



JUNE 9, 2023

WEEKLY REPORT

TO: MAYOR MITCHELL AND COUNCIL MEMBERS
FROM: CITY MANAGER BRYAN LANGLEY

KYLE COMMUNICATIONS DEPARTMENT
COMMUNICATIONSDEPT@CITYOFKYLE.COM

I. COUNCIL SCHEDULE

TUESDAY, JUNE 20, CITY COUNCIL SPECIAL SESSION, 5:30 P.M.

All meetings will be held at Kyle City Hall Council Chambers, 100 W. Center St. The meeting will be conducted in the council chambers and is also available via live stream, www.cityofkyle.com/kyletv/kyle-10-live.

TUESDAY, JUNE 20, CITY COUNCIL REGULAR SESSION, 7 P.M.

All meetings will be held at Kyle City Hall Council Chambers, 100 W. Center St. The meeting will be conducted in the council chambers and is also available via live stream, www.cityofkyle.com/kyletv/kyle-10-live.

II. KOHLER'S CROSSING DID NOT RECEIVE RAILROAD CROSSING ELIMINATION GRANT

Staff Contact: Leon Barba

The Kohler's Crossing Project was not selected for funding through the Railroad Crossing Elimination Grant. The City will wait for the call for projects from CAMPO.

III. DUPLICATE UTILITY BILL INSERTS

Staff Contact: Rachel Sonnier

In May, the City of Kyle ran notices in City Utility Bills for the 2030 Comprehensive Plan Open Houses held May 22. But due to technical error, the notices also ran in the bills that went out to customers in June. We apologize for any confusion the duplicate notices might have caused. More opportunities for public input will be available in the future. For more information on the Kyle 2030 Comprehensive Plan rewrite or to give your feedback, please visit Kyle2030.com.

IV. ZENCITY COMMUNITY SURVEY REPORT

Staff Contact: Rachel Sonnier

We have received our first Community Survey Benchmark Report from ZenCity. Essentially this report will serve as our baseline for benchmarking for all future reports we receive from ZenCity. **(Please see attachment on page 8)**

V. WASTEWATER TREATMENT PLANT RIBBON CUTTING RESCHEDULED

Staff Contact: Rachel Sonnier

The Wastewater Treatment Plant Ribbon Cutting, originally scheduled for Friday, June 23, has been rescheduled to Thursday, July 13 from 5-7 p.m. The ribbon cutting will include remarks by City of Kyle Mayor Travis Mitchell and City of Kyle Wastewater Treatment Plant Staff, free snow cones from food truck vendor Kona Ice, a bouncy house for kids, music, and a chance to ask questions and speak with city staff.

VI. FUND BALANCE IN THE WASTEWATER IMPACT FEE FUND

Staff Contact: Perwez Moheet

At the last City Council meeting held on June 6, 2023, Council Member Parsley requested the amount of the Fund Balance in the Wastewater Impact Fee Fund. As of May 31, 2023, the Fund Balance for the Wastewater Impact Fee Fund totaled \$21.9 million. It is important to note that a number of wastewater impact fee funded projects totaling approximately \$5.0 million are planned in FY 2023. As contracts are awarded for these planned projects, it will result in the reduction of the Fund Balance.

VII. ECONOMIC DEVELOPMENT UPDATES

Staff Contact: Victoria Vargas



Now Open For Business:

- Cycle Bar
- Chipotle
- Freebirds

Torchy's Tacos coming July 5 ,2023.

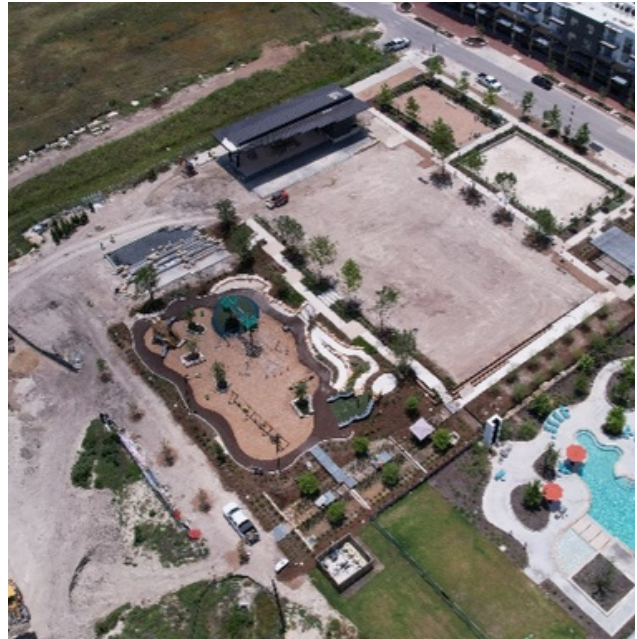
Academy will be coming in September 2023.

IIX. CIP/ROAD PROJECT UPDATES

Staff Contact: Leon Barba

La Verde Park:

- Project 89% complete
- Import of topsoil for sod area
- Spot survey existing grade
- LED lighting at bridge
- Soffit installation continuing
- Limestone waterproofing
- Up light install on larger trees around lawn area
- La Verde Monument Update
- Monument has been approved to be manufactured & will take 6-8 weeks
- Substantial Completion Date: July 2023

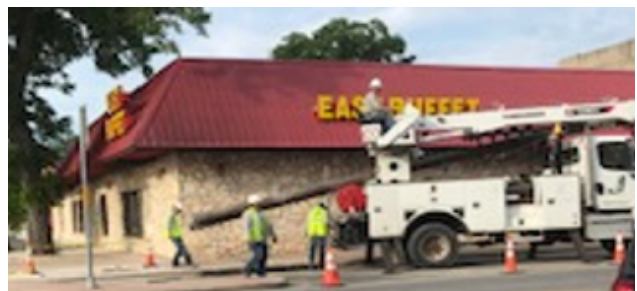


Public Safety Center:

- Project 89% complete
- Loadbank install
- Centerpoint gas meter install
- Sod & planting trees
- Elevator commissioning
- Spraying water repellents
- Gym flooring
- Furniture & Equipment install
- Substantial Completion Date: June 2023

Downtown Relocation of Lines:

- Spectrum: Pending a Spectrum service removal (one pole)
- PEC: Scheduled to start removing poles this week. Estimate 1 week to remove once they arrive.



CIP/ROAD PROJECT UPDATES CONTINUED

Indian Paintbrush Lift Station:

- Based on pay request, overall progress is 63%
- Continued preparation of emergency generator pad
- Removed existing canopy pad
- Preparation of control panel pad



Schlemmer & Porter Phase II:

- Notice to Proceed for construction is June 12, 2023.
- Approximately 1,500' of wastewater pipeline.
- The contractor for the project is Cedar Hills Construction.
- Estimated 4 months to complete

Kohler's Crossing Project:

- Night work is scheduled to begin June 19th.
- Night work occurs between June 19th & June 23rd.
- Kohler's Crossing to be closed late June/early July for 4 days from Marketplace to Entrance of ACC. Dependent on UPRR's notification.
- Project estimated to be completed by mid-August.

Center/South Street Quiet Zone

- Aaron Concrete to begin work June 12.
- Project estimated to be completed early August 2023.



IX. KYLE PUBLIC LIBRARY UPDATES

Staff Contact: Colleen Tierney

The Science Discovery Event with Daniel G. Benes held on Wednesday, June 7 was a wonderful success!



Other Programs:

- After Hours Mystery Games for Teens on Friday, June 9 at 6 pm
- Intro to Self Defense for Teens on Tuesday, June 13 at 2 pm
- Mini Golf at the Library On Wednesday, June 14 from 10 am - 5 pm the Kyle Public Library will be transformed into an 18 hole golf course! All equipment will be provided, This event is free!

Library Job Table:

Check out the Library's Job Table! Read through binders with current job listings, take home available brochures and articles, and explore our Non-Fiction section for resume writing, interview advice and more!

JOB TABLE

Read through Job Binders and keep a copy of current job listings in the area!

Take home any available handouts/brochures/ articles to learn more about all things job related!

X. CITY COUNCIL REQUESTS

Council requests from the dais will be documented in the Friday Report until completion.

Date of Request	Request	Status
6/6/2023	The Fund Balance in the Wastewater Impact Fee Fund	Provided herein (Item VI) - Complete
6/6/2023	Work session regarding the street widening issue	Scheduled for 7/18/2023 City Council Meeting
6/6/2023	<ol style="list-style-type: none"> 1. How much does it cost to operate the effluent pumps and related system to convey the effluent to the golf course? 2. Do we perform routine preventative maintenance and what does that look like? 3. Can we get a copy of the contract? 	<p>Staff is still looking into Questions 1 & 2 and will provide information in the June 16 Weekly Report.</p> <p>The Reclaimed Water Agreement with Plum Creek Golf Course is attached on page 19.</p>

XI. ATTACHMENTS

- ZenCity Community Survey benchmark Report.....Page 08
- Road Bond Program Project Status Updates.....Page 13
- Parks and Recreation Department May Program Recap.....Page 14
- Reclaimed Water Agreement with Plum Creek Golf Course.....Page 19

Community Benchmark

How we compare Kyle, TX to other similar communities

Residents from more than 1,000 communities across the United States have participated in Zencity's Community Surveys. We use the combined results from these surveys to produce our benchmark estimates. By averaging across respondents from dozens or hundreds of different communities, it's possible to arrive at a picture of what the results for a "typical" community in that cohort look like. This offers a way to compare your results- particularly strengths and areas for improvement- within a greater context. Each community running a Community Survey with Zencity receives a customized community benchmark cohort that reflects its unique characteristics.

First, the cities, towns, and counties in the United States are allocated into cohorts using variables such as population size, geography, density, and demographics to group similar communities together. Then, each cohort's benchmarks are calculated using the same scoring methodology outlined in the Survey Methodology section. Finally, since recruitment methods can differ slightly according to the needs of each community, cohort benchmarks are adjusted accordingly to match the exact distribution of recruitment methods.

These are some of the communities represented in your cohort

Density is calculated by people per square mile of land area.

Diversity is measured by percentage of people who are not in the largest race or ethnicity group.

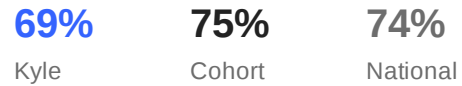
Median income is the median annual dollars of income per household.

COMMUNITY NAME	TOTAL POP	DENSITY	DIVERSITY	MEDIAN INCOME (\$)
Kyle, Texas	45,828	1,475	10.95%	75,413
Burleson, Texas	47,151	1,669	6.70%	77,329
Slidell, Louisiana	27,782	1,847	21.81%	55,874
Cleveland, Tennessee	45,115	1,665	14.66%	44,542
Florence, Kentucky	32,721	3,059	11.82%	60,018
Bristol, Tennessee	26,973	826	4.61%	42,067

+ more communities with similar characteristics

The data displayed on this page was sourced from the U.S. Census Bureau's 2020 Census of Population and Housing.

The overall resident satisfaction in Kyle is lower than its cohort.



- Kyle
- Cohort
- ▲ National

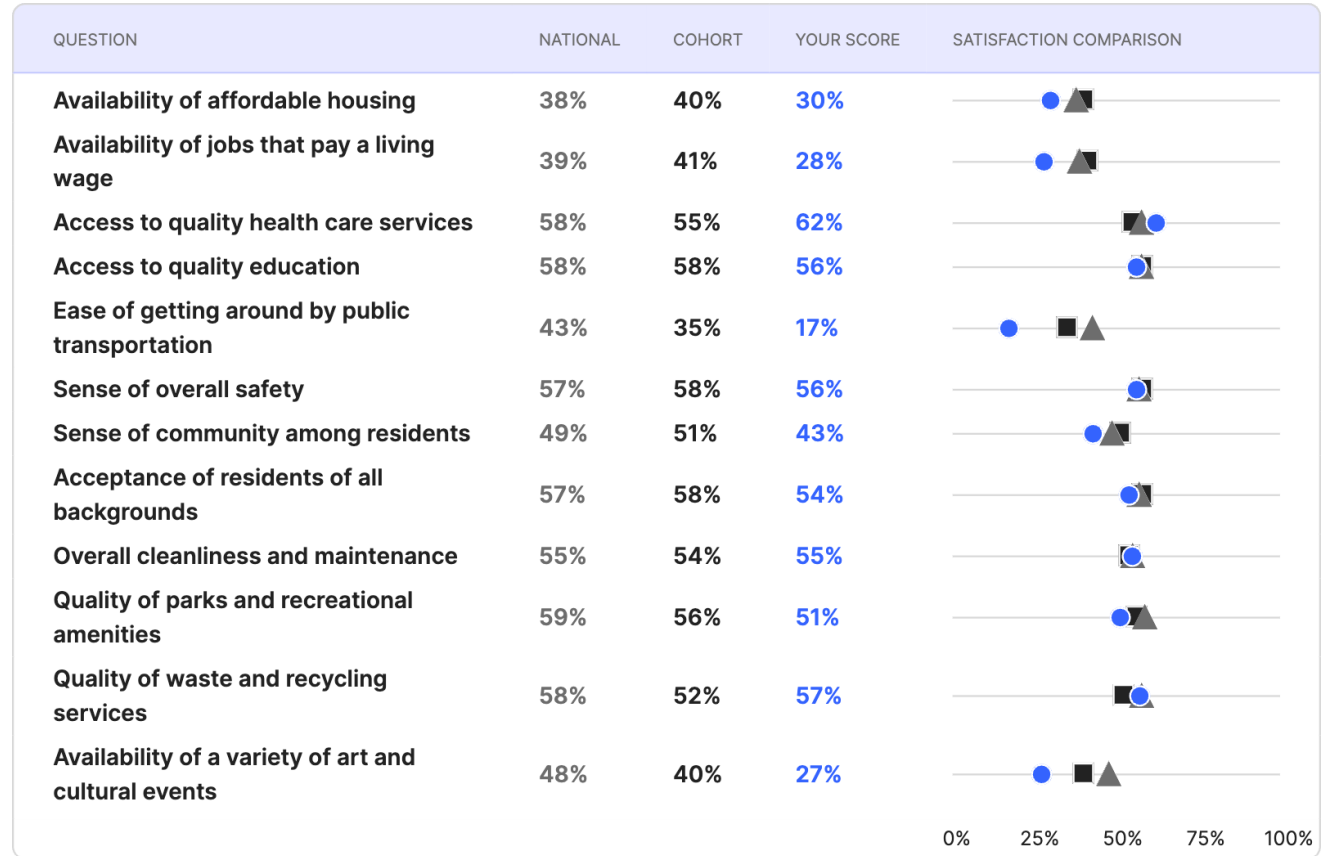
QUESTION	NATIONAL	COHORT	YOUR SCORE	SATISFACTION COMPARISON
How is the overall quality of life in Kyle?	62%	64%	61%	
How likely are you to recommend Kyle as a place to live?	59%	60%	54%	
How likely are you to be living in Kyle 5 years from now?	61%	64%	57%	

0% 25% 50% 75% 100%

Satisfaction with Life in Kyle, TX

Breakdown by characteristic

- Kyle
- Cohort
- ▲ National



2022 Road Bond Program



Weekly Project Status Report Updated: 6/6/2023

ID	Project Name	Project Status
In Design		
1a	Kohlers to Seton (IH 35)	- Conceptual Schematic due 9/6/2023 -Revised Baseline Schedule approved 5/14/2023 -NTP issued 3/23/2023
1b	Kohlers to Seton (off-system)	- Conceptual Schematic due 6/28/2023 -Revised Baseline Schedule approved 5/14/2023 -NTP issued 3/23/2023
2a	Bebee Road (West)	- 50% Schematic due 7/27/2023 -35% Complete -Baseline Schedule approved 4/26/2023 -NTP issued 3/23/2023
2b	Bebee Road (East)	- 50% Schematic due 7/27/2023 -30% Complete -Baseline Schedule approved 4/26/2023 -NTP issued 3/23/2023
3	Old Stagecoach Road/ Center Street (Off-System)	- 50% Schematic due 10/9/2023 -Revised Baseline Schedule approved 5/14/2023 -NTP issued 3/23/2023
4	Center Street (FM 150) (On-System)	- 50% Schematic due 8/9/2023 -Revised Baseline Schedule approved 5/14/2023 -NTP issued 3/23/2023
5	Kyle Parkway/ Lehman Road Extension	- 30% PS&E due 7/20/2023 -Revised Baseline Schedule approved 5/25/2023 -NTP issued 3/23/2023
6	Marketplace Avenue	- Contract approved by City Council 6/6/2023
7	Bunton Creek Road	- 50% Schematic due 7/19/2023 -14% Complete -Baseline Schedule approved 4/10/2023 -NTP issued 3/23/2023
8	Windy Hill Road	- Draft Schematic due 9/4/2023 -3% Complete -Baseline Schedule approved 4/10/2023 -NTP issued 3/23/2023

Welcome, June!



NATIONAL TRAILS DAY

The Parks and Recreation Departments Celebrated National Trails Day on Saturday, June 3rd with guided trail rides and a scavenger hunt beginning at the Waterleaf Park trailhead. Over 25 guests attended.



New Zip Line at Gregg-Clarke Park

PARD installed a new zip line at the Gregg-Clarke Park playground. The zip line is designed for 5-12 year olds.



SUMMER CAMP BEGAN!

Summer Camp began on Tuesday, June 30th. PARD welcomed 73 campers each day. This week's field trips included Fischer Park and Main Event.

New LED Mobile Screen Arrived!

The Parks and Recreation Department's new LED mobile screen arrived. This Thursday, staff took part in an afternoon of training. The LED mobile screen will make its debut at the June 10th market day and its movie debut at the June 23rd Movie in the Park at Gregg-Clarke Park.



FATHER'S DAY PHOTO OPT AT MKP

PARD INSTALLED A FATHER'S DAY PHOTO OPT AT MARY KYLE HARTSON CITY SQUARE PARK. THE BANNER WILL BE DISPLAYED AT THE PARK GAZEBO UNTIL JUNE 19TH.



RESERVATION REPORT:

May June 4th-June 10th	# of Reservations	# of Guests
KRUG Activity Center	2	200
Steeplechase Park Pavilion	0	0
Waterleaf Park Ballfields	0	0
Gregg-Clarke Park Pavilions	2	30
Gregg-Clarke Park Ballfields	4	60
Ash Pavilion		

Park and Recreation Board Meeting May 30th:

The Park and Recreation Board met in a rescheduled meeting on May 30th.

The Park and Recreation Board recommended approval of three Eagle Scout Projects including:

- Herb Boxes at the Post Oak Community Garden
- Garden Boxes at the Post Oak Community Garden
- ADA Picnic Tables & ADA Garden Plots at the Post Oak Community Garden

The Parks and Recreation Board recommended approval of the parkland dedication credit for Caroline Marketplace as preapproved in their development agreement.

The Parks and Recreation Board discussed Park and Recreation Board involvement in the planning for programs and events. No action was taken.

The Parks and Recreation Board had a discussion with the Director of Communications, Rachel Sonnier, and provided input and recommendations for ways to strengthen PARD promotions. No action was taken.

The Parks and Recreation Board reviewed the tentative 2024 calendar for Parks and Recreation Month and provided feedback. No action was taken.

The Parks and Recreation Department Director provided updates on The Wall that Heals Recap, Kyle Fair Recap, Programs and Events, and CIP updates. No action was taken.

OUTDOOR NATURE PROGRAMMING:

- Hosted the National Trails Day Guided Trail Tours
- Repaired the Plum Creek temporary creek crossing.

PARK MAINTENANCE PROGRAM COORDINATORS:

- Designed Thank You sign for TDS portable restrooms
- Designed the "coming soon" signs for the Steeplechase and Gregg-Park Splashpads

RECREATION

- Summer Camp began May 30th
- First full week of pool operations- Avg 52 people per hour
- Total weekly pool attendance ~ 2,093
- First week of summer camp- Avg 73 per day
- Registration for summer kickball is open
- Registration for summer softball is open
- Registrations for the following are open: June Family Skate night, June/July Paint and Sip, Kinderdance, baton twirling, Sky Hawks Sports, and market days

PARKS AND TRAILS MAINTENANCE

- Trails Team repaired the temporary creek crossing along the Plum Creek Trail
- Hosted National Trails Day
- Installed the Zip Line at Gregg-Clarke Park
- Removed 55 yards of litter
- Mowed 720 acres of parkland

SPECIAL EVENTS

- Facilitated a recap meeting with City Staff regarding Kyle Fair-A TexTravaganza
- Planning for 4th of July
- Planning for Pie in the Sky
- Assisted with National Trails Day

PARD Projects & CIP Updates

Ash Pavilion Improvements New Floor New Scoreboard	Floor arrived, Install 6/26. Scoreboard arrive, Install 6/12.
Gregg Clarke Park Skate Park	Base data complete. Public Engagement Session 6/28 6-8pm at City Hall.
Gregg Clarke Park Splash Pad	Construction to begin 6/28.
Plum Creek trail Improvement	Conducting Trails Committee Interviews. Trails Committee to be appointed at the June 20 th City Council Meeting. Trails Committee meetings will begin in July. An RFQ for trail improvements will be posted in late summer.
Masonwood Park Development	In process. RFP to post in July.
Aeration at Cool Springs and Lineberger Lake	In process. RFP to post in July.
Inclusive Playground	Construction to begin 6/20.
Park Restrooms	RFP closed. Recommendation for approval will be on the June 20 th City Council Meeting agenda.
Ballfield Improvements	RFP will be posted 6/7-6/23.

UPCOMING EVENTS/PROGRAMS

THIS WEEK:

Juneteenth Market Days at Mary Kyle Hartson City Square Park

Saturday, June 10th
 9am-2pm

Trivia Night

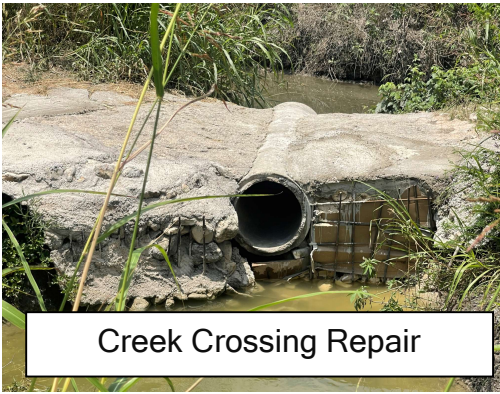
Monday, June 12th
 6:30 p.m.

Paint and Sip

Wednesday, June 14th
 4:00pm-6:00pm
teamsideline.com/sites/kyle/home.

Registration for the Dive In Movie at the James Adkins Pool is now open: Friday, July 21st at Sundown
<https://www.cityofkyle.com/recreation/dive-movie-0>

PHOTOS



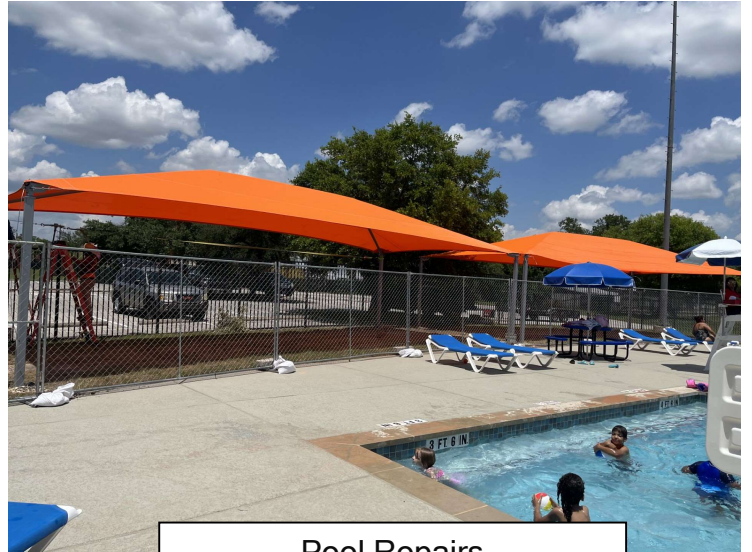
Creek Crossing Repair



Trails Tours



Summer Camp



Pool Repairs



AMENDMENT TO THE
AMENDED AND RESTATED RECLAIMED WATER USE AGREEMENT
STATE OF TEXAS
COUNTY OF HAYS

This Amendment to the Amended and Restated Reclaimed Water Use Agreement (the "Amendment"), effective as of the 19th day of December, 2019 is made by and between the City of Kyle, Texas, a Home Rule Municipality ("City"), and Plum Creek Golf Course, Ltd. ("Purchaser").

Unless otherwise defined herein, all definitions are found in the Amended and Restated Reclaimed Water User Agreement between the City and Plum Creek Development Partners, Ltd. dated effective as of the 18th day of January 2012 (the Amended and Restated Agreement);

WHEREAS, the Amended and Restated Agreement was assigned to Purchaser and the City consented to the assignment by instrument dated March 9, 2015;

WHEREAS, Purchaser, as current owner of the Golf Course Property, and the City wish to enter into this Amendment in order to amend the Amended and Restated Agreement;

WHEREAS, Purchaser and City desire to extend the term of the agreement for 20 years;

WHEREAS, Purchaser desires to have the permit and inspection fees for a restroom facility waived;

WHEREAS, Purchaser and City desire to memorialize several easements that need to be conveyed to the City for utilities, provide existing lines and gain agreement from the City to continue to work with Purchaser on future construction;

WHEREAS, Purchaser desires for the City to commit to minimizing any construction impacts on play or golf course operations;

WHEREAS, City desires to exercise its rights in paragraph 2.2 of the Amended and Restated Agreement to acquire the Effluent Pumping Facilities and the Effluent Transportation and Distribution Facilities;

WHEREAS, City desires to have the rights to store and distribute reclaimed water in and from the Storage Pond to users outside of the Golf Course Property and Purchaser agrees to cooperate with the City to expand the storage capacity of the Storage Pond as provided herein, including donating land for a pump station, associated utilities, access and a potential storage tank;

WHEREAS, Purchaser desires to have assurance that the City will not deplete the Storage Pond or otherwise leave the Irrigation System unusable due to improper operation or insufficient storage;

WHEREAS, City desires to establish an annual operating cost for the Facilities that the Purchaser will pay for the benefit of reclaimed water;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City agrees to sell Reclaimed Water to Purchaser, and Purchaser agrees to pay the City for such delivery of Reclaimed Water, in the amounts and upon the terms and conditions hereinafter set forth:

Section 1. DEFINITION OF TERMS

“ADDITIONAL RECLAIMED WATER” means effluent that will be passing through the Facilities, stored or withdrawn from the Storage Pond for the benefit of anyone other than the Purchaser.

“AGREEMENT” means the Amended and Restated Agreement and this Amendment.

“EFFLUENT PUMPING, TRANSPORTATION AND DISTRIBUTION FACILITIES” means the facilities necessary to convey Reclaimed Water from the Wastewater Treatment Plant to the Storage Pond.

“FACILITIES” means collectively the Effluent Pumping, Transportation and Distribution Facilities and Storage Pond.

“GOLF COURSE PROPERTY” means the land used by Purchaser as a golf course, which land is located within the property and a portion of which is depicted in **Attachment C** to Exhibit A, attached hereto.

“RECLAIMED WATER” means the treated wastewater effluent (also known as “grey water” or “effluent”) produced from the City’s Wastewater Treatment Plant.

“STORAGE POND” means the golf course pond constructed to store Reclaimed Water delivered to Purchaser for the use on the Golf Course Property.

“WASTEWATER TREATMENT PLANT” means the primary wastewater treatment plant of the City as presently located and as may be relocated in the future; provided that if any relocation occurs, the City will commit to continually providing Reclaimed Water to Purchaser from the new location.

Section 2. AGREEMENT

Prior Agreement Amended. The Amended and Restated Agreement is amended in so much as the items in this Amendment replace, repeal or redefine terms in the Amended and Restated Agreement. To the extent of any conflict between the terms herein and the Amended and Restated Agreement, the terms herein shall control.

Term. The term of the Agreement shall be twenty (20) years from the date of this Agreement. The Term may be extended two times for an additional twenty (20) years each with consent of each party.

Facilities. The Purchaser hereby transfers all ownership and interest in the Effluent Pumping, Transportation and Distribution Facilities to the City. The parties shall execute a bill of sale and assignment or other suitable instrument that can be recorded in a form mutually agreeable to the parties. The first sentence of Section 3.1 and all of Section 9.1 of the Amended and Restated Agreement are hereby deleted. To the extent any provision of the Amended and Restated Agreement requires Purchaser to maintain the Facilities, such provision shall be amended to reflect that such obligation shall be the City's obligation to maintain the Effluent, Pumping, Transportation and Distribution Facilities and the Purchaser's obligation to maintain the Storage Pond, except as expressly stated herein.

Meter. City shall install and maintain a new meter, and if reasonably necessary, a back flow preventer ("BFP"), to account for any water withdrawn from the Storage Pond by City to assure Purchaser that City is providing the amount of Reclaimed Water to the Purchaser required under the Amended and Restated Agreement and this Amendment. The Purchaser shall grant the City an easement for the placement, installation, maintenance, and access to the Meter in a form acceptable to the City.

Payment. Purchaser agrees that it currently expends approximately \$20,000.00 (twenty thousand dollars) per year for the production and delivery of the Reclaimed Water, and agrees that upon transfer of the Effluent, Pumping, Transportation and Distribution Facilities to the City, it will begin paying an equivalent sum, on a monthly basis prorated, each year, increased by increases in the CPI-All Urban Consumers ("CPIV") over the first month of the prior year, but no more than 3% per year, for inflation, to the City. The monthly payment shall be due on the _____ day of each month. A penalty of \$100.00 shall be due for each day the monthly payment is late.

Maintenance. Purchaser recognizes that the Reclaimed Water delivery may be interrupted for outages including regular maintenance, power outages, or other items beyond the control of the City. Purchaser shall be responsible for maintenance of the Storage Pond in a manner consistent with how the pond has been maintained in the past, but Purchaser grants City the rights to maintain the Storage Pond as well, specifically for items such as conducting dredging, improving banks, installing piping or other mechanical items or any other items needed to meet the City's additional capacity to serve other prospective customers other than Purchaser. The City agrees to minimize the effect on play or operations and will schedule any construction and annual

maintenance during the months of November through February in order to minimize disruption of play and golf course operations. City shall further maintain at its expense the suction point and service line up to and after the Meter. The City shall maintain at its expense the Meter and the BFP.

City's Right to Reclaimed Water. The City may withdraw Reclaimed Water from the Storage Pond to provide to third parties without being obligated to pay Purchaser for such Reclaimed Water, provided (a) there is enough Reclaimed Water in the Storage Ponds to provide for the maintenance of the Golf Course Property; provided that the City shall be entitled to withdraw Reclaimed Water in amounts that are above 900,000 gallons per day (or such other amount that the Parties may agree upon in writing from time to time), and (b) the City takes no more water on a monthly basis than utilized by Purchaser. The City shall hold title to the Reclaimed Water that it withdraws from the Storage Pond to provide to third parties.

Notice. City agrees to provide Purchaser, or Purchaser's designee, reasonable notice when planned outages are expected, or when unexpected outages occur.

Acts of God. Purchaser shall not hold City liable for extended service outages that are the result of Acts of God so long as City is making reasonable efforts to restore service.

Fees. Purchaser shall not pay inspection or review fees for a new restroom facility to be constructed on the golf course for the relief of players.

Easements. To the extent that Purchaser has any existing easements for the Facilities, it agrees to transfer them, at its own expense, to the City. This will include any new easements reasonably required by City to utilize the Storage Pond for additional storage. Purchaser shall cause PC Operating Partners, Ltd. to convey any and all City Utilities easements in its name that cross the golf course that are currently recorded, to the benefit of the City, and are attached to this agreement. Transfer shall include conveying by easements to the City by new instrument in a form reasonably acceptable to the City and vacating the existing easements.

Storage Pond Improvements. Purchaser agrees to dedicate to the City either via easement or fee simple (at Purchaser's election) conveyance, reasonable additional land at or near the Storage Pond needed for infrastructure to provide for storage and distribution of the Additional Reclaimed Water, including items such as a pump or receiving station, access easements, and other necessary improvements as may be jointly agreed to. The Purchaser shall cooperate with the City to allow the City to improve and expand the Storage Pond, which the City shall construct at the City's expense, but only between November through February. The City will provide the construction plans for the expansion of the Storage Pond to the Purchaser for review and approval, which must not be unreasonably withheld, conditioned or delayed. The Purchaser shall return any comments on the construction plans within 10 days of receipt of such plans. The City will cooperate with the Purchaser so that the construction of the expansion of the Storage Pond does not unreasonably interfere with the operation of the golf course.

Repairs. The City shall repair and restore any damage to the Golf Course Property and any improvements thereon caused by any activities performed by the City, its agents and/or contractors pursuant hereto.


Anti-Boycott. By entering into an Amendment with the City, Purchaser verifies that the Purchaser does not boycott Israel and will not boycott Israel during the term of the Addendum.

Notice to Purchaser. Section 10.2 of the Agreement is hereby amended to update the notice to Purchaser address as follows:

Plum Creek Golf Course, Ltd.
610 W. Fifth St., Suite 601
Austin, Texas 78701
Attn: David C. Mahn
Fax: (512) 472-7455

AGREED upon and entered this 19th day of DECEMBER, 2019.

CITY OF KYLE, TEXAS

By: 

Travis Mitchell, Mayor

Mailing Address: 100 W. Center Street


Kyle, Hays County, Texas 78640

PURCHASER:

Plum Creek Golf Course, Ltd.

By: PC Golf Course, GP, LLC,

General Partner

By: 

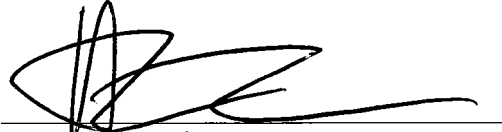
David C. Mahn, Member

EXHIBIT A Previous Agreement

I hereby certify that the rights, terms and conditions set forth in the Water Use Agreement, as assigned, are in full force and effect for the benefit of Plum Creek, the Golf Course and PC Golf.

Further, Affiant saith not.”

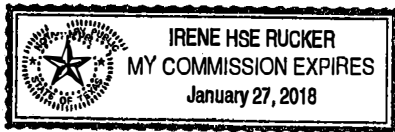
This Affidavit is executed to give notice to the public that the rights, terms and conditions set forth in the Water Use Agreement are in effect.



David C. Mahn

SUBSCRIBED AND SWORN to this 3rd day of June, 2015 by David C. Mahn.

[NOTARY SEAL]





NOTARY PUBLIC
In and for the State of Texas

After Recording Return To:

~~DuBois, Bryant & Campbell, LLP
Attn: Patricia A. Sherman Bruce
303 Colorado Street, Suite 2300
Austin, Texas 78701~~

**Attn: Whitney White
Independence Title Company
5900 Shepherd Mountain Cove
Bldg. 2, Suite 200
Austin, TX 78730**

EXHIBIT "A"

Water Use Agreement

[See Attached]

AMENDED AND RESTATED RECLAIMED WATER USE AGREEMENT

STATE OF TEXAS

COUNTY OF HAYS

This Amended and Restated Reclaimed Water Use Agreement, effective as of the 18th day of January 2012 is made by and between the City of Kyle, Texas, a Home Rule Municipality ("City"), and Plum Creek Development Partners, Ltd. ("Purchaser").

WITNESSTH:

WHEREAS, on March 1, 2011, Purchaser acquired title to the Golf Course Property (hereinafter defined);

WHEREAS, Purchaser, as current owner of the Golf Course Property, and the City wish to enter into this Agreement in order to amend and restate that certain original Reclaimed Water Use Agreement between the City and Mountain City Golf Company, L.L.C. dated effective as of July 21, 1998 (the "Original Agreement");

WHEREAS, the City, in order to (i) reduce the use of potable water for irrigation purposes, and (ii) increase the productivity of existing potable water treatment facilities and drinking water capacity, is contemplating the creation of an additional utility that would distribute and sell some of the Reclaimed Water (the "Reclaimed Water Utility") to other third party users that want such Reclaimed Water for irrigation purposes;

WHEREAS, Purchaser, in exchange for the execution of this Agreement, is willing to work with the City in the planning and implementation of the Reclaimed Water Utility as the City installs infrastructure to pump, distribute and store Reclaimed Water for such other users who wish to use such Reclaimed Water for irrigation purposes. In that regard, Purchaser is willing to (i) consider improvements, retrofits and expansions of holding ponds or lakes within Plum Creek that would hold such Reclaimed Water for sale to such other users and (ii) to plan and install Reclaimed Water lines ("Pump Pipes") in areas within Plum Creek in order to assist in the distribution of Reclaimed Water to such other users.

WHEREAS, the City and Purchaser desire to (i) secure a long term supply of Reclaimed Water for Plum Creek and (ii) plan for the distribution to such other users of some of the Reclaimed Water not used by Plum Creek;

WHEREAS, Purchaser desires to accept from the City the Reclaimed Water produced by the City, upon the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City agrees to sell Reclaimed Water to Purchaser, and Purchaser agrees to pay the City for such delivery of Reclaimed Water, in the amounts and upon the terms and conditions hereinafter set forth:

Section 1. DEFINITION OF TERMS

The following terms and expressions as used in this Agreement shall have the following meanings:

1.1 "EFFLUENT PUMPING FACILITIES" means the facilities necessary to convey Reclaimed Water from the Point of Delivery to the meter (as both are depicted on *Attachment B*, attached hereto for all purposes).

1.2 "EFFLUENT TRANSPORTATION AND DISTRIBUTION FACILITIES" means the facilities necessary to convey Reclaimed Water from the meter to the Storage Pond, as both are shown on the facilities drawing attached hereto as *Attachments A and B*.

1.3 "FACILITIES" means collectively the Effluent Pumping Facility, the Effluent Transportation and the Distribution Facility and the Storage Pond.

1.4 "GOLF COURSE PROPERTY" means the land used by Purchaser as a golf course, which land is located within the Property and a portion of which is depicted as open space on *Attachment C* attached hereto.

1.5 "IRRIGATION SYSTEM" means the system installed on a portion of the Property for irrigation of the Golf Course Property.

1.6 "OPERATE AND MAINTAIN THE FACILITIES" means the routine maintenance used to maintain the Effluent Pumping Facilities to a standard of care and quality that ensures a consistent and reliable delivery of Reclaimed Water. As used in this definition, the word "maintenance", includes, without limitation, the routine cleaning, service and replacement of screen, solid pump, effluent wet wells, water pumps, motors, valves, hatches, control panels, electric, signage, fencing, distribution lines, meters and any other associated appurtenances to allow for a consistent production of effluent to the Storage Pond.

1.7 "OPERATE AND MAINTAIN THE CITY WASTEWATER TREATMENT PLANT" means the operation of the City's Waste Water Treatment Plant to a standard of care and quality for consistent and reliable delivery of Type II Reclaimed Water meeting all applicable State and Federal requirements and as specified by Section III of the Texas Discharge Permit No. WQ R11041-022 and the record keeping related thereto. As used in this definition, the word "operation", includes, without limitation, the consistent conveyance of effluent water from the City's wastewater treatment plant up to the Point of Delivery as depicted in *Attachments A and B*.

1.8 "POINT OF DELIVERY" means the location marked "Point of Delivery" as such location is reflected on the facilities drawing attached hereto and made a part hereof for all purposes as *Attachments A and B*.

1.9 "PROPERTY" means the real property owned by Purchaser, and/or Purchaser's affiliates, which real property makes up the project known as Plum Creek.

1.10 "RECLAIMED WATER" means the treated wastewater effluent (also known as

“grey water”) produced from the City's Wastewater Treatment Plant.

1.11 "STORAGE POND" means the golf course pond constructed to store Reclaimed Water delivered to Purchaser as depicted on the facilities drawing attached hereto as *Attachment A*.

1.12 "TNRCC" means the Texas Natural Resource Conservation Commission, or its successor agency.

1.13 "WASTEWATER TREATMENT PLANT" means the primary wastewater treatment plant of the City as presently located and as may be relocated in the future; provided that if any relocation occurs, the City will partially assign to Purchaser any additional, necessary easements that the City has rights in and to for any relocated Facilities.

Section 2. FACILITIES CONSTRUCTION

2.1 Facilities Constructed. The Effluent Transportation and Distribution Facilities, Effluent Pumping Facilities, and Storage Pond (collectively, the "Facilities") necessary to transport and deliver Reclaimed Water from the Point of Delivery at the City's Wastewater Treatment Plant to the Purchaser at the Property as shown on the facilities drawing at *Attachment A* are existing as of the date of this Agreement. The City hereby acknowledges that the Facilities currently meet all applicable rules and regulations of the TNRCC for reclaimed water systems

2.2 Conveyance of Portion of Facilities to City. The City will have the option to acquire the Effluent Pumping Facilities, the Effluent Transportation and Distribution Facilities, or both from Purchaser at no charge for such Effluent Pumping Facilities, the Effluent Transportation and Distribution Facilities, or both to the City pursuant to transfer documents, in form and with content reasonably acceptable to Purchaser. Notwithstanding any provision in this Agreement to the contrary, upon the conveyance of the Effluent Pumping Facilities, the Effluent Transportation and Distribution Facilities, or both to the City, the City shall, own, operate and maintain, as applicable, the Effluent Pumping Facilities and the Effluent Transportation and Distribution Facilities and the Purchaser shall have no further maintenance obligations with respect thereto.

Section 3. OPERATION AND MAINTENANCE OF FACILITIES AND DELIVERY OF RECLAIMED WATER

3.1 Delivery. The Purchaser shall operate and maintain the Facilities and deliver Reclaimed Water from the Point of Delivery through the Facilities to the Storage Pond. It is agreed and understood that the City and the Purchaser shall share a meter for the purposes of measuring the Reclaimed Water delivered to Purchaser. For clarity, the parties hereto agree that all valves and other controls to start, stop, and regulate the flow of water to Purchaser under this Agreement (the "Regulators") that are beyond the Point of Delivery (including such Regulators related meter), are part of the Facilities. While the City does not make any guaranties as to the quality of the Reclaimed Water, if the quality of the Reclaimed Water is ever less than that specified in Texas Discharged Permit No. WQ 0011041-001, then the City shall notify Purchaser orally within twenty-four (24) hours of the City becoming aware of such deficiency, and

Purchaser shall have the right to suspend acceptance of the Reclaimed Water by notifying the City orally and confirming such suspension in writing within twenty-four (24) hours.

3.2 Permits. The City has obtained Texas Discharge Permit No. WQ 0011041-002 and Authorization No. R11041-002 from the TNRCC. The Producer and Provider shall continue to maintain, with assistance from the Purchaser (but at no cost to Purchaser), TNRCC's permits and authorizations for this Reclaimed Water project pursuant to TNRCC rules and regulations.

3.3 Use of Water. The Reclaimed Water delivered by the City shall be used for irrigation of the Golf Course Property.

3.4 Right to Maintain the Facilities and, if applicable, the City's Wastewater Treatment Plant. The City hereby grants to Purchaser and Purchaser's successors, assigns, employees, contractors and agents the right, to the extent necessary, access to any and all property (i) owned by the City, (ii) that the City has rights to, and/or (iii) that the City's Wastewater Treatment Plant occupies (either now or in the future) for the purposes of constructing, maintaining and/or operating the Facilities and any equipment used in connection with such Facilities (whether or not such equipment is owned by the Purchaser or the City). To the extent permitted by applicable law, Purchaser hereby indemnifies, defends and holds City, harmless from and against any loss, damage, injury, claim, action, cause of action, debts, demands, liabilities, obligations, costs and expenses ("Claims") the City may suffer or incur as a result of the use of, or the presence or activities of Purchaser or any of the Purchaser's employees, contractors or agents (collectively, the "Purchaser Parties") on or related in any way to such land that the City has ownership of and/or rights to as described in the preceding sentence, including, without limitation (a) any and all reasonable attorneys' fees incurred by the City as a result of any and all Claims relating to such matters; (b) any mechanics' or materialmen's liens imposed against all or any portion of such land by a party claiming to be performing an inspection or audit or any other work on Purchaser's behalf; or (c) any injury to person (including death) or loss of or damage or injury to such land or improvements located thereon caused solely by the acts or omissions of Purchaser and Purchaser Parties.

Section 4. QUANTITY AND UNIT MEASUREMENT

4.1 Quantity. Pursuant to this Agreement and during the entire term of this Agreement, the City agrees to convey and deliver and the Purchaser agrees to accept all Reclaimed Water that Purchaser desires to use up to a maximum of 900,000 gallons a day. The Reclaimed Water will be delivered in accordance with this Agreement. In no event shall the City be required under this Agreement to deliver any minimum amount of Reclaimed Water to Purchaser. Purchaser agrees that the quantity of Reclaimed Water available for delivery and use by Purchaser shall solely be dependent on the normal operations of production of the City's wastewater treatment system. The City shall endeavor to deliver a quantity of Reclaimed Water necessary to meet Purchaser's needs as contemplated by this Agreement subject to the normal operation and production of the City's wastewater treatment system.

4.2 Sale by Purchaser. Purchaser shall not sell Reclaimed Water purchased from the City to any other party, agency, individual or corporation.

4.3 Measurements.

a. Purchaser has installed, operates, maintains, and reads the meter that records the Reclaimed Water delivered to Purchaser. The City is permitted to also read such meter and record the Reclaimed Water delivered to Purchaser. The principal measurement point for water taken by Purchaser under this Agreement shall be located near the designated Point of Delivery

b. The City and Purchaser shall keep accurate records of all measurement of Reclaimed Water required under this Agreement and the measuring devices and such records shall be open to inspection by Purchaser during reasonable business hours. The City and Purchaser shall have access to the metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the Purchaser. The City's agents or employees may observe the reading, calibration and adjustment.

c. Should Purchaser have reason to believe that a meter or meters is recording water usage inaccurately, Purchaser may request in writing that the City investigate the meter operations. If it is mutually agreed by the City and Purchaser that the meter is malfunctioning, or should the City or Purchaser discover that a meter or meters is recording water usage inaccurately, Purchaser shall immediately notify the City of same, and replace the faulty meter or meters.

d. If, for any reason, a meter is out of service or out for repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered, through the period such meter is out of service or out for repair, shall be estimated and agreed upon by the parties thereto upon the basis of the best data available. For such purpose, the best data available shall be deemed by other meters in the transmission line which can be related to the main delivery meter. If no other meters in the system are operational which will allow determination of delivered quantity, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

~~4.4 Unit of Measurement. The unit of measurement for Reclaimed Water delivered hereunder shall be 1,000 gallons of water, U-S. Standard Liquid Measure.~~

Section 5. QUALITY

5.1 General. The Reclaimed Water to be delivered by the City shall be treated sewage in compliance with applicable State and Federal Law. This water is not intended for human consumption or domestic purposes and is to be used only for irrigation purposes for the Golf Course Property. Purchaser has satisfied itself that such water will be suitable for its use; provided that if at any time the quality of water delivered is dangerous to human health when applied by Purchaser's irrigation system or otherwise less than that required to maintain vigorous, healthy plant growth for the plant material at the Purchaser's facilities, then Purchaser may immediately terminate or suspend this Agreement and may refuse acceptance of the water, and Purchaser will not be liable for any payments for any period of non-acceptance. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT RELATIVE TO THE QUALITY OF

RECLAIMED WATER.

Section 6. PAYMENTS BY PURCHASER FOR RECLAIMED WATER RECEIVED

6.1 Commencement of Service. The City has been providing Reclaimed Water under the Original Agreement and shall continue on and after the date of this Agreement to provide Reclaimed Water to Purchaser for no charge in accordance with the terms of this Agreement.

6.2 Rate. Notwithstanding whether or not the City acquires the Facilities from Purchaser, the City shall never charge Purchaser and Purchaser shall never be required to pay the City for the Reclaimed Water delivered to the Purchaser.

Section 7. SUSPENSION OF SERVICE

7.1 Force Majeure. If the City is unable to deliver Reclaimed Water under the terms of this Agreement due to circumstances beyond the City's control and without its fault whether such occurrence or circumstance be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then the City shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof, then the City shall not be liable for the breach of this Agreement. The City shall use reasonable and good faith efforts to correct any impediment preventing delivery of Reclaimed Water and give Purchaser advance notice when possible and to the extent it is reasonable, give such force of any inability to deliver the water needed so that Purchaser may seek alternative sources.

7.2 Repairs and Maintenance. The City may temporarily suspend delivery of Reclaimed Water to Purchaser for the purpose of performing maintenance and repairs to the City's wastewater system, including its Wastewater Treatment Plant. The City shall endeavor to provide Purchaser with written notice prior to suspension of such service and an estimated time of when service shall be reestablished.

7.3 Regulatory Action. The City may temporarily suspend delivery of Reclaimed Water to Purchaser pursuant to the request, written order, or direction of any regulatory agency having jurisdiction over the use of Reclaimed Water. The City shall endeavor to provide Purchaser with verbal notice prior to suspension of such service and an estimated time of when service shall be reestablished.

7.4 Emergency Situation. If the City has or is in the imminent future going to run out of potable water for the residents in the City's service area and only after (i) the City has exhausted all of its other available options, (ii) the City cannot locate another source for water and (iii) the City has provided not less than one hundred twenty (120) days prior written notice, the City may temporarily suspend delivery of the Reclaimed Water to Purchaser for the purpose of converting the Reclaimed Water into potable water for such residents. The City will make every effort to shorten the duration for which the Reclaimed Water will not be available to Purchaser. If the City suspends delivery of the Reclaimed Water because of an emergency situation as provided for in this Agreement, Purchaser may, at Purchaser's election and sole

discretion, terminate this Agreement at any time during any such suspension, by providing written notice of such termination to the City, and such termination will take effect when sent by Purchaser.

Section 8. RECLAIMED WATER UTILITY.

8.1. Planning for Reclaimed Water Utility. The City intends to study the feasibility and implementation of a facilities, operation and distribution system operated by a City-owned Reclaimed Water Utility to promote the civic objectives described in the Recitals to this Agreement. Purchaser shall reasonably cooperate with the City, which reasonable cooperation, will include, without limitation, Purchaser providing planning materials, engineering data and other similar materials relating to Plum Creek and the City's planning and possible creation of the Reclaimed Water Utility.

8.2. Lines and Joint Facilities. The City and Purchaser contemplate that existing or future ponds and lakes within Plum Creek could be used as holding ponds to hold Reclaimed Water, some of which will be for the distribution to other third party users. Purchaser and the City agree to work together diligently and in good faith to consider providing some of the Reclaimed Water to other third party users and to plan for the possible expansion and/or retrofit of the Facilities in order for such Facilities to be able to transport and hold the Reclaimed Water for distribution to such other third parties for use in landscape irrigation or other approved purposes. Likewise, Purchaser and the City agree to work together diligently and in good faith to plan for the areas the Pump Pipes would be located within Plum Creek and to design the mechanism that would measure the amount of Reclaimed Water distributed to such other third parties for such uses. The costs of such Facilities and Pump Pipes shall be a part of the Reclaimed Water Utility system. The allocation of such costs, if any allocation is made, between Purchaser and the City, must be approved by both Purchaser and the City, and is dependent on factors (not an exhaustive list) such as the party benefitting from such improvement, the rate to be charged for such Reclaimed Water, the capacity of such improvements and other factors relating to the installation, operation and use of the such Reclaimed Water Utility system.

Section 9. GENERAL PROVISIONS.

9.1 Operations and Maintenance. Purchaser will continuously operate and maintain the Facilities.

9.2 Conditions. It is expressly understood and agreed that any obligations on the part of the City to provide Reclaimed Water to Purchaser be (a) conditioned upon the City's ability to maintain all necessary permits, agreements, material, labor, and equipment, provided the City uses reasonable efforts to maintain said permits, agreements, material, labor, and equipment (b) subject to all present and future valid laws, order, rules, and regulations of the United States of

America, the States of Texas and any government or regulatory body having jurisdiction over the City or its activities, and (c) subject to the right of the City to terminate Reclaimed Water deliveries under this Agreement when the City finds uses of such water to be noncompliant with the provisions of the TNRCC Reclaimed Water use rules located at Title 30 of the Texas Administrative Code, Chapter 210.

9.3 Title. Title to all water supplied hereunder shall be in the City up to delivery of such water to the Storage Pond at which point title shall pass to Purchaser. The Storage Pond is specifically delineated and shown on *Attachment A*.

9.4 Obligations of Purchaser.

a. Purchaser shall be responsible to operate and maintain its lines, any pumping or other facilities necessary for the transportation of the Reclaimed Water from the Point of Delivery to the place of use including the Facilities and Storage Pond, at its sole risk and expense; provided however, City shall use its good faith efforts to assist Purchaser in obtaining any and all necessary easements for the operation of the Facilities, including any easements necessary for the Facilities if the City's Wastewater Treatment Plant is relocated pursuant to an express right in this Agreement to relocate it. Additionally, City agrees to, as applicable, (i) assign to Purchaser, in form attached hereto as *Attachment D*, any and all easements rights, to the extent assignable, that the City has for the operation of the Facilities, and (ii) grant to Purchaser easements, in form and with content reasonably satisfactory to Purchaser, easement and access rights, to the extent the City can, for access to and the operation of the Facilities. The City represents that it has one or more written and recorded easements in place that collectively make up the entire area occupied by the Effluent Transportation and Distribution Facilities. And, further, the City agrees that to the extent it does not have written and recorded easements for any such area and once the City is notified of such failure, the City will cooperate in good faith and use commercially reasonable efforts to obtain such missing easement or easements.

b. By its execution of this Agreement, Purchaser acknowledges its receipt of the TNRCC Reclaimed Water use rules also located at Title 30 of the Texas Administration Code, Chapter 210 and further agrees to comply with all requirements and responsibilities under such rules.

9.5 INDEMNIFICATION. THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES SHALL NOT BE HELD LIABLE OR RESPONSIBLE FOR, AND SHALL BE SAVED AND HELD HARMLESS BY PURCHASER FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, ENFORCEMENT ACTIONS, LOSSES, DAMAGES, OR LIABILITY INCLUDING ALL LITIGATION, COSTS, AND ATTORNEYS' FEES BROUGHT BY ANY PERSON, ENTITY OR ANY REGULATORY AUTHORITY ARISING OUT OF OR OCCASIONED BY THE ACTS OF PURCHASER OR PURCHASERS' AGENT OR EMPLOYEES IN THE EXECUTION OR THE PERFORMANCE OF THIS CONTRACT, PURCHASER'S USE OF RECLAIMED WATER, AND PURCHASER'S OPERATION OF THE FACILITIES.

Section 10. TERM OF AGREEMENT; MODIFICATION; NOTICES; STATE OR FEDERAL LAWS, RULES, ORDER OR REGULATIONS

10.1 Terms of Agreement. This Agreement shall be in force and effect from the date of execution hereof for a term of twenty (20) years.

10.2 Address and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and correctively, for convenience called "Notice") herein provided or permitted to be given, made or accepted by any party must be in writing. Notice may, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified or registered, and addressed to the party to be notified, with return receipt requested; (ii) by delivering the same to such party, or an agent such of such party, by hand delivery or facsimile transmission; or (iii) by depositing the same with an overnight courier service guaranteeing "next day delivery," addressed to the party to be notified and with all charges prepaid. Notices shall be addressed to the party notified. Notice deposited in the mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of Notice, the addresses of the parties shall be, until changed as hereafter provided as follows:

Purchaser: Plum Creek Development Partners, Ltd.
 200 Congress Avenue, Suite 9A
 Austin, Texas 78701
 Attn: David Mahn
 Fax: (512) 472-7455

With Copy To: Mountain Plum, Ltd.
 4040 Broadway, Suite 501
 San Antonio, Texas 78209
 Attn: Chris Gill and Peter French
 Fax: (210) 826-9502

City: City of Kyle
 Attn: Director of Public Works
 P.O. Box 40
 Fax: (512) 262-3403

Any party may change the address for notice by giving notice of such change in accordance with the provisions of this section.

10.3 State and Federal Laws, Rules, Order and Regulations. This Agreement is subject to all applicable Federal and State Laws and applicable permits, ordinances, rules, order and regulations of any local, State or Federal Governmental Authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 11. ASSIGNMENT

11.1 General. Except under the condition stated in Section 11.2, this Agreement shall not be assignable by Purchaser in whole or in part without the written consent of the City except that such consent shall not be unreasonably withheld. The City and Purchaser each binds itself and its successors and assigns to the other party with respect to all covenants of this Agreement.

11.2 Permitted Assignment. Any assignment by Purchaser of any right or interest in this Agreement, in whole or in part, to Plum Creek or Purchaser's first lien lender shall not require the City's consent.

11.3 Transfer. In the event the City assigns, conveys or otherwise relinquishes its obligations with respect to wastewater treatment and disposal for the service area covering the Golf Course Property to third parties (whether private or public) such that the City is no longer operating and depositing of treated wastewater effluent produced from City's Wastewater Treatment Plant(s) the City shall cause said third party to assume all of City's obligations under this Agreement.

Section 12. GOVERNING LAW

12.1 General. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties hereunder, shall be governed by the Laws of the State of Texas.

Section 13. REMEDIES UPON DEFAULT

13.1 Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

13.2 No Additional Waiver Implied. The failure of any party hereto to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this agreement shall not be construed as waiver or relinquishment of the future performance of any term, covenant, or condition by the other parties hereto, but the obligation of such other parties with respect to such future performance shall continue in full force and effect.

13.3 Remedies. The Parties recognize that certain of their respective obligations, if not performed, may be adequately compensated by money damages while others could not be. Accordingly, the Parties agree that in the event of any failure to perform any covenants, conditions, or obligations of this Agreement on the part of any party, the aggrieved party shall:

- a) to the extent, if any, permitted by law, have the remedy of specific performance of this Agreement, in addition to any other remedies otherwise available at law or in equity or under this Agreement; and
- b) either City or Purchaser may terminate this Agreement by written notice,

after such party has given notice of material default to the other party upon the expiration of the thirty (30) days permitted for curing such default not having been cured.

13.4 Plum Creek's Cure Right. **INTENTIONALLY DELETED.**

Section 14. VENUE

14.1 General. All amounts due under this Agreement, including, but not limited to, payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Hays County, Texas which is the County in which the administrative offices are located. It is officially agreed by the parties to this Agreement that Hays County, Texas is the place of performance of this Agreement; and in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Hays County, Texas.

Section 15. SEVERABILITY

15.1 General. The provisions of this Agreement are severable, and if any provision or 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 provision or part of this Agreement to other persons or circumstances shall not be affected hereby.

Section 16. TITLES

16.1 General. Titles and subtitled Articles contained herein are for convenience only and have no legal or other effect on the terms of this Agreement.

Section 17. PRIOR AGREEMENTS

17.1 General. This Agreement relates only to the rights of Plum Creek Development Partners, Ltd. for Reclaimed Water for the Golf Course Property and this Agreement only cancels and supersedes the Original Agreement. Notwithstanding anything contained in this Agreement to the contrary, the terms and conditions of any and all other agreements by and between Plum Creek Development Partners, Ltd. or any of its affiliates (as applicable) and the City of Kyle are not affected in any way by this Agreement and further such other agreements remain in full force and effect and are to be governed solely in accordance with the terms and conditions of such other agreements.

IN WITNESS WHEREOF, the parties hereto acting under the proper authority have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, on this 18th day of January, 2012, all as of the day and year first written, which is the effective date of this Agreement.

[SIGNATURE ARE ON THE FOLLOWING PAGE]

PURCHASER:

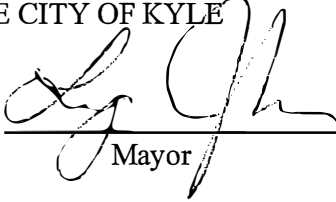
PLUM CREEK DEVELOPMENT PARTNERS, LTD.

By: BGI PLUM CREEK DEVELOPERS, LTD.,
a Texas limited partnership, general partner

By: BENCHMARK LAND DEVELOPMENT, INC.,
a Texas corporation, general partner

By: 
David C. Mahrt, Vice President

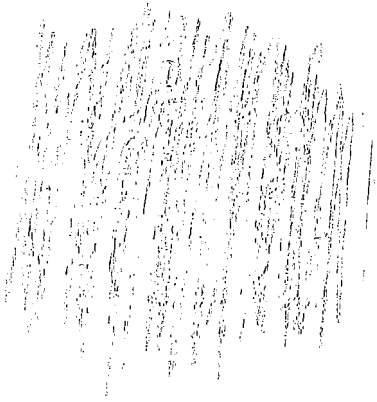
THE CITY OF KYLE

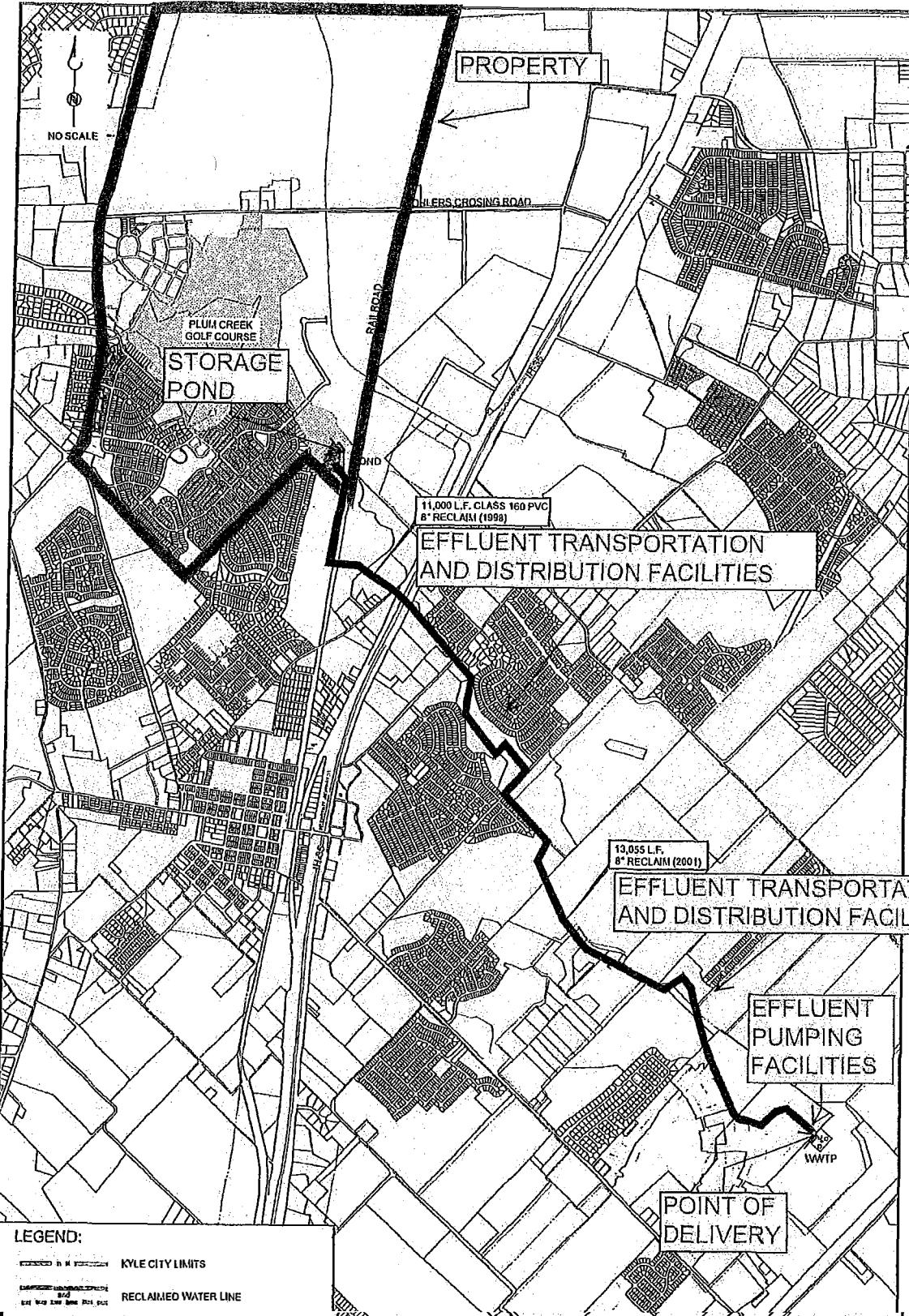
By: 
Mayor

ATTEST:


City Secretary

(SEAL)





BROWN AND CALDWELL

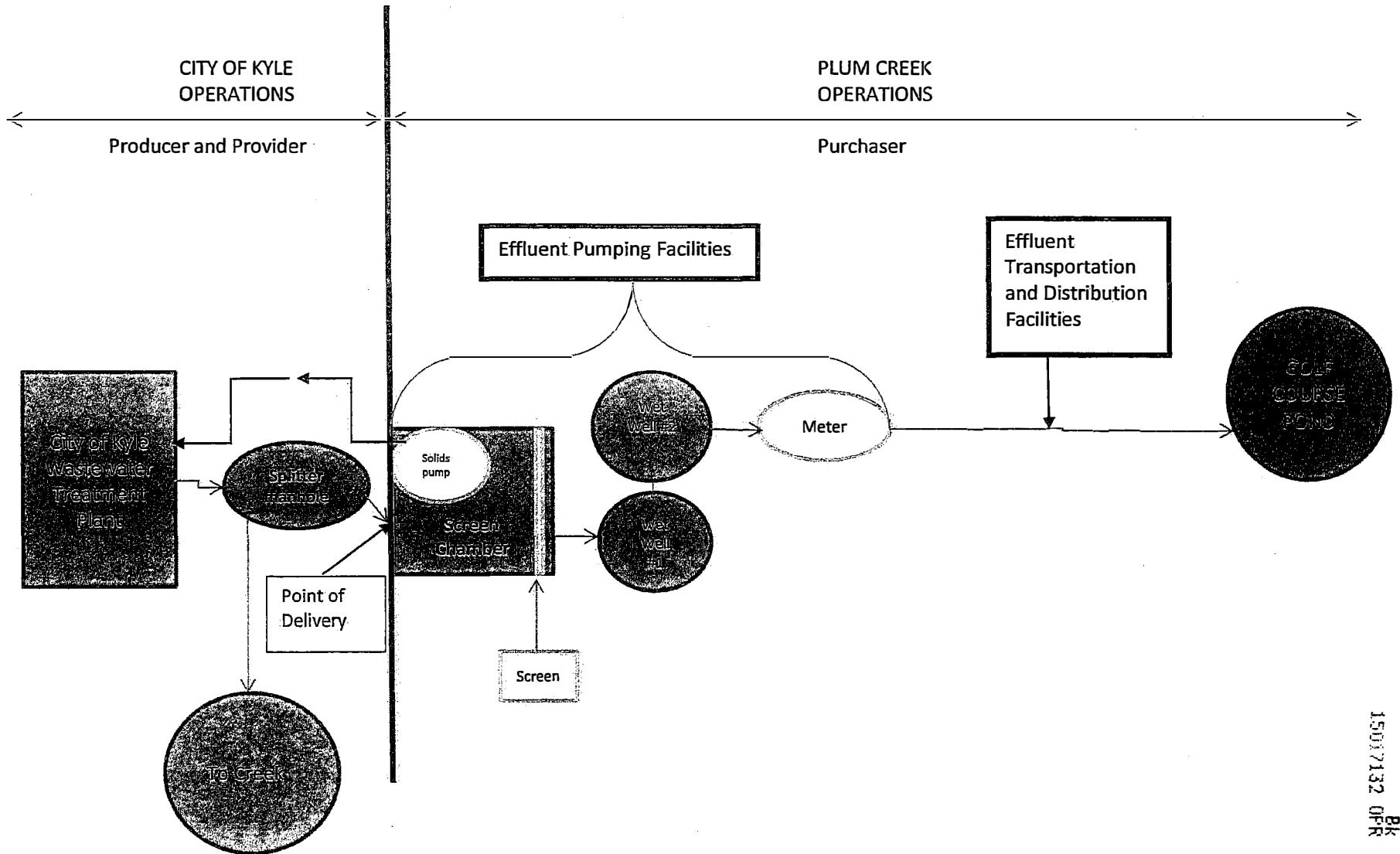
RECLAIMED WATER TRANSMISSION FACILITIES EVALUATION
EXISTING RECLAIMED WATER SYSTEM



ATTACHMENT B

[SEE EXHIBIT ATTACHED]

Attachment B
System Schematic for Operation and Maintenance



ATTACHMENT C

[SEE EXHIBIT ATTACHED]





AMENDED MASTER PLAN 2009

ORIGINAL MASTER PLAN DATED JULY 1997
 AMENDED MASTER PLAN SEPTEMBER 1999
 AMENDED MASTER PLAN JUNE 17, 2003
 AMENDED MASTER PLAN JULY 5, 2005
 AMENDED MASTER PLAN JULY 7, 2009
 AMENDED MASTER PLAN AUGUST 13, 2009

OWNERS:
MOUNTAIN PLUM, LTD.
 1939 NE Loop 410 Suite 230
 San Antonio, TX 78217
 Contact: Darcy Maxwell - 512/829-7224

PLUM CREEK DEVELOPMENT PARTNERS, LTD.
 6001 W. William Cannon
 Building 2, Suite 201
 Austin, TX 78749
 Contact: David C. Mahr - 512/742-7455

MIDDLETON PROPERTIES, INC.
 P. O. Box 88
 Arcadia, MO 63621
 Contact: George C. Middleton - 573/546-2806

PLUM CREEK HOMEOWNERS ASSOCIATION
 168 Kirkham Circle Suite B
 Kyle, TEXAS 78940
 Contact: Dave Brown - 512/219-1927

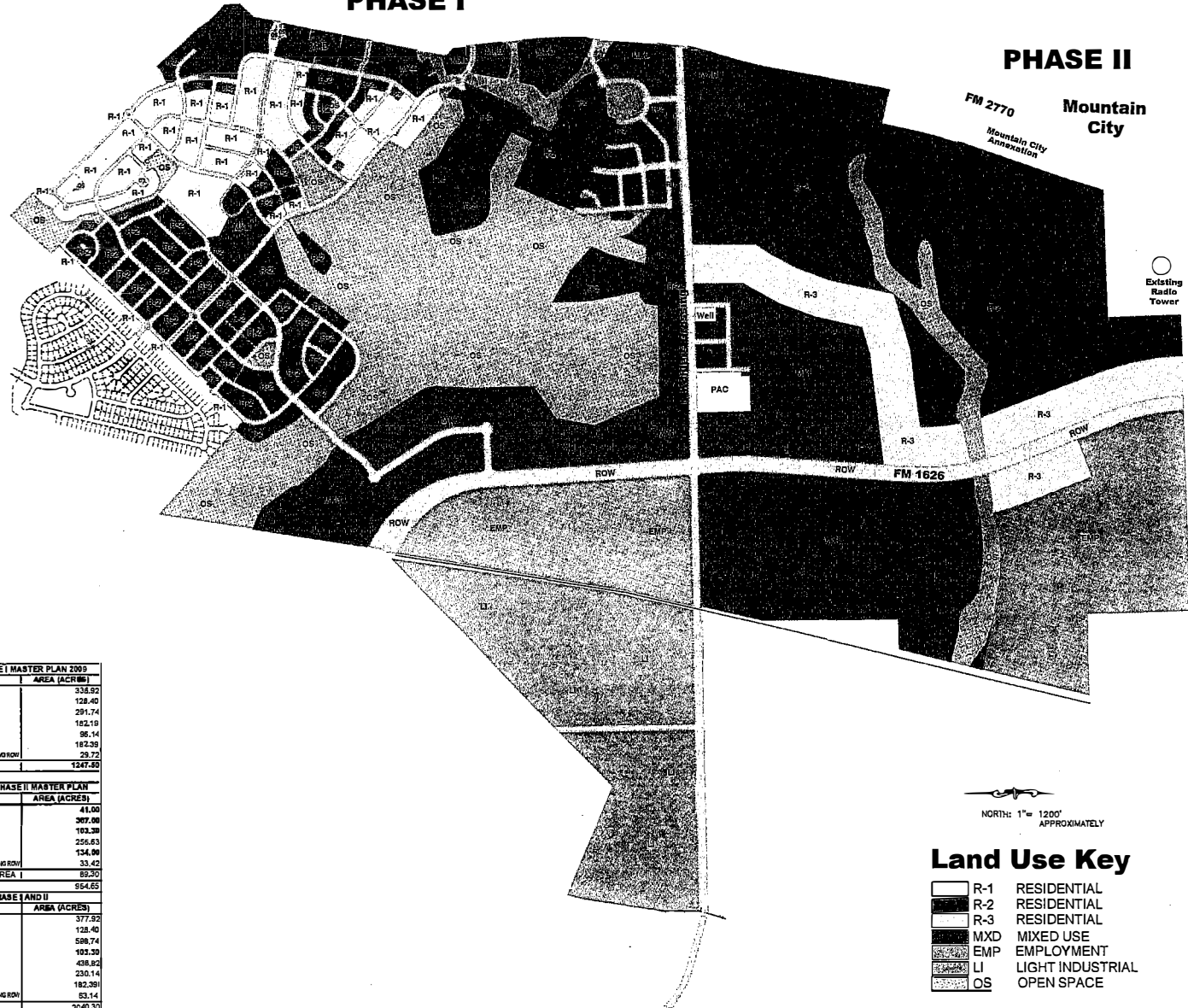
APPLICANT:
 PLUM CREEK DEVELOPMENT PARTNERS, LTD.
 6001 W. William Cannon
 Building 2, Suite 201
 Austin, TX 78749
 Contact: David C. Mahr - 512/742-7455

LAND PLANNER:
 TBG-PARTNERS, INC
 901 South MoPac
 Building 2, Suite 350
 Austin, TX 78746
 Contact: Sean Compton - 512/327-1011

ENGINEER:
 AXIOM ENGINEERS, INC.
 13276 Research Blvd. Ste. 208
 Austin, TX 78750
 Contact: Alan Rhames 512-506-9335

PHASE I

PHASE II



NORTH: 1" = 1200'
 APPROXIMATELY

Land Use Key

- R-1 RESIDENTIAL
- R-2 RESIDENTIAL
- R-3 RESIDENTIAL
- MXD MIXED USE
- EMP EMPLOYMENT
- LI LIGHT INDUSTRIAL
- OS OPEN SPACE

PLUM CREEK PHASE I MASTER PLAN 2009	
LAND USE	AREA (ACRES)
OS	335.92
R1	128.40
R2	291.74
MXD	162.19
EMP	96.14
LI	182.39
FM 1626 & HIGHWAYS CROSSING ROW	23.72
TOTAL	1247.50
PLUM CREEK PHASE II MASTER PLAN	
LAND USE	AREA (ACRES)
OS	41.00
R2	387.09
R3	163.39
MXD	256.83
EMP	134.99
FM 1626 & HIGHWAYS CROSSING ROW	33.42
UNANNEXED AREA	89.30
TOTAL	954.65
TOTAL PHASE I AND II	
LAND USE	AREA (ACRES)
OS	377.92
R1	128.40
R2	598.74
R3	193.39
MXD	438.92
EMP	230.14
LI	182.39
FM 1626 & HIGHWAYS CROSSING ROW	53.14
TOTAL	2242.30

*NEIGHBORHOOD RESIDENTIAL ROW AREA IS NOT INCLUDED IN ROW CALCULATIONS.

APP'D	
REVISED	
DATE	
NO.	13-17-09
13276 Research Blvd Suite 208 Austin, TX 78750 Ph: (512) 506-9335 Fax: (512) 506-9377 www.axiomtx.com	
PLUM CREEK KYLE, TEXAS ZONING MAP	
DESIGNED:	JLS
APPROVED:	ADR
FILE:	PP-ZONING
JOB NO.:	249-10
DATE:	DECEMBER 2009
SHEET	1 of 1

ATTACHMENT D
PARTIAL ASSIGNMENT OF EASEMENTS

Effective Date: January 18, 2012

Assignor: City of Kyle, Texas, a Type A general law city

Assignor's Mailing Address: City of Kyle
Attn: Director of Public Works
P.O. Box 40
Kyle, Hays County, Texas 78611

Assignee: Plum Creek Development Partners, Ltd., a Texas limited partnership

Assignee's Mailing Address: Plum Creek Development Partners, Ltd.
200 Congress Avenue, Suite 9A
Austin, Travis County, Texas 78701

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration

Easements: All of Assignor's rights, title and interest in and to the easements described on **Exhibit A** attached hereto and incorporated herein for all purposes ("Easements") insofar as same relate to and for so long thereafter as such Easements are necessary for the transportation of treated wastewater effluent produced from Assignor's wastewater treatment plant to Assignee pursuant to the terms and conditions of the Agreement (as defined below).

Reservations from and Exceptions to Conveyance. Assignor expressly reserves from this conveyance, and it is subject to, all easement rights of Assignor not related to the transportation of treated wastewater effluent, if any; and all presently recorded restrictions, reservations, covenants, conditions, and other instruments that affect the Easements that are filed in the official records of Hays County, Texas including all matters that would be visible on the ground from a survey of the Easements.

Reference is made to that certain Amended and Restated Reclaimed Water Use Agreement dated _____, 2012 between Assignor and Assignee ("Agreement"). The covenants, representations and warranties set forth in the Agreement are hereby incorporated herein by reference as if such covenants, representations and warranties were fully set out herein. Assignor and Assignee acknowledge and agree that such covenants, representations and warranties, though not set forth herein in full, are applicable and effective with respect to the conveyance, assignment and transfer evidenced hereby.

The conveyance is made by Assignor and accepted by Assignee "where is" "as is" without warranty of any type whatsoever and with all defects known or unknown. For the consideration shown, and subject to the reservations and exceptions to conveyance, Assignor assigns unto Assignee such part of Assignor's right, title, and interest in and to the Easements for so long as such rights are necessary for the transportation of wastewater effluent as specified in the Agreement. This Assignment shall apply to and inure to the benefit of, and be binding upon

and enforceable against the parties hereto and their respective heirs, successors, administrators and assigns, to the same extent as if they were original parties hereto.

This Assignment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

Assignee's acquisition of title to all or any of the property on which the Easements are located shall not terminate the Easements. The Easements may only be terminated or released by a written release or vacation of the applicable Easements recorded in the Official Public Records of Hays County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

ASSIGNOR:

THE CITY OF KYLE

By: _____
Mayor

ATTEST:

City Secretary

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

Before me the undersigned authority on this day personally appeared _____, mayor of the City of Kyle, Hays County, a Type A general law city, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of the City of Kyle, Hays County, a Type A general law city.

Given under my hand and seal of office this ____ day of January, 2012.

Notary Public in and for the State of Texas

ASSIGNEE:

PLUM CREEK DEVELOPMENT PARTNERS, LTD.

By: BGI PLUM CREEK DEVELOPERS, LTD.,
a Texas limited partnership, general partner

INC.,

By: BENCHMARK LAND DEVELOPMENT,
a Texas corporation, general partner

By: _____
David C. Mahn, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me the undersigned authority on this day personally appeared David C. Mahn, Vice President of Benchmark Land Development, Inc., general partner of BGI Plum Creek Developers, Ltd., general partner of Plum Creek Development Partners, Ltd., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of such corporation and limited partnerships.

Given under my hand and seal of office this ____ day of January, 2012.

Notary Public in and for the State of Texas

After recording return to:
DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, TX 78701
Attn: Patricia Sherman Bruce

EXHIBIT "A"

Easements

Easements Recorded by Separate Instrument:

1. Utility Easement recorded June 8, 1998 granted from Nancy Osgood, individually, and Bar-O, Ltd. as Volume 1420, Page 899, Official Public Records of Hays County, Texas.
2. Utility Easement recorded May 23, 2000 granted from Arthur L. Schmeltekopf, Jr. and wife, Katherine Finch Schmeltekopf, Ernest Toepfer, Jr. and wife, Rose Marie Schmeltekopf Toepfer, and Morris Henry Schmeltekopf and wife, Linda Hill Schmeltekopf recorded as Volume 1672, Page 306, Official Public Records of Hays County, Texas.
3. Utility Easement dated October 2, 2000 granted from Charles Durham Nash recorded as Volume 1728, Page 700, Official Public Records of Hays County, Texas.

EXHIBIT "B"

Consent to Assignment

[See Attached]

CONSENT TO ASSIGNMENT

In connection with that certain Amended and Restated Reclaimed Water Use Agreement (the "Agreement") dated January 18, 2012 between the City of Kyle, a Home Rule Municipality (the "City") and Plum Creek Development Partners, Ltd. ("PCDP"), the City hereby consents to the assignment of the Agreement from ~~PDCP~~ to Plum Creek Golf Course, Ltd.

KW PCDP

THE CITY OF KYLE

By: *[Signature]*
Mayor

ATTEST:

[Signature]
City Secretary

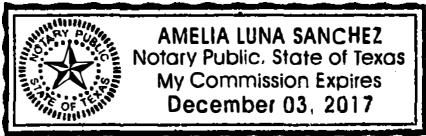
STATE OF TEXAS §

§

COUNTY OF HAYS §

Before me, the undersigned authority, on this day personally appeared *R. Todd Webster*, Mayor of the City of Kyle, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this *9th* day of *March*, 2015.



[Signature]
Notary Public - State of Texas

AFTER RECORDING, RETURN TO:

Mitchell D. Savrick
Savrick Schumann Johnson McGarr
Kaminski & Shirley
4330 Gaines Ranch Loop, Suite 150
Austin, TX 78735

**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.

20001663 AMENDMENT
01/15/2020 03:38:19 PM Total Fees: \$154.00

 Elaine H. Cardenas

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