 211; provided that a conditional use permit may only be approved

after a public hearing is held by the city council after having received a report and recommendation from the planning and zoning commission concerning the effect of the proposed use on the adjacent and neighboring properties and neighborhoods.

(Ord. No. 438, § 27(a), 11-24-2003; Ord. No. 438-35, § 3(a), 8-2-2005; [Ord. No. 928](#), § 1(Exh. A), 1-17-2017)

RS (Retail Services District)

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

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

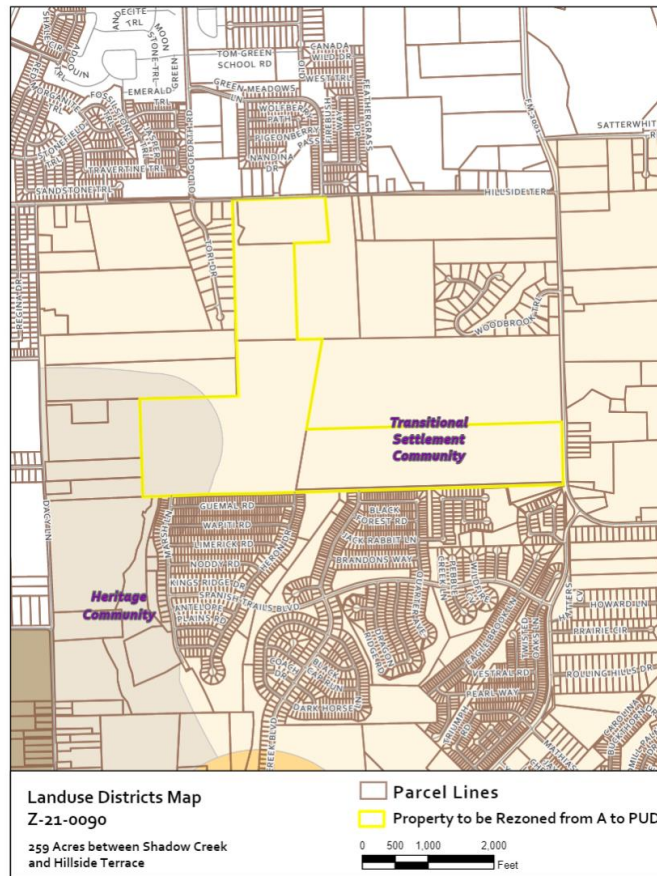
(Ord. No. 438, § 42(a), 11-24-2003)

Conditions of the Zoning Ordinance

Sec. 53-1205 Amendments

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

public notice and hold a public hearing as provided by state law, and shall recommend to the council such action as the planning and zoning commission deems proper...



Comprehensive Plan Text

The subject site is located primarily in the “Transitional Settlement” District. The R-1-A and RS zoning districts are recommended conditionally in the “Transitional Settlement” District. The “Heritage Community” District will not be considered as this portion to be rezoned is floodplain.

Current Land Use Chart

Transitional Settlement District

Recommended Zoning Categories: R-1-1, A, C/M, UE

Conditional Zoning Categories: R-1-2, R-1-3, **R-1-A**, R-1-C, R-1-T, R-2, R-3-1, R-3-2, R-3-3, W, NC, CC, HS, E, M-2, M-3, **R/S**, RV, T/U

Transitional Settlement District

'Character':

The Transitional Settlement District is primarily located outside of the Kyle corporate limits, in an area of the city not served by Kyle water and wastewater service. The district should provide an area for low density housing in the suburban built form, serviced by private wastewater treatment plants, while still preserving its rural landscape heritage. This area of Kyle has received relatively little development pressure to date, due in large part to the increased developmental costs associated with establishing all new infrastructure. Kyle must be prepared to guide and direct development to the extent possible through the management of land divisions and enabling private wastewater treatment facilities.

'Intent':

Close to I-35 and generally well-served by east-west roads (Windy Hill Road/County Road 131) and north-south roads (FM 2001), the District is not yet suited to accommodate commercial and industrial uses, at least those that are higher water users or high wastewater producers. The intention of this district is to assemble large acreage tracts of land for suburban-form neighborhoods, utilizing best management practices of low-impact development and particular sensitivity to the lack of public infrastructure to service the district. Opportunities should be provided for single family residential housing in close proximity to transportation corridors, thereby reducing travel demand on local streets, while still creating affordable housing solutions. The District should be designed to capture regional employment-oriented development opportunities with growth towards Hwy 21, SH 45 and SH 130 wherever possible. These employment opportunities must transition the surrounding residential land uses, both within and outside of the District, to order to prevent conflict with the surrounding community fabric and preclude the continued growth of residential land uses.

Analysis

The subject property is primarily sited within the "Transitional Community" District, with two primary access points, one on Hillside Terrace and the other on FM 2001. The applicant is requesting a rezoning to a Planned Unit Development (PUD). The 259-acres will have 1.7-acres of commercial (RS) internal to the site, to be relatively equidistant to most of the project. The remaining 257.3-acres will have R-1-A zoning (Single Family

Residential Attached). The applicant is requesting detached residential as allowed per Sec. 53-111.

The 259-acre site is currently undergoing annexation, with the second read of the annexation ordinance on May 17, 2022. There will also be a development agreement associated with the project, to further enshrine development standards for the project. The attached concept plan shows the layout of the project, with a mix of 40' wide, alley loaded residential, 50' non-alley loaded residential, the commercial area, a Vybe node and an extensive public park with Vybe trail and multiple private maintained parks. Please also see the proposed PUD standards, that will also be incorporated into the development agreement.

While the primary entrances are at Hillside Terrace and FM 2001, there will also be multiple secondary entrances (Suffield Drive extension (City TMP) and 3 southern connections to the Shadow Creek neighborhood). The developer will build a portion of the northern connection of Shadow Creek Blvd, per both the City's and County's Transportation Master Plan. Water will be served by Goforth SUD, wastewater will be served by Windy Hill Utility Company. Following approval of the rezoning, the site will be expected to comply with all regulations relating to platting, site plan and building permits.

Recommendation

At the May 10, 2022 Planning & Zoning Commission meeting, the Commission voted 7-0 to recommend approval of the zoning, following full annexation. Staff supports the rezoning from "A" (Agriculture) to "PUD" (Planned Unit Development)" for the 259-acre property, and asks the Mayor & Council to vote to approve the rezoning request.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 259 ACRES OF LAND FROM AGRICULTURE ‘A’ TO PLANNED UNIT DEVELOPMENT ‘PUD’ FOR PROPERTY LOCATED AT 5260 HILLSIDE TERRACE, IN HAYS COUNTY, TEXAS; AUTHORIZING THE CITY SECRETARY TO AMEND THE CITY OF KYLE CODE OF ORDINANCES 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 259 acres of land from Agriculture ‘A’ to Planned Unit Development ‘PUD’ for property located at 5260 Hillside Terrace, Hays County, Texas and the property location map labeled ‘Exhibit A’.

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, as shown in ‘Exhibit A’ and by proper endorsement indicate the authority for said notation.

SECTION 3. The associated PUD standards and concept plan are attached as ‘Exhibit B’, and the PUD standards will control over portions of City of Kyle development code where such standards vary from the City of Kyle requirements.

SECTION 4. 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 5. 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 6. 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 _____, 2022, 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 _____, 2022, 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 _____, 2022.

ATTEST:

Jennifer Holm, City Secretary

Travis Mitchell, Mayor

Exhibit 1

PUD Zoning Map

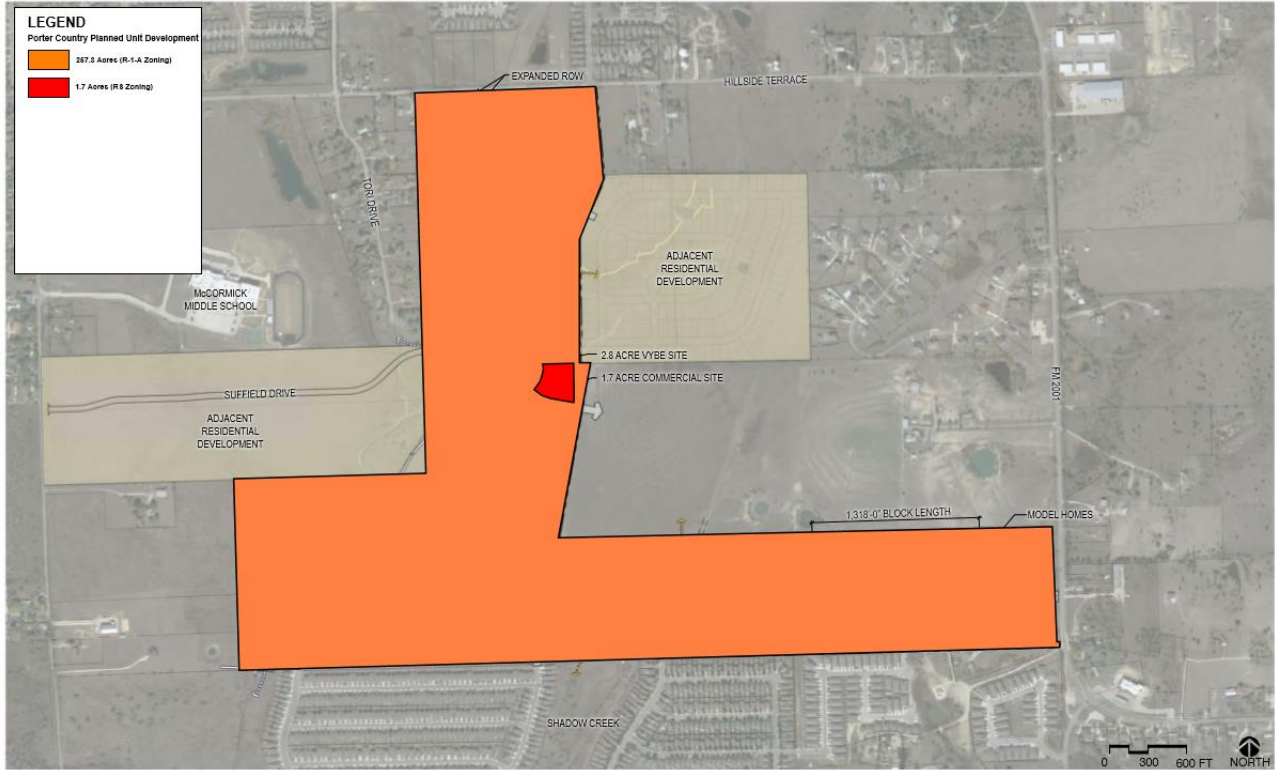


Exhibit 2

PUD Standards

Porter Country PUD – R-1-A/RS Development Standards

Section 1. General Provisions

- (A) **Project Described.** Porter Country PUD shall include compatible residential and commercial uses as more particularly depicted on **Exhibit A** (the “*Concept Plan*”). The Property shall be developed as a single-family residential community with over 75 acres of open space, trail system, public parks, and an amenity site. Commercial endeavors will serve and provide convenience to the residential tract and general public. The remainder will be necessary infrastructure and right-of-way.
- (B) **Project Enhancements.** The Developer will provide the following improvements within the project:
- (1) Impressive primary entry improvements at FM 2001, including an entry monument constructed from durable materials, such as concrete, metal, and masonry, with lighting, landscaping, an entry park, a landscaped median, and street trees.
 - (2) Impressive secondary entry improvements at Hillside Terrace that are cohesive and of comparable quality to those at the primary entry on FM 2001, including an entry monument constructed from durable materials, such as concrete, metal, and masonry with lighting and landscaping.
 - (3) A landscaped frontage along Hillside Terrace and FM 2001, including a fence constructed from masonry or concrete (including fencecrete) along the rear of residential lots abutting the rights-of-way, trees, and other landscaping.
 - (4) Extension of Suffield Drive within a sixty-foot (60’) right-of-way stretching from the western boundary to the eastern boundary egress point of the Porter Country PUD, as shown on the Concept Plan.
 - (5) Landscape and park improvements in common areas throughout the community, including trails, open lawns, natural areas, seating areas, and playscapes. All landscape improvements will have a permanent irrigation system, except for those landscaping areas utilizing “zero” or xeriscaping.
 - (6) Over 65 acres of publicly dedicated, privately maintained parks and open space. Each residence within the Porter Country PUD will be located within 1,200 feet of a park or open space.
 - (7) Over 5,000 linear feet of a twelve foot (12’) wide concrete trail as part of the Emerald Crown Trail Master Plan, a regional trail system, and over 10,000 linear feet of additional public trails throughout the development.
 - (8) A private amenity site with a pool, lawn, lounge and activity areas, shade structures and restrooms.
 - (9) Dimensional shingles will be used on all residences and metal poles utilized in residential fence construction.
- (C) **Applicability.** Development of and uses within the Porter Country PUD shall conform to the limitations and conditions set forth herein. If the regulations of the Porter Country

PUD and the attached exhibits conflict with the City of Kyle Code of Ordinances (the "City Code"), the regulations set forth herein shall control. Except as otherwise specifically modified by the Porter Country PUD, all other rules, regulations, and ordinances of the City in effect at the time of permit application apply to development within the Porter Country PUD.

Section 2. Residential Tract

- (A) The maximum density shall be 5.48 dwelling units per buildable acre. Notwithstanding anything in the City Code to contrary, which is hereby modified to the extent of any conflict, as used herein, the term "buildable acre" is defined as each acre within the Residential Tract, save and except (i) 3.793 acres that are encumbered by utility easements existing on the date of this Ordinance, (ii) 14.0 acres of parkland which would have otherwise been required under the City Code, (iii) 29.088 acres of floodplain. The total amount of "buildable acres" in the Residential Tract is 178.521 acres for the purposes of determining the maximum density allowed within the Residential Tract.
- (B) The use and development of the single-family lots ("*SF Lots*"), as more particularly depicted on Concept Plan, shall be subject to the use and development standards of Single-Family Attached District 'R-1-A' as the base zoning district, except as modified below.
- (1) Detached single-family structures are permitted.
 - (2) The minimum living space per residential unit shall be twelve hundred (1,200) square feet.
 - (3) Utility lots for uses such as easements, rights-of-way, parkland, and mailboxes in support of residential uses but that do not have a single-family structure are exempt from any minimum lot size requirements.
 - (4) The minimum SF Lot width as measured at the front yard setback shall be forty feet (40'), the minimum lot depth shall be one hundred and ten feet (110'), and the minimum lot size shall be four thousand four hundred (4,400) square feet.
 - (5) A minimum of fifteen percent (15%) of the SF Lots with detached single-family structures shall be between fifty feet (50') and sixty feet (60') wide as measured at the front yard setback.
 - (6) SF Lots that are forty foot (40') wide and face the Entry Boulevard, North/South Parkway, and 70' Collector, as depicted on the Concept Plan, shall be rear-loaded and no side-entry garage is permitted.
 - (7) A minimum of thirty percent (30%) of SF Lots that are forty feet (40') wide shall be rear-loaded. A maximum of sixty percent (60%) of SF Lots that are less than fifty feet (50') wide shall be front-loaded
 - (8) For rear-loaded SF Lots, the minimum front setback shall be ten feet (10'). Municipal utility easements located on front lot lines shall be a minimum of ten feet (10') wide and municipal utility easements are not required on rear lot lines of rear-loaded SF Lots.

- (9) The minimum front setback for SF Lots with an attached front-loaded garage shall be twenty feet (20'). The façade for all attached front-loaded garages shall be set back five feet (5') from the front wall of the residential unit facing the front property line. "Front wall" shall include the load-bearing portion of a covered front porch.
 - (10) The minimum side setback shall be five feet (5') and municipal utility easements located on side lot lines shall be a minimum of five feet (5') wide.
 - (11) The minimum rear setback for front-loaded SF Lots shall be ten feet (10').
 - (12) The minimum size of garages shall be three hundred seventy-eight (378) square feet. No additional on-site storage (attached to house or detached) shall be required.
- (C) The overhang of an eave of a residential building is permitted to encroach within the setbacks and municipal utility easements.
 - (D) The minimum parking required for each residential dwelling unit is two (2) spaces. No additional spaces shall be required for dwelling units with more than two bedrooms.
 - (E) The same house plan may be built on every other SF Lot on either side of the street so long as the house is differentiated by elevation, materials and colors. An elevation may only be used once per three (3) consecutive houses. Developer shall be responsible for tracking and ensuring the arrangement of house plans comply, and in the event the house plan configuration is not in compliance, Developer will be solely responsible for any changes necessary to achieve compliance.
 - (F) Development within the Residential Tract shall comply with the Residential Style Guide found in the City Code unless otherwise modified herein as part of the Porter Country PUD. To the extent the City Residential Style Guide conflicts with these development standards, the Porter Country PUD Development Standards shall control.

Section 3. Commercial Tract

The use and development of the Commercial Tract, as more particularly depicted on the Concept Plan, shall be subject to the use and development standards of Retail and Services District 'RS' as the base zoning district, except as modified herein. Utility lots for uses such as easements, rights-of-way, and utility structures in support of commercial uses but do not have a commercial structure are exempt from any minimum lot size requirements.

Section 4. Parkland and Open Space

- (A) Owner shall develop a privately maintained public open space and trail system to be dedicated to the City ("*Public Parkland*") that will substantially comply with City of Kyle Parks Master Plan. Specifically, a portion of the trail, not to exceed 6,200 linear feet, located within the Creekside Park, as identified on the Concept Plan ("*Creekside Trail*"), will be a part of the City's Emerald Crown Trail and shall be constructed as a twelve foot (12') wide concrete trail. The Creekside Trail will extend from the southern property boundary to the northern property boundary to connect with future phases of the Emerald Crown Trail. The Public Parkland shall be maintained by a property owners' association.

- (B) The City agrees that the Public Parkland satisfies the requirements of Section 41-147 of the Code and no further public parkland dedication, fee in lieu of dedication, or park development fee will be required of Owner.
- (C) The Public Parkland is an eligible improvement under a Public Improvement District.

Section 5. Subdivision Infrastructure

- (A) Except as otherwise provided below for the Porter Country PUD, all streets, roads, sidewalks, drainage, and all other infrastructure within the Property (the "*Subdivision Infrastructure*") will be constructed by Owner to meet City Code, except as modified herein. Overhead electric and telecom lines are only permitted within electric easements located (i) along the western boundary of the Property starting at the southern Property line and extending approximately 2,076 linear feet to the north and (ii) adjacent to the roadway extending east to west along the southern boundary of the Property.
- (B) ADA-compliant sidewalks are required along all of the Property lines abutting the right-of-way for Hillside Terrace and FM 2001.
- (C) Block lengths shall comply with the Code, except in the areas shown in the Concept Plan to be in excess of the minimums provided in Section 41-135 of the Code. Those certain block lengths indicated in the Concept Plan shall not exceed 2,000 feet in length. Blocks may be bounded on either end by a local street, private alley, open space, or parkland.
- (D) The width of an alley right-of-way shall be twenty feet (20'). The minimum pavement width for alleys, measured from edge of pavement to edge of pavement, shall be sixteen feet (16'). Alleys may be established as public right-of-way or as an access easement. Developer shall coordinate with Texas Disposal System to ensure that the alley is an appropriate width for trucks to maneuver.
- (E) The minimum width of right-of-way within the Porter Country PUD shall be fifty-two feet (52'), shall generally comply with widths depicted in the Concept Plan, and shall be designed to allow adequate room for street trees. Street sections are more particularly depicted on **Exhibit B**.
- (F) The minimum street curve radii shall comply with the City of Austin Transportation Criteria Manual.
- (G) The City shall coordinate with adjacent landowners to ensure that internal streets designed to access adjacent properties are connected in a manner that creates a safe and City Code compliant street network.
- (H) The City shall accept completed Subdivision Infrastructure for ownership, operation, and maintenance in compliance with City Code. The City shall not unreasonably deny, delay, or condition its acceptance of the Subdivision Infrastructure.

Section 6. Landscaping

- (A) Except as provided herein, all entry collector roadways and residential streets will be planted with street trees at an average spacing of fifty feet (50') on center. Street trees shall have a minimum two-inch (2") caliper, measured six inches (6") above the root ball. Where applicable, street trees will be installed during residential construction.

-
- (B) Street trees planted on or immediately adjacent to a residential lot shall also count toward the minimum (2) trees required for that lot under Section 54-5 of the City Code.

Section 7. Permits and Approvals

- (A) Mass grading of the Property may begin before final approval of the plats and construction plans are received from the City.
- (B) Development of the Residential Tract shall utilize "*Prairie Building Construction*" which allows the construction of residences to begin after recordation of the final subdivision plat and concurrently with the subdivision improvements, contingent upon (i) home construction traffic is limited to temporary access roads, where possible, to avoid vehicular traffic on future public right-of-way, (ii) any vehicular traffic on right-of-way will be at Owner's risk, (iii) streets damaged by vehicular traffic will be repaired or replaced at Owner's expense as directed by City inspectors, and (iv) construction is in accordance with a Prairie Build Plan approved by the City of Kyle. In no event shall any home be issued a Certificate of Occupancy before the infrastructure is properly constructed and fully functional, and the home is connected to water and wastewater facilities.
- (C) Development of the Residential Tract shall utilize the City's alternative process for review and approval of required development permit applications which allows multiple development permit applications to run concurrently.

Exhibit A

Concept Plan



RIALTO STUDIO
LANDSCAPE ARCHITECTURE

Rialto Studio, Inc.
7719 Wood Haven Drive, Suite 240
www.rialtostudio.com

PROJECT
Hillside

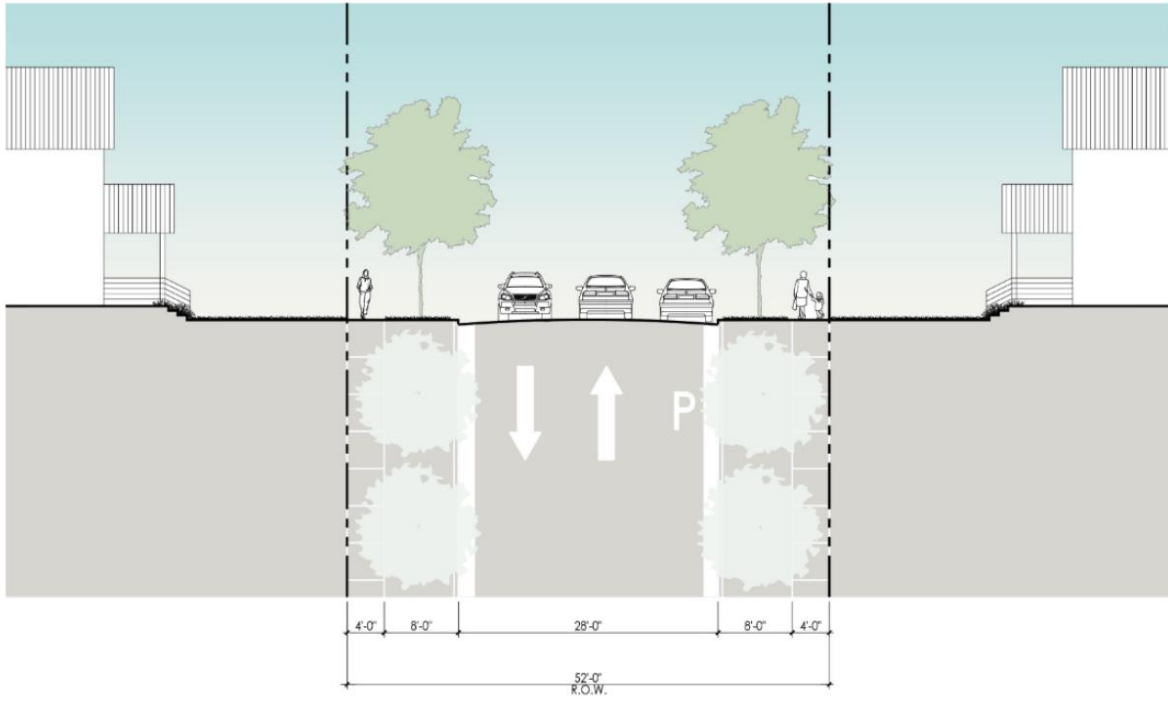
TITLE
Conceptual Site Plan

DATE
11/18/2021

PAGE
1 of 1

Exhibit B

Local Street Cross Section



LOCAL STREET

LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided: All that certain area of land being 176.023 acres, more or less, lying in and being situated out of the W.A. Moore Survey, Abstract 331, and the Jessie B. Eaves Survey, Abstract 166, in Hays County, Texas, and being that same property described in a deed dated April 22, 2021 to Hillside Terrace Development, LLC as recorded in Document No. 21020969, Official Public Records of Hays County, Texas and deed dated October 18, 2021 to Hillside Terrace Development, LLC as recorded in Document No. 21057370, Official Public Records of Hays County, Texas

of lots (if subdivided): _____ # of acres: 176.023

Site APN/Property ID #(s): R14010, R13932, R13939

Location: 5260 Hillside Terrace County: Hays County

Development Name: _____

OWNER

Company/Applicant Name: Hillside Terrace Development, LLC

Authorized Company Representative (if company is owner): Terry LaGrone

Type of Company and State of Formation: a Texas limited liability company

Title of Authorized Company Representative (if company is owner): Authorized Signatory

Applicant Address: 2100 Northland Drive, Austin, Texas 78756

Applicant Fax: _____

Applicant Phone: 512-921-0229

Applicant/Authorized Company Representative Email: dmcelrath@mymilestone.com

APPLICANT REPRESENTATIVE

Check one of the following:

I will represent the application myself; or

I hereby designate Jeff Howard, McLean & Howard LLP (name of project representative) to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

I hereby certify that the above-named owner is the rightful owner of the Property. I am either the owner of the property identified above or a partner/manager/officer/director/member of the company who is authorized to act on behalf of the company. I further certify that the information provided herein and in the

application for the development is true and correct. By signing below, I agree that the City of Kyle (the "City") is authorized and permitted to provide information contained within this application, including the email address, to the public.

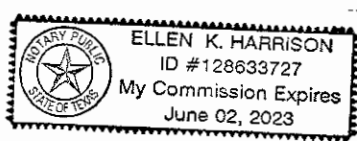
Owner's Signature: [Signature] Date: 11-19-21

State of Texas §
County of Travis §

This instrument was acknowledged before me on November 19, 2021 by Terry LaGrone, Authorized Signatory of MSCB Hillside, LLC, a Texas limited company, Manager of Hillside Terrace Development, LLC, a Texas limited liability company.

SUBSCRIBED AND SWORN TO before me, this the 19th day of November, 2021

(Notary Seal)



[Signature: Ellen K. Harrison]

Notary Public's Signature

6-2-2023
My Commission Expires

PROJECT REPRESENTATIVE

Representative Name: Jeffrey Howard, McLean & Howard LLP
Representative Address: 901 S. MoPac Expy, Bldg II, Suite 225, Austin, Texas 78746
Representative Phone: 512-328-2008
Representative Email: jhoward@mcleanhowardlaw.com

Representative's Signature: [Signature: J Howard] Date: November 22, 2021

LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided: All that certain area of land being 82.951 acres, more or less, situated in the Jessie B. Eaves Survey, Abstract 166, Hays County, Texas, and being that same property described in a deed dated August 6, 2018 to Rio Oso Holdings, LLC as recorded in Document No. 1828156, Official Public Records of Hays County, Texas

of lots (if subdivided): _____ # of acres: 82.951

Site APN/Property ID #(s): R162775

Location: FM 2001, north of Windy Hill Road County: Hays County

Development Name: _____

OWNER

Company/Applicant Name: Rio Oso Holdings LLC

Authorized Company Representative (if company is owner): Todd Burek

Type of Company and State of Formation: a Texas limited liability company

Title of Authorized Company Representative (if company is owner): Member

Applicant Address: 22711 Fossil Park, San Antonio, TX 78261

Applicant Fax: _____

Applicant Phone: _____

Applicant/Authorized Company Representative Email: _____

APPLICANT REPRESENTATIVE

Check one of the following:

I will represent the application myself; or

I hereby designate Jeffrey Howard, McLean & Howard LLP (name of project representative) to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

I hereby certify that the above-named owner is the rightful owner of the Property. I am either the owner of the property identified above or a partner/manager/officer/director/member of the company who is authorized to act on behalf of the company. I further certify that the information provided herein and in the application for the development is true and correct. By signing below, I agree that the City of Kyle (the "City") is authorized and permitted to provide information contained within this application, including the email address, to the public.

Owner's Signature: Todd Burek Date: 11/19/2021

State of Texas §
County of Travis §

This instrument was acknowledged before me on November 19 by Todd Burek
Member of the Rio Oso Holdings LLC, a Texas limited liability company.

SUBSCRIBED AND SWORN TO before me, this
the 19 day of November 2021

(Notary Seal)

Jean A. Jynell
Notary Public's Signature

2/10/25
My Commission Expires

PROJECT REPRESENTATIVE

Representative Name: Jeffrey Howard, McLean & Howard LLP
Representative Address: 901 S. MoPac Expy, Bldg II, Suite 225, Austin, Texas 78746
Representative Phone: 512-328-2008
Representative Email: jhoward@mcleanhowardlaw.com

Representative's Signature: J Howard Date: November 22, 2021



Franchise Tax Account Status

As of : 01/10/2022 09:59:31

This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

HILLSIDE TERRACE DEVELOPMENT, LLC	
Texas Taxpayer Number	32078020735
Mailing Address	PO BOX 17008 AUSTIN, TX 78760-7008
Right to Transact Business in Texas	ACTIVE
State of Formation	TX
Effective SOS Registration Date	02/25/2021
Texas SOS File Number	0803959614
Registered Agent Name	GARRETT S. MARTIN
Registered Office Street Address	9111 JOLLYVILLE ROAD, SUITE 111 AUSTIN, TX 78759



Franchise Tax Account Status

As of : 01/10/2022 10:04:17

This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

RIO OSO HOLDINGS, LLC	
Texas Taxpayer Number	32067955362
Mailing Address	22711 FOSSIL PEAK SAN ANTONIO, TX 78261-3022
Right to Transact Business in Texas	ACTIVE
State of Formation	TX
Effective SOS Registration Date	08/01/2018
Texas SOS File Number	0803081864
Registered Agent Name	TODD BUREK
Registered Office Street Address	22711 FOSSIL PEAK SAN ANTONIO, TX 78261

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.

GENERAL WARRANTY DEED

Date: August 6, 2018

Grantor: TONY GREAVES and CAROL C. GREAVES, husband and wife

Grantor's Mailing Address:

2400 FM 2001
Buda, TX 78610
Hays County

GF# 13,311-MM
Stewart Tile-Bitters

Grantee: RIO OSO HOLDINGS, LLC

Grantee's Mailing Address:

22711 Fossil Peak
San Antonio, TX 78261
Bexar County

Consideration:

TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration.

Property (including any improvements):

Being 82.951 acres of land, more or less, situated in the Jesse B. Eaves Survey, Abstract No. 166, in Hays County, Texas, being that same property called to contain 197.63 acres of land described in a deed dated August 11, 1995 to Tony Greaves and Carol C. Greaves as recorded in Volume 1167, Page 445, Official Public Records of Hays County, Texas; said 82.951 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof.

Reservations from and Exceptions to Conveyance and Warranty:

Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property; and taxes for 2018, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee

and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

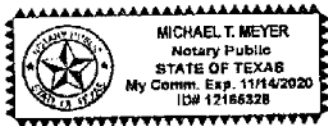
GRANTOR:

Tony Greaves
TONY GREAVES

Carol C. Greaves
CAROL C. GREAVES

STATE OF TEXAS)
COUNTY OF BEXAR)

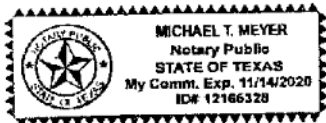
This instrument was acknowledged before me on August 6th, 2018, by TONY GREAVES.



Michael T. Meyer
Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF BEXAR)

This instrument was acknowledged before me on August 6th, 2018, by CAROL C. GREAVES.



Michael T. Meyer
Notary Public, State of Texas

AFTER RECORDING RETURN TO:
RIO OSO HOLDINGS, LLC
22711 Fossil Peak
San Antonio, TX 78261
GF: 136311

EXHIBIT "A"

Being 82.951 acres of land situated in the Jesse B. Eaves Survey, Abstract No. 166, in Hays County, Texas, being that same property called to contain 197.63 acres of land described in a deed dated August 11, 1995 to Tony Greaves and Carol C. Greaves as recorded in Volume 1167, Page 445, Official Public Records of Hays County, Texas. Said 82.951 acre tract of land was surveyed by BCE, Ltd. on June 29, 2018 and is more particularly described as follows:

Beginning at a ½" iron rod found with an aluminum cap marked "Pro-Tech" (for record information; Monumentation, Bearings and Distances, refer to the Map of Survey this day made to accompany this description), on the west right-of-way line of F.M. 2001, being the southeast corner of said 197.63 acre tract and this tract of land;..

Thence in part along a wire fence line, with the south boundary line of said 197.63 acre tract and this tract of land, the following four (4) calls:

1. South 89°06'41" West for a distance of 1216.90 feet, to an angle point;
2. South 89°55'55" West for a distance of 553.44 feet, to an angle point;
3. South 88°40'24" West for a distance of 395.30 feet, to an 8" wood fence post found for an angle point;
4. South 89°13'51" West for a distance of 1897.75 feet, to a ½" iron rod set (all ½" iron rods set are with a red cap marked "RPLS #4540"), for the southwest corner of said 197.63 acre tract and this tract of land;

Thence along or near a wire fence line with the west boundary line of said 197.63 acre tract and this tract of land, North 10°47'21" East for a distance of 929.10 feet, to a ½" iron rod set, for the northwest corner of this tract of land;

Thence crossing said 197.63 acre tract of land with the north boundary line of this tract of land, North 89°14'22" East for a distance of 3878.40 feet, to a ½" iron rod set, on the west right-of-way line of said F.M. 2001, same being the east boundary line of said 197.63 acre tract, being the northeast corner of this tract of land;

Thence along or near in part a wood rail fence and in part a wire fence line, with the west right-of-way line of said F.M. 2001, same being the east boundary line of said 197.63 acre tract and this tract of land, the following two (2) calls:

1. South 00°33'18" East for a distance of 855.98 feet, to a concrete monument found for a point of curvature of a curve to the left;
2. With said curve to the left having a radius of 756.20 feet, a delta of 04°05'50", an arc length of 54.08 feet and a chord bearing and distance of South 02°51'16" East, 54.06 feet, to the Point of Beginning.

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 MEN BY THESE PRESENTS: THAT

03-1082955 MS 12

STERLING EQUITIES, INC., a Texas corporation ("**Grantor**"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by **HILLSIDE TERRACE DEVELOPMENT, LLC**, a Texas limited liability company ("**Grantee**"), whose mailing address is 9111 Jollyville Road Suite 111, Austin, Texas 78759, 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, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described property:

- (i) That certain real property in Hays County, Texas, which is described on Exhibit "A" attached hereto and incorporated herein by reference, together with all of Grantor's right, title and interest to oil, gas, and other minerals in or under the surface thereof, if any, and all executory leasing rights with respect thereto, if any (the "**Land**");
- (ii) All of Grantor's right, title and interest to any and all structures, 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 herein collectively as the "**Improvements**"); and
- (iii) All other appurtenances solely benefiting or pertaining to the Land or the Improvements, including, without limitation, all of Grantor's right, title, and interest, as owner of the Land, but not otherwise, in and to all streets, alleys, rights-of-way, or easements solely benefiting the Land, but only to the extent that Grantor's interest in same arise as a result of Grantor's ownership interest in the Land, and not otherwise, and all claims and causes of action relating to or concerning the Land and/or the Improvements (all of the foregoing being referred to herein collectively as the "**Appurtenances**").

The Land, Improvements and Appurtenances are collectively referred to herein 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 herein, 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 affecting the Land; 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.

AS-IS DISCLAIMER. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF GRANTOR CONTAINED IN THAT CERTAIN CONTRIBUTION AGREEMENT BETWEEN GRANTOR AND GRANTEE DATED MARCH 5, 2021, AS AMENDED (THE "AGREEMENT") AND GRANTOR'S WARRANTY OF TITLE CONTAINED HEREIN, GRANTOR HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING (i) THE NATURE OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, (A) THE WATER, SOIL AND GEOLOGY THEREIN, (B) THE SUITABILITY THEREOF FOR ANY PARTICULAR PURPOSE, AND (C) THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS ON OR IN THE PROPERTY; AND (ii) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH THE LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY. GRANTEE ACKNOWLEDGES THAT IT WILL INSPECT THE PROPERTY AND, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THE AGREEMENT AND GRANTOR'S WARRANTY OF TITLE CONTAINED HEREIN, GRANTEE WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR. THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS," "WHERE IS" AND WITH ALL FAULTS BASIS, AND GRANTEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THE AGREEMENT AND GRANTOR'S WARRANTY OF TITLE CONTAINED HEREIN, GRANTOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, PROFITABILITY, TENANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

[SIGNATURE PAGE FOLLOWS]

EXECUTED AND DELIVERED the 22nd day of April, 2021.

GRANTOR:

STERLING EQUITIES, INC.,
a Texas corporation

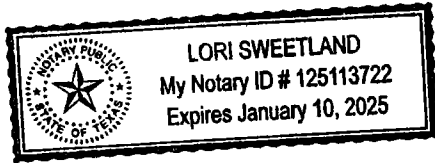
By: [Signature]
Printed Name: Jimmy Nassour
Title: President

THE STATE OF Texas §

COUNTY OF Travis §

This instrument was acknowledged before me this 22 day of April, 2021, by Jimmy Nassour, as President of Sterling Equities, Inc., a Texas corporation, on behalf of said corporation.

(SEAL)



[Signature]
Notary Public Signature

EXHIBIT "A"

Approximately 163.935 acres of real property located in Hays County, Texas, more particularly described as "Hillside Terrace" and further described below.

LEGAL DESCRIPTION: BEING 163.935 ACRES OF LAND LYING IN AND BEING SITUATED OUT OF THE W.A. MOORE SURVEY, ABSTRACT 331 AND THE JESSIE B. EAVES SURVEY, ABSTRACT 166 IN HAYS COUNTY, TEXAS AND BEING:

ALL OF THAT CERTAIN 30.13 ACRE TRACT OF LAND, 110.69 ACRE TRACT OF LAND AND 22.17 ACRE TRACT OF LAND (DESCRIBED IN VOLUME 1344, PAGE 857) CONVEYED TO DONALD J. SAWYER AND OUR LADY'S MARIONITE CATHOLIC CHURCH BY DEEDS RECORDED IN VOLUME 5142, PAGES 342 & 346 OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS;

A PORTION OF THAT CERTAIN 36.81 ACRE TRACT OF LAND (DESCRIBED IN VOLUME 232, PAGE 193) CONVEYED TO DONALD J. SAWYER AND OUR LADY'S MARIONITE CATHOLIC CHURCH BY DEEDS RECORDED IN VOLUME 5142, PAGES 342 & 346 OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS;

AND ALL OF THAT CERTAIN 22'x716' ROADWAY EASEMENT DESCRIBED BY DEEDS RECORDED IN VOLUME 188, PAGE 553 AND VOLUME 232, PAGE 193 DEED RECORDS, HAYS COUNTY, TEXAS;

SAID 163.935 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES IN AUGUST, 2018:

BEGINNING at a 1/2" iron rod found on the southerly margin of Hillside Terrace for the northeasterly corner hereof and said 22.17 acre tract and the northwesterly corner of that certain 8.00 acre tract of land conveyed to Chase Baromeo, Jr. and Barbara A. Castleberry by deed recorded in Volume 881, Page 259 of said official public records;

THENCE S 05°42'58" E a distance of 685.26 feet to a 1/2" iron rod with cap stamped "RPLS3693" found in a northerly line of said 36.81 acre tract for the southeasterly corner of said 22.17 acre tract and the southwesterly corner of said Baromeo 8.00 acre tract;

THENCE S 87°16'06" W a distance of 532.28 feet along said line to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an ell corner hereof;

THENCE S 02°35'48" E a distance of 1457.98 feet to an 8" fence corner post found for the southeast corner of said 30.13 acre tract and the southwest corner of that certain 35.00 acre tract of land conveyed to Chase Baromeo, Jr. and Barbara A. Castleberry by deed recorded in Volume 393, Page 780 of said official public records;

THENCE N 88°09'48" E a distance of 378.70 feet to a concrete nail with washer stamped "ProTech" found in concrete for the northeasterly corner of said 110.69 acre tract and the northwesterly corner of that certain 197.63 acre tract of land conveyed to Tony Greaves and Carol C. Greaves by deed recorded in Volume 1167, Page 445 of said official public records;

THENCE along the common line of said 110.69 acre tract with said Greaves 197.63 acre tract the following five (5) calls:

- 1. S 09°17'57" W a distance of 2317.36 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for the southwest corner of said Greaves 197.63 acre tract;**
- 2. N 87°44'44" E a distance of 1897.75 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for angle point;**
- 3. N 87°11'09" E a distance of 395.35 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for angle point;**
- 4. N 88°26'40" E a distance of 553.50 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for angle point;**
- 5. N 87°37'15" E a distance of 1216.80 feet to a 1/2" iron rod with cap stamped "ProTech" found in the curving westerly right-of-way (80') line of FM 2001 for the southeasterly corner of said Greaves 197.63 acre tract;**

THENCE a distance of 37.03 feet along the arc of said curving right-of-way line to the left having a radius of 756.20 feet and a chord bearing S 07°22'32" E a distance of 37.03 feet to a 1/2" iron rod with cap stamped "ProTech" found for the northeast corner of that certain 2.80 acre tract of land conveyed to James Mikeska and Traci Horner-Mikeska by deed recorded in Volume 1738, Page 731 of said official public records;

THENCE along the south line of said 110.69 acre tract the following seven (7) calls:

- 1. S 87°42'19" W a distance of 858.85 feet to a 1/2" iron pipe found for the northwest corner of said Mikeska 2.80 acre tract and a corner of Lot 24, Block "A", Windy Hill Subdivision recorded in Document #17040372 plat records, Hays County, Texas;**
- 2. S 87°40'35" W a distance of 1223.06 feet to a 3/4" iron pipe found for the northwest corner of Lot 1, Block "A", Windy Hill Subdivision and the northeast corner of Lot 38, Block "T", Shadow Creek Phase Three, Section Four as recorded in Volume 13, Page 337 of said plat records;**
- 3. S 87°42'28" W a distance of 1993.45 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for angle point in the north line of Shadow Creek Phase Nine, Section Two as recorded by plat in Document #17029868 of said plat records;**
- 4. S 87°41'02" W a distance of 445.39 feet to a 6" fence post found in the north line of Lot 46, Block "B", Shadow Creek Phase Nine, Section Two;**

- 5. S 88°37'06" W a distance of 873.34 feet to a 1/2" iron rod found for angle point in the north line of Lot 46, Block "B", Shadow Creek Phase Nine, Section Two;
- 6. S 86°47'25" W a distance of 556.30 feet to a PK nail found in concrete for angle point;
- 7. S 86°38'56" W a distance of 443.01 feet to a 4" steel fence corner post found for the southwest corner hereof and said 110.69 acre tract and the southeast corner of that certain 10.009 acre tract of land conveyed to Mayra Garcia and Matias Garcia by deed recorded in Volume 3572, Page 398 of said official public records;

THENCE N 02°32'25" W a distance of 1483.85 feet to a 6" steel fence corner post found in the southerly line of that certain 68.96 acre tract of land conveyed to Douglas R. Thomas and Carolyn J. Thomas by deed recorded in Volume 1942, Page 763 for an corner of said 110.69 acre tract and the northeast corner of that certain 36.02 acre tract of land conveyed to Salvador Villegas by deed recorded in Volume 3252, Page 672 of said official public records;

THENCE N 87°39'48" E a distance of 1501.99 feet to a 1/2" iron rod found for the southeasterly corner of said Thomas 68.96 acre tract;

THENCE N 02°43'08" W a distance of 1007.78 feet to a 1/2" iron rod with cap found for the southeast corner of Lot 12, Country Ridge Subdivision as recorded by plat in Volume 3, Page 274 of said plat records;

THENCE N 02°20'11" W a distance of 1960.66 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set in the south margin of Hillside Terrace for the northwest corner hereof and said 22'x716' roadway easement;

THENCE N 87°18'54" E a distance of 1410.56 feet along Hillside Terrace to the POINT OF BEGINNING and containing 163.935 acres of land, more or less, and as shown on map of survey prepared herewith.

Surveyed by:



James E. Garon
 Registered Professional Land Surveyor
 Co\Hays\Surveys\Jessie B Eaves A-166\45118

EXHIBIT "B"

- a) Pipeline easement in favor of Hope Engineering and Supply Company, as set forth in instrument recorded in/under Vol. 95, Page 154 of the Deed Records of Hays County, Texas.
- b) Pipeline easement in favor of Hope Engineering and Supply Company, as set forth in instrument recorded in/under Vol. 95, Page 160 of the Deed Records of Hays County, Texas.
- c) Pipeline and telephone and telegraph line easement in favor of Hope Engineering and Supply Company, as set forth in instrument recorded in/under Vol. 95, Page 155 of the Deed Records of Hays County, Texas.
- d) Pipeline easement in favor of United Gas Public Service Co., as set forth in instrument recorded in/under Vol. 102, Page 479 of the Deed Records of Hays County, Texas.
- e) Pipeline right-of-way easement in favor of United Pipe Line Corp. as set forth in instrument recorded in/under Vol. 102, Page 488 and as assigned in Vol. 222, Page 60 of the Deed Records of Hays County, Texas.
- f) Pipeline easement in favor of United Gas Public Service Co., as set forth in instrument recorded in/under Vol. 102, Page 489 of the Deed Records of Hays County, Texas.
- g) Electrical protection unit easement in favor of United Gas Public Service Co., as set forth in instrument recorded in/under Vol. 115, Page 629 of the Deed Records of Hays County, Texas.
- h) Telegraph, telephone and power lines easement in favor of United Gas Line Company, as set forth in instrument recorded in/under Vol. 156, Page 217 of the Deed Records of Hays County, Texas.
- i) An access easement described in instrument recorded in/under Vol. 188, Page 553 of the Deed Records of Hays County, Texas.
- j) Water pipeline easement in favor of Goforth Water Supply Corporation as set forth in instrument recorded in/under Vol. 229, Page 116 of the Deed Records of Hays County, Texas.
- k) Water pipeline easement in favor of Goforth Water Supply Corporation as set forth in instrument recorded in/under Vol. 254, Page 647 of the Deed Records of Hays County, Texas.

- l) Cathodic protection easement in favor of Valero Transmission Company, as set forth in instrument recorded in/under Vol. 401, Page 763 of the Deed Records of Hays County, Texas.
- m) Pipeline easement for treated water in favor of Guadalupe-Blanco River Authority, as set forth in instrument recorded in/under Vol. 2735, Page 724 of the Official Public Records of Hays County, Texas.
- n) Drainage easement in favor of Hays County, Texas, as set forth in instrument recorded in/under 2796, Page 381, of the Official Public Records of Hays County, Texas.
- o) Terms and provisions of Oil, Gas and Mineral Lease contained in the instrument recorded in Vol. 206, Page 72 of the Deed Records of Hays County, Texas.
- p) Mineral and/or royalty interest in and to all oil, gas and other minerals on, in, under or that may be produced from the subject property is excepted herefrom as the same is set forth in instrument recorded in/under Vol. 258, Page 493, of the Deed Records of Hays County, Texas.
- q) Non-participating royalty interest in and to all oil, gas and other minerals on, in, under or that may be produced from the subject property is excepted herefrom as the same is set forth in instrument recorded in/under Vol. 242, Page 319, of the Deed Records of Hays County, Texas.
- r) Mineral and/or royalty interest in and to all oil, gas and other minerals on, in, under or that may be produced from the subject property is excepted herefrom as the same is set forth in instrument recorded in/under Vol. 850, Page 629, of the Deed Records of Hays County, Texas.

After Recording Return to:

Hillside Terrace
911 Jailville Rd, Suite 111
Austin, TX 78759

**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.

21020969 DEED
04/26/2021 08:07:26 AM Total Fees: \$54.00

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



NON-MATERIAL CORRECTION INSTRUMENT

(Pursuant to Section 5.028, Texas Property Code)

SPECIAL WARRANTY DEED

TO THE COUNTY CLERK:

PLEASE INDEX THIS INSTRUMENT UNDER THE NAMES OF THE PARTIES TO THE INSTRUMENT BEING CORRECTED:

STATE OF TEXAS §
COUNTY OF HAYS §

Original Instrument:

Document Type: Special Warranty Deed

Grantor: Sterling Equities, Inc., a Texas corporation

Grantee: Hillside Terrace Development, LLC, a Texas limited liability company

Recording Date: October 19, 2021

Recording Information: 21057370

STERLING EQUITIES, INC., a Texas corporation ("**Grantor**"), caused to be recorded that certain Special Warranty Deed, recorded under Document No. 21057370 in the Official Public Records of Hays County, Texas (the "**Deed**").

Robert D. Burton, as evidenced by his signature below, is an employee of Winstead PC. He has personal knowledge of the relevant facts and has examined the Deed and has determined that an incorrect element in the property description exists in the Deed, and that such nonmaterial error can be properly corrected through the recordation of this instrument. The incorrect element is in Call No. 6 following the fifth (5th) paragraph on Exhibit "A" to the Deed. Such call is hereby corrected as follows:

- 6) S 01°43'27" E a distance of 800.00 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS 4303" set for an angle point,

A complete copy of the corrected Exhibit "A" to the Original Instrument is attached hereto and incorporated herein as Exhibit "A".

Other than the stated correction above, this instrument is intended to restate in all aspects the Deed and is effective as of the effective date of the Deed.

Upon execution, a copy of this instrument shall be sent via U.S. First Class Mail to each party to the Deed in accordance with the provisions of Section 5.028(d)(2) of the Texas Property Code.



Robert D. Burton

THE STATE OF TEXAS §
 §
COUNTY OF Travis §

This instrument was acknowledged before me on November 29, 2021, by Robert D. Burton, known personally to me.

[SEAL]

Stephanie Symms
NOTARY PUBLIC, State of Texas
My Commission Expires: 9-10-24
Printed Name: Stephanie Symms



EXHIBIT "A"

**JAMES E. GARON
& ASSOCIATES, INC.**
PROFESSIONAL LAND SURVEYORS

185 McAllister Road
Bastrop, Texas 78602
512-303-4185
Firm Reg. #10058400
jgaron@austin.rr.com

November 23, 2021

LEGAL DESCRIPTION: BEING 12.088 ACRES OF LAND LYING IN AND BEING SITUATED OUT OF THE W.A. MOORE SURVEY, ABSTRACT 331 AND THE JESSIE B. EAVES SURVEY, ABSTRACT 166 IN HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 35.044 ACRE TRACT OF LAND CONVEYED TO GJG DEVELOPMENT II, LLC BY DEED RECORDED IN DOC. #19024067 OF THE OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS AND BEING DESCRIBED IN A CORRECTION AFFIDAVIT IN DOC. #19031503 OF SAID OFFICIAL RECORDS AND BEING A PORTION OF THAT CERTAIN 36.341 ACRE (TRACT 1) CONVEYED TO GJG DEVELOPMENT II, LLC BY DEED RECORDED IN DOC. #21026658 OF SAID OFFICIAL RECORDS; SAID 12.088 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES IN AUGUST, 2018, NOVEMBER, 2018 AND SEPTEMBER, 2021:

BEGINNING at a 8" wood fence post found for the southwesterly corner hereof and said GJG Development II 35.044 acre tract, being an ell corner of that certain 163.935 acre tract of land conveyed to Sterling Equities, Inc. by deed recorded in Doc. #20061095 of said Official Records;

THENCE N 02°35'48" W a distance of 1457.98 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for the northwest corner hereof and the present northwest corner said GJG Development II 36.341 acre tract, from which said northwest corner a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set at the northwest corner of said GJG Development II 35.044 acre tract bears S 02°35'48" E 21.16' feet;

THENCE N 87°16'06" E a distance of 532.28 feet a 1/2" iron rod with cap Stamped RPLS 3693 found at the southwest corner of that certain 8.00 acre tract of land conveyed to Nancy H. Johnson by Will. Record description in Volume 881, Page 259 of said official public records, the southeasterly corner of said Sterling Equities, Inc. 163.935 acre tract for the northeast corner hereof;

THENCE crossing said GJG Development II 36.341 acre tract and said GJG Development II 35.044 acre tract for the easterly line hereof the following eight (8) calls:

- 1) S 02°35'48" E a distance of 43.92 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an angle point,
- 2) S 20°10'26" W a distance of 126.93 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an angle point,

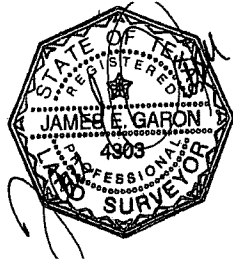
● Page 2

November 23, 2021

- 3) S 24°19'48" W a distance of 280.00 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an angle point,
- 4) S 16°11'00" W a distance of 49.59 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an angle point,
- 5) S 05°46'10" W a distance of 77.41 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an angle point,
- 6) S 01°43'27" E a distance of 800.00 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an angle point,
- 7) S 88°16'33" W a distance of 10.00 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set for an angle point,
- 8) S 01°43'27" E a distance of 129.40 feet to a 1/2" iron rod with cap stamped "JE Garon RPLS4303" set in a northerly line of said Out of Order, Inc., Cabot-Chase, LTD and Sawyer Ranch, LLC 163.935 acre tract, the southerly line of said GJG Development II 35.044 acre tract for the southeast corner hereof;

THENCE for the southerly line hereof and said GJG Development II 35.044 acre tract S 88°09'48" W a distance of 305.00 feet to the **POINT OF BEGINNING** and containing 12.088 acres of land, more or less, and as shown on map of survey prepared herewith.

Surveyed by:



James E. Garon
Registered Professional Land Surveyor
Co\Hays\Surveys\Jessie B Eaves A-166\83021

**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.

21065307 DEED
11/30/2021 10:23:05 AM Total Fees: \$38.00

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





CITY OF KYLE, TEXAS

Porter Country PID Admin Svcs P3Works

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Approve a professional services agreement with P3WORKS, LLC, Austin, Texas, to provide Public Improvement District (PID) formation and administration services to the City of Kyle in association with the Porter Country Public Improvement District PID. All costs incurred for services under this agreement will be paid through future PID assessments collected. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2022-05-19_P3_KYL_Porter Country PID_Admin_Contract_Draft_v1

**AGREEMENT FOR PUBLIC IMPROVEMENT DISTRICT
ADMINISTRATION SERVICES**

This Agreement for Public Improvement District Administration Services (“Agreement”) is entered into this _____ day of _____, 20__, by and between P3Works, LLC (“P3Works”), and the City of Kyle Texas (“City”).

RECITALS

WHEREAS, the City Council passed Resolution No. _____ on _____, 20__, approving and authorizing the creation of the Porter Country Public Improvement District No. _ ("PID No. _" or "District") to finance the costs of certain public improvements for the benefit of property within the District; and

WHEREAS, the City may consider issuing bonds to fund certain improvements in the PID as authorized by the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended; and

WHEREAS, the City requires specialized services related to the revision and updating of the Service and Assessment Plan ("Service and Assessment Plan"), bond issuance, and the administration of the District, as more fully set forth in this Agreement; and

WHEREAS, P3Works has the expertise to properly establish and administer the District and ensure compliance with Texas Local Government Code Chapter 372; and

WHEREAS, the City desires to retain P3Works to provide District administration services;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for good and valuable consideration, P3Works and the City agree as follows:

ARTICLE I

TERM OF AGREEMENT

1.0 The Agreement shall be effective as of its approval by all parties and shall be for a period of three (3) years and shall automatically continue on a year to year basis until terminated pursuant to Article IV of this Agreement.

ARTICLE II

SERVICES TO BE PROVIDED BY P3WORKS

2.0 The scope and timing of services to be performed by P3Works are set forth in Exhibit A, which is attached hereto and incorporated into this Agreement by this reference.

2.1 P3Works agrees that its services pursuant to this Agreement shall at all times be subject to

the control and supervision of the City and that nothing in this Agreement shall constitute an assignment of any right or obligation of the City under any applicable contract, agreement, or law. P3Works shall not represent to any property owner or any other person that it or any of its employees are acting as the City or employees of the City.

2.2 No substantial changes in the scope of services shall be made without the prior written approval of P3Works and the City.

2.3 P3Works shall supply all tools and means necessary to perform the services and production of the work product described in Exhibit A.

ARTICLE III

PAYMENT TERMS AND CONDITIONS

3.0 In consideration for the services to be performed by P3Works, the City agrees to pay P3Works the fees for all services and related costs and expenses set forth in Exhibit A, beginning the first day of the month following the execution of this Agreement. Beginning on the February 1 following the levy of the Assessment and each February 1 thereafter, the fees shall increase by 2%.

3.1 Monthly invoices shall be submitted to the City for work completed. City agrees to pay the amount due to P3Works upon receipt of each invoice.

3.2 Copies of all invoices to P3Works for expenses, materials, or services provided to P3Works will accompany the invoice to the City. P3Works will pass any third-party cost through to the City without markup and will not incur any expense in excess of \$200 without written consent of the City.

3.3 The only source of payment for P3Works' fees and services shall be the District or funds advanced by the developer. The City general fund shall never be used to pay for any expenses relating to P3Works' administration of the District. In the event there is insufficient District funds in a given year to pay P3Works' fees and expenses, P3Works agrees to defer the fees and expenses until such time as there are sufficient District funds or funds advanced by the developer.

ARTICLE IV

TERMINATION OF THIS AGREEMENT

4.0 Notwithstanding any other provisions of this Agreement, either party may terminate this Agreement at any time by giving sixty (60) days written notice to the other party without penalty and without limitation of its right to seek damages. City shall pay P3Works, within 30 days of such termination, all of P3Works' fees and expenses actually accrued or incurred to and including the date of termination, including any amount incurred or accrued in connection with work in progress.

ARTICLE V

GENERAL PROVISIONS

5.0 This Agreement supersedes any and all agreements, including any Original PID Administration Agreement, either oral or written, between the parties hereto with respect to rendering

of services by P3Works for the City and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party of this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party which are not embodied herein and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

5.1 This Agreement shall be administered and interpreted under the laws of the State of Texas. This Agreement shall not be construed for or against any party by reason of who drafted the provisions set forth herein. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall remain in full force and effect.

5.2 Neither this Agreement or any duties or obligations under this Agreement may be assigned by P3Works without the prior written consent of the City.

5.3 P3Works is a PID Administration firm, does not provide financial advice, and is not an Independent Registered Municipal Advisor under the SEC and MSRB Rules, therefore, P3Works will request an IRMA Exemption Letter if not already provided on the City's website, and then will provide to the City an IRMA Exemption Acceptance Letter in the general form attached as Exhibit B upon execution of the Agreement.

5.4 The waiver by either party of a breach or violation of any provision of this Agreement will not operate as or be construed to be a waiver of any subsequent breach thereof.

5.5 Upon acceptance or approval by City, all deliverables prepared or assembled by P3Works under this Agreement, and any other related documents or items shall be delivered to City, in hard copy and digital format for City use only. All digital data which contains algorithms, formulas, methodologies and related content provided to the City by the P3Works shall remain the property of the P3Works, and is provided as backup documentation to the deliverables, but shall not be released in digital format to any third-parties due to the proprietary nature of the intellectual data.

5.6 The City acknowledges P3Works' ownership of its software, programs, inventions, know-how, trade secrets, confidential knowledge, source code, or other proprietary information relating to products, processes, services, software, formulas, developmental or experimental work, business plans, financial information, or other subject matter ("Confidential Information") pertaining to the business of P3Works. This Agreement shall not in any way give rise to any requirement or obligation for P3Works to disclose or release any Confidential Information.

5.7 The headings and article titles of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

5.8 Should either party commence any legal action or proceeding against the other based upon this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs.

5.9 All notices, requests, demands, and other communications which are required to be given under this agreement shall be in writing and shall be deemed to have been duly given upon the delivery by registered or certified mail, return receipt requested, postage prepaid thereon, as follows:

To P3Works:

Mary V. Petty
Managing Partner
P3Works, LLC
9284 Huntington Square, Ste. 100
North Richland Hills, Texas 76182

To City:

Scott Sellers
City Manager
City of Kyle
100 W. Center Street
Kyle, Texas 78640

5.10 The parties hereby warrant that the persons executing this Agreement are authorized to execute this Agreement and are authorized to obligate the respective parties to perform this Agreement. A facsimile signature on this Agreement shall be treated for all purposes as an original signature.

Executed on this _____ day of _____, 20____:

P3Works, LLC

BY: _____
Mary V. Petty
Managing Partner

City of Kyle

BY: _____
Scott Sellers
City Manager

EXHIBIT A
SERVICES TO BE PROVIDED

PID FORMATION, SERVICE AND ASSESSMENT PLAN PREPARATION, AND BOND ISSUANCE SUPPORT SERVICES

Billed at P3Works' prevailing hourly rates, which are currently as follows:

Title	Hourly Rate
<i>Managing Partner</i>	<i>\$250</i>
<i>Vice President</i>	<i>\$185</i>
<i>Senior Associate</i>	<i>\$160</i>
<i>Associate</i>	<i>\$135</i>
<i>Administrative</i>	<i>\$100</i>

**P3Works' hourly rates may be adjusted from time to time to reflect increased costs of labor and/or adding/reclassifying titles. Travel times will be billed at hourly rates.*

District Due Diligence and Preparation of PID Plan of Finance

1. P3Works will review project information and in conjunction with the City's Financial Advisor review a plan of finance for the proposed transaction, including
 - a) Assessed value schedules, value to lien analysis, and overall structuring to achieve City goals and objectives
 - b) Identify areas of risk with the City's Financial Advisor, and solutions to mitigate the risks,
 - c) Bond sizing and bond phasing by improvement area,
 - d) Sources and uses of funds by improvement area,
 - e) Debt service schedules, and;
 - f) Assessment allocation and associated estimated annual installment by lot type for each improvement area.

Preparation of Service and Assessment Plan

1. P3Works will prepare a complete and final Service and Assessment Plan to be adopted by City Council and included in the Official Statement for the Bonds based on the Plan of Finance.
2. P3Works will present the Service and Assessment Plan to City Council and request approval of Assessment Roll.

Bond Issuance Support

1. P3Works will ensure bond documents, including the PID financing agreement, bond indenture, and official statement are all consistent with the Service and Assessment Plan.
2. P3Works will provide ad-hoc analysis as requested by the underwriter in preparation of the preliminary official statement.

Participation in Presentations to City Council or other Public Forums

1. P3Works will prepare and present information as requested to the City Council or any other public forum.

BASIC DISTRICT ADMINISTRATION SERVICES

If no bonds are sold:

Monthly Fee = \$1,500 beginning the first of the month following execution of this Agreement for the first improvement area; and \$1,000 per month for each improvement area thereafter. (Proration will occur for any partial month if not begun on the 1st day of the month.)

If bonds are sold:

Monthly Fee amounts will be \$2,500 for the first improvement area beginning the first month following the issuance of bonds; and \$1,250 per month for each improvement area thereafter.

For PIDs that P3Works did not create: Monthly Collection Fees will not begin until the first Annual SAP Update is drafted by P3Works and approved by Council, therefore all work completed to that point will be billed hourly.

See Section below related to “Consulting Services Relating to Future Improvement Areas and related Bond Issuance” for hourly fees if bonds are contemplated.

Prepare Annual Service and Assessment Plan Update

1. If possible, obtain updated construction cost estimates (or actual costs for completed facilities) for District improvements, and update service and assessment plan text and tables.
2. Update service and assessment plan text and tables as necessary to account for any changes in development plan or land uses.
3. Update annual District assessment roll.
4. Identify parcel subdivisions, conveyance to owners' associations, changes in land use, and any other information relevant to the levy of special assessments.
5. Review maps of tax parcels to compile/audit list of parcels that are within the District for the upcoming bond year. Classify each parcel pursuant to the approved service and assessment plan.
6. Identify any parcels dedicated to any property types classified as exempt by the service and assessment plan.
7. Update District database with newly subdivided parcels and property type classifications.
8. Calculate annual special assessment for each parcel. Verify the sum of annual installments for all parcels in the District is sufficient to meet the annual debt service requirement, administration expenses, and any provisions for delinquency or prepayment reserves.
9. Calculate other funds available, such as reserve fund income, capitalized interest, and interest income. Reduce annual assessment based on findings according to approved service and assessment plan.
10. Present preliminary annual assessment roll to City. Upon approval by City, submit final annual assessment roll to County Tax Collector.

Administration of Bond Funds (if bonds are sold)

1. Review and summarize the account statements for the funds maintained by the trustee. Ensure annual special assessment calculation is compliant with Indenture as it relates to each fund.
2. Provide annual summary of all District accounts maintained by Trustee at the time the annual service and assessment plan update is performed.

Provide Public Information Request Support

1. If requested, P3Works will respond to any calls and or emails relating to the District. P3Works will only provide technical answers relating to the annual assessments or the District generally. P3Works will not provide any commentary on City policy relating to PIDs.
2. If the City receives a notice from a property owner alleging an error in the calculation of any matters related to the annual assessment roll for the District, P3Works will review and provide a written response to the City. If a calculation error occurred, P3Works will take corrective action as required to correct the error.

Delinquency Management

1. After the end of the annual assessment installment collection period, P3Works will prepare a delinquent special assessment report, which details which parcels are delinquent and the amount of delinquency.
2. P3Works will notify the City what action must be taken relating to delinquent parcels, if any, to remain in compliance with the District bond documents.

Website Setup

1. Prepare for the P3Works website database searchable by property tax ID for use by property owners, title companies, mortgage companies, or other interested parties. The search results will provide assessment information, including outstanding principal, annual installment amount, payment information, and a breakdown of the assessment installment by use (principal, interest, reserve fund accounts, administrations, etc.)
2. Prepare "District Information" page for website. Information will include a background of the District formation and bond issuance process, District boundary map, and description of improvements. In additions, P3Works will provide a link to District documents.

DISTRICT ADMINISTRATION SETUP SERVICES (Required for any existing PID not created by P3Works.)

\$7,500 One Time Lump Sum Fee

1. P3Works will review the full bond transcript and identify all requirements of the City relating to District administration and/or disclosure requirements.
2. Prepare written summary of all City administration and disclosure requirements.
3. Prepare calendar of all relevant dates and deadlines for District administration and disclosure requirements.
4. Meet with County Assessor's office to establish procedure for obtaining parcel information for assessment roll.
5. Meet with County Tax Office to establish procedure to include District assessment roll on property tax bill.
6. Meet with City representatives to finalize policies and procedures relating to District Administration.

ADDITIONAL DISTRICT ADMINISTRATION SERVICES

Billed at P3Works' prevailing hourly rates, which are currently as follows:

<i>Title</i>	<i>Hourly Rate</i>
<i>Managing Partner</i>	<i>\$250</i>
<i>Vice President</i>	<i>\$185</i>
<i>Senior Associate</i>	<i>\$160</i>
<i>Associate</i>	<i>\$135</i>
<i>Administrative</i>	<i>\$100</i>

**P3Works' hourly rates may be adjusted from time to time to reflect increased costs of labor and/or adding/reclassifying titles. Travel will be billed at the hourly rates.*

Continuing Disclosure Services

1. P3Works will prepare the form of the annual report as required by the continuing disclosure agreements and work with the City and the Developer to complete.
2. P3Works will request from developer the reports due pursuant to the developer disclosure agreement and disseminate these reports pursuant to the disclosure agreement; including Seller's Disclosures.
3. Upon notification by any responsible party or if P3Works independently becomes aware of such knowledge, P3Works will prepare notices of material events covering the events enumerated in the disclosure agreements.
4. P3Works will coordinate with the Trustee to disseminate the annual reports, quarterly reports from the developer, and notice of significant events to the Municipal Securities Rulemaking Board (MSRB) and any other parties required in the continuing disclosure agreement.

Developer Payment Request Administration

1. P3Works will review all developer payment requests to ensure the request complies with the PID Financing Agreement, the District service and assessment plan, and any other relevant provisions contained in the District documents.
2. P3Works will audit the developer payment request to ensure there is proper backup documentation and that the accounting is accurate.
3. P3Works will coordinate with the City's designated representative to ensure the improvements were built to the standards of the accepting governing body.
4. P3Works will ensure improvements to be dedicated are free and clear of all liens and encumbrances.

Consulting Services Relating to Future Improvement Areas and related Bond Issuance (to be paid from Developer funds advanced to City)

1. P3Works will update the Service and Assessment Plan to comply with Bond documents.
2. P3Works will prepare an updated Assessment Roll including the future Improvement Area
3. P3Works will coordinate with City's bond counsel, financial advisor, and the bond underwriter to ensure the Bonds and all related documents are in compliance with State Law.
4. P3Works will prepare any additional reports or analyses as needed to successfully issue the Bonds.

EXHIBIT B
IRMA EXEMPTION LETTER



P3Works, LLC.
9284 Huntington Sq.
Suite 100
North Richland Hills,
Texas 76182

Mary V. Petty
Managing Partner
+1.817.393-0353 Phone
Admin@P3-Works.com

May 19, 2022

Scott Sellers
City Manager
100 W. Center Street
Kyle, Texas 78640

RE: IRMA Exemption/Acceptance Letter

To Whom It May Concern:

We have received your written representation, dated _____, 20__, that the City of Kyle (the "City") has engaged and is represented by _____, an independent registered Municipal Advisor ("IRMA"). In accordance with Section 15Ba1-1(d)(3)(vi) of the Securities Exchange Act of 1934 ("Securities Exchange Act"), we understand and intend for the City to rely on IRMA's advice in evaluating recommendations brought forward by P3Works, LLC that constitute "advice" as defined in the Securities Exchange Act ("IRMA Exemption").

Furthermore, P3Works, LLC has conducted reasonable due diligence and is confirming that to the best of our knowledge, the IRMA is independent from P3Works, LLC, that P3Works, LLC is not a municipal advisor and is not subject to the fiduciary duty to municipal entities that the Security and Exchange Act imposes on municipal advisors, and that P3Works, LLC has a reasonable basis for relying on the IRMA Exemption. We will advise you, in writing, if we become aware of any changes.

P3Works, LLC provides PID Administration as consult services to Cities and Counties.

As required by the relevant sections of the Securities Exchange Act regarding Municipal Advisors, we are informing your identified IRMA of these facts.

Mary V. Petty
Managing Partner
P3Works, LLC

Jon Snyder
Managing Partner
P3Works, LLC



CITY OF KYLE, TEXAS

Acceptance of Talavera Phase 1 Subdivision

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Approval of a Resolution of the City Council of the City of Kyle, Texas accepting the Talavera Phase 1 Subdivision improvements; finding and determining that the meeting at which this Resolution is passed was noticed and is open to the Public as required by law.
~ Leon Barba, P.E., City Engineer

Other Information: A final walk-through was completed on May 10, 2022. The punch list items have been completed on the project. The street, drainage, and wastewater improvements have been completed in substantial accordance with the City's requirements. Record drawings have been provided to the City.

A Maintenance Bond has been provided for a period of two (2) years.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Acceptance Package

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS ACCEPTING TALAVERA PHASE 1 SUBDIVISION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the developer of this subdivision has completed construction of the improvements in general accordance with plans approved by the City of Kyle; and

WHEREAS, the subdivision improvements are defined as street, drainage, and wastewater systems installed within public rights-of-way and any dedicated drainage or public utility easements within the subdivision; and

WHEREAS, the contractor has also provided the City a two (2) year maintenance bond in an amount of thirty five percent (35%) of the cost of the construction for any repairs that may be necessary during a two-year period from the date of acceptance by City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS hereby accepts the public improvements and certifies completion of the improvements for Talavera Phase 1. The current maintenance surety is hereby \$894,444.23 being thirty five percent of the total cost of required improvements, to be held for two years from this date.

SECTION 1. That the subdivision improvements within Talavera Phase 1 are hereby accepted for operation and maintenance.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED this the ____ day of _____, 2022.

CITY OF KYLE, TEXAS

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary

EXHIBIT A

STAFF ACCEPTANCE MEMO




CITY OF KYLE

100 W. Center St.
Office (512) 262-1010

Kyle, Texas 78640
Fax (512) 262-3915

MEMORANDUM

TO: Scott Sellers, City Manager

FROM: Leon Barba, P.E., City Engineer 

DATE: May 23, 2022

SUBJECT: Talavera Phase 1
Final Acceptance

The referenced subdivision is recommended for acceptance by the City of Kyle.

A final walkthrough was completed on May 10, 2022. The punch list items have been completed on the project. The street, drainage and wastewater improvements have been constructed in substantial accordance with the City's requirements. Record drawings have been provided to the City.

A Maintenance Bond (Westfield Insurance Company – Bond No. 219205C) in the amount of \$894,444.23 has been provided for a period of two (2) years.

Please let me know if you need any additional information.

Xc: Harper Wilder, Public Works Dept.
Perwez Moheet, Finance Dept.
Debbie Guerra, Planning and Zoning



05/05/2022

RE: TALAVERA SUBDIVISION PHASE 1
Paving, Drainage, Water & Wastewater Improvements
Engineer's Concurrence Letter

To Whom It May Concern:

Please find this letter as our formal engineering concurrence for the above-referenced project. On May 05, 2022, I the undersigned professional engineer, made a final visual inspection of the above referenced project. This inspection represented the culmination of multiple site visits conducted by BGE, Inc., singly and several joint site visits conducted with City of Kyle and Goforth SUD staff accompanied by Contractor personnel. The conclusion drawn from this final inspection and those site visits conducted during construction is that the Talavera Subdivision Phase 1 Paving, Drainage, Water & Wastewater Improvements project has been constructed in general compliance with the approved plans, specifications and requirements of the associated regulatory permits with insignificant deviation.

Revegetation of areas disturbed in this construction project remain in progress with appropriate erosion controls in place to minimize erosive potential during the grow-in period.

Sincerely,
BGE, Inc.

Josh Janysek, P.E.
Project Manager – Construction



cc: Ricky Cisneros, City of Kyle
Neal Goedrich, Goforth

EXHIBIT B

MAINTENANCE BOND

MAINTENANCE BOND

Bond No.: 219205C

KNOW ALL PERSONS BY THESE PRESENTS, that we, JL Gray Construction, Inc., as Principal and Westfield Insurance Company, a corporation organized and doing business under and by virtue of the laws of the State of Ohio and duly licensed to conduct surety business in the State of Texas, as Surety, are held and firmly bound unto City of Kyle as Obligee, in the sum of Eight Hundred Ninety-four Thousand Four Hundred Forty-four And 23/100 (\$894,444.23) Dollars, for which payment, will and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these presents.

THE CONDITIONS OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal entered into an agreement or agreements with said Obligee(s) to: Talavera Phase 1.

WHEREAS, said agreement provided that Principal shall guarantee replacement and repair of improvements as described therein for a period of 2 year(s) following final acceptance of said improvements: Talavera Phase 1 - Erosion, Street, Wastewater, and Drainage Improvements

NOW THEREFORE, if the above Principal shall indemnify the Obligee for all loss that Obligee may sustain by reason of any defective materials or workmanship which become apparent during the period of 2 year (s) from and after acceptance of said improvements by Obligee, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact.

This 31st day of March, 2022.

JL Gray Construction, Inc.
Principal

By: _____

Westfield Insurance Company
Surety

Seal

Local Recording Agency:
K & S Insurance
P O Box 277
Rockwall, TX 75087

By: _____

Jack Nottingham, Attorney-in-fact

General
Power
of Attorney

POWER NO. 4220012 14

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, JOINTLY OR SEVERALLY

of ROCKWALL and State of TX its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship-

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 02nd day of JANUARY A.D., 2020 .

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this 02nd day of JANUARY A.D., 2020 , before me personally came Gary W. Stumper to me known, who, being by me duly sworn, did depose and say, that he resides in Hartford, CT; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 31st day of March A.D., 2022 .



Secretary

Frank A. Carrino, Secretary

**IMPORTANT NOTICE
STATE OF TEXAS
COMPLAINT PROCEDURES**

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact your agent.

3. You may call Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's toll-free telephone number for information or to make a complaint at:

1-800-243-0210

4. You may also write to Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company at:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write to the Texas Department of Insurance, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent, Westfield Insurance Company, Westfield National Insurance Company, or Ohio Farmers Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su (title) al (telephone number).

Usted puede llamar al numero de telefono gratis de Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's para informacion o para someter una queja al:

1-800-243-0210

Usted tambien puede escribir a Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companies, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente, Westfield Insurance Company, Westfield National Insurance Company, o Ohio Farmers Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

TALAVEA PHASE 1 - FINAL COST AND QUANTITIES

DEVELOPER: RANCH ROAD DEV.
 ENGINEER: BGE
 CONTRACTOR: JLGRAY

DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
GOFORTH IMPROVMENTS				
WATER IMPROVEMENTS				
8" PVC C-900	6092	LF	\$ 32.50	\$ 197,990.00
12" PVC C-900	1315	LF	\$ 50.50	\$ 66,407.50
8" GATE VALVE	28	EA	\$ 1,725.00	\$ 48,300.00
12" GATE VALVE	2	EA	\$ 2,650.00	\$ 5,300.00
12" BUTTERFLY VALVE	4	EA	\$ 2,775.00	\$ 11,100.00
5 1/4" FIRE HYDRANT ASSEMBLY	16	EA	\$ 4,500.00	\$ 72,000.00
SINGLE SERVICE	21	EA	\$ 950.00	\$ 19,950.00
DOUBLE SERVICE	51	EA	\$ 1,500.00	\$ 76,500.00
TRENCH SAFETY	7407	LF	\$ 1.00	\$ 7,407.00
BORE AND 24" ENCASEMENT	80	LF	\$ 492.00	\$ 39,360.00
TRAFFIC CONTROL FOR BORE/BORE PITS	1	LS	\$ 1,650.00	\$ 1,650.00
48" SPLIT CASING FOR EXISTING GBRA LINE	226	LF	\$ 1,200.00	\$ 271,200.00
16" HDPE CASING	100	LF	\$ 73.00	\$ 7,300.00
16" STEEL CASING	60	LF	\$ 200.00	\$ 12,000.00
CONNECT TO EXISTING 12" WL W/ CUT IN TEE	1	EA	\$ 10,000.00	\$ 10,000.00
GAS LINE CROSSINGS	5	EA	\$ 3,475.00	\$ 17,375.00
FLUSH VALVE ASSEMBLY	6	EA	\$ 2,050.00	\$ 12,300.00
IRRIGATION SERVICE	1	EA	\$ 2,450.00	\$ 2,450.00
4" METER AND 3'X5' VAULT	1	LS	\$ 24,150.00	\$ 24,150.00
2-6" UTILITY SLEEVES	136	LF	\$ 25.00	\$ 3,400.00
GOFORTH IMPROVMENTS				\$ 906,139.50
CITY OF KYLE IMPROVEMENTS				
EROSION CONTROL ITEMS				
SILT FENCE	6535	LF	\$ 2.00	\$ 13,070.00
STABILIZED CONST ENTRANCE	2	EA	\$ 950.00	\$ 1,900.00
INLET PROTECTION	20	EA	\$ 85.00	\$ 1,700.00
CONCRETE WASHOUT	1	EA	\$ 650.00	\$ 650.00
MATTING FOR SLOPES GREATER THAN 3:1	4060	SY	\$ 1.50	\$ 6,090.00
ROCK LEVEL SPREADER	91	LF	\$ 30.00	\$ 2,730.00
MULCH SOCK	106	LF	\$ 5.25	\$ 556.50
REVEG ROW, OPEN SPACES, & CHANNEL	46637	SY	\$ 1.50	\$ 69,955.50
SUB-TOTAL EROSION CONTROL ITEMS				\$ 96,652.00
STREET/SITE IMPROVEMENTS				
CLEARING & GRUBBING	31.78	AC	\$ 1,005.00	\$ 31,938.90
EXCAVATION	51764	CY	\$ 2.10	\$ 108,704.40
EMBANKMENT	47565	CY	\$ 1.45	\$ 68,969.25
PADDED LOT FINE GRADING	121	LOT	\$ 150.00	\$ 18,150.00
SUBGRADE PREPARATION 3' BOC	24880	SY	\$ 2.00	\$ 49,760.00
8" BASE	24880	SY	\$ 7.50	\$ 186,600.00
GEOGRID	24880	SY	\$ 3.75	\$ 93,300.00
2" HMAc TYPE D	18314	SY	\$ 11.25	\$ 206,032.50
CURB & GUTTER	11535	LF	\$ 15.50	\$ 178,792.50
RIBBON CURB	274	LF	\$ 16.50	\$ 4,521.00
SAWTOOTH CURB AND GUTTER	20	LF	\$ 43.80	\$ 876.00
4' SIDEWALK	3778	LF	\$ 26.00	\$ 98,228.00
TYPE I RAMPS	50	EA	\$ 1,200.00	\$ 60,000.00
CONCRETE VALLEY GUTTER	4	EA	\$ 5,600.00	\$ 22,400.00

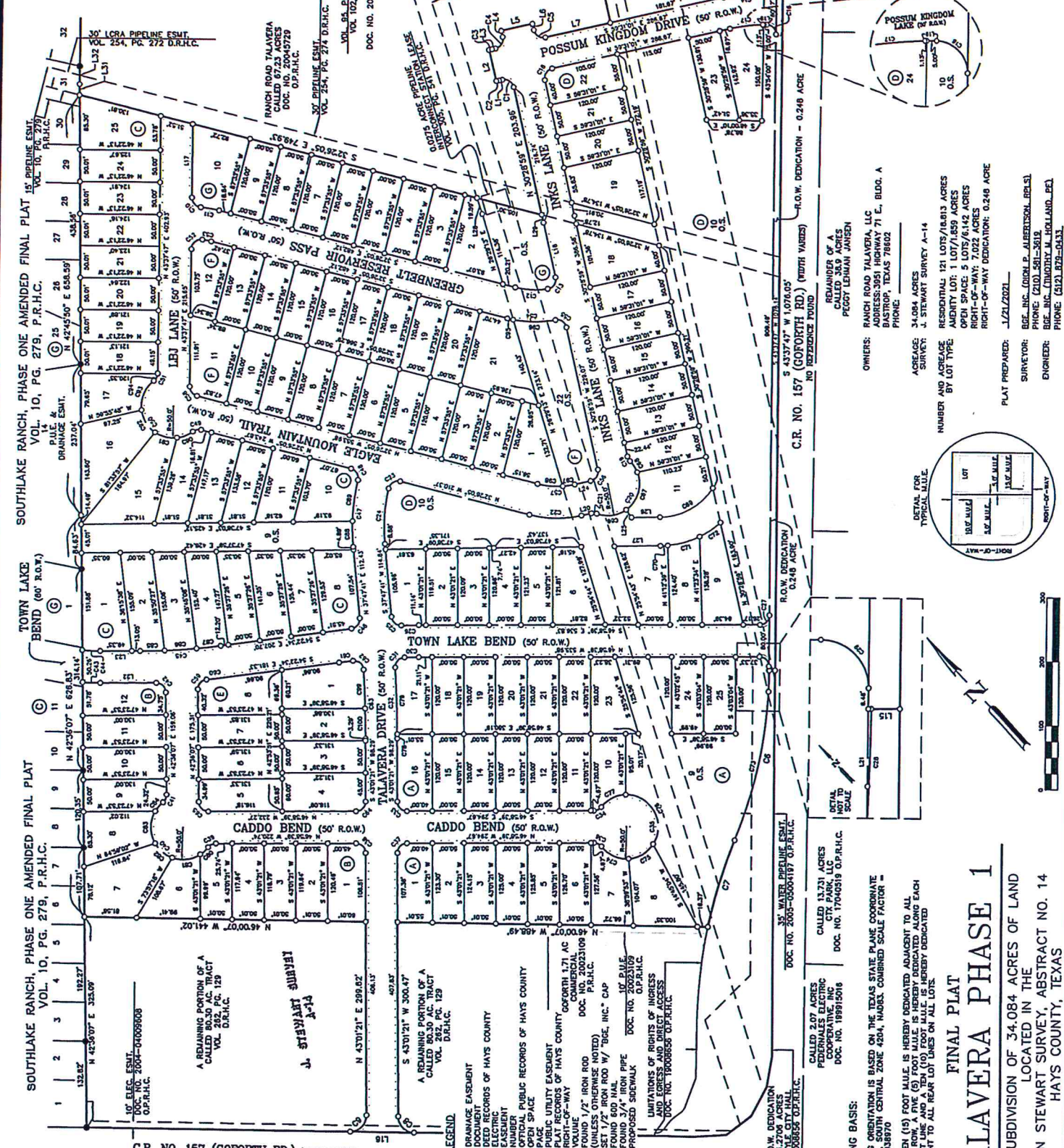
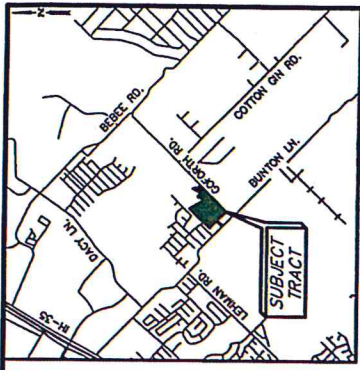
ROCK RETAINING WALL	3685	SFF	\$ 29.00	\$ 106,865.00
STREET END BARRICADES	3	EA	\$ 1,125.00	\$ 3,375.00
SIGNAGE, STRIPING, & TRAFFIC CONTROL	1	LS	\$ 17,050.00	\$ 17,050.00
TEMPORARY GAS CROSSING FOR EARTHWORK	1	LS	\$ 4,550.00	\$ 4,550.00
SUB-TOTAL STREET/SITE IMPROVEMENTS				\$ 1,260,112.55
WASTEWATER IMPROVEMENTS				
8" PVC SDR26 0-6'	754	LF	\$ 28.00	\$ 21,112.00
8" PVC SDR26 6-8'	895	LF	\$ 29.00	\$ 25,955.00
8" PVC SDR26 8-10'	1570	LF	\$ 31.00	\$ 48,670.00
8" PVC SDR26 10-12'	1534	LF	\$ 34.00	\$ 52,156.00
8" PVC SDR26 12-14'	1508	LF	\$ 37.00	\$ 55,796.00
8" PVC SDR26 14-16'	407	LF	\$ 40.00	\$ 16,280.00
8" PVC SDR26 16-18'	165	LF	\$ 43.00	\$ 7,095.00
4' STANDARD MANHOLE	31	EA	\$ 4,025.00	\$ 124,775.00
5' CIP MANHOLE	1	EA	\$ 16,975.00	\$ 16,975.00
EXTRA DEPTH MANHOLE	97	VF	\$ 300.00	\$ 29,100.00
DOUBLE SERVICE	53	EA	\$ 1,450.00	\$ 76,850.00
SINGLE SERVICE	15	EA	\$ 1,100.00	\$ 16,500.00
DOUBLE SIDED TEE FITTINGS	121	EA	\$ 210.00	\$ 25,410.00
TRENCH SAFETY	6588	LF	\$ 2.00	\$ 13,176.00
16" HDPE CASING	40	LF	\$ 73.00	\$ 2,920.00
GAS CROSSINGS	5	EA	\$ 3,475.00	\$ 17,375.00
TIE TO EXISTING MANHOLE	1	EA	\$ 9,000.00	\$ 9,000.00
SUB-TOTAL WASTEWATER IMPROVEMENTS				\$ 559,145.00
DRAINAGE IMPROVEMENTS				
18" CLASS III RCP	1505	LF	\$ 45.25	\$ 68,101.25
24" CLASS III RCP	891	LF	\$ 56.00	\$ 49,896.00
30" CLASS III RCP	435	LF	\$ 78.00	\$ 33,930.00
36" CLASS III RCP	785	LF	\$ 102.00	\$ 80,070.00
54" CLASS III RCP	277	LF	\$ 215.00	\$ 59,555.00
3- 8'X4' BOX CULVERT	59	LF	\$ 1,565.00	\$ 92,335.00
SW-O HEADWALL	1	EA	\$ 23,750.00	\$ 23,750.00
SW-O HEADWALL	1	EA	\$ 35,892.14	\$ 35,892.14
24" HEADWALL	1	EA	\$ 4,390.00	\$ 4,390.00
24" SET HEADWALL	4	EA	\$ 2,500.00	\$ 10,000.00
30" HEADWALL	1	EA	\$ 5,370.00	\$ 5,370.00
30" DUAL SET HEADWALL	2	EA	\$ 7,440.00	\$ 14,880.00
54" HEADWALL	1	EA	\$ 11,550.00	\$ 11,550.00
TRENCH SAFETY	3306	LF	\$ 1.00	\$ 3,306.00
10' CURB INLET	11	EA	\$ 4,500.00	\$ 49,500.00
15' CURB INLET	7	EA	\$ 6,900.00	\$ 48,300.00
4' STORM MANHOLE	8	EA	\$ 3,015.00	\$ 24,120.00
5' STORM MANHOLE	4	EA	\$ 3,800.00	\$ 15,200.00
6' STORM MANHOLE	2	EA	\$ 4,750.00	\$ 9,500.00
7' STORM MANHOLE	1	EA	\$ 7,200.00	\$ 7,200.00
SUB-TOTAL DRAINAGE IMPROVEMENTS				\$ 639,645.39
CITY OF KYLE IMPROVEMENTS				\$ 2,555,554.94
BODY	TOTAL	TERM	%	BOND AMOUNT
GOFORTH IMPROVEMENTS	\$ 906,139.50	2 YEARS	5%	\$ 45,306.98
CITY OF KYLE IMPROVEMENTS	\$ 2,555,554.94	2 YEARS	35%	\$ 894,444.23

EXHIBIT C

SUBDIVISION MAP



BGE, Inc.
 7330 San Pedro Ave., Suite 202
 Dallas, Texas 75216
 Tel: 214-581-3600
 TPELS Registration No. F-1048
 TPELS Licensed Surveying Firm No. 10194490



C.R. NO. 157 (GOFORTH RD.) (WIDTH VARIES) NO REFERENCE FOUND

LEGEND:
 D.E. DRAINAGE EASEMENT
 DOC. NO. 20022109
 ELEC. ELECTRIC EASEMENT
 ESMT. EASEMENT
 NO. 157
 O.P.R.H.C. OFF-ROAD PUBLIC RECORDS OF HAYS COUNTY
 P.C. OPEN SPACE
 P.E. PUBLIC UTILITY EASEMENT
 P.L.E. PUBLIC RECORDS OF HAYS COUNTY
 P.M.C. PUBLIC RECORDS OF HAYS COUNTY
 VOL. 157
 1/2" IRON PIPE
 3/4" IRON PIPE
 10" P.U.E.
 12" P.U.E.
 18" P.U.E.
 24" P.U.E.
 30" P.U.E.
 36" P.U.E.
 42" P.U.E.
 48" P.U.E.
 54" P.U.E.
 60" P.U.E.
 66" P.U.E.
 72" P.U.E.
 78" P.U.E.
 84" P.U.E.
 90" P.U.E.
 96" P.U.E.
 102" P.U.E.
 108" P.U.E.
 114" P.U.E.
 120" P.U.E.
 126" P.U.E.
 132" P.U.E.
 138" P.U.E.
 144" P.U.E.
 150" P.U.E.
 156" P.U.E.
 162" P.U.E.
 168" P.U.E.
 174" P.U.E.
 180" P.U.E.
 186" P.U.E.
 192" P.U.E.
 198" P.U.E.
 204" P.U.E.
 210" P.U.E.
 216" P.U.E.
 222" P.U.E.
 228" P.U.E.
 234" P.U.E.
 240" P.U.E.
 246" P.U.E.
 252" P.U.E.
 258" P.U.E.
 264" P.U.E.
 270" P.U.E.
 276" P.U.E.
 282" P.U.E.
 288" P.U.E.
 294" P.U.E.
 300" P.U.E.

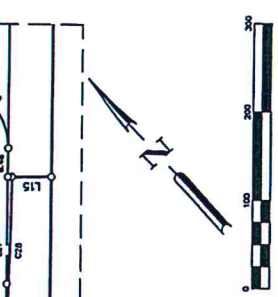
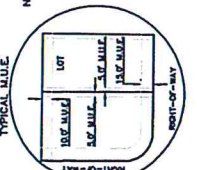
OWNERS: RANCH ROAD TALAVERA, LLC
 ADDRESS: 9541 HIGHWAY 71 E., BLDG. A
 BASTROP, TEXAS 78602
 PHONE: (512) 879-0433

AGREEMENT: 34,084 ACRES
 SURVEY: J. STEWART SURVEY A-14

NUMBER AND ACREAGE BY LOT TYPE:
 RESIDENTIAL: 121 LOTS/18,813 ACRES
 AGENCY LOT: 1 LOT/1,859 ACRES
 OPEN SPACE: 5 LOTS/6,142 ACRES
 RIGHT-OF-WAY: 7,022 ACRES
 RIGHT-OF-WAY DEDICATION: 0.248 ACRE

PLAY PREPARED: 1/21/2021

SURVEYOR: BGE, INC. (JOHN P. ALBERTSON, RELS.)
ENGINEER: BGE, INC. (TIMOTHY M. HOLLAND, PE.)
 PHONE: (512) 879-0433



BEARING BASIS:
 CALLED 2,077 ACRES
 PROPOSED EASEMENT
 COOPERATIVE, INC.
 DOC. NO. 198915016

BEARING BASIS:
 CALLED 13,231 ACRES
 CTR PARK, LLC
 COOPERATIVE, INC.
 DOC. NO. 17940519 O.P.R.H.C.

BEARING OBSERVATION IS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, ZONE 14N, NAD83. COMBINED SCALE FACTOR = 0.9999938970

A FIFTEEN (15) FOOT WIDE IS HEREBY DEDICATED ADJACENT TO ALL SIDE LOT LINES AND A TEN (10) FOOT WIDE IS HEREBY DEDICATED ADJACENT TO ALL REAR LOT LINES ON ALL LOTS.

TALAVERA PHASE 1

FINAL PLAT

A SUBDIVISION OF 34,084 ACRES OF LAND LOCATED IN THE JOHN STEWART SURVEY, ABSTRACT NO. 14 HAYS COUNTY, TEXAS

CURVE TABLE					
NUMBER	ARC LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C1	23.56'	15.00'	90°00'00"	N 143°01' W	21.31'
C2	4.22'	325.00'	0°44'37"	S 59°08'43" W	4.22'
C3	5.00'	275.00'	1°02'27"	S 59°59'47" E	5.00'
C4	23.56'	15.00'	90°00'00"	N 75°28'59" E	21.31'
C5	23.56'	15.00'	90°00'00"	S 14°31'01" E	21.31'
C6	271.87'	715.00'	21°47'11"	S 54°42'21" W	270.24'
C7	141.14'	785.00'	10°16'07"	S 60°28'54" W	140.95'
C8	38.84'	25.00'	89°01'27"	S 01°29'22" E	35.05'
C9	39.70'	25.00'	90°58'32"	N 89°30'37" E	35.66'
C10	22.43'	15.00'	85°40'16"	S 00°47'42" W	20.40'
C11	51.19'	125.00'	93°56'21"	N 37°41'16" W	29.31'
C12	24.51'	15.00'	93°37'04"	S 44°10'01" E	20.83'
C13	24.51'	15.00'	87°17'35"	E 21.87'	
C14	69.53'	320.00'	12°26'57"	N 53°17'32" W	69.39'
C15	23.56'	15.00'	89°18'10"	N 86°16'59" W	21.21'
C16	23.56'	15.00'	90°00'00"	N 01°22'13" W	21.21'
C17	51.74'	270.00'	10°58'49"	N 54°01'58" W	51.66'
C18	23.56'	15.00'	90°00'00"	S 75°28'59" W	21.21'
C19	8.58'	15.00'	32°47'16"	S 14°05'21" W	8.47'
C20	135.77'	50.00'	155°34'32"	N 75°28'59" E	97.74'
C21	8.58'	15.00'	32°47'16"	N 43°07'23" W	8.47'
C22	82.72'	175.00'	27°04'55"	S 45°38'33" E	81.95'
C23	23.97'	15.00'	91°34'05"	N 87°13'08" W	21.50'
C24	87.37'	275.00'	18°12'08"	S 46°33'45" W	87.00'
C25	22.60'	15.00'	86°18'30"	S 05°21'34" E	20.52'
C26	27.48'	102.50'	1°32'10"	N 47°44'44" W	27.48'
C27	23.40'	15.00'	89°33'34"	N 88°19'34" E	21.10'
C28	33.11'	715.00'	2°39'10"	N 45°11'20" E	33.10'
C29	23.72'	15.00'	90°39'26"	N 01°40'26" W	21.33'
C30	24.94'	15.00'	1°18'34"	N 47°37'56" W	22.28'
C31	110.69'	2,025.00'	3°07'55"	S 01°36'39" E	21.55'
C32	13.62'	15.00'	90°00'00"	S 41°27'23" E	110.68'
C33	13.62'	15.00'	90°00'00"	S 01°36'39" E	21.21'
C34	13.62'	15.00'	52°01'13"	N 20°39'03" W	13.16'
C35	247.87'	50.00'	284°02'24"	N 43°01'21" E	61.54'
C36	13.62'	15.00'	52°01'13"	N 20°39'03" W	13.16'
C37	23.56'	15.00'	90°00'00"	S 89°01'21" W	21.21'
C38	23.56'	15.00'	90°00'00"	N 01°36'39" E	21.21'
C39	13.62'	15.00'	52°01'13"	N 22°59'15" W	13.16'
C40	168.96'	50.00'	193°36'28"	S 02°11'37" E	99.30'
C41	13.62'	15.00'	52°01'13"	N 88°36'43" E	13.16'
C42	23.45'	15.00'	89°34'46"	N 02°11'16" W	21.14'
C43	27.81'	325.00'	4°34'12"	S 44°31'33" E	27.80'
C44	28.20'	275.00'	5°25'30"	S 44°02'24" E	28.19'
C45	125.80'	975.00'	7°23'55"	S 50°40'36" E	125.81'
C46	22.99'	15.00'	87°49'45"	N 81°23'34" E	20.81'
C47	105.34'	325.00'	10°34'17"	S 47°04'49" W	104.88'
C48	23.25'	15.00'	88°48'03"	N 11°57'58" E	20.99'
C49	13.56'	15.00'	51°47'43"	N 58°19'37" W	13.10'
C50	157.00'	50.00'	179°54'21"	S 05°43'23" W	100.00'

CURVE TABLE					
NUMBER	ARC LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C51	13.83'	15.00'	52°02'46"	N 89°39'10" E	13.16'
C52	23.52'	15.00'	97°29'33"	N 87°37'26" W	22.55'
C53	14.06'	125.00'	6°26'34"	N 35°39'23" W	14.05'
C54	76.32'	175.00'	24°59'18"	S 44°55'45" E	75.72'
C55	23.01'	15.00'	87°54'23"	N 13°28'12" W	20.82'
C56	23.56'	15.00'	90°00'00"	N 75°28'59" E	21.21'
C57	59.08'	125.00'	27°04'56"	S 45°56'33" E	58.54'
C58	19.91'	15.00'	84°37'52"	S 84°55'03" W	18.48'
C59	22.16'	15.00'	84°37'52"	S 84°55'03" W	20.20'
C60	28.78'	1,025.00'	1°36'32"	S 53°54'18" E	28.78'
C61	22.34'	975.00'	1°18'46"	N 53°33'11" W	22.34'
C62	24.34'	15.00'	92°58'37"	N 06°34'39" W	21.76'
C63	102.17'	1,975.00'	3°06'13"	N 41°28'05" E	107.15'
C64	23.56'	15.00'	90°00'00"	N 89°01'21" E	21.21'
C65	23.45'	15.00'	89°34'46"	S 02°11'16" E	21.14'
C66	46.68'	50.00'	59°47'01"	S 54°37'16" E	46.78'
C67	66.14'	50.00'	75°47'15"	N 59°35'36" E	61.42'
C68	20.95'	50.00'	21°00'16"	N 09°41'51" E	20.79'
C69	98.28'	100.00'	56°18'35"	S 75°47'20" E	94.37'
C70	11.51'	145.00'	4°32'37"	S 49°54'31" E	11.51'
C71	52.17'	145.00'	20°39'55"	S 62°29'27" E	51.89'
C72	39.44'	145.00'	15°35'03"	S 80°35'26" E	39.32'
C73	238.77'	715.00'	19°08'01"	N 58°04'56" E	237.66'
C74	46.91'	50.00'	56°02'41"	S 22°58'47" E	46.98'
C75	46.51'	50.00'	53°16'06"	S 77°39'11" E	44.86'
C76	102.95'	50.00'	123°42'25"	N 13°50'34" E	88.17'
C77	44.49'	50.00'	50°59'12"	N 73°00'15" W	43.04'
C78	6.71'	2,025.00'	0°11'23"	N 42°55'41" E	6.71'
C79	103.99'	2,025.00'	2°56'32"	S 89°18'46" E	16.82'
C80	16.90'	50.00'	19°22'07"	S 53°38'00" E	43.83'
C81	45.37'	50.00'	51°59'31"	S 40°58'28" E	45.00'
C82	35.76'	50.00'	40°58'28"	S 07°09'00" E	35.00'
C83	52.36'	50.00'	60°00'00"	S 43°20'14" W	50.00'
C84	18.57'	50.00'	21°17'06"	S 83°58'43" W	18.47'
C85	38.08'	975.00'	21°41'17"	S 48°05'47" E	38.08'
C86	50.01'	975.00'	2°56'20"	S 50°41'06" E	50.00'
C87	37.81'	975.00'	21°31'18"	S 53°15'55" E	37.80'
C88	40.17'	325.00'	7°04'57"	S 41°20'09" W	40.15'
C89	65.17'	325.00'	11°29'19"	S 50°37'18" W	65.06'
C90	26.91'	50.00'	30°50'16"	S 66°46'40" E	26.59'
C91	35.65'	50.00'	41°04'54"	S 32°51'05" E	35.09'
C92	42.37'	50.00'	46°32'53"	S 11°37'48" W	41.11'
C93	51.87'	50.00'	59°26'19"	S 65°57'24" W	49.58'
C94	12.77'	15.00'	48°46'45"	N 71°17'11" E	12.39'
C95	9.77'	175.00'	3°11'52"	S 34°02'01" E	9.77'
C96	66.56'	175.00'	21°47'26"	S 48°31'41" E	66.16'
C97	19.10'	125.00'	8°45'12"	S 55°08'25" E	19.08'
C98	39.99'	125.00'	18°19'44"	S 41°35'57" E	39.82'
C99	60.45'	1,975.00'	1°45'13"	N 40°47'26" E	60.45'
C100	46.71'	1,975.00'	12°11'19"	N 42°20'41" E	46.71'

LINE TABLE		
NUMBER	BEARING	DISTANCE
L1	N 59°31'01" W	5.46'
L2	N 29°35'29" E	50.02'
L3	S 59°31'01" E	5.46'
L4	N 30°28'59" E	10.02'
L5	S 59°31'01" E	50.00'
L6	S 30°28'59" W	10.02'
L7	S 59°31'01" E	105.00'
L8	S 15°26'53" E	111.29'
L9	S 20°06'23" E	26.98'
L10	S 11°39'59" E	122.91'
L11	S 40°37'23" E	58.31'
L12	S 58°59'20" E	73.70'
L13	S 80°32'16" E	2.47'
L14	S 46°22'13" E	10.00'
L15	N 46°34'15" W	9.10'
L16	N 46°00'07" W	100.01'
L17	S 43°37'50" W	114.65'
L18	N 30°28'59" E	87.26'
L19	N 46°22'13" W	6.13'
L20	N 59°31'01" W	16.01'
L21	N 43°37'49" E	33.08'
L22	N 46°58'39" W	87.34'
L23	S 46°58'39" E	82.39'
L24	N 59°31'01" W	23.86'
L25	N 07°29'13" E	14.92'
L26	S 47°32'47" E	44.66'
L27	N 47°39'03" W	72.42'
L28	N 24°20'00" E	26.35'
L29	S 30°28'59" W	12.78'
L31	N 42°45'50" E	17.01'
L32	N 43°44'18" E	27.91'

LAND USE SCHEDULE		
DESCRIPTION	NO.	ACREAGE
RESIDENTIAL	121	18.813 AC.
AMENITY LOT	1	1.859 AC.
RIGHT-OF-WAY	-	7.022 AC.
RIGHT-OF-WAY DEDICATION	-	0.248 AC.
OPEN SPACE	5	6.142 AC.
TOTAL	128	34.084 AC.

STREET NAMES		
STREET	R.O.W. WIDTH	CENTERLINE LENGTH
POSSUM KINGDOM DRIVE	50 FT.	455 FT.
IHMS LANE	50 FT.	743 FT.
GREENBELT RESERVOIR PASS	50 FT.	648 FT.
EAGLE MOUNTAIN TRAIL	50 FT.	722 FT.
CADDO BEHD	50 FT.	950 FT.
LEJ LANE	50 FT.	448 FT.
TOWN LAKE BEHD	50 FT.	1,081 FT.
TALAVERA DRIVE	50 FT.	1,049 FT.
TOTAL LINEAR FEET		6,088 FT.



BGE, Inc.
 7130 San Antonio Ave., Suite 202
 San Antonio, TX 78217
 Tel: 210-581-9600 • www.bge.com
 TPBELS Registration No. F-1048
 TPBELS Licensed Surveying Firm No. 10194490

FINAL PLAT
TALAVERA PHASE 1
 A SUBDIVISION OF 34.084 ACRES OF LAND
 LOCATED IN THE
 JOHN STEWART SURVEY, ABSTRACT NO. 14
 HAYS COUNTY, TEXAS

STATE OF TEXAS §
COUNTY OF HAYS §

KNOW ALL MEN BY THESE PRESENTS:

THAT BRANCH ROAD TALAVERA, LLC, ACTING HEREIN BY AND THROUGH SCOTT MILLER, MANAGER, BEING THE OWNER OF THE 67.23 ACRE TRACT OF LAND AS CONVEYED TO BY SPECIAL WARRANTY DEED RECORDED IN DOC. NO. 20045729 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, HAS HEREBY APPOINTED SCOTT MILLER, MANAGER, AS THE AGENT OF SAID TRACT OF LAND PURSUANT TO CHAPTER 212 AND 213 OF THE TEXAS LOCAL GOVERNMENT CODE, TO BE KNOWN AS:

TALAVERA PHASE 1

AND DOES HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON, SUBJECT TO ANY EASEMENTS AND/OR RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED.

WITNESS MY HAND, THIS THE _____ DAY OF _____, 20____ A.D.

SCOTT MILLER
MANAGER

STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED SCOTT MILLER, MANAGER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

NOTARY PUBLIC, STATE OF TEXAS

PRINT NOTARY'S NAME _____
MY COMMISSION EXPIRES _____

I, CHRISTOPHER R. RAWLS, AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS, TO PRACTICE THE PROFESSION OF ENGINEERING, AND DO HEREBY CERTIFY THAT COUNTY SUBDIVISION REGULATIONS, ENGINEERING STANDPOINT, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND SHALL COMPLY WITH CHAPTER 482, TRANS PARLAMENTARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL BE VOID ON THE DAY IT IS FILED UPON AS A FINAL SURVEY DOCUMENT.



CHRISTOPHER R. RAWLS
LICENSED PROFESSIONAL ENGINEER NO. 124994
BICE, INC.
1701 DIRECTORS BLVD., SUITE 1000
AUSTIN, TX 78744

DATE _____

I, DION P. ALBERTSON, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT, THAT IT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE BY EMPLOYEES OF BICE INC. ON THE GROUND, AND THAT ALL NECESSARY SURVEY MONUMENTS WILL BE CORRECTLY SET OR FOUND AS SHOWN THEREON UPON COMPLETION OF CONSTRUCTION.

DION P. ALBERTSON, RPLS.
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4983
BICE, INC.
7330 SAN PEDRO AVE., SUITE 202
SAN ANTONIO, TEXAS 78216

DATE _____

STATE OF TEXAS §
COUNTY OF HAYS §

REVIEWED BY: LEON BARBA, CITY ENGINEER

REVIEWED BY: HARPER WILDER, DIRECTOR OF PUBLIC WORKS

THIS FINAL PLAY HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KYLE, TEXAS, AND IS HEREBY APPROVED BY SUCH PLANNING AND ZONING COMMISSION.

DATED THIS _____ DAY OF _____, 20____

CHAIRPERSON _____

TALAVERA PHASE 1
FINAL PLAT

A SUBDIVISION OF 34.084 ACRES OF LAND
LOCATED IN THE
JOHN STEWART SURVEY, ABSTRACT NO. 14
OF HAYS COUNTY, TEXAS

STATE OF TEXAS §
COUNTY OF HAYS §

I, ELAINE H. CARRODIAS, COUNTY CLERK OF HAYS COUNTY, TEXAS DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE _____ DAY OF _____, 20____ A.D., AT _____ O'CLOCK _____ M. IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, IN DOCUMENT NUMBER _____

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 20____ A.D.

ELAINE H. CARRODIAS, MBA, PHD
COUNTY CLERK
HAYS COUNTY, TEXAS

SEWAGE DISPOSAL/INDIVIDUAL WATER SUPPLY CERTIFICATION, TO-WIT:

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNEXION TO AN INDIVIDUAL WATER SUPPLY OR A STATE-APPROVED COMMUNITY WATER SYSTEM, DUE TO DECLINING WATER SUPPLIES AND DIMINISHING WATER QUALITY. PROTECTIVE MEASURES SHALL BE PROVIDED BY HAYS COUNTY TO PROTECT THE BEST AVAILABLE WATER RESOURCE. GROUND WATER AVAILABILITY, RAIN WATER COLLECTION IS ENCOURAGED AND IN SOME AREAS MAY OFFER THE BEST AVAILABLE WATER RESOURCE.

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNEXION TO A PUBLIC SEWER SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY HAYS COUNTY DEVELOPER SERVICES.

TALAVERA PHASE 1 IS LOCATED ENTIRELY WITHIN THE BOUNDARIES AND SERVICE AREA OF GOFORTH SPECIAL UTILITY DISTRICT WATER AS REGULATED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, WILL BE PROVIDED TO ALL LOTS REQUIRING SERVICE THROUGH THE DISTRICT'S PUBLIC WATER SYSTEM.

MARIO TOBIAS, GENERAL MANAGER
GOFORTH SPECIAL UTILITY DISTRICT
DATE _____

GENERAL NOTES:

1. THIS SUBDIVISION IS LOCATED WITHIN THE FULL PURPOSE JURISDICTION OF THE CITY OF KYLE.
2. THIS SUBDIVISION IS LOCATED WITHIN THE BOUNDARY OF THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
3. THIS SUBDIVISION DOES NOT LIE WITHIN THE BOUNDARIES OF THE RECHARGE ZONE OR THE CONTRIBUTING ZONE OF THE EDWARDS AQUIFER.
4. THIS SUBDIVISION IS WITHIN UNSHADED ZONE "X" AS DELINEATED ON THE FLOOD INSURANCE RATE MAP FOR HAYS COUNTY, TEXAS AND INCORPORATED AREA, MAP NUMBER 4020904087, REVISED SEPTEMBER 7, 2005.
5. ALL STREETS SHALL BE DESIGNED IN ACCORDANCE WITH APPLICABLE CITY OF KYLE REQUIREMENTS AND APPROVED BY CITY OF KYLE PUBLIC WORKS DEPARTMENT AND UPON ACCEPTANCE SHALL BE DEDICATED TO THE CITY FOR MAINTENANCE.
6. NO OBSTACLE INCLUDING FENCING OR LANDSCAPING WHICH WOULD INTERFERE WITH CONVEYANCE OF STORM WATER SHALL BE PLACED OR ERRECTED WITHIN DRAINAGE EASEMENTS.
7. GREENBELT/DRAINAGE EASEMENTS SHALL BE MAINTAINED BY THE HOME OWNERS ASSOCIATION.
8. SIDEWALKS SHALL BE CONSTRUCTED ALONG BOTH SIDES OF EACH RESIDENTIAL STREET AND MAINTAINED BY THE ADJACENT PROPERTY OWNER. SIDEWALKS, FENCED PUBLIC UTILITIES AND OTHER UTILITIES THAT ARE TO BE DEDICATED TO THE CITY OF KYLE SHALL MEET OR EXCEED ALL 2010 ADA ACCESSIBILITY STANDARDS OF ACCESSIBILITY DESIGN AND ALL CURRENT FEDERAL AND STATE LAWS REGARDING ACCESS FOR PEOPLE WITH DISABILITIES FOR TITLE II ENTITIES.
9. GAS IS PROVIDED BY CENTERPOINT ENERGY.
10. TELEPHONE/CABLE PROVIDED BY FRONTIER.
11. ELECTRICITY PROVIDED BY PEDERNALES ELECTRIC COMPANY.
12. WASTEWATER SERVICES ARE PROVIDED AND OPERATED BY THE CITY OF KYLE.
13. WATER IS PROVIDED BY GOFORTH SPECIAL UTILITY DISTRICT.
14. TYPICAL LANDSCAPE MAINTENANCE, CUTTING AND TRIMMING WITHIN THE SUBDIVISION, ALL EASEMENTS, RETENTION PONDS AND RIGHTS-OF-WAY TO THE PAVEMENT TO BE THE RESPONSIBILITY OF PROPERTY OWNERS AND/OR PROPERTY AND/OR HOME OWNERS ASSOCIATIONS.
15. POST-CONSTRUCTION STORMWATER CONTROL MEASURES SHALL HAVE A MAINTENANCE PLAN. THE MAINTENANCE PLAN MUST BE FILED IN THE REAL PROPERTY RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE OWNER OF THIS PROPERTY SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF REDEVELOPED SITE OPERATIONS AND MAINTENANCE MEASURES. THE MAINTENANCE PLAN ADDRESSING MAINTENANCE REQUIREMENTS FOR ANY STRUCTURAL COMPONENTS ON SITE, OPERATION AND MAINTENANCE MEASURES SHALL BE DOCUMENTED AND RETAINED ON SITE, SUCH AS AT THE OFFICES OF THE OWNER OR OPERATOR, AND MADE AVAILABLE FOR REVIEW BY THE CITY.
16. THE TOTAL NUMBER OF LOTS (RIGHT-OF-WAY DEDICATIONS NOT INCLUDED) IS 122. THE AVERAGE LOT SIZE IS 0.186 ACRE. THE NUMBER OF LOTS GREATER THAN 10 ACRES IS 0. THE NUMBER OF LOTS BETWEEN 5-10 ACRES IS 0. THE NUMBER OF LOTS BETWEEN 2-5 ACRES IS 1. THE NUMBER OF LOTS BETWEEN 1-2 ACRES IS 1. THE NUMBER OF LOTS SMALLER THAN 1 ACRE IS 125.
17. POST-DEVELOPMENT CONDITIONS RUNOFF RATE SHALL BE NO GREATER THAN THE PRE-DEVELOPMENT CONDITION FOR 2, 5, 10, 25, AND 100 YEAR STORM EVENTS, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 205, SUBCHAPTER 3.02. PRE AND POST DEVELOPMENT RUNOFF CALCULATIONS SHALL BE INCLUDED WITH THE CONSTRUCTION DRAWINGS FOR THIS SUBDIVISION.
18. FOR ALL LOTS, A 15-FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ADJACENT TO ALL PUBLIC RIGHTS-OF-WAY, A 5-FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED TO ALL INTERNAL SIDE LOT LINES, AND A 10-FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED TO ALL REAR LOT LINES.
19. OPEN SPACE LOTS A-9 AND D-10 ARE HEREBY DEDICATED AS PUBLIC UTILITY EASEMENTS.
20. NO BUILDING PERMITS WILL BE ISSUED UNTIL CITY ACCEPTANCE OF THE BANTON CREEK INTERCEPTOR WASTEWATER IMPROVEMENTS



BGE Inc.
7330 San Pedro Ave., Suite 202
San Antonio, TX 78216
Tel: 210-581-3600 • www.bgeinc.com
TBPELS Registration No. F-1046
TBPELS Licensed Surveying Firm No. 10184480



CITY OF KYLE, TEXAS

Authorization to Apply, Auth Rep DR-4485 Resolution

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Approve a Resolution of the City of Kyle, Texas, Authorizing the submission of a Hazard Mitigation Assistance Grant Application for DR-4485, appointing the city manager as the chief executive officer and authorized representative to act in all matters in connection with the FEMA mitigation grants. ~ *James R. Earp, Assistant City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- ☐ Resolution -Authorization to Apply, Auth Rep DR-4485

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE SUBMISSION OF A HAZARD MITIGATION ASSISTANCE GRANT APPLICATION FOR DR-4485, APPOINTING THE CITY MANAGER AS THE CHIEF EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE TO ACT IN ALL MATTERS IN CONNECTION WITH THE FEMA MITIGATION GRANTS.

WHEREAS, The City is considering the submission of FEMA Hazard Mitigation Assistance grant application for funds for critical facility generators; and

WHEREAS, FEMA Mitigation Fund applicants are required to appoint an official to act as the Authorized Representative in all matters in connection with the Mitigation Grants.

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

Section 1. That the City is authorizing the submission of an application for FEMA’s Hazard Mitigation Assistance Grant Program; and

Section 2. That the city manager be appointed the Chief Executive Officer and Authorized Representative to act on behalf of the City in all matters in connection with the FEMA Mitigation Grants.

PASSED AND ADOPTED this _____ day of _____, 2022.

THE CITY OF KYLE, TEXAS

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary



CITY OF KYLE, TEXAS

Committing Matching Funds - Generator Grant

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Approve a Resolution of the City of Kyle, Texas, Committing the City of Kyle to provide local matching funds to secure and complete the FEMA Hazard Mitigation Grant Projects. ~ *James R. Earp, Assistant City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Resolution - Funding Commitment - Kyle

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS, COMMITTING THE CITY OF KYLE TO PROVIDE LOCAL MATCHING FUNDS TO SECURE AND COMPLETE THE FEMA HAZARD MITIGATION GRANT PROJECTS.

WHEREAS, the City has applied for FEMA Hazard Mitigation Assistance funds to provide the City with funding to complete the proposed critical facility generator mitigation project.

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

1. The City commits to providing the 10% or more local share for the FEMA Hazard Mitigation Grant projects.
2. Should other funds not be available for whatever reason, the City will pay its local share from the general fund.

PASSED AND ADOPTED this _____ day of _____, 2022.

THE CITY OF KYLE, TEXAS

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary



CITY OF KYLE, TEXAS

Hog Trapping

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Consider and possible action to approve contract with Lone Star Trapping for feral hog removal on city-owned property. ~ *Kathy Roecker, Stormwater Management Plan Administrator*

Other Information:

Lone Star Trapping
John Kortez
De Leon, Texas 76444
254-271-4559
lonestarttrapping@gmail.com

\$2000 per month

Travel Fee (Per Trip, No More Than 5 Trips Monthly)

If the property is located 50 miles outside of De Leon, Texas, there will be a \$50 travel fee accessed every additional 50 miles beyond that radius. Travel fees will be invoiced separately per trip. The fee is based one-way and not for a round-trip. You will not be billed for more than five trips even if the contract requires us to visit the location more than five times during the contract period. Travel fees are per trap enclosure. If the contract has multiple traps, then these terms will be enforced for each enclosure.

Insurance information supplied with Agreement

Trap-N-Hogs
Val Ramirez
280 Sides Lane
Lockhart, TX 78644
512-995-9153
\$2000 per month for minimum 3 months, then month-to-month
No Insurance

Jay Pruitt
512-581-8999
\$2000 per month
No Insurance

Legal Notes: N/A

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

-
- ☐ Lone Star Trapping Contract
 - ☐ Lone Star Trapping COI
 - ☐ Trap-N-Hogs Agreement
 - ☐ June 2022 Damage Photo
 - ☐ June 2022 Damage Photo



Hog Removal

To: Kathy Roecker
City of Kyle, Texas
kroecker@cityofkyle.com
512-738-7227

Prepared by: John Kortez
Lone Star Trapping
lonestarttrapping@gmail.com

About Us

Trusted. Reliable. Effective.

Lone Star Trapping LLC was created to provide property owners an active line of defense against the rapidly growing feral hog population. Founded in 2015 and co-owned by Wyatt Walton, Blaine Garcia, and John Kortez; we are fully insured and trusted by many throughout the state of Texas.

We've
Worked
With



Since 2015 we have trapped over **30,000** feral hogs and stopped continued damages for many different landowners.

As Seen On:



In The Press

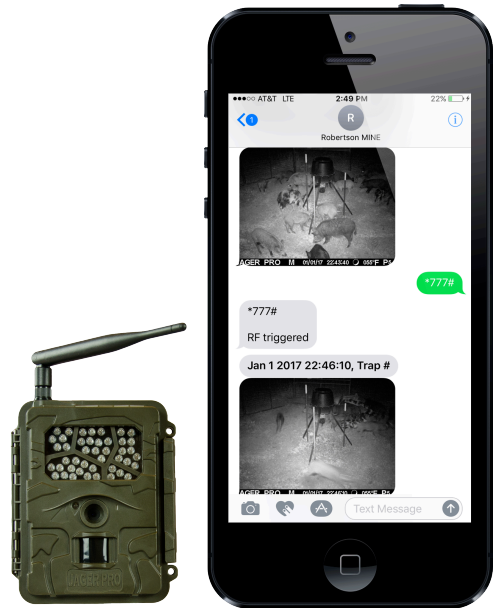
<https://ktxs.com/news/local/feral-hogs-taking-over-the-big-country>

<https://www.foxnews.com/science/feral-hog-texas-golf-course>

<https://news4sanantonio.com/news/local/managing-feral-hog-population-a-lot-easier-said-than-done>

How It Works

Successfully removing feral hogs is a science that requires a specific method of trapping, a technique that we have perfected.



We don't just catch one or two hogs at a time educating the others; we capture the entire sounder (herd). Our goal as trappers is to eliminate the problem, eliminate the cost of damages, and improve the native wildlife, which currently competes for food with these nuisance animals.

After setting up the trap, our team of professionals continuously watches the camera for hog activity happening in real-time. As the hogs enter the trap, we are notified immediately via transmitted cellular signals. Once the entire group has been counted in the enclosure, a text message is sent, triggering the gate and effectively capturing the hogs.

Once the animals have been successfully trapped, our team will then perform humane live removal, where the hogs are loaded into a trailer and transported to a certified Texas holding facility. Because feral hogs can reproduce at a very rapid pace, it is crucial to remove then entire group eliminating further reproduction within that habitat.

Hog Removal Service

Name	Quantity	Price	Total
Feral Hog Removal Services (Agreement Renews Monthly If Not Canceled Before The Next Billing Period)	1	\$2,000	\$2,000
<ul style="list-style-type: none">• Baiting• Equipment Setup/Takedown*• 24/7 Camera Management• Cellular Triggered Trapping• Humane Relocation to Certified State Holding Facility			
Total			\$2,000

*Equipment will be setup and taken down at trappers discretion and may not be erected on site for the entire 30 days. It is critical that equipment is introduced slowly to the feral hogs so the process isn't prolonged.

Travel Fee (Per Trip, No More Than 5 Trips Monthly)

If the property is located 50 miles outside of De Leon, Texas, there will be a \$50 travel fee assessed every additional 50 miles beyond that radius. Travel fees will be invoiced separately per trip. The fee is based one-way and not for a round-trip. You will not be billed for more than five trips even if the contract requires us to visit the location more than five times during the contract period. Travel fees are per trap enclosure. If the contract has multiple traps, then these terms will be enforced for each enclosure.

Terms & Conditions

The term of this specific Agreement (the "Term") will begin at the time of the first site visit and will remain in full force and effect until terminated by the Client. This Agreement is month-to-month and can be canceled anytime prior to the next month's billing date.

In the event that either Party wishes to terminate this Agreement, that Party will be required to provide written notice to the other Party before the next bill period. No refunds will be given after the monthly payment has been received and the new month of equipment rental begins.

Performance

The Client understands and agrees that upon completion of this Agreement feral hogs may return at any given time and the Service Provider is not held responsible. The Client also understands and agrees that there is no guarantee on the removal of any animals due to acts of nature outside of the Service Provider's control. The Service Provider does guarantee that all steps will be taken to condition and remove the nuisance animal in accordance with the Agreement.

Compensation

For the services rendered by the Service Provider as required by this Agreement, the Client will provide compensation (the "Compensation") to the Service Provider as follows:

- The service offered to the Client will be performed for a monthly rate of \$2000 per trap. Lone Star Trapping, the Service Provider, will keep full rights to all captured wild hogs. No refunds will be provided to the Client by the Service Provider, all sales are considered final.

Reimbursement of Expenses

The Service Provider will be reimbursed for the amount of \$50 for every additional 50 miles outside De Leon, Texas. No more than 5 trips will occur within the month of the agreement. This reimbursement will cover all fuel expenses outside of the 50-mile radius from De Leon. The fee is based one-way and not for a round-trip. Travel fees are per trap enclosure. If the contract has multiple traps, then these terms will be enforced for each enclosure.

Confidentiality

Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.

The Service Provider agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Service Provider has obtained, except as authorized by the Client or as required by law. The obligations of confidentiality will apply during the term of this Agreement and will survive indefinitely upon termination of this Agreement.

All written and oral information and material disclosed or provided by the Client to the Service Provider under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Service Provider.

Return of Property

Upon the expiry or termination of this Agreement, the Service Provider will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

Upon the expiry or termination of this Agreement, the Client will return to the Service Provider any property, tools, cameras, traps, documentation, records, or Confidential Information which is the property of the Service Provider.

Capacity/Independent Contractor

In providing the Services under this Agreement it is expressly agreed that the Service Provider is acting as an independent contractor and not as an employee. The Service Provider and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

Indemnification

Except to the extent paid in settlement from any applicable insurance policies, and to the extent

permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, stockholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any intentional tort of negligence act or omission of the indemnifying party, its respective directors, stockholders, affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

Dispute Resolution

In the event a dispute arises out of or in connection with this Agreement, the Parties will attempt to resolve the dispute through friendly consultation.

If the dispute is not resolved within a reasonable period then any or all outstanding issues may be submitted to mediation in accordance with any statutory rules of mediation. If mediation is unavailable or is not successful in resolving the entire dispute, any outstanding issues will be submitted to final and binding arbitration in accordance with the laws of the State of Texas. The arbitrator's award will be final, and judgment may be entered upon it by any court having jurisdiction within the State of Texas.

Modification of Agreement

Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Time of the Essence

Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

Assignment

The Service Provider will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without prior written consent of the Client.

Entire Agreement

It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Enurement

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

Titles/Headings

Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Gender

Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Texas, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

Waiver

The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/16/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Culver Commercial Insurance Services, LLC 3100 N. Oak Ave Mineral Wells, TX 76067	CONTACT NAME: Amanda Culver PHONE (A/C, No, Ext): 817-565-8195 E-MAIL ADDRESS: culvercommercialinsurance2@gmail.com	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Evanston Insurance Company	NAIC # 35378
INSURED Lone Star Trapping, LLC 1740 FM 3027 Mineral Wells, TX 76067	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			3EZ5128	10/11/2021	10/11/2022	EACH OCCURRENCE	1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATUTORY LIMITS	OTHER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

OSS JPOW Solar Services, LLC
 5313 Womack Road
 Sanford, NC 27330

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Amanda Culver

02/16/2022

MEMORANDUM OF AGREEMENT
between
City of Kyle
and
TRAP N HOGS 24/7, DBA VAL RAMIREZ
for
HARVESTING FERAL SWINE on city properties

This Memorandum of Agreement is made and entered into by and between hereinafter referred to as “The City of Kyle and Trap N Hogs 24/7, Val Ramirez, hereinafter referred to as “TNH” (hereinafter referred to collectively as “the Parties”). This Agreement is entered into by and between the Parties pursuant to the authority granted in compliance with the provisions of Parks and Wildlife Code 13.001 and 13.0061.

I. INTRODUCTION AND PURPOSE

WHEREAS, the city of Kyle, desires to remove feral swine, an invasive species not native to Texas, from any and all city properties, due to their deleterious impacts on native plant and animal habitats and natural communities and to ensure visitor safety;

WHEREAS, TNH has been trapping and harvesting (“Harvest” or “Harvesting”) of feral swine for the past 9 years, not native to Texas for the collection and sale of venison and desires to facilitate the removal of feral swine off city properties and

WHEREAS, The city of Kyle, will enter a contract with Trap N Hogs 24/7 for 3 months at \$2,000 per month and then enter a per month to month basis there after the first initial 3 months as hog damage is accessed.

NOW THEREFORE, the following are guidelines that must be adhered to throughout the duration of this

Agreement: **II. SCOPE OF THE AGREEMENT**

A. TPWD and TNH mutually agree that:

1. The Project Coordinators (listed in Section III) will make prior arrangements to establish City and Park entrance and exiting procedures, authorized trap locations and routes to traps and boundaries, dates and times to ensure the safety and security of the Park. These locations must be vetted by the park superintendent to ensure they will not pose a risk to the natural and cultural resources in the Park.
2. All activities shall be in compliance with TPWD’s State Parks Division Procedure SP-PRO-4.B.3, “Exotic, Feral and Nuisance Animal Control” and referenced applicable statutes and policies within the procedure, attached hereto as Attachment A and incorporated herein for all purposes.
3. There are no limits to the numbers of feral swine TNH may harvest. The intent of the harvest is to approach zero populations of exotic species.

B. TNH agrees:

1. To only Harvest feral swine; all other trapped animals must be released.
2. Any live feral swine removed from the Park must be taken directly to a licenced buying facility, or a licenced slaughter facility operated under the state or federal meat inspection laws and regulations to be processed in compliance with Texas Administrative Code (TAC), [Title 4, Chapter 55, Section 55.9](#) (Attachment B). Under no circumstance will TNH be permitted to remove the live feral swine from the Park to be released back into the unconfined wild.
3. To process any meat for human consumption in compliance with the Texas Meat and Poultry Inspection Act; [Health and Safety Code, Chapter 433](#).
4. To provide live traps, bait, all equipment, and labor deemed necessary to execute these operations and provide a safe and effective trapping service.. All bait used must be certified for livestock consumption.
5. That only those individuals directly aiding or assisting with Harvesting and removal operations of feral swine are allowed access to the Park and/or Harvesting site. Access to the Parks and City properties will be granted for the sole purpose of completing tasks and activities outlined within this Agreement. Contact with the general public during the course of trapping, harvest and removal activities is discouraged. All

visitor inquiries will be directed to Park staff.

6. To check traps frequently enough to ensure that any trapped feral swine and/or other animals accidentally trapped are not allowed to die prematurely or suffer needlessly.
7. To confine TNH's vehicles used during Agreement activities to designated roads/trails unless otherwise directed by Parks personnel.
8. To remove traps from their locations in the Park, within fifteen (15) days notice, for any and all special events conducted by the Park.
9. To comply with the State Park's Rules and Regulations established in [TAC, Title 31, Chapter 59, Subchapter F](#) attached hereto as Attachment C, incorporated herein, and all applicable federal, state, and local laws, ordinances, and regulations in its performance under this Agreement. TNH will report any illegal activities or vandalism that it becomes aware of to Park staff immediately (i.e. illegal hunting, firearm discharge, ATV activity).
10. To exercise proper care to ensure that TNH's activities will not impact the floral, faunal (except the targeted exotic species) archeological, or geological resources of the Park. TNH shall coordinate operations with the City of Kyle Project Coordinator; and, in every case, TNH shall operate within the Texas Antiquities Code and the Texas Parks and Wildlife Code.
11. Not to represent themselves to the public or any government agency as an employee(s) of The City of Kyle,
12. To remove all trash, debris, carcasses, and any other such waste created as a result of Agreement activities. All such waste shall be disposed of properly and as approved by TPWD.
13. Any footage of the traps will not be posted or shown to the public in any format. Footage may be shared with TPWD for them to post at their discretion.

C. City of Kyle agrees to:

1. Assist TNH in a timely manner to clear trapping locations.
2. Give TNH general assistance as needed.
3. Provide TNH with access to the Parks and City Properties.
4. Provide TNH with designated carcass dump site(s) for feral swine carcasses not being harvested from the Park.

III. CONTACT INFORMATION

City of Kyle Project Coordinator TNH Project Coordinator
trapnhogs247@yahoo.com

Val Ramirez 280 sides lane
Lockhart, Texas 78644
512-995-9153

This Agreement will become effective upon signature of both parties and shall terminate one year from date of origin.

An extension to this Agreement may be granted with prior written approval by The City of Kyle. Any extensions shall be at the same terms and conditions, plus any approved changes.

V. MISCELLANEOUS

- A. **Applicable Rules and Regulations:** This Agreement may not contain all applicable rules and regulations pertaining to this project. It is the responsibility of TNH to research and comply with all applicable federal, state, local, and regulatory authority rules and regulations, whichever is more stringent.
- B. **Termination:** This Agreement is subject to cancellation, without penalty, either in whole or in part, if
 1. TNH fails to comply with the terms and conditions of this Agreement; or
 2. TNH fails to comply with the provisions of applicable laws or regulations.

City of Kyle may terminate the agreement for convenience at any time with thirty (30) days notice.

City of Kyle reserves the right to suspend or restrict Agreement activities during bad weather conditions, or other conditions when continued operations would adversely impact safety conditions.

City of Kyle reserves the right to suspend or restrict Agreement activities immediately if it believes that TNH's

actions or activities may pose an immediate threat to City of Kyle staff and/or the public.

Failure on the part of TNH to comply with any of the requirements stipulated in this Agreement shall constitute a breach of this Agreement and shall result in the Agreement becoming subject to cancellation upon City of Kyle giving TNH written notice of TNH 's default under the provisions of this Agreement. City of Kyle will be permitted to stop all operations until the default can be remedied. In the event TNH shall fail to remedy such default within a reasonable period after its receipt of notice of default, City of Kyle shall have the right to cancel this Agreement and notice of such cancellation shall result in the Agreement becoming canceled immediately thereupon.

- E. Public Information: TNH is required to make any information created or exchanged with the state pursuant to this Agreement, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.
- F. Dispute Resolution: The parties agree that the dispute resolution provisions in Chapter 2260 of the Government Code shall govern this Agreement.
- G. **INDEMNIFICATION: TNH SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE city of Kyle, ITS OFFICERS, AND EMPLOYEES, AND TPWD, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF TNH.**
- H. Assignment: TNH shall not assign or subcontract the whole or any part of the Agreement.
- I. Entire Agreement; Modifications: The Agreement supersedes all prior agreements, written or oral, between TNH and City of Kyle and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writ signed by City of Kyle and TNH.
- J. Records Retention: TNH shall maintain all documents and records relating to this Agreement for a period of seven (7) years after the date of execution.
- K. Other Law: TNH will comply with all applicable laws and regulations in acting under this Agreement and all sub agreements.
- L. Conflict of Interest: TNH will disclose any actual or potential conflict of interest in writing to the City of Kyle.
- M. Venue and Governing Law: This Agreement shall be governed by the laws of the State of Texas. The proper place of venue for suit on or in respect of the Agreement shall be in Hays county.
- N. U.S. Department of Homeland Security's E-Verify System: By entering into this Agreement, TNH certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
 - a) All persons employed to perform duties within Texas, during the term of the Agreement; and b) All persons (including subcontractors) assigned by TNH to perform work pursuant to the Agreement, within the United States of America.

If this certification is falsely made, TNH may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

TRAP N HOGS 24/7, DBA VAL RAMIREZ		The City of Kyle	
By:		By:	
	Val Ramirez Owner		
Date :		Date :	

**ATTACHMENT A
PROCEDURE SP-PRO-4.B.3**

**Division Procedure: SP-PRO-4.B.3
Exotic, Feral and Nuisance Animal Control
Effective: February 23, 2022, until February 23, 2023**

I. Purpose

Exotic and feral wildlife and their effects on native plant and animal communities have been studied extensively in Texas and elsewhere. Due to previous land uses, fencing and/or management activities adjacent to park land, many parks contain populations of either resident or migratory exotics and/or feral animals. The overriding concern regarding these species is their negative and often disastrous impact on native plant and animal habitats and natural communities.

In keeping with the spirit of the Texas Parks and Wildlife Department’s Commission Policy to conserve and manage City and Park Land natural resources for the highest and best purpose, the City of Kyle Division goal is to eliminate all species of exotic and feral wildlife in parks to the greatest extent practicable.

Nuisance animals in parks should be removed or relocated as soon as environmental or population problems become evident or when visitor safety is threatened and shall be consistent with management objectives for specific park units. Consequently, parks shall not be used as relocation sites for nuisance animals such as raccoons, squirrels or skunks removed from other properties.

Implementation of this Procedure is intended to reduce, eliminate or relocate specifically identified feral, exotic and/or wildlife species. The primary objective is the conservation of a park’s natural resources and to ensure visitor safety.

II. Background

A. Supervision and Direction:

Implementation, direction of park staff, as well as concurrent liabilities for controlling exotic, feral, and nuisance wildlife within the Park are the sole responsibility of the Park Superintendent. Prior to taking actions such as planned hunts or aerial shooting, notification should be made to any affected neighboring landowners, law enforcement personnel, and county or municipal authorities, along with the Regional Office, as appropriate. Incidental or routine removals may be undertaken by authorized personnel on an opportunistic basis as circumstances arise without prior notifications. The assigned Resource Coordinator will support the site Superintendent and assure compliance with the resources management objectives of the action.

B. Responsibility and Purpose:

It shall be the responsibility of the Park Superintendent to ensure that this procedure is implemented in the Parks where exotic, feral, or nuisance populations of wildlife species have been identified. The Park Superintendent is also responsible for reporting any action taken under this procedure. Reports shall be provided to the Natural Resources Program with copies provided to the State Park Regional Director or Regional Law Enforcement Coordinator as appropriate.

C. Responsibilities:

The Natural Resources Program in consultation with park staff, State Park Law Enforcement, and other programs or Divisions as appropriate, shall have the primary responsibility for determining appropriate actions under this Procedure. Qualification and authorization for the application of lethal control means shall be administered by the Law Enforcement Program.

III. Definitions

As used in this policy, the following terms shall have these meanings:

Exotic Species – Animals not native, or alien to, Texas and which were not present historically prior to European colonization of the Americas; any non-native wild animal. Examples are axis, fallow, and sika deer, nutria, aoudad sheep, mouflon sheep, blackbuck antelope, and other non-native species and fishes alien to Texas such as snakehead, piranha, common carp, grass carp, armored catfish, guppy and tilapia. This also includes naturalized pest species such as European starling and English sparrow.

Feral Species – Normally domesticated animals that have escaped and are living in a wild state, no longer owned or cared for by anyone.

Nuisance, Habituated or Managed Wildlife - Native or naturalized species that, because of unusually high populations, disease, habituation, or threats to wildlife restoration efforts, habitat or public safety, must be removed or relocated. Native wildlife species may be controlled/hunted to maintain populations below undesirable levels. Examples may include, but are not limited to, cowbirds, rock dove, javelina, beaver, raccoon, American alligator, skunk, opossum, white-tailed deer, fox, coyote, and mountain lion.







CITY OF KYLE, TEXAS

Application Certification - Kyle - DR-4485

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Authorize the City Manager to execute the TDEM DR-4485 Application Certification.
~ *James R. Earp, Assistant City Manager*

Other Information: This is the first of a number of housekeeping items required by TDEM and delivered by Grantworks for the city to authorize. While the actual application will not be available to review before hand due to the nature of the grant system, on a joint call with staff, TDEM has instructed they expect the requesting bodies to authorize and execute the paperwork before hand. If the grant is not awarded, then some of the items being authorized or executed will expire.

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Application Certification - Kyle - DR-4485



Hazard Mitigation Grant Program Application Certification

Grant Program: HMGP CFDA #: 97.039 Grant #: 4485

Applicant: Kyle

Project Type: Generators Regular

Project Title:

The undersigned assures fulfillment of all requirements of the Hazard Mitigation Grant Program as contained in the program guidelines and that all information contained herein is true and correct to the best of my knowledge.

The governing body of the applicant has duly authorized the document, and hereby applies for the assistance documented in this application.

The applicant understands that the project may proceed **ONLY AFTER FEMA APPROVAL** is gained.

Typed Name of Certifying Official

Title

Telephone Number

Signature of Certifying Official

Date Signed



CITY OF KYLE, TEXAS

DR-4485 Grant Terms and Conditions

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Authorize the City Manager to execute acceptance of DR-4485 Grant Terms and Conditions required should grant funds be awarded. ~ *James R. Earp, Assistant City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Grant-Terms-and-Conditions - Kyle - (COVID) DR4485

GRANT TERMS AND CONDITIONS

This Agreement (consisting of these terms and conditions and all exhibits) is made and entered into by and between the Texas Division of Emergency Management (TDEM), an agency of the State of Texas, hereinafter referred to as " TDEM," and the award recipient, City of Kyle, hereinafter referred to as the "Subrecipient." Furthermore, TDEM and the Subrecipient are collectively hereinafter referred to as the "Parties." All subawards made under this agreement are subject to the same terms and conditions below.

Subrecipient may not assign or transfer any interest in this award without the express, prior written consent of TDEM and/or DHS/FEMA or other awarding agency.

- a. The term Recipient and pass-through entity have the same meaning as "Grantee," as used in governing statutes, regulations, and DHS/FEMA guidance.
- b. A Recipient is also a "non-federal entity" for administration purposes.
- c. A Subrecipient is also known as a "Subgrantee" as used in governing statutes regulations and DHS/ FEMA guidance.
- d. A Subrecipient is also a "non-federal entity" for administration purposes.
- e. The "Grant" referred to in this agreement is an award to the Subrecipient passed through from TDEM to the Subrecipient.
- f. Certifying Official will be the Mayor, Judge, or Executive Director authorized to execute these grant terms and conditions, and to submit changes of Subrecipient Agents.
- g. Projects and any subsequent versions for those projects accepted by the Subrecipient and subsequently obligated or deobligated by DHS/FEMA are considered subawards to this grant agreement.
- h. TDEM uses contractors to administer subawards, both in communication with Subgrantees and the awarding agency. A Subgrantee's point of contact for all awards will be the regional Recovery or Mitigation Coordinator followed by the regional contractor. Subgrantees should update their primary points of contact with every new award in addition to each time a contact may change.
- A. **Standard of Performance.** Subrecipient shall perform all activities as approved by TDEM. Any change to a project shall receive prior written approval by TDEM and, if required, by FEMA or other awarding agency. Subrecipient shall perform all activities in accordance with all terms, provisions and requirements set forth in this Grant, including but not limited to the following Exhibits:
 1. Assurances – Non-Construction Programs, hereinafter referred to as "Exhibit A"
 2. Assurances – Construction Programs, hereinafter referred to as "Exhibit B"
 3. Certifications for Grant Agreements, hereinafter referred to as "Exhibit C"
 4. State of Texas Assurances, hereinafter referred to as "Exhibit D"
 5. Environmental Review Certification, hereinafter referred to as "Exhibit E"
 6. Additional Grant Conditions, hereinafter referred to as "Exhibit F"
 7. Additional Grant Certifications, hereinafter referred to as "Exhibit G"
 8. Request for Information and Documentation referred to as "Exhibit H"

GRANT TERMS AND CONDITIONS

- B. **Failure to Perform.** In the event Subrecipient fails to implement and complete the project(s) approved and awarded, or comply with any provision of this Grant, Subrecipient shall be liable to TDEM for an amount not to exceed the award amount of this Grant and may be barred from applying for or receiving additional DHS/FEMA grant program funds

or any other grant program funds administered by TDEM until repayment to TDEM is made and any other compliance or audit finding is satisfactorily resolved, in addition to any other remedy specified in this Grant. Failure to timely implement and complete projects may reduce future funding in additional DHS/FEMA and/or other grant programs administered by TDEM.

- C. **Funding Obligations.** TDEM shall not be liable to Subrecipient for any costs incurred by Subrecipient that are not allowable costs.
1. Notwithstanding any other provision of this Grant, the total of all payments and other obligations incurred by TDEM under this Grant shall not exceed the total cumulative award amounts listed on the Subawards (projects and subsequent versions).
 2. Subrecipient shall contribute the match funds listed on the subaward.

Subrecipient shall refund to TDEM any sum of these Grant funds that has been determined by TDEM or DHS/FEMA to be an overpayment to Subrecipient or that TDEM determines has not been spent by Subrecipient in accordance with this Grant. No refund payment(s) shall be made from local, state or federal Grant funds unless repayment with Grant funds is specifically permitted by statute or regulation. Subrecipient shall make such refund to TDEM within thirty (30) calendar days after TDEM requests such refund. If the subrecipient is unable to refund the amount due at the time of request, they may request offset funds from other open projects under the same award or request a payment plan. If a subrecipient does not provide the amount requested within 30 calendar days, TDEM will first offset the amount with any available funds within the same award and may pursue other remedies to receive payment in full.

- D. **Performance Period.** The performance period for this Grant is listed on the subaward letter for each project. **All projects shall be completed within the performance period AND all reimbursement requests shall be submitted to TDEM within 60 days of the end of the performance period.** Subrecipient shall have expended all Grant funds and submitted reimbursement requests, invoices and any supporting documentation to TDEM within 60 days of the end of the performance period. TDEM shall not be obligated to reimburse expenses incurred after the performance period or submitted after the deadline.

- E. **Uniform Administrative Requirements, Cost Principals and Audit Requirements.** Except as specifically modified by law or this Grant, Subrecipient shall administer this Grant through compliance with the most recent version of all applicable laws and regulations, including but not limited to DHS program legislation, Federal awarding agency regulations, and the terms and conditions of this Grant. A non-exclusive list is provided below [not all may apply in every project]:

- Public Law 93-288, as amended (Stafford Act)
- 44 CFR, Emergency Management and Assistance
- Disaster Mitigation Act of 2000
- OMB Regulations 2 CFR, Grant and Agreements
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Executive Order 12372, Intergovernmental Review of Programs and Activities
- Executive Order 12549, Debarment and Suspension
- Executive Order 12612, Federalism

GRANT TERMS AND CONDITIONS

- Executive Order 12699, Seismic Design
- Executive Order 12898, Environmental Justice
- Coastal Barrier Resources Act, Public Law 97-348
- Single Audit Act, Public Law 98-502
- Sandy Recovery Improvement Act publications
- Disaster Recovery Reform Act of 2018 16 U.S.C. § 470, National Historic Preservation Act
- 16 U.S.C. § 1531, Endangered Species Act References
- FEMA program publications, guidance and policies

F. **State Requirements for Grants.** Subrecipient shall comply with all other federal, state, and local laws and regulations applicable to this Grant including but not limited to the laws and the regulations promulgated in Texas Government Code, Chapter 783, Uniform Grant and Contract Management, (UGMS) at:

<http://www.window.state.tx.us/procurement/catrad/ugms.pdf>

and the program State Administrative Plan, available at:

<https://grants.tdem.texas.gov>

Subrecipient shall, in addition to the assurances and certifications, comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, OMB circulars, terms and conditions of this Grant and the approved application.

Grant funds may not be awarded to or expended by any entity which performs political polling. This prohibition does not apply to a poll conducted by an academic institution as part of the institution's academic mission that is not conducted for the benefit of a particular candidate or party.

Grant funds may not be expended by a unit of local government unless the following limitations and reporting requirements are satisfied:

1. Texas General Appropriations Act, Art. IX, Parts 2 and 3, except there is no requirement for increased salaries for local government employees;
2. Texas Government Code Sections 556.004, 556.005, and 556.006, which prohibits using any money or vehicle to support the candidacy of any person for office, influencing positively or negatively the payment, loan, or gift to a person or political organization for a political purpose, and using Grant funds to influence the passage or defeat of legislation including not assisting with the funding of a lobbyist, or using Grant funds to pay dues to an organization with a registered lobbyist;
3. Texas Government Code Sections 2113.012 and 2113.101, which prohibits using Grant funds to compensate any employee who uses alcoholic beverages on active duty and Subrecipient may not use Grant funds to purchase an alcoholic beverage and may not pay or reimburse any travel expense for an alcoholic beverage;
4. Texas General Appropriations Act, Art. IX, Section 6.13, which requires Subrecipient to make every effort to attain key performance target levels associated with this Grant, including performance milestones, milestone time frames, and related performance reporting requirements; and
5. General Appropriations Act, Art. IX, Sections 7.01 and 7.02, and Texas Government Code §2102.0091, which requires that this Grant may only be expended if Subrecipient timely completes and files its reports.

G. **Restrictions and General Conditions.**

1. **Use of Funds.** DHS/FEMA Grant funds may only be used for the purposes set forth in this

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GRANT TERMS AND CONDITIONS

Grant, and shall be consistent with the statutory authority for this Grant. Grant funds may not be used for matching funds for other Federal grants/cooperative agreements, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition,

GRANT TERMS AND CONDITIONS

Federal funds may not be used to sue the Federal government or any other government entity.

2. Federal Employee Prohibition. Federal employees are prohibited directly benefiting from any funds under this Grant.
3. Points of Contacts. Within 10 calendar days of any change, Subrecipient shall notify TDEM of any change in designated of Subrecipient Agents as submitted during the execution of this agreement, and any subsequent changes submitted by Subrecipient. In the event a Subrecipient hires a consultant to assist them with managing its Public Assistance grants, they must be listed on the Designated Subrecipient Agent Form. TDEM will direct all correspondence to the Subrecipient but will cc: the consultant on all email exchanges. The Subrecipient will be responsible for sharing written communications with the consultant. The Subrecipient will remain the primary point of contact and must be included in all decision-making activities.
4. DUNS Number. Subrecipient confirms its Data Universal Numbering Systems (DUNS) Number is accurate and is registered on Sams.gov. The DUNS Number is the nine digit number established and assigned by Dun and Bradstreet, Inc., at 866/705-5711 or <http://fedgov.dnb.com/webform>
5. Central Contractor Registration and Universal Identifier Requirements. Subrecipient maintains that it has registered on the System for Award Management (SAM) at www.sam.gov or other federally established site for contractor registration, and entered TDEM-required information. Subrecipient shall keep current, and then review and update the information at least annually. Subrecipient shall keep information current in the SAM database until the later of when it submits this Grant's final financial report or receives final Grant award payment. Subrecipient agrees that it shall not make any subaward agreement or contract related to this Grant without first obtaining the vendor/subawardee's mandatory DUNS number. See Section §200.32 of OMB 2 C.F.R.
6. Reporting Total Compensation of Subrecipient Executives. 2 C.F.R. §200.331; see FEMA Information Bulletin 350.
 - a. Applicability and what to report: Subrecipient shall report whether Subrecipient received \$25 million or more in Federal procurement contracts or financial assistance subject to the Transparency Act per 2 C.F.R. §200.331. Subrecipient shall report whether 80% or more of Subrecipient's annual gross revenues were from Federal procurement contracts or Federal financial assistance. If Subrecipient answers "yes" to both questions, Subrecipient shall report, along with Subrecipient's DUNS number, the names and total compensation (see 17 C.F.R. §229.402(c)(2)) for each of Subrecipient's five most highly compensated executives for the preceding completed fiscal year.
 - b. Where and when to report: Subrecipient shall report executive total compensation at www.sam.gov or other federally established replacement site. By signing this Grant, Subrecipient certifies that, if required, Subrecipient's jurisdiction has already registered, entered the required information, and shall keep information in the SAM database current, and update the information at least annually for each year until the later of when the jurisdiction submits its final financial report or receives final payment. Subrecipient agrees that it shall not make any subaward agreement or contract without first obtaining the subawardee's mandatory DUNS number.
7. Debarment and Suspension. Subrecipient shall comply with Executive Order 12549 and 12689, which provide protection against waste, fraud, and abuse by debarment or

GRANT TERMS AND CONDITIONS

suspending those persons deemed irresponsible in their dealings with the Federal government.

8. Direct Deposit. A completed direct deposit form from Subrecipient shall be provided to TDEM, prior to receiving any payments under the provisions of this grant. The direct deposit form is currently available at grants.tdem.texas.gov under Resources/Public Assistance.
9. Property Management and Inventory. Subrecipient shall maintain property/inventory records which, at minimum, shall include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, the cost of the property, the percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. Subrecipient shall develop and implement a control system to prevent loss, damage or theft of property and Subrecipient shall investigate and document any loss, damage or theft of property funded under this Grant.
10. Site Visits. DHS/FEMA and/or TDEM, through its authorized representatives, have the right at all reasonable times to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by DHS/FEMA on the premises of Subrecipient or a contractor under this Grant, Subrecipient shall provide and shall require its contractors to provide all reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work.

H. Procurement and Contracting.

1. Procurements. Subrecipient shall comply with all applicable federal, state, and local laws and requirements, including but not limited to proper competitive solicitation processes where required, for any procurement which utilizes federal funds awarded under this Grant in accordance with 2 C.F.R. 200. 318-326 and Appendix II to Part 200 (A-C) and (E-J)
2. Contract Provisions. All contracts executed using funds awarded under this Grant shall contain the contract provisions listed under 2 C.F.R. 200.326 and Appendix II (A), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
3. Procurement activities must follow the most restrictive of Federal, State and Local procurement regulations:
 - a. Procurement by micro purchase
 - b. Procurement by small purchase
 - c. Procurement by sealed bid
 - d. Procurement by competitive proposal
 - e. Procurement by non-competitive proposal, solely when the award of a contract is unfeasible under the other methods

The State must be contacted for approval to use a noncompetitive procurement method. Failure to follow eligible procurement methods will result in ineligible costs. Other types of agreements for services must have State approval prior to use or execution. A copy of the local procurement policy must be provided to the State before initial payment.

GRANT TERMS AND CONDITIONS

The **cost plus a percentage of cost** and **percentage of construction** cost methods of contracting are **ineligible**.

Must perform **cost/price analysis** for every procurement action in excess of the Simplified Acquisition Threshold.

Must negotiate profit as a separate element where required.

4. Evidence of non-debarment for vendors must be documented through <http://www.sam.gov/portal/public/SAM> and http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/ and submitted for review.
5. Comply with rules related to underutilized businesses (small and minority businesses, women's enterprises and labor surplus firms) at 2 CFR 200.321

- I. **Monitoring.** Subrecipient will be monitored periodically by federal, state or local entities, both programmatically and financially, to ensure that project goals, objectives, performance requirements, timelines, milestone completion, budget, and other program-related criteria are met.

TDEM, or its authorized representative, reserves the right to perform periodic desk/office-based and/or on-site monitoring of Subrecipient's compliance with this Grant and of the adequacy and timeliness of Subrecipient's performance pursuant to this Grant. After each monitoring visit, if the monitoring visit reveals deficiencies in Subrecipient's performance under this Grant, a monitoring report will be provided to the Subrecipient and shall include requirements for the timely correction of such deficiencies by Subrecipient. Failure by Subrecipient to take action specified in the monitoring report may be cause for suspension or termination of this Grant pursuant to the Suspension and/or Termination Section herein.

J. **Audit.**

1. **Audit of Federal and State Funds.** Subrecipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Grant as required by the Single Audit Act (OMB 2 C.F.R. 200.501, formerly A- 133). Subrecipient shall comply, as applicable, with Texas Government Code, Chapter 783, the Uniform Grant Management Standards (UGMS), the State Uniform Administrative Requirements for Grants and Cooperative Agreements.
2. **Right to Audit.** Subrecipient shall give the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the Comptroller General of the United States, the Texas State Auditor, TDEM, or any of their duly authorized representatives, access to and the right to conduct a financial or compliance audit of Grant funds received and performances rendered under this Grant. Subrecipient shall permit TDEM or its authorized representative to audit Subrecipient's records. Subrecipient shall provide any documents, materials or information necessary to facilitate such audit.
3. **Subrecipient's Liability for Disallowed Costs.** Subrecipient understands and agrees that it shall be liable to TDEM for any costs disallowed pursuant to any financial or compliance audit(s) of these funds. Subrecipient further understands and agrees that reimbursement to TDEM of such disallowed costs shall be paid by Subrecipient

GRANT TERMS AND CONDITIONS

from funds that were not provided or otherwise made available to Subrecipient pursuant to this Grant or any other federal contract.

4. Subrecipient's Facilitation of Audit. Subrecipient shall take such action to facilitate the performance of such audit(s) conducted pursuant to this Section as TDEM may require of Subrecipient. Subrecipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient and the requirement to cooperate is included in any subcontract it awards.
5. State Auditor's Clause. Subrecipient understands that acceptance of funds under this Grant acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Subrecipient further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Subrecipient shall ensure that this clause concerning the State Auditor's Office's authority to audit funds and the requirement to cooperate fully with the State Auditor's Office is included in any subgrants or subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Subrecipient relating to this Grant.

K. Retention and Accessibility of Records.

1. Retention of Records. Subrecipient shall follow its own internal retention policy, or the state's retention policy, whichever is stricter. At a minimum, the subrecipient shall maintain fiscal records and supporting documentation for all expenditures of this Grant's funds pursuant to the applicable OMB 2 C.F.R. Subpart D – Post Federal Award Requirements, §200.333-337, and this Grant. Subrecipient shall retain these records and any supporting documentation for a minimum of three (3) years from the later of the completion of this project's public objective, submission of the final expenditure report, any litigation, dispute, or audit. Records shall be retained for three (3) years after any real estate or equipment final disposition. The DHS or TDEM may direct Subrecipient to retain documents or to transfer certain records to DHS/FEMA custody when DHS/FEMA determines that the records possess long term retention value.
2. Access to Records. Subrecipient shall give the United States Department of Homeland Security, the Comptroller General of the United States, the Texas State Auditor, TDEM, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by Subrecipient pertaining to this Grant including records concerning the past use of DHS/FEMA funds. Such rights to access shall continue as long as the records are retained by Subrecipient.

L. Changes, Amendments, Suspension or Termination

1. Modification. DHS/FEMA or TDEM may modify this Grant after an award has been made. Once notification has been made in writing, any subsequent request for funds indicates Subrecipient's acceptance of the changes to this Grant. Any alteration, addition, or deletion to this Grant by Subrecipient is not valid.
2. Effect of Changes in Federal and State Laws. Any alterations, additions, or deletions to this Grant that are required by changes in federal and state laws, regulations or policy are automatically incorporated into this Grant without written amendment to this Grant and shall become effective upon the date designated by such law or regulation. In the event DHS/FEMA or TDEM determines that changes are necessary to this Grant after an award has been made, including changes to the period of performance or terms and conditions, Subrecipient shall be notified of the changes in writing. Once notification has

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GRANT TERMS AND CONDITIONS

been made, any subsequent request for funds will indicate Subrecipient's acceptance of the changes to this Grant.

3. **Suspension.** In the event Subrecipient fails to comply with any term of this Grant, TDEM may, upon written notification to Subrecipient, suspend this Grant, in whole or in part, withhold payments to Subrecipient and prohibit Subrecipient from incurring additional obligations of this Grant's funds.
4. **Termination.** TDEM shall have the right to terminate this Grant, in whole or in part, at any time before the end of the Performance Period, if TDEM determines that Subrecipient has failed to comply with any term of this Grant. TDEM shall provide written notice of the termination and include:
 - a. The reason(s) for such termination;
 - b. The effective date of such termination; and
 - c. In the case of partial termination, the portion of this Grant to be terminated.
 - d. Appeal may be made to the Deputy Chief of the Texas Division of Emergency Management - Recovery & Mitigation.

M. **Enforcement.** If Subrecipient materially fails to comply with any term of this Grant, whether stated in a federal or state statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, TDEM or DHS/FEMA may take one or more of the following actions, as appropriate in the circumstances:

1. Increased monitoring of projects and require additional financial and performance reports
2. Require all payments as reimbursements rather than advance payments
3. Temporarily withhold payments pending correction of the deficiency
4. Disallow or deny use of funds and matching credit for all or part of the cost of the activity or action not in compliance;
5. Request DHS/FEMA to wholly or partially de-obligate funding for a project
6. Temporarily withhold cash payments pending correction of the deficiency by subrecipient or more severe enforcement action by TDEM or DHS/FEMA;
7. Withhold further awards for the grant program
8. Take other remedies that may be legally available

In taking an enforcement action, TDEM will provide Subrecipient an opportunity for a hearing, appeal, or other administrative proceeding to which Subrecipient is entitled under any statute or regulation applicable to the action involved.

The costs of Subrecipient resulting from obligations incurred by Subrecipient during a suspension or after termination of this Grant are not allowable unless TDEM or DHS/FEMA expressly authorizes them in the notice of suspension or termination or subsequently.

Other Subrecipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

- The costs result from obligations which were properly incurred by Subrecipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable; and
- The costs would be allowable if this Grant were not suspended or expired normally at the end of the funding period in which the termination takes effects.

The enforcement remedies identified in this section, including suspension and termination, do not preclude Subrecipient from being subject to "Debarment and Suspension" under E.O.

GRANT TERMS AND CONDITIONS

12549. 2 C.F.R., Appendix II to Part 200, (I).

- N. **Conflicts of Interest**. The subrecipient will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts and will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- O. **Closing of this Grant**. TDEM will close each subaward after receiving all required final documentation from the Subrecipient. If the close out review and reconciliation indicates that Subrecipient is owed additional funds, TDEM will send the final payment automatically to Subrecipient. If Subrecipient did not use all the funds received, TDEM will recover the unused funds.

At the completion and closure of all Subrecipient's projects (subawards), TDEM will request the Subrecipient to Certify the completion of all projects (subawards) in accordance with the grant terms and conditions to state there are no further claims under this subgrant.

The closeout of this Grant does not affect:

1. DHS/FEMA or TDEM's right to disallow costs and recover funds on the basis of a later audit or other review;
 2. Subrecipient's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
 3. Records retention requirements, property management requirements, and audit requirements, as set forth herein; and
 4. Any other provisions of this Grant that impose continuing obligations on Subrecipient or that govern the rights and limitations of the parties to this Grant after the expiration or termination of this Grant.
- P. **Notices**. All notices and other communications pertaining to this agreement shall be delivered in electronic format and/or writing and shall be transmitted by fax, e-mail, personal hand-delivery (and receipted for) or deposited in the United States Mail, as certified mail, return receipt requested and postage prepaid, to the other party.

EXHIBIT A

ASSURANCES - NON-CONSTRUCTION PROGRAMS See Standard Form 424B

As the duly authorized representative of Subrecipient, I certify that Subrecipient:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this Grant.
2. Will give the Department of Homeland Security, the Texas Division of Emergency Management, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Grant and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190 as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514) which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for DHS grant-supported activities, DHS-FEMA requires the environmental aspects to be reviewed and evaluated before final action on the application; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C. §§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348, 45 C.F.R. 46, and DHS Management Directive 026-044 (Directive) regarding the protection of human subjects involved in research, development, and related activities supported by this Grant. "Research" means a systematic investigation, including research, development, testing, and evaluation designed to develop or contribute to general knowledge. See Directive for additional provisions for including humans in the womb, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). See also state and local law for research using autopsy materials.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133 (now OMB 2 C.F.R. 200.500), "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance, and policies governing this Grant.

GRANT TERMS AND CONDITIONS

EXHIBIT B

ASSURANCES - CONSTRUCTION PROGRAMS See Standard Form 424D

As the duly authorized representative of Subrecipient, I certify that Subrecipient:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this Grant.
2. Will give the Department of Homeland Security, the Texas Division of Emergency Management, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to this Grant and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of this Grant.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the agreement.
11. Will comply or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally- assisted construction sub-agreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) as amended by 42 U.S.C. 4311 et seq. and Executive Order (EO) 11514 which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) comply with the Clean Air Act of 1977, (42 U.S.C. §§7401 et seq. and Executive Order 11738) providing for the protection of and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133 (now OMB 2 C.F.R. 200.500), "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, grant guidance and policies governing this Grant.

GRANT TERMS AND CONDITIONS

Exhibit C

Certifications for Grant Agreements

The undersigned, as the authorized official, certifies the following to the best of his/her knowledge and belief.

- A. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL Disclosure of Lobbying Activities, in accordance with its instructions.
- C. The undersigned shall require that the language of this certification prohibiting lobbying be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- D. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28 C.F.R. Part 67, Section 67.510. (Federal Certification), the Subrecipient certifies that it and its principals and vendors:
 1. Are not debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency. Subrecipient can access debarment information by going to www.sam.gov and the State Debarred Vendor List at: www.window.state.tx.us/procurement/prog/vendor_performance/debarred.
 2. Have not within a three-year period preceding this Grant been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification;
 4. Have not within a three-year period preceding this Grant had one or more public transactions (Federal, State, or local) terminated for cause or default; or
 5. Where Subrecipient is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Grant. (Federal Certification).
- E. Federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Subrecipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.
- F. Subrecipient will comply with 2 C.F.R. Part 180, Subpart C as a condition of receiving grant funds and Subrecipient will require such compliance in any subgrants or contract at the next tier.
- G. Subrecipient will comply with the Drug-free Workplace Act, in Subpart B of 2 C.F.R. Part 3001.
- H. Subrecipient is not delinquent on any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129 and form SF-424, item number 17 for additional information and guidance.
- I. Subrecipient will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this Grant.
- J. Subrecipient understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of funds in this Grant.

GRANT TERMS AND CONDITIONS

EXHIBIT D

State of Texas Assurances

As the duly authorized representative of Subrecipient, I certify that Subrecipient:

1. Shall comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the Subrecipient's governing body or of the Subrecipient's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
2. Shall insure that all information collected, assembled, or maintained by the Subrecipient relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, unless otherwise expressly prohibited by law.
3. Shall comply with Texas Government Code, Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
4. Shall comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.
5. Shall not contract with or issue a license, certificate, or permit to the owner, operator, or administrator of a facility if the Subrecipient is a health, human services, public safety, or law enforcement agency and the license, permit, or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.
6. Shall comply with all rules adopted by the Texas Commission on Law Enforcement pursuant to Chapter 1701, Texas Occupations Code, or shall provide the grantor agency with a certification from the Texas Commission on Law Enforcement that the agency is in the process of achieving compliance with such rules if the Subrecipient is a law enforcement agency regulated by Texas Occupations Code, Chapter 1701.
7. Shall follow all assurances. When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and subrecipients shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met. (See UGMS Section _.36 for additional guidance on contract provisions).
8. Shall comply with the Texas Family Code, Section 261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Subrecipient shall also ensure that all program personnel are properly trained and aware of this requirement.
9. Shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990 including Titles I, II, and III of the Americans with Disability Act which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities, 44 U.S.C. §§ 12101-12213; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Grant.
10. Shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.
11. Shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Shall comply with the provisions of the Hatch Political Activity Act (5 U.S.C. §§7321-29), which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

GRANT TERMS AND CONDITIONS

14. Shall insure that the facilities under its ownership, lease, or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (EO 11738).
15. Shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
16. Shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1977, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
17. Shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
18. Shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
19. Shall comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.
20. Shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.
21. Shall comply with the Pro-Children Act of 1994 (Public Law 103-277), which prohibits smoking within any portion of any indoor facility used for the provision of services for children.
22. Shall comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.
23. Shall comply with all applicable requirements of all other federal and state laws, executive orders, regulations, and policies governing this program.
24. And its principals are eligible to participate and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and it is not listed on a state or federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement have Exclusions listed at <https://www.sam.gov/portal/public/SAM/>.
25. Shall adopt and implement applicable provisions of the model HIV/AIDS workplace guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

GRANT TERMS AND CONDITIONS

EXHIBIT E

Environmental Review

As the duly authorized representative of Subrecipient, I certify that Subrecipient:

1. shall assess its federally funded projects for potential impact to environmental resources and historic properties.
2. shall submit any required screening form(s) as soon as possible and shall comply with deadlines established by TDEM. Timelines for the Environmental Planning and Historic Preservation (EHP) review process will vary based upon the complexity of the project and the potential for environmental or historical impact.
3. shall include sufficient review time within its project management plan to comply with EHP requirements. Initiation of any activity prior to completion of FEMA's EHP review will result in a non-compliance finding and TDEM will not authorize or release Grant funds for non-compliant projects.
4. as soon as possible upon receiving this Grant, shall provide information to TDEM to assist with the legally-required EHP review and to ensure compliance with applicable EHP laws and Executive Orders (EO) currently using the FEMA EHP Screening Form OMB Number 1660-0115/FEMA Form 024-0-01 and submitting it, with all supporting documentation, to TDEM for review. These EHP requirements include but are not limited to the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, EO 11988 – Floodplain Management, EO 11990 – Protection of Wetlands, and EO 12898 – Environmental Justice. Subrecipient shall comply with all Federal, State, and local EHP requirements and shall obtain applicable permits and clearances.
5. shall not undertake any activity from the project that would result in ground disturbance, facility modification, or purchase and use of sonar equipment without the prior approval of FEMA. These include but are not limited to communications towers, physical security enhancements involving ground disturbance, new construction, and modifications to buildings.
6. shall comply with all mitigation or treatment measures required for the project as the result of FEMA's EHP review. Any changes to an approved project description will require re-evaluation for compliance with EHP requirements before the project can proceed.
7. if ground disturbing activities occur during project implementation, Subrecipient shall ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient shall immediately cease construction in that area and notify FEMA and the appropriate State Historical Preservation Office.

GRANT TERMS AND CONDITIONS

EXHIBIT F

Additional Grant Conditions

1. Additional damage requiring a new Public Assistance project to be written must be reported within 60 days following the Project Scoping meeting with the State-Federal team (or FEMA process equivalent).
2. All work must be done prior to the approved project completion deadline assigned to each Project (POP). For projects written at 100% complete, documentation must be submitted within 90 days of the Recovery Scoping Meeting (or FEMA process equivalent) or within 90 days of the work completion date (both Hazard Mitigation and Public Assistance), whichever is later, regardless of whether the project has been obligated. Should additional time be required, a time extension request must be submitted which: a.) Identifies the projects requiring an extension. b.) Explains the reason for an extension. c.) Indicates the percentage of work that has been completed. d.) Provides an anticipated completion date. e.) Provides detailed milestones documenting expected progress. The reason for an extension must be based on extenuating circumstances or unusual project requirements that are beyond the control of your jurisdiction/organization. **Failure to submit a time extension request 90 days prior to the end of the period of performance may result in reduction or withdrawal of federal funds for approved work.**
3. Any significant change to a project's approved Scope of Work must be reported and approved through TDEM and FEMA before starting the project. Failure to do so will jeopardize grant funding. The Subrecipient shall submit requests for cost overruns requiring additional obligations to TDEM, who will forward to FEMA for review and approval prior to incurring costs. Approval of these requests is not guaranteed and is subject to funding availability. Costs incurred prior to approval of any scope or budget/cost changes may be denied.
4. The Project Completion and Certification Report must be submitted to TDEM within 60 days of all approved work being completed for each project. If any project requires the purchase of insurance as a condition of receiving federal funds, a copy of the current policy must be attached to this report, or Duplication of Benefits form certifying other funds were received to complete the project.
5. A cost overrun appeal on small (\$128,900) Public Assistance projects must be reported to the Texas Division of Emergency Management (TDEM) within 60 days of completing the last small project in order to be considered for additional funding.
6. Appeals may be filed on any determination made by FEMA or TDEM. All appeals must be submitted to TDEM within 60 days from receiving written notice of the action you wish to appeal. Should you wish to appeal a determination contained in the project application, the 60 days will start the day the application is signed. Appeals for Alternative Projects will be subject to the terms of the signed agreement for the Alternative Project.
7. Public Assistance program projects will not receive funding until all of the requirements identified in the comments section of the Project Worksheet are met.
8. You may request a payment of funds on projects by initiating a Request for Reimbursement (RFR) in TDEM's Grant Management System (GMS) or an Advance of Funds Request (AFR), and including documentation supporting your request. Small Public Assistance projects are paid upon obligation and will be initiated by TDEM personnel. Payments for open projects must be requested at least quarterly if expenditures have been made in that quarter.
9. Subrecipients will be required to submit quarterly progress reports (QPR) for open large projects and all Hazard Mitigation Grant Program projects using TDEM's GMS. Your assigned Public Assistance and/or Mitigation Coordinator will coordinate the due date for your specific reporting. Reports shall record all

GRANT TERMS AND CONDITIONS

information in an accurate and timely manner for each quarter. Detailed information regarding each item of information required is available on the form in GMS. Public Assistance program small projects are typically exempt from quarterly reporting, however TDEM reserves the right to require QPRs on any smalls requiring a POP extension. The first quarterly report will be due at the end of the first full quarter following the quarter in which the project was obligated. No quarterlies are required for projects that Subrecipient has initiated a closeout request and has provided a certificate of completion. Failure to submit required quarterly reports for two or more quarters can result in withholding or deobligation of funding for Subrecipients until all reports are submitted and up-to-date.

10. Subrecipients expending \$750,000 or more in total Federal financial assistance in a fiscal year will be required to provide an audit made in accordance with OMB Uniform Guidance; Cost Principles, Audit, and Administrative Requirements for Federal Awards, Subpart F. A copy of the Single Audit must be submitted to your cognizant State agency or TDEM within nine months of the end of the subrecipient's fiscal year. Consult with your financial officer regarding this requirement. If not required to submit a single audit, a letter must be sent to TDEM certifying to this.
11. Subrecipients will not make any award to any party which is debarred or suspended, or is otherwise excluded from participation in the Federal assistance programs (EO 12549, Debarment and Suspension). Subrecipient must maintain documentation validating review of debarment list of eligible contractors.
12. Subrecipients must keep record of equipment acquired by federal funds for the life cycle of the equipment. A life cycle for most equipment will be three years, but could be longer. If the fair market value of a piece of equipment is valued over \$5,000, FEMA will have the right to a portion of proceeds if equipment is sold. If the fair market value of a piece of equipment is less than \$5,000, the property can either be retained, sold or designated as surplus with no further obligation to FEMA.
13. TDEM will be using the FEMA Public Assistance Delivery Model to facilitate the writing of project worksheets (Portal). Subrecipient will be responsible for establishing and maintaining an active account in the Portal and to provide and upload timely, all information requested that is needed to write accurate project worksheets. The Portal will provide the Subrecipient visibility of the entire project writing process.
14. TDEM requires the use of its Grant Management System (GMS) for Subrecipient grant management functions. Subrecipient will access GMS to initiate Requests for Reimbursements (RFR), Advance of Funds Requests (AFR), Time Extensions, Scope and Cost change requests, Quarterly Progress Reports, Project Closeouts, Appeals, and other items deemed necessary by TDEM. Requested forms and processes may be adjusted and changed to accommodate GMS processes and requirements. Subrecipient agrees to monitor GMS as necessary to properly manage and complete awarded projects under this agreement.
- 16.2 CFR 200.210(a)(15), 2 CFR 200.331(a)(1)(xiii) and (a)(4) make reference to indirect cost rates. The Subrecipient may use the negotiated Indirect Cost Rate approved by its cognizant agency, or may use the 10% de minimis rate of modified total direct costs (MTDC) (as per § 200.414) when receiving Management Costs.

GRANT TERMS AND CONDITIONS

EXHIBIT G

Match Certification

Additional Grant Certifications

Subrecipient certifies that it has the ability to meet or exceed the cost share required for all subawards (Projects) and amendments (versions) under this Grant Agreement.

Duplication of Program Statement

Subrecipient certifies there has not been, nor will there be, a duplication of benefits for this project.

Match Certification

Federal Debt Disclosure

Subrecipient certifies that it is not delinquent on any Federal Debt.

For Hazard Mitigation Projects Only:

Maintenance Agreement

Applicant certifies that if there is a Maintenance Agreement needed for this facility copy of that agreement will be provided to TDEM.

Environmental Justice Statement

Federal Executive Order 12898 compliance requirements – If there are any concentrations of low income or minority populations in or near the HMGP project:

1. Applicant certifies that the HMGP project result will not result in a disproportionately high or adverse effect on low income or minority populations.

OR

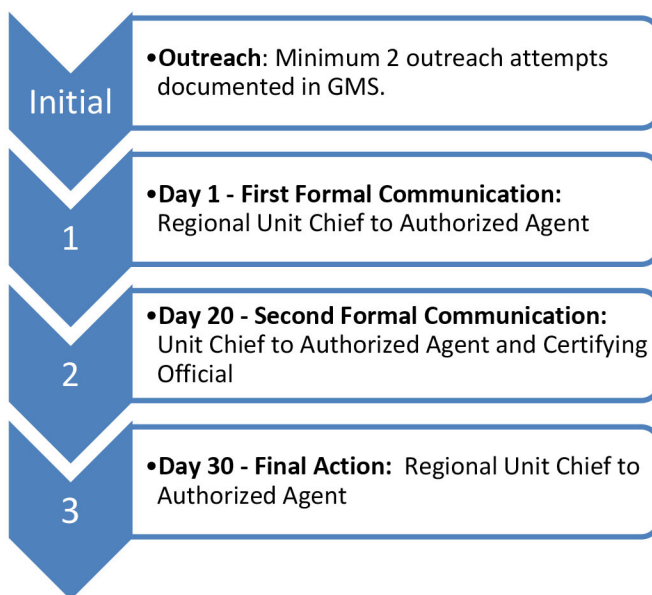
2. Applicant certifies that action will be taken to ensure achievement of environmental justice for low income and minority populations related to this HMGP project.

Formal Request for Information Policy

Timelines for providing complete and accurate information and documentation are crucial to the success of the overall Grant Program and to the timely completion and closure of awarded projects. TDEM has developed a framework to support this endeavor following a progressive series of communications for the subrecipient, referred to as Request for Information (RFI). TDEM will work with subrecipients throughout the Formal RFI process as communication is the key to success.

Scope: This policy will be applied to Public Assistance and Hazard Mitigation projects for management and closeout activities after obligation. This policy will address non-responsive and inadequate responses to request for information. The timelines outlined below represent a single 30-day period, containing three milestones.

Generally, this 30-day RFI Timeline begins after TDEM sufficiently documents communication (minimum of two GMS documented forms of outreach) with the subrecipient that has been escalated up to the Regional Unit Chief regarding the requested documentation. However, nothing limits the ability of TDEM to issue either a First or Second Request.



RFI Timelines

First Formal Communication

The TDEM Regional Unit Chief will issue a read-receipt, high importance email to the subrecipient's Authorized Agent(s) highlighting previous requests and allowing thirty calendar days to provide the requested information.

Second Formal Communication

TDEM staff will issue a formal reminder through a letter signed by the Unit Chief which is then emailed to the subrecipient's Authorized Agent(s) and Certifying Official informing them of the final ten business days remaining to provide the requested information. The Assistant Chief is to be copied on the email for visibility.

Final Action

If the RFI is not sufficiently answered, the Unit Chief will verbally contact the subrecipient's Authorized Agent(s) informing them of TDEM's intent to proceed with deobligation of funds or other remedies deemed appropriate by TDEM. Deobligation requires any previously paid funds to be returned to TDEM within thirty calendar days, per the State Administrative Plan.

GRANT TERMS AND CONDITIONS

Please initial by each Exhibit, acknowledging you have received them, understand them, and agree to abide by them.

_____ Assurances – Non-Construction Programs, hereinafter referred to as “Exhibit A”

_____ Assurances – Construction Programs, hereinafter referred to as “Exhibit B”

_____ Certifications for Grant Agreements, hereinafter referred to as “Exhibit C”

_____ State of Texas Assurances, hereinafter referred to as “Exhibit D”

_____ Environmental Review Certification, hereinafter referred to as “Exhibit E”

_____ Additional Grant Conditions, hereinafter referred to as “Exhibit F”

_____ Additional Grant Certifications, hereinafter referred to as “Exhibit G”

_____ Request for Information and Documentation referred to as “Exhibit H”

Please sign below to acknowledged acceptance of the grant and all exhibits in this agreement, and to abide by all terms and conditions.

Signature of Certifying Official

Date

Printed Name and Title



CITY OF KYLE, TEXAS

Boards and Commissions Ordinance Date Amend

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: *(First Reading)* An ordinance of the City of Kyle, Texas, Amending Part II, Chapter 2, Article III Boards, Committees and Commissions, Division 1 Generally, Subdivision I Boards, Section 2-42. Appointment; Repealing conflicting ordinances and providing for related matters. ~ *James R. Earp, Assistant City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- DRAFT Boards and Commissions Ordinance Date Amend

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING PART II, CHAPTER 2, ARTICLE III BOARDS, COMMITTEES AND COMMISSIONS, DIVISION 1 GENERALLY, SUBDIVISION I BOARDS, SECTION 2-42. APPOINTMENT; REPEALING CONFLICTING ORDINANCES AND PROVIDING FOR RELATED MATTERS.

Whereas, the City Council of the City of Kyle desires to standardize application procedures for boards, committees and commissions to promote efficient governmental operations, representation and involvement of citizens in community issues; and,

Whereas, the code of the City of Kyle has multiple references throughout various boards and commissions that conflict with each other;

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. Part II, Chapter 2, Article III Boards, Committees and Commissions, Division 1 Generally, Subdivision I Boards, Section 2-42. Appointment. The following paragraph shall hereby be amended to change the due date from July 31 to August 31:

(c) ... from June 1 through August 31 of each year...

Section 9. Repeal of Conflicting Ordinances. 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 10. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this the _____ day of _____, 2022.

FINALLY PASSED AND APPROVED on this the _____ day of _____, 2022.

ATTEST:

THE CITY OF KYLE, TEXAS

Jennifer Holm, City Secretary

Travis Mitchell, Mayor



CITY OF KYLE, TEXAS

Task Order No. 15 LJA FM 110 Waterline Project

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Approve Task Order No. 15 to LJA ENGINEERING, INC., Austin, Texas in an amount not to exceed \$150,913.20 for designing a new 16" waterline within the new FM 110 right of way. ~ *Leon Barba, P.E., City Engineer*

Other Information: The City plans to extend the water system from the existing Yarrington ground storage facility to the southeast approximately 4,600 linear feet. A 16" waterline for future expansion of the City water system will be placed within the new FM 110 right of way.

The engineer shall develop the following project packages:

1. FM 110 Waterline Project Engineering Report
2. FM 110 Waterline Project Construction Plans
3. FM 110 Waterline Project Construction Specifications

Legal Notes: N/A

Budget Information:

ATTACHMENTS:

Description

- Task Order No. 15 LJA FM 110 Waterline Project Agreement
- Map

This is Task Order No. 15,
consisting of 2 pages.

Task Order

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services – Task Order Edition, ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: 06/07/2022
- b. Owner: City Of Kyle
- c. Engineer: LJA Engineering, Inc.
- d. Specific Project (title): FM 110 Waterline Project
- e. Specific Project (description): New 16" waterline along FM110 for 4,600 LF.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

Set forth in Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.
- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

All work to be completed by February 15th, 2024.

5. Payments to Engineer

- A. Owner shall pay Engineer for services rendered under this Task Order as follows:
For the scope of services outlined in Exhibit A, a total fee would be \$150,913.20. Please see Exhibit C for Fee Breakdown.

6. Attachments:

- a. Exhibit A - Engineers Scope
- b. Exhibit B - Owner's Responsibilities
- c. Exhibit C – Fee
- d. Exhibit D - Schedule

7. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is 06/07/2022.

OWNER:
By: _____

ENGINEER: 
By: _____

Print Name: Travis Mitchell

Print Name: Brian Young, PE

Title: Mayor

Title: Vice President

Engineer License or Firm's
Certificate No. (if required): F-1386
State of: Texas

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

ATTEST _____
Jennifer Holm, City Secretary

Name: Stuart Cowell, PE

Title: Project Manager

Address: 2700 La Frontera, Ste 150, Round Rock,
Texas 78681

E-Mail
Address: scowell@lja.com

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

Exhibit A

**Engineer's Services for
FM 110 Waterline Project**

Purpose: The City of Kyle is expanding their water system to the southeast. The proposed FM 110 Waterline Project (Project) will be a 16" waterline for future expansion of the City water system. The water line will start at the City Water Plant and travel southeast for about 1 mile. LJA will provide two proposed routes, anticipated construction costs via Preliminary Engineering Report; gather geotechnical and geospatial supporting data; perform engineering design; preparation of Plans, Specs, and Estimate (PS&E); and bidding and construction phase services for the construction of the proposed Project.

The Engineer shall develop the following project package:

1. FM 110 Waterline Project Engineering Report
2. FM 110 Waterline Project Construction Plans
3. FM 110 Waterline Project Construction Specifications

This project will generally include:

TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION

The Engineer will perform:

1. Prepare a Project Management Plan
 - a. Prepare an initial critical path schedule in Microsoft Project format for approval by the City indicating tasks, milestones, major meetings, and reviews. Update schedule with each milestone deliverable.
 - b. The basis for the design criteria will be the City of Kyle's Utility Criteria Manual and Texas Commission on Environmental Quality (TCEQ). Should any relevant criteria change during the design process the City will be informed.
2. Invoicing, Contract Document Coordination, Progress Reports
 - a. Project creation and Task Order creation
 - b. Prepare monthly progress reports and send with invoice to City via e-mail/USPS.
 - c. Prepare monthly invoices for all requests for payment.
 - d. City Coordination
3. Meetings
 - a. LJA Engineering will have pre-design (kickoff) meeting with City of Kyle PM.
 - i. The purpose of the Kick-off Meeting is to assemble all the members of the City and consulting team staffs to make sure the direction and coordination of the project is well-understood. The following topics will be reviewed at the meeting:
 - Introductions of City staff and Consultants
 - Reporting relationships and contact information
 - Goals and Objectives of the Project
 - Scope and data needs/availability
 - Schedule, budget and deliverables
 - b. Milestone Meetings will be held for each of the following submittals: 60%, 90%, and 100% PS&E. These meetings will include City of Kyle and the Engineer's staff and are estimated to last up to 1 hour.

- c. Monthly update meetings on status of project.
- d. Engineer will provide meeting minutes.

Deliverables

- Monthly invoice and progress report-documentation.
- Project Schedule

TASK 2 – DATA COLLECTION AND REVIEW

The Engineer and Subconsultants will perform:

1. Site visits and field investigations as necessary to confirm field data
 - The Engineer will conduct two (2) site visits to verify data on utility locations, future alignments, conflicts, and other engineering aspects, and collect additional photography of existing conditions. For the purposes of estimating the effort for this task, it is assumed that the design team will conduct two (2) site visit using two (2) personnel.
2. Utility Coordination – contact and coordinate with existing utilities to determine any conflicts that may need to be mitigated.
3. Collection and review of existing infrastructure data, flow data, and planned development flows.

Deliverables

- Survey of Proposed Area

TASK 3 – PRELIMINARY ENGINEERING

The Engineer shall review and confirm existing data and develop a Preliminary Engineering Report to summarize and support the development of Plans, Specifications, and Estimate for the construction of Project. The Engineer will:

1. Review all existing as-builts;
2. Review future development plans;
3. Prepare and analyze an alignments (2);
4. Prepare cost estimates for alignment;
4. Prepare recommendation for alignment and construction based on available construction funding budget that will be provided by the City.
5. Prepare Preliminary Engineering Report confirming and documenting size, horizontal alignment, vertical alignment, opinion of probable construction costs, and anticipated construction schedule.

Deliverables

- Draft and final Preliminary Engineering Report

TASK 4 – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

The Engineer will develop the following plan sheets for constructing 4,600 LF 16" PVC waterline in accordance with City of Kyle's guidelines. All PS&E sheets will be 22" x 34".

- Title Sheet
- Sheet Index
- Prepare General Notes Sheet for water and wastewater improvement installation using standard City of Austin notes obtained from the City. Additional notes will be added by the

FM 110 Waterline Project

Engineer as necessary.

- Prepare E&Q Sheet: Estimate and Quantity Data Sheet
- Prepare Project Layout / Horizontal Alignment Layout including survey control points and benchmarks
- Prepare Erosion Control Plan Sheets
- Prepare Water Line Improvement Plan and profile sheets
- Prepare surface restoration requirements
- Prepare Traffic control requirements
- Prepare Standard Construction Details
- Prepare Special construction details for project
- Prepare a list of Water Specifications complete with standard and special specifications with applicable special provisions needed for the project.
- Construction estimate for the FM 110 Waterline. The estimate will be in Microsoft Excel spreadsheet format, reflect COA, and other recent local Average Unit Bid items and descriptions. The estimate will contain all major items that will likely be on the project (Current COA unit bid prices, with a reasonable adjustment for inflation to the anticipated bid opening date, will be used in preparation of the estimates).

Comment Resolution/Quality Assurance and Quality Control (QA/QC)

The Engineer will perform PS&E QA/QC & Comment Resolution at 60, 90, 100%

- QA/QC of 60, 90, 100% Submittals
- Update plans per City of Kyle comments received from the 60, 90 and 100% milestone review meetings.

Milestone Submittals

- 60, 90, 100% PS&E – 2 Sets of Hard Copies, 1 PDF
- Final PS&E and Project Manual, 2 Signed and Sealed originals, 1 PDF
- 60, 90, 100% and Final Construction Cost Estimates
- 60, 90, 100% and Final Construction Schedule

Permitting

- Submit plans to Texas Commission on Environmental Quality (TCEQ)
- Submit plans for permit through Texas Department of Transportation (TxDOT)
- Submit plans for permit through Hays County.

Deliverables

The following will be provided for each design phase:

- Route Layout
- Engineers Opinion of Probable Construction Costs (60, 90, and 100%)
- Electronic Graphics - provide the City an electronic deliverable of the plans (including standard drawings) in PDF & AutoCAD
- Hard Copy Submittals – The Engineer shall provide to the City, 2 full-size copies of construction plans (60, 90, and 100%) and specifications (90 and 100%).
- Submittals – 60%, 90%, and 100% submittals - Comments and revisions requested at the review meetings shall be incorporated into the plans for the subsequent submittal.

TASK 5 – BID PHASE SERVICES

The Engineer will assist the City of Kyle throughout the Bid Phase of the project including:

- Assist the City with Contract advertisement for the Project including preparation of notice and arranging for placement of the advertisement in Civcast and other media as required.
- Coordinate with local print shop to distribute plans and project manuals to interested bidders.
- Conduct a pre-bid conference.
- Prepare addendum (up to 3) and answer bidder’s questions
- Conduct the bid opening.
- Prepare the bid tabulation and provide the City with a recommendation of award.
- Assist the City in execution of the construction contract.

TASK 6 – CONSTRUCTION PHASE SERVICES

The Engineer will:

- Conduct preconstruction meeting
- Site visits (6)
- Answer RFI’s
- Review and approve submittals
- Conduct construction meetings
 - Prepare meeting minutes
- Change Orders
 - Review change orders after approved by inspector
 - Create and process change orders (up to 3)
- Assist in pay application review
- Conduct final inspection
- Coordinate with city inspector and contractor
- Prepare As-built Plans (record drawings)

COMPENSATION

The compensation for these items of work will be as follows. See Exhibit C for a breakdown of costs.

<u>Task</u>	<u>Description</u>	<u>Basis of Fee</u>
1	Project Management and Communication	Lump Sum
2	Data Collection and Review	Lump Sum
3	Preliminary Engineering	Lump Sum
4	Plans, Specifications and Estimate	Lump Sum
5	Bid Phase Services	Lump Sum
6	Construction Phase Services	Lump Sum
Z99	Reimbursable	Lump Sum

The compensation will be billed on a lump sum basis for all tasks. Any services requested by the Client not included above will be provided on a time and materials basis as requested by Client.

UNDERSTANDING OF WORK

- The owner will acquire any environmental assessments, endangered species survey, 10-A permits etc., if required to process the application.
- The owner will acquire any required easement(s) for the proposed alignment.
- The owner will retain a qualified inspector for the construction of FM 110 Waterline on a full or

part time basis.

- Any substantial changes initiated by the client once engineering services begin may require additional services.
- The fees do not include reimbursable expenses for application fees or review fees. Reimbursable items will be billed in accordance with the engineering services agreement.
- The fees for geotechnical engineering are not included with this proposal.

THIS SCOPE DOES NOT INCLUDE THE FOLLOWING ITEMS:

- ROW/Easement Negotiation and/or Acquisition Services
- ROW Metes & Bounds
- PS&E design for Drainage Improvements
- Drainage reports and studies
- Tree permit
- Construction Material Testing
- Construction Inspection
- Geotechnical Investigation and Reporting Services
- Topographical or Boundary Survey Services
- Environmental Assessment. It is assumed that all environment concerns have been addressed.
- Design of excavation support systems. (By General Contractor)
- Design of Temporary support and shoring systems. (By General Contractor)
- Means and Methods of Construction.

Exhibit B

**Owner's Responsibilities for
FM 110 Waterline Project**

The City will perform the following:

- Promptly execute contract documents and amendments as necessary so as not to delay the prosecution of work.
- Promptly review and process all requests for payment.
- Prompt plan review of all interim and milestone deliverables
- Assist with Right of Entry for all properties
- Provide Utility and Construction Easement Acquisition Services
- Provide all public involvement and coordination with landowners
- Provide any water modeling necessary

EXHIBIT C-FEE SCHEDULE - LJA ENGINEERING, INC.

Project: FM 110 Waterline

TASK	FEE	HOURS
TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION	\$11,037.95	70
TASK 2 – DATA COLLECTION AND REVIEW	\$7,031.20	48
TASK 3 – PRELIMINARY ENGINEERING	\$17,911.70	113
TASK 4 – PLANS, SPECIFICATIONS, AND ESTIMATE	\$82,900.95	524
TASK 5 – BID PHASE SERVICES	\$6,909.00	45
TASK 6 – CONSTRUCTION PHASE SERVICES	\$23,673.90	140
OTHER DIRECT EXPENSES	\$1,448.50	
TOTAL	\$150,913.20	940

Exhibit C: TO#15 FM 110 Waterline

TASK DESCRIPTION		Principal	Project Manager	QA/QC Manager	Project Engineer	Engineer in Training	GIS Technician II	Supervisory GIS II	Administrative Assistant	Total Labor Hrs & Costs
		\$223.25 HOURS	\$188.00 HOURS	\$199.75 HOURS	\$176.25 HOURS	\$145.70 HOURS	\$129.25 HOURS	\$141.00 HOURS	\$75.20 HOURS	HOURS
TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION										
1.1	Project Management Plan									
1.1.1	Prepare and Maintain Project Management Plan		4							4
1.2	Invoicing, Contract Document Coordination, Progress Reports									
1.2.1	Project Creation and Task Order Creation	1	2							3
1.2.2	Prepare monthly invoices for all requests for payment		4						6	10
1.2.3	Prepare monthly progress reports		4						6	10
1.2.3	City Coordination		8			4				12
1.3	Meetings									
1.3.1	Prepare Agenda and Sign-in Sheets					3				3
1.3.2	Kickoff Meeting		3			3				6
1.3.3	Milestone Meetings (60%, 90%, 100% design)		9			9				18
1.3.4	Monthly Update Meetings		4							4
TASK 1 SUB TOTAL HOURS		1	38	0	0	19	0	0	12	70
TASK 1 SUB TOTAL FEE		\$223.25	\$7,144.00	\$0.00	\$0.00	\$2,768.30	\$0.00	\$0.00	\$902.40	\$11,037.95
TASK 2 – DATA COLLECTION AND REVIEW										
2.1	Data Collection, Review, and Analysis									
2.1.1	Site Visit (2)				8	8	12	2		30
2.1.2	Utility Coordination to collect information on existing utilities within project area					12				12
2.1.3	Collect and review existing infrastructure and flow data					6				6
TASK 2 SUB TOTAL HOURS		0	0	0	8	26	12	2	0	48
TASK 2 SUB TOTAL FEE		\$0.00	\$0.00	\$0.00	\$1,410.00	\$3,788.20	\$1,551.00	\$282.00	\$0.00	\$7,031.20
TASK 3 – PRELIMINARY ENGINEERING										
3.1	Preliminary Engineering									
3.1.1	Review all As-builts				2	6				8
3.1.2	Review future development plans				4	6				10
3.1.3	Prepare and Analyze alignment and construction alternatives				3	16				19
3.1.4	Prepare cost estimates for each alternative					8				8
3.1.5	Prepare Preliminary Engineering Report	2	6		25	35				68
TASK 3 SUB TOTAL HOURS		2	6	0	34	71	0	0	0	113
TASK 3 SUB TOTAL FEE		\$446.50	\$1,128.00	\$0.00	\$5,992.50	\$10,344.70	\$0.00	\$0.00	\$0.00	\$17,911.70
TASK 4 – PLANS, SPECIFICATIONS, AND ESTIMATE										
4.1	16" Waterline									
4.1.1	Title Sheet					2				2
4.1.2	Sheet Index					2				2
4.1.3	General Notes Sheet					2				2
4.1.4	Estimate and Quantity Data Sheet				4	24				28
4.1.5	Project Layout / Horizontal Alignment Layout sheet				1	10				11
4.1.6	Erosion Control Plan Sheets				4	20				24
4.1.7	Waterline Plan and profile sheets		40		60	150				250
4.1.8	Surface Restoration		4			20				24
4.1.9	Traffic control requirements		2			16				18
4.1.10	Standard Construction Details				1	4				5

Exhibit C: TO#15 FM 110 Waterline

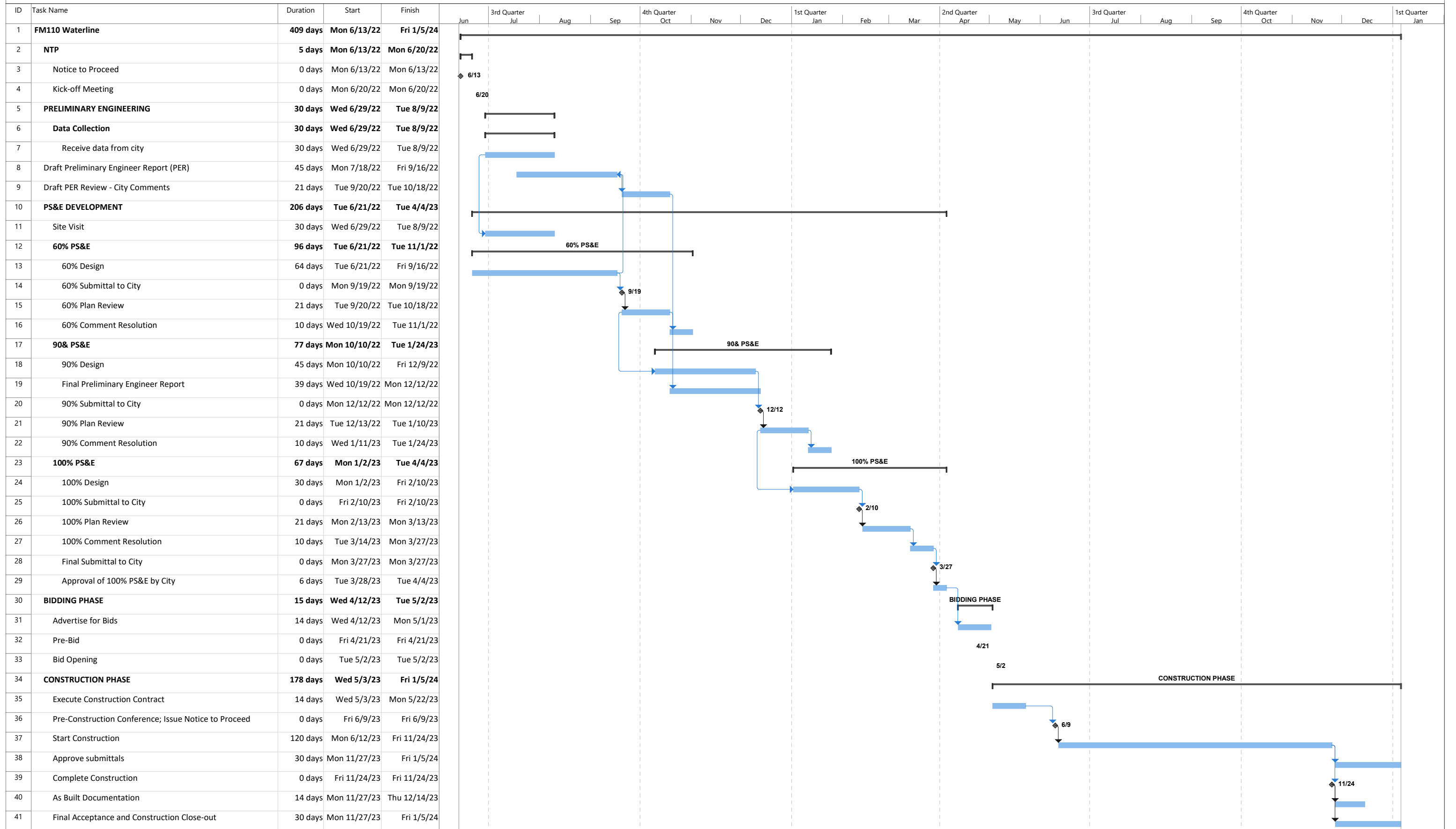
TASK DESCRIPTION		Principal	Project Manager	QA/QC Manager	Project Engineer	Engineer in Training	GIS Techician II	Supervisory GIS II	Administrative Assistant	Total Labor Hrs & Costs
		\$223.25 HOURS	\$188.00 HOURS	\$199.75 HOURS	\$176.25 HOURS	\$145.70 HOURS	\$129.25 HOURS	\$141.00 HOURS	\$75.20 HOURS	HOURS
4.1.11	Special construction details for project				1	4				5
4.1.12	QA/QC (60%, 90%, 100% design)			24						24
4.1.13	Project Manual with Technical Specifications		4			8				12
4.1.14	Engineer's Opinion of Probable Construction Costs		3			16				19
4.2	Milestone Comment Resolution									
4.2.2	Respond to City 60% comments		6			24				30
4.2.3	Respond to City 90% comments		4			18				22
4.2.4	Respond to City 100% comments		2			12				14
4.2.5	Respond to TxDOT comments		4			8				12
4.2.6	Respond to TCEQ comments		4			8				12
4.3	Permitting									
4.3.1	Permitting - TCEQ					4				4
4.3.2	Permitting - TxDOT					4				4
TASK 4 SUB TOTAL HOURS		0	73	24	71	356	0	0	0	524
TASK 4 SUB TOTAL FEE		\$0.00	\$13,724.00	\$4,794.00	\$12,513.75	\$51,869.20	\$0.00	\$0.00	\$0.00	\$82,900.95
TASK 5 – BID PHASE SERVICES										
5.1	BID PHASE ASSISTANCE									
5.1.1	Prepare All Applicable Construction Documents For Bidding		6							6
5.1.2	Advertisement		2							2
5.1.3	Attend Pre-Bid Conference		3							3
5.1.4	Respond to Bidder's Questions				6					6
5.1.5	Prepare Project Addenda (Up to 3)		6							6
5.1.6	Bid Opening		3							3
5.1.7	Analyze Contractor Bids, Prepare Bid Tabulation, Produce Recommendation Letter				1	3				4
5.1.8	Construction Contract Assistance	1			2				12	15
TASK 5 SUB TOTAL HOURS		1	20	0	9	3	0	0	12	45
TASK 5 SUB TOTAL FEE		\$223.25	\$3,760.00	\$0.00	\$1,586.25	\$437.10	\$0.00	\$0.00	\$902.40	\$6,909.00
TASK 6 – CONSTRUCTION PHASE SERVICES										
6.1	CONSTRUCTION PHASE SERVICES									
6.1.1	Attend Preconstruction Conference		3			3				6
6.1.2	Site Visit (3)		9			9				18
6.1.3	RFIs				6					6
6.1.4	Submittals				8					8
6.1.5	Construction meetings (8)		24							24
6.1.6	Assist in pay application review		8							8
6.1.7	Change Orders/Design Changes (up to 3)				6	12				18
6.1.8	Coordination with Contractor/Inspector/TxDOT		12			24				36
6.1.9	Final Inspection		3			3				6
6.1.11	Prepare as-built plans (record drawings)					6				6
6.1.12	Prepare Close-out Documents		4							4
TASK 6 SUB TOTAL HOURS		0	63	0	20	57	0	0	0	140
TASK 6 SUB TOTAL FEE		\$0	\$11,844	\$0	\$3,525	\$8,305	\$0	\$0	\$0	\$23,674
TOTAL Project Tasks										

Exhibit C: TO#15 FM 110 Waterline

TASK DESCRIPTION	Principal	Project Manager	QA/QC Manager	Project Engineer	Engineer in Training	GIS Technician II	Supervisory GIS II	Administrative Assistant	Total Labor Hrs & Costs
	\$223.25 HOURS	\$188.00 HOURS	\$199.75 HOURS	\$176.25 HOURS	\$145.70 HOURS	\$129.25 HOURS	\$141.00 HOURS	\$75.20 HOURS	
TOTAL HOURS	4	200	24	142	532	12	2	24	940
TOTAL FEE	\$893.00	\$37,600.00	\$4,794.00	\$25,027.50	\$77,512.40	\$1,551.00	\$282.00	\$1,804.80	\$149,464.70
Project Totals									
LJA ODC									\$1,448.50
PROJECT TOTAL									\$150,913.20

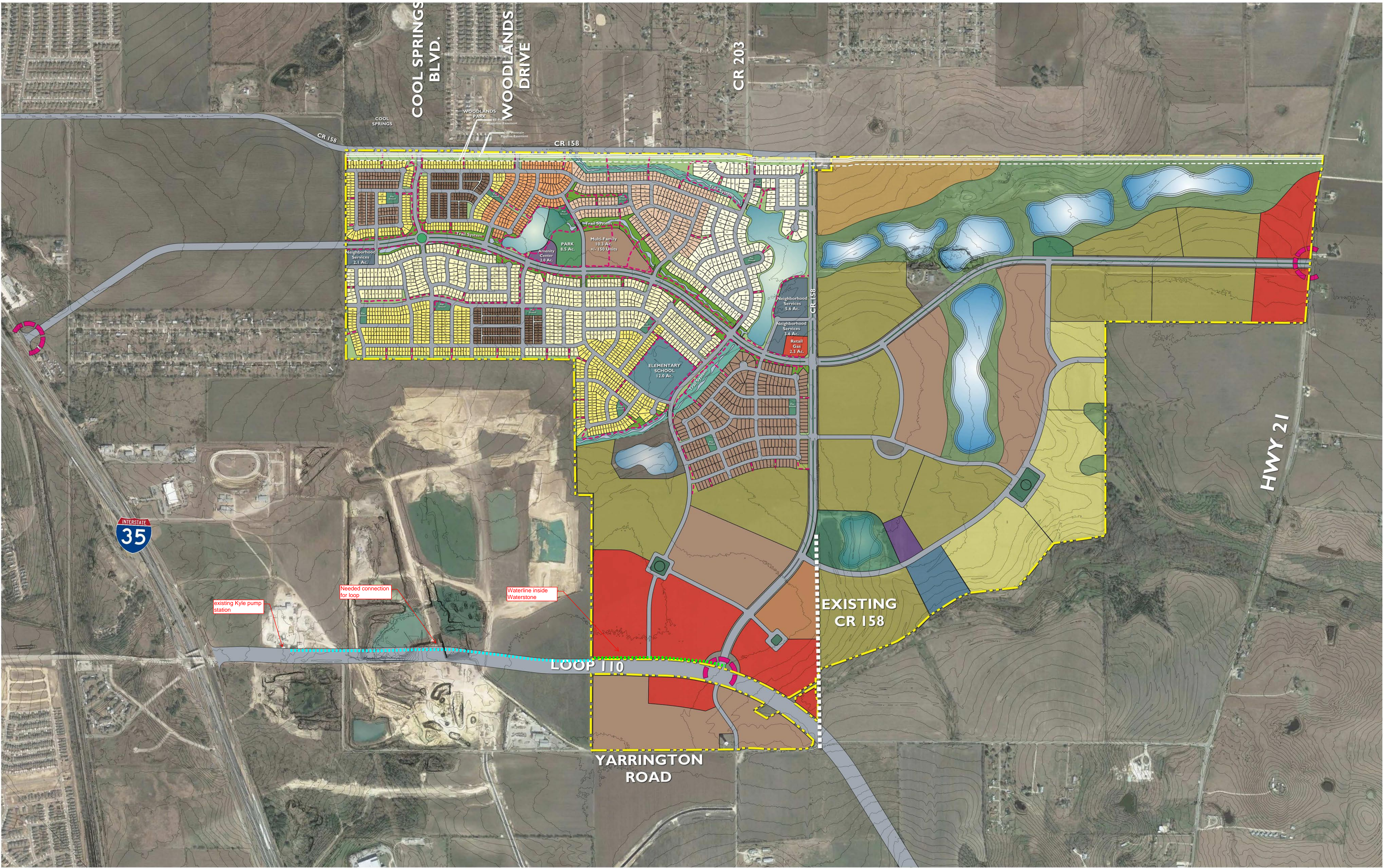
LJA'S OVERHEAD DIRECT COSTS			
DIRECT REIMBURSABLE EXPENSES	Rate	Quantity	Cost
Lodging/Hotel	\$85.00		\$0.00
Meals	\$25.00		\$0.00
Mileage	\$0.575	1,680	\$966.00
Rental Car	\$45.00		\$0.00
Standard Postage	\$0.42		\$0.00
Overnight Mail - letter size	\$16.00		\$0.00
Overnight Mail - oversized box	\$30.00		\$0.00
Courier Services (Deliveries)	\$30.00	6	\$180.00
CADD Plotting (per SQ/FT)	\$1.50		\$0.00
Photocopies B/W (8.5 X 11)	\$0.10	1,250	\$125.00
Photocopies B/W (11 X 17)	\$0.15	400	\$60.00
Photocopies Color (8 X 10)	\$0.75	10	\$7.50
Photocopies Color (11 X 17)	\$1.00		\$0.00
Blueline/Blackline Prints (11" X 17")	\$0.20		\$0.00
Blueline/Blackline Prints (22" X 34")	\$0.50		\$0.00
Plots (B/W on Bond)	\$0.25		\$0.00
Plots (Color on Bond)	\$2.00		\$0.00
Plots (Color on Photographic Paper)	\$5.50		\$0.00
Mylar (11" X 17")	\$3.00		\$0.00
Traffic Control for Subs	\$2,000.00		\$0.00
CD Archive	\$1.50		\$0.00
TCEQ Sewage Collection System Filing Fee	\$650.00		\$0.00
TDLR Registration and Inspection	\$1,450.00		\$0.00
City of Austin Permitting (DSD and QMD)	\$1,523.20		\$0.00
CIVCAST Advertisement	\$110.00	1	\$110.00
	TOTAL DIRECT COSTS		\$1,448.50

FM 110 Waterline PS&E Schedule



Project: FM110 PSE Schd
Date: Tue 5/31/22

Task		Summary		Inactive Milestone		Duration-only		Start-only		External Milestone		Manual Progress	
Split		Project Summary		Inactive Summary		Manual Summary Rollup		Finish-only		Deadline			
Milestone		Inactive Task		Manual Task		Manual Summary		External Tasks		Progress			



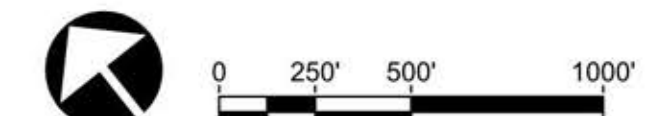
Copyright RVI

Aerial Photography: January 16, 2018



WATERSTONE DEVELOPMENT • OVERALL PLAN

- 📍 Hays County, Texas
- 📅 June 05, 2020
- 🔢 # 17001932
- 🏗️ Tack Development



Information furnished regarding this property is from sources deemed reliable. RVI has not made an independent investigation of these sources and no warranty is made as to their accuracy or completeness. This plan is conceptual, subject to change, and does not represent any regulatory approval.
 L:\2017\17001932 Waterstone\Submittal Plans\submitted 2020-06-06\submitted 2020-06-06.dwg



CITY OF KYLE, TEXAS

Approval of Change Order No. 8, Southside Wastewater Improvements Project

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Approval of Change Order No. 8 to SKYBLUE UTILITIES, INC., Kingsland, Texas, in an additional amount of \$546,675.37, increasing the total contract amount, not to exceed, \$6,756,882.60 for City requested changes and unforeseen conditions. ~ *Leon Barba, P.E., City Engineer*

Other Information: This change is for the installation of an additional 1,596 LF of 18" wastewater main, 5 manholes, 80 LF of LS driveway culvert, 2 service connections, excavation in unidentified hard rock, 1,500 tons of stabilized sand, a stilling well at lift station wet well. Deduction of 1,569 LF of Force Main and 126 LF of bore at Creek Sta. 108+68.25.

Legal Notes: N/A

Budget Information:

ATTACHMENTS:

Description

- ☐ 06.02.2022 Change Order #8



CONTRACT CHANGE ORDER

PROJECT NAME	City of Kyle Southside Wastewater Improvements		
LOCATION OF WORK	Kyle, TX		
CONTRACT NO.	N/A	CHANGE ORDER NO.	08
REQUESTING PARTY	City of Kyle	DATE OF REQUEST	5/31/2022
PROJECT MANAGER	Leon Barba	CONTRACTOR	Skyblue Utilities, Inc.
OWNER	City of Kyle	ENGINEER	RPS Group, Inc.




CONTRACTOR IS DIRECTED TO COMPLETE THE FOLLOWING CHANGES IN CONTRACT DOCUMENTS	
DESCRIPTION OF CHANGES NEEDED	Installation of an additional 1,596 LF of 18" wastewater main, 5 manholes, 80 LF of LS driveway culvert, 2 service connections, excavation in unidentified hard rock, 1,500 tons of stabilized sand, a stilling well at lift station wet well. Deduction for 1,569 LF of FM and 126 LF of bore at Creek STA 108+68.25.
REASON FOR CHANGE	Change order required for completion of the project.
SUPPORT AND JUSTIFICATION DOCUMENTS	
SPECIFICATIONS	

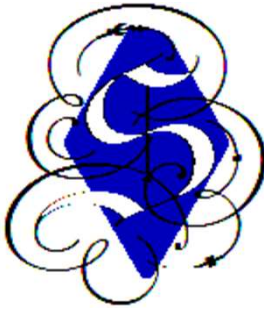
CHANGE IN CONTRACT PRICE		CHANGE IN CONTRACT TIMES	
ORIGINAL PRICE	\$ 5,783,309.60	ORIGINAL TIMES	460 Days
NET CHANGES OF PREVIOUS CHANGE ORDERS	\$ 426,897.63	NET CHANGES OF PREVIOUS CHANGE ORDERS IN DAYS	149 Days
NET INCREASE / DECREASE	\$ 546,675.37	NET INCREASE / DECREASE	90 Days
TOTAL CONTRACT PRICE WITH APPROVED CHANGES	\$ 6,756,882.60	TOTAL CONTRACT TIME WITH APPROVED CHANGES	699 Days



PROJECT NAME	City of Kyle Southside Wastewater Improvements		
LOCATION OF WORK	Kyle, TX		
CONTRACT NO.	N/A	CHANGE ORDER NO.	08

ITEMIZED BREAKDOWN OF WORK				
ITEM NAME	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
1	Service Connections @ 8 LF	2	\$2,530.00	\$5,060.00
2	Unidentified Hard Rock outcrop during excavation	33	\$2,875.00	\$94,875.00
3	160 LF of 8" wastewater main installation at CDJC	160	\$465.84	\$74,534.40
4	Creek Crossing - 138 LF of 18" wastewater main; 126 LF 30" Steel Casing	1	\$83,668.25	\$83,668.25
5	Delete Bore at Creek STA 108+68.25	(126)	\$381.22	\$(48,033.72)
6	Stabilized Sand - Murray Property	1,500	\$52.33	\$78,495.00
7	Traffic Control for Murray Property Construction in ROW	2	\$20,882.22	\$41,764.44
8	Lift station driveway Box Culvert	80	\$149.50	\$11,960.00
9	Stilling Well installation	1	\$5,842.00	\$5,842.00
10	18" Gravity Main (replace 14" FM)	1,596	\$152.77	\$243,820.92
11	Manholes for 18" gravity main	5	\$8,724.00	\$43,620.00
12	Delete 14" Force Main	(1,569)	\$56.68	\$(88,930.92)
			TOTAL	\$546,675.37

RECOMMENDED BY ENGINEER		APPROVED BY OWNER	
DATE	6/1/2022	DATE	06.02.2022
ACCEPTED BY CONTRACTOR		REVIEWED BY FUNDER	
DATE	6/1/2022	DATE	



SKYBLUE UTILITIES, INC.
P.O. BOX 1001
KINGSLAND, TX 78639

PROJECT: Southside Wastewater Improvements Project
OWNER: City of Kyle
ENGINEER: RPS

PROPOSED CHANGE ORDER: EIGHT
DATE: 6/1/2022

REVISED CONTRACT AMOUNT: \$6,210,207.13

NOTICE TO PROCEED: 12/3/2018

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT
PROPOSAL CHANGE ORDER 8					
1	Service Connections @ 8 LF	2	EA	\$ 2,530.00	\$ 5,060.00
2	Unidentified Hard Rock outcrop during excavation	33	DY	\$ 2,875.00	\$ 94,875.00
3	160 LF of 8" wastewater main installation at CDJC	160	LF	\$ 465.84	\$ 74,534.40
4	Creek Crossing - 138 LF of 18" wastewater main; 126 LF 30" Steel Casing	1	EA	\$ 83,668.25	\$ 83,668.25
5	Delete Bore at creek STA 108+68.25	-126	LF	\$ 381.22	\$ (48,033.72)
6	Stablized Sand - Murray Property	1,500	TON	\$ 52.33	\$ 78,495.00
7	Traffic Control for Murray Property Construction in ROW	2	EA	\$ 20,882.22	\$ 41,764.44
8	Lift station driveway Box Culvert	80	LF	\$ 149.50	\$ 11,960.00
9	Stilling Well installation	1	EA	\$ 5,842.00	\$ 5,842.00
10	18" Gravity Main (replace 14" FM)	1,596	LF	\$ 152.77	\$ 243,820.92
11	Manholes for 18" gravity main	5	EA	\$ 8,724.00	\$ 43,620.00
12	Delete 14" Force Main	-1,569	LF	\$ 56.68	\$ (88,930.92)
Total					\$ 546,675.37

ORIGINAL CONTRACT AMOUNT: \$5,783,309.60
PREVIOUS CHANGE ORDERS: \$426,897.63
PROPOSAL CHANGE ORDER 8: \$546,675.37
PROPOSAL CONTRACT AMOUNT: \$6,756,882.60

ADDITIONAL DAYS REQUESTED: 90



CITY OF KYLE, TEXAS

Contract for DR-4485 Professional Services - Halff

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Authorize the Mayor to execute a contract for professional services with Halff and Associates for the DR-4485 Hazard Mitigation grant. ~ *James R. Earp, Assistant City Manager*

Other Information: This contract is a follow up to the award given to Halff and Associates to serve as Engineer for the DR-4485 grant being submitted to cover emergency generators.

Legal Notes: The contract has been reviewed by legal.

Budget Information: Grant funds are not yet secured, so engineering expenses may not be reimbursed. Applying for this grant was approved by council, and Halff was awarded the engineering portion of the work.

ATTACHMENTS:

Description

- Contract
- Exhibit
- Halff Associates

CONTRACT FOR PROFESSIONAL SERVICES

BETWEEN

CITY OF KYLE

AND

HALFF ASSOCIATES,
INC.

FOR

DR-4485 COVID
HAZARD MITIGATION GRANT PROGRAM

THIS CONTRACT is entered into by and between CITY OF KYLE, 100 W Center St, Kyle, TX 78640, hereinafter called the "CITY", acting herein by Travis Mitchell, Mayor, hereunto duly authorized, and HALFF ASSOCIATES, INC., 1201 North Bowser Rd, Richardson, TX 75081, hereinafter called "FIRM", acting herein by Corporation, procured in conformance with Texas Government Code Chapter 2254, Subchapter A, "Professional Services" and 2 C.F.R. 200 regulations.

WITNESSETH THAT:

WHEREAS, CITY desires to implement an Engineer Services Contract in conformance with its Request for Qualifications of Engineering Services for DR-4485 COVID Hazard Mitigation Assistance; and

WHEREAS, CITY desires to engage FIRM to render certain professional services ("Services") in connection with the above solicitation in relation to Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program projects awarded to CITY.

NOW THEREFORE, the parties do mutually agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

- 1.1 Part I, Scope of Services, is hereby incorporated by reference into this Contract.
- 1.2 In performing its work under this Agreement, the FIRM shall perform its Services to the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by the FIRM (Standard of Care). The Services of the FIRM shall commence on the date first given for the execution of this Contract. In any event, all the Services required, and performance hereunder shall be completed no later than May 22, 2023 or end of the Period of Performance of the grant plus any extensions.
- 1.2 The FIRM's Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the project.
- 1.3 It is understood and agreed that the FIRM's Services under this agreement do not include participation in or support for any litigation. Should such services be required, a Supplemental Agreement may be negotiated between the CITY and the FIRM describing the services desired and providing a basis for compensation to the FIRM.
- 1.4 If any change proposed by the CITY to the requested professional services described in Part 1 causes an increase or decrease in the cost and/or time required for performance of this Agreement, the FIRM shall notify the CITY and the change will be reduced to writing mutually agreed to by both parties and will modify this Agreement accordingly.

ARTICLE 2 – COMPENSATION

- 2.1 The compensation to be paid to the FIRM for providing the requested Services shall be the maximum amount of compensation and reimbursement to be paid hereunder as noted in Article 3 of this Contract. Payment to the FIRM shall be based on satisfactory completion of identified milestones in Article 3 – Invoice Procedures and Payment of this Contract.
- 2.2 If the FIRM's Services under this Agreement are delayed, suspended, or interrupted for reasons beyond the FIRM'S control, the FIRM'S's compensation and schedule shall be equitably adjusted at the time of performance.
- 2.3 CITY hereby acknowledges that the FIRM cannot warrant that any cost estimates

provided by the FIRM will not vary from actual costs incurred by the CITY.

- 2.4 It is understood and agreed that the FIRM'S Services under this Agreement are limited to those described in Part 1 hereof and do not include participation in or control over the operation of any aspect of the project. Compensation under this Agreement does not include any amount for participating in or controlling any such operation.

ARTICLE 3 – INVOICE PROCEDURES AND PAYMENT

- 3.1 The FIRM shall submit invoices to the CITY for work accomplished at the end of each milestone period as noted below. The maximum amount of compensation and reimbursement shall conform with the schedule below. Payment to the FIRM shall be based on satisfactory completion of identified milestones as listed below.

Budget will be entered here for the Engineering portion of the Project

Data Collection/Site Assessment	\$10,000
Draft Generator Assessment Study	\$27,000
Final Generator Assessment Study	\$5,000
Benefit Cost Analysis	\$4,400

Standard Hourly Rates Schedule.

The following standard hourly rates are subject to review and adjustment. Hourly rates for services are for services as of the effective Date of this contract are:

Insert engineers schedule of hourly rates here

- 3.2 The CITY, as owner or authorized agent for the owner, hereby agrees that payment as provided herein will be made for said work within 30 days from the date the invoice, for same, is mailed to the CITY at the address set out herein or is otherwise delivered, and, in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees.

If CITY fails to make any payment due FIRM for services and expenses within 30 days after receipt of Engineer's invoice, then the compounded amount due FIRM will be increased at the rate of 1.5% per month from said thirtieth day and the FIRM may, after giving seven days written notice to CITY, suspend services until CITY has paid in full all amounts due for services, expenses, and other related charges. If CITY contests an invoice, FIRM may withhold only that portion so contested, and must pay the undisputed portion. This suspension shall remain in effect until all unpaid invoices are paid in full, and the FIRM shall not have any liability to the CITY for delays or damages caused by CITY's untimely or unpaid payments.

ARTICLE 4 – LIMIT OF LIABILITY

- 4.1 To the extent permitted by law, City and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Specific Project. Further, any damages incurred by City shall be limited to the insurance required under this Agreement.

ARTICLE 5 – INDEMNIFICATION

- 5.1 To the extent permitted by law, FIRM shall indemnify and hold harmless CITY, and CITY'S officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages to the extent arising out of or relating to this Agreement, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of FIRM or FIRM'S officers, directors, members, partners, agents, employees, or consultants.
- 5.2 To the extent permitted by applicable law, CITY shall indemnify and hold harmless FIRM and its officers, directors, members, partners, agents, employees, and consultants from reasonable claims, costs, losses, and damages to the extent arising out of or relating to this Agreement, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of CITY or CITY'S officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the CITY with respect to this Agreement.

ARTICLE 6 – INSURANCE

- 6.1 The FIRM shall, at all times, carry Workers' Compensation Insurance as required by statute, commercial general liability insurance including bodily injury and property damage; automobile liability coverage; and professional liability coverage. Insurance certificates will be provided to the CITY upon request.
- 6.2 The FIRM shall name the CITY as an additional insured on insurance coverages provided by contractors on the project.

ARTICLE 7 – ASSIGNABILITY

- 7.1 FIRM shall not assign any interest on this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of CITY thereto. Provided, however, that claims for money by the FIRM from CITY under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to CITY.

ARTICLE 8 – SUBSURFACE INVESTIGATIONS

- 8.1 In soils, foundation, groundwater, and other subsurface investigations, the actual characteristic may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total cost

and/or execution of projects. These conditions and cost/execution effects are not the responsibility of the FIRM.

ARTICLE 9 – CITY FURNISHED DATA

9.1 It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to the FIRM by the CITY and its agencies. No charge will be made to the FIRM for such information and the CITY and its agencies will cooperate with the FIRM in every way possible to facilitate the performance of the work described in the Contract.

ARTICLE 10 – ACCESS TO FACILITIES AND PROPERTY

10.1 CITY will make its facilities accessible to the FIRM as required for the FIRM's performance of its services and will provide labor and safety equipment as requested by the FIRM for such access. CITY will perform, at no cost to the FIRM, such tests of equipment, machinery, pipelines, and other components of CITY's facilities as may be required in connection with the FIRM's services.

ARTICLE 11 – NO THIRD-PARTY BENEFICIARIES

11.1 Nothing contained in this agreement shall create a contractual relationship with, or a cause of action in favor of, any third party. It is expressly understood and agreed that the enforcement of these items and conditions shall be reserved to the CITY and the FIRM. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the CITY and the FIRM that any such person or entity, other than the CITY and the FIRM, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

ARTICLE 12 – TERMINATION/CHANGES

12.1 Termination of Contract for Cause. If, through any cause, FIRM shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if FIRM shall violate any of the covenants, agreements, or stipulations of this Contract, CITY shall thereupon have the right to terminate this Contract by giving written notice to FIRM of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by FIRM under this Contract shall, at the option of CITY, become its property and FIRM shall be entitled to receive just and equitable compensation for Services completed hereunder.

Notwithstanding the above, FIRM shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of the Contract by FIRM, and CITY may withhold any payments to FIRM for the purpose of set-off until such time as the exact amount of damages due CITY from FIRM is determined.

12.2 Termination for Convenience of CITY. CITY may terminate this Contract at any time by giving at least ten (10) days' notice in writing to FIRM. If the Contract is terminated by CITY as provided herein, FIRM will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of FIRM, Section 12.1 above relative to termination shall apply.

- 12.3 Remedies.** In the event of any dispute, claim, question, or disagreement arising from or relating to determining the party responsible for any disallowed costs as a result of non-compliance with federal, state, or program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.
- 12.4 Changes.** CITY may, from time to time, request changes in the scope of the services, listed in Part 1, of FIRM to be performed hereunder. Such changes, including any increase or decrease in the amount of FIRM's compensation, which are mutually agreed upon by and between CITY and FIRM, shall be incorporated in written amendments to this Contract.

ARTICLE 13 – NOTICES

- 13.1** All notices, certifications, progress reports, or acknowledgements given under this Agreement shall be in writing and delivered personally or sent by registered mail, reputable overnight courier service, telegram, fax or other confirmed electronic means. Such notices shall be effective upon receipt by the addressee.

Notices to Halff Associates, Inc shall be sent to:

Halff Associates, Inc
13620 Briarwick Drive, Ste. 100
Austin, TX 78729
Attention: Paul Morales, PE

Notice to CITY shall be sent to:

CITY of Kyle
300 W Center St,
Kyle, TX 78640,
Attention: City Manager

ARTICLE 14 – GOVERNING LAW AND MISCELLANEOUS PROVISIONS

- 14.1** This Contract shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hays County, Texas.
- 14.2** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.
- 14.4** If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

ARTICLE 15 – SEVERABILITY

15.1 In any case one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall not be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 16 – PERSONNEL

- 16.1** FIRM represents that he/she has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with CITY.
- 16.2** All of the services required hereunder will be performed by FIRM or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- 16.3** None of the work or services covered by this Contract shall be subcontracted without the prior written approval of CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

ARTICLE 17 – REPORTS AND INFORMATION

- 17.1** FIRM, at such times, and in such forms as CITY may require, shall furnish CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
- 17.2** Progress reports are due to the CITY on the 1st day of the beginning of the next reporting quarter on the following schedule:

Quarter 1 – October 1 (for the period July through September)
Quarter 2 – January 1 (for the period October through December)
Quarter 3 – April 1 (for the period January through March)
Quarter 4 – July 1 (for the period April through June)

ARTICLE 18 – FEDERAL COMPLIANCE – REQUIRED CONTRACT PROVISIONS

- 18.1** Standard. Contracts for more than the simplified acquisition threshold, currently set at \$250,000. All payments or expenditures made by the CITY under this Agreement are subject to the CITY's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made. This Agreement is subject to termination for convenience upon not less than (10) days written notice to the FIRM if CITY has failed to allocate funds for the continued procurement of the service.
- 18.2** Clean Air Act. The FIRM agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act as amended, 42 U.S.C. § 7401 et seq. The FIRM further agrees to:
- (a) report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office; and
 - (b) the FIRM agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- 18.3** Federal Water Pollution Control Act. The FIRM agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The FIRM further agrees to:
- a. Report each violation to the CITY and understands and agrees that the CITY, will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office; and
 - b. The FIRM agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- 18.4** Debarment and Suspension (Executive Order 12549 and 12689). The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified. a. Suspension and Debarment
1. This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the FIRM is required to verify that none of the FIRM'S principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 2. The FIRM must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.
 3. This certification is a material representation of fact relied upon by the CITY. If it is later determined that the FIRM did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 4. The FIRM agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The FIRM further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 18.5** Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification: If applicable, the FIRM must sign and submit to the CITY the Certification Regarding Lobbying (Appendix A, 44 C.F.R. Part 18).

- 18.6** Solid Waste Disposal Act/Procurement of Recovered Material (2 CFR 200 Appendix II (K) and 2 CFR 200.322). A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of

the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014].

18.7 Conflicts of Interest (24 CFR 570.489(g) and Uniform Grant Management Standards (UGMS) of the Texas Comptroller of Public Accounts, 2 CFR 200.318(c)(1).

- a. Governing Body. No member of the governing body of the CITY and no other officer, employee, or agent of the CITY, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of FEMA award between FEMA and the CITY, shall have any personal financial interest, direct or indirect, in the FIRM or this Contract; and the FIRM shall take appropriate steps to assure compliance.
- b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the FEMA award between TDEM and the CITY, shall have any personal financial interest, direct or indirect, in the FIRM or this Contract; and the FIRM shall take appropriate steps to assure compliance.
- c. The FIRM and Employees. The FIRM warrants and represents that it has no conflict of interest associated with the FEMA award between FEMA and the CITY or this Contract. The FIRM further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the FEMA award between FEMA and the CITY or in any business, entity, organization or person that may benefit from the award. The FIRM further agrees that it will not employ an individual with a conflict of interest as described herein.

18.8 Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

18.9 Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

18.10 Energy Efficiency (2 CFR 200 Appendix II (H) and 42 U.S.C. 6201. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

18.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR 200.321).

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's

business enterprises.

- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

18.12 Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

ARTICLE 19 – FEDERAL COMPLIANCE – FEMA REQUIRED PROVISIONS

19.1 Access to Records – The following access to records requirements apply to this contract:

- (1) The FIRM agrees to provide Texas Department of Emergency Management (TDEM), the CITY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the FIRM which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The FIRM agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The FIRM agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the CITY and the FIRM acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

19.2 Findings Confidential. All of the reports, information, data, etc., prepared or assembled by FIRM under this contract are confidential and FIRM agrees that they shall not be made available to any individual or organization without the prior written approval of CITY.

19.3 Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of FIRM.

19.4 Retention of Records. All records related to this grant will be retained for a minimum of three (3) years from the date of closeout of the grant.

19.5 Department of Homeland Security (DHS) Standard Terms and Conditions. Firm shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

19.6 Compliance with Local Laws. FIRM shall comply with all applicable laws, ordinances and codes of the State and local governments, and FIRM shall save CITY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

19.7 Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The FIRM will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

19.8 No Obligation by Federal Government. The Federal Government is not a part to this contract and is not subject to any obligations or liabilities to the non-Federal entity, FIRM, or any other party pertaining to any matter resulting from the contract.

19.9 Program Fraud and False or Fraudulent Statements or Related Acts. The FIRM acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

ARTICLE 20 – TEXAS GOVERNMENT CODE PROVISIONS

20.1 Verification of No Boycott Israel. As required by Chapter 2270, Texas Government Code, the FIRM hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

20.2 Foreign Terrorist Organizations. Pursuant to Chapter 2252, Texas Government Code, the FIRM represents and certifies that, at the time of execution of this Agreement neither the FIRM, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

20.3 Anti-Boycott Verification – Energy Companies. FIRM hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

20.4 Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations. FIRM hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on

its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

ARTICLE 21 – ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement and the Attachments incorporated by reference contain the entire understanding between the Parties, superseding all prior or contemporaneous communications, agreements, and understandings between the Parties with respect to the subject matter hereof. This Agreement may not be modified in any manner except by written amendment executed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

HALFF ASSOCIATES, INC.

CITY OF KYLE, TEXAS

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

PART I SCOPE OF SERVICES

Note, this Scope of Services is for this Contract only and may not reflect all services described in the Request for Qualifications under which these services were procured. As stated in the RFQ, other Contracts may be entered into between CITY and FIRM that cover additional services, or other services may be added to this Contract at a later date if amended by both parties.

CITY intends that this Contract cover a scope of services that will produce reports, drawings, budgets, and other documents required in pre-award and post-award engineering services for Hazard Mitigation Grant Assistance (HMGA).

FIRM shall perform the following tasks:

Post-Award Services

1. Preliminary and Final Design Plans and Specifications
 - a. Prepare a preliminary report with an estimated budget.
 - b. Prepare detailed plans and technical specifications for the construction the improvements within the allowed budget.
 - c. Submit the drawings and specifications to the CITY for review and approval.
 - d. Upon completion of any revisions by the CITY, prepare final quantity takeoff for establishment of construction costs.
2. Bidding Phase Services
 - a. Coordinate with the CITY on specific pre-bid opening & bid opening dates and times to be specified in the advertisement for bids.
 - b. Complete the advertisement for bids and schedule required notices for publishing in the local area newspaper(s).
 - c. Prepare and provide construction documents including all contract document information for the bidding and construction of the project.
 - d. Provide the necessary copies of project manuals, plans, and specifications for bidding and construction of the project.
 - e. Attend pre-bid and bid opening conferences.
3. Construction Phase Services
 - a. Oversight of construction.
 - b. Inspection of work throughout construction and upon project completion.

Standard of Performance

1. All services of FIRM and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Contract.
2. FIRM represents that services provided under this Contract shall be performed within the limits prescribed by CITY in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in FIRM's work and services performed under this Contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from CITY and at FIRM's expense if the deficiency is due to FIRM's negligence. CITY shall notify FIRM in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies

- available to CITY under applicable state or federal law.
4. FIRM agrees to and shall hold harmless CITY, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of FIRM, its officers, agents, employees, subcontractors, and others acting for or under the direction of FIRM doing the work herein contracted for or by or in consequence of any negligence in the performance of this Contract, or by or on account of any omission in the performance of this Contract.



ATTACHMENT 1

City of Kyle HMGP DR-4485 COVID Engineering Services Backup Power Generator Assessment Study

SCOPE OF WORK

The attached proposal includes professional engineering services for the backup power generator assessment study to six City of Kyle sites.

SCOPE OF THE PROJECT

Engineer contracts with Owner to develop an engineer's report with backup power generation recommendations and engineer's opinion of probable construction cost for six City of Kyle sites. Engineer agrees to provide the services described below.

SCOPE OF BASIC SERVICES

Halff will provide the following tasks to assist with the development of a Hazard Mitigation Application. Specifically, the following professional services will be provided:

TASK 1: PROJECT MANAGEMENT

This task consists of planning the project, executing the plan and making necessary adjustments or changes when needed, as well as closing out the project when work has been successfully completed. The project manager shall be the single point of contact for all correspondences and is responsible for monthly progress reports and invoices.

TASK 2: GENERATOR ASSESSMENT STUDY

2.1 Electrical Backup System Analysis:

Halff will be developing 8 generator sizing simulation models for recommended generator capacity specifications. The generator sizing simulation model is to be conducted as per Owner provided Electrical One Line Diagram record documents and site visits. Site visits not to exceed of one per site. Halff will study recommended generator starting transients such as voltage dip thresholds, frequency response, and step loading.

2.2 Electrical Engineering Report:

Report is to provide site electrical backup power system upgrade recommendations. It is to include an electrical load list, engineer's opinion of probable construction cost and generator sizing recommendation analysis report. Report shall also include recommended backup power electrical equipment such as the associated automatic transfer switch, required generator structural foundation, and electrical feeder/raceway requirements.



2.3 Opinions of Probable Construction Cost. Engineer’s Opinions (if any) of Probable Construction Cost (OPCC) are to be made on the basis of Engineer’s experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors’ methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from OPCC prepared by Engineer.

TASK 3: GENERATOR BENEFIT COST ANALYSIS

A benefit cost analysis will be conducted by Grantworks, Inc., subconsultant, to assist with the development of the backup generator Hazard Mitigation Application. Grantworks, Inc. proposal to conduct this analysis is attached.

EXCEPTIONS AND CONDITIONS

- A. This scope assumes a pre-award effort to assist with developing of the Hazard Mitigation Application.
- B. Services associated with Geotechnical, environmental, asbestos and mold abatement are specifically excluded.
- C. The terms of services under this proposal shall be governed by the general agreement between Halff Associates and the City of Kyle.
- D. The development of construction documents is specifically excluded from the scope of work.

FEE SUMMARY

The fee estimate for the scope of work outlined above will be based on a **lump sum** and is shown below. Our services will be invoiced monthly based on the percentage of work completed. Costs incurred will be carefully monitored during the progress of this project and the fees will not be exceeded without prior approval from the City.

Task 1: Project Management.....	\$ 3,500
Task 2: Generator Assessment Study.....	\$ 38,500
Task 3: Benefit Cost Analysis	\$ 4,400

TOTAL ENGINEERING SERVICES **\$ 46,400**



SUBCONSULTANT PROPOPOSAL

Letter of Agreement between GrantWorks, Inc. and Halff Associates, Inc.
for Benefit Cost Analysis (BCA) Development work.

Primary Contact

Halff Associates, Inc.
1201 North Bowser Rd.
Richardson, TX 75081-2275

RE: Letter of Agreement Between GrantWorks, Inc. and Halff Associates, Inc.

Hazard Mitigation Application Development for City of Kyle.

Halff Associates, Inc. has been awarded a contract with the City of Kyle to assist with the development of a Hazard Mitigation Application. Per HMA Guidance FEMA has specified minimum project criteria via regulation (44 CFR Section 206.434), sub-applicants must demonstrate mitigation projects are cost effective. Projects must be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The recipient must demonstrate this by documenting that the project;

1. Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved,
2. Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur,
3. Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options,
4. Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address,
5. Considers long-term changes to the areas and entities it protects and has manageable future maintenance and modification requirements.

We would like to enter into agreement with your firm as a subcontractor to assist in the completion of the BCA:

Halff Associates, Inc. Obligations:

1. Provide information, cooperation, and assistance to GrantWorks, Inc. necessary to its fulfillment of the BCA development.
2. Furnish GrantWorks, Inc. with copies of Project-related data and information upon request.
3. Examine documents and information submitted by the GrantWorks, Inc. and promptly render responses within 5 business days to the GrantWorks, Inc.
4. Pay GrantWorks, Inc. invoices within 60 days of receipt.

The compensation for the above services to GrantWorks, Inc. shall be five hundred dollars (\$500) per location, eight (8) in total, for a sum of four thousand dollars (\$4,000).

Facility

- 1 Ground Tank (Lehman)
- 2 Lift Station (Kensington)
- 3 Well 2
- 4 Well 3
- 5 Well 4
- 6 Ground Tank (Veterans)
- 7 Ground Tank (Yarrington)
- 8 Lift Station (Trails)

*GrantWorks, Inc.
2201 Northland Drive
Austin, TX 78756*

Half Associates, Inc.
1201 North Bowser Rd.
Richardson, TX 75081-2275

BY: 

Bruce J. Spitzengel
President

BY: _____
Typed Name
Title

Franchise Tax Details



Franchise Search Results

Public Information Report



As of : 06/03/2022 07:26:08

This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

[Obtain a certification](#) for filings with the Secretary of State.

HALFF ASSOCIATES, INC.

Texas Taxpayer Number	17513086995
Mailing Address	100 NE LOOP 410 STE 200 SAN ANTONIO, TX 78216-4741
Right to Transact Business in Texas	ACTIVE
State of Formation	TX
Effective SOS Registration Date	08/27/1969
Texas SOS File Number	0026570900
Registered Agent Name	JAMES MARK EDWARDS
Registered Office Street Address	1201 NORTH BOWSER ROAD RICHARDSON, TX 75081



CITY OF KYLE, TEXAS

CTC Residential Development

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Consider and possible action to waive the requirement of the 12-month waiting period in Sec. 53-1205(i)(2) of the City's Code of Ordinances with regard to the application for zoning or property located at 5839 Kyle Parkway, in Hays County, Texas. CTC Residential LLC (Z-21-0091). ~ *Daniela Parsley, Council Member*

City Council voted 1-6 to approve on 1/18/2022.

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Traffic Calming Measures

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Discussion regarding possible text amendments and/or alternative traffic calming measures to be considered in single residential zoned areas (including but not limited to R-1-1, R-1-2, R-1-3, R-1-A, M-1, M-2, M-3). ~ *Dex Ellison, Council Member*

Other Information: <https://nacto.org/publication/urban-street-design-guide/street-design-elements/vertical-speed-control-elements/speed-cushion/>

<https://www.transportation.gov/mission/health/Traffic-Calming-to-Slow-Vehicle-Speeds>

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Comprehensive Plan Discussion

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Discussion and possible action regarding the City of Kyle's process of creating the Comprehensive Plan. ~ *Yvonne Flores-Cale, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Homestead Exemption

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Discussion and possible action regarding a change in the City of Kyle's homestead exemption. ~ *Yvonne Flores-Cale, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Universal Natural Gas Franchise Agreement

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: *(First Reading)* An ordinance granting to Universal Natural Gas, LLC (d/b/a Universal Natural Gas, Inc.) and its successors and assigns, for a period of ten (10) years from the effective date of this ordinance, a non-exclusive franchise and right to enter the public ways to install, operate and maintain a distribution system within, along, across, over and under the public ways of the city of Kyle, Texas for the transportation, distribution and/or sale of gas to customers and the public in the city; defining the words and phrases therein; providing for assignment, sale or lease of the franchise; providing for use and repair of the public ways; providing for regulation of service; establishing depth of pipelines; establishing rights and duties in the movement and alteration of pipelines; providing for indemnification of the city of Kyle; providing for inspection of grantee's records; requiring grantee to pay a franchise fee; providing for conditions of the franchise; providing for construction of this ordinance upon the invalidity of any part thereof; providing for acceptance of this franchise by grantee and both an effective and an operative date thereof; repealing all other ordinances directly in conflict herewith; providing for severability; providing for publication and prescribing an effective date. ~
Jerry Hendrix, Assistant City Manager

- Public Hearing

Other Information: Public Hearing was noticed in the Hays Free Press in their May 25th edition.

Agreement has been reviewed and approved by staff and city legal.

Legal Notes:

Budget Information: Grantee shall collect the Franchise Fee from its Customers and shall pay City a Franchise Fee the sum of which is equal to Five Percent (5%) of the Gross Receipts received by Grantee.

ATTACHMENTS:

Description

- Universal Natural Gas Franchise Agreement
- City of Kyle Service Area Map

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO UNIVERSAL NATURAL GAS, LLC (d/b/a UNIVERSAL NATURAL GAS, INC.) AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TEN (10) YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC WAYS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC WAYS OF THE CITY OF KYLE, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CUSTOMERS AND THE PUBLIC IN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING FOR USE AND REPAIR OF THE PUBLIC WAYS; PROVIDING FOR REGULATION OF SERVICE; ESTABLISHING DEPTH OF PIPELINES; ESTABLISHING RIGHTS AND DUTIES IN THE MOVEMENT AND ALTERATION OF PIPELINES; PROVIDING FOR INDEMNIFICATION OF THE CITY OF KYLE; PROVIDING FOR INSPECTION OF GRANTEE'S RECORDS; REQUIRING GRANTEE TO PAY A FRANCHISE FEE; PROVIDING FOR CONDITIONS OF THE FRANCHISE; PROVIDING FOR CONSTRUCTION OF THIS ORDINANCE UPON THE INVALIDITY OF ANY PART THEREOF; PROVIDING FOR ACCEPTANCE OF THIS FRANCHISE BY GRANTEE AND BOTH AN EFFECTIVE AND AN OPERATIVE DATE THEREOF; REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PRESCRIBING AN EFFECTIVE DATE.

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

SECTION 1. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the following meanings:

- A. "Affiliate" means any person or entity that directly or indirectly owns or controls, that is directly or indirectly owned or controlled by, or that is under common ownership or control with Grantee.
- B. "City" means the City of Kyle, in Hays County, Texas, a municipal corporation, hereinafter also referred to as "City".
- C. "City Secretary" means the City Secretary of the City or other such officer of the City designated to serve as the filing officer for official documents and records of the City.
- D. "City Council" means the City Council of the City as the governing body of the City.
- E. "City Engineer" means the City Engineer of the City, the Public Works Director of the City, or such other officer of the City designated to approve engineering plans and designs for construction within Public Ways.
- F. "City Manager" means the City Manager of the City, the City Administrator of the City, or such other chief administrative officer of the City designated to hear appeals from the decisions of other City officers.

- G. “Customer” means any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, or public or private entity located within the municipal corporate limits of the City and serviced by the Grantee through any use of the Public Ways.
- H. “Franchise Fee” or “Franchise Fees” shall mean the sum of fees to be paid to the City by Grantee under Section 11 of this Ordinance.
- I. “Gas Sales” means the sale of natural gas to Grantee’s Customers located within the corporate limits of the City by use of the System.
- J. “Gas Transportation” means the transportation of Transport Gas for redelivery to Customers with re-delivery points located within the corporate limits of the City.
- K. “Grantee” shall mean UNIVERSAL NATRUAL GAS, LLC, a Texas limited liability company, and its successors and assigns.
- L. “Gross Receipts from Gas Sales” shall constitute and include Grantee’s total receipts from Gas Sales to Grantee’s Customers within the corporate limits of the City. Grantee’s Gross Receipts from Gas Sales subject to the Franchise Fee shall specifically exclude, without limitation:
- [1] receipts from gas sales or services to Customers located at delivery points outside the corporate limits of the City;
 - [2] revenues derived from monthly service fees and miscellaneous service charges, such as charges to connect, disconnect, or reconnect customers within the corporate limits of the City, charges to handle returned checks from consumers within the corporate limits of the City, and such other service charges as may, from time to time, be authorized in the rates of the Grantee;
 - [3] sales of gas billed but not collected or received by the Grantee;
 - [4] the revenue of any Affiliate of Grantee, to the extent that such revenue is also included in Gross Receipts from Gas Sales of the Grantee;
 - [5] sales taxes, gross receipts taxes, other applicable taxes under state or local law, and Franchise Fees collected by Grantee;
 - [6] any interest income earned by the Grantee; and
 - [7] all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City’s Public Ways.
- M. “Gross Receipts from Gas Transportation” shall constitute and include Grantee’s total receipts from its transportation of Transport Gas, consisting of receipts from cost of service.

Grantee's Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude, without limitation:

- [1] receipts from gas transportation services to Customers located at delivery points outside the corporate limits of the City;
- [2] fees for gas transportation services billed but not collected or received by the Grantee;
- [3] the revenue of any Person including, without limitation, an Affiliate of Grantee, to the extent that such revenue is also included in Gross Sales Revenues of the Grantee;
- [4] sales taxes, gross receipts taxes, other applicable taxes under state or local law, and Franchise Fees collected by Grantee;
- [5] any interest income earned by the Grantee; and
- [6] all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Ways.

N. "Permit" means the authorization to Grantee:

- [1] for the opening of the streets, avenues, alleys, other public places or Public Ways shown on maps or plans submitted by Grantee to the City Engineer, showing the streets, avenues, alleys, and other public places and the locations thereon wherein Grantee proposes to construct new mains and pipes,
- [2] for the new construction or laying of the new mains and pipes by Grantee as shown on plans, and
- [3] to perform all work on existing Grantee facilities or the System within the Public Ways or other City rights-of-way, and
- [4] approved by the City.

O. "Person" means an individual, corporation, general or limited partnership, limited liability company, trust, association, or other business or legal entity.

P. "Public Ways" means the present and future streets, avenues, boulevards, parkways, lanes, alleys, bridges, sidewalks, easements, highways, and public places within the municipal corporate limits of the City.

Q. "System" means Grantee's system of mains, pipelines, conduits, valves, feeders, regulator stations, laterals, service lines, measuring devices, and all other necessary plants, attachments, land, structures, facilities and appurtenances for the purpose of selling, storing, supplying, conveying, transmitting, distributing, and/or transporting natural gas

and any gas, including the equivalent substitutes, for all other lawful purposes in, through, upon, under, and along the present and future streets, avenues, alleys, bridges, sidewalks, easements, highways, and any other public place within the municipal corporate limits of the City.

- R. “Transport Gas” means gas owned or controlled by a user or its designee (i.e., gas that is purchased or otherwise acquired by a user from someone other than Grantee) and delivered by such user or its designee to Grantee at a point on Grantee’s System, such point of delivery to be defined by Grantee, and carried, delivered or transported through Grantee’s System at a point of redelivery within the municipal corporate limits of the City by Grantee to the user for a fee.

SECTION 2. GRANT OF FRANCHISE

- A. Subject to the terms and conditions of this Franchise Ordinance, the Grantor hereby grants to Grantee, its successors and assigns and Affiliates, for the term of ten (10) years from the effective date of this Ordinance, the right to enter upon the Public Ways to install, operate and maintain a System along, across, over and under the Public Ways for the privilege of transporting, distributing and/or selling gas to Customers and the public within the municipal corporate limits of the City, and including any territory that the City may hereafter annex, acquire, purchase; and to distribute, sell, store, supply, transport, carry and/or convey natural gas and any gas through Grantee’s System in the City to other cities, towns, communities and areas outside the City and to inhabitants thereof, for the full term of this Franchise Ordinance.
- B. The Ordinance shall have the effect of and shall be a contract between City and Grantee and shall be the measure of the rights and liabilities of City as well as Grantee, subject to City Ordinances and applicable state and federal laws.
- C. The Franchise granted by this Ordinance shall in no way affect or impair the present or future rights, obligations, or remedies of the City or Grantee under the Texas Gas Utility Regulatory Act, as amended. This is a non-exclusive franchise.

SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE

Grantee may not sell, transfer or assign the franchise granted hereby without authorization of City Council expressed by ordinance.

SECTION 4. USE AND REPAIR OF THE PUBLIC WAYS

- A. Grantee’s System shall be erected, placed, extended, repaired, laid or otherwise installed, operated and maintained in such a manner as will, at the sole but reasonable discretion of the City, not interfere with or damage other existing public uses of the Public Ways, including but not limited to existing sewer, water, pipes, electricity, telephone wires, public or private drains, and any other facilities within the City and also including those utilities granted by franchise or permit by the City. This Ordinance shall constitute the Permit to

perform all work on existing Grantee facilities or the System within the Public Ways or rights of way.

- B. Except in the case of an emergency, within the City's full purpose jurisdiction, when Grantee desires to lay any new mains or replace any existing mains hereunder, and before commencing its new construction work or replacement of mains, it shall submit to the City Engineer, or other designee identified by the City, a map or plan showing the streets, avenues, alleys, and other public places and the locations thereon wherein it proposes to construct such new or replacement mains and pipes. The City Engineer, or other designee, shall by written notice, either issue or deny the Permit to Grantee. Approval by the City Engineer, or other designee, shall constitute the Permit to Grantee for the opening of the streets, avenues, alleys and other public places shown on the map or plan, and for the new construction or laying of the new mains and pipes by Grantee or the replacement of existing mains and pipes as shown on the plan.

In the event that the Permit is denied, the City Engineer, or other designee, shall advise Grantee of the reasons for the denial and all necessary steps to secure approval of the Permit. Grantee shall have the right to immediately appeal the non-issuance of the Permit to the City Manager, and if not approved within ten (10) calendar days by the City Manager, Grantee may appeal to the City Council and be heard at a public meeting held in compliance with applicable law. If the City Council fails to act on the appeal within ten (10) calendar days, the appeal will be deemed to be denied unless agreed otherwise in writing by Grantee and the City.

This Subsection 4 (B) shall also apply to all other facilities and equipment of Grantee to be constructed or installed on public property within the City's full purpose jurisdiction.

- C. It shall be necessary for Grantee to secure a Permit, as defined herein, for the laying of service pipes from the mainline pipes of Grantee to its Customers.
- D. Grantee is required to secure all permits and pipelines permits as promulgated by the City's Ordinances.
- E. After any excavation or disturbance, Grantee shall, at its own expense, with due diligence and dispatch, place the Public Way, and all public or private property so disturbed, in a condition City equal to or better than that before being damaged, destroyed, or disturbed by the Grantee.

SECTION 5. REGULATION OF SERVICE

The System of Grantee shall at all times be installed, operated and maintained in accordance with accepted good practice, and in accordance with all State, Federal and City ordinances.

The City reserves the right to:

- A. Determine, fix, and regulate the charges, rates, or compensation to be charged by the Grantee

- B. Repeal the Franchise by ordinance any time upon the failure or refusal of the Grantee to comply with the terms of this Franchise Agreement, the City Charter, or any applicable city ordinance
- C. Establish standards and quality of products or service.
- D. Require such expansion, extension, and improvement of plants and facilities as are necessary to provide adequate service to all the City and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.
- E. Prescribe the method of accounting and reporting to the City so that the Grantee will accurately reflect the expenses, profits, and property values used in rendering its services to the City. It shall be deemed sufficient compliance with this requirement if the Grantee keeps its accounts in accordance with the uniform system established by an applicable federal or state agency for such service.
- F. Examine and audit at any time the accounts and other records of Grantee and to require annual and other reports prescribed in the City ordinances.
- G. Require such compensation, regulatory, rental, and franchise fees as may not be prohibited by law.
- H. Impose such regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare and accommodation of the public.
- I. Assess a penalty against the Grantee for failure to comply with this Agreement, the ordinances of the City, or the law of the State. Grantee will be informed of the Grantee's violations in writing, stating the provisions the Grantee failed to comply with, a time for a hearing, and a deadline for the correction of the non-compliance. The City may assess a reasonable penalty based on the facts issues and circumstances determined at the hearing. Failure to correct the non-compliance within a reasonable time may result in the City terminating the Agreement.

SECTION 6. DEPTH OF PIPELINES

After the effective date of this franchise, Grantee's main or lateral lines installed or replaced in Public Ways shall be installed or replaced at depths which comply with all applicable City Ordinances applicable at the time of installation as well as state and federal rules, regulations and company policies establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be determined as outlined in City's Ordinances.

SECTION 7. DUTY TO MOVE OR ALTER LINES

- A. City reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the City, along, across, over or under the Public Ways. In permitting such work to be done, the City shall be liable to the Grantee for any damage to Grantee's

pipelines and facilities caused by City or its agents' or contractors' negligence, to the extent allowed by law.

- B. When Grantee is required by City to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by the City, Grantee shall remove or relocate such mains, laterals, and other facilities at Grantee's sole cost and expense. If Grantee is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Grantee as a result of such removal or relocation, and such reimbursement is required to be handled through City, then Grantee's costs and expenses shall be included in any application by City for reimbursement, if Grantee provides the City its appropriate cost and expense documentation prior to the filing of the application. City shall provide reasonable notice to Grantee of the deadline for Grantee to submit documentation of the costs and expenses of such relocation to City.
- C. When Grantee is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by the City without reimbursement, Grantee shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 of the Texas Utilities Code or any other applicable law or regulations.
- D. Grantee is required, at its own expense, to restore all public and private property to a condition equal to or better than that before being damaged or destroyed by the Grantee as a result of the performance of this Agreement.

SECTION 8. EXTENSIONS

Grantee is required to extend and provide service to all parts and portions of the City that are subject to new greenfield development. It is an defense to violation of this provision if Grantee has offered its services to applicable developers, at prevailing and competitive rates, and developer has declined.

SECTION 9. INDEMNIFICATION

Grantee and its successors and assigns shall indemnify, save, defend, protect and hold City and its agents, successors, assigns, legal representatives, employees, contractors, elected and non-elected officials and officers harmless from and against any and all claims, damages, losses, liabilities, demands, costs, causes of action, settlements, awards, penalties, fees assessments, fines, charges, demands, liens, punitive damages, attorney fees and judgments of every kind or character, known or unknown, fixed or contingent (collectively "Claims") arising out of the acts or omissions of the Grantee, its servants, agents, employees, contractors, subcontractors, licensees, or any other person or entity in connection with the Grantee and the operation of this franchise, including without limitation any claims arising from tort, personal injury, death, property damage or nuisance, provided however, that in the event of such claim or claims being prosecuted against the City, Grantee shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the City shall give prompt written notice to Grantee of the presentation or prosecution of such claims. The indemnity provided for in this paragraph shall not apply to any Claims or liability resulting from the acts, omissions, or negligence of the City, its agents, legal

representatives, employees, contractors, elected and non-elected officials and officers or any other person or entity in connection with the City.

SECTION 10. GRANTEE'S RATES, RULES AND REGULATIONS

The Grantee has the right to make and enforce rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the conduct of its business and deemed desirable or constructive to the health, safety, welfare and accommodation of the public in accordance with the City's ordinances and subject to all applicable federal and state laws and regulatory agencies with appropriate jurisdiction.

SECTION 11. INSPECTION OF RECORDS

Grantee permits City or its agents to inspect, examine and audit, , the books, papers and any other records kept by Grantee pertaining to the rendering of service to the public, such as plats, maps and atlases identifying Grantee's pipelines in the City, and the books and records necessary, as determined by the City, to verify the franchise fee payment provided for in Section 12 hereof. Notwithstanding the obligation herein, Grantee shall have the right to the reasonable protection of proprietary information and to provide redacted documents or require City or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Grantee but which do not frustrate the purposes of this Section.

SECTION 12. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

A. As full consideration for the rights and privileges conferred by this Ordinance, Grantee agrees to pay City as follows:

[1] Grantee shall collect the Franchise Fee from its Customers and shall pay City a Franchise Fee the sum of which is equal to Five Percent (5%) of the Gross Receipts received by Grantee, per billing period, from the transportation and sale of natural gas for consumption within the municipal corporate limits of the City. The Franchise Fee shall include only Gross Receipts from Gas Sales to Customers located in the City and Gross Receipts from Gas Transportation to Transport Gas Customers with re-delivery points located in the City. All sums due from Grantee shall be in lieu of all other franchise fees, licenses, or occupational taxes, which may be levied or attempted to be levied on Grantee by the City.

[2] Grantee shall pay such Franchise Fee collected from its Customers to the City under the terms of this Ordinance, based upon meters read on or after the effective date of this Ordinance. During the term of this Ordinance, Grantee shall collect from its Customers and pay the City on January 31st (for the last six months of the prior calendar year) and July 31st (for the first six months of the calendar year). Grantee shall include with the Franchise Fee payment a statement showing its collections of Gross Receipts from Gas Sales and Gross Receipts from Gas Transportation in the City, including the calculation of the Franchise Fee for the subject time period. Collection and payment of Franchise Fee shall be final as to both parties unless

questioned by written notice provided by one party to the other within one year after payment thereof has been made.

- [3] Any payments that are received after 5:00 P.M. of the due date constitute late payments. Late payments shall accrue interest from such due date until payment is received by the City. Interest shall be calculated in accordance with the interest rate for customer deposits established in accordance with Texas Utilities Code Section 183.003 for the time period involved.
- [4] It is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the Public Ways or other public rights-of-way of the City, including expressly the charge permitted to be levied by the Texas Tax Code Sections 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. The Franchise Fee shall be in lieu of and accepted as payment of all of Grantee's obligations to pay all other franchise fees, licenses, easement or occupation taxes, levies, exactions, rentals, street-cut fees, inspection fees, right of way inspection fees, permit fees, franchise fees, easement taxes, or charges of any kind whatsoever which may be levied or attempted to be levied in general by the City for the use of City's Public Ways and other rights-of-way, with the sole exception of sales taxes, ad valorem taxes and special assessments which are made without reference to or dependence upon Grantee's franchise or occupancy of the streets and public right of way, e.g., special assessment paving liens.

The rights, privileges, and franchises granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time as it may see fit, like privileges, rights, and franchises to any other person or corporation for the purpose of furnishing gas in the City.

Unless expressly set forth herein, or otherwise provided by law, by accepting this Ordinance, Grantee does not agree to be responsible for the payment of franchise fees other than as expressly set forth herein, or for the payment of franchise fees owed to the City by any other entity, corporation or firm.

SECTION 13. CONDITIONS OF FRANCHISE

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, regulations, and ordinances of City now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

To the extent that all or any other existing ordinance shall conflict with any provision of this Ordinance, this Ordinance shall prevail upon passage, adopting and acceptance of this Ordinance.

In addition to all other rights, powers and remedies retained by the Grantee and City under this Franchise Agreement or otherwise, in the event a dispute arises regarding the obligations under this Franchise Agreement, the City shall give written notice specifying the nature of the dispute to the Grantee. The Grantee shall have 45 days from receipt of such notice to remedy the dispute. If the cure cannot reasonably be completed within such 45-day period, commercially reasonable best

efforts to complete such cure shall be used. In the event a remedy does not occur, the City shall give 20 days written notice of intent to pursue additional judicial and/or legal remedies to the Grantee, including but not limited to injunctions to prevent breaches of this Franchise Agreement and to enforce specifically the terms and provisions of this Franchise Agreement. Actions taken by Grantee in order to comply with then-current laws and regulations shall not be considered grounds for a dispute hereunder. Nothing herein shall be construed to limit Grantee's or City's right to seek judicial determination of a breach of this Franchise Agreement, nor the City's reserved right expressed in Section 5(I) herein.

SECTION 14. INVALIDITY OF ORDINANCE

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining portions of this Ordinance, which shall remain valid and effective as if such invalid provision did not exist, although the parties shall be entitled to a judicial interpretation or construction of this Ordinance to address the validation of such provision by minimal amendment thereof. Further, should any governmental body now or hereafter having jurisdiction determine that Grantee shall not be permitted to collect in whole or in part the compensation due City by others for Transport Gas as set forth in Paragraph (2) of Subsection A of Section 13 of this Ordinance, Grantee shall thereafter have no obligation to make such payment to City and Paragraph (2) of Subsection A of Section 11 shall be of no force and effect with regard to the sale of Transport Gas.

SECTION 15. EFFECTIVE DATE AND TERM

This ordinance shall take effect and be in full force immediately upon the date of its final passage.

SECTION 16. NOTICE OF ORDINANCE

The Franchise Ordinance may not be passed except on two readings held after a public hearing for which ten (10) days notice is given.

SECTION 17. ACCEPTANCE BY GRANTEE

Grantee shall have thirty days from the execution of this Ordinance within which to file in the office of the City Secretary its consent to and written acceptance of the provisions and conditions of this Franchise Ordinance.

SECTION 18. REPEALER

Each and every other ordinance or part thereof which is directly in conflict with any provision herein as to the grant of a franchise for natural gas services and the regulation thereof is hereby repealed.

SECTION 19. SEVERABILITY

That it is hereby declared that the sections, articles, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, articles, or sections of this ordinance since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

SECTION 20. NO WAIVER OF POWER.

In granting this Franchise, the City does not waive its regulatory powers, nor any rights under the Constitution and laws, present and future, of the State of Texas, nor any of its rights under future ordinances which are not in conflict herewith. The enumeration of special duties required of the Grantee shall not be construed as a limitation of the powers and duties conferred upon the City by the Constitution or laws of the State of Texas, or any present or future ordinances; and the Grantee shall perform all duties required by of it, by any valid ordinances not in conflict herewith adopted by the City, and by the laws of the State of Texas.

SECTION 21. CITY RESERVES POWER

The City retains exclusive control over its streets, including (without enumerating all of its powers and without limiting its other powers) the power to lay out, establish, open, alter, widen, lower, elevate, extend, grade, abandon, discontinue, abolish, close, sell, pave, supervise, maintain and improve all of its streets and to construct, maintain and repair sewer pipes, water mains, drainage systems and other public works within its streets. In the exercise of such powers, the City may, whenever it deems it to be necessary, require the Grantee to alter, lower, elevate, relocate, or remove its pipelines in any such street, as and when required by the City. Such alterations to the Grantee's systems shall be made at Grantee's expense, subject to the Grantee's right to recover such costs from the ratepayers within the City pursuant to Section 104.112 of the Texas Utilities Code.

SECTION 22. VENUE

This franchise agreement is performable in Hays County, Texas and in the event of a dispute between such parties hereto, by agreement of such parties, venue shall be established in Hays County, Texas.

SECTION 23. ANNEXATIONS

City shall promptly notify Grantee in writing of areas newly annexed into or de-annexed from the corporate limits of City, and Grantee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice. Upon receipt of notice of annexation from the City, Grantee shall have one hundred eighty (180) days to begin collecting and paying the Franchise Fee for any revenues received from Grantee's customers residing in the newly annexed territories.

SECTION 24. RENEWAL OF FRANCHISE; NOTICE

Upon expiration of the initial ten (10) year term of this franchise, unless one of the parties provides written notice of termination to the other party hereto, this franchise shall be automatically renewed up to three (3) successive terms, with each renewal term lasting for five (5) years. Either party may provide written notice of termination to the other party prior to the expiration of a renewal term and up to six months after the beginning of an automatically renewed term.

Notices to Parties shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to:

City of Kyle:

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

Copy:

Paige Saenz
Knight Law Firm, LLC
Executive Office Terrace
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

Universal Natural Gas, LLC:

Universal Natural Gas, LLC (d/b/a Universal Natural Gas, Inc.)
Attn: General Counsel
61 Carlton Woods Dr., Building 2
The Woodlands, TX 77382

Any party may change the address to which notices and other communications hereunder are to be delivered by giving notice to the other party in the manner described herein.

SECTION 25. PROOF OF LIABILITY TO PERFORM UNDER THIS FRANCHISE

At the City's request, the Grantee will provide a copy of its Annual Report to the City Manager each year as proof of its financial ability to perform the duties required by this franchise.

SECTION 26. INSURANCE

During the term hereof, the Grantee shall maintain one or more policies of general liability insurance having policy limits of not less than \$5,000,000.00 per occurrence. At the City's request, the Grantee will provide a certificate of insurance evidencing such coverage. Grantor shall maintain reasonably adequate insurance covering its obligations of indemnity under Section 9 hereof. A certificate of insurance and a complete copy of the insurance policy including all riders, exhibits, amendments, and attachments shall be provided to the City annually and upon any substantial change in the nature of its coverage under this section. Should Grantee elect to self-insure, its annual notice to the City shall contain information describing with reasonable particularity all procedures for filing a claim.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
KYLE, TEXAS, THIS _____ DAY OF _____, 2022.**

MAYOR

ATTEST:

City Secretary

The above and forgoing Franchise Ordinance and the grants, franchise, powers, rights and privileges thereto were accepted by Grantee this ____ day of _____, 2022.

UNIVERSAL NATURAL GAS, LLC

By: _____

Name: _____

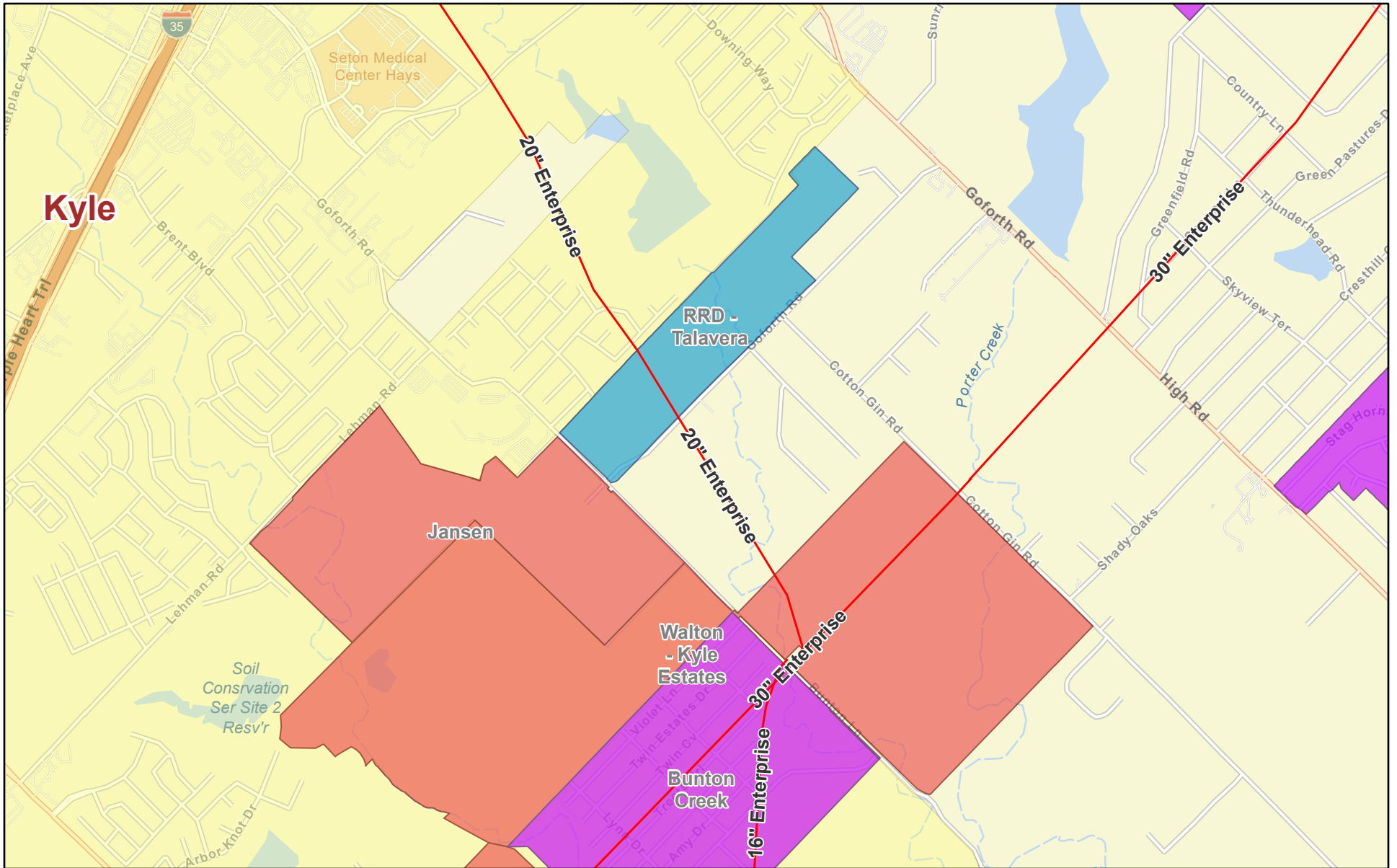
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, _____ of UNIVERSAL NATURAL GAS, LLC, and who represents he has been given authority to sign this Agreement by and on behalf of said entity.

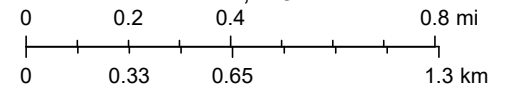
Notary Public, State of _____

City of Kyle Map



6/2/2022

1:27,475



Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Item # 29



CITY OF KYLE, TEXAS

Kyle 57 PID - SAP

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Consideration and possible action on an Ordinance of the City of Kyle Making a Finding of Special Benefit to the Property in the Kyle 57 Public Improvement District; Providing for the Method of Assessment of Special Assessments Against Property in the District; Approving an Assessment Roll for the District; Levying Assessments Against Property within the District; Providing for Payment of the Assessments; Providing for Penalties and Interest on Delinquent Assessments; Establishing a Lien on Property within the District; Approving a Service and Assessment Plan; Approving Landowner Agreements; Providing for Related Matters in Accordance with Chapter 372, Texas Local Government Code; Providing an Effective Date; and Providing for Severability. ~ *Jon Snyder, P3Works, LLC, City's PID Administrator*

- Public Hearing

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- ☐ Ordinance levying assessments - Kyle 57 PID Bonds 3
- ☐ Exhibit B to Assessment Ordinance - Landowner Agreement with Kyle 57 Development Corp. 1
- ☐ Exhibit C to Assessment Ordinance - Landowner Agreement with MileStone Community Builders 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE KYLE 57 PUBLIC IMPROVEMENT DISTRICT; PROVIDING FOR THE METHOD OF ASSESSMENT OF SPECIAL ASSESSMENTS AGAINST PROPERTY IN THE DISTRICT; APPROVING AN ASSESSMENT ROLL FOR THE DISTRICT; LEVYING ASSESSMENTS AGAINST PROPERTY WITHIN THE DISTRICT; PROVIDING FOR PAYMENT OF THE ASSESSMENTS; PROVIDING FOR PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; ESTABLISHING A LIEN ON PROPERTY WITHIN THE DISTRICT; APPROVING A SERVICE AND ASSESSMENT PLAN; APPROVING LANDOWNER AGREEMENTS; PROVIDING FOR RELATED MATTERS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY

WHEREAS, Kyle Mortgage Investors, LLC, a Colorado limited liability company (“Kyle Mortgage Investors”), in accordance with Chapter 372 of the Texas Local Government Code, as amended (the “PID Act”), filed a petition (the “Petition”) with the City Secretary of the City of Kyle, Texas (the “City”) on June 1, 2021, requesting that the City authorize the Kyle 57 Public Improvement District to be created within the City limits; and

WHEREAS, the Petition contained the signatures of the owners of taxable property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the District, as determined by the then-current ad valorem tax rolls of the Hays Central Appraisal District and the signatures of property owners who own taxable real property within the Kyle 57 Public Improvement District that constitutes more than fifty percent of the area of all taxable property that is liable for assessment; and

WHEREAS, after providing the notices required by the PID Act and by Chapter 551 of the Texas Government Code, (the “Open Meetings Act”), the City Council conducted a public hearing on September 7, 2021, to hear evidence and make findings as to the advisability of the improvements to be constructed for the benefit of the Kyle 57 Public Improvement District (the “Authorized Improvements”); the nature of the Authorized Improvements; the estimated cost of the Authorized Improvements, including the administrative costs of establishing and operating Kyle 57 Public Improvement District (the “Actual Costs”); the boundaries of the Kyle 57 Public Improvement District; the apportionment of the Actual Costs to be assessed against property in the Kyle 57 Public Improvement District between the Kyle 57 Public Improvement District and the municipality; and the method of assessment; and

WHEREAS, on September 7, 2021, after the closing of the public hearing, the City Council adopted Resolution No. 1249 (the “Creation Resolution”), which authorizes the Kyle 57 Public Improvement District (the “District”), and which includes the City Council’s findings as to the advisability of the Authorized Improvements; and

WHEREAS, on October 4, 2021, the City Council approved the Kyle 57 Public Improvement District Financing Agreement with Kyle 57 Development, Inc., a Texas corporation (the “Developer”), which included as an exhibit a draft service and assessment plan of the type described in Sections 372.013 and 372.014 of the Texas Local Government Code, and the City Council, in approving the Kyle 57 Public Improvement District Financing Agreement, did not approve, authorize, or levy any assessments against any of the property within the District; and

WHEREAS, on November 1, 2021, the Developer acquired approximately 57.293 acres of land in the District from Kyle Mortgage Investors; and

WHEREAS, after providing the notices required by the PID Act and by Chapter 551 of the Texas Government Code, the City Council conducted a public hearing on May 17, 2022, to hear evidence and make findings as to the advisability of increasing the estimated costs of improvements for the District, and after closing the public hearing, the City Council adopted Resolution No. 1299, approving the amendment to the Creation Resolution;

WHEREAS, the City Council, on May 17, 2022, adopted Resolution No. 1302 directing the filing of the Assessment Roll (the “Assessment Roll”), a copy of which is included as an exhibit to the attached *Exhibit A* and is incorporated herein, making the Assessment Roll available for public inspection, and approving the notice published on May 25, 2022 and June 1, 2022 in the *Hays Free Press* of a public hearing to be conducted on June 7, 2022, to consider the proposed assessments to be levied against property located in the Kyle 57 Public Improvement District (the “Assessments”), and also mailed notice of the same hearing to the property owners within the District, the Developer and its affiliate, MileStone Community Builders, LLC, a Texas limited liability company (collectively, the “Landowners”); and

WHEREAS, the City Council conducted said hearing at the City Council meeting on June 7, 2022, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or to contest the Assessment Roll, and each proposed Assessment, and to offer testimony pertinent to any issue presented on the amount of the Assessment, the apportionment of the costs of the Authorized Improvements, the purpose of the Assessment, the special benefits accruing to the property within the District due to the Authorized Improvements, and the penalties and interest of annual installments and on delinquent annual installments of the Assessment; and

WHEREAS, there were no written objections or evidence submitted to the City Secretary either before or at the hearing in opposition to the Service and Assessment Plan, the apportionment of the costs of the Authorized Improvements, the Assessment Roll, or the levy of the Assessments; and

WHEREAS, the apportionment of the Costs to be assessed against the property in the District, as reflected in the Assessment Roll and in the Kyle 57 Public Improvement District Service and Assessment Plan, a copy of which is attached hereto as *Exhibit A* and is incorporated herein (the attached “Service and Assessment Plan,” as it may be modified, amended, supplemented and updated from time to time), is fair and reasonable and is made on

the basis of special benefits accruing to each parcel because of the Authorized Improvements, and results in the imposing of equal shares of the Actual Costs on property that is similarly benefited, and the apportionment of the Actual Costs between the City and the area to be assessed is based on reasonable classifications and formulas; and

WHEREAS, the Service and Assessment Plan, which is updated every year, covers a period of at least five years, defines the District’s annual indebtedness and projected Actual Costs, and states provisions relating to due and delinquency dates for the Assessments, interest on Annual Installments, and procedures in connection with the imposition and collection of the Assessments; and

WHEREAS, the owners of 100% of the privately-owned and taxable property located within the District, and who are persons to be assessed pursuant to this Ordinance executed on June 7, 2022, the Kyle 57 Landowner Agreements (the “Landowner Agreements”) in which said Landowners acknowledge, accept, and approve of, without reservation, the Service and Assessment Plan, Assessment Roll, this Ordinance, and the levy of the Assessments against their property located within the District, and agree to pay the Assessments when due and payable; and

WHEREAS, the City Council finds and determines that the Assessment Roll, and the Service and Assessment Plan in a form substantially similar to the attached *Exhibit A* should be approved, and that the Landowner Agreements in the forms substantially similar to the attached *Exhibit B* and *Exhibit C* should be approved; and that the Assessments should be levied as provided in this Ordinance and the Service and Assessment Plan.

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

Section 1. Findings. The findings and recitations set out in this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2. Public Hearing. The action of the City Council holding and closing the public hearing in these proceedings is hereby ratified and confirmed.

Section 3. Terms. Terms not otherwise defined herein are defined in the Service and Assessment Plan substantially in the form attached hereto as *Exhibit A*.

Section 4. Service and Assessment Plan. The Service and Assessment Plan is hereby approved as the service and assessment plan for the District in substantially the form attached to this Ordinance and the Mayor, the Mayor Pro Tem, the Director of Finance, the City Manager, and the Assistant City Manager, are hereby authorized to make such non-substantive changes to the Service and Assessment Plan as may be required to give full effect to this Ordinance and to the Service and Assessment Plan attached hereto.

Section 5. Assessment Roll. The Assessment Roll, attached as Exhibit E-1 to the Service and Assessment Plan, is hereby approved as the Assessment Roll of the District.

Section 6. Levy and Payment of Assessments for Costs of Improvement Project.

(a) The City Council hereby levies an assessment on each tract of property located within the District, except for the Non-Benefitted Property, as shown and described on the Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Assessment Roll. The Assessment and the Annual Installment shown in the Assessment Roll include annual assessments for the Annual Collection Costs and the Additional Interest, as described in the Service and Assessment Plan. The amount of the Annual Installment shall be reviewed and determined annually by the City Council following the City Council's annual review of the Service and Assessment Plan for the District. Pursuant to Section 372.015(d), the amount of assessment for each property owner may be adjusted following the annual review of the Service and Assessment Plan.

(b) The levy of the Assessments related to the District shall be effective on the date of execution of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

(c) The collection of the Assessments shall be as described in the Service and Assessment Plan.

(d) Each Assessment may be paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.

(e) Each Assessment may be paid in advance in any amount as provided in subsection 372.018(f) of the PID Act and Section V.I.E of the Service and Assessment Plan.

(f) Each Assessment shall bear interest at the rate or rates specified in the Service and Assessment Plan.

(g) Each Annual Installment shall be collected each year in the manner set forth in the Service and Assessment Plan.

(h) The Annual Installments for Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

Section 7. Method of Assessment. The method of apportioning the Actual Costs is set forth in the Service and Assessment Plan.

Section 8. Penalties and Interest on Delinquent Assessments. Delinquent Assessments shall be subject to the penalties, interest, procedures, and foreclosure sales set forth in the Service and Assessment Plan. The Assessments shall have lien priority as specified in the PID Act and the Service and Assessment Plan.

Section 9. Lien Property. (a) As provided in those certain Landowner Agreements, dated June 7, 2022, the Landowners intend for the obligations, covenants and burdens on the owners of the Assessed Property, including without limitation such owners' obligations related to payment of the Assessments and the Annual Installments, to constitute a covenant running with the land. The Assessments and the Annual Installments levied hereby shall be binding upon the owners, and their respective transferees, legal representatives, heirs, devisees, successors and assigns in the same manner and for the same period as such parties would be personally liable for the payment of ad valorem taxes under applicable law. Assessments shall have lien priority as specified in the PID Act and the Service and Assessment Plan.

(b) The Assessments and Annual Installments levied and assessed against the property within the District as provided in this Ordinance and the Service and Assessment Plan, together with reasonable attorney's fees and costs of collection, if incurred, are hereby declared to be and are made a lien upon each tract of property within the District against which the same are levied and assessed, and a personal liability and charge against the real and true owners of each such tract, including the successors and assigns, whether such owners be named herein or not, and said liens shall be and constitute the first enforceable lien and claim against the lot on which such assessments are levied, and shall be a first and paramount lien thereon, superior to all other liens and claims except state, county, school district and City ad valorem taxes.

Section 10. Approval of Landowner Agreements. The Landowner Agreements between the City and the Landowners are hereby authorized and approved in the substantially final forms attached hereto as *Exhibit B* and *Exhibit C* and incorporated herein as a part hereof for all purposes and the Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute and deliver such Landowner Agreements with such changes as may be required to carry out the purposes of this Ordinance. The Mayor's or Mayor Pro Tem's signature on the Landowner Agreements may be attested by the City Secretary.

Section 11. Appointment of Administrator and Collector of Assessments. (a) P3Works, LLC is hereby appointed and designated as the Administrator of the Service and Assessment Plan and of Assessments levied by this Ordinance. The Administrator shall perform the duties of the Administrator described in the Service and Assessment Plan and in this Ordinance. The Administrator's fees, charges and expenses for providing such service shall constitute an Annual Collection Costs.

(b) The Director of Finance of the City or his designee is hereby appointed as the temporary collector of the Assessments. The Director of Finance or his designee shall serve in such capacity until such time as the City shall arrange for the collection duties to be performed by the Hays County Tax Office or any other qualified collection agent selected by the City.

Section 12. Applicability of Tax Code. To the extent not inconsistent with this Ordinance, and not inconsistent with the PID Act or the other laws governing public improvement districts, the provisions of the Texas Tax Code governing enforcement of ad valorem tax liens shall be applicable to the imposition and collection of Assessments by the City, and the Texas Tax Code shall otherwise be applicable to the extent provided by the PID Act.

Section 13. Severability. If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 14. Filing in Land Records. The City Secretary is directed to cause a copy of this Ordinance, including the Service and Assessment Plan and the Assessment Roll, to be recorded in the real property records of Hays County by no later than the seventh day after the City Council passes and approves this Ordinance. The City Secretary is further directed to similarly file each Annual Service Plan Update approved by the City Council by no later than the seventh day after the City Council adopts each Annual Service Plan Update.

Section 15. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the PID Act, and it is accordingly so ordained.

Section 16. 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.

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PASSED AND APPROVED on this 7th day of June, 2022.

ATTEST:

THE CITY OF KYLE, TEXAS

Jennifer Holm, City Secretary

Travis Mitchell, Mayor

[CITY SEAL]

EXHIBIT A

**SERVICE AND ASSESSMENT PLAN FOR THE
KYLE 57 PUBLIC IMPROVEMENT DISTRICT**

EXHIBIT B

**LANDOWNER AGREEMENT
with Kyle 57 Development Corporation, Inc.**

EXHIBIT C

**LANDOWNER AGREEMENT
with MileStone Community Builders, LLC**

KYLE 57 LANDOWNER AGREEMENT

This **KYLE 57 LANDOWNER AGREEMENT** (the “Agreement”), is entered into as of June 7, 2022, between the City of Kyle, Texas (the “City”) and Kyle 57 Development, Inc., a Texas corporation (the “Landowner”).

RECITALS:

WHEREAS, capitalized terms used but not defined herein shall have the meanings given to them in the Service and Assessment Plan (as defined herein); and

WHEREAS, Landowner owns the Assessed Property described by a lot and block numbers attached as **Exhibit A** to this Agreement (the “Landowner’s Parcel”) and which is incorporated herein for all purposes, comprising all of the non-exempt, privately-owned land owned by the Landowner which is located within the Kyle 57 Public Improvement District (the “District”) in the City; and

WHEREAS, contemporaneously herewith, the City Council has adopted an assessment ordinance (including all exhibits and attachments thereto, the “Assessment Ordinance”) relating to the Authorized Improvements and has approved the Kyle 57 Public Improvement District Service and Assessment Plan (as updated and amended, the “Service and Assessment Plan”) which is incorporated herein for all purposes, and has levied an assessment on the Assessed Property in the District that will be pledged as the security for payment of bonds or other obligations to pay the costs of constructing the Authorized Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits hereinafter set forth, the City and the Landowner hereby contract, covenant and agree as follows:

APPROVAL OF AGREEMENTS

Affirmation of Recitals. The findings set forth in the Recitals of this Agreement are hereby incorporated as the official findings of the City Council.

I. AGREEMENTS OF LANDOWNER

A. Affirmation and Acceptance of Agreements and Findings of Benefit. Landowner hereby ratifies, confirms, accepts, agrees to, and approves:

(i) the creation and boundaries of the District, the boundaries of the Landowner’s Parcel, which is located within the District, and the location and development of the Authorized Improvements on the Landowner’s Parcel and on the property within and outside the District;

(ii) the determinations and findings as to the benefits by the City Council in the Service and Assessment Plan and the Assessment Ordinance; and

(iii) the Assessment Ordinance and the Service and Assessment Plan.

B. Acceptance and Approval of Assessments and Lien on Property. Landowner consents to, agrees to, acknowledges and accepts the following:

(i) the Assessments levied on Assessed Property within the District (the “Assessments”) as shown on the Assessment Roll, as the Assessment Roll may be updated or amended from time to time;

(ii) the Authorized Improvements specially confer a benefit on Assessed Property within the District, and the Landowner’s Parcel, in an amount at least equal to the Assessment levied on the Assessed Property, including the Landowner’s Parcel, within the District, as such Assessment is shown on the Assessment Roll;

(iii) each Assessment is final, conclusive and binding upon Landowner and any subsequent owner of any of the Assessed Property, including the Landowner’s Parcel, regardless of whether such landowner may be required to prepay a portion of, or the entirety of, such Assessment upon the occurrence of a mandatory prepayment event as provided in the Service and Assessment Plan;

(iv) the obligation to pay the Assessment levied on the Assessed Property owned by the Landowner and any subsequent owner of any of the Assessed Property when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance;

(v) each Assessment or reassessment, with interest, the expense of collection, and reasonable attorney’s fees, if incurred, is a first and prior lien against the Parcels constituting the Assessed Property, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipality ad valorem taxes, and is a personal liability of and charge against the owner of any Assessed Property regardless of whether such owner is named;

(vi) the Assessment lien on the Assessed Property is a lien and covenant that runs with the land and is effective from the date of the Assessment Ordinance and continues until the Assessment is paid and may be enforced by the governing body of the City in the same manner that an ad valorem tax lien against real property may be enforced by the City;

(vii) delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney’s fees as provided in the Chapter 372 of the Texas Local Government Code, as amended (the “PID Act”);

(viii) the owner of any Assessed Property may pay at any time the entire Assessment, with interest that has accrued on the Assessment, on any parcel in the Assessed Property;

(ix) the Annual Installments of the Assessments may be adjusted, decreased and extended; and, the Landowner and any subsequent owner of any Assessed Property shall be obligated to pay their respective revised amounts of the Annual Installments, when due, and without the necessity of further action, assessments or reassessments by the City, the same as though they were expressly set forth herein; and

(x) Landowner has timely received, or hereby waive, all notices required to be provided to them under Texas law, including the PID Act, in connection with the creation of the District and the adoption and approval by the City Council of the Assessment Ordinance, the Service and Assessment Plan, and the Assessment Roll.

C. Mandatory Prepayment of Assessments. Landowner agrees and acknowledges that Landowner or subsequent landowners may have an obligation to prepay an Assessment upon the occurrence of a mandatory prepayment event, at the sole discretion of the City and as provided in the Service and Assessment Plan, as amended or updated.

D. Notice of Assessments. Landowner further agrees as follows:

(i) in the event of any subdivision, sale, transfer or other conveyance by the Landowner of the right, title or interest of the Landowner in the Landowner's Parcel or any part thereof, the Landowner's Parcel, or any such part thereof, any purchaser, transferee or other subsequent owner shall take such Assessed Property or portion thereof, subject to all of the terms, conditions and provisions of the Service and Assessment Plan;

(ii) Landowner agrees to comply with the notice requirements set forth in Texas Section 5.014, Section 5.0141 and Section 5.0143, Texas Property Code, as amended;

(iii) Landowner agrees to execute and provide the notices substantially in the forms set forth in the Service and Assessment Plan to any purchaser of the Landowner's Parcel or any part thereof; and

(iv) Landowner shall comply with, and shall contractually obligate (and, upon the City's request, promptly provide written evidence of such contractual provisions to the City) any party who purchases any Assessed Property owned by Landowner, or any portion thereof, for the purpose of constructing residential properties that are eligible for "homestead" designations under State law, to comply with, the Homebuyer Education Program described on **Exhibit B** to this Agreement. Such compliance obligation shall terminate as to each Lot if, and when, (i) a final certificate of occupancy for a residential unit on such Lot is issued by the City, and (ii) there is a sale of a Lot to an individual

homebuyer, it being the intent of the undersigned that the Homebuyer Education Program shall apply only to a commercial builder who is in the business of constructing and/or selling residences to individual home buyers (a “Builder”) but not to subsequent sales of such residence and Lot by an individual home buyer after the initial sale by a Builder.

II.
OWNERSHIP AND CONSTRUCTION OF
AUTHORIZED IMPROVEMENTS

A. Ownership and Transfer of Authorized Improvements. Landowner acknowledges that the Authorized Improvements and the land (or easements, as applicable) needed therefor shall be dedicated, conveyed, leased, or otherwise provided to or for the benefit of the City, as described in the Service and Assessment Plan. Landowner agrees to execute such conveyances and/or dedications as may be required by the City to evidence same.

B. Grant of Easement and License, Construction of Authorized Improvements.

Any subsequent owner of the Landowner’s Parcel shall, upon the request of the City or Landowner, grant and convey to the City (upon the Landowner’s request) or Landowner (upon a City request) and its contractors, materialmen and workmen a temporary license and/or easement, as appropriate, to construct the Authorized Improvements on the property owned by the Landowner within the District, to stage on the property owned by the Landowner within the District construction trailers, building materials and equipment to be used in connection with such construction of the Authorized Improvements and to provide for passage and use over and across parts of the property within the District as shall be reasonably necessary during the construction of the Authorized Improvements. Any subsequent owner of the Landowner’s Parcel may require that each contractor constructing the Authorized Improvements cause such owner of any of the Landowner’s Parcel to be indemnified and/or named as an additional insured under liability insurance reasonably acceptable to such owner of the Landowner’s Parcel. The right to use and enjoy any easement and license provided above shall continue until the construction of the Authorized Improvements are complete; provided, however, any such license or easement shall automatically terminate upon the recording of the final plat for the Landowner’s Parcel in the real property records of Hays County, Texas.

III.
COVENANTS AND WARRANTIES; MISCELLANEOUS

A. Special Covenants and Warranties of Landowner.

Landowner represents and warrants to the City as follows:

(i) Landowner is duly organized, validly existing and, as applicable, in good standing under the laws of the state of its organization and has the full right, power and authority to enter into this Agreement, and to perform all the obligations required to be performed by Landowner hereunder.

(ii) This Agreement has been duly and validly executed and delivered by, and on behalf of, Landowner and, assuming the due authorization, execution and delivery thereof by and on behalf of the City and the Landowner, constitutes a valid, binding and enforceable obligation of such parties enforceable in accordance with its terms. This representation and warranty is qualified to the extent the enforceability of this Agreement may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general.

(iii) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under, any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which Landowner is a party, or by which Landowner or Landowner's Parcel is otherwise bound.

(iv) Landowner is, subject to all matters of record in the Hays County, Texas Real Property Records, the sole owner of the Landowner's Parcel.

(v) The Landowner's Parcel is not subject to, or encumbered by, any covenant, lien, encumbrance or agreement which would prohibit (i) the creation of the District, (ii) the levy of the Assessments and the priority of the lien related to the Assessments as described in this Agreement, or (iii) the construction of the Authorized Improvements on property within the District, as generally described on the current plats of the property within the District (or, if subject to any such prohibition, the approval or consent of all necessary parties thereto has been obtained).

(vi) Landowner covenants and agrees to execute any and all documents necessary, appropriate or incidental to the purposes of this Agreement, as long as such documents are consistent with this Agreement and do not create additional liability of any type to, or reduce the rights of, such Landowner by virtue of execution thereof.

B. Waiver of Claims Concerning Authorized Improvements. The Landowner, with full knowledge of the provisions, and the rights thereof pursuant to such provisions, of applicable law, waives any claims against the City and its successors, assigns and agents, pertaining to the installation of the Authorized Improvements.

C. Notices.

Any notice or other communication to be given to the City or Landowner under this Agreement shall be given by delivering the same in writing to:

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

With a copy to: Attn: Veronica Rivera
The Knight Law Firm
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

To the Landowner: Attn: Garrett Martin, President
Kyle 57 Development, Inc.
2100 Northland Drive
Austin, Texas 78756

With a copy to: Attn: Ross Martin
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the recipient at the address set forth herein.

Each recipient may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this provision shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for, or actually received by, the addressee.

D. Parties in Interest.

This Agreement is made solely for the benefit of the City and the Landowner and is not assignable, except, in the case of Landowner, in connection with the sale or disposition of all or substantially all of the parcels which constitute the Landowner's Parcel. However, the parties expressly agree and acknowledge that the City, the Landowner, each current owner of any parcel which constitutes the Landowner's Parcel, and the holders of or trustee for any bonds or other obligations secured by Assessment revenues of the City or any part thereof to finance the costs of the Authorized Improvements, are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the parties hereto. This Agreement shall be recorded in the real property records of Hays County, Texas.

E. Amendments.

This Agreement may be amended only by written instrument executed by the City and the Landowner. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners of the property within the District and recorded in the Real Property Records of Hays County, Texas.

F. Effective Date.

This Agreement shall become and be effective upon the date of final execution by the latter of the City and the Landowner (the "Effective Date") and shall be valid and enforceable on said date and thereafter.

G. Estoppels.

Within ten (10) days after written request from a party hereto, the other party shall provide a written certification, indicating whether this Agreement remains in effect as to the Assessed Property, and whether any party is then in default hereunder.

H. Termination.

This Agreement shall terminate and be of no further force and effect as to the Assessed Property upon payment in full of the Assessment(s) against such Assessed Property.

I. No Boycott of Israel.

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

J. No Business With Sanctioned Countries.

The Landowner represents that neither it nor any of its respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153

or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

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

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

K. Verification Regarding Energy Company Boycotts.

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

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

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

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

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

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

[Signature pages to follow]

EXECUTED by the City and Landowner on the Effective Date.

Date: _____, 2022

CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

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

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires: _____

[Signature Page Landowner Agreement]

LANDOWNER

Date: _____, 2022

KYLE 57 DEVELOPMENT, INC.,
a Texas corporation

By: _____

Name: Garrett S. Martin

Title: President

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

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

Notary Public, State of Texas

[Signature Page Landowner Agreement]

EXHIBIT A
LOT AND BLOCK DESCRIPTION OF LANDOWNER'S PARCEL

Lots 1, 2, 3, 5, 15, Block A; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, Block B; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, Block C; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, Block D; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, Block E; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, Block F; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, Block G; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, Block H; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, Block I; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, Block J; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, Block K; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, Block L; Lots 1, 2, 3, 4, 8, 9, 14, 15, 16, Block M; SAGE HOLLOW, a subdivision in Hays County, Texas, according to the map or plat recorded under Document Number 22007572, in the Official Public Records of Hays County, Texas.

EXHIBIT B
HOMEBUYER EDUCATION PROGRAM

As used in this Exhibit B, the recorded Notice to Subsequent Purchasers in the form attached to the Kyle 57 Public Improvement District Service and Assessment Plan are referred to as the “Recorded Notices.”

1. Any Landowner who is a Builder shall provide evidence of compliance with Paragraph 1 above, signed by such residential homebuyer, to the City upon the City’s request.
2. Any Landowner who is a Builder shall prominently display signage in its model homes, if any, substantially in the form of the Recorded Notices.
3. If prepared and provided by the City, any Landowner who is a Builder shall distribute informational brochures about the existence and effect of the District in prospective homebuyer sales packets.
4. Any Landowner who is a Builder shall include Assessments in estimated property taxes, if such Builder estimates monthly ownership costs for prospective homebuyers.

KYLE 57 LANDOWNER AGREEMENT

This **KYLE 57 LANDOWNER AGREEMENT** (the “Agreement”), is entered into as of June 7, 2022, between the City of Kyle, Texas (the “City”) and MileStone Community Builders, LLC, a Texas limited liability company (the “Landowner”).

RECITALS:

WHEREAS, capitalized terms used but not defined herein shall have the meanings given to them in the Service and Assessment Plan (as defined herein); and

WHEREAS, Landowner owns the Assessed Property described by a lot and block numbers attached as **Exhibit A** to this Agreement (the “Landowner’s Parcel”) and which is incorporated herein for all purposes, comprising all of the non-exempt, privately-owned land owned by the Landowner which is located within the Kyle 57 Public Improvement District (the “District”) in the City; and

WHEREAS, contemporaneously herewith, the City Council has adopted an assessment ordinance (including all exhibits and attachments thereto, the “Assessment Ordinance”) relating to the Authorized Improvements and has approved the Kyle 57 Public Improvement District Service and Assessment Plan (as updated and amended, the “Service and Assessment Plan”) which is incorporated herein for all purposes, and has levied an assessment on the Assessed Property in the District that will be pledged as the security for payment of bonds or other obligations to pay the costs of constructing the Authorized Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits hereinafter set forth, the City and the Landowner hereby contract, covenant and agree as follows:

APPROVAL OF AGREEMENTS

Affirmation of Recitals. The findings set forth in the Recitals of this Agreement are hereby incorporated as the official findings of the City Council.

I. AGREEMENTS OF LANDOWNER

A. Affirmation and Acceptance of Agreements and Findings of Benefit. Landowner hereby ratifies, confirms, accepts, agrees to, and approves:

(i) the creation and boundaries of the District, the boundaries of the Landowner’s Parcel, which is located within the District, and the location and development of the Authorized Improvements on the Landowner’s Parcel and on the property within and outside the District;

(ii) the determinations and findings as to the benefits by the City Council in the Service and Assessment Plan and the Assessment Ordinance; and

(iii) the Assessment Ordinance and the Service and Assessment Plan.

B. Acceptance and Approval of Assessments and Lien on Property. Landowner consents to, agrees to, acknowledges and accepts the following:

(i) the Assessments levied on Assessed Property within the District (the “Assessments”) as shown on the Assessment Roll, as the Assessment Roll may be updated or amended from time to time;

(ii) the Authorized Improvements specially confer a benefit on Assessed Property within the District, and the Landowner’s Parcel, in an amount at least equal to the Assessment levied on the Assessed Property, including the Landowner’s Parcel, within the District, as such Assessment is shown on the Assessment Roll;

(iii) each Assessment is final, conclusive and binding upon Landowner and any subsequent owner of any of the Assessed Property, including the Landowner’s Parcel, regardless of whether such landowner may be required to prepay a portion of, or the entirety of, such Assessment upon the occurrence of a mandatory prepayment event as provided in the Service and Assessment Plan;

(iv) the obligation to pay the Assessment levied on the Assessed Property owned by the Landowner and any subsequent owner of any of the Assessed Property when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance;

(v) each Assessment or reassessment, with interest, the expense of collection, and reasonable attorney’s fees, if incurred, is a first and prior lien against the Parcels constituting the Assessed Property, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipality ad valorem taxes, and is a personal liability of and charge against the owner of any Assessed Property regardless of whether such owner is named;

(vi) the Assessment lien on the Assessed Property is a lien and covenant that runs with the land and is effective from the date of the Assessment Ordinance and continues until the Assessment is paid and may be enforced by the governing body of the City in the same manner that an ad valorem tax lien against real property may be enforced by the City;

(vii) delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney’s fees as provided in the Chapter 372 of the Texas Local Government Code, as amended (the “PID Act”);

(viii) the owner of any Assessed Property may pay at any time the entire Assessment, with interest that has accrued on the Assessment, on any parcel in the Assessed Property;

(ix) the Annual Installments of the Assessments may be adjusted, decreased and extended; and, the Landowner and any subsequent owner of any Assessed Property shall be obligated to pay their respective revised amounts of the Annual Installments, when due, and without the necessity of further action, assessments or reassessments by the City, the same as though they were expressly set forth herein; and

(x) Landowner has timely received, or hereby waive, all notices required to be provided to them under Texas law, including the PID Act, in connection with the creation of the District and the adoption and approval by the City Council of the Assessment Ordinance, the Service and Assessment Plan, and the Assessment Roll.

C. Mandatory Prepayment of Assessments. Landowner agrees and acknowledges that Landowner or subsequent landowners may have an obligation to prepay an Assessment upon the occurrence of a mandatory prepayment event, at the sole discretion of the City and as provided in the Service and Assessment Plan, as amended or updated.

D. Notice of Assessments. Landowner further agrees as follows:

(i) in the event of any subdivision, sale, transfer or other conveyance by the Landowner of the right, title or interest of the Landowner in the Landowner's Parcel or any part thereof, the Landowner's Parcel, or any such part thereof, any purchaser, transferee or other subsequent owner shall take such Assessed Property or portion thereof, subject to all of the terms, conditions and provisions of the Service and Assessment Plan;

(ii) Landowner agrees to comply with the notice requirements set forth in Texas Section 5.014, Section 5.0141 and Section 5.0143, Texas Property Code, as amended;

(iii) Landowner agrees to execute and provide the notices substantially in the forms set forth in the Service and Assessment Plan to any purchaser of the Landowner's Parcel or any part thereof; and

(iv) Landowner shall comply with, and shall contractually obligate (and, upon the City's request, promptly provide written evidence of such contractual provisions to the City) any party who purchases any Assessed Property owned by Landowner, or any portion thereof, for the purpose of constructing residential properties that are eligible for "homestead" designations under State law, to comply with, the Homebuyer Education Program described on **Exhibit B** to this Agreement. Such compliance obligation shall terminate as to each Lot if, and when, (i) a final certificate of occupancy for a residential unit on such Lot is issued by the City, and (ii) there is a sale of a Lot to an individual

homebuyer, it being the intent of the undersigned that the Homebuyer Education Program shall apply only to a commercial builder who is in the business of constructing and/or selling residences to individual home buyers (a “Builder”) but not to subsequent sales of such residence and Lot by an individual home buyer after the initial sale by a Builder.

**II.
OWNERSHIP AND CONSTRUCTION OF
AUTHORIZED IMPROVEMENTS**

A. Ownership and Transfer of Authorized Improvements. Landowner acknowledges that the Authorized Improvements and the land (or easements, as applicable) needed therefor shall be dedicated, conveyed, leased, or otherwise provided to or for the benefit of the City, as described in the Service and Assessment Plan. Landowner agrees to execute such conveyances and/or dedications as may be required by the City to evidence same.

B. Grant of Easement and License, Construction of Authorized Improvements.

Any subsequent owner of the Landowner’s Parcel shall, upon the request of the City or Landowner, grant and convey to the City (upon the Landowner’s request) or Landowner (upon a City request) and its contractors, materialmen and workmen a temporary license and/or easement, as appropriate, to construct the Authorized Improvements on the property owned by the Landowner within the District, to stage on the property owned by the Landowner within the District construction trailers, building materials and equipment to be used in connection with such construction of the Authorized Improvements and to provide for passage and use over and across parts of the property within the District as shall be reasonably necessary during the construction of the Authorized Improvements. Any subsequent owner of the Landowner’s Parcel may require that each contractor constructing the Authorized Improvements cause such owner of any of the Landowner’s Parcel to be indemnified and/or named as an additional insured under liability insurance reasonably acceptable to such owner of the Landowner’s Parcel. The right to use and enjoy any easement and license provided above shall continue until the construction of the Authorized Improvements are complete; provided, however, any such license or easement shall automatically terminate upon the recording of the final plat for the Landowner’s Parcel in the real property records of Hays County, Texas.

**III.
COVENANTS AND WARRANTIES; MISCELLANEOUS**

A. Special Covenants and Warranties of Landowner.

Landowner represents and warrants to the City as follows:

(i) Landowner is duly organized, validly existing and, as applicable, in good standing under the laws of the state of its organization and has the full right, power and authority to enter into this Agreement, and to perform all the obligations required to be performed by Landowner hereunder.

(ii) This Agreement has been duly and validly executed and delivered by, and on behalf of, Landowner and, assuming the due authorization, execution and delivery thereof by and on behalf of the City and the Landowner, constitutes a valid, binding and enforceable obligation of such parties enforceable in accordance with its terms. This representation and warranty is qualified to the extent the enforceability of this Agreement may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general.

(iii) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under, any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which Landowner is a party, or by which Landowner or Landowner's Parcel is otherwise bound.

(iv) Landowner is, subject to all matters of record in the Hays County, Texas Real Property Records, the sole owner of the Landowner's Parcel.

(v) The Landowner's Parcel is not subject to, or encumbered by, any covenant, lien, encumbrance or agreement which would prohibit (i) the creation of the District, (ii) the levy of the Assessments and the priority of the lien related to the Assessments as described in this Agreement, or (iii) the construction of the Authorized Improvements on property within the District, as generally described on the current plats of the property within the District (or, if subject to any such prohibition, the approval or consent of all necessary parties thereto has been obtained).

(vi) Landowner covenants and agrees to execute any and all documents necessary, appropriate or incidental to the purposes of this Agreement, as long as such documents are consistent with this Agreement and do not create additional liability of any type to, or reduce the rights of, such Landowner by virtue of execution thereof.

B. Waiver of Claims Concerning Authorized Improvements. The Landowner, with full knowledge of the provisions, and the rights thereof pursuant to such provisions, of applicable law, waives any claims against the City and its successors, assigns and agents, pertaining to the installation of the Authorized Improvements.

C. Notices.

Any notice or other communication to be given to the City or Landowner under this Agreement shall be given by delivering the same in writing to:

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

With a copy to: Attn: Veronica Rivera
The Knight Law Firm
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

To the Landowner: Attn: Garrett Martin, President
MileStone Community Builders, LLC
2100 Northland Drive
Austin, Texas 78756

With a copy to: Attn: Ross Martin
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the recipient at the address set forth herein.

Each recipient may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this provision shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for, or actually received by, the addressee.

D. Parties in Interest.

This Agreement is made solely for the benefit of the City and the Landowner and is not assignable, except, in the case of Landowner, in connection with the sale or disposition of all or substantially all of the parcels which constitute the Landowner's Parcel. However, the parties expressly agree and acknowledge that the City, the Landowner, each current owner of any parcel which constitutes the Landowner's Parcel, and the holders of or trustee for any bonds or other obligations secured by Assessment revenues of the City or any part thereof to finance the costs of the Authorized Improvements, are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the parties hereto. This Agreement shall be recorded in the real property records of Hays County, Texas.

E. Amendments.

This Agreement may be amended only by written instrument executed by the City and the Landowner. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners of the property within the District and recorded in the Real Property Records of Hays County, Texas.

F. Effective Date.

This Agreement shall become and be effective upon the date of final execution by the latter of the City and the Landowner (the "Effective Date") and shall be valid and enforceable on said date and thereafter.

G. Estoppels.

Within ten (10) days after written request from a party hereto, the other party shall provide a written certification, indicating whether this Agreement remains in effect as to the Assessed Property, and whether any party is then in default hereunder.

H. Termination.

This Agreement shall terminate and be of no further force and effect as to the Assessed Property upon payment in full of the Assessment(s) against such Assessed Property.

I. No Boycott of Israel.

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

J. No Business With Sanctioned Countries.

The Landowner represents that neither it nor any of its respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153

or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

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

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

K. Verification Regarding Energy Company Boycotts.

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

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

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

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

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

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

[Signature pages to follow]

EXECUTED by the City and Landowner on the Effective Date.

Date: _____, 2022

CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

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

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires:_____

[Signature Page Landowner Agreement]

LANDOWNER

Date: _____, 2022

MILESTONE COMMUNITY BUILDERS, LLC,
a Texas limited liability company

By: _____

Name: Garrett S. Martin

Title: Sole Member

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of June, 2022 by Garrett S. Martin, Sole Member of MileStone Community Builders, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

[Signature Page Landowner Agreement]

EXHIBIT A
LOT AND BLOCK DESCRIPTION OF LANDOWNER'S PARCEL

Lots 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, Block A; Lots 5, 6, 7, 10, 11, 12, 13, Block M; SAGE HOLLOW, a subdivision in Hays County, Texas, according to the map or plat recorded under Document Number 22007572, in the Official Public Records of Hays County, Texas.

EXHIBIT B
HOMEBUYER EDUCATION PROGRAM

As used in this Exhibit B, the recorded Notice to Subsequent Purchasers in the form attached to the Kyle 57 Public Improvement District Service and Assessment Plan are referred to as the “Recorded Notices.”

1. Any Landowner who is a Builder shall provide evidence of compliance with Paragraph 1 above, signed by such residential homebuyer, to the City upon the City’s request.
2. Any Landowner who is a Builder shall prominently display signage in its model homes, if any, substantially in the form of the Recorded Notices.
3. If prepared and provided by the City, any Landowner who is a Builder shall distribute informational brochures about the existence and effect of the District in prospective homebuyer sales packets.
4. Any Landowner who is a Builder shall include Assessments in estimated property taxes, if such Builder estimates monthly ownership costs for prospective homebuyers.



CITY OF KYLE, TEXAS

Kyle 57 PID - Bond Issuance

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Consideration and possible action on an Ordinance Authorizing the Issuance of the City of Kyle, Texas Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District); Approving and Authorizing an Indenture of Trust, a Bond Purchase Agreement, a Limited Offering Memorandum, a Continuing Disclosure Agreement, and Other Agreements and Documents in Connection Therewith; Making Findings with Respect to the Issuance of Such Bonds; Providing an Effective Date. ~
Jon Snyder, P3Works, LLC, City's PID Administrator

- Public Hearing

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Ordinance authorizing Bonds - Kyle 57 PID 3
- Exhibit A to Bond Ordinance - Indenture of Trust 1
- Exhibit C to Bond Ordinance - Continuing Disclosure Agreement of the Issuer 1

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF KYLE, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022 (KYLE 57 PUBLIC IMPROVEMENT DISTRICT); APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, A LIMITED OFFERING MEMORANDUM, A CONTINUING DISCLOSURE AGREEMENT, AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; MAKING FINDINGS WITH RESPECT TO THE ISSUANCE OF SUCH BONDS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Kyle, Texas (the “City”), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the “PID Act”), has previously established the “Kyle 57 Public Improvement District” (the “District”), pursuant to Resolution No. 1249 adopted by the City Council of the City (the “City Council”) on September 7, 2021; and

WHEREAS, pursuant to the PID Act, the City Council published notice and conducted a public hearing on May 17, 2022, to hear evidence and make findings as to the advisability of increasing the estimated costs of improvements for the District, and after closing the public hearing, the City Council adopted Resolution No. 1299, approving an amendment to Resolution No. 1249; and

WHEREAS, pursuant to the PID Act, the City Council published notice and held a public hearing on June 7, 2022, regarding the levy of special assessments within the District, closed the public hearing, and the City Council adopted Ordinance No. _____ (the “Assessment Ordinance”); and

WHEREAS, in the Assessment Ordinance, the City Council approved and accepted the “Kyle 57 Public Improvement District Service and Assessment Plan” (as defined and described in the Assessment Ordinance, the “Service and Assessment Plan”) relating to the District and levied the “Assessments” (as defined in the Service and Assessment Plan, the “Assessments”) against the property within the District as shown on the “Assessment Roll” (as defined and described in the Service and Assessment Plan). Capitalized terms used in this preamble and not otherwise defined shall have the meaning assigned thereto in the Service and Assessment Plan (as defined below); and

WHEREAS, the City authorized and approved in substantially final form that certain Kyle 57 Public Improvement District Financing Agreement (the “Financing Agreement”) between the City and Kyle 57 Development, Inc., a Texas corporation (the “Developer”), on October 4, 2021, and as amended by the letter agreement, effective as of March 1, 2022 between the City and the Developer, and as amended by the First Amendment, effective as of May 17, 2022, pursuant to which the City has agreed to issue revenue bonds payable from Assessments to pay for the costs of constructing authorized improvements as identified in the Service and Assessment Plan (the “Public Improvements”); and

WHEREAS, the City Council has found and determined that it is in the best interests of the City to issue its bonds to be designated “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District)” (the “Bonds”), such series to be payable from and secured by the Trust Estate, as defined in the hereinafter defined Indenture; and

WHEREAS, the City is authorized by the PID Act to issue the Bonds for the purposes of (i) paying a portion of the Actual Costs of the Public Improvements (the term “Actual Costs,” as used in this Ordinance is defined in Section 2(a) of this Ordinance below) (ii) paying capitalized interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve account for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds; and

WHEREAS, in connection with the issuance of the Bonds for the purposes of paying the costs of the Public Improvements, the City has determined such improvements confer a special benefit on the District, as provided in Section III of the Service and Assessment Plan and further depicted on Exhibit G of the Service and Assessment Plan; and

WHEREAS, the City’s Home Rule Charter provides that the City may not issue debt other than general obligation bonds approved by a public vote without prior public notice and a public hearing; and

WHEREAS, the City published notice of a public hearing on the issuance of the Bonds on May 25, 2022, in the time and manner required by the City’s Home Rule Charter; and

WHEREAS, the meeting at which this Ordinance was considered was open to the public as required by law; the public notice of the time, place, and purpose of that meeting was given as required by Chapter 551, Texas Government Code, as amended; and the meeting was conducted pursuant to the public notice required by the City’s Home Rule Charter that was published on May 25, 2022, and included a public hearing on the issuance of the Bonds; and

WHEREAS, after conducting the duly noticed public hearing on the issuance of the Bonds, the City Council, as set out in this Ordinance, hereby approves the: (i) issuance of the Bonds to finance the Public Improvements as identified in the Service and Assessment Plan, (ii) form, terms, and provisions of the Indenture (defined below) securing the Bonds authorized hereby, (iii) form, terms and provisions of a Bond Purchase Agreement (defined below) between the City and the Underwriter (defined below) of the Bonds, (iv) form, content and use by the Underwriter of the Limited Offering Memorandum (defined below), and (v) form, terms and provisions of the Continuing Disclosure Agreement (defined below);

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

SECTION 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein.

SECTION 2. Approval of Issuance of Bonds and Indenture of Trust.

(a) The issuance of the Bonds for the purposes of (i) paying a portion of the Actual Costs of the Public Improvements (the term “Actual Costs” as used in this Ordinance means the actual costs paid or incurred by or on behalf of the Owner): (1) to plan, design, acquire, construct, install, and dedicate such improvements to the City, including the acquisition of necessary easements and other right-of-way; (2) to prepare plans, specifications (including bid packages), contracts, and as-built drawings; (3) to obtain zoning, licenses, plan approvals, permits, inspections, and other governmental approvals; (4) for third-party professional consulting services including but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisals; (5) of labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums; and (6) to implement, administer, and manage the above-described activities, including a 4% construction management fee. Actual Costs shall not include general contractor’s fees in an amount that exceeds a percentage equal to the percentage of work completed or construction management fees in an amount that exceeds an amount equal to the construction management fee amortized in approximately equal monthly installments over the term of the applicable construction management contract. Amounts expended for costs described in subsection (3), (4), and (6) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated), (ii) paying capitalized interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds, is hereby authorized and approved.

(b) The Bonds shall be issued and secured under that certain Indenture of Trust dated as of June 1, 2022 (the “Indenture”), between the City and BOKF, NA, as trustee (the “Trustee”), with such changes as may be necessary or desirable to carry out the intent of this Ordinance and as approved by the Mayor or Mayor Pro Tem of the City, such approval to be evidenced by the execution and delivery of the Indenture, which Indenture is hereby approved in substantially final form attached hereto as Exhibit A and incorporated herein for all purposes. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute the Indenture and the City Secretary is hereby authorized and directed to attest such signature of the Mayor or Mayor Pro Tem.

(c) The Bonds shall be dated, shall mature on the date or dates and in the principal amounts, shall bear interest, shall be subject to redemption and shall have such other terms and provisions as set forth in the Indenture. The Bonds shall be in substantially the form set forth in the Indenture with such insertions, omissions and modifications as may be required to conform the form of bond to the actual terms of the Bonds. The Bonds shall be payable from and secured by the Pledged Revenues (as

defined in the Indenture) and other assets of the Trust Estate (as defined in the Indenture) pledged to such Bonds and shall never be payable from ad valorem taxes.

SECTION 3. Sale of Bonds; Approval of Bond Purchase Agreement. The Bonds shall be sold to FMSbonds, Inc. (the “Underwriter”) at the price and on the terms and provisions set forth in that certain Bond Purchase Agreement (the “Bond Purchase Agreement”), dated the date hereof, between the City and the Underwriter, attached hereto as Exhibit B and incorporated herein as a part hereof for all purposes, which terms of sale are declared to be in the best interest of the City. The form, terms, and provisions of the Bond Purchase Agreement are hereby authorized and approved and the Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute and deliver the Bond Purchase Agreement. The Mayor’s or Mayor Pro Tem’s signature on the Bond Purchase Agreement may be attested by the City Secretary.

SECTION 4. Approval of Limited Offering Memorandum. The City Council, at a regular called meeting on May 17, 2022, adopted Resolution No. 1301 whereby it found and determined that the Preliminary Limited Offering Memorandum for the Bonds, dated _____, 2022 (the “Preliminary Limited Offering Memorandum”) was approved in form and content, with such changes, addenda, supplements, or amendments as may be approved by the City Manager, Director of Finance, Financial Advisor, Counsel or Bond Counsel to the City. The Preliminary Limited Offering Memorandum was “deemed final” (as that term is defined in 17 C.F.R. Section 240.15c2-12) by the City on _____, 2022, the date it was made public, such deeming as final is hereby ratified, confirmed and approved. The final Limited Offering Memorandum (the “Limited Offering Memorandum”) is hereby approved and adopted with such changes therein as the Mayor, Mayor Pro Tem, the City Manager, the City Secretary, and other appropriate officials of the City may approve, such approval to be conclusively evidenced by the delivery thereof. The Limited Offering Memorandum as thus approved, executed, and delivered, with such appropriate variations as shall be approved by the Mayor or Mayor Pro Tem, and the Underwriter, may be used by the Underwriter in the offering and sale of the Bonds. The City Secretary is hereby authorized and directed to include and maintain a copy of the Preliminary Limited Offering Memorandum and Limited Offering Memorandum and any addenda, supplement, or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Limited Offering Memorandum by the Underwriter in the offering of the Bonds is hereby ratified, approved, and confirmed. Notwithstanding the execution, approval, and delivery of such Preliminary Limited Offering Memorandum and Limited Offering Memorandum by the Mayor or Mayor Pro Tem, the Mayor or Mayor Pro Tem and this City Council are not responsible for and proclaim no specific knowledge of the information contained in the Preliminary Limited Offering Memorandum and Limited Offering Memorandum pertaining to the Development (as defined in the Limited Offering Memorandum), the Developer or its financial ability, any builders, any landowners, or the appraisal of the property in the District.

SECTION 5. Approval of Continuing Disclosure Agreement of the Issuer. That certain Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) between the City, P3Works, LLC (the “Administrator”) and RBC Capital Markets, LLC (the “Dissemination Agent”) is hereby authorized and approved in substantially final form attached hereto as Exhibit C and incorporated herein for all purposes, and the Mayor or the Mayor Pro Tem of the City is

hereby authorized and directed to execute and deliver such Continuing Disclosure Agreement with such changes as may be required to carry out the purpose of this Ordinance and as approved by the Mayor or the Mayor Pro Tem, such approval to be evidenced by the execution thereof.

SECTION 6. Additional Actions. The Mayor, the Mayor Pro Tem, the Director of Finance, the City Manager, Assistant City Manager, and the City Secretary are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance and to issue the Bonds in accordance with the terms of this Ordinance. The Mayor, the Mayor Pro Tem, the Director of Finance, the City Manager, Assistant City Manager, and the City Secretary are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in connection with the sale, issuance and delivery of the Bonds and the carrying out of the purposes and intent of this Ordinance.

SECTION 7. Severability. If any portion of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect any of the remaining portions of this Ordinance.

SECTION 8. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 9. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 10. Construction of Terms. If appropriate in the context of this Ordinance, words of the plural shall be considered to include the singular, and words of the masculine, feminine or neutral gender shall be considered to include the other genders.

SECTION 11. Effective Date. This Ordinance is passed on one reading as authorized by Texas Government Code, Section 1201.028, as amended, and shall be effective immediately upon its passage and adoption.

SECTION 12. 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.

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PASSED, APPROVED AND EFFECTIVE THIS 7TH DAY OF JUNE, 2022.

Travis Mitchell, Mayor
City of Kyle, Texas

ATTEST:

Jennifer Holm, City Secretary
City of Kyle, Texas

[CITY SEAL]

EXHIBIT A
INDENTURE OF TRUST

EXHIBIT B
BOND PURCHASE AGREEMENT

EXHIBIT C
CONTINUING DISCLOSURE AGREEMENT
OF THE ISSUER

INDENTURE OF TRUST

By and Between

CITY OF KYLE, TEXAS

and

**BOKF, NA,
as Trustee**

DATED AS OF JUNE 1, 2022

SECURING

**CITY OF KYLE, TEXAS
SPECIAL ASSESSMENT REVENUE BONDS,
SERIES 2022
(KYLE 57 PUBLIC IMPROVEMENT DISTRICT)**

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INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of June 1, 2022 is by and between the CITY OF KYLE, TEXAS (the “City”), and BOKF, NA, as trustee (together with its successors, the “Trustee”). Capitalized terms used in the preambles, recitals and granting clauses and not otherwise defined shall have the meanings assigned thereto in Article I.

WHEREAS, a petition (the “Petition”) requesting the creation of a public improvement district located in the City to be known as the Kyle 57 Public Improvement District (the “District”) was signed and submitted by Kyle Mortgage Investors, LLC, a Colorado limited liability company (“Kyle Mortgage Investors”), (i) the owner of taxable real property representing more than 50% of the appraised value of taxable real property liable for assessment in the proposed District, and (ii) the record owner of taxable real property that constituted more than 50% of the area of all taxable real property that was liable for assessment in the proposed District and filed with the City Secretary of the City (the “City Secretary”) on June 1, 2021, pursuant to the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended (the “PID Act”); and

WHEREAS, on September 7, 2021, after due notice, the City Council of the City (“City Council”) held a public hearing in the manner required by law on the advisability of the improvement projects and services described in the Petition as required by Section 372.009 of the PID Act; and

WHEREAS, the City Council made the findings required by Section 372.009(b) of the PID Act and, by Resolution No. 1249 (the “Creation Resolution”) adopted by a majority of the members of the City Council, authorized the creation of the District in accordance with its finding as to the advisability of the improvement projects and services; and

WHEREAS, the City Secretary filed a copy of Resolution No. 1249 with the Hays County Clerk in accordance with the provisions of the PID Act; and

WHEREAS, no written protests of the creation of the District from any owners of record of property within the District were filed with the City Secretary within 20 days after September 7, 2021; and

WHEREAS, on October 4, 2021, the City Council approved the Kyle 57 Public Improvement District Financing Agreement between the City and Kyle 57 Development, Inc., a Texas corporation (the “Developer”), and adopted Resolution No. 1252; and

WHEREAS, on November 1, 2021, the Developer acquired the property within the District, consisting of approximately 57.293 acres, from Kyle Mortgage Investors; and

WHEREAS, on May 17, 2022, the City Council adopted Resolution No. 1299, amending the Creation Resolution to increase the estimated costs of Authorized Improvements that can be funded by the District; and

WHEREAS, the City Council, pursuant to Section 372.016 of the PID Act, filed a proposed assessment roll for the District with the City Secretary and made the proposed assessment roll

subject to public inspection, and also directed and caused the City Secretary to publish notice of a public hearing, on May 25, 2022 and June 1, 2022, in the *Hays Free Press*, a newspaper of general circulation in the City, for the consideration of the proposed assessments and the “Service and Assessment Plan”, and to mail notice of the public hearing to the last known address of each property owner liable for assessments; and

WHEREAS, on June 7, 2022, the City Council convened the public hearing, and at such public hearing all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to make any objection to the proposed Assessment Roll and the Assessments; and

WHEREAS, at the June 7, 2022, public hearing referenced above, there were no written objections or evidence submitted to the City Secretary in opposition to the Service and Assessment Plan, the allocation of Actual Costs, the Assessment Roll, or the levy of the Assessments; and

WHEREAS, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City Secretary or the City, the City Council closed the hearing; and

WHEREAS, on June 7, 2022, the City approved and accepted the Service and Assessment Plan in conformity with the requirements of the PID Act and adopted Ordinance No. _____ (the “*Assessment Ordinance*”) and therein levied the Assessments; and

WHEREAS, the City Council is authorized by the PID Act to issue its revenue bonds payable from the Assessments for the purposes of (i) paying a portion of the Actual Costs of the Public Improvements, (ii) paying capitalized interest on bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve account for payment of principal and interest on Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds; and

WHEREAS, the City Council now desires to issue revenue bonds, in accordance with the PID Act, such series of Bonds to be entitled “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District)” (the “*Bonds*”), such Bonds being payable solely from the Assessment Revenue and other funds pledged under this Indenture to the payment of Bonds and for the purposes set forth in the preamble of this Indenture; and

WHEREAS, the Trustee has agreed to accept the trusts herein created and to serve as Trustee upon the terms set forth in this Indenture.

NOW, THEREFORE, the City, in consideration of the foregoing premises and acceptance by the Trustee of the trusts herein created, of the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, PLEDGE, TRANSFER, ASSIGN, and DELIVER to the Trustee for the benefit of the Owners, a security interest in all of the moneys, rights and properties described in the Granting Clauses hereof, as follows (collectively, the “*Trust Estate*”):

FIRST GRANTING CLAUSE

The Pledged Revenues and all moneys and investments held in the Pledged Funds, including any contract or any evidence of indebtedness related thereto or other rights of the City to receive any of such moneys or investments, whether now existing or hereafter coming into existence, and whether now or hereafter acquired; and

SECOND GRANTING CLAUSE

Any and all other property or money of every name and nature which is, from time to time hereafter by delivery or by writing of any kind, conveyed, pledged, assigned or transferred to the Trustee as additional security hereunder by the City or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property or money at any and all times and to hold and apply the same subject to the terms thereof; and

THIRD GRANTING CLAUSE

Any and all proceeds and products of the foregoing property described in the above granting clauses;

TO HAVE AND TO HOLD the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successors or assigns;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and ratable benefit of all present and future Owners of the Bonds from time to time issued under and secured by this Indenture, and for enforcement of the payment of the Bonds in accordance with their terms, and for the performance of and compliance with the obligations, covenants, and conditions of this Indenture;

PROVIDED, HOWEVER, if and to the extent that Assessments have been prepaid, the lien on the real property associated with such Prepayment shall be released, and the rights of the Trustee and Owners under this Indenture to proceed against the City for the purpose of protecting and enforcing the rights of the Owners with respect to such released real property shall terminate;

FURTHER PROVIDED, HOWEVER, if the City or its assigns shall well and truly pay, or cause to be paid, the principal or redemption price of and the interest on all the Bonds at the times and in the manner stated in the Bonds, according to the true intent and meaning thereof, then this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture is to be and remain in full force and effect; and

IN ADDITION, the Bonds are special obligations of the City payable solely from the Trust Estate, as and to the extent provided in this Indenture. The Bonds do not give rise to a charge against the general credit or taxing powers of the City and are not payable except as provided in this Indenture. Notwithstanding anything to the contrary herein, the Owners shall never have the right to demand payment thereof out of any funds of the City other than the Trust Estate. The City

shall have no legal or moral obligation to pay for the Bonds out of any funds of the City other than the Trust Estate.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated, and delivered and the Trust Estate hereby created, assigned, and pledged is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the City has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Owners from time to time of the Bonds as follows:

ARTICLE I DEFINITIONS, FINDINGS AND INTERPRETATION

Section 1.1. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Indenture, the following terms shall have the meanings specified below:

“*Account*” means any of the accounts established pursuant to Section 6.1 of this Indenture.

“*Actual Costs*” means, with respect to Public Improvements, the actual costs paid or incurred by or on behalf of the Developer: (1) to plan, finance, design, acquire, construct, install, and dedicate such improvements to the City, including the acquisition of necessary easements and other right-of-way; (2) to prepare plans, specifications (including bid packages), contracts, and as-built drawings; (3) to obtain zoning, licenses, plan approvals, permits, inspections, and other governmental approvals; (4) for third-party professional consulting services including, but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisals; (5) for labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums; and (6) to implement, administer, and manage the above-described activities including, but not limited to, a construction management fee equal to four percent (4%). Actual Costs shall not include general contractor’s fees in an amount that exceeds the percentage of work completed or construction management fees in an amount that exceeds the construction management fee amortized in approximately equal monthly installments over the term of the applicable construction management contract. Amounts expended for costs described in subsections (3), (4), and (6) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated.

“*Additional Interest*” means the amount collected by application of the Additional Interest Rate.

“*Additional Interest Rate*” means the 0.50% additional interest charged on Assessments pursuant to Section 372.018 of the PID Act.

“*Additional Interest Reserve Account*” means the Account established pursuant to Section 6.1 hereof.

“*Additional Interest Reserve Requirement*” means, initially, an amount equal to 5.5% of the principal amount of the Outstanding Bonds which will be funded from the payment of the Additional Interest deposited to the Pledged Revenue Fund.

“*Additional Obligations*” means any bonds or obligations, including specifically, any installment contracts, reimbursement agreements, temporary note or time warrant secured in whole or in part by an assessment, other than the Assessments securing the Bonds levied against property within the District in accordance with the PID Act.

“*Administrative Fund*” means that Fund established by Section 6.1 and administered pursuant to Section 6.9 hereof.

“*Administrator*” means the City or the person or independent firm designated by the City who shall have the responsibilities provided in the Service and Assessment Plan, the Indenture, or any other agreement or document approved by the City related to the duties and responsibilities of the administration of the District.

“*Annual Collection Costs*” mean the actual or budgeted costs and expenses relating to collecting the Annual Installments, including, but not limited to, costs and expenses for: (1) the Administrator; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; (7) complying with this Service and Assessment Plan and the PID Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements; and (8) the paying agent/registrars and Trustee in connection with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

“*Annual Debt Service*” means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled (including by reason of Sinking Fund Installments), and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any Sinking Fund Installments due in such Bond Year).

“*Annual Installment*” means, with respect to the Assessed Property, the annual installment payments of an Assessment calculated by the Administrator and approved by the City Council, including: (i) principal; (ii) interest; (iii) Annual Collection Costs; and (iv) the Additional Interest.

“*Annual Service Plan Update*” means an update to the Service and Assessment Plan prepared no less frequently than annually by the Administrator and approved by the City Council.

“*Applicable Laws*” means the PID Act, and all other laws or statutes, rules, or regulations, and any amendments thereto, of the State of Texas or of the United States, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.

“*Assessed Property*” means for any year, any Parcel within the District against which an Assessment is levied, other than Non-Benefited Property.

“*Assessment Ordinance*” means Ordinance No. _____ adopted by the City Council on June 7, 2022, that levied the Assessments on the Assessed Properties in the District.

“*Assessment Revenue*” means monies collected by or on behalf of the City from any one or more of the following: (i) an Assessment levied against an Assessed Property, or Annual Installment payment thereof, including any interest on such Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, and (iii) Foreclosure Proceeds.

“*Assessment Roll*” means the Assessment Roll for the Assessed Properties within the District, included in the Service and Assessment Plan as Exhibit E-1, or any other Assessment Roll in an amendment or supplement to the Service and Assessment Plan or in an Annual Service Plan Update, showing the total amount of the Assessments, as updated, modified or amended from time to time in accordance with the procedures set forth in the Service and Assessment Plan and in the PID Act, including updates prepared in connection with the issuance of PID Bonds or in connection with any Annual Service Plan Update.

“*Assessments*” mean the aggregate assessments shown on the Assessment Roll. The singular of such term means the assessment levied against an Assessed Property, as shown on the Assessment Roll, subject to reallocation upon the subdivision of an Assessed Property or reduction according to the provisions of the Service and Assessment Plan and the PID Act.

“*Authorized Denomination*” means, with respect to the Bonds, \$100,000 and any integral multiple of \$1,000 in excess thereof, notwithstanding the foregoing, Authorized Denominations shall also include Bonds issued in \$1,000 in principal amount and integral multiples of \$1,000 in the following instances: (A) any Bonds or any portion thereof that have been redeemed in part or (B) any Bonds or any portion thereof that have been defeased in part; *provided, however*, that upon receipt by the Paying Agent/Registrar of written evidence that the Bonds have received an Investment Grade Rating, Authorized Denomination shall mean \$1,000 or any integral multiple thereof, notwithstanding any subsequent downgrade, suspension or withdrawal of such rating.

“*Authorized Improvements*” means those public improvements authorized by Section 372.003 of the PID Act, including Public Improvements, Bond Issuance Costs, and District Formation Expenses.

“*Bond Counsel*” means Bickerstaff Heath Delgado Acosta LLP or any other attorney or firm of attorneys designated by the City that are nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

“*Bond Date*” means the date designated as the initial date of the Bonds by Section 3.2(a) of this Indenture.

“*Bond Fund*” means the Fund established pursuant to Section 6.1 and administered as provided in Section 6.4 hereof.

“*Bond Issuance Costs*” means the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

“*Bond Ordinance*” means Ordinance No. _____ adopted by the City Council on June 7, 2022, authorizing the issuance of the Bonds pursuant to this Indenture.

“*Bond Year*” means the one-year period beginning on September 1 in each year and ending on August 31 in the following year.

“*Bonds*” means those certain “City of Kyle, Texas, Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District) that are secured by the Trust Estate.

“*Business Day*” means any day other than a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close.

“*Certification for Payment*” means a certification for payment substantially in the forms of Exhibit E attached to the Financing Agreement executed by the Developer and submitted to the City and approved by the City Representative, specifying the amount of work performed and the Actual Costs thereof, and requesting payment for such Actual Costs from money on deposit in accounts of the Project Fund as further described in the Financing Agreement and Section 6.5 herein.

“*City*” means the City of Kyle, Texas.

“*City Certificate*” means a document signed by the City Representative and delivered to the Trustee, certifying that the Trustee is authorized to take the action specified in the City Certificate, and a form of City Certificate is included as *Exhibit B* to this Indenture.

“*City Council*” shall have the meaning ascribed to such term in the recitals hereof.

“*City Engineer*” means the civil engineer or firm of civil engineers selected by the City to perform the duties set forth herein and in the Financing Agreement.

“*City Representative*” means the City Manager and/or any official or agent of the City authorized by the City Council to undertake the action referenced herein.

“*Closing Date*” means the date of the initial delivery of and payment for the applicable Series of Bonds.

“*Code*” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“*Continuing Disclosure Agreements*” or “*Continuing Disclosure Agreement*” means both, or either of, the Continuing Disclosure Agreements, with respect to the Bonds, by and between the

City, the Administrator and the Dissemination Agent, and by and among the Developer (and its Designated Successors and Assigns), the Administrator, and the Dissemination Agent.

“*County*” means Hays County, Texas.

“*Creation Resolution*” shall have the meaning set forth in the third recital.

“*Defeasance Securities*” means Investment Securities then authorized by applicable law for the investment of funds to defease public securities.

“*Delinquent Collection Costs*” means the costs related to the foreclosure on an Assessed Property and the costs of collection of a delinquent Assessment, delinquent annual Installments, or any other delinquent amounts due under the Service and Assessment Plan, including penalties and reasonable attorney’s fees actually paid, but excluding amounts representing interest and penalty interest.

“*Designated Payment/Transfer Office*” means (i) with respect to the initial Paying Agent/Registrar named in this Indenture, the transfer/payment office located in Houston, Texas, or such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“*Designated Successors and Assigns*” means (i) an entity to which Developer assigns (in writing) its rights and obligations contained in the Financing Agreement, (ii) any entity which is the successor by merger or otherwise to all or substantially all of Developer’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Developer.

“*Developer*” means Kyle 57 Development, Inc., a Texas corporation, and their Designated Successors and Assigns.

“*Dissemination Agent*” means RBC Capital Markets, LLC, and its successors.

“*District*” shall have the meaning set forth in the first recital.

“*District Formation Expenses*” means the costs associated with forming the District, including but not limited to 1st year Annual Collection Costs, and any other cost or expense directly associated with the establishment of the District.

“*DTC*” means The Depository Trust Company of New York, New York, or any successor securities depository.

“*DTC Participant*” means brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“*Event of Default*” shall have the meaning, with respect to this Indenture, set forth in Section 11.1 hereof.

“*Excess Additional Interest Reserve Amount*” shall have the meaning set forth in Section 6.7(e) hereof.

“*Financing Agreement*” means the “*Kyle 57 Public Improvement District Financing Agreement*” between the City and the Developer, dated as of October 4, 2021, and as amended by the letter agreement, effective as of March 1, 2022, between the City and the Developer, and as amended by the First Amendment to Kyle 57 Public Improvement District Financing Agreement, effective as of May 17, 2022, which provides, in part, for the deposit of proceeds from the issuance and sale of the Bonds and the payment of Actual Costs of Authorized Improvements within in the District, the issuance of bonds, the reimbursement of Actual Costs to the Developer from the proceeds of the Bonds for funds advanced by the Developer and used to pay Actual Costs of the Public Improvements and other matters related thereto.

“*Foreclosure Proceeds*” means the proceeds, including interest and penalty interest, received by the City from the enforcement of the Assessments against any Assessed Property or Assessed Properties, whether by foreclosure of lien or otherwise, but excluding and net of all Delinquent Collection Costs.

“*Fund*” means any of the funds established pursuant to Section 6.1 of this Indenture.

“*Indenture*” means this Indenture of Trust as originally executed or as it may be from time to time supplemented or amended by one or more indentures supplemental hereto and entered into pursuant to the applicable provisions hereof.

“*Independent Financial Consultant*” means any consultant or firm of such consultants appointed by the City who, or each of whom: (i) is judged by the City, as the case may be, to have experience in matters relating to the issuance and/or administration of the Bonds; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the District, or any real property in the District; and (iv) is not connected with the City as an officer or employee of the City or related by consanguinity or affinity to any such officer or employee, but who may be regularly retained to make reports to the City.

“*Initial Bond*” means the Initial Bond as set forth in *Exhibit A* to this Indenture.

“*Interest Payment Date*” means the date or dates upon which interest on the Bonds is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being on March 1 and September 1 of each year, commencing September 1, 2022.

“*Investment Grade Rating*” means a rating assigned by a Rating Agency in one of such Rating Agency’s four highest categories for long-term debt instruments (without regard for gradation within a rating category and without regard for credit enhancement) or otherwise designated as investment grade by a Rating Agency.

“*Investment Securities*” means those authorized investments described in the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended; and that at the time made are included in and authorized by the City’s official investment policy as approved by the City Council from time to time.

“*Maximum Annual Debt Service*” means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

“*Non-Benefited Property*” means Parcels within the boundaries of the District that accrue no special benefit from the Authorized Improvements.

“*Outstanding*” means, as of any particular date when used with reference to Bonds, all Bonds authenticated and delivered under this Indenture except (i) any Bond that has been canceled by the Trustee (or has been delivered to the Trustee for cancellation) at or before such date, (ii) any Bond for which the payment of the principal or Redemption Price of and interest on such Bond shall have been made as provided in Article IV, and (iii) any Bond in lieu of or in substitution for which a new Bond shall have been authenticated and delivered pursuant to Section 3.11 herein.

“*Owner*” or “*Holder*” means the Person who is the registered owner of a Bond or Bonds, as shown in the Register, which shall be Cede & Co., as nominee for DTC, so long as the Bonds are in book-entry only form and held by DTC as securities depository in accordance with Section 3.13 herein.

“*Parcel*” means a property identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purposes, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the official public records of Hays County, or by any other means determined by the City.

“*Paying Agent/Registrar*” means initially the Trustee, or any successor thereto as provided in this Indenture.

“*Person*” or “*Persons*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“*PID Act*” means Texas Local Government Code, Chapter 372, Public Improvement Districts, as amended.

“*PID Bonds*” means all bonds or any bond authorized by a bond ordinance and issued in accordance with this Indenture, including the Bonds, Refunding Bonds and any bonds issued in exchange or replacement thereof as permitted by this Indenture.

“*PID Costs of Issuance Account*” means the Account established pursuant to Section 6.1 hereof.

“*PID Improvements Account*” means the Account of such name established pursuant to Section 6.1 hereof.

“*Pledged Funds*” means the Pledged Revenue Fund, the Bond Fund, the Project Fund, the Reserve Fund, and the Redemption Fund. Such term also includes each fund or account pledged to the repayment of Refunding Bonds.

“*Pledged Revenue Fund*” means that fund established pursuant to Section 6.1 hereof and administered pursuant to Section 6.3 herein.

“*Pledged Revenues*” means the sum of (i) Assessment Revenue other than Annual Collection Costs and Delinquent Collection Costs; (ii) the moneys held in any of the Pledged Funds; and (iii) any additional revenues that the City may pledge to the payment of Bonds.

“*Prepayment*” means the payment of all or a portion of an Assessment, with interest that has accrued to the date of prepayment, before the final Annual Installment thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Annual Installment.

“*Principal and Interest Account*” means the Account of such name established pursuant to Section 6.1 hereof.

“*Project Collection Fund*” means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.14 herein.

“*Project Fund*” means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.5 herein.

“*Public Improvements*” means the Authorized Improvements that benefit the District and which are described in Section III.A of the Service and Assessment Plan and as depicted in Exhibit G of the Service and Assessment Plan, and which improvements are to be financed with the Bonds.

“*Purchaser*” means, with respect to a Series of Bonds, the initial underwriter of such Bonds.

“*Quarter in Interest*” means as of any particular date of calculation, the Owners of no less than twenty-five percent (25%) of the principal amount of the then Outstanding Bonds. In the event that two or more groups of Owners satisfy the percentage requirement set forth in the immediately preceding sentence and act (or direct the Trustee in writing to act) in a conflicting manner, only the group of Owners with the greatest percentage of Outstanding Bonds (as measured in accordance with the immediately preceding sentence) shall, to the extent of such conflict, be deemed to satisfy such requirement.

“*Rating Agency*” means each of Moody's Investors Service, Inc., S&P Global Ratings, Fitch Ratings Inc., Kroll Bond Rating Agency, Inc., and any other nationally recognized statistical rating organization recognized as such by the SEC.

“*Rebate Amount*” has the meaning ascribed to such term in section 1.148-1(b) of the Regulations.

“*Rebate Fund*” means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.8 herein.

“*Record Date*” means the close of business on the fifteenth (15th) calendar day (whether or not a Business Day) of the month next preceding an Interest Payment Date.

“*Redemption Fund*” means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.6 herein.

“*Redemption Price*” means 100% of the principal amount of such Bonds, or portions thereof, to be redeemed plus accrued interest to the date of redemption.

“*Refunding Bonds*” means Bonds secured by a parity lien, with the Outstanding Bonds, on the Trust Estate issued pursuant to Section 3.6 hereof, as more specifically described in a Supplemental Indenture, authorizing the refunding of all or any portion of the Outstanding Bonds.

“*Register*” means the register specified in Article III of this Indenture.

“*Regulations*” shall have the meaning set forth in Section 7.5(a) hereof.

“*Reserve Account*” means the Account of such name established pursuant to Section 6.1 hereof.

“*Reserve Account Requirement*” means, as of the Closing Date, the least of: (i) Maximum Annual Debt Service on the Bonds, (ii) 125% of average Annual Debt Service on the Bonds, or (iii) 10% of the par amount of the Bonds; provided, however, that such Reserve Account Requirement shall be reduced by the amount of any transfers made pursuant to subsections (c) and (d) of Section 6.7; and provided further that as a result of an optional redemption pursuant to Section 4.3, the Reserve Account Requirement shall be reduced by a percentage equal to the pro rata principal amount of Bonds redeemed by such optional redemption divided by the total principal amount of the Outstanding Bonds prior to such redemption. As of the Closing Date for the Bonds, the Reserve Account Requirement is \$_____, which is an amount equal to Maximum Annual Debt Service on the Bonds as of the Closing Date therefor.

“*Reserve Fund*” means that fund established pursuant to Section 6.1 and administered in Section 6.7 herein.

“*SEC*” means the United States Securities and Exchange Commission.

“*Series*” means any designated series of Bonds issued under this Indenture.

“*Service and Assessment Plan*” means the Kyle 57 Public Improvement District Service and Assessment Plan approved by the City Council on June 7, 2022, and which is attached as Exhibit A to the Assessment Ordinance.

“*Sinking Fund Installment*” means the amount of money to redeem or pay at maturity the principal of Bonds payable from such installments at the times and in the amounts provided in Section 4.2 herein.

“*Stated Maturity*” means the date the Bonds, or any portion of the Bonds, as applicable are scheduled to mature without regard to any redemption or prepayment.

“*Supplemental Indenture*” means an indenture which has been duly executed by the Trustee and the City Representative pursuant to an ordinance adopted by the City Council and which indenture amends or supplements this Indenture, but only if and to the extent that such indenture is specifically authorized hereunder.

“*Tax Certificate*” means the Certificate as to Tax Exemption delivered by the City on the Closing Date for the Bonds setting forth the facts, estimates and circumstances in existence on the Closing Date for the Bonds which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the interest on such Bonds to be included in the gross income of the Owners thereof for Federal income tax purposes.

“*Trust Estate*” means the Trust Estate described in the granting clauses of this Indenture.

“*Trustee*” means BOKF, NA, Houston, Texas, a national banking association duly organized and validly existing under the laws of the United States of America, in its capacity as trustee hereunder, and its successors, and any other corporation or association that may at any time be substituted in its place, as provided in Article IX, such entity to serve as Trustee and Paying Agent/Registrar for the Bonds.

Section 1.2. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Indenture are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.3. Table of Contents, Titles and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Indenture or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.4. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Words importing persons include any legal person, including any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization and government or agency or political subdivision thereof.

(c) Any reference to a particular Article or Section shall be to such Article or Section of this Indenture unless the context shall require otherwise.

(d) This Indenture and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Indenture.

ARTICLE II THE BONDS

Section 2.1. Security for the Bonds.

The Bonds, as to both principal and interest, are and shall be equally and ratably secured by and payable from a first lien on and pledge of the Trust Estate.

The lien on and pledge of the Trust Estate shall be valid and binding and fully perfected from and after the Closing Date, without physical delivery or transfer of control of the Trust Estate, the filing of this Indenture or any other act; all as provided in Texas Government Code, Chapter 1208, as amended, which applies to the issuance of the Bonds and the pledge of the Trust Estate granted by the City under this Indenture, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Trust Estate granted by the City under this Indenture is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the Owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

Section 2.2. Limited Obligations.

The Bonds are special and limited obligations of the City, payable solely from and secured solely by the Trust Estate, including the Pledged Revenues and the Pledged Funds, and the Bonds shall never be payable out of funds raised or to be raised by taxation or from any other revenues, properties or income of the City.

Section 2.3. Authorization for Indenture.

The terms and provisions of this Indenture and the execution and delivery hereof by the City to the Trustee have been duly authorized by official action of the City Council of the City. The City has ascertained and it is hereby determined and declared that the execution and delivery of this Indenture is necessary to carry out and effectuate the purposes set forth in the preambles of this Indenture and that each and every covenant or agreement herein contained and made is necessary, useful or convenient in order to better secure the Bonds and is a contract or agreement necessary, useful and convenient to carry out and effectuate the purposes herein described.

Section 2.4. Contract with Owners and Trustee.

(a) The purposes of this Indenture are to establish a lien and the security for, and to prescribe the minimum standards for the authorization, issuance, execution and delivery of,

the Bonds and to prescribe the rights of the Owners, and the rights and duties of the City and the Trustee.

(b) In consideration of the purchase and acceptance of any or all of the Bonds by those who shall purchase and hold the same from time to time, the provisions of this Indenture shall be a part of the contract of the City with the Owners, and shall be deemed to be and shall constitute a contract among the City, the Owners, and the Trustee.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.1. Authorization.

The Bonds are hereby authorized to be issued and delivered in accordance with the Constitution and general laws of the State of Texas, including particularly the PID Act, as amended. The Bonds shall be issued in the aggregate principal amount of \$____,000 for the purpose of (i) paying a portion of the Actual Costs of the Public Improvements, (ii) paying capitalized interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds.

Section 3.2. Date, Denomination, Maturities, Numbers and Interest.

(a) The Bonds shall be dated June 30, 2022 (the “*Bond Date*”) and shall be issued in Authorized Denominations. Upon the receipt of an Investment Grade Rating on the Bonds, the City shall promptly notify the Dissemination Agent in writing of such rating change and shall provide written direction to the Dissemination Agent to file a notice of such occurrence with the Municipal Securities Rulemaking Board and to forward such notice to the Paying Agent/Registrar and to the Trustee. The Dissemination Agent shall file such notice and forward the same to the Paying Agent/Registrar and to the Trustee immediately following the day on which it receives written notice of such occurrence from the City. Any such notice is required to be filed within ten (10) Business Days of the occurrence of the receipt of the Investment Grade Rating on the Bonds. Upon receipt by the Paying Agent/Registrar of written evidence that the Bonds have received an Investment Grade Rating, beneficial ownership in the Bonds may be acquired in principal denominations of \$1,000 or any integral multiple thereof, notwithstanding any subsequent downgrade, suspension or withdrawal of such rating. The Bonds shall be in fully registered form, without coupons, and shall be numbered separately from R-1 upward, except the Initial Bond, which shall be numbered T-1.

(b) Interest shall accrue and be paid on each Bond from the later of the date of initial delivery of the Bonds or the most recent Interest Payment Date to which interest has been paid or provided for, at the rate per annum set forth below until the principal thereof has been paid on the maturity date specified below or otherwise provided for. Such interest shall be payable semiannually on March 1 and September 1 of each year, commencing September 1, 2022, computed on the basis of a 360-day year of twelve 30-day months.

(c) The Bonds shall mature on September 1 in the years and in the principal amounts and shall bear interest as set forth below:

<u>Year</u>	<u>Principal Installment</u>	<u>Interest Rate</u>
20__	\$ ____,000	__%
20__	____,000	__%
20__	____,000	__%
20__	____,000	__%

(d) The Bonds shall be subject to mandatory sinking fund redemption, optional redemption, and extraordinary optional redemption prior to maturity as provided in Article IV herein, and shall otherwise have the terms, tenor, denominations, details, and specifications as set forth in the form of Bond set forth in Exhibit A to this Indenture.

Section 3.3. Conditions Precedent to Delivery of Bonds.

(a) The Bonds shall be executed by the City and delivered to the Trustee, whereupon the Trustee shall authenticate the Bonds and, upon payment of the purchase price of the Bonds, shall deliver the Bonds upon the order of the City, but only upon delivery to the Trustee of:

- (1) a certified copy of the Assessment Ordinance;
- (2) a certified copy of the Bond Ordinance;
- (3) a copy of the executed Financing Agreement;
- (4) a copy of this Indenture executed by the Trustee and the City;
- (5) a City Certificate directing the authentication and delivery of the Bonds, describing the Bonds to be authenticated and delivered, designating the purchasers to whom the Bonds are to be delivered, stating the purchase price of the Bonds and stating that all items required by this Section are therewith delivered to the Trustee in form and substance satisfactory to the City;
- (6) a copy of each of the executed Continuing Disclosure Agreements;
- (7) a copy of the executed opinion of Bond Counsel; and
- (8) the approving opinion of the Attorney General of the State and the State Comptroller's registration certificate.

(b) Each Series of Refunding Bonds shall be executed by the City and delivered to the Trustee, whereupon the Trustee shall authenticate such Bonds and, upon payment of the purchase price of such Series of Bonds, shall deliver such Series of Bonds upon the order of the City, but only upon delivery to the Trustee of:

- (1) the items described in Section 3.3(a)(1), (3), (4), (5), and (6) , if any, above;
- (2) a certified copy of the ordinance of the City Council authorizing the issuance of such Series of Bonds and all actions necessary therefor;
- (3) an original executed counterpart of the Supplemental Indenture for such Series of Bonds that establishes, among other things, the date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of such Bonds, which such terms shall include a deposit into the Reserve Account of an amount equal to the Reserve Account Requirement taking into account the then Outstanding Bonds and the Bonds then proposed to be issued;
- (4) a copy of the opinion of Bond Counsel required by Section 10.1 hereof;
- (5) a City Certificate, including the requisite information as set forth in Section 3.3(a)(5) above, to the effect that the issuance of such Series of Bonds complies with the requirements contained herein and in each Supplemental Indenture; and
- (6) the City Representative shall certify to the Trustee in writing that the City is not in default in the performance and observance of any of the terms, provisions and conditions applicable to the City contained herein or in any Supplemental Indenture.

Section 3.4. Medium, Method and Place of Payment.

(a) Principal of and interest on the Bonds shall be paid in lawful money of the United States of America, as provided in this Section.

(b) Interest on the Bonds shall be payable to the Owners thereof as shown in the Register at the close of business on the relevant Record Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date that continues for thirty (30) days or more thereafter, a new record date for such interest payment (a “*Special Record Date*”) will be established by the Trustee, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the “*Special Payment Date*,” which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) Business Days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Trustee at the close of business on the last Business Day preceding the date of mailing such notice.

(c) Interest on the Bonds shall be paid by check, dated as of the Interest Payment Date, and sent, first class United States mail, postage prepaid, by the Paying Agent/Registrar to each Owner at the address of each as such appears in the Register or by such

other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, the Owner shall bear all risk and expense of such other banking arrangement.

(d) The principal of each Bond shall be paid to the Owner of such Bond on the due date thereof, whether at the maturity date or the date of prior redemption thereof, upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Indenture is not a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

(f) Unclaimed payments of amounts due hereunder shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Bonds to which such unclaimed payments pertain. Subject to any escheat, abandoned property, or similar law of the State of Texas, any such payments remaining unclaimed by the Owners entitled thereto for two (2) years after the applicable payment or redemption date shall be applied to the next payment or payments on such Bonds thereafter coming due and, to the extent any such money remains after the retirement of all Outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, none of the City, the Paying Agent/Registrar, or any other Person shall be liable or responsible to any holders of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat law or similar law of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

Section 3.5. Execution and Registration of Bonds.

(a) The Bonds shall be executed on behalf of the City by the Mayor or Mayor Pro Tem of the City and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Indenture unless and until there appears thereon the Certificate of Trustee substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Trustee. It shall not be required that the same officer or authorized signatory of the Trustee sign the Certificate of Trustee on all of

the Bonds. In lieu of the executed Certificate of Trustee described above, each Initial Bond delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which certificate shall be evidence that each Initial Bond has been duly approved by the Attorney General of the State of Texas, is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

(d) On each Closing Date, one Initial Bond representing the entire principal amount of all of the Bonds of such Series, payable in stated installments to the Purchaser, or its designee, executed with the manual or facsimile signatures of the Mayor or Mayor Pro Tem of the City and the City Secretary, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Purchaser or its designee. Upon payment for such Initial Bond, the Trustee shall cancel the Initial Bond and upon City Certificate deliver to DTC on behalf of the Purchaser one registered definitive Bond for each year of maturity of the applicable Series of Bonds, in the aggregate principal amount of all Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC.

Section 3.6. Refunding Bonds.

(a) Except in accordance with the provisions of this Indenture, including Section 13.2, the City shall not issue additional bonds, notes or other obligations payable from any portion of the Trust Estate, other than Refunding Bonds. The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State of Texas. Except as limited by the terms of this Indenture, including Section 13.2, the City reserves the right to incur debt payable from sources other than the Trust Estate, including revenue derived from contracts with other entities, including private corporations, municipalities and political subdivisions issued particularly for the purchase, construction, improvement, extension, replacement, enlargement or repair of the facilities needed in performing any such contract.

(b) The principal of all Refunding Bonds must be scheduled to be paid, be subject to mandatory sinking fund redemption or mature on September 1 of the years in which such principal is scheduled to be paid. All Refunding Bonds must bear interest at a fixed rate and any interest payment dates for Refunding Bonds must be March 1 and September 1. The date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of Refunding Bonds shall be set forth in a Supplemental Indenture.

(c) Upon their authorization by the City, the Refunding Bonds of a Series issued under this Section 3.6 shall be issued and shall be delivered to the purchasers or owners thereof, but before, or concurrently with, the delivery of said Refunding Bonds to such purchasers or owners there shall have been filed with the Trustee the items required by Section 3.3(b) above.

Section 3.7. Ownership.

(a) The City, the Trustee, the Paying Agent/Registrar and any other Person may treat the Person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment as provided herein (except interest shall be paid to the Person in whose name such Bond is registered on the relevant Record Date) and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Trustee, nor the Paying Agent/Registrar, shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of any Bond shall be valid and effectual and shall discharge the liability of the City, the Trustee and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.8. Registration, Transfer and Exchange.

(a) So long as any Bond remains Outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a Register in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Indenture. The Paying Agent/Registrar represents and warrants that it will maintain a copy of the Register, and, upon written request from the City, file with the City, and shall cause the Register to be current with all registration and transfer information as from time to time may be applicable.

(b) A Bond shall be transferable only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture, or with respect to, said Bond.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest rate and in any Authorized Denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. The Trustee is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) The Trustee is hereby authorized to authenticate and deliver Bonds transferred or exchanged in accordance with this Section. A new Bond or Bonds will be delivered by the Paying Agent/Registrar, in lieu of the Bond being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each transferred Bond delivered by the Paying Agent/Registrar in

accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such transferred Bond is delivered.

(e) Each exchange Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(f) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different Authorized Denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Bond.

(g) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Bond or portion thereof called for redemption prior to maturity within 45 days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond.

Section 3.9. Cancellation.

All Bonds paid or redeemed before scheduled maturity in accordance with this Indenture, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Indenture, shall be cancelled, and proper records shall be made regarding such payment, redemption, exchange, or replacement. The Paying Agent/Registrar shall dispose of cancelled Bonds in accordance with the records retention requirements of the Trustee.

Section 3.10. Temporary Bonds.

(a) Following the delivery and registration of the Initial Bond of a given Series and pending the preparation of definitive Bonds for such Series of Bonds, the proper officers of the City may execute and, upon the City's request, the Trustee shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Indenture.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Trustee the Bonds in definitive form; thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and the Trustee shall authenticate and deliver in exchange therefor a Bond or Bonds of the same maturity and series, in definitive form, in the Authorized Denomination, and in the same aggregate principal amount, as the Bond or Bonds in temporary

form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.11. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Trustee shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the City shall issue and the Trustee, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

- (i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;
- (ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the Trustee to save them and the City harmless;
- (iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Trustee and the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and
- (iv) satisfies any other reasonable requirements imposed by the City and the Trustee.

(c) After the delivery of such replacement Bond, if a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the Person to whom it was delivered or any Person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the City, the Paying Agent/Registrar or the Trustee in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.12. Book-Entry Only System.

The Bonds shall initially be issued in book-entry-only form and shall be deposited with DTC, which is hereby appointed to act as the securities depository therefor, in accordance with the letter of representations from the City to DTC. On the Closing Date for the Bonds, the definitive Bonds shall be issued in the form of a single typewritten certificate for each maturity thereof registered in the name of Cede & Co., as nominee for DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any Person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other Person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other Person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Indenture to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the Person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Owners as shown in the Register, as provided in this Indenture, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No Person other than an Owner, as shown in the Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Indenture. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks or drafts being mailed to the registered owner at the close of business on the relevant Record Date, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

Section 3.13. Successor Securities Depository: Transfer Outside Book-Entry-Only System.

In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the letter of representations from the City to DTC, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of

the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Bonds and cause the Paying Agent/Registrar to transfer one or more separate registered Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

Section 3.14. Payments to Cede & Co.

Notwithstanding any other provision of this Indenture to the contrary, so long as Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds shall be made and given, respectively, in the manner provided in the blanket letter of representations from the City to DTC.

Section 3.15. Use of Book-Entry-Only System Not Required.

Notwithstanding any provision of this Indenture to the contrary, any Supplemental Indenture may provide that a Series of Bonds will not be issued in book-entry-only form and that Sections 3.12 – 3.14 of this Indenture will not apply to such Series of Bonds.

ARTICLE IV
REDEMPTION OF BONDS BEFORE MATURITY

Section 4.1. Limitation on Redemption.

The Bonds shall be subject to redemption before their scheduled maturity only as provided in this Article IV.

Section 4.2. Mandatory Sinking Fund Redemption.

(a) The Bonds are subject to mandatory sinking fund redemption prior to their maturity and will be redeemed by the City in part at the Redemption Price from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI, on the dates and in the respective Sinking Fund Installments as set forth in the following schedule:

\$ Bonds Maturing September 1, 20

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ __,000
September 1, 20__	__,000
September 1, 20__	__,000
September 1, 20__*	__,000

\$ Bonds Maturing September 1, 20

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ __,000
September 1, 20__	__,000
September 1, 20__	__,000
September 1, 20__	__,000
September 1, 20__*	__,000

(b) At least forty-five (45) days prior to each sinking fund redemption date, the Trustee shall select by lot, in accordance with Section 4.5, a principal amount of Bonds of such maturity equal to the Sinking Fund Installment amount of such Bonds to be redeemed, shall call such Bonds for redemption on such scheduled mandatory redemption date, and shall give notice of such redemption, as provided in Section 4.6.

(c) The principal amount of Bonds of a Stated Maturity required to be redeemed on any mandatory sinking fund redemption date pursuant to this Section 4.2(a) shall be reduced, at the option of the City, by the principal amount of any Bonds of such maturity which, at least forty-five (45) days prior to the mandatory sinking fund redemption date shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued and unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

(d) The principal amount of Bonds required to be redeemed on any mandatory sinking fund redemption date pursuant to this Section 4.2(a) shall be reduced on a pro rata basis among Sinking Fund Installments by the principal amount of any Bonds which, at least forty-five (45) days prior to the mandatory sinking fund redemption date, shall have been redeemed pursuant to the optional redemption or extraordinary optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

Section 4.3. Optional Redemption.

The City reserves the right and option to redeem the Bonds maturing on or after September 1, 20__ before their scheduled maturity dates, in whole or in part, in amounts equal to Authorized

* Stated Maturity

Denominations, on or after September 1, 20__, such redemption date or dates to be fixed by the City, at the Redemption Price.

Section 4.4. Extraordinary Optional Redemption.

(a) The City reserves the right and option to redeem the Bonds before their respective scheduled maturity dates, in whole or in part, on the first day of any month, at the Redemption Price from amounts on deposit in the Redemption Fund as a result of Prepayments as provided in Section 6.3(d) (including related transfers to the Redemption Fund made pursuant to this Indenture), or as a result of unexpended amounts transferred from the PID Improvements Account of the Project Fund as provided in Section 6.5(d).

Notwithstanding the foregoing, the Trustee will not be required to make an extraordinary optional redemption pursuant to this Section 4.4 unless it has at least \$1,000 available in the Redemption Fund with which to redeem the Bonds.

(b) In lieu of redeeming the Bonds with the funds described in this Section, the City may purchase the Bonds in the open market of the maturity to be redeemed at the price not in excess of that provided in Section 4.7.

Section 4.5. Partial Redemption.

(a) If less than all of the Bonds are to be redeemed pursuant to Section 4.2, 4.3, or 4.4, Bonds shall be redeemed in minimum principal amounts of \$1,000 or any integral thereof. Each Bond shall be treated as representing the number of Bonds that is obtained by dividing the principal amount of such Bond by \$1,000. No redemption shall result in a Bond in a denomination of less than the Authorized Denomination in effect at that time; provided, however, if the principal amount of the Outstanding Bond is less than an Authorized Denomination after giving effect to such partial redemption, a Bond in the principal amount equal to the unredeemed portion, but not less than \$1,000, may be issued.

(b) In selecting the Bonds to be redeemed pursuant to Section 4.2, the Trustee may select Bonds in any method that results in a random selection.

(c) In selecting the Bonds to be redeemed pursuant to Section 4.3, the Trustee may rely on the directions provided in a City Certificate. If less than all Bonds within a Stated Maturity are called for optional redemption pursuant to Section 4.3 hereof, the Trustee shall call by lot the Bonds, or portions thereof, within such Stated Maturity and in such principal amounts, for redemption.

(d) If less than all of the Bonds are called for extraordinary optional redemption pursuant to Section 4.4, the Bonds or portion of a Bond, as applicable, to be redeemed shall be allocated on a pro rata basis (as nearly as practicable) among all Outstanding Bonds. If less than all Bonds within a Stated Maturity are called for extraordinary optional redemption pursuant to Section 4.4 hereof, the Trustee shall call by lot the Bonds, or portions thereof, within such Stated Maturity and in such principal amounts, for redemption.

(e) Upon surrender of any Bond for redemption in part, the Trustee in accordance with Section 3.8 of this Indenture, shall authenticate and deliver and exchange the Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, which shall be an Authorized Denomination. A new Bond representing the unredeemed balance of such Bond shall be issued to the Owner thereof, such exchange being without charge.

Section 4.6. Notice of Redemption to Owners.

(a) The Trustee shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed, at the address shown in the Register.

(b) The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, and subject to Section 4.5 hereof, an identification of the Bonds or portions thereof to be redeemed, any conditions to such redemption and that on the redemption date, if all conditions, if any, to such redemption have been satisfied, such Bond shall become due and payable.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

(d) The City has the right to rescind any optional redemption or extraordinary optional redemption described in Section 4.3 or 4.4 by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Trustee shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

(e) With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.

Section 4.7. Purchase Price for Bonds.

Upon receipt of written notice from the City specifying the Bonds to be purchased, the Trustee shall apply moneys available for redemption to the purchase of Bonds which were otherwise to be redeemed in such order or priority and subject to such restrictions as may be prescribed in this Indenture in the manner provided in this Section. The purchase price paid by the Trustee on behalf of the City (excluding accrued and unpaid interest but including any

brokerage and other charges) for any Bond purchased by the City shall not exceed the principal amount of such Bond.

Section 4.8. Payment Upon Redemption.

(a) The Trustee shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Redemption Fund or otherwise received by the Trustee from the City and shall use such funds solely for the purpose of paying the Redemption Price on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the designated corporate trust office of the Trustee (initially, Houston, Texas) on or after the date fixed for redemption, the Trustee shall pay the Redemption Price on such Bond to the date of redemption from the moneys set aside for such purpose.

Section 4.9. Effect of Redemption.

Notice of redemption having been given as provided in Section 4.6 of this Indenture, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption provided that funds for the payment of the Redemption Price of such Bonds or the principal of and interest on such Bonds, as applicable, to the date fixed for redemption are on deposit with the Trustee; thereafter, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

ARTICLE V
FORM OF THE BONDS

Section 5.1. Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Trustee, and the Assignment to appear on each of the Bonds, (i) shall be substantially in the form set forth in Exhibit A to this Indenture with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Indenture, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds shall be typewritten, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

(d) The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 5.2. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of S&P Global Market Intelligence on behalf of the American Bankers Association, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof; and, none of the City, the Trustee, or the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds. The Trustee may include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners of the Bonds and that neither the City nor the Trustee shall be liable for any inaccuracies of such numbers.

Section 5.3. Legal Opinion.

The approving legal opinion of Bond Counsel may be printed on or attached to each Bond over the certification of the City Secretary of the City, which may be executed in facsimile.

Section 5.4. Statement of Insurance.

A statement relating to municipal bond insurance policy, if any, to be issued for the Bonds may be printed on or attached to each Bond.

ARTICLE VI
FUNDS AND ACCOUNTS

Section 6.1. Establishment of Funds and Accounts.

(a) Creation of Funds. The following Funds are hereby created and established under this Indenture:

- (i) Pledged Revenue Fund;
- (ii) Bond Fund;
- (iii) Project Fund;
- (iv) Redemption Fund;
- (v) Reserve Fund;
- (vi) Rebate Fund;
- (vii) Administrative Fund; and
- (viii) Project Collection Fund.

(b) Creation of Accounts.

(i) The following Account(s) are hereby created and established under the Bond Fund:

- (A) Capitalized Interest Account; and
- (B) Principal and Interest Account.

(ii) The following Account(s) are hereby created and established under the Project Fund:

- (A) PID Improvements Account; and
- (B) PID Costs of Issuance Account.

(iii) The following Account(s) are hereby created and established under the Reserve Fund:

- (A) Reserve Account; and
- (B) Additional Interest Reserve Account.

(c) Each Fund (and each Account and each subaccount, if any) created within such Fund shall be maintained by the Trustee separate and apart from all other funds and accounts of the City. The Pledged Funds shall constitute trust funds which shall be held in trust by the Trustee as part of the Trust Estate solely for the benefit of the Owners of the Bonds.

(d) Except as otherwise provided herein, interest earnings and profit on each respective Fund and Account established by this Indenture, including the Project Collection Fund, shall be applied or withdrawn for the purposes of such Fund or Account as specified below.

Section 6.2. Initial Deposits to Funds and Accounts.

The proceeds from the sale of the Bonds shall be paid to the Trustee and deposited or transferred by the Trustee as follows:

- (i) to the Capitalized Interest Account of the Bond Fund: \$_____;
- (ii) to the Reserve Account of the Reserve Fund: \$_____ which is equal to the initial Reserve Account Requirement;
- (iii) to the Administrative Fund: \$_____;
- (iv) to the PID Costs of Issuance Account of the Project Fund: \$_____ and
- (v) to the PID Improvements Account of the Project Fund: \$_____.

Section 6.3. Pledged Revenue Fund.

(a) On or before February 20, 2023 and on or before each February 20 and August 20 of each year thereafter while the Bonds are Outstanding, the City shall deposit or cause to be deposited all Pledged Revenues, other than the Pledged Revenues on deposit in the Project Collection Fund which revenues shall be transferred in accordance with Section 6.14 hereof, into the Pledged Revenue Fund. As soon as practicable following deposit into the Pledged Revenue Fund pursuant to this Section 6.3(a) or Section 6.14, the Trustee shall apply the Pledged Revenues in the following order of priority:

- (i) first, retain in the Pledged Revenue Fund an amount sufficient to pay debt service on the Bonds next coming due in such calendar year;
- (ii) second, deposit to the Reserve Account of the Reserve Fund an amount to cause the amount in the Reserve Account to equal the Reserve Account Requirement;
- (iii) third, deposit to the Additional Interest Reserve Account of the Reserve Fund an amount equal to the Additional Interest;
- (iv) fourth, to pay other Actual Costs of Public Improvements; and
- (v) fifth, to pay other costs permitted by the PID Act.

Along with each transfer to the Trustee, the City shall provide a City Certificate as to (i) the Funds and Accounts into which the amounts are to be deposited or retained, as applicable, and (ii) the amounts of any payments to be made from such Funds and Accounts.

(b) From time to time as needed to pay the obligations relating to the Bonds, but no later than five (5) Business Days before each Interest Payment Date, the Trustee shall withdraw from the Pledged Revenue Fund and transfer to the Principal and Interest Account of the Bond Fund, an amount, taking into account any amounts then on deposit in such Principal and Interest Account and any expected transfers from the Capitalized Interest Account to the Principal and Interest Account, such that the amount on deposit in the Principal and Interest Account equals the principal (including any Sinking Fund Installments) and interest due on the Bonds on the next Interest Payment Date.

(c) If, after the foregoing transfers and any transfer from the Reserve Fund as provided in Section 6.7 herein, there are insufficient funds to make the payments provided in paragraph (b) above, the Trustee shall apply the available funds in the Principal and Interest Account first to the payment of interest, then to the payment of principal (including any Sinking Fund Installments) on the Bonds.

(d) Notwithstanding Section 6.3(a) hereof, the Trustee shall deposit Prepayments to the Pledged Revenue Fund and within two (2) business days after such deposit shall transfer such Prepayments to the Redemption Fund.

(e) Notwithstanding Section 6.3(a) hereof, the Trustee shall deposit Foreclosure Proceeds to the Pledged Revenue Fund and within two (2) business days after such deposit shall transfer Foreclosure Proceeds, as directed by the City pursuant to a City Certificate, first to the Reserve Fund to restore any transfers from the accounts within the Reserve Fund made with respect to the Assessed Property or Assessed Properties to which the Foreclosure Proceeds relate (*first*, to replenish the Reserve Account Requirement, and *second*, to replenish the Additional Interest Reserve Requirement), and second, to the Redemption Fund.

(f) After satisfaction of the requirement to provide for the payment of the principal and interest on the Bonds and to fund any deficiency that may exist in any Account of the Reserve Fund and transfer of funds pursuant to Section 6.3(a)(i) – (iv) above, the City may direct the Trustee by City Certificate to apply Assessments for any lawful purposes permitted by the PID Act for which Assessments may be paid. The Trustee may rely on such written direction of the City and shall have no obligation to determine the lawful purposes permitted under the PID Act.

Section 6.4. Bond Fund.

(a) On each Interest Payment Date, the Trustee shall withdraw from the Principal and Interest Account and transfer to the Paying Agent/Registrar the principal (including any Sinking Fund Installments) and interest then due and payable on the Bonds, less any amount to be used to pay interest on the Bonds on such Interest Payment Date from the Capitalized Interest Account as provided below.

(b) If amounts in the Principal and Interest Account are insufficient for the purposes set forth in paragraph (a) above, the Trustee shall withdraw from the Reserve Fund amounts to cover the amount of such insufficiency in the order described in Section 6.7(f) hereof. Amounts so withdrawn from the Reserve Fund shall be deposited in the Principal and Interest Account and transferred to the Paying Agent/Registrar.

(c) Moneys in the Capitalized Interest Account shall be used for the payment of interest on the Bonds on the following dates and in the following amounts:

<u>Date</u>	<u>Amount</u>
September 1, 2022	\$_____

Any amounts on deposit to the Capitalized Interest Account after the payment of interest on the dates and in the amounts listed above shall be transferred to the PID Improvements Account of the Project Fund, or if the PID Improvements Account of the Project Fund has been closed as provided in Section 6.5(d) herein, such amounts shall be transferred to the Redemption Fund to be used to redeem the Bonds, and the Capitalized Interest Account shall be closed.

Section 6.5. Project Fund.

(a) Money on deposit in the PID Improvements Account and the PID Costs of Issuance Account of the Project Fund shall be used for the purposes specified in this Section.

(b) Disbursements from the PID Improvements Account of the Project Fund to pay Actual Costs of the Public Improvements shall be made by the Trustee upon receipt by the Trustee of one or more City Certificates containing a properly executed and completed Certification for Payment. See attached forms of Certification for Payment as Exhibit E to the Financing Agreement.

(c) Disbursements from the PID Costs of Issuance Account of the Project Fund shall be made by the Trustee pursuant to and in accordance with a City Certificate providing for the application of such funds to be disbursed (with the exception of fees and expenses initially incurred by the Trustee, which may be withdrawn by the Trustee).

(d) If the City Representative reasonably determines that amounts then on deposit in the PID Improvements Account of the Project Fund are not expected to be expended for purposes of the PID Improvements Account due to the completion, abandonment, or constructive abandonment, of the Public Improvements, as the case may be, such that, in the opinion of the City Representative, it is unlikely that the amounts in the PID Improvements Account of the Project Fund will ever be expended for the purposes of the PID Improvements Account, the City Representative shall file a City Certificate with the Trustee which identifies the amounts then on deposit in the PID Improvements Account that are not expected to be used for purposes of the PID Improvements Account. If such City Certificate is so filed, the amounts on deposit in the PID Improvements Account shall be transferred to the Redemption Fund to redeem Bonds on the earliest practical date after notice of redemption has been provided in accordance with this Indenture, and the PID Improvements Account shall be closed.

(e) Upon the Trustee's receipt of a written determination by the City Representative that all costs of issuance of the Bonds have been paid and the appropriate portion of the costs incidental to the organization of the District have been paid, the City Representative shall file a City Certificate with the Trustee which identifies the amounts then on deposit in the PID Costs of Issuance Account of the Project Fund that are not expected to be used for purposes of the PID Costs of Issuance Account. If such City Certificate is so filed, the amounts on deposit in the PID Costs of Issuance Account of the Project Fund shall be transferred to the PID Improvements Account of the Project Fund, as directed by the City in a City Certificate filed with the Trustee, and the PID Costs of Issuance Account of the Project Fund shall be closed. If the PID Improvements Account of the Project Fund has been closed, the amounts on deposit in the PID Costs of Issuance Account of the Project Fund, that would have been transferred to such Account under this Section 6.5(e) of the Indenture, shall be transferred, as directed by the City in a City Certificate, to the Principal and Interest Account of the Bond Fund to pay interest on the Bonds.

(f) In making any determination pursuant to this Section, the City Representative may conclusively rely upon a report issued by the City Engineer or a certificate of an Independent Financial Consultant.

In providing any disbursement from the PID Improvements Account of the Project Fund, the Trustee may conclusively rely as to the completeness and accuracy of all statements in such Certification for Payment if such certificate is signed by a City Representative, and the Trustee shall not be required to make any independent investigation in connection therewith. The execution of any Certification for Payment by a City Representative shall constitute, unto the

Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

Section 6.6. Redemption Fund.

Subject to adequate amounts on deposit in the Pledged Revenue Fund, the Trustee, as directed by City Certificate, shall cause to be deposited to the Redemption Fund from the Pledged Revenue Fund an amount sufficient to redeem Bonds as provided in Sections 4.3 and 4.4 on the dates specified for redemption as provided in Sections 4.3 and 4.4. Amounts on deposit in the Redemption Fund shall be used and withdrawn by the Trustee to redeem Bonds as provided in Article IV.

Section 6.7. Reserve Fund.

(a) The Reserve Account will be initially funded with a deposit of \$_____ from the proceeds of the Bonds and the City agrees with the Owners of the Bonds to accumulate from the deposits outlined in Section 6.3(a) hereof, and when accumulated maintain in the Reserve Account, an amount equal to not less than the Reserve Account Requirement. All amounts deposited in the Reserve Account shall be used and withdrawn by the Trustee for the purpose of making transfers to the Principal and Interest Account of the Bond Fund as provided in this Indenture. The Trustee will transfer from the Pledged Revenue Fund to the Additional Interest Reserve Account, to the extent that the Reserve Account contains the Reserve Account Requirement and funds are available after application of the deposit priority in Section 6.3(a) hereof, an amount equal to the Additional Interest until the Additional Interest Reserve Requirement has been accumulated in the Additional Interest Reserve Account; provided, however, that at any time the amount on deposit in the Additional Interest Reserve Account is less than Additional Interest Reserve Requirement, the Trustee shall resume depositing the Additional Interest into the Additional Interest Reserve Account until the Additional Interest Reserve Requirement has accumulated in the Additional Interest Reserve Account.

(b) Whenever a transfer is made from an account of the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Trustee shall provide written notice thereof to the City, specifying the amount withdrawn and the source of said funds.

(c) Whenever Bonds are to be redeemed with the proceeds of Prepayments pursuant to Section 4.4, a proportionate amount in the Reserve Account of the Reserve Fund shall be transferred on the Business Day prior to the redemption date by the Trustee to the Redemption Fund to be applied to the redemption of the Bonds. The amount so transferred from the Reserve Account of the Reserve Fund shall be equal to an amount representing the difference between (i) the lesser of (A) the Reserve Account Requirement prior to redemption and (B) the amount actually on deposit in the Reserve Account prior to redemption, and (ii) the Reserve Account Requirement after such redemption; provided, however, no such transfer from the Reserve Account shall cause the amount on deposit therein to be less than the Reserve Account Requirement to be in effect after such redemption. If after such transfer, and after applying investment earnings on the Redemption Fund toward payment of accrued and unpaid interest to the date of redemption on the Bonds to be redeemed, there are insufficient funds to pay the Redemption Price of the Bonds to be redeemed as a result of such Prepayment, the Trustee shall transfer an amount equal to the shortfall, or any

additional amounts necessary to permit the Bonds to be redeemed in minimum principal amounts of \$1,000, from the Additional Interest Reserve Account to the Redemption Fund to be applied to the redemption of the Bonds.

(d) Whenever, on any Interest Payment Date, or on any other date at the written request of a City Representative, the amount in the Reserve Account exceeds the Reserve Account Requirement, the Trustee shall provide written notice to the City Representative of the amount of the excess. Such excess shall be transferred to the Principal and Interest Account to be used for the payment of interest on the Bonds on the next Interest Payment Date in accordance with Section 6.4 hereof, unless within 45 days of such notice to the City Representative, the Trustee receives a City Certificate instructing the Trustee to apply such excess: (i) to pay amounts due under Section 6.8 hereof, (ii) to the Administrative Fund in an amount not more than the Annual Collection Costs and Delinquent Collection Costs for the Bonds, or (iii) to the PID Improvements Account of the Project Fund if such application and the expenditure of funds is expected to occur within three years of the date hereof.

(e) Whenever, on any Interest Payment Date, or on any other date at the written request of the City Representative, the amount on deposit in the Additional Interest Reserve Account exceeds the Additional Interest Reserve Requirement, the Trustee shall provide written notice to the City of the amount of the excess (the “*Excess Additional Interest Reserve Amount*”). Such excess amounts on deposit in the Additional Interest Reserve Account shall be transferred, at the direction of the City pursuant to a City Certificate, to the Administrative Fund for the payment of Annual Collection Costs or to the Redemption Fund in order to effect the redemption of Bonds pursuant to Section 4.4. In the event that the Trustee does not receive a City Certificate directing the transfer of the Excess Additional Interest Reserve Amount to the Administrative Fund within 45 days of providing notice to the City of such Excess Additional Interest Reserve Amount, the Trustee shall transfer the Excess Additional Interest Reserve Amount to the Redemption Fund and redeem Bonds pursuant to Section 4.4 hereof.

(f) Whenever, on any Interest Payment Date, the amount on deposit in the Bond Fund is insufficient to pay the debt service on the Bonds due on such date, the Trustee shall transfer *first* from the Additional Interest Reserve Account of the Reserve Fund and *second* from the Reserve Account of the Reserve Fund to the Bond Fund the amounts necessary to cure such deficiency.

(g) At the final maturity of the Bonds, the amount on deposit in the Reserve Account and the Additional Interest Reserve Account shall be transferred to the Principal and Interest Account and applied to the payment of the principal of the Bonds.

(h) If, after a Reserve Account withdrawal, the amount on deposit in the Reserve Account of the Reserve Fund is less than the Reserve Account Requirement, the Trustee shall transfer from the Pledged Revenue Fund to the Reserve Account of the Reserve Fund the amount of such deficiency, in accordance with Section 6.3.

(i) If the amount held in the Reserve Fund together with the amount held in the Bond Fund and Redemption Fund is sufficient to pay the principal amount of all Outstanding Bonds on the next Interest Payment Date, together with the unpaid interest accrued on such Bonds

as of such Interest Payment Date, the moneys shall be transferred to the Redemption Fund and thereafter used to redeem all Outstanding Bonds as of such Interest Payment Date.

Section 6.8. Rebate Fund; Rebate Amount.

(a) There is hereby established a special fund of the City to be designated “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District) Rebate Fund” (the “Rebate Fund”) to be held by the Trustee in accordance with the terms and provisions of this Indenture. Amounts on deposit in the Rebate Fund shall be used solely for the purpose of paying amounts due the United States Government in accordance with the Code. The Trustee shall transfer from the Pledged Revenue Fund to the credit of the Rebate Fund each amount instructed by City Certificate to be transferred thereto.

(b) In order to assure that the Rebate Amount is paid to the United States rather than to a third party, investments of funds on deposit in the Rebate Fund shall be made in accordance with the Code and the Tax Certificate. The Trustee shall withdraw from the Rebate Fund and pay to the United States the amounts instructed by City Certificate.

(c) The Trustee conclusively shall be deemed to have complied with the provisions of this Section and Section 7.5(h) hereof and shall not be liable or responsible if it follows the written instructions of the City and shall not be required to take any action under this Section and Section 7.5(h) hereof in the absence of written instructions from the City.

(d) If, on the date of each annual calculation, the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the City may direct the Trustee, pursuant to a City Certificate, to transfer the amount in excess of the Rebate Amount to the Principal and Interest Account of the Bond Fund.

Section 6.9. Administrative Fund.

(a) On or before February 20, 2023, and on or before each February 20 and August 20 of each year thereafter while the Bonds are Outstanding, the City shall deposit or cause to be deposited to the Administrative Fund the amounts collected each year to pay Annual Collection Costs and Delinquent Collection Costs, other than the Annual Collection Costs and Delinquent Collection Costs deposited in the Project Collection Fund, which amounts shall be deposited in accordance with Section 6.14 hereof. Moneys in the Administrative Fund shall be held by the Trustee separate and apart from the other Funds created and administered hereunder and used as directed by a City Certificate solely for the purposes set forth in the Service and Assessment Plan.

(b) The Administrative Fund is not a Pledged Fund.

Section 6.10. Investment of Funds.

(a) Money in any Fund established pursuant to this Indenture shall be invested by the Trustee only as directed by the City pursuant to a City Certificate filed with the Trustee at least two (2) business days in advance of the making of such investment (or as directed below) in time deposits or certificates of deposit secured in the manner required by law for public funds, or

be invested in direct obligations of, including obligations the principal and interest on which are unconditionally guaranteed by, the United States of America, in obligations of any agencies or instrumentalities thereof, or in such other investments as are permitted under the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, or any successor law, as in effect from time to time; the City Certificate shall direct investment in such deposits and investments (which may include repurchase agreements for such investment with any primary dealer of such agreements) so that the money required to be expended from any Fund will be available at the proper time or times. Such investments shall be valued each year in terms of current market value as of September 30. For purposes of maximizing investment returns, to the extent permitted by law, money in such Funds may be invested in common investments of the kind described above, or in a common pool of such investments which shall be kept and held at an official depository bank, which shall not be deemed to be or constitute a commingling of such money or funds provided that safekeeping receipts or certificates of participation clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such Fund are held by or on behalf of each such Fund. If necessary, such investments shall be promptly sold in order to make the disbursements required or permitted by this Indenture or to prevent any default. In the event the City does not provide written investment directions, the Trustee is instructed to invest funds into the 38142B609 Goldman Sachs Financial Square Treasury Instruments.

(b) Obligations purchased as an investment of moneys in any Fund or Account shall be deemed to be part of such Fund or Account, subject, however, to the requirements of this Indenture for transfer of interest earnings and profits resulting from investment of amounts in Funds and Accounts. Whenever in this Indenture any moneys are required to be transferred by the City to the Trustee, such transfer shall be accomplished by transferring a like amount of Investment Securities unless the City instructs the Trustee otherwise by written direction.

(c) The Trustee and its affiliates may act as sponsor, depository, principal or agent in the acquisition or disposition of any investment. The Trustee shall not incur any liability for losses arising from any investments made pursuant to this Section. The Trustee shall not be required to determine the suitability or legality of any investments or whether investments comply with Section 6.10(a) above.

(d) Investments in any and all Funds and Accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular Funds or Accounts of amounts received or held by the Trustee hereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts to which they are credited and otherwise as provided in this Indenture.

(e) The Trustee will furnish the City monthly cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

Section 6.11. Advances from Available Funds.

In the event of a delinquency in the payment of any installment of the Assessment levied upon any property for the payment of the principal portion of an Annual Installment, the City may,

but is not obligated to, be the purchaser of the delinquent property upon which any of said Assessments are levied in like manner in which it may become the purchaser of property sold for the nonpayment of general ad valorem property taxes, and in the event the City does so become the purchaser of such property, shall pay and transfer and deposit into the Pledged Revenue Fund the amount of any remaining amount of unpaid Assessment, delinquent Assessment installments and interest thereon. The City may also pay and transfer from available funds and deposit into the Pledged Revenue Fund, but shall not be so obligated, the amount of any such Assessment pending redemption or sale. Any amounts so advanced by the City shall be recoverable upon sale or redemption of the property. The City shall not be obligated to advance available funds to cure any deficiency in the Pledged Revenue Fund, or any other Fund created hereunder, and has determined that it would not obligate itself to advance available funds from other funds of the City to cure any such deficiency.

Section 6.12. [RESERVED]

Section 6.13. Security of Funds.

All Funds heretofore created or reaffirmed, to the extent not invested as herein permitted, shall be secured in the manner and to the fullest extent required by law for the security of public funds, and such Funds shall be used only for the purposes and in the manner permitted or required by this Indenture.

Section 6.14. Project Collection Fund.

While any Bonds are Outstanding, another taxing unit or an appraisal district, by agreement with the City, may collect Assessment Revenue on the City's behalf. If such taxing unit or appraisal district presents or otherwise tenders to the Trustee such collected Assessment Revenue for deposit on the City's behalf, the Trustee shall accept such Assessment Revenue and deposit the same into the Project Collection Fund. The Trustee shall, as directed by the City pursuant to a City Certificate, deposit or cause to be deposited all of that portion of the Assessment Revenue deposited into the Project Collection Fund that consists of the Annual Collection Costs and Delinquent Collection Costs to the Administrative Fund and, as directed pursuant to a City Certificate, deposit or cause to be deposited all of that portion of the Assessment Revenue deposited into the Project Collection Fund that consists of Pledged Revenue into the Pledged Revenue Fund. The City shall provide such City Certificate on or before February 20, 2023 and every August 20 and February 20 thereafter while the Bonds are Outstanding. The Project Collection Fund is not a Pledged Fund.

ARTICLE VII
COVENANTS

Section 7.1. Confirmation of Assessments.

The City hereby confirms, covenants, and agrees that, in the Assessment Ordinance, it has levied the Assessments against the respective Assessed Properties from which the Pledged Revenues will be collected and received.

Section 7.2. Collection and Enforcement of Assessments.

(a) For so long as any Bonds are Outstanding and amounts are due to the Developer to reimburse it for its funds it has contributed to pay Actual Costs of the Authorized Improvements, the City covenants, agrees and warrants that it will take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens thereof enforced continuously, in the manner and to the maximum extent permitted by Applicable Laws, and, to the extent permitted by Applicable Laws, to cause no reduction, abatement or exemption in the Assessments.

(b) The City will determine or cause to be determined, no later than February 15 of each year, whether or not any Annual Installment is delinquent and, if such delinquencies exist, the City will order and cause to be commenced as soon as practicable any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including diligently prosecuting an action in district court to foreclose the currently delinquent Annual Installment. Notwithstanding the foregoing, the City shall not be required under any circumstances to purchase or make payment for the purchase of the delinquent Assessment or the corresponding Assessed Property.

Section 7.3. Against Encumbrances.

(a) Other than Refunding Bonds, the City shall not create and, to the extent Pledged Revenues are received, shall not suffer to remain, any lien, encumbrance or charge upon the Pledged Revenues, the Trust Estate, or any other property pledged under this Indenture, except the pledge created for the security of the Bonds, and other than a lien or pledge subordinate to the lien and pledge of such property related to the Bonds .

(b) So long as Bonds are Outstanding hereunder, the City shall not issue any bonds, notes or other evidences of indebtedness secured by any pledge of or other lien or charge on any portion of the Pledged Revenues, the Trust Estate or other property pledged under this Indenture, except that the City may issue Refunding Bonds in accordance with the terms of this Indenture.

Section 7.4. Records, Accounts, Accounting Reports.

The City hereby covenants and agrees that so long as any of the Bonds or Outstanding Bonds or any interest thereon remain outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the Assessments. The Trustee and holder or holders of any Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all such records, accounts, and data relating thereto, upon written request to the City by the Trustee or duly authorized representative, as applicable. The City shall provide the Trustee or duly authorized representative, as applicable, an opportunity to inspect such books and records relating to the Bonds during the City's regular business hours and on a mutually agreeable date not later than thirty days after the City receives such request.

Section 7.5. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

“*Code*” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Issue Date.

“*Computation Date*” has the meaning set forth in section 1.148-1(b) of the Regulations.

“*Gross Proceeds*” means any proceeds as defined in section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in section 1.148-1(c) of the Regulations, of the Bonds.

“*Investment*” has the meaning set forth in section 1.148-1(b) of the Regulations.

“*Issue Date*” for the Bonds or other obligations of the City is the respective date on which such bonds or other obligations of the City is delivered against payment therefor.

“*Net Sale Proceeds*” has the meaning stated in section 1.148-1(b) of the Regulations.

“*Nonpurpose Investment*” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

“*Proceeds*” has the meaning stated in section 1.148-1(b) of the Regulations.

“*Rebate Amount*” has the meaning set forth in section 1.148-1(b) of the Regulations.

“*Regulations*” means any proposed, temporary or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“*Yield*” of (1) any Investment has the meaning set forth in section 1.148-5 of the Regulations; and (2) the Bonds has the meaning set forth in section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan.

(i) Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(ii) The City covenants and agrees that the levied Assessments will meet the requirements of the “tax assessment loan exception” within the meaning of section 1.141-5(d) of the Regulations on the date the Bonds are delivered and will ensure that the Assessments continue to meet such requirements for so long as the Bonds are outstanding hereunder.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested) if, as a result of such investment, the Yield from the Issue Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the final Computation Date. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchaser and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall, pursuant to a City Certificate, pay to the United States the amount described in paragraph (ii) above at the times, in the installments, to the place, in the manner and accompanied by such forms or other information as is or

may be required by section 148(f) of the Code and the regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (ii) and (iii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) *Not to Divert Arbitrage Profits.* Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) *Not Hedge Bonds.* The City will not invest more than 50 percent of the Proceeds of each series of the Bonds in Nonpurpose Investments having a substantially guaranteed yield for four years or more. On the Issue Date of each series of the Bonds, the City reasonably expects that at least 85 percent of the Net Sale Proceeds of each series of the Bonds will be used to carry out the governmental purpose of such series within three years after the respective Issue Date of such series.

(k) *Elections.* The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, or City Secretary, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Tax Certificate or similar or other appropriate certificate, form or document.

ARTICLE VIII LIABILITY OF CITY

Neither the full faith and credit nor the general taxing power of the City is pledged to the payment of the Bonds, and except for the Trust Estate, no City taxes, fee or revenues from any source are pledged to the payment of, or available to pay any portion of, the Bonds or any other obligations relating to the District. The City shall never be liable for any obligations relating to the Bonds or other obligations relating to the District, other than as specifically provided for in this Indenture.

The City shall not incur any responsibility in respect of the Bonds or this Indenture other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own willful default or act of bad faith. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants

or agreements of the Trustee herein or of any of the documents executed by the Trustee in connection with the Bonds, or as to the existence of a default or event of default thereunder.

In the absence of bad faith, the City may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Indenture. The City shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

No provision of this Indenture, the Bonds, the Assessment Ordinance, or any agreement, document, instrument, or certificate executed, delivered or approved in connection with the issuance, sale, delivery, or administration of the Bonds (collectively, the “*Bond Documents*”), shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Trust Estate and the Annual Collection Costs) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if in the judgment of the City there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it.

Neither the Owners nor any other Person shall have any claim against the City or any of its officers, officials, agents, or employees for damages suffered as a result of the City’s failure to perform in any respect any covenant, undertaking, or obligation under any Bond Documents or as a result of the incorrectness of any representation in, or omission from, any of the Bond Documents, except to the extent that any such claim relates to an obligation, undertaking, representation, or covenant of the City, in accordance with the Bond Documents and the PID Act. Any such claim shall be payable only from the Trust Estate or the amounts collected to pay Annual Collection Costs on deposit in the Administrative Fund. Nothing contained in any of the Bond Documents shall be construed to preclude any action or proceeding in any court or before any governmental body, agency, or instrumentality against the City or any of its officers, officials, agents, or employees to enforce the provisions of any of the Bond Documents or to enforce all rights of the Owners of the Bonds by mandamus or other proceeding at law or in equity.

The City may rely on and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Indenture the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Trustee, an Independent Financial Consultant, an independent inspector or the City Manager or the Assistant City Manager or other person designated by the City Council to so act on behalf of the City, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Indenture upon the

faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations, and directions of such persons or entities.

ARTICLE IX THE TRUSTEE

Section 9.1. Trustee as Registrar and Paying Agent.

The Trustee is hereby designated and agrees to act as Registrar and Paying Agent for and in respect to the Bonds. The Trustee hereby accepts and agrees to execute the respective trusts imposed upon it by this Indenture, but only upon the express terms and conditions, and subject to the provisions of this Indenture to all of which the parties hereto and the Owners of the Bonds agree. No implied covenants or obligations shall be read into this Indenture against the Trustee.

Section 9.2. Trustee Entitled to Indemnity.

The Trustee shall be under no obligation to institute any suit, or to undertake any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct; provided, however, that absent an Event of Default, the Trustee shall not request or require indemnification as a condition to making any deposits, payments or transfers when required hereunder, or to delivering any notice when required hereunder. Nevertheless, the Trustee may begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as the Trustee, without indemnity, and in such case the Trustee may make transfers from the Administrative Fund, and to the extent money in the Administrative Fund is insufficient, from the Pledged Revenue Fund, to pay all costs, fees, and expenses, outlays, and counsel fees and other reasonable disbursements properly incurred in connection therewith and shall be entitled to a preference therefor over any Bonds Outstanding hereunder.

Section 9.3. Responsibilities of the Trustee.

(a) The recitals contained in this Indenture and in the Bonds shall be taken as the statements of the City and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or the Bonds or with respect to the security afforded by this Indenture, and the Trustee shall incur no liability with respect thereto. Except as otherwise expressly provided in this Indenture, the Trustee shall have no responsibility or duty with respect to: (i) the issuance of Bonds for value; (ii) the application of the proceeds thereof, except to the extent that such proceeds are received by it in its capacity as Trustee; (iii) the application of any moneys paid to the City or others in accordance

with this Indenture, except as to the application of any moneys paid to it in its capacity as Trustee; or (iv) any calculation of arbitrage or rebate under the Code.

(b) The duties and obligations of the Trustee shall be determined by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture. The Trustee will, prior to any Event of Default and after curing of any Event of Default, perform such duties and only such duties as are specifically set forth herein. The Trustee will, during the existence of an Event of Default, exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture, except for its own negligence or willful misconduct. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from this Indenture for the existence, furnishing or use of the Public Improvements.

(c) The Trustee, before the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default occurred and continues, the Trustee shall exercise such rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs in exercising any rights or remedies or performing any of its duties hereunder.

(d) The Trustee shall not be responsible for any recital herein (except with respect to the authentication certificate of the Trustee endorsed on the Bonds) or for the recording, filing, or refileing of this Indenture in connection therewith, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency or security of the Bonds.

(e) The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Indenture or of the Bonds. The Trustee shall not be accountable for the use or application of any Bonds or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Indenture.

(f) The Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it is established that the Trustee was negligent in ascertaining the pertinent facts.

(g) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of at least a Quarter in Interest of the aggregate outstanding principal of the Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(h) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default unless the Trustee is notified specifically of the default or Event of Default in a written instrument or document delivered to it by the City or by an Owner of the Bonds. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no Event of Default, except as noted above, unless Trustee has actual knowledge of an Event of Default.

(i) Before taking any action under this Indenture (other than making any deposits, payments or transfers when required hereunder), the Trustee may require that a satisfactory indemnity be furnished to it for the payment or reimbursement of all costs and expenses (including, without limitation, attorney's fees and expenses) to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which it adjudicated to have resulted from its negligence or willful misconduct.

(j) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture, and final payment of the Bonds.

(k) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys, or receivers, and the Trustee shall be entitled to rely and act upon the opinion or advice of its own counsel, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys, and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of its own counsel.

Section 9.4. Property Held in Trust.

All moneys and securities held by the Trustee at any time pursuant to the terms of this Indenture shall be held by the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

Section 9.5. Trustee Protected in Relying on Certain Documents.

The Trustee may conclusively rely upon any order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond, or other document provided to the Trustee in accordance with the terms of this Indenture that it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Indenture and the Financing Agreement, or upon the written opinion of any counsel, architect, engineer, insurance consultant, management consultant, or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry and shall not be deemed to have knowledge into any statements contained or matters referred to in any such instrument.

The Trustee may consult with counsel, who may or may not be Bond Counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered, or omitted to be taken by it in good faith and in accordance therewith. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request, or giving such authority or consent to the Owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor and upon transfer or in place thereof.

Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter may be deemed to be conclusively proved and established by a City Certificate, unless other evidence in respect thereof be hereby specifically prescribed. Such City Certificate shall be full warrant for any action taken or suffered in good faith under the provisions hereof, but the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Except as otherwise expressly provided herein, any request, order, notice, or other direction required or permitted to be furnished pursuant to any provision hereof by the City to the Trustee shall be sufficiently executed if executed in the name of the City by the City Representative.

The Trustee shall not be under any obligation to see to the recording or filing of this Indenture, or otherwise to the giving to any Person of notice of the provisions hereof except as expressly required in Section 9.13 herein.

Section 9.6. Compensation.

Unless otherwise provided by contract with the Trustee, the Trustee shall transfer from the Administrative Fund, upon written direction of the City, compensation for all services rendered by it hereunder, including its services as Registrar and Paying Agent, together with all its reasonable expenses, charges, and other disbursements and those of its counsel, agents and employees, incurred in and about the administration and execution of the trusts hereby created and the exercise of its powers and the performance of its duties hereunder, upon delivery of an invoice therefor to the City, and the Trustee shall have a lien therefor on the Administrative Fund. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if in the judgment of the Trustee there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it. If the City fails to make any payment required by this Section, the Trustee may make such payment from any moneys in the Administrative Fund and shall have a first lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in the Administrative Fund under any provisions hereof for the foregoing reasonable advances, fees, costs, and expenses incurred. The right of the Trustee to fees, expenses, and indemnification shall survive the release, discharge, and satisfaction of the Indenture.

Section 9.7. Permitted Acts.

The Trustee and its directors, officers, employees, or agents may become the owner of or may in good faith buy, sell, own, hold and deal in Bonds and may join in any action that any Owner

of Bonds may be entitled to take as fully and with the same rights as if it were not the Trustee. The Trustee may act as depository, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, the City or any committee formed to protect the rights of holders of Bonds or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not such committee shall represent the holders of a majority in aggregate outstanding principal amount of the Bonds. The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

Section 9.8. Resignation of Trustee.

The Trustee may at any time resign and be discharged of its duties and obligations hereunder by giving not fewer than 30 days' written notice, specifying the date when such resignation shall take effect, to the City and each Owner of any Outstanding Bond. Such resignation shall take effect upon the appointment of a successor as provided in Section 9.10 and the acceptance of such appointment by such successor.

Section 9.9. Removal of Trustee.

The Trustee may be removed at any time by the Owners of a Quarter in Interest of the Bonds by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or by their attorneys-in-fact, duly authorized and delivered to the City. Copies of each such instrument shall be delivered by the City to the Trustee and any successor thereof. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Owners of a Quarter in Interest of the aggregate outstanding principal of the Bonds.

Section 9.10. Successor Trustee.

If the Trustee resigns, is removed, is dissolved, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or if a receiver, liquidator, or conservator of the Trustee or of its property is appointed, or if any public officer takes charge or control of the Trustee or of its property or affairs, the position of the Trustee hereunder shall thereupon become vacant.

If the position of Trustee becomes vacant for any of the foregoing reasons or for any other reason, a successor Trustee may be appointed after any such vacancy occurs by the Owners of a Quarter in Interest of the Bonds by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or their attorneys-in-fact, duly authorized and delivered to such successor Trustee, with notification thereof being given to the predecessor Trustee and the City.

Until such successor Trustee shall have been appointed by the Owners of a Quarter in Interest of the Bonds, the City shall forthwith appoint a Trustee to act hereunder. Copies of any instrument of the City providing for any such appointment shall be delivered by the City to the Trustee so appointed. The City shall mail notice of any such appointment to each Owner of any Outstanding Bonds within 30 days after such appointment. Any appointment of a successor

Trustee made by the City immediately and without further act shall be superseded and revoked by an appointment subsequently made by the Owners of Bonds.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated or any corporation or association resulting from any merger, conversion or consolidation to which it shall be a party or any corporation or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee hereunder, without any further act, deed or conveyance, provided that such corporation or association shall be a commercial bank or trust company or national banking association qualified to be a successor to such Trustee pursuant to the provisions set forth herein, or a trust company that is a wholly-owned subsidiary of any of the foregoing.

If in a proper case no appointment of a successor Trustee is made within 45 days after the giving by any Trustee of any notice of resignation in accordance with Section 9.8 herein or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Owner of Bonds may apply to any court of competent jurisdiction for the appointment of such a successor, and the court may thereupon, after such notice, if any, as the court may deem proper, appoint such successor and the City shall be responsible for the costs of such appointment process. Any duties and obligations of such predecessor Trustee shall thereafter cease and terminate, and the payment of the fees and expenses owed to the predecessor Trustee shall be paid in full.

Any successor Trustee appointed under the provisions of this Section shall be a commercial bank or trust company or national banking association (i) having a capital and surplus and undivided profits aggregating at least \$50,000,000, if there be such a commercial bank or trust company or national banking association willing and able to accept the appointment on reasonable and customary terms, and (ii) authorized by law to perform all the duties of the Trustee required by this Indenture.

Each successor Trustee shall mail, in accordance with the provisions of the Bonds, notice of its appointment to any Rating Agency which, at the time of such appointment, is providing a rating on the Bonds and each of the Owners of the Bonds.

Section 9.11. Transfer of Rights and Property to Successor Trustee.

Any successor Trustee appointed under the provisions of Section 9.10 shall execute, acknowledge, and deliver to its predecessor and the City an instrument in writing accepting such appointment, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers, duties, obligations, and trusts of its predecessor hereunder, with like effect as if originally appointed as Trustee. However, the Trustee then ceasing to act shall nevertheless, on request of the City or of such successor and upon receipt of its outstanding charges, execute, acknowledge, and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all the rights, immunities, powers, and trusts of such Trustee and all the right, title, and interest of such Trustee in and to the Trust Estate, and shall pay over, assign, and deliver to such successor any moneys or other properties subject to the trusts and conditions herein set forth. Should any deed, conveyance, or instrument in writing from the City be required by such successor for more fully and certainly

vesting in and confirming to it any such moneys, estates, properties, rights, powers, duties, or obligations, any and all such deeds, conveyances, and instruments in writing, on request and so far as may be authorized by law, shall be executed, acknowledged, and delivered by the City.

Section 9.12. Merger, Conversion or Consolidation of Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated or any corporation or association resulting from any merger, conversion or consolidation to which it shall be a party or any corporation or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee hereunder, without any further act, deed or conveyance, provided that such corporation or association shall be a commercial bank or trust company or national banking association qualified to be a successor to such Trustee under the provisions of Section 9.10, or a trust company that is a wholly-owned subsidiary of any of the foregoing.

Section 9.13. Security Interest in Trust Estate.

Chapter 1208, Texas Government Code, applies to the issuance of the Bonds and the pledge of the Trust Estate provided for herein, and such pledge is, under current law, valid, effective and perfected. The City shall cause to be filed all appropriate initial financing statements, if any, to ensure that the Trustee (for the benefit of the Owners of the Bonds) is granted a valid and perfected first priority lien on the entire Trust Estate. Nothing herein shall obligate the Trustee to file any initial financing statements. Upon the City's timely delivery of a copy of such filed initial financing statement, if any, to the Trustee, the Trustee shall file continuation statements of such initial financing statement(s) in the same jurisdictions as the initial financing statement(s) previously provided to the Trustee.

Section 9.14. Offering Documentation.

The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum, or any other disclosure material prepared or distributed with respect to the Bonds and shall have no responsibility for compliance with any State or federal securities laws in connection with the Bonds.

Section 9.15. Expenditure of Funds and Risk.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of its rights or powers if the Trustee shall have reasonable grounds for believing that the repayment of such funds or indemnity against such risk or liability is not assured.

Section 9.16. Environmental Hazards.

The Trustee may inform any Holder of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and in such event, no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such

action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not been adequately indemnified.

The Trustee shall not be responsible or liable for the environmental condition related to the improvements to any real property or for diminution in value of the same, or for any claims by or on behalf of the owners thereof as the result of any contamination by a hazardous substance, hazardous material, pollutant, or contaminant. The Trustee assumes no duty or obligation to assess the environmental condition of any improvements or with respect to compliance thereof under State or federal laws pertaining to the transport, storage, treatment, or disposal of hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits, or licenses issued under such laws.

Section 9.17. Accounts, Periodic Reports and Certificates.

The Trustee shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Funds and Accounts established by this Indenture and which shall at all times be subject to inspection by the City, and the Owner or Owners of not less than 10% in principal amount of any Bonds then Outstanding or their representatives duly authorized in writing.

Section 9.18. Construction of Indenture.

The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Owners of the Bonds.

ARTICLE X
MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 10.1. Amendments Permitted.

This Indenture and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture, except as provided below, pursuant to the affirmative vote at a meeting of Owners of the Bonds, or with the written consent without a meeting, of the Owners of more than fifty percent (50%) of the aggregate principal amount of the Bonds then Outstanding. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the principal of or interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, (ii) permit the creation by the City of any pledge or lien upon the Trust Estate superior to the pledge and lien created for the benefit of the Bonds, (iii) except as otherwise permitted by this Indenture, permit the creation by the City of any pledge or lien upon the Trust Estate on a parity with the pledge and lien created for the benefit of the Bonds, or (iv) reduce the percentage of Bonds required for the amendment hereof. Any such amendment may not modify any of the rights or obligations of the Trustee without its written consent.

This Indenture and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;
- (ii) to make modifications not adversely affecting any Outstanding Bonds in any respect;
- (iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in regard to questions arising under this Indenture, as the City may deem necessary or desirable and not inconsistent with this Indenture, and that shall not adversely affect the rights of the Owners of the Bonds;
- (iv) to authorize a Series of Refunding Bonds in accordance with the provisions of this Indenture; and
- (v) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds.

Notwithstanding the above, no Supplemental Indenture under this Section shall be effective unless the City first delivers to the Trustee an opinion of Bond Counsel to the effect that such amendment will not adversely affect the: (i) interests of the Owners in any respect, and (ii) exclusion of interest on any Bond from gross income for purposes of federal income taxation.

Section 10.2. Owners' Meetings.

The City may at any time call a meeting of the Owners of the Bonds. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof, and to fix and adopt rules and regulations for the conduct of said meeting.

Section 10.3. Procedure for Amendment with Written Consent of Owners.

The City and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds or of this Indenture, to the extent that such amendment is permitted by Section 10.1 herein, to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Trustee to each Owner of Bonds from whom consent is required under this Indenture, but failure to mail copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

Such Supplemental Indenture shall not become effective unless there shall be filed with the Trustee the written consents of the Owners as required by this Indenture and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if

accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 11.6 herein. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof), unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Bonds have filed their consents to the Supplemental Indenture, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Indenture, stating in substance that the Supplemental Indenture has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Indenture or consents thereto). Proof of the mailing of such notice shall be filed with the Trustee. A record, consisting of the papers required by this Section 10.3 to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Indenture shall become effective upon the filing with the Trustee of the proof of mailing of such notice, and the Supplemental Indenture shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of forty-five (45) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such forty-five day period; provided, however, that the Trustee during such forty-five day period and any such further period during which any such action or proceeding may be pending shall be entitled in its sole discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Indenture as it may deem expedient.

Section 10.4. Effect of Supplemental Indenture.

From and after the time any Supplemental Indenture becomes effective pursuant to this Article X, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties, and obligations under this Indenture of the City, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.5. Endorsement or Replacement of Bonds Issued After Amendments.

The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the designated office of the Trustee or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed, and delivered. In that case, upon demand of the Owner of any Bonds then

Outstanding, such new Bonds shall be exchanged at the designated office of the Trustee without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

Section 10.6. Amendatory Endorsement of Bonds.

The provisions of this Article X shall not prevent any Owner from accepting any amendment as to the particular Bonds held by such Owner, provided that due notation thereof is made on such Bonds.

Section 10.7. Waiver of Default.

Subject to the second and third sentences of Section 10.1, with the written consent of more than fifty percent (50%) in aggregate principal amount of the Bonds then Outstanding, the Owners may waive compliance by the City with certain past defaults under the Indenture and their consequences. Any such consent shall be conclusive and binding upon the Owners and upon all future Owners. For the avoidance of doubt, any waiver given pursuant to this Section shall be subject to Section 11.5 below.

Section 10.8. Execution of Supplemental Indenture.

In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall receive, and shall be fully protected in relying upon, an opinion of Bond Counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's own rights, duties and immunities under this Indenture or otherwise.

Any such amendment shall not modify any of the rights or obligations of the Trustee without its written consent. In executing or accepting any Supplemental Indenture, the Trustee shall be fully protected in relying upon an opinion of nationally recognized bond counsel engaged by the Trustee and addressed and delivered to the Trustee stating that (a) the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture, (b) the execution and delivery of will not adversely affect the exclusion from federal gross income of the interest on the Bonds, and (c) such Supplemental Indenture will, upon the execution and delivery thereof, to be a valid and binding obligation of the City.

ARTICLE XI
DEFAULT AND REMEDIES

Section 11.1. Events of Default.

Each of the following occurrences or events shall be and is hereby declared to be an "Event of Default," to wit:

- (i) The failure of the City to deposit the Pledged Revenues to the Pledged Revenue Fund;

(ii) The failure of the City to enforce the collection of the Assessments including the prosecution of foreclosure proceedings;

(iii) The failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; and

(iv) Default in the performance or observance of any other covenant, agreement or obligation of the City under this Indenture and the continuation thereof for a period of ninety (90) days after written notice to the City by the Trustee, or by the Owners of a Quarter in Interest of the Bonds with a copy to the Trustee, specifying such default and requesting that the failure be remedied.

Section 11.2. Immediate Remedies for Default.

(a) Subject to Article VIII, upon the happening and continuance of any one or more of the Events of Default described in Section 11.1, the Trustee may, and at the written direction of the Owners of a Quarter in Interest of the Bonds and its receipt of indemnity satisfactory to it shall, proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Indenture, by action seeking mandamus or by other suit, action, or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief to the extent permitted by this Indenture or by Applicable Laws, including, but not limited to, the specific performance of any covenant or agreement contained herein, or injunction; provided, however, that any action for money damages against the City shall be limited in recovery to the assets of the Trust Estate, including the Pledged Revenues. The Trustee retains the right to obtain the advice of counsel in its exercise of remedies for default.

(b) THE PRINCIPAL OF THE BONDS SHALL NOT BE SUBJECT TO ACCELERATION UNDER ANY CIRCUMSTANCES.

(c) If the assets of the Trust Estate are sufficient to pay all amounts due with respect to all Outstanding Bonds, in the selection of Trust Estate assets to be used in the payment of Bonds due under this Article, the City shall determine, in its absolute discretion, and shall instruct the Trustee by City Certificate, which Trust Estate assets shall be applied to such payment and shall not be liable to any Owner or other Person by reason of such selection and application. In the event that the City shall fail to deliver to the Trustee such City Certificate, the Trustee shall select and liquidate or sell Trust Estate assets as provided in the following paragraph, and shall not be liable to any Owner, or other Person, or the City by reason of such selection, liquidation or sale. The Trustee shall have no liability for its selection of Trust Estate assets to liquidate or sell.

(d) Whenever moneys are to be applied pursuant to this Article XI, irrespective of and whether other remedies authorized under this Indenture shall have been pursued in whole or in part, the Trustee may cause any or all of the assets of the Trust Estate, including Investment Securities, to be sold. The Trustee may so sell the assets of the Trust Estate and all right, title, interest, claim and demand thereto and the right of redemption thereof, in one or more parts, at any such place or places, and at such time or times and upon such notice and terms as the Trustee may deem appropriate and as may be required by law and apply the proceeds thereof in accordance with the provisions of this Section. Upon such sale, the Trustee may make and deliver to the

purchaser or purchasers a good and sufficient assignment or conveyance for the same, which sale shall be a perpetual bar both at law and in equity against the City, and all other Persons claiming such properties. No purchaser at any sale shall be bound to see to the application of the purchase money proceeds thereof or to inquire as to the authorization, necessity, expediency, or regularity of any such sale. Nevertheless, if so requested by the Trustee, the City shall ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be necessary or, in the judgment of the Trustee, proper for the purpose which may be designated in such request. The Trustee shall have no liability for its selection of Trust Estate assets to liquidate or sell.

Section 11.3. Restriction on Owner's Action.

(a) No Owner shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy hereunder, unless (i) a default has occurred and is continuing of which the Trustee has been notified in writing, (ii) such default has become an Event of Default and the Owners of a Quarter in Interest of the Bonds then Outstanding have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (iii) the Owners have furnished to the Trustee indemnity as provided in Section 9.2 herein, (iv) the Trustee has for sixty (60) days after such notice failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name, (v) no written direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Owners of a majority of the aggregate principal amount of the Bonds then Outstanding, and (vi) notice of such action, suit, or proceeding is given to the Trustee in writing; however, all proceedings at law or in equity shall be instituted and maintained in the manner provided herein and for the equal benefit of the Owners of all Bonds then Outstanding. The notification, request and furnishing of indemnity set forth above shall, at the option of the Trustee, as advised by counsel, be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture or for any other remedy hereunder.

(b) Subject to Article VIII, nothing in this Indenture shall affect or impair the right of any Owner to enforce payment of any Bond at and after the maturity thereof, or on the date fixed for redemption or the obligation of the City to pay each Bond issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner expressed herein and in the Bonds.

(c) In case the Trustee or any Owners shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or any Owners, then and in every such case the City, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 11.4. Application of Revenues and Other Moneys After Default.

(a) All moneys, securities, funds and Pledged Revenues, Pledged Funds, or other assets of the Trust Estate and the income therefrom received by the Trustee pursuant to any right given or action taken under the provisions of this Article, together with all amounts held by the Trustee hereunder as part of the Trust Estate, shall, after payment of the cost and expenses of the proceedings resulting in the collection of such amounts, the expenses (including its counsel fees, costs, and expenses), liabilities, and advances incurred or made by the Trustee and the fees of the Trustee in carrying out this Indenture, during the continuance of an Event of Default, notwithstanding Section 11.2 hereof, be applied by the Trustee, on behalf of the City, to the payment of interest and principal or Redemption Price then due on Bonds, as follows:

FIRST: To the payment to the Owners entitled thereto all installments of interest then due in the direct order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the Owners entitled thereto, without any discrimination or preference; and

SECOND: To the payment to the Owners entitled thereto of the unpaid principal of Outstanding Bonds, or Redemption Price of any Bonds which shall have become due, whether at maturity or by call for redemption, in the direct order of their due dates and, if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due and to the Owners entitled thereto, without any discrimination or preference.

Within ten (10) days of receipt of such good and available funds, the Trustee may fix a record and payment date for any payment to be made to Owners pursuant to this Section 11.4.

(b) In the event funds are not adequate to cure any of the Events of Default described in Section 11.1, the available funds shall be allocated to the Bonds that are Outstanding in proportion to the quantity of Bonds that are currently due and in default under the terms of this Indenture.

(c) The restoration of the City to its prior position after any and all defaults have been cured, as provided in Section 11.3, shall not extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

Section 11.5. Effect of Waiver.

No delay or omission of the Trustee, or any Owner, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given to the Trustee or the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient.

The Trustee may and, if previously directed in writing by Owners of a Quarter in Interest of the Bonds then Outstanding, shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds.

Section 11.6. Evidence of Ownership of Bonds.

(a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners of Bonds may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys duly appointed in writing. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, or the holding by any Person of the Bonds shall be sufficient for any purpose of this Indenture (except as otherwise herein expressly provided) if made in the following manner:

(i) The fact and date of the execution of such instruments by any Owner of Bonds or the duly appointed attorney authorized to act on behalf of such Owner may be provided by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate, or affidavit shall also constitute sufficient proof of his authority.

(ii) The ownership of Bonds and the amount, numbers and other identification and date of holding the same shall be proved by the Register.

(b) Except as otherwise provided in this Indenture with respect to revocation of a consent, any request or consent by an Owner of Bonds shall bind all future Owners of the same Bonds in respect of anything done or suffered to be done by the City or the Trustee in accordance therewith.

Section 11.7. No Acceleration.

In the event of the occurrence of an Event of Default under Section 11.1 hereof, the right of acceleration of any Stated Maturity is not granted as a remedy hereunder and the right of acceleration under this Indenture is expressly denied.

Section 11.8. Mailing of Notice.

Any provision in this Article for the mailing of a notice or other document to Owners shall be fully complied with if it is mailed, first class postage prepaid, only to each Owner at the address appearing upon the Register.

Section 11.9. Exclusion of Bonds.

Bonds owned or held by or for the account of the City shall be promptly delivered to the Trustee and cancelled. Such Bonds will not be deemed Outstanding for any purpose, including without limitation, the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Indenture, and the City shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Indenture.

Section 11.10. Remedies Not Exclusive.

No remedy herein conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity, by statute or by contract.

Section 11.11. Direction by Owners.

Anything herein to the contrary notwithstanding, the Owners of a Quarter in Interest of the Bonds shall have the right by an instrument in writing executed and delivered to the Trustee, to direct the choice of remedies and the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, under each Supplemental Indenture or otherwise, or exercising any trust or power conferred upon the Trustee, including the power to direct or withhold directions with respect to any remedy available to the Trustee or the Owners, provided, (i) such direction shall not be otherwise than in accordance with law and the provisions hereof, (ii) that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and (iii) that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Owners not parties to such direction.

ARTICLE XII
GENERAL COVENANTS AND REPRESENTATIONS

Section 12.1. Representations as to the Trust Estate.

(a) The City represents and warrants that it is authorized by Applicable Laws to authorize and issue the Bonds, to execute and deliver this Indenture and to pledge the Trust Estate in the manner and to the extent provided in this Indenture, and that the Trust Estate are and will be and remain free and clear of any pledge, lien, charge, or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Indenture except as expressly provided herein.

(b) The City shall at all times, to the extent permitted by Applicable Laws, defend, preserve and protect the pledge of the Trust Estate and all the rights of the Owners and the Trustee, under this Indenture against all claims and demands of all Persons whomsoever.

(c) The City will take all steps reasonably necessary and appropriate, and will direct the Trustee to take all steps reasonably necessary and appropriate, to collect all delinquencies

in the collection of the Assessments and any other amounts pledged to the payment of the Bonds to the fullest extent permitted by the PID Act and other Applicable Laws.

(d) To the extent permitted by law, statements for the Annual Installments shall be sent by, or on behalf of the City, to the affected property owners on the same statement or such other mechanism that is used by the City, so that such Annual Installments are collected simultaneously with ad valorem taxes and shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City.

Section 12.2. General.

The City shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under the provisions of this Indenture.

Section 12.3. No Boycott of Israel.

To the extent this Indenture constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Indenture. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel,’ a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 12.4. Iran, Sudan, and Foreign Terrorist Organizations.

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

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

The foregoing representation is made solely to enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or

Iran or any federal sanctions regime relating to a foreign terrorist organization. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 12.5. No Discrimination Against Fossil Fuel Companies.

To the extent this Indenture constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Indenture. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies,” a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 12.6. No Discrimination Against Firearm Entities and Firearm Trade Associations.

(a) To the extent this Indenture constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Indenture. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification and the following definitions:

(i) discriminate against a firearm entity or firearm trade association,’ a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the

firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association;

(ii) 'firearm entity,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting); and

(iii) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

(b) The Trustee understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

ARTICLE XIII
SPECIAL COVENANTS

Section 13.1. Further Assurances; Due Performance.

(a) At any and all times the City will duly execute, acknowledge and deliver, or will cause to be done, executed and delivered, all and every such further acts, conveyances, transfers, and assurances in a manner as the Trustee shall reasonably require for conveying, transferring, pledging, and confirming unto the Trustee, all and singular, the revenues, Funds, Accounts and properties constituting the Pledged Revenues, and the Trust Estate hereby transferred and pledged, or intended so to be transferred and pledged.

(b) The City will duly and punctually keep, observe and perform each and every term, covenant and condition on its part to be kept, observed and performed, contained in this Indenture.

Section 13.2. Additional Obligations or Other Liens.

(a) The City reserves the right to issue Additional Obligations under other indentures, assessment ordinances, or similar agreements or other obligations which do not constitute or create a lien on any portion of the Trust Estate and are not payable from any portion of the Trust Estate.

(b) Other than Refunding Bonds issued to refund all or a portion of the PID Bonds, the City will not create or voluntarily permit to be created any debt, lien or charge on any portion of the Trust Estate, and will not cause or allow any matter or things whereby the lien of this Indenture or the priority hereof might or could be lost or impaired, and further covenants that it will pay or cause to be paid or will make adequate provisions for the satisfaction and discharge of all lawful claims and demands which if unpaid might by law be given precedence over or any equality with this Indenture as a lien or charge upon the Trust Estate; provided, however, that nothing in this Section shall require the City to apply, discharge, or make provision for any such lien, charge, claim, or demand so long as the validity thereof shall be contested by it in good faith, unless thereby, in the opinion of Bond Counsel or counsel to the Trustee, the same would endanger the security for the Bonds.

The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State, and in accordance with the conditions set forth below:

(i) The principal of all Refunding Bonds must be scheduled to be paid, be subject to mandatory sinking fund redemption or mature on September 1 of the years in which such principal is scheduled to be paid, subject to mandatory sinking fund redemption or maturity. All Refunding Bonds must bear interest at a fixed rate and any interest payment dates for Refunding Bonds must be March 1 and September 1. The date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of Refunding Bonds shall be set forth in a Supplemental Indenture; and

(ii) Upon their authorization by the City, the Refunding Bonds of a Series issued under this Section 13.2 shall be issued and shall be delivered to the purchasers or owners thereof, but before, or concurrently with, the delivery of said Refunding Bonds to such purchasers or owners there shall have been filed with the Trustee (1) a copy, certified by the City Secretary of the City, of the ordinance or ordinances of the City authorizing the issuance, sale, execution and delivery of the Refunding Bonds and the execution and delivery of a Supplemental Indenture establishing, among other things, the date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of such Refunding Bonds, and (2) an original executed counterpart of the Supplemental Indenture for such Refunding Bonds.

Section 13.3. Books of Record.

(a) The City shall cause to be kept full and proper books of record and accounts, in which full, true and proper entries will be made of all dealing, business and affairs of the City, which relate to the Pledged Revenues, the Pledged Funds, and the Bonds.

(b) The Trustee shall have no responsibility with respect to the financial and other information received by it pursuant to this Section 13.3 except to receive and retain same, subject to the Trustee's document retention policies, and to distribute the same in accordance with the provisions of this Indenture. Specifically, but without limitation, the Trustee shall have no duty to review such information, is not considered to have notice of the contents of such information or a default based on such contents, and has no duty to verify the accuracy of such information.

ARTICLE XIV
PAYMENT AND CANCELLATION OF THE BONDS AND
SATISFACTION OF THE INDENTURE

Section 14.1. Trust Irrevocable.

The trust created by the terms and provisions of this Indenture is irrevocable until the Bonds secured hereby are fully paid or provision is made for their payment as provided in this Article.

Section 14.2. Satisfaction of Indenture.

If the City shall pay or cause to be paid, or there shall otherwise be paid to the Owners, principal of and interest on all of the Bonds, at the times and in the manner stipulated in this Indenture, and all amounts due and owing with respect to the Bonds have been paid or provided for, then the pledge of the Trust Estate and all covenants, agreements, and other obligations of the City to the Owners of such Bonds, shall thereupon cease, terminate, and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the City copies of all such documents as it may have evidencing that principal of and interest on all of the Bonds has been paid so that the City may determine if the Indenture is satisfied; if so, the Trustee shall pay over or deliver all moneys held by it in the Funds and Accounts held hereunder to the Person

entitled to receive such amounts, or, if no Person is entitled to receive such amounts, then to the City.

Section 14.3. Bonds Deemed Paid.

All Outstanding Bonds shall prior to the Stated Maturity or redemption date thereof be deemed to have been paid and to no longer be deemed Outstanding if (i) in case any such Bonds are to be redeemed on any date prior to their Stated Maturity, the Trustee shall have given notice of redemption on said date as provided herein, (ii) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and the interest on which when due will provide moneys which, together with any moneys deposited with the Trustee at the same time, shall be sufficient to pay when due the principal of and interest on of the Bonds to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (iii) the Trustee shall have received a report by an independent certified public accountant selected by the City verifying the sufficiency of the moneys or Defeasance Securities deposited with the Trustee to pay when due the principal of and interest on of the Bonds to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (iv) if the Bonds are then rated, the Trustee shall have received written confirmation from each Rating Agency that such deposit will not result in the reduction or withdrawal of the rating on the Bonds, and (v) the Trustee shall have received an opinion of Bond Counsel to the effect that (A) any Bond having been deemed to have been paid as provided in this Section is no longer Outstanding hereunder and is no longer secured by or entitled to the benefits of this Indenture, (B) such defeasance is in accordance with the terms hereof and (C) such defeasance will not adversely affect the exclusion of interest on such Bond from gross income for purposes of federal income taxation. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on the Bonds. Any cash received from such principal of and interest on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall be reinvested in Defeasance Securities as directed in writing by the City maturing at times and in amounts sufficient to pay when due the principal of and interest on the Bonds on and prior to such redemption date or maturity date thereof, as the case may be. Any payment for Defeasance Securities purchased for the purpose of reinvesting cash as aforesaid shall be made only against delivery of such Defeasance Securities.

ARTICLE XV
MISCELLANEOUS

Section 15.1. Benefits of Indenture Limited to Parties.

Nothing in this Indenture, expressed or implied, is intended to give to any Person other than the City, the Trustee and the Owners, any right, remedy, or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Trustee.

Section 15.2. Successor is Deemed Included in All References to Predecessor.

Whenever in this Indenture or any Supplemental Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 15.3. Execution of Documents and Proof of Ownership by Owners.

Any request, declaration, or other instrument which this Indenture may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys duly appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration, or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the Person signing such request, declaration, or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number, and date of holding the same shall be proved by the Register.

Any request, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Trustee in good faith and in accordance therewith.

Section 15.4. Waiver of Personal Liability.

No member, officer, agent, or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

Section 15.5. Notices to and Demands on City and Trustee.

(a) Except as otherwise expressly provided in this Indenture, all notices or other instruments required or permitted under this Indenture, including any City Certificate, shall be in writing and shall be delivered by hand, mailed by first class mail, postage prepaid, or transmitted by facsimile or e-mail and addressed as follows:

If to the City:

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

Fax No.: 512.262.3987
Email: ssellers@cityokyle.com

With copy to:

The Knight Law Firm, LLP
Attn: Veronica Rivera, City Attorney
223 West Anderson Lane, Suite A-105
Austin, Texas 78752
Fax No.: 512.922.3004
Email: vrivera@cityattorneytexas.com

If to the Trustee
or the Paying Agent/Registrar:

BOKF, NA.
Attn: Rosalyn Davis
1401 McKinney, Suite 1000
Houston, Texas 77010
Fax No.: 713.354.0279
Email: Rosalyn.Davis@bokf.com

Any such notice, demand, or request may also be transmitted to the appropriate party by telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change given to the other party by the party effecting the change. Notices and consents given by mail in accordance with this Section shall be deemed to have been given five Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

(b) The Trustee shall mail to each Owner of a Bond notice of (i) any substitution of the Trustee; or (ii) the redemption or defeasance of all Bonds Outstanding.

(c) The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law. The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that the City shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the City elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method), the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk

of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 15.6. Partial Invalidity.

If any Section, paragraph, sentence, clause, or phrase of this Indenture shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The City hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause, or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid, or unenforceable.

Section 15.7. Applicable Laws.

This Indenture shall be governed by and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas.

Section 15.8. Counterparts.

This Indenture may be executed in counterparts, each of which shall be deemed an original.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Trustee have caused this Indenture of Trust to be executed all as of the date hereof.

CITY OF KYLE, TEXAS

By: _____
Mayor

Attest:

City Secretary

[CITY SEAL]

BOKF, NA,
as Trustee

By: _____
Authorized Officer

EXHIBIT A

(a) Form of Bond.

NEITHER THE FAITH AND CREDIT NOR THE TAXING
POWER OF THE STATE OF TEXAS, THE CITY, OR ANY
OTHER POLITICAL CORPORATION, SUBDIVISION OR
AGENCY THEREOF, IS PLEDGED TO THE PAYMENT OF
THE PRINCIPAL OF OR INTEREST ON THIS BOND.

REGISTERED

REGISTERED

No. _____

\$ _____

United States of America
State of Texas

CITY OF KYLE, TEXAS
SPECIAL ASSESSMENT REVENUE BOND, SERIES 2022
(KYLE 57 PUBLIC IMPROVEMENT DISTRICT)

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATE OF DELIVERY</u>	<u>CUSIP NUMBER</u>
_____ %	September 1, 20____	_____	_____

The City of Kyle, Texas (the “City”), for value received, hereby promises to pay, solely from the Trust Estate, to

or registered assigns, on the Maturity Date as specified above, the sum of

_____ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on the unpaid principal amount hereof from the later of the Date of Delivery, as specified above, or the most recent Interest Payment Date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on March 1 and September 1 of each year, commencing September 1, 2022, until maturity or prior redemption.

Capitalized terms appearing herein that are defined terms in the Indenture defined below, have the meanings assigned to them in the Indenture. Reference is made to the Indenture for such definitions and for all other purposes.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the corporate trust office in Houston, Texas (the “*Designated Payment/Transfer Office*”), of BOKF, NA, as trustee and paying agent/registrars (the “*Trustee*”, which term includes any successor trustee under the Indenture), or, with respect to a successor trustee and paying agent/registrars, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the Interest Payment Date, mailed by the Trustee to the registered owner at the address shown on the registration books kept by the Trustee or by such other customary banking arrangements acceptable to the Trustee, requested by, and at the risk and expense of, the Person to whom interest is to be paid. For the purpose of the payment of interest on this Bond, the registered owner shall be the Person in whose name this Bond is registered at the close of business on the “*Record Date*,” which shall be the fifteenth day of the month next preceding such Interest Payment Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date that continues for 30 days or more thereafter, a new record date for such interest payment (a “*Special Record Date*”) will be established by the Trustee, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the “*Special Payment Date*,” which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Trustee at the close of business on the last Business Day preceding the date of mailing such notice.

If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of a duly authorized issue of Assessment revenue bonds of the City having the designation specified in its title (herein referred to as the “*Bonds*”), dated June 30, 2022 and issued in the aggregate principal amount of \$_____,000 and issued, with the limitations described herein, pursuant to an Indenture of Trust, dated as of June 1, 2022 (the “*Indenture*”), by and between the City and the Trustee, to which Indenture reference is hereby made for a description of the amounts thereby pledged and assigned, the nature and extent of the lien and security, the respective rights thereunder to the holders of the Bonds, the Trustee, and the City, and the terms upon which the Bonds are, and are to be, authenticated and delivered and by this reference to the terms of which each holder of this Bond hereby consents. All Bonds issued under the Indenture are equally and ratably secured by the amounts thereby pledged and assigned. The Bonds are being issued for the purpose of (i) paying a portion of the Actual Costs of the Public Improvements, (ii) paying capitalized interest on the Bonds during and after the period of acquisition and construction of the Public Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds.

The Bonds are limited obligations of the City payable solely from the Trust Estate as defined in the Indenture. Reference is hereby made to the Indenture, copies of which are on file with and available upon request from the Trustee, for the provisions, among others, with respect

to the nature and extent of the duties and obligations of the City, the Trustee and the Owners. The Owner of this Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms, conditions and provisions of the Indenture.

Notwithstanding any provision hereof, the Indenture may be released and the obligation of the City to make money available to pay this Bond may be defeased by the deposit of money and/or certain direct or indirect Defeasance Securities sufficient for such purpose as described in the Indenture.

The Bonds are issuable as fully registered bonds only in Authorized Denominations, subject to the provisions of the Indenture authorizing redemption in Authorized Denominations.

The Bonds are subject to sinking fund redemption prior to their respective maturities and will be redeemed by the City in part at a price equal to 100% of the principal amount thereof, or portions thereof, to be redeemed plus accrued interest thereon to the date set for redemption from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI of the Indenture, on the dates and in the Sinking Fund Installment amounts as set forth in the following schedule:

\$ Bonds Maturing September 1, 20

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ __,000
September 1, 20__	__,000
September 1, 20__	__,000
September 1, 20__*	__,000

\$ Bonds Maturing September 1, 20

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ __,000
September 1, 20__	__,000
September 1, 20__	__,000
September 1, 20__	__,000
September 1, 20__*	__,000

At least 45 days prior to each sinking fund redemption date, the Trustee shall select for redemption by lot, or such random method as Trustee shall deem fair and appropriate, a principal amount of Bonds of such maturity equal to the Sinking Fund Installments of such Bonds to be redeemed, shall call such Bonds for redemption on such scheduled mandatory sinking fund

* Stated Maturity

redemption date, and shall give notice of such redemption, as provided in Section 4.6 of the Indenture.

The principal amount of Bonds required to be redeemed on any sinking fund redemption date shall be reduced, at the option of the City, by the principal amount of any Bonds of such maturity which, at least 45 days prior to the sinking fund redemption date shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued and unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

The City reserves the right and option to redeem the Bonds maturing on or after September 1, 20__ before their scheduled maturity dates, in whole or in part, in amounts equal to Authorized Denominations, on or after September 1, 20__, such redemption date or dates to be fixed by the City, at 100% of the principal amount of such Bonds, or portions thereof, to be redeemed plus accrued interest to the date of redemption.

Bonds are subject to extraordinary optional redemption prior to maturity in whole or in part, on the first day of any month, at a Redemption Price equal to at 100% of the principal amount of such Bonds called for redemption, or portions thereof, to be redeemed plus accrued interest to the date of redemption from amounts on deposit in the Redemption Fund as a result of Prepayments, other transfers to the Redemption Fund pursuant to the Indenture, or as a result of unexpended amounts transferred from the Project Fund as provided in the Indenture.

Upon surrender of any Bond for redemption in part, the Trustee in accordance with the Indenture, shall authenticate and deliver and exchange the Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, which shall be an Authorized Denomination. A new Bond representing the unredeemed balance of such Bond shall be issued to the Owner thereof, such exchange being without charge. If any Bonds are to be redeemed and such redemption results in the unredeemed portion of a single Bond in an amount less than the Authorized Denomination, a Bond in the principal amount equal to the unredeemed portion, but not less than \$1,000, may be issued.

The Trustee shall give notice of any redemption of the Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or part thereof) to be redeemed, at the address shown on the Register. The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the rights of the holders of Bonds under the Indenture at any time Outstanding affected by such modification. The Indenture also contains provisions permitting the holders of specified percentages in aggregate principal amount of the Bonds at the time Outstanding, on behalf of the holders of all the Bonds, to waive compliance by the City with certain past defaults under the Bond Ordinance or the Indenture and their consequences. Any such consent or waiver by the holder of this Bond or any predecessor Bond evidencing the same debt shall be conclusive and binding upon such holder and upon all future holders thereof and of any Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Trustee, and upon delivery to the Trustee of such certifications and/or opinion of Bond Counsel as may be required under the Indenture for the transfer of this Bond. Upon satisfaction of such requirements, one or more new fully registered Bonds of the same Stated Maturity, of Authorized Denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Trustee shall be required to issue, transfer or exchange any Bond called for redemption where such redemption is scheduled to occur within 45 calendar days of the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Bond.

The City, the Trustee, and any other Person may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the Person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Trustee shall be affected by notice to the contrary.

NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY OF KYLE, TEXAS, HAYS COUNTY, TEXAS, THE STATE OF TEXAS, OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE BONDS.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any Constitutional or statutory limitation.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be executed under the official seal of the City.

Mayor, City of Kyle, Texas

City Secretary, City of Kyle, Texas

[City Seal]

(b) Form of Comptroller's Registration Certificate.

The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond:

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
 §
THE STATE OF TEXAS §

I HEREBY CERTIFY THAT there is on file and of record in my office an opinion to the effect that the Attorney General of the State of Texas has approved this Bond, and that this Bond has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this _____.

Comptroller of Public Accounts
of the State of Texas

[SEAL]

(c) Form of Certificate of Trustee.

CERTIFICATE OF TRUSTEE

It is hereby certified that this is one of the Bonds of the series of Bonds referred to in the within mentioned Indenture.

BOKF, NA,
Houston, Texas, as Trustee

DATED: _____

By: _____
Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and zip code of transferee):

(Social Security or other identifying number: _____) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Date: _____

Signature Guaranteed By:

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Trustee

Authorized Signatory

(e) The Initial Bond shall be in the form set forth in paragraphs (a), (b), (d) and (e) of this Exhibit A, except for the following alterations:

(i) immediately under the name of the Bond the heading "INTEREST RATE" and "MATURITY DATE" shall both be completed with the expression "As Shown Below," and the reference to the "CUSIP NUMBER" shall be deleted;

(ii) in the first paragraph of the Bond, the words "on the Maturity Date as specified above, the sum of _____ DOLLARS" shall be deleted and the following will be inserted: "on September 1 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

Year Principal Installment Interest Rate”

(Information to be inserted from Section 3.2(c) of the Indenture); and

(iii) the Initial Bond shall be numbered T-1.

EXHIBIT B

FORM OF CITY CERTIFICATE

[City Letterhead]

Ms. Rosalyn Davis
BOKF, NA
1401 McKinney, Suite 1000
Houston, Texas 77010
Ph.: 713.289.5829

Re: City of Kyle, Texas Special Assessment Revenue Bonds (Kyle 57 Public Improvement District)

Reference is made to the Indenture of Trust (the "Indenture") by and between the City of Kyle, Texas (the "City") and BOKF, NA (the "Trustee"), regarding the above-described transaction. In accordance with the Indenture, we hereby instruct you as follows:

[insert instructions]

This City Certificate, as executed by the City Representative (as defined in the Indenture) below, is provided in accordance with and complies with the provisions of the Indenture. In submitting this Certificate, it is certified that the Developer has spent \$874,780 in Public Improvements. The Trustee is hereby authorized to rely upon this City Certificate and to take the foregoing action(s). By submission of this City Certificate, the City hereby affirms that it remains in compliance with the covenants as set forth in the Indenture and all supplements related thereto.

Very truly yours,

CITY OF KYLE, TEXAS

By: /s/ _____
Name: _____
Title: _____

**CITY OF KYLE, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022
(KYLE 57 PUBLIC IMPROVEMENT DISTRICT)**

CONTINUING DISCLOSURE AGREEMENT OF THE ISSUER

This Continuing Disclosure Agreement of the Issuer dated as of June 1, 2022 (this “Disclosure Agreement”) is executed and delivered by and between the City of Kyle, Texas (the “Issuer”), P3Works, LLC (the “Administrator”) and RBC Capital Markets, LLC, acting solely in its capacity of dissemination agent (the “Dissemination Agent”), with respect to the Issuer’s “Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District)” (the “Bonds”). The Issuer, the Administrator, and the Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer, the Administrator and the Dissemination Agent for the benefit of the Owners (defined below) and beneficial owners of the Bonds. Unless and until a different filing location is designated by the MSRB (defined below) or the SEC (defined below), all filings made by the Dissemination Agent pursuant to this Disclosure Agreement shall be filed with the MSRB through EMMA (defined below).

SECTION 2. Definitions. In addition to the definitions set forth above and in the Indenture of Trust dated as of June 1, 2022 (the “Indenture”), which apply to any capitalized term used in this Disclosure Agreement, including the Exhibits hereto, unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Administrator” shall mean the Issuer or the person or independent firm designated by the City who shall have the responsibility provided in the Service and Assessment Plan, the Indenture, or any other agreement or document approved by the City related to the duties and responsibility of the administration of the District.

“Annual Collection Costs” shall have the meaning assigned to such term in the Indenture.

“Annual Financial Information” shall mean annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 4(a) of this Disclosure Agreement.

“Annual Installment(s)” shall have the meaning assigned to such term in the Indenture.

“Annual Issuer Report” shall mean any Annual Issuer Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Assessment(s)” shall have the meaning assigned to such term in the Indenture.

“Bonds” shall mean the City of Kyle, Texas Special Assessment Revenue Bonds, Series 2022 (Kyle 57 Public Improvement District).

“Business Day” shall mean any day other than a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office

of the Paying Agent/Registrar is located are required or authorized by law or executive order to close.

“Developer” shall mean Kyle 57 Development, Inc., a Texas corporation, and its respective successors and assigns.

“Disclosure Agreement of the Developer” shall mean the Continuing Disclosure Agreement of the Developer dated as of June 1, 2022 executed and delivered by the Developer, P3Works, LLC, as Administrator and the Dissemination Agent.

“Disclosure Representative” shall mean the Director of Finance of the Issuer or the designee of either of such officers, or such other officer or employee as the Issuer may designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean RBC Capital Markets, LLC, acting solely in its capacity of dissemination agent, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“District” shall mean Kyle 57 Public Improvement District.

“EMMA” shall mean the Electronic Municipal Market Access System currently available on the internet at <http://emma.msrb.org>.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Financing Agreement” shall mean the “*Kyle 57 Public Improvement District Financing Agreement*” between the City and the Developer, dated as of October 4, 2021, and as amended by the letter agreement, effective as of March 1, 2022, between the City and the Developer, and as amended by the First Amendment to Kyle 57 Public Improvement District Financing Agreement, effective as of May 17, 2022, which provides, in part, for the deposit of proceeds from the issuance and sale of the Bonds and the payment of Actual Costs of Authorized Improvements within in the District, the issuance of bonds, the reimbursement of Actual Costs to the Developer from the proceeds of the Bonds for funds advanced by the Developer and used to pay Actual Costs of the Public Improvements and other matters related thereto.

“Fiscal Year” shall mean the Issuer’s fiscal year, currently the 12 month period from October 1 through September 30.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule.

“Outstanding” shall have the meaning assigned to such term in the Indenture.

“Owner” shall mean the registered owner of any Bonds.

“Participating Underwriter” shall mean FMSbonds, Inc. and its successors and assigns.

“Prepayment” shall mean the payment of all or a portion of an Assessment before the final Annual Installment thereof.

“Redemption Price” shall have the meaning assigned to such term in the Indenture.

“Rule” shall mean Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Service and Assessment Plan” shall mean the Kyle 57 Public Improvement District Service and Assessment Plan approved by the City Council on June 7, 2022, as same may be further amended, updated, supplemented or otherwise modified from time to time.

“Trust Estate” shall have the meaning assigned to such term in the Indenture.

“Trustee” shall mean BOKF, NA, Houston, Texas, a national banking association duly organized and validly existing under the laws of the United States of America, acting solely in its capacity as trustee, or any successor trustee pursuant to the Indenture.

SECTION 3. Provision of Annual Issuer Reports.

(a) The Issuer shall cause and hereby directs the Dissemination Agent to provide or cause to be provided to the MSRB, in the electronic or other form required by the MSRB, commencing with the Fiscal Year ending September 30, 2022, an Annual Issuer Report provided to the Dissemination Agent which is consistent with the requirements of and within the time periods specified in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer, if prepared and when available, may be submitted separately from the Annual Issuer Report, and later than the date required in this paragraph for the filing of the Annual Issuer Report, if audited financial statements are not available by that date; provided, however, if the audited financial statements are not complete within such period, then the Issuer shall provide unaudited financial statements within such period. In each case, the Annual Issuer Report may be submitted as a single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Agreement. If the Issuer’s Fiscal Year changes, it shall file notice of such change (and of the date of the new Fiscal Year) with the MSRB prior to the next date by which the Issuer otherwise would be required to provide the Annual Issuer Report pursuant to this paragraph. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

Not later than ten (10) days prior to the date specified in Section 4 of this Disclosure Agreement for providing the Annual Issuer Report to the MSRB, the Issuer shall provide the Annual Issuer Report to the Dissemination Agent. The Dissemination Agent shall provide such Annual Issuer Report to the MSRB not later than ten (10) days from receipt of such Annual Issuer Report from the Issuer.

If by the fifth (5th) day before the filing date required under Section 4 of this Disclosure Agreement, the Dissemination Agent has not received a copy of the Annual Issuer Report, the Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail) to remind the Issuer of its undertaking to provide the applicable Annual Issuer Report pursuant to this subsection (a). Upon such reminder, the Disclosure Representative shall either (i) provide the Dissemination Agent with an electronic copy of the Annual Issuer Report no later than two (2) Business Days prior to the filing date required under Section 4 of this Disclosure Agreement; or (ii) instruct the Dissemination Agent in writing that the Issuer will not be able to provide the Annual Issuer Report within the time required under this Disclosure Agreement, state the date by which the Annual Issuer Report for such year will be provided and instruct the Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit A; provided, however, that in the event the Disclosure Representative is required to act under either (i) or (ii) described above, the Dissemination Agent still must file the Annual Issuer Report or the notice of failure to file, as applicable, to the MSRB, no later than six months after the end of each Fiscal Year; provided further, however, that in the event the Disclosure Representative fails to act under either (i) or (ii) described above, the Dissemination Agent shall file a notice of failure to file no later than on the last Business Day of the six month period after the end of the Fiscal Year.

(b) The Issuer shall or shall cause the Dissemination Agent to:

(i) determine the filing address or other filing location of the MSRB each year prior to filing the Annual Issuer Report on the date required in subsection (a);

(ii) file the Annual Issuer Report containing or incorporating by reference the information set forth in Section 4 hereof; and

(iii) if the Issuer has provided the Dissemination Agent with the completed Annual Issuer Report and the Dissemination Agent has filed such Annual Issuer Report with the MSRB, then the Dissemination Agent shall file a report with the Issuer certifying that the Annual Issuer Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB.

SECTION 4. Content and Timing of Annual Issuer Reports. The Annual Issuer Report for the Bonds shall contain or incorporate by reference, and the Issuer agrees to provide or cause to be provided to the Dissemination Agent, the following:

(a) Within six (6) months after the end of each Fiscal Year the Annual Financial Information of the Issuer (any or all of which may be unaudited) being:

(i) Tables setting forth the following information, as of the end of such Fiscal Year:

(A) For the Bonds, the maturity date or dates, the interest rate or rates, the original aggregate principal amount, the principal amount remaining Outstanding and the interest amount remaining Outstanding;

(B) The amounts in the funds and accounts securing the Bonds; and

(C) The assets and liabilities of the Trust Estate.

(ii) The principal and interest paid on the Bonds during such Fiscal Year and the minimum scheduled principal and interest required to be paid on the Bonds in the next Fiscal Year.

(iii) Any changes to the land use designation for the property in the District from the purposes identified in the Service and Assessment Plan.

(iv) Updates to the information in the Service and Assessment Plan as most recently amended or supplemented (a "SAP Update"), including any changes to the methodology for levying the Assessments in the District.

(v) The aggregate taxable assessed valuation for parcels or lots within the District based on the most recent certified tax roll available to the Issuer.

(vi) With respect to single-family residential lots, until building permits have been issued for parcels or lots representing, in the aggregate, ninety-five percent (95%) of the total Assessments levied within the District, the Annual Financial Information (in the SAP Update or otherwise) shall include the following:

(A) the number of new homes completed in the District during such Fiscal Year; and

(B) the aggregate number of new homes completed within the District since filing the initial Annual Issuer Report for the Fiscal Year ended September 30, 2021.

(vii) Listing of any property or property owners in the District representing more than five percent (5%) of the levy of Assessments, the amount of the levy of Assessments against such landowners, and the percentage of such Assessments relative to the entire levy of Assessments within the District, all as of the [_____] billing date for the Fiscal Year.

(viii) Collection and delinquency history of the Assessments within the District for the past five Fiscal Years, in substantially the following format:

Collection and Delinquent History of Assessments

Collected in Fiscal Year	Assessment Billed	Parcels Levied	Delinquent Amount as of 2/1	Delinquent Percentage as of 2/1	Delinquent Amount as of 9/1	Delinquent Percentage as of 9/1	Total Assessments Collected ⁽¹⁾
Ending 9/30							
20__							
20__							

20__
20__
20__

\$

⁽¹⁾ Collected as of _____, 20__. Includes \$ _____ attributable to Prepayments

(ix) For each calendar year, if the total amount of Annual Installments that are delinquent as of September 1 in such calendar year is equal to or greater than ten (10%) of the total amount of Annual Installments due in such calendar year, a list of parcel numbers for which the Annual Installments are delinquent.

(x) Total amount of Prepayments collected, as of the February 15 of the calendar year immediately succeeding such Fiscal Year, in each case with respect to the most recent billing period (generally, [_____] of the preceding calendar year through January 31 of the current calendar year).

(xi) The amount of delinquent Assessments by Fiscal Year:

(A) which are subject to institution of foreclosure proceedings (but as to which such proceedings have not been instituted);

(B) for which foreclosure proceedings have been instituted but have not been concluded;

(C) which have been reduced to judgment but not collected;

(D) which have been reduced to judgment and collected; and

(E) the result of any foreclosure sales of assessed property within the District if the assessed property sold at a foreclosure sale represents more than five percent (5%) of the total amount of Assessments.

(xii) A description of any amendment to this Disclosure Agreement and a copy of any restatements to the Issuer's audited financial statements during such Fiscal Year.

(b) If not provided with the financial information provided under subsection 4(a) above, if prepared and when available, the audited financial statements of the Issuer for the most recently ended Fiscal Year, prepared in accordance with generally accepted accounting principles applicable from time to time to the Issuer. If such audited financial statements are not complete within the time period specified in subsection 4(a) above, then the Issuer shall provide unaudited financial statements within such period and shall provide audited financial statements for the applicable Fiscal Year when and if the audit report on such statements becomes available.

See Exhibit B hereto for a form for submitting the information set forth in the preceding paragraphs. The Issuer has designated P3Works, LLC as the Administrator. The Administrator, and if no Administrator is designated, Issuer's staff, shall prepare the Annual Financial Information. In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of the Annual Issuer Reports under this Section 4.

Any or all of the items listed above may be included by specific reference to other documents, including disclosure documents of debt issues of the Issuer, which have been submitted to and are publicly accessible from the MSRB. If the document included by reference is a final offering document, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, each of the following is a Listed Event with respect to the Bonds:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancements reflecting financial difficulties.
5. Substitution of credit or liquidity providers, or their failure to perform.
6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.
7. Modifications to rights of Owners, if material.
8. Bond calls, if material, and tender offers.
9. Defeasances.
10. Release, substitution, or sale of property securing repayment of the bonds, if material.
11. Rating changes.
12. Bankruptcy, insolvency, receivership or similar event of the Issuer.
13. The consummation of a merger, consolidation, or acquisition of the Issuer, or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
14. Appointment of a successor or additional trustee under the Indenture or the change of name of a trustee, if material.

15. Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material.

16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

The Issuer does not intend for any sale by the Developer of real property within the District in the ordinary course of the Developer's business to be considered a significant event for the purposes of number 10 above.

Any event described in number 12 above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

The Issuer intends the words used in numbers 15 and 16 above and the definition of Financial Obligation to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

Upon the occurrence of a Listed Event, the Issuer shall promptly notify the Dissemination Agent in writing and the Issuer shall direct the Dissemination Agent to file a notice of such occurrence with the MSRB. The Dissemination Agent shall file such notice no later than the Business Day immediately following the day on which it receives written notice of such occurrence from the Issuer. Any such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Any notice under the preceding paragraphs shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Dissemination Agent to disseminate such information as provided herein, and the date the Issuer desires for the Dissemination Agent to disseminate the information (which date shall not be more than ten (10) Business Days after the occurrence of the Listed Event or failure to file).

In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures made under this Section 5. In addition, the Issuer shall have the sole responsibility to ensure that any notice required to be filed under this Section 5 is filed within ten (10) Business Days of the occurrence of the Listed Event.

(b) The Dissemination Agent shall, promptly, and not more than five (5) Business Days after obtaining actual knowledge of the occurrence of any Listed Event with respect to the Bonds, notify the Disclosure Representative in writing of such Listed Event. The Dissemination Agent shall not be required to file a notice of the occurrence of such Listed Event with the MSRB unless and until it receives written instructions from the Disclosure Representative to do so. If the Dissemination Agent has been

instructed by the Disclosure Representative on behalf of the Issuer to report the occurrence of a Listed Event under this subsection (b), the Dissemination Agent shall file a notice of such occurrence with the MSRB no later than the Business Day immediately following the day on which it receives written instructions from the Issuer. It is agreed and understood that the duty to make or cause to be made the disclosures herein is that of the Issuer and not that of the Trustee or the Dissemination Agent. It is agreed and understood that the Dissemination Agent has agreed to give the foregoing notice to the Issuer as an accommodation to assist it in monitoring the occurrence of such event, but is under no obligation to investigate whether any such event has occurred. As used above, “actual knowledge” means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Dissemination Agent be liable in damages or in tort to the Issuer, the Participating Underwriter, the Trustee, or any Owner or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(c) If in response to a notice from the Dissemination Agent under subsection (b), the Issuer determines that the Listed Event under number 2, 7, 8 (as to bond calls only), 10, 13, 14 or 15 of subparagraph (a) above is not material under applicable federal securities laws, the Issuer shall promptly, but in no case more than five (5) Business Days after occurrence of the event, notify the Dissemination Agent and the Trustee (if the Dissemination Agent is not the Trustee) in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (b).

SECTION 6. Termination of Reporting Obligations. The obligations of the Issuer, the Administrator and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds, when the Issuer is no longer an obligated person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required. So long as any of the Bonds remain Outstanding, the Dissemination Agent may assume that the Issuer is an obligated person with respect to the Bonds until it receives written notice from the Disclosure Representative stating that the Issuer is no longer an obligated person with respect to the Bonds, and the Dissemination Agent may conclusively rely upon such written notice with no duty to make investigation or inquiry into any statements contained or matters referred to in such written notice. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event with respect to the Bonds under Section 5(a).

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent or successor Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be RBC Capital Markets, LLC. The Issuer will give prompt written notice to the Developer, or any other party responsible for providing quarterly information pursuant to the Disclosure Agreement of Developer, of any change in the identity of the Dissemination Agent under the Disclosure Agreement of Developer.

SECTION 8. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Issuer and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall not unreasonably withhold its consent to any amendment so

requested by the Issuer), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the delivery of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next related Annual Issuer Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(a), and (ii) the Annual Issuer Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. No amendment which adversely affects the Dissemination Agent may be made without its prior written consent (which consent will not be unreasonably withheld or delayed).

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Issuer Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Issuer Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Issuer Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Agreement, the Dissemination Agent or any Owner or beneficial owner of the Bonds may, and the Trustee (at the request of any Participating Underwriter or the Owners of at least twenty-five percent (25%) aggregate principal amount of Outstanding Bonds and upon being indemnified to its satisfaction) shall, take such actions as may be necessary and appropriate to cause the Issuer to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall

not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer to comply with this Disclosure Agreement shall be an action for mandamus or specific performance. A default under this Disclosure Agreement by the Issuer shall not be deemed a default under the Disclosure Agreement of Developer by the Developer, and a default under the Disclosure Agreement of Developer by the Developer shall not be deemed a default under this Disclosure Agreement by the Issuer.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent and Administrator.

(a) The Dissemination Agent shall not be responsible in any manner for the content of any notice or report (including without limitations the Annual Issuer Report) prepared by the Issuer pursuant to this Disclosure Agreement. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent. To the extent permitted by law, the Issuer agrees to hold harmless the Dissemination Agent, its officers, directors, employees and agents, but only with funds to be provided by the Developer or from Annual Collection Costs collected from the property owners in the District, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct; provided, however, that nothing herein shall be construed to require the Issuer to indemnify the Dissemination Agent for losses, expenses or liabilities arising from information provided to the Dissemination Agent by the Developer or the failure of the Developer to provide information to the Dissemination Agent as and when required under the Disclosure Agreement of Developer. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Dissemination Agent is an "obligated person" under the Rule. The Dissemination Agent shall not be responsible for the Issuer's failure to submit a complete Annual Issuer Report to the MSRB. The Dissemination Agent is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The fact that the Dissemination Agent may have a banking or other business relationship with the Issuer or any person with whom the Issuer contracts in connection with the transaction described in the Indenture, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event described in Section 5 above, except as may be provided by written notice to the Dissemination Agent pursuant to this Disclosure Agreement.

The Dissemination Agent may, from time to time, consult with legal counsel of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and the Dissemination Agent shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

(b) Except as otherwise provided herein, the Administrator shall not have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Administrator shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Administrator. To the extent permitted by law, the Issuer agrees to hold harmless the Administrator, its officers, directors, employees and agents,

but only with funds to be provided by the Developer or from Annual Collection Costs collected from the property owners in the District, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Administrator's negligence or willful misconduct; provided, however, that nothing herein shall be construed to require the Issuer to indemnify the Administrator for losses, expenses or liabilities arising from information provided to the Administrator by third parties, or the failure of any third party to provide information to the Administrator as and when required under this Disclosure Agreement, or the failure of the Developer to provide information to the Administrator as and when required under the Disclosure Agreement of Developer. The obligations of the Issuer under this Section shall survive resignation or removal of the Administrator and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Administrator is an "obligated person" under the Rule. The Administrator is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The Administrator shall not in any event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to duties and responsibilities of the Administrator hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document delivered to the Administrator and believed to be genuine and to have been signed or presented by the proper party or parties.

The Administrator may, from time to time, consult with legal counsel of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and the Administrator shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

(c) UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT, THE ADMINISTRATOR, OR THE ISSUER BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, THE ADMINISTRATOR, OR THE DISSEMINATION AGENT, RESPECTIVELY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE DISSEMINATION AGENT AND THE ADMINISTRATOR ARE UNDER NO OBLIGATION NOR ARE THEY REQUIRED TO BRING SUCH AN ACTION.

SECTION 12. Assessment Timeline. The basic expected timeline for the collection of Assessments and the anticipated procedures for pursuing the collection of delinquent Assessments is set forth in Exhibit C which is intended to illustrate the general procedures expected to be followed in enforcing the payment of delinquent Assessments. Failure to adhere to such expected timeline shall not constitute a default by the Issuer under this Disclosure Agreement, the Indenture, the Bonds or any other document related to the Bonds.

SECTION 13. No Personal Liability. No covenant, stipulation, obligation or agreement of the Issuer, the Administrator, or Dissemination Agent contained in this Disclosure Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future council members,

officer, agent or employee of the Issuer, the Administrator, or Dissemination Agent in other than that person's official capacity.

SECTION 14. Severability. In case any section or provision of this Disclosure Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reasons held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision thereof or any other covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder (except to the extent that such remainder or section or provision or other covenant, stipulation, obligation, agreement, act or action, or part thereof is wholly dependent for its operation on the provision determined to be invalid), which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 15. Sovereign Immunity. The Dissemination Agent and the Administrator agree that nothing in this Disclosure Agreement shall constitute or be construed as a waiver of the Issuer's sovereign or governmental immunities regarding liability or suit.

SECTION 16. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Administrator, the Dissemination Agent, the Participating Underwriter, and the Owners and the beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 17. Dissemination Agent and Administrator Compensation. The fees and expenses incurred by the Dissemination Agent and the Administrator for their respective services rendered in accordance with this Disclosure Agreement constitute Annual Collection Costs and will be included in the Annual Installments as provided in the annual updates to the Service and Assessment Plan. The Issuer shall pay or reimburse the Dissemination Agent and the Administrator, but only with funds to be provided from the Annual Collection Costs component of the Annual Installments collected from the property owners in the District, for the fees and expenses for their respective services rendered in accordance with this Disclosure Agreement.

SECTION 18. Anti-Boycott Verification. To the extent this Disclosure Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Dissemination Agent and the Administrator, each respectively, hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Disclosure Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

SECTION 19. Iran, Sudan and Foreign Terrorist Organizations. The Dissemination Agent and the Administrator, each respectively, represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

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

The foregoing representation is made solely to enable the Issuer to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Dissemination Agent and the Administrator, each respectively, and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

SECTION 20. No Discrimination Against Fossil-Fuel Companies. To the extent this Disclosure Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Dissemination Agent and the Administrator, each respectively, hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Disclosure Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable Federal or Texas law; or (B) does business with a company described by (A) above.

SECTION 21. No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Disclosure Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Dissemination Agent and the Administrator, each respectively, hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Disclosure Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, (a) 'discriminate against a firearm entity or firearm trade association' (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or

firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. As used in the foregoing verification, (b) 'firearm entity' means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and (c) 'firearm trade association' means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

SECTION 22. Affiliate. As used in Sections 18 through 21, the Dissemination Agent and Administrator, each respectively, understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Dissemination Agent or the Administrator within the meaning of SEC Rule 405, 17.C.F.R. § 230.405, and exists to make a profit.

SECTION 23. Disclosure of Interested Parties. Pursuant to Section 2252.908(c)(4), Texas Government Code, as amended, the Dissemination Agent hereby certifies it is a publicly traded business entity and is not required to file a Certificate of Interested Parties Form 1295 related to this Disclosure Agreement.

SECTION 24. Governing Law. This Disclosure Agreement shall be governed by the laws of the State of Texas.

SECTION 25. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Issuer, the Administrator and the Dissemination Agent agree that electronic signatures to this Disclosure Agreement may be regarded as original signatures.

[Signature pages follow]

CITY OF KYLE, TEXAS

By: _____
City Manager

RBC Capital Markets, LLC
(as Dissemination Agent)

By: _____
Authorized Officer

P3WORKS, LLC
(as Administrator)

By: _____
Authorized Officer

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE
ANNUAL ISSUER REPORT**

Name of Issuer: City of Kyle, Texas
Name of Bond Issue: Special Assessment Revenue Bonds, Series 2022
(Kyle 57 Public Improvement District)(the “Bonds”)
CUSIP Nos.: [insert CUSIP Numbers]
Date of Delivery: _____, 20__

NOTICE IS HEREBY GIVEN that the City of Kyle, Texas (the “Issuer”), has not provided [an Annual Issuer Report][annual audited financial statements] with respect to the above-named bonds as required by the Continuing Disclosure Agreement of Issuer dated as of June 1, 2022, between the Issuer, P3Works, LLC, as “Administrator” and RBC Capital Markets, LLC, as “Dissemination Agent.” The Issuer anticipates that [the Annual Issuer Report][annual audited financial statements] will be filed by _____.

Dated: _____

RBC CAPITAL MARKETS, LLC
on behalf of the City of Kyle, Texas
(as Dissemination Agent)

By: _____

Title: _____

cc: City of Kyle, Texas

EXHIBIT B

**CITY OF KYLE, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022
(KYLE 57 PUBLIC IMPROVEMENT DISTRICT)**

ANNUAL ISSUER REPORT*

Delivery Date: _____, 20__

CUSIP Nos.: [insert CUSIP Numbers]

DISSEMINATION AGENT

Name: RBC Capital Markets, LLC
Address: _____
City: _____
Telephone: (____) ____-____
Contact Person: Attn: _____

Section 4(a)(i)(A)

BONDS OUTSTANDING

CUSIP Number	Maturity Date	Interest Rate	Original Principal Amount	Outstanding Principal Amount	Outstanding Interest Amount

Section 4(a)(i)(B)

INVESTMENTS

Fund/ Account Name	Investment Description	Par Value	Book Value	Market Value

*Excluding Audited Financial Statements of the Issuer

Section 4(a)(i)(C)

ASSETS AND LIABILITIES OF PLEDGED TRUST ESTATE

ASSETS

Bonds (Principal Balance) _____
 Funds and Accounts [list] _____
TOTAL ASSETS _____

LIABILITIES

Outstanding Bond Principal _____
 Outstanding Program Expenses (if any) _____
TOTAL LIABILITIES _____

EQUITY

Assets Less Liabilities _____
 Parity Ratio _____

Form of Accounting Cash Accrual Modified Accrual

ITEMS REQUIRED BY SECTIONS 4(a)(ii) – (vii) OF THE CONTINUING DISCLOSURE AGREEMENT OF ISSUER RELATING TO THE CITY OF KYLE, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022 (KYLE 57 PUBLIC IMPROVEMENT DISTRICT)

[Insert a line item for each applicable listing]

SECTION 4(a)(viii) COLLECTION AND DELINQUENCY HISTORY OF THE ASSESSMENTS WITHIN THE DISTRICT FOR THE PAST FIVE FISCAL YEARS, IN THE FOLLOWING FORMAT:

Collection and Delinquent History of Assessments

Collected in Fiscal Year	Assessment Billed	Parcels Levied	Delinquent Amount as of 2/1	Delinquent Percentage as of 2/1	Delinquent Amount as of 9/1	Delinquent Percentage as of 9/1	Total Assessments Collected ⁽¹⁾
20__							
20__							
20__							
20__							
20__							
							\$

⁽¹⁾ Collected as of _____, 20__. Includes \$ _____ attributable to Prepayments

**ITEMS REQUIRED BY SECTIONS 4(a)(ix) – (xii) OF THE CONTINUING
DISCLOSURE AGREEMENT OF ISSUER RELATING TO THE CITY OF KYLE,
TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022 (KYLE 57 PUBLIC
IMPROVEMENT DISTRICT)**

[Insert a line item for each applicable listing]

EXHIBIT C

**BASIC EXPECTED TIMELINE FOR ASSESSMENT COLLECTIONS
AND PURSUIT OF DELINQUENCIES¹**

<u>Date</u>	<u>Delinquency Clock (Days)</u>	<u>Activity</u>
January 31		Assessments are due.
February 1	1	Assessments delinquent if not received.
February 15	15	<p>Issuer forwards payment to Trustee for all collections received as of February 15, along with detailed breakdown. Subsequent payments and relevant details will follow monthly thereafter.</p> <p>Issuer and/or Administrator should be aware of actual and specific delinquencies.</p> <p>Administrator should be aware if Reserve Fund needs to be utilized for debt service payments during the corresponding Fiscal Year. If there is to be a shortfall of any Annual Installments due to be paid that Fiscal Year, the Dissemination Agent should be immediately notified in writing.</p> <p>Administrator should determine if previously collected surplus funds, if any, plus actual Annual Installment collections will be fully adequate for debt service in the corresponding March and September.</p> <p>At this point, if total delinquencies are under 5% and if there is adequate funding for March and September payments, no further action is anticipated for collection of Assessments except that the Issuer or Administrator, working with the City Attorney or an appropriate designee, will begin process to cure deficiency. For properties delinquent by more than one year or if the delinquency exceeds \$10,000, the matter will be referred for commencement of foreclosure.</p> <p>If there are over 5% delinquencies or if there is insufficient funding in the Pledged Revenue</p>

¹ Illustrates anticipated dates and procedures for pursuing the collection of delinquent Annual Installments of Assessments, which dates and procedures shall be in accordance with Chapters 31, 32, 33 and 34, Texas Tax Code, as amended (the “Code”), and the Hays County Tax/Assessor Collector’s procedures, and are subject to adjustment by the Issuer. If the collection and delinquency procedures under the Code are subsequently modified, whether due to an executive order of the Governor of Texas or an amendment to the Code, such modifications shall control.

Fund for transfer to the Principal and Interest Account of such amounts as shall be required for the full March and September payments, the collection-foreclosure procedure will proceed against all delinquent properties.

March 1

29/30

Trustee pays bond interest payments to Owners.

Reserve Fund payment to Bond Fund may be required if Assessments are below approximately 50% collection rate.

Issuer, or the Trustee, on behalf of the Issuer, to notify Dissemination Agent of the occurrence of draw on the Reserve Fund and, following receipt of such notice, Dissemination Agent to notify MSRB of such draw on the Fund for debt service.

Use of Reserve Fund for debt service payment should trigger commencement of foreclosure on delinquent properties.

Issuer, or the Administrator on behalf of the Issuer, determines whether or not any Annual Installments are delinquent and, if such delinquencies exist, the Issuer commences as soon as practicable appropriate and legally permissible actions to obtain such delinquent Annual Installments.

March 20

48/49

If any property owner with ownership of property responsible for more than \$10,000 of the Annual Installments of Assessments is delinquent or if a total of delinquencies is over 5%, or if it is expected that Reserve Fund moneys will need to be utilized for either the March or September bond payments, the Disclosure Representative shall work with City Attorney's office, or the appropriate designee, to satisfy payment of all delinquent Annual Installments of Assessments.

April 15

74/75

Preliminary foreclosure activity commences, and Issuer to notify Dissemination Agent in writing of the commencement of preliminary foreclosure activity.

If Dissemination Agent has not received Foreclosure Schedule and Plan of Collections,

		Dissemination Agent to request same from the Issuer.
May 1	90/91	If the Issuer has not provided the Dissemination Agent with Foreclosure Schedule and Plan of Collections, and if instructed by the Owners under Section 11.2 of the Indenture, Dissemination Agent requests that the Issuer commence foreclosure or provide plan for collection.
May 15	104/105	The designated lawyers or law firm will be preparing the formal foreclosure documents and will provide periodic updates to the Dissemination Agent for dissemination to those bondholders who have requested to be notified of collections progress. The goal for the foreclosure actions is a filing by no later than June 1 (day 121/122).
June 1	121/122	Foreclosure action to be filed with the court.
June 15	135/136	Issuer notifies Trustee and Dissemination Agent of foreclosure filing status in writing. Dissemination Agent notifies Owners.
July 1	151/152	If Owners and Dissemination Agent have not been notified of a foreclosure action, Dissemination Agent will notify the Issuer that it is appropriate to file action.

A committee of not less than twenty-five percent (25%) of the Owners may request a meeting with the City Manager, Assistant City Manager or the Director of Finance to discuss the Issuer's actions in pursuing the repayment of any delinquencies. This would also occur after day 30 if it is apparent that a Reserve Fund draw is required. Further, if delinquencies exceed five percent (5%), Owners may also request a meeting with the Issuer at any time to discuss the Issuer's plan and progress on collection and foreclosure activity. If the Issuer is not diligently proceeding with the foreclosure process, the Owners may seek an action for mandamus or specific performance to direct the Issuer to pursue the collections of delinquent Annual Installments of Assessments.



CITY OF KYLE, TEXAS

Brick and Mortar Infrastructure Agreement

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Consider and possible action to approve an Infrastructure and Property Conveyance Agreement, a Property Conveyance Escrow Agreement, the Transportation Improvement Design, and Permitting and Construction Agreement in the Brick and Mortar District by and between Plum Creek Development Partners, LTD., Mountain Plum, LTD., and the City of Kyle, Texas, and the First and Second Amendments to Letter Agreement confirming Allocation of Land to Satisfy Land Dedication of Plum Creek Land to the City of Kyle, Texas. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Infrastructure Agreement and Property Conveyance - Brick and Mortar District - 379235 - 17 - DOCS
- 220517_Land Dedication
- Public Infrastructure Design and Permitting Agreement - 371509 - 10 - DOCS
- Conveyance Escrow Agreement - 380871 - 7 - DOCS
- Site-Specific Declaration (Soccer Parcel) - 392851 - 2 - DOCS
- First Amendment to Letter Agreement (City Land Dedications) - 393021 - 1 - DOCS
- Second Amendment to Letter Agreement (City Land Dedications) - 392680 - 8 - DOCS

**INFRASTRUCTURE AND PROPERTY CONVEYANCE AGREEMENT
– BRICK AND MORTAR DISTRICT**

This Infrastructure and Property Conveyance Agreement – Brick and Mortar District (this "*Agreement*") is made and entered into to be effective as of _____, 2022 ("*Effective Date*") by and between the CITY OF KYLE, TEXAS, a Texas home rule municipal corporation (the "*City*"), PLUM CREEK DEVELOPMENT PARTNERS, LTD., a Texas limited partnership ("*PCDP*"), and MOUNTAIN PLUM, LTD., a Texas limited partnership ("*MP*;" MP and PCDP are referred to collectively herein as "*Owner*"). The City and the Owner are sometimes referred to herein individually as a "*Party*" and jointly as the "*Parties*." The Parties agree as follows.

Article I. Purposes; Consideration.

1.01. The Owner is developing a mixed-use community consisting of residential, office, and commercial uses on certain land located in Hays County, Texas, and being depicted in **Exhibit A** attached hereto and incorporated herein for all purposes, to be known as Brick and Mortar District (the "*Property*").

1.02. The Owner and the City desire to coordinate the conveyance of the right-of-way, design, construction, and installation of roadway, trail, parking, and streetscape improvements and associated infrastructure improvements, being more particularly described in **Exhibit B** and depicted in **Exhibit B-1** (the "*Transportation Improvements*") upon certain real property owned by PCDP, as generally depicted on **Exhibit C** attached hereto (the "*TI Land*") as provided herein to create efficiencies in the installation of public infrastructure within the Brick and Mortar District.

1.03. The City intends to construct (or cause to be constructed) the Transportation Improvements, subject to the issuance of the Bonds (defined herein), as provided in this Agreement.

1.04. The Property is located within Reinvestment Zone Number Two, City of Kyle, Texas, which is a tax increment reinvestment zone created pursuant to the authority of Chapter 311, Texas Tax Code, as amended, by Ordinance No. 1022 adopted by the City Council of the City on December 18, 2018 as amended (the "*TIRZ*").

1.05. To finance the costs to construct the Transportation Improvements, it is the City's intent to issue certificates of obligation pursuant to Subchapter C, Texas Local Government Code or tax increment financing bonds in the amount of eight million dollars (\$8,000,000) (the "*Bonds*"), and that the City would receive reimbursement for the cost to design and construct Transportation Improvements from the TIRZ.

1.06. The City, PCDP, and MP are parties to that certain Letter Agreement confirming Allocation of Land to Satisfy Land Dedication of Plum Creek Land to the City of Kyle, Texas dated March 12, 2021 ("*Original Letter Agreement*", as amended by that certain First Amendment to Letter Agreement of even date herewith ("*First Amendment*") and, together with the Original Letter Agreement, the "*Letter Agreement*"), in which the Parties address the terms and conditions for conveyance of, *inter alia*, the parcels referred to therein as the Office Building Parcel and the Hotel/Convention Center Parcel, as further set forth in the Letter Agreement.

1.07. To facilitate fulfilling the purpose of the TIRZ, the Parties further desire to provide for the conveyance of the Restaurant Parcel (as hereinafter defined) and the Soccer Parcel (as hereinafter defined) pursuant to this Agreement, as well as to provide for the conveyance of the Office Building Parcel and the Hotel/Convention Center Parcel pursuant to the Letter Agreement. The Parties further wish to address the waiver of impact fee credits addressed in other agreements between the Parties, as herein provided.

1.08. The consideration for this Agreement is the covenants, conditions, and undertakings between the Parties, and the benefits that will accrue to the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. It is expressly acknowledged that this Agreement is subject to the issuance of the Bonds and the receipt of the proceeds thereof.

Article II. Sequence of Events

2.01. Contemplated Sequence of Events. The sequence of events contemplated by this Agreement is as follows:

- (a) Approval of this Agreement by the City and Owner and entry into the Consulting Agreement (as hereinafter defined).
- (b) Approval of an agreement between the City and the TIRZ providing for reimbursement of the cost of the Transportation Improvements from the TIRZ fund on or before _____ (the "*TIRZ Agreement*").
- (c) Owner will cause the TI Land to be surveyed on or before _____, 2022.
- (d) Preparation of documents to effectuate the conveyance of the TI Land to the City.
- (e) Provision of the Meeting Notice by the City (as hereinafter defined).
- (f) Conveyance of the TI Land to the City upon the terms set forth herein on or before the Meeting Date (as hereinafter defined).
- (g) City Council authorization of the Bonds on or before _____, 2022 and deposit of the proceeds from the Bonds (the "*Bond Proceeds*") into Transportation Improvements Account.
- (h) Execution and delivery of Property Conveyance Escrow Agreement (as hereinafter defined), and deposit of executed deed for the Restaurant Parcel, Office Building Parcel, and Hotel/Convention Center Parcel as provided therein, and conveyance of the Soccer Parcel to the City upon the terms set forth herein on or before the Soccer Conveyance Date (as hereinafter defined).
- (i) Design, Bid, and Construction of the Transportation Improvements. The parties will endeavor to (i) complete the design phase within nine (9) months following

the date the City Council authorizes the Bonds, (ii) complete the bid phase within three (3) months following completion of the design phase, and (iii) complete the construction phase within twelve (12) months following completion of the bid phase, subject to feedback from contractors received during the bid phase.

- (j) Conveyance of the Restaurant Parcel, Office Building Parcel and Hotel/Convention Center Parcel pursuant to the Property Conveyance Escrow Agreement upon the Commencement of Construction of the Transportation Improvements (hereinafter defined) on or before the TI Commencement Deadline (as defined in the Property Conveyance Escrow Agreement).

Article III. Parcel Conveyances

3.01. TI Land. The City will provide to Owner at least thirty (30) days' prior written notice (the "**Meeting Notice**") of the date that the City Council is scheduled to vote on the issuance of the Bonds (the "**Meeting Date**"). Following receipt of the Meeting Notice but prior to the Meeting Date, PCDP shall convey the TI Land to the City as public right of way, to construct the Transportation Improvements thereon, upon the terms, provisions, and conditions hereinafter set forth. The deed conveying the TI Land to the City will provide that if Bonds are not issued and Bond Proceeds are not deposited into the Transportation Improvements Account on or before _____, 2022 (the "**Deposit Deadline**"), the ownership of the TI Land shall revert back to PCDP. In addition, if Bonds are not issued and Bond Proceeds are not deposited into the Transportation Improvements Account on or before the Deposit Deadline, Owner shall have no obligation to execute the Property Conveyance Escrow Agreement (as hereinafter defined) and shall have no obligation to convey the Soccer Parcel and/or the Restaurant Parcel to the City, and the conveyance of the Office Building Parcel and the Hotel/Convention Center Parcel shall be governed by the terms, provisions, and conditions of the Letter Agreement. The conveyance of the TI Land to the City shall be made on as AS-IS, WHERE-IS basis, subject to all matters of record, provided that prior to conveyance, PCDP will discharge (or otherwise cause to be deleted) all monetary liens for contractual indebtedness that belong to or were caused by PCDP affecting the TI Land.

3.02. Restaurant Parcel, Office Building Parcel, and Hotel Convention Center Parcel.

(a) Simultaneously with the Soccer Field Conveyance (as hereinafter defined), PCDP shall execute and deliver to Corridor Title Co. a Conveyance Escrow Agreement in the form attached hereto as **Exhibit G** (the "**Property Conveyance Escrow Agreement**"), together with executed deeds for the conveyance to the City of (i) the Office Building Parcel pursuant to the terms, provisions, and conditions of the Letter Agreement, (ii) the Hotel Convention Center Parcel pursuant to the terms, provisions, and conditions of the Letter Agreement, and (iii) that certain real property more particularly depicted on **Exhibit D** attached hereto (the "**Restaurant Parcel**") for the construction of a restaurant containing not more than 6,000 square feet of indoor space, with related surface improvements (the "**Restaurant Improvements**") upon the terms, provisions and conditions hereinafter set forth. The conveyance of the Restaurant Parcel to the City (the "**Restaurant Conveyance**") shall be made on as AS-IS, WHERE-IS basis, subject to all matters of record; provided that prior to conveyance, PCDP will discharge (or otherwise cause to be deleted) all monetary liens for contractual indebtedness. PCDP and the City shall work together in good faith to

resolve any title issues which would prevent the Restaurant Improvements from being constructed and operated on the Restaurant Parcel as contemplated by this Agreement.

(b) The Restaurant Parcel is currently encumbered by the Declaration of Covenants, Conditions and Restrictions for Plum Creek Uptown District recorded under Book 3339, Page 197 of the Official Public Records of Hays County, Texas, as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions for Plum Creek Uptown District recorded under Document No. 2015-15017103 in the Official Public Records of Hays County, Texas, and as supplemented by that certain Supplemental Declaration of Covenants, Conditions and Restrictions for Plum Creek Uptown District recorded under No. 2015-15017102, Book 5233, Page 109 of the Official Public Records of Hays County, Texas (collectively, referred to herein as the “**Uptown POA Restrictions**”). The City and Owner hereby agree that if the Uptown POA Restrictions are amended to withdraw the Restaurant Parcel from the Uptown POA Restrictions (hereinafter to be referred to as the “**Restaurant Restriction Withdrawal**”) prior to the Restaurant Conveyance, then the City shall take ownership of the Restaurant Parcel subject to the Plum Creek Mixed-Use Master Declaration recorded in the Official Public Records of Hays County, Texas (hereinafter to be referred to as “**Recorded**” or “**Record**” or “**Recording**”, as applicable) as Instrument #17035892 (together with all governing instruments relating thereto, and as the same may be amended from time to time, the “**Master Declaration**”) by the Recording of (i) a Notice of Addition of Land (the “**Notice of Addition of Land**”), (ii) a Notice of Annexation (the “**Notice of Annexation**”), and (iii) a Development Tract Declaration (the “**Development Tract Declaration**”, which collectively along with the Notice of Addition of Land and the Notice of Annexation shall be known as the “**Annexation Instruments**”). The Master Declaration shall be amended to include, without limitation, the following requirement: during the Development Period, until such time that the Restaurant Parcel is used for restaurant, retail, or other commercial purposes by an Operating Entity (as defined below), the City (as defined herein) shall not be a member of the Plum Creek Mixed-Use Property Owner’s Association (the “**Mixed-Use Association**”) and Declarant shall exercise its rights to delay the levy of Assessments to the Mixed-Use Association. The Development Tract Declaration shall include, without limitation, (i) a requirement that the Restaurant Parcel initially be opened and operated for at least one (1) business day as a full-service restaurant, and after satisfying such requirement, the City or Operating Entity shall be permitted to change the use of the Restaurant Parcel to another retail use acceptable to Owner and commonly found in first-class shopping centers, provided that in no event shall the Restaurant Parcel be used as a convenience store, fuel station, automobile repair operation or other noxious use to be further set forth in the Development Tract Declaration (the “**Restaurant Restriction**”); (ii) a requirement that at such time that the City either leases or conveys the Restaurant Parcel to a third-party (the “**Operating Entity**”) to construct and operate on the Restaurant Parcel a full-service restaurant, retail business, or other commercial use, the Operating Entity shall automatically be considered a member of the Mixed-Use Association and shall be required to pay Assessments to the Mixed-Use Association as required under the Master Declaration and the Annexation Instruments; (iii) a requirement that prior to the construction of any improvements on the Restaurant Parcel, any design and construction plans such improvements must be approved by (a) the Plum Creek Reviewer (as such term is defined in the Master Declaration and the Annexation Instruments) during the Development Period (as such term is defined in the Master Declaration and the Annexation Instruments) and thereafter the ACC designated by the Mixed-Use Association, (b) the City, and (c) a design review professional mutually agreed to by the City and the Plum Creek Reviewer; (iv) a requirement that the Restaurant

Parcel and all improvements thereon be maintained in a safe, first class manner; and (v) a requirement providing Owner and its assignees the right of self-help in the event the City or Operating Entity fails to perform or comply with any term, condition, or obligation of the Master Declaration or the Annexation Instruments; provided that prior to the conveyance or lease of the Restaurant Parcel to an Operating Entity in accordance with this Agreement, any remedies for the City's failure to comply with any term, condition, or obligation of the Master Declaration or the Annexation Instruments will be limited to the right to exercise self-help and to seek injunctive relief.

(c) In the event that the Restaurant Restriction Withdrawal does not occur within thirty (30) days prior to the Restaurant Conveyance, the City shall take ownership of the Restaurant Parcel subject to the Uptown POA Restrictions, as well as to a Supplementary Declaration to Uptown POA Restrictions (the "**Supplemental Declaration**"), which shall include the Restaurant Restriction and other terms and provisions to be negotiated in good faith by the Parties and Recorded prior to the Restaurant Conveyance, as well as an instrument (the "**Agreement Regarding Declaration**") requiring the Parties and their successors and assigns to continue to work in good faith to effect the Restaurant Restriction Withdrawal and requiring that concurrent with the completion of the Restaurant Restriction Withdrawal, the Restaurant Parcel shall be made subject to the Master Declaration and the Development Tract Declaration by the Recording of the Annexation Instruments against the Restaurant Parcel, which such documents shall also reflect the terms set forth in Section 3.02(b), above. The terms set forth in Section 3.02(b) and (c) shall also be included in the deed or separate instrument to be Recorded at the time of the Restaurant Conveyance.

3.03. Soccer Parcel.

(a) On or before the date (the "**Soccer Conveyance Date**") which is thirty (30) days following receipt of the Deposit Notice (as hereinafter defined), MP shall convey the real property more particularly depicted on **Exhibit E** attached hereto (the "**Soccer Parcel**") to the City for the construction of public soccer fields (the "**Soccer Field Improvements**"), upon the terms, provisions and conditions hereinafter set forth. The conveyance of the Soccer Parcel to the City (the "**Soccer Field Conveyance**") shall be made on as AS-IS, WHERE-IS basis, subject to all matters of record; provided that prior to conveyance, MP will discharge (or otherwise cause to be deleted) all monetary liens for contractual indebtedness that belong to or were caused by MP affecting the Soccer Parcel. MP and the City shall work together in good faith to resolve any title issues which would prevent the Soccer Field Improvements from being constructed and operated on the Soccer Parcel as contemplated by this Agreement.

(b) The City and Owner hereby agree that Owner and the City shall record a Site-Specific Declaration (the "**Soccer Field Site Specific Declaration**") against the Soccer Parcel prior to the Soccer Field Conveyance in a form substantially similar to that set forth in **Exhibit F**.

3.04. Extension of City Deadlines. The TI Commencement Deadline (as defined in the Property Conveyance Escrow Agreement) and the period of time during which Owner shall refrain from drawing on the Impact Fee Credit (as hereinafter defined) as provided in Section 5.01(b) below shall be extended on a day-for-day basis for (i) each day beyond the Soccer Conveyance Date that MP fails to convey the Soccer Parcel to the City, and/or PCDP fails to deliver the Property Conveyance Escrow

Agreement and the executed deeds for the Restaurant Parcel, the Office Building Parcel, and the Hotel/Convention Center Parcel (collectively, the “*Deeds*”) as required by this Agreement, except to the extent such failure is caused by any act or omission of the City in contravention of this Agreement and/or the Letter Agreement, and (ii) each day that PCPD fails to timely fulfill one or more of its obligations under the Consulting Agreement following ten (10) days’ written notice from the City of such failure, except to the extent such failure is caused by an act or omission of the City in contravention of this Agreement and/or the Consulting Agreement (each, an “*Owner Delay*”). In addition, the City may elect to suspend expenditure of Bond proceeds during the pendency of an Owner Delay. The remedies set forth in this section is in addition to any other remedy available under this Agreement.

Article IV. Transportation Improvements.

4.01. Bond Issuance.

(a) To finance the costs to construct the Transportation Improvements, it is the City’s intent to issue the Bonds on or before _____, and that the City would receive reimbursement for the cost of the Transportation Improvements from the TIRZ. In the event that the TIRZ Agreement is not executed and/or the Bonds are not issued on or before _____ or the City does not receive the proceeds thereof, the Parties shall meet to determine whether the construction of the Transportation Improvements as contemplated under this Agreement is feasible. If it is not, the parties may consider amendments to this Agreement or may terminate this Agreement, and any agreements entered in connection with this Agreement. In the event that the TIRZ Agreement is not executed and/or the Bonds are not issued and/or the City does not receive the proceeds thereof on or before _____, this Agreement shall automatically terminate.

(b) Before the City approves the issuance of Bonds, the following conditions must be met, in the following order: (a) the City must have entered into the TIRZ Agreement; and (b) the Owner must convey the TI Land to the City.

(c) The proceeds of the sale of the Bonds shall be deposited into a separate account to be held by the City to pay the costs of the design and construction of the Transportation Improvements as provided herein (the “*Transportation Improvements Account*”). The City shall give Owner notice of the deposit of the proceeds from the sale of the Bonds into the Transportation Improvements Account (the “*Deposit Notice*”).

(d) The City shall pay from the Transportation Improvement Account the costs to design, permit, install, and construct the Transportation Improvements, including without limitation, the hard construction costs; all advertising and other costs associated with public bidding and award of construction contracts; the cost of payment, performance, and maintenance bonds for the Transportation Improvements; surveying costs; the costs of subdivision construction permits and associated submission and inspection fees; reasonable contingency; soils and material testing costs; the fees of the project engineer, a third party construction supervisor, other professional fees related to the design and construction of the Transportation Improvements, and any other necessary and reasonable out-of-pocket costs required in connection with the design, permitting, construction, inspection and completion of the Transportation Improvements (collectively, the “*Transportation*

Improvements Costs”). The Transportation Improvements Costs shall be paid in accordance with the terms, provisions and conditions of the Consulting Agreement.

4.02. Design and Construction of the Transportation Improvements.

(a) Simultaneously with the execution of this Agreement, PCDP and the City shall enter into a consulting agreement in the form attached hereto as **Exhibit H** pursuant to which PCDP will facilitate the design and construction process for the Transportation Improvements (the “*Consulting Agreement*”).

(b) Intentionally deleted.

(c) As the design of the Transportation Improvements progresses and is completed, the Parties will prepare detailed descriptions of the Transportation Improvements to be used to further define the costs of the Transportation Improvements that will be funded by the Bonds and reimbursed. The Transportation Improvements will only include those improvements and related costs that may be funded by the Bonds. The detailed descriptions approved by the City Engineer and the project engineer will serve as the basis for the separate description and itemization of the bid documents and the payment requests for the Transportation Improvements, so that the costs of the Transportation Improvements can be separately accounted for and payments for said improvements made from the appropriate sources of funds as provided in this Agreement.

(d) The project engineer will include an estimate of the Transportation Improvements at ____ percent design plans. In the event an estimate demonstrates that the cost to construct the Transportation Improvements exceeds the balance of the Bonds, the Parties shall reasonably cooperate to modify the scope of the Transportation Improvements so that the cost to construct the Transportation Improvements does not exceed the balance of the Bonds. In no event shall the City be required to enter into a TI Construction Contract (as hereinafter defined) that exceeds the balance of the Bond proceeds. The TI Construction Contract shall be in the form of an agreement where the Transportation Improvements will be delivered at a not-to-exceed amount.

Article V. Impact Fee Waiver

5.01 Impact Fee Waiver.

(a) Reference is hereby made to that certain Agreement among the City, PCDP and MP, together with Plum Creek Partners, originally dated April 15, 1997, as the same has been amended by Addendum Number One dated March 20, 2003, Addendum Number Two dated September 7, 2004, Addendum Number Three dated August 5, 2014, and Addendum Number Four dated October 17, 2017 (“*Addendum 4*”), and as further modified by those certain two (2) Letter Agreements dated March 12, 2021 between the City, PCDP, the Plum Creek Uptown District Property Owners’ Association, Inc. and MP (the original agreement and all such addendums and letter agreements are collectively referred to herein as the “*Development Agreement*”). Pursuant to the Development Agreement, Owner is currently owed prepaid Impact Fees due for Water and Wastewater Facilities costs constructed in Phase 1 (all such foregoing terms as defined in Addendum 4) in the amount of \$1,886,000.00 (the “*Impact Fee Credits*”). Owner intends to waive the Impact Fee Credits upon the terms, provisions and conditions set forth in this Article V.

(b) Notwithstanding any provision in the Development Agreement to the contrary, at such time as Commencement of Construction of the Transportation Improvements (defined below) occurs, Owner shall waive the Impact Fee Credits, such that the City shall have no further obligation to reimburse Owner for the Impact Fee Credits. Owner hereby agrees that under no circumstances will Owner draw upon the Impact Fee Credits prior to the date that is the earlier of (i) eighteen (18) months following the Effective Date or (ii) the date Commencement of Construction of the Transportation Improvements occurs. For the avoidance of doubt, Owner and City hereby acknowledge and agree that Owner shall not waive its rights to the Impact Fee Credits as previously contemplated by Section 6(d) or 6(e) of Addendum 4, and instead the waiver of the Impact Fee Credits shall be governed by the terms of this Agreement. As used herein, “**Commence Construction of the Transportation Improvements**” means (i) execution of the TI Construction Contract (defined below) and (ii) the City’s issuance of a written notice to proceed within no longer than ten (10) days following the date of such notice with the entire scope of work under the TI Construction Contract. As used herein, the “**TI Construction Contract**” means a payment and performance bonded construction contract executed by the City and the applicable contractor selected pursuant to the Consulting Agreement, on a guaranteed maximum price basis for the construction of the hard costs and contingency portions of the Transportation Improvements, in an amount equal to the full amount of such portions of the Transportation Improvements Costs (subject to any scope modifications as provided in Section 4.02(d) above).

Article VI. Assignment of Commitments and Obligations

6.01. Owner’s rights and obligations under this Agreement may be assigned by Owner with the consent of the City, which shall not be unreasonably withheld, delayed, or conditioned. Any assignment of Owner’s rights under this Agreement shall be required to be expressly made by written agreement executed by Owner, and the conveyance of all or any portion of the Property without such express assignment shall not be deemed or construed to include an assignment of any of Owner’s rights under this Agreement.

Article VII. Default and Related Provisions

7.01. Default. Except as otherwise provided herein, 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 such that it cannot reasonably be cured within such fourteen (14) business day period, the defaulting party shall have such longer period of time as may be reasonably necessary to cure the default in question so long as such party has commenced to cure such default within such fourteen (14) business day period and diligently and continuously pursues the completion of such cure thereafter, provided that such default is cured within ninety (90) days after the original notice of default. If the default cannot be cured despite the defaulting party’s ongoing diligent and good faith efforts in accordance with the foregoing, 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.

7.02. Intentionally Deleted.

7.03. Attorneys Fees. In the event of any litigation between the Parties, the prevailing Party in such litigation shall be entitled to obtain recovery from the non-prevailing Party of its attorneys' fees and costs related to such action, including appeals and post judgment awards

7.04. 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.

7.05 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by a Party, such Party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any periods in which such Party is reasonably and actually delayed by reason of fire, earthquake, explosion, flood, hurricane, the elements, governmental regulation of the sale of materials or supplies or the transportation thereof, global financial crisis, war, invasion, insurrection, rebellion, riots, strikes or lockouts, or inability to obtain necessary materials, goods, equipment, services, utilities or labor.

Article VIII. Notices

Any notice to be given hereunder by any Party to another Party shall be in writing and may be effected by sending said notices by registered or certified mail, return receipt requested, or by nationally recognized delivery service to the address set forth below. Notice shall be deemed given and received two (2) business days after deposited with the United States Postal Service, or one (1) business days after deposited with such delivery service.

Any notice mailed to the City shall be addressed:

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

with required copy to:

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

Any notice mailed to MP and/or PCDP shall be addressed:

Mountain Plum, Ltd. and Plum Creek Development Partners, Ltd.
4040 Broadway, Suite 501
San Antonio, Texas 78209
Attn: Richard B. Negley and Laura Negley Gill

with required copies to:

Momark Development
31 Navasota Street, Suite 240
Austin, Texas 78702
Attn: Megan Shannon

and

Golden Steves & Gordon, LLP
200 East Basse Rd, Suite 200
San Antonio, Texas 78209
Attn: Stephen L. Golden

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

Article IX. Miscellaneous Provisions

9.01. 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.

9.02. 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 Brick and Mortar District. 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.

9.03. 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 Owner.

9.04. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are

INFRASTRUCTURE AGREEMENT – BRICK AND MORTAR DISTRICT

PAGE 10

declared to be severable.

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

9.06. 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 shall lie exclusively in Hays, Texas.

9.07. Statutory Verifications.

(a) 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 Owner represents that neither the Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner (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.

(b) 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, Owner represents that Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

(c) The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

(d) The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business

relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

[signature pages follow]

EXECUTED in multiple originals to be effective as of the Effective Date.

CITY:

CITY OF KYLE, TEXAS

a Texas home-rule municipal corporation

Attest:

By: _____

Name: Jennifer Holm

Title: City Secretary

By: _____

Name: Travis Mitchell

Title: Mayor

PCDP:

Plum Creek Development Partners, Ltd.,
a Texas limited partnership

By: PCDP General Partner, LLC, a Texas limited liability company, its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

MP:

Mountain Plum, Ltd.,
a Texas limited partnership

By: MP General, LLC,
a Texas limited liability company,
its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

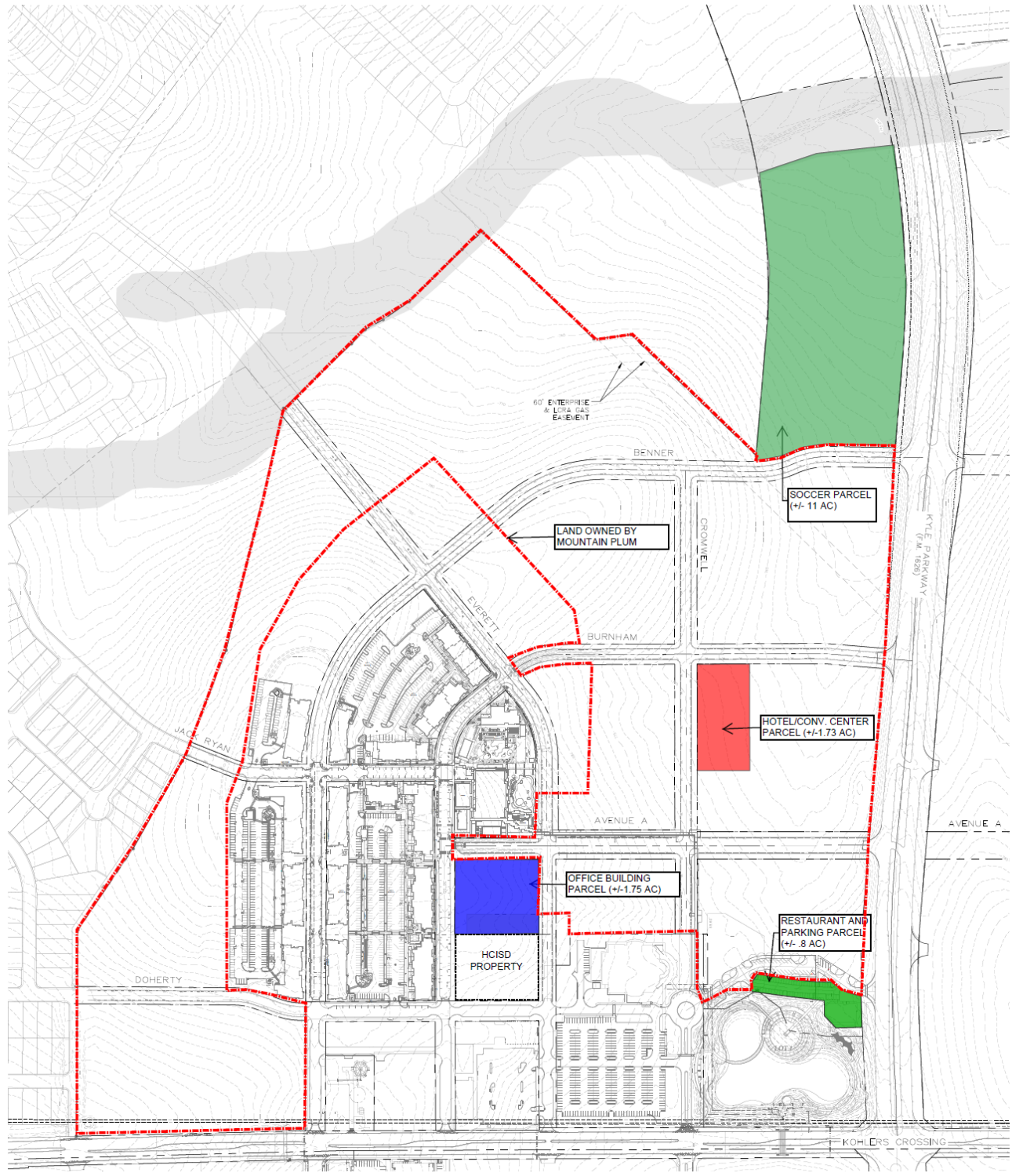
By: MountainCityLand, LLC,
a Texas limited liability company,
its manager

By: _____
Laura Negley Gill, Manager

Exhibit A

Property

[attached]



Plum Creek North
Brick & Mortar Base Map
Kyle, Texas
April 25, 2022

----- = Property



Exhibit B

Description of Transportation Improvements

The Transportation Improvements consist of the design, construction, and installation the following roadway, trail, and streetscape improvements and associated infrastructure improvements:

- (i) Avenue “A” Street Extension and associated utilities from Burnham to 1626, including raised paver table road section between Burnham & Everett, and a raised paver table intersection at Cromwell & Avenue “A”;
- (ii) Cromwell Road Extension and associated utilities from Avenue “A” to existing roundabout;
- (iii) Heroes Park Drive Extension and associated utilities from Cromwell to 1626;
- (iv) Cultural Trail & Streetscape;
- (v) Avenue “A” Streetscape (Lights/Landscape only) from Burnham to Cromwell (southside), consistent with the attached street section diagram;
- (vi) Cromwell Street Streetscape (Lights/Landscape only) from Avenue “A” to existing roundabout (westside), consistent with the attached street section diagram;
- (vii) Enhanced Safety at Kohler’s Crossing/Cromwell intersection (Pedestrian Crossing/Streetlight); and
- (viii) PEC direct costs applicable to new roadway construction;
- (ix) Restaurant Pad Parking and Streetscape.

Exhibit B-1

General Depiction of Transportation Improvements

[attached]

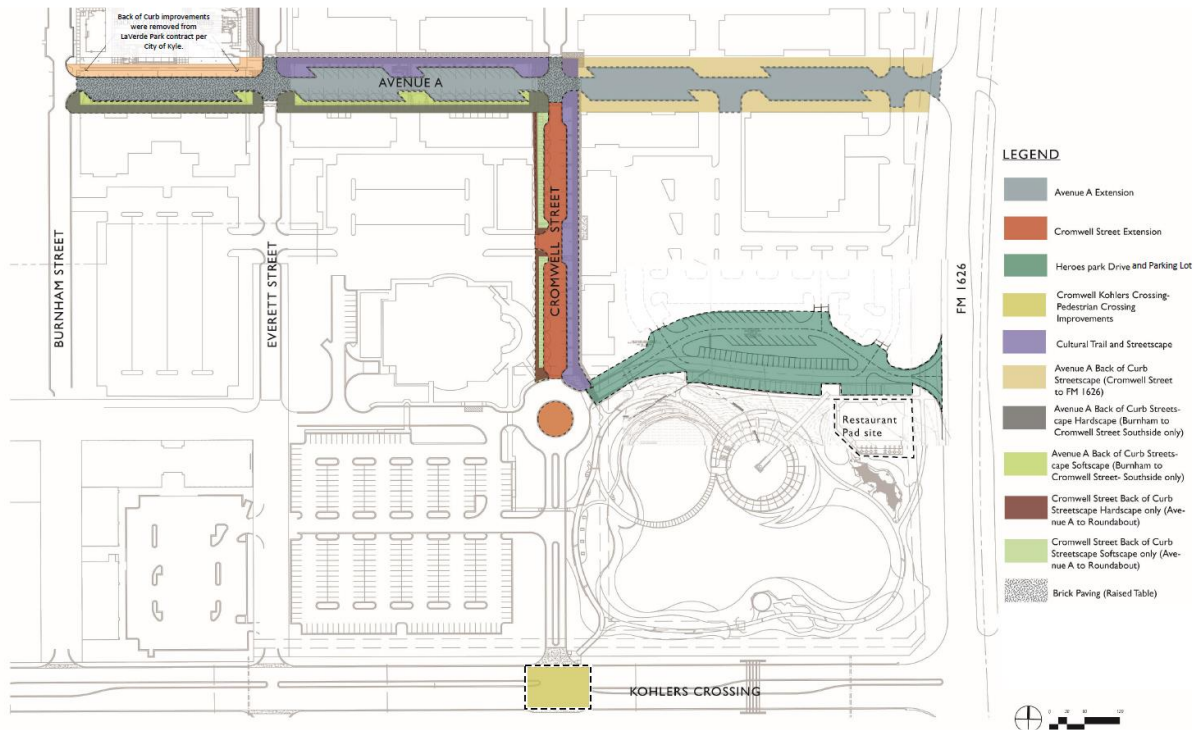
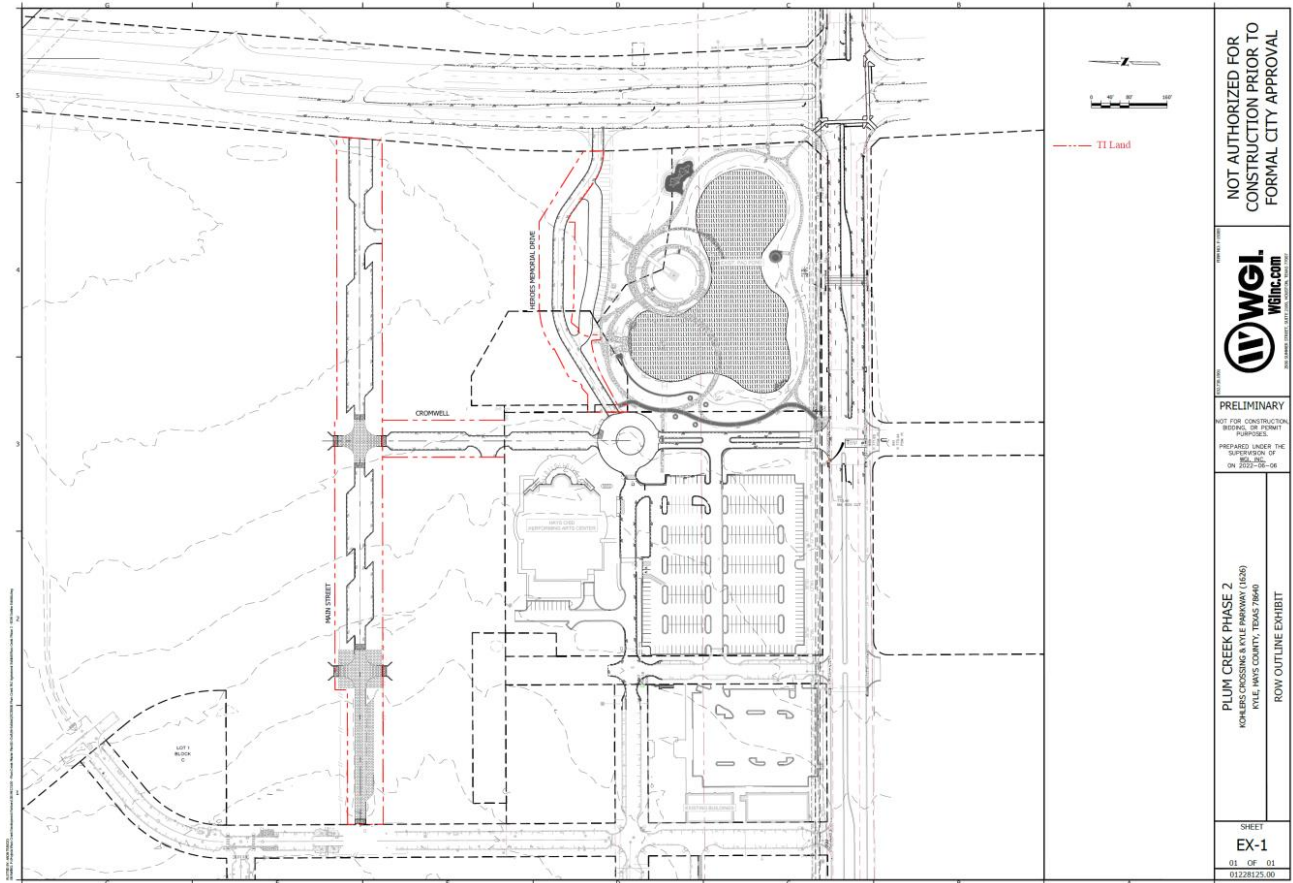


Exhibit C

TI Land

[attached]



NOT AUTHORIZED FOR
CONSTRUCTION PRIOR TO
FORMAL CITY APPROVAL

WGL
WGLINC.COM

PRELIMINARY
NOT FOR CONSTRUCTION
BIDDING OR PERMIT
PURPOSES.
PREPARED UNDER THE
SUPERVISION OF
DATE: 2022-06-06

PLUM CREEK PHASE 2
WILBER CROSSING & VOLE BROADWAY (28th)
AVENUE, WINDY COUNTY, TEXAS 75786

ROW OUTLINE EXHIBIT

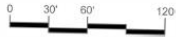
SHEET
EX-1
01 OF 01
01228125.00

Exhibit D

Restaurant Parcel

[attached]

RESTAURANT PARCEL
Approximately 35,268 SF



Date: 02/22/2022

Plan subject to change

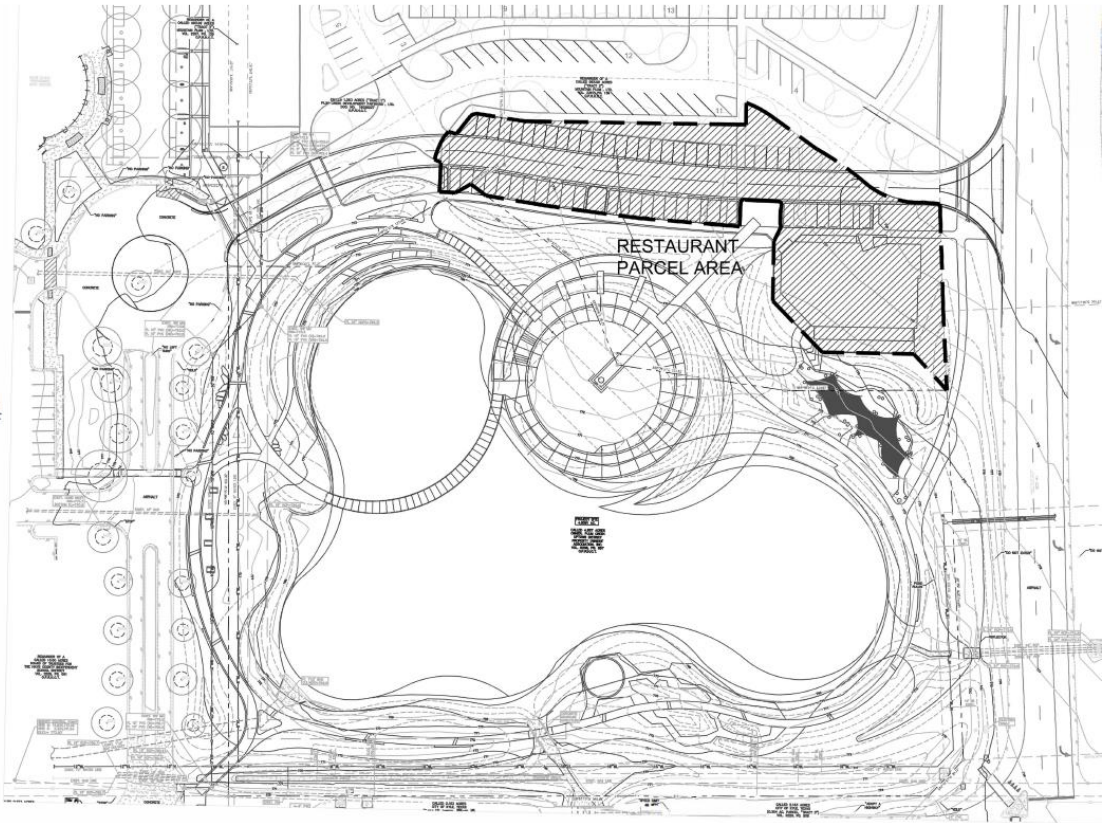


Exhibit E

Soccer Parcel

[attached]

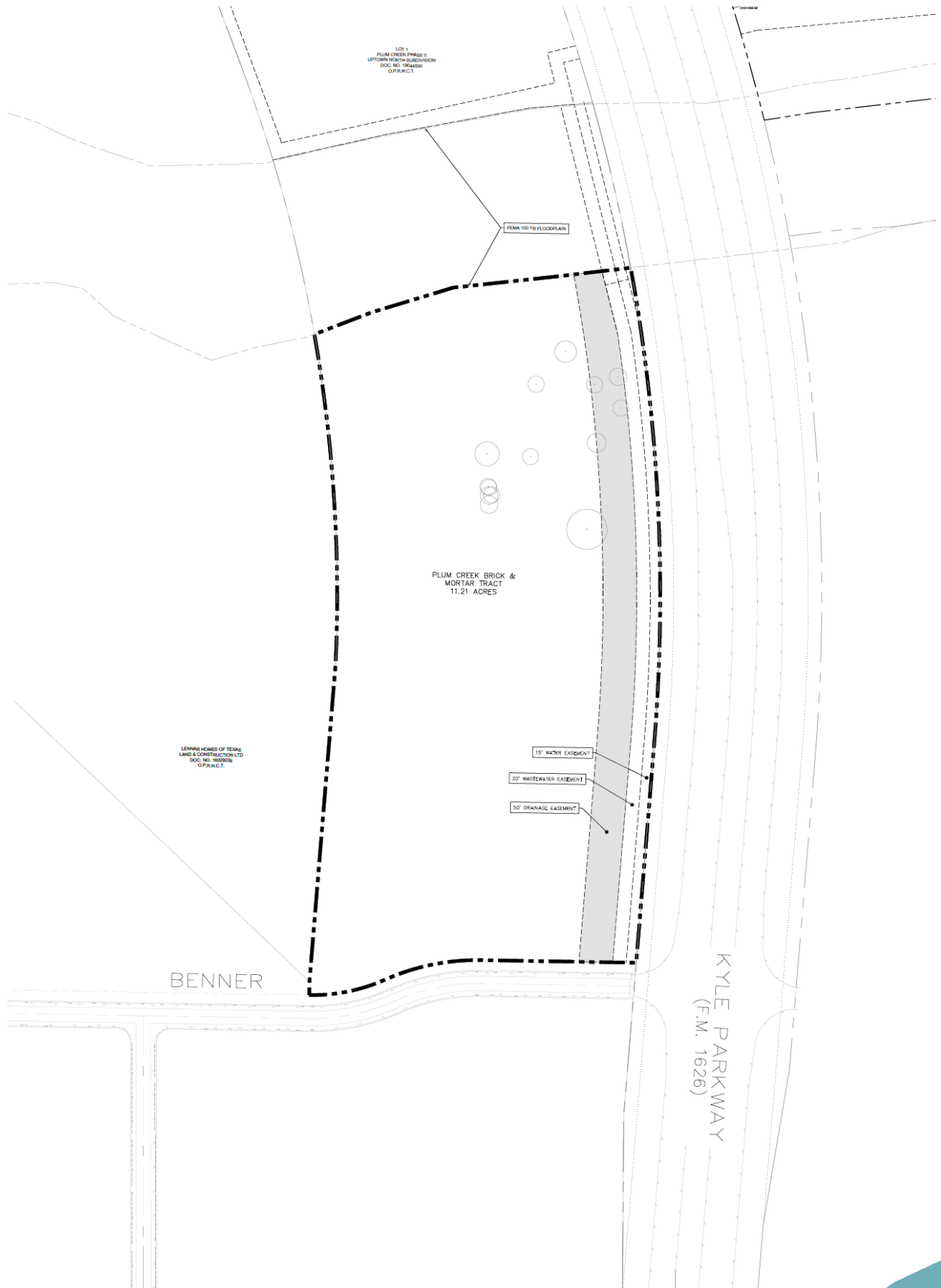


Exhibit F

Soccer Field Site Specific Declaration

[to be attached]

Exhibit G

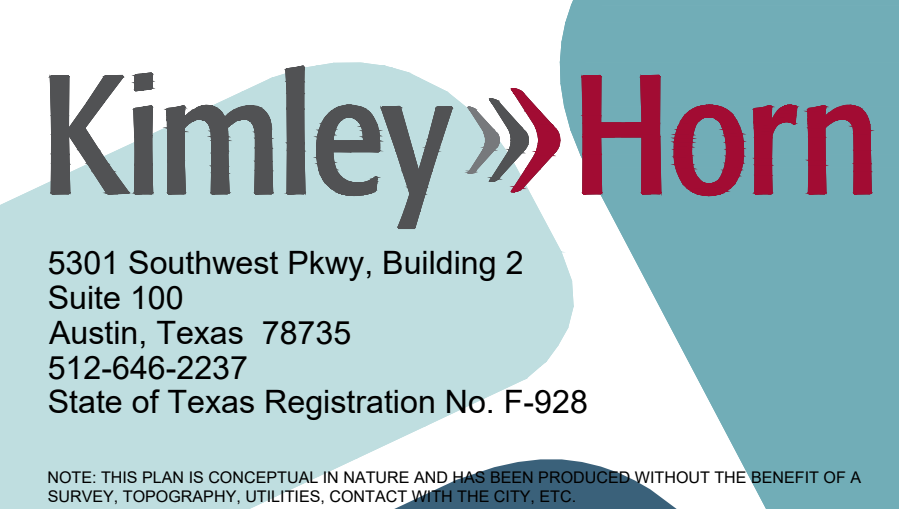
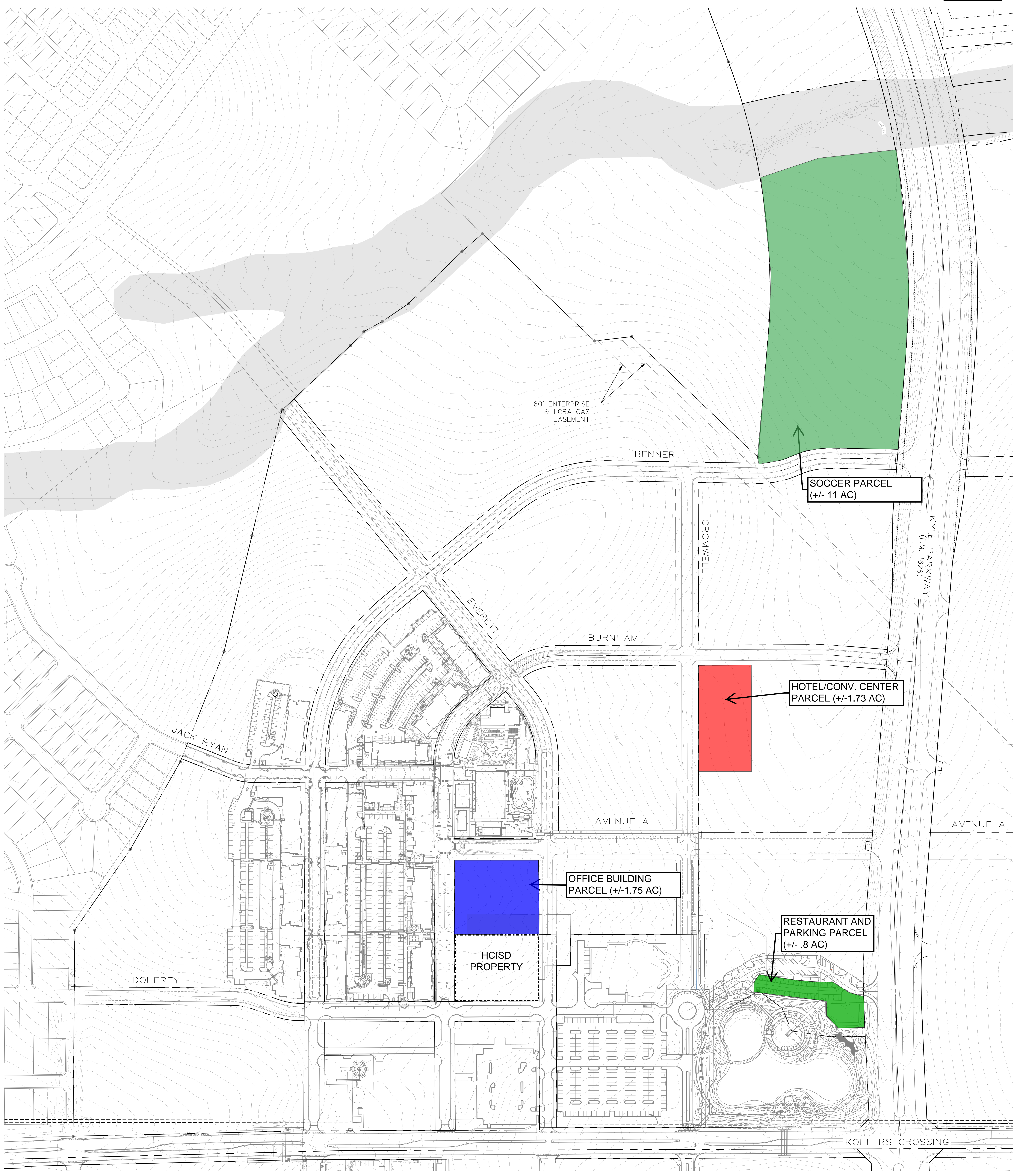
Property Conveyance Escrow Agreement

[to be attached]

Exhibit H

Consulting Agreement

[to be attached]



Transportation Improvement Design, Permitting and Construction Agreement

This Transportation Improvement Design, Permitting and Construction Agreement (this "**Agreement**") is entered into this _____ day of _____, 2022, between the City of Kyle, Texas, a Texas home rule municipality (the "**City**"), Reinvestment Zone Number Two, City of Kyle, Texas ("**TIRZ #2**") and Plum Creek Development Partners, Ltd., a Texas limited partnership ("**Consultant Manager**") collectively referred to herein as the "**Parties**", for the purpose of setting forth their respective rights, obligations and understandings with respect to the design, permitting and construction of roadway, trail, and streetscape improvements and associated infrastructure improvements, being more particularly described in **Exhibit A** and depicted in **Exhibit A-1** (collectively, the "**Project**") located in the Uptown portion of the Plum Creek Planned Unit Development ("**Uptown District**").

WHEREAS: On December 18, 2022, including subsequent amendments, the City passed an ordinance authorizing the creation of a Tax Increment Investment Zone to fund the soft and hard construction costs of the Project; and

WHEREAS: Approximately _____ acres of land will be conveyed for public right of way purposes by Consultant Manager to the City for the Project pursuant to that certain Infrastructure and Property Conveyance Agreement – Brick and Mortar District of even date herewith, by and between the City, Consultant Manager and Mountain Plum, Ltd.; and

WHEREAS: The Parties wish to proceed without delay with the design and permitting phase of the Project, including, the budgeting of the Project; engagement and management of consultants for the Project; design, engineering and construction plans for the Project; and permitting of the Project (the "**Design and Permitting Phase**"). Immediately following the Design and Permitting Phase, the Parties wish to proceed with the bidding of the project, selection of the Contractor (as hereinafter defined) and construction of the Project (the "**Construction Phase**"). The Parties have agreed that it is in the best interests of TIRZ #2 to retain Consultant Manager to advise TIRZ #2 on the Project's Design and Permitting Phase and Construction Phase; and

WHEREAS: Consultant Manager, and adjacent property owners, benefit from this Agreement and the development of the Project because Consultant Manager, or affiliates thereof, is the developer for the Uptown District; additionally, the development of the Project in a manner that is consistent with the design for the Uptown District is beneficial to, and will enhance, Consultant Manager's and adjacent property owners' development of the Uptown District; and

WHEREAS: Consultant Manager has agreed to perform the below responsibilities listed in Section 1 without charge to the City;

WHEREAS: this Agreement is being entered pursuant to that certain Infrastructure and Property Conveyance Agreement – Brick and Mortar District of even date herewith ("**Infrastructure Agreement**") by and between the City, Consultant Manager and Mountain Plum,

Ltd., a Texas limited partnership.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **Engagement and Duties of Consultant Manager.**

The City hereby retains Consultant Manager, at no compensation to Consultant Manager, to act on its behalf in the performance of the following design, permitting and construction duties:

a. Create a detailed hard cost (construction fees) and soft cost (Consultant fees) budget, including contingency, for the Project to be reviewed and approved by TIRZ #2 (the "**Budget**") including all anticipated Transportation Improvement Costs (as hereinafter defined). The Budget is estimated to be approximately \$8.0 million and must be approved by the City and TIRZ #2 before any further Design and Permitting Phase activities may occur, including the engagement of Consultants. The Consultant Manager may update the Budget as needed from time to time based on changed conditions, subject to approval by the City and TIRZ #2. TIRZ #2 and the City will not be responsible for paying any amounts that are not approved in the Budget.

b. Interview and select consultants (the "**Consultants**") and a general contractor (the "**Contractor**") and negotiate scope and fee of the Consultant's and General Contractor's work for the Project. The City and TIRZ #2 will approve the selection of the Consultants and Contractor, the scope of their work and fee they charge, such approval not to be unreasonably withheld, conditioned or delayed so long as such Consultants' and Contractor's fees are consistent with the Budget. Such Consultants may include a Project engineer, Project architect, Project designer, Project landscape architect, Project lighting designer and other consultants reasonably required to develop the overall design and engineering for the Project. Consultants and Contractor shall be selected by Consultant Manager and, after approval of the Consultant by the City and TIRZ #2, retained by the City pursuant to the Consultant Contracts (as hereinafter defined) and Construction Contract (as hereinafter defined), as applicable. The Consultant and Contractor budgets shall be within the approved Budget. In the event that the Budget requires revision due to Consultants' and/or Contractor's scopes and fees, the Consultant Manager will promptly notify TIRZ #2 and the City and obtain approval by TIRZ #2 and the City before authorizing work outside of the approved Budget and scope of work, such approval not to be unreasonably withheld, conditioned or delayed.

c. Cause the Consultants and Contractor to identify and disclose in writing the following: (1) the relationships and/or any gifts identified in Section 176.006(a)(1)-(3), Texas Local Government Code that Consultants or Contractor may have with (in the case of a relationship) or may have given (in the case of a gift) City Council members, TIRZ #2 board members, the City Manager, the Assistant City Manager, the Finance Director, the City Attorney, and the Consultant Manager; and (2) conflicts of interests as required by Ordinance No. 518, as amended (the City's Ethics Ordinance); and complete Form 1295

(pursuant to HB 1295, as amended), at the time Consultants and/or Contractor are presented to TIRZ #2 for approval. The Consultant Contracts and Construction Contract will require Consultants and Contractor, as applicable, to identify and disclose such business relationships and conflicts of interest as they may arise from time to time during the design and construction of the Project. Consultant Manager shall further disclose in writing to TIRZ #2 any relationship or exchange of gifts described in Section 176.006(a)(1)-(3), Texas Local Government Code that Consultant Manager may have with respect to a Consultant or Contractor at the time that Consultant Manager recommends a Consultant or Contractor to TIRZ #2.

d. Prepare all contracts with Consultants with not-to-exceed amounts using the City's standard form, unless the City approves otherwise (each, a "**Consultant Contract**" and, collectively, the "**Consultant Contracts**"). In addition, Consultant Contracts shall be performance based, in that payments will be made based on percentage of completion of the applicable Consultant's work. Consultant Manager will obtain approval of TIRZ #2 of the not-to-exceed amounts. The Consultant Contracts shall provide for the City to own the deliverables upon the periodic payment of amounts due and owning under the applicable Consultant Contract and shall entitle the City to use such deliverables to continue the Project in the event this Agreement or any Consultant Contracts are terminated before completion of the Design and Permitting Phase. Copies of executed Consultant Contracts, together with any related amendments and/or addenda, shall be provided to TIRZ #2 upon request. The Consultant Contracts shall provide that the City, TIRZ #2, and Consultant Manager shall be named as an additional insured on the insurance policies required to be carried by Consultant under the applicable Consultant Contract and shall include the City, TIRZ #2, and the Consultant Manager as an indemnified party under the indemnity provision of the applicable Consultant Contract.

e. Prepare the contract with General Contractor (the "**Construction Contract**") in accordance with the guidelines included on **Exhibit B** attached hereto. A copy of the executed Construction Contract, together with any related amendments and/or addenda, shall be provided to TIRZ #2 upon request.

f. Provide a monthly status report to the City and TIRZ #2.

g. Review work performed by Consultants and Contractor, approve invoices and applications for payment submitted by Consultants and Contractor, and submit to the City and TIRZ #2 requests for payment of all Consultant invoices and Contractor applications for payment timely, to be paid by the City and TIRZ #2 within the timeframes set forth in Section 2.f. below. Each payment application submitted by the Consultants shall include an assignment of the then-complete plans and/or deliverables to the City, as applicable.

h. Cause construction plans for the Project to be prepared and submitted to the City and TIRZ #2 for approval, such approval not to be unreasonably withheld, conditioned or delayed (as so approved, the "**Construction Plans**").

i. Manage all hired Consultants' work related to the preparation of schematic design and design development drawings, construction drawings, specifications, cost estimating, and other plans necessary to achieve the vision of the Project. This includes reviewing and overseeing the quality and timeliness of the Consultants' work, alerting TIRZ #2 of any deficiencies in any Consultant's work, and recommending termination of Consultant Contracts by the City, if and as necessary. All Consultants' work must be of quality sufficient to support an application for a Site Development Permit to the City.

j. Manage the process of obtaining approval of the Construction Plans and associated permits from the City. In no event shall Consultant Manager be responsible for the payment of any permits (or fees associated therewith) required for the Project. If necessary, the Consultant Manager may break the Project into two or more different submittals to the City.

k. Perform the Design and Permitting Phase to the best of its ability, and without charge to TIRZ #2 for Consultant's Manager's Services; provided, however, that notwithstanding any provision herein to the contrary, the City shall be responsible for the costs to design, permit, install, and construct the Transportation Improvements, including without limitation, the hard construction costs; all advertising and other costs associated with public bidding and award of construction contracts; the cost of payment, performance, and maintenance bonds for the Transportation Improvements; surveying costs; the costs of subdivision construction permits and associated submission and inspection fees; project contingency; soils and material testing costs; the fees of the project engineer, a third party construction supervisor, other professional fees related to the design and construction of the Transportation Improvements, and any other necessary and reasonable out-of-pocket costs required in connection with the design, permitting, construction, inspection and completion of the Transportation Improvements (collectively, the "**Transportation Improvements Costs**").

l. Advertise the Project for sealed, competitive bids in compliance with Chapter 252 and Chapter 271, Texas Local Government Code, including requirements for payment and performance bonds for the full cost of constructing the Transportation Improvements that comply with Chapter 2253, Texas Government Code and that name the City as the beneficiary under the payment and performance bonds, based on the Construction Plans, and recommend a qualified bidder/contractor to the City. Prior to bidding the Project, Consultant Manager shall provide the City Engineering department with a copy of the documents and materials soliciting the bids, including but not limited to the notice to bidders, instructions to bidders, construction contracts, general, special and supplemental conditions, and technical specifications. The City Engineer will review the description of the Transportation Improvements for compliance with this Agreement. The Consultant Manager shall cause the Project engineer shall make any changes to the bid documents required by the City Engineer that do not comply with the terms of this Agreement. The Consultant Manager and the Project engineer will coordinate the receipt

and opening of the bids with the City Engineer and will provide a copy of the bids and bid tabulations to the City Engineer for review and approval, such approval not to be unreasonably withheld, conditioned or delayed. Within fourteen (14) days after receipt of the bids, the City Engineer will notify Consultant Manager of the City's Engineer's approval or rejection of the bids and the City Engineer's and Project engineer's recommendation of the lowest responsible bidder/contractor. If Consultant Manager agrees with the City Engineer's and Project Engineer's recommendation, the bid will be submitted to the City Council with a recommendation for approval. If the City Council approves the bid, the City will enter into the Construction Contract with the approved bidder/contractor for the construction of the Transportation Improvements; provided, the Construction Contract shall not exceed the balance of the certificates of obligation issued for the Project ("**Bonds**"). In the event lowest responsible bid exceeds the balance of the Bonds, the Parties shall reasonably cooperate to modify the scope of the Transportation Improvements so that the cost to construct the Transportation Improvements does not exceed the balance of the Bonds. In no event shall the City be required to enter into a Construction Contract that exceeds the balance of the Bonds.

m. Manage Contractor's work related to the construction of the Transportation Improvements in accordance with the Construction Plans. This includes reviewing and overseeing the quality and timeliness of Contractor's work, alerting TIRZ #2 of any deficiencies in Contractor's work, and recommending termination of the Construction Contract by the City, if and as necessary.

n. Perform the Construction Phase to the best of its ability, and without charge to TIRZ #2 for Consultant's Manager's Services; provided that in no event shall Consultant Manager be responsible for any Transportation Improvements Costs.

2. **City and TIRZ #2 Responsibilities During the Design and Permitting Phase.**

In order to support the Project, the City and TIRZ #2 shall:

a. Promptly review and reasonably approve the Budget as presented by Consultant Manager and found to be acceptable by the City and TIRZ #2, acting in their respective reasonable discretion.

b. Within thirty (30) days after approving the Budget, dedicate funds for the Project in accordance with the Infrastructure Agreement.

c. Promptly review and reasonably approve Consultants' scopes of service, not-to-exceed contract amounts, performance milestones, and deliverables provided by the Consultant Manager that are found to be acceptable by the City and TIRZ #2, acting in their respective reasonable discretion, and execute the Consultant Contracts.

d. Pay Consultants when and as required under the Consultant Contracts within fifteen (15) days following receipt by the City and TIRZ #2 of Consultant Manager's

request and recommendation for payment, subject to Chapter 2251, Texas Government Code.

e. Make reasonable efforts to assist Consultant Manager and the Consultants in obtaining any approvals necessary from the board of TIRZ #2 and/or from all applicable departments of the City, consistent with the City Charter and City ethics ordinance, to obtain the applicable permits for the Project.

f. Promptly review and approve the Construction Plans presented by Consultant Manager.

g. Execute the Construction Contract, and review construction draw requests from the Contractor submitted in accordance with the terms of the Construction Contract, which shall be provided no more frequently than once a month. Not later than 10 days after receipt of a request for payment, the City engineer shall review such requests and recommend the amount included in such requests to be paid. The City Engineer may reject a payment request for any reason set forth in the Construction Contract. Within 10 days after the City engineer's recommendation, the City shall then advance the amount so recommended by checks drawn on the Transportation Improvements Account payable to Contractor.

h. During the Construction Phase, to review, approve and sign necessary and appropriate change orders in a timely manner; to perform all inspections of the Transportation Improvements in a timely manner; and to approve the Transportation Improvements in a timely manner if constructed in accordance with the Construction Plans.

i. After completion of the installation of the public utility lines in accordance with applicable contracts and requirements to be constructed as part of the Project, to allow such lines to be connected to the City's utility systems to allow the testing of such Transportation Improvements as may be required for the final acceptance by the City.

3. **Timing of Design and Permitting Phase and Construction Phase**. The Parties shall each use good faith, commercially reasonable efforts with respect to items for which such Party is responsible in accordance with Section 2 above to (i) cause the Design and Permitting Phase to be completed within nine (9) months of execution of this Agreement; (ii) cause the Project to be bid, the Contractor to be selected and the Construction Contract to be executed within three (3) months following completion of the Design and Permitting Phase; (iii) cause a notice to proceed under the Construction Contract to be issued within ten (10) days after the City's approval and execution of the Construction Contract; and (iv) cause the Construction Phase to be completed within months following issuance of such notice to proceed.

4. **Compliance with Applicable Law**. The parties will work in good faith to cause the Project to be bid and administered in a manner that is compliant with Chapter 252, Texas Local Government Code and Subchapter C, Chapter 271, Texas Local Government Code and the Infrastructure Agreement, and shall approve amendments to this Agreement and include terms in the

Construction Contract as necessary to comply with said laws.

5. **Choice of Law and Venue.** This agreement shall be construed according to the laws of the State of Texas, with venue in the courts of Hays County, Texas.

6. **Partial Invalidity.** If any provisions of this Agreement, or the application thereof to any particular party or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to any other particular party or circumstance, shall be valid and enforceable.

7. **Attorneys' Fees.** In the event of any litigation regarding this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and costs of court.

8. **Multiple Counterparts; Multiple Signature Pages.** This Agreement and any amendment or supplement thereto may be executed in two or more counterparts (each of which may bear the original signatures of all or some of the parties to this Agreement) and, if each of the parties to this Agreement has executed at least one such counterpart, then all such counterparts together shall constitute one and the same agreement with the same force and effect as if all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment or supplement thereto may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be delivered by telecopy or email and attached to another counterpart thereof identical in form thereto but having attached to it one or more additional counterparts of the same or other signature pages to this Agreement.

9. **Statutory Verifications.**

a. 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 Consultant Manager represents that neither the Consultant Manager nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant Manager (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.

b. 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, Consultant Manager represents that Consultant Manager nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant Manager is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

c. The Consultant Manager hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies

and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

d. The Consultant Manager hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

10. **Appropriations.** Notwithstanding any provision contained herein, the financial obligations of the City and TIRZ #2 contained herein are subject to and contingent upon appropriations by the City Council and TIRZ #2 of such funds or other revenues being available, received and appropriated by the City and TIRZ #2 in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of the City and TIRZ #2.

[Signatures on following page]

Executed as of the date first written above.

City:

**CITY OF KYLE, TEXAS,
a Texas home rule municipality**

By:
Its:

TIRZ #2:
THE CITY OF KYLE TIRZ#2

By:
Its:

Consultant Manager:

Plum Creek Development Partners, Ltd.,
a Texas limited partnership

By: PCDP General Partner, LLC,
a Texas limited liability company,
its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

Exhibit A
Description of Project

The Transportation Improvements consist of the design, construction, and installation the following roadway, trail, and streetscape improvements and associated infrastructure improvements:

- (i) Avenue “A” Street Extension and associated utilities from Burnham to 1626, including raised paver table road section between Burnham & Everett, and a raised paver table intersection at Cromwell & Avenue “A”;
- (ii) Cromwell Road Extension and associated utilities from Avenue “A” to existing roundabout;
- (iii) Heroes Park Drive Extension and associated utilities from Cromwell to 1626;
- (iv) Cultural Trail & Streetscape;
- (v) Avenue “A” Streetscape (Lights/Landscape only) from Burnham to Cromwell (southside), consistent with the attached street section diagram;
- (vi) Cromwell Street Streetscape (Lights/Landscape only) from Avenue “A” to existing roundabout (westside), consistent with the attached street section diagram;
- (vii) Enhanced Safety at Kohler’s Crossing/Cromwell intersection (Pedestrian Crossing/Streetlight); and
- (viii) PEC direct costs applicable to new roadway construction; and
- (ix) Restaurant Pad Parking and Streetscape.

Exhibit A-1
Depiction of Project

[attached]

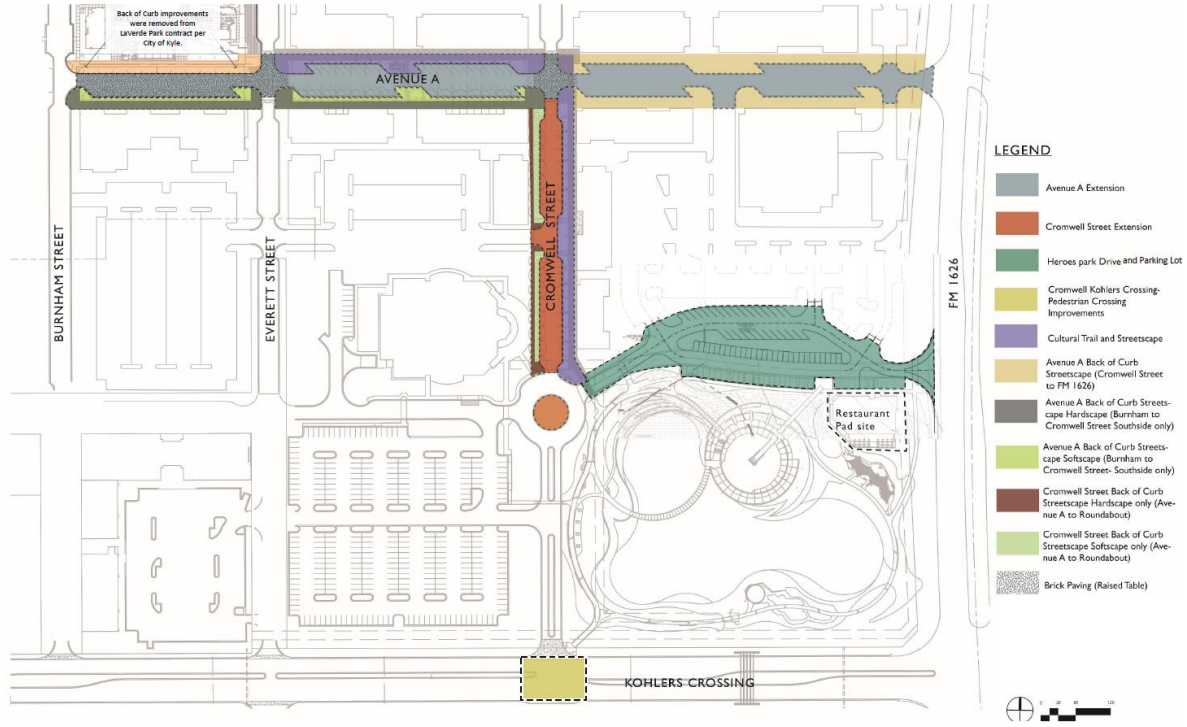


Exhibit B
Construction Contract Terms

The Construction Contract shall contain the following terms, unless approved otherwise by the City:

1. The Contractor will be required to post payment and performance bonds in the full contract amount, and to carry commercial general liability insurance written on a “per-occurrence” basis in a minimum amount of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and the City will be named as an additional insured or beneficiary, as appropriate, of such insurance and bonds. The performance bond shall include a one-year maintenance period following substantial completion of the Transportation Improvements, or such other period set forth in the Construction Contract.
2. A minimum of five percent (5%) retainage shall be withheld from each payment made to the Contractor, such retainage to be paid to Contractor following final completion of the Project and delivery of final lien waivers, as further set forth in the Construction Contract.
3. The Contractor will indemnify the City from any liability arising out of claims arising due to Contractor’s activities related to installation and construction of the Transportation Improvements.
4. In order to obtain any progress payment payable to the Contractor, Contractor must deliver to Consultant Manager and the City a copy of the certified construction draw request containing sufficient detail for the City to verify the payment request completed to the date of the contractor’s draw request and has been approved by the Project Engineer and the Consultant Manager; (ii) the Project Engineer’s certification of the amount of the contract price remaining to be paid; and (iii) an affidavit signed by the contractor, in the form of a conditional waiver and release of lien upon progress payment, including affirmation of that payment of all subcontractors and vendors supplying labor and or materials for the Transportation Improvements will be made upon receipt of the amount request in the draw request. The City may dispute a draw request by giving written notice to the Consultant Manager, Contractor and Project engineer of the amount of the draw request disputed and the specific basis for the dispute within 10 days of receipt of the draw request; provided that a dispute will only be permitted if the City, in good faith, alleges that the work covered by the draw request has not been completed in accordance with the Construction Contract or there is a default by the contractor under the Construction Contract, and the City shall pay any amount that is not in dispute. The parties shall cooperate to resolve any dispute permitted under this Section promptly in order to avoid a default under the Construction Contract.
5. For contracts that have a stated expenditure of at \$1 million for the purchase of goods and services or that result in the City spending at least \$1M during fiscal year, Pursuant to Subchapter J, Chapter 552, Texas Government Code, Contractor shall:

- a. Preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement;
- b. Promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the entity on request of the Owner; and
- c. On completion of the Agreement, either:
 - i. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the entity; or
 - ii. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Contracting information" includes, but is not limited to, records, communications and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance."

The Construction Contract shall contain the following terms, unless approved otherwise by Consultant Manager:

1. Consultant Manger shall be named as an additional insured on the insurance policies required to be carried by Contractor under the Construction Contract.
2. The Contractor will indemnify Consultant Manager from any liability arising out of claims arising due to Contractor's activities related to installation and construction of the Transportation Improvements.
3. The Contractor shall commence construction within five (5) days following issuance of a notice to proceed under the Construction Contract.

CONVEYANCE ESCROW AGREEMENT

GF File No. _____

Effective Date: _____, 2022

Contract: Collectively, (i) that certain Infrastructure and Property Conveyance Agreement – Brick and Mortar District of even date herewith (“**Infrastructure Agreement**”) by and between the City of Kyle, Texas, a Texas home rule municipal corporation (the “**City**”), Plum Creek Development Partners, Ltd., a Texas limited partnership (“**PCDP**”) and Mountain Plum, Ltd., a Texas limited partnership (“**MP**” and, together with PCDP, “**Owner**”), and (ii) that certain Letter Agreement confirming Allocation of Land to Satisfy Land Dedication of Plum Creek Land to the City of Kyle, Texas dated March 12, 2021, as amended by that certain First Amendment to Letter Agreement of even date herewith and Second Amendment to the Letter Agreement of even date herewith (collectively, the “**Letter Agreement**”), by and between the City, PCDP and MP, as the Infrastructure Agreement and/or Letter Agreement, may be amended from time to time. *Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such term in the Infrastructure Agreement or Letter Agreement, as applicable.*

Property: Collectively, (i) that certain approximately 0.8-acre tract of land more particularly described in the Infrastructure Agreement as the Restaurant Parcel (“**Restaurant Parcel**”); (ii) that certain approximately 1.75-acre tract of land more particularly described in the Letter Agreement as the Office Building Parcel (“**Office Building Parcel**”); and (iii) that certain approximately 1.73-acre tract of land more particularly described in the Letter Agreement as the Hotel/Convention Center Parcel (“**Hotel/Convention Center Parcel**”).

City’s address for notice: City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

with required copy to: The Knight Law Firm, LLP
223 W. Anderson Lane, Suite A105
Austin, Texas 78752

Owner’s address for notice: Mountain Plum, Ltd. and Plum Creek Development Partners, Ltd.
4040 Broadway, Suite 501
San Antonio, Texas 78209
Attn: Richard B. Negley and Laura Negley Gill

with required copies to: Momark Development
31 Navasota Street, Suite 240
Austin, Texas 78702
Attn: Megan Shannon

And Golden Steves & Gordon, LLP
200 East Basse Rd, Suite 200
San Antonio, Texas 78209
Attn: Stephen L. Golden

Escrow Agent: Corridor Title Co.

Escrow Agent's
Address for Notice: Corridor Title Co.
Attn: Gina Kufrovich
171 Benney Ln, Bldg. I
Dripping Springs, TX 78620

Deeds: Collectively, (i) Special Warranty Deed conveying the Restaurant Parcel to the City, attached hereto as Exhibit A ("**Restaurant Parcel Deed**"); (ii) Special Warranty Deed conveying the Office Building Parcel to the City, attached hereto as Exhibit B ("**Office Building Parcel Deed**"); and (iii) Special Warranty Deed conveying the Hotel/Convention Center Parcel to the City, attached hereto as Exhibit C ("**Hotel/Convention Center Parcel Deed**").

Escrow Agent's Duties: Upon receipt of written notice (the "**Conveyance Notice**") from the City that the City has Commenced Construction of the Transportation Improvements (as such term is defined in the Infrastructure Agreement) on or before the date which is eighteen (18) months following the Effective Date, as the same may be extended as provided in Section 3.04 of the Infrastructure Agreement (the "**TI Commencement Deadline**") in accordance with the terms and provisions of the Infrastructure Agreement, Escrow Agent shall deliver notice of same to Owner, and if Owner provides no written objection thereto to Escrow Agent within 30 days after Owner's receipt of the Conveyance Notice (the "**Conveyance Deadline**"), the Escrow Agent will record the Deeds in the Official Public Records of Hays County, Texas.

Simultaneously with the recording of the Restaurant Parcel Deed, Escrow Agent will record the Annexation Instruments (as defined in the Infrastructure Agreement) in the Official Public Records of Hays County, Texas; provided, however, in the event that as of the date of the Conveyance Notice, the Restaurant Restriction Withdrawal has not occurred as described in the Infrastructure Agreement, Escrow Agent will record the Supplemental Declaration and Agreement Regarding Declaration (both such terms as defined in the Infrastructure Agreement) in the Official Public Records of Hays County, Texas, in lieu of the Annexation Instruments.

Simultaneously with the recording of the Office Building Parcel Deed, Escrow Agent will record the Office Building DTD (as defined in the Letter Agreement) in the Official Public Records of Hays County, Texas.

Simultaneously with the recording of the Hotel/Convention Center Parcel Deed, Escrow Agent will record the Hotel/Convention Center DTD (as

defined in the Letter Agreement) affecting the Hotel/Convention Center Parcel in the Official Public Records of Hays County, Texas.

Additionally, prior to the Conveyance Deadline, the City and Owner shall deliver to Escrow Agent all reasonable and customary documents as may be required by Escrow Agent, City and Owner in connection with the conveyance of the Property to the City and in accordance with the Contract (collectively, the “*Closing Documents*”). Upon the recording of Deeds and other applicable documents as provided in this section above and delivery of the executed Closing Documents to the City and Owner, this Agreement shall automatically terminate.

In the event Commencement of Construction of the Transportation Improvements does not occur on or before the TI Commencement Deadline in accordance with the terms and provisions of the Infrastructure Agreement (subject to such extension(s) as may be mutually agreed upon between the parties in writing, which agreement is hereby authorized to be approved and executed by the City Manager), Owner may provide written notice thereof (the “*Termination Notice*”) to the City and Escrow Agent. If the City provides no written objection thereto to Escrow Agent within 30 days after the City’s receipt of the Termination Notice, (i) Escrow Agent shall return the Deeds to Owner, (ii) Owner shall have no further obligation to convey the Restaurant Parcel to the City, (iii) Owner shall have no further obligation to convey the Office Building Parcel or the Hotel/Convention Center Parcel to the City pursuant to this Agreement (the conveyance of which to thereafter be governed by the terms, provisions, and conditions of the Letter Agreement), and (iv) this Agreement shall automatically terminate.

Consideration:

Ten and no/100 dollars (\$10.00) and other good and valuable consideration, the payment and receipt of which are hereby acknowledged.

Agreement:

1. The Deeds have been deposited into escrow with Escrow Agent and shall be received, held and disbursed as set forth herein.
2. Notwithstanding any provision herein to the contrary, in the event of dispute between City, Owner, and/or Escrow Agent related to the holding and/or disbursing of the Deeds, Escrow Agent shall have the right to disburse the Deeds into a court of competent jurisdiction in Hays County, Texas. Escrow Agent shall provide written notice of Escrow Agent’s intent to disburse the Deeds into the registry of a court not less than five (5) business days prior thereto. The five (5) day notice period specified herein shall not apply in the event Escrow Agent is served with a court order or other direction of a court to disburse the Deeds.
3. Escrow Agent shall have no liability or responsibility related to the satisfactory completion of the matter, or for any other matter, event, action or non-action related hereto, except for the holding of the Deeds as herein provided. City and Owner hereby release and hold harmless Escrow Agent from any and all matters, events, actions, and non-actions related

hereto excluding only matters, events, actions or non-actions by Escrow Agent that constitute gross negligence or willful misconduct.

4. Escrow Agent may elect to terminate its services hereunder without the consent of either City or Owner, provided however, Escrow Agent shall provide written notice to both City and Owner not less than thirty (30) calendar days prior to any such termination of services. City and Owner shall appoint a new escrow agent and provide Escrow Agent mutual written release/disbursement instructions within such thirty (30) day period.

5. City and Owner may mutually elect to remove or replace Escrow Agent. Upon such mutual election, City and Owner shall provide written notice to Escrow Agent of such election and Escrow Agent shall have two (2) business days after receipt of such written notice to disburse the Deeds as may be provided in any such notice.

6. This Agreement and the Contract represent the entire agreement of the parties hereto related to the Deeds. This Agreement shall not be amended, except in writing with the mutual consent of the City, Owner, and Escrow Agent. The persons signing this Agreement warrant and represent that they have the authority and authorization to execute this agreement on behalf of the respective parties identified with their signatures.

7. This Agreement is governed by the laws of the State of Texas. Venue for disputes arising from or related to this agreement shall be in Hays County, Texas.

8. This Agreement may be executed in multiple counterparts. Each executed counterpart shall in aggregate constitute a single original document in the same manner as if all parties hereto had executed the same single document. Separate signature pages from each original counterpart may be combined with and/or into a single original document for purposes of recording.

9. This Agreement is binding upon City, Owner, and Escrow Agent and their respective successors and assigns. Owner may assign its rights under this Agreement to a third party upon notice to, but without the prior written consent of the City.

[SIGNATURES ON THE FOLLOWING PAGE.]

EXECUTED in multiple originals to be effective as of the Effective Date.

CITY:

CITY OF KYLE, TEXAS

a Texas home-rule municipal corporation

Attest:

By: _____

Name: Jennifer Holm

Title: City Secretary

By: _____

Name: Travis Mitchell

Title: Mayor

PCDP:

Plum Creek Development Partners, Ltd.,
a Texas limited partnership

By: PCDP General Partner, LLC,
a Texas limited liability company,
its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

MP:

Mountain Plum, Ltd.,
a Texas limited partnership

By: MP General, LLC,
a Texas limited liability company,
its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

ESCROW AGENT:

Corridor Title

By: _____
Name: _____
Title: _____

EXHIBIT A
RESTAURANT PARCEL DEED

[to be attached]

EXHIBIT B
OFFICE BUILDING PARCEL DEED

[to be attached]

EXHIBIT C
HOTEL/CONVENTION CENTER PARCEL DEED

[to be attached]

**SITE-SPECIFIC DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
[*Soccer Parcel*]**

STATE OF TEXAS

COUNTY OF HAYS

This *Site-Specific Declaration of Covenants, Restrictions, and Easements [Soccer Parcel]* (this “**Declaration**”) is made this ____ day of _____, 2022 (“**Effective Date**”), by **PLUM CREEK DEVELOPMENT PARTNERS, LTD**, a Texas limited partnership and **MOUNTAIN PLUM, LTD.**, a Texas limited partnership, on behalf of itself, its successors and assigns (“**Declarant**”).

Recitals

A. Declarant is the owner of that tract of real property located in Hays County, Texas, more particularly described on **Exhibit A**, attached and incorporated herewith (the “**Soccer Parcel**”).

B. The Soccer Parcel is adjacent to or in the vicinity of the Mixed-Use Community, as such term is defined below. The land that may be made part of the Mixed-Use Community by annexation is described in the Plum Creek Mixed-Use Master Declaration, recorded as Document No. 17035892 in the Official Public Records of Hays County, Texas, as may be supplemented and amended from time to time (collectively, the “**Mixed-Use Declaration**”).

C. Declarant intends to convey the Soccer Parcel to the City of Kyle, a Texas home rule city, and its affiliates (collectively, the “**City**”), and to provide for the development and use of the Soccer Parcel in a manner that compliments the Mixed-Use Community, the City hereby consents that the Soccer Parcel shall be subject to the terms, covenants, conditions, easements, and restrictions of this Declaration, as evidenced by its signature as attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant and the City hereby declares that the Soccer Parcel shall be owned, conveyed, maintained, and used subject to the provisions of this Declaration, which shall constitute a covenant running with the title to such property and shall be binding upon all parties now or hereafter having any right, title, or interest in the Soccer Parcel, and their heirs, successors, successors-in-title, and assigns. This Declaration, as may be supplemented and amended from time to time, shall inure to the benefit of, and shall be enforceable by Declarant until such time as Declarant or the successors and assigns of Declarant cease to exist; and the Mixed-Use Association.

1. Definitions

- (a) The term “**Applicable Law**” means all applicable laws, statutes, ordinances, codes, rules, regulations, orders, licenses, permits, applicable judicial decisions or decrees of any “**Governmental Authority**” or “**Governmental Authorities**” which such terms shall include all federal, state, county, city, township, or local governmental or quasi-governmental authority, entities, or bodies (or any department or agency thereof) exercising jurisdiction over the Property.

- (b) The term “**Associations**” means, collectively, the Mixed-Use Association and the Residential Association.
- (c) The term “**Development Period**” means the period of time during which the Declarant owns any property within the Mixed-Use Community that is encumbered by the Mixed-Use Declaration.
- (d) The term “**Mixed-Use Association**” means the Plum Creek Mixed-Use Property Owners’ Association, Inc., a Texas nonprofit corporation, its successors and assigns.
- (e) The term “**Mixed-Use Community**” means the development governed by the Mixed-Use Declaration.
- (f) The term “**Neighborhood Zone**” means that portion of the Property that is within 200 feet from the boundaries of the Residential Community or within 200 feet from the boundaries of the Mixed-Use Community .
- (g) The term “**Residential Community**” means the development governed by the Residential Declaration.
- (h) The term “**Residential Declaration**” the Plum Creek North Master Covenant, recorded as Document No. 21026524, Official Public Records of Hays County, Texas, as amended.
- (i) The term “**Residential Association**” means the Plum Creek North Master Community, Inc. a Texas nonprofit corporation, its successors and assigns .
- (j) The term “**Owner**” means the holder of record title to all or any portion of the Soccer Parcel.

2. Use and Conduct

2.1. **Land Use Covenants.** The Soccer Parcel shall expressly NOT be a part of the Mixed-Use Community or encumbered by the Mixed-Use Declaration and, therefore, the Owner shall not be a member of the Mixed-Use Association, but the Soccer Parcel, and any portion thereof, shall be subject to those covenants and restrictions set forth in this Declaration.

2.2. **Soccer Parcel Use.** The Soccer Parcel shall be used solely for the construction, use and operation of recreational fields and improvements, including but not limited to restrooms, concession areas, and parking lots, related to the use of the fields for recreation and for no other purpose, unless otherwise approved by the Declarant (collectively, the “**Recreational Use**”). The recreational fields and improvements may be used for recreational purpose other than soccer. The Soccer Parcel and all structures, landscaping, signage, buildings, equipment, and other improvements and areas located therein and thereon, if any, shall be used in accordance with Applicable Law.

2.3. **Restricted Activities and Uses.** The following activities and uses are prohibited within the Soccer Parcel unless expressly authorized by the Declarant during the Development Period and thereafter the Board, and then subject to such conditions as may be imposed by the Declarant or the Board. The Declarant and the Board shall have the right to determine if any activities or uses violate this *Section 2.3* in the Declarant’s and the Board’s, as applicable, reasonable discretion:

(a) “adult entertainment uses”, which term shall mean and refer to any theater, establishment, equipment or system which: (A) shows, previews, sells, rents, distributes, displays, depicts or promotes in any way “adult” movies, films, motion pictures, videos, television shows, cable media, magazines, books or other medium, media or electronic experience (whether now or hereafter developed); or (B) sells, rents, or distributes sexually explicit games, toys, devices, or similar merchandise (provided that nothing herein is intended to require the blocking of access to the same from any personal computer or internet access point or any future technological equivalent). For the purposes of the foregoing, the term “adult” shall mean and refer to any material that is (i) obscene or pornographic as determined by Declarant or the Board in its discretion, or (ii) rated X or NC-17 or its equivalent by the movie production industry (or any successor rating established by the movie production industry);

(b) the sale of illicit drugs or paraphernalia for use of illicit drugs; or,

(c) gambling for money facility or operation, including, but not limited to off track or sports betting parlor, table games such as black jack, poker, slot machines, video poker/black jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, the prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such activities are incidental to the public use of the Soccer Parcel, or to activities which might be associated with gambling but whereby no money changes hands.

2.4. **Nuisances.** No unsightly article, building, condition, or any other item or condition creating a nuisance or otherwise in violation of law shall be permitted to exist or remain on or within the Soccer Parcel. The Owner and its employees, agents, visitors, guests, and licensees shall refrain from any conduct, actions, or use of any devices that would distract from the quality of the Soccer Parcel. The following activities are expressly prohibited within the Soccer Parcel:

(a) the burning of materials that cause smoke to cross the Soccer Parcel;

(b) the parking or storage of motor vehicles or motorcycles on the Soccer Parcel for more than twenty-four (24) hours;

(c) the storage of materials or equipment except as permitted in the Plans;

(d) the staging of construction work except as permitted in the Plans;

(e) the storage of hazardous or toxic materials except as permitted in the Plans and in compliance with all Applicable Law;

(f) the use or placement of underground storage tanks except as permitted in the Plans and in compliance with all Applicable Law;

(g) the use, enjoyment, and occupancy of any portion of the Soccer Parcel in a manner that causes or produces any effects that are discernible by or affect the owners or occupants of the Residential Community or the Mixed-Use Community by their volume, duration, pounding beat, frequency or shrillness, vibration, or light (collectively, the “Disturbances”), except as permitted herein;

- (h) the use of laser pointers, spotlights, drones, or other unmanned aerial vehicles or equipment or activity except in the event such equipment is being operated by the City or its designee;
- (i) the use of devices that unreasonably interfere with television or radio reception;
- (j) sleeping or camping overnight in the Soccer Parcel and the use of tents for such activity; and,
- (k) the discharge of firecrackers and other fireworks except in connection with fireworks, laser shows, or similar displays under a license or permit issued for that purpose and approved in advance by the Declarant.

2.5. **Grills and Fire.** Use of stoves and portable grills (wherein the charcoal and other material to be burned shall at all times be completely contained within the stove or grill) or other fire safety-approved fire receptacles are permitted during normal park hours but only outside the Neighborhood Zone. All other uses of fire are prohibited. The Owner shall provide sufficient fire apparatus, equipment, and infrastructure (including but not limited to fire hydrants, sprinklers, fire lanes, and signage) within the Property to guard against the spread of fire within the Property. No fires or grilling may occur within the Neighborhood Zone.

2.6. **Parking.** Parking (whether associated with the playing of sports, participation in events, or general use) is prohibited within both the Residential Community and the Mixed-Use Community except in those areas of the Residential Community or the Mixed-Use Community, as applicable, that have been pre-approved by either the board of directors of the Residential Association or the board of directors of the Mixed-Use Association, as applicable, and identified with signs as “**Permitted Parking Areas**”, such signs also being subject to the prior written approval of the Residential Association or the Mixed-Use Association, as applicable. The City shall manage the parking of its guests and invitees by providing adequate on-site parking for any events held on the Property and shall take reasonable steps to enforce compliance, including but not limited to (A) displaying appropriate signage that prohibits parking within any privately owned areas of the Residential Community and the Mixed-Use Community, as applicable, (B) issuing parking tickets, and/or (C) towing of any vehicles that are parked in any designated prohibited parking areas.

2.7. **Structures/Improvements.** No temporary, permanent, or enclosed structure (including but not limited to lighting, signage, and seating) that is taller than twenty (20’) feet above finish grade may be erected within the Neighborhood Zone, unless agreed to by the Mixed-Use Association. If the City determines that an above-ground storage tank must be used or installed within the Neighborhood Zone, the City will work with the Mixed-Use Association in good faith to minimize the visual impact of the above-ground storage tank by installing screening to be approved by the Mixed-Use Association in their reasonable discretion.

2.8. **Park Regulations.** Use of the Property must comply with Chapter 26 of the City of Kyle Code of Ordinances, as such may be amended from time to time (the “**Parks and Recreation Ordinance**”). Each Association reserves the right to ask the City cease, end, and terminate any activity in violation of the Parks and Recreation Ordinance. The Parks and Recreation Ordinance is specifically incorporated herein by reference.

2.9. **Activities.** Sports and civic activities within the Neighborhood Zone are required to cease operations and entertainment at sundown. Sports and civic activities within the Property outside the Neighborhood Zone are required to cease operations and entertainment at 10:00 p.m. on weekdays, and 11:00 p.m. on Friday and Saturday. Notwithstanding the foregoing, on no more than ten (10) days each year (each a “**City Special Event Day**”), the Mixed-Use Association shall grant the City a variance from compliance with any restrictions contained herein against excessive noise and lighting. On a City Special Event Day, the City shall also have the right to permit any organized special events occurring on the Property to cease operations and entertainment at midnight, and the City shall further be entitled to take down or remove any structures required for the special event, as well as clean up and remove any trash or remaining items related to the special event (the “**Clean Up Activities**”), after midnight so long as such Clean Up Activities are done in such a way as to not disturb any residents or owners within the Residential Community and the Mixed-Use Community and such Clean Up Activities end within a reasonable period of time after the event ends. All other exceptions shall require the consent of the board of directors of the Mixed-Use Association, which such consent can be withheld in the Mixed-Use Association’s sole discretion. All events on the Property must comply with Chapter 23, Article IV of the City of Kyle Code of Ordinances, as such may be amended from time to time (the “**Noise Ordinance**”). The Mixed-Use Association reserves the right to ask the City cease, end, and terminate any activity in violation of the Noise Ordinance. The Noise Ordinance is specifically incorporated herein by reference.

2.10. **Exterior Illumination.** All lighting used on the Property shall be energy efficient and designed and located to avoid glare and the spread or trespass of light onto the Residential Community and/or the Mixed-Use Community or into the night sky. All lighting used on the Property shall conform to a maximum maintained vertical illuminance level for spill light that does not exceed 0.8 fc (initial 1.1 fc). There shall be no “lighted” fields or other “lighted” improvements within the Neighborhood Zone.

2.11. **Screening.** Unless otherwise approved in advance and in writing by the Reviewer Committee, exterior components of plumbing, storage areas, air conditioning and heating equipment, roof objects (including fans, vents, cooling towers, antennas, and all roof-mounted equipment which rises above the roof line), trash receptacles, and maintenance facilities, shall either be housed in closed buildings or otherwise screened from view. If the City determines that an above-ground storage tank must be used or installed within the Neighborhood Zone, the City will work with the Mixed-Use Association in good faith to minimize the visual impact of the above-ground storage tank by installing screening to be approved by the Mixed-Use Association in their reasonable discretion.

2.12. **Drainage.** The Owner shall not interfere with the established drainage patterns over any part of the Soccer Parcel, unless approved by the Reviewer Committee and provided adequate provision is made for proper drainage. Plans submitted to the Reviewer Committee for approval must indicate thereon an erosion control plan to be instituted during construction on the Soccer Parcel. The Owner of the Soccer Parcel will be obligated to maintain and keep such approved erosion controls in good condition and repair.

3. Architectural Review

3.1. **Reviewing Authority.** The entity having architectural review and approval authority hereunder at any given time is hereinafter referred to in this Declaration as the “**Reviewer**”. Such authority is held by a three member architectural control committee being made up of (a) the Plum Creek

Reviewer (as such term is defined in the Mixed-Use Declaration) during the Development Period (as such term is defined in the Mixed-Use Declaration) and thereafter a member of the ACC that has been designated pursuant to the Mixed-Use Declaration, (b) the City, and (c) a design review professional mutually agreed to by the City and the Plum Creek Reviewer (collectively, the “**Reviewer Committee**”). In the event that a representative on the Reviewer Committee resigns or for any other reason cannot serve on the Reviewer Committee (a “**Departing Member**”), the entity being represented by the Departing Member shall have the right to appoint a substitute representative to the Reviewer Committee within 30 days of the date that the Departing Member’s role on the Reviewer Committee terminates. If a substitute representative has not been appointed within such 30 day period, the remaining members of the Reviewer Committee shall have the authority to act collectively as the Reviewer Committee without the third member. Notwithstanding the foregoing, the City agrees that the person representing the City on the Reviewer Committee under this Declaration shall not have the right to participate in any ACC or Plum Creek Reviewer matter that relates to the Mixed-Use Community or the Residential Community, or does not relate to the Soccer Parcel.

3.2. **Plan Approval.** No improvements shall be constructed, installed on, altered, renovated, replaced, repaired, maintained, or located within the Soccer Parcel until design and construction plans (“**Plans**”) for such improvements or work have been submitted to and approved in writing by the Reviewer Committee. All Plans shall be accompanied by such information as to building materials, equipment design, final appearance, and other related information as is necessary to establish the exterior appearance and basic structural integrity of the improvements, and must comply the following requirements:

- a) Any buildings constructed on or within the Soccer Parcel shall be designed by and built in accordance with the plans and specifications of a licensed architect or building designer.
- b) All improvements and other construction shall conform with the Plum Creek P.U.D. Master Plan.

4. **Maintenance and Operation Requirements.** The Soccer Parcel and all fields, structures, landscaping, signage, buildings, equipment, and improvements located therein and thereon shall be designed, constructed, operated, and maintained in a safe, first class manner, as reasonably determined by the Declarant and the City, and consistent with the design, construction, maintenance, and operation practices of the surrounding Mixed-Use Community and in accordance with the requirements of this Declaration and Applicable Law. Such operation and maintenance is subject to funds being appropriated in any applicable budget, which the City shall use its best efforts to appropriate.

5. **Insurance.** The Owner will be required to procure and maintain commercially standard general liability insurance, property insurance, automobile liability coverage, and worker’s compensation as required by law. Insurance policies required by this Section may be from an intergovernmental risk pool authorized to transact business in the State of Texas.

6. **Repair and Reconstruction.** In the event of damage or destruction to any portion of the improvements on the Soccer Parcel, the Owner shall work diligently to repair or reconstruct the damaged improvements within a commercially reasonable period and in a manner consistent with the original construction or such other Plans approved in accordance with *Article 3*. For any period prior to commencement of reconstruction of a structure on the Soccer Parcel, an Owner shall act diligently and in a commercially reasonable manner to clear the Soccer Parcel of debris and maintain it in a neat and

attractive, landscaped condition consistent with this Declaration. Except as otherwise provided herein, the Owner shall pay any costs insurance proceeds do not cover.

7. Self-Help; No Waiver

7.1. **Self-Help.** If the Owner fails to perform or comply with any term, condition, or obligation of this Declaration, and such failure continues for thirty (30) days after receipt of written notice from the Declarant or the Mixed-Use Association (or such longer period as may be reasonable under the circumstances if the failure cannot be cured within thirty (30) days and the Owner failing to perform commences to cure within such time period and diligently and continuously prosecutes such cure to completion), then the Declarant or the Board shall have the right but not the duty to give the Owner at least five (5) days' notice of its intent to exercise self-help, except in case of emergency (an emergency for the purpose of this *Section 7.1* shall mean any violation which may damage all or any portion of the Soccer Parcel, the Mixed-Use Community, or the improvements located therein or thereon, or cause physical injury to any person). The Declarant and the Mixed-Use Association have the right but not the duty to enter any portion of the Soccer Parcel to perform maintenance and operations as outlined herein, and abate or remove any improvement, thing, animal, person, vehicle, or condition that violates this Declaration. In exercising this right, such party is not trespassing and shall not seek reimbursement from the Owner for the costs incurred by the Declarant, the Mixed-Use Association or its agents, employees, or contractors to cure the violations. Declarant or Mixed-Use Association, as applicable, shall further ensure that all costs incurred in exercising its remedies under this Section shall be paid in full and shall prevent any vendors or contractors from filing a lien against the Soccer Parcel. Nothing contained in this Section shall create any obligation or duty on the part of the Declarant or the Mixed-Use Association to exercise the rights granted herein or perform another Owner's obligations. The rights of the Declarant and the Mixed-Use Association to enforce this Declaration against the City shall be limited to the right to exercise self-help as set forth in this section and the right to seek injunctive relief.

7.2. **No Waiver.** The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration. No breach shall entitle Owner to terminate this Declaration.

8. Easements. Subject to the terms and conditions of *Section 7.1*, Declarant, the Mixed-Use Association, and each such entity's successors and assigns, shall have a perpetual non-exclusive right, privilege and easement, but not the obligation, to enter upon any portion of the Soccer Parcel for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance and to enforce this Declaration, and to remove any object that interferes with the conveyance of stormwater over and through the Property. Such right may be exercised by Declarant's or the Mixed-Use Association's duly authorized agents and assigns, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant(s) of the Soccer Parcel.

9. Miscellaneous.

9.1. **Indemnification.** Declarant and the Mixed-Use Association shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, damage, costs, losses, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by

the activities of the Declarant or the Mixed-Use Association under *Sections 7.1 or 8* of this Declaration, including any acts or negligent omissions of the Declarant or the Mixed-Use Association, and its respective agents, officers, directors, contractors, subcontractors, or employees, while in the exercise or performance of the rights or duties under *Sections 7.1 or 8* of this Declaration. This indemnification provision, however shall not apply to any claims, suits, demands, judgments, damage, costs, losses, or expenses arising from the negligent or willful acts or omissions of the City; provided that for the purposes of the foregoing, the City's entering into this Declaration shall not be deemed to be a "negligent or willful act."

9.2. **Term.**

(a) Subject to amendment or termination as provided herein, this Declaration shall remain in effect and shall be enforceable by Declarant and the Mixed-Use Association, and each entity's successors and assigns, in accordance with the terms of this Declaration, for a term of thirty (30) years from the date this Declaration is recorded in the Public Records and, thereafter, shall automatically be renewed for successive periods of ten (10) years each so long as the Mixed-Use Declaration remains in effect. Notwithstanding the foregoing, if the Soccer Parcel becomes subject to the Mixed-Use Declaration, then this Declaration shall automatically terminate and be of no further force and effect and, thereafter, use, and development of the Soccer Parcel shall be subject to the terms of the Mixed-Use Declaration and the other governing documents referenced therein.

(b) If any provision of this Declaration would be unlawful, void or voidable by reason of any Texas law prohibiting covenants from extending more than twenty-one (21) years beyond the death of a person identified in such covenant who is living at the time such covenant is made, such provision shall expire twenty-one (21) years after the death of the last survivor of the now living, as of the date of the initial recording of this Declaration in the Public Records, descendants of Elizabeth II, Queen of England.

9.3. **Amendment.** This Declaration may be amended only by written instrument signed by Declarant until expiration or termination of the Development Period (as such term is defined under the Mixed-Use Declaration) and by the Owner. After the end of the Development Period (as such term is defined under the Mixed-Use Declaration), this Declaration may be amended only by written instrument signed by Mixed-Use Association and the Owner.

9.4. **Notices.** Any notice permitted or required to be given by this Declaration must be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday, or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Declarant, its successors and assigns, as applicable, for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Declarant, its successors and assigns, as applicable.

9.5. **Definitions.** Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Mixed-Use Declaration.

9.6. **Recitals.** The recitals above are incorporated herein and specifically made a part of this Declaration.

9.7. **Construction and Interpretation.** The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on the date this instrument is recorded in the Public Records.

DECLARANT:

PLUM CREEK DEVELOPMENT PARTNERS, LTD.,
a Texas limited partnership

By: PCDP General Partner, LLC, a Texas limited liability company, its General Partner

By: _____
Richard B. Negley, Manager

By: _____
Thomas Smith, Manager

By: MountainCityLand, LLC,
a Texas limited liability company

By: _____
Name: Laura Negley Gill
Title: Manager

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

DECLARANT:

MOUNTAIN PLUM, LTD., a Texas limited partnership

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

By: _____
Richard B. Negley, Manager

By: _____
Thomas Smith, Manager

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

By: _____
Name: Laura Negley Gill
Title: Manager

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2022, by Richard B. Negley, Manager of MP General, L.L.C., a Texas limited liability company, General Partner of Mountain Plum, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2022, by Thomas Smith, Manager of MP General, L.L.C., a Texas limited liability company, General Partner of Mountain Plum, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2022, by Laura Negley Gill, Manager of MountainCityLand, LLC, a Texas limited liability company, Manager of MP General, L.L.C., a Texas limited liability company, General Partner of Mountain Plum, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(seal)

Notary Public, State of Texas

ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED:

CITY:

THE CITY OF KYLE, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

Address: 100 West Center Street

Kyle, Texas 78641

STATE OF TEXAS §

§

COUNTY OF Hays §

This instrument was acknowledged before me on the ___ day of _____, 2022, by _____, _____ of _____, a _____, on behalf of said _____.

Notary Public in and for the
State of Texas

Exhibit A

Legal Description of the Property

_____, 2022

The City of Kyle, Texas
100 Center Street
Kyle, Texas 78640
Attention: Scott Sellers, City Manager

Re: ***First Amendment to Letter Agreement confirming Allocation of Land to Satisfy Land Dedication of Plum Creek Land to the City of Kyle, Texas***

Dear Scott:

This First Amendment to Letter Agreement (“***Amendment***”) will serve as an amendment to that certain Letter Agreement dated March 12, 2021 (the “***Original Letter Agreement***”), by and among the City of Kyle, Texas (“***City***”), Mountain Plum, Ltd. (“***MP***”) and Plum Creek Development Partners, Ltd. (“***PCDP***” and, together with MP, “***Owner***”), with Plum Creek Uptown District Property Owners’ Association, Inc. (the “***Association***”) joining in the execution thereof. Collectively, the Original Letter Agreement and this Amendment shall be hereinafter referred to as the “***Letter Agreement***.” Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Original Letter Agreement. In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The City acknowledges and agrees that the Park Parcel, the Public Safety Center Parcel and Heroes Memorial Parcel have been conveyed to the City in accordance with the parties’ agreements and the terms, provisions, and conditions of the Letter Agreement. In connection therewith, City and Owner elected not to encumber the Park Parcel, the Heroes Memorial Parcel, and/or the Public Safety Parcel with the CCR’s, but rather elected to record (a) the *Site-Specific Declaration of Covenants, Restrictions and Easements [Central Park]* recorded under Document 21032653, Official Public Records of Hays County, Texas (the “***Central Park Site-Specific Declaration***”) against the Park Parcel, (b) the *Site-Specific Declaration of Covenants, Restrictions and Easements [Heroes Memorial Tracts]* recorded under Document 21062446, Official Public Records of Hays County, Texas (the “***Heroes Memorial Park Site-Specific Declaration***”) against the Heroes Memorial Parcel, and (c) the *Site-Specific Declaration of Covenants, Restrictions and Easements [Public Safety Center]* recorded under Document 21050068, Official Public Records of Hays County, Texas (the “***Public Safety Center Site-Specific Declaration***”) against the Public Safety Parcel, and City and Owner acknowledge and agree that the recording of the Central Park Site-Specific Declaration, the Heroes Memorial Park Site-Specific Declaration, and the Public Safety Center Site-Specific Declaration satisfies the requirements of the Letter Agreement. For avoidance of doubt, the City hereby acknowledges agrees that Owner has satisfied all of its obligations under the Letter Agreement with respect to the conveyance of the Park Parcel, the Public Safety Center Parcel and Heroes Memorial Parcel.

2. The Association joined in the execution of the Original Letter Agreement for the limited purposes of consenting and agreeing to certain provisions thereof pertaining to the Heroes Memorial Parcel and the Park Parcel. The conveyance of the Heroes Memorial Parcel and the Park Parcel having been completed, the City and Owner hereby release the Association from the Original Letter Agreement, and the Association hereby consents to such release. Accordingly, City, Owner and the Association hereby

acknowledge and agree that the Association shall not be required to execute or otherwise consent or agree to any future modification(s), amendment(s) and/or termination of the Letter Agreement.

Except as expressly set forth herein, this Amendment shall not amend or otherwise modify the terms, provisions, or conditions of the Original Letter Agreement which remains in full force and effect, as amended hereby. To the extent of a conflict between the Original Letter Agreement and this Amendment, this Amendment shall control. This Amendment shall be binding upon the parties hereto and their respective successors and assigns. This Amendment may be executed in two or more counterparts, which when taken together shall constitute one and the same instrument. The parties contemplate that they may be executing counterparts of this Amendment transmitted by facsimile or email in PDF format and agree and intend that a signature by either facsimile machine or email in PDF format shall bind the party so signing with the same effect as though the signature were an original signature.

Please execute below and return a copy of this letter to me. Thanks for your help in this matter.

[Signature pages follow.]

Sincerely,

Plum Creek Development Partners, Ltd.,
a Texas limited partnership

By: PCDP General Partner, LLC, a Texas limited liability company, its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

Mountain Plum, Ltd.,
a Texas limited partnership

By: MP General, LLC,
a Texas limited liability company,
its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

Acknowledged and Agreed:

City of Kyle, Texas

By: _____

Printed Name: _____

Title: _____

Acknowledged and Agreed:

Plum Creek Uptown District Property Owners' Association, Inc.,
a Texas nonprofit corporation

By: _____
Printed Name: _____
Title: _____

_____, 2022

The City of Kyle, Texas
100 Center Street
Kyle, Texas 78640
Attention: Scott Sellers, City Manager

Re: ***Second Amendment to Letter Agreement confirming Allocation of Land to Satisfy Land Dedication of Plum Creek Land to the City of Kyle, Texas***

Dear Scott:

This Second Amendment to Letter Agreement (“***Amendment***”) will serve as an amendment to that certain Letter Agreement dated March 12, 2021 (the “***Original Letter Agreement***”), as amended by that certain First Amendment to Letter Agreement dated _____, 2022 (the “***First Amendment***” and, together with the Original Letter Agreement, the “***Letter Agreement***”), by and among the City of Kyle, Texas (“***City***”), Mountain Plum, Ltd. (“***MP***”) and Plum Creek Development Partners, Ltd. (“***PCDP***” and, together with MP, “***Owner***”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Letter Agreement. In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Section 1 of the Original Letter Agreement, located on Page 3 thereof, is hereby deleted in its entirety.
2. Section 5 of the Original Letter Agreement, located on Pages 6 and 7 thereof (which Section 5 ends with, “on mutually acceptable terms and conditions”) is hereby deleted in its entirety.
3. The following language is hereby added to the Original Letter Agreement as a new Section 5 to the Letter Agreement:

“5. Conveyance of Office Building Parcel and Hotel/Convention Center Parcel.

(A) Requirement to Deliver Conveyance Escrow Agreement. Simultaneously with the Soccer Field Conveyance, as such term is defined in that certain *Infrastructure and Property Conveyance Agreement* of even date herewith, by and between City and Owner (the “***Infrastructure Agreement***”), Owner shall execute and deliver to Corridor Title Co. a *Conveyance Escrow Agreement* in the form attached hereto as **Exhibit A** (the “***Property Conveyance Escrow Agreement***”), together with an executed deed for the conveyance to the City of each of the Office Building Parcel and Hotel/Convention Center Parcel, upon the terms, provisions and conditions hereinafter set forth and as set forth in the Property Conveyance Escrow Agreement. Following the execution and delivery of the Property Conveyance Escrow Agreement and related deeds (provided Owner does not thereafter default in its obligations under the Property Conveyance Escrow Agreement beyond any applicable notice and cure periods), Owner will be deemed to have satisfied all Conveyance Obligations pursuant to the Letter Agreement and Development Agreement (as defined therein), and Owner shall have no further Conveyance Obligations under the Letter Agreement and Development Agreement (as defined therein).

(B) Requirement to Annex under the Mixed-Use Declaration. The Office Building Parcel and the Hotel/Convention Center Parcel shall be made subject to the *Plum Creek Mixed-Use Master Declaration* recorded as Document No. 17035892 in the Official Public Records of Hays County Texas, the parcel's applicable Notice of Annexation (as such term is defined under the Mixed-Use CCRs), and the parcel's applicable Development Tract Declaration (as such term is defined under the Mixed-Use CCRs), all as such may be amended from time to time (collectively, the "*Mixed-Use CCRs*") pursuant to the requirements set out below:

a. Office Building DTD: The Development Tract Declaration that will encumber the Office Building Parcel (the "*Office Building DTD*") shall include, without limitation, the following covenants, conditions, and restrictions:

- (i) a restrictive covenant providing that the Office Building Parcel may only be used and developed as either an office building or for vertical mixed-use consisting of no fewer than 3 stories, with retail use limited to the first floor (the "*Office Use*");
- (ii) a requirement that during the Development Period (as such term is defined under the Mixed-Use CCRs) and until the earlier of (1) the date the Office Use commences upon the Office Building Parcel (meaning the issuance of the first temporary or final certificate of occupancy for all or any portion of a building within the Office Building Parcel), or (b) the end of the Development Period, the City shall not be a member of the Plum Creek Mixed-Use Property Owner's Association (the "*Mixed-Use Association*") and Declarant shall exercise its rights to delay the levy of Assessments (as such term is defined under the Mixed-Use CCRs) to the Mixed-Use Association. After the earlier of (1) the date that the Office Use commences upon the Office Building Parcel or (2) the date the Development Period expires, and continuing thereafter then (a) the owner of the Office Building Parcel (if the Office Building Parcel has not been leased to an Office Ground Lessee), or (b) the operator of the Office Building Parcel (if the City is still the owner but has leased the Office Building Parcel to a third party, which third party shall hereinafter be referred to the "*Office Ground Lessee*") shall automatically be considered a member of the Mixed-Use Association and shall be required to pay Assessments to the Mixed-Use Association as required under the Mixed-Use CCRs. Notwithstanding the foregoing, those owners or lessees that purchase or lease only a portion of the Office Building Parcel for their individual commercial, retail, or office use but do not operate the Office Building Parcel shall not be entitled to membership in the Mixed-Use Association but shall be required to pay any Assessments levied by their respective lessor or landlord;
- (iii) a requirement that prior to the construction of any improvements on the Office Building Parcel, any design and construction plans for such improvements must be approved by a three-member architectural control committee being made up of (a) one member of the Plum Creek Reviewer (as such term is defined in the Mixed-Use CCRs) during the Development Period (as such term is defined in the Mixed-Use CCRs) and thereafter one member of the ACC that has been designated pursuant

to the Mixed-Use CCRs, (b) one member of the City, and (c) a design review professional mutually agreed to by the City and the Plum Creek Reviewer;

- (iv) a requirement that the Office Building Parcel and all improvements thereon be maintained in a safe, first-class manner; and,
 - (v) a requirement providing Owner and its assignees the right of self-help in the event the owner of the Office Building Parcel fails to perform or comply with any term, condition, or obligation of the Mixed-Use CCRs; provided that prior to the date the Office Use first commences upon the Office Building Parcel, any remedies for the City's failure to comply with any term, condition, or obligation of the Mixed-Use CCRs will be limited to the right to exercise self-help and to seek injunctive relief.
- b. Hotel/Convention DTD: The Development Tract Declaration encumbering the Hotel/Convention Center Parcel (the "***Hotel/Convention Center DTD***") shall include, without limitation, the following covenants, conditions, and restrictions:
- (i) a restrictive covenant providing that the Hotel/Convention Center Parcel may only be used and developed either as a hotel/convention center or for vertical mixed-use consisting of no fewer than 3 stories, with retail use limited to the first floor (the "***Hotel/Convention Center Use***");
 - (ii) a requirement that during the Development Period (as such term is defined under the Mixed-Use CCRs) and until the earlier of (1) the date the Hotel/Convention Center Use commences upon the Hotel/Convention Center Parcel, or (b) the end of the Development Period, the City shall not be a member of the Mixed-Use Association and Declarant shall exercise its rights to delay the levy of Assessments (as such term is defined under the Mixed-Use CCRs) to the Mixed-Use Association. After the earlier of (1) the date the Hotel/Convention Center Use commences upon the Hotel/Convention Center Parcel (meaning the issuance of the first temporary or final certificate of occupancy for all or any portion of a building within the Hotel/Convention Center Parcel), or (b) the date the Development Period expires, and continuing thereafter, then (a) the owner of the Hotel/Convention Center Parcel (if the Hotel/Convention Center Parcel has not been leased to a Hotel Ground Lessee), or (b) the operator of the Hotel/Convention Center Parcel (if the City is still the owner but has leased the Hotel/Convention Center Parcel to a third party, which third party shall hereinafter be referred to the "***Hotel Ground Lessee***") shall automatically be considered a member of the Mixed-Use Association and shall be required to pay Assessments to the Mixed-Use Association as required under the Mixed-Use CCRs. Notwithstanding the foregoing, those owners or lessees that purchase or lease only a portion of the Hotel/Convention Center Parcel for their individual commercial, retail, or office uses but do not operate the Hotel/Convention Center Parcel shall not be entitled to membership in the Mixed-Use Association but shall be required to pay any Assessments directly levied by their respective lessor or landlord;

- (iii) a requirement that prior to the construction of any improvements on the Hotel/Convention Center Parcel, any design and construction plans for such improvements must be approved by a three member architectural control committee being made up of (a) one member of the Plum Creek Reviewer (as such term is defined in the Mixed-Use CCRs) during the Development Period (as such term is defined in the Mixed-Use CCRs) and thereafter a member of the ACC that has been designated pursuant to the Mixed-Use CCRs, (b) one member of the City, and (c) a design review professional mutually agreed to by the City and the Plum Creek Reviewer;
- (iv) a requirement that the Hotel/Convention Center Parcel and all improvements thereon be maintained in a safe, first-class manner; and,
- (v) a requirement providing Owner and its assignees the right of self-help in the event the owner of the Hotel/Convention Center Parcel fails to perform or comply with any term, condition, or obligation of the Mixed-Use CCRs; provided that prior to the date the Hotel/Convention Center Use first commences upon the Hotel/Convention Center Parcel, any remedies for the City's failure to comply with any term, condition, or obligation of the Mixed-Use CCRs, will be limited to the right to exercise self-help and to seek injunctive relief."

4. The following paragraph from the Original Letter Agreement is hereby deleted in its entirety, the terms thereof being superseded by the provisions set forth hereinabove:

"If these conveyances are completed as outlined above, then the Owners will have completed their Conveyance Obligation. The Public Safety Center Parcel, Office Building Parcel, and the Hotel/Convention Center Parcel will be subject to the Plum Creek Mixed-Use Master Declaration recorded as Instrument # 17035892 in the Official Public Records of Hays County, Texas ("CCRs"), as affected by the applicable Development Tract Declaration. Prior to recording the deed conveying the Public Safety Center Parcel, Office Building Parcel and the Hotel/Convention Center Parcel to the City, a Notice of Annexation and Development Tract Declaration ("Development Tract Declaration") subjecting such tracts to such documents and the CCRs will be recorded in the Official Public Records of Hays County, Texas. The City agrees that a Notice of Annexation and Development Tract Declaration subjecting the Heroes Memorial Parcel and the Park Parcel to such documents and the CCRs will also be recorded in the Official Public Records of Hays County, Texas, at such time that the Heroes Memorial Parcel and the Park Parcel are no longer encumbered by the Uptown POA Restrictions, and that if the City owns the Heroes Memorial Parcel and the Park Parcel at that time, the City will consent to the recording of the CCRs, a Notice of Annexation, and a Development Area Declaration against such parcel. The CCRs pertaining to the Park Parcel, Public Safety Center Parcel, Office Building Parcel, Hotel/Convention Center Parcel and the Heroes Memorial Parcel shall, *inter alia*, provide that (i) the City or City-created entity shall not be required to pay assessments or dues with respect to the applicable Parcel pursuant to the CCRs while the City or City-created entity owns and operates such Parcels for the purposes contemplated herein, but if such Parcel is owned or operated by an entity other than the City or the City-created entity and/or used for a different purpose, such Parcel(s) shall be subject to dues and assessments (calculated in the same manner as other commercial parcels) pursuant to the CCRs; (ii) the City or a City-created entity shall be required to maintain the improvements to be constructed on each Parcel in good condition and repair, at its

sole cost and expense, all as further set forth in the applicable Development Tract Declaration; (iii) the City or City-created entity shall not be required to comply with such terms that cannot be enforced against municipalities; and (iv) containing such other terms determined appropriate by the Owner and the City.”

5. Notwithstanding any provision herein to the contrary, in the event that either (i) the Bonds are not issued and Bond Proceeds are not deposited into the Transportation Improvements Account on or before the Deposit Deadline (all such foregoing capitalized terms in this subparagraph (i) as defined in the Infrastructure Agreement) and, resultingly, Owner and the City do not enter into the Property Conveyance Escrow Agreement, or (ii) Commencement of Construction of the Transportation Improvements (as defined in the Infrastructure Agreement) does not occur on or before the TI Commencement Deadline (as defined in the Property Conveyance Escrow Agreement) and, resultingly, the deeds for the Office Building Parcel and the Hotel/Convention Center Parcel are returned to Owner in accordance with the Property Conveyance Escrow Agreement, then the terms, provisions and conditions of this Amendment shall be automatically deemed null and void and of no further force or effect, and the terms, provisions and conditions of the Original Letter agreement affected hereby shall be automatically reinstated and shall thereafter govern the conveyance of the Office Building Parcel and Hotel/Convention Center Parcel.

Except as expressly set forth herein, this Amendment shall not amend or otherwise modify the terms, provisions, or conditions of the Letter Agreement, which remains in full force and effect, as amended hereby. To the extent of a conflict between the Letter Agreement and this Amendment, this Amendment shall control. This Amendment shall be binding upon the parties hereto and their respective successors and assigns. This Amendment may be executed in two or more counterparts, which when taken together shall constitute one and the same instrument. The parties contemplate that they may be executing counterparts of this Amendment transmitted by facsimile or email in PDF format and agree and intend that a signature by either facsimile machine or email in PDF format shall bind the party so signing with the same effect as though the signature were an original signature.

Please execute below and return a copy of this letter to me. Thanks for your help in this matter.

[Signature pages follow.]

Sincerely,

Plum Creek Development Partners, Ltd.,
a Texas limited partnership

By: PCDP General Partner, LLC,
a Texas limited liability company, its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

Mountain Plum, Ltd.,
a Texas limited partnership

By: MP General, LLC,
a Texas limited liability company,
its general partner

By: _____
Richard Negley, Manager

By: _____
Thomas J Smith, Manager

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

By: _____
Laura Negley Gill, Manager

City of Kyle

_____, 2022

Page 7

Acknowledged and Agreed:

City of Kyle, Texas

By: _____

Printed Name: _____

Title: _____

Exhibit A

Property Conveyance Escrow Agreement

[to be attached]



CITY OF KYLE, TEXAS

Porter Country PID - Accepting Petition

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Consider and possible action on a Resolution of the City Council of the City of Kyle, Texas accepting a Petition for Creation of the Porter Country Public Improvement District; Setting a public hearing under Sec. 372.009 of the Texas Local Government Code on the advisability of the creation of the Porter Country Public Improvement District within the City of Kyle, Texas; and Authorizing the issuance of Notice by the City Secretary of Kyle, Texas regarding the public hearing. ~ *Amber Lewis, Assistant City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Resolution Accepting Petition (Porter Country)
- Exhibit A - Porter Country PID - Petition for Creation - City of Kyle 4885-6176-2306 v.4 4-12-22

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS ACCEPTING A PETITION FOR CREATION OF THE PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT; SETTING A PUBLIC HEARING UNDER SEC. 372.009 OF THE TEXAS LOCAL GOVERNMENT CODE ON THE ADVISABILITY OF THE CREATION OF THE PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT WITHIN THE CITY OF KYLE, TEXAS; AND AUTHORIZING THE ISSUANCE OF NOTICE BY THE CITY SECRETARY OF KYLE, TEXAS REGARDING THE PUBLIC HEARING.

WHEREAS, the City of Kyle, Texas (the “City”) is authorized by Chapter 372, Texas Local Government Code, as amended (the “Act”) to create a public improvement district within its corporate limits and its extraterritorial jurisdiction and to levy special assessments against property within the district to pay the costs of public improvement projects that confer a special benefit on property within the district; and

WHEREAS, on April 12, 2022, Hillside Terrace Development LLC, a Texas limited liability company and Rio Oso Holdings, LLC, a Texas limited liability company (the “Petitioners”), submitted and filed with the City Secretary of the City (the “City Secretary”) pursuant to the Act a “Petition to Establish Porter Country Public Improvement District” (the “Petition”), attached hereto as Exhibit “A” and incorporated herein for all purposes, requesting the establishment of a public improvement district covering approximately 259.02 acres described in the Petition, to be known as the Porter Country Public Improvement District (the “District”); and

WHEREAS, Petitioners represent they constitute (i) the owners of taxable real property representing more than fifty percent (50%) of the appraised value of taxable real property liable for assessment under the proposal in the Petition, as determined by the current roll of the appraisal district in which the property is located and (ii) the record owners of real property liable for assessment under the proposal who: (A) constitute more than fifty percent (50%) of all record owners of property that is liable for assessment under the proposal in the Petition; or (B) own taxable real property that constitutes more than fifty percent (50%) of the area of all taxable real property that is liable for assessment under the proposal in the Petition, within the corporate limits of the City. It is further asserted that Petitioners include the intended successors in interest to certain owners of taxable real property within the area proposed for the District and who will be responsible for the assessments against the property within the District; and

WHEREAS, the Act states that a Petition to create a public improvement district is sufficient if signed by owners of more than fifty percent (50%) of the taxable real property, according to appraised value, and either of the following: more than fifty percent (50%) of the area of all taxable real property liable for assessment under the proposal, or more than fifty percent (50%) of all record owners of property liable for assessment; and

WHEREAS, Petitioners describe the general nature of the proposed public improvements as parks and open space, landscaping, utilities, streets and roadways, entry monumentation, signage, costs of financing said improvements, and costs for establishing and administering the District; and

WHEREAS, Petitioners estimate the cost of the proposed public improvements is \$60,000,000.00 (including issuance and other financing costs) and that said cost will be recovered through an assessment against property in the District which will result in each parcel paying its fair share of the costs of public improvements based on the special benefits received by the property; and

WHEREAS, the Act further requires that prior to the adoption of the resolution determining the boundaries of the District, the City Council of Kyle, Texas (the “City Council”) must hold a public hearing on the advisability of the improvements, the nature of the improvements contemplated, the estimated costs of the improvements, the method of assessment, and the apportionment, if any, of the costs between the District and the City; and

WHEREAS, in order to hold a public hearing for the creation of a public improvement district, notice must be: (i) published in a newspaper of general circulation in the City, and (ii) mailed to the address of each owner of property located in the proposed District, as reflected on the tax rolls, before the fifteenth (15th) day before the date of the hearing in accordance with the Act.

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

SECTION 1. The City Council hereby approves the recitals contained in the preamble of this Resolution and finds that all the recitals are true and correct and incorporate the same in the body of this Resolution as findings of fact.

SECTION 2. City staff reviewed the Petition attached hereto as Exhibit “A” and determined that same complied with the requirements of the Act and the City Council accepts the Petition. The Petition is filed with the office of the City Secretary and is available for public inspection.

SECTION 3. The City Council calls a public hearing to be scheduled at or after 7:00 p.m. on July 5, 2022 to be held at Kyle City Hall City Council Chambers, 100 W. Center Street, Kyle, Texas 78640 pursuant to the form of the Notice (hereinafter defined) attached hereto as Exhibit “B”, for the purpose of hearing public testimony on the advisability of the improvements, the nature of the improvements contemplated, the estimated costs of the improvements, the boundaries of the District, the method of assessment, and the apportionment, if any, of the costs between the District and the City. All residents and property owners within the District and all other persons, are hereby invited to appear in person, or by their attorney, and speak on the creation of the District.

SECTION 4. The Public Hearing may be adjourned from time to time. Upon the closing of the Public Hearing, the City Council may consider the adoption of a resolution creating the District or may defer the adoption of such a resolution for up to six (6) months. The creation of the District is within the sole discretion of the City Council.

SECTION 5. Attached hereto as Exhibit “B” is a form of the Notice of Public Hearing (the “Notice”), the form and substance of which is hereby adopted and approved; provided that the Notice may be updated as determined necessary by the City to comply with the Act.

SECTION 6. The City Council hereby authorizes and directs the City Secretary, on or before June 17, 2021, in accordance with the Act, to: (a) publish notice of the public hearing in a newspaper

of general circulation in the City; and (b) mail notice of the public hearing to the owners of the property located in the proposed District as reflected on the tax rolls.

SECTION 7. If any section, article, paragraph, sentence, clause, phrase or word in this resolution or application thereof to any persons or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this resolution; and the City Council hereby declares it would have passed such remaining portions of the resolution despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 8. This Resolution shall be in full force and effect from and after its passage, and it is accordingly so resolved.

PASSED AND ADOPTED by the City Council of Kyle, Texas, at a regular meeting on the _____ day of _____, 2021, at which a quorum was present, and for which due notice was given pursuant to Government Code, Chapter 551.

Travis Michell, Mayor

ATTEST:

Jennifer Holm, City Secretary
City of Kyle, Texas

[CITY SEAL]

EXHIBIT "A"
PETITION FOR CREATION OF DISTRICT

EXHIBIT “B”

CITY OF KYLE, TEXAS NOTICE OF PUBLIC HEARING REGARDING THE CREATION OF THE PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT

Pursuant to Section 372.009(c) and (d) of the Texas Local Government Code, as amended (the “Act”), notice is hereby given that the City Council of the City of Kyle, Texas (“City”), will hold a public hearing to accept public comments and discuss the petition (the “Petition”), filed by Hillside Terrace Development LLC, a Texas limited liability company and Rio Oso Holdings, LLC (the “Owners”), requesting that the City create the Porter Country Public Improvement District (the “District”) to include property owned by the Owners and further described herein (the “Property”).

Time and Place of the Hearing. The public hearing will be held at a regular meeting of the Kyle City Council beginning at or after 7:00 p.m. on July 5, 2022 at Kyle City Hall City Council Chambers, 100 W. Center Street, Kyle, Texas 78640 and/or via a videoconference meeting. A copy of the Porter Country Public Improvement District petition is available for public review at the office of the City Secretary, located at 100 W. Center Street, Kyle, Texas 78640.

General Nature of the Proposed Authorized Improvements. The purposes of the District include the design, acquisition, construction, and improvement of public improvement projects authorized by the Act. The general nature of the proposed public improvements to be provided by the District that are necessary for the development of the Property within the District, in phases, may include, without limitation, acquisition (by purchase or otherwise, of real property or contract rights in connection with each improvement), construction and improvement of: water and wastewater facilities; cost shares in offsite water and wastewater improvements; stormwater facilities, including drainage improvements which expel stormwater runoff from the Property; pond facilities, including landscaping, irrigation, and fencing related thereto; drainage facilities; road/street facilities, including associated right-of-way; park improvements, including playscapes, dog park improvements, and associated structures; entry monumentation and landscaping; common area landscaping, irrigation (including meters), and lighting, including design thereof; trails; open space improvements; screening walls; and other common area improvements; as well as payment of expenses incurred in the establishment, administration and operation of the District and the costs of issuance, reserve funds or credit enhancement of any bonds issued by or on behalf of the District, if necessary (collectively, the “Authorized Improvements”). These Authorized Improvements shall promote the interests of the City and confer a special benefit upon the Property within the District.

Estimated Cost of the Authorized Improvements. The estimated cost to design, acquire and construct the Authorized Improvements, together with bond issuance costs, eligible legal and financial fees, eligible credit enhancement costs and eligible costs incurred in establishment, administration and operation of the District is not to exceed \$60,000,000. The City will determine what amount or portion of the costs will be paid by assessment of the property owners within the District.

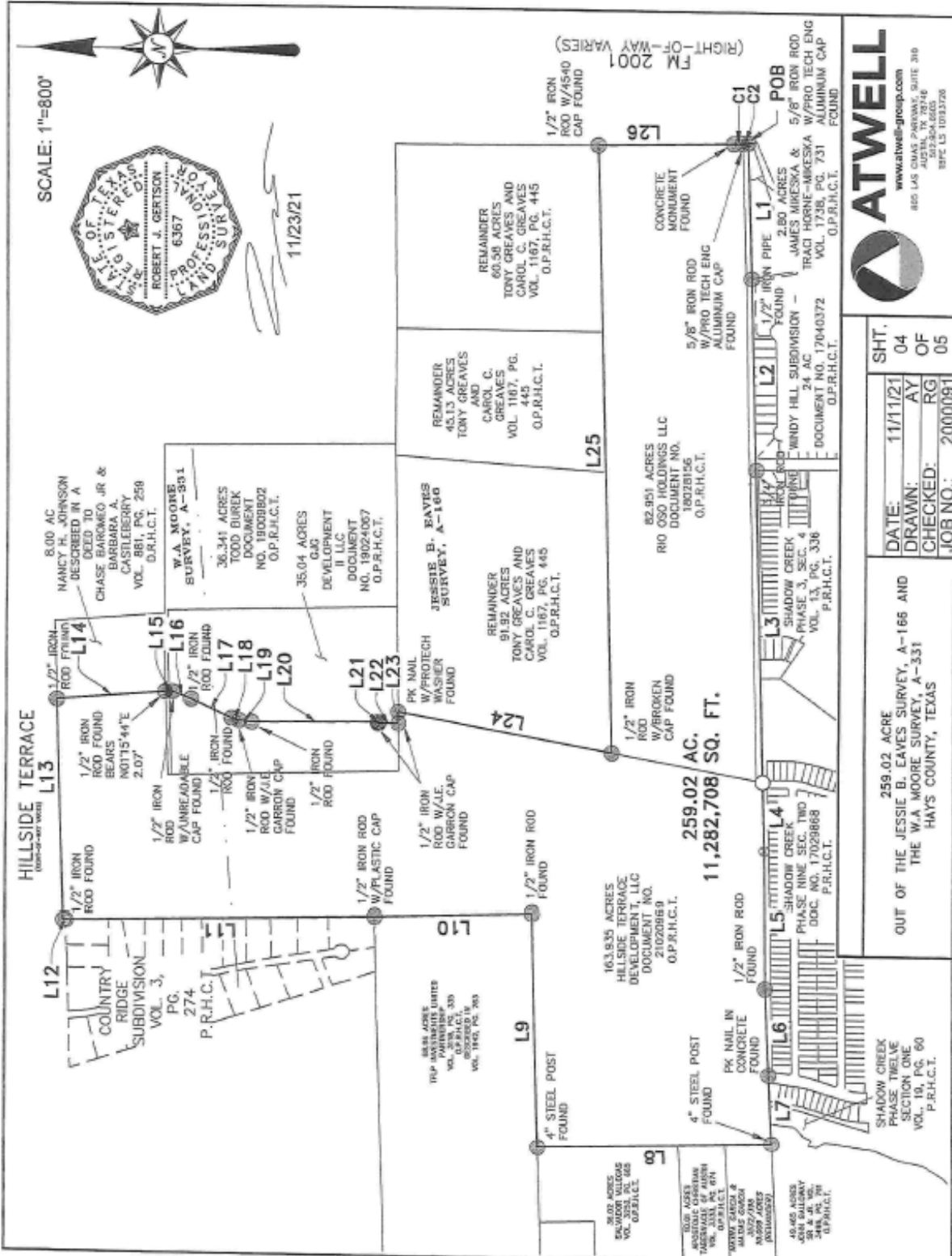
Proposed District Boundaries. The District is proposed to include approximately 259.02 acres of land generally located west of FM 2001 and south of County Road 113, located within the corporate limits of the City, as generally depicted or described on the map provided herein as Exhibit A, said map and metes and bounds description, also available at Kyle City Hall, Office of the City Secretary,

located at 100 W. Center Street, Kyle, Texas 78640 and available for public inspection during regular business hours.

Proposed Method of Assessment. An assessment methodology will be prepared that will address: (i) how the costs of the public improvements financed with the assessments are assessed against the property in the District, (ii) how the assessments are to be collected each year, and (iii) reduction of the assessments for costs savings (pursuant to the annual review of the service plan for the District). Additionally, a report will be prepared showing the special benefits accruing to property in the District and how the costs of the public improvements are assessed to property on the basis of the special benefits. The result will be that equal shares of the costs will be imposed on property similarly benefitted. The assessment of the methodology will result in each parcel paying its fair share of the costs of the Public Improvements provided with the assessments based on the special benefits received by the property from the Public Improvements and property equally situated paying equal shares of the costs of the Public Improvements.

Apportionment of Cost between the District and the City. Approval and creation of the District will not obligate the City to provide any funds to finance the proposed Authorized Improvements. No municipal property in the District shall be assessed. All the costs of the proposed Authorized Improvements will be paid from assessments levied on the Property within the District. The developer of the Property may also pay certain costs of the improvements from other sources of funds, if any, available to it as developer of the District.

Exhibit A



DATE:	11/11/21
DRAWN:	AY
CHECKED:	RG
JOB NO.:	2000091

259.02 ACRE
 OUT OF THE JESSIE B. EAVES SURVEY, A-166 AND
 THE W.A. MOORE SURVEY, A-331
 HAYS COUNTY, TEXAS

SHT.	04
OF	05

\\20000091\dwg\survey\12\shadow creek brdy wkn.dwg Savedate:11/23/2021 1:29 PM Plotted:11/23/2021 2:06 PM

Exhibit A

STATE OF TEXAS §
 § PETITION TO ESTABLISH PORTER COUNTRY
COUNTY OF HAYS § PUBLIC IMPROVEMENT DISTRICT

TO THE HONORABLE GOVERNING BODY OF THE CITY OF KYLE:

COMES NOW Hillside Terrace Development LLC, a Texas limited liability company and Rio Oso Holdings, LLC (together, the “Petitioners”), and hereby request and petition the City of Kyle (the “City”) to establish the Porter Country Public Improvement District (the “District”) under and pursuant to the provisions of Chapter 372, Texas Local Government Code, on the hereinafter described property situated within the corporate limits of the City of Kyle, and in support thereof would respectfully show the following:

I.

The general nature of the proposed improvements to be provided by the District, in phases, includes, without limitation, acquisition (by purchase or otherwise, of real property or contract rights in connection with each improvement), construction and improvement of: water and wastewater facilities; cost shares in offsite water and wastewater improvements; stormwater facilities, including drainage improvements which expel stormwater runoff from the Property; pond facilities, including landscaping, irrigation, and fencing related thereto; drainage facilities; road/street facilities, including associated right-of-way; park improvements, including playscapes, dog park improvements, and associated structures; entry monumentation and landscaping; common area landscaping, irrigation (including meters), and lighting, including design thereof; trails; open space improvements; screening walls; and other common area improvements; as well as payment of expenses incurred in the establishment, administration and operation of the District and the costs of issuance, reserve funds or credit enhancement of any bonds issued by or on behalf of the District, if necessary; all of which promote the interests of the City.

II.

The estimated costs of constructing and acquiring all of the currently proposed public improvements, together with bond issuance costs, legal and financial fees, letter of credit fees and expenses, bond credit enhancement expenses, capitalization of bond interest, the creation of a bond reserve fund, expenses incurred in the establishment, administration and operation of the District and acquisition, by purchase or otherwise, of real property or contract rights in connection with each authorized improvement, is presently estimated to be a total of approximately \$60,000,000, based on the estimated current and future costs for construction and acquisition of water, wastewater, roadway, and drainage systems to serve the area within the District and the park, trail, landscape, entry improvements, and parking improvements, as authorized by law. The total costs of the improvements shall be paid from any revenues or assessments lawfully available to the City

from the District, anticipating that the costs of acquisition of the water, wastewater, roadway, and drainage systems, park, landscape, trail, and parking improvements will be paid pursuant to a contractual reimbursement obligation or the issuance of bonds secured by and payable from a special assessment levied on all property within the District's boundaries for the public improvements.

III.

The boundaries of the proposed District are fully described in Exhibit "A", attached hereto and made a part hereof for all purposes. A map of the proposed District is attached hereto as Exhibit "B" and made a part hereof for all purposes. The proposed District is commonly known as Porter Country.

IV.

The proposed method of assessment is to impose a special assessment to be paid in installments on all useable property within the District, net of any public right-of-way, according to the value of the property, without regard to the value of improvements on the property, or in any other manner that results in imposing equal shares of the cost on property similarly benefitted. A report will be prepared showing the special benefits accruing to property within the District and how the costs of the public improvements are assessed to property on the basis of special benefit received by the property from the public improvements.

V.

All costs incurred by the District shall be paid by the District, and there shall be no apportionment of costs between the District and the City as a whole. The City will not be obligated to provide any funds to finance the proposed improvements except from assessments generated by property within the District.

VI.

Management and administration of the District shall be by the City. The City may contract from time to time with a private company for District administrative services. The Petitioners understand that the annual budget for the District is subject to review by City staff with final approval by the City Council.

VII.

The individuals executing this Petition are duly authorized to execute this Petition, and the Petitioners request the establishment of the District.

VIII.

An Advisory Board may be established to develop and recommend an improvement plan to the City Council of the City of Kyle (the "Council"). The Petitioners request that if the Council establishes an Advisory Board, that such Advisory Board should include representatives of the Petitioners or their designees.

IX.

This Petition has been executed for and on behalf of (i) the owners of more than 50% of the taxable real property described in said Exhibit A, representing all of the appraised value of taxable real property liable for assessment under this Petition as shown by the current roll of the Hays County Appraisal District, and (ii) the record owners of more than 50% of the real property liable for assessment under this Petition, and shall be filed with the Secretary of the City. The Petitioners own 100% of the property to be located in the District and liable for assessment. Although inapplicable to the Petitioners, as the owners of the property located in the District and liable for assessment, it is noted that: With respect to community property, the City may accept the signature of a spouse as a representation of both spouses that they support the creation or renewal of the PID absent a separate property agreement. *However, if City staff is made aware of any disagreement among owners of community property, those petitions will not be counted.*

WHEREFORE, PREMISES CONSIDERED, Petitioners pray that the Council:

- (1) duly consider this Petition and adopt a Resolution finding (i) that this Petition complies with all legal requirements; (ii) that the proposed improvements are necessary, advisable and will provide a public use and benefit to the City; and (iii) that the estimated costs of the improvements, the method of assessment and the apportionment of costs between the District and the City of Kyle are reasonable and acceptable;
- (2) call a public hearing, give notice thereof as required by law and hold such hearing on the advisability of the improvements specified in this Petition; and
- (3) grant all matters requested in this Petition and grant such other relief, in law or in equity, to which Petitioners shall show themselves to be entitled.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Petition has been executed by the Petitioners on the 19th day of November, 2021.

HILLSIDE TERRACE DEVELOPMENT LLC,
a Texas limited liability company

By: MSCB HILLSIDE, LLC,
a Texas limited liability company
its Manager

By: [Signature]
Terry LaGrone, Authorized Signatory

Date: 11-19-2021

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was executed before me on this 19th day of November, 2021, by Terry LaGrone, as Authorized Signatory for MSCB Hillside, LLC, a Texas limited liability company, as manager of Hillside Terrace Development, LLC, a Texas limited liability company, on behalf of said company.



[Signature]
NOTARY PUBLIC

RIO OSO HOLDINGS LLC,
a Texas limited liability company

By: Todd Burek

Todd Burek, Manager

Date: 11/30/21

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 TEXAS
COUNTY OF TRAVIS

Subscribed and sworn to (or affirmed) before me on this 30 day of November, 2021, by Todd Burek as Manager of Rio Oso Holdings LLC, a Texas limited liability company, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal) Signature Ellen K. Harrison



EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

4885-6176-2306v.2 60691-70 11/10/2021

EXHIBIT "A"
DESCRIPTION

A 259.02 acres (11,282,708 square feet), tract of land, lying within the Jessie B. Eaves Survey, Abstract 166 and the W.A. Moore Survey, Abstract 331, Hays County, Texas, and being all of a called 163.935 acre tract, conveyed to Hillside Terrace Development, LLC in Document No. 21020969, Official Public Records of Hays County, Texas, all of a called 82.951 acre tract, conveyed to RIO OSO Holdings LLC in Document No. 18028156, Official Public Records of Hays County, Texas and a portion of called 35.04 acre tract, conveyed to GJG Development II LLC in Document No. 19024067, Official Public Records of Hays County, Texas, described as follows:

BEGINNING at a 5/8" iron rod with aluminum "PRO TECH ENG" cap found at the southeastern corner of said 163.935 acre tract, the northeastern corner of a called 2.80 acre tract, conveyed to James Mikeska & Traci Horne-Mikeska in Volume 1738, Page 731, Official Public Records of Hays County, Texas, and being on the western right-of-way line of F.M. 2001 (right-of-way varies), for the southeastern corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, with the southern line of said 163.935 acre tract and the northern line of said 2.80 acre tract, S88°25'07"W, a distance of 858.81 feet to a 1/2" iron pipe found, for the northwestern corner of said 2.80 acre tract and the northeastern corner of Windy Hill Subdivision 24 AC, a subdivision, recorded in Document No. 17040372, Official Public Records of Hays County, Texas;

THENCE, with the southern line of said 163.935 acre tract and the northern line of said Windy Hill Subdivision 24 AC, S88°22'00"W, a distance of 1223.10 feet to a 3/4" iron pipe found, for the northwestern corner of said Windy Hill Subdivision 24 AC and the northeastern corner of Shadow Creek Phase 3, Section 4, a subdivision, recorded in Volume 13, Page 336, Plat Records Hays County, Texas;

THENCE, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of Shadow Creek Phase 9, Section 2, a subdivision, recorded in Document No. 17029868, Plat Records Hays County, Texas, S88°25'56"W, a distance of 1993.62 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set;

THENCE, with the southern line of said 163.935 acre tract and the northern line of said Shadow Creek Phase 9, Section 2, the following three (3) courses and distances;

1. S88°24'30"W, a distance of 445.39 feet to a 6" wood fence post found;
2. S89°20'38"W, a distance of 873.39 feet to a 1/2" iron rod found;
3. S87°32'32"W, a distance of 556.41 feet to a pk nail in concrete found;

THENCE, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 9, Section 2, the northern line of Shadow Creek Phase 12, Section 1, a subdivision, recorded in Volume 19, Page 60, Plat Records Hays County, Texas and the northern line of a called 49.465 acre tract, conveyed to John Galloway Sr. & John Galloway Jr. in Volume 496, Page 791, Official Public Records of Hays County, Texas, S87°20'19"W, a distance of 442.82 feet to a 4" steel post found, for the southwestern corner of said 163.935 acre tract and the southeastern corner of a the remainder of a called 10.009 acre tract, conveyed to Mayra Garcia and Matias Garcia in Volume 3572, Page 398, Official Public Records of Hays County, Texas, for the southwestern corner of the herein described tract;

THENCE, with the western line of said 163.935 acre tract, the eastern line of said remainder of a called 10.009 acre tract, the eastern line of a called 10.01 acre tract, conveyed to Apostolic Christian Tabernacle of Austin in Volume 3333, Page 674, Official Public Records of Hays County, Texas, and the eastern line of a called 36.02 acre tract, conveyed to Salvador Villegas in Volume 3252, Page 665, Official Public Records of Hays County, Texas, N01°49'27"W, a distance of 1483.67 feet to a 4" steel post found, for an ell corner of said 163.935 acre tract, the northeastern corner of said 36.02 acre tract and being on the southern line of a called 68.96 acre tract, conveyed to TFLP Investments Limited Partnership in Volume 3118, Page 335, Official Public Records of Hays County, Texas;

THENCE, with a northern line of said 163.935 acre tract and the southern line of said 68.96 acre tract, N88°22'22"E, a distance of 1502.07 feet to a 1/2" iron rod found for an ell corner of said 163.935 acre tract and the southeastern corner of said 68.96 acre tract;

THENCE, with a western line of said 163.935 acre tract and the eastern line of said 68.96 acre tract, N02°00'11"W, a distance of 1007.83 feet to a 1/2" iron rod with plastic cap found for the northeastern corner of said 68.96 acre tract and the southeastern corner of Country Ridge Subdivision, a subdivision recorded in Volume 3, Page 274 Plat Records of Hays County, Texas;

THENCE, with a western line of said 163.935 acre tract and the eastern line of said Country Ridge Subdivision, N01°37'27"W, a distance of 1945.78 feet to a 1/2" iron rod found for the northeastern corner of said Country Ridge Subdivision and being on the southern right-of-way line of Hillside Terrace (right-of-way varies);

THENCE, with a western line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N01°37'27"W, a distance of 14.88 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the northwestern corner of said 163.935 acre tract and of the herein described tract;

THENCE, with a northern line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N88°01'45"E, a distance of 1410.61 feet to a 1/2" iron rod found for the northeastern corner of said 163.935 acre tract, the northwest corner of a 8.00 acre tract, conveyed to Nancy H. Johnson and described in a called 8.00 acre tract to Chase Baromeo Jr. and Barbara A. Castleberry in Volume 881, Page 259 Deed Records of Hays County, Texas and for the northeastern corner of the herein described tract;

THENCE, with an eastern line of said 163.935 acre tract and the western line of said 8.00 acre tract, S04°59'16"E, a distance of 685.20 feet to a point for an ell corner of said 163.935 acre tract, the southwest corner of a said 8.00 acre tract, and being on the northern line of a called 36.341 acre conveyed to Todd Burek in Document No. 19009802, Official Public Records of Hays County, Texas, from which a 1/2" iron rod found bears N01°15'44"E, a distance of 2.07 feet;

THENCE, over and across said 36.341 acre tract and said 35.04 acre tract, the following eight (8) courses and distances:

1. S 01° 57' 33" E, a distance of 43.81 feet to a 1/2" iron rod with unreadable cap found;
2. S 20° 51' 38" W, a distance of 126.91 feet to a 1/2" iron rod found;
3. S 25° 03' 48" W, a distance of 279.88 feet to a 1/2" iron rod found;
4. S 17° 00' 26" W, a distance of 49.76 feet to a 1/2" iron rod with J.E. Garron cap found;
5. S 06° 28' 28" W, a distance of 77.28 feet to a 1/2" iron rod found;
6. S 01° 01' 23" E, a distance of 800.38 feet to a 1/2" iron rod with J.E. Garron cap found;
7. S 88° 38' 46" W, a distance of 9.99 feet to a 1/2" iron rod with J.E. Garron cap found;
8. S 00° 58' 08" E, a distance of 129.20 feet to a 1/2" iron rod with J.E. Garron cap found on a northern line of said 163.935 acre tract and also being a southern line of said 35.04 acre tract;

THENCE, with a northern line of said 163.935 acre tract and also being the southern line of said 35.04 acre tract, N 88° 55' 55" E, a distance of 73.88 feet to a PK nail with washer stamped "PROTECH" found for an ell corner of said 163.935 acre tract and the northwestern corner of the remainder of a called 91.92 acre tract, conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas;

THENCE, with a eastern line of said 163.935 acre tract and also being the western line of said 91.92 acre tract, S10°01'04"W, a distance of 1388.58 feet to a 1/2" iron rod with broken cap found for the northwestern corner of said 82.951 acre tract and also being the southwestern corner of the remainder of said 91.92 acre tract;

THENCE, with the northern line of said 82.951 acre tract, the southern line of said remainder of 91.92 acre tract and also the southern boundary line of the remainder of a called 45.13 acre tract and of the remainder of a called 60.58 acre tract both conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, N88°27'53"E, a distance of 3878.65 feet to a 1/2" iron rod with a 4540 cap found for the northeastern corner of said 82.951 acre tract, the southeastern corner of said remainder of the 60.58 acre tract and also being on the western right-of-way line of F.M. 2001;

THENCE, with the eastern line of said 82.951 acre tract and also being the western right-of-way line of F.M. 2001, the following two (2) courses and distances:

1. S01°20'27"E, a distance of 856.10 feet to a concrete monument found on the arc of a curve to the left;
2. Along the arc of said curve to the left, a distance of 54.09 feet, having a radius of 756.20 feet, a delta angle of 4°05'54" and a chord bearing of S03°29'29"E, a distance of 54.08 feet to a 5/8" iron rod with aluminum "PRO TECH ENG" cap found on the arc of a curve to the left, for the southeastern corner of said 82.951 acre tract and the northern southeastern corner of said 163.935 acre tract;

THENCE, with the eastern line of said 163.935 acre tract and the western right-of-way line of F.M. 2001, along the arc of said curve to the left, a distance of 37.01 feet, having a radius of 756.20 feet, a delta angle of 2°48'14" and a chord bearing of S06°20'21"E, a distance of 37.00 feet to the **POINT OF BEGINNING**.

Containing 259.02 acres or 11,282,708 square feet, more or less.

BEARING BASIS NOTE

This project is referenced for all bearing and coordinate basis to the Texas State Plane Coordinate System NAD 83 (2011 adjustment), South Central Zone (4204). The Grid to Surface combined scale factor is 1.00013.

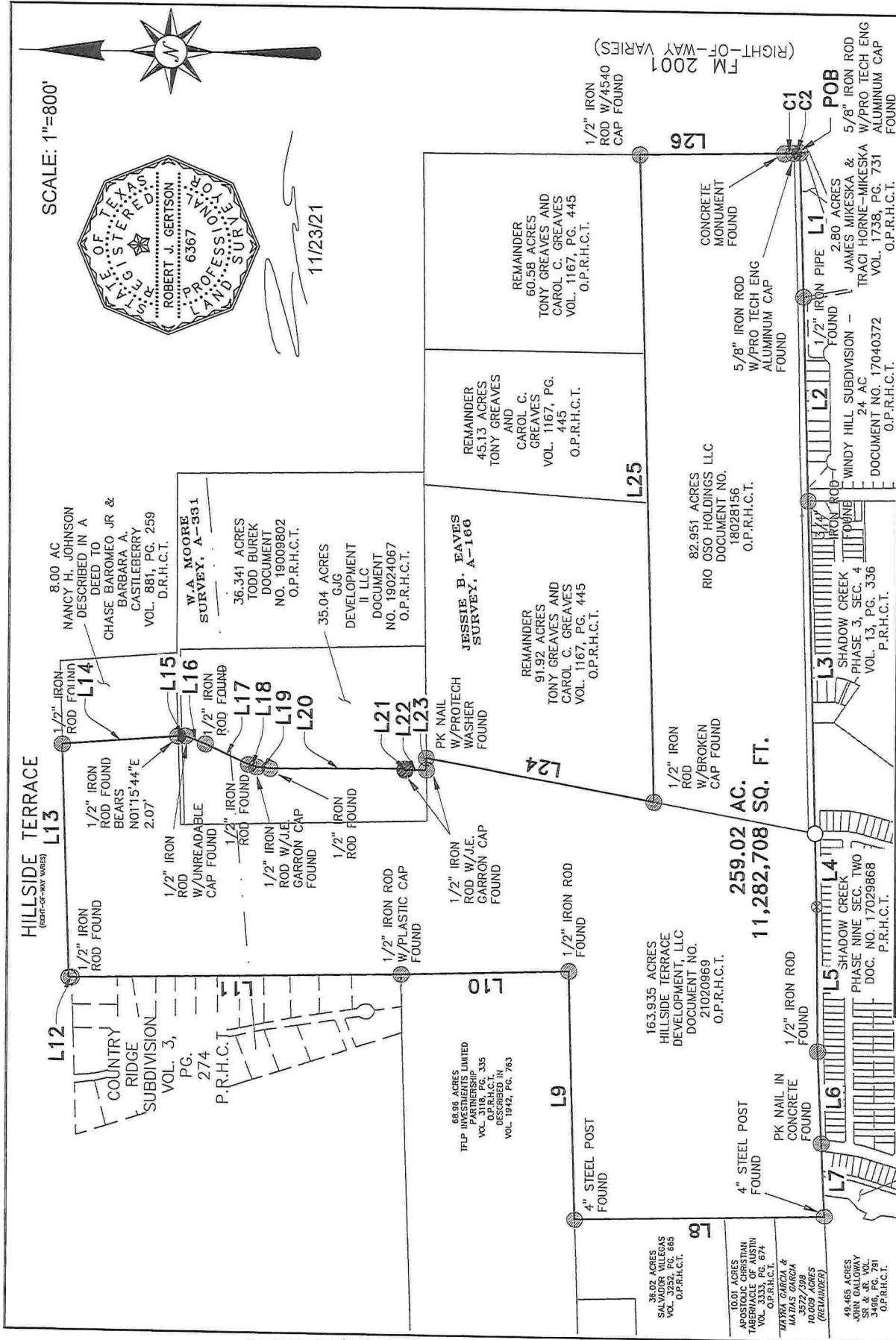
Robert J. Gertson, RPLS
Texas Registration No. 6367
Atwell, LLC
805 Las Cimas Parkway, Suite 310
Austin, Texas 78746
Ph. 512-904-0505
TBPE LS Firm No. 10193726



11/23/2021

EXHIBIT B
MAP OF THE PROPERTY

K:\2000091\dwg\survey\all\shadow creek bdy ex.dwg Savedate:11/23/2021 1:29 PM Plotdate:11/23/2021 2:06 PM



SCALE: 1"=800'



11/23/21

ATWELL
 www.atwell-group.com
 805 LAS CIMAS PARKWAY, SUITE 310
 AUSTIN, TX 78746
 512.304.0505
 TPBE LS 10193726

DATE:	11/11/21	SHT.	04
DRAWN:	AY	OF	05
CHECKED:	RG		
JOB NO.:	2000091		

259.02 ACRE
 OUT OF THE JESSIE B. EAVES SURVEY, A-166 AND
 THE W.A. MOORE SURVEY, A-331
 HAYS COUNTY, TEXAS

SHADOW CREEK
 PHASE TWELVE
 SECTION ONE
 VOL. 19, PG. 60
 P.R.H.C.T.

163.935 ACRES
 HILLSIDE TERRACE
 DEVELOPMENT, LLC
 DOCUMENT NO.
 21020969
 O.P.R.H.C.T.

36.02 ACRES
 SALVADOR VILLEGAS
 VOL. 3252, PG. 665
 O.P.R.H.C.T.

10.01 ACRES
 APOSTOLIC CHRISTIAN
 CENTER, INC., AUSTIN
 VOL. 3133, PG. 674
 O.P.R.H.C.T.

49.455 ACRES
 JOHN GALLOWAY
 SR & JR, VOL.
 3466, PG. 791
 O.P.R.H.C.T.

163.935 ACRES
 HILLSIDE TERRACE
 DEVELOPMENT, LLC
 DOCUMENT NO.
 21020969
 O.P.R.H.C.T.

259.02 AC.
 11,282,708 SQ. FT.

91.92 ACRES
 TONY GREAVES AND
 CAROL C. GREAVES
 VOL. 1167, PG. 445
 O.P.R.H.C.T.

82.951 ACRES
 RIO OSO HOLDINGS LLC
 DOCUMENT NO.
 18028156
 O.P.R.H.C.T.

REMAINDER
 45.13 ACRES
 TONY GREAVES
 AND
 CAROL C.
 GREAVES
 VOL. 1167, PG.
 445
 O.P.R.H.C.T.

REMAINDER
 60.58 ACRES
 TONY GREAVES AND
 CAROL C. GREAVES
 VOL. 1167, PG. 445
 O.P.R.H.C.T.

1/2" IRON
 ROD W/4540
 CAP FOUND

CONCRETE
 MONUMENT
 FOUND

5/8" IRON ROD
 W/PRO TECH ENG
 ALUMINUM CAP
 FOUND

1/2" IRON PIPE
 FOUND

5/8" IRON ROD
 W/PRO TECH ENG
 ALUMINUM CAP
 FOUND

1/2" IRON
 ROD
 W/BROKEN
 CAP FOUND

1/2" IRON
 ROD
 W/PROTECH
 WASHER
 FOUND

1/2" IRON
 ROD W/JE.
 GARRON CAP
 FOUND

1/2" IRON
 ROD
 W/UNREADABLE
 CAP FOUND

1/2" IRON
 ROD
 W/JE.
 GARRON CAP
 FOUND

1/2" IRON
 ROD
 W/UNREADABLE
 CAP FOUND

1/2" IRON
 ROD
 W/UNREADABLE
 CAP FOUND

1/2" IRON
 ROD
 W/UNREADABLE
 CAP FOUND

1/2" IRON
 ROD
 W/UNREADABLE
 CAP FOUND

SCALE: 1"=800'



LINE DATA TABLE		
LINE #	DIRECTION	LENGTH
L14	S4°59'16"E	685.20'
L15	S1°57'33"E	43.81'
L16	S20°51'38"W	126.91'
L17	S25°03'48"W	279.88'
L18	S17°00'26"W	49.76'
L19	S6°28'28"W	77.28'
L20	S1°01'23"E	800.38'
L21	S88°38'46"W	9.99'
L22	S0°58'08"E	129.20'
L23	N88°55'55"E	73.88'
L24	S10°01'04"W	1388.58'
L25	N88°27'53"E	3878.65'
L26	S1°20'27"E	856.10'

LINE DATA TABLE		
LINE #	DIRECTION	LENGTH
L1	S88°25'07"W	858.81'
L2	S88°22'00"W	1223.10'
L3	S88°25'56"W	1993.62'
L4	S88°24'30"W	445.39'
L5	S89°20'38"W	873.39'
L6	S87°32'32"W	556.41'
L7	S87°20'19"W	442.82'
L8	N1°49'27"W	1483.67'
L9	N88°22'22"E	1502.07'
L10	N2°00'11"W	1007.83'
L11	N1°37'27"W	1945.78'
L12	N1°37'27"W	14.88'
L13	N88°01'45"E	1410.61'

CURVE DATA TABLE			
CURVE #	DELTA	RADIUS	CHORD LENGTH
C2	4°16'04"	726.20'	54.09'
			S3°29'29"E
			54.08'



DATE:	11/11/21	SHT.	05
DRAWN:	AY	OF	05
CHECKED:	RG		
JOB NO.:	2000091		

259.02 ACRE
 OUT OF THE JESSIE B. EAVES SURVEY, A-166 AND
 THE W.A. MOORE SURVEY, A-331
 HAYS COUNTY, TEXAS

k:\2000091\dwg\survey\alta\shadow creek bndy exh.dwg Savedate:11/23/2021 1:29 PM Plotdate:11/23/2021 2:00 PM



CITY OF KYLE, TEXAS

Mark McCliney SAMCO Capital

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Consider and possible action to retain services of Mark McCliney from SAMCO Capital as the city's financial advisor. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Kyle, City of 2022
- Information for Municipal Advisory Clients



MUNICIPAL ADVISORY CONTRACT

June 7, 2022

The Honorable Mayor and City Council
City of Kyle
100 W. Center Street
Kyle, Texas 78640

Ladies and Gentlemen:

1. We understand that the City, from time to time, will consider the issuance of debt obligations and that in connection with the authorization, issuance, sale and delivery of such obligations you desire the Mark McLiney Municipal Advisory team to perform professional services in the capacity of Municipal Advisors for the City.
2. We agree to provide all services related to the development and implementation of a debt management plan. These services include, but are not limited to, the structuring of a bond model, the formulation of a bond program, the analysis and completion of refunding programs, consultation regarding bond elections, consultation regarding bond ratings, consultation regarding the available types of financings, etc. The services include communicating and coordinating with other professionals involved in bond transactions and related services (e.g. bond counsel, rating agent, credit enhancement providers, verification agent, arbitrage rebate provider, etc.). The advice and assistance includes serving as a fiduciary to the Issuer and representing the Issuer's interest in the sale and distribution of any debt obligations.
3. We agree to direct and coordinate the entire program of financing herein contemplated. It is specifically understood and agreed, however, that this obligation on our part shall not cover payment of any expenses associated with the issuance of the obligations or the expenses of any litigation, if such would occur.

As consideration for the services rendered by us and as reimbursement for the expenses which we are to incur, it is understood and agreed that the City is to pay and we are to accept, a cash fee for such professional services in accordance with the fee schedule set forth as follows. Such fee shall become due and payable simultaneously with the delivery of the bonds to the purchaser. It is understood that a miscellaneous expense will be added to the fee to cover reimbursables. This amount shall be capped at \$5,000.

FEE SCHEDULE

The following schedule is an estimate of fees due for Municipal Advisory work. The actual fee will be more or less based upon work performed.

Base Fee – Any issue				\$ 5,000			
Plus \$12.50	per \$1,000	\$500,000	or	\$11,250	for	\$500,000	Bonds
	next						
Plus \$8.00	per \$1,000	\$500,000	or	\$15,250	for	\$1,000,000	Bonds
	next						
Plus \$5.50	per \$1,000	\$1,500,000	or	\$23,500	for	\$2,500,000	Bonds
	next						
Plus \$3.50	per \$1,000	\$2,500,000	or	\$32,250	for	\$5,000,000	Bonds
	next						
Plus \$2.00	per \$1,000	\$5,000,000	or	\$42,250	for	\$10,000,000	Bonds
	next						
Plus \$1.00	per \$1,000	\$10,000,000	or				
	next						

Fees for Refunding Bonds, Revenue Bonds or Bonds issued to State or Federal Agencies shall be computed from the above schedule, plus 25%. For any issue of Refunding Bonds and/or other Debt Instruments involving Escrow Agreements, it is understood and agreed that our fee will be the fee schedule set out above plus 10%. For Bonds issued pursuant to a Bond Election our fee will include an additional \$5,000 to cover costs associated with the Bond Election.

Fees for the issuance of Public Improvement District (“PID”) Bonds will be 2% of the Par Amount of each PID Bond.

SAMCO Capital Markets, Inc. will bill the Issuer at Closing for each issue of obligations a net amount which will include a fee calculated on the above schedule as well as costs and expenses, where applicable, incurred on behalf of the Issuer for the Bond Attorneys, preparation, printing and distribution of the Notice of Sale, Official Statement, Uniform Bid Form or Private Placement Memorandum, independent consultants, information meetings, if any, presentations to rating agencies and rating fees, if any, printing of Obligations, and all appropriate costs and expenses associated with the closing and delivery of the Obligations.

4. If appropriate, we will assist with the annual filing of all documents related to the Securities Exchange Commission Rule 15c2-12 (Continuing Disclosure). It is understood that we are not your agent for Continuing Disclosure because SAMCO Capital Markets, Inc. cannot be assured of being informed on a timely manner of all material events which require filing during the year. It is further understood that any fees due us for our work in this capacity will be determined on a case by case basis.
5. Due to the personal nature of municipal advisory consulting services, this Agreement is being entered into with the Mark McLiney Municipal Advisory Group of SAMCO Capital Markets. The Issuer expects that all files will be held in duplicate by the group and the company. At the full discretion of the Issuer, this Agreement can be automatically assigned to and transferred to the Mark McLiney Municipal Advisory Group.
6. This Agreement will commence on the date of acceptance and shall remain in effect until terminated or replaced with a subsequent agreement. This Agreement can be terminated at any time, with or without cause, with simple written notice.

Respectfully submitted,

SAMCO CAPITAL MARKETS, INC.

BY:

Mark M. McLiney

ACCEPTANCE

ACCEPTED and adopted by the City Council of the City of Kyle on this the 7th day of June 2022

Mayor

DISCLOSURE STATEMENT OF MUNICIPAL ADVISOR

This Disclosure Statement is provided by SAMCO Capital Markets, Inc. ("SAMCO") to **City of Kyle, Texas** (the "Client"). This Disclosure Statement provides information regarding conflicts of interest and legal or disciplinary events of Municipal Advisor required to be disclosed to Client pursuant to MSRB Rule G-42(b) and (c)(ii).

PART A – Disclosures of Conflicts of Interest

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. If no such material conflicts of interest are known to exist based on the exercise of reasonable diligence by the municipal advisor, municipal advisors are required to provide a written statement to that effect.

- There are no known material conflicts of interest known to SAMCO in connection with the Scope of Services under our financial advisory agreement; however, we are notifying the Client that SAMCO Capital Markets, Inc. has, through a third-party affiliated person, a certain fee-splitting arrangement with Deutsche Bank, a provider of money market funds to Issuers.
- In an offering for which we act as Financial Advisor on your behalf, SAMCO Capital Markets, Inc., in our role as a Broker Dealer, may purchase securities from that offering from an underwriter, either for our own trading account or for the account of a customer. In such a case SAMCO will take care that these secondary transactions, at or near the time of initial issuance, for a specific maturity in part or in whole, do not contravene the purpose or intent of the MSRB rules or compromise our fiduciary duty to you as Financial Advisor.

PART B – Disclosures of Information Regarding Legal Events and Disciplinary History

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to its client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Accordingly, Municipal Advisor sets out below required disclosures and related information in connection with such disclosures.

- There are no legal or disciplinary events that are material to Client's evaluation of SAMCO or the integrity of Municipal Advisor's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I filed with the SEC.

Client may review SAMCO's most recent Form MA and each most recent Form MA-I filed with the SEC on the SEC's EDGAR system at:

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001333702> The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by Municipal Advisor in its capacity as a broker-dealer on Form BD or Form U4, as applicable. Information provided by Municipal Advisor on Form BD or Form U4 is publicly accessible through reports generated by BrokerCheck at <http://brokercheck.finra.org>. For purposes of accessing such BrokerCheck reports SAMCO's CRD number is 136532.

PART C – Future Supplemental Disclosures

As required by MSRB Rule G-42, this Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of Municipal Advisor. Municipal Advisor will provide Client with any such supplement or amendment as it becomes available throughout the term of the Agreement.

Dated: June 7, 2022



Municipal Securities Rulemaking Board

A photograph of a classical building facade, likely a town hall, with several large columns and a pediment. The words "TOWN HALL" are inscribed in gold letters on a stone ledge below the columns. The image is overlaid with a semi-transparent blue rectangle containing the title text.

Information for Municipal Advisory Clients

The Municipal Securities Rulemaking Board (MSRB) provides significant protections for municipal entities and obligated persons that are clients of a municipal advisor. Certain of those protections also apply to potential clients of a municipal advisor. Municipal advisors must comply with our rules when engaging in municipal advisory activities.

This document summarizes key principles of our rules that protect you. It also provides information on how to file a complaint against a municipal advisor with the appropriate federal regulatory authority. For the complete text of the rules and additional educational information, visit the MSRB's website at www.msrb.org.

Professional Competency. Our rules require that your municipal advisor meet professional qualification requirements based on its municipal advisory activities. Beginning January 1, 2018, our rules require that municipal advisors also meet continuing education requirements.

Fair Dealing. Our rules require that your municipal advisor deal fairly with you and not engage in any deceptive, dishonest or unfair practice. Your municipal advisor must satisfy a duty of care. Your municipal advisor's recommendations must be suitable, and your municipal advisor's compensation for its recommendations must not be excessive.

To help make sure that your municipal advisor is providing unbiased advice, our rules address potential conflicts of interest, including gift-giving and political contributions. Our rules generally prohibit a municipal advisor from advising or soliciting a municipal entity within two years of a political contribution to an official of that municipal entity.

Our rules also require that you receive certain disclosures from your municipal advisor so you are aware of information that is material to your decision-making. If you are receiving advice from your municipal advisor, your municipal advisor must disclose, in writing, all material conflicts of interest, and all legal and disciplinary events material to your evaluation of your municipal advisor. We refer to this as a “full and fair” disclosure under our rules.

You are also protected by our fair dealing rules if you are solicited by a municipal advisor on behalf of a third-party municipal securities dealer, municipal advisor or investment adviser to buy certain products or services. That municipal advisor must disclose all material facts about the solicitation, including all material risks and characteristics of the product or service.

Duty of Loyalty. If you are a municipal entity, our rules provide extra protections when your municipal advisor advises you about municipal financial products or the issuance of municipal securities. Your municipal advisor must deal honestly and with the utmost of good faith, and act in your best interests without regard to its financial or other interests.

Periodic Disclosure. Your municipal advisor must periodically provide you with the following:

- a statement that it is registered with the MSRB and the Securities and Exchange Commission (SEC);
- the MSRB’s website address; and
- a statement as to the availability of this brochure.

Documentation. When hiring a municipal advisor to provide advice, your municipal advisor must give you a written document outlining certain terms of its relationship with you.

Remedies for Disputes

If you have a dispute with your municipal advisor firm or representative, you should try to — but do not have to — resolve it with the individual or a supervisor. In some cases, you may not be able to resolve the dispute.

Terms as Used in this Brochure

- **You:** A municipal advisory client, including:
 - **Municipal Entity:** A state, political subdivision of a state, or municipal corporate instrumentality of a state, including a public pension plan.
 - **Obligated Person:** Any person (including the issuer) legally committed to support payment of all or part of an issue of municipal securities, other than certain unrelated providers of credit or liquidity enhancement.
- **Municipal Advisory Activities**
 - **The provision of advice** to you with respect to municipal financial products or the issuance of municipal securities.
 - **Solicitation** of you on behalf of certain third parties to purchase a product or service.

Municipal advisors that also act as municipal securities dealers must follow additional rules. For more information about the regulatory protections for investors, see the MSRB's [Information for Municipal Securities Investors](#) brochure.

Filing a Complaint

Regardless of whether you have tried to resolve your complaint directly, you may file a formal complaint with the regulatory agency that examines your municipal advisor for compliance with MSRB rules. You also may contact the MSRB, at 1300 I Street NW, Suite 1000, Washington, DC, 20005, 202-838-1330, complaints@msrb.org, and we will forward the complaint to the appropriate enforcement agency listed below.

To expedite the handling of your complaint, please be as specific as possible as to the nature of the complaint, including detail about the representative and/or firm involved. Please provide your name, phone number, email address and mailing address.

If you have a complaint about a potential violation of MSRB rules or other federal securities laws, contact:

U.S. Securities and Exchange Commission

SEC Center for Complaints and Enforcement Tips
100 F Street, N.E.
Washington, DC 20549-5990
<https://www.sec.gov/reportspubs/investor-publications/complaintshtml.html>

Or use the online portal at:
<https://denebleo.sec.gov/TCRExternal/index.xhtml>

If you have a complaint about your municipal advisor or about the municipal securities market, contact:

U.S. Securities and Exchange Commission

Office of Municipal Securities
100 F Street, N.E.
Washington, DC 20549
(202) 551-5680

If you have a complaint against your municipal advisor that is also registered with FINRA as a dealer, contact:

FINRA Investor Complaint Center

9509 Key West Avenue
Rockville, MD 20850-3329
(240) 386-4357
<http://www.finra.org/investors/problem>

Or use the online portal at:
<http://www.finra.org/investors/investor-complaint-center>

About the MSRB

The MSRB protects investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. The MSRB fulfills this mission by regulating the municipal securities firms, banks and municipal advisors that engage in municipal securities and advisory activities. To further protect market participants, the MSRB provides market transparency through its [Electronic Municipal Market Access \(EMMA®\)](#) website, the official repository for information on all municipal bonds. The MSRB also serves as an objective resource on the municipal market, conducts extensive education and outreach to market stakeholders, and provides market leadership on key issues. The MSRB is a Congressionally-chartered, self-regulatory organization governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is subject to oversight by the Securities and Exchange Commission.



CITY OF KYLE, TEXAS

Stephanie Leibe Norton Rose
Fulbright

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Consideration and approval of a resolution approving an engagement agreement for Bond Counsel Legal Services with Norton Rose Fulbright US LLP; and other matters in connection therewith

A. The City Council of the City intends to engage Norton Rose Fulbright US LLP to provide the City with bond counsel legal services pertaining to the City's issuance of public securities, including advising the City on its "official statement" to potential investors pursuant to Federal securities law and issuing a legal opinion as to the same.

B. Norton Rose Fulbright US LLP has consistently demonstrated its competence, qualifications, and experience as an industry leader in public finance matters through the provision of bond counsel legal services, the representation of local governments on federal income tax matters, the publication of disclosure policies and the representation of state agencies and political subdivisions within the State of Texas on public finance matters.

C. Accessing the public markets through the issuance of public securities and providing an "official statement" of the City to potential investors is governed by Federal securities law requires the advice of legal advisors that specialize in public finance matters and are well versed in Federal securities law.

D. Engaging an attorney in private practice who specializes in public finance matters and is well versed in all aspects of public finance matters (including state law, federal income tax law and federal securities law) pursuant to an hourly fee arrangement would likely result in higher fees paid by the City and such fees incurred would be payable by the City through amounts in the City's General Fund, whether or not the public securities is issued.

E. Fees for professional services in public finance matters, including bond counsel services, have traditionally been paid pursuant to a contingent fee contract, where such fees become payable only upon the successful issuance of the public securities and out of the public securities proceeds. Entering into a contract for bond counsel legal services with Norton Rose Fulbright US LLP (a firm that specializes in public finance matters and is well versed in Federal tax and securities law) payment of which is contingent on the City's successful issuance of public securities and payable out of public securities proceeds, provides the City a superior level of bond counsel legal services and fee(s) payable under the contract is reasonable in the public finance market and would likely be

less than if such services were conducted pursuant to an hourly rate contract with an attorney specializing in public finance matters. This high level of bond counsel legal services pursuant to a contingent fee contract is in the best interest of the residents of the City. ~ J. Scott Sellers, City Manager

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 1. Resolution
- Engagement Letter

RESOLUTION NO. _____

**A RESOLUTION APPROVING AN ENGAGEMENT AGREEMENT FOR
BOND COUNSEL LEGAL SERVICES WITH NORTON ROSE
FULBRIGHT US LLP; AND OTHER MATTERS IN CONNECTION
THEREWITH**

WHEREAS, the City Council (the *Governing Body*) of the City of Kyle, Texas (the *City*) anticipates accessing the public or private markets from time to time to issue public securities to finance certain capital improvement projects within the City or to refinance public securities previously issued by the City, which will require the City to comply with the applicable laws and administrative rules of the State of Texas (the *State*) and federal securities and federal tax laws related thereto; and

WHEREAS, the Governing Body requires legal counsel which specializes in public finance matters and is well versed in State and federal securities and federal tax laws and applicable administrative procedures to provide bond counsel legal services pertaining to the City's issuance of public securities;

WHEREAS, the payment of such legal services shall be contingent on the City's successful issuance of public securities pertaining thereto and shall be payable from such public securities proceeds; and

WHEREAS, Norton Rose Fulbright US LLP will provide the City with bond counsel legal services on all of the City's publicly offered or privately placed public securities and has provided the City with one or more engagement agreements for bond counsel legal services pertaining to the City's anticipated future issuances of public securities (the *Engagement Agreement*, attached hereto as Exhibit A); and

WHEREAS, Section 2254.1036 of the Texas Government Code (*Section 2254.1036*), requires that a political subdivision of the State, including the City, enter into a contingent fee contract for legal services only after: (i) the governing body of the political subdivision has provided written notice to the public stating certain provisions enumerated within 2254.1036; (ii) the governing body of the political subdivision approved such contract in an open meeting called for the purposes of considering such contract; (iii) the governing body of the political subdivision has stated in writing certain findings made by the governing body upon the approval of such contract, and (iv) the Texas Attorney General need not approve the Engagement Agreement pursuant to the exception provided by Section 2254.102(e); and

WHEREAS, the Governing Body caused notice of this resolution (the *Resolution*), this meeting, and the following provisions enumerated within 2254.1036 to be provided to the public in accordance with the Texas Open Meetings Act and 2254.1036:

1. The Governing Body of the City intends to engage Norton Rose Fulbright US LLP to provide the City with bond counsel legal services pertaining to the City's issuance of public securities on the public or private market, including advising the City on any "official statement" to potential investors

pursuant to federal securities laws and issuing a legal opinion as to the foregoing;

2. Norton Rose Fulbright US LLP has demonstrated to the City its competence, qualifications, and experience as an industry leader in public finance matters through the provision of bond counsel and disclosure counsel legal services, the representation of local governments in relation to federal income tax matters, the representation of multiple advisors, issuers, and other parties in United States Securities and Exchange Commission enforcement actions, the publication of disclosure policies and the representation of State agencies and political subdivisions within the State of Texas on public securities related issues;
3. Accessing the public or private markets through the issuance of public securities and providing an “official statement” of the City to potential investors is governed by State and federal securities and federal tax laws and requires the advice of legal advisors that specialize in public finance matters that are well versed in public finance legal matters;
4. Engaging an attorney in private practice who specializes in public finance matters and is well versed in State and federal securities and federal tax laws pursuant to an hourly fee arrangement would likely result in higher fees to be paid by the City, and such fees incurred would be payable by the City by amounts on deposit in the City’s General Fund, whether or not the public securities are issued;
5. Fees for professional services in public finance matters, including bond counsel services, have traditionally been paid pursuant to a contingent fee contract, where such fees become payable only upon the successful issuance of the public securities and are payable solely out of the proceeds of the public securities;
6. Entering into a contract for bond counsel legal services with Norton Rose Fulbright US LLP (a firm that specializes in public finance matters and is well versed in State and federal securities and federal tax laws) payment of which is contingent on the City’s successful issuance of public securities and payable out of public securities proceeds provides the City a superior level of bond counsel legal services and fee(s) payable under the contract are reasonable in the public finance market and would likely be less than if such services were conducted pursuant to an hourly rate contract with an attorney specializing in public finance matters;
7. For each of the reasons state above, the execution of contingent fee engagement contracts with Norton Rose Fulbright US LLP is in the best interest of the residents of the City; and

WHEREAS, the meeting at which this Resolution is being considered is an open meeting called, in part, for the purposes of considering (i) the need for obtaining the bond legal services that are the subject of the Engagement Agreement, (ii) the terms of the Engagement Agreement, (iii) the competence, qualifications, and experience of Norton Rose Fulbright US LLP, and (iv) the reasons the Engagement Agreement is in the best interest of the residents of the City and in compliance with Section 2254.1036; and

WHEREAS, the Governing Body hereby finds and determines that the adoption of this Resolution is in the best interests of the residents of the City; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS THAT:

SECTION 1. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Governing Body.

SECTION 2. The Governing Body hereby finds that: (i) there is a substantial need for the bond counsel legal services that are the subject of the Engagement Agreement with Norton Rose Fulbright US LLP; (ii) the bond counsel legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the bond counsel legal services will be obtained and because, until the issuance of a public security, the City will not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees which is not contingent on the issuance of the public securities; and (iii) the relationship between the City or the Governing Body and Norton Rose Fulbright US LLP is not improper and would not appear improper to a reasonable person.

SECTION 3. Based on the findings by the Governing Body described above, the Governing Body hereby approves the City entering into the Engagement Agreement with Norton Rose Fulbright US LLP and authorizes the Mayor or the City Manager to execute the Engagement Agreement.

SECTION 4. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, so that the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 6. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Governing Body hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject

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

SECTION 8. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

[The remainder of this page intentionally left blank.]

PASSED, ADOPTED AND APPROVED on this the 7th day of June, 2022.

CITY OF KYLE, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)

EXHIBIT A
Engagement Agreement

June 7, 2022

VIA E-MAIL

Norton Rose Fulbright US LLP
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
United States of America

Honorable Travis Mitchell
City of Kyle, Texas
100 W. Center Street
Kyle, Texas 78640

Stephanie Leibe
Partner
Direct line +1 512 536 2420
stephanie.leibe@nortonrosefulbright.com

Tel +1 512 474 5201
Fax +1 512 536 4598
nortonrosefulbright.com

Re: Engagement Agreement for Bond Counsel Services

Dear Mayor Mitchell:

Terms of engagement

This Letter of Engagement and the attached Norton Rose Fulbright Standard Terms of Engagement (“**Standard Terms**”) set out the terms that govern the relationship between the City of Kyle, Texas (the “City”) and Norton Rose Fulbright US LLP (**we** or **us** or **firm**) and the additional Norton Rose Fulbright Verein member firms described in the Standard Terms, who may be engaged to represent you in connection with the Matters as defined below.

Norton Rose Fulbright US LLP has made no promises or guarantees to the City about the outcome of the representation or the Matters, and nothing in these terms of engagement shall be construed as such a promise or guarantee. Any expressions on our part concerning the outcome of the Matters are based on our professional judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by our knowledge of the facts and are based on our views of the state of the law at the time they are expressed.

We recognize our obligation to preserve the confidentiality of attorney-client communications as well as client confidences, as required by the governing rules of professional responsibility. If the Matters involves transactions, litigation or administrative proceedings or like proceedings in which we appear as counsel of record for the City in publicly available records, we reserve the right to inform others of the fact of our representation of the City in the Matters and (if likewise reflected of record in publicly available records) the results obtained, unless the City specifically directs otherwise.

Client

We have been retained by the City. Unless we agree otherwise in writing, and subject to satisfactory conflict clearances, we are not representing any other related entities or individuals, such as the City’s shareholders, directors and officers, employees, partners, members.

Scope of engagement

We confirm that we have been retained by you as Bond Counsel in connection with the issuance, sale, and delivery of one or more series of the City's general obligation debt (collectively, the "Debt"). In addition, the issuance or incurrence of Debt or the conduct of any elections are referred to herein as the "Matters"; our representation in connection with the Matters is referred to herein as the "Representation". Our acceptance of the Representation becomes effective upon the execution and return of the enclosed copy of this letter.

Except as expressly stated otherwise, we will advise and act at all times in accordance with and in respect of federal and/or appropriate state law only and are not responsible for advising you as to the effect or enforceability of any documents or matters which may be subject to or governed by the laws of any other jurisdiction.

Personnel

I will be working on the Matter as lead attorney, but will add to this team with others who are necessary to complete the applicable Representation with respect to a particular Matter. You may call, write, or e-mail any of us whenever you have any questions about the Representation. Other firm personnel, including paralegals and other administrative staff, will participate in the Representation if and to the extent, in our judgment, their participation is necessary or appropriate.

Fees and other charges

Legal fees and costs are difficult to estimate. Except as discussed herein, accordingly, we have made no commitment concerning the maximum fees and charges that will be necessary to resolve or complete the Representation.

From time to time, we may furnish estimates of legal fees and other charges that we anticipate will be incurred in connection with the Matter. Such estimates are by their nature inexact because of the potential for unforeseeable circumstances; and therefore, our actual fees and other charges may vary from such estimates.

Our fees will generally be based on the time spent by firm personnel, primarily firm lawyers or paralegals, who participate in the Representation and on the basis of the complexity of a Matter. For portions of the Representation that do not involve the issuance of Debt, we will agree with you to a fee arrangement that may be fixed fee or hourly in nature prior to our commencement of any work related to such portion of the Representation. Certain fees may be reimbursable to the City depending on the type of economic development project. For portions of the Representation that do involve the issuance of Debt, a fee schedule is attached hereto as Exhibit A-1.

In addition to our fees for rendering professional services, our statement will include other charges for expenses and services incurred incident to the performance of our legal services, such as photocopying, delivery charges, travel expenses, overtime for secretaries and other nonlegal staff, Texas Attorney General filing fee of up to \$9,500 per series of Debt (that we will pay on behalf of, subject to reimbursement by, the City), specialized computer applications such as computerized legal research and filing fees. Our current recharge schedule (which is subject to change from time to time) is attached hereto as Exhibit A-2.

Invoicing and reporting

Our billing rates are based on the assumption of prompt payment. Consequently, fees for our legal services and other charges will be billed upon the conclusion of the Matter.

Conflicts of interest

Before accepting the Engagement, we have undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest that would prevent us from representing the City in the Matter. We reviewed that issue in accordance with the rules of professional responsibility adopted in Texas. You agree to the applicability of those rules in regard to all matters relating to this engagement and that, in future matters involving the City, potential conflicts of interest will be evaluated under the local rules of professional responsibility applicable to the Norton Rose Fulbright office handling that future matter. Based on the information available to us, we are not aware of any conflicts. If our firm or any other Norton Rose Fulbright Verein member firm is adverse to the client in any matter, **it is very important that the client be informed of such matter, including the identity of the adverse party, the nature of the matter and the identity of the member firm representing the adverse party, and that consent be obtained.** If for any reason the above information cannot be provided to the client, consult your General Counsel. Paragraph 7.3 of the NRF Standard Terms contains the standard advance waiver – Consider referencing that paragraph here and specifying examples of matter types if we anticipate that we will act adverse to the client in particular types of matters. That detail may strengthen the effectiveness of the advance waiver.

In addition to our representation of other companies and individuals, we also regularly represent lawyers and law firms. As a result, opposing counsel in the Matter may be a lawyer or law firm that we may represent now or in the future. Likewise, opposing counsel in the Matter may represent our firm now or in the future. Further, we have professional and personal relationships with many other attorneys, often because of our participation in bar associations and other professional organizations. It is our professional judgment that such relationships with other attorneys do not adversely affect our ability to represent any client. The acceptance of these terms of engagement represents an unqualified consent to any such relationships between our firm and other lawyers or law firms, even counsel who is representing a party that is adverse to the City in the Matter that is the subject of this engagement or in some other matter.

During the course of the firm's representation of the City, we may need to analyze or address matters relating to our professional duties or responsibilities, and to consult with lawyers of the firm who have been identified internally to serve as the firm's in-house counsel about such matters. To the extent that any conflict of interest might be deemed to exist as between the firm and the City because of these consultations, you hereby waive any such conflict, consent to such consultations, and agree that we have no obligation to disclose information relating to such consultations to the City. You also agree that these consultations are protected from disclosure by the firm's attorney-client privilege and, as appropriate, the firm's work product protection and that the City will not seek to discover or inquire into them. Nothing in the foregoing shall otherwise diminish or affect our obligation to keep the City informed of material developments in your representation.

Applicable law

The laws of Texas (exclusive of its conflict of laws principles) govern these terms of engagement, and the parties submit to the exclusive jurisdiction of the courts sitting in the City of Houston, Harris County, Texas in any matter arising from or relating to this engagement or anything contained in this engagement letter including the attached Standard Terms, and consent to venue in such court and waive any objection of inconvenient forum as to such court. You agree that any legal process relating to this engagement may be served upon you by us by first-class mail addressed to the mailing address set forth on the first page of this letter and/or by e-mail to the e-mail address set forth on the first page of this letter, or to such additional or alternative addresses as you may provide for such purposes. Each professional is subject to the ethical and professional conduct rules applicable to the jurisdiction in which that lawyer is authorized to practice.

Standards of Professionalism and Attorney Complaint Information

Pursuant to rules promulgated by the Texas Supreme Court and the State Bar of Texas, we are to advise our clients of the contents of the Texas Lawyer's Creed, a copy of which is attached. In addition, we are to advise clients that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. A brochure entitled Attorney Complaint Information is available at all of our Texas offices and is likewise available upon request. A client that has any questions about State Bar's disciplinary process should call the Office of the General Counsel of the State Bar of Texas at 1 800 932 1900 toll free.

Termination

At any time, the City may, with or without cause, terminate the representation by notifying us of the City's intention to do so.

We are subject to the codes or rules of professional responsibility for the jurisdictions in which we practice. There are several types of conduct or circumstances that could result in our withdrawing from representing a client, including, for example, the following: nonpayment of fees or charges; misrepresentation of or failure to disclose material facts; fraudulent or criminal conduct; action contrary to our advice; and conflict of interest with another client. The right of Norton Rose Fulbright US LLP to withdraw in such circumstances is in addition to any rights created by statute or recognized by the governing rules of professional conduct. Further, a failure by the City to meet any obligations under these terms of engagement shall entitle us to terminate the representation. We try to identify in advance and discuss with our clients any situation that may lead to our withdrawal.

Termination of the representation will not affect the City's obligation to pay for legal services rendered and expenses and charges incurred before termination, as well as additional services and charges incurred in connection with an orderly transition of the Matter. Further, in the event of termination of the representation, the City's will take all steps necessary to release Norton Rose Fulbright US LLP of any further obligations in the representation in the Matter, including, without limitation, the execution of any documents necessary to effectuate our withdrawal from the representation in the Matter.

After termination or completion of the representation, changes may occur in the applicable laws or regulations that could affect the City's future rights and liabilities in regard to the Matter. Unless we are actually engaged after termination or completion of the representation to provide additional advice on such issues, the firm has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Matter.

Confidential Firm Information

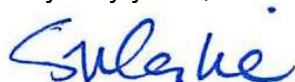
The City recognizes that, in forming the attorney-client relationship or otherwise, we may provide or may have provided the City with information marked "Confidential." The City agrees to maintain the confidential nature of that information and not to disclose it to third parties.

Conclusion and acceptance

You can accept this agreement by signing and returning to us the enclosed copy of this letter or by continuing to retain us.

This letter and the attached Standard Terms constitute the entire terms of the engagement of Norton Rose Fulbright US LLP in connection with the Matter. These written terms of engagement are not subject to any oral agreements or understandings, and they can be modified only by further written agreement signed both by the City and Norton Rose Fulbright US LLP. Unless expressly stated in these terms of engagement, no obligation or undertaking shall be implied on the part of either the City or Norton Rose Fulbright US LLP.

Very truly yours,



Stephanie Leibe

SVL/rmw

cc: Matt Lee (Firm)
Chris Guevara (Firm)

Mayor Mitchell
June 7, 2022
Page 6

The City of Kyle, Texas acknowledges and accepts the terms of engagement set out in this letter and its attachments.

.....
Signed

.....
Title

.....
Name

.....
Company

Date:

NORTON ROSE FULBRIGHT STANDARD TERMS OF ENGAGEMENT

Norton Rose Fulbright Verein (the **Verein**) is a Swiss verein which does not itself engage in the practice of law or other business. The member firms in the Verein are Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP (the **Members** or, individually, a **Member**), who, with their subsidiaries or associated entities, engage in a coordinated international legal practice, even though they are separate law firms each of which, absent specific contractual agreement with a client on an individual matter, is solely responsible for its own work and not for the work of any other of them.

Each of the Members is committed to providing its clients with the highest quality legal services and to building a lasting relationship with its clients as a trusted adviser.

To that end, these Standard Terms of Engagement will apply to all engagements between a Member or its subsidiary or associated entity and a client unless otherwise agreed in writing by the client and an authorized representative of such Member, subsidiary or associated entity. These Standard Terms of Engagement are supplemented by additional standard provisions and/or a letter or contract of engagement relevant to the jurisdiction of the Contracting Party (as below defined).

1 Defined Terms

1.1 The following documents will constitute the entire agreement relating to the engagement of a Contracting Party by a client: (i) any letter or contract of engagement, (ii) any additional standard provisions referred to above, (iii) these Standard Terms, (iv) any other terms and conditions agreed between the Contracting Party and the client, and (v) any amendments or supplements to any of the foregoing agreed from time to time. In the event of any conflict between the terms of the foregoing, the documents shall be construed in the order of priority in which they are referred to above, but subject to any amendments as referred to in (v).

1.2 In the above-mentioned documents:

- (a) Any individual entity that is a Member or subsidiary or associated entity of a Member is referred to as a Norton Rose Fulbright Entity. The Norton Rose Fulbright Entity with which a client engages at any time is referred to as the Contracting Party.
- (b) We, our and us refer to the Contracting Party together with any other Norton Rose Fulbright Entity to which part or all of your instructions have been referred pursuant to paragraph 2.1(h) of these Terms; you and your refer to the client (jointly, if more than one, and not individually) with which the Contracting Party engages. Unless otherwise specifically agreed, you and your do not refer to and no attorney/client or solicitor/client relationship will exist as to persons or entities related to the client such as parent companies, subsidiaries, affiliates, employees, officers, directors, shareholders, partners, members, commonly owned corporations or partnerships, or other such persons, entities or affiliates.

2 Your relationship with us

2.1 When you instruct us on an individual matter, we will write to you to set out:

- (a) which Norton Rose Fulbright Entity is the Contracting Party;
- (b) the scope of the work we have agreed to undertake and any assumptions on which it is based;
- (c) who will be the responsible partner or director and other key team members whom we will try not to replace, although unforeseen circumstances may require that;
- (d) the fees and invoicing arrangements;
- (e) any applicable limitation of liability; and
- (f) the governing law applicable to the contractual relationship with you and the choice of jurisdiction for resolving any issues.
- (g) Your contractual relationship for individual matters is between you and the Contracting Party, not any other Norton Rose Fulbright Entity nor any individual. You understand that we do not make any promises or warranties as to the outcome of the representation.
- (h) If, with your agreement, the Contracting Party has referred all or part of your instructions on any individual matter to one or more other Norton Rose Fulbright Entities, legal services provided by other Norton Rose Fulbright Entities will be governed by the terms of our engagement, which will apply as between you and such Norton Rose Fulbright Entity or Entities, to the fullest extent permitted by the laws and professional regulations applicable in the jurisdictions in which such other Norton Rose Fulbright Entity or Entities operate as regards such other Norton Rose Fulbright Entity's or Entities' representation of you, as well as by, if any are issued, additional standard provisions and any letter or contract of engagement relevant to the other Norton Rose Fulbright Entity or Entities.

3 Our fees

- 3.1 Our bills are payable on receipt and in the currency in which they are submitted. If you ask us to provide bills using an e-billing solution you understand that: (i) we will send your information to our and your third party supplier(s) to enable us to comply with your request and the transfer is at your risk; (ii) any costs arising out of use of your third party supplier shall be borne by you; and (iii) our compliance with your request shall not reduce the fee otherwise chargeable by us.
- 3.2 If you are required by law to deduct any amount when paying a bill, you will pay to us an additional amount so as to ensure that we receive a net sum equal to the amount of the bill.
- 3.3 We need to approve in advance any proposal for any part of one of our bills to be paid by a third party. Notwithstanding our approval, you agree that you will remain responsible for paying the whole bill and any interest accrued on it.
- 3.4 Unless otherwise agreed, any other Norton Rose Fulbright Entity or Entities to whom the Contracting Party has referred instructions under paragraph 2.1(h) may provide statements of their fees and charges to the Contracting Party, who will include such fees and charges in its statements to you, which you will be obligated to pay in order that it can remit payment to such other Norton Rose Fulbright Entity or Entities.

- 3.5 If a bill remains unpaid 30 days after delivery:
- (a) you agree that we may be entitled to charge interest, if any, on it at such rate and under such arrangements allowable under the laws and professional regulations applicable to us or as may be provided for in applicable additional standard provisions or an agreement between us and you, and
 - (b) on giving written notice to you, we may cease work on the matter to which the bill relates and any of your other matters. You agree that we are not responsible for any loss resulting from such inactivity. If the matter is litigious, we may also remove ourselves from the Court or tribunal record.
- 3.6 You agree that we may exercise a lien over your files and documents until all bills due to us from you have been paid in full, subject to the laws and professional regulations applicable to us.
- 3.7 If we are required by any governmental or regulatory body, or by a service provider appointed by you, to submit one of our bills to audit, to produce documents or provide information on any individual matter on which you have instructed us, we shall be entitled to bill you for the work involved (and any disbursements incurred) at the rates agreed for the relevant matter. If legal privilege attaches to any such documents, you will either waive privilege or instruct us to review them in your interests.
- 3.8 We advise and you acknowledge that the Members of the Verein have an arrangement between them that where a matter is referred by one Member to another, the referring Member and one or more of its partners or directors may be financially rewarded for having so referred the matter. This is an entirely internal arrangement as between the Members of the Verein, and their respective partners and directors, and it does not require you to pay any amount in addition to the fees, disbursements and other charges which apply under the agreed terms of your engagement of us and, if applicable, any other Norton Rose Fulbright Entity.

4 Disbursements and other charges

- 4.1 We may consider it to be in your interests to instruct counsel or engage correspondent lawyers, experts or others on your behalf and at your expense. We will consult you before doing so if such instructions or engagements will result in significant fees becoming payable.
- 4.2 We may also charge for photocopying, telephone calls, travel, searches, court fees, hosting on-line data or deal rooms and for other services at our or their standard rates from time to time and for other expenses. These charges will be included in our bills and will not include any mark-up of expenses for which the precise cost can be readily determined but may vary from or exceed our or their direct cost for services for which the precise cost cannot be readily determined.

5 Money held on account for you

- 5.1 We will deposit any money we hold on your behalf with a regulated financial institution and manage it in accordance with the laws and professional regulations applicable to us. You agree that we are not responsible for any loss of funds so deposited and managed.

5.2 If you deposit money with us on account of our fees, the principal and interest accrued, if any, will be applied to your final bill, rendered when we complete your instructions. Unless you and we have agreed otherwise, we may also apply any part of the money in settlement of any outstanding interim bills we submit to you.

6 Communicating with us

6.1 When you seek and receive legal advice from us on your rights and obligations, legal advice or attorney-client privilege will attach to our communications related to that advice. If we act for you in contemplated or actual legal proceedings, litigation or attorney-client privilege will attach to our communications related to those proceedings.

6.2 You agree that we may communicate with you using electronic means, knowing that certain risks (including, for example, interception, unauthorized access and risk of viruses) are associated with such means.

7 Confidentiality, conflict of interests, and our relationships with other clients

7.1 We will keep all information obtained from you, which is not in the public domain, confidential, and will only otherwise disclose it with your authority or if required to do so by the laws and professional regulations applicable to us or if permitted under paragraph 9.3. Nevertheless, you agree that we may disclose any relevant information in order to protect and/or defend ourselves in any actual or threatened legal, civil or regulatory proceeding and may also disclose any relevant information in confidence to our insurers, insurance brokers, auditors, bankers and other advisers if and to the extent such disclosure may occur without waiving or losing any applicable legal privilege.

7.2 You will provide us, and will instruct your other advisers and any co-venturer or other co-participants to provide us, on any matter on which we are instructed, with all relevant information and documents, all of which will have been properly obtained and on which we may rely without verification. You agree that, unless you instruct us otherwise, we may disclose any relevant information to your other professional advisers.

7.3 Norton Rose Fulbright is a large coordinated international legal practice with multiple offices around the world. Because of the size, geographic scope, breadth and diversity of the practice, it is inevitable that current and future clients of ours will come into contact with you, and it is important that we agree with you on certain matters in relation to conflicts of interests to preserve our ability to represent both you and other clients. You agree that we may represent current or future clients (including any parties adverse to you in this Matter) in any other matter (including in litigation, arbitration, or other dispute resolution proceedings) that is not substantially related to your Matter, even if their interests are directly adverse to you or your interests in that other matter. We agree, however, that we will not represent another client in a matter if we have obtained non-public proprietary or other confidential information from you that could be used by that other client to your material disadvantage in that matter. You agree and accept that you have access to independent advice on the effect of this paragraph 7.3 and that your signature by way of acceptance of the provisions of the engagement letter to which these Terms apply is confirmation that you understand the scope and application of this paragraph and that you have no questions or concerns in that respect.

7.4 You agree that we or any other Norton Rose Fulbright Entity may act for other clients in transactions or disputes in which you or any affiliated entity of yours has an interest

provided that we or such other Norton Rose Fulbright Entity do not thereby breach our or their duty of confidentiality to you.

- 7.5 You agree that we are under no duty to disclose to you or use on your behalf any information in respect of which we or any other Norton Rose Fulbright Entity owe a duty of confidentiality to another client or any other person.
- 7.6 You agree that we may disclose our role as legal advisers in any matter on which we are instructed following its completion, for the purposes of publicity, unless you instruct us otherwise. You also agree that, unless you instruct us otherwise, we may publicize the fact that we have a relationship with you.

8 Complaints

- 8.1 Any concerns or complaint about our work should be directed initially to the partner/director responsible for carrying out your instructions or, if you prefer, to the relationship partner/director. We maintain internal procedures that can be employed should a concern require escalation beyond the responsible partner/ director. The laws and professional regulations applicable to us may also provide formal complaint procedures.
- 8.2 In particular, you should raise any queries regarding any of our bills with the partner or director responsible for the matter as soon as possible. If any part of one of our bills is queried by you or the relevant payer, you agree to immediately pay, or procure payment of, those parts not subject to query.

9 Data protection, exchange of information and storage of documents

- 9.1 We act as a data controller in the provision of our legal services. We will process personal data provided to us by you or your employees or agents in relation to any instruction in accordance with data protection standards required by applicable law and will implement appropriate technical and organizational security measures to protect against unauthorized or unlawful processing of that personal data and against accidental loss of, or damage to, that personal data. Please see our Privacy notice for further information on our processing of personal data: <http://www.nortonrosefulbright.com/privacy-notice/>
- 9.2 Each party (you and we) will assist the other party in complying with its respective obligations under applicable data protection law and will ensure that the provision of personal data to the other party is fair and lawful. You agree that you will make our Privacy notice available to your employees or other individuals whose personal data you share with us where this provision of information is required by applicable data protection law. We in turn agree that we will promptly notify you either: (i) upon receipt of a request or complaint from a regulatory authority or an individual exercising a data subject right; or (ii) in the event of loss, disclosure or unauthorized or unlawful processing of personal data that you have provided to us or that we have obtained on your behalf. We will cooperate with you and provide all reasonable assistance as may be required in either case.
- 9.3 In the course of providing our services to you, personal data (if any) with respect to persons in the European Economic Area (EEA) may be accessible to and used by other Norton Rose Fulbright Entities and their contractors and/or agents, including those located outside the EEA where data protection laws may not be as comprehensive as in the EEA, but as to such personal data we will ensure compliance with the data protection standards

of the EU General Data Protection Regulation 2016 or higher standards under other laws applicable to such personal data.

- 9.4 We will also share your contact details, and those of your staff with whom we have contact, with other Norton Rose Fulbright Entities in order to provide you with information relevant to your business, and to ensure your continuous access to publications, events and news in areas of interest to you. Where your employees supply their contact details to us, we will only use that personal data in accordance with our Privacy notice referenced above or as otherwise consented to by them.
- 9.5 We will not exchange information that will result in waiver or loss of any client privilege with other Norton Rose Fulbright Entities. Otherwise, you agree that the Contracting Party may exchange your information (including personal data) with other Norton Rose Fulbright Entities, including for the purposes of conflict checking, compliance, financial planning, billing, business development and matter management. Arrangements are in place among all Norton Rose Fulbright Entities to protect the confidentiality of the information exchanged.
- 9.6 We may outsource certain functions associated with servicing clients to a service center dedicated to Norton Rose Fulbright located outside of the EEA or to other third party providers. For example, we may outsource information and document management, office support, technology and IT services, word processing, photocopying, and translation services.
- 9.7 Some of your data may be stored using cloud technology managed by a third party service provider. We have agreements in place with the third party service providers referred to in paragraphs 9.6 and 9.7 where applicable and also employ technical and organizational measures to protect the confidentiality and security of any information shared with them.
- 9.8 We do not undertake to store or retain your files (whether paper or electronic) for any particular period of time, but will do so for at least the minimum number of years required by applicable laws and professional regulations or local business custom. Files may be destroyed at any time after the expiry of such period, without notice, except those files you ask be delivered to you.

10 Copyright and intellectual property

- 10.1 We retain all copyright and other intellectual property rights in all material developed, designed and created by us in the course of a matter. You may only use and copy material created by us for you, or which we have developed independently of our work for you and used in the course of your matter, in accordance with our advice or specific license terms. All material must be kept confidential by you unless we agree otherwise.
- 10.2 We may use all material created and/or modified by us in the course of any matter for legal training, forms, service development (including in the training of artificial intelligence technologies in which event the materials may be hosted on a third party system) and research purposes, without reference to you.

11 Our compliance with certain laws and regulations

- 11.1 We may require you to provide identifying documents and information concerning yourself and individuals and/or entities associated with you in order to comply with anti-money laundering laws and regulations, and to keep those documents and information up to date.

We may be unable to carry out your instructions if we are unable to verify your identity or, in some instances, the identities of your directors, shareholders and eventual beneficial owners. We shall only process such identifying documents and information for the purposes of preventing money laundering or terrorist financing and to fulfil any other legal and regulatory obligation and shall retain it for the period necessary in accordance with permitted or required retention and limitation periods and in accordance with our data protection obligations as set out at paragraph 9 above.

- 11.2 We may be required by law or regulation to report to a governmental or regulatory authority our knowledge and/or suspicion that certain criminal offences have been committed, regardless of whether such an offence has been committed by a client of ours or by a third party. We may not be able to discuss such reports with you because of restrictions imposed by those laws and regulations, and we may have to cease acting for you in those circumstances. You agree that we are not responsible for any adverse consequences you may suffer as a result of our compliance with such laws and regulations.

12 Force majeure

Neither you nor we will be responsible for failure to perform our respective obligations concerning your instructions (save for your responsibility to pay our bills in full) if the failures are due to causes outside, respectively, your or our control.

13 Amendments

From time to time, we may need to amend these terms of engagement. If this occurs, we will notify you of the changes by means of a notice in the Legal Notices section of our website but they will not affect any matter on which we are then currently instructed.

14 Limitations

If the validity or enforceability of any of these terms of engagement is in any way limited by the laws and professional regulations applicable to us, those laws and professional regulations will take precedence over these terms of engagement but they will be valid and enforceable to the fullest extent permitted by such laws and professional regulations, and such limitation shall not affect the validity or enforceability of any other term.

15 Integrity and ethics

Our policy is to act at all times in accordance with the highest professional, ethical and business standards, and we expect you to act in like manner in all your dealings with us and your business counter-parties. We do not countenance bribery or corruption in any form and you agree (i) not to expect or request any conduct from us that might bring our name into disrepute or compromise our integrity, (ii) that you and your employees and agents will refrain from any practices involving bribery or any other corrupt activities, and (iii) that you have taken or will take internal steps or procedures designed to ensure that the risk of corruption and bribery during the course of our relationship is eliminated.

16 Termination

- 16.1 Either you or we may terminate our engagement at any time by giving reasonable prior notice in writing, subject, in our case, to any applicable laws or regulations. We will only stop acting for you if we believe we have a good reason to do so, including in the

circumstances contemplated by paragraph 3.5 (b), but we retain sole discretion regarding any such decision.

- 16.2 If our engagement is terminated for any reason, you agree to pay in full our bills representing fees, costs, disbursements and other charges up to the time of the engagement's termination.
- 16.3 A solicitor/client or attorney/client relationship exists between you and us only if, at the relevant point in time, we are working under instructions from you; we shall have no duty to provide you advice at any other time concerning changes in laws, rules or regulations that might affect your rights. Further, if we are not under instructions from you at a given point in time, you agree that, unless prohibited by applicable laws or regulations, we are entitled to accept at that time other instructions to act in respect of the subject matter of your previous instructions although we will not disclose to, or use to the benefit of, another client any information or documents in respect of which we owe you a duty of confidentiality.
- 16.4 We and other Norton Rose Fulbright Entities may send you general information on legal developments without charge, or may include you in general mailings, after our or their engagement with you has been terminated. This will not change the fact that our or their engagement has been terminated.

[THE TEXAS LAWYER'S CREED — A MANDATE FOR PROFESSIONALISM

The Texas Supreme Court and the Texas Court of Criminal Appeals adopted this Creed, with the requirement that lawyers advise their clients of its contents when undertaking representation.

I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM. A lawyer owes to the administration of justice, personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism. I am passionately proud of my profession. Therefore, "My word is my bond." I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life. I commit myself to an adequate and effective pro bono program. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT. A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest. I will advise my client of the contents of this Creed when undertaking representation. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice. I will advise my client that civility and courtesy are expected and are not a sign of weakness. I will advise my client of proper and expected behavior. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party. I will advise my client that we will not pursue tactics which are intended primarily for delay. I will advise my client that we will not pursue any course of action which is without merit. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER. A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct. I will be courteous, civil, and prompt in oral and written communications. I will not quarrel over matters of form or style, but I will concentrate on matters of substance. I will identify for other counsel or parties all changes I have made in documents submitted for review. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when
hearings, depositions,

meetings, conferences or closings are canceled. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party. I will refrain from excessive and abusive discovery. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE. Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol. I will conduct myself in court in a professional manner and demonstrate my respect for the Court and the law. I will treat counsel, opposing parties, witnesses, the Court, and members of the Court staff with courtesy and civility and will not manifest by words or conduct bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation. I will be punctual. I will not engage in any conduct which offends the dignity and decorum of proceedings. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage. I will respect the rulings of the Court. I will give the issues in controversy deliberate, impartial and studied analysis and consideration. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Exhibit A

FEE SCHEDULE

Standard Fee Schedule:

Our proposed fee schedule will be based on a base of \$7,500 plus the product of the principal amount of any debt obligation (an *Obligation*) applied against the following fee schedule:

Principal Amount of Obligations	Fee* (per \$1,000 denomination)
\$0 - \$10,000,000	\$1.2500
\$10,000,001-\$25,000,000	\$1.1250
\$25,000,001 - \$50,000,000	\$0.8750
\$50,000,001 - \$100,000,000	\$0.7500
\$100,000,001 - \$200,000,000	\$0.6250
Over \$200,000,000	\$0.5000

* This scale will be increased by 25% for the issuance of any refunding Obligations and any Debt obligation secured by enterprise system revenues.

* Variable Rate Obligations (without third-party liquidity) will be billed at our standard fee scale, plus \$25,000.

* Remarketings of outstanding variable rate Obligations to new variable rate term periods or fixed rate conversions will be billed at 50% of our standard fee schedule (plus \$5,000 for additional federal income tax expertise in the event that any such remarketing or conversion results in a reissuance of Obligations under federal tax law).

* To the extent that our Firm is responsible for preparing the offering documents relating to the issuance or remarketing of any Obligations, an additional fee of \$7,500 will be charged.

*For the creation of a public improvement district and the levy of assessments independent of a bond issuance, our firm will negotiate an appropriate fee schedule with the applicable developers.

* Lease-purchase equipment obligation will be billed on an hourly basis, subject to a minimum charge of \$15,000.

* Special election services will be billed on an hourly basis, with a per election cap of \$15,000 (unless an election contest or other litigation or administrative proceeding is initiated).

* Individual expense reimbursements for any issuance of Obligations shall be capped at \$2,500 per series of Obligation.

* Redemptions or defeasances not associated with an Obligation transaction are billed at a fixed fee of \$2,500.

* Separately negotiated hourly or fixed fee arrangement for all derivative product structures, variable rate bond programs with third party liquidity, conduit debt, and lease revenue bonds.

* Case-by-case exceptions may be made to the above.

LIST OF EXPENSES
NORTON ROSE FULBRIGHT US LLP
(Austin)

Expenses and Services Summary

EXPENSE/SERVICE	CHARGE
Binding	\$1.75 per book (Pricing varies in other office locations)
Data Base Research Lexis, Westlaw, Information America	Costs allocated by the firm
Deliveries	
Overnight/Express	Direct cost
Outside Courier	Direct cost
Courthouse Messengers	Outside courier rates – Direct cost (Pricing varies in other office locations)
Document Scanning	\$.12 per page – Direct cost
Duplicating	
Photocopy	\$0.15 per page
Color photocopy	\$0.85 per page
Microfilm/Microfiche	Direct cost
Videography (duplication)	Direct cost
Electronic Mail (via Internet)	No charge
Library Research by Library Staff	\$85.00 - \$120.00 per hour
Weekend & Late Evening Air Conditioning	\$19.19 per hour (Only if necessitated by client requirements) (Pricing varies in other office locations)
Postage	Direct cost
Secretarial Overtime	\$28.00 per hour (Pricing varies in other office locations)
Facsimile (Outgoing)	No charge
Telephone	
Long Distance (Domestic)	No charge
Long Distance (International)	No charge
Telephone Conference	Direct cost (Third-party provider's charge -\$0.05 per participant per minute)

EXPENSE/SERVICE**CHARGE**

File Storage Retrieval	Direct cost (Pricing varies in other office locations) Price may vary depending on time constraints - Rush/After Hour
Transportation	
Mileage (personal automobile)	Applicable IRS allowable rate per mile
Lodging	Direct cost
Meals	Direct cost
Car Rental/Airline/Rail/Etc.	Direct cost
CD-ROM Research	Rate varies based on length of search
Graphic Arts	\$150.00 - \$175.00 per hour, plus direct cost of supplies. If sent to outside vendor - Direct cost
Practice Support	\$200.00 per gigabyte per month
E-Discovery	Direct cost
Firm hosting of on-site document review performed by outside contract attorneys	\$10.00 per hour



CITY OF KYLE, TEXAS

Rules of Council amendment

Meeting Date: 6/7/2022

Date time: 7:00 PM

Subject/Recommendation: Consider and possible action to approve a resolution of the City of Kyle, Texas, Amending Resolution Number 1273 and Restating the City of Kyle Rules of City Council. ~ *Travis Mitchell, Mayor*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2022 0607 Rules of Council Amendment - Red Line
- 2022 0607 Amended Resolution and Rules of Council - Clean

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AMENDING RESOLUTION NUMBER 1273 AND RESTATING THE CITY OF KYLE RULES OF CITY COUNCIL, PROVIDING FOR MEETINGS, AGENDA, COUNCIL PROCEEDINGS, RECONSIDERATION OF AGENDA ITEMS; PARLIAMENTARY PROCEDURE, DEBATE, DECORUM, AND CITIZEN PARTICIPATION AT MEETINGS; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS

Whereas, Article III of the Kyle City Charter provides that City Council may determine and define the rule of its proceedings and require certain decorum it deems necessary to properly transact the business of the city; and

Whereas, the Mayor and City Council have now reviewed and agree upon certain amendments to the *Rules of City Council* to amend rules and procedures herein.

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

Section 1. Findings. The recitals herein are 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. Authorization. The *City of Kyle Rules of City Council*, a copy of which is attached hereto marked "Exhibit A" and made part of this Resolution are hereby approved and adopted as written, and replaces the previously adopted rules contained in Resolution No. 1273.

Section 3. Effective Date. This Resolution shall take effect from and after the date of its passage as authorized by the Charter of the City of Kyle and shall expire upon the first regular scheduled city council meeting where any Councilmember is seated to fill an expired term.

Section 4. Open Meetings. That it is hereby 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 ____ day of June, 2022.

THE CITY OF KYLE, TEXAS

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary

CITY OF KYLE

RULES OF CITY COUNCIL

Effective immediately following adoption of these rules, the following rules, regulations, and bi laws will be adhered to by the Kyle City Council. They shall remain in effect unless otherwise changed by formal approval by City Council. Such action is authorized and is in keeping with **Kyle City Charter**, Article III, Section 3.05, which states in part, that the City Council may determine the rules of its proceedings. These Rules shall be reviewed annually or in the meeting following the seating of a new Councilmember.

A. MEETING – Four types of meetings are recognized:

1. **Regular Meetings** will be held on the first and third Tuesday night of each month. Unless determined otherwise by majority vote of the City Council, such meetings will be held at the City Hall in the Council Chambers commencing at 7:00 p.m.
2. **Special Meetings** are subject to call by the Mayor or City Manager. Except in unusual circumstances, these meetings will be held at the City Hall at a stated time. The purpose of such meeting is to act upon matters that should not be delayed until a Regular Meeting. Minutes of such meeting will be maintained as a Special Meeting.
3. **Workshop Meetings** are subject to call by the Mayor, City Manager, or Councilmember, subject to a majority will. The time, place and purpose will be stated at each instance. The purpose of such meeting shall be to discuss in-depth or to explore matters of interest to the City. A Workshop Meeting Agenda shall not include any action item.
4. **Emergency Meetings** are to be held pursuant to Section 551.045 of the Texas Government Code.

B. AGENDA – The following stipulations relate to the Agenda for Meetings of the Council:

1. All Councilmembers may submit up to but no more than three (3) agenda items to the Mayor or City Manager. Agenda items must be requested by email and must be submitted to the Mayor or City Manager prior to 8:00 a.m. on the Thursday before the next regular City Council meeting. Items to be added to a special City Council meeting, or a workshop, must also be requested by email and must be submitted to the Mayor or City Manager four (4) business days prior to the meeting. ~~Council-requested agenda items shall be placed at the beginning of the section of the agenda under which the particular council-requested agenda item belongs.~~ Agenda order is at the discretion of the Mayor and City Manager and will generally follow the following format: 1. Presentations and Proclamations 2. City Business 3. Council Business. If a Councilmember wishes to request an item be placed in a specific location on the agenda, he or she should make that request in writing concurrently with the agenda request and shall include an explanation. The Mayor or City Manager shall accommodate the request if it is deemed reasonable and not harmful to the flow of the meeting.

2. In order to ensure that council-requested agenda items are compliant with the Texas Open Meetings Act, emails requesting agenda items should follow one of two formats. A Councilmember may either write out the specific agenda language, or a Councilmember may write a sufficient description of the subject and the Mayor ~~and or~~ City Manager will craft the language. If the Mayor or City Manager believes a request is not sufficiently descriptive to comply with the Texas Open Meetings Act, the Mayor or City Manager shall correspond with the Councilmember in order to rectify the situation. In the event of a disagreement, the Mayor, City Manager, or Councilmember may request an opinion from the City Attorney whose ruling shall be final.

All council-requested agenda items submitted in accordance with Section B.1. and B.2., that pertain to City business and that are not otherwise prohibited from being placed on the agenda by these rules, the City Charter, a City ordinance, or applicable state law, will appear on the agenda for the meeting. In the event of a disagreement regarding whether a council-requested agenda item should appear on an agenda, the Mayor, City Manager, or Councilmember may request an opinion from the City Attorney whose ruling shall be final. The City Attorney's ruling shall be given in writing and shared with the Mayor, City Manager, and City Council. If an item requested by a Councilmember fails to pass by the required vote of the City Council, that same item or one of substantially similar subject matter may not be placed back on the agenda for at least six (6) months from the day of the vote unless the matter is brought back for reconsideration in accordance with Section E.6. After the six (6) month period, any Councilmember may again submit the agenda item to the Mayor or City Manager for Council consideration. The Mayor, working in conjunction with the City Manager, will determine any other business items and for placement on the agenda for consideration of Council for Regular and Special Meetings.

When an individual Councilmember requests that an item be included on the meeting agenda, the City Manager shall not be compelled to conduct any research or preparation for such agenda item. Any request for information relative to said agenda item, other than public records, shall be provided to the Council prior to discussion of such item at the meeting.

3. Agenda materials made available three (3) business days prior to the meeting shall be sufficient notice of items to be discussed to have afforded ample opportunity for all Councilmembers to inquire into the nature of each matter. However, in accordance with sec. 551.043(a) of the Texas Local Government Code, the Mayor, working in conjunction with the City Manager, may modify the posted agenda up to seventy-two (72) hours prior to the meeting.
4. All public meetings will be noticed in accordance with the Texas Open Meetings Act.

C. DAIS

1. Councilmembers shall be seated on the dais in sequential order from left to right by district number with the Mayor seated in the center.
2. Council members shall exercise professionalism with texting, email, or participating in any form of electronic communication while seated at the dais. Council members shall not text, email, or participate in any form of electronic communications with other council members while seated at the dais.

D. COUNCIL MEETING PROCEEDINGS – These procedures shall apply to all meetings of the City Council.

1. **Chair** – The Mayor shall be the presiding officer at all meetings of the City Council and have a voice in all of its proceedings. In event of the absence of the Mayor, the Mayor Pro Tem shall be the presiding officer. In the event of the absence of the Mayor and Mayor Pro Tem, the Mayor may designate a Chair from the members of Council to preside over the meeting.
2. **Roll Call** – The presiding officer shall take the Chair at the hour appointed for Council to meet and shall immediately call the City Council to order. The roll shall then be taken by the City Secretary, who shall enter in the minutes of each meeting the names of members present.
3. **Addressing the Chair** – Councilmembers shall speak in Council Meetings only upon being recognized by the Mayor or Chair, whose recognition shall not be withheld. A Councilmember shall signal his or her request for recognition by raising his or her hand.
4. **Voting** – All members of the Council present shall vote upon every issue, subject or matter properly before the Council and requiring a Council vote; provided that, if any member of the Council has a conflict of interest that fact shall be stated in the minutes and such member shall abstain from discussion and voting on the issue. Additionally, if any member of the Council abstains from a vote, that member shall immediately fill out an affidavit with the City Secretary stating the conflict of interest or other reason requiring the abstention. No ordinance, resolution, order, action, matter or issue, shall be passed, approved, adopted, taken or consented to except by a majority vote of the members of Council present and voting, and not less than four (4) affirmative votes shall be required to pass, approve, adopt, take action on, or consent to any ordinance, resolution, action, matter, issue, or motion (*Kyle City Charter, Article III, Section 3.08*), except for canvassing an election, in accordance with Texas Election Code Sec. 67.004.
5. **Recordation of Vote** – At the discretion of the Mayor or Chair, any vote on a qualifying motion may be recorded by either a simultaneous voice vote of Councilmembers or by individual roll call. A roll call vote shall be taken and duly recorded upon request by any member of Council.
6. **Attendance** – No member shall be excused from attendance at a Council meeting except by a vote of a majority of the members present.

E. PARLIAMENTARY PROCEDURE – In conducting all meetings of City Council, it shall be Council’s intent to generally follow Robert’s Rules of Order and the following commonly used procedures:

PARLIAMENTARY QUESTIONS, MOTIONS AND THEIR PRECEDENCE:

	Debatable	Amendable	A Majority Vote (of those present)
To adjourn	No	No	Yes No
To take a recess	No	Yes	Yes
For the previous question	No	No	Yes
To continue to a time certain	Yes	Yes	Yes
To amend	Yes	Yes	Yes
To offer a substitute amendment	Yes	Yes	Yes
To postpone indefinitely	Yes	No	Yes
To table	Yes	No	Yes
To adjourn to Executive Session	Yes	Yes	Yes
To reconvene to Regular Session after Executive Session	No	Yes	Yes

1. **Opening an Item for Discussion** – To initiate discussion, the Mayor or Chair shall introduce an agenda item, in most cases by reading or summarizing the heading of the proposed legislation. After the Mayor or Chair has introduced the agenda item, the item will be brought forward for discussion. Council members shall then adhere to the procedures defined herein for general discussion or debate of the pending item.

A Councilmember may not be recognized to speak or make motions if no item has yet been properly introduced by the Mayor or Chair.

2. **Discussing an Item Prior to a Motion** – After an item has been properly introduced by the Mayor or Chair, but prior to a motion, the Council shall refrain from debate. Rather, the Council may ask questions or provide factual statements related to the item.

3. **Handing a Motion** – The three steps by which a motion is normally brought before Council are as follows: (a) The Mayor or a Councilmember who has the floor makes the

motion; (b) another Councilmember or the Mayor seconds the motion; and (c) the Mayor or Chair states the question on the motion.

When a motion is made, no further discussion will be permitted until the Mayor or Chair receives a second.

When the Mayor or Chair has stated the question, the motion is pending. It is then open to further discussion and debate, if necessary.

~~Any Councilmember who has made a motion that has been duly placed before Council will have the right to speak first in debate, if so desired, after the Mayor or Chair has stated the question.~~

4. **Amending a Motion** – Amending a motion that is before Council allows for additional clarification of action pending before Council. After any motion is made and properly seconded, placing it before the Council, the Mayor or Chair shall ask if there are any questions or further discussion, except non-debatable items. If, as a result of the ensuing discussion, the Councilmember who made the motion wishes to amend, add to, and/or clarify his/her motion, he/she shall be permitted to do so before the vote is taken. Upon its proper seconding by a Councilmember or the Mayor, the amended motion may be immediately put to a vote.
5. **Close Debate to Vote** – Debate shall normally be closed after every Councilmember wishing to speak has been given every opportunity to speak and no Councilmember has any additional comments to make. When the debate appears to have closed, the Mayor or Chair shall call for a vote.
6. **Calling the Question** – If a motion or amendment is before the Council, a Councilmember who has the floor may call for the question on any issue by stating “I call the question.” The Mayor or Chair may interrupt the speaker to call the question. In either case, if the question is properly called, the Mayor or Chair shall immediately ask for a second, and upon seconding by another Councilmember, shall immediately ask for a roll call vote. Passage of the motion to call the previous question shall terminate debate on the original motion, amendment, or amended motion, and the motion which was called shall then immediately be put to a roll call vote.
7. **Point of Order** – At any time during the meeting, a Councilmember may seek recognition from the Mayor or Chair to call a Point of Order and may interrupt to do so. After being recognized, the Councilmember shall explain what Council procedure they believe was not followed. The Mayor or Chair will then rule on the Point of Order by either sustaining or overruling.

If the Point of Order is sustained, corrective action will be taken by the Mayor or Chair to rectify the situation if possible. If no corrective action can be taken, the Point of Order and ruling will be recorded by the City Secretary in the official meeting minutes. If the Point

of Order is overruled, the floor will be given back to whomever had it before the Point of Order and council business shall proceed.

If the Councilmember who called the Point of Order disagrees with the ruling of the Mayor or Chair, he or she may immediately appeal following the ruling by verbally stating they would like to appeal. In this case, the Mayor or Chair will ask for a roll call vote of Council and the majority vote shall be the ruling.

Point of Orders must be called immediately after the action in question. If the action has passed and new business is before council, the Mayor or Chair may reject the Point of Order ~~on the basis of~~based on timeliness.

8. **Reconsider** – Reconsidering previous Council action enables a majority of Council, within a limited time and without notice (other than notice required by the Open Meetings Act), to bring back for further consideration a motion that has already been voted on. The purpose of reconsidering a vote is to permit correction of hasty or erroneous action, to ~~take into account~~consider added information or a changed situation that has developed since the taking of the vote, or to bring back a matter that has not- received four votes of the City Council either for or against the matter. The motion to reconsider has the following unique characteristics:
 - a. For matters that were approved with at least four votes of Council:
 - i. The motion to reconsider can be made only by a member who voted with the prevailing side and only at the same meeting the vote to be reconsidered was taken.
 - b. For matters that failed to be approved due to four or more Council members voting against the matter:
 - i. A member of Council from the prevailing side of the vote (who voted against the matter), can request that the matter be reconsidered at the next regular City Council meeting following the meeting at which the matter failed to be approved.
 - ii. The request may be made at the meeting at which the motion failed to pass, or the request may be made in writing and submitted to the City Manager and the City Secretary by 3:00pm on the Thursday before the next regular City Council meeting following the meeting at which the matter failed to be approved.
 - c. For matters that have not received four votes of Council either for or against a motion on the matter:
 - i. Any member of Council can request that the matter be placed on the agenda for reconsideration. The request may be made at the meeting at which the motion failed to pass, or the request may be made in writing and submitted to the City Manager and the City Secretary by 3:00pm on the Thursday before the next regular City Council meeting following the meeting at which the matter failed to receive four votes.

- d. Reconsideration of a matters under this Section will not be limited to the motion or motions made at the prior meeting.
9. **Ordinances** – If a motion to approve an ordinance passes with a 7-0 affirmative vote on first reading, said ordinance is finally passed unless objected to by a Councilmember or the Mayor. If an objection exists, then the item must be presented subsequently for a second reading.

F. **DEBATE**

1. **Limit Debate** – By majority vote, the Mayor and Council may agree to limit the duration of debate on any business before it. That agreement must be formalized by Council on a roll call vote.
2. **Assignment of the Floor for Debate** – When a measure is presented for consideration by the Council, the Mayor or Chair shall recognize the appropriate individual to present the case. If the Councilmember who made the motion that is immediately pending claims the floor and has not already spoken on the question, he is entitled to be recognized in preference to other members. When two or more Councilmembers wish to speak, the Mayor or Chair shall select the individual who is to speak first. A motion can be made only by that Councilmember who has been recognized by the Mayor or Chair as having the floor.
3. The Mayor shall not be obligated to recognize any Councilmember for a second comment on the subject or amendment until every Councilmember wishing to speak has been allowed a first comment. Councilmembers shall also have the right to request the floor be yielded to him/her for the sole purpose of asking a question. If the Councilmember requested to yield the floor obliges, then the requesting Councilmember may ask his/her question. The floor will then be transferred back to the originating member.

G. **DECORUM**

1. **Dilatory & Improper Motions** – It is the duty of the Mayor or Chair to prevent Councilmembers from misusing the legitimate motions merely to obstruct business. Whenever the Mayor or Chair becomes convinced that one or more members are using parliamentary forms for obstructive purposes, he or she should rule that such motions are out of order.
2. Councilmembers shall conduct themselves in a professional manner. No Councilmember shall indulge in personalities, use language publicly offensive, or use language tending to hold a member of the City Council or staff up to contempt. Councilmembers shall not be permitted to accuse (expressly or implied) another Councilmember or staff of violating ethics or statutory laws publicly during a Council Meeting, nor shall Councilmembers be

permitted to place items on the agenda to that effect. This section applies to the Mayor, all staff, and all Councilmembers.

3. If a Councilmember is speaking or otherwise transgressing the rules of the Council, the Mayor or any Councilmember may call him/her to order. City Council itself shall, if appealed to, decide the case without debate. If the decision is in favor of the member called to order, he/she shall be at liberty to proceed, but not otherwise. If determined to have transgressed the rules by a majority of Council, said member may be subject to censure or other such punishment as the Council deems proper and consistent with City Ordinances and the City Charter.

H. CITIZEN PARTICIPATION AT MEETINGS – The following procedures shall be utilized to provide for citizen participation:

1. All citizens attending any Council meeting will have an opportunity to sign the roster.
2. As required by the City Charter, a Citizen Comment agenda item will be placed on the agenda for each meeting of the City Council. The Mayor or Chair shall require that a citizen wishing to speak during Citizen Comment complete and submit a “Public Citizen Comment Form” for the record and submit it to the City Secretary. When properly recognized by the Mayor or Chair, citizens shall approach the podium, state their name for the record, and each person providing testimony will be limited to three (3) minutes for comments, subject to the discretion of the Mayor or Chair.
3. The Mayor or Chair shall ensure that citizen comments are directed to the Mayor and Council and pertain to matters of general importance to the City and its operations. The Mayor shall ensure that members of the City Council and city staff refrain from discussion of matters raised during citizen comment unless the matter is directly related to a properly posted agenda item or otherwise requires a clarification regarding city procedural or ministerial matters. The Mayor and Council may direct staff to engage a citizen at an appropriate time to address a matter raised during the citizen comment period.
4. During Citizen Comment, if a citizen requests that the City Council take action on a matter that requires legislation or other official action of the City Council, the Mayor or Chair shall inform the requestor that a member of the City Council may place an item on a future agenda for consideration by the City Council, in accordance with the provisions of Section B.1. and B.2. of these *Rules of Council*.
5. The Mayor or Chair is responsible for ensuring the orderly conduct of participants during City Council meetings and shall prohibit the use of the citizen comment period to engage in personal attacks, discussion of personnel and employment matters, the use of profanity or ethnic, racial or gender-oriented slurs, or any “disorderly conduct” which violates state or local law.
6. The Mayor or Chair is responsible for ensuring the orderly conduct of participants during City Council meetings and shall ensure that any person providing testimony before the City

Council is properly recognized before speaking. The Mayor or Chair shall prohibit any person from engaging in disorderly conduct that interferes with properly recognized testimony or that is otherwise disruptive to the proceedings, including but not limited to audible gestures such as clapping, jeering, shouting and other audible outbursts and visual gestures such as visual displays or other visual communication or actions that interfere with the orderly conduct of the proceedings. The Mayor or Chair may seek the assistance of law enforcement to restore or otherwise ensure order during City Council proceedings.

7. The Mayor or Chair may recognize a citizen to participate in the discussion of any item of business as listed upon the meeting agenda. The Mayor or Chair of said meeting may ask the citizens present if they wish to speak for or against or as a resource witness regarding any item listed on the meeting agenda. If so, they may be given an opportunity to do so at the proper time when duly recognized by the Mayor or Chair of the meeting. A member of the City Council wishing to engage a citizen during the discussion of an agenda item shall make such a request of the Mayor or Chair who shall have discretion whether to allow said discussion to proceed.
8. If there is no objection from a member of the City Council, the Mayor or Chair may deviate from rules governing *Citizen Participation*, to obtain information necessary for consideration of a matter being deliberated by the City Council.
9. Upon the request of a member of the City Council, the Mayor or Chair shall strictly enforce the rules governing *Citizen Participation*.

I. COUNCIL ATTENDANCE – The following rules shall apply to council absences and tardiness and will clarify Section 3.06 and 3.09 of the Kyle City Charter.

1. Attendance at Special Meetings held on the same day as a Regular Meeting shall not be treated as a separate meeting for the purpose of determining absences, whether excused or unexcused, as it relates to Section 3.06 and 3.09 of the Kyle City Charter.
2. Except for the prior point, and consistent with Section 3.06 of the Charter, Council absence at Special Meetings, Workshop Meetings, Emergency Meetings, and Regular Meetings shall only be excused by a majority vote of council.
3. For the purposes of this section, an absence shall be defined as a Councilmember failing to attend the entirety of a meeting. Tardiness shall be defined as a Councilmember failing to be present at roll call or leaving prior to adjournment.
4. Absences and tardiness may, but are not required to, be excused by a majority vote of Council. A Councilmember who wishes to have their absence or tardiness excused should, when possible, inform the Mayor or Mayor Pro Tem prior to the absence or tardiness occurring.

5. While Section 3.06 considers council attendance at all officially called meetings, Section 3.09 shall only be calculated based on Regular Meetings (typically scheduled on the first and third Tuesday of every month).
6. A Councilmember who receives an excused absence for a Regular Meeting shall not have their compensation lowered based on missing that meeting. However, no more than two (2) Regular Meetings may be excused to prevent a reduction in Council compensation in a fiscal year.
7. Council should not invoke Section 3.06 or 3.09 based on tardiness; however, repetitive unexcused tardiness may be used as the basis for Council action consistent with Section 3.05 of the Kyle City Charter.

J. COUNCIL/STAFF COMMUNICATION – The following rules shall apply to all Councilmembers and the Mayor.

1. As per the City Charter, Council shall not give direction to any member of staff, including the City Manager, but by majority vote of Council at a public meeting.
2. Council shall not make requests for information from anyone except the City Manager, the City Attorney, the City Secretary, or an Assistant City Manager. The request shall be in the form of an email and in all instances the City Manager shall be copied. Whenever reasonable, appropriate staff shall accommodate and respond to Council requests for information in a timely manner (initial response typically in 1-2 business days). To promote fairness and to maintain staff productivity, the City Manager may reduce the timeliness of responsiveness to individual Council inquiries if the volume and nature of the requests are outliers compared to most Council inquiries.
3. Council may ask questions of staff during Council meetings. Council shall avoid giving direction or assignments to staff during meetings except by motion and majority vote. Staff shall not construe any questions or statements from Council as direction, except by motion and majority vote.
4. Council may request and attend meetings with staff – with or without the City Manager present – but only with the knowledge and express permission of the City Manager.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AMENDING RESOLUTION NUMBER 1273 AND RESTATING THE CITY OF KYLE RULES OF CITY COUNCIL, PROVIDING FOR MEETINGS, AGENDA, COUNCIL PROCEEDINGS, RECONSIDERATION OF AGENDA ITEMS; PARLIAMENTARY PROCEDURE, DEBATE, DECORUM, AND CITIZEN PARTICIPATION AT MEETINGS; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS

Whereas, Article III of the Kyle City Charter provides that City Council may determine and define the rule of its proceedings and require certain decorum it deems necessary to properly transact the business of the city; and

Whereas, the Mayor and City Council have now reviewed and agree upon certain amendments to the *Rules of City Council* to amend rules and procedures herein.

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

Section 1. Findings. The recitals herein are 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. Authorization. The *City of Kyle Rules of City Council*, a copy of which is attached hereto marked “Exhibit A” and made part of this Resolution are hereby approved and adopted as written, and replaces the previously adopted rules contained in Resolution No. 1273.

Section 3. Effective Date. This Resolution shall take effect from and after the date of its passage as authorized by the Charter of the City of Kyle and shall expire upon the first regular scheduled city council meeting where any Councilmember is seated to fill an expired term.

Section 4. Open Meetings. That it is hereby 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 ____ day of June, 2022.

THE CITY OF KYLE, TEXAS

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary

CITY OF KYLE**RULES OF CITY COUNCIL**

Effective immediately following adoption of these rules, the following rules, regulations, and bi laws will be adhered to by the Kyle City Council. They shall remain in effect unless otherwise changed by formal approval by City Council. Such action is authorized and is in keeping with **Kyle City Charter**, Article III, Section 3.05, which states in part, that the City Council may determine the rules of its proceedings. These Rules shall be reviewed annually or in the meeting following the seating of a new Councilmember.

A. MEETING – Four types of meetings are recognized:

1. **Regular Meetings** will be held on the first and third Tuesday night of each month. Unless determined otherwise by majority vote of the City Council, such meetings will be held at the City Hall in the Council Chambers commencing at 7:00 p.m.
2. **Special Meetings** are subject to call by the Mayor or City Manager. Except in unusual circumstances, these meetings will be held at the City Hall at a stated time. The purpose of such meeting is to act upon matters that should not be delayed until a Regular Meeting. Minutes of such meeting will be maintained as a Special Meeting.
3. **Workshop Meetings** are subject to call by the Mayor, City Manager, or Councilmember, subject to a majority will. The time, place and purpose will be stated at each instance. The purpose of such meeting shall be to discuss in-depth or to explore matters of interest to the City. A Workshop Meeting Agenda shall not include any action item.
4. **Emergency Meetings** are to be held pursuant to Section 551.045 of the Texas Government Code.

B. AGENDA – The following stipulations relate to the Agenda for Meetings of the Council:

1. All Councilmembers may submit up to but no more than three (3) agenda items to the Mayor or City Manager. Agenda items must be requested by email and must be submitted to the Mayor or City Manager prior to 8:00 a.m. on the Thursday before the next regular City Council meeting. Items to be added to a special City Council meeting, or a workshop, must also be requested by email and must be submitted to the Mayor or City Manager four (4) business days prior to the meeting. Agenda order is at the discretion of the Mayor and City Manager and will generally follow the following format: 1. Presentations and Proclamations 2. City Business 3. Council Business. If a Councilmember wishes to request an item be placed in a specific location on the agenda, he or she should make that request in writing concurrently with the agenda request and shall include an explanation. The Mayor or City Manager shall accommodate the request if it is deemed reasonable and not harmful to the flow of the meeting.

2. In order to ensure that council-requested agenda items are compliant with the Texas Open Meetings Act, emails requesting agenda items should follow one of two formats. A Councilmember may either write out the specific agenda language, or a Councilmember may write a sufficient description of the subject and the Mayor or City Manager will craft the language. If the Mayor or City Manager believes a request is not sufficiently descriptive to comply with the Texas Open Meetings Act, the Mayor or City Manager shall correspond with the Councilmember in order to rectify the situation. In the event of a disagreement, the Mayor, City Manager, or Councilmember may request an opinion from the City Attorney whose ruling shall be final.

All council-requested agenda items submitted in accordance with Section B.1. and B.2., that pertain to City business and that are not otherwise prohibited from being placed on the agenda by these rules, the City Charter, a City ordinance, or applicable state law, will appear on the agenda for the meeting. In the event of a disagreement regarding whether a council-requested agenda item should appear on an agenda, the Mayor, City Manager, or Councilmember may request an opinion from the City Attorney whose ruling shall be final. The City Attorney's ruling shall be given in writing and shared with the Mayor, City Manager, and City Council. If an item requested by a Councilmember fails to pass by the required vote of the City Council, that same item or one of substantially similar subject matter may not be placed back on the agenda for at least six (6) months from the day of the vote unless the matter is brought back for reconsideration in accordance with Section E.6. After the six (6) month period, any Councilmember may again submit the agenda item to the Mayor or City Manager for Council consideration. The Mayor, working in conjunction with the City Manager, will determine any other business items and for placement on the agenda for consideration of Council for Regular and Special Meetings.

When an individual Councilmember requests that an item be included on the meeting agenda, the City Manager shall not be compelled to conduct any research or preparation for such agenda item. Any request for information relative to said agenda item, other than public records, shall be provided to the Council prior to discussion of such item at the meeting.

3. Agenda materials made available three (3) business days prior to the meeting shall be sufficient notice of items to be discussed to have afforded ample opportunity for all Councilmembers to inquire into the nature of each matter. However, in accordance with sec. 551.043(a) of the Texas Local Government Code, the Mayor, working in conjunction with the City Manager, may modify the posted agenda up to seventy-two (72) hours prior to the meeting.
4. All public meetings will be noticed in accordance with the Texas Open Meetings Act.

C. DAIS

1. Councilmembers shall be seated on the dais in sequential order from left to right by district number with the Mayor seated in the center.

2. Council members shall exercise professionalism with texting, email, or participating in any form of electronic communication while seated at the dais. Council members shall not text, email, or participate in any form of electronic communications with other council members while seated at the dais.

D. COUNCIL MEETING PROCEEDINGS – These procedures shall apply to all meetings of the City Council.

1. **Chair** – The Mayor shall be the presiding officer at all meetings of the City Council and have a voice in all of its proceedings. In event of the absence of the Mayor, the Mayor Pro Tem shall be the presiding officer. In the event of the absence of the Mayor and Mayor Pro Tem, the Mayor may designate a Chair from the members of Council to preside over the meeting.
2. **Roll Call** – The presiding officer shall take the Chair at the hour appointed for Council to meet and shall immediately call the City Council to order. The roll shall then be taken by the City Secretary, who shall enter in the minutes of each meeting the names of members present.
3. **Addressing the Chair** – Councilmembers shall speak in Council Meetings only upon being recognized by the Mayor or Chair, whose recognition shall not be withheld. A Councilmember shall signal his or her request for recognition by raising his or her hand.
4. **Voting** – All members of the Council present shall vote upon every issue, subject or matter properly before the Council and requiring a Council vote; provided that, if any member of the Council has a conflict of interest that fact shall be stated in the minutes and such member shall abstain from discussion and voting on the issue. Additionally, if any member of the Council abstains from a vote, that member shall immediately fill out an affidavit with the City Secretary stating the conflict of interest or other reason requiring the abstention. No ordinance, resolution, order, action, matter or issue, shall be passed, approved, adopted, taken or consented to except by a majority vote of the members of Council present and voting, and not less than four (4) affirmative votes shall be required to pass, approve, adopt, take action on, or consent to any ordinance, resolution, action, matter, issue, or motion (*Kyle City Charter, Article III, Section 3.08*), except for canvassing an election, in accordance with Texas Election Code Sec. 67.004.
5. **Recordation of Vote** – At the discretion of the Mayor or Chair, any vote on a qualifying motion may be recorded by either a simultaneous voice vote of Councilmembers or by individual roll call. A roll call vote shall be taken and duly recorded upon request by any member of Council.
6. **Attendance** – No member shall be excused from attendance at a Council meeting except by a vote of a majority of the members present.

E. PARLIAMENTARY PROCEDURE – In conducting all meetings of City Council, it shall be Council’s intent to generally follow Robert’s Rules of Order and the following commonly used procedures:

PARLIAMENTARY QUESTIONS, MOTIONS AND THEIR PRECEDENCE:

	Debatable	Amendable	A Majority Vote (of those present)
To adjourn	No	No	No
To take a recess	No	Yes	Yes
For the previous question	No	No	Yes
To continue to a time certain	Yes	Yes	Yes
To amend	Yes	Yes	Yes
To offer a substitute amendment	Yes	Yes	Yes
To postpone indefinitely	Yes	No	Yes
To table	Yes	No	Yes
To adjourn to Executive Session	Yes	Yes	Yes
To reconvene to Regular Session after Executive Session	No	Yes	Yes

1. **Opening an Item for Discussion** – To initiate discussion, the Mayor or Chair shall introduce an agenda item, in most cases by reading or summarizing the heading of the proposed legislation. After the Mayor or Chair has introduced the agenda item, the item will be brought forward for discussion. Council members shall then adhere to the procedures defined herein for general discussion or debate of the pending item.

A Councilmember may not be recognized to speak or make motions if no item has yet been properly introduced by the Mayor or Chair.

2. **Discussing an Item Prior to a Motion** – After an item has been properly introduced by the Mayor or Chair, but prior to a motion, the Council shall refrain from debate. Rather, the Council may ask questions or provide factual statements related to the item.

3. **Handing a Motion** – The three steps by which a motion is normally brought before Council are as follows: (a) The Mayor or a Councilmember who has the floor makes the

motion; (b) another Councilmember or the Mayor seconds the motion; and (c) the Mayor or Chair states the question on the motion.

When a motion is made, no further discussion will be permitted until the Mayor or Chair receives a second.

When the Mayor or Chair has stated the question, the motion is pending. It is then open to further discussion and debate, if necessary.

4. **Amending a Motion** – Amending a motion that is before Council allows for additional clarification of action pending before Council. After any motion is made and properly seconded, placing it before the Council, the Mayor or Chair shall ask if there are any questions or further discussion, except non-debatable items. If, as a result of the ensuing discussion, the Councilmember who made the motion wishes to amend, add to, and/or clarify his/her motion, he/she shall be permitted to do so before the vote is taken. Upon its proper seconding by a Councilmember or the Mayor, the amended motion may be immediately put to a vote.
5. **Close Debate to Vote** – Debate shall normally be closed after every Councilmember wishing to speak has been given every opportunity to speak and no Councilmember has any additional comments to make. When the debate appears to have closed, the Mayor or Chair shall call for a vote.
6. **Calling the Question** – If a motion or amendment is before the Council, a Councilmember who has the floor may call for the question on any issue by stating “I call the question.” The Mayor or Chair may interrupt the speaker to call the question. In either case, if the question is properly called, the Mayor or Chair shall immediately ask for a second, and upon seconding, shall immediately ask for a roll call vote. Passage of the motion to call the previous question shall terminate debate on the original motion, amendment, or amended motion, and the motion which was called shall then immediately be put to a roll call vote.
7. **Point of Order** – At any time during the meeting, a Councilmember may seek recognition from the Mayor or Chair to call a Point of Order and may interrupt to do so. After being recognized, the Councilmember shall explain what Council procedure they believe was not followed. The Mayor or Chair will then rule on the Point of Order by either sustaining or overruling.

If the Point of Order is sustained, corrective action will be taken by the Mayor or Chair to rectify the situation if possible. If no corrective action can be taken, the Point of Order and ruling will be recorded by the City Secretary in the official meeting minutes. If the Point of Order is overruled, the floor will be given back to whomever had it before the Point of Order and council business shall proceed.

If the Councilmember who called the Point of Order disagrees with the ruling of the Mayor or Chair, he or she may immediately appeal following the ruling by verbally stating they would like to appeal. In this case, the Mayor or Chair will ask for a roll call vote of Council and the majority vote shall be the ruling.

Point of Orders must be called immediately after the action in question. If the action has passed and new business is before council, the Mayor or Chair may reject the Point of Order based on timeliness.

8. **Reconsider** – Reconsidering previous Council action enables a majority of Council, within a limited time and without notice (other than notice required by the Open Meetings Act), to bring back for further consideration a motion that has already been voted on. The purpose of reconsidering a vote is to permit correction of hasty or erroneous action, to consider added information or a changed situation that has developed since the taking of the vote, or to bring back a matter that has not received four votes of the City Council either for or against the matter. The motion to reconsider has the following unique characteristics:
- a. For matters that were approved with at least four votes of Council:
 - i. The motion to reconsider can be made only by a member who voted with the prevailing side and only at the same meeting the vote to be reconsidered was taken.
 - b. For matters that failed to be approved due to four or more Council members voting against the matter:
 - i. A member of Council from the prevailing side of the vote (who voted against the matter), can request that the matter be reconsidered at the next regular City Council meeting following the meeting at which the matter failed to be approved.
 - ii. The request may be made at the meeting at which the motion failed to pass, or the request may be made in writing and submitted to the City Manager and the City Secretary by 3:00pm on the Thursday before the next regular City Council meeting following the meeting at which the matter failed to be approved.
 - c. For matters that have not received four votes of Council either for or against a motion on the matter:
 - i. Any member of Council can request that the matter be placed on the agenda for reconsideration. The request may be made at the meeting at which the motion failed to pass, or the request may be made in writing and submitted to the City Manager and the City Secretary by 3:00pm on the Thursday before the next regular City Council meeting following the meeting at which the matter failed to receive four votes.
 - d. Reconsideration of a matters under this Section will not be limited to the motion or motions made at the prior meeting.

9. **Ordinances** – If a motion to approve an ordinance passes with a 7-0 affirmative vote on first reading, said ordinance is finally passed unless objected to by a Councilmember or the Mayor. If an objection exists, then the item must be presented subsequently for a second reading.

F. DEBATE

1. **Limit Debate** – By majority vote, the Mayor and Council may agree to limit the duration of debate on any business before it. That agreement must be formalized by Council on a roll call vote.
2. **Assignment of the Floor for Debate** – When a measure is presented for consideration by the Council, the Mayor or Chair shall recognize the appropriate individual to present the case. If the Councilmember who made the motion that is immediately pending claims the floor and has not already spoken on the question, he is entitled to be recognized in preference to other members. When two or more Councilmembers wish to speak, the Mayor or Chair shall select the individual who is to speak first. A motion can be made only by that Councilmember who has been recognized by the Mayor or Chair as having the floor.
3. The Mayor shall not be obligated to recognize any Councilmember for a second comment on the subject or amendment until every Councilmember wishing to speak has been allowed a first comment. Councilmembers shall also have the right to request the floor be yielded to him/her for the sole purpose of asking a question. If the Councilmember requested to yield the floor obliges, then the requesting Councilmember may ask his/her question. The floor will then be transferred back to the originating member.

G. DECORUM

1. **Dilatory & Improper Motions** – It is the duty of the Mayor or Chair to prevent Councilmembers from misusing the legitimate motions merely to obstruct business. Whenever the Mayor or Chair becomes convinced that one or more members are using parliamentary forms for obstructive purposes, he or she should rule that such motions are out of order.
2. Councilmembers shall conduct themselves in a professional manner. No Councilmember shall indulge in personalities, use language publicly offensive, or use language tending to hold a member of the City Council or staff up to contempt. Councilmembers shall not be permitted to accuse (expressly or implied) another Councilmember or staff of violating ethics or statutory laws publicly during a Council Meeting, nor shall Councilmembers be permitted to place items on the agenda to that effect. This section applies to the Mayor, all staff, and all Councilmembers.

3. If a Councilmember is speaking or otherwise transgressing the rules of the Council, the Mayor or any Councilmember may call him/her to order. City Council itself shall, if appealed to, decide the case without debate. If the decision is in favor of the member called to order, he/she shall be at liberty to proceed, but not otherwise. If determined to have transgressed the rules by a majority of Council, said member may be subject to censure or other such punishment as the Council deems proper and consistent with City Ordinances and the City Charter.

H. CITIZEN PARTICIPATION AT MEETINGS – The following procedures shall be utilized to provide for citizen participation:

1. All citizens attending any Council meeting will have an opportunity to sign the roster.
2. As required by the City Charter, a Citizen Comment agenda item will be placed on the agenda for each meeting of the City Council. The Mayor or Chair shall require that a citizen wishing to speak during Citizen Comment complete and submit a “Public Citizen Comment Form” for the record and submit it to the City Secretary. When properly recognized by the Mayor or Chair, citizens shall approach the podium, state their name for the record, and each person providing testimony will be limited to three (3) minutes for comments, subject to the discretion of the Mayor or Chair.
3. The Mayor or Chair shall ensure that citizen comments are directed to the Mayor and Council and pertain to matters of general importance to the City and its operations. The Mayor shall ensure that members of the City Council and city staff refrain from discussion of matters raised during citizen comment unless the matter is directly related to a properly posted agenda item or otherwise requires a clarification regarding city procedural or ministerial matters. The Mayor and Council may direct staff to engage a citizen at an appropriate time to address a matter raised during the citizen comment period.
4. During Citizen Comment, if a citizen requests that the City Council take action on a matter that requires legislation or other official action of the City Council, the Mayor or Chair shall inform the requestor that a member of the City Council may place an item on a future agenda for consideration by the City Council, in accordance with the provisions of Section B.1. and B.2. of these *Rules of Council*.
5. The Mayor or Chair is responsible for ensuring the orderly conduct of participants during City Council meetings and shall prohibit the use of the citizen comment period to engage in personal attacks, discussion of personnel and employment matters, the use of profanity or ethnic, racial or gender-oriented slurs, or any “disorderly conduct” which violates state or local law.
6. The Mayor or Chair is responsible for ensuring the orderly conduct of participants during City Council meetings and shall ensure that any person providing testimony before the City Council is properly recognized before speaking. The Mayor or Chair shall prohibit any person from engaging in disorderly conduct that interferes with properly recognized

testimony or that is otherwise disruptive to the proceedings, including but not limited to audible gestures such as clapping, jeering, shouting and other audible outbursts and visual gestures such as visual displays or other visual communication or actions that interfere with the orderly conduct of the proceedings. The Mayor or Chair may seek the assistance of law enforcement to restore or otherwise ensure order during City Council proceedings.

7. The Mayor or Chair may recognize a citizen to participate in the discussion of any item of business as listed upon the meeting agenda. The Mayor or Chair of said meeting may ask the citizens present if they wish to speak for or against or as a resource witness regarding any item listed on the meeting agenda. If so, they may be given an opportunity to do so at the proper time when duly recognized by the Mayor or Chair of the meeting. A member of the City Council wishing to engage a citizen during the discussion of an agenda item shall make such a request of the Mayor or Chair who shall have discretion whether to allow said discussion to proceed.
8. If there is no objection from a member of the City Council, the Mayor or Chair may deviate from rules governing *Citizen Participation*, to obtain information necessary for consideration of a matter being deliberated by the City Council.
9. Upon the request of a member of the City Council, the Mayor or Chair shall strictly enforce the rules governing *Citizen Participation*.

I. COUNCIL ATTENDANCE – The following rules shall apply to council absences and tardiness and will clarify Section 3.06 and 3.09 of the Kyle City Charter.

1. Attendance at Special Meetings held on the same day as a Regular Meeting shall not be treated as a separate meeting for the purpose of determining absences, whether excused or unexcused, as it relates to Section 3.06 and 3.09 of the Kyle City Charter.
2. Except for the prior point, and consistent with Section 3.06 of the Charter, Council absence at Special Meetings, Workshop Meetings, Emergency Meetings, and Regular Meetings shall only be excused by a majority vote of council.
3. For the purposes of this section, an absence shall be defined as a Councilmember failing to attend the entirety of a meeting. Tardiness shall be defined as a Councilmember failing to be present at roll call or leaving prior to adjournment.
4. Absences and tardiness may, but are not required to, be excused by a majority vote of Council. A Councilmember who wishes to have their absence or tardiness excused should, when possible, inform the Mayor or Mayor Pro Tem prior to the absence or tardiness occurring.
5. While Section 3.06 considers council attendance at all officially called meetings, Section 3.09 shall only be calculated based on Regular Meetings (typically scheduled on the first and third Tuesday of every month).

6. A Councilmember who receives an excused absence for a Regular Meeting shall not have their compensation lowered based on missing that meeting. However, no more than two (2) Regular Meetings may be excused to prevent a reduction in Council compensation in a fiscal year.
7. Council should not invoke Section 3.06 or 3.09 based on tardiness; however, repetitive unexcused tardiness may be used as the basis for Council action consistent with Section 3.05 of the Kyle City Charter.

J. COUNCIL/STAFF COMMUNICATION – The following rules shall apply to all Councilmembers and the Mayor.

1. As per the City Charter, Council shall not give direction to any member of staff, including the City Manager, but by majority vote of Council at a public meeting.
2. Council shall not make requests for information from anyone except the City Manager, the City Attorney, the City Secretary, or an Assistant City Manager. The request shall be in the form of an email and in all instances the City Manager shall be copied. Whenever reasonable, appropriate staff shall accommodate and respond to Council requests for information in a timely manner (initial response typically in 1-2 business days). To promote fairness and to maintain staff productivity, the City Manager may reduce the timeliness of responsiveness to individual Council inquiries if the volume and nature of the requests are outliers compared to most Council inquiries.
3. Council may ask questions of staff during Council meetings. Council shall avoid giving direction or assignments to staff during meetings except by motion and majority vote. Staff shall not construe any questions or statements from Council as direction, except by motion and majority vote.
4. Council may request and attend meetings with staff – with or without the City Manager present – but only with the knowledge and express permission of the City Manager.



CITY OF KYLE, TEXAS

Executive Session

Meeting Date: 6/7/2022

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.
 - o Greentrails HOA
 - o Combined Emergency Communications Center
 - o Cause No. 18-1282; Jesse Espinoza v. the City of Kyle, Texas, in the 22nd Judicial District, Hays County, Texas
 - o SOAH Docket No. 407-18-3098.F5, Jesus Espinosa v. Kyle Police Department, Before the State Office of Administrative Hearings
 - o Cause No. 22-0873 The State of Texas, Ex. Rel. 1200 S. Old Stagecoach Road, LLC vs. City of Kyle, Texas
 - o Nonconforming uses and structures
2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
 - o Greentrails HOA
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.
 - o Project Fire Engine Red
 - o Project Tropical Green
 - o Project French Lime
 - o Project Goldfish
 - o Project Titanium
 - o Project Bullseye
 - o Project MBA

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Reconvene

Meeting Date: 6/7/2022
Date time: 7:00 PM

Subject/Recommendation: Take action on items discussed in Executive Session.

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available