

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") entered between the City of Kyle, Texas (the "City") and County Line Business Park, a Texas limited liability company (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 for the period of time specified in this Agreement (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 the purpose of conducting its commercial development and leasing business which uses are existing and/or planned ("the Permitted Uses") on the Effective Date of this Agreement, as further described in Section 2(c).
- (b) Except as needed for the Permitted Uses, the Owner shall not subdivide the Property, by either platting the property or by dividing the property by metes and

bounds description (except as otherwise provided in Section 10), 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. Permitted Uses include: the twelve buildings located on the Property as of the Effective Date of this Agreement; completing the buildout of six additional buildings already in process of being built or planned to be built on the property; and the leasing of those buildings for commercial uses. The Permitted Uses may be continued under this Agreement without the need for a building permit from the City.

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 Owner's failure to comply with Sections 2(a), 2(b), or 2(c).
 - (3) The filing for voluntary annexation of the Property into the City by the Owner.
 - (4) Transfer or conveyance of the Property to a different 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 "B"**, 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 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. Said regulations shall not be applied to the use of the Property for Permitted Uses during the term of this Agreement.

Section 5. Term. The term of this Agreement (the "Term") is three (3) years from the Effective Date.

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, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within 14 days of any change in the use of the Property. A copy of the notices required by this Section shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

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

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

County Line Business Park

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

Section 11. Amendment and Modifications. This Agreement may be amended or modified only in a written instrument that is executed by both the City and the Owner after it has been authorized by the City Council.

Section 12. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

Section 13. Governmental Immunity; Defenses. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either the City or Owner, including governmental immunity, or to create any legal rights or claims on behalf of any third party.

Section 14. Enforcement; Waiver. This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

Section 15. Effect of Future Laws. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 16. Venue and Applicable Law. Venue for this Agreement shall be in Hays County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

Section 17. Counterparts. This Agreement may be separately executed in individual

counterparts and, upon execution, shall constitute one and same instrument.

Section 18. Effective Date. This Agreement shall be in full force and effect as of the date of approval of this Agreement by the City Council, from and after its execution by the Parties.

Section 19. Sections to Survive Termination. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions related to annexation of the Property into the City.

Entered into this 2 day of December, 2019.

Owner

By: 

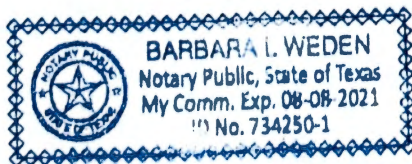
City of Kyle, Texas


Travis Mitchell, Mayor

STATE OF TEXAS §
COUNTY OF Day §

BEFORE ME the undersigned authority on this day personally appeared Cedric Leguypay, the 2nd of December, 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 2nd day of December, 2019.




Notary Public - State of Texas

STATE OF TEXAS
COUNTY OF HAYS

§
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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 3rd day of December, 2019.


Notary Public - State of Texas

Exhibit A
Property Description

TITLE SURVEY OF A CALLED 10.00 ACRES DOC. NO. 17010853 OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TX

LEGEND	
()	RECORD INFORMATION
()	RIGHT OF WAY
()	W.L.E.
()	ELECTRIC EASEMENT
()	VOLUME AND PAGE
()	DOCUMENT NUMBER
()	OFFICIAL PUBLIC RECORDS
()	HAYS COUNTY SET
()	(PINK CAP STAMPED)
()	"SURVEY WORKS 6356"
()	12" IRON ROD FOUND
()	CALCULATED POINT
()	IRRIGATION CONTROL VALVE
()	ELECTRIC METER
()	POWER POLE
()	WATER METER
()	CLEAN OUT
()	AIR CONDITIONING
()	GUY WIRE
()	KEY PAD
()	SEPTIC LID
()	SEPTIC VALVE
()	O.H.E.
()	OVERHEAD ELECTRIC
()	CHAINLINK FENCE
()	BARB WIRE FENCE
()	RAIL FENCE
()	CONCRETE AREA
()	CONCRETE EDGING
()	GRAVEL AREA

CALLED 7.6270 ACRES
VOL. 1227, PG. 10
O.P.R.H.C.

(1,163.12')
(S46°21'34"E)
1,162.87'
S46°21'47"E

MEASURED ACREAGE
10.0 ACRES ±
CALLED 10.00 ACRES
DOC. NO. 17010853
O.P.R.H.C.

CALLED 34.995 ACRES
VOL. 1388, PG. 870
O.P.R.H.C.

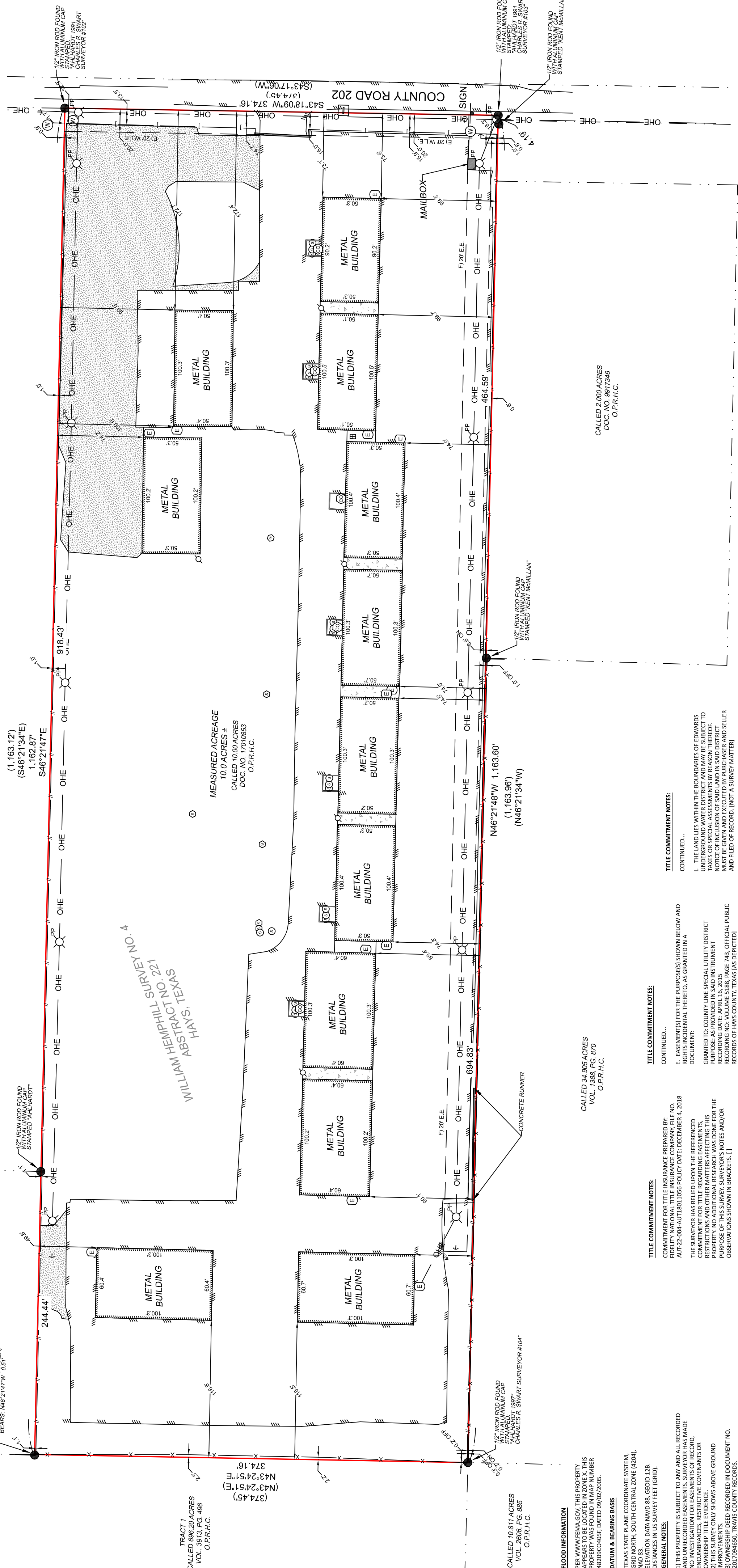
CALLED 2.000 ACRES
DOC. NO. 8917346
O.P.R.H.C.

CALLED 45.2855 ACRES
VOL. 974, PG. 676
O.P.R.H.C.

CALCULATED POINT FROM WHICH
A 12" IRON ROD FOUND
WITH ALUMINUM CAP
STAMPED "HALLHART
1891"
CHARLES R. SMART SURVEYOR
BEARS (N43°24'51" E)
BEARS (N43°24'51" E)

TRACT 1
CALLED 695.20 ACRES
VOL. 3813, PG. 486
O.P.R.H.C.

CALLED 10.811 ACRES
VOL. 2906, PG. 885
O.P.R.H.C.



TITLE COMMITMENT NOTES:

- CONTINUED...
- E. EASEMENTS FOR THE PURPOSES SHOWN BELOW AND RIGHTS INCIDENTAL THERETO, AS GRANTED IN A DOCUMENT.
 - GRANTED TO: COUNTY (VIA SPECIAL UTILITY DISTRICT PURPOSE AS PROVIDED IN SAID INSTRUMENT RECORDING NO. VOLUME 5188, PAGE 743, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (AS DEPICTED)).
 - EASEMENTS FOR THE PURPOSES SHOWN BELOW AND RIGHTS INCIDENTAL THERETO, AS GRANTED IN A DOCUMENT.
 - GRANTED TO: FEDERNALES ELECTRIC COOPERATIVE, INC. PURPOSE: AS PROVIDED IN SAID INSTRUMENT RECORDING NO. INSTRUMENT #17003387, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (AS DEPICTED).
 - G. THE LAND LIES WITHIN THE BOUNDARIES OF PLUM CREEK GROUND WATER DISTRICT AND MAY BE SUBJECT TO TAXES OR SPECIAL ASSESSMENTS BY REASON THEREOF. NOTICE OF INCLUSION OF SAID LAND IN SAID DISTRICT MUST BE GIVEN AND EXECUTED BY PURCHASER AND SELLER AND FILED OF RECORD. (NOT A SURVEY MATTER)
 - H. THE LAND LIES WITHIN THE BOUNDARIES OF PLUM CREEK GROUND WATER DISTRICT AND MAY BE SUBJECT TO TAXES OR SPECIAL ASSESSMENTS BY REASON THEREOF. NOTICE OF INCLUSION OF SAID LAND IN SAID DISTRICT MUST BE GIVEN AND EXECUTED BY PURCHASER AND SELLER AND FILED OF RECORD. (NOT A SURVEY MATTER)

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FLOOD INFORMATION

PER WWW.FEMA.GOV, THIS PROPERTY IS NOT IN A FLOOD ZONE. THE PROPERTY WAS FOUND IN MAP NUMBER 4829C0405F, DATED 09/02/2005.

DATUM & BEARING BASIS

TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, SOUTH CENTRAL ZONE (4204), ELEVATION DATA NAVD 83, GEOD 12B, DISTANCES IN US SURVEY FEET (GRID).

- GENERAL NOTES:
- THIS SURVEY IS SUBJECT TO ANY AND ALL RECORDED AND UNRECORDED EASEMENTS, SURVEYOR HAS MADE NO INVESTIGATION FOR EASEMENTS OF RECORD.
 - ENCUMBRANCES, RESTRICTIVE COVENANTS OR OTHER MATTERS AFFECTING THIS SURVEY OR ANY PART THEREOF, WHICH CANNOT BE DETERMINED FROM RECORD DOCUMENT.
 - OWNERSHIP DEED RECORDED IN DOCUMENT NO. 2017984650, HAYS COUNTY RECORDS.
 - THE FOLLOWING MATTERS CORRESPONDING TO SCHEDULE B ITEMS 5 ADDRESSED BY THE SURVEYOR ARE ITEMIZED BELOW:
 - EASEMENTS FOR THE PURPOSES SHOWN BELOW AND RIGHTS INCIDENTAL THERETO, AS GRANTED IN A DOCUMENT.
 - GRANTED TO: PLUM CREEK CONSERVATION DISTRICT PURPOSE: AS PROVIDED IN SAID INSTRUMENT RECORDING NO. VOLUME 184, PAGE 312, DEED RECORDS OF HAYS COUNTY, TEXAS (AS DEPICTED). SECTION CANNOT BE DETERMINED FROM RECORD DOCUMENT.
 - EASEMENTS FOR THE PURPOSES SHOWN BELOW AND RIGHTS INCIDENTAL THERETO, AS GRANTED IN A DOCUMENT.
 - DUE TO DIFFERING BUILDING PRACTICES, BUILDING DIMENSIONS ARE APPROXIMATE. THE DEVELOPMENT CODES AND ZONING ORDINANCES.
 - GRAPHIC REPRESENTATION ONLY.

I CERTIFY THAT THIS SURVEY HAS BEEN COMPLETED IN ACCORDANCE WITH THE CURRENT REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF TEXAS TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Derek Kinsaul

DEREK KINSAUL, R.P.L.S. NO. 6356 AUGUST 15, 2019
DRAWN BY: E. OLSEN REVISION:

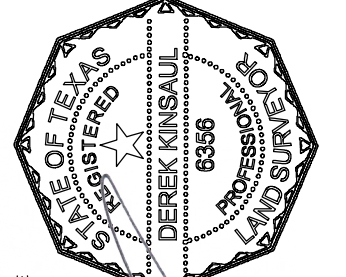


Exhibit B

**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.

19045299 AGREEMENT
12/12/2019 02:01:40 PM Total Fees: \$70.00

 Elaine H. Cardenas

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