

STATE OF TEXAS §
COUNTY OF HAYS §

**DEVELOPMENT AGREEMENT
UNDER SECTION 212.172, TEXAS LOCAL GOVERNMENT CODE**

This Development Agreement under Section 212.172, Texas Local Government Code (the "Agreement") is entered between the City of Kyle, Texas (the "City") and Alice Henk Ewald, Polly Darlene Haynes, Dinah Gwin Bateman, Cynthia Gruenbein, and Allen D. Ewald (the "Owner"). The term Owner shall include all owners of the Property. The City and the Owner are collectively referred to as the Parties.

WHEREAS, the Owner owns the parcels of real property in Hays County, Texas, more particularly described in the attached **Exhibit "A"** (the "Property");

WHEREAS, the City initiated the process to annex all or portions of Owner's Property;

WHEREAS, the Developer has requested that the City consider entering into a development agreement to provide for the continuation of the Property in the City's extraterritorial jurisdiction ("ETJ");

WHEREAS, the City is agreeable to the continuation of the Property in the City's ETJ for the period of time and under the terms and conditions stated in this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Section 212.172, Texas Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

Section 1. Extraterritorial Jurisdiction Status of Property. The City agrees that the Property shall remain in the City's extraterritorial jurisdiction (the "ETJ") and the City shall discontinue the pending annexation proceedings as to the Property. The City further agrees that it shall not annex the Property during the term of this Agreement, subject to the terms and conditions of this Agreement.

Section 2. Owner's Obligations. In consideration of the City's agreement not to annex the Property and as a condition of the Property remaining in the City's ETJ, the Owner covenants and agrees to the following:

- (a) The Owner shall use the Property only for use and location of self-storage and boat/recreational vehicle storage structures and the accessory uses authorized in Section 2(c) which uses are existing and/or planned ("the Permitted Uses") on the Effective Date of this Agreement which are identified in **Exhibit "B"**.
- (b) The Owner shall not subdivide the Property, by either platting the property or by

dividing the property by metes and bounds description, or file for approval of a subdivision plat, site plan, or related development document for the Property with Hays County or the City until the Property is annexed into the city limits and zoned by the City.

- (c) Except for the Permitted Uses, the Owner shall not construct, or allow to be constructed, any building or structure on the Property that requires a building permit until the Property is annexed into and zoned by the City and the required permits are issued by the City. Accessory structures that do not exceed 200 square feet and that comply with the City's ordinances may be installed on the Property without triggering voluntary annexation of the property and shall be included in the definition of Permitted Uses; provided that the Owner obtains building permits and other approvals required by City ordinances and regulations prior to construction. Structures existing at the time of this agreement are not required to be modified or improved to meet the City's building codes, ordinances and regulations unless and until such time that an existing structure is modified to an extent that requires a building permit, and then only the portion of the building or expansion subject to the building permit shall be required to comply with current building codes. For example if a wing is added to an existing building that requires electrical service from the existing building's electrical box, the new construction would fall under the current building codes of the city and the electrical box of the existing building may also be required to be brought up to code.
- (d) The City's Warehouse (District "W") zoning regulations shall apply to the Property; provided that the Property may be used for the Permitted Uses only, unless the Property is annexed into the City. The City's building codes, ordinances, and regulations shall apply to the Property as if it were located in the city limits, except as specifically provided otherwise in this Agreement. Any buildings or structures constructed on the Property after the Effective Date shall be constructed in compliance with the regulations for District "W" and the City's building codes, ordinances and regulations, as well as any applicable state and federal laws.

Section 3. Development and Annexation of Property.

- (a) The following occurrences shall be deemed the Owner's request to that the City annex the Property into the City's corporate limits, and the Property may subsequently be annexed at the discretion of the City Council:
 - (1) The filing of any application for plat approval, site plan approval, building permit or related development document for the Property, or the commencement of development of the Property, except for the Permitted Uses as specifically authorized herein.
 - (2) The use of the Property for a use other than the Permitted Uses.
 - (3) The Owner's failure to comply with Section 2.

- (4) The filing for voluntary annexation of the Property into the City by the Owner.
- (5) The expiration of this Agreement.
- (b) The Owner agrees that annexation initiated due to an occurrence under Section 3(a) is an annexation by request of and consent of the property owner and the Owner hereby consents to such annexation as though a petition or request for such annexation had been tendered by the Owner. Upon annexation, the Owner agrees that municipal services shall be provided to the Property in accordance with the adopted municipal services plan, a copy of which is attached hereto as **Exhibit "C"**, unless the Parties agree in writing otherwise.
- (c) The Owner agrees that the City may annex a strip of the Property if necessary to cause the city limits to be contiguous to a tract that the City wishes to annex land that is located outside of the Property or for the annexation of an Affected Parcel pursuant to Section 3 (b). The Parties will work in good faith to determine the location and extent of the strip to be annexed.

Section 4. Application of City Regulations. The Property is subject to all of the City's regulations, as they are amended from time to time, and planning authority that do not materially interfere with the use of the Property for the Permitted Uses in the same manner the regulations are enforced within the City's boundaries and the Owner acknowledges and agrees that the City is hereby authorized to enforce said regulations and planning authority except as specifically provided otherwise herein.

Section 5. Term. The term of this Agreement (the "Term") is fifteen (15) years from the Effective Date, which may be renewed for two (2) additional term for a maximum of forty-five (45) years.

Section 6. Vested Rights Claims. This Agreement is not a permit for the purposes of Chapter 245, Texas Local Government Code. The Owner hereby waives any and all vested rights and claims that the Owner may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner takes or has taken in violation of Section 2 herein. Notwithstanding the foregoing, the Owner and City agree and acknowledge that any vested rights and claims pertaining to the use and development of the Property as authorized by Section 2 is not waived by the Owner.

Section 7. Authorization.

- (a) All parties and officers signing this Agreement warrant to be duly authorized to execute this Agreement.
- (b) The Owner acknowledges that each and every owner of the Property or an authorized representative has signed this Agreement and that the Agreement is binding on all owners of the Property.

Section 8. Notice. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee. Any person who sells or conveys any portion of the Property shall give written notice of the sale or conveyance to the City. A copy of the notices required by this Section shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

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

Notices required to be sent to the Owner shall be sent by personal delivery or certified mail, return receipt requested, to the Owner at the following address:

Owner Contact and Address:
Dinah Bateman
400 Drue
Kyle, TX 78640

Section 9. Covenant Running with the Land. This Agreement shall constitute a covenant that runs with the Property and is binding on future Owners of the Property, and a copy of this Agreement shall be recorded in the Official Public Records of Hays County, Texas. The Owner and the City acknowledge and agree that this Agreement is binding upon the City and the Owner and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.

Section 10. Conveyance of Property. Conveyance of the Property in its entirety to subsequent owners does not constitute a request for voluntary annexation unless Section 2 is also violated.

Section 11. Severability. If any provision of this Agreement is held by a court of competent and final jurisdiction to be invalid or unenforceable for any reason, then the remainder of the Agreement shall be deemed to be valid and enforceable as if the invalid portion had not been included.

Section 12. Amendment and Modifications. This Agreement may be amended or modified only in a written instrument that is executed by both the City and the Owner after it has been authorized by the City Council.

Section 13. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

Section 14. Governmental Immunity; Defenses. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either the City or Owner, including governmental immunity, or to create any legal rights or claims on behalf of any third

party.

Section 15. Enforcement; Waiver. This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

Section 16. Effect of Future Laws. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 17. Venue and Applicable Law. Venue for this Agreement shall be in Hays County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

Section 18. Counterparts. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Section 19. Effective Date. This Agreement shall be in full force and effect as of the date of approval of this Agreement by the City Council, from and after its execution by the Parties.

Section 20. Sections to Survive Termination. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions related to annexation of the Property into the City.

Execution Pages to Follow.

Entered into this 18th day of December, 2019.

Owner

By: Alice Henk Ewald
By: Dorah Gwen Bateman
By: Polly Darlene Hayes
By: Allen D Ewald
By: Cynthia Guerber

City of Kyle, Texas

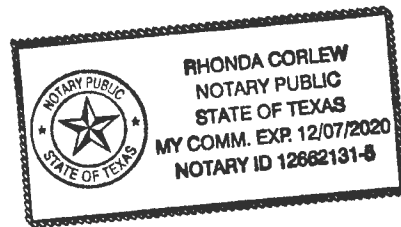
Travis Mitchell
Travis Mitchell, Mayor

STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Nice Hank Ewald the 1 of 5, the Owner of the Property, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 5th day of Dec, 2019.

Rhonda Corlew
Notary Public - State of Texas

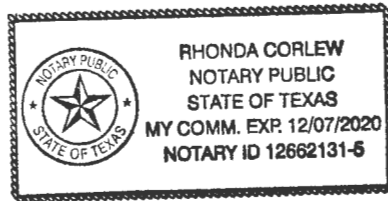


STATE OF TEXAS §
COUNTY OF Hays §

BEFORE ME the undersigned authority on this day personally appeared Siwan Gwin Bateman
the 2 of 5, the Owner of the Property, and acknowledged that he is fully
authorized to execute the foregoing document and that he executed such document for the purposes
and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 5th day of
Dec, 2019.

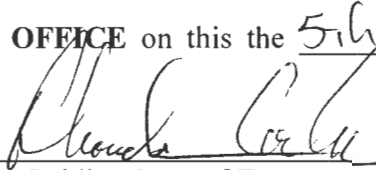
Rhonda Corlew
Notary Public - State of Texas



STATE OF TEXAS §
COUNTY OF Hays §

BEFORE ME the undersigned authority on this day personally appeared Peter Andrew Haynes the 3 of 5, the Owner of the Property, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 5th day of Dec., 2019.

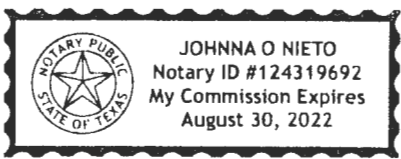


Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF Bexar §

BEFORE ME the undersigned authority on this day personally appeared Allen O. Ewald,
the _____ of _____, the Owner of the Property, and acknowledged that he is fully
authorized to execute the foregoing document and that he executed such document for the purposes
and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 9th day of
December, 2019.



Johnna O. Nieto
Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF Jim Wells §

BEFORE ME the undersigned authority on this day personally appeared Dec,
the 12 of 2019, the Owner of the Property, and acknowledged that he is fully
authorized to execute the foregoing document and that he executed such document for the purposes
and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 12 day of
Dec, 2019.

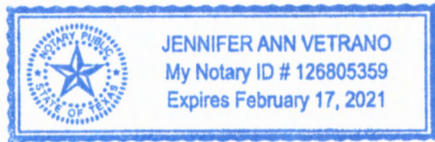
Megan Pavlicek
Notary Public - State of Texas



STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Travis Mitchell, Mayor, City of Kyle, Texas and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 18th day of December, 2019.



Jennifer A. Vetrano

Notary Public - State of Texas

Exhibit A
Property Description

Exhibit A

3280 E RR 150

Approximately 7.5 Acres

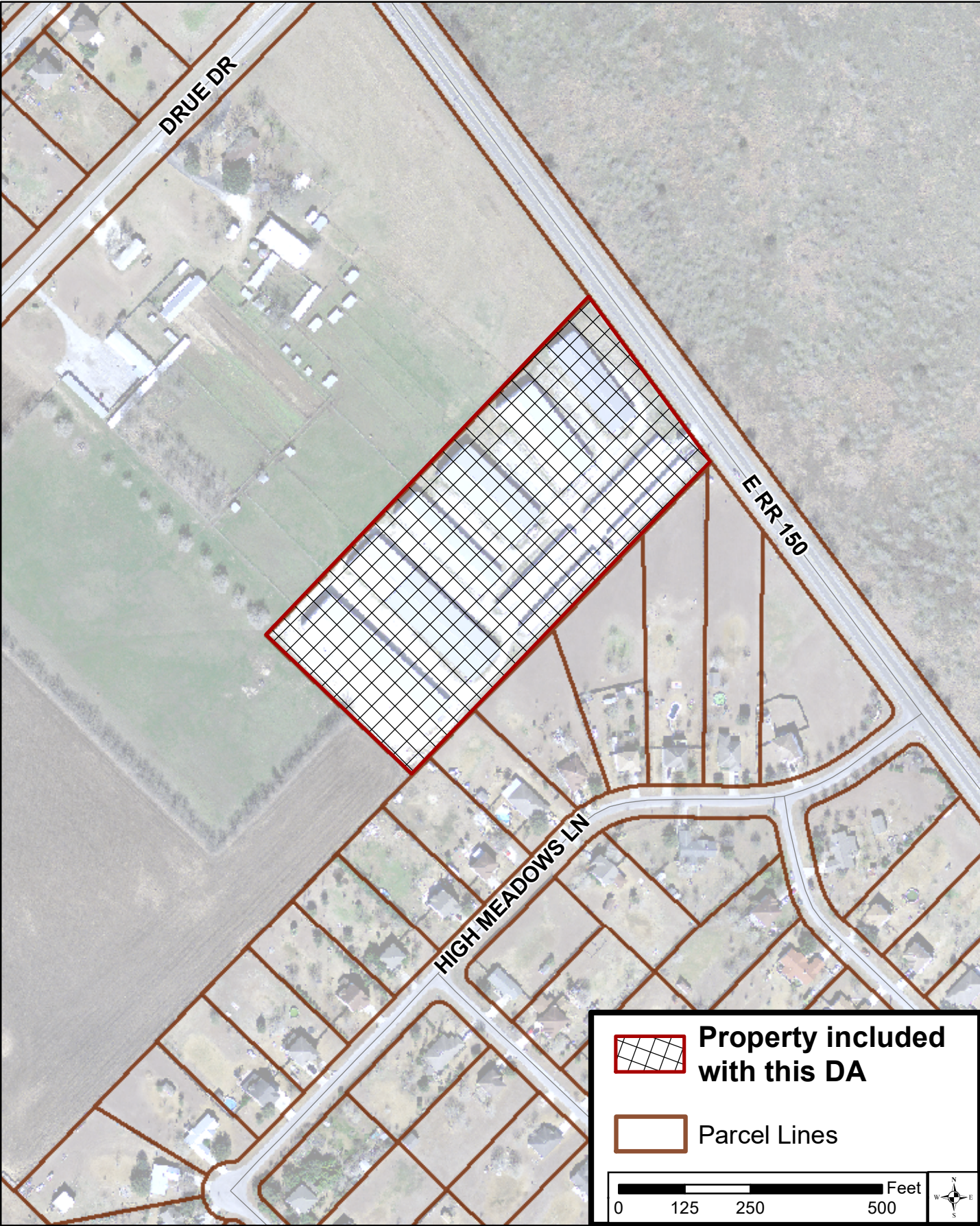


Exhibit B

Planned Permitted Uses

Oct 29, 2019

James,

We would like to expand our business at A+D Storage. If and when we expand it would extend 361' North and South going to back fence of our property line. Going East to West it would be 383' to fence line.

We would like to build two buildings for Covered RV parking. Buildings would be 308' long X 83' wide, with 64' between buildings to provide adequate turn around for RV'ers.

This would leave 121' feet for turn around and extra parking.

Thank you

Dinah Bateman

512-924-9423

dinahbateman@yahoo.com

Existing Fence

Existing Fence

Current Bld 6

383'

Existing Fence

↑

10'

83'

New Bld 7

308'

Turnaround

64'

New Fence

83'

New Bld 8

308'

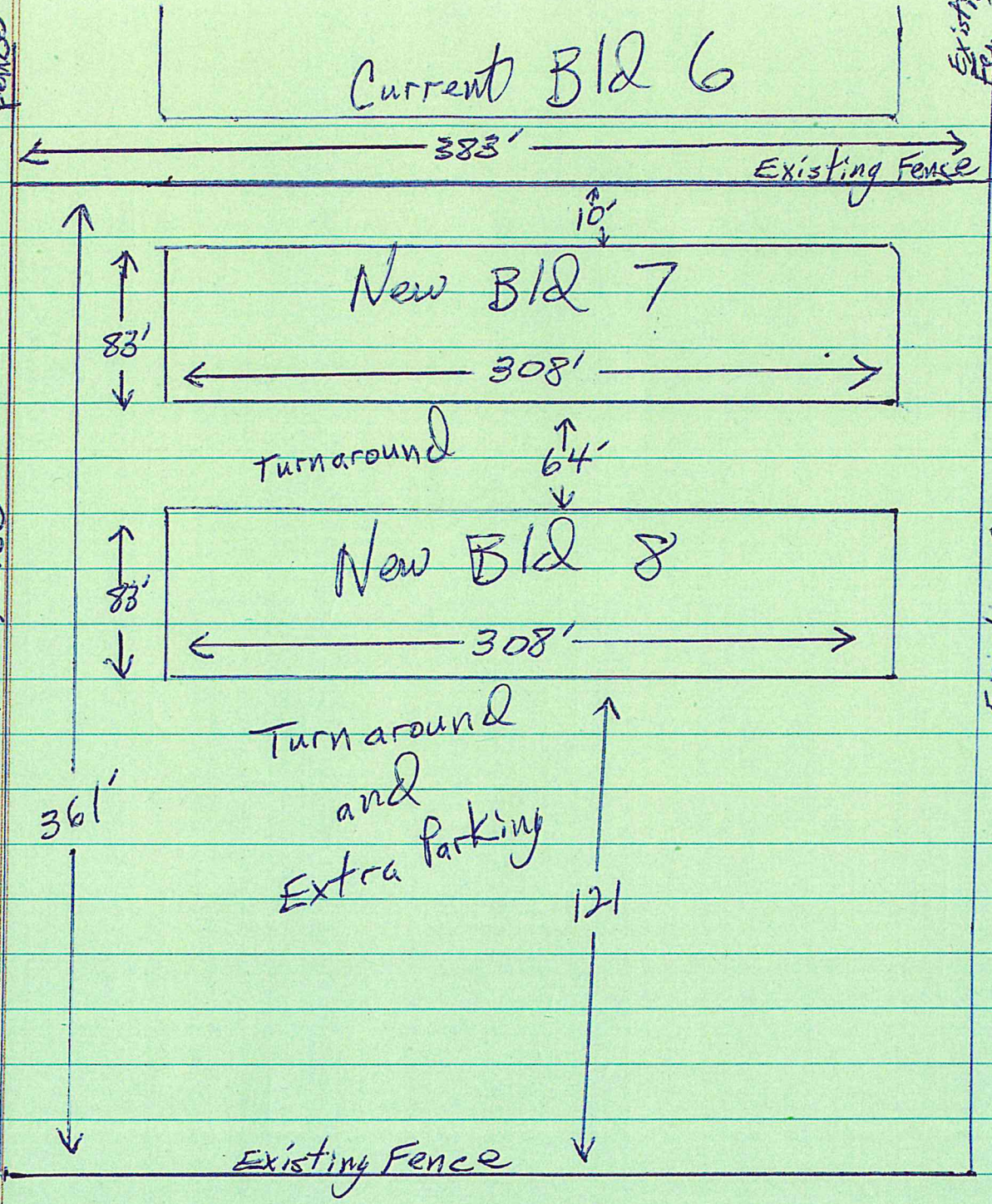
Existing Fence

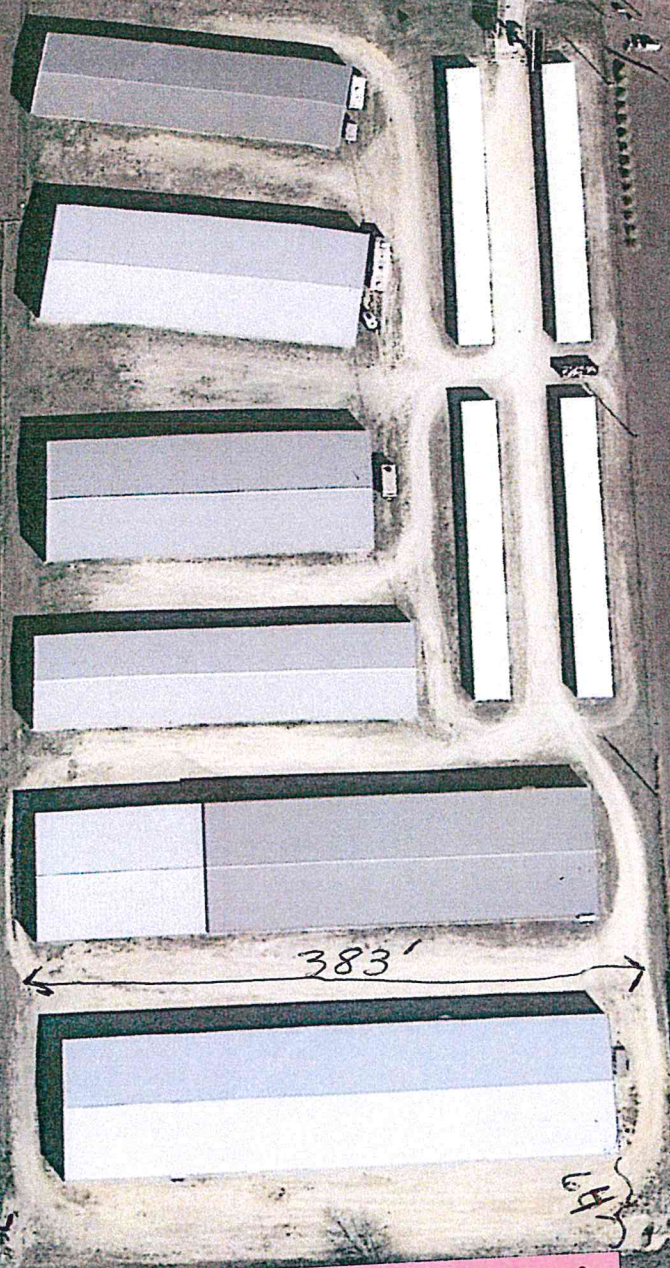
Turnaround and Extra Parking

361'

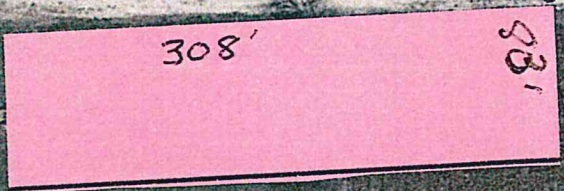
121'

Existing Fence



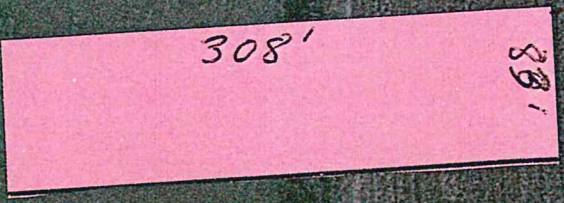


383'



308'

88'



308'

88'

361'

185' 1/2"
 out left
 for building

Exhibit C
Municipal Services Plan

Exhibit “C”

MUNICIPAL SERVICES PLAN FOR PROPERTY TO BE ANNEXED TO THE CITY OF KYLE

WHEREAS, the City of Kyle, Texas (the “City”) intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the “Property”);

WHEREAS, Section 43.056, Loc. Gov't. Code, requires a municipal service plan be adopted with the annexation ordinance;

WHEREAS, the Property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that are existing are sufficient to service the Property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements by the City are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City;

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by Chapt. 43, Loc. Gov't. Code, to annex the Property into the City; and

WHEREAS, the Property will benefit from the City’s development restrictions and zoning requirements, as well as other municipal services provided by the City, which are good and valuable consideration for this service plan

NOW, THEREFORE, the City agrees to provide the following municipal services for the Property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to this Plan, the following municipal services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

C. Animal control as follows:

Service by present assigned code compliance personnel, equipment and facilities.

D. Maintenance of parks and playgrounds within the City.

- E. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.
- F. Maintenance of other City facilities, buildings and service.
- G. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned Agricultural District "A" with the intent to rezone the Property upon request of the landowner(s) or city staff. The Planning & Zoning Commission and the City Council will consider rezoning the Property at future times in response to requests submitted by the landowner(s) or requested by city staff.

(2) **Scheduled Municipal Services.** Depending upon the Property owner's plans and schedule for the development of the Property or redevelopment of the Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines or wells as provided by statutes of the State of Texas.

(ii) In accordance with the rules and regulations for water service extension, water service will be provided by the utility holding a water certificate of convenience and necessity ("CCN") for the Property, or absent a utility holding a CCN, in whose jurisdiction the Property is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's system, the Property owner(s) shall construct the internal water lines and pay the costs of water line extension and necessary facilities to service the Property as required in City ordinances at the time of the request. The Property owner(s) agree the Property in its current state has adequate water service and no capital improvements by the City are required. The Property owner(s) agree as the Property develops and water services are sought from the utility holding the CCN for the Property that the City's ordinances, policies, or agreements between the City and the Property owner(s) shall govern the extension of water services to the Property and the City shall have no obligation to service in another CCN.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines or septic systems as provided by statutes of the State of Texas.

(ii) The Property owner(s) shall construct the internal and off-site sewer lines and facilities (the "Sewer System") and pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Sewer System, sewer service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The Sewer System will be accepted and maintained by

the City in accordance with its usual policies. Requests for new sewer extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

C. Maintenance of public streets and rights-of-way as appropriate as follows:

(i) Provide maintenance services on public streets within the Property that are dedicated and finally accepted by the City. The maintenance of such public streets and roads will be limited as follows:

- (A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.;
- (B) Routine maintenance as presently performed by the City; and
- (C) The Property owner(s) have specifically agreed that maintenance services will be of little benefit and will not be required or needed on the Property, prior to the Property owner(s), its grantees, successors and assigns completing the construction and dedication of streets to the City in compliance with City subdivision regulations.

(ii) Following installation of the roadways, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain the public streets, roadways and rights-of-way within the boundaries of the Property if dedicated and accepted, as follows:

- (A) As provided in C(i)(A)&(B) above;
- (B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;
- (C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and
- (D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the Property abut existing roadways. The Property owner(s) agree that no City improvements are required on such roadways to service the Property. If the owner(s) develop the Property so as to impact abutting roadways pursuant to the City's subdivision regulation, the owner(s) agree to comply with such ordinances.

(3) **Special Services and Actions.** Although the City reserves all its governmental authority, powers and discretion, if the City shall unreasonably refuse to grant the permits and approvals above provided in (2)(A), (B) & (C), then in that event the owner(s) may request and obtain disannexation of the Property pursuant to this service plan; provided that if the City shall, in the exercise of its discretion and authority, approve the permits and events set forth in (2)(A), (B) & (C) above, the Property shall be and remain within the corporate limits of the City.

(4) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the Property or redevelopment, the landowner(s) will be responsible for the development costs the same as a developer or landowner in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the Property. The Property owner(s) for itself, its grantees, successors, and assigns agree that no capital improvements are required to service the Property the same as similarly situated properties already within the City.

(5) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(6) **Property Description.** The legal description and map of the Property are as set forth in Exhibit "A" that is attached to the Ordinance to which this negotiated municipal service plan is attached as Exhibit "B".

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.

20001683 AGREEMENT
01/15/2020 03:38:19 PM Total Fees: \$114.00

 Elaine H. Cárdenas

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