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 November 15, 2022, at Kyle City Hall, 100 W. Center Street, Kyle, TX 78640, for the purpose of discussing the following agenda.

Posted this 10th day of November, 2022, prior to 7:00 p.m.

I. Call Meeting to Order

II. Approval of Minutes

- 1. City Council Special Meeting Minutes November 1, 2022. ~ Jennifer Holm, City Secretary
- 2. City Council Meeting Minutes November 1, 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. Agenda Order

3. Agenda Order. ~ *Travis Mitchell, Mayor*

V. Appointments

4. Appointment to the Economic Development & Tourism Board. ~ Victoria Vargas, Director of Economic Development

- Tony Spano, Developer Seat (Reappointment)
- Eddie Brown, Local Business Owner Seat (Reappointment)
- Luke Miller, Healthcare Seat
- Cassidy Berenato, Tourism Seat

VI. Presentation

- 5. Native American Heritage Month Proclamation. ~ *Travis Mitchell, Mayor*
- 6. Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *Jerry Hendrix, Interim City Manager*
 - Veterans Day Parade Recap
 - Santa's Arrival Dec. 1
 - Santa Rides in Kyle Dec. 13-15
 - 25 Days of Christmas Dec. 1-25
 - Downtown Master Plan Public Hearings
 - Comprehensive Plan Update
 - Police Employee Association
 - Team Kyle Update
- 7. CIP/Road Projects and Consent Agenda Presentation. ~ *Leon Barba, P.E., City Engineer*

VII. Consent Agenda

- Authorize a Purchase Order in an amount not to exceed \$150,000.00 to the Lower Colorado River Authority (LCRA) for the purchase of forty-two (42) two-way radios, including programming and accessories, for the Police Department. ~ *Jeff Barnett, Chief of Police*
- 9. Authorize the City's Director of Finance to dispose through an auction facility one (1) Lot of Motorola handheld devices with accessories determined to be surplus equipment by the Police Department. ~ *Jeff Barnett, Chief of Police*
- Authorize the City's Director of Finance to dispose through an auction facility one
 (1) city-owned animal control vehicle determined to be a surplus vehicle by the Police Department. ~ *Jeff Barnett, Chief of Police*
- 11. Authorize award and execution of a Purchase Order to LCCX, LLC, DBA LACKEY DE CARVAJAL CX, San Antonio, Texas, in an amount not to exceed \$66,158.51 for test and balance services at the City's Public Safety Center. ~ Ryan Rosborough, AG/CM, City's Project Manager
- 12. *(Second Reading)* An Ordinance Granting a Five-Year Extension to the Franchise Granted by Ordinance No. 959 and Amended by Ordinance No. 1150 to Pedernales Electric Cooperative Inc., Containing Various Terms and Conditions with regard to the Extension of the Franchise; to Construct, Maintain,

Operate and Use a Transmission and Distribution System in the City of Kyle to Provide Electric Utility Service. ~ *Jerry Hendrix, Interim City Manager*

City Council voted 6-0 to approve on First Reading on 11/1/2022.

VIII.Public Hearings

13. Conduct a public hearing on the Creation of a Reinvestment Zone and its benefits to the City of Kyle and to provide a reasonable opportunity for any owner of property within the proposed Reinvestment Zone to protest the inclusion of their property within the proposed Reinvestment Zone, which proposed zone consists of approximately 179.341 acres generally located east of Post Road and south of County Road 158, known as Limestone Creek. ~ *Travis Mitchell, Mayor*

IX. Items Pulled from Consent Agenda

X. Consider and Possible Action

- 14. [Postponed 10/3/2022] Consider and possible action on a quote from OMJC Signal for the purchase of portable traffic signals in the amount of \$331,600.00. ~ *Amber Lewis, Assistant City Manager*
- 15. [Postponed 10/3/2022] Consideration and Approval of a Resolution Relating to Establishing the City's Intention to Reimburse itself for the Prior Lawful Expenditure of Funds Relating to Constructing Various City Improvements from the Proceeds of Tax-Exempt Obligations to be Issued by the City for Authorized Purposes; Authorizing Other Matters Incident and Related Thereto; and Providing an Effective Date. ~ *Stephanie Leibe, Norton Rose Fulbright US LLP, City's Bond Counsel*
- 16. Discussion and possible action regarding adding Police Department Signage on the Public Safety Center. ~ *Ryan Rosborough*, AG|CM
- 17. *(First Reading)* Approve an ordinance to reduce the speed limit on Conestoga Drive from Old Stage Coach Road to Jarbridge Drive. ~ Leon Barba, P.E., City Engineer
- 18. Approve a resolution authorizing the mayor to negotiate an agreement with KCI TECHNOLOGIES, INC., San Antonio, Texas to provide a comprehensive street pavement evaluation and infrastructure assessment of city streets. ~ *Leon Barba, P.E., City Engineer*
- 19. Approve Task Order #2 with RPS INFRASTRUCTURE, INC., Austin, Texas, a civil engineering consulting firm, to provide field notes and surveyor metes and bounds map for the Marketplace Avenue extension in an amount of \$31,950.25. ~ *Leon Barba, P.E., City Engineer*
- 20. Discussion and Consideration to approve the 104 S. Burleson Project Schematic Design Plans, Budget and Schedule, to proceed into the Design Document Phase of design. ~ *Ryan Rosborough, AG|CM and Todd Kaiser, BGK Architects*

(Second Reading) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 7.17 acres of land from 'A' (Agriculture) to 'CC' (Community Commercial) for property located on Lot 2, Block A of the Findley Subdivision, in Hays County, Texas. (360 Old Stagecoach Retail, LLC - Z-22-0106) ~ Will Atkinson, Director of Planning

Planning and Zoning Commission voted 5-1 to recommend approval of the request.

City Council voted 6-0 to approve on First Reading on 11/1/2022.

- 22. [Postponed 10/3/2022] Approve a development agreement between the City of Kyle and Plum Creek Developers, LLC (Joe Brooks). ~ *Will Atkinson, Director of Planning*
- 23. [Postponed 10/3/2022] (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 18.84 acres of land from 'RS' (Retail Services) to 'PUD' (Planned Unit Development) for property located approximately 400' southwest of the intersection of Marketplace Ave & City Lights Dr. in Hays County, Texas. (Joe Brooks Z-22-0099) ~ *Will Atkinson, Director of Planning*

Planning and Zoning Commission voted 3-2 to recommend approval of the request. City Council voted 6-0 to postpone first reading on 10/18/2022.

• Public Hearing

The public hearing was left open at the 10/18/2022 Council meeting.

24. (First Reading) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 4.01 acres of land from Agriculture 'A' to Retail Service District 'RS' for property located at 23451 IH-35 in Hays County, Texas. (Winn Family Limited Partnership - Z-22-0109). ~ Will Atkinson, Director of Planning

Planning and Zoning Commission voted 7-0 to approve the request.

- Public Hearing
- 25. Presentation of Word Place Development Jeff Barton, Partner, Gap Strategies
- 26. Discussion and possible action for renaming Art Commission to add Arts and Cultural Commission. ~ *Michael Tobias, Council Member*
- 27. (*First Reading*) An Ordinance of the City of Kyle, Texas, Establishing Clearance Requirements for Overhead Electric, Communication, and Cable Television Lines; Providing for violation of the ordinance; Providing a penalty; and Providing for related matters. ~ *Paige Saenz, City Attorney*

- 28. Discussion and possible action regarding review of the City of Kyle's Ordinance Sec. 8-251. Technical provisions for building around pipelines. ~ *Yvonne Flores-Cale, Council Member*
- 29. Consider and possible action to authorize the expenditure of funds to pay off the Kyle Housing Authority USDA Loan. ~ *Jerry Hendrix, Interim City Manager*

XI. Executive Session

- 30. 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.
 - San Marcos and Kyle EAA lease water agreement
 - Discussion regarding 24321 IH 35
 - 2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 to deliberate the purchase of real property for public purpose.

Property Acquisition

- 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.
- 31. Take action on items discussed in Executive Session.

XII. 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 1101 Special Minutes

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: City Council Special Meeting Minutes - November 1, 2022. ~ Jennifer Holm, City Secretary

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

2022 1101 Special DRAFT

SPECIAL CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Special Session on November 1, 2022 at Kyle City Hall with the following persons present:

Diane Hervol

Mayor Travis Mitchell Mayor Pro Tem Robert Rizo Council Member Yvonne Flores-Cale Council Member Ashlee Bradshaw* Council Member Daniela Parsley Council Member Michael Tobias Jerry Hendrix, Interim City Manager Amber Lewis, Assistant City Manager Paige Saenz, City Attorney Rachel Sonnier, Communications Director Grant Bowling, Video Production Specialist Jennifer Holm, City Secretary Victoria Vargas, Economic Dev Director Perwez Moheet, Finance Director Tim Griffith, Police Commander

I. Call Meeting to Order

Mayor Mitchell called the meeting to order at 6:01 p.m. Mayor Mitchell asked the city secretary to call roll.

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

Council Member Bradshaw attended executive session virtually at 6:06 p.m.

II. Citizen Comment Period with City Council

Mayor Mitchell opened citizen comments at 6:01 p.m.

Diane Hervol was called to speak as registered. She spoke about two references about the City Manager position. She stated that she had been a part of two hires of prior city managers, in 2010 and 2014. She stated that the position is a very important position. She stated the average city manager stays six years, and the next six years will be very interesting for the City. She spoke about the process the Councils in 2010 and 2014 took for selecting a city manager and provided her preference for the way they handled it in 2010, even allowing the citizenry to participate. She hoped and asked that each Council member give it all the attention it's due.

With no one else wishing to speak, Mayor Mitchell closed citizen comments at 6:04 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.

*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.

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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 to deliberate the purchase of real property for public purpose.
 - Property Acquisition
- 3. Personnel matters pursuant to Section 551.074.
 - Discussion regarding deliberation, appointment, employment, duties, and evaluation of the Interim City Manager
- 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 Rising Phoenix
 - Project Shamrock

Council Member Flores-Cale read into the record, "Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics: Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071; Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 - Property Acquisition; Personnel matters pursuant to Section 551.074 - Discussion regarding deliberation, appointment, employment, duties, and evaluation of the Interim City Manager; 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 Rising Phoenix; Project Shamrock."

The City Council did not discuss any item under Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, as read in the record.

The City Council convened into executive session at 6:06 p.m.

- 2. Take action on items discussed in Executive Session.
 - Approval of Chapter 380 agreement for Project Shamrock. ~ Victoria Vargas, Interim Director of Economic Development

Mayor Mitchell called the meeting back to order at 7:02 p.m. Mayor Mitchell announced that no action took place in Executive Session but action would be taken now.

Ms. Vargas presented on Project Shamrock.

Mayor Mitchell moved to approve a Chapter 380 Agreement for Project Shamrock Council Member Flores-Cale seconded the motion. Motion carried 6-0.

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IV. Adjourn

Mayor Mitchell moved to adjourn. Council Member Flores-Cale seconded the motion. No vote was held.

Travis Mitchell, Mayor

With no further business to discuss, the City Council adjourned at 7:03 p.m.

Attest:

Jennifer Holm, City Secretary



CITY OF KYLE, TEXAS

2022 1101 Regular Minutes

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: City Council Meeting Minutes - November 1, 2022. ~ Jennifer Holm, City Secretary

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

D 2022 1101 DRAFT

REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on November 1, 2022 at Kyle City Hall with the following persons present:

Evangelina Chapa

Michele Jeanmarie

Dan LePage

Sylvia Gallo

Mayor Travis Mitchell Mayor Pro Tem Robert Rizo Council Member Yvonne Flores-Cale Council Member Ashlee Bradshaw* Council Member Daniela Parsley **Council Member Michael Tobias** Jerry Hendrix, Interim City Manager Amber Lewis, Assistant City Manager Paige Saenz, City Attorney Rachel Sonnier, Communications Director Alison Kelly, Communications Manager Grant Bowling, Video Production Specialist Jennifer Holm, City Secretary Leon Barba, City Engineer Victoria Vargas, Economic Dev. Director Perwez Moheet, Finance Director Marco Forti. IT Director Cara Waits, Interim Library Director Colleen Tierney, Future Library Director Mariana Espinoza, Parks & Recreation Director Aimee Garcia, Recreation Manager Claudia Rocha, Special Events Manager Stacy Anderson, Outdoor Nature Specialist William Atkinson, Planning Director Tim Griffith, Police Commander Will Paiz-Tabash, Emergency Mgmt. Coord. David Amsler, Management Analyst Andrew Cable, Municipal Court Judge

I. Call Meeting to Order

Mayor Mitchell called the meeting to order at 7:04 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 Flores-Cale, Council Member Bradshaw, Council Member Parsley, and Council Member Tobias. A quorum was present.

II. Approval of Minutes

- 1. City Council Special Meeting Minutes October 18, 2022. ~ Jennifer Holm, City Secretary
- 2. City Council Meeting Minutes October 18, 2022. ~ Jennifer Holm, City Secretary

*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.

City Council Meeting Minutes November 1, 2022 – Page 2 Kyle City Hall

Council Member Tobias moved to approve the minutes of the October 18, 2022 Special Council Meeting and the minutes of the October 18, 2022 Regular Council Meeting. Council Member Flores-Cale seconded the motion. Motion carried 6-0.

III. Citizen Comment Period with City Council

Mayor Mitchell opened citizen comments at 7:05 p.m.

Evangelina Chapa was called to speak as registered. She stated that she was disappointed at the last meeting about the discussion regarding the Kyle police department sign. She stated that in previous years there was discussion about a new city hall in Uptown. She stated that the residents spoke against a city hall, saying that if anyone needed a new building it was the police department. She stated that in her opinion the new building should be only for the police.

Michele Jeanmarie was called to speak as registered. She spoke about Exit 217 being closed off. She stated that closing off this exit made no sense to her because Costco is on the rise, so many homes on Windy Hill, they are forced to get off so early near Firestone. She stated that vehicles are cutting through the Amberwood subdivision, and she cannot backup out of her own driveway on Cherrywood. She asked Council to reconsider reopening Exit 217 north.

Dan LePage was called to speak as registered. He stated his concern with the voting, and that improvements need to be made for information to be put out about the individuals to provide a history and their ideas so that people can have a fair assessment of what they are voting for. He asked that the City have candidates provide information for the City's website.

Sylvia Gallo was called to speak as registered. She stated that she is experiencing the same issue as Ms. Jeanmarie. She also stated that the Yarrington exit has a similar issue. She stated that the City's growth needs to be addressed. She wants to see Kyle as a destination for sports and recreation. She stated that the exits must be addressed for the east side expansions. She asked for the Council's support.

With no one else wishing to speak, Mayor Mitchell closed citizen comments at 7:14 p.m.

IV. Agenda Order

3. Agenda Order. ~ Travis Mitchell, Mayor

No action was taken.

V. Presentation

4. Arbor Day Proclamation. ~ *Robert Rizo, Mayor Pro Tem*

Mayor Pro Tem Rizo read aloud the Proclamation acknowledging Arbor Day. No action was taken.

5. Presentation on findings from surveying five communities in Kyle and tornado rebate program. ~ *William Paiz-Tabash, Emergency Management Coordinator*

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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. ~ *Jerry Hendrix, Interim City Manager*
 - City Manager Professional Recruitment Services
 - Comprehensive Plan Kickoff Recap
 - Downtown Master Plan Update
 - Veterans Day Parade Nov 12
 - Santa's Arrival Dec 1
 - Santa Rides in Kyle Dec 13-15
 - 25 Days of Christmas Dec 1-25
 - Paws for Reading Nov 5
 - Food for Fines Thru Nov 12
 - Team Kyle Update

Mr. Hendrix, Ms. Lewis, Mr. Atkinson, Ms. Espinoza and Ms. Waits presented the item.

Mr. Hendrix introduced new employees: Alison Kelly, Claudia Rocha, and Colleen Tierney. He recognized Marco Forti as the next Director of IT and recognized Victoria Vargas as the next Director of Economic Development.

During the item Mayor Mitchell called for a special meeting on November 10 at 6 p.m. for Council to interview the professional recruitment services companies.

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

No action was taken.

VI. Consent Agenda

Mayor Mitchell brought forward Item Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 for consideration.

- 8. Authorize award and execution of a Purchase Order to UPBEAT SITE FURNISHINGS TIPS in an amount not to exceed \$40,483.46 for trash receptacles and furniture for the La Verde. This purchase is being made through the Interlocal Purchasing System (TIPS), a purchasing cooperative, priced under Contract #210305. ~ *Mariana Espinoza, Director of Parks & Recreation*
- 9. Authorize award and execution of a Purchase Order to DELL TECHNOLOGIES in the amount of \$104,702.98 for the purchase of various servers, computers for workstations, and other associated equipment for the Public Safety Center facility. This purchase is being made through the Texas DIR contract #TX DIR-TSO-3763. ~ *Marco Forti, Interim Director of Information Technology and Ryan Rosborough, AG/CM, City's Project Manager*

- 10. Approve Amendment No. 1 to BLACK & VEATCH CORPORATION, San Antonio, Texas, in an amount of \$98,000.00, increasing the total contract amount not to exceed \$1,178,000.00 for professional engineering services for construction management and construction inspection for the City of Kyle wastewater treatment plant expansion. ~ Leon Barba, P.E., City Engineer
- 11. Approval of Change Order No. 9 to SKYBLUE UTILITIES, INC., Kingsland, Texas, in an additional amount of \$148,841.70 increasing the total contract not to exceed \$6,095,724.30 for the Southside Wastewater Improvements Project. ~ *Leon Barba, P.E., City Engineer*
- 12. Approve Reimbursement Agreement between UNION PACIFIC RAILROAD, Omaha, Nebraska, in the amount not to exceed \$25,000.00 for preliminary engineering services for the proposed Kohlers Crossing Overpass project. ~ *Leon Barba, P.E., City Engineer*
- 13. Approve an Interlocal Agreement (ILA) between Hays County and the City of Kyle in an amount not to exceed \$165,000.00 for the proposed Kohlers Crossing Overpass Project. ~ *Leon Barba, P.E., City Engineer*
- 14. (*Second Reading*) An Ordinance of the City of Kyle, Texas, Ratifying, Confirming, and Approving the Granting of Consent to the Creation of the North Hays County Municipal Utility District No. 2 and the Inclusion of the Land Therein ~ *Paige Saenz, City Attorney*

City Council voted 6-0 to approve on first reading on 10/18/2022.

15. (Second Reading) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 153 acres of land from 'A' (Agriculture) to 'R-1-A' (Single Family Attached), approximately 16.5 acres of land from 'A' (Agriculture) to 'R-3-2' (Multifamily Residential 2) and approximately 1.5 acres of land from 'A'(Agriculture) to 'RS' (Retail Services) for property located between Opal Ln and Roland Ln, adjacent to the UPRR tracks, which includes all legally recorded lots in the final plats of Paramount Section 1, Paramount Section 2 & Opal Point at Kyle MF, in Hays County, Texas. This includes all the property contemplated in the 'Development Agreement Between City of Kyle, Texas, and Intermandeco GP, LLC or Assigns'', dated August 10th, 2017 (Intermandeco GP, LLC - Paramount Subdivision - Z-22-0108). ~ Will Atkinson, Director of Planning

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

City Council voted 6-0 to approve on first reading on 10/18/2022.

16. Consider acceptance of a deed dedicating 3.56-acres for parkland purpose relating to Sec.
3(h) Donation Parcel of the "Development Agreement Establishing Development Standards for the Kyle Marketplace Subdivision/Development" (CSW KC II, LLC).
~ Will Atkinson, Director of Planning

17. Approve Plum Creek Phase 2, Section 10 Replat of Lot 7 (SUB-22-0270) 42.04 acres; 2 commercial lots located at FM 1626 and Rikardson. ~ *Will Atkinson, Director of Planning*

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

Mayor Pro Tem Rizo moved to approve Consent Agenda Item Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17. Council Member Flores-Cale seconded the motion. Motion carried 6-0.

VII. Items Pulled from Consent Agenda

VIII. Consider and Possible Action

18. Approve an agreement between the City of Kyle and Judge Andrew Cable for providing Municipal Court Judge services for a two-year period to expire on October 31, 2024 at a fixed fee of \$3,110.00 per month. ~ *Perwez A. Moheet, CPA, Director of Finance*

Council Member Parsley moved to approve Item No.18. Council Member Flores-Cale seconded the motion. Motion carried 6-0.

19. Discussion and possible action to install pet waste stations at Heroes Memorial Park, a slippery rocks sign by the water fall and an additional trash can by Peace Garden. ~ *Daniela Parsley, Council Member*

Mariana Espinoza, Parks and Recreation Director, provided information on the item.

Mayor Mitchell moved to direct staff to install pet waste stations at Heroes Memorial Park, a slippery rocks sign by the water fall and an additional trash can by the Peace Garden. Council Member Parsley seconded the motion. Motion carried 6-0.

20. Consideration and possible action to approve re-allocation of Heroes Memorial Park Contingency funds to La Verde Park Contingency in the amount of \$25,393.10. ~ *Ryan Rosborough*, *AG/CM*

Mayor Mitchell stated that it was requested by staff to postpone this item. No action was taken.

- 21. (*First Reading*) An Ordinance Granting a Five-Year Extension to the Franchise Granted by Ordinance No. 959 and Amended by Ordinance No. 1150 to Pedernales Electric Cooperative Inc., Containing Various Terms and Conditions with regard to the Extension of the Franchise; to Construct, Maintain, Operate and Use a Transmission and Distribution System in the City of Kyle to Provide Electric Utility Service. ~ *Jerry Hendrix, Interim City Manager*
 - Public Hearing

Mayor Mitchell opened the public hearing at 8:24 p.m. With no one wishing to speak, Mayor Mitchell closed the public hearing at 8:24 p.m.

City Council Meeting Minutes November 1, 2022 – Page 6 Kyle City Hall

Mayor Mitchell moved to approve Item No. 21. Council Member Flores-Cale seconded the motion. Motion carried 6-0.

22. (Second Reading) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 5.43 acres of land from 'A' (Agriculture) to 'RS' (Retail Services) for property located approximately 450 feet north of the intersection of IH-35 & Old Bridge Trail in Hays County, Texas (Sunrise Village Investments, LLC - Z-22-0107). ~ Will Atkinson, Director of Planning

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

City Council voted 5-0 to approve on first reading on 10/18/2022.

Mayor Mitchell recused himself and left the dais at 8:26 p.m. Mayor Pro Tem Rizo brought forward the item for discussion. Council Member Tobias moved to approve agenda Item No. 22. Council Member Parsley seconded the motion. Motion carried 5-0 with Mayor Mitchell's recusal.

Mayor Mitchell returned to the dais at 8:28 p.m.

23. (*Second Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 9.12 acres of land to 'PUD MXD' for property located at the NW corner of N. Burleson & Marketplace Avenue, in Hays County, Texas (Julia Parker Family Partnership and the L.W. Parker Family Trust - Z-22-0104). ~ *Will Atkinson, Director of Planning*

Planning and Zoning Commission voted 3-1 to recommend approval of the request.

City Council voted 6-0 to approve on first reading on 10/18/2022.

Council Member Flores-Cale moved to approve Item No. 23. Mayor Pro Tem Rizo seconded the motion. Motion carried 6-0.

24. [Postponed 10/18/2022] (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 7.17 acres of land from 'A' (Agriculture) to 'CC' (Community Commercial) for property located on Lot 2, Block A of the Findley Subdivision, in Hays County, Texas (360 Old Stagecoach Retail, LLC - Z-22-0106). ~ Will Atkinson, Director of Planning

Planning and Zoning Commission voted 5-1 to recommend approval of the request.

• Public Hearing

The public hearing was left open on 10/18/2022.

Mayor Mitchell opened the public hearing at 8:32 p.m. With no one wishing to speak, Mayor Mitchell closed the public hearing at 8:32 p.m.

City Council Meeting Minutes November 1, 2022 – Page 7 Kyle City Hall

Mayor Pro Tem Rizo moved to approve consent agenda Item No. 24. Mayor Mitchell seconded the motion.

Mayor Mitchell requested a roll call vote. Mayor Mitchell voted aye; Council Member Parsley voted aye; Mayor Pro Tem Rizo voted aye; Council Member Flores-Cale voted aye; Council Member Bradshaw voted aye; and Council Member Tobias voted aye. Motion carried 6-0.

25. Amend the Policy on Appointments for City Boards, Committees and Commissions to exempt the Economic Development & Tourism Board from the current policy. ~ *Travis Mitchell, Mayor*

Victoria Vargas, Economic Development Director, provided information on the item.

Mayor Mitchell moved to amend to the Policy on Appointments for City Boards, Committees and Commissions to exempt the Economic Development & Tourism Board from the current policy and direct the Economic Development Director to bring forward the nominations that were originally proposed during the last draft day meeting. Council Member Tobias seconded the motion. Motion carried 6-0.

IX. Executive Session

- 26. 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 to deliberate the purchase of real property for public purpose.
 - Property Acquisition
 - 3. Personnel matters pursuant to Section 551.074.
 - Discussion regarding deliberation, appointment, employment, duties, and evaluation of the Interim City Manager.
 - 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 Rising Phoenix
 - Project Shamrock

There was no executive session.

27. Take action on items discussed in Executive Session.

City Council Meeting Minutes November 1, 2022 – Page 8 Kyle City Hall

X. Adjourn

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

With no further business to discuss, the City Council adjourned at 8:56 p.m.

Attest:

Travis Mitchell, Mayor

Jennifer Holm, City Secretary



CITY OF KYLE, TEXAS

Agenda Order

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Agenda Order. ~ Travis Mitchell, Mayor

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description No Attachments Available



CITY OF KYLE, TEXAS

Appointment to the Economic Development & Tourism Board

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Appointment to the Economic Development & Tourism Board. ~ Victoria Vargas, Director of Economic Development

- Tony Spano, Developer Seat (Reappointment)
- Eddie Brown, Local Business Owner Seat (Reappointment)
- Luke Miller, Healthcare Seat
- Cassidy Berenato, Tourism Seat

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Tony Spano application for reappointment
- Tony Spano- Bio
- **D** Eddie Brown application for reappointment
- Eddie Brown- Bio
- Luke Miller application
- Luke Miller- Bio
- Cassidy Berenato application
- Cassidy Berenato- Bio

Spano, Tony



Employment Application | Submitted: 27-Jun-2022

AAA

Tony Spano

Boards & Commissions Application 2022

Job Location - Kyle, TX Boards or Commissions - Boards & Commissions Volunteers Internal Job ID - 06.01.2022

Application Questions

Board Member Qualifications

The following are qualifications to be able to serve as a board or commission member in Kyle. Any applicant that does not meet the qualifications will be rejected from the selection process.

Question	Answer	Disqualifier?
Are you a city employee?: *	No-Not a City Employee	
Are you a legal resident of the United States? *	Yes	
Will you be at least 18 years of age by the September appointment? *	Yes	
Will you by the September appointment, have been a resident of the State of Texas and the City of Kyle for at least 6 consecutive months, OR if applying to the Economic Development/Arts Commission have a significant presence in the community? *	Yes	
Do you live inside the city limits of Kyle, TX? *	No	
If you do not live inside the city limits of Kyle, are you applying as a Business Representative, and own or work for a business located within the city limits or ETJ?	Yes	
Are you currently delinquent on any	No-Not Delinquent	Item # 4

https://admin.applicantpool.com/applicants/print_application.php?application_id=26276237&application_ids=&domain_id=1904&custom_questions=1&... 1/4

indebtedness to the city? *

Boards & Commissions

Please select all the following Boards and Commissions you are qualified for and have an interest in serving on. If you are selecting more than one Board or Commission, we highly encourage you to either (1) attach a statement of interest identifying in order your preferences from greatest to least, and/or (2) to contact a Council member to discuss your preferences, and/or (3) to attend the special meeting scheduled for a later date to voice your preferences. Additional questions related to the Boards and Commissions may follow depending on your selection(s).

Question	Answer	Disqualifier?
What Board(s) and/or Commission(s) are you applying for? *	Kyle Economic Development and Tourism Board	
If selected for an Arts Commission position, which one of these area(s) are you qualified in?:	This question was not answered.	
If selected for an Economic Development and Tourism position, which one of these area(s) are you qualified in?	Seat 1-7: Developer, Financier, Healthcare Industry, Higher Education/Workforce, Local Utility, Major Employer, Tourism Industry	
Are you currently serving on a City of Kyle board or commission? *	Yes	
Please list board or commission:	Economic Development and Tourism	
Please list term expiration date:	2022	
How many meetings have you missed during your term?	2 or 3	
How many times have you abstained from votes during your term?	2	
Have you ever served on a City of Kyle Board or Commission?	Yes	
Please list board or commission and service dates:	Economic Development and Tourism 2016 - 2022	
What experiences do you have that would be useful on the board or commission?	This question was not answered.	
What do you feel are the responsibilities of the board/commission(s) you are applying for? *	Determine potential benefit of new development to city.	
What is the role between the board/commission(s) for which you are applying, and the City Council, City staff, and the general public? *	The Board serves at the pleasure of City Council. Assist city staff Fiduciary relationship	
Have you ever attended a meeting of the board/commission(s) you have applied for? *	Yes	
Have you read the minutes of recent meetings of the board/commission(s) you	Yes	Item # 4

https://admin.applicantpool.com/applicants/print_application.php?application_id=26276237&application_ids=&domain_id=1904&custom_questions=1&... 2/4

Personal Questions |

Question	Answer	Disqualifier?
Please tell us how you heard about the City of Kyle Boards and Commissions openings: *	Other Source	
I was referred by (if applicable):	This question was not answered.	
What prompted you to apply?	This question was not answered.	
Please list your occupation: *	Builder/ Developer	
Please select your highest level of education: *	Vocational or special training	
Education Details (Institution, Field of Study, Type of Degree):	Business Management	
Do you possess any professional licenses? If yes, please list any that would be applicable to the board or commission you are applying for:	General Contractor	
What other skills and/or experience would you like to add?	This question was not answered.	
Please list any professional and/or community activities you are involved in:	This question was not answered.	
The City of Kyle is looking for people that share and promote our TeamKyle Core Values of Knowledge, Yes-Attitude, Leading Edge and Employee Accountability. How will you apply these core values to your service to the city? *	In whatever way I can.	

Ethics Agreement |

Please read and refer to the **City of Kyle Ethics Ordinance (View Here**) before answering the following two questions:

Question	Answer	Disqualifier?
Do you understand and agree to adhere to the City's Ethics Ordinance? *	Yes	
Do you know of any reason you might have a conflict of interest (as described in the ethics ordinance) as a result of your service on any of the boards/commissions on which you are applying for? If yes, you will need to explain. *	No	
Have you ever been employed by the City of Kyle? *	No	
Do you have relatives or members of your household serving as an elected or	No	ltem # 4

https://admin.applicantpool.com/applicants/print_application.php?application_id=26276237&application_ids=&domain_id=1904&custom_questions=1&... 3/4

6/2	7/22, 11:00 AM	Spano, Tony
	appointed official of the City of Kyle: *	
	Do you have any relatives employed by the City of Kyle? *	No
	Have you ever been convicted of a crime or are currently under investigation for a crime (excluding traffic violation)?: *	No

Acknowledgement

- I understand that if any member of the public makes a request for information included in this Application for Appointment, most of the information must be disclosed under the Public Information Act.
- I understand that the City of Kyle will attempt to maintain the confidentiality of highly private matters by seeking an Attorney General's opinion in accordance with the Public Information Act.
- I understand that it may not be legally possible to maintain the confidentiality of such information, and I hereby release the City of Kyle, and its agents, employees and officers, from any and all liability whatsoever if the information must be released pursuant to the Public Information Act or any other law requiring its release.

I Acknowledge the Above
 Signature: F Tony Spano
 Date: 2022-06-27 10:03:13am
 IP Address: 97.105.196.158



Tony Spano Bigelow Homes

Developer Seat

Tony Spano is seeking re-appointment to the ED&T Board. He currently serves as the Vice-Chair of the Board.

Tony brings a unique perspective from a builder/develop point of view as he has worked in Kyle for many years and has watch the community grow from a town of 5,000 to almost 60,000! He can offer feedback on the permitting process. Tony's knowledge of land acquisition and development make him an asset as our Board looks to offer feedback on the Comprehensive Plan and also an Economic Development Strategic Plan.

Tony is also very active in the community, serving on the Kyle Area Chamber of Commerce's board for many years.

Brown, Eddie



Employment Application | Submitted: 13-Jul-2022

ΑΑΑ

Eddie Brown

Boards & Commissions Application 2022

Job Location - Kyle, TX Boards or Commissions - Boards & Commissions Volunteers Internal Job ID - 06.01.2022

Application Questions

Board Member Qualifications |

The following are qualifications to be able to serve as a board or commission member in Kyle. *Any applicant that does not meet the qualifications will be rejected from the selection process.*

Question	Answer	Disqualifier?
Are you a city employee?: *	No-Not a City Employee	
Are you a legal resident of the United States? *	Yes	
Will you be at least 18 years of age by the September appointment? *	Yes	
Will you by the September appointment, have been a resident of the State of Texas and the City of Kyle for at least 6 consecutive months, OR if applying to the Economic Development/Arts Commission have a significant presence in the community? *	Yes	
Do you live inside the city limits of Kyle, TX? *	No	
If you do not live inside the city limits of Kyle, are you applying as a Business	Yes	ltem # 4

Representative, and own or work for a business located within the city limits or ETJ?

Are you currently delinquent on any indebtedness to the city? *

No-Not Delinquent

Boards & Commissions |

Please select all the following Boards and Commissions you are qualified for and have an interest in serving on. If you are selecting more than one Board or Commission, we highly encourage you to either (1) attach a statement of interest identifying in order your preferences from greatest to least, and/or (2) to contact a Council member to discuss your preferences, and/or (3) to attend the special meeting scheduled for a later date to voice your preferences. Additional questions related to the Boards and Commissions may follow depending on your selection(s).

Question	Answer	Disqualifier?
What Board(s) and/or Commission(s) are you applying for? *	Kyle Economic Development and Tourism Board	
If selected for an Arts Commission position, which one of these area(s) are you qualified in?:	This question was not answered.	
If selected for an Economic Development and Tourism position, which one of these area(s) are you qualified in?	Seat 1-7: Developer, Financier, Healthcare Industry, Higher Education/Workforce, Local Utility, Major Employer, Tourism Industry	
Are you currently serving on a City of Kyle board or commission? *	Yes	
Please list board or commission:	Economic Development and Tourism	
Please list term expiration date:	March 2022	
How many meetings have you missed during your term?	2	
How many times have you abstained from votes during your term?	0	
Have you ever served on a City of Kyle Board or Commission?	Yes	
Please list board or commission and service dates:	Economic/Tourism 1/20 through present	
What experiences do you have that would be useful on the board or commission?	My company built our HQ in Kyle after considering several potential locations. We operate in 60 countries around the world.	ltom # 4

Item # 4

Brown, Eddie

What do you fool are the	Brown, Eddie Drowida guidance and incights to the Reard from	
What do you feel are the	Provide guidance and insights to the Board from	
responsibilities of the	the perspective of a business owner. Leverage my	
board/commission(s) you are applying	relationships to help the City of Kyle recruit	
for? *	businesses which are on strategy to recruit to our	
	city.	
What is the role between the	We take guidance from the strategic plan, and	
board/commission(s) for which you are	direction from staff and council to focus our	
applying, and the City Council, City	efforts on relevant and timely opportunities and	
staff, and the general public? *	challenges.	
stant, and the general public:	chattenges.	
Have you ever attended a meeting of	Yes	
the board/commission(s) you have		
applied for? *		
Have you read the minutes of recent	Yes	
meetings of the board/commission(s)		
you are applying for? *		
Personal Questions		
Question	Answer	Disqualifie
Please tell us how you heard about the	Personal Referral	
City of Kyle Boards and Commissions		
openings: *		
opennigs.		
I was referred by (if applicable):	Brian Ziegler	
What prompted you to apply?	I feel I have knowledge and relationships which	
	can be put to use to help the city achieve its	
	objectives	
Please list your occupation: *	President Athlete Performance Solutions and	
	Gameday Boots	
Please select your highest level of	Bachelors	
education: *		
Education Dotails (Institution Field of	Emony Univ (Atlanta Coorgia) PS Political	
Education Details (Institution, Field of	Emory Univ (Atlanta Georgia), BS - Political	
Study, Type of Degree):	Science	
Do you possess any professional	no	
licenses? If yes, please list any that		
would be applicable to the board or		
commission you are applying for:		
What other skills and/or experience	considering Private Pilot's certification	
would you like to add?		

 $https://admin.applicantpool.com/applicants/print_application_php?application_id=26421324\&application_ids=\&domain_id=1904\&custom_questions=1\&\dots 3/5$

community activities you are involved in:	administration)
The City of Kyle is looking for people	I have a very positive experience in living through
that share and promote our TeamKyle	the building development process here in Kyle. I
Core Values of Knowledge, Yes-	believe strongly in the City's commitment to help
Attitude, Leading Edge and Employee	businesses find alignment with the City's strategic
Accountability. How will you apply	plan, in ways that support the goals and
these core values to your service to the	objectives the businesses must achieve in order
city? *	to be successful here in Kyle.

Ethics Agreement

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Please read and refer to the **City of Kyle Ethics Ordinance** (View Here) before answering the following two questions:

Question	Answer	Disqualifier?
Do you understand and agree to adhere to the City's Ethics Ordinance? *	Yes	
Do you know of any reason you might have a conflict of interest (as described in the ethics ordinance) as a result of your service on any of the boards/commissions on which you are applying for? If yes, you will need to explain. *	No	
Have you ever been employed by the City of Kyle? *	No	
Do you have relatives or members of your household serving as an elected or appointed official of the City of Kyle: *	No	
Do you have any relatives employed by the City of Kyle? *	No	
Have you ever been convicted of a crime or are currently under investigation for a crime (excluding traffic violation)?: *	No	

Acknowledgement

- I understand that if any member of the public makes a request for information included in this Application for Appointment, most of the information must be disclosed under the Public Information Act.
- I understand that the City of Kyle will attempt to maintain the confidentiality of highly private matters by seeking an Attorney General's opinion in accordance with the Public Information Act.
- I understand that it may not be legally possible to maintain the confidentiality of such information, and I hereby release the City of Kyle, and its agents, employees and officers, from any and all liability whatsoever if the information must be released pursuant to the Public Information Act or any other law requiring its release.

I Acknowledge the Above Signature: Edward J Brown Date: 2022-07-13 10:25:49am IP Address: 71.42.182.123

Signature

Brown, Eddie

Date



Eddie Brown, Athlete Performance Solutions

Industry/Local Business Owner Seat

Eddie Brown is seeking re-appointment to the ED&T Board. He addressed City Council during Citizen Comments at the September 24, 2022 meeting.

He opened his business, Athlete Performance Solutions at the Hays Commerce Center in October 2020. He has been an asset to the EDT Board as he brings a unique Business Owners prospective to the conversation. He can attest to the ease of the development and permitting process in the City and to the workforce challenges he and many others are facing.

Due to the nature of his business, he is also knowledgeable on branding and marketing.

Miller, Luke



Employment Application | Submitted: 07-Aug-2022

ΑΑΑ

Luke Miller

Boards & Commissions Application 2022

Job Location - Kyle, TX Boards or Commissions - Boards & Commissions Volunteers Internal Job ID - 06.01.2022

Application Questions

Board Member Qualifications |

The following are qualifications to be able to serve as a board or commission member in Kyle. *Any applicant that does not meet the qualifications will be rejected from the selection process.*

Question	Answer	Disqualifier?
Are you a city employee?: *	No-Not a City Employee	
Are you a legal resident of the United States? *	Yes	
Will you be at least 18 years of age by the September appointment? *	Yes	
Will you by the September appointment, have been a resident of the State of Texas and the City of Kyle for at least 6 consecutive months, OR if applying to the Economic Development/Arts Commission have a significant presence in the community? *	Yes	
Do you live inside the city limits of Kyle, TX? *	No	
If you do not live inside the city limits of Kyle, are you applying as a Business	Yes	ltem # 4

Representative, and own or work for a business located within the city limits or ETJ?

Are you currently delinquent on any indebtedness to the city? *

Boards & Commissions

Please select all the following Boards and Commissions you are qualified for and have an interest in serving on. If you are selecting more than one Board or Commission, we highly encourage you to either (1) attach a statement of interest identifying in order your preferences from greatest to least, and/or (2) to contact a Council member to discuss your preferences, and/or (3) to attend the special meeting scheduled for a later date to voice your preferences. Additional questions related to the Boards and Commissions may follow depending on your selection(s).

No-Not Delinguent

Question	Answer	Disqualifier?
What Board(s) and/or Commission(s) are you applying for? *	Kyle Economic Development and Tourism Board	
If selected for an Arts Commission position, which one of these area(s) are you qualified in?:	This question was not answered.	
If selected for an Economic Development and Tourism position, which one of these area(s) are you qualified in?	Seat 1-7: Developer, Financier, Healthcare Industry, Higher Education/Workforce, Local Utility, Major Employer, Tourism Industry	
Are you currently serving on a City of Kyle board or commission? *	No	
Have you ever served on a City of Kyle Board or Commission?	No	
What experiences do you have that would be useful on the board or commission?	Healthcare experience	
What do you feel are the responsibilities of the board/commission(s) you are applying for? *	To envision a future for Kyle where residents can lead fulfilling lives and to make recommendations that align for a prosperous future of the community.	
What is the role between the board/commission(s) for which you are applying, and the City Council, City staff, and the general public? *	To make recommendations on areas of development that benefit residents and those who work in the community.	
Have you ever attended a meeting of the board/commission(s) you have	No	ltem # 4

22, 11:53 AM applied for? *	Miller, Luke	
Have you read the minutes of recent meetings of the board/commission(s) you are applying for? *	Yes	
Personal Questions		
Question	Answer	Disqualifie
Please tell us how you heard about the City of Kyle Boards and Commissions openings: *	Personal Referral	
I was referred by (if applicable):	Victoria Vargas	
What prompted you to apply?	A recommendation by a former board member.	
Please list your occupation: *	Healthcare	
Please select your highest level of education: *	Masters	
Education Details (Institution, Field of Study, Type of Degree):	PharmD, University of Pittsburgh	
Do you possess any professional licenses? If yes, please list any that would be applicable to the board or commission you are applying for:	N/A	
What other skills and/or experience would you like to add?	Leadership experience, public speaking, etc.	
Please list any professional and/or community activities you are involved in:	Several professional organizations (ACHE, ASHP, AASHP, etc.), volunteer activities include foodbank, AHA Heart walk, etc.	
The City of Kyle is looking for people that share and promote our TeamKyle Core Values of Knowledge, Yes- Attitude, Leading Edge and Employee Accountability. How will you apply these core values to your service to the city? *	I would apply a yes-attitude by always being positive and envisioning a future of Kyle that may seem unbelievable to achieve.	

Ethics Agreement |

Please read and refer to the City of Kyle Ethics Ordinance (View Here) before answering the following two questions:

Question

Answer

8/8/22, 11:53 AM	Miller, Luke
Do you understand and agree to adhere to the City's Ethics Ordinance? *	Yes
Do you know of any reason you might have a conflict of interest (as described in the ethics ordinance) as a result of your service on any of the boards/commissions on which you are applying for? If yes, you will need to explain. *	No
Have you ever been employed by the City of Kyle? *	No
Do you have relatives or members of your household serving as an elected or appointed official of the City of Kyle: *	No
Do you have any relatives employed by the City of Kyle? *	No
Have you ever been convicted of a crime or are currently under investigation for a crime (excluding traffic violation)?: *	No

Acknowledgement

- I understand that if any member of the public makes a request for information included in this Application for Appointment, most of the information must be disclosed under the Public Information Act.
- I understand that the City of Kyle will attempt to maintain the confidentiality of highly private matters by seeking an Attorney General's opinion in accordance with the Public Information Act.
- I understand that it may not be legally possible to maintain the confidentiality of such information, and I hereby release the City of Kyle, and its agents, employees and officers, from any and all liability whatsoever if the information must be released pursuant to the Public Information Act or any other law requiring its release.

I Acknowledge the Above
 Signature: Luke Miller
 Date: 2022-08-07 09:16:29pm
 IP Address: 136.49.19.75

Signature

Date



Luke Miller, Ascension Seton Hays

Healthcare Seat

I am currently the Pharmacy Director at Ascension Seton Hays and the Director of Operations for Ascension Seton Hays. My strengths include my ability to effectively communicate, my ambition to maximize pharmacy services in order to improve patient care, and my unyielding work ethic. I am fascinated by the ever changing healthcare system and the policies that are implemented to improve it.

I am heavily involved in Ascension, the corporate organization for Ascension Seton Hays, at the national level by serving as lead on several different workgroups focused on various areas of inpatient care. In addition, I serve as a peer reviewer for several medical journals such as Annals of Pharmacotherapy and American Journal of Health-System Pharmacy.

I have served as Chair for the SAG on Clinical Leadership and on the Council of Public Policy for ASHP. I have also previously served as President of the Northeast Florida Society of Health System Pharmacists (NEFSHP), in addition to the Legal and Regulatory Affairs Council of the Florida Society of Health System Pharmacists (FSHP). I serve as President for Austin Area Society of Health-System Pharmacists (AASHP).

I greatly enjoy affecting patient care from a system level. With my interest in policy and healthcare from an administrative standpoint, I have aspirations to be a pioneer of change, implementing new clinical initiatives and finding ways to improve the quality of care we deliver.


Employment Application | Submitted: 10-Jun-2022

ΑΑΑ

Cassidy Berenato

Boards & Commissions Application 2022

Job Location - Kyle, TX Boards or Commissions - Boards & Commissions Volunteers Internal Job ID - 06.01.2022

Application Questions

Board Member Qualifications |

The following are qualifications to be able to serve as a board or commission member in Kyle. *Any applicant that does not meet the qualifications will be rejected from the selection process.*

Question	Answer	Disqualifier?
Are you a city employee?: *	No-Not a City Employee	
Are you a legal resident of the United States? *	Yes	
Will you be at least 18 years of age by the September appointment? *	Yes	
Will you by the September appointment, have been a resident of the State of Texas and the City of Kyle for at least 6 consecutive months, OR if applying to the Economic Development/Arts Commission have a significant presence in the community? *	Yes	
Do you live inside the city limits of Kyle, TX? *	No	
How many months have you lived within the city limits of Kyle? *		
What subdivision do you live in? *		
If you do not live inside the city limits of Kyle, are you applying as a Business	This question was not answered.	Item # 4

Representative, and own or work for a business located within the city limits or ETJ?

Are you currently delinquent on any indebtedness to the city? *

No-Not Delinquent

Boards & Commissions |

Please select all the following Boards and Commissions you are qualified for and have an interest in serving on. If you are selecting more than one Board or Commission, we highly encourage you to either (1) attach a statement of interest identifying in order your preferences from greatest to least, and/or (2) to contact a Council member to discuss your preferences, and/or (3) to attend the special meeting scheduled for a later date to voice your preferences. Additional questions related to the Boards and Commissions may follow depending on your selection(s).

Question	Answer	Disqualifier?
What Board(s) and/or Commission(s) are you applying for? *	Kyle Economic Development and Tourism Board	
If selected for an Arts Commission position, which one of these area(s) are you qualified in?:	This question was not answered.	
If selected for an Economic Development and Tourism position, which one of these area(s) are you qualified in?	Seat 1-7: Developer, Financier, Healthcare Industry, Higher Education/Workforce, Local Utility, Major Employer, Tourism Industry	
Are you currently serving on a City of Kyle board or commission? *	No	
Have you ever served on a City of Kyle Board or Commission?	No	
What experiences do you have that would be useful on the board or commission?	I manage the San Marcos Regional Airport and have extensive knowledge related to City government and economic development. Although the airport is owned by the City of San Marcos, it is an economic asset to the entire region, including the City of Kyle.	
What do you feel are the responsibilities of the board/commission(s) you are applying for? *	Make smart, thoughtful decisions related to the growth and development of Kyle in coordination with the City's vision and master plan.	
What is the role between the board/commission(s) for which you are applying, and the City Council, City staff, and the general public? *	The Board should assist Council in making timely and economically sound decisions.	
Have you ever attended a meeting of the board/commission(s) you have applied for? *	No	
Have you read the minutes of recent meetings of the board/commission(s) you are applying for? *	Yes	

Personal Questions |

https://admin.applicantpool.com/applicants/print application.php?application id=26126205&application ids=&domain id=1904&custom questions=1&... 2/4

Question	Answer	Disqualifier?
Please tell us how you heard about the City of Kyle Boards and Commissions openings: *	Newsletter	
I was referred by (if applicable):	This question was not answered.	
What prompted you to apply?	I've lived in the City of Kyle for 12 years and due to my job, I feel like I'm more plugged in with what's happening in San Marcos than I am with my own community. On a professional level, I'm involved with the GSMP and have a strong desire to educate the City of Kyle on the benefits of the airport and it's utilization in terms of marketing and recruitment.	
Please list your occupation: *	Vice President	
Please select your highest level of education: *	Bachelors	
Education Details (Institution, Field of Study, Type of Degree):	University of Texas - Public Relations	
Do you possess any professional licenses? If yes, please list any that would be applicable to the board or commission you are applying for:	This question was not answered.	
What other skills and/or experience would you like to add?	This question was not answered.	
Please list any professional and/or community activities you are involved in:	San Marcos Chamber of Commerce Board Member GSMP Vision 2025 Steering Committee Member Sights & Sounds Committee Chair - Christmas Spirits	
The City of Kyle is looking for people that share and promote our TeamKyle Core Values of Knowledge, Yes-Attitude, Leading Edge and Employee Accountability. How will you apply these core values to your service to the city? *	My knowledge of the roles and responsibilities of government agencies and the importance of citizen involvement could be an asset to the committee. Additionally, the combination of working for a private entity in the management of a public facility allows me unique insight into the relationship between private and public entities and the power of a Yes-Attitude.	

Ethics Agreement |

Please read and refer to the **City of Kyle Ethics Ordinance (View Here**) before answering the following two questions:

Question	Answer	Disqualifier?
Do you understand and agree to adhere to the City's Ethics Ordinance? *	Yes	
Do you know of any reason you might have a conflict of interest (as described in the ethics ordinance) as a result of your service on any of the boards/commissions	No	

https://admin.applicantpool.com/applicants/print_application.php?application_id=26126205&application_ids=&domain_id=1904&custom_questions=1&... 3/4

15/22, 10:11 AM	Berenato, Cassidy
on which you are applying for? If yes, you will need to explain. *	
Have you ever been employed by the City of Kyle? *	No
Do you have relatives or members of your household serving as an elected or appointed official of the City of Kyle: *	No
Do you have any relatives employed by the City of Kyle? *	No
Have you ever been convicted of a crime or are currently under investigation for a crime (excluding traffic violation)?: *	No

Acknowledgement

- I understand that if any member of the public makes a request for information included in this Application for Appointment, most of the information must be disclosed under the Public Information Act.
- I understand that the City of Kyle will attempt to maintain the confidentiality of highly private matters by seeking an Attorney General's opinion in accordance with the Public Information Act.
- I understand that it may not be legally possible to maintain the confidentiality of such information, and I hereby release the City of Kyle, and its agents, employees and officers, from any and all liability whatsoever if the information must be released pursuant to the Public Information Act or any other law requiring its release.

I Acknowledge the Above
 Signature: Cassidy Berenato
 Date: 2022-06-10 11:10:39am
 IP Address: 24.155.188.114



Cassidy Berenato, Texas Aviation Partners

Tourism Seat

Cassidy graduated from the University of Texas at Austin with a Bachelor of Science in Public Relations and a minor in Business Foundations. She joined the Texas Aviation Partners team in 2010 and brought with her extensive knowledge of property and project management.

In 2021, Cassidy was promoted from the Director of Marketing and Business Development to Vice President.

New and prospective tenants at all TAP-managed locations work directly with Cassidy from negotiations to lease execution. Her knowledge of airport regulations and City/County approval processes ensure a smooth and coordinated leasing effort for all parties.

In addition to managing the airport's real estate portfolio, Cassidy works closely with the Texas Department of Transportation Aviation Division and the Federal Aviation Administration's regional office to secure federal funding for grant projects and to ensure compliance with federal regulations, provides oversight to marketing, and leads the effort for master plan implementation at San Marcos Regional Airport. *The only FAA designated reliever airport for both the Austin-Bergstrom and San Antonio International Airports the San Marcos Regional Airport is a rapidly emerging center for business, technology and mobility.*

Cassidy currently serves on the Board of Directors for the San Marcos Area Chamber and the Steering Committee for the Greater San Marcos Partnership's Vision 2025 Economic Development Strategy.



Native American Heritage Month

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Native American Heritage Month Proclamation. ~ Travis Mitchell, Mayor

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS: Description

No Attachments Available



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CIP/Road Projects Update

Meeting Date: 11/15/2022 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



Meeting Date: 11/15/2022 Date time:7:00 PM

LCRA two-way radios

Subject/Recommendation: Authorize a Purchase Order in an amount not to exceed \$150,000.00 to the Lower Colorado River Authority (LCRA) for the purchase of forty-two (42) two-way radios, including programming and accessories, for the Police Department. ~ *Jeff Barnett, Chief* of Police

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2701_Kyle_Police_Department_P25_Handhelds_Binding_Proposal_20221012
- LCRA Letter



RADIO SERVICES AND EQUIPMENT BINDING PROPOSAL

October 12, 2022 Attention: Kyle Police Department Attn: Chief Jeff Barnett 300 W. Center Street Kyle, TX 78640

OVERVIEW

The Lower Colorado River Authority ("LCRA") is pleased to submit this binding proposal for the radio services and equipment described below (this "Proposal"). This Proposal and the information set forth herein shall be subject to the terms and conditions of the Interlocal Cooperation Agreement between Kyle Police Department and LCRA (the "Interlocal Agreement").

PROJECT SCOPE

This Proposal shall include:

- Forty-two (42) XL-185P 700/800 MHz Handheld Radios, including Programming, Delivery and Training
- Thirteen (13) Spare Batteries

PRICING

The pricing included in the tables attached hereto as Attachment A include the binding pricing proposal for the equipment and installations outlined for this Project. The pricing indicated in Attachment A is valid for 30 days from the date of this Proposal.

PAYMENT TERMS

Kyle Police Department will be invoiced on the following terms for this Project:

- 25% upon execution of this Proposal
- 50% upon receipt of materials by LCRA
- 25% upon delivery of materials to the Kyle Police Department.

BILLING METHOD

Notwithstanding anything to the contrary in the Interlocal Agreement or this Proposal, Kyle Police Department will be invoiced for the amounts above upon completion of each phase.



ACCEPTANCE

If you would like for us to proceed with this work, please have an authorized representative sign below and return to me. If you should have any questions, please don't hesitate to contact me at the contact information below.

DISCLAIMER

This Proposal is not intended and shall not be construed as a public offering of communications services. Nothing in this Proposal shall be interpreted to characterize LCRA as a common carrier of communications services.

Best Regards,

Erik Andersen Director, Business Development Telecom Lower Colorado River Authority 3505 Montopolis Drive Austin, TX 78744 Office: (512) 730-6409 Cell: (512) 718-2542

ACCEPTED AND AGREED TO BY:

Kyle Police Department

Ву: _____

Name (Printed):_____

Title:_____

Date:_____



Attachment A

Installation Services and Equipment Costs	Price
 Forty-two (42) XL-185P 700/800 MHz Handheld Radios System, Full Keypad Black P25 Trunking Phase II TDMA OTAP 256 AES/64 DES Encryption Encryption Lite Antenna 3100 mAH Battery Desk Charger Belt Clip Lapel Mic with 2.5mm jack, Emergency Button and Volume Control Leather Holster Thirteen (13) HXL-200P LI(H) Batteries 	\$148,764
Total*:	\$149,987

*The pricing indicated in this Attachment A is valid for 30 days from the date of this Proposal.



November 9, 2022

Chief Jeff Barnett Kyle Police Department 300 W. Center Street Kyle, TX 78640

Re: LCRA's proposed 700 MHz Project 25 (P25) radio equipment solution for the City of Kyle

Chief Barnett,

LCRA is pleased to assist the City of Kyle as its Police Department begins its migration from 900 MHz OpenSky radios that have reached their end-of-life to a 700 MHz P25 radio equipment solution.

As part of this migration process, LCRA proposes that the City of Kyle and its police department adopt the L3Harris model XL-185P handheld radio as their radios moving forward. This radio meets all P25 standards for functionality and will fully interoperate with the City's L3Harris Symphony Dispatch Consoles that operate on LCRA's L3Harris system. All other law enforcement, fire, EMS, and ISD radios in the City's area use L3Harris equipment, which will allow for the fullest functionality between agencies.

The City of Kyle and the Kyle Police Department procure radio equipment and related services through the Interlocal Cooperation Agreement between the City of Kyle and LCRA, dated November 20, 2018. In accordance with Sec. 791.025 of the Texas Government Code, "A local government that purchases goods and services under [the Texas Interlocal Cooperation Act] satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and services."

We are looking forward to procuring this equipment for you through our existing Interlocal Cooperation Agreement, and training your staff on the new radios once they are delivered. If you have any questions in the meantime, please do not hesitate to reach LCRA at 512.730.6464.

Respectfully,

At

Julia Kroll Lower Colorado River Authority | Account Manager Principal O 512.730.6464 M 512.422.6143 24 x 7 Support: 512.730.6450 julia.kroll@lcra.org

Enhancing the Lives of Texans

P.O. BOX 220 • AUSTIN, TEXAS • 78767-0220 • (512) 473-3200 • 1-800-776-5272 • WWW.LCRA.ORG



Authorization to Auction Surplus Police Department Equipment Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:	Authorize the City's Director of Finance to dispose through an auction facility one (1) Lot of Motorola handheld devices with accessories determined to be surplus equipment
	by the Police Department. ~ Jeff Barnett, Chief of Police
Other Information:	The Police Department is requesting authorization to dispose by auction one (1) Lot of Motorola handheld devices with accessories. The city-owned Motorola devices determined to be surplus by the Police Department are as follows:
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501445
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501440
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501443
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501447
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501430
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501446
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501410
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501422
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501424
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501442
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501431
	Ticket Writer/Motorola Model: MC75A8 SN: 11301522501427
	Ticket Writer Dock/Model: CRD7X01-4000ER SN: 12292521120966
	Ticket Writer Dock/Model: CRD7X01-4000ER SN: 12279521127400
	Ticket Writer AC Adapter SN: 23MAR1201B9
	Single Ticket Writer Dock/Model: CRD7X00-1 SN: 13023522500918
	Card Adapter SN: SZ012280

Card Adapter SN: SZ012273

Card Adapter SN: SZ012270

Any and all proceeds from the sale of the above devices will be deposited and accounted for in the City's General Fund for future appropriation by City Council.

A memorandum from the Police Department explaining the reasons for determining the above identified devices as surplus is attached to this City Council meeting agenda item.

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

Request to Sell Surplus Equipment



Date: Friday, November 4, 2022 To: Chief Jeff Barnett Asst Chief Pedro Hernandez From: Sergeant Daniel Gooding

Re: Request to sell surplus equipment

Chiefs,

I am requesting to sell surplus equipment that has been completely phased out of use on patrol. They were formerly used for issuing citations, however, the operating systems have been failing and have become unreliable. Below is a list of the equipment we are looking to auction:

Ticket Writer/Motorola Model: MC75A8 Ticket Writer Dock/Model: CRD7X01-4000ER Ticket Writer Dock/Model: CRD7X01-4000ER Ticket Writer AC Adapter Single Ticket Writer Dock/Model: CRD7X00-1 **Card Adapter Card Adapter Card Adapter**

SN: 11301522501445 SN: 11301522501440 SN: 11301522501443 SN: 11301522501447 SN: 11301522501430 SN: 11301522501446 SN: 11301522501410 SN: 11301522501422 SN: 11301522501424 SN: 11301522501442 SN: 11301522501431 SN: 11301522501427 SN: 12292521120966 SN: 12279521127400 SN: 23MAR1201B9 SN: 13023522500918 SN: SZ012280 SN: SZ012273 SN: SZ012270

Sergeant Daniel Gooding SSB Sergeant

🔇 512-268-3232 🛛 🖶 512-268-2330

111 North Front Street, Kyle, TX 78640



Authorization to Auction Surplus Animal Control Vehicle Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:	Authorize the City's Director of Finance to dispose through an auction facility one (1) city-owned animal control vehicle determined to be a surplus vehicle by the Police Department. ~ <i>Jeff Barnett, Chief of Police</i>
Other Information:	The Police Department is requesting City Council's authorization to dispose by auction one (1) City-owned animal control vehicle. The city-owned vehicle determined to be surplus by the Police Department is as follows:
	• Unit22, Ford 2009 F-150, VIN 1FTRX12W89FA42159
	Any and all proceeds from the sale of the above vehicle will be deposited and accounted for in the city's General Fund for future appropriation by City Council.
	A memorandum from the Police Department explaining the reasons for determining the above identified vehicle as surplus is attached to this City Council meeting agenda item.
Legal Notes:	
Budget Information:	

U

ATTACHMENTS:

Description

Sell of Unit 22 Memo



111 North Front Street, Kyle, TX 78640 Non-Emergency: 512-268-3232 Admin: 512-268-0859 Fax: 512-268-2330

Date:Monday, October 3, 2022To:Chief Jeff Barnett
Asst Chief Pedro HernandezFrom:Sergeant Daniel Gooding
Officer Jason Dibble

Re: Retirement and sale of Unit 22

Chief,

SSB is requesting permission to sell a surplus vehicle that is no longer in use and would cost several thousand dollars to fix. This Ford 2009 F-150, VIN 1FTRX12W89FA42159, has 226528 miles on it. Before it was ultimately parked, it had lost its air conditioning and was in poor condition cosmetically. The vehicle will be sold with the 6 door Animal kennel in the bed, but any emergency lights and the graphics identifying itself with the Kyle Animal Control will be removed.



Respectfully, Sergeant Daniel Gooding

111 North Front Street, Kyle, TX 78640



Approve Purchase Order to LCCx for Test & Balance Service for Public Safety Center

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:	Authorize award and execution of a Purchase Order to LCCX, LLC, DBA LACKEY DE CARVAJAL CX, San Antonio, Texas, in an amount not to exceed \$66,158.51 for test and balance services at the City's Public Safety Center. ~ <i>Ryan Rosborough, AG/CM, City's Project Manager</i>
Other Information:	On August 2, 2022, the City Council authorized AG/CM to proceed with contract negotiations with LCCx, LLC, dba Lackey de Carvajal Cx, for test and balance services for the City's Public Safety Center project.
Legal Notes:	
Budget Information:	

ATTACHMENTS:

Description

D Proposal From LCCx for Test & Balance Work at Public Safety Center

July 29, 2022

Mr. Bob Farmer AGCM Senior Program Manager bfarmer@agcm.com m: (512) 284-6738

RE: LCCx 22.0608 Project: Kyle Public Safety Center Professional Test, Adjust & Balance Services

Dear Mr. Farmer,

Thank you for the opportunity for LCCx, LLC (hereinafter called LCCx) to furnish our Professional Services Proposal to provide **Kyle Public Safety Building** for the above job (Hereinafter called **PROJECT**) to **City of Kyle** (hereinafter called **CLIENT**). This Proposal Letter outlines our Fee Proposal subject to an executed Professional Services Agreement.

PROJECT SCOPE:

Provide Test, Adjust & Balance Services for the **Project** to verify that the HVAC Systems are functional as designed. Verify through testing and field observations.

GENERAL ASSUMPTIONS:

1. Design and Construction documents will be provided by the Designers and Contractors.

2. Contractor Personnel and MEP trade contractors will be made available for field verification.

3. Design Personnel will be made available for design assistance and field verification if necessary.

4. Any necessary repairs or adjustment to equipment will be by others, under contract to the Owner.

PROJECT SCHEDULE:

Work shall be completed within 30 days from Substantial Completion, provided all systems function as intended by the Owner.

TAB SCOPE OF WORK AND SERVICES:

LCCX will serve as the TAB Agent to coordinate and provide **Industry Standard TAB Services** on the Client's behalf for the **PROJECT**. Our TAB tasks will include:

- Develop and submit TAB Plan and schedule, revise, as necessary.
- Develop TAB data forms, for HVAC equipment and systems.
- Prepare a Preliminary and Final TAB Report for review by Design Engineer.

22.0608 Kyle PSB TAB Page 2 SYSTEMS TO BE TESTED, ADJUSTED AND BALANCED

HVAC Systems:

- All Major Mechanical equipment as defined by Equip Tag No.
- BMS controls Prelim Checkout
- Air Side Only
- Water Side Only

CLARIFICATIONS AND QUALIFICATIONS:

- We include coordination of TAB with PM.
- We include one TAB verification site visit.
- All work to take place during normal business hours (M-F, 7:30 AM-4:00 PM)
- Clean filters to be in place before test and balance is performed
- Acknowledge 12 Mo. construction schedule
- Controls contractor will be available full time during Tab Operation
- All lift access (if necessary) provided by others.
- Attendance at five (5) TAB Coordination Meetings

EXCLUSIONS:

- 90 day and Alternate Season return visits
- New sheaves, belts
- Sound and Vibration Testing
- DALT Duct leakage testing
- PRE-TAB Audit, unless specifically mentioned
- We furnish \$2 million limit, we exclude the \$5 million limit for Professional Liability.

We relied on the following documents for pricing:

- Compiled Mechanical Plans Dated 3-28-2022
- Specification SECTION 23 05 93 Testing, Adjusting, Balancing Dated 7-14-21

COMPENSATION:

Based on the Scope of Work for the Described Services we propose a lump sum fee for Base Services

FEE PROPOSAL, ALL SCOPES OF WORK	
BASE BID: TEST ADJUST & BALANCE	\$ 66,158.51

In the event of performing the work described above, we propose a lump sum fee for all services of **\$ 66,158.51** <u>sixty-six thousand, one hundred- fifty-eight dollars and fifty-one cents.</u>

TERMS AND CONDITIONS

REIMBURSABLE EXPENSES:

Reimbursable expenses will include the following:

- Out of town (Austin area) travel and related expenses (hotels, meals, car rental, taxis, etc.).
- Messenger service and express mail.
- Document printing, reproduction and plotting costs



22.0608 Kyle PSB TAB Page 3

ADDITIONAL SERVICES:

This fee is for basic services provided above; it does not include any other service unless specifically mentioned. All additional work and fees must be agreed to in writing prior to our undertaking of this work and will be invoiced on an hourly or lump sum basis, as agreed.

HOURLY RATES:

The hourly rates are the basis for Professional Service Agreements in which LCCx is performing services an hourly basis against a lump sum fee for 403 hours and shall be as per the attached LCCx rate schedule sheet for this project. Rates for all other staff classifications are fully loaded and are based on direct personnel expense (DPE). DPE includes payroll cost, payroll taxes, mandatory and customary benefits, etc.

PAYMENT SCHEDULE:

Once our work has commenced, invoices for basic services, additional services and reimbursable expenses will be submitted monthly. Invoices will be considered correct as rendered if not questioned in writing by your office within five (5) days of the invoice date. Payment is due within 30 days of the invoice date. Payment of all fees must be made promptly, independent of any closing dates or other project financing arrangements. Payment of the fee shall not be dependent upon project financing. LCCX reserves the right to suspend all work on the project if payment is not received when due. In the event of such suspension, the client will waive all rights, claims, etc. which it might otherwise have against LCCX as a direct or indirect result of such suspension.

CONDITIONS:

No deductions will be made from the compensation on account of any penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the project.

In the event of any dispute, claim, question, or controversy arising out of this agreement, its performance, interpretation and/or breach, the same will be determined by arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association.

If the project is suspended in whole or in part for a period of more than ninety (90) days and subsequently resumed, LCCX will be entitled to an equitable adjustment of our fee for basic services.

LCCX will not be responsible for or be liable in any way; with the discovery, presence, handling, removal, disposal of or exposure of persons to hazardous materials in any form at the project. The client understands and agrees that products or building materials that are permissible under current building codes and ordinances may, at a future date, be banned or limited in use in the construction industry because of presently unknown hazardous and/or defective characteristics. The client agrees that if any such product or material specified for this project by the consultant shall, at any future date, be suspected or discovered to be defective or a health or safety hazard, then the client shall waive all claims as a result thereof against the consultant.



22.0608 Kyle PSB TAB

Page 4

LCCX will not be responsible for the acts or omissions of the contractor, subcontractors or any other persons performing any of the work or for the failure of any of these parties to carry out the work in accordance with construction documents.

Either party upon thirty (30) days written notice may terminate this agreement if the other party fails to perform its obligations under this agreement through no fault of the party initiating the termination. LCCX will be paid for all services rendered up to and including the date of termination.

Drawings, calculations, and specifications as instruments of service are and will always remain the exclusive property of LCCX, whether the project for which they are made is executed or not. The instruments of service are not to be used by the client and/or owner for other projects or extensions to this project except by written agreement between and with appropriate compensation to LCCX.

LCCX will not be liable for additional scope due to redesign to meet the project budget costs. Revisions to drawings after construction documents are issued will be considered additional services.

I hope that the above meets with your approval. We look forward to working with you on this project and request that you indicate your approval of this letter of agreement by signing in the space provided below.

Very truly yours,

W. harley

Michael W Lackey, PE Manager LCCx, LLC mike.lackey@lccx.com 210-705-3735

ACCEPTED BY: **CLIENT** Authorized Signer

Signature:	
Name:	
Title:	



Lackey de Carvajal TAB

IECC2015 C408 REQUIRED TAB - PROPOSED TAB SCOPE OF WORK (Based on IECC2015, ASHRAE90.1-2013 and ASHRAE Std 111-2008) Contract#:

Task Order#/Assignmen	t i	
Bid Date:	29-Jul-22	
Client Proj Mgr:	Bob Farmer	
CLIENT:	City of Kyle	
Client Address, Street/PO:		
Client Address, City,State,Zip:		
LCCx Proposal No:	22.0608	
Client Project Name:	Kyle Public Safety Center	
Client Project No:		
Project Loc:	Koehler Crossing	
Contract Type:	Lump Sum	

FEE TASK ID. PROJECT DURATION 4.0 BREAKDOWN 1 Initiate TAB Process BY TASK #Meetings Requirements PROJECT ADMINISTRATION 4.0 DESIGN PHASE MEETINGS ASHRAE 0.0 CONDUCT TAB Kick-Off MEET Std 111 1.0 ТАВ TAB COORD MEETINGS 2.0 701.92 Process CONSTR MEETINGS 2.0 \$ \$ **PROJECT COORDINATION SUBTOTAL** 3,271.55 2 Prepare TAB Qualification Submittal NO 3 Prepare a TAB Plan and Schedule. YES 4 **Review TAB Specification** NO **TAB Design Review of Construction** 5 NO Documents 50% CD NO 100% CD BACKCHECK NO **Review GC Submittals for Field** 6 Documentation YES Prepare TAB Field Reporting 7 YES Documentation 7.1 PRE-TAB AUDIT NO 6,054.72 \$ **PRE CONSTRUCTION PHASE SUBTOTAL CONSTRUCTON PHASE - Field TAB Activities**

0 0

8.1	Conduct Site Observations prior		
	to Start-up		
	Prepare TAB Deficiency List from	NO	
	Site Visit		
8.3	Perform Test Adjusting and Balanci	ng	
	Air Side Equipment		
	RTU	YES	
	AHU	YES	
	Mixing Laterals	NO	
	VAV	YES	
	VRF SYSTEM	YES	
	Hydronic Side Equipment	NO	
	Chillers	YES	
	Pumps	YES	
	Boilers	NO	
8.4	Maintain TAB Deficiencies Log	YES	

CONSTRUCTION PH	ASE SUBTOTAL		\$ 51,477.93
9.1	Draft Preliminary TAB Report for		
	Review	YES	
9.2	Production Cost		
9.3	Issue Final TAB Report	YES	
POST CONSTRUCT	ION PHASE SUBTOTAL		\$ 5,354.31
POST OCCUPANCY	PHASE		
10.1	Return For Alternate Season	NO	\$ -
	/Warranty Review, if required		
10.2	Update Final TAB Report with Alternate	NO	\$ -
	Season results		
POST OCCUPANCY	PHASE SUBTOTAL		\$ -

BASE FEE	\$ 66,158.51
TRAVEL EXPENSES. If Any	\$ -
SUB-CONTRACTS, If Any	\$ 0.00
TOTAL FEE - BASE TAB SOW	\$ 66,158.51

VOLUNTARY ADD ALTERNATES

11	Duct Leakage Test	NO	\$	-
12	Sound Testing	NO	\$	-
13	Vibration Testing	NO	\$	-
14	Sheave Changes	NO	\$	-
15	Fire and Smoke Damper Inspections	NO	\$	-
16	Stairwell Pressurization Testing	NO	\$	-
17	Laboratory Hood Testing	NO	\$	-
18	Other	NO	\$	-
	TOTAL ADD ALTERNATES		\$	-

TOTAL FEE - BASE Cx SOW AND ADD ALTERNATES

\$ 66,158.51

QUALIFICATIONS: SYSTEMS TO BE Tested, Adjusted and Balanced

HVAC Systems: All Major Mechanical equipment as defined by Equip Tag No. BMS controls - Prelim Checkout

Air side only Water side only

CLARIFICATIONS AND QUALIFICATIONS:

We include coordination of TAB with PM. We include TAB verification site visit. All work to take place during normal business hours (M-F, 7:30-4:00) Clean filters to be in place before test and balance is performed Acknowledge 6 Mo. construction schedule Controls contractor will be available at all times during Tab Operation All lift access provided by others.

EXCLUSIONS:

90 day and Alternate Season return visits New sheaves, belts Sound and Vibration Testing DALT Duct leakage testing Hydrostatic Testing Cleanroom Testing Fume Hood Testing Indoor Air Quality Testing Plumbing System Smoke System Verification or Testing Pre-TAB **We relied on the following documents for pricing** Mechanical Plans dated 3-28-22 and TAB Spec: 23-05-93



PEC Franchise Ordinance

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: (Second Reading) An Ordinance Granting a Five-Year Extension to the Franchise Granted by Ordinance No. 959 and Amended by Ordinance No. 1150 to Pedernales Electric Cooperative Inc., Containing Various Terms and Conditions with regard to the Extension of the Franchise; to Construct, Maintain, Operate and Use a Transmission and Distribution System in the City of Kyle to Provide Electric Utility Service. ~ Jerry Hendrix, Interim City Manager

City Council voted 6-0 to approve on First Reading on 11/1/2022.

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

D PEC Franchise Renewal Kyle

ORDINANCE NO.

AN ORDINANCE GRANTING A FIVE-YEAR EXTENSION TO THE FRANCHISE GRANTED BY ORDINANCE NO. 959 AND AMENDED BY ORDINANCE NO. 1150 TO PEDERNALES ELECTRIC COOPERATIVE INC., CONTAINING VARIOUS TERMS AND CONDITIONS WITH REGARD TO THE EXTENSION OF THE FRANCHISE; TO CONSTRUCT, MAINTAIN, OPERATE AND USE A TRANSMISSION AND DISTRIBUTION SYSTEM IN THE CITY OF KYLE TO PROVIDE ELECTRIC UTILITY SERVICE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE:

WHEREAS, On August 22, 2017, the City Kyle (hereinafter, the "City") adopted Ordinance No. 959, and amended by Ordinance No. 1150 on June 1, 2021, granting a franchise to Pedernales Electric Cooperative ("PEC") to use the City's streets, lanes, alleys and other rights-of-way for the purpose of erecting, constructing, maintaining, operating, using, extending, removing, replacing, and repairing PEC's electrical distribution facilities serving customers within that part of its certificated service area that lies in the boundaries of the City, the term of which expires on August 22, 2022 (hereinafter, the "Franchise").

WHEREAS, the City and PEC wish to further amend Ordinance 959 and extend the term of the Franchise granted therein.

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

Section 1. Extension of the Franchise. The Franchise granted by Ordinance No. 959 and as amended by Ordinance No. 1150 is hereby renewed on the terms included therein and as amended herein, as if set forth here in full and extended for an additional five-year term to commence on August 23, 2022, expiring on August 22, 2027.

Section 2. Installation of facilities in Public Right-of-Way. The Franchise is hereby amended by adding Section 4(c) to read as follows:

Section 4(c). Installation of facilities in the Public Right-of-Way shall be in conformance with all applicable City requirements, including placing all new distribution facilities underground; provided, however, the City acknowledges that certain new distribution facilities relating to substations, reliability and redundancy improvements, riser poles that transitions overhead lines into underground facilities may be placed overhead, and system upgrades to and relocations for existing facilities may remain overhead, and to the extent that safety standards of NESC or Cooperative standards require facilities to be placed overhead or remain overhead, such lines may remain or be placed overhead. To the extent any gateway corridor overlay or similar classification

exists within the City, this Section 4(c) governs overhead placement of facilities. And in all such instances with respect to the construction of these overhead facilities, the City shall not require PEC to obtain an exception.

PEC shall, when planning improvements in the Public Right-of-Way to existing distribution facilities to increase capacity or for system improvement, give reasonable consideration to installing the upgraded distribution facilities underground; provided that the City may require the upgraded facilities to be placed underground upon the payment of the differential cost between overhead and underground construction and facilities. To the extent the City selects underground construction of facilities in such case, in the event any additional road widening or relocation project then is required by the City, the City shall pay the differential cost between overhead and underground for the facilities to remain underground.

<u>Section 3. Effect of Amendment.</u> The original Franchise, as amended, is hereby amended as provided in this Ordinance. In the event of a conflict between the Franchise, as amended, and this Ordinance, this Ordinance shall control. The Franchise and all amendments thereto shall be referred to together as the "Franchise." Words and phrases used in this Ordinance shall, if defined in the Franchise and not specifically modified by this Ordinance, shall have the definition and meaning as provided in the Franchise.

Section 4. Effective Date. This Ordinance shall take effect immediately from and after its passage and adoption in accordance with the applicable provisions of Section 11.02 of the Home Rule Charter of the City of Kyle, and Chapter 52 of the Texas Local Government Code (hereinafter, the "Effective Date").

<u>Section 5. Open Meetings.</u> 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, Chapter 551, of the Texas Government Code.

Section 6. Compliance with Charter. In compliance with the provisions of the City Charter, this Ordinance, upon being introduced at a regular meeting of the Council, shall be passed after two readings held after a public hearing for which ten (10) days notice is given.

PASSED AND APPROVED on this	day of	, 20
FINALLY PASSED AND APPROVEI	• on this day of	, 20
ATTEST:	THE CITY (OF KYLE

Jennifer Hom, City Secretary

ACKNOWLEDGED, ACCEPTED, AND AGREED TO;

PEDERNALES ELECTRIC COOPERATIVE, INC.

BY:_____

NAME: _____

TITLE:

DATE: _____



PH TIRZ No. 4 Limestone Creek

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Conduct a public hearing on the Creation of a Reinvestment Zone and its benefits to the City of Kyle and to provide a reasonable opportunity for any owner of property within the proposed Reinvestment Zone to protest the inclusion of their property within the proposed Reinvestment Zone, which proposed zone consists of approximately 179.341 acres generally located east of Post Road and south of County Road 158, known as Limestone Creek. ~ *Travis Mitchell, Mayor*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

1328, Setting a Public Hearing for the creation of Limestone Creek TIRZ No. 4

RESOLUTION NO. 1328

RESOLUTION SETTING A PUBLIC HEARING UNDER SECTION 311.003 OF THE TEXAS TAX CODE FOR THE CREATION OF A TAX INCREMENT REINVESTMENT ZONE WITHIN THE CORPORATE LIMITS OF THE CITY OF KYLE, TEXAS; AUTHORIZING THE ISSUANCE OF NOTICE BY THE CITY SECRETARY OF KYLE, TEXAS REGARDING THE PUBLIC HEARING; AND DIRECTING THE CITY TO PREPARE A PRELIMINARY REINVESTMENT ZONE PROJECT AND FINANCING PLAN.

WHEREAS, the City of Kyle, Texas (the "<u>City</u>"), is authorized under Chapter 311 of the Texas Tax Code, as amended (the "<u>Act</u>"), to create a tax increment reinvestment zone within its corporate limits and within its extraterritorial jurisdiction; and

WHEREAS, the City Council of the City (the "<u>City Council</u>") wishes to hold a public hearing in accordance with Section 311.003 of the Act regarding the establishment of a tax increment reinvestment zone in the City (the "<u>Zone</u>") with the boundaries being described in the metes and bounds and depictions attached as **Exhibit A**; and

WHEREAS, in order to hold a public hearing for the creation of the Zone, notice must be given in a newspaper of general circulation in the City no later than the 7th day before the date of the hearing in accordance with Section 311.003 of the Act; and

WHEREAS, the City Council has determined to hold a public hearing on *Tuesday*, *November 15, 2022* on the creation of the Zone.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL:

<u>Section 1.</u> That a public hearing is hereby called for *Tuesday, November 15, 2022 at* 7:00 p.m. in the Kyle City Hall, 100 W. Center Street, Kyle, Texas 78640, for the purpose of hearing any interested person speak for or against the inclusion of property in the proposed Zone, the creation of the Zone, its boundaries, or the concept of tax increment financing with respect to the creation of the Zone.

Section 2. At such time and place the City Council will hear testimony regarding the creation of the Zone and will provide a reasonable opportunity for the owner of any property within the proposed Zone to protest the inclusion of their property within the Zone. Upon closing the public hearing, the City Council may consider the adoption of an ordinance authorizing the creation of the Zone.

Section 3. Attached hereto as **Exhibit** \mathbf{B} is a form of the Notice of Public Hearing, the form and substance of which is hereby adopted and approved.

<u>Section 4.</u> The City Secretary is hereby authorized and directed, on or before *November 8*, 2022, in accordance with the Act, to cause said notice to be published in substantially the form attached hereto in a newspaper of general circulation in the City.

<u>Section 5</u>. Before the *November 15, 2022* hearing concerning the Zone, the City shall prepare a preliminary reinvestment zone project and financing plan.

<u>Section 6</u>. This resolution shall be in full force and effect from and after its passage and it is accordingly so resolved.

PASSED AND APPROVED ON THIS 18th DAY OF OCTOBER 2022.

ATTEST:

Travis Mitchell, Mayor

Iolm, City Secretary



"Exhibit "A"

D&A Job No. 1691-009 April 19, 2022

METES AND BOUNDS DESCRIPTION 161.5 ACRE TRACT

BEING A 161.5 ACRE TRACT OUT OF THE JAMES WILLIAMS SURVEY, ABSTRACT NUMBER 473, HAYS COUNTY, TEXAS, BEING ALL OF A CALLED 179.278 ACRE TRACT OF LAND, DESCRIBED IN A DEED TO MERITAGE HOMES OF TEXAS LLC, RECORDED IN DOCUMENT NUMBER 21036270, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS [O.P.R.H.C.T.], SAVE AND EXCEPT A 5.895 ACRE TRACT AND A 11.946 ACRE TRACT IN SAID DEED, AND BEING ALL OF A CALLED 7.87 ACRE TRACT, DESCRIBED TO LASALLE MUNICIPAL UTILITY DISTRICT NO 1, RECORDED IN DOCUMENT NUMBER 21016927, [O.P.R.H.C.T.], SAID 161.5 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the northwest corner of said 179.278 acre tract, also on the east rightof-way line of County Road (CR) 145 (Volume 5, Page 205, Plat Records of Hays County, Texas [P.R.H.C.T.]), same being the southwest corner of a called 85.1806 acre tract, described in a deed to Allauddin N. Maredia, and recorded in Document Number 17039745 [O.P.R.H.C.T];

THENCE, S46°44'17"E, departing the east right-of-way of said C.R. 145 and continuing with the common line of said 179.278 acre and said 85.1806 acre tract, a distance of 4,013.29 feet to a 1/2-inch iron rod found for the northeast corner of said 179.278 acre tract, and the southeast corner of said 85.1806 acre tract, same being on the northwest line of a called 236.1 acre tract, described in a deed to Tack Development, Ltd., recorded in C.F. Number 18007777 [O.P.R.H.C.T.];

THENCE S43°23'05"W, departing the south line of said 85.1806 acre tract and continuing with the common line of said 179.278 acre tract and said 236.1 acre tract, a distance of 1,947.18 feet to a to a 1/2-inch iron rod found for the southeast corner of said 179.278 acre tract, same being the northwest corner of Quail Ridge Subdivision, a subdivision of record in Volume 2, Page 337, [P.R.H.C.T.];

THENCE N46°44'14"W, departing the west line of said 236.1 acre tract acre tract and continuing with the common line of said 179.278 acre tract and said Quail Ridge Subdivision, a distance of 2,842.59 feet to a to a 1/2-inch iron rod found at the southeast corner of the said 5.895 acre save and except tract;

THENCE departing north line of said Quail Ridge Subdivision, and continuing over and across said 179.278 acre tract with the east and north lines of the said 5.895 acre save and except tract and the south line of the said 7.87 acre tract, the following eight (8) courses and distances:

- 1) N43°15'48"E, a distance of 195.23 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found and the beginning of a curve to the right,
- 2) with said curve to the right, defined by an arc length of 141.87 feet, a radius of 330.03 feet, a delta angle of 24°37'51", a chord bearing of N09°38'34"W, a chord distance of 140.78 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found,

CONTINUED ON NEXT PAGE



3) N02°44'09"E, a distance of 243.78 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found and the beginning of a curve to the left,

"Exhibit "-----"

- 4) with said curve to the left, defined by an arc length of 31.23 feet, a radius of 20.00 feet, a delta angle of 89°28'43", a chord bearing of N42°12'11"W, a chord distance of 28.16 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found,
- 5) N86°49'32"W, a distance of 280.56 feet to a to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found and the beginning of a curve to the right,
- 6) with said curve to the right, defined by an arc length of 573.03 feet, a radius of 1,040.13 feet, a delta angle of 31°33'55", a chord bearing of N71°23'01"W, a chord distance of 565.81 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found,
- 7) N55°32'03"W, a distance of 126.49 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found, and
- 8) S86°40'31", a distance of 20.47 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found on the west line of said 179.278 acre tract and on the south right-of-way line of said C.R. 145;

THENCE N43°16'02"E, with the east right-of-way line of said C.R. 145, a distance of 106.18 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found on the west line of said 179.278 acre tract, at the southwest corner of the said 11.946 acre save and except tract;

THENCE, departing the east right-of-way of said C.R. 145 and continuing over and across said 179.278 acre tract with the south and east lines of the said 11.946 acre save and except tract, and the north line of the said 7.87 acre tract, the following eight (8) courses and distances:

- 1) S10°17'05"E, a distance of 17.42 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found,
- 2) S55°36'03"E, a distance of 114.06 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found and the beginning of a curve to the left,
- 3) with said curve to the left, defined by an arc length of 529.19 feet, a radius of 960.25 feet, a delta angle of 31°34'31", a chord bearing of S71°23'26"E, a chord distance of 522.51 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found,
- 4) S86°49'32"E, a distance of 279.97 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found and the beginning of a curve to the left,
- 5) with said curve to the left, defined by an arc length of 31.59 feet, a radius of 20.00 feet, a delta angle of 90°29'25", a chord bearing of N47°49'44"W, a distance of 28.41 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found,
- 6) N02°43'44"E, a distance of 419.07 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found, and the beginning of a curve to the right. and

CONTINUED ON NEXT PAGE



7) with said curve to the right, defined by an arc length of 136.59 feet, a radius of 330.03 feet, a delta angle of 23°42'48", a chord bearing of N14°32'37"E, a chord distance of 135.62 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found, and

"Exhibit "-----"

8) N47°21'17"W, a distance of 480.50 feet to a 1/2-inch iron rod with cap stamped "PAYNE 6064" found on the west line of said 179.278 acre tract and on the said east right-of-way of C.R. 145;

THENCE N43°16'09"W, with the west line of said 179.278 acre tract and on the said east right-of-way of C.R. 145, a distance of 958.21 feet to the POINT OF BEGINNING and containing approximately 161.5 acres.

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

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

2 04/19/2022

Date

John Barnard Registered Professional Land Surveyor Texas Registration No. 5749 Doucet & Associates jbarnard@doucetengineers.com TBPLS Firm No. 10105800




\\doucet\da_files\Departments\Geospatial\Projects\1691-009 Meritage Tract Survey\CAD\dwg\Active - Exhibits\1691-009 Limestone Creek Overall Exhibit Surf.dwc

LINE TABLE				
LINE	BEARING	DISTANCE		
L1	N43°15'48"E	195.23'		
L2	N02°44'09"E	243.78'		
L3	N86°49'32"W	280.56'		
L4	N55°36'03"W	126.49'		
L5	S86°40'31"W	20.47'		
L6	N43°16'02"E	106.18'		
L7	S10°17'05"E	17.42'		
L8	S55°36'03"E	114.06'		
L9	S86°49'32"E	279.97'		
L10	N02°43'44"E	419.07'		
L11	N47°21'17"W	480.50'		

	CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	141.87'	330.03'	24°37'51"	N09°38'34"W	140.78'
C2	31.23'	20.00'	89°28'43"	N42°12'11"W	28.16'
C3	573.03'	1,040.13'	31°33'55"	N71°23'01"W	565.81'
C4	529.19'	960.25'	31°34'31"	S71°23'26"E	522.51'
C5	31.59'	20.00'	90°29'25"	N47°49'44"E	28.41'
C6	136.59'	330.03'	23°42'48"	N14°32'37"E	135.62'

CONTROL NOTE:

BASIS OF BEARING IS THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NORTH AMERICAN DATUM 1983 (NAD83), 2011 ADJUSTMENT (EPOCH 2010). ALL COORDINATE VALUES AND DISTANCES SHOWN ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY USING THE SURFACE ADJUSTMENT FACTOR OF 0.9999190065604686. UNITS: US SURVEY FEET.

I, JOHN BARNARD, REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT AND ACCOMPANYING LEGAL DESCRIPTION OF EVEN DATE REPRESENT AN ACTUAL SURVEY PERFORMED ON THE GROUND UNDER MY SUPERVISION.

DR 04/19/2022

JOHN BARNARD DATE REGISTERED PROFESSIONAL LAND SURVEYOR TEXAS REGISTRATION NO. 5749 DOUCET & ASSOCIATES JBARNARD@DOUCETENGINEERS.COM



DOUCET

LIMESTONE CREEK 161.5 ACRE PROPERTY EXHIBIT

HAYS COUNTY, TEXAS

Civil Engineering // Entitlements // Geospatial 7401 B. Highway 71 W, Ste. 160 Austin, TX 78735, Tel: (512)-583-2600 www.doucetengineers.com TBPE Firm Number: 3937 TBPELS Firm Number: 10105800

Date: 04/19/2022
Scale: 1" = 500'
Drawn by: SWP
Reviewer: JB
Project: 1691-009
Sheet: 5 OF 5
Field Book: N/A
Party Chief: ADM
Survey Date: 09/28/21

//doucet/da_files/Departments/Geospatial/Projects/1691-009 Meritage Tract Survey/CAD/dwg/Active - Exhibits/1691-009 Limestone Creek Overall Exhibit Surf.dwg



A DESCRIPTION OF 11.946 ACRES IN THE JAMES W. WILLIAMS SURVEY NO. 11, ABSTRACT 473, HAYS COUNTY, TEXAS, BEING OUT OF A CALLED 134 1/2 ACRE TRACT OF LAND CONVEYED TO JOHN H. SPOONER, IN VOLUME 2940, PAGE 806 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY TEXAS (OPRHCT); SAID 11.946 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2-inch iron rod found at the west corner of said 134 1/2 acre tract, same being the north corner of Lot 86, Quail Ridge Subdivision, recorded in Volume 2, Page 337 of the Plat Records of Hays County, Texas (OPRHCT), also being in the southeast right-of-way-line of E Post Road (right-of-way width varies);

THENCE, with the northwest line of said 134 1/2 acre tract, same being the southeast right-of-way line of E Post Road, **N43°16'11''E**, at a distance of **122.88** feet to a 1/2-inch iron rod with "PAYNE 6064" cap set in the northwest line of said 134 1/2 acre tract, the same being in the southeast right-of-way line of said E Post Road and in the north right-of-way line of a 7.87 acre tract (80' wide road) conveyed to LaSalle Municipal Utility District No. 1 in Document No. 21016927 ORHCT, being the **POINT OF BEGINNING** hereof;

THENCE, leaving the 7.87 acre right-of-way tract, continuing with the northwest line of said 134 1/2 acre tract, same being the southeast right-of-way line of E Post Road, N43°16'11"E, at a distance of 865.89 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set in the northwest line of said 134 1/2 acre tract, the same being the southeast right-of-way line of said E Post Road from which a calculated point at the north corner of said 134 1/2 acre tract bears N43°16'11"E a distance of 471.57 feet;

THENCE, leaving E Post Road and across said 134 1/2 acre tract the following four (4) courses and distances:

- 1) S47°21'20"E, a distance of 480.45 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set,
- 2) with a curve to the left, having a radius of 330.00 feet, a delta angle of 23°38'24", an arc length of 136.16 feet, and a chord which bears S14°33'37"W, a distance of 135.19 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set,
- 3) S02°44'25"W, a distance of 419.43 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set, and,
- 4) with a curve to the right, having a radius of 20.00 feet, a delta angle of 90°26'03", an arc length of 31.57 feet, and a chord which bears S47°57'26"W, a distance of 28.39 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set in the north right-of-way line of the previously mentioned 7.87 acre roadway conveyed in Document Number 21016927, ORHCT;

THENCE, across said 134 1/2 acre tract and with said north right-of-way of the 7.87 acre roadway tract the following four (4) courses and distances:

1) N86°49'32"W, a distance of 279.81 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set,

2) with a curve to the right, having a radius of 960.25 feet, a delta angle of 31°34'30", an arc length of 529.18 feet, and a chord which bears N71°23'26"W, a distance of 522.51 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set,

3) N55°36'03"W, a distance of 114.06 feet to a 1/2-inch iron rod with "PAYNE 6064" cap set, and,

4) N10°17'05"W, a distance of 17.41 feet to the POINT OF BEGINNING hereof, and containing 11.946 acres, more or less.

Surveyed on the ground May 20, 2021. Bearing Basis: Grid North on The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions. Attachments: drawing 1960-001-PLAT EXCEPTION-NORTH

6/5/21

Phillip C. Payne, RPLS State of Texas #6064







- BEARINGS, DISTANCES AND AREAS IN PARENTHESIS ARE 2. FROM RECORD INFORMATION.
- ACCORDING TO HORIZONTAL SCALING FROM THE CURRENT 3. F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48290C0405F, DATED SEPTEMBER 2, 2005, THIS TRACT DOES NOT LIE WITHIN ZONE A OR ZONE AE.
- ATTACHMENTS: METES AND BOUNDS DESCRIPTION 4. 1960-001-5.895 ACRE TRACT
- 5. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT, THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.

.81' VRS)

BEARING BASIS: GRID NORTH ON THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), SOUTH CENTRAL ZONE, BASED ON GPS SOL

CONTROL/BEARING BASIS INFORMATION

2940/806 OPRHCT

WILLIAMS

JAMES W. WILLIAM JAMES W. WILLIAM JAMES V. NO. 11

LEGEND

LUTIONS.	OPRHCT	OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
	PRTCT	PLAT RECORDS OF HAYS COUNTY, TEXAS
	DRTCT	DEED RECORDS OF HAYS COUNTY, TEXAS
	VRS	VARAS
	۲	1/2" IRON ROD FOUND WITH A PLASTIC CAP STAMPED "RPLS 4046" OR OTHERWISE NOTED
	۲	1/2" IRON ROD FOUND UNLESS OTHERWISE NOTED
	\bigtriangleup	CALCULATED POINT
	Ø	1/2" IRON ROD SET WITH A PLASTIC CAP STAMPED "PAYNE 6064"
	ohu }	UTILITY POLE, OVERHEAD UTILITY LINE, GUY
	Ð	WATER VALVE
	-0-	SIGN
	\bigtriangleup	GAS MARKER
	0	BOLLARD
	W	WATER MANHOLE
	-0-	HYDRANT
		MAILBOX
	— # ——	CHAIN LINK FENCE
	X	WIRE FENCE
	//	WOOD FENCE



EXHIBIT B

City of Kyle City Council Notice of Public Hearing On Creation of Reinvestment Zone

THE KYLE CITY COUNCIL WILL HOLD A PUBLIC HEARING ON *TUESDAY NOVEMBER 15, 2022* AT 7:00 P.M. IN THE KYLE CITY HALL, LOCATED AT 100 W. CENTER STREET, KYLE, TEXAS 78640, ON THE CREATION OF A REINVESTMENT ZONE AND ITS BENEFITS TO THE CITY OF KYLE AND TO PROVIDE A REASONABLE OPPORTUNITY FOR ANY OWNER OF PROPERTY WITHIN THE PROPOSED REINVESTMENT ZONE TO PROTEST THE INCLUSION OF THEIR PROPERTY WITHIN THE PROPOSED REINVESTMENT ZONE, WHICH PROPOSED ZONE CONSISTS OF APPROXIMATELY 179.341 ACRES GENERALLY LOCATED EAST OF POST ROAD AND SOUTH OF COUNTY ROAD 158 AND AS MORE PARTICULARLY DESCRIBED BY A METES AND BOUNDS DESCRIPTION AVAILABLE AT KYLE CITY HALL AND AVAILABLE FOR PUBLIC INSPECTION. AT THE PUBLIC HEARING, ANY INTERESTED PERSON MAY SPEAK FOR OR AGAINST THE INCLUSION OF PROPERTY WITHIN THE REINVESTMENT ZONE, THE CREATION OF THE REINVESTMENT ZONE, ITS BOUNDARIES, OR THE CONCEPT OF TAX INCREMENT FINANCING. FOLLOWING THE PUBLIC HEARING, THE KYLE CITY COUNCIL WILL CONSIDER ADOPTING AN ORDINANCE CREATING THE REINVESTMENT ZONE.



Meeting Date: 11/15/2022 Date time:7:00 PM

Portable Traffic Signals

Subject/Recommendation:	[Postponed 10/3/2022] Consider and possible action on a quote from OMJC Signal for the purchase of portable traffic signals in the amount of \$331,600.00. ~ <i>Amber Lewis, Assistant City Manager</i>
Other Information:	OMJC Signal is a sole source manufacturer for the 25' trailers and any and all trailers with Intelight 2070 ATC traffic controllers and EDI conflict monitors.
Legal Notes:	
Budget Information:	

ATTACHMENTS:

Description

D Quote # 8554

OMJCSignal PO Box 1594 Waterloo, IA 50704 403 Chestnut St. Waterloo, IA 50703 800.776.5999 Fax: 319.236.1554 Email: sales@omjcsignal.com omjcsignal.com

Quotation

Quote Number 8554

Quote Date: September 16, 2022



Quoted to:

ATTN: JO ANN GARCIA KYLE, TX SHIP TO: CITY OF KYLE KYLE, TX

PH:	512	262	3949
FAX:			

Customer ID		ner ID Good Thru Payment Terms		Sales	Sales Rep Name		
CITY O	CITY OF KYLE 10/1		22 Net 30 Days		DAVID T. KNAPI	2	
Quantity	Item	'	I	Description	Unit Price	Extension	
4.00	HDPTS TC26-B-OMJC	DUTY XL DRONE) W AND SOLA FOR USE INFRASTE VEHICLE **ON-SIT		NE PAIR OF 25' POP-UP HEAVY UTY XL TRAILERS (1 MASTER, ONE RONE) WIRELESS TRAFFIC CONTROL ND SOLAR POWER. INCLUDES KIT OR USE WITH EXISTING NFRASTRUCTURE EHICLE DETECTOR 800.00 *ON-SITE TRAINING WITH FACTORY EP INCLUDED AT NO ADDED COST 800.00		320,000.00	
specified. All	parts, materials c	and compo	nents ar	uoted above unless otherwise e new unless otherwise of 1985 to serve you.	Subtota Sales Ta Freight Tota	326,400.00 5,200.00 3 ttern 0 #.14	



Reimbursement Resolution for Bond Proceeds Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:[Postponed 10/3/2022] Consideration and Approval of a Resolution Relating to
Establishing the City's Intention to Reimburse itself for the Prior Lawful Expenditure of
Funds Relating to Constructing Various City Improvements from the Proceeds of Tax-
Exempt Obligations to be Issued by the City for Authorized Purposes; Authorizing
Other Matters Incident and Related Thereto; and Providing an Effective Date. ~
Stephanie Leibe, Norton Rose Fulbright US LLP, City's Bond Counsel

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

Reimbursement Resolution

RESOLUTION

A RESOLUTION RELATING TO ESTABLISHING THE CITY'S INTENTION TO REIMBURSE ITSELF FOR THE PRIOR LAWFUL EXPENDITURE OF FUNDS RELATING TO CONSTRUCTING VARIOUS CITY IMPROVEMENTS FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY THE CITY FOR AUTHORIZED PURPOSES; AUTHORIZING OTHER MATTERS INCIDENT AND RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council (the *Governing Body*) of the City of Kyle, Texas (the *Issuer*) has entered into or will enter into various contracts pertaining to the expenditure of lawfully available funds of the Issuer to finance the costs associated with (i) making permanent public improvements or for other public purposes, to wit: designing, demolishing, constructing, renovating, improving, reconstructing, restructuring and extending streets and thoroughfares and related land and right-of-way sidewalks, streetscapes, collectors, drainage, landscape, signage, upgrading technology and traffic signals, acquiring lands and rights-of-way necessary thereto or incidental therewith and installing related public art (the Construction Costs), (ii) the payment of various engineering costs, including design testing, design engineering, and construction inspection related to the Construction Costs (the Engineering Costs), (iv) the payment of various architectural costs, including preparation of plans and specifications and various other plans and drawings related to the Construction Costs (the Architectural Costs), and (v) the payment of various administrative costs, including the fees of bond counsel, financial advisor, project manager, project consultant, other professionals, and bond printer (the Administrative Costs) [the Construction Costs, the Engineering Costs, the Architectural Costs, and the Administrative Costs collectively constitute the costs of the Issuer's projects that are the subject of this Resolution (the *Project*); and

WHEREAS, the provisions of Section 1201.042, as amended, Texas Government Code (*Section 1201.042*) provide that the proceeds from the sale of obligations issued to finance the acquisition, construction, equipping, or furnishing of any project or facilities, such as the Project, may be used to reimburse the Issuer for costs attributable to such project or facilities paid or incurred before the date of issuance of such obligations; and

WHEREAS, the United States Department of Treasury (the *Department*) released Regulation Section 1.150-2 (the *Regulations*) which establishes when the proceeds of obligations are spent and therefore are no longer subject to various federal income tax restrictions contained in the Internal Revenue Code of 1986, as amended (the *Code*); and

WHEREAS, the Issuer intends to reimburse itself, within eighteen months from the later of the date of expenditure or the date the property financed is placed in service (but in no event more than three years after the original expenditures are paid), for the prior lawful capital expenditure of funds from the proceeds of one or more series of tax-exempt obligations (the *Obligations*) that the Issuer currently contemplates issuing in the principal amount of not to exceed \$294,000,000 to finance a portion of the costs of the Project; and

WHEREAS, under the Regulations, to fund such reimbursement with proceeds of the Obligations, the Issuer must declare its expectation ultimately to make such reimbursement before making the expenditures; and

WHEREAS, the Issuer hereby finds and determines that the reimbursement for the prior expenditure of funds of the Issuer is not inconsistent with the Issuer's budgetary and financial circumstances; 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 Issuer; now, therefore,

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

SECTION 1. This Resolution is a declaration of intent to establish the Issuer's reasonable, official intent under section 1.150-2 of the Regulations and Section 1201.042 to reimburse itself from certain of the proceeds of the Obligations for any capital expenditures previously incurred (not more than 60 days prior to the date hereof) or to be incurred with respect to the Project from the Issuer's General Fund or other lawfully available funds of the Issuer.

SECTION 2. The Issuer intends to issue the Obligations and allocate within 30 days after the date of issuance of the Obligations the proceeds therefrom to reimburse the Issuer for prior lawful expenditures with respect to the Project in a manner to comply with the Regulations.

SECTION 3. The reimbursed expenditure will be a type properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles.

SECTION 4. The Issuer intends to otherwise comply, in addition to those matters addressed within this Resolution, with all the requirements contained in the Regulations.

SECTION 5. This Resolution may be relied upon by the appropriate officials at the Office of the Attorney General for the State of Texas and establishes compliance by the Issuer with the requirements of Texas law and the Regulations.

SECTION 6. With respect to the proceeds of the Obligations allocated to reimburse the Issuer for prior expenditures, the Issuer shall not employ an abusive device under Treasury Regulation Section 1.148-10, including using within one year of the reimbursement allocation, the funds corresponding to the proceeds of the Obligations in a manner that results in the creation of "replacement proceeds", as defined in Treasury Regulation Section 1.148-1, of the Obligations or another issue of tax-exempt obligations.

SECTION 7. 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 8. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict,

and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 9. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 10. 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 11. 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 12. 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 20th day of September, 2022.

CITY OF KYLE, TEXAS

ATTEST:

Mayor

City Secretary

(CITY SEAL)

Signature page to the Reimbursement Resolution



Police Department Signage - PSC

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Discussion and possible action regarding adding Police Department Signage on the Public Safety Center. ~ Ryan Rosborough, AG|CM

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

L KPSC-PD_name-options1























Speed Zone Reduction Ordinance for Conestoga Drive from Texas Jack Drive to Jarbridge Drive

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:	(<i>First Reading</i>) Approve an ordinance to reduce the speed limit on Conestoga Drive from Old Stage Coach Road to Jarbridge Drive. ~ <i>Leon Barba, P.E., City Engineer</i>
Other Information:	FOR BOTH EAST AND WEST BOUND TRAFFIC ON CONESTOGA DRIVE: Beginning at the intersection of Old Stagecoach Road and Conestoga Drive to the Jarbridge Drive and Conestoga Drive intersection, an approximate distance of 0.34 miles, a prima facie maximum speed limit of 25 miles per hour.
Legal Notes:	N/A

Budget Information:

ATTACHMENTS:

Description

- Conestoga Drive Ordinance
- Conestoga Speed Study
- Conestoga Sign & Striping Layout

ORDINANCE NO.

AN ORDINANCE OF THE CITY KYLE, TEXAS, ZONING FOR TRAFFIC AND RATE OF SPEED THEREIN, ON CONESTOGA DRIVE IN THE CITY LIMITS OF THE CITY OF KYLE; DEFINING SPEEDING AND FIXING A PENALTY, THEREFORE; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; PROVIDING A SAVING CLAUSE REPEALING CONFLICTING LAWS; PROVIDING FOR RELATED MATTERS; AND DECLARING AN EMERGENCY.

WHEREAS, the regulation of traffic, motor vehicles and conveyances upon all public streets, roadway and rights-of-way within the City limits is essential and necessary to protect and to preserve the public safety of the City of Kyle, Texas (the "City"); and

WHEREAS, a traffic study has been completed and recommended specific maximum rates of speed for Conestoga Drive; and

WHEREAS, the City Council has found the maximum rates of speed hereinafter set forth and listed in this ordinance are reasonable and necessary for the public safety and are supported by sound and accepted public safety and traffic engineering criteria.

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

Section 1. <u>Findings</u>. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made part hereof for all purposes as findings of fact.

Section 2. <u>Speed Zone</u>. It is hereby determined upon the basis of an Engineering and Traffic investigation that the prima facie maximum speed limit on Conestoga Drive in the City of Kyle, is hereby stated, which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the prima facie maximum speed limit so declared to wit.

FOR BOTH EAST AND WEST BOUND TRAFFIC ON CONESTOGA DRIVE:

Beginning at the intersection of Old Stage Coach Road and Conestoga Drive to Jarbridge Drive and Conestoga Drive intersection, an approximate distance of 0.34 miles, a prima facie maximum speed limit of 25 miles per hour.

Section 3. <u>Violation and Penalties</u>. That all of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this ordinance shall be guilty of a misdemeanor, which is named "The Offense of Speeding" and that the said offense is punishable by a fine in any sum not to exceed Two Hundred dollars (\$200.00). That the use of the word "Speeding" shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than fixed by City Ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.

That in prosecutions under this ordinance, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to acknowledge the offense, be sufficient if it

in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of "Speeding".

Section 4. <u>Repeal of Conflicting Ordinances</u>. That should any section or any portion of any section hereof be decreed to be void, the invalidity of such section or such portion thereof shall not affect the validity of the remaining portions of this ordinance; and that each section and each portion thereof not decreed to be invalid shall remain valid and enforceable.

Section 5. <u>Effective Date</u>. That all ordinances and parts of ordinances that are in conflict with this ordinance are hereby repealed.

Section 6. <u>Severability</u>. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 7. <u>Open Meetings</u>. 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, *Chapter 551, Tex. Gov't. Code.*

That the fact that prompt action should be taken in the regulation of traffic, on the streets of this city, in the manner provided for in this ordinance creates an emergency requiring that the rules that provide that an ordinance shall be read at three separate meetings of the city council before final passage, be suspended; and that the said rules are hereby suspended, and this ordinance is here and now passed, and that it is ordered that it take effect from and after its passage and publication.

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

The City of Kyle, Texas

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary



Date:October 28, 2022To:Chief Jeff BarnettFrom:Sgt. T. VranaRe: Traffic Speed Survey: Conestoga Dr.

A traffic speed survey was conducted using a pole-mounted speed radar on Conestoga Dr. at Six Shooter Dr. for approximately seven days in each direction. Westbound traffic direction was surveyed from 10/13/2022 to 10/20/2022, and eastbound traffic direction was surveyed from 10/21/2022 to 10/28/2022. The speed counter was programmed to "stealth mode" to reduce the possibility of skewed data created from motorists' reaction to observing the counter.

Conestoga Dr. is a residential roadway, maintains a posted speed limit of 30 miles per hour and is a two-lane roadway with no improved shoulders, center median, or lane markings. Traffic movement on Conestoga Dr. is regulated by properly erected speed limit signs and stop signs. There are no electronic traffic control devices on this roadway.

The reports to follow were created using hourly and daily incremental renderings to analyze disparity among different hours and days. Eastbound and westbound direction surveys were performed independently of each other and are thus reported independently below.

Sgt. T. Vrana Traffic Division Supervisor Kyle Police Department

Westbound (10-13-2022 to 10-20-2022)

The total number of vehicles counted were 2,470 with an overall average speed of 23 miles per hour. High speeds (41-44 mph) were noted mostly between 2PM and 10PM during weekdays.

- 1. Total Vehicles Count......2470

- 6. Maximum Speed (MPH)......44 mph
- 7. Minimum Speed (MPH)......3 mph
- 8. 50th Percentile Speed Average (MPH)......23 mph
- 9. 85th Percentile Speed Average (MPH).....27 mph



Generated on October 28, 2022 at 5:07 PM

Sgt. T. Vrana Traffic Division Supervisor Kyle Police Department

Eastbound (10/21/2022 to 10/28/2022)

The total number of vehicles counted were 2,649 with an overall average speed of 24 miles per hour. High speeds (41-47 mph) were noted mostly during the weekdays with no timeframe consistency.

COUNT

- 1. Total Vehicles Count.....2,649

- 8. 50th Percentile Speed Average (MPH)......24 mph

Count by Speed Range Report

Location: Conestoga and Six Shooter

Eastbound

Report period: 2022-10-21 to 2022-10-28

Count By Speed Range

Count by S	
Speed (mph)	Count
1-5	26
6-10	162
11-15	128
16-20	323
21-25	1017
26-30	711
31-35	252
36-40	29
41-45	O
46-50	1
51-55	O
56-60	0
61-65	0
66-70	0
71-75	0
76-80	O
81-85	0
86-90	0
91-95	0
96-100	0
Total	2649

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Sgt. T. Vrana Traffic Division Supervisor Kyle Police Department







CITY OF KYLE ENGINEERING DEPARTMENT 00 W CENTER STREI KYLE, TX 78640 PH (512) 262-3965

CITY OF KYLE, HAYS COUNTY, TEXAS



Approve Pavement Evaluation Resolution

Subject/Recommendation: Approve a resolution authorizing the mayor to negotiate an agreement with KCI

Meeting Date: 11/15/2022 Date time:7:00 PM

TECHNOLOGIES, INC., San Antonio, Texas to provide a comprehensive street pavement evaluation and infrastructure assessment of city streets. ~ *Leon Barba, P.E., City Engineer* Other Information: A Request for Qualifications (RFQ) was issued on October 5, 2022 seeking qualified consultant services to provide a comprehensive street condition assessment. Seven (7) submittals were received in response to the RFQ prior to the October 31, 2022 (noon) deadline.
Staff evaluated the proposals and is recommending the firm of KCI Technologies, Inc. for City Council approval to provide the pavement evaluation and assessment of approximately 184 center line miles of city streets.
A contract will be negotiated with the selected firm and it will be brought back to City Council for approval.

Legal Notes:

N/A

Budget Information:

ATTACHMENTS:

- Description
- Resolution
- Consultant Rankings

RESOLUTION NO.

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH KCI TECHNOLOGIES, INC., OF SAN ANTONIO, TEXAS, TO PROVIDE A COMPREHENSIVE STREET CONDITION ASSESSMENT OF THE CITY STREET SYSTEM; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, on October 5, 2022, the City of Kyle requested qualifications from professional engineering firms to conduct a pavement distress survey on existing pavement conditions and curbs; provide recommendations for rehabilitation, additional analysis, and estimated pavement life; and an inventory of infrastructure in the right-of-way from block to block; and

WHEREAS, the City received proposals by the October 30, 2022 deadline.

WHEREAS, the City desires to obtain professional engineering services from KCI Technologies, Inc. of San Antonio, Texas; and

WHEREAS, KCI Technologies, Inc., is qualified and capable of performing the engineering services on the City street system proposed herein and is willing to enter into an Agreement with the City of Kyle to perform such services; and

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

SECTION 1. <u>Findings</u>. The hereinabove recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. <u>Authorization</u>. The Mayor is hereby authorized to execute a professional services agreement with KCI Technologies, Inc. for a comprehensive street condition assessment.

SECTION 3. <u>Effective Date</u>. This resolution shall take effect immediately from and after its passage by the City Council of the City of Kyle.

SECTION 4. <u>Open Meetings</u>. It is hereby officially found and determined that the meeting at which this Resolution was 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 Government Code.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, on this 15th day of November, 2022.

THE CITY OF KYLE, TEXAS

ATTEST:

Travis Mitchell, Mayor

Jennifer Holm, City Secretary

Pavement Condition Assessment K22-23.1

Date of Evaluation	November 8, 2022		Applied	WSP USA			_	1
Qualification Items	Weight	Applied Pavement Technology	Applied Research Associates, Inc.	Environmemt & Infrastructure, Inc.	KSA	KCI Technologies	Data Transfer Solutions	Infrastructure Management Services
Qualifications & Availability	10	7.00	9.67	6.00	8.67	9.67	6.33	9.67
Proposed Staff	40	35.00	34.00	31.00	30.33	37.67	32.33	34.67
Project Experience	40	30.67	38.33	30.00	29.00	36.67	35.67	37.00
Project Approach	10	8.33	9.33	8.00	8.00	10.00	9.67	9.00
Total	100	81.00	91.33	75.00	76.00	94.00	84.00	90.33
Ranking		5	2	7	6	1	4	3



Marketplace Ave. Extension Task Order #2

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:	Approve Task Order #2 with RPS INFRASTRUCTURE, INC., Austin, Texas, a civil engineering consulting firm, to provide field notes and surveyor metes and bounds map for the Marketplace Avenue extension in an amount of \$31,950.25. ~ <i>Leon Barba, P.E., City Engineer</i>
Other Information:	The field notes and metes and bound mapping documents needed for the conveyance of property from the land owner to the City for the Marketplace Extension from FM 1626 north to the existing end/stub out point of Marketplace south of Kohlers Crossing will be prepared/developed.
	The property conveyed will be adequate for the construction of the roadway, utility, drainage, pedestrian, illumination and incidental infrastructure necessary for this street extension.
Legal Notes:	N/A
Budget Information:	

ATTACHMENTS:

Description

- D Marketplace Attachment A
- D RPS Marketplace Mapping Fee
- D Marketplace Extension
ATTACHMENT A

TASK ORDER NO. 2

SERVICES TO BE PROVIDED BY THE ENGINEER

RPS Infrastructure, Inc. (Engineer) will provide staff to support the City of KYLE (Owner) with general construction and engineering support services. The Owner also includes the City's General Engineering Consultant (GEC), K Friese & Associates, which the Owner has secured to act on its behalf as an Owner's Representative. The Engineer is required to coordinate with the GEC for completion of this work. Specific tasks may include, but are not limited to, the following:

The work to be performed by the Engineer shall consist of providing right-of-way (ROW) mapping and documentation.

The Engineer shall complete the services to be provided by the Engineer according to the milestone work schedule established in the task order. The Engineer shall submit a written progress report to the Owner monthly indicating the actual work accomplished during the month, scheduled work to be accomplished for the month, and the estimated work to be accomplished for the coming month. The progress report will use a bar chart diagram to indicate the percentage complete of each task shown on the previous report and the percentage complete of each task. The Engineer is required to meet with the designated Owner project manager and environmental coordinator bi-weekly for progress tracking purposes unless prior agreement is made with Owner not to hold a scheduled meeting. The Engineer shall submit minutes of the meeting, summarizing the events of the meeting within seven calendar days after each meeting.

The Engineer shall prepare a project work schedule. The work schedule must incorporate an allocation of time for stage reviews of the ROW Mapping documents by Owner personnel. The Engineer shall present the work schedule to the Owner for review and acceptance and provide assistance in interpreting the proposed work schedule.

GENERAL REQUIREMENTS

1.1. Design Criteria.

Design Criteria. The Engineer shall prepare all work in accordance with the latest version of applicable Owner's procedures, specifications, manuals, guidelines, standard drawings, and standard specifications or previously approved special provisions and special specifications, which include:

- Kyle Connected 2040 Transportation Master Plan (2015)
- Kyle Transportation Master Plan Update (2021)
- The Vybe Kyle: Trail-Oriented Development (2021)
- Kyle Drainage Master Plan (2018)
- City of Kyle Roundabout Ordinance #1162 (2021)
- City of Kyle standard detail sheets and general construction notes
- TxDOT Roadway Design Manual
- TxDOT Hydraulic Design Manual
- Texas Manual on Uniform Traffic Control Devices (TMUTCD)

1

- Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges (latest Edition)
- Other Owner approved manuals

When design criteria are not identified in Owner's manuals or TxDOT criteria, the Engineer shall notify the Owner and refer to City of Austin policies and the American Association of State Highway and Transportation Officials (AASHTO), A Policy on Geometric Design of Highways and Street, (latest Edition).

1.2. Right-of-Entry. The Engineer shall notify the Owner and secure permission to enter private property to perform any surveying, environmental, engineering, or geotechnical activities needed off Owner right-of-way. In pursuance of the Owner's policy with the general public, the Engineer shall not commit acts which would result in damages to private property, and the Engineer shall make every effort to comply with the wishes and address the concerns of affected private property owners. The Engineer shall contact each property owner prior to any entry onto the owner's property and shall request concurrence from the Owner prior to each entry.

1.3. Progress Reporting and Invoicing. The Engineer shall invoice according to Function Code breakdowns shown in Exhibit "A" of the Professional Services Agreement and Attachment "B" - Fee Schedule, of each task order. The Engineer shall submit each invoice in a format acceptable to the Owner.

With each invoice the Engineer shall submit a monthly written progress report to the Owner's Project Manager regardless of whether the Engineer is invoicing for that month.

The Engineer's written progress report shall describe activities during the reporting period; activities planned for the following period: problems encountered and actions taken to remedy them; list of meetings attended; and overall status, including a percent complete by task.

The Engineer shall complete the services according to the milestone work schedule established in the task order. The Engineer shall submit a monthly written progress report to the Owner indicating the actual work accomplished during the month, scheduled work to be accomplished for the month, the estimated work to be accomplished for the coming month, problems encountered, and actions taken to remedy them, list of meetings attended, and overall status. The progress report must use a bar chart diagram to indicate the percentage complete of each task shown on the previous report and the percentage complete of each task. The Engineer is required to meet with the designated Owner project manager or environmental coordinator bi-weekly for progress tracking purposes unless prior written agreement is made with Owner not to hold a meeting in any given month. The Engineer shall submit minutes of the meeting summarizing the events of the meeting within seven calendar days after each meeting.

Condition precedents to final payment by the Owner are the Owner's receipt of all electronic files and confirmation by the Owner's Project Manager that (1) the electronic files can be opened and are usable by the Owner utilizing the Owner-owned version of the intended software, and (2) all of the Owner's review comments have been addressed.

The Engineer shall prepare a letter of transmittal to accompany each document submittal to the Owner. At a minimum, the letter of transmittal must include the project name, project limits, Owner's contract number, and Owner's task order number.

1.4. Traffic Control. The Engineer shall provide all planning, labor, and equipment to develop and to execute each Traffic Control Plan (TCP) needed by the Engineer to perform services under each task order. The Engineer shall comply with the requirements of the most recent edition of the TMUTCD. The Engineer shall submit a copy of each TCP to the Owner for approval prior commencing any work on any Owner roadway. The Engineer shall provide all signs, flags, and safety equipment needed to execute the approved TCP. The Engineer shall notify the Owner in writing five (5) days (in advance of executing each TCP requiring a lane closure and shall have received written concurrence from the Owner prior to beginning the lane closure. The Engineer's field crew shall always possess a copy of the approved TCP on the job site and shall make the TCP available to the Owner for inspection upon request. The Engineer shall assign charges for any required traffic control to the applicable function code. City requires Public Notice of lane and Road closure 7 days in advance of closure.

1.5. State-Controlled Waters. N/A.

1.6. Coordination. The Engineer shall coordinate issues and communications with Owner's internal departments through the Owner's Project Manager. The Owner will communicate the resolution of issues and provide the Engineer direction through the Owner's Project Manager.

Where applicable, the Engineer shall notify the Owner and coordinate with adjacent engineers and surveyors on all controls at project interfaces. The Engineer shall document the coordination effort, and each engineer must provide written concurrence regarding the agreed project controls and interfaces. In the event the Engineer and the other adjacent engineers are unable to agree, the Engineer shall meet jointly with the Owner and each adjacent engineer to resolve disagreements. If the engineers are unable to resolve an issue with the Owner as mediator, the Owner may decide the issue and the decision will be final.

1.7. Level of Effort. For each task order, the Engineer shall base the level of effort at each phase on the prior work developed in earlier phases without unnecessary repetition or re-study. As directed by the Owner, the Engineer shall provide written justification regarding whether or not additional or repeated level of effort of earlier completed work is warranted, or if additional detail will be better addressed at a later stage in the project development.

1.8. Quality Assurance (QA) and Quality Control (QC). The Engineer shall provide peer review at all levels. For each deliverable, the Engineer shall have some evidence of their internal review and mark-up of that deliverable as preparation for submittal. A milestone submittal is not considered complete unless the required milestone documents and associated internal red-line mark-ups are submitted. The Owner's Project Manager may require the Engineer to submit the Engineer's internal mark-up (red-lines) or comments developed as part the Engineer's quality control step. When internal mark-ups are requested by the Owner in advance, the Owner, at its sole discretion, may reject the actual deliverable should the Engineer fail to provide the evidence of quality control. The Engineer shall clearly label each document submitted for quality assurance as an internal mark-up document.

The Engineer shall perform QA and QC on all survey procedures, field surveys, data, and products prior to delivery to the Owner. If, at any time, during the course of reviewing a survey submittal it becomes apparent to the Owner that the submittal contains errors, omissions, or inconsistencies, the Owner may cease its review and immediately return the submittal to the Engineer for appropriate action by the Engineer. A submittal returned to the Engineer for this reason is not a submittal for purposes of the submission schedule.

1.9. Use of the State's Standards. N/A

1.10. Organization of Plan Sheets. N/A

1.11. Organization of Design Project Folder and Files (Electronic Project Files). The Engineer shall organize the electronic project files in accordance with the Owner's File Management System (FMS) format. The Engineer shall maintain the project files in the Owner's file structure.

1.12. Personal Protective Equipment (PPE). The Engineer shall, and shall require its subcontractors to, (1) provide personal protective equipment (PPE) to their personnel, (2) provide business vehicles for their personnel, and (3) require their personnel to use PPE and drive only business vehicles while performing work on or near roadways. The PPE must meet all (1) current standards set by the Occupational Safety and Health Administration (OSHA) and (2) TxDOT requirements (e.g., safety glasses, Type 3 (TY 3) pants for night work). Each business vehicle must be clearly marked with the Engineer's business name, or the name of the appropriate subcontractor, such that the name can be identified from a distance.

1.13. Data Classification. Unless otherwise clearly labeled or otherwise specifically excepted through a provision of this contract or its attachments, all data provided to or generated by the Engineer under this contract is considered public data for the purposes of applying the Owner's data security standards. The Engineer shall manage all data and work products according to the terms of the contract, including specifically Attachment I, Information Resources and Security Requirements.

1.14. Preventative Measures to Prevent the Spread of Oak Wilt Disease Contamination.

The Engineer shall take the following preventive measures while cutting, pruning, or removing oak trees in counties which have confirmed cases of oak wilt disease or when directed by the Owner:

- A. When possible, employ alternative methods instead of pruning or cutting oak trees.
- B. When possible, perform necessary pruning and cutting of healthy trees during January or February when sap beetles are least active.
- C. Treat wounds with pruning paint in oak wilt disease infected counties to discourage insects, especially during warm weather.
- D. Sterilize all pruning tools between each use on each tree with either Lysol spray or a 70 percent rubbing alcohol solution.
- E. Dispose of the tree cuttings by burning, burying, or another approved method.

TASK DESCRIPTIONS AND FUNCTION CODES

The Engineer shall categorize each task performed to correspond with the Function Codes (FC) and Task Descriptions.

FUNCTION CODE 130(130) - RIGHT-OF-WAY (ROW) DATA

For Function Code 130, the term Surveyor means the firm (prime provider or subprovider) that is providing the surveying services shown in this scope.

The Engineer shall ensure that the following general standards for survey work are followed for Function Code 130:

Unless otherwise indicated, any reference in this attachment to a manual, specification, policy, rule or regulation, or law means the version in effect at the time the work is performed. TxDOT manuals are available at: http://onlinemanuals.txdot.gov/manuals/. All surveys must meet or exceed all applicable requirements and standards provided by:(1) Professional Land Surveying Practices Act, (2) General Rules of Procedures and Practices promulgated by the Texas Board of Professional Engineers and Land Surveyors (TBPELS), and (3) the TxDOT Survey Manual. The Surveyor shall perform all work in an organized and professional manner. All surveys are subject to the approval of the Owner.

The Surveyor shall use TxDOT's ROW Preliminary Procedures for Authority to Proceed Manual and TxDOT Survey Manual as the basis for the format and preparation of all right of way (ROW) documents produced, including ROW maps, written parcel descriptions, parcel plats, and other ROW work products, unless otherwise specified by the Owner. Unless otherwise directed by the Owner, the Surveyor shall use (1) the North American Datum of 1983 (NAD83), Texas Coordinate System of 1983 (State Plane Coordinates) applicable to the zone or zones in which the work is performed, with values in U.S. survey feet, as the basis for all horizontal coordinates derived and (2) the datum adjustment currently in use by TxDOT.

Project or surface coordinates must be calculated by applying a combined adjustment factor (CAF) to State Plane Coordinate values. If provided by the Owner, the Surveyor shall use a project specific CAF.

Elevations must be based on the North American Vertical Datum 88 (NAVD88), unless otherwise specified by the Owner.

All work using the Global Positioning System (GPS), whether primary control surveys or other, must meet or exceed the requirements provided by the TxDOT Survey Manual to the order of accuracy specified in the categories listed below or in a work authorization. If the order of accuracy is not specified in this attachment or in a work authorization, the work must meet or exceed the order of accuracy specified in the publication listed in this paragraph.

All conventional horizontal and vertical control surveys must meet or exceed the order of accuracy specified in the TxDOT Survey Manual unless specified otherwise in the contract.

All boundary determination surveys, whether for ROW acquisition, ROW re-establishment, or other boundary needs, must meet or exceed the accuracy specified in the TxDOT Survey Manual unless specified otherwise in the contract.

The Owner may authorize the Surveyor to use an Unmanned Aircraft System (UAS) to perform services under this contract. The use of UAS is regulated by the Federal Aviation Administration (FAA). All UAS operators must comply with Federal Aviation Administration (FAA) regulations and the TxDOT Unmanned Aircraft System (UAS) Flight Operations and User's Manual.

The survey data must be fully compatible with the Owner's computer system and with programs in use by the Owner at the time of the submission, without further modification or conversion. The current programs used by TxDOT are Microsoft Word, Bentley MicroStation, Bentley OpenRoads civil design system, Bentley GEOPAK Survey, Excel, and ESRI ArcGIS. Data collection programs must be compatible with the current import formats allowed by GEOPAK Survey and be attributed with current feature codes. These programs may be replaced at the discretion of the Owner.

Drawing sizes are defined, based on American National Standards Institute (ANSI) standard paper sizes, as follows: A-size means 8.5 inches by 11.0 inches, B-size means 11.0 inches by 17.0 inches, C-size means 17.0 inches by 22.0 inches, and D-size means 22 inches by 34.0 inches.

Variations from these software applications or other requirements listed above shall only be allowed if requested in writing by the Surveyor and approved by the Owner.

The Surveyor shall perform quality control/quality assurance on all procedures, field surveys, data, and products prior to delivery to the Owner. The Owner may also require the Surveyor to review the survey work performed by others. If, at any time, during the course of reviewing a submittal of any item it becomes apparent to the Owner that the submittal contains a substantial number of errors, omissions, and inconsistencies, the Owner may cease its review and return the submittal to the Surveyor immediately for appropriate corrective action. A submittal returned to the Surveyor for this reason is not a submittal for purposes of the submission schedule.

The standards for services that are not boundary-related but that relate to surveying for engineering projects may be determined by the construction specifications, design specifications, or as specified by the Owner.

130.1. RIGHT-OF-WAY SURVEYS (15.1.1)

Right-of-Way Surveys includes the performance of surveys to establish land boundaries, and preparation of parcel descriptions and parcel plats.

The Surveyor shall prepare:

- A. boundary surveys and create Property Descriptions (metes and bounds plus plats);
- B. create GIS files for ROWD/ Real Property Asset Map system; and

The standards and deliverables are detailed in Chapter 4, Section 8 of the TxDOT ROW Preliminary Procedures for the Authority to Proceed Manual.

130.2. RIGHT OF WAY MAPPING - TRADITIONAL ROW MAP

If requested in a work authorization, the Surveyor shall conduct traditional ROW mapping.

Traditional ROW mapping includes ground surveying and preparation of parcel maps, and legal descriptions also known as metes and bounds descriptions.

A. PURPOSE

The purpose of traditional ROW mapping is:

- 1. To prepare mapping documents suitable for use in the acquisition of real property and the issuance of a title policy.
- 2. To prepare a map of a resurvey of existing ROW where it is necessary to update or redefine ROW lines.

B. DEFINITIONS

In this attachment, the following definitions shall apply:

- 1. Abstract Map means a scale drawing prepared from record documents depicting proposed ROW lines, existing ROW lines, easement lines, and private property lines with relevant grantee names, recording data, and recording dates.
- 2. Closure/Area Calculation Sheet means a computer-generated print-out of the area and the perimeter bearings, distances, curve data, and coordinates of an individual parcel of land to be acquired, including the degree of angular and distance mis-closure for each individual parcel.
- 3. Denial of Access Line means a line that indicates specific location where access to the roadway is denied.
- 4. Owner means the current title holder of record as determined by the Real Property Records.
- 5. Parent Tract means a unit or contiguous units of land under single ownership, comprising a single marketable tract of land consistent with the principle of highest and best use. A parent tract may be described by a single instrument or several instruments. A single parent tract cannot be severed by a public ROW easement, or separate ownership which destroys unity of use.
- 6. Parent Tract Inset means a small map to an appropriate scale, of the parent tract perimeter placed upon the ROW map in the proximity of the respective parcel. Parent tract insets are used in cases where the parent tract cannot be shown to the same scale as the ROW map. Since parent tract insets are used to identify the limits and location of parent tracts, they must include public ROW, utility easements and fee strips, and identifiable water courses which bound the parent tract.
- 7. Point of Beginning or POB means a corner of the parcel of land to be acquired, located on the proposed ROW line and being the beginning terminus of the first course of the written property description or plat.
- 8. Point of Commencing or POC means a monumented property corner identifiable in the real property records that is located outside the proposed ROW corridor. For title purposes, the POC must be a monumented back corner of the parent tract. In the event a monumented back corner of the parent tract cannot be recovered, the nearest identifiable monumented property corner located outside the proposed ROW corridor may be used.
- 9. Preliminary ROW Layout means a scaled drawing depicting proposed ROW lines, existing ROW lines, proposed pavement, access denial lines, the proposed centerline alignment, private property lines, easement lines, visible improvements, visible utilities, and the station and offset from the centerline alignment to each point of curvature (PC), point of

tangency (PT), and angle point in the proposed ROW lines and to each PC, PT, and the angle point in the existing ROW lines in areas of no proposed acquisition.

- 10. Property Description means a document prepared as an exhibit for the conveyance of a property interest and issuance of a title policy, reflecting the results of a boundary survey, and signed and sealed by a registered professional land surveyor (RPLS), attached to an acquisition deed as Exhibit A, and consisting of the following two parts:
 - a. Written metes and bounds description delineating the area and the boundary and describing the location of an individual parcel of land unique to all other parcels of land.
 - b. Parcel plat, which is an ANSI A-size (8.5" x 11") scaled drawing depicting the information recited in the metes and bounds description in 10 a. above, which represents the parcel(s) of land to be acquired.
- 11. ROW Maps means a series of ANSI D-size (22" x 34") scaled drawings depicting the results of relevant elements of records research, field work, analysis, computation, and mapping required to determine title, delineate areas and boundaries, and locate and describe utilities and improvements to the extent necessary to appraise the value and negotiate the acquisition of individual parcels of private land for a proposed ROW project.

C. PROCEDURE

All standards, procedures, and equipment used by the Surveyor must be such that, at a minimum, the results of the survey is in compliance with the precision and accuracy requirements set forth by the Texas Board of professional Engineers and Land Surveyors (TBPELS) rules.

1. Abstract Map

The Surveyor shall prepare an Abstract Map sufficient to determine the following:

- a. All interests of public record held in the land to be acquired.
- b. The total record holdings to be acquired from an owner contiguous to a land.
- c. All interests in land held in common to be acquired (shopping mall parking lots, subdivision reserves, etc.)
- d. All improvements proposed by other agencies that might have a bearing on project development.
- e. All called monuments, bearings, and distances in recorded information.
- 2. Property Descriptions

The Surveyor shall prepare a Property Description for each parcel (or tract for surplus property) consisting of two parts: (1) a metes and bounds description of the property and (2) a parcel plat. Each part of a Property Description must be signed and sealed by a RPLS.

a. Metes and bounds description The Surveyor shall prepare a metes and bounds description for each parcel of land to be acquired. The Surveyor shall use the TxDOT standard format for metes and bounds descriptions. Metes and bounds descriptions must be submitted in Microsoft Word format and must include the following information:

- i. State, county, and original land grant survey within which the proposed parcel of land to be acquired is located.
- ii. Reference to unrecorded and recorded subdivisions by name, lot, block, and recording data to the extent applicable.
- iii. Reference by name to the grantor and grantee, date and recording data of the most current instrument(s) of conveyance describing the parent tract.

The Surveyor shall use the execution date when citing deed references. The Surveyor shall use the recording or filing dates, making clear which date is being used if the execution date is not explicit on the face of the document.

- iv. A POC.
- v. A POB with the N and E surface coordinates.
- vi. A series of courses, identified by number and proceeding in a clockwise direction, describing the perimeter of the parcel of land to be acquired, and labeled with appropriate bearings, distances, and curve data.
- vii. Curve data must include the radius, delta angle, arc length, and long chord bearing and distance.
- viii. Each course must be identified either as a proposed ROW line, an existing ROW line, or a property line of the parent tract. Each property line of the parent tract must be described with an appropriate adjoiner call.
- ix. A description of all monumentation set or found, which must include size and material.
- x. A reference to the source of bearings, coordinates, and datum used.
- b. Parcel plat

The Surveyor shall prepare a parcel plat for each parcel of land to be acquired using the Owner's standard format. Parcel plats must include each and every item of information 1) written in the metes and bounds description and 2) shown on the ROW map (if requested by the Owner) for the individual parcel.

D. ADHERENCE TO STANDARDS

For purposes of clarity, consistency, and ease of understanding, the Owner as an acquiring agency of private property for public use, has adopted TxDOT's standards and formats for a ROW map to facilitate the processes of negotiation, appraisal, relocation assistance, and condemnation. The Surveyor shall adhere to these standards and formats to every extent possible.

E. GENERAL SPECIFICATIONS

The following general specifications for 1) description, and 2) plat:

3. Parcel plats must be submitted to the Owner on A-size bond paper with a 0.5-inch border. Match lines must be used where more than one sheet is required.

- 4. Parcel plats must be drawn to a scale of 1 inch = 50 feet. Scales other than 1 inch = 50 feet may be used with prior approval by the Owner. In the case of large parcels which are difficult to fit on a single A-size sheet, the Surveyor shall use multiple A-size sheets with match lines.
- 5. The minimum size lettering for a parcel plat is 0.3 inches at print scale.
- 6. Property Descriptions shall be submitted on A-size bond paper.

F. GENERAL REQUIREMENTS

The Surveyor shall adhere to the following general requirements:

- 1. Copies of instruments of record submitted to the Owner must be indexed by parcel number.
- 2. Coordinates appearing on parcel plats, and in written property descriptions must be surface coordinates based on the Texas State Plane Coordinate System. The appropriate combined adjustment factors (sea level factor multiplied by the scale factor) for each zone of the coordinate system, which have been developed by TxDOT, must be noted. To obtain surface coordinates, the Surveyor shall multiply grid coordinates by the appropriate combined adjustment factor for each zone, as provided by TxDOT.
- 3. Line and curve tables may be used when necessary.
- 4. The number of centerline alignment stations shown on a single plan sheet shall be limited to allow approximately four inches between match lines and sheet borders for future details and notes.
- 5. A minimum four-inch by four-inch space must be reserved at the bottom right corner of each map sheet for future revision notes.
- 6. If requested by the Owner, the Surveyor shall set a 5/8-inch rebar with a TxDOT aluminum ROW cap (or other appropriate monument) on the proposed ROW line and replace the rebar later with a TxDOT Type II ROW marker.

When the 5/8" rebar with a company rod cap is set for PCs, PTs, PIs, and 1500 foot stations, the double asterisk symbol (**) must be shown on the map sheets and written into and shown in the Property Description and must be accompanied by the following note:

**The monument described, and set may be replaced with a Type II ROW marker upon the completion of the construction project, under the supervision of a RPLS, either employed or retained by the Owner.

When new ROW lines intersect boundary lines of properties creating new boundary corners in the new ROW line, the Surveyor shall place a 5/8- inch rebar with the State's 2-inch aluminum property corner rod cap.

G. GIS SUBMISSION REQUIREMENTS AND STANDARDS

All ROW mapping project work authorizations are subject to the standards and required ArcGIS deliverables detailed in Chapter 4, Section 8 of TxDOT's ROW Preliminary Procedures for the Authority to Proceed Manual.

H. ELECTRONIC ROW MAP STANDARDS

The primary purpose of this section is to provide instructions on the graphics standards, file management structure, and naming conventions, for ROW mapping electronic deliverables submitted to the TxDOT Right of Way Division by surveying services providers, as part of the ROW package.

The Surveyor shall adhere to the following requirements for electronic map submittals:

1. Bentley MicroStation

All graphic files for map sheets and parcel plats must be native Bentley MicroStation DGN files created using Bentley OpenRoads civil design system with TxDOT's current seed files, resource files, workspace environment, and settings.

2. Level Library Files

The Surveyor shall use the TxDOT's current MicroStation level library files for ROW mapping. The files contain all the predefined levels that are typically needed for ROW mapping and include levels for existing utilities.

- Separate DGN Files for Each Map Sheet The Surveyor shall provide one DGN file for each map sheet. Each file must be spatially registered to the project coordinate system. The sheet file naming convention is "Highway Name Sheet Number.dgn(e.g., ROAD_S01.dgn).
- 4. Naming convention for the Master Design File or Master ROW Files and Map Sheet.

The recommended naming prefix for design files is MDF (for master design file). Therefore, the prefix must be different for the ROW files because the location of the existing and proposed ROW in the design files from the schematic will change to some degree after an on-the- ground survey is made for a ROW map. Therefore, the prefix might be MRF for master ROW file.

The Surveyor shall provide the corrected Master ROW Files to the design engineer to be used in the final plans, specifications, and estimate (PS&E) so that all features of construction and the relocation of utilities will be correctly placed in relation to the highway ROW and the ROW of cross streets or roadways.

The master ROW file naming convention is: "MRF ROW Logical Name.dgn", with examples as follows:

MRF212104065_Schematic90.dgn (for schematic layout 90% submittal)

MRF212104065_Schematic100.dgn (for schematic layout 100% submittal)

MRF212104065_SchemApprov.dgn (for City projects on State ROW)

MRF212104065_PSEDesign.dgn (for final PS&E design)

MRF212104065_ExROW.dgn (for existing ROW determined by RPLS)

MRF212104065_PropROW.dgn (for proposed ROW of final design) MRF212104065_DeedPlot.dgn (for deed record) MRF212104065_Planimetric.dgn (for aerial mapping topography) MRF212104065_ROWTopo.dgn (for improvements data collection) MRF212104065_DesignTopo.dgn (for design level data collection topography)

MRF212104065_ExUtil.dgn (for existing utilities)

All sheet files with a plan view must have the MRF referenced to allow more than one sheet file to be worked on at the same time.

5. File Structure of Master and Reference DGN Files

If possible, the file structure should not contain subfolders.

6. Lines Weights, Line Styles, Colors, Text Size, Text Fonts, Scale, and Annotations

Legibility is the primary concern when choosing the scale, line weights and text size. Sheets must be legible at full scale sheet size (i.e., D-size drawing) and when reduced to half scale sheet size (B-size drawing size). It is not sufficient that originals or first-generation plots are legible, reproductions (copies) must retain legibility.

The normal scales for a full-sized sheet (i.e., D-size) is 1 inch = 50 feet (urban) and 1 inch = 100 feet (rural). For a half-sized sheet (i.e., B-size) the scale is 1 inch = 100 feet (urban) and 1 inch = 200 feet (rural).

The standard cell library is: TxdotSurv_04.cel or current State cell files; The standard font is Leroy. The standard State color table is: V256COLR.ctb or Txgpk.ctb.

The Surveyor shall use the TxDOT's current GEOPAK Survey SMD file that sets up new feature codes in SMD file for alignment chains, parcel chains and survey chains that can be drawn by GEOPAK Survey from the GPK file with the correct line styles, colors and weights to the designated levels loaded into the DGN by the TxDOT's current level library files.

The Surveyor shall use MicroStation Packager for the submission of electronic deliverables, which captures any non-State standard files (e.g., rsc, cel, text) that were used in the map that look and plot differently in the TxDOT's MicroStation workspace.

7. Text and Line Color considerations

Text and line colors must be legible when using background imagery.

8. Required Data in the GEOPAK ROW GPK File

Alignments, chains of proposed and existing ROW lines, parent tracts and taking parcels, and all other points collected in the field (start with schematic or design GPK file) are required.

If the design GPK file is too detailed for ROW use, the Engineer shall create input files for the information needed for the design GPK file to load into the ROW GPK file.

9. Surface Coordinate and the ROW GIS Geo-Database

Surface adjustment factors and basis of datum must be well documented in the electronic deliverables "file structure/deliverables read me" file.

- 10. Requirements for Electronic Deliverables
 - a. Native MicroStation DGN files (reference files, sheets files, and parcel plats files);
 - b. GEOPAK Survey GPK files.
 - c. Separate comma delimited point files (ASCII file) in the following coordinate systems: Surface or Projected Coordinates, Grid Coordinates (Texas Coordinate System of 1983 in U.S. Survey feet) and Geographic Coordinates (WGS-84 in decimal degrees). The file will have the following format: point number, northing or latitude, easting or longitude, elevation, feature code, and point description. File naming convention is: Road Name_Type of Coordinates.csv (e.g., Road_Surface.csv, 212101065_Grid.csv, and 212101065_WGS84.csv);
 - d. PDF files created in MicroStation of map sheets (both D-size and B-size sheets), one set in black and white and another set-in color if there is orthoimagery for the background.
 - e. PDF files and Microsoft Word documents of signed and sealed Property Descriptions and Surveyor's Reports.
 - f. Raw and processed GPS files including adjustment reports.

I. ROW MAPPING TASKS TO BE COMPLETED

The Surveyor shall perform the following tasks:

1. Abstracting

The Surveyor shall obtain copies of all existing ownership documents for the parent tracts along with all subdivision plats and recorded documents defining existing easements within, along or intersecting the existing ROW, and prepare an Abstract Map.

2. Field Surveys

The Surveyor shall locate and set additional horizontal and vertical control points, as necessary, at the maximum spacing distance of 1,500 feet; field locate property corners, existing ROW markers, improvements, and visible utilities; verify and update the planimetric file; and as directed by the Owner, perform the following:

- a. Obtain right-of-entry to survey on private property and prepare a spreadsheet of the information.
- b. Locate existing horizontal and vertical control and verify the control information, locate property corners, and update the planimetric information with any missing visible improvements or visible utilities.

The Surveyor shall base all field work and calculations on the current controls and datum provided by the Owner.

- 3. Property Description
 - a. The Surveyor shall prepare a Property Description(s) for each parcel or tract in the form of a preliminary and a final deliverable(s). Each part of a Property

Description shall be signed and sealed by an RPLS. The Surveyor shall prepare preliminary Property Description(s)- for review by the Owner.

Metes and bounds descriptions

The Surveyor shall prepare a metes and bounds description for each parcel of land to be acquired. The Surveyor shall follow the standard formats for metes and bounds descriptions that TxDOT has developed.

Parcel plats

The Surveyor shall prepare a parcel plat for each parcel of land to be acquired. The Engineer shall follow the standard formats for parcel plats that the State has developed.

Parcel plats must include all items of information shown on the ROW map that concerns the individual parcel.

b. The Surveyor shall prepare final deliverables.

The Surveyor shall set appropriate monuments on the proposed ROW lines at intersecting property lines, and at all points of curvature (PC), points of tangency (PT), angle points, intersecting ROW lines of side streets, and at 1,500-foot stations.

The Surveyor shall set appropriate monuments on the existing ROW lines in areas of no acquisition at all PCs, PTs, angle points, and 1,500-foot stations, and as directed by the Owner.

The Surveyor shall set appropriate monuments at intersecting property lines with the new ROW lines.

The Surveyor shall prepare the final ROW (ArcGIS) database template "ROW_Parcels_Edits" populated with the final parcels, final alignment, and project control points in ArcGIS 10.6.1 format or the current version in use by the Owner.

The Surveyor shall prepare final, signed, sealed, and dated Property Descriptions.

4. Quality Assurance and Quality Control (QA/QC)

The Surveyor shall conduct a QA/QC review and prepare a check list for each task performed.

The Surveyor shall prepare a surveyor's report regarding their survey procedures, findings, and decisions made.

J. ROW MAPPING DELIVERABLES

The Surveyor shall provide the following:

- 5. Scanned copies of the ownership documents and one D-size paper copy of the Abstract Map and the associated MicroStation graphics files for review purposes.
- 6. Field Survey Data
 - a. A spreadsheet of the property owners and right-of-entry information.
 - b. Scanned copies of the field notes, control data sheets, and a graphics file of all field survey data.
- 7. Property Description Submittals
 - a. Preliminary Property Description Submittals

One paper copy of the preliminary Property Description(s) for review purposes marked "Preliminary – Not to be used for recording purposes", and an electronic copy of each Property Description in PDF format.

The ROW (ArcGIS) database template "ROW_Parcels_Edits" populated with the preliminary parcels, alignment, and project control points in ArcGIS 10.6.1 format or the current version in use by TxDOT.

b. Final Property Description Submittals

Two paper sets of the final Property Description(s) showing the metes and bounds descriptions and parcel plats, signed and sealed by a RPLS, and the associated electronic files in PDF and Word formats.

Bentley MicroStation parcel plat graphics files and master reference files (MRF).

The ROW (ArcGIS) database template "ROW_Parcels_Edits" populated with the final parcels, final alignment, and project control points in ArcGIS 10.6.1 format or the current version in use by the Owner.

8. QA/QC

Documentation stating that the appropriate monuments were set on the proposed ROW lines at intersecting property lines, PC's, PT's, angle points, ROW lines of side streets and at 1,500-foot stations.

Documentation stating that the appropriate monuments were set on the existing ROW lines in areas of no acquisition at intersecting property lines, PC's, PT's, angle points, ROW lines of side streets and at 1,500- foot stations.

A copy of TxDOT's ROW map checklist signed by the surveyor, if required.

A copy of the surveyor's report signed by the surveyor.

FUNCTION CODE 145(145, 164) - MANAGING CONTRACTED/DONATED PE

CONTRACT MANAGEMENT AND ADMINISTRATION

145.1. Contract Management and Administration

The Engineer shall:

- A. Act as an agent for the Owner when specified in a task order.
- B. Produce a complete and acceptable deliverable for each environmental service performed for environmental documentation.
- C. Incorporate environmental data into identification of alternatives.
- D. Notify the Owner of its schedule, in advance, for all field activities.
- E. Notify the Owner as soon as practical, by phone and in writing, if performance of environmental services discloses the presence or likely presence of significant impacts (in accordance with 40 Code of Federal Regulations (CFR) 1500-1508). Inform the Owner of the basis for concluding there are significant impacts and the basis for concluding that the impacts might require mitigation.
- F. Notify the Owner as soon as practical, by phone and in writing, if performance of environmental services results in identification of impacts or a level of controversy that might elevate the transportation activity's status from a categorical exclusion or environmental assessment. The Owner will reassess the appropriate level of documentation.

145.2. Project Management and Administration

The Engineer, in association with the Owner's Project Manager shall be responsible for directing and coordinating all activities associated with the project to comply with Owner policies and procedures, and to deliver that work on time.

Project Management and Coordination. The Engineer shall coordinate all subconsultant activity to include quality of and consistency of plans and administration of the invoices and monthly progress reports. The Engineer shall coordinate with necessary local entities.

The Engineer shall:

- Prepare monthly written progress reports for each project.
- Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule, for each task order. The schedule submittals shall be hard copy and electronic format.
- Meet on a scheduled basis with the Owner to review project progress. Prepare, distribute, and file both written and electronic correspondence.
- Prepare and distribute meeting minutes.
- Document phone calls and conference calls as required during the project to coordinate the work for various team members.
- Provide QC/QA documentation for all submittals, including the sub consultants.

RPS Infrastructure, Inc. shall begin work as soon as authorized in this Task Order No. $\underline{2}$.

APPROVED:

ACCEPTED:

CITY OF KYLE, TEXAS

RPS INFRASTRUCTURE, INC.

Ву	Ву
Title: Mayor	Title
Attest	Attest
Date	Date

CITY OF KYLE, TEXAS	
CONTRACT NO.	

EXHIBIT _ FEE SCHEDULE Method of Payment: LUMP SUM AND UNIT COSTS

PROJECT NAME: Marketplace Avenue

PROJECT LIMITS: FM 1626 to Marketplace (Existing)

TASK DESCRIPTION													
		RPS	SAM, INC.	s	ubconsultant 2	s	Subconsultant 3	S	ubconsultant 4	Subconsultant 5	Subconsultant 6	TO	TAL COSTS BY FC
FEASIBILITY STUDIES (FC 102 (102))	\$	-	\$ -	\$	-	\$	-	\$	-	\$ -	\$ -	\$	-
SOCIAL, ECONOMIC AND ENVIRONMENTAL STUDIES AND PUBLIC INVOLVEMENT (FC 120 (120))	\$	-	\$ -	\$	_	\$	-	\$	_	\$-	\$-	\$	_
RIGHT-OF-WAY DATA (FC 130 (130))	\$	-	\$ 27,869.00	\$	-	\$	-	\$	-	\$-	\$-	\$	27,869.00
MANAGING CONTRACTED/DONATED PE (FC 145 (145,164))	\$	3,325.00	\$ -	\$	-	\$	-	\$	-	\$ -	\$ -	\$	3,325.00
ROADWAY DESIGN CONTROLS (FC 160 (160))	\$	-	\$ -	\$	-	\$	-	\$	-	\$-	\$-	\$	-
DRAINAGE (FC 160 (161))	\$	-	\$ -	\$	-	\$	-	\$	-	\$-	\$-	\$	-
SIGNING, PAVEMENT MARKINGS AND SIGNALIZATION (PERMANENT) (FC 160 (162))	\$	-	\$ -	\$	-	\$	-	\$	-	\$ -	\$-	\$	-
MISCELLANEOUS (ROADWAY) (FC 160 (163))	\$	-	\$ -	\$	-	\$	-	\$	-	\$-	\$-	\$	-
TRAFFIC MANAGEMENT SYSTEMS (PERMANENT) (FC 160 (165))	\$	-	\$ -	\$	-	\$	-	\$	-	\$-	\$-	\$	-
BRIDGE DESIGN (FC 160 (170))	\$	-	\$ -	\$	-	\$	-	\$	-	\$-	\$ -	\$	-
SUBTOTAL LABOR EXPENSES	\$	3,325.00	\$ 27,869.00	\$	-	\$	-	\$	-	\$-	\$-	\$	31,194.00
DIRECT EXPENSES (FC 164)	\$	-	\$ 756.25	\$	-	\$	-	\$	-	\$-	\$-	\$	756.25
UNIT COST EXPENSES (FC 164)	\$	-	\$ -	\$	-	\$	-	\$	-	\$-	\$-	\$	-
TOTAL	\$	3,325.00	\$ 28,625.25	\$	-	\$	-	\$	-	\$-	\$ -	\$	31,950.25
	1	10.4%	89.6%			•							100%
			SUMMARY										
TOTAL LABOR COSTS FOR PRIME PROVIDER			 									\$	3,325.00
NON-SALARY (OTHER DIRECT EXPENSES) FOR PRIME PROVIDER												\$	-
SUBCONTRACTS (includes labor costs, direct expenses and unit cost	t)											\$	28,625.25
GRAND TOTAL												\$	31,950.25

Page 1 of 1

Contract No. _____ Work Authorization No. _









CITY OF KYLE, TEXAS

104 S. Burleson Project

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Discussion and Consideration to approve the 104 S. Burleson Project Schematic Design Plans, Budget and Schedule, to proceed into the Design Document Phase of design. ~ Ryan Rosborough, AG|CM and Todd Kaiser, BGK Architects

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 11-4-22 UPDATE Draft Schematic Budget (SD)
- Draft Strawman 11-4-22
- D Site
- D plans
- elevations



Kyle 104 S. Burleson - Schematic Budget Projection	11/4/2022
Assuming 15K SF, Multi Story, Office/Retail (Shell) Event Space (Built out)	
\$10,494,000 Budget per City Budget Documents	
Description	<u>Costs</u>
Construction Costs	\$12,652,138
Design Fees	\$613,000
FFE/Owner Provided	\$724,138
Misc Consultants	\$252,000
Utilities	\$135,000
Contingency	\$557,107
TOTAL CONCEPTUAL PROJECT BUDGET	<u>\$14,933,383</u>
POTENTIAL FUNDING GAP	<u>\$4,439,383</u>



Construction Cost Summary		
Description	<u>Costs</u>	Notes
Construction Cost	\$9,688,816	Cadence Schematic Estimate
Construction Escalation	\$1,453,322	1.5% per Month x 10 Months
Asbestos Abatement	\$10,000	Allowance
Future Vybe Trail	\$0	Not in this Contract
Improvement of Alleyway	\$0	Not in this Contract
Café Alternate	TBD	
Structural Option - Mass Timber or Hybrid (Concrete Structure Base Bid)	\$1,500,000	
Total Construction Budget	<u>\$12,652,138</u>	



Design Fee Summary		
Description	Costs	Notes
Design Fee		0 Per City Executed Agreement
Design Team Add Service		0 None foreseen at this point
Design Team Reimburables	\$10,00	0 Allowance only
Total Design Budget	\$613,00	0
		_



FFE/Owner Provided Summary		
Description	Costs	Notes
Office Space TI Allowance (\$35/sf @ 3927 sf)	\$137,445	
Restaurant Space TI Allowance (\$45/sf @ 2970 sf)	\$133,650	
Owner Furniture	\$200,000	Allowance for Event Space Furniture
Technology/IT/Fiber to Building	\$253,043	Calculated as 2% of Construction
DAS/Repeater System	\$0	Not required per Design/City
Total FFE Budget	<u>\$724,138</u>	-
		4



Misc Consulting Fee Summary]
Description	Costs	Notes
Commissioning	\$0	Not Required by City/Design
Geotech	\$0	Previous, not this budget
Testing Lab	\$40,000	Allowance for future contract
Topo Survey/Boundary Survey, Tree Survey	\$0	Previous, not this budget
Project Management Fees (AGCM)	\$212,000	City Executed Contract
Total Misc Consulting Fee Budget	\$252,000	



Utility Fee Summary]
		-
Description	Costs	Notes
Water Service Tap/Impact Fees	\$50,000	TBD - Placeholder
Sewer System Impact Fees - NA (No City Fees Incurred)	\$50,000	TBD - Placeholder
Electrical Service Fees	\$35,000	Allowance - PEC Transformer
Gas Service	\$0	No connection fee per Centerpoint
Fiber/Phone Service (NA - Under IT)	\$0	
Total Utility Budget	\$135,000	
		_



Contingency Summary]
		1
Description	Costs	Notes
Owners Project/Supplies/Materials Contingency	\$557,107	Calculated as 5% of Construction Cost
Total Contingency Budget	<u>\$557,107</u>	-





AUSTIN 900 South 1st Street Suite #407 Austin, TX 78704 Ofc (512) 426-0091 Fax (512) 426-7608 www.agcm.com

104 S. Burleson "Strawman" Schedule

October 21, 2022 – Cadence Present Schematic Estimate

November 15, 2022 – Present Project Schematic and Costs to Council for approval to next phase, Present Cadence Final Contract for Approval

- December 20, 2022 BGK Complete DD Design Set
- February 1, 2023 Cadence Present DD Estimate

February 7, 2023 – Present Project Design Docs and Cost Update to Council for approval to next phase

March 24, 2023 – BGK Complete Construction Documents (100%)

April 4, 2023 – Council Approve 100% Construction Documents (CD's)

May 5, 2023 -Cadence submit GMP for review

May 16, 2023 – Council Approval of GMP

May 22, 2023 – Execute NTP, Construction Begins

August 1, 2024 – CMAR Substantial Completion

August 19, 2024 – Owner Occupancy/Tenant Turnover (for buildout)





1224 E 12th Street Suite 320 Austin, Texas 78702 512.476.7133 Fax: 512.478.2624

PROGRESS PRINT

Not for regulatory approval, permitting or construction

Revision Schedule
MARK ISSUE DATE

100% Schematic Design



104 S. Burleson

OVERALL LANDSCAPE CONCEPT

© 2022 Barnes Gromatzky Kosarek Architects JOB NO: 2204 DATE: 09/16/2022 RESERVED: RESERVED:

L-100





Item # 20



GROUND FLOOR / COMMERCIAL









EXTER	IOR MATERIAL SCHEDULE
BM-1	MODULAR BRICK MASONRY, B.O.D. OLD TEXAS
GL-1	1" INSULATED GLAZING UNIT, CLEAR
GL-2	1" INSULATED GLAZING UNIT, TINTED
MP-1	METAL PANEL, COLOR: ANODIZED ALUMINUM: DARK BRONZE
MF-1	METAL FASCIA, CANOPY, COLOR: ANODIZED ALUMINUM: DARK BRONZE
MF-2	METAL FASCIA, ROOF, COLOR: ANODIZED ALUMINUM: DARK BRONZE
WP-1	WOOD PANEL, B.O.D. WHITE OAK
WW-1	ALUMINUM WINDOW WALL SYSTEM, COLOR: ANODIZED ALUMINUM: DARK BRONZE
SS-1	ALUMINUM STOREFRONT SYSTEM, COLOR: ANODIZED ALUMINUM: DARK BRONZE
RS-1	RAILING SYSTEM - GUARDRAIL, COLOR: ANODIZED ALUMINUM: DARK BRONZE

ELEVATIONS

© 2022 Barnes Gromatzky Kosarek Architects JOB NO: 2204 DATE: 09/16/2022 RESERVED: RESERVED:





CITY OF KYLE, TEXAS

360 Old Stagecoach Retail, LLC -Zoning (Z-22-0106) Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:	<i>(Second Reading)</i> An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 7.17 acres of land from 'A' (Agriculture) to 'CC' (Community Commercial) for property located on Lot 2, Block A of the Findley Subdivision, in Hays County, Texas. (360 Old Stagecoach Retail, LLC - Z-22-0106) ~ <i>Will Atkinson, Director of Planning</i>
	Planning and Zoning Commission voted 5-1 to recommend approval of the request.
	City Council voted 6-0 to approve on First Reading on 11/1/2022.
Other Information:	See attachments.
Legal Notes:	N/A
Budget Information:	N/A

ATTACHMENTS:

Description

- Staff Report
- D Ordinance
- D Summary Request Letter
- Landowner Authorization
- D Franchise Tax Account Status
- D Deed
- Warranty Deed
- D Survey
- Letter of Opposition
- Revised Letter of Opposition

Petition No. Z-22-0106

Property Location	N. Old Stagecoach Rd, Kyle, TX 78640 Findley Subdivision, Lot 2
Owner	360 Old Stagecoach Retail, LLC 12600 Hill Country Blvd Ste. R-275 Bee Cave, TX 78738
Agent	Connor Overby Atwell, LLC 805 Las Cimas Pkwy, Ste. 310 Austin, TX 78746
Request	Rezone 7.16-Acres "A" (Agriculture) to "CC" (Community Commercial)

Vicinity Map



City of Kyle, Texas

Site Description

The site proposed to be rezoned, is an undeveloped lot located at 360 Old Stagecoach Rd. It's currently zoned "A" or "Agriculture." To the north is a vacant lot currently zoned "RS" and the northwest is the Sage Hollow residential subdivision (PUD). To the south is and across N. Old Stagecoach Road is property zoned "RS". To the west is a property zoned "A", with a single-family residence. To the east is a property zoned "RS" or "Retail Services", with a combination convenience store, fuel station and car wash under construction.

Existing 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)

Requested Zoning



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)

Requirements of the Zoning District

Sec. 53-669. - Building placement.

- When the rear or side lot line abuts a single family residential zoned lot or property used for a single family residence the rear/side setback shall consist of the following transitional yards:
 - A 15-foot wide planting area consisting of one shade tree, two non-deciduous trees, and eight evergreen shrubs per 50 linear feet of lot width.
 - Eight-foot privacy fence.
- Lot size: Minimum 8,000 square foot lot.
- *Height regulations:* Maximum height of two stories within 150 feet from single-family residential zoned or used property and three stories between 150 and 300 feet from single-family residential zoned or used property.

City of Kyle, Texas

• Stories shall not exceed 14 feet in height from finished floor to finished ceiling. A single floor level exceeding 14 feet shall be counted as two stories.

Sec. 53-670. - Design.

- Primary entrances shall face the public street.
- The exterior walls shall be constructed of 100 percent stone, brick, masonry, stucco, masonry veneer, or similar granular product excluding doorways and windows. All walls must include materials and design characteristics consistent with those on the front (wood and metal may be used as accent material).
- Windows or doors of clear or lightly tinted glass (no high glare glass) shall comprise at least 50 percent of the frontage length measured between three feet and ten feet above grade, for retail buildings and shall comprise at least 30 percent of the frontage length for non-retail based buildings. Windows shall be distributed in a more or less even manner.
- For new non-residential development all buildings shall incorporate at least four of the following buildings elements:
 - Awnings;
 - Pillars;
 - Canopies;
 - Alcoves;
 - Recessed entries;
 - Ornamental cornices (other than colored stripes or bands alone);
 - Pillar posts.
- Exterior walls cannot have a blank uninterrupted length greater than 30 feet, without including two or more features:
 - Change in plane;
 - Change in texture or masonry pattern;
 - Windows;
 - Other equivalent that subdivide the wall into a human scale.

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

Sec. 53-671. Site standards.

The site development regulations for uses in the CC district are as follows:

Landscaping

 Street trees shall be planted a minimum of 30 feet on center. A minimum of 25 percent of the lot area shall be devoted to landscaping (all landscaping shall consist of droughttolerant plants). Fifty percent of the required landscaping shall be located in front of the primary building.

Sidewalks.

City of Kyle, Texas
• Sidewalks, driveways and parking areas are required. The sidewalks and pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

Screening.

• Screening of loading, trash, recycling and storage facilities is required. All trash and recycling receptacles shall be stored behind the host building. The materials used for screening must be compatible with the materials used on the host building.

Parking.

• Seventy percent of all parking shall be setback behind the front of the building. Curb cuts for parking areas shall not exceed 25 feet in width.

Detention Facilities.

 Detention and water quality ponds shall utilize earthen berms and be designed with a curvilinear contoured shape. Any structural stabilization shall be limited to the use of native stone (except for outlet structure), and shall be limited to not more than 30 percent of the perimeter of the pond and shall be seamlessly integrated with landscape.

Lighting.

• Site lighting shall shine downward and be shielded so that light sources are not visible from public thoroughfares or from adjacent residential zoned or used property. Lighting pole standards shall not exceed a height of 18 feet.

Fencing.

 Any fencing in front, or to the side on corner lots, shall not exceed a height of three feet and any solid fencing material shall not exceed a height of two feet. No chain link, sheet metal, plastic, vinyl, barbed wire or horizontal metal pipe larger than two inches in diameter shall be used.

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

Sec. 53-672. Use.

The neighborhood commercial zoning district shall allow professional offices and small businesses serving neighborhood community needs. The following uses shall be permitted:

- Multi-family on the second floor and above shall be permitted by right regardless of base zoning;
- Bed and breakfast up to five rooms;
- Retail;
- Restaurant;
- Religious assembly;
- Art gallery;
- Child care center (outdoor playground allowed);
- Fire/police station;
- Professional office;

City of Kyle, Texas

- Funeral home;
- Barber/beauty shop;
- Convenience/grocery store;
- Fuel station*;
- Nursing/retirement homes;
- Veterinarian without outdoor boarding;
- Health and fitness center;
- Restaurant with drive-thru*;
- Financial institution w/ drive-thru banking.
- * See special standards.

(Ord. No. 700, § 2(Exh. A), 7-17-201

Sec. 53-673. Special standards.

Size of building: First floors are limited to a maximum of 15,000 square feet.

Permanent outdoor storage shall not be allowed. Outdoor dining shall be allowed. Limited outdoor display shall be allowed with no more than ten percent of the lot area to be used for merchandise (merchandise shall not be left outside overnight). Outdoor displays shall not be allowed in any required off-street parking spaces.

Establishments located on property that are within 300 feet of any property zoned or used for a single-family residential use may not to be open to the general public before 6:00 a.m. and must be closed to the general public by 10:00 p.m. Businesses may utilize extended hours on Friday and Saturday if the following conditions exist:

- If a property is located 150 feet or more from a single-family zoned or used property the business shall be allowed a closing time of midnight, on Friday and Saturday, by right.
- Any property closer than 150 feet from a single-family residentially zoned or used property may apply for a conditional use permit to allow for extended business hours that would allow for a closing time of midnight, on Friday and Saturday.

Fuel stations must adhere to the following requirements:

- Fascias of the canopy shall be finished to match the building material and color. Striping and banding of canopies is prohibited.
- No more than eight fuel pumps shall be allowed within the community commercial zoning designation.

Drive-through facilities (speakers, menu boards, or drive-through windows) shall not be located within 75 feet of a residentially zoned property. Drive-through facilities shall not face a public ROW. Drive-through lanes and facilities shall be located to the side and rear of the primary building. A minimum of a ten-foot wide landscape area along the edge of a site where parking areas, drive lanes are adjacent to a public street shall be provided. The landscape area shall include trees, shrubs and/or low walls to screen cars from view while allowing eye level visibility into the site.

(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

Mid-Town Community District

The subject site is located within both the "Mid-Town Community" district. The "CC" zoning district is a conditional district in the "Mid-Town Community" district.

Mid-Town Community

Recommended: R-1-1, R-1-2, R-1-3, NC Conditional: E, R-1-A, R-1-T, R-3-1, R-3-2, **CC**, R/S, MXD, O/I

<u>'Character'</u>: The Mid-Town District contains sites of recent residential development in Kyle, and will continue to predominantly feature residential uses. Those residential uses in this District are organized around the curvilinear streets of suburban neighborhood design, rather than the regular, rectilinear grid that characterizes the Old Town District. The Plum Creek waterway flows through and adjacent to the Mid-Town District, offering opportunities for recreation and a responsibility for environmental conservation. This District has a neighborhood-oriented form built around shared spaces such as streets, yards, porches and common areas. Neighborhood legibility and continuity is enhanced through these shared spaces. Distinctive landscape forms, including creekways, vistas, and rolling hills, give identity to this District and should be preserved, protected, and incorporated into development plans.

<u>'Intent':</u> The purpose of the Mid-Town District is to maximize the value capture of new residential development in Kyle. This District enjoys unusual proximity to amenities, such as open space, Downtown, commercial nodes, and transit options. The area is therefore well-positioned to define an economic and lifestyle pattern that is unique to Kyle. New development should accommodate mid- to high-density residential uses within the unique landscape forms that are present in the District. Higher density residential, attached residential, and non-residential projects like employment and retail sales should be considered based on their proximity to higher classification streets, higher capacity water and waste water availability, and likelihood of compatibility of adjacent uses. Legibility of neighborhood identity, definition, and transportation should be improved within the Mid-Town District through such elements as trails, sidewalks, signage, and interconnected shared spaces.

Analysis

The subject property is located on approximately 7.16-acres and zoned "A" (Agriculture). This site is currently undeveloped.

The Community Commercial zoning district is an appropriate use given the zoning of the surrounding properties and proximity to residential areas. This zoning district allows for less intense uses than Retail Services, making it an appropriate choice for the area (i.e. more restrictions regarding uses, than RS). This will provide opportunity for economic growth within this area of the City, provide additional retail and dining options, while also applying appropriate design restrictions adjacent to the residential areas. Community Commercial zoning has robust standards for development to help ensure a quality project that can seamlessly integrate into the surrounding community. A short list of robust design standards follows:

• Curvilinear detention pond (decorative and functional);

- 10' landscape buffer adjacent to residential uses with a mix of trees, shrubs and walls.
- Dumpsters must be enclosed and in the rear of the property.
- 70% of parking must be behind the front face of the building and the public ROW.
- Property will have an extension of the Vybe Trail along N. Old Stagecoach Road and will integrate appropriately into the Vybe Trail system.

Utility Providers:

- Water: City of Kyle
- Wastewater: City of Kyle
- Electric: PEC

Transportation Master Plan:

The City of Kyle's Transportation Masterplan shows this section of N. Old Stagecoach Road to be re-aligned through the property to the south. However, the portion of N. Old Stagecoach Road adjacent to this parcel, will generally have the existing alignment. Per the 2022 Road Bond, the City proposes to reconstruct Old Stagecoach Road into a 4lane undivided road, with the Vybe Trail flanking the one side of the future road.

Permits Required following zoning:

- Subdivision: Approved
- Site Development Permit
- Conditional Use Permit(s) (Veteran's Drive Overlay)
- Commercial Building Permit(s)

At the October 11, 2022 Planning & Zoning Commission meeting, Commissioner Oncken had questions relating to restrictions of drive-thru uses, how the proposed commercial site will integrate into the Vybe Trail, and proximity of the commercial buildings to the adjacent residential (west and north of the site). Staff believes the items were adequately addressed at the meeting and within the zoning code.

Recommendation

Staff has reviewed the zoning request and it does align with the current Comprehensive Plan and found it to be an appropriate zoning district for the site. The Planning and Zoning Commission voted 5-1 to recommend approval of this zoning to City Council on October 11, 2022.

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 7.17 ACRES OF LAND FROM 'A' (AGRICULTURE) TO 'CC' (COMMUNITY COMMERCIAL) – FOR PROPERTY LOCATED ON LOT 2, BLOCK A OF THE FINDLEY SUBDIVISION 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 7.17 acres from 'A' (Agriculture) to 'CC' (Community Commercial) Zoning for property located on Lot 2, Block A of the Findley Subdivision, Hays County, Texas and the property location map and survey 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.

<u>SECTION 3.</u> 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.

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

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

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 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 A



PROPERTY DESCRIPTION

A 7.16 acres (311,950 square feet), tract of land, lying within the Samuel Pharass Survey, Abstract 360, Hays County, Texas, and being all of Lot 2, Block A of Findley Subdivision, a subdivision recorded in Document Number 21040053, Official Plat Records of Hays County, Texas, described as follows:

BEGINNING at a fence post found for the northwestern corner of said Lot 2, the easternmost corner of a called 2.62 arce tract conveyed to Alton E. Franke in Volume 245, Page 347, Deed Records of Hays County, Texas and being a southern corner of a 57.260 arce tract conveyed to Kyle Mortgage Investors, LLC, for the westernmost corner of the herein described tract;

THENCE, with the northwestern corner of said Lot 2 also being the southeastern line of said 57.260 are tract, N35⁵54⁵9^cE, a distance of 50⁷.96 feet to an 1/2[°] iron rod found at the eastern said 57.260 are and the southern corner of called 4.847 are tract of conveyed to David Beseda in Document Number 17041944, Official Public Records of Hays County, Texas;

THENCE, with the northwestern line of said Lot 2 and also being the southeastern line of said 4.847 acre tract, N35'57'08'E, a distance of 184.73 feet to an a called iron rod with cap stamped "ATWELL LLC" set for the northernmost corner of said Lot 2, the southeastern line of said 4.847 acre and the westernmost corner of Lot 1, Block A of said Findley;

THENCE, with the southwestern line of said Lot 1 and 2 and also being in the northwestern right of said Lot 2, S50'23'29'E, a distance of 438.51 feet to an iron rod with cap stamped "ATWELL LLC" set, for the eastermost comer of said Lot 2 and also being in the northwestern right-of-way of Old Stagecoach Road (right-of-way line);

THENCE, with the northwestern line of said Old Stagecoach Road and the southeastern line of said Lot 2, S43°46'53'W, a distance of 935.93 feet to an iron rod found with cap stamped "ATWELL LLC" set, for the southernmost corner of said Lot 2 and the easternmost corner of said southern 2.62 acre tract;

THENCE, with the southernmost of said Lot 2 and the northern line of said 2.62 acre tract, $N13^{\circ}46'30'W$, a distance of 406.05 feet to the **POINT OF BEGINNING**.

Containing 7.16 acres or 311,950 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 TBPLS Firm No. 10193726

06/30/2021

Page 2 of 1



CONSULTING. ENGINEERING. CONSTRUCTION.

August 18, 2022

City of Kyle Planning Department 101 W. Center Street Kyle, TX 78640

RE: 360 Old Stagecoach Retail – Summary Request Letter

City of Kyle Planning:

On behalf of 360 Old Stagecoach Retail, LLC, Atwell LLC is pleased to submit this summary request letter as a supplement to the attached site plan application, which is located along the north side of Old Stagecoach Road near the intersection of FM 150, Kyle Texas, 78640.

The proposed 7.16-acre lot is part of the Findley Subdivision described as "Lot 2 Block A" in accordance with Hays County CAD. The site is within City of Kyle Full Jurisdiction, Hays County, Texas and is currently zoned for Agricultural use and is proposed to be rezoned to Community Commercial District. 360 Old Stagecoach Retail is a proposed development of a commercial use tract consisting of 3 retail/office and 2 restaurant buildings, ranging from 3,500 square-feet to 19,950 square-feet.

The site development is proposed with 254 parking spaces, including 1 detention pond. The site will include approximately 400 LF of hike and bike trail to meet the city's Overall Parks Plan. A 15 foot wide landscape buffer will be provided along the north and west property boundary, adjacent to the Kyle 57 subdivision and Franke's property.

The site is undeveloped, therefore there is no existing impervious cover. When developed, the storm water runoff shall be controlled to pre-development flow rate via detention ponds. No portion of the site is located within the Recharge Zone or Contributing Zone per the Texas Commission on Environmental Quality.

The property is not affected by the 100-year flood plain as shown on the Flood Insurance Rate Map number 48209C0270F dated September 02, 2005, as prepared by the Federal Emergency Management Agency. The site is located within the Plum Creek watershed.

For water service, a proposed 8-inch water line will tie into the existing 8" water main that is located along the Old Stagecoach Road right-of-way. The proposed water line provide domestic and fire service to the commercial site and will be capped at the end for future connection.

For wastewater service, proposed 8-inch gravity collection lines will tie into the existing wastewater manholes located along Old Stagecoach Road right-of-way. There are currently no planned lift stations required for this development.

Storm sewer infrastructure will be provided to capture and convey runoff to detention pond. There is a proposed culvert at each driveway entrance to convey right-of-way runoff downstream toward an existing culvert that crosses Old Stagecoach Road. The existing culvert may need to be resized and replaced. The storm sewer infrastructure size is unknown at this time and will be provided with the complete set construction plans. Pedernales Electric Cooperative, Inc. (PEC) will provide electric to the commercial site.

If you should have any questions pertaining to this project or if you need further explanation, please feel free to call me at (512) 466-2371.

Sincerely,

Adia Alarch

Adrian Alvarado Engineer **ATWELL, LLC**, TBPE Firm No. 12242 aalvarado@atwell-group.com

Attachments:

- Land Owner Authorization
- Property Deeds
- Preliminary Site Plan set

LANDOWNER AUTHORIZATIONAND AFFIDAVIT OF OWNERSHIP

SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided: Findley Subdivision Lot 2 Block A # of lots (if subdivided): 1 # of acres: 7.16 Site APN/Property ID #(s): R16950 Location: Kyle, Texas County: Hays Development Name: 360 Old Stagecoach Retail

OWNER

Company/Applicant Name: <u>360 Old Stagecoach Retail, LLC</u>
Company/Applicant Name: <u>360 Old Stagecoach Retail, LLC</u> Authorized Company Representative (if company is owner): Nil House
Type of Company and State of Formation: Commercial Development - TEXAS
Title of Authorized Company Representative (if company is owner): <u>MEMABER</u> Applicant Address: <u>12600 Hill COUNTRY BLVD, SUITE R-275, BEE CAUE</u> TX 78738
Applicant Address: 12600 Hill OWNEY BIVD., SUITE R-275, BEE CAVE TX 78738
Applicant Fax:
Applicant Phone: 512-9
Applicant/Authorized Company Representative Email: NEIL @ 360 CAPTX. Com

APPLICANT REPRESENTATIVE

Check one of the following:

. I will represent the application myself; or

X I hereby designate Connor Overby c/o Atwell, LLC (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

Date: 8.19.2022 Owner's Signature: State of IEXAS § County of TRAVIS

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.).



PROJECT	REPR	ESEN	TA	TIV	'E
---------	------	------	----	-----	----

SUBSCRIBED AND SWORN TO before me, this the day of Allal 5, 20 2 Public's Signature Notary 1. 17.2027

Representative Name: <u>Atwell, LLC</u>	
Representative Address: 805 Las Cimas Parkway, Suite 310, Austin	<u>, Texas 78746</u>
Representative Phone: 512-904-0505 (office) 512-750-5282 (mobil	<u>e)</u>
Representative Email: <u>coverby@atwell-group.com</u>	
Representative's Signature:	Date: 09/20/2022





Franchise Tax Account Status

As of : 08/17/2022 17:06:23

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

360 OLD STAGECOACH RETAIL, LLC			
Texas Taxpayer Number	32081661848		
Mailing Address	12600 HILL COUNTRY BLVD STE R-275 BEE CAVE, TX 78738- 6768		
Right to Transact Business in Texas	ACTIVE		
State of Formation	TX		
Effective SOS Registration Date	10/27/2021		
Texas SOS File Number	0804293083		
Registered Agent Name	NEIL FRANCOIS		
Registered Office Street Address	13000 SPANISH OAKS CLUB DR UNIT 7 AUSTIN, TX 78738		

Independence Title/GF#_2/55252-COM/LMB

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.

DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THAT **360 OLD STAGECOACH RETAIL, LLC, a Texas limited liability company** (hereinafter referred to as "<u>Grantor</u>"), whose mailing address is 12600 Hill Country Blvd. Suite R-275, Bee Caves, Texas 78738, in consideration of the sum of Ten (\$10.00) Dollars to Grantor in hand paid, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the uses, purposes and trusts herein set forth and declared, have Granted, Bargained and Sold, and by these presents do hereby Grant, Bargain, Sell and Convey unto **PATRICK C. BELL, TRUSTEE** (hereinafter referred to as "<u>Trustee</u>"), in trust, whose mailing address is Potter Minton, Attn: Patrick C. Bell, Plaza Tower, Suite 500, 110 N. College, Tyler, Texas 75702, all of the property described in paragraphs A, B and C, immediately following, to-wit:

A. The real property located in the **City of Kyle, Hays County, Texas**, as more particularly described on <u>Exhibit "A"</u> attached hereto (the "<u>Land</u>"), together with all of the easements and other rights and benefits appurtenant to the Land; all buildings and other improvements now or hereafter situated on the Land (the "<u>Improvements</u>"); all of Grantor's right, title and interest in and to all other rights, privileges and benefits appurtenant to the Land or the Improvements, whether now existing or hereafter arising.

B. All of Grantor's right, title and interest in and to all goods, fixtures, equipment, inventory, supplies and other tangible personal property of any kind in which Grantor now has, or at any time hereafter acquires, an ownership interest, including without limitation, those that are now, or at any time hereafter, situated in, on or about the Land or Improvements (or used in connection with the Land or Improvements), including, but not limited to, all heating, lighting, refrigeration, mechanical, plumbing, ventilating, incinerating, water-heating, cooking, communication, fire suppression, electrical, and air-conditioning fixtures and equipment, and all appliances, furniture, furnishings, artwork, engines, machinery, elevators, pumps, motors, compressors, boilers, condensing units, cooling towers, doors, windows, window screens, window treatments, wall coverings, sprinklers, hoses, tools, supplies, speakers, electrical wiring, floor coverings, signs and all replacements and substitutions thereof and all additions thereto. All of the property described or referred to in this paragraph B being hereinafter sometimes called "Accessories".

C. All of Grantor's right, title and interest in and to all other assets of every kind and character of Grantor (whether now owned or hereafter acquired, and whether tangible or intangible) (i) that are used in connection with the Land, the Improvements and/or the Accessories, including, without limitation all licenses, permits, warranties, contracts, leases, management agreements and other agreements, and all other rights and benefits of any kind associated with the Land, the Improvements or the Accessories, including, without limitation, all contract rights, privileges and benefits of Grantor under parking leases, licenses and agreements, and (ii) including, without limitation, all other goods, inventory, equipment, investment property, instruments, chattel paper, documents and letter of credit rights, accounts, deposit

accounts, fixtures and supporting obligations (each as defined in Title 1, Chapter 9 of the Texas Business and Commerce Code).

All property and interests described or referred to in paragraphs A, B, and C preceding is sometimes hereinafter referred to collectively as the "<u>Mortgaged Property</u>." Provided, however, and notwithstanding anything in the Loan Documents (hereafter defined) to the contrary, in the event any portion of the Mortgaged Property is determined to be in a special flood hazard area, the liens and security interest created by the Loan Documents shall not secure the repayment of any loans which are not expressly created by the Loan Documents.

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular the rights, hereditaments and appurtenances in anywise appertaining or belonging thereto, unto Trustee, and his successors or substitutes in this trust, and his and their assigns, in trust, and for the uses and purposes hereinafter set further, forever.

Grantor, for Grantor and Grantor's successors, hereby agrees to warrant and forever defend, all and singular, the Mortgaged Property unto Trustee, and his successors or substitutes in this trust, and to his and their assigns, forever, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject only to the Permitted Encumbrances. As used herein, the term "<u>Grantor's successors</u>" means each and all of the successors, assigns, executors, heirs, administrators and legal representatives of Grantor. As used herein, the term "<u>Permitted Encumbrances</u>" means (a) the easements and other matters listed on <u>Exhibit "B"</u> attached hereto and made a part hereof, (b) the liens and security interests in favor of Mortgagee created by the Loan Documents, and (c) any other matters that are expressly approved in writing by Mortgagee.

Grantor hereby grants to the Mortgagee hereinafter named, and to the successors and assigns of Mortgagee, a first and superior lien and security interest in the Mortgaged Property, and each and every part thereof, subject to the Permitted Encumbrances, and in all proceeds from the sale, lease or other disposition thereof and in all sums, proceeds, funds and reserves described or referred to in Sections 5.7, 5.8 and 5.9 hereof; provided, however, that the grant of a security interest in proceeds shall not be deemed to authorize any action otherwise prohibited herein. Mortgagee's mailing address is P. O. Box 1079, Tyler, Texas 75710.

ARTICLE I

The Obligation

<u>Section 1.1</u> This Deed of Trust (as used herein, the expression "<u>this Deed of Trust</u>" shall mean this Deed of Trust, Security Agreement and Assignment of Rents), and all rights, titles, interests, liens, security interests, powers and privileges created hereby or arising by virtue hereof, are given to secure payment and performance of the following indebtedness, obligations and liabilities:

(a) all indebtedness of Grantor now or hereafter owing to Southside Bank, including, without limitation, the indebtedness evidenced by a **Promissory Note executed by 360 OLD STAGECOACH RETAIL**, LLC, as **Maker, payable to the order of Southside Bank (hereinbefore and hereinafter referred to as "<u>Mortgagee</u>") in Tyler, Smith County, Texas, dated of even date herewith, in the principal face amount of \$2,027,282.40, maturing on December 29, 2022, bearing interest as therein specified, containing an attorney's fee clause, interest, and principal being payable as therein specified (the "<u>Note</u>"), including, without limitation, any and all future advances under the Note;**

(b) (Intentionally Omitted);

(c) all other indebtedness, obligations and liabilities of Grantor to Mortgagee arising pursuant to the provisions of this Deed of Trust, the other Loan Documents, or otherwise, whether now existing or hereafter incurred;

(d) (Intentionally Omitted); and

(e) any and all renewals, extensions, modifications or restatements of all or any part of the indebtedness, obligations and liabilities described or referred to in Subsections 1.1(a), 1.1(b), 1.1(c) and 1.1(d) preceding.

The word "<u>Obligation</u>", as used herein, shall mean all of the indebtedness, obligations and liabilities described or referred to in the foregoing Subsections 1.1(a), 1.1(b), 1.1(c), 1.1(d) and 1.1(e).

The word "<u>Holder</u>", as used herein, shall mean the holder or holders of the Obligation at the time in question.

The words "<u>Loan Agreement</u>" means the Loan Agreement of even date herewith by, between and among 360 Old StageCoach Retail, LLC and Southside Bank, as same may hereafter be modified, amended or restated.

The words "Loan Documents" means all documents evidencing or securing payment of the Obligation, or any part thereof, as same may be executed, modified, amended or restated from time to time.

ARTICLE II

Certain Representations, Warranties and Covenants of Grantor

<u>Section 2.1</u> Grantor represents and warrants that: (a) Grantor has the power and authority to execute and deliver this Deed of Trust and to perform its obligation hereunder; and (b) the statements contained in this Deed of Trust concerning Grantor's mailing address are true and correct.

Grantor, for Grantor and Grantor's successors, covenants and agrees to: (a) subject to Section 2.2 Grantor's right to contest the same if provided in the Loan Agreement, pay or cause to be paid, before delinquent, all taxes and assessments of every character in respect of the Mortgaged Property, or any part thereof, and from time to time, upon request of Holder, to furnish to Holder evidence satisfactory to Holder of the timely payment of such taxes and assessments; (b) maintain insurance with respect to the Mortgaged Property as provided in the Loan Agreement; (c) cause all property insurance so carried to name Holder as mortgagee (and cause all such insurance proceeds to be payable to Holder), to stipulate that same can be cancelled after no less than thirty (30) days written notice to Holder, and to deliver copies the policies of insurance or certificates thereof to Holder; (d) pay, or cause to be paid, all premiums for such insurance when due, and furnish to Holder satisfactory proof of the timely making of such payments and to deliver all renewal policies to Holder at least fifteen (15) days before the expiration date of each expiring policy; (e) comply, in all material respects, with all valid governmental laws, ordinances and regulations applicable to the Mortgaged Property and its ownership, use and operation, including without limitation, all laws now or hereafter in effect pertaining to health, hygiene, the environment or environmental conditions on, under, or about the Land, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601, et seq, the Resource Conservation and Recovery Act, 42 USC §6901, et seq, the Clean Water Act, 33 USC § 1251, et seq, the Clean Air Act, 42 USC §7401, et seq, the Federal Water Pollution Control Act, 33 USC §1251, et seq, and any similar state laws or ordinances, including without limitation, the Texas Water Code §26.001, et seq, the Texas Solid Waste Disposal Act, Texas Health and Safety Code §361.001, et seq, and Regulations, Rules, Guidelines and Standards promulgated pursuant to such laws, statutes and regulations, as amended from time to time, and to comply, in all material respects, with all, and not violate in any material respect, any easements, restrictions, agreements, covenants, and conditions with respect to or affecting the Mortgaged Property, or any part thereof; (f) at all times maintain, preserve and keep the Mortgaged Property in the condition required in the Loan Agreement; (g) promptly pay all bills for labor and materials incurred in connection with the Mortgaged Property as provided in the Loan Agreement; (h) at any time and from time to time, upon reasonable written request by Holder, forthwith, execute and deliver to Holder any and all reasonable additional instruments and further assurances, and do all other acts and things as may be necessary or proper, in the exercise of Holder's reasonable opinion, to effect the intent of these presents, more fully evidence and perfect the rights, titles, liens and security interests herein created or intended to be created and protect the rights, remedies, powers and privileges of Holder hereunder: (i) not to authorize any termination or any material amendment or modification of any easements appurtenant to the Land, without Holder's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; (i) continuously maintain Grantor's existence and its right to do business in Texas; (k) not, without the prior written consent of Holder, sell, trade, transfer, assign, exchange or otherwise dispose of any material interest in the Mortgaged Property, or any material part thereof, except for disposition of items of the tangible Accessories which have become obsolete or worn beyond practical use or which are replaced by an article of equal or better suitability and value; (1) pay and perform all of the Obligations in accordance with the terms thereof, or when the maturity thereof may be accelerated in accordance with the terms thereof; (m) (Intentionally Omitted); (n) (Intentionally Omitted); (o) at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens or security interests created hereby, or upon the Obligation, or any part thereof, promptly pay all such taxes; (p) (Intentionally Omitted): (g) (Intentionally Omitted); (r) punctually and properly perform all of Grantor's covenants, duties and liabilities under any other security agreement, mortgage, deed of trust, collateral, pledge agreement, loan agreement or assignment of any kind now or hereafter existing as security for or in connection with payment of the Obligation, or any part thereof (each such being herein called "other security instrument"); and (s) allow Holder, upon reasonable prior notice and during normal business hours and subject to the rights of Tenants under Leases, to inspect the Mortgaged Property and all records relating thereto or to the Obligation, and to make and take away copies of such records.

Section 2.3 TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION NOTICE: (A) GRANTOR IS REQUIRED TO: (i) KEEP THE LAND INSURED AGAINST DAMAGE IN THE AMOUNT HOLDER SPECIFIES; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME HOLDER AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) GRANTOR MUST, IF REQUIRED BY HOLDER, DELIVER TO HOLDER A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS, AND (C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), HOLDER MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.

ARTICLE III

Respecting Defaults and Remedies of Holder

Section 3.1 The term "Default", as used herein, shall mean a default hereunder or any other Default as

defined in the Loan Agreement and expiration of any applicable cure period as set forth therein.

<u>Section 3.2</u> Upon the occurrence and during the continuation of a Default, Holder may, at its option, do any one or more of the following:

(a) If the Default is based on Grantor's failure to keep or perform any covenant whatsoever contained in this Deed of Trust, Holder may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenants shall be a part of the Obligation, and Grantor promises upon written demand, to pay to Holder, at the place where the Note is payable, or at such other place as Holder may direct by written notice, all sums so advanced or paid by Holder, with interest at the Past Due Rate (as defined in the Note). No such payment by Holder shall constitute a waiver of any Default. In addition to the liens and security interest hereof, Holder shall be subrogated to all rights, titles, liens and security interests securing the payment of any debt, claim, tax or assessment for the payment of which Holder may make an advance, or which Holder may pay.

(b) Holder may, without notice, demand or presentment, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Obligation, declare the entire unpaid balance of the Obligation immediately due and payable, and upon such declaration the entire unpaid balance of the Obligation shall be immediately due and payable.

Holder may request Trustee to proceed with foreclosure, and in such event, Trustee is (c) hereby authorized and empowered, and it shall be his special duty, upon such request of the Holder, to sell the Mortgaged Property, or any part thereof, in accordance with the applicable provisions of Section 51.002, et. seq. of the Texas Property Code. Any sale of any part of the Mortgaged Property located in the State of Texas shall be made in the county in which such Mortgaged Property is situated. Where any part of the Mortgaged Property located in the State of Texas is situated in more than one county, then notice as herein provided shall be given in both or all of such counties, and such notice shall designate the county where the Mortgaged Property will be sold. Notice of such proposed sale shall be given as required by the applicable provisions of the Texas Property Code as then in effect. The Affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Sale of the Mortgaged Property shall be "AS IS" with a special warranty of title binding Grantor, and without representation or warranty, express or implied, by Trustee. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Obligation is paid and performed in full. It shall not be necessary to have present or to exhibit at any such sale any of the Accessories. In addition to the rights and powers of the sale granted under the preceding provisions of this Subsection 3.2(c), if Default is made in the payment of any installment of the Obligation, Holder, at its option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Obligation to be due and payable, may orally or in writing direct Trustee to enforce this Trust and to sell the Mortgaged Property subject to such un-matured indebtedness and the liens and security interests securing its payment, in the same manner, on the same terms, at the same place and time and after having given notice in the same manner, all as provided in the preceding provisions of this Subsection 3.2(c). After such sale, Trustee shall make due conveyance to the purchaser or purchasers. Sales made without maturing the Obligation may be made hereunder whenever there is a default in the payment of any installment of the Obligation without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Section 3.2(c), the unmatured balance of the Obligation (except as to any proceeds of any sale which Holder may apply as prepayment of the Obligation) or the liens and security interest securing payment of the Obligation. It is intended by each of the foregoing provisions of this Subsection 3.2(c) that Trustee may, after any request or direction by Holder, sell, not only the Land but also, the Accessories and other interests constituting a part of the Mortgaged Property, or any part thereof, along with the Land, or any part thereof, all as a unit and a part of a single sale, of may sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. It is agreed that, in any deed or deeds given by Trustee, any and all statements of fact or other recitals therein made as to the identity of the Holder, or as to the occurrence or existence of any Default, or as to the acceleration of the maturity of the Obligation, or as to the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee, and, without being limited by the foregoing, as to any other act or thing having been duly done by Holder or by Trustee, shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals of fact are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do by virtue hereof. In the event of the resignation or death of Trustee, or his removal from his county of residence or inability, for any reason, to make any such sale or to perform any of the trusts herein declared, or at the option of Holder, without cause, then Holder may appoint, in writing, a substitute trustee, who shall thereupon succeed to all the estates, titles, rights, powers and trusts herein granted to and vested in Trustee. If Holder is an entity, such appointment may be made on behalf of such Holder by any person who is then an authorized officer of agent of Holder. In the event of the resignation or death of any such substitute trustee, or his failure, refusal or inability to make any such sale or perform such trusts, or at the option of Holder, without cause, successive substitute trustees may thereafter, from time to time, be appointed in the same manner. Wherever herein the word "Trustee" is used, the same shall mean the person who is the duly appointed trustee or substitute trustee hereunder at the time in question.

(d) Holder may, or Trustee may upon written request of Holder, proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligation in accordance with the terms hereof and of the Note or other instruments evidencing it, to foreclose the liens, security interests and this Deed of Trust as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction.

(e) Holder, as a matter of right and without regard to the sufficiency of the security, and without any showing of insolvency, fraud or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding, other than the proceeding for appointment of a receiver or receivers of the Mortgaged Property, or any part thereof, shall take control of all receipts of the Mortgaged Property, and of the income, rents, issues and profits thereof.

(f) Holder may enter upon the Land, take possession of the Mortgaged Property and remove the Accessories, or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of Holder, take possession of any property located on or in the Mortgaged Property which is not a part of the Mortgaged Property and hold or store such property at Grantor's expense. (g) Holder may require Grantor to assemble the tangible Accessories, or any part thereof, and make them available to Holder at a place to be designated by Holder which is reasonably convenient to Grantor and Holder.

After notification, if any, hereafter provided in this Subsection 3.2(h), Holder may sell, (h)lease or otherwise dispose of, at the office of Holder, or on the Land, or elsewhere, as chosen by Holder, all or any part of the Accessories or other personal property, in their then condition, and each Sale (as used herein, the term "Sale" means any such sale, lease or other disposition made pursuant to this Subsection 3.2(h)) may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any Sale, it shall not be necessary to exhibit the property sold, or part thereof. The Sale of any part of the Accessories or other personal property shall not exhaust Holder's power of sale, but Sales may be made from time to time until the Obligation is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection 3.2(h) or reasonable notification of the time of any private Sale made pursuant to this Subsection 3.2(h), shall be sent to Grantor and to any other person entitled under the Uniform Commercial Code of the State of Texas ("Code") to notice; provided that if the Accessories or other personal property, or part thereof, being sold are perishable, or threaten to decline speedily in value, or are of a type customarily sold on a recognized market, Holder may sell, lease or otherwise dispose of such items, or part thereof, being sold, leased or otherwise disposed of without notification, advertisement or other notice of any kind. It is agreed that notice sent or given not less than thirty (30) days prior to the taking of the action to which the notice relates, is reasonable notification and notice for the purposes of this Subsection 3.2(h). Notwithstanding the foregoing, the Accessories and other personal property included in the Mortgaged Property may be sold with the Land pursuant to the applicable provisions of Section 51.002, et. seq. of the Texas Property Code and Section 9.604 of the Texas Business and Commerce Code.

(i) Holder may surrender the insurance policies maintained pursuant to Section 2.2(b) hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Obligation, and, in connection therewith, Grantor hereby appoints Holder as the agent and attorney-in-fact for Grantor to collect such premiums.

(j) Holder may retain the Accessories and/or other personal property included in the Mortgaged Property in satisfaction of the Obligation whenever the circumstances are such that Holder is entitled to do so under the Code.

(k) Holder may buy the Mortgaged Property, or any part thereof, at public Sale or judicial sale.

(1) Holder may buy the Accessories or other personal property, or any part thereof, at any private Sale if they are a type customarily sold in a recognized market or are a type which is the subject of widely distributed standard price quotations.

(m) Holder shall have and may exercise any and all other rights and remedies which Holder may have at law or in equity, or by virtue of any other security instrument, or under the Code, or under the other Loan Documents, or otherwise.

(n) Holder may apply the reserves, if any, required by Section 5.9 hereof, toward payment of the Obligation.

Section 3.3 If Holder is the purchaser of the Mortgaged Property, or any part thereof, at any Sale thereof, whether such Sale be under the power of sale hereinabove vested in Trustee, or upon any other foreclosure of the liens and security interests hereof, or otherwise, Holder shall, upon any such purchase, acquire good title (subject only to the Permitted Encumbrances) to the Mortgaged Property so purchased, free of the liens and security interests.

<u>Section 3.4</u> Should any part of the Mortgaged Property come into the possession of Holder during a Default, Holder may use or operate the Mortgaged Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction, or in accordance with any other rights held by Holder in respect of the Mortgaged Property. Grantor covenants to promptly reimburse and pay to Holder, at the place where the Note is payable, or at such other place as may be designated by Holder in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes or other charges) incurred by Holder during a Default in connection with its custody, preservation, use or operation of the Mortgaged Property, together with interest thereon from the date incurred by Holder at the Past Due Rate (as defined in the Note), and all such expenses, cost, taxes, interest and other charges shall be a part of the Obligation. It is agreed, however, that the risk of accidental loss or damage to the Mortgaged Property is on Grantor, and Holder shall have no liability whatsoever for decline in value of the Mortgaged Property, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

<u>Section 3.5</u> In case the liens or security interests hereof shall be foreclosed by Trustee's sale, or by other judicial or non-judicial action, the purchaser at any such Sale shall receive, as an incident to his ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said property, or any part thereof, subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale, and anyone occupying the property (excluding those occupying the property pursuant to a lease, license or other occupancy agreement that is permitted by the Loan Documents), after demand made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

<u>Section 3.6</u> The proceeds from any Sale, lease of other disposition made pursuant to this Article III, or the proceeds from surrendering any insurance policies pursuant to Subsection 3.2(i) hereof, or any Rental collected by Holder pursuant to Article IV hereof, or the reserves required by Section 5.9 hereof, or sums received pursuant to Section 5.7 hereof, or proceeds from insurance which Holder elects to apply to the Obligation pursuant to Section 5.8 hereof, shall be applied by Trustee, or by Holder, as the case may be, as follows: First, to the payment of all expenses of advertising, selling and conveying the Mortgaged Property, or part thereof, including reasonable attorneys' fees; second, to interest on the Obligation; third, to principal on the matured portion of the Obligation; fourth, to prepayment of the un-matured portion, if any, of the Obligation (applied to installments of principal in inverse order of maturity); and fifth, the balance, if any, remaining after the full and final payment and performance of the Obligation, to Grantor.

<u>Section 3.7</u> In the event a foreclosure hereunder should be commenced by Trustee in accordance with Subsection 3.2(c) hereof, Holder may at any time before the Sale direct Trustee to abandon the Sale, and may then institute suit for the collection of the Note, and for the foreclosure of the liens and security interest hereof. If Holder should institute a suit for the collection of the Note, and for a foreclosure of the liens and security interests

hereof, it may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee to sell the Mortgaged Property, or any part thereof, in accordance with the provisions of this Deed of Trust.

TRUSTEE WILL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT Section 3.8 DONE BY TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING THE TRUSTEE'S NEGLIGENCE AND/OR STRICT LIABILITY), EXCEPT FOR TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Trustee will have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee will be under no liability for interest on any moneys received by it hereunder. GRANTOR SHALL REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND SAVE IT HARMLESS AGAINST, ANY AND ALL LIABILITY AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES) WHICH MAY BE INCURRED BY IT IN THE PERFORMANCE OF ITS DUTIES HEREUNDER (INCLUDING ANY LIABILITY AND EXPENSES **RESULTING FROM TRUSTEE'S OWN NEGLIGENCE AND/OR STRICT LIABILITY), EXCEPT** FOR TRUSTEE'S GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT. The foregoing indemnity will not terminate upon release, foreclosure or other termination of this Deed of Trust.

ARTICLE IV

Leases and Rental

<u>Section 4.1</u> As used in this Deed of Trust: (a) "<u>Lease</u>" means any lease, sublease or other agreement under the terms of which any person other than Grantor has or acquires any right to occupy or use the Land or Improvements, or any part thereof, or interest therein; (b) "<u>Lessee</u>" means the lessee, sublessee, tenant or other person having the right to occupy or use a part of the Land or Improvements under a Lease; and (c) "<u>Rental</u>" means the rents, additional rents, royalties and other consideration payable by the Lessee under the terms of a Lease, and any other revenues generated from the Land or Improvements.

<u>Section 4.2</u> Grantor covenants and agrees to: (a) if a Default occurs and continues beyond any applicable cured period, upon written demand by Holder, assign to Holder, by separate instrument in form and substance reasonably satisfactory to Holder and Grantor, any or all Leases, or the Rental payable thereunder, including but not limited to, any Lease which is now in existence or which may be executed after the date hereof; (b) pay to Holder, as a prepayment of principal on the Note, all Rental paid by any Lessee for more than three months in advance; (c) comply with the terms and provisions of each Lease; (d) not amend, modify, extend or renew any Lease on other than market terms; (e) not assign, transfer or mortgage any Lease other than to Holder; (f) not assign, transfer, pledge or mortgage any Rental other than to Holder; and (g) not waive, excuse, release or condone any nonperformance of any covenants of any Lessee, except in the ordinary course of business and consistent with prudent business practices.

<u>Section 4.3</u> Notwithstanding anything to the contrary contained herein, Holder is entitled to all of the rights and remedies of an assignee set forth in Chapter 64 of the Texas Property Code, the Texas Assignment of Rents Act ("<u>TARA</u>"). This Deed of Trust shall constitute and serve as a security instrument under TARA. Holder shall have the ability to exercise its rights related to the Leases and Rental, in

Holder's sole discretion and without prejudice to any other remedy available, as provided in this Deed of Trust and/or as otherwise allowed by applicable law, including, without litigation, TARA.

ARTICLE V

Miscellaneous

<u>Section 5.1</u> If the Obligation, including, without limitation, the Note (including any renewals, modifications and restatements thereof) and all other amounts due and payable by Grantor under the Loan Documents are paid in full; if there exists no Default (and no circumstances which, with the giving of notice and/or the passing of time, would reasonably be expected to constitute a Default) including, without limitation, no default in the payment of other indebtedness secured by this Deed of Trust; and if Holder has no obligation to make any future loan advances or extend any additional credit under any of the Loan Documents, then this conveyance shall become null and void and be released at Grantor's request and expense. Otherwise, this Deed of Trust shall remain in full force and effect, and no release hereof shall impair Grantor's covenants, warranties and indemnities contained herein with respect to matters first arising or occurring prior to such release, all of which shall survive any release of this Deed of Trust.

<u>Section 5.2</u> As used in this Article V, "<u>Rights</u>" means rights, remedies, powers and privileges, and "<u>Liens</u>" means titles, interests, liens and security interests. All Rights and Liens herein, or by law or in equity provided, or provided in any other security instrument and shall not be deemed to deprive Holder or Trustee of any such other legal or equitable Rights and Liens by judicial proceedings, or otherwise, appropriate to enforce the conditions, covenants and terms of this Deed of Trust, the Note and other security instruments, and the employment of any Rights hereunder, or otherwise, shall not prevent the concurrent or subsequent employment of any other appropriate Rights.

<u>Section 5.3</u> Any and all covenants in this Deed of Trust may from time to time, by instrument in writing signed by Holder and delivered to Grantor, be waived to such extent and in such manner as Holder may desire, but no such waiver shall ever affect or impair Holder's Rights or Liens hereunder, except to the extent so specifically stated in such written instrument. Impossibility, impracticability or force majeure shall not excuse the performance of any covenant of Grantor.

<u>Section 5.4</u> Any provision herein, or in any Note or any other document executed in connection herewith, to the contrary notwithstanding, no Holder shall in any event be entitled to receive or collect, nor shall or may the amounts received hereunder be credited, so that Holder shall be paid, as interest, a sum greater than the maximum amount permitted by the laws of the State of Texas to be charged to the person, firm or corporation primarily obligated to pay the Obligation at the time in question. If any construction of this Deed of Trust or the Note, or any and all other papers, indicates a different right given to Holder to ask for, demand or receive any larger sum, as interest, such is a mistake in calculation or wording, which this clause shall override and control, and proper adjustment shall automatically be made accordingly.

<u>Section 5.5</u> In the event Grantor or any of Grantor's successors conveys its interest in the Mortgaged Property, or any part thereof, to any other party, Holder may, without notice to Grantor or Grantor's successors, deal with any owner of any part of the Mortgaged Property with reference to this Deed of Trust and the Obligation, either by way of foreclosure on the part of Holder, or extension of time of payment of the Obligation, or release of all or any part of the Mortgaged Property, or any other property securing payment of the Obligation, without

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in any way modifying or affecting Holder's Rights and Liens hereunder or the liability of Grantor or any other party liable for payment of the Obligation, in whole or in part.

<u>Section 5.6</u> Grantor hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created. Grantor also waives all rights, claims and defenses under Sections 51.003 and 51.004 of the Texas Property Code.

<u>Section 5.7</u> Holder shall be entitled to receive any and all sums that may be awarded or become payable to Grantor for the condemnation of the Mortgaged Property, or any part thereof, for public or quasi- public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Mortgaged Property, and Holder shall apply such proceeds in the order and in the manner as set forth in Section 3.6 hereof.

<u>Section 5.8</u> Holder may collect the proceeds of any and all insurance that may become payable with respect to the Mortgaged Property and shall apply such proceeds in the order and in the manner as set forth in Section 3.6 hereof, provided that Holder may deduct therefrom any reasonably third-party expenses incurred in connection with the collection or handling of such proceeds, it being understood that Holder shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such proceeds.

<u>Section 5.9</u> Upon the occurrence and during the continuation of a Default, at the request of Holder, Grantor shall create a fund or reserve for the payment of all insurance premiums, taxes and assessments against the Mortgaged Property by paying to Holder contemporaneously with each installment of principal and/or interest on the Note a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Holder, less all sums paid previously to Holder therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent, with such sums to be held by Holder without interest, for the purposes of paying such premiums, taxes and assessments. Transfer of legal title to the Mortgaged Property shall automatically transfer title in all sums deposited under the provisions of this Section 5.9.

Section 5.10 It is understood and agreed that the proceeds of any Note, to the extent the same are utilized to renew or extend any indebtedness or take up any outstanding Liens against the Mortgaged Property, or any portion thereof, have been advanced by Holder at Grantor's request and upon Grantor's representation that such amounts are due and payable. Holder shall be subrogated to any and all Rights and Liens owned or claimed by any owner or holder of said outstanding Rights and Liens, however remote, regardless of whether said Rights and Liens are acquired by assignment or are released by the Holder thereof upon payment.

<u>Section 5.11</u> Any notice required or permitted to be given under this Deed of Trust or under the other Loan Documents shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight courier service. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth in this Deed of Trust. Any communication so addressed and mailed shall be deemed to be given on the date when actually delivered to the address of the intended addressee (whether or not delivery is accepted). Any party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

<u>Section 5.12</u> If the Rights and Liens created by this Deed of Trust shall be invalid or unenforceable as to any part of the Obligation, the unsecured portion of the Obligation shall be completely paid prior to the payment of the remaining and secured portion of the Obligation, and all payments made on the Obligation shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligation.

<u>Section 5.13</u> This Deed of Trust is binding upon Grantor and Grantor's successors, and shall inure to the benefit of Holder, and its successors and assigns, and the provisions hereof shall likewise be covenants running with the Land. The duties, covenants, conditions, obligations and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and Grantor's successors.

Section 5.14 This Deed of Trust is also a security agreement and financing statement.

<u>Section 5.15</u> This Deed of Trust secures all contemporaneous and future advances made under the Note, and to the extent that money is advanced to make improvements to the Land or any part thereof, this Deed of Trust is a construction mortgage within the meaning of Section 9.334 of the Texas Business and Commerce Code.

Section 5.16 Grantor expressly acknowledges a vendor's lien on the Mortgaged Property as security for that portion (if any) of the Obligation that represents money advanced by Mortgagee to pay the purchase price of the Mortgaged Property. This Deed of Trust does not waive the vendor's lien, and the vendor's lien and the lien created by the Deed of Trust shall be cumulative. Holder may elect to enforce either of the liens without waiving the other, or Holder may enforce both liens.

Section 5.17 NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO ACCELERATION OF MATURITY IN THE EVENT OF SALE OR CONVEYANCE OF THE LAND OR ANY PART THEREOF.

(Deed of Trust – Signature Page)

EXECUTED AND DELIVERED to be effective as of December 29, 2021.

GRANTOR:

360 OLD STAGECOACH RETAIL, LLC, a Texas limited

liability company By: Neil Francois, Manager

STATE OF TEXAS § § § Travis COUNTY OF ____

This instrument was signed and acknowledged before me on December _____, 2021, by Neil Francois, in the capacity stated.

24



Notary Public, State of Texas

AFTER RECORDING RETURN TO: Southside Bank Attn: Julie Brown P. O. Box 1079 Tyler, Texas 75710

EXHIBIT "A" (Land)

7.16 acres, more or less, being all of Lot 2, Block A, FINDLEY SUBDIVISION, according to the map or plat thereof, recorded in Document No. 21040053, Official Public Records, Hays County, Texas and more particularl described by metes and bounds as follows:

A 7.16 ACRES (311,950 SQUARE FEET), TRACT OF LAND, LYING WITHIN THE SAMUEL PHARASS SURVEY, ABSTRACT 360, HAYS COUNTY, TEXAS, AND BEING ALL OF LOT 2, BLOCK A OF FINDLEY SUBDIVISION, A SUBDIVISION RECORDED IN DOCUMENT NUMBER 21040053, OFFICIAL PLAT RECORDS OF HAYS COUNTY, TEXAS, DESCRIBED AS FOLLOWS:

BEGINNING AT A FENCE POST FOUND FOR THE NORTHWESTERN CORNER OF SAID LOT 2, THE EASTERNMOST CORNER OF A CALLED 2.62 ACRE TRACT CONVEYED TO ALTON E. FRANKE IN VOLUME 245, PAGE 347, DEED RECORDS OF HAYS COUNTY, TEXAS AND BEING A SOUTHERN CORNER OF A 57.260 ACRE TRACT CONVEYED TO KYLE MORTGAGE INVESTORS, LLC, FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, WITH THE NORTHWESTERN CORNER OF SAID LOT 2 ALSO BEING THE SOUTHEASTERN LINE OF SAID 57.260 ACRE TRACT, N35'54'59'E, A DISTANCE OF 507.96 FEET TO AN 1/2" IRON ROD FOUND AT THE EASTERN SAID 57.260 ACRE AND THE SOUTHERN CORNER OF CALLED 4.847 ACRE TRACT OF CONVEYED TO DAVID BESEDA IN DOCUMENT NUMBER 17041944, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS;

THENCE, WITH THE NORTHWESTERN LINE OF SAID LOT 2 AND ALSO BEING THE SOUTHEASTERN LINE OF SAID 4.847 ACRE TRACT, N35'57'08'E, A DISTANCE OF 184.73 FEET TO AN A CALLED IRON ROD WITH CAP STAMPED "ATWELL LLC" SET FOR THE NORTHERNMOST CORNER OF SAID LOT 2, THE SOUTHEASTERN LINE OF SAID 4.847 ACRE AND THE WESTERNMOST CORNER OF LOT 1, BLOCK A OF SAID FINDLEY;

THENCE, WITH THE SOUTHWESTERN LINE OF SAID LOT 1 AND 2 AND ALSO BEING IN THE NORTHWESTERN RIGHT OF SAID LOT 2, S50'23'29'E, A DISTANCE OF 438.51 FEET TO AN IRON ROD WITH CAP STAMPED "ATWELL LLC" SET, FOR THE EASTERNMOST CORNER OF SAID LOT 2 AND ALSO BEING IN THE NORTHWESTERN RIGHT-OF-WAY OF OLD STAGECOACH ROAD (RIGHT-OF-WAY LINE);

THENCE, WITH THE NORTHWESTERN LINE OF SAID OLD STAGECOACH ROAD AND THE SOUTHEASTERN LINE OF SAID LOT 2, S43'46'53*W, A DISTANCE OF 935.93 FEET TO AM IRON ROD FOUND WITH CAP STAMPED "ATWELL LLC" SET, FOR THE SOUTHERNMOST CORNER OF SAID LOT 2 AND THE EASTERNMOST CORNER OF SAID SOUTHERN 2.62 ACRE TRACT;

THENCE, WITH THE SOUTHERNMOST OF SAID LOT 2 AND THE NORTHERN LINE OF SAID 2.62 ACRE TRACT, N13'46'30'W, A DISTANCE OF 406.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.16 ACRES OR 311,950 SQUARE FEET, MORE OR LESS.

EXHIBIT "B" (PERMITTED ENCUMBRANCES)

a. Easement as STATED and SHOWN on the plat and dedication set out in Schedule A hereof: Purpose: municipal utility easement

Location: 15 feet adjacent to all street ROW; 5 feet along each side lot line and 10 feet adjacent to all rear lot lines

b. Easement as SHOWN on the plat and dedication set out in Schedule A hereof:

Purpose: wastewater

Location: 15 feet adjacent to a portion of the Old Stagecoach Road property line

c. Easement as SHOWN on the plat and dedication set out in Schedule A hereof: Purpose: wastewater Location: 20 feet across the center of Lot 2 as shown

d. Easement as SHOWN on the plat and dedication set out in Schedule A hereof:

Purpose: water

Location: 15 feet across the center of Lot 2 as shown

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.

21071700 DEEDOFTRUST 12/30/2021 03:48:50 PM Total Fees: \$82.00

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

Clain & Cardenas



Independence Title/GF# 2/55252 -COM/LMB SPECIAL WARRANTY DEED

§ § §

THE STATE OF TEXAS

COUNTY OF HAYS

KNOW ALL PERSONS BY THESE PRESENTS:

That COVEY FUND I, LP., a Texas limited partnership ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration paid by the Grantee herein named, the receipt and sufficiency of which are hereby acknowledged, and the further consideration of the execution and delivery by said Grantee of a certain Promissory Note (the "Note") in the principal amount of Two Million Twenty-seven Thousand Two Hundred Eighty-two and 40/100 DOLLARS (\$2,027,282.40), of even date herewith, payable to the order of SOUTHSIDE BANK (hereinafter referred to as the "Mortgagee"), bearing interest at the rate therein provided, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto 360 OLD STAGECOACH RETAIL, LLC, a Texas limited liability company ("Grantee"), that certain tract of real property in Hays County, Texas, as more particularly described on Exhibit "A" attached hereto (the "Land", together with all improvements located thereon, and all of the rights, privileges, easements and appurtenances belonging or appertaining to the Land, being hereinafter collectively referred to as the "Property").

The Note is secured by a vendor's lien retained in this deed in favor of SOUTHSIDE BANK, and by a deed of trust of even date from Grantee to, PATRICK C. BELL, Trustee.

Whereas the Mortgagee has, at the special instance and request of Grantee, paid to Grantor a portion of the purchase price of the Property, as included in the above-described Promissory Note, the said vendor's lien against the Property securing the payment of the Promissory Note and superior title are hereby assigned, transferred and delivered to Mortgagee, Grantor hereby conveying to said Mortgagee the superior title to the Property, subrogating said Mortgagee to all the rights and remedies of Grantor in the premises by virtue of said lien. TO HAVE AND TO HOLD the Property, together with any and all improvements located thereon and all of the rights, privileges, easements and appurtenances belonging or appertaining to the Property and such improvements, in anywise belonging, unto Grantee, its successors and assigns forever; and Grantor does hereby bind himself, his heirs, executors, administrators, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its 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.

It is expressly agreed that the vendor's lien herein described and superior title are retained in favor of the payee of the Promissory Note hereinabove described against the Property and any improvements thereon, until said Note and all interest thereon shall have been fully paid according to the terms thereof, at which time this deed will become absolute.

Grantor has made no representation or warranty, express or implied, upon which Grantee has relied, as to the condition of the Property, the fitness of the Property for any intended use or purpose, the existence of any hazardous or toxic materials in or on the Land or any other environmental condition of the Land, the availability of utilities or other services to the Land, the workmanship or materials used in the improvements on the Property, or the present or future income that may be generated from the Property, except for the warranty of title set forth in this deed and the contract under which this deed was delivered. Grantee acknowledges that it is relying solely upon its investigation and examination of the Property and is satisfied with the condition thereof, and agrees that the Property is being conveyed to Grantee "AS IS" and "WITH ALL FAULTS," with any and all latent and patent defects, except for the warranty of title set forth in this deed was delivered.

This conveyance is made by Grantor and accepted by Grantee subject to the encumbrances and other matters described on Exhibit "B" attached hereto.

Ad valorem taxes for the year 2021 have been prorated as of the date hereof, and Grantee assumes and agrees to pay all taxes for the year 2021, as well as any subsequent years during Grantee's ownership of the Property.

(Signature Page Follows)



(Signature Page To Special Warranty Deed)

EXECUTED to be effective this the $\int_{-\infty}^{\infty}$, 2021. day of

GRANTOR:

Covey Fund I LP a Texas limited partnership

By: Duncan Findley Group, LLC a Texas limited liability company its General Partner

By:

Name: Brett Findley Title: Manager

STATE OF TEXAS COUNTY OF HAYS Travy'S

This instrument was acknowledged before me on <u>December 2</u>, 2021, by Brett Findley, as Manager of Duncan Findley Group, LLC, a Texas limited liability company, as general partner of Covey Fund I, LP., a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

<u>GRANTEE'S ADDRESS</u>: 360 Old Stagecoach Retail, LLC 12600 Hill Country Boulevard, Suite R-275 Bee Cave, Texas 78738



EXHIBIT "A"

7.16 acres, more or less, being all of Lot 2, Block A, FINDLEY SUBDIVISION, according to the map or plat thereof, recorded in Document No. 21040053, Official Public Records, Hays County, Texas and more particularl described by metes and bounds as follows:

A 7.16 ACRES (311,950 SQUARE FEET), TRACT OF LAND, LYING WITHIN THE SAMUEL PHARASS SURVEY, ABSTRACT 360, HAYS ODUNTY, TEXAS, AND BEING ALL OF LOT 2, BLOCK A OF FINDLEY SUBDIVISION, A SUBDIVISION RECORDED IN DOCUMENT NUMBER 21040053, OFFICIAL PLAT RECORDS OF HAYS COUNTY, TEXAS, DESCRIBED AS FOLLOWS:

BEGINNING AT A FENCE POST FOUND FOR THE NORTHWESTERN CORNER OF SAID LOT 2, THE EASTERNMOST CORNER OF A CALLED 2.62 ACRE TRACT CONVEYED TO ALTON E. FRANKE IN VOLUME 245, PAGE 347, DEED RECORDS OF HAYS COUNTY, TEXAS AND BEING A SOUTHERN GORNER OF A 57.260 ACRE TRACT CONVEYED TO KYLE MORTGAGE INVESTORS, LLC, FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, WITH THE NORTHWESTERN CORMER OF SAID LOT 2 ALSO BEING THE SOUTHEASTERN LINE OF SAID 57.250 ACRE TRACT, N35'54'59'E, A DISTANCE OF 5D7.96 FEET TO AN 1/2" IRON ROD FOUND AT THE EASTERN SAID 57.260 ACRE AND THE SOUTHERN CORNER OF CALLED 4.847 ACRE TRACT OF CONVEYED TO DAVID BESEDA IN DOCUMENT NUMBER 17041944, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS;

THENCE, WITH THE NORTHWESTERN LINE OF SAID LOT 2 AND ALSO BEING THE SOUTHEASTERN LINE OF SAID 4.847 ACRE TRACT, N35'57'08'E, A DISTANCE OF 184.73 FEET TO AN A CALLED IROM ROD WITH CAP STAMPED "ATWELL LLC" SET FOR THE NORTHERNMOST CORNER OF SAID LOT 2, THE SOUTHEASTERN LINE OF SAID 4.847 ACRE AND THE WESTERNMOST CORNER OF LOT 1, BLOCK A OF SAID FINDLEY;

THEMCE, WITH THE SOUTHWESTERM LINE OF SAID LOT 1 AND 2 AND ALSO BEING IN THE NORTHWESTERN RIGHT OF SAID LOT 2, S50723"29"E, A DISTANCE OF 438.51 FEET TO AN IRON ROD WITH CAP STAMPED "ATWELL LLC" SET, FOR THE EASTERNMOST CORNER OF SAID LOT 2 AND ALSO BEING IN THE NORTHWESTERN RIGHT-OF-WAY OF OLD STAGECOACH ROAD (RIGHT-OF-WAY LINE);

THENCE, WITH THE NORTHWESTERN UNE OF SAID OLD STADECOACH ROAD AND THE SOUTHEASTERN UNE OF SAID LDT 2, S43"46"53"W, A DISTANCE OF 935.03 FEET TO AN IRON ROD FOUND WITH CAP STAMPED "ATWELL LLC" SET, FOR THE SOUTHERNMOST CORNER OF SAID LOT 2 AND THE EASTERNMOST CORNER OF SAID SOUTHERN 2.62 ACRE TRACT;

THENCE, WITH THE SOUTHERNMOST OF SAID LOT 2. AND THE NORTHERN LINE OF SAID 2.62 ACRE TRACT, N13'46'30", A DISTANCE OF 406.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.16 ACRES OR 311,950 SOUARE FEET, MORE OR LESS.

,
<u>Exhibit B</u>

Permitted Exceptions

1. The following restrictive covenants of record itemized below:

Document No. 21040053, Official Public Records, Hays County, Texas, but omitting any covenant or restriction based on race, color, religion, sex, disability, handicap, familial status or national origin.

2. Easement as STATED and SHOWN on the plat and dedication set out in Schedule A hereof: Purpose: municipal utility easement

Location: 15 feet adjacent to all street ROW; 5 feet along each side lot line and 10 feet adjacent to all rear lot lines

3. Easement as SHOWN on the plat and dedication set out in Schedule A hereof: Purpose: wastewater

Location: 15 feet adjacent to a portion of the Old Stagecoach Road property line

4. Easement as SHOWN on the plat and dedication set out in Schedule A hereof: Purpose: wastewater

Furpose. wastewater

Location: 20 feet across the center of Lot 2 as shown

5. Easement as SHOWN on the plat and dedication set out in Schedule A hereof: Purpose: water

Location: 15 feet across the center of Lot 2 as shown

6. Easement:

Recorded: Document No. 21013408, Official Public Records, Hays County, Texas. To: Pedernales Electric Cooperative, Inc. Purpose: electric utility

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.

21071699 DEED 12/30/2021 03:48:50 PM Total Fees: \$46.00

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

Clain & Cardenas



PROPERTY DESCRIPTION

A 7.16 acres (311,950 square feet), tract of land, lying within the Samuel Pharass Survey, Abstract 360, Hays County, Texas, and being all of Lot 2, Block A of Findley Subdivision, a subdivision recorded in Document Number 21040053, Official Plat Records of Hays County, Texas, described as follows:

BEGINNING at a fence post found for the northwestern corner of said Lot 2, the easternmost corner of a called 2.62 acre tract conveyed to Alton E. Franke in Volume 245, Page 347, Deed Records of Hays County, Texas and being a southern corner of a 57.260 acre tract conveyed to Kyle Mortgage Investors, LLC, for the westernmost corner of the herein described tract;

THENCE, with the northwestern corner of said Lot 2 also being the southeastern line of said 57.260 acre tract, N35°54'59"E, a distance of 507.96 feet to an 1/2" iron rod found at the eastern said 57.260 acre and the southern corner of called 4.847 acre tract of conveyed to David Beseda in Document Number 17041944, Official Public Records of Hays County, Texas;

THENCE, with the northwestern line of said Lot 2 and also being the southeastern line of said 4.847 acre tract, N35°57'08"E, a distance of 184.73 feet to an a called iron rod with cap stamped "ATWELL LLC" set for the northernmost corner of said Lot 2, the southeastern line of said 4.847 acre and the westernmost corner of Lot 1, Block A of said Findley;

THENCE, with the southwestern line of said Lot 1 and 2 and also being in the northwestern right of said Lot 2, S50°23'29"E, a distance of 438.51 feet to an iron rod with cap stamped "ATWELL LLC" set, for the easternmost corner of said Lot 2 and also being in the northwestern right-of-way of Old Stagecoach Road (right-of-way line);

THENCE, with the northwestern line of said Old Stagecoach Road and the southeastern line of said Lot 2, S43°46'53"W, a distance of 935.93 feet to an iron rod found with cap stamped "ATWELL LLC" set, for the southernmost corner of said Lot 2 and the easternmost corner of said southern 2.62 acre tract;

THENCE, with the southernmost of said Lot 2 and the northern line of said 2.62 acre tract, N13°46'30"W, a distance of 406.05 feet to the **POINT OF BEGINNING.**

Containing 7.16 acres or 311,950 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 TBPLS Firm No. 10193726

06/30/2021



CITY OF KYLE

Planning Department

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

NOTICE OF PUBLIC HEARINGS ON A PROPOSED ZONING CHANGE

NOTICE IS HEREBY GIVEN TO ALL INTERESTED PERSONS, THAT: (Z-22-0106)

The City of Kyle shall hold a public hearing on a request by Connor Overby, P.E. (Z-22-0106) to rezone approximately 7.17 acres of land from 'A' (Agriculture) to 'CC' (Community Commercial) for property located on Lot 2, Block A of the Findley Subdivision, in Hays County, Texas.

The Planning and Zoning Commission may recommend, and the City Council may consider, assigning any zoning district which is equivalent or more restrictive.

A public hearing will be held by the Planning and Zoning Commission on Tuesday, October 11, 2022 at 6:30 P.M.

A public hearing will be held by the Kyle City Council on Tuesday, October 18, 2022 at 7:00 P.M.

This is a meeting taking place at Kyle City Hall, 100 W. Center Street, Kyle, Texas 78640; Spectrum 10; https://www.cityofkyle.com/kylety/kyle-10-live

Owner(s): 360 Old Stagecoach Retail, LLC Agent: Connor Overby, P.E. 512-584-8671 805 Las Cimas Parkway, Ste. 310 Austin, TX 78746



You may send your written comments to the Planning Department, 100 W. Center St., Kyle, Texas 78640 (attention: Zoning File # **Z-22-0106**).

Name: ______ Address: ______

o I am in favor, this is why _____

VI am not if favor, and this is why <u>See Attach mest</u>

Attachment to Response - Zoning File #Z-22-0106

Our Residential Homestead of 35 years borders the West side of the subject property. Based on the significance of the proposed zoning change, we need additional time to respond to the request.

Thank you,

Elta E. Franke

Alton E. Franke

Deanna K. Aranke



CITY OF KYLE

Planning Department

100 W. Center Street, Kyle, Texas 78640 (512) 262-000B I W B 6

OCT.

NOTICE OF PUBLIC HEARINGS ON A PROPOSED ZONING CHANGE

NOTICE IS HEREBY GIVEN TO ALL INTERESTED PERSONS, THAT:

The City of Kyle shall hold a public hearing on a request by Connor Overby, P.E. (Z-22-0106) to rezone approximately 7.17 acres of land from 'A' (Agriculture) to 'CC' (Community Commercial) for property located on Lot 2, Block A of the Findley Subdivision, in Hays County, Texas.

The Planning and Zoning Commission may recommend, and the City Council may consider, assigning any zoning district which is equivalent or more restrictive.

A public hearing will be held by the Planning and Zoning Commission on Tuesday, October 11, 2022 at 6:30 P.M.

A public hearing will be held by the Kyle City Council on Tuesday, October 18, 2022 at 7:00 P.M.

This is a meeting taking place at Kyle City Hall, 100 W. Center Street, Kyle, Texas 78640; Spectrum 10; https://www.cityofkyle.com/kyletv/kyle-10-live

Owner(s): 360 Old Stagecoach Retail, LLC Agent: Connor Overby, P.E. 512-584-8671 805 Las Cimas Parkway, Ste. 310 Austin, TX 78746



You may send your written comments to the Planning Department, 100 W. Center St., Kyle, Texas 78640 (attention: Zoning File # Z-22-0106).

Name: _____ Address: _____

I am in favor, this is why ______

I am not if favor, and this is why <u>see attackment</u>

Attachment – Zoning File #Z-22-0106 Alton E. and Deanna K. Franke

As stated in our Planning and Zoning Protest, our Residential Homestead of 35 years borders the West side of the subject property. It appears that under the zoning process, a zoning change may be voted on and changed by the City Council in 17 days from the postage meter date.

Our home, along with 6 homes under construction in Sage Hollow, border the subject property. Those buying the homes under construction have the option of buying knowing of the Community Commercial zoning designation. We do not have that option. The City Council will make that determination for us.

The Mid Town Community Land Use District – "The Plum Creek waterway flows through and adjacent to the Mid-Town District, offering opportunities for recreation and a responsibility for environmental conservation." The zoning change will result in mass grading and destruction of the natural environment. Can we save some on the existing natural environment?

Some of our concerns are as follows:

<u>Permitted Uses:</u> Includes uses that have a higher impact on adjoining residential properties. It is not clear that if fuel stations have been removed or limited by a change to another part of the code.

<u>Transitional Area between residential and commercial</u>: Many of the residential subdivisions in the area have a 20 foot transitional area between residential subdivisions or adjacent properties. These include the following:

North border of Home Town Kyle with adjacent property; Area between Cypress Creek Forest and Six Creeks. Southwest corner of Six Creeks and neighboring residences; and Area between Plum Creek and Brooks Crossing

The latter leaves the original landscape. It would seem that the transitional area between commercial to residential would be greater than residential to residential. Can Council grant variances as to transitional areas? The commercial zone in Sage Hollow has a substantial transitional area between commercial and residential.

<u>Noise - Sec. 23-60.- Noises prohibited:</u> Any unreasonably loud, disturbing or unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof, or any noise of such character, intensity and continued duration which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities, is prohibited after the effective

date hereof, and is hereby declared to be a nuisance. Item #12 which addresses construction is more restrictive, not less.

I believe that the city to the North of Kyle has residential decibel limit of 63 daytime and 56 a night.

<u>Traffic Impact:</u> Access to commercial property would be to the existing Old Stagecoach Road. Traffic currently backs up well beyond the subject property. It appears that access from Sage Hollow to Old Stagecoach Road may run through the subject property thereby further increasing traffic on Old Stagecoach Road.

<u>Section 53-995 Tree Ordinance – Protective trees are defined as trees with a</u> <u>circumference of</u> twenty-eight (28) inch or greater. Specimen trees are trees with a circumference of seventy (75) inch or greater. Will variances be granted to the Tree Ordinance?

The common line with our home and the subject property is wooded with the fear that oak trees removed may be connected by root systems to our trees thereby damaging them. Oak wilt may be transmitted through the root system. Said trees are part of the heritage and history along the original Old Stagecoach Road.

Trees have been tagged along our common property line with the subject property.

<u>Hours of Operation:</u> Zoning allows businesses to be open to the general public until 10:00 pm. Businesses may utilize extended hours on Friday and Saturdays.

<u>Fences:</u> Any fencing in front, or to the side on corner lots, shall not exceed a height of three feet and any solid fencing material shall not exceed a height of two feet.

<u>Drainage</u>: Drainage concerns include the water flow from our property to the subject property creating a dam effect, and the increased water flow across Old Stagecoach Road. The latter was recently closed after rainfall. Thanks to the City Employees that came out in the night to barricade the road and possibly save accidents.

The development of Sage Hollow to the North, and the development of the subject will most likely increase drainage with less absorption and changes in the natural lay of the land.

<u>History:</u> Old Stagecoach Road is not just a name; it is the original route of the stagecoach line. The route and the historic areas along the way should be preserved.

<u>Neighborhood Commercial Disrict:</u> In order to lessen impact on existing residential homesteads, is it possible to mix a Neighborhood Commercial District with a Community Commercial District?

Page 2 of 3

<u>Preliminary Site Plan Set:</u> The Preliminary Site Plan set, shown as an attachment to the Summary Request Letter of Atwell, was not included with the package.

Future Zoning Changes: May there be future zoning changes to the subject property?

Thank you for your consideration.

105 E. frake

Alton E, Franke

Deanna Kay Franke

Deanna K. Franke



CITY OF KYLE, TEXAS

Plum Creek Developers, LLC (Joe Brooks) - Development Agreement Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation:	[Postponed 10/3/2022] Approve a development agreement between the City of Kyle and Plum Creek Developers, LLC (Joe Brooks). ~ <i>Will Atkinson, Director of Planning</i>
Other Information:	See attachments.
Legal Notes:	N/A
Budget Information:	N/A

ATTACHMENTS:

Description

Development Agreement

DEVELOPMENT AGREEMENT ESTABLISHING DEVELOPMENT STANDARDS FOR THE WATERFRONT AT MARKETPLACE DEVELOPMENT

This Development Agreement Establishing Development Standards for the Waterfront at Marketplace Development (the "<u>Agreement</u>") is made and entered into, effective as of the _____ day of August, 2022, (the "<u>Effective Date</u>") by and between the **City of Kyle, Texas**, a Texas home rule municipal corporation (the "<u>City</u>"), and **Plum Creek Developers, LLC** (the "<u>Developer</u>"). The City and the Developer are sometimes referred to herein as the "<u>Parties</u>." The Parties agree as follows.

Section 1. Purpose; Consideration.

- (a) The Developer owns that certain 18.844 acre tract located in Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "<u>Property</u>") and wishes to develop the Property for mixed use (the "<u>Development</u>"). The Developer desires that the City be able to enforce the development standards set forth in **Exhibit B** attached hereto and incorporated herein for all purposes through its building permit and inspection processes, given that House Bill 2439 adopted in the 86th Legislative Session limits the ability of cities to enforce certain development standards governing building materials by ordinance.
- (b) The Developer will benefit from the City enforcing the Development Standards as set forth herein because it will be more efficient and cost-effective for compliance to be monitored and enforced through the City's building permit and inspection processes and will help ensure that the Development is built out as planned by the Developer after conveyance to the builder of homes or other buildings and structures authorized by the applicable zoning regulations. The City will benefit from this Agreement by having assurance regarding certain development standards for the Development, having certainty that such Development Standards may be enforced by the City, and preservation of property values within the City.
- (c) The benefits to the Parties set forth in this Section 1, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

Section 2. Term; Termination.

(a) The initial term of this Agreement shall be in full force and effect from the Effective Date hereof for a period of ten (10) years, subject to earlier termination as provided in this Agreement. The Initial Term shall automatically be extended for an additional five (5) years for a total term of fifteen (15) years ("Extension Term") upon Developer receiving temporary or final certificates of occupancy with respect to buildings containing a minimum of 250 dwelling units. Unless earlier terminated as provided in this Agreement, this Agreement shall terminate upon the earlier of the Initial Term or Extension Term, if applicable or the issuance of the final certificate of occupancy for the final multifamily structure in the Development.

- (b) The Parties further mutually agree that this Agreement shall be in full force and effect upon the date above first written, provided that the City may terminate this Agreement if Developer defaults under the terms of this Agreement, subject to the notice and cure provisions in Section 6.
- (c) City acknowledges that Developer may seek new entitlements to use and amendments to entitlements to use and new or amended development standards for the Development.

Section 3. Development Standards.

- (a) Architectural Design. The multifamily portion of the Planned Unit Development approved by Ordinance No. ______ on even date will have building material components designed and built to the design standard as shown in Exhibit B. City staff has the authority to grant minor changes to the building materials shown in Exhibit B, however the building material components must substantially comply with said exhibit. Developer acknowledges and agrees that the building material components of the Architectural Design is a covenant that runs with the Property and is binding upon future owners of the Property.
- (b) **Building Permits.** The Developer acknowledges and agrees that compliance with Section 3(a) will be a condition of issuance of building permits. Developer further agrees that the City may use its building permitting and inspection enforcement processes and procedures to enforce the requirements of Section 3(a) above, including but not limited to rejection of applications and plans, stop work orders, and disapproval of inspections for applications and/or work that does not comply with this Agreement. Applications and plans for a building permit must demonstrate substantial compliance with this Agreement in order for a building permit to be issued. Applications for building permits must be in substantial compliance with this Agreement, as well as the Applicable Regulations, in order for such application to be approved and a building permit issued. Plans demonstrating substantial compliance with this Agreement must accompany a building permit application and will become a part of the approved permit. Any multifamily structure constructed on the Property must comply with this Agreement and the Applicable Regulations for a certificate of occupancy to be issued for such structure.

Section 4. Development of the Property. Except as modified by this Agreement, the Development and the Property will be developed in accordance with all applicable local, state, and federal regulations, including but not limited to the City's ordinances and the zoning regulations applicable to the Property, and such amendments to City ordinances and regulations that may be applied to the Development and the Property under Chapter 245, Texas Local Government Code, and good engineering practices (the "Applicable Regulations"). If there is a conflict between the Applicable Regulations and the Development Standards, the Development Standards shall control.

(a) The City shall not impose any architectural standards or require any architectural, design review or similar approvals to be obtained from the City other than those set forth in **Exhibit B** for the multifamily residential portions of the Development.

Section 5. Assignment of Commitments and Obligations; Covenant Running with the Land Changes.

- (a) Developer's rights and obligations under this Agreement may be assigned by Developer to one (1) or more purchasers of all or part of the Property; provided the City Council must first approve and consent to any such assignment by Developer of this Agreement or of any right or duty of Developer pursuant to this Agreement, which consent shall not be unreasonably withheld, conditioned, or delayed.
- (b) This Agreement shall constitute a covenant that runs with the Property and is binding on future owners of the Property, including but not limited to the building material component of the Architectural Design, and a copy of this Agreement shall be recorded in the Official Public Records of Hays County, Texas. The Developer and the City acknowledge and agree that this Agreement is binding upon the City and the Developer and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.
- (c) The parties acknowledge that refinements and further development may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the architectural details of the Development and with respect to those items covered in general terms under this Agreement and Exhibit B. If and when the parties find that minor changes or adjustments or other implementations are necessary or appropriate to Exhibit B, they shall, unless otherwise required by law, effectuate such minor changes or adjustments through administrative amendments approved by the City Manager or his/her designee, which, after execution, shall be attached hereto as an addenda to such Exhibit and become a part hereof. This Agreement may be further changed or amended from time to time as necessary, with approval by the City Council of the City and Developer as noted in Section 2(c) above. Any minor changes or adjustments shall not be deemed to be an overall amendment to this Agreement, and unless otherwise required by law, no such minor administrative changes or adjustments shall require prior notice or hearing.

Section 6. Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of

remedies or a waiver of the right to pursue any other authorized remedy. In addition to the other remedies set forth herein, the City may withhold approval of a building permit application or a certificate of occupancy for a structure that does not comply with the Development Standards.

Section 7. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

Section 8. Attorneys' Fees. In the event of action pursued in court to enforce rights under this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

Section 9. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

Section 10. Force Majeure.

- (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances: acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemics; pandemics, landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- (b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- (c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Section 11. Notices. Any notice to be given hereunder by any party to another party shall be in

writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed: City of Kyle Attn: City Manager 100 W. Center Street Kyle, Texas 78640

with copy to: The Knight Law Firm, LLC Attn: Paige Saenz 223 West Anderson Lane, Suite A-105 Austin, Texas 78752

Any notice mailed to the Developer shall be addressed: Plum Creek Developers, LLC 265 Fieldcrest Dr. Marble Falls, Tx 78654 Attn: Joe Brooks

with a copy to: FSG Lawyers P.C. 19800 MacArthur Boulevard, Suite 1100 Irvine, CA 92612 Attn: James D. Stroffe

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

Section 12. Waiver of Alternative Benefits. The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

Section 13. Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically

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

Section 14. Agreement and Amendment. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and except as otherwise provided, may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

Section 15. No Joint Venture. The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

Section 16. No Third Party Beneficiaries. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

Section 17. Effective Date. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

Section 18. Recordation. This Agreement or a memorandum of Agreement acceptable to the City and Developer shall be recorded in the Official Public Records of Hays County, Texas.

Section 20. Texas Law Governs. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in Hays County, Texas.

Section 21. 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 Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

- (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, Developer represents that Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Government Code.
- (c) The Developer 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 Developer 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.

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

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

Exhibit A – Property Description **Exhibit B** – Architectural Material Design

EXECUTED in multiple originals this the _____ day of September, 2022.

§ § <u>CITY:</u> City of Kyle, Texas a Texas home-rule municipal corporation

Attest:

By:______ Name: Jennifer Holm Title: City Secretary By:______ Name: Travis Mitchell Title: Mayor

THE STATE OF TEXAS COUNTY OF HAYS

This instrument was acknowledged before me on this ____ day of _____, 20__, by Travis Mitchell, Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

DEVELOPER: Plum Creek Developers, LLC

By:		
Name:		
Title:		

THE STATE OF TEXAS	ş		
COUNTY OF	§		
This instrument was acknowle	edged before m	e on this day of _	, 20, by
;;	of	, a	company, on
behalf of said company.			

(SEAL)

Notary Public, State of Texas

EXHIBIT "A"

Description of Property



POLITICAL SUBDIVISION DESCRIPTION

DESCRIPTION OF A CALCULATED 18.844 ACRE TRACT OF LAND, SITUATED IN THE HENRY LOLLAR SURVEY, ABSTRACT NUMBER 290 AND COMPRISED OF A PORTION OF LOT 1A OF THE RESUBDIVISION OF LOT 1 PLUM CREEK PARK, A SUBDIVISION OF RECORD IN BOOK 10, PAGES 10-11 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 37.526 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO PLUM CREEK DEVELOPERS, LLC OF RECORD IN DOCUMENT NUMBER 11015327 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID CALCULATED 18.884 ACRE TRACT OF LAND, AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at the most northerly corner of said Lot 1A, being also the most westerly southwest corner of Lot 2B of the Replat of Plum Creek Park Lot 2, a subdivision of record in Document No. 17034221 of the Offficial Records of Hays County, Texas, and being in the east line of Missouri Pacific Railroad and International & Great Northern Railroad, a 100 foot wide Right-of-Way;

THENCE with the north line of said Lot 1A and the southwest line of said Lot 1A, the following nine (9) bearings and distances (all bearings and distances noted below are derived from record information in Documents noted above);

- 1. S 70° 21' 37" E, for a distance of 176.53 feet to a calculated point of record,
- 2. S 24° 23' 06" E, for a distance of 143.06 feet to a calculated point of record,
- 3. S 12° 20' 02" E, for a distance of 90.04 feet to a calculated point of record,
- 4. S 02° 27' 00" W, for a distance of 140.63 feet to a calculated point of record,
- 5. S 16° 00' 15" W, for a distance of 115.60 feet to a calculated point of record,
- 6. S 44° 50' 39" W, for a distance of 70.35 feet to a calculated point of record,
- 7. S 12° 49' 37" E, for a distance of 103.49 feet to a calculated point of record,
- 8. S 56°56' 48" E, for a distance of 149.23 feet to a calculated point of record, and
- 9. S 86° 36' 55" E, for a distance of 84.19 feet to a calculated point of record and being the southeast corner of the herein described tract

Zamora, L.L.C. dba "ZWA" Firm No. 10062700 1425 South Loop 4, Buda, TX 78610 ~ P.O. Box 1036, Buda, TX 78610 Phone: 512-295-6201 ~ Fax: 512-295-6091 Page 1 of 4 M:_Austin-Projects\1081 PLUM CREEK DEVELOPMENT\01 18.844 ACRE ZONING CHANGE\M-B DESC **THENCE N 80° 56' 38" W** (a calculated bearing and distance) crossing said Lot 1A and said 37.526 acre tract, for a distance of **366.65** feet to a calculated point in the west line of said Lot 1A, the west line of said 37.526 acre tract and the east line of said Missouri Pacific Railroad and International & Great Northern Railroad;

THENCE N 10° 15' 09" E (record bearing from Plat for Lot 1A), with the east line of said Missouri Pacific Railroad and International & Great Northern Railroad for a distance of 2,283.93 feet to the POINT OF BEGINNING and containing 18.844 acres of land, more or less.

THIS DOCUMENT WAS PREPARED UNDER 22 TAC § 663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

BEARINGS ALONG MISSOURI PACIFIC RAILROAD AND THE NORTH LINE OF LOT 1A WERE TAKEN FROM PLAT RECORDED IN BOOK 10, PAGE 10 -11 OF THE PLAT RECORDS HAYS COUNTY, TEXAS.

BEARINGS AND DISTANCES ALONG THE WEST RIGHT OF WAY OF MARKET PLACE AVE WERE TAKEN FOR DOCUMENT NO. 17026876 OFFICIAL PUBLIC RECORDS HAYS COUNTY, TEXAS.

REVISION 1: Modified Acreage

Zamora, L.L.C. dba "ZWA" Firm No. 10062700 1425 South Loop 4, Buda, TX 78610 ~ P.O. Box 1036, Buda, TX 78610 Phone: 512-295-6201 ~ Fax: 512-295-6091 Page 2 of 4 M:\ Austin-Projects\1081 PLUM CREEK DEVELOPMENT/01 18.844 ACRE ZONING CHANGE\M-B DESC





Exhibit "B" Architectural Design

Elevations











CITY OF KYLE, TEXAS

Joe Brooks - Zoning (Z-22-0099)

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: [Postponed 10/3/2022] (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 18.84 acres of land from 'RS' (Retail Services) to 'PUD' (Planned Unit Development) for property located approximately 400' southwest of the intersection of Marketplace Ave & City Lights Dr. in Hays County, Texas. (Joe Brooks - Z-22-0099) ~ *Will Atkinson, Director of Planning*

Planning and Zoning Commission voted 3-2 to recommend approval of the request. City Council voted 6-0 to postpone first reading on 10/18/2022.

Public Hearing

The public hearing was left open at the 10/18/2022 Council meeting.

Other Information:	See attached.
Legal Notes:	N/A
Budget Information:	N/A

ATTACHMENTS:

Description

- Staff Report
- D PUD Ordinance
- Landowner Authorization Form
- D Franchise Tax Status Form
- D Deed

Property Location	Marketplace Ave, Kyle, TX 78640
Owner	Plum Creek Developers, LLC. 265 Field Crest Marble Falls, TX 78654
Agent	Joe Brooks 19800 MacArthur Blvd., Suite 1110 Irvine, CA 92616
Request	Rezone Approximately 18.84-Acres "RS" (Retail Services) to "PUD" (Planned Unit Development)

Vicinity Map



Site Description

The site is undeveloped and located on the west side of Marketplace Ave. It's currently inside the city limits of the City of Kyle and is zoned "Retail Services" ("RS"). The parcel is approximately 0.3 miles west of IH-35, and across the street from City Lights Drive.

Just north of the property is the Oaks on Marketplace Apartments (R-3-3). To the west is the Creekside Village Subdivision which is zoned Single-Family Old "R-1." The property to the south is currently undeveloped and is zoned Retail Services "RS."



Zoning Map

Existing Zoning

RS (Retail Services)

Sec. 53-480. – 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 <u>section 53-1230</u>.

(Ord. No. 438, § 45(a), 11-24-2003)

Requested Zoning



PUD (Planned Unit Development)

- R-3-3 (Residential Multifamily 3 9.84 acres)
- RS (Retail Services 9 acres total)

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

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

(Ord. No. 438, § 33(a), 11-24-2003)

Sec. 53-480. – 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 <u>section 53-1230</u>.

(Ord. No. 438, § 45(a), 11-24-2003)

Sec. 53-703. - Flexible planning.

- (a) When considering a planned unit development (PUD), the unique nature of each proposal for a PUD may require, under proper circumstances, the departure from the strict enforcement of certain present codes and ordinances, e.g., without limitation, the width and surfacing of streets and highways, lot size, parking standards, set backs, alleyways for public utilities, signage requirements, curbs, gutters, sidewalks and streetlights, public parks and playgrounds, drainage, school sites, storm drainage, water supply and distribution, sanitary sewers, sewage collection and treatment, single use districts, etc.
- (b) Final approval of a PUD by the city council shall constitute authority and approval for such flexible planning to the extent that the PUD as approved, departs from existing codes and ordinances.

(c) The flexibility permitted for a PUD does not imply that any standard or requirement will be varied or decreased.

Sec. 53-704. - Rules applicable.

The city council, after public hearing and proper notice to all parties affected and after recommendation from the planning and zoning commission, may attach a planned unit development district designation to any tract of land equal to or greater than three buildable acres. Under the planned development designation the following rules apply:

- (1) The approval of any proposed PUD or combination of uses proposed therein shall be subject to the discretion of the city council, and no such approval will be inferred or implied.
- (2) Permitted uses are those listed under the applicable zoning districts for the base zoning to be applied to the PUD (for example, the permitted uses in a PUD proposed to be developed as CBD-2, RS, W, CM districts). In addition, a planned unit development district may be established where the principal purpose is to serve as a transitional district, or as an extension of an existing district whereby the provision of off-street parking, screening walls, fences, open space and/or planting would create a protective transition between a lesser and more restrictive district. In approving a planned unit development, additional uses may be permitted, and specific permitted uses may be prohibited from the base district.
- (3) Standards required by the base zoning apply in a planned unit development except that the following regulations and standards may be varied in the adoption of the planned unit development; provided that the plan is consistent with sound urban planning and good engineering practices.
 - a. Front, side and rear setbacks.
 - b. Maximum height.
 - c. Maximum lot coverage.
 - d. Floor area ratio.
 - e. Off-street parking requirements.
 - f. Special district requirements pertaining to the base zoning.
 - g. Number of dwelling units per buildable acre.

- h. Accessory building regulations.
- i. Sign standards.
- (4) In approving a planned unit development, no standards may be modified unless such modification is expressly permitted by this chapter, and in no case may standards be modified when such modifications are prohibited by this chapter.
- (5) In approving a planned unit development, the city council may require additional standards deemed necessary to create a reasonable transition to, and protection of, adjacent property and public areas, including but not limited to, light and air, orientation, type and manner of construction, setbacks, lighting, landscaping, management associations, open space, and screening.
- (6) The planning and zoning commission and city council, in approving modifications to standards and regulations, shall be guided by the purpose intended by the base zoning and general intent of this chapter.

(Ord. No. 438, § 39(e), 11-24-2003)

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 primarily located within the "Core Area Transition Community" land use district. The "RS" zoning district is recommended and "R-3-3" is recommended conditionally in the "Core Area Transition" land use district.

Core Area Transition Community

Recommended: E, **R/S**, CC, NC, MXD, O/I, Conditional: HS, R-1-A, R-1-T, R-1-C, R-3-2, **R-3-3**

Core Area Transition

<u>'Character'</u>: The Core Area Transition District currently consists primarily of commercial and light industrial uses, with some residential uses. Key defining features include Old Highway 81, North Burleson Street, I-35 and frontage roads, and the railroad. This District is important as a transitional zone between largely residential areas and the commercial uses along I-35 and as a portion of Kyle that is visually significant to travelers along I-35. The character of the District should reflect its urban and transitional intentions. The land area of this District is relatively small, and there are many physical barriers, so land uses should be compact and aggregated, especially residential uses. Vertically mixed-use development models are well suited to this District, and development should be located close to roadways, with minimal front yards, to maximize available land and visibility from main roads. Adequate land use transitions should be provided to avoid conflict between different land uses (i.e. residential adjacent to industrial).

<u>'Intent':</u> With its highly visible position in the middle of the City, the Core Area Transition District should be an urban environment that serves an identifying function for the City of Kyle. By acting as an area of functional linkage for the City, the District can connect vehicular and pedestrian movement, economic centers, and visually defining elements. The built fabric should display a transition from the small-scale grid pattern of Downtown to the large plate design of the Super Regional Node. As this District develops, it should serve to create a consistent fabric that links Downtown and the Super Regional Node, encouraging the expansion and strengthening of Kyle's core. Additionally, Plum Creek passes west to east through the middle of the Core Area Transition District, and this significant natural feature should be apparent and accessible via trails and open spaces

Analysis

The 18.84-acre tract is south of the Oaks on Marketplace Apartments, on Marketplace Ave. All adjacent properties are inside the city limits, with diverse zoning in place.

The 2019 comprehensive plan allows "RS" zoning district as recommended and the "R-3-3" zoning district as conditional. When zoning districts/uses are recommended, they generally will fit into the landscape or built environment without much issue. This can range from expected uses to how the development integrates into the street and surrounding community, and diversity of housing types. When zoning districts/uses are conditional, staff and applicants need to provide more careful consideration of the project. The diverse existing land uses/zoning allow the "PUD" district to generally fit in to the area.

From west to east, the existing zoning generally ramps up in density and intensity of use. The zoning request neatly fits into this idea. Creekside Village is a single-family residential neighborhood. The railroad is a dividing line and buffer between Creekside Village and this property with its proposed "PUD" Zoning.



Vybe Trail Map – Location of Project in Red

Per the proposed PUD ordinance, the site is more than simply stitching the RS and R-3-3 districts together. The overall design expects the project to have significant urban form as it relates to front building lines adjacent to Marketplace Avenue. Additionally, the commercial buildings (RS) are required to be 2-stories minimum. The multifamily units will be 4 stories. Both zoning districts will have appropriate architecture as expected per City standards. The multifamily units will have a development agreement with elevations included. The commercial areas will comply or exceed the standards in the I-35 Overlay, which is required (Conditional Use Permit). Additionally, this property will tie into the Citywide Vybe Trail System, which allows for and promotes higher density, mixed-use developments.

Utility Providers

- Electricity = Pedernales Electric Cooperative
- Water & Wastewater = City of Kyle

Per discussions with the Planning & Zoning Commission on August 9, 2022, the public notice has different acreage than what is expected in the PUD. What is noticed is approximately 9.84 acres of multifamily, and the expectation from the applicant was to rezone approximately 12-13 acres to multifamily (R-3-3). Staff realized the honest mistake following notice in the newspaper and worked with the applicant to account for standards in the PUD document to allow for flexibility in acreage. The adjustment in the PUD document is an effort to be fair to the applicant. Both Chairperson Guerra & Commissioner James voted against the request as they had concerns relating to stated acreage of multifamily use versus the acreage in the PUD.

It should be noted that Jeff Barton provided both written and oral testimony in support of the proposed application. Mr. Barton and his family owns property across Marketplace
Avenue from Mr. Brook's acreage. The Word Place PUD is a high density, town center development that will benefit from additional high-density development around it. Mr. Barton's testimony reflects this idea.

As stated at the last Council meeting, Mr. Abadi has an easement over his property allowing for 50% of Mr. Brooks stormwater onto his property. Additionally, the City of Kyle, Engineering Department does not agree to waiving the rules applying to a 100-foot stream buffer from the center line of the creek. As a function of the site development permit that will be required of the site, the city will review data to study the effects on the floodplain. As a result of the data, the site development permit will account for the floodplain in an appropriate manner, per the city's code and also FEMA's requirements.

Recommendation

At the August, 9, 2022 Planning & Zoning Commission meeting, the Commission voted 3-2 to recommend approval of the zoning. As the comprehensive plan supports the rezoning request, and this stretch of Marketplace Avenue is expected to develop in a more urban fashion, Staff asks the Mayor & City Council to support the zoning request.

THE WATERFRONT AT MARKETPLACE PLANNED UNIT DEVELOPMENT SUBMITTED May 9, 2022

The Waterfront at Marketplace is in the heart of the city of Kyle and integral to the City-wide Kyle Trail System Plan. The property is located west of I-35, south of City Lights Drive, and north of Burleson Road in Kyle.

The owners of the property provided a land easement for the Marketplace Avenue Extension to support the City's vision for a high-density mixed-use community offering new employment opportunities to the residents of Kyle. This Planned Unit Development (PUD) seeks to realize the vision by establishing flexible development and building standards that will accommodate a land plan that allows for market-based outcomes.

The purpose of this document is to provide overall guidance and create a sustainable framework for the project. The community will be built in several phases, but still maintain creativity in building placement, people movement, traffic flow and to create a comfortable place to live, work and play. It allows flexibility to accommodate the evolution of living space designs, work place environments, supporting services, hospitality and entertainment.

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Section 10.	Roadway Infrastructure
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SECTION 1. DEFINITIONS

All definitions referenced in the Unified Development Code of the City of Kyle, Ordinance No. (Ord. No. 438, § 39(a), 11-24-2003) Section 53-699 through 53-727, of Kyle Code of Ordinances (the "Code"), shall apply to interpretation of the terms of this Planned Unit Development for The Waterfront at Marketplace (this "PUD"). Any terms not defined in this Development Plan shall be construed by applying the *Random House Webster's Unabridged Dictionary*, subject to the interpretation of the Planning Director of the City of Kyle.

SECTION 2. THE PROPERTY

This PUD applies to approximately eighteen (18.844) acres of land located within the jurisdictional limits of the City of Kyle, Texas, west of Interstate North 35 Service Road and north of Burleson Road, which are collectively herein defined as the "Property", and which are legally described as follows:

PLUM CREEK PARK, Lot PT 1-A, Acres 18.844

SECTION 3. APPROVAL CRITERIA

This PUD is intended to conform to the approval criteria of (Ord. No. 438, § 39(a), 11-24-2003) Section 53-699 through 53-727, of Kyle Code of Ordinances (the "Code"). Section 53-699 of the Code provides that the following criteria shall be considered by City Council for zoning changes: Toward these ends, rezoning of land and development under this district will be permitted only in accordance with the intent and purpose of the city's comprehensive plan and this chapter, and to that end the planned unit development plan must be prepared and approved in accordance with the provisions of this chapter.

- (1) Allow development which is harmonious with nearby areas;
- (2) Enhance and preserve areas which are unique or have outstanding scenic, environmental, cultural or historic significance;
- (3) Provide an alternative for more efficient use of land, resulting in smaller utility networks, safer streets, more open space, and lower construction and maintenance costs;
- (4) Encourage harmonious and coordinated development, considering natural features, community facilities, circulation patterns and surrounding properties and neighborhoods;
- (5) Facilitate the analysis of the effect of development upon the tax base, the local economy, population, public facilities and the environment;
- (6) Provide and result in an enhanced residential and/or work environment for those persons living and/or working within the district; and
- (7) Require the application of professional planning and design techniques to achieve overall coordinated mixed-use developments and avoid the negative effects of piecemeal, segregated, or unplanned development.

SECTION 4. BASE ZONING DISTRICTS

This PUD shall be applicable to zoning as it applies to all portions of the Property. All design, development, and use criteria not specifically covered by this PUD shall be subject to the applicable provisions of the current Code. All design, development and use of the Property shall generally conform to the PUD described herein and, unless superseded, amended or controverted by the terms of this PUD. Below each Zone shall have its own zoning description as follows:

Development Zone A – High Density Multi-family (R3-3) **Development Zone B** – Commercial District (RS) **Development Zone C** – Commercial District (RS)

SECTION 5. DEVELOPMENT ZONES

The three (3) Zones as shown on Exhibit "C", being Zone A, Zone B and Zone C, are described in the following sections. Each Zone will be built in phases.

5.1 **Zone A** consists of approximately twelve - thirteen (13) acres of land and represents the approximate boundary lines of the most northern and central land area comprising the Property closest in proximity to the Missouri Pacific Railroad and borders Creekside Village. Zone A is segmented from the remainder of the PUD by Zone C to the north east, Zone B to the south and Marketplace Avenue Street extension. Zone A shall be developed with the following residential product:

Multi-family High Density: Zone A shall be designed and developed with the intent to build approximately 300 to 330 units housed within four story buildings equipped with elevators, flat roofs, inset balconies and first floor masonry. The site will be a gated community with market rate units. Density is to be up to 28 units per acre. The leasing office is to be located at Marketplace Avenue with protracted elevation. Units facing the wet detention are to have larger balconies and the same massing as Marketplace Avenue elevations. Unless otherwise noted within this PUD, the development standards of Overlay Districts, (Ord. No. 438, § 39(a), 11-24-2003) Section 53-699 through 53-727 and Section 53-294 Code shall be met. Leasing office, club center, business center, swimming pool, fitness center, dog park and resident gathering area will serve as amenity and activity centers for the apartment residents

- Zone B consists of approximately two (2) acres of land generally depicted as the land south of Zone A and along Marketplace Avenue. Two separate buildings against Marketplace ROW/Easement where commercial space is allocated will be incorporated. Parking will be in the rear of the site. Massing is to compliment the multifamily along Marketplace Ave. Unless otherwise noted within this PUD, Zone B shall be a minimum elevation of two stories developed to RS Overlay District standards with the following use restrictions:
 - Uses permitted by right:

- Restaurant general
- Micro-brewery/micro-winery,
- Live music/entertainment
- Integrated office center,
- Bar, pub or tavern,
- General office
- General Retail
- Dry cleaning serve/drop off only,
- Fitness center,

- Vehicle rentals - provided it's a golf car rental or lease facility. Facility must keep inventory inside commercial space or behind commercial building.

All other RS uses shall be prohibited in Zone C, including mattress stores, "Second Hand" store or/ "Surplus Store", however, this provision shall not apply to a Nike Factory Outlet, Last Call, Nordstrom Rack or like user, Liquor store containing less than 5,000 sq. ft. and having less than 50 locations in the United States, Automotive service/repair facility, financial institutions, nail salons greater than 3,000 sq. ft., convenience store, gas stations, veterinary hospital, all medical uses, or daycare facility.

• Zone C consists of approximately three (3) acres of land and is generally depicted as the land northeast along Marketplace Avenue extension. Zone C may be designed and developed for commercial use with a minimum elevation of two stories. Two separate buildings against Marketplace ROW/Easement where commercial space is allocated will be incorporated. Parking will be in the rear of the site. The north end of north building first floor to be dedicated for restaurant use along the wet detention area. Massing is to compliment the multifamily along Marketplace Ave.

5.2 Unless otherwise noted within this PUD, Zone C shall be developed to RS Overlay District standards with the following use restrictions:

- Uses permitted by right:
 - Restaurant general
 - Micro-brewery/micro-winery,
 - Live music/entertainment
 - Integrated office center,
 - Bar, pub or tavern,
 - General office
 - General Retail
 - Dry cleaning serve/drop off only,
 - Fitness center,
 - Vehicle rentals provided it's a golf car rental or lease facility. Facility must keep inventory inside commercial space or behind commercial building.

All other RS uses shall be prohibited in Zone C, including mattress stores, "Second Hand" store or/ "Surplus Store", however, this provision shall not apply to a Nike Factory Outlet, Last Call, Nordstrom Rack or like user, Liquor store containing less than 5,000 sq. ft. and having less than 50 locations in the United States, Automotive service/repair facility, financial institutions, nail salons greater than 3,000 sq. ft., convenience store, gas stations, veterinary hospital, all medical uses, or daycare facility.

- 5.3 This PUD allows for multiple site plans for or within each Zone in order to allow for phased development. Each area developed will be compliant with City of Kyle development code unless otherwise superceded by this PUD document. Construction of north commercial site (Zone C) must have a certificate of occupancy prior to the first multifamily building. Commencement and completion of commercial areas will be subject to Force Majeure.
- 5.4 Pursuant to the Code, landscape features including outside gathering areas, walkways, driveways, swimming pools, walls, and minor utilities, shall be permitted within required setback areas, provided that the same shall not encroach on a public utility easement without a License to Encroach. To the extent defined under the Code, the improvements consisting of these landscape features will be included in impervious cover calculations.

SECTION 6. DEVELOPMENT STANDARDS

6.1 **Zone A** will be developed with (Ord. No. 438, § 39(a), 11-24-2003) Section 53-699 through 53-727 and Section 53-294. Common area landscaping shall comply with City requirements. Buildings shall contain variation through three types of articulation of front façades, using different building materials, flat roof designs, front door location and cover treatment, colors and window design.

Table 6.2 Zone A1 –Multifamily High-Density (R3-3)		
	MF-2	
Maximum Number of Units per Building	No Limit	
Building Height (Maximum)	60 feet	
Building Separation	10 feet	
Internal Lot Setback (Minimum)	0 feet	
Building Setback to Perimeter Boundary (East)*	0 feet	
Building Setback to Perimeter Boundary (West)	10 feet	
Residential Density (Units/Acre)	28	
* Internal drive aisles and driveways allowed within setback		

62 **Zone B and C** may be developed as C-3 General Commercial. Building design and materials will adhere to Overlay District and Sections 53-480 through 53-484.

Table 6. 5		
Zone B – Commercial (RS)		
Building Height (Maximum)	60 feet	
Building Separation (Minimum)	25 feet	
Marketplace Street Setback (Minimum)	0 feet	
Side Setback (Minimum)	10 feet	

SECTION 7. MASTER SIGN PLAN

7.1 Signs shall not be subject to a setback from the public right-of way and in accordance with Chapter 29 of the Code.

SECTION 8. STORMWATER MANAGEMENT

8.1 *Storm Water Detention:* The property owner holds a perpetual easement adjacent and to the north of the subject site. This easement provides for storm water detention and will be adjacent to Plum Creek along the north property line and west of Marketplace Avenue. Site storm water will be directed to a combination of both on site detention to the south pursuant to Code and/or to an off-site wet detention area to the north of the site. Both of these detention areas will drain into the waterways of Plum Creek to the north and Spring Branch Tributary to the south.

The detention ponds will be maintained in accordance with code requirements relative to detention and the provisions thereof contained within a water detention maintenance agreement with property owners within the PUD. The City of Kyle will put its full assonance and effort into granting building permits in an expedited manner. Stormwater and flood management will comply with FEMA and City of Kyle ordinances.

waters, mere will be no suballi set back required.

SECTION 9. ENVIRONMENTAL PROTECTION

The Plan will comply with environmental protection standards detailed in Section 53-722 of the Code, except as otherwise specified in this PUD.

SECTION 10. ROADWAY INFRASTRUCTURE

- 10.1 The Property has approximately 2000 feet of frontage along Marketplace Avenue, a major arterial roadway. Sound walls will not be provided or required between the railroad tracks and the multi-family units.
- 10.2 Up to five driveway curb cuts will be incorporated into the street access and egress designs of the site. This agreement provides for a waiver of any roadway / infrastructure related fees as the road ROW was provided by property owner with no land costs.
- 10.3 The City of Kyle is planning to install a pedestrian tunnel along the south property line of Zone B. Property owner and the City will enter into a mutually agreeable 10' below grade easement along the north side of the south property line for the City of Kyle trail system improvements within the 10 feet set back requirement herein. Surface parking will be allowed within the easement. In exchange for this easement rather than compensation all Park Land Fees are waived.

SECTION 11. PEDESTRIAN AND VEHICULAR CIRCULATION

- 11.1 The improvements within this PUD will be designed to maximize pedestrian and vehicular circulation within the Property. This PUD will incorporate homogenous design features for all Buildings and other improvements and appurtenances within the Property.
- 11.2 Transportation is an important component with a focus on both internal circulation and access to neighboring property/roadways. All driveways and streets will provide safety and be in accordance with the City's adapted Fire Code.

SECTION 12. PARKING REQUIREMENTS

Improvements within this PUD shall consist of a mixed-use development with a variety of businesses that conduct business at varying times. It is unlikely that all of these businesses will operate at maximum capacity during the same hours of the day. The intent of this provision is to best facilitate a mixed-use, environment where additional surface parking would be detrimental to the desired density.

Parking requirements in all Zones shall meet the requirements of Tables 12.1 and 12.2 of this PUD. All other uses shall follow the UDC minimum requirements at the time of Site Development Plan.

Table 12.1Minimum Bicycle Parking	
Office, on-site	1 space per 10,000 sq. ft. GFA
Retail, on-site	1 space per 7,500 sq. ft. GFA

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Table 12.2 Minimum Vehicle Parking		
Multifamily Residential High-Density (MF-2)	2.01 total parking spaces per unit and 1.43 total parking spaces per bed.	
Office	1 space per 250 sq. ft. GFA	
Retail	1 space per 250 sq. ft. GFA	
Restaurant	1 space per 250 sq. ft. GFA	

SECTION 13. LANDSCAPING, COMMON AMENITIES

- 13.1 Landscape requirements for this PUD shall meet all applicable requirements in Section 53-699 through 53-727 and Section 53-294 of the Code, unless otherwise stated. Landscape requirements can be shifted within a development zone provided the entire PUD meets the overall requirements. Screening of mechanical equipment and waste containers shall meet the Code requirements. Enclosures shall resemble the composition of the buildings nearby.
- 13.2 Landscape Maintenance. Property owners of each Zone will maintain the landscaping.

Parkland Dedication. In the event the city desires to utilize any detention area related to the development for publicuse that it will accept a parkland donation from the owner of said detention area and the developers that use the detention area will perform the detention pond maintenance and not burden Parks Department with this scope. The developer will work with adjacent property owner(s) to ensure any dedication will be legally binding.

13.4 *Impervious Cover*. Section 53-33 0f the Code requires impervious cover shall not exceed eightyfive (80) percent as applied to the aggregate sum of the building and improvement footprints compared to the comprehensive area of land comprising each Zone in the Property. However, as this property is affected by two waterways with flood plain setbacks, wet detention and wetlands restoration these areas for this site will be counted as meeting the pervious cover requirements. The affected area that is pervious is approximately 3.75 acres thus meeting the 80% requirement.

SECTION 14. EXTERIOR LIGHTING

Exterior Lighting on the Property and its Buildings will comply with the requirements set forth in Section 7.05 of the Code related to outdoor lighting unless otherwise described in this PUD.

SECTION 15. PUD MODIFICATIONS

This PUD represents the allowable uses and design standards for the Zones contained within the Property. The exhibits attached to this PUD are illustrative only and do not represent final designs. Modifications to Building sizes, uses and locations, as well as to amenity areas and to pedestrian and vehicular circulation, are allowed without amendment to the PUD, providing modifications conform to uses authorized by this PUD or to applicable provisions of the Code.

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SECTION 16.

DEVELOPMENT DENSITY

	Table 17.1 Developmen	nt Density	_		
Zone	Use(s)	Max. Approx. Acres	Max. Res. Units	Approx. Density	Max. # LUEs
A	High-Density Multifamily (R3-3)	13	330	25.07	500
Residential To	tals	Varies	Varies	Varies	500
Zone	Use(s)	Min. Approx. Acres	Min. Building SF	Approx. FAR	Approx. # LUEs
В	General Commercial (RS)	2	45,000	varies	250
С	General Commercial (RS)	3	180,000	varies	250
Non-Residenti	al Totals (Zones B, and C)	5	225,000	varies	500

SECTION 17. UTILITIES

City of Kyle shall provide water and wastewater services.

The City agrees that if an agreement exists between this property and the City of Kyle, relating to water and wastewater service, it will be honored. Otherwise, the project will be required to pay for the full cost of any off site wet utility extensions required, including the associated service taps and labor.

SECTION 18. LIST OF EXHIBITS

The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A	Location Map
Exhibit B	Current Zoning
Exhibit C	Development Zones

SUBJECT PROPERTY INFORMATION Subdivision Name, Block, Lot, or legal description if not subdivided: <u>PLUM CREEK PARK, Lot PT 1-</u> <u>A, 18.844</u> # of lots (if subdivided): ______ # of acres: <u>18.44</u> Site APN/Property ID #(s): <u>8421-R99807</u> Location: <u>Marketplace Ave, Kyle TX</u> County: <u>Hays</u> Development Name: <u>The Waterfront at Marketplace</u>

OWNER

Company/Applicant Name: <u>Plum Creek Developers, LLC</u> Authorized Company Representative (if company is owner): Joe Brooks Type of Company and State of Formation: <u>a Texas Limited Liability Company</u> Title of Authorized Company Representative (if company is owner): <u>Member</u> Applicant Address: <u>19800 MacArthur Blvd.</u>, <u>Suite 1100, Irvine, CA 92616</u> Applicant Fax: <u>949-265-1199</u> Applicant Phone: <u>949-265-1100</u> Applicant/Authorized Company Representative Email: <u>joe.brooksceo@gmail.com</u>

APPLICANT REPRESENTATIVE

Check one of the following:

 \checkmark . I will represent the application myself; or

I hereby designate ______ (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.

_____ Date: 5/23/22 Owner's Signature: State of TexAS

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.).



County of Bu RWETS

PROJECT REPRESENTATIVE

SUBSCRIBED AND SWORN TO before me, this
the <u>23nd</u> day of <u>May</u> , 20 <u>2</u> ?
Acrone Stin
Notary Public's Signature
12-31-2022
My Commission Expires

My Commission Expires

Representative Name: Joe Brooks Representative Address: 265 Field Crest Dr., Marble Falls, TX 78654 Representative Phone: 805-816-2964 Representative Email: joe.brooksceo@gmail.com _____Date: <u>5/23/22</u> R-Representative's Signature: t





Franchise Tax Account Status

As of : 05/23/2022 11:23:30

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

EEK DEVELOPERS, LLC
32042922537
19800 MACARTHUR BLVD STE 1100 IRVINE, CA 92612-2440
ACTIVE
TX
10/27/2010
0801336033 .
JEFFREY S. HOWARD
901 SOUTH MOPAC EXPRESSWAY, SUITE 225 AUSTIN, TX 78746

Public Information Report

Public Information Report PLUM CREEK DEVELOPERS, LLC Report Year :2021

Information on this site is obtained from the most recent Public Information Report (PIR) processed by the Secretary of State (SOS). PIRs filed with annual franchise tax reports are forwarded to the SOS. After processing, the SOS sends the Comptroller an electronic copy of the information, which is displayed on this web site. The information will be updated as changes are received from the SOS.

You may order a copy of a Public Information Report from <u>open.records@cpa.texas.gov</u> or Comptroller of Public Accounts, Open Records Section, PO Box 13528, Austin, Texas 78711.

Title Name and Address	
MEMBER	PC EDGE INVESTMENTS LLC 265 FIELDCREST DRIVE MARBLE FALLS, TX 78654
MEMBER	PLUM CREEK INVESTORS LLC 19800 MACARTHUR BLVD STE 11 IRVINE, CA 92612



Hays County Liz Q. Gonzalez County Clerk San Marcos, Texas 78666

Instrument Number: 2011-11015327 As OPR RECORDINGS

Recorded On: July 05, 2011

Parties: PARKER JULIA E TRUSTEE

To PLUM CREEK DEVELOPERS LLC

Comment:

(Parties listed above are for Clerks reference only)

		** Examined and Charged as Follows: **
OPR RECORDINGS	48.00	
Total Recording:	48.00	

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Record and Return To:

Document Number: 2011-11015327 Receipt Number: 278075 Recorded Date/Time: July 05, 2011 12:31:48P Book-Vol/Pg: BK-OPR VL-4145 PG-863 User / Station: L Curry - Cashiering #5

INDEPENDENCE TITLE COMPANY 9442 N. CAPITAL OF TX HWY . PLAZA 2 STE 100 AUSTIN TX 78759



State of Texas | County of Hays

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

Liz Q.Gonzalez, County CLerk

Billable Pages: 9 Number of Pages: 10 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.

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15-0421524-DPP

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

Date: June 30, 2011

Grantor: JULIA E. PARKER also known as JULIE NORMAN PARKER, Individually and as Trustee of THE L. W. PARKER FAMILY TRUST

Grantor's Mailing Address: P. O. Box 555, Pflugerville, Travis County, Texas 78660, with copy to: RAY PARKER, 15104 Spring Hill Lane, Pflugerville, Travis County, Texas 78660

Grantee: PLUM CREEK DEVELOPERS, LLC, a Texas limited liability company

Grantee's Mailing Address:

PLUM CREEK DEVELOPERS, LLC 101 Highway 281, Suite 208 Marble Falls, Texas, 78654

Consideration: TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration together with a purchase money promissory note ("Note") dated June 30, 2011, executed by Grantee and payable to the order of Grantor in the principal amount of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00). The Note is secured by a first and superior vendor's lien retained in this deed and by a first-lien deed of trust dated June 30, 2011, executed by Grantee to DAN R. MCNERY, Trustee.

Property (including any improvements):

(The description of the Property to be conveyed by this Deed is set forth on Exhibit A attached hereto and incorporated herein by reference.)

Reservations from Conveyance: None.

Exceptions to Conveyance and Warranty: Set forth on Exhibit B, attached hereto and incorporated herein by reference.

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 Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

The vendor's lien against and superior title to the Property are retained until the Note described is fully paid according to its terms, at which time this deed will become absolute.

"AS IS" CLAUSE

AS A MATERIAL PART OF THE CONSIDERATION FOR THIS DEED, GRANTOR AND GRANTEE AGREE THAT GRANTEE IS TAKING THE PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY BY GRANTOR THAT THE PROPERTY HAS A PARTICULAR FINANCIAL VALUE OR IS FIT FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THE OPTION AGREEMENT PURSUANT TO WHICH THIS DEED IS GIVEN, GRANTEE ACKNOWLEDGES AND STIPULATES THAT GRANTEE IS NOT RELYING ON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION WITH RESPECT TO THE PROPERTY CONDITION BUT IS **RELYING ON GRANTEE'S EXAMINATION OF THE PROPERTY. GRANTEE** THE PROPERTY WITH THE EXPRESS UNDERSTANDING AND TAKES STIPULATION THAT EXCEPT AS EXPRESSLY SET FORTH IN THE OPTION AGREEMENT PURSUANT TO WHICH THIS DEED IS GIVEN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES EXCEPT FOR LIMITED WARRANTIES OF TITLE SET FORTH IN THIS DEED.

ENVIRONMENTAL MATTERS CLAUSE

AFTER THE DATE OF THIS DEED, GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS GRANTOR FROM ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), ACTIONS, DEMANDS, PENALTIES, LOSSES, COSTS OR EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND REMEDIAL COSTS), SUITS, COSTS OF ANY SETTLEMENT OR JUDGMENT AND CLAIMS OF ANY AND EVERY KIND WHATSOEVER WHICH MAY NOW OR IN THE FUTURE BE PAID, INCURRED OR SUFFERED BY OR ANY PERSON OR ENTITY AGAINST GRANTOR BY OR ASSERTED GOVERNMENTAL AGENCY ARISING OUT OF THE EXISTENCE OF ANY HAZARDOUS MATERIALS, ENVIRONMENTAL HAZARDS OR CONDITION ON THE PROPERTY RESULTING SOLELY FROM GRANTEE'S, GRANTEE'S AGENTS', CONTRACTORS', LESSEES', OR OTHER PERMITEES' OPERATIONS AND ACTIVITIES ON THE PROPERTY AFTER THE DATE OF THIS DEED.

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

JULIA E. PARKER also known as JULIA NORMAN PARKER, Individually and as Trustee of THE L. W. PARKER FAMILY TRUST

Grantee, PLUM CREEK DEVELOPERS, LLC, accept this deed and consents to its form and substance. Grantee acknowledges that the terms of this deed conform with Grantee's intent and that they will control in the event of any conflict with the agreement Grantee signed regarding the Property described in this deed.

(Acknowledgments)

STATE OF TEXAS

COUNTY OF TRAVIS

STATE OF CALIFORNIA

This instrument was acknowledged before me on June <u>39</u>, 2011, by JULIA E. PARKER also known as JULIE NORMAN PARKER, Individually and as Trustee of THE L. W. PARKER FAMILY TRUST.

DAN P. PHARES MY COMMISSION EXPIRES August 31, 2013	h
	Notary Public - State of Texas

COUNTY OF <u>Jure 24 2011</u> before me, <u>Unre Jurice Halle</u>, personally appeared <u>Jurici A</u>. <u>Huffe</u>, who proved to me on the basis of satisfactory evidence to be the person(s) whose Name(s) is/see subscribed to the within instrument and acknowledged to me that he/ske/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

J. Harlow

(Seal)



Grantee agrees to the obligations imposed on Grantee by the terms of this deed.

PLUM CREEK DEVELOPERS, LLC, a Texas limited liability company By: Name: James D. Stroffe Title. Authorized Signatory

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After Recording Return To: Independence Title Company

Independence Title Company 9442 N. Cap. of Tx. Hwy. Bldg. 2, Ste. 200 Austin, TX 78759 Attn: Deb Dubelbers

EXHIBIT A Property Description

Parcel One

BEING 37.526 ACRES OF LAND OUT OF THE HENRY LOLLAR SURVEY, ABSTRACT NO. 290, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF LOT 1-A OF THE RESUBDIVISION OF LOT 1 PLUM CREEK PARK, A SUBDIVISION OF RECORD IN VOLUME 10, PAGES 10-11 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS; SAID 37.526 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, at the intersection of the easterly right-of-way line of the Missouri Pacific Railroad and the westerly right-of-way line of Burleson Road (R.O.W. varies), for the southernmost corner of said Lot 1-C and hereof;

THENCE, N10° 15' 09"E, leaving said westerly right-of-way line of Burleson Road, along said easterly right-of-way line of the Missouri Pacific Railroad, for the westerly line of said Lot 1-C and a portion of the westerly line of said Lot 1-A, a distance of 1591.00 feet a calculated point for the **POINT OF BEGINNING** and southwesterly corner hereof;

THENCE, N10° 15' 09"E, continuing along said easterly right-of-way line of the Missouri Pacific Railroad, for a portion of the westerly line of said Lot 1-A, a distance of 2298.50 feet to the westernmost southerly corner of Lot 2 of Plum Creek Park, a subdivision of record in Volume 7, Pages 297-298 of said Plat Records, for the northernmost corner of said Lot 1-A and hereof;

THENCE, leaving said easterly right-of-way line of the Missouri Pacific Railroad, along a portion of the southerly line of said Lot 2, being the northerly line of said Lot 1-A and hereof, the following sixteen (16) course and distance:

- 1) S69° 10' 00"E, a distance of 176.52 feet for an angle point;
- 2) S23° 11' 29"E, a distance of 143.06 feet for an angle point;
- 3) S11° 08' 25"E, a distance of 90.04 feet for an angle point;
- 4) S03° 38' 37"W, a distance of 140.63 feet for an angle point;
- 5) S17° 11' 52"N, a distance of 115.60 feet for an angle point;
- 6) S46° 02' 16"W, a distance of 70.35 feet for an angle point;
- 7) S11° 38' 00"E, a distance of 103.49 feet for an angle point;
- 8) S55° 45' 11"E, a distance of 149.23 feet for an angle point;
- 9) S85° 25' 18"E, a distance of 170.36 feet for an angle point;
- 10) S49° 04 '51"E, a distance of 87.45 feet for an angle point;
- 11) S09° 07' 16"E, a distance of 118.27 feet for an angle point;
- 12) S36° 52' 23"E, a distance of 182.25 feet for an angle point;
- 13) S66° 41' 34"E, a distance of 277.90 feet for an angle point;

- 14) S16° 22' 40"E, a distance of 228.51 feet for an angle point;
- 15) S13° 01' 30"W, a distance of 144.88 feet for an angle point;
- 16) S31° 35' 43"W, a distance of 124.54 feet to the northernmost corner of Lot 3-A of the Replat of Lot 3 Plum Creek Park, a subdivision of record in Volume 8, Page 65 of said Plat Records, being an angle point in the southerly line of said Lot 2, for an angle point in the easterly line of said Lot 1-A and hereof;

THENCE, S52° 03' 46"W, along the westerly line of said Lot 3-A, being the easterly line of said Lot I-A, a distance of 928.78 feet for an angle point in the easterly line hereof:

THENCE, S44° 39' 38"W, continuing along the westerly line of said Lot 3- A, being the easterly line of said Lot I -A, a distance of 190.57 feet to a calculated point for the southeasterly corner hereof;

THENCE, leaving the westerly line of said Lot 3-A, over and across said Lot 1-A, for the southerly lines hereof, the following two (2) courses and distances:

- 1) N09° 45' 44"E, a distance of 45.94 feet to a calculated point for an angle point;
- 2) N79° 44' 51"W, a distance of 432.27 feet to the POINT OF BEGINNING, containing an area of 37.526 acres (1,634,639 square feet) of land, more or less, within these meets and bounds.

Parcel Two

A non-exclusive, appurtenant easement and right of way for pedestrian and vehicular ingress and egress to and from Parcel One, and for roadway, drainage and utility purposes, including both public and private utilities and services, and for landscaping and for the construction, operation, maintenance, repair, alteration, and inspection thereof and other necessary facilities attendant thereto, over, under, across and through Grantor's retained property being generally described as:

Phase 1 consisting of approximately 23.362 acres of land out of the Henry Lollar Survey, Abstract No. 290 and the John Green Survey Abstract Number 200, situated in Hays County, Texas, being all of Lot 2 Plum Creek Park, a subdivision of record in volume 7, pages 297-298 of the plat records of Hays County, Texas; and

Phase 2 consisting of approximately 17.500 acres of land out of the Henry Lollar Survey, Abstract No. 290 and the Z. Hinton Survey Abstract No. 220, situated in Hays County, Texas, being all of Lots 1-B and 1-C and a portion of Lot 1-A of the re-subdivision of Lot 1 Plum Creek Park, a subdivision of record in volume 10, pages 10-11 of the plat records of Hays County, Texas;

together with all right necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including the right to cut and remove timber, trees, brush and other obstructions.

Said easement is approximately 70 feet wide, aligning generally with the centerline of Marketplace at its intersection with City Lights Drive to the north and intersecting Burleson Road on the southeast and is depicted on the attached Exhibit A-I.



EXHIBIT A-1

EXHIBIT B

3

Exceptions to Conveyance and Warranty

As to Tract One:

- 1. Liens described as part of the Consideration.
- 2. Standby fees, taxes, and assessments by any taxing authority for the year 2011, 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
- 3. Rights and interests of parties in, to and/or arising from an existing grazing lease, and to the rights and interests of the tenants in possession under the terms of the grazing lease.
- 4. Rights and interests of parties in, to and/or arising from, together with obligations, restrictions, provisions, easements setback lines, designation of additional right of way and other matters as set forth in plat recorded respectively in Volume 10, Pages 10-11, Plat Records, Hays County, Texas.
- 5. Rights and interests of parties, in, to and/or arising from easement/right of way originally in favor of the City of Kyle, Texas, as recorded in Volume 1433, Page 670, Official Public Records, Hays County, Texas.
- 6. Rights and interests of parties in, to and/or arising from easement/right of way originally in favor of Pedernales Electric Cooperative as recorded in Volume 3146, Page 328, Official Public Records, Hays County, Texas.
- 7. Rights and interests of parties in, to and/or arising from Boundary Line Agreement recorded in Document No. 9915546, Official Public Records, Hays County, Texas.
- 8. Easement For Underground Facilities originally in favor of Southwestern Bell Telephone Company as recorded in Volume 261, Page 478, Deed Records, Hays County, Texas.

As to Tract Two:

- 1. Liens described as part of the Consideration.
- 2. Standby fees, taxes, and assessments by any taxing authority for the year 2011 and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.
- 3. Rights and interests of parties in, to and/or arising from an existing grazing lease, and to the rights and interests of the tenants in possession under the terms of the grazing lease.
- 4. Rights and interests of parties in, to and/or arising from, together with obligations, restrictions, provisions, easements setback lines, designation of additional right of way and other matters as set forth in plats recorded respectively in Volume 7, Pages 297-298, and Volume 10, Pages 10-11, Plat Records, Hays County, Texas.
- 5. As to portions of Lot 2, rights and interests of parties in, to and/or arising from easement/right of way originally in favor of TLC Properties, Inc. as recorded in Volume 3009, Page 72, Official Public Records, Hays County, Texas.
- 6. As to portions of Lot 2, rights and interests of parties in, to and/or arising from easement/right of way originally in favor of the City of Kyle as recorded in Volume

3041, Page 8, Official Public Records, Hays County, Texas.

- 7. Rights and interests of parties in, to and/or arising from easement/right of way originally in favor of Pedernales Electric Cooperative as recorded in Volume 3146, Page 333, Official Public Records, Hays County, Texas.
- 8. As to portions of Lot 2, rights and interests of parties in, to and/or arising from easement/right of way originally in favor of the City of Kyle as recorded in Volume 3305, Page 773, Official Public Records, Hays County, Texas.
- 9. As to portions of Lot 2, rights and interests of parties in, to and/or arising from easement/right of way originally in favor of Pedernales Electric Cooperative as recorded in Volume 3305, Page 779, Official Public Records, Hays County, Texas.
- 10. As to portions of Lot 2, rights and interests of parties in, to and/or arising from, together with obligations and agreements related to on-site sewage facility as stated in or referenced by Affidavit to the Public recorded under Document No. 9923803 Official Public Records, Hays County, Texas.
- 11. Easement For Underground Facilities originally in favor of Southwestern Bell Telephone Company as recorded in Volume 261, Page 478, Deed Records, Hays County, Texas.



CITY OF KYLE, TEXAS

Winn Family Limited Partnership -Zoning (Z-22-0109) Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation	 (<i>First Reading</i>) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 4.01 acres of land from Agriculture 'A' to Retail Service District 'RS' for property located at 23451 IH-35 in Hays County, Texas. (Winn Family Limited Partnership - Z-22-0109). ~ <i>Will Atkinson, Director of Planning Planning and Zoning Commission voted 7-0 to approve the request.</i> 	
	Public Hearing	
Other Information:	See attached.	
Legal Notes:	N/A	
Budget Information:	N/A	

ATTACHMENTS:

Description

- Staff Report
- D Ordinance
- Summary Request Letter
- Landowner Authorization
- Franchise Tax Account Status
- Deed Deed
- D Survey

Property Location Property ID:	23451 IH-35, Kyle, TX 78640 R90524
Owner	Winn Family Limited Partnership Andrew C Winn P.O. Box 1727 Wimberley, TX 78676
Agent	Al Carroll, P.E. 155 Riverwalk Dr San Marcos, TX 78666
Request	Rezone 4.01-Acres "A" (Agriculture) to "RS" (Retail Services)

Vicinity Map





Image shown with more detail.

Site Description

The site proposed to be rezoned, is an undeveloped lot located along the IH-35 N Frontage Road. It's currently zoned "A" or "Agriculture." Immediately to the north is the 1-acre portion of the Winn tract, currently zoned "RS". To the south is property zoned Construction Manufacturing "CM" and utilized as a small scale light industrial park. To the west and across I-35 is an undeveloped property which is zoned "A." To the east is a property zoned "W" and used as a recreational vehicle dealership.

Existing 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)



Requested Zoning

RS (Retail Services)

Sec. 53-480. – 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 <u>section 53-1230</u>.

(Ord. No. 438, § 45(a), 11-24-2003)

Sec. 53-481. Conditions and limitations.

The conditions and limitations on uses in the RS district are as follows:

- (1) The use be conducted wholly within an enclosed building, except for:
 - Delivery
 - Catering
 - Gasoline sales
 - Plant nurseries
 - Garden centers
 - Outdoor dining
 - Outdoor display of merchandise

Additional outdoor uses may be considered and must follow the same approval process outlined in section 53-419. Outdoor, live, acoustic music performances or similar entertainment (no electronic sound amplification), must be considered through the conditional use process. All outdoor uses adjacent to residential uses or zoning, must comply with standard solid screening and landscape buffers as found in section 53-484. Outdoor uses cannot interfere with ADA access to public rights-of-way.

(Ord. No. 438, § 42(b), 11-24-2003; Ord. No. 1077, § 3(Exh. A), 2-4-2020)

Sec. 53-482. Site development regulations.

The site development regulations on uses in the RS district are as follows:

- (1) Paved sidewalks, driveways and parking areas are required. The sidewalks, pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.
- (2) Screening of loading and storage facilities is required.

(Ord. No. 438, § 42(c), 11-24-2003)

Sec. 53-484. Special screening requirements.

All construction or development of property within this district that abuts property with residential zoning and/or residential use must conform to the following special screening requirements:

- (1) Solid, continuous fencing up to eight feet in height, but not less than six feet in height; and solid landscaping of at least four feet in width.
- (2) Screening under this section shall be at least three feet in height, but no more than four feet in height in front yards, from the front setback line to the sidewalk.
- (3) Landscaping under this section shall conform to the provisions of section 53-994(4) through (6).

- (4) All screening required by this section shall be along all common property boundaries with residential zoning.
- (5) All screening shall be constructed to maintain structural integrity against natural forces such as wind, rain, and temperature variations.
- (6) The finished side of all fences built to comply with this section shall face away from the screened property.
- (7) All screening and/or landscaping required by this section shall be in addition to all other landscaping, planting, screening, and/or setback requirements.
- (8) Exceptions to the provisions of this section may be granted by the planning and zoning commission and city council to require a lesser amount of screening if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the screened area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 438, § 42(e), 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 within the "Regional Node" district. The "RS" zoning district is recommended in the "Regional Node."

Regional Node

Recommended: R-1-C, R-3-2, R-3-3, CC, NC, **R/S**, MXD Conditional: CBD-1, CBD-2, E, HS, R-3-1, O/I

<u>'Character'</u>: Regional Nodes should have regional scale retail and commercial activity complemented by regional scale residential uses. Th ese Nodes should represent the character and identity of Kyle, and signal these traits to the surrounding community. Regional Nodes have a radius of approximately 1/3 of a mile so that they are walkable, but are able to contain a greater range of uses at a larger scale than those found in Local Nodes. Appropriate uses may include grocery stores, retail shopping centers, multi-family housing, and municipal services, such as libraries and recreation centers. Regional Nodes are scaled and designed as activity centers where users not only secure good and services, but also congregate and remain for extended periods, unlike Local Nodes which are designed around quick turnaround convenience retail. The Regional Nodes located along I-35 at the northern and southern boundaries of Kyle should be

designed as entryways into Kyle with elements that are symbolic of Kyle and serve to attract I-35 travelers into Kyle. Transitions between Regional Nodes and surrounding districts must be carefully constructed to avoid abrupt shifts in land uses. Trails and sidewalks should be present throughout all Regional Nodes and should connect to surrounding neighborhoods.

<u>'Intent'</u>: The primary goal of the Regional Modes is to capture commercial opportunities necessary to close Kyle's tax gap. To achieve this goal, the Nodes should draw upon anticipated regional growth and aggregate density to enhance value and activity levels in a concentrated and visible location. Regional Nodes should provide a mixture of uses that complements regional commercial activity, as well as encourage high intensity residential development. Th ese Nodes should respond to other regional areas of growth, specifically along I-35 and FM 1626, and to growth toward Hwy 21, SH 45 and SH 130. Th e anchor of each Regional Node should be regional commercial uses, and Regional Nodes should have a high level of development intensity.

Analysis

The subject property is located on approximately 5.01-acres and is currently zoned "A" for the southern 4.01-acres. This site is currently undeveloped with and is currently being utilized as the temporary construction yard for the City's Southside Wastewater Project. The site was originally a materials borrow pit to construct IH-35 in the mid-20th century. Later on, the Winn family purchased the property. They started construction on a metal warehouse but never completed it, prior to annexation. The total site is 5.01-acres, with the northern 1-acre section zoned "Retail Services" (Ord. No. 1193, 5/3/2022).

A majority of the adjacent parcels are zoned and used for warehouse or light industrial uses. At a glance, this site would logically follow a similar development pattern, however, in 2017 the City of Kyle removed warehouse and light industrial uses from the IH-35 corridor (comprehensive plan amendment). With discussions between the applicant and staff, the "Retail Services" (RS) zoning district was the next best district to consider from a marketing perspective. The "RS" district is also recommended per the City of Kyle's comprehensive plan.

Utilities:

- Water = City of Kyle
- Wastewater = City of Kyle
- Electricity = Pedernales Electric Cooperative

Relating to permits, the site may need to subdivide, but will be required to provide a site development permit, conditional use permit (building elevations/I-35 Overlay) and commercial building permit(s) to develop the site.

Recommendation

Staff has reviewed this zoning request and has determined the re-zoning is appropriate and aligns with the current Comprehensive Plan. The Planning and Zoning Commission voted unanimously to recommend approval of this request on November 8, 2022.

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 4.01 ACRES OF LAND FROM 'A' (AGRICULTURE) TO 'RS' (RETAIL SERVICES) – FOR PROPERTY LOCATED AT 23451 IH-35 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 4.01 acres from 'A' (Agriculture) to 'RS' (Retail Services) for property located at 23451 IH-35 in Hays County, Texas and the property location map and survey 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. 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.

<u>SECTION 4</u>. 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.

<u>SECTION 5.</u> 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




Legal Description of 4.01 acres of land out of the James W. Williams Survey, A-473, Hays County, Texas; being a portion of that 5.01 acre tract conveyed to The Winn Family Limited Partnership, a Texas Limited Partnership, by deed dated March 22, 2012, and recorded in Volume 4304, Page 759 of the Official Public Records of Hays County, Texas; and being more particularly described as follows:

COMMENCING at the Northwest corner of the said 5.01 acre tract, same being on the West right-of-way line of Interstate Highway No. 35;

THENCE S 04d 16' 22" W, 143.17 feet, with the West right-of-way line of Interstate Highway No. 35 to the POINT OF BEGINNING and the Northwest corner of the tact herein described;

THENCE S 85d 43' 35" E, 352.92 feet, crossing the said 5.01 acre tract, to the Northeast corner of the tact herein described;

THENCE S 06d 30' 39" E, 189.09 feet, to an angle point;

THENCE S 01d 48' 10" E, 259.29 feet, to the Southeast corner of the said 5.01 acre tract and the Southeast corner of the tact herein described;

THENCE N 85d 43' 38" W, 455.74 feet, to the Southwest corner of the said 5.01 acre tract and the Southwest corner of the tact herein described, same being on the aforementioned West right-of-way line of Interstate Highway No. 35;

THENCE N 04d 16' 22" E, 436.12 feet, with the West right-of-way line of Interstate Highway No. 35 to the POINT OF BEGINNING, and containing 4.01 acres of land.

This description prepared for the sole purpose of rezoning the tact herein described.



SKETCH TO ACCOMPANY LEGAL DESCRIPTIONS FOR REZONING PURPOSES ONLY



September 16, 2022

City of Kyle 100 W. Center St. Kyle, Texas 78640 Attn: Planning Department

RE: 23451 IH 35, Kyle, Texas 78640 (5.01 Acres out of the James W. Williams Survey Abs. 0473)

To whom it may concern,

The purpose of the accompanying Zoning Change application, checklist, exhibit and accompanying legal descriptions are to officially zone the property for development purposes. At the time of annexation into the City of Kyle this property was zoned Agricultural (A). In order to develop the property, we are requesting that the zoning of the property be changed to Retail/Services (RS) in accordance with the attached exhibit and legal descriptions. Should you have any questions or concerns please feel free to contact us.

Regards,

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Al Carroll, P.E. Civil Engineering Manager San Marcos Division

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SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided. Being 5.01 acres of land, more or less, out of the James W. Williams Survey, Abs. 473, Hays County, Texas

# of lots (if subdivided): 1	# of acre	# of acres: 5.01
Site APN/Property ID #(s): R90524		
Location: 23451 IH 35, Kyle, TX 78640 County: Hays	County:	Hays
Develonment Name.		

OWNER

Authorized Company Representative (if company is owner): Andrew C Winn Type of Company and State of Formation: Limited Partnership - Texas Company/Applicant Name: Winn Family Limited Partnership

Title of Authorized Company Representative (if company is owner): <u>Co Manager</u> Applicant Address: <u>PO Box 1727</u>, Wimberley, Texas 78676

Applicant Fax:

Applicant Phone: (512) 847-5538

Applicant/Authorized Company Representative Email: omwegoto@gmail.com

APPLICANT REPRESENTATIVE

Check one of the following:

. I will represent the application myself; or

(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. Al Carroll, P.E I hereby designate

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: and rule Wate: 9/15/2022

State of Texas

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County of <u>theys</u>

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 <u>15</u> day of <u>5eptember</u> 2022 <u>aili</u> <u>Dualertry</u> Notary Public's Signature <u>11 / 16 / 2025</u> My Commission Expires

Page 1 of 2

PROJECT REPRESENTATIVE	Representative Protection for Address 1: 10: 00 reference for an indexe 1: page 2: 000 representative Protection in the second protection in the s	
	Item # 24	

Franchise Search Results





Franchise Tax Account Status

As of : 10/07/2022 08:57:14

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

WINN FAMILY PARTNERSHIP, LP		
Texas Taxpayer Number	32034980311	
Mailing Address	5015 TANBARK RD DALLAS, TX 75229-4337	
Right to Transact Business in Texas	ACTIVE	
State of Formation	TX	
Effective SOS Registration Date	08/27/2007	
Texas SOS File Number	0800862903	
Registered Agent Name	WALTER T. WINN	
Registered Office Street Address	398 CCR 709 KOSSE, TX 76653	



Hays County Liz Q. Gonzalez County Clerk San Marcos, Texas 78666

Instrument Number: 2012-12007333 As OPR RECORDINGS

Recorded On: March 22, 2012

Parties: DEVENPORT SALLY INDEPENDENT EXECUTRIX

To WINN FAMILY LP

Billable Pages: 4

Number of Pages: 5

Comment:

(Parties listed above are for Clerks reference only)

** Examined and Charged as Follows: **

OPR RECORDINGS 28.00 Total Recording: 28.00

******* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT ***********

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Record and Return To:

Document Number: 2012-12007333 Receipt Number: 298951 Recorded Date/Time: March 22, 2012 01:52:07P Book-Vol/Pg: BK-OPR VL-4304 PG-759 User / Station: S Breland - Cashering #1

PATRICK G REHMET PO BOX 1916 WIMBERLEY TX 78676



State of Texas | County of Hays

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

King & Dorgeley Liz Q. Gonzalez, County CLerk

Item # 24

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

SPECIAL WARRANTY DEED

Date: 22 March, 2012

Grantor: Sally Devenport, in the capacity of Independent Executrix of the Estate of James Buchanan Winn, III, Deceased, in Cause Number 12020-P in the County Court At Law No. 1, Hays County, Texas, Sitting in Matters Probate

Grantor's Mailing Address: 310 Hub Drive, Wimberley, Texas 78676 County of Hays

Grantee: The Winn Family Limited Partnership, a Texas Limited Partnership

Grantee's Mailing Address: 236 Winn Valley Drive, Wimberley, Texas 78676 County of Hays

Consideration: TEN DOLLARS (\$10.00) and other good and valuable consideration.

Property (including any improvements): Being 5.01 acres of land, more or less, out of the James W. Williams Survey, A-473, Hays County, Texas, more particularly decribed by metes and bounds in Exhibit "A" attached hereto and by reference incorporated herein for all pertinent purposes.

Reservations from and Exceptions to Conveyance and Warranty: This conveyance is made, delivered, and accepted subject to any restrictions, covenants, conditions and easements of record, if any, affecting said property, and any and all zoning laws, regulations and ordinances of municipal and/or governmental authorities of record in the Office of the County Clerk of Hays County, Texas.

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 anywise belonging, to have and hold it to Grantee, its successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the property to Grantee and Grantee's 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.

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ESTATE OF JAMES BUCHANAN WINN, III, DECEASED

By: Sally 1 wenport

INDEPENDENT EXECUTRIX

STATE OF TEXAS COUNTY OF HAYS



This instrument was acknowledged before me on this the 2^{2n} day of $\underline{\gamma_{CUCH}}$. 2012, by SALLY DEVENPORT, in the capacity of Independent Executrix of the Estate of James Buchanan Winn, III, Deceased.

State of Texas

After Recording Return To: Patrick G. Rehmet P.O. Box 1916 Wimberley, Texas 78676

1422 201

DESCRIPTION OF 5.01 ACRES, MORE OR LESS, OF LAND AREA IN THE JAMES W. WILLIAMS SURVEY, ABSTRACT NO. 473, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT TRACT DESCRIBED AS 63.97 ACRES IN A DEED FROM ED LUNDAY ET UX TO G.A. SCHULLE DATED JANUARY 11, 1944 AND RECORDED IN VOLUME 129, PAGE 2 OF THE HAYS COUNTY DEED RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

· · ·

BEGINNING at a 1/2" iron rod set in the east line of Interstate Highway No. 35 and that tract described as 5.03 acres in a deed from Ed Lunday et ux to the State of Texas dated June 28, 1934 and recorded in Volume 109, Page 162 of the Hays County Deed Records, for the northwest corner of this tract, from which a TXDOT concrete highway monument found in the northwest line of the Schulle 63.97 acre tract for the northeast corner of the State of Texas 5.03 acre tract bears N 04° 47' 00" E 661.99 feet;

THENCE leaving the State of Texas 5.03 acre tract, Interstate Highway No. 35 and the PLACE OF BEGINNING as shown on that plat numbered 24366-97-c dated January 29, 1998 as prepared for Jim Winn by Byrn & Associates, Inc. of San Marcos, Texas, with the north line of this tract, the following two courses:

- 1. S 85° 13' 00" E 222.77 feet to a 1/2" iron rod set for an angle point, and
- S 47° 17' 20" E 153.15 feet to a 1/2" iron rod set for the northeast corner of this tract;

THENCE with the east line of this tract, the following two courses:

- 1. S 06° 00' 01" E 239.01 feet to a 1/2" iron rod set for an angle point, and
- 2. S 10° 17' 32" E 259.29 feet to a 1/2" iron rod set for the southeast corner of this tract;

THENCE with the south line of this tract, N 85° 13' 00" W 455.74 feet to a 1/2" iron rod set in the east line of the aforereferenced State of Texas 5.03 acre tract and Interstate Highway No. 35 for the southwest corner of this tract, from which a TXDOT concrete highway monument found for point of curvature bears S 04° 47' 00" W 302.81 feet;

THENCE with the common west line of this tract, the east line of the State of Texas 5.03 acre tract and Interstate Highway No. 35, N 04° 47' 00" E (this being the Bearing Basis for this description) 579.30 feet to the PLACE OF BEGINNING.

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EXHIBIT "A"

* #4

1422 292

There are contained within these metes and bounds 5.01 acres, more or less, of land area as prepared from public records and a survey made on the ground on January 29, 1998 by Byrn & Associates, Inc. of San Marcos, Texas. All 1/2" iron rods set are capped with a plastic cap stamped "Byrn Survey".

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David C. Williamson, R.P.L.S. #4190

FILED AND RECORDED OFFICIAL PUBLIC RECORDS

Marquird, Villafornds

6-10-98 03:59 PM 9811822 KLEEN \$17.00 MARGIE T VILLALPANDO, County Clerk HAYS COUNTY

CLIENT: Winn, J. DATE: January 29, 1998 SURVEY: Williams, James W., A-473 COUNTY: Hays, Texas JOB NO.: 24366-97 FND5.01

4

Page 2 of 2

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Legal Description of 4.01 acres of land out of the James W. Williams Survey, A-473, Hays County, Texas; being a portion of that 5.01 acre tract conveyed to The Winn Family Limited Partnership, a Texas Limited Partnership, by deed dated March 22, 2012, and recorded in Volume 4304, Page 759 of the Official Public Records of Hays County, Texas; and being more particularly described as follows:

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SKETCH TO ACCOMPANY LEGAL DESCRIPTIONS FOR REZONING PURPOSES ONLY



IH-35





Presentation of Word Place Development Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Presentation of Word Place Development - Jeff Barton, Partner, Gap Strategies

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS: Description

No Attachments Available



Rename Arts Commission

Discussion and possible action for renaming Art Commission to add Arts and Cultural Commission. ~ *Michael Tobias, Council Member*

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Arts and Cultural Commission backup material

"Arts" along with the word "Cultural" is to enhance the description and work of this commission for the city. The roles and responsibilities section of the art commission description already list cultural programs in "bullet 3". With the word and adding "Cultural" in the title, the commission can be reviewed for grant proposals that cater to cultural programs at the local, state, and national levels. The change of "Art" to "Arts" supports the expanded vision to be inclusive of all art mediums. Arts and Cultural Commission is the new proposed name for this newly formed commission.

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Overhanging Wires Ordinance

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: (*First Reading*) An Ordinance of the City of Kyle, Texas, Establishing Clearance Requirements for Overhead Electric, Communication, and Cable Television Lines; Providing for violation of the ordinance; Providing a penalty; and Providing for related matters. ~ *Paige Saenz, City Attorney*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

D Ordinance. Clearance. Requirements

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, ESTABLISHING CLEARANCE REQUIREMENTS FOR OVERHEAD ELECTRIC, COMMUNICATION, AND CABLE TELEVISION LINES; PROVIDING FOR VIOLATION OF THE ORDINANCE; PROVIDING A PENALTY; AND PROVIDING FOR RELATED MATTERS

Whereas, the City of Kyle, Texas, a home rule municipality (the "City") finds that it is reasonable and necessary to establish clearance requirements for overhead electric, communication, and cable television lines for the purpose of protecting the public health, safety, and welfare;

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

Section 1. <u>Findings of Fact</u>. The findings and recitations set out in the preamble of this Ordinance are found to be true and correct, and that they are hereby adopted by the Council and made a part hereof for all purposes.

Section 2. <u>Adoption of Clearance Regulations to Regulate Height of Overhead</u> <u>Lines.</u> Chapter 38, Article II, Division 1 is hereby amended by adding Section 38-24, to be entitled "Height of Overhead Line" to read as follows:

Sec. 38-24. - Height of Overhead Line.

The minimum vertical clearance above the streets and rights-of-way at the largest vertical sag of the line shall be 22 feet for overhead electric lines, and 18 feet for overhead communication and cable television lines. Clearances for such lines shall be greater if required by the National Electrical Safety Code and governing laws. The electric, cable, or telecommunication utility or company, as appropriate, shall ensure that all overhead lines are constructed and maintained in compliance with the National Electrical Safety Code, except where generally accepted industry standards require greater protections for the City to safely maintain, operate, construct, reconstruct and repair any existing or planned street lighting facility, traffic signal pole, or other aboveground city facility, in which case such industry standards shall apply.

Section 3. <u>Amendment of Conflicting Ordinances</u>. Chapter 38, Article I of the City of Kyle Code of Ordinance is hereby amended to include 38.01 which was previously reserved. 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 4. <u>Violation Of Ordinance; Penalty</u>. The violation of this ordinance shall be punished by fine not exceeding \$500.00. Each day an offense shall continue shall constitute a separate offense.

Section 5. <u>Savings Clause</u>. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting regulation of public places that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. <u>Severability</u>. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared void.

Section 7. <u>Open Meetings</u>. 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.

Section 8. <u>Effective Date</u>. This Ordinance shall take effect immediately from and after publication in accordance with the provisions of the City Charter and the Local Government Code.

PASSED AND APPROVED on First Reading this _____ day of _____, 2022.

FINALLY PASSED AND APPROVED on this the _____day of ______, 2022.

THE CITY OF KYLE, TEXAS

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary



Building around Pipelines

Meeting Date: 11/15/2022 Date time:7:00 PM

 Subject/Recommendation:
 Discussion and possible action regarding review of the City of Kyle's Ordinance Sec. 8-251. - Technical provisions for building around pipelines. ~ *Yvonne Flores-Cale, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description No Attachments Available



Kyle Housing Authority

Meeting Date: 11/15/2022 Date time:7:00 PM

Subject/Recommendation: Consider and possible action to authorize the expenditure of funds to pay off the Kyle Housing Authority USDA Loan. ~ *Jerry Hendrix, Interim City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS: Description

Item # 29



Meeting Date: 11/15/2022 Date time:7:00 PM

Executive Session - Convene

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.
 - San Marcos and Kyle EAA lease water agreement
 - Discussion regarding 24321 IH 35
- 2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 to deliberate the purchase of real property for public purpose.
 - Property Acquisition
- 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.

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS: Description

No Attachments Available



Reconvene

Meeting Date: 11/15/2022 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