

# 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 April 18, 2023, at Kyle City Hall, 100 W. Center Street, Kyle, TX 78640, for the purpose of discussing the following agenda.

Posted this 14th day of April, 2023, prior to 7:00 p.m.

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

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

1. City Council Special Meeting Minutes - April 1, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*
2. City Council Special Meeting Minutes - April 4, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*
3. City Council Meeting Minutes - April 4, 2023. ~ *Jennifer Kirkland, TRMC, 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**

4. Agenda Order per Rules of Council Sec. B1.

### **V. Presentation**

5. National Crime Victims' Rights Proclamation. ~ *Yvonne Flores-Cale, Council Member*
6. Presentation of the FLOCK Safety Automated License Plater Reader System. ~ *Jeff Barnett, Chief of Police*
7. Arts & Cultural Commission updates. *Colleen Tierney, Director of Library Services*
8. 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*
  - Skate Night
  - Art in the Park
  - 4th of July Update
  - National Library Week
  - Overdrive is Changing to Libby
  - Ribbon Cutting of Seed Library
  - Teen Job Fair
  - Landscape Code Updates
  - Residential Style Guide Updates
  - Comprehensive Master Plan Update
  - After Action Report and Improvement Plan for Exercise at City Hall
  - Team Kyle Update
9. CIP/Road Projects and Consent Agenda Presentation. ~ *Travis Mitchell, Mayor*

## **VI. Consent Agenda**

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

*City Council voted 7-0 to approve on first reading on 4/4/2023.*

11. Approve Task Order No. 5 to PAPE-DAWSON ENGINEERING, INC., Austin, Texas in an amount not to exceed \$72,800.00, for a preliminary engineering report (PER) and 30% design documents for a one-million gallon elevated water storage tank, a 500,000-gallon pre-stressed concrete water ground storage tank, and an associated pump station and appurtenances for the proposed CR 158 water storage project. ~ *Leon Barba, P.E., City Engineer*

## **VII. Items Pulled from Consent Agenda**



## **VIII. Public Hearings**

12. Public Hearing Concerning the Approval of the Amended and Restated Project and Finance Plan and the Amended Interlocal Agreement for the Tax Increment Zone Number Two, City of Kyle and Approval of the Extension of the Zone. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*

## **IX. Consider and Possible Action**

13. Consideration and Approval of an Ordinance of the City of Kyle, Texas Approving the Amended and Restated Project and Finance Plan and Amended Interlocal Agreement for the Tax Increment Reinvestment Zone Number Two, City of Kyle and Approving the Extension of the Zone; and Other Matters Related Thereto. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*
14. Consider approval of a Transportation Improvement Design, Permitting and Construction Agreement with TIRZ No. 2 and Plum Creek Development Partners. ~ *Paige Saenz, City Attorney*
15. Consider and possible action to approve a Resolution of the City of Kyle, Texas Approving the Form and Authorizing the Distribution of a Preliminary Limited Offering Memorandum for the City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project); and Resolving Other Matters Incident and Related Thereto. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*
16. Consider and possible action to approve a Resolution of the City of Kyle, Texas Determining the Costs of Certain Authorized Improvements to be Financed within Improvement Area #1 of the Porter Country Public Improvement District; Approving a Preliminary Service and Assessment Plan Updated For Improvement Area #1, Including a Proposed Improvement Area #1 Assessment Roll; Directing the Filing of the Proposed Improvement Area #1 Assessment Roll with the City Secretary to Make Available for Public Inspection; Noticing a Public Hearing for May 16, 2023 to Consider an Ordinance Levying Assessments on Property Located within Improvement Area #1 of the Porter Country Public Improvement District; Directing City Staff to Publish and Mail Notice of Said Public Hearing; and Resolving Other Matters Incident and Related Thereto. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*
17. Discussion regarding the feasibility of utilizing the rainwater harvesting system liftstation design from the Public Safety Center to another City project/location. ~ *Derek Bird, AGCM, City of Kyle Project Manager*
18. Presentation, update, and possible action regarding spay/neuter/vaccinate program for City of Kyle including vouchers, requirements, participation, and costs. ~ *Jeff Barnett, Chief of Police*
19. Authorize execution of a professional services agreement with CATALYST COMMERCIAL, INC., Dallas, Texas, for total consulting fees in the amount not to exceed \$25,000.00 which includes reimbursable expenses at 115 percent of

actual costs to provide services related to recruitment of targeted retail, hospitality, entertainment and destination recreation in the City of Kyle for the period April 1, 2023 through September 29, 2023. ~ *Victoria Vargas, Director of Economic Development*

20. Approve an updated Interlocal Agreement (ILA) between the Plum Creek Watershed Partnership and the City of Kyle regarding the continued participation and implementation of the Plum Creek Watershed Protection Plan. ~ *Kathy Roecker, Stormwater Management Plan Administrator*
21. (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 4.68 acres of land from 'RS' (Retail Services) to 'R-1-T' (Townhomes) for property locate at 1290 Bebee Road in Hays County, Texas. (Dacy Lane LLC - Z-23-0113) ~ *Will Atkinson, Director of Planning*

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

- Public Hearing

22. Approve License Agreement Between the City of Kyle & Caroline Marketplace, LP. ~ *Will Atkinson, Director of Planning*
  - *The license agreement is for maintenance of public street parking associated with the Caroline on Marketplace project. The project was entitled through the CSW, LLC development agreement.*
23. Consider and Possible Action to Support the City of Kyle's Participation in a Regional Climate Pollution Action Plan Grant. ~ *Bear Heiser, Council Member*
24. Discussion and possible action regarding the Rules of Council, to include but not limited to, the rescision of votes. ~ *Yvonne Flores-Cale, Council Member*
25. Discussion regarding council budget workshop calendar and scheduling of visioning workshop. ~ *Travis Mitchell, Mayor*

## **X. 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, settlement agreement, or to seek the advice of the City Attorney and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct.
    - Cause No. 22-0873; the State of Texas, ex. rel. 1200 S. Old Stagecoach Road, LLC, v. City of Kyle, Texas; pending in the 207th

Judicial District Court of Hays County, Texas, and Cause No. 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas

- Marshall Tract
  - City Manager Employment Agreement
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.
  3. Personnel matters pursuant to Section 551.074.
  4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
    - Project Pearly Whites
    - Project Lion King
    - Project Limoncello
    - Project Chile Pepper
27. Take action on items discussed in Executive Session.

## **XI. Adjourn**

*At any time during the 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.*

Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Kyle City Hall is wheelchair accessible. Individuals who require auxiliary aids, interpretive services, and/or other services for this meeting should submit a request at <https://www.cityofkyle.com/contact> or call (512)262-1010, 48 hours in advance of the meeting.



# CITY OF KYLE, TEXAS

## 2023 0401 Special Minutes

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** City Council Special Meeting Minutes - April 1, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

📎 2023 0401 Special DRAFT

## SPECIAL CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Special Session on April 1, 2023 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell  
Mayor Pro Tem Michael Tobias  
Council Member Bear Heiser  
Council Member Yvonne Flores-Cale  
Council Member Miguel Zuniga  
Council Member Ashlee Bradshaw  
Council Member Daniela Parsley  
Jerry Hendrix, Interim City Manager  
Amber Schmeits, Assistant City Manager  
Paige Saenz, City Attorney  
Rachel Sonnier, Communications Director  
Grant Bowling, Video Production Specialist  
Jennifer Kirkland, City Secretary  
Perwez Moheet, Finance Director  
Sandra Duran, HR Director  
Jeff Barnett, Chief of Police  
Pedro Hernandez, Assistant Chief of Police  
Tim Griffith, Police Commander  
Mark Spencer, Police Officer

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

Mayor Mitchell called the meeting to order at 9:00 a.m. Mayor Mitchell asked the city secretary to call roll.

Present were: Mayor Mitchell, Mayor Pro Tem Tobias, Council Member Heiser, Council Member Flores-Cale, Council Member Bradshaw, and Council Member Parsley. A quorum was present. Council Member Zuniga was absent. He arrived at 9:01 a.m. and entered into executive session.

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

Mayor Mitchell opened citizen comments at 9:00 a.m. With no one wishing to speak, Mayor Mitchell closed citizen comments at 9:00 a.m.

### **III. Executive Session**

1. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
  1. Pending or contemplated litigation or to seek the advice of the City Attorney and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct.
    - Engagement of an Employment Attorney

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.
3. Personnel matters pursuant to Section 551.074.
  - City Manager Candidate Review
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.

Mayor Mitchell 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 and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct - Engagement of an Employment Attorney; and Personnel matters pursuant to Section 551.074 - City Manager Candidate Review.”

The City Council convened into executive session at 9:01 a.m.

Council Member Bradshaw left the meeting at 10:44 a.m.

2. Take action on items discussed in Executive Session.

Mayor Mitchell called the meeting back to order at 11:10 a.m. Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

#### **IV. Consider and Possible Action**

5. Discuss, authorize and possibly approve the verbiage of the Request for Qualifications (RFQ), approved by the City Council during the March 21, 2023, regular council meeting, to allow for the Council to receive, review and possibly retain legal counsel, specifically for the future City Manager's contract. ~ *Yvonne Flores-Cale, Council Member*

Mayor Mitchell brought forward Item No. 5 out of order, after Item No. 2.

Mayor Mitchell moved to direct the Knight Law Firm to retain independent counsel in pursuit of consultation as it relates to the employment contract of the city manager through a Professional Services Agreement, and for the independent counsel to be Lloyd Gosselink. Council Member Parsley seconded the motion. Motion carried 5-1 with Council Member Flores-Cale dissenting.

3. Discussion and history of Prop F approved through the 2020 City Charter Election.
4. Discussion and possible action on implementation of the committee and police department reporting requirements of Prop F, Section 7.06 of the City Charter.

Mayor Mitchell brought forward Item No. 3 and 4 for discussion simultaneously.

Mayor Mitchell moved to direct staff to create an ordinance for the police oversight committee consistent with the scope that has been discussed and outlined during the meeting to be brought to council for review and adoption at the first regularly scheduled council meeting in May. Mayor Pro Tem Tobias seconded the motion. Motion carried 6-0.

## **V. 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 12:28 p.m.

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Travis Mitchell, Mayor

Attest:

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Jennifer Kirkland, City Secretary



# CITY OF KYLE, TEXAS

## 2023 0404 Special Minutes

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** City Council Special Meeting Minutes - April 4, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

📎 2023 0404 DRAFT Special



## SPECIAL CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Special Session on April 4, 2023 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell  
Mayor Pro Tem Michael Tobias  
Council Member Bear Heiser  
Council Member Yvonne Flores-Cale  
Council Member Miguel Zuniga  
Council Member Ashlee Bradshaw  
Council Member Daniela Parsley  
Jerry Hendrix, Interim City Manager  
Amber Schmeits, Assistant City Manager  
Paige Saenz, City Attorney  
Roxy Stevens, Special Counsel  
Rachel Sonnier, Communications Director  
Grant Bowling, Video Production Specialist  
Jennifer Kirkland, City Secretary  
Leon Barba, City Engineer  
Victoria Vargas, Economic Development Director  
Claudia Rocha, Special Events Manager  
Will Atkinson, Planning Director  
Jason Lutz, Senior Planner

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

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

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

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

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

### **III. Executive Session**

1. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
  1. Pending or contemplated litigation, settlement agreement, or to seek the advice of the City Attorney and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct.

- Cause No. 22-0873; the State of Texas, ex. rel. 1200 S. Old Stagecoach Road, LLC, v. City of Kyle, Texas; pending in the 207th Judicial District Court of Hays County, Texas, and Cause No. 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas
  - Water Services Area Agreement
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.
  3. Personnel matters pursuant to Section 551.074.
  4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
    - Project Provision
    - Project Lime Zest
    - Project DNA

Mayor Mitchell 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 and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct - Cause No. 22-0873; the State of Texas, ex. rel. 1200 S. Old Stagecoach Road, LLC, v. City of Kyle, Texas; pending in the 207th Judicial District Court of Hays County, Texas, and Cause No. 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas; Water Services Area Agreement; 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 of the business prospects that the City seeks to have locate, stay, or expand in or near the City - Project Provision; Project Lime Zest; Project DNA.”

The City Council convened into executive session at 5:36 p.m. The Council did not discuss Project Provision, Project Lime Zest, or Project DNA as stated.

Council Member Flores-Cale recused herself and did not attend executive session.

2. Take action on items discussed in Executive Session.

Mayor Mitchell called the meeting back to order at 7:07 p.m. Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

#### **IV. Consider and Possible Action**

3. Consideration and possible action to disannex or discontinue from being part of the city properties described in Ordinance No. 1010, consisting of approximately 62.47 acres of land, and to repeal Ordinance No. 1010. ~ *Paige Saenz, City Attorney*

No action was taken.

**V. Adjourn**

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

With no further business to discuss, the City Council adjourned at 7:07 p.m.

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Travis Mitchell, Mayor

Attest:

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Jennifer Kirkland, City Secretary



# CITY OF KYLE, TEXAS

## 2023 0404 Regular Minutes

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** City Council Meeting Minutes - April 4, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

📎 2023 0404 DRAFT

## REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on April 4, 2023 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell	Virginia Parker
Mayor Pro Tem Michael Tobias	Matthew Tobias
Council Member Bear Heiser	Christina Thompson
Council Member Yvonne Flores-Cale	Misty Kinnison
Council Member Miguel Zuniga	Sandy Gonzalez
Council Member Ashlee Bradshaw	Kyle Benacquisto
Council Member Daniela Parsley	Nathan Larsen
Jerry Hendrix, Interim City Manager	David Mirza Kadjar III
Amber Schmeits, Assistant City Manager	Logan Beyer
Paige Saenz, City Attorney	Eduardo Jimenez
Rachel Sonnier, Communications Director	Quintin Nieskes
Grant Bowling, Video Production Specialist	Dakota Nieskes
Jennifer Kirkland, City Secretary	Zadok Benjamin Gallus
Leon Barba, City Engineer	Brenna Kadjar
Victoria Vargas, Economic Development Director	Joe Cantalupo
Perwez Moheet, Finance Director	Derek Bird
Sandra Duran, HR Director	Stephanie Leibe
Marco Forti, IT Director	Kyle Taylor
Colleen Tierney, Library Director	Cary Cobb
Mariana Espinoza, Parks & Recreation Director	Rusty Wood
Claudia Rocha, Special Events Manager	
Jason Lutz, Senior Planner	
Kaela Sharp, City Planner	
Pedro Hernandez, Assistant Chief of Police	
Tracy Vrana, Police Sergeant	
Daniel Gooding, Police Sergeant	
Kelly Barron Victims Services Coordinator	
Hannah-Bea Bickford, Victims Advocate	
Briana Geddes, Neighborhood Services Supervisor	
Kacie Olivo, Animal Control Officer	
Harper Wilder, Director of Public Works	
Will Paiz-Tabash, Emergency Mgmt. Coordinator	

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

Mayor Mitchell called the meeting to order at 7:07 p.m. The Pledge of Allegiance was recited. Mayor Mitchell asked the city secretary to call roll.

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

## **II. Approval of Minutes**

1. City Council Special Meeting Minutes - March 21, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*
2. City Council Meeting Minutes - March 21, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*
3. City Council Special Meeting Minutes - March 23, 2023. ~ *Jennifer Kirkland, TRMC, City Secretary*

Mayor Pro Tem Tobias moved to approve the minutes of the March 21, 2023 Special Council Meeting, March 21, 2023 Council Meeting and the minutes of the March 23, 2023 Special Council Meeting. Council Member Parsley seconded the motion. Motion carried 7-0.

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

Mayor Mitchell opened citizen comments at 7:09 p.m.

Virginia Parker, representing the San Marcos River Foundation, was called to speak as registered. She spoke about the Blanco River that flows from Kyle downstream into San Marcos. She then stated her concerns about the City's TCEQ wastewater permit application for increasing its discharge into Plum Creek. She stated they plan to request a contested case hearing if the application stays as is. She asked Council to amend the application to a 5/5/2/.5 request (CBOD-5, total suspended solids-5, ammonia-2, phosphorus- 0.5). She would like to see dissolved oxygen at 6, stating it is currently at 5. She stated they would like to see reuse in the plan. She offered to visit with Council along the way.

Matthew Tobias, representing Autism Acceptance, was called to speak as registered. He stated that he is a junior at Lehman High School. He spoke about being in the marching band, athletic training, and on the student council. He stated that Autism isn't something to be sad about because it's something that makes him who he is. He thanked the City Council for supporting Autism Awareness.

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

## **IV. Agenda Order**

4. Agenda Order per Rules of Council Sec. B1. ~ *Travis Mitchell, Mayor*

Council Member Parsley moved to move Item No. 35 to the top of consider and possible action. Council Member Flores-Cale seconded the motion. Motion carried 7-0.

## **V. Appointments**

5. Consideration of nomination for appointment to the Kyle Public Library Advisory Board to fill a vacancy - Seat 6. ~ *Colleen Tierney, Library Director*
  - Christina Thompson

Mayor Pro Tem Tobias moved to approve the appointment of Christina Thompson to Seat 6 of the Kyle Public Library Advisory Board. Council Member Parsley seconded the motion.

Ms. Thompson answered Ms. Flores-Cale's question.

Mayor Mitchell called for the vote. Motion carried 7-0.

6. Consideration and possible appointment of a city council member to the Combined Emergency Communications Center Executive Board. ~ *Jerry Hendrix, Interim City Manager*

Council Member Flores-Cale moved to appoint Mayor Pro Tem Tobias as a city council member to the Combined Emergency Communications Center Executive Board. Council Member Zuniga seconded the motion. Motion carried 7-0.

## **VI. Presentation**

7. Autism Awareness Month Proclamation. ~ *Michael Tobias, Mayor Pro Tem*

Mayor Pro Tem Tobias read aloud the Proclamation acknowledging Autism Awareness Month. Misty Kinnison with CARD Kyle spoke about their work with area children with Autism and the services they offer. No action was taken.

8. National Animal Control Officer Appreciation Week Proclamation. ~ *Miguel A. Zuniga PhD, Council Member*

Council Member Zuniga read aloud the Proclamation acknowledging National Animal Control Officer Appreciation Week. No action was taken.

9. Sexual Assault Awareness Month Proclamation. ~ *Daniela Parsley, Council Member*

Council Member Parsley read aloud the Proclamation acknowledging Sexual Assault Awareness Month. Sandy Gonzalez representing Hays Caldwell Women's Center spoke on the item. No action was taken.

10. Child Abuse Awareness Proclamation. ~ *Travis Mitchell, Mayor*

Mayor Mitchell read aloud the Proclamation acknowledging Child Abuse Awareness. Sandy Gonzalez with Hays Caldwell Women's Center provided information on their upcoming fundraiser. Kyle Benacquisto representing CASA of Central Texas also provided information and announced information about volunteering and their upcoming fundraiser. No action was taken.

11. Proclamation recognizing Kyle Eagle Scouts Class of 2022. ~ *Daniela Parsley, Council Member*

Council Member Parsley read aloud the Proclamation acknowledging the Kyle Eagle Scouts Class of 2022. Nathan Larsen, Troop 967, David Mirza Kadjar III, Troop 967, Logan Beyer, Troop 125, Eduardo Jimenez, Troop 125, Quintin Nieskes, Troop 812, Dakota Nieskes, Troop 812, and Zadok Benjamin Gallus, 812, were all recognized. No action was taken.

12. Earth Month Awareness Proclamation. ~ *Miguel A. Zuniga PhD, Council Member*

Council Member Zuniga read aloud the Proclamation acknowledging Earth Month Awareness. No action was taken.

13. Presentation of Master Schedule and Public Outreach Plan for the 2022 Road Bond Program. ~ *Joe Cantalupo, K Friese & Associates, City's 2022 Road Bond Program Manager.*

No action was taken.

14. 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*

- Pickleball Tournament
- Earth Day Native Plant Give-Away
- Earth Day Camp Out
- Seasonal Staff Hiring Update
- Autism Awareness Event
- Food for Fines
- Ribbon Cutting of Seed Library
- Teen Job Fair
- Comprehensive Master Plan Update
- Economic Development Joint Workshop
- City Hall Emergency Training
- Team Kyle Update

Mr. Hendrix, Ms. Espinoza, Ms. Tierney, Mr. Lutz, Ms. Vargas, Ms. Sonnier, Mr. Paiz-Tabash, and Assistant Chief of Police Hernandez presented the item.

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

Mr. Barba and Ms. Espinoza presented the item. No action was taken.

**VIII. Items Pulled from Consent Agenda**

20. Authorize the Interim City Manager to execute Add Service Agreements with PGAL, Inc., in an amount not to exceed \$54,500.00 for additional design services for the Vybe Trail (\$30,000.00), Lift Station for Rainwater Harvesting (\$23,500.00), and Distributed Antenna System (\$1,000.00) in association with the City's Public Safety Center project. Funding will be provided from the remaining funds in PGAL's contract (\$24,500.00) and from the Vybe trail funds (\$30,000.00) for this agenda item. ~ *Derek Bird, AGCM, City of Kyle Project Manager*

Mayor Mitchell brought forward Item No. 20, out of order after Item No. 15. Mr. Bird and Ms. Saenz presented the item.



Council Member Flores-Cale moved to approve Item No. 20, excluding \$23,500 for lift station rainwater harvesting. Council Member Parsley seconded the motion. Motion carried 7-0.

21. Authorize the Interim City Manager to accept a \$25,000.00 grant from the Burdine Johnson Foundation for the purpose of creating a community garden at Post Oak Park. ~ *Mariana Espinoza, Director of Parks & Recreation*

Mayor Pro Tem Tobias moved to approve Agenda Item No. 21. Council Member Flores-Cale seconded the motion. Motion carried 6-0. Council Member Heiser left the dais at approximately 9:10 p.m. and was absent for the vote.

## **VII. Consent Agenda**

Mayor Mitchell brought forward Item Nos. 16, 17, 18, 19, 22, 23, 24, and 25 for consideration.

16. Approve a Resolution by the City of Kyle, Texas suspending the April 10, 2023 effective date of the proposal by Texas Gas Service Company, A division of One Gas, Inc. to implement interim GRIP rate adjustments for gas utility investment in 2022 and requiring delivery of the resolution to the company and legal counsel. ~ *Kaela Sharp, City Planner*
17. Approve a Resolution establishing the date for a public hearing to be held on May 16, 2023, as required under Chapter 395 of the Texas Local Government Code, to consider, discuss, and review the update to the water and wastewater land use assumptions, water and wastewater capital improvements plan, and imposition of updated water and wastewater impact fee amounts. ~ *Leon Barba, P.E., City Engineer*
18. Authorize the Interim City Manager to execute The Public Highway At-Grade Crossing Agreement with UNION PACIFIC RAILROAD COMPANY and in an amount not to exceed \$36,000.00 estimated for project management and inspections for the Center Street and South Street quiet zone railroad crossings. ~ *Leon Barba, P.E., City Engineer*
19. Approve Amendment No. 5 to Task Order No. 6 to LJA ENGINEERING, INC., Austin, Texas, in the amount not to exceed \$3,039.20 increasing the total contract amount to \$233,735.00 for additional survey of temporary construction easements for the Anthem to Kohlers Crossing Waterline Connection Project. ~ *Leon Barba, P.E., City Engineer*
22. Authorize the Police Department to apply for a Strategic Traffic Enforcement Program (STEP) Click It Or Ticket (CIOT) grant in an amount no greater than \$5,000.00 from the Texas Department of Transportation and authorize an estimated 20% matching funding from the Police Department's approved operating budget for FY 2022-2023 in an amount not to exceed \$1,000 to fund the STEP Grant Program for two weeks beginning May 22, 2023 and ending June 4, 2023. ~ *Jeff Barnett, Chief of Police*
23. Authorize the Police Department to apply for a Strategic Traffic Enforcement Program (STEP) Operation Slow Down (OpSlow) grant in an amount no greater than \$5,000.00 from Texas Department of Transportation (TXDOT) and authorize an estimated 20% matching funding from the Police Department's approved operating budget for FY 2022-

2023 in an amount not to exceed \$1,000 to fund the STEP Grant Program for two weeks beginning July 14, 2023 and ending July 30, 2023. ~ *Jeff Barnett, Chief of Police*

24. Discuss and take action to pay Kazoo, Inc. DBA WorkTango an additional \$3,069.00 subscription fee to add 55 plus users to conduct Boards & Commissions engagement surveys as needed. ~ *Sandra Duran, Director of Human Resources*

25. Approve an agreement with and award a purchase order in the guaranteed minimum amount of \$18,000.00 to ALAMO ATTRACTIONS, INC., San Antonio, Texas for providing carnival rides, concessions and amusements for the Kyle Fair TexTravaganza. ~ *Mariana Espinoza, Director of Parks & Recreation*

Council Member Parsley moved to approve Consent Agenda Item Nos. 16, 17, 18, 19, 22, 23, 24, and 25. Council Member Flores-Cale seconded the motion. Motion carried 6-0. Council Member Heiser was absent for the vote.

### **IX. Public Hearings**

26. Public Hearing Regarding the Petition to Increase the Estimated Costs of the Improvements for Improvement Area #2 of the Southwest Kyle Public Improvement District No. 1. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*

Mayor Mitchell opened the public hearing at 9:11 p.m. With no one wishing to speak, Mayor Mitchell closed the public hearing at 9:12 p.m.

### **X. Consider and Possible Action**

35. Discussion and possible action to amend the fire code section 503.2.1 and establish a new safe unobstructed width for public and private roads. ~ *Daniela Parsley, Council Member*

Mayor Mitchell brought forward Item No. 35 out of order, after Item No. 26. Council Member Heiser returned to the dais at approximately 9:13 p.m. Kyle Taylor, Fire Chief of ESD No. 5 provided information on the item.

Council Member Parsley moved to amend the fire code to go from a minimum width of 20 feet to 24 feet. Council Member Flores-Cale seconded the motion. Motion carried 6-1 with Mayor Mitchell dissenting.

27. Consideration and Approval of a Resolution of the City of Kyle, Texas, Approving an Amendment to the Southwest Kyle Public Improvement District No. 1 within the City of Kyle Pursuant to Chapter 372 of the Texas Local Government Code. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*

Ms. Leibe, City's Bond Counsel, presented the item. Cary Cobb of Intermandeco, the developer, provided information on the item.

Mayor Pro Tem Tobias moved to approve Agenda Item No. 27. Council Member Parsley seconded the motion. Motion carried 7-0.

28. Approve Task Order No. 4 to PAPE-DAWSON ENGINEERS, INC., San Antonio, Texas in the amount not to exceed \$1,067,346.60 for engineering services and design of Old Stagecoach Road from Veterans Drive (RM 150) to Center Street (Off-System) and also Center Street (Off-System) from Old Stagecoach Road to Veterans Drive (RM 150). ~ *Joe Cantalupo, K Friese & Associates, City's 2022 Road Bond Program Manager*

Council Member Zuniga moved to approve Item No. 28. Council Member Flores-Cale seconded the motion. Motion carried 7-0.

29. *(First Reading)* An Ordinance regulating traffic, authorizing and directing the installation and erection of stop signs for traffic control at the intersection of County Road 158 and Old Post Road; Spring Branch Drive and Spring Branch Loop/Fall Creek Drive; and Sanders and Kohler's Crossing in the city limits of Kyle. ~ *Leon Barba, P.E., City Engineer*

Mayor Mitchell moved to approve Agenda Item No. 29. Council Member Parsley seconded the motion. Motion carried 7-0.

With no objections, the ordinance was finally passed.

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

- Public Hearing

Ms. Schmeits presented the item.

Mayor Mitchell opened the public hearing at 9:40 p.m. With no one wishing to speak, Mayor Mitchell closed the public hearing at 9:40 p.m.

Rusty Wood, Director of Operations for Acadian Ambulance, provided information on the item.

Council Member Zuniga moved to approve Item No. 30. Mayor Pro Tem Tobias seconded the motion. Motion carried 7-0.

Mayor Mitchell asked if there were any objections to the ordinance being finally passed. Ms. Saenz stated that the City's Charter requires two readings for a Franchise.

31. Approve Change Order No. 1 in the amount of \$125,000.00 increasing the total contract amount awarded to OASIS WATER PLAYGROUNDS, Houston, TX, from \$500,000.00 to a total amount not to exceed \$625,000.00 and authorize execution of a contract in the total amount of \$625,000.00 for the design and construction of a 3,000 sq. ft. Splashpad and other associated structures and equipment as included in the proposal at the City's Gregg-Clarke Park. ~ *Mariana Espinoza, Director of Parks & Recreation*

Council Member Flores-Cale moved to approve Agenda Item No. 31. Council Member Parsley seconded the motion. Motion carried 7-0.

32. Approve an agreement with and a purchase order to OASIS WATER PLAYGROUNDS, Houston, TX, in an amount not to exceed \$495,065.00 for the design and construction of a 2,300 sq. ft. Splashpad and other associated structures and equipment as included in the proposal at the City's Steeplechase Park. ~ *Mariana Espinoza, Director of Parks & Recreation*

Council Member Flores-Cale moved to approve Agenda Item No. 32. Mayor Pro Tem Tobias seconded the motion. Motion carried 7-0.

33. Consider Approval of a Service Area Agreement between Crosswinds Municipal Utility District, the City of Kyle, and Texas Water Utilities, L.P., to transfer service area to City of Kyle to provide retail water utility services. ~ *Paige Saenz, City Attorney*

Ms. Saenz presented the item. Mr. Barba provided additional information on the item.

Council Member Zuniga moved to approve Agenda Item No. 33. Council Member Parsley seconded the motion.

Council Member Zuniga restated his motion to approve Item No. 33 and authorize the Interim City Manager to enter into an agreement with Texas Water Utilities, L.P. Motion carried 7-0.

34. Discussion and possible action regarding a Request for Proposals for the preparation of the U.S. Department of Housing and Urban Development 2023-2024 Consolidated Plan as it relates to becoming a CDBG Entitlement City. ~ *Amber Schmeits, Assistant City Manager*

Council Member Parsley moved to approve Item No. 34. Mayor Pro Tem Tobias seconded the motion. Motion carried 7-0.

36. Discussion and possible action regarding the City of Kyle's future use of reclaimed water lines, including but not limited to review/discussion of past reports, future plans to incorporate lines into the city's infrastructure, including new development and possible direction to staff to obtain additional information. ~ *Yvonne Flores-Cale, Council Member*

Ms. Schmeits, Mr. Atkinson, and Mr. Barba provided information on the item.

Council Member Flores-Cale moved to direct staff to review our current ordinances, state laws, codes, and other legal barriers, find possible users, and bring back ideas regarding rainwater harvesting incentives and development landscaping requirements better suited for the City's landscaping conditions. Council Member Parsley seconded the motion. Motion carried 7-0.

## **XI. Executive Session**

38. 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, settlement agreement, or to seek the advice of the City Attorney and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct. Cause No. 22-0873; the State of Texas, ex. rel. 1200 S. Old Stagecoach Road, LLC, v. City of Kyle, Texas; pending in the 207th Judicial District Court of Hays County, Texas, and Cause No. 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas Water Services Area Agreement
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.
3. Personnel matters pursuant to Section 551.074.
4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
  - Project Provision
  - Project Lime Zest
  - Project DNA

Mayor Mitchell brought forward Item No. 37 for executive session.

Mayor Mitchell read into the record, “Agenda Item No. 37 is consideration and possible action to disannex or discontinue from being part of the city properties described in Ordinance No. 1010, consisting of approximately 62.47 acres of land, and to repeal Ordinance No. 1010; and I will also request that we go into executive session on pending or contemplated litigation or to seek the advice of the City Attorney and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct - Cause No. 22-0873; the State of Texas, ex. rel. 1200 S. Old Stagecoach Road, LLC, v. City of Kyle, Texas; pending in the 207th Judicial District Court of Hays County, Texas, and Cause No. 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas.”

The City Council convened into executive session at 10:15 p.m.

Council Member Flores-Cale recused herself and did not attend executive session.

39. Take action on items discussed in Executive Session.

Mayor Mitchell called the meeting back to order at 10:45 p.m. Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

37. Consideration and possible action to disannex or discontinue from being part of the city properties described in Ordinance No. 1010, consisting of approximately 62.47 acres of land, and to repeal Ordinance No. 1010. ~ *Paige Saenz, City Attorney*

Mayor Mitchell moved to table Item No. 37. Mayor Pro Tem Tobias seconded the motion. Motion carried 6-0.

## **XII. 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 10:46 p.m.

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Travis Mitchell, Mayor

Attest:

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Jennifer Kirkland, City Secretary



# CITY OF KYLE, TEXAS

## Agenda Order

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** Agenda Order per Rules of Council Sec. B1.

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## National Crime Victims' Rights Week Proclamation

**Meeting Date: 4/18/2023**  
**Date time: 7:00 PM**

**Subject/Recommendation:** National Crime Victims' Rights Proclamation. ~ *Yvonne Flores-Cale, Council Member*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### ATTACHMENTS:

#### **Description**

❏ Proclamation Draft



City of Kyle

City Council Proclamation

NATIONAL CRIME VICTIMS' RIGHTS WEEK

APRIL 23-29, 2023

WHEREAS, the first "National Crime Victims' Rights Week" was proclaimed by President Ronald Regan in April 1981.

WHEREAS, the impact of the crime or traumatic event can leave a lasting physical, emotional, or financial impact on people of all ages, genders, abilities, and of all economic, racial, and social backgrounds, anyone can be a victim.

WHEREAS the term "victim" is more than just a label and has legal standing and protections that go along with it;

WHEREAS crime victims' rights acts passed here in Texas and at the federal level guarantee victims the right to meaningfully participate in the criminal justice process;

WHEREAS victim service providers, advocates, law enforcement officers, attorneys, and other allied professionals can help survivors find their justice by enforcing these rights;

WHEREAS victim service providers and allied professionals can reach more victims through innovative, trauma-informed programs, such as telehealth services and multidisciplinary teams;

WHEREAS victim service providers and allied professionals can increase access to victim services and compensation in areas that have been historically underserved, marginalized, and adversely affected by inequality by implementing culturally responsive services;

WHEREAS equity and inclusion are fundamental prerequisites to survivor care, and survivor-led services that provide victims with opportunities to share their experiences are essential blueprints for support;

WHEREAS National Crime Victims' Rights Week provides an opportunity to recommit to ensuring that accessible, appropriate, and trauma-informed services are offered to all victims of crime;

WHEREAS, today the City of Kyle wishes to commend our Victim Services Division consisting of a Victim Coordinator and an Advocate. The duo supported 717 individuals last year with some the following traumatic events: sexual assault; harassment; survivors of homicide victims; and victims of family violence. The Kyle Police Department Victim Services Division has also assisted other agencies with their Victim Service needs, to best support victims within the Hays County Community.

WHEREAS, the City of Kyle wishes to commend our Victim Services Coordinator Kelly Barron and our Victim Services Advocate Hannah-Bea Bickford.

THEREFORE, I, \_\_\_\_\_, \_\_\_\_\_ THE CITY OF KYLE, TEXAS, do hereby proclaim the week of

**April 23-29, 2023 as**

**"National Crime Victims' Rights Week"**

And reaffirming the City of Kyle's commitment to creating a victim service and criminal justice response that assists all victims of crime during Crime Victims' Rights Week and throughout the year; and

Expressing our sincere gratitude and appreciation for those community members, victim service providers, and criminal justice professionals who are committed to improving our response to all victims of crime so that they may find relevant assistance, support, justice, and peace.

Signed and entered this \_\_\_\_ th day of April 2023.



# CITY OF KYLE, TEXAS

## FLOCK License Plate Reader Camera System

**Meeting Date: 4/18/2023**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Presentation of the FLOCK Safety Automated License Plate Reader System. ~ *Jeff Barnett, Chief of Police*

### **Other Information:**

### **Legal Notes:**

**Budget Information:** Funding in the amount of \$50,000.00 for a license plate reader system is included in the approved budget for Fiscal Year 2022-2023 for the Police Department as follows:


- 1100-15100- 522140

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### **ATTACHMENTS:**

#### **Description**

- ☐ 7.46 KPD Automated License Plate Readers Policy DRAFT
- ☐ FLOCK Safety PPT for Kyle TX

<p>GENERAL ORDER</p>  <p>Kyle Police Department</p>	Effective: <b>DATE</b>	<b>Chapter 7.46</b>
	Section: Investigative Operations	Subject: <b>Automated License Plate Readers</b>
	Approved: <u>Jeff Barnett</u> Chief of Police	
	DRAFT	

## I. POLICY

Automated License Plate Reading (ALPR) technology utilizes specialized cameras and computers to quickly capture large numbers of photographs of license plates, convert them to text and compare them quickly to a large list of plates of interest. This technology provides many opportunities for the enhancement of productivity, effectiveness, and officer safety. It is the policy of this agency that all members abide by the guidelines set forth herein when using this technology, while maintaining compliance with applicable state and federal laws.

## II. PURPOSE

The primary purpose of the Kyle Police Department Automated License Plate Readers (ALPR) system is to provide a tool for use by Patrol and Criminal Investigations personnel. This tool assists in the detection and apprehension of vehicles and/or persons traveling through the jurisdiction of Kyle in a vehicle that has license plates that have been entered either into the National Crime Index Computer or on the Kyle Police Department ALPR Hotlist. The ALPR system can also be utilized by Kyle Police Detectives to assist in the development of leads that can eventually identify suspects who have committed crimes within this city.

## III. DEFINITIONS

- A. ALPR – (Automated License Plate Reader) - equipment consisting of a camera(s), ALPR computer, and MDC software used to automatically recognize and interpret the characters on vehicle license plates. This data is then compared with a list of license plates bearing some significance to law enforcement.
- B. Hot List - also known as "hit list." A database populated with items of specific concern to the investigative and/or enforcement interests of law enforcement. This may include, but is not limited to, Terrorist Screening Center Watch List, stolen/wanted vehicles and license plates, wanted and missing persons, cautions, and license plates associated with AMBER Alerts or various watch lists provided for law enforcement purposes.
- C. Download - transfer of data to and from the ALPR server consisting of license plate associated data.
- D. Alarm - aka "Hit" - a positive indication, by visual and/or audible signal, of a potential match between data on the "hot list" and a license plate scanned by the ALPR system. A hit is NOT conclusive confirmation that a license plate is wanted, and additional investigation is always warranted when a hit is indicated.
- E. ALPR Generated Data - all information, including location, date and time of a license plate encountered and any ALPR generated digital photographic image(s) of the license plate and vehicle generated entirely through the use of, and by, the ALPR equipment.
- F. Audio Recording – The KPD ALPR Camera System shall perform no audio recording.

## IV. ALPR COORDINATOR

- A. The Chief of Police shall designate an ALPR Coordinator with administrative oversight for the ALPR system deployment and operations that is responsible for the following:
  - 1. Establishing protocols for access, collection, storage, and retention of LPR data and associated media files.
  - 2. Establishing protocols to preserve and document ALPR reads and "alerts" or "hits" that are acted on in the field or associated with investigations or prosecutions.
  - 3. Establishing protocols to establish and ensure the security and integrity of data captured, stored, and/or retained by the ALPR system.
  - 4. Training requirement for authorized users.
  - 5. Maintaining records identifying approved ALPR deployments and documenting their results, including appropriate documentation of significant incidents and arrests that are related to its usage.
  - 6. Authorizing any requests for ALPR systems use or data access according to the policies and guidelines of this agency.
  - 7. Working with the Custodian of Records on the retention and destruction of ALPR data.

## **V. ALPR OPERATIONS**

- A. All operators shall receive training prior to using the ALPR system.
- B. An ALPR shall only be used for official law enforcement business.
- C. An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- D. It is the responsibility of each ALPR user to download the current "hot list" from ALPR server prior to the deployment of the ALPR equipment.
- E. Upon receiving an alarm, the ALPR operator should utilize whatever information is available to determine the accuracy of the "hit." The ALPR operator will visually verify the actual license plate number and the actual read on the LPR screen are the same, i.e., same characters and numbers. The operator will confirm the "hit" is still active by running the information through NCIC via Teletype or MDC. Receipt of an ALPR alarm is NOT sufficient probable cause to warrant a stop or arrest without additional verification.
- F. Upon receipt of an alarm, the ALPR operator will use established procedures in taking enforcement action based on the seriousness of the offense.
- G. Additional information may be entered into the ALPR system at any time. Broadcast information received following the initial download should be manually entered immediately upon receipt by the ALPR operator. The reason for the entry shall be included in the "note" portion of the entry screen, i.e., stolen vehicle, missing person, abduction, Amber Alert, robbery suspect, etc.
- H. Upon completing the manual entry, the operator should query the ALPR data to determine if the license plate was scanned previously. ALPR operators should ensure that any manually entered plates are promptly removed when the original reason for entry is no longer valid.

## **VI. DEPLOYMENT**

- A. ALPR equipped vehicles may be used in a routine patrol capacity.
- B. The ALPR Program will be managed by the Command staff of the department in order to ensure that the equipment is being effectively utilized and maintained. The Chief of Police, or his designee, will be responsible for the determination of the locations for the placement of ALPR system equipment. Locations will be determined based on maximum captures of license plates at points of ingress and egress in the city, natural choke points where vehicle traffic must pass before entering sections of the city and/or locations based on criminal activity.

## **VII. MAINTENANCE**

- A. Under no conditions should an ALPR operator attempt to modify the ALPR equipment or software operating system without permission from the ALPR coordinator.
- B. ALPR camera lenses may be cleaned with glass cleaner or mild soap and water and a soft, nonabrasive cloth.
- C. Damage to ALPR equipment shall be immediately reported to a supervisor. The supervisor will document and investigate the damage.
- D. The ALPR coordinator will be notified of any ALPR equipment needing maintenance, removal, or repair. This information should be submitted via e-mail or to the Division Coordinators. The ALPR coordinator will coordinate all maintenance and repair with the appropriate ALPR vendor. The vehicle does not need to be removed from service once the damaged or malfunctioning ALPR is secured or removed from the vehicle.

## **VIII. INVESTIGATIONS**

- A. Every police officer has access to previous license plate reads via the Executive Information System (EIS) or through the respective license plate reader program.
- B. Personnel may access ALPR data for law enforcement purposes only.
- C. All ALPR data queries must be accompanied by the agencies case number corresponding with the investigation. Without a case number entered, the system will not allow a query of license plate data.
- D. No entry of "Hot Lists" or other data may be entered into the ALPR database without Supervisor approval.
- E. It is recommended that officers and detectives check the EIS system or the respective license plate reader program for any previous reads for investigations where full or partial license plates are known. This information can prove to be very valuable in regard to locating a vehicle that is either stolen or utilized in a crime.

## **IX. PRIVATELY OWNED/FUNDED ALPR SYSTEMS**

- A. The agency recognizes that residents may want to purchase privately owned ALPR systems and link them to the KPD network of systems. All private systems linked to the KPD system must be approved by the Chief of Police. All data received by the KPD shall become KPD data and subject to all provisions of this policy. The KPD must be provided search capabilities to

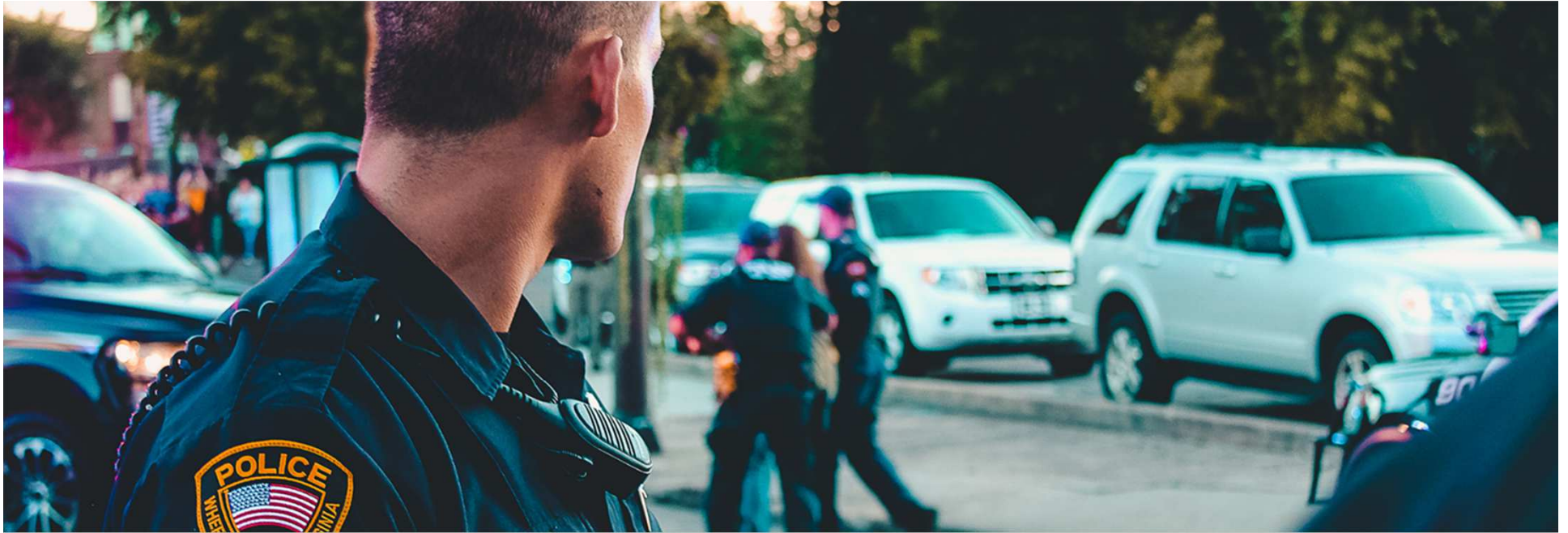
any linked ALPR system. The KPD shall not be responsible for any costs associated with a privately funded ALPR system.

1. Privately owned ALPR systems must meet all local government right of way ordinances, rules and regulations.
2. The KPD will not actively monitor any privately-owned ALPR or video system.

#### **X. DATA COLLECTION AND RETENTION**

- A. When personnel become aware of invalid data being contained within the state NCIC/TCIC database, KPD personnel shall notify the contributing agency and document who was notified by name and title on the CAD report.
- B. KPD may enter into data-sharing agreements with other law enforcement agencies as determined by the Chief of Police.
- C. Any requests for information gathered through the use of ALPR technology will be handled in accordance with General Order 5.1 Departmental Records.
- D. Information gathered through the use of ALPR technology will only be shared with other law enforcement agencies, for law enforcement purposes.
- E. Only data from ALPRs that is necessary for law enforcement purposes will be gathered and stored. All ALPR footage will be retained for 30 days. ALPR footage of an evidentiary nature will be retained in accordance with the current City of Kyle Schedule of Records Retention and Disposition Form.





# flock safety

+ **Kyle, Texas**

Leverage the future of policing, *now*



flock safety

# Our Mission

**Eliminate** Crime for the **Whole Community**







flock safety

# Why Flock Safety?

What we observe:  
**the current  
reality**

- Limited Police Resources
- Crime is on the rise
- Trust is needed more than ever

What we believe:  
**the opportunity**

- Technology multiplies the force
- Capture and distribute objective evidence to the right user
- Engage community to support and grow



flock safety

# How does the tech work?

flock safety

## When you get Flock you get:

### objective, real-time and investigative leads

- Vehicle Fingerprint™ = license plate plus
- **Indiscriminate evidence** from fixed locations
- No people, no facial recognition, no traffic enforcement



**Plate**  
TX LGS2639



**Last Visit**  
3:15 PM EDT



**Make**  
Toyota



**Seen**  
3 OF 30 DAYS



**Color**  
Gray



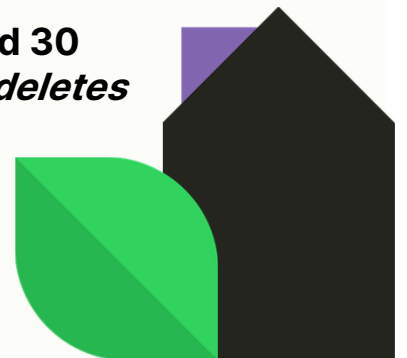


## What is this tech?

- License plate recognition
- Gathers objective evidence and facts about vehicles, not people
- Alerts police of wanted vehicles
- Used to solve crime
- Adheres to all state laws

## What ISN'T this tech?

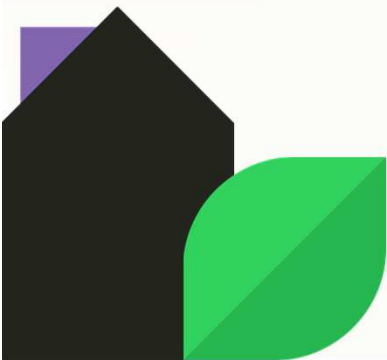
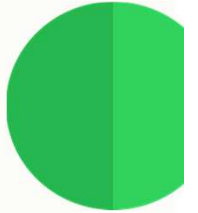
- Not facial recognition
- **Not tied to Personal Identifiable information.**
- Not used for traffic enforcement
- **Data not stored beyond 30 days → *automatically deletes every 30 days***



# How does this technology prevent and eliminate crime?

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- **Proactive:** Real Time Alerts when Stolen or Wanted Vehicles enter your City
- **Investigative:** As clearance rates increase, crime rates decrease
- Flock cameras act as a **deterrent**





flock safety

# Mitigating risk





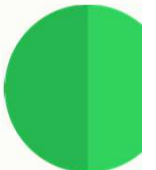
Ethics-Driven Innovation

## Protecting Privacy

- **Footage owned by Agency/City and will never be sold or shared by Flock**
- 30 day data retention, then deleted
- Short retention period ensures that all data not associated with a crime is automatically deleted & unrecoverable
- **Takes human bias out of crime-solving by detecting objective data, and detecting events that are objectively illegal (ex. Stolen vehicles)**

flock safety

- **All data is stored securely in the AWS Cloud, with end to end encryption of all data.**
- **Search reason is required for audit trail**
- NOT facial recognition software
- NOT predictive policing
- **NO PII is contained in Flock**
- **NOT used for traffic enforcement**
- Not connected to registration data or 3rd party databases (Carfax, DMV)
- Transparency Portal (optional)





## Transparency + Insights

### Measure ROI and promote the ethical use of public safety technology

#### Transparency Portal

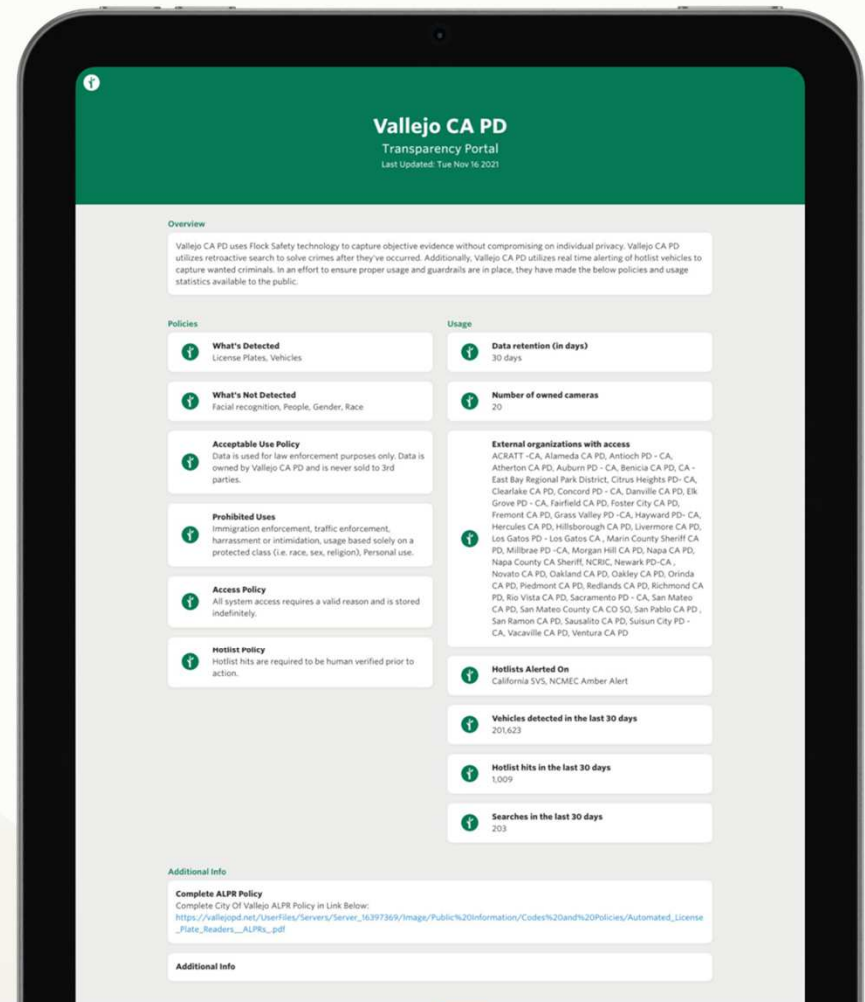
- Customizable for each agency
- Display technology policies
- Publish usage metrics
- Share downloadable Search audits

#### Insights Dashboard

- Measure crime patterns and ROI
- Audit Search history

#### Examples

- Click here for [Morgan Hill PD](#)
- Click here for [Vallejo PD](#)





flock safety

**It actually solves and prevents  
crime**

# Widely Adopted in Texas

- Forney
- East Tawakoni
- Garland
- Kaufman City Constable
- UT Tyler
- Bartonville
- Round Rock
- Williamson Co SO
- Village of Briarcliff

- Paris City
- Tyler
- Grand Prairie
- Windsor Park PID
- Boyd
- **Dallas**
- **Houston**
- Sun City
- San Marcos

- Carrollton
- Mansfield
- Northlake
- Odessa
- Lewisville
- North Richland Hills
- Wolfforth
- Denton County Water
- Pflugerville ISD

.....**AND MANY  
MORE**



## Case Study *Recent Success Story*



Lewisville PD



Lewisville, TX

- Couple was doing some last minute shopping before their wedding, when a **shoplifter** switched out their carts and took the bride to be's purse with their **wedding ring and thousands of dollars in cash**.
- Lewisville PD arrived on scene viewed **store security footage** and was able to get a **clear vehicle description** but not a license plate.
- The officer used that description to **filter for footage in Flock and got a plate**.
- They **set a custom hotlist** alert on that vehicle and **made a stop** where they found the stolen goods.
- The couple saw justice within hours, had a happy wedding the next day and the **thief was arrested**.

## Lewisville police officer tracks down stolen wedding rings hours before couple's big day

The couple went to shop for a basket to keep blankets in so their wedding guests could stay warm. But then something cold-hearted happened.



## Case Study: *Smash & Grab Robbery*



San Bruno PD



San Bruno, CA

- January 2022 - Five suspects attempt a Smash & Grab at a Jewelry store but are chased off by the owner
- **But here's what didn't make the news...**
- Suspect vehicle identified using Flock
- SBPD thought the suspects would try again, potentially more violently
- **Vehicle placed on a custom hotlist**
- SBPD receives a real time alert that the suspects are returning
- **Officers locate the vehicle within seconds preventing another attempt**

[San Bruno jewelry store owner stops attempted smash-and-grab robbery](#)

- ABC 7 News - Bay Area



## CASE STUDY *Amber Alert*



CPD



Chamblee, Georgia



**Stranger on Stranger Abduction**  
August 28, 2020

## When every second matters, Flock Safety's Machine Vision is Critical

- 12:33 PM** ● Amber Alert Issued
- ...
- 1:01 PM** ● Search Conducted with Flock Safety
- ...
- 2:30 PM** ● Suspect Vehicle Located
- ...
- 5:03 PM** ● Felony Stop + Arrest
- ...
- 6:00 PM** ● Baby Reunited with Mother

flock safety

Thank You





# CITY OF KYLE, TEXAS

## Arts & Cultural Commission Update

**Meeting Date: 4/18/2023**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Arts & Cultural Commission updates. *Colleen Tierney, Director of Library Services*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available





# CITY OF KYLE, TEXAS

## City Manager's Report

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *Jerry Hendrix, Interim City Manager*

- Skate Night
- Art in the Park
- 4th of July Update
- National Library Week
- Overdrive is Changing to Libby
- Ribbon Cutting of Seed Library
- Teen Job Fair
- Landscape Code Updates
- Residential Style Guide Updates
- Comprehensive Master Plan Update
- After Action Report and Improvement Plan for Exercise at City Hall
- Team Kyle Update

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## CIP/Road Projects Update

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

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

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## (Second Reading) Acadian Ambulance Franchise

Meeting Date: 4/18/2023

Date time: 7:00 PM

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

*City Council voted 7-0 to approve on first reading on 4/4/2023.*

### Other Information:

The current franchise agreement for Acadian Ambulance Services was approved on second reading on January 19th, 2021, and included a term of two years with an option to renew for an additional two years with council approval.

The attached ordinance will codify Council's approval of a two-year extension. This ordinance is required to have a second reading per the City's Charter Sec. 11.02.  
[https://library.municode.com/tx/kyle/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTXIPUUTFRCO\\_S11.02FR](https://library.municode.com/tx/kyle/codes/code_of_ordinances?nodeId=PTICH_ARTXIPUUTFRCO_S11.02FR)

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

### Legal Notes:

### Budget Information:

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### ATTACHMENTS:

#### Description

- ☐ Acadia.Franchise.Renewal Ordinance
- ☐ UCR - Texas 2023[96]
- ☐ 1130, Acadian Ambulance Franchise
- ☐ Notice of Public Hearing Acadian Franchise Agreement

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

**AN ORDINANCE APPROVING A TWO-YEAR RENEWAL AND EXTENSION TO THE FRANCHISE GRANTED TO ACADIAN AMBULANCE SERVICE OF TEXAS, LLC, D/B/A ACADIAN AMBULANCE SERVICE, TO PROVIDE NON-EMERGENCY AND ROLLOVER EMERGENCY AMBULANCE SERVICES WITHIN THE BOUNDARIES OF THE CITY OF KYLE, TEXAS; APPROVING RATES AND CHARGES FOR PATIENTS OR CUSTOMERS; PROVIDING AN OPEN MEETINGS ACT CLAUSE; ESTABLISHING AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.**

**WHEREAS**, the City of Kyle, Texas, a home rule municipality (the “City”), and Acadian Ambulance Service of Texas, LLC, dba Acadian Ambulance Service (“Acadian”) are parties to a franchise agreement authorizing the provision of non-emergency and rollover emergency ambulance services within the City granted by Ordinance No. 1130 adopted on January 19, 2021 (the “Franchise Agreement”)

**WHEREAS**, the Franchise Agreement has a term of two years and may be renewed for an additional two years upon the written request of Acadian;

**WHEREAS**, Acadian has requested that the Franchise Agreement be renewed for an additional two-year period and the City desires to approve the renewal;

**WHEREAS**, Acadian has requested that the City approve new rates and charges for patients or customers as required by the Franchise Agreement; and

**WHEREAS**, pursuant to Section 11.02 of the City Charter, the City held a public hearing on the proposed renewal of the Franchise Agreement after publishing notice at least ten (10) days’ before the public hearing;

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

**Section 1. Renewal Approved.** The Franchise Agreement is hereby renewed and approved for an additional two-year period. The term of the renewal period shall begin on January 19, 2023, and remain in full force and effect for a period of two years, subject to earlier termination as provided in the Franchise Agreement.

**Section 2. Rates and Charges to Patients or Customers.** Section 16 of the Franchise Agreement is hereby amended in its entirety to approve new rates and charges to patients or

customers, and to read as follows and as set forth in Exhibit A. The new rates and charges shall be effective upon the date of adoption of this Ordinance.

**Section 16**  
**Rates and Charges to Patients or Customers**

1. Acadian shall comply with the schedule of rates that Acadian has attached to this Agreement as EXHIBIT "A" and which is incorporated herein by reference. Acadian may amend the schedule of rates only upon the adoption of an ordinance approving said amendment.
2. On non-emergency calls, or calls where a person requires transportation to a non-emergency facility, collection for service (payment) may, at the option of Acadian, be made before the ambulance begins the trip.

**Section 2. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance was passed was held after a public hearing on the subject of this Franchise Agreement, and said meeting was open to the public, and 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.

**Section 3. Effective Date.** This Ordinance shall be in full force and take effect from and after the date of its final passage and publication as required by law.

**PASSED AND APPROVED ON FIRST READING** on the 4<sup>th</sup> day of April, 20\_\_\_\_.

**PASSED AND FINALLY APPROVED ON SECOND READING** on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2023

**CITY OF KYLE, TEXAS**

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

**ATTEST:**

\_\_\_\_\_  
Jennifer Kirkland, City Secretary

**ACADIAN AMBULANCE SERVICE OF TEXAS, LLC, D/B/A ACADIAN  
AMBULANCE SERVICE** hereby accepts the renewal of the Franchise  
Agreement.

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

**EXHIBIT “A”**  
**Acadian Ambulance Service of Texas Pricing Catalog**  
**Usual and Customary Rates**

**Acadian Ambulance Service of Texas**  
**Pricing Catalog**  
**Usual and Customary Rates**

	<b>2023</b>	
	<b>Rates</b>	<b>Effective date</b>
<b><u>Base Rates</u></b>		
ALS2 Emergency	<b>\$ 2,317.00</b>	January 1, 2023
ALS1 Emergency	<b>1,702.00</b>	January 1, 2023
ALS1 Non-Emergency	<b>1,653.00</b>	January 1, 2023
BLS Emergency	<b>1,702.00</b>	January 1, 2023
BLS Non-Emergency	<b>1,127.00</b>	January 1, 2023
Specialty Care Base	<b>3,535.00</b>	January 1, 2023
 <b><u>Mileage</u></b>		
Mileage	<b>\$ 35.93</b>	January 1, 2023

**ORDINANCE NO. 1130**

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

*RECITALS*

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

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

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

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

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

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

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



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

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

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

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

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

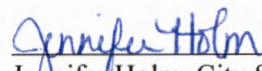
Section 7. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Ch. 551, Local Gov’t Code.

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

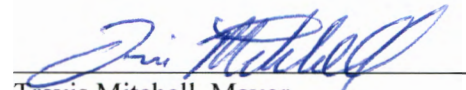
PASSED AND APPROVED on First Reading the 5th day of January, 2021.

PASSED AND ADOPTED on Second Reading the 19th day of January, 2021.

ATTEST:

  
Jennifer Holm, City Secretary

**The City of Kyle, Texas**

  
Travis Mitchell, Mayor

## EXHIBIT "A"

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

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

#### *RECITALS*

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

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

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

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

#### **Section 1** **Definitions**

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

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

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

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

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

- 1) transporting a patient who during the transport becomes critical or otherwise unstable to the closest most appropriate facility with an emergency room capable of treating the patient; or,
- 2) while stopped on a public roadway to render aid to motorists and/or pedestrians involved in a traffic or other incident that has potential to cause injury while waiting for emergency responders to arrive.

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

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

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

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

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

## **Section 2**

### **Contents of Application to Provide Non-Emergency Services**

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

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

- a. The name and address of the provider or franchisee of the ambulance services for which a franchise is being granted;
- b. the trade and all other names, if any, under which the applicant does business, along with a certified copy of an assumed name certificate stating such name or names or articles of incorporation stating such name or names;

- c. a complete resume of the training and experience of the applicant in the transportation and care of patients;
- d. a description in the manner in which the public will be able to obtain assistance and how the non-emergency vehicles will be dispatched; and
- e. a description of the non-emergency ambulance applicant's capability to provide regular transportation services in the City.

#### **Section 4** **Term of Agreement**

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

#### **Section 5** **Service Area**

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

#### **Section 6** **Disclosure of Patient Information**

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

#### **Section 7** **Minimum Standards for Non-Emergency Ambulance Franchisees**

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

1. inspect the premises, vehicles, equipment, and personnel of Acadian to assure compliance to this Agreement and perform any other inspections as deemed necessary by law or for the benefit of the public safety, health or welfare;
2. recommend to the city council the temporary or permanent suspension of a franchise in the event of non-compliance with the terms of this Agreement;

3. receive complaints from the public, other enforcing agencies, and others regarding any infractions allegedly committed by Acadian, and review or otherwise investigate any complaints, and recommend corrective action after Acadian has had a responsible time to respond to said allegations;
4. maintain all records of compliance with this Agreement and other applicable State and County regulations;
5. require Acadian to restore at its expense all public or private property to a condition equal to or better than that before being damaged or destroyed by Acadian.

### **Section 8** **Violations; Penalties**

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

1. First offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed five hundred dollars (\$500.00) levied against Acadian, for which Acadian is responsible to pay or otherwise said franchise may be terminated by the city council.
2. Second offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed one thousand dollars (\$1,000.00) if within one (1) year of the first offense, levied against Acadian, for which Acadian is responsible to pay or otherwise said franchise may be terminated by the city council.
3. Third offense: probation, suspension, or termination of the franchise, including up to a fine not to exceed two thousand dollars (\$2,000.00) if within one (1) year of the second offense, levied against Acadian, for which Acadian is responsible to pay or otherwise said franchise may be terminated by the city council.
4. Fourth and subsequent offenses: If within one (1) year of the third offense, City staff shall recommend to the city council permanent termination of the franchise, upon which city council may accept or deny staff recommendation, or at its discretion, the city council

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

### **Section 9**

#### **Default**

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

### **Section 10**

#### **Majority vote**

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

### **Section 11**

#### **State Permits and City Franchise Requirements**

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

### **Section 12**

#### **Exemptions from Franchise Requirements**

No franchise shall be required for:

1. any entity rendering assistance to Acadian in the case of a disaster, major catastrophe, mutual aid, or emergency when the services franchised by the City are insufficient or unable to cope, and assistance has been requested by the City;
2. any entity other than the franchisee operated from a location or headquarters outside of the City limits, but transporting to facilities located within the City limits, or transporting patients within the City limits to locations outside of the City limits;
3. ambulances owned and operated by an agency of the United States Government;
4. vehicles owned and operated by EMS providers chartered by the State of Texas as corporations to operate in the City limits to provide emergency

medical services, or municipal EMS providers; or,

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

### **Section 13** **Franchise Fees to City**

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

### **Section 14** **Quarterly Reports**

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

### **Section 15** **Cessation of Activity upon Termination of Franchise**

1. Upon cancellation, suspension, or termination of Acadian's franchise, by actions taken by either the city council or Acadian, Acadian shall immediately cease operations that are granted under the franchise.
2. Upon revocation, suspension, or termination of a driver's license or attendant's certification or Emergency Medical Technician certificate, such attendant shall cease to drive an ambulance, perform service, or attend an ambulance under the direction or authority of Acadian.



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

### **Section 16**

#### **Rates and Charges to Patients or Customers**

1. Acadian shall comply with the schedule of rates that Acadian has attached to this Agreement as EXHIBIT "B" and which is incorporated herein by reference. Acadian may amend the schedule of rates only upon the adoption of an ordinance approving said amendment.
2. On non-emergency calls, or calls where a person requires transportation to a non-emergency facility, collection for service (payment) may, at the option of Acadian, be made before the ambulance begins the trip.

### **Section 17**

#### **Insurance**

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

### **Section 18**

#### **Nondiscrimination**

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

### **Section 19**

#### **Records, Reports**

Acadian shall maintain the following records:

1. record of dispatch showing time call for transport was received, time ambulance dispatched, time arrived on scene, time arrived at destination, time in service, and time returned to base;
2. a trip record that shall be so designed as to provide the patient or customer with

- a copy of it and that may serve as a receipt for any charges paid;
3. maintenance of a daily report log for the purpose of identifying all individuals transported in any given day;
  4. daily driver and attendant checklist and inspection report which shall list contents and description of operations for each vehicle, signed by the individual verifying vehicle operations and equipment; and,
  5. if private records are kept, including operational, vehicular maintenance, driver/attendant training certifications, insurance certifications, traffic compliance, accident records, financial, tax and related records, shall be open at any reasonable time for inspection and audit by the city manager or designee, or any professionally trained accountant/auditor; but Acadian may deem and mark certain materials as proprietary and confidential or protected by state or federal law, which may still be viewed by the city manager, designee or accountant/auditor representing the City but not disclosed to the general public unless a Texas Attorney General Ruling or court of competent jurisdiction so orders such a public release.

## **Section 20**

### **Transfer and Assignment**

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

## **Section 21**

### **Private Ambulance Services Personnel**

Attendants and drivers employed by Acadian shall be:

1. at least eighteen (18) years of age;
2. a citizen of the United States;
3. licensed by the State of Texas to operate the vehicle occupied; and,
4. certified as having obtained any legally required training as may be required by any regulatory bodies having jurisdiction over the provision of private ambulance services to the general public.

## **Section 22**

### **Indemnification**

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

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

### **Section 23** **Compliance with Laws and Regulations**

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

### **Section 24** **No Waiver; Cumulative Remedies**

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

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

## **Section 25** **Administration**

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

## **Section 26** **Notices**

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

FRANCHISEE:

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

CITY OF KYLE, TEXAS ("CITY"):

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

## **Section 27** **Governing Law**

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

## **Section 28** **Modification or Amendment**

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

**Section 29**  
**Entire Agreement**

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

**Section 30**  
**Corporate Authority**

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

**Section 31**  
**Severability**

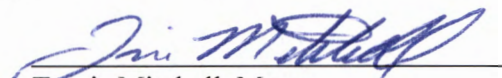
If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion will be deemed a separate, distinct, and independent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

**Section 32**  
**Effective Date**

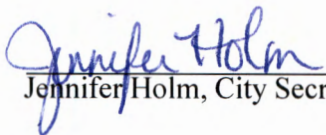
This Agreement shall be in full force and take effect from and after the date of the final passage or the ordinance in which the Agreement is incorporated and upon the signing and attesting of said Agreement as witnessed below.

THE CITY OF KYLE, TEXAS

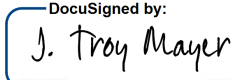
By:

  
Travis Mitchell, Mayor

ATTEST:

  
Jennifer Holm, City Secretary

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

By:   
FD5923D66E714C3...  
James Mayer  
Title: Regional Vice President

**EXHIBIT “B”**  
**ACADIAN SCHEDULE OF RATES**  
**(SEE ATTACHED)**

**ACADIAN AMBULANCE SERVICE, INC.**  
**PRICING CATALOG**

**Description**

**Transports**

ALS2 Emergency	\$ 1,804.00	January 1, 2021
ALS1 Emergency	1,321.00	January 1, 2021
ALS1 Non-Emergency	1,283.00	January 1, 2021
BLS Emergency	1,321.00	January 1, 2021
BLS Non-Emergency	868.00	January 1, 2021
Specialty Care Base	2,763.00	January 1, 2021
Ambulance Response, treatment without transport	287.00	January 1, 2021

**Mileage**

Mileage - 0 - 50 miles	\$ 26.49 per mile	January 1, 2021
51 - 100 miles	26.49	January 1, 2021
101 and over	26.49	January 1, 2021

**Ancillaries**

Airvo device	\$ 1,260.00	January 1, 2021
Airway Mgmt-Disposable Supplies	92.00	January 1, 2021
Bariatric Stretcher	374.00	January 1, 2021
BiPAP	1,260.00	January 1, 2021
Burn Sheet	67.00	January 1, 2021
Capnometer	131.00	January 1, 2021
C-Collar	92.00	January 1, 2021
CPAP devise with Manometer	340.00	January 1, 2021
Disaster Bag	425.00	January 1, 2021
Disposable BVM	171.00	January 1, 2021
Disposable Splint	29.00	January 1, 2021
Disposable Supplies/Environ. Protection	112.00	January 1, 2021
EKG Monitor	211.00	January 1, 2021
EKG Monitor-Disposable Supplies	29.00	January 1, 2021
EKG Monitor Pace Pads	261.00	January 1, 2021
EKG 12 Lead	211.00	January 1, 2021
Endotracheal Intubation	112.00	January 1, 2021
Extra Ambulance Attendant	309.00	January 1, 2021
Extra Unit Assistance Fee	309.00	January 1, 2021
EZ-IO Intraosseous Infusion - disposable needle	514.00	January 1, 2021
Glucose	29.00	January 1, 2021
IV Set Up/Disposables	112.00	January 1, 2021
IVAC Pump	211.00	January 1, 2021
King-LTD	81.00	January 1, 2021
Out of Service Area	211.00	January 1, 2021
Oxygen Mask/Set Up	206.00	January 1, 2021
O.B. Kit	131.00	January 1, 2021
Poison Antidote Kit	105.00	January 1, 2021
Pulse Oximeter	131.00	January 1, 2021
SAM Pelvic Sling II	92.00	January 1, 2021
Sterile Water	42.00	January 1, 2021



**ACADIAN AMBULANCE SERVICE, INC.**  
**PRICING CATALOG**

**Description**

Suction Equipment  
 Throplex Chest Drainage System  
 Ventilator  
 Visidex Strip / Regeant Strip

**Medication**

Adenocard 12 mg  
 Amidate 2mg/ ml 20cc vial  
 Amiodarone  
 Aspirin  
 Atropine Sulfate  
 Benadryl  
 Calcium Chloride  
 Calcium Gloconte, 10%  
 Cardene 20mg (Nicardipine)  
 D5W 1,000 CC  
 Dextrose  
 Diltiazem  
 Dobutamine  
 Dopamine  
 Epinephrine  
 Epinephrine 30mg  
 Famotidine  
 Fentanyl  
 Glucagon  
 Heparin  
 Ipratropium Bromide  
 Ketamine Hcl, 10mg/ ml 20 ml vial  
 Labetalol  
 Lasix  
 Levetiracetam  
 Lidocaine  
 Lidocaine, 20%  
 Magnesium Sulfate  
 Mannitol, 20%  
 Metoprolol  
 Morphine Sulfate  
 Narcan, 2mg  
 Nitro Tab  
 Nitroglycerin Injection  
 Nitrol Ointment  
 Nitropress  
 Norepinephrine  
 Normal Saline 1,000 cc  
 Ondansetron  
 Oxymetazoline  
 Pitocin

Texas		
2021 Rates		
	<u>Amount</u>	<u>Effective Dates</u>
	29.00	January 1, 2021
	311.00	January 1, 2021
	1,260.00	January 1, 2021
	29.00	January 1, 2021
\$	92.00	January 1, 2021
	58.00	January 1, 2021
	62.00	January 1, 2021
	9.00	January 1, 2021
	62.00	January 1, 2021
	62.00	January 1, 2021
	62.00	January 1, 2021
	41.00	January 1, 2021
	323.00	January 1, 2021
	92.00	January 1, 2021
	70.00	January 1, 2021
	64.00	January 1, 2021
	30.00	January 1, 2021
	92.00	January 1, 2021
	62.00	January 1, 2021
	92.00	January 1, 2021
	9.00	January 1, 2021
	64.00	January 1, 2021
	311.00	January 1, 2021
	9.00	January 1, 2021
	62.00	January 1, 2021
	92.00	January 1, 2021
	92.00	January 1, 2021
	9.00	January 1, 2021
	9.00	January 1, 2021
	62.00	January 1, 2021
	70.00	January 1, 2021
	62.00	January 1, 2021
	18.00	January 1, 2021
	62.00	January 1, 2021
	13.00	January 1, 2021
	146.00	January 1, 2021
9.00	January 1, 2021	
92.00	January 1, 2021	
62.00	January 1, 2021	
62.00	January 1, 2021	
66.00	January 1, 2021	
92.00	January 1, 2021	
64.00	January 1, 2021	
66.00	January 1, 2021	
9.00	January 1, 2021	

**ACADIAN AMBULANCE SERVICE, INC.**  
**PRICING CATALOG**

**Description**

Potassium Chloride  
 Propofol, 1g  
 Albuterol (Nebulizer always used)  
 Ringers Lactate 1,000 cc  
 Sodium Bicarbs, 8.4%  
 Sodium Bicarbs, 4.2%  
 Solu-Cortef  
 Solu-Medrol 1 gram  
 Succinylcholine 20 mg  
 Tranexamic Acid  
 Vecuronium  
 Versed, 5mg/ ml 1 ml vial  
 Zemuron 10 mg/ ml 10ml vial

<b>Texas</b>	
<b>2021 Rates</b>	
<b><u>Amount</u></b>	<b><u>Effective Dates</u></b>
18.00	January 1, 2021
53.00	January 1, 2021
62.00	January 1, 2021
112.00	January 1, 2021
70.00	January 1, 2021
41.00	January 1, 2021
110.00	January 1, 2021
92.00	January 1, 2021
9.00	January 1, 2021
98.00	January 1, 2021
66.00	January 1, 2021
47.00	January 1, 2021
92.00	January 1, 2021

**Public Notice  
Notice of Public Hearing  
Franchise Agreement**

NOTICE IS HEREBY GIVEN TO ALL INTERESTED PERSONS, THAT:

The City of Kyle will hold a public hearing at the regularly scheduled meeting of the Kyle City Council on Tuesday, April 4, 2023, regarding an Ordinance granting an extension to the franchise granted by Ordinance No. 838 and amended by Ordinance No. 1026 and 1130 to Acadian Ambulance Service of Texas, LLC, D/B/A, containing various terms and conditions with regard to the extension of the franchise; to provide non-emergency and rollover ambulance services within the boundaries of the City of Kyle, Texas.

This is planned as an in person meeting taking place at <https://www.cityofkyle.com/kyletv/kyle-10-live> and at Kyle City Hall, 100 W. Center Street, Kyle, TX 78640. Please check the agenda for the proper location.

The public hearing schedule is as follows:

The public hearing will be held by the Kyle City Council on Tuesday, April 4, 2023 at 7:00 P.M.



## CITY OF KYLE, TEXAS

Task Order No. 5 to Pape-Dawson  
Engineering, CR 158 Elevated and  
Ground Storage Water Tanks and  
Pump Station Project \$72,800.00

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** Approve Task Order No. 5 to PAPE-DAWSON ENGINEERING, INC., Austin, Texas in an amount not to exceed \$72,800.00, for a preliminary engineering report (PER) and 30% design documents for a one-million gallon elevated water storage tank, a 500,000-gallon pre-stressed concrete water ground storage tank, and an associated pump station and appurtenances for the proposed CR 158 water storage project. ~ *Leon Barba, P.E., City Engineer*

**Other Information:** The scope of work for the engineer is to provide a preliminary engineering report and 30% design drawings. Once approved by staff, the engineer will submit a proposal for 60%, 90% and 100% design, bid and construction phase services associated with the CR 158 elevated and ground storage water tanks and pump station for council approval.

**Legal Notes:** N/A

**Budget Information:** Funding in the amount of \$72,800.00 is available in the approved 5-year Capital Improvements Spending Plan from the Water Impact Fee Fund as follows:

- 3320-86704-573130 (Water Impact Fee Fund)

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### ATTACHMENTS:

#### **Description**

- ☐ Pape-Dawson Proposal

April 12, 2023

Ms. Yvonne Gil Vallejo  
City of Kyle  
100W. Center St.  
Kyle, TX 78640

Re: CR 158 Elevated and Ground Storage Water Tanks and Pump Station Project  
Preliminary Engineering Report and 30% Design Documents  
Task Order No. 5

Dear Ms. Vallejo:

We are pleased to present this proposal for providing civil engineering services in connection with the above referenced project. Our proposed scope of services and associated fees are as follows:

**OVERVIEW:**

Pape-Dawson (PD) to provide a preliminary engineering report (PER) and 30% design documents for a 1-million-gallon elevated water storage tank (EST) and a 500,000-gallon pre-stressed concrete water ground storage tank (GST), and a pump station, including electrical and instrumentation, piping, and related facilities. Upon approval of the 30% engineering design, the Pape-Dawson Team will provide a separate scope of services and associated fee for completing to 100% design, permitting, bidding, and construction phase services for the project. This scope of services does not include modeling or verification of existing distribution or supply infrastructure capacity to and from the project site.

**I. TASK 1 – PRELIMINARY ENGINEERING REPORT (PER) (TASK 205) \$30,000**

The PER describes the design parameters of the project. Design to be based on the City of Kyle and the Texas Commission on Environmental Quality (TCEQ) standards. During this phase of the project, PD to make one (1) site visit to the proposed facility site to review existing conditions, site characteristics, and potential impacts on site planning. PD to attend up to two (2) design coordination meetings with the City of Kyle to review conceptual and preliminary schematics of the facility. Team to coordinate with Alliance Water Supply (AWS) for supply and connection to the pipeline, and with the developer of the site where the City of Kyle facilities will be constructed. The City of Kyle will provide the hydraulic grade line requirements that will serve as the basis for establishing the tank height.

The PER consists of the following:

- Sizing of major components, including GST, EST, and pumping per TCEQ and City of Kyle requirements,
- AWS delivery parameters for pressure and volume,
- AWS instrumentation/communication requirements (Task 3),
- City of Kyle instrumentation/communication requirements (Task 3),
- Electrical requirements for power supply and TCEQ emergency power requirements (Task 3),
- Security and access requirements,
- Preliminary Opinion of Probably Construction Costs (AACE Level 4),

- Attend a maximum of two (2) meetings with the City of Kyle staff

**II. TASK 2 – 30% PLANS/SCHEMATICS (TASK 290) \$30,000**

The 30% plans/schematics will be included in the PER as an attachment and to consist of the following:

- Site Plan and Yard Piping Plan;
- General GST plan and elevation;
- General EST plan and elevation;
- Pump station, general layout and building sizing;
- Access drive and perimeter/security fencing;
- General layout and sizing of electrical components (Task 3).

**III. TASK 3 – ELECTRICAL ENGINEERING & INSTRUMENTATION SUPPORT (TASK 504) \$12,500**

- PER - AWS instrumentation/communication requirements, City of Kyle instrumentation/ communication requirements, electrical requirements for power supply, and TCEQ emergency power requirements;
- 30% Plans/Schematics - One-line diagram and general layout/sizing of electrical components.

**IV. TASK 4 – DIRECT EXPENSES (REIMBURSABLE EXPENSES) (TASK 503) \$300**

Direct Expenses include travel, express mail, special deliveries and subcontractor expenses related to these services.

*Note: Per the existing contract no mark up on Direct Expenses.*

**LIST OF DELIVERABLES**

- Preliminary Engineering Report
- 30% Plans/Schematics

**THIS PROPOSAL ASSUMES AND/OR EXCLUDES THE FOLLOWING:**

- ◆ *No permitting, Final Engineering/Construction Documents, Bidding, or Construction Phase Services are included as part of this scope and fee.*
- ◆ *No geotechnical or structural engineering services anticipated as part of this assignment.*
- ◆ *No survey services included.*
- ◆ *No environmental or cultural resources clearance is included.*
- ◆ *Disinfection system design will be provided during the final design phase of the project.*
- ◆ *No modeling of the delivery system or distribution system is included, the City will provide the pumping and pressure requirements for the water facilities.*

**SUMMARY OF SCOPE AND FEES**

I.	Preliminary Engineering Report	Task 205	Lump Sum	\$30,000
II.	30% Plans/Schematics	Task 290	Lump Sum	\$30,000
III.	Electrical Engineering/Support	Task 504	Lump Sum	\$12,500
IV.	Reimbursable Expenses	Task 503	Allowance NTE	\$300
<b>Total:</b>				<b>\$72,800</b>

### **BASIS OF COMPENSATION**

Pape-Dawson's compensation for the above services shown as hourly, allowance or Time and Materials (T&M) will be a charge on an as needed basis for personnel services plus an hourly charge for specialized equipment. Pape-Dawson's compensation for the other above services will be a lump sum fee. A budget of **\$72,800** is the estimated cost of Pape-Dawson's current understanding of the services identified above. If this budget figure is exceeded, Pape-Dawson may request modification of this Agreement.

### **AGREEMENT**

Upon the signing of this Proposal by Client, this Proposal to be governed by the existing Master Agreement for Professional Engineering Services by and between Client and Engineer, dated effective as of the **30th** day of **March 2023**, with the same force and effect as if all of the terms of such Master Agreement were recited verbatim herein.

The costs, fees, budget, and scope of work set out herein are valid for ninety (90) days from the date of this Proposal. If Pape-Dawson does not receive an executed Proposal from the Client within ninety (90) days from the date of this Proposal, the costs, fees, budget, and scope of work are subject to revision at Pape-Dawson's sole discretion. Pape-Dawson will provide a revised Proposal with the modified costs, budget, and scope of work should revisions be made.

We appreciate the opportunity to work with you on this project.

Sincerely,  
Pape-Dawson Engineers, Inc.



Jennifer Glaess, P.E.  
Senior Project Manager

**CITY OF KYLE**

Signature: \_\_\_\_\_

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

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

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



Cara C. Tackett, P.E.  
Managing Principal, Water Resources



# CITY OF KYLE, TEXAS

## TIRZ No. 2 Public Hearing - Project and Finance Plan

**Meeting Date: 4/18/2023**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Public Hearing Concerning the Approval of the Amended and Restated Project and Finance Plan and the Amended Interlocal Agreement for the Tax Increment Zone Number Two, City of Kyle and Approval of the Extension of the Zone. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*

### **Other Information:**

### **Legal Notes:**

### **Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

- ☐ Notice of Public Hearing TIRZ No. 2



**City of Kyle City Council  
Notice of Public Hearing  
On Reinvestment Zone Two, City of  
Kyle**

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THE KYLE CITY COUNCIL WILL HOLD A PUBLIC HEARING ON *TUESDAY, APRIL 18, 2023 AT 7:00 P.M. IN THE KYLE CITY HALL, LOCATED AT 100 W. CENTER STREET, KYLE, TEXAS 78640*, ON EXTENDING THE TERM OF AND APPROVING AN AMENDED PROJECT AND FINANCE PLAN FOR TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, CITY OF KYLE AND ITS BENEFITS TO THE CITY OF KYLE AND TO PROVIDE A REASONABLE OPPORTUNITY FOR ANY INTERESTED PERSON TO SPEAK FOR OR AGAINST THE EXTENSION OF THE TERM OF THE ZONE AND/OR THE AMENDED PROJECT AND FINANCE PLAN, WHICH ZONE CONSISTS OF APPROXIMATELY 179.3 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 TO SPEAK FOR OR AGAINST THE EXTENSION OF THE TERM OF THE ZONE AND/OR THE AMENDED PROJECT AND FINANCE PLAN. FOLLOWING THE PUBLIC HEARING, THE KYLE CITY COUNCIL WILL CONSIDER ADOPTING AN ORDINANCE EXTENDING THE TERM OF THE TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, CITY OF KYLE AND APPROVING THE AMENDED PROJECT AND FINANCE PLAN.



# CITY OF KYLE, TEXAS

## TIRZ No. 2 Ord - Project and Finance Plan

Meeting Date: 4/18/2023  
Date time: 7:00 PM

**Subject/Recommendation:** Consideration and Approval of an Ordinance of the City of Kyle, Texas Approving the Amended and Restated Project and Finance Plan and Amended Interlocal Agreement for the Tax Increment Reinvestment Zone Number Two, City of Kyle and Approving the Extension of the Zone; and Other Matters Related Thereto. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*

### Other Information:

### Legal Notes:

### Budget Information:

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### ATTACHMENTS:

#### Description

- ☐ Ordinance
- ☐ Amended and Restated Project and Finance Plan
- ☐ Amended Map for Exhibit H

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

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS APPROVING THE AMENDED AND RESTATED PROJECT AND FINANCE PLAN AND AMENDED INTERLOCAL AGREEMENT FOR THE TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, CITY OF KYLE AND APPROVING THE EXTENSION OF THE TERM OF THE ZONE; AND OTHER MATTERS RELATED THERETO**

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

**WHEREAS**, on December 18, 2018 the City Council of the City (the “City Council”) through Ordinance No. 1022 (the “Creation Ordinance”) designated Tax Increment Reinvestment Zone Two, City of Kyle (the “Zone”) with the boundaries being described in the metes and bounds and depictions attached to the Creation Ordinance; and

**WHEREAS**, on May 30, 2019 the City entered into an Interlocal Agreement (the “Original Interlocal Agreement”) with Hays County, Texas (the “County”); and

**WHEREAS**, the Board of Directors of the Zone (the “Board”) approved a Project and Financing Plan for the Zone on November 14, 2019; and

**WHEREAS**, on December 3, 2019, the City Council adopted Ordinance No. 1064 (the “Amending Ordinance” and, together with the Creation Ordinance, the “Zone Ordinance”) which amended the Creation Ordinance and adopted the Project and Financing Plan for the Zone (the “Original Project and Financing Plan”); and

**WHEREAS**, the City Council desires to (1) extend the term of the Zone from December 31, 2037 to December 31, 2057, (2) amend the Original Project and Financing Plan to add additional projects, (3) amend the Original Interlocal Agreement, and (4) issue obligations secured by revenues generated within the Zone to finance such authorized projects; and

**WHEREAS**, prior to extending the term of the Zone and amending the Original Project and Financing Plan, the City Council must hold a public hearing; and

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

**WHEREAS**, the City has published notice in the *Hays Free Press* on March 29, 2023 for a public hearing to be held on April 18, 2023; and

**WHEREAS**, on April 13, 2023, the Board adopted a resolution (1) approving the extension the term of the Zone from December 31, 2037 to December 31, 2057, (2) approving the amendment to the Original Project and Financing Plan to add additional projects, and (3) recommending that the City issue obligations secured by revenues generated within the Zone to finance such authorized projects; and

**WHEREAS**, the City Council finds and determines that the term of the Zone should be extended from December 31, 2037 to December 31, 2057; and

**WHEREAS**, the City Council finds and determines that the Original Project and Financing Plan should be amended to add additional projects to the plan; and

**WHEREAS**, the City Council finds and determines that the Original Interlocal Agreement should be amended; and

**WHEREAS**, the City Council finds and determines the Amended and Restated Project and Financing Plan for Reinvestment Zone Number Two, City of Kyle, a copy of which is attached hereto as **Exhibit A** (the Original Project and Financing Plan, as amended, the "Project and Financing Plan") and the Amended Interlocal Agreement (the Original Interlocal Agreement, as amended, the "Interlocal Agreement") a copy of which is attached hereto as **Exhibit B** are feasible and encourage further development within the Zone and includes all information required by the Act; and

**WHEREAS**, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; and

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

SECTION 1. Findings. The findings and determinations set forth in the preamble above are hereby deemed to be true and correct and incorporated herein.

SECTION 2. Approval of Extension of Term. The City Council hereby approves the extension of the term of the Zone from December 31, 2037 to December 31, 2057.

SECTION 3. Approval of Amended Final Plan. The City Council hereby approves the "Tax Increment and Reinvestment Zone Number Two, City of Kyle Amended Project and Financing Plan" in the form attached hereto as Exhibit A, which is incorporated herein as a part hereof for all purposes, as the Project and Financing Plan for the Zone, in accordance with the Act. The City hereby finds that the Project and Financing Plan satisfies the requirements of the Act, the Zone will enhance the value of all taxable real property in the Zone and the Project and Financing Plan is feasible.

SECTION 4. Approval of Amended Interlocal Agreement. The City Council hereby approves the amendment to the Interlocal Agreement, in substantially the form attached hereto as Exhibit B, which is incorporated herein as a part hereof for all purposes. The City Council hereby authorizes the Mayor, City Manager and Finance Director of the City to negotiate any final terms with the County to finalize the amendment to the Interlocal

Agreement and execute the final Interlocal Agreement, as amended.

SECTION 5. Additional Actions. The Mayor, City Manager, Finance Director of the City and the City Secretary are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance.

SECTION 6. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 8. Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 9. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 10. Effective Date. This Ordinance shall become effective from and after its date of passage in accordance with the law.

[Remainder of Page Intentionally Left Blank; Signatures to Follow]

**PASSED AND APPROVED** on this April 18, 2023.

CITY OF KYLE, TEXAS

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

**ATTEST:**

\_\_\_\_\_  
City Secretary

**EXHIBIT A**

**Amended and Restated Project and Financing Plan**

**See Tab No. \_\_**

**EXHIBIT B**

**Interlocal Agreement**

**See Tab No. \_\_**





TAX INCREMENT REINVESTMENT ZONE NUMBER TWO,  
CITY OF KYLE, TEXAS  
AMENDED AND RESTATED  
PROJECT AND FINANCE PLAN  
APRIL 18, 2023

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## SECTION 1: DEFINITIONS

Capitalized terms used in this Amended Plan shall have the meanings given to them in **Section I** below unless otherwise defined in this Amended Plan or unless the context in which a term is used clearly requires a different meaning. Unless otherwise defined, a reference to a “Section,” or an “Exhibit,” shall be a reference to a Section of this Amended Plan or an Exhibit attached to and made a part of this Amended Plan for all purposes.

“**Act**” means Chapter 311, Texas Tax Code, Tax Increment Financing Act.

“**Administrative Costs**” means the actual, direct costs paid or incurred by or on behalf of the City to administer the Zone, including planning, engineering, legal services, organizational costs, publicizing costs, or implementations costs paid by or on behalf of the City that are directly related to the administration of the Zone.

“**Amended Plan**” means this *Tax Increment Reinvestment Zone Number Two, City of Kyle Amended and Restated Project and Finance Plan* approved by the City Council on April 18, 2023.

“**Appraisal District**” means the Hays Central Appraisal District.

“**Board**” means the Board of Directors for the Zone.

“**Captured Appraised Value**” means the new taxable value generated in addition to the Tax Increment Base on a parcel-by-parcel basis for each year during the term of the Zone, as calculated and confirmed annually by the Appraisal District.

“**City**” means the City of Kyle, Texas.

“**City Council**” means the governing body of the City.

“**City TIRZ Increment**” means fifty percent (50%) of the City’s ad valorem real property taxes collected and received by the City on the Captured Appraised Value in the Zone, and deposited into the TIRZ Fund.

“**County**” means Hays County, Texas.

“**County Participation Agreement**” means that certain Interlocal Agreement to Participate in Tax Increment Reinvestment Zone Number Two, City of Kyle, Texas entered into by the City, and the County, on May 30[?], 2019, as amended from time to time, detailing the City and County’s participation in the Zone.

**“County TIRZ Increment”** means the portion of the County’s ad valorem tax increment equal to fifty percent (50%) of the ad valorem real property taxes collected and received by the County on the Captured Appraised Value in the Zone.

**“Creation Ordinance”** means Ordinance No. 1022 adopted by the City Council on December 18, 2018, as amended by Ordinance No. 1064 on December 3, 2019.

**“Feasibility Study”** means the economic feasibility study as evaluated over the term of the Zone and focused only on direct financial benefits, as shown on **Exhibit E**.

**“Non-Project Costs”** means those certain costs that will be spent to develop in the Zone, but will not be financed by the Zone, and will be financed by private funds, as described in **Section 6**, and shown on **Exhibit B**.

**“Original Plan”** means the *Tax Increment Reinvestment Zone Number Two, City of Kyle Project and Finance Plan* approved by the City Council on December 3, 2019.

**“Preliminary Plan”** means the *Tax Increment Reinvestment Zone Number Two, City of Kyle Preliminary Project and Finance Plan* approved by the City Council on December 18, 2018.

**“Project Costs”** means the total costs, including interest on obligations, for the Public Improvements in the Zone.

**“Property”** means 161.5 acres of land as depicted on **Exhibit A** and described on **Exhibit I**.

**“Public Improvements”** means the proposed public improvements to be financed by the Zone, as depicted on **Exhibit H**, and detailed on **Exhibit C**, which include:

- a. Streetscapes, landscaping, roadways, transportation, roundabouts, underground waste receptacles and other applicable associated improvements;
- b. Public art including water features
- c. Parks, plazas and other public realm spaces dedicated exclusively for public gatherings, community events, and community celebrations;
- d. Safe pedestrian crossings including pavement lit crosswalks and underpasses;
- e. Under-the-road pedestrian crossings;
- f. Public parking/parking garages;
- g. Public buildings and other applicable facilities;
- h. Wayfinding and Signage;
- i. Safety and human comfort improvements including shade structures and lighting;
- j. Ambiance and space making lighting such as tree lights, free hanging strung lights;
- k. Trails connecting to Uptown to other areas within Plum Creek and adjacent developments;

- l. Improvements deemed appropriate by the TIRZ Board to promote economic development within Plum Creek; and
- m. Other improvements that is permissible under Chapter 311 of the Texas Tax Code and approved by the City Council and the Board of Directors.

**“Tax Increment Base”** means total appraised value of taxable real property in the Zone at the time of creation of the Zone, as calculated and certified by the Appraisal District.

**“TIRZ Bonds – Series 2023”** means those certain “City of Kyle, Texas Tax Increment Revenue Bonds, Series 2023” that are secured by the City TIRZ Increment. The schedule for the TIRZ Bonds – Series 2023 is detailed on **Exhibit F**.

**“TIRZ Bonds – Series 2025”** means those certain “City of Kyle, Texas Tax Increment Revenue Bonds, Series 2025” that are anticipated to be issued and secured by the City TIRZ Increment in the future. The proposed schedule for the TIRZ Bonds – Series 2025 is detailed on **Exhibit F**.

**“TIRZ Fund”** means the tax increment fund created by the City and segregated from all other funds of the City.

**“Zone”** means *Tax Increment Reinvestment Zone Number Two, City of Kyle, Texas*, as depicted on **Exhibit A**, and described on **Exhibit I**.

## SECTION 2: INTRODUCTION

### 2.1 Authority and Purpose

The City has the authority under the Act to designate a contiguous or noncontiguous geographic area within the corporate limits or extraterritorial jurisdiction of the City as a tax increment reinvestment zone to promote development or redevelopment of the area because the City Council determined that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future, that the Zone is economically feasible, and that creation of the Zone is in the best interest of the City and the property in the Zone. The purpose of the Zone is to facilitate such development or redevelopment by financing the costs of public works, public improvements, programs, and other projects benefiting the Zone, plus other costs incidental to those expenditures, all of which costs are authorized by the Act.

### 2.2 Eligibility Requirements

An area is eligible under the Act to be designated as a tax increment reinvestment zone if the area:

- 1) substantially arrests or impairs the sound growth of the municipality designating the Zone, retard the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition; or
- 2) is predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impairs or arrests the sound growth of the City; or
- 3) is in a federally assisted new community located in the City or in an area immediately adjacent to a federally assisted new community; or
- 4) is in an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the City by the owners of property constituting at least fifty percent (50%) of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

The City cannot, however, designate a zone if more than thirty percent (30%) of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes, or if the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds fifty percent (50%) of the total appraised value of taxable real property in the City and in industrial districts created by the City.

## **2.3 Zone**

The Property within the Zone is currently located within the corporate limits of the City. At the time of Zone creation, the Property was predominantly open, undeveloped or underdeveloped, and substantially impaired and arrested the sound growth of the City. Due to its size, location, and physical characteristics development would not occur solely through private investment in the foreseeable future. The Property lacks public infrastructure and requires economic incentive to attract development for the purpose of providing long-term economic benefits including, but not limited to, increased real property tax base for all taxing units in the Zone. If the Public Improvements are financed as contemplated by this Amended Plan, the City envisions that the Property will be developed to take full advantage of the opportunity to bring to the City, and the County, a quality development.

## **2.4 Preliminary Plan and Hearing**

Before the City Council adopted the Creation Ordinance, the City Council prepared a Preliminary Plan in accordance with the Act and held a public hearing on the creation of the Zone and its benefits to the City and to the Property, at which public hearing interested persons were given the opportunity to speak for and against the creation of the Zone, the boundaries of the Zone and the concept of tax increment financing, and at which hearing the owners of the Property were given a reasonable opportunity to protest the inclusion of their Property in the Zone. The requirement of the Act for a preliminary reinvestment zone project and finance plan was satisfied by the Preliminary Plan, the purpose of which was to describe, in general terms, the Public Improvements that will be undertaken and financed by the Zone. A description of how such Public Improvements and projects will be undertaken and financed shall be determined by this Amended Plan, which requires approval by the Board and City Council.

## **2.5 Creation of the Zone**

Upon the closing of the above referenced public hearing, the City Council considered the Creation Ordinance and the made following findings:

- 1) that development or redevelopment of the Property would not occur solely through private investment in the reasonably foreseeable future,
- 2) that the Zone was feasible,
- 3) that improvements in the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the City, and
- 4) that the Zone meets the eligibility requirements of the Act.

Among other provisions required by the Act, the Creation Ordinance appointed the Board.

## **2.6 Board Recommendations**

After the creation of the Zone, the Board reviewed the Preliminary Plan and recommend its approval by the City Council pursuant to which the City shall contribute the City TIRZ Increment into the TIRZ Fund to pay a portion of the Project Costs benefiting the Zone. Pursuant to the County Participation Agreement, the County shall contribute the County TIRZ Increment into the TIRZ Fund to pay a portion of the Project Costs benefitting the Zone. Likewise, the Board has reviewed this Amended Plan and recommended its approval by the City Council in order to extend the term of the Zone, include additional projects to Amended Plan, acknowledge the City's authority to issue tax increment revenue bonds.

## **SECTION 3: DESCRIPTION AND MAPS**

### **3.1 Existing Uses and Conditions**

The Property is currently zoned Plum Creek Residential 2, Plum Creek Mixed Use, Plum Creek Light Industrial, Plum Creek Employment, Plum Creek Open Space, Agriculture, Plum Creek Residential 3, Multifamily R-3-3, Retail Services, and Warehouse and is intended to be developed with residential, commercial, and industrial uses. The Property is undeveloped or underdeveloped, and there is limited public infrastructure to support development. Development requires extensive public infrastructure that: (1) the City could not provide, and (2) would not be provided solely through private investment in the foreseeable future.

### **3.2 Proposed Uses**

The proposed uses of the Property in the City include residential, commercial, and industrial, as shown on **Exhibit G**.

## **SECTION 4: PROPOSED CHANGES TO ORDINANCES, PLANS, CODES, RULES, AND REGULATIONS**

The Property is wholly located in the corporate limits of the City and is subject to the City's zoning regulations. The City has exclusive jurisdiction over the subdivision and platting of the property within the Property and the design, construction, installation, and inspection of water, sewer, drainage, roadway, and other public infrastructure. No proposed changes to zoning ordinances, comprehensive plan, building codes, subdivision rules, or other municipal ordinances are planned.



## **SECTION 5: RELOCATION OF DISPLACED PERSONS**

No persons will be displaced and in need of relocation due to the creation of the Zone or implementation of this Amended Plan.

## **SECTION 6: ESTIMATED NON-PROJECT COSTS**

Non-Project Costs are costs that will be spent to develop in the Zone but will not be financed by the Zone, and will be financed by private funds. The list of Non-Project Costs is shown on **Exhibit B** and are estimated to be approximately \$227,820,000.

## **SECTION 7: PROPOSED PUBLIC IMPROVEMENTS**

### **7.1 Categories of Public Improvements**

All Public Improvements shall be designed and constructed in accordance with all applicable City standards and shall otherwise be inspected, approved, and accepted by the City. At the City's option, the Public Improvements may be expanded to include any other category of improvements authorized by the Act.

### **7.2 Locations of Public Improvements**

The estimated locations of the proposed Public Improvements are depicted on **Exhibit H**. These locations may be revised, with the approval of the City, from time to time without amending this Amended Plan.

## **SECTION 8: ESTIMATED PROJECT COSTS**

### **8.1 Project Costs**

The total costs are estimated to be \$100,114,565, as shown below and detailed on **Exhibit C**. The costs of Public Improvements are estimated to be \$99,614,620, and the Administrative Costs are estimated to be \$499,945.

### **8.2 Administrative Costs**

The Administrative Costs are estimated to be \$10,000 per year beginning 2023 and escalating at two percent (2%) thereafter. The Administrative Costs shall be paid each year from the TIRZ Fund before any other Project Costs are paid.

## 8.5 Estimated Timeline of Incurred Costs

The Administrative Costs will be incurred annually through the remaining duration of the Zone. It is estimated the costs for constructing the Public Improvements will be incurred between 2023 and 2057, as shown on **Exhibit D**.

## SECTION 9: ECONOMIC FEASIBILITY

### 9.1 Feasibility Study

The Feasibility Study focuses on only direct financial benefits (i.e. ad valorem tax revenues from the development of Public Improvements in the Zone). Based on the Feasibility Study, during the term of the Zone, new development (which would not have occurred but for the Zone) will generate approximately \$200,229,130 in total new real property tax revenue for the taxing entities. Approximately \$100,114,565 will be deposited into the TIRZ Fund to pay for the Project Costs, over the life of the Zone. The remaining real property tax revenue over that period, estimated at \$100,114,565 shall be retained by the taxing entities.

The Feasibility Study shows the cumulative City TIRZ Increment is estimated to be \$66,673,458, which will be available to pay a portion of the Project Costs, until the term expires or is otherwise terminated. The remainder of the new City real property tax revenue generated within the Zone and retained by the City is estimated to be \$66,673,458 over the term.

The Feasibility Study shows the cumulative County TIRZ Increment is estimated to be \$33,441,107, which will be available to pay a portion of the Project Costs, until the term expires or is otherwise terminated. The remainder of the new County real property tax revenue generated within the Zone and retained by the County is estimated to be \$33,441,107 over the term.

One hundred percent (100%) of all taxing revenues generated for other taxing entities by the new development within the Zone will be retained by the respective taxing entities. Based on the foregoing, the feasibility of the Zone has been demonstrated.

## SECTION 10: ESTIMATED BONDED INDEBTEDNESS

The City shall be authorized to issue Tax Increment Revenue bonds which are secured by and payable from the City TIRZ Increment. The estimated bonded indebtedness of the Zone is anticipated to be \$11,500,000, split between the TIRZ Bonds – Series 2023, and TIRZ Bonds – Series 2025, as shown on **Exhibit F**.

## SECTION 11: APPRAISED VALUE

### 11.1 Tax Increment Base

The Tax Increment Base is \$121,367,726, as confirmed by the Appraisal District. Each year, the Appraisal District shall confirm the Captured Appraised Value of the Zone.

### 11.2 Estimated Captured Appraised Value

It is estimated that upon expiration of the term of the Zone, the total Captured Appraised Value of taxable real property in the Zone will be approximately \$1,015,580,601 as shown on **Exhibit E**. The actual Captured Appraised Value, as certified by the Appraisal District each year, will be used to calculate both the City TIRZ Increment and County TIRZ Increment, pursuant to this Amended Plan, and the County Participation Agreement.

## SECTION 12: METHOD OF FINANCING

### 12.1 TIRZ Fund Contributions

This Amended Plan shall obligate the City to deposit the City TIRZ Increment into the TIRZ Fund. For example, in FY 2022, the City's ad valorem tax rate was \$0.5082 per \$100 of taxable value, therefore the City would contribute \$0.2541 per \$100 of the Captured Appraised Value of the Zone levied and collected, to the TIRZ Fund.

The County Participation Agreement obligates the County to deposit the County TIRZ Increment into the TIRZ Fund beginning in 2020. For example, in FY 2022, the County's ad valorem tax rate was \$0.2950 per \$100 of taxable value, therefore the County would contribute \$0.1475 per \$100 of the Captured Appraised Value of the Zone levied and collected, to the TIRZ Fund.

The funds deposited into the TIRZ Fund shall be prioritized and allocated on a parcel-by-parcel as follows:

- 1) For the reasonable Administrative Costs of the Zone; then
- 2) For the debt service payments of the TIRZ Bonds – Series 2023, funds available from the City Tax Increment only, as detailed on **Exhibit F**; then
- 3) Any remaining revenue in the TIRZ Fund may be used to fund any other Public Improvements, or in any other manner as authorized by the City and allowed pursuant to the Act and the County Participation Agreement.

All payments of Project Costs shall be made solely from the TIRZ Fund and from no other funds of the City or County, unless otherwise approved by the City or the County. The TIRZ Fund shall only be used to pay the Project Costs. The City may amend this Amended Plan in compliance with

the Act and the County Participation Agreement, including but not limited to what is considered a Project Cost.

## **SECTION 13: DURATION OF THE ZONE, TERMINATION**

### **13.1 Duration**

The stated term of the Zone commenced upon the execution of the Creation Ordinance and shall continue until December 31, 2056, with the last payment being deposited by Fiscal Year Ending September 30, 2057, unless otherwise terminated in accordance with the Creation Ordinance.

### **13.2 Termination**

The Zone shall terminate on the earlier of (i) December 31, 2057, or (ii) at such time that the obligations of the Zone, including all Project Costs, have been paid in full. If upon expiration of the stated term of the Zone, the obligations of the Zone have not been fully funded by the TIRZ Fund, the City and the County shall have no obligation to pay the shortfall and the term shall not be extended. Nothing in this Section is intended to prevent the City from extending the term of the Zone in accordance with the Act.

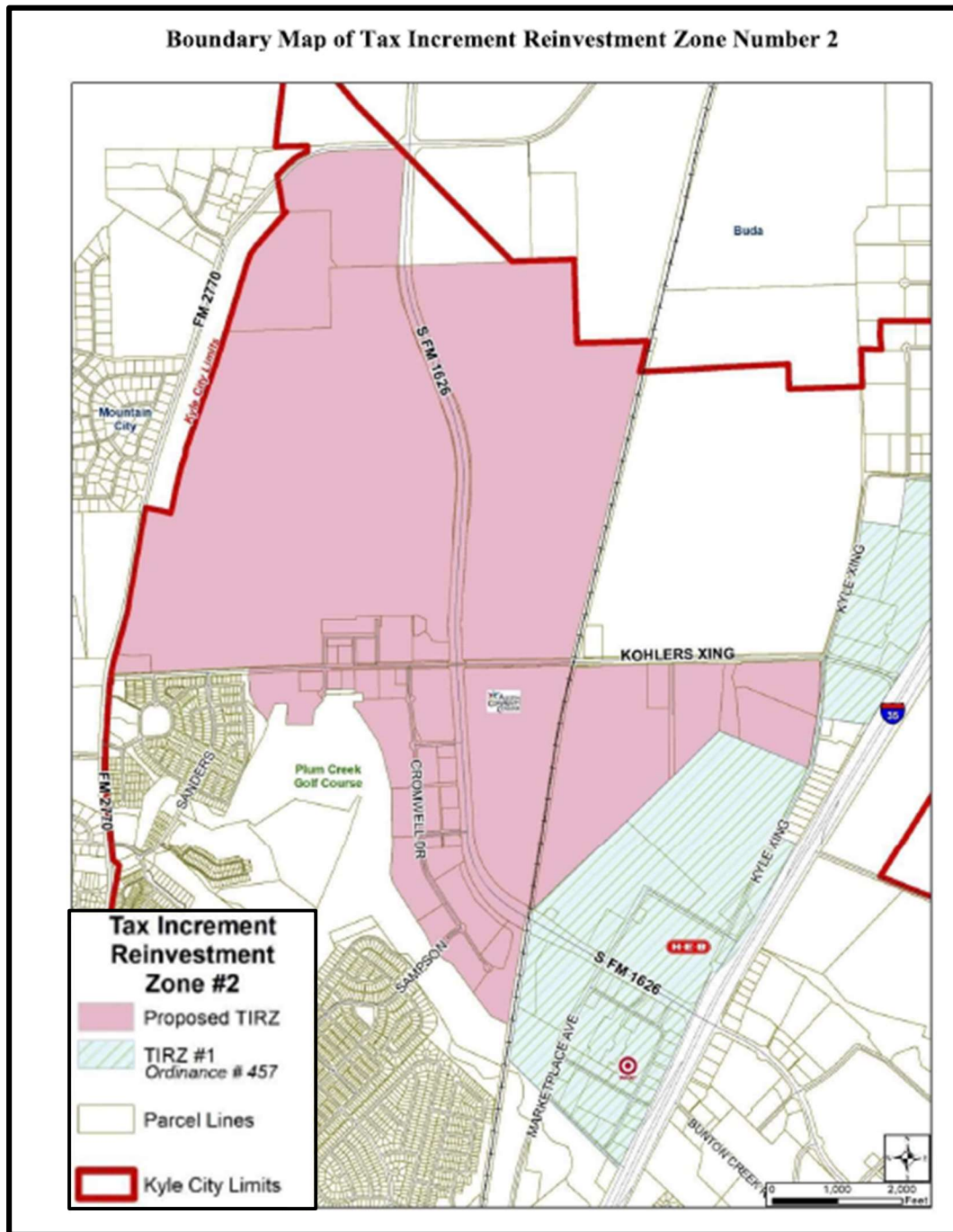
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## LIST OF EXHIBITS

Unless otherwise stated, all references to "Exhibits" contained in this Amended Plan shall mean and refer to the following exhibits, all of which are attached to and made a part of this Amended Plan for all purposes.

<b>Exhibit A</b>	Map of the Zone
<b>Exhibit B</b>	Non-Project Costs
<b>Exhibit C</b>	Project Costs
<b>Exhibit D</b>	Estimated Timeline of Incurred Costs
<b>Exhibit E</b>	Feasibility Study
<b>Exhibit F</b>	Debt Service Schedule
<b>Exhibit G</b>	Proposed Uses of the Property
<b>Exhibit H</b>	Map of the Public Improvements
<b>Exhibit I</b>	Legal Description of the Zone

## EXHIBIT A – MAP OF THE ZONE



## EXHIBIT B – NON-PROJECT COSTS

### Tax Increment Reinvestment Zone Number Two, City of Kyle, Texas Non-Project Costs

Base Taxable Value	Estimated New Value Added	Estimated Non-Project Costs <sup>1,2</sup>
\$ 121,367,726	406,142,623	\$ 227,820,000

(1) Shown for illustrative purposes only.

(2) Non-Project Costs estimated at approximately 80% of the new value added to the Zone.

## EXHIBIT C – PROJECT COSTS

### Tax Increment Reinvestment Zone Number Two, City of Kyle, Texas Estimated Timeline of Incurred Costs

Project Costs	
<b>Public Improvements</b>	
Capital Parks Repayment to City	\$ 20,000,000
Park Maintenance (w/ Inflation)	\$ 38,937,584
Other Expenses	\$ 8,839,557
TIRZ Bonds - Series 2023 (Retail Roads)	\$ 16,409,225
TIRZ Bonds - Series 2025	\$ 7,648,700
Public Improvements <sup>2</sup>	\$ 7,779,554
<b>Public Improvement Costs</b>	<b>\$ 99,614,620</b>
<b>Administrative Costs</b>	<b>\$ 499,945</b>
<b>Total Project Costs</b>	<b>\$ 100,114,565</b>

(1) To be determined at the discretion of the City Council and TIRZ Board.

(2) Proposed improvements include convention center (including hotel and related facilities), regional sports complex, and cultural facilities (including libraries and museums). Improvements will be selected based upon TIRZ Board recommendation and City Council approval.



## EXHIBIT D – ESTIMATED TIMELINE OF INCURRED COSTS

Tax Increment Reinvestment Zone Number Two, City of Kyle, Texas									
Estimated Timeline of Incurred Costs <sup>2</sup>									
Zone Year	FYE (9/30) <sup>1</sup>	Administrative Costs	Capital Parks Repayment to City	Park Maintenance (w/ Inflation)	Other Expenses	TIRZ Bonds - Series 2023 <sup>3</sup>	TIRZ Bonds - Series 2025 <sup>4</sup>	Public Improvements <sup>2,5</sup>	
1 - Base	2018								
6	2023	\$ 10,000	\$ 250,000	\$ 644,000	\$ 146,200	\$ -	\$ -	\$	580,869
7	2024	\$ 10,200	\$ 400,000	\$ 663,320	\$ 150,586	\$ 440,000	\$ -	\$	180,289
8	2025	\$ 10,404	\$ 450,000	\$ 683,220	\$ 155,104	\$ 475,000	\$ -	\$	207,664
9	2026	\$ 10,612	\$ 450,000	\$ 703,716	\$ 159,757	\$ 548,075	\$ 215,000	\$	-
10	2027	\$ 10,824	\$ 450,000	\$ 724,828	\$ 164,549	\$ 577,025	\$ 264,700	\$	-
11	2028	\$ 11,041	\$ 475,000	\$ 746,573	\$ 169,486	\$ 574,050	\$ 261,400	\$	-
12	2029	\$ 11,262	\$ 500,000	\$ 768,970	\$ 174,570	\$ 575,800	\$ 253,100	\$	-
13	2030	\$ 11,487	\$ 500,000	\$ 792,039	\$ 179,808	\$ 577,000	\$ 265,100	\$	-
14	2031	\$ 11,717	\$ 525,000	\$ 815,800	\$ 185,202	\$ 572,650	\$ 261,200	\$	-
15	2032	\$ 11,951	\$ 550,000	\$ 840,274	\$ 190,758	\$ 573,025	\$ 257,300	\$	-
16	2033	\$ 12,190	\$ 550,000	\$ 865,482	\$ 196,481	\$ 572,850	\$ 253,400	\$	9,682
17	2034	\$ 12,434	\$ 575,000	\$ 891,447	\$ 202,375	\$ 577,125	\$ 254,500	\$	-
18	2035	\$ 12,682	\$ 600,000	\$ 918,190	\$ 208,446	\$ 575,575	\$ 255,300	\$	-
19	2036	\$ 12,936	\$ 600,000	\$ 945,736	\$ 214,700	\$ 573,475	\$ 255,800	\$	8,015
20	2037	\$ 13,195	\$ 625,000	\$ 974,108	\$ 221,141	\$ 575,825	\$ 256,000	\$	-
21	2038	\$ 13,459	\$ 625,000	\$ 1,003,331	\$ 227,775	\$ 577,350	\$ 255,900	\$	13,318
22	2039	\$ 13,728	\$ 650,000	\$ 1,033,431	\$ 234,608	\$ 573,050	\$ 255,500	\$	10,138
23	2040	\$ 14,002	\$ 650,000	\$ 1,064,434	\$ 241,646	\$ 573,200	\$ 254,800	\$	27,782
24	2041	\$ 14,282	\$ 650,000	\$ 1,096,367	\$ 248,896	\$ 577,525	\$ 253,800	\$	41,511
25	2042	\$ 14,568	\$ 675,000	\$ 1,129,258	\$ 256,363	\$ 575,750	\$ 257,500	\$	31,590
26	2043	\$ 14,859	\$ 700,000	\$ 1,163,136	\$ 264,053	\$ 573,150	\$ 255,600	\$	28,031
27	2044	\$ 15,157	\$ 700,000	\$ 1,198,030	\$ 271,975	\$ 574,725	\$ 253,400	\$	45,520
28	2045	\$ 15,460	\$ 725,000	\$ 1,233,971	\$ 280,134	\$ 575,200	\$ 255,900	\$	34,318
29	2046	\$ 15,769	\$ 750,000	\$ 1,270,990	\$ 288,538	\$ 574,575	\$ 257,800	\$	24,710
30	2047	\$ 16,084	\$ 750,000	\$ 1,309,119	\$ 297,194	\$ 572,850	\$ 254,100	\$	46,682
31	2048	\$ 16,406	\$ 775,000	\$ 1,348,393	\$ 306,110	\$ 575,025	\$ 255,100	\$	34,916
32	2049	\$ 16,734	\$ 800,000	\$ 1,388,845	\$ 315,294	\$ 575,825	\$ 255,500	\$	24,971
33	2050	\$ 17,069	\$ 800,000	\$ 1,430,510	\$ 324,752	\$ 575,250	\$ 255,300	\$	41,832
34	2051	\$ 17,410	\$ 800,000	\$ 1,473,425	\$ 334,495	\$ 573,300	\$ 254,500	\$	60,477
35	2052	\$ 17,758	\$ 800,000	\$ 1,517,628	\$ 344,530	\$ 574,975	\$ 258,100	\$	70,888
36	2053	\$ 18,114	\$ 800,000	\$ 1,563,157	\$ 354,866	\$ -	\$ 255,800	\$	663,620
37	2054	\$ 18,476	\$ 850,000	\$ 1,610,052	\$ 365,512	\$ -	\$ 252,900	\$	631,728
38	2055	\$ 18,845	\$ -	\$ 1,658,353	\$ 376,477	\$ -	\$ 254,400	\$	1,495,166
39	2056	\$ 19,222	\$ -	\$ 1,708,104	\$ 387,771	\$ -	\$ -	\$	1,764,209
40	2057	\$ 19,607	\$ -	\$ 1,759,347	\$ 399,405	\$ -	\$ -	\$	1,701,632
<b>Total</b>		<b>\$ 499,945</b>	<b>\$ 20,000,000</b>	<b>\$ 38,937,584</b>	<b>\$ 8,839,557</b>	<b>\$ 16,409,225</b>	<b>\$ 7,648,700</b>	<b>\$</b>	<b>7,779,554</b>
<b>Footnotes</b>									
(1) As provided by City's Financial Advisor in model dated 02/06/2023.									
(2) As determined by the City Council and TIRZ Board.									
(3) Represents the debt service on the TIRZ Bond - Series 2023, as shown on <b>Exhibit F</b> .									
(4) Represents the debt service on the TIRZ Bond - Series 2025, as shown on <b>Exhibit F</b> .									
(5) Represents TIRZ Revenue available for additional Public Improvements.									

EXHIBIT E – FEASIBILITY STUDY

Tax Increment Reinvestment Zone Number 2, City of Kyle, Texas																
Feasibility Study																
Zone Year	FYE (9/30) <sup>1</sup>	Growth/ Year <sup>1</sup>	New Taxable Value	Incremental Value <sup>1</sup>	City TIRZ Increment <sup>1</sup>			City Retained Revenue Annual	County TIRZ Increment <sup>1,2</sup>			County Retained Annual	Total TIRZ Contribution <sup>1</sup>		Total Retained Revenue	
					Rate	%	Annual		Rate	%	Annual		Annual	Annual	Cumulative	Annual
1 - Base	2018		\$ 121,367,726													
6	2023	5%	\$ 527,510,349	\$ 406,142,623	\$ 0.5082	50%	\$ 1,032,008	\$ 1,032,008	\$ 0.2950	50%	\$ 599,060	\$ 599,060	\$ 1,631,069	\$ 1,631,069	\$ 1,631,069	\$ 1,631,069
7	2024	5%	\$ 547,817,480	\$ 426,449,754	\$ 0.5700	50%	\$ 1,215,382	\$ 1,215,382	\$ 0.2950	50%	\$ 629,013	\$ 629,013	\$ 1,844,395	\$ 3,475,464	\$ 1,844,395	\$ 3,475,464
8	2025	5%	\$ 569,139,968	\$ 447,772,242	\$ 0.5900	50%	\$ 1,320,928	\$ 1,320,928	\$ 0.2950	50%	\$ 660,464	\$ 660,464	\$ 1,981,392	\$ 5,456,856	\$ 1,981,392	\$ 5,456,856
9	2026	5%	\$ 591,528,580	\$ 470,160,854	\$ 0.5900	50%	\$ 1,386,975	\$ 1,386,975	\$ 0.2950	50%	\$ 693,487	\$ 693,487	\$ 2,080,462	\$ 7,537,318	\$ 2,080,462	\$ 7,537,318
10	2027	5%	\$ 615,036,623	\$ 493,668,897	\$ 0.5900	50%	\$ 1,456,323	\$ 1,456,323	\$ 0.2950	50%	\$ 728,162	\$ 728,162	\$ 2,184,485	\$ 9,721,803	\$ 2,184,485	\$ 9,721,803
11	2028	2%	\$ 624,910,001	\$ 503,542,275	\$ 0.5900	50%	\$ 1,485,450	\$ 1,485,450	\$ 0.2950	50%	\$ 742,725	\$ 742,725	\$ 2,228,175	\$ 11,949,977	\$ 2,228,175	\$ 11,949,977
12	2029	2%	\$ 634,980,846	\$ 513,613,120	\$ 0.5900	50%	\$ 1,515,159	\$ 1,515,159	\$ 0.2950	50%	\$ 757,579	\$ 757,579	\$ 2,272,738	\$ 14,222,715	\$ 2,272,738	\$ 14,222,715
13	2030	2%	\$ 645,253,108	\$ 523,885,382	\$ 0.5900	50%	\$ 1,545,462	\$ 1,545,462	\$ 0.2950	50%	\$ 772,731	\$ 772,731	\$ 2,318,193	\$ 16,540,908	\$ 2,318,193	\$ 16,540,908
14	2031	2%	\$ 655,730,816	\$ 534,363,090	\$ 0.5900	50%	\$ 1,576,371	\$ 1,576,371	\$ 0.2950	50%	\$ 788,186	\$ 788,186	\$ 2,364,557	\$ 18,905,465	\$ 2,364,557	\$ 18,905,465
15	2032	2%	\$ 666,418,078	\$ 545,050,352	\$ 0.5900	50%	\$ 1,607,899	\$ 1,607,899	\$ 0.2950	50%	\$ 803,949	\$ 803,949	\$ 2,411,848	\$ 21,317,313	\$ 2,411,848	\$ 21,317,313
16	2033	2%	\$ 677,319,085	\$ 555,951,359	\$ 0.5900	50%	\$ 1,640,057	\$ 1,640,057	\$ 0.2950	50%	\$ 820,028	\$ 820,028	\$ 2,460,085	\$ 23,777,397	\$ 2,460,085	\$ 23,777,397
17	2034	2%	\$ 688,438,112	\$ 567,070,386	\$ 0.5900	50%	\$ 1,672,858	\$ 1,672,858	\$ 0.2950	50%	\$ 836,429	\$ 836,429	\$ 2,509,286	\$ 26,286,684	\$ 2,509,286	\$ 26,286,684
18	2035	2%	\$ 699,779,520	\$ 578,411,794	\$ 0.5900	50%	\$ 1,706,315	\$ 1,706,315	\$ 0.2950	50%	\$ 853,157	\$ 853,157	\$ 2,559,472	\$ 28,846,156	\$ 2,559,472	\$ 28,846,156
19	2036	2%	\$ 711,347,756	\$ 589,980,030	\$ 0.5900	50%	\$ 1,740,441	\$ 1,740,441	\$ 0.2950	50%	\$ 870,221	\$ 870,221	\$ 2,610,662	\$ 31,456,818	\$ 2,610,662	\$ 31,456,818
20	2037	2%	\$ 723,147,356	\$ 601,779,630	\$ 0.5900	50%	\$ 1,775,250	\$ 1,775,250	\$ 0.2950	50%	\$ 887,625	\$ 887,625	\$ 2,662,875	\$ 34,119,693	\$ 2,662,875	\$ 34,119,693
21	2038	2%	\$ 735,182,949	\$ 613,815,223	\$ 0.5900	50%	\$ 1,810,755	\$ 1,810,755	\$ 0.2950	50%	\$ 905,377	\$ 905,377	\$ 2,716,132	\$ 36,835,825	\$ 2,716,132	\$ 36,835,825
22	2039	2%	\$ 747,459,253	\$ 626,091,527	\$ 0.5900	50%	\$ 1,846,970	\$ 1,846,970	\$ 0.2950	50%	\$ 923,485	\$ 923,485	\$ 2,770,455	\$ 39,606,280	\$ 2,770,455	\$ 39,606,280
23	2040	2%	\$ 759,981,084	\$ 638,613,358	\$ 0.5900	50%	\$ 1,883,909	\$ 1,883,909	\$ 0.2950	50%	\$ 941,955	\$ 941,955	\$ 2,825,864	\$ 42,432,144	\$ 2,825,864	\$ 42,432,144
24	2041	2%	\$ 772,753,351	\$ 651,385,625	\$ 0.5900	50%	\$ 1,921,588	\$ 1,921,588	\$ 0.2950	50%	\$ 960,794	\$ 960,794	\$ 2,882,381	\$ 45,314,525	\$ 2,882,381	\$ 45,314,525
25	2042	2%	\$ 785,781,064	\$ 664,413,338	\$ 0.5900	50%	\$ 1,960,019	\$ 1,960,019	\$ 0.2950	50%	\$ 980,010	\$ 980,010	\$ 2,940,029	\$ 48,254,554	\$ 2,940,029	\$ 48,254,554
26	2043	2%	\$ 799,069,330	\$ 677,701,604	\$ 0.5900	50%	\$ 1,999,220	\$ 1,999,220	\$ 0.2950	50%	\$ 999,610	\$ 999,610	\$ 2,998,830	\$ 51,253,384	\$ 2,998,830	\$ 51,253,384
27	2044	2%	\$ 812,623,362	\$ 691,255,636	\$ 0.5900	50%	\$ 2,039,204	\$ 2,039,204	\$ 0.2950	50%	\$ 1,019,602	\$ 1,019,602	\$ 3,058,806	\$ 54,312,190	\$ 3,058,806	\$ 54,312,190
28	2045	2%	\$ 826,448,475	\$ 705,080,749	\$ 0.5900	50%	\$ 2,079,988	\$ 2,079,988	\$ 0.2950	50%	\$ 1,039,994	\$ 1,039,994	\$ 3,119,982	\$ 57,432,173	\$ 3,119,982	\$ 57,432,173
29	2046	2%	\$ 840,550,090	\$ 719,182,364	\$ 0.5900	50%	\$ 2,121,588	\$ 2,121,588	\$ 0.2950	50%	\$ 1,060,794	\$ 1,060,794	\$ 3,182,382	\$ 60,614,555	\$ 3,182,382	\$ 60,614,555
30	2047	2%	\$ 854,933,737	\$ 733,566,011	\$ 0.5900	50%	\$ 2,164,020	\$ 2,164,020	\$ 0.2950	50%	\$ 1,082,010	\$ 1,082,010	\$ 3,246,030	\$ 63,860,584	\$ 3,246,030	\$ 63,860,584
31	2048	2%	\$ 869,605,058	\$ 748,237,332	\$ 0.5900	50%	\$ 2,207,300	\$ 2,207,300	\$ 0.2950	50%	\$ 1,103,650	\$ 1,103,650	\$ 3,310,950	\$ 67,171,534	\$ 3,310,950	\$ 67,171,534
32	2049	2%	\$ 884,569,804	\$ 763,202,078	\$ 0.5900	50%	\$ 2,251,446	\$ 2,251,446	\$ 0.2950	50%	\$ 1,125,723	\$ 1,125,723	\$ 3,377,169	\$ 70,548,704	\$ 3,377,169	\$ 70,548,704
33	2050	2%	\$ 899,833,846	\$ 778,466,120	\$ 0.5900	50%	\$ 2,296,475	\$ 2,296,475	\$ 0.2950	50%	\$ 1,148,238	\$ 1,148,238	\$ 3,444,713	\$ 73,993,416	\$ 3,444,713	\$ 73,993,416
34	2051	2%	\$ 915,403,168	\$ 794,035,442	\$ 0.5900	50%	\$ 2,342,405	\$ 2,342,405	\$ 0.2950	50%	\$ 1,171,202	\$ 1,171,202	\$ 3,513,607	\$ 77,507,023	\$ 3,513,607	\$ 77,507,023
35	2052	2%	\$ 931,283,877	\$ 809,916,151	\$ 0.5900	50%	\$ 2,389,253	\$ 2,389,253	\$ 0.2950	50%	\$ 1,194,626	\$ 1,194,626	\$ 3,583,879	\$ 81,090,902	\$ 3,583,879	\$ 81,090,902
36	2053	2%	\$ 947,482,200	\$ 826,114,474	\$ 0.5900	50%	\$ 2,437,038	\$ 2,437,038	\$ 0.2950	50%	\$ 1,218,519	\$ 1,218,519	\$ 3,655,557	\$ 84,746,458	\$ 3,655,557	\$ 84,746,458
37	2054	2%	\$ 964,004,490	\$ 842,636,764	\$ 0.5900	50%	\$ 2,485,778	\$ 2,485,778	\$ 0.2950	50%	\$ 1,242,889	\$ 1,242,889	\$ 3,728,668	\$ 88,475,126	\$ 3,728,668	\$ 88,475,126
38	2055	2%	\$ 980,857,225	\$ 859,489,499	\$ 0.5900	50%	\$ 2,535,494	\$ 2,535,494	\$ 0.2950	50%	\$ 1,267,747	\$ 1,267,747	\$ 3,803,241	\$ 92,278,367	\$ 3,803,241	\$ 92,278,367
39	2056	2%	\$ 998,047,015	\$ 876,679,289	\$ 0.5900	50%	\$ 2,586,204	\$ 2,586,204	\$ 0.2950	50%	\$ 1,293,102	\$ 1,293,102	\$ 3,879,306	\$ 96,157,673	\$ 3,879,306	\$ 96,157,673
40	2057	2%	\$ 1,015,580,601	\$ 894,212,875	\$ 0.5900	50%	\$ 2,637,928	\$ 2,637,928	\$ 0.2950	50%	\$ 1,318,964	\$ 1,318,964	\$ 3,956,892	\$ 100,114,565	\$ 3,956,892	\$ 100,114,565
Total							\$ 66,673,458	\$ 66,673,458			\$ 33,441,107	\$ 33,441,107	\$ 100,114,565		\$ 100,114,565	
Assumptions								Footnotes								
Base Taxable Value				\$ 121,367,726				(1) As provided by City's Financial Advisor in model dated 03/31/2023.								
City Tax Rate				\$ 0.5082000				(2) County has not yet agreed to participate from years 2039-2057, and are								
County Tax Rate				\$ 0.2950000				shown for illustrative purposes only.								

## EXHIBIT F – DEBT SERVICE SCHEDULE

City of Kyle, Texas TIRZ #2 Proforma Debt Capacity Analysis Based Upon \$527,510,349 TIRZ #2 Value April 10, 2023																			
Taxable Assessed Value Assumptions					TIRZ #2 Structural Assumptions					TIRZ #2 Expenditure Assumptions									
TY 2022/FY 2023 Certified Values: \$527,510,349 (all ARB is settled, per HCAD on 1/26/23)					City/County Participation Rates: 50%					City Capital Expenditures for Parks: \$ 20,000,000									
Less: TY 2018/ FY 2019 Base Values: \$121,367,726					Original TIRZ #2 Termination Date: 12/31/2037					Amortization (years): 30									
TY 2022/ FY 2023 Increment: \$406,142,623					Amended TIRZ #2 Termination Date: 12/31/2056					Annual Repayment to City: Varies									
Growth Rate through 2027: 5%										Annual Park Maintenance Expense: \$644,000									
Growth Rate after 2027: 2%										Other Expenses: \$146,200									
										Inflation Growth Rate: 3%									
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R		
FYE (9/30)	TIRZ #2 Incremental Value	City of Kyle Tax Rate	City TIRZ #2 Revenues (50%) (B x C / 100 x .5)	Hays County Tax Rate	County TIRZ #2 Revenues (50%) (E x F / 100 x .5)	Projected TIRZ #2 Revenues (D + F)	Less: Annual Capital Parks Repayment to City	Less: Annual Park Maintenance (w/ Inflation)	Less: Other Expenses (w/ Inflation)	Available For Debt Service (G - H - I - J)	\$8,000,000 Series 2023 <sup>(1)</sup>	\$3,500,000 Series 2025 <sup>(2)</sup>	\$11,500,000 Total Debt Service	Maximum Annual Debt Service (Max L or N)	Additional Bonds Test Coverage (D / O) > 1.25X	Debt Service Coverage Ratio <sup>(3)</sup> (D / N)	Excess Capacity After City Reimbursements (K - N)		
2023	\$ 406,142,623	\$ 0.5082	\$ 1,032,008	\$ 0.2950	\$ 599,060	\$ 1,631,069	\$ 250,000	\$ 644,000	\$ 146,200	\$ 590,869				\$ 577,525	N/A	N/A	\$ 590,869		
2024	426,449,754	0.5700	1,215,382	0.2950	629,013	1,844,395	400,000	663,320	150,586	630,489	\$ 440,000		\$ 440,000	577,525	1.79X	2.76X	190,489		
2025	447,772,242	0.5900	1,320,928	0.2950	660,464	1,981,392	450,000	683,220	155,104	693,069			475,000	577,000	1.44X	2.78X	218,069		
2026	470,160,854	0.5900	1,386,975	0.2950	693,487	2,080,462	450,000	703,716	159,757	766,989	\$ 440,000	\$ 215,000	763,075	842,100	1.57X	1.82X	3,914		
2027	493,668,897	0.5900	1,456,323	0.2950	728,162	2,184,485	450,000	724,828	164,549	845,108			777,025	842,100	1.65X	1.73X	3,383		
2028	503,542,275	0.5900	1,485,450	0.2950	742,725	2,228,175	475,000	746,573	169,486	837,116			774,050	842,100	1.73X	1.78X	1,666		
2029	513,613,120	0.5900	1,515,159	0.2950	757,579	2,272,738	500,000	768,970	174,570	829,198			775,800	842,100	1.76X	1.83X	298		
2030	523,885,382	0.5900	1,545,462	0.2950	772,731	2,318,193	500,000	792,039	179,808	846,346			777,000	842,100	1.82X	1.84X	4,246		
2031	534,363,090	0.5900	1,576,371	0.2950	788,186	2,364,557	525,000	815,800	185,202	838,555			772,650	842,100	1.85X	1.89X	4,705		
2032	545,050,352	0.5900	1,607,899	0.2950	803,949	2,411,848	550,000	840,274	190,758	830,816			773,025	842,100	1.89X	1.94X	491		
2033	555,951,359	0.5900	1,640,057	0.2950	820,028	2,460,085	550,000	865,482	196,481	848,122			772,850	842,100	1.93X	1.98X	21,872		
2034	567,070,386	0.5900	1,672,858	0.2950	836,429	2,509,286	575,000	891,447	202,375	840,465			777,125	842,100	1.97X	2.01X	8,840		
2035	578,411,794	0.5900	1,706,315	0.2950	853,157	2,559,472	600,000	918,190	208,446	832,836			775,575	842,100	2.01X	2.05X	1,961		
2036	589,980,030	0.5900	1,740,441	0.2950	870,221	2,610,662	600,000	945,736	214,700	850,226			773,475	842,100	2.05X	2.10X	20,951		
2037	601,779,630	0.5900	1,775,250	0.2950	887,625	2,662,875	625,000	974,108	221,141	842,626			775,825	842,100	2.09X	2.13X	10,801		
2038	613,815,223	0.5900	1,810,755	0.2950	905,377	2,716,132	625,000	1,003,331	227,775	860,027			777,350	842,100	2.13X	2.17X	26,777		
2039	626,091,527	0.5900	1,846,970	0.2950	923,485	2,770,455	650,000	1,033,431	234,608	852,416			773,050	842,100	2.17X	2.23X	23,866		
2040	638,613,358	0.5900	1,883,909	0.2950	941,955	2,825,864	650,000	1,064,434	241,646	869,784			773,200	842,100	2.22X	2.28X	41,784		
2041	651,385,625	0.5900	1,921,588	0.2950	960,794	2,882,381	650,000	1,096,367	248,896	887,119			777,525	842,100	2.26X	2.31X	55,794		
2042	664,413,338	0.5900	1,960,019	0.2950	980,010	2,940,029	675,000	1,129,258	256,363	879,409			775,750	842,100	2.31X	2.35X	46,159		
2043	677,701,604	0.5900	1,999,220	0.2950	999,610	2,998,830	700,000	1,163,136	264,053	871,641			773,150	842,100	2.35X	2.41X	42,891		
2044	691,255,636	0.5900	2,039,204	0.2950	1,019,602	3,058,806	700,000	1,198,030	271,975	888,801			774,725	842,100	2.40X	2.46X	60,676		
2045	705,080,749	0.5900	2,079,988	0.2950	1,039,994	3,119,982	725,000	1,233,971	280,134	880,877			775,200	842,100	2.45X	2.50X	49,777		
2046	719,182,364	0.5900	2,121,588	0.2950	1,060,794	3,182,382	750,000	1,270,990	288,538	872,854			774,575	842,100	2.50X	2.55X	40,479		
2047	733,566,011	0.5900	2,164,020	0.2950	1,082,010	3,246,030	750,000	1,309,119	297,194	889,716			772,850	842,100	2.55X	2.62X	62,766		
2048	748,237,332	0.5900	2,207,300	0.2950	1,103,650	3,310,950	775,000	1,348,393	306,110	881,447			775,025	842,100	2.60X	2.66X	51,322		
2049	763,202,078	0.5900	2,251,446	0.2950	1,125,723	3,377,169	800,000	1,388,845	315,294	873,031			775,825	842,100	2.65X	2.71X	41,706		
2050	778,466,120	0.5900	2,296,475	0.2950	1,148,238	3,444,713	800,000	1,430,510	324,752	889,450			775,250	842,100	2.70X	2.77X	58,900		
2051	794,035,442	0.5900	2,342,405	0.2950	1,171,202	3,513,607	800,000	1,473,425	334,495	905,686			773,300	842,100	2.76X	2.83X	77,886		
2052	809,916,151	0.5900	2,389,253	0.2950	1,194,626	3,583,879	800,000	1,517,628	344,530	921,721			774,975	842,100	2.81X	2.87X	88,646		
2053	826,114,474	0.5900	2,437,038	0.2950	1,218,519	3,655,557	800,000	1,563,157	354,866	937,534			775,800	842,100	2.86X	2.93X	681,734		
2054	842,636,764	0.5900	2,485,778	0.2950	1,242,889	3,728,668	850,000	1,610,052	365,512	903,104			775,900	842,100	2.91X	2.98X	650,204		
2055	859,489,499	0.5900	2,535,494	0.2950	1,267,747	3,803,241	-	1,658,353	376,477	1,768,411			776,400	842,100	2.96X	3.03X	1,514,011		
2056	876,679,289	0.5900	2,586,204	0.2950	1,293,102	3,879,306	-	1,708,104	387,771	1,783,431			776,400	842,100	3.01X	3.08X	1,783,431		
2057	894,212,875	0.5900	2,637,928	0.2950	1,318,964	3,956,892	-	1,759,347	399,405	1,798,140			776,400	842,100	3.06X	3.13X	1,798,140		
Total			\$ 66,673,458				\$ 20,000,000				\$ 16,409,225	\$ 7,648,700	\$ 23,294,825						

<sup>(1)</sup> Preliminary, subject to change. Interest calculated at 5.50% for illustrative purposes only. Represents the funding of street improvements within TIRZ #2 to be financed in summer 2023.

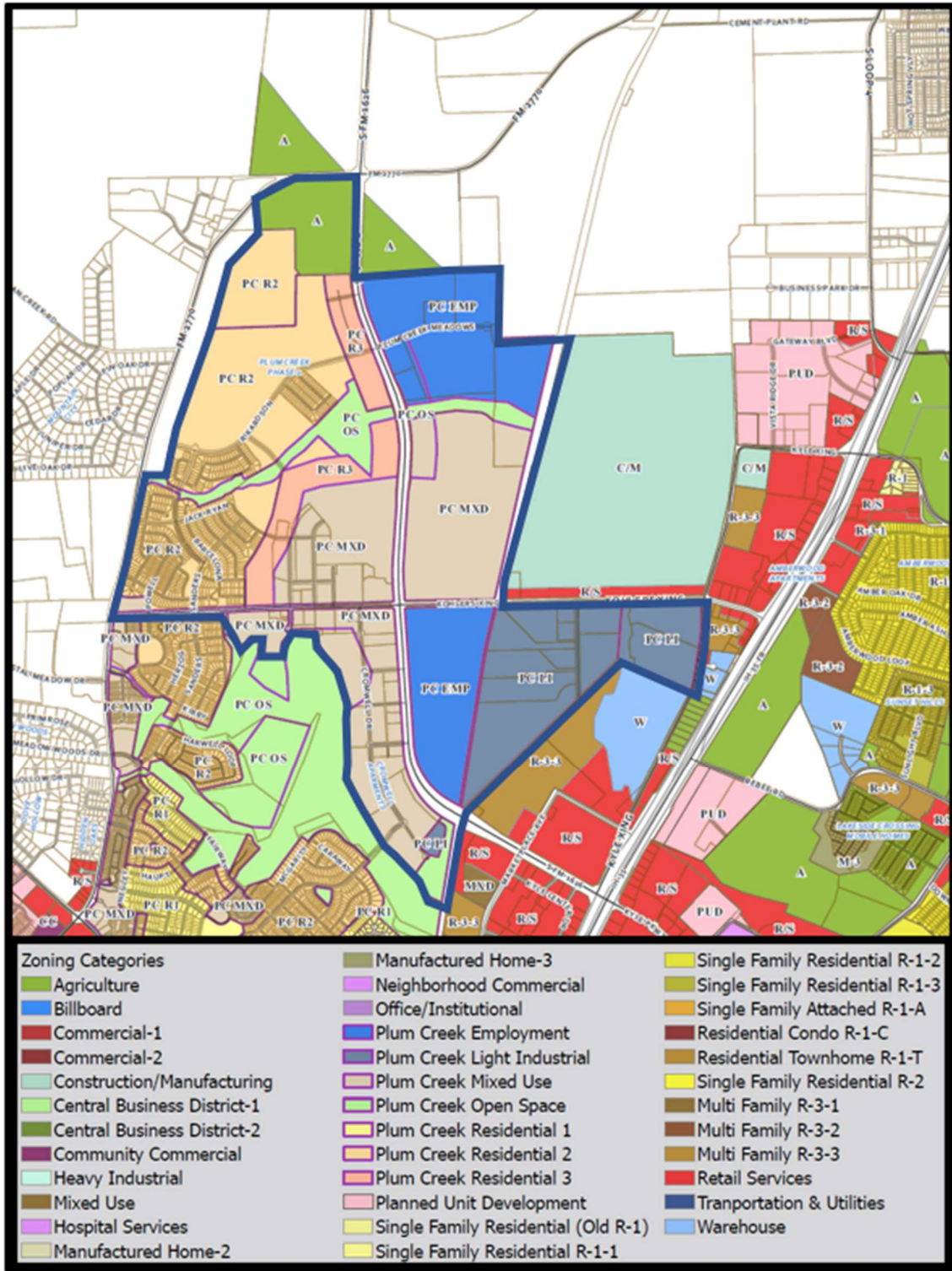
<sup>(2)</sup> Preliminary, subject to change. Interest calculated at 6.00% for illustrative purposes only.

<sup>(3)</sup> Debt service coverage is based upon the City's pledged tax increment only. Subject to change.

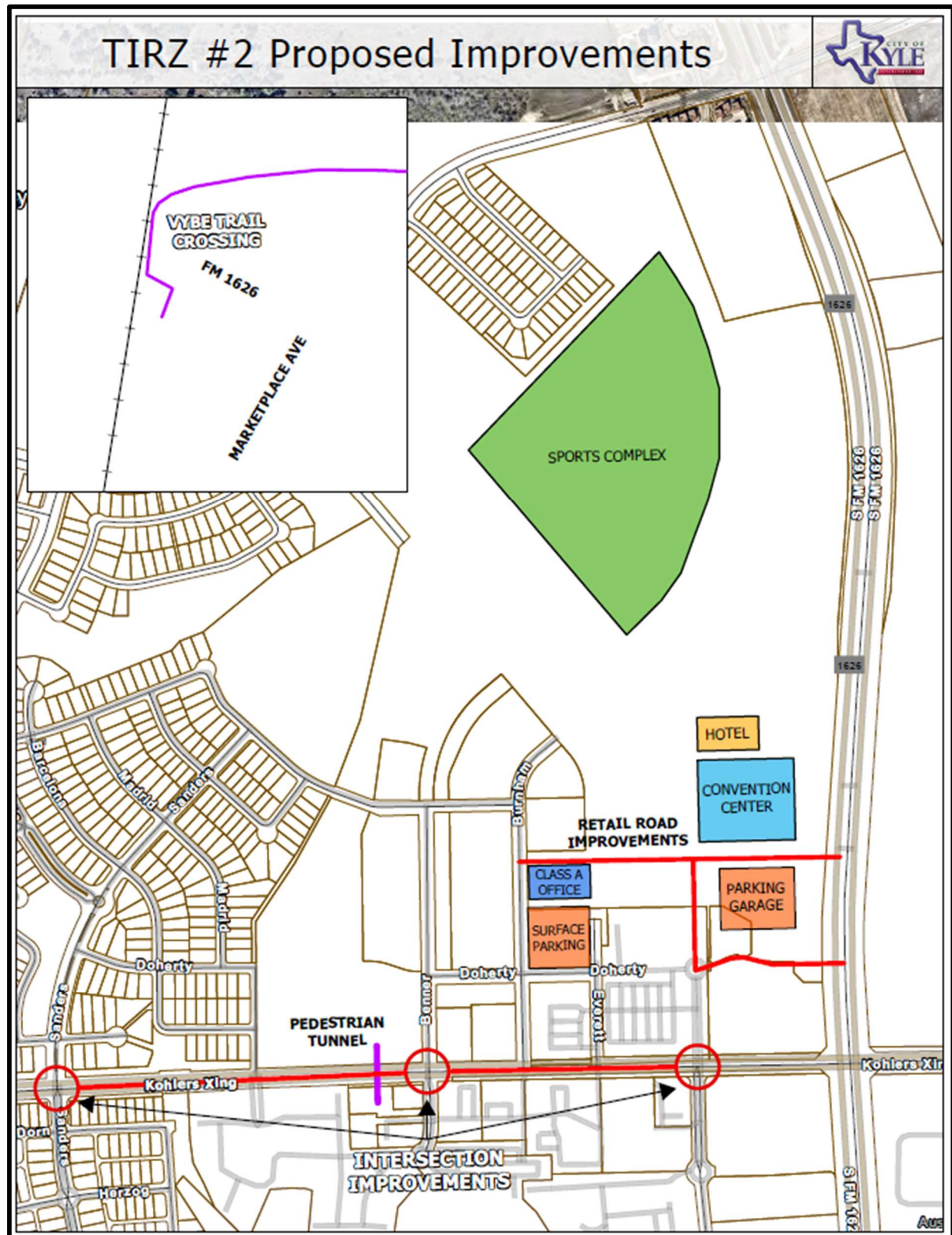




## EXHIBIT G – PROPOSED USES OF THE PROPERTY



## EXHIBIT H – MAP OF THE PUBLIC IMPROVEMENTS





## EXHIBIT I – LEGAL DESCRIPTION OF THE ZONE

### Boundary Description Tax Increment Reinvestment Zone Number 2

THIS IS A DESCRIPTION OF A TRACT OF LAND CONTAINING APPROXIMATELY 1482.9 ACRES OUT OF THE JESSE DAY SURVEYS ABSTRACTS NOS. 152 AND 159, THE JOHN KING SURVEY NO. 20, THE MORTON MCCARVER SURVEY ABSTRACT NO. 10, THE THOMAS G. ALLEN SURVEY NO. 26, THE HENRY LOLLER SURVEY NO. 19, ABSTRACT 290 AND THE JOHN COOPER SURVEY NO. 13 IN HAYS COUNTY, TEXAS, TO BE USED FOR POLITICAL MEANS. THIS WAS NOT SURVEYED ON THE GROUND AND IS A BOUNDS DESCRIPTION ONLY ASSEMBLED FROM THE BEST AVAILABLE EVIDENCE INCLUDING DEED RESEARCH AND APPRAISAL DISTRICT MAPS. REFERENCES TO ALL DOCUMENTS OF RECORD REFER TO THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. THIS TYPE OF DESCRIPTION IS ALLOWED UNDER THE TEXAS ADMINISTRATIVE CODE, PART 29, CHAPTER 663, SUBCHAPTER B, RULE 663.21 AND IS FURTHER DESCRIBED AS FOLLOWS:

BEGINNING at the southwest corner of the intersection of FM 2770 and S FM 1626, same being the most northerly corner of the 142.38 acre parcel described in four tracts in a Special Warranty Deed to Texas Lehigh Cement Company recorded in Book 609 Page 843 of the Official Public Records of Hays County, Texas (Tax Parcel Nos. R 11247, R148425, and R148426);

THENCE, with the southerly right-of-way line of FM 2770, in a westerly direction to the Kyle city limits as it crosses tract 2 of the 142.38 acre parcel owned by Texas Lehigh Cement Company;

THENCE, with the Kyle city limit line, through the afore-mentioned Texas Lehigh Cement parcel to the intersection with a 51.48 acre tract, the same being more particularly described in Special Warranty Deed with Vendors Lien to Lennar Homes of Texas Land & Construction LTD recorded in Document Number 16029226 of the Official Public Records of Hays County, Texas (Tax Parcel No. R146069);

THENCE, continuing along the Kyle city limits with the western boundary of the Lennar Homes of Texas Land & Construction LTD tract, through a 308 acre tract and a 10.87 acre, the same being more particularly described in Special Warranty Deed with Vendors Lien to Lennar Homes of Texas Land & Construction LTD recorded in Document Number 16029226 of the Official Public Records of Hays County, Texas (Tax Parcel Nos. R146068 and R151283);

THENCE, along western right-of-way line FM 2770 and the northern right-of-way of Kohlers Crossing, also being the western and southern boundary of the 3.55 acre tract of Lot 1, Block A of Plum Creek Phase 2 Northwest Business Park;

THENCE, continuing along the north right-of-way of Kohlers Crossing, also being the southern boundary of the Lennar Homes of Texas Land & Construction LTD 308 acre and 10.87 acre tracts;

THENCE, crossing the Kohlers Crossing right-of-way at the northwestern corner of the 14.066 acre tract, being more particularly described as Lot 2 Block A of Plum Creek Phase 1 Section 6F, and continuing along the western and southern boundary of said tract;

THENCE, across the southern end of the right-of-way of Benner and the southern boundary of Lots 1 and 2, Block A of Plum Creek Phase 1 Section 12A;

THENCE, along the southwestern boundary of Lot 2, Block A of Plum Creek Phase 1 Section 12B;

THENCE, along the western boundary of Lot 1, Block A of Plum Creek Phase 1 Section 11J;

THENCE, along the western boundary of Lot 1, Block A of Plum Creek Phase 1 Section 11F;

THENCE, along the western boundary of Lot 1, Block A of Plum Creek Phase 1 Section 11E-2;

THENCE, along the southwestern boundary of Lot 1, Block A of Plum Creek Phase 1 Section 11E-1;

THENCE, crossing the Sampson Rd right-of-way and continuing along the southwestern boundary of Lot 1, Block A of Plum Creek Phase 1 Section 11D;

THENCE, along the southwestern boundary of Lot 2, Block A of Plum Creek Phase 1 Section 11C, turning north along the eastern boundary of said lot also being the western right-of-way of the Union Pacific Railroad;

THENCE, crossing the FM 1626 right-of-way and the Railroad right-of-way to the southern corner and southeastern boundary of the 0.04 acre parcel being more particularly described as Tract 19 in the Deed Without Warranty to Mountain Plum LTD in Book 2047 Page 133 of the Official Public Records of Hays County, Texas (Tax Parcel No. R134955);

THENCE, continuing along the southeastern border of the 105.188 acre tract being a portion of that 1062.87 acre tract more particularly described in Book 2047, Page 133 of the Official Public Records of Hays County, Texas (Tax Parcel Nos. R13837, R134155, and R134161);

THENCE, along the southeastern boundary of the Marketplace Ave right-of-way as described in the subdivision plat Plum Creek Phase 1 Lot 1 Block A Business Park;

THENCE, along the southeastern boundary of the 69.725 acre tract being more particularly described in the Deed Without Warranty to Mountain Plum LTD in Book 2047 Page 133 of the Official Public Records of Hays County, Texas (Tax Parcel Nos. R12691, R13408, R13851, R134156, and R134159);

THENCE, continuing along the southern and eastern borders of the lots described in Majestic Industrial Park with the east boundary also being the western right-of-way line of Kyle Crossing, and continuing along the northern boundary of lots 1 and 3 of Majestic Industrial Park, being the same as the southern boundary of Kohlers Crossing right-of-way;

THENCE, continuing along the southern right-of-way of Kohlers Crossing also being the northern boundaries of the afore-mentioned 69.725 acre parcel, Plum Creek Phase 1 Lot 1 Block A Business Park, and the afore-mentioned 105.188 acre parcel, crossing the Union Pacific railroad right-of-way to the northeast corner of Lot 1 Block A of Plum Creek Phase 1 Section 8;

THENCE, north along the western boundary of the Union Pacific Railroad right-of-way to the Kyle city limit line;

THENCE, leaving the railroad right-of-way, following the eastern and northern boundaries of the Kyle city limit line to the point where it intersects the 75 acre parcel being more particularly described in the Deed Without Warranty to Texas-Lehigh Cement Company in Book 609 Page 843 of the Official Public Records of Hays County, Texas (Tax Parcel Nos. R11237 and R127405);

THENCE, following the southern boundary of said 75 acre parcel westward to its intersection with the S FM 1626 right-of-way;

THENCE, crossing the FM 1626 right-of-way and following the western line of said right-of-way in a northerly direction to the BEGINNING for a total of 1482.9 acres, more or less.

~~THENCE, north along the western boundary of the Union Pacific Railroad right-of-way to the Kyle city limit line in the northeastern corner of the 146.736 acre tract being more particularly described in (need a deed reference, owner Mountain Plum LTD) (Tax Parcel No R109017 and R11227);~~

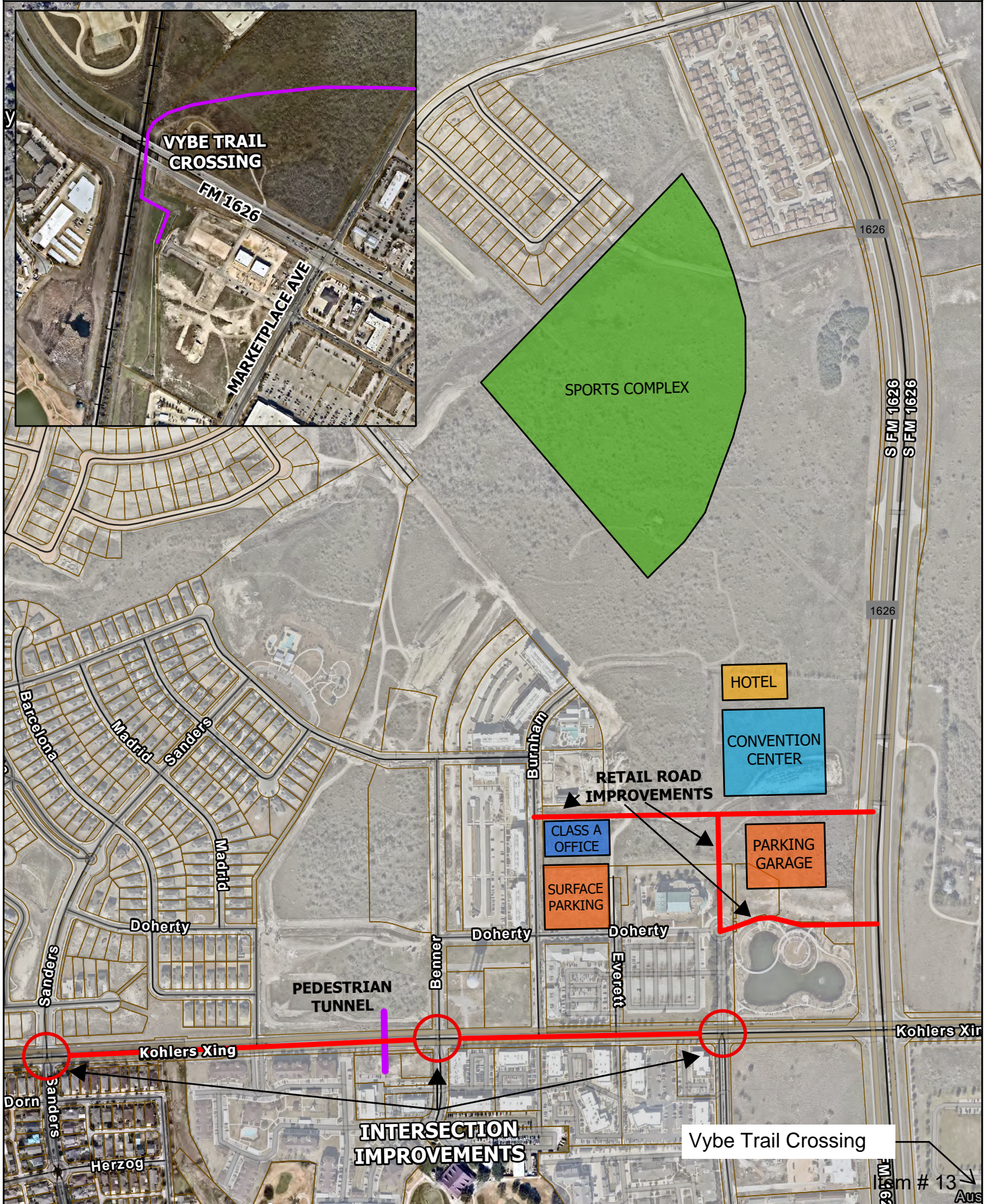
~~THENCE, leaving the railroad right-of-way, following the eastern and northern boundaries of the 146.736 acre parcel, crossing the FM 1626 right-of-way and following the western line of said right-of-way in a northerly direction to the BEGINNING for a total of 1482.9 acres, more or less.~~

The following is a list of Hays Central Appraisal District parcel ID numbers included in the TIRZ:

R102948, R102949, R111489, R11209, R11227, R124075, R124076, R124475, R12691, R127266, R127663, R130335, R130336, R130419, R130421, R130423, R130425, R132398, R132399, R132402, R132408, R13408, R134152, R134153, R134155, R134156, R134159, R134161, R135553, R137936, R138187, R138188, R138189, R138268, R138269, R138270, R138271, R138272, R138273, R138274, R138275, R13837, R13851, R140150, R143792, R144234, R144235, R144236, R144843, R144849, R146068, R146069, R147859, R147860, R147908, R148425, R148426, R151122, R151279, R151283, R151597, R151601, R151602, R151603, R152394, R152412, R155405, R155406, R156298, R156516, R88923, R109017, R11227, R124024, R124066, R124067, R124068, R124069, R124070, R124071, R127267, R130339, R130340, R156457, R156458, R156516, R88919, R88923, R134740. In the event of a conflict between this Exhibit and Exhibit B, Exhibit B shall control.



# TIRZ #2 Proposed Improvements







# CITY OF KYLE, TEXAS

## TIRZ No. 2 Transportation Improvement Design

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** Consider approval of a Transportation Improvement Design, Permitting and Construction Agreement with TIRZ No. 2 and Plum Creek Development Partners. ~  
*Paige Saenz, City Attorney*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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**ATTACHMENTS:**

**Description**

- ☐ TIRZ 2 Transportation Improvement Design

## Transportation Improvement Design, Permitting and Construction Agreement

This Transportation Improvement Design, Permitting and Construction Agreement (this "**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Kyle, Texas, a Texas home rule municipality (the "**City**"), Reinvestment Zone Number Two, City of Kyle, Texas ("**TIRZ #2**") and Plum Creek Development Partners, Ltd., a Texas limited partnership ("**Consultant Manager**") collectively referred to herein as the "**Parties**", for the purpose of setting forth their respective rights, obligations and understandings with respect to the design, permitting and construction of roadway, trail, and streetscape improvements and associated infrastructure improvements, being more particularly described in **Exhibit A** and depicted in **Exhibit A-1** (collectively, the "**Project**") located in the Uptown portion of the Plum Creek Planned Unit Development ("**Uptown District**").

WHEREAS: On December 18, 2021, including subsequent amendments, the City passed an ordinance authorizing the creation of a Tax Increment Investment Zone to fund the soft and hard construction costs of the Project; and

WHEREAS: Approximately 4.5564 acres of land will be conveyed for public right of way purposes by Consultant Manager to the City for the Project pursuant to that certain Infrastructure and Property Conveyance Agreement – Brick and Mortar District of even date herewith, by and between the City, Consultant Manager and Mountain Plum, Ltd.; and

WHEREAS: The Parties wish to proceed without delay with the design and permitting phase of the Project, including, the budgeting of the Project; engagement and management of consultants for the Project; design, engineering and construction plans for the Project; and permitting of the Project (the "**Design and Permitting Phase**"). Immediately following the Design and Permitting Phase, the Parties wish to proceed with the bidding of the project, selection of the Contractor (as hereinafter defined) and construction of the Project (the "**Construction Phase**"). The Parties have agreed that it is in the best interests of TIRZ #2 to retain Consultant Manager to advise TIRZ #2 on the Project's Design and Permitting Phase and Construction Phase; and

WHEREAS: Consultant Manager has engaged WGI, Inc. ("**WGI**") to design the Project and act as Project engineer under that certain Professional Services Agreement dated April 12, 2022 (the "**WGI Agreement**") in an amount not to exceed \$635,120.00 except as provided in the WGI Agreement (the "**Design Fee**"); and

WHEREAS: Consultant Manager, and adjacent property owners, benefit from this Agreement and the development of the Project because Consultant Manager, or affiliates thereof, is the developer for the Uptown District; additionally, the development of the Project in a manner that is consistent with the design for the Uptown District is beneficial to, and will enhance, Consultant Manager's and adjacent property owners' development of the Uptown District; and

WHEREAS: Consultant Manager has agreed to perform the below responsibilities listed in Section 1 without charge to the City;

WHEREAS: this Agreement is being entered pursuant to that certain Infrastructure and Property Conveyance Agreement – Brick and Mortar District of even date herewith ("**Infrastructure Agreement**") by and between the City, Consultant Manager and Mountain Plum, Ltd., a Texas limited partnership.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **Engagement and Duties of Consultant Manager.**

The City hereby retains Consultant Manager, at no compensation to Consultant Manager, to act on its behalf in the performance of the following design, permitting and construction duties:

a. Create a detailed hard cost (construction fees) and soft cost (Consultant fees) budget, including contingency, for the Project to be reviewed and approved by TIRZ #2 (the "**Budget**") including all anticipated Transportation Improvement Costs (as hereinafter defined). The Budget is estimated to be approximately \$8.0 million and must be approved by the City and TIRZ #2 before any further Design and Permitting Phase activities may occur, including the engagement of Consultants. The Consultant Manager may update the Budget as needed from time to time based on changed conditions, subject to approval by the City and TIRZ #2. TIRZ #2 and the City will not be responsible for paying any amounts that are not approved in the Budget.

b. Interview and select consultants (the "**Consultants**") and a general contractor (the "**Contractor**") and negotiate scope and fee of the Consultant's and General Contractor's work for the Project. The City and TIRZ #2 will approve the selection of the Consultants and Contractor, the scope of their work and fee they charge, such approval not to be unreasonably withheld, conditioned or delayed so long as such Consultants' and Contractor's fees are consistent with the Budget. Such Consultants may include a Project engineer, Project architect, Project designer, Project landscape architect, Project lighting designer and other consultants reasonably required to develop the overall design and engineering for the Project. Except as provided in Section 4 pertaining to the assignment of the WGI Agreement from Consultant Manager to the City, Consultants and Contractor shall be selected by Consultant Manager and, after approval of the Consultant by the City and TIRZ #2, retained by the City pursuant to the Consultant Contracts (as hereinafter defined) and Construction Contract (as hereinafter defined), as applicable. The Consultant and Contractor budgets shall be within the approved Budget. In the event that the Budget requires revision due to Consultants' and/or Contractor's scopes and fees, the Consultant Manager will promptly notify TIRZ #2 and the City and obtain approval by TIRZ #2 and the City before authorizing work outside of the approved Budget and scope of work, such approval not to be unreasonably withheld, conditioned or delayed.

c. Cause the Consultants and Contractor to identify and disclose in writing the following: (1) the relationships and/or any gifts identified in Section 176.006(a)(1)-(3), Texas Local Government Code that Consultants or Contractor may have with (in the case of a relationship) or may have given (in the case of a gift) City Council members, TIRZ #2 board members, the City Manager, the Assistant City Manager, the Finance Director, the City Attorney, and the Consultant Manager; and (2) conflicts of interests as required by Ordinance No. 518, as amended (the City's Ethics Ordinance); and complete Form 1295 (pursuant to HB 1295, as amended), at the time Consultants and/or Contractor are presented to TIRZ #2 for approval. The Consultant Contracts and Construction Contract will require Consultants and Contractor, as applicable, to identify and disclose such business relationships and conflicts of interest as they may arise from time to time during the design and construction of the Project. Consultant Manager shall further disclose in writing to TIRZ #2 any relationship or exchange of gifts described in Section 176.006(a)(1)-(3), Texas Local Government Code that Consultant Manager may have with respect to a Consultant or Contractor at the time that Consultant Manager recommends a Consultant or Contractor to TIRZ #2.

d. Prepare all contracts with Consultants with not-to-exceed amounts using the City's standard form, unless the City approves otherwise (each, a "**Consultant Contract**" and, collectively, the "**Consultant Contracts**"). In addition, Consultant Contracts shall be performance based, in that payments will be made based on percentage of completion of the applicable Consultant's work. Consultant Manager will obtain approval of TIRZ #2 of the not-to-exceed amounts. The Consultant Contracts shall provide for the City to own the deliverables upon the periodic payment of amounts due and owning under the applicable Consultant Contract and shall entitle the City to use such deliverables to continue the Project in the event this Agreement or any Consultant Contracts are terminated before completion of the Design and Permitting Phase. Copies of executed Consultant Contracts, together with any related amendments and/or addenda, shall be provided to TIRZ #2 upon request. The Consultant Contracts shall provide that the City, TIRZ #2, and Consultant Manager shall be named as an additional insured on the insurance policies required to be carried by Consultant under the applicable Consultant Contract and shall include the City, TIRZ #2, and the Consultant Manager as an indemnified party under the indemnity provision of the applicable Consultant Contract.

e. Prepare the contract with General Contractor (the "**Construction Contract**") in accordance with the guidelines included on **Exhibit B** attached hereto. A copy of the executed Construction Contract, together with any related amendments and/or addenda, shall be provided to TIRZ #2 upon request.

f. Provide a monthly status report to the City and TIRZ #2.

g. Review work performed by Consultants and Contractor, approve invoices and applications for payment submitted by Consultants and Contractor, and submit to the City and TIRZ #2 requests for payment of all Consultant invoices and Contractor applications for payment timely, to be paid by the City and TIRZ #2 within the timeframes

set forth in Section 2.f. below. Each payment application submitted by the Consultants shall include an assignment of the then-complete plans and/or deliverables to the City, as applicable.

h. Cause construction plans for the Project to be prepared and submitted to the City and TIRZ #2 for approval, such approval not to be unreasonably withheld, conditioned or delayed (as so approved, the **"Construction Plans"**).

i. Manage all hired Consultants' work related to the preparation of schematic design and design development drawings, construction drawings, specifications, cost estimating, and other plans necessary to achieve the vision of the Project. This includes reviewing and overseeing the quality and timeliness of the Consultants' work, alerting TIRZ #2 of any deficiencies in any Consultant's work, and recommending termination of Consultant Contracts by the City, if and as necessary. All Consultants' work must be of quality sufficient to support an application for a Site Development Permit to the City.

j. Manage the process of obtaining approval of the Construction Plans and associated permits from the City. In no event shall Consultant Manager be responsible for the payment of any permits (or fees associated therewith) required for the Project. If necessary, the Consultant Manager may break the Project into two or more different submittals to the City.

k. Perform the Design and Permitting Phase to the best of its ability, and without charge to TIRZ #2 for Consultant's Manager's Services; provided, however, that notwithstanding any provision herein to the contrary, the City shall be responsible for the costs to design, permit, install, and construct the Transportation Improvements, including without limitation, the hard construction costs; all advertising and other costs associated with public bidding and award of construction contracts; the cost of payment, performance, and maintenance bonds for the Transportation Improvements; surveying costs; the costs of subdivision construction permits and associated submission and inspection fees; project contingency; soils and material testing costs; the fees of the project engineer, a third party construction supervisor, other professional fees related to the design and construction of the Transportation Improvements, and any other necessary and reasonable out-of-pocket costs required in connection with the design, permitting, construction, inspection and completion of the Transportation Improvements (collectively, the **"Transportation Improvements Costs"**).

l. Advertise the Project for sealed, competitive bids in compliance with Chapter 252 and Chapter 271, Texas Local Government Code and Chapter 2269, Texas Government Code, including requirements for payment and performance bonds for the full cost of constructing the Transportation Improvements that comply with Chapter 2253, Texas Government Code and that name the City as the beneficiary under the payment and performance bonds, based on the Construction Plans, and recommend a qualified bidder/contractor to the City. Prior to bidding the Project, Consultant Manager

shall provide the City Engineering department with a copy of the documents and materials soliciting the bids, including but not limited to the notice to bidders, instructions to bidders, construction contracts, general, special and supplemental conditions, and technical specifications. The City Engineer will review the description of the Transportation Improvements for compliance with this Agreement. The Consultant Manager shall cause the Project engineer shall make any changes to the bid documents required by the City Engineer that do not comply with the terms of this Agreement. The Consultant Manager and the Project engineer will coordinate the receipt and opening of the bids with the City Engineer and will provide a copy of the bids and bid tabulations to the City Engineer for review and approval, such approval not to be unreasonably withheld, conditioned or delayed. Within fourteen (14) days after receipt of the bids, the City Engineer will notify Consultant Manager of the City's Engineer's approval or rejection of the bids and the City Engineer's and Project engineer's recommendation of the lowest responsible bidder/contractor. If Consultant Manager agrees with the City Engineer's and Project Engineer's recommendation, the bid will be submitted to the City Council with a recommendation for approval. If the City Council approves the bid, the City will enter into the Construction Contract with the approved bidder/contractor for the construction of the Transportation Improvements; provided, the Construction Contract shall not exceed the balance of the certificates of obligation or tax increment revenue bonds, as applicable, issued for the Project ("**Bonds**"). In the event lowest responsible bid exceeds the balance of the Bonds, the Parties shall reasonably cooperate to modify the scope of the Transportation Improvements so that the cost to construct the Transportation Improvements does not exceed the balance of the Bonds. In no event shall the City be required to enter into a Construction Contract that exceeds the balance of the Bonds.

m. Manage Contractor's work related to the construction of the Transportation Improvements in accordance with the Construction Plans. This includes reviewing and overseeing the quality and timeliness of Contractor's work, alerting TIRZ #2 of any deficiencies in Contractor's work, and recommending termination of the Construction Contract by the City, if and as necessary.

n. Perform the Construction Phase to the best of its ability, and without charge to TIRZ #2 for Consultant's Manager's Services; provided that in no event shall Consultant Manager be responsible for any Transportation Improvements Costs.

## 2. **City and TIRZ #2 Responsibilities During the Design and Permitting Phase.**

In order to support the Project, the City and TIRZ #2 shall:

a. Promptly review and reasonably approve the Budget as presented by Consultant Manager and found to be acceptable by the City and TIRZ #2, acting in their respective reasonable discretion.

b. Within thirty (30) days after approving the Budget, dedicate funds for the Project in accordance with the Infrastructure Agreement.

c. Promptly review and reasonably approve Consultants' scopes of service, not-to-exceed contract amounts, performance milestones, and deliverables provided by the Consultant Manager that are found to be acceptable by the City and TIRZ #2, acting in their respective reasonable discretion, and execute the Consultant Contracts.

d. Pay Consultants when and as required under the Consultant Contracts within fifteen (15) days following receipt by the City and TIRZ #2 of Consultant Manager's request and recommendation for payment, subject to Chapter 2251, Texas Government Code from the Bond proceeds.

e. Make reasonable efforts to assist Consultant Manager and the Consultants in obtaining any approvals necessary from the board of TIRZ #2 and/or from all applicable departments of the City, consistent with the City Charter and City ethics ordinance, to obtain the applicable permits for the Project.

f. Promptly review and approve the Construction Plans presented by Consultant Manager.

g. Execute the Construction Contract, and review construction draw requests from the Contractor submitted in accordance with the terms of the Construction Contract, which shall be provided no more frequently than once a month. Not later than 10 days after receipt of a request for payment, the City engineer shall review such requests and recommend the amount included in such requests to be paid. The City Engineer may reject a payment request for any reason set forth in the Construction Contract. Within 10 days after the City engineer's recommendation, the City shall then advance the amount so recommended by checks drawn on the Transportation Improvements Account payable to Contractor.

h. During the Construction Phase, to review, approve and sign necessary and appropriate change orders in a timely manner; to perform all inspections of the Transportation Improvements in a timely manner; and to approve the Transportation Improvements in a timely manner if constructed in accordance with the Construction Plans.

i. After completion of the installation of the public utility lines in accordance with applicable contracts and requirements to be constructed as part of the Project, to allow such lines to be connected to the City's utility systems to allow the testing of such Transportation Improvements as may be required for the final acceptance by the City.

3. **Timing of Design and Permitting Phase and Construction Phase.** The Parties shall each use good faith, commercially reasonable efforts with respect to items for which such Party is responsible in accordance with Section 2 above to (i) cause the Design and Permitting Phase to be completed within nine (9) months of execution of this Agreement; (ii) cause the Project to be bid, the Contractor to be selected and the Construction Contract to be executed within three (3) months following completion of the Design and Permitting Phase; (iii) cause a notice to proceed under the



Construction Contract to be issued within ten (10) days after the City's approval and execution of the Construction Contract; and (iv) cause the Construction Phase to be completed within the time period required pursuant to the Construction Contract.

4. **Approval of Project Engineer.** The City and TIRZ #2 hereby approve WGI as the engineer to design and act as Project engineer for the Project and the Design Fee, and approve the WGI Agreement and all of the terms, provisions and conditions set forth therein including, without limitation, the Design Fee . Pursuant to the WGI Agreement, Consultant shall cause WGI to design and obtain City approval of the construction plans for the Project (the "**Project Construction Plans**"). Within thirty (30) days of the date of receipt of the Bond proceeds, (i) Consultant Manager shall cause the WGI Agreement to be assigned to the City, together with any and all related rights, warranties, guaranties, assurances of performance and instruments of service (including the Project Construction Plans) accruing in favor of or to which Consultant Manager is entitled thereunder, and the City shall accept such assignment and shall assume all of the obligations of Consultant Manager under the WGI Agreement including, without limitation, the obligation to pay to WGI all amounts due thereunder arising on or after the date of such assignment; and (ii) the TIRZ #2 or the City, as applicable, shall reimburse Consultant Manager for all amounts paid by Consultant Manager to WGI pursuant to the WGI Agreement prior to the date of such assignment, and Consultant Manager shall provide the City with reasonable documentation of all such amounts paid.

5. **Compliance with Applicable Law.** The parties will work in good faith to cause the Project to be bid and administered in a manner that is compliant with Chapter 252, Texas Local Government Code and Subchapter C, Chapter 271, Texas Local Government Code, Chapter 2269, Texas Government Code, and the Infrastructure Agreement, and shall approve amendments to this Agreement and include terms in the Construction Contract as necessary to comply with said laws.

6. **Choice of Law and Venue.** This agreement shall be construed according to the laws of the State of Texas, with venue in the courts of Hays County, Texas.

7. **Partial Invalidity.** If any provisions of this Agreement, or the application thereof to any particular party or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to any other particular party or circumstance, shall be valid and enforceable.

8. **Attorneys' Fees.** In the event of any litigation regarding this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and costs of court.

9. **Multiple Counterparts; Multiple Signature Pages.** This Agreement and any amendment or supplement thereto may be executed in two or more counterparts (each of which may bear the original signatures of all or some of the parties to this Agreement) and, if each of the parties to this Agreement has executed at least one such counterpart, then all such counterparts together shall constitute one and the same agreement with the same force and effect as if all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment or supplement thereto may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be delivered by telecopy or email

and attached to another counterpart thereof identical in form thereto but having attached to it one or more additional counterparts of the same or other signature pages to this Agreement.

**10. Statutory Verifications.**

a. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Consultant Manager represents that neither the Consultant Manager nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant Manager (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

b. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Consultant Manager represents that Consultant Manager nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant Manager is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

c. The Consultant Manager hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

d. The Consultant Manager hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used

in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

11. **Appropriations.** Notwithstanding any provision contained herein, the financial obligations of the City and TIRZ #2 contained herein are subject to and contingent upon appropriations by the City Council and TIRZ #2 of such funds or other revenues being available, received and appropriated by the City and TIRZ #2 in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of the City and TIRZ #2.

*[Signatures on following page]*

Executed as of the date first written above.

**City:**

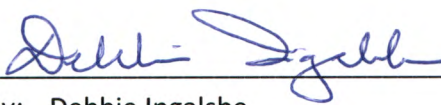
**CITY OF KYLE, TEXAS,  
a Texas home rule municipality**

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By: Travis Mitchell  
Its: Mayor

**TIRZ #2:**

**THE CITY OF KYLE TIRZ#2**



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By: Debbie Ingalsbe  
Its: Chair

**Consultant Manager:**

**Plum Creek Development Partners, Ltd.,**  
a Texas limited partnership

By: PCDP General Partner, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Richard Negley, Manager

By: \_\_\_\_\_  
Thomas J Smith, Manager

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

By: \_\_\_\_\_  
Laura Negley Gill, Manager

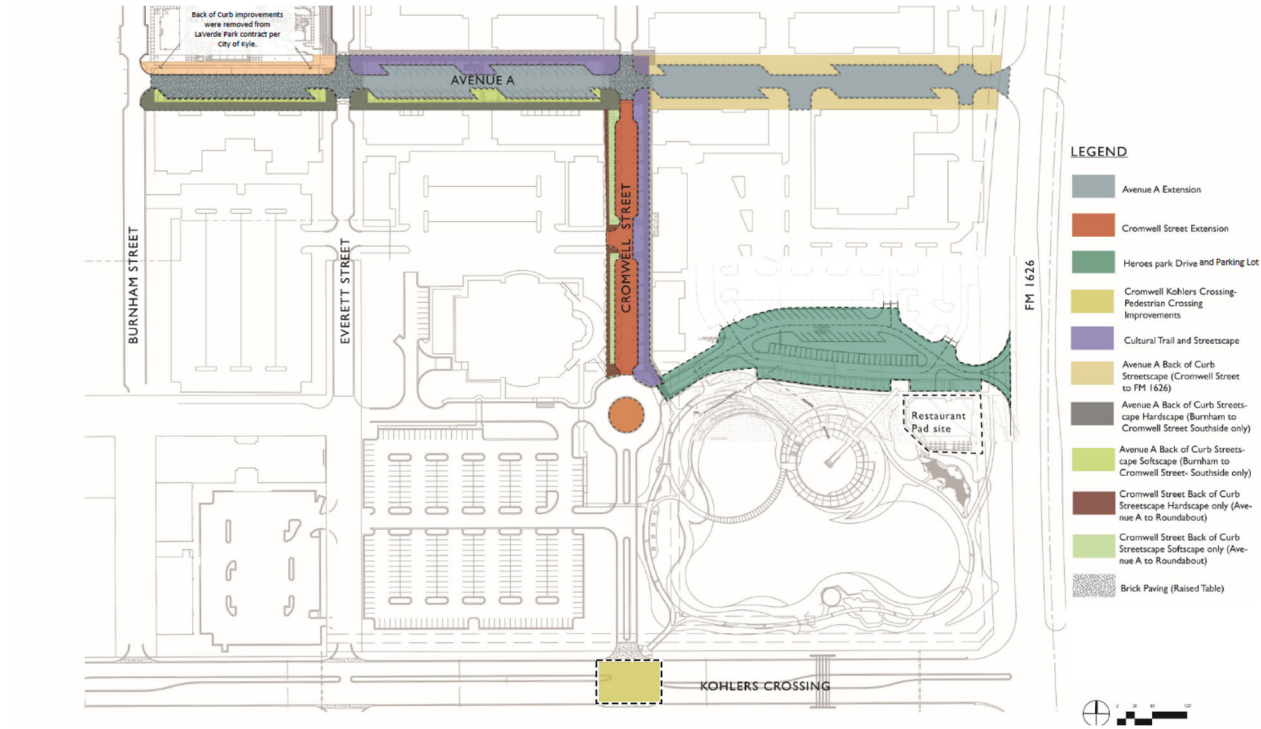
**Exhibit A**  
**Description of Project**

The Transportation Improvements consist of the design, construction, and installation the following roadway, trail, and streetscape improvements and associated infrastructure improvements:

- (i) Avenue “A” Street Extension and associated utilities from Burnham to 1626, including raised paver table road section between Burnham & Everett, and a raised paver table intersection at Cromwell & Avenue “A”;
- (ii) Cromwell Road Extension and associated utilities from Avenue “A” to existing roundabout;
- (iii) Heroes Park Drive Extension and associated utilities from Cromwell to 1626;
- (iv) Cultural Trail & Streetscape;
- (v) Avenue “A” Streetscape (Lights/Landscape only) from Burnham to Cromwell (southside), consistent with the attached street section diagram;
- (vi) Cromwell Street Streetscape (Lights/Landscape only) from Avenue “A” to existing roundabout (westside), consistent with the attached street section diagram;
- (vii) Enhanced Safety at Kohler’s Crossing/Cromwell intersection (Pedestrian Crossing/Streetlight); and
- (viii) PEC direct costs applicable to new roadway construction; and
- (ix) Restaurant Pad Parking and Streetscape.

**Exhibit A-1**  
**Depiction of Project**

[attached]





**Exhibit B**  
**Construction Contract Terms**

The Construction Contract shall contain the following terms, unless approved otherwise by the City:

1. The Contractor will be required to post payment and performance bonds in the full contract amount, and to carry commercial general liability insurance written on a “per-occurrence” basis in a minimum amount of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and the City will be named as an additional insured or beneficiary, as appropriate, of such insurance and bonds. The performance bond shall include a one-year maintenance period following substantial completion of the Transportation Improvements, or such other period set forth in the Construction Contract.
2. A minimum of five percent (5%) retainage shall be withheld from each payment made to the Contractor, such retainage to be paid to Contractor following final completion of the Project and delivery of final lien waivers, as further set forth in the Construction Contract.
3. The Contractor will indemnify the City from any liability arising out of claims arising due to Contractor’s activities related to installation and construction of the Transportation Improvements.
4. In order to obtain any progress payment payable to the Contractor, Contractor must deliver to Consultant Manager and the City a copy of the certified construction draw request containing sufficient detail for the City to verify the payment request completed to the date of the contractor’s draw request and has been approved by the Project Engineer and the Consultant Manager; (ii) the Project Engineer’s certification of the amount of the contract price remaining to be paid; and (iii) an affidavit signed by the contractor, in the form of a conditional waiver and release of lien upon progress payment, including affirmation of that payment of all subcontractors and vendors supplying labor and or materials for the Transportation Improvements will be made upon receipt of the amount request in the draw request. The City may dispute a draw request by giving written notice to the Consultant Manager, Contractor and Project engineer of the amount of the draw request disputed and the specific basis for the dispute within 10 days of receipt of the draw request; provided that a dispute will only be permitted if the City, in good faith, alleges that the work covered by the draw request has not been completed in accordance with the Construction Contract or there is a default by the contractor under the Construction Contract, and the City shall pay any amount that is not in dispute. The parties shall cooperate to resolve any dispute permitted under this Section promptly in order to avoid a default under the Construction Contract.
5. For contracts that have a stated expenditure of at \$1 million for the purchase of goods and services or that result in the City spending at least \$1M during fiscal year, Pursuant to Subchapter J, Chapter 552, Texas Government Code, Contractor shall:

- a. Preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement;
- b. Promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the entity on request of the Owner; and
- c. On completion of the Agreement, either:
  - i. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the entity; or
  - ii. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Contracting information" includes, but is not limited to, records, communications and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance."

The Construction Contract shall contain the following terms, unless approved otherwise by Consultant Manager:

1. Consultant Manger shall be named as an additional insured on the insurance policies required to be carried by Contractor under the Construction Contract.
2. The Contractor will indemnify Consultant Manager from any liability arising out of claims arising due to Contractor's activities related to installation and construction of the Transportation Improvements.
3. The Contractor shall commence construction within five (5) days following issuance of a notice to proceed under the Construction Contract.



# CITY OF KYLE, TEXAS

## Porter Country PID PLOM

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** Consider and possible action to approve a Resolution of the City of Kyle, Texas Approving the Form and Authorizing the Distribution of a Preliminary Limited Offering Memorandum for the City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project); and Resolving Other Matters Incident and Related Thereto. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*

### Other Information:

### Legal Notes:

### Budget Information:

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### ATTACHMENTS:

#### Description

- ☐ 3. Resolution Approving Preliminary Limited Offering Memorandum
- ☐ Kyle - Porter Country PID S2023 IA#1 - PLOM
- ☐ Kyle Porter Country PID IA#1 - App B - Form of Indenture
- ☐ Kyle Porter Country PID IA#1 - App C - Form of SAP
- ☐ Kyle Porter Country PID IA#1 - App D - Form of BC Opinion Letter
- ☐ Kyle Porter Country PID IA#1 - App E-1 - Form of Issuer CDA
- ☐ Kyle Porter Country PID IA#1 - App E-2 - Form of Developer CDA
- ☐ Kyle Porter Country PID IA#1 - App F - Development Agreement
- ☐ Kyle Porter Country PID IA#1 - App G - Form of Financing Agreement
- ☐ Kyle Porter Country PID IA#1 - App H - Form of Completion Agreement
- ☐ Kyle Porter Country PID IA#1 - App I - Appraisal

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF KYLE, TEXAS APPROVING THE FORM AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY LIMITED OFFERING MEMORANDUM FOR THE CITY OF KYLE, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023 (PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1 PROJECT); AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.**

**WHEREAS**, the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended (the "PID Act") authorizes the City of Kyle, Texas (the "City") to create a public improvement district within the corporate boundaries of the City; and

**WHEREAS**, pursuant to Resolution No. 1316 (the "Authorization Resolution"), adopted by the City Council (the "City Council") of the City on July 5, 2022, the City has created the "Porter Country Public Improvement District" (the "District"); and

**WHEREAS**, the City intends to issue the bonds to be designated "City of Kyle, Texas, Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project)" (the "Bonds") to fund certain improvements in the District as authorized by the PID Act; and

**WHEREAS**, there has been presented to this City Council a Preliminary Limited Offering Memorandum relating to the Bonds (the "PLOM"); and

**WHEREAS**, this City Council finds and determines that it is necessary and in the best interests of the City to approve the form and content of the PLOM and authorize the use of the PLOM in the offering and sale of the Bonds by FMSbonds, Inc. (the "Underwriter"), under the conditions outlined herein; and

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

SECTION 1. The recitals set forth above in this Resolution are true and correct and are hereby adopted as findings of the City Council and are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2. The form and content of the PLOM is hereby approved with such changes, addenda, supplements or amendments as may be approved by the Interim City Manager.

SECTION 3. The City hereby authorizes the PLOM to be used by the Underwriter in connection with the initial marketing and sale of the Bonds; provided that the PLOM shall not be released to the public without the approval of the Interim City Manager, which approval shall be made in consultation with SAMCO Capital Markets, Inc., the City's Financial Advisor and Norton Rose Fulbright US LLP, the City's Bond Counsel.

SECTION 4. The City Council hereby delegates to the Interim City Manager the authority to approve release of the PLOM to the public for use in marketing the Bonds under the conditions outlined herein.

SECTION 5. The City staff is authorized and directed to do all things proper and necessary to carry out the intent hereof.

SECTION 6. This Resolution shall become effective from and after its date of passage in accordance with law.

*[Execution page follows]*

**ADOPTED, PASSED, AND APPROVED**, this \_\_\_\_\_, 2023.

CITY OF KYLE, TEXAS

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

ATTEST:

\_\_\_\_\_  
Jennifer Kirkland, City Secretary

(City Seal)

## NEW ISSUE

**PRELIMINARY LIMITED OFFERING MEMORANDUM DATED [APRIL 20], 2023**

**THE BONDS ARE INITIALLY OFFERED ONLY TO PERSONS WHO MEET THE DEFINITION OF “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT OF 1933) OR “ACCREDITED INVESTOR” (AS DEFINED IN RULE 501 OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933). SEE “LIMITATIONS APPLICABLE TO INITIAL PURCHASERS.”**

*In the opinion of Bond Counsel, interest on the Bonds will be excludable from gross income for federal income tax purposes under existing law, subject to the matters described under “TAX MATTERS” herein. See “TAX MATTERS – Tax Exemption” herein for a discussion of Bond Counsel’s opinion.*

**\$15,852,000\*****CITY OF KYLE, TEXAS,****(a municipal corporation of the State of Texas located in Hays County)****SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023****(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1 PROJECT)****Bond Date: May 1, 2023****Interest Accrual Date: Date of Delivery (defined below)****Due: September 1, as shown on the inside cover**

The City of Kyle, Texas, Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project) (the “Bonds”), are being issued by the City of Kyle, Texas (the “City”). The Bonds will be issued in fully registered form, without coupons. Beneficial ownership of the Bonds initially may be acquired in principal denominations of \$100,000 and in integral multiples of \$1,000 in excess thereof; The Bonds will bear interest at the rates set forth on the inside cover, calculated on the basis of a 360-day year of twelve 30-day months, payable on each March 1 and September 1, commencing September 1, 2023\*, until maturity or earlier redemption. The Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). No physical delivery of the Bonds will be made to the beneficial owners thereof. For so long as the book-entry only system is maintained, the principal of and interest on the Bonds will be paid from the sources described herein by BOKF, NA, Houston, Texas, as trustee (the “Trustee”), to DTC as the registered owner thereof. See “BOOK-ENTRY ONLY SYSTEM.”

The Bonds are being issued by the City pursuant to the Public Improvement District Assessment Act, Subchapter A of Chapter 372, Texas Local Government Code, as amended (the “PID Act”), an ordinance expected to be adopted by the City Council of the City (the “City Council”) on May 2, 2023, and an Indenture of Trust, dated as of May 1, 2023 (the “Indenture”), entered into by and between the City and the Trustee. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Indenture.

Proceeds of the Bonds will be used to provide funds for (i) paying a portion of the Actual Costs of the Improvement Area #1 Improvements, (ii) paying interest on the Bonds during and after the period of acquisition and construction of the Improvement Area #1 Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the Porter Country Public Improvement District (the “District”), and (v) paying the costs of issuance of the Bonds. See “THE IMPROVEMENTS” and “APPENDIX B – Form of Indenture.”

The Bonds Similarly Secured (as defined herein), which includes the Bonds, when issued and delivered, will constitute valid and binding special, limited obligations of the City payable solely from and secured by the Trust Estate, consisting primarily of Assessments (as defined herein) levied against assessable properties in Improvement Area #1 of the District (the “Assessed Property” or “Assessed Properties”) in accordance with a Service and Assessment Plan (as defined herein) and other funds comprising the Trust Estate, all to the extent and upon the conditions described herein. The “Bonds Similarly Secured” consists of the Bonds and any series of bonds issued to refund all or a portion of the Bonds. The Bonds Similarly Secured are not payable from funds raised or to be raised from taxation. See “SECURITY FOR THE BONDS SIMILARLY SECURED.” The Bonds are subject to redemption at the times, in the amounts, and at the redemption price more fully described herein under the subcaption “DESCRIPTION OF THE BONDS – Redemption Provisions.”

**The Bonds involve a significant degree of risk, are speculative in nature, and are not suitable for all investors. See “BONDHOLDERS’ RISKS” and “SUITABILITY FOR INVESTMENT.” Prospective purchasers should carefully evaluate the risks and merits of an investment in the Bonds, should consult with their legal and financial advisors before considering a purchase of the Bonds, and should be willing to bear the risks of loss of their investment in the Bonds. The Bonds are not credit enhanced or rated and no application has been made for a rating on the Bonds.**

THE BONDS SIMILARLY SECURED, INCLUDING THE BONDS, ARE SPECIAL, LIMITED OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM THE PLEDGED REVENUES AND OTHER FUNDS COMPRISING THE TRUST ESTATE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE BONDS SIMILARLY SECURED DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE CITY AND ARE PAYABLE SOLELY FROM THE SOURCES IDENTIFIED IN THE INDENTURE. THE OWNERS OF BONDS SIMILARLY SECURED SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF MONEY RAISED OR TO BE RAISED BY TAXATION, OR OUT OF ANY FUNDS OF THE CITY OTHER THAN THE TRUST ESTATE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. NO OWNER OF THE BONDS SIMILARLY SECURED SHALL HAVE THE RIGHT TO DEMAND ANY EXERCISE OF THE CITY’S TAXING POWER TO PAY THE PRINCIPAL OF THE BONDS SIMILARLY SECURED OR THE INTEREST OR REDEMPTION PREMIUM, IF ANY, THEREON. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO PAY THE BONDS SIMILARLY SECURED OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND OTHER FUNDS COMPRISING THE TRUST ESTATE. SEE “SECURITY FOR THE BONDS SIMILARLY SECURED.”

This cover page contains certain information for quick reference only. It is not a complete summary of the Bonds. Investors must read this entire Limited Offering Memorandum to obtain information essential to the making of an informed investment decision.

The Bonds are offered for delivery when, as, and if issued by the City and accepted by the Underwriter, subject to, among other things, the approval of the Bonds by the Attorney General of Texas and the receipt of the opinion of Norton Rose Fulbright US LLP, Bond Counsel, as to the validity of the Bonds and the excludability of interest thereon from gross income for federal income tax purposes. See “APPENDIX D – Form of Opinion of Bond Counsel.” Certain legal matters will be passed upon for the Underwriter by its counsel, Orrick, Herrington & Sutcliffe LLP, for the City by its counsel, The Knight Law Firm, LLP, and for the Developer by its special counsel, Winstead, PC. It is expected that the Bonds will be delivered in book-entry form through the facilities of DTC on or about [May \_\_], 2023 (the “Date of Delivery”).

**FMSbonds, Inc.**

\* Preliminary, subject to change.

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES, PRICES, YIELDS,  
AND CUSIP NUMBERS\***

CUSIP Prefix: <sup>(a)</sup>

\$15,852,000\*

CITY OF KYLE, TEXAS,

(a municipal corporation of the State of Texas located in Hays County)

SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023

(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1 PROJECT)

\$ \_\_\_\_\_ % Term Bonds, Due September 1, 20 \_\_, Priced to Yield \_\_\_\_\_ %; CUSIP Suffix \_\_\_\_\_ <sup>(a) (b) (c) (d)</sup>

\$ \_\_\_\_\_ % Term Bonds, Due September 1, 20 \_\_, Priced to Yield \_\_\_\_\_ %; CUSIP Suffix \_\_\_\_\_ <sup>(a) (b) (c) (d)</sup>

- 
- (a) CUSIP numbers are included solely for the convenience of owners of the Bonds. CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by FactSet Research Systems Inc. on behalf of the American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Global Services. CUSIP numbers are provided for convenience of reference only. None of the City, the City's Financial Advisor or the Underwriter takes any responsibility for the accuracy of such numbers.
- (b) The Bonds are subject to extraordinary optional redemption as described herein under "DESCRIPTION OF THE BONDS – Redemption Provisions."
- (c) The Bonds are also subject to redemption, in whole or in part, prior to stated maturity, at the option of the City, on any date on or after September 1, 20 \_\_, at the redemption price set forth herein under "DESCRIPTION OF THE BONDS – Redemption Provisions."
- (d) The Term Bonds are also subject to mandatory sinking fund redemption as described herein under "DESCRIPTION OF THE BONDS – Redemption Provisions."

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\* Preliminary, subject to change.



**CITY OF KYLE, TEXAS  
CITY COUNCIL**

<u>Name</u>	<u>Place</u>	<u>Term Expires (November)</u>
Travis Mitchell	Mayor	2023
Bear Heiser	Council Member (District 1)	2025
Yvonne Flores-Cale	Council Member (District 2)	2023
Miguel Zuniga, Ph.D.	Council Member (District 3)	2025
Ashlee Bradshaw	Council Member (District 4)	2023
Daniela Parsley	Council Member (District 5)	2024
Michael Tobias	Council Member (District 6)	2024

**INTERIM CITY MANAGER**

Jerry Hendrix

**ASSISTANT CITY MANAGER**

Amber Schmeits

**CITY SECRETARY**

Jennifer Kirkland

**CITY FINANCE DIRECTOR**

Perwez A. Moheet, CPA

**ADMINISTRATOR**

P3Works, LLC

**FINANCIAL ADVISOR TO THE CITY**

SAMCO Capital Markets, Inc.

**BOND COUNSEL**

Norton Rose Fulbright US LLP

**UNDERWRITER'S COUNSEL**

Orrick, Herrington & Sutcliffe LLP

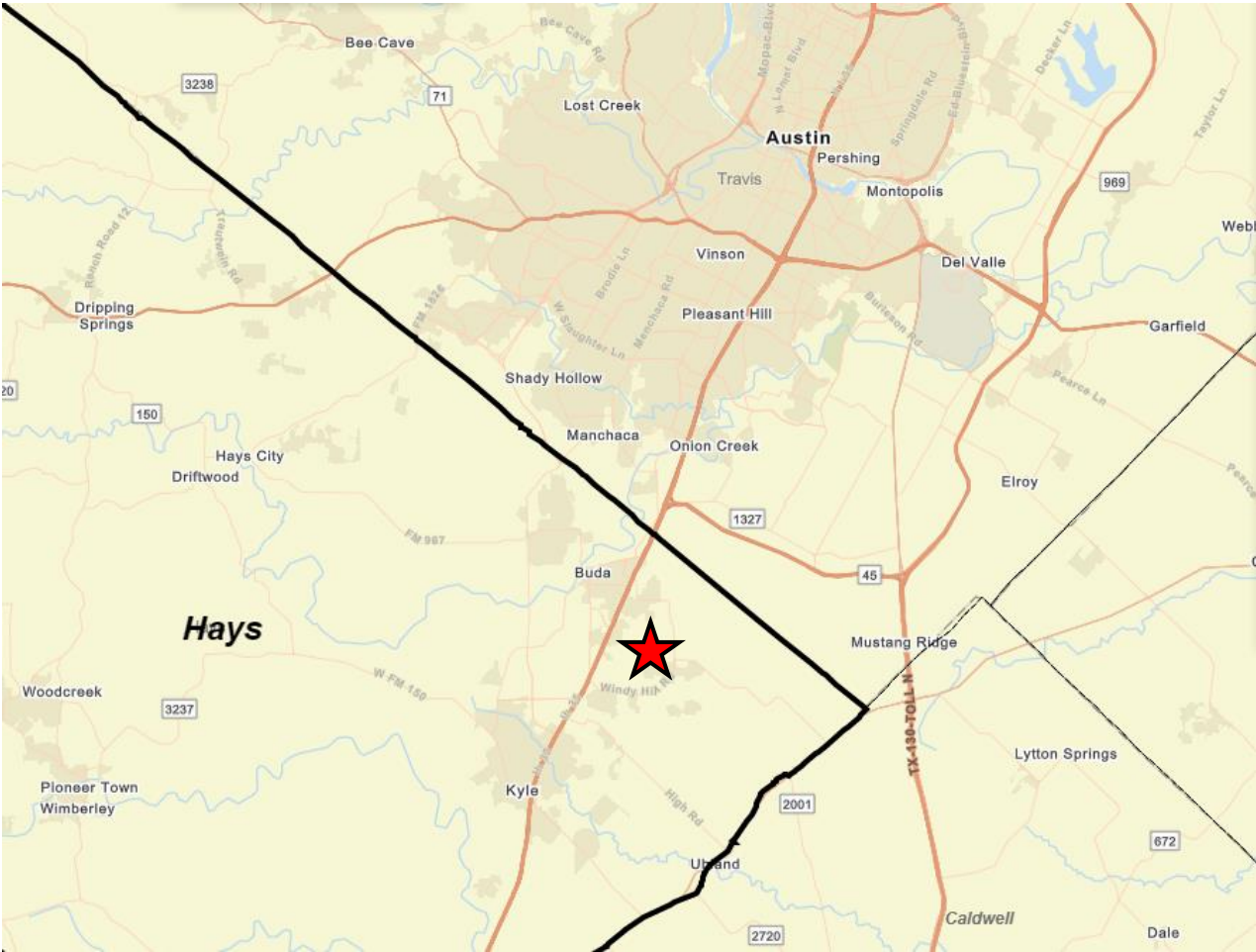
For additional information regarding the City, please contact:

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Director of Finance  
City of Kyle, Texas  
100 W. Center Street  
Kyle, Texas 78640  
(512) 262-1010  
pmoheet@cityofkyle.com

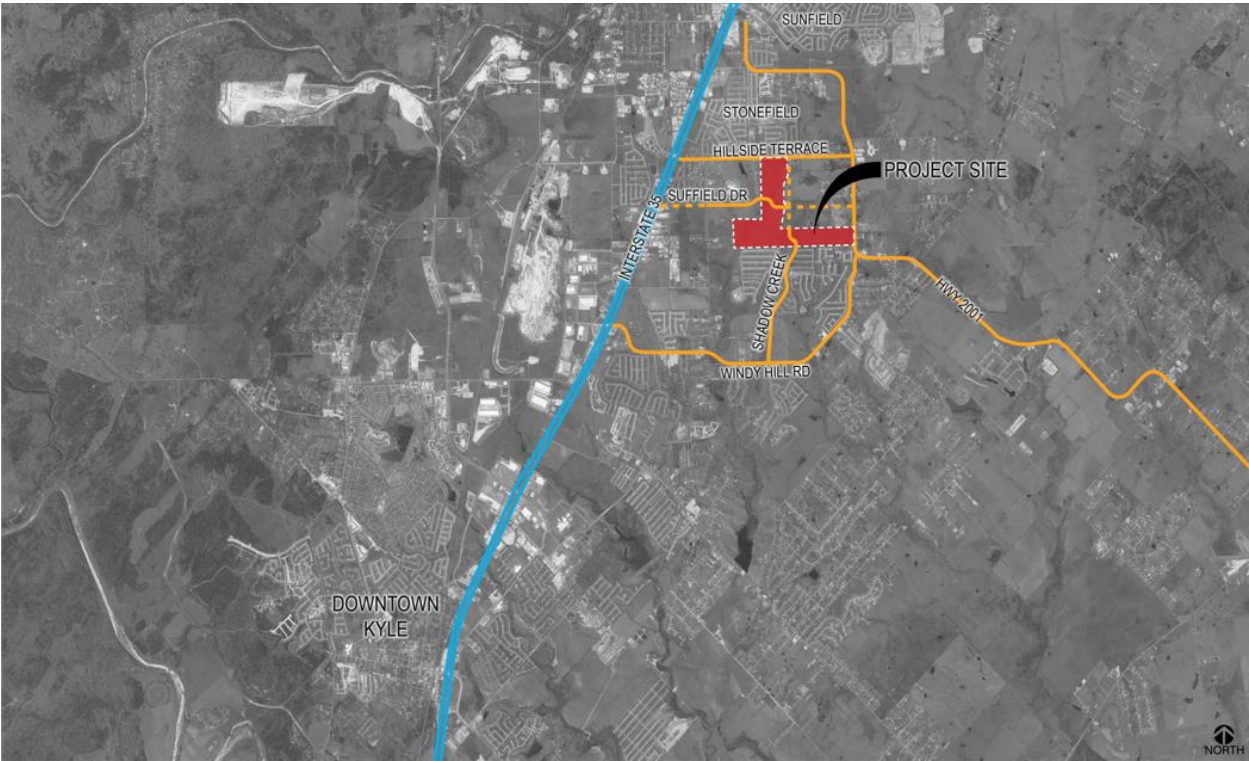
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REGIONAL LOCATION MAP OF THE DISTRICT

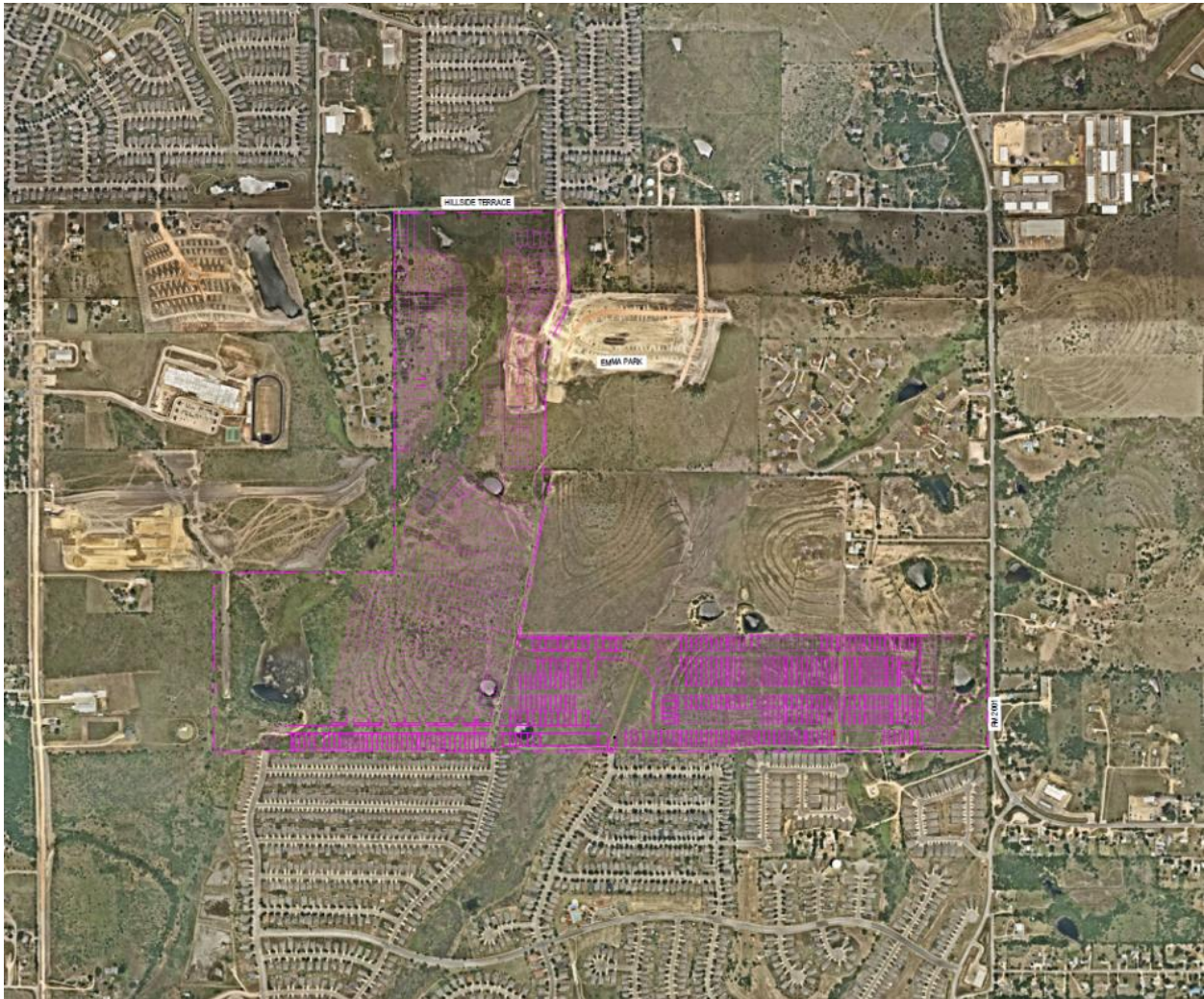


**AREA LOCATION MAP OF THE DISTRICT**



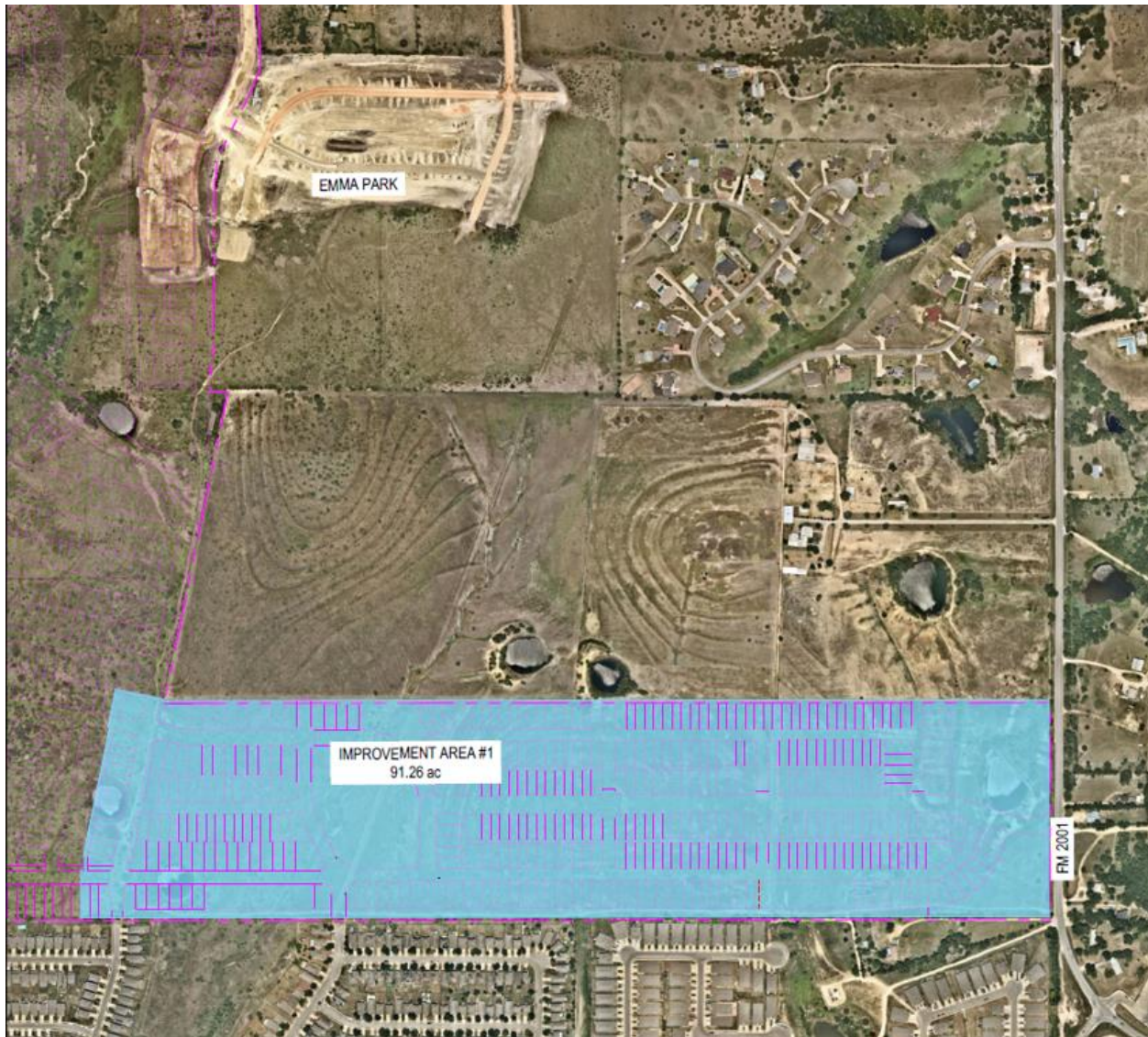


**MAP SHOWING BOUNDARIES OF THE DISTRICT**





**MAP SHOWING BOUNDARIES OF IMPROVEMENT AREA #1**



## CONCEPT PLAN OF THE DISTRICT



## USE OF PRELIMINARY LIMITED OFFERING MEMORANDUM

*FOR PURPOSES OF COMPLIANCE WITH RULE 15c2-12 OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION AS AMENDED AND IN EFFECT ON THE DATE OF THIS PRELIMINARY LIMITED OFFERING MEMORANDUM (THE “RULE” or “RULE 15c2-12”), THIS DOCUMENT CONSTITUTES AN “OFFICIAL STATEMENT” OF THE CITY WITH RESPECT TO THE BONDS THAT HAS BEEN “DEEMED FINAL” BY THE CITY AS OF ITS DATE EXCEPT FOR THE OMISSION OF NO MORE THAN THE INFORMATION PERMITTED BY RULE 15c2-12.*

NO DEALER, BROKER, SALESPERSON OR OTHER PERSON HAS BEEN AUTHORIZED BY THE CITY OR THE UNDERWRITER TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THOSE CONTAINED IN THIS LIMITED OFFERING MEMORANDUM, AND IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY EITHER OF THE FOREGOING. THIS LIMITED OFFERING MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY AND THERE SHALL BE NO OFFER, SOLICITATION OR SALE OF THE BONDS BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH OFFER, SOLICITATION OR SALE.

THE INITIAL PURCHASERS ARE ADVISED THAT THE BONDS BEING OFFERED PURSUANT TO THIS LIMITED OFFERING MEMORANDUM ARE BEING OFFERED AND SOLD ONLY TO “QUALIFIED INSTITUTIONAL BUYERS” AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT OF 1933”) AND “ACCREDITED INVESTORS” AS DEFINED IN RULE 501 OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933. SEE “LIMITATIONS APPLICABLE TO INITIAL PURCHASERS” HEREIN. EACH PROSPECTIVE INITIAL PURCHASER IS RESPONSIBLE FOR ASSESSING THE MERITS AND RISKS OF AN INVESTMENT IN THE BONDS, MUST BE ABLE TO BEAR THE ECONOMIC AND FINANCIAL RISK OF SUCH INVESTMENT IN THE BONDS, AND MUST BE ABLE TO AFFORD A COMPLETE LOSS OF SUCH INVESTMENT. CERTAIN RISKS ASSOCIATED WITH THE PURCHASE OF THE BONDS ARE SET FORTH UNDER “BONDHOLDERS’ RISKS” HEREIN. EACH INITIAL PURCHASER, BY ACCEPTING THE BONDS, AGREES THAT IT WILL BE DEEMED TO HAVE MADE THE ACKNOWLEDGMENTS AND REPRESENTATIONS DESCRIBED UNDER THE HEADING “LIMITATIONS APPLICABLE TO INITIAL PURCHASERS.”

THE UNDERWRITER HAS REVIEWED THE INFORMATION IN THIS LIMITED OFFERING MEMORANDUM IN ACCORDANCE WITH, AND AS PART OF, ITS RESPONSIBILITIES TO INVESTORS UNDER THE UNITED STATES FEDERAL SECURITIES LAWS AS APPLIED TO THE FACTS AND CIRCUMSTANCES OF THIS TRANSACTION. THE INFORMATION SET FORTH HEREIN HAS BEEN FURNISHED BY THE CITY AND OBTAINED FROM SOURCES, INCLUDING THE DEVELOPER, WHICH ARE BELIEVED BY THE CITY AND THE UNDERWRITER TO BE RELIABLE, BUT IT IS NOT GUARANTEED AS TO ACCURACY OR COMPLETENESS, AND IS NOT TO BE CONSTRUED AS A REPRESENTATION OF THE UNDERWRITER. THE INFORMATION AND EXPRESSIONS OF OPINION HEREIN ARE SUBJECT TO CHANGE WITHOUT NOTICE, AND NEITHER THE DELIVERY OF THIS LIMITED OFFERING MEMORANDUM, NOR ANY SALE MADE HEREUNDER, SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE CITY OR THE DEVELOPER SINCE THE DATE HEREOF.

NONE OF THE CITY, THE UNDERWRITER, OR THE DEVELOPER MAKE ANY REPRESENTATION AS TO THE ACCURACY, COMPLETENESS, OR ADEQUACY OF THE INFORMATION SUPPLIED BY THE DEPOSITORY TRUST COMPANY FOR USE IN THIS LIMITED OFFERING MEMORANDUM.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH LAWS. THE REGISTRATION OR QUALIFICATION OF THE BONDS UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN WHICH THEY MAY HAVE BEEN REGISTERED OR QUALIFIED, IF ANY, SHALL NOT BE REGARDED AS A RECOMMENDATION THEREOF. NONE OF SUCH JURISDICTIONS, OR ANY OF THEIR AGENCIES, HAVE PASSED UPON THE MERITS OF THE BONDS OR THE ACCURACY OR COMPLETENESS OF THIS LIMITED OFFERING MEMORANDUM.

CERTAIN STATEMENTS INCLUDED OR INCORPORATED BY REFERENCE IN THIS LIMITED OFFERING MEMORANDUM CONSTITUTE “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF THE UNITED STATES PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995, SECTION 21E OF THE UNITED STATES EXCHANGE ACT OF 1934, AS AMENDED, AND SECTION 27A OF THE SECURITIES

ACT. SUCH STATEMENTS ARE GENERALLY IDENTIFIABLE BY THE TERMINOLOGY USED SUCH AS “PLAN,” “EXPECT,” “ESTIMATE,” “PROJECT,” “ANTICIPATE,” “BUDGET” OR OTHER SIMILAR WORDS. THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE CITY NEITHER PLANS TO ISSUE ANY UPDATES OR REVISIONS NOR PLANS TO REQUEST THAT THE DEVELOPER PROVIDE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ANY OF ITS EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR, OTHER THAN AS DESCRIBED UNDER “CONTINUING DISCLOSURE – THE CITY” AND “– THE DEVELOPER,” RESPECTIVELY HEREIN.

THE TRUSTEE HAS NOT PARTICIPATED IN THE PREPARATION OF THIS LIMITED OFFERING MEMORANDUM AND ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN THIS LIMITED OFFERING MEMORANDUM OR THE RELATED TRANSACTIONS AND DOCUMENTS OR FOR ANY FAILURE BY ANY PARTY TO DISCLOSE EVENTS THAT MAY HAVE OCCURRED AND MAY AFFECT THE SIGNIFICANCE OR ACCURACY OF SUCH INFORMATION.

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THE BONDS OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

REFERENCES TO WEBSITE ADDRESSES PRESENTED HEREIN ARE FOR INFORMATIONAL PURPOSES ONLY AND MAY BE IN THE FORM OF A HYPERLINK SOLELY FOR THE READER’S CONVENIENCE. UNLESS SPECIFIED OTHERWISE, SUCH WEBSITES AND THE INFORMATION OR LINKS CONTAINED THEREIN ARE NOT INCORPORATED INTO, AND ARE NOT PART OF, THIS LIMITED OFFERING MEMORANDUM FOR PURPOSES OF, AND AS THAT TERM IS DEFINED IN, THE RULE.

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**PRELIMINARY LIMITED OFFERING MEMORANDUM**

**\$15,852,000\***

**CITY OF KYLE, TEXAS,**

**(a municipal corporation of the State of Texas located in Hays County)**

**SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023**

**(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1 PROJECT)**

**INTRODUCTION**

The purpose of this Limited Offering Memorandum, including the cover page, inside cover and appendices hereto, is to provide certain information in connection with the issuance and sale by the City of Kyle, Texas (the “City”), of its \$15,852,000\* aggregate principal amount of Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project) (the “Bonds”).

The Bonds are being issued by the City pursuant to the Public Improvement District Assessment Act, Subchapter A of Chapter 372, Texas Local Government Code, as amended (the “PID Act”), the ordinance authorizing the issuance of the Bonds expected to be adopted by the City Council of the City (the “City Council”) on May 2, 2023 (the “Bond Ordinance”), and an Indenture of Trust, dated as of May 1, 2023 (the “Indenture”), entered into by and between the City and BOKF, NA, Houston, Texas, as trustee (the “Trustee”). Payment of the Bonds is secured by a pledge of and a lien upon the Trust Estate (as defined in the Indenture), consisting primarily of revenue from special assessments (“Assessments”) levied pursuant to a separate ordinance expected to be adopted by the City Council on May 2, 2023 (the “Assessment Ordinance”) against assessable property (the “Assessed Property” or “Assessed Properties”) located within Improvement Area #1 (as defined below) of the Porter Country Public Improvement District (the “District”), all to the extent and upon the conditions described herein and in the Indenture. See “SECURITY FOR THE BONDS SIMILARLY SECURED” and “ASSESSMENT PROCEDURES.”

Reference is made to the Indenture for a full statement of the authority for, and the terms and provisions of, the Bonds. All capitalized terms used in this Limited Offering Memorandum that are not otherwise defined herein shall have the meanings set forth in the Indenture. See “APPENDIX B – Form of Indenture.”

Set forth herein are brief descriptions of the City, the District, the Assessment Ordinance, the Bond Ordinance, the Service and Assessment Plan (as defined herein), the Financing Agreement (as defined herein), the Development Agreement (as defined herein), Hillside Terrace Development, LLC, a Texas limited liability company, and its successors and assigns (the “Developer”), and P3Works, LLC (the “Administrator”), together with summaries of terms of the Bonds and the Indenture and certain provisions of the PID Act. All references herein to such documents and the PID Act are qualified in their entirety by reference to such documents or such PID Act and all references to the Bonds are qualified by reference to the definitive forms thereof and the information with respect thereto contained in the Indenture. Copies of these documents may be obtained during the period of the offering of the Bonds from the Underwriter, FMSbonds, Inc., 5 Cowboys Way, Suite 300-25, Frisco, Texas 75034, telephone number (214) 302-2246. The Form of Indenture appears in APPENDIX B and the Form of Service and Assessment Plan appears in APPENDIX C. The information provided under this caption “INTRODUCTION” is intended to provide a brief overview of the information provided in the other captions herein and is not intended, and should not be considered, fully representative or complete as to the subjects discussed hereunder.

**PLAN OF FINANCE**

**Development Plan**

Through a series of purchases, contributions, and assignments, the Developer acquired approximately 259.02 acres of land (the “Property”). For additional information regarding the acquisition of the Property, see “THE DEVELOPER – History and Financing of the District.” Currently, the Developer intends to develop the Property into a master planned community consisting of 981 single-family lots, one amenity lot, one commercial lot, one vybe trail

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\* Preliminary, subject to change.

extension lot, five detention ponds, and over 70 acres of publicly dedicated privately maintained parkland including over 15,000 feet of concrete/natural trails throughout the development (collectively, the “Development”). The Developer intends the Development to be constructed in three improvement areas, consisting of six construction phases as follows: (i) Improvement Area #1 consisting of Phase 1 and Phase 2; (ii) Improvement Area #2 consisting of Phase 3 and Phase 4; and (iii) Improvement Area #3 consisting of Phase 5 and Phase 6.

The Developer will construct improvements necessary to complete lot development. Lot development in Improvement Area #1 will consist of construction of certain public improvements benefitting the land within Improvement Area #1 to be financed by the City through the District, consisting of road, roundabout, drainage, parks and landscaping (collectively, the “Improvement Area #1 Improvements”) and certain privately financed improvements, consisting of water improvements (the “Improvement Area #1 Privately Financed Public Improvements”) and wastewater improvements (the “Privately Financed Improvements”). Upon completion, (i) the Improvement Area #1 Improvements will be owned, operated, and maintained by the City (other than the alleys, parks, common areas, landscaping, and water quality and detention ponds which will be maintained by a property owners’ association); (ii) the Improvement Area #1 Privately Financed Public Improvements will be transferred to and operated and maintained by Goforth Special Utility District (“Goforth SUD”); and (iii) the Privately Financed Improvements will be transferred to and operated and maintained by Windy Hill Utility Co., LLC, a Texas limited liability company, a subsidiary of BVRT Utility Holding Co., limited liability company (“Windy Hill”). The Improvement Area #1 Privately Financed Public Improvements and Privately Financed Improvements are not eligible for reimbursement. In addition to the Improvement Area #1 Improvements, proceeds of the Bonds will also be used to finance certain costs related to the issuance of the Bonds, including issuance costs, reserve funds, capitalized interest, and costs incidental to the organization and administration of the District (such costs together with the Improvement Area #1 Improvements, the “Improvement Area #1 Projects”). See “THE DEVELOPMENT – Development Plan.”

“Improvement Area #1” is approximately 91.281 acres of land and will be the first improvement area in the District to be developed. It is expected that Improvement Area #1 will be developed in two phases: the first phase (“Phase 1”) is expected to include 204 40’ lots and 50 50’ lots, for a total of 254 single-family lots, and the second phase (“Phase 2”) is expected to include 141 40’ lots and 14 50’ lots, for a total of 155 single-family lots, for a combined total of 409 single-family lots in Improvement Area #1. The Developer commenced construction of improvements within Improvement Area #1 in August 2022 and expects to complete construction thereof in May 2025, specifically: construction of the Privately Financed Improvements commenced in August of 2022 and is expected to be completed in August of 2023; construction of the Improvement Area #1 Privately Financed Public Improvements and the Improvement Area #1 Improvements in Phase 1 commenced in August of 2022 and is expected to be completed in March of 2024; and construction of the Improvement Area #1 Privately Financed Public Improvements and the Improvement Area #1 Improvements in Phase 2 is expected to commence in April of 2024 and is expected to be completed in May of 2025.

“Improvement Area #2” is expected to be the second improvement area in the District to be developed. Improvement Area #2 is expected to contain 263 40’ lots and 33 50’ lots, for a total of 296 single-family lots. Improvement Area #2 is also expected to be developed in two phases, “Phase 3” and “Phase 4,” respectively. The Developer expects to begin construction of the Authorized Improvements (as defined in the Service and Assessment Plan) which benefit Improvement Area #2 (the “Improvement Area #2 Improvements”) in July of 2026.

“Improvement Area #3” is expected to be the third improvement area in the District to be developed. Improvement Area #3 is expected to contain 215 40’ lots and 61 50’ lots, for a total of 276 single-family lots, and approximately 48,878 square feet of commercial space. Improvement Area #2 is also expected to be developed in two phases, “Phase 5” and “Phase 6,” respectively. The Developer expects to begin construction of the Authorized Improvements which benefit Improvement Area #3 (the “Improvement Area #3 Improvements”) in March of 2028.

It is expected that the homes within the District will be constructed by MileStone Community Builders, LLC, a Texas limited liability company (“MileStone”), an affiliate of the Developer, pursuant to a lot purchase agreement entered into by MileStone and the Developer granting MileStone the exclusive right to purchase all lots in the District. See “– Lot Purchase Agreement” below.

## **Development Agreement**

The City and Developer entered into the Porter Country Development Agreement, effective May 17, 2022, as amended by the First Amendment to the Porter Country Development Agreement entered into as of September 6, 2022 (together, the “Development Agreement”), establishing certain restrictions and commitments to be imposed and made in connection with the development of the Property including but not limited to parkland, open space, public amenities, trails, entry monumentation, and water and wastewater services. See “THE DEVELOPMENT – Development Agreement” and “APPENDIX F – Development Agreement.”

## **Financing Agreement**

The City and Developer expect to enter into the Porter Country Public Improvement District Financing Agreement, on or about May 2, 2023, and as may be further amended from time to time (the “Financing Agreement”), which provides, in part, for the issuance of bonds and the deposit of proceeds from the issuance and sale of such bonds, including the Bonds Similarly Secured, for the payment of costs of Authorized Improvements within the District, the reimbursement of costs to the Developer from the proceeds of bonds or assessments for funds advanced by the Developer and used to pay costs of Authorized Improvements, including the Improvement Area #1 Improvements. Additionally, in the Financing Agreement, the Developer agrees to maintain sufficient available funds, in a form acceptable to the City, to finance the costs of Authorized Improvements not funded by the proceeds of bonds or assessment revenues. See “THE DEVELOPMENT – Financing Agreement” and “APPENDIX G – Form of Financing Agreement.”

## **Completion Agreement**

To ensure the Improvement Area #1 Improvements, the Improvement Area #1 Privately Financed Public Improvements and the Privately Financed Improvements (the Improvement Area #1 Improvements, the Improvement Area #1 Privately Financed Public Improvements and the Privately Financed Improvements are hereinafter collectively referred to as the “Designated Improvements”) within Improvement Area #1 are completed, and funding is available to provide for their completion, the Developer and the City expect to enter into the Improvement Area #1 Completion Agreement, on or about May 2, 2023 (the “Completion Agreement”). Pursuant to the Completion Agreement, the Developer is required to provide an irrevocable standby letter of credit (the “Letter of Credit”) in the initial amount of \$\_\_\_\_\_ to the benefit of the City from a lender or financial institution in a form acceptable to the City. Pursuant to the Completion Agreement, the letter of credit will be delivered to the City on or before five (5) business days after the pricing of the Bonds and is anticipated to be provided by International Bank of Commerce (“IBC”).

The value of the Letter of Credit may be reduced from time to time upon completion of the Designated Improvements (including segments or sections thereof) to reflect the amount needed to complete the remaining Designated Improvements. The City may submit a “Draw Statement” pursuant to the Letter of Credit to construct the Designated Improvements, if the Designated Improvements are not completed in accordance with the Completion Agreement schedule, subject to force majeure and the notice and cure provisions provided herein. The Letter of Credit will automatically renew annually and will terminate 15 days after receipt by IBC of written notice from the City that the Designated Improvements have been completed. See “THE DEVELOPMENT – Completion Agreement” and “APPENDIX H – Form of Completion Agreement.”

## **Status of Lot Construction**

Lot construction in Phase 1 of Improvement Area #1 began in August of 2022 and is expected to be completed in March of 2024. Lot construction in Phase 2 of Improvement Area #1 is expected to begin in April of 2024 and is expected to be completed in May of 2025. For lot construction to be complete, the Designated Improvements must all be complete.

*Improvement Area #1 Improvements.* The Improvement Area #1 Improvement consist primarily of road, roundabout, drainage, parks and landscaping. The total costs of the Improvement Area #1 Improvements is anticipated to be \$11,846,617, which costs will be financed with the proceeds of the Bonds

and a Developer contribution. As of March 1, 2023, the Developer has spent approximately \$1,660,000 towards the costs of the Improvement Area #1 Improvements.

*Improvement Area #1 Privately Financed Public Improvements.* While the Improvement Area #1 Privately Financed Public Improvements qualify as an Authorized Improvement benefiting Improvement Area #1, they are not being financed through the District. The total cost of the Improvement Area #1 Privately Financed Public Improvements is anticipated to be \$2,193,751, which costs will be financed with amounts advanced to the Developer under the Development Loan (as defined herein). As of March 1, 2023, the Developer has spent approximately \$120,000 towards the costs of the Improvement Area #1 Privately Financed Public Improvements.

*Privately Financed Improvements.* The Privately Financed Improvements are not Authorized Improvements. The total costs of the Privately Financed Improvements is anticipated to be \$1,811,561, which costs will be financed with amounts advanced to the Developer under the Development Loan. As of March 1, 2023, the Developer has spent approximately \$1,807,000 towards the costs of the Privately Financed Improvements.

See “THE DEVELOPMENT – Status of Lot Construction” for more information concerning the status of lot construction and the development in the District.

As additional security for the payment of the Developer contribution towards the costs of the Designated Improvements, the City and the Developer intend to enter into a Completion Agreement supported by a Letter of Credit benefiting the City. See “THE DEVELOPMENT – Completion Agreement” and “APPENDIX H – Form of Completion Agreement.

#### **Lot Purchase Agreement**

The Developer executed a lot purchase agreement with MileStone on April 27, 2021 (the “Original Agreement”), which was amended by the “First Amendment to the Lot Purchase Agreement,” effective December 20, 2021 (together with the Original Agreement, the “Lot Purchase Agreement”), granting MileStone the exclusive right to purchase all lots in the Property. MileStone made a \$979,000 earnest money deposit, which will be applied toward the purchase price of lots at the final lot closing. For more information regarding the Lot Purchase Agreement see “THE DEVELOPMENT – Lot Purchase Agreement” and “THE DEVELOPER – History and Financing of the District – *Development Financing*.”

#### **The Bonds**

Proceeds of the Bonds will be used to provide funds for (i) paying a portion of the Actual Costs (as defined in the Indenture) of the Improvement Area #1 Improvements, (ii) paying interest on the Bonds during and after the period of acquisition and construction of the Improvement Area #1 Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds. See “APPENDIX B – Form of Indenture.”

Payment of the Bonds Similarly Secured (defined herein), including the Bonds, is secured by a pledge of and a lien upon the Trust Estate, consisting primarily of revenue from the Assessments to be levied against the assessable parcels or lots within Improvement Area #1 of the District, all to the extent and upon the conditions described herein and in the Indenture. See “SECURITY FOR THE BONDS SIMILARLY SECURED” and “ASSESSMENT PROCEDURES.”

**The Bonds shall never constitute an indebtedness or general obligation of the City, the State, or any other political subdivision of the State, within the meaning of any constitutional provision or statutory limitation whatsoever, but the Bonds are limited and special obligations of the City payable solely from the Trust Estate as provided in the Indenture. Neither the faith and credit nor the taxing power of the City, the State or any other political subdivision of the State is pledged to the payment of the Bonds.**

## **Future Improvement Area Bonds**

The Developer may make one or more requests to the City to issue one or more series of improvement area bonds (each such series of bonds are “Future Improvement Area Bonds”) to finance the cost of Authorized Improvements to be developed to serve the future improvement areas within the District (individually, a “Future Improvement Area” or collectively, the “Future Improvement Areas”) as the development proceeds. The estimated costs of such improvements benefiting Future Improvement Areas of the District will be determined as the Future Improvement Areas of the District are developed, and the Service and Assessment Plan will be updated to identify the Authorized Improvements to be constructed within Future Improvement Areas of the District to be financed by each series of Future Improvement Area Bonds. Such Future Improvement Area Bonds will be secured by separate assessments levied pursuant to the PID Act on assessable property within the Future Improvement Area in the District that benefit from the Authorized Improvements.

## **Bonds Sold Pursuant to this Limited Offering Memorandum**

**Only the Bonds are offered pursuant to this Limited Offering Memorandum. The Bonds and any Future Improvement Area Bonds issued by the City are separate and distinct issues of securities secured by separate assessments. The Bonds are also separate and distinct issues of securities from any Refunding Bonds issued by the City in the future, but the Bonds and any Refunding Bonds (collectively, “Bonds Similarly Secured”) issued under the Indenture will be equally and ratably secured by the Trust Estate.**

### **LIMITATIONS APPLICABLE TO INITIAL PURCHASERS**

Each initial purchaser is advised that the Bonds being offered pursuant to this Limited Offering Memorandum are being offered and sold only to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933 and “accredited investors” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933. Each initial purchaser of the Bonds (each, an “Investor”) will be deemed to have acknowledged and represented to the City as follows:

1. The Investor has authority and is duly authorized to purchase the Bonds and to execute any instruments and documents required to be executed by the Investor in connection with the purchase of the Bonds.
2. The Investor is an “accredited investor” under Rule 501 of Regulation D of the Securities Act of 1933 or a “qualified institutional buyer” under Rule 144A of the Securities Act of 1933, and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.
3. The Bonds are being acquired by the Investor for investment and not with a view to, or for resale in connection with, any distribution of the Bonds, and the Investor intends to hold the Bonds solely for its own account for investment purposes and for an indefinite period of time, and does not intend at this time to dispose of all or any part of the Bonds. However, the Investor may sell at any time the Investor deems appropriate. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.
4. The Investor understands that the Bonds are not registered under the Securities Act of 1933 and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, and (c) will not carry a rating from any rating service.
5. The Investor acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Authorized Improvements, the Bonds, the security therefor, and such other information as the Investor has deemed necessary or desirable in connection with its decision to purchase the Bonds (collectively, the “Investor Information”). The Investor has received a copy of this Limited Offering Memorandum relating to the Bonds. The Investor acknowledges that it has assumed responsibility for its review of the Investor Information and it has not relied upon any advice, counsel,



representation or information from the City in connection with the Investor's purchase of the Bonds. The Investor agrees that none of the City, its councilmembers, officers, or employees shall have any liability to the Investor whatsoever for or in connection with the Investor's decision to purchase the Bonds except for gross negligence, fraud or willful misconduct. For the avoidance of doubt, it is acknowledged that the Underwriter is not deemed an officer or employee of the City.

6. The Investor acknowledges that the obligations of the City under the Indenture are special, limited obligations payable solely from amounts paid to the City pursuant to the terms of the Indenture and the City shall not be directly or indirectly or contingently or morally obligated to use any other moneys or assets of the City for amounts due under the Indenture. The Investor understands that the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the City, the State or any political subdivision or taxing district thereof; that the Bonds will never represent or constitute a general obligation or a pledge of the full faith and credit of the City, the State or any political subdivision thereof; that no right will exist to have taxes levied by the State or any political subdivision thereof for the payment of principal and interest on the Bonds; and that the liability of the City and the State with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Indenture.

7. The Investor has made its own inquiry and analysis with respect to the Bonds and the security therefor. The Investor is aware that the development of the District involves certain economic and regulatory variables and risks that could adversely affect the security for the Bonds.

The Investor acknowledges that the sale of the Bonds to the Investor is made in reliance upon the certifications, representations and warranties described in items 1-7 above.

## **DESCRIPTION OF THE BONDS**

### **General Description**

Capitalized terms not otherwise defined in this caption have the meanings assigned to them in the Indenture. The Bonds will mature on the dates and in the amounts set forth in the inside cover page of this Limited Offering Memorandum. Interest on the Bonds will accrue from the Closing Date and will be computed on the basis of a 360-day year of twelve 30-day months. Interest on the Bonds will be payable on each March 1 and September 1, commencing September 1, 2023 (each, an "Interest Payment Date"), until maturity or prior redemption. BOKF, NA, Houston, Texas, is the initial Trustee and Paying Agent/Registrar for the Bonds.

The Bonds will be issued in fully registered form, without coupons. Beneficial ownership of the Bonds may be acquired in principal denominations of \$100,000 and in integral multiples of \$1,000 in excess thereof ("Authorized Denominations"). Upon receipt by the Paying Agent/Registrar of written evidence that the Bonds have received an Investment Grade Rating, beneficial ownership in the Bonds may be acquired in principal denominations of \$1,000 or any integral multiple thereof, notwithstanding any subsequent downgrade, suspension or withdrawal of such rating. Upon initial issuance, the ownership of the Bonds will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), and purchases of beneficial interests in the Bonds will be made in book-entry only form. See "BOOK-ENTRY ONLY SYSTEM" and "SUITABILITY FOR INVESTMENT."

### **Redemption Provisions**

Optional Redemption. The City reserves the right and option to redeem the Bonds maturing on or after September 1, 20\_\_ before their scheduled maturity dates, in whole or in part, on any date, in minimum principal amounts of \$1,000, on or after September 1, 20\_\_, such redemption date or dates to be fixed by the City, at the Redemption Price.

Extraordinary Optional Redemption. Notwithstanding any provision in the Indenture to the contrary, the City reserves the right and option to redeem the Bonds before their respective scheduled maturity dates, in whole or in part, on the first day of any month, at the Redemption Price from amounts on deposit in the Redemption Fund as a result of Prepayments (including related transfers to the Redemption Fund), transfers to the Redemption Fund, or as a result of unexpended amounts transferred from the IA#1 Improvements Account of the Project Fund. The City shall

notify the Trustee in writing at least forty-five (45) days before the scheduled extraordinary optional redemption date fixed by the City, or such other time period as the Trustee and the City shall mutually agree.

Notwithstanding the foregoing, the Trustee will not be required to make an extraordinary optional redemption unless it has at least \$1,000 available in the Redemption Fund with which to redeem the Bonds. In lieu of redeeming the Bonds with the funds described in the paragraph above, the City may purchase the Bonds in the open market of the maturity to be redeemed at the price not in excess of the purchase price provided in the Indenture.

**Mandatory Sinking Fund Redemption.** The Bonds are subject to mandatory sinking fund redemption prior to their maturity and will be redeemed by the City in part at the Redemption Price from moneys available for such purpose in the Principal and Interest Account of the Bond Fund, on the dates and in the respective Sinking Fund Installments as set forth in the following schedule:

<b><u>\$ Term Bonds Maturing September 1, 20</u></b> <sup>*</sup>	
<b><u>Redemption Date</u></b>	<b><u>Sinking Fund Installment</u></b>

†

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† Stated maturity.

At least forty-five (45) days prior to each mandatory sinking fund redemption date, and subject to any prior reduction, the Trustee shall select a principal amount of Bonds, of such maturity equal to the Sinking Fund Installment amount of such Bonds to be redeemed, shall call such Bonds for redemption on such scheduled mandatory sinking fund redemption date, and shall give notice of such redemption.

The principal amount of Bonds of a Stated Maturity required to be redeemed on any mandatory sinking fund redemption date shall be reduced, at the option of the City, by the principal amount of any Bonds of such maturity which, at least (45) days prior to the mandatory sinking fund redemption date, shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

The principal amount of Bonds required to be redeemed on any redemption shall be reduced on a pro rata basis among Sinking Fund Installments by the principal amount of any Bonds which, at least 45 days prior to the sinking fund redemption date, shall have been redeemed pursuant to the optional redemption or extraordinary optional redemption provisions of the Indenture and not previously credited to a mandatory sinking fund redemption.

**Partial Redemption.** If less than all of a series of Bonds Similarly Secured are to be redeemed pursuant to the Indenture, the Bonds Similarly Secured shall be redeemed in minimum principal amounts of \$1,000 or any integral multiple thereof. The Bonds Similarly Secured shall be treated as representing the number of bonds that is obtained by dividing the principal amount of such series of Bonds by \$1,000. No redemption shall result in a Bond Similarly Secured in a denomination of less than the Authorized Denomination in effect at that time; provided, however, if the amount of the Outstanding Bond Similarly Secured is less than an Authorized Denomination after giving effect to such partial redemption, a Bond Similarly Secured in the principal amount equal to the unredeemed portion, but not less than \$1,000, may be issued.

In selecting the Bonds Similarly Secured to be redeemed under the mandatory sinking fund redemption provisions of the Indenture, the Trustee may select Bonds in any method that results in a random selection.

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<sup>\*</sup> Preliminary, subject to change.

In selecting the Bonds Similarly Secured to be redeemed under the optional redemption provisions of the Indenture, the Trustee may conclusively rely on the directions provided in a City Certificate.

If less than all of a series of Bonds are called for extraordinary optional redemption under the Indenture, the Bonds Similarly Secured or portion of a Bond Similarly Secured, as applicable, of such series to be redeemed shall be allocated on a pro rata basis (as nearly as practicable) among all Outstanding Bonds of such series.

Upon surrender of any Bond Similarly Secured for redemption in part, the Trustee, in accordance with the Indenture, shall authenticate and deliver an exchange Bond Similarly Secured or Bonds of the same series and in an aggregate principal amount equal to the unredeemed portion of the Bond Similarly Secured so surrendered, such exchange being without charge.

*Notice of Redemption to Owners.* Upon receipt of written notice from the City of the exercise of any redemption, the Trustee shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed, at the address shown in the Register. So long as the Bonds are in book entry only form and held by the DTC as security depository, references to Owner in the Indenture means Cede & Co., as nominee for DTC.

The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed, any conditions to such redemption and that on the redemption date, if all conditions, if any, to such redemption have been satisfied, such Bond shall become due and payable.

Any notice given as provided in the Indenture shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice. The City has the right to rescind any optional redemption or extraordinary optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Trustee shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not satisfied and sufficient funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.

### **BOOK-ENTRY ONLY SYSTEM**

*This section describes how ownership of the Bonds is to be transferred and how the principal of, premium, if any, and interest on the Bonds are to be paid to and credited by the DTC, while the Bonds are registered in its nominee name. The information in this section concerning DTC and the Book-Entry-Only System has been provided by DTC for use in disclosure documents such as this Limited Offering Memorandum. The information in this section concerning DTC and DTC's book-entry-only system has been obtained from sources that the City believes to be reliable, but none of the City, the City's Financial Advisor or the Underwriter takes any responsibility for the accuracy or completeness thereof.*

*The City cannot and does not give any assurance that (1) DTC will distribute payments of debt service on the Bonds, or redemption or other notices, to DTC Participants, (2) DTC Participants or others will distribute debt service payments paid to DTC or its nominee (as the registered owner of the Bonds), or redemption or other notices, to the Beneficial Owners, or that they will do so on a timely basis or (3) DTC will serve and act in the manner described in this Limited Offering Memorandum. The current rules applicable to DTC are on file with the Securities and*

*Exchange Commission, and the current procedures of DTC to be followed in dealing with DTC Participants are on file with DTC.*

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered security certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its registered subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of "AA+". The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices for the Bonds shall be sent to DTC. If less than all Bonds of the same maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant of such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

All payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or Paying Agent/Registrar, on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee, the Paying Agent/Registrar, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. All payments on the Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, the Paying Agent/Registrar or the City, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the City or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Bond certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered. Thereafter, Bond certificates may be transferred and exchanged as described in the Indenture.

NONE OF THE CITY, THE TRUSTEE, THE PAYING AGENT/REGISTRAR, THE CITY'S FINANCIAL ADVISOR OR THE UNDERWRITER WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO THE DTC PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT AS NOMINEE WITH RESPECT TO THE PAYMENTS TO OR THE PROVIDING OF NOTICE FOR THE DTC PARTICIPANTS, THE INDIRECT PARTICIPANTS OR THE BENEFICIAL OWNERS OF THE BONDS. THE CITY CANNOT AND DOES NOT GIVE ANY ASSURANCES THAT DTC, THE DTC PARTICIPANTS OR OTHERS WILL DISTRIBUTE PAYMENTS OF PRINCIPAL OF OR INTEREST ON THE BONDS PAID TO DTC OR ITS NOMINEE, AS THE REGISTERED OWNER, OR PROVIDE ANY NOTICES TO THE BENEFICIAL OWNERS OR THAT THEY WILL DO SO ON A TIMELY BASIS, OR THAT DTC WILL ACT IN THE MANNER DESCRIBED IN THIS LIMITED OFFERING MEMORANDUM. THE CURRENT RULES APPLICABLE TO DTC ARE ON FILE WITH THE SECURITIES AND EXCHANGE COMMISSION, AND THE CURRENT PROCEDURES OF DTC TO BE FOLLOWED IN DEALING WITH DTC PARTICIPANTS ARE ON FILE WITH DTC.

#### **Use of Certain Terms in Other Sections of this Limited Offering Memorandum**

In reading this Limited Offering Memorandum it should be understood that while the Bonds are in the Book-Entry Only System, references in other sections of this Limited Offering Memorandum to registered owners should be read to include the person for which the Participant acquires an interest in the Bonds, but (i) all rights of ownership must be exercised through DTC and the Book-Entry Only System and (ii) except as described above, notices that are to be given to registered owners under the Indenture will be given only to DTC.

## **SECURITY FOR THE BONDS SIMILARLY SECURED**

### **General**

THE BONDS SIMILARLY SECURED, INCLUDING THE BONDS, ARE SPECIAL, LIMITED OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM THE PLEDGED REVENUES AND OTHER FUNDS COMPRISING THE TRUST ESTATE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE BONDS SIMILARLY SECURED DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE CITY AND ARE PAYABLE SOLELY FROM THE SOURCES IDENTIFIED IN THE INDENTURE. THE OWNERS OF THE BONDS SIMILARLY SECURED SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF MONEY RAISED OR TO BE RAISED BY TAXATION, OR OUT OF ANY FUNDS OF THE CITY OTHER THAN THE TRUST ESTATE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. NO OWNER OF THE BONDS SIMILARLY SECURED SHALL HAVE THE RIGHT TO DEMAND ANY EXERCISE OF THE CITY'S TAXING POWER TO PAY THE PRINCIPAL OF THE BONDS SIMILARLY SECURED OR THE INTEREST OR REDEMPTION PREMIUM, IF ANY, THEREON. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO PAY THE BONDS SIMILARLY SECURED OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND OTHER FUNDS COMPRISING THE TRUST ESTATE.

The principal of, premium, if any, and interest on the Bonds Similarly Secured, including the Bonds, are secured by a pledge of and a lien upon the pledged revenues (the "Pledged Revenues"), consisting primarily of Assessments levied against the assessable parcels or lots within Improvement Area #1 of the District and other funds comprising the Trust Estate, all to the extent and upon the conditions described herein and in the Indenture. "Bond Similarly Secured" means all bonds or any bond authorized by a bond ordinance and issued in accordance with the Indenture, including the Bonds, Refunding Bonds and any bonds issued in exchange or replacement thereof as permitted by the Indenture. Bonds Similarly Secured does not include the Future Improvement Area Bonds. Improvement Area #1 contains approximately 91.281 acres, which originally consisted of one or more parcels to be assessed (each, a "Parcel" and collectively, the "Assessed Property"). The Assessed Property has been or will be subdivided into 409 lots for single-family residential development (each, a "Lot"). In accordance with the PID Act and in connection with the issuance of the Bonds, the City intends to approve the Service and Assessment Plan (the "Service and Assessment Plan"), which describes the special benefit received by the property within the District, provides the basis and justification for the determination of special benefit on such property, establishes the methodology for the levy of Assessments and provides for the allocation of Pledged Revenues for payment of principal of, premium, if any, and interest on the Bonds. The form of the Service and Assessment Plan is attached hereto as "APPENDIX C – Form of Service and Assessment Plan."

The Service and Assessment Plan is reviewed and updated at least annually for the purpose of determining the annual budget for improvements and the Annual Installments (as defined below) of Assessments due in a given year. The determination by the City of the assessment methodology set forth in the Service and Assessment Plan is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on all current and future landowners or developers within the District. See "APPENDIX C – Form of Service and Assessment Plan."

### **Pledged Revenues**

The City is authorized by the PID Act, the Assessment Ordinance and other provisions of law to finance the costs of the Improvement Area #1 Improvements by levying Assessments upon properties in Improvement Area #1 of the District. For a description of the assessment methodology and the amounts of Assessments anticipated to be levied in the District, see "ASSESSMENT PROCEDURES" and "APPENDIX C – Form of Service and Assessment Plan." The City will covenant in the Indenture that it will take and pursue all actions permissible under the PID Act, and all other laws or statutes, rules, or regulations, and any amendments thereto, of the State of Texas (the "State") or of the United States (collectively, "Applicable Laws") to cause the Assessments to be collected and the liens thereof to be enforced continuously. See "– Pledged Revenue Fund," "APPENDIX B – Form of Indenture" and "APPENDIX C – Form of Service and Assessment Plan."

Pursuant to the Indenture, the following terms are assigned the following meanings:

“Additional Interest” means the amount collected by application of the Additional Interest Rate.

“Additional Interest Rate” means the 0.50% additional interest rate charged on Assessments securing Bonds Similarly Secured pursuant to Section 372.018 of the PID Act.

“Annual Collection Costs” mean the actual or budgeted costs and expenses relating to collecting the Annual Installments, including, but not limited to, costs and expenses for: (1) the Administrator; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; (7) complying with the Service and Assessment Plan and the PID Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

“Annual Installment” means, with respect to the Assessed Properties, the annual installment payment of an Assessment as calculated by the Administrator and approved by the City Council, that includes: (1) principal; (2) interest; (3) Annual Collection Costs; and (4) Additional Interest.

“Assessment Revenue” means monies collected by or on behalf of the City from any one or more of the following: (i) an Assessment levied against an Assessed Property, or Annual Installment payment thereof, including any interest on such Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, (iii) Delinquent Collection Costs, and (iv) Foreclosure Proceeds.

“Delinquent Collection Costs” mean the costs related to the foreclosure on an Assessed Property and the costs of collection of a delinquent Assessment, delinquent annual Installments, or any other delinquent amounts due under the Service and Assessment Plan, including penalties and reasonable attorney’s fees actually paid, but excluding amounts representing interest and penalty interest.

“Foreclosure Proceeds” means the proceeds, including interest and penalty interest, received by the City from the enforcement of the Assessments against any Assessed Property or Assessed Properties, whether by foreclosure of lien or otherwise, but excluding and net of all Delinquent Collection Costs.

“Pledged Funds” means the Pledged Revenue Fund, the Bond Fund, the Project Fund (but only with respect to such accounts and subaccounts of the Project Fund created pursuant to the terms of the Indenture; provided, however, that in the event a Privately Financed Improvements Subaccount and Improvement Area #1 Privately Financed Public Improvements Subaccount are created pursuant to the Indenture, such subaccounts shall not be Pledged Funds), the Reserve Fund, and the Redemption Fund. Such term also includes each fund or account pledged to the repayment of the Bonds or Refunding Bonds.

“Pledged Revenues” means the sum of (i) Assessment Revenue other than Delinquent Collection Costs; (ii) the moneys held in any of the Pledged Funds; and (iii) any additional revenues that the City may pledge to the payment of Bonds Similarly Secured.

The PID Act provides that the Assessments (including any reassessment, with interest, and the expense of collection and reasonable attorney’s fees, if incurred) are a first and prior lien (the “Assessment Lien”) against the property assessed, superior to all other liens and claims, except liens and claims for the State, county, school district, or municipality for ad valorem taxes and are a personal liability of and charge against the owners of property, regardless of whether the owners are named. Pursuant to the PID Act, the Assessment Lien is effective from the date of the Assessment Ordinance until the Assessments are paid (or otherwise discharged), and is enforceable by the City Council in the same manner that an ad valorem property tax levied against real property may be enforced by the City Council. See “ASSESSMENT PROCEDURES” herein.

## **Collection and Enforcement of Assessments**

The Assessments on each parcel, tract or lot which are to be collected in each year during the term of the Bonds are shown on the Assessment Roll. The Assessments, together with the interest thereon, will be deposited in the Pledged Revenue Fund for the payment of the principal of, premium, if any, and interest on the Bonds as and to the extent provided in the Service and Assessment Plan and the Indenture. See “SECURITY FOR THE BONDS SIMILARLY SECURED – Pledged Revenue Fund” and “APPENDIX B – Form of Indenture.”

The Assessments assessed to pay debt service on the Bonds Similarly Secured, including the Bonds, together with interest thereon, are payable in Annual Installments established by the Assessment Ordinance and the Service and Assessment Plan to correspond, as nearly as practicable, to the debt service requirements for the Bonds. An Annual Installment of Assessments has been made payable in the Assessment Ordinance in each Fiscal Year preceding the date of final maturity of the Bonds Similarly Secured which, if collected, will be sufficient to pay the portion of the debt service requirements attributable to Assessments in the Service and Assessment Plan. Each Annual Installment is payable as provided in the Service and Assessment Plan and the Assessment Ordinance.

Any sums collected for the payment of Annual Collection Costs shall be deposited in the Administrative Fund and shall not constitute Pledged Revenues.

## **Unconditional Levy of Assessments**

The City will impose Assessments on the property within Improvement Area #1 of the District to pay the principal of and interest on the Bonds Similarly Secured scheduled for payment from Pledged Revenues as described in the Indenture and in the Service and Assessment Plan and coming due during each Fiscal Year. The Assessments are effective from the date, and strictly in accordance with the terms, of the Assessment Ordinance. Each Assessment may be paid immediately in full or in periodic Annual Installments over a period of time equal to the term of the Bonds Similarly Secured, which installments shall include interest on the Assessments. Pursuant to the Assessment Ordinance, interest on the Assessments for each lot or unit within Improvement Area #1 and allocated to the Bonds Similarly Secured, begins to accrue on the date specified in the Service and Assessment Plan and, bears interest at the rate of interest on the Bonds plus the Additional Interest Rate. Each Annual Installment, including the interest on the unpaid amount of Assessments, will be determined by September 30 of each year and billed on or around October 15 of each year. Each Annual Installment together with interest thereon shall be delinquent if not paid prior to February 1 of the following year.

As authorized by Section 372.003(b)(14) of the PID Act, the City will levy, assess and collect Annual Collection Costs each year while the Bonds Similarly Secured are Outstanding and unpaid. The portion of each Annual Installment of an Assessment used to pay the Annual Collection Costs shall remain in effect from year to year until all Bonds Similarly Secured are finally paid or until the City adjusts the levy after an annual review in any year pursuant to Section 372.015(d) of the PID Act. The amount collected to pay Annual Collection Costs shall be due in the manner set forth in the Assessment Ordinance and shall be billed on or about October 15 of each year and shall be delinquent if not paid by February 1 of the following year. Amounts collected for Annual Collection Costs do not secure repayment of the Bonds Similarly Secured.

There will be no split payment of Assessments or discount for the early payment of Assessments.

The PID Act provides that the Assessments (including any reassessment, with interest, the expense of collection and reasonable attorney's fees, if incurred) and the Assessment Lien against the property within Improvement Area #1, are superior to all other liens and claims, except liens and claims for the State, county, school district, or municipality for ad valorem taxes and are a personal liability of and charge against the owners of property, regardless of whether the owners are named. Pursuant to the PID Act, the Assessment Lien is effective from the date of the Assessment Ordinance until the Assessments are paid (or otherwise discharged) and is enforceable by the City Council in the same manner that an ad valorem property tax levied against real property may be enforced by the City Council. See “ASSESSMENT PROCEDURES” herein. The Assessment Lien is superior to any homestead rights of a property owner that were properly claimed after the adoption of the Assessment Ordinance. However, an Assessment Lien may not be foreclosed upon if any homestead rights of a property owner were properly claimed prior to the adoption of the Assessment Ordinance (“Pre-existing Homestead Rights”) for as long as such rights are maintained



on the property. See “BONDHOLDERS’ RISKS – Assessment Limitations.” There are currently no properties within Improvement Area #1 that have claimed a homestead exemption.

Failure to pay an Annual Installment when due shall not accelerate the payment of the remaining Annual Installments of the Assessments and such remaining Annual Installments (including interest) shall continue to be due and payable at the same time and in the same amount and manner as if such default had not occurred.

### **Perfected Security Interest**

The lien on and pledge of the Trust Estate shall be valid and binding and fully perfected from and after the Closing Date, and execution and delivery of the Indenture, without physical delivery or transfer of control of the Trust Estate, the filing of the Indenture or any other act; all as provided in Chapter 1208 of the Texas Government Code, as amended, which applies to the issuance of the Bonds and the pledge of the Trust Estate granted by the City under the Indenture, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are outstanding such that the pledge of the Trust Estate granted by the City under the Indenture is to be subject to the filing requirements of Chapter 9, Business and Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business and Commerce Code and enable a filing to perfect the security interest in said pledge to occur. See “APPENDIX B – Form of Indenture.”

### **Pledged Revenue Fund**

On or before [February 20, 202\_] and on or before each February 20 and August 20 of each year thereafter while the Bonds are Outstanding, the City shall deposit or cause to be deposited with the Trustee all Pledged Revenues, if any, other than the Pledged Revenues on deposit in the Project Collection Fund which revenues shall be transferred in accordance with the Indenture, into the Pledged Revenue Fund. Specifically, the City shall deposit or cause to be deposited Assessment Revenues and other Pledged Revenues to be applied by the Trustee in the following order of priority:

- (i) *first*, to the Pledged Revenue Fund in an amount sufficient to pay debt service on the Bonds Similarly Secured next coming due in such calendar year;
- (ii) *second*, to the Reserve Account of the Reserve Fund in an amount to cause the amount in the Reserve Account to equal the initial Reserve Account Requirement;
- (iii) *third*, to the Additional Interest Reserve Account of the Reserve Fund in an amount equal to the Additional Interest;
- (iv) *fourth*, to pay other Actual Costs of Improvement Area #1 Projects; and
- (v) *fifth*, to pay other costs permitted by the PID Act.

Along with each deposit of Pledged Revenues from the Project Collection Fund to the Pledged Revenue Fund, the City shall provide a City Certificate to the Trustee as to (i) the Funds and Accounts into which the amounts are to be deposited or retained, as applicable, and (ii) the amounts of any payments to be made from such Funds and Accounts.

From time to time as needed to pay the obligations relating to the Bonds Similarly Secured, but no later than five (5) Business Days before each Interest Payment Date, the Trustee shall withdraw from the Pledged Revenue Fund and transfer to the Principal and Interest Account of the Bond Fund, an amount, taking into account any amounts then on deposit in such Principal and Interest Account and any expected transfers from the Capitalized Interest Account of the Bond Fund to the Principal and Interest Account of the Bond Fund, such that the amount on deposit in the Principal and Interest Account of the Bond Fund equals the principal (including any Sinking Fund Installments) and interest due on the Bonds Similarly Secured on the next Interest Payment Date.

If, after the foregoing transfers and any transfer from the Reserve Fund, there are insufficient funds to make the payments provided above, the Trustee shall apply the available funds in the Principal and Interest Account of the Bond Fund first to the payment of interest, then to the payment of principal (including any Sinking Fund Installments) on the Bonds Similarly Secured.

Notwithstanding the above-described flow of funds, the Trustee shall deposit Prepayments to the Pledged Revenue Fund and within two business days after such deposit shall transfer such Prepayments to the Redemption Fund.

Notwithstanding the above described flow of funds, the Trustee shall deposit Foreclosure Proceeds to the Pledged Revenue Fund and within two business days after such deposit shall transfer Foreclosure Proceeds, as directed by the City pursuant to a City Certificate, *first* to the Reserve Fund to restore any transfers from the accounts within the Reserve Fund made with respect to the Assessed Property or Assessed Properties to which the Foreclosure Proceeds relate (first, to the Reserve Account of the Reserve Fund to replenish the Reserve Account Requirement, and second, to replenish the Additional Interest Reserve Account of the Reserve Fund to replenish the Additional Interest Reserve Requirement), and *second*, to the Redemption Fund.

After satisfaction of the requirement to provide for the payment of the principal and interest on the Bonds Similarly Secured and to fund any deficiency that may exist in any Account of the Reserve Fund and transfer of funds pursuant to the Indenture, the City may direct the Trustee by City Certificate to apply Assessments for any lawful purposes permitted by the PID Act for which Assessments may be paid.

Any additional Pledged Revenues remaining after the satisfaction of the foregoing shall be applied by the Trustee, as instructed by the City pursuant to a City Certificate, for any lawful purpose permitted by the PID Act for which such additional Pledged Revenues may be used, including transfers to other Funds and Accounts created pursuant to the Indenture.

### **Bond Fund**

On each Interest Payment Date, the Trustee shall withdraw from the Principal and Interest Account of the Bond Fund and transfer the principal (including any Sinking Fund Installments) and interest then due and payable on the Bonds Similarly Secured, less any amount to be used to pay interest on the Bonds Similarly Secured on such Interest Payment Date from the Capitalized Interest Account of the Bond Fund as provided below.

If amounts in the Principal and Interest Account of the Bond Fund are insufficient for the purposes set forth above, the Trustee shall withdraw from the Reserve Fund amounts to cover the amount of such insufficiency in the order described in the Indenture. Amounts so withdrawn from the Reserve Fund shall be deposited in the Principal and Interest Account of the Bond Fund and transferred to the Paying Agent/Registrar.

Moneys in the Capitalized Interest Account of the Bond Fund shall be used for the payment of interest on the Bonds on the following dates and in the following amounts:

<u>Date</u>	<u>Amount</u>
September 1, 2023	\$_____

Any amounts on deposit to the Capitalized Interest Account of the Bond Fund after the payment of interest on the dates and in the amounts listed above shall be transferred to the IA#1 Improvements Account of the Project Fund, or if the IA#1 Improvements Account of the Project Fund has been closed as provided in the Indenture, such amounts shall be transferred to the Redemption Fund to be used to redeem the Bonds, and the Capitalized Interest Account of the Bond Fund shall be closed.

## Project Fund

Pursuant to the Indenture, a Project Fund will be created to be used for the purposes described in “PLAN OF FINANCE – The Bonds.” Money on deposit in the PID Improvements Account and the PID Costs of Issuance Account of the Project Fund shall be used for the purposes as outlined below.

Any amounts drawn on the Letter of Credit by the City pursuant to the terms of the Letter of Credit shall be paid to the Trustee and be deposited to the appropriate subaccount of the IA#1 Improvements Account of the Project Fund as set forth in a City Certificate; provided, however, that prior to the initial draw of funds pursuant to the terms of the Letter of Credit, the City shall cause the Trustee to create (i) a “Public Improvements Subaccount,” (ii) a “Privately Financed Improvements Subaccount” and (iii) an “Improvement Area #1 Privately Financed Public Improvements Subaccount” of the IA#1 Improvements Account of the Project Fund.

Disbursements from the IA#1 Improvements Account of the Project Fund to pay Actual Costs shall be made by the Trustee upon receipt by the Trustee of one or more City Certificates containing a properly executed and completed Certification for Payment.

Disbursements from the IA#1 Costs of Issuance Account of the Project Fund shall be made by the Trustee pursuant to and in accordance with a City Certificate providing for the application of such funds to be disbursed (with the exception of fees and expenses initially incurred by the Trustee, which may be withdrawn by the Trustee).

If the City Representative reasonably determines that amounts then on deposit in the IA#1 Improvements Account of the Project Fund are not expected to be expended for purposes of the IA#1 Improvements Account of the Project Fund due to the completion, abandonment, or constructive abandonment, of the Improvement Area #1 Improvements, as the case may be, such that, in the opinion of the City Representative, it is unlikely that the amounts in the IA#1 Improvements Account of the Project Fund will ever be expended for the purposes of the IA#1 Improvements Account of the Project Fund, the City Representative shall file a City Certificate with the Trustee and provide a copy of such City Certificate to the Developer prior to filing with the Trustee, which identifies the amounts then on deposit in the IA#1 Improvements Account of the Project Fund that are not expected to be used for purposes of the IA#1 Improvements Account of the Project Fund. If such City Certificate is so filed, the amounts on deposit in the IA#1 Improvements Account of the Project Fund shall be transferred to the Redemption Fund to redeem Bonds Similarly Secured on the earliest practical date after notice of redemption has been provided in accordance with the Indenture, and the IA#1 Improvements Account of the Project Fund shall be closed.

Upon the Trustee’s receipt of a written determination by the City Representative that all costs of issuance of the Bonds Similarly Secured have been paid and the appropriate portion of the costs incidental to the organization of the District have been paid, the City Representative shall file a City Certificate with the Trustee which identifies the amounts then on deposit in the IA#1 Costs of Issuance Account of the Project Fund that are not expected to be used for purposes of the IA#1 Costs of Issuance Account of the Project Fund. If such City Certificate is so filed, the amounts on deposit in the IA#1 Costs of Issuance Account of the Project Fund shall be transferred first to the IA#1 Improvements Account of the Project Fund used to pay Actual Costs and second to the Principal and Interest Account of the Bond Fund used to pay interest on the Bonds Similarly Secured, as directed by the City in a City Certificate filed with the Trustee, and the IA#1 Costs of Issuance Account of the Project Fund shall be closed.

The aggregate amount of funds that the Trustee may disburse from the IA#1 Improvements Account of the Project Fund shall not exceed the Unrestricted Amount except and until the Release Restriction (as defined below) has been satisfied. The Trustee may make disbursements from the IA#1 Improvements Account of the Project Fund that exceed the Unrestricted Amount only when the Developer provides written certification to the Trustee and the City in a Certificate for Payment in the form attached to the Financing Agreement that the Release Restriction has been satisfied. The first Certificate for Payment that requests funds in excess of the Unrestricted Amount from the IA#1 Improvements Account of the Project Fund and which evidences satisfaction of the Release Restriction shall be submitted to the City, the Trustee, and the Administrator for review and confirmation. Moneys may be disbursed from the IA#1 Improvements Account of the Project Fund in excess of the Unrestricted Amount only if the City has issued a certificate of occupancy for at least [15] homes within Improvement Area #1 (the “*Release Restriction*”). The City may not approve a Certificate for Payment from the IA#1 Improvements Account of the Project Fund for any amounts that exceed the Unrestricted Amount until the Release Restriction has been satisfied.

## **Redemption Fund**

Subject to adequate amounts on deposit in the Pledged Revenue Fund, the Trustee, as directed by City Certificate, shall cause to be deposited to the Redemption Fund from the Pledged Revenue Fund an amount sufficient to redeem Bonds as provided in the provisions of the Indenture relating to optional redemption and extraordinary optional redemption on the dates specified for redemption as provided in the Indenture. Amounts on deposit in the Redemption Fund shall be used and withdrawn by the Trustee to redeem Bonds as provided in provisions in the Indenture relating to redemption.

## **Reserve Fund: Reserve Account and Additional Interest Reserve Account**

Pursuant to the Indenture, a Reserve Account will be created within the Reserve Fund for the benefit of the Bonds and will held by the Trustee and funded with proceeds of the Bonds in the amount of the Reserve Account Requirement. Additionally, an Additional Interest Reserve Account will be created will be created within the Reserve Fund for the benefit of the Bonds and will held by the Trustee and funded from the deposit of Additional Interest in the amount of the Additional Interest Account Requirement. See “APPENDIX B – Form of Indenture” and “APPENDIX C – Form of Service and Assessment Plan.”

The Reserve Account of the Reserve Fund will be initially funded with a deposit of \$\_\_\_\_\_ from the proceeds of the Bonds in the amount of the Reserve Account Requirement and the City agrees with the Owners of the Bonds Similarly Secured to accumulate from the deposits outlined in the Indenture, and when accumulated maintain in the Reserve Account of the Reserve Fund, an amount equal to not less than the Reserve Account Requirement. All amounts deposited in the Reserve Account of the Reserve Fund shall be used and withdrawn by the Trustee for the purpose of making transfers to the Principal and Interest Account of the Bond Fund as provided in the Indenture.

The Trustee, if needed, will transfer from the Pledged Revenue Fund to the Additional Interest Reserve Account of the Reserve Fund on March 1 and September 1 of each year, commencing [March 1, 2024], to the extent that funds are available after application of the deposit priority in the Indenture, an amount equal to the Additional Interest in the Additional Interest Reserve Account of the Reserve Fund until the Additional Interest Reserve Requirement has been accumulated in the Additional Interest Reserve Account of the Reserve Fund; provided, however, that at any time the amount on deposit in the Additional Interest Reserve Account of the Reserve Fund is less than Additional Interest Reserve Requirement, the Trustee shall resume depositing the Additional Interest into the Additional Interest Reserve Account of the Reserve Fund until the Additional Interest Reserve Requirement has accumulated in the Additional Interest Reserve Account of the Reserve Fund.

Whenever a transfer is made from an Account of the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Trustee shall provide written notice thereof to the City, specifying the amount withdrawn and the source of said funds. Whenever Bonds are to be redeemed with the proceeds of Prepayments, a proportionate amount in the Reserve Account of the Reserve Fund shall be transferred on the Business Day prior to the redemption date by the Trustee to the Redemption Fund to be applied to the redemption of the Bonds. The amount so transferred from the Reserve Account of the Reserve Fund shall be equal to an amount representing the difference between (i) the lesser of (A) the Reserve Account Requirement prior to redemption and (B) the amount actually on deposit in the Reserve Account of the Reserve Fund prior to redemption, and (ii) the Reserve Account Requirement after such redemption; *provided, however*, no such transfer from the Reserve Account of the Reserve Fund shall cause the amount on deposit therein to be less than the Reserve Account Requirement to be in effect after such redemption. If after such transfer, and after applying investment earnings on the Redemption Fund toward payment of accrued and unpaid interest to the date of redemption on the Bonds to be redeemed, there are insufficient funds to pay the principal amount plus accrued and unpaid interest on such Bonds to the date fixed for redemption of the Bonds to be redeemed as a result of such Prepayment, the Trustee shall transfer an amount equal to the shortfall from the Additional Interest Reserve Account of the Reserve Fund to the Redemption Fund to be applied to the redemption of the Bonds.

Whenever, on any Interest Payment Date, or on any other date at the written request of a City Representative, the amount in the Reserve Account of the Reserve Fund exceeds the Reserve Account Requirement, the Trustee shall provide written notice to the City Representative of the amount of the excess. Such excess shall be transferred to the Principal and Interest Account of the Bond Fund to be used for the payment of interest on the Bonds Similarly Secured on the next Interest Payment Date in accordance with the Indenture, unless within 45 days of such notice to the City

Representative, the Trustee receives a City Certificate instructing the Trustee to apply such excess: (i) to pay amounts due under the Rebate Fund provision of the Indenture, (ii) to the IA#1 Improvements Account of the Project Fund, if such application and the expenditure of funds is expected to occur within three years of the date hereof, or (iii) for such other use specified in such City Certificate if the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that such alternate use will not adversely affect the exemption from federal income tax of the interest on any Bond Similarly Secured.

Whenever, on any Interest Payment Date, or on any other date at the written request of the City Representative, the amount on deposit in the Additional Interest Reserve Account of the Reserve Fund exceeds the Additional Interest Reserve Requirement, the Trustee shall provide written notice to the City of the amount of the excess (the "Excess Additional Interest Reserve Amount"). The Excess Additional Interest Reserve Amount on deposit in the Additional Interest Reserve Account of the Reserve Fund shall be transferred by the Trustee to the Redemption Fund, and shall notify the City of such transfer in writing. In transferring the amounts to be transferred pursuant to this paragraph, the Trustee may conclusively rely on the Annual Installments as shown on the Assessment Roll in the Service and Assessment Plan or an Annual Service Plan Update, unless and until it receives a City Certificate directing that a different amount be used.

Whenever, on any Interest Payment Date, the amount on deposit in the Bond Fund is insufficient to pay the debt service on the Bonds Similarly Secured due on such date, the Trustee shall transfer first from the Additional Interest Reserve Account of the Reserve Fund to the Principal and Interest Account of the Bond Fund and second from the Reserve Account of the Reserve Fund to the Principal and Interest Account of the Bond Fund the amounts necessary to cure such deficiency. At the final maturity of the Bonds Similarly Secured, the amount on deposit in the Reserve Account of the Reserve Fund and the Additional Interest Reserve Account of the Reserve Fund shall be transferred to the Principal and Interest Account of the Bond Fund and applied to the payment of the principal of the Bonds Similarly Secured. If, after a Reserve Fund withdrawal, the amount on deposit in the Reserve Account of the Reserve Fund is less than the Reserve Account Requirement, the Trustee shall transfer from the Pledged Revenue Fund to the Reserve Account of the Reserve Fund the amount of such deficiency. If the amount held in the Reserve Fund together with the amount held in the Bond Fund and Redemption Fund is sufficient to pay the principal amount and of all Outstanding Bonds on the next Interest Payment Date, together with the unpaid interest accrued on such Bonds as of such Interest Payment Date, the moneys shall be transferred to the Redemption Fund and thereafter used to redeem all Bonds as of such Interest Payment Date.

#### **Administrative Fund**

The City shall deposit or cause to be deposited to the Administrative Fund the amounts collected each year to pay Annual Collection Costs and Delinquent Collection Costs, other than the Annual Collection Costs and Delinquent Collection Costs deposited into the Project Collection Fund as described below under "Project Collection Fund." Moneys in the Administrative Fund shall be held by the Trustee separate and apart from the other Funds created and administered under the Indenture and used as directed by a City Certificate solely for the purposes set forth in the Service and Assessment Plan. THE ADMINISTRATIVE FUND SHALL NOT BE PART OF THE TRUST ESTATE AND IS NOT SECURITY FOR THE BONDS SIMILARLY SECURED.

#### **Project Collection Fund**

While any Bonds Similarly Secured are Outstanding, another taxing unit or an appraisal district, by agreement with the City, may collect Assessment Revenue on the City's behalf. If such taxing unit or appraisal district presents or otherwise tenders to the Trustee such collected Assessment Revenue for deposit on the City's behalf, the Trustee shall accept such Assessment Revenue and deposit the same into the Project Collection Fund. The Trustee shall, as directed by the City pursuant to a City Certificate, deposit or cause to be deposited (i) all of that portion of the Assessment Revenue deposited into the Project Collection Fund that consists of the Annual Collection Costs and Delinquent Collection Costs to the Administrative Fund and (ii) all of that portion of the Assessment Revenue deposited into the Project Collection Fund that consists of Pledged Revenues into the Pledged Revenue Fund for future allocations as described under "Pledged Revenue Fund" above. The City shall provide such City Certificate on or before [February 20, 202\_] and every August 20 and February 20 thereafter while the Bonds are Outstanding. The Project Collection Fund is not a Pledged Fund.

## **Bonds Deemed Paid**

All Outstanding Bonds Similarly Secured shall prior to the Stated Maturity or redemption date thereof be deemed to have been paid and to no longer be deemed Outstanding if (i) in case any such Bonds Similarly Secured are to be redeemed on any date prior to their Stated Maturity, the Trustee shall have given notice of redemption on said date as provided in the Indenture, (ii) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and the interest on which when due will provide moneys which, together with any moneys deposited with the Trustee at the same time, shall be sufficient to pay when due the principal of and interest on of the Bonds Similarly Secured to become due on such Bonds Similarly Secured on and prior to the redemption date or maturity date thereof, as the case may be, (iii) the Trustee shall have received a report by an independent certified public accountant selected by the City verifying the sufficiency of the moneys or Defeasance Securities deposited with the Trustee to pay when due the principal of and interest on of the Bonds Similarly Secured to become due on such Bonds Similarly Secured on and prior to the redemption date or maturity date thereof, as the case may be, (iv) if the Bonds Similarly Secured are then rated, the Trustee shall have received written confirmation from each Rating Agency then publishing a rating on such Bonds that such deposit will not result in the reduction or withdrawal of the rating on the Bonds Similarly Secured, and (v) the Trustee shall have received an opinion of Bond Counsel to the effect that (A) any Bond Similarly Secured having been deemed to have been paid as provided in the Indenture is no longer Outstanding under the Indenture and is no longer secured by or entitled to the benefits of the Indenture, (B) such defeasance is in accordance with the terms of the Indenture and (C) such defeasance will not adversely affect the exclusion of interest on such Bond Similarly Secured from gross income for purposes of federal income taxation. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to the Indenture nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on the Bonds Similarly Secured. Any cash received from such principal of and interest on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall be reinvested in Defeasance Securities as directed in writing by the City maturing at times and in amounts sufficient to pay when due the principal of and interest on the Bonds Similarly Secured on and prior to such redemption date or maturity date thereof, as the case may be. Any payment for Defeasance Securities purchased for the purpose of reinvesting cash as aforesaid shall be made only against delivery of such Defeasance Securities.

“Defeasance Securities” means Investment Securities then authorized by applicable law for the investment of funds to defease public securities. “Investment Securities” means those authorized investments described in the City’s official investment policy as approved by the City Council from time to time, and eligible for the investment of public funds by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended. Under current State law, Investment Securities that are authorized for the investment of funds to defease public securities are (a) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America; (b) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality, and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent; and (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent.

There is no assurance that the current law will not be changed in a manner which would permit investments other than those described above to be made with amounts deposited to defease the Bonds Similarly Secured. Because the Indenture does not contractually limit such investments, Owners may be deemed to have consented to defeasance with such other investments, notwithstanding the fact that such investments may not be of the same investment quality as those currently permitted under State law. There is no assurance that the ratings for U.S. Treasury securities used as Defeasance Securities or that for any other Defeasance Security will be maintained at any particular rating category.

## Events of Default

Each of the following occurrences or events constitutes an “Event of Default” under the Indenture:

- (i) the failure of the City to deposit the Pledged Revenues to the Pledged Revenue Fund;
- (ii) the failure of the City to enforce the collection of the Assessments including the prosecution of foreclosure proceedings, in accordance with the Indenture;
- (iii) the failure to make payment of the principal of or interest on any of the Bonds Similarly Secured when the same becomes due and payable and such failure is not remedied within thirty (30) days; provided, however, that the payments are to be made only from Pledged Revenues or other funds currently available in the Pledge Funds and available to the City to make the payments; and
- (iv) default in the performance or observance of any other covenant, agreement or obligation of the City under the Indenture and the continuation thereof for a period of ninety (90) days after written notice to the City by the Trustee, or by the Owners of a Quarter in Interest of the Bonds Similarly Secured with a copy to the Trustee, specifying such default by the Owners of a Quarter in Interest of the Bonds Similarly Secured requesting that the failure be remedied.

## Immediate Remedies for Default

Upon the happening and continuance of any of the Events of Default described in the Indenture, the Trustee may, and at the written direction of Owners of a Quarter in Interest of the Bonds Similarly Secured then Outstanding, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under the Indenture, by action seeking mandamus or by other suit, action, or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief to the extent permitted by the Indenture or by Applicable Laws, including, but not limited to, the specific performance of any covenant or agreement contained therein, or injunction; provided, however, that any action for money damages against the City shall be limited in recovery to the assets of the Trust Estate, including the Pledged Revenues.

THE PRINCIPAL OF THE BONDS SIMILARLY SECURED SHALL NOT BE SUBJECT TO ACCELERATION UNDER ANY CIRCUMSTANCES.

If the assets of the Trust Estate are sufficient to pay all amounts due with respect to all Outstanding Bonds Similarly Secured, in the selection of Trust Estate assets to be used in the payment of Bonds Similarly Secured due under in an Event of Default, the City shall determine, in its absolute discretion, and shall instruct the Trustee by City Certificate, which Trust Estate assets shall be applied to such payment and shall not be liable to any Owner or other Person by reason of such selection and application. In the event that the City shall fail to deliver to the Trustee such City Certificate, the Trustee shall select and liquidate or sell Trust Estate assets as provided in the following paragraph, and shall not be liable to any Owner, or other Person, or the City by reason of such selection, liquidation or sale. The Trustee shall have no liability for its selection of Trust Estate assets to liquidate or sell.

Whenever moneys are to be applied pursuant to the Indenture, irrespective of and whether other remedies authorized under the Indenture shall have been pursued in whole or in part, the Trustee may cause any or all of the assets of the Trust Estate, including Investment Securities, to be sold. The Trustee may so sell the assets of the Trust Estate and all right, title, interest, claim and demand thereto and the right of redemption thereof, in one or more parts, at any such place or places, and at such time or times and upon such notice and terms, as the Trustee may deem appropriate, and as may be required by Applicable Laws and apply the proceeds thereof in accordance with the provisions of this subcaption. Upon such sale, the Trustee may make and deliver to the purchaser or purchasers a good and sufficient assignment or conveyance for the same, which sale shall be a perpetual bar both at law and in equity against the City, and all other Persons claiming such properties. No purchaser at any sale shall be bound to see to the application of the purchase money proceeds thereof or to inquire as to the authorization, necessity, expediency, or regularity of any such sale. Nevertheless, if so requested by the Trustee, the City shall ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be

necessary or proper, in the judgment of the Trustee, for the purpose which may be designated in such request. The Trustee shall have no liability for its selection of Trust Estate assets to liquidate or sell.

### **Restriction on Owner's Actions**

No Owner shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of the Indenture or for the execution of any trust thereof or any other remedy thereunder, unless (i) a default has occurred and is continuing of which the Trustee has been notified in writing, (ii) such default has become an Event of Default and the Owners of a Quarter in Interest of the Bonds Similarly Secured have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers thereinbefore granted or to institute such action, suit or proceeding in its own name, (iii) the Owners have furnished to the Trustee indemnity as provided in the Indenture, (iv) the Trustee has for sixty (60) days after such notice failed or refused to exercise the powers thereinbefore granted, or to institute such action, suit, or proceeding in its own name, (v) no written direction inconsistent with such written request has been given to the Trustee during such sixty (60) day period by the Owners of a majority of the aggregate principal amount of the Bonds Similarly Secured then Outstanding, and (vi) notice of such action, suit, or proceeding is given to the Trustee in writing; however, no one or more Owners of the Bonds Similarly Secured shall have any right in any manner whatsoever to affect, disturb, or prejudice the Indenture by its, his or their action or to enforce any right thereunder except in the manner provided therein, and that all proceedings at law or in equity shall be instituted and maintained in the manner provided therein and for the equal benefit of the Owners of all Bonds Similarly Secured then Outstanding. The notification, request and furnishing of indemnity set forth above shall, at the option of the Trustee, as advised by counsel, be conditions precedent to the execution of the powers and trusts of the Indenture and to any action or cause of action for the enforcement of the Indenture or for any other remedy thereunder.

Subject to provisions of the Indenture with respect to certain liabilities of the City, nothing in the Indenture shall affect or impair the right of any Owner to enforce payment of any Bond Similarly Secured at and after the maturity thereof, or on the date fixed for redemption or the obligation of the City to pay each Bond Similarly Secured issued thereunder to the respective Owners thereof at the time and place, from the source and in the manner expressed therein and in the Bonds Similarly Secured.

In case the Trustee or any Owners shall have proceeded to enforce any right under the Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or any Owners, then and in every such case the City, the Trustee and the Owners shall be restored to their former positions and rights thereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

### **Application of Revenues and Other Moneys After Event of Default**

All moneys, securities, funds and Pledged Revenues and the income therefrom received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture shall, after payment of the cost and expenses of the proceedings resulting in the collection of such amounts, the expenses (including its counsel), liabilities, and advances incurred or made by the Trustee and the fees of the Trustee in carrying out the Indenture, during the continuance of an Event of Default, shall be applied by the Trustee, on behalf of the City, to the payment of interest and principal or Redemption Price then due on Bonds Similarly Secured, as follows:

(i) First: To the payment to the registered owners entitled thereto all installments of interest then due in the direct order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the registered owners entitled thereto, without any discrimination or preference; and

(ii) Second: To the payment to the registered owners entitled thereto of the unpaid principal of Outstanding Bonds Similarly Secured, or Redemption Price of any Bonds Similarly Secured which shall have become due, whether at maturity or by call for redemption, in the direct order of their due dates and, if the amounts available shall not be sufficient to pay in full all the Bonds Similarly Secured due on any date, then to the payment thereof ratably, according to the amounts of principal due or redemption price and to the registered owners entitled thereto, without any discrimination or preference.



Within ten (10) days of receipt of such good and available funds, the Trustee may fix a record and payment date for any payment to be made to Owners pursuant to the Indenture.

In the event funds are not adequate to cure any of the Events of Default, the available funds shall be allocated to the Bonds Similarly Secured that are Outstanding in proportion to the quantity of Bonds Similarly Secured that are currently due and in default under the terms of the Indenture. The restoration of the City to its prior position after any and all defaults have been cured, shall not extend to or affect any subsequent default under the Indenture or impair any right consequent thereon.

### **Investment of Funds**

Money in any Fund or Account established pursuant to the Indenture shall be invested by the Trustee only as directed by the City pursuant to a City Certificate filed with the Trustee at least two (2) days in advance of the making of such investment (or as directed below) in time deposits or certificates of deposit secured in the manner required by law for public funds, or be invested in direct obligations of, including obligations the principal and interest on which are unconditionally guaranteed by, the United States of America, in obligations of any agencies or instrumentalities thereof, or in such other investments as are permitted under the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, or any successor law, as in effect from time to time; the City Certificate shall direct investment in such deposits and investments (which may include repurchase agreements for such investment with any primary dealer of such agreements) so that the money required to be expended from any Fund will be available at the proper time or times. Notwithstanding the preceding sentence, amounts in the Additional Interest Reserve Account of the Reserve Fund may not be invested above the Yield (as defined in the Indenture) on the Bonds Similarly Secured, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that such investment and/or the failure to comply with such yield restriction will not adversely affect the exemption from federal income tax of the interest on any Bond Similarly Secured. Such investments shall be valued each year in terms of current market value as of September 30. For purposes of maximizing investment returns, to the extent permitted by law, money in such Funds may be invested in common investments of the kind described above, or in a common pool of such investments which shall be kept and held at an official depository bank, which shall not be deemed to be or constitute a commingling of such money or funds provided that safekeeping receipts or certificates of participation clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such Fund are held by or on behalf of each such Fund. If necessary, such investments shall be promptly sold in order to make the disbursements required or permitted by the Indenture or to prevent any default. In the event the City does not provide written investment directions, the Trustee is instructed to invest funds pursuant to the instructions in the Indenture.

The Trustee and its affiliates may act as sponsor, depository, principal or agent in the acquisition or disposition of any investment. The Trustee shall have no investment discretion and the Trustee's only responsibility for investments shall be to follow the written instructions contained in any City Certificate and to ensure that an investment it is directed to purchase is a permitted investment pursuant to the terms of the Indenture. The Trustee shall not incur any liability for losses arising from any investments made pursuant to the Indenture. The Trustee shall not be required to determine the suitability or legality of any investments and may conclusively rely on the City's written instructions of the directed investments.

Investments in any and all Funds and Accounts (and subaccounts, if any) may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions therein for transfer to or holding in or to the credit of particular Funds and Accounts (and subaccounts, if any) of amounts received or held by the Trustee thereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts (and subaccounts, if any) to which they are credited and otherwise as provided in the Indenture.

The Trustee will furnish the City monthly cash transaction statements which include detail for all investment transactions made by the Trustee thereunder and, unless the Trustee receives a written request, the Trustee is not required to provide brokerage confirmations so long as the Trustee is providing such monthly cash transaction statements. The Trustee may conclusively rely on City Certificates that such an investment will comply with the City's investment policy and with the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended.

## **Against Encumbrances**

Other than the Refunding Bonds, the City shall not create and, to the extent Pledged Revenues are received, shall not suffer to remain, any lien, encumbrance or charge upon the Pledged Revenues, the Trust Estate, other than that specified in the Indenture, or upon any other property pledged under the Indenture, except any pledge created for the equal and ratable security of the Bonds Similarly Secured, and other than a lien or pledge subordinate to the lien and pledge of such property related to the Bonds Similarly Secured.

So long as Bonds Similarly Secured are Outstanding, the City shall not issue any bonds, notes or other evidences of indebtedness secured by any pledge of or other lien or charge on any portion of the Pledged Revenues, the Trust Estate or other property pledged under the Indenture, except that the City may issue Refunding Bonds in accordance with the terms of the Indenture, as provided therein.

## **Additional Obligations or Other Liens**

The City reserves the right to issue Additional Obligations under other indentures, assessment ordinances, or similar agreements or other obligations which do not constitute or create a lien on the Trust Estate and are not payable from Pledged Revenues or any portion of the Trust Estate. Additionally, the City has reserved the right to issue bonds or other obligations secured by and payable from Pledged Revenues so long as such pledge is subordinate to the pledge of Pledged Revenues securing payment of the Bonds Similarly Secured.

Other than the Refunding Bonds issued to refund all or a portion of the Bonds Similarly Secured, the City will not create or voluntarily permit to be created any debt, lien or charge on any portion of the Trust Estate, and will not cause or allow any matter or things whereby the lien of the Indenture or the priority hereof might or could be lost or impaired, and further covenants that it will pay or cause to be paid or will make adequate provisions for the satisfaction and discharge of all lawful claims and demands which if unpaid might by law be given precedence over or any equality with the Indenture as a lien or charge upon the Trust Estate; provided, however, that nothing in the Indenture shall require the City to apply, discharge, or make provision for any such lien, charge, claim, or demand so long as the validity thereof shall be contested by it in good faith, unless thereby, in the opinion of Bond Counsel or counsel to the Trustee, the same would endanger the security for the Bonds Similarly Secured.

The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds Similarly Secured or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State, and in accordance with the conditions set forth below:

- (i) The principal of all Refunding Bonds must (i) be scheduled to be paid, (ii) be subject to mandatory sinking fund redemption or (iii) mature, on September 1 of the years in which such principal (i) is scheduled to be paid, (ii) is subject to mandatory sinking fund redemption or (iii) matures. All Refunding Bonds must bear interest at a fixed rate and any interest payment dates for Refunding Bonds must be March 1 and September 1. The date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of Refunding Bonds shall be set forth in a Supplemental Indenture; and
- (ii) Upon their authorization by the City, the Refunding Bonds of a Series issued under the Indenture shall be issued and shall be delivered to the purchasers or owners thereof, but before, or concurrently with, the delivery of said Refunding Bonds to such purchasers or owners there shall have been filed with the Trustee (1) a copy, certified by the City Secretary of the City, of the ordinance or ordinances of the City authorizing the issuance, sale, execution and delivery of the Refunding Bonds and the execution and delivery of a Supplemental Indenture establishing, among other things, the date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of such Refunding Bonds, and (2) an original executed counterpart of the Supplemental Indenture for such Refunding Bonds.

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## SOURCES AND USES OF FUNDS\*

The table that follows summarizes the expected sources and uses of proceeds of the Bonds:

### Sources of Funds:

Principal Amount	\$
TOTAL SOURCES <sup>(1)</sup>	\$

### Use of Funds:

Deposit to IA#1 Improvements Account of the Project Fund <sup>(2)</sup>	\$
Deposit to Capitalized Interest Account of the Bond Fund	
Deposit to Reserve Account of the Reserve Fund	
Deposit to Administrative Fund	
Deposit to IA#1 Costs of Issuance Account of the Project Fund	
Underwriter Discount <sup>(3)</sup>	
TOTAL USES	\$

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<sup>(1)</sup> Does not include sources of funds for (i) Developer contribution towards the Designated Improvements.

<sup>(2)</sup> The Trustee may only make disbursements from the IA#1 Improvements Account that exceed the Unrestricted Amount after the Developer provides written certification to the Trustee and the City in a Certification for Payment that the Release Restriction has been satisfied. See "SECURITY FOR THE BONDS — Project Fund."

<sup>(3)</sup> Includes Underwriter's Counsel's fee in the amount of \$\_\_\_\_\_.

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\* Preliminary, subject to change.

## DEBT SERVICE REQUIREMENTS\*

The following table sets forth the debt service requirements for the Bonds:

<b><u>Year Ending</u></b> <b><u>(September 30)</u></b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>	<b><u>Total</u></b>
2023 <sup>(1)</sup>			
2024 <sup>(1)</sup>			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
2044			
2045			
2046			
2047			
2048			
2049			
2050			
2051			
2052			
<u>2053</u>			
<b>Total</b>	<b>\$15,852,000*</b>		

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\* To be updated and completed upon pricing.

(1) Interest due in 2023 and 2024 will be paid from amounts on deposit in the Capitalized Interest Account.

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\* Preliminary, subject to change.

## OVERLAPPING TAXES AND DEBT

The land within Improvement Area #1 of the District has been, and is expected to continue to be, subject to taxes and assessments imposed by taxing entities. Such taxes and assessments are payable in addition to the Assessments.

### Overlapping Taxes

The City, Hays County, Austin Community College District, NE Hays County Emergency Services District No. 2, Hays County Fire Emergency Services District No. 8, the Hays Consolidated Independent School District, the Plum Creek Conservation District and the Plum Creek Groundwater Conservation District each may levy ad valorem taxes upon land in Improvement Area #1 of the District for payment of debt incurred by such governmental entities and/or for payment of maintenance and operations expenses. The City has no control over the level of ad valorem taxes or assessments levied by such other taxing authorities. The following tables reflects the overlapping ad valorem tax rates currently levied on property located in Improvement Area #1 of the District and the estimated Annual Installment as a tax rate equivalent in both the growth and the no-grow scenarios.

#### Overlapping Taxes – Growth Scenario<sup>(1)</sup>

Taxing Entity	Tax Year 2022 Ad Valorem Tax Rate <sup>(2)</sup> (2025 TRE <sup>(3)</sup> )	Tax Year 2022 Ad Valorem Tax Rate <sup>(2)</sup> (2039 TRE <sup>(3)</sup> )	Tax Year 2022 Ad Valorem Tax Rate <sup>(2)</sup> (2053 TRE <sup>(3)</sup> )
The City	\$0.5082	\$0.5082	\$0.5082
Hays County	\$0.2950	\$0.2950	\$0.2950
Hays County (Special Road District Tax)	\$0.0175	\$0.0175	\$0.0175
Austin Community College District	\$0.0987	\$0.0987	\$0.0987
NE Hays County Emergency Services District No. 2	\$0.0674	\$0.0674	\$0.0674
Hays County Fire Emergency Services District No. 8	\$0.0876	\$0.0876	\$0.0876
Hays Consolidated Independent School District	\$1.3423	\$1.3423	\$1.3423
Plum Creek Conservation District	\$0.0162	\$0.0162	\$0.0162
Plum Creek Groundwater Conservation District	<u>\$0.0159</u>	<u>\$0.0159</u>	<u>\$0.0159</u>
Total Current Tax Rate	<u>\$2.4488</u>	<u>\$2.4488</u>	<u>\$2.4488</u>
Estimated Annual Installment in Improvement Area #1 as a Tax Rate Equivalent	<u>\$0.5890<sup>(4)</sup></u>	<u>\$0.5698<sup>(4)</sup></u>	<u>\$0.5717<sup>(4)</sup></u>
<b>Estimated Total Tax Rate and Average Annual Assessment in the District as a Tax Rate Equivalent</b>	<u><b>\$3.0000<sup>(4)</sup></b></u>	<u><b>\$3.0186<sup>(4)</sup></b></u>	<u><b>\$3.0205<sup>(4)</sup></b></u>

<sup>(1)</sup> Assumes 2% annual home price appreciation in calculating the estimated annual installment as a Tax Rate Equivalent. For the amortization of the Assessments, see Exhibit I to the Service and Assessment Plan and “DEBT SERVICE REQUIREMENTS.”

<sup>(2)</sup> As reported by the taxing entities. Per \$100 in assessed value.

<sup>(3)</sup> For illustrative purposes, installment payment years 2025, 2039 and 2052 are shown. 2025 is the tax year in which the first full Annual Installment is due and 2053 is the tax year in which the final Annual Installment is due.

<sup>(4)</sup> Preliminary, subject to change. Derived from the Service and Assessment Plan. Includes annual installment of assessments levied for payment of the Bonds, interest thereon, Additional Interest and Annual Collection Costs.

Source: Municipal Advisory Council of Texas.

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**Overlapping Taxes – No-Growth Scenario<sup>(1)</sup>**

Taxing Entity	Tax Year 2022 Ad Valorem Tax Rate <sup>(2)</sup> (2025 TRE <sup>(3)</sup> )	Tax Year 2022 Ad Valorem Tax Rate <sup>(2)</sup> (2039 TRE <sup>(3)</sup> )	Tax Year 2022 Ad Valorem Tax Rate <sup>(2)</sup> (2053 TRE <sup>(3)</sup> )
The City	\$0.5082	\$0.5082	\$0.5082
Hays County	\$0.2950	\$0.2950	\$0.2950
Hays County (Special Road District Tax)	\$0.0175	\$0.0175	\$0.0175
Austin Community College District	\$0.0987	\$0.0987	\$0.0987
NE Hays County Emergency Services District No. 2	\$0.0674	\$0.0674	\$0.0674
Hays County Fire Emergency Services District No. 8	\$0.0876	\$0.0876	\$0.0876
Hays Consolidated Independent School District	\$1.3423	\$1.3423	\$1.3423
Plum Creek Conservation District	\$0.0162	\$0.0162	\$0.0162
Plum Creek Groundwater Conservation District	<u>\$0.0159</u>	<u>\$0.0159</u>	<u>\$0.0159</u>
Total Current Tax Rate	<u>\$2.4488</u>	<u>\$2.4488</u>	<u>\$2.4488</u>
Estimated Annual Installment in Improvement Area #1 as a Tax Rate Equivalent	<u>\$0.6128<sup>(4)</sup></u>	<u>\$0.7822<sup>(4)</sup></u>	<u>\$1.0355<sup>(4)</sup></u>
<b>Estimated Total Tax Rate and Average Annual Assessment in the District as a Tax Rate Equivalent</b>	<u><b>\$3.0222<sup>(4)</sup></b></u>	<u><b>\$3.2310<sup>(4)</sup></b></u>	<u><b>\$3.4843<sup>(4)</sup></b></u>

<sup>(1)</sup> Assumes 0% annual home price appreciation in calculating the estimated annual installment as a Tax Rate Equivalent. For the amortization of the Assessments, see Exhibit I to the Service and Assessment Plan and “DEBT SERVICE REQUIREMENTS.”

<sup>(2)</sup> As reported by the taxing entities. Per \$100 in assessed value.

<sup>(3)</sup> For illustrative purposes, installment payment years 2025, 2039 and 2052 are shown. 2025 is the tax year in which the first full Annual Installment is due and 2053 is the tax year in which the final Annual Installment is due.

<sup>(4)</sup> Preliminary, subject to change. Derived from the Service and Assessment Plan. Includes annual installment of assessments levied for payment of the Bonds, interest thereon, Additional Interest and Annual Collection Costs.

Source: Municipal Advisory Council of Texas.

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## Overlapping Debt

As noted above, Improvement Area #1 of the District includes territory located in other governmental entities that may issue or incur debt secured by the levy and collection of ad valorem taxes or assessments. Set forth below is an overlapping debt table showing the outstanding indebtedness payable from ad valorem taxes with respect to property within Improvement Area #1 of the District, and City debt to be secured by the Assessments:

### Overlapping Debt in the District

Taxing or Assessing Entity	Gross Outstanding Debt as of Mar. 31, 2023	Estimated Percentage Applicable <sup>(1)</sup>	Direct and Estimated Overlapping Debt <sup>(1)</sup>
The City (Assessments – The Bonds)	\$ 15,852,000*	100.00%	\$15,852,000*
The City	161,715,000	0.056	905,604
Hays County	500,607,000	0.08	400,486
Austin Community College District	414,210,000	0.008	33,137
NE Hays County Emergency Services District No. 2	-	-	-
Hays County Fire Emergency Services District No. 8	-	-	-
Hays Consolidated Independent School District	651,815,000	0.19	1,238,449
Plum Creek Conservation District	-	-	-
Plum Creek Groundwater Conservation District	-	-	-
	<b><u>\$1,744,199,000</u></b>		<b><u>\$18,429,676</u></b>

(\*) Preliminary, subject to change.

(1) Based on the Appraisal for Improvement Area #1 of the District and on certified valuations for Tax Year 2022 for the taxing entities.

Sources: Hays Central Appraisal District, Municipal Advisory Council of Texas.

## Agricultural Valuation

If land is devoted principally to agricultural use, a landowner can apply for an agricultural valuation on the property and pay ad valorem taxes based on the land's agricultural use valuation with respect to its ad valorem taxes. Agricultural use includes production of crops or livestock. It also can include leaving the land idle for a government program or for normal crop or livestock rotation.

If land qualified for an agricultural valuation and the land use changes to a non-agricultural use, "rollback taxes" are assessed for each of the previous three years in which the land received the lower agricultural valuation. The rollback tax is the difference between taxes paid on land's agricultural value and the taxes that the landowner would have paid if the land had been taxed on a higher market value for each year from the date on which taxes would have been due. If the land use changes to a non-agricultural use on only a portion of a larger tract, the landowner can fence off the remaining land and maintain the agricultural valuation on the remaining land. In this scenario, the landowner would only be responsible for rollback taxes on that portion of the land where use changed and not the entire tract.

The land within Improvement Area #1 is no longer entitled to valuation for ad valorem tax purposes based upon its agricultural use. It is expected that rollback taxes in the estimated amount of \$82,428 will be paid by the Developer during development of Improvement Area #1 and prior to the purchase of homes by homeowners.

## Homeowners' Association

In addition to the Assessments described above, the Developer anticipates that each lot owner in Improvement Area #1 of the District will pay a maintenance and operation fee and/or a property owner's association fee to a homeowner's association (the "HOA") to be formed by the Developer. The HOA assessments are expected to be \$720 per year.



## ASSESSMENT PROCEDURES

### General

Capitalized terms under this caption and not otherwise defined in the Limited Offering Memorandum shall have the meaning given to such terms in the Service and Assessment Plan. As required by the PID Act, when the City determines to defray a portion of the costs of the Improvement Area #1 Improvements through Assessments, it must adopt a resolution generally describing the Improvement Area #1 Improvements and the land within Improvement Area #1 of the District to be subject to Assessments to pay the costs therefor. The City has caused an assessment roll to be prepared (the “Assessment Roll”), which Assessment Roll shows the land within Improvement Area #1 of the District to be assessed, the amount of the benefit to and the Assessment against each lot or parcel of land and the number of Annual Installments in which the Assessment is divided. The Assessment Roll was filed with the City Secretary and made available for public inspection. Statutory notice was given to the owners of the property to be assessed and a public hearing was conducted to hear testimony from affected property owners as to the propriety and advisability of undertaking the Improvement Area #1 Improvements and funding the same with Assessments. The City expects to levy the Assessments and adopt the Assessment Ordinance on May 2, 2023. After adoption of the Assessment Ordinance, the Assessments will become legal, valid and binding liens upon the property against which the Assessments were made.

Under the PID Act, the costs of the Improvement Area #1 Improvements to be defrayed through Assessments may be assessed by the City against the assessable property in Improvement Area #1 of the District so long as the special benefit conferred upon the Assessed Property by the Improvement Area #1 Projects equals or exceeds the Assessments. The costs of the Improvement Area #1 Projects may be assessed using any methodology that results in the imposition of equal shares of cost on Assessed Property similarly benefited. The allocation of benefits and assessments to the benefitted land within Improvement Area #1 of the District is presented in the Service and Assessment Plan, which should be read in its entirety. See “APPENDIX C – Form of Service and Assessment Plan.”

### Assessment Methodology

The Service and Assessment Plan describes the special benefit to be received by each parcel of assessable property as a result of the Improvement Area #1 Projects, as applicable, provides the basis and justification for the determination that such special benefit exceeds the Assessments being levied, and establishes the methodology by which the City allocates the special benefit of the Improvement Area #1 Projects to parcels in a manner that results in equal shares of costs being apportioned to parcels similarly benefitted.

As described in the Service and Assessment Plan, a portion of the costs of the Improvement Area #1 Projects are being funded with proceeds of the Bonds, which are payable from and secured by Pledged Revenues and other funds comprising the Trust Estate.

*Method of Allocation of Assessments.* As set forth in the Service and Assessment Plan, the City Council initially allocated the Assessment to the initial parcels in Improvement Area #1 (the “Improvement Area #1 Initial Parcel”). See Exhibit B, Authorized Improvements, and Exhibit E-1, Improvement Area #1 Assessment Roll, to “APPENDIX C – Form of Service and Assessment Plan.”

*Method of Reallocation of Assessments.* Upon division, the Assessment allocated to the Improvement Area #1 Initial Parcel shall be allocated to the newly created Assessed Property based on the ratio of estimated build out value of each Assessed Property or Lot (upon recorded subdivision plat – estimated average build out value of all newly subdivided Lots with same Lot Type) to the estimated build out value for all parcels or Lots within the prior Parcel.

If two or more Lots or Parcels are consolidated, the Administrator shall allocate the Assessments against the Lots or Parcels before the consolidation to the consolidated Lot or Parcel, which allocation shall be approved by the City Council in the next Annual Service Plan Update.

The reallocation of an Assessment against a Lot after the Lot has been designated as a homestead under Texas law may not exceed the Assessment against the homestead Lot prior to the reallocation.

**True-up of Assessments if Maximum Assessment Exceeded.** Prior to the approval of a final subdivision plat, the Administrator will certify that the final plat will not cause the Assessment for any Lot Type to exceed the applicable Maximum Assessment for such Lot Type. If the subdivision of any Assessed Property by a final subdivision plat causes the Assessment per Lot for any Lot Type to exceed the applicable Maximum Assessment for such Lot Type, the landowner shall partially prepay the Assessment for each Assessed Property that exceeds the applicable Maximum Assessment for such Lot Type in an amount sufficient to reduce the Assessment to the applicable Maximum Assessment for such Lot Type. The City's approval of a final subdivision plat without payment of such amounts does not eliminate the obligation of the person or entity filing the plat to pay such Assessments.

**Mandatory Prepayment of Assessments.** If Assessed Property is transferred to a person or entity that is exempt from payment of the Assessments, the owner transferring the Assessed Property shall pay to the City the full amount of the Assessment, plus Prepayment Costs and Delinquent Collection Costs for such Assessed Property, prior to the transfer. If the owner of the Assessed Property causes the Assessed Property to become Non-Benefitted Property, the owner causing the change in status shall pay the full amount of the Assessment, plus Prepayment Costs and Delinquent Collection Costs, prior to the change in status.

**Reduction of Assessments.** If as a result of cost savings or an Authorized Improvement not being constructed, the Actual Costs of completed Authorized Improvements are less than the Assessments levied for the payment thereof, the Trustee shall apply amounts on deposit in the applicable account of the Project Fund relating to the PID Bonds that are not expected to be used for purposes of the Project Fund, to redeem outstanding PID Bonds, in accordance with the Indenture. The Assessments shall not, however, be reduced to an amount less than the outstanding PID Bonds. The Administrator shall update (and submit to the City Council for review and approval as part of the next Annual Service Plan Update) the Assessment Roll and corresponding Annual Installments to reflect the reduced Assessments. See "APPENDIX C – Form of Service and Assessment Plan."

**Assessment Allocation.** The following table provides the allocation of Assessments of the Parcel, as of March 31, 2023.

**Assessment Allocation**

Landowners	Assessment Amount	Assessment Percentage
Developer	\$15,401,669.24*	97.16%
MileStone	\$ 450,330.76*	2.84%

\* Preliminary, subject to change.

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The following tables provide the expected allocation of Assessments based on Lot Type.

**Expected Assessment Reallocation in Improvement Area #1<sup>(1)</sup>**

Planned Lot Type (ft.)	Units	Est. Finished Lot Value per Unit <sup>(2)</sup>	Projected Home Value per Unit/Sq. Ft <sup>(3)</sup>	Estimated Assessment per Lot <sup>(4)</sup>	Total Assessment per Lot Type <sup>(4)</sup>	Estimated Annual Installments per Lot (2025) <sup>(5)</sup>	Estimated Annual Installments per Lot (2039) <sup>(5)</sup>	Estimated Annual Installments per Lot (2053) <sup>(5)</sup>
Phase 1 - 40'	204	\$67,000	\$420,000	\$37,528	\$ 7,655,623	\$2,574	\$3,285	\$4,349
Phase 1 - 50'	50	83,750	508,000	45,390	2,269,524	3,113	3,973	5,260
Phase 2 - 40'	141	73,000	420,000	37,528	5,291,386	2,574	3,285	4,349
Phase 2 - 50'	14	91,300	508,000	45,390	635,467	3,113	3,973	5,260
<b>Total/WAVG.</b>	<b>409</b>	<b>\$71,948</b>	<b>\$433,770</b>	<b>\$38,758</b>	<b>\$15,852,000</b>	<b>\$2,658</b>	<b>\$3,393</b>	<b>\$4,492</b>

(1) Estimates based on information available as of the date of this Limited Offering Memorandum. Actual unit counts and estimated unimproved land value may vary from the estimates shown above. The above estimates of value assume completion of the Improvement Area #1 Improvements. The above estimate assumes an average of 6.125% interest rate and a 30-year term for the Bonds and Annual Collection Costs of \$40,000 increasing 2% per year. For additional information regarding the annual installment as a tax rate equivalent, see "OVERLAPPING TAXES AND DEBT – Overlapping Taxes – Overlapping Taxes – Growth Scenario" and "–Overlapping Taxes – No-Growth Scenario" or Exhibit F – Maximum Assessment, to Exhibit C – Service and Assessment Plan.

(2) Values are from the Appraisal based on indicated retail lot value.

(3) Estimate provided by the Developer. Estimated Buildout Value used in the Service and Assessment Plan.

(4) Obtained from the Service and Assessment Plan; based upon projected home values provided by the Developer.

(5) Assumes completion of homes at values estimated by the Developer. The amortization of the assessments escalate at a rate of 2% annually. Preliminary, subject to change.

**Collection and Enforcement of Assessment Amounts**

Under the PID Act, the Annual Installments may be collected in the same manner and at the same time as regular ad valorem taxes of the City. The Assessments may be enforced by the City in the same manner that an ad valorem tax lien against real property is enforced. Delinquent installments of the Assessments incur interest, penalties and attorney's fees in the same manner as delinquent ad valorem taxes. Under the PID Act, the Assessment Lien is a first and prior lien against the property assessed, superior to all other liens and claims except liens or claims for State, county, school district or municipality ad valorem taxes. See "BONDHOLDERS' RISKS – Assessment Limitations" herein.

The City will covenant in the Indenture to collect, or cause to be collected, Assessments as provided in the Assessment Ordinance. No less frequently than annually, City staff or a designee of the City shall prepare, and the City Council shall approve, an Annual Service Plan Update to allow for the billing and collection of Annual Installments. Each Annual Service Plan Update shall include an updated Assessment Roll and a calculation of the Annual Installment for each Parcel. Annual Collection Costs shall be allocated among all Parcels in proportion to the amount of the Annual Installments for the Parcels.

The City will covenant, agree and warrant in the Indenture that, for so long as any Bonds Similarly Secured are Outstanding, that it will take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens thereof enforced continuously, in the manner and to the maximum extent permitted by Applicable Laws, and, to the extent permitted by Applicable Laws, to cause no reduction, abatement or exemption in the Assessments.

To the extent permitted by law, notice of the Annual Installments will be sent by, or on behalf of, the City to the affected property owners on the same statement or such other mechanism that is used by the City, so that such Annual Installments are collected simultaneously with ad valorem taxes and shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City.

The City will determine or cause to be determined, no later than February 15 of each year, whether or not any Annual Installment is delinquent and, if such delinquencies exist, the City will order and cause to be commenced as soon as practicable any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including diligently prosecuting an action in district court to foreclose the currently delinquent Annual Installment. Notwithstanding the foregoing, the City shall not be required under any

circumstances to purchase or make payment for the purchase of the delinquent Assessment or the corresponding Assessed Property.

The City will implement the basic timeline and procedures for Assessment collections and pursuit of delinquencies set forth in Exhibit C of the Continuing Disclosure Agreement of the Issuer set forth in APPENDIX E-1 and to comply therewith to the extent that the City reasonably determines that such compliance is the most appropriate timeline and procedures for enforcing the payment of delinquent Assessments.

The City shall not be required under any circumstances to expend any funds for delinquent collection costs in connection with its covenants and agreements under the Indenture or otherwise other than funds on deposit in the Administrative Fund.

Annual Installments will be paid to the City or its agent. Annual Installments are billed in each year, and become delinquent on February 1 of the following year. In the event Assessments are not timely paid, there are penalties and interest as set forth below:

Date Payment <u>Received</u>	Cumulative <u>Penalty</u>	Cumulative <u>Interest</u>	<u>Total</u>
February	6%	1%	7%
March	7%	2%	9%
April	8%	3%	11%
May	9%	4%	13%
June	10%	5%	15%
July	12%	6%	18%

After July, the penalty remains at 12%, and interest increases at the rate of 1% each month. In addition, if an account is delinquent in July, a 20% attorney's collection fee may be added to the total penalty and interest charge. In general, property subject to lien may be sold, in whole or in parcels, pursuant to court order to collect the amounts due. An automatic stay by creditors or other entities, including governmental units, could prevent governmental units from foreclosing on property and prevents liens for post-petition taxes from attaching to property and obtaining secured creditor status unless, in either case, an order lifting the stay is obtained from the bankruptcy court. In most cases, post-petition Assessments are paid as an administrative expense of the estate in bankruptcy or by order of the bankruptcy court.

#### **Assessment Amounts**

The maximum amounts of the Assessments have been established by the methodology described in the Service and Assessment Plan. The Assessment Roll sets forth for each year the Annual Installment for each Parcel consisting of payment of (i) principal, (ii) interest, (iii) Annual Collection Costs, and (iv) Additional Interest (relating to Assessments securing the Bonds). The Annual Installments for Improvement Area #1 may not exceed the amounts shown on the Assessment Roll. The Assessments will be levied against the parcels comprising the Assessed Property in Improvement Area #1 as indicated on the Assessment Roll. See "APPENDIX C – Form of Service and Assessment Plan."

The Annual Installments shown on the Assessment Roll will be reduced to equal the actual costs of repaying the Bonds, the Additional Interest and actual Annual Collection Costs (as provided for in the definition of such term), taking into consideration any other available funds for these costs, such as interest income on account balances.

The Bonds are secured by a first lien on and pledge of the Trust Estate, including the Assessments. See "SECURITY FOR THE BONDS SIMILARLY SECURED" and "APPENDIX C – Form of Service and Assessment Plan."

## **Prepayment of Assessments**

Pursuant to the PID Act and the Indenture, the owner of any property assessed may voluntarily prepay (a “Prepayment”) all or part of any Assessment levied against any lot or parcel, together with accrued interest to the date of payment, at any time. Upon receipt of such Prepayment, such amounts will be applied towards the redemption or payment of the Bonds. Amounts received at the time of a Prepayment which represent a payment of principal, interest, or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as payment of the regularly scheduled installment of the Assessments.

Prior to the approval of a final subdivision plat, the Administrator shall certify that the final plat will not cause the Assessment for any Lot Type to exceed the Maximum Assessment. If the subdivision of any Assessed Property by a final subdivision plat causes the Assessment per Lot for any Lot Type to exceed the applicable Maximum Assessment for such Lot Type, the Developer shall partially prepay the Assessment for each Assessed Property that exceeds the applicable Maximum Assessment for such Lot Type in an amount sufficient to reduce the Assessment to the applicable Maximum Assessment for such Lot Type. The City’s approval of a final subdivision plat without payment of such amounts does not eliminate the obligation of the person or entity filing the plat to pay such Assessments.

## **Priority of Lien**

The Assessments or any reassessment, the expense of collection, and reasonable attorney’s fees, if incurred, constitute a first and prior lien against the property assessed, superior to all other liens and claims except liens or claims for the State, county, school district or municipality ad valorem taxes, and are a personal liability of and charge against the owners of the property regardless of whether the owners are named. The lien is effective from the date of the Assessment Ordinance until the Assessment is paid, and may be enforced by the City in the same manner as an ad valorem tax levied against real property may be enforced by the City. The owner of any property assessed may pay the entire Assessment levied against any lot or parcel, together with accrued interest to the date of payment, at any time.

## **Foreclosure Proceedings**

In the event of delinquency in the payment of any Annual Installment, except for unpaid Assessments on homestead property (unless the lien associated with the assessment attached prior to the date the property became a homestead), the City is empowered to order institution of an action in State district court to foreclose the lien of such delinquent Annual Installment. In such action the real property subject to the delinquent Annual Installments may be sold at judicial foreclosure sale for the amount of such delinquent Annual Installments, plus penalties and interest.

Any sale of property for nonpayment of an installment or installments of an Assessment will be subject to the lien established for remaining unpaid installments of the Assessment against such property and such property may again be sold at a judicial foreclosure sale if the purchaser thereof fails to make timely payment of the non-delinquent installments of the Assessments against such property as they become due and payable. Judicial foreclosure proceedings are not mandatory. In the event a foreclosure is necessary, there could be a delay in payments to owners of the Bonds pending prosecution of the foreclosure proceedings and receipt by the City of the proceeds of the foreclosure sale. It is possible that no bid would be received at the foreclosure sale, and in such event there could be an additional delay in payment of the principal of and interest on Bonds or such payment may not be made in full. The City is not required under any circumstance to purchase or make payment for the purchase of the delinquent Assessment on the corresponding Assessed Property.

The City will covenant in the Indenture to take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens thereof enforced continuously, in the manner and to the maximum extent permitted by Applicable Laws, and to cause no reduction, abatement or exemption in the Assessments, provided that the City is not required to expend any funds for collection and enforcement of Assessments other than funds on deposit in the Administrative Fund. Pursuant to the Indenture, Foreclosure Proceeds (excluding Delinquent Collection Costs) constitute Pledged Revenues to be deposited into the Pledged Revenue Fund upon receipt by the City and distributed in accordance with the Indenture. See “APPENDIX B – Form of Indenture. See also “APPENDIX E-1 –

Form of Disclosure Agreement of the Issuer” for a description of the expected timing of certain events with respect to collection of the delinquent Assessments.

## **THE CITY**

### **Background**

The City is a political subdivision and municipal corporation of the State, duly organized and existing under the laws of the State including the City’s Home Rule Charter, initially adopted by the qualified voters of the City in the year 2000, and as amended in 2006, 2016, 2018 and 2020. The City operates as a home rule municipality under a Council-Manager form of government with a City Council comprised of the Mayor and six Council Members. The City Manager is the chief executive officer for the City.

The City is located in Hays County along Interstate Highway 35. It is located approximately eight (8) miles north of the City of San Marcos, twenty (20) miles south of the City of Austin and sixty (60) miles north of the City of San Antonio. The City covers approximately 31.25 square miles. The City’s 2020 census population was 45,697, and the City has estimated that its 2023 population is approximately 55,600.

The City is a thriving community having easy access to major highway and roadways, including Interstate Highway 35. The City is strategically located eight miles north of San Marcos, 20 miles south of Austin and 60 miles north of San Antonio. The City is the second largest city in Hays County and enjoys a south-central location convenient to most major population and employment centers in the State.

### **City Government**

The City is a political subdivision formed in 1880 and is a home rule municipality of the State, duly organized and existing under the laws of the State. City Council consists of the Mayor and six Council Members who are elected for staggered three-year terms. The City Council formulates operating policy for the City while the City Manager is the chief administration officer. The current members of the City Council and their respective expiration of terms of office, as well as the principal administrators of the City, are noted on page ii. See “APPENDIX A – General Information Regarding the City” for more information.

## **THE DISTRICT**

### **General**

The PID Act authorizes municipalities, such as the City, to create public improvement districts within their boundaries or extraterritorial jurisdiction, and to impose assessments within the public improvement district to pay for certain improvements. The District was created by Resolution No. 1316 of the City adopted on July 5, 2022, in accordance with the PID Act (the “Creation Resolution”) for the purpose of undertaking and financing, the costs of certain public improvements within the District, including the Improvement Area #1 Improvements, authorized by the PID Act and approved by the City Council that confer a special benefit on the portion of the District property being developed. The District is not a separate political subdivision of the State and is governed by the City Council. A map of the property within the District is included on page v hereof.

### **Powers and Authority of the City**

Pursuant to the PID Act, the City may establish and create the District and undertake, or reimburse a developer for the costs of, improvement projects that confer a special benefit on property located within the District, whether located within the City limits or the City’s extraterritorial jurisdiction. The PID Act provides that the City may levy and collect the Assessments on property in the District, or portions thereof, payable in periodic installments based on the benefit conferred by an improvement project to pay all or part of its cost.

Pursuant to the PID Act and the Creation Resolution, the City has the power to undertake, or reimburse a developer for the costs of, the financing, acquisition, construction or improvement of the Improvement Area #1

Improvements. See “THE IMPROVEMENTS” herein. Pursuant to the authority granted by the PID Act and the Creation Resolution, the City has determined to undertake the acquisition (by purchase or otherwise, of real property or contract rights in connection with each improvement), construction and improvement of: water and wastewater facilities, including drainage improvements which expel stormwater runoff from the Property; pond facilities, including landscaping, irrigation, and fencing related thereto; drainage facilities; road/street facilities, including associated right-of-way; park improvements, including playscapes, dog park improvements, and associated structures; landscaping; common area landscaping, irrigation (including meters), and lighting, including design thereof; trails; open space improvements; screening walls; and other common area improvements; as well as payment of expenses incurred in the establishment, administration and operation of the District and the costs of issuance, reserve funds or credit enhancements of any bonds issues by or on behalf of the District. The City has determined to finance a portion of the costs of the Improvement Area #1 Improvements through the issuance of the Bonds, and to provide for the payment of debt service on the Bonds from the Trust Estate. See “ASSESSMENT PROCEDURES” herein and “APPENDIX C – Form of Service and Assessment Plan.”

## **THE IMPROVEMENTS**

### **General**

The current development plan for the District is for the development of the Property into a master planned community consisting of 981 single-family lots, one amenity lot, one commercial lot, one vybe trail extension lot, five detention ponds, and over 70 acres of publicly dedicated privately maintained parkland including over 15,000 feet of concrete/natural trails throughout the development. The Developer intends the Development to be constructed in three improvement areas, consisting of six construction phases as follows: (i) Improvement Area #1 consisting of Phase 1 and Phase 2; (ii) Improvement Area #2 consisting of Phase 3 and Phase 4; and (iii) Improvement Area #3 consisting of Phase 5 and Phase 6.

The Developer will construct certain Authorized Improvements and Privately Financed Improvements (as defined in the Service and Assessment Plan) to serve the District, beginning with the Designated Improvements. The Improvement Area #1 Improvements will be designed and constructed in accordance with City standards and specifications, as modified by the Development Agreement and the PUD Ordinance. The Improvement Area #1 Privately Financed Public Improvements and Privately Financed Improvements will be designed and constructed in accordance with City standards and specifications, as modified by the Development Agreement and the PUD Ordinance and, applicable, the administrative rules of Texas Commission on Environmental Quality (the “TCEQ Rules”), as applicable. See “APPENDIX C – Form of Service and Assessment Plan.”

### **Improvement Area #1 Improvements**

A portion of the Improvement Area #1 Improvements will be funded with the proceeds of the Bonds. The Developer is responsible for the completion of the construction of the Improvement Area #1 Improvements. From the proceeds of the Bonds, the City will either pay directly or will reimburse the Developer for a portion of the project costs actually incurred in developing, designing, and constructing the Improvement Area #1 Improvements within the District. The costs of the Improvement Area #1 Improvements are estimated to equal \$11,846,617. As of March 1, 2023, the Developer has spent approximately \$1,660,000 towards the costs of the Improvement Area #1 Improvements.

### **Improvement Area #1 Projects**

The Improvement Area #1 Projects include the Improvement Area #1 Improvements, Improvement Area #1 Bond Issuance Costs and First Year Annual Collection Costs. The total costs of the Improvement Area #1 Projects is \$16,248,064\*, including Bond Issuance Costs and First Year Annual Collection Costs estimated to equal 4,361,446\*. The Improvement Area #1 Projects are expected to be financed as follows: (i) proceeds of the Bonds in the amount of

\$15,852,000\*; and (ii) a Developer contribution in the approximate amount of \$396,064\*. See “SOURCES AND USES OF FUNDS” and “APPENDIX C – Form of Service and Assessment Plan.”

### **Improvement Area #1 Privately Financed Public Improvements**

The Improvement Area #1 Privately Financed Public Improvements will not be funded with the proceeds of the Bonds, but the Developer will be responsible for the completion of the construction of the Improvement Area #1 Privately Financed Public Improvements. The costs of the Improvement Area #1 Privately Financed Public Improvements serving Improvement Area #1 are estimated to equal \$2,193,751. The Improvement Area #1 Privately Financed Public Improvements qualify as Authorized Improvements, and thus, while the Improvement Area #1 Privately Financed Public Improvements will not be financed with the Bonds, they may be financed with future PID Bonds in Future Improvement Areas. As of March 1, 2023, the Developer has spent approximately \$120,000 towards the costs of the Improvement Area #1 Privately Financed Public Improvements.

### **Privately Financed Improvements**

The Privately Financed Improvements will not be funded with the proceeds of the Bonds, but the Developer will be responsible for the completion of the construction of the Privately Financed Improvements. The costs of the Privately Financed Improvements serving Improvement Area #1 are estimated to equal \$1,811,561. As of March 1, 2023, the Developer has spent approximately \$250,000 towards the costs of the Privately Financed Improvements.

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\* Preliminary, subject to change.



## Summary of Costs

The following table reflects the total expected costs of the Improvement Area #1 Projects, the Improvement Area #1 Privately Financed Public Improvements, and the Privately Financed Improvements benefitting Improvement Area #1. See “APPENDIX C – Form of Service and Assessment Plan.”

### Costs of the Improvements

	Total Costs	Privately Financed Improvements [a]	Water Improvements [b]	Improvement Area #1 Projects
<i>Improvement Area #1 Improvements</i>				
Heron Drive Improvements	\$ 691,383	\$ -	\$ -	\$ 691,383
Roadway	5,181,155	-	-	5,181,155
Drainage & Ponds	3,058,567	-	-	3,058,567
Parks and Landscaping	1,518,083	-	-	1,518,083
Soft Costs	1,397,429	-	-	1,397,429
	<b>\$ 11,846,617</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 11,846,617</b>
<i>Improvement Area #1 Privately Financed Public Improvements</i>				
Water	\$ 1,928,197	\$ -	\$ 1,928,197	\$ -
Soft Costs	257,869	-	257,869	-
	<b>\$ 2,186,066</b>	<b>\$ -</b>	<b>\$ 2,186,066</b>	<b>\$ -</b>
<i>Privately Financed Improvements</i>				
Wastewater	\$ 1,623,340	\$ 1,623,340	\$ -	\$ -
Soft Costs	217,098	217,098	-	-
	<b>\$ 1,840,438</b>	<b>\$ 1,840,438</b>	<b>\$ -</b>	<b>\$ -</b>
<i>Improvement Area #1 Bond Issuance Costs</i>				
Debt Service Reserve Fund	\$ 1,585,200	\$ -	\$ -	\$ 1,585,200
Capitalized Interest	1,270,306	-	-	1,270,306
Underwriter's Discount	475,560	-	-	475,560
Cost of Issuance	1,030,380	-	-	1,030,380
	<b>\$ 4,361,446</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,361,446</b>
<i>First Year Annual Collection Costs</i>	\$ 40,000	\$ -	\$ -	\$ 40,000
First Year Collection Costs	<b>\$ 40,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 40,000</b>
<b>Total</b>	<b>\$ 20,274,568</b>	<b>\$ 1,840,438</b>	<b>\$ 2,186,066</b>	<b>\$ 16,248,064</b>

Notes:

[a] Privately Financed Improvements are not eligible for reimbursement.

[b] Improvement Area #1 water improvements are classified as Improvement Area #1 Privately Financed Public Improvements and are intended to be dedicated to and maintained by Goforth Special Utility District (“Goforth SUD”). Improvements to include trench excavation and embedment, trench safety, piping, manholes, valves, fire hydrant assemblies, service connections, testing, related earthwork, erosion control, and all necessary appurtenances to be fully operational transmission lines constructed to City and utility provider standards required to provide water service.

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The expected costs of the improvements listed above are based on information provided by the Developer and its engineer and reviewed by the City staff and by third-party consultants retained by the City, and are to be approved by the City Council as part of the Service and Assessment Plan. See “APPENDIX C – Form of Service and Assessment Plan.”

Below is a list of the expected improvements benefiting Improvement Area #1:

Improvement Area #1 Improvements. The Improvement Area #1 Improvements benefit Improvement Area #1 of the District and consist of the following:

*Heron Drive Improvements to Roundabout Improvements* to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, and associated utility infrastructure in the Heron Drive right-of-way. Also includes a roundabout that will include the roadway improvements listed above, in addition to mountable curbs and reinforced concrete aprons. These Heron Drive improvements and roundabout are anticipated to benefit phases 1 – 4 of the District.

*Roadway Improvements* to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, alleyways or corresponding public easements & testing. Also includes a deceleration lane off FM 2001.

*Drainage and Ponds Improvements* to include trench excavation and embedment, trench safety, piping, manholes, inlets, headwalls, testing, related earthwork, and erosion control. Also included are retention ponds, detention ponds, and wet detention ponds, clearing excavation, piping for inbound and outbound drainage lines, outlet structures, and erosion control.

*Parks and Landscaping Improvements* to include a wet pond with irrigated trees, irrigated planting beds and sod at the entry, trail lighting, electrical, perimeter fencing, upgraded median landscaping along the entry road and at roundabouts, and right of way. Also to be included are a playground, and a parkway with trails, irrigation and meters, site furnishings, trees, sod, parkland, open space and planting beds.

*Soft Costs* related to designing, constructing, installing, and financing the Improvement Area #1 Improvements, including land planning and design, City fees and performance bonds, engineering, soil testing, survey, construction management, legal fees, consultant fees, contingency, inspection fees, district formation costs, and other PID costs incurred and paid by the Developer.

Improvement Area #1 Privately Financed Public Improvements and Privately Financed Improvements. The Improvement Area #1 Privately Financed Public Improvements and Privately Financed Improvements will not be funded by Bond proceeds, and consist of the following:

*Improvement Area #1 Privately Financed Public Improvements* to include trench excavation and embedment, trench safety, piping, manholes, valves, fire hydrant assemblies, service connections, testing, related earthwork, erosion control, and all necessary appurtenances to be fully operational transmission lines constructed to City and utility provider standards required to provide water service.

The Improvement Area #1 Privately Financed Public Improvements are intended to be dedicated to and maintained by Goforth SUD. Improvement Area #1 Assessments will not be used to fund the Improvement Area #1 Privately Financed Public Improvements. Improvement Area #1 Privately Financed Public Improvements benefitting future improvement areas within the District may be funded with assessments once all other Authorized Improvements for such improvement area have been funded, as reflected in the Service and Assessment Plan.

The Improvement Area #1 Privately Financed Public Improvements will be funded by the Developer through funds advanced under the Development Loan.

*Privately Financed Improvements* to include trench excavation and embedment, trench safety, piping, manholes, valves, lift station and pump assemblies, service connections, testing, related earthwork, erosion control, and all necessary appurtenances to be fully operational gravity and force lines constructed to City and utility provider standards required to provide wastewater service.

The Privately Financed Improvements are intended to be dedicated to and maintained by Windy Hill.

Improvement Area #1 Assessments will not be used to fund the Privately Financed Improvements.

The Privately Financed Improvements will be funded by the Developer through funds advanced under the Development Loan.

### **Ownership and Maintenance of Improvements**

*Improvement Area #1 Improvements.* The Improvement Area #1 Improvements will be designed and constructed in accordance with City standards and specifications, as modified by the Development Agreement and PUD Ordinance. The Improvement Area #1 Improvements will be owned by the City. The City will provide for the ongoing operation, maintenance and repair of the Improvement Area #1 Improvements (other than the alleys, parks, common areas, landscaping, and water quality and detention ponds which will be maintained by the HOA) constructed and conveyed, as outlined in the Service and Assessment Plan.

*Improvement Area #1 Privately Financed Public Improvements.* The Improvement Area #1 Privately Financed Public Improvements will be constructed in accordance with City standards and specifications, as modified by the Development Agreement, PUD Ordinance and, as applicable, the TCEQ Rules. The Improvement Area #1 Privately Financed Public Improvements will be owned by Goforth SUD, and Goforth SUD will provide for the ongoing operation, maintenance and repair of the Improvement Area #1 Privately Financed Public Improvements as outlined in the Water Agreement, as defined herein.

*Privately Financed Improvements.* The Privately Financed Improvements will be constructed in accordance with City standards and specifications, as modified by the Development Agreement, PUD Ordinance and, as applicable, the TCEQ Rules. The Privately Financed Improvements will be owned by Windy Hill, and Windy Hill will provide for the ongoing operation, maintenance and repair of the Privately Financed Improvements as outlined in the Wastewater Agreement, as defined herein.

## **THE DEVELOPMENT**

### **Overview**

The Development is an approximately 259.02-acre master planned development project located entirely within the City and is located on the east side of the City of Kyle within Hays County, Texas. The property is located along the west side of FM 2001 and extends from the Shadow Creek Subdivision. Access to the site will be provided along FM 2001, Suffield Drive, and Hillside Terrace, with additional entrances through the existing Shadow Creek subdivision and one along Suffield Drive through a future development.

### **Development Plan**

Currently, the Developer intends to develop the Property into a master planned community consisting of 981 single-family lots, one amenity lot, one commercial lot, one vybe trail extension lot, five detention ponds, and over 70 acres of publicly dedicated privately maintained parkland including over 15,000 feet of concrete/natural trails throughout the development. The Developer intends the Development to be constructed in three improvement areas, consisting of six construction phases as follows: (i) Improvement Area #1 consisting of Phase 1 and Phase 2; (ii) Improvement Area #2 consisting of Phase 3 and Phase 4; and (iii) Improvement Area #3 consisting of Phase 5 and Phase 6.

The Developer will construct improvements necessary to complete lot development. Lot development in Improvement Area #1 will consist of construction of: (i) the Improvement Area #1 Improvements, which will benefit the land within Improvement Area #1, will be financed by the City through the District, and will consist of road, roundabout, drainage, parks and landscaping; (ii) the Improvement Area #1 Privately Financed Public Improvements, which will be privately financed improvements, consisting of water improvements; and (iii) the Privately Financed Improvements, which will be privately financed improvements, consisting of wastewater improvements. Upon completion, (i) the Improvement Area #1 Improvements will be owned, operated, and maintained by the City (other than the alleys, parks, common areas, landscaping, and water quality and detention ponds which will be maintained by the HOA); (ii) the Improvement Area #1 Privately Financed Public Improvements will be transferred to and

operated and maintained by Goforth SUD; and (iii) the Privately Financed Improvements will be transferred to and operated and maintained by Windy Hill. The Improvement Area #1 Privately Financed Public Improvements and Privately Financed Improvements are not eligible for reimbursement. In addition to the Improvement Area #1 Improvements, proceeds of the Bonds will also be used to finance the Improvement Area #1 Projects, which include, in addition to the costs of the Improvement Area #1 Improvements, certain costs related to the issuance of the Bonds, including issuance costs, reserve funds, capitalized interest, and costs incidental to the organization and administration of the District.

### **Lot Purchase Agreement**

The Developer executed the Original Agreement, granting MileStone the exclusive right to purchase all single-family residential lots in the Property, effective as of April 27, 2021 (the “Effective Date”). Pursuant to the Lot Purchase Agreement, MileStone is required to acquire lots pursuant to a takedown schedule and must acquire and develop the lots at such times and in such quantities to ensure the Developer’s conformance to its obligations under the terms and conditions of the Development Loan (as defined herein below). Notwithstanding the foregoing, the Lot Purchase Agreement provides a take-down schedule requiring a minimum of 50 lots be taken down within 36 months from the effective date (the “First Takedown Period”), and a “Second Takedown Period” requiring an additional 20 lots be taken down 90 days after the expiration of the First Takedown Period. The take-down schedule then requires an additional 20 lots be taken down every 90 days thereafter until all lots have been taken down.

To purchase lots, MileStone must provide written notice to the Developer and the escrow agent named in the Lot Purchase Agreement specifying the lot or lots to be acquired and the date of closing. Upon the escrow agent’s receipt of closing documents from the Developer and the required Purchase Price (as defined herein below) from MileStone, the escrow agent will immediately disburse to the Developer all applicable payments received from MileStone. The escrow agent will cause the deed(s) to be recorded conveying to MileStone the lots as designated by MileStone strictly in accordance with the provisions of the Lot Purchase Agreement.

The “Purchase Price,” will be determined as of the Effective Date in an amount equal to the following: (1) the “Base Purchase Price” of \$1,150.00 per front foot; (2) the “Lot Escalator” of 2.0%, per annum, which will begin to accrue on the date of the initial closing of any lots under the Lot Purchase Agreement; (3) the “Phase Lot Escalator” in the amount of 6.00%, per annum, which will begin to accrue on the date of the initial closing of lots within each phase, not as to any other phase; (4) the “Impact Fee Reimbursement” equating to a pro-rata portion of all impact fees previously paid by the Developer; and (5) the “PID Reimbursement Credit” equating to a credit in the amount of \$3,550.00 which will reduce the Purchase Price.

In the event of a default by MileStone, the Developer will be entitled to either (i) enforce specific performance of MileStone’s obligations to acquire lots; or (ii) terminate the Lot Purchase Agreement and retain the Deposit (as defined below), and all other amounts paid by MileStone to, or for the benefit of, the Developer pursuant to the Lot Purchase Agreement. In the event of a default by the Developer under the Development Loan, beyond all applicable notice and cure periods set forth therein, upon the written request of the lender, MileStone must attorn to the lender and must pay directly to the lender the Purchase Price and all sums due to Developer under the Lot Purchase Agreement, and the lender will perform all of the Developer’s covenants, conditions and obligations contained in the Lot Purchase Agreement, provided, however, that MileStone will not be so obligated to attorn unless, if MileStone will so request in writing, the lender will execute and deliver to MileStone an instrument wherein such the lender agrees that so long as MileStone performs all of the terms, covenants and conditions of the Lot Purchase Agreement, none of MileStone’s rights contained herein will be disturbed by the lender.

MileStone made a \$979,000 earnest money deposit (the “Deposit”). No portion of the Deposit will be applied toward the Purchase Price until the final lot closing, at which time the full balance of the Deposit will be applied toward the Purchase Price for the applicable lots, and any remaining balance of the Deposit will be returned by the Developer to MileStone via check or wire transfer.

The “First Takedown Period” expires on April 27, 2024. Milestone has begun its initial takedown and expects to take down approximately 50 lots by August of 2023. As of March 31, 2023, Milestone has taken down 12 40’ lots in Phase #1 of Improvement Area #1.

## **Development Agreement**

The City and Developer entered into the Development Agreement, effective May 17, 2022, as amended by the First Amendment to the Porter Country Development Agreement, effective September 6, 2022, establishing certain restrictions and commitments to be imposed and made in connection with the development of the Property. The Development Agreement requires the Developer to: (i) dedicate and convey approximately 70.6 acres to the City to be used as parkland, open space, and public amenities, which will be maintained and operated by a homeowner's association; (ii) construct primary and secondary entry monumentations with other fencing and landscaping improvements; and (iii) manage construction of the Vybe Trail Extension (as defined in the Development Agreement). The Development Agreement further requires the Developer to deposit four hundred thousand dollars (\$400,000.00) on or before three (3) days prior to the closing of bonds issued for Improvement Area #2 with a third-party title company to be held in escrow and used for the payment of a portion of the costs related to the construction of the Vybe Trail Extension. Additionally, the Development Agreement provides that the City and Developer intend that water service to the Property will be provided by Goforth SUD, and sewer service to the Property will be provided by Windy Hill.

The Development Agreement also establishes a maximum overlapping tax rate equivalent, including all taxing entities, of \$3.05 per \$100 of estimated buildout value (the "Maximum Equivalent Tax Rate"), but in no case less than a special assessment tax rate equivalent of \$0.47 per \$100 of estimated buildout value. The estimated buildout value for a lot classification shall be determined by the Administrator using information provided by the Developer and confirmed by the City Council by considering such factors as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, builder contracts, discussions with homebuilders, reports from third party consultants, information provided by the Developer, or any other information that may help determine buildout value.

## **Financing Agreement**

The City and Developer expect to enter into the Financing Agreement, on or about May 2, 2023, which provides, in part, for the issuance of bonds and the deposit of proceeds from the issuance and sale of such bonds, including the Bonds Similarly Secured, for the payment of costs of Authorized Improvements within the District, the reimbursement of costs to the Developer from the proceeds of bonds or assessments for funds advanced by the Developer and used to pay costs of Authorized Improvements, including the Improvement Area #1 Improvements. Additionally, in the Financing Agreement, the Developer agrees to maintain sufficient available funds, in a form acceptable to the City, to finance the costs of Authorized Improvements not funded by the proceeds of bonds or assessment revenues. See "APPENDIX G – Form of Financing Agreement."

## **Completion Agreement**

To ensure the Designated Improvements within Improvement Area #1 are completed, and funding is available to provide for their completion, the Developer and the City expect to enter into the Completion Agreement. Pursuant to the Completion Agreement, the Developer is required to provide the Letter of Credit in the initial amount of \$\_\_\_\_\_ to the benefit of the City from a lender or financial institution in a form acceptable to the City. The letter of credit will be delivered concurrently with the Completion Agreement and is anticipated to be provided by IBC.

The value of the Letter of Credit may be reduced from time to time upon completion of the Designated Improvements (including segments or sections thereof) to reflect the amount needed to complete the remaining Designated Improvements. The Developer agreed to complete the Designated Improvements on the following schedule, subject to force majeure and the notice and cure provisions provided therein:

(i) The Designated Improvements shall be substantially completed for "Phase #1" of Improvement Area #1 not later than eighteen (18) months from the closing of the Bonds.

(ii) The Designated Improvements shall be substantially completed for "Phase #2" of Improvement Area #1 not later than thirty-six (36) months from the closing of the Bonds.

The Letter of Credit will automatically renew annually and will terminate 15 days after receipt by IBC of written notice from the City that the Designated Improvements have been completed.

The City may submit a “Draw Statement” pursuant to the Letter of Credit to construct the Designated Improvements, if the Designated Improvements are not completed in accordance with the Completion Agreement schedule, subject to force majeure. Prior to submitting a Draw Statement, the City must provide written notice of the Developer’s failure to complete and a reasonable time to cure the alleged failure of not less than 30 days after giving written notice. See “THE DEVELOPMENT – Completion Agreement” and “APPENDIX H – Form of Completion Agreement.”

#### **Status of Lot Construction**

Lot construction in Phase 1 of Improvement Area #1 began in August of 2022 and is expected to be completed in March of 2024. Lot construction in Phase 2 of Improvement Area #1 is expected to begin in April of 2024 and is expected to be completed in May of 2025. As of March 1, 2023, the Developer has spent approximately \$1,660,000 towards the costs of the Improvement Area #1 Improvements and approximately, \$120,000 towards the costs of the Improvement Area #1 Privately Financed Public Improvements and \$1,807,000 towards the costs of the Privately Financed Improvements.

The Developer’s current expectations regarding estimated value to lien ratios in Improvement Area #1 of the District are as follows:

#### **Estimated Lot and Home Prices and Estimated Value to Lien Ratios in Improvement Area #1**

Planned Lot Type (ft.)	Units/ Sq. Ft.	Base Lot Price <sup>(1)</sup>	Average Base Home Price <sup>(2)</sup>	Bond Assessment per Lot	Estimated Ratio of Value of Base Lot Price to Bond Assessment <sup>(3)</sup>	Estimated Ratio of Value of Average Base Home Price to Bond Assessment
Phase 1 - 40’	204	\$67,000	\$420,000	\$37,528	1.79 : 1	11.19 : 1
Phase 1 - 50’	50	83,750	508,000	45,390	1.85 : 1	11.19 : 1
Phase 2 - 40’	141	73,000	420,000	37,528	1.95 : 1	11.19 : 1
Phase 2 - 50’	14	91,300	508,000	45,390	2.01 : 1	11.19 : 1
<b>Total/WAVG</b>	<b>409</b>	<b>\$71,948</b>	<b>\$433,770</b>	<b>\$38,758</b>	<b>1.86 : 1</b>	<b>11.19 : 1</b>

<sup>(1)</sup> Values are from the Appraisal based on indicated retail lot value.

<sup>(2)</sup> The values provided as the Average Base Home Prices are an average value over the life of the Bonds. Average Base Home Prices are estimates provided by Developer.

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The Developer’s current expectations regarding the expected build-out schedule of the District are as follows:

**Expected Build-Out and Absorption Schedule of Single-Family Residential Units in the District<sup>(1)</sup>**

Imp. Area	Phase	Lot Size	Single-Family Lots	Expected Infrastructure Completion Date	Actual/Expected Initial Closing Date of Lots to MileStone	Expected Final Closing Date of Lots to MileStone	Expected Initial Closing Date of homes to Homeowners	Expected Final Closing Date of homes to Homeowners
1	1	40’	204	Mar. 2024	Mar. 2023 <sup>(2)</sup>	May 2025	Mar. 2024	Oct. 2025
1	1	50’	50	Mar. 2024	Apr. 2023 <sup>(2)</sup>	May 2025	Mar. 2024	Oct. 2025
1	2	40’	141	May 2025	Jun. 2025	Feb. 2027	Nov. 2025	Jul. 2027
1	2	50’	14	May 2025	Jun. 2025	Feb. 2027	Nov. 2025	Jul. 2027
2	3	40’	156	Feb. 2027	Mar. 2027	Jan. 2028	Aug. 2027	Jun. 2028
2	3	50’	0	Feb. 2027	Mar. 2027	Jan. 2028	Aug. 2027	Jun. 2028
2	4	40’	107	Jan. 2028	Feb. 2028	Nov. 2028	Jul. 2028	Apr. 2029
2	4	50’	33	Jan. 2028	Feb. 2028	Nov. 2028	Jul. 2028	Apr. 2029
3	5	40’	132	Nov. 2028	Dec. 2028	Oct. 2029	May 2029	Mar. 2030
3	5	50’	31	Nov. 2028	Dec. 2028	Oct. 2029	May 2029	Mar. 2030
3	6	40’	83	Oct. 2029	Nov. 2029	May 2030	Apr. 2030	Oct. 2030
3	6	50’	30	Oct. 2029	Nov. 2029	May 2030	Apr. 2030	Oct. 2030
<b>Total</b>			<b>981</b>					

<sup>(1)</sup> Provided by Developer.

<sup>(2)</sup> As of March 31, 2023, MileStone has taken down 12 lots and anticipates taking down additional lots prior to the expected infrastructure completion date.

## Zoning/Permitting

The District is currently zoned under the PUD Ordinance adopted by the City Council on June 7, 2022 (the “PUD Ordinance”). The PUD Ordinance allows certain residential and commercial uses and establishes guidelines pertaining to purpose, height, area and setbacks. Because the District lies wholly within the city limits of the City, as partially annexed by the City on May 17, 2022, the City’s zoning and subdivision regulations control the aspects of development not specifically set forth in the PUD Ordinance and the Development Agreement.

## Amenities

Pursuant to the PUD Ordinance and Development Agreement, the Developer is to develop a private amenity site with a pool, lawn, lounge, activity areas, shade structures, and restrooms (the “Amenity Center”), as well as landscaping and park improvements in common areas throughout the District, including trails, open lawns, natural areas, seating areas and playscapes. The Amenity Center will be owned and maintained by the HOA, while the other open space and park improvements will be dedicated and conveyed to the City and maintained by the HOA. Construction of the Amenity Center is scheduled to begin in May of 2024 and is expected to be complete in March of 2025, and is anticipated to cost approximately \$1,500,000. Construction of the Amenity Center will be funded by the Developer through its Development Loan.

## Schools

The District is located entirely within the Hays Consolidated Independent School District (“Hays CISD”). Hays CISD operates 26 campuses that are located throughout northern Hays County and serves approximately 20,000 students. Such campuses include three comprehensive high schools, six middle schools (6-8 grade), 15 elementary schools, an alternative high school of choice, a disciplinary center and a performing arts center. The Hays CISD schools nearest the District are Ralph Pfluger Elementary School (“Pfluger Elementary”), Dr. T C McCormick Jr. Middle School (“McCormick Middle”), and Jack C Hays High School (“Hays High”). GreatSchools.org rated Pfluger Elementary 8-out-of-10, McCormick Middle as 4-out-of-10, and Hays High 6-out-of-10. According to the Texas Education Agency annual report cards, Pfluger Elementary was rated as “A”, McCormick Middle as “B”, and Hays High as “A”. (The categories for public school districts and public schools are A, B, C, D or F.)

The District is also served by Austin Community College (“ACC”), which is a junior college district located in Central Texas with a total annual enrollment of approximately 70,000 students. It is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award associate degrees and baccalaureate degrees. ACC’s Hays Campus is located approximately three miles from the District. According to ACC’s website, ACC is currently constructing a First Responder Training Center at the Hays Campus that will offer students emergency training. The Hays Campus also offers law enforcement, corrections, and peace officer tracks, as well as core curriculum designed to be transferred to four-year colleges and universities.

The District is also located approximately ten miles from Texas State University (“Texas State”), a public research university located in the City of San Marcos, Texas. According to its website, Texas State currently has more than 38,000 undergraduate and graduate students and offers over 200 bachelor’s, master’s, and doctoral degree programs.

## **Environmental**

A Phase I Environmental Site Assessment (a “Phase I ESA”) of approximately 320 acres, including the entirety of the District’s boundaries, was completed in May of 2021. The Phase I ESA noted the Property was found to have a low probability for environmental risk related to significant levels of hazardous substances or petroleum products, and further assessment was not warranted at the time of the ESA; however, the following recommendations were made: remove all structures and contents on the Property, properly cap/abandon all water wells, remove all debris, and contact utility companies and pipeline owners prior to commencement of construction. It was later determined that the water wells identified on the Phase I ESA were actually not located on the property, but were located approximately one-half mile outside of the property lines. The Developer has completed all of the other Phase I ESA recommendations.

Development of the property is subject to a variety of environmental rules, including the Edwards Aquifer Rules (Title 30, Chapter 213 of the Texas Administrative Code) of the Texas Commission on Environmental Quality (“TCEQ”), the City’s Water Quality Protection Ordinance, the City’s Conservation Design Ordinance, and the federal Endangered Species Act.

According to the website for the United States Fish and Wildlife Service, the Texas blind salamander, Barton Springs salamander, whooping crane, golden-cheeked warbler, fountain darter, San Marcos gambusia, Texas wild-rice, Comal Springs riffle beetle, and Comal Springs dryopid beetle are endangered species in Hays County, and the San Marcos salamander and the red knot are threatened species in Hays County. No habitats for these endangered or threatened species were identified on the site.

## **Utilities**

Water. To have sufficient water capacity to serve the District and based on the District’s location within the water supply system territory controlled by Goforth SUD, the Developer and Goforth SUD entered into a Non-Standard Water Service Agreement (the “Water Agreement”) wherein Goforth SUD would reserve water supply and water system capacity for the District – beginning with Phase 1, and with the option to amend the Water Agreement to cover each additional phase individually. Goforth SUD contracts with Guadalupe Brazos River Authority (“GBRA”) to meet its water supply needs. Pursuant to the Water Agreement, Goforth SUD is expected to have sufficient capacity to provide water service to the District.

The Water Agreement provides that the Developer will pay Goforth SUD \$654,750 as an impact fee for Phase 1 only to be used to assist in funding capital improvements to Goforth SUD’s system capacity. To secure water service for the lots in the remaining five phases, the Developer has committed to providing Goforth SUD an Irrevocable Letter of Credit (the “Goforth SUD ILOC”), on a phase-by-phase basis, at the time of plat approval for each of the remaining five phases in the amount of \$3,000 per lot for each lot in the platted phase. The Developer will also pay \$3,000 per lot to Goforth SUD at the time, and as a condition of, Goforth SUD’s acceptance for service of the distribution lines constructed for the subject phase, such that the total payment per lot will be \$5,500 per lot, after Goforth SUD also receives a lot owner impact fee of \$2,500 from each individual lot at the time service is initiated to the District. The Goforth SUD ILOC for a particular phase will be retired upon building permit issuance, or Goforth SUD’s acceptance of improvements.



Pursuant to the Water Agreement, the Developer further agrees to contract for, construct, and install all the necessary on-site distribution lines, valves, fire hydrants, and other on-site appurtenances, including but not limited to all water meters necessary to serve Phase 1, prior to receiving water service to all lots in Phase 1. The Developer is further required to contract for, construct and install all necessary off-site water main or lateral extensions needed to connect Goforth SUD's water system to Phase 1, as well as ensure that all water improvements meet all requirements of the TCEQ.

As of March 1, 2023, the Water Agreement has not been amended to cover Phase 2. The Developer anticipates amending the Water Agreement to cover Phase 2, upon commencement of construction of Phase 2 on or about April of 2024.

***Wastewater.*** To provide wastewater services to the District and based on the District's location within the wastewater treatment system territory controlled by Windy Hill, the Developer and Windy Hill entered into the Wastewater Treatment Service Extension Developer Subdivision Nonstandard Service Agreement (the "Wastewater Agreement") wherein Windy Hill agreed to provide wastewater services to the District. The Wastewater Agreement requires the Developer to finance and construct a wastewater collection system within the District that will connect, extend, or both into Windy Hill's wastewater treatment point of service. Upon Developer's completion of each and any phase of the wastewater collection system, and subject to Windy Hill's inspection and final approval the Developer will dedicate and convey the wastewater collection system, together with associated warranties, easements, rights-of-way permits, licenses, or appurtenances to Windy Hill free and clear of all liens, claims, and encumbrances. Following completion and dedication of the wastewater collection system to Windy Hill, Windy Hill agrees to provide continuous and adequate services (as defined in the Wastewater Agreement) to the District.

***Other Utilities.*** The Developer expects additional utilities to be provided by: (1) Phone/Cable/Data – Grande Communications Networks and Charter Communications/Spectrum; (2) Electric – Pedernales Electric Cooperative; and (3) Natural Gas – CenterPoint Energy.

### **Preliminary Geotechnical Exploration**

A Geotechnical Feasibility Evaluation (a "Geotech") covering the District, performed by MLA Geotechnical, Engineer's Job No. 21101107.001, was issued in January of 2022. The Geotech provides recommendations regarding pavement thickness throughout the District, and provides construction considerations regarding ground water and pavement.

### **Existing Mineral and Groundwater Rights**

There are certain mineral rights reservations of one or more prior owners of real property within the District (collectively, the "Mineral Owner"), pursuant to one or more deeds in the chain of title for the property in the District.

The Developers are not aware of any ongoing oil, gas or other mineral rights development or exploration on or adjacent to the property within the District. Certain rules and regulations of the Texas Railroad Commission may restrict the ability of the Mineral Owner to explore or develop the property due to well density, acreage, pooling regulations or location issues.

Although the Developer does not expect the above-described mineral rights, or the exercise of such rights or any other mineral or groundwater rights or related real property rights in or around the District to have a material adverse effect on the Development, the property within the District, or the ability of landowners within the District to pay Assessments, the Developer makes no guarantee as to such expectation. See "BONDHOLDERS' RISKS – Exercise of Mineral Rights."

### **Existing Easement for Pipeline**

[Enterprise Texas Pipeline LLC ("Enterprise") holds a certain right of way and easement upon, over, under and through the property within the District (the "Easement"). Enterprise owns and operates a pipeline that is located within the Easement and commonly known as "Line 9034 New Braunfels to Turnersville Road Station" pipeline (the

“Pipeline,” together with any related valves, meters, equipment, and other appurtenances, the “Facilities”) that runs through the property in the District pursuant to the Easement. The Easement is primarily located in areas designated as open space. In order to construct certain roadways within the District, being Marsh Lane and Shadow Creek Boulevard, (the “Encroachment”) over and across the Pipeline, the Developer and Enterprise entered into an encroachment agreement (the “Encroachment Agreement”). The Encroachment Agreement provides construction parameters, including the presence of a representative of Enterprise during construction activities, and requires the Developer to maintain a minimum cover between the top of the Pipeline and the top of respective road surfaces. The Developer is responsible for any costs relating to Enterprise’s operation of the Facilities or the Easement incurred by Enterprise due to the Encroachment. If the Developer breaches any term of the Encroachment Agreement, Enterprise, at its option, may terminate the Encroachment Agreement upon 20 days written notice to the Developer. In the event of termination, the Developer is required to remove all Encroachment situated on the Easement at Developer’s expense. The terms, covenants and conditions of the Encroachment Agreement constitute covenants running with the land and are binding upon an inure to the benefit of Enterprise and the Developer, their successors and assigns.] *[The Encroachment Agreement is still under discussion between the Developer and City regarding assignment and enforceability]*

## **THE DEVELOPER**

### **General**

In general, the activities of a developer in a development such as the District include purchasing the land, designing the subdivision, including the utilities and streets to be installed and any community facilities to be built, defining a marketing program and building schedule, securing necessary governmental approvals and permits for development, arranging for the construction of roads and the installation of utilities (including, in some cases, water, sewer, and drainage facilities, as well as telephone and electric service) and selling improved lots and commercial reserves to builders, developers, or other third parties. The relative success or failure of a developer to perform such activities within a development may have a material effect on the security of the revenue bonds, such as the Bonds, issued by a municipality for a public improvement district. A developer is generally under no obligation to develop the property which it owns in a development. Furthermore, there is no restriction on the developer's right to sell any or all of the land which the developer owns within a development. In addition, a developer is ordinarily the major tax and assessment payer within a district during its development. See “BONDHOLDERS’ RISKS – Dependence Upon Developer.”

### **Description of the Developer**

The Developer was created by MileStone for the purpose of acquiring, developing and ultimately conveying lots in the District to MileStone, as the sole homebuilder in the District, as described under the caption “THE DEVELOPMENT.” The Developer is a nominally capitalized Texas corporation, the primary assets of which are (1) unsold property within the District, and (2) proceeds from the sale of lots within the District. The Developer will have no source of funds with which to pay Assessments or taxes levied by the City or any other taxing entity other than funds resulting from the sale of property within the District or funds advanced to the Developer by its members or an affiliated party. The Developer’s ability to make full and timely payments of Assessments or taxes will directly affect the City’s ability to meet its obligation to make payments on the Bonds. For additional information, see “BONDHOLDERS’ RISKS – Dependence Upon Developer” herein.

### **Description of MileStone**

MileStone is a respected vertically integrated real estate development and home building company. MileStone, a privately held home builder, sells approximately 1,000 homes per year. Its experienced management team has over 60 years of combined experience and has developed over 7,000 lots in Central Texas. MileStone is involved with community outreach and philanthropic endeavors. MileStone has experienced expansive growth during its tenure as a premier builder from Austin. MileStone has been recognized for many awards including: Inc. Magazine’s 6th fastest growing company in the nation, the Home Builders Association - President’s Award (Best Volume Home Builder), and ABJ’s Production Home Builder of the Year in 2017.

## **Executive Biography of MileStone's Owner & CEO**

*Garrett Martin, Owner & CEO.* Garrett Martin, one of the company's co-founders, is the President and CEO of MileStone. Prior to MileStone, Mr. Martin started his career in home building in the land development section of D.R. Horton and was later selected to help startup the Austin division of another national home building company, which experienced great success during its startup. Since Mr. Martin started Milestone Community Builders in 2008, the company has developed and sold approximately 8,500 homes. Mr. Martin attended Trinity University in San Antonio graduating with honors in finance and English literature. He received his JD after studying at both Southern Methodist University Dedman School of Law and the University of Texas School of Law. He was a member of the Phi Delta Phi honor society and was on law review at Southern Methodist University Dedman School of Law.

## **Other MileStone Projects**

MileStone has been involved in the following notable developments in Central Texas:

*Sage Hollow (Kyle 57 Public Improvement District), Kyle, Texas* is a 57-acre master planned community in Kyle Texas. It is expected to have 219 single family lots, open space areas including over 6,367 feet of concrete/natural trails, an amenity center, one commercial lot, and four water quality and/or detention ponds.

*Larkspur MUD, Williamson County, Texas*, is a large master planned community in Williamson County, Texas, near the intersection of Highway 29 and Highway 183A. It consists of over 600 acres with over 1,700 single-family lots in addition to a large swimming pool with splash pad, amenity center, entry monumentation, and over 100 acres of open space across 3 different Municipal Utility Districts.

*The Grove at Shoal Creek, Austin, Texas*, is a 75-acre mixed used project in the heart of Central Austin, just 4 miles from downtown, with over 330 townhomes, 70 stacked flat condos, 230 mid-rise condos, 1,000 multi-family and senior housing units, and 320,000 square feet of office and retail space.

*The Hills of Bear Creek, Austin, Texas*, is a large master planned community near the intersection of FM 1626 and Brodie Lane in South Austin. The project consists of 426 single family lots, a pool with amenity center, entry monumentation, City of Austin lift station, stormwater treatment and detention facilities.

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## History and Financing of the District

Summary of At-Risk Entities and Investments in the District Subordinate to the Assessment Lien. To finance the acquisition of land and the development of the District, the Developer and certain third parties, including Pioneer Bank, SSB, a Texas savings bank (“Pioneer Bank”) and Sunflower Bank, N.A., a national banking association, formerly known as Pioneer Bank (“Sunflower Bank”), have expended, or will expend, equity or extended promissory notes that are secured by a lien on some or all of the real property within the District, including Improvement Area #1, that are subordinate to the lien associated with the Assessments securing the Bonds.

### **Summary of Entities with At-Risk Capital Subordinate to the Lien Securing the Bonds**

At Risk Entity	Funding Type	Funding Purpose	Security	Position to Assessment Lien	Initial Amount	Outstanding Balance <sup>(1)</sup>
Sterling Equities	Equity <sup>(2)</sup>	Land Acquisition	NA	NA	\$5,170,000	\$4,700,179
Sunflower Bank	Promissory Note (Note 4) <sup>(3)</sup>	Development Loan	Lien on Real Property within the District	Subordinate	\$17,585,100.00	\$7,764,995
MileStone	Cash	Single-Family Lot Earnest Money	Lien on Contracted Single-Family Lots	Subordinate	\$979,000	\$979,000
<b>Total Outstanding Balance of Equity and Loan/Notes Secured by a Subordinate Lien Against Real Property within the District as of March 31, 2023:</b>						

<sup>(1)</sup> As of March 31, 2023.

<sup>(2)</sup> In kind donation of approximately 175 acres (the 163 Acres and the 12 Acres) valued at an amount not to exceed \$5,170,000, which property contribution amount is treated as a capital contribution of property in exchange for ownership interests in Developer.

<sup>(3)</sup> The initial amount reflects the credit available. As of March 31, 2023, the only amounts drawn on Note 4 was \$7,764,995 to renew, extend, and rearrange, but not extinguish, the unpaid balance of Note 1, Note 2, and Note 3 (each as defined below).

The Property Acquisition. Through a series of purchases, contributions, and assignments, as described below, Developer acquired the Property to be developed into the District.

On August 6, 2018, Rio Oso Holdings, LLC, a Texas limited liability company (“Rio Oso Holdings”) acquired 82.951 acres via general warranty deed (the “82 Acres”). On March 5, 2021, Chase Equities, Inc., a Texas corporation (“Chase”) entered into a Contribution Agreement (and such amendment thereto, are collectively referred to herein as the “Contribution Agreement”) with the Developer, wherein Chase agreed to contribute 163.935 acres to the Developer (the “163 Acres”). Chase and the Developer agreed that that the Contribution Agreement would be treated as a capital contribution of property by Chase to the Developer in exchange for ownership interests of Developer. On or about April 22, 2021, Chase assigned its rights under the Contribution Agreement to Sterling Equities, Inc., a Texas corporation (“Sterling”) (the “Assignment of Contribution Agreement”), and on April 22, 2021, Sterling conveyed the 163 Acres to the Developer via special warranty deed. On August 2, 2021, GJG Development II, LLC, a Texas limited liability corporation (“GJG Development”) entered into an agreement for purchase and sale of real property (and such amendment thereto, are collectively referred to herein as the “GJG Purchase Agreement”) to sell 12.088 acres (the “12 Acres”) of real property to Sterling. On October 18, 2021, Sterling conveyed the 12 Acres to the Developer via special warranty deed. On November 8, 2021, Rio Oso Holdings agreed to sell the 82 Acres to MileStone via the “Rio Oso Agreement of Sale and Purchase.” On December 17, 2021, MileStone assigned its rights under the Rio Oso Agreement of Sale and Purchase to the Developer, its affiliate, and Rio Oso Holdings subsequently conveyed the 82 Acres to the Developer.

Acquisition and Development Financing. To finance a portion of the land costs and the initial costs of developing the District, MileStone entered into a development loan agreement with Pioneer Bank (the “Development Loan Agreement”), effective September 4, 2018, as amended, on four occasions, and most recently on December 20, 2021, for a development loan in an amount not to exceed \$25,000,000 (as amended, the “Development Loan”). On March 29, 2023, the Development Loan Agreement was further amended by letter agreement. Subject to the terms and conditions of the Development Loan Agreement, Pioneer agreed to make a loan to MileStone, or any “Corporate Affiliates” as defined in the Development Loan Agreement, of MileStone, which includes the Developer. The Development Loan is secured by deeds of trust in favor of Sunflower Bank, as successor in interest to Pioneer Bank, which cover the 82 acres, 163 acres, and 12 acres, as described below, within the District.

On October 29, 2021, Pioneer Bank made an advance, as evidenced by a promissory note in the amount of \$3,608,315.21 (“Note 1”), to the Developer, in accordance with the terms of the Development Loan Agreement. Note 1 is secured by a deed of trust executed, effective October 29, 2021, by the Developer and lien on the 163 Acres and the 12 Acres. Then, on December 20, 2021, Pioneer Bank made an advance, as evidenced by a promissory note in the amount of \$3,700,000.00 (“Note 2”), to the Developer, in accordance with the terms of the Development Loan Agreement. Note 2 is secured by (i) a deed of trust executed, effective December 20, 2021, by the Developer and lien on the 82 Acres and (ii) a second deed of trust executed, effective December 20, 2021, by the Developer and lien on the 163 Acres and the 12 Acres. On April 27, 2022, Sunflower Bank, formerly known as Pioneer Bank, made an advance, as evidence by a promissory note in the amount of \$975,191.00 (“Note 3”), to the Developer, in accordance with the terms of the Development Loan Agreement. Note 3 is secured by a deed of trust executed, effective as of April 27, 2021, by the Developer, and lien on the 82 Acres, 163 Acres, and 12 Acres.

On March 29, 2023, Sunflower Bank (the “Lender”) made an advance, as evidenced by a promissory note in the amount of \$17,585,100.00 (“Note 4”), to the Developer, in accordance with the terms of the Development Loan Agreement. A portion of the proceeds of Note 4 were used to renew, extend, and rearrange, but not extinguish, the unpaid balance of Note 1, Note 2, and Note 3, and the remaining portion of Note 4 may be advanced to the Developer to be used in the development of the District. Note 4 is secured by a deed of trust executed, effective March 29, 2023, by the Developer and lien on the 82 Acres, 163 Acres, and 12 Acres. The repayment of Note 4 is also guaranteed by MileStone.

Amounts advanced under the Development Loan, the repayment of which is evidenced by Note 4, accrue interest at a rate equal per annum equal to the lesser of (i) Prime Rate or (ii) the Maximum Lawful Rate; provided, however, the interest rate on the notes will never be less than 3.75%.

As of March 31, 2023, the Developer owed approximately \$7,764,995 on the Development Loan. Note 4 is scheduled to mature on December 31, 2024, with quarterly payments to be made. Developer intends to repay Note 4 from, among other things, the revenue generated from the sale of the single-family lots developed in the District to MileStone. In the event of a default under the Development Loan by Developer, Sunflower Bank will have the right to various remedies, including foreclosure of the deeds of trust.

Completion Agreement for Improvements. The Developer and the City expect to enter into the Completion Agreement and the related Letter of Credit relating to funding the costs of and completing the construction of the Designated Improvements. See “THE DEVELOPMENT – Completion Agreement” and “APPENDIX H – Form of Completion Agreement.”

Vertical Construction. MileStone has a revolving vertical construction line with IBC. When MileStone purchases lots from the Developer, IBC will take a lien on the lots that MileStone owns.

The PID Act provides that the Assessment Lien is a first and prior lien against the assessed property within the District and is superior to all other liens and claims except liens or claims for State, county, school district, or municipality ad valorem taxes. At or prior to delivery of the Bonds, Lender, as successor in interest to Pioneer Bank, has agreed to consent to and acknowledge the creation of the District, the levy of the Assessments and the subordination of the liens securing the Development Loan to the Assessment Lien on property within the District securing payment of the Assessments. As a result, the lien on the property within the District securing the Assessments will have priority over the lien on the property within the District securing the Development Loan.

## THE ADMINISTRATOR

*The following information has been provided by P3Works, LLC, as the Administrator. Certain of the following information is beyond the direct knowledge of the City and the Underwriter, and neither the City nor the Underwriter have any way of guaranteeing the accuracy of such information.*

The City has selected P3Works, LLC as the initial Administrator. The City has entered into an agreement for administration of the District with the Administrator to provide specialized services related to the administration of the District needed to support the issuance of the Bonds. The Administrator will primarily be responsible for preparing the annual update to the Service and Assessment Plan. The Administrator is a consulting firm focused on providing special taxing district services relating to the formation and administration of public improvement districts, and is based in Austin, Texas, Houston, Texas, and North Richland Hills, Texas.

The Administrator's duties will include:

- Preparation of the annual update to the Service and Assessment Plan
- Preparation of assessment rolls for County billing and collection
- Establishing and maintaining a database of all County Parcel IDs within the District
- Trust account analysis and reconciliation
- Property owner inquiries
- Determination of prepayment amounts
- Preparation and review of disclosure notices with Dissemination Agent
- Review of developer draw requests for reimbursement of authorized improvement costs

## APPRAISAL

### Improvement Area #1 Appraisal

General. Barletta & Associates, Inc. (the "Appraiser"), prepared an appraisal report for the City dated February 28, 2023, based upon a physical inspection of the District conducted on September 7, 2022 (the "Appraisal"). The prospective date of completion utilized for the Appraisal for Phase 1 is November 1, 2023, and for Phase 2 is May 1, 2025. This delay could impact the prospective bulk market value at completion, as noted below. The Appraisal was prepared at the request of the City and is addressed solely to the Underwriter for use in preparing an estimated value of property in connection with the issuance of the Bonds. The estimates of value presented in the Appraisal are no indication of the appraised property's actual market value. Investors should not assume that the disposition of the lots in the District in the event of default would provide sufficient funds to pay the principal of Bonds outstanding at that time. The Appraisal does not constitute a recommendation to any person to purchase or sell the Bonds. The description herein of the Appraisal is intended to be a brief summary only of the Appraisal as it relates to the District. The Appraisal is attached hereto as APPENDIX I and should be read in its entirety. The conclusions reached in the Appraisal are subject to certain assumptions, hypothetical conditions and qualifications, which are set forth therein. See "APPENDIX I – Appraisal" and "BONDHOLDERS' RISKS – Use of Appraisal."

Value Estimates. The Appraiser estimated the market value of the fee simple interest in the land comprising Improvement Area #1 of the District by gathering comparable market data and conducting a study of the market area for the purpose of providing the Appraiser's opinion of the "Upon Completion" market value of the 254 proposed lots in Phase 1 and the 155 proposed lots in Phase 2 of Improvement Area #1 of the District.

The sales comparison approach was used to conclude the market values of the bulk and retail revenue of the existing and proposed residential lots. An income approach retail sell-out technique was then employed to derive the indicated "upon completion" bulk market values of the proposed lots in Improvement Area #1 of the District. The Appraisal contains a number of assumptions, including that the marketing plan for Improvement Area #1 of the

District is for new homes with a price-point range of approximately \$420,000 (40' lots) up to \$508,000 (50' lots), and built by production homebuilder, MileStone, or comparable homebuilders. See "APPENDIX I – Appraisal."

The value estimate for the assessable property within Improvement Area #1 of the District using the methodologies described in the Appraisal and subject to the limiting conditions and assumptions set forth in the Appraisal, is \$13,825,000 for Phase 1, based on a prospective effective date of November 1, 2023, and \$8,180,000 for Phase 2, based on a prospective effective date of May 1, 2025.

**None of the City, the Developer or the Underwriter makes any representation as to the accuracy, completeness, assumptions or information contained in the Appraisal. The assumptions or qualifications with respect to the Appraisal are contained therein. There can be no assurance that any such assumptions will be realized, and the City, the Developer and the Underwriter make no representation as to the reasonableness of such assumptions.**

### **BONDHOLDERS' RISKS**

*Before purchasing any of the Bonds, prospective investors and their professional advisors should carefully consider all of the risk factors described below which may create possibilities wherein interest may not be paid when due or that the Bonds may not be paid at maturity or otherwise as scheduled, or, if paid, without premium, if applicable. The following risk factors (which are not intended to be an exhaustive listing of all possible risks associated with an investment in the Bonds) should be carefully considered prior to purchasing any of the Bonds. Moreover, the order of presentation of the risks summarized below does not necessarily reflect the significance of such investment risks.*

**THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM THE PLEDGED REVENUES AND OTHER FUNDS COMPRISING THE TRUST ESTATE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE BONDS DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE CITY AND ARE PAYABLE SOLELY FROM THE SOURCES IDENTIFIED IN THE INDENTURE. THE OWNERS OF THE BONDS SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF MONEY RAISED OR TO BE RAISED BY TAXATION, OR OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND OTHER FUNDS COMPRISING THE TRUST ESTATE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO DEMAND ANY EXERCISE OF THE CITY'S TAXING POWER TO PAY THE PRINCIPAL OF THE BONDS OR THE INTEREST OR REDEMPTION PREMIUM, IF ANY, THEREON. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO PAY THE BONDS OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND OTHER FUNDS COMPRISING THE TRUST ESTATE.**

#### **General**

The ability of the City to pay debt service on the Bonds as due is subject to various factors that are beyond the City's control. These factors include, among others, (a) the ability or willingness of property owners within the District to pay Assessments levied by the City, (b) cash flow delays associated with the institution of foreclosure and enforcement proceedings against property within Improvement Area #1 of the District, (c) general and local economic conditions that may impact real property values, the ability to liquidate real property holdings and the overall value of real property development projects, and (d) general economic conditions which may impact the general ability to market and sell the lots within the District, it being understood that poor economic conditions within the City, State and region may slow the assumed pace of sales of such lots.

The rate of development of the property in the District is directly related to the vitality of the residential housing industry. In the event that the sale of the lands within the District should proceed more slowly than expected and the Developer is unable to pay the Assessments, only the value of the lands, with improvements, will be available for payment of the debt service on the Bonds, and such value can only be realized through the foreclosure or expeditious liquidation of the lands within Improvement Area #1 of the District. There is no assurance that the value of such lands will be sufficient for that purpose and the expeditious liquidation of real property through foreclosure or

similar means is generally considered to yield sales proceeds in a lesser sum than might otherwise be received through the orderly marketing of such real property.

The Underwriter is not obligated to make a market in or repurchase any of the Bonds, and no representation is made by the Underwriter, the City or the City's Financial Advisor that a market for the Bonds will develop and be maintained in the future. If a market does develop, no assurance can be given regarding future price maintenance of the Bonds.

The City has not applied for or received a rating on the Bonds. The absence of a rating could affect the future marketability of the Bonds. There is no assurance that a secondary market for the Bonds will develop or that holders who desire to sell their Bonds prior to the stated maturity will be able to do so.

### **Deemed Representations and Acknowledgment by Purchasers**

Each purchaser of Bonds (each a "Purchaser") will be deemed to have acknowledged and represented to the City the matters set forth under the heading "LIMITATIONS APPLICABLE TO INITIAL PURCHASERS" which include among others a representation and acknowledgment that the purchase of the Bonds involves investment risks, certain of which are set forth under this heading "BONDHOLDERS' RISKS" and elsewhere herein, and such purchaser, either alone or with its purchaser representative(s) (as defined in Rule 501(h) of Regulation D under the Securities Act), has sophisticated knowledge and experience in financial and business matters and the capacity to evaluate such risks in making an informed investment decision to purchase the Bonds, and the purchaser can afford a complete loss of its investment in the Bonds.

### **Assessment Limitations**

Annual Installments of Assessments are billed to property owners in Improvement Area #1 of the District. Annual Installments are due and payable, and bear the same penalties and interest for non-payment, as for ad valorem taxes as set forth under "ASSESSMENT PROCEDURES" herein. Additionally, Annual Installments established by the Service and Assessment Plan correspond in number and proportionate amount to the number of installments and principal amounts of Bonds maturing in each year, Annual Collection Costs, and the Additional Interest. See "ASSESSMENT PROCEDURES" herein. The unwillingness or inability of a property owner to pay regular property tax bills as evidenced by property tax delinquencies may also indicate an unwillingness or inability to make regular property tax payments and Annual Installments of Assessment payments in the future.

In order to pay debt service on the Bonds, it is necessary that Annual Installments are paid in a timely manner. Due to the lack of predictability in the collection of Annual Installments in the District, the City has established a Reserve Account in the Reserve Fund, to be funded from the proceeds of the Bonds, to cover delinquencies. The Annual Installments are secured by the Assessment Lien. However, there can be no assurance that foreclosure proceedings will occur in a timely manner so as to avoid depletion of the Reserve Account and delay in payments of debt service on the Bonds. See "BONDHOLDERS' RISKS – Remedies and Bankruptcy" herein.

Upon an ad valorem tax lien foreclosure event of a property within Improvement Area #1 of the District, any Assessment that is also delinquent will be foreclosed upon in the same manner as the ad valorem tax lien (assuming all necessary conditions and procedures for foreclosure are duly satisfied). To the extent that a foreclosure sale results in insufficient funds to pay in full both the delinquent ad valorem taxes and the delinquent Assessments, the liens securing such delinquent ad valorem taxes and delinquent Assessments would likely be extinguished. Any remaining unpaid balance of the delinquent Assessments would then be an unsecured personal liability of the original property owner.

Based upon the language of Texas Local Government Code, § 372.017(b), case law relating to other types of assessment liens and opinions of the Texas Attorney General, the Assessment Lien as it relates to installment payments that are not yet due should remain in effect following an ad valorem tax lien foreclosure, with future installment payments not being accelerated. Texas Local Government Code § 372.018(d) supports this position, stating that an Assessment Lien runs with the land and the portion of an assessment payment that has not yet come due is not eliminated by foreclosure of an ad valorem tax lien.



The Assessment Lien is superior to any homestead rights of a property owner that were properly claimed after the adoption of the Assessment Ordinance. However, an Assessment Lien may not be foreclosed upon if any homestead rights of a property owner were properly claimed prior to the adoption of the Assessment Ordinance (“Pre-existing Homestead Rights”) for as long as such rights are maintained on the property. It is unclear under State law whether or not Pre-existing Homestead Rights would prevent the Assessment Lien from attaching to such homestead property or instead cause the Assessment Lien to attach, but remain subject to, the Pre-existing Homestead Rights.

Under State law, in order to establish homestead rights, the claimant must show a combination of both overt acts of homestead usage and intention on the part of the owner to claim the land as a homestead. Mere ownership of the property alone is insufficient and the intent to use the property as a homestead must be a present one, not an intention to make the property a homestead at some indefinite time in the future. As of the date of adoption of the Assessment Ordinance, no such homestead rights had been claimed. Furthermore, the Developer and MileStone are not eligible to claim homestead rights and represent that they own all property within Improvement Area #1 of the District as of the date of the Assessment Ordinance. Consequently, there are and can be no homestead rights on the Assessed Property superior to the Assessment Lien and, therefore, the Assessment Liens may be foreclosed upon by the City.

Failure by owners of the parcels to pay Annual Installments when due, depletion of the Reserve Fund, delay in foreclosure proceedings, or the inability of the City to sell parcels which have been subject to foreclosure proceedings for amounts sufficient to cover the delinquent installments of Assessments levied against such parcels may result in the inability of the City to make full or punctual payments of debt service on the Bonds.

THE ASSESSMENTS CONSTITUTE A FIRST AND PRIOR LIEN AGAINST THE PROPERTY ASSESSED, SUPERIOR TO ALL OTHER LIENS AND CLAIMS EXCEPT LIENS AND CLAIMS FOR STATE, COUNTY, SCHOOL DISTRICT OR MUNICIPALITY AD VALOREM TAXES AND IS A PERSONAL OBLIGATION OF AND CHARGE AGAINST THE OWNERS OF PROPERTY LOCATED WITHIN IMPROVEMENT AREA #1 OF THE DISTRICT.

#### **Adverse Developments Affecting the Financial Services Industry**

Actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, transactional counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. For example, on March 10, 2023, Silicon Valley Bank, or SVB, was closed by the California Department of Financial Protection and Innovation, which appointed the Federal Deposit Insurance Corporation, or the FDIC, as receiver. Similarly, on March 12, 2023, Signature Bank and Silvergate Capital Corp. were each swept into receivership. Recently, troubled First Republic Bank received a \$30 billion rescue pack from 11 of the biggest U.S. banks in an effort to prevent its collapse and UBS has agreed acquire the troubled Credit Suisse. Although a statement by the Department of the Treasury, the Federal Reserve and the FDIC stated that all depositors of SVB would have access to all of their money after only one business day of closure, including funds held in uninsured deposit accounts, borrowers under credit agreements, letters of credit and certain other financial instruments with SVB, Signature Bank or any other financial institution that is placed into receivership by the FDIC may be unable to access undrawn amounts thereunder.

If the Developer is unable to access funds pursuant the Development Loan Agreement with the Lender, the Developer’s ability to finance the costs of the improvements, or to enter into new commercial lending arrangements to complete the Development, could be adversely affected. If MileStone is unable to access funds under its revolving vertical construction line with IBC or other financial instrument, MileStone’s ability take down lots and complete homes could be adversely affected. Additionally, confidence in the safety and soundness of regional banks specifically or the banking system generally could impact where customers choose to maintain deposits, which could materially adversely impact the Developer and MileStone’s liquidity and access loan funding capacity and results in impact to operations. Similar impacts to the development industry have occurred in the past, such as during the 2008-2010 financial crisis.

## **Infectious Disease Outbreak**

In March 2020, the World Health Organization and the President of the United States separately declared the outbreak of a respiratory disease caused by a novel coronavirus (“COVID-19”) to be a public health emergency (the “Pandemic”). On January 31, 2020, the Secretary of the United States Health and Human Services Department declared a public health emergency for the United States. On March 13, 2020, the President of the United States declared the Pandemic a national emergency and the Governor of Texas (the “Governor”) declared a state of disaster for all counties in the State in response to the Pandemic. Under State law, the proclamation of a state of disaster by the Governor may not continue for more than 30 days unless renewed. The Governor had historically renewed his declaration monthly, most recently on February 14, 2023; however, the Governor has not renewed this declaration as of March 16, 2023 and therefore it has expired by operation of law.

There are currently no COVID-19 related operating limits imposed by executive order of the Governor for any business or other establishment in the State. The Governor retains the right to impose additional restrictions on activities if needed in order to mitigate the effects of COVID-19. The City has not experienced any decrease in property values or unusual tax delinquencies as a result of COVID-19; however, the City, the Financial Advisor, the Underwriter or the Developer cannot predict the long-term economic effect of COVID-19 or a similar virus, the financial and operating condition of the Developer, the projected buildout schedule, home prices and buildout values or an investment in the Bonds, should there be a reversal of economic activity or re-imposition of restrictions.

## **Risk from Weather Events**

All of the State, including the City, is subject to extreme weather events that can cause loss of life and damage to property through strong winds, flooding, heavy rains and freezes, including events similar to the severe winter storm that the continental United States experienced in February 2021, which resulted in disruptions in the Electric Reliability Council of Texas power grid and prolonged blackouts throughout the State. It is impossible to predict whether similar events will occur in the future and the impact they may have on the City, including land within the District.

In the event of a severe natural disaster, there may be significant damage to both property and infrastructure in the District. As a result, a substantial portion of the property owners may be unable or unwilling to pay the Assessments when due. In addition, the value of land in the District could be diminished in the aftermath of such a natural disaster, reducing the resulting proceeds of foreclosure sales in the event of delinquencies in the payment of the Assessments.

## **General Risks of Real Estate Investment and Development**

The Developer has the right to modify or change its plan for development of the District, from time to time, including, without limitation, land use changes, changes in the overall land and phasing plans, and changes to the type, mix, size and number of units to be developed. No defined “true-up” agreement has been entered into between the City and the Developer, nor is there a requirement that future Developer enter into such an agreement. There can be no assurance, in the event the Developer or a subsequent developer modifies or changes its plan for development that the necessary revisions to the Service and Assessment Plan will be made. Nor can there be an assurance that the eventual assessment burden on the property will be marketable.

The ability of the Developer and MileStone to develop lots and sell single-family residential homes within the District may be affected by unforeseen changes in the general economic conditions, fluctuations in the real estate market and other factors beyond the control of the owner of the single-family residential lots. In the event that a large number of single-family projects are constructed outside of the District, and compete with the Development, the demand for residential housing within the District could be reduced, thereby adversely affecting the continued development of the Development, or its attraction to businesses and residents.

Investments in undeveloped or developing real estate are generally considered to be speculative in nature and to involve a high degree of risk. The Development will be subject to the risks generally incident to real estate investments and development. Many factors that may affect the Development, as well as the operating revenues of

the Developer, including those derived from the Development, are not within the control of the Developer. Such factors include changes in national, regional and local economic conditions; changes in long and short term interest rates; changes in the climate for real estate purchases; changes in demand for or supply of competing properties; changes in local, regional and national market and economic conditions; unanticipated development costs, market preferences and architectural trends; unforeseen environmental risks and controls; the adverse use of adjacent and neighboring real estate; changes in interest rates and the availability of mortgage funds to buyers of the homes to be built in the Development, which may render the sale of such homes difficult or unattractive; acts of war, terrorism or other political instability; delays or inability to obtain governmental approvals; changes in laws; moratorium; acts of God (which may result in uninsured losses); strikes; labor shortages; energy shortages; material shortages; inflation; adverse weather conditions; contractor or subcontractor defaults; and other unknown contingencies and factors beyond the control of the Developer.

The Development cannot be completed without the Developer obtaining a variety of governmental approvals and permits, some of which have already been obtained. Certain permits are necessary to initiate construction of each phase of the Development and to allow the occupancy of residences and to satisfy conditions included in the approvals and permits. There can be no assurance that all of these permits and approvals can be obtained or that the conditions to the approvals and permits can be fulfilled. The failure to obtain any of the required approvals or fulfill any one of the conditions could cause materially adverse financial results for the Developer.

A slowdown of the development process and the related absorption rate within the Development because of any or all of the foregoing could affect adversely land values. The timely payment of the Bonds depends on the willingness and ability of the Developer, MileStone, and any subsequent owners to pay the Assessments when due. Any or all of the foregoing could reduce the willingness and ability of such owners to pay the Assessments and could greatly reduce the value of the property within the District in the event such property has to be foreclosed. If Annual Installments of Assessments are not timely paid and there are insufficient funds in the accounts of the Reserve Fund, a nonpayment could result in a payment default under the Indenture.

### **Competition; Real Estate Market**

The successful development of the land within Improvement Area #1 of the District, the success of the District, and the sale of residential units therein, once such homes are built, may be affected by unforeseen changes in general economic conditions, fluctuations in the real estate market and other factors beyond the control of the Developer. Moreover, the Developer has the right to modify or change their plans for development of the land within Improvement Area #1 of the District from time to time, including, without limitation, land use changes, changes in overall land and phasing plans, and changes to the type, mix, size and number of units to be developed. No prediction can be made about the state of the real estate market in the future or the availability of financing for potential home buyers.

Contracts that the Developer may have with individual homebuilders are subject to a myriad of contractual conditions and contingencies, all or some of which if not complied with, could precipitate a termination or winding up of such contractual arrangement for the sale of lots, causing the Developer to possibly need to execute a different strategy for the development and sale of lots and residential units within Improvement Area #1 of the District. As described herein, the Assessments are an imposition against the land only. Neither the Developer nor any other subsequent landowner is a guarantor of the Assessments and the recourse for the failure of the Developer or any other landowner to pay the Assessments is limited to the collection proceedings against the land as described herein.

The housing industry in the central Texas area is very competitive, and none of the Developer, the City, the City's Financial Advisor or the Underwriter can give any assurance that the building programs that are planned throughout the District will ever commence or be completed in accordance with the Developer's expectations. The competitive position of the Developer in the sale of developed lots or of any other homebuilder in the construction and sale of single-family residential units is affected by most of the factors discussed in this subsection, and such competitive position is directly related to maintenance of market values in the District. For competing projects in the area, see "Sales Comparison Approach – Builder Takedown Lot Sales Valuation" and "Builder Lot Takedown Analyses" in Exhibit I – The Appraisal.

There can be no assurances that other similar projects will not be developed in the future or that existing projects will not be upgraded or otherwise become able to compete with the Development.

### **Risks Related to the Current Residential Real Estate Market**

Downturns in the real estate market and other factors beyond the control of the Developer, including general economic conditions, may impact the timing of parcel lot and home sales within the District. No assurances can be given that projected home prices and buildout values presented in this Limited Offering Memorandum will be realized.

### **Risks Related to Recent Increase in Costs and Low Supply of Building Materials**

As a result of the Pandemic, low supply and high demand, and the ongoing trade war, there have been substantial increases in the cost of lumber and other materials, causing many homebuilders and general contractors to experience budget overruns. The Developer is responsible for the construction of the Improvement Area #1 Improvements. The Developer expects to finance a portion of the costs of the Improvement Area #1 Improvements from proceeds of the Bonds. If the Actual Costs of the Improvement Area #1 Improvements are substantially greater than the estimated costs or if the Developer is unable to access building materials in a timely manner, it may affect the ability of the Developer to complete the Improvement Area #1 Improvements or pay the Assessments when due. If the costs of material continue to increase, it may affect the ability of the homebuilders to construct homes within the District. There is no way to predict whether such cost increases or low supply of building materials will continue or if such continuance will affect the development of the District.

### **Failure or Inability to Complete Proposed Development**

Proposed development within the District (including the foregoing) may be affected by changes in general economic conditions, fluctuations in the real estate market and interest rates, changes in the income tax treatment of real property ownership, unexpected increases in development costs and other similar factors as well as availability of utilities and the development or existence of environmental concerns with such land. See “Availability of Utilities” and “Hazardous Substances” below. Land development within the District could also be affected adversely by changes in governmental policies, including, but not limited to, governmental policies to restrict or control development. (Any approvals needed in the future for the Development must come from the City.) There can be no assurances that other similar projects will not be developed in the future or that existing projects will not be upgraded or otherwise able to compete with the Development. A slowdown of the development process and the related absorption rate within the Development because of any or all of the foregoing could affect adversely land values. THE TIMELY PAYMENT OF THE BONDS DEPENDS UPON THE WILLINGNESS AND ABILITY OF THE DEVELOPER AND ANY SUBSEQUENT OWNERS TO PAY THE ASSESSMENTS WHEN DUE. ANY OR ALL OF THE FOREGOING COULD REDUCE THE WILLINGNESS AND THE ABILITY OF SUCH OWNERS TO PAY THE ASSESSMENTS AND COULD GREATLY REDUCE THE VALUE OF PROPERTY WITHIN IMPROVEMENT AREA #1 OF THE DISTRICT IN THE EVENT SUCH PROPERTY HAS TO BE FORECLOSED. In that event, there could be a default in the payment of the Bonds.

### **Completion of Homes**

The cost and time for completion of homes by the Developer is uncertain and may be affected by changes in national, regional, and local market and economic conditions; changes in long and short term interest rates; changes in the climate for real estate purchases; changes in demand for or supply of competing properties; unanticipated development costs, market preferences and architectural trends; unforeseen environmental risks and controls; the adverse use of adjacent and neighboring real estate; changes in interest rates and the availability of mortgage funds to buyers of the homes yet to be built in the Development, which may render the sale of such homes difficult or unattractive; acts of war, terrorism or other political instability; delays or inability to obtain governmental approvals; changes in laws; moratorium; force majeure (which may result in uninsured losses); strikes; labor shortages; energy shortages; material shortages; inflation; adverse weather conditions; subcontractor defaults; and other unknown contingencies and factors beyond the control of the Developer.

## **Absorption Rate and Estimated Pricing**

There can be no assurance that the Developer will be able to achieve their anticipated absorption rates and estimated pricing. Failure to achieve the absorption rate or pricing estimates will adversely affect the estimated value of the Development, could impair the economic viability of the Development and could reduce the ability or desire of property owners to pay the Assessments.

## **Completion of Improvements**

The construction of the Designated Improvements that are necessary for the successful development of the Development are not yet complete. The cost and time for completion of all of such improvements is uncertain and may be affected by changes in national, regional, and local market and economic conditions; changes in long and short term interest rates; changes in the climate for real estate purchases; changes in demand for or supply of competing properties; unanticipated development costs, market preferences and architectural trends; unforeseen environmental risks and controls; the adverse use of adjacent and neighboring real estate; changes in interest rates and the availability of mortgage funds to buyers of the homes to be built in the Development, which may render the sale of such homes difficult or unattractive; acts of war, terrorism or other political instability; delays or inability to obtain governmental approvals; changes in laws; moratorium; force majeure (which may result in uninsured losses); strikes; labor shortages; energy shortages; material shortages; inflation; adverse weather conditions; subcontractor defaults; and other unknown contingencies and factors beyond the control of the Developer. If cost overruns result in delay of construction, or if other delays are experienced, the Developer may be unable to complete timely all of such necessary improvements.

Additionally, to ensure the completion of the Designated Improvements, the City and the Developer expects to enter into the Completion Agreement, pursuant to which the Developer commits to complete such improvements. However, if the Designated Improvements are not completed in accordance with the Completion Agreement schedule, subject to force majeure, the City may draw on the Letter of Credit to complete the Designated Improvements. See “THE DEVELOPMENT – Completion Agreement” and “APPENDIX H – Form of Completion Agreement.”

## **Loss of Tax Exemption**

The Indenture contains covenants by the City intended to preserve the exclusion from gross income of interest on the Bonds for federal income tax purposes. As discussed under the caption “TAX MATTERS” herein, interest on the Bonds could become includable in gross income for purposes of federal income taxation, retroactive to the date the Bonds were issued, as a result of future acts or omissions of the City in violation of its covenants in the Indenture.

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the federal or State level, may adversely affect the tax-exempt status of interest on the Bonds under federal or State law and could affect the market price or marketability of the Bonds. Any such proposal could limit the value of certain deductions and exclusions, including the exclusion for tax-exempt interest. The likelihood of any such proposal being enacted cannot be predicted. Prospective purchasers of the Bonds should consult their own tax advisors regarding the foregoing matters.

## **Bankruptcy**

The payment of Assessments and the ability of the City to foreclose on the lien of a delinquent unpaid Assessment may be limited by bankruptcy, insolvency or other laws generally affecting creditors’ rights or by the laws of the State relating to judicial foreclosure. Although bankruptcy proceedings would not cause the Assessments to become extinguished, bankruptcy of a property owner in all likelihood would result in a delay in prosecuting foreclosure proceedings. Such a delay would increase the likelihood of a delay or default in payment of the principal of and interest on the Bonds, and the possibility that delinquent Assessments might not be paid in full.

## **Direct and Overlapping Indebtedness, Assessments and Taxes**

The ability of an owner of property within the District to pay the Assessments could be affected by the existence of other taxes and assessments imposed upon the property. Public entities whose boundaries overlap those of the District currently impose ad valorem taxes on the property within the District and will likely do so in the future. Such entities could also impose assessment liens on the property within the District. The imposition of additional liens, or for private financing, may reduce the ability or willingness of the Developer to pay the Assessments. See “OVERLAPPING TAXES AND DEBT.”

## **Depletion of Reserve Fund**

Failure of the owners of property within the District to pay the Assessments when due could result in the rapid, total depletion of the accounts in the Reserve Fund prior to replenishment from the resale of property upon a foreclosure or otherwise or delinquency redemptions after a foreclosure sale, if any. There could be a default in payments of the principal of and interest on the Bonds if sufficient amounts are not available in the Reserve Fund. The Indenture provides that if, after a withdrawal from the Reserve Fund, the amount in the Reserve Fund is less than the Reserve Account Requirement, the Trustee shall transfer an amount from the Pledged Revenue Fund to the Reserve Account of the Reserve Fund sufficient to cure such deficiency, as described under “SECURITY FOR THE BONDS – Reserve Account of the Reserve Fund” herein.

## **Hazardous Substances**

While governmental taxes, assessments and charges are a common claim against the value of a parcel, other less common claims may be relevant. One of the most serious in terms of the potential reduction in the value that may be realized to the assessment is a claim with regard to a hazardous substance. In general, the owners and operators of a parcel may be required by law to remedy conditions relating to releases or threatened releases of hazardous substances. The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as “CERCLA” or “Superfund Act,” is the most well-known and widely applicable of these laws. It is likely that, should any of the parcels of land located in the District be affected by a hazardous substance, the marketability and value of parcels would be reduced by the costs of remedying the condition, because the purchaser, upon becoming owner, will become obligated to remedy the condition just as is the seller.

The value of the land within the District does not take into account the possible liability of the owner (or operator) for the remedy of a hazardous substance condition of the parcel. The City has not independently verified, and is not aware, that the owner (or operator) of any of the parcels within the District has such a current liability with respect to such parcel; however, it is possible that such liabilities do currently exist and that the City is not aware of them.

Further, it is possible that liabilities may arise in the future with respect to any of the land within the District resulting from the existence, currently, of a substance presently classified as hazardous but which has not been released or the release of which is not presently threatened, or may arise in the future resulting from the existence, currently, on the parcel of a substance not presently classified as hazardous but which may in the future be so classified. Further, such liabilities may arise not simply from the existence of a hazardous substance but from the method of handling it. All of these possibilities could significantly affect the value of a parcel that is realizable upon a delinquency. See “THE DEVELOPMENT – Environmental” for discussion of previous Phase I ESA performed on property within the District.

## **Regulation**

Development within the District may be subject to future federal, State and local regulations. Approval may be required from various agencies from time to time in connection with the layout and design of development in the District, the nature and extent of public improvements, land use, zoning and other matters. Failure to meet any such regulations or obtain any such approvals in a timely manner could delay or adversely affect development in the District and property values.

## **Recent Changes in State Law Regarding Public Improvement Districts**

The 87th Legislature passed House Bill 1543, which became effective September 1, 2021, and requires a person who proposes to sell or otherwise convey real property within a public improvement district to provide to the purchaser of the property, before the execution of a binding contract of purchase and sale, written notice of the obligation to pay public improvement district assessments, in accordance with Section 5.014, Texas Property Code, as amended. In the event a contract of purchase and sale is entered into without the seller providing the notice, the intended purchaser is entitled to terminate the contract of purchase and sale. If the Developer or MileStone do not provide the required notice and prospective purchasers of property within the District terminate a purchase and sale contract, the anticipated absorption schedule may be affected. In addition to the right to terminate the purchase contract, a property owner who did not receive the required notice is entitled, after sale, to sue for damages for (i) all costs relative to the purchase, plus interest and reasonable attorney's fees, or (ii) an amount not to exceed \$5,000, plus reasonable attorney's fees. In a suit filed pursuant to clause (i), any damages awarded must go first to pay any outstanding liens on the property. In such an event, the outstanding Assessments on such property should be paid. On payment of all damages respectively to the lienholders and purchaser pursuant to clause (i), the purchaser is required to reconvey the property to the seller. Further, if the Developer or MileStone do not provide the required notice and become liable for monetary damages, the anticipated buildout and absorption schedule may be affected. No assurances can be given that the projected buildout and absorption schedules presented in this Limited Offering Memorandum will be realized. The forms of notice to be provided to homebuyers are attached to the Service and Assessment Plan. See "Appendix C – Form of Service and Assessment Plan.

## **Potential Future Changes in State Law Regarding Public Improvement Districts**

The 87th Legislative Session of the State ended on May 31, 2021, without any legislation being passed by either chamber of the 87<sup>th</sup> Legislature recommending oversight of bonds secured by assessments. The Governor called three special legislative sessions, which all concluded without any legislation being introduced or passed related to the oversight of bonds secured by assessments. The 88th Legislative Session of the State began on January 10, 2023, and is scheduled through May 29, 2023, pending any special legislative sessions. It is impossible to predict what bills may be introduced during upcoming legislative sessions and, if passed, the impact that any future legislation will or may have on the security for the Bonds.

## **Flood Plain**

Certain portions of the Property are currently located within an official FEMA 100-year flood plain. Per the Developer, all land located within an official FEMA 100-year flood plain will be used as parkland, with the exception of three lots in Phase 3, one Lot in Phase 5, and one lot in Phase 6, which are intended to be removed from such flood plain by a Conditional Letter of Map Revision or Letter of Map Revision as the Development progresses. The City cannot predict whether or when another such flooding event will occur, and if so, whether the Development would be negatively impacted by such an event.

## **Exercise of Mineral and Groundwater Rights**

The Developer does not expect the existence or exercise of any mineral or and groundwater rights or related real property rights in or around the District to have a material adverse effect on the Development, the property within the District, or the ability of landowners within the District to pay Assessments. However, none of the City, the Financial Advisor or the Underwriter provide any assurances as to such Developer's expectations.

## **Bondholders' Remedies and Bankruptcy**

Upon the happening and continuance of any of the Events of Default described in the Indenture, the Trustee may, and at the written direction of the Owners of a Quarter in Interest of the Bonds and its receipt of indemnity satisfactory to it shall, proceed against the City for the purpose of protecting and enforcing the rights of the Owners under the Indenture, by action seeking mandamus or by other suit, action, or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief to the extent permitted by the Indenture or Applicable Laws, including, but not limited to, the specific performance of any covenant or agreement contained herein, or injunction;

provided, however, that any action for money damages against the City shall be limited in recovery to the assets of the Trust Estate, including the Pledged Revenues.

The issuance of a writ of mandamus may be sought if there is no other available remedy at law to compel performance of the City's obligations under the Bonds or the Indenture and such obligations are not uncertain or disputed. The remedy of mandamus is controlled by equitable principles, so rests with the discretion of the court, but may not be arbitrarily refused. There is no acceleration of maturity of the Bonds in the event of default and, consequently, the remedy of mandamus may have to be relied upon from year to year. The Owners of the Bonds cannot themselves foreclose on property within the District or sell property within the District in order to pay the principal of and interest on the Bonds. The enforceability of the rights and remedies of the owners of the Bonds further may be limited by laws relating to bankruptcy, reorganization or other similar laws of general application affecting the rights of creditors of political subdivisions such as the City. In this regard, should the City file a petition for protection from creditors under federal bankruptcy laws, the remedy of mandamus or the right of the City to seek judicial foreclosure of its Assessment Lien would be automatically stayed and could not be pursued unless authorized by a federal bankruptcy judge. See "BONDHOLDERS' RISKS – Bankruptcy Limitation to Bondholders' Rights" herein.

Any bankruptcy court with jurisdiction over bankruptcy proceedings initiated by or against a property owner within the District pursuant to the Federal Bankruptcy Code could, subject to its discretion, delay or limit any attempt by the City to collect delinquent Assessments, or delinquent ad valorem taxes, against such property owner.

In addition, in 2006, the Texas Supreme Court ruled in *Tooke v. City of Mexia*, 197 S.W.3d 325 (Tex. 2006) ("*Tooke*") that a waiver of sovereign immunity must be provided for by statute in "clear and unambiguous" language. In so ruling, the Court declared that statutory language such as "sue and be sued", in and of itself, did not constitute a clear and unambiguous waiver of sovereign immunity. In *Tooke*, the Court noted the enactment in 2005 of sections 271.151-.160, Texas Local Government Code (the "Local Government Immunity Waiver Act"), which, according to the Court, waives "immunity from suit for contract claims against most local governmental entities in certain circumstances." The Local Government Immunity Waiver Act covers cities and relates to contracts entered into by cities for providing goods or services to cities.

In *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427 (Tex. 2016) ("*Wasson*"), the Texas Supreme Court (the "Court") addressed whether the distinction between governmental and proprietary acts (as found in tort-based causes of action) applies to breach of contract claims against municipalities. The Court analyzed the rationale behind the Proprietary-Governmental Dichotomy to determine that "a city's proprietary functions are not done pursuant to the 'will of the people'" and protecting such municipalities "via the [S]tate's immunity is not an efficient way to ensure efficient allocation of [S]tate resources." While the Court recognized that the distinction between governmental and proprietary functions is not clear, the *Wasson* opinion held that the Proprietary-Governmental Dichotomy applies in a contract-claims context. The Court reviewed *Wasson* for a second time and issued an opinion on October 5, 2018 clarifying that to determine whether governmental immunity applies to a breach of contract claim, the proper inquiry is whether the municipality was engaged in a governmental or proprietary function when it entered into the contract, not at the time of the alleged breach. Therefore, in regard to municipal contract cases (as in tort claims), it is incumbent on the courts to determine whether a function was proprietary or governmental based upon the statutory and common law guidance at the time of inception of the contractual relationship. Texas jurisprudence has generally held that proprietary functions are those conducted by a city in its private capacity, for the benefit only of those within its corporate limits, and not as an arm of the government or under authority or for the benefit of the State; these are usually activities that can be, and often are, provided by private persons, and therefore are not done as a branch of the State, and do not implicate the State's immunity since they are not performed under the authority, or for the benefit, of the State as sovereign. Notwithstanding the foregoing new case law issued by the Court, such sovereign immunity issues have not been adjudicated in relation to bond matters (specifically, in regard to the issuance of municipal debt). Each situation will be prospectively evaluated based on the facts and circumstances surrounding the contract in question to determine if a suit, and subsequently, a judgement, is justiciable against a municipality.

The City is not aware of any State court construing the Local Government Immunity Waiver Act in the context of whether contractual undertakings of local governments that relate to their borrowing powers are contracts covered by such act. Because it is unclear whether the Texas legislature has effectively waived the City's sovereign



immunity from a suit for money damages in the absence of City action, the Trustee or the owners of the Bonds may not be able to bring such a suit against the City for breach of the Bonds or the Indenture covenants. As noted above, the Indenture provides that owners of the Bonds may exercise the remedy of mandamus to enforce the obligations of the City under the Indenture. Neither the remedy of mandamus nor any other type of injunctive relief was at issue in Tooke, and it is unclear whether Tooke will be construed to have any effect with respect to the exercise of mandamus, as such remedy has been interpreted by State courts. In general, State courts have held that a writ of mandamus may be issued to require public officials to perform ministerial acts that clearly pertain to their duties. State courts have held that a ministerial act is defined as a legal duty that is prescribed and defined with a precision and certainty that leaves nothing to the exercise of discretion or judgment, though mandamus is not available to enforce purely contractual duties. However, mandamus may be used to require a public officer to perform legally-imposed ministerial duties necessary for the performance of a valid contract to which the State or a political subdivision of the State is a party (including the payment of moneys due under a contract).

### **Judicial Foreclosures**

Judicial foreclosure proceedings are not mandatory; however, the City has covenanted to order and cause such actions to be commenced. In the event a foreclosure is necessary, there could be a delay in payments to owners of the Bonds pending prosecution of the foreclosure proceedings and receipt by the City of the proceeds of the foreclosure sale. It is possible that no bid would be received at the foreclosure sale, and, in such event, there could be an additional delay in payment of the principal of and interest on the Bonds or such payment may not be made in full. Moreover, in filing a suit to foreclose, the City must join other taxing units that have claims for delinquent taxes against all or part of the same property; the proceeds of any sale of property within the District available to pay debt service on the Bonds may be limited by the existence of other tax liens on the property. (See “OVERLAPPING TAXES AND DEBT” herein.) Collection of delinquent taxes, assessments and the Assessments may be adversely affected by the effects of market conditions on the foreclosure sale price, and by other factors, including taxpayers’ right to redeem property within two years of foreclosure for residential and agricultural use property and six months for other property, and by a time-consuming and expensive collection procedure.

### **No Acceleration**

The Indenture does not contain a provision allowing for the acceleration of the Bonds in any event, including in the event of a payment default or other default under the terms of the Bonds or the Indenture.

### **Limited Secondary Market for the Bonds**

The Bonds may not constitute a liquid investment, and there is no assurance that a liquid secondary market will exist for the Bonds in the event an Owner thereof determines to solicit purchasers for the Bonds. Even if a liquid secondary market exists, there can be no assurance as to the price for which the Bonds may be sold. Such price may be lower than that paid by the current Owners of the Bonds, depending on the progress of development of the District subject to the Assessments, existing real estate and financial market conditions and other factors.

### **No Credit Rating**

The City has not applied for or received a rating on the Bonds. Even if a credit rating had been sought for the Bonds, it is not anticipated that such a rating would have been investment grade. The absence of a rating could affect the future marketability of the Bonds. There is no assurance that a secondary market for the Bonds will develop or that holders who desire to sell their Bonds prior to the stated maturity will be able to do so. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary market trading in connection with a particular issue is suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then generally prevailing circumstances. Such prices could be substantially different from the original purchase price.

## **Bankruptcy Limitation to Bondholders' Rights**

The enforceability of the rights and remedies of the owners of the Bonds may be limited by laws relating to bankruptcy, reorganization or other similar laws of general application affecting the rights of creditors of political subdivisions such as the City. The City is authorized under State law to voluntarily proceed under Chapter 9 of the Federal Bankruptcy Code, 11 U.S.C. 901-946. The City may proceed under Chapter 9 if it (1) is generally not paying its debts, or unable to meet its debts, as they become due, (2) desires to effect a plan to adjust such debts, and (3) has either obtained the agreement of or negotiated in good faith with its creditors, is unable to negotiate with its creditors because negotiation is impracticable, or reasonably believes that a creditor may attempt to obtain a preferential transfer.

If the City decides in the future to proceed voluntarily under the Federal Bankruptcy Code, the City would develop and file a plan for the adjustment of its debts, and the Bankruptcy Court would confirm the plan if (1) the plan complies with the applicable provisions of the Federal Bankruptcy Code, (2) all payments to be made in connection with the plan are fully disclosed and reasonable, (3) the City is not prohibited by law from taking any action necessary to carry out the plan, (4) administrative expenses are paid in full, (5) all regulatory or electoral approvals required under State law are obtained and (6) the plan is in the best interests of creditors and is feasible. The rights and remedies of the owners of the Bonds would be adjusted in accordance with the confirmed plan of adjustment of the City's debt.

## **Tax-Exempt Status of the Bonds**

The Indenture contains covenants by the City intended to preserve the exclusion from gross income of interest on the Bonds for federal income tax purposes. As discussed under the caption "TAX MATTERS," interest on the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the Bonds were issued as a result of future acts or omissions of the City in violation of its covenants in the Indenture.

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the federal or State level, may adversely affect the tax-exempt status of interest on the Bonds under federal or State law and could affect the market price or marketability of the Bonds. Any such proposal could limit the value of certain deductions and exclusions, including the exclusion for tax-exempt interest. The likelihood of any such proposal being enacted cannot be predicted. Prospective purchasers of the Bonds should consult their own tax advisors regarding the foregoing matters.

As further described in "TAX MATTERS" below, failure of the City to comply with the requirements of the Internal Revenue Code of 1986 (the "Code") and the related legal authorities, or changes in the federal tax law or its application, could cause interest on the Bonds to be included in the gross income of owners of the Bonds for federal income tax purposes, possibly from the date of original issuance of the Bonds. Further, the opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of interest on the Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. The IRS has an ongoing program of auditing obligations that are issued and sold as bearing tax-exempt interest to determine whether, in the view of the IRS, interest on such obligations is included in the gross income of the owners thereof for federal income tax purposes. In the past, the IRS has announced audit efforts focused in part on "developer-driven bond transactions," including certain tax increment financings and certain assessment bond transactions. It cannot be predicted if this IRS focus could lead to an audit of the Bonds or what the result would be of any such audit. If an audit of the Bonds is commenced, under current procedures parties other than the City would have little, if any, right to participate in the audit process. Moreover, because achieving judicial review in connection with an audit of tax-exempt obligations is difficult, obtaining an independent review of IRS positions with which the City legitimately disagrees may not be practicable. Any action of the IRS, regardless of the outcome, including but not limited to selection of the Bonds for audit, or the course or result of such audit, or an audit of obligations presenting similar tax issues, may affect the market price for, or the marketability of, the Bonds. Finally, if the IRS ultimately determines that the interest on the Bonds is not excluded from the gross income of Bondholders for federal income tax purposes, the City may not have the resources to settle with the IRS, the Bonds are not required to be redeemed, and the interest rate on the Bonds will not increase.

## **Management and Ownership**

The management and ownership of the Developer and related property owners could change in the future. Purchasers of the Bonds should not rely on the management experience of such entities. There are no assurances that such entities will not sell the subject property or that officers will not resign or be replaced. In such circumstances, a new developer or new officers in management positions may not have comparable experience in projects comparable to the Development.

## **Availability of Utilities**

*General.* Pursuant to the Water Agreement, Goforth SUD has agreed to reserve water supply and water system capacity for the District. Goforth SUD receives water from GBRA. The progress of development within the District is dependent upon Goforth SUD receiving an adequate supply of water. If Goforth SUD cannot timely or fails to supply water to the property in the District, the development of the land in the District could be adversely affected. Similarly, pursuant to the Wastewater Agreement, Windy Hill has agreed to provide wastewater services to the District. The progress of development within the District is dependent upon Windy Hill providing adequate wastewater services to the District. If Windy Hill cannot timely or fails to supply wastewater services to the property in the District, the development of the land in the District could be adversely affected. The City has no control over Goforth SUD or Windy Hill or their ability to provide adequate water and wastewater services, respectively, to the District.

Portions of the State, including the City and its surrounding area, are experiencing significant growth, which has produced and is expected to continue to produce a growing demand for water and wastewater service. The ability of Goforth SUD to provide an adequate supply of water and the ability of Windy Hill to provide sufficient capacity for the treatment of wastewater is dependent on many factors, including, but not limited to, supply and demand of materials to complete necessary water and wastewater improvements, compliance with the TCEQ regulations, the effects of extreme weather events on such entities' water and wastewater systems, and the construction of developments competing with the District. See "THE DEVELOPMENT – Utilities," "BONDHOLDERS' RISKS – General Risks of Real Estate Investment and Development" "– Risks Related to Recent Increase in Costs of Building Materials," "– Competition," "– Regulation," and "– Risk from Weather Events."

None of the City, the Financial Advisor, the Underwriter, or the Developer can predict the impact that such growing demand may have on the City, the District, the projected buildout schedule, availability of water and wastewater service to the District or an investment in the Bonds.

*Availability of Water.* The State is currently experiencing a drought due to significantly low rainfall. The continuation of the drought may affect the ability of Goforth SUD to deliver water under the Water Agreement, which in turn may have an impact on water service to the District.

None of the City, the Financial Advisor, the Underwriter, or the Developer can predict the impact that the drought or any future similar condition may have on the City, the District, Goforth SUD, the projected buildout schedule, availability of water service to the District or an investment in the Bonds. See "THE DEVELOPMENT – Utilities."

## **Use of Appraisal**

None of the City, the Developer nor the Underwriter makes any representation as to the accuracy, completeness, assumptions or information contained in the Appraisal. The assumptions or qualifications with respect to the Appraisal are contained therein. There can be no assurance that any such assumptions will be realized, and the City, the Developer and the Underwriter make no representation as to the reasonableness of such assumptions.

In connection with the preparation of the Appraisal, the Appraiser may have reviewed the information supplied or otherwise made available to it by the City for reasonableness, has assumed and relied upon the accuracy and completeness of all such information and of all information supplied or otherwise made available to it by any other party, and did not undertake any duty or responsibility to verify independently any of such information. The

Appraiser has not made or obtained, nor will it make or obtain, an independent valuation or appraisal of any other assets or liabilities (contingent or otherwise) other than the property in the District. With respect to operating or financial forecasts and other information and data provided to or otherwise reviewed by or discussed with the Appraiser, the Appraiser has assumed that such forecasts and other information and data were reasonably prepared in good faith on bases reflecting the best currently available estimates and judgments of the City's employees, representatives and advisors, as well as any corrections or updates to such forecasts and other information and data.

In performing its analyses, the Appraiser has made numerous other assumptions with respect to general business, economic and regulatory conditions and other matters, many of which are beyond the Appraiser's control and the City's control, as well as certain factual matters. For example, the Appraiser assumed that the owners of property in the District have clear and marketable title to the properties in the District, that no title defects exist unless the Appraiser was specifically informed to the contrary, that improvements were made in accordance with law, that no hazardous materials are present or were present previously, that no deed restrictions exist, and that no changes to zoning ordinances or regulations governing use, density or shape are pending or being considered. Furthermore, the Appraiser's analysis, opinions and conclusions are necessarily based upon market, economic, financial and other circumstances and conditions existing prior to the valuation. The foregoing is a summary of the standard assumptions, qualifications and limitations that generally apply to the Appraiser's appraisal reports.

The Appraiser confirms that the valuations included in the Appraisal were prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

Caution should be exercised in the evaluation and use of appraisal results. An appraisal is an estimate of market value as of a specified date based upon assumptions and limiting conditions and any extraordinary assumptions specific to the relevant valuation. It is not a precise measure of value but is based on a subjective comparison of related activity taking place in the real estate market. The valuation set forth in the Appraisal is based on various assumptions of future expectations and while the Appraiser's internal forecasts of net operating income for the properties in the District is considered by the Appraiser to be reasonable at the current time, some of the assumptions may not materialize or may differ materially from actual experience in the future.

The Bonds will not necessarily trade at values determined solely by reference to the underlying value of the properties in the District.

The intended use and user of the Appraisal are specifically identified in the Appraisal as agreed upon in the contract for services and/or reliance language found in the Appraisal. The Appraiser has consented to the use of the Appraisal in this Limited Offering Memorandum in connection with the issuance of the Bonds. No other use or user of the Appraisal is permitted by any other party for any other purpose

### **Dependence Upon Developer**

*Developer's Initial Liability for Assessments.* As of March 31, 2023, the Developer owns approximately 97.16% of the assessed property within the District, and thus currently has the obligation for the payment of 97.16% of the total Assessments in the approximate amount of \$15,401,669.24\*. MileStone currently owns approximately 2.84% of the assessed property within the District, and thus currently has the obligation for the payment of 2.84% of the total Assessments in the approximate amount of \$450,330.76\*. The ability of Developer and MileStone to make its respective and timely payments of the Assessments will directly affect the ability of the City to meet its debt service obligations with respect to the Bonds. The sole asset of the Developer is land within the District, the proceeds from the sale of parcels and lots within Improvement Area #1 of the District, and related permits and development rights.

The City will pay the Developer, or its designee, from proceeds of the Bonds for project costs actually incurred in developing and constructing the Improvement Area #1 Improvements within the District. There can be no assurances given as to the financial ability of the Developer to complete such improvements.

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\* Preliminary, subject to change.

The source of funding for future land development activities and infrastructure construction to develop the lots proposed for the District also consists of proceeds from Future Improvement Area Bonds and proceeds of lot sales, as well as possible bank financing and equity contributions by the Developer and its members. There can be no assurances given as to the financial ability of the Developer to advance any funds to the City to supplement revenues from the Assessments if necessary, or as to whether the Developer will advance such funds.

## **TAX MATTERS**

### **Opinion**

The delivery of the Bonds is subject to the opinion of Bond Counsel to the effect that interest on the Bonds for federal income tax purposes (1) will be excludable from gross income, as defined in Section 61 of the Internal Revenue Code of 1986, as amended to the date of such opinion (the “Code”), pursuant to section 103 of the Code and existing regulations, published rulings, and court decisions, and (2) will not be included in computing the alternative minimum taxable income of the owners thereof who are individuals. A form of Bond Counsel’s opinion is reproduced as Appendix D. The statutes, regulations, rulings, and court decisions on which such opinion is based are subject to change.

In rendering the foregoing opinions, Bond Counsel will rely upon representations and certifications of the City made in a certificate dated the Closing Date pertaining to the use, expenditure, and investment of the proceeds of the Bonds and will assume continuing compliance by the City with the provisions of the Indenture subsequent to the issuance of the Bonds. The Indenture contains covenants by the City with respect to, among other matters, the use of the proceeds of the Bonds and the facilities financed therewith by persons other than state or local governmental units, the manner in which the proceeds of the Bonds are to be invested, the periodic calculation and payment to the United States Treasury of arbitrage “profits” from the investment of proceeds, and the reporting of certain information to the United States Treasury. Failure to comply with any of these covenants may cause interest on the Bonds to be includable in the gross income of the owners thereof from the date of the issuance of the Bonds.

Bond Counsel’s opinion is not a guarantee of a result, but represents its legal judgment based upon its review of existing statutes, regulations, published rulings and court decisions and the representations and covenants of the City described above. No ruling has been sought from the Internal Revenue Service (the “IRS”) with respect to the matters addressed in the opinion of Bond Counsel, and Bond Counsel’s opinion is not binding on the IRS. The IRS has an ongoing program of auditing the tax-exempt status of the interest on tax-exempt obligations. If an audit of the Bonds is commenced, under current procedures the IRS is likely to treat the City as the “taxpayer,” and the owners of the Bonds would have no right to participate in the audit process. In responding to or defending an audit of the tax-exempt status of the interest on the Bonds, the City may have different or conflicting interests from the owners of the Bonds. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit, regardless of its ultimate outcome.

Except as described above, Bond Counsel expresses no other opinion with respect to any other federal, state or local tax consequences under present law, or proposed legislation, resulting from the receipt or accrual of interest on, or the acquisition or disposition of, the Bonds. Prospective purchasers of the Bonds should be aware that the ownership of tax-exempt obligations such as the Bonds may result in collateral federal tax consequences to, among others, financial institutions, life insurance companies, property and casualty insurance companies, certain foreign corporations doing business in the United States, S corporations with subchapter C earnings and profits, corporations subject to the alternative minimum tax on adjusted financial statement income, individual recipients of Social Security or Railroad Retirement benefits, individuals otherwise qualifying for the earned income tax credit, owners of an interest in a financial asset securitization investment trust (“FASIT”), and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry, or who have paid or incurred certain expenses allocable to, tax-exempt obligations. Prospective purchasers should consult their own tax advisors as to the applicability of these consequences to their particular circumstances.

For taxable years beginning after 2022, the Code imposes a minimum tax of 15 percent of the adjusted financial statement income of certain large corporations, generally consisting of corporations (other than S corporations, regulated investment companies and real estate investment trusts) with more than \$1 billion in average annual adjusted financial statement income, determined over a three-year period. For this purpose, adjusted financial

statement income generally consists of the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement for the taxable year, subject to various adjustments, but is not reduced for interest earned on tax-exempt obligations, such as the Bonds. Prospective purchasers that could be subject to this minimum tax should consult with their own tax advisors regarding the potential impact of owning the Bonds.

Existing law may change to reduce or eliminate the benefit to bondholders of the exclusion of interest on the Bonds from gross income for federal income tax purposes. Any proposed legislation or administrative action, whether or not taken, could also affect the value and marketability of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed or future changes in tax law.

### **Tax Accounting Treatment of Discount and Premium on Certain Bonds**

The initial public offering price of certain Bonds (the "Discount Bonds") may be less than the amount payable on such Bonds at maturity. An amount equal to the difference between the initial public offering price of a Discount Bond (assuming that a substantial amount of the Discount Bonds of that maturity are sold to the public at such price) and the amount payable at maturity constitutes original issue discount to the initial purchaser of such Discount Bond. A portion of such original issue discount allocable to the holding period of such Discount Bond by the initial purchaser will, upon the disposition of such Discount Bond (including by reason of its payment at maturity), be treated as interest excludable from gross income, rather than as taxable gain, for federal income tax purposes, on the same terms and conditions as those for other interest on the Bonds described above under "Tax Exemption." Such interest is considered to be accrued actuarially in accordance with the constant interest method over the life of a Discount Bond, taking into account the semiannual compounding of accrued interest, at the yield to maturity on such Discount Bond and generally will be allocated to an initial purchaser in a different amount from the amount of the payment denominated as interest actually received by the initial purchaser during the tax year.

However, such interest may be required to be taken into account in determining the amount of the branch profits tax applicable to certain foreign corporations doing business in the United States, even though there will not be a corresponding cash payment. In addition, the accrual of such interest may result in certain other collateral federal income tax consequences to, among others, financial institutions, life insurance companies, property and casualty insurance companies, S corporations with subchapter C earnings and profits, corporations subject to the alternative minimum tax on adjusted financial statement income, individual recipients of Social Security or Railroad Retirement benefits, individuals otherwise qualifying for the earned income tax credit, owners of an interest in a FASIT, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry, or who have paid or incurred certain expenses allocable to, tax-exempt obligations. Moreover, in the event of the redemption, sale or other taxable disposition of a Discount Bond by the initial owner prior to maturity, the amount realized by such owner in excess of the basis of such Discount Bond in the hands of such owner (adjusted upward by the portion of the original issue discount allocable to the period for which such Discount Bond was held) is includable in gross income.

Owners of Discount Bonds should consult with their own tax advisors with respect to the determination of accrued original issue discount on Discount Bonds for federal income tax purposes and with respect to the state and local tax consequences of owning and disposing of Discount Bonds. It is possible that, under applicable provisions governing determination of state and local income taxes, accrued interest on Discount Bonds may be deemed to be received in the year of accrual even though there will not be a corresponding cash payment.

The purchase price of certain Bonds (the "Premium Bonds") paid by an owner may be greater than the amount payable on such Bonds at maturity. An amount equal to the excess of a purchaser's tax basis in a Premium Bond over the amount payable at maturity constitutes premium to such purchaser. The basis for federal income tax purposes of a Premium Bond in the hands of such purchaser must be reduced each year by the amortizable bond premium, although no federal income tax deduction is allowed as a result of such reduction in basis for amortizable bond premium. Such reduction in basis will increase the amount of any gain (or decrease the amount of any loss) to be recognized for federal income tax purposes upon a sale or other taxable disposition of a Premium Bond. The amount of premium that is amortizable each year by a purchaser is determined by using such purchaser's yield to maturity (or, in some cases with respect to a callable Bond, the yield based on a call date that results in the lowest yield on the Bond).

Purchasers of the Premium Bonds should consult with their own tax advisors with respect to the determination of amortizable bond premium on Premium Bonds for federal income tax purposes and with respect to the state and local tax consequences of owning and disposing of Premium Bonds.

### **State, Local and Foreign Taxes**

Investors should consult their own tax advisors concerning the tax implications of the purchase, ownership or disposition of the Bonds under applicable state or local laws. Foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not United States persons.

## **LEGAL MATTERS**

### **Legal Proceedings**

Delivery of the Bonds will be accompanied by the unqualified approving legal opinion of the Attorney General to the effect that the Bonds are valid and legally binding obligations of the City under the Constitution and laws of the State, payable from the Trust Estate and, based upon their examination of a transcript of certified proceedings relating to the issuance and sale of the Bonds, the legal opinion of Bond Counsel, to a like effect.

Norton Rose Fulbright US LLP, serves as Bond Counsel to the City. Orrick, Herrington & Sutcliffe LLP serves as Underwriter's Counsel. The legal fees paid to Bond Counsel and Underwriter's Counsel are contingent upon the sale and delivery of the Bonds.

### **Legal Opinions**

The City will furnish the Underwriter a transcript of certain certified proceedings incident to the authorization and issuance of the Bonds. Such transcript will include a certified copy of the approving opinion of the Attorney General of Texas, as recorded in the Bond Register of the Comptroller of Public Accounts of the State, to the effect that the Bonds are valid and binding special, limited obligations of the City. The City will also furnish the legal opinion of Bond Counsel, to the effect that, based upon an examination of such transcript, the Bonds are valid and binding special, limited obligations of the City under the Constitution and laws of the State. The legal opinion of Bond Counsel will further state that the Bonds, including principal of and interest thereon, are payable from and secured by a pledge of and lien on the Trust Estate. Bond Counsel will also provide a legal opinion to the effect that interest on the Bonds will be excludable from gross income for federal income tax purposes under Section 103(a) of the Code, subject to the matters described above under the caption "TAX MATTERS." A copy of the opinion of Bond Counsel is attached hereto as "APPENDIX D –Form of Opinion of Bond Counsel."

Except as noted below, Bond Counsel did not take part in the preparation of the Limited Offering Memorandum, and such firm has not assumed any responsibility with respect thereto or undertaken independently to verify any of the information contained therein, except that, in its capacity as Bond Counsel, such firm has reviewed the information describing the Bonds in the Limited Offering Memorandum under the captions or subcaptions "PLAN OF FINANCE – The Bonds" (except for the last paragraph thereof), "DESCRIPTION OF THE BONDS," "SECURITY FOR THE BONDS SIMILARLY SECURED," "ASSESSMENT PROCEDURES" (except for the subcaptions "Assessment Methodology" and "Assessment Amounts"), "THE DISTRICT," "TAX MATTERS," "LEGAL MATTERS – Legal Proceedings" (except for the last paragraph thereof), "LEGAL MATTERS – Legal Opinions (except for the last paragraph thereof)," "CONTINUING DISCLOSURE – The City," "REGISTRATION AND QUALIFICATION OF BONDS FOR SALE," "LEGAL INVESTMENT AND ELIGIBILITY TO SECURE PUBLIC FUNDS IN TEXAS," APPENDIX B and APPENDIX D, and such firm is of the opinion that the information relating to the Bonds, the Bond Ordinance, the Assessment Ordinance and the Indenture contained therein fairly and accurately describes the laws and legal issues addressed therein and, with respect to the Bonds, such information conforms to the Bond Ordinance, the Assessment Ordinance and the Indenture.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of that expression of professional

judgment, of the transaction opined upon, or of the future performance of the parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

### **Litigation – The City**

At the time of delivery and payment for the Bonds, the City will certify that, except as disclosed herein, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to its knowledge, overtly threatened against the City affecting the existence of the District, or seeking to restrain or to enjoin the sale or delivery of the Bonds, the application of the proceeds thereof, in accordance with the Indenture, or the collection or application of the Assessments securing the Bonds, or in any way contesting or affecting the validity or enforceability of the Bonds, the Assessment Ordinance, the Indenture, any action of the City contemplated by any of the said documents, or the collection or application of the Trust Estate, or in any way contesting the completeness or accuracy of this Limited Offering Memorandum or any amendment or supplement thereto, or contesting the powers of the City or its authority with respect to the Bonds or any action of the City contemplated by any documents relating to the Bonds.

### **Litigation – The Developer**

At the time of delivery and payment for the Bonds, the Developer will certify that, except as disclosed herein, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory body, public board or body pending, or, to the best knowledge of the Developer, threatened against or affecting the Developer wherein an unfavorable decision, ruling or finding would have a material adverse effect on the financial condition or operations of the Developer or its officers or would adversely affect (1) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture, the Bond Ordinance, the Service and Assessment Plan, the Development Agreement, the Financing Agreement, or the Representations Letter of the Developer, or otherwise described in this Limited Offering Memorandum, or (2) the tax-exempt status of interest on the Bonds.

## **SUITABILITY FOR INVESTMENT**

Investment in the Bonds poses certain economic risks. See “BONDHOLDERS’ RISKS”. The Bonds are not, at this time, rated by any nationally recognized municipal securities rating service. No dealer, broker, salesman or other person has been authorized by the City or the Underwriter to give any information or make any representations, other than those contained in this Limited Offering Memorandum, and, if given or made, such other information or representations must not be relied upon as having been authorized by either of the foregoing. Additional information will be made available to each prospective investor, including the benefit of a site visit to the City and the opportunity to ask questions of the Developer, as such prospective investor deems necessary in order to make an informed decision with respect to the purchase of the Bonds.

## **ENFORCEABILITY OF REMEDIES**

The remedies available to the owners of the Bonds upon an event of default under the Indenture are in many respects dependent upon judicial actions, which are often subject to discretion and delay. See “BONDHOLDERS’ RISKS – Bondholders’ Remedies and Bankruptcy.” Under existing constitutional and statutory law and judicial decisions, including the federal bankruptcy code, the remedies specified by the Indenture and the Bonds may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified, as to the enforceability of the remedies provided in the various legal instruments, by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors and enacted before or after such delivery.

## **NO RATING**

No application for a rating on the Bonds has been made to any rating agency, nor is there any reason to believe that the City would have been successful in obtaining an investment grade rating for the Bonds had application been made.



## **CONTINUING DISCLOSURE**

### **The City**

Pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), the City and BOKF, NA, Houston, Texas (in such capacity, the “Dissemination Agent”) have entered into a Continuing Disclosure Agreement (the “Disclosure Agreement of the Issuer”) for the benefit of the Owners of the Bonds (including owners of beneficial interests in the Bonds), to provide, by certain dates prescribed in the Disclosure Agreement of the Issuer, certain financial information and operating data relating to the City (collectively, the “City Reports”). The specific nature of the information to be contained in the City Reports is set forth in “APPENDIX E-1 – Form of Disclosure Agreement of the Issuer.” Under certain circumstances, the failure of the City to comply with its obligations under the Disclosure Agreement of the Issuer constitutes an event of default thereunder. Such a default will not constitute an event of default under the Indenture, but such event of default under the Disclosure Agreement of the Issuer would allow the Owners of the Bonds (including owners of beneficial interests in the Bonds) to bring an action for specific performance.

The City has agreed to update information and to provide notices of certain specified events only as provided in the Disclosure Agreement of the Issuer. The City has not agreed to provide other information that may be relevant or material to a complete presentation of its financial results of operations, condition, or prospects or agreed to update any information that is provided in this Limited Offering Memorandum, except as provided in the Disclosure Agreement of the Issuer. The City makes no representation or warranty concerning such information or concerning its usefulness to a decision to invest in or sell the Bonds at any future date. The City disclaims any contractual or tort liability for damages resulting in whole or in part from any breach of the Disclosure Agreement of the Issuer or from any statement made pursuant to the Disclosure Agreement of the Issuer.

### **The City’s Compliance with Prior Undertakings**

During the last five years, the City has complied in all material respects with all continuing disclosure agreements made by the City in accordance with the Rule.

### **The Developer**

The Developer, the Administrator, and the Dissemination Agent will, in connection with the issuance of the Bonds, enter into a Continuing Disclosure Agreement (the “Disclosure Agreement of the Developer”) for the benefit of the Owners of the Bonds (including owners of beneficial interests in the Bonds), to provide, by certain dates prescribed in the Disclosure Agreement of the Developer, certain information regarding Improvement Area #1 and the Improvement Area #1 Projects (collectively, the “Developer Reports”). The specific nature of the information to be contained in the Developer Reports is set forth in “APPENDIX E-2 – Form of Disclosure Agreement of the Developer.” Under certain circumstances, the failure of the Developer or the Administrator to comply with its obligations under the Disclosure Agreement of the Developer constitutes an event of default thereunder. Such a default will not constitute an event of default under the Indenture, but such event of default under the Disclosure Agreement of the Developer would allow the Owners of the Bonds (including owners of beneficial interests in the Bonds) to bring an action for specific performance.

The Developer has agreed to provide (i) certain updated information to the Administrator, which consultant will prepare and provide such updated information in report form and (ii) notices of certain specified events, only as provided in the Disclosure Agreement of the Developer. The Developer has not agreed to provide other information that may be relevant or material to a complete presentation of its financial results of operations, condition, or prospects or agreed to update any information that is provided in this Limited Offering Memorandum, except as provided in the Disclosure Agreement of the Developer. The Developer makes no representation or warranty concerning such information or concerning its usefulness to a decision to invest in or sell the Bonds at any future date. The Developer disclaims any contractual or tort liability for damages resulting in whole or in part from any breach of the Disclosure Agreement of the Developer or from any statement made pursuant to the Disclosure Agreement of the Developer.

## **The Developer's Compliance with Prior Undertakings**

The Developer has not previously entered into any disclosure agreements.

## **THE FINANCIAL ADVISOR**

*The following information has been provided by SAMCO Capital Markets, Inc., as the Financial Advisor.*

SAMCO Capital Markets, Inc. (the "Financial Advisor") is employed as the Financial Advisor to the City in connection with the issuance of the Bonds. The Financial Advisor's fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance and delivery of the Bonds. SAMCO Capital Markets, Inc., in its capacity as Financial Advisor, has relied on the opinions of Bond Counsel and has not verified and does not assume any responsibility for the information, covenants, and representations contained in any of the bond documentation with respect to the federal income tax status of the Bonds. In the normal course of business, the Financial Advisor may also from time to time sell investment securities to the City for the investment of bond proceeds or other funds of the City upon the request of the City.

The Financial Advisor has provided the following sentence for inclusion in this Preliminary Limited Offering Memorandum. The Financial Advisor has reviewed the information in this Preliminary Limited Offering Memorandum in accordance with its responsibilities to the City and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Financial Advisor does not guarantee the accuracy or completeness of such information.

## **UNDERWRITING**

FMSbonds, Inc., (the "Underwriter") has agreed to purchase the Bonds from the City at a purchase price of \$\_\_\_\_\_ (the par amount of the Bonds, less an underwriting discount of \$\_\_\_\_\_, which includes Underwriter's Counsel's fee) and no accrued interest. The Underwriter's obligations are subject to certain conditions precedent and if obligated to purchase any of the Bonds the Underwriter will be obligated to purchase all of the Bonds. Subject to certain restrictions contained in the Bond Purchase Agreement, the Bonds may be offered and sold by the Underwriter at prices lower than the initial offering prices stated on the inside cover page hereof, and such initial offering prices may be changed from time to time by the Underwriter.

## **REGISTRATION AND QUALIFICATION OF BONDS FOR SALE**

The sale of the Bonds has not been registered under the Federal Securities Act of 1933, as amended, in reliance upon the exemption provided thereunder by Section 3(a)(2); and the Bonds have not been qualified under the Securities Act of Texas in reliance upon various exemptions contained therein; nor have the Bonds been qualified under the securities acts of any other jurisdiction. The City assumes no responsibility for qualification of the Bonds under the securities laws of any jurisdiction in which the Bonds may be sold, assigned, pledged, hypothecated or otherwise transferred. This disclaimer of responsibility for qualification for sale or other disposition of the Bonds shall not be construed as an interpretation of any kind with regard to the availability of any exemption from securities registration provisions.

## **LEGAL INVESTMENT AND ELIGIBILITY TO SECURE PUBLIC FUNDS IN TEXAS**

The PID Act and Section 1201.041 of the Public Security Procedures Act (Chapter 1201, Texas Government Code, as amended) provide that the Bonds are negotiable instruments and investment securities governed by Chapter 8, Texas Business and Commerce Code, as amended, and are legal and authorized investments for insurance companies, fiduciaries, trustees, or for the sinking funds of municipalities or other political subdivisions or public agencies of the State. With respect to investment in the Bonds by municipalities or other political subdivisions or public agencies of the State, the Texas Public Funds Investment Act (the "PFIA") requires that the Bonds be assigned a rating of at least "A" or its equivalent as to investment quality by a national rating agency. See "NO RATING" above. In addition, the PID Act and various provisions of the Texas Finance Code provide that, subject to a prudent investor standard, the Bonds are legal investments for state banks, savings banks, trust companies with capital of one

million dollars or more, and savings and loan associations. The Bonds are eligible to secure deposits to the extent of their market value. No review by the City has been made of the laws in other states to determine whether the Bonds are legal investments for various institutions in those states. No representation is made that the Bonds will be acceptable to public entities to secure their deposits or acceptable to such institutions for investment purposes.

The City made no investigation of other laws, rules, regulations or investment criteria which might apply to such institutions or entities or which might limit the suitability of the Bonds for any of the foregoing purposes or limit the authority of such institutions or entities to purchase or invest in the Bonds for such purposes.

## **INVESTMENTS**

The City invests its funds in investments authorized by State law in accordance with investment policies approved by the City Council. Both State law and the City's investment policies are subject to change.

Under State law, the City is authorized to make investments meeting the requirements of the PFIA, which currently include (1) obligations, including letters of credit, of the United States or its agencies and instrumentalities, including the Federal Home Loan Banks; (2) direct obligations of the State or its agencies and instrumentalities; (3) collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States; (4) other obligations, the principal and interest of which is guaranteed or insured by or backed by the full faith and credit of, the State or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation (the "FDIC") or by the explicit full faith and credit of the United States; (5) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than "A" or its equivalent; (6) bonds issued, assumed or guaranteed by the State of Israel; (7) interest-bearing banking deposits that are guaranteed or insured by the FDIC or its successor, or the National Credit Union Share Insurance Fund or its successor; (8) interest-bearing banking deposits other than those described by clause (7) if (A) the funds invested in the banking deposits are invested through: (i) a broker with a main office or branch office in this state that the City selects from a list the governing body or designated investment committee of the City adopts as required by Section 2256.025, Texas Government Code; or (ii) a depository institution with a main office or branch office in this state that the City selects; (B) the broker or depository institution selected as described by (A) above arranges for the deposit of the funds in the banking deposits in one or more federally insured depository institutions, regardless of where located, for the City's account; (C) the full amount of the principal and accrued interest of the banking deposits is insured by the United States or an instrumentality of the United States; and (D) the City appoints as the City's custodian of the banking deposits issued for the City's account: (i) the depository institution selected as described by (A) above; (ii) an entity described by Section 2257.041(d), Texas Government Code; or (iii) a clearing broker dealer registered with the SEC and operating under SEC Rule 15c3-3; (9) (i) certificates of deposit or share certificates meeting the requirements of the PFIA that are issued by an institution that has its main office or a branch office in the State and are guaranteed or insured by the FDIC or the National Credit Union Share Insurance Fund, or their respective successors, or are secured as to principal by obligations described in clauses (1) through (8) or in any other manner and provided for by law for City deposits, or (ii) certificates of deposits where (a) the funds are invested by the City through (A) a broker that has its main office or a branch office in the State and is selected from a list adopted by the City as required by law, or (B) a depository institution that has its main office or branch office in the State that is selected by the City, (b) the broker or the depository institution selected by the City arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the City, (c) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States, and (d) the City appoints the depository institution selected under (a) above, a custodian as described by Section 2257.041(d) of the Texas Government Code, or a clearing broker-dealer registered with the SEC and operating pursuant to SEC Rule 15c3-3 (17 C.F.R. Section 240.15c3-3) as custodian for the City with respect to the certificates of deposit; (10) fully collateralized repurchase agreements that have a defined termination date, are secured by a combination of cash and obligations described in clause (1) above, clause (12) below, require the securities being purchased by the City or cash held by the City to be pledged to the City, held in the City's name, and deposited at the time the investment is made with the City or with a third party selected and approved by the City, and are placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in the State; (11) certain bankers' acceptances with the remaining term of 270 days or less, if the short-term obligations of the accepting bank or its parent are rated at least "A-1" or "P-

1” or the equivalent by at least one nationally recognized credit rating agency; (12) commercial paper with a stated maturity of 365 days or less that is rated at least “A-1” or “P-1” or the equivalent by either (a) two nationally recognized credit rating agencies or (b) one nationally recognized credit rating agency if the paper is fully secured by an irrevocable letter of credit issued by a U.S. or state bank; (13) no-load money market mutual funds registered with and regulated by the United States SEC that provide the City with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940 and that comply with SEC Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.); and (14) no-load mutual funds registered with the SEC that have an average weighted maturity of less than two years, and either (a) a duration of one year or more and invest exclusively in obligations described in under this heading, or (b) a duration of less than one year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities. In addition, bond proceeds may be invested in guaranteed investment contracts that have a defined termination date and are secured by obligations, including letters of credit, of the United States or its agencies and instrumentalities, other than the prohibited obligations described below, in an amount at least equal to the amount of bond proceeds invested under such contract and are pledged to the City and deposited with the City or a third party selected and approved by the City.

The City may invest in such obligations directly or through government investment pools that invest solely in such obligations provided that the pools are rated no lower than “AAA” or “AAAm” or an equivalent by at least one nationally recognized rating service. The City may also contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control for a term up to two years, but the City retains ultimate responsibility as fiduciary of its assets. In order to renew or extend such a contract, the City must do so by order, ordinance, or resolution. The City is specifically prohibited from investing in: (1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal; (2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security and bears no interest; (3) collateralized mortgage obligations that have a stated final maturity of greater than 10 years; and (4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Political subdivisions such as the City are authorized to implement securities lending programs if (i) the securities loaned under the program are 100% collateralized, a loan made under the program allows for termination at any time and a loan made under the program is either secured by (a) obligations that are described in clauses (1) through (8) above, (b) irrevocable letters of credit issued by a state or national bank that is continuously rated by a nationally recognized investment rating firm at not less than “A” or its equivalent or (c) cash invested in obligations described in clauses (1) through (8) above, clauses (12) through (14) above, or an authorized investment pool; (ii) securities held as collateral under a loan are pledged to the City, held in the City’s name and deposited at the time the investment is made with the City or a third party designated by the City; (iii) a loan made under the program is placed through either a primary government securities dealer or a financial institution doing business in the State; and (iv) the agreement to lend securities has a term of one year or less.

Under State law, the City is required to invest its funds under written investment policies that primarily emphasize safety of principal and liquidity; that address investment diversification, yield, maturity, and the quality and capability of investment management; and that include a list of authorized investments for City funds, the maximum allowable stated maturity of any individual investment and the maximum average dollar-weighted maturity allowed for pooled fund groups, methods to monitor the market price of investments acquired with public funds, a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis, and procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments consistent with the PFIA. All City funds must be invested consistent with a formally adopted “Investment Strategy Statement” that specifically addresses each fund’s investment. Each Investment Strategy Statement will describe its objectives concerning: (1) suitability of investment type, (2) preservation and safety of principal, (3) liquidity, (4) marketability of each investment, (5) diversification of the portfolio, and (6) yield.

Under State law, the City’s investments must be made “with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person’s own affairs, not for speculation, but for investment considering the probable safety of capital and the probable income to be derived.” At least quarterly the City’s investment officers must submit an investment report to the City

Council detailing: (1) the investment position of the City, (2) that all investment officers jointly prepared and signed the report, (3) the beginning market value, and any additions and changes to market value and the ending value of each pooled fund group, (4) the book value and market value of each separately listed asset at the beginning and end of the reporting period, (5) the maturity date of each separately invested asset, (6) the account or fund or pooled fund group for which each individual investment was acquired, and (7) the compliance of the investment portfolio as it relates to: (a) adopted investment strategies and (b) State law. No person may invest City funds without express written authority from the City Council.

Under State law, the City is additionally required to: (1) annually review its adopted policies and strategies; (2) adopt by written instrument a rule, order, ordinance, or resolution stating that it has reviewed its investment policy and investment strategies and records any changes made to either its investment policy or investment strategy in the respective rule, order, ordinance or resolution; (3) require any investment officers with personal business relationships or family relationships with firms seeking to sell securities to the City to disclose the relationship and file a statement with the Texas Ethics Commission and the City; (4) require the registered principal of firms seeking to sell securities to the City to: (a) receive and review the City's investment policy, (b) acknowledge that reasonable controls and procedures have been implemented to preclude imprudent investment activities conducted between the entity and the organization that are not authorized by the entity's investment policy (except to the extent that this authorization is dependent on an analysis of the makeup of the entity's entire portfolio, requires an interpretation of subjective investment standards or relates to investment transactions of the entity that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority), and (c) deliver a written statement attesting to these requirements; (5) in conjunction with its annual financial audit, perform a compliance audit of the management controls on investments and adherence to the City's investment policy; (6) restrict reverse repurchase agreements to not more than ninety (90) days and restrict the investment of reverse repurchase agreement funds to no greater than the term of the reverse repurchase agreement; (7) restrict the investment in no-load money market mutual funds in the aggregate to no more than fifteen percent (15%) of the City's monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service; (8) require local government investment pools to conform to the new disclosure, rating, net asset value, yield calculation, and advisory board requirements; (9) provide specific investment training for the Treasurer, the chief financial officer (if not the Treasurer) and the investment officer; and (10) at least annually review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the City.

### **INFORMATION RELATING TO THE TRUSTEE**

The City has appointed BOKF, NA, a national banking association organized under the laws of the United States, to serve as Trustee. The Trustee is to carry out those duties assignable to it under the Indenture. Except for the contents of this section, the Trustee has not reviewed or participated in the preparation of this Limited Offering Memorandum and assumes no responsibility for the contents, accuracy, fairness or completeness of the information set forth in this Limited Offering Memorandum or for the recitals contained in the Indenture or the Bonds, or for the validity, sufficiency, or legal effect of any of such documents.

Furthermore, the Trustee has no oversight responsibility, and is not accountable, for the use or application by the City of any of the Bonds authenticated or delivered pursuant to the Indenture or for the use or application of the proceeds of such Bonds by the City. The Trustee has not evaluated the risks, benefits, or propriety of any investment in the Bonds and makes no representation, and has reached no conclusions, regarding the value or condition of any assets or revenues pledged or assigned as security for the Bonds, the technical or financial feasibility of the project, or the investment quality of the Bonds, about all of which the Trustee expresses no opinion and expressly disclaims the expertise to evaluate.

Additional information about the Trustee may be found at its website at [www.bokfinancial.com](http://www.bokfinancial.com). Neither the information on the Trustee's website, nor any links from that website, is a part of this Limited Offering Memorandum, nor should any such information be relied upon to make investment decisions regarding the Bonds.

## **SOURCES OF INFORMATION**

### **General**

The information contained in this Limited Offering Memorandum has been obtained primarily from the City's records, the Developer and its representatives and other sources believed to be reliable. In accordance with its responsibilities under the federal securities law, the Underwriter has reviewed the information in this Limited Offering Memorandum in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of the transaction, but the Underwriter does not guarantee the accuracy or completeness of such information. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Limited Offering Memorandum or any sale hereunder will create any implication that there has been no change in the financial condition or operations of the City or the Developer described herein since the date hereof. This Limited Offering Memorandum contains, in part, estimates and matters of opinion that are not intended as statements of fact, and no representation or warranty is made as to the correctness of such estimates and opinions or that they will be realized. The summaries of the statutes, resolutions, ordinances, indentures and engineering and other related reports set forth herein are included subject to all of the provisions of such documents. These summaries do not purport to be complete statements of such provisions and reference is made to such documents for further information.

### **Source of Certain Information**

The information contained in this Limited Offering Memorandum relating to the description of the Improvement Area #1 Projects generally and, in particular, the information included in the sections captioned "PLAN OF FINANCE (except for the information under "– The Bonds"), "THE IMPROVEMENTS," "THE DEVELOPMENT," "THE DEVELOPER," "BONDHOLDERS' RISKS" (only as it pertains to the Developer, the Improvement Area #1 Improvements and the Development), "LEGAL MATTERS – Litigation – The Developer," and "CONTINUING DISCLOSURE – The Developer" and "– The Developer' Compliance with Prior Undertakings" has been provided by the Developer, and the Developer warrants and represents that the information contained herein is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made herein, in light of the circumstances under which they were made, not misleading. At the time of delivery of the Bonds to the Underwriter, the Developer will deliver a certificate to this effect to the City and the Underwriter.

### **Experts**

The information regarding the Service and Assessment Plan in this Limited Offering Memorandum has been provided by P3Works, LLC and has been included in reliance upon the authority of such firm as experts in the field of development planning and finance.

The information regarding the Appraisal in this Limited Offering Memorandum, which is subject to the assumptions, hypothetical conditions and qualifications set forth therein, has been provided by Barletta & Associates, Inc., and has been included in reliance upon the authority of such firm as experts in the field of the appraisal of real property.

### **Updating of Limited Offering Memorandum**

If, subsequent to the date of the Limited Offering Memorandum, the City learns, through the ordinary course of business and without undertaking any investigation or examination for such purposes, or is notified by the Underwriter, of any adverse event which causes the Limited Offering Memorandum to be materially misleading, and unless the Underwriter elects to terminate its obligation to purchase the Bonds, the City will promptly prepare and supply to the Underwriter an appropriate amendment or supplement to the Limited Offering Memorandum satisfactory to the Underwriter; provided, however, that the obligation of the City to so amend or supplement the Limited Offering Memorandum will terminate when the City delivers the Bonds to the Underwriter, unless the Underwriter notifies the City on or before such date that less than all of the Bonds have been sold to ultimate customers; in which case the

City's obligations hereunder will extend for an additional period of time (but not more than 90 days after the date the City delivers the Bonds) until all of the Bonds have been sold to ultimate customers.

### **FORWARD-LOOKING STATEMENTS**

Certain statements included or incorporated by reference in this Limited Offering Memorandum constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21e of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "project," "anticipate," "budget" or other similar words.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE CITY DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ANY OF ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR, OTHER THAN AS DESCRIBED UNDER "CONTINUING DISCLOSURE" HEREIN.

### **AUTHORIZATION AND APPROVAL**

The City Council will approve the form and content of this Preliminary Limited Offering Memorandum and the use thereof by the Underwriter in connection with the marketing and sale of the Bonds. In the Bond Ordinance, the City Council will approve the form and content of the final Limited Offering Memorandum.

CITY OF KYLE, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

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## APPENDIX A

### GENERAL INFORMATION REGARDING THE CITY

The City is a political subdivision and municipal corporation of the State of Texas (the “State”), duly organized and existing under the laws of the State including the City’s Home Rule Charter, initially adopted by the qualified voters of the City in the year 2000, and as amended in 2006, 2016, 2018 and 2020. The City operates as a home rule municipality under a Council-Manager form of government with a City Council consisting of the Mayor and six Council Members. The City Manager is the chief executive officer for the City.

The City is located in Hays County along Interstate Highway 35. It is located approximately eight (8) miles north of the City of San Marcos, twenty (20) miles south of the City of Austin and sixty (60) miles north of the City of San Antonio. The City covers approximately 31.25 square miles. The City’s 2020 census population was 45,697, and the City has estimated that its 2023 population is approximately 55,600.

The City is a thriving community having easy access to major highway and roadways, including Interstate Highway 35. The City is strategically located eight miles north of San Marcos, 20 miles south of Austin and 60 miles north of San Antonio. The City is the second largest city in Hays County and enjoys a south-central location convenient to most major population and employment centers in the State.

#### Historical Employment in Hays County and the City

The following information has been provided for informational purposes only.

##### Hays County

	Average Annual				
	2023 <sup>(1)(2)</sup>	2022 <sup>(1)(2)</sup>	2021 <sup>(2)</sup>	2020 <sup>(2)</sup>	2019
Civilian Labor Force	141,807	138,543	129,600	121,304	120,848
Total Employed	136,463	134,363	124,271	113,639	117,494
Total Unemployed	5,344	4,180	5,329	7,665	3,354
Unemployment Rate	3.8%	3.0%	4.1%	6.3%	2.8%

<sup>(1)</sup> Data through February 2023.

<sup>(2)</sup> The COVID-19 Pandemic has negatively affected travel, commerce, employment rates and financial markets globally, and is widely expected to continue negatively affecting economic growth and financial markets worldwide. See “BONDHOLDERS’ RISKS – Infectious Disease Outbreak.”

Source: Texas Labor Market Information.

##### The City

	Average Annual				
	2023 <sup>(1)(2)</sup>	2022 <sup>(1)(2)</sup>	2021 <sup>(2)</sup>	2020 <sup>(2)</sup>	2019
Civilian Labor Force	30,467	29,828	27,975	25,783	25,647
Total Employed	29,428	28,975	26,799	24,117	24,936
Total Unemployed	1,039	853	1,176	1,666	711
Unemployment Rate	3.4%	2.9%	4.2%	6.5%	2.8%

<sup>(1)</sup> Data through February 2023.

<sup>(2)</sup> The COVID-19 Pandemic has negatively affected travel, commerce, employment rates and financial markets globally, and is widely expected to continue negatively affecting economic growth and financial markets worldwide. See “BONDHOLDERS’ RISKS – Infectious Disease Outbreak.”

Source: Texas Labor Market Information.

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## Major Employers in the City

The major employers in the City are set forth in the table below.

Employer	Employees	Percentage of Total City Employment
Hays County Independent School District	2,383	11.45%
Seton Medical Center Hays	610	2.93%
The City	251	6.09%
HEB Plus	208	1.00%
Legend Oaks Healthcare & Rehabilitation	116	0.56%
Lowes	108	0.52%
Warm Springs Rehab Hospital	100	0.48%
Home Depot	100	0.48%
Austin Community College at Hays	80	0.38%
RSI, Inc	58	0.28%
Construction Metal Products	40	0.19%
Southwestern Pneumatic	40	0.19%
Miscellaneous Steel Industries	30	0.14%
<b>Total</b>	<b>4,124</b>	<b>24.70%</b>

*Source: The City's Comprehensive Annual Financial Report for the year ended September 30, 2022.*

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## REGIONAL EMPLOYMENT

### Surrounding Economic Activity

The major employers of municipalities surrounding the City are set forth in the table below.

City of San Marcos, TX		City of New Braunfels, TX		City of Seguin, TX		City of Buda, TX	
Approximately 10 Miles from the City		Approximately 30 Miles from the City		Approximately 30 Miles from the City		Approximately 8 Miles from the City	
Employer	Employees	Employer	Employees	Employer	Employees	Employer	Employees
Texas State University	3,730	Comal ISD	2,895	Texas Power Systems/CAT	2,000	Wal-Mart	325
Amazon	2,200	Schlitterbahn Water Park	2,100	Continental AG (Motorola)	1,500	US Foods	300
San Marcos Premium Outlets	1,600	Wal-Mart Distribution Center	1,250	Seguin ISD	1,045	Capital Excavation	300
Tanger Factory Outlets	1,540	New Braunfels ISD	1,188	CMC Steel	900	Dynamic Systems	200
San Marcos CISD	1,400	City of New Braunfels	812	Guadalupe Regional Medical Center	765	Fat Quarter Shop	160
Hays County	885	Sysco	810	Tyson Foods	750	Texas Lehigh	160
City of San Marcos	817	Hunter Industries-Colorado Materials	730	Guadalupe County	650	ProBuild	130
HEB Distribution Center	750	Comal County	681	Texas Lutheran University	440	Cabela's	120
Central Texas Medical Center	675	HD Supply	538	HEB	429	Cap City Steel	100
CFAN	600	Rush Enterprises	518	Wal-Mart Supercenter	400	Jardines	75

City of Schertz, TX	
Approximately 45 Miles from the City	
Employer	Employees
Schertz/Cibola/UC ISD	1,992
Amazon.com	900
Sysco Central Texas	806
Visionworks	593
FedEx Group	580
The Brandt Companies, LLC	537
HEB Grocery Co.	500
Republic Beverage Company	413
City of Schertz	392
FedEx Freight	325

City of Austin, TX	
Approximately 20 Miles from the City	
Employer	Employees
State Government	38,589
University of Texas at Austin	27,426
City of Austin	14,471
HEB	13,901
Federal Government	13,400
Dell Computer Corporation	13,000
Austin ISD	11,098
St. David's Healthcare	10,665
Ascension Seton	10,513
Samsung Austin Semiconductor	8,935

Source: Municipal Advisory Council of Texas

APPENDIX B  
FORM OF INDENTURE

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APPENDIX C  
FORM OF SERVICE AND ASSESSMENT PLAN

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APPENDIX D  
FORM OF OPINION OF BOND COUNSEL



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APPENDIX E-1

FORM OF DISCLOSURE AGREEMENT OF THE ISSUER

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FORM OF DISCLOSURE AGREEMENT OF THE DEVELOPER

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APPENDIX F

DEVELOPMENT AGREEMENT

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APPENDIX G  
FORM OF FINANCING AGREEMENT



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APPENDIX H  
FORM OF COMPLETION AGREEMENT

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## APPENDIX I

### APPRAISAL

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**INDENTURE OF TRUST**

**By and Between**

**CITY OF KYLE, TEXAS**

**and**

**BOKF, NA,  
as Trustee**

**DATED AS OF MAY 1, 2023**

**SECURING**

**\$\_\_\_\_\_**

**CITY OF KYLE, TEXAS  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023  
(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT  
IMPROVEMENT AREA #1 PROJECT)**

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of May 1, 2023 is by and between the CITY OF KYLE, TEXAS (the “City”), and BOKF, NA, as trustee (together with its successors, the “Trustee”). Capitalized terms used in the preambles, recitals and granting clauses and not otherwise defined shall have the meanings assigned thereto in Article I.

WHEREAS, a petition was submitted and filed with the City Secretary of the City (the “City Secretary”) pursuant to the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended (the “PID Act”), requesting the creation of a public improvement district located in the corporate limits of the City to be known as Porter Country Public Improvement District (the “District”); and

WHEREAS, the petition contained the signature of the owner of taxable property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the District, as determined by the then current ad valorem tax rolls of the Hays Central Appraisal District, and the signature of the property owner who owns taxable real property that constitutes more than fifty percent of the area of all taxable property that is liable for assessment by the District; and

WHEREAS, on July 5, 2022, after due notice, the City Council of the City (the “City Council”) held the public hearing in the manner required by law on the advisability of the improvement projects and services described in the petition as required by Section 372.009 of the PID Act and on July 5, 2022, the City Council made the findings required by Section 372.009(b) of the PID Act and, by Resolution No. 1316, adopted by a majority of the members of the City Council, authorized the District in accordance with its finding as to the advisability of the improvement projects and services and also made findings and determinations relating to the estimated total costs of certain Authorized Improvements; and

WHEREAS, on August 3, 2022, Resolution No. 1316 was recorded in the real property records of Hays County under Instrument No. 22037770; and

WHEREAS, no written protests to the creation of the District from any owners of record of property within the District were filed with the City Secretary within 20 days after July \_\_, 2022; and

WHEREAS, on April 18, 2023, the City Council by Resolution No. \_\_ made findings and determinations relating to the Actual Costs of certain Improvement Area #1 Projects, received and accepted a preliminary service and assessment plan and a proposed assessment roll, called a public hearing for May 2, 2023 and directed City staff to (i) file said proposed assessment roll with the City Secretary and to make it available for public inspection as required by Section 372.016(b) of the PID Act, and (ii) coordinate publishing such notice relating to the May 2, 2023 hearing as required by Section 372.016(b) of the PID Act; and

WHEREAS, on April [21], 2023, the City Council, pursuant to Section 372.016(b) of the PID Act, caused to be published notice of the public hearing in the *Austin American Statesman*, a newspaper of general circulation in the City, to consider the proposed Service and Assessment

Plan and the Assessment Roll and the levy of the Assessments on property within Improvement Area #1 of the District; and

WHEREAS, the City Council, pursuant to Section 372.016(c) of the PID Act, mailed notice of the public hearing to consider the proposed Assessment Roll and the Service and Assessment Plan and the levy of Assessments on property in Improvement Area #1 of the District to the last known address of the owners of property liable for the Assessments; and

WHEREAS, the City Council opened and convened the hearing on May 2, 2023 and at such public hearing all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the proposed Service and Assessment Plan, the proposed Assessment Roll and the Assessments, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of estimated costs of the Improvement Area #1 Projects, the purposes of the Assessments, the special benefits of the Improvement Area #1 Projects, and the penalties and interest on Annual Installments and on delinquent Annual Installments of the Assessments, and there were no written objections or evidence submitted to the City Secretary in opposition to the Service and Assessment Plan, the allocation of estimated costs of the Improvement Area #1 Projects, the Assessment Roll, and the levy of the Assessments; and

WHEREAS, the City Council closed the hearing, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, the City approved Ordinance No. \_\_\_\_, which levied the Assessments against the property within Improvement Area #1 and approved the Service and Assessment Plan, in conformity with the requirements of the PID Act; and

WHEREAS, the City Council, in accordance with the Authority granted to it by the PID Act and other applicable laws, has authorized the issuance of its City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project)” (the “*Bonds*”), pursuant to Ordinance No. \_\_\_\_, approved at the May 2, 2023 meeting of the City Council, for the purpose of (i) paying a portion of the costs of the public improvements within the District conferring a direct benefit to property situated in that portion of the District designated as “Improvement Area #1” (the “*Improvement Area #1 Improvements*”), (ii) paying interest on Bonds during and after the period of acquisition and construction of the Improvement Area #1 Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District (the “*District Formation Costs*”), and (v) paying the costs of issuance of the Bonds; and

WHEREAS, the Bonds are payable from the Assessments levied against that portion of the District designated as Improvement Area #1 and are secured by this Indenture of Trust, dated May 1, 2023 (the “*Indenture*”), executed and delivered by the City and the Trustee, concurrent with the issuance of the Bonds; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by written ordinance of the City Council of the City of Kyle, Texas; and

WHEREAS, the Trustee has accepted the trusts created by this Indenture and in evidence thereof has joined in the execution and delivery hereof; and

WHEREAS, except as provided herein, all acts and conditions and things required by the laws of the State to happen, exist and be performed precedent to execution and delivery of this Indenture have happened, exist and have been performed as so required in order to make the Indenture a valid, binding, and legal instrument for the security of the Bonds and a valid and binding agreement in accordance with its terms; and

NOW, THEREFORE, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the further purpose of fixing and declaring the terms and conditions upon which the Bonds are to be issued, authenticated, delivered and accepted by the holders thereof, the City and the Trustee do hereby mutually covenant and agree, for the equal and proportionate benefit of the respective Owners, or providers, as applicable, from time to time, of the Bonds Similarly Secured, including the Bonds, as follows (collectively, the “*Trust Estate*”):

#### FIRST GRANTING CLAUSE

The Pledged Revenues and all moneys and investments held in the Pledged Funds, including any contract or any evidence of indebtedness related thereto or other rights of the City to receive any of such moneys or investments, whether now existing or hereafter coming into existence, and whether now or hereafter acquired; and

#### SECOND GRANTING CLAUSE

Any and all other property or money of every name and nature which is, from time to time hereafter by delivery or by writing of any kind, conveyed, pledged, assigned or transferred to the Trustee as additional security hereunder by the City or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property or money at any and all times and to hold and apply the same subject to the terms thereof; and

#### THIRD GRANTING CLAUSE

Any and all proceeds and products of the foregoing property described in the above granting clauses;

TO HAVE AND TO HOLD the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successors or assigns;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and ratable benefit of all present and future Owners of the Bonds Similarly Secured from time to time issued under and secured by this Indenture, and for enforcement of the payment of the Bonds Similarly Secured in accordance with their terms, and for the performance of and compliance with the obligations, covenants, and conditions of this Indenture;

PROVIDED, HOWEVER, if and to the extent that Assessments have been prepaid, the lien on the real property associated with such Prepayment shall be released, and the rights of the Trustee and Owners under this Indenture to proceed against the City for the purpose of protecting and enforcing the rights of the Owners with respect to such released real property shall terminate;

FURTHER PROVIDED, HOWEVER, if the City or its assigns shall well and truly pay, or cause to be paid, the principal or redemption price of and the interest on all the Bonds Similarly Secured at the times and in the manner stated in the Bonds Similarly Secured, according to the true intent and meaning thereof, then this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture is to be and remain in full force and effect; and

IN ADDITION, the Bonds Similarly Secured are special obligations of the City payable solely from the Trust Estate, as and to the extent provided in this Indenture. The Bonds Similarly Secured do not give rise to a charge against the general credit or taxing powers of the City and are not payable except as provided in this Indenture. Notwithstanding anything to the contrary herein, the Owners shall never have the right to demand payment thereof out of any funds of the City other than the Trust Estate. The City shall have no legal or moral obligation to pay for the Bonds Similarly Secured out of any funds of the City other than the Trust Estate.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds Similarly Secured issued and secured hereunder are to be issued, authenticated, and delivered and the Trust Estate hereby created, assigned, and pledged is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the City has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Owners from time to time of the Bonds Similarly Secured as follows:

## ARTICLE I DEFINITIONS, FINDINGS AND INTERPRETATION

### Section 1.1 Definitions.

In this Indenture, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

“*Account*” means any of the accounts established pursuant to Section 6.1 of this Indenture.

“*Actual Costs*” mean, with respect to Improvement Area #1 Projects, the actual costs paid or incurred by or on behalf of the Developer: (1) to plan, finance, design, acquire, construct, install, and dedicate such improvements to the City, including the acquisition of necessary easements and other right-of-way; (2) to prepare plans, specifications (including bid packages), contracts, and as-built drawings; (3) to obtain zoning, licenses, plan approvals, permits, inspections, and other governmental approvals; (4) for third-party professional consulting services including but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisals; (5) for labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums; and (6) to implement, administer, and manage the above-described activities, including a 4% construction management fee. Actual Costs shall not include general contractor’s fees in an amount that exceeds a percentage equal to

the percentage of work completed or construction management fees in an amount that exceeds an amount equal to the construction management fee amortized in approximately equal monthly installments over the term of the applicable construction management contract. Amounts expended for costs described in subsection (3), (4), and (6) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated.

*“Additional Interest”* means the amount collected by application of the Additional Interest Rate.

*“Additional Interest Rate”* means the 0.50% additional interest rate charged on Assessments securing the Bonds Similarly Secured pursuant to Section 372.018 of the PID Act.

*“Additional Interest Reserve Account”* means the Account established pursuant to Section 6.1 hereof.

*“Additional Interest Reserve Requirement”* means, initially, an amount equal to 5.5% of the principal amount of the Outstanding Bonds Similarly Secured which will be funded from the payment of the Additional Interest deposited to the Pledged Revenue Fund and transferred to the Additional Interest Reserve Account.

*“Additional Obligations”* means any bonds or obligations, including specifically, any installment contracts, reimbursement agreements, temporary note or time warrant secured in whole or in part by an assessment, other than the Assessments securing the Bonds Similarly Secured, levied against property within the District in accordance with the PID Act.

*“Administrative Fund”* means that Fund established by Section 6.1 and administered pursuant to Section 6.9 hereof.

*“Administrator”* means the City or the person or independent firm designated by the City who shall have the responsibility provided in the Service and Assessment Plan, the Indenture, or any other agreement or document approved by the City related to the duties and responsibility of the administration of the District.

*“Annual Collection Costs”* mean the actual or budgeted costs and expenses relating to collecting the Annual Installments, including, but not limited to, costs and expenses for: (1) the Administrator; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; (7) complying with the Service and Assessment Plan and the PID Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

*“Annual Debt Service”* means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds Similarly Secured in such Bond Year, assuming that the Outstanding Bonds

Similarly Secured are retired as scheduled (including by reason of Sinking Fund Installments), and (ii) the principal amount of the Outstanding Bonds Similarly Secured due in such Bond Year (including any Sinking Fund Installments due in such Bond Year).

*“Annual Installment”* means, with respect to the Assessed Properties, the annual installment payment of an Assessment as calculated by the Administrator and approved by the City Council, that includes: (1) principal; (2) interest; (3) Annual Collection Costs; and (4) Additional Interest.

*“Annual Service Plan Update”* means an update to the Service and Assessment Plan prepared no less frequently than annually by the Administrator and approved by the City Council.

*“Applicable Laws”* means the PID Act, and all other laws or statutes, rules, or regulations, and any amendments thereto, of the State of Texas or of the United States, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.

*“Assessed Property”* means for any year, any Parcel within Improvement Area #1 of the District against which an Assessment is levied, other than Non-Benefited Property.

*“Assessment Ordinance”* means Ordinance No. \_\_\_\_ adopted by the City Council on May 2, 2023, that levied the Assessments on the Assessed Properties in Improvement Area #1.

*“Assessment Revenue”* means monies collected by or on behalf of the City from any one or more of the following: (i) an Assessment levied against an Assessed Property, or Annual Installment payment thereof, including any interest on such Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, (iii) Delinquent Collection Costs, and (iv) Foreclosure Proceeds.

*“Assessment Roll”* means the Assessment Roll for the Assessed Properties within Improvement Area #1 of the District, included in the Service and Assessment Plan as Exhibit E-1, or any other Assessment Roll in an amendment or supplement to the Service and Assessment Plan or in an Annual Service Plan Update, showing the total amount of the Assessments, as updated, modified or amended from time to time in accordance with the procedures set forth in the Service and Assessment Plan and in the PID Act, including updates prepared in connection with the levy of an Assessment, the issuance of PID Bonds or in connection with any Annual Service Plan Update.

*“Assessments”* mean the aggregate assessments shown on the Assessment Roll. The singular of such term means the assessment levied against an Assessed Property, as shown on the Assessment Roll, subject to reallocation upon the subdivision of an Assessed Property or reduction according to the provisions of the Service and Assessment Plan and the PID Act.

*“Authorized Denomination”* means, with respect to the Bonds, \$100,000 and any integral multiple of \$1,000 in excess thereof, or such smaller amount authorized by Section 4.5(c); [provided, however, that upon receipt by the Paying Agent/Registrar of written evidence that the Bonds have received an Investment Grade Rating, Authorized Denomination shall mean \$1,000 or any integral multiple of \$1,000 in excess thereof, notwithstanding any subsequent downgrade,

suspension or withdrawal of such rating]. With respect to Refunding Bonds, such term shall have the meaning ascribed thereto in the Supplemental Indenture authorizing the issuance of such Refunding Bonds.

*“Authorized Improvements”* means those public improvements authorized by Section 372.003 of the PID Act, including Bond Issuance Costs and First Year Annual Collection Costs.

*“Bond Counsel”* means Norton Rose Fulbright US LLP or any other attorney or firm of attorneys designated by the City that are nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

*“Bond Date”* means the date designated as the initial date of the Bonds by Section 3.2(a) of this Indenture.

*“Bond Fund”* means the Fund established pursuant to Section 6.1 and administered as provided in Section 6.4 hereof.

*“Bond Issuance Costs”* means the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

*“Bond Ordinance”* means Ordinance No. \_\_\_\_ adopted by the City Council on May 2, 2023, authorizing the issuance of the Bonds pursuant to this Indenture.

*“Bonds”* or *“Bond”* means those certain “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project) that are secured by the Trust Estate, consisting primarily of actual revenues received by or on behalf of the City from the collection of Assessments levied against Assessed Property, or the Annual Installments thereof, for the Improvement Area #1 Projects.”

*“Bonds Similarly Secured”* or *“Bond Similarly Secured”* means all bonds or any bond authorized by a bond ordinance and issued in accordance with this Indenture, including the Bonds, Refunding Bonds and any bonds issued in exchange or replacement thereof as permitted by this Indenture. For the avoidance of doubt, such term does not include the Future Improvement Area Bonds.

*“Bond Year”* means the one-year period beginning on September 1 in each year and ending on August 31 in the following year.

*“Business Day”* means any day other than a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close.

*“Capitalized Interest Account”* means the Account of such name established pursuant to Section 6.1 hereof.



“*Certification for Payment*” means a certification for payment substantially in the forms of Exhibit A attached to the Financing Agreement executed by the Developer and submitted to the City and approved by the City Representative, specifying the amount of work performed and the Actual Costs thereof, and requesting payment for such Actual Costs from money on deposit in accounts of the Project Fund as further described in the Financing Agreement and Section 6.5 herein.

“*City*” means the City of Kyle, Texas.

“*City Certificate*” means a document signed by the City Representative and delivered to the Trustee, certifying that the Trustee is authorized to take the action specified in the City Certificate, and a form of City Certificate is included as *Exhibit B* to this Indenture.

“*City Council*” shall have the meaning ascribed to such term in the recitals hereof.

“*City Engineer*” means the civil engineer or firm of civil engineers selected by the City to perform the duties set forth herein and in the Financing Agreement.

“*City Representative*” means the City Manager and/or any official or agent of the City authorized by the City Council to undertake the action referenced herein.

“*Closing Date*” means the date of the initial delivery of and payment for the applicable Series of Bonds Similarly Secured.

“*Code*” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“*Continuing Disclosure Agreements*” or “*Continuing Disclosure Agreement*” means both, or either of, the Continuing Disclosure Agreements, with respect to the Bonds, by and between the City and the Dissemination Agent, and by and among the Developer, the Administrator, and the Dissemination Agent.

“*County*” means Hays County, Texas.

“*Defeasance Securities*” means Investment Securities then authorized by applicable law for the investment of funds to defease public securities.

“*Delinquent Collection Costs*” mean the costs related to the foreclosure on an Assessed Property and the costs of collection of a delinquent Assessment, delinquent annual Installments, or any other delinquent amounts due under the Service and Assessment Plan, including penalties and reasonable attorney’s fees actually paid, but excluding amounts representing interest and penalty interest.

“*Designated Payment/Transfer Office*” means (i) with respect to the initial Paying Agent/Registrar named in this Indenture, the transfer/payment office located in Houston, Texas, or such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“*Developer*” means Hillside Terrace Development LLC, a Texas limited liability company, and its successors and assigns.

“*Development Agreement*” means the agreement titled the “Porter Country Development Agreement,” dated May 17, 2022, as amended by the “First Amendment to Porter Country Development Agreement” entered into as of [September 6, 2022], each of which were entered into by and between the City and the Developer as such agreement may be further amended from time to time.

“*Dissemination Agent*” means BOKF, NA, solely in its capacity of dissemination agent, and its successors.

“*District*” shall have the meaning set forth in the first recital.

“*DTC*” means The Depository Trust Company of New York, New York, or any successor securities depository.

“*DTC Participant*” means brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“*Event of Default*” shall have the meaning, with respect to this Indenture, set forth in Section 11.1 hereof.

“*Excess Additional Interest Reserve Amount*” shall have the meaning set forth in Section 6.7(e) hereof.

“*Financing Agreement*” means the “Porter Country Public Improvement District Financing Agreement” between the City and the Developer, dated as of May 2, 2023, which provides, in part, for the issuance of bonds and the deposit of proceeds from the issuance and sale of such bonds, including the Bonds Similarly Secured, for the payment of Actual Costs of Authorized Improvements within the District, the reimbursement of Actual Costs to the Developer from the proceeds of bonds or assessments for funds advanced by the Developer and used to pay Actual Costs of Authorized Improvements, including the Improvement Area #1 Projects, and other matters related thereto, as such agreement may be further amended from time to time.

“*First Year Annual Collection Costs*” means the estimated cost of the first year’s Annual Collection Costs.

“*Foreclosure Proceeds*” means the proceeds, including interest and penalty interest, received by the City from the enforcement of the Assessments against any Assessed Property or Assessed Properties, whether by foreclosure of lien or otherwise, but excluding and net of all Delinquent Collection Costs.

“*Fund*” means any of the funds established pursuant to Section 6.1 of this Indenture.

*“Future Improvement Areas”* mean, at the time of the issuance of the Bonds, the property within the District, excluding Improvement Area #1. Future Improvement Areas may be developed in phases concurrently with or after Improvement Area #1.

*“Future Improvement Area Bonds”* mean bonds issued to fund Authorized Improvements (or a portion thereof) in an improvement area within the Future Improvement Area in question.

*“IA#1 Costs of Issuance Account”* means the Account established pursuant to Section 6.1 hereof.

*“IA#1 Improvements Account”* means the Account of such name established pursuant to Section 6.1 hereof.

*“Improvement Area”* means specifically defined and designated areas within the District that are developed in phases including Improvement Area #1.

*“Improvement Area #1”* means the initial improvement area to be developed, consisting of approximately 91.281 acres, to be developed within the District as described by metes and bounds in Exhibit K of the Service and Assessment Plan and as generally depicted on the map in Exhibit A-3 to the Service and Assessment Plan.

*“Improvement Area #1 Improvements”* means Authorized Improvements, excluding Improvement Area #1 Privately Financed Public Improvements, which only benefit Improvement Area #1 Assessed Property as listed in Section III and depicted in Exhibit G of the Service and Assessment Plan.

*Improvement Area #1 Privately Financed Public Improvements”* means Authorized Improvements benefitting Improvement Area #1, which will not be financed with PID Bonds.

*“Improvement Area #1 Projects”* means Improvement Area #1 Improvements, Improvement Area #1 Bond Issuance Costs and First Year Annual Collection Costs.

*“Independent Financial Consultant”* means any consultant or firm of such consultants appointed by the City who, or each of whom: (i) is judged by the City, as the case may be, to have experience in matters relating to the issuance and/or administration of the Bonds Similarly Secured; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the District, or any real property in the District; and (iv) is not connected with the City as an officer or employee of the City or related by consanguinity or affinity to any such officer or employee, but who may be regularly retained to make reports to the City.

*“Indenture”* means this Indenture of Trust as originally executed or as it may be from time to time supplemented or amended by one or more indentures supplemental hereto and entered into pursuant to the applicable provisions hereof.

*“Initial Bond”* means, with respect to the Bonds, the initial bond set forth in Exhibit A hereto, and with respect to any Refunding Bonds, the initial bond set forth in the applicable Supplemental Indenture.

*“Interest Payment Date”* means the date or dates upon which interest on the Bonds is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being on March 1 and September 1 of each year, commencing September 1, 2023.

*“Investment Grade Rating”* means a rating assigned by a Rating Agency in one of such Rating Agency’s four highest categories for long-term debt instruments (without regard for gradation within a rating category and without regard for credit enhancement) or otherwise designated as investment grade by a Rating Agency.

*“Investment Securities”* means those authorized investments described in the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended; and that at the time made are included in and authorized by the City’s official investment policy as approved by the City Council from time to time.

*“Letter of Credit”* means the Irrevocable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 2023, issued by International Bank of Commerce in favor of the City at the request of and for the account of the Developer.

*“Maximum Annual Debt Service”* means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds Similarly Secured.

*“Non-Benefited Property”* means Parcels within the boundaries of the District that accrue no special benefit from the Authorized Improvements.

*“Outstanding”* means, as of any particular date when used with reference to Bonds Similarly Secured, all Bonds Similarly Secured authenticated and delivered under this Indenture except (i) any Bond Similarly Secured that has been canceled by the Trustee (or has been delivered to the Trustee for cancellation) at or before such date, (ii) any Bond Similarly Secured for which the payment of the principal or Redemption Price of and interest on such Bond Similarly Secured shall have been made as provided in Article IV, and (iii) any Bond Similarly Secured in lieu of or in substitution for which a new Bond Similarly Secured shall have been authenticated and delivered pursuant to Section 3.11 herein.

*“Owner”* or *“Holder”* means the Person who is the registered owner of a Bond Similarly Secured or Bonds Similarly Secured, as shown in the Register, which shall be Cede & Co., as nominee for DTC, so long as the Bonds Similarly Secured are in book-entry only form and held by DTC as securities depository in accordance with Section 3.13 herein.

*“Parcel”* means a property identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purposes, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the official public records of Hays County, or by any other means determined by the City.

*“Paying Agent/Registrar”* means initially the Trustee, or any successor thereto as provided in this Indenture.

“*Person*” or “*Persons*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“*PID Act*” means Texas Local Government Code, Chapter 372, Public Improvement Districts, as amended.

“*PID Bonds*” mean the Bonds Similarly Secured and the Future Improvement Area Bonds, if any.

“*Pledged Funds*” means the Pledged Revenue Fund, the Bond Fund, the Project Fund (but only with respect to such accounts and subaccounts of the Project Fund created pursuant to the terms of this Indenture; provided, however, that in the event a Privately Financed Improvements Subaccount and Improvement Area #1 Privately Financed Public Improvements Subaccount are created pursuant to Section 6.5(b), such subaccounts shall not be Pledged Funds), the Reserve Fund, and the Redemption Fund. Such term also includes each fund or account pledged to the repayment of the Bonds or Refunding Bonds.

“*Pledged Revenue Fund*” means that fund established pursuant to Section 6.1 hereof and administered pursuant to Section 6.3 herein.

“*Pledged Revenues*” means the sum of (i) Assessment Revenue other than Delinquent Collection Costs; (ii) the moneys held in any of the Pledged Funds; and (iii) any additional revenues that the City may pledge to the payment of Bonds Similarly Secured.

“*Prepayment*” means the payment of all or a portion of an Assessment, with interest that has accrued to the date of prepayment, before the due date of the final installment thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Annual Installment.

“*Principal and Interest Account*” means the Account of such name established pursuant to Section 6.1 hereof.

“*Privately Financed Improvements*” means those improvements which are not Authorized Improvements or Improvement Area #1 Privately Financed Public Improvements and are not eligible for reimbursement.

“*Project Collection Fund*” means that Fund established by Section 6.1 and administered pursuant to Section 6.10 herein.

“*Project Fund*” means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.5 herein.

“*Purchaser*” means, with respect to a Series of Bonds Similarly Secured, the initial underwriter of such Bonds Similarly Secured.

*“Quarter in Interest”* means as of any particular date of calculation, the Owners of no less than twenty-five percent (25%) of the principal amount of the then Outstanding Bonds Similarly Secured. In the event that two or more groups of Owners satisfy the percentage requirement set forth in the immediately preceding sentence and act (or direct the Trustee in writing to act) in a conflicting manner, only the group of Owners with the greatest percentage of Outstanding Bonds Similarly Secured (as measured in accordance with the immediately preceding sentence) shall, to the extent of such conflict, be deemed to satisfy such requirement.

*“Rating Agency”* means each of Moody's Investors Service, Inc., S&P Global Ratings, Fitch Ratings Inc., Kroll Bond Rating Agency, Inc., and any other nationally recognized statistical rating organization recognized as such by the SEC.

*“Rebate Amount”* has the meaning ascribed to such term in section 1.148-1(b) of the Regulations.

*“Rebate Fund”* means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.8 herein.

*“Record Date”* means the close of business on the fifteenth (15<sup>th</sup>) calendar day (whether or not a Business Day) of the month next preceding an Interest Payment Date.

*“Redemption Fund”* means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.6 herein.

*“Redemption Price”* means 100% of the principal amount of such Bonds Similarly Secured, or portions thereof, to be redeemed plus accrued interest to the date of redemption.

*“Refunding Bonds”* means Bonds Similarly Secured which are secured by a parity lien, with the Outstanding Bonds Similarly Secured, on the Trust Estate issued pursuant to Section 3.6 hereof, as more specifically described in a Supplemental Indenture, authorizing the refunding of all or any portion of the Outstanding Bonds Similarly Secured.

*“Register”* means the register specified in Article III of this Indenture.

*“Regulations”* shall have the meaning set forth in Section 7.5(a) hereof.

*“Release Restriction”* shall have the meaning assigned to such term in Section 6.5(i) hereof.

*“Reserve Account”* means the Account of such name established pursuant to Section 6.1 hereof.

*“Reserve Account Requirement”* means the least of: (i) Maximum Annual Debt Service on the Bonds as of the Closing Date therefor, (ii) 125% of average Annual Debt Service on the Bonds as of the Closing Date therefor, or (iii) 10% of the par amount of the Bonds; *provided, however*, that such amount shall be reduced by the amount of any transfers made pursuant to subsections (c) and (d) of Section 6.7; and provided further that as a result of an optional redemption pursuant to

Section 4.3, the Reserve Account Requirement shall be reduced by a percentage equal to the pro rata principal amount of Bonds redeemed by such optional redemption divided by the total principal amount of the Outstanding Bonds prior to such redemption. As of the Closing Date for the Bonds, the Reserve Account Requirement is \$\_\_\_\_\_, [which is an amount equal to Maximum Annual Debt Service on the Bonds as of the Closing Date therefor].

“*Reserve Fund*” means that fund established pursuant to Section 6.1 and administered in Section 6.7 herein.

“*SEC*” means the United States Securities and Exchange Commission.

“*Series*” means any designated series of Bonds issued under this Indenture.

“*Service and Assessment Plan*” means the original Service and Assessment Plan for the District, approved by the City Council on May 2, 2023, and which is attached as Exhibit A to the assessment ordinance for the Authorized Improvements benefitting Improvement Area #1, and each subsequent amendment to such plan as adopted by the City Council.

“*Sinking Fund Installment*” means the amount of money to redeem or pay at maturity the principal of Bonds payable from such installments at the times and in the amounts provided in Section 4.2 herein.

“*Stated Maturity*” means the date the Bonds Similarly Secured, or any portion of the Bonds Similarly Secured, as applicable are scheduled to mature without regard to any redemption or prepayment.

“*Supplemental Indenture*” means an indenture which has been duly executed by the Trustee and the City Representative pursuant to an ordinance adopted by the City Council and which indenture amends or supplements this Indenture, but only if and to the extent that such indenture is specifically authorized hereunder.

“*Tax Certificate*” means the Certificate as to Tax Exemption delivered by the City on the Closing Date for the Bonds setting forth the facts, estimates and circumstances in existence on the Closing Date for the Bonds which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the interest on such Bonds to be included in the gross income of the Owners thereof for Federal income tax purposes.

“*Trust Estate*” means the Trust Estate described in the granting clauses of this Indenture.

“*Trustee*” means BOKF, NA, Houston, Texas, a national banking association duly organized and validly existing under the laws of the United States of America, in its capacity as trustee hereunder, and its successors, and any other corporation or association that may at any time be substituted in its place, as provided in Article IX, such entity to serve as Trustee and Paying Agent/Registrar for the Bonds Similarly Secured.

“*Unrestricted Amount*” means \$[\_\_\_\_\_].

## Section 1.2 Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Indenture are hereby adopted, restated and made a part of the operative provisions hereof.

## Section 1.3 Table of Contents, Titles and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Indenture or any provision hereof or in ascertaining intent, if any question of intent should arise.

## Section 1.4 Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Words importing persons include any legal person, including any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization and government or agency or political subdivision thereof.

(c) Any reference to a particular Article or Section shall be to such Article or Section of this Indenture unless the context shall require otherwise.

(d) This Indenture and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Indenture.

## ARTICLE II THE BONDS

### Section 2.1 Security for the Bonds Similarly Secured.

The Bonds Similarly Secured, as to both principal and interest, are and shall be equally and ratably secured by and payable from a first lien on and pledge of the Trust Estate.

The lien on and pledge of the Trust Estate shall be valid and binding and fully perfected from and after the Closing Date for the applicable Series of Bonds Similarly Secured each issued under this Indenture, without physical delivery or transfer of control of the Trust Estate, the filing of this Indenture or any other act; all as provided in Texas Government Code, Chapter 1208, as amended, which applies to the issuance of the Bonds Similarly Secured and the pledge of the Trust Estate granted by the City under this Indenture, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds Similarly Secured are Outstanding such that the pledge of the Trust Estate granted by the City under this Indenture is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in



order to preserve to the registered owners of the Bonds Similarly Secured the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

Section 2.2 Limited Obligations.

The Bonds Similarly Secured are special and limited obligations of the City, payable solely from and secured solely by the Trust Estate, including the Pledged Revenues and the Pledged Funds, and the Bonds Similarly Secured shall never be payable out of funds raised or to be raised by taxation or from any other revenues, properties or income of the City.

Section 2.3 Authorization for Indenture.

The terms and provisions of this Indenture and the execution and delivery hereof by the City to the Trustee have been duly authorized by official action of the City Council of the City. The City has ascertained and it is hereby determined and declared that the execution and delivery of this Indenture is necessary to carry out and effectuate the purposes set forth in the preambles of this Indenture and that each and every covenant or agreement herein contained and made is necessary, useful or convenient in order to better secure the Bonds Similarly Secured and is a contract or agreement necessary, useful and convenient to carry out and effectuate the purposes herein described.

Section 2.4 Contract with Owners and Trustee.

(a) The purposes of this Indenture are to establish a lien and the security for, and to prescribe the minimum standards for the authorization, issuance, execution and delivery of, the Bonds Similarly Secured and to prescribe the rights of the Owners, and the rights and duties of the City and the Trustee.

(b) In consideration of the purchase and acceptance of any or all of the Bonds Similarly Secured by those who shall purchase and hold the same from time to time, the provisions of this Indenture shall be a part of the contract of the City with the Owners, and shall be deemed to be and shall constitute a contract among the City, the Owners, and the Trustee.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.1 Authorization.

The Bonds are hereby authorized to be issued and delivered in accordance with the Constitution and general laws of the State of Texas, including particularly the PID Act, as amended. The Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_ for the purpose of (i) paying a portion of the Actual Costs of the Improvement Area #1 Improvements, (ii) paying interest on the Bonds during and after the period of acquisition and construction of the Improvement Area #1 Improvements, (iii) funding a reserve fund for payment of principal and

interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds.

### Section 3.2 Date, Denomination, Maturities, Numbers and Interest.

(a) The Bonds shall be dated May 1, 2023 (the “*Bond Date*”) and shall be issued in Authorized Denominations. Upon the receipt of an Investment Grade Rating on the Bonds, the City shall promptly notify the Dissemination Agent in writing of such rating change and shall provide written direction to the Dissemination Agent to file a notice of such occurrence with the Municipal Securities Rulemaking Board and to forward such notice to the Paying Agent/Registrar and to the Trustee. The Dissemination Agent shall file such notice and forward the same to the Paying Agent/Registrar and to the Trustee immediately following the day on which it receives written notice of such occurrence from the City. Any such notice is required to be filed within ten (10) Business Days of the occurrence of the receipt of the Investment Grade Rating on the Bonds. Upon receipt by the Paying Agent/Registrar of written evidence that the Bonds have received an Investment Grade Rating, beneficial ownership in the Bonds may be acquired in principal denominations of \$1,000 or any integral multiple thereof, notwithstanding any subsequent downgrade, suspension or withdrawal of such rating. The Bonds shall be in fully registered form, without coupons, and shall be numbered separately from R-1 upward, except the Initial Bond, which shall be numbered T-1.

(b) Interest shall accrue and be paid on each Bond from the later of the Closing Date of the Bonds or the most recent Interest Payment Date to which interest has been paid or provided for, at the rate per annum set forth below until the principal thereof has been paid on the maturity date specified below or otherwise provided for. Such interest shall be payable semiannually on March 1 and September 1 of each year, commencing September 1, 2023 computed on the basis of a 360-day year of twelve 30-day months.

(c) The Bonds shall mature on September 1 in the years and in the principal installments and shall bear interest as set forth below:

<u>Year</u>	<u>Principal Installment</u>	<u>Interest Rate</u>
20__	\$ _____	__% __%
20__	\$ _____	__% __%
20__	\$ _____	__% __%
20__	\$ _____	__% __%

(d) The Bonds shall be subject to mandatory sinking fund redemption, optional redemption, and extraordinary optional redemption prior to maturity as provided in Article IV herein, and shall otherwise have the terms, tenor, denominations, details, and specifications as set forth in the form of Bond set forth in Exhibit A to this Indenture.

### Section 3.3 Conditions Precedent to Delivery of Bonds Similarly Secured.

(a) The Bonds shall be executed by the City and delivered to the Trustee, whereupon the Trustee shall authenticate the Bonds and, upon payment of the purchase price of

the Bonds, shall deliver the Bonds upon the order of the City, but only upon delivery to the Trustee of:

- (1) a certified copy of the Assessment Ordinance;
- (2) a certified copy of the Bond Ordinance;
- (3) a copy of the executed Financing Agreement
- (4) a copy of this Indenture executed by the Trustee and the City;
- (5) a City Certificate directing the authentication and delivery of the Bonds, describing the Bonds to be authenticated and delivered, designating the purchasers to whom the Bonds are to be delivered, stating the purchase price of the Bonds and stating that all items required by this Section are therewith delivered to the Trustee in form and substance satisfactory to the City;
- (6) a copy of the executed opinion of Bond Counsel;
- (7) a copy of the executed Continuing Disclosure Agreements; and
- (8) the approving opinion of the Attorney General of the State and the State Comptroller's registration certificate.

(b) Each Series of Refunding Bonds shall be executed by the City and delivered to the Trustee, whereupon the Trustee shall authenticate such Refunding Bonds and, upon payment of the purchase price of such Series of Refunding Bonds, shall deliver such Series of Refunding Bonds upon the order of the City, but only upon delivery to the Trustee of:

- (1) the items described in Section 3.3(a)([5]) and ([7]), if any, above;
- (2) a certified copy of the ordinance of the City Council authorizing the issuance of such Series of Refunding Bonds and all actions necessary therefor;
- (3) an original executed counterpart of the Supplemental Indenture for such Series of Refunding Bonds that establishes, among other things, the date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of such Series of Refunding Bonds, which such terms shall include a deposit into the Reserve Account of the Reserve Fund of an amount equal to the Reserve Account Requirement taking into account the then Outstanding Bonds Similarly Secured and the Refunding Bonds then proposed to be issued;
- (4) a City Certificate, including the requisite information as set forth in Section 3.3(a)([5]) above, to the effect that the issuance of such

Series of Refunding Bonds complies with the requirements contained herein and in each Supplemental Indenture, including the requirements contained in Section 13.2(c) below; and

- (5) the City Representative shall certify to the Trustee in writing that the City is not in default in the performance and observance of any of the terms, provisions and conditions applicable to the City contained herein or in any Supplemental Indenture.

#### Section 3.4 Medium, Method and Place of Payment.

(a) Principal of and interest on the Bonds Similarly Secured shall be paid in lawful money of the United States of America, as provided in this Section.

(b) Interest on the Bonds Similarly Secured shall be payable to the Owners thereof as shown in the Register at the close of business on the relevant Record Date; *provided, however*, that in the event of nonpayment of interest on a scheduled Interest Payment Date that continues for thirty (30) days or more thereafter, a new record date for such interest payment (a “*Special Record Date*”) will be established by the Trustee, if and when funds for the payment of such interest have been received from or on behalf of the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the “*Special Payment Date*,” which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) Business Days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond Similarly Secured appearing on the books of the Trustee at the close of business on the last Business Day preceding the date of mailing such notice.

(c) Interest on the Bonds Similarly Secured shall be paid by check, dated as of the Interest Payment Date, and sent, United States mail, first-class postage prepaid, by the Paying Agent/Registrar to each Owner at the address of each Owner as such appears in the Register or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, the Owner shall bear all risk and expense of such other banking arrangement.

(d) The principal of each Bond Similarly Secured shall be paid to the Owner of such Bond Similarly Secured on the due date thereof, whether at the maturity date or the date of prior redemption thereof, upon presentation and surrender of such Bond Similarly Secured at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Bonds Similarly Secured shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in Section 3.2 of this Indenture.

(f) Unclaimed payments of amounts due hereunder shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the

Owner of the Bonds Similarly Secured to which such unclaimed payments pertain. Subject to any escheat, abandoned property, or similar law of the State of Texas, any such payments remaining unclaimed by the Owners entitled thereto for two (2) years after the applicable payment or redemption date shall be applied to the next payment or payments on such Bonds Similarly Secured thereafter coming due and, to the extent any such money remains after the retirement of all Outstanding Bonds Similarly Secured, shall be paid to the City to be used for any lawful purpose. Thereafter, none of the City, the Paying Agent/Registrar, or any other Person shall be liable or responsible to any Owners of such Bonds Similarly Secured for any further payment of such unclaimed moneys or on account of any such Bonds Similarly Secured, subject to any applicable escheat law or similar law of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

### Section 3.5 Execution and Registration of Bonds Similarly Secured.

(a) The Bonds Similarly Secured shall be executed on behalf of the City by the Mayor or Mayor Pro Tem of the City and the City Secretary or Assistant City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds Similarly Secured shall have the same effect as if each of the Bonds Similarly Secured had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds Similarly Secured shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds Similarly Secured.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds Similarly Secured ceases to hold such office before the authentication of such Bonds Similarly Secured or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond Similarly Secured shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Indenture unless and until there appears thereon the Certificate of Trustee substantially in the form provided herein or in a Supplemental Indenture, duly authenticated by manual execution by an officer or duly authorized signatory of the Trustee. It shall not be required that the same officer or authorized signatory of the Trustee sign the Certificate of Trustee on all of the Bonds Similarly Secured. In lieu of the executed Certificate of Trustee described above, the Initial Bond delivered at the Closing Date for such series of Bonds Similarly Secured shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein or in a Supplemental Indenture, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his or her duly authorized agent, which certificate shall be evidence that such Initial Bond has been duly approved by the Attorney General of the State of Texas, is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

(d) On each Closing Date for each Series of the Bonds Similarly Secured, one Initial Bond representing the entire principal amount of such Series of Bonds Similarly Secured, payable in stated installments to the Purchaser of such series of Bonds Similarly Secured, or its

designee, executed with the manual or facsimile signatures of the Mayor or Mayor Pro Tem and the City Secretary or Assistant City Secretary, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Purchaser of such series of Bonds Similarly Secured or its designee. Upon payment for such Initial Bond, the Trustee shall cancel the Initial Bond and upon City Certificate deliver to DTC on behalf of the Purchaser of such Bonds Similarly Secured one registered definitive bond for each year of maturity of such series of the Bonds Similarly Secured, in the aggregate principal amount of all bonds for such maturity of such series of the Bonds Similarly Secured, registered in the name of Cede & Co., as nominee of DTC.

### Section 3.6 Refunding Bonds.

(a) Except in accordance with the provisions of this Indenture, including Section 13.2, the City shall not issue additional bonds, notes or other obligations payable from any portion of the Trust Estate, other than Refunding Bonds. The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State of Texas. Except as limited by the terms of this Indenture, including Section 13.2, the City reserves the right to incur debt payable from sources other than the Trust Estate, including revenue derived from contracts with other entities, including private corporations, municipalities and political subdivisions issued particularly for the purchase, construction, improvement, extension, replacement, enlargement or repair of the facilities needed in performing any such contract.

(b) The principal of all Refunding Bonds must be scheduled to be paid, be subject to mandatory sinking fund redemption or mature on September 1 of the years in which such principal is scheduled to be paid. All Refunding Bonds must bear interest at a fixed rate and any interest payment dates for Refunding Bonds must be March 1 and September 1. The date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of Refunding Bonds shall be set forth in a Supplemental Indenture.

(c) Upon their authorization by the City, the Refunding Bonds of a Series issued under this Section 3.6 shall be issued and shall be delivered to the purchasers or owners thereof, but before, or concurrently with, the delivery of said Refunding Bonds to such purchasers or owners there shall have been filed with the Trustee the items required by Section 3.3(b) above.

### Section 3.7 Ownership.

(a) The City, the Trustee, the Paying Agent/Registrar and any other Person may treat the Person in whose name any Bond Similarly Secured is registered as the absolute owner of such Bond Similarly Secured for the purpose of making and receiving payment as provided herein (except interest shall be paid to the Person in whose name such Bond Similarly Secured is registered on the relevant Record Date) and for all other purposes, whether or not such Bond Similarly Secured is overdue, and neither the City nor the Trustee, nor the Paying Agent/Registrar, shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of any Bond Similarly Secured shall be valid and effectual and shall discharge the liability of the City, the Trustee and the Paying Agent/Registrar upon such Bond Similarly Secured to the extent of the sums paid.

### Section 3.8 Registration, Transfer and Exchange.

(a) So long as any Bond Similarly Secured remains Outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a Register in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds Similarly Secured in accordance with this Indenture. The Paying Agent/Registrar represents and warrants that it will maintain a copy of the Register, with a copy thereof filed with the City, and shall cause the Register to be current with all registration and transfer information as from time to time may be applicable.

(b) A Bond Similarly Secured shall be transferable only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond Similarly Secured shall be effective until entered in the Register. If any Bond Similarly Secured is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond Similarly Secured shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond Similarly Secured shall forthwith cease and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond Similarly Secured who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture, or with respect to, said Bond Similarly Secured.

(c) The Bonds Similarly Secured shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond Similarly Secured or Bonds Similarly Secured of the same maturity and interest rate and in any Authorized Denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. The Trustee is hereby authorized to authenticate and deliver Bonds Similarly Secured exchanged for other Bonds Similarly Secured in accordance with this Section.

(d) The Trustee is hereby authorized to authenticate and deliver Bonds Similarly Secured transferred or exchanged in accordance with this Section. A new Bond Similarly Secured or Bonds will be delivered by the Paying Agent/Registrar, in lieu of the Bond Similarly Secured being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each transferred Bond Similarly Secured delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond Similarly Secured or Bonds Similarly Secured in lieu of which such transferred Bond Similarly Secured is delivered.

(e) Each exchange Bond Similarly Secured delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the

benefits and security of this Indenture to the same extent as the Bond Similarly Secured or Bonds Similarly Secured in lieu of which such exchange Bond Similarly Secured is delivered.

(f) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different Authorized Denomination of any of the Bonds Similarly Secured. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Bond Similarly Secured.

(g) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Bond Similarly Secured or portion thereof called for redemption prior to maturity within 45 days prior to the date fixed for redemption; *provided, however*, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond Similarly Secured.

### Section 3.9 Cancellation.

All Bonds Similarly Secured paid or redeemed before scheduled maturity in accordance with this Indenture, and all Bonds Similarly Secured in lieu of which exchange Bonds Similarly Secured or replacement Bonds Similarly Secured are authenticated and delivered in accordance with this Indenture, shall be cancelled, and proper records shall be made regarding such payment, redemption, exchange, or replacement. The Paying Agent/Registrar shall dispose of cancelled Bonds Similarly Secured in accordance with the records retention requirements of the Trustee.

### Section 3.10 Temporary Bonds Similarly Secured.

(a) Following the delivery and registration of the Initial Bond of a given Series of Bonds Similarly Secured and pending the preparation of definitive Bonds Similarly Secured for such Series of Bonds Similarly Secured, the proper officers of the City may execute and, upon the City's request, the Trustee shall authenticate and deliver, one or more temporary Bonds Similarly Secured that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds Similarly Secured in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds Similarly Secured may determine, as evidenced by their signing of such temporary Bonds Similarly Secured.

(b) Until exchanged for Bonds Similarly Secured in definitive form, such Bonds Similarly Secured in temporary form shall be entitled to the benefit and security of this Indenture.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Trustee the Bonds Similarly Secured in definitive form; thereupon, upon the presentation and surrender of the Bond Similarly Secured or Bonds Similarly Secured in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds Similarly Secured in temporary form and the Trustee shall authenticate and deliver in exchange therefor a Bond Similarly Secured or Bonds Similarly Secured of the same maturity and series, in definitive form, in the Authorized Denomination, and in the same aggregate principal amount, as the Bond



Similarly Secured or Bonds Similarly Secured in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.11 Replacement Bonds Similarly Secured.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond Similarly Secured, the Trustee shall authenticate and deliver in exchange therefor a replacement Bond Similarly Secured of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond Similarly Secured to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond Similarly Secured is lost, apparently destroyed or wrongfully taken, the Trustee, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond Similarly Secured has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond Similarly Secured of like tenor and principal amount bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond Similarly Secured;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the Trustee to save them and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Trustee and the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Trustee.

(c) After the delivery of such replacement Bond Similarly Secured, if a bona fide purchaser of the original Bond Similarly Secured in lieu of which such replacement Bond Similarly Secured was issued presents for payment such original Bond Similarly Secured, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond Similarly Secured from the Person to whom it was delivered or any Person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the City, the Paying Agent/Registrar or the Trustee in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond Similarly Secured has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond Similarly Secured,

may pay such Bond Similarly Secured if it has become due and payable or may pay such Bond Similarly Secured when it becomes due and payable.

(e) Each replacement Bond Similarly Secured delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond Similarly Secured or Bonds Similarly Secured in lieu of which such replacement Bond Similarly Secured is delivered.

### Section 3.12 Book-Entry Only System.

The Bonds shall initially be issued in book-entry-only form and shall be deposited with DTC, which is hereby appointed to act as the securities depository therefor, in accordance with the letter of representations from the City to DTC. On the Closing Date for the applicable series of Bonds, the definitive Bonds shall be issued in the form of a single typewritten certificate for each maturity thereof registered in the name of Cede & Co., as nominee for DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any Person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other Person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other Person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Indenture to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the Person in whose name each Bond Similarly Secured is registered in the Register as the absolute owner of such Bond Similarly Secured for the purpose of payment of principal of, premium, if any, and interest on Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond Similarly Secured, for the purpose of registering transfer with respect to such Bond Similarly Secured, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Owners as shown in the Register, as provided in this Indenture, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No Person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Indenture. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks or drafts being mailed to the registered owner at the close of business on the relevant Record Date, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

Section 3.13 Successor Securities Depository: Transfer Outside Book-Entry-Only System.

In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the letter of representations from the City to DTC, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Bonds and cause the Paying Agent/Registrar to transfer one or more separate registered Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

Section 3.14 Payments to Cede & Co.

Notwithstanding any other provision of this Indenture to the contrary, so long as Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds shall be made and given, respectively, in the manner provided in the blanket letter of representations from the City to DTC.

ARTICLE IV  
REDEMPTION OF BONDS BEFORE MATURITY

Section 4.1 Limitation on Redemption.

The Bonds shall be subject to redemption before their scheduled maturity only as provided in this Article IV. Each Series of Bonds Similarly Secured, other than the Bonds, shall be subject to mandatory sinking fund redemption and optional redemption as provided in the Supplemental Indenture authorizing the issuance of such Series of Bonds Similarly Secured.

Section 4.2 Mandatory Sinking Fund Redemption.

(a) The Bonds are subject to mandatory sinking fund redemption prior to their maturity and will be redeemed by the City in part at the Redemption Price from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI, on the dates and in the respective Sinking Fund Installments as set forth in the following schedule:

**Term Bonds Maturing September 1, 20\_\_**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____

September 1, 20\_\_

**Term Bonds Maturing September 1, [20\_\_]**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____

**Term Bonds Maturing September 1, [20\_\_]**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____

**Term Bonds Maturing September 1, [20\_\_]**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____

(b) At least forty-five (45) days prior to each mandatory sinking fund redemption date, and subject to any prior reduction authorized by subparagraphs (c) and (d) of this Section 4.2, the Trustee shall select a principal amount of Bonds, in accordance with Section 4.5, of such maturity equal to the Sinking Fund Installment amount of such Bonds to be redeemed, shall call such Bonds for redemption on such scheduled mandatory sinking fund redemption date, and shall give notice of such redemption, as provided in Section 4.6.

(c) The principal amount of Bonds of a Stated Maturity required to be redeemed on any mandatory sinking fund redemption date pursuant to subparagraph (a) of this Section 4.2 shall be reduced, at the option of the City, by the principal amount of any Bonds of such maturity which, at least (45) days prior to the mandatory sinking fund redemption date, shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

(d) The principal amount of Bonds required to be redeemed on any redemption date pursuant to subparagraph (a) of this Section 4.2 shall be reduced on a pro rata basis among Sinking Fund Installments by the principal amount of any Bonds which, at least 45 days prior to the sinking fund redemption date, shall have been redeemed pursuant to the optional redemption or extraordinary optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

#### Section 4.3 Optional Redemption.

The City reserves the right and option to redeem the Bonds maturing on or after September 1, 20[ ] before their scheduled maturity dates, in whole or in part, on any date, in minimum principal amounts of \$1,000, on or after September 1, 20[ ], such redemption date or dates to be fixed by the City, at the Redemption Price.

#### Section 4.4 Extraordinary Optional Redemption.

(a) The City reserves the right and option to redeem Bonds Similarly Secured before their respective scheduled maturity dates, in whole or in part, on the first day of any month, at the Redemption Price from amounts on deposit in the Redemption Fund as a result of Prepayments (including related transfers to the Redemption Fund as provided in Section 6.7(d) or (e), transfers to the Redemption Fund made pursuant to Section 6.3(d), 6.3(e), 6.7(a), 6.7(d), 6.7(e) 6.7(f) or 6.7(j) hereof, or as a result of unexpended amounts transferred from the IA#1 Improvements Account of the Project Fund as provided in Section 6.5(d). The City shall notify the Trustee in writing at least forty-five (45) days before the scheduled extraordinary optional redemption date fixed by the City, or such other time period as the Trustee and the City shall mutually agree.

Notwithstanding the foregoing, the Trustee will not be required to make an extraordinary optional redemption pursuant to this Section 4.4 unless it has at least \$1,000 available in the Redemption Fund with which to redeem the Bonds.

(b) In lieu of redeeming the Bonds with the funds described in this Section, the City may purchase the Bonds in the open market of the maturity to be redeemed at the price not in excess of that provided in Section 4.7.

#### Section 4.5 Partial Redemption.

(a) If less than all of the Bonds are to be redeemed pursuant to Sections 4.2, 4.3, or 4.4, the Bonds shall be redeemed in minimum principal amounts of \$1,000 or any integral multiple thereof. Each Bond shall be treated as representing the number of bonds that is obtained by dividing the principal amount of the Bonds by \$1,000. No redemption shall result in a Bond in

a denomination of less than the Authorized Denomination in effect at that time; provided, however, if the amount of the Outstanding Bond is less than an Authorized Denomination after giving effect to such partial redemption, a Bond in the principal amount equal to the unredeemed portion, but not less than \$1,000, may be issued.

(b) In selecting the Bonds to be redeemed pursuant to Section 4.2, the Trustee may select Bonds in any method that results in a random selection.

(c) In selecting the Bonds to be redeemed pursuant to Section 4.3, the Trustee may conclusively rely on the directions provided in a City Certificate.

(d) If less than all of a series of Bonds are called for extraordinary optional redemption pursuant to Section 4.4 hereof, the Bonds or portion of a Bond, as applicable, of such series to be redeemed shall be allocated on a pro rata basis (as nearly as practicable) among all Outstanding Bonds of such series.

(e) Upon surrender of any Bond for redemption in part, the Trustee, in accordance with Section 3.8 of this Indenture, shall authenticate and deliver an exchange Bond or Bonds of the same series and in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, such exchange being without charge.

#### Section 4.6 Notice of Redemption to Owners.

(a) Upon receipt of written notice from the City of the exercise of any redemption, the Trustee shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed, at the address shown in the Register. So long as the Bonds are in book entry only form and held by the DTC as security depository, references to Owner in this Indenture means Cede & Co., as nominee for DTC.

(b) The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, and subject to Section 4.5 hereof, an identification of the Bonds or portions thereof to be redeemed, any conditions to such redemption and that on the redemption date, if all conditions, if any, to such redemption have been satisfied, such Bond shall become due and payable.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

(d) The City has the right to rescind any optional redemption or extraordinary optional redemption described in Section 4.3 or 4.4 by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Trustee shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

(e) With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not satisfied and sufficient funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.

#### Section 4.7 Purchase Price for Bonds.

Upon receipt of written notice from the City specifying the Bonds to be purchased, the Trustee shall apply moneys available for redemption to the purchase of Bonds which were otherwise to be redeemed in such order or priority and subject to such restrictions as may be prescribed in this Indenture in the manner provided in this Section. The purchase price paid by the Trustee on behalf of the City (excluding accrued and unpaid interest but including any brokerage and other charges) for any Bond purchased by the City shall not exceed the principal amount of such Bond.

#### Section 4.8 Payment Upon Redemption.

(a) The Trustee shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Redemption Fund or otherwise received by the Trustee from the City and shall use such funds solely for the purpose of paying the Redemption Price on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the designated corporate trust office of the Trustee (initially, Houston, Texas) on or after the date fixed for redemption, the Trustee shall pay the Redemption Price on such Bond to the date of redemption from the moneys set aside for such purpose.

#### Section 4.9 Effect of Redemption.

Notice of redemption having been given as provided in Section 4.6 of this Indenture, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption provided that funds for the payment of the Redemption Price of such Bonds or the principal of and interest on such Bonds, as applicable, to the date fixed for redemption are on deposit with the Trustee; thereafter, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

## ARTICLE V FORM OF THE BONDS

### Section 5.1 Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Trustee, and the Assignment to appear on each of the Bonds, (i) shall be substantially in the form set forth in Exhibit A to this Indenture with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Indenture, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds shall be typewritten, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

(d) The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

(e) The form of each Series of Refunding Bonds shall be set forth in the applicable Supplemental Indenture authorizing the issuance of such Refunding Bonds.

### Section 5.2 CUSIP Registration.

The City may secure identification numbers through FactSet Research Systems Inc. on behalf of the American Bankers Association, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly *provided, however*, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof; and, none of the City, the Trustee, or the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds. The Trustee may include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners of the Bonds and that neither the City nor the Trustee shall be liable for any inaccuracies of such numbers.

### Section 5.3 Legal Opinion.

The approving legal opinion of Bond Counsel may be printed on or attached to each Bond over the certification of the City Secretary of the City, which may be executed in facsimile.



Section 5.4 Statement of Insurance.

A statement relating to municipal bond insurance policy, if any, to be issued for the Bonds may be printed on or attached to each Bond.

ARTICLE VI  
FUNDS AND ACCOUNTS

Section 6.1 Establishment of Funds and Accounts.

(a) Creation of Funds. The following Funds are hereby created and established under this Indenture:

- (i) Pledged Revenue Fund;
- (ii) Bond Fund;
- (iii) Project Fund;
- (iv) Redemption Fund;
- (v) Reserve Fund;
- (vi) Rebate Fund;
- (vii) Administrative Fund; and
- (viii) Project Collection Fund.

(b) Creation of Accounts.

(i) The following Accounts are hereby created and established under the Bond Fund:

- (A) Principal and Interest Account; and
- (B) Capitalized Interest Account.

(ii) The following Accounts are hereby created and established under the Project Fund:

- (A) IA#1 Improvements Account; and
- (B) IA#1 Costs of Issuance Account.

(iii) The following Accounts are hereby created and established under the Reserve Fund:

- (A) Reserve Account; and

(B) Additional Interest Reserve Account.

(c) Each Fund and each Account (and each subaccount, if any) created within such Fund shall be maintained by the Trustee separate and apart from all other funds and accounts of the City. The Pledged Funds shall constitute trust funds which shall be held in trust by the Trustee as part of the Trust Estate solely for the benefit of the Owners of the Bonds Similarly Secured.

(d) Except as otherwise provided herein, interest earnings and profit on each respective Fund and Account established by this Indenture, including the Project Collection Fund, shall be applied or withdrawn for the purposes of such Fund or Account as specified below.

Section 6.2 Initial Deposits to Funds and Accounts.

The proceeds from the sale of the Bonds shall be paid to the Trustee and deposited or transferred by the Trustee as follows:

- (i) to the Reserve Account of the Reserve Fund: \$\_\_\_\_\_ which is equal to the initial Reserve Account Requirement;
- (ii) to the Capitalized Interest Account of the Bond Fund: \$\_\_\_\_\_;
- (iii) to the Administrative Fund: \$\_\_\_\_\_;
- (iv) to the IA#1 Costs of Issuance Account of the Project Fund: \$\_\_\_\_\_; and
- (v) to the IA#1 Improvements Account of the Project Fund: \$\_\_\_\_\_.

Section 6.3 Pledged Revenue Fund.

(a) On or before [February 20, 202\_] and on or before each February 20 and August 20 of each year thereafter while the Bonds are Outstanding, the City shall deposit or cause to be deposited with the Trustee all Pledged Revenues, if any, other than the Pledged Revenues on deposit in the Project Collection Fund which revenues shall be transferred in accordance with Section 6.10 hereof, into the Pledged Revenue Fund. Specifically, the City shall deposit or cause to be deposited Assessment Revenues and other Pledged Revenues to be applied by the Trustee in the following order of priority:

- (i) first, to the Pledged Revenue Fund in an amount sufficient to pay debt service on the Bonds Similarly Secured next coming due in such calendar year;
- (ii) second, to the Reserve Account of the Reserve Fund in an amount to cause the amount in the Reserve Account to equal the initial Reserve Account Requirement;

(iii) third, to the Additional Interest Reserve Account of the Reserve Fund in an amount equal to the Additional Interest;

(iv) fourth, to pay other Actual Costs of Improvement Area #1 Projects;  
and

(v) fifth, to pay other costs permitted by the PID Act.

Along with each deposit of Pledged Revenues from the Project Collection Fund to the Pledged Revenue Fund, the City shall provide a City Certificate to the Trustee as to (i) the Funds and Accounts into which the amounts are to be deposited or retained, as applicable, and (ii) the amounts of any payments to be made from such Funds and Accounts.

(b) From time to time as needed to pay the obligations relating to the Bonds Similarly Secured, but no later than five (5) Business Days before each Interest Payment Date, the Trustee shall withdraw from the Pledged Revenue Fund and transfer to the Principal and Interest Account of the Bond Fund, an amount, taking into account any amounts then on deposit in such Principal and Interest Account and any expected transfers from the Capitalized Interest Account of the Bond Fund to the Principal and Interest Account of the Bond Fund, such that the amount on deposit in the Principal and Interest Account of the Bond Fund equals the principal (including any Sinking Fund Installments) and interest due on the Bonds Similarly Secured on the next Interest Payment Date.

(c) If, after the foregoing transfers and any transfer from the Reserve Fund as provided in Section 6.7 herein, there are insufficient funds to make the payments provided in paragraph (b) above, the Trustee shall apply the available funds in the Principal and Interest Account of the Bond Fund first to the payment of interest, then to the payment of principal (including any Sinking Fund Installments) on the Bonds Similarly Secured.

(d) Notwithstanding Section 6.3(a) hereof, the Trustee shall deposit Prepayments to the Pledged Revenue Fund and within two business days after such deposit shall transfer such Prepayments to the Redemption Fund.

(e) Notwithstanding Section 6.3(a) hereof, the Trustee shall deposit Foreclosure Proceeds to the Pledged Revenue Fund and within two business days after such deposit shall transfer Foreclosure Proceeds, as directed by the City pursuant to a City Certificate, first to the Reserve Fund to restore any transfers from the accounts within the Reserve Fund made with respect to the Assessed Property or Assessed Properties to which the Foreclosure Proceeds relate (*first*, to the Reserve Account of the Reserve Fund to replenish the Reserve Account Requirement, and *second*, to replenish the Additional Interest Reserve Account of the Reserve Fund to replenish the Additional Interest Reserve Requirement), and second, to the Redemption Fund.

(f) After satisfaction of the requirement to provide for the payment of the principal and interest on the Bonds Similarly Secured and to fund any deficiency that may exist in any Account of the Reserve Fund and transfer of funds pursuant to Section 6.3(a)(i) - (iii) above, the City may direct the Trustee by City Certificate to apply Assessments for any lawful purposes permitted by the PID Act for which Assessments may be paid. The Trustee may rely on such

written direction of the City and shall have no obligation to determine the lawful purposes permitted under the PID Act.

(g) Any additional Pledged Revenues remaining after the satisfaction of the foregoing shall be applied by the Trustee, as instructed by the City pursuant to a City Certificate, for any lawful purpose permitted by the PID Act for which such additional Pledged Revenues may be used, including transfers to other Funds and Accounts created pursuant to this Indenture.

#### Section 6.4 Bond Fund.

(a) On each Interest Payment Date, the Trustee shall withdraw from the Principal and Interest Account of the Bond Fund and transfer the principal (including any Sinking Fund Installments) and interest then due and payable on the Bonds Similarly Secured, less any amount to be used to pay interest on the Bonds Similarly Secured on such Interest Payment Date from the Capitalized Interest Account of the Bond Fund as provided below.

(b) If amounts in the Principal and Interest Account of the Bond Fund are insufficient for the purposes set forth in paragraph (a) above, the Trustee shall withdraw from the Reserve Fund amounts to cover the amount of such insufficiency in the order described in Section 6.7(g) hereof. Amounts so withdrawn from the Reserve Fund shall be deposited in the Principal and Interest Account of the Bond Fund and transferred to the Paying Agent/Registrar.

(c) Moneys in the Capitalized Interest Account of the Bond Fund shall be used for the payment of interest on the Bonds on the following dates and in the following amounts:

<u>Date</u>	<u>Amount</u>
_____ 1, 202__	\$ _____
_____ 1, 202__	\$ _____

Any amounts on deposit to the Capitalized Interest Account of the Bond Fund after the payment of interest on the dates and in the amounts listed above shall be transferred to the IA#1 Improvements Account of the Project Fund, or if the IA#1 Improvements Account of the Project Fund has been closed as provided in Section 6.5(d) herein, such amounts shall be transferred to the Redemption Fund to be used to redeem the Bonds, and the Capitalized Interest Account of the Bond Fund shall be closed.

#### Section 6.5 Project Fund.

(a) Money on deposit in the Project Fund shall be used for the purposes specified in Section 3.1 hereof.

(b) Any amounts drawn on the Letter of Credit by the City pursuant to the terms of the Letter of Credit shall be paid to the Trustee and be deposited to the appropriate subaccount of the IA#1 Improvements Account of the Project Fund as set forth in a City Certificate; provided, however, that prior to the initial draw of funds pursuant to the terms of the Letter of Credit, the City shall cause the Trustee to create (i) a "Public Improvements Subaccount," (ii) a "Privately

Financed Improvements Subaccount” and (iii) a “Improvement Area #1 Privately Financed Public Improvements Subaccount” of the IA#1 Improvements Account of the Project Fund.

(c) Disbursements from the IA#1 Improvements Account of the Project Fund to pay Actual Costs shall be made by the Trustee upon receipt by the Trustee of one or more City Certificates containing a properly executed and completed Certification for Payment. See attached form of Certification for Payment as Exhibit A to the Financing Agreement. Such provisions and procedures related to such disbursement contained in the Financing Agreement are herein incorporated by reference and deemed set forth herein in full.

(d) Disbursements from the IA#1 Costs of Issuance Account of the Project Fund shall be made by the Trustee pursuant to and in accordance with a City Certificate providing for the application of such funds to be disbursed (with the exception of fees and expenses initially incurred by the Trustee, which may be withdrawn by the Trustee).

(e) If the City Representative reasonably determines that amounts then on deposit in the IA#1 Improvements Account of the Project Fund are not expected to be expended for purposes of the IA#1 Improvements Account of the Project Fund due to the completion, abandonment, or constructive abandonment, of the Improvement Area #1 Improvements, as the case may be, such that, in the opinion of the City Representative, it is unlikely that the amounts in the IA#1 Improvements Account of the Project Fund will ever be expended for the purposes of the IA#1 Improvements Account of the Project Fund, the City Representative shall file a City Certificate with the Trustee and provide a copy of such City Certificate to the Developer prior to filing with the Trustee, which identifies the amounts then on deposit in the IA#1 Improvements Account of the Project Fund that are not expected to be used for purposes of the IA#1 Improvements Account of the Project Fund. If such City Certificate is so filed, the amounts on deposit in the IA#1 Improvements Account of the Project Fund shall be transferred to the Redemption Fund to redeem Bonds Similarly Secured on the earliest practical date after notice of redemption has been provided in accordance with this Indenture, and the IA#1 Improvements Account of the Project Fund shall be closed.

(f) Upon the Trustee’s receipt of a written determination by the City Representative that all costs of issuance of the Bonds Similarly Secured have been paid and the appropriate portion of the costs incidental to the organization of the District have been paid, the City Representative shall file a City Certificate with the Trustee which identifies the amounts then on deposit in the IA#1 Costs of Issuance Account of the Project Fund that are not expected to be used for purposes of the IA#1 Costs of Issuance Account of the Project Fund. If such City Certificate is so filed, the amounts on deposit in the IA#1 Costs of Issuance Account of the Project Fund shall be transferred first to the IA#1 Improvements Account of the Project Fund used to pay Actual Costs and second to the Principal and Interest Account of the Bond Fund used to pay interest on the Bonds Similarly Secured, as directed by the City in a City Certificate filed with the Trustee, and the IA#1 Costs of Issuance Account of the Project Fund shall be closed.

(g) In making any determination pursuant to this Section, the City Representative may conclusively rely upon a report issued by the City Engineer or a certificate of an Independent Financial Consultant.

(h) In providing any disbursement from the IA#1 Improvements Account of the Project Fund, the Trustee may conclusively rely as to the completeness and accuracy of all statements in such Certification for Payment if such certificate is signed by a City Representative, and the Trustee shall not be required to make any independent investigation in connection therewith. The execution of any Certification for Payment by a City Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

(i) The aggregate amount of funds that the Trustee may disburse from the IA#1 Improvements Account of the Project Fund shall not exceed the Unrestricted Amount except and until the Release Restriction (as defined below) has been satisfied. The Trustee may make disbursements from the IA#1 Improvements Account of the Project Fund that exceed the Unrestricted Amount only when the Developer provides written certification to the Trustee and the City in a Certificate for Payment in the form attached to the Financing Agreement that the Release Restriction has been satisfied. The first Certificate for Payment that requests funds in excess of the Unrestricted Amount from the IA#1 Improvements Account of the Project Fund and which evidences satisfaction of the Release Restriction shall be submitted to the City, the Trustee, and the Administrator for review and confirmation. Moneys may be disbursed from the IA#1 Improvements Account of the Project Fund in excess of the Unrestricted Amount only if the City has issued a certificate of occupancy for at least [15] homes within Improvement Area #1 (the “*Release Restriction*”). The City may not approve a Certificate for Payment from the IA#1 Improvements Account of the Project Fund for any amounts that exceed the Unrestricted Amount until the Release Restriction has been satisfied.

#### Section 6.6 Redemption Fund.

Subject to adequate amounts on deposit in the Pledged Revenue Fund, the Trustee, as directed by City Certificate, shall cause to be deposited to the Redemption Fund from the Pledged Revenue Fund an amount sufficient to redeem Bonds as provided in Sections 4.3 and 4.4 on the dates specified for redemption as provided in Sections 4.3 and 4.4. Amounts on deposit in the Redemption Fund shall be used and withdrawn by the Trustee to redeem Bonds as provided in Article IV.

#### Section 6.7 Reserve Fund.

(a) The Reserve Account of the Reserve Fund will be initially funded with a deposit of \$[ ] from the proceeds of the Bonds in the amount of the Reserve Account Requirement and the City agrees with the Owners of the Bonds Similarly Secured to accumulate from the deposits outlined in Section 6.3(a) hereof, and when accumulated maintain in the Reserve Account of the Reserve Fund, an amount equal to not less than the Reserve Account Requirement. All amounts deposited in the Reserve Account of the Reserve Fund shall be used and withdrawn by the Trustee for the purpose of making transfers to the Principal and Interest Account of the Bond Fund as provided in this Indenture.

(b) The Trustee, if needed, will transfer from the Pledged Revenue Fund to the Additional Interest Reserve Account of the Reserve Fund on March 1 and September 1 of each year, commencing [March 1, 202\_], to the extent that funds are available after application of the

deposit priority in Section 6.3(a) hereof, an amount equal to the Additional Interest in the Additional Interest Reserve Account of the Reserve Fund until the Additional Interest Reserve Requirement has been accumulated in the Additional Interest Reserve Account of the Reserve Fund; *provided, however*, that at any time the amount on deposit in the Additional Interest Reserve Account of the Reserve Fund is less than Additional Interest Reserve Requirement, the Trustee shall resume depositing the Additional Interest into the Additional Interest Reserve Account of the Reserve Fund until the Additional Interest Reserve Requirement has accumulated in the Additional Interest Reserve Account of the Reserve Fund.

(c) Whenever a transfer is made from an Account of the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Trustee shall provide written notice thereof to the City, specifying the amount withdrawn and the source of said funds.

(d) Whenever Bonds are to be redeemed with the proceeds of Prepayments pursuant to Section 4.4, a proportionate amount in the Reserve Account of the Reserve Fund shall be transferred on the Business Day prior to the redemption date by the Trustee to the Redemption Fund to be applied to the redemption of the Bonds. The amount so transferred from the Reserve Account of the Reserve Fund shall be equal to an amount representing the difference between (i) the lesser of (A) the Reserve Account Requirement prior to redemption and (B) the amount actually on deposit in the Reserve Account of the Reserve Fund prior to redemption, and (ii) the Reserve Account Requirement after such redemption; *provided, however*, no such transfer from the Reserve Account of the Reserve Fund shall cause the amount on deposit therein to be less than the Reserve Account Requirement to be in effect after such redemption. If after such transfer, and after applying investment earnings on the Redemption Fund toward payment of accrued and unpaid interest to the date of redemption on the Bonds to be redeemed, there are insufficient funds to pay the principal amount plus accrued and unpaid interest on such Bonds to the date fixed for redemption of the Bonds to be redeemed as a result of such Prepayment, the Trustee shall transfer an amount equal to the shortfall from the Additional Interest Reserve Account of the Reserve Fund to the Redemption Fund to be applied to the redemption of the Bonds.

(e) Whenever, on any Interest Payment Date, or on any other date at the written request of a City Representative, the amount in the Reserve Account of the Reserve Fund exceeds the Reserve Account Requirement, the Trustee shall provide written notice to the City Representative of the amount of the excess. Such excess shall be transferred to the Principal and Interest Account of the Bond Fund to be used for the payment of interest on the Bonds Similarly Secured on the next Interest Payment Date in accordance with Section 6.4 hereof, unless within 45 days of such notice to the City Representative, the Trustee receives a City Certificate instructing the Trustee to apply such excess: (i) to pay amounts due under Section 6.8 hereof, (ii) to the IA#1 Improvements Account of the Project Fund if such application and the expenditure of funds is expected to occur within three years of the date hereof, or (iii) for such other use specified in such City Certificate if the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that such alternate use will not adversely affect the exemption from federal income tax of the interest on any Bond Similarly Secured.

(f) Whenever, on any Interest Payment Date, or on any other date at the written request of the City Representative, the amount on deposit in the Additional Interest Reserve Account of the Reserve Fund exceeds the Additional Interest Reserve Requirement, the Trustee

shall provide written notice to the City of the amount of the excess (the “*Excess Additional Interest Reserve Amount*”). The Excess Additional Interest Reserve Amount on deposit in the Additional Interest Reserve Account of the Reserve Fund shall be transferred by the Trustee to the Redemption Fund, and shall notify the City of such transfer in writing. In transferring the amounts to be transferred pursuant to this Section, the Trustee may conclusively rely on the Annual Installments as shown on the Assessment Roll in the Service and Assessment Plan or an Annual Service Plan Update, unless and until it receives a City Certificate directing that a different amount be used.

(g) Whenever, on any Interest Payment Date, the amount on deposit in the Bond Fund is insufficient to pay the debt service on the Bonds Similarly Secured due on such date, the Trustee shall transfer first from the Additional Interest Reserve Account of the Reserve Fund to the Principal and Interest Account of the Bond Fund and second from the Reserve Account of the Reserve Fund to the Principal and Interest Account of the Bond Fund the amounts necessary to cure such deficiency.

(h) At the final maturity of the Bonds Similarly Secured, the amount on deposit in the Reserve Account of the Reserve Fund and the Additional Interest Reserve Account of the Reserve Fund shall be transferred to the Principal and Interest Account of the Bond Fund and applied to the payment of the principal of the Bonds Similarly Secured.

(i) If, after a Reserve Fund withdrawal, the amount on deposit in the Reserve Account of the Reserve Fund is less than the Reserve Account Requirement, the Trustee shall transfer from the Pledged Revenue Fund to the Reserve Account of the Reserve Fund the amount of such deficiency, in accordance with Section 6.3.

(j) If the amount held in the Reserve Fund together with the amount held in the Bond Fund and Redemption Fund is sufficient to pay the principal amount and of all Outstanding Bonds Similarly Secured on the next Interest Payment Date, together with the unpaid interest accrued on such Bonds Similarly Secured as of such Interest Payment Date, the moneys shall be transferred to the Redemption Fund and thereafter used to redeem all Bonds Similarly Secured as of such Interest Payment Date.

#### Section 6.8 Rebate Fund; Rebate Amount.

(a) There is hereby established a special fund of the City to be designated “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project) Rebate Fund” (the “*Rebate Fund*”) to be held by the Trustee in accordance with the terms and provisions of this Indenture. Amounts on deposit in the Rebate Fund shall be used solely for the purpose of paying amounts due the United States Government in accordance with the Code. The Trustee shall transfer from the Pledged Revenue Fund to the credit of the Rebate Fund each amount instructed by City Certificate to be transferred thereto.

(b) In order to assure that the Rebate Amount is paid to the United States rather than to a third party, investments of funds on deposit in the Rebate Fund shall be made in



accordance with the Code and the Tax Certificate. The Trustee shall withdraw from the Rebate Fund and pay to the United States the amounts instructed by City Certificate.

(c) The Trustee conclusively shall be deemed to have complied with the provisions of this Section and Section 7.5(h) hereof and shall not be liable or responsible if it follows the written instructions of the City and shall not be required to take any action under this Section and Section 7.5(h) hereof in the absence of written instructions from the City.

(d) If, on the date of each annual calculation, the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the City may direct the Trustee, pursuant to a City Certificate, to transfer the amount in excess of the Rebate Amount to the Principal and Interest Account of the Bond Fund.

#### Section 6.9 Administrative Fund.

(a) Notwithstanding Section 6.3(a) hereof, the City shall deposit or cause to be deposited to the Administrative Fund the amounts collected each year to pay Annual Collection Costs and Delinquent Collection Costs, other than the Annual Collection Costs and Delinquent Collection Costs deposited into the Project Collection Fund, which amounts shall be deposited in accordance with Section 6.10 hereof. Moneys in the Administrative Fund shall be held by the Trustee separate and apart from the other Funds created and administered hereunder and used as directed by a City Certificate solely for the purposes set forth in the Service and Assessment Plan.

(b) The Administrative Fund is not a Pledged Fund.

#### Section 6.10 Project Collection Fund.

While any Bonds Similarly Secured are Outstanding, another taxing unit or an appraisal district, by agreement with the City, may collect Assessment Revenue on the City's behalf. If such taxing unit or appraisal district presents or otherwise tenders to the Trustee such collected Assessment Revenue for deposit on the City's behalf, the Trustee shall accept such Assessment Revenue and deposit the same into the Project Collection Fund. The Trustee shall, as directed by the City pursuant to a City Certificate, deposit or cause to be deposited (i) all of that portion of the Assessment Revenue deposited into the Project Collection Fund that consists of the Annual Collection Costs and Delinquent Collection Costs to the Administrative Fund and (ii) all of that portion of the Assessment Revenue deposited into the Project Collection Fund that consists of Pledged Revenues into the Pledged Revenue Fund for future allocations as set forth in Section 6.3(a) hereof. The City shall provide such City Certificate on or before [February 20, 202\_] and every August 20 and February 20 thereafter while the Bonds are Outstanding. The Project Collection Fund is not a Pledged Fund.

#### Section 6.11 Investment of Funds.

(a) Money in any Fund or Account established pursuant to this Indenture shall be invested by the Trustee only as directed by the City pursuant to a City Certificate filed with the Trustee at least two (2) days in advance of the making of such investment (or as directed below) in time deposits or certificates of deposit secured in the manner required by law for public funds, or be invested in direct obligations of, including obligations the principal and interest on which are

unconditionally guaranteed by, the United States of America, in obligations of any agencies or instrumentalities thereof, or in such other investments as are permitted under the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, or any successor law, as in effect from time to time; the City Certificate shall direct investment in such deposits and investments (which may include repurchase agreements for such investment with any primary dealer of such agreements) so that the money required to be expended from any Fund will be available at the proper time or times. Notwithstanding the preceding sentence, amounts in the Additional Interest Reserve Account of the Reserve Fund may not be invested above the Yield (as defined in Section 7.5(a) hereof) on the Bonds Similarly Secured, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that such investment and/or the failure to comply with such yield restriction will not adversely affect the exemption from federal income tax of the interest on any Bond Similarly Secured. Such investments shall be valued each year in terms of current market value as of September 30. For purposes of maximizing investment returns, to the extent permitted by law, money in such Funds may be invested in common investments of the kind described above, or in a common pool of such investments which shall be kept and held at an official depository bank, which shall not be deemed to be or constitute a commingling of such money or funds provided that safekeeping receipts or certificates of participation clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such Fund are held by or on behalf of each such Fund. If necessary, such investments shall be promptly sold in order to make the disbursements required or permitted by this Indenture or to prevent any default. To ensure that cash on hand is invested, if the City does not give the Trustee written or timely instructions with respect to investments of funds, the Trustee shall invest and re-invest cash balances in the [\_\_\_\_\_], or other money market mutual funds that are rated in either of the two highest categories by a rating agency, including funds for which the Trustee and/or its affiliates provide investment advisory or other management services, until directed otherwise by the City Certificate.

(b) Obligations purchased as an investment of moneys in any Fund or Account shall be deemed to be part of such Fund or Account, subject, however, to the requirements of this Indenture for transfer of interest earnings and profits resulting from investment of amounts in Funds and Accounts. Whenever in this Indenture any moneys are required to be transferred by the City to the Trustee, such transfer shall be accomplished by transferring a like amount of Investment Securities unless the City instructs the Trustee otherwise by written direction.

(c) The Trustee and its affiliates may act as sponsor, depository, principal or agent in the acquisition or disposition of any investment. The Trustee shall have no investment discretion and the Trustee's only responsibility for investments shall be to follow the written instructions contained in any City Certificate and to ensure that an investment it is directed to purchase is a permitted investment pursuant to the terms of this Indenture. The Trustee shall not incur any liability for losses arising from any investments made pursuant to this Section. The Trustee shall not be required to determine the suitability or legality of any investments or whether investments comply with Section 6.11(a) above. The parties hereto acknowledge that the Trustee is not providing investment supervision, recommendations, or advice.

(d) Investments in any and all Funds and Accounts (and subaccounts, if any) may be commingled in a separate fund or funds for purposes of making, holding and disposing of

investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular Funds or Accounts (and subaccounts, if any) of amounts received or held by the Trustee hereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts (and subaccounts, if any) to which they are credited and otherwise as provided in this Indenture.

(e) The Trustee will furnish the City monthly cash transaction statements which include detail for all investment transactions made by the Trustee hereunder and, unless the Trustee receives a written request, the Trustee is not required to provide brokerage confirmations so long as the Trustee is providing such monthly cash transaction statements.

(f) The Trustee may conclusively rely on any City Certificate and shall not be required to make any investigation in connection therewith.

#### Section 6.12 Advances from Available Funds.

In the event of a delinquency in the payment of any installment of the Assessment levied upon any property for the payment of the principal portion of an Annual Installment, the City may, but is not obligated to, be the purchaser of the delinquent property upon which any of said Assessments are levied in like manner in which it may become the purchaser of property sold for the nonpayment of general ad valorem property taxes, and in the event the City does so become the purchaser of such property, shall pay and transfer and deposit into the Pledged Revenue Fund the amount of any remaining amount of unpaid Assessment, delinquent Assessment installments and interest thereon. The City may also pay and transfer from available funds and deposit into the Pledged Revenue Fund, but shall not be so obligated, the amount of any such Assessment pending redemption or sale. Any amounts so advanced by the City shall be recoverable upon sale or redemption of the property. The City shall not be obligated to advance available funds to cure any deficiency in the Pledged Revenue Fund, or any other Fund created hereunder, and has determined that it would not obligate itself to advance available funds from other funds of the City to cure any such deficiency.

#### Section 6.13 Security of Funds.

All Funds or Accounts heretofore created, to the extent not invested as herein permitted, shall be secured in the manner and to the fullest extent required by law for the security of public funds, and such Funds or Accounts shall be used only for the purposes and in the manner permitted or required by this Indenture.

### ARTICLE VII COVENANTS

#### Section 7.1 Confirmation of Assessments.

The City hereby confirms, covenants, and agrees that the Assessments to be collected from the Assessed Property are as so reflected in the Service and Assessment Plan (as it may be updated from time to time) and, in accordance with the Assessment Ordinance, it has levied the Assessments against the respective Assessed Properties from which the Pledged Revenues will be collected and received.

## Section 7.2 Collection and Enforcement of Assessments.

(a) For so long as any Bonds Similarly Secured are Outstanding, the City covenants, agrees and warrants that it will take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens thereof enforced continuously, in the manner and to the maximum extent permitted by Applicable Laws, and, to the extent permitted by Applicable Laws, to cause no reduction, abatement or exemption in the Assessments.

(b) The City will determine or cause to be determined, no later than February 15 of each year, whether or not any Annual Installment is delinquent and, if such delinquencies exist, the City will order and cause to be commenced as soon as practicable any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including diligently prosecuting an action in district court to foreclose the currently delinquent Annual Installment. Notwithstanding the foregoing, the City shall not be required under any circumstances to purchase or make payment for the purchase of the delinquent Assessment or the corresponding Assessed Property. Furthermore, nothing shall obligate the City, the City Attorney, or any appropriate designee to undertake collection or foreclosure actions against delinquent accounts in violation of the applicable state law, court order, or existing contractual provisions between the City and its appropriate collections enforcement designees.

## Section 7.3 Against Encumbrances.

(a) Other than the Refunding Bonds, the City shall not create and, to the extent Pledged Revenues are received, shall not suffer to remain, any lien, encumbrance or charge upon the Pledged Revenues, the Trust Estate, other than that specified in Section 9.6 of this Indenture, or upon any other property pledged under this Indenture, except any pledge created for the equal and ratable security of the Bonds Similarly Secured, and other than a lien or pledge subordinate to the lien and pledge of such property related to the Bonds Similarly Secured.

(b) So long as Bonds Similarly Secured are Outstanding hereunder, and except as set forth in Section 13.2 hereof, the City shall not issue any bonds, notes or other evidences of indebtedness secured by any pledge of or other lien or charge on any portion of the Pledged Revenues, the Trust Estate or other property pledged under this Indenture, except that the City may issue Refunding Bonds in accordance with the terms of this Indenture, as provided in Section 13.2 hereof.

## Section 7.4 Records, Accounts, Accounting Reports.

The City hereby covenants and agrees that so long as any of the Bonds Similarly Secured or any interest thereon remain Outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the Assessments. The Trustee and Owners of any Bonds Similarly Secured or any duly authorized agent or agents of such Owners shall have the right at all reasonable times to inspect all such records, accounts, and data relating thereto, upon written request to the City by the Trustee or duly authorized representative, as applicable. The City shall provide the Trustee or duly authorized representative, as applicable, an opportunity to inspect such books and records relating to the Bonds Similarly Secured during the City's regular

business hours and on a mutually agreeable date not later than thirty days after the City receives such request.

Section 7.5 Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

(b) “*Closing Date*” means the date on which the Bonds are first authenticated and delivered to the respective initial purchasers against payment therefor.

(c) “*Code*” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

(d) “*Computation Date*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(e) “*Gross Proceeds*” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

(f) “*Investment*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

(g) “*Nonpurpose Investment*” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

(h) “*Regulations*” means any proposed, temporary or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

(i) “*Yield*” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and (2) of the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(j) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(k) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of the Bonds:

(l) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds of such series, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(m) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds of such series or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(n) No Private Loan.

(i) Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of any Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(ii) The City covenants and agrees that the levied Assessments will meet the requirements of the “tax assessment loan exception” within the meaning of Section 1.141-5(d) of the Regulations on the date that the Bonds are delivered and will ensure that the Assessments continue to meet such requirements for so long as Bonds are outstanding.

(o) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested) if, as a result of such investment, the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(p) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(q) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe with respect to the Bonds.

(r) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(s) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(t) Not less frequently than each Computation Date for the Bonds, the City shall calculate the Rebate Amount for the Bonds in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(u) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall, pursuant to a City Certificate, direct the Trustee to transfer to the Rebate Fund from the funds or accounts designated in such City Certificate and direct the Trustee to pay to the United States from the Rebate Fund the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(v) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (ii) and (iii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(w) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(x) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, City Secretary or Assistant City Secretary, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Tax Certificate or similar or other appropriate certificate, form or document.

## ARTICLE VIII LIABILITY OF CITY

Neither the full faith and credit nor the general taxing power of the City is pledged to the payment of the Bonds Similarly Secured, and except for the Trust Estate, no City taxes, fee or revenues from any source are pledged to the payment of, or available to pay any portion of, the Bonds Similarly Secured or any other obligations relating to the District. The City shall never be liable for any obligations relating to the Bonds Similarly Secured or other obligations relating to the District, other than as specifically provided for in this Indenture.

The City shall not incur any responsibility in respect of the Bonds Similarly Secured or this Indenture other than in connection with the duties or obligations explicitly herein or in the Bonds Similarly Secured assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own willful default or act of bad faith. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Trustee herein or of any of the documents executed by the Trustee in connection with the Bonds Similarly Secured, or as to the existence of an Event of Default thereunder.

In the absence of bad faith, the City may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Indenture. The City shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

No provision of this Indenture, the Bonds Similarly Secured, the Assessment Ordinance, or any agreement, document, instrument, or certificate executed, delivered or approved in connection with the issuance, sale, delivery, or administration of the Bonds Similarly Secured (collectively, the "*Bond Documents*"), shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Trust Estate and the Annual Collection Costs) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if in the judgment of the City there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it.



Neither the Owners nor any other Person shall have any claim against the City or any of its officers, officials, agents, or employees for damages suffered as a result of the City's failure to perform in any respect any covenant, undertaking, or obligation under any Bond Documents or as a result of the incorrectness of any representation in, or omission from, any of the Bond Documents, except to the extent that any such claim relates to an obligation, undertaking, representation, or covenant of the City, in accordance with the Bond Documents and the PID Act. Any such claim shall be payable only from the Trust Estate, the funds available for such payment in any of the Pledged Funds, if any, or the amounts collected to pay Annual Collection Costs on deposit in the Administrative Fund. Nothing contained in any of the Bond Documents shall be construed to preclude any action or proceeding in any court or before any governmental body, agency, or instrumentality against the City or any of its officers, officials, agents, or employees to enforce the provisions of any of the Bond Documents or to enforce all rights of the Owners of the Bonds Similarly Secured by mandamus or other proceeding at law or in equity.

The City may rely on and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Indenture the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Trustee, an Independent Financial Consultant, an independent inspector or the City Manager or the Assistant City Manager or other person designated by the City Council to so act on behalf of the City, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Indenture upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations, and directions of such persons or entities.

## ARTICLE IX THE TRUSTEE

### Section 9.1 Trustee as Registrar and Paying Agent.

The Trustee is hereby designated and agrees to act as Registrar and Paying Agent for and in respect to the Bonds Similarly Secured. The Trustee hereby accepts and agrees to execute the respective trusts imposed upon it by this Indenture, but only upon the express terms and conditions, and subject to the provisions of this Indenture to all of which the parties hereto and the Owners of

the Bonds Similarly Secured agree. No implied covenants or obligations shall be read into this Indenture against the Trustee.

#### Section 9.2 Trustee Entitled to Indemnity.

The Trustee shall be under no obligation to institute any suit, or to undertake any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct; *provided, however*, that absent an Event of Default, the Trustee shall not request or require indemnification as a condition to making any deposits, payments or transfers when required hereunder, or to delivering any notice when required hereunder. Nevertheless, the Trustee may begin suit, or appear in and defend suit, or do anything else in its sole and exclusive judgment proper to be done by it as the Trustee, without indemnity, and in such case the Trustee may make transfers from the Pledged Revenue Fund or the Administrative Fund to pay all costs, fees, and expenses, outlays, and counsel fees and other reasonable disbursements properly incurred in connection therewith and shall be entitled to a preference therefor over any Bonds Similarly Secured Outstanding hereunder.

#### Section 9.3 Responsibilities of the Trustee.

(a) The recitals contained in this Indenture and in the Bonds Similarly Secured shall be taken as the statements of the City and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or the Bonds Similarly Secured or with respect to the security afforded by this Indenture, and the Trustee shall incur no liability with respect thereto. Except as otherwise expressly provided in this Indenture, the Trustee shall have no responsibility or duty with respect to: (i) the issuance of Bonds Similarly Secured for value; (ii) the application of the proceeds thereof, except to the extent that such proceeds are received by it in its capacity as Trustee; (iii) the application of any moneys paid to the City or others in accordance with this Indenture, except as to the application of any moneys paid to it in its capacity as Trustee; (iv) any calculation of arbitrage or rebate under the Code; (v) any loss suffered in connection with any investment of funds in accordance with this Indenture; or (vi) to undertake any other action unless specifically authorized pursuant to a written direction by the City or pursuant to this Indenture.

(b) The duties and obligations of the Trustee shall be determined by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture. The Trustee will, prior to any Event of Default and after curing of any Event of Default, perform such duties and only such duties as are specifically set forth herein. The Trustee will, during the existence of an Event of Default, exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture, except for its own negligence or willful misconduct. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from this Indenture for the existence, furnishing or use of the Improvement Area #1 Projects.

(c) The Trustee, before the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default occurred and continues, the Trustee shall exercise such rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs in exercising any rights or remedies or performing any of its duties hereunder.

(d) The Trustee shall not be responsible for any recital herein (except with respect to the authentication certificate of the Trustee endorsed on the Bonds Similarly Secured) or for the recording, filing, or refiling of this Indenture in connection therewith, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency or security of the Bonds Similarly Secured.

(e) The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Indenture or of the Bonds Similarly Secured. The Trustee shall not be accountable for the use or application of any Bonds Similarly Secured or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Indenture.

(f) The Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it is established that the Trustee was negligent in ascertaining the pertinent facts.

(g) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of at least a Quarter in Interest of the aggregate outstanding principal of the Bonds Similarly Secured relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(h) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default unless the Trustee is notified specifically of the default or Event of Default in a written instrument or document delivered to it by the City or by an Owner of the Bonds Similarly Secured. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no Event of Default, except as noted above, unless Trustee has actual knowledge of an Event of Default.

(i) Before taking any action under this Indenture (other than making any deposits, payments or transfers prior to an Event of Default when required hereunder), the Trustee may require that a satisfactory indemnity be furnished to it for the payment or reimbursement of all costs and expenses (including, without limitation, attorney's fees and expenses) to which it may

be put and to protect it against all liability which it may incur in or by reason of such action, except liability which it adjudicated to have resulted from its negligence or willful misconduct.

(j) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture, and final payment of the Bonds Similarly Secured.

(k) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys, or receivers, and the Trustee shall be entitled to rely and act upon the opinion or advice of its own counsel, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys, and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of its own counsel.

#### Section 9.4 Property Held in Trust.

All moneys and securities held by the Trustee at any time pursuant to the terms of this Indenture shall be held by the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

#### Section 9.5 Trustee Protected in Relying on Certain Documents.

The Trustee may conclusively rely upon any order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond, or other document provided to the Trustee in accordance with the terms of this Indenture that it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, the Financing Agreement, and the Development Agreement, or upon the written opinion of any counsel, architect, engineer, insurance consultant, management consultant, or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry into and shall not be deemed to have knowledge of any statements contained or matters referred to in any such instrument. The Trustee may consult with counsel, who may or may not be Bond Counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered, or omitted to be taken by it in good faith and in accordance therewith. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request, or giving such authority or consent to the Owner of any Bond Similarly Secured, shall be conclusive and binding upon all future owners of the same Bond Similarly Secured and upon Bonds Similarly Secured issued in exchange therefor and upon transfer or in place thereof.

Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter may be deemed

to be conclusively proved and established by a City Certificate, unless other evidence in respect thereof be hereby specifically prescribed. Such City Certificate shall be full warrant for any action taken or suffered in good faith under the provisions hereof, but the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Except as otherwise expressly provided herein, any request, order, notice, or other direction required or permitted to be furnished pursuant to any provision hereof by the City to the Trustee shall be sufficiently executed if executed in the name of the City by the City Representative.

The Trustee shall not be under any obligation to see to the recording or filing of this Indenture, or otherwise to the giving to any Person of notice of the provisions hereof except as expressly required in Section 9.13 herein.

#### Section 9.6 Compensation.

Unless otherwise provided by contract with the Trustee, the Trustee shall transfer from the Administrative Fund, upon written direction of the City, compensation for all services rendered by it hereunder, including its services as Registrar and Paying Agent, together with all its reasonable expenses, charges, and other disbursements and those of its counsel, agents and employees, incurred in and about the administration and execution of the trusts hereby created and the exercise of its powers and the performance of its duties hereunder, upon delivery of an invoice therefor to the City, and the Trustee shall have a lien therefor on any and all funds at any time held by it hereunder (except the Rebate Fund) prior to any Bonds Similarly Secured Outstanding. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if in the judgment of the Trustee there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it. If the City fails to make any payment required by this Section, the Trustee may make such payment from any moneys in the Administrative Fund and shall have a first lien with right of payment before payment on account of principal of or interest on any Bond Similarly Secured, upon all moneys in the Administrative Fund, and to the extent moneys in the Administrative Fund are insufficient, then from any moneys in its possession (except the Rebate Fund) under any provisions hereof for the foregoing reasonable advances, fees, costs, and expenses incurred. The right of the Trustee to fees, expenses, and indemnification shall survive the release, discharge, and satisfaction of the Indenture.

#### Section 9.7 Permitted Acts.

The Trustee and its directors, officers, employees, or agents may become the owner of or may in good faith buy, sell, own, hold and deal in Bonds Similarly Secured and may join in any action that any Owner of Bonds Similarly Secured may be entitled to take as fully and with the same rights as if it were not the Trustee. The Trustee may act as depository, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, the City or any committee formed to protect the rights of holders of Bonds Similarly Secured or to effect or aid in any reorganization growing out of the enforcement of the Bonds Similarly Secured or this Indenture, whether or not such committee shall represent the holders of a majority in aggregate outstanding principal amount of the Bonds Similarly Secured. The permissive right of the Trustee

to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

#### Section 9.8 Resignation of Trustee.

The Trustee may at any time resign and be discharged of its duties and obligations hereunder by giving not fewer than 30 days' written notice, specifying the date when such resignation shall take effect, to the City and each Owner of any Outstanding Bond Similarly Secured. Such resignation shall take effect upon the appointment of a successor as provided in Section 9.10 and the acceptance of such appointment by such successor. Notwithstanding the foregoing, if, after sixty (60) days following receipt of the notice, the City has not appointed a successor Trustee, the Trustee may apply to a court of competent jurisdiction to appoint a successor Trustee, at no expense to the City, and such resignation shall take effect upon the court's appointment of a successor Trustee.

#### Section 9.9 Removal of Trustee.

The Trustee may be removed at any time by the Owners of a Quarter in Interest of the Bonds Similarly Secured by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or by their attorneys-in-fact, duly authorized and delivered to the City. Copies of each such instrument shall be delivered by the City to the Trustee and any successor thereof. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Owners of a Quarter in Interest of the aggregate outstanding principal of the Bonds Similarly Secured.

#### Section 9.10 Successor Trustee.

If the Trustee resigns, is removed, is dissolved, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or if a receiver, liquidator, or conservator of the Trustee or of its property is appointed, or if any public officer takes charge or control of the Trustee or of its property or affairs, the position of the Trustee hereunder shall thereupon become vacant.

If the position of Trustee becomes vacant for any of the foregoing reasons or for any other reason, a successor Trustee may be appointed after any such vacancy occurs by the Owners of a Quarter in Interest of the Bonds Similarly Secured by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or their attorneys-in-fact, duly authorized and delivered to such successor Trustee, with notification thereof being given to the predecessor Trustee and the City.

Until such successor Trustee shall have been appointed by the Owners of a Quarter in Interest of the Bonds Similarly Secured, the City shall forthwith appoint a Trustee to act hereunder. Copies of any instrument of the City providing for any such appointment shall be delivered by the City to the Trustee so appointed. The City shall mail notice of any such appointment to each Owner of any Outstanding Bonds Similarly Secured within 30 days after such appointment. Any appointment of a successor Trustee made by the City immediately and without further act shall be

superseded and revoked by an appointment subsequently made by the Owners of Bonds Similarly Secured.

If in a proper case no appointment of a successor Trustee is made within 45 days after the giving by any Trustee of any notice of resignation in accordance with Section 9.8 herein or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Owner of Bonds Similarly Secured may apply to any court of competent jurisdiction for the appointment of such a successor, and the court may thereupon, after such notice, if any, as the court may deem proper, appoint such successor and the City shall be responsible for the costs of such appointment process. Any duties and obligations of such predecessor Trustee shall thereafter cease and terminate, and the payment of the fees and expenses owed to the predecessor Trustee shall be paid in full.

Any successor Trustee appointed under the provisions of this Section shall be a commercial bank or trust company or national banking association (i) having a capital and surplus and undivided profits aggregating at least \$50,000,000, if there be such a commercial bank or trust company or national banking association willing and able to accept the appointment on reasonable and customary terms, and (ii) authorized by law to perform all the duties of the Trustee required by this Indenture.

Each successor Trustee shall mail, in accordance with the provisions of the Bonds Similarly Secured, notice of its appointment to any Rating Agency which, at the time of such appointment, is providing a rating on the Bonds Similarly Secured and each of the Owners of the Bonds Similarly Secured.

#### Section 9.11 Transfer of Rights and Property to Successor Trustee.

Any successor Trustee appointed under the provisions of Section 9.10 shall execute, acknowledge, and deliver to its predecessor and the City an instrument in writing accepting such appointment, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers, duties, obligations, and trusts of its predecessor hereunder, with like effect as if originally appointed as Trustee. However, the Trustee then ceasing to act shall nevertheless, on request of the City or of such successor, execute, acknowledge, and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all the rights, immunities, powers, and trusts of such Trustee and all the right, title, and interest of such Trustee in and to the Trust Estate, and shall pay over, assign, and deliver to such successor any moneys or other properties subject to the trusts and conditions herein set forth. Should any deed, conveyance, or instrument in writing from the City be required by such successor for more fully and certainly vesting in and confirming to it any such moneys, estates, properties, rights, powers, duties, or obligations, any and all such deeds, conveyances, and instruments in writing, on request and so far as may be authorized by law, shall be executed, acknowledged, and delivered by the City.

#### Section 9.12 Merger, Conversion or Consolidation of Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated or any corporation or association resulting from any merger, conversion or consolidation to which it shall be a party or any corporation or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee hereunder, without any further act, deed or conveyance, *provided* that such corporation or association shall be a commercial bank or trust company or national banking association qualified to be a successor to such Trustee under the provisions of Section 9.10, or a trust company that is a wholly-owned subsidiary of any of the foregoing.

#### Section 9.13 Security Interest in Trust Estate.

Chapter 1208, Texas Government Code, applies to the issuance of the Bonds Similarly Secured and the pledge of the Trust Estate provided for herein, and such pledge is, under current law, valid, effective and perfected. The City shall cause to be filed all appropriate initial financing statements, if any, to ensure that the Trustee (for the benefit of the Owners of the Bonds Similarly Secured) is granted a valid and perfected first priority lien on the entire Trust Estate. Nothing herein shall obligate the Trustee to file any initial financing statements. Upon the City's timely delivery of a copy of such filed initial financing statement, if any, to the Trustee, the Trustee shall file continuation statements of such initial financing statement(s) in the same jurisdictions as the initial financing statement(s) previously provided to the Trustee. Unless the Trustee is otherwise notified in writing by the City, the Trustee may rely upon the initial financing statements in filing any continuation statements hereunder.

#### Section 9.14 Offering Documentation.

The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum, or any other disclosure material prepared or distributed with respect to the Bonds Similarly Secured and shall have no responsibility for compliance with any State or federal securities laws in connection with the Bonds Similarly Secured.

#### Section 9.15 Expenditure of Funds and Risk.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of its rights or powers if the Trustee shall have reasonable grounds for believing that the repayment of such funds or indemnity against such risk or liability is not assured.

#### Section 9.16 Environmental Hazards.

The Trustee may inform any Holder of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and in such event, no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such



action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not been adequately indemnified.

The Trustee shall not be responsible or liable for the environmental condition related to the improvements to any real property or for diminution in value of the same, or for any claims by or on behalf of the owners thereof as the result of any contamination by a hazardous substance, hazardous material, pollutant, or contaminant. The Trustee assumes no duty or obligation to assess the environmental condition of any improvements or with respect to compliance thereof under State or federal laws pertaining to the transport, storage, treatment, or disposal of hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits, or licenses issued under such laws.

#### Section 9.17 Accounts, Periodic Reports and Certificates.

The Trustee shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Funds and Accounts established by this Indenture and which shall at all times be subject to inspection by the City, and the Owner or Owners of not less than 10% in principal amount of any Bonds Similarly Secured then Outstanding or their representatives duly authorized in writing.

#### Section 9.18 Construction of Indenture.

The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Owners of the Bonds Similarly Secured.

### ARTICLE X MODIFICATION OR AMENDMENT OF THIS INDENTURE

#### Section 10.1 Amendments Permitted.

This Indenture and the rights and obligations of the City and of the Owners of the Bonds Similarly Secured may be modified or amended at any time by a Supplemental Indenture, except as provided below, pursuant to the affirmative vote at a meeting of Owners of the Bonds Similarly Secured, or with the written consent without a meeting, of the Owners of more than fifty percent (50%) of the aggregate principal amount of the Bonds Similarly Secured then Outstanding. No such modification or amendment shall (i) extend the maturity of any Bond Similarly Secured or reduce the principal of or interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond Similarly Secured, without the express consent of the Owner of such Bond Similarly Secured, (ii) permit the creation by the City of any pledge or lien upon the Trust Estate superior to the pledge and lien created for the benefit of the Bonds Similarly Secured, (iii) except as otherwise permitted by this Indenture, permit the creation by the City of any pledge or lien upon the Trust Estate on a parity with the pledge and lien created for the benefit of the Bonds Similarly Secured, or (iv) reduce the percentage of Owners of Bonds Similarly Secured required for the amendment hereof. Any such amendment may not modify any of the rights or obligations of the Trustee without its written consent.

This Indenture and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;
- (ii) to make modifications not adversely affecting any Outstanding Bonds Similarly Secured in any material respect;
- (iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in regard to questions arising under this Indenture, as the City may deem necessary or desirable and not inconsistent with this Indenture, and that shall not adversely affect the rights of the Owners of the Bonds Similarly Secured in any material respect;
- (iv) to authorize a Series of Refunding Bonds in accordance with the provisions of this Indenture, as set forth in Section 13.2 herein; and
- (v) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds Similarly Secured.

Any modification or amendment made pursuant to this Section 10.1 shall not be subject to the notice procedure specified in Section 10.3 below. Notwithstanding the above, no Supplemental Indenture under subsection (i), (ii), (iii) or (v) above shall be effective unless the City first delivers to the Trustee an opinion of Bond Counsel to the effect that such amendment will not adversely affect the: (i) interests of the Owners in any material respect, and (ii) exclusion of interest on any Bond Similarly Secured from gross income for purposes of federal income taxation.

#### Section 10.2 Owners' Meetings.

The City may at any time call a meeting of the Owners of the Bonds Similarly Secured. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof, and to fix and adopt rules and regulations for the conduct of said meeting.

#### Section 10.3 Procedure for Amendment with Written Consent of Owners.

The City and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds Similarly Secured or of this Indenture, to the extent that such amendment is permitted by Section 10.1 herein, to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Trustee to each Owner of Bonds Similarly Secured from whom consent is required under this Indenture, but failure to mail copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

Such Supplemental Indenture shall not become effective unless there shall be filed with the Trustee the written consents of the Owners as required by this Indenture and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds Similarly Secured for which such consent is given, which proof shall be such as is permitted by Section 11.6 herein. Any such consent shall be binding upon the Owner of the Bonds Similarly Secured giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof), unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Bonds Similarly Secured have filed their consents to the Supplemental Indenture, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Indenture, stating in substance that the Supplemental Indenture has been consented to by the Owners of the required percentage of Bonds Similarly Secured and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Indenture or consents thereto). Proof of the mailing of such notice shall be filed with the Trustee. A record, consisting of the papers required by this Section 10.3 to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Indenture shall become effective upon the filing with the Trustee of the proof of mailing of such notice, and the Supplemental Indenture shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds Similarly Secured at the expiration of forty-five (45) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such forty-five (45) day period; *provided, however*, that the Trustee during such forty-five (45) day period and any such further period during which any such action or proceeding may be pending shall be entitled in its sole discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Indenture as it may deem expedient and the Trustee shall have no liability with respect to any action taken, or any instance of inaction, except as a consequence of its own negligence or willful misconduct.

#### Section 10.4 Effect of Supplemental Indenture.

From and after the time any Supplemental Indenture becomes effective pursuant to this Article X, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties, and obligations under this Indenture of the City, the Trustee and all Owners of Bonds Similarly Secured Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

#### Section 10.5 Endorsement or Replacement of Bonds Similarly Secured Issued After Amendments.

The City may determine that Bonds Similarly Secured issued and delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by

endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Similarly Secured Outstanding at such effective date and presentation of his Bond Similarly Secured for that purpose at the designated office of the Trustee or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond Similarly Secured. The City may determine that new Bonds Similarly Secured, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed, and delivered. In that case, upon demand of the Owner of any Bonds Similarly Secured then Outstanding, such new Bonds Similarly Secured shall be exchanged at the designated office of the Trustee without cost to any Owner, for Bonds Similarly Secured then Outstanding, upon surrender of such Bonds Similarly Secured.

#### Section 10.6 Amendatory Endorsement of Bonds Similarly Secured.

The provisions of this Article X shall not prevent any Owner from accepting any amendment as to the particular Bonds Similarly Secured held by such Owner, provided that due notation thereof is made on such Bonds Similarly Secured.

#### Section 10.7 Waiver of Default.

Subject to the second and third sentences of Section 10.1, with the written consent of more than fifty percent (50%) in aggregate principal amount of the Bonds Similarly Secured then Outstanding, the Owners may waive compliance by the City with certain past defaults under the Indenture and their consequences. Any such consent shall be conclusive and binding upon the Owners and upon all future Owners. For the avoidance of doubt, any waiver given pursuant to this Section shall be subject to Section 11.5 below.

#### Section 10.8 Execution of Supplemental Indenture.

In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall receive, and shall be fully protected in relying upon, an opinion of Bond Counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's own rights, duties and immunities under this Indenture or otherwise.

No such amendment shall modify any of the rights or obligations of the Trustee without its written consent. In executing or accepting any Supplemental Indenture, the Trustee shall be fully protected in relying upon an opinion of nationally recognized bond counsel engaged by the Trustee and addressed and delivered to the Trustee stating that (a) the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture, (b) the execution and delivery of will not adversely affect the exclusion from federal gross income of the interest on the Bonds Similarly Secured, and (c) such Supplemental Indenture will, upon the execution and delivery thereof, to be a valid and binding obligation of the City.

ARTICLE XI  
DEFAULT AND REMEDIES

Section 11.1 Events of Default.

Each of the following occurrences or events shall be and is hereby declared to be an “Event of Default,” to wit:

- (i) The failure of the City to deposit the Pledged Revenues to the Pledged Revenue Fund;
- (ii) The failure of the City to enforce the collection of the Assessments including the prosecution of foreclosure proceedings;
- (iii) The failure to make payment of the principal of or interest on any of the Bonds Similarly Secured when the same becomes due and payable and such failure is not remedied within thirty (30) days; provided, however, that the payments are to be made only from Pledged Revenues or other funds currently available in the Pledge Funds and available to the City to make the payments; and
- (iv) Default in the performance or observance of any other covenant, agreement or obligation of the City under this Indenture and the continuation thereof for a period of ninety (90) days after written notice to the City by the Trustee, or by the Owners of a Quarter in Interest of the Bonds Similarly Secured with a copy to the Trustee, specifying such default by the Owners of a Quarter in Interest of the Bonds Similarly Secured requesting that the failure be remedied.

Section 11.2 Immediate Remedies for Default.

(a) Subject to Article VIII, upon the happening and continuance of any one or more of the Events of Default described in Section 11.1, the Trustee may, and at the written direction of the Owners of a Quarter in Interest of the Bonds Similarly Secured and its receipt of indemnity satisfactory to it shall, proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Indenture, by action seeking mandamus or by other suit, action, or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief to the extent permitted by this Indenture or by Applicable Laws, including, but not limited to, the specific performance of any covenant or agreement contained herein, or injunction; *provided, however*, that any action for money damages against the City shall be limited in recovery to the assets of the Trust Estate, including the Pledged Revenues. The Trustee retains the right to obtain the advice of counsel in its exercise of remedies for default.

(b) THE PRINCIPAL OF THE BONDS SIMILARLY SECURED SHALL NOT BE SUBJECT TO ACCELERATION UNDER ANY CIRCUMSTANCES.

(c) If the assets of the Trust Estate are sufficient to pay all amounts due with respect to all Outstanding Bonds Similarly Secured, in the selection of Trust Estate assets to be used in the payment of Bonds Similarly Secured due under this Article, the City shall determine, in its absolute discretion, and shall instruct the Trustee by City Certificate, which Trust Estate

assets shall be applied to such payment and shall not be liable to any Owner or other Person by reason of such selection and application. In the event that the City shall fail to deliver to the Trustee such City Certificate, the Trustee shall select and liquidate or sell Trust Estate assets as provided in the following paragraph, and shall not be liable to any Owner, or other Person, or the City by reason of such selection, liquidation or sale. The Trustee shall have no liability for its selection of Trust Estate assets to liquidate or sell.

(d) Whenever moneys are to be applied pursuant to this Article XI, irrespective of and whether other remedies authorized under this Indenture shall have been pursued in whole or in part, the Trustee may cause any or all of the assets of the Trust Estate, including Investment Securities, to be sold. The Trustee may so sell the assets of the Trust Estate and all right, title, interest, claim and demand thereto and the right of redemption thereof, in one or more parts, at any such place or places, and at such time or times and upon such notice and terms as the Trustee may deem appropriate and as may be required by law and apply the proceeds thereof in accordance with the provisions of this Section. Upon such sale, the Trustee may make and deliver to the purchaser or purchasers a good and sufficient assignment or conveyance for the same, which sale shall be a perpetual bar both at law and in equity against the City, and all other Persons claiming such properties. No purchaser at any sale shall be bound to see to the application of the purchase money proceeds thereof or to inquire as to the authorization, necessity, expediency, or regularity of any such sale. Nevertheless, if so requested by the Trustee, the City shall ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be necessary or, in the judgment of the Trustee, proper for the purpose which may be designated in such request. The Trustee shall have no liability for its selection of Trust Estate assets to liquidate or sell.

### Section 11.3 Restriction on Owner's Action.

(a) No Owner shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy hereunder, unless (i) a default has occurred and is continuing of which the Trustee has been notified in writing, (ii) such default has become an Event of Default and the Owners of a Quarter in Interest of the Bonds Similarly Secured have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (iii) the Owners have furnished to the Trustee indemnity as provided in Section 9.2 herein, (iv) the Trustee has for sixty (60) days after such notice failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name, (v) no written direction inconsistent with such written request has been given to the Trustee during such sixty (60) day period by the Owners of a majority of the aggregate principal amount of the Bonds Similarly Secured then Outstanding, and (vi) notice of such action, suit, or proceeding is given to the Trustee in writing; however, no one or more Owners of the Bonds Similarly Secured shall have any right in any manner whatsoever to affect, disturb, or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner provided herein, and that all proceedings at law or in equity shall be instituted and maintained in the manner provided herein and for the equal benefit of the Owners of all Bonds Similarly Secured then Outstanding. The notification, request and furnishing of indemnity set forth above shall, at the option of the Trustee, as advised by counsel, be conditions

precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture or for any other remedy hereunder.

(b) Subject to Article VIII, nothing in this Indenture shall affect or impair the right of any Owner to enforce payment of any Bond Similarly Secured at and after the maturity thereof, or on the date fixed for redemption or the obligation of the City to pay each Bond Similarly Secured issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner expressed herein and in the Bonds Similarly Secured.

(c) In case the Trustee or any Owners shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or any Owners, then and in every such case the City, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

#### Section 11.4 Application of Revenues and Other Moneys After Default.

(a) All moneys, securities, funds and Pledged Revenues or other assets of the Trust Estate and the income therefrom received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such amounts, the expenses (including its counsel fees, costs, and expenses), liabilities, and advances incurred or made by the Trustee and the fees of the Trustee in carrying out this Indenture, during the continuance of an Event of Default, notwithstanding Section 11.2 hereof, shall be applied by the Trustee, on behalf of the City, to the payment of interest and principal or Redemption Price then due on Bonds Similarly Secured, as follows:

FIRST: To the payment to the Owners entitled thereto all installments of interest then due in the direct order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the Owners entitled thereto, without any discrimination or preference; and

SECOND: To the payment to the Owners entitled thereto of the unpaid principal of Outstanding Bonds Similarly Secured, or Redemption Price of any Bonds Similarly Secured which shall have become due, whether at maturity or by call for redemption, in the direct order of their due dates and, if the amounts available shall not be sufficient to pay in full all the Bonds Similarly Secured due on any date, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due and to the Owners entitled thereto, without any discrimination or preference.

Within ten (10) days of receipt of such good and available funds, the Trustee may fix a record and payment date for any payment to be made to Owners pursuant to this Section 11.4.

(b) In the event funds are not adequate to cure any of the Events of Default described in Section 11.1, the available funds shall be allocated to the Bonds Similarly Secured

that are Outstanding in proportion to the quantity of Bonds Similarly Secured that are currently due and in default under the terms of this Indenture.

(c) The restoration of the City to its prior position after any and all defaults have been cured, as provided in Section 11.3, shall not extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

#### Section 11.5 Effect of Waiver.

No delay or omission of the Trustee, or any Owner, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given to the Trustee or the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient.

The Trustee, if previously directed in writing by Owners of a Quarter in Interest of the Bonds Similarly Secured, shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds Similarly Secured.

#### Section 11.6 Evidence of Ownership of Bonds Similarly Secured.

(a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners of Bonds Similarly Secured may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys duly appointed in writing. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, or the holding by any Person of the Bonds Similarly Secured shall be sufficient for any purpose of this Indenture (except as otherwise herein expressly provided) if made in the following manner:

(i) The fact and date of the execution of such instruments by any Owner of Bonds Similarly Secured or the duly appointed attorney authorized to act on behalf of such Owner may be provided by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate, or affidavit shall also constitute sufficient proof of his authority.

(ii) The ownership of Bonds Similarly Secured and the amount, numbers and other identification and date of holding the same shall be proved by the Register.

(b) Except as otherwise provided in this Indenture with respect to revocation of a consent, any request or consent by an Owner of Bonds Similarly Secured shall bind all future



Owners of the same Bonds Similarly Secured in respect of anything done or suffered to be done by the City or the Trustee in accordance therewith.

Section 11.7 No Acceleration.

In the event of the occurrence of an Event of Default under Section 11.1 hereof, the right of acceleration of any Stated Maturity is not granted as a remedy hereunder and the right of acceleration under this Indenture is expressly denied.

Section 11.8 Mailing of Notice.

Any provision in this Article for the mailing of a notice or other document to Owners shall be fully complied with if it is mailed, first class postage prepaid, only to each Owner at the address appearing upon the Register.

Section 11.9 Exclusion of Bonds Similarly Secured.

Bonds Similarly Secured owned or held by or for the account of the City shall be promptly delivered to the Trustee and cancelled. Such Bonds Similarly Secured will not be deemed Outstanding for any purpose, including without limitation, the purpose of consent or other action or any calculation of Outstanding Bonds Similarly Secured provided for in this Indenture, and the City shall not be entitled with respect to such Bonds Similarly Secured to give any consent or take any other action provided for in this Indenture.

Section 11.10 Remedies Not Exclusive.

No remedy herein conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity, by statute or by contract.

Section 11.11 Direction by Owners.

Anything herein to the contrary notwithstanding, the Owners of a Quarter in Interest of the Bonds Similarly Secured shall have the right by an instrument in writing executed and delivered to the Trustee, to direct the choice of remedies and the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, under each Supplemental Indenture or otherwise, or exercising any trust or power conferred upon the Trustee, including the power to direct or withhold directions with respect to any remedy available to the Trustee or the Owners, provided, (i) such direction shall not be otherwise than in accordance with Applicable Laws and the provisions hereof, (ii) that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, (iii) that the Trustee may require satisfactory indemnity prior to taking such action and (iv) that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Owners not parties to such direction.

ARTICLE XII  
GENERAL COVENANTS AND REPRESENTATIONS

Section 12.1 Representations as to the Trust Estate.

(a) The City represents and warrants that it is authorized by Applicable Laws to authorize and issue the Bonds Similarly Secured, to execute and deliver this Indenture and to pledge the Trust Estate in the manner and to the extent provided in this Indenture, and that the Trust Estate are and will be and remain free and clear of any pledge, lien, charge, or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Indenture except as expressly provided herein.

(b) The City shall at all times, to the extent permitted by Applicable Laws, defend, preserve and protect the pledge of the Trust Estate and all the rights of the Owners and the Trustee, under this Indenture against all claims and demands of all Persons whomsoever.

(c) The City will take all steps reasonably necessary and appropriate, and will direct the Trustee to take all steps reasonably necessary and appropriate, to collect all delinquencies in the collection of the Assessments and any other amounts pledged to the payment of the Bonds Similarly Secured to the fullest extent permitted by the PID Act and other Applicable Laws.

(d) To the extent permitted by law, statements for the Annual Installments shall be sent by, or on behalf of the City, to the affected property owners on the same statement or such other mechanism that is used by the City, so that such Annual Installments are collected simultaneously with ad valorem taxes and shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City.

Section 12.2 Accounts, Periodic Reports and Certificates.

The Trustee shall keep or cause to be kept proper books of records and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Funds and Accounts established by this Indenture and which shall at all times be subject to inspection by the City during the Trustee's regular business hours and each Owner or Owners of not less than 10% in principal amount of any Bonds Similarly Secured then Outstanding or their representatives duly authorized in writing, providing reasonable notice to the Trustee.

Section 12.3 General.

The City shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under the provisions of this Indenture.

ARTICLE XIII  
SPECIAL COVENANTS

Section 13.1 Further Assurances; Due Performance.

(a) At any and all times the City will duly execute, acknowledge and deliver, or will cause to be done, executed and delivered, all and every such further acts, conveyances, transfers, and assurances in a manner as the Trustee shall reasonably require for conveying, transferring, pledging, and confirming unto the Trustee, all and singular, the revenues, Funds, Accounts and properties constituting the Pledged Revenues, and the Trust Estate hereby transferred and pledged, or intended so to be transferred and pledged.

(b) The City will duly and punctually keep, observe and perform each and every term, covenant and condition on its part to be kept, observed and performed, contained in this Indenture.

Section 13.2 Additional Obligations or Other Liens; Refunding Bonds.

(a) The City reserves the right to issue Additional Obligations under other indentures, assessment ordinances, or similar agreements or other obligations which do not constitute or create a lien on the Trust Estate and are not payable from Pledged Revenues or any portion of the Trust Estate. Additionally, the City has reserved the right to issue bonds or other obligations secured by and payable from Pledged Revenues so long as such pledge is subordinate to the pledge of Pledged Revenues securing payment of the Bonds Similarly Secured.

(b) Other than Refunding Bonds issued to refund all or a portion of the Bonds, the City will not create or voluntarily permit to be created any debt, lien or charge on any portion of the Trust Estate, and will not cause or allow any matter or things whereby the lien of this Indenture or the priority hereof might or could be lost or impaired, and further covenants that it will pay or cause to be paid or will make adequate provisions for the satisfaction and discharge of all lawful claims and demands which if unpaid might by law be given precedence over or any equality with this Indenture as a lien or charge upon the Trust Estate; *provided, however*, that nothing in this Section shall require the City to apply, discharge, or make provision for any such lien, charge, claim, or demand so long as the validity thereof shall be contested by it in good faith, unless thereby, in the opinion of Bond Counsel or counsel to the Trustee, the same would endanger the security for the Bonds.

(c) The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds Similarly Secured or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State, and in accordance with the conditions set forth below:

(i) The principal of all Refunding Bonds must (i) be scheduled to be paid, (ii) be subject to mandatory sinking fund redemption or (iii) mature, on September 1 of the years in which such principal (i) is scheduled to be paid, (ii) is subject to mandatory sinking fund redemption or (iii) matures. All Refunding Bonds must bear interest at a fixed rate and any interest payment dates for Refunding Bonds must be March 1 and September 1. The date, rate or rates of

interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of Refunding Bonds shall be set forth in a Supplemental Indenture; and

(ii) Upon their authorization by the City, the Refunding Bonds of a Series issued under this Section 13.2 shall be issued and shall be delivered to the purchasers or owners thereof, but before, or concurrently with, the delivery of said Refunding Bonds to such purchasers or owners there shall have been filed with the Trustee (1) a copy, certified by the City Secretary of the City, of the ordinance or ordinances of the City authorizing the issuance, sale, execution and delivery of the Refunding Bonds and the execution and delivery of a Supplemental Indenture establishing, among other things, the date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of such Refunding Bonds, and (2) an original executed counterpart of the Supplemental Indenture for such Refunding Bonds.

### Section 13.3 Books of Record.

(a) The City shall cause to be kept full and proper books of record and accounts, in which full, true and proper entries will be made of all dealing, business and affairs of the City, which relate to the Pledged Revenues, the Pledged Funds, and the Bonds Similarly Secured.

(b) The Trustee shall have no responsibility with respect to the financial and other information received by it pursuant to this Section 13.3 except to receive and retain same, subject to the Trustee's document retention policies, and to distribute the same in accordance with the provisions of this Indenture. Specifically, but without limitation, the Trustee shall have no duty to review such information, is not considered to have notice of the contents of such information or a default based on such contents, and has no duty to verify the accuracy of such information.

## ARTICLE XIV PAYMENT AND CANCELLATION OF THE BONDS AND SATISFACTION OF THE INDENTURE

### Section 14.1 Trust Irrevocable.

The trust created by the terms and provisions of this Indenture is irrevocable until the Bonds Similarly Secured which are secured hereby are fully paid or provision is made for their payment as provided in this Article.

### Section 14.2 Satisfaction of Indenture.

If the City shall pay or cause to be paid, or there shall otherwise be paid to the Owners, principal of and interest on all of the Bonds Similarly Secured, at the times and in the manner stipulated in this Indenture, and all amounts due and owing with respect to the Bonds Similarly Secured have been paid or provided for, then the pledge of the Trust Estate and all covenants, agreements, and other obligations of the City to the Owners of such Bonds Similarly Secured, shall thereupon cease, terminate, and become void and be discharged and satisfied. In such event, the

Trustee shall execute and deliver to the City copies of all such documents as it may have evidencing that principal of and interest on all of the Bonds Similarly Secured has been paid so that the City may determine if the Indenture is satisfied; if so, the Trustee shall pay over or deliver all moneys held by it in the Funds and Accounts held hereunder to the Person entitled to receive such amounts, or, if no Person is entitled to receive such amounts, then to the City.

#### Section 14.3 Bonds Similarly Secured Deemed Paid.

All Outstanding Bonds Similarly Secured shall prior to the Stated Maturity or redemption date thereof be deemed to have been paid and to no longer be deemed Outstanding if (i) in case any such Bonds Similarly Secured are to be redeemed on any date prior to their Stated Maturity, the Trustee shall have given notice of redemption on said date as provided herein, (ii) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and the interest on which when due will provide moneys which, together with any moneys deposited with the Trustee at the same time, shall be sufficient to pay when due the principal of and interest on of the Bonds Similarly Secured to become due on such Bonds Similarly Secured on and prior to the redemption date or maturity date thereof, as the case may be, (iii) the Trustee shall have received a report by an independent certified public accountant selected by the City verifying the sufficiency of the moneys or Defeasance Securities deposited with the Trustee to pay when due the principal of and interest on of the Bonds Similarly Secured to become due on such Bonds Similarly Secured on and prior to the redemption date or maturity date thereof, as the case may be, (iv) if the Bonds Similarly Secured are then rated, the Trustee shall have received written confirmation from each Rating Agency then publishing a rating on such Bonds Similarly Secured that such deposit will not result in the reduction or withdrawal of the rating on the Bonds Similarly Secured, and (v) the Trustee shall have received an opinion of Bond Counsel to the effect that (A) any Bond Similarly Secured having been deemed to have been paid as provided in this Section is no longer Outstanding hereunder and is no longer secured by or entitled to the benefits of this Indenture, (B) such defeasance is in accordance with the terms hereof and (C) such defeasance will not adversely affect the exclusion of interest on such Bond Similarly Secured from gross income for purposes of federal income taxation. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on the Bonds Similarly Secured. Any cash received from such principal of and interest on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall be reinvested in Defeasance Securities as directed in writing by the City maturing at times and in amounts sufficient to pay when due the principal of and interest on the Bonds Similarly Secured on and prior to such redemption date or maturity date thereof, as the case may be. Any payment for Defeasance Securities purchased for the purpose of reinvesting cash as aforesaid shall be made only against delivery of such Defeasance Securities.

## ARTICLE XV MISCELLANEOUS

### Section 15.1 Benefits of Indenture Limited to Parties.

Nothing in this Indenture, expressed or implied, is intended to give to any Person other than the City, the Trustee and the Owners, any right, remedy, or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Trustee.

### Section 15.2 Successor is Deemed Included in All References to Predecessor.

Whenever in this Indenture or any Supplemental Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

### Section 15.3 Execution of Documents and Proof of Ownership by Owners.

Any request, declaration, or other instrument which this Indenture may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys duly appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration, or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the Person signing such request, declaration, or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds Similarly Secured and the amount, maturity, number, and date of holding the same shall be proved by the Register.

Any request, declaration or other instrument or writing of the Owner of any Bond Similarly Secured shall bind all future Owners of such Bond Similarly Secured in respect of anything done or suffered to be done by the City or the Trustee in good faith and in accordance therewith.

### Section 15.4 Waiver of Personal Liability.

No member, officer, agent, or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds Similarly Secured; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

Section 15.5 Notices to and Demands on City and Trustee.

(a) Except as otherwise expressly provided in this Indenture, all notices or other instruments required or permitted under this Indenture, including any City Certificate or City Certificate, shall be in writing and shall be delivered by hand, mailed by first class mail, postage prepaid, or transmitted by facsimile or e-mail and addressed as follows:

If to the City:

City of Kyle, Texas  
100 W. Center Street  
Kyle, Texas 78640  
Attn: City Manager  
Fax No.: 512.262.3987  
Email: jhendrix@cityokyle.com

With copy to:

P3 Works, LLC  
Attn: Jon Snyder  
3901 S. Lamar Blvd, Suite 440  
North Austin, Texas 78704  
Phone No.: [ ]  
Email: jon@P3-works.com

If to the Trustee  
or the Paying Agent/Registrar:

BOKF, NA  
Attn: Rachel Roy  
1401 McKinney Street, Suite 1000  
Houston, Texas 77010  
Fax No.: 713.354.0270  
Email: rachel.roy@bankoftexas.com

Any such notice, demand, or request may also be transmitted to the appropriate party by telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change given to the other party by the party effecting the change. Notices and consents given by mail in accordance with this Section shall be deemed to have been given five Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

(b) The Trustee shall mail to each Owner of a Bond Similarly Secured notice of (i) any substitution of the Trustee; or (ii) the redemption or defeasance of all Bonds Similarly Secured Outstanding.

(c) The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law. The Trustee agrees to accept and act

upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; *provided, however*, that the City shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the City elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method), the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

#### Section 15.6 Partial Invalidity.

If any Section, paragraph, sentence, clause, or phrase of this Indenture shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The City hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause, or phrase hereof and authorized the issue of the Bonds Similarly Secured pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid, or unenforceable.

#### Section 15.7 Applicable Laws.

This Indenture shall be governed by and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas.

#### Section 15.8 Counterparts.

This Indenture may be executed in counterparts, each of which shall be deemed an original.

#### Section 15.9 Amendments to Financing Agreement.

The City and the Developer may amend and supplement the Financing Agreement, from time to time, without the consent or approval of the Owners or the Trustee.

#### Section 15.10 No Boycott of Israel.

To the extent this Indenture constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Indenture. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel,' a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, means refusing to deal with,



terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

#### Section 15.11 Iran, Sudan, and Foreign Terrorist Organizations.

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

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

The foregoing representation is made solely to enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

#### Section 15.12 No Discrimination Against Fossil Fuel Companies.

To the extent this Indenture constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Indenture. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies,” a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 15.13 No Discrimination Against Firearm Entities and Firearm Trade Associations.

(a) To the extent this Indenture constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Indenture. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification and the following definitions:

(i) ‘discriminate against a firearm entity or firearm trade association,’ a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association;

(ii) ‘firearm entity,’ a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined

in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting); and

(iii) ‘firearm trade association,’ a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

(b) The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

*[remainder of page left blank intentionally]*

IN WITNESS WHEREOF, the City and the Trustee have caused this Indenture of Trust to be executed all as of the date hereof.

CITY OF KYLE, TEXAS

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

Attest:

\_\_\_\_\_  
City Secretary

[CITY SEAL]

BOKF, NA,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT A

(a) Form of Bond.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, THE CITY, OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION OR AGENCY THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND.

REGISTERED

No. \_\_\_\_\_ \$ \_\_\_\_\_

United States of America  
State of Texas

CITY OF KYLE, TEXAS  
SPECIAL ASSESSMENT REVENUE BOND, SERIES 2023  
(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1  
PROJECT)

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATE OF DELIVERY</u>	<u>CUSIP NUMBER</u>
_____ %	September 1, 20__	_____, 20__	_____

The City of Kyle, Texas (the “City”), for value received, hereby promises to pay, solely from the Trust Estate, to

\_\_\_\_\_

or registered assigns, on the Maturity Date, as specified above, the sum of

\_\_\_\_\_ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on the unpaid principal amount hereof from the later of the Date of Delivery, as specified above, or the most recent Interest Payment Date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on March 1 and September 1 of each year, commencing September 1, 2023, until maturity or prior redemption.

Capitalized terms appearing herein that are defined terms in the Indenture defined below, have the meanings assigned to them in the Indenture. Reference is made to the Indenture for such definitions and for all other purposes.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the corporate trust office in Houston, Texas (the “*Designated Payment/Transfer Office*”), of BOKF, NA, as trustee and paying agent/registrar (the “*Trustee*”, which term includes any successor trustee under the Indenture), or, with respect to a successor trustee and paying agent/registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the Interest Payment Date, mailed by the Trustee to the registered owner at the address shown on the registration books kept by the Trustee or by such other customary banking arrangements acceptable to the Trustee, requested by, and at the risk and expense of, the Person to whom interest is to be paid. For the purpose of the payment of interest on this Bond, the registered owner shall be the Person in whose name this Bond is registered at the close of business on the “*Record Date*,” which shall be the fifteenth day of the month next preceding such Interest Payment Date; *provided, however*, that in the event of nonpayment of interest on a scheduled Interest Payment Date that continues for 30 days or more thereafter, a new record date for such interest payment (a “*Special Record Date*”) will be established by the Trustee, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the “*Special Payment Date*,” which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Trustee at the close of business on the last Business Day preceding the date of mailing such notice.

If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of a duly authorized issue of assessment revenue bonds of the City having the designation specified in its title (herein referred to as the “*Bonds*”), dated May 1, 2023 and issued in the aggregate principal amount of \$\_\_\_\_\_ and issued, with the limitations described herein, pursuant to an Indenture of Trust, dated as of May 1, 2023 (the “*Indenture*”), by and between the City and the Trustee, to which Indenture reference is hereby made for a description of the amounts thereby pledged and assigned, the nature and extent of the lien and security, the respective rights thereunder to the holders of the Bonds, the Trustee, and the City, and the terms upon which the Bonds are, and are to be, authenticated and delivered and by this reference to the terms of which each holder of this Bond hereby consents. All Bonds issued under the Indenture are equally and ratably secured by the amounts thereby pledged and assigned. The Bonds are being issued for the purpose of (i) paying a portion of the Actual Costs of the Improvement Area #1 Improvements, (ii) paying interest on the Bonds during and after the period of acquisition and construction of the Improvement Area #1 Improvements, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) paying a portion of the Actual Costs incidental to the organization and administration of the District, and (v) paying the costs of issuance of the Bonds.

The Bonds Similarly Secured are limited obligations of the City payable solely from the Trust Estate as defined in the Indenture. Reference is hereby made to the Indenture, copies of which are on file with and available upon request from the Trustee, for the provisions, among

others, with respect to the nature and extent of the duties and obligations of the City, the Trustee and the Owners. The Owner of this Bond Similarly Secured, by the acceptance hereof, is deemed to have agreed and consented to the terms, conditions and provisions of the Indenture.

Notwithstanding any provision hereof, the Indenture may be released and the obligation of the City to make money available to pay this Bond may be defeased by the deposit of money and/or certain direct or indirect Defeasance Securities sufficient for such purpose as described in the Indenture.

The Bonds are issuable as fully registered bonds only in Authorized Denominations, subject to the provisions of the Indenture authorizing redemption in Authorized Denominations.

The Bonds are subject to sinking fund redemption prior to their respective maturities and will be redeemed by the City in part at a price equal to 100% of the principal amount thereof, or portions thereof, to be redeemed plus accrued interest thereon to the date set for redemption from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI of the Indenture, on the dates and in the Sinking Fund Installment amounts as set forth in the following schedule:

**Term Bonds Maturing September 1, 20**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____

**Term Bonds Maturing September 1, 20**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____

**Term Bonds Maturing September 1, 20**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____

**Term Bonds Maturing September 1, 20**

<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$ _____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____
September 1, 20__	_____

At least 45 days prior to each sinking fund redemption date, the Trustee shall select for redemption by lot, or such random method as Trustee shall deem fair and appropriate, a principal amount of Bonds of such maturity equal to the Sinking Fund Installments of such Bonds to be redeemed, shall call such Bonds for redemption on such scheduled mandatory sinking fund redemption date, and shall give notice of such redemption, as provided in Section 4.6 of the Indenture.

The principal amount of Bonds required to be redeemed on any sinking fund redemption date shall be reduced, at the option of the City, by the principal amount of any Bonds of such maturity which, at least 45 days prior to the sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued and



unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption or extraordinary optional redemption and not previously credited to a sinking fund redemption.

The City reserves the right and option to redeem the Bonds maturing on or after September 1, 20[ ] before their scheduled maturity dates, in whole or in part, in amounts equal to Authorized Denominations, on or after September 1, 20[ ], such redemption date or dates to be fixed by the City, at 100% of the principal amount of such Bonds, or portions thereof, to be redeemed plus accrued interest to the date of redemption.

Bonds are subject to extraordinary optional redemption prior to maturity in whole or in part, on the first day of any month, at a Redemption Price equal to at 100% of the principal amount of such Bonds called for redemption, or portions thereof, to be redeemed plus accrued interest to the date of redemption from amounts on deposit in the Redemption Fund as a result of Prepayments, other transfers to the Redemption Fund pursuant to the Indenture, or as a result of unexpended amounts transferred from the Project Fund as provided in the Indenture.

Upon surrender of any Bond for redemption in part, the Trustee in accordance with the Indenture, shall authenticate and deliver and exchange the Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, which shall be an Authorized Denomination. A new Bond representing the unredeemed balance of such Bond shall be issued to the Owner thereof, such exchange being without charge. If any Bonds are to be redeemed and such redemption results in the unredeemed portion of a single Bond in an amount less than the Authorized Denomination, a Bond in the principal amount equal to the unredeemed portion, but not less than \$1,000, may be issued.

The Trustee shall give notice of any redemption of the Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or part thereof) to be redeemed, at the address shown on the Register. The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the rights of the holders of Bonds under the Indenture at any time Outstanding affected by such modification. The Indenture also

contains provisions permitting the holders of specified percentages in aggregate principal amount of the Bonds at the time Outstanding, on behalf of the holders of all the Bonds, to waive compliance by the City with certain past defaults under the Bond Ordinance or the Indenture and their consequences. Any such consent or waiver by the holder of this Bond or any predecessor Bond evidencing the same debt shall be conclusive and binding upon such holder and upon all future holders thereof and of any Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Trustee, and upon delivery to the Trustee of such certifications and/or opinion of Bond Counsel as may be required under the Indenture for the transfer of this Bond. Upon satisfaction of such requirements, one or more new fully registered Bonds of the same Stated Maturity, of Authorized Denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Trustee shall be required to issue, transfer or exchange any Bond called for redemption where such redemption is scheduled to occur within 45 calendar days of the transfer or exchange date; *provided, however*, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Bond.

The City, the Trustee, and any other Person may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the Person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Trustee shall be affected by notice to the contrary.

NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY OF KYLE, TEXAS, HAYS COUNTY, TEXAS, THE STATE OF TEXAS, OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE BONDS.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any Constitutional or statutory limitation.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be executed under the official seal of the City.

---

Mayor, City of Kyle, Texas

---

City Secretary, City of Kyle, Texas

[City Seal]

(b) Form of Comptroller's Registration Certificate.

The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond:

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER      §  
OF PUBLIC ACCOUNTS              §              REGISTER NO. \_\_\_\_\_  
   §  
THE STATE OF TEXAS              §

I HEREBY CERTIFY THAT there is on file and of record in my office an opinion to the effect that the Attorney General of the State of Texas has approved this Bond, and that this Bond has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

[SEAL]

(c) Form of Certificate of Trustee.

CERTIFICATE OF TRUSTEE

It is hereby certified that this is one of the Bonds of the series of Bonds referred to in the within mentioned Indenture.

BOKF, NA,  
Houston, Texas, as Trustee

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and zip code of transferee):

---

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(Social Security or other identifying number: \_\_\_\_\_) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

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

Signature Guaranteed By:

---

---

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Trustee

Authorized Signatory

(e) The Initial Bond shall be in the form set forth in paragraphs (a), (b), (d) and (e) of this Exhibit A, except for the following alterations:

(i) immediately under the name of the Bond the heading "INTEREST RATE" and "MATURITY DATE" shall both be completed with the expression "As Shown Below," and the reference to the "CUSIP NUMBER" shall be deleted;

(ii) in the first paragraph of the Bond, the words "on the Maturity Date as specified above, the sum of \_\_\_\_\_ DOLLARS" shall be deleted and the following will be inserted: "on September 1 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<u>Year</u>	<u>Principal Installment</u>	<u>Interest Rate</u>
-------------	------------------------------	----------------------

(Information to be inserted from Section 3.2(c) of the Indenture); and

(iii) the Initial Bond shall be numbered T-1.

# FORM OF CITY CERTIFICATE

Appendix B – Page 90

# Porter Country Public Improvement District

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PRELIMINARY SERVICE AND ASSESSMENT PLAN  
APRIL 6, 2022



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## INTRODUCTION

Capitalized terms used in this Service and Assessment Plan shall have the meanings given to them in **Section I** unless otherwise defined in this Service and Assessment Plan or unless the context in which a term is used clearly requires a different meaning. Unless otherwise defined, a reference to a "Section", "Exhibit", or an "Appendix" shall be a reference to a Section of this Service and Assessment Plan or an Exhibit or Appendix attached to and made a part of this Service and Assessment Plan for all purposes.

On July 5, 2022, the City Council passed and approved Resolution No. 1316, authorizing the creation of the District in accordance with the PID Act.

The purpose of the District is to finance the Actual Costs of the Authorized Improvements that confer a special benefit on property within the District. The District contains approximately 259.02 acres located within the City, as described legally by metes and bounds on **Exhibit J** and as depicted on the map in **Exhibit A-1**.

The PID Act requires a service plan covering a period of at least five years and defining the annual indebtedness and projected cost of the Authorized Improvements. The Service Plan is contained in **Section IV**.

The PID Act requires that the Service Plan include an assessment plan that assesses the Actual Costs of the Authorized Improvements against Assessed Property within the District based on the special benefits conferred on such property by the Authorized Improvements. The Assessment Plan is contained in **Section V**.

The PID Act requires an Assessment Roll that states the Assessment against each Parcel determined by the method chosen by the City. The Assessment against each Assessed Property must be sufficient to pay the share of the Actual Costs apportioned to the Assessed Property and cannot exceed the special benefit conferred on the Assessed Property by the Authorized Improvements. The Improvement Area #1 Assessment Roll is contained in **Exhibit E-1**.

## SECTION I: DEFINITIONS

**“Actual Costs”** mean, with respect to Authorized Improvements, the actual costs paid or incurred by or on behalf of the Developer: (1) to plan, design, acquire, construct, install, and dedicate such improvements to the City, including the acquisition of necessary easements and other right-of-way; (2) to prepare plans, specifications (including bid packages), contracts, and as-built drawings; (3) to obtain zoning, licenses, plan approvals, permits, inspections, and other governmental approvals; (4) for third-party professional consulting services including but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisals; (5) for labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums; and (6) to implement, administer, and manage the above-described activities, including a 4% construction management fee. Actual Costs shall not include general contractor’s fees in an amount that exceeds a percentage equal to the percentage of work completed or construction management fees in an amount that exceeds an amount equal to the construction management fee amortized in approximately equal monthly installments over the term of the applicable construction management contract. Amounts expended for costs described in subsection (3), (4), and (6) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated.

**“Additional Interest”** means the amount collected by application of the Additional Interest Rate.

**“Additional Interest Rate”** means the 0.50% additional interest rate charged on Assessments securing PID Bonds pursuant to Section 372.018 of the PID Act.

**“Administrator”** means the City or the person or independent firm designated by the City who shall have the responsibilities provided in this Service and Assessment Plan, the Indenture, or any other agreement or document approved by the City related to the duties and responsibilities of the administration of the District.

**“Annual Collection Costs”** mean the actual or budgeted costs and expenses relating to collecting the Annual Installments, including, but not limited to, costs and expenses for: (1) the Administrator; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; (7) complying with this Service and Assessment Plan and the PID Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection

with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

**“Annual Installment”** means the annual installment payment of an Assessment as calculated by the Administrator and approved by the City Council, that includes: (1) principal; (2) interest; (3) Annual Collection Costs; and (4) Additional Interest, if applicable.

**“Annual Service Plan Update”** means an update to this Service and Assessment Plan prepared no less frequently than annually by the Administrator and approved by the City Council.

**“Assessed Property”** means any Parcel within the District against which an Assessment is levied.

**“Assessment”** means an assessment levied against a Parcel imposed pursuant to an Assessment Ordinance and the provisions herein, as shown on an Assessment Roll, subject to reallocation upon the subdivision of such Parcel or reduction according to the provisions herein and in the PID Act.

**“Assessment Ordinance”** means any ordinance adopted by the City Council in accordance with the PID Act that levies an Assessment on Assessed Property within the District, as shown on any Assessment Roll.

**“Assessment Plan”** means the methodology employed to assess the Actual Costs of the Authorized Improvements against Assessed Property within the District based on the special benefits conferred on such property by the Authorized Improvements, more specifically described in **Section V**.

**“Assessment Roll”** means any assessment roll for the Assessed Property within the District, including the Improvement Area #1 Assessment Roll included in this Service and Assessment Plan as **Exhibit E-1**, as updated, modified, or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared in connection with the levy of an Assessment, the issuance of PID Bonds, or in connection with any Annual Service Plan Update.

**“Authorized Improvements”** means improvements authorized by Section 372.003 of the PID Act, including Bond Issuance Costs, and First Year Annual Collection Costs.

**“Bond Issuance Costs”** means the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Texas Attorney General, and any other cost or expense directly

associated with the issuance of PID Bonds.

**“City”** means the City of Kyle, Texas.

**“City Council”** means the governing body of the City.

**“County”** means Hays County, Texas.

**“Delinquent Collection Costs”** means costs related to the foreclosure on Assessed Property and the costs of collection of delinquent Assessments, delinquent Annual Installments, or any other delinquent amounts due under this Service and Assessment Plan including penalties and reasonable attorney’s fees actually paid, but excluding amounts representing interest and penalty interest.

**“Developer”** means Hillside Terrace Development LLC, a Texas limited liability company and its successors and assigns.

**“District”** means the Porter Country Public Improvement District, consisting of approximately 259.02 acres within the City, as described by metes and bounds shown on **Exhibit J** and by the map shown on **Exhibit A-1**.

**“Engineer’s Report”** means a report provided by a licensed professional engineer that identifies the Authorized Improvements, including their costs, location, and benefit, attached hereto as **Appendix A**.

**“Estimated Buildout Value”** means the estimated value of an Assessed Property after completion of the horizontal and the vertical improvements (e.g. house, office building, etc.), and shall be determined by the Administrator and confirmed by the City Council by considering such factors as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, builder contracts, discussions with homebuilders, reports from third party consultants, or any other information that may impact value.

**“First Year Annual Collection Costs”** means the estimated cost of the first year’s Annual Collection Costs.

**“Homebuilder”** means Milestone Community Builders, LLC, a Texas limited liability company.

**“Improvement Area”** means specifically defined and designated areas within the District that are developed in phases including Improvement Area #1.

**“Improvement Area #1”** means the first Improvement Area to be developed within the District, as shown on **Exhibit A-3** and as described on **Exhibit K**, comprised of approximately 91.281 acres and planned to include 409 single family homes.

**“Improvement Area #1 Annual Installment”** means the annual installment payment of an Improvement Area #1 Assessment as calculated by the Administrator and approved by the City, that includes: (1) principal; (2) interest; (3) Annual Collection Costs; and (4) Additional Interest.

**“Improvement Area #1 Assessed Property”** means all Parcels within Improvement Area #1 other than Non-Benefited Property and Owner Association Property.

**“Improvement Area #1 Assessment Roll”** means the assessment roll included in this Service and Assessment Plan as **Exhibit E-1**, as updated, modified or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared relating to the issuance of PID Bonds or in connection with any Annual Service Plan Update.

**“Improvement Area #1 Assessments”** means the Assessments shown on the Improvement Area #1 Assessment Roll that are levied on Improvement Area #1 Assessed Property to fund Improvement Area #1 Projects.

**“Improvement Area #1 Bonds”** means those bonds entitled “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Projects)” that are secured by Improvement Area #1 Assessments.

**“Improvement Area #1 Improvements”** means Authorized Improvements, excluding Improvement Area #1 Privately Financed Public Improvements, which only benefit Improvement Area #1 Assessed Property as described in **Section III** and depicted on **Exhibit G**.

**“Improvement Area #1 Initial Parcel”** means all of the land within Improvement Area #1, as generally described by metes and bounds in **Exhibit K** and shown on the map on **Exhibit A-3**, consisting of approximately 91.281 acres. Until a plat has been recorded and a Lot has been assigned a property ID within Improvement Area #1, the Annual Installment will be allocated to each property ID within the Improvement Area #1 Initial Parcel based on the Hays Central Appraisal District acreage for billing purposes only.

**“Improvement Area #1 Privately Financed Public Improvements”** means Authorized Improvements benefiting Improvement Area #1, which will not be financed with PID Bonds.

**“Improvement Area #1 Projects”** means the Improvement Area #1 Improvements, Improvement Area #1 Bond Issuance Costs and First Year Annual Collection Costs.

**“Indenture”** means an Indenture of Trust entered into in connection with the issuance of PID Bonds, as amended or supplemented from time to time, between the City and the Trustee setting forth terms and conditions related to the PID Bonds.

**“Landowner Certificate”** means any landowner certificate executed by the Owner(s) consenting to the levy of the Assessments.

**“Lot”** means, for any portion of the District for which a subdivision plat has been recorded in the official public records of the County, a tract of land described as a “lot” in such subdivision plat.

**“Lot Type”** means a classification of final building Lots with similar characteristics (e.g. lot size, product type, buildout value, etc.), as determined by the Administrator and confirmed by the City Council. In the case of single-family residential Lots, the Lot Type shall be further defined by classifying the residential Lots by the Estimated Buildout Value of the Lot as determined by the Administrator and confirmed by the City Council.

**“Lot Type 1”** means a Lot designated as a 40’ lot within Improvement Area #1, shown as such on **Exhibit A-2**.

**“Lot Type 2”** means a Lot designated as a 50’ lot within Improvement Area #1, shown as such on **Exhibit A-2**.

**“Maximum Assessment”** means for each Lot Type within Improvement Area #1, at the time a new Lot is created by plat an Assessment equal to the lesser of (1) the amount calculated pursuant to **Section VI.A**, or (2) the amount shown on **Exhibit F**, which amount will be reduced annually by principal payments made as part of the Annual Installment. Maximum Assessment for future Improvement Areas will be determined in future Annual Service Plan updates.

**“Non-Benefited Property”** means Parcels within the boundaries of the District that accrue no special benefit from the Authorized Improvements.

**“Notice of Assessment Termination”** means a document recorded in the official public records of the County evidencing the termination of an Assessment, a form of which is attached as **Exhibit H**.

**“Owners”** means Hillside Terrace Development LLC, a Texas limited liability company, and Milestone Community Builders, LLC, a Texas limited liability company, and their successors and assigns.

**“Owner Association”** means one or more property owners associations that may own, operate and/or maintain some of the Authorized Improvements and which the City acknowledges are approved and authorized by the City pursuant to Section 372.023(a)(3) of the PID Act.

**“Owner Association Property”** means property owned and/or maintained by an Owner Association.

**“Parcel(s)”** means a property identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purposes, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the official public records of the County, or by any other means as determined by the City.

**“PID Act”** means Chapter 372, Texas Local Government Code, as amended.

**“PID Bonds”** means bonds issued by the City, in one or more series, to finance the Authorized Improvements that confer a special benefit on the property within the District.

**“Prepayment”** means the payment of all or a portion of an Assessment before the due date of the final Annual Installment thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest, or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Annual Installment.

**“Prepayment Costs”** means principal, interest, including Additional Interest, and Annual Collection Costs to the date of Prepayment.

**“Privately Financed Improvements”** means those improvements which are not Authorized Improvements or Improvement Area #1 Privately Financed Public Improvements and are not eligible for reimbursement.

**“Service and Assessment Plan”** means this Service and Assessment Plan as it may be modified, amended, supplemented, and updated from time to time.

**“Service Plan”** covers a period of at least five years and defines the annual indebtedness and projected costs of the Authorized Improvements, more specifically described in **Section IV**.

**“Trustee”** means the trustee (or successor trustee) under an Indenture.

## SECTION II: THE DISTRICT

The District includes approximately 259.02 acres located within the City, as described legally by metes and bounds on **Exhibit J** and as depicted on the map on **Exhibit A-1**. Development of the District is anticipated to include approximately 981 single-family homes and 4.5 acres of commercial space.

Improvement Area #1 includes approximately 91.281 acres as described legally by metes and bounds on **Exhibit K** and as depicted on the map on **Exhibit A-3**. Development of Improvement Area #1 is anticipated to include 409 single-family homes.

## SECTION III: AUTHORIZED IMPROVEMENTS

The City, based on information provided by the Developer and their engineer and on review by the City staff and by third-party consultants retained by the City, determined that the Authorized Improvements confer a special benefit on the Assessed Property. Authorized Improvements will be designed and constructed in accordance with City standards and specifications and will be owned and operated by the City unless otherwise indicated. The budget for the Authorized Improvements, as well as the allocation of the Authorized Improvements, is shown on **Exhibit B**.

### A. Improvement Area #1 Projects

#### 1. Improvement Area #1 Improvements<sup>1</sup>

##### ▪ *Heron Drive Improvements to Roundabout*

Improvements to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, and associated utility infrastructure in the Heron Drive right-of-way. Also includes a roundabout that will include the roadway improvements listed above, in addition to mountable curbs and reinforced concrete aprons. These Heron Drive improvements and roundabout are anticipated to benefit phases 1 – 4 of the District.

##### ▪ *Roadway*

Improvements to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, alleyways or corresponding public easements & testing. Also includes a deceleration lane off FM 2001.

##### ▪ *Drainage and Ponds*

Improvements to include trench excavation and embedment, trench safety, piping,



manholes, inlets, headwalls, testing, related earthwork, and erosion control. Also included are retention ponds, detention ponds, and wet detention ponds, clearing excavation, piping for inbound and outbound drainage lines, outlet structures, and erosion control.

- *Parks and Landscaping*

Includes a wet pond with irrigated trees, irrigated planting beds and sod at the entry monument, entry monument and trail lighting, electrical, perimeter fencing, upgraded median landscaping along the entry road and at roundabouts, and right of way. Also to be included are a playground, and a parkway with trails, irrigation and meters, site furnishings, trees, sod, parkland, open space and planting beds.

- *Soft Costs*

Costs related to designing, constructing, installing, and financing the Improvement Area #1 Improvements, including land planning and design, City fees and performance bonds, engineering, soil testing, survey, construction management, legal fees, consultant fees, contingency, inspection fees, district formation costs, and other PID costs incurred and paid by the Developer.

Notes:

<sup>1</sup>Water improvements are intended to be dedicated to and maintained by Goforth Special Utility District ("Goforth SUD"). Improvements to include trench excavation and embedment, trench safety, piping, manholes, valves, fire hydrant assemblies, service connections, testing, related earthwork, erosion control, and all necessary appurtenances to be fully operational transmission lines constructed to City and utility provider standards required to provide water service.

Water improvement benefiting Improvement Area #1 are defined herein as "Improvement Area #1 Privately Financed Public Improvements". Improvement Area #1 Assessments will not be used to fund water improvements benefitting Improvement Area #1. Water improvements benefitting future improvement areas within the District may be funded with Assessments once all other Authorized Improvements for such Improvement Area have been funded, as reflected in this Service and Assessment Plan.

## **2. Improvement Area #1 Bond Issuance Costs**

- *Debt Service Reserve Fund*

Equals the amount required under an applicable Indenture in connection with the issuance of PID Bonds.

- *Capitalized Interest*

Equals the capitalized interest payments on PID Bonds as reflected in an applicable Indenture.

- *Underwriter's Discount*

Equals a percentage of the par amount of a particular series of PID Bonds plus a fee for underwriter's counsel.

- *Costs of Issuance*

Includes costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

**3. First Year Annual Collection Costs**

Equals the First Year Annual Collection Costs for Improvement Area #1.

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## SECTION IV: SERVICE PLAN

The PID Act requires the Service Plan to cover a period of at least five years. The Service Plan is required to define the annual projected costs and indebtedness for the Authorized Improvements undertaken within the District during the five-year period. The Service Plan shall be updated in each Annual Service Plan Update. **Exhibit C** summarizes the Service Plan for the District.

**Exhibit D** summarizes the sources and uses of funds required to finance the Authorized Improvements. The sources and uses of funds shown on **Exhibit D** shall be updated in each Annual Service Plan Update.

## SECTION V: ASSESSMENT PLAN

The PID Act allows the City to apportion the costs of the Authorized Improvements to the Assessed Property based on the special benefit received from the Authorized Improvements. The PID Act provides that such costs may be apportioned: (1) equally per front foot or square foot; (2) according to the value of property as determined by the City, with or without regard to improvements constructed on the property; or (3) in any other manner approved by the City that results in imposing equal shares of such costs on property similarly benefited. The PID Act further provides that the governing body may establish by ordinance or order reasonable classifications and formulas for the apportionment of the cost between the municipality and the area to be assessed and the methods of assessing the special benefits for various classes of improvements.

This section of this Service and Assessment Plan describes the special benefit received by each Assessed Property within the District as a result of the Authorized Improvements and provides the basis and justification for the determination that this special benefit exceeds the amount of the Assessments to be levied on the Assessed Property for such Authorized Improvements.

The determination by the City of the assessment methodologies set forth below is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on the Owners and all future owners and developers of the Assessed Property.

### A. Assessment Methodology

The City Council, acting in its legislative capacity based on information provided by the Developer and their engineer and on review by the City staff and by third-party consultants retained by the City, has determined that Improvement Area #1 Projects shall be allocated to the Improvement Area #1 Assessed Property pro rata based on Estimated Buildout Value. Currently, the

Improvement Area #1 Initial Parcel is the only Parcel within Improvement Area #1, and as such, the Improvement Area #1 Initial Parcel is allocated 100% of the Improvement Area #1 Projects.

### **B. Improvement Area #1 Assessments**

Improvement Area #1 Assessments are levied on the Improvement Area #1 Assessed Property according to the Improvement Area #1 Assessment Roll, attached hereto as **Exhibit E-1**. The projected Improvement Area #1 Annual Installments are shown on **Exhibit E-2**, subject to revisions made during any Annual Service Plan Update.

### **C. Findings of Special Benefit**

The City Council, acting in its legislative capacity based on information provided by the Developer and their engineer and reviewed by the City staff and by third-party consultants retained by the City, has found and determined:

1. The costs of the Improvement Area #1 Projects equal \$16,248,064 as shown on **Exhibit B**; and
2. The Improvement Area #1 Assessed Property receives special benefit from the Improvement Area #1 Projects equal to or greater than the Actual Costs of the Improvement Area #1 Projects allocated to the Improvement Area #1 Assessed Property; and
3. The Assessed Property is allocated 100% of the Improvement Area #1 Assessments levied for the Improvement Area #1 Projects, which equal \$15,852,000 as shown on the Improvement Area #1 Assessment Roll, attached as **Exhibit E-1**; and
4. The special benefit ( $\geq$  \$16,248,064) received by the Improvement Area #1 Assessed Property from the Improvement Area #1 Projects allocated to the Improvement Area #1 Assessed Property is greater than or equal to the amount of Improvement Area #1 Assessments (\$15,852,000) levied on the Improvement Area #1 Assessed Property; and
5. At the time the City Council approved the Assessment Ordinance levying the Improvement Area #1 Assessments, the Owners owned 100% of the Improvement Area #1 Assessed Property. In separate Landowner Certificates, the Owners acknowledged that the Improvement Area #1 Projects confer a special benefit on the Improvement Area #1 Assessed Property and consented to the imposition of the Improvement Area #1 Assessments to pay for the Actual Costs associated therewith. The Owners ratified, confirmed, accepted, agreed to, and approved: (1) the determinations and findings by the City Council as to the special benefits described herein and in the Assessment Ordinance, and (2) the levying of the Improvement Area #1 Assessments on the Improvement Area #1 Assessed Property.

#### **D. Annual Collection Costs**

The Annual Collection Costs shall be paid for on a pro rata basis by the owners of each Assessed Property based on the amount of outstanding Assessment remaining on the Assessed Property. The Annual Collection Costs shall be collected as part of and in the same manner as Annual Installments in the amounts shown on the Assessment Roll, which may be revised in Annual Service Plan Updates based on Actual Costs incurred.

#### **E. Interest**

The interest rate on Assessments securing the PID Bonds may exceed the interest rate on the PID Bonds by the Additional Interest Rate. Interest at the rate of the PID Bonds and the Additional Interest shall be collected as part of each Annual Installment and shall be deposited pursuant to the Indenture.

### **SECTION VI: TERMS OF THE ASSESSMENTS**

#### **A. Reallocation of Assessments**

##### *1. Upon Division Prior to Recording of Subdivision Plat*

Upon the division of any Assessed Property (without the recording of subdivision plat), the Administrator shall reallocate the Assessment for the Assessed Property prior to the division among the newly divided Assessed Properties according to the following formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

A = the Assessment for the newly divided Assessed Property

B = the Assessment for the Assessed Property prior to division

C = the Estimated Buildout Value of the newly divided Assessed Property

D = the sum of the Estimated Buildout Value for all the newly divided Assessed Properties

The calculation of the Estimated Buildout Value of an Assessed Property shall be performed by the Administrator based on information from the Developer, Homebuilder, additional homebuilders, market studies, appraisals, official public records of the County, and any other relevant information regarding the Assessed Property. The calculation as confirmed by the City Council shall be conclusive.

The sum of the Assessments for all newly divided Assessed Properties shall equal the Assessment for the Assessed Property prior to subdivision. The calculation shall be made separately for each newly divided Assessed Property. The reallocation of an Assessment

for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an update to this Service and Assessment Plan approved by the City Council.

### *2. Upon Subdivision by a Recorded Subdivision Plat*

Upon the subdivision of any Assessed Property based on a recorded subdivision plat, the Administrator shall reallocate the Assessment for the Assessed Property prior to the subdivision among the new subdivided Lots based on Estimated Buildout Value according to the following formula:

$$A = [B \times (C \div D)]/E$$

Where the terms have the following meanings:

A = the Assessment for the newly subdivided Lot

B = the Assessment for the Parcel prior to subdivision

C = the sum of the Estimated Buildout Value of all newly subdivided Lots with same Lot Type

D = the sum of the Estimated Buildout Value for all the newly subdivided Lots excluding Non-Benefited Property

E = the number of Lots with same Lot Type

Prior to the recording of a subdivision plat, the Owners shall provide the City an Estimated Buildout Value as of the date of the recorded subdivision plat for each Lot created by the recorded subdivision plat considering factors such as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, discussions with homebuilders, and any other factors that may impact value. The calculation of the Estimated Buildout Value for a Lot shall be performed by the Administrator and confirmed by the City Council based on information provided by the Developer, Homebuilder, additional homebuilders, third party consultants, and/or the official public records of the County regarding the Lot.

The sum of the Assessments for all newly subdivided Lots shall not exceed the Assessment for the portion of the Assessed Property subdivided prior to subdivision. The calculation shall be made separately for each newly subdivided Assessed Property. The reallocation of an Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an update to this Service and Assessment Plan approved by the City Council.

### *3. Upon Consolidation*

If two or more Lots or Parcels are consolidated, the Administrator shall allocate the Assessments against the Lots or Parcels before the consolidation to the consolidated Lot or Parcel, which allocation shall be approved by the City Council in the next Annual Service Plan Update.

#### **B. True-up of Assessments if Maximum Assessment Exceeded**

Prior to the approval of a final subdivision plat, the Administrator shall certify that the final plat will not cause the Assessment for any Lot Type to exceed the Maximum Assessment for such Lot Type. If the subdivision of any Assessed Property by a final subdivision plat causes the Assessment per Lot for any Lot Type to exceed the applicable Maximum Assessment for such Lot Type, the landowner shall partially prepay the Assessment for each Assessed Property that exceeds the applicable Maximum Assessment for such Lot Type in an amount sufficient to reduce the Assessment to the applicable Maximum Assessment for such Lot Type. The City's approval of a final subdivision plat without payment of such amounts does not eliminate the obligation of the person or entity filing the plat to pay such Assessments.

#### **C. Mandatory Prepayment of Assessments**

If Assessed Property is transferred to a person or entity that is exempt from payment of the Assessments under applicable law or any portion of Assessed Property becomes Non-Benefited Property, the owner transferring the Assessed Property or causing the portion to become Non-Benefited Property shall pay to the City or the Administrator on behalf of the City the full amount of the outstanding Assessment, plus Prepayment Costs and Delinquent Collection Costs, if any, for such Assessed Property, prior to the transfer; provided that, however, such mandatory Prepayment of the Assessment shall not be required for portions of a Parcel that are dedicated or conveyed to the City, any other governmental entity or utility provider, or an Owners Association for use as internal roads, utilities, parks, drainage and detention facilities, and other similar improvements, in which case the Assessment that was allocated to the Parcel will be reallocated to the remainder of the Parcel. If a reallocation to the remainder of the Parcel as provided in the foregoing sentence causes the Assessment for such remainder to exceed the Maximum Assessment, the owner of the remainder of the Parcel must partially prepay the Assessment to the extent it exceeds the Maximum Assessment for such Parcel in an amount sufficient to reduce the Assessment to the Maximum Assessment.

#### **D. Reduction of Assessments**

If as a result of cost savings or an Authorized Improvement not being constructed, the Actual Costs of completed Authorized Improvements are less than the Assessments levied for the payment thereof, the Trustee shall apply amounts on deposit in the applicable account of the Project Fund (as defined in the applicable Indenture) relating to the PID Bonds that are not expected to be used for purposes of the Project Fund, to redeem outstanding PID Bonds, in

accordance with the applicable Indenture. The Assessments shall not, however, be reduced to an amount less than the outstanding PID Bonds.

The Administrator shall update (and submit to the City Council for review and approval as part of the next Annual Service Plan Update) the Assessment Roll and corresponding Annual Installments to reflect the reduced Assessments.

#### **E. Prepayment of Assessments**

The owner of the Assessed Property may pay, at any time, all or any part of an Assessment in accordance with the PID Act. Interest costs from the date of prepayment to the date of redemption of the applicable PID Bonds, if any, may be paid from a reserve established under the applicable Indenture. If an Annual Installment has been billed prior to the Prepayment, the Annual Installment shall be due and payable and shall be credited against the Prepayment.

If an Assessment is paid in full, with Prepayment Costs: (1) the Administrator shall cause the Assessment to be reduced to zero and the Assessment Roll to be revised accordingly; (2) the Administrator shall prepare the revised Assessment Roll and submit to the City Council for review and approval as part of the next Annual Service Plan Update; (3) the obligation to pay the Assessment and corresponding Annual Installments shall terminate; and (4) the City shall provide the owner with a recordable Notice of Assessment Termination, a form of which is attached as **Exhibit H**.

If an Assessment is paid in part, with Prepayment Costs: (1) the Administrator shall cause the Assessment to be reduced and the Assessment Roll revised accordingly; (2) the Administrator shall prepare the revised Assessment Roll and submit to the City Council for review and approval as part of the next Annual Service Plan Update; and (3) the obligation to pay the Assessment and corresponding Annual Installments shall be reduced to the extent of the Prepayment made.

#### **F. Prepayment as a Result of Eminent Domain Proceeding or Taking**

If any portion of any Parcel of Assessed Property is taken from an owner as a result of eminent domain proceedings or if a transfer of any portion of any Parcel of Assessed Property is made to an entity with the authority to condemn all or a portion of the Assessed Property in lieu of or as a part of an eminent domain proceeding (a "Taking"), the portion of the Assessed Property that was taken or transferred (the "Taken Property") shall be reclassified as Non-Benefited Property.

For the Assessed Property that is subject to the Taking as described in the preceding paragraph, the Assessment that was levied against the Assessed Property (when it was included in the Taken Property) prior to the Taking shall remain in force against the remaining Assessed Property (the Assessed Property less the Taken Property), (the "Remaining Property") following the reclassification of the Taken Property as Non-Benefited Property, subject to an adjustment of the Assessment applicable to the Remaining Property after any required Prepayment as set forth



below. The owner will remain liable to pay in Annual Installments, or payable as otherwise provided by this Service and Assessment Plan, as updated, or the PID Act, the Assessment that remains due on the Remaining Property, subject to an adjustment in the Annual Installments applicable to the Remaining Property after any required Prepayment as set forth below. Notwithstanding the foregoing, if the Assessment that remains due on the Remaining Property exceeds the applicable Maximum Assessment, the owner will be required to make a Prepayment in an amount necessary to ensure that the Assessment against the Remaining Property does not exceed such Maximum Assessment, in which case the Assessment and Annual Installments applicable to the Remaining Property will be reduced by the amount of the partial Prepayment. If the City receives all or a portion of the eminent domain proceeds (or payment made in an agreed sale in lieu of condemnation), such amount shall be credited against the amount of Prepayment, with any remainder credited against the assessment on the Remaining Property.

In all instances the Assessment remaining on the Remaining Property shall not exceed the applicable Maximum Assessment.

By way of illustration, if an owner owns 100 acres of Assessed Property subject to a \$100 Assessment and 10 acres is taken through a Taking, the 10 acres of Taken Property shall be reclassified as Non-Benefited Property and the remaining 90 acres of Remaining Property shall be subject to the \$100 Assessment, (provided that this \$100 Assessment does not exceed the Maximum Assessment on the Remaining Property). If the Administrator determines that the \$100 Assessment reallocated to the Remaining Property would exceed the Maximum Assessment on the Remaining Property by \$10, then the owner shall be required to pay \$10 as a Prepayment of the Assessment against the Remaining Property and the Assessment on the Remaining Property shall be adjusted to be \$90 and the Annual Installments adjusted accordingly.

Notwithstanding the previous paragraphs in this subsection (F), if the owner notifies the City and the Administrator that the Taking prevents the Remaining Property from being developed for any use which could support the Estimated Buildout Value requirement, the owner shall, upon receipt of the compensation for the Taken Property, be required to prepay the amount of the Assessment required to buy down the outstanding Assessment to the Maximum Assessment on the Remaining Property to support the Estimated Buildout Value requirement. The owner will remain liable to pay the Annual Installments on both the Taken Property and the Remaining Property until such time that such Assessment has been prepaid in full.

Notwithstanding the previous paragraphs in this subsection (F), the Assessments shall not, however, be reduced to an amount less than the outstanding PID Bonds.

#### **G. Payment of Assessment in Annual Installments**

Assessments that are not paid in full shall be due and payable in Annual Installments. **Exhibit E-2** shows the projected Improvement Area #1 Annual Installments. Annual Installments are subject to adjustment in each Annual Service Plan Update.

The Administrator shall prepare and submit to the City Council for its review and approval an Annual Service Plan Update to allow for the billing and collection of Annual Installments. Each Annual Service Plan Update shall include updated Assessment Rolls and updated calculations of Annual Installments. Annual Collection Costs shall be allocated equally among Parcels for which the Assessments remain unpaid. Annual Installments shall be reduced by any applicable Indenture, such as capitalized interest, interest earnings on account balances, and any other funds available to the Trustee for such purposes. Annual Installments shall be collected by the City in the same manner and at the same time as ad valorem taxes. Annual Installments shall be subject to the penalties, procedures, and foreclosure sale in case of delinquencies as set forth in the PID Act and in the same manner as ad valorem taxes for the City. The City Council may provide for other means of collecting Annual Installments. Assessments shall have the lien priority specified in the PID Act.

Sales of the Assessed Property for nonpayment of Annual Installments shall be subject to the lien for the remaining unpaid Annual Installments against the Assessed Property, and the Assessed Property may again be sold at a judicial foreclosure sale if the purchaser fails to timely pay the Annual Installments as they become due and payable.

The City reserves the right to refund PID Bonds in accordance with the PID Act. In the event of a refunding, the Administrator shall recalculate the Annual Installments so that total Annual Installments will be sufficient to pay the refunding bonds, and the refunding bonds shall constitute "PID Bonds."

Each Annual Installment of an Assessment, including interest on the unpaid principal of the Assessment, shall be updated annually. Each Annual Installment shall be due when billed and shall be delinquent if not paid prior to February 1 of the following year. The first Annual Installment will be delinquent if not paid by February 1, 2024.

## **SECTION VII: ASSESSMENT ROLLS**

The Improvement Area #1 Assessment Roll is attached as **Exhibit E-1**. The Administrator shall prepare and submit to the City Council, for review and approval, proposed revisions to the Assessment Rolls and Annual Installments for each Parcel within the District as part of each Annual Service Plan Update.

## **SECTION VIII: ADDITIONAL PROVISIONS**

### **A. Calculation Errors**

If the owner of a Parcel claims that an error has been made in any calculation required by this Service and Assessment Plan, including, but not limited to, any calculation made as part of any Annual Service Plan Update, the owner's sole and exclusive remedy shall be to submit a written notice of error to the Administrator by December 1<sup>st</sup> of each year following City Council approval of the calculation; otherwise, the owner shall be deemed to have unconditionally approved and accepted the calculation. Upon receipt of a written notice of error from an owner the Administrator shall provide a written response to the City Council and the owner within 30 days of such referral. The City Council shall consider the owner's notice of error and the Administrator's response at a public hearing, and within 30 days after closing such hearing, the City Council shall make a final determination as to whether an error has been made. If the City Council determines that an error has been made, the City Council may take such corrective action as is authorized by the PID Act, this Service and Assessment Plan, the Assessment Ordinance, or the Indenture, or is otherwise authorized by the discretionary power of the City Council. The determination by the City Council as to whether an error has been made, and any corrective action taken by the City Council, shall be final and binding on the owner and the Administrator.

### **B. Amendments**

Amendments to this Service and Assessment Plan must be made by the City Council in accordance with the PID Act. To the extent permitted by the PID Act, this Service and Assessment Plan may be amended without notice to owners of the Assessed Property: (1) to correct mistakes and clerical errors; (2) to clarify ambiguities; and (3) to provide procedures to collect Assessments, Annual Installments, and other charges imposed by this Service and Assessment Plan.

### **C. Administration and Interpretation**

The Administrator shall: (1) perform the obligations of the Administrator as set forth in this Service and Assessment Plan; (2) administer the District for and on behalf of and at the direction of the City Council; and (3) interpret the provisions of this Service and Assessment Plan. Interpretations of this Service and Assessment Plan by the Administrator shall be in writing and shall be appealable to the City Council by owners or developers adversely affected by the interpretation. Appeals shall be decided by the City Council after holding a public hearing at which all interested parties have an opportunity to be heard. Decisions by the City Council shall be final and binding on the owners and developers and their successors and assigns.

### **D. Form of Buyer Disclosure**

Per Section 5.014 of the Texas Property Code, as amended, this Service and Assessment Plan, and any future Annual Service Plan Updates, shall include a form of the buyer disclosures for the District. The buyer disclosures are attached hereto in **Exhibit L-1** and **Exhibit L-2**. Within seven days of approval by the City Council, the City shall file and record in the real property records of the County the executed ordinance approving this Service and Assessment Plan, or any future Annual Service Plan Updates. The executed ordinance, including any attachments, approving this Service and Assessment Plan or any future Annual Service Plan Updates shall be filed and recorded in the real property records of the County in its entirety.

#### **E. Severability**

If any provision of this Service and Assessment Plan is determined by a governmental agency or court to be unenforceable, the unenforceable provision shall be deleted and, to the maximum extent possible, shall be rewritten to be enforceable. Every effort shall be made to enforce the remaining provisions.

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## EXHIBITS

The following Exhibits are attached to and made a part of this Service and Assessment Plan for all purposes:

<b>Exhibit A-1</b>	District Boundary Map
<b>Exhibit A-2</b>	Concept Plan
<b>Exhibit A-3</b>	Improvement Area #1 Map
<b>Exhibit B</b>	Authorized Improvements
<b>Exhibit C</b>	Service Plan
<b>Exhibit D</b>	Sources and Uses
<b>Exhibit E-1</b>	Improvement Area #1 Assessment Roll
<b>Exhibit E-2</b>	Improvement Area #1 Annual Installments
<b>Exhibit F</b>	Maximum Assessment
<b>Exhibit G</b>	Maps of Improvement Area #1 Improvements
<b>Exhibit H</b>	Notice of Assessment Termination
<b>Exhibit I</b>	Improvement Area #1 Bonds Debt Service Schedule
<b>Exhibit J</b>	District Legal Description
<b>Exhibit K</b>	Improvement Area #1 Legal Description
<b>Exhibit L-1</b>	Lot Type 1 Buyer Disclosure
<b>Exhibit L-2</b>	Lot Type 2 Buyer Disclosure

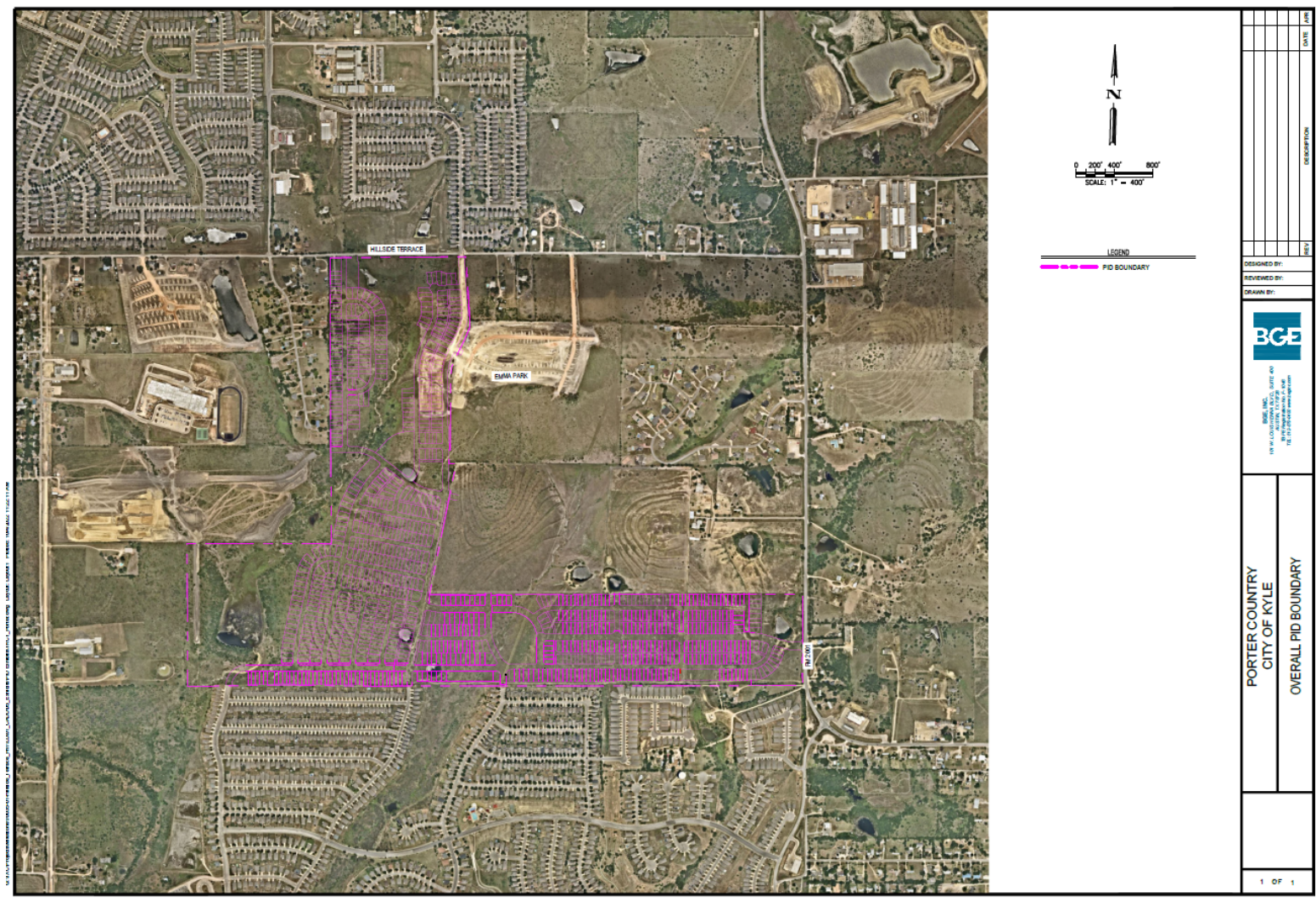
## APPENDICES

The following Appendices are attached to and made a part of this Service and Assessment Plan for all purposes:

<b>Appendix A</b>	Engineer's Report
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EXHIBIT A-1 – DISTRICT BOUNDARY MAP



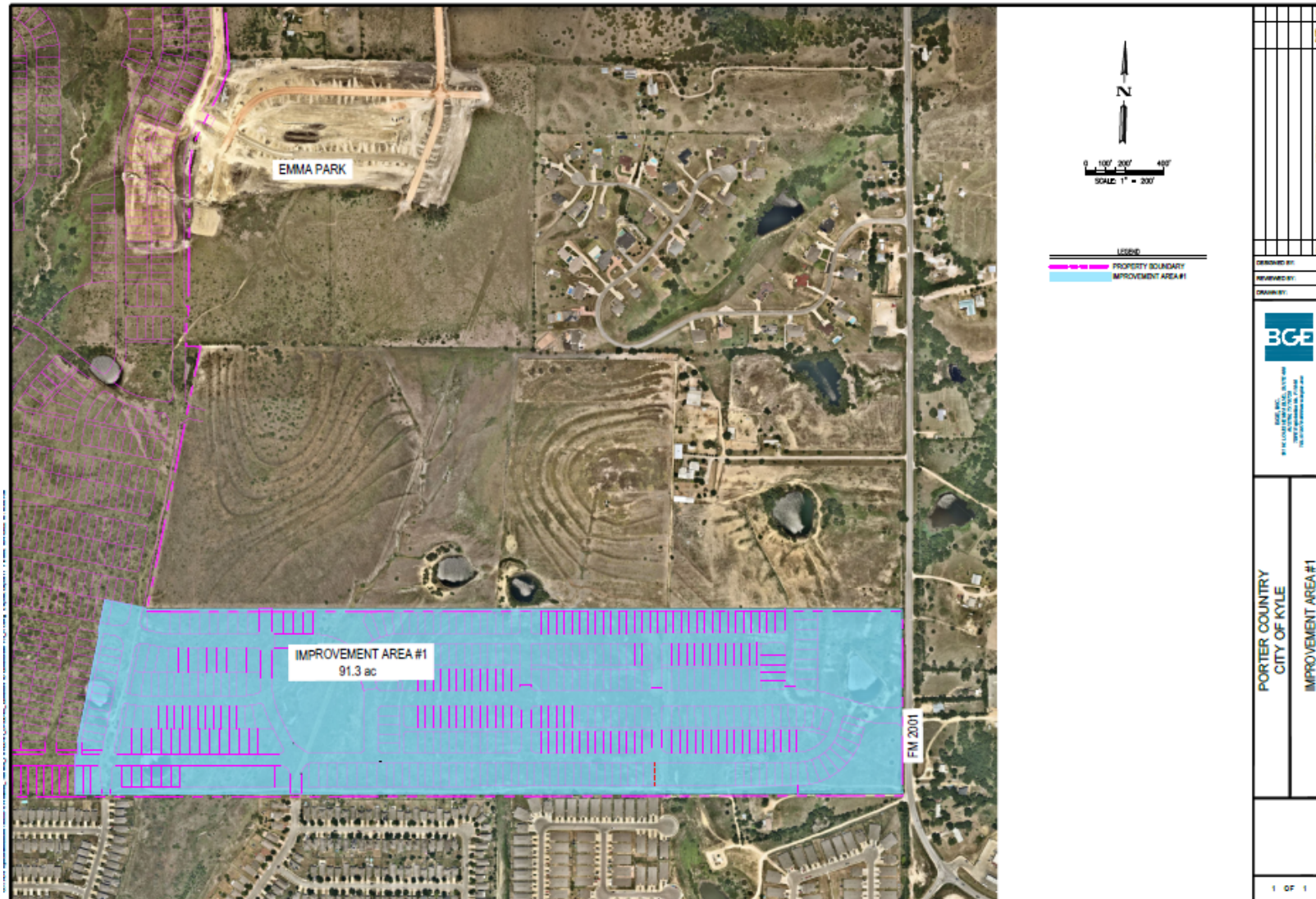


## EXHIBIT A-2 – CONCEPT PLAN





## EXHIBIT A-3 – IMPROVEMENT AREA #1 MAP





## EXHIBIT B – AUTHORIZED IMPROVEMENTS

	Total Costs	Privately Financed Improvements [a]	Water Improvements [b]	Improvement Area #1 Projects
<i>Improvement Area #1 Improvements</i>				
Heron Drive Improvements	\$ 691,383	\$ -	\$ -	\$ 691,383
Roadway	5,181,155	-	-	5,181,155
Drainage & Ponds	3,058,567	-	-	3,058,567
Parks and Landscaping	1,518,083	-	-	1,518,083
Soft Costs	1,397,429	-	-	1,397,429
	<b>\$ 11,846,617</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 11,846,617</b>
<i>Improvement Area #1 Privately Financed Public Improvements</i>				
Water	\$ 1,928,197	\$ -	\$ 1,928,197	\$ -
Soft Costs	257,869	-	257,869	-
	<b>\$ 2,186,066</b>	<b>\$ -</b>	<b>\$ 2,186,066</b>	<b>\$ -</b>
<i>Privately Financed Improvements</i>				
Wastewater	\$ 1,623,340	\$ 1,623,340	\$ -	\$ -
Soft Costs	217,098	217,098	-	-
	<b>\$ 1,840,438</b>	<b>\$ 1,840,438</b>	<b>\$ -</b>	<b>\$ -</b>
<i>Improvement Area #1 Bond Issuance Costs</i>				
Debt Service Reserve Fund	\$ 1,585,200	\$ -	\$ -	\$ 1,585,200
Capitalized Interest	1,270,306	-	-	1,270,306
Underwriter's Discount	475,560	-	-	475,560
Cost of Issuance	1,030,380	-	-	1,030,380
	<b>\$ 4,361,446</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,361,446</b>
<i>First Year Annual Collection Costs</i>				
First Year Collection Costs	\$ 40,000	\$ -	\$ -	\$ 40,000
	<b>\$ 40,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 40,000</b>
<b>Total</b>	<b>\$ 20,274,568</b>	<b>\$ 1,840,438</b>	<b>\$ 2,186,066</b>	<b>\$ 16,248,064</b>

**Notes:**

[a] Privately Financed Improvements are not eligible for reimbursement.

[b] Improvement Area #1 water improvements are classified as Improvement Area #1 Privately Financed Public Improvements and are intended to be dedicated to and maintained by Goforth Special Utility District ("Goforth SUD"). Improvements to include trench excavation and embedment, trench safety, piping, manholes, valves, fire hydrant assemblies, service connections, testing, related earthwork, erosion control, and all necessary appurtenances to be fully operational transmission lines constructed to City and utility provider standards required to provide water service.

## EXHIBIT C – SERVICE PLAN

Annual Installments Due		1/31/2024	1/31/2025	1/31/2026	1/31/2027	1/31/2028
<i>Improvement Area #1 Bonds</i>						
Principal		\$ -	\$ -	\$ 1,000	\$ 1,000	\$ 2,000
Interest		299,371	970,935	970,935	970,874	970,813
Capitalized Interest		(299,371)	(970,935)	-	-	-
	(1)	\$ -	\$ -	\$ 971,935	\$ 971,874	\$ 972,813
Annual Collection Costs	(2)	\$ -	\$ 40,800	\$ 41,616	\$ 42,448	\$ 43,297
Additional Interest	(3)	\$ -	\$ 73,565	\$ 73,565	\$ 79,255	\$ 79,250
<b>Total Annual Installment</b>	<b>(4) = (1) + (2) + (3)</b>	<b>\$ -</b>	<b>\$ 114,365</b>	<b>\$ 1,087,116</b>	<b>\$ 1,093,577</b>	<b>\$ 1,095,360</b>

## EXHIBIT D – SOURCES AND USES

Sources of Funds		
Improvement Area #1 Bond Par	\$	15,852,000
Owner Contribution [a]	\$	4,422,568
<b>Total Sources</b>	<b>\$</b>	<b>20,274,568</b>
Uses of Funds		
Improvement Area #1 Improvements	\$	11,846,617
Water Improvements [b]		2,186,066
Privately Financed Improvements		1,840,438
	<b>\$</b>	<b>15,873,121</b>
<i>Improvement Area #1 Bond Issuance Costs</i>		
Debt Service Reserve Fund	\$	1,585,200
Capitalized Interest		1,270,306
Underwriter's Discount		475,560
Cost of Issuance		1,030,380
		<b>4,361,446</b>
<i>First Year Annual Collection Costs</i>		
First Year Annual Collection Costs	\$	40,000
	<b>\$</b>	<b>40,000</b>
<b>Total Uses</b>	<b>\$</b>	<b>20,274,568</b>

**Notes:**

[a] Non-reimbursable to the Owner

[b] Water Improvements are Improvement Area #1 Privately Financed Public Improvements and are not eligible for reimbursement with Improvement Area #1 Assessments.

## EXHIBIT E-1 – IMPROVEMENT AREA #1 ASSESSMENT ROLL

Property ID <sup>1</sup>	Lot Type	Outstanding Assessment	Annual Installment Due 1/31/2024
R162775	Improvement Area #1 Initial Parcel	\$ 6,822,489.06	\$ 49,221.17
R13939	Improvement Area #1 Initial Parcel	\$ 9,029,510.94	\$ 65,143.83
<b>Total</b>		<b>\$ 15,852,000.00</b>	<b>\$ 114,365.00</b>

*Notes:*

1) The entirety of Improvement Area #1 is contained within Property IDs R162775 & R13939. For billing purposes, the Annual Installment due 1/31/2024 shall be allocated pro rata based on acreage.

## EXHIBIT E-2 – IMPROVEMENT AREA #1 ANNUAL INSTALLMENTS

Annual Installment Due 1/31	Improvement Area #1 Bonds				Annual Collection Costs	Annual Installment
	Principal	Interest [a]	Capitalized Interest	Additional Interest [b]		
2023	\$ -	\$ 299,371	\$ (299,371)	\$ -	\$ -	\$ -
2024	-	970,935	(970,935)	73,565	40,800	114,365
2025	1,000	970,935	-	73,565	41,616	1,087,116
2026	1,000	970,874	-	79,255	42,448	1,093,577
2027	2,000	970,813	-	79,250	43,297	1,095,360
2028	17,000	970,690	-	79,240	44,163	1,111,093
2029	41,000	969,649	-	79,155	45,046	1,134,850
2030	66,000	967,138	-	78,950	45,947	1,158,035
2031	93,000	963,095	-	78,620	46,866	1,181,581
2032	122,000	957,399	-	78,155	47,804	1,205,357
2033	153,000	949,926	-	77,545	48,760	1,229,231
2034	188,000	940,555	-	76,780	49,735	1,255,070
2035	224,000	929,040	-	75,840	50,730	1,279,610
2036	264,000	915,320	-	74,720	51,744	1,305,784
2037	307,000	899,150	-	73,400	52,779	1,332,329
2038	354,000	880,346	-	71,865	53,835	1,360,046
2039	404,000	858,664	-	70,095	54,911	1,387,670
2040	457,000	833,919	-	68,075	56,010	1,415,003
2041	515,000	805,928	-	65,790	57,130	1,443,847
2042	578,000	774,384	-	63,215	58,272	1,473,871
2043	645,000	738,981	-	60,325	59,438	1,503,744
2044	716,000	699,475	-	57,100	60,627	1,533,202
2045	794,000	655,620	-	53,520	61,839	1,564,979
2046	877,000	606,988	-	49,550	63,076	1,596,613
2047	966,000	553,271	-	45,165	64,337	1,628,774
2048	1,062,000	494,104	-	40,335	65,624	1,662,063
2049	1,164,000	429,056	-	35,025	66,937	1,695,018
2050	1,274,000	357,761	-	29,205	68,275	1,729,242
2051	1,393,000	279,729	-	22,835	69,641	1,765,205
2052	1,519,000	194,408	-	15,870	71,034	1,800,311
2053	1,655,000	101,369	-	8,275	72,454	1,837,098
<b>Total</b>	<b>\$ 15,852,000</b>	<b>\$ 22,908,890</b>	<b>\$ (1,270,306)</b>	<b>\$ 1,834,285</b>	<b>\$ 1,655,178</b>	<b>\$ 40,980,046</b>

**Notes:**

[a] Interest on the Improvement Area #1 PID Bonds is calculated at a 6.125% rate for illustrative purposes.

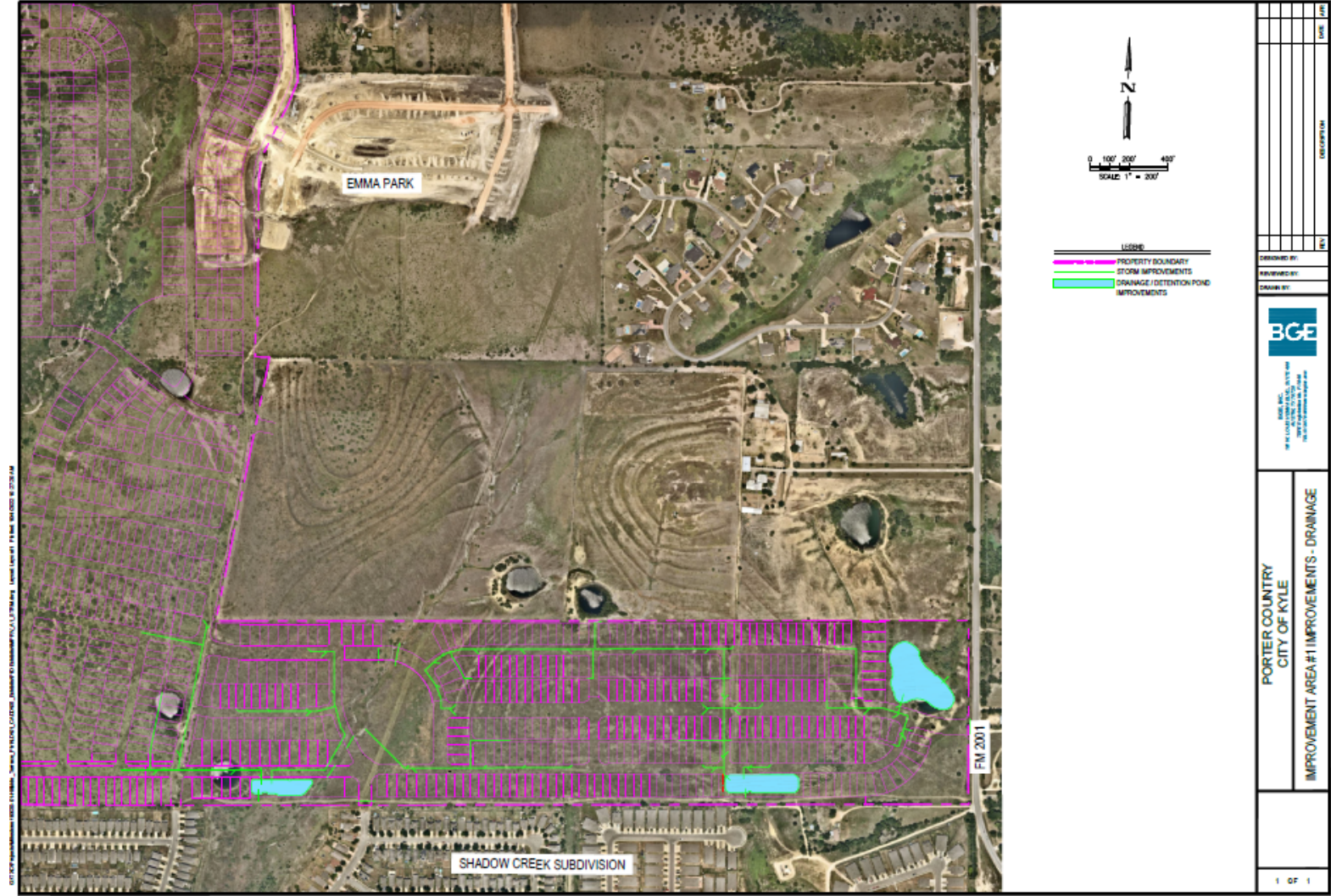
[b] Additional Interest is calculated at a 0.50% rate.

*The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

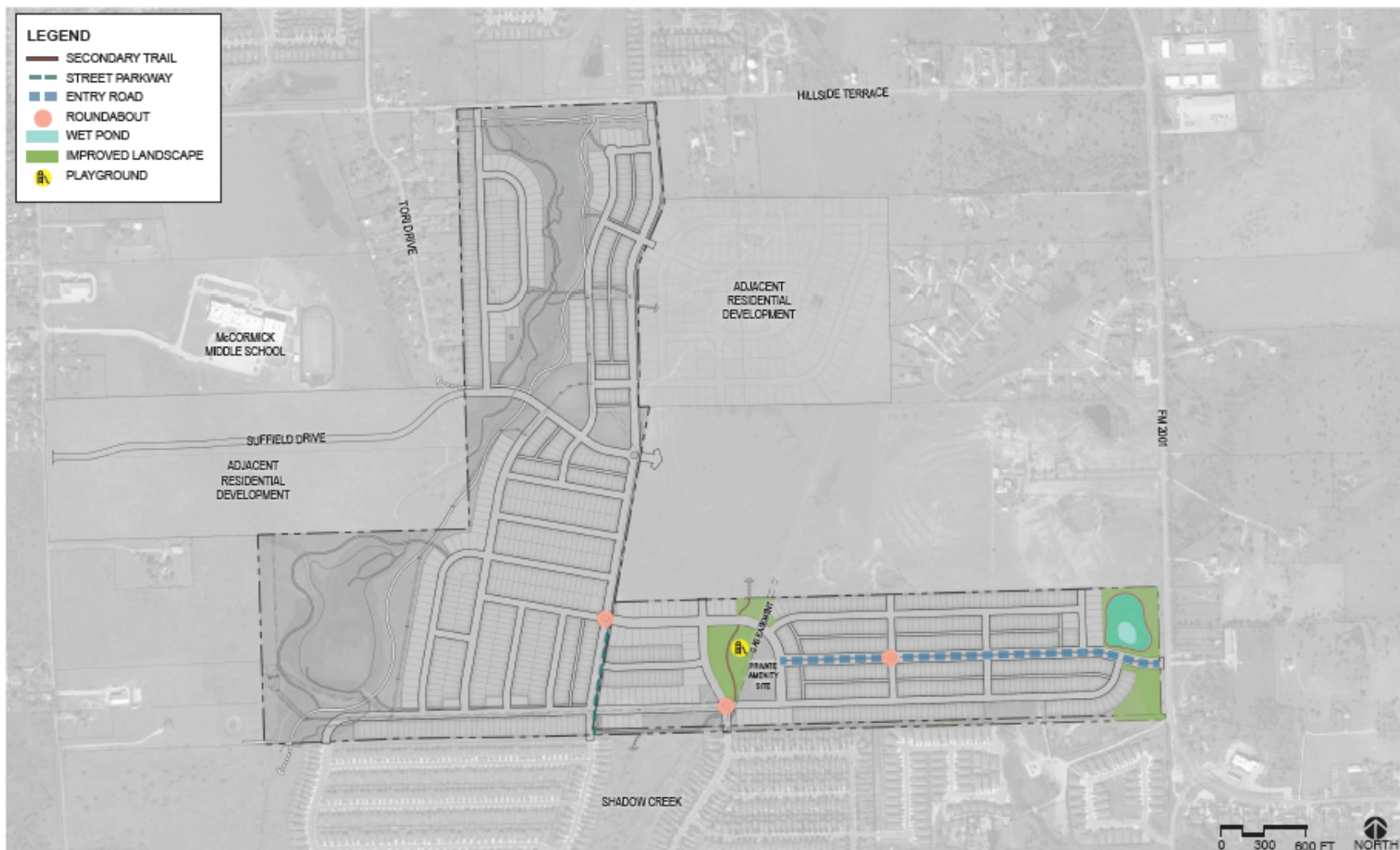
## EXHIBIT F – MAXIMUM ASSESSMENT

Improvement Area #1 (Phase 1 & 2) <sup>1</sup>																	
Lot Type	Units	Finished Lot Value	Total Finished Lot Value	Estimated Buildout Value per Unit	Total Estimated Buildout Value	Assessment	Maximum Assessment Per Unit <sup>2</sup>	Value to Lien per Finished Lot Value	Installment Per Unit			Tax Rate Equivalent (No Growth Scenario - 0% Home Price Appreciation)			Tax Rate Equivalent (Growth Scenario - 2% Home Price Appreciation)		
									2025	2039	2053	2025	2039	2053	2025	2039	2053
Lot Type 1 (Phase 1 - 40')	204	\$ 67,000	\$ 13,668,000	\$ 420,000	\$ 85,680,000	\$ 7,655,623	\$ 37,527.56	1.79	\$ 2,574	\$ 3,285	\$ 4,349	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
Lot Type 2 (Phase 1 - 50')	50	\$ 83,750	\$ 4,187,500	\$ 508,000	\$ 25,400,000	\$ 2,269,524	\$ 45,390.48	1.85	\$ 3,113	\$ 3,973	\$ 5,260	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
Lot Type 1 (Phase 2 - 40')	141	\$ 73,000	\$ 10,293,000	\$ 420,000	\$ 59,220,000	\$ 5,291,386	\$ 37,527.56	1.95	\$ 2,574	\$ 3,285	\$ 4,349	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
Lot Type 2 (Phase 2 - 50')	14	\$ 91,300	\$ 1,278,200	\$ 508,000	\$ 7,112,000	\$ 635,467	\$ 45,390.48	2.01	\$ 3,113	\$ 3,973	\$ 5,260	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
<b>Total/Weighted Average</b>	<b>409</b>	<b>\$ 71,948</b>	<b>\$ 29,426,700</b>	<b>\$ 433,770</b>	<b>\$ 177,412,000</b>	<b>\$ 15,852,000</b>	<b>\$ 38,757.95</b>	<b>1.86</b>	<b>\$ 2,658</b>	<b>\$ 3,393</b>	<b>\$ 4,492</b>	<b>\$ 0.6128</b>	<b>\$ 0.7822</b>	<b>\$ 1.0355</b>	<b>\$ 0.5890</b>	<b>\$ 0.5698</b>	<b>\$ 0.5717</b>

# EXHIBIT G – MAPS OF IMPROVEMENT AREA #1 IMPROVEMENTS









## EXHIBIT H – NOTICE OF ASSESSMENT TERMINATION



P3Works, LLC  
9284 Huntington Square, Suite 100  
North Richland Hills, TX 76182

[Date]  
Hays County Clerk's Office  
Honorable [County Clerk Name]  
Hays Government Center  
712 S. Stagecoach Trail  
San Marcos, TX 78666

**Re: City of Kyle Lien Release documents for filing**

Dear Ms./Mr. [County Clerk Name],

Enclosed is a lien release that the City of Kyle is requesting to be filed in your office. Lien release for [insert legal description]. Recording Numbers: [Plat]. Please forward copies of the filed documents below:

City of Kyle  
Attn: [City Secretary]  
100 W. Center Street  
Kyle, TX 78640

Please contact me if you have any questions or need additional information.

Sincerely,  
[Signature]

Jon Snyder  
P: (888)417-7074  
[admin@p3-works.com](mailto:admin@p3-works.com)

**[City Secretary Name]  
100 W. Center Street  
Kyle, TX 78640**

**FULL RELEASE OF PUBLIC IMPROVEMENT DISTRICT LIEN**

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

## RECITALS

**WHEREAS**, on or about \_\_\_\_\_, the City Council, approved Ordinance No. \_\_\_\_\_, (hereinafter referred to as the “Assessment Ordinance”) levying assessments on the Property (hereinafter defined) and approving a service and assessment plan and assessment roll for the Porter Country Public Improvement District; and



## **EXHIBIT I – IMPROVEMENT AREA #1 BONDS DEBT SERVICE SCHEDULE**

## EXHIBIT J – DISTRICT LEGAL DESCRIPTION

### EXHIBIT "A" DESCRIPTION

A 259.02 acres (11,282,708 square feet), tract of land, lying within the Jessie B. Eaves Survey, Abstract 166 and the W.A. Moore Survey, Abstract 331, Hays County, Texas, and being all of a called 163.935 acre tract, conveyed to Hillside Terrace Development, LLC in Document No. 21020969, Official Public Records of Hays County, Texas, all of a called 82.951 acre tract, conveyed to RIO OSO Holdings LLC in Document No. 18028156, Official Public Records of Hays County, Texas and a portion of called 35.04 acre tract, conveyed to GJG Development II LLC in Document No. 19024067, Official Public Records of Hays County, Texas, described as follows:

**BEGINNING** at a 5/8" iron rod with aluminum "PRO TECH ENG" cap found at the southeastern corner of said 163.935 acre tract, the northeastern corner of a called 2.80 acre tract, conveyed to James Mikeska & Traci Home-Mikeska in Volume 1738, Page 731, Official Public Records of Hays County, Texas, and being on the western right-of-way line of F.M. 2001 (right-of-way varies), for the southeastern corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said 2.80 acre tract, S88°25'07"W, a distance of 858.81 feet to a 1/2" iron pipe found, for the northwestern corner of said 2.80 acre tract and the northeastern corner of Windy Hill Subdivision 24 AC, a subdivision, recorded in Document No. 17040372, Official Public Records of Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Windy Hill Subdivision 24 AC, S88°22'00"W, a distance of 1223.10 feet to a 3/4" iron pipe found, for the northwestern corner of said Windy Hill Subdivision 24 AC and the northeastern corner of Shadow Creek Phase 3, Section 4, a subdivision, recorded in Volume 13, Page 336, Plat Records Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of Shadow Creek Phase 9, Section 2, a subdivision, recorded in Document No. 17029868, Plat Records Hays County, Texas, S88°25'56"W, a distance of 1993.62 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Shadow Creek Phase 9, Section 2, the following three (3) courses and distances;

1. S88°24'30"W, a distance of 445.39 feet to a 6" wood fence post found;
2. S89°20'38"W, a distance of 873.39 feet to a 1/2" iron rod found;
3. S87°32'32"W, a distance of 556.41 feet to a pk nail in concrete found;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 9, Section 2, the northern line of Shadow Creek Phase 12, Section 1, a subdivision, recorded in Volume 19, Page 60, Plat Records Hays County, Texas and the northern line of a called 49.465 acre tract, conveyed to John Galloway Sr. & John Galloway Jr. in Volume 496, Page 791, Official Public Records of Hays County, Texas, S87°20'19"W, a distance of 442.82 feet to a 4" steel post found, for the southwestern corner of said 163.935 acre tract and the southeastern corner of a the remainder of a called 10.009 acre tract, conveyed to Mayra Garcia and Matias Garcia in Volume 3572, Page 398, Official Public Records of Hays County, Texas, for the southwestern corner of the herein described tract;

**THENCE**, with the western line of said 163.935 acre tract, the eastern line of said remainder of a called 10.009 acre tract, the eastern line of a called 10.01 acre tract, conveyed to Apostolic Christian Tabernacle of Austin in Volume 3333, Page 674, Official Public Records of Hays County, Texas, and the eastern line of a called 36.02 acre tract, conveyed to Salvador Villegas in Volume 3252, Page 665, Official Public Records of Hays County, Texas, N01°49'27"W, a distance of 1483.67 feet to a 4" steel post found, for an ell corner of said 163.935 acre tract, the northeastern corner of said 36.02 acre tract and being on the southern line of a called 68.96 acre tract, conveyed to TFLP Investments Limited Partnership in Volume 3118, Page 335, Official Public Records of Hays County, Texas;

**THENCE**, with a northern line of said 163.935 acre tract and the southern line of said 68.96 acre tract, N88°22'22"E, a distance of 1502.07 feet to a 1/2" iron rod found for an ell corner of said 163.935 acre tract and the southeastern corner of said 68.96 acre tract;

**THENCE**, with a western line of said 163.935 acre tract and the eastern line of said 68.96 acre tract, N02°00'11"W, a distance of 1007.83 feet to a 1/2" iron rod with plastic cap found for the northeastern corner of said 68.96 acre tract and the southeastern corner of Country Ridge Subdivision, a subdivision recorded in Volume 3, Page 274 Plat Records of Hays County, Texas;

THENCE, with a western line of said 163.935 acre tract and the eastern line of said Country Ridge Subdivision, N01°37'27"W, a distance of 1945.78 feet to a 1/2" iron rod found for the northeastern corner of said Country Ridge Subdivision and being on the southern right-of-way line of Hillside Terrace (right-of-way varies);

THENCE, with a western line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N01°37'27"W, a distance of 14.88 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the northwestern corner of said 163.935 acre tract and of the herein described tract;

THENCE, with a northern line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N88°01'45"E, a distance of 1410.61 feet to a 1/2" iron rod found for the northeastern corner of said 163.935 acre tract, the northwest corner of a 8.00 acre tract, conveyed to Nancy H. Johnson and described in a called 8.00 acre tract to Chase Baromeo Jr. and Barbara A. Castleberry in Volume 881, Page 259 Deed Records of Hays County, Texas and for the northeastern corner of the herein described tract;

THENCE, with an eastern line of said 163.935 acre tract and the western line of said 8.00 acre tract, S04°59'16"E, a distance of 685.20 feet to a point for an ell corner of said 163.935 acre tract, the southwest corner of a said 8.00 acre tract, and being on the northern line of a called 36.341 acre conveyed to Todd Burek in Document No. 19009802, Official Public Records of Hays County, Texas, from which a 1/2" iron rod found bears N01°15'44"E, a distance of 2.07 feet;

THENCE, over and across said 36.341 acre tract and said 35.04 acre tract, the following eight (8) courses and distances:

1. S 01° 57' 33" E, a distance of 43.81 feet to a 1/2" iron rod with unreadable cap found;
2. S 20° 51' 38" W, a distance of 126.91 feet to a 1/2" iron rod found;
3. S 25° 03' 48" W, a distance of 279.88 feet to a 1/2" iron rod found;
4. S 17° 00' 26" W, a distance of 49.76 feet to a 1/2" iron rod with J.E. Garron cap found;
5. S 06° 28' 28" W, a distance of 77.28 feet to a 1/2" iron rod found;
6. S 01° 01' 23" E, a distance of 800.38 feet to a 1/2" iron rod with J.E. Garron cap found;
7. S 88° 38' 46" W, a distance of 9.99 feet to a 1/2" iron rod with J.E. Garron cap found;
8. S 00° 58' 08" E, a distance of 129.20 feet to a 1/2" iron rod with J.E. Garron cap found on a northern line of said 163.935 acre tract and also being a southern line of said 35.04 acre tract;

THENCE, with a northern line of said 163.935 acre tract and also being the southern line of said 35.04 acre tract, N 88° 55' 55" E, a distance of 73.88 feet to a PK nail with washer stamped "PROTECH" found for an ell corner of said 163.935 acre tract and the northwestern corner of the remainder of a called 91.92 acre tract, conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas;

THENCE, with a eastern line of said 163.935 acre tract and also being the western line of said 91.92 acre tract, S10°01'04"W, a distance of 1388.58 feet to a 1/2" iron rod with broken cap found for the northwestern corner of said 82.951 acre tract and also being the southwestern corner of the remainder of said 91.92 acre tract;

THENCE, with the northern line of said 82.951 acre tract, the southern line of said remainder of 91.92 acre tract and also the southern boundary line of the remainder of a called 45.13 acre tract and of the remainder of a called 60.58 acre tract both conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, N88°27'53"E, a distance of 3878.65 feet to a 1/2" iron rod with a 4540 cap found for the northeastern corner of said 82.951 acre tract, the southeastern corner of said remainder of the 60.58 acre tract and also being on the western right-of-way line of F.M. 2001;

THENCE, with the eastern line of said 82.951 acre tract and also being the western right-of-way line of F.M. 2001, the following two (2) courses and distances:

1. S01°20'27"E, a distance of 856.10 feet to a concrete monument found on the arc of a curve to the left;
2. Along the arc of said curve to the left, a distance of 54.09 feet, having a radius of 756.20 feet, a delta angle of 4°05'54" and a chord bearing of S03°29'29"E, a distance of 54.08 feet to a 5/8" iron rod with aluminum "PRO TECH ENG" cap found on the arc of a curve to the left, for the southeastern corner of said 82.951 acre tract and the northern southeastern corner of said 163.935 acre tract;

THENCE, with the eastern line of said 163.935 acre tract and the western right-of-way line of F.M. 2001, along the arc of said curve to the left, a distance of 37.01 feet, having a radius of 756.20 feet, a delta angle of 2°48'14" and a chord bearing of S06°20'21"E, a distance of 37.00 feet to the POINT OF BEGINNING.

Containing 259.02 acres or 11,282,708 square feet, more or less.

BEARING BASIS NOTE

This project is referenced for all bearing and coordinate basis to the Texas State Plane Coordinate System NAD 83 (2011 adjustment), South Central Zone (4204). The Grid to Surface combined scale factor is 1.00013.

Robert J. Gertson, RPLS  
Texas Registration No. 6367  
Arwell, LLC  
805 Las Cimas Parkway, Suite 310  
Austin, Texas 78746  
Ph. 512-904-0505  
TBPE LS Firm No. 10193726



11/23/2021



## EXHIBIT K – IMPROVEMENT AREA #1 LEGAL DESCRIPTION

### EXHIBIT "A" DESCRIPTION

A 91.281 acres (3,976,181 square feet), tract of land, lying within the Jessie B. Eaves Survey, Abstract 166 and being all of a called 82.98 acre tract, conveyed to Hillside Terrace Development, LLC in Document No. 21069835, Official Public Records of Hays County, Texas and a portion of a called 163.935 acre tract, conveyed to Hillside Terrace Development LLC in Document No. 21020969 Official Public Records of Hays County, Texas, described as follows:

**BEGINNING** at a 5/8" iron rod with aluminum "PRO TECH ENG" cap found at the southeastern corner of said 163.935 acre tract, the northeastern corner of a called 2.80 acre tract, conveyed to James Mikeska & Traci Horne-Mikeska in Volume 1738, Page 731, Official Public Records of Hays County, Texas, and being on the western right-of-way line of F.M. 2001 (right-of-way varies), for the southeastern corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said 2.80 acre tract, S88°25'07"W, a distance of 858.81 feet to a 1/2" iron pipe found, for the northwestern corner of said 2.80 acre tract and the northeastern corner of Windy Hill Subdivision 24 AC, a subdivision, recorded in Document No. 17040372, Official Public Records of Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Windy Hill Subdivision 24 AC, S88°22'00"W, a distance of 1223.10 feet to a 3/4" iron pipe found, for the northwestern corner of said Windy Hill Subdivision 24 AC and the northeastern corner of Shadow Creek Phase 3, Section 4, a subdivision, recorded in Volume 13, Page 336, Plat Records Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of Shadow Creek Phase 9, Section 2, a subdivision, recorded in Document No. 17029868, Plat Records Hays County, Texas, S88°25'56"W, a distance of 1993.62 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" found for a southern angle corner of the herein described tract;

**THENCE**, continuing with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of said Shadow Creek Phase 9, Section 2, S88°24'30"W, a distance of 168.71 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the southwestern corner of the herein described tract;

**THENCE**, over and across said 163.935 acre tract, the following eight (8) courses and distances:

1. N01°30'41"W, 207.25 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
2. N88°29'23"E, 14.02 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
3. N01°35'27"W, 55.00 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
4. N04°13'38"E, 32.84 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
5. N10°02'37"E, 546.67 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
6. N72°49'45"W, 8.06 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
7. N10°00'58"E, 170.98 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the northwestern corner of the herein described tract;
8. S 79°57'22" E, 215.52 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set in the western line of the remainder of a called 91.92 acre tract, conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, and for a northern angle corner of the herein described tract;



THENCE, with the western line of the remainder of said 91.92 acre tract and also being a eastern line of said 163.935 acre tract, S10°01'01"W, a distance of 6.34 feet to a 1/2" iron rod with broken cap found for the northwestern corner of said 82.98 acre tract and also being the southwestern corner of the remainder of said 91.92 acre tract, and for a northern angle corner of the herein described tract;

THENCE, with the northern line of said 82.98 acre tract, the southern line of said remainder of 91.92 acre tract and also the southern boundary lines of the remainder of a called 45.13 acre tract and of the remainder of a called 60.58 acre tract both conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, N88°27'53"E, a distance of 3878.65 feet to a 1/2" iron rod with a 4540 cap found for the northeastern corner of said 82.98 acre tract, the southeastern corner of said remainder of the 60.58 acre tract and also being on the said western right-of-way line of F.M. 2001, for the northeastern corner of the herein described tract;

THENCE, with the eastern line of said 82.98 acre tract, said 163.935 acre tract and also being the said western right-of-way line of F.M. 2001, the following three (3) courses and distances:

1. S01°20'27"E, a distance of 856.10 feet to a concrete monument found on the arc of a curve to the left;
2. Along the arc of said curve to the left, a distance of 54.09 feet, having a radius of 756.20 feet, a delta angle of 4°05'54" and a chord bearing of S03°29'29"E, a distance of 54.08 feet to a 5/8" iron rod with aluminum cap stamped "PRO TECH ENG" found for the southeastern corner of said 82.98 acre tract and also being the northern southeastern corner of said 163.935 acre tract, and also being on the arc of a curve to the left;
3. Along the arc of said curve to the left, a distance of 37.01 feet, having a radius of 756.20 feet, a delta angle of 2°48'14" and a chord bearing of S06°20'21"E, a distance of 37.00 feet to the POINT OF BEGINNING.

Containing 91.281 acres (3,976,181 square feet), more or less, in Hays County.

**BEARING BASIS NOTE**

This project is referenced for all bearing and coordinate basis to the Texas State Plane Coordinate System NAD 83 (2011 adjustment), South Central Zone (4204). The Grid to Surface combined scale factor is 1.00013.

Robert J. Gertson, RPLS  
Texas Registration No. 6367  
Atwell, LLC  
805 Las Cimas Parkway, Suite 310  
Austin, Texas 78746  
Ph. 512-904-0505  
TBPE LS Firm No. 10193726



12/09/2022

## EXHIBIT L-1 – LOT TYPE 1 BUYER DISCLOSURE

### NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT

A person who proposes to sell or otherwise convey real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code (except for public improvement districts described under Section 372.0035), or Chapter 382, Local Government Code, shall first give to the purchaser of the property this written notice, signed by the seller.

For the purposes of this notice, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring the notice set forth below.

This notice requirement does not apply to a transfer:

- 1) under a court order or foreclosure sale;
- 2) by a trustee in bankruptcy;
- 3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- 4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- 5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- 6) from one co-owner to another co-owner of an undivided interest in the real property;
- 7) to a spouse or a person in the lineal line of consanguinity of the seller;
- 8) to or from a governmental entity; or
- 9) of only a mineral interest, leasehold interest, or security interest

The following notice shall be given to a prospective purchaser before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph of a purchase contract. In the event a contract of purchase and sale is entered into without the seller having provided the required notice, the purchaser, subject to certain exceptions, is entitled to terminate the contract.

A separate copy of this notice shall be executed by the seller and the purchaser and must be filed in the real property records of the county in which the property is located at the closing of the purchase and sale of the property.

AFTER RECORDING<sup>1</sup> RETURN TO:

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NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO  
KYLE, TEXAS  
CONCERNING THE FOLLOWING PROPERTY

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PROPERTY ADDRESS

**LOT TYPE 1 PRINCIPAL ASSESSMENT: \$37,527.56**

As the purchaser of the real property described above, you are obligated to pay assessments to Kyle, Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within *Porter Country Public Improvement District* (the "District") created under Subchapter A, Chapter 372, Local Government Code.

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from the City of Kyle. The exact amount of each annual installment will be approved each year by the Kyle City Council in the annual service plan update for the district. More information about the assessments, including the amounts and due dates, may be obtained from the City of Kyle.

Your failure to pay any assessment or any annual installment may result in penalties and interest being added to what you owe or in a lien on and the foreclosure of your property.

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<sup>1</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County when updating for the Current Information of Obligation to Pay Improvement District Assessment.

[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

The undersigned seller acknowledges providing this notice to the potential purchaser before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF SELLER

\_\_\_\_\_  
SIGNATURE OF SELLER]<sup>2</sup>

<sup>2</sup> To be included in copy of the notice required by Section 5.014, Tex. Prop. Code, to be executed by seller in accordance with Section 5.014(a-1), Tex. Prop. Code.

[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above. The undersigned purchaser acknowledged the receipt of this notice including the current information required by Section 5.0143, Texas Property Code, as amended.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>3</sup>

<sup>3</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.

[The undersigned seller acknowledges providing a separate copy of the notice required by Section 5.014 of the Texas Property Code including the current information required by Section 5.0143, Texas Property Code, as amended, at the closing of the purchase of the real property at the address above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF SELLER

\_\_\_\_\_  
SIGNATURE OF SELLER

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>4</sup>

<sup>4</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.

## ANNUAL INSTALLMENTS - LOT TYPE 1

Annual Installment Due 1/31	Improvement Area #1 PID Bonds					Annual Collection	
	Principal	Interest [a]	Capitalized Interest	Additional Interest [b]		Costs	Annual Installment
2023	\$ -	\$ 708.72	\$ (708.72)	\$ -		\$ -	\$ -
2024	-	2,298.56	(2,298.56)	174.16		96.59	270.74
2025	2.37	2,298.56	-	174.16		98.52	2,573.61
2026	2.37	2,298.42	-	187.63		100.49	2,588.90
2027	4.73	2,298.27	-	187.61		102.50	2,593.12
2028	40.25	2,297.98	-	187.59		104.55	2,630.37
2029	97.06	2,295.52	-	187.39		106.64	2,686.61
2030	156.25	2,289.57	-	186.90		108.77	2,741.50
2031	220.17	2,280.00	-	186.12		110.95	2,797.24
2032	288.82	2,266.52	-	185.02		113.17	2,853.53
2033	362.21	2,248.83	-	183.58		115.43	2,910.05
2034	445.07	2,226.64	-	181.77		117.74	2,971.22
2035	530.29	2,199.38	-	179.54		120.10	3,029.31
2036	624.99	2,166.90	-	176.89		122.50	3,091.28
2037	726.78	2,128.62	-	173.77		124.95	3,154.12
2038	838.05	2,084.11	-	170.13		127.45	3,219.73
2039	956.42	2,032.78	-	165.94		130.00	3,285.13
2040	1,081.89	1,974.19	-	161.16		132.60	3,349.84
2041	1,219.20	1,907.93	-	155.75		135.25	3,418.12
2042	1,368.34	1,833.25	-	149.65		137.95	3,489.20
2043	1,526.95	1,749.44	-	142.81		140.71	3,559.92
2044	1,695.04	1,655.92	-	135.18		143.53	3,629.66
2045	1,879.69	1,552.10	-	126.70		146.40	3,704.89
2046	2,076.18	1,436.96	-	117.30		149.32	3,779.78
2047	2,286.88	1,309.80	-	106.92		152.31	3,855.91
2048	2,514.15	1,169.73	-	95.49		155.36	3,934.72
2049	2,755.62	1,015.74	-	82.92		158.46	4,012.74
2050	3,016.03	846.95	-	69.14		161.63	4,093.76
2051	3,297.75	662.22	-	54.06		164.87	4,178.89
2052	3,596.04	460.23	-	37.57		168.16	4,262.00
2053	3,918.00	239.98	-	19.59		171.53	4,349.09
<b>Total</b>	<b>\$ 37,527.56</b>	<b>\$ 54,233.84</b>	<b>\$ (3,007.29)</b>	<b>\$ 4,342.43</b>		<b>\$ 3,918.42</b>	<b>\$ 97,014.97</b>

**Notes:**

[a] Interest on the Improvement Area #1 PID Bonds is calculated at a 6.125% rate for illustrative purposes.

[b] Additional Interest is calculated at a 0.50% rate.

*The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

Annual Installment Schedule to Notice  
of Obligation to Pay Improvement District Assessment

Item # 15

## EXHIBIT L-2 – LOT TYPE 2 BUYER DISCLOSURE

### NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT

A person who proposes to sell or otherwise convey real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code (except for public improvement districts described under Section 372.0035), or Chapter 382, Local Government Code, shall first give to the purchaser of the property this written notice, signed by the seller.

For the purposes of this notice, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring the notice set forth below.

This notice requirement does not apply to a transfer:

- 1) under a court order or foreclosure sale;
- 2) by a trustee in bankruptcy;
- 3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- 4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- 5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- 6) from one co-owner to another co-owner of an undivided interest in the real property;
- 7) to a spouse or a person in the lineal line of consanguinity of the seller;
- 8) to or from a governmental entity; or
- 9) of only a mineral interest, leasehold interest, or security interest

The following notice shall be given to a prospective purchaser before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph of a purchase contract. In the event a contract of purchase and sale is entered into without the seller having provided the required notice, the purchaser, subject to certain exceptions, is entitled to terminate the contract.

A separate copy of this notice shall be executed by the seller and the purchaser and must be filed in the real property records of the county in which the property is located at the closing of the purchase and sale of the property.



AFTER RECORDING<sup>1</sup> RETURN TO:

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NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO  
KYLE, TEXAS  
CONCERNING THE FOLLOWING PROPERTY

---

PROPERTY ADDRESS

**LOT TYPE 2 PRINCIPAL ASSESSMENT: \$45,390.48**

As the purchaser of the real property described above, you are obligated to pay assessments to Kyle, Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within ***Porter Country Public Improvement District*** (the "District") created under Subchapter A, Chapter 372, Local Government Code.

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from the City of Kyle. The exact amount of each annual installment will be approved each year by the Kyle City Council in the annual service plan update for the district. More information about the assessments, including the amounts and due dates, may be obtained from the City of Kyle.

Your failure to pay any assessment or any annual installment may result in penalties and interest being added to what you owe or in a lien on and the foreclosure of your property.

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<sup>1</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County when updating for the Current Information of Obligation to Pay Improvement District Assessment.

[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

The undersigned seller acknowledges providing this notice to the potential purchaser before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF SELLER

\_\_\_\_\_  
SIGNATURE OF SELLER]<sup>2</sup>

<sup>2</sup> To be included in copy of the notice required by Section 5.014, Tex. Prop. Code, to be executed by seller in accordance with Section 5.014(a-1), Tex. Prop. Code.

[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above. The undersigned purchaser acknowledged the receipt of this notice including the current information required by Section 5.0143, Texas Property Code, as amended.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>3</sup>

<sup>3</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.

[The undersigned seller acknowledges providing a separate copy of the notice required by Section 5.014 of the Texas Property Code including the current information required by Section 5.0143, Texas Property Code, as amended, at the closing of the purchase of the real property at the address above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF SELLER

\_\_\_\_\_  
SIGNATURE OF SELLER

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>4</sup>

<sup>4</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.

## ANNUAL INSTALLMENTS - LOT TYPE 2

Annual Installment Due 1/31	Improvement Area #1 PID Bonds				Annual Collection	
	Principal	Interest [a]	Capitalized Interest	Additional Interest [b]	Costs	Annual Installment
2023	\$ -	\$ 857.22	\$ (857.22)	\$ -	\$ -	\$ -
2024	-	2,780.17	(2,780.17)	210.65	116.83	327.47
2025	2.86	2,780.17	-	210.65	119.16	3,112.84
2026	2.86	2,779.99	-	226.94	121.55	3,131.34
2027	5.73	2,779.82	-	226.92	123.98	3,136.44
2028	48.68	2,779.47	-	226.90	126.46	3,181.49
2029	117.40	2,776.48	-	226.65	128.99	3,249.52
2030	188.98	2,769.29	-	226.06	131.57	3,315.91
2031	266.30	2,757.72	-	225.12	134.20	3,383.33
2032	349.33	2,741.41	-	223.79	136.88	3,451.41
2033	438.10	2,720.01	-	222.04	139.62	3,519.77
2034	538.32	2,693.18	-	219.85	142.41	3,593.76
2035	641.40	2,660.21	-	217.16	145.26	3,664.02
2036	755.94	2,620.92	-	213.95	148.16	3,738.97
2037	879.06	2,574.62	-	210.17	151.13	3,814.98
2038	1,013.64	2,520.78	-	205.78	154.15	3,894.34
2039	1,156.81	2,458.69	-	200.71	157.23	3,973.44
2040	1,308.57	2,387.84	-	194.93	160.38	4,051.71
2041	1,474.65	2,307.69	-	188.38	163.59	4,134.30
2042	1,655.04	2,217.36	-	181.01	166.86	4,220.27
2043	1,846.89	2,115.99	-	172.73	170.19	4,305.81
2044	2,050.19	2,002.87	-	163.50	173.60	4,390.16
2045	2,273.53	1,877.30	-	153.25	177.07	4,481.15
2046	2,511.19	1,738.04	-	141.88	180.61	4,571.73
2047	2,766.04	1,584.23	-	129.33	184.22	4,663.82
2048	3,040.92	1,414.81	-	115.49	187.91	4,759.14
2049	3,332.99	1,228.56	-	100.29	191.67	4,853.50
2050	3,647.96	1,024.41	-	83.63	195.50	4,951.50
2051	3,988.70	800.97	-	65.39	199.41	5,054.47
2052	4,349.49	556.66	-	45.44	203.40	5,155.00
2053	4,738.91	290.26	-	23.69	207.47	5,260.33
<b>Total</b>	<b>\$ 45,390.48</b>	<b>\$ 65,597.12</b>	<b>\$ (3,637.38)</b>	<b>\$ 5,252.28</b>	<b>\$ 4,739.42</b>	<b>\$ 117,341.91</b>

**Notes:**

[a] Interest on the Improvement Area #1 PID Bonds is calculated at a 6.125% rate for illustrative purposes.

[b] Additional Interest is calculated at a 0.50% rate.

*The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## **APPENDIX A – ENGINEER’S REPORT**

[Remainder of page intentionally left blank.]

\_\_\_\_\_, 2023

Norton Rose Fulbright US LLP  
98 San Jacinto Boulevard, Suite 1100  
Austin, Texas 78701-4255  
United States

Tel +1 512 474 5201  
Fax +1 512 536 4598  
nortonrosefulbright.com

DRAFT

IN REGARD to the authorization and issuance of the “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project )” (the “Bonds”), dated May 1, 2023, in the principal amount of \$\_\_\_\_\_, we have examined the legality and validity of the issuance thereof by the City of Kyle, Texas (the “City”) solely to express legal opinions as to the validity of the Bonds and the exclusion of the interest on the Bonds from gross income for federal income tax purposes, and for no other purpose. We have not been requested to investigate or verify, and we neither expressly nor by implication render herein any opinion concerning, the financial condition or capabilities of the City, or the history or prospects of the collection of the Pledged Revenues, the disclosure of any financial or statistical information or data pertaining to the City and used in the sale of the Bonds, or the sufficiency of the security for or the value or marketability of the Bonds, and have not assumed any responsibility with respect thereto. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Indenture.

THE BONDS are issued in fully registered form only and mature, unless redeemed prior to maturity in accordance with the terms stated on the Bonds, on September 1 in each of the years specified in the Bonds, all in accordance with the Indenture of Trust (the “Indenture”), dated as of May 1, 2023, between the City and BOKF, NA, as trustee (the “Trustee”), approved by the City Council of the City pursuant to an ordinance (the “Ordinance”) adopted by the City Council of the City on May 2, 2023 authorizing the issuance of the Bonds. The Bonds accrue interest from the date, at the rates, and in the manner and interest is payable on the dates, all as provided in the Indenture.

IN RENDERING THE OPINIONS herein we have examined and rely upon (i) original or certified copies of the proceedings had in connection with the issuance of the Bonds, including the Indenture, the Ordinance and an examination of the initial Bond executed and delivered by the City (which we found to be in due form and properly executed); (ii) certifications of officers of the City relating to the expected use and investment of proceeds of the sale of the Bonds and certain other funds of the City and (iii) other documentation and such matters of law as we deem relevant. In the examination of the proceedings relating to the issuance of the Bonds, we have assumed the authenticity of all documents submitted to us as originals, the conformity to original copies of all documents submitted to us as certified copies, and the accuracy of the statements contained in such documents and certifications.

BASED ON OUR EXAMINATION, we are of the opinion that, under applicable law of the United States of America and the State of Texas in force and effect on the date hereof:

Norton Rose Fulbright US LLP is a limited liability partnership registered under the laws of Texas.

Norton Rose Fulbright US LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP and Norton Rose Fulbright North Africa Inc are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

1. The Bonds have been authorized, issued and delivered in accordance with law; that the Bonds are valid, legally binding and enforceable limited obligations of the City in accordance with their terms payable solely from a first and prior lien on the Trust Estate, except to the extent the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws now or hereafter enacted relating to creditors' rights generally.

2. Assuming continuing compliance after the date hereof by the City with the provisions of the Indenture and in reliance upon representations and certifications of the City made in a certificate of even date herewith pertaining to the use, expenditure, and investment of the proceeds of the Bonds, interest on the Bonds for federal income tax purposes (i) will be excludable from gross income, as defined in Section 61 of the Internal Revenue Code of 1986, as amended to the date hereof, of the owners thereof pursuant to Section 103 of such Code, existing regulations, published rulings, and court decisions thereunder, and (ii) will not be included in computing the alternative minimum taxable income of the owners thereof who are individuals.

We express no opinion with respect to any other federal, state, or local tax consequences under present law or any proposed legislation resulting from the receipt or accrual of interest on, or the acquisition or disposition of, the Bonds. Ownership of tax-exempt obligations such as the Bonds may result in collateral federal tax consequences to, among others, financial institutions, property and casualty insurance companies, life insurance companies, certain foreign corporations doing business in the United States, S corporations with subchapter C earnings and profits, owners of an interest in a financial asset securitization investment trust, individual recipients of Social Security or Railroad Retirement Benefits, individuals otherwise qualifying for the earned income tax credit, owners of an interest in a financial asset securitization investment trust, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry, or who have paid or incurred certain expenses allocable to, tax-exempt obligations.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any facts or circumstances that may thereafter come to our attention or to reflect any changes in any law that may thereafter occur or become effective. Moreover, our opinions are not a guarantee of result and are not binding on the Internal Revenue Service; rather, such opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

Norton Rose Fulbright US LLP



**CITY OF KYLE, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023  
(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT  
IMPROVEMENT AREA #1 PROJECT)**

**CONTINUING DISCLOSURE AGREEMENT OF THE ISSUER**

This Continuing Disclosure Agreement of the Issuer dated as of May 1, 2023 (this “Disclosure Agreement”) is executed and delivered by and among the City of Kyle, Texas (the “Issuer”), P3Works, LLC (as more fully defined herein, the “Administrator”) and BOKF, NA, Houston, Texas, acting solely in its capacity as dissemination agent (as more particularly defined herein, the “Dissemination Agent”), with respect to the Issuer’s “Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project)” (the “Bonds”). The Issuer, the Administrator, and the Dissemination Agent covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Issuer, the Administrator and the Dissemination Agent for the benefit of the Owners (defined herein) and beneficial owners of the Bonds. Unless and until a different filing location is designated by the MSRB (defined herein) or the SEC (defined herein), all filings made by the Dissemination Agent pursuant to this Disclosure Agreement shall be filed with the MSRB through EMMA (defined herein).

**SECTION 2. Definitions.** In addition to the definitions set forth above and in the Indenture of Trust by and between the Issuer and the Trustee (as defined herein), dated as of May 1, 2023, relating to the Bonds (the “Indenture”), which apply to any capitalized term used in this Disclosure Agreement, including the Exhibits hereto, unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Additional Obligations” shall have the meaning assigned to such term in the Indenture.

“Administrator” shall mean the Issuer or the person or independent firm designated by the Issuer who shall have the responsibilities provided in the Service and Assessment Plan, the Indenture, or any other agreement or document approved by the Issuer related to the duties and responsibilities of the administration of the District. The Issuer has selected P3Works, LLC as the current Administrator.

“Annual Collection Costs” shall have the meaning assigned to such term in the Indenture.

“Annual Collections Report” shall mean any Annual Collection Report provided by the Issuer pursuant to, and as described in, Section 5 of this Disclosure Agreement.

“Annual Collections Report Filing Date” shall mean, for each Fiscal Year succeeding the reporting Fiscal Year, the date that is three (3) months after the Final Assessment Payment Date, which Annual Collections Report Filing Date is currently April 30.

“Annual Financial Information” shall mean annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 4(a) of this Disclosure Agreement.

“Annual Installment” shall have the meaning assigned to such term in the Indenture.

“Annual Issuer Report” shall mean any Annual Issuer Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Annual Issuer Report Filing Date” shall mean, for each Fiscal Year, the date that is six (6) months after the end of the Issuer’s Fiscal Year, which Filing Date is currently March 31.

“Annual Service Plan Update” shall mean the annual review and update of the Service and Assessment Plan required by the PID Act and the Service and Assessment Plan.

“Assessments” shall have the meaning assigned to such term in the Indenture.

“Business Day” shall have the meaning assigned to such term in the Indenture.

“Collections Reporting Date” shall mean, for each Tax Year, the date that is one (1) month after the Delinquency Date, which Collections Reporting Date is currently March 1.

“Completion Agreement” shall mean the Improvement Area #1 Completion Agreement effective as of May 2, 2023 by and between the Developer and the City.

“Delinquency Date” shall mean February 1 of the year following the year in which the Assessments were billed or as may be otherwise defined in Section 31.02 of the Texas Tax Code, as amended.

“Designated Improvement” shall mean any one or more of the Improvement Area #1 Improvements, the Improvement Area #1 Privately Financed Public Improvements, and the Privately Financed Improvements.

“Developer” shall mean Hillside Terrace Development, LLC, a Texas limited liability company, and its respective successors and assigns.

“Disclosure Agreement of the Developer” shall mean the Continuing Disclosure Agreement of the Developer dated as of May 1, 2023 executed and delivered by the Developer, the Administrator, and the Dissemination Agent.

“Disclosure Representative” shall mean the Director of Finance of the Issuer or the designee of either of such officers, or such other officer or employee as the Issuer may designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean BOKF, NA, Houston, Texas, a national banking association duly organized and existing under the laws of the United States, acting solely in its capacity of dissemination agent, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“District” shall mean Porter Country Public Improvement District.

“EMMA” shall mean the Electronic Municipal Market Access System currently available on the internet at <http://emma.msrb.org>.

“Final Assessment Payment Date” shall mean the calendar day preceding the Delinquency Date.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Fiscal Year” shall mean the Issuer’s fiscal year, currently the one-year period from October 1 through September 30.

“Improvement Area #1” shall have the meaning assigned to such term in the Indenture.

“Improvement Area #1 Improvements” shall have the meaning assigned to such term in the Indenture.

“Improvement Area #1 Privately Financed Public Improvements” shall have the meaning assigned to such term in the Indenture.

“Letter of Credit” shall have the meaning assigned to such term in the Indenture.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive continuing disclosure reports pursuant to the Rule.

“Outstanding” shall have the meaning assigned to such term in the Indenture.

“Owner(s)” shall mean the registered owner(s) of any Bonds, as shown in the register maintained by the Trustee.

“Participating Underwriter” shall mean FMSbonds, Inc. and its successors and assigns.

“PID Act” means Chapter 372, Texas Local Government Code, as amended.

“Prepayment” shall have the meaning assigned to such term in the Indenture.

“Privately Financed Improvements” shall have the meaning assigned to such term in the Indenture.

“Rule” shall mean Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SAP Update” shall have the meaning assigned to such term in Section 4(a)(iii) of this Disclosure Agreement.

“SEC” shall mean the United States Securities and Exchange Commission.

“Service and Assessment Plan” shall have the meaning assigned to such term in the Indenture.

“Special Event” shall mean any of the events listed in Section 6(d) of this Disclosure Agreement.

“Special Event Filing” shall mean a filing of a notice to be made upon the occurrence of a Special Event in accords with Section 6(d) of this Disclosure Agreement.

“Tax Year” means the calendar year or as may be otherwise defined in Section 1.04 of the Texas Tax Code, as amended.

“Trust Estate” shall have the meaning assigned to such term in the Indenture.

“Trustee” shall have the meaning assigned to such term in the Indenture.

### SECTION 3. Provision of Annual Issuer Reports.

(a) For each Fiscal Year, commencing with the Fiscal Year ending September 30, 2023, the Issuer shall cause, pursuant to written direction, and hereby directs the Dissemination Agent to provide or cause to be provided to the MSRB, in the electronic or other format required by the MSRB, not later than the Annual Issuer Report Filing Date, an Annual Issuer Report provided to the Dissemination Agent which complies with the requirements specified in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer, if prepared and when available, may be submitted separately from the Annual Issuer Report, and later than the date required in this paragraph for the filing of the Annual Issuer Report, if audited financial statements are not available by that date; provided, however, if the audited financial statements are not complete within such period, then the Issuer shall provide unaudited financial statements within such period. In each case, the Annual Issuer Report may be submitted as a single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Agreement. The Issuer is providing the audited financial statement in connection with the requirements of this Disclosure Agreement and the Rule; notwithstanding such requirements, the Bonds are special obligations of the Issuer and do not give rise to a charge against the general credit or taxing power of the Issuer and are payable solely from the sources identified in the Indenture. If the Issuer’s Fiscal Year changes, it shall file notice of such change (including the date of the new Fiscal Year) with the MSRB prior to the next Annual Issuer Report Filing Date. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

Not later than ten (10) days prior to the Annual Issuer Report Filing Date, the Issuer shall provide the Annual Issuer Report to the Dissemination Agent together with written direction to file such Annual

Issuer Report with the MSRB. The Dissemination Agent shall provide such Annual Issuer Report to the MSRB not later than ten (10) days from receipt of such Annual Issuer Report from the Issuer, but in no event later than the Annual Issuer Report Filing Date for such Fiscal Year.

If by the fifth (5<sup>th</sup>) day before the Annual Issuer Report Filing Date, the Dissemination Agent has not received a copy of the Annual Issuer Report, the Dissemination Agent shall contact the Disclosure Representative in writing (which may be by e-mail) to remind the Issuer of its undertaking to provide the applicable Annual Issuer Report pursuant to this subsection (a). Upon such reminder, the Disclosure Representative shall either (i) provide the Dissemination Agent with an electronic copy of the Annual Issuer Report no later than two (2) Business Days prior to the Annual Issuer Report Filing Date; or (ii) instruct the Dissemination Agent in writing that the Issuer will not be able to provide the Annual Issuer Report by the Annual Issuer Report Filing Date, state the date by which the Annual Issuer Report for such year will be provided and instruct the Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit A; provided, however, that in the event the Disclosure Representative is required to act under either (i) or (ii) described above, the Dissemination Agent still must file the Annual Issuer Report or the notice of failure to file, as applicable, to the MSRB, no later than the Annual Issuer Report Filing Date; provided further, however, that in the event the Disclosure Representative fails to act under either (i) or (ii) described above, the Dissemination Agent shall file a notice of failure to file no later than on the last Business Day prior to the Annual Issuer Report Filing Date; or the Issuer will notify the Dissemination Agent in writing that the Issuer will provide or cause to be provided the Annual Issuer Report to the MSRB through alternate means. If the Issuer so notifies the Dissemination Agent, the Issuer will provide the Dissemination Agent with a written report certifying that the Annual Issuer Report has been provided to the MSRB pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB prior to the second (2<sup>nd</sup>) Business Day prior to the Annual Issuer Report Filing Date. In the event the Issuer fails to provide the Dissemination Agent with such a report, the Dissemination Agent shall file a notice of failure to file no later than the last Business Day prior to the applicable Annual Issuer Report Filing Date.

- (b) The Issuer shall or shall cause the Dissemination Agent pursuant to written direction to:
  - (i) determine the filing address or other filing location of the MSRB each year prior to filing the Annual Issuer Report; and
  - (ii) file the Annual Issuer Report containing or incorporating by reference the information set forth in Section 4 hereof.

(c) If the Issuer has provided the Dissemination Agent with the completed Annual Issuer Report and the Dissemination Agent has filed such Annual Issuer Report with the MSRB, then the Dissemination Agent shall file a report with the Issuer certifying that the Annual Issuer Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB, which report shall include a filing receipt from the MSRB.

SECTION 4. Content and Timing of Annual Issuer Reports. The Annual Issuer Report for the Bonds shall contain or incorporate by reference, and the Issuer agrees to provide or cause to be provided to the Dissemination Agent to file by the Annual Issuer Report Filing Date, the following:

(a) *Annual Financial Information.* The following Annual Financial Information (any or all of which may be unaudited):

(i) Tables setting forth the following information, as of the end of such Fiscal Year:

(A) for the Bonds, the maturity date or dates, the interest rate or rates, the original aggregate principal amount, the aggregate principal amount Outstanding and the total interest amount due on aggregate principal amount Outstanding;

(B) the amounts in the funds and accounts securing the Bonds and a description of the related investments; and

(C) the assets and liabilities of the Trust Estate.

(ii) Financial information and operating data with respect to the Issuer of the general type and in substantially similar form to that shown in the tables provided under Sections 4(a)(ii) of Exhibit B attached hereto. Such information shall be provided as of the end of the reporting Fiscal Year.

(iii) Any updates to the Service and Assessment Plan, including the Annual Service Plan Update (collectively, a “SAP Update”).

(iv) Until certificates of occupancy (“COs”) have been issued (or, if COs are not issued upon completion of construction of single-family dwellings, approval of the final inspection has been granted) for lots representing, in the aggregate, ninety-five percent (95%) of the total single-family residential lots within Improvement Area #1, the Annual Issuer Report (in the SAP Update or otherwise) shall include the following:

(A) the number of COs issued for new homes completed in Improvement Area #1 during such Fiscal Year; and

(B) the aggregate number of COs issued for new homes completed within Improvement Area #1 since filing the initial Annual Financial Information for Fiscal Year ended September 30, 2023.

(v) A description of any amendment to this Disclosure Agreement and a copy of any restatements to the Issuer’s audited financial statements during such Fiscal Year.

(b) *Audited Financial Statements.* The audited financial statements of the Issuer for the most recently ended Fiscal Year, prepared in accordance with generally accepted accounting principles applicable from time to time to the Issuer and that have been audited by an independent certified public accountant. If the audited financial statements of the Issuer are not available by the Annual Issuer Report Filing Date, the Issuer shall provide unaudited financial statements of the Issuer no later than the Annual Issuer Report Filing Date and audited financial statements as described in the preceding sentence when and if available.

(c) A form for submitting the information set forth in Section 4(a) above is attached as Exhibit B hereto. Any or all of the items listed above may be included by specific reference to other

documents, including disclosure documents of debt issues of the Issuer, which have been submitted to and are publicly accessible from the MSRB. If the document included by reference is a final offering document, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

The Administrator, and if no Administrator is designated, Issuer's staff, shall prepare the Annual Financial Information. In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of the Annual Financial Information under this Section 4.

#### SECTION 5. Annual Collections Report.

(a) For each Fiscal Year succeeding the reporting Fiscal Year, the Issuer shall cause, pursuant to written direction, and hereby directs the Dissemination Agent to provide or cause to be provided to the MSRB, in the electronic or other format required by the MSRB, not later than the Annual Collections Report Filing Date, an Annual Collections Report provided to the Dissemination Agent which complies with the requirements specified in this Section 5; provided that the Issuer may provide the Annual Collections Report as part of the Annual Issuer Report, if such Annual Collections Report is available when the Annual Issuer Report is provided to the MSRB. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

Not later than ten (10) days prior to the Annual Collections Report Filing Date, the Issuer shall provide the Annual Collections Report to the Dissemination Agent together with written direction to file such Annual Collections Report with the MSRB. The Dissemination Agent shall provide such Annual Collections Report to the MSRB not later than ten (10) days from receipt of such Annual Collections Report from the Issuer, but in no event later than the Annual Collections Report Filing Date.

If by the fifth (5<sup>th</sup>) day before the Annual Collections Report Filing Date, the Dissemination Agent has not received a copy of the Annual Collections Report, the Dissemination Agent shall contact the Disclosure Representative in writing (which may be by e-mail) to remind the Issuer of its undertaking to provide the applicable Annual Collections Report pursuant to this subsection 5(a). Upon such reminder, the Disclosure Representative shall either (i) provide the Dissemination Agent with an electronic copy of the Annual Collections Report no later than two (2) Business Days prior to the Annual Collections Report Filing Date; or (ii) instruct the Dissemination Agent in writing that the Issuer will not be able to provide the Annual Collections Report by the Annual Collections Report Filing Date, state the date by which the Annual Collections Report for such year will be provided and instruct the Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit A; provided, however, that in the event the Disclosure Representative is required to act under either (i) or (ii) described above, the Dissemination Agent still must file the Annual Collections Report or the notice of failure to file, as applicable, to the MSRB, no later than the Annual Collections Report Filing Date; provided further, however, that in the event the Disclosure Representative fails to act under either (i) or (ii) described above, the Dissemination Agent shall file a notice of failure to file no later than on the last Business Day prior to the Annual Collections Report Filing Date; or the Issuer will notify the Dissemination Agent in writing that the Issuer will provide or cause to be provided the Annual Collections Report to the MSRB through alternate means. If the Issuer so notifies the Dissemination Agent, the Issuer will provide the Dissemination Agent with a written report certifying that the Annual Collections Report has been provided to the MSRB pursuant to this Disclosure Agreement, stating the

date it was provided and that it was filed with the MSRB prior to the second (2<sup>nd</sup>) Business Day prior to the Annual Collections Report Filing Date. In the event the Issuer fails to provide the Dissemination Agent with such a report, the Dissemination Agent shall file a notice of failure to file no later than the last Business Day prior to the applicable Annual Collections Report Filing Date.

(b) The Annual Collections Report for the Bonds shall contain, and the Issuer agrees to provide or cause to be provided to the Dissemination Agent to file by the Annual Collections Report Filing Date, certain financial information and operating data with respect to collection of the Assessments of the general type and in substantially similar form to that shown in the tables provided in Exhibit C attached hereto. Such information shall cover the period beginning the first (1<sup>st</sup>) day of the Fiscal Year succeeding the reporting Fiscal Year through the Collections Reporting Date. If the State Legislature amends the definition of Delinquency Date or Tax Year, the City shall file notice of such change or changes with the MSRB prior to the next Annual Collections Report Filing Date. The Administrator, and if no Administrator is designated, Issuer's staff, shall prepare the Annual Collections Report. In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of the Annual Collections Report under this Section 5.

#### SECTION 6. Reporting of Significant Events and Special Events.

(a) Pursuant to the provisions of this Section 6(a), each of the following is a Listed Event with respect to the Bonds:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancements reflecting financial difficulties.
5. Substitution of credit or liquidity providers, or their failure to perform.
6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.
7. Modifications to rights of Owners, if material.
8. Bond calls, if material, and tender offers.
9. Defeasances.
10. Release, substitution, or sale of property securing repayment of the bonds, if material.
11. Rating changes.



12. Bankruptcy, insolvency, receivership or similar event of the Issuer.

13. The consummation of a merger, consolidation, or acquisition of the Issuer, or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

14. Appointment of a successor or additional trustee under the Indenture or the change of name of a trustee, if material.

15. Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material.

16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

The sale by the Developer of real property within Improvement Area #1 will not constitute a Listed Event for the purposes of paragraph (10) above.

For these purposes, any event described in paragraph (12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

The Issuer intends the words used in paragraphs (15) and (16) above and the definition of Financial Obligation to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018. For the avoidance of doubt, the incurrence of Additional Obligations without the filing of a corresponding official statement with the MSRB will constitute the incurrence of a material Financial Obligation for which a notice of a Listed Event in accordance with this Section 6 must be filed with the MSRB.

Upon the occurrence of a Listed Event, the Issuer shall promptly notify the Dissemination Agent in writing and the Issuer shall direct the Dissemination Agent to file a notice of such occurrence with the MSRB. The Dissemination Agent shall file such notice no later than the Business Day immediately following the day on which it receives written notice of such occurrence from the Issuer. Any such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event; provided, however, the failure of the Issuer to provide timely written notice to the Dissemination Agent in accordance with this paragraph shall not constitute a failure of the Dissemination Agent to comply with the MSRB's ten (10) Business Day filing requirement.

Any notice under the preceding paragraphs shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Dissemination Agent to disseminate such information as provided herein, and the date the Issuer desires for the Dissemination Agent to disseminate the information. In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures made under this Section 6. In addition, the Issuer shall have the sole responsibility to ensure that any notice required to be filed under this Section 6 is filed within ten (10) Business Days of the occurrence of the Listed Event.

(b) The Dissemination Agent shall, promptly, and not more than five (5) Business Days after obtaining actual knowledge of the occurrence of any Listed Event with respect to the Bonds, notify the Disclosure Representative in writing of such Listed Event. The Dissemination Agent shall not be required to file a notice of the occurrence of such Listed Event with the MSRB unless and until it receives written instructions from the Disclosure Representative to do so. If the Dissemination Agent has been instructed in writing by the Disclosure Representative on behalf of the Issuer to report the occurrence of a Listed Event under this subsection (b), the Dissemination Agent shall file a notice of such occurrence with the MSRB no later than two (2) Business Days following the day on which it receives such written instructions. It is agreed and understood that the duty to make or cause to be made the disclosures herein is that of the Issuer and not that of the Dissemination Agent. It is agreed and understood that the Dissemination Agent has agreed to give the foregoing notice to the Issuer as an accommodation to assist it in monitoring the occurrence of such event, but is under no obligation to investigate whether any such event has occurred. As used above, “actual knowledge” means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Dissemination Agent be liable in damages or in tort to the Issuer, the Participating Underwriter, the Trustee, or any Owner or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(c) If in response to a notice from the Dissemination Agent under subsection (b), the Issuer determines that the Listed Event under number 2, 7, 8 (as to bond calls only), 10, 13, 14 or 15 of subparagraph (a) above is not material under applicable federal securities laws, the Issuer shall promptly, but in no case more than five (5) Business Days after the occurrence of the event, notify the Dissemination Agent and the Trustee (if the Dissemination Agent is not the Trustee) in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (b).

(d) Pursuant to the provisions of this Section 6(d), each of the following is a Special Event with respect to the Bonds:

1. Draw on the Letter of Credit by the City for financing the costs of the Designated Improvements; and
2. Occurrence of an “Event of Default” under the Completion Agreement.

Upon the occurrence of a Special Event, the Issuer shall promptly notify the Dissemination Agent in writing and the Issuer shall direct the Dissemination Agent to file a Special Event Filing with the MSRB. A Special Event Filing to be made in connection with a draw on the Letter of Credit must contain (i) the date of the draw request, (ii) the amount of the draw on the Letter of Credit and (iii) the Designated Improvement or Designated Improvements to be financed by such draw. A Special Event Filing to be made in connection with an Event of Default under the Completion Agreement must contain (i) the

nature of the default, (ii) the date of the Event of Default and (iii) the remedies sought by the Issuer. The Dissemination Agent shall file such Special Event Filing no later than the Business Day immediately following the day on which it receives such Special Event Filing from the Issuer. Any such filing is required to be filed within ten (10) Business Days of the occurrence of such Special Event; provided, however, the failure of the Issuer to provide timely written notice to the Dissemination Agent in accordance with this paragraph shall not constitute a failure of the Dissemination Agent to comply with the ten (10) Business Day filing requirement. In addition, the Issuer shall have the sole responsibility to ensure that any Special Event Filing required to be filed under this Section 6(d) is filed within ten (10) Business Days of the occurrence of a draw on the Letter of Credit, pursuant to the Completion Agreement.

SECTION 7. Termination of Reporting Obligations. The obligations of the Issuer, the Administrator and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds, when the Issuer is no longer an obligated person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Dissemination Agent and the Administrator of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required. So long as any of the Bonds remain Outstanding, the Administrator and Dissemination Agent may assume that the Issuer is an obligated person with respect to the Bonds until they receive written notice from the Disclosure Representative stating that the Issuer is no longer an obligated person with respect to the Bonds, and the Administrator and Dissemination Agent may conclusively rely upon such written notice with no duty to make investigation or inquiry into any statements contained or matters referred to in such written notice. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event with respect to the Bonds under Section 6(a).

SECTION 8. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent or successor Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If the Issuer discharges the Dissemination Agent without appointing a successor Dissemination Agent, the Issuer shall use best efforts to appoint a successor Dissemination Agent within thirty (30) days of such discharge. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be BOKF, NA, Houston, Texas. The Issuer will give prompt written notice to the Developer, or any other party responsible for providing quarterly information pursuant to the Disclosure Agreement of Developer, of any change in the identity of the Dissemination Agent under the Disclosure Agreement of Developer. The Dissemination Agent may resign at any time with thirty (30) days' written notice to the Issuer.

SECTION 9. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Issuer, the Administrator and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall not unreasonably withhold its consent to any amendment so requested in writing by the Issuer or the Administrator), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, 5 or 6(a), it may only be made in connection with a change in circumstances that arises from a change in legal

requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the delivery of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next related Annual Financial Information, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 6(a), and (ii) the Annual Financial Information for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. No amendment which adversely affects the Dissemination Agent may be made without its prior written consent (which consent will not be unreasonably withheld or delayed).

SECTION 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Issuer Report, Annual Collections Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Issuer Report, Annual Collections Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Issuer Report, Annual Collections Report or notice of occurrence of a Listed Event.

SECTION 11. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Agreement, the Dissemination Agent or any Owner or beneficial owner of the Bonds may, and the Trustee (at the written request of any Participating Underwriter or the Owners of at least twenty-five percent (25%) aggregate principal amount of Outstanding Bonds and upon being indemnified to its satisfaction) shall, take such actions as may be necessary and appropriate to cause the Issuer to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer to comply with this Disclosure Agreement shall be an action for mandamus or specific performance. A default under this Disclosure Agreement shall not be deemed a default under the Disclosure Agreement of Developer

and a default under the Disclosure Agreement of Developer shall not be deemed a default under this Disclosure Agreement.

SECTION 12. Duties, Immunities and Liabilities of Dissemination Agent and Administrator.

(a) The Dissemination Agent shall not have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent. To the extent permitted by law, the Issuer agrees to indemnify and hold harmless the Dissemination Agent, its officers, directors, employees and agents, but only from Annual Collection Costs collected from the property owners in Improvement Area #1, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct; provided, however, that nothing herein shall be construed to require the Issuer to indemnify the Dissemination Agent for losses, expenses or liabilities arising from information provided to the Dissemination Agent by the Developer or the failure of the Developer to provide information to the Dissemination Agent as and when required under the Disclosure Agreement of Developer. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Dissemination Agent is an "obligated person" under the Rule. If the Issuer does not provide the Dissemination Agent with the Annual Issuer Report in accordance with Section 3(a) or the Annual Collections Report in accordance with Section 5(a), the Dissemination Agent shall not be responsible for the failure to submit an Annual Issuer Report or Annual Collections Report, as applicable, to the MSRB. The Dissemination Agent is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The fact that the Dissemination Agent may have a banking or other business relationship with the Issuer or any person with whom the Issuer contracts in connection with the transaction described in the Indenture, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event described in Section 6 above, except as may be provided by written notice to the Dissemination Agent pursuant to this Disclosure Agreement.

The Dissemination Agent may, from time to time, consult with legal counsel of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and the Dissemination Agent shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

(b) The Administrator shall not have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Administrator shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Administrator. To the extent permitted by law, the Issuer agrees to hold harmless the Administrator, its officers, directors, employees and agents, but only from Annual Collection Costs collected from the property owners in Improvement Area #1, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Administrator's negligence or willful misconduct; provided, however, that nothing herein shall be construed to require the Issuer to indemnify

the Administrator for losses, expenses or liabilities arising from information provided to the Administrator by third parties, or the failure of any third party to provide information to the Administrator as and when required under this Disclosure Agreement, or the failure of the Developer to provide information to the Administrator as and when required under the Disclosure Agreement of Developer. The obligations of the Issuer under this Section shall survive resignation or removal of the Administrator and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Administrator is an “obligated person” under the Rule. The Administrator is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The Administrator shall not in any event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to duties and responsibilities of the Administrator hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document delivered to the Administrator and believed to be genuine and to have been signed or presented by the proper party or parties.

The Administrator may, from time to time, consult with legal counsel of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and the Administrator shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

(c) UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT, THE ADMINISTRATOR, OR THE ISSUER BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY ANY PARTY TO THIS DISCLOSURE AGREEMENT WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE DISSEMINATION AGENT AND THE ADMINISTRATOR ARE UNDER NO OBLIGATION NOR ARE THEY REQUIRED TO BRING SUCH AN ACTION.

SECTION 13. Assessment Timeline. The basic expected timeline for the collection of Assessments and the anticipated procedures for pursuing the collection of delinquent Assessments is set forth in Exhibit D which is intended to illustrate the general procedures expected to be followed in enforcing the payment of delinquent Assessments. Failure to adhere to such expected timeline shall not constitute a default by the Issuer under this Disclosure Agreement, the Indenture, the Bonds or any other document related to the Bonds.

SECTION 14. No Personal Liability. No covenant, stipulation, obligation or agreement of the Issuer, the Administrator or Dissemination Agent contained in this Disclosure Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future council members, officer, agent or employee of the Issuer, the Administrator or Dissemination Agent in other than that person’s official capacity.

SECTION 15. Severability. In case any section or provision of this Disclosure Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reasons held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision thereof or

any other covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder (except to the extent that such remainder or section or provision or other covenant, stipulation, obligation, agreement, act or action, or part thereof is wholly dependent for its operation on the provision determined to be invalid), which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 16. Sovereign Immunity. The Dissemination Agent and the Administrator agree that nothing in this Disclosure Agreement shall constitute or be construed as a waiver of the Issuer's sovereign or governmental immunities regarding liability or suit.

SECTION 17. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Administrator, the Dissemination Agent, the Participating Underwriter, and the Owners and the beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 18. Dissemination Agent and Administrator Compensation. The fees and expenses incurred by the Dissemination Agent and the Administrator for their respective services rendered in accordance with this Disclosure Agreement constitute Annual Collection Costs and will be included in the Annual Installments as provided in the annual updates to the Service and Assessment Plan. The Issuer shall pay or reimburse the Dissemination Agent and the Administrator, but only with funds to be provided from the Annual Collection Costs component of the Annual Installments collected from the property owners in Improvement Area #1, for the fees and expenses for their respective services rendered in accordance with this Disclosure Agreement.

SECTION 19. Anti-Boycott Verification. The Dissemination Agent and Administrator, each respectively, hereby verify that the Dissemination Agent, the Administrator and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Dissemination Agent and Administrator, if any, do not boycott Israel and, to the extent this Disclosure Agreement is a contract for goods or services, will not boycott Israel during the term of this Disclosure Agreement. The foregoing verification is made solely to enable the Issuer to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

SECTION 20. Iran, Sudan and Foreign Terrorist Organizations. The Dissemination Agent and the Administrator, each respectively, represent that neither the Dissemination Agent, the Administrator nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Dissemination Agent or the Administrator is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

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

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

The foregoing representation is made solely to enable the Issuer to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law and excludes the Dissemination Agent, the Administrator and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Dissemination Agent or the Administrator, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

SECTION 21. No Discrimination Against Fossil-Fuel Companies. To the extent this Disclosure Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Dissemination Agent and the Administrator, each respectively, hereby verify that the Dissemination Agent, the Administrator and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Dissemination Agent and Administrator, if any, do not boycott energy companies and will not boycott energy companies during the term of this Disclosure Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

SECTION 22. No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Disclosure Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Dissemination Agent and the Administrator, each respectively, hereby verify that the Dissemination Agent, the Administrator and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Dissemination and Administrator, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Disclosure Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification,

(a) “discriminate against a firearm entity or firearm trade association” (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the



established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association,

(b) "firearm entity" means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and

(c) "firearm trade association" means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

SECTION 23. Affiliate. As used in Sections 19 through 22, the Dissemination Agent and Administrator, each respectively, understand "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Dissemination Agent or the Administrator within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

SECTION 24. Disclosure of Interested Parties. Pursuant to Section 2252.908(c)(4), Texas Government Code, as amended, the Dissemination Agent hereby certifies it is a publicly traded business entity and is not required to file a Certificate of Interested Parties Form 1295 related to this Disclosure Agreement. Submitted herewith is a completed Form 1295 in connection with the Administrator's participation in the execution of this Disclosure Agreement generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The Issuer hereby confirms receipt of the Form 1295 from the Administrator, and the Issuer agrees to acknowledge such form with the TEC through its electronic filing application not later than the thirtieth (30th) day after the receipt of such form. The Administrator and the Issuer understand and agree that, with the exception of information identifying the Issuer and the contract identification number, neither the Issuer nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Administrator; and, neither the Issuer nor its consultants have verified such information.

SECTION 25. Governing Law. This Disclosure Agreement shall be governed by the laws of the State of Texas.

SECTION 26. Counterparts. This Disclosure Agreement may be executed in several

counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

CITY OF KYLE, TEXAS

By: \_\_\_\_\_  
[Interim] City Manager

BOKF, NA, Houston, Texas  
(as Dissemination Agent)

By: \_\_\_\_\_  
Authorized Officer

P3WORKS, LLC  
(as Administrator)

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO MSRB OF FAILURE TO FILE  
[ANNUAL ISSUER REPORT][ANNUAL COLLECTIONS REPORT]**

Name of Issuer: City of Kyle, Texas  
Name of Bond Issue: Special Assessment Revenue Bonds, Series 2023  
(Porter Country Public Improvement District Improvement Area #1  
Project)(the “Bonds”)  
CUSIP Nos.: [insert CUSIP Numbers]  
Date of Delivery: \_\_\_\_\_, 20\_\_

NOTICE IS HEREBY GIVEN that the City of Kyle, Texas (the “Issuer”), has not provided [Annual Financial Information][[audited][unaudited] financial statements][the Annual Collections Report] for fiscal year ended \_\_\_\_\_ with respect to the Bonds as required by the Continuing Disclosure Agreement of the Issuer dated as of May 1, 2023, by and among the Issuer, P3Works, LLC, as the “Administrator,” and BOKF, NA, as “Dissemination Agent.” The Issuer anticipates that [the Annual Financial Information][[audited][unaudited] financial statements][the Annual Collections Report] will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

BOKF, NA, Houston, Texas  
on behalf of the City of Kyle, Texas  
(as Dissemination Agent)

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

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

cc: City of Kyle, Texas

**EXHIBIT B**

**CITY OF KYLE, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023  
(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT  
IMPROVEMENT AREA #1 PROJECT)**

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**ANNUAL FINANCIAL INFORMATION\***

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Delivery Date: \_\_\_\_\_, 20\_\_

CUSIP NOS: [insert CUSIP NOs.]

**DISSEMINATION AGENT**

Name: BOKF, NA, Houston, Texas

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

City: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

Contact Person: Attn: \_\_\_\_\_

**Section 4(a)(i)(A)**

**BONDS OUTSTANDING**

CUSIP Number	Maturity Date	Interest Rate	Original Principal Amount	Outstanding Principal Amount	Outstanding Interest Amount

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\* Excluding audited financial statements of the Issuer.

**Section 4(a)(i)(B)****INVESTMENTS**

Fund/ Account Name	Investment Description	Par Value	Book Value	Market Value

**Section 4(a)(i)(C)****ASSETS AND LIABILITIES OF TRUST ESTATE**

Cash Position of Trust Estate for statements dated September 30, 20[ ]		
[List of Funds/Accounts Held Under Indenture]	Amount In the Fund	
Total		A
Bond Principal Amount Outstanding		B
Outstanding Assessment Amount to be collected		C
<b>Net Position of Trust Estate and Outstanding Bonds and Assessments</b>		<b>A-B+C</b>

September 30, 20[ ] Trust Statements:      ☐ Audited                      ☐ Unaudited

Accounting Type:              ☐ Cash              ☐ Accrual              ☐ Modified Accrual

**Section 4(a)(ii)**

**FINANCIAL INFORMATION AND OPERATING DATA WITH RESPECT TO THE  
ISSUER OF THE GENERAL TYPE AND IN SUBSTANTIALLY SIMILAR FORM  
PROVIDED IN THE FOLLOWING TABLES AS OF THE END OF THE FISCAL YEAR**

**Debt Service Requirements on the Bonds**

<u>Year Ending</u> <u>(September 30)</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
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**Top [Five] Assessment Payers in Improvement Area #1<sup>(1)</sup>**

<u>Property Owner</u>	<u>No. of Parcels/Lots</u>	<u>Percentage of Parcels/Lots</u>	<u>Outstanding Assessments</u>	<u>Percentage of Total Assessments</u>
-----------------------	----------------------------	---------------------------------------	------------------------------------	--

<sup>(1)</sup> Does not include those owing less than one percent (1%) of total Assessments.

**Assessed Value of Improvement Area #1 of the District**

The [YEAR] certified total assessed value for the land in Improvement Area #1 of the District is approximately \$[AMOUNT] according to the Hays County Central Appraisal District.

**Foreclosure History Related to the Assessments for the Past Five Fiscal Years**

<u>Fiscal Year Ended (9/30)</u>	<u>Delinquent Assessment Amount not in Foreclosure Proceedings</u>	<u>Parcels in Foreclosure Proceedings</u>	<u>Delinquent Assessment Amount in Foreclosure Proceedings</u>	<u>Foreclosure Sales</u>	<u>Foreclosure Proceeds Received</u>
20__	\$		\$		\$
20__					
20__					
20__					
20__					

[insert any necessary footnotes]

**Collection and Delinquency History of Annual Installments for the Past Five Fiscal Years**

<u>Fiscal Year Ended (9/30)</u>	<u>Total Annual Installment Billed</u>	<u>Parcels Levied<sup>(1)</sup></u>	<u>Delinquent Amount as of 3/1</u>	<u>Delinquent % as of 3/1</u>	<u>Delinquent Amount as of [9/1]</u>	<u>Delinquent % as of [9/1]</u>	<u>Total Assessments Collected<sup>(2)</sup></u>
20__	\$		\$	%	\$	%	\$
20__							
20__							
20__							
20__							

<sup>(1)</sup> Pursuant to Section 31.031, Texas Tax Code, certain veterans, persons aged 65 or older, and the disabled, who qualify for an exemption under either Section 11.13(c), 11.32, or 11.22, Texas Tax Code, are eligible to pay property taxes in four equal installments ("Installment Payments"). Effective January 1, 2018, pursuant to Section 31.031(a-1), Texas Tax Code, the Installment Payments are each due before February 1, April 1, June 1, and August 1. Each unpaid Installment Payment is delinquent and incurs penalties and interest if not paid by the applicable date.

<sup>(2)</sup> [Does/does not] include interest and penalties.

**Parcel Numbers for Delinquencies Equaling or Exceeding 10% of Annual Installments Due**

For the past five Fiscal Years, if the total amount of delinquencies as of September 1 equals or exceeds ten percent (10%) of the amount of Annual Installments due, a list of parcel numbers for which the Annual Installments are delinquent.

<u>Fiscal Year Ended (9/30)</u>	<u>Delinquent % as of 9/1</u>	<u>Parcel Numbers</u>
20__	%	
20__		

**History of Prepayment of Assessments for the Past Five Fiscal Years**

<u>Fiscal Year Ended (9/30)</u>	<u>Number of Prepayments</u>	<u>Amount of Prepayments</u> \$	<u>Bond Call Date</u>	<u>Amount of Bonds Redeemed</u> \$
20__				
20__				
20__				
20__				
20__				

---

[insert any necessary footnotes]

**ITEMS REQUIRED BY SECTIONS 4(a)(iii) – (v) OF THE CONTINUING DISCLOSURE AGREEMENT OF THE ISSUER RELATING TO CITY OF KYLE, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023 (PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1 PROJECT)**

**[Insert a line item for each applicable listing]**

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**EXHIBIT C**

**CITY OF KYLE, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023  
(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT  
IMPROVEMENT AREA #1 PROJECT)**

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**ANNUAL COLLECTIONS REPORT**

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Delivery Date: \_\_\_\_\_, 20\_\_

CUSIP NOSs: [insert CUSIP Nos.]

**DISSEMINATION AGENT**

Name: BOKF, NA  
Address: [\_\_\_\_\_]   
City: [\_\_\_\_\_, Texas \_\_\_\_\_]  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
Contact Person: Attn: \_\_\_\_\_

**SELECT FINANCIAL INFORMATION AND OPERATING DATA WITH RESPECT TO  
COLLECTION OF THE ASSESSMENTS COVERING THE PERIOD BEGINNING WITH  
THE FIRST DAY OF THE FISCAL YEAR SUCCEEDING THE REPORTING FISCAL  
YEAR THROUGH THE COLLECTIONS REPORTING DATE PROVIDED IN  
COMPLIANCE WITH SECTION 5(A) OF THE CONTINUING DISCLOSURE  
AGREEMENT OF THE ISSUER RELATING TO CITY OF KYLE, TEXAS SPECIAL  
ASSESSMENT REVENUE BONDS, SERIES 2023 (PORTER COUNTRY PUBLIC  
IMPROVEMENT DISTRICT IMPROVEMENT AREA #1 PROJECT)**

**Foreclosure History Related To The Annual Installments<sup>(1)</sup>**

Succeeding Fiscal Year	Delinquent Annual Installment Amount not in Foreclosure <u>Proceedings</u>	Parcels in Foreclosure <u>Proceedings</u>	Delinquent Annual Installment Amount in Foreclosure <u>Proceedings</u>	Foreclosure <u>Sales</u>	Foreclosure Proceeds <u>Received</u>
20	\$		\$		\$

(i) Period covered includes October 1, 20\_\_ through March 1, 20\_\_.

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**Collection and Delinquency Annual Installments**<sup>(1)</sup>

Succeeding Fiscal Year 20__	Total Annual Installment <u>Levied</u> \$	Parcels <u>Levied</u> <sup>(2)</sup>	Delinquent Amount as <u>of 3/1</u> \$	Delinquent <u>% as of 3/1</u> %	Total Annual Installments <u>Collected</u> <sup>(3)</sup> \$
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<sup>(1)</sup> Period covered includes October 1, 20\_\_ through March 1, 20\_\_.

<sup>(2)</sup> Pursuant to Section 31.031, Texas Tax Code, certain veterans, persons aged 65 or older, and the disabled, who qualify for an exemption under either Section 11.13(c), 11.32, or 11.22, Texas Tax Code, are eligible to pay property taxes in four equal installments ("Installment Payments"). Effective January 1, 2018, pursuant to Section 31.031(a-1), Texas Tax Code, the Installment Payments are each due before February 1, April 1, June 1, and August 1. Each unpaid Installment Payment is delinquent and incurs penalties and interest if not paid by the applicable date.

<sup>(3)</sup> [Does/does not] include interest and penalties.

**Prepayment of Assessments**<sup>(1)</sup>

Succeeding Fiscal Year	Number of <u>Prepayments</u>	Amount of <u>Prepayments</u> \$	<u>Bond Call Date</u>	Amount of Bonds <u>Redeemed</u> \$
---------------------------	---------------------------------	---------------------------------------	-----------------------	---

<sup>(1)</sup> Period covered includes October 1, 20\_\_ through March 1, 20\_\_.

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## EXHIBIT D

### BASIC EXPECTED TIMELINE FOR ASSESSMENT COLLECTIONS AND PURSUIT OF DELINQUENCIES<sup>1</sup>

<u>Date</u>	<u>Delinquency Clock (Days)</u>	<u>Activity</u>
January 31		Assessments are due.
February 1	1	Assessments delinquent if not received.
February 15	15	<p>Immediately upon receipt, but in no event later than February 15, Issuer forwards payment to Trustee for all collections received, along with detailed breakdown. Subsequent payments and relevant details will follow monthly thereafter.</p> <p>Issuer and/or Administrator should be aware of actual and specific delinquencies</p> <p>Administrator should be aware if Reserve Fund needs to be utilized for debt service payments during the corresponding Fiscal Year. <b>If there is to be a shortfall of any Annual Installments due to be paid that Fiscal Year, the Dissemination Agent should be immediately notified in writing.</b></p> <p>Administrator should determine if previously collected surplus funds, if any, plus actual Annual Installment collections will be fully adequate for debt service in the corresponding March and September.</p> <p>At this point, if there is adequate funding for March and September payments, no further action is anticipated for collection of Assessments except that the Issuer or Administrator, working with the City Attorney or an appropriate designee, will begin process to cure deficiency. <b>For properties delinquent by more than one year or if the delinquency exceeds \$10,000 the matter will be referred for commencement of</b></p>

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<sup>1</sup> Illustrates anticipated dates and procedures for pursuing the collection of delinquent Annual Installments of Assessments, which dates and procedures shall be in accordance with Chapters 31, 32, 33 and 34, Texas Tax Code, as amended (the "Code"), and the Hays County Tax/Assessor Collector's procedures, and are subject to adjustment by the Issuer. If the collection and delinquency procedures under the Code are subsequently modified, whether due to an executive order of the Governor of Texas or an amendment to the Code, such modifications shall control.

foreclosure, in accordance with the Hays County Tax Assessor-Collector's procedures<sup>2</sup>.

**If there is insufficient funding in the Pledged Revenue Fund for transfer to the Principal and Interest Account of the Bond Fund of such amounts as shall be required for the full March and September payments, the collection-foreclosure procedure will proceed against all delinquent properties, in accordance with the Hays County Tax Assessor-Collector procedures<sup>2</sup>.**

March 15

43/44

Trustee pays Bond interest payments to Owners.

Reserve Fund payment to Bond Fund may be required if Assessments are below approximately 50% collection rate.

Issuer, or the Trustee on behalf of the Issuer, to notify Dissemination Agent in writing of the occurrence of draw on the Reserve Fund and, following receipt of such notice, Dissemination Agent to notify MSRB of such draw or the Reserve Fund.

**Use of Reserve Fund for debt service payment should trigger commencement of foreclosure on delinquent properties.**

July 1

152/153

Issuer, or the Administrator on behalf of the Issuer, determines whether or not any Annual Installments are delinquent and, if such delinquencies exist, the Issuer commences as soon as practicable appropriate and legally permissible actions to obtain such delinquent Annual Installments, in accordance with the Hays County Tax Assessor-Collector procedures<sup>2</sup>.

**Preliminary Foreclosure activity commences, in accordance with the Hays County/Tax Assessor Collector procedures<sup>2</sup>, and Issuer to notify Dissemination Agent in writing of the commencement of preliminary foreclosure activity.**

If Dissemination Agent has not received Foreclosure Schedule and Plan of Collections, Dissemination Agent to request same from the Issuer.

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<sup>2</sup> If the collection and delinquency procedures under the Code are subsequently modified, whether due to an executive order of the Governor of Texas or an amendment to the Code, such modifications shall control.

If the Issuer has not provided the Dissemination Agent with Foreclosure Schedule and Plan of Collections, and if instructed by the Owners under Section 11.2 of the Indenture, Trustee requests that the Issuer commence foreclosure or provide plan for collection and deliver such plan to the Dissemination Agent.

August 15

197/198

The designated lawyers or law firm will be preparing the formal foreclosure documents and will provide periodic updates to the Dissemination Agent for dissemination to those Owners who have requested to be notified of collections progress. The goal for the foreclosure actions is a filing by no later than August 15 (day 197/198).

**Foreclosure action to be filed with the court, in accordance with the Hays County Tax Assessor-Collector procedures<sup>3</sup>.**

**Issuer notifies Trustee and Dissemination Agent of Foreclosure filing status in writing. Dissemination Agent notifies Owners.**

If Owners and Dissemination Agent have not been notified of a foreclosure action, Dissemination Agent will notify the Issuer that it is appropriate to file action.

A committee of not less than twenty-five percent (25%) of the Owners may request a meeting with the City Manager, Assistant City Manager or the Director of Finance to discuss the Issuer's actions in pursuing the repayment of any delinquencies. This would also occur after day thirty (30) if it is apparent that a Reserve Fund draw is required. Further, if delinquencies exceed five percent (5%), Owners may also request a meeting with the Issuer at any time to discuss the Issuer's plan and progress on collection and foreclosure activity. If the Issuer is not diligently proceeding with the foreclosure process, the Owners may seek an action for mandamus or specific performance to direct the Issuer to pursue the collections of delinquent Annual Installments of Assessments.

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<sup>3</sup> If the collection and delinquency procedures under the Code are subsequently modified, whether due to an executive order of the Governor of Texas or an amendment to the Code, such modifications shall control.

**CITY OF KYLE, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023  
(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT  
IMPROVEMENT AREA #1 PROJECT)**

**CONTINUING DISCLOSURE AGREEMENT OF THE DEVELOPER**

This Continuing Disclosure Agreement of the Developer dated as of May 1, 2023 (this “Disclosure Agreement”) is executed and delivered by and among Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”), P3Works, LLC (the “Administrator”), and BOKF, NA, Houston, Texas, acting solely in the capacity of dissemination agent (as more particularly defined below, the “Dissemination Agent”) with respect to the “City of Kyle, Texas, Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project)” (the “Bonds”). The Developer, the Administrator and the Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Developer, the Administrator and the Dissemination Agent for the benefit of the Owners (defined below) and beneficial owners of the Bonds. Unless and until a different filing location is designated by the MSRB (defined below) or the SEC (defined below), all filings made by the Dissemination Agent pursuant to this Disclosure Agreement shall be filed with the MSRB through EMMA (defined below).

SECTION 2. Definitions. In addition to the definitions set forth above and in the Indenture of Trust dated as of May 1, 2023, relating to the Bonds (the “Indenture”), which apply to any capitalized term used in this Disclosure Agreement, including the Exhibits hereto, unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Administrator” shall mean the Issuer or the person or independent firm designated by the Issuer who shall have the responsibility provided in the Service and Assessment Plan, the Indenture, or any other agreement or document approved by the Issuer related to the duties and responsibility of the administration of the District. The Issuer has selected P3Works, LLC as the current Administrator.

“Annual Collection Costs” shall have the meaning assigned to such term in the Indenture.

“Annual Installment” shall have the meaning assigned to such term in the Indenture.

“Annual Service Plan Update” shall mean the annual review and update of the Service and Assessment Plan required by the PID Act and the Service and Assessment Plan.

“Assessed Property” shall have the meaning assigned to such term in the Indenture.

“Assessment Roll” shall have the meaning assigned to such term in the Indenture.

“Assessments” shall have the meaning assigned to such term in the Indenture.



“Business Day” shall have the meaning assigned to such term in the Indenture.

“Certification Letter” shall mean a certification letter provided by a Reporting Party pursuant to Section 3, in substantially the form attached as Exhibit D.

“Completion Agreement” shall have the meaning assigned to such term in the Indenture.

“Designated Improvements” shall mean, collectively, the Improvement Area #1 Improvements, the Improvement Area #1 Privately Financed Public Improvements and the Privately Financed Improvements.

“Developer” shall mean Hillside Terrace Development, LLC, a Texas limited liability company, and each other Person, through assignment, who assumes the obligations, requirements or covenants to construct one or more of the Improvement Area #1 Improvements, Improvement Area #1 Privately Financed Public Improvements, Privately Financed Improvements or HOA Amenities, and their designated successors and assigns.

“Developer Listed Events” shall mean any of the events listed in Section 4(a) of this Disclosure Agreement.

“Disclosure Agreement of the Issuer” shall mean the Continuing Disclosure Agreement of the Issuer dated as of May 1, 2023 executed and delivered by and among the Issuer, the Administrator and the Dissemination Agent.

“Dissemination Agent” shall mean BOKF, NA, Houston, Texas, a national banking association duly organized and existing under the laws of the United States, acting solely in its capacity of dissemination agent, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“District” shall mean Porter Country Public Improvement District.

“EMMA” shall mean the Electronic Municipal Market Access System available on the internet at <http://emma.msrb.org>.

“HOA Amenities” shall mean the amenity center, including, but not limited to, a pool, lawn, lounge, activity areas, shade structures, and restrooms, and other similar improvements, to be constructed by the Developer within the District and to be owned and/or operated by a homeowners’ association.

“Homebuilder(s)” shall mean any merchant homebuilder who enters into an Lot Purchase Agreement with the Developer and/or another merchant homebuilder, and the affiliates and/or successors and assigns of such homebuilder under such Lot Purchase Agreement.

“Improvement Area #1” shall have the meaning assigned to such term in the Indenture.

“Improvement Area #1 Improvements” shall have the meaning assigned to such term in the Indenture.

“Improvement Area #1 Privately Financed Public Improvements” shall have the meaning assigned to such term in the Indenture.

“Issuer” shall mean the City of Kyle, Texas.

“Letter of Credit” shall have the meaning assigned to such term in the Indenture.

“Listed Events” shall mean, collectively, Developer Listed Events and Significant Homebuilder Listed Events.

“Lot Purchase Agreement” shall mean, with respect to lots or land within Improvement Area #1, any lot purchase and sale agreement between one or more Homebuilders and/or the Developer to purchase lots or to purchase land intended for single family residential development and use, including detached or attached single family homes or townhomes.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive continuing disclosure reports pursuant to the Rule.

“Outstanding” shall have the meaning assigned to such term in the Indenture.

“Owner” shall mean the registered owner of any Bonds.

“Participating Underwriter” shall mean FMSbonds, Inc., and its successors and assigns.

“Person” shall mean any legal person, including any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government, or any agency or political subdivision thereof.

“Privately Financed Improvements” shall have the meaning assigned to such term in the Indenture.

“Quarterly Ending Date” shall mean each March 31, June 30, September 30 and December 31, beginning [September 30], 2023.

“Quarterly Filing Date” shall mean for each Quarterly Ending Date, the fifteenth calendar day of the second month following such Quarterly Ending Date being May 15, August 15, November 15, and February 15.

“Quarterly Information” shall have the meaning assigned to such term in Section 3 of this Disclosure Agreement.

“Quarterly Report” shall mean any Quarterly Report described in Section 3 of this Disclosure Agreement and substantially similar to that attached as Exhibit A hereto.

“Reporting Party” shall mean, collectively, the Developer and any Significant Homebuilder who has acknowledged and assumed reporting obligations in accordance with Section 6 of this Disclosure Agreement.

“Rule” shall mean Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Service and Assessment Plan” shall have the meaning assigned to such term in the Indenture.

“Significant Homebuilder” shall mean a Homebuilder, including any affiliates of such Homebuilder, that then owns twenty (20) or more of the single family residential lots within Improvement Area #1.

“Significant Homebuilder Listed Events” shall mean any of the events listed in Section 4(b) of this Disclosure Agreement.

“Trustee” shall have the meaning assigned to such term in the Indenture.

### SECTION 3. Quarterly Reports.

(a) The Developer with respect to Improvement Area #1 and all real property in Improvement Area #1 (except as provided in the last sentence of this subsection (a)), and any other Reporting Party, with respect to its acquired real property, shall, at its cost and expense, provide, or cause to be provided, to the Administrator, not more than ten (10) days after each Quarterly Ending Date, beginning with [September 30, 2023], the information required for the preparation of the Quarterly Report (with respect to each Reporting Party, the “Quarterly Information”). The Reporting Party shall provide, or cause to be provided, such Quarterly Information until such party’s obligations terminate pursuant to Section 7 of this Disclosure Agreement. For the avoidance of doubt, (i) if the Developer elects, the Developer may, but shall not be obligated to, provide any Quarterly Information on behalf of any Significant Homebuilder and (ii) the Developer shall remain obligated to provide the Quarterly Information with respect to any real property acquired by a Significant Homebuilder until an acknowledgment of assignment with respect to such real property is delivered in accordance with Section 6 of this Disclosure Agreement, at which time the Developer shall have no further obligation or liability for disclosures or other responsibilities under this Disclosure Agreement as to the property so transferred.

(b) The Administrator shall (i) prepare each Quarterly Report with the Quarterly Information provided by each Reporting Party pursuant to subsection (a) above and (ii) provide to the Reporting Parties each Quarterly Report for review no later than twenty (20) days after each Quarterly Ending Date. Each Reporting Party shall review the Quarterly Report and, upon such review, shall promptly, but no later than thirty (30) days after each Quarterly Ending Date, provide to the Administrator the Certification Letter and authorize the Administrator to provide such Quarterly Report and Certification Letter to the Issuer and Dissemination Agent pursuant to subsection (c) below. In all cases, each Reporting Party shall have the sole responsibility for the content, design and other elements comprising substantive contents of all of the Quarterly Information provided by such Reporting Party contained in the Quarterly Report. Notwithstanding anything to the contrary in this Disclosure Agreement, the Developer shall use commercially reasonable efforts to cause to be provided any information required by this Section 3 regarding and in the possession of a Homebuilder that is not a Reporting Party. Without limiting the generality of the immediately preceding sentence, commercially reasonable efforts in such regard shall include, but not be limited to, ensuring that each Lot Purchase Agreement that is executed with a Homebuilder after the date hereof contains a provision obligating the applicable Homebuilder to

provide the Developer the information required by this Section 3 as and when required for the Developer to comply with its obligations hereunder.

(c) The Administrator shall provide to the Dissemination Agent, no later than thirty-five (35) days after each Quarterly Ending Date, the Quarterly Report containing the information described in this Section 3, the Certification Letter(s) provided by each Reporting Party, and written direction to the Dissemination Agent to file such documents with the MSRB. The Dissemination Agent shall file the Quarterly Report and the Certification Letter(s) with the MSRB and provide a copy of such report to the Issuer and the Participating Underwriter within ten (10) days of the Dissemination Agent's receipt thereof pursuant to this subsection 3(c); provided, however, that the Quarterly Report and the Certification Letter(s) must be submitted to the MSRB not later than each Quarterly Filing Date. In the event that any Reporting Party or the Administrator does not provide the information required by subsection (a) or (b) of this Section, as applicable, in a timely manner and, as a result, either an incomplete Quarterly Report is filed with the MSRB, or a Quarterly Report is not filed with the MSRB by each Quarterly Filing Date, the Dissemination Agent shall, upon written direction from the applicable Reporting Party file a notice of failure to provide Quarterly Information or failure to file a Quarterly Report with the MSRB in substantially the form attached as Exhibit B, as soon as practicable. If incomplete Quarterly Information is provided by any Reporting Party, the Dissemination Agent or any other Reporting Party who provided complete information shall not be responsible for the failure to submit a complete Quarterly Report to the MSRB. If each Reporting Party timely provides the required Quarterly Information to the Administrator as described in this Section 3, the failure of the Administrator to provide the information provided by each Reporting Party to the Dissemination Agent, or the failure of the Dissemination Agent to provide such information to the Participating Underwriter in a timely manner, shall not be deemed a default by the Reporting Parties under this Disclosure Agreement.

(d) Such Quarterly Report shall be in a form similar to that as attached in Exhibit A hereof and shall include:

(i) In a form similar to that as Table 3(d)(i) in Exhibit A attached hereto, the composition of the property within Improvement Area #1 subject to the Assessments, including:

A. The total number of proposed single family residential lots within Improvement Area #1, broken out by lot size, as of the Quarterly Ending Date and as identified in the prior Quarterly Report;

B. The total number of platted single family residential lots within Improvement Area #1, broken out by lot size, as of the Quarterly Ending Date and as identified in the prior Quarterly Report; and

C. An explanation as to any change to the total number of proposed single family residential lots within Improvement Area #1 from the prior Quarterly Report.

(ii) In a form similar to that as Table 3(d)(ii) in Exhibit A attached hereto, the landowner composition of Improvement Area #1, including:

A. The number of parcels and/or lots owned by each type of landowner (i.e., Developer or Homebuilder), broken down by planned and actual parcels and/or lots; and

B. Based on the information in the Annual Service Plan Update most recently approved by the Issuer, the percentage of Annual Installments of Assessments relative to the total Annual Installments of Assessments for the Developer, each Homebuilder, and homeowners (end-users), as of the Quarterly Ending Date.

(iii) In a form similar to that as Table 3(d)(iii) in Exhibit A attached hereto, for each parcel designated as single family residential, lot absorption statistics by lot type, on a quarter over quarter and cumulative total basis, as applicable, including:

A. The number of lots platted in Improvement Area #1, on a current quarter and running total basis, broken down by landowner;

B. The number of single family lots in Improvement Area #1 owned by the Developer not closed or under contract with a Homebuilder, as of the Quarterly Ending Date;

C. The number of single family lots in Improvement Area #1 owned by the Developer under contract (but not closed) with a Homebuilder, as of the Quarterly Ending Date and broken down by Homebuilder; and

D. The number of single family lots in Improvement Area #1 closed with a Homebuilder during the applicable quarter and on a cumulative total basis, broken down by Homebuilder.

(iv) In a form similar to that as Table 3(d)(iv) in Exhibit A attached hereto, for each parcel designated as single family residential, for each Homebuilder, broken down by lot type, on a quarter over quarter and cumulative total basis, as applicable:

A. The number of homes under construction in Improvement Area #1, as of the Quarterly Ending Date;

B. The number of completed homes not under contract with homebuyers in Improvement Area #1, as of the Quarterly Ending Date;

C. The number of homes that became under contract with homebuyers in Improvement Area #1 during the applicable quarter;

D. The number of homes closed with (delivered to) homebuyers (delivered to end users) in Improvement Area #1, as of the Quarterly Ending Date;

F. The average list price of homes closed with homebuyers during the applicable quarter; and

F. The estimated date of completion of all homes to be constructed by the Homebuilder.

(v) In a form similar to that as Table 3(d)(v) in Exhibit A attached hereto, materially adverse changes or determinations to permits/approvals for the development of Improvement Area #1 which necessitate changes to the land use plans of the Developer; and

(vi) In a form similar to that as Table 3(d)(vi) in Exhibit A attached hereto, information on any existing, new or modified mortgage debt on the land within Improvement Area #1 owned by the Developer, including the original principal amount, loan balance, existence of deeds of trust or other similar encumbrances against the property within Improvement Area #1, interest rate and terms of repayment.

(vii) In a form similar to that as Table 3(d)(vii) in Exhibit A attached hereto, in accordance with the Completion Agreement, the Developer shall identify the evidence of available funds, if applicable, and certify as to the sufficiency of such funds to complete the Designated Improvements. Notwithstanding anything contained herein, any reporting required pursuant to this Section 3(d)(vii) shall terminate upon the release of Completion Agreement pursuant to its terms. In the next Quarterly Report submitted following the release of the Completion Agreement, the Developer shall include a statement regarding such release and termination of the reporting responsibilities pursuant to this Section 3(d)(vii).

(e) In a form similar to that as Table 3(e)(i)-(iv) in Exhibit A attached hereto, with respect to the Improvement Area #1 Improvements, as set forth in the Service and Assessment Plan, the Improvement Area #1 Privately Financed Public Improvements, the Privately Financed Improvements and the HOA Amenities, the Developer shall provide or cause to be provided the following information to the Administrator for inclusion in each Quarterly Report:

(i) Construction budget and timeline for the Improvement Area #1 Improvements, including:

A. Total budgeted costs of all the Improvement Area #1 Improvements;

B. Total actual costs of the Improvement Area #1 Improvements drawn from the Project Fund (as defined in the Indenture), as of the Quarterly Ending Date;

C. Total actual costs of the Improvement Area #1 Improvements financed with other sources of funds (other than funds drawn from the Project Fund), as of the Quarterly Ending Date;

D. Actual or expected date of commencement of construction;

E. Actual or expected construction completion date, and if there is a delay from the date previously reported, an explanation of the delay;

F. Actual acceptance date by the Issuer or other applicable entity, if accepted; and

G. Narrative update on construction milestones for the Improvement Area #1 Improvements since the date of the prior Quarterly Report.

(ii) Construction budget and timeline for the Improvement Area #1 Privately Financed Public Improvements, including:

- A. Total budgeted costs of all Improvement Area #1 Privately Financed Public Improvements;
- B. Total actual costs of all Improvement Area #1 Privately Financed Public Improvements, as of the Quarterly Ending Date;
- C. Actual or expected date of commencement of construction;
- D. Actual or expected construction completion date, and if there is a delay from the date previously reported, an explanation of the delay; and
- E. Actual acceptance date by the applicable entity, if accepted; and
- F. Narrative update on construction milestones for the Improvement Area #1 Privately Financed Public Improvements since the date of the prior Quarterly Report.

(iii) Construction budget and timeline for the Privately Financed Improvements, including:

- A. Total budgeted costs of all Privately Financed Improvements;
- B. Total actual costs of all Privately Financed Improvements, as of the Quarterly Ending Date;
- C. Actual or expected date of commencement of construction;
- D. Actual or expected construction completion date, and if there is a delay from the date previously reported, an explanation of the delay; and
- E. Actual acceptance date by the applicable entity, if accepted; and
- F. Narrative update on construction milestones for the Privately Financed Improvements since the date of the prior Quarterly Report.

(iv) Construction budget and timeline for the HOA Amenities, including:

- A. Total budgeted costs of all HOA Amenities;
- B. Total actual costs of all HOA Amenities, as of the Quarterly Ending Date;
- C. Actual or expected date of commencement of construction;
- D. Forecast or actual construction completion date, and if there is a delay from the date previously reported, an explanation of the delay;
- E. Actual acceptance date by the applicable entity, if accepted; and

F. Narrative update on construction milestones for the HOA Amenities since the date of the prior Quarterly Report.

SECTION 4. Event Reporting Obligations.

(a) Pursuant to the provisions of this Section 4, each of the following occurrences is a Developer Listed Event with respect to the Bonds:

(i) Failure to pay any real property taxes or Assessments levied within Improvement Area #1 on a parcel owned by the Developer; provided, however, that the exercise of any right of the Developer as a landowner within Improvement Area #1 to exercise legal and/or administrative procedures to dispute the amount or validity of all or any part of any real property taxes shall not be considered a Developer Listed Event under this Section 4(a) nor a breach or default of this Disclosure Agreement;

(ii) Material damage to or destruction of any development or improvements within Improvement Area #1, including the Improvement Area #1 Improvements, the Improvement Area #1 Privately Financed Public Improvements, the Privately Financed Improvements, and the HOA Amenities;

(iii) Material default by the Developer or any of the Developer's affiliates on any loan or any guaranty of payments under a loan with respect to the acquisition, development or permanent financing of Improvement Area #1 undertaken by the Developer or any of the Developer's affiliates;

(iv) Material default by the Developer or any of the Developer's affiliates on any loan secured by property within Improvement Area #1 owned by the Developer or any of the Developer's affiliates;

(v) The bankruptcy, insolvency or similar filing of the Developer or any of the Developer's affiliates or any determination that the Developer or any of the Developer's affiliates is unable to pay its debts as they become due;

(vi) The consummation of a merger, consolidation, or acquisition of the Developer, or the sale of all or substantially all of the assets of the Developer or any of the Developer's affiliates, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(vii) The filing of any lawsuit with a claim for damages, in excess of \$1,000,000 against the Developer or any of the Developer's affiliates that may adversely affect the completion of development of Improvement Area #1 or litigation that may materially adversely affect the financial condition of the Developer or any of the Developer's affiliates;

(viii) Any material change in the legal structure, chief executive officer or controlling ownership of the Developer;



(ix) Any assignment and assumption of disclosure obligations under this Disclosure Agreement pursuant to Sections 5 or 6 herein;

(x) Early termination of or material default by a Homebuilder under a Lot Purchase Agreement; and

(xi) Any material amendment or waiver of the provisions contained in the Completion Agreement or the Letter of Credit.

(b) Pursuant to the provisions of this Section 4, each of the following occurrences related to any Significant Homebuilder is a Significant Homebuilder Listed Event with respect to the Bonds:

(i) Failure to pay any real property taxes or Assessments levied within Improvement Area #1 on a lot or parcel owned by such Significant Homebuilder; provided, however, that the exercise of any right of such Significant Homebuilder as a landowner within Improvement Area #1 to exercise legal and/or administrative procedures to dispute the amount or validity of all or any part of any real property taxes shall not be considered a Significant Homebuilder Listed Event under this Section 4(b) nor a breach or default of this Disclosure Agreement;

(ii) The bankruptcy, insolvency or similar filing of such Significant Homebuilder or any determination that such Significant Homebuilder is unable to pay its debts as they become due;

(iii) The consummation of a merger, consolidation, or acquisition involving such Significant Homebuilder or the sale of all or substantially all of the assets of such Significant Homebuilder, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(iv) Any material change in the type of legal entity, chief executive officer or controlling ownership of such Significant Homebuilder;

(v) Early termination of or material default by such Significant Homebuilder under a Lot Purchase Agreement; and

(vi) Any assignment and assumption of disclosure obligations under this Disclosure Agreement pursuant to Section 6 herein.

(c) Whenever a Reporting Party obtains knowledge of the occurrence of a Listed Event applicable to such Reporting Party, such Reporting Party shall promptly, and not more than five (5) Business Days after such Reporting Party obtains such knowledge, notify the Issuer, the Administrator and the Dissemination Agent in writing and the Reporting Party shall direct the Dissemination Agent to file a notice of such occurrence with the MSRB, in the manner hereinafter described, and provide a copy of such notice to the Issuer and the Participating Underwriter. Any such notice is required to be filed within ten (10) Business Days after the Reporting Party becomes aware of the occurrence of such Listed Event. If the Reporting Party timely notifies the Dissemination Agent of the occurrence of a Listed Event, as described in this Section 4, the failure of the Dissemination Agent to provide such

notice to the Participating Underwriter in a timely manner shall not be deemed a default by such Reporting Party under this Disclosure Agreement.

The Developer and each other Reporting Party, if any, shall only be responsible for reporting the occurrence of a Listed Event applicable to such Reporting Party and shall not be responsible for reporting the occurrence of a Listed Event applicable to any other Reporting Party, regardless of if such Reporting Party is providing Quarterly Information on behalf of any other Significant Homebuilder.

Any notice under the preceding paragraphs shall be accompanied with the text of the disclosure that the applicable Reporting Party desires to make, the written authorization of such Reporting Party for the Dissemination Agent to disseminate such information as provided herein, and the date the Reporting Party desires for the Dissemination Agent to disseminate the information.

In all cases, the applicable Reporting Party shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures. In addition, the applicable Reporting Party shall have the sole responsibility to ensure that any notice required to be filed with the MSRB under this Section 4 is actually filed within ten (10) Business Days after such Reporting Party becomes aware of the Listed Event applicable to such Reporting Party.

(d) The Dissemination Agent shall, promptly, and not more than five (5) Business Days after obtaining actual knowledge of the occurrence of any Listed Event, notify in writing the Administrator and the applicable Reporting Party of such Listed Event. The Dissemination Agent shall not be required to file a notice of the occurrence of such Listed Event with the MSRB unless and until it receives written instructions from the applicable Reporting Party to do so. It is agreed and understood that the duty to make or cause to be made the disclosures herein is that of the Reporting Party and not that of the Trustee or the Dissemination Agent. It is agreed and understood that the Dissemination Agent has agreed to give the foregoing notice to the applicable Reporting Party as an accommodation to assist it in monitoring the occurrence of such event, but is under no obligation to investigate whether any such event has occurred. As used above, “actual knowledge” means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Dissemination Agent be liable in damages or in tort to the Participating Underwriter, the Administrator, the Issuer, any Reporting Party or any Owner or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(e) If the Dissemination Agent has been notified in writing by a Reporting Party to report the occurrence of a Listed Event in accordance with subsection (c) or (d) of this Section 4, the Dissemination Agent shall file a notice of such occurrence with the MSRB promptly after its receipt of such written instructions from such Reporting Party; provided that all such notices must be filed no later than the date specified in subsection (c) of this Section 4 for such Listed Event.

#### SECTION 5. Assumption of Reporting Obligations by Developers.

The Developer shall cause each Person, who, through assignment, assumes the obligations, requirements or covenants to construct one or more of the Improvement Area #1 Improvements, Improvement Area #1 Privately Financed Public Improvements, the Privately Financed Improvements or HOA Amenities, to assume and comply with the disclosure obligations of the Developer under this Disclosure Agreement. The Developer shall deliver to the Dissemination Agent, Administrator and the

Issuer, a written acknowledgement and assumption from each Person, who assumes the obligations, requirements or covenants to construct one or more of the Improvement Area #1 Improvements, Improvement Area #1 Privately Financed Public Improvements, Privately Financed Improvements or HOA Amenities in substantially the form attached as Exhibit E (the “Developer Acknowledgment”), acknowledging and assuming its obligations under this Disclosure Agreement. Pursuant to Section 4(a)(ix) above, the Developer shall direct the Dissemination Agent to file a copy of each Developer Acknowledgment with the MSRB, in accordance with Sections 4(c) and 4(e) above. Upon any such transfer to a Person, and such Person’s delivery of written acknowledgement of assumption of Developer’s obligations under this Disclosure Agreement as to the property transferred, the Developer shall have no further obligation or liability for disclosures or other responsibilities under this Disclosure Agreement as to the property transferred or the obligations assigned. Notwithstanding anything to the contrary elsewhere herein, after such assignment, the Developer shall not be liable for the acts or omissions of such Person arising from or in connection with such disclosure obligations under this Disclosure Agreement. Additionally, for the avoidance of doubt, the Developer shall require that any Person comply with obligations of this Section 5 with respect to any subsequent transfers by such Person to any individual or entity meeting the definition of a “Developer” in the future.

#### SECTION 6. Assumption of Reporting Obligations by Significant Homebuilders.

If a Homebuilder acquires ownership of real property in Improvement Area #1 resulting in such Homebuilder becoming a Significant Homebuilder, the Developer may (i) cause such Significant Homebuilder to comply with the Developer’s disclosure obligations under Section 3(d)(iv) and Section 4(b) hereof, with respect to such acquired real property until such party’s disclosure obligations terminate pursuant to Section 7 of this Disclosure Agreement or (ii) elect to provide any or all Quarterly Information on behalf of such Significant Homebuilder; provided, however, a Significant Homebuilder who is also a Developer shall be required to provide the disclosure information required by Sections 3 and 4(a), as applicable, pursuant to Section 5 above; provided further, however, that if the Developer initially elects to provide any or all Quarterly Information on behalf of such Significant Homebuilder, the Developer may elect in the future to cause such Significant Homebuilder to comply with the Developer’s disclosure obligations, as described in (i) above.

If the Developer elects to cause a Significant Homebuilder to comply with the Developer’s disclosure obligations, as described above, the Developer shall deliver to the Dissemination Agent, Administrator and the Issuer, a written acknowledgement from each Significant Homebuilder, in substantially the form attached as Exhibit F (the “Significant Homebuilder Acknowledgment”), acknowledging and assuming its obligations under this Disclosure Agreement. Pursuant to Sections 4(a)(ix) and 4(b)(vi) above, the Developer or Significant Homebuilder, as applicable, shall direct the Dissemination Agent to file a copy of the Significant Homebuilder Acknowledgment with the MSRB, in accordance with Sections 4(c) and 4(e) above. Upon any such transfer to a Significant Homebuilder, and such Significant Homebuilder’s delivery of written acknowledgement of assumption of Developer’s obligations under this Disclosure Agreement as to the property transferred, the Developer shall have no further obligation or liability for disclosures or other responsibilities under this Disclosure Agreement as to the property transferred or the obligations assigned. The Developer shall remain obligated with respect to any real property acquired by a Significant Homebuilder until an acknowledgment of assignment with respect to such real property is delivered to the Dissemination Agent, Administrator, the Issuer and the MSRB, in accordance with this Section 5(c).

Notwithstanding anything to the contrary elsewhere herein, after such transfer of ownership, the Developer shall not be liable for the acts or omissions of such Significant Homebuilder arising from or in connection with such disclosure obligations under this Disclosure Agreement. Additionally, for the avoidance of doubt, the Developer shall use commercially reasonable efforts to require that any Significant Homebuilder comply with obligations of this Section 6 with respect to any subsequent transfers by such Significant Homebuilder to any individual or entity meeting the definition of a “Significant Homebuilder” in the future, including the requirement, pursuant to Section 4(b)(vi) above, to direct the Dissemination Agent to file a copy of the Significant Homebuilder Acknowledgment with the MSRB, in accordance with Section 4(c) and 4(e) above.

#### SECTION 7. Termination of Reporting Obligations.

(a) The reporting obligations of the Developer under this Disclosure Agreement shall terminate upon the earlier of (i) the date when none of the Bonds remain Outstanding, or (ii) the date when (x) all of the Improvement Area #1 Improvements are complete, (y) the Developer no longer owns at least twenty (20) of the single family residential lots within Improvement Area #1, and (z) the Developer is not reporting on behalf of any Significant Homebuilder. Notwithstanding the foregoing, if the Developer is reporting on behalf of a Significant Homebuilder, the Developer’s reporting obligations, with respect to the property owned by the Significant Homebuilder, terminates in accordance with subsection (b) below.

(b) The reporting obligations of a Significant Homebuilder, if any, under this Disclosure Agreement shall terminate upon the earlier of the date when (i) none of the Bonds remain Outstanding, or (ii) the Significant Homebuilder no longer owns at least twenty (20) of the single family residential lots within Improvement Area #1.

(c) At such time that the reporting obligations of the Developer or Significant Homebuilder, if any, terminate in accordance with subsection (a) or (b) of this Section 7, the Administrator shall provide written notice to the Developer or Significant Homebuilder, as applicable, the Participating Underwriter, the Issuer and the Dissemination Agent in substantially the form attached as Exhibit C, thereby, terminating the applicable party’s reporting obligations under this Disclosure Agreement (the “Termination Notice”). If such Termination Notice with respect to the Developer or Significant Homebuilder occurs while any of the Bonds remain Outstanding, the Administrator shall immediately provide, or cause to be provided, the Termination Notice to the Dissemination Agent, and the Dissemination Agent shall provide such Termination Notice to the MSRB, the Issuer, the Trustee, the Developer or Significant Homebuilder, as applicable, and the Participating Underwriter on or before the next succeeding Quarterly Filing Date.

(d) The obligations of the Administrator and the Dissemination Agent under this Disclosure Agreement shall terminate upon the earlier of (i) the date when none of the Bonds remain Outstanding, or (ii) termination of the Developer’s and all Significant Homebuilder’s, if any, reporting obligations in accordance with subsection (a) or (b) of this Section 7 and any Termination Notice required by subsection (c) of this Section 7 has been provided to the MSRB, the Issuer, the Trustee, the Developer or Significant Homebuilder, as applicable, and the Participating Underwriter.

SECTION 8. Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be BOKF, NA, Houston, Texas. The Issuer may, from time to time, appoint or engage a successor

Dissemination Agent to assist the Reporting Parties in carrying out their obligations under this Disclosure Agreement and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. Pursuant to the Disclosure Agreement of the Issuer, the Issuer has agreed to provide written notice to each then-existing Reporting Party of any change in the identity of the Dissemination Agent.

SECTION 9. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Developer, the Administrator and the Dissemination Agent may jointly amend this Disclosure Agreement (and the Dissemination Agent shall not unreasonably withhold its consent to any amendment so requested by the Developer or Administrator), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3 or 4, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of any Reporting Party, or the type of business conducted; and

(b) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

(c) In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Administrator shall describe such amendment in the next related Quarterly Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type of financial information or operating data being presented by the Reporting Parties. The Developer shall provide, or cause to be provided, at its cost and expense, an executed copy of any amendment or waiver entered into under this Section 9 to the Issuer, the Administrator, the Dissemination Agent, and the Participating Underwriter.

SECTION 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent any Reporting Party from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in addition to that which is required by this Disclosure Agreement. If any Reporting Party chooses to include any information in any Quarterly Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, no Reporting Party shall have an obligation under this Disclosure Agreement to update such information or include it in any future Quarterly Report or notice of occurrence of a Listed Event.

SECTION 11. Content of Disclosures. In all cases, the applicable Reporting Party shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures, whether provided under Section 3, 4 or 10 of this Disclosure Agreement.

SECTION 12. Default. In the event of a failure of a Reporting Party, Dissemination Agent or Administrator to comply with any provision of this Disclosure Agreement, any Owner or beneficial owner of the Bonds may, and the Trustee (at the written request of any Participating Underwriter or the

Owners of at least twenty-five percent (25%) aggregate principal amount of Outstanding Bonds and upon being indemnified to its satisfaction) shall, take such actions as may be necessary and appropriate to cause the Reporting Party, Dissemination Agent and/or the Administrator to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Reporting Party, Dissemination Agent or the Administrator to comply with this Disclosure Agreement shall be an action to mandamus or specific performance. A default under this Disclosure Agreement shall not be deemed a default under the Disclosure Agreement of the Issuer, and a default under the Disclosure Agreement of the Issuer shall not be deemed a default under this Disclosure Agreement. Furthermore, a default under this Disclosure Agreement by any Reporting Party shall not be deemed a default under this Disclosure Agreement by any other Reporting Party, and no Reporting Party shall have any obligation to take any action to mitigate or cure the default of any other Reporting Party.

SECTION 13. Duties, Immunities and Liabilities of Dissemination Agent and Administrator.

(a) The Dissemination Agent shall not be responsible in any manner for the content of any notice or report (including without limitation the Quarterly Report) prepared by a Reporting Party and/or the Administrator pursuant to this Disclosure Agreement. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent. The Developer agrees to hold harmless the Dissemination Agent, its officers, directors, employees and agents against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Developer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Dissemination Agent is an "obligated person" under the Rule. The Dissemination Agent is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The Dissemination Agent shall not in any event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to duties and responsibilities of the Dissemination Agent hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document delivered to the Dissemination Agent and believed to be genuine and to have been signed or presented by the proper party or parties.

(b) Except as otherwise provided herein, the Administrator shall not have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Administrator shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Administrator. The Developer agrees to hold harmless the Administrator, its officers, directors, employees and agents against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Administrator's breach, negligence or willful misconduct. The obligations of the Developer under this Section shall survive resignation or removal of the Administrator and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Administrator is an "obligated person" under

the Rule. The Administrator is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The Administrator shall not in any event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to duties and responsibilities of the Administrator hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document delivered to the Administrator and believed to be genuine and to have been signed or presented by the proper party or parties.

(c) The Dissemination Agent or the Administrator may, from time to time, consult with legal counsel of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and the Dissemination Agent and Administrator shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

(d) UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT, THE ADMINISTRATOR, THE DEVELOPER, OR ANY OTHER REPORTING PARTY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY ANY PARTY TO THIS DISCLOSURE AGREEMENT OR A REPORTING PARTY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE DISSEMINATION AGENT AND THE ADMINISTRATOR ARE UNDER NO OBLIGATION NOR ARE THEY REQUIRED TO BRING SUCH AN ACTION.

SECTION 14. No Personal Liability. No covenant, stipulation, obligation or agreement of a Reporting Party, the Administrator or the Dissemination Agent contained in this Disclosure Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future officer, agent or employee of the Reporting Party, the Administrator or Dissemination Agent in other than that person's official capacity.

SECTION 15. Severability. In case any section or provision of this Disclosure Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reasons held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision thereof or any other covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder (except to the extent that such remainder or section or provision or other covenant, stipulation, obligation, agreement, act or action, or part thereof is wholly dependent for its operation on the provision determined to be invalid), which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 16. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Reporting Parties, the Administrator, the Dissemination Agent, the Issuer, the Participating Underwriter, and the Owners and the beneficial owners from time to time of the Bonds, and shall create

no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 17. Dissemination Agent Compensation. The fees and expenses incurred by the Dissemination Agent for its services rendered in accordance with this Disclosure Agreement constitute Annual Collection Costs and will be included in the Annual Installments as provided in the Annual Service Plan Update. The Issuer shall pay or reimburse the Dissemination Agent, but only with funds to be provided from the Annual Collection Costs component of the Annual Installments collected from the property owners in Improvement Area #1, for the fees and expenses for its services rendered in accordance with this Disclosure Agreement.

SECTION 18. Administrator Compensation. The fees and expenses incurred by the Administrator for its services rendered in accordance with this Disclosure Agreement constitute Annual Collection Costs and will be included in the Annual Installments as provided in the Annual Service Plan Update. The Administrator has entered into a separate agreement with the Issuer, which agreement governs the administration of Improvement Area #1, including the payment of the fees and expenses of the Administrator for its services rendered in accordance with this Disclosure Agreement.

SECTION 19. Governing Law. This Disclosure Agreement shall be governed by the laws of the State of Texas.

SECTION 20. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[Signature pages follow.]*



BOKF, NA, HOUSTON, TEXAS  
(solely in its capacity as Dissemination Agent)

By: \_\_\_\_\_  
Authorized Officer

SIGNATURE PAGE OF CONTINUING DISCLOSURE AGREEMENT OF THE DEVELOPER

S-1

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

SIGNATURE PAGE OF CONTINUING DISCLOSURE AGREEMENT OF THE DEVELOPER

S-2

P3WORKS, LLC  
(as Administrator)

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

SIGNATURE PAGE OF CONTINUING DISCLOSURE AGREEMENT OF THE DEVELOPER

S-3

**EXHIBIT A**

**CITY OF KYLE, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023  
(PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT  
IMPROVEMENT AREA #1 PROJECT)**

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**DEVELOPER QUARTERLY REPORT**  
*[INSERT QUARTERLY ENDING DATE]*

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Delivery Date: \_\_\_\_\_, 20\_\_

CUSIP Numbers: [Insert CUSIP Numbers]

**DISSEMINATION AGENT**

Name: BOKF, NA  
Address: [\_\_\_\_\_] ]  
City: [\_\_\_\_\_] ]  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
Contact Person: Attn: \_\_\_\_\_

[Remainder of page intentionally left blank]

**TABLE 3(d)(i)**

IMPROVEMENT AREA #1 OVERVIEW (as of <i>[Insert Quarterly Ending Date]</i> )			
NUMBER OF PROPOSED AND PLATTED SINGLE FAMILY RESIDENTIAL LOTS IN IMPROVEMENT AREA #1 SUBJECT TO ASSESSMENTS:			
	As of <i>[Insert Quarterly Ending Date]</i>	As of <i>[Insert Prior Quarterly Ending Date]</i>	Explanation as to any change to the total number of proposed single family lots from the prior Quarterly Report
<b>Total Proposed SF Lots</b>			
Phase 1			
40' Lot			
50' Lot			
[Future SF] <sup>(1)</sup>			
Phase 2			
40' Lot			
50' Lot			
[Future SF] <sup>(1)</sup>			
<b>Total Platted SF Lots</b>			
Phase 1			
40' Lot			N/A
50' Lot			N/A
[Future SF] <sup>(1)</sup>			N/A
Phase 2			
40' Lot			N/A
50' Lot			N/A
[Future SF] <sup>(1)</sup>			N/A

<sup>(1)</sup> Future SF only to be included if additional lot types are added in Improvement Area #1.

[Remainder of page intentionally left blank]

**TABLE 3(d)(ii)**

LANDOWNER COMPOSITION (as of [Insert Quarterly Ending Date]) OF IMPROVEMENT AREA #1			
Landowner Composition	Lot Type	Number of Lots/Parcels Owned	% of Annual Installments of Assessments <sup>(1)</sup>
<b>Developer Owned</b>	[40'/50']		
	[40'/50']		
<b>Homebuilder Owned<sup>(2)</sup></b>			
[ ]	[40'/50']		
	[40'/50']		
[ ]	[40'/50']		
	[40'/50']		
[ ]	[40'/50']		
	[40'/50']		
<b>Homeowner (End-User) Owned<sup>(3)</sup></b>	[40'/50']		
	[40'/50']		
<b>Total District:</b>			

(1) Derived from information in the Assessment Roll approved by the Issuer on \_\_\_\_\_, 20\_\_ as part of the Annual Service Plan Update. Does not take into consideration any prepayments of Assessments made between the date of such Annual Service Plan Update and the date of this Quarterly Report.

(2) Add lines for each Homebuilder.

(3) Information for homeowner (end-user) owned is reported as the total aggregate amount for all homeowners within Improvement Area #1.

[Remainder of page intentionally left blank]

FOR EACH PARCEL DESIGNATED AS SINGLE FAMILY RESIDENTIAL:

**TABLE 3(d)(iii)**

LOT ABSORPTION STATISTICS FOR SINGLE FAMILY RESIDENTIAL IN IMPROVEMENT AREA #1 <sup>(1)</sup>											
	Q__ 20__	Q__ 20__	Q__ 20__	Q__ 20__	Q__ 20__	Q__ 20__	Q__ 20__	Q__ 20__	Q__ 20__	Q__ 20__	TOTAL
# of platted SF lots: <ul style="list-style-type: none"> <li>[Developer/Homebuilder] <ul style="list-style-type: none"> <li>○ 40'</li> <li>○ 50'</li> </ul> </li> </ul> <b>Subtotal</b>											
<ul style="list-style-type: none"> <li>[Developer/Homebuilder] <ul style="list-style-type: none"> <li>○ 40'</li> <li>○ 50'</li> </ul> </li> </ul> <b>Subtotal</b> <ul style="list-style-type: none"> <li>[Developer/Homebuilder] <ul style="list-style-type: none"> <li>○ 40'</li> <li>○ 50'</li> </ul> </li> </ul> <b>Subtotal</b> <b>TOTAL</b>											
# of SF lots not under contract with Homebuilders: <ul style="list-style-type: none"> <li>• 40'</li> <li>• 50'</li> </ul> <b>TOTAL</b>											N/A
# of SF lots under contract (but not closed) with Homebuilders: <ul style="list-style-type: none"> <li>• [Homebuilder] <ul style="list-style-type: none"> <li>○ 40'</li> <li>○ 50'</li> </ul> </li> </ul> <b>Subtotal</b> <ul style="list-style-type: none"> <li>• [Homebuilder] <ul style="list-style-type: none"> <li>○ 40'</li> <li>○ 50'</li> </ul> </li> </ul> <b>Subtotal</b> <ul style="list-style-type: none"> <li>• [Homebuilder] <ul style="list-style-type: none"> <li>○ 40'</li> <li>○ 50'</li> </ul> </li> </ul> <b>Subtotal</b> <b>TOTAL</b>											N/A  N/A  N/A

[Table continues on next page]

**TABLE 3(d)(iii) (continued)**

LOT ABSORPTION STATISTICS FOR SINGLE FAMILY RESIDENTIAL IN IMPROVEMENT AREA #1 <sup>1)</sup>											
	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	TOTAL
# of SF lots closed with Homebuilders:											
• [Homebuilder]											
○ 40'											
○ 50'											
<b>Subtotal</b>											
• [Homebuilder]											
○ 40'											
○ 50'											
<b>Subtotal</b>											
• [Homebuilder]											
○ 40'											
○ 50'											
<b>Subtotal</b>											
<b>TOTAL</b>											

<sup>(1)</sup> Add information for each Homebuilder and add rows if additional lot types are added in Improvement Area #1.

[Remainder of page intentionally left blank]



**TABLE 3(d)(iv)**

[Homebuilder] ABSORPTION STATISTICS FOR SINGLE FAMILY RESIDENTIAL LOTS IN IMPROVEMENT AREA #1 <sup>(1)</sup>								
	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	Q 20__	TOTAL
# of SF homes under construction: • 40' • 50' <b>TOTAL</b>								N/A
# of completed SF homes NOT under contract with end-user: • 40' • 50' <b>TOTAL</b>								N/A
# of SF homes under contract with end-user: • 40' • 50' <b>TOTAL</b>								N/A
# of SF homes closed on (delivered to) end-users: • 40' • 50' <b>TOTAL</b>								
Average list price of homes delivered to end-users: • 40' • 50' <b>AVERAGE</b>								

<sup>(1)</sup> Additional tables to be added for each Homebuilder. Add rows if additional lot types are added in Improvement Area #1.

The estimated date of completion of all homes to be constructed by [Homebuilder] is \_\_\_\_\_, \_\_\_\_.

The estimated date of completion of all homes to be constructed by [Homebuilder] is \_\_\_\_\_, \_\_\_\_.

[Remainder of page intentionally left blank]

STATUS OF DEVELOPMENT:

**TABLE 3(d)(v)**

PERMITS/APPROVALS	
Material Adverse Change or Determination to Permit/Approval	Description of the Change to the Land Use Plan

**TABLE 3(d)(vi)**

INFORMATION ON EXISTING, NEW OR MODIFIED MORTGAGE DEBT						
Borrower	Lender	Amount	Loan Balance	Existence of Deeds of Trust	Interest Rate	Terms

**TABLE 3(d)(vii)**

[SUBSEQUENT] EVIDENCE OF AVAILABLE FUNDS		
Total Costs to Complete Remaining Designated Improvements	Amount Available in the Project Fund	Description and Amount of evidence of available funds

[The funds outlined above are sufficient to complete the Designated Improvements.]

[Remainder of page intentionally left blank]

STATUS OF IMPROVEMENT AREA #1 IMPROVEMENTS, IMPROVEMENT AREA #1  
PRIVATELY FINANCED PUBLIC IMPROVEMENTS, PRIVATELY FINANCED IMPROVEMENTS  
AND HOA AMENITIES:

**TABLE 3(e)(i)-(iv)**

IMPROVEMENT AREA #1 IMPROVEMENTS BUDGET AND TIMELINE OVERVIEW						
Improvement Area #1 Improvements	Budgeted Costs	Actual Costs Drawn from Project Fund as of [Insert Quarterly Ending Date]	Actual Costs financed with sources other than Bond proceeds as of [Insert Quarterly Ending Date]	Actual/Expected Construction Commencement Date	Actual/ Expected Completion Date	Actual Acceptance Date, if accepted
• Heron Drive/Roundabout	\$ _____	\$ _____	\$ _____	_____	_____	_____
• Roadway	\$ _____	\$ _____	\$ _____	_____	_____	_____
• Drainage and Ponds	\$ _____	\$ _____	\$ _____	_____	_____	_____
• Parks and Landscaping	\$ _____	\$ _____	\$ _____	_____	_____	_____
• Soft Costs	\$ _____	\$ _____	\$ _____	_____	_____	_____

If there is a delay in the expected completion date for any Improvement Area #1 Improvement from that previously reported, an explanation of such delay:

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Narrative update on construction milestones for Improvement Area #1 Improvements, since last Quarterly Report:

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[Remainder of page intentionally left blank]

IMPROVEMENT AREA #1 PRIVATELY FINANCED PUBLIC IMPROVEMENTS BUDGET AND TIMELINE OVERVIEW					
Improvement Area #1 Privately Financed Public Improvements	Budgeted Costs	Actual Costs spent as of [ <i>Insert Quarterly Ending Date</i> ]	Actual/ Expected Construction Commencement Date	Actual/ Expected Completion Date	Actual Acceptance Date, if accepted
<ul style="list-style-type: none"> <li>Improvement Area #1 Privately Financed Public Improvements</li> <li>[Soft Costs]</li> </ul>	\$ _____  \$ _____	\$ _____  \$ _____	_____  _____	_____  _____	_____  _____

If there is a delay in the expected completion date for any Improvement Area #1 Privately Financed Public Improvements from that previously reported, an explanation of such delay:

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Narrative update on construction milestones for Improvement Area #1 Privately Financed Public Improvements, since last Quarterly Report:

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[Remainder of page intentionally left blank]

PRIVATELY FINANCED IMPROVEMENTS BUDGET AND TIMELINE OVERVIEW					
Privately Financed Improvements	Budgeted Costs	Actual Costs spent as of [ <i>Insert Quarterly Ending Date</i> ]	Actual/ Expected Construction Commencement Date	Actual/ Expected Completion Date	Actual Acceptance Date, if accepted
<ul style="list-style-type: none"> <li>Privately Financed Improvements</li> <li>[Soft Costs]</li> </ul>	\$ _____ \$ _____	\$ _____ \$ _____	_____ _____	_____ _____	_____ _____

If there is a delay in the expected completion date for any Privately Financed Improvements from that previously reported, an explanation of such delay:

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Narrative update on construction milestones for Privately Financed Improvements, since last Quarterly Report:

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HOA AMENITIES BUDGET AND TIMELINE OVERVIEW					
HOA Amenities	Budgeted Costs	Actual Costs spent as of [ <i>Insert Quarterly Ending Date</i> ]	Actual/ Expected Construction Commencement Date	Actual/ Expected Completion Date	Actual Acceptance Date, if accepted
<ul style="list-style-type: none"> <li>[Amenity Center]</li> </ul>	\$ _____	\$ _____	_____	_____	_____

If there is a delay in the expected completion date for any HOA Amenity from that previously reported, an explanation of such delay:

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Narrative update on construction milestones for HOA Amenities, since last Quarterly Report:

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**EXHIBIT B**

**NOTICE TO MSRB OF FAILURE TO  
[PROVIDE QUARTERLY INFORMATION][FILE QUARTERLY REPORT]**

[DATE]

Name of Issuer: City of Kyle, Texas  
Name of Bond Issue: Special Assessment Revenue Bonds, Series 2023  
(Porter Country Public Improvement District Improvement Area #1  
Project) (the “Bonds”)  
CUSIP Numbers: [insert CUSIP Numbers]  
Date of Delivery: \_\_\_\_\_, 20\_\_

NOTICE IS HEREBY GIVEN that \_\_\_\_\_, a  
\_\_\_\_\_ (the [“Developer”]<sup>1</sup>) [“Significant Homebuilder”]) has not provided the  
[Quarterly Information][Quarterly Report] for the period ending on [Insert Quarterly Ending Date]  
with respect to the Bonds as required by the Continuing Disclosure Agreement of the Developer  
dated as of May 1, 2023, by and among Hillside Terrace Development, LLC, a Texas limited  
liability company (the “Developer”), P3Works, LLC, as the “Administrator” and BOKF, NA,  
Houston, Texas, as the “Dissemination Agent.” The [Developer][Significant Homebuilder]  
anticipates that the [Quarterly Information][Quarterly Report] will be [provided][filed] by  
\_\_\_\_\_.

Dated: \_\_\_\_\_

BOKF, NA, Houston, Texas  
on behalf of the Developer  
(acting solely in its capacity as  
Dissemination Agent)

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

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

cc: City of Kyle, Texas

<sup>1</sup> If applicable, replace with applicable successor(s)/assign(s).

**EXHIBIT C**  
**TERMINATION NOTICE**

[DATE]

Name of Issuer: City of Kyle, Texas  
Name of Bond Issue: Special Assessment Revenue Bonds, Series 2023  
(Porter Country Public Improvement District Improvement Area #1  
Project) (the “Bonds”)  
CUSIP Numbers. [insert CUSIP Numbers]  
Date of Delivery: \_\_\_\_\_, 20\_\_

FMSbonds, Inc. 5 Cowboys Way, Suite 300-25 Frisco, Texas 75034	BOKF, NA, Houston, Texas [_____ [_____] ]
--	---

City of Kyle, Texas 100 W. Center Street Kyle, Texas 78640	Hillside Terrace Development, LLC 2100 Northland Drive Austin, Texas 78756
--	--

[Significant Homebuilder]

NOTICE IS HEREBY GIVEN that that \_\_\_\_\_, a  
\_\_\_\_\_ (the [“Developer”] [“Significant Homebuilder”]) is no longer  
responsible for providing [any Quarterly Information][the Quarterly Report] with respect to the  
Bonds, thereby, terminating such party’s reporting obligations under the Continuing Disclosure  
Agreement of the Developer dated as of May 1, 2023, by and among Hillside Terrace  
Development, LLC, a Texas limited liability company (the “Developer”), P3Works, LLC, as the  
“Administrator” and BOKF, NA, Houston, Texas, as the “Dissemination Agent.”

Dated: \_\_\_\_\_

P3Works, LLC  
on behalf of the [Developer] [Significant Homebuilder]  
(solely in its capacity as Administrator)

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

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

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<sup>1</sup> If applicable, replace with applicable successor(s)/assign(s).

## EXHIBIT D

### CERTIFICATION LETTER

[DATE]

Name of Issuer: City of Kyle, Texas  
Name of Bond Issue: Special Assessment Revenue Bonds, Series 2023  
(Porter Country Public Improvement District Improvement Area #1  
Project)  
CUSIP Numbers: [insert CUSIP Numbers]  
Quarterly Ending Date: \_\_\_\_\_, 20\_\_

Re: Quarterly Report for Porter Country Public Improvement District Improvement Area #1

To whom it may concern:

Pursuant to the Continuing Disclosure Agreement of the Developer dated as of May 1, 2023 by and among Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”), P3Works, LLC, as the “Administrator”, and BOKF, NA, Houston, Texas, as the “Dissemination Agent,” this letter constitutes the certificate stating that the Quarterly Information, provided by [Developer][\_\_\_\_\_, as a “Significant Homebuilder”], contained in this Quarterly Report herein submitted by the Administrator, on behalf of the [Developer][Significant Homebuilder], constitutes the [portion of the] Quarterly Report required to be furnished by the [Developer][Significant Homebuilder]. Any and all Quarterly Information, provided by the [Developer][Significant Homebuilder], contained in this Quarterly Report for the three month period ending on [Insert Quarterly Ending Date], to the best of my knowledge, is true and correct, as of [insert date].

Please do not hesitate to contact our office if you have and questions or comments.

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

OR

[SIGNIFICANT HOMEBUILDER]  
(as Significant Homebuilder)

By: \_\_\_\_\_  
Title: \_\_\_\_\_]

D-1



**EXHIBIT E**

**FORM OF ACKNOWLEDGEMENT OF ASSIGNMENT  
OF DEVELOPER REPORTING OBLIGATIONS**

[DATE]

[INSERT ASSIGNEE CONTACT INFORMATION]

**Re: Porter Country Public Improvement District Improvement Area #1 – Continuing Disclosure Obligation**

Dear \_\_\_\_\_,

Per [*Insert name of applicable agreement*], as of \_\_\_\_\_, 20\_\_, you have been assigned and have assumed the obligations, requirements or covenants to construct one or more of the Improvement Area #1 Improvements, Privately Financed Improvements or HOA Amenities (each as defined in the Disclosure Agreement of the Developer) within the Porter Country Public Improvement District (the “District”).

Pursuant to Section 2 of the Continuing Disclosure Agreement of the Developer dated as of May 1, 2023 (the “Disclosure Agreement of the Developer”) by and among Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”), P3Works, LLC (the “Administrator”), and BOKF, NA, Houston, Texas, (the “Dissemination Agent”) with respect to the “City of Kyle, Texas, Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project),” any person that, through assignment, assumes the obligations, requirements or covenants to construct one or more of the Improvement Area #1 Improvements, Privately Financed Improvements or HOA Amenities is defined as a Developer.

As a Developer, pursuant to Section 5 of the Disclosure Agreement of the Developer, you acknowledge and assume the reporting obligations under Section 3(e)(i) of the Disclosure Agreement of the Developer for the construction of the Improvement Area #1 Improvements, Privately Financed Improvements or HOA Amenities as detailed in the Disclosure Agreement of the Developer, which is included herewith.

Sincerely,

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

Acknowledged by:

**[INSERT ASSIGNEE NAME]**

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

**EXHIBIT F**

**FORM OF ACKNOWLEDGEMENT OF ASSIGNMENT  
OF SIGNIFICANT HOMEBUILDER REPORTING OBLIGATIONS**

[DATE]

[INSERT SIGNIFICANT HOMEBUILDER CONTACT INFORMATION]

**Re: Porter Country Public Improvement District Improvement Area #1 – Continuing Disclosure Obligation**

Dear \_\_\_\_\_,

As of \_\_\_\_\_, 20\_\_, you own \_\_\_\_\_ lots within Improvement Area #1 of the Porter Country Public Improvement District (the “District”).

Pursuant to Section 2 of the Continuing Disclosure Agreement of the Developer dated as of May 1, 2023 (the “Disclosure Agreement of the Developer”) by and among Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”), P3Works, LLC (the “Administrator”), and BOKF, NA, Houston, Texas, (the “Dissemination Agent”) with respect to the “City of Kyle, Texas, Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Project),” any entity that owns twenty (20) or more of the single family residential lots within Improvement Area #1 of the District is defined as a Significant Homebuilder.

As a Significant Homebuilder, pursuant to Section 6 of the Disclosure Agreement of the Developer, you acknowledge and assume the reporting obligations under Sections 3(d)(iv) and 4(b) of the Disclosure Agreement of the Developer for the property which is owned as detailed in the Disclosure Agreement of the Developer, which is included herewith.

Sincerely,

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

Acknowledged by:  
**[INSERT ASSIGNEE NAME]**

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

## PORTER COUNTRY DEVELOPMENT AGREEMENT

**THIS PORTER COUNTRY DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into as of May 17, 2022 (the “Effective Date”) by and between the **CITY OF KYLE, TEXAS**, a home rule municipality located in Hays County, Texas (the “City”) and **HILLSIDE TERRACE DEVELOPMENT, LLC**, a Texas limited liability company (the “Owner”). The City and Owner are hereinafter sometimes referred to as a “Party” and collectively as the “Parties.”

### RECITALS

A. Owner intends to develop and improve, in one or more phases, all or a portion of that certain tract or parcel of land consisting of approximately 259 acres of land, more or less, all of which is located within the municipal boundaries of the City, in Hays County, Texas, as more particularly described in Exhibit “A” attached hereto (the “Property”) as a master-planned community, with up to 980 single family residential dwelling units, commercial development, and uses as provided in the zoning for the property pursuant to Ordinance No. \_\_\_\_\_, and as may be amended (“Porter Country PUD”), and as generally shown on the Concept Plan (hereinafter defined) attached hereto as Exhibit “B” (the “Project”).

B. The Owner has submitted to the City a petition for the creation of Porter Country Public Improvement District (“PID”) on the Property (the “District”) in order to construct the Authorized Improvements (hereinafter defined) to support the Project in a financially feasible manner in accordance with Chapter 372, Texas Local Government Code, as amended (the “Act”), and any applicable state law (the “PID Petition”).

C. The City intends to create the PID in order to plan, finance, construct, acquire, operate and maintain the Authorized Improvements within the Project without imposing an undue burden on the City and its residents and taxpayers.

D. The Parties intend that water service to the Property will be provided by Goforth Special Utility District (“Goforth SUD”), and sewer service to the Property will be provided by Windy Hill Utility Company (“Windy Hill”).

E. It is intended that special assessments will be levied on the Property within the PID (“Special Assessments”) and PID Bonds (hereinafter defined) will be sold to finance the design, construction and installation of the Authorized Improvements. The Authorized Improvements will confer a special benefit to the Property within the PID.

F. The City intends to exercise its powers under the PID Act, to provide alternative financing arrangements that will enable the Owner to do the following in accordance with the procedures and requirements of the PID Act and this Agreement: (i) fund or be reimbursed for a specified portion of the costs of the Authorized Improvements using the proceeds of PID Bonds; or (ii) obtain reimbursement for the specified portion of the costs of the Authorized Improvements, the source of which reimbursement will be installment payments from Special Assessments within the Property.

G. The City, after due and careful consideration, has concluded that the development of the Property, as provided for herein, will further the growth of the City, provide public recreational spaces, increase the assessed valuation of the real estate situated within the City, foster increased economic activity within the City, upgrade public infrastructure within the City, and otherwise be in the best interests of the City by furthering the health, safety, morals and welfare of its residents and taxpayers.

H. This Agreement is entered pursuant to the laws of the State of Texas, the City Charter, and the City Code of Ordinances.

I. The Parties desire to establish certain restrictions and commitments to be imposed and made in connection with the development of the Property; to provide increased certainty to the City and Owner concerning development rights, entitlements, arrangements, and commitments, including the obligations and duties of the Owner and the City, for a period of years; and to identify planned land uses and permitted intensity of development of the Property as provided in this Agreement. The Parties acknowledge that they are proceeding in reliance upon the purposes, intent, effectiveness and enforceability of this Agreement.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE I** **DEFINITIONS; INCORPORATION OF RECITALS; TERM**

1.1 Incorporation of Recitals. The representations, covenants and recitations set forth in the above recitals (the “Recitals”) are material to this Agreement and are hereby found and agreed to be true and correct, and are incorporated into and made a part hereof as though they were fully set forth in this Article.

1.2 Definitions. Capitalized terms used in this Agreement shall have the meanings set forth in this section, unless otherwise defined, or unless the context clearly requires another definition.

“Act” means Chapter 372 of the Texas Local Government Code, as amended.

“Agreement” is defined in the preamble hereof and includes any subsequent written amendments or modifications made pursuant to Section 12.5 hereof.

“Applicable Rules” shall have the meaning set forth in Section 4.1 hereof.

“Appraisal” means the appraisal of the Property obtained in connection with issuance of the PID Bonds to determine whether there is sufficient value associated with the Property to meet the value to lien ratios set forth in the PID Finance Exhibits (hereinafter defined).

“Authorized Improvements” means the public improvements expressly authorized by the Act and to be constructed and funded in connection with the PID Bonds that will be more particularly described in the PID creation resolution, the PFA (hereinafter defined) and the SAP (hereinafter defined). A list of public improvements for the Project and their estimated costs are attached hereto as Exhibit “C”, as may be updated in the SAP. The PID will fund no more than \$41,000,000 in Authorized Improvements, including PID Bond issuance and financing costs. The amount may increase up to \$60,000,000 with City Council approval due to cost increases in the Authorized Improvements.

“Bond Authorization Date” means the date that the City Council authorizes the issuance of the PID Bonds.

“City” means the City of Kyle, Texas, a home rule municipality located in Hays County, Texas.

“City Regulations” means the City’s Charter, City’s Code of Ordinances and the other regulations, standards, codes and ordinances of the City governing the platting or re-platting of land into subdivisions and development of said land in effect as of the Effective Date.

“Code of Ordinances” means the applicable code or ordinances adopted by the City which regulate development or subdivision of real property within the City in effect as of the Effective Date.

“Concept Plan” shall mean the conceptual site plan shown on Exhibit “B” attached hereto and made a part hereof.

“Effective Date” means the date on which this Agreement is entered into by both Parties, as provided above.

“Improvement Account of the Project Fund” means the construction fund account created under the Indenture of Trust, funded by the PID Bonds, and used to pay or reimburse for certain portions of the construction or acquisition of the Authorized Improvements.

“Indenture of Trust” means an Indenture of Trust between the City and trustee acceptable to City and Owner covering the PID Bonds, as the same may be amended from time to time.

“Owner” means Hillside Terrace Development, LLC, a Texas limited liability company, and includes any subsequent Owner, whether one or more and whether or not related to the Owner or otherwise a related party of the Owner or a partnership or other entity in which the Owner is a partner or participant, of all or any portion of the Property that specifically acquires by whole or partial assignment, by operation of law or otherwise, the rights and obligations of the Owner under this Agreement.

“Person” means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other legal entity whatsoever.

“Party” or “Parties” means all or any of the City and the Owner, as applicable, and their respective successors and/or permitted assigns.

“PID” means the Porter Country Public Improvement District for the Property created under authority of the Act pursuant to a resolution adopted by the City Council of the City.

“PID Bonds” means special assessment revenue bonds authorized by the City to be issued, in one or more series, in accordance with the Act and the PFA (hereinafter defined).

“PID Finance Exhibits” means the financial analysis and assumptions about the Project in accordance with the SAP (herein defined), the proposed Special Assessments, and the PID Bonds described in Section 9.1. The information set forth in Section 9.1 may be revised by agreement of the Parties based on updated information received during the due diligence review of the Project, the proposed special assessments, and the proposed PID Bonds.

“PID Financing Agreement” or “PFA” means a PID Financing Agreement to be entered into between City and Owner to provide for the assessment, levying and collection of Special Assessments on the Property, the construction and maintenance of the Authorized Improvements, the issuance of the PID Bonds and other matters related thereto.

“PID Financing Documents” means the PFA and SAP, collectively.

“Porter Country PUD” means Ordinance No. \_\_\_\_\_ approved by the City Council on \_\_\_\_\_, 2022, as may be amended from time to time.

“Project” means the real estate development planned for the Property known as “Porter Country.”

“Property” means the approximately 259-acre tract legally described on Exhibit “A” attached hereto and made a part hereof.

“Reimbursement Agreement” means a PID reimbursement agreement or similar agreement between the City and the Owner.

“SAP” means a Service and Assessment Plan to be entered into contemporaneously with the levy of all requisite Special Assessments on the Property in support of the PID Bonds in accordance with the PID Finance Exhibits and further subject to the PID Bond issuance requirements set forth under Section 9.1 attached hereto.

“Subdivision Ordinance” means Chapter 41 of the City’s Code of Ordinances.

“Wastewater Improvements” means the sewer lines, facilities and infrastructure improvements needed to serve the Property and constituting the Project Facilities.

1.3 Term. The term of this agreement shall commence on the Effective Date and continue until the earlier to occur of: (i) the expiration of thirty (30) years from the Effective Date, or (ii) the date on which the City and the Owner discharge all of their obligations hereunder, including: (a) the Authorized Improvements have been completed and the City or Goforth SUD, as applicable, has accepted all of the Authorized Improvements, (b) all PID Bond proceeds have been expended for the construction of all of the Authorized Improvements, and (c) the Owner has been reimbursed for all completed and accepted Authorized Improvements.

## **ARTICLE II**

### **CONCEPT PLAN; BENEFITS; SEQUENCE OF EVENTS; COOPERATION**

2.1 Concept Plan. The Property is proposed for development as a mixed-use master planned community with up to 980 single family residential dwelling units, commercial development, and the uses as set forth in the Porter Country PUD, including parkland, open space and other public and private amenities as shown in the Concept Plan. Owner will subdivide and develop the Property and construct or cause to be constructed the Authorized Improvements, at the Owner’s expense in accordance with this Agreement (subject to PID funding and reimbursements as provided in this Agreement), the plans and specifications approved by the City, good engineering practices, the Applicable Rules, as defined in Section 4.1 and the City Regulations. The Concept Plan illustrates the approved development concept for the Property but has not been engineered and does not represent the final design that will be approved through the final platting process. Any amendment to the Concept Plan approved by the City pursuant to the City’s zoning or platting regulations, shall be considered an amendment to this Agreement and shall replace the attached Concept Plan and become part of this Agreement.

2.2 General Benefits. Owner has voluntarily elected to enter into and accept the benefits of this Agreement and will benefit from the reimbursements set forth herein. The City will benefit from this Agreement by virtue of construction of the Authorized Improvements and of expanding its public amenities

by Owner as herein provided. The Parties expressly confirm and agree that development of the Property will be best accomplished through this Agreement and will substantially advance the legitimate interests of the City. The City, by approval of this Agreement, further finds the execution and implementation of this Agreement is not inconsistent or in conflict with any of the policies, plans, or ordinances of the City.

2.3 Contemplated Sequence of Events. The sequence of events contemplated by this Agreement is as follows:

- (a) Submittal of the PID Petition;
- (b) Review and consideration of annexation and zoning for the Property, which shall be approved at the same City Council meeting as this Agreement and in reliance upon the terms of this Agreement;
- (c) Approval of this Agreement by the City and the Owner;
- (d) Review of the PID Petition and creation of the PID, subject to approval by City Council;
- (e) Submittal and review of preliminary plats for the various phases of the Property; and
- (f) The City and the Owner's negotiation and execution of various agreements and the City Council's consideration of resolutions and ordinances to effectuate the terms of this Agreement, including, but not limited to: the preparation and approval of the SAP, the levy of Special Assessments on Property within the PID, and the issuance, subject to the approval by City Council, of the PID Bonds.

2.4 Necessary and Appropriate Actions. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the City's case, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent, subject to the terms and conditions of this Agreement and subject to applicable processes, procedures, and findings that are required by state law, City ordinances, or the City Charter related to actions taken by the City Council.

### **ARTICLE III** **OBLIGATIONS AND CONDITIONS**

3.1 City's Obligations. The City will reasonably cooperate with the Owner and use its best efforts, in good faith, to:

(a) Complete the first round of City staff review within fourteen (14) days and subsequent rounds of City staff review within seven (7) days of submittals for approval of the concept plan, preliminary plat, final plat and construction plans for the Project using the City's alternative review process to allow for concurrent review, subject to the Owner timely submitting applications and responding to comments;

(b) Negotiate and enter into the PFA and a Reimbursement Agreement, if any, and approve the form of SAP prior to the issuance of the PID Bonds, provided that:

- (1) The PFA and the SAP will specifically identify the Authorized

Improvements; and

(2) Owner can reasonably demonstrate that it has or will have adequate funding to timely construct or cause to be constructed the Authorized Improvements for the Project which will not be paid for or reimbursed by the PID Bonds; and

(c) Authorize issuance of the PID Bonds within three (3) months but no later than six (6) months after receiving a bond issuance request from the Owner (the “Bond Authorization Date”) in accordance with the PID Bond issuance requirements set forth in Section 9.1 and the PID Finance Exhibits attached hereto, provided City is proceeding in good faith and Owner has provided all necessary documentation to effectuate the transaction; and

(1) An Appraisal of the Property has been prepared by a third party selected by the City prior to issuance of PID Bonds;

(2) The Parties have entered into the PFA and a Reimbursement Agreement, if applicable;

(3) Special Assessments in an amount adequate to finance the PID Bonds have been levied against the Property and the SAP has been adopted;

(4) Owner can reasonably demonstrate to the City and its financial advisors that, as of the time of the proposed bond sale that (i) all applicable tests necessary for issuance of the PID Bonds have been satisfied, and (ii) sufficient security for the PID Bonds based upon the existing market conditions at the time of such bond sale; and

(d) Subject to the conditions set forth in Section 3.1(b) and 3.1(c), work towards approval of the PFA, a Reimbursement Agreement, if any, the SAP, and issuance of the PID Bonds.

### 3.2 Owner’s Obligations. The Owner shall:

(a) Use its best efforts, in good faith, to timely submit the concept plan, preliminary plats and construction plan applications, as may be required, to the City and respond to City comments, subject to the City timely commenting on such applications;

(b) Reasonably cooperate with the City and use its best efforts, in good faith, to (i) negotiate and enter into the PFA and a Reimbursement Agreement, if applicable, (ii) request the issuance of the PID Bonds, (iii) provide the City with information needed to evaluate the proposed Special Assessments and the issuance of PID Bonds, to develop and adopt the SAP, and to issue the PID Bonds;

(c) Develop the Property and construct all infrastructure required for built-on-the-lot single-family homes in compliance with the Applicable Rules and City Regulations, subject to this Agreement and the Porter Country PUD;

(d) Pay to the City such fees and charges for, or with respect to, the development of the Property, including, but not limited to, subdivision application fees and building permit fees with the Owner, its grantees, successors and assigns, agreeing that the City’s fees and charges are currently provided for in the Applicable Rules and City Regulations which may be amended by the City from time to time;

(e) Pay to the City the reasonable costs and expenses incurred by the City for legal services in connection with the negotiation and implementation of this Agreement; and



(f) Agree that this Agreement does not waive the requirements of any Applicable Rules and City Regulations, except as specifically provided herein.

3.3 Conditions. Notwithstanding any other codes, resolutions, or ordinances of the City or any agreements related to the PID to the contrary, in the event any of the following events should occur: (i) the City identifies material flaws in the assumptions set forth in the PID Finance Exhibits, including but not limited to whether the proposed Special Assessments will impact the marketability of the Project; (ii) the Owner fails to give the City notice of its request to issue PID Bonds; (iii) the Appraisal does not demonstrate that Property meets the value to lien ratio set forth in this Agreement; or (iv) the City fails for any reason to authorize the issuance of the PID Bonds to finance the Authorized Improvements on or before the Bond Authorization Date in accordance with the PID Finance Exhibits, which date may be extended by mutual agreement of the Parties, the Parties shall confer to determine whether the issuance of PID Bonds is feasible based on the conditions set forth in Section 9.1. If the Parties elect not to proceed with the issuance of PID Bonds, then the Owner shall develop the Project in accordance with this Agreement and may be reimbursed for the costs of the Authorized Improvements pursuant to a Reimbursement Agreement.

3.4 Dissolution of PID. Contemporaneously with the creation of the PID, the Parties shall enter into an agreement for the dissolution of the PID (the “Dissolution Agreement”) whereby the Owner agrees that, in the event Special Assessments have not been levied or PID Bonds have not been issued on or before three (3) years after the effective date of the Dissolution Agreement in accordance to the agreed upon terms set forth in the Dissolution Agreement, the City may dissolve the PID.

#### **ARTICLE IV** **DEVELOPMENT OF THE PROPERTY**

##### **4.1 Applicable Rules**

(a) The Property shall be developed in compliance with the Applicable Rules and the City Regulations, this Agreement and pursuant to the Porter Country PUD, the Concept Plan, as it may be amended from time to time, and good engineering practices.

(b) The City Development Rules that apply to the Property are the City ordinances, rules, and regulations governing subdivision, land use, site development, and building and utility construction. If there is any conflict between the Project Approvals and the City Development Rules, the Project Approvals shall prevail. If there is a conflict between this Agreement and the City Rules, this Agreement shall prevail.

(c) For the purpose of establishing development standards for the Property, the following definitions, shall apply:

(1) “Applicable Rules” means the City Rules, the City Charter, and other local, state, and federal laws and regulations that apply to the Property and the development thereof, as they exist on the Effective Date.

(2) “City Rules” means the City’s ordinances, rules and regulations (including the City Development Rules).

(3) “Project Approvals” means all variances, waivers, and exceptions to the City Rules approved by the City, and all properly granted approvals required under the City Rules for the Project, including the Porter Country PUD, Concept Plan, plat approval, site

development plans, and building permits.

4.2 Phased Development. The Owner may develop the Project in one or more phases in accordance with the phasing plan approved by the City.

4.3 Zoning. The Property is currently zoned pursuant to the Porter Country PUD. The Owner agrees to develop the Property consistent with the Porter Country PUD, as may be amended pursuant to the process, notice, hearings, and procedures applicable to all other properties within the City.

4.4 Vested Rights. The City acknowledges that the Owner shall be deemed vested from the Effective Date of this Agreement to develop the Project in accordance with this Agreement, the Porter Country PUD, the City Regulations, and the Code of Ordinances to the extent and for such matters as vesting is applicable pursuant to Chapter 245 of the Texas Local Government Code. The Owner's vesting shall expire (1) on the fifth anniversary from the date a concept plan is filed with the City if no progress has been made towards completion of the Project; or (2) if this Agreement is terminated by reason of Owner's default beyond any applicable notice and cure periods (the "Vested Rights"). Progress toward completion of the Project shall be defined as set forth in Section 245.005(c), Texas Local Government Code. The Owner does not, by entering into this Agreement, waive any rights or obligations arising under Chapter 245 of the Texas Local Government Code. To the extent any criteria specified in this Agreement which are in conflict with any other current or future City Regulations, then this Agreement shall prevail unless otherwise agreed to by the Owner in writing. The Parties acknowledge and agree that this paragraph shall not apply to fees imposed in conjunction with development permits.

4.5 Owner's Rights to Continue Development. In consideration of Owner's agreements, the City agrees that it will not, during the term of this Agreement, impose or attempt to impose: (a) any moratorium on building or development within the Project or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting subdivision plats, site development permits or other necessary approvals, within the Project except for moratoria imposed pursuant to Texas Local Government Code Subchapter E, Section 212.131 et. seq. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.

4.6 Parkland. Approximately 70.6 acres shall be dedicated as parkland and open space as more particularly depicted in Exhibit "D" ("Parkland and Open Space"). Provided the Owner utilizes or dedicates such Parkland and Open Space acreage substantially in accordance with Exhibit "D", Developer shall be deemed to have satisfied all applicable parkland dedication or improvement requirements or payment of fees required in lieu thereof, of any kind whatsoever. Owner shall design, construct and install the public amenities listed and referenced in Exhibit "D", as more particularly referenced and described hereinafter ("Public Amenities"). Owner shall convey the approximately 70.6 acres by deed to the City upon City's approval of the final plat for the portion of the Property in which the applicable Parkland and Open Space is contained. All Parkland and Open Space conveyed to the City and all Public Amenities described in Exhibit "D" will be maintained and operated by the Association, as the term is defined in Section 10.1, commencing upon the conveyance of the applicable Parkland and Open Space or acceptance of the first Public Amenities by the City (as applicable) and continuing for as long as the Parkland and Open Space is used as parkland. Parkland and Open Space shall be dedicated at the time of final plat approval for the portion of the Property in which the Parkland and Open Space is contained. The Public Amenities listed and described in Exhibit "D" will be constructed within the Project in phases concurrently with development of each phase (and as further set forth in Exhibit "D" attached hereto) in which the applicable Public Amenities are located; provided, Owner shall provide to or for the benefit of City, as security for the performance of such obligation, a payment and performance bond for the benefit of the City (or any

combination thereof) in an amount not less than 110% of the then-projected cost of any such unconstructed Public Amenities for a phase prior to any final plat filing for a particular phase. Owner shall have the right to draw down on the security posted as construction of the Public Amenities progresses. All Public Amenities described in Exhibit “D” and all Parkland and Open Space conveyed to the City will be Authorized Improvements maintained and operated by the Association, and the Owner and/or the Association and the City will enter into a maintenance and operation agreement substantially in the form attached hereto as Exhibit “E” concurrently with the conveyance of the Parkland and Open Space or Public Amenities, as applicable.

4.7 Project Entrances. Owner shall construct a primary entry at FM 2001 with improvements that include, but not limited to, an entry monument constructed from durable materials, such as concrete, metal, and masonry with lighting, landscaping, an entry park, a landscaped median, and street trees. Owner shall construct a secondary entry at Hillside Terrace that is cohesive with the primary entry with improvements that include, but not limited to, an entry monument constructed from durable materials, such as concrete, metal, and masonry with lighting and landscaping. The frontage along Hillside Terrace and FM 2001 shall include a fence constructed from masonry or concrete (including fencecrete) along the rear of residential lots abutting the rights-of-way, trees, and other landscaping. The entryway improvements, lighting, and landscape improvements set forth in this Section 4.8 may be included as Authorized Improvements.

4.8 Vybe Trail Extension. On or before three (3) days prior to the closing of PID Bonds issued for Improvement Area #2 of the Project, Owner shall deposit or cause to be deposited the sum of four hundred thousand dollars (\$400,000.00) with a third party title company selected by the Parties (the “Escrow Agent”) to be held in escrow (the “Vybe Trail Extension Escrow”) and used for the payment of a portion of the costs related to the construction of a portion of the Violet Crown Trail extending from the southern boundary of the Property to Windy Hill Road and substantially consistent with the highlighted segment of the Violet Crown Trail as depicted on the Citywide Trails Master Plan attached hereto as Exhibit “F” (the “Vybe Trail Extension”). The City shall be responsible for obtaining all funding approvals necessary for the additional costs of the Vybe Trail Extension as well as obtaining all easements and rights of way necessary for the construction of the Vybe Trail Extension. If the City has obtained all funding approvals, easements, and rights of way necessary for the construction of the Vybe Trail Extension on or before the Owner’s commencement of construction of the portion of the Vybe Trail on the Property which connects to the Vybe Trail Extension, the Vybe Trail Extension Escrow funds will be released to the City for use of the construction of the Vybe Trail Extension pursuant to a separate escrow agreement between the City, the Owner, and the Escrow Agent. The Owner agrees to manage construction of the Vybe Trail Extension during construction of the portion of the Vybe Trail which connects to the Property. The Owner shall not be required to provide payment, performance, or maintenance bonds related to the Vybe Trail Extension. Upon completion of the Vybe Trail Extension, the Owner shall not be required to maintain or cause to be maintained the Vybe Trail Extension and shall have no ongoing responsibilities with respect to the Vybe Trail Extension. In the event the City has not obtained all funding approvals, easements, and rights of way necessary for the construction of the Vybe Trail Extension on or before the Owner’s commencement of construction of the portion of the Vybe Trail on the Property which connects to the Vybe Trail Extension, the Vybe Trail Extension Escrow shall be returned to the Owner, and such four hundred thousand dollar (\$400,000.00) funding contribution shall be deemed forfeited by the City.

## **ARTICLE V**

### **PID TRUE UP**

#### **5.1 PID True Up.**

- (a) The following definitions shall be used in this Article V:

(1) “Maximum Special Assessment” means, for each lot classification identified in the Service and Assessment Plan (“SAP”), an Special Assessment equal to an amount that produces an average annual installment (inclusive of principal, interest, and administrative expenses) resulting in the Maximum Equivalent Tax Rate. The Maximum Special Assessment shall only be calculated upon (i) for a parcel being created by a subdivision plat, at the time of the filing of a subdivision plat, and (ii) for parcels whose Special Assessments are securing a series of PID Bonds, at the time such PID Bonds are issued.

(2) “Maximum Equivalent Tax Rate” means, for each lot classification identified in the SAP, a maximum overlapping tax rate equivalent, including all taxing entities, of \$3.05 per \$100 of estimated buildout value, but in no case less than a PID Special Assessment tax rate equivalent of \$0.47 per \$100 of estimated buildout value. The estimated buildout value for a lot classification shall be determined by the PID administrator using information provided by the Owner and confirmed by the City Council by considering such factors as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, builder contracts, discussions with homebuilders, reports from third party consultants, information provided by the Owner, or any other information that may help determine buildout value.

(b) Mandatory Reduction in Special Assessments if Maximum Special Assessment Exceeded.

(1) Maximum Special Assessment Exceeded at Plat. If the subdivision of any assessed property by a recorded subdivision plat causes the Special Assessment per lot to exceed the Maximum Special Assessment, then prior to the City approving the plat, the Owner must partially prepay the Special Assessment for each property that exceeds the Maximum Special Assessment in an amount sufficient to reduce the Special Assessment to the Maximum Special Assessment.

(2) Maximum Special Assessment Exceeded at PID Bond Issuance. At the time PID Bonds are issued, if the Special Assessment per Lot for any lot classification identified in the SAP exceeds the Maximum Special Assessment, then prior to the issuance of PID Bonds, the Special Assessment on the parcel shall be reduced until the Special Assessment equals the Maximum Special Assessment.

## **ARTICLE VI**

### **PROJECT ENGINEER AND PROJECT FACILITIES**

6.1 Project Engineer. The Owner has selected Brown and Gay Engineers as the project engineer for the Authorized Improvements, as herein defined (the “Project Engineer”). The Project Engineer will prepare the design, construction plans and specifications, and supporting documentation for the development of the Property. The Project Engineer will work and coordinate with the City Engineer to obtain the review and approval by Owner, the City Engineer and the Director of Development Services of such design, plans and specifications and supporting documentation. The Owner may, from time to time and at any time, replace the Project Engineer in the Owner’s sole and absolute discretion. In the event Owner elects to replace the Project Engineer, the Owner will provide written notice to the City of the replacement engineer.

6.2 Project Facilities. The Project Facilities collectively consist of the Authorized Improvements and the Wastewater Improvements.

## **ARTICLE VII**

## PLAN REVIEW/APPROVAL AND BIDDING OF PROJECT FACILITIES

7.1 Plan Review and Approval. The City and the Owner shall cooperate in good faith and in a diligent manner to provide the Project Engineer with all information required to prepare a complete set of plans and specifications for each of the Project Facilities (the “Plans”). The Owner elects and agrees that the Concept Plan, preliminary plans, construction plans, and final plat for the Project shall be reviewed under City’s alternative review process to allow for concurrent review. The City and the Owner shall work together in good faith to prepare and finalize the final plats and Plans, to maximize value, and to ensure the construction costs for all of the Project Facilities are commercially reasonable. Upon receipt of draft final plats and Plans from the Owner or Project Engineer, the Owner shall submit such final plats and Plans to the City. The Owner shall also provide to the City a cost estimate of the cost to construct the Project Facilities based on the Plans provided (“Cost Estimate”) and an estimated construction schedule based on such Plans. The City and Owner agree to work diligently with one another to finalize the Plans and keep the costs commercially reasonable. The City shall have fourteen (14) days from its receipt of first submittal of the final plats and Plans to approve or deny the final plats and Plans or to provide comments back to the submitter of the final plats and Plans. If any approved construction and/or engineering final plats and Plans are amended or supplemented, the City shall have seven (7) days from its receipt of such amended or supplemented final plats and Plans to approve or deny the final plats and Plans or to provide comments back to the submitter of the final plats and Plans. Any written City approval or denial must be based on compliance with applicable City Regulations. If the City does not specifically approve or deny the submitted Plans within the above-described time periods, the City shall be promptly notified; if, after five (5) business days from the date of receipt of such notification the City has not specifically approved or denied the submitted Plans or provided comments back to the submitter, or if the Parties have not agreed to additional time for the City to respond, the Plans shall be deemed approved. After Owner receives any comments to the Plans, the Owner shall revise the Plans accordingly to address such comments and value engineering. The foregoing process shall repeat until the Plans are approved by the Owner and the City. The City agrees not to unreasonably withhold its approval of the final plats or Plans. Upon approval of the Plans, the City and the Owner shall sign, date and exchange an index of drawings identifying such approved Plans. Once the Plans are approved by the City and the Owner, the Plans shall not be modified or amended without the prior written consent of both the City and the Owner, which both Parties agree to give reasonably; provided that such changes do not result in a material increase in cost. Following approval of the Plans, the Owner shall, at the Owner’s cost and expense and in compliance with all applicable codes, laws, regulations and ordinances, cause the construction of the Project Facilities in accordance with the Plans. The City shall cooperate with the Owner in connection with obtaining the necessary permits for the Project Facilities. If any provision in this paragraph conflicts with any other provision in this Agreement, this paragraph controls.

7.2 Project Facilities Costs Expenses and Reimbursement. All costs and expenses for designing, bidding, constructing and installing the Project Facilities shall initially be paid by the Owner. The Owner shall be eligible for reimbursement of the Project Facilities as set forth in this Agreement.

7.3 Competitive Bidding. This Agreement and construction of the Authorized Improvements are anticipated to be exempt from competitive bidding pursuant to Sections 252.022(a)(9) and 252.022(a)(11) of the Texas Local Government Code based upon current cost estimates. However, in the event that the actual costs for the Authorized Improvements do not meet the parameters for exemption from the competitive bid requirement, then alternative delivery methods may be used by the City as allowed by law.

7.4 Project Facilities Constructed on City Land or the Property. If the Project Facilities are on land owned by the City, the City shall grant to the Owner a temporary easement to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Project Facilities in a form acceptable to both Parties. If the Project Facilities are on land owned by the Owner, the

Owner shall execute and deliver to the City such access, maintenance and operation easements as the City may reasonably require in recordable form, and the Owner shall grant to the City a permanent access, maintenance and operation easement to enter upon such land for purposes related to inspection, maintenance and operation of the Project Facilities in a form acceptable to the City. The grant of the permanent easement shall not relieve the Owner of any obligation to grant the City, Goforth SUD, Windy Hill, or other entity, as applicable, title to property and/or easements related to the Project Facilities as required by this Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Project Facilities. The provisions for inspection and acceptance of such Project Facilities otherwise provided herein shall apply.

## **ARTICLE VIII**

### **CONSTRUCTION OF PROJECT FACILITIES; PAYMENT**

8.1 Construction of the Project Facilities. Owner shall design, construct, install and obtain City acceptance and Goforth SUD acceptance, as applicable, of the Authorized Improvements in accordance with the terms and conditions of this Agreement. Owner shall design, construct, install and obtain Windy Hill acceptance of the Wastewater Improvements in accordance with the terms and conditions of this Agreement.

8.2 Payment, Performance and Maintenance Bonds. The City shall require the Owner to provide performance and payment bonds (in a form reasonably acceptable to the City) at the time of final plat approval to assure that the Authorized Improvements are constructed as proposed. The Owner shall provide, or cause to be provided, a two (2) year maintenance bond upon acceptance of applicable Authorized Improvements by the City.

8.3 City Acceptance.

(a) Within thirty (30) days after the City's final inspection and correction of punch list items of the Authorized Improvements (or applicable segment thereof), the Owner shall convey to the City (if requested by the City and by an instrument acceptable to the City), and the City will accept the applicable Authorized Improvements as follows:

(1) The Owner shall provide the City Engineer with a set of as-built drawings, for permanent record.

(2) The Owner or Owner's Contractor shall provide the City Manager or designee with a two-year maintenance bond for the Authorized Improvements conveyed to the City (as applicable).

(b) Upon the completion of construction of the applicable Authorized Improvements by the Owner, and final acceptance thereof by the City, the applicable Authorized Improvements will be owned, operated, and maintained by the City, and no other conveyance documents will be required to effectuate this transfer (other than easements that are not conveyed by plat).

8.4 Project Costs.

(a) The cost of the Project Facilities (the "Project Costs") will include all costs and expenses paid or incurred by the Owner in connection with the design and construction of the Project Facilities including, but not limited to, costs and expenses for:

(1) feasibility, design, engineering, environmental, consulting, survey, and

legal;

- (2) soils and materials testing;
- (3) obtaining governmental and regulatory approvals;
- (4) construction management (4%), construction, and inspections; and
- (5) amounts reimbursed by the Owner to the City for third party costs paid or incurred by the City in connection with the design and construction of the Project Facilities (including, but not limited to, inspection, engineering, and legal fees).

(b) Project Costs shall be reviewed by the City Engineer for reasonableness and necessity, and written comments, if any, shall be provided to the Owner within thirty (30) days after the Project Costs, including documentation, are delivered to the City Engineer. If any Project Costs are rejected by the City Engineer as unreasonable or unnecessary, a detailed written justification for the rejection shall be provided to the Owner. The portion of the approved Project Costs shall be paid or reimbursed to the Owner while payment with respect to the disputed portion(s) of the Project Costs shall not be made until the Owner and the City have jointly settled such dispute or additional information has been provided to the City's reasonable satisfaction.

#### 8.5 City's Option to Complete Project Facilities.

(a) In the event the Owner fails to complete and obtain City acceptance of the Project Facilities to be dedicated to the City after any applicable notice and cure periods, the City will have the right, but not the obligation, to complete the Project Facilities and to draw on any fiscal security guaranteeing the completion of the Project Facilities.

(b) In the event the City elects to complete the Project Facilities, the Owner agrees that all of the Owner's right, title, and interest in the plans and specifications, designs, easements, real and personal property, and improvements acquired, produced or installed in aid of or necessary for completing such Project Facilities by the Owner or its engineers or contractors before such default shall become the property of the City and, in such event, the Owner will provide all necessary documentation to the City within five (5) business days of the City's request. To ensure that the City has all necessary rights to the plans and specifications for the Project Facilities and any other engineering services of the Project Engineer, Owner hereby assigns all its rights, title, and interest in the professional services agreements between the Owner and the Project Engineer necessary for completion of the Project Facilities. The Owner agrees that the City will have the right to use such plans and specifications to complete the Project Facilities.

### **ARTICLE IX** **PID BOND ISSUANCE REQUIREMENTS**

9.1 PID Bond Issuance Requirements. The Parties acknowledge the City's "Public Improvement District Policy" as of the Effective Date and agree that as consideration for the Owner's development of the Project, the City's issuance of PID Bonds and the PID Financing Documents shall be subject to the following requirements, which may differ from the policy:

(a) PID Bond Operations. The aggregate principal amount of PID Bonds to be issued shall not exceed \$60,000,000, which shall be used to fund: (i) the actual costs of the Authorized

Improvements, (ii) to the extent permitted by law, required reserves, additional interest, and capitalized interest during the period of construction and not more than twelve (12) months after the completion of construction of all Authorized Improvements covered by the PID Bond issue in question and in no event for a period greater than thirty-six (36) months from the date of the initial delivery of the PID Bonds, (iii) a PID reserve fund and administrative fund, and (iv) any costs of issuance for the PID Bonds; provided, however, that to the extent the law(s) which limit the period of capitalized interest to twelve (12) months after completion of construction change, the foregoing limitation may, with the agreement of the Parties, be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances.

(b) Maturity. The final maturity for each series of PID Bonds shall occur no later than thirty (30) years from the issuance date of said PID Bonds.

(c) Financing Amount. The Owner intends to request the issuance of the PID Bonds subject to the condition that the maximum cost of Authorized Improvements to be funded plus issuance and other financing costs shall not exceed \$41,000,000. The amount may increase up to \$60,000,000 with City Council approval due to cost increases in the Authorized Improvements.

(d) Value to Lien Ratio. The minimum value to lien ratio based on the anticipated final lot values as provided in an Appraisal at the issuance date of each series of PID Bonds shall be at least 2.0 to 1 overall, as set forth in the Indenture of Trust.

(e) Maximum PID Administrative Expenses. The administrative expenses related to the PID, as set forth in the SAP, shall not increase by more than two percent (2%) on an annual basis.

(f) Maximum Annual Installment Increase. Annual installments of the Special Assessments, as set forth in the SAP, shall be permitted to increase by up to two percent (2%) on an annual basis.

(g) City PID Fee. A fee in an amount equal to ten percent (10%) of the net proceeds of the PID bonds (the “City PID Fee”) shall be paid, or caused to be paid, by Owner three (3) days prior to closing of each series of PID Bonds. The City PID Fee received by the City shall be deposited into the City’s general fund and used by the City solely at its discretion for any lawful purposes.

## **ARTICLE X**

### **PROPERTY OWNERS ASSOCIATION**

10.1 Property Owners Association. Owner will create a Property Owners Association (“Association”), and shall establish bylaws, rules, regulations, and restrictive covenants (collectively, the “Association Regulations”) to assure the Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Association pursuant to this Agreement. The owner of each lot in the subdivision shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Association Regulations will establish periodic Association dues and assessments, to be charged and paid by the lot owners in the Project, that are and will be sufficient to maintain (a) the drainage easements and improvements within the Property that are dedicated to the City but not maintained and operated by the City (the “Drainage”); (b) any part or portion of the Property that is dedicated to the Association (the “Dedicated Property”); and (c) maintenance and operation of the Parkland and Open Space and Public Amenities identified in Exhibit “D” in accordance with Section 4.6 above. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the Drainage, Dedicated Property, Parkland and Open Space, and Public Amenities, and to provide funds required for the management and operation of the Association.



**ARTICLE XI**  
**AUTHORITY; COVENANTS; PROPERTY RIGHTS**

11.1 Powers.

(a) The City hereby represents and warrants to the Owner that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the terms and conditions of this Agreement and subject to applicable processes, procedures, and findings that are required by state law, City ordinances, or the City Charter related to actions taken by the City Council, and all of the foregoing have been authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions, and does not require the consent of any other governmental authority.

(b) The Owner hereby represents and warrants to the City that the Owner has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary actions of the Owner. Concurrently with the Owner's execution of this Agreement, the Owner has delivered to the City copies of the resolutions or other corporate actions authorizing the execution of this Agreement and evidencing the authority of the persons signing this Agreement on behalf of the Owner to do so. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Owner, and is enforceable in accordance with its terms and provisions.

11.2 Authorized Parties. Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreements, any request, demand, approval, notice or consent of the City or the Owner is required, or the City or the Owner is required to agree or to take some action at the request of the other, such request, demand, approval, notice or consent, or agreement shall be given for the City, unless otherwise provided herein or inconsistent with applicable law, the City Charter, or City Regulations, by the City Manager and for the Owner by any officer of the Owner so authorized (and, in any event, the officers executing this Agreement are so authorized); and any party shall be authorized to act on any such request, demand, approval, notice or consent, or agreement.

**ARTICLE XII**  
**GENERAL PROVISIONS**

12.1 Time of the Essence. Time is of the essence in all things pertaining to the performance of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

12.2 Default; Remedies.

(a) A Party shall be deemed in default under this Agreement if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement, subject to the notice and cure provisions in this Section 12.2.

(b) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a default of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No default of this Agreement may be found to have occurred if performance has commenced to the reasonable

satisfaction of the complaining party within thirty (30) days of the receipt of such notice, and the Party shall be given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). Upon a default of this Agreement for which cure has not commenced as provided above, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may seek relief, including but not limited to the specific performance of the covenants and agreements herein contained, mandamus, and injunctive relief. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

### 12.3 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; wars; revolts; terrorism; sabotage and threats of sabotage or terrorism; epidemic; pandemic; 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; transportation disasters, whether by ocean, rail, land or air; or other causes that (i) are not reasonably within the control of the party claiming such inability, or (ii) could not be avoided, by the party who suffers it, by the exercise of commercially reasonable efforts.

(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 thirty (30) 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.

12.4 Liability of the Owner, its successors and assignees. Any obligation or liability of the Owner whatsoever that may arise at any time under this Agreement or any obligation or liability which may be incurred by the Owner pursuant to any other instrument, transaction or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Owner and any fiscal surety posted with the City related to the Porter Country Subdivision only, except as required by the PFA or any other agreements the Owner enters related to the PID or the Porter Country Subdivision. No obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of partners, officers, employees, shareholders or agents of the Owner, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise, except as required by the PFA or any other agreements the Owner enters related to the PID or the Porter Country Subdivision.

12.5 Personal Liability of Public Officials. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this

Agreement.

12.6 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed by registered or certified mail, return receipt requested, or personally delivered to an officer of the receiving party at the following addresses:

If to the City:

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

with a copy to:

The Knight Law Firm, LLP  
Attn: Paige H. Saenz  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

If to the Owner:

Hillside Terrace Development, LLC  
Attn.: Garrett Martin, President  
2100 Northland Drive  
Austin, Texas 78756

with a copy to:

Winstead PC  
Attn: Ross Martin  
2728 N. Harwood, Suite 500  
Dallas, Texas 75201

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when deposited with the United States Postal Service, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, an authorized officer of the City or the Owner, as the case may be.

12.7 Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the City Council and the Owner. No course of dealing on the part of the City or the Owner nor any failure or delay by the City or the Owner with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

12.8 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement, and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

12.9 Beneficiaries. This Agreement shall bind and inure to the benefit of the Parties and their successors and permitted assigns.

12.10 Successors and Assigns.

(a) Except as expressly provided in this Section, neither party to this Agreement shall have the right to convey, transfer, assign, mortgage, pledge or otherwise encumber all or any part of its right, title and interest under this Agreement to any party without the prior written consent of the other party to this Agreement, which consent shall not be unreasonably withheld, conditioned, delayed or denied.

(b) Owner may, from time to time, effectuate a transfer of the obligations, rights, requirements, or covenants to develop the Property under this Agreement, in whole or in part, without the consent of City to: (i) any affiliate or related entity of the Owner; or (ii) any lienholder on the Property. The obligations, rights, requirements, or covenants to develop the Property under this Agreement shall not be assigned by the Owner to a non-affiliate or non-related entity of the Owner without the prior written consent of the City Council, which consent shall not be unreasonably withheld, conditioned, delayed, or denied; provided such party agrees in writing to assume all of Owner's duties, obligations, and liabilities so assigned hereunder, and provided further that any such assignment shall not become effective until the City receives notice of the assignment and a copy of the assignment instrument. Any receivables due under this Agreement, the PFA, or any Reimbursement Agreement may be assigned by the Owner without the consent of, but upon written notice to, the City within ten (10) days of such assignment pursuant to this Agreement.

(c) Owner may pledge, assign, collaterally assign, or grant a lien or security interest in, or otherwise encumber any of its right, title and interest under this Agreement, in whole or in part, (i) without the consent of the City, to any third party lender of the Project (each, a "Lender"), or (ii) to any person or entity with the City Council's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed) as security for the performance of Owner's obligations; and in relation thereto, the City will execute reasonable acknowledgements of this Agreement as may be requested by such Lender or third party, including confirmation whether this Agreement is valid and in full force and effect, whether either party is in default of any duty or obligation under this Agreement, and agreeing to provide notice and opportunity to cure to such Lender and the City agrees to accept a cure, not to be unreasonably withheld, offered by the Lender as if offered by the defaulting Party. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any Lender to perform any obligations or incur any liability under this Agreement unless the Lender agrees in writing to perform such obligations or incur such liability. A Lender is not a party to this Agreement unless this Agreement is amended, with the consent of the Lender, to add the Lender as a Party.

(d) Any attempted transfer of a portion of the Property or of any right or beneficial interest under this Agreement shall not be effective with respect to such interest unless the instrument purporting to carry out such transfer expressly states that the right or beneficial interest subject to the transfer is deemed a transfer to the proposed party.

(e) Notwithstanding anything to the contrary, this Agreement shall not be binding upon any purchaser of a platted lot or reserve in the Project.

12.11 Exhibits, Titles of Articles, Sections and Subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the Parties and shall not be construed to have any effect or meaning as to the agreement between the Parties hereto. Any reference herein to a section or subsection shall be considered

a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

12.12 Applicable Law. This Agreement is a contract made under, and shall be construed in accordance with and governed by, the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the Texas State District Courts of Hays County, Texas or the United States District Court for the Western District of Texas.

12.13 Entire Agreement. This Agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

12.14 No Waiver of City Standards. Except as may be specifically provided in this Agreement, the City does not waive or grant any exemption to the Property or the Owner with respect to City Regulations.

12.15 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

12.16 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

12.17 Interpretation. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

12.18 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby.

12.19 Binding Obligations. This Agreement shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; provided, however, this Agreement, if recorded, shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree (i) that the term “end-buyer” means any owner, developer, tenant, user, or occupant, and (ii) that the term “fully developed and improved lot” means any lot, regardless of proposed use, for which a final plat has been approved by the governmental authority having jurisdiction and for which all planned and approved improvements have been constructed and accepted to the extent that a building permit may be obtained for such lot.

12.20 Anti-Boycott Verification. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Owner represents that neither Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner (i) boycotts Israel or (ii) will boycott Israel through the

term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

12.21 Verification under Chapter 2252, Texas Government Code. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Owner represents that Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

12.22 No Discrimination Against Fossil-Fuel Companies. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, as amended, the Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (b) does business with a company described by (a) above.

12.23 No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, as amended, the Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, (a) ‘discriminate against a firearm entity or firearm trade association’ means, with respect to the firearm entity or firearm trade association, to: (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; and (b) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (A) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (B) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association. As used in the foregoing verification, (a) ‘firearm entity’ means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in

conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code); and (b) ‘firearm trade association’ means a person, corporation, unincorporated association, federation, business league, or business organization that: (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

12.24 Exhibits. The following Exhibits to this Agreement are incorporated herein by reference for all purposes:

<u>Exhibit A</u>	Description of Property
<u>Exhibit B</u>	Concept Plan
<u>Exhibit C</u>	Authorized Improvements
<u>Exhibit D</u>	Parkland and Public Amenities
<u>Exhibit E</u>	Form of Maintenance and Operations Agreement
<u>Exhibit F</u>	Vybe Trail Extension

*[Signature pages follow]*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

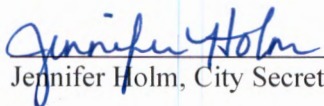
**CITY:**

**CITY OF KYLE, TEXAS,**  
a home rule municipality

By:

  
Travis Mitchell, Mayor

ATTEST:

  
Jennifer Holm, City Secretary





**OWNER:**

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

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

Name: Garrett Martin \_\_\_\_\_

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

## **EXHIBIT "A"**

### **Description of Property**

A 259.02 acres (11,282,708 square feet), tract of land, lying within the Jessie B. Eaves Survey, Abstract 166 and the W.A. Moore Survey, Abstract 331, Hays County, Texas, and being all of a called 163.935 acre tract, conveyed to Hillside Terrace Development, LLC in Document No. 21020969, Official Public Records of Hays County, Texas, all of a called 82.951 acre tract, conveyed to RIO OSO Holdings LLC in Document No. 18028156, Official Public Records of Hays County, Texas and a portion of called 35.04 acre tract, conveyed to GJG Development II LLC in Document No. 19024067, Official Public Records of Hays County, Texas, described as follows:

**BEGINNING** at a 5/8" iron rod with aluminum "PRO TECH ENG" cap found at the southeastern corner of said 163.935 acre tract, the northeastern corner of a called 2.80 acre tract, conveyed to James Mikeska & Traci Horne-Mikeska in Volume 1738, Page 731, Official Public Records of Hays County, Texas, and being on the western right-of-way line of F.M. 2001 (right-of-way varies), for the southeastern corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said 2.80 acre tract, S88°25'07"W, a distance of 858.81 feet to a 1/2" iron pipe found, for the northwestern corner of said 2.80 acre tract and the northeastern corner of Windy Hill Subdivision 24 AC, a subdivision, recorded in Document No. 17040372, Official Public Records of Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Windy Hill Subdivision 24 AC, S88°22'00"W, a distance of 1223.10 feet to a 3/4" iron pipe found, for the northwestern corner of said Windy Hill Subdivision 24 AC and the northeastern corner of Shadow Creek Phase 3, Section 4, a subdivision, recorded in Volume 13, Page 336, Plat Records Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of Shadow Creek Phase 9, Section 2, a subdivision, recorded in Document No. 17029868, Plat Records Hays County, Texas, S88°25'56"W, a distance of 1993.62 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Shadow Creek Phase 9, Section 2, the following three (3) courses and distances;

1. S88°24'30"W, a distance of 445.39 feet to a 6" wood fence post found;
2. S89°20'38"W, a distance of 873.39 feet to a 1/2" iron rod found;
3. S87°32'32"W, a distance of 556.41 feet to a pk nail in concrete found;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 9, Section 2, the northern line of Shadow Creek Phase 12, Section 1, a subdivision, recorded in Volume 19, Page 60, Plat Records Hays County, Texas and the northern line of a called 49.465 acre tract, conveyed to John Galloway Sr. & John Galloway Jr. in Volume 496, Page 791, Official Public Records of Hays County, Texas, S87°20'19"W, a distance of 442.82 feet to a 4" steel post found, for the southwestern corner of said 163.935 acre tract and the southeastern corner of a the remainder of a called 10.009 acre tract, conveyed to Mayra Garcia and Matias Garcia in Volume 3572, Page 398, Official Public Records of Hays County, Texas, for the southwestern corner of the herein described tract;

**THENCE**, with the western line of said 163.935 acre tract, the eastern line of said remainder of a called 10.009 acre tract, the eastern line of a called 10.01 acre tract, conveyed to Apostolic Christian Tabernacle of Austin in Volume 3333, Page 674, Official Public Records of Hays County, Texas, and the eastern line of a called 36.02 acre tract, conveyed to Salvador Villegas in Volume 3252, Page 665, Official Public Records of Hays County, Texas, N01°49'27"W, a distance of 1483.67 feet to a 4" steel post found, for an ell corner of said 163.935 acre tract, the northeastern corner of said 36.02 acre tract and being on the southern line of a called 68.96 acre tract, conveyed to TFLP Investments Limited Partnership in Volume 3118, Page 335, Official Public Records of Hays County, Texas;

**THENCE**, with a northern line of said 163.935 acre tract and the southern line of said 68.96 acre tract, N88°22'22"E, a distance of 1502.07 feet to a 1/2" iron rod found for an ell corner of said 163.935 acre tract and the southeastern corner of said 68.96 acre tract;

**THENCE**, with a western line of said 163.935 acre tract and the eastern line of said 68.96 acre tract, N02°00'11"W, a distance of 1007.83 feet to a 1/2" iron rod with plastic cap found for the northeastern corner of said 68.96 acre tract and the southeastern corner of Country Ridge Subdivision, a subdivision recorded in Volume 3, Page 274 Plat Records of Hays County, Texas;

THENCE, with a western line of said 163.935 acre tract and the eastern line of said Country Ridge Subdivision, N01°37'27"W, a distance of 1945.78 feet to a 1/2" iron rod found for the northeastern corner of said Country Ridge Subdivision and being on the southern right-of-way line of Hillside Terrace (right-of-way varies);

THENCE, with a western line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N01°37'27"W, a distance of 14.88 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the northwestern corner of said 163.935 acre tract and of the herein described tract;

THENCE, with a northern line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N88°01'45"E, a distance of 1410.61 feet to a 1/2" iron rod found for the northeastern corner of said 163.935 acre tract, the northwest corner of a 8.00 acre tract, conveyed to Nancy H. Johnson and described in a called 8.00 acre tract to Chase Baromeo Jr. and Barbara A. Castleberry in Volume 881, Page 259 Deed Records of Hays County, Texas and for the northeastern corner of the herein described tract;

THENCE, with an eastern line of said 163.935 acre tract and the western line of said 8.00 acre tract, S04°59'16"E, a distance of 685.20 feet to a point for an ell corner of said 163.935 acre tract, the southwest corner of a said 8.00 acre tract, and being on the northern line of a called 36.341 acre conveyed to Todd Burek in Document No. 19009802, Official Public Records of Hays County, Texas, from which a 1/2" iron rod found bears N01°15'44"E, a distance of 2.07 feet;

THENCE, over and across said 36.341 acre tract and said 35.04 acre tract, the following eight (8) courses and distances:

1. S 01° 57' 33" E, a distance of 43.81 feet to a 1/2" iron rod with unreadable cap found;
2. S 20° 51' 38" W, a distance of 126.91 feet to a 1/2" iron rod found;
3. S 25° 03' 48" W, a distance of 279.88 feet to a 1/2" iron rod found;
4. S 17° 00' 26" W, a distance of 49.76 feet to a 1/2" iron rod with J.E. Garron cap found;
5. S 06° 28' 28" W, a distance of 77.28 feet to a 1/2" iron rod found;
6. S 01° 01' 23" E, a distance of 800.38 feet to a 1/2" iron rod with J.E. Garron cap found;
7. S 88° 38' 46" W, a distance of 9.99 feet to a 1/2" iron rod with J.E. Garron cap found;
8. S 00° 58' 08" E, a distance of 129.20 feet to a 1/2" iron rod with J.E. Garron cap found on a northern line of said 163.935 acre tract and also being a southern line of said 35.04 acre tract;

THENCE, with a northern line of said 163.935 acre tract and also being the southern line of said 35.04 acre tract, N 88° 55' 55" E, a distance of 73.88 feet to a PK nail with washer stamped "PROTECH" found for an ell corner of said 163.935 acre tract and the northwestern corner of the remainder of a called 91.92 acre tract, conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas;

THENCE, with a eastern line of said 163.935 acre tract and also being the western line of said 91.92 acre tract, S10°01'04"W, a distance of 1388.58 feet to a 1/2" iron rod with broken cap found for the northwestern corner of said 82.951 acre tract and also being the southwestern corner of the remainder of said 91.92 acre tract;

THENCE, with the northern line of said 82.951 acre tract, the southern line of said remainder of 91.92 acre tract and also the southern boundary line of the remainder of a called 45.13 acre tract and of the remainder of a called 60.58 acre tract both conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, N88°27'53"E, a distance of 3878.65 feet to a 1/2" iron rod with a 4540 cap found for the northeastern corner of said 82.951 acre tract, the southeastern corner of said remainder of the 60.58 acre tract and also being on the western right-of-way line of F.M. 2001;

THENCE, with the eastern line of said 82.951 acre tract and also being the western right-of-way line of F.M. 2001, the following two (2) courses and distances:

1. S01°20'27"E, a distance of 856.10 feet to a concrete monument found on the arc of a curve to the left;
2. Along the arc of said curve to the left, a distance of 54.09 feet, having a radius of 756.20 feet, a delta angle of 4°05'54" and a chord bearing of S03°29'29"E, a distance of 54.08 feet to a 5/8" iron rod with aluminum "PRO TECH ENG" cap found on the arc of a curve to the left, for the southeastern corner of said 82.951 acre tract and the northern southeastern corner of said 163.935 acre tract;

THENCE, with the eastern line of said 163.935 acre tract and the western right-of-way line of F.M. 2001, along the arc of said curve to the left, a distance of 37.01 feet, having a radius of 756.20 feet, a delta angle of 2°48'14" and a chord bearing of S06°20'21"E, a distance of 37.00 feet to the POINT OF BEGINNING.

Containing 259.02 acres or 11,282,708 square feet, more or less.



### Concept Plan



## EXHIBIT “C”

### Authorized Improvements

Description	Total Costs <sup>[a]</sup>	Private Improvements	Improvement Area #1 <sup>[a]</sup>	Improvement Area #2	Improvement Area #3
Roadway <sup>[b]</sup>	\$ 8,150,173	-	\$ 3,657,704	\$ 1,953,859	\$ 2,538,610
Water <sup>[c]</sup>	3,536,376	-	1,403,861	900,069	1,232,445
Wastewater <sup>[d]</sup>	3,011,281	3,011,281	-	-	-
Drainage & Ponds <sup>[e]</sup>	5,520,157	-	2,290,715	1,706,927	1,522,515
Parks and Landscaping <sup>[e]</sup>	2,091,016	-	713,674	548,138	829,204
Subtotal	\$ 22,309,003	\$ 3,011,281	\$ 8,065,955	\$ 5,108,994	\$ 6,122,774
Contingency (7.0%)[d]	1,561,630	210,790	564,617	357,630	428,594
Construction Management (4.0%)[d]	892,360	120,451	322,638	204,360	244,911
Engineering and Soft Costs <sup>[e]</sup>	4,461,801	602,256	1,613,191	1,021,799	1,224,555
Developer District Formation Costs	650,000	-	250,000	200,000	200,000
<b>Total Improvements</b>	<b>\$ 29,874,794</b>	<b>\$ 3,944,778</b>	<b>\$ 10,816,401</b>	<b>\$ 6,892,782</b>	<b>\$ 8,220,834</b>
Bond Issuance Costs					
Capitalized Interest	\$ 2,812,950		\$ 1,125,450	\$ 973,500	\$ 714,000
Reserve Fund	\$ 2,687,955		\$ 1,027,273	\$ 851,469	\$ 809,214
Underwriter Discount	\$ 950,700		\$ 375,150	\$ 292,050	\$ 283,500
Cost of Issuance (6.0%)	\$ 1,901,400		\$ 750,300	\$ 584,100	\$ 567,000
First Year Collection Costs	\$ 70,000		\$ 30,000	\$ 20,000	\$ 20,000
<b>Total Bond Issue Costs</b>	<b>\$ 8,423,005</b>	<b>\$ -</b>	<b>\$ 3,308,173</b>	<b>\$ 2,721,119</b>	<b>\$ 2,393,714</b>
<b>Total Authorized Improvements</b>	<b>\$ 38,297,799</b>	<b>\$ 3,944,778</b>	<b>\$ 14,124,574</b>	<b>\$ 9,613,900</b>	<b>\$ 10,614,547</b>

**Footnotes:**

- [a] Porter County Combined Budget. Amounts represent estimates only and are subject to change.
- [b] Includes streets, earthwork, clearing, erosion control, demolition, staking and entry improvements. Assumes 2.0% of earthwork, clearing and grubbing costs apply to PID improvements.
- [c] Water service provided by GoForth SUD. Assumes improvements will be eligible for PID financing.
- [d] Wastewater services provided by Windy Hill Utility Company. Assumes improvements are not eligible for PID financing.
- [e] Assumes parks, landscaping and pond improvements will be maintained by the HOA.
- [g] Includes pre-development costs.

## EXHIBIT "D"

### Parkland and Public Amenities



Exhibit D

**EXHIBIT “E”**

Form of Maintenance and Operations Agreement  
[attached]

Exhibit E

(Page 1 of 8)

## MAINTENANCE AND OPERATIONS AGREEMENT

This Maintenance and Operations Agreement (the “Agreement”) is entered into by the City of Kyle, a Texas home rule municipal corporation and political subdivision of the State of Texas situated in Hays County, Texas (the “City”), and \_\_\_\_\_, a \_\_\_\_\_ (“Licensee”), effective as of the \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), upon the terms and conditions set forth below.

### I. DEFINED TERMS

A. “**Development Agreement**” means the Porter Country Development Agreement dated effective \_\_\_\_\_.

B. “**District**” means the “Porter Country Public Improvement District”, as described in the SAP, which property therein is being developed as a master planned community in the City.

C. “**Public Improvements**” means a portion of the “Authorized Improvements,” as described in the SAP, comprising only the following:

- Detention/Water Quality Pond
- Parks and Landscaping

D. “**Service and Assessment Plan**” means the Porter Country Public Improvement District Service and Assessment Plan (“SAP”) dated effective \_\_\_\_\_, as updated and amended from time to time.

### II. PURPOSE OF LICENSE AGREEMENT

A. The City grants to Licensee permission to operate and maintain the Public Improvements. The City makes this grant solely to the extent of its right, title and interest in the Public Improvements, without any express or implied warranties.

B. Licensee agrees that all maintenance and operations permitted by this Agreement with respect to the Public Improvements shall be done in compliance with all applicable County, State and/or federal laws, ordinances, regulations, and policies now existing or later adopted, and applicable City regulations.

### III. ANNUAL FEE

No annual fee shall be due to the City in connection with this Agreement, and the City will not compensate Licensee for the maintenance and operation of the Public Improvements.

### IV. CITY’S RIGHT TO PUBLIC IMPROVEMENTS

This Agreement is expressly subject and subordinate to the present and future right of the City to use the Public Improvements for the benefit of the public.

### V. INSURANCE

Exhibit E

(Page 2 of 8)



A. Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company reasonably acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than \$600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The City may require the Licensee to increase the combined single limit of such coverage from time to time in the reasonable discretion of the City. Such insurance coverage shall specifically name the City as an additional insured. The insurance shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement. Licensee may satisfy the insurance requirement herein by blanket policies covering property in addition to the Public Improvements. Licensee shall be responsible for any deductibles stated in the policy. A certificate of insurance evidencing such coverage shall be delivered to the Kyle City Manager on or before the Licensee's use or occupancy of the Public Improvements.

B. Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse and shall provide the City where possible thirty (30) days written notice as evidenced by a return receipt of registered or certified mail of any anticipated cancellation, reduction, restriction, or other limitation thereafter established under such policy of insurance.

## **VI. INDEMNIFICATION**

Licensee shall indemnify, defend, and hold harmless the City and its officers, agents, and employees against all claims, suits, demands, judgments, damage, costs, losses, expenses, including reasonable attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by Licensee's maintenance of the Public Improvements under this Agreement. This indemnification provision, however, shall not apply to any claims, suits, demands, judgments, damage, costs, losses, expenses, or other liability for personal injury, death, or damage to any person or property (i) for which the City shall have been compensated by insurance provided under Paragraph V, above, (ii) arising out of any acts or omissions by the City under Paragraph IV, above, or (iii) arising solely from the negligence or willful acts or omissions of the City; provided that for the purposes of the foregoing, the City's entering into this Agreement shall not be deemed to be a "negligent or willful act."

## **VII. CONDITIONS**

A. Licensee's Responsibilities. Licensee will be responsible for any and all damage to the Public Improvements unless such damage is as a result of acts or omissions by the City.

B. Maintenance. Licensee shall maintain the Public Improvements in good repair, working order, and good condition, and in compliance with this Agreement and the Development Agreement, as applicable. The City may require Licensee to take action to maintain the Public Improvements in compliance with this Agreement, including, but not limited to, the removal of dead or dying vegetation placed by Licensee within the park and open space, and rebuilding and reconstructing the Public Improvements, save and except that removal or repairs due to normal wear and tear shall be completed within thirty (30) days (or such longer reasonable period of time if thirty (30) days is not reasonable as long as such additional time does not exceed ninety (90) days from the date of the notice) following receipt of a written request from the City.

C. Operation. Licensee shall operate the Public Improvements in accordance with applicable State and federal regulations for the operation of the facilities comprising the Public Improvements.

D. Removal or Modification. No Public Improvements may be modified or removed without the prior written consent of the City.

E. Default. In the event that Licensee fails to maintain the Public Improvements as provided in this Agreement and the Development Agreement, or otherwise comply with the terms or conditions as set forth herein, the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and if Licensee does not satisfactorily remedy the same within the thirty (30) day period (provided that the City shall allow such additional time as may be reasonably necessary for Licensee to cure any failure as long as Licensee commences such cure within the thirty (30) day period provided and diligently pursues such cure thereafter and as long as such additional time does not exceed ninety (90) days from the date of the notice) the City may pursue its remedies under Paragraph XI below.

City Address:

City of Kyle  
Attention: City Manager

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

Licensee Address:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## VIII. COMMENCEMENT

This Agreement shall begin on the Effective Date and continue thereafter for as long as the Public Improvements are maintained and operated by the Licensee.

## IX. TERMINATION

Notwithstanding any other term, provision, or condition of this Agreement and the Development Agreement, subject only to prior written notification to Licensee, this Agreement is revocable by the City if Licensee fails to comply with the terms and conditions of this Agreement beyond applicable notice and cure periods, including but not limited to the insurance requirements specified herein. The City agrees that, if the City terminates this Agreement, the City will operate and maintain the Public Improvements in the manner contemplated by the Development Agreement with reimbursement of City's costs to operate and maintain the Public Improvements by Licensee. The City may further terminate and revoke this Agreement if:

A. The Public Improvements, or a portion of them, constitute a danger to the public which the City deems not to be remediable by alteration or maintenance of such Public Improvements; or

Exhibit E

(Page 4 of 8)

B. Maintenance or alteration necessary to alleviate a danger to the public has not been made after the notice and cure periods provided herein have lapsed.

#### **X. FUNDING MAINTENANCE OBLIGATION**

Licensee will establish periodic homeowner's association dues and assessments, to be charged and paid by the lot owners within the property under the jurisdiction of Licensee pursuant to such bylaws, rules, regulations, and restrictive covenants established by Licensee (collectively, "Association Regulations"), in order to maintain and operate the Public Improvements as provided in this Agreement. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance and operation of the Public Improvements, and to provide funds required for the management and operation of Licensee.

#### **XI. REMEDIES**

The City will be entitled to judicially enforce Licensee's obligations under this Agreement pursuant to the Association Regulations. Licensee also agrees that, in the event of any default on its part under this Agreement, the City shall have available to it equitable remedies including, without limitation, the right to obtain a writ of mandamus or an injunction, or seek specific performance against Licensee to enforce Licensee's obligations under this Agreement.

#### **XII. EMINENT DOMAIN**

If any portion of the Public Improvements is taken by eminent domain by a governmental authority other than the City, this Agreement shall terminate as to the affected portion of the Public Improvements so condemned.

#### **XIII. INTERPRETATION**

This Agreement shall, in the event of any dispute over its intent, meaning, or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

#### **XIV. APPLICATION OF LAW**

This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

#### **XV. SPECIFIC PERFORMANCE**

If either party materially breaches the terms of this License Agreement, such material breach shall be an event of default. In that event, the non-defaulting party to this License Agreement may pursue the remedy of specific performance.

#### **XVI. VENUE**

Venue for all lawsuits concerning this Agreement will be in Hays County, Texas.

Exhibit E

(Page 5 of 8)

## **XVII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT**

This Agreement and all of the covenants herein shall run with the Public Improvements; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time by written instrument, without affecting or impairing any right arising from any subsequent or other default.

## **XVIII. AMENDMENT**

This License Agreement may be amended only by an instrument in writing signed and approved by both parties.

## **XIX. ASSIGNMENT**

Licensee shall not assign or transfer its interest in this Agreement without the written consent of the City.

## **XX. POWER AND AUTHORITY**

A. The City hereby represents and warrants to Licensee that the City has full constitutional and lawful right, power, and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the terms and conditions of this Agreement and subject to applicable processes, procedures, and findings that are required by state law, City ordinances, or the City Charter related to actions taken by the City Council, and all of the foregoing have been authorized and approved by all necessary City proceedings, findings, and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the City, is enforceable in accordance with its terms and provisions, and does not require the consent of any other governmental authority.

B. Licensee hereby represents and warrants to the City that Licensee has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary actions of Licensee. Concurrently with Licensee's execution of this Agreement, Licensee has delivered to the City copies of the resolutions or other corporate actions authorizing the execution of this Agreement and evidencing the authority of the persons signing this Agreement on behalf of Licensee to do so. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of Licensee, and is enforceable in accordance with its terms and provisions.

\* \* \*

[SIGNATURE PAGE FOLLOWS]

Exhibit E

(Page 6 of 8)

**TERMS AND CONDITIONS ACCEPTED**, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LICENSOR:**

City of Kyle

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

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

Title: Mayor

**LICENSEE:**

\_\_\_\_\_

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

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

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

**THE STATE OF TEXAS**       §

§

**COUNTY OF HAYS**       §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Mayor, City of Kyle, Texas, on behalf of the City.

\_\_\_\_\_  
Notary Public - State of Texas

Exhibit E

(Page 7 of 8)

THE STATE OF TEXAS     §  
  §  
COUNTY OF HAYS         §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Texas

**AFTER RECORDING RETURN TO:**

City of Kyle  
Attn: City Secretary

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

Exhibit E

(Page 8 of 8)

**EXHIBIT “F”**

**Vybe Trail Extension**



Exhibit F

(Page 1 of 1)

## **Porter Country Public Improvement District Financing Agreement**

This Porter Country Public Improvement District Financing Agreement (this “Agreement”) is entered into by Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”) and the City of Kyle, Texas (the “City”), to be effective May 2, 2023, (the “Effective Date”). The Developer and the City are individually referred to as a “Party” and collectively as the “Parties.”

### **SECTION 1. RECITALS**

1.1 WHEREAS, capitalized terms used in this Agreement shall have the meanings given to them in Section 2;

1.2 WHEREAS, unless otherwise defined: (1) all references to “sections” shall mean sections of this Agreement; (2) all references to “exhibits” shall mean exhibits to this Agreement which are incorporated as part of this Agreement for all purposes; and (3) all references to “ordinances” or “resolutions” shall mean ordinances or resolutions adopted by the City Council;

1.3 WHEREAS, the Developer is a Texas limited liability company;

1.4 WHEREAS, the City of Kyle is a Texas home-rule municipality;

1.5 WHEREAS, the Developer and the City entered into that certain Porter Country Development Agreement, effective March 17, 2022, as amended by the First Amendment to the Porter Country Development Agreement, dated as of September 6, 2022 (as may be amended, the “Development Agreement”) pertaining to development matters with respect to the Property;

1.6 WHEREAS, it is intended that the Property will be developed as a residential and commercial development, in accordance with the Development Agreement and the Planned Unit Development District zoning (as may be further amended, the “PUD”), adopted by the City Council pursuant to Ordinance No. 1204 on June 7, 2022;

1.7 WHEREAS, on July 5, 2022, the City Council passed and approved the PID Creation Resolution authorizing the creation of the PID pursuant to the Act, covering approximately 259.02 contiguous acres within the City's corporate limits, which land is described in the PID Creation Resolution;

1.8 WHEREAS, contemporaneously with the approval of this Agreement, the City Council passed and approved an Assessment Ordinance for Improvement Area #1;

1.9 WHEREAS, the Assessment Ordinance for Improvement Area #1 approved the SAP;

1.10 WHEREAS, the SAP identifies Authorized Improvements to be designed, constructed, and installed by or at the direction of the Parties that confer a special benefit on the Assessed Property;



- 1.11 WHEREAS, the SAP sets forth the Actual Costs of the Authorized Improvements;
- 1.12 WHEREAS, the Assessed Property is being developed in phases or “Improvement Areas;”
- 1.13 WHEREAS, this Agreement shall apply to all phases and no additional financing agreement shall be required for future Improvement Areas;
- 1.14 WHEREAS, the SAP determines and apportions the Actual Costs of the Authorized Improvements to the Assessed Property, which Actual Costs are allocated based upon the special benefit that the Authorized Improvements confer upon the Assessed Property as required by the Act;
- 1.15 WHEREAS, the Assessment Ordinance for Improvement Area #1 levied the Improvement Area #1 Assessments against the Improvement Area #1 Assessed Property in the amounts set forth on the Improvement Area #1 Assessment Roll;
- 1.16 WHEREAS, an assessment ordinance will be considered for future Improvement Areas to levy Assessments against Assessed Property in the amounts set forth on the Assessment Roll(s) related to such Improvement Areas;
- 1.17 WHEREAS, Assessments, including the Annual Installments thereof, are due and payable as described in the SAP;
- 1.18 WHEREAS, Annual Installments shall be billed and collected by the City or its designee;
- 1.19 WHEREAS, Assessment Revenue from the collection of Assessments, including the Annual Installments thereof, shall be deposited (1) as provided in the applicable Indenture if PID Bonds secured by such Assessments are issued, or (2) into the City Project Fund if no such PID Bonds are issued or no PID Bonds remain outstanding;
- 1.20 WHEREAS, Bond Proceeds shall be deposited as provided in the applicable Indenture;
- 1.21 WHEREAS, the PID Project Fund shall only be used in the manner set forth in the applicable Indenture;
- 1.22 WHEREAS, the foregoing RECITALS: (1) are part of this Agreement for all purposes; (2) are true and correct; and (3) each Party has relied upon such Recitals in entering into this Agreement; and
- 1.23 WHEREAS, all resolutions and ordinances referenced in this Agreement (e.g., the PID Creation Resolution and each Assessment Ordinance), together with all other documents referenced in this Agreement (e.g., the SAP and each Indenture), are incorporated as part of this Agreement for all purposes as if such resolutions, ordinances, and other documents were set forth in their entirety in or as exhibits to this Agreement.

NOW THEREFORE, for and in consideration of the mutual obligations of the Parties set forth in this Agreement, the Parties agree as follows:

## **SECTION 2. DEFINITIONS**

- 2.1 “Act” is defined as Chapter 372, Texas Local Government Code, as amended.
- 2.2 “Actual Costs” is defined in the SAP.
- 2.3 “Actual Increased Costs” is defined in Section 4.11.
- 2.4 “Actual Increased City Obligation Costs” is defined in Section 4.11.
- 2.5 “Additional Costs” is defined in Section 4.11.
- 2.6 “Administrator” is defined in the SAP.
- 2.7 “Agreement” is defined in the introductory paragraph.
- 2.8 “Annual Collection Costs” are defined in the SAP.
- 2.9 “Annual Installment” is defined in the SAP.
- 2.10 “Applicable Laws” means the Act and all other laws or statutes, rules, or regulations of the State of Texas or the United States, as the same may be amended, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.
- 2.11 “Assessed Property” is defined in the SAP.
- 2.12 “Assessment” is defined in the SAP.
- 2.13 “Assessment Ordinance” is defined in the SAP.
- 2.14 “Assessment Revenue” means the revenues actually received by or on behalf of the City from the collection of Assessments, including Prepayments, Annual Installments and foreclosure proceeds.
- 2.15 “Assessment Roll” is defined in the SAP.
- 2.16 “Authorized Improvements” is defined in the SAP.
- 2.17 “Bond Improvement Account” means the account under the PID Project Fund established by an Indenture relating to PID Bonds, including the IA #1 Improvements Account relating to the Improvement Area #1 Bonds, into which Bond Proceeds are deposited to pay for the Actual Costs of the Authorized Improvements as described in the Indenture.

2.18 “Bond Proceeds” mean the proceeds derived from the issuance and sale of a series of PID Bonds that are deposited and made available to pay Actual Costs in accordance with the applicable Indenture.

2.19 “Certificate for Payment” means a certificate (substantially in the form of Exhibit A or as otherwise approved by the Developer and the City Representative) executed by a representative of the Developer and approved by a City Representative, delivered to a City Representative (and/or, if applicable, to the trustee named in any applicable Indenture), specifying the work performed and the amount charged (including materials and labor costs) for Actual Costs of Authorized Improvements, and requesting payment of such amount from the Bond Improvement Account of the PID Project Fund or the City Project Fund, as applicable. Each certificate shall include supporting documentation in the standard form for City construction projects and evidence that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City.

2.20 “Certificate for Payment – Developer Improvement Account” means a certificate (substantially in the form of Exhibit B or as otherwise approved by the Developer and the City Representative) executed by a representative of the Developer and approved by a City Representative, delivered to a City Representative (and/or, if applicable, to the trustee named in any applicable Indenture), specifying the work performed and the amount charged (including materials and labor costs) for Actual Costs of Authorized Improvements, and requesting payment of such amount from the Developer Improvement Account of the PID Project Fund. Each certificate shall include supporting documentation in the standard form for City construction projects and evidence that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City.

2.21 “Change Order” is defined in Section 3.12.

2.22 “City” is defined in the introductory paragraph.

2.23 “City Council” means the governing body of the City.

2.24 “City Obligations” is defined in the Section 4.11.

2.25 “City Project Fund” means the fund established by the City under this Agreement or a Reimbursement Agreement (and segregated from all other funds of the City) into which the City deposits Assessment Revenue if not deposited into the PID Pledged Revenue Fund.

2.26 “City Representative” means any person authorized by the City Council to undertake the actions referenced herein.

2.27 “Closing Disbursement Request” means a request in the form of Exhibit E or as otherwise approved by the Parties.

2.28 “Cost Overrun” is defined in Section 3.2.

2.29 “Cost Underrun” is defined in Section 3.11.

- 2.30 “Default” is defined in Section 4.8.1.
- 2.31 “Delinquent Collection Costs” is defined in the SAP.
- 2.32 “Developer” is defined in the introductory paragraph.
- 2.33 “Developer Advances” means advances made by the Developer to pay Actual Costs.
- 2.34 “Developer Continuing Disclosure Agreement” means any *Continuing Disclosure Agreement of Developer* executed contemporaneously with the sale of PID Bonds.
- 2.35 “Developer Improvement Account” means the account under the PID Project Fund established by an Indenture relating to the PID Bonds issued for an Improvement Area into which the Developer will deposit funds to pay for the Actual Costs of the Authorized Improvements benefitting such Improvement Area as described in the Indenture.
- 2.36 “Development Agreement” is defined in Section 1.5.
- 2.37 “Effective Date” is defined in the introductory paragraph.
- 2.38 “End User” is defined as a residential homebuyer or purchaser of a fully developed and improved lot.
- 2.39 “Estimated Additional Costs” is defined in the Section 4.11.
- 2.40 “Estimated Additional City Obligation Costs” is defined in the Section 4.11.
- 2.41 “Failure” is defined in Section 4.8.1.
- 2.42 “Home Buyer Disclosure Program” is defined as the disclosure program, administered by the Builder (as defined in Exhibit G) as set forth in a document in substantially the same form as Exhibit G attached hereto, that establishes a mechanism to disclose to each Buyer (as defined in Exhibit G) the terms and conditions under which their lot is burdened by the PID.
- 2.43 “Improvement Area” is defined in the SAP.
- 2.44 “Improvement Area #1” is defined in the SAP.
- 2.45 “Improvement Area #1 Bonds” is defined in the SAP.
- 2.46 “Indenture” means the applicable trust indenture pursuant to which PID Bonds are issued.
- 2.47 “Maturity Date” is the date one year after the last Annual Installment is collected.
- 2.48 “Non-Benefited Property” is defined in the SAP.

- 2.49 “Parcel” is defined in the SAP.
- 2.50 “Party” and “Parties” are defined in the introductory paragraph.
- 2.51 “PID” is defined as the Porter Country Public Improvement District, created by the PID Creation Resolution.
- 2.52 “PID Bonds” is defined in the SAP.
- 2.53 “PID Creation Resolution” is defined as Resolution No. 1316 passed and approved by the City Council on July 5, 2022.
- 2.54 “PID Pledged Revenue Fund” means the fund, including all accounts created within such fund, established by the City under an Indenture (and segregated from all other funds of the City) into which the City deposits Assessment Revenue from the collection of Assessments, including Annual Installments thereof, securing PID Bonds issued and still outstanding under such Indenture.
- 2.55 “PID Project Fund” means the fund, including all accounts or subaccounts created within such fund, established by the City under an Indenture (and segregated from all other funds of the City) into which the City deposits a portion of the Bond Proceeds and any other funds authorized or required by such Indenture.
- 2.56 “Prepayment” is defined in the SAP.
- 2.57 “Property” is defined as that certain 259.02 acre tract within the City's corporate limits, which tract is described in the PID Creation Resolution.
- 2.58 “PUD” is defined in Section 1.6.
- 2.59 “QTEO” is defined in the Section 4.11.
- 2.60 “Reimbursement Agreement” means any Porter Country Public Improvement District Reimbursement Agreement by and between the City and the Developer entered into for the payment of Assessments in installments, applicable to any Improvement Area within the District.
- 2.61 “Reimbursement Agreement Balance” means, upon the levy of Assessments, any unpaid amount owed to the Developer for Actual Costs of Authorized Improvements pursuant to a Reimbursement Agreement from Assessments collected in the City Project Fund.
- 2.62 “Reimbursement Obligation” is defined in the applicable Reimbursement Agreement.
- 2.63 “Service and Assessment Plan” or “SAP” is defined as the *Porter Country Public Improvement District Service and Assessment Plan* approved as part of the Assessment Ordinance, as the same may be updated or amended by City Council action in accordance with the Act.

2.64 “Tax Certificate” is defined in Section 4.7.2.

2.65 “Transfer” and “Transferee” are defined in Section 4.10.

### **SECTION 3. FUNDING AUTHORIZED IMPROVEMENTS**

3.1 Fund Deposits. Until or unless PID Bonds are issued, the City shall bill, collect, and deposit into the City Project Fund all Assessment Revenue consisting of: (1) revenue collected from the payment of Assessments (including Prepayments and amounts received from the foreclosure of liens but excluding costs and expenses related to collection); and (2) revenue collected from the payment of Annual Installments (excluding Annual Collection Costs and Delinquent Collection Costs). Once PID Bonds are issued, the City shall bill, collect, and deposit all Assessment Revenue in the manner set forth in the applicable Indenture. Upon the issuance of PID Bonds, the City shall also deposit Bond Proceeds and any other funds authorized or required by the Indenture and the Developer shall deposit any funds or provide other fiscal security required by this Agreement and the Indenture in the manner set forth in the applicable Indenture. Annual Installments shall be billed and collected by the City (or by any person, entity, or governmental agency permitted by law) in the same manner and at the same time as City ad valorem taxes are billed and collected. Funds in the PID Project Fund shall only be used in accordance with the applicable Indenture. Funds in the City Project Fund shall only be used to pay Actual Costs of the Authorized Improvements or all or any portion of the Reimbursement Obligation in accordance with the Reimbursement Agreement. Notwithstanding any other provision in this Agreement, the Actual Costs of Authorized Improvements allocable to each phase or “Improvement Area” shall be paid from the Bond Proceeds or Assessment Revenue collected solely from Assessments levied on the property within such phase or “Improvement Area” benefitting from such Authorized Improvements. The City will take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens related to such Assessments to be enforced continuously, in the manner and to the maximum extent permitted by the Applicable Laws, and, to the extent permitted by Applicable Laws, to cause no reduction, abatement or exemption in the Assessments for so long as any PID Bonds are outstanding or a Reimbursement Obligation remains outstanding. The City shall determine or cause to be determined, no later than February 15 of each year whether any Annual Installment is delinquent and if such delinquencies exist, the City will order and cause to be commenced as soon as practicable, and subject to any necessary action required by the City Council, any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including without limitation diligently prosecuting an action to foreclose the currently delinquent Annual Installment; provided, however, the City shall not be required under any circumstances to pay any delinquent Assessment or purchase or make payment for the purchase of the corresponding Assessed Property.

3.2 Payment of Actual Costs. If PID Bonds are not issued (or prior to such issuance) to pay Actual Costs of Authorized Improvements, the Developer may elect to make Developer Advances to pay Actual Costs. If PID Bonds are issued, the Bond Proceeds shall be used in the manner provided in the applicable Indenture; and the Developer shall have no obligation to make Developer Advances so long as fiscal security acceptable to the City is provided for completion of the Authorized Improvements. If the Developer elects to make Developer Advances in connection with the issuance of a series of PID Bonds, then such Developer Advances may be reduced by the amount of payments of Actual Costs of the Authorized Improvements (or portions thereof) to be financed by such PID Bonds that

the Developer has previously paid if (i) the Developer submits to the City all information related to such costs that would be required by a Closing Disbursement Request, and (ii) the City approves such Actual Costs in writing at least five (5) days prior to the pricing of the PID Bonds. The Developer shall also make Developer Advances to pay for any cost overrun (“Cost Overrun”) after applying cost savings, including Cost Underruns. The Developer agrees to pay the Actual Costs of the Authorized Improvements set forth in the SAP that are not funded by Bond Proceeds or by funds in the City Project Fund (as provided in the Reimbursement Agreement), if any, and agrees to maintain sufficient funds for such purpose in the form of: (i) loan funds, (ii) funds available pursuant to a letter of credit, (iii) available cash, or (iv) any combination of (i) – (iii) as required by and acceptable to the City.

3.3 PID Bonds. The City, in its sole, legislative discretion, may issue PID Bonds, in one or more series, when and if the City Council determines it is financially feasible for the purposes of: (1) paying a Reimbursement Obligation (as provided in the applicable Reimbursement Agreement); or (2) paying directly Actual Costs of Authorized Improvements described in the applicable Indenture. PID Bonds issued for such purpose will be secured by and paid solely as authorized by the applicable Indenture. The failure of the City to issue PID Bonds shall not constitute a “Failure” by the City or otherwise result in a “Default” by the City. Upon the issuance of the PID Bonds, the Developer has a duty to construct those Authorized Improvements described in the applicable Indenture. The Developer shall not be relieved of its duty to construct or cause to be constructed such improvements even if there are insufficient funds in the PID Project Fund to pay the Actual Costs. This Agreement shall apply to all of the PID Bonds issued by the City whether in one or more series, and no additional financing agreement shall be required for future series of PID Bonds.

3.4 Disbursements and Transfers at and after Bond Closing.

3.4.1 The City and the Developer agree that from the proceeds of the PID Bonds, and upon the presentation of evidence satisfactory to the City Representative, the City will cause the trustee under the applicable Indenture to pay at closing of the PID Bonds approved amounts from the appropriate account to the City or the Developer, as applicable, which costs may include payment for costs of issuance of PID Bonds and payment of costs incurred in the establishment, administration, and operation of the PID and any other eligible items expended by the Developer and the City as of the time of the delivery of the PID Bonds as described in the SAP. In order to receive disbursement, the Developer shall execute a Closing Disbursement Request to be delivered to the City no less than five (5) days prior to the scheduled pricing date for the PID Bonds for payment in accordance with the provisions of the applicable Indenture.

3.4.2 In order to receive disbursements for Actual Costs of Authorized Improvements from the applicable fund under this Agreement, a Reimbursement Agreement, and applicable Indenture, the Developer shall execute a Certificate for Payment or Certificate for Payment – Developer Improvement Account, as applicable, no more frequently than monthly, to be delivered to the City for payment in accordance with the provisions of the applicable Indenture and this Agreement. Upon receipt of a Certificate for Payment or Certificate for Payment – Developer Improvement Account (along with all accompanying documentation required by the City) from the Developer, the City shall conduct a review in order to confirm that such request is complete, to confirm that the work for which

payment is requested was performed in accordance with all Applicable Laws and applicable plans therefore and with the terms of this Agreement, the Reimbursement Agreement, and any other agreement between the parties related to property in the PID, and to verify and approve the Actual Costs of such work specified in such certificate. The City shall also conduct such review as is required in its discretion to confirm the matters certified in the Certificate for Payment or Certificate for Payment – Developer Improvement Account.

3.4.3 The Developer agrees to cooperate with the City in conducting each such review required to be made for the approval of a Certificate for Payment or Certificate for Payment – Developer Improvement Account, as applicable; and, the Developer agrees to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review.

3.4.4 Within ten (10) business days following receipt of any Certificate for Payment or Certificate for Payment – Developer Improvement Account, the City shall either: (1) approve such certificate and forward it to the trustee under the applicable Indenture for payment, or (2) provide the Developer with written notification of disapproval of all or part of such certificate, specifying the basis for any such disapproval. Any disputes shall be resolved as required by Section 3.4.5 herein. The City shall (i) make payment under the approved or partially approved Certificate for Payment from the City Project Fund, or (ii) deliver the approved or partially approved Certificate for Payment or Certificate for Payment – Developer Improvement Account, to the trustee under the applicable Indenture for payment from the Bond Improvement Account or the Developer Improvement Account, as applicable, and such trustee shall make the disbursements as quickly as practicable thereafter.

3.4.5 If there is a dispute over the amount of any payment, the City shall nevertheless pay the undisputed amount, and the Parties shall use all reasonable efforts to resolve the disputed amount before the next payment is made; however, if the Parties are unable to resolve the disputed amount, then the City's determination of the disputed amount (as approved by the City Council) shall control.

3.5 Obligations Limited. The obligations of the City under this Agreement shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or constitute a debt or other obligation of the City payable from any source other than the City Project Fund or the PID Project Fund. Unless approved by the City, no other City funds, revenues, taxes, or income of any kind shall be used to pay: (1) the Actual Costs of the Authorized Improvements; (2) the Reimbursement Obligation even if the Reimbursement Obligation is not paid in full on or before the Maturity Date; or (3) debt service on any PID Bonds. None of the City or any of its elected or appointed officials or any of its officers, employees, consultants or representatives shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement.

3.6 Obligation to Pay. Subject to the provisions of Section 3.4.7 and 3.5 of this Agreement and any Reimbursement Agreement, if applicable, if the Developer is (1) current on payment of all taxes,



assessments and fees owed to the City, and (2) in then current compliance with its obligations under (a) this Agreement, and (b) all Developer Continuing Disclosure Agreements (if PID Bonds are issued and remain outstanding); then, following the inspection and approval by the City of any portion of Authorized Improvements for which Developer seeks reimbursement of the Actual Costs by submission of a Certificate for Payment, Certificate for Payment – Developer Improvement Account, or Closing Disbursement Request, the obligations of the City under this Agreement to pay disbursements (whether to the Developer or to any assignee of the Developer) identified in any approved Certificate for Payment, Certificate for Payment – Developer Improvement Account, or Closing Disbursement Request and to pay debt service on PID Bonds are unconditional AND NOT subject to any defenses or rights of offset except as may be provided in any Indenture.

3.7 City Delegation of Authority. All Authorized Improvements shall be constructed by or at the direction of the Developer in accordance with the plans and in accordance with this Agreement, the Development Agreement, the PUD, and any other agreement between the parties related to property in the PID. The Developer shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of Authorized Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work in accordance with City ordinances, City regulations, the PUD, and generally accepted practices appropriate to the activities undertaken. The Developer has sole responsibility of ensuring that all Authorized Improvements are constructed in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work in accordance with City ordinances, City regulations, the PUD, and generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of all Authorized Improvements to be acquired and accepted by the City from the Developer. If any Authorized Improvements are or will be on land owned by the City, the City shall grant to the Developer a license agreement in a form acceptable to the City to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Authorized Improvements. Inspection and acceptance of Authorized Improvements will be in accordance with applicable City ordinances and regulations.

3.8 Security for Authorized Improvements. Prior to completion and conveyance to the City of any Authorized Improvements, the Developer shall cause to be provided to the City a maintenance bond in the amount required by the City's subdivision regulations for applicable Authorized Improvements, which maintenance bond shall be for a term of two years from the date of final acceptance of the applicable Authorized Improvements. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that legal counsel for the City has the right to reject any surety company regardless of such company's authorization to do business in Texas. Nothing in this Agreement shall be deemed to prohibit the Developer or the City from contesting in good faith the validity or amount of any mechanics or materialman's lien and/or judgment nor limit the remedies available to the Developer or the City with respect thereto so long as such delay in performance shall not subject the Authorized Improvements to foreclosure, forfeiture, or sale. In the event that any such lien and/or judgment with respect to the Authorized Improvements

is contested, the Developer shall be required to post or cause the delivery of a surety bond or letter of credit, whichever is preferred by the City, in an amount reasonably determined by the City, not to exceed one hundred twenty percent (120%) of the disputed amount.

3.9 Ownership and Transfer of Authorized Improvements. The Developer shall furnish to the City a preliminary title report for land related to the Authorized Improvements to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City. The report shall be made available for City review and approval at least fifteen (15) business days prior to the scheduled transfer of title. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, would materially affect the City's use and enjoyment of the Authorized Improvements. If the City objects to any preliminary title report, the City shall not be obligated to accept title to the applicable Authorized Improvements until the Developer has cured the objections to the reasonable satisfaction of the City.

3.10 Remaining Funds After Completion of an Authorized Improvement. Upon the entering into final construction contracts for an Authorized Improvement, if the Actual Cost of such Authorized Improvement is less than the budgeted cost as shown in Exhibit B to the SAP, as the same may be updated by the City, (a "Cost Underrun"), any remaining budgeted cost will be available to pay Cost Overruns on any other Authorized Improvement. Additionally, upon the final completion of an Authorized Improvement and payment of all outstanding invoices for such Authorized Improvement, any Cost Underrun will be available to pay Cost Overruns on any other Authorized Improvement. A City Representative shall promptly confirm to the Administrator (as defined in the SAP) that such remaining amounts are available to pay such Cost Overruns, and the Developer, the Administrator and the City Representative will agree how to use such moneys to secure the payment and performance of the work for other Authorized Improvements. Any Cost Underrun for any Authorized Improvement is available to pay Cost Overruns on any other Authorized Improvement and may be added to the amount approved for payment in any Certificate for Payment, as agreed to by the Developer, the Administrator and the City Representative.

3.11 Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (herein referred to as "Change Orders") required for the construction of an Authorized Improvement. The Developer or its contractors may approve and implement any Change Orders even if such Change Order would increase the Actual Cost of an Authorized Improvement, but the Developer shall be solely responsible for payment of any Cost Overruns resulting from such Change Orders except to the extent amounts are available as Cost Underruns pursuant to Section 3.10 hereof.

3.12 Landowner Consent and Recordation of Assessments.

3.12.1 Concurrently with the levy of the Assessments, the Developer shall execute (and shall cause any other owner of any of the Assessed Property to execute) a landowner consent certificate (the "Landowner Certificate") in which the Owner shall approve and accept the apportionment of Assessments in the Service and Assessment Plan and the levy of the Assessments by the City. The Landowner Certificate further shall (a) evidence the Developer's or landowner's intent that the Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Assessed Property to the Assessments,

including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Assessments; and (b) provide that the liens created by the levy of the Assessments are a first and prior lien on the Assessed Property, subject only to liens for ad valorem taxes of the State, County, City, or school district. A form of the Landowner Certificate is attached hereto as Exhibit F.

3.12.2 After the City Council approves a Service and Assessment Plan and any subsequent updates or amendments thereto, the City shall file a copy of the Service and Assessment Plan or the updates and amendments thereto with the County Clerk of Hays County, Texas (the “County Clerk”) in accordance with the PID Act. The Service and Assessment Plan, including any annual update thereto, will include the notice form required by Section 5.014 of the Texas Property Code (the “Section 5.014 Notice”). Any fees or other costs associated with the filing of the original Service and Assessment Plan and any amendment or updated thereto in connection with the issuance of PID Bonds with the County Clerk shall be paid by Developer. Any fees or other costs associated with the filing of all other amendments or updates to the Service and Assessment Plan with the County Clerk will be paid as an Annual Collection Cost.

3.12.3 The Developer shall execute and provide to any potential purchaser of Assessed Property the Section 5.014 Notice in accordance with Subchapter A of Chapter 5 of the Texas Property Code and, upon closing of the purchase and sale of such Assessed Property execute a copy of the Section 5.014 Notice in recordable form and file or cause to be filed such notice in the deed records of the County in accordance with Subchapter A of Chapter 5 of the Texas Property Code.

3.12.4 If foregoing procedures set forth in this Section 3.12 are later amended by the Texas Legislature, the amended provisions of the PID Act or Subchapter A of Chapter 5 of the Texas Property Code shall be deemed to amend this Section 3.12 without any further actions by the City or the Developer.

#### **SECTION 4. ADDITIONAL PROVISIONS**

4.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until the Maturity Date and the Reimbursement Agreement Balance is paid in full.

4.2 No Competitive Bidding. Construction of the Authorized Improvements shall not require competitive bidding pursuant to Section 252.022(a)(9) of the Texas Local Government Code, as amended. All plans and specifications, but not construction contracts, shall be reviewed and approved, in writing, by the City staff prior to Developer selecting the contractor.

4.3 Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City.

4.4 Audit. The City Representative shall have the right, during normal business hours and upon five (5) business days' prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the

Authorized Improvements. For a period of two (2) years after completion of the Authorized Improvements or after the expenditure of all Bond Proceeds, whichever is later, the Developer shall maintain proper books of record and account for the construction of the Authorized Improvements and all costs related thereto. Such accounting books shall be maintained in accordance with customary real estate accounting principles. The Developer shall have the right, during normal business hours, to review all records and accounts pertaining to the Assessments upon written request to the City. The City shall provide the Developer an opportunity to inspect such books and records relating to the Assessments during the City's regular business hours and on a mutually agreeable date no later than ten (10) business days after the City receives such written request. The City shall keep and maintain a proper and complete system of records and accounts pertaining to the Assessments for so long as PID Bonds remain outstanding or Reimbursement Obligation remains unpaid.

4.5 Developer's Right to Protest Ad Valorem Taxes. Nothing in this Agreement shall be construed to limit or restrict Developer's right to protest ad valorem taxes. The Developer's decision to protest ad valorem taxes on Assessed Property does not constitute a Default under this Agreement.

4.6 PID Administration and Collection of Assessments. If the City designates an Administrator who shall have the responsibilities provided in the SAP related to the duties and responsibilities of the administration of the PID, the City shall provide the Developer upon request with a copy of the agreement between the City and the Administrator. If the City contracts with a third-party for the collection of Annual Installments of the Assessments, the City shall provide the Developer with a copy of such agreement. During the term of this Agreement, the City shall notify the Developer of any change of Administrator or third-party collection of the Assessments.

4.7 Representations and Warranties.

4.7.1 The Developer represents and warrants to the City that: (1) the Developer has the authority to enter into and perform its obligations under this Agreement; (2) the Developer has the financial resources, or the ability to obtain sufficient financial resources, to meet its obligations under this Agreement; (3) any information provided by the Developer for inclusion in an offering document or official statement for an issue of PID Bonds will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; (4) the person executing this Agreement on behalf of the Developer has been duly authorized to do so; (5) this Agreement is binding upon the Developer in accordance with its terms; and (6) the execution of this Agreement and the performance by the Developer of its obligations under this Agreement does not constitute a breach or event of default by the Developer under any other agreement, instrument, or order to which the Developer is a party or by which the Developer is bound.

4.7.2 If in connection with the issuance of PID Bonds the City is required to deliver a certificate as to tax exemption (a "Tax Certificate") to satisfy requirements of the Internal Revenue Code, the Developer agrees to provide, or cause to be provided, such facts and

estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Developer represents that such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the knowledge of the officers of the Developer providing such facts and estimates, true, correct and complete as of such date. To the extent that it exercises control or direction over the use or investment of any proceeds from the sale of PID Bonds (including, but not limited to, the use of the Authorized Improvements), the Developer further agrees that it will not knowingly make, or permit to be made, any use or investment of such funds that would cause any of the covenants or agreements of the City contained in a Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

4.7.3 The City represents and warrants to the Developer that: (1) the City has the authority to enter into and perform its obligations under this Agreement; (2) the person executing this Agreement on behalf of the City has been duly authorized to do so; (3) this Agreement is binding upon the City in accordance with its terms; and (4) the execution of this Agreement and the performance by the City of its obligations under this Agreement do not constitute a breach or event of default by the City under any other agreement, instrument, or order to which the City is a party or by which the City is bound.

#### 4.8 Default/Remedies.

4.8.1 If either Party fails to perform an obligation imposed on such Party by this Agreement (a “Failure”) and such Failure is not cured after notice and the expiration of the cure periods provided in this section, then such Failure shall constitute a “Default.” If a Failure is monetary, the non-performing Party shall have ten (10) business days within which to cure. If the Failure is non-monetary, the non-performing Party shall have thirty (30) days within which to cure. However, if the non-monetary Failure is of such a nature that it cannot reasonably be expected to be cured within thirty (30) days, then the Party who failed to perform shall have such time as is necessary to cure the default, so long as the failing Party commences the cure within thirty (30) days and diligently pursues such cure to completion, but in no event more than ninety (90) days.

4.8.2 If the Developer is in Default, the City shall have available all remedies at law or in equity; provided that, except as otherwise provided in this Agreement, no default by the Developer shall entitle the City to terminate this Agreement or to withhold payments to the Developer in accordance with this Agreement, any Reimbursement Agreement, and any Indenture, as applicable. Notwithstanding the foregoing, in the event the Developer attempts to transfer its interests in this Agreement in violation of Section 4.10 of this Agreement, the City, in its sole discretion shall have the right to terminate this Agreement.

4.8.3 If the City is in Default, the Developer shall have available all remedies at law or in equity; provided, however, no Default by the City shall entitle the Developer to terminate this Agreement.

4.8.4 The City shall give notice of any alleged Failure by the Developer to each Transferee identified in any notice from the Developer, and such Transferees shall have the right, but not the obligation, to cure the alleged Failure within the same cure periods that are provided to the Developer. The election by a Transferee to cure a Failure by the Developer shall constitute a cure by the Developer but shall not obligate the Transferee to be bound by this Agreement unless the Transferee agrees in writing to be bound.

4.9 Remedies Outside the Agreement. Nothing in this Agreement constitutes a waiver by the City of any remedy the City may have outside this Agreement against the Developer, any Transferee, or any other person or entity involved in the design, construction, or installation of the Authorized Improvements. The City shall not be deemed to waive any defenses or immunities, whether sovereign, governmental, legislative, qualified or otherwise, all such defenses and immunities being expressly retained. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the PID. Nothing herein shall be construed as affecting the City's or the Developer's rights or duties to perform their respective obligations under other agreements, use regulations, or subdivision requirements relating to the development property in the PID.

4.10 Indemnification. THE DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS CITY (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO DEVELOPER'S CONSTRUCTION OF THE PUBLIC IMPROVEMENTS INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S CONTRACTORS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S CONTRACTORS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S CONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S CONTRACTORS ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE DEVELOPER SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND/OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW.

4.11 Transfers. The Developer has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part without the consent of (but with notice to) the City, the Developer's right, title, or interest to payments under this Agreement (but not performance obligations), but only as it relates to each separate Improvement Area within the PID, including, but not limited to, any right, title, or interest of the Developer in and to payments from Bond Proceeds or the City Project Fund (any of the foregoing, a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"); provided, however, that no such conveyance, transfer, assignment, mortgage, pledge, or other encumbrance shall be made without prior written consent of the City Council if such conveyance, transfer, assignment, mortgage, pledge, or other encumbrance would result in (1) the issuance of municipal securities, and/ or (2) the City being viewed as an "obligated person" within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission, and/or (3) the City being subjected to additional reporting or recordkeeping duties. Notwithstanding the foregoing, no Transfer shall be effective until notice of the Transfer is given to the City. The City may rely on notice of a Transfer received from the Developer without obligation to investigate or confirm the validity of the Transfer. The Developer waives all rights or claims against the City for any funds paid to a third party as a result of a Transfer for which the City received notice.

4.12 Qualified Tax-Exempt Status. In any calendar year in which PID Bonds are issued, the Developer agrees to pay the City additional costs ("Additional Costs") the City may incur in the issuance of City obligations (the "City Obligations") as described in this Section 4.11 if the City Obligations are deemed not to qualify for the designation of "qualified tax-exempt obligations" ("QTEO") as defined in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, as a result of the issuance of PID Bonds by the City in any given year. The City agrees to deposit all funds for the payment of such Additional Costs received under this Section 4.11 into a segregated account of the City, and such funds shall remain separate and apart from all other funds and accounts of the City until December 31 of the calendar year in which the PID Bonds are issued, at which time the City is authorized to utilize such funds for any purpose permitted by law. Additionally, the City will provide the Developer on an annual basis no later than August 15th each year the projected amount of City Obligations to be issued in the upcoming year based on its annual budget process.

In the event the City issues PID Bonds prior to the issuance of City Obligations, the City's Financial Advisor shall calculate the estimated Additional Costs based on the market conditions as they exist approximately thirty (30) days prior to the date of the pricing of the PID Bonds (the "Estimated Additional Costs"), and the City shall provide a written invoice to the Developer. Unless otherwise agreed to in writing by the City, the Developer shall pay such Estimated Additional Costs to the City on or before the earlier of (i) ten (10) business days after the date of the City's invoice and (ii) five (5) business days prior to pricing the PID Bonds. The City shall not be required to price or sell any issue of PID Bonds until the Developer has paid to the City the Estimated Additional Costs related to the PID Bonds then being issued. The Estimated Additional Costs are an estimate of the

increased cost to the City to issue its City Obligations as non-QTEO. Upon the City's approval of the City Obligations, the City's Financial Advisor shall calculate the actual Additional Costs to the City of issuing its City Obligations as non-QTEO (the "Actual Increased Costs"). The City will, within five (5) business days of the issuance of the City Obligations, notify the Developer of the Actual Increased Costs. In the event the Actual Increased Costs are less than the Estimated Additional Costs, the City will refund to the Developer the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased Costs. If the Actual Increased Costs are more than the Estimated Additional Costs, the Developer will pay to the City the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased Costs. If the Developer does not pay the City the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased Costs, the Developer shall not be reimbursed for any Developer Advances until such payment is made in full.

In the event the City issues City Obligations prior to the issuance of PID Bonds, the City's Financial Advisor shall calculate the estimated Additional Costs based on the market conditions as they exist approximately twenty (20) days prior to the date of the pricing of the City Obligations (the "Estimated Additional City Obligation Costs"), and the City shall provide a written invoice to the Developer. The Developer shall pay such Estimated Additional City Obligation Costs to the City at least ten (10) days prior to pricing the City Obligations. If the Developer has not paid the Estimated Additional City Obligation Costs to the City by the required time, the City, at its option, may elect to designate such City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year. The Estimated Additional City Obligation Costs are an estimate of the increased cost to the City to issue its City Obligations as non-QTEO. Upon the City's approval of the City Obligations, the City's Financial Advisor shall calculate the actual Additional Costs to the City of issuing its City Obligations as non-QTEO (the "Actual Increased City Obligation Costs"). The City will, within five (5) business days of the issuance of the City Obligations, notify the Developer of the Actual Increased City Obligation Costs. In the event the Actual Increased City Obligation Costs are less than the Estimated Additional City Obligation Costs, the City will refund to the Developer the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased City Obligation Costs. If the Actual Increased City Obligation Costs are more than the Estimated Additional City Obligation Costs, the Developer will pay to the City the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased City Obligation Costs. If the Developer does not pay the City the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased City Obligation Costs, the Developer shall not be reimbursed for any Developer Advances until such payment is made in full.

To the extent any developer(s) or owner(s) (including the Developer, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or owner (including the Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or owner(s) (including the Developer,



as applicable) as necessary so as to put all developers and owners so paying for the same calendar year in the proportion set forth in the next paragraph, said reimbursement to be made by the City within ten (10) business days after its receipt of such subsequent payments of such Additional Costs.

The City shall charge Additional Costs attributable to any other developer or owner on whose behalf the City has issued debt in the same manner as described in this Section 4.11, and the Developer shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of the Developer's portion had already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to the Developer. The portion owed by the Developer shall be determined by dividing the total Bond Proceeds from any debt issued on behalf of the Developer in such calendar year by the total Bond Proceeds from any debt issued by the City for the benefit of all owners or developers (including the Developer) in such calendar year.

If in any calendar year the City issues City Obligations or PID Bonds on its own account that exceed the amount that would otherwise qualify the City for the issuance of bank qualified debt, then no Additional Costs shall be due from the Developer in connection with such PID Bonds. The Additional Costs incurred with respect to such PID Bonds shall be allocated as described above, and if any Additional Costs had already been paid by the Developer to the City for such calendar year, then such excess of Additional Costs shall be reimbursed to the Developer within five (5) business days of the issuance of such City Obligations or PID Bonds, as applicable.

4.13 Estoppel Certificate. From time to time upon written request of the Developer, the City Manager will execute a written estoppel certificate (1) identifying any obligations of the Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; or (2) stating, to the extent true, that to the best knowledge and belief of the City, the Developer is in compliance with its duties and obligations under this Agreement.

4.14 Applicable Law; Venue. This Agreement is being executed and delivered and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply, the substantive laws of the State of Texas shall govern the interpretation and enforcement of this Agreement. In the event of a dispute involving this Agreement, venue shall lie in any court of competent jurisdiction in Hays County, Texas.

4.15 Notice. Any notice referenced in this Agreement must be in writing and shall be deemed given at the addresses shown below: (1) when delivered by a nationally recognized delivery service such as FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person is the named addressee; or (2) 72 hours after deposited with the United States Postal Service, Certified Mail, Return Receipt Requested.

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

With a copy to: The Knight Law Firm, LLP  
Attn: Paige H. Saenz  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

To the Developer: Hillside Terrace Development, LLC  
Attn.: Garrett Martin  
2100 Northland Drive  
Austin, Texas 78756

With a copy to: Winstead PC  
Attn: Ross Martin  
2728 N. Harwood, Suite 500  
Dallas, Texas 75201

Any Party may change its address by delivering notice of the change in accordance with this section.

4.16 Conflicts; Amendment. In the event of any conflict between this Agreement and any other instrument, document, or agreement by which either Party is bound: (1) first, the provisions and intent of any applicable Indenture shall control, (2) second, the provisions and intent of this Agreement shall control subject only to the terms of any applicable Indenture. This Agreement may only be amended by written agreement of the Parties.

4.17 Severability. If any provision of this Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions.

4.18 Non-Waiver. The failure by a Party to insist upon the strict performance of any provision of this Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Agreement.

4.19 Third Party Beneficiaries. Nothing in this Agreement is intended to or shall be construed to confer upon any person or entity other than the City, the Developer, and Transferees any rights under or by reason of this Agreement. All provisions of this Agreement shall be for the sole and exclusive benefit of the City, the Developer, and Transferees.

4.20 Counterparts. This Agreement may be executed in multiple counterparts, which, when taken together, shall be deemed one original.

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

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

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

4.22 No Boycott of Israel. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

4.23 Anti-Boycott Verification – Energy Companies. 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). The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

4.24 Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations. 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. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

4.25 Form 1295. Submitted herewith is a completed Form 1295 in connection with the Developer's participation in the execution of this Agreement generated by the Texas Ethics Commission's (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Developer and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

4.26 Employment of Undocumented Workers. During the term of this Agreement, and to the extent required under State law, the Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Developer shall repay the taxes abated herein within 120 days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Pursuant to Section 2264.101 (c), Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

*[Execution pages follow.]*

**CITY OF KYLE, TEXAS**

By: \_\_\_\_\_  
Travis Mitchell, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Jennifer Kirkland, City Secretary

CITY SIGNATURE PAGE

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By:  
Name: Garrett S. Martin  
Title: Manager

## EXHIBIT A

### FORM OF CERTIFICATE FOR PAYMENT

The undersigned is an agent for Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”) and requests the City of Kyle, Texas (the “City”) approve payment from the **[Improvement Area # \_\_\_\_ Improvements Account of the PID Project Fund] [City Project Fund]** in the amount of \_\_\_\_\_ for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Authorized Improvements providing a special benefit to property within the \_\_\_\_\_ Public Improvement District. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the \_\_\_\_\_ PID Financing Agreement between the Developer and the City (the “Financing Agreement”).

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced Authorized Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The amount listed for the Authorized Improvements below is a true and accurate representation of the Actual Costs associated with the creation, acquisition, or construction of said Authorized Improvements, and such costs (i) are in compliance with the Financing Agreement, and (ii) are consistent with the SAP.
4. The Developer is in compliance with the terms and provisions of the Financing Agreement, the SAP, and the Developer Continuing Disclosure Agreement.
5. The Developer has timely paid all ad valorem taxes and annual installments of Assessments it owes or an entity the Developer controls owes, located in the Porter Country Public Improvement District and has no outstanding delinquencies for such assessments.
6. All conditions set forth in the Indenture (as defined in the Financing Agreement) for the payment hereby requested have been satisfied.
7. The work with respect to the Authorized Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Authorized Improvements (or its completed segment).

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

9. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for Authorized Improvements identified may be paid until the work with respect to such Authorized Improvements (or segment) has been completed and the City has accepted such Authorized Improvements (or segment). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such Authorized Improvements (or segment).

10. The Developer confirms that **[based on the statements provided by the Trustee (as defined in the SAP)] [based on all prior amounts paid to Developer from the City Project Fund]** as of the date of this Certificate for Payment and based on the percentage of completion of the Authorized Improvements as of the date of this Certificate for Payment as verified by the City payment of the amounts requested in this Certificate for Payment, taking into account all prior payments for the Authorized Improvements and the amount of work related to the Authorized Improvements remaining to be completed as of the date of this Certificate for Payment will not cause the amounts on deposit in **[the PID Project Fund] [the City Project Fund]** to fall below the amount necessary to complete the remaining Authorized Improvements taking into account the amounts available to the Developer under its private loan, a line of credit and/or any other form acceptable to the City.

11. ***[THIS SECTION ONLY USED FOR DRAWS FROM BOND IMPROVEMENT ACCOUNT OF PROJECT FUND UNDER IMPROVEMENT AREA #1 BOND INDENTURE:*** With respect to PID Bonds for Improvement Area #1, no payments shall be made that cause the aggregate amount of payments, when taking into account all amounts previously paid from the IA#1 Improvements Account of the Project Fund (as defined in the Bond Indenture for the Improvement Area #1 Bonds (the "Improvement Area #1 Bond Indenture"), to exceed \_\_\_\_\_ DOLLARS AND 00/100 (\$\_\_\_\_\_) (the "Unrestricted Amount"), until a "Release Restriction" as defined in and required by Section 6.5(i) of the Improvement Area #1 Bond Indenture has been met. The Developer confirms that the amounts requested under this Certificate for Payment when taking into account all payments previously made from the IA #1 Improvements Account of the Project Fund shall not cause disbursements from the IA #1 Improvements Account of the Project Fund to exceed the Unrestricted Amount prior to the satisfaction of the Release Restriction.]

**Payments requested are as follows:**

- a. X amount to Person or Account Y for Z goods or services.
- b. Payment / Wire Instructions



Attached hereto are invoices, cancelled checks, receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are “bills paid” affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Financing Agreement, after receiving this payment request, the City has inspected the Authorized Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

I hereby declare that the above representations and warranties are true and correct.

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

### **APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, acknowledges that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City, and otherwise finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment [and shall include said payments in the City Order (as defined in the Indenture) submitted to the Trustee directing payments to be made from the applicable fund in accordance with the Indenture] [and approves direct payment to be made from the City Project Fund] to the Developer or to any person designated by the Developer.

### **CITY OF KYLE, TEXAS**

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

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

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

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

**EXHIBIT B**  
**FORM OF CERTIFICATE FOR PAYMENT –**  
**DEVELOPER IMPROVEMENT ACCOUNT**

The undersigned is an agent for [DEVELOPER], a Texas limited partnership (the “Developer”) and requests the City of Kyle, Texas (the “City”) approve payment from the Developer Improvement Account of the PID Project Fund in the amount of \_\_\_\_\_ for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Authorized Improvements providing a special benefit to property within the Porter Country Public Improvement District. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Porter Country Public Improvement District Financing Agreement between the Developer and the City (the “Financing Agreement”).

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced Authorized Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The amount listed for the Authorized Improvements below is a true and accurate representation of the Actual Costs associated with the creation, acquisition, or construction of said Authorized Improvements, and such costs (i) are in compliance with the Financing Agreement, and (ii) are consistent with the SAP.
4. The Developer is in compliance with the terms and provisions of the Financing Agreement, the SAP, and the Developer Continuing Disclosure Agreement.
5. The Developer has timely paid all ad valorem taxes and annual installments of Assessments it owes or an entity the Developer controls owes, located in the Porter Country Public Improvement District and has no outstanding delinquencies for such assessments.
6. All conditions set forth in the Indenture (as defined in the Financing Agreement) for the payment hereby requested have been satisfied.
7. The work with respect to the Authorized Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Authorized Improvements (or its completed segment).

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

9. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for Authorized Improvements identified may be paid until the work with respect to such Authorized Improvements (or segment) has been completed and the City has accepted such Authorized Improvements (or segment). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such Authorized Improvements (or segment).

10. The Developer confirms that based on the statements provided by the Trustee (as defined in the SAP) as of the date of this Certificate for Payment and based on the percentage of completion of the Authorized Improvements as of the date of this Certificate for Payment as verified by the City payment of the amounts requested in this Certificate for Payment, taking into account all prior payments for the Authorized Improvements and the amount of work related to the Authorized Improvements remaining to be completed as of the date of this Certificate for Payment will not cause the amounts on deposit in the PID Project Fund to fall below the amount necessary to complete the remaining Authorized Improvements taking into account the amounts available to the Developer under its private loan, a line of credit and/or any other form acceptable to the City.

**Payments requested are as follows:**

- a. X amount to Person or Account Y for Z goods or services.
- b. Payment / Wire Instructions

Attached hereto are invoices, cancelled checks, receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Financing Agreement, after receiving this payment request, the City has inspected the Authorized Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

I hereby declare that the above representations and warranties are true and correct.

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

### **APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, acknowledges that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City, and otherwise finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and shall include said payments in the City Order (as defined in the Indenture) submitted to the Trustee directing payments to be made from the Developer Improvement Account of the PID Project Fund in accordance with the Indenture to the Developer or to any person designated by the Developer.

### **CITY OF KYLE, TEXAS**

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

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

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

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

**EXHIBIT C**

**[INTENTIONALLY BLANK]**



**EXHIBIT D**

**[INTENTIONALLY BLANK]**

**Exhibit E**  
**FORM OF CLOSING DISBURSEMENT REQUEST**

The undersigned is an agent for Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”) and requests the City of Kyle, Texas (the “City”) approve payment to the Developer (or to the person designated by the Developer) from the applicable account of the PID Project Fund from \_\_\_\_\_ (the “Trustee”) in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) to be transferred from the applicable account of the PID Project Fund upon the delivery of the PID Bonds for costs incurred in the establishment, administration, and operation of the Porter Country Public Improvement District (the “District”) and costs associated with the issuance of PID Bonds, as follows. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Porter Country Public Improvement District Financing Agreement between the Developer and the City (the “Financing Agreement”).

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced establishment, administration, and operation of the PID and/or costs of issuance of the PID Bonds at the time of the delivery of the PID Bonds have not been the subject of any prior payment request submitted to the City.
3. The amount listed for the below costs is a true and accurate representation of the Actual Costs associated with the establishment, administration and operation of the PID at the time of the delivery of the PID Bonds, and such costs are in compliance with the SAP.
4. The Developer is in compliance with the terms and provisions of the Financing Agreement, the SAP, and the Developer Continuing Disclosure Agreement and Indenture.
5. All conditions set forth in the Indenture and the Financing Agreement for the payment hereby requested have been satisfied.
6. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

**Payments requested hereunder shall be made as directed below:**

[Information regarding Payee, amount, and deposit instructions attached]

I hereby declare that the above representations and warranties are true and correct.

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Order submitted to the Trustee directing payments to be made from the applicable account under the Indenture upon delivery of the PID Bonds.

**CITY OF KYLE, TEXAS**

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

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

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

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

**Exhibit F**  
**FORM OF LANDOWNER CONSENT CERTIFICATE**

This Landowner Consent Certificate is issued by [LANDOWNER], a \_\_\_\_\_, (“Landowner”), as the landowner that holds record title to approximately [ ] acres (the “Property”), as more particularly described by metes and bounds in Exhibit “A” attached to this Landowner Consent Certificate and incorporated herein for all purposes, within the Porter Country Public Improvement District (the “PID”) created by the City of Kyle, Texas (the “City”). Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the City’s ordinance levying assessments on property within the PID, anticipated to be adopted on [ ], 20[ ], including the Service and Assessment Plan and Assessment Roll attached thereto (the ordinance and Service and Assessment Plan, including Assessment Roll, as of the date actually adopted by the City Council is referred to collectively as the “Assessment Ordinance”).

Landowner hereby declares and confirms that it holds record title to the Property located within the PID which is subject to the special assessments (the “Assessments”) levied by the City under the Assessment Ordinance. Further, Landowner hereby ratifies, declares, consents to, affirms, agrees to and confirms each of the following:

- The Landowner is the sole owner of the Property as of the date of this Landowner Consent Certificate and will be the sole owner of the Property on the date of the Assessment Ordinance.
- The right, power and authority of the City Council of the City to adopt the Assessment Ordinance, including the attachments thereto, and to levy the Assessments against the Property.
- The Authorized Improvements specially benefit the Property in an amount equal to or in excess of the Assessments levied on the Property as shown on the Assessment Roll.
- The Assessment against the Property is final, conclusive and binding upon the Landowner.
- Landowner shall pay the Assessment levied on the Assessed Property owned by such Landowner when due and in the amount required by and stated in the Assessment Ordinance and the attachments thereto.
- Delinquent installments of the Assessments shall incur and accrue interest, penalties, and attorney’s fees as provided in Service and Assessment Plan and in accordance with Chapter 372 of the Texas Local Government Code, as amended (the “PID Act”).
- The “Annual Installments” (as defined in the Service and Assessment Plan) of the Assessment levied against the Property may be adjusted, decreased and extended in accordance with the Porter Country Development Agreement, the Service and Assessment Plan and the PID Act.
- All notices required to be provided to it under the PID Act have been received and to the extent of any defect in such notice, Landowner hereby waives any notice requirements.

- Landowner consents to all actions taken by the City with respect to the creation of the PID and the levy of Assessments against the Property.

Landowner hereby waives any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the PID, defining the Assessed Property, adopting the Assessment Ordinance, Service and Assessment Plan and each Assessment Roll, levying of the Assessments, and determining the amount of the Annual Installments of the Assessments.

IN WITNESS WHEREOF, the undersigned has caused this Landowner Consent Certificate to be executed as of \_\_\_\_\_, 20\_\_.

**[LANDOWNER]**

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

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

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

**Exhibit G**  
**HOME BUYER DISCLOSURE PROGRAM**

1. A Builder<sup>1</sup> for an Assessed Property shall provide each residential homebuyer or purchaser (the “Buyer”) with the “Notice of Obligation to Pay Public Improvement District Assessment to the City”, in accordance with the PID Act and on the form attached to the Service and Assessment Plan.
2. A Builder for an Assessed Property shall provide evidence of compliance with 1 above, signed by such Buyer, to the City upon receipt of written request by the City or the Owner which sets forth the County’s mailing address and other contact information.
3. A Builder for an Assessed Property shall prominently display signage provided by the Owner or the Administrator in the Builder’s model homes, if any, located within the Property.
4. If prepared and provided by the City and approved by Owner (such approval not to be unreasonably withheld), a Builder for an Assessed Property shall distribute informational brochures about the existence and effect of the District in prospective homebuyer sales packets.

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<sup>1</sup> Builder” means a commercial builder who is in the business of constructing and/or selling residences to individual home buyers.

## IMPROVEMENT AREA #1 COMPLETION AGREEMENT

**THIS IMPROVEMENT AREA #1 COMPLETION AGREEMENT** (herein, this “**Agreement**”) is made effective May 2, 2023, by and between **HILLSIDE TERRACE DEVELOPMENT, LLC**, a Texas limited liability company (the “**Developer**”), and the **CITY OF KYLE, TEXAS** (the “**City**”).

### RECITALS

**WHEREAS**, the Porter Country Public Improvement District (the “**District**”) was established by the City pursuant to Resolution No. 1316 on July 5, 2022;

**WHEREAS**, the Developer is the owner and developer of approximately 91.281 acres of land within the District, as more particularly described in **Exhibit A** attached hereto and incorporated by reference herein (“**Improvement Area #1**”);

**WHEREAS**, the City and the Developer have entered into that certain Porter Country Public Improvement District Financing Agreement, dated of even date herewith, as may be amended from time to time (the “**PFA**”) pursuant to which the City and the Developer have agreed to certain terms relating to the construction and funding of the Authorized Improvements (as defined in the Service and Assessment Plan) within the District;

**WHEREAS**, the City has determined that it is in the best interests of the present and future landowners and is a special benefit to the lands within Improvement Area #1 of the District to finance, construct and deliver the Authorized Improvements within Improvement Area #1 (the “**Improvement Area #1 Improvements**”) as more specifically described in the *Porter Country Public Improvement District Service and Assessment Plan*, adopted by the City Council on May 2, 2023, as updated and amended from time to time (the “**Service and Assessment Plan**”), and the Developer has agreed to construct and install such Improvement Area #1 Improvements pursuant to the PFA;

**WHEREAS**, a portion of the Improvement Area #1 Improvements will be funded with proceeds from the sale of the City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Projects) (the “**Series 2023 Bonds**”);

**WHEREAS**, the Developer also agrees to the construction and funding of the Improvement Area #1 Privately Financed Public Improvements (as defined in the Service and Assessment Plan) and the Privately Financed Improvements (as defined in the Service and Assessment Plan) within Improvement Area #1 (the Improvement Area #1 Improvements, the Improvement Area #1 Privately Financed Public Improvements and the Privately Financed Improvements are hereinafter collectively referred to as the “**Designated Improvements**”);

**WHEREAS**, in order to ensure that the Designated Improvements are completed and funding is available to provide for their completion, the Developer has agreed to enter into this Agreement to provide further assurances to the City that the Designated Improvements will be constructed and the Developer has evidence of available funds to complete the Designated Improvements pursuant to a Letter of Credit (hereinafter defined); and



**NOW, THEREFORE**, based upon the above recitals and other good and valuable consideration, the receipt of which and sufficiency of which is hereby acknowledged, the Developer and the City, agree as follows:

**1. Incorporation of Recitals; Capitalization.** The recitals stated above are true and correct and are incorporated by reference as a material part of this Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the PFA.

**2. Completion of Improvement Area #1 Improvements.** The Developer agrees to fund any shortfall between the amount of monies available from the sale of the Series 2023 Bonds to complete the Improvement Area #1 Improvements and the total Actual Cost (as such term is defined in the Service and Assessment Plan) to complete the Improvement Area #1 Improvements, after taking into account any approved application of an available Cost Underrun to a Cost Overrun (both defined in the PFA) pursuant to the terms of the PFA (the “**Funding Shortfall**”).

**3. Completion of Designated Improvements.**

(a) To assure the completion of the Designated Improvements and fund any Funding Shortfall related to the Improvement Area #1 Improvements, the Developer shall provide an irrevocable standby letter of credit (“**Letter of Credit**”) in the amount of \$\_\_\_\_\_ to the benefit of the City from a lender or financial institution in a form acceptable to the City on or before five (5) business days after the pricing of the Series 2023 Bonds, evidencing that sufficient funds are available to the Developer to fund the completion of the Designated Improvements. The City and the Developer agree that the stated amount set forth in the Letter of Credit may be reduced from time to time upon completion of the Designated Improvements (including segments or sections thereof) to reflect the amount needed to complete the remaining Designated Improvements.

(b) The Developer shall complete the Designated Improvements on the following schedule, subject to Force Majeure (hereinafter defined) and the notice and cure provisions provided herein:

(i) The Designated Improvements shall be substantially completed for “Phase #1” of Improvement Area #1 not later than eighteen (18) months from the closing of the Series 2023 Bonds.

(ii) The Designated Improvements shall be substantially completed for “Phase #2” of Improvement Area #1 not later than thirty-six (36) months from the closing of the Series 2023 Bonds.

(c) The City may submit a “Draw Statement” pursuant to the Letter of Credit to construct the Designated Improvements, if the Designated Improvements are not completed on the schedule provided section 3(a) above, subject to Force Majeure and the notice and cure provisions provided herein.

(d) The City may submit a “Draw Statement” pursuant to the Letter of Credit to construct the Designated Improvements, if the Letter of Credit is requested to be withdrawn prior to the completion of the Designated Improvements.

(e) As used herein, “Force Majeure” shall mean, without limitation, acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy, acts or orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, pandemics, quarantine, viral outbreaks, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or other acts, events, causes, or circumstances not within the reasonable control of the Developer and that could not have been avoided by the exercise of good faith, due diligence, and reasonable care.

(f) As part of each quarterly report (the “**Quarterly Report**”) filed with the Municipal Securities Rulemaking Board (the “**MSRB**”) by the Developer, pursuant to and in accordance with the Continuing Disclosure Agreement of the Developer, dated as of May 1, 2023, and entered into with respect to the Series 2023 Bonds (the “**Developer CDA**”), the Developer shall certify to the sufficiency of the funds available under the Letter of Credit to complete the then-remaining Designated Improvements.

(g) The Developer shall provide updates on the construction budget and the progress of construction of the Designated Improvements in each Quarterly Report in accordance with the Developer CDA.

(h) The City shall submit a “Special Event Filing”, pursuant to the Continuing Disclosure Agreement of Issuer, dated as of May 1, 2023, and entered into with respect to the Series 2023 Bonds (the “**Issuer CDA**”), of any submittal of a “Draw Statement”, in accordance with Section 3(c) or Section 3(d) above, and the amount of such draw on the Letter of Credit.

**4. Developer Default; Protection Against Third Party Interference.** The Developer hereby acknowledges and agrees that its obligations hereunder are obligations and liabilities of the Developer alone and the City shall have no responsibility for the payment or repayment of the same (including the repayment of the Letter of Credit). In the event the Developer does not comply with the terms of this Agreement, the City shall provide written notice to the Developer and the Developer shall be given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). If the Developer does not comply with the terms of this Agreement and its cure has not commenced as provided herein (an “Event of Default”), the City or its designee shall have the right to seek specific performance from a court of competent jurisdiction in order to ensure the Designated Improvements are completed as soon thereafter as reasonably possible. The City shall submit a Special Event Filing, pursuant to the Issuer CDA, of and Event of Default and/or remedies sought, including any court filings seeking specific performance by the Developer in accordance with this Agreement.

**5. Amendments.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the City and the Developer. The Developer shall submit a filing pursuant to the Developer CDA of any material amendment to or waiver of the provisions contained in this Agreement.

**6. Authorization; Consent.** The execution of this Agreement has been duly authorized by the City and the Developer, and both the City and the Developer have full power and authority to comply with the terms and provisions of this instrument.

**7. Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by prepaid express overnight courier or messenger service, facsimile or, or mailed (airmail if international) by registered or certified (postage prepaid), return receipt requested with delivery via email confirming mailing thereof, to the following addresses:

City:

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

With copy to:

The Knight Law Firm, LLP  
Attn: Paige Saenz  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

Developer:

Hillside Terrace Development, LLC  
Attn: Garrett Martin, President  
2100 Northland Drive  
Austin, Texas 78756

With a copy to:

Winstead PC  
Attn: Ross Martin  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201

Except as otherwise provided in this Agreement, any mailed notice sent in the manner provided above shall be deemed received three (3) business days after delivery or mailing. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day shall be deemed received the next business day. If any time for giving notice contained in this Agreement would otherwise expire on a non-business day, the notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall constitute non-business days. Any party or other person to whom notices are to be sent or copied may notify the other parties

and addressees of any changes in name or address to which notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

**8. Third Party Beneficiaries.** This Agreement is solely for the benefit of the City and the Developer, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation, other than the City and the Developer, any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the City and the Developer and their respective representatives, successors, and assigns.

**9. Successors.** The rights and obligations created by this Agreement shall be binding upon and inure to the benefit of the Developer, and its successors and assigns, subject to Section 15 below.

**10. Assignment.** This Agreement may be assigned in whole or in part by the Developer to a party who is acquiring all or a majority of Improvement Area #1 property owned by the Developer; provided, that the Developer first obtains the prior written approval of the City Council, such consent not to be unreasonably withheld and the party to whom this Agreement is assigned provides the City with a replacement irrevocable standby letter of credit from a lender or financial institution in a form acceptable to the City. Notwithstanding the foregoing, this Agreement may be assigned in whole or in part without the prior written approval of the City Council (but with notice to the City within thirty (30) days of the assignment) to an affiliate or entity under common control of the Developer so long as the Letter of Credit remains in effect.

**11. Construction of Terms; Conflict with Financing Agreement.** Whenever used the singular number shall include the plural, the plural the singular; the use of any gender shall include all genders, as the context requires; and the disjunctive shall be construed as the conjunctive, the conjunctive as the disjunctive, as the context requires. To the extent there is a conflict between the terms of this Agreement and the PFA, this Agreement shall control.

**12. Controlling Law.** This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Texas.

**13. Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

**14. Headings for Convenience Only.** The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

**15. Covenant and Recordation.** The Developer, as the developer and the owner of the real property within Improvement Area #1 of the District at the time of the execution of this Agreement, agrees that the obligations imposed upon it by this Agreement are valid and enforceable and shall be covenants running with the real property described in **Exhibit A** hereto, creating an obligation, and one which is binding upon successor owners and assigns. The City

shall record this Agreement in the Public Records of Hays County, Texas. Once the Developer has completed the Designated Improvements pursuant to the terms of this Agreement and the PFA, the Developer shall notify the City, and the City shall record in the public records a release and satisfaction of its obligations under this Agreement substantially in the form of the Completion Agreement Release attached hereto as **Exhibit B**. This Agreement, when recorded, shall be binding upon the Developer and the City and their successors and assigns as permitted by this Agreement and upon the real property described in **Exhibit A**; **however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-user or unaffiliated homebuilder, except for land use and development regulations that apply to such lots.**

**16. Anti-Boycott Verification.** To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the 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.

**17. Iran, Sudan and Foreign Terrorist Organizations.** To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, the Developer represents that the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**18. Anti-Boycott Verification – Energy Companies.** 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).

**19. Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations.** 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.

20. **Form 1295.** The Developer has delivered the Form 1295 and certification of filing generated by the Texas Ethics Commission's electronic portal, signed by an authorized agent, prior to the execution of this Agreement by the City and Developer. Developer and the City understand that neither the City nor any City representative, consultant, or advisor have the ability to verify the information included in Form 1295, and none of the City or any City employee, official consultant, or advisor have an obligation, nor have undertaken any responsibility, for advising Developer with respect to the proper completion of Form 1295 other than providing the identification numbers required for the completion of Form 1295.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

IN WITNESS WHEREOF, the parties hereto execute this Agreement and further agree that it shall take effect as of the date first above written.

*[signature pages follow]*

**CITY:**

**CITY OF KYLE, TEXAS**

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

STATE OF TEXAS                   §  
  §  
COUNTY OF HAYS               §

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2023, by  
\_\_\_\_\_, as \_\_\_\_\_ of the City of Kyle, on behalf of the  
City.

[SEAL]

\_\_\_\_\_  
Notary Public  
Commission Expires: \_\_\_\_\_

**DEVELOPER:**

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By:  
Name: Garrett S. Martin  
Title: Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by Garrett S. Martin, Manager of MSCB Hillside, LLC, a Texas limited liability company, Managing Member of Hillside Terrace Development, LLC, a Texas limited liability company, on behalf of said entity.

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

AFTER RECORDING PLEASE RETURN TO:

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



## **EXHIBIT A**

### **METES AND BOUNDS DESCRIPTION OF IMPROVEMENT AREA #1**

#### **EXHIBIT "A" DESCRIPTION**

A 91.281 acres (3,976,181 square feet), tract of land, lying within the Jessie B. Eaves Survey, Abstract 166 and being all of a called 82.98 acre tract, conveyed to Hillside Terrace Development, LLC in Document No. 21069835, Official Public Records of Hays County, Texas and a portion of a called 163.935 acre tract, conveyed to Hillside Terrace Development LLC in Document No. 21020969 Official Public Records of Hays County, Texas, described as follows:

**BEGINNING** at a 5/8" iron rod with aluminum "PRO TECH ENG" cap found at the southeastern corner of said 163.935 acre tract, the northeastern corner of a called 2.80 acre tract, conveyed to James Mikeska & Traci Horne-Mikeska in Volume 1738, Page 731, Official Public Records of Hays County, Texas, and being on the western right-of-way line of F.M. 2001 (right-of-way varies), for the southeastern corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said 2.80 acre tract, S88°25'07"W, a distance of 858.81 feet to a 1/2" iron pipe found, for the northwestern corner of said 2.80 acre tract and the northeastern corner of Windy Hill Subdivision 24 AC, a subdivision, recorded in Document No. 17040372, Official Public Records of Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Windy Hill Subdivision 24 AC, S88°22'00"W, a distance of 1223.10 feet to a 3/4" iron pipe found, for the northwestern corner of said Windy Hill Subdivision 24 AC and the northeastern corner of Shadow Creek Phase 3, Section 4, a subdivision, recorded in Volume 13, Page 336, Plat Records Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of Shadow Creek Phase 9, Section 2, a subdivision, recorded in Document No. 17029868, Plat Records Hays County, Texas, S88°25'56"W, a distance of 1993.62 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" found for a southern angle corner of the herein described tract;

**THENCE**, continuing with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of said Shadow Creek Phase 9, Section 2, S88°24'30"W, a distance of 168.71 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the southwestern corner of the herein described tract;

**THENCE**, over and across said 163.935 acre tract, the following eight (8) courses and distances:

1. N01°30'41"W, 207.25 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
2. N88°29'23"E, 14.02 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
3. N01°35'27"W, 55.00 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
4. N04°13'38"E, 32.84 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
5. N10°02'37"E, 546.67 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
6. N72°49'45"W, 8.06 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
7. N10°00'58"E, 170.98 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the northwestern corner of the herein described tract;
8. S 79°57'22" E, 215.52 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set in the western line of the remainder of a called 91.92 acre tract, conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, and for a northern angle corner of the herein described tract;

THENCE, with the western line of the remainder of said 91.92 acre tract and also being a eastern line of said 163.935 acre tract, S10°01'01"W, a distance of 6.34 feet to a 1/2" iron rod with broken cap found for the northwestern corner of said 82.98 acre tract and also being the southwestern corner of the remainder of said 91.92 acre tract, and for a northern angle corner of the herein described tract;

THENCE, with the northern line of said 82.98 acre tract, the southern line of said remainder of 91.92 acre tract and also the southern boundary lines of the remainder of a called 45.13 acre tract and of the remainder of a called 60.58 acre tract both conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, N88°27'53"E, a distance of 3878.65 feet to a 1/2" iron rod with a 4540 cap found for the northeastern corner of said 82.98 acre tract, the southeastern corner of said remainder of the 60.58 acre tract and also being on the said western right-of-way line of F.M. 2001, for the northeastern corner of the herein described tract;

THENCE, with the eastern line of said 82.98 acre tract, said 163.935 acre tract and also being the said western right-of-way line of F.M. 2001, the following three (3) courses and distances:

1. S01°20'27"E, a distance of 856.10 feet to a concrete monument found on the arc of a curve to the left;
2. Along the arc of said curve to the left, a distance of 54.09 feet, having a radius of 756.20 feet, a delta angle of 4°05'54" and a chord bearing of S03°29'29"E, a distance of 54.08 feet to a 5/8" iron rod with aluminum cap stamped "PRO TECH ENG" found for the southeastern corner of said 82.98 acre tract and also being the northern southeastern corner of said 163.935 acre tract, and also being on the arc of a curve to the left;
3. Along the arc of said curve to the left, a distance of 37.01 feet, having a radius of 756.20 feet, a delta angle of 2°48'14" and a chord bearing of S06°20'21"E, a distance of 37.00 feet to the POINT OF BEGINNING.

Containing 91.281 acres (3,976,181 square feet), more or less, in Hays County.

#### BEARING BASIS NOTE

This project is referenced for all bearing and coordinate basis to the Texas State Plane Coordinate System NAD 83 (2011 adjustment), South Central Zone (4204). The Grid to Surface combined scale factor is 1.00013.

Robert J. Gertson, RPLS  
Texas Registration No. 6367  
Atwell, LLC  
805 Las Cimas Parkway, Suite 310  
Austin, Texas 78746  
Ph. 512-904-0505  
TBPE LS Firm No. 10193726



12/09/2022

## **EXHIBIT B**

### **COMPLETION AGREEMENT RELEASE**

The **CITY OF KYLE, TEXAS** (the “City”), hereby acknowledges receipt of notification of the completion of the Designated Improvements in accordance with the Completion Agreement (the “**Completion Agreement**”), effective May 2, 2023, by and between the City and **HILLSIDE TERRACE DEVELOPMENT, LLC**, a Texas limited liability company (the “**Developer**”).

The Completion Agreement was recorded in the Public Records of Hays County, Texas under Instrument No. \_\_\_\_\_ against the real property more particularly described in Exhibit A attached to the Completion Agreement and incorporated by referenced herein.

The Developer and its successors and assigns shall have no further obligations, duties or liabilities under the Completion Agreement, the City hereby releases, waives and forever discharges the Developer and its successors and assigns from all obligations, duties or liabilities of whatever nature arising under or in connection with the Completion Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**CITY:**

**CITY OF KYLE, TEXAS**

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

STATE OF TEXAS

§  
§  
§

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of the City of Kyle, on behalf of the  
City.

[SEAL]

\_\_\_\_\_  
Notary Public  
Commission Expires: \_\_\_\_\_

**AN APPRAISAL REPORT**  
**OF**  
**PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT, AREA 1, PHASES 1 & 2,**  
**BEING 254 UNDER-DEVELOPMENT LOTS, ON 66.6 ACRES IN PHASE 1,**  
**AND 155 PROPOSED LOTS ON 24.7 ACRES IN PHASE 2,**  
**LOCATED ALONG THE WEST LINE OF F.M. 2001,**  
**SOUTH OF HILLSIDE TERRACE DRIVE, IN**  
**KYLE, HAYS COUNTY, TEXAS 78610**

**FOR**  
**MR. R.R. "TRIPP" DAVENPORT, III**  
**UNDERWRITER**  
**FMSBONDS, INC.**  
**5 COWBOYS WAY, SUITE 300-25**  
**FRISCO, TEXAS 75034**

**BY**  
**BARLETTA & ASSOCIATES, INC.**  
**1313 CAMPBELL ROAD, BUILDING C**  
**HOUSTON, TEXAS 77055-6429**

**B&A FILE NUMBER: C8100-06**

**AS OF**  
**TRANSMITTAL DATE OF APPRAISAL: FEBRUARY 28, 2023**  
**DATE OF SITE VISIT: SEPTEMBER 7, 2022**  
**PROSPECTIVE "UPON COMPLETION" DATE: PHASE 1 - NOVEMBER 1, 2023**  
**PROSPECTIVE "UPON COMPLETION" DATE: PHASE 2 - MAY 1, 2025**

# BARLETTA & ASSOCIATES, INC.

REAL ESTATE APPRAISERS • CONSULTANTS

February 28, 2023

Mr. R.R. "Tripp" Davenport, III  
Underwriter  
FMSbonds, Inc.  
5 Cowboy Way, Suite 300-25  
Frisco, Texas 75034

RE: An Appraisal Report of **Porter Country Public Improvement District (PID), Area 1, Phases 1 & 2**, being **254** under-development lots, on **66.6** acres in Phase 1, and **155** proposed lots on **24.7** acres in Phase 2, located along the west line of F.M. 2001, south of Hillside Terrace Drive, in Kyle, Hays County, Texas 78610. Of the 254 under-development lots in Phase 1, 204 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 50 lots will have typical dimensions of 50' x 120', or 6,000 SF. Of the 155 proposed lots in Phase 2, 141 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 14 lots will have typical dimensions of 50' x 120', or 6,000 SF. The subject lots are to be built-out by Milestone Community Builders, and will have new home price points ranging from \$420,000 (40' lots), up to \$508,000 (50' lots). The subject is located in Kyle, but has a Buda postal address.

**B&A File No. C8100-06**

Dear Mr. Davenport:

At your request, I have physically visited and prepared an appraisal of the above-captioned property, gathered comparable market data, and conducted a study of the market area for the purpose of providing my opinion of the **"Upon Completion" Market Values of the subject lots**, in compliance with the FMSbonds, Inc.'s Appraisal Instructions; the Uniform Standards of Professional Appraisal Practice; and the Appraisal Institute's Code of Professional Ethics.

**At the request of the client, the "As Is" Market Value of the 409 paper lots, plus site development costs to date, in Porter Country, have not been valued herein.**

To conclude, it is my opinion that the **"Upon Completion" Market Values of the** of the fee simple interests in the subject lots in **Porter Country, Phases 1 and 2**, as of the indicated prospective dates, are as follows:

Description	No. Lots	Bulk Market Value	Prospective Date
Porter Country PID, Area 1, Phase 1	254	\$13,825,000	11/1/2023
Porter Country PID, Area 1, Phase 2	155	\$8,180,000	5/1/2025

The Bulk Market Value of Porter Country PID, Area 1, **Phase 1** is derived from a Sum of Retail Revenue of **\$17,855,500**, or \$70,297 per lot. The Bulk Market Value of Porter Country PID, Area 1, **Phase 2** is derived from a Sum of Retail Revenue of **\$11,571,200**, or \$74,653 per lot.

**Extraordinary Assumptions:**

- 1.) Porter Country PID, Area 1, Phase 2 is not yet platted, and the "Upon Completion" Market Value of Phase 2 is subject to a review of the plat, once available.
- 2.) The subject property is under-development as a residential subdivision, with a prospective completion date. In this appraisal report, I have projected the market conditions at the prospective time of completion that would be anticipated by typical market participants. In a similar fashion, I projected the retail valuation of the individual subject lots, absorption period and holding costs, based on projected conditions that are anticipated by typical market participants. Further, unknown circumstances may change the anticipated date of completion to another date, which may have market conditions that are different from those which are expected on the anticipated date of completion that is reflected in this report. Because actual future market conditions may deviate from those which are anticipated by typical market participants, this appraisal is subject to a review of market conditions and current sale data that will be available on the prospective or actual date of completion.
- 3.) This appraisal is subject to the proposed and under-development improvements being completed in a timely and professional workmanlike manner and that the under-development improvements do not deviate significantly from those described herein.
- 4.) The valuation of the subject improvements "Upon Completion" require a valuation of the subject improvements as of a prospective date, when they are projected to be physically complete based upon the plans and specifications provided. Developing this opinion of value requires the use of an extraordinary assumption because the subject in the prospective value opinion is as it exists as of a future date when physically complete. Therefore, I have relied upon information and specifications for the under-development improvements provided by the subject developing party. Should these representations be amended, or prove to be inaccurate, the value conclusions are subject to revision.
- 5.) This appraisal assumes that the developer's marketing plan is for new homes with a price-point range of \$420,000 (40' lots), up to \$508,000 (50' lots), by Milestone Community Builders, or a comparable production home builder.
- 6.) A deviation from any of the extraordinary assumptions stated above might have an effect on the Market Value conclusions contained herein.

**Market Value** is defined by FIRREA as follows:

**Market Value** means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and

seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) buyer and seller are typically motivated;
- (2) both parties are well informed or well advised, and acting in what they consider their own best interests;
- (3) a reasonable time is allowed for exposure in the open market;
- (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

It has been a pleasure serving you, and if I can be of further assistance, please call me.

Sincerely,

**BARLETTA & ASSOCIATES, INC.**



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Phillip F. Barletta, MAI, SRA  
President  
State Certified, TX-1320197-G



## CERTIFICATION

### USPAP CERTIFICATION

I certify that, to the best of my knowledge and belief, the following:

1. The statement of facts contained in this report is true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
4. I have provided no real estate services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
9. Phillip F. Barletta, MAI, SRA made an unaccompanied visit to the subject property on September 7, 2022.
10. Dwayne Guarino provided research assistance to the signer of this appraisal.
11. This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.
12. The appraiser has had extensive experience in appraising proposed, under-development and existing residential subdivision properties in the subject market area and the Austin region, and is State General Certified; thus, he is well qualified to appraise the subject property and fully satisfies the Competency Rule of the

Uniform Standards of Professional Appraisal.

13. Phillip F. Barletta, MAI, SRA is a State Certified General Real Estate Appraiser by the Texas Appraiser Licensing & Certification Board for the State of Texas.

**AI CERTIFICATION**

1. The reported analyses, opinions and conclusions were developed, and this report has also been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
2. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
3. As of the date of this report, Phillip F. Barletta, MAI, SRA has completed the continuing education program for Designated Members of the Appraisal Institute.

The appraiser hereby certifies regulatory compliance and it is my opinion that the **“Upon Completion” Bulk Market Values** of the fee simple interest in the subject properties, as of the indicated prospective dates, are as follows:

Description	No. Lots	Bulk Market Value	Prospective Date
Porter Country PID, Area 1, Phase 1	254	\$13,825,000	11/1/2023
Porter Country PID, Area 1, Phase 2	155	\$8,180,000	5/1/2025

**Extraordinary Assumptions:**

- 1.) Porter Country PID, Area 1, Phase 2 is not yet platted, and the “Upon Completion” Market Value of Phase 2 is subject to a review of the plat, once available.
- 2.) The subject property is under-development as a residential subdivision, with a prospective completion date. In this appraisal report, I have projected the market conditions at the prospective time of completion that would be anticipated by typical market participants. In a similar fashion, I projected the retail valuation of the individual subject lots, absorption period and holding costs, based on projected conditions that are anticipated by typical market participants. Further, unknown circumstances may change the anticipated date of completion to another date, which may have market conditions that are different from those which are expected on the anticipated date of completion that is reflected in this report. Because actual future market conditions may deviate from those which are anticipated by typical market participants, this appraisal is subject to a review of market conditions and current sale data that will be available on the prospective or actual date of completion.

- 3.) This appraisal is subject to the proposed and under-development improvements being completed in a timely and professional workmanlike manner and that the under-development improvements do not deviate significantly from those described herein.
- 4.) The valuation of the subject improvements "Upon Completion" require a valuation of the subject improvements as of a prospective date, when they are projected to be physically complete based upon the plans and specifications provided. Developing this opinion of value requires the use of an extraordinary assumption because the subject in the prospective value opinion is as it exists as of a future date when physically complete. Therefore, I have relied upon information and specifications for the under-development improvements provided by the subject developing party. Should these representations be amended, or prove to be inaccurate, the value conclusions are subject to revision.
- 5.) This appraisal assumes that the developer's marketing plan is for new homes with a price-point range of \$420,000 (40' lots), up to \$508,000 (50' lots), by Milestone Community Builders, or a comparable production home builder.
- 6.) A deviation from any of the extraordinary assumptions stated above might have an effect on the Market Value conclusions contained herein.

**BARLETTA & ASSOCIATES, INC.**



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Phillip F. Barletta, MAI, SRA  
President  
State Certified, TX-1320197-G

### **ASSUMPTIONS AND LIMITING CONDITIONS**

This appraisal is subject to the following conditions:

1. This Appraisal Report is intended to comply with the reporting requirements set forth under the Uniform Standards of Professional Appraisal Practice, Standard Rule 2-2 (a). As such, this report does, in fact, include narrative discussions of the data, reasoning and analyses that were used in the appraisal process to develop the appraiser's opinions of value. Supporting documentation concerning the data, reasoning, and analyses is included in this report. The appraiser is not responsible for unauthorized use of this report.
2. No responsibility is assumed for legal or title consideration. Titles to the properties are assumed to be good and marketable unless otherwise stated in this report.
3. The properties are appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.
4. Responsible ownership and competent property management are assumed unless otherwise stated in this report.
5. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
6. All engineering is assumed to be correct. Any plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
7. It is assumed that there are no hidden or unapparent conditions of the subject property, subsoil, or structures that render them more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
8. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in this report.
9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in this Appraisal Report.
10. It is assumed that all required licenses, certificates of occupancy or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.
11. Any sketches in this report may show approximate dimensions and is included to assist the reader in visualizing the properties. Maps and exhibits found in this report are provided for reader reference purposes only. No guarantee as to accuracy is expressed or implied unless otherwise stated in this report. No surveys have been made for the purpose of this report.

12. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the properties described and that there is no encroachment or trespass unless otherwise stated in this report.
13. The appraiser is not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the properties. The appraiser's value estimate is predicated on the assumption that there is no such material on or in the properties that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of the routine observations made during the appraisal process.
14. Unless otherwise stated in this report, the subject property are appraised without specific compliance surveys having been conducted to determine if the properties are or are not in conformance with the requirements of the Americans With Disabilities Act. The presence of architectural and communications barriers that are structural in nature that would restrict access by disabled individuals may adversely affect the property's' value, marketability, or utility.
15. Any under-development improvements are assumed to be completed in a good workmanlike manner in accordance with the submitted plans and specifications.
16. The distributions, if any, of the total valuations in this report between land and improvements apply only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
17. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraisers, and in any event, only with proper written qualification and only in its entirety.
18. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, new sales, or other media without prior written consent and approval of the appraiser.
19. This appraisal assumes that there are no significant wetlands and/or endangered species or habitats issues affecting the subject sites.

20. Texas is a non-disclosure state. It is important that the intended users of this appraisal understand that in Texas, there is no legal requirement for grantors or grantees to disclose any information relative to a transfer of real property. As a result, no data source provides absolute coverage of all transactions. It is possible that there are sales data of which we are unaware, or were non-verifiable. My sources provide the data typically available to appraisers in the ordinary course of business.

**Extraordinary Assumptions:**

- 1.) Porter Country PID, Area 1, Phase 2 is not yet platted, and the "Upon Completion" Market Value of Phase 2 is subject to a review of the plat, once available.
- 2.) The subject property is under-development as a residential subdivision, with a prospective completion date. In this appraisal report, I have projected the market conditions at the prospective time of completion that would be anticipated by typical market participants. In a similar fashion, I projected the retail valuation of the individual subject lots, absorption period and holding costs, based on projected conditions that are anticipated by typical market participants. Further, unknown circumstances may change the anticipated date of completion to another date, which may have market conditions that are different from those which are expected on the anticipated date of completion that is reflected in this report. Because actual future market conditions may deviate from those which are anticipated by typical market participants, this appraisal is subject to a review of market conditions and current sale data that will be available on the prospective or actual date of completion.
- 3.) This appraisal is subject to the proposed and under-development improvements being completed in a timely and professional workmanlike manner and that the under-development improvements do not deviate significantly from those described herein.
- 4.) The valuation of the subject improvements "Upon Completion" require a valuation of the subject improvements as of a prospective date, when they are projected to be physically complete based upon the plans and specifications provided. Developing this opinion of value requires the use of an extraordinary assumption because the subject in the prospective value opinion is as it exists as of a future date when physically complete. Therefore, I have relied upon information and specifications for the under-development improvements provided by the subject developing party. Should these representations be amended, or prove to be inaccurate, the value conclusions are subject to revision.
- 5.) This appraisal assumes that the developer's marketing plan is for new homes with a price-point range of \$420,000 (40' lots), up to \$508,000 (50' lots), by Milestone Community Builders, or a comparable production home builder.
- 6.) A deviation from any of the extraordinary assumptions stated above might have an effect on the Market Value conclusions contained herein.

### **SUMMARY OF SALIENT FACTS AND CONCLUSIONS**

Type of Property:	Porter Country Public Improvement District (PID), Area 1, Phases 1 & 2, being 254 under-development lots, on 66.6 acres in Phase 1, and 155 proposed lots on 24.7 acres in Phase 2, located along the west line of F.M. 2001, south of Hillside Terrace Drive, in Kyle, Hays County, Texas 78610. Of the 254 under-development lots in Phase 1, 204 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 50 lots will have typical dimensions of 50' x 120', or 6,000 SF. Of the 155 proposed lots in Phase 2, 141 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 14 lots will have typical dimensions of 50' x 120', or 6,000 SF. The subject lots are to be built-out by Milestone Community Builders, and will have new home price points ranging from \$420,000 (40' lots), up to \$508,000 (50' lots). The subject is located in Kyle, but has a Buda postal address.
Mapsco Reference:	Hays County – 661 C
Postal Address:	Buda, Texas 78610 (The subject is located in Kyle, but has a Buda postal address.)
Location:	Along the west line of F.M. 2001, south of Hillside Terrace Drive, in Kyle, Hays County, Texas 78610.
Phase 1 Tract Size:	66.6 acres platted for 254 lots
Density:	3.81 lots per acre.
Phase 2 Tract Size:	24.7 acres to contain 155 lots
Density:	6.28 lots per acre.
Phases 1 & 2 Tract Size:	91.3 acres to contain 409 lots
Density:	4.48 lots per acre.

#### **Porter Country PID Lot Size Mix**

<b>Phase 1:</b>	<b><u>No.</u></b>	<b><u>Description</u></b>	<b><u>Typical Dimensions</u></b>	<b><u>Avg. Size</u></b>
	204	Under-development	40' x 110'	4,400 SF
	50	Under-development	50' x 120'	6,000 SF
<b>Total/Average</b>	<b>254</b>	<b>Under-development</b>	<b>-</b>	<b>4,715 SF</b>

<b>Phase 2:</b>	<b><u>No.</u></b>	<b><u>Description</u></b>	<b><u>Typical Dimensions</u></b>	<b><u>Avg. Size</u></b>
	141	Proposed	40' x 110'	4,400 SF
	14	Proposed	50' x 120'	6,000 SF
<b>Total/Average</b>	<b>155</b>	<b>Proposed</b>	<b>-</b>	<b>4,545 SF</b>

**Appraisal Dates**

- Date of Site Visit: September 7, 2022  
 - Date of Report Transmittal: February 28, 2023  
 - Prospective Date of Value: Phase 1 – November 23, 2023  
 Phase 2 – May 1, 2025

Purpose of the Appraisal:

To provide an opinion of **the “Upon Completion” Market Values in Bulk of the subject 254 Phase 1 under-development lots, and the subject 155 proposed Phase 2 lots**, in compliance with the FMSbonds, Inc.’s Appraisal Instructions; the Uniform Standards of Professional Appraisal Practice; and the Appraisal Institute’s Code of Professional Ethics. **At the request of the client, the “As Is” Market Values of the subject paper lots have not been valued herein.**

Rights Appraised:

Fee Simple Estate

Floodplain:

Zone “X,” being outside of the 100-year and 500-year floodplains, according to FEMA Map Panel No. 48209C0291F, dated 9/2/2005.

**Utilities/Services**

Water: Goforth Special Utility District  
 Sanitary Sewer: Windy Hill Utility District  
 Electricity: Pedernales Electric Co-Op  
 Natural Gas: Center Point Energy  
 Telephone/Cable Service: Spectrum  
 Police Protection: City of Kyle and Hays County Sheriff’s Dept.  
 Fire Protection: Hays County Emergency Districts #5 & #9  
 School District: Hays Consolidated I.S.D.

Zoning:

Planned Unit Development (P.U.D.), by City of Kyle

Restrictions:

None adverse known.

Subject Builder:

Milestone Community Builders

New Home Price Range:

\$420,000 to \$508,000

Highest & Best Use:

Near term, phased residential lot development, as economic conditions and demand warrants.

**CONCLUSION:** The subject Porter Country PID has a suburban location in the rapidly growing Kyle/Buda Market Area of Austin. All services and public utilities are available, and no detrimental zoning, encroachments, or restrictions were noted, which would represent an adverse influence to the subject lots for starter to lower mid-priced production housing, as proposed.



**MARKET VALUE CONCLUSIONS:**

<b>Description</b>	<b>No. Lots</b>	<b>Bulk Market Value</b>	<b>Prospective Date</b>
Porter Country PID, Area 1, Phase 1	254	\$13,825,000	11/1/2023
Porter Country PID, Area 1, Phase 2	155	\$8,180,000	5/1/2025

**Extraordinary Assumptions:**

- 1.) Porter Country PID, Area 1, Phase 2 is not yet platted, and the "Upon Completion" Market Value of Phase 2 is subject to a review of the plat, once available.
- 2.) The subject property is under-development as a residential subdivision, with a prospective completion date. In this appraisal report, I have projected the market conditions at the prospective time of completion that would be anticipated by typical market participants. In a similar fashion, I projected the retail valuation of the individual subject lots, absorption period and holding costs, based on projected conditions that are anticipated by typical market participants. Further, unknown circumstances may change the anticipated date of completion to another date, which may have market conditions that are different from those which are expected on the anticipated date of completion that is reflected in this report. Because actual future market conditions may deviate from those which are anticipated by typical market participants, this appraisal is subject to a review of market conditions and current sale data that will be available on the prospective or actual date of completion.
- 3.) This appraisal is subject to the proposed and under-development improvements being completed in a timely and professional workmanlike manner and that the under-development improvements do not deviate significantly from those described herein.
- 4.) The valuation of the subject improvements "Upon Completion" require a valuation of the subject improvements as of a prospective date, when they are projected to be physically complete based upon the plans and specifications provided. Developing this opinion of value requires the use of an extraordinary assumption because the subject in the prospective value opinion is as it exists as of a future date when physically complete. Therefore, I have relied upon information and specifications for the under-development improvements provided by the subject developing party. Should these representations be amended, or prove to be inaccurate, the value conclusions are subject to revision.
- 5.) This appraisal assumes that the developer's marketing plan is for new homes with a price-point range of \$420,000 (40' lots), up to \$508,000 (50' lots), by Milestone Community Builders, or a comparable production home builder.
- 6.) A deviation from any of the extraordinary assumptions stated above might have an effect on the Market Value conclusions contained herein.

### **IDENTIFICATION OF THE SUBJECT PROPERTY**

Porter Country is a proposed master-planned community on a total of 259.02 acres, which will eventually yield approximately 981 residential lots, a recreational/amenity center, numerous trails and green spaces, along with a 4.50-acre commercial tract. The entire 259.02 acres was recently annexed into the City of Kyle. Goforth Special Utility District will provide public water to the site, and Windy Hill Utility will provide sanitary sewer service.

**The subject property consists of Porter Country Public Improvement District (PID), Area 1, Phases 1 & 2, being 254 under-development lots, on 66.6 acres in Phase 1, and 155 proposed lots on 24.7 acres in Phase 2, located along the west line of F.M. 2001, south of Hillside Terrace Drive, in Kyle, Hays County, Texas 78610. Of the 254 under-development lots in Phase 1, 204 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 50 lots will have typical dimensions of 50' x 120', or 6,000 SF. Of the 155 proposed lots in Phase 2, 141 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 14 lots will have typical dimensions of 50' x 120', or 6,000 SF. The subject lots are to be built-out by Milestone Community Builders, and will have new home price points ranging from \$420,000 (40' lots), up to \$508,000 (50' lots). The subject is located in Kyle, but has a Buda postal address.**

The subject Development Tract is legally described as:

91.3 acres of land located in the Jessie B. Eaves Survey, Abstract 166, Hays County, Texas.

The subject Phase 1 under-development lots are legally described as:

Lots 2-43 & 45-61, Block A; Lots 1-39, Block B; Lots 1-30, Block C; Lots 1-33, Block D; Lots 1-10, Block K; Lots 1-28, Block L; Lots 2-33, Block M; Lots 2-7, Block N; Lots 1-3, Block O; Lots 1-14, Block P; and Lots 1 & 2, Block V, Porter Country, Phase 1, Hays County, Texas.

**Note:** The subject proposed Phase 2 lots are not yet platted; thus, legal descriptions for the proposed lots are not yet available.

### HISTORY OF THE SUBJECT PROPERTY

Title to the subject Porter Country development tract is vested with Hillside Terrace Development, LLC, which is shown to have purchased tract in April 2021 from Rio Oso Holdings, LLC. The purchase price was not disclosed.

Hillside Terrace Development, LLC, which is a subsidiary of Milestone Community Builders, will develop all of the lots in Porter Country, and will then sell all of the developed lots to Milestone Community Builders. Porter Country, Phase 1 is now under-development, and is projected to be substantially complete by November 1, 2023. The subject Phase 1 lots are to be purchased by Milestone Community Builders for a base price of \$46,000 per lot for the 40' lots (\$1,150 PFF), and \$57,500 per lot for the 50' lots (\$1,150 PFF), along with a 6.0% per annum **"Phase Lot" Escalator**. Milestone Community Builders has agreed to purchase 50 lots upon substantial completion, and the 20 lots per quarter thereafter.

The subject Phase 2 lots, and all subsequent phases in Porter Country, will increase at a rate of 2.0% per annum from the completion of the Phase 1 lots, which is referred to in the Lot Purchase Agreement as the **"Lot Escalator."** Thus, the base lot price for the proposed lots in Phase 2 will increase at a rate of 2.0% per year ("Phase Lot" Escalator) from the substantial completion date of Phase 1, and then once complete, the Phase 2 lots will escalate at a rate of 6.0% per year (Lot Escalator).

**The Phase 2 lots are to be substantially complete by May 1, 2025, or 6 months after the substantial completion of Phase 1, indicating a base lot price of (\$46,000 per lot x 1.01 = \$46,460 per lot) \$46,460 per lot for the 40' lots, or \$1,161.50 PFF, and \$58,075 per lot for the 50' lots, or \$1,161.50 PFF.**

**I am not aware of any other transactions involving the subject property during the past three years.**

### INTENDED USE/USER OF THE APPRAISAL

This appraisal is intended to offer my opinion of the **“Upon Completion” Bulk Market Value of the subject 254 under-development Phase 1 lots, and the 155 proposed Phase 2 lots**, to the client, FMSbonds, Inc., for the underwriting of the City’s proposed Porter Country Public Improvement District Bond transaction. The use of the appraisal by anyone other than Mr. Tripp Davenport, III and Mr. Robert Rivera (c/o FMSbonds, Inc.), or the City is prohibited, except as provided herein. Additionally, I confirm our permission to use the final Appraisal Report in the offer and sale of public securities, secured by the special assessments levied on property within the PID, and I confirm that I will execute, subject to our approval of the same, a certificate related to the use of the appraisal for such purpose, as provided by the client. Any other party is an unintended unauthorized user.

**At the request of the client, the “As Is” Market Value of the 409 paper lots, plus site development costs to date, have not been valued herein.**

### SCOPE OF WORK OF THE APPRAISAL

The scope of work of the appraisal is the process to support my opinion of the **“Upon Completion” Bulk Market Value of the subject 254 under-development Phase 1 lots, and the 155 proposed Phase 2 lots**, employing the Sales Comparison Approach and the Income Approach (DCF), in an Appraisal Report format. In preparing this appraisal, the appraiser:

- visited the subject property and surrounding market area, unaccompanied;
- contacted **Mr. Cooper Dukette with Milestone Community Builders (512/796-6572); and Mr. Patrick Bourne with Sundance Analytics (512/871-8810; Mr. Robert Rivera with FMSbonds (817/240-6371) and Mr. Tripp Davenport with FMSbonds (214/418-1588)**, all of whom provided significant physical, financial and historical data to the appraiser for this valuation analysis;
- was provided a survey for the 91.3-acre development tract;
- was provided costs for the subject Porter Country PID;
- was provided a plat for Porter Country, Phase 1, but not Phase 2;
- was provided a copy of the lot purchase agreement for Porter Country;
- analyzed macro and micro market conditions of this region and market area;
- interviewed active market participants;

- gathered relevant available information on current comparable builder retail lot sales and lot absorption data, referencing such publications as the ABOR MLS, and the Zonda Austin Metrostudy;
- referenced other publications and services such as MapPro, Google Earth, Realty Rates.com, the Hays County Appraisal District, and the Hays County Clerks' Office, among other services, as well as the appraiser's vast data base;
- confirmed and analyzed the data and applied the most applicable approaches to value; i.e., the Sales Comparison Approach, and the Income Approach; and
- concluded the **"Upon Completion" Bulk Market Values of the subject 254 under-development lots in Porter Country, Phase 1 lots, as well as the 155 proposed lots in Porter Country, Phase 2**, for reasonable exposure periods as of the stated prospective effective dates.

**While considered, at the client's request, the Cost Approach was not developed. Further, at the request of the client, the "As Is" Market Value of the subject 409 paper lots have not been valued herein. The absence of the Cost Approach does not affect the credibility of the Market Value conclusions in this appraisal.**

#### **PROPERTY RIGHTS APPRAISED**

The property rights appraised are the ***Fee Simple Estate***. Fee Simple Estate is defined by The Dictionary of Real Estate Appraisal, Seventh Edition, Appraisal Institute, published in 2022, Page 73, as follows:

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.

#### **DEFINITION OF MARKET VALUE**

As referred to herein, ***Market Value*** is defined by FIRREA, as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) buyer and seller are typically motivated;
- (2) both parties are well informed or well advised, and each acting in what they consider their own best interests;
- (3) a reasonable time is allowed for exposure in the open market;

- (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

#### **DEFINITION OF “SUM OF THE RETAIL VALUES”**

As referred to herein, ***Sum of Retail Values*** is defined by The Dictionary of Real Estate Appraisal, Seventh Edition, Appraisal Institute, published in 2022, Page 185, as follows:

The sum of the separate and distinct market value opinions for each of the units in a condominium, subdivision development, or portfolio of properties, as of the date of valuation. The aggregate of retail values does not represent the value of all the units as though sold together in a single transaction; it is simply the total of the individual market value conclusions. An appraisal has an effective date, but summing the sale prices of multiple units over an extended period of time will not be the value on that one day unless the prices are discounted to make the value equivalent to what another developer or investor would pay for the bulk purchase of the units. Also called the aggregate of the retail values or aggregate retail selling price.

#### **DEFINITION OF “AS IS” MARKET VALUE ON APPRAISAL DATE**

As referred to herein, ***“As Is” Market Value*** is defined by The Dictionary of Real Estate Appraisal, Seventh Edition, Appraisal Institute, published in 2022, Page 10, as follows:

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date.

#### **DEFINITION OF “BULK VALUE”**

As referred to herein, ***“Bulk Value”*** is defined by The Dictionary of Real Estate Appraisal, Seventh Edition, revised 2022, by the Appraisal Institute, Page 22, as follows:

The value of multiple units, subdivided plots, or properties in a portfolio as though sold together in a single transaction.

#### **DATES OF THE APPRAISAL**

The effective date of my appraisal site inspection was September 7, 2022. The prospective “Upon Completion” date of value of Phase 1 is November 1, 2023, and for Phase 2 is May 1, 2025. The date of transmittal of the report is February 28, 2023.

### **ZONING AND RESTRICTIONS**

The subject development tract is zoned P.U.D. by the City of Kyle, and the subject proposed and under-development lots are assumed to conform to the P.U.D. Ordinance. It is also assumed subject lots will be deed restricted, but I am not aware of any adverse deed restrictions which would preclude development of the land and lots to their highest and best uses.

### **AD VALOREM TAX DATA**

**Tax Assessments & Taxes:** The subject development tract comprising **Porter Country Public Improvement District (PID), Area 1, Phases 1 & 2** is assessed by Hays Central Appraisal District (HCAD) under Account R162775, and R13939. Account R162775 encompasses the majority of the development tract, which is described as an 82.951-acre parcel with an assessed value of \$3,623,200 (\$43,679 per acre), and is not shown to carry an ag exemption. The remainder of the development tract is contained within Account R13939, which is described as a 109.785-acre parcel with an assessed value of \$2,651,710 (\$24,154 per acre), and is shown to carry an ag exemption value of \$9,000.

The taxing authorities affecting the subject property include Hays County, Hays County Special Road District, Hays County Fire Emergency Service District #8, Northeast Hays County Emergency Service District #2, Austin Community College, Hays C.I.S.D., Plum Creek Conservation District, Plum Creek Ground Water Conservation District and City of Kyle. In addition, the subject lots will be assessed by the City of Kyle – PID Assessor, with a projected tax rate of \$0.47 per \$100 assessed.

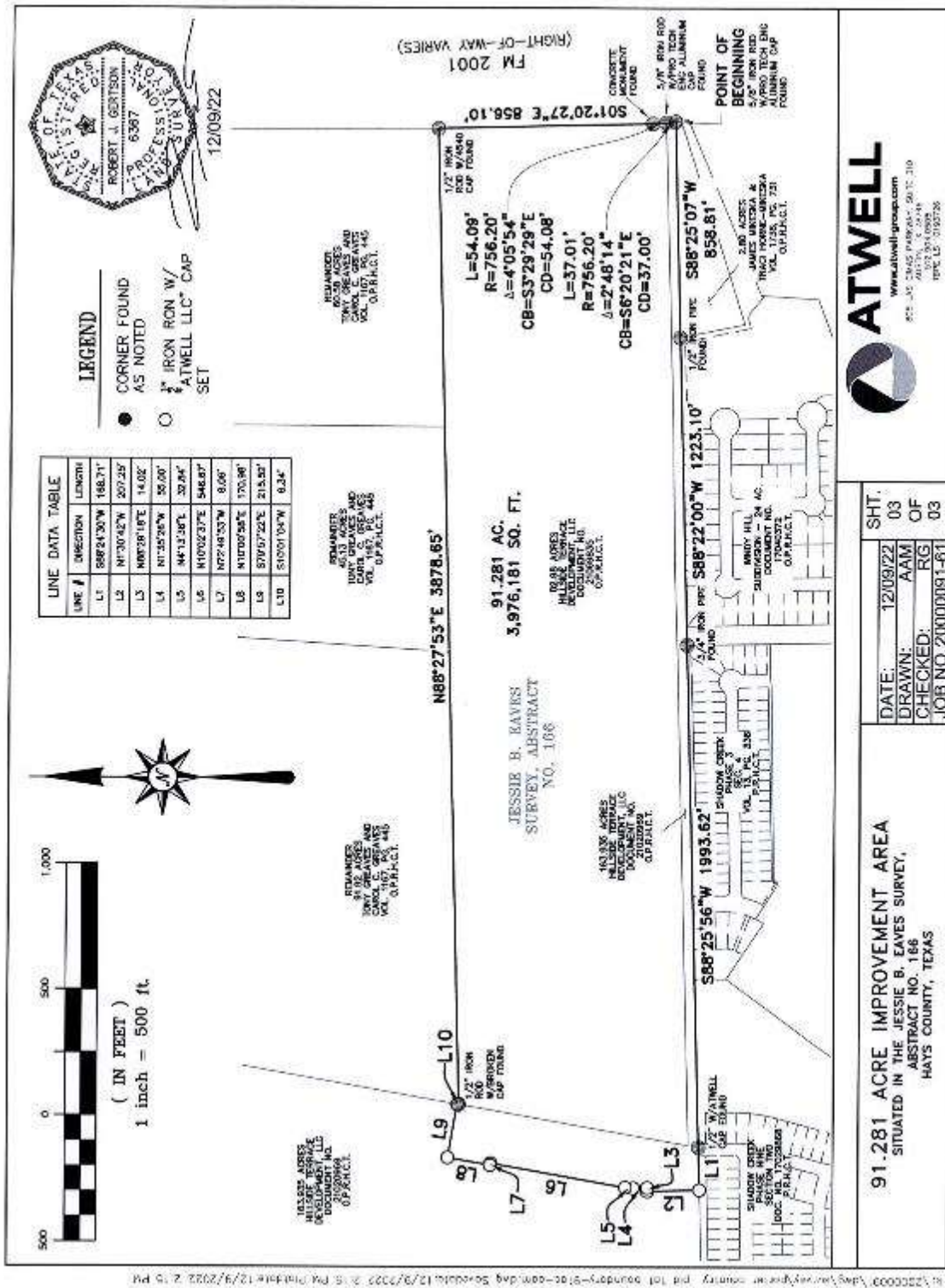
**Tax Assessments & Taxes:** The 2021 (most recent) tax rates, including the projected City of Kyle – PID Assessor, are as follows:

<b>TAXING AUTHORITY</b>	<b>2021 TAX RATE</b>
Hays County	\$0.362900
Hays County Special Road District	\$0.023800
Hays County Fire Emergency District #8	\$0.100000
Northeast Hays County Emergency District #2	\$0.075000
Austin Community College	\$0.104800
Hays C.I.S.D.	\$1.359700
Plum Creek Conservation District	\$0.020500
Plum Creek Ground Water Conservation District	\$0.020800
City of Kyle	\$0.508200
City of Kyle – PID Assessor (Projected)	\$0.470000
<b>TOTAL:</b>	<b>\$3.045700</b>

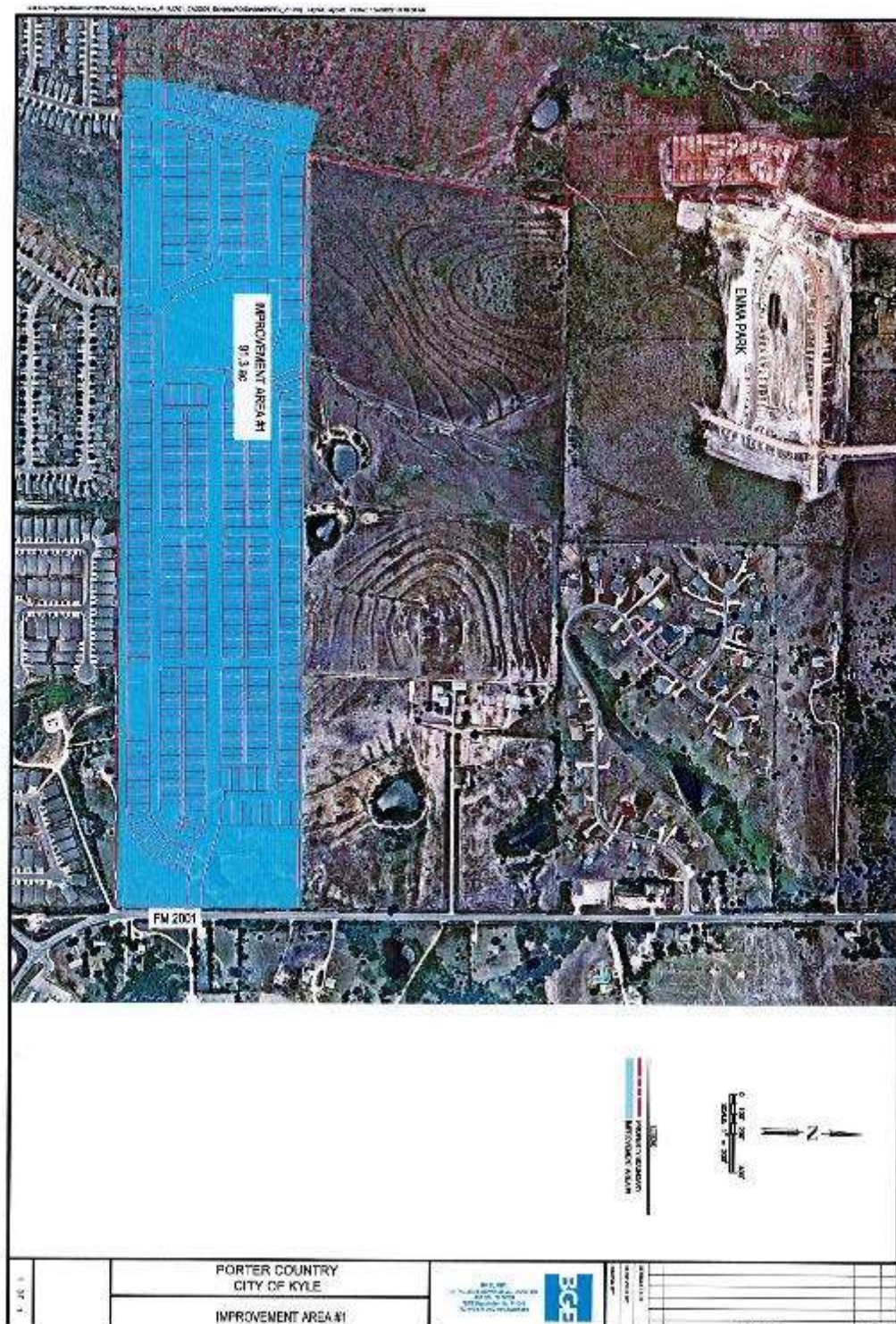
**Rollback Taxes:** As previously mentioned, the subject development tract is not shown to carry an agricultural exemption; **thus a 3-year rollback of taxes will not be applicable.**



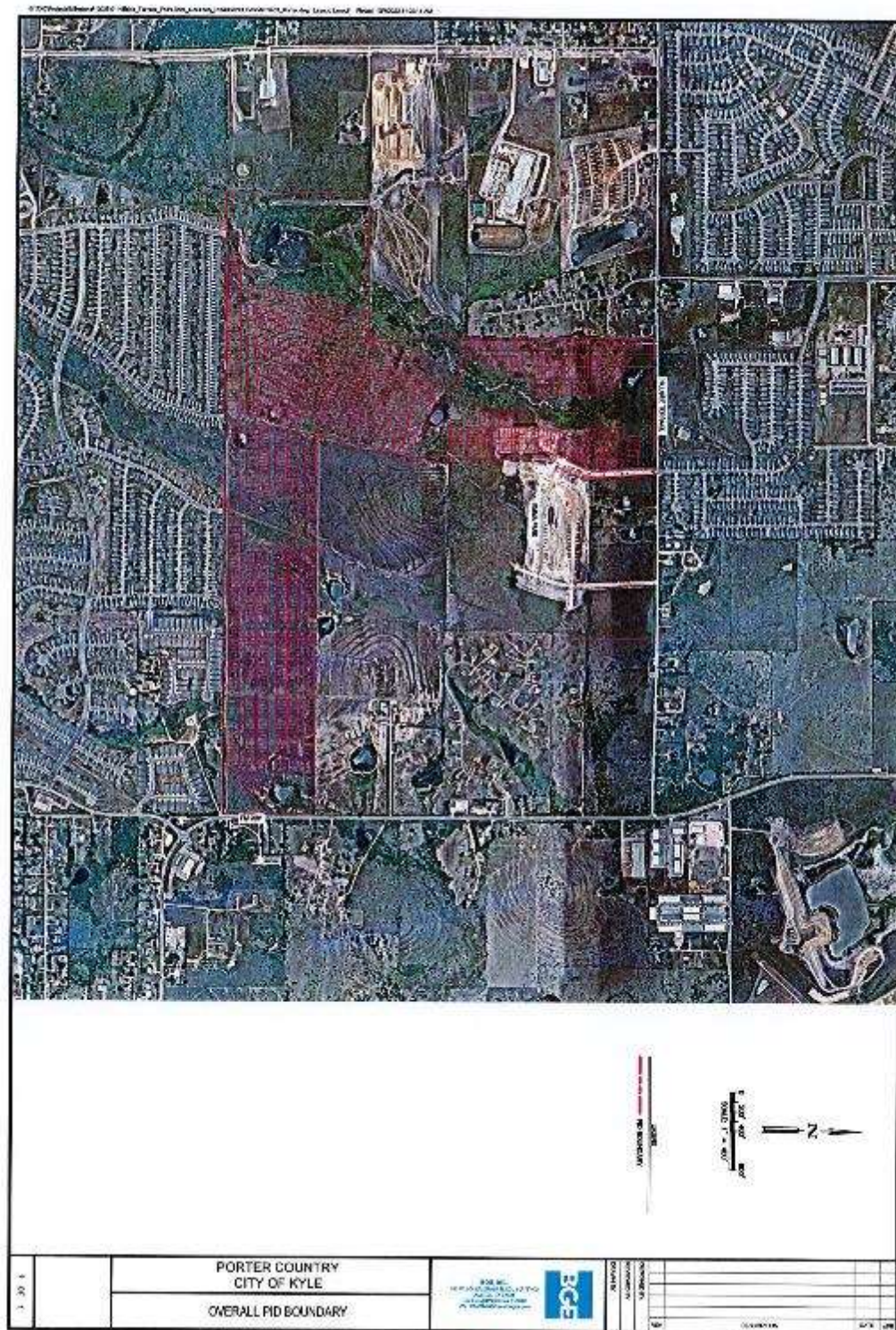
## SURVEY



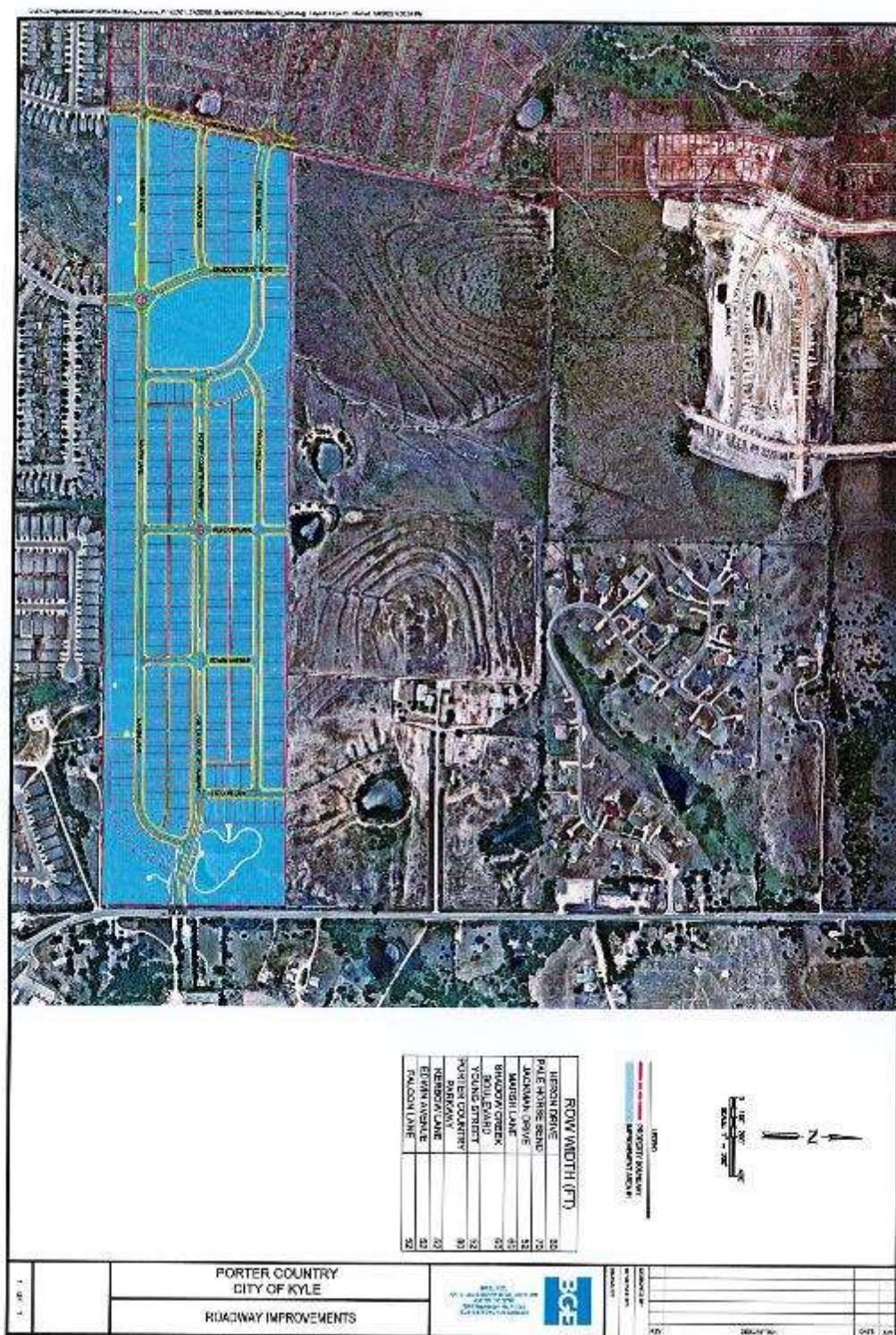
# **PORTER COUNTRY IMPROVEMENT AREA 1 CONCEPTUAL PLAN**



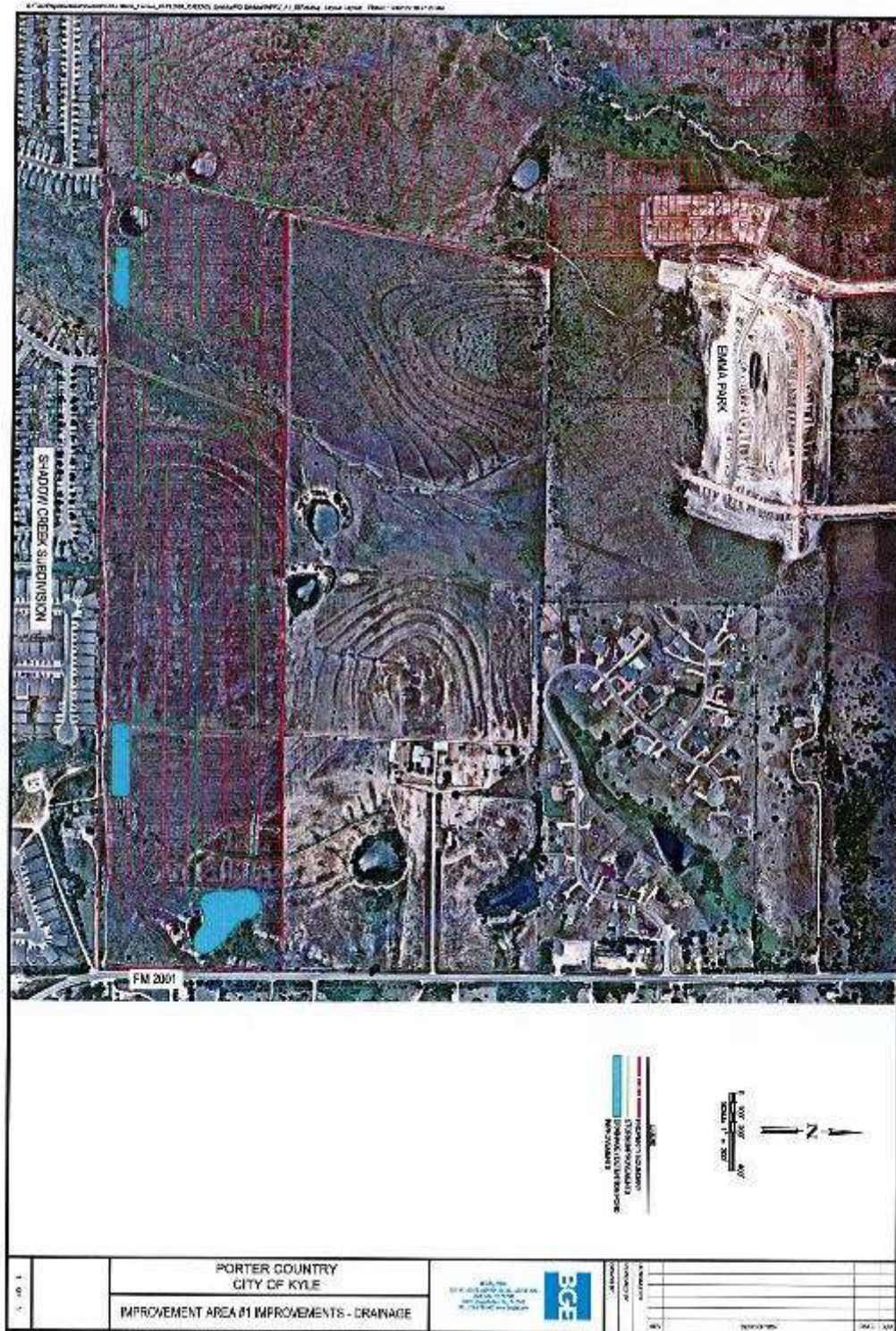




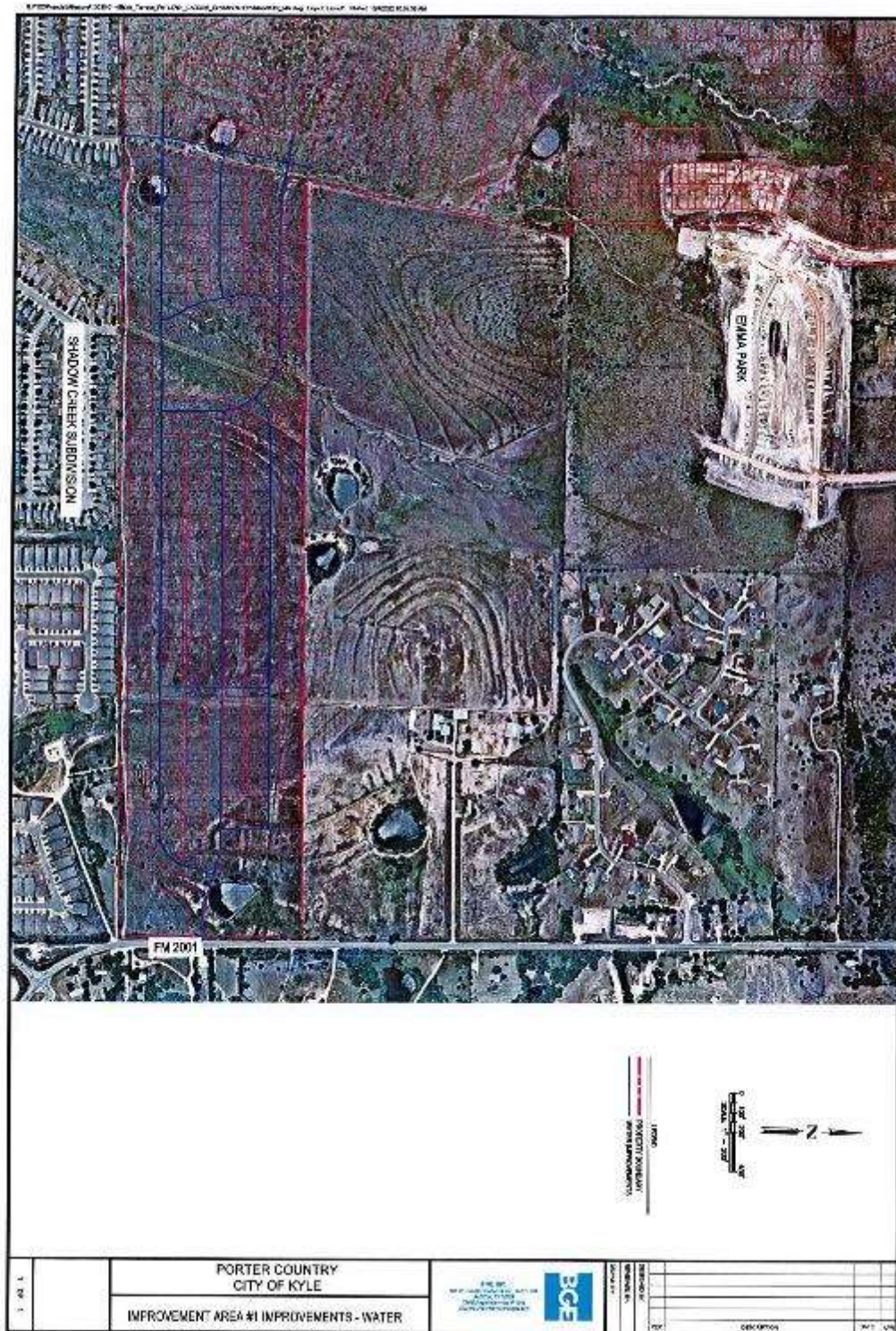




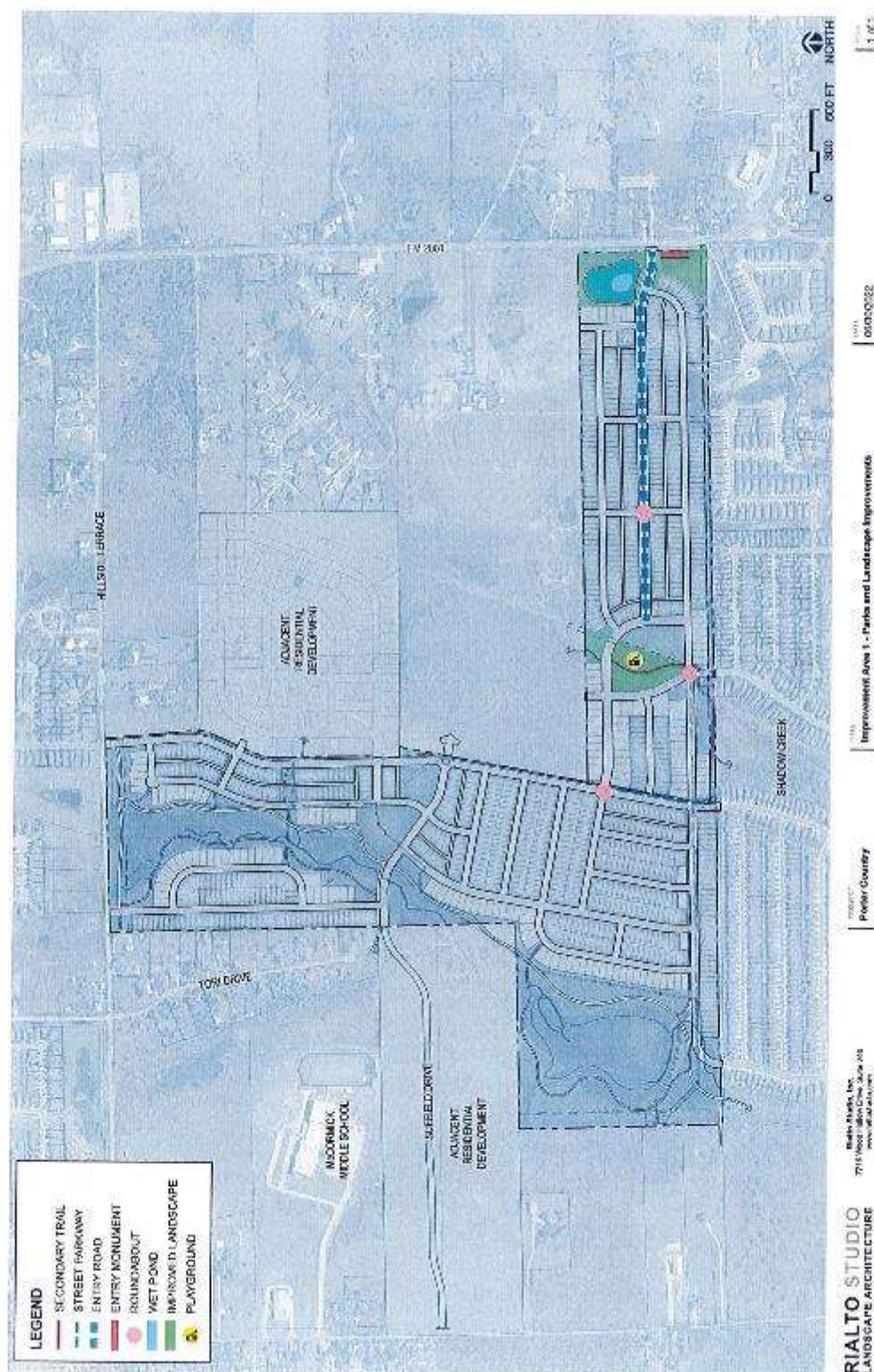












**GREATER AUSTIN AREA DATA**

(Please refer to the Addenda of this appraisal for an Austin MSA summary analysis.)







### **MARKET AREA ANALYSIS**

**Market Area Defined:** According to The Dictionary of Real Estate Appraisal, Seventh Edition, by the Appraisal Institute, 2022, page 116, a **market area** is defined as: “The geographic region from which a majority demand comes and in which the majority of competition is located. Depending on the market, a market area may be further subdivided into components such as primary, secondary, and tertiary market areas, or the competitive market area may be distinguished from the general market area.”

**Boundaries:** In order to discuss a market area, the boundaries must be established in order to distinguish it from the rest of the community. The market area boundaries are generally delineated as follows:

The city limits of Kyle, Texas and outlying periphery.

The City of Kyle, which contains 31.27 square miles, is located 21 miles southwest of Austin, and 58 miles northeast of San Antonio, along IH 35, in the Austin-Round Rock-San Marcos metropolitan area. Kyle, Texas is located immediately south of Buda, and immediately north of San Marcos, which is the county seat for Hays County.

Kyle is now one of the fastest growing cities in Texas. According to 2020 Census estimates, the population is 52,300, which is 86.67% greater than the 2010 Census estimate of 28,016. The city has experienced rapid growth due to the southerly expansion of Austin, as well as the northerly expansion of San Marcos and New Braunfels due just south of Kyle.

**Major Streets:** I.H. 35 extends northeast/southwest through Kyle, and is the primary commercial/retail corridor. I.H. 35 links Austin and San Antonio, and is heavily traveled. Major secondary thoroughfares include Kyle Parkway (F.M. 1626); Jack C. Hays Trail (F.M. 2770); F.M. 150; Old Stagecoach Road; and Kohlers Crossing. Access to and through Kyle is considered to be above average.

**Vybe Trail:** In September 2022, the Kyle City Council approved a “Citywide Trails Master Plan,” known as The Vybe, that prioritizes trail-oriented developments connecting the

entire city of Kyle. The ultimate goal of The Vybe is to reduce in-town traffic, by providing an 80 mile network of trails for hiking, biking and skating, as well as golf carts. The Vybe will offer illuminated paths, and provide space for shopping and dining kiosks, public restrooms, golf cart parking, and charging stations, as well as green spaces for recreational uses, including swimming pools, dog parks and picnic areas. Construction of the first phase of The Vybe is now underway.

**Single-Family Market:** According to the Zonda Austin Metrostudy, 2nd Quarter 2022, the subject's South Market Area is the third most active sector of the eight market areas comprising the Austin region. For the 12 months ending with the 2nd Quarter 2022, the South Market Area had 4,504 starts and 2,730 closings, for an undersupplied vacant developed lot (VDL) inventory of 13.1 months, and an elevated housing inventory of 15.4 months.

The subject Porter Country is within the South Market Area, and the Kyle/Buda Submarket. The Kyle/Buda Submarket accounted for 3,375 of those 4,504 starts (74.93%) and 2,156 of those 2,730 closings (78.97%), with a notably undersupplied vacant developed lot inventory of only 13.5 months, and an elevated housing inventory of 14.4 months. Typically, a 20 to 24-month lot supply is considered to be equilibrium; thus, the Kyle/Buda Submarket is notably undersupplied at 13.5 months, as is the South Market Area at 13.1 months.

Submarket/ Market Area		1Q 2021	2Q 2021	3Q 2021	4Q 2021	1Q 2022	2Q 2022	Annual Rates/ Inventory Supply (Mos)
<b>Kyle/Buda Submarket</b>	Starts	559	758	853	896	721	905	3,375
	Closings	522	505	454	525	550	627	2,156
	Housing Inv.	1,119	1,372	1,771	2,142	2,313	2,591	14.4 Mos.
	VDL Inv.	2,859	3,034	2,821	2,703	3,585	3,803	13.5 Mos.
<b>South Market Area</b>	Starts	675	929	1,178	1,208	1,100	1,018	4,504
	Closings	668	601	554	675	736	765	2,730
	Housing Inv.	1,394	1,722	2,346	2,889	3,243	3,496	15.4 Mos.
	VDL Inv.	3,830	3,996	3,970	3,629	4,565	4,900	13.1 Mos.

**Source:** Zonda Austin Metrostudy, 2nd Quarter 2022

Within the South Market Area starts in the 2nd Quarter 2022 were up 9.58% over 2nd Quarter 2021, and closings were up 27.29% over the same time period. Within the Kyle/Buda Submarket starts in the 2nd Quarter 2022 were up 19.39% over the 2nd Quarter 2021, and closings were up 24.16% over the same time period. The Austin region has experienced unprecedented growth over the past three years, and demand for new housing remains very strong. These trends indicate a rapid growth rate.

The housing inventory for both the South Market and the Kyle/Buda Submarket are elevated, and is due, in part, to the dramatic increase in starts, but is primarily attributable to a severe shortage in labor and materials. Further, the VDL inventories in both the Kyle/Buda Submarket, and the South Market Area have continually remained at undersupplied levels over the past 4 quarters, and are still notably undersupplied.

Notable recent residential developments in proximity to Kyle include 6 Creeks, Anthem, Blanco Vista, Casetta Ranch, Crosswinds, Cypress Forest, Paramount Park, Plum Creek, Sage Hollow, and Sunfield, as well as the under-development Porter Country.

**Services/Utilities:** Police and fire protection is provided by the various municipalities for the areas situated within the city limits of Kyle. The areas beyond the city limits are patrolled and serviced by the Hays County Sheriff's Department, and various fire/EMS districts.

Water and wastewater for the majority of the area is provided by the City of Kyle, with sufficient capacity to sustain future growth. The areas outside of the city limits are served through either Special Utility Districts, MUDs, WCIDs, or private well and septic systems. Electricity to the area is provided by Pedernales Electric Co-op, and typically AT&T or Spectrum provides telephone service. Natural gas is provided by Center Point Energy.

Kyle is located entirely within the Hays Consolidates I.S.D., which operates 26 campuses, and serves in excess of 20,000 students, with a student - teacher ratio 16:1. San Marcos is home to Texas State University (formerly known as Southwest Texas State), which is the 5<sup>th</sup> largest university in Texas with enrollment in excess of 38,800 students, and is the largest employer in San Marcos with 2,780 employees. In 2014, the Hays Campus of

Austin Community College opened, and is the only ACC campus to offer a First Responders Training Center, with a 50-yard tactical gun range, and a vehicle operations track.

Additional higher education in this region is provided by The University of Texas at Austin, Concordia University, Huston-Tillotson College and St. Edward's University in Austin, and Southwestern University in Georgetown.

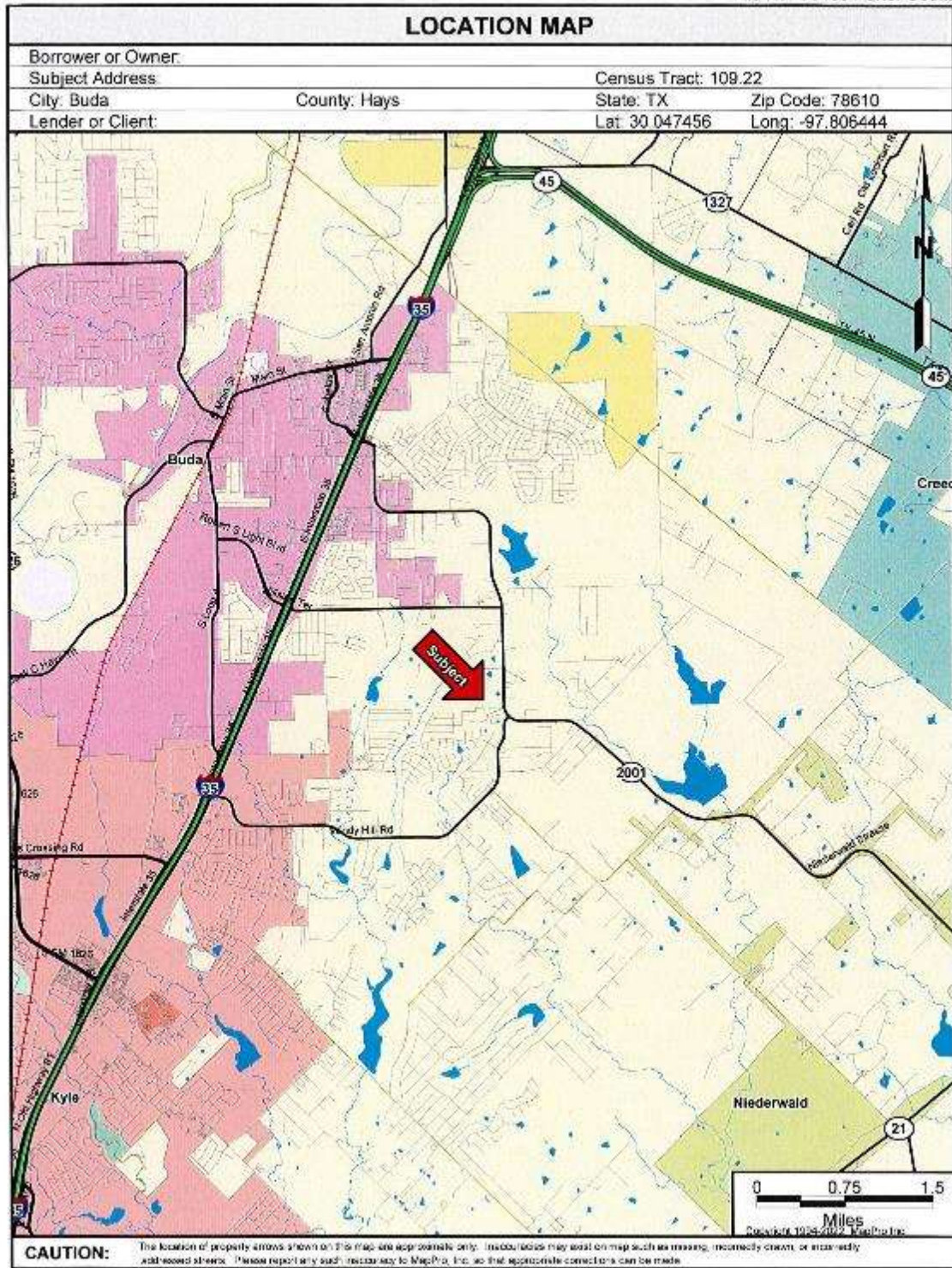
**CONCLUSION:** The subject market area is in the direct path of Austin's rapid growth patterns to the south, and San Antonio's growth patterns to the north, along the I-35 corridor. The market area is considered to be in a rapid growth stage of its life cycle, and is expected to continue as such into the foreseeable future. City services and utilities are available in sufficient capacity to accommodate future growth, and I am unaware of any adverse conditions or environmental hazards that would prohibit future development. No adverse or detrimental influences were noted, and no adverse zoning or other restrictions are present that would have a negative effect on area development.

The overall economic outlook of the market area has recently improved from the effects of the Coronavirus pandemic with the economy continuing to open up, along with stable \$80 - \$90+/- per barrel oil. The overall attitude and expectations of most market area participants is that of continued rapid population growth over the foreseeable future. The current Covid-19 pandemic had been receding. However, there had been an uptick in infections during July-September 2021, due to the Delta Variant. The Omicron Variant started to surge in December 2021, but appears to be a far less severe version of the virus thus far and was declining by mid-February 2022.

Inflation in June reached a record high level since 1982 of 9.1%, but dipped slightly in July to 8.6%, causing the Federal Reserve to rapidly increase interest rates during May, June, July and August 2022. The overall impact to the local residential market is to be determined, but most experts expect some slower activity throughout the remainder of 2022 and into 2023.

## LOCATION MAP

File No. C8100 Porter Country



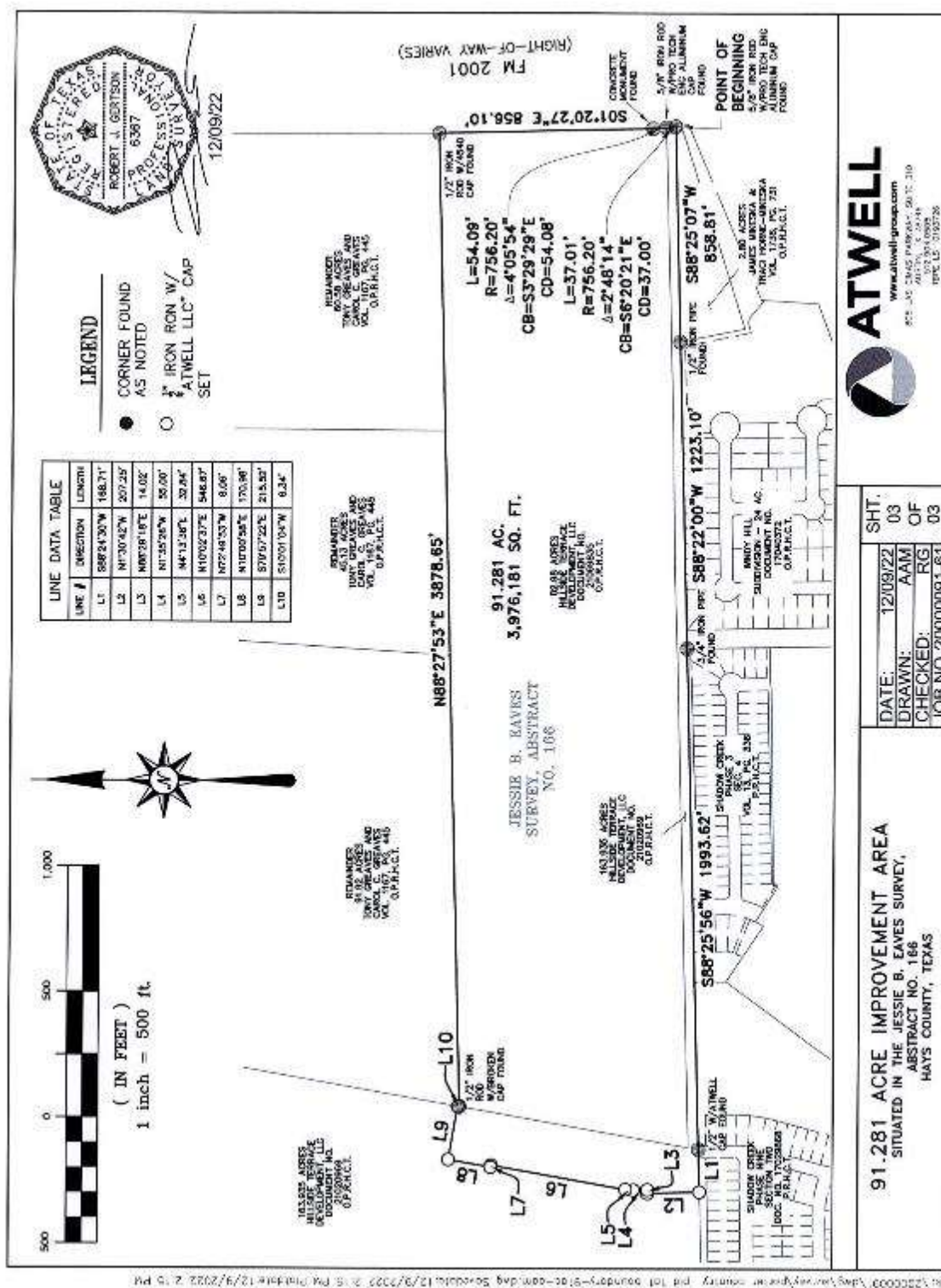


# AERIAL PHOTOGRAPH



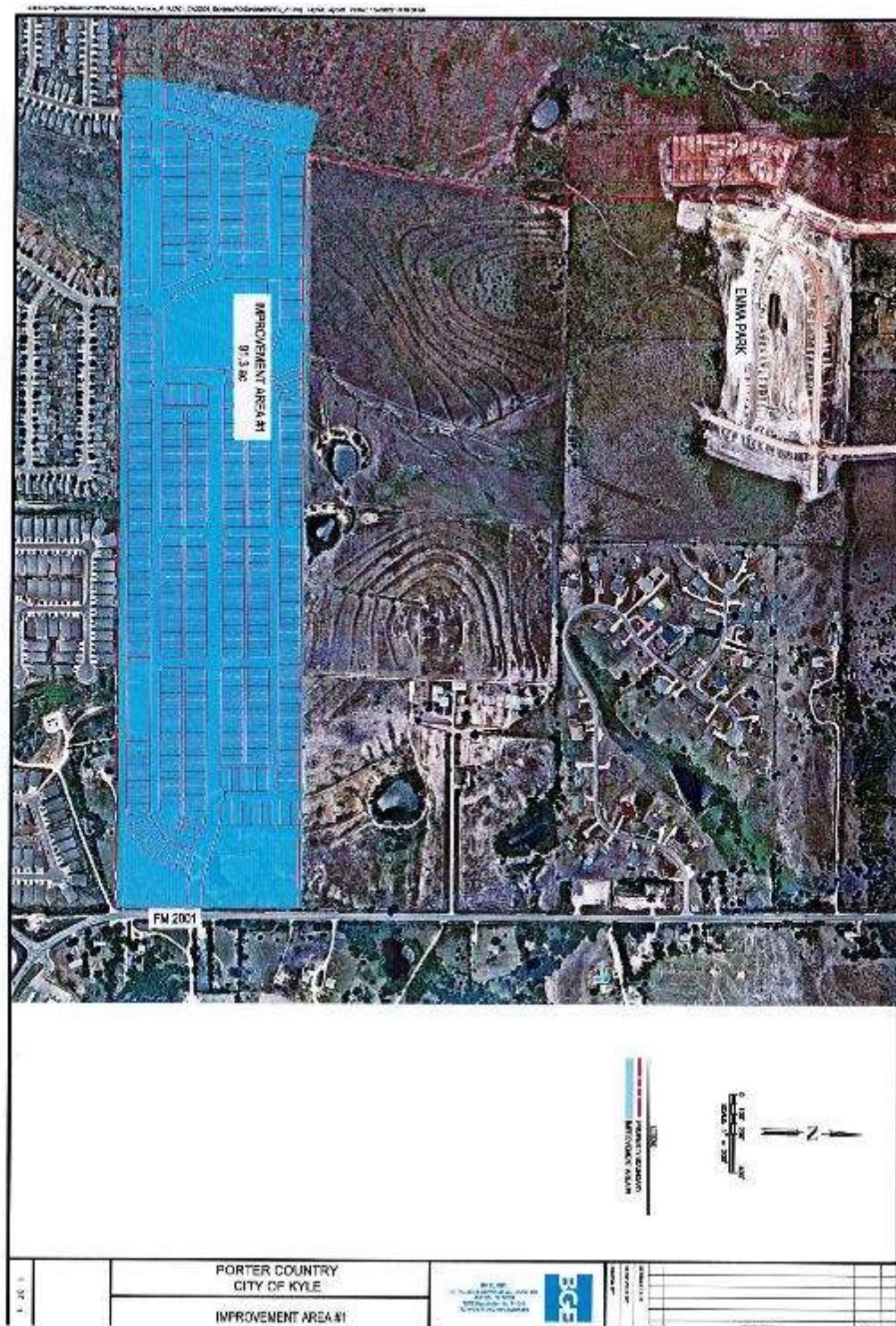


## SURVEY





# **PORTER COUNTRY IMPROVEMENT AREA 1 CONCEPTUAL PLAN**



**ANALYSIS OF PORTER COUNTRY PID, AREA 1, PHASES 1 & 2**  
**254 UNDER-DEVELOPMENT RESIDENTIAL LOTS, "UPON COMPLETION"**

Type of Property: Porter Country Public Improvement District (PID), Area 1, Phases 1 & 2, being 254 under-development lots, on 66.6 acres in Phase 1, and 155 proposed lots on 24.7 acres in Phase 2, located along the west line of F.M. 2001, south of Hillside Terrace Drive, in Kyle, Hays County, Texas 78610. Of the 254 under-development lots in Phase 1, 204 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 50 lots will have typical dimensions of 50' x 120', or 6,000 SF. Of the 155 proposed lots in Phase 2, 141 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 14 lots will have typical dimensions of 50' x 120', or 6,000 SF. The subject lots are to be built-out by Milestone Community Builders, and will have new home price points ranging from \$420,000 (40' lots), up to \$508,000 (50' lots). The subject is located in Kyle, but has a Buda postal address.

Mapsco Reference: Hays County – 661 C

Postal Address: Buda, Texas 78610

Location: Along the west line of F.M. 2001, south of Hillside Terrace Drive, in Kyle, Hays County, Texas 78610.

Phase 1 Tract Size: 66.6 acres platted for 254 lots

Density: 3.81 lots per acre.

Phase 2 Tract Size: 24.7 acres to contain 155 lots

Density: 6.28 lots per acre.

Phases 1 & 2 Tract Size: 91.3 acres to contain 409 lots

Density: 4.48 lots per acre.

**Porter Country PID Lot Size Mix**

Phase 1:		Typical		
	<u>No.</u>	<u>Description</u>	<u>Dimensions</u>	<u>Avg. Size</u>
	204	Under-development	40' x 110'	4,400 SF
	50	Under-development	50' x 120'	6,000 SF
<b>Total/Average</b>	<b>254</b>	<b>Under-development</b>	<b>-</b>	<b>4,715 SF</b>

Phase 2:		Typical		
	<u>No.</u>	<u>Description</u>	<u>Dimensions</u>	<u>Avg. Size</u>
	141	Proposed	40' x 110'	4,400 SF

<b>Total/Average</b>	<u>14</u> <b>155</b>	<b>Proposed Proposed</b>	50' x 120' -	6,000 SF <b>4,545 SF</b>
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### **Substantial Completion Dates**

Phase 1: November 1, 2023  
Phase 2: May 1, 2025

Floodplain: Zone "X," being outside of the 100-year and 500-year floodplains, according to FEMA Map Panel No. 48209C0291F, dated 9/2/2005.

### **Utilities/Services**

Water: Goforth Special Utility District  
Sanitary Sewer: Windy Hill Utility District  
Electricity: Pedernales Electric Co-Op  
Natural Gas: Center Point Energy  
Telephone/Cable Service: Spectrum  
Police Protection: City of Kyle and Hays County Sheriff's Dept.  
Fire Protection: Hays County Emergency Districts #5 & #9  
School District: Hays Consolidated I.S.D.

Zoning: Planned Unit Development (P.U.D.), by City of Kyle

Restrictions: None adverse known.

Amenities: A 5.0-acre amenity park and an entrances park is planned for Phase 1, and Phase 2 will include a large 61-acre Creekside park, along with the city-sponsored Vybe Trail, which will eventually provide a city-wide network throughout the City of Kyle.

Subject Builder: Milestone Community Builders

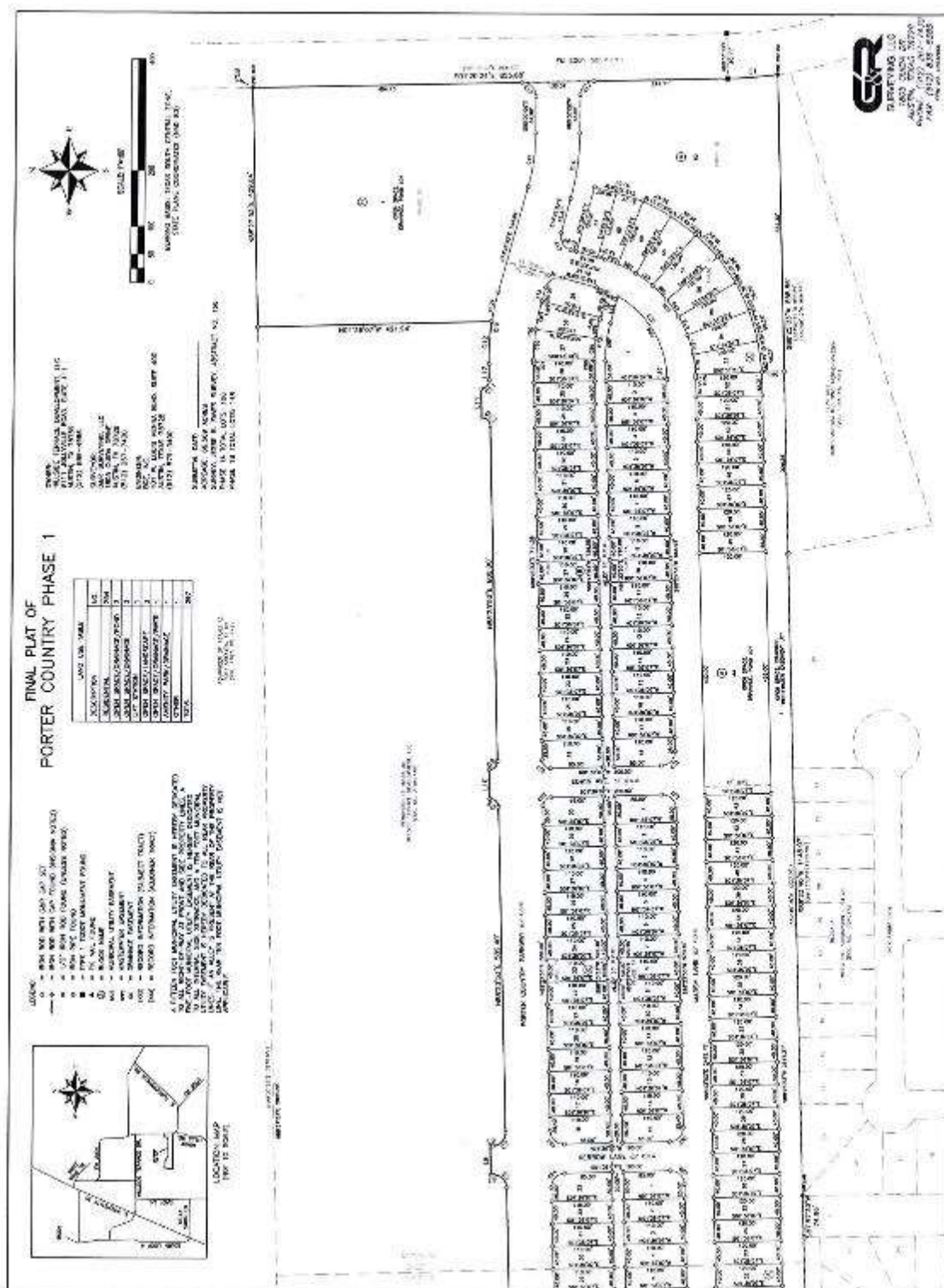
New Home Price Range: \$420,000 to \$508,000

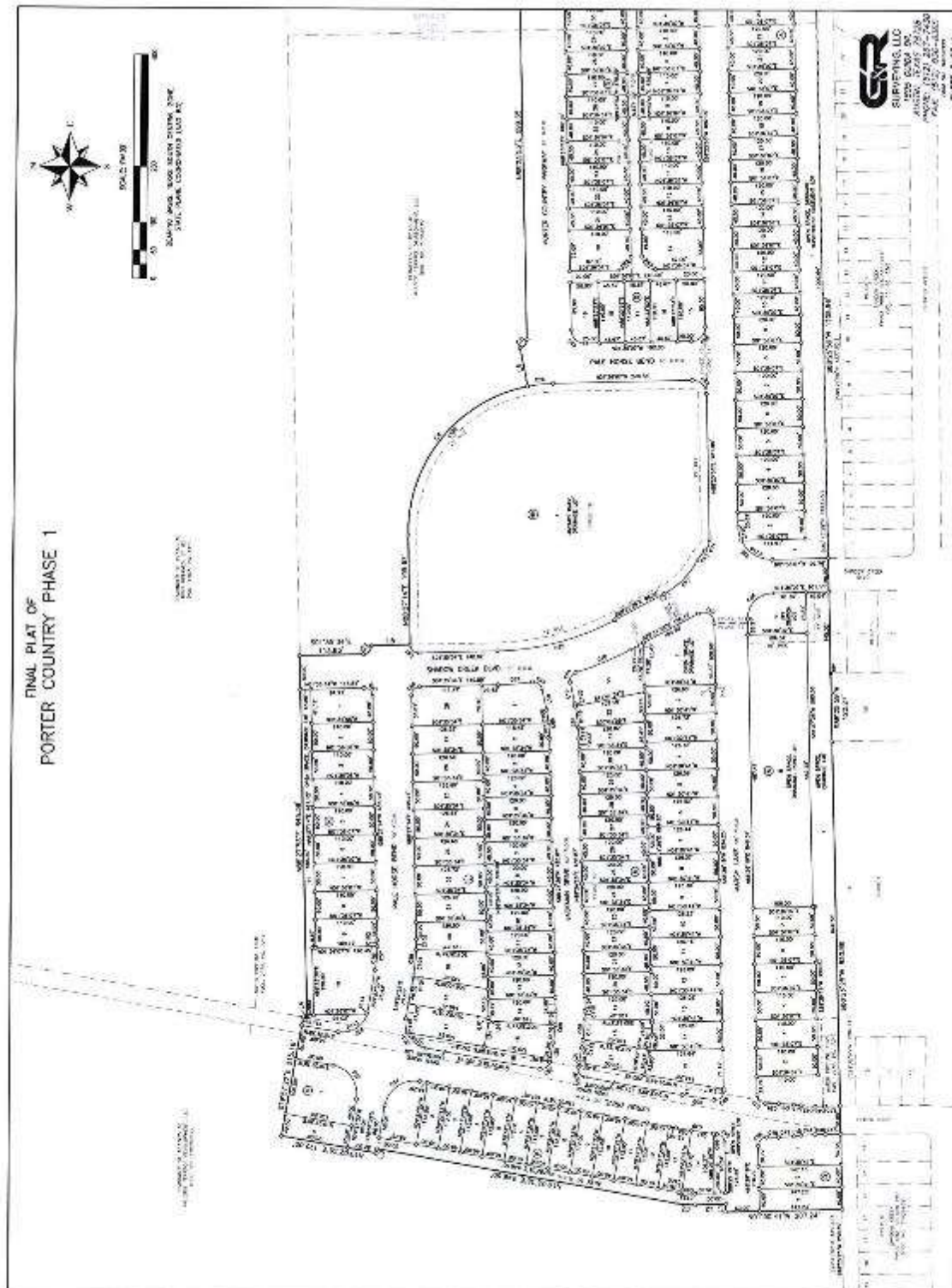
Highest & Best Use: Near term, phased residential lot development, as economic conditions and demand warrants.

**CONCLUSION:** The subject Porter Country PID has a suburban location in the rapidly growing Kyle/Buda Market Area of Austin. The subject will include extensive areas as part of the city-sponsored Vybe Trail, which will eventually provide a city-wide network throughout the City of Kyle. All services and public utilities are available, and no detrimental zoning, encroachments, or restrictions were noted, which would represent an adverse influence to the subject lots for mid-priced production housing, as proposed.



## PHASE 1 PLAT





FINAL PLAT OF  
PORTER COUNTRY PHASE 1

DATE OF REPLY:

Copyright © 1992

[illegible]

MUSEC OLYMPIAN INT., LLC

**NAME**  
XXXXXXXXXXXX

SMILE OF TIGER

1972-73  
1973-74

MADE BY THE DISTRICT OFFICE, A COURT FILED IN AND FOR SAN JOAQUIN COUNTY, CALIF., ON THIS 24th

DATE OF \_\_\_\_\_ PERSONAL - MOBILE MAIL \_\_\_\_\_ AS RECEIVED AGENT OF  
BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, BY \_\_\_\_\_  
AND DOCUMENT, PERSONAL MAIL TO BE MAILED TO ME ON THE NAME OF INVESTIGATION CHECKED TO ME  
ON THE PERSONAL MAIL IS SUBJECT TO THE FOLLOWING AGENT, AND AGENT TO ME THE DATE  
RECEIVED THE SAME FOR THE PERSONAL AND DOCUMENTATION (PERSONAL)

ONLY AGENT OF MAIL AND DATE OF OFFICE, THE DATE \_\_\_\_\_ ON \_\_\_\_\_ TO \_\_\_\_\_

2025 RELEASE UNDER E.O. 14176

HISTORY, NATURE, &amp; STATE OF TEXAS.

PHOTO 5a2

#### US COMPARISON CHARTS

CODE OF TITLE

DENSITY OF FACTS

THAT: FRANK L. MORGAN, JR. AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO EXECUTE THE PROVISIONS OF ANY SURETY AND WARRANT THAT: I PREPARE THIS THAT FRANK L. MORGAN, JR. AGREE AND ACKNOWLEDGE THE FOREGOING TRUTH AND COMPLIANCE WITH THEREOF NO. 425 OF THE CIVIL CODE OF TEXAS AND THAT ALL FURTHER ENDORSEMENTS REQUIRED AS FOUND ON THE TRAIL POLICY PROVIDED BY CRYSTALITE TRAIL COMPANY, LLC OF NO. 100021 DATED MARCH 22, 2022. THIS JURY 3-20-22 MPFS.

Environ Biol Fish (2015) 98:529–538

**PAF**

NAME OF USER

CLARK, D. 1983.

NOT A LAWYER. ASK ABBEY AN AUTHORIZED ORAL BY LAW OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF  
 DISTRICTS, AND DO HERBY SAYS THAT THIS WAS CONFORMS WITH THE ATTORNEY GENERAL'S OF THE CITY OF DALLAS  
 1000.

J. Asian Money 35, No. 1 (2008)

## CAST

APPROVED AND FORWARDED BY THE \_\_\_\_\_ CLERK OF \_\_\_\_\_ CO. AND BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF \_\_\_\_\_, LONG AND SHORT-TERMS TO BE KEPT FOR RECORD IN THE COUNTY CLERK'S OFFICE, \_\_\_\_\_ COUNTY, TEXAS.

NAME \_\_\_\_\_  
 PLAYING AND LEARNING OUR BEST CHAMBER  
 LIST OF BOOKS TO GO

[illegible]

LES EAGLE LIT - SUD-18

02

REVISED 07

Copyright © 2006 by John Wiley & Sons, Inc.

1998

#### W. CUP OF TON

PLUMB & CARPENTERS LOCAL 2280 OF NEW YORK, BEARS DO HEAVY COSTS THAT THE FOLLOWING REPRESENTS:

PREPARE AND ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_\_ DAY

5

WEEKS: 100 HOURS: 1000 DATE: 10/10/10

JAMES H. CARROLL, JR., D.D.  
 CHURCH COURT  
 1002 EIGHTH STREET

CLD# 0007  
602 (1947) - YOK

449

- [illegible]

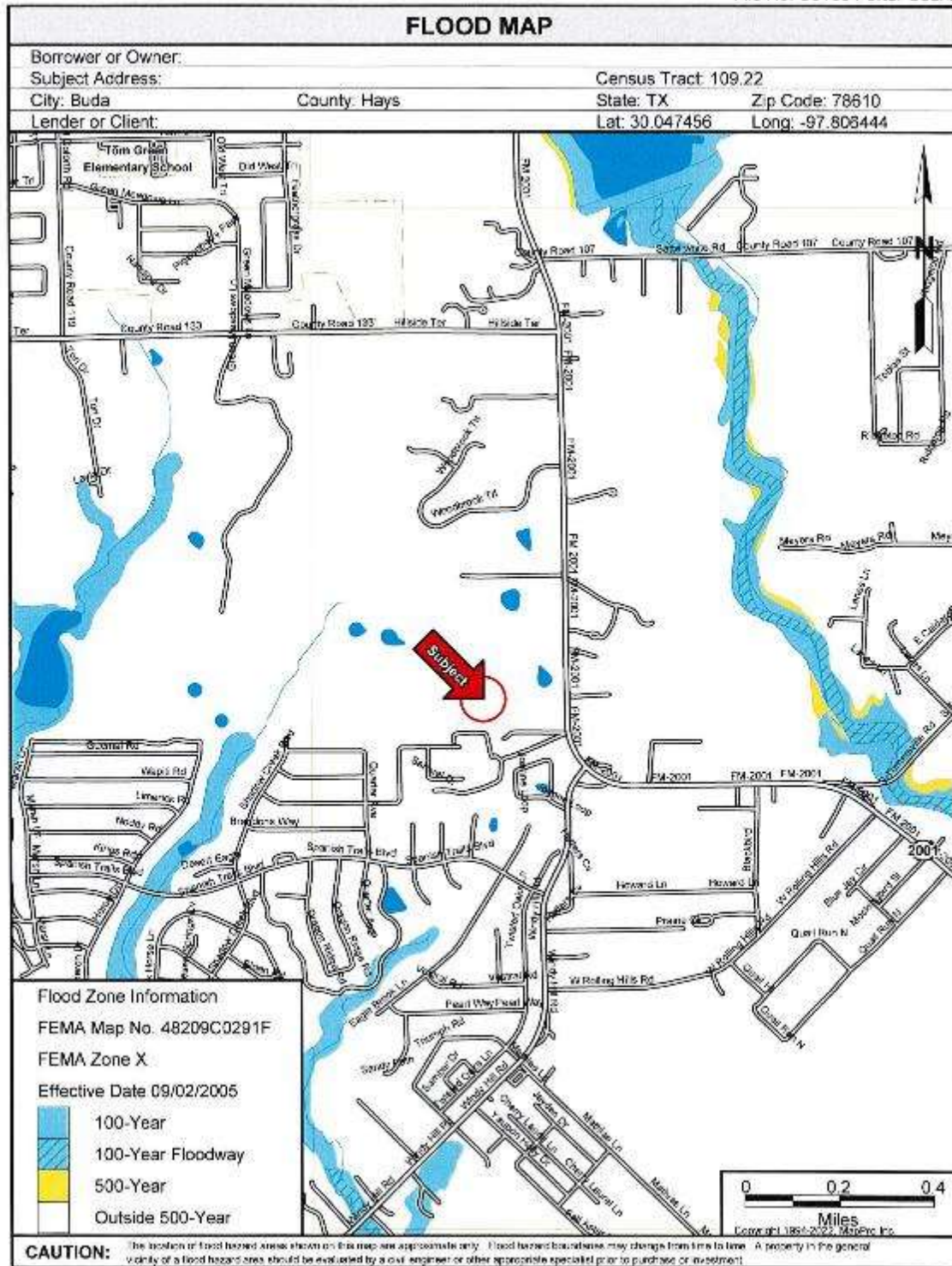


**SURVEYING, LLC**  
1005 OAK ST  
MINN, MN 55405  
VIVIAN (512) 267-2413  
DAN (512) 838-8285  
CIVIL & LAND SURVEYING  
PAGE 4 OF 4



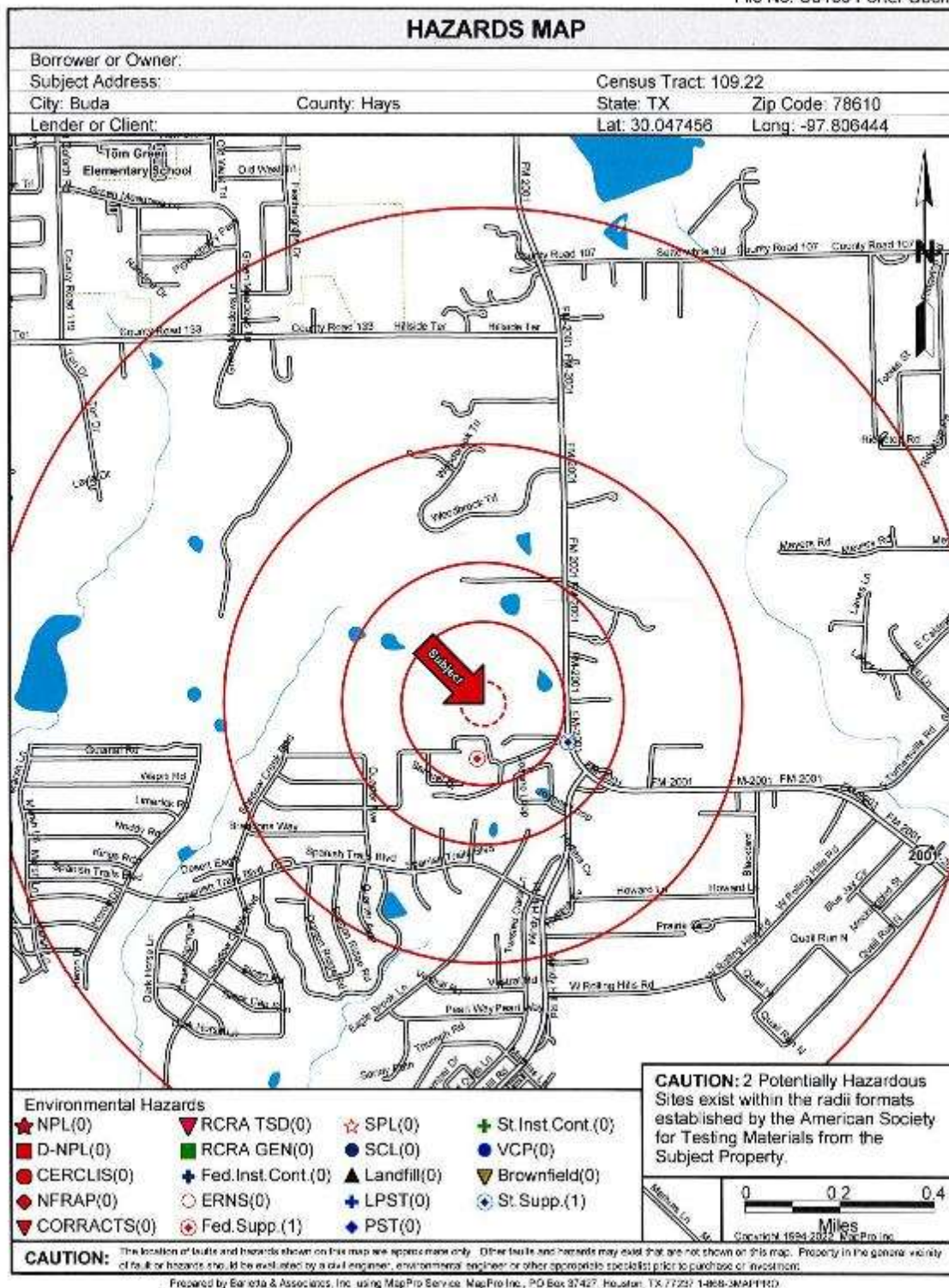
# FLOOD MAP

File No. C8100 Porter Country



## HAZARDS MAP

File No. C8100 Porter Country







## **SUBJECT PROPERTY PHOTOGRAPHS**



A northerly view of F.M 2001



A southerly view of F.M 2001





A view of the subject from F.M. 2001



The on-site detention



On-going construction





On-going construction





On-going construction



### **HIGHEST AND BEST USE**

The “**Highest and Best Use**” is defined and described as:

The reasonably probable use of property, that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity. (The Dictionary of Real Estate Appraisal, Seventh Edition, 2022, page 88, Appraisal Institute).

The definition immediately above applies specifically to the highest and best use of land. It is to be recognized that in cases where a site has existing improvements on it, the highest and best use may very well be determined to be different from the existing use. The existing use will continue, however, unless and until land value in its highest and best use exceeds the total value of the property in its existing use.

Implied within these definitions is recognition of the contribution of that specific use to community environment or to community development goals in addition wealth maximization to individual property owners. Also implied is that the determination of the highest and best use results from the appraiser's judgment and analytical skill, i.e., that the use determined from analysis represents an opinion, not a fact to be found. In appraisal practice, the concept of highest and best use represents the premise upon which value is based. In the context of most probable selling price (market value) another appropriate term to reflect highest and best use would be "most probable use." In the current context of investment value, an alternative term would be "most profitable use".

In order to reasonably determine the "highest and best use" of the subject, legally permissible uses, physically possible uses, financially feasible uses and the maximally productive use are considered.

### **LEGALLY PERMISSIBLE**

**Zoning/Restrictions:** Zoning regulations, deed restrictions, adverse easements, historical districts, building codes, and environmental regulations often limit the potential uses of a property. The subject development tract is zoned P.U.D. by the City of Kyle, and the subject under-development lots are assumed to conform to the P.U.D. ordinance. The subject under-development lots and proposed lots are also assumed to be deed



restricted, but I am not aware of any adverse deed restrictions which would preclude development of the land and lots to their highest and best uses.

### **PHYSICALLY POSSIBLE**

Site size, shape, topography, location, and the availability of utilities are generally held as the most important factors in determining uses by which land may be developed. Some small sites, because of their limited size, can only reach their optimum use as part of an assemblage with adjacent tracts. Conversely, larger sites are not restricted by size, allowing for a wider range of possible uses.

Porter Country is a proposed master-planned community on a total of 259.02 acres, which will eventually yield approximately 981 residential lots, a recreational/amenity center, numerous trails and green spaces, along with a 4.50-acre commercial tract. The entire 259.02 acres was recently annexed into the City of Kyle. Goforth Special Utility District will provide public water to the site, and Windy Hill Utility will provide sanitary sewer service.

The subject property consists of **Porter Country Public Improvement District (PID), Area 1, Phases 1 & 2, being 254 under-development lots, on 66.6 acres in Phase 1, and 155 proposed lots on 24.7 acres in Phase 2, located along the west line of F.M. 2001, south of Hillside Terrace Drive, in Kyle, Hays County, Texas 78610. Of the 254 under-development lots in Phase 1, 204 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 50 lots will have typical dimensions of 50' x 120', or 6,000 SF. Of the 155 proposed lots in Phase 2, 141 lots will have typical dimensions of 40' x 110', or 4,400 SF, and 14 lots will have typical dimensions of 50' x 120', or 6,000 SF. The subject lots are to be built-out by Milestone Community Builders, and will have new home price points ranging from \$420,000 (40' lots), up to \$508,000 (50' lots). The subject is located in Kyle, but has a Buda postal address.**

### **FINANCIALLY FEASIBLE**

Any use, which produces a positive rate of return, is regarded as feasible from a financial point of view. The general character of the market area and adjacent land uses also

provide indications of feasible use. This data along with other market data form the basis for analysis of various alternate investment returns.

According to the Zonda Austin Metrostudy, 2nd Quarter 2022, the subject's South Market Area is the third most active sector of the eight market areas comprising the Austin region. For the 12 months ending with the 2nd Quarter 2022, the South Market Area had 4,504 starts and 2,730 closings, for an undersupplied vacant developed lot (VDL) inventory of 13.1 months, and an elevated housing inventory of 15.4 months.

The subject Porter Country is within the South Market Area, and the Kyle/Buda Submarket. The Kyle/Buda Submarket accounted for 3,375 of those 4,504 starts (74.93%) and 2,156 of those 2,730 closings (78.97%), with a notably undersupplied vacant developed lot inventory of only 13.5 months, and an elevated housing inventory of 14.4 months. Typically, a 20 to 24-month lot supply is considered to be equilibrium; thus, the Kyle/Buda Submarket is notably undersupplied at 13.5 months, as is the South Market Area at 13.1 months.

Submarket/ Market Area		1Q 2021	2Q 2021	3Q 2021	4Q 2021	1Q 2022	2Q 2022	Annual Rates/ Inventory Supply (Mos)
<b>Kyle/Buda Submarket</b>	Starts	559	758	853	896	721	905	3,375
	Closings	522	505	454	525	550	627	2,156
	Housing Inv.	1,119	1,372	1,771	2,142	2,313	2,591	14.4 Mos.
	VDL Inv.	2,859	3,034	2,821	2,703	3,585	3,803	13.5 Mos.
<b>South Market Area</b>	Starts	675	929	1,178	1,208	1,100	1,018	4,504
	Closings	668	601	554	675	736	765	2,730
	Housing Inv.	1,394	1,722	2,346	2,889	3,243	3,496	15.4 Mos.
	VDL Inv.	3,830	3,996	3,970	3,629	4,565	4,900	13.1 Mos.

**Source:** Zonda Austin Metrostudy, 2nd Quarter 2022

Within the South Market Area starts in the 2nd Quarter 2022 were up 9.58% over 2nd Quarter 2021, and closings were up 27.29% over the same time period. Within the Kyle/Buda Submarket starts in the 2nd Quarter 2022 were up 19.39% over the 2nd Quarter 2021, and closings were up 24.16% over the same time period. The Austin region

has experienced unprecedented growth over the past three years, and demand for new housing remains very strong. These trends indicate a rapid growth rate.

The housing inventory for both the South Market and the Kyle/Buda Submarket are elevated, and is due, in part, to the dramatic increase in starts, but is primarily attributable to a severe shortage in labor and materials. Further, the VDL inventories in both the Kyle/Buda Submarket, and the South Market Area have continually remained at undersupplied levels over the past 4 quarters, and are still notably undersupplied.

Notable recent residential developments in proximity to Kyle include 6 Creeks, Anthem, Blanco Vista, Casetta Ranch, Crosswinds, Cypress Forest, Paramount Park, Plum Creek, Sage Hollow, and Sunfield, as well as the under-development Porter Country.

#### **MAXIMALLY PRODUCTIVE HIGHEST & BEST USE CONCLUSION**

The usage that produces the highest value is the maximally productive use, which is the highest and best use for the subject site. All of the subject Phase 1 under-development lots, and the Phase 2 proposed lots will be built-out by Milestone Community Builders, and the physically possible and legally permissible use of the subject development tract strongly supports a residential use. Thus, the maximally productive use of the subject 254 under-development Phase 1 lots, and the 155 proposed Phase 2 subject lots is for multi-phase lot development, as proposed, and as economic conditions and demand warrant.

### **SALES COMPARISON APPROACH – BUILDER TAKEDOWN LOT SALES VALUATION**

The Sales Comparison Approach is “The process of deriving a value indication for the subject property by comparing sales of similar properties to the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison.” (The Dictionary of Real Estate Appraisal, Seventh Edition, Appraisal Institute, 2022, p. 170).

The rationale for this approach, based on the principle of substitution, is that a probable purchaser would not be justified in paying more for an individual retail lot than the cost of acquiring a substitute property of similar utility and characteristics, as that of the typical subject lot.

Again, knowledgeable individuals active in the area, which include real estate brokers, appraisers, developers, and builders, were consulted for information that would aid in the investigation. All of the data presented was confirmed for accuracy. On the following pages are details concerning the comparable takedown lot sales that have been used for the establishment of the subject's typical or base Builder Takedown Lot Value conclusion.

**BUILDER LOT TAKEDOWN NUMBER ONE**

Subdivision Name: 6 Creeks, Phase 1A4, Section 6A  
 Mapsco Map: Hays County – 699 F, G, K & L  
 Location: The west line of N. Old Stagecoach Road at 6 Creeks Boulevard, in the ETJ of Kyle, Hays County, Texas 78640.  
 Grantor: HMBRR Development, Inc.  
 Grantee: Perry Homes  
 New SFR Price Range: \$300,000 to \$500,000  
 Sales Data:

No. of <u>Lots</u>	Lot <u>Width</u>	Purchase <u>Price/Lot</u>	Purchase <u>Price/FF</u>	Sales <u>Date</u>
10	45'	\$73,750	\$1,639	7/28/2022

Financing: Cash to seller  
 Annual Escalator: 7.0%  
 Utilities: All available  
 School District: Hays Consolidated I.S.D.  
 Zoning/Restrictions: None/6 Creeks, Section 6A Deed Restrictions  
 Floodplain: No  
 Confirmation: Lot Purchase Contract; Clerk's File #202222036758

Comments: This is the purchase of 10 lots out of a total of 40 lots out of 6 Creeks, Section 6A. In addition to the base lot price, **Perry Homes will pay an additional \$8,801 per lot in builder fees, or \$196 PFF.**

**BUILDER LOT TAKEDOWN NUMBER TWO**

Subdivision Name: 6 Creeks, Phase 1A4, Section 6A  
 Mapsco Map: Hays County – 699 F, G, K & L  
 Location: The west line of N. Old Stagecoach Road at 6 Creeks Boulevard, in the ETJ of Kyle, Hays County, Texas 78640.  
 Grantor: HMBRR Development, Inc.  
 Grantee: Highland Homes  
 New SFR Price Range: \$300,000 to \$500,000  
 Sales Data:

No. of <u>Lots</u>	Lot <u>Width</u>	Purchase <u>Price/Lot</u>	Purchase <u>Price/FF</u>	Sales <u>Date</u>
10	45'	\$73,750	\$1,639	8/16/2022

Financing: Cash to seller  
 Annual Escalator: 7.0%  
 Utilities: All available  
 School District: Hays Consolidated I.S.D.  
 Zoning/Restrictions: None/6 Creeks, Section 6A Deed Restrictions  
 Floodplain: No  
 Confirmation: Lot Purchase Contract; Clerk's File #202222039577

Comments: This is the pending purchase of 10 lots out of a total of 39 lots out of 6 Creeks, Section 6A. In addition to the base lot price, Highland Homes will pay an additional **\$8,801 per lot in builder fees, or \$196 PFF.**

**BUILDER LOT TAKEDOWN CONTRACT NUMBER THREE**

Subdivision Name: 6 Creeks, Phase 1A4, Section 7  
 Mapsco Map: Hays County – 699 F, G, K & L  
 Location: The west line of N. Old Stagecoach Road at 6 Creeks Boulevard, in the ETJ of Kyle, Hays County, Texas 78640.  
 Grantor: HMBRR Development, Inc.  
 Grantee: Highland Homes  
 New SFR Price Range: \$450,000 to \$600,000  
 Sales Data:

No. of <u>Lots</u>	Lot <u>Width</u>	Purchase <u>Price/Lot</u>	Purchase <u>Price/FF</u>	Sales <u>Date</u>
10	55'	\$110,000	\$2,000	Pending

Financing: Cash to seller  
 Annual Escalator: None (20% true-up).  
 Utilities: All available  
 School District: Hays Consolidated I.S.D.  
 Zoning/Restrictions: None/6 Creeks, Section 7 Deed Restrictions  
 Floodplain: No  
 Confirmation: Lot Purchase Contract

Comments: This is the pending purchase of 10 lots out of a total of 35 lots in 6 Creeks, Section 7. In addition to the base lot price and true-up, Highland Homes will pay an additional \$5,376 per lot in builder fees, or \$98 PFF.

**BUILDER LOT TAKEDOWN NUMBER FOUR**

Subdivision Name: Anthem, Phase 2  
 Mapsco Map Reference: 659 P  
 Location: The northeast line of F.M. 150, west of Jack C Hays Trail, and east of Indian Hills, in the Kyle market area, Hays County, Texas 78640.  
 Grantor: Kyle 150, L.P.  
 Grantee: Newmark Homes  
 New Home Price Range: \$450,000 to \$500,000

**Sales Data:**

<u>Lot Width</u>	<u>Purchase Price/Lot</u>	<u>Purchase Price/FF</u>	<u>Sales Date</u>	<u>No. of Lots</u>
50'	\$67,500	\$1,350	Pending	29

Financing: Cash to seller  
 Utilities: All available  
 School District: Hays C.I.S.D.  
 Zoning/Restrictions: None/Residential Deed Restrictions  
 Floodplain: No  
 Confirmation: Lot Contract (B&A File C8125)

Comments: The base lot price was \$67,500 per lot, with a 6.0% annual escalator. beginning November 1, 2022. May 7, 2022. In addition to the base lot price, Newmark Homes will pay an additional \$8,800 per lot in builder fees, or \$176 PFF.



**BUILDER LOT TAKEDOWN NUMBER FIVE**

Subdivision Name: The Colony, MUD 1C, Section 3  
 Mapsco Map Reference: 743 C  
 Location: The west line of F.M. 969 at Sam Houston Drive in the Bastrop ETJ, Bastrop County, Texas 78602.  
 Grantor: Hunt Communities  
 Grantee: Scott Felder  
 New Home Price Range: \$300,000 to \$675,000

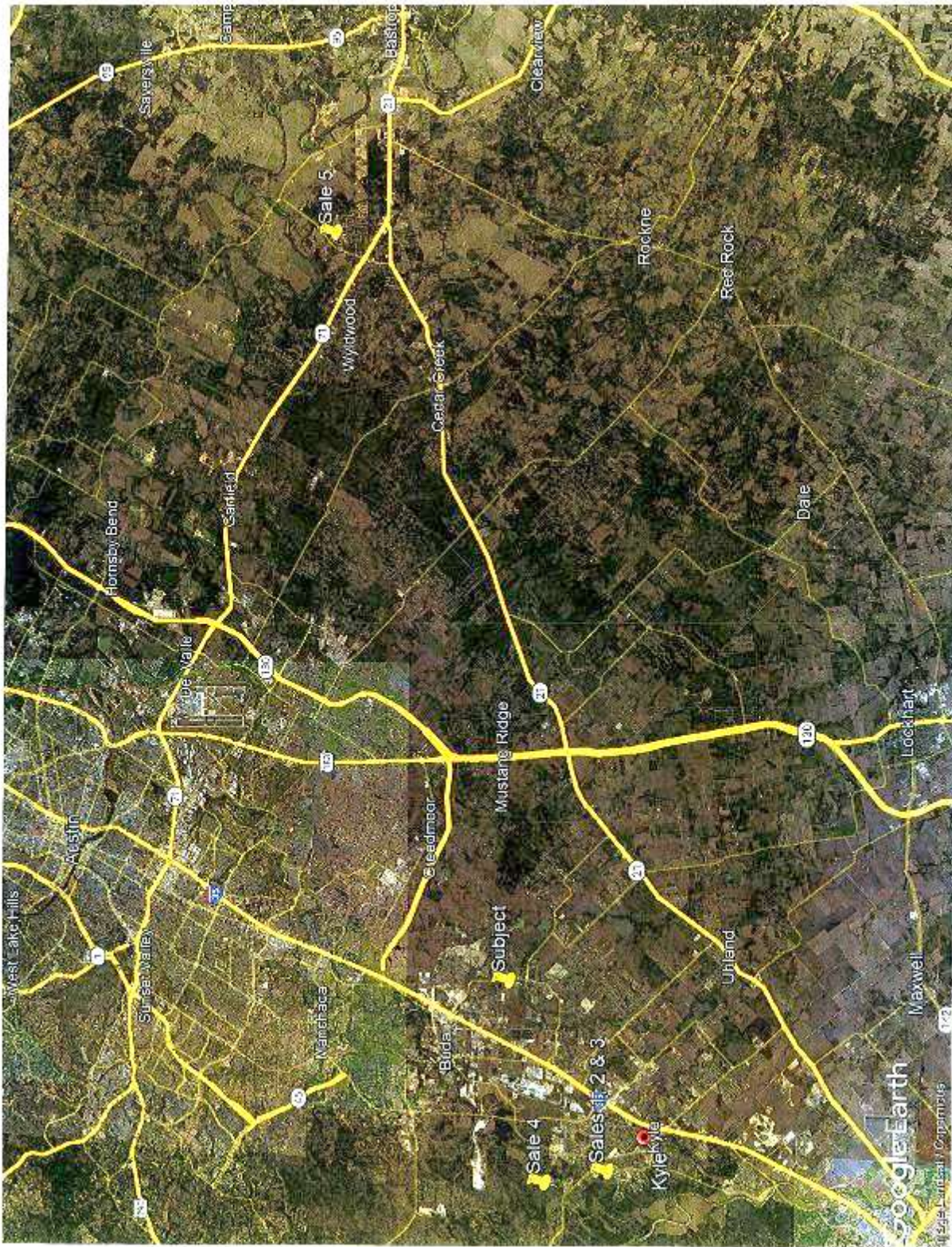
**Sales Data:**

<u>Lot Width</u>	<u>Purchase Price/Lot</u>	<u>Purchase Price/FF</u>	<u>Sales Date</u>	<u>No. of Lots</u>
50'	\$75,000	\$1,500	3/11/2022	11

Financing: Cash to seller  
 Utilities: All available  
 School District: Bastrop I.S.D.  
 Zoning/Restrictions: None/Residential Deed Restrictions  
 Floodplain: No  
 Confirmation: Lot Contract & Clerk's Files #202205412 & 202205414

Comments: In addition to the purchase price, the builder paid an additional \$2,500 per lot for an amenity fee, and \$1,500 per lot for marketing fees, for a total of \$4,000 per lot, or \$80 PFF.







### BUILDER LOT TAKEDOWN ANALYSES

The Builder Lot Takedowns illustrated on the preceding pages are considered to be representative of the best available data for comparison to the subject lots, and are summarized on the following chart:

BUILDER LOT TAKEDOWN SALES SUMMARY							
LOT SALE	SALE DATE	SUBDIVISION	SALE TYPE	NO. LOTS	LOT WIDTH	LOT PRICE	LOT PRICE PFF
1	8/2022	6 Creeks, Section 6A	Takedown	10	45'	\$73,750	\$1,639
2	8/2022	6 Creeks, Section 6A	Takedown	10	45'	\$73,750	\$1,639
3	Pending	6 Creeks, Section 7	Takedown	10	55'	\$110,000	\$2,000
4	Pending	Anthem, Phase 2	Takedown	29	50'	\$67,500	\$1,350
5	3/2022	The Colony, MUD 1C, Sec. 3	Takedown	11	50'	\$75,000	\$1,500

The market data was first analyzed to determine the best unit of comparison, and the features inherent to a given property causing a property's sale price to vary relative to another property. Sales comparison was then used to estimate representative and reasonable measures for adjustment factors or differences between the comparable sales and subject lots. The best units of comparison for Builder Takedown Lot Sales are the total sales price per lot, or the price per front foot. Of these various units of comparison, it was determined that the price per front foot was the most applicable. The categories found to be prevalent for adjustment analysis were cumulative adjustments such as Real Property Rights Conveyed, Financing (cash equivalent consideration), Conditions of Sale (motivation), and Time (sale date); and additive market related conditions adjustments such as Location, Size and Overall Property Characteristics (physical). Adjustments are made on a cumulative basis for the first four categories listed, and then on an additive basis on the remaining categories.

### CUMULATIVE ADJUSTMENTS

**Real Property Rights Conveyed:** The comparability of property interests must first be considered when utilizing sales for adjustment analysis. The real property rights conveyed of the sales were all found to feature fee simple interest. **Therefore, no adjustment is necessary for this category,** as it is considered that each sale adequately represents market prices and market activity in the subject area for fee simple estates.

**Financing/Cash Equivalent Considerations:** Prior to adjusting for various categories applicable in the adjustment grid, each sale was reviewed with respect to financing terms and supplemental acquisition costs. When favorable financing occurred, the sale was adjusted to reflect the cash equivalent price in terms of U.S. dollars that the seller actually received. Generally, cash equivalency is arrived at by applying present value factors to the stream of income generated by the seller offering favorable financing. All monies are brought back to the present value if the seller were to sell for cash or cash equivalency. **No consideration for financing was required in this analysis.**

**Conditions of Sale:** This category, as well as the previous two categories, is related to motivation of the parties in the transaction to agree on the sales price at the date of sale. The conditions and reasons for a sale are factors, which can have a direct impact on the sales price. Buyers and sellers motivation for acquisition or disposition of a property can cause large differences in the actual sales price versus market value. Extraction of an appropriate adjustment for special sales conditions is generally difficult to ascertain. Pairing of sales is typically the best method in establishing an adjustment. However, when sales are scarce and/or significant differences in the properties are evident, additional considerations must be reviewed. Such considerations typically relate to additional information provided by the buyer and/or seller, which may be difficult to measure, but must be considered, analyzed, and reasonably adjusted. **Lot Sales 1 through 5 are typical builder retail lot takedowns, warranting no extractable adjustments.**

**Date of Sale:** A time adjustment is required if changes occur in market conditions between the time of sale of a comparable property, and the effective date of the appraisal of the subject property. Under such circumstances, the price of the comparable property would be different at the date of appraisal, and an adjustment is warranted to the cash equivalent sales price for the sale to be used as a comparable. **Lot Sales 1, 2 and 5 are each adjusted at a rate of 1.50% per quarter, or 6.0%, in order to reflect their older 2022 sale dates. Lot Sales 3 and 4 are pending, and are not adjusted.**

**Builder Fees:** The subject lots will not be assessed any additional builder fees. **Lot Sales 1 and 2 incur an additional \$8,801 per lot, or \$196 PFF. Lot Sale 3 incurs an additional \$5,376 per lot, or \$98 PFF. Lot Sale 4 incurs an additional \$8,800 per lot, or \$176 PFF, and Lot Sale 5 incurs an additional \$4,000 per lot, or \$80 PFF.** Lot Sales 1, 2, 3, 4 and 5 are adjusted accordingly.

### **ADDITIVE ADJUSTMENTS**

**Location:** Factors, which often have an effect on lot values, include proximity to schools, the specific school district, shopping, market area amenities, and employment centers. Accessibility is an important consideration as well, particularly within market areas such as the subject. In addition to these elements, lots located in well-established subdivisions with higher priced homes tend to likewise command higher prices than otherwise equal lots in less desirable subdivisions.

**Lot Sales 1, 2 and 3 are located within 6 Creeks, which is a premier master-planned community in Kyle, and is considered to be superior to the subject's location, warranting -15% adjustments to each. Lot Sales 4 and 5 are considered to be generally similar in location, warranting no adjustments.**

**Size:** Developers and home builders are now negotiating residential lot sales on a per-front-foot (PFF) basis, and the comparables clearly support this trend. Given that I have elected to use a Price Per FF methodology, **adjustments for lot size are not warranted for the data set presented.**

**School District:** Like the subject lots, **Lot Sales 1, 2, 3 and 4** are located within the Hays Consolidated I.S.D., **warranting no adjustments.** Lot Sale 5 is located within the Bastrop I.S.D., which is equally regarded, warranting no adjustment.

**Physical Characteristics:** Other factors, which can have an effect on lot values include drainage, shape with respect to development potential, adverse easements, cul-de-sac location, corner lots, location with respect to flood hazard areas and especially in this market area is the hillside view consideration. All of the lot sales can be described as very

similar in overall physical characteristics compared to the subject lots, **thus requiring no adjustment for this category.**

#### **LOT SALES ADJUSTMENT GRID**

The following Lot Sales Adjustment Grid illustrates the adjustments that were extracted and applied in the analyses of the comparable Builder Lot Sales to the typical subject 40' lot and 50' lot, "Upon Completion," in Porter Country, Phase 1.

<b>LOT TAKEDOWN ADJUSTMENT GRID</b> <b>PORTER COUNTRY, PHASE 1 – 237, 40' &amp; 50' LOTS, "UPON COMPLETION"</b>						
MARKET DATA	SUBJECT	SALE 1	SALE 2	SALE 3	SALE 4	SALE 5
Sale Price PFF	-	\$1,639	\$1,639	\$2,000	\$1,350	\$1,500
Sales Date Adjustment	11/2023 -	8/2022 +7.50%	8/2022 +7.50%	Pending 0%	Pending 0%	3/2022 +10.50%
<b>Adjusted Sale Price PFF</b>	<b>-</b>	<b>\$1,762</b>	<b>\$1,762</b>	<b>\$2,000</b>	<b>\$1,350</b>	<b>\$1,658</b>
Financing Adjustment	- -	CTS 0%	CTS 0%	CTS 0%	CTS 0%	CTS 0%
Conditions of Sale Adjustment	Lot Takedown -	10 Lot Takedown 0%	10 Lot Takedown 0%	10 Lot Takedown 0%	29 Lot Takedown 0%	11 Lot Takedown 0%
Builder Fees Adjustment	None -	\$8,801/Lot +\$196	\$8,801/Lot +\$196	\$5,376/Lot +\$98	\$8,800/Lot +\$176	\$4,000/Lot \$80
<b>Adjusted Sale Price PFF</b>	<b>-</b>	<b>\$1,958</b>	<b>\$1,958</b>	<b>\$2,098</b>	<b>\$1,526</b>	<b>\$1,738</b>
Location Adjustment	Porter Country Phase 1 -	6 Creeks; Section 6A -15%	6 Creeks; Section 6A -15%	6 Creeks; Section 7 -15%	Anthem 0%	The Colony 0%
Lot Size (FF) Adjustment	40' & 50' -	45' 0%	45' 0%	55' 0%	50' 0%	50' 0%
School District Adjustment	Hays C.I.S.D -	Hays C.I.S.D 0%	Hays C.I.S.D 0%	Hays C.I.S.D 0%	Hays C.I.S.D 0%	Bastrop I.S.D 0%
Physical Characteristics Adjustment	Typical -	Equal 0%	Equal 0%	Equal 0%	Equal 0%	Equal 0%
<b>Net Adjustment</b>	<b>-</b>	<b>-15%</b>	<b>-15%</b>	<b>-15%</b>	<b>0%</b>	<b>0%</b>
<b>Indicated Sale Price PFF</b>	<b>-</b>	<b>\$1,664</b>	<b>\$1,664</b>	<b>\$1,783</b>	<b>\$1,526</b>	<b>\$1,738</b>
<b>Indicated Mean Price PFF</b>	<b>\$1,675</b>					
<b>Indicated Median Price PFF</b>	<b>\$1,664</b>					

**BUILDER LOT VALUE CONCLUSION, PORTER COUNTRY, PHASE 1 "UPON COMPLETION":** The sales presented indicate a range of \$1,526 PFF to \$1,783 PFF, with a mean of \$1,675 PFF, and a median indication of \$1,664 PFF. After considering the physical characteristics of the subject lots, as well as the supply and demand for these lots in the market area, and the trend for increasing lot values in the Kyle Market Area, it is my opinion that the Base Market Value of a typical **40' subject lot in Porter Country, Phase 1**, as of November 1, 2023, is **\$1,675 PFF**.

Thus, the **"Upon Completion" Retail Lot Value of the 40' lots in Porter Country, Phase 1**, is concluded as follows:

$$\frac{\text{Lot Width}}{40'} \times \frac{\text{Retail Lot Revenue PFF}}{\$1,675} = \frac{\text{Indicated Retail Lot Value}}{\$67,000}$$

Further, it is my opinion that the Base Market Value of a typical **50' subject lot in Porter Country, Phase 1**, as of November 1, 2023, is **\$1,675 PFF**. Thus, the **“Upon Completion” Retail Lot Value of the 50' lots in Porter Country, Phase 1**, is concluded as follows:

$$\frac{\text{Lot Width}}{50'} \times \frac{\text{Retail Lot Revenue PFF}}{\$1,675} = \frac{\text{Indicated Retail Lot Value}}{\$83,750}$$

**SUM OF RETAIL REVENUE CONCLUSION, “UPON COMPLETION”**

The 254 under-development subject lots in **Porter Country, Phase 1** have an **“Upon Completion”** sum of retail revenue computed as follows:

<u>No.</u>	<u>Description</u>	<u>Lot Size</u>	<u>Retail Lot Value</u>	<u>Sum of Retail Revenue</u>	<u>Effective Date</u>
204	Under-Development	40' x 110' @	\$67,000 / Lot =	\$13,668,000	11/1/2023
50	Under-Development	50' x 120' @	\$83,750 / Lot =	\$ 4,187,500	11/1/2023
254	<b>Total / Average</b>		<b>\$70,297 / Lot =</b>	<b>\$17,855,500</b>	<b>11/1/2023</b>

**BUILDER LOT VALUE CONCLUSION, PORTER COUNTRY, PHASE 2 “UPON COMPLETION”**: The subject Phase 2 proposed lots are to be substantially complete by May 1, 2025, or approximately 18 months after the Phase 1 lots. Assuming a constant increase in lot values of 6.0% per year, or 1.50% per quarter would indicate a base lot price for the **40' lots** of (\$67,000 per lot x 1.09 = \$73,030 per lot) Say: **\$73,000 per lot, or \$1,825 PFF**.

Assuming a constant increase in lot values of 6.0% per year, or 1.50% per quarter would indicate a base lot price for the **50' lots** of (\$83,750 per lot x 1.09 = \$91,288 per lot) Say: **\$91,300 per lot, or \$1,826 PFF**.

The 155 proposed subject lots in **Porter Country, Phase 2** have an **“Upon Completion”** sum of retail revenue computed as follows:



<u>No.</u>	<u>Description</u>	<u>Lot Size</u>	<u>Retail Lot Value</u>	<u>Sum of Retail Revenue</u>	<u>Effective Date</u>
141	Under-Development	40' x 110' @	\$73,000 / Lot =	\$10,293,000	5/1/2025
14	Under-Development	50' x 120' @	\$91,300 / Lot =	\$ 1,278,200	5/1/2025
155	<b>Total / Average</b>		<b>\$74,653 / Lot =</b>	<b>\$11,571,200</b>	<b>5/1/2025</b>

### **INCOME APPROACH - DISCOUNTED BULK MARKET VALUE ANALYSIS**

The Bulk Market Value for the subject lots, or sold collectively to a single purchaser, is determined by discounting the net sales proceeds of the aggregate gross builder retail lot value arrived at previously. The discounting is necessary to reflect the absorption period, required yield, and related expenses incurred during the sell-out term. The following is a discussion of each of these categories and the assumptions applicable thereto:

#### **ABSORPTION**

Generally, in developments such as the subject, an absorption period is required in order to promote and eventually sell-out the subject lots on an individual lot basis. To determine the rates at which the subject single-family lots will be absorbed into the market, I have analyzed the recent absorption of lots in several single-builder subdivisions in the vicinity of the subject subdivision.

<b>Subdivision</b>	<b>Lot Size</b>	<b>No. Builders</b>	<b>Price Range (\$1,000's)</b>	<b>12-Month Closings</b>	<b>Closings Per Quarter</b>	<b>Closings Per Builder Per Quarter</b>
Casetta Ranch	35' – 50'	1	\$300-\$456	95	23.75	23.75
Highlands at Gristmill	40' - 45'	1	\$281 - \$340	76	19.00	19.00
Plum Creek/Peninsula	35' – 45'	1	\$228 - \$425	40	10.00	10.00
Southgrove	40' – 50'	1	\$293 - \$439	45	11.25	10.00
Stagecoach Crossing	50'	1	\$360 - \$440	93	23.25	23.25
Sunset Hills	50'	1	\$273 - \$345	98	24.50	24.50

Source: Zonda Austin Metrostudy, 2<sup>nd</sup> Quarter 2022

These absorption comparables indicate annual absorption of 40 lots up to 98 lots, with an average of 74.50 closings per year, or 18.63 closings per quarter. Again, these absorption comparables are all single-builder subdivisions.

Further, it should be noted that new home prices have escalated so rapidly in the Kyle submarket, that in many cases, builders are no longer publishing new home prices. Within Casetta Ranch, where Zonda Austin Metrostudy indicates a range for new home prices of \$300,000 to \$400,000, the website for Casetta Ranch shows new home prices ranging from \$327,000 to \$446,990. In Peninsula at Plum Creek, Empire Homes' website

indicates new homes form the \$400,000's. Similarly, in Southgrove, where Zonda Austin Metrostudy indicates a range for new home prices of \$293,000 to \$393,000, the website for Southgrove shows new home prices starting at \$367,990. **Thus, the new home price range quoted by Zonda Austin Metrostudy is now out of date.** As mentioned previously, typically, a 20 to 24-month lot supply is considered to be equilibrium; thus, the Kyle/Buda Submarket is severely undersupplied at 13.5 months, as is the South Market Area at 13.1 months.

**Absorption Conclusion, Porter Country, Phase 1 "Upon Completion"**: Again, the subject Porter Country, Phase 1 is expected to be substantially complete by November 1, 2023, and pre-marketing will begin in the interim. Herein, I have projected lot absorption at a rate of **20 lots per quarter, after an initial takedown in Period Zero of 14 lots**, summarized as follows:

<b><u>Porter Country, Phase 1</u></b>														
<b><u>"Upon Completion" – November 1, 2023</u></b>														
<b>Quarterly Period</b>	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<b>Total</b>
<b>Lot Absorption</b>	14	20	20	20	20	20	20	20	20	20	20	20	20	<b>254</b>

**Absorption Conclusion, Porter Country, Phase 2 - "Upon Completion:"**

The Phase 2 lots are scheduled for completion by May 1, 2025. Based on the above, the 155 lots in Phase 2 will not be in demand until the end October, 2026, or approximately 12 months after substantial completion of the 254 lots in Phase 1. Assuming a constant rate of absorption of 20 lots per quarter, Phase 2 will require an absorption period of  $(155 \text{ lots} \div 20 \text{ lots per quarter} = 7.75 \text{ quarters})$  approximately 7.75 quarters, which will begin in 2025, summarized as follows:

<b><u>Porter Country, Phase 2</u></b> <b><u>"Upon Completion" – May 1, 2025</u></b>														
<b>Quarterly Period</b>	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<b><u>Total</u></b>
<b>Date (Qtr./Year)</b>	2Q 25	3Q 25	4Q 25	1Q 26	2Q 26	3Q 26	4Q 26	1Q 27	2Q 27	3Q 27	4Q 27	1Q 28	2Q 28	-
<b>Lot Absorption</b>	0	0	0	0	0	20	20	20	20	20	20	20	15	<b>155</b>

The projected takedown schedule for the 155 subject proposed lots in Porter Country, Phase 2 "Upon Completion" amounts to 155 lots over 3.00 years, or an average of **12.92 lots per quarter**, which is well supported by the lower-end of the absorption comparables.

## INTERNAL RATE OF RETURN (IRR)

I referenced the Developer's Survey conducted by RealtyRates.com for the 3rd Quarter 2022.

### Texas

RealtyRates.com DEVELOPER SURVEY - 3rd Quarter 2022 <sup>1</sup>						
Texas - Subdivisions & PUDs						
	Actual Rates			Pro-Forma Rates		
	Min	Max	Avg	Min	Max	Avg
<b>Site-Built Residential</b>	14.26%	32.17%	21.52%	13.69%	30.88%	20.66%
-100 Units	14.26%	27.73%	20.57%	13.69%	26.62%	19.75%
100-500 Units	14.61%	30.50%	21.65%	14.03%	29.28%	20.79%
500+ Units	14.97%	31.89%	22.02%	14.37%	30.61%	21.14%
Mixed Use	15.32%	32.17%	21.85%	14.71%	30.88%	20.97%
<b>Manufactured Housing</b>	14.57%	35.02%	22.99%	13.99%	33.62%	22.07%
-100 Units	14.57%	30.45%	22.06%	13.99%	29.23%	21.18%
100-500 Units	14.94%	33.49%	23.25%	14.34%	32.15%	22.32%
500+ Units	15.30%	35.02%	23.65%	14.69%	33.62%	22.70%
<b>Business Parks</b>	14.53%	32.49%	21.83%	13.95%	31.19%	20.95%
-100 Acres	14.53%	28.26%	20.97%	13.95%	27.13%	20.13%
100-500 Acres	14.90%	31.08%	22.07%	14.30%	29.84%	21.19%
500+ Acres	15.26%	32.49%	22.45%	14.65%	31.19%	21.55%
<b>Industrial Parks</b>	14.62%	28.04%	19.86%	14.04%	26.92%	19.07%
-100 Acres	14.62%	24.39%	19.11%	14.04%	23.41%	18.35%
100-500 Acres	14.99%	26.83%	20.07%	14.39%	25.75%	19.27%
500+ Acres	15.35%	28.04%	20.40%	14.74%	26.92%	19.58%

<sup>1</sup>2nd Quarter 2022 Data

Copyright 2022 RealtyRates.com<sup>TM</sup>

As indicated within the RealtyRates.com survey, developers and builders reported modeling proforma internal rates of return ranging from 14.03% to 29.28%, with an average of 19.75% for residential developments with 100 units to 500 units. These same developers and builders reported actual internal rates of return ranging from 14.61% to 30.50%, with an average of 21.65%.

Based on the availability of alternative investment yields; the lot quantity at 409 lots; and considering the relative risk of the subject residential development investment in the Greater Austin region and the subject market area; it is the appraiser's opinion that an overall **IRR of 17.50%** is most appropriate for the subject under-development **Porter Country, Phase 1** lots' cash flow, inclusive of profit.

Because the Phase 2 lots will not be substantially complete until May 1, 2025, it is the appraiser's opinion that a slightly higher overall **IRR of 18.0%** is most appropriate for the subject proposed **Porter Country, Phase 2** lots' cash flow, inclusive of profit.

On the following pages are the discounted cash flow (DCF) analyses builder retail sell-out of the subject lots, along with a discussion of the various absorption, carrying expenses, and yield assumptions to discount the cash flow builder retail sell-out of the subject 254, Phase 1 under-development lots, followed by the 155, Phase 2 proposed lots, "Upon Completion."

### DISCOUNTED CASH FLOW ASSUMPTIONS

#### Sum of Retail Revenue:

The 254 under-development subject lots in **Porter Country, Phase 1** have an “**Upon Completion**” sum of retail revenue computed as follows:

<u>No.</u>	<u>Description</u>	<u>Lot Size</u>	<u>Retail Lot Value</u>	<u>Sum of Retail Revenue</u>	<u>Effective Date</u>
204	Under-Development	40' × 110' @	\$67,000 / Lot =	\$13,668,000	11/1/2023
50	Under-Development	50' × 120' @	\$83,750 / Lot =	\$ 4,187,500	11/1/2023
<b>254</b>	<b>Total / Average</b>		<b>\$70,297 / Lot =</b>	<b>\$17,855,500</b>	<b>11/1/2023</b>

The 155 proposed subject lots in **Porter Country, Phase 2** have an “**Upon Completion**” sum of retail revenue computed as follows:

<u>No.</u>	<u>Description</u>	<u>Lot Size</u>	<u>Retail Lot Value</u>	<u>Sum of Retail Revenue</u>	<u>Effective Date</u>
141	Under-Development	40' × 110' @	\$73,000 / Lot =	\$10,293,000	5/1/2025
14	Under-Development	50' × 120' @	\$91,300 / Lot =	\$ 1,278,200	5/1/2025
<b>155</b>	<b>Total / Average</b>		<b>\$74,653 / Lot =</b>	<b>\$11,571,200</b>	<b>5/1/2025</b>

**Absorption Period:** The absorption period projected for the subject lots' sell-out is based on the vacant lot inventory and absorption projections, as detailed in the prior section of this appraisal.

**Growths:** The retail lot values have been escalated over the projected sell-out at **1.50% per quarter, or 6.00% per year**, which is well supported by current trends in the Kyle/Buda market area, whereby builders have agreed to annual escalators ranging from 6.0% to 8.0%.

**Beginning Lot Inventory:** The Beginning Lot Inventory is the total number of lots in inventory on the first day of each quarterly period.

**Lot Sales Per Period:** The Lots Sales per Period is the total number of lots sold or absorbed during each quarterly period.

**Ending Lot Inventory:** The Ending Inventory is the total number of lots in inventory on the last day of each quarterly period.

**Average Lots Held Per Period:** The Average Lots Held per Period is the average of Beginning Lot Inventory and Ending Lot Inventory.

**Starting Inventory (Dollars):** The Starting Inventory is expressed in terms of dollars by multiplying the Average Lot Value by the Beginning Lot Inventory, and is a carry-over of the Ending Inventory balance.

**Average Inventory Held (Dollars):** The Average Inventory Held in Dollars is the average of the Starting Inventory (dollars) and the Ending Inventory (dollars).

**Ending Inventory (Dollars):** The Ending Inventory is expressed in terms of dollars by subtracting the periodic Sales (dollars) from the Starting Lot Inventory (dollars).

**Periodic Sales Income:** The total Quarterly Sales are the revenue generated during the period, before sales expense deductions.

#### **SALES EXPENSES**

**Marketing/Closing Costs:** Herein, I have projected broker commissions at 3.0% of periodic sales. The closing costs and marketing costs of the subject lots were estimated at 2.0% of the periodic sales, for a total of **5.0%** for marketing and closing costs.

**Taxes:** The subject lots are not yet assessed. HCAD typically discounts lots held in bulk, between 50% to 75% of retail value. Herein, I have projected taxes at a rate of 65% of the average retail value ( $\$70,297 \times 0.65 = \$45,693$ ) for an average assessed value of **\$45,693 per lot**. The tax expense is based on the projected average assessed value per lot, multiplied by the tax rate per \$100, and divided by four to reflect quarterly taxes. The tax rate for the subject lots is based on the most-recent 2021 total tax rate of \$3.0457 per \$100, of assessed value, which is rounded to **\$3.05 per \$100**.

**Administrative Expense:** This category reflects incidental expenses including bank charges, accounting and legal fees, office expenses, etc., which are typically incurred by the developer throughout the holding period. These expenses are typically relatively minor; thus, I have projected this expense at **0.5% of quarterly lot sales revenue**.



**Maintenance:** The subject lots will be part of Porter Country Homeowners Association. The HOA dues to the developer for vacant lots are estimated at \$200 per lot per year or **\$50 per lot per quarterly period.**

**DISCOUNTED CASH FLOW ANALYSIS**

See the following page for the discounted cash flow (DCF) analyses builder retail sell-out of the **254 under-development lots in Porter Country, Phase 1, “Upon Completion,” followed by the discounted cash flow (DCF) analyses builder retail sell-out of the 155 proposed lots in Porter Country, Phase 2, “Upon Completion.”**

**PORTER COUNTRY, PHASE 1**

**254 Lots, "Upon Completion" – November 1, 2023**

**DISCOUNTED SELL-OUT CASH FLOW ANALYSIS**

TOTAL NO. OF LOTS:		254												
GROSS RETAIL REVENUE:		\$17,855,500												
ABSORPTION PERIOD:		12 QUARTERS												
INTERNAL RATE OF RETURN:		17.5%												
ASSESSMENT VALUE PER LOT:		\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693	\$45,693
EFFECTIVE TAX RATE @100:		\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05
MAINTENANCE (LOT/QUARTER):		\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
BUILDER FEES PER LOT:		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
QUARTERLY PERIOD:		ZERO	ONE	TWO	THREE	FOUR	FIVE	SIX	SEVEN	EIGHT	NINE	TEN	ELEVEN	TWELVE
STARTING INVENTORY:		254.0	240.0	220.0	200.0	180.0	160.0	140.0	120.0	100.0	80.0	60.0	40.0	20.0
LOT SALES PERIOD:		14.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0
ENDING INVENTORY:		240.0	220.0	200.0	180.0	160.0	140.0	120.0	100.0	80.0	60.0	40.0	20.0	0.0
AVG. LOTS HELD PERIOD:		247.0	230.0	210.0	190.0	170.0	150.0	130.0	110.0	90.0	70.0	50.0	30.0	10.0
SALES APPRECIATION:		0.00%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%
STARTING INVENTORY:		\$17,855,500	\$17,124,409	\$15,932,835	\$14,701,662	\$13,429,968	\$12,116,815	\$10,761,247	\$9,362,285	\$7,918,932	\$6,430,173	\$4,894,969	\$3,312,263	\$1,680,973
AVG. LOT VALUE:		\$70,297	\$71,352	\$72,422	\$73,508	\$74,611	\$75,730	\$76,866	\$78,019	\$79,189	\$80,377	\$81,583	\$82,807	\$84,049
AVG. INVENTORY HELD:		\$17,363,419	\$16,410,892	\$15,208,615	\$13,966,579	\$12,683,859	\$11,359,514	\$9,992,886	\$8,582,094	\$7,127,039	\$5,626,401	\$4,079,141	\$2,484,197	\$940,487
ENDING INVENTORY:		\$16,871,339	\$15,697,375	\$14,484,396	\$13,231,495	\$11,937,749	\$10,602,214	\$9,223,926	\$7,801,904	\$6,335,146	\$4,822,630	\$3,263,313	\$1,656,131	\$0
QUARTERLY SALES:		\$984,161	\$1,427,034	\$1,448,440	\$1,470,166	\$1,492,219	\$1,514,602	\$1,537,321	\$1,560,381	\$1,583,786	\$1,607,543	\$1,631,656	\$1,656,131	\$1,680,973
BUILDER FEES:		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL REVENUES:		\$984,161	\$1,427,034	\$1,448,440	\$1,470,166	\$1,492,219	\$1,514,602	\$1,537,321	\$1,560,381	\$1,583,786	\$1,607,543	\$1,631,656	\$1,656,131	\$1,680,973
LESS EXPENSES:														
a) MKTG/CLOSING (50%):		\$49,208	\$71,352	\$72,422	\$73,508	\$74,611	\$75,730	\$76,866	\$78,019	\$79,189	\$80,377	\$81,583	\$82,807	\$84,049
b) TAXES/AVG. INV. HELD.:		\$0	\$80,134	\$73,166	\$66,198	\$59,230	\$52,261	\$45,293	\$38,325	\$31,357	\$24,389	\$17,420	\$10,452	\$3,484
c) ADMINISTRATIVE (0.5%):		\$4,921	\$7,135	\$7,242	\$7,351	\$7,461	\$7,573	\$7,687	\$7,802	\$7,919	\$8,038	\$8,158	\$8,281	\$8,404
d) MAINTENANCE:		\$0	\$11,500	\$10,500	\$9,500	\$8,500	\$7,500	\$6,500	\$5,500	\$4,500	\$3,500	\$2,500	\$750	\$125
TOTAL EXPENSES:		\$54,129	\$170,121	\$163,330	\$156,557	\$149,802	\$143,064	\$136,346	\$129,646	\$122,965	\$116,304	\$109,662	\$85,728	\$87,658
NET SALES INCOME:		\$930,033	\$1,256,913	\$1,285,109	\$1,313,609	\$1,342,417	\$1,371,537	\$1,400,975	\$1,430,735	\$1,460,821	\$1,491,240	\$1,521,995	\$1,570,403	\$1,593,315
QUARTERLY IRR														
AT 17.5%:		1.00	0.958084	0.917925	0.879449	0.842586	0.807268	0.773430	0.741011	0.709951	0.680192	0.651681	0.624365	0.598194
DISCOUNTED SALES:		\$930,033	\$1,204,228	\$1,179,634	\$1,155,252	\$1,131,101	\$1,107,198	\$1,083,556	\$1,060,190	\$1,037,111	\$1,014,330	\$991,855	\$980,505	\$953,112
TOTAL NPV OF SALES														
"UPON COMPLETION":		\$13,828,105												
ROUNDED TO:		\$13,825,000												
VALUE PER LOT:		\$54,429												

**PORTER COUNTRY, PHASE 2**  
**155 Lots, "Upon Completion" – May 1, 2025**

## DISCOUNTED SELL-OUT CASH FLOW ANALYSIS

**\$8,179,124**  
**\$8,180,000**  
**\$52,774**

### **DISCOUNTED CASH FLOW MARKET VALUE CONCLUSIONS**

After applying an IRR of 17.50%, inclusive of profit, to the 254 under-development Phase 1 subject lots' prospective cash flow sell-out; and an IRR of 18.0%, inclusive of profit, to the 155 proposed Phase 2 subject lots' prospective cash flow sell-out; it is the opinion of the appraiser that the **“Upon Completion” Bulk Market Values** of the subject lots to a single purchaser, via the Income Approach, are as follows:

<b>Description</b>	<b>No. Lots</b>	<b>Bulk Market Value</b>	<b>Prospective Date</b>
Porter Country PID, Area 1, Phase 1	254	\$13,825,000	11/1/2023
Porter Country PID, Area 1, Phase 2	155	\$8,180,000	5/1/2025

When estimating the value of multiple lots or parcels of land "In Bulk" or collectively to a single purchaser, individual builder retail lot market values are typically totaled, and a discounted cash flow is then applied to reflect factors such as yield, risk, and expenses which must be incurred by the owner throughout the holding period or sell-out term for the multiple retail properties. The preceding discounted cash flow model is deemed to be the most reliable technique in concluding my opinion of the Market Value for the subject lots "In Bulk" or collectively to a single purchaser.

The indicated “Upon Completion” Bulk Market Value of the 254 subject under-development lots in **Porter Country, Phase 1** computes to a total of **\$13,825,000**, or an average of **\$54,429 per lot**. This net present value conclusion represents a discount of approximately **22.57%** in comparison to the previously estimated **sum of retail revenue of \$17,855,500, or an average of \$70,297 per lot**.

The indicated “Upon Completion” Bulk Market Value of the 155 subject proposed lots in **Porter Country, Phase 2** computes to a total of **\$8,180,000**, or an average of **\$52,774 per lot**. This net present value conclusion represents a discount of approximately **29.31%** in comparison to the previously estimated **sum of retail revenue of \$11,571,200, or an average of \$74,653 per lot**.

The resulting bulk purchase discounts are considered to be reasonable, particularly when considering that purchasing the subject lots "In Bulk" will involve an assumption of a certain amount of risk and known carrying costs.

### **RECONCILIATION AND FINAL MARKET VALUE CONCLUSIONS**

The Sales Comparison Approach was used to conclude the “Upon Completion” retail revenues of the subject residential lots. An Income Approach retail sell-out technique was then employed to derive the indicated “Upon Completion” Bulk Market Value of the subject 254 under-development lots in Porter Country, Phase 1, and the 155 proposed lots in Porter Country, Phase 2. The cumulative builder retail revenue of the subject lots were discounted for their projected absorption period. A discounted cash flow analysis was used to present value the projected income streams of the subject under-development lots over their projected absorption period. The Income Approach procedure is generally considered to be the most valid method of estimating the bulk value of multiple builder retail lots to one individual buyer, especially if the parcels/lots involve a holding period or sell-out term and carrying costs.

**While considered, the Cost Approach was not developed. Further, at the request of the client, the “As Is” Market Value of the subject paper lots, plus development costs to date, was not valued herein. The absence of the Cost Approach does not affect the credibility of the Market Value conclusions in this appraisal.**

### **FINAL MARKET VALUE CONCLUSIONS**

<b>Description</b>	<b>No. Lots</b>	<b>Bulk Market Value</b>	<b>Prospective Date</b>
Porter Country PID, Area 1, Phase 1	254	\$13,825,000	11/1/2023
Porter Country PID, Area 1, Phase 2	155	\$8,180,000	5/1/2025

### **Extraordinary Assumptions:**

- 1.) Porter Country PID, Area 1, Phase 2 is not yet platted, and the “Upon Completion” Market Value of Phase 2 is subject to a review of the plat, once available.
- 2.) The subject property is under-development as a residential subdivision, with a prospective completion date. In this appraisal report, I have projected the market conditions at the prospective time of completion that would be anticipated by typical market participants. In a similar fashion, I projected the retail valuation of the individual subject lots, absorption period and holding costs, based on projected conditions that are anticipated by typical market participants. Further, unknown circumstances may



change the anticipated date of completion to another date, which may have market conditions that are different from those which are expected on the anticipated date of completion that is reflected in this report. Because actual future market conditions may deviate from those which are anticipated by typical market participants, this appraisal is subject to a review of market conditions and current sale data that will be available on the prospective or actual date of completion.

- 3.) This appraisal is subject to the proposed and under-development improvements being completed in a timely and professional workmanlike manner and that the under-development improvements do not deviate significantly from those described herein.
- 4.) The valuation of the subject improvements "Upon Completion" require a valuation of the subject improvements as of a prospective date, when they are projected to be physically complete based upon the plans and specifications provided. Developing this opinion of value requires the use of an extraordinary assumption because the subject in the prospective value opinion is as it exists as of a future date when physically complete. Therefore, I have relied upon information and specifications for the under-development improvements provided by the subject developing party. Should these representations be amended, or prove to be inaccurate, the value conclusions are subject to revision.
- 5.) This appraisal assumes that the developer's marketing plan is for new homes with a price-point range of \$420,000 (40' lots), up to \$508,000 (50' lots), by Milestone Community Builders, or a comparable production home builder.
- 6.) A deviation from any of the extraordinary assumptions stated above might have an effect on the Market Value conclusions contained herein.

#### **MARKETING AND EXPOSURE PERIODS**

A marketing period is not a fact which can be found, but is an estimate which is dependent on supply/demand market conditions, availability of financing, competent marketing and negotiating efforts, and perhaps most important, the appropriate asking price. My estimate of the projected marketing period assumes market conditions are similar to those, which currently exist, as of the effective date of this appraisal. It also assumes reasonable financing can be obtained and that the property is aggressively marketed.

According to participants in the regional and local residential land market and others who have experience handling and marketing of such properties in the subject area, marketing times for properties such as the subject have been decreasing in recent years. Based upon my market analysis, I have estimated a prospective marketing period for the "upon completion" residential lots to be within 6 months. The subject property should market well at the reasonable and competitive concluded Market Values. As a result, I further

estimate a historic exposure period of approximately 6 months or less for the subject lots, based upon the market data presented herein and the reported exposure times of the comparable sales.

## ADDENDA

## LETTER OF ENGAGEMENT

**BARLETTA & ASSOCIATES, INC.**  
 REAL ESTATE APPRAISERS & CONSULTANTS

C8100

September 1, 2022

Mr. R.R. "Tripp" Davenport, III  
 Underwriter  
 FMSbonds, Inc.  
 5 Cowboys Way, Suite 300-25  
 Frisco, Texas 75034

Direct: 877/899-2220  
 Cell: 214/418-1588  
 Email: tdavenport@fmsbonds.com

**RE: Proposal/Authorization for Valuation and Consulting Services of an 86.55-acre, 390-lot residential subdivision "Upon Completion," known as Porter Country Public Improvement District, Area #1 ("PID"), in Kyle, Hays County, Texas (the "Subject Property").**

Dear Mr. Davenport:

We look forward to preparing for you an Appraisal Report of the fee simple "Upon Completion" Market Values of the above-described Subject Property in conformance with and subject to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and the Uniform Standards of Professional Appraisal Practice (USPAP) as developed by the Appraisal Standards Board of the Appraisal Foundation.

As a matter of disclosure and in accordance with the Ethics Rule of USPAP, I have not performed any services regarding the Subject Property within a three-year period immediately preceding the acceptance of this assignment, either as an appraiser or in any other capacity.

The intended use of the appraisal is to provide an opinion of values for the underwriting of a proposed Public Improvement District Bond Transaction. The use of the appraisal by anyone other than you, Mr. Tripp Davenport, III c/o FMSbonds, Inc., is prohibited, except as provided herein. Additionally, we confirm our permission to use the final Appraisal Report in the offer and sale of public securities, secured by the special assessments levied on property within the PID and we confirm that we will execute, subject to our approval of the same, a certificate related to the use of the appraisal for such purpose, as provided by the client.

In determining these opinions of value, the appraiser will make certain assumptions which will be clearly detailed within the Appraisal Report. These will include, but are not limited to the assumption, that the City of Kyle will, or has approved the proposed

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Page 2

development, and that all development entitlements are in place for such development to proceed, and that all public infrastructure will be financed, in whole or in part, with special assessments levied on subject property within the PID, relating to the development.

**The total fee for this Appraisal Report is \$7,500, and we require full receipt of these funds prior to the commencement of this appraisal assignment.** The delivery date will be within four (4) weeks from your signed acceptance of this engagement letter agreement, receipt of the fee and receipt of requested documents from the developer. Any delay in receipt of requested documents, will potentially delay the delivery date. If you or any of your assigns (including FMSbonds, Inc. or the developer) cancel the assignment, prior to completion, you agree to pay us for all of our expenses and our time to date, based on prorata of work completed, with the remainder to be returned to the payor of such fee.

Upon completion of the Appraisal Report, an electronic version of the report will be provided to [tdavenport@fmsbonds.com](mailto:tdavenport@fmsbonds.com), while up to two hard copies of the appraisal will be provided upon request.

In the event we receive a subpoena to testify in any litigation, arbitration, or administrative hearing of any nature whatsoever, or as a result of this engagement or the related report to which we are or are not a party, you agree to pay our then current hourly rates for such preparation and presentation of testimony. Regarding data collected by us or provided by you in this assignment, you agree that it will remain the property of Barletta & Associates, Inc. and that we may utilize and include such data (either in the aggregate or individually), in our database. Finally, you agree that all data already in the public domain may be utilized on an unrestricted basis.

If the above terms are acceptable, please execute, date below and fax or e-mail to [phillip@barlettainc.com](mailto:phillip@barlettainc.com). If you should have any further questions, please do not hesitate to contact me.

AGREED TO AND ACKNOWLEDGED THIS 1<sup>st</sup> DAY OF September, 2022.

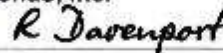
BARLETTA & ASSOCIATES, INC.



Phillip F. Barletta, MAI, SRA  
President  
State Certified, TX-1320197-G

ACCEPTED BY:

FMSbonds, Inc.



Mr. R.R. "Tripp" Davenport, III  
Underwriter  
9/1/22

Date

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## AUSTIN AREA ANALYSIS

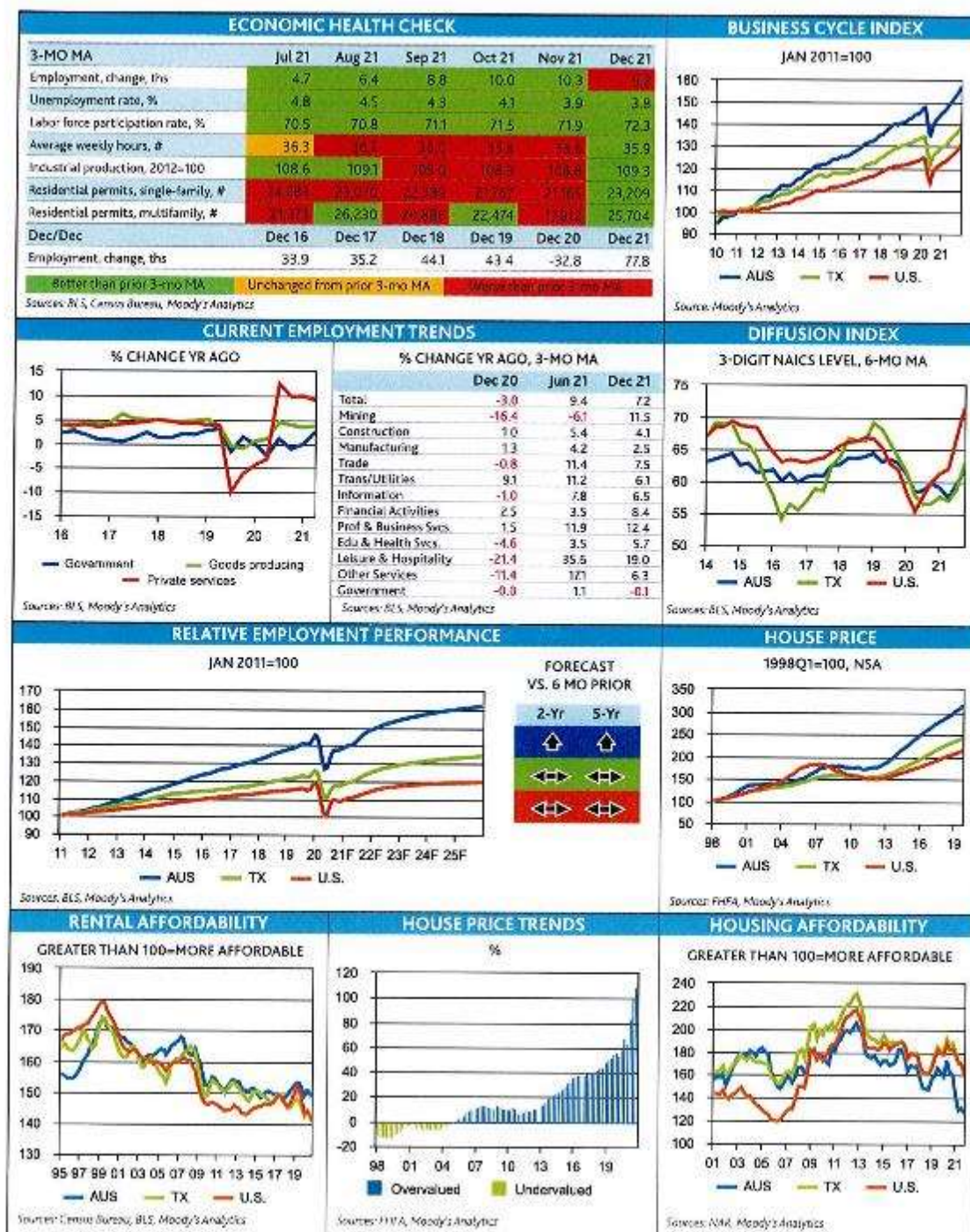




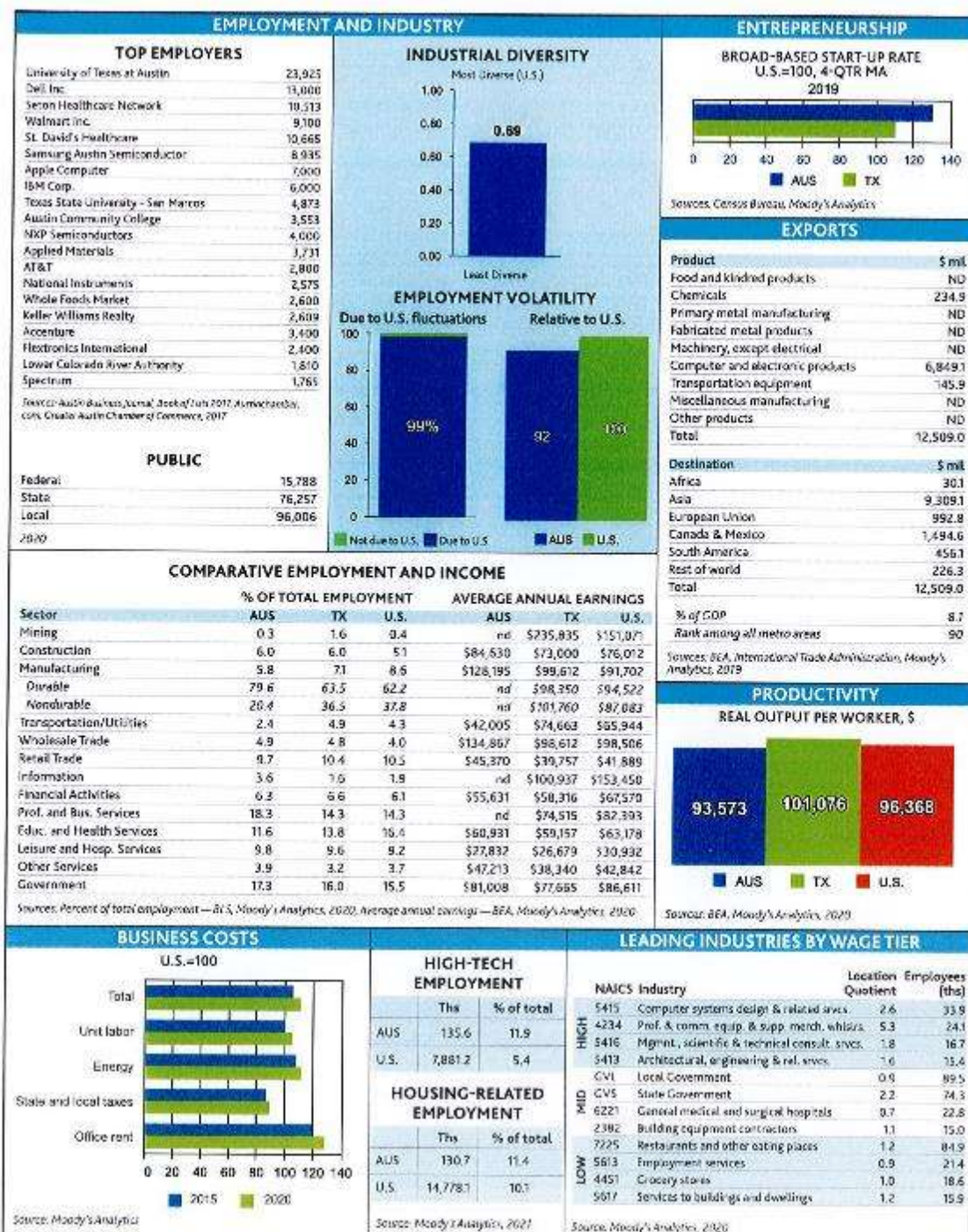
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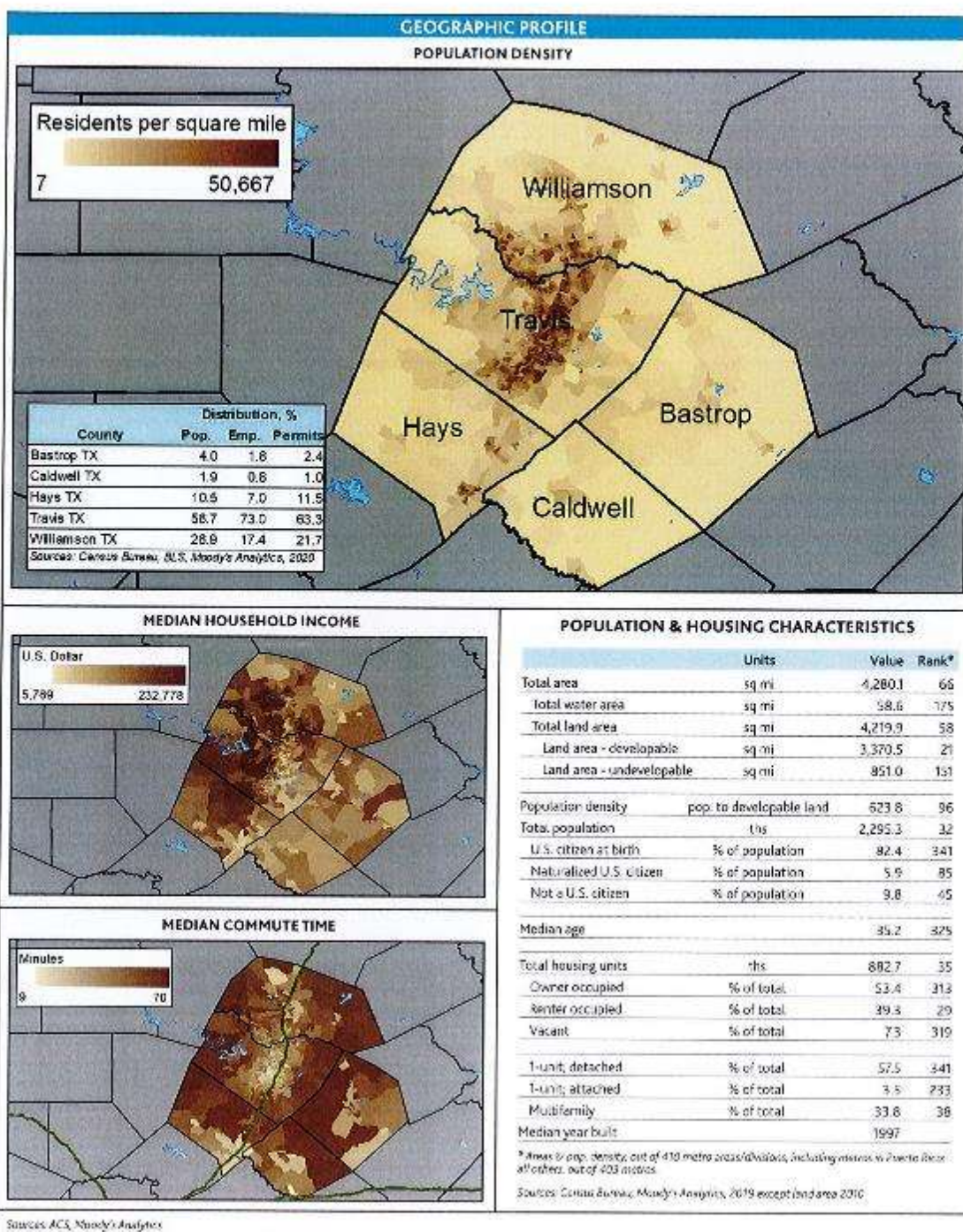
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## **QUALIFICATIONS OF THE APPRAISER**



### QUALIFICATIONS OF PHILLIP F. BARLETTA, MAI, SRA

#### PROFESSIONAL AFFILIATIONS

Member Appraisal Institute, MAI Number: 7644

Texas State Certified General Real Estate Appraiser  
 Certificate Number: TX-1320197-G  
 Date of Expiration: 03/31/2023

Texas Real Estate Broker, License Number: 0235500

Mr. Barletta is a designated Realtor Member of the Houston Association of Realtors and the Texas Association of Realtors. He has served as a member on the Appraisal Institute's Houston Chapter Number 33 Admissions Committee and Candidate's Guidance Committee. He has also been elected to the Houston Chapter Number 33 Board of Directors for Years 2000, 2001 and 2002, and served on the Officer's Nominating Committee for 2003, 2004, 2011, 2014, 2017 and 2019. In 2020, he was again elected to the Houston Chapter Board of Directors in 2020 for 2021.

#### EDUCATIONAL BACKGROUND

Mr. Barletta graduated from Sam Houston State University in Huntsville, Texas on May 21, 1977. He received a Bachelor of Business Administration degree with primary emphasis on finance, management, and real estate related courses. In addition he has successfully passed the following Appraisal Institute Courses and attended the following Seminars:

- 1) Course 1-A: Basic Appraisal Principles, Methods and Techniques (1979)
- 2) Course 8: Single-Family Residential Appraisal (1979)
- 3) Course 18-A: Capitalization Theory and Techniques, Part A (1984)
- 4) Course 18-B: Capitalization Theory and Techniques, Part B (1985)
- 5) Course 2-1: Case Studies and Real Estate Valuation (1985)
- 6) Course 2-2: Valuation Analysis and Report Writing (1985)
- 7) Course 2-3: Standards of Professional Practice (1985)
- 8) Seminar: Subdivision Analysis, by A.I.R.E.A., Houston, TX (1986)
- 9) Seminar: R41-b and the Appraiser, by S.R.E.A., Dallas, TX (1987)
- 10) Course 18-B: Audited Capitalization, Part B (1987)
- 11) Seminar: FNMA Underwriting Guidelines, by S.R.E.A., Houston, TX (1987)
- 12) Seminar: FNMA Appraisal Guidelines & Condo/PUD Acceptance (2 days), by S.R.E.A., Houston, TX (1988)
- 13) Seminar: FNMA Appraisal Guidelines, by S.R.E.A., Houston, TX (1989)
- 14) Seminar: Standards of Professional Practice Update by A.I.R.E.A., Houston, TX (1989)
- 15) Seminar: Comprehensive Appraisal Workshop by Ted Whiteman, MAI, Houston, TX (Jan. 15-18, 1990)
- 16) Seminar: Affordable Housing Disposition Program by RTC, Houston, TX (Sept. 21, 1990)
- 17) Seminar: Appraising Troubled Income Properties by A.I.R.E.A., Houston, TX (Oct. 25, 1990)
- 18) Seminar: Discounted Cash Flow Analysis by A.I.R.E.A., Houston, TX (Nov. 16, 1990)
- 19) Seminar: FNMA Underwriting Guidelines by Appraisal Institute, Houston, TX (July 19, 1991)
- 20) Seminar: Valuation of Leased Fees by Appraisal Institute, Houston, TX (July 20, 1991)
- 21) Course: Standards of Professional Practice - Parts A & B by Appraisal Institute, Houston, TX (March 26-29, 1992)
- 22) Seminar: Americans with Disabilities Act (ADA) Seminar by Appraisal Institute, Houston, TX (Nov. 4, 1992)
- 23) Seminar: ARGUS Version 3.0 Training Seminar by ARGUS Financial Software, Houston, TX (Nov. 12, 1993)
- 24) Seminar: The New URAR Report, by Appraisal Institute, Houston, TX (Feb. 17, 1994)
- 25) Seminar: Fair Lending and the Appraiser, by Appraisal Institute, Houston, TX (April 8, 1994)
- 26) Seminar: Understanding Limited Appraisals & Reporting Options - General, Houston, TX (July 7, 1994)
- 27) Seminar: How to Appraise FHA Insured Property, by H.U.D., Houston, TX (Dec. 1, 1994)
- 28) Seminar: Real Estate Evaluations & The Appraisal Industry, by Appraisal Institute, Houston, TX (April 20, 1995)
- 29) Seminar: Appraisal Practices for Litigation, by Appraisal Institute, Houston, TX (May 19-20, 1995)
- 30) Seminar: The High-Tech Appraisal Office, by Appraisal Institute, Kansas City, MO (6/14/96)
- 31) Seminar: The Internet and Appraising, by Appraisal Institute, Kansas City, MO (6/15/96)
- 32) Seminar: Litigation Skills for the Appraiser: An Overview, by Appraisal Institute, Houston, TX (10/25/98)
- 33) Seminar: Understanding Limited Appraisals & Appraisal Reporting Options, by Appraisal Institute, Houston, TX (June 12, 1997)
- 34) Seminar: Affordable Housing Valuation, by Appraisal Institute, Houston, TX (June 13, 1997)
- 35) Course 430: Standards of Professional Practice, Part C, by Appraisal Institute, Houston, TX (Dec. 4-5, 1997)
- 36) Seminar: R4580 Fannie Mae Seminar, by Appraisal Institute, Houston, TX (July 17, 1998)



37)	Seminar:	The Appraisal of Local Retail Properties, by Appraisal Institute, Houston, TX (September 28, 1998)
38)	Seminar:	Attacking & Defending an Appraisal in Litigation, by Ted Whitmer, MAI, CCIM, Houston, Texas (April 15-16, 1999)
39)	Seminar:	Fannie Mae – Mortgage Lending, by Appraisal Institute, Houston, TX (November 10, 1999)
40)	Seminar:	10 <sup>th</sup> Annual Outlook for Texas Rural Land Markets, by Texas A&M University, College Station, TX (March 24, 2000)
41)	Seminar:	Subdivision Analysis, by Appraisal Institute, Houston, TX (June 20, 2000)
42)	Seminar:	HUD Multifamily Accelerated Processing (MAP), by HUD, Fort Worth, TX (September 27, 2000)
43)	Seminar:	U.S.P.A.P. 2001 Update, by Appraisal Institute, Houston, TX (February 17, 2001)
44)	Seminar:	11 <sup>th</sup> Annual Outlook for Texas Rural Land Markets, by Texas A&M University, College Station, TX (May 4, 2001)
45)	Seminar:	2002 Commercial Real Estate Forecast, by CCIM, Houston, TX (February 14, 2002)
46)	Seminar:	Texas USPAP Update, by Appraisal Institute, Houston, TX (March 23, 2002)
47)	Seminar:	12 <sup>th</sup> Annual Outlook for Texas Rural Land Markets, by Texas A&M University, College Station, TX (May 3, 2002)
48)	Course 430	Standards of Professional Practice, Part C, by Appraisal Institute, Houston, TX (December 12-13, 2002)
49)	Seminar:	13 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, College Station, TX (April 10, 2003)
50)	Course 400	U.S.P.A.P. 2004 Update, by Appraisal Institute, Houston, TX (January 24, 2004)
51)	Course 400	U.S.P.A.P. 2005 Update, by Appraisal Institute, Houston, TX (April 14, 2005)
52)	Seminar:	15 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, College Station, TX (April 28, 2005)
53)	Seminar:	Professional Guide to the URAR, by Appraisal Institute, Houston, TX (June 23, 2005)
54)	Seminar:	16 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, College Station, TX (April 27, 2005)
55)	Seminar:	Subdivision Valuation, by Appraisal Institute, Houston, TX (November 9, 2006)
56)	Seminar:	Scope of Work, by Appraisal Institute, Houston, TX (January 18, 2007)
57)	Course 400	U.S.P.A.P. 2008-09 Update, by Appraisal Institute, Houston, TX (Jan. 19, 2008)
58)	Seminar:	Analyzing Distressed Real Estate, by Appraisal Institute, Houston, TX (Dec. 11, 2008)
59)	Seminar:	Mortgage Fraud, by Champions School of R.E., Houston, TX (Jan. 16, 2009)
60)	Seminar:	18 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 6-7, 2009)
61)	Seminar:	U.S.P.A.P. 2010 – 2011 Update, by Appraisal Institute, Houston, TX (Feb. 24, 2010)
62)	Seminar:	20 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (May 6-7, 2010)
63)	Seminar:	Business Practices & Ethics, by Appraisal Institute, Houston, TX (Dec. 9, 2010)
64)	Seminar:	Staying out of Trouble in Appraisal Practice & A Lender's Perspective, by Appraisal Institute, Houston, TX (Feb. 26, 2011)
65)	Seminar:	Appraising Distressed Commercial Real Estate, by Appraisal Institute, Houston, TX (April 15, 2011)
66)	Seminar:	Appraisal Curriculum Overview (2-Day General), by Appraisal Institute, Austin, TX (May 10-11, 2011)
67)	Course:	Fundamentals of Separating Real & Personal Property from Intangible Business Assets, by Appraisal Institute, Chicago, IL (Dec. 15-16, 2011)
68)	Seminar:	U.S.P.A.P. 2012-2013 Update, by Appraisal Institute, Houston, TX (Feb. 22, 2012)
69)	Seminar:	Complex Litigation Appraisal Case Studies, by Appraisal Institute, Houston, TX (Jan. 14, 2013)
70)	Seminar:	23 <sup>rd</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 25-26, 2013)
71)	Seminar:	Business Practices & Ethics, by Appraisal Institute, Houston, TX (July 31, 2013)
72)	Seminar:	U.S.P.A.P. 2014-2015 Update, by Appraisal Institute, Houston, TX (December 6, 2013)
73)	Seminar:	24 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 17-18, 2014)
74)	Course:	Texas Appraiser Trainee/Sponsor Course, Houston, TX (April 16, 2015)
75)	Seminar:	25 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 23-24, 2015)
76)	Seminar:	U.S.P.A.P. 2016 – 2017 Update, by Appraisal Institute, Houston, TX (December 11, 2015)
77)	Seminar:	26 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 28 – 29, 2016)
78)	Seminar:	Eminent Domain, by CLE International, Austin, TX (Feb. 9-10, 2017)
79)	Seminar:	27 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 20-21, 2017)
80)	Symposium:	2017 Real Estate Symposium/TALCB Course #32854, by Appraisal Institute, Houston, TX (August 18, 2017)
81)	Seminar:	Business Practices & Ethics, by Appraisal Institute, Houston, TX (Oct. 13, 2017)
82)	Course:	U.S.P.A.P. 2018-2019, 7-Hour Update, by Appraisal Institute, Houston, TX (Dec. 7, 2017)
83)	Seminar:	28 <sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 26-27, 2018)
84)	Symposium:	2018 Real Estate Symposium, by Appraisal Institute, Houston, TX (September 28, 2018)

- 85) Seminar: 29<sup>th</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 25-26, 2019)
- 86) Symposium: 2019 Real Estate Symposium, TALCB Course #37477, By Appraisal Institute, Houston, TX (Sept. 26, 2019)
- 87) Seminar: U.S.P.A.P. 2020-2021, 7-Hour Update, by Appraisal Institute, Houston, TX (Dec. 13, 2019)
- 88) Course: Eminent Domain & Condemnation by Appraisal Institute Online, (Sept. 10, 2020)
- 89) Seminar: Business Practice and Ethics, by Appraisal Institute, Live Online-Synchronous (July 27, 2021)
- 90) Course: U.S.P.A.P. 2022-2023, 7-Hour Update by Appraisal Institute, Austin, TX (Dec. 17, 2021)
- 91) Seminar: 31<sup>st</sup> Annual Outlook for Texas Land Markets, by Texas A&M University, San Antonio, TX (April 28-29, 2022)

#### **APPRAISAL BACKGROUND**

Mr. Barletta began appraising in January, 1977. He has had extensive experience in appraising all types of commercial and residential properties (listed below) in the Houston, Dallas/Ft. Worth, Austin and San Antonio regions, plus numerous other cities throughout Texas. In August, 1987, Mr. Barletta became a partner in an appraisal company in which he held the title President. In 1991, he formed a new company, BARLETTA & ASSOCIATES, INC., where he also holds the title of President, with offices at 1313 Campbell Road, Suite C, Houston, Texas 77055-6429.

Some of the various types of appraisals performed by Mr. Barletta would include: high-end single-family residences, two-to-four unit residential income properties, raw land, mixed-use developed commercial sites, master-planned residential subdivisions, condominium/PUD projects, conventional and HUD apartment projects, office buildings, shopping centers, office/warehouses, special-purpose properties, motels/hotels, golf courses, marinas, restaurants, various commercial/retail facilities, all types of industrial properties and eminent domain/condemnation properties. Mr. Barletta has also been qualified as an expert witness in various court matters for real property valuation by numerous attorneys, and he has arbitrated and reviewed a number of legal issues.

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E-Mail:	<a href="mailto:philip@barlettainc.com">philip@barlettainc.com</a>





# CITY OF KYLE, TEXAS

## Porter Country PID - Resolution Assessment Roll

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** Consider and possible action to approve a Resolution of the City of Kyle, Texas Determining the Costs of Certain Authorized Improvements to be Financed within Improvement Area #1 of the Porter Country Public Improvement District; Approving a Preliminary Service and Assessment Plan Updated For Improvement Area #1, Including a Proposed Improvement Area #1 Assessment Roll; Directing the Filing of the Proposed Improvement Area #1 Assessment Roll with the City Secretary to Make Available for Public Inspection; Noticing a Public Hearing for May 16, 2023 to Consider an Ordinance Levying Assessments on Property Located within Improvement Area #1 of the Porter Country Public Improvement District; Directing City Staff to Publish and Mail Notice of Said Public Hearing; and Resolving Other Matters Incident and Related Thereto. ~ *Stephanie Leibe, Norton Rose Fulbright, City's Bond Counsel*

### **Other Information:**

### **Legal Notes:**

### **Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

- ☐ 1. Resolution Approving Preliminary Service and Assessment Plan
- ☐ Preliminary Service and Assessment Plan

CITY OF KYLE, TEXAS

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF KYLE, TEXAS DETERMINING THE COSTS OF CERTAIN AUTHORIZED IMPROVEMENTS TO BE FINANCED WITHIN IMPROVEMENT AREA #1 OF THE PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT; APPROVING A PRELIMINARY SERVICE AND ASSESSMENT PLAN UPDATED FOR IMPROVEMENT AREA #1, INCLUDING A PROPOSED IMPROVEMENT AREA #1 ASSESSMENT ROLL; DIRECTING THE FILING OF THE PROPOSED IMPROVEMENT AREA #1 ASSESSMENT ROLL WITH THE CITY SECRETARY TO MAKE AVAILABLE FOR PUBLIC INSPECTION; NOTICING A PUBLIC HEARING FOR MAY 16, 2023 TO CONSIDER AN ORDINANCE LEVYING ASSESSMENTS ON PROPERTY LOCATED WITHIN IMPROVEMENT AREA #1 OF THE PORTER COUNTRY PUBLIC IMPROVEMENT DISTRICT; DIRECTING CITY STAFF TO PUBLISH AND MAIL NOTICE OF SAID PUBLIC HEARING; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO**

WHEREAS, the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended (the "PID Act") authorizes the City of Kyle, Texas (the "City") to create a public improvement district within the corporate boundaries of the City; and

WHEREAS, pursuant to Resolution No. 1316 (the "Authorization Resolution"), adopted by the City Council (the "City Council") of the City on July 5, 2022, the City has created the "Porter Country Public Improvement District" (the "District"); and

WHEREAS, the City authorized the creation of the District to finance certain public improvements authorized by the Act for the benefit of the property within the District in amounts up to \$60,000,000 (the "Authorized Improvements"); and

WHEREAS, the property within the District, consisting of approximately 259.02 acres, is being developed in phases, of which approximately 91.281 acres, as more particularly described and depicted in the hereinafter defined Preliminary SAP (as defined herein), are included in the first improvement area ("Improvement Area #1"); and

WHEREAS, the City Council and City staff have been presented with the "Porter Country Public Improvement District Preliminary Service and Assessment Plan", including the proposed assessment roll for Improvement Area #1 attached as Exhibit E-1 thereto (the "Improvement Area #1 Assessment Roll," and jointly the "Preliminary SAP"), a copy of which is attached hereto as **Exhibit A** and is incorporated herein for all purposes; and

WHEREAS, the Preliminary SAP sets forth the estimated total costs of certain Authorized Improvements to be financed by the District at this time to benefit property within Improvement Area #1 (the "Improvement Area #1 Improvements") and the Proposed Improvement Area #1 Assessment Roll states the assessments proposed to be levied against each benefitted parcel of land in Improvement Area #1 of the District, as determined by the method of assessment chosen by the City and set forth in the Preliminary SAP; and

WHEREAS, the PID Act requires that the Proposed Improvement Area #1 Assessment Roll be filed with the City Secretary of the City (the "City Secretary") and be subject to public inspection; and

WHEREAS, the PID Act requires that a public hearing (the "Assessment Hearing") be called to consider proposed assessments against the benefitted property within Improvement Area #1 of the District and requires City Council to hear and pass on any objections to the proposed assessments at, or on the adjournment of, the Assessment Hearing; and

WHEREAS, the PID Act requires that notice of the Assessment Hearing be mailed to property owners liable for assessment and published in a newspaper of general circulation in the City before the tenth (10th) day before the date of the Assessment Hearing; and

WHEREAS, the City Council hereby finds and determines that these actions are in the best interests of the residents of the City; now, therefore

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

SECTION 1. The recitals set forth above in this Resolution are true and correct and are hereby adopted as findings of the City Council and are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2. The City Council does hereby accept the Preliminary SAP for the District, including the Improvement Area #1 Assessment Roll, in a form substantially similar to the attached **Exhibit A**, and which is incorporated herein for all purposes. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Preliminary SAP.



SECTION 3. The City Council hereby determines that the total costs of the Improvement Area #1 Improvements to be financed by the District are as set forth in Exhibit B to the Preliminary SAP.

SECTION 4. The City Council's final determination and approval of the costs of the Improvement Area #1 Improvements, or any portion thereof, shall be subject to and contingent upon City Council's approval of a final, updated Service and Assessment Plan which will include a final Improvement Area #1 Assessment Roll, after the properly noticed and held Assessment Hearing.

SECTION 5. The Improvement Area #1 Assessment Roll states the assessments and the projected annual installments proposed to be levied against each parcel of land in Improvement Area #1 of the District that benefits from the Improvement Area #1 Improvements, as determined by the method of assessment chosen by the City in the Authorization Resolution and as more fully described in the Preliminary SAP.

SECTION 6. The City Council hereby authorizes and directs the filing of the Improvement Area #1 Assessment Roll with the City Secretary and directs the City Secretary to make the same available for public inspection.

SECTION 7. The City Council expressly defers the levy of assessments against property within Future Improvement Areas for Authorized Improvements that will benefit such property until such time as the costs of such Authorized Improvements can be determined with certainty as more fully described in in the Preliminary SAP.

Section 8. The City Council hereby authorizes, and calls, a public hearing (the Assessment Hearing, as defined above) to be held on **May 16, 2023, at or after 7:00 p.m.** in the Kyle City Hall, 100 W. Center Street, Kyle, Texas 78640, at which, the City Council shall, among other actions, hear and pass on any objections to the proposed assessments, and, upon the adjournment of the Assessment Hearing, the City Council will consider an ordinance levying the assessments as special assessments on property located within Improvement Area #1 of the District that benefits from the Improvement Area #1 Improvements and which ordinance shall specify the method of payment of the assessments.

SECTION 9. The City Council hereby authorizes and directs the City Secretary to coordinate the publishing of notice of the Assessment Hearing to be held on **May 16, 2023**, in

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substantially the form attached hereto as **Exhibit B** and incorporated herein for all purposes, in the *Austin American Statesman*, a newspaper of general circulation in the City, on or before **April 21, 2023**, as required by Section 372.016(b) of the PID Act.

SECTION 10. When the Improvement Area #1 Assessment Roll is filed with the City Secretary, the City Council hereby authorizes and directs the City Secretary, on or before **April 21, 2023** to mail to owners of property liable for the proposed assessments notice of the Assessment Hearing to be held on **May 16, 2023**, as required by Section 372.016(c) of the PID Act.

SECTION 11. City staff is authorized and directed to take such other actions as are required (including, but not limited to, notice of the public hearing as required by the Texas Open Meetings Act) to place the public hearing on the agenda for the **May 16, 2023** meeting of the City Council.

SECTION 12. This Resolution shall become effective from and after its date of passage in accordance with law.

*[Remainder of Page Intentionally Left Blank]*



**ADOPTED, PASSED, AND APPROVED** on this the \_\_\_\_ day of April, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(City Seal)

**EXHIBIT A**  
**PRELIMINARY SAP**

**EXHIBIT B**  
**CITY OF KYLE, TEXAS**  
**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN THAT a public hearing will be conducted by the City Council of Kyle, Texas on May 16, 2023 at or after 7:00 p.m. at the Kyle City Hall, 100 W. Center Street, Kyle, Texas 78640. The public hearing will be held to consider proposed assessments to be levied against the assessable property within Improvement Area #1 of the Porter County Public Improvement District (the "District") pursuant to the provisions of Chapter 372 of the Texas Local Government Code, as amended.

The proposed Authorized Improvements to be undertaken at this time (the "Improvement Area #1 Improvements") include road improvements, improvements to a roundabout, drainage improvements, erosion, parks and landscaping control detention and retention improvements, parks and landscaping, costs related to designing, constructing, and installing of the Improvement Area #1 Improvements, other improvements similar to those described above, costs related to the establishment, administration, maintenance and operation of the District, bond issuance costs, and the first year annual collection costs.

The total costs of the Improvement Area #1 Improvements, including administrative costs and the costs of issuing bonds, is \$16,248,064.

The boundaries of the District include approximately 259.02 acres of land generally located on the east side of the City of Kyle along the west side of FM 2011, located within the corporate limits of the City. The boundaries of Improvement Area #1 of the District include approximately 91.281 acres of land within the District, as more particularly described by a metes and bounds description available at Kyle City Hall for public inspection.

All written or oral objections on the proposed assessment within Improvement Area #1 of the District will be considered at the public hearing.

A copy of the proposed Improvement Area #1 Assessment Roll, which includes the assessments proposed to be levied against each parcel of land within Improvement Area #1 of the District that benefits from the Improvement Area #1 Improvements, is available for public inspection at the office of the City Secretary, 100 W. Center Street, Kyle, Texas 78640.

# Porter Country Public Improvement District

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PRELIMINARY SERVICE AND ASSESSMENT PLAN

APRIL 18, 2022



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## INTRODUCTION

Capitalized terms used in this Service and Assessment Plan shall have the meanings given to them in **Section I** unless otherwise defined in this Service and Assessment Plan or unless the context in which a term is used clearly requires a different meaning. Unless otherwise defined, a reference to a "Section", "Exhibit", or an "Appendix" shall be a reference to a Section of this Service and Assessment Plan or an Exhibit or Appendix attached to and made a part of this Service and Assessment Plan for all purposes.

On July 5, 2022, the City Council passed and approved Resolution No. 1316, authorizing the creation of the District in accordance with the PID Act.

The purpose of the District is to finance the Actual Costs of the Authorized Improvements that confer a special benefit on property within the District. The District contains approximately 259.02 acres located within the City, as described legally by metes and bounds on **Exhibit J** and as depicted on the map in **Exhibit A-1**.

The PID Act requires a service plan covering a period of at least five years and defining the annual indebtedness and projected cost of the Authorized Improvements. The Service Plan is contained in **Section IV**.

The PID Act requires that the Service Plan include an assessment plan that assesses the Actual Costs of the Authorized Improvements against Assessed Property within the District based on the special benefits conferred on such property by the Authorized Improvements. The Assessment Plan is contained in **Section V**.

The PID Act requires an Assessment Roll that states the Assessment against each Parcel determined by the method chosen by the City. The Assessment against each Assessed Property must be sufficient to pay the share of the Actual Costs apportioned to the Assessed Property and cannot exceed the special benefit conferred on the Assessed Property by the Authorized Improvements. The Improvement Area #1 Assessment Roll is contained in **Exhibit E-1**.

## SECTION I: DEFINITIONS

**“Actual Costs”** mean, with respect to Authorized Improvements, the actual costs paid or incurred by or on behalf of the Developer: (1) to plan, design, acquire, construct, install, and dedicate such improvements to the City, including the acquisition of necessary easements and other right-of-way; (2) to prepare plans, specifications (including bid packages), contracts, and as-built drawings; (3) to obtain zoning, licenses, plan approvals, permits, inspections, and other governmental approvals; (4) for third-party professional consulting services including but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisals; (5) for labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums; and (6) to implement, administer, and manage the above-described activities, including a 4% construction management fee. Actual Costs shall not include general contractor’s fees in an amount that exceeds a percentage equal to the percentage of work completed or construction management fees in an amount that exceeds an amount equal to the construction management fee amortized in approximately equal monthly installments over the term of the applicable construction management contract. Amounts expended for costs described in subsection (3), (4), and (6) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated.

**“Additional Interest”** means the amount collected by application of the Additional Interest Rate.

**“Additional Interest Rate”** means the 0.50% additional interest rate charged on Assessments securing PID Bonds pursuant to Section 372.018 of the PID Act.

**“Administrator”** means the City or the person or independent firm designated by the City who shall have the responsibilities provided in this Service and Assessment Plan, the Indenture, or any other agreement or document approved by the City related to the duties and responsibilities of the administration of the District.

**“Annual Collection Costs”** mean the actual or budgeted costs and expenses relating to collecting the Annual Installments, including, but not limited to, costs and expenses for: (1) the Administrator; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; (7) complying with this Service and Assessment Plan and the PID Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection

with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

**“Annual Installment”** means the annual installment payment of an Assessment as calculated by the Administrator and approved by the City Council, that includes: (1) principal; (2) interest; (3) Annual Collection Costs; and (4) Additional Interest, if applicable.

**“Annual Service Plan Update”** means an update to this Service and Assessment Plan prepared no less frequently than annually by the Administrator and approved by the City Council.

**“Assessed Property”** means any Parcel within the District against which an Assessment is levied.

**“Assessment”** means an assessment levied against a Parcel imposed pursuant to an Assessment Ordinance and the provisions herein, as shown on an Assessment Roll, subject to reallocation upon the subdivision of such Parcel or reduction according to the provisions herein and in the PID Act.

**“Assessment Ordinance”** means any ordinance adopted by the City Council in accordance with the PID Act that levies an Assessment on Assessed Property within the District, as shown on any Assessment Roll.

**“Assessment Plan”** means the methodology employed to assess the Actual Costs of the Authorized Improvements against Assessed Property within the District based on the special benefits conferred on such property by the Authorized Improvements, more specifically described in **Section V**.

**“Assessment Roll”** means any assessment roll for the Assessed Property within the District, including the Improvement Area #1 Assessment Roll included in this Service and Assessment Plan as **Exhibit E-1**, as updated, modified, or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared in connection with the levy of an Assessment, the issuance of PID Bonds, or in connection with any Annual Service Plan Update.

**“Authorized Improvements”** means improvements authorized by Section 372.003 of the PID Act, including Bond Issuance Costs, and First Year Annual Collection Costs.

**“Bond Issuance Costs”** means the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Texas Attorney General, and any other cost or expense directly



associated with the issuance of PID Bonds.

**“City”** means the City of Kyle, Texas.

**“City Council”** means the governing body of the City.

**“County”** means Hays County, Texas.

**“Delinquent Collection Costs”** means costs related to the foreclosure on Assessed Property and the costs of collection of delinquent Assessments, delinquent Annual Installments, or any other delinquent amounts due under this Service and Assessment Plan including penalties and reasonable attorney’s fees actually paid, but excluding amounts representing interest and penalty interest.

**“Developer”** means Hillside Terrace Development LLC, a Texas limited liability company and its successors and assigns.

**“District”** means the Porter Country Public Improvement District, consisting of approximately 259.02 acres within the City, as described by metes and bounds shown on **Exhibit J** and by the map shown on **Exhibit A-1**.

**“Engineer’s Report”** means a report provided by a licensed professional engineer that identifies the Authorized Improvements, including their costs, location, and benefit, attached hereto as **Appendix A**.

**“Estimated Buildout Value”** means the estimated value of an Assessed Property after completion of the horizontal and the vertical improvements (e.g. house, office building, etc.), and shall be determined by the Administrator and confirmed by the City Council by considering such factors as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, builder contracts, discussions with homebuilders, reports from third party consultants, or any other information that may impact value.

**“First Year Annual Collection Costs”** means the estimated cost of the first year’s Annual Collection Costs.

**“Homebuilder”** means Milestone Community Builders, LLC, a Texas limited liability company.

**“Improvement Area”** means specifically defined and designated areas within the District that are developed in phases including Improvement Area #1.

**“Improvement Area #1”** means the first Improvement Area to be developed within the District, as shown on **Exhibit A-3** and as described on **Exhibit K**, comprised of approximately 91.281 acres and planned to include 409 single family homes.

**“Improvement Area #1 Annual Installment”** means the annual installment payment of an Improvement Area #1 Assessment as calculated by the Administrator and approved by the City, that includes: (1) principal; (2) interest; (3) Annual Collection Costs; and (4) Additional Interest.

**“Improvement Area #1 Assessed Property”** means all Parcels within Improvement Area #1 other than Non-Benefited Property and Owner Association Property.

**“Improvement Area #1 Assessment Roll”** means the assessment roll included in this Service and Assessment Plan as **Exhibit E-1**, as updated, modified or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared relating to the issuance of PID Bonds or in connection with any Annual Service Plan Update.

**“Improvement Area #1 Assessments”** means the Assessments shown on the Improvement Area #1 Assessment Roll that are levied on Improvement Area #1 Assessed Property to fund Improvement Area #1 Projects.

**“Improvement Area #1 Bonds”** means those bonds entitled “City of Kyle, Texas Special Assessment Revenue Bonds, Series 2023 (Porter Country Public Improvement District Improvement Area #1 Projects)” that are secured by Improvement Area #1 Assessments.

**“Improvement Area #1 Improvements”** means Authorized Improvements, excluding Improvement Area #1 Privately Financed Public Improvements, which only benefit Improvement Area #1 Assessed Property as described in **Section III** and depicted on **Exhibit G**.

**“Improvement Area #1 Initial Parcel”** means all of the land within Improvement Area #1, as generally described by metes and bounds in **Exhibit K** and shown on the map on **Exhibit A-3**, consisting of approximately 91.281 acres. Until a plat has been recorded and a Lot has been assigned a property ID within Improvement Area #1, the Annual Installment will be allocated to each property ID within the Improvement Area #1 Initial Parcel based on the Hays Central Appraisal District acreage for billing purposes only.

**“Improvement Area #1 Privately Financed Public Improvements”** means Authorized Improvements benefiting Improvement Area #1, which will not be financed with PID Bonds.

**“Improvement Area #1 Projects”** means the Improvement Area #1 Improvements, Improvement Area #1 Bond Issuance Costs and First Year Annual Collection Costs.

**“Indenture”** means an Indenture of Trust entered into in connection with the issuance of PID Bonds, as amended or supplemented from time to time, between the City and the Trustee setting forth terms and conditions related to the PID Bonds.

**“Landowner Certificate”** means any landowner certificate executed by the Owner(s) consenting to the levy of the Assessments.

**“Lot”** means, for any portion of the District for which a subdivision plat has been recorded in the official public records of the County, a tract of land described as a “lot” in such subdivision plat.

**“Lot Type”** means a classification of final building Lots with similar characteristics (e.g. lot size, product type, buildout value, etc.), as determined by the Administrator and confirmed by the City Council. In the case of single-family residential Lots, the Lot Type shall be further defined by classifying the residential Lots by the Estimated Buildout Value of the Lot as determined by the Administrator and confirmed by the City Council.

**“Lot Type 1”** means a Lot designated as a 40’ lot within Improvement Area #1, shown as such on **Exhibit A-2**.

**“Lot Type 2”** means a Lot designated as a 50’ lot within Improvement Area #1, shown as such on **Exhibit A-2**.

**“Maximum Assessment”** means for each Lot Type within Improvement Area #1, at the time a new Lot is created by plat an Assessment equal to the lesser of (1) the amount calculated pursuant to **Section VI.A**, or (2) the amount shown on **Exhibit F**, which amount will be reduced annually by principal payments made as part of the Annual Installment. Maximum Assessment for future Improvement Areas will be determined in future Annual Service Plan updates.

**“Non-Benefited Property”** means Parcels within the boundaries of the District that accrue no special benefit from the Authorized Improvements.

**“Notice of Assessment Termination”** means a document recorded in the official public records of the County evidencing the termination of an Assessment, a form of which is attached as **Exhibit H**.

**“Owners”** means Hillside Terrace Development LLC, a Texas limited liability company, and Milestone Community Builders, LLC, a Texas limited liability company, and their successors and assigns.

**“Owner Association”** means one or more property owners associations that may own, operate and/or maintain some of the Authorized Improvements and which the City acknowledges are approved and authorized by the City pursuant to Section 372.023(a)(3) of the PID Act.

**“Owner Association Property”** means property owned and/or maintained by an Owner Association.

**“Parcel(s)”** means a property identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purposes, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the official public records of the County, or by any other means as determined by the City.

**“PID Act”** means Chapter 372, Texas Local Government Code, as amended.

**“PID Bonds”** means bonds issued by the City, in one or more series, to finance the Authorized Improvements that confer a special benefit on the property within the District.

**“Prepayment”** means the payment of all or a portion of an Assessment before the due date of the final Annual Installment thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest, or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Annual Installment.

**“Prepayment Costs”** means principal, interest, including Additional Interest, and Annual Collection Costs to the date of Prepayment.

**“Privately Financed Improvements”** means those improvements which are not Authorized Improvements or Improvement Area #1 Privately Financed Public Improvements and are not eligible for reimbursement.

**“Service and Assessment Plan”** means this Service and Assessment Plan as it may be modified, amended, supplemented, and updated from time to time.

**“Service Plan”** covers a period of at least five years and defines the annual indebtedness and projected costs of the Authorized Improvements, more specifically described in **Section IV**.

**“Trustee”** means the trustee (or successor trustee) under an Indenture.

## SECTION II: THE DISTRICT

The District includes approximately 259.02 acres located within the City, as described legally by metes and bounds on **Exhibit J** and as depicted on the map on **Exhibit A-1**. Development of the District is anticipated to include approximately 981 single-family homes and 4.5 acres of commercial space.

Improvement Area #1 includes approximately 91.281 acres as described legally by metes and bounds on **Exhibit K** and as depicted on the map on **Exhibit A-3**. Development of Improvement Area #1 is anticipated to include 409 single-family homes.

## SECTION III: AUTHORIZED IMPROVEMENTS

The City, based on information provided by the Developer and their engineer and on review by the City staff and by third-party consultants retained by the City, determined that the Authorized Improvements confer a special benefit on the Assessed Property. Authorized Improvements will be designed and constructed in accordance with City standards and specifications and will be owned and operated by the City unless otherwise indicated. The budget for the Authorized Improvements, as well as the allocation of the Authorized Improvements, is shown on **Exhibit B**.

### A. Improvement Area #1 Projects

#### 1. Improvement Area #1 Improvements<sup>1</sup>

##### ▪ *Heron Drive Improvements to Roundabout*

Improvements to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, and associated utility infrastructure in the Heron Drive right-of-way. Also includes a roundabout that will include the roadway improvements listed above, in addition to mountable curbs and reinforced concrete aprons. These Heron Drive improvements and roundabout are anticipated to benefit phases 1 – 4 of the District.

##### ▪ *Roadway*

Improvements to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, alleyways or corresponding public easements & testing. Also includes a deceleration lane off FM 2001.

##### ▪ *Drainage and Ponds*

Improvements to include trench excavation and embedment, trench safety, piping,

manholes, inlets, headwalls, testing, related earthwork, and erosion control. Also included are retention ponds, detention ponds, and wet detention ponds, clearing excavation, piping for inbound and outbound drainage lines, outlet structures, and erosion control.

- *Parks and Landscaping*

Includes a wet pond with irrigated trees, irrigated planting beds and sod at the entry monument, entry monument and trail lighting, electrical, perimeter fencing, upgraded median landscaping along the entry road and at roundabouts, and right of way. Also to be included are a playground, and a parkway with trails, irrigation and meters, site furnishings, trees, sod, parkland, open space and planting beds.

- *Soft Costs*

Costs related to designing, constructing, installing, and financing the Improvement Area #1 Improvements, including land planning and design, City fees and performance bonds, engineering, soil testing, survey, construction management, legal fees, consultant fees, contingency, inspection fees, district formation costs, and other PID costs incurred and paid by the Developer.

Notes:

<sup>1</sup>Water improvements are intended to be dedicated to and maintained by Goforth Special Utility District ("Goforth SUD"). Improvements to include trench excavation and embedment, trench safety, piping, manholes, valves, fire hydrant assemblies, service connections, testing, related earthwork, erosion control, and all necessary appurtenances to be fully operational transmission lines constructed to City and utility provider standards required to provide water service.

Water improvement benefiting Improvement Area #1 are defined herein as "Improvement Area #1 Privately Financed Public Improvements". Improvement Area #1 Assessments will not be used to fund water improvements benefitting Improvement Area #1. Water improvements benefitting future improvement areas within the District may be funded with Assessments once all other Authorized Improvements for such Improvement Area have been funded, as reflected in this Service and Assessment Plan.

## **2. Improvement Area #1 Bond Issuance Costs**

- *Debt Service Reserve Fund*

Equals the amount required under an applicable Indenture in connection with the issuance of PID Bonds.

- *Capitalized Interest*

Equals the capitalized interest payments on PID Bonds as reflected in an applicable Indenture.

- *Underwriter's Discount*

Equals a percentage of the par amount of a particular series of PID Bonds plus a fee for underwriter's counsel.

- *Costs of Issuance*

Includes costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

**3. First Year Annual Collection Costs**

Equals the First Year Annual Collection Costs for Improvement Area #1.

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## SECTION IV: SERVICE PLAN

The PID Act requires the Service Plan to cover a period of at least five years. The Service Plan is required to define the annual projected costs and indebtedness for the Authorized Improvements undertaken within the District during the five-year period. The Service Plan shall be updated in each Annual Service Plan Update. **Exhibit C** summarizes the Service Plan for the District.

**Exhibit D** summarizes the sources and uses of funds required to finance the Authorized Improvements. The sources and uses of funds shown on **Exhibit D** shall be updated in each Annual Service Plan Update.

## SECTION V: ASSESSMENT PLAN

The PID Act allows the City to apportion the costs of the Authorized Improvements to the Assessed Property based on the special benefit received from the Authorized Improvements. The PID Act provides that such costs may be apportioned: (1) equally per front foot or square foot; (2) according to the value of property as determined by the City, with or without regard to improvements constructed on the property; or (3) in any other manner approved by the City that results in imposing equal shares of such costs on property similarly benefited. The PID Act further provides that the governing body may establish by ordinance or order reasonable classifications and formulas for the apportionment of the cost between the municipality and the area to be assessed and the methods of assessing the special benefits for various classes of improvements.

This section of this Service and Assessment Plan describes the special benefit received by each Assessed Property within the District as a result of the Authorized Improvements and provides the basis and justification for the determination that this special benefit exceeds the amount of the Assessments to be levied on the Assessed Property for such Authorized Improvements.

The determination by the City of the assessment methodologies set forth below is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on the Owners and all future owners and developers of the Assessed Property.

### A. Assessment Methodology

The City Council, acting in its legislative capacity based on information provided by the Developer and their engineer and on review by the City staff and by third-party consultants retained by the City, has determined that Improvement Area #1 Projects shall be allocated to the Improvement Area #1 Assessed Property pro rata based on Estimated Buildout Value. Currently, the



Improvement Area #1 Initial Parcel is the only Parcel within Improvement Area #1, and as such, the Improvement Area #1 Initial Parcel is allocated 100% of the Improvement Area #1 Projects.

### **B. Improvement Area #1 Assessments**

Improvement Area #1 Assessments are levied on the Improvement Area #1 Assessed Property according to the Improvement Area #1 Assessment Roll, attached hereto as **Exhibit E-1**. The projected Improvement Area #1 Annual Installments are shown on **Exhibit E-2**, subject to revisions made during any Annual Service Plan Update.

### **C. Findings of Special Benefit**

The City Council, acting in its legislative capacity based on information provided by the Developer and their engineer and reviewed by the City staff and by third-party consultants retained by the City, has found and determined:

1. The costs of the Improvement Area #1 Projects equal \$16,248,064 as shown on **Exhibit B**; and
2. The Improvement Area #1 Assessed Property receives special benefit from the Improvement Area #1 Projects equal to or greater than the Actual Costs of the Improvement Area #1 Projects allocated to the Improvement Area #1 Assessed Property; and
3. The Assessed Property is allocated 100% of the Improvement Area #1 Assessments levied for the Improvement Area #1 Projects, which equal \$15,852,000 as shown on the Improvement Area #1 Assessment Roll, attached as **Exhibit E-1**; and
4. The special benefit ( $\geq$  \$16,248,064) received by the Improvement Area #1 Assessed Property from the Improvement Area #1 Projects allocated to the Improvement Area #1 Assessed Property is greater than or equal to the amount of Improvement Area #1 Assessments (\$15,852,000) levied on the Improvement Area #1 Assessed Property; and
5. At the time the City Council approved the Assessment Ordinance levying the Improvement Area #1 Assessments, the Owners owned 100% of the Improvement Area #1 Assessed Property. In separate Landowner Certificates, the Owners acknowledged that the Improvement Area #1 Projects confer a special benefit on the Improvement Area #1 Assessed Property and consented to the imposition of the Improvement Area #1 Assessments to pay for the Actual Costs associated therewith. The Owners ratified, confirmed, accepted, agreed to, and approved: (1) the determinations and findings by the City Council as to the special benefits described herein and in the Assessment Ordinance, and (2) the levying of the Improvement Area #1 Assessments on the Improvement Area #1 Assessed Property.

#### **D. Annual Collection Costs**

The Annual Collection Costs shall be paid for on a pro rata basis by the owners of each Assessed Property based on the amount of outstanding Assessment remaining on the Assessed Property. The Annual Collection Costs shall be collected as part of and in the same manner as Annual Installments in the amounts shown on the Assessment Roll, which may be revised in Annual Service Plan Updates based on Actual Costs incurred.

#### **E. Interest**

The interest rate on Assessments securing the PID Bonds may exceed the interest rate on the PID Bonds by the Additional Interest Rate. Interest at the rate of the PID Bonds and the Additional Interest shall be collected as part of each Annual Installment and shall be deposited pursuant to the Indenture.

### **SECTION VI: TERMS OF THE ASSESSMENTS**

#### **A. Reallocation of Assessments**

##### *1. Upon Division Prior to Recording of Subdivision Plat*

Upon the division of any Assessed Property (without the recording of subdivision plat), the Administrator shall reallocate the Assessment for the Assessed Property prior to the division among the newly divided Assessed Properties according to the following formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

A = the Assessment for the newly divided Assessed Property

B = the Assessment for the Assessed Property prior to division

C = the Estimated Buildout Value of the newly divided Assessed Property

D = the sum of the Estimated Buildout Value for all the newly divided Assessed Properties

The calculation of the Estimated Buildout Value of an Assessed Property shall be performed by the Administrator based on information from the Developer, Homebuilder, additional homebuilders, market studies, appraisals, official public records of the County, and any other relevant information regarding the Assessed Property. The calculation as confirmed by the City Council shall be conclusive.

The sum of the Assessments for all newly divided Assessed Properties shall equal the Assessment for the Assessed Property prior to subdivision. The calculation shall be made separately for each newly divided Assessed Property. The reallocation of an Assessment

for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an update to this Service and Assessment Plan approved by the City Council.

## *2. Upon Subdivision by a Recorded Subdivision Plat*

Upon the subdivision of any Assessed Property based on a recorded subdivision plat, the Administrator shall reallocate the Assessment for the Assessed Property prior to the subdivision among the new subdivided Lots based on Estimated Buildout Value according to the following formula:

$$A = [B \times (C \div D)]/E$$

Where the terms have the following meanings:

A = the Assessment for the newly subdivided Lot

B = the Assessment for the Parcel prior to subdivision

C = the sum of the Estimated Buildout Value of all newly subdivided Lots with same Lot Type

D = the sum of the Estimated Buildout Value for all the newly subdivided Lots excluding Non-Benefited Property

E = the number of Lots with same Lot Type

Prior to the recording of a subdivision plat, the Owners shall provide the City an Estimated Buildout Value as of the date of the recorded subdivision plat for each Lot created by the recorded subdivision plat considering factors such as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, discussions with homebuilders, and any other factors that may impact value. The calculation of the Estimated Buildout Value for a Lot shall be performed by the Administrator and confirmed by the City Council based on information provided by the Developer, Homebuilder, additional homebuilders, third party consultants, and/or the official public records of the County regarding the Lot.

The sum of the Assessments for all newly subdivided Lots shall not exceed the Assessment for the portion of the Assessed Property subdivided prior to subdivision. The calculation shall be made separately for each newly subdivided Assessed Property. The reallocation of an Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an update to this Service and Assessment Plan approved by the City Council.

## *3. Upon Consolidation*

If two or more Lots or Parcels are consolidated, the Administrator shall allocate the Assessments against the Lots or Parcels before the consolidation to the consolidated Lot or Parcel, which allocation shall be approved by the City Council in the next Annual Service Plan Update.

#### **B. True-up of Assessments if Maximum Assessment Exceeded**

Prior to the approval of a final subdivision plat, the Administrator shall certify that the final plat will not cause the Assessment for any Lot Type to exceed the Maximum Assessment for such Lot Type. If the subdivision of any Assessed Property by a final subdivision plat causes the Assessment per Lot for any Lot Type to exceed the applicable Maximum Assessment for such Lot Type, the landowner shall partially prepay the Assessment for each Assessed Property that exceeds the applicable Maximum Assessment for such Lot Type in an amount sufficient to reduce the Assessment to the applicable Maximum Assessment for such Lot Type. The City's approval of a final subdivision plat without payment of such amounts does not eliminate the obligation of the person or entity filing the plat to pay such Assessments.

#### **C. Mandatory Prepayment of Assessments**

If Assessed Property is transferred to a person or entity that is exempt from payment of the Assessments under applicable law or any portion of Assessed Property becomes Non-Benefited Property, the owner transferring the Assessed Property or causing the portion to become Non-Benefited Property shall pay to the City or the Administrator on behalf of the City the full amount of the outstanding Assessment, plus Prepayment Costs and Delinquent Collection Costs, if any, for such Assessed Property, prior to the transfer; provided that, however, such mandatory Prepayment of the Assessment shall not be required for portions of a Parcel that are dedicated or conveyed to the City, any other governmental entity or utility provider, or an Owners Association for use as internal roads, utilities, parks, drainage and detention facilities, and other similar improvements, in which case the Assessment that was allocated to the Parcel will be reallocated to the remainder of the Parcel. If a reallocation to the remainder of the Parcel as provided in the foregoing sentence causes the Assessment for such remainder to exceed the Maximum Assessment, the owner of the remainder of the Parcel must partially prepay the Assessment to the extent it exceeds the Maximum Assessment for such Parcel in an amount sufficient to reduce the Assessment to the Maximum Assessment.

#### **D. Reduction of Assessments**

If as a result of cost savings or an Authorized Improvement not being constructed, the Actual Costs of completed Authorized Improvements are less than the Assessments levied for the payment thereof, the Trustee shall apply amounts on deposit in the applicable account of the Project Fund (as defined in the applicable Indenture) relating to the PID Bonds that are not expected to be used for purposes of the Project Fund, to redeem outstanding PID Bonds, in

accordance with the applicable Indenture. The Assessments shall not, however, be reduced to an amount less than the outstanding PID Bonds.

The Administrator shall update (and submit to the City Council for review and approval as part of the next Annual Service Plan Update) the Assessment Roll and corresponding Annual Installments to reflect the reduced Assessments.

#### **E. Prepayment of Assessments**

The owner of the Assessed Property may pay, at any time, all or any part of an Assessment in accordance with the PID Act. Interest costs from the date of prepayment to the date of redemption of the applicable PID Bonds, if any, may be paid from a reserve established under the applicable Indenture. If an Annual Installment has been billed prior to the Prepayment, the Annual Installment shall be due and payable and shall be credited against the Prepayment.

If an Assessment is paid in full, with Prepayment Costs: (1) the Administrator shall cause the Assessment to be reduced to zero and the Assessment Roll to be revised accordingly; (2) the Administrator shall prepare the revised Assessment Roll and submit to the City Council for review and approval as part of the next Annual Service Plan Update; (3) the obligation to pay the Assessment and corresponding Annual Installments shall terminate; and (4) the City shall provide the owner with a recordable Notice of Assessment Termination, a form of which is attached as **Exhibit H**.

If an Assessment is paid in part, with Prepayment Costs: (1) the Administrator shall cause the Assessment to be reduced and the Assessment Roll revised accordingly; (2) the Administrator shall prepare the revised Assessment Roll and submit to the City Council for review and approval as part of the next Annual Service Plan Update; and (3) the obligation to pay the Assessment and corresponding Annual Installments shall be reduced to the extent of the Prepayment made.

#### **F. Prepayment as a Result of Eminent Domain Proceeding or Taking**

If any portion of any Parcel of Assessed Property is taken from an owner as a result of eminent domain proceedings or if a transfer of any portion of any Parcel of Assessed Property is made to an entity with the authority to condemn all or a portion of the Assessed Property in lieu of or as a part of an eminent domain proceeding (a "Taking"), the portion of the Assessed Property that was taken or transferred (the "Taken Property") shall be reclassified as Non-Benefited Property.

For the Assessed Property that is subject to the Taking as described in the preceding paragraph, the Assessment that was levied against the Assessed Property (when it was included in the Taken Property) prior to the Taking shall remain in force against the remaining Assessed Property (the Assessed Property less the Taken Property), (the "Remaining Property") following the reclassification of the Taken Property as Non-Benefited Property, subject to an adjustment of the Assessment applicable to the Remaining Property after any required Prepayment as set forth

below. The owner will remain liable to pay in Annual Installments, or payable as otherwise provided by this Service and Assessment Plan, as updated, or the PID Act, the Assessment that remains due on the Remaining Property, subject to an adjustment in the Annual Installments applicable to the Remaining Property after any required Prepayment as set forth below. Notwithstanding the foregoing, if the Assessment that remains due on the Remaining Property exceeds the applicable Maximum Assessment, the owner will be required to make a Prepayment in an amount necessary to ensure that the Assessment against the Remaining Property does not exceed such Maximum Assessment, in which case the Assessment and Annual Installments applicable to the Remaining Property will be reduced by the amount of the partial Prepayment. If the City receives all or a portion of the eminent domain proceeds (or payment made in an agreed sale in lieu of condemnation), such amount shall be credited against the amount of Prepayment, with any remainder credited against the assessment on the Remaining Property.

In all instances the Assessment remaining on the Remaining Property shall not exceed the applicable Maximum Assessment.

By way of illustration, if an owner owns 100 acres of Assessed Property subject to a \$100 Assessment and 10 acres is taken through a Taking, the 10 acres of Taken Property shall be reclassified as Non-Benefited Property and the remaining 90 acres of Remaining Property shall be subject to the \$100 Assessment, (provided that this \$100 Assessment does not exceed the Maximum Assessment on the Remaining Property). If the Administrator determines that the \$100 Assessment reallocated to the Remaining Property would exceed the Maximum Assessment on the Remaining Property by \$10, then the owner shall be required to pay \$10 as a Prepayment of the Assessment against the Remaining Property and the Assessment on the Remaining Property shall be adjusted to be \$90 and the Annual Installments adjusted accordingly.

Notwithstanding the previous paragraphs in this subsection (F), if the owner notifies the City and the Administrator that the Taking prevents the Remaining Property from being developed for any use which could support the Estimated Buildout Value requirement, the owner shall, upon receipt of the compensation for the Taken Property, be required to prepay the amount of the Assessment required to buy down the outstanding Assessment to the Maximum Assessment on the Remaining Property to support the Estimated Buildout Value requirement. The owner will remain liable to pay the Annual Installments on both the Taken Property and the Remaining Property until such time that such Assessment has been prepaid in full.

Notwithstanding the previous paragraphs in this subsection (F), the Assessments shall not, however, be reduced to an amount less than the outstanding PID Bonds.

#### **G. Payment of Assessment in Annual Installments**

Assessments that are not paid in full shall be due and payable in Annual Installments. **Exhibit E-2** shows the projected Improvement Area #1 Annual Installments. Annual Installments are subject to adjustment in each Annual Service Plan Update.

The Administrator shall prepare and submit to the City Council for its review and approval an Annual Service Plan Update to allow for the billing and collection of Annual Installments. Each Annual Service Plan Update shall include updated Assessment Rolls and updated calculations of Annual Installments. Annual Collection Costs shall be allocated equally among Parcels for which the Assessments remain unpaid. Annual Installments shall be reduced by any applicable Indenture, such as capitalized interest, interest earnings on account balances, and any other funds available to the Trustee for such purposes. Annual Installments shall be collected by the City in the same manner and at the same time as ad valorem taxes. Annual Installments shall be subject to the penalties, procedures, and foreclosure sale in case of delinquencies as set forth in the PID Act and in the same manner as ad valorem taxes for the City. The City Council may provide for other means of collecting Annual Installments. Assessments shall have the lien priority specified in the PID Act.

Sales of the Assessed Property for nonpayment of Annual Installments shall be subject to the lien for the remaining unpaid Annual Installments against the Assessed Property, and the Assessed Property may again be sold at a judicial foreclosure sale if the purchaser fails to timely pay the Annual Installments as they become due and payable.

The City reserves the right to refund PID Bonds in accordance with the PID Act. In the event of a refunding, the Administrator shall recalculate the Annual Installments so that total Annual Installments will be sufficient to pay the refunding bonds, and the refunding bonds shall constitute "PID Bonds."

Each Annual Installment of an Assessment, including interest on the unpaid principal of the Assessment, shall be updated annually. Each Annual Installment shall be due when billed and shall be delinquent if not paid prior to February 1 of the following year. The first Annual Installment will be delinquent if not paid by February 1, 2024.

## **SECTION VII: ASSESSMENT ROLLS**

The Improvement Area #1 Assessment Roll is attached as **Exhibit E-1**. The Administrator shall prepare and submit to the City Council, for review and approval, proposed revisions to the Assessment Rolls and Annual Installments for each Parcel within the District as part of each Annual Service Plan Update.

## **SECTION VIII: ADDITIONAL PROVISIONS**

### **A. Calculation Errors**

If the owner of a Parcel claims that an error has been made in any calculation required by this Service and Assessment Plan, including, but not limited to, any calculation made as part of any Annual Service Plan Update, the owner's sole and exclusive remedy shall be to submit a written notice of error to the Administrator by December 1<sup>st</sup> of each year following City Council approval of the calculation; otherwise, the owner shall be deemed to have unconditionally approved and accepted the calculation. Upon receipt of a written notice of error from an owner the Administrator shall provide a written response to the City Council and the owner within 30 days of such referral. The City Council shall consider the owner's notice of error and the Administrator's response at a public hearing, and within 30 days after closing such hearing, the City Council shall make a final determination as to whether an error has been made. If the City Council determines that an error has been made, the City Council may take such corrective action as is authorized by the PID Act, this Service and Assessment Plan, the Assessment Ordinance, or the Indenture, or is otherwise authorized by the discretionary power of the City Council. The determination by the City Council as to whether an error has been made, and any corrective action taken by the City Council, shall be final and binding on the owner and the Administrator.

### **B. Amendments**

Amendments to this Service and Assessment Plan must be made by the City Council in accordance with the PID Act. To the extent permitted by the PID Act, this Service and Assessment Plan may be amended without notice to owners of the Assessed Property: (1) to correct mistakes and clerical errors; (2) to clarify ambiguities; and (3) to provide procedures to collect Assessments, Annual Installments, and other charges imposed by this Service and Assessment Plan.

### **C. Administration and Interpretation**

The Administrator shall: (1) perform the obligations of the Administrator as set forth in this Service and Assessment Plan; (2) administer the District for and on behalf of and at the direction of the City Council; and (3) interpret the provisions of this Service and Assessment Plan. Interpretations of this Service and Assessment Plan by the Administrator shall be in writing and shall be appealable to the City Council by owners or developers adversely affected by the interpretation. Appeals shall be decided by the City Council after holding a public hearing at which all interested parties have an opportunity to be heard. Decisions by the City Council shall be final and binding on the owners and developers and their successors and assigns.

### **D. Form of Buyer Disclosure**



Per Section 5.014 of the Texas Property Code, as amended, this Service and Assessment Plan, and any future Annual Service Plan Updates, shall include a form of the buyer disclosures for the District. The buyer disclosures are attached hereto in **Exhibit L-1** and **Exhibit L-2**. Within seven days of approval by the City Council, the City shall file and record in the real property records of the County the executed ordinance approving this Service and Assessment Plan, or any future Annual Service Plan Updates. The executed ordinance, including any attachments, approving this Service and Assessment Plan or any future Annual Service Plan Updates shall be filed and recorded in the real property records of the County in its entirety.

#### **E. Severability**

If any provision of this Service and Assessment Plan is determined by a governmental agency or court to be unenforceable, the unenforceable provision shall be deleted and, to the maximum extent possible, shall be rewritten to be enforceable. Every effort shall be made to enforce the remaining provisions.

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## EXHIBITS

The following Exhibits are attached to and made a part of this Service and Assessment Plan for all purposes:

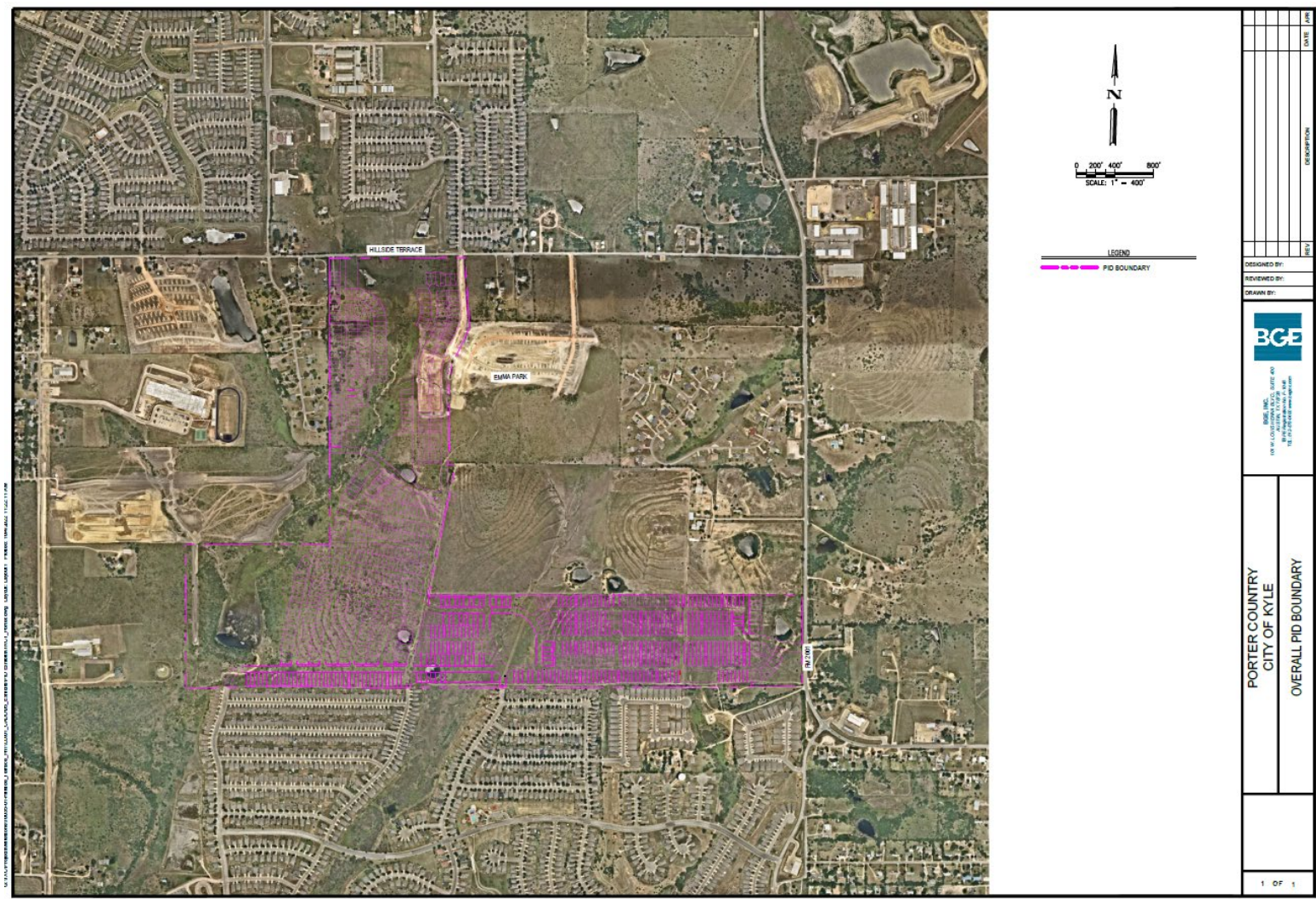
<b>Exhibit A-1</b>	District Boundary Map
<b>Exhibit A-2</b>	Concept Plan
<b>Exhibit A-3</b>	Improvement Area #1 Map
<b>Exhibit B</b>	Authorized Improvements
<b>Exhibit C</b>	Service Plan
<b>Exhibit D</b>	Sources and Uses
<b>Exhibit E-1</b>	Improvement Area #1 Assessment Roll
<b>Exhibit E-2</b>	Improvement Area #1 Annual Installments
<b>Exhibit F</b>	Maximum Assessment
<b>Exhibit G</b>	Maps of Improvement Area #1 Improvements
<b>Exhibit H</b>	Notice of Assessment Termination
<b>Exhibit I</b>	Improvement Area #1 Bonds Debt Service Schedule
<b>Exhibit J</b>	District Legal Description
<b>Exhibit K</b>	Improvement Area #1 Legal Description
<b>Exhibit L-1</b>	Lot Type 1 Buyer Disclosure
<b>Exhibit L-2</b>	Lot Type 2 Buyer Disclosure

## APPENDICES

The following Appendices are attached to and made a part of this Service and Assessment Plan for all purposes:

<b>Appendix A</b>	Engineer's Report
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EXHIBIT A-1 – DISTRICT BOUNDARY MAP





## EXHIBIT A-2 – CONCEPT PLAN



**RIALTO STUDIO**  
LANDSCAPE ARCHITECTURE

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

PROJECT  
**Hillside**

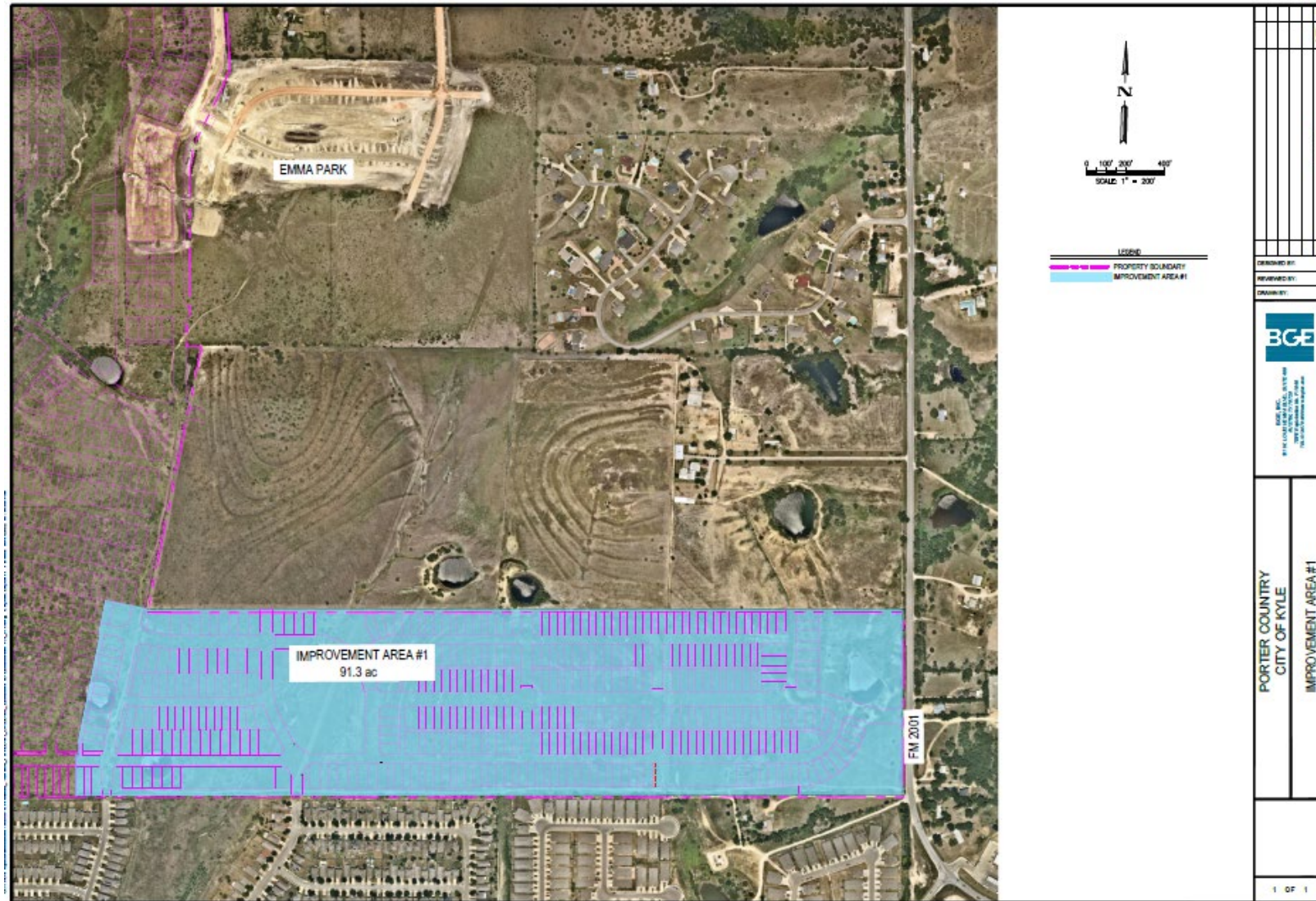
TITLE  
**Conceptual Site Plan**

DATE  
11/16/2021

PAGE  
1 of 1



## EXHIBIT A-3 – IMPROVEMENT AREA #1 MAP



## EXHIBIT B – AUTHORIZED IMPROVEMENTS

	Total Costs	Privately Financed Improvements [a]	Water Improvements [b]	Improvement Area #1 Projects
<i>Improvement Area #1 Improvements</i>				
Heron Drive Improvements	\$ 691,383	\$ -	\$ -	\$ 691,383
Roadway	5,181,155	-	-	5,181,155
Drainage & Ponds	3,058,567	-	-	3,058,567
Parks and Landscaping	1,518,083	-	-	1,518,083
Soft Costs	1,397,429	-	-	1,397,429
	<b>\$ 11,846,617</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 11,846,617</b>
<i>Improvement Area #1 Privately Financed Public Improvements</i>				
Water	\$ 1,928,197	\$ -	\$ 1,928,197	\$ -
Soft Costs	257,869	-	257,869	-
	<b>\$ 2,186,066</b>	<b>\$ -</b>	<b>\$ 2,186,066</b>	<b>\$ -</b>
<i>Privately Financed Improvements</i>				
Wastewater	\$ 1,623,340	\$ 1,623,340	\$ -	\$ -
Soft Costs	217,098	217,098	-	-
	<b>\$ 1,840,438</b>	<b>\$ 1,840,438</b>	<b>\$ -</b>	<b>\$ -</b>
<i>Improvement Area #1 Bond Issuance Costs</i>				
Debt Service Reserve Fund	\$ 1,585,200	\$ -	\$ -	\$ 1,585,200
Capitalized Interest	1,270,306	-	-	1,270,306
Underwriter's Discount	475,560	-	-	475,560
Cost of Issuance	1,030,380	-	-	1,030,380
	<b>\$ 4,361,446</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,361,446</b>
<i>First Year Annual Collection Costs</i>	\$ 40,000	\$ -	\$ -	\$ 40,000
First Year Collection Costs	<b>\$ 40,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 40,000</b>
<b>Total</b>	<b>\$ 20,274,568</b>	<b>\$ 1,840,438</b>	<b>\$ 2,186,066</b>	<b>\$ 16,248,064</b>

Notes:

[a] Privately Financed Improvements are not eligible for reimbursement.

[b] Improvement Area #1 water improvements are classified as Improvement Area #1 Privately Financed Public Improvements and are intended to be dedicated to and maintained by Goforth Special Utility District ("Goforth SUD"). Improvements to include trench excavation and embedment, trench safety, piping, manholes, valves, fire hydrant assemblies, service connections, testing, related earthwork, erosion control, and all necessary appurtenances to be fully operational transmission lines constructed to City and utility provider standards required to provide water service.

## EXHIBIT C – SERVICE PLAN

Annual Installments Due		1/31/2024	1/31/2025	1/31/2026	1/31/2027	1/31/2028
<i>Improvement Area #1 Bonds</i>						
Principal		\$ -	\$ -	\$ 1,000	\$ 1,000	\$ 2,000
Interest		299,371	970,935	970,935	970,874	970,813
Capitalized Interest		(299,371)	(970,935)	-	-	-
	(1)	\$ -	\$ -	\$ 971,935	\$ 971,874	\$ 972,813
Annual Collection Costs	(2)	\$ -	\$ 40,800	\$ 41,616	\$ 42,448	\$ 43,297
Additional Interest	(3)	\$ -	\$ 73,565	\$ 73,565	\$ 79,255	\$ 79,250
<b>Total Annual Installment</b>	<b>(4) = (1) + (2) + (3)</b>	<b>\$ -</b>	<b>\$ 114,365</b>	<b>\$ 1,087,116</b>	<b>\$ 1,093,577</b>	<b>\$ 1,095,360</b>

## EXHIBIT D – SOURCES AND USES

Sources of Funds		
Improvement Area #1 Bond Par	\$	15,852,000
Owner Contribution [a]	\$	4,422,568
<b>Total Sources</b>	<b>\$</b>	<b>20,274,568</b>
Uses of Funds		
Improvement Area #1 Improvements	\$	11,846,617
Water Improvements [b]		2,186,066
Privately Financed Improvements		1,840,438
	<b>\$</b>	<b>15,873,121</b>
<i>Improvement Area #1 Bond Issuance Costs</i>		
Debt Service Reserve Fund	\$	1,585,200
Capitalized Interest		1,270,306
Underwriter's Discount		475,560
Cost of Issuance		1,030,380
		<b>4,361,446</b>
<i>First Year Annual Collection Costs</i>		
First Year Annual Collection Costs	\$	40,000
	<b>\$</b>	<b>40,000</b>
<b>Total Uses</b>	<b>\$</b>	<b>20,274,568</b>

Notes:

[a] Non-reimbursable to the Owner

[b] Water Improvements are Improvement Area #1 Privately Financed Public Improvements and are not eligible for reimbursement with Improvement Area #1 Assessments.



## EXHIBIT E-1 – IMPROVEMENT AREA #1 ASSESSMENT ROLL

Property ID <sup>1</sup>	Lot Type	Outstanding Assessment	Annual Installment Due 1/31/2024
R162775	Improvement Area #1 Initial Parcel	\$ 6,822,489.06	\$ 49,221.17
R13939	Improvement Area #1 Initial Parcel	\$ 9,029,510.94	\$ 65,143.83
<b>Total</b>		<b>\$ 15,852,000.00</b>	<b>\$ 114,365.00</b>

*Notes:*

1) The entirety of Improvement Area #1 is contained within Property IDs R162775 & R13939. For billing purposes, the Annual Installment due 1/31/2024 shall be allocated pro rata based on acreage.

## EXHIBIT E-2 – IMPROVEMENT AREA #1 ANNUAL INSTALLMENTS

Annual Installment Due 1/31	Improvement Area #1 Bonds				Annual Collection Costs	Annual Installment
	Principal	Interest [a]	Capitalized Interest	Additional Interest [b]		
2023	\$ -	\$ 299,371	\$ (299,371)	\$ -	\$ -	\$ -
2024	-	970,935	(970,935)	73,565	40,800	114,365
2025	1,000	970,935	-	73,565	41,616	1,087,116
2026	1,000	970,874	-	79,255	42,448	1,093,577
2027	2,000	970,813	-	79,250	43,297	1,095,360
2028	17,000	970,690	-	79,240	44,163	1,111,093
2029	41,000	969,649	-	79,155	45,046	1,134,850
2030	66,000	967,138	-	78,950	45,947	1,158,035
2031	93,000	963,095	-	78,620	46,866	1,181,581
2032	122,000	957,399	-	78,155	47,804	1,205,357
2033	153,000	949,926	-	77,545	48,760	1,229,231
2034	188,000	940,555	-	76,780	49,735	1,255,070
2035	224,000	929,040	-	75,840	50,730	1,279,610
2036	264,000	915,320	-	74,720	51,744	1,305,784
2037	307,000	899,150	-	73,400	52,779	1,332,329
2038	354,000	880,346	-	71,865	53,835	1,360,046
2039	404,000	858,664	-	70,095	54,911	1,387,670
2040	457,000	833,919	-	68,075	56,010	1,415,003
2041	515,000	805,928	-	65,790	57,130	1,443,847
2042	578,000	774,384	-	63,215	58,272	1,473,871
2043	645,000	738,981	-	60,325	59,438	1,503,744
2044	716,000	699,475	-	57,100	60,627	1,533,202
2045	794,000	655,620	-	53,520	61,839	1,564,979
2046	877,000	606,988	-	49,550	63,076	1,596,613
2047	966,000	553,271	-	45,165	64,337	1,628,774
2048	1,062,000	494,104	-	40,335	65,624	1,662,063
2049	1,164,000	429,056	-	35,025	66,937	1,695,018
2050	1,274,000	357,761	-	29,205	68,275	1,729,242
2051	1,393,000	279,729	-	22,835	69,641	1,765,205
2052	1,519,000	194,408	-	15,870	71,034	1,800,311
2053	1,655,000	101,369	-	8,275	72,454	1,837,098
<b>Total</b>	<b>\$ 15,852,000</b>	<b>\$ 22,908,890</b>	<b>\$ (1,270,306)</b>	<b>\$ 1,834,285</b>	<b>\$ 1,655,178</b>	<b>\$ 40,980,046</b>

**Notes:**

[a] Interest on the Improvement Area #1 PID Bonds is calculated at a 6.125% rate for illustrative purposes.

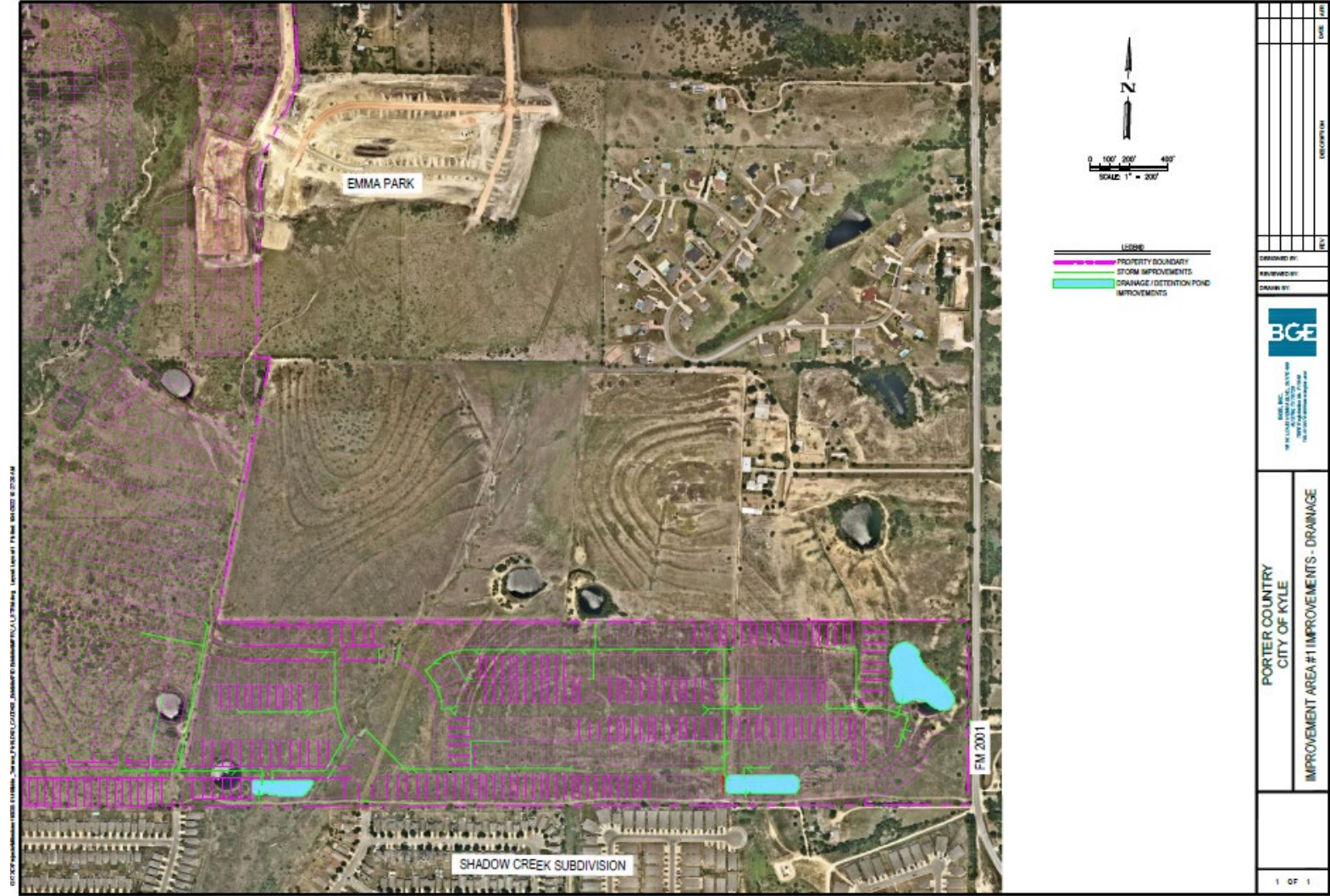
[b] Additional Interest is calculated at a 0.50% rate.

*The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## EXHIBIT F – MAXIMUM ASSESSMENT

Improvement Area #1 (Phase 1 & 2) <sup>1</sup>																	
Lot Type	Units	Finished Lot Value	Total Finished Lot Value	Estimated Buildout Value per Unit	Total Estimated Buildout Value	Assessment	Maximum Assessment Per Unit <sup>2</sup>	Value to Lien per Finished Lot Value	Installment Per Unit			Tax Rate Equivalent (No Growth Scenario - 0% Home Price Appreciation)			Tax Rate Equivalent (Growth Scenario - 2% Home Price Appreciation)		
									2025	2039	2053	2025	2039	2053	2025	2039	2053
Lot Type 1 (Phase 1 - 40')	204	\$ 67,000	\$ 13,668,000	\$ 420,000	\$ 85,680,000	\$ 7,655,623	\$ 37,527.56	1.79	\$ 2,574	\$ 3,285	\$ 4,349	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
Lot Type 2 (Phase 1 - 50')	50	\$ 83,750	\$ 4,187,500	\$ 508,000	\$ 25,400,000	\$ 2,269,524	\$ 45,390.48	1.85	\$ 3,113	\$ 3,973	\$ 5,260	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
Lot Type 1 (Phase 2 - 40')	141	\$ 73,000	\$ 10,293,000	\$ 420,000	\$ 59,220,000	\$ 5,291,386	\$ 37,527.56	1.95	\$ 2,574	\$ 3,285	\$ 4,349	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
Lot Type 2 (Phase 2 - 50')	14	\$ 91,300	\$ 1,278,200	\$ 508,000	\$ 7,112,000	\$ 635,467	\$ 45,390.48	2.01	\$ 3,113	\$ 3,973	\$ 5,260	\$ 0.6128	\$ 0.7822	\$ 1.0355	\$ 0.5890	\$ 0.5698	\$ 0.5717
<b>Total/Weighted Average</b>	<b>409</b>	<b>\$ 71,948</b>	<b>\$ 29,426,700</b>	<b>\$ 433,770</b>	<b>\$ 177,412,000</b>	<b>\$ 15,852,000</b>	<b>\$ 38,757.95</b>	<b>1.86</b>	<b>\$ 2,658</b>	<b>\$ 3,393</b>	<b>\$ 4,492</b>	<b>\$ 0.6128</b>	<b>\$ 0.7822</b>	<b>\$ 1.0355</b>	<b>\$ 0.5890</b>	<b>\$ 0.5698</b>	<b>\$ 0.5717</b>

EXHIBIT G – MAPS OF IMPROVEMENT AREA #1 IMPROVEMENTS







## EXHIBIT H – NOTICE OF ASSESSMENT TERMINATION



P3Works, LLC  
9284 Huntington Square, Suite 100  
North Richland Hills, TX 76182

[Date]  
Hays County Clerk's Office  
Honorable [County Clerk Name]  
Hays Government Center  
712 S. Stagecoach Trail  
San Marcos, TX 78666

**Re: City of Kyle Lien Release documents for filing**

Dear Ms./Mr. [County Clerk Name],

Enclosed is a lien release that the City of Kyle is requesting to be filed in your office. Lien release for [insert legal description]. Recording Numbers: [Plat]. Please forward copies of the filed documents below:

City of Kyle  
Attn: [City Secretary]  
100 W. Center Street  
Kyle, TX 78640

Please contact me if you have any questions or need additional information.

Sincerely,  
[Signature]

Jon Snyder  
P: (888)417-7074  
[admin@p3-works.com](mailto:admin@p3-works.com)

**[City Secretary Name]  
100 W. Center Street  
Kyle, TX 78640**

**FULL RELEASE OF PUBLIC IMPROVEMENT DISTRICT LIEN**

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

## RECITALS

**WHEREAS**, on or about \_\_\_\_\_, the City Council, approved Ordinance No. \_\_\_\_\_, (hereinafter referred to as the “Assessment Ordinance”) levying assessments on the Property (hereinafter defined) and approving a service and assessment plan and assessment roll for the Porter Country Public Improvement District; and





## **EXHIBIT I – IMPROVEMENT AREA #1 BONDS DEBT SERVICE SCHEDULE**

## EXHIBIT J – DISTRICT LEGAL DESCRIPTION

### EXHIBIT "A" DESCRIPTION

A 259.02 acres (11,282,708 square feet), tract of land, lying within the Jessie B. Eaves Survey, Abstract 166 and the W.A. Moore Survey, Abstract 331, Hays County, Texas, and being all of a called 163.935 acre tract, conveyed to Hillside Terrace Development, LLC in Document No. 21020969, Official Public Records of Hays County, Texas, all of a called 82.951 acre tract, conveyed to RIO OSO Holdings LLC in Document No. 18028156, Official Public Records of Hays County, Texas and a portion of called 35.04 acre tract, conveyed to GJG Development II LLC in Document No. 19024067, Official Public Records of Hays County, Texas, described as follows:

**BEGINNING** at a 5/8" iron rod with aluminum "PRO TECH ENG" cap found at the southeastern corner of said 163.935 acre tract, the northeastern corner of a called 2.80 acre tract, conveyed to James Mikeska & Traci Horne-Mikeska in Volume 1738, Page 731, Official Public Records of Hays County, Texas, and being on the western right-of-way line of F.M. 2001 (right-of-way varies), for the southeastern corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said 2.80 acre tract, S88°25'07"W, a distance of 858.81 feet to a 1/2" iron pipe found, for the northwestern corner of said 2.80 acre tract and the northeastern corner of Windy Hill Subdivision 24 AC, a subdivision, recorded in Document No. 17040372, Official Public Records of Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Windy Hill Subdivision 24 AC, S88°22'00"W, a distance of 1223.10 feet to a 3/4" iron pipe found, for the northwestern corner of said Windy Hill Subdivision 24 AC and the northeastern corner of Shadow Creek Phase 3, Section 4, a subdivision, recorded in Volume 13, Page 336, Plat Records Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of Shadow Creek Phase 9, Section 2, a subdivision, recorded in Document No. 17029868, Plat Records Hays County, Texas, S88°25'56"W, a distance of 1993.62 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Shadow Creek Phase 9, Section 2, the following three (3) courses and distances;

1. S88°24'30"W, a distance of 445.39 feet to a 6" wood fence post found;
2. S89°20'38"W, a distance of 873.39 feet to a 1/2" iron rod found;
3. S87°32'32"W, a distance of 556.41 feet to a pk nail in concrete found;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 9, Section 2, the northern line of Shadow Creek Phase 12, Section 1, a subdivision, recorded in Volume 19, Page 60, Plat Records Hays County, Texas and the northern line of a called 49.465 acre tract, conveyed to John Galloway Sr. & John Galloway Jr. in Volume 496, Page 791, Official Public Records of Hays County, Texas, S87°20'19"W, a distance of 442.82 feet to a 4" steel post found, for the southwestern corner of said 163.935 acre tract and the southeastern corner of a the remainder of a called 10.009 acre tract, conveyed to Mayra Garcia and Matias Garcia in Volume 3572, Page 398, Official Public Records of Hays County, Texas, for the southwestern corner of the herein described tract;

**THENCE**, with the western line of said 163.935 acre tract, the eastern line of said remainder of a called 10.009 acre tract, the eastern line of a called 10.01 acre tract, conveyed to Apostolic Christian Tabernacle of Austin in Volume 3333, Page 674, Official Public Records of Hays County, Texas, and the eastern line of a called 36.02 acre tract, conveyed to Salvador Villegas in Volume 3252, Page 665, Official Public Records of Hays County, Texas, N01°49'27"W, a distance of 1483.67 feet to a 4" steel post found, for an ell corner of said 163.935 acre tract, the northeastern corner of said 36.02 acre tract and being on the southern line of a called 68.96 acre tract, conveyed to TFLP Investments Limited Partnership in Volume 3118, Page 335, Official Public Records of Hays County, Texas;

**THENCE**, with a northern line of said 163.935 acre tract and the southern line of said 68.96 acre tract, N88°22'22"E, a distance of 1502.07 feet to a 1/2" iron rod found for an ell corner of said 163.935 acre tract and the southeastern corner of said 68.96 acre tract;

**THENCE**, with a western line of said 163.935 acre tract and the eastern line of said 68.96 acre tract, N02°00'11"W, a distance of 1007.83 feet to a 1/2" iron rod with plastic cap found for the northeastern corner of said 68.96 acre tract and the southeastern corner of Country Ridge Subdivision, a subdivision recorded in Volume 3, Page 274 Plat Records of Hays County, Texas;

THENCE, with a western line of said 163.935 acre tract and the eastern line of said Country Ridge Subdivision, N01°37'27"W, a distance of 1945.78 feet to a 1/2" iron rod found for the northeastern corner of said Country Ridge Subdivision and being on the southern right-of-way line of Hillside Terrace (right-of-way varies);

THENCE, with a western line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N01°37'27"W, a distance of 14.88 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the northwestern corner of said 163.935 acre tract and of the herein described tract;

THENCE, with a northern line of said 163.935 acre tract and the southern right-of-way line of Hillside Terrace, N88°01'45"E, a distance of 1410.61 feet to a 1/2" iron rod found for the northeastern corner of said 163.935 acre tract, the northwest corner of a 8.00 acre tract, conveyed to Nancy H. Johnson and described in a called 8.00 acre tract to Chase Baromeo Jr. and Barbara A. Castleberry in Volume 881, Page 259 Deed Records of Hays County, Texas and for the northeastern corner of the herein described tract;

THENCE, with an eastern line of said 163.935 acre tract and the western line of said 8.00 acre tract, S04°59'16"E, a distance of 685.20 feet to a point for an ell corner of said 163.935 acre tract, the southwest corner of a said 8.00 acre tract, and being on the northern line of a called 36.341 acre conveyed to Todd Burek in Document No. 19009802, Official Public Records of Hays County, Texas, from which a 1/2" iron rod found bears N01°15'44"E, a distance of 2.07 feet;

THENCE, over and across said 36.341 acre tract and said 35.04 acre tract, the following eight (8) courses and distances:

1. S 01° 57' 33" E, a distance of 43.81 feet to a 1/2" iron rod with unreadable cap found;
2. S 20° 51' 38" W, a distance of 126.91 feet to a 1/2" iron rod found;
3. S 25° 03' 48" W, a distance of 279.88 feet to a 1/2" iron rod found;
4. S 17° 00' 26" W, a distance of 49.76 feet to a 1/2" iron rod with J.E. Garron cap found;
5. S 06° 28' 28" W, a distance of 77.28 feet to a 1/2" iron rod found;
6. S 01° 01' 23" E, a distance of 800.38 feet to a 1/2" iron rod with J.E. Garron cap found;
7. S 88° 38' 46" W, a distance of 9.99 feet to a 1/2" iron rod with J.E. Garron cap found;
8. S 00° 58' 08" E, a distance of 129.20 feet to a 1/2" iron rod with J.E. Garron cap found on a northern line of said 163.935 acre tract and also being a southern line of said 35.04 acre tract;

THENCE, with a northern line of said 163.935 acre tract and also being the southern line of said 35.04 acre tract, N 88° 55' 55" E, a distance of 73.88 feet to a PK nail with washer stamped "PROTECH" found for an ell corner of said 163.935 acre tract and the northwestern corner of the remainder of a called 91.92 acre tract, conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas;

THENCE, with a eastern line of said 163.935 acre tract and also being the western line of said 91.92 acre tract, S10°01'04"W, a distance of 1388.58 feet to a 1/2" iron rod with broken cap found for the northwestern corner of said 82.951 acre tract and also being the southwestern corner of the remainder of said 91.92 acre tract;

THENCE, with the northern line of said 82.951 acre tract, the southern line of said remainder of 91.92 acre tract and also the southern boundary line of the remainder of a called 45.13 acre tract and of the remainder of a called 60.58 acre tract both conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, N88°27'53"E, a distance of 3878.65 feet to a 1/2" iron rod with a 4540 cap found for the northeastern corner of said 82.951 acre tract, the southeastern corner of said remainder of the 60.58 acre tract and also being on the western right-of-way line of F.M. 2001;

THENCE, with the eastern line of said 82.951 acre tract and also being the western right-of-way line of F.M. 2001, the following two (2) courses and distances:

1. S01°20'27"E, a distance of 856.10 feet to a concrete monument found on the arc of a curve to the left;
2. Along the arc of said curve to the left, a distance of 54.09 feet, having a radius of 756.20 feet, a delta angle of 4°05'54" and a chord bearing of S03°29'29"E, a distance of 54.08 feet to a 5/8" iron rod with aluminum "PRO TECH ENG" cap found on the arc of a curve to the left, for the southeastern corner of said 82.951 acre tract and the northern southeastern corner of said 163.935 acre tract;

THENCE, with the eastern line of said 163.935 acre tract and the western right-of-way line of F.M. 2001, along the arc of said curve to the left, a distance of 37.01 feet, having a radius of 756.20 feet, a delta angle of 2°48'14" and a chord bearing of S06°20'21"E, a distance of 37.00 feet to the POINT OF BEGINNING.

Containing 259.02 acres or 11,282,708 square feet, more or less.

BEARING BASIS NOTE

This project is referenced for all bearing and coordinate basis to the Texas State Plane Coordinate System NAD 83 (2011 adjustment), South Central Zone (4204). The Grid to Surface combined scale factor is 1.00013.

Robert J. Gertson, RPLS  
Texas Registration No. 6367  
Arwell, LLC  
805 Las Cimas Parkway, Suite 310  
Austin, Texas 78746  
Ph. 512-904-0505  
TBPE LS Firm No. 10193726



11/23/2021



## EXHIBIT K – IMPROVEMENT AREA #1 LEGAL DESCRIPTION

### EXHIBIT "A" DESCRIPTION

A 91.281 acres (3,976,181 square feet), tract of land, lying within the Jessie B. Eaves Survey, Abstract 166 and being all of a called 82.98 acre tract, conveyed to Hillside Terrace Development, LLC in Document No. 21069835, Official Public Records of Hays County, Texas and a portion of a called 163.935 acre tract, conveyed to Hillside Terrace Development LLC in Document No. 21020969 Official Public Records of Hays County, Texas, described as follows:

**BEGINNING** at a 5/8" iron rod with aluminum "PRO TECH ENG" cap found at the southeastern corner of said 163.935 acre tract, the northeastern corner of a called 2.80 acre tract, conveyed to James Mikeska & Traci Horne-Mikeska in Volume 1738, Page 731, Official Public Records of Hays County, Texas, and being on the western right-of-way line of F.M. 2001 (right-of-way varies), for the southeastern corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said 2.80 acre tract, S88°25'07"W, a distance of 858.81 feet to a 1/2" iron pipe found, for the northwestern corner of said 2.80 acre tract and the northeastern corner of Windy Hill Subdivision 24 AC, a subdivision, recorded in Document No. 17040372, Official Public Records of Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract and the northern line of said Windy Hill Subdivision 24 AC, S88°22'00"W, a distance of 1223.10 feet to a 3/4" iron pipe found, for the northwestern corner of said Windy Hill Subdivision 24 AC and the northeastern corner of Shadow Creek Phase 3, Section 4, a subdivision, recorded in Volume 13, Page 336, Plat Records Hays County, Texas;

**THENCE**, with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of Shadow Creek Phase 9, Section 2, a subdivision, recorded in Document No. 17029868, Plat Records Hays County, Texas, S88°25'56"W, a distance of 1993.62 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" found for a southern angle corner of the herein described tract;

**THENCE**, continuing with the southern line of said 163.935 acre tract, the northern line of said Shadow Creek Phase 3, Section 4 and the north line of said Shadow Creek Phase 9, Section 2, S88°24'30"W, a distance of 168.71 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the southwestern corner of the herein described tract;

**THENCE**, over and across said 163.935 acre tract, the following eight (8) courses and distances:

1. N01°30'41"W, 207.25 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
2. N88°29'23"E, 14.02 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
3. N01°35'27"W, 55.00 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
4. N04°13'38"E, 32.84 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
5. N10°02'37"E, 546.67 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
6. N72°49'45"W, 8.06 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for a western angle corner of the herein described tract;
7. N10°00'58"E, 170.98 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set for the northwestern corner of the herein described tract;
8. S 79°57'22" E, 215.52 feet to a 1/2" iron rod with cap stamped "ATWELL LLC" set in the western line of the remainder of a called 91.92 acre tract, conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, and for a northern angle corner of the herein described tract;

**THENCE**, with the western line of the remainder of said 91.92 acre tract and also being a eastern line of said 163.935 acre tract, S10°01'01"W, a distance of 6.34 feet to a 1/2" iron rod with broken cap found for the northwestern corner of said 82.98 acre tract and also being the southwestern corner of the remainder of said 91.92 acre tract, and for a northern angle corner of the herein described tract;

**THENCE**, with the northern line of said 82.98 acre tract, the southern line of said remainder of 91.92 acre tract and also the southern boundary lines of the remainder of a called 45.13 acre tract and of the remainder of a called 60.58 acre tract both conveyed to Tony Greaves and Carol C. Greaves in Volume 1167, Page 445, Official Public Records of Hays County, Texas, N88°27'53"E, a distance of 3878.65 feet to a 1/2" iron rod with a 4540 cap found for the northeastern corner of said 82.98 acre tract, the southeastern corner of said remainder of the 60.58 acre tract and also being on the said western right-of-way line of F.M. 2001, for the northeastern corner of the herein described tract;

**THENCE**, with the eastern line of said 82.98 acre tract, said 163.935 acre tract and also being the said western right-of-way line of F.M. 2001, the following three (3) courses and distances:

1. S01°20'27"E, a distance of 856.10 feet to a concrete monument found on the arc of a curve to the left;
2. Along the arc of said curve to the left, a distance of 54.09 feet, having a radius of 756.20 feet, a delta angle of 4°05'54" and a chord bearing of S03°29'29"E, a distance of 54.08 feet to a 5/8" iron rod with aluminum cap stamped "PRO TECH ENG" found for the southeastern corner of said 82.98 acre tract and also being the northern southeastern corner of said 163.935 acre tract, and also being on the arc of a curve to the left;
3. Along the arc of said curve to the left, a distance of 37.01 feet, having a radius of 756.20 feet, a delta angle of 2°48'14" and a chord bearing of S06°20'21"E, a distance of 37.00 feet to the **POINT OF BEGINNING**.

Containing 91.281 acres (3,976,181 square feet), more or less, in Hays County.

**BEARING BASIS NOTE**

This project is referenced for all bearing and coordinate basis to the Texas State Plane Coordinate System NAD 83 (2011 adjustment), South Central Zone (4204). The Grid to Surface combined scale factor is 1.00013.

Robert J. Gertson, RPLS  
Texas Registration No. 6367  
Atwell, LLC  
805 Las Cimas Parkway, Suite 310  
Austin, Texas 78746  
Ph. 512-904-0505  
TBPE LS Firm No. 10193726



12/09/2022

## **EXHIBIT L-1 – LOT TYPE 1 BUYER DISCLOSURE**

### **NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT**

A person who proposes to sell or otherwise convey real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code (except for public improvement districts described under Section 372.0035), or Chapter 382, Local Government Code, shall first give to the purchaser of the property this written notice, signed by the seller.

For the purposes of this notice, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring the notice set forth below.

This notice requirement does not apply to a transfer:

- 1) under a court order or foreclosure sale;
- 2) by a trustee in bankruptcy;
- 3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- 4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- 5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- 6) from one co-owner to another co-owner of an undivided interest in the real property;
- 7) to a spouse or a person in the lineal line of consanguinity of the seller;
- 8) to or from a governmental entity; or
- 9) of only a mineral interest, leasehold interest, or security interest

The following notice shall be given to a prospective purchaser before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph of a purchase contract. In the event a contract of purchase and sale is entered into without the seller having provided the required notice, the purchaser, subject to certain exceptions, is entitled to terminate the contract.

A separate copy of this notice shall be executed by the seller and the purchaser and must be filed in the real property records of the county in which the property is located at the closing of the purchase and sale of the property.

AFTER RECORDING<sup>1</sup> RETURN TO:

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NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO  
KYLE, TEXAS  
CONCERNING THE FOLLOWING PROPERTY

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PROPERTY ADDRESS

**LOT TYPE 1 PRINCIPAL ASSESSMENT: \$37,527.56**

As the purchaser of the real property described above, you are obligated to pay assessments to Kyle, Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within *Porter Country Public Improvement District* (the "District") created under Subchapter A, Chapter 372, Local Government Code.

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from the City of Kyle. The exact amount of each annual installment will be approved each year by the Kyle City Council in the annual service plan update for the district. More information about the assessments, including the amounts and due dates, may be obtained from the City of Kyle.

Your failure to pay any assessment or any annual installment may result in penalties and interest being added to what you owe or in a lien on and the foreclosure of your property.

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<sup>1</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County when updating for the Current Information of Obligation to Pay Improvement District Assessment.



[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

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SIGNATURE OF PURCHASER

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SIGNATURE OF PURCHASER

The undersigned seller acknowledges providing this notice to the potential purchaser before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

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SIGNATURE OF SELLER

---

SIGNATURE OF SELLER]<sup>2</sup>

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<sup>2</sup> To be included in copy of the notice required by Section 5.014, Tex. Prop. Code, to be executed by seller in accordance with Section 5.014(a-1), Tex. Prop. Code.

[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above. The undersigned purchaser acknowledged the receipt of this notice including the current information required by Section 5.0143, Texas Property Code, as amended.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>3</sup>

\_\_\_\_\_  
<sup>3</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.

[The undersigned seller acknowledges providing a separate copy of the notice required by Section 5.014 of the Texas Property Code including the current information required by Section 5.0143, Texas Property Code, as amended, at the closing of the purchase of the real property at the address above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF SELLER

\_\_\_\_\_  
SIGNATURE OF SELLER

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>4</sup>

\_\_\_\_\_  
<sup>4</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.

## ANNUAL INSTALLMENTS - LOT TYPE 1

Annual Installment Due 1/31	Improvement Area #1 PID Bonds				Annual Collection	
	Principal	Interest [a]	Capitalized Interest	Additional Interest [b]	Costs	Annual Installment
2023	\$ -	\$ 708.72	\$ (708.72)	\$ -	\$ -	\$ -
2024	-	2,298.56	(2,298.56)	174.16	96.59	270.74
2025	2.37	2,298.56	-	174.16	98.52	2,573.61
2026	2.37	2,298.42	-	187.63	100.49	2,588.90
2027	4.73	2,298.27	-	187.61	102.50	2,593.12
2028	40.25	2,297.98	-	187.59	104.55	2,630.37
2029	97.06	2,295.52	-	187.39	106.64	2,686.61
2030	156.25	2,289.57	-	186.90	108.77	2,741.50
2031	220.17	2,280.00	-	186.12	110.95	2,797.24
2032	288.82	2,266.52	-	185.02	113.17	2,853.53
2033	362.21	2,248.83	-	183.58	115.43	2,910.05
2034	445.07	2,226.64	-	181.77	117.74	2,971.22
2035	530.29	2,199.38	-	179.54	120.10	3,029.31
2036	624.99	2,166.90	-	176.89	122.50	3,091.28
2037	726.78	2,128.62	-	173.77	124.95	3,154.12
2038	838.05	2,084.11	-	170.13	127.45	3,219.73
2039	956.42	2,032.78	-	165.94	130.00	3,285.13
2040	1,081.89	1,974.19	-	161.16	132.60	3,349.84
2041	1,219.20	1,907.93	-	155.75	135.25	3,418.12
2042	1,368.34	1,833.25	-	149.65	137.95	3,489.20
2043	1,526.95	1,749.44	-	142.81	140.71	3,559.92
2044	1,695.04	1,655.92	-	135.18	143.53	3,629.66
2045	1,879.69	1,552.10	-	126.70	146.40	3,704.89
2046	2,076.18	1,436.96	-	117.30	149.32	3,779.78
2047	2,286.88	1,309.80	-	106.92	152.31	3,855.91
2048	2,514.15	1,169.73	-	95.49	155.36	3,934.72
2049	2,755.62	1,015.74	-	82.92	158.46	4,012.74
2050	3,016.03	846.95	-	69.14	161.63	4,093.76
2051	3,297.75	662.22	-	54.06	164.87	4,178.89
2052	3,596.04	460.23	-	37.57	168.16	4,262.00
2053	3,918.00	239.98	-	19.59	171.53	4,349.09
<b>Total</b>	<b>\$ 37,527.56</b>	<b>\$ 54,233.84</b>	<b>\$ (3,007.29)</b>	<b>\$ 4,342.43</b>	<b>\$ 3,918.42</b>	<b>\$ 97,014.97</b>

**Notes:**

[a] Interest on the Improvement Area #1 PID Bonds is calculated at a 6.125% rate for illustrative purposes.

[b] Additional Interest is calculated at a 0.50% rate.

*The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

Annual Installment Schedule to Notice  
of Obligation to Pay Improvement District Assessment

Item # 16

## EXHIBIT L-2 – LOT TYPE 2 BUYER DISCLOSURE

### NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT

A person who proposes to sell or otherwise convey real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code (except for public improvement districts described under Section 372.0035), or Chapter 382, Local Government Code, shall first give to the purchaser of the property this written notice, signed by the seller.

For the purposes of this notice, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring the notice set forth below.

This notice requirement does not apply to a transfer:

- 1) under a court order or foreclosure sale;
- 2) by a trustee in bankruptcy;
- 3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- 4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- 5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- 6) from one co-owner to another co-owner of an undivided interest in the real property;
- 7) to a spouse or a person in the lineal line of consanguinity of the seller;
- 8) to or from a governmental entity; or
- 9) of only a mineral interest, leasehold interest, or security interest

The following notice shall be given to a prospective purchaser before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph of a purchase contract. In the event a contract of purchase and sale is entered into without the seller having provided the required notice, the purchaser, subject to certain exceptions, is entitled to terminate the contract.

A separate copy of this notice shall be executed by the seller and the purchaser and must be filed in the real property records of the county in which the property is located at the closing of the purchase and sale of the property.

AFTER RECORDING<sup>1</sup> RETURN TO:

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NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO  
KYLE, TEXAS  
CONCERNING THE FOLLOWING PROPERTY

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PROPERTY ADDRESS

**LOT TYPE 2 PRINCIPAL ASSESSMENT: \$45,390.48**

As the purchaser of the real property described above, you are obligated to pay assessments to Kyle, Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within ***Porter Country Public Improvement District*** (the "District") created under Subchapter A, Chapter 372, Local Government Code.

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from the City of Kyle. The exact amount of each annual installment will be approved each year by the Kyle City Council in the annual service plan update for the district. More information about the assessments, including the amounts and due dates, may be obtained from the City of Kyle.

Your failure to pay any assessment or any annual installment may result in penalties and interest being added to what you owe or in a lien on and the foreclosure of your property.

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<sup>1</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County when updating for the Current Information of Obligation to Pay Improvement District Assessment.

[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

The undersigned seller acknowledges providing this notice to the potential purchaser before the effective date of a binding contract for the purchase of the real property at the address described above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF SELLER

\_\_\_\_\_  
SIGNATURE OF SELLER]<sup>2</sup>

<sup>2</sup> To be included in copy of the notice required by Section 5.014, Tex. Prop. Code, to be executed by seller in accordance with Section 5.014(a-1), Tex. Prop. Code.

[The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above. The undersigned purchaser acknowledged the receipt of this notice including the current information required by Section 5.0143, Texas Property Code, as amended.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

STATE OF TEXAS

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COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>3</sup>

\_\_\_\_\_  
<sup>3</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.



[The undersigned seller acknowledges providing a separate copy of the notice required by Section 5.014 of the Texas Property Code including the current information required by Section 5.0143, Texas Property Code, as amended, at the closing of the purchase of the real property at the address above.

DATE:

DATE:

\_\_\_\_\_  
SIGNATURE OF SELLER

\_\_\_\_\_  
SIGNATURE OF SELLER

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

The foregoing instrument was acknowledged before me by \_\_\_\_\_ and \_\_\_\_\_, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

Given under my hand and seal of office on this \_\_\_\_\_, 20\_\_.

Notary Public, State of Texas]<sup>4</sup>

\_\_\_\_\_  
<sup>4</sup> To be included in separate copy of the notice required by Section 5.0143, Tex. Prop. Code, to be executed at the closing of the purchase and sale and to be recorded in the deed records of Hays County.

## ANNUAL INSTALLMENTS - LOT TYPE 2

Annual Installment Due 1/31	Improvement Area #1 PID Bonds				Annual Collection	
	Principal	Interest [a]	Capitalized Interest	Additional Interest [b]	Costs	Annual Installment
2023	\$ -	\$ 857.22	\$ (857.22)	\$ -	\$ -	\$ -
2024	-	2,780.17	(2,780.17)	210.65	116.83	327.47
2025	2.86	2,780.17	-	210.65	119.16	3,112.84
2026	2.86	2,779.99	-	226.94	121.55	3,131.34
2027	5.73	2,779.82	-	226.92	123.98	3,136.44
2028	48.68	2,779.47	-	226.90	126.46	3,181.49
2029	117.40	2,776.48	-	226.65	128.99	3,249.52
2030	188.98	2,769.29	-	226.06	131.57	3,315.91
2031	266.30	2,757.72	-	225.12	134.20	3,383.33
2032	349.33	2,741.41	-	223.79	136.88	3,451.41
2033	438.10	2,720.01	-	222.04	139.62	3,519.77
2034	538.32	2,693.18	-	219.85	142.41	3,593.76
2035	641.40	2,660.21	-	217.16	145.26	3,664.02
2036	755.94	2,620.92	-	213.95	148.16	3,738.97
2037	879.06	2,574.62	-	210.17	151.13	3,814.98
2038	1,013.64	2,520.78	-	205.78	154.15	3,894.34
2039	1,156.81	2,458.69	-	200.71	157.23	3,973.44
2040	1,308.57	2,387.84	-	194.93	160.38	4,051.71
2041	1,474.65	2,307.69	-	188.38	163.59	4,134.30
2042	1,655.04	2,217.36	-	181.01	166.86	4,220.27
2043	1,846.89	2,115.99	-	172.73	170.19	4,305.81
2044	2,050.19	2,002.87	-	163.50	173.60	4,390.16
2045	2,273.53	1,877.30	-	153.25	177.07	4,481.15
2046	2,511.19	1,738.04	-	141.88	180.61	4,571.73
2047	2,766.04	1,584.23	-	129.33	184.22	4,663.82
2048	3,040.92	1,414.81	-	115.49	187.91	4,759.14
2049	3,332.99	1,228.56	-	100.29	191.67	4,853.50
2050	3,647.96	1,024.41	-	83.63	195.50	4,951.50
2051	3,988.70	800.97	-	65.39	199.41	5,054.47
2052	4,349.49	556.66	-	45.44	203.40	5,155.00
2053	4,738.91	290.26	-	23.69	207.47	5,260.33
<b>Total</b>	<b>\$ 45,390.48</b>	<b>\$ 65,597.12</b>	<b>\$ (3,637.38)</b>	<b>\$ 5,252.28</b>	<b>\$ 4,739.42</b>	<b>\$ 117,341.91</b>

**Notes:**

[a] Interest on the Improvement Area #1 PID Bonds is calculated at a 6.125% rate for illustrative purposes.

[b] Additional Interest is calculated at a 0.50% rate.

*The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## **APPENDIX A – ENGINEER’S REPORT**

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## Porter Country

### PUBLIC IMPROVEMENT DISTRICT ENGINEER'S REPORT – IMPROVEMENT AREA # 1

March 6, 2023

## Introduction

Porter Country is a proposed master planned subdivision community by Milestone Community Builders, Inc. The development proposes 979 single-family residential lots, approximately 4.5 acres of commercial lots, and is located on approximately 259.02 acres in Hays County, Texas. It is approximately 1 mile from I-35 and is 20 miles south of Austin. The property was recently annexed into the City of Kyle. The community will include an amenity center, numerous open spaces, and park areas with interconnecting trails throughout the subdivision. Water service will be provided by Goforth Special Utility District and the improvements are anticipated to be funded by the PID. Wastewater service will be provided by Windy Hill Utility and will not be funded through the PID. Improvement Area No. 1 is approximately 91.3 acres and consists of Phases 1 and 2 (located primarily in the Rio Oso Tract and a small portion of the Sterling Equities Tract). Phase 1 is approximately 66.57 acres and is located in the southeast corner of the subject property along FM 2001 and Phase 2 is approximately 24.69 acres and is located directly North of Phase 1. Porter Country is anticipated to be constructed in six phases.

This report includes the supporting documentation for the formation of the PID and the issuance of the Improvement Area No. 1 bonds by the City of Kyle. The bonds are to be used to finance the public infrastructure items listed below that are necessary for buildout of the development.

## Development Improvements

- **Heron Drive Improvements to Roundabout**
  - Heron Drive Roadway and Associated Improvements within ROW
    - Improvements to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, and associated utility infrastructure in the Heron Drive right-of-way. Also includes a roundabout that will include the roadway improvements listed above, in addition to mountable curbs and reinforced concrete aprons. The Heron Drive Improvements and roundabout are anticipated to benefit Phases 1-4 of Porter Country.
- **Improvement Area No. 1 Improvements**
  - Roadway
    - Improvements to include subgrade stabilization, concrete pavement with curb and gutter, concrete sidewalk with ADA ramps, signage, lighting, earthwork, excavation, erosion control, alleyways or corresponding public easements & testing. Also includes a deceleration lane off FM 2001.



- Water
  - Improvements to include trench excavation and embedment, trench safety, piping, valves, fire hydrant assemblies, service connections, testing, related earthwork, erosion control and all necessary appurtenances constructed to City and Utility provider standards required to provide water service to Improvement Area No. 1.
- Drainage
  - Improvements to include trench excavation and embedment, trench safety, piping, manholes, inlets, headwalls, testing, related earthwork, and erosion control. Also included are retention ponds, detention ponds, and wet detention ponds, clearing, excavation, piping for inbound and outbound drainage lines, outlet structures, and erosion control.
- Parks and Landscaping
  - Improvements to include a wet pond with irrigated trees, irrigated planting beds and sod at the entry, trail lighting, electrical, perimeter fencing, upgraded median landscaping along the entry road and at roundabouts, and right of way. Also to be included are a playground, and a parkway with trails, irrigation and meters, site furnishings, trees, sod, parkland, open space, and planting beds.
- Soft Costs
  - Costs related to designing, constructing, installing, and financing the Improvement Area No. 1 Improvements, including land planning and design, City fees, engineering, soil testing, survey, construction management, legal fees, consultant fees, contingency, inspection fees, district formation costs, and other PID costs incurred and paid by the Developer.

## Development Costs

An Engineers' Opinion of Probable Cost has been prepared for Improvement Area No. 1 Improvements described above and is included as the Public Improvement District Cost Estimate. The Opinion of Probable Cost is based on contractor pricing and BGE, Inc.'s reasonable professional judgment and experience and does not constitute a warranty, expressed or implied. Actual costs may vary.

## Development & Construction Schedule

### Phase 1:

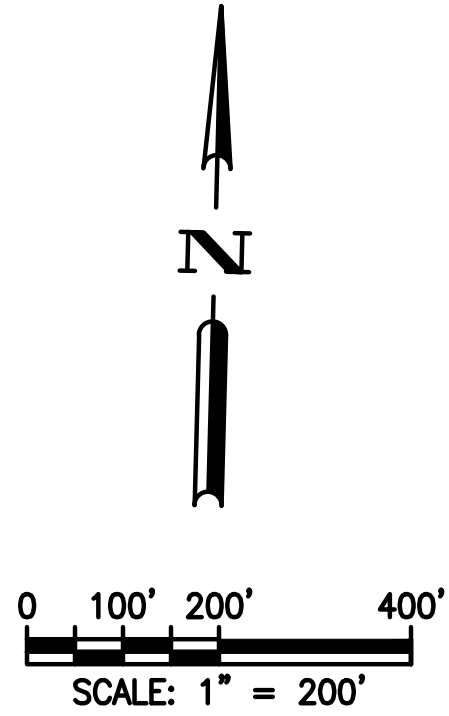
- Begin Construction: 3/2023
- Complete Construction: 11/2023

### Phase 2:

- Begin Construction: 12/2024
- Complete Construction: 8/2025



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LEGEND

PROPERTY BOUNDARY

IMPROVEMENT AREA #1

REV	DESCRIPTION	DATE	APP

DESIGNED BY: \_\_\_\_\_

REVIEWED BY: \_\_\_\_\_

DRAWN BY: \_\_\_\_\_

**BGE, INC.**  
101 W. LOUIS HENNA BLVD., SUITE 400  
AUSTIN, TX 78728  
TEPE Registration No. F-1046  
TEL 512.473.5060 www.bgeinc.com

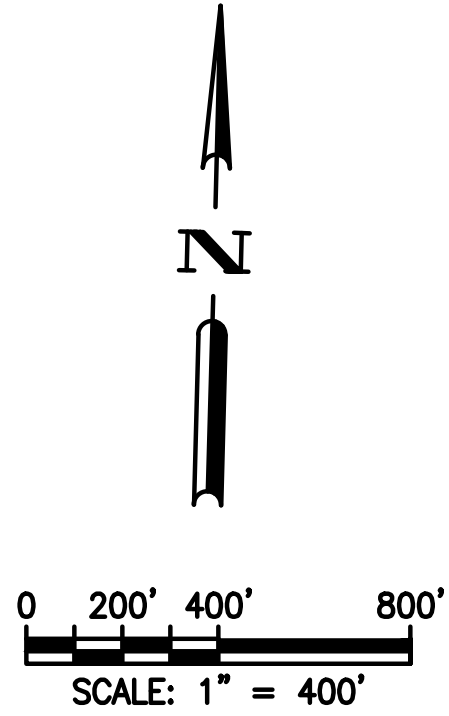
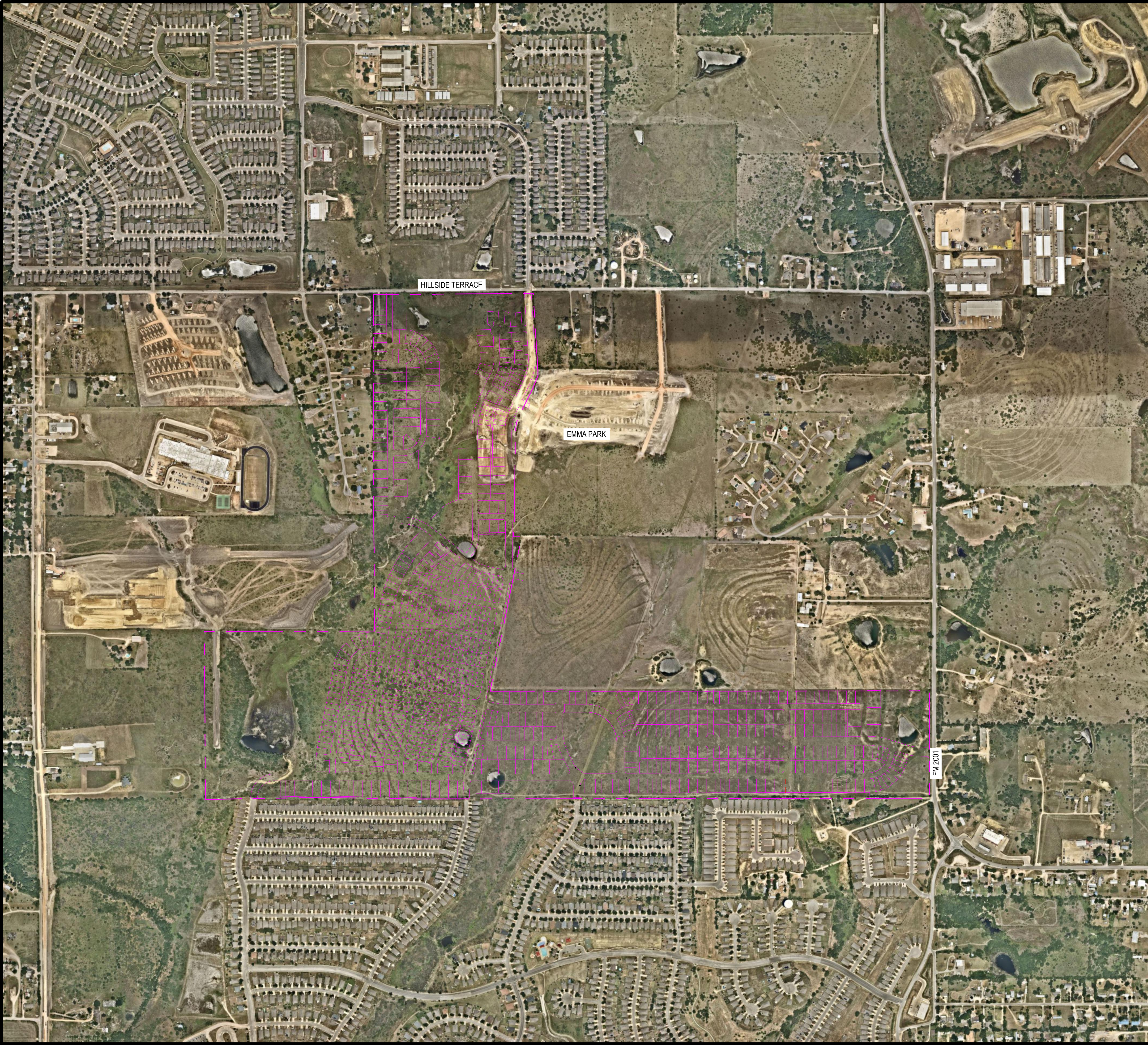
PORTER COUNTRY  
CITY OF KYLE

IMPROVEMENT AREA #1


1 OF 1



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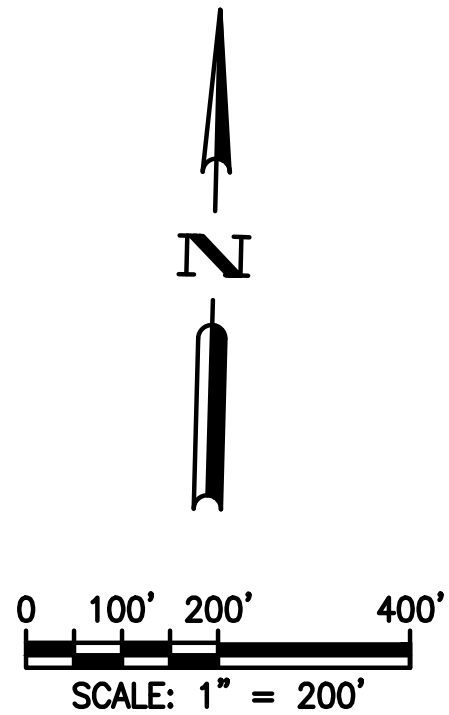


LEGEND  
PID BOUNDARY

PORTER COUNTRY CITY OF KYLE		DESIGNED BY:		REV	DESCRIPTION	DATE	APR
		REVIEWED BY:					
		DRAWN BY:					
OVERALL PID BOUNDARY		 BGE, INC. 101 W. LOUIS HENNA BLVD., SUITE 400 AUSTIN, TX 78728 TEPE Registration No. F-1046 TEL 512.679-0060 www.bgeinc.com					
1 OF 1							



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LEGEND	
<span style="color: magenta;">----</span>	PROPERTY BOUNDARY
<span style="background-color: lightblue;"> </span>	IMPROVEMENT AREA #1

ROW WIDTH (FT)	
HERON DRIVE	60
PALE HORSE BEND	70
JACKMAN DRIVE	52
MARSH LANE	60
SHADOW CREEK BOULEVARD	60
YOUNG STREET	52
PORTER COUNTRY PARKWAY	80
KERBOW LANE	52
EDWIN AVENUE	52
FALCON LANE	52

PORTER COUNTRY  
CITY OF KYLE

ROADWAY IMPROVEMENTS

DESIGNED BY:

REVIEWED BY:

DRAWN BY:

REV

DESCRIPTION

DATE

APR

BGE, INC.

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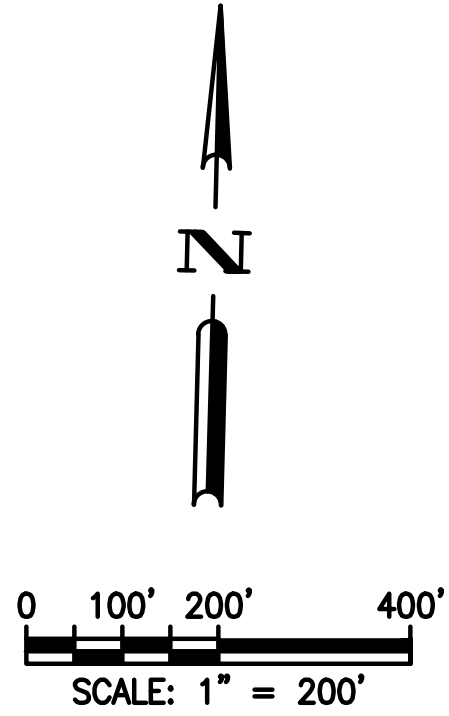
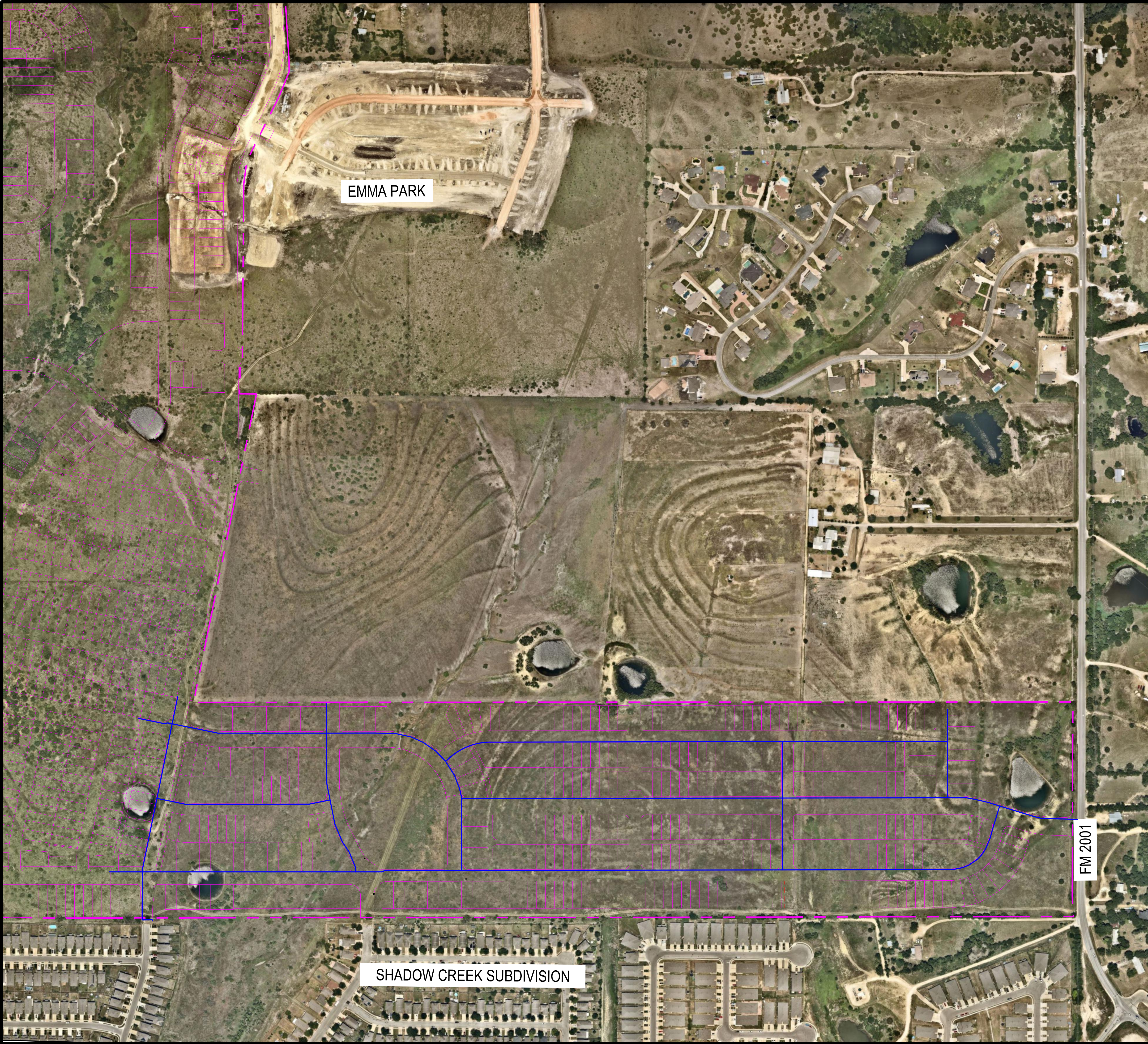
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- LEGEND
- PROPERTY BOUNDARY
  - WATER IMPROVEMENTS

PORTER COUNTRY CITY OF KYLE		DESIGNED BY:	
IMPROVEMENT AREA #1 IMPROVEMENTS - WATER		REVIEWED BY:	
		DRAWN BY:	
		REV	DESCRIPTION
1 OF 1		DATE	APR



BGE, INC.  
101 W. LOUIS HENNA BLVD., SUITE 400  
AUSTIN, TX 78728  
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LEGEND

SECONDARY TRAIL

STREET PARKWAY

ENTRY ROAD

ROUNDBABOUT

WET POND

IMPROVED LANDSCAPE

PLAYGROUND





## ENGINEERS OPINION OF PROBABLE CONSTRUCTION COSTS

**PROJECT:** Hillside Terrace Ph 1

**BASED ON:** Plan set dated 06/02/2022

**DATE:** 7/6/2022

**PREPARED BY:** Madison Mitchell, Garrett Lindsey

**REVIEWED BY:** Ashley Udelhofen, Aaron Corn

### SECTION 1 - WATER IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
1-01	8" WATER LINE PVC	5,062	LF	\$64.95	\$328,761.12
1-02	12" WATER LINE PVC	4,540	LF	\$107.46	\$487,835.19
1-03	12" GATE VALVE	5	EA	\$4,067.00	\$20,335.02
1-04	8" GATE VALVE	16	EA	\$2,370.28	\$37,924.42
1-05	2" FLUSHING VALVE	5	EA	\$3,262.50	\$16,312.50
1-06	12" WET CONNECTION	1	EA	\$2,898.97	\$2,898.97
1-07	SINGLE SERVICE	26	EA	\$2,512.98	\$65,337.48
1-08	DOUBLE SERVICE	127	EA	\$2,766.89	\$351,395.03
1-09	FIRE HYDRANT	18	EA	\$7,011.08	\$126,199.51
1-10	AUTOMATIC AIR RELEASE VALVE	1	EA	\$3,800.00	\$3,800.00
1-11	TRENCH SAFETY	8,226	LF	\$0.86	\$7,107.36
<b>SUBTOTAL - WATER IMPROVEMENTS</b>					<b>\$1,447,906.60</b>

### SECTION 2 - WASTEWATER IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
2-01	8" PVC WASTEWATER LINE ALL DEPTHS	8296	LF	\$61.65	\$511,484.98
2-02	SINGLE SERVICE	45	EA	\$2,047.52	\$92,138.40
2-03	DOUBLE SERVICE	119	EA	\$2,269.69	\$270,092.87
2-04	STD. 4' WASTEWATER MANHOLE	40	EA	\$5,982.05	\$239,281.92
2-05	4' DROP MANHOLE	5	EA	\$7,193.68	\$35,968.40
2-06	8" WASTEWATER CLEANOUT	6	EA	\$2,153.75	\$12,922.50
2-07	REMOVE PLUG AND CONNECT TO EXISTING, 8"	2	EA	\$2,333.20	\$4,666.40
2-08	TRENCH SAFETY	7,375	LF	\$1.08	\$7,965.31
2-09	ADJUST EXISTING MANHOLE	2	EA	\$2,405.00	\$4,810.00
<b>SUBTOTAL - WASTEWATER IMPROVEMENTS</b>					<b>\$1,179,330.79</b>

### SECTION 3 - DRAINAGE IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
3-01	18" RCP CL III	3,773	LF	\$70.18	\$264,745.28
3-02	24" RCP CL III	749	LF	\$68.65	\$51,422.90
3-03	30" RCP CL III	1,323	LF	\$92.64	\$122,610.50
3-04	36" RCP CL III	100	LF	\$123.63	\$12,401.20
3-05	42" RCP CL III	153	LF	\$166.92	\$25,571.09
3-06	42" RCP CL IV	365	LF	\$187.07	\$68,314.27
3-07	48" RCP CL III	646	LF	\$208.74	\$134,860.60
3-08	54" RCP CL III	378	LF	\$293.80	\$111,050.82
3-09	5' X 4' RCB CL III	107	LF	\$390.00	\$41,535.78
3-10	6' X 3' RCB CL III	718	LF	\$337.03	\$241,987.54
3-11	4' x 4' BOX MANHOLE	9	EA	\$5,787.75	\$52,089.75
3-12	5' x 5' BOX MANHOLE	5	EA	\$6,138.98	\$30,694.90
3-13	6' x 6' BOX MANHOLE	2	EA	\$7,021.23	\$14,042.46
3-14	7' x 7' BOX MANHOLE	3	EA	\$13,019.92	\$39,059.77
3-15	10 FOOT CURB INLET	41	EA	\$6,309.73	\$258,699.03
3-16	15 FOOT CURB INLET	1	EA	\$7,933.00	\$7,933.00
3-17	4'X4' AREA INLET	1	EA	\$4,983.35	\$4,983.35
3-18	3'X3' GRATE INLET	11	EA	\$2,854.95	\$31,404.41
3-19	18" SET TXDOT SETP-CD	3	EA	\$1,388.45	\$4,165.35
3-20	24" HEADWALL COA 508S-13 W/ ENERGY DISSIPATORS	1	EA	\$2,561.43	\$2,561.43
3-21	42" HEADWALL COA 508S-13 W/ ENERGY DISSIPATORS	1	EA	\$8,943.00	\$8,943.00
3-22	5' x 4' RCB CONCRETE HEADWALL TXDOT FW-0 W/ ENERGY DISSIPATORS	2	EA	\$14,204.47	\$28,408.93
3-23	6' x 3' RCB CONCRETE HEADWALL TXDOT FW-0 W/ ENERGY DISSIPATORS	1	EA	\$8,695.38	\$8,695.38
3-24	6' x 3' RCB WINGWALLS TXDOT PW W/ PARALLEL WINGS	4	EA	\$14,147.00	\$56,588.00
3-25	MORTARED ROCK RIP RAP	167	SY	\$141.95	\$23,713.44
3-26	GRASS-LINED SWALE, TRIANGULAR WITH 3:1 SIDE SLOPES, INCLUDING REVEGETATION	1,540	LF	\$32.82	\$50,531.76
3-27	GRASS-LINED SWALE, TRAPEZOIDAL WITH 3:1 SIDE SLOPES, INCLUDING REVEGETATION	56	LF	\$32.82	\$1,847.44
3-28	TRENCH SAFETY	7,251	LF	\$1.03	\$7,432.66
3-29	DETENTION POND INCLUDING OUTFALL STRUCTURES	2	EA	\$60,000.00	\$120,000.00
3-30	WET DETENTION POND INCLUDING OUTFALL STRUCTURES	1	EA	\$275,000.00	\$275,000.00
<b>SUBTOTAL - DRAINAGE IMPROVEMENTS</b>					<b>\$2,101,294.03</b>

### SECTION 4 - LOCAL STREET IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
4-01	2" HMAC	4,241	SY	\$15.56	\$65,996.52
4-02	8" CRUSHED LIMESTONE BASE	5,560	SY	\$8.25	\$45,869.32
4-03	8" LIME STABILIZED SUBGRADE	5,560	SY	\$8.63	\$47,995.99

4-04	TENSAR TX 130	5,560	SY	\$2.78	\$15,470.47
4-05	SIGNAGE AND STRIPING	1	LS	\$15,000.00	\$15,000.00
4-06	CURB AND GUTTER	23,360	LF	\$18.12	\$423,232.53
4-07	P.C. CONCRETE SIDEWALK (INCLUDING COLLECTORS AND PONDS)	34,670	SF	\$6.82	\$236,406.06
4-08	SIDEWALK RAMP WITH PAVERS (TYPE I)	52	EA	\$1,272.83	\$66,187.29
4-09	INSTALL STREET END BARRICADE	8	EA	\$1,241.88	\$9,935.00
4-10	REMOVE STREET END BARRICADE	1	EA	\$486.12	\$486.12
<b>SUBTOTAL - LOCAL STREET IMPROVEMENTS</b>					<b>\$926,579.32</b>
<b>SECTION 5 - ALLEY IMPROVEMENTS</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>COST/UNIT</b>	<b>TOTAL COST</b>
5-01	2" HMAC	3,381	SY	\$15.56	\$52,616.85
5-02	8" CRUSHED LIMESTONE BASE	5,709	SY	\$8.25	\$47,098.38
5-03	8" LIME STABILIZED SUBGRADE	5,709	SY	\$8.63	\$49,282.03
5-04	VERTICAL MOISTURE BARRIER	4,595	LF	\$9.70	\$44,588.05
5-05	RIBBON CURB	4,595	LF	\$14.66	\$67,378.32
5-06	TYPE II DRIVEWAY	10	EA	\$2,768.79	\$27,687.93
<b>SUBTOTAL - ALLEY IMPROVEMENTS</b>					<b>\$288,651.57</b>
<b>SECTION 6 - COLLECTOR IMPROVEMENTS</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>COST/UNIT</b>	<b>TOTAL COST</b>
6-01	2.5" HMAC	30,964	SY	\$18.60	\$575,938.42
6-02	10" CRUSHED LIMESTONE BASE	44,603	SY	\$12.78	\$569,921.19
6-03	8" LIME STABILIZED SUBGRADE	44,603	SY	\$8.63	\$385,039.69
6-04	TENSAR TX 130	44,603	SY	\$2.78	\$124,109.23
6-05	SIGNAGE AND STRIPING	1	LS	\$20,000.00	\$20,000.00
6-06	CONCRETE VALLEY GUTTER	10	EA	\$5,027.87	\$50,278.72
6-07	INSTALL METAL BEAM GUARD FENCE TXDOT DETAIL GF(31)-19 -INCLUDING END TREATMENTS	519	LF	\$88.75	\$46,061.25
6-08	HANDRAIL	387	LF	\$158.00	\$61,146.00
6-09	RIGHT TURN LANE AND DRIVEWAY CONNECTION TO FM 2001	1	LS	\$150,000.00	\$150,000.00
<b>SUBTOTAL - COLLECTOR IMPROVEMENTS</b>					<b>\$1,982,494.50</b>
<b>SECTION 7 - HERON DRIVE IMPROVEMENTS</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>COST/UNIT</b>	<b>TOTAL COST*</b>
7-01	8" WATER LINE PVC	472	LF	\$64.95	\$30,686.60
7-02	12" WATER LINE PVC	903	LF	\$107.46	\$97,022.52
7-03	12" GATE VALVE	5	EA	\$4,067.00	\$20,335.02
7-04	8" GATE VALVE	3	EA	\$2,370.28	\$7,110.83
7-05	2" FLUSHING VALVE	1	EA	\$3,262.50	\$3,262.50
7-06	8" WET CONNECTION	1	EA	\$2,898.97	\$2,898.97
7-07	SINGLE WATER SERVICE	2	EA	\$2,512.98	\$5,025.96
7-08	DOUBLE WATER SERVICE	6	EA	\$2,766.89	\$16,601.34
7-09	FIRE HYDRANT	2	EA	\$7,011.08	\$14,022.17
7-10	WATER TRENCH SAFETY	1,375	LF	\$0.86	\$1,188.29
7-11	8" PVC WASTEWATER LINE ALL DEPTHS	921	LF	\$61.65	\$56,780.29
7-12	DOUBLE WASTEWATER SERVICE	7	EA	\$2,269.69	\$15,887.82
7-13	STD. 4' WASTEWATER MANHOLE	3	EA	\$5,982.05	\$17,946.14
7-14	8" WASTEWATER CLEANOUT	1	EA	\$2,153.75	\$2,153.75
7-15	REMOVE PLUG AND CONNECT TO EXISTING, 8"	1	EA	\$2,333.20	\$2,333.20
7-16	WASTEWATER TRENCH SAFETY	921	LF	\$1.08	\$994.65
7-17	ADJUST EXISTING MANHOLE	1	EA	\$2,405.00	\$2,405.00
7-18	18" RCP CL III	186	LF	\$70.18	\$13,081.51
7-19	24" RCP CL III	100	LF	\$68.65	\$6,860.88
7-20	30" RCP CL III	658	LF	\$92.64	\$60,914.30
7-21	48" RCP CL III	117	LF	\$208.74	\$24,448.13
7-22	4' x 4' BOX MANHOLE	1	EA	\$5,787.75	\$5,787.75
7-23	6' x 6' BOX MANHOLE	1	EA	\$7,021.23	\$7,021.23
7-24	10 FOOT CURB INLET	3	EA	\$6,309.73	\$18,929.20
7-25	DRAINAGE TRENCH SAFETY	1,061	LF	\$1.03	\$1,087.52
7-26	2.5" HMAC	4,413	SY	\$18.60	\$82,073.28
7-27	10" CRUSHED LIMESTONE BASE	5,882	SY	\$12.78	\$75,163.40
7-28	8" LIME STABILIZED SUBGRADE	5,882	SY	\$8.63	\$50,780.52
7-29	TENSAR TX 130	5,882	SY	\$2.78	\$16,368.00
7-30	CONCRETE VALLEY GUTTER	1	EA	\$5,027.87	\$5,027.87
7-31	SIDEWALK RAMP WITH PAVERS (TYPE I)	20	EA	\$1,272.83	\$25,456.65
7-32	INSTALL STREET END BARRICADE	1	EA	\$1,241.88	\$1,241.88
7-33	REMOVE STREET END BARRICADE	1	EA	\$486.12	\$486.12
<b>SUBTOTAL - HERON DRIVE IMPROVEMENTS</b>					<b>\$691,383.28</b>
*a portion of the cost of Heron drive will benefit Improvement Area #2					
<b>SECTION 8 - EROSION CONTROL IMPROVEMENTS</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>COST/UNIT</b>	<b>TOTAL COST</b>
8-01	SILT FENCE	6,033	LF	\$3.47	\$20,951.32
8-02	INLET PROTECTION	46	EA	\$111.00	\$5,106.00
8-03	REVEGETATION (EXCLUDING CHANNELS)	94,924	SY	\$1.27	\$120,173.61
8-04	DIVERSION DIKE, COA 622S-1	403	LF	\$7.50	\$3,024.83
<b>SUBTOTAL - EROSION CONTROL IMPROVEMENTS</b>					<b>\$149,255.75</b>

**SECTION 9 - CLEARING/EXCAVATION/GRADING IMPROVEMENTS**

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
9-01	CLEARING AND GRUBBING	19	AC	\$1,691.67	\$32,141.65
9-02	STABILIZED CONSTRUCTION ENTRANCE	1	EA	\$2,105.20	\$2,105.20
9-03	EMBANKMENT	27,700	CY	\$3.56	\$98,612.00
9-04	EXCAVATION	48,800	CY	\$6.44	\$314,272.00
9-05	DEMOLISH AND REMOVE EXISTING FENCE	2,811	LF	\$3.14	\$8,819.51
9-06	RETAINING WALLS	2,120	FF	\$33.20	\$70,389.33
<b>SUBTOTAL - CLEARING/EXCAVATION/GRADING IMPROVEMENTS</b>					<b>\$526,339.70</b>

IMPROVEMENT CATEGORY	COST
WATER IMPROVEMENTS	\$1,447,906.60
WASTEWATER IMPROVEMENTS	\$1,179,330.79
DRAINAGE IMPROVEMENTS	\$2,101,294.03
LOCAL STREET IMPROVEMENTS	\$926,579.32
ALLEY IMPROVEMENTS	\$288,651.57
COLLECTOR IMPROVEMENTS	\$1,982,494.50
HERON DRIVE IMPROVEMENTS	\$691,383.28
EROSION CONTROL IMPROVMENTS	\$149,255.75
CLEARING/EXCAVATION/GRADING IMPROVEMENTS	\$526,339.70
TOTAL	\$9,293,235.54
CONTINGENCY (15%)	\$1,393,985.33
TOTAL WITH CONTINGENCY	\$10,687,220.88
PER LOT (253)	\$42,241.98

NOTE: WALLS RESULTING FROM DETAILED LOT GRADING ARE NOT INCLUDED IN THIS OPC.

NOTE: DOES NOT INCLUDE DRY UTILITIES, STREET LIGHTS, AND LANDSCAPING.

UNIT COSTS USED IN THIS ESTIMATE ARE BASED UPON RECENT CONSTRUCTION BIDS AND ENGINEER'S EXPERIENCE AND DOES NOT CONSTITUTE A WARRANTY, EXPRESS OR IMPLIED. ACTUAL COSTS WILL VARY.

## ENGINEERS OPINION OF PROBABLE CONSTRUCTION COSTS

**PROJECT:** Hillside Terrace Ph 2

**BASED ON:** Plan set dated 05/23/2022

**DATE:** 7/6/2022

**PREPARED BY:** Madison Mitchell, Garrett Lindsey

**REVIEWED BY:** Ashley Udelhofen

### SECTION 1 - WATER IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
1-01	8" WATER LINE PVC	3,461	LF	\$64.95	\$224,791.95
1-02	8" GATE VALVE	6	EA	\$2,370.28	\$14,221.66
1-03	2" FLUSHING VALVE	1	EA	\$3,262.50	\$3,262.50
1-04	8" WET CONNECTION	4	EA	\$3,907.80	\$15,631.20
1-05	SINGLE SERVICE	14	EA	\$2,512.98	\$35,181.72
1-06	DOUBLE SERVICE	50	EA	\$2,766.89	\$138,344.50
1-07	FIRE HYDRANT	6	EA	\$7,011.08	\$42,066.50
1-08	AUTOMATIC AIR RELEASE VALVE	1	EA	\$3,800.00	\$3,800.00
1-09	TRENCH SAFETY	3,461	LF	\$0.86	\$2,990.30
<b>SUBTOTAL - WATER IMPROVEMENTS</b>					<b>\$480,290.33</b>

### SECTION 2 - WASTEWATER IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
2-01	8" PVC WASTEWATER LINE ALL DEPTHS	2948	LF	\$61.65	\$181,751.57
2-02	SINGLE SERVICE	22	EA	\$2,047.52	\$45,045.44
2-03	DOUBLE SERVICE	46	EA	\$2,269.69	\$104,405.65
2-04	STD. 4' WASTEWATER MANHOLE	14	EA	\$5,982.05	\$83,748.67
2-05	4' DROP MANHOLE	2	EA	\$7,193.68	\$14,387.36
2-06	8" WASTEWATER CLEANOUT	1	EA	\$2,153.75	\$2,153.75
2-07	REMOVE PLUG AND CONNECT TO EXISTING, 8"	4	EA	\$2,333.20	\$9,332.81
2-08	TRENCH SAFETY	2,948	LF	\$1.08	\$3,183.84
<b>SUBTOTAL - WASTEWATER IMPROVEMENTS</b>					<b>\$444,009.09</b>

### SECTION 3 - DRAINAGE IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
3-01	18" RCP CL III	1,448	LF	\$70.18	\$101,614.85
3-02	24" RCP CL III	384	LF	\$68.65	\$26,361.60
3-03	30" RCP CL III	362	LF	\$92.64	\$33,536.59
3-04	36" RCP CL III	601	LF	\$123.63	\$74,301.63
3-05	42" RCP CL III	448	LF	\$166.92	\$74,779.04
3-06	48" RCP CL III	151	LF	\$208.74	\$31,520.12
3-07	54" RCP CL III	105	LF	\$293.80	\$30,849.00
3-08	6' X 3' RCB CL III	294	LF	\$337.03	\$99,086.82
3-09	4' x 4' BOX MANHOLE	3	EA	\$5,787.75	\$17,363.25
3-10	5' x 5' BOX MANHOLE	4	EA	\$6,138.98	\$24,555.92
3-11	6' x 6' BOX MANHOLE	2	EA	\$7,021.23	\$14,042.46
3-12	5' DIA. MANHOLE	1	EA	\$5,014.36	\$5,014.36
3-13	10 FOOT CURB INLET	15	EA	\$6,309.73	\$94,645.99
3-14	15 FOOT CURB INLET	1	EA	\$7,933.00	\$7,933.00
3-15	4'X4' AREA INLET	1	EA	\$4,983.35	\$4,983.35
3-16	3'X3' GRATE INLET	6	EA	\$2,854.95	\$17,129.68
3-17	CONNECT TO EXISTING 18" RCP	4	EA	\$1,825.50	\$7,302.00
3-18	CONNECT TO EXISTING 54" RCP	1	EA	\$2,375.00	\$2,375.00
3-19	18" HEADWALL COA 508S-13 W/ ENERGY DISSIPATORS	1	EA	\$2,391.07	\$2,391.07
3-20	36" HEADWALL COA 508S-13 W/ ENERGY DISSIPATORS	1	EA	\$6,732.50	\$6,732.50
3-21	6' x 3' RCB WINGWALLS TXDOT PW W/ PARALLEL WINGS	2	EA	\$14,147.00	\$28,294.00
3-22	MORTARED ROCK RIP RAP	46	SY	\$141.95	\$6,506.04
3-23	GRASS-LINED CHANNEL, TRIANGULAR WITH 3:1 SIDE SLOPES, INCLUDING REVEGETATION	2,033	LF	\$32.82	\$66,716.28
3-24	TRENCH SAFETY	3,793	LF	\$1.03	\$3,887.83
<b>SUBTOTAL - DRAINAGE IMPROVEMENTS</b>					<b>\$781,922.36</b>

SECTION 4 - LOCAL STREET IMPROVEMENTS					
ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
4-01	2" HMAC	10,395	SY	\$15.56	\$161,764.63
4-02	8" CRUSHED LIMESTONE BASE	13,800	SY	\$8.25	\$113,850.61
4-03	8" LIME STABILIZED SUBGRADE	13,800	SY	\$8.63	\$119,129.13
4-04	TENSAR TX 130	13,800	SY	\$2.78	\$38,398.70
4-05	SIGNAGE AND STRIPING	1	LS	\$15,000.00	\$15,000.00
4-06	CURB AND GUTTER	6,720	LF	\$18.12	\$121,753.98
4-07	P.C. CONCRETE SIDEWALK	3,703	SF	\$6.82	\$25,250.87
4-08	SIDEWALK RAMP WITH PAVERS (TYPE I)	26	EA	\$1,272.83	\$33,093.65
4-09	INSTALL STREET END BARRICADE	2	EA	\$1,241.88	\$2,483.75
4-10	REMOVE STREET END BARRICADE	5	EA	\$486.12	\$2,430.62
SUBTOTAL - LOCAL STREET IMPROVEMENTS					\$633,155.94
SECTION 5 - ALLEY IMPROVEMENTS					
ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
5-01	2" HMAC	3,751	SY	\$15.56	\$58,371.39
5-02	8" CRUSHED LIMESTONE BASE	5,943	SY	\$8.25	\$49,032.94
5-03	8" LIME STABILIZED SUBGRADE	5,943	SY	\$8.63	\$51,306.29
5-04	VERTICAL MOISTURE BARRIER	3,950	LF	\$9.70	\$38,331.83
5-05	RIBBON CURB	3,950	LF	\$14.66	\$57,924.36
5-06	TYPE II DRIVEWAY	6	EA	\$2,768.79	\$16,612.76
SUBTOTAL - ALLEY IMPROVEMENTS					\$271,579.57
SECTION 6 - COLLECTOR IMPROVEMENTS					
ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
6-01	2.5" HMAC	2,677	SY	\$18.60	\$49,787.06
6-02	10" CRUSHED LIMESTONE BASE	3,369	SY	\$12.78	\$43,049.51
6-03	8" LIME STABILIZED SUBGRADE	3,369	SY	\$9.70	\$32,694.38
6-04	TENSAR TX 130	3,369	SY	\$2.78	\$9,374.70
6-05	SIGNAGE AND STRIPING	1	LS	\$20,000.00	\$20,000.00
6-06	CONCRETE VALLEY GUTTER	2	EA	\$5,027.87	\$10,055.74
6-07	INSTALL METAL BEAM GUARD FENCE TXDOT DETAIL GF(31)-19 -INCLUDING END TREATMENTS	220	LF	\$88.75	\$19,525.00
6-08	HANDRAIL	180	LF	\$158.00	\$28,440.00
SUBTOTAL - COLLECTOR IMPROVEMENTS					\$212,926.39
SECTION 7 - EROSION CONTROL IMPROVEMENTS					
ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
7-01	SILT FENCE	3,165	LF	\$3.47	\$10,990.46
7-02	INLET PROTECTION	23	EA	\$111.00	\$2,553.00
7-03	REVEGETATION (EXCLUDING CHANNELS)	9,914	SY	\$1.27	\$12,551.03
SUBTOTAL - EROSION CONTROL IMPROVEMENTS					\$26,094.49
SECTION 8 - CLEARING/EXCAVATION/GRADING IMPROVEMENTS					
ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
8-01	CLEARING AND GRUBBING	5	AC	\$1,691.67	\$8,458.33
8-02	STABILIZED CONSTRUCTION ENTRANCE	2	EA	\$2,105.20	\$4,210.41
8-03	EMBANKMENT	6,700	CY	\$3.56	\$23,852.00
8-04	EXCAVATION	13,000	CY	\$6.44	\$83,720.00
8-05	DEMOLISH AND REMOVE EXISTING FENCE	1,572	LF	\$3.14	\$4,931.27
8-06	RETAINING WALLS	6,453	FF	\$33.20	\$214,255.83
SUBTOTAL - CLEARING/EXCAVATION/GRADING IMPROVEMENTS					\$339,427.84



IMPROVEMENT CATEGORY	COST
WATER IMPROVEMENTS	\$480,290.33
WASTEWATER IMPROVEMENTS	\$444,009.09
DRAINAGE IMPROVEMENTS	\$781,922.36
LOCAL STREET IMPROVEMENTS	\$633,155.94
ALLEY IMPROVEMENTS	\$271,579.57
COLLECTOR IMPROVEMENTS	\$212,926.39
EROSION CONTROL IMPROVEMENTS	\$26,094.49
CLEARING/EXCAVATION/GRADING IMPROVEMENTS	\$339,427.84
CONTINGENCY (15%)	\$478,410.90
<b>TOTAL</b>	<b>\$3,667,816.92</b>
PER LOT (155)	\$23,663.33

NOTES: WALLS RESULTING FROM DETAILED LOT GRADING ARE NOT INCLUDED IN THIS OPC.

NOTES: DOES NOT INCLUDE DRY UTILITIES, STREET LIGHTS, AND LANDSCAPING.

UNIT COSTS USED IN THIS ESTIMATE ARE BASED UPON RECENT CONSTRUCTION BIDS AND ENGINEER'S EXPERIENCE

AND DOES NOT CONSTITUTE A WARRANTY, EXPRESS OR IMPLIED. ACTUAL COSTS WILL VARY.

**Hillside - Estimate of Probable Cost***Improvement Area 1*

February 28, 2023

**LANDSCAPE IMPROVEMENTS**

item	qty	unit	price	cost
Secondary Trail	800	LF	\$32.84	\$26,268.00
Parkway	960	LF	\$173.93	\$166,972.78
Entry Road	2,700	LF	\$107.98	\$291,545.54
Roundabout	3	EA	\$34,313.91	\$102,941.72
Playground	1	ALLOW	\$100,000.00	\$100,000.00
Wet Pond Circulation	1	ALLOW	\$50,000.00	\$50,000.00
Upgraded Landscape Area	128,637	SF	\$3.41	\$439,132.60
All Other Green Space	250,707	SF	\$0.15	\$37,606.12
<b>AREA 1 LANDSCAPE IMPROVEMENTS SUBTOTAL</b>				<b>\$1,214,466.75</b>
<i>General Conditions</i>			<i>15%</i>	<i>\$182,170.01</i>
<i>Contingency</i>			<i>10%</i>	<i>\$121,446.68</i>
<b>AREA 1 LANDSCAPE IMPROVEMENTS TOTAL</b>				<b>\$1,518,083.44</b>



# CITY OF KYLE, TEXAS

## Discuss Feasibility of Utilizing Rainwater Harvesting System Design at Alternative Sites

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** Discussion regarding the feasibility of utilizing the rainwater harvesting system liftstation design from the Public Safety Center to another City project/location. ~ *Derek Bird, AGCM, City of Kyle Project Manager*

### **Other Information:**

### **Legal Notes:**

**Budget Information:** Funding in the amount of \$23,500.00 is available in the approved Fiscal Year 2022-2023 Capital Improvements Spending Plan for the Public Safety Center project as follows:

- \$23,500.00 for Lift Station Rain Harvesting System (2020 GO Bonds) 1951-67720-573170

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### **ATTACHMENTS:**

#### **Description**

- Design for Rainwater Harvesting System Liftstation







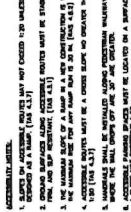




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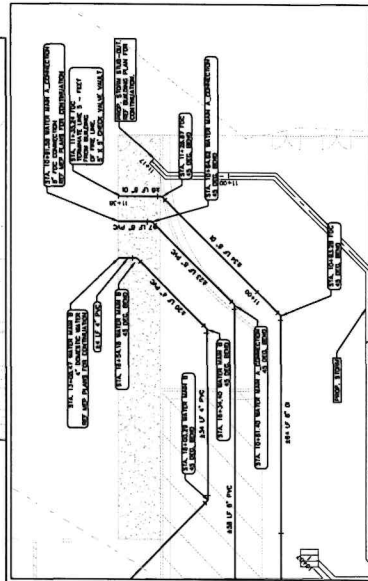
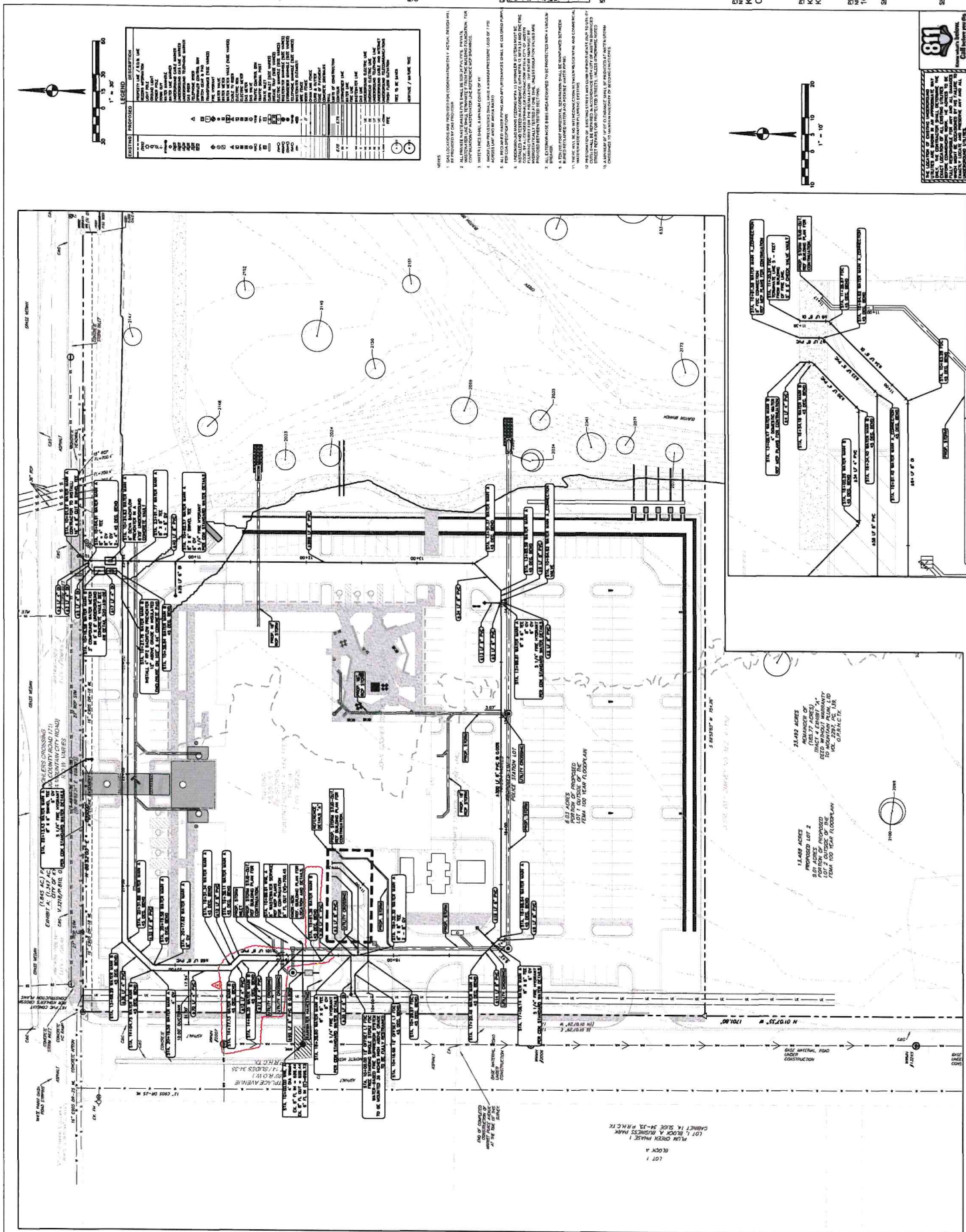










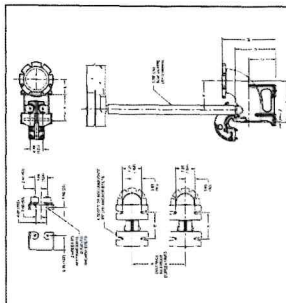




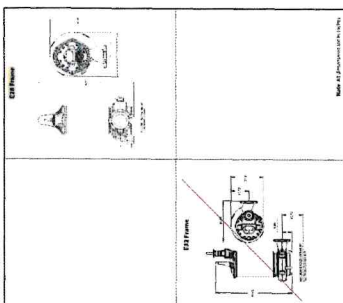




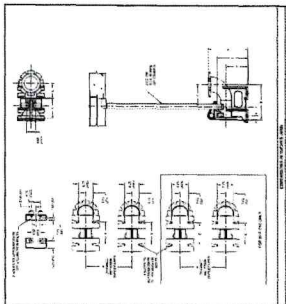
# 1" & 10" Break Away Fitting

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Series GESHOK BARNES



**BARNES** envee  
3", 4" & 6" Break Away Fitting  
Submersible Wet Dry Fit Accessories

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**BARNES** enviro  
es 6ESHD  
The Owner

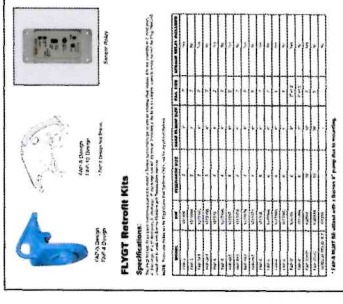


**Break Away Fitting**  
Submersible Wet Dry Fit Accessories

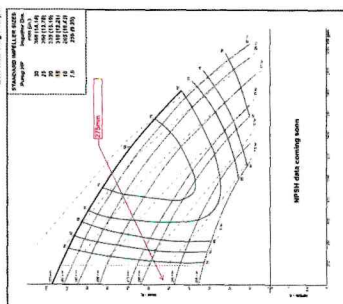


CRANE PUMPS & SYSTEMS

**BARNES** strive  
BAF FLYGT Retrofit Kit  
Submersible Win/Drp Pt. Anchors

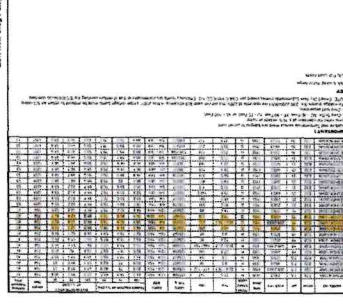


**BARNES**  
Series 6ESHDK  
Performance Curve  
7.5 - 30 hp (1700W - 60W)  
1/2" - 3/4" (12.7mm - 19.0mm)

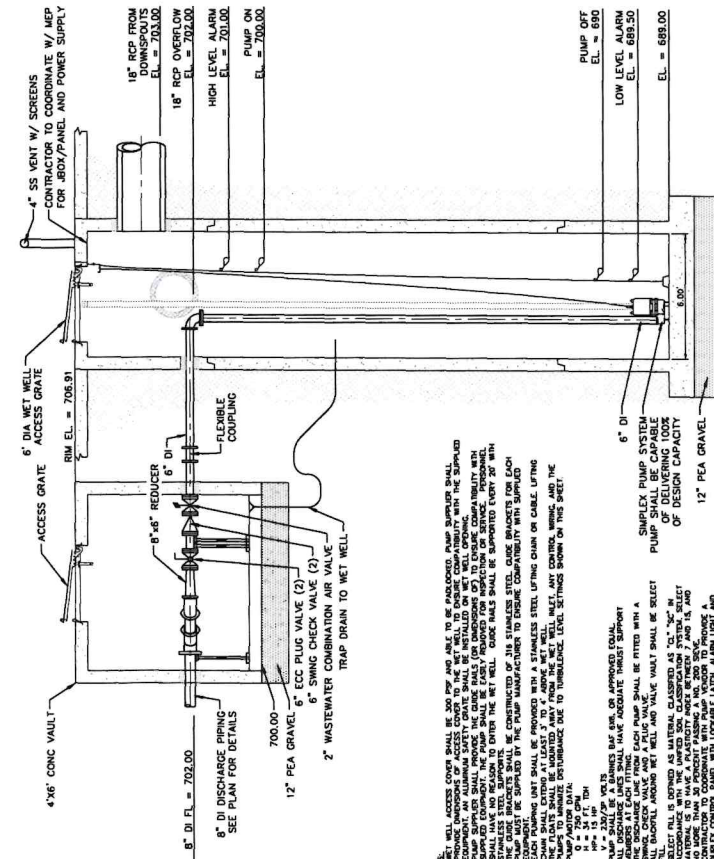


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**BARNES** and noble  
Series 6ESH



SECTION 28100 - PUMPS AND SYSTEMS



1 WET WELL SECTION  
NTS.

- THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF LOS ANGELES AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF LOS ANGELES AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF LOS ANGELES AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES.



# CITY OF KYLE, TEXAS

## Request Funding for Spay/Neuter Voucher Program \$22,250.00

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** Presentation, update, and possible action regarding spay/neuter/vaccinate program for City of Kyle including vouchers, requirements, participation, and costs. ~ *Jeff Barnett, Chief of Police*

### **Other Information:**

### **Legal Notes:**

**Budget Information:** The Police Department estimates that \$22,250.00 in funding will be required to implement a Spay and Neuter Voucher Program. The approved budget of the Police Department for Fiscal Year 2022-2023 does not include funding for the implementation of this new program.

Should the City Council consider authorizing the Police Department to implement a Spay and Neuter Voucher Program in Kyle, then the Council would need to direct the City's Director of Finance to bring back a budget amendment for Council's approval to appropriate \$22,500.00 from the General Fund balance to fund this program.

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### **ATTACHMENTS:**

#### **Description**

- ☐ Spay neuter voucher proposal



**KYLE  
POLICE**

**ANIMAL CONTROL DIVISION**

111 North Front Street, Kyle, TX 78640

512-268-3232

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**Budget Proposal for Spay/Neuter Voucher Program for Residents through Emancipet**

**Proposal:**

We are proposing to have 250 spay/neuter vouchers available to City of Kyle residents on a first come first serve basis. One voucher per address. The residents must be able to provide proof of residency to receive the voucher. The vouchers would cover the base cost of the spay/neuter surgery. The voucher will not cover the cost of vaccines, microchipping, or any additional costs recommended by Emancipet staff. Owners will be required to have their pet vaccinated for rabies if they can not provide proof of current rabies vaccination at time of surgery.

**Cost:**

The current cost of a spay or neuter surgery on a cat or dog through Emancipet is \$89. The cost for 250 surgeries is \$22,250. The vouchers would be able to be used at their Austin clinics or the mobile clinics that come to Hays County.



# CITY OF KYLE, TEXAS

Authorize Execution of Agreement  
for Professional Services provided  
by Catalyst Commercial \$25,000.00

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** Authorize execution of a professional services agreement with CATALYST COMMERCIAL, INC., Dallas, Texas, for total consulting fees in the amount not to exceed \$25,000.00 which includes reimbursable expenses at 115 percent of actual costs to provide services related to recruitment of targeted retail, hospitality, entertainment and destination recreation in the City of Kyle for the period April 1, 2023 through September 29, 2023. ~ *Victoria Vargas, Director of Economic Development*

**Other Information:**

**Legal Notes:**

**Budget Information:** Funding in the amount of \$25,000.00 is available from the General Fund in the approved budget for Fiscal Year 2022-2023 of the City's Economic Development Department as follows:

- 1100-11900-553220 (General Fund)

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**ATTACHMENTS:**

**Description**

- ☐ 2023 Catalyst PSA

**STATE OF TEXAS           §           AGREEMENT FOR PROFESSIONAL SERVICES**  
**COUNTY OF HAYS           §**

This Agreement (hereinafter “AGREEMENT”) is made by between the City of Kyle (hereinafter “City”), a Texas municipality organized under its home rule charter, and **Catalyst Commercial, Inc.**, (hereinafter "**Consultant**") a Texas corporation, acting by and through its authorized representatives:

**RECITALS:**

**WHEREAS**, the City desires to have the Consultant provide economic and real estate advisory services related to the activation of key mixed use areas within the City of Kyle, Texas (“Services”); and

**WHEREAS**, Consultant has the knowledge, ability and expertise to provide such SERVICES needed by the City; and

**WHEREAS**, the City desires to engage the services of Consultant as an independent contractor and not as an employee, to provide the Services under the terms and conditions provided in this Agreement;

**NOW, THEREFORE**, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

**A. TERM / TERMINATION**

1. The term of this Agreement shall begin on April 1, 2023. This Agreement shall continue until September 29, 2023, unless sooner terminated as provided herein. This Agreement shall be automatically extended annually or terminated by either party.
2. This Agreement may be terminated prior to the end of the term by either party, for any reason or for no reason, at any time upon thirty (30) days written notice by registered or certified mail, return receipt requested, addressed to the other party at the addresses listed below; provided, that in any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement.

**B. SCOPE OF SERVICES / RESPONSIBILITY OF THE PARTIES**

**Consultant’s Responsibilities and Authority.**

Provide ongoing economic development advisory services to support activities to activate real estate projects, assist with targeted recruitment strategies, and/or other economic development services, and any expenses required to carry out the services including but not limited to:.

1. Catalyst will work with staff to maintain a summary of key development sites.

2. Consultant shall support the City in scheduling meetings and/or represent the city at conferences.
3. Consultant shall on occasion field inquiries on Consultant's professional opinion regarding the highest and best use of certain properties or projects.
4. Consultant shall on occasion provide demographic information and requested reports from prospects, developers and/or City.
5. Consultant may support the entitlement and or planning of various sites and support staff, prospects, and or property owners in advisory services related to the activation of sites.

Reporting. During the term of this Agreement, Consultant shall provide monthly conference calls to update the City of results and statistics of Consultant's efforts in Kyle and provide brief monthly written reports to the City detailing the status of Consultant's delivery of the Services, including opportunity activity report/spreadsheet and communication log.

Consultant and City shall reassess and update strategy, as needed. [The](#) City or Consultant may, at any time, reasonably request a change to the Agreement for Professional Services. Any requested change that the parties mutually accept (a "Change") will be set forth in a written change order prepared by Consultant and agreed to and signed by both parties that specifically references the relevant changes in Services. In the event the parties are unable to mutually agree upon a proposed Change or a proposed change order, and such proposed Change relates to a material component of the project, either party may terminate such Agreement for Professional Services upon not less than thirty (30) days advance written notice to the other party.

Subconsultant and Third-Party Vendors: Consultant may enlist the efforts of Consultant's associates, and all Consultant's associates shall devote an amount of time and effort on Client's behalf as Consultant, in Consultant's sole discretion, determines necessary to carry out the duties described in this Agreement. Consultant and Consultant's employees, agents, affiliates, and associates are entitled to engage in other business activities including, but not limited to, representing other principals, listing properties for sale or lease, and presenting the same properties to other prospects.

Successors and Assigns: The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in party in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.

Renewal. This Agreement shall be renewed automatically on its anniversary date, unless terminated earlier by either party.

Fee Schedule: Consultant shall complete the Services based upon the fee schedule below:

1. Monthly tenant outreach at \$3,000/MO	\$18,000
2. ICSC RECon	\$2,500
3. RetailLive	\$500



Billing: City shall pay Consultant monthly based upon hourly rates set for the below, plus reimbursable expenses, including, but not limited to actual costs times 115% relating to any, travel, event costs lodging, reprographics, facilities rental, workshop supplies, and plotting to perform such Services. However, this Agreement shall not exceed **Twenty Five Thousand Dollars (\$25,000)** in the calendar year, unless amended in writing. All invoices shall be due upon receipt and paid within thirty (30) days. Any local, state or federal taxes applicable to any of the services provided by Contractor shall be added to the amount due. Any services undertaken by Consultant shall be compensated at the following rates:

\$300.00 per hour for principal

\$250.00 per hour for senior consultants

\$175.00 per hour associates

\$105.00 per hour for professional support staff

No Prejudice: Consultant, and/or its sub consultants (if any) shall not be barred from representing or providing services to the private sector for additional services during or after the termination of this Agreement for any engagements related to this work. Furthermore, Client acknowledges that Jason Claunch, principal for Consultant is a licensed real estate broker (TREC #0456163) and authorizes Consultant to act as an intermediary and to appoint its associated licensees to work with the parties in the event that broker also represents a buyer, or tenant, that wishes to purchase or lease property owned by the City. Consultant may act as an intermediary between a prospective buyer or tenant, subject to The Texas Real Estate License Act. Client hereby acknowledges and consents to Consultant acting as an intermediary. **No additional fees shall be due to Consultant, from City, except according to the fees set forth herein unless agreed to per separate agreement.**

In the event Consultant serves as an Intermediary, Consultant is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. If Consultant acts as an intermediary in a transaction Consultant:

- (1) shall treat all parties honestly;
- (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (4) may not disclose any confidential information or any information that a party specifically instructs the Consultant in writing not to disclose unless authorized in writing to disclose the information or required to do so by court order.

Closure: By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

**City:**

CITY OF KYLE

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

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

Its: \_\_\_\_\_

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

**Consultant:**

CATALYST COMMERCIAL, INC  
a Texas Corporation

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

Jason Claunch

Its: President

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

CATALYST COMMERCIAL  
3232 McKinney Avenue, 5<sup>th</sup> Floor  
Dallas, Texas 75204



# CITY OF KYLE, TEXAS

## Updated Interlocal Agreement for the Plum Creek Watershed Partnership

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** Approve an updated Interlocal Agreement (ILA) between the Plum Creek Watershed Partnership and the City of Kyle regarding the continued participation and implementation of the Plum Creek Watershed Protection Plan. ~ *Kathy Roecker, Stormwater Management Plan Administrator*

**Other Information:** In 2006, the Plum Creek Watershed Partnership (“PCWP”) was established to restore and protect the water quality in Plum Creek, a tributary of the San Marcos River in the Guadalupe River Basin. During the past few contract cycles, the original interlocal agreement was left in place, and a shorter renewal document was signed. The Financing Parties listed in the original agreement have changed; therefore, an updated interlocal agreement was needed.

In addition, in the original agreement, the ground rules for the steering committee were attached to the interlocal agreement. These ground rules should have the ability to be amended by the steering committee as things change so it was voted to make the ground rules a separate document. Language was added to the updated interlocal agreement that states the ground rules will be reviewed and updated by the steering committee, as needed, within 90 days of the execution of the renewed interlocal agreement.

**Legal Notes:** N/A

**Budget Information:**

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### ATTACHMENTS:

#### Description

- 2023 PLUM CREEK INTERLOCAL AGREEMENT AMENDMENT FINAL 4-3-23

**INTERLOCAL AGREEMENT AMENDMENT AND RENEWAL AMONG  
HAYS COUNTY, CALDWELL COUNTY, CITY OF LULING, CITY OF KYLE,  
CITY OF BUDA, CITY OF LOCKHART, CITY OF UHLAND,  
GUADALUPE-BLANCO RIVER AUTHORITY, PLUM CREEK  
CONSERVATION DISTRICT, AQUA WATER SUPPLY CORPORATION,  
CALDWELL-TRAVIS SOIL AND WATER CONSERVATION DISTRICT #304,  
AND HAYS COUNTY SOIL AND WATER CONSERVATION DISTRICT #351,  
REGARDING IMPLEMENTATION OF THE PLUM CREEK WATERSHED  
PROTECTION PLAN**

This Interlocal Agreement Amendment and Renewal (“Amendment”) is made and entered into, effective the \_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”) by and among Hays County, Texas (“Hays County”); Caldwell County, Texas (“Caldwell County”); City of Luling (“Luling”); City of Kyle (“Kyle”); City of Buda (“Buda”); City of Lockhart (“Lockhart”); City of Umland (“Umland”); Guadalupe-Blanco River Authority (“GBRA”); Plum Creek Conservation District (“PCCD”); Aqua Water Supply Corporation (“Aqua Water”); Caldwell-Travis Soil and Water Conservation District #304 (“Caldwell-Travis SWCD”); and Hays County Soil and Water Conservation District #351 (“Hays County SWCD”); jointly known as the “Financing Parties.” This Amendment is entered into by the Financing Parties pursuant to the authority granted and in compliance with the provisions of the “Interlocal Cooperation Act,” as amended, Chapter 791, Texas Government Code. This Amendment is intended to further the purpose of the Interlocal Cooperation Act, which is to increase the efficiency and effectiveness of local governments.

WHEREAS in 2006, the Plum Creek Watershed Partnership (“PCWP”) was established to restore and protect the water quality in Plum Creek, a tributary of the San Marcos River in the Guadalupe River Basin of Texas, and each Financing Party named above has representatives on the PCWP Steering Committee that is described in and operates under the PCWP Ground Rules dated May 5, 2006 (“Ground Rules”), throughout that time; and

WHEREAS since that time several million dollars have been dedicated to the development and implementation of the highly recognized Plum Creek Watershed Protection Plan (“WPP”); and

WHEREAS the Plum Creek WPP is a roadmap to restore water quality in Plum Creek and includes recommendations on data collection and water quality monitoring, implementation of best management practices to address pollution from agriculture and urban sources, and outreach and education; and

WHEREAS the Plum Creek WPP satisfies the U.S. Environmental Protection Agency’s (“EPA”) guidelines and expectations for a WPP; and

WHEREAS the Plum Creek Watershed Coordinator (“PCWP Watershed Coordinator”), through an existing grant from the Texas State Soil and Water Conservation Board (“TSSWCB”), EPA, and the Financing Parties, payable and available to the PCWP Watershed Coordinator, facilitates the PCWP; secures additional funding through writing grants; tracks the progress of implementing the Plum Creek WPP; and reports water quality trends resulting from implementation of the Plum Creek WPP; and

WHEREAS on July 11, 2011, the Financing Parties entered into the Interlocal Agreement Among Hays County, Caldwell County, City of Luling, City of Kyle, City of Buda, City of Lockhart, City of Uhland, Guadalupe-Blanco River Authority, Plum Creek Conservation District, Aqua Water Supply Corporation, Caldwell-Travis Soil and Water Conservation District #304, and Hays County Soil and Water Conservation District #351 for the protection of the Plum Creek Watershed (“Interlocal Agreement”); and

WHEREAS on November 20, 2018, the Financing Parties entered into the Renewal and Extension of the Interlocal Agreement Among Hays County, Caldwell County, City of Luling, City of Kyle, City of Buda, City of Lockhart, City of Uhland, Guadalupe-Blanco River Authority, Plum Creek Conservation District, Aqua Water Supply Corporation, Caldwell-Travis Soil and Water Conservation District #304, and Hays County Soil and Water Conservation District #351, Regarding Implementation of the Plum Creek Watershed Protection Plan (“Renewal and Extension”); and

WHEREAS the Financing Parties desire to ensure continued implementation of the Plum Creek WPP;

NOW THEREFORE, the Financing Parties have mutually agreed to amend and renew the Interlocal Agreement and to proceed as follows:

## **ARTICLE I PCWP WATERSHED COORDINATOR**

The Financing Parties agree to continue their support for the funding of a PCWP Watershed Coordinator for implementation of the Plum Creek WPP. Such program will continue to be the responsibility of the PCWP.

## **ARTICLE II MANAGING PARTNER**

GBRA was designated as Managing Partner by the PCWP Steering Committee, following the execution of the Interlocal Agreement, and will continue to serve in this role. The Managing Partner will be responsible for updating the job description and responsibilities of the PCWP Watershed Coordinator, as needed, with input from the PCWP Steering Committee. The PCWP Steering Committee will continue to follow the Ground Rules.

The Managing Partner will supervise the PCWP Watershed Coordinator. As needed, the Managing Partner, after consulting with PCWP Steering Committee members, will serve as the hiring manager to fill the PCWP Watershed Coordinator position in the event that the position becomes vacant. The Managing Partner may, at its discretion, form a hiring committee comprised of members selected from the PCWP Steering Committee. The PCWP Watershed Coordinator will continue to be housed at a location in the watershed that the Managing Partner approves of, after consulting with the PCWP Steering Committee.

## **ARTICLE III PLUM CREEK WATERSHED COORDINATOR**

The primary responsibilities of the PCWP Watershed Coordinator are stated and listed in Attachment A to this Amendment. Additionally, various other tasks of the PCWP Watershed Coordinator are stated and

listed on Attachment B.

#### **ARTICLE IV FUNDING**

Any payments made by or financial obligations of any Financing Party relating to this Amendment shall be made from current revenues available to the Financing Party and shall be made to the Managing Partner. The Managing Partner is authorized to deposit all funds received from Financing Partners pursuant to this Amendment in applicable bank accounts and is authorized to spend such funds to implement this Amendment in accordance with the approved budget, provided, however, that any proposed expenditure of funds herein in excess of \$1,000.00, except the salary of the PCWP Watershed Coordinator, shall be first approved by the PCWP Steering Committee. The Financing Parties agree that the estimated annual budget balance, not including a grant reward, is approximately \$48,000.00 with said amount being allocated among several Financing Parties in accordance with Attachment C to this Amendment.

The Financing Parties further agree that other opportunities for funding shall be actively pursued by the PCWP Steering Committee, the Managing Partner, and PCWP Watershed Coordinator throughout the term of this Amendment. Other sources of funding which shall be pursued include, but are not limited to, federal, state, non-profit, non-government affiliated private or public grants, and other state and federal funding opportunities.

#### **ARTICLE V STATISTICS AND DOCUMENTS**

The Managing Partner shall properly, accurately, and completely maintain all documents, papers, records, and other evidence regarding implementation of this Amendment. To further the purpose of cooperative administration of the activities described within this Amendment, the Managing Partner agrees, if requested, to make documents and record materials associated with expenditures under this Amendment available to each Financing Party, upon reasonable notice, and as often as each Financing Party may require for purpose of inspection, examination, and/or copying of same.

The Managing Partner shall maintain and retain a complete set of any and all documents, papers, records, and other evidence produced as a result of this Amendment and ensure that this Amendment is publicly available in the form of a PDF version of this Amendment on the PCWP website. If necessary, a reproduction of a document may be submitted and it shall be so marked.

#### **ARTICLE VI DISPUTES**

The Financing Parties agree to use due diligence to cooperate and communicate with each other to resolve any and all disputes which may arise under this Amendment. The Financing Parties agree that before they exercise the termination rights described in Article VIII, they will attempt to resolve the dispute and will allow the non-disputing Financing Parties the opportunity to cure the alleged dispute. In the event they are unable to do so, the Financing Parties agree to mediate the dispute prior to exercising their termination rights.

#### **ARTICLE VII**



## **TERM**

This Amendment shall be effective on the date the last of the Financing Parties signs this Agreement (the “Effective Date”) with the financing obligation described commencing for a period of one year beginning on the Effective Date. The term of this Amendment shall be automatically renewed each year for the duration of the federal grant funding provided through the TSSWCB, unless terminated earlier, as provided in Article VIII or amended as provided in Article IX.

## **ARTICLE VIII TERMINATION**

Termination of this Amendment shall coincide with the termination of federal grant funding provided through the TSSWCB and EPA. In the event a Financing Party to this Amendment determines it is in the best interest of that Financing Party to withdraw from this Amendment, the Financing Party may withdraw by giving written notice of such intent to the remaining Financing Parties at the addresses provided in Section X of this Amendment no later than May 31 of the calendar year.

The withdrawing Financing Party shall cooperate with the remaining Financing Parties to achieve a proper transition time period to allow the remaining Financing Parties to restructure the contributions provided by the remaining Financing Parties. The withdrawing Financing Party shall remain liable for such Financing Party’s allocated share of the budget for and including the entire PCWP fiscal year prior to such Financing Party’s withdrawal.

## **ARTICLE IX AMENDMENT**

No amendment, modification, or alteration of the terms of this Amendment shall be binding unless it is in writing, dated subsequent to the date hereof, and be agreed to and duly executed by each of the Financing Parties after official action by each of the respective governing bodies of the Financing Parties.

## **ARTICLE X NOTICES**

Notices to any Financing Party required or appropriate under this Amendment shall be deemed sufficient if in writing and mailed to the following addresses, USPS postage prepaid.

**To Hays County.** Notices to Hays County shall be addressed to:

Hays County Judge  
Hays County  
111 East San Antonio Street, Suite 300  
San Marcos, TX 78666

and to such other addresses as may hereafter be designated in writing by the Hays County Judge.

**To Caldwell County.** Notices to Caldwell County shall be addressed to:

Caldwell County Judge  
 Caldwell County  
 110 South Main Street  
 Lockhart, TX 78644

and to other such addresses as may herein be designated in writing by the Caldwell County Judge.

**To Luling.** Notices to Luling shall be addressed to:

City Manager  
 City of Luling  
 509 East Crockett  
 Luling, TX 78648

and to other such addresses as may herein be designated in writing by the City Manager of Luling.

**To Kyle.** Notices to Kyle shall be addressed to:

City Manager  
 City of Kyle  
 100 West Center Street  
 Kyle, TX 78640

and to other such addresses as may herein be designated in writing by the City Manager of Kyle.

**To Buda.** Notices to Buda shall be addressed to:

City Manager  
 City of Buda  
 405 E. Loop Street, Building 100  
 Buda, TX 78610

and to other such addresses as may herein be designated in writing by the City Manager of Buda.

**To Lockhart.** Notices to Lockhart shall be addressed to:

City Manager  
 City of Lockhart  
 P.O. Box 239  
 Lockhart, TX 78644

and to other such addresses as may herein be designated in writing by the City Manager of Lockhart.

**To Uhland.** Notices to Uhland shall be addressed to:

City Secretary  
 City of Uhland

15 N. Old Spanish Trail  
Uhland, TX 78640

and to other such addresses as may herein be designated in writing by the City Secretary of Uhland.

**To GBRA.** Notices to GBRA shall be addressed to:

General Manager  
Guadalupe-Blanco River Authority  
933 East Court Street  
Seguin, TX 78155

and to such other addresses as may herein be designated in writing by the General Manager of GBRA.

**To Plum Creek Conservation District.** Notices to Plum Creek Conservation District shall be addressed to:

Executive Manager  
Plum Creek Conservation District  
1101 W. San Antonio Street  
Lockhart, TX 78644

**To Aqua Water Supply Corporation.** Notices to Aqua Water Supply Corporation shall be addressed to:

General Manager  
Aqua WSC  
415 Old Austin Hwy  
Drawer P  
Bastrop, TX 78602

**To Caldwell-Travis SWCD.** Notices to Caldwell-Travis SWCD shall be addressed to:

Chairman  
Caldwell-Travis SWCD #304  
111 E Martin Luther King Jr Industrial Blvd, Suite B  
Lockhart, TX 78644

and to other such addresses as may herein be designated in writing by the Chairman of Caldwell-Travis SWCD.

**To Hays County SWCD.** Notices to Hays County SWCD shall be addressed to:

Chairman  
Hays County SWCD #351  
326 Cheatham Street  
San Marcos, TX 78666-6912

and to other such addresses as may herein be designated in writing by the Chairman of Hays County SWCD.

## **ARTICLE XI RELATIONSHIP OF FINANCING PARTIES**

Nothing contained herein shall be deemed or construed by the Financing Parties, or by any third party, as creating the relationship of principal and agent, joint venture, or any other similar relationship among the Financing Parties. It is understood and agreed that no provisions contained herein nor any acts of the Financing Parties hereto create a relationship among the Financing Parties other than that of independent contractor. In keeping with the provision of its services as an independent contractor, each Financing Party shall be responsible for its respective acts or omissions. No Financing Party has the authority to bind the other Financing Parties or to hold out to third parties that it has the authority to bind the other Financing Parties separately or collectively.

## **ARTICLE XII APPLICABLE LAW**

This Amendment shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Financing Parties created hereunder are performable in the counties of Guadalupe, Hays, Travis, or Caldwell, Texas.

## **ARTICLE XIII LEGAL CONSTRUCTION**

In case any one or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such shall not affect any other provisions hereof and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## **ARTICLE XIV COMPLIANCE WITH LAWS AND ORDINANCES**

The Financing Parties hereby agree to comply with all federal, state, and local laws and ordinances applicable to the work or services to be performed under this Amendment. The Financing Parties acknowledge that they are each subject to the Texas Public Information Act and the exceptions stated in such Act.

## **ARTICLE XV PARTIES BOUND**

This Amendment shall be binding upon and inure only to the benefit of the Financing Parties hereto and their respective successors and assigns where permitted by this Amendment.

## **ARTICLE XVI DEFINITIONS**

The “Financing Parties” means the entities that have executed this Amendment in their separate capacities.

The “Plum Creek Watershed Partnership” or “PCWP” means an unincorporated entity operating under the “PCWP Ground Rules.”

The “PCWP Steering Committee” is the group of individuals listed in the Ground Rules document, that directs the actions of the “Plum Creek Watershed Partnership” in accordance with the “PCWP Ground Rules” and with the terms of this Amendment.

The “Managing Partner” is the person or entity selected by the PCWP Steering Committee to be, and operates as, the managing partner of the PCWP and has the duties and responsibilities described in both the “PCWP Ground Rules” and in this Amendment.

In Witness Whereof, the Financing Parties have executed in multiple originals, each of which shall have the full force and effect of an original, this Amendment.

## Hays County

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

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

## City of Luling

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

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

## City of Buda

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

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

## City of Umland

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

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

## Plum Creek Conservation District

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

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

## Caldwell-Travis SWCD #304

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

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

## Caldwell County

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

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

## City of Kyle

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

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

## City of Lockhart

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

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

## Guadalupe-Blanco River Authority

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

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

## Aqua Water Supply Corporation

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

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

## Hays County SWCD #351

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

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



**ATTACHMENT A**  
**PRIMARY RESPONSIBILITIES OF PLUM CREEK WATERSHED COORDINATOR**

- Work with counties, cities, local boards and businesses to implement management measures identified in the Plum Creek WPP to improve water quality and develop funding mechanisms for putting them in place.
- Work with state and federal agencies and organizations, as appropriate, to bring technical and financial resources to the watershed.
- Pursue external funding to reduce or cover costs for the project (salary and operating).
- Track and document implementation efforts to assess progress toward established goals in the WPP.
- Evaluate water quality data to monitor progress and determine the need for new approaches.
- Coordinate and conduct water resources and related environmental outreach education efforts across the watershed, including organizing training programs and participating in local community clean-up events.
- Develop publications (e.g., newspaper, newsletter, factsheets), and website content to promote and communicate watershed efforts.
- Conduct regular stakeholder meetings, including PCWP Steering Committee and Work Group, throughout the watershed to gather and incorporate local input and encourage citizen participation.
- Provide Counties, Cities and other partners with regular updates on progress, and seek their input and recommendations on needed activities.

## **ATTACHMENT B PLUM CREEK WATERSHED COORDINATOR TASKS**

### **Agriculture**

- Coordinate with Soil and Water Conservation District Technician
- Secure funding to support financial incentive programs
- Organize, promote and participate in Texas AgriLife Extension Service education workshops and training events
- Develop and deliver educational programs on agriculture nonpoint source best management practices
- Develop and disseminate factsheets and other education materials (e.g., videos, slide sets) to promote adoption and proper management of best management practices
- Facilitate soil and water testing campaigns; conduct interpretive educational events
- Coordinate development of grant proposals
- Monitor and report progress of conservation practice program implementation
- Identify and implement innovative strategies to facilitate practice adoption and sustained management

### **Feral Hogs**

- Coordinate with Wildlife Extension Feral Hog Education Specialist
- Monitor and facilitate citizen use of the online reporting system to track feral hogs sightings and damage
- Facilitate delivery of updates on progress to County officials and other stakeholders
- Deliver education programs at workshops and other events
- Facilitate and assist with development and distribution of educational resources (e.g., factsheets, videos, etc.)
- Coordinate with Texas Wildlife Services to facilitate hog control efforts
- Monitor and report progress of feral hog programs and identify proactive strategies

### **Urban Stormwater**

- Work with city officials to identify programs and projects to mitigate stormwater nonpoint source
- Assist cities with development of grant proposals
- Assist city personnel with existing TCEQ CWA §319(h) nonpoint source projects in Kyle and Lockhart
- Facilitate stormwater management practice demonstrations
- Secure, develop and/or assist with the preparation and distribution of educational resources including factsheets, videos, slide sets, etc.
- Coordinate Sports Athletic Field Education (SAFE) workshops
- Coordinate community cleanup events and participate in environmental fairs in Kyle, Lockhart, and Luling

- Facilitate pet waste management outreach
- Monitor and report progress of urban nonpoint source programs and identify proactive strategies

#### Wastewater

- Coordinate septic system management workshops for homeowners and installer/ maintenance providers
- Assist cities and counties with Texas Water Development Board applications for wastewater infrastructure projects; including State Revolving Fund
- Facilitate fats, oils, and grease (FOG) workshops
- Interact with wastewater treatment facilities (WWTFs) to pursue voluntary permit upgrades
- Promote and assist with research efforts to determine and mitigate contributions from WWTF
- Pursue implementation of an unannounced inspection program for WWTFs
- Assist counties with expansion of inspection/enforcement programs for septic systems
- Develop and deliver educational resources and programs regarding the need for and methods of septic system management

#### General Partnership Duties

- Coordinate and conduct quarterly PCWP Steering Committee meetings and Work Group meetings as needed
- Actively promote widespread awareness and involvement in project implementation by stakeholders across the watershed
- Conduct regular communication with the PCWP and respond to stakeholder questions and concerns
- Facilitate communication and coordination among team members from all agencies and organizations
- Identify funding opportunities and develop and submit grant proposals to support implementation
- Perform quarterly analysis of targeted and routine water quality monitoring data
- Track management practice implementation across the watershed, both as a result of the project and external efforts
- Manage implementation grants; generate quarterly progress reports for grants and other funding sources
- Prepare the biennial update of the Plum Creek WPP including progress in implementation and needed modifications to goals and milestones
- Produce and distribute publications highlighting watershed implementation activities and specific best management practices
- Produce and distribute a quarterly newsletter
- Manage and update PCWP website content
- Manage and update Facebook site and Instagram page

- Produce and distribute press releases regarding key issues, programs and project efforts in the watershed
- Provide radio interviews regarding watershed developments; pursue a weekly radio program to discuss project efforts and public action
- Provide regular updates to city councils, county commissioner's courts, PCCD, soil and water conservation districts, TSSWCB, TCEQ, and other partner agencies, groups and organizations
- Develop material for inclusion in the TCEQ-TSSWCB Annual Report on Managing NPS Pollution in Texas and the GBRA CRP Basin Highlights Report and Basin Summary Report
- Facilitate adoption of appropriate city and county ordinances
- Perform advisory role in Central Texas Green Printing, regional water and wastewater studies, and other regional planning efforts on behalf of the PCWP
- Interact with ongoing local school water quality monitoring projects
- Participate in annual community events and festivals (Luling Foundation Field Day, Lockhart Rites of Spring, Luling Watermelon Thump, etc.) to promote citizen interaction to implement the WPP
- Facilitate special household hazardous waste and agricultural waste pesticide collection events
- Facilitate ongoing illegal dumping management programs
- Coordinate periodic tours/field days in the watershed for stakeholders and agency partners to demonstrate project efforts
- Pursue opportunities for increased public awareness including roadway signs, billboards, special events, etc.

**ATTACHMENT C**  
**FINANCING PARTIES COST BREAKDOWN**

Entities	2009 Population*	Area (sq. Miles)	Cost Portion		Total
			Population (50%)	Land (50%)	
Caldwell County	17,488	311.00	\$3,022.00	\$5,932.00	\$8,954.00
Hays County	8,622	72.00	\$1,490.00	\$1,208.00	\$2,698.00
Kyle	28,700	9.38	\$4,960.00	\$188.00	\$5,148.00
Lockhart	14,238	11.26	\$2,461.00	\$225.00	\$2,686.00
Luling	5,502	3.31	\$951.00	\$66.00	\$1,017.00
Buda	7,784	2.27	\$1,345.00	\$45.00	\$1,391.00
GBRA	26,110	388.00	\$4,513.00	\$7,775.00	\$12,287.00
PCCD	26,110	388.00	\$4,513.00	\$7,775.00	\$12,287.00
Uhland	457	1.83	\$79.00	\$37.00	\$116.00
Aqua WSC	3,855		\$666.00	\$749.00	\$1,416.00
Total	138,866	1,187.05	\$24,000.00	\$24,000.00	<b>\$48,000.00</b>

\*Population that falls within the Plum Creek Watershed



# CITY OF KYLE, TEXAS

Dacy Lane LLC - Zoning (Z-23-0113)

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** *(First Reading)* An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 4.68 acres of land from 'RS' (Retail Services) to 'R-1-T' (Townhomes) for property located at 1290 Bebee Road in Hays County, Texas. (Dacy Lane LLC - Z-23-0113) ~ *Will Atkinson, Director of Planning*

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

- Public Hearing

**Other Information:** See attachments.

**Legal Notes:** N/A

**Budget Information:** N/A

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## **ATTACHMENTS:**

### **Description**

- ☐ Staff Report
- ☐ Summary Letter
- ☐ Ordinance
- ☐ Landowner Authorization Form
- ☐ Franchise Tax Status Form
- ☐ Deed
- ☐ Plat



<b>Property Location</b>	<b>Approximately 430’ W of Dacy Lane &amp; Bebee Rd Intersection (south side of Bebee Rd.), Kyle, TX 78640</b>
<b>Owner</b>	<b>Dacy Lane, LLC 2308 Cypress Point West Drive, Austin, TX 78746</b>
<b>Agent</b>	<b>Hunter Biechlin Vincent Gerard &amp; Associates 1715 Capital Texas Hwy, Ste. 207 Austin, TX 78746.</b>
<b>Request</b>	<b>Rezone 4.66-Acres RS (Retail Services) to 4.66-Acres R-1-T (Residential Townhouse District)</b>

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**Site Description**

The site, also known as “Dacy Village Lot 4” is an undeveloped parcel zoned RS (Retail Services). It is currently in review to be platted. To the north and across Bebee Rd is vacant land zoned “A” or “Agriculture and owned by the City of Kyle and two residential lots. To the southeast are three “RS” lots. One, adjacent to Dacy Village Lot 4 and abutting Bebee Rd, is under construction (convenience store & fuel sales). To the south is the Lakeside Crossing Manufactured Home park and to the northwest is the Hays Junction Apartments (zoned R-3-3).

The applicant seeks to rezone the property from “RS” (Retail Services) to “R-1-T” (4.66-Acres).

## Current Zoning



### RS (Retail Services)

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

This district allows general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes, including most in-store retail sales of

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

(Ord. No. 438, § 42(a), 11-24-2003)

## **Requested Zoning**

R-1-T (Residential Townhouse District, R-1-T)

### **Sec. 53-140. - Purpose and permitted use.**

The residential townhouse district R-1-T allows attached single-family structures containing four or more dwelling units with a minimum of 1,000 square feet of living area per unit and permitted accessory structures. The single-family residences authorized in this zoning district are those generally referred to as townhouses. There shall be no more than ten units per buildable acre of land within the associated boundary of the premises of the townhouse site.

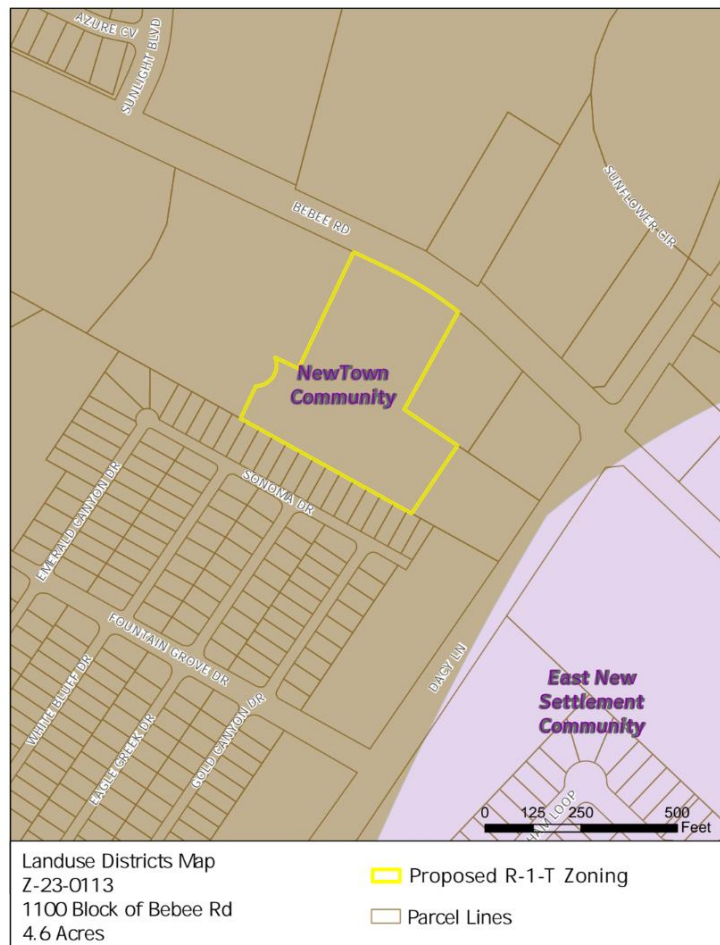
(Ord. No. 438, § 29(a), 11-24-2003)

## **Conditions of the Zoning Ordinance**

### **Sec. 53-1205 Amendments**

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

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



## Comprehensive Plan Text

The subject site is located in the “New Town Community” District. The R-1-T zoning district is recommended in the “New Town Community” District.

## Current Land Use Chart

### New Town Community

Recommended Zoning Categories: R-1-1, R-1-2, R-1-3, R-1-C, **R-1-T**, R-2, R-3-2, R-3-3, CC, NC, RS, MXD, O/I

Conditional Zoning Categories: E, A, C/M, R-1-A, R-3-1, RV, T/U, UE, HS, W

### **New Town Community**

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

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

As parcels along major roadways and along side high capacity wet utilities come available, the development density of those parcels should be established higher than other areas of the city, especially any properties in proximity to either I-35, FM 1626 or both. The purpose of the New Town District is to harness economic development potential and establish its position as the sustainable center of surrounding growth. The leading way to make this a reality is to build off the strength of the urban form supported in the Core Area Transition District, make use of the transportation network already in place that runs through and along this district, and enable more uses and architectural types that blend well into the urban design form. This District should provide economic support to Kyle based on locational advantages gained by access to growth advancing from south Austin and nodal developments on the northern side of Kyle. Mixed-Use development should be encouraged, not only permitted, to maximize economic development. This can be achieved by aggregating appropriate densities in order to support a mixture of uses.

Development patterns and employment opportunities should be created in the New Town District that do not conflict with the surrounding community fabric. Establishing mixed use zoning districts and employment districts will compliment the existing retail and service uses present today, and should be supported by the adjacent residential and future integrated multi-family residential.

## **Analysis**

Dacy Village Lot 4 is a platted lot requesting to be rezoned from RS to R-1-T. The lot is approximately 430-feet west of the intersection of Dacy Lane and Bebee Road (south side of Bebee), between the Hays Junction Apartment community and a convenience store/fuel sales (under construction). This stretch of Bebee Road, especially on the south side of the street, has a significantly high density/intensity of uses (Hays Junction – 28 units per acre, and RS lots and uses at the intersection).

The City of Kyle Comprehensive Plan (updated in September of 2019), shows this area to be within the “New Town Community” land use district. This land use district anticipates a mix of reasonably high intensity of land uses (with appropriate densities), as well as middle to lower density uses as well. The more intense uses (multifamily, commercial, vertical mixed use) would typically be along major road networks/intersections with higher capacity wet utilities (Bebee Road, Dacy Lane). Less intense uses would be off of smaller classification roads or between major intersections (Single family residential). In most cases, the Comprehensive Plan calls for various types of residential and commercial opportunities related to retail and office uses.

Regarding Dacy Village Lot 4, the R-1-T zoning district is an appropriate request. To the west, the Hays Junction Apartments are allowed to operate at a maximum density of 28 units per buildable acre. To the east, of Dacy Village Lot 4, the RS zoning district has a significant number of high intensity commercial uses (as appropriate for a major intersection). The R-1-T district fits in between these developments at a maximum density of 10 units per buildable acre, though parking requirements may bring this number down.

The R-1-T district only allows the land use of Townhomes in this district. Townhomes are a much needed housing type that offers another option for those citizens seeking home ownership.



### Adequate Road Network To and From The Site

The site will have access to Dacy Lane through an access easement to the east, and direct access onto Bebee Road. Given the small acreage of the site, it's not likely to have a significant impact on the existing road network. When developed, the lot will be required to dedicate rights-of-way for future widening, likely pay the City's road fee given the small scale of the project and per City of Kyle requirements. Additionally, upgrades to Bebee Road have been approved as part of the City's Road Bond program.

### Adequate Wastewater Availability

Adequate water and wastewater services exist in close proximity to the site. The City of Kyle will serve both water and wastewater. Power will be provided by Pedernales Electric Cooperative.

**At the April 11<sup>th</sup>, 2023 Planning & Zoning Commission meeting, the Commission voted 6-0 to recommend approval of the request (Commissioner Mata absent). Discussion centered favorably on promotion of missing middle/step up housing and that Bebee Road will be improved through the road bond program.**

### **Recommendation**

In conclusion, given the need for the proposed housing type, future upgrades to Bebee Rd., and adjacent zoning/land uses that are compatible with the request, staff supports the rezoning from "RS" (Retail Services) to R-1-T (Residential Townhouse District) for the Dacy Village Lot 4 as requested.



## VINCENT GERARD AND ASSOCIATES, INC.

Mr. Will Atkinson  
Director, Planning & Development  
City of Kyle Texas

February 23, 2023

**RE: Summary Letter for Dacy Village Townhomes Rezone – R1T Zoning 4.6 Acres**  
Legal description – Lot 4 Block B Dacy Village Subdivision

Mr. Atkinson,

The owners of Lot 4 Block B in Dacy Village are requesting a rezone from RS Retail Services to R1T Residential Townhome. The project had originally filed in 2020 for R1C Residential condos but were denied at that time by City Council. The reason provided by Council was the inadequate traffic and roadway status on Bebee Road. The lot is just east of the Dacy Lane and Bebee road intersection. Originally, the developers and owners thought that retail services would be a marketable land use on this 4.6-acre tract. The hard corner of the tract has been developed with convenience/gas facility. An aerial survey prepared by our office shows an abundance of undeveloped retail tracts in the immediate area. The market trends do not align with more retail. What has interested some developers is a medium density townhome project. The concept provided shows 30 attached townhomes for affordable residential starter townhomes such that was successful in early phases of Plum Creek. With a K-5 Elementary school within walking distance and a City of Kyle regional park across the street, we feel that the development would be successful with a rezone to R1T.

Recent Road Bond approval packages for Kyle last November, including Bebee Road improvements to IH 35, should alleviate the transportation concerns by Council.

### **Traffic Study**

We did a traffic report and analysis based on the questions of previous council on traffic increases. It was prepared by Amer Gilani, PE with CBD Engineering. Mr. Gilani is a traffic engineer. His study is included in the submittal package and clearly shows less traffic is generated with the Townhome zoning requested.

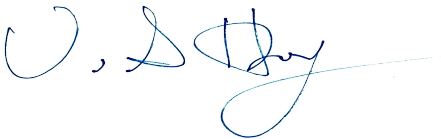
### **Townhome Concept Plan**

A concept plan is also part of the submittal package. It shows 30 attached townhome units. A home builder/developer could attach the minimum of 4 townhomes along the main residential street, however around the north cul-de-sacs it would be difficult to

maintain the 4 attached minimum. We believe the market and homebuyers would be more attracted for two (2) attached units. The thought for zoning category R1A was studied, however the unit yield and lot sizes fail to comply with R1A zoning requirements. The design for this concept is to access as many units as possible from a rear one way alley, thereby opening up the street scene. Two car detached garages would be placed on the one way 15' private access alley. Due to the configuration of Lot 4, this is not always possible. On the townhomes with direct road front access and attached garages, depth for 4 off street parking spaces has been provided. The owners want to reserve the right to subdivide the tract into smaller townhome lots, dedicating public roadway for the main street and leaving the alley access as private maintained one-way access easements. The minimum lot size of 880 sf is obtainable. Most lots are 40' wide with a common wall for one side lot line. The products shown are generous size townhomes, each having 3 bedrooms to attract young families. The product averages 30-35' wide & some may be 2 story. The concept has 2 points of access, one main public road out to Bebee Road and the common access easement from Dacy Lane. Dacy Lane will be gated with a Knox box for fire access. Please note, this Townhome concept plan is for illustration and zoning purposes only and does not commit a future developer builder to the exact plans.

If you have any questions, please let us know.

Sincerely



Vincent G. Huebinger

*Xc: Spence Collins*

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

**AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 4.68 ACRES OF LAND FROM ‘RS’ (RETAIL SERVICES) TO ‘R-1-T’ (TOWNHOMES) – FOR PROPERTY LOCATED AT 1290 BEBEE ROAD 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 4.68 acres from ‘RS’ (Retail Services) to ‘R-1-T’ (Townhomes) for property located at 1290 Bebee Road in Hays County, Texas and the subdivision plat 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.

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

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

**READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING** by the City Council of Kyle at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, 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 \_\_\_\_\_, 2023, at which a quorum

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

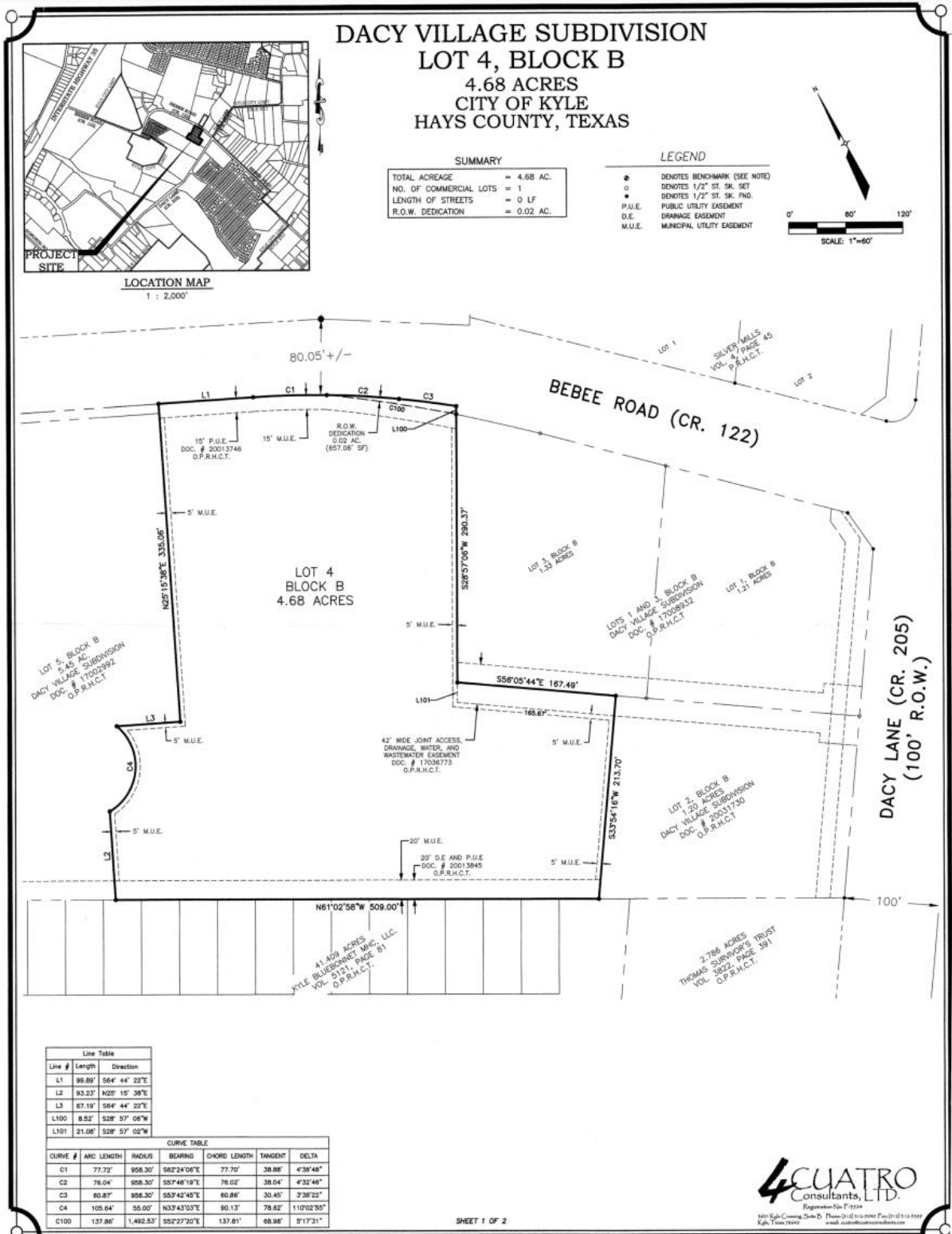
APPROVED this \_\_\_\_\_day of \_\_\_\_\_, 2023.

ATTEST:

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

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

# Exhibit A





**DACY VILLAGE SUBDIVISION  
LOT 4, BLOCK B  
4.68 ACRES  
CITY OF KYLE  
HAYS COUNTY, TEXAS**

STATE OF TEXAS *Waco*  
COUNTY OF *HAYS*

KNOW ALL MEN BY THESE PRESENTS, THAT DACY LANE, LLC, OWNER OF THAT CERTAIN TRACT CONVEYED BY GENERAL WARRANTY DEED, RECORDED IN DOCUMENT NUMBER 2011-11022936 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE 4.68 ACRES IN ACCORDANCE WITH THE ATTACHED MAP OR PLAT TO BE KNOWN AS "DACY VILLAGE SUBDIVISION LOT 4, BLOCK B", SUBJECT TO ANY EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

I (WE) FURTHER ACKNOWLEDGE THAT THE DEDICATIONS AND/OR EXACTIONS MADE HEREIN ARE PROPORTIONAL TO THE IMPACT OF THE SUBDIVISION UPON THE PUBLIC SERVICES REQUIRED IN ORDER THAT THE DEVELOPMENT WILL COMPORT WITH THE PRESENT AND FUTURE GROWTH NEEDS OF THE CITY; I (WE), MY (OUR) SUCCESSORS AND ASSIGNS HEREBY WAIVE ANY CLAIM, DAMAGE, OR CAUSE OF ACTION THAT I (WE) MAY HAVE AS A RESULT OF THE DEDICATION OF EXACTIONS MADE HEREIN.

WITNESS MY HAND THIS 22<sup>nd</sup> DAY OF September, 2020.

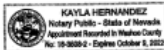
BY: JONATHAN W. CHENG  
DACY LANE, LLC  
2308 CYPRESS POINT WEST DRIVE  
AUSTIN, TEXAS 78746

BEFORE ME, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED JONATHAN W. CHENG, KNOWN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED, AND IN THE CAPACITY THEREIN STATED, GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 22<sup>nd</sup> DAY OF September, 2020.

(SEAL)

NOTARY PUBLIC'S SIGNATURE

WITNESS MY HAND THIS 20<sup>th</sup> DAY OF September, 2020.

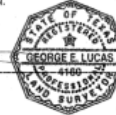


**PLAT NOTES:**

- NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE OR THE EDWARDS AQUIFER CONTRIBUTING ZONE.
- THIS SUBDIVISION LIES WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
- BUILDING SETBACK LINES SHALL BE IN CONFORMANCE WITH CITY OF KYLE ZONING ORDINANCE REQUIREMENTS.
- NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE 100 YEAR FLOOD PLAIN AS DELINEATED ON HAYS COUNTY COMMUNITY PANEL 48209C 0290F, DATED SEPTEMBER 2, 2005.
- UTILITY SERVICE:  
ELECTRIC: PEDERNALES ELECTRIC COOPERATIVE  
TELEPHONE: FRONTIER COMMUNICATIONS  
WATER: CITY OF KYLE  
WASTEWATER: CITY OF KYLE  
NATURAL GAS: CENTERPOINT ENERGY
- A 5-FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ALONG EACH SIDE BOUNDARY OF THE PROPERTY.  
A 10-FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ALONG THE REAR BOUNDARY OF THE PROPERTY.
- NO BUILDING, ACCESSORY BUILDING, FENCING, OR LANDSCAPING WHICH INTERFERE WITH THE FLOW OF STORM WATER SHALL BE PLACED OR ERRECTED WITHIN A NATURAL DRAINAGE WAY OR DRAINAGE EASEMENT.
- TYPICAL LANDSCAPE MAINTENANCE, CUTTINGS AND TRIMMINGS, WITHIN THE SUBDIVISION, ALL EASEMENTS, DETENTION PONDS, AND RIGHTS OF WAYS TO THE STREET PAVEMENT TO BE THE RESPONSIBILITY OF PROPERTY OWNERS AND/OR PROPERTY OWNERS ASSOCIATIONS.
- SIDEWALKS, PEDESTRIAN CROSSINGS, AND OTHER PUBLIC AMENITIES TO BE DEDICATED TO THE CITY OF KYLE SHALL MEET OR EXCEED ALL 2010 ADA STANDARDS OF ACCESSIBILITY FOR TITLE II ENTITIES.

**SURVEYOR:**  
STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT, THAT IT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT ALL NECESSARY SURVEY MONUMENTS ARE CORRECTLY SET OR FOUND AS SHOWN HEREIN.



GEORGE E. LUCAS,  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4160  
CELCO SURVEYING, FIRM REGISTRATION NO. 10193975  
2205 STONECREST PATH  
NEW BRAUNFELS, TEXAS 78130  
OFFICE (512) 635-4857

**ENGINEER:**  
STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT.

HUGO ELIZONDO, JR.,  
REGISTERED PROFESSIONAL ENGINEER NO. 69781  
CUATRO CONSULTANTS, LTD.  
3601 KYLE CROSSING, SUITE A  
KYLE, TEXAS 78640



**CITY OF KYLE:**  
STATE OF TEXAS  
COUNTY OF HAYS

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

DATED THIS 4<sup>th</sup> DAY OF October, 2020.

HOWARD J. KOONTZ, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

REVIEWED BY:

City Engineer: 10/13/20 DATE  
Director of Public Works: 10-13-20 DATE

STATE OF TEXAS  
COUNTY OF HAYS

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

ON THE 23<sup>rd</sup> DAY OF October, A.D., 2020, AT  
8:34 O'CLOCK P.M., IN THE PLAT RECORDS OF HAYS COUNTY,  
TEXAS IN DOCUMENT NO. 20047963 WITNESS MY HAND

AND SEAL OF OFFICE THIS THE 23<sup>rd</sup> DAY OF October, A.D., 2020  
Elaine H. Cardenas by: Sara Kretzschmar, Deputy  
ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS



**4 CUATRO**  
Consultants, LTD.  
Registration No. T-5929  
3601 Kyle Crossing, Suite B, Phone (512) 313-6990 Fax (512) 313-6990  
Eggs, Texas 78640 email: info@cuatroconsultants.com



LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

**SUBJECT PROPERTY INFORMATION**

Subdivision Name, Block, Lot, or legal description if not subdivided: Dacy Village Block B Lot 4 4.68 ac  
# of lots (if subdivided): 1 # of acres: 4.68 ac.  
Site APN/Property ID #(s): R 172769, Geo ID 11-2314-000B-00400-2  
Location: Bebee Road & CR 205 County: Hays  
Development Name: Dacy Village Lot 4 Block B

**OWNER**

Company/Applicant Name: Dacy Lane LLC  
Authorized Company Representative (if company is owner): C/O Jonathan Cheng  
Type of Company and State of Formation: Texas LLC  
Title of Authorized Company Representative (if company is owner): Manager  
Applicant Address: 2933 West Carson Street Torrance CA 90503  
Applicant Fax: N/A  
Applicant Phone: 617-308-4268  
Applicant/Authorized Company Representative Email: joncheng@gmail.com

**APPLICANT REPRESENTATIVE**

Check one of the following:

\_\_\_\_. I will represent the application myself; or

X I hereby designate Vincent Gerard & Assoc. Inc, Vincent Huebinger to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

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

Owner's Signature: [Signature] Date: 10/29/2022

State of Nevada §

County of Washoe §

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.).

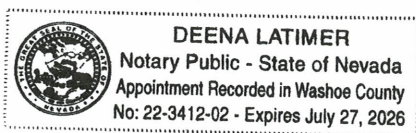
**State of Nevada, County of Washoe**

SUBSCRIBED AND SWORN TO before me, this  
the 29th day of October, 2022

[Signature]  
Notary Public's Signature

My Commission Expires July 27, 2026

(Notary Seal)



PROJECT REPRESENTATIVE

Representative Name: Vincent G. Huebinger – Vincent Gerard & Associates Inc.

Representative Address: 1715 S Capital of Texas Highway Suite 207 Austin Texas 78746

Representative Phone: O - (512) 328-2693, M - (512) 423-0853

Representative Email: Vinceh@vincentgerard.com

Representative's Signature:  Date: 10/27/2022



## Franchise Tax Account Status

As of : 02/28/2023 09:06:08

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

DACY LANE, LLC	
<b>Texas Taxpayer Number</b>	32045128116
<b>Mailing Address</b>	11220 WOODLAND HILLS TRL AUSTIN, TX 78732-2177
<b>❓ Right to Transact Business in Texas</b>	ACTIVE
<b>State of Formation</b>	TX
<b>Effective SOS Registration Date</b>	09/21/2011
<b>Texas SOS File Number</b>	0801483506
<b>Registered Agent Name</b>	CHARLES R. HUFFINGTON
<b>Registered Office Street Address</b>	11220 WOODLAND HILLS TRAIL AUSTIN, TX 78732

\*\*\*\* Electronically Filed Document \*\*\*\*

Hays County Texas  
Liz Q. Gonzalez  
County Clerk

Document Number: 2011-11022936  
Recorded As : ELECTRONIC RECORDING

Recorded On: September 30, 2011  
Recorded At: 10:32:07 am  
Number of Pages: 6  
Book-VI/Pg: Bk-OPR VI-4198 Pg-372  
Recording Fee: \$32.00

Parties:

Direct- BERRONG FLORENCE W  
Indirect- DACY LANE LLC

Receipt Number: 286220  
Processed By: Lynn Curry

\*\*\*\*\* 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.



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*

Liz Q. Gonzalez, County Clerk



RETURN TO:  
**ALAMO TITLE COMPANY**  
 901 S. MOPAC EXPRESSWAY  
 BLDG. III, SUITE 100  
 AUSTIN, TEXAS 78746-5776  
 GF# ALA11001659-6

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL 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.

**GENERAL WARRANTY DEED WITH VENDOR'S LIEN**

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

**FLORENCE W. BERRONG** ("Grantor"), for and in consideration of (i) the execution and delivery of that certain Promissory Note in the original principal sum of FOUR HUNDRED AND SIX THOUSAND TWO HUNDRED AND FIFTY AND NO/100 DOLLARS (\$406,250.00) (the "Note"), which is secured by a vendor's lien retained in favor of **Equity Secured Capital, L.P.**, a Texas limited partnership, in this deed and by a deed of trust of even-date from Grantee to **Eric J.W. Visser, Trustee**; and (ii) Grantee's express agreement to pay all ad valorem taxes accruing against the Property (as hereinbelow defined) for the 2011 calendar year and all subsequent years; and (iii) other good and valuable consideration to Grantor in hand paid by **DACY LANE, LLC**, a Texas limited liability company ("Grantee"), whose mailing address is 2308 Cypress Point West Drive, Austin, Travis County, Texas 78746, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, has **GRANTED, SOLD AND CONVEYED**, and by these presents does **GRANT, SELL AND CONVEY**, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described real property, together with all appurtenances thereto and improvements thereon, if any (the "Property"), to-wit:

**APPROXIMATELY 23.77 ACRES** of land being out of and a portion of the **DANIEL DOWNER SURVEY NO. 22, ABSTRACT NO. 151; THOMAS G. ALLEN SURVEY, ABSTRACT NO. 26; AUGUSTUS BRICHTA SURVEY, ABSTRACT NO. 517; ELISHA PRUETT SURVEY NO. 23, ABSTRACT NO. 378;** and the **JOHN STEWART SURVEY, ABSTRACT NO. 14**, in Hays County, Texas, and being a portion of that tract of land called 27.097 acres conveyed to Joseph B. Berrong in the deed recorded in Volume 244, Page 527, of the Deed Records of Hays County, Texas; **SAVE AND EXCEPT** that called 2.309 acre portion, that called 0.471 of one acre portion, and that called 0.368 of one acre portion thereof, all conveyed to Hays County in deeds recorded in Volume 1200, Page 756, Volume 1200, Page 781, and Volume 3911, Page 40, Official Public Records of Hays County, Texas. Said 23.77 acre remainder tract being more particularly described by metes and bounds in Exhibit "A-1", attached hereto.

**TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to herein, Grantor does hereby bind itself and its successors to **WARRANT AND FOREVER DEFEND** all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof;

provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all easements, rights of way, leases, reservations, mineral severances, covenants, conditions, restrictions and other title exceptions which affect the Property and including those revealed in or by the recorded documents on file with the Clerk of Hays County, Texas, including those listed in **Exhibit "B"** attached hereto and incorporated herein for all purposes (b) all regulations, restrictions, laws, statutes, ordinances, obligations or other matters which affect the Property and which are imposed by or exist by reason of any regulatory, governmental, or quasi-governmental districts, entities, agencies, authorities or other bodies of any kind or nature

("Governmental Authorities"); (c) all prescriptive rights, discrepancies, conflicts, shortages in area, encroachments or overlapping of improvements, and all rights of adjoining landowners in or to any walls, fences or other improvements situated on or across any common boundary; and (d) all standby fees, taxes and assessments by any taxing authority for all tax years beginning on January 1, 2011 and all subsequent years, and all liens securing the payment of any of the foregoing. Ad valorem taxes with respect to the Property for the current year have been prorated by and between Grantor and Grantee. By acceptance of this deed, Grantee assumes and agrees to pay and indemnifies and agrees to hold Grantor harmless from and against all ad valorem taxes relating to the Property, for the 2011 tax year, and all subsequent years.

At Grantee's request, **Equity Secured Capital, L.P.**, has paid to Grantor that portion of the purchase price of the Property that is evidenced by the Note described. A vendor's lien and superior title to the property are retained for the benefit of **Equity Secured Capital, L.P.**, until such time as Grantee has satisfied all obligations accruing under the Note, at which time this deed shall become absolute.

EXECUTED AND DELIVERED the 26th day of Sept., 2011, the "Effective Date" of this instrument.

GRANTOR:

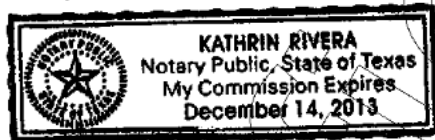
Florence W. Berrong  
Florence W. Berrong

# ACKNOWLEDGEMENTS

THE STATE OF TEXAS

COUNTY OF Bexar

This instrument was acknowledged before me on the 26 day of September, 2011, by Florence W. Berrong.



My Commission Expires:  
12-14-13

Kathrin Rivera  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS  
Kathrin Rivera  
(Printed Name of Notary)

## Exhibit A-1



### **TRI-TECH** **SURVEYING COMPANY, L.P.**

*Formerly Doug Seelig Land Surveyors, PC*

Phone: 512-440-0222 Fax: 512-440-0324

3902 Manchaca Austin, Texas 78704

#### 23.77 ACRES

DESCRIPTION OF 23.77 ACRES OF LAND OUT OF THE DAN DOWNER SURVEY #22, ABSTRACT #151, AND THE THOMAS G. ALLEN SURVEY, ABSTRACT #26, AND THE A. BRICHTA SURVEY, ABSTRACT #517, AND THE ELISHA PRUETT SURVEY #23, ABSTRACT #376 AND THE JOHN STEWART LEAGUE ABSTRACT #14, ALL IN HAYS COUNTY, TEXAS, BEING A PORTION OF A 27.097 ACRE TRACT OR PARCEL OF LAND CONVEYED BY GIFT DEED TO FLORENCE W. BERRONG OF RECORD UNDER DOCUMENT NO. 9912825, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS *LESS AND EXCEPT* THAT CERTAIN 2.309 ACRES OF LAND OUT OF THE ELISHA PRUETT SURVEY, HAYS COUNTY, TEXAS BEING MORE PARTICULARLY DESCRIBED IN DEED DATED JANUARY 15, 1996 FROM JOSEPH B. BERRONG TO HAYS COUNTY, TEXAS RECORDED IN VOLUME 1200 PAGE 756, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND FURTHER *LESS AND EXCEPT* THAT CERTAIN 0.471 ACRE OF LAND OUT OF THE ELISHA PRUETT SURVEY, IN HAYS COUNTY, TEXAS CONVEYED TO HAYS COUNTY, TEXAS IN VOLUME 1200 PAGE 761, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS *LESS AND EXCEPT* 0.369 ACRE OF LAND CONVEYED TO HAYS COUNTY BY DEED OF RECORD IN VOLUME 3911 PAGE 40, OFFICIAL RECORDS OF HAYS COUNTY, TEXAS

BEGINNING at a 5/8" iron rod found at the Westerly-Southwest corner of the herein described 23.77 acres of land, said iron rod is the Western most Southeast corner of the above said 2.309 acres of land, and from said iron rod the more Western-Southwest corner (no monument recovered) of the 27.097 acres of land bears N64°16'50"W, 21.84 feet, said 5/8" iron rod found is in the current East right of way line of County Road No. 122 (A.K.A. Bebee Road) the above said iron rod lies in the North line of that called 25.001 acres tract of land conveyed to Steven Bruce Thomas, Trustee by warranty deed of record in Volume 3822 Page 391, Official Public Records of Hays County, Texas, said 5/8" iron rod found is the PLACE OF BEGINNING hereof

PAGE 1 OF 2

# Exhibit A-1

THENCE along the current East right of way line of County Road No. 122, along a curve to the right, a diagram of which is in Volume 1200 Page 756, Official Public Records of Hays County, Texas, said curve has a radius of 418.37 feet, and length of 663.76 feet, the chord of which bears N66°36'15"E, 596.30 feet to a 5/8" iron rod found at a point of tangency in the current South right of way line of County Road No. 122

THENCE continuing along the current South right of way line of County Road No. 122, shown by diagram recorded in Volume 1200 Page 756, Official Public Records of Hays County, Texas, same being the North line of the herein described 23.77 acres of land, the following four (4) courses and distances:

- 1.) S67°58'14"E, bearing basis, 1198.90 feet to a 5/8" iron rod found
- 2.) S58°45'48"E, along a curve to the right, the radius of which is 956.45 feet, the length is 307.51 feet, for a chord distance of 306.19 feet to a 5/8" iron rod found
- 3.) S49°33'42"E, 338.19 feet to a 1/2" iron rod found
- 4.) S09°23'44"E, 38.25 feet to a 1/2" iron rod found at the intersection of the current South right of way line of County Road No. 122 and the current West right of way line of County Road No. 205, for an angle corner hereof

THENCE along the current West right of way line of County Road No. 205 (A.K.A. Dacy Lane) S30°40'24"W, 382.75 feet to a 1/2" iron rod found at the Eastern more Southeast corner hereof, same being a point in the South line of the above said 27.097 acres tract of land, same being the North line of a called 25.001 acres tract of land conveyed to Steven Bruce Thomas, Trustee by Warranty Deed of record in Volume 3822 Page 391, Official Public Records of Hays County, Texas

THENCE N64°16'50"W along the dividing line of the herein described 23.77 acres of land and the called 25.001 acres of land, for a distance of 2,207.53 feet returning to the PLACE OF BEGINNING and containing 23.77 acres of land.

This description is to accompany a survey map of the same 23.77 acres described herein.

*David Bell*  
 David Bell  
 Registered Professional Land Surveyor No. 3994  
 Job No. AUS-PL393-11



*04/12/2011*  
 Date

PAGE 2 OF 2

2

**EXHIBIT "B"**  
**PERMITTED EXCEPTIONS**

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Southwestern Bell Telephone Company  
Purpose: telephone and communication line easement  
Recording Date: March 26, 1942  
Recording No: Volume 124, Page 203, Deed Records of Hays County, Texas

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: County Line Water Supply Corp.  
Purpose: water pipe line easement  
Recording Date: June 10, 1974  
Recording No: Volume 268, Page 73, Deed Records of Hays County, Texas

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Hays County  
Purpose: public utility easement  
Recording Date: June 3, 2010  
Recording No: Volume 3913, Page 212, Official Public Records of Hays County, Texas

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Padernales Electric Cooperative, Inc.  
Purpose: electric utility easement  
Recording Date: September 25, 1998  
Recording No: Document No. 9615408, Official Public Records of Hays County, Texas  
Affects: 5'x 35' wide

Interest in and to oil, gas and other minerals and/or royalties, bonuses, rentals and all other rights relating thereto as set forth in the document

Recording No.: Volume 130, Page 371, Deed Records of Hays County, Texas

Interest in and to oil, gas and other minerals and/or royalties, bonuses, rentals and all other rights relating thereto as set forth in the document

Recording No.: Volume 130, Page 372, Deed Records of Hays County, Texas

**AFTER RECORDING RETURN TO:**

Alamo Title Commercial Division  
RE: GF#ALA11001659  
Attn: Troy Conover  
Commercial Escrow Officer  
901 S. Mopac, Bldg III, Ste. 100  
Austin, Texas 78746-5776

# DACY VILLAGE SUBDIVISION

## LOT 4, BLOCK B

4.68 ACRES  
CITY OF KYLE  
HAYS COUNTY, TEXAS

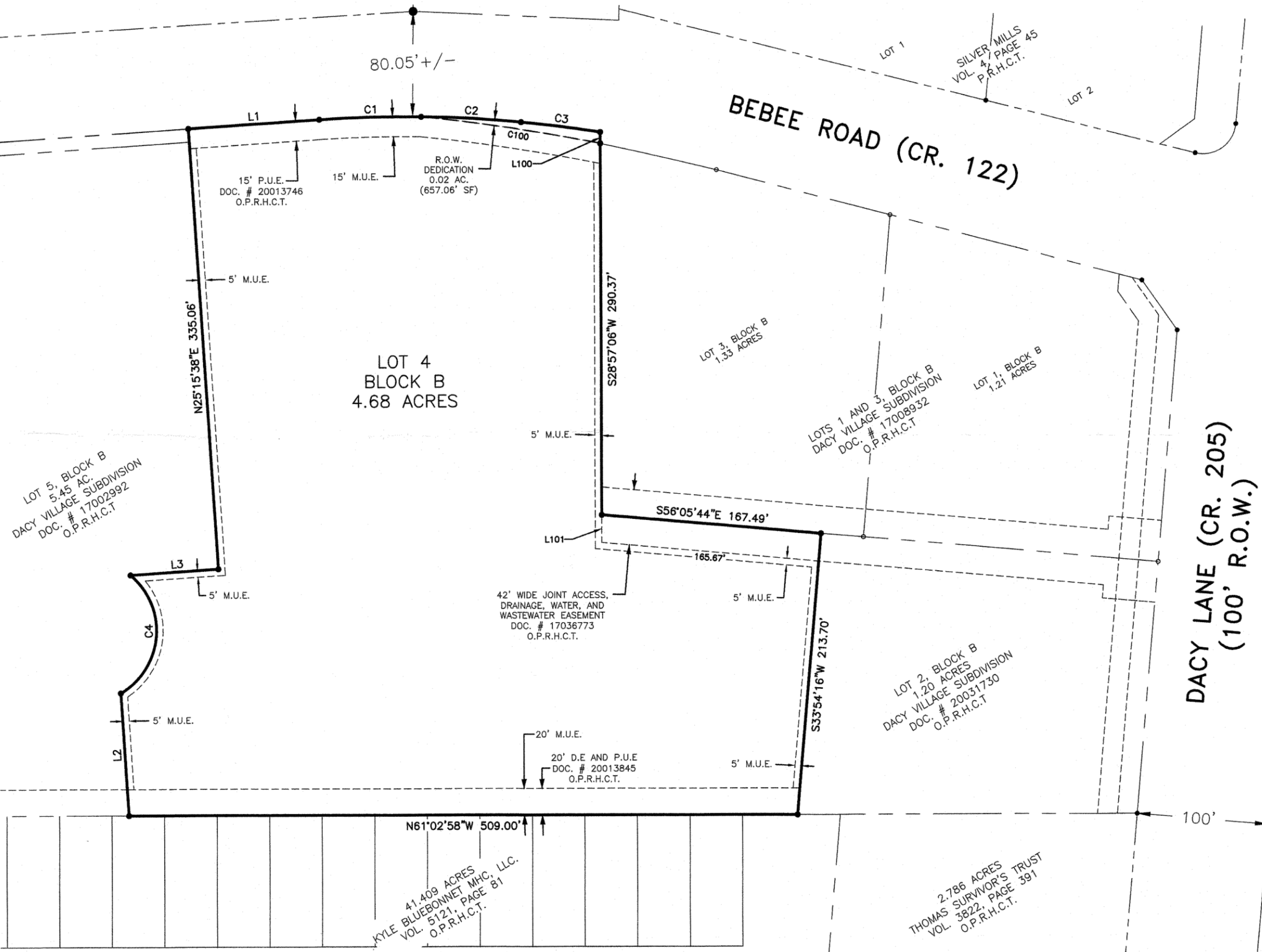
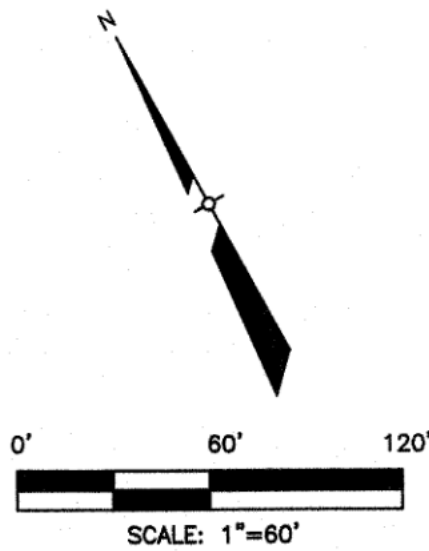


### SUMMARY

TOTAL ACREAGE	= 4.68 AC.
NO. OF COMMERCIAL LOTS	= 1
LENGTH OF STREETS	= 0 LF
R.O.W. DEDICATION	= 0.02 AC.

### LEGEND

•	DENOTES BENCHMARK (SEE NOTE)
o	DENOTES 1/2" ST. SK. SET
•	DENOTES 1/2" ST. SK. FND.
P.U.E.	PUBLIC UTILITY EASEMENT
D.E.	DRAINAGE EASEMENT
M.U.E.	MUNICIPAL UTILITY EASEMENT



Line Table		
Line #	Length	Direction
L1	99.89'	S64° 44' 22"E
L2	93.23'	N25° 15' 38"E
L3	67.19'	S64° 44' 22"E
L100	8.52'	S28° 57' 06"W
L101	21.08'	S28° 57' 02"W

CURVE TABLE						
CURVE #	ARC LENGTH	RADIUS	BEARING	CHORD LENGTH	TANGENT	DELTA
C1	77.72'	958.30'	S62°24'06"E	77.70'	38.88'	4°38'48"
C2	76.04'	958.30'	S57°48'19"E	76.02'	38.04'	4°32'46"
C3	60.87'	958.30'	S53°42'45"E	60.86'	30.45'	3°38'22"
C4	105.64'	55.00'	N33°43'03"E	90.13'	78.62'	110°02'55"
C100	137.86'	1,492.53'	S52°27'20"E	137.81'	68.98'	5°17'31"



# DACY VILLAGE SUBDIVISION

## LOT 4, BLOCK B

### 4.68 ACRES

### CITY OF KYLE

### HAYS COUNTY, TEXAS

STATE OF TEXAS *Nevada*  
COUNTY OF *HAYS* *Washoe*

KNOW ALL MEN BY THESE PRESENTS, THAT DACY LANE, LLC., OWNER OF THAT CERTAIN TRACT CONVEYED BY GENERAL WARRANTY DEED, RECORDED IN DOCUMENT NUMBER 2011-11022936 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE 4.68 ACRES IN ACCORDANCE WITH THE ATTACHED MAP OR PLAT TO BE KNOWN AS "DACY VILLAGE SUBDIVISION LOT 4, BLOCK B", SUBJECT TO ANY EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

I (WE) FURTHER ACKNOWLEDGE THAT THE DEDICATIONS AND/OR EXACTIONS MADE HEREIN ARE PROPORTIONAL TO THE IMPACT OF THE SUBDIVISION UPON THE PUBLIC SERVICES REQUIRED IN ORDER THAT THE DEVELOPMENT WILL COMPORT WITH THE PRESENT AND FUTURE GROWTH NEEDS OF THE CITY; I (WE), MY (OUR) SUCCESSORS AND ASSIGNS HEREBY WAIVE ANY CLAIM, DAMAGE, OR CAUSE OF ACTION THAT I (WE) MAY HAVE AS A RESULT OF THE DEDICATION OF EXACTIONS MADE HEREIN.

WITNESS MY HAND THIS 22<sup>nd</sup> DAY OF September, 2020.

BY: JONATHAN W. CHENG  
DACY LANE, LLC  
2308 CYPRESS POINT WEST DRIVE  
AUSTIN, TEXAS 78746

BEFORE ME, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED JONATHAN W. CHENG, KNOWN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED, AND IN THE CAPACITY THEREIN STATED, GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 22 DAY OF September, 2020.

(SEAL)

NOTARY PUBLIC'S SIGNATURE

WITNESS MY HAND THIS 22<sup>nd</sup> DAY OF September, 2020.



#### PLAT NOTES:

- NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE OR THE EDWARDS AQUIFER CONTRIBUTING ZONE.
- THIS SUBDIVISION LIES WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
- BUILDING SETBACK LINES SHALL BE IN CONFORMANCE WITH CITY OF KYLE ZONING ORDINANCE REQUIREMENTS.
- NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE 100 YEAR FLOOD PLAIN AS DELINEATED ON HAYS COUNTY COMMUNITY PANEL 48209C 0290F, DATED SEPTEMBER 2, 2005.
- UTILITY SERVICE:
 

ELECTRIC:	PEDERNALES ELECTRIC COOPERATIVE
TELEPHONE:	FRONTIER COMMUNICATIONS
WATER:	CITY OF KYLE
WASTEWATER:	CITY OF KYLE
NATURAL GAS:	CENTERPOINT ENERGY
- A 5-FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ALONG EACH SIDE BOUNDARY OF THE PROPERTY.  
A 10-FOOT MUNICIPAL UTILITY EASEMENT IS HEREBY DEDICATED ALONG THE REAR BOUNDARY OF THE PROPERTY.
- NO BUILDING, ACCESSORY BUILDING, FENCING, OR LANDSCAPING WHICH INTERFERE WITH THE FLOW OF STORM WATER SHALL BE PLACED OR ERECTED WITHIN A NATURAL DRAINAGE WAY OR DRAINAGE EASEMENT.
- TYPICAL LANDSCAPE MAINTENANCE, CUTTINGS AND TRIMMINGS, WITHIN THE SUBDIVISION, ALL EASEMENTS, DETENTION PONDS, AND RIGHTS OF WAYS TO THE STREET PAVEMENT TO BE THE RESPONSIBILITY OF PROPERTY OWNERS AND/OR PROPERTY OWNERS ASSOCIATIONS.
- SIDEWALKS, PEDESTRIAN CROSSINGS, AND OTHER PUBLIC AMENITIES TO BE DEDICATED TO THE CITY OF KYLE SHALL MEET OR EXCEED ALL 2010 ADA STANDARDS OF ACCESSIBILITY FOR TITLE II ENTITIES.

#### SURVEYOR:

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT, THAT IT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT ALL NECESSARY SURVEY MONUMENTS ARE CORRECTLY SET OR FOUND AS SHOWN HEREIN.



9-15-20

GEORGE E. LUCAS,  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4160  
CELCO SURVEYING, FIRM REGISTRATION NO. 10193975  
2205 STONECREST PATH  
NEW BRAUNFELS, TEXAS 78130  
OFFICE (512) 635-4857

#### ENGINEER:

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT.

9/15/20

HUGO ELIZONDO, JR.,  
REGISTERED PROFESSIONAL ENGINEER NO. 69781  
CUATRO CONSULTANTS, LTD.  
3601 KYLE CROSSING, SUITE A  
KYLE, TEXAS 78640



#### CITY OF KYLE:

STATE OF TEXAS  
COUNTY OF HAYS

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

DATED THIS 14<sup>th</sup> DAY OF OCTOBER, 2020.

HOWARD J. KOONTZ, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

REVIEWED BY:

CITY ENGINEER

DATE

DIRECTOR OF PUBLIC WORKS

DATE

STATE OF TEXAS  
COUNTY OF HAYS

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

ON THE 23<sup>rd</sup> DAY OF October, A.D., 2020, AT

2:34 O'CLOCK P.M., IN THE PLAT RECORDS OF HAYS COUNTY,

TEXAS IN DOCUMENT NO. 20047963 WITNESS MY HAND

AND SEAL OF OFFICE THIS THE 23<sup>rd</sup> DAY OF October, A.D. 2020

Elaine H. Cardenas by Sid Kroetzger, Deputy  
ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS



**4 CUATRO**  
Consultants, LTD.

Registration No. F-3524  
3601 Kyle Crossing, Suite D Phone: (512) 512-5040 Fax: (512) 512-5599  
Kyle, Texas 78640 e-mail: cuatro@cuatroconsultants.com

**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.

20047963 PLAT  
10/23/2020 02:34:51 PM Total Fees: \$121.00

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





# CITY OF KYLE, TEXAS

## License Agreement Between City of Kyle & Caroline Marketplace, LP

Meeting Date: 4/18/2023  
Date time: 7:00 PM

**Subject/Recommendation:** Approve License Agreement Between the City of Kyle & Caroline Marketplace, LP. ~  
*Will Atkinson, Director of Planning*

- *The license agreement is for maintenance of public street parking associated with the Caroline on Marketplace project. The project was entitled through the CSW, LLC development agreement.*

**Other Information:** See attached.

**Legal Notes:** N/A

**Budget Information:** N/A

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### ATTACHMENTS:

#### Description

- ☐ License Agreement

**CITY OF KYLE**  
**LICENSE AGREEMENT FOR**  
**PARALLEL PARKING AT**  
**KYLE MARKETPLACE**

THE CITY OF KYLE, a political subdivision of the State of Texas (the “City”), and CAROLINE MARKETPLACE, LP, a Texas limited partnership, or its successors and assigns (“Licensee”), enter into this License Agreement for Parallel Parking at Kyle Marketplace (“Agreement”) on this the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”) upon the terms and conditions set forth below.

**RECITALS:**

A. The City owns the Licensed Property (as described below) which is a public street right-of-way.

B. Licensee owns certain land in Kyle, Hays County, Texas as more particularly described in **Exhibit A** (the “Licensee’s Property”), which is adjacent to the Licensed Property. Licensee is developing a multi-family apartment project with commercial space and other ancillary uses on Licensee’s Property (the “Project”).

C. The City and CSW KC II LLC (predecessor-in-interest to Licensee) entered into that certain Development Agreement Establishing Development Standards for the Kyle Marketplace Subdivision / Development dated March 1, 2022 and recorded on April 19, 2022 as Document No. 22019278 in the Official Public Records of Hays County, Texas (the “Development Agreement”), which Development Agreement affects Licensee’s Property.

D. In order to accomplish the intent and purposes of the Development Agreement, among other things, the City desires to grant a parking license to Licensee in accordance with the terms and conditions set forth herein.

**AGREEMENT:**

For and in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**I. PURPOSE OF LICENSE AGREEMENT.**

A. The City hereby grants to Licensee (and its invitees and permittees) permission to use the below-described “Licensed Property” for the following purposes only:

Licensee is authorized to construct, place, install, use, and maintain parallel parking in the land described and in the locations shown in the attached **Exhibit B** (the “Licensed Property”). The parallel parking shall be installed in accordance with good engineering practices, this Agreement, construction plans approved by the City, and applicable local, state, and federal regulations (the “Parking”).

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

B. Licensee agrees that:

1. all construction, placement, installation and maintenance permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal, laws, ordinances, regulations, and policies now existing or later adopted, including the City's subdivision ordinance;
2. that all installation of the Parking will be completed in a timely manner without delay;
3. construction and installation performed by the Licensee under this Agreement shall be done in accordance with any plans filed with and approved by the City; and
4. Licensee will abide by all terms of this Agreement.

**II. ANNUAL FEE.** No annual fee shall be due in connection with this Agreement.

**III. CITY'S RIGHTS TO LICENSED PROPERTY.**

A. This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees and licensees, to construct, install, establish, maintain, use, operate and renew any public utilities or franchised public utilities on, beneath or above the surface of the Licensed Property.

B. Said uses of the Licensed Property by the City may not substantially interfere with or destroy Licensee's use of the Licensed Property or the Parking, subject to the City's right to terminate this Agreement as set forth below.

C. Notwithstanding any provision in this Agreement to the contrary, the City retains the right to enter upon the Licensed Property, at any time without notice, assuming no obligation to Licensee, to remove any of the licensed improvements or alterations thereof in the event of an emergency or otherwise whenever such removal is deemed reasonably necessary for protecting persons, property, or the health or safety of the public as determined by the governing body of the City.

D. The parties acknowledge that there are existing public utilities under the Licensed Property. Licensee has no obligation to repair or maintain any such public utilities. If any such utilities under the Licensed Property require maintenance or repair, the City may, upon ten (10) business days' notice to Licensee (except in the event of an emergency if necessary to protect the health or safety of the public, in which case no such prior notice is required), evacuate the surface to conduct such repairs. In that instance, the City will not be responsible for returning the Licensed Property to its state prior to the maintenance or repair. Licensee will be responsible, at its sole cost, for replacing the asphalt, concrete, other surface materials, landscaping, painting and any impacted signage on the Licensed Property to substantially the same state prior to the City's maintenance or repair.

**IV. INSURANCE.**

A. Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company reasonably acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than one million and No/100 Dollars (\$1,000,000.00), which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall specifically name the City as an additional insured. This insurance coverage shall cover all perils arising from the activities of Licensee, its officers, directors, employees, agents or contractors, relative to this Agreement and to the installation of the Parking. Licensee shall be responsible for any deductibles stated in the policy. A true copy of a certificate of insurance evidencing such coverage shall be delivered to the City within thirty (30) days from the effective date of this agreement and promptly upon request. Licensee acknowledges that Licensor's insurance policy will change when it binds its wrap

insurance policy in connection with construction of the Project, and then again within a period of time upon completion of construction. Such insurance policies shall, in any event, comply with the above requirements and will not result in any gaps in coverage.

B. So long as Licensee is using the Licensed Property, Licensee shall not cause such insurance to be canceled nor permit such insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty (30) days after the City has received written notice as evidenced by a return receipt of registered or certified mail with a courtesy copy emailed to the then current City Secretary.

C. Licensee shall, at its sole expense, cause the contractor that installs the Improvements to carry insurance coverage that complies with Section IV.A. above, provided that the combined single limit of the policy shall not be less than \$1,000,000.00. Such insurance coverage shall include the City as an additional insured and shall cover all perils arising from the activities of Licensee, the contractor, their respective officers, employees, agents, or contractors, relative to constructing and installing the Parking, or otherwise related to the Parking and the Licensed Property. Such insurance shall be in full force and effect for the duration of the construction of the Parking. Licensee shall be responsible for any deductibles stated in the policy. A certificate of insurance evidencing such coverage shall be delivered to the City upon request.

**V. INDEMNIFICATION.** Licensee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments and expenses, including attorney's fees, or other liability for personal injury, death or damage to any person or property which is directly caused by Licensee's construction and location of the Parking on the Licensed Property, or Licensee's actions or inactions in maintaining the Parking located on the Licensed Property, or the actions or inactions of Licensee's agents, employees, contractors, or officers in connection with this Agreement or the Parking. This indemnification provision, however, shall not apply to any claims, suits, damages, costs, losses or expenses (i) for which the City shall have been, or is entitled to be compensated by insurance provided under Article IV above, or (ii) which are proximately caused by the negligent or willful acts of the City, its agents, employees or contractors; provided, however, that for the purposes of the foregoing, the City's act of entering into this Agreement shall not be deemed to be a "negligent or willful act."

## **VI. CONDITIONS.**

### **A. Licensee's Responsibilities.**

1. Licensee will be responsible for any damage to, repair of or relocation of Parking located within the Licensed Property during the term of this Agreement. Further, Licensee shall reimburse the City for all costs of replacing or repairing any property of the City which was damaged or destroyed as a result of activities under this Agreement by, or on behalf of, Licensee. Licensee shall maintain the Parking in good repair and appearance.
2. Licensee shall take commercially reasonable efforts to ensure that each contractor and subcontractor, employee, agent or assign constructing, installing, modifying, repairing, or maintaining the Improvements shall safeguard and protect the public on or using the property adjacent to where the work is being performed, from accidents, injury or damage, by placing barriers, lights and other sufficient safeguards, around all cuts, openings, excavations, installation sight and materials, implements and tools upon the premises used in connection with the construction activity on the Licensed Property. Licensee shall further comply with any conditions required by the City to minimize hazards to persons during construction of the Parking.



3. Licensee shall take commercially reasonable efforts to guard or cause to be guarded any hole, trench, excavation, mound, embankment, installation or other obstruction while the same may exist while constructing or installing Parking and shall not to suffer the same to remain there beyond a time reasonably sufficient for the completion of the construction activity.

B. Maintenance. Licensee is responsible for maintenance of the Licensed Property including, but not limited to, striping, cracks, potholes, asphalt/concrete repair and replacement, curb and gutter, sidewalks (if any), street signage, and landscaping (if any) in improved areas.

**VII. COMMENCEMENT; TERM.** This Agreement shall begin with the date set forth in the introductory paragraph of this Agreement and continue thereafter unless or until terminated by the City or the Licensee.

**VIII. TERMINATION.**

A. Termination by City. This Agreement may be terminated at any time by resolution of the City Council of the City of Kyle after the occurrence of any of the following events after providing thirty (30) days' written notice to the Licensee:

1. the Licensed Property, or a portion of them, materially interfere with the functionality of the City's right-of-way;
2. use of the Licensed Property becomes necessary for a public purpose; or
3. the licensed improvements, or a portion of them, constitute a danger to the public which the City deems not to be remediable by alteration or maintenance of such improvements.

B. In the event that Licensee fails to maintain the Parking or otherwise comply with the terms or conditions as set forth herein, then the City shall give Licensee written notice thereof in accordance with the notice provisions set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of and, if Licensee does not satisfactorily remedy the same within the 30-day period, the City may perform the work or contract for the completion of the work and the City may terminate this Agreement. Licensee agrees to pay within thirty (30) days of written demand by the City and receipt of paid invoices, all reasonable costs and expenses incurred by the City in completing the work whether or not the City has terminated the agreement. Termination of this Agreement, or removal of the Parking, may result in Licensee being non-compliant with other agreements or legal requirements which may have legal consequences separate from those listed herein. Notwithstanding the foregoing, if such default is not reasonably susceptible of cure within said 30-day period, said failure to cure will not result in termination if Licensee has commenced a cure during such 30-day period and thereafter diligently prosecute the cure to completion.

C. In the event that the City terminates this Agreement for any reason other than Licensee's breach of this agreement, the number of parking spaces in the Licensed Property at the time of said termination shall continue to be included in calculating the number of parking spaces in the Project for purposes of complying with the Development Agreement for the duration of the term of the Development Agreement. This Section VIII(C) shall survive the termination or expiration of this Agreement.

D. Licensee may terminate this Agreement by delivering written notice to the City not later

than 60 days prior to the effective date of the termination. After any such termination, Licensee shall, at the City's request, either (i) restore the Licensed Property to substantially the same condition that existed prior to the construction and installation of the Parking, or (ii) leave the Licensed Property in its condition existing at that time.

**IX. APPLICATION OF LAW.** This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

**X. SPECIFIC PERFORMANCE.** If either party materially breaches the terms of this Agreement (subject to any notice and cure periods set forth above), such material breach shall be an event of default. In that event, the non-defaulting party to this Agreement may pursue the remedy of specific performance.

**XI. VENUE.** Venue for all lawsuits concerning this Agreement will be in Hays County, Texas.

**XII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT.** This Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to the benefit of and bind the City, Licensee, and all future owners of all or any portion of the Licensed Property or the Licensee's Property and their respective successors and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

**XIII. ASSIGNMENT.** Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the City, which consent shall not be unreasonably withheld, except that Licensee may assign this Agreement to any affiliate of Licensee or any successive owner of Licensee's Property without consent, and subject to Section XII above. Subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish to the City a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, address, and contact person of the assignee, along with the date of assignment or transfer. Licensee duties under this Agreement are not terminated by Licensee's sale of its interest in the Licensed Property or adjacent properties, but Licensee's duties under this Agreement are terminated upon assignment of this Agreement to another party.

**XIV. EMINENT DOMAIN.** If eminent domain is exerted on the Licensed Property by paramount authority, then the City will, to the extent permitted by law, cooperate with Licensee to effect the removal of Licensee's affected installations and improvements thereon, at Licensee's sole expense. Licensee shall not be entitled to retain any monies paid by the condemning authority to Licensee for Licensee's installations taken, if any.

**XV. NOTICES.** All notices, demands and requests for delivery of documents or information hereunder shall be in writing and shall be deemed to have been properly delivered and received as of the time of delivery if personally delivered, as of the time deposited in the mail system if sent by United States certified mail, return receipt requested, and postage prepaid, or as of the time of delivery to Federal Express (or comparable express delivery system) if sent by such method with all costs prepaid. All notices, demands and requests hereunder shall be addressed:

To Licensee At:

Caroline Marketplace, LP  
3815 S. Capital of Texas Highway, Ste. 300  
Austin, TX 78704

To City At:

City of Kyle  
100 W. Central St.  
Kyle, Texas 78640

Attn: Jason Hauck

with a copy to:

Caroline Marketplace, LP  
3000 Richmond Avenue  
Houston, TX 77098  
Attn: Julie Stephenson

with a copy to:

Paige Saenz  
Knight Law Firm  
223 W. Anderson St., Suite A-105  
Austin, Texas 78752

or to such other addresses which either party may so designate by sending notice as aforesaid.

**XVI. ESTOPPEL CERTIFICATES.** The City shall, within ten (10) business days of its receipt of a written request from Licensee, from time to time provide a written estoppel certificate duly executed in a form reasonably approved by Licensee stating: (a) to the best of the City's knowledge, whether Licensee is in default or violation of this Agreement and setting forth with specificity the default or violation; (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate, and (c) such other information regarding the status of the obligations under this Agreement as may be reasonably requested.

[Remainder of page intentionally left blank.]

EXECUTED as of the dates set forth below to be effective as of the date first set forth above.

**THE CITY:**

**THE CITY OF KYLE**, a political subdivision of the State of Texas

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

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

Title: Mayor

THE STATE OF TEXAS

§

§

COUNTY OF HAYS

§

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, Mayor, City of Kyle, Texas, on behalf of the City.

SEAL:

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

[Remainder of page intentionally left blank.]

**LICENSEE:**

CAROLINE MARKETPLACE, LP,  
a Texas limited partnership

By Caroline Marketplace GP, LLC,  
a Texas limited liability company,  
its general partner

By:   
Jason Hauck, Vice President

THE STATE OF TEXAS

§

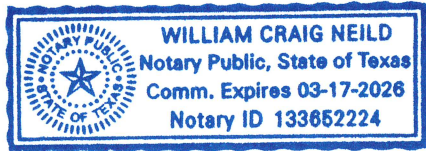
§


COUNTY OF TRAVIS

§

This instrument was acknowledged before me on this the 10 day of April, 2023, Jason Hauck, Vice President of Caroline Marketplace GP, LLC, a Texas limited liability company, general partner of Caroline Marketplace, LP, a Texas limited partnership, on behalf of said entities.

SEAL:



  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

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

**EXHIBIT A**

**Licensee's Property**

Lots 1, 1B, 1C, 2, 3 and 4, Block F, Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3, and 4, Block F, a subdivision in Hays County, Texas, according to the map or plat of record in Volume 17, Page 200 of the Plat Records of Hays County, Texas.



## **EXHIBIT B**

### **Licensed Property**

#### **LICENSE AGREEMENT AREA 1:**

BEING a 0.0721-acre (3,141 sq. ft.) tract of land out of the Henry Lollar Survey, Abstract No. 290, City of Kyle, Hays County, Texas, being a portion of Physicians Way (60' R.O.W) of the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0721-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a chiseled "X" in concrete found at the southeastern intersection of said Physicians Way (60-foot R.O.W. and Marketplace Avenue as shown on the plat of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3, & 4, Block F for a northwestern corner of Lot 1B, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1B, Block F being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas;

THENCE: South 77°26'00" East a distance of 20.22 feet along the northeastern line of the said Lot 1B, Block F, the southwestern right-of-way line of said Physicians Way to a 1/2-inch iron rod found for a northwestern corner of the said Lot 1B, Block F;

THENCE: Continuing along the northeastern line of the said Lot 1B, Block F, the southwestern right-of-way line of said Physicians Way with a curve to the right having a Delta Angle of 2°56'13", a Radius of 440.00 feet, an Arc length of 22.55 feet with the chord of the curve South 75°45'46" East a distance of 22.55 feet to a calculated point;

THENCE: Across the right-of-way of said Physicians Way, North 15°42'21" East a distance of 0.20 feet to a calculated point for the POINT OF BEGINNING and the southwestern corner of this herein described tract;

THENCE: Across the right-of-way of said Marketplace Avenue with the following courses and distances;

1. North 31°18'21" West a distance of 13.91 feet to a calculated point for the northwestern corner of this herein described tract;
2. with a non-tangent curve to the right with a Delta angle of 15°11'57", a Radius of 457.92 feet and an Arc length of 121.48 feet having a Chord bearing of South 67°59'23" East and a distance of 121.12 feet to a calculated point;
3. South 60°09'37" East a distance of 220.40 feet to a calculated point for the northeastern corner of this herein described tract;
4. South 76°51'07" West a distance of 13.91 feet to a calculated point for the southeastern corner of this herein described tract;
5. North 60°09'50" West a distance of 210.20 feet to a calculated point;
6. THENCE: with a non-tangent curve to the left with a Delta angle of 14°09'53", a Radius of 440.80 feet and an Arc length of 108.97 feet having a Chord bearing of North 67°24'28" West and a distance of 108.70 feet to the **POINT OF BEGINNING and CONTAINING** 0.0721-acres (3,141 sq. ft.) of land.

## **LICENSE AGREEMENT AREA 2:**

BEING a 0.0344-acre (1,497 sq. ft.) tract of land out of the Henry Lollar Survey, Abstract No. 290, and the John King Survey No. 20, Abstract No. 276, City of Kyle, Hays County, Texas, being a portion of Physicians Way (60' R.O.W) of the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0344-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a 1/2-inch iron rod found for the northeastern corner of Lot 1, Block F and the northwestern corner of Lot 2, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1, Block F; said Lot 2, Block F being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas, from which a 1/2-inch iron rod with cap stamped "Doucet Assoc." found for the northeastern corner of Lot 1B, Block F and the northwestern corner of the said Lot 1, Block F bears North 60°06'23" West a distance of 252.56 feet;

THENCE: South 60°06'23" East a distance of 28.77 feet along the northeastern line of the said Lot 2, Block F, the southwestern right-of-way line of said Physicians Way to a calculated point for the POINT OF BEGINNING and the southwestern corner of this herein described tract;

THENCE: Across the right-of-way of said Physicians Way with the following courses and distances;

1. North 00°02'05" West a distance of 11.93 feet to a calculated point for the northwestern corner of this herein described tract;
2. South 60°07'01" East a distance of 144.61 feet to a calculated point for the northeastern corner of this herein described tract;
3. South 00°02'05" East a distance of 11.96 feet to a calculated point on the northeastern line of the said Lot 2, Block F, the southwestern right-of-way line of said Physicians Way, for the southeastern corner of this herein described tract;

THENCE: North 60°06'23" West a distance of 144.63 feet to the **POINT OF BEGINNING and CONTAINING** 0.0344-acres (1,497 sq. ft.) of land.

## **LICENSE AGREEMENT AREA 3:**

BEING a 0.0725-acre (3,158 sq. ft.) tract of land out of the John King Survey No. 20, Abstract No. 276, City of Kyle, Hays County, Texas, being a portion of Physicians Way (60' R.O.W) as shown on the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0725-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a 1/2-inch iron rod with cap stamped "Doucet Assoc." found at the southwestern intersection of Physicians Way (60-foot R.O.W.) and Kyle Center Drive (60-foot R.O.W.) as shown on the plat of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3, & 4, Block F for a northeastern corner of Lot 2, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1B, Block F, being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official

Public Records of Hays County, Texas, from which a 1/2-inch iron rod with cap stamped "Doucet Assoc." found on the northwestern right-of-way line of said Kyle Center Drive, for the southeastern corner of the said Lot 2, Block F, the northeastern corner of Lot 4, Block F, of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, , bears South 27°01'59" West a distance of 438.66 feet;

THENCE: Along the northeastern line of the said Lot 2, Block F, and the southwestern intersection of said Physicians Way and said Kyle Center Drive with a curve to the left having a Delta Angle of 87°58'43", a Radius of 30.00 feet, an Arc length of 46.07 feet with the chord of the curve North 16°57'29" West a distance of 41.67 feet to a 5/8-inch iron rod with cap stamped "Jones|Carter" set for a northeastern corner of the said Lot 2, Block F;

THENCE: North 60°56'57" West a distance of 15.19 feet along the northeastern line of the said Lot 2, Block F, the southwestern right-of-way line of said Physicians Way to a 5/8-inch iron rod with cap stamped "Jones|Carter" set for a corner of the said Lot 2, Block F;

THENCE: North 60°06'23" West a distance of 8.74 feet continuing along the northeastern line of the said Lot 2, Block F, the southwestern right-of-way line of said Physicians Way to a calculated point;

THENCE: Across the right-of-way of said Physicians Way, North 29°53'37" East a distance of 0.81 feet to a calculated point for the POINT OF BEGINNING and the southeastern corner of this herein described tract;

THENCE: Across the right-of-way of said Marketplace Avenue with the following courses and distances;

1. North 60°06'36" West a distance of 320.43 feet to a calculated point for the southwestern corner of this herein described tract;
2. North 19°12'28" West a distance of 14.49 feet to a calculated point for the northwestern corner of this herein described tract;
3. South 60°07'43" East a distance of 341.47 feet to a calculated point for the southeastern corner of this herein described tract;
4. South 76°19'46" West a distance of 13.93 feet to the **POINT OF BEGINNING and CONTAINING** 0.0725-acres (3,158 sq. ft.) of land.

#### **LICENSE AGREEMENT AREA 4:**

BEING a 0.0591-acre (2,575 sq. ft.) tract of land out of the John M. Green Survey No. 21, Abstract No. 200 and the Henry Lollar Survey, Abstract No. 290, City of Kyle, Hays County, Texas, being a portion of Kyle Center Drive (60' R.O.W) as shown on the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0591-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a 1/2-inch iron rod with cap stamped "Doucet Assoc." found at the southwestern intersection of Kyle Center Drive (60-foot R.O.W.) and Physicians Way (60-foot R.O.W.) as shown the plat of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3, & 4, Block F for a northeastern corner of Lot 2, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1B, Block F being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas, , from which a 1/2-inch iron rod with cap stamped "Doucet Assoc."

found on the northwestern right-of-way line of said Kyle Center Drive for the southeastern corner of the said Lot 2, Block F, the northeastern corner of Lot 4, Block F, both of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, , bears South 27°01'59" West a distance of 438.66 feet;

THENCE: South 27°01'59" West a distance of 19.66 feet along the southeastern line of the said Lot 2, Block F, the northwestern right-of-way line of said Kyle Center Drive to a calculated point ;

THENCE: Across the right-of-way of said Kyle Center Drive, South 62°58'01" East a distance of 0.57 feet to a calculated point for the POINT OF BEGINNING and the northwestern corner of this herein described tract;

THENCE: Across the right-of-way of said Kyle Center Drive with the following courses and distances;

1. North 69°00'38" East a distance of 14.22 feet to a calculated point for the northeastern corner of this herein described tract;
2. South 27°00'44" West a distance of 281.55 feet to a calculated point for the southeastern corner of this herein described tract;
3. North 14°50'22" West a distance of 14.23 feet to a calculated point for the southwestern corner of this herein described tract;
4. North 27°00'25" East a distance of 260.39 feet to the **POINT OF BEGINNING and CONTAINING** 0.0591-acres (2,575 sq. ft.) of land.

#### **LICENSE AGREEMENT AREA 5:**

BEING a 0.0852-acre (3,713 sq. ft.) tract of land out of the Henry Lollar Survey, Abstract No. 290, City of Kyle, Hays County, Texas, being a portion of Kyle Center Drive (60' R.O.W) as shown on the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0852-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a 1/2-inch iron rod found at the northwestern intersection of Kyle Center Drive (60-foot R.O.W.) and City Lights Drive (R.O.W. Varies) as shown on the plat of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3, & 4, Block F for a southeastern corner of Lot 4, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1B, Block F being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas, , from which a 1/2-inch iron rod found for a southeastern corner of the said Lot 4, Block F, on the northeastern right-of-way line of said City Lights Drive, bears with a curve to the right having a Delta Angle of 90°08'19", a Radius of 30.00 feet, an Arc length of 47.20 feet with the chord of the curve North 89°49'18" West a distance of 42.48 feet;

THENCE: North 44°27'18" East a distance of 29.79 feet along the southeastern line of the said Lot 4, Block F, on the northwestern right-of-way line of said Kyle Center Drive to a 1/2-inch iron rod found for a southeastern corner of the said Lot 4, Block F, on the northwestern right-of-way line of said Kyle Center Drive;

THENCE: Across the right-of-way of said Kyle Center Drive, South 31°38'27" West a distance of 2.64 feet to a calculated point for the POINT OF BEGINNING and the southwestern corner of this herein described tract;

THENCE: Across the right-of-way of said Kyle Center Drive with the following courses and distances;

1. with a non-tangent curve to the left with a Delta angle of 17°20'26", a Radius of 458.86 feet, an Arc length of 138.87 feet having a Chord bearing of North 35°57'36" East and a distance of 138.34 feet to a calculated point;
2. North 27°01'58" East a distance of 239.98 feet to a calculated point for the northwestern corner of this herein described tract;
3. North 68°52'53" East a distance of 14.22 feet to a calculated point for the northeastern corner of this herein described tract;
4. South 27°01'50" West a distance of 253.89 feet to a calculated point;
5. with a non-tangent curve to the right with a Delta angle of 18°06'08", a Radius of 471.61 feet and an Arc length of 149.00 feet having a Chord bearing of South 36°47'40" West and a distance of 148.38 feet to a calculated point for the southeastern corner of this herein described tract;
6. North 02°45'33" East a distance of 14.13 feet to the **POINT OF BEGINNING and CONTAINING** 0.0852-acres (3,713 sq. ft.) of land.

#### **LICENSE AGREEMENT AREA 6:**

BEING a 0.1199-acre (5,222 sq. ft.) tract of land out of the Henry Lollar Survey, Abstract No. 290, City of Kyle, Hays County, Texas, being a portion of City Lights Drive (R.O.W Varies) as shown on the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.1199-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a 1/2-inch iron rod found on the northeastern line of said City Lights drive as shown on the said Plat of Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3, & 4, Block F for a southeastern corner of Lot 4, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1B, Block F, being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas, , from which a 1/2-inch iron rod with cap stamped "Doucet Assoc." found on the northeastern right-of-way line of said City Lights Drive for the southwestern corner of the said Lot 4, Block F, the southeastern corner of Lot 3, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, , bears North 45°20'41" West a distance of 249.35 feet;

THENCE: North 45°20'41" West a distance of 25.03 feet along the southwestern line of the said Lot 4, Block F, on the northeastern right-of-way line of said Kyle Center Drive to a calculated point;

THENCE: Across the right-of-way of said City Lights Drive, South 44°39'19" West a distance of 0.53 feet to a calculated point for the POINT OF BEGINNING and the northeastern corner of this herein described tract;

THENCE: Across the right-of-way of said City Lights Drive with the following courses and distances;

1. South 00°18'44" East a distance of 13.40 feet to a calculated point for the southeastern corner of this herein described tract;
2. North 45°20'35" West a distance of 559.39 feet to a calculated point for the southwestern corner of this herein described tract;
3. North 89°38'28" East a distance of 13.44 feet to a calculated point for the northwestern corner of this herein described tract;
4. South 45°20'25" East a distance of 540.41 feet to the **POINT OF BEGINNING and CONTAINING** 0.1199-acres (5,222 sq. ft.) of land.

**LICENSE AGREEMENT AREA 7:**

BEING a 0.0851-acre (3,706 sq. ft.) tract of land out of the Henry Lollar Survey, Abstract No. 290, City of Kyle, Hays County, Texas, being a portion of City Lights Drive (R.O.W. Varies) as shown on the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0851-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a 1/2-inch iron rod found at the northeastern intersection of said City Lights Drive and Marketplace Avenue (R.O.W. Varies) as shown on the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F for a southwestern corner of Lot 1C, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1C, Block F, being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas;;

THENCE: Along a southwestern line of the said Lot 1C, Block F, the northeastern intersection of said Marketplace Avenue and said City Lights Drive with a curve to the left having a Delta Angle of 65°53'09", a Radius of 30.00 feet, an Arc length of 34.50 feet with the chord of the curve South 11°59'39" East a distance of 32.63 feet to a 5/8-inch iron rod with cap stamped "Jones|Carter" set for a southwestern corner of the said Lot 1C, Block F, from which a 1/2-inch iron rod found on the northeastern right-of-way line of said City Lights Drive for the southeastern corner of the said Lot 1C, Block F, the southwestern corner of Lot 1, Block F, , , bears South 45°20'41" East a distance of 213.27 feet;

THENCE: South 45°20'41" East a distance of 69.31 feet along the southwestern line of the said Lot 1C, Block F, the northeastern right-of-way line of said City Lights Drive to a calculated point;

THENCE: Across the right-of-way of said City Lights Drive, South 44°39'19" West a distance of 0.38 feet to a calculated point for the POINT OF BEGINNING and the northwestern corner of this herein described tract;

THENCE: Across the right-of-way of said City Lights Drive with the following courses and distances;

1. South 45°19'46" East a distance of 380.41 feet to a calculated point for the northeastern corner of this herein described tract;
2. South 00°18'44" East a distance of 13.38 feet to a calculated point for the southeastern corner of this herein described tract;
3. North 45°20'25" West a distance of 399.42 feet to a calculated point for the southwestern corner of this herein described tract;



4. North 89°41'16" East a distance of 13.50 feet to the **POINT OF BEGINNING and CONTAINING** 0.0851-acres (3,706 sq. ft.) of land.

**LICENSE AGREEMENT AREA 8:**

BEING a 0.0241-acre (1,051 sq. ft.) tract of land out of the Henry Lollar Survey, Abstract No. 290, City of Kyle, Hays County, Texas, being a portion of Marketplace Avenue (R.O.W. Varies) as shown on the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0241-acre tract of land and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a 1/2-inch iron rod found at the northeastern intersection of Marketplace Avenue and City Lights Drive (R.O.W. Varies) as shown on the said Plat of Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F for a southwestern corner of Lot 1C, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1C, Block F, being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas, , from which a 1/2-inch iron rod found on the northeastern right-of-way line of said City Lights Drive for the southeastern corner of the said Lot 1C, Block F, the southwestern corner of Lot 1, Block F, , , bears with a curve to the left having a Delta Angle of 65°53'09", a Radius of 30.00 feet, an Arc length of 34.50 feet with the chord of the curve South 11°59'39" East a distance of 32.63 feet to a 5/8-inch iron rod with cap stamped "Jones|Carter" set for a southwestern corner of the said Lot 1C, Block F, and thence along the northeastern right-of-way line of said City Lights drive South 45°20'41" East a distance of 213.27 feet;

THENCE: North 20°46'25" East a distance of 25.94 feet along the northwestern line of the said Lot 1C, Block F, the southeastern right-of-way line of said Marketplace Avenue to a calculated point;

THENCE: Across the right-of-way of said Marketplace Avenue, North 69°13'35" West a distance of 0.26 feet to a calculated point for the POINT OF BEGINNING and the southeastern corner of this herein described tract;

THENCE: Across the right-of-way of said Marketplace Avenue with the following courses and distances;

1. South 62°53'13" West a distance of 14.10 feet to a calculated point for the southwestern corner of this herein described tract;
2. North 20°50'01" East a distance of 121.39 feet to a calculated point for the northwestern corner of this herein described tract;
3. South 21°15'11" East a distance of 14.20 feet to a calculated point for the northeastern corner of this herein described tract;
4. South 20°52'28" West a distance of 100.38 feet to the **POINT OF BEGINNING and CONTAINING** 0.0241-acres (1,051 sq. ft.) of land.

**LICENSE AGREEMENT AREA 9:**

BEING a 0.0547-acre (2,384 sq. ft.) tract of land out of the Henry Lollar Survey, Abstract No. 290, City of Kyle, Hays County, Texas, being a portion of Marketplace Avenue (R.O.W. Varies) as shown on the plat of the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F as shown on a plat recorded in Volume 17, Page 200 of the Plat Records of Hays County, Texas; said 0.0547-acre tract of land

and being more particularly described by metes and bounds as follows with bearings referenced to the Texas Coordinate System of 1983, South Central Zone:

COMMENCING: at a chiseled "X" in concrete found at the southeastern intersection of Marketplace Avenue and Physicians Way (60-foot R.O.W.) as shown on the said plat of the Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3, & 4, Block F for a northwestern corner of Lot 1B, Block F of the said Kyle Marketplace Section 2, Amending Plat of the Replat of Lots 1, 2, 3 & 4, Block F, said Lot 1B, Block F being the same tract of land as described in a Special Warranty Deed to Caroline Marketplace, LP recorded under Document No. 2022028971 of the Official Public Records of Hays County, Texas;

THENCE: Along the northwestern line of the said Lot 1B, Block F, the southeastern intersection of said Marketplace Avenue and said Physicians Way with a curve to the left having a Delta Angle of  $88^{\circ}52'20''$ , a Radius of 30.00 feet, an Arc length of 46.53 feet with the chord of the curve South  $58^{\circ}05'30''$  West a distance of 42.01 feet to a 1/2-inch iron rod found for a northwestern corner of the said Lot 1B, Block F;

THENCE: Along the northwestern line of the said Lot 1B, Block F, the southeastern right-of-way line of said Marketplace Avenue with a curve to the left having a Delta Angle of  $1^{\circ}18'36''$ , a Radius of 1040.00 feet, an Arc length of 23.78 feet with the chord of the curve South  $14^{\circ}19'37''$  West a distance of 23.78 feet to a calculated point;

THENCE: Across the right-of-way of said Marketplace Avenue, North  $75^{\circ}01'05''$  West a distance of 0.37 feet to a calculated point for the POINT OF BEGINNING and the northeastern corner of this herein described tract;

THENCE: Across the right-of-way of said Marketplace Avenue with the following courses and distances;

1. with a non-tangent curve to the right with a Delta angle of  $06^{\circ}29'47''$ , a Radius of 933.23 feet and an Arc length of 105.81 feet having a Chord bearing of South  $17^{\circ}48'53''$  West and a distance of 105.76 feet to a calculated point;
2. South  $20^{\circ}43'47''$  West a distance of 135.08 feet to a calculated point for the southeastern corner of this herein described tract;
3. South  $62^{\circ}42'34''$  West a distance of 14.22 feet to a calculated point for the southwestern corner of this herein described tract;
4. North  $20^{\circ}43'47''$  East a distance of 145.68 feet to a calculated point;
5. with a non-tangent curve to the left with a Delta angle of  $06^{\circ}53'15''$ , a Radius of 959.52 feet and an Arc length of 115.34 feet having a Chord bearing of North  $17^{\circ}33'44''$  East and a distance of 115.27 feet to a calculated point for the northwestern corner of this herein described tract;
6. South  $27^{\circ}07'25''$  East a distance of 14.17 feet to the **POINT OF BEGINNING and CONTAINING** 0.0547-acres (2,384 sq. ft.) of land.





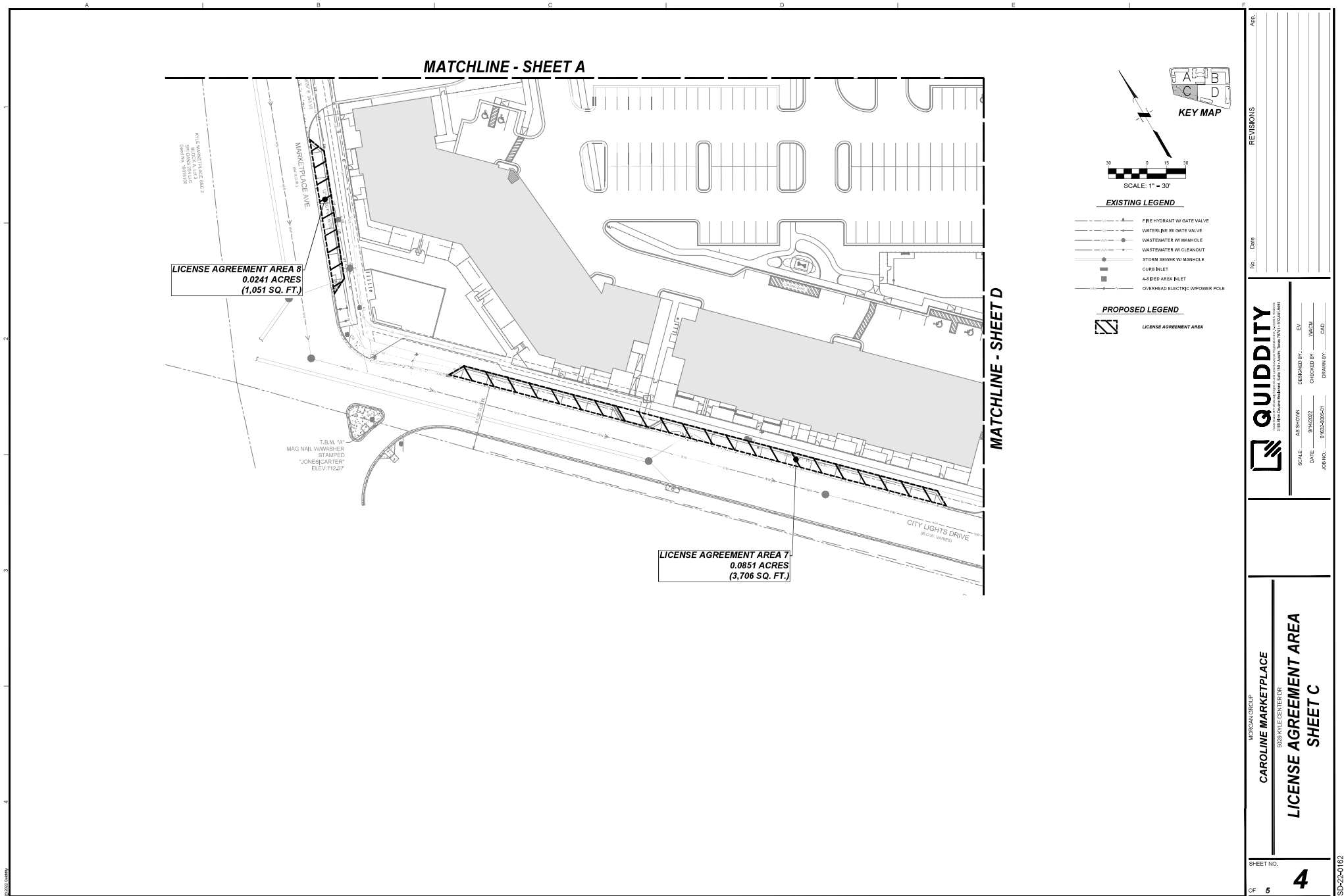


**LICENSE AGREEMENT AREA 4**  
**0.0591 ACRES**  
**(2,575 SQ. FT.)**

ICIANS WAY  
(60' R.O.W.)

KYLE MARKETPLACE SEC 2  
BLOCK E, Lx 2B  
KYLE CAR WASH SERVICES  
SUBSIDIARY LLC  
Dated At: 21068114

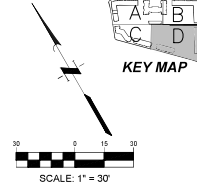
SHEET NO. **3**  
OF **5**













**MATCHLINE - SHEET C**

**MATCHLINE - SHEET B**



EXISTING LEGEND

- |   |                                 |
|---|---------------------------------|
|  | FIRE HYDRANT W/ GATE VALVE      |
|  | WATERLINE W/ GATE VALVE         |
|  | WASTEWATER W/ MANHOLE           |
|  | WASTEWATER W/ CLEANOUT          |
|  | STORM SEWER W/ MANHOLE          |
|  | CURB INLET                      |
|  | 6-SIDED AREA INLET              |
|  | OVERHEAD ELECTRIC W/ POWER POLE |

PROPOSED LEGEND



**LICENSE AGREEMENT AREA**

**LICENSE AGREEMENT AREA 5**  
**0.0852 ACRES**  
**(3,713 SQ. FT.)**

**LICENSE AGREEMENT AREA 6**  
**0.1199 ACRES**  
**(5,222 SQ. FT.)**

[illegible]

**QUIDDITY**  
Three dimensional figures are one dimensional objects. Quiddity is 100% real.  
3110 Hue-Denard Boulevard, Suite 150 • Austin, Texas 78741 • 512.441.1949

SCALE: AS SHOWN DESIGNED BY: EV  
DATE: 9/14/2022 CHECKED BY: WACM  
JOB NO.: D1632-0005-01 DRAWN BY: CAD

**CAROLINE MARKETPLACE**  
MORGAN GROUP

**LICENSE AGREEMENT AREA**  
**SHEET D**

SHEET NO.

5

OF 5

Item # 22



# CITY OF KYLE, TEXAS

## Participation in a Regional Climate Pollution Action Plan Grant

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** Consider and Possible Action to Support the City of Kyle's Participation in a Regional Climate Pollution Action Plan Grant. ~ *Bear Heiser, Council Member*

**Other Information:** The EPA recently announced the Climate Pollution Reduction Grant (CPRG) which provides the Austin-Round Rock-Georgetown MSA with a non-competitive grant of \$1 million for development, updating, or evaluation of plans to reduce climate pollution. Note – while the grant is focused on climate emissions, those reductions have documented co-benefits to reducing Ozone and PM2.5 emissions across the region.

The City of Austin is taking the lead on developing the grant application for the region and managing all aspects of the program. However, EPA would like this to foster as much collaboration as possible, so the Capital Area Council of Governments (CAPCOG) is encouraging Clean Air Coalition (CAC) members to join the City of Austin by supporting their application as well as participating in the project.

Some potential benefits of participation include:

- The opportunity to participate in a metro-wide collaboration around climate and air pollution;
- A portion of staff time paid to engage in climate planning efforts over the next four years;
- Consultant support to help identify priorities and conduct analyses which can inform future grant applications;
- And most importantly: eligibility to apply for CPRG implementation funding (competitive grants with a total available amount of \$4.6 billion, available in late 2023/2024).

The City of Austin would like letters of support to be submitted to them by April 25.

**Legal Notes:** N/A

**Budget Information:**

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### ATTACHMENTS:

#### Description

- ☐ City of Kyle Notice of Intent to Participate in CPRG Planning Grant from the City of Austin



Date: April 18, 2023

To: EPA Office of Air and Radiation [CPRG@epa.gov]

From: Travis Mitchell, Mayor, City of Kyle, Texas

Metro: Austin-Round Rock-Georgetown, TX Metro Area

Subject: Notice of Intent to Participate in CPRG Planning Grant from the City of Austin

On behalf of the City of Kyle, the Kyle City Council is writing in support of the City of Austin's application to participate in the CPRG Planning Grant program.

The City of Kyle designates the City of Austin with oversight and responsibility for managing grant funds and coordinating activities and deliverables pertaining to the CPRG Planning Grant program. The City of Kyle intends to participate in those activities and the development of those deliverables, led by the City of Austin.

Sincerely,

Travis Mitchell, Mayor



# CITY OF KYLE, TEXAS

## Rules of Council - Recision of Votes

**Meeting Date: 4/18/2023**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Discussion and possible action regarding the Rules of Council, to include but not limited to, the recision of votes. ~ *Yvonne Flores-Cale, Council Member*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Budget/Visioning Workshop

**Meeting Date: 4/18/2023**

**Date time: 7:00 PM**

**Subject/Recommendation:** Discussion regarding council budget workshop calendar and scheduling of visioning workshop. ~ *Travis Mitchell, Mayor*

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available



# CITY OF KYLE, TEXAS

## Executive Session - Convene

Meeting Date: 4/18/2023

Date time: 7:00 PM

**Subject/Recommendation:** Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.

1. Pending or contemplated litigation, settlement agreement, or to seek the advice of the City Attorney and Attorneys concerning legal issues pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct.
  - Cause No. 22-0873; the State of Texas, ex. rel. 1200 S. Old Stagecoach Road, LLC, v. City of Kyle, Texas; pending in the 207th Judicial District Court of Hays County, Texas, and Cause No. 19-1492; 1200 S. Old Stagecoach Road, LLC v. City of Kyle, Texas; pending in the 22nd Judicial District Court of Hays County, Texas
  - Marshall Tract
  - City Manager Employment Agreement
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.
3. Personnel matters pursuant to Section 551.074.
4. Convene into executive session pursuant to Section 551.087, Texas Government Code, to deliberate regarding the offer of economic incentives to one or more business prospects that the City seeks to have locate, stay, or expand in or near the City.
  - Project Pearly Whites
  - Project Lion King
  - Project Limoncello
  - Project Chile Pepper

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### ATTACHMENTS:

#### **Description**

No Attachments Available





# CITY OF KYLE, TEXAS

## Reconvene

**Meeting Date: 4/18/2023**  
**Date time: 7:00 PM**

**Subject/Recommendation:** Take action on items discussed in Executive Session.

**Other Information:**

**Legal Notes:**

**Budget Information:**

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### **ATTACHMENTS:**

#### **Description**

No Attachments Available