

# CITY OF KYLE



## Notice of Regular City Council Meeting

KYLE CITY HALL  
100 W. Center Street

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on 12/13/2011, at the New Kyle Public Library, 550 Scott Street, Kyle, Texas 78640 for the purpose of discussing the following agenda.

Posted this 9th day of December, 2011 prior to 7:00 p.m.

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### I. Call Meeting To Order

### II. Citizen Comment Period With City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak must sign in before the meeting begins at the Kyle City Hall. Speakers may be provided with an opportunity to speak during this time period, and they must observe the three-minute time limit.

### III. Presentation

1. Presentation of Kyle Leadership Academy Certifications ~ *Jerry Hendrix, Director of Communications*

Level 1: Chuck Moerbe

 [Attachments](#)

### IV. Consider and Possible Action

2. Authorize Award and Execution of a Purchase Order to KEILHAUER, of Toronto, Canada, in an amount Not to Exceed \$16,633.41 (U.S. Dollars) to purchase various furniture items for the Kyle Public Library ~ *Connie Brooks, Director of Public Library*

 [Attachments](#)

3. Authorize the Chief of Police to Expend an amount Not to Exceed \$3,464.00 in donated funds for the Blue Santa Program and to transfer the administration and management responsibilities of the Blue Santa Program to the Police Association including collection, distribution, accounting, and reporting for such donated funds ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

4. Authorize Award and Execution of a 12-month lease contract with COWBOY HARLEY-DAVIDSON OF AUSTIN, TEXAS, for two (2) 2012 FLHP Road King Harley-Davidson police motorcycles in an amount Not to Exceed \$9,360.00 for the 12-month term ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

5. Authorize Award and Execution of a Purchase Order to PRIORITY PUBLIC SAFETY UNIFORMS & EQUIPMENT (formerly doing business as Cop Stuff) of Van Alstyne, Texas, in an amount Not to Exceed \$10,189.00 to purchase and install emergency equipment for two leased police motorcycles for the City of Kyle Police Department. (Related to Item No. 4) ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

6. Consider and Possible Action on the Economic Development Agreement between the City of Kyle and Image Microsystems ~ *Diana Blank, Director of Economic Development*

 [Attachments](#)

7. Consider and Possible Action on the Economic Development Agreement between the City of Kyle and Nomoland Company, LP ~ *Diana Blank, Director of Economic Development*

 [Attachments](#)

8. Consideration and Possible Action as may be required regarding initiating action and taking action to Amend the 2010 Transportation Master Plan to include Bebee Road as a Minor Arterial Roadway, directing staff and the Planning and Zoning Commission to make such amendment to the 2010 Master Transportation Plan and submit said amended plan to CAMPO for an amendment to the CAMPO 2035 Plan and inclusion in such plan for possible consideration for future 2011/2012 TIP Funding ~ *Council Member Jaime Sanchez*

 [Attachments](#)

9. Consideration and Possible Action regarding the First Amended and Restated Interlocal Agreement between Hays County and the City of Kyle regarding FM 150 ~ *Lanny Lambert, City Manager*

 [Attachments](#)

10. Consideration and Possible Action to Extend the Interlocal Agreement for Commercial Office Lease of 111 N. Front Street, formerly known as the Wells Fargo Building, to Hays County for One Year ~ *Lanny Lambert, City Manager*

 [Attachments](#)

11. Consideration and Possible Action of Any and All Issues relating to the Renewal and Extension of the Reclaimed Water Agreement for the Plum Creek Golf Course; and Related Matters ~ *Diana Blank, Director of Economic Development*

 [Attachments](#)

**V. Executive Session**

12. Convene into Executive Session pursuant to Section 551.087, Tex. Gov't Code, to deliberate offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City

 [Attachments](#)

13. Reconvene into Open Session to take any and all actions as deemed appropriate in the City Council's discretion regarding offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City

 [Attachments](#)

**VI. ADJOURN**

*At any time during the Regular City Council Meeting, the City Council may*

*adjourn into an Executive Session, as needed, on any item listed on the agenda  
for which state law authorizes Executive Session to be held*

\*Per Texas Attorney General Opinion No. JC-0169; Open Meeting & Agenda Requirements, Dated January 24, 2000: The permissible responses to a general member communication at the meeting are limited by 551.042, as follows: "SEC.551.042. Inquiry Made at Meeting. (a) If, at a meeting of a government body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by the subchapter, the notice provisions of this subchapter, do not apply to:(1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry. (b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.



# CITY OF KYLE, TEXAS

## Kyle Leadership Academy

Meeting Date: 12/13/2011

Date time: 7:00 PM

**Subject/Recommendation:**

Presentation of Kyle Leadership Academy Certifications ~ *Jerry Hendrix, Director of Communications*

Level 1: Chuck Moerbe

**Other Information:**

This item is for recognition of those citizens who have completed certain portions of training within the City of Kyle Leadership Academy. Level One certification indicates that the recipients have attended at least six modules of training, including one facility tour. Level two certification indicates that the recipients have attended at least nine modules of training, including two facility tours. Level three certification indicates that the participant has completed all 12 modules of the course.

**Budget Information:**

@import url(http://kyle.novusagenda.com/CuteSoft\_Client/CuteEditor/Load.ashx?type=style&file=SyntaxHighlighter.css); n/a

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# CITY OF KYLE, TEXAS

## Economic Development Executive Session

**Meeting Date: 12/13/2011**  
**Date time: 7:00 PM**

**Subject/Recommendation:**

Convene into Executive Session pursuant to Section 551.087, Tex. Gov't Code, to deliberate offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City

**Other Information:**

**Budget Information:**

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# CITY OF KYLE, TEXAS

## Economic Development Reconvene into Open Session

**Meeting Date: 12/13/2011**  
**Date time: 7:00 PM**

**Subject/Recommendation:**

Reconvene into Open Session to take any and all actions as deemed appropriate in the City Council's discretion regarding offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City

**Other Information:**

**Budget Information:**

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# CITY OF KYLE, TEXAS

## Furniture Purchase for New Library - KEILHAUER

Meeting Date: 12/13/2011  
Date time: 7:00 PM

**Subject/Recommendation:**

Authorize Award and Execution of a Purchase Order to KEILHAUER, of Toronto, Canada, in an amount Not to Exceed \$16,633.41 (U.S. Dollars) to purchase various furniture items for the Kyle Public Library ~ *Connie Brooks, Director of Public Library*

**Other Information:**

On November 21, 2011, the Library Board approved the furniture purchase plan for the new Kyle Public Library. Accordingly, the Library Board recommends City Council's approval of this purchase.

Keilhauer is on the list of authorized contracts (#3-7110280) under the Texas Multiple Award Schedule (TXMAS) as administered by the State of Texas. TXMAS has been established as an alternative purchasing method and includes contracts that have been developed from contracts awarded by the federal government or any other governmental entity of any state. In addition, TXMAS contracts take advantage of the most favored customer (MFC) pricing obtained by the federal government.

The Purchase Order includes the following:

- |                               |  |
|-------------------------------|--|
| 1. Furniture :                | \$14,179.20  |
| 2. Installation & Admin. Fee: | \$ 2,454.21 (Service provided by Workplace Resource) |
| 3. TOTAL:                     | <u>\$16,633.41</u>                                   |

A copy of the detailed price quote provided by the vendor is attached

**Budget Information:**

Please see attached Fiscal Note.

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[Itemized Price Quote - Keilhauer](#)

[Fiscal Note - Purchase Library Furniture Keilhauer 12-13-2011](#)

# KEILHAUER

1450 Birchmount Road | Toronto, Ontario M1P2E3 Canada  
800-724-5665 Office | 800-416-759-5723 Fax

Quote #: KPL-LR-07272011-KH-SW Rev. # 5 Date: 12.01.2011  
Quoted To: Shea McClanahan | Workplace Resource | 1717 W. 6<sup>th</sup> St., # 1900 | Austin, TX 78703  
Project: Kyle Public Library Specifier: Laura Robinson  
Sales Rep: Sue Gorman Associates | 713.522.0707 Office | sue@suegormanlp.com

Qty	Description of Item	List Price Each	Sell Price Each	Extended
2	C-13 Librarian's Office Keilhauer Also Chair # 3623 With Arms, Upholstered Seat and Back Frame: PC00 Nickel   Shell Color: TBD COM Upholstery - 1 yard per chair required	\$500.00 Excluding COM	\$211.00	\$422.00
4	C-21B   Reading Area Keilhauer Also Chair # 3623 With Arms, Upholstered Seat and Back Frame: PC00 Nickel   Shell Color: TBD COM Upholstery - 1 yard per chair required	\$500.00 Excluding COM	\$211.00	\$844.00
4	C-9 Breakroom Keilhauer Also Chair with Arms # 3513 Shell: Solid # 15 Black Frame: POC00 Nickel	\$400.00	\$168.80	\$675.20
40	C-21 Reading Area Keilhauer Also Chair with Arms # 3513 Shell: Solid # 15 Black Frame: POC00 Nickel	\$400.00	\$168.80	\$6,752.00
16	C-21 Silent Reading Keilhauer Also Chair with Arms # 3513 Shell: Solid # 15 Black Frame: POC00 Nickel	\$400.00	\$168.80	\$2,700.80
12	C-14 Entry Lobby Keilhauer Also Chair without Arms # 3510 Shell: Translucent # 56 Soft Spring Frame: POC00 Nickel	\$350.00	\$147.70	\$1,772.40
6	C-17 Entry Lobby Keilhauer Also Chair with Arms # 3513 Shell: Translucent # 56 Soft Spring Frame: POC00 Nickel	\$400.00	\$168.80	\$1,012.80
Total:				\$14,179.20
Freight:				0.00
NOTE:		Pricing does not include Dealer Delivery and Installation Fees		
COMs:		Pricing for C-13 and C-21B do not include fabric pricing		
TXMAS Discount:		57.8% off List price		
TXMAS Admin/Smart Fee:		Not included in pricing		
Keilhauer TXMAS Contract #:		TXMAS-3-7110280		
Workplace Resource:		TXMAS Contract # 3-7110280-11		
Lead Time:		4-6 Weeks after receipt of clean PO/receipt of COM		
Terms:		Deposits and payments subject to Manufacturer's terms and conditions.		

Quote valid for 30 days from date on quote.

Item # 4





Date: 9/15/2011

**Quote# SM110130**  
**KYLE PUBLIC LIBRARY**  
**TXMAS CONTRACT: TXMAS-3-7110280; EXP. 01/27/2012**  
**PURCHASE ORDER MUST BE MADE OUT TO THE FOLLOWING:**  
**KEILHAUER**  
**c/o Workplace Resource LLC.**  
**1450 BIRCHMOUNT RD**  
**TORONTO SCARBOROUGH ONTARIO CANADA M1P2E3**

Item	Qty.	Product		Unit	Extended
1	2	<b>3623</b>	<i>List:</i>	\$500.00	\$1,000.00
		ALSO CHAIR W/ ARMS UPH SEAT AND BACK FRAME PC00 NICKEL SHELL	<i>Sell:</i>	\$211.00	\$422.00
		TBD COM KNOLL STAR STRUCK FAN CLUB K1048/6	<i>Sell Discount %:</i>		57.80
2	2		<i>List:</i>	\$0.00	\$0.00
		KNOLL STAR STRUCK FAN CLUB K1048/6	<i>Sell:</i>	\$77.00	\$154.00
			<i>Sell Discount %:</i>		0.00
3	12	<b>3510</b>	<i>List:</i>	\$350.00	\$4,200.00
		ALSO CHAIR W/O ARMS SHELL TRANSLUCENT #56 SOFT SPRING FRAME	<i>Sell:</i>	\$147.70	\$1,772.40
		POC00	<i>Sell Discount %:</i>		57.80
4	6	<b>3513</b>	<i>List:</i>	\$400.00	\$2,400.00
		ALSO CHAIR W/ ARMS 27.5H SHELL TRANSLUCENT #56 SOFT SPRING	<i>Sell:</i>	\$168.80	\$1,012.80
		FRAME POC00	<i>Sell Discount %:</i>		57.80
5	56	<b>3515</b>	<i>List:</i>	\$400.00	\$22,400.00
		ALSO CHAIR W/ ARMS 27.5H SHELL #15 BLACK FRAME POC00 NICKEL	<i>Sell:</i>	\$168.80	\$9,452.80
			<i>Sell Discount %:</i>		57.80
6	4	<b>3623</b>	<i>List:</i>	\$500.00	\$2,000.00
		ALSO CHAIR W/ ARMS UPH SEAT AND BACK FRAME PC00 NICKEL SHELL	<i>Sell:</i>	\$211.00	\$844.00
		TBD COM MAHARAM OFFSET OASIS	<i>Sell Discount %:</i>		57.80
7	4		<i>List:</i>	\$0.00	\$0.00
		MAHARAM OFFSET OASIS	<i>Sell:</i>	\$77.00	\$308.00
			<i>Sell Discount %:</i>		0.00
8	4	<b>3513</b>	<i>List:</i>	\$400.00	\$1,600.00
		ALSO CHAIR W/ ARMS 27.5H SHELL #15 BLACK FRAME POC00 NICKEL	<i>Sell:</i>	\$168.80	\$675.20
			<i>Sell Discount %:</i>		57.80
9	1	<b>TXMAS ADMIN FEE</b>	<i>List:</i>	\$215.92	\$215.92
			<i>Sell:</i>	\$215.92	\$215.92
			<i>Sell Discount %:</i>		0.00
10	1	<b>FREIGHT COST</b>	<i>List:</i>	\$0.00	\$0.00
			<i>Sell:</i>	\$14.29	\$14.29
			<i>Sell Discount %:</i>		0.00

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Date: 9/15/2011

Quote# SM110130  
 KYLE PUBLIC LIBRARY  
 TXMAS CONTRACT: TXMAS-3-7110280; EXP. 01/27/2012  
 PURCHASE ORDER MUST BE MADE OUT TO THE FOLLOWING:  
 KEILHAUER  
 c/o Workplace Resource LLC.  
 1450 BIRCHMOUNT RD  
 TORONTO SCARBOROUGH ONTARIO CANADA M1P2E3

Item	Qty.	Product		Unit	Extended
11	1	<b>INSTALL</b>	<i>List:</i>	\$0.00	\$0.00
		RECEIVE AND INSTALL NORMAL BUSINESS HOURS	<i>Sell:</i>	\$2,224.00	\$2,224.00
			<i>Sell Discount %:</i>		0.00
			<b>Total:</b>	<i>List:</i>	\$33,815.92
				<i>Sell:</i>	\$17,095.41
			Price Valid for 30 Days.		

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Workplace Resource  
 1717 West 6th Street, Suite 190 Austin, Texas 78703  
 PH: 1-800-580-3000 FAX: 1-512-472-7888

Workplace Resource  
 4400 NE Loop 410, Suite 130 San Antonio, TX 78218  
 PH: 1-800-486-6011 FAX: 1-214-276-4218

Item # 4

City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: December 13, 2011  
 CONTACT CITY DEPARTMENT: Public Library  
 CONTACT CITY STAFF: Connie Brooks, Director

SUBJECT: Authorize award and execution of a Purchase Order to KEILHAUER of Toronto, Canada, in an amount Not to Exceed \$16,633.41 (U.S. Dollars) to various furniture item for the new Kyle Public Library.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to Keilhauer will require expenditure of funds from the accumulated Library Donation Fund for the new library.

1. City Department::	Public Library
2. Project Name:	Furniture, Fixtures, and Equipment (FF&E)
3. Budget/Accounting Code(s):	138-677-57111
4. Funding Source #2:	Library Donations
5. Current Appropriation:	\$ 161,905.90 (Donations)
6. Unencumbered Balance:	\$ 93,006.09
7. Amount of This Action:	<u>\$( 16,633.41)</u>
8. Remaining Balance:	<u>\$ 76,372.68</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this purchase in the amount of \$16,633.41 is provided from accumulated donations for the new Library.

ADDITIONAL INFORMATION/COUNCIL ACTION:

On November 21, 2011, the Library Board approved the furniture purchase plan for the new Kyle Public Library. Accordingly, the Library Board recommends City Council's approval of this purchase. The City Council's approval of this item will also authorize staff to apply \$16,633.41 from the Library Donation Fund for this Purchase Order.



## CITY OF KYLE, TEXAS

### Authorization to Expend \$3,464.00 for the Blue Santa Program

**Meeting Date: 12/13/2011**  
**Date time: 7:00 PM**

**Subject/Recommendation:**

Authorize the Chief of Police to Expend an amount Not to Exceed \$3,464.00 in donated funds for the Blue Santa Program and to transfer the administration and management responsibilities of the Blue Santa Program to the Police Association including collection, distribution, accounting, and reporting for such donated funds ~  
*Jeff Barnett, Chief of Police*

**Other Information:**

**Budget Information:**

Please see attached Fiscal Note.

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**Attachments / click to download**

[Fiscal Note - Blue Santa Program](#)

City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: December 13, 2011  
 CONTACT CITY DEPARTMENT: Police Department  
 CONTACT CITY STAFF: Jeff Barnett, Chief of Police

SUBJECT: Authorize the Chief of Police to Expend an amount Not to Exceed \$3,464.00 in donated funds for the Blue Santa Program and to transfer the administration and management responsibilities of the Blue Santa Program to the Police Association including collection, distribution, accounting, and reporting for such donated funds. ~ Lanny Lambert, City Manager

CURRENT YEAR FISCAL IMPACT:

This authorization will require expenditure of donated funds accumulated in the Police Special Revenue Fund for the Blue Santa Program.

1. City Department:	Police Department
2. Project Name:	Blue Santa Program
3. Budget/Accounting Code(s):	132-520-52190
4. Funding Source:	Donations
5. Current Appropriation:	\$ 3,464.00 (Donations)
6. Unencumbered Balance:	\$ 3,464.00
7. Amount of This Action:	<u>\$(3,464.00)</u>
8. Remaining Balance:	<u>\$ 0.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for all expenditure of funds in the amount not to exceed \$3,464.00 for the Blue Santa Program is provided from accumulated donations.

ADDITIONAL INFORMATION/COUNCIL ACTION:



# CITY OF KYLE, TEXAS

## Lease Contract for Police Motorcycles - Cowboy Harley-Davidson

Meeting Date: 12/13/2011  
Date time: 7:00 PM

**Subject/Recommendation:**

Authorize Award and Execution of a 12-month lease contract with COWBOY HARLEY-DAVIDSON OF AUSTIN, TEXAS, for two (2) 2012 FLHP Road King Harley-Davidson police motorcycles in an amount Not to Exceed \$9,360.00 for the 12-month term ~ *Jeff Barnett, Chief of Police*

**Other Information:**

The Police Department is in need of two (2) police patrol motorcycles. If authorized by the City Council, the Chief of Police will enter into a 12-month lease contract by issuing a Purchase Order to COWBOY HARLEY-DAVIDSON OF AUSTIN, TEXAS for two (2) 2012 Harley-Davidson FLHP Road King police motorcycles in an amount not to exceed \$4,680.00 per motorcycle or a total lease amount of \$9,360.00 for the 12-month lease term.

On November 2, 2011, the City of Kyle issued an Invitation to Bid (IFB) to solicit bids from interested dealers and leasing companies to lease two police motorcycles for the Police Department. A solicitation notice for the IFB was published in the Hays Free Press and was posted on the City’s website.

Initially, the City did not receive any bids in response to the IFB. Subsequently, the deadline to submit bids was extended by a week and the City received only bid in response from Harley-Davidson of Austin, Texas.

The amount of lease payments and required maintenance costs are as follows. The monthly lease payments do not include required maintenance costs or excessive mileage costs.

	<u>Monthly Payments</u>	<u>Total 12-Months</u>
1. Motorcycle #1:	\$390.00	\$4,680.00
2. Motorcycle #2:	<u>\$390.00</u>	<u>\$4,680.00</u>
TOTAL:	<u>\$780.00</u>	<u>\$9,360.00</u>

Excess Mileage Costs \$0.10 Per Mile:

Allowable miles are 18,000 for each motorcycle and a charge of \$0.10 per mile will be applied for each mile in excess of the allowable miles.

Required Maintenance Costs \$2,910.00:

- At mileage intervals 1,000, 5,000, and 15,000: \$239.00 per interval for each motorcycle or a total cost of \$1,434.00 for both motorcycles.
- At mileage interval 10,000: \$279.00 for each motorcycle or a total cost of \$558.00 for both motorcycles.
- At mileage intervals 2,500, 7,500, and 12,500: \$153.00 per interval for each motorcycle or a total cost of \$918.00 for both motorcycles.

**Budget Information:**

Please see attached Fiscal Note.

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**Attachments / click to download**

- [Bid Response/Quote](#)
  - [Invitation to Bid \(IFB\)](#)
  - [Fiscal Note - Cowboy Harley-Davidson](#)
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City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: December 13, 2011  
 CONTACT CITY DEPARTMENT: Police Department  
 CONTACT CITY STAFF: Jeff Barnett, Chief of Police

SUBJECT: Authorize award and execution of a 12-month lease contract with COWBOY HARLEY-DAVIDSON OF AUSTIN, TEXAS, for two (2) 2012 FLHP Road King Harley-Davidson police motorcycles in an amount Not to Exceed \$9,360.00 for the 12-month term. ~ Jeff Barnett, Chief of Police

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to Cowboy Harley-Davidson will require expenditure of funds from the Operating Budget of the Police Department.

1. City Department:	Police Department
2. Project Name:	Lease Contract for Two Police Motorcycles
3. Budget/Accounting Code(s):	110-151-54176
4. Funding Source:	Approved FY 2011-12 Budget (General Fund)
5. Current Appropriation:	\$ 9,600.00
6. Unencumbered Balance:	\$ 9,600.00
7. Amount of This Action:	<u>\$(9,360.00)</u>
8. Remaining Balance:	<u>\$ 240.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this 12-month lease contract in the amount of \$9,360.00 is provided from the approved FY 2011-12 Operating Budget for the Police Department (General Fund).

ADDITIONAL INFORMATION/COUNCIL ACTION:

A separate City Council authorization will be requested by the Police Department to purchase and install emergency equipment from a different vendor/supplier on both police patrol motorcycles being leased by the department.



EXHIBIT A

**QUOTATION FOR A 2-YEAR POLICE MOTORCYCLE LEASE**  
(Bidders Must Use Exhibits A & B to Respond)

1. Responder: COWBOY H-D OF AUSTIN
2. Address: 10717 S THAS AUSTIN, TX 78747
3. Contact Name: RICHARD BOURGEOIS
4. Email Address: richardb@cowboymarley.com
5. Telephone/Fax: 512-448-4294 512-380-032
6. Manufacturer: HARLEY-DAVIDSON
7. Model Name: FLHP
8. Model Year: 2012
9. Model Description: ROAD KING  
BLACK  
ABS  
103ci
10. Delivery Date(s): 12-2-11
11. Allowable Mileage Per Year: 18000 (Per Motorcycle)
12. Number of Lease Payments: 12 (Per Motorcycle)
13. Monthly Lease Payment Amount: 390.00 (Per Motorcycle)
14. Total Amount of Lease Payments: 4680.00 (Per Motorcycle)  
Line 12 x Line 13
15. Is Buyback Option Available?  Yes  No
16. Buyback Value at End of 2-Year Lease: \_\_\_\_\_ (Per Motorcycle)  
What will it cost the City to purchase the motorcycles at the end of the 2-year lease?
17. Charge Per Mile Above Allowable Miles Per Year: \$0.10 (Rate Per Mile)
18. Interest Rate Used for the Lease: \_\_\_\_\_ (APR)
19. Any Required Maintenance Costs (Per Mileage Interval/Per Motorcycle):

Mileage Interval(s) <u>1,000, 5,000 &amp; 15,000</u>	Cost: <u>239.00</u>
Mileage Interval(s) <u>10,000</u>	Cost: <u>279.00</u>
Mileage Interval(s) <u>2,500, 7,500 &amp; 12,500</u>	Cost: <u>153.00</u>
Mileage Interval(s) _____	Cost: _____

Item # 6

ONE YEAR RENEWABLE LEASE PER OWNERSHIP,



**CITY OF KYLE, TEXAS**  
**INVITATION FOR BID (IFB) NO: 2011-02-PM**

Solicitation For: Lease for Two (2) Police Motorcycles

Solicitation Number: IFB 2011-02-PM

Date Issued: November 2, 2011

Description: The City of Kyle, Texas is soliciting bids to lease two (2) Police Motorcycles to be utilized by the Police Department in carrying-out their daily law enforcement responsibilities.

The City is soliciting vendors to provide bids as follows:

1. A two (2) year lease term under which the motorcycles are returned to the vendor at the end of the lease term with a buyback option if available.
2. A four (4) year lease-purchase where the motorcycles will become the property of the City at the end of the lease term for a nominal charge.

Bid Submission  
Deadline: Must Be Received By: November 18, 2011 by 2:00 p.m.

**Revised Deadline:** Must Be Received By: **December 2, 2011 by 2:00 p.m.**

Bid Submission: By Email Send to: [pmoheet@cityofkyle.com](mailto:pmoheet@cityofkyle.com)  
By Mail Send to: Mr. Perwez A. Moheet, CPA  
Director of Finance  
City of Kyle  
100 W. Center Street  
Kyle, Texas 78640

Bid Opening Date: December 5, 2011 at 9:00 a.m. **(Revised)**  
Finance Conference Room, Kyle City Hall  
100 W. Center Street  
Kyle, Texas 78640

Specifications and Other  
Bid Requirements: To view the specifications for this solicitation and other bid requirements, please go to <http://www.cityofkyle.com/rfps>.

Contact Person: Andy Alejandro, email: [talejandro@cityofkyle.com](mailto:talejandro@cityofkyle.com)

**CITY OF KYLE, TEXAS**  
**INVITATION FOR BID (IFB) NO: 2011-02-PM**

**SPECIFICATIONS AND GENERAL BID REQUIREMENTS**

**SCOPE:**

The City of Kyle, Texas is soliciting bids to lease two (2) Police Motorcycles to be utilized by the Police Department in carrying-out their daily law enforcement responsibilities. The City is soliciting vendors to provide bids as follows:

1. A two (2) year lease term under which the motorcycles are returned to the vendor at the end of the lease term. Please refer to Exhibit A for required bid response information and format.
2. A four (4) year lease-purchase where the motorcycles will become the property of the City at the end of the lease term for a nominal charge. Please refer to Exhibit B for required bid response information and format.

**GENERAL CONDITIONS:**

Equipment shall be manufacturer's latest model and shall have been manufactured as a 2012 model year. All components shall be installed new, unused, and equipment is to be serviced in accordance with manufacturer's recommended pre-delivery checklist and shall be ready for operation upon delivery. Equipment offered below the listed specifications will be considered unacceptable.

**WARRANTY**

Warranty and parts dealer and manufacturer must provide the maximum standard manufacturer's warranty on all components parts and services included. All components, parts, and service are required to provide as a minimum one year unlimited mileage warranty.

**DELIVERY**

Delivery of the two (2) Police Motorcycles is to be made at the Kyle Police Department or at a location acceptable to and agreed upon by the City's Chief of Police.

**SPECIFICATIONS**

- a) Quantity: Two (2) Police Motorcycles
- b) Model Year: 2012
- c) Color: Black
- d) Engine: Minimum piston displacement of not less than 1690 cc. Two

cylinders with overhead valves, primary chain drive, twin cams, air cooled with standard oil cooler, and equipped with hydraulic lifters.

- e) Transmission: Transmission to be of latest design, manual type, with not less than six (6) forward speeds.
- f) Brakes: Independent anti-lock brake system, hydraulic disc brakes for front and rear wheels, brakes shall be free of heat fade, and with uniform expanding rotors.
- g) Suspension: Motorcycles shall be provided with a suspension system to allow optimum handling conditions as required in law enforcement.
- h) Wheels/Tires: Black slotted disc cast aluminum wheels, rim material to be impermeable to compressed air. Tubeless tires to have non-skid tread, designed to operate on paved highways and shall have a four-ply fabric enforcement.
- i) Fuel Tank: Capacity of six gallons, must provide a minimum of 1 gallon of reserve fuel capacity when the main supply is fully used and must have electric fuel pump.
- j) Electrical: All electrical systems must be 12-volts including battery, starter, charging system, connectors, hand controls, and water resistant switches.
- k) Horn: Sound level must be audible above traffic generated noise.
- l) Lighting: Quartz halogen headlight, pursuit lamps front mounted, one red and blue (incandescent), tail light, self canceling turn signals, 4-way integrated flashers, license plate lighting with two blue marker lamps, front (amber) and rear (red) fender tip lights.
- m) Displays: Analog speedometer, analog tachometer, resetting trip meter, fuel gauge, emergency light activation indicator, fuel mileage countdown, turn signal indicators, neutral indicator, high beam indicator, low oil pressure indicator, engine diagnostic light, and ABS indicator lamp.
- n) Features: Solo air saddle special police type seat with breathable material covered and bladder suspension seat.  
Side stand with electronic disengage to prevent drive off with side stand deployed.  
Pivoting foot boards with non-skid rubber pads.  
Front engine guard bar and rear saddlebag guard pads.  
Factory installed law enforcement type molded water resistant saddlebags with police style speed latches.  
Dual chrome exhaust system.  
Final belt drive.

Clear polycarbonate or Lexan constructed windshield designed to break away with minimal force.  
Two long stem true image mirrors.  
One key fits all locks.

**EXHIBIT A****QUOTATION FOR A 2-YEAR POLICE MOTORCYCLE LEASE  
(Bidders Must Use Exhibits A & B to Respond)**

1. Responder: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Contact Name: \_\_\_\_\_
4. Email Address: \_\_\_\_\_
5. Telephone/Fax: \_\_\_\_\_
6. Manufacturer: \_\_\_\_\_
7. Model Name: \_\_\_\_\_
8. Model Year: \_\_\_\_\_
9. Model Description: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
10. Delivery Date(s): \_\_\_\_\_
11. Allowable Mileage Per Year: \_\_\_\_\_ (Per Motorcycle)
12. Number of Lease Payments: \_\_\_\_\_ (Per Motorcycle)
13. Monthly Lease Payment Amount: \_\_\_\_\_ (Per Motorcycle)
14. Total Amount of Lease Payments: \_\_\_\_\_ (Per Motorcycle)  
 Line 12 x Line 13
15. Is Buyback Option Available?  Yes  No
16. Buyback Value at End of 2-Year Lease: \_\_\_\_\_ (Per Motorcycle)  
 What will it cost the City to purchase the motorcycles at the end of the 2-year lease?
17. Charge Per Mile Above  
 Allowable Miles Per Year: \_\_\_\_\_ (Rate Per Mile)
18. Interest Rate Used for the Lease: \_\_\_\_\_ (APR)
19. Any Required Maintenance Costs (Per Mileage Interval/Per Motorcycle):
- Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_
- Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_
- Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_
- Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_

**EXHIBIT B****QUOTATION FOR A 4-YEAR POLICE MOTORCYCLE LEASE-PURCHASE  
(Bidders Must Use Exhibits A & B to Respond)**

1. Responder: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Contact Name: \_\_\_\_\_
4. Telephone/Fax: \_\_\_\_\_
5. Email Address: \_\_\_\_\_
6. Manufacturer: \_\_\_\_\_
7. Model Name: \_\_\_\_\_
8. Model Year: \_\_\_\_\_
9. Model Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Delivery Date(s): \_\_\_\_\_
11. Allowable Mileage Per Year: \_\_\_\_\_ (Per Motorcycle)
12. Number of Lease Payments: \_\_\_\_\_ (Per Motorcycle)
13. Monthly Lease Payment Amount: \_\_\_\_\_ (Per Motorcycle)
14. Total Amount of Lease Payments: \_\_\_\_\_ (Per Motorcycle)  
Line 12 x Line 13
15. Buyback Value at End of 4-Year Lease: \_\_\_\_\_ (Per Motorcycle)  
What will it cost the City to purchase the motorcycles at the end of the 4-year lease?
16. Charge Per Mile Above  
Allowable Miles Per Year: \_\_\_\_\_ (Rate Per Mile)
17. Interest Rate Used for the Lease: \_\_\_\_\_ (APR)
18. Any Required Maintenance Costs (Per Mileage Interval/Per Motorcycle):  
Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_  
Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_  
Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_  
Mileage Interval(s) \_\_\_\_\_ Cost: \_\_\_\_\_



## CITY OF KYLE, TEXAS

### Purchase Emergency Equipment & Installation for Police Motorcycles

Meeting Date: 12/13/2011  
Date time: 7:00 PM

**Subject/Recommendation:**

Authorize Award and Execution of a Purchase Order to PRIORITY PUBLIC SAFETY UNIFORMS & EQUIPMENT (formerly doing business as Cop Stuff) of Van Alstyne, Texas, in an amount Not to Exceed \$10,189.00 to purchase and install emergency equipment for two leased police motorcycles for the City of Kyle Police Department. (Related to Item No. 4) ~ *Jeff Barnett, Chief of Police*

**Other Information:**

The Police Department is requesting City Council's authorization to award a Purchase Order to Priority Public Safety Uniforms & Equipment (formerly doing business as Cop Stuff), Van Alstyne, Texas, in an amount not to exceed \$10,189.00 for the purchase of various emergency equipment and installation on the two leased police motorcycles.

- Emergency Equipment: \$ 9,189.00
- Installation: \$ 1,000.00
- TOTAL: \$10,189.00

Cop Stuff of Van Alstyne was awarded a contract (Bid #2008-124) for Emergency Vehicle Equipment and Supplies by the Tarrant County's Cooperative Purchasing Program. Among the many cities and counties, the City of Kyle is a participating member of the Tarrant County Cooperative Purchasing Program. Additional information about the Tarrant County Cooperative Purchasing Program can be found at their website.

Detailed price quotation from Priority Public Safety Uniforms & Equipment (formerly doing business as Cop Stuff) is attached.

**Budget Information:**

Please see attached Fiscal Note.

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**Attachments / click to download**

- [Itemized Price Quote - Emergency Equipment Motorcycles](#)
- [Fiscal Note - Emergency Equipment Motorcycles](#)





## EMERGENCY VEHICLE OUTFITTERS

659 Martin Duke Road Van Alstyne, Texas 75495

Phone: 1-866-532-9357 Fax: 1-877-532-6533

# Proposal

Proposal Date: 10/5/2011

Proposal #: DN11-3064

Project:

### Bill To:

KYLE POLICE DEPARTMENT  
ATTN: Walt Tallent/Sgt. Varano  
300 West Center Street  
P.O. Box 40  
Kyle, Texas 78640

REP

Item	Description	Qty.	Rate	Amount	Markup	Total
WE-M04ZJ2	WHELEN WINDSHIELD LIGHT ARRAY	2	420.00	840.00		840.00
WE-M4B6R	WHELEN MOTO BOX WITH 6 M4 SUPER LED LIGHTEHEADS 3 RED 3 BLUE	2	1,925.00	3,850.00		3,850.00
WE-2ER00ZCR	WHELEN-PAR 36 LED CLEAR LIGHT W/ EXTENDED LENS, RED	2	103.00	206.00		206.00
WE-2EB00ZCR	WHELEN-PAR 36 LED BLUE W/ EXTENDED LENS	2	103.00	206.00		206.00
WE-SA350MH	SA-350MH SIREN SPEAKER FOR HARLEY WIRING HARNES	2	379.00	758.00		758.00
WE-WS321	WHELEN-WS321 SIREN FOR HARLEY WIRING HARNES	2	329.00	658.00		658.00
WE-M4BSEP	SEPARATION PLATE	2	79.00	158.00		158.00
WE-M1BATT	MOTORCYCLE GEL BATTERY	2	199.00	398.00		398.00
WE-M4B6CHGR	BATTERY CHARGER	2	189.00	378.00		378.00
WE-M1GROUND	M1GROUND GROUND PLATE	2	8.25	16.50		16.50
WE-LINZ6R	WHELEN LINZ6 6 RED 6 BLUE 4 RED/BLUE SPLIT	16	85.00	1,360.00		1,360.00
WE-M2FNDR	FENDER MOUNT KIT FOR LINZ6	4	31.50	126.00		126.00
WE-RBKTHD1	Harley Side Windshield Mount For LINZ6	4	9.95	39.80		39.80
WE-RBKTHD2	HARLEY SIDE (SADDLE BAG) CRASH BAR MOUNTING KIT FOR LINZ6	4	17.75	71.00		71.00
WE-RBKTHD3	HARLEY REAR (SADDLE BAG) CRASH BAR MOUNTING BRACKET	4	20.75	83.00		83.00
WE-RBKTHD4	UNDER BOX MOUNT FOR 1 LINZ6 LEFT	2	10.20	20.40		20.40
WE-RBKTHD4R	UNDER BOX MOUNT KIT FOR 1 LINZ6 RIGHT	2	10.20	20.40		20.40

**TAX (8.25%)**

\$0.00

**Total**

**\$9,189.10**

SIGNATURE \_\_\_\_\_

Item # 7

City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: December 13, 2011  
 CONTACT CITY DEPARTMENT: Police Department  
 CONTACT CITY STAFF: Jeff Barnett, Chief of Police

SUBJECT: Authorize award and execution of a Purchase Order to PRIORITY PUBLIC SAFETY UNIFORMS & EQUIPMENT (formerly doing business as Cop Stuff) of Van Alstyne, Texas, in an amount Not to Exceed \$10,189.00 to purchase and install emergency equipment for two leased police motorcycles for the City of Kyle Police Department. (Related to Item No. \_\_\_\_\_ ~ Jeff Barnett, Chief of Police

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to Priority Public Safety Uniforms & Equipment (formerly doing business as Cop Stuff) will require expenditure of funds from the Operating Budget of the Police Department.

1. City Department:	Police Department
2. Project Name:	Emergency Equipment for Two Police Motorcycles
3. Budget/Accounting Code(s):	110-151-52233
4. Funding Source:	Approved FY 2011-12 Budget (General Fund)
5. Current Appropriation:	\$ 11,000.00
6. Unencumbered Balance:	\$ 11,000.00
7. Amount of This Action:	<u>\$(10,189.00)</u>
8. Remaining Balance:	<u>\$ 811.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this Purchase Order in the amount of \$10,189.00 is provided from the approved FY 2011-12 Operating Budget for the Police Department (General Fund).

ADDITIONAL INFORMATION/COUNCIL ACTION:

A separate City Council authorization will be requested by the Police Department to lease two police motorcycles for a 12-month term from a different vendor/dealer.



# CITY OF KYLE, TEXAS

## Development Agreement between City of Kyle and Image Microsystems

**Meeting Date: 12/13/2011**  
**Date time: 7:00 PM**

**Subject/Recommendation:**

Consider and Possible Action on the Economic Development Agreement between the City of Kyle and Image Microsystems ~ *Diana Blank, Director of Economic Development*

**Other Information:**

**Budget Information:**

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [Image Microsystems](#)
  - [sky blue Exhibit B](#)
  - [sky blue Exhibit C](#)
-

STATE OF TEXAS §

**KNOW ALL BY THESE PRESENTS:**

COUNTY OF HAYS §

**CITY OF KYLE/IMAGE MICROSYSTEMS**

This Chapter 380 Economic Development Agreement (“Agreement”), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, (the “Effective Date”), by and between the City of Kyle, Texas, a home rule municipal corporation (the “City”) and Image Microsystems, its successors and assigns (“Image Microsystems”).

**RECITALS**

**WHEREAS**, the City is establishing an economic development program and authorizing the City Manager to make economic development grants to Image Microsystems as an inducement by the City for the Project; and

**WHEREAS**, The City is interested and desirous of promoting economic development within its boundaries pursuant to a development agreement with Image Microsystems; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the City; and

**WHEREAS**, as part of the Project, the City seeks to induce Image Microsystems to create at least 131 new full-time jobs in year one, create an additional 50 new full-time jobs in year two and maintain 181 full-time jobs for the remainder of the term of this agreement in connection with the Project and the operations of Image Microsystems in Kyle, Texas; which jobs shall promote state and local economic development and stimulate business and commercial activity in Kyle; and

**WHEREAS**, as part of the Project, the City seeks to induce Image Microsystems to invest at least \$3.375 million by (fill in Date), in real property, real property improvements, and new equipment and machinery, at its site at 3700 Kyle Crossing, Kyle, Texas; and

**WHEREAS**, The City, after due and careful consideration, has concluded that the Project as provided for herein will further the growth of the City, improve the environment of the City, increase the assessed valuation within the City, foster increased economic activity within the City, increase employment opportunities within the City, upgrade public infrastructure serving the Property, and otherwise be in the best interests of the City by furthering the health, safety and welfare of its residents and taxpayers, and that entering into this Agreement is necessary and convenient to implement the Project and achieve its economic development purposes.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, the City

and Image Microsystems agree as follows:

## **I. AUTHORITY**

1.01 The City's execution of this agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. Image Microsystems' execution and performance of this Agreement constitutes a valid and binding obligation of Image Microsystems in the event Image Microsystems proceeds to locate the Project at the site, 3700 Kyle Crossing, Kyle, Texas; the City acknowledges that Image Microsystems is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to invest its funds, and expand employment in Kyle.

## **II. DEFINITIONS**

2.01 "E-waste Recycling Plant" means an e-waste recycling, data asset recovery and sign material manufacturing plant to be purchased and improved by Image Microsystems at 3700 Kyle Crossing, Kyle, Texas as attached as Exhibit "A".

2.02 "Additional Property Tax Notice" means the written notice provided by Image Microsystems to the City of any additional amounts of Property Tax paid by Image Microsystems over and above the amount of Property Tax paid by Image Microsystems in any given year.

2.03 "Certificate of Compliance" means the written certification by Image Microsystems under which it warrants to the City that it is in full compliance with each of its obligations under this Agreement, including the number of new full-time jobs maintained by Image Microsystems for the preceding year under Section 4.01 of this Agreement. The Certificate shall be substantially in the form and contain the information specified in the sample Certificate attached to this Agreement as Exhibit "C".

2.04 "Certified Appraised Value of Eligible Property" means the final appraised value of eligible property as determined by Hays County Appraisal District after the resolution of any contests or disputes concerning property valuation.

2.05 "Chapter 380 Payment" means the amounts paid by the City to Image Microsystems under the Program.

2.06 "County Tax Collector" means the Tax Assessor Collector for Hays County or its successor.

2.07 "Effective Date" means the effective date of this Agreement and is (fill in effective date).

2.08 "Existing Fab" means existing manufacturing plant that is located at 3700 Kyle Crossing,

Kyle, Texas as of the date of this agreement, including, without limitation, the expansion and improvements of the original plant currently under construction.

2.09 “Full-time Job(s)” means full-time jobs performed at the Image Microsystems campus by employees of Images Microsystems and created as the result of the purchase, improvements and operations by Image Microsystems to an E-waste Recycling Facility at 3700 Kyle Crossing, Kyle, Texas.

2.10 Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and, where the context requires, the plural of any word shall include the singular.

2.11 “Grant” shall mean, pursuant to the Agreement the payment of monies in the manner provided Section 5.01 Property Tax Incentive and Section 5.02 Sales Tax Incentive from the City’s portion of the sales and use taxes that result from the one percent (1%) general City Sales Tax on the sales of taxable items collected on-site by Image Microsystems and remitted to the Comptroller of the State of Texas for the purpose of promoting new or expanded Image Microsystems development and the creation of new jobs in the City.

2.12 “Year One” means a period of one year beginning (fill in effective start date) and ending (fill in -one year thereafter).

2.13 “Year Two” means a period of one year beginning (fill in effective start date of yr 2) and ending (fill in one year thereafter).

2.14 “Remainder of the Term of this Agreement” means (fill in effective start date of yr 3) and ending (fill in three years thereafter).

2.15 “Term of this Agreement” means a period of five years beginning (fill in effective start date of the agreement) and ending (fill in end date being 5 years thereafter).

2.16 “Original Investment” means the investment by Image Microsystems of at least \$3,375,000 in real property, real property improvements and new equipment and machinery at its site at 3700 Kyle Crossing, Kyle, Texas by (fill in date).

2.17 “Program” means the economic development program for this Project established by the City pursuant to Texas Local Government Code Chapter 380 to promote local economic development and stimulate business and commercial activity within the City.

2.18 “Project” means Image Microsystems' proposal to create new jobs and make an additional capital investment for the Existing Fab. to be located and to be maintained at 3700 Kyle Crossing, Kyle, Texas.

2.19 “Property tax” means amount of City Property Tax paid by Image Microsystems to the Hays County Tax Collector.

2.20 “Property Tax Notice” means the written notice provided by Image Microsystems to the City of the amount of Property Tax paid by Image Microsystems to the Hays County Tax Collector.

2.21 “Sales Tax” or “Sales Tax Revenues” means the City’s share received from the State of Texas Comptroller of Public Accounts Office (“Comptroller”) of municipal sales taxes, such as that presently in effect pursuant to Texas Tax Code §§ 321.101 and 321.103, resulting from (i) sales tax collected by Image Microsystems located at 3700 Kyle Crossing, Kyle, Texas, and (ii) sales/use tax paid directly by a business or person located on the Property under its sales tax permit.

2.22 “HCAD” means Hays Central Appraisal District or its successors.

### III. TERM

3.01 This Agreement shall become enforceable upon execution by the City and Image Microsystems and shall be effective on the Effective Date. Unless terminated earlier in accordance with its terms, the Agreement shall terminate (in termination date).

### IV. IMAGE MICROSYSTEMS OBLIGATIONS

In consideration of the City’s participation in the Program, Image Microsystems agrees that the following performance guidelines shall apply:

4.01 Existing Fab employment and Local Businesses. The obligation of the City to pay Grants shall be conditioned upon the Image Microsystems continued compliance with and satisfaction of each of the conditions set forth in this Agreement, as solely and finally determined by City without recourse.

4.01.1 Image Microsystems shall create new jobs as follows:

- (a) Between the Effective Date and the end of year one, Image Microsystems shall create at least 131 new full-time jobs, create an additional 50 new full-time jobs in year two and maintain 181 full-time jobs for the remainder of the term of this agreement
- (b) Each full time job created shall be located in the City and pay no less than \_\_\_\_\_ per hour.
- (c) Each full time employee hired by Image Microsystems pursuant to this Agreement shall be eligible for full company benefits.
- (d) In the event of a voluntary or involuntary termination or elimination of a Full-time Job after (fill in end date of year one), that causes the number people

employed in Full-time Jobs to fall below 131, Image Microsystems shall continue to receive the incentives set out in Sections 5.01 and 5.02 below, provided the required number of people employed in said Full-time Jobs is re-established within 90 days after the date of termination or elimination occurs that results in the number of people employed in said Full-time Jobs to fall below 131.

(e) If the total number of the Full-time Jobs falls below 131 and is not restored at the conclusion of the 90 day period, then, at the option of the City, this Agreement shall terminate.

(f) Image Microsystems shall provide written notification to the City within two weeks of the reduction referenced in this Section; the notice shall contain the reduction in levels of Full-time Jobs and Image Microsystems' plan for restoring the levels. Image Microsystems shall provide the City written notification at the conclusion of the 90 day period as to the status of Image Microsystems' efforts in this regard.

4.01.2 Image Microsystems shall make its best efforts to employ a well represented workforce of citizens of the City of Kyle. Such well represented work force shall to the extent possible using commercially reasonable business hiring practices include veterans of the armed services, individuals with disabilities as recognized by the Americans with Disabilities Act, women, and racial minorities. During the term of the Agreement, Image Microsystems shall work with its local employment recruiting agency to enhance recruiting of citizens of Kyle job applicants. Image Microsystems shall work with the Texas Workforce Commission to assist in the recruitment and hiring of individuals who are from the City of Kyle.

4.01.3 Audit. The City shall, upon reasonable prior written notice to Image Microsystems and during normal Image Microsystems hours, have the right to audit and inspect the Image Microsystems's records, books, and all other relevant records related to this Agreement.

4.01.4 Recapture. In the event of Default, the City shall, after providing Image Microsystems notice of its failure to complete all performance requirements contained within this Agreement and an opportunity to cure, have the right to recapture all Grant funds provided herein for the creation of full time jobs pursuant to this Agreement. The recapture of any Grant funds from the Image Microsystems shall be in like manner and subject to the same penalties as provided by Section 4.06 hereof.

4.02 E-waste Recycling Plant Investment. By (fill in deadline date), Image Microsystems shall invest at least \$3,375,000 in new real property improvements and new equipment and machinery for the E-waste Recycling Plant, 3700 Kyle Crossing, Kyle, Texas.

4.02.1 For purposes of this Section 4 and the City's obligations under Section 5, new equipment and machinery shall be considered to be:



- (a) equipment placed into service to for or related to or supporting the manufacture of products based in a new technology or a new generation of an existing technology deployed at the Image Microsystems Plant in Kyle and attributed to the operation of a E-waste Recycling Plant, or
- (b) equipment supporting or conducting research and development or manufacturing operations not in existence prior to the execution of this Agreement deployed at the Image Microsystems plant in Kyle and attributable to the operations of an E-waste Recycling Plant.

4.02.2 For purposes of this Section 4 and the City's obligation under Section 5, new real property improvements shall be considered to be new building additions located at the Image Microsystems Plant, 3700 Kyle Crossing, Kyle, Texas that are attributed to the operation of E-waste Recycling Plant.

4.03 Compliance with Regulations. For the construction or remodeling of the Existing Fab and related facilities, which are the subject of this Agreement, and any future facilities in the City's planning jurisdiction during the term of this Agreement, Image Microsystems shall comply with all City Code regulations in effect at the time any site plan application is filed.

4.04 Certificate of Compliance. At the time that Image Microsystems delivers to the City the annual Property Tax Notice required under Section 5.03 below, Image Microsystems shall also deliver a Certificate of Compliance to the City. The City has the right to inspect pertinent records of Image Microsystems to verify compliance with all requirements of this Agreement. Inspections shall be preceded by at least two week's notice by telephone or in writing to Image Microsystems. The Certificate shall be substantially in the form and contain the information specified in the sample Certificate attached to this Agreement as Exhibit "C".

4.05 Failure to Meet Obligations. In the event that Image Microsystems fails to fulfill its obligations under the performance guidelines in Sections 4.01, 4.02 and 4.03 above, after receipt of notice and expiration of the cure period described in Section 6.06 of this Agreement upon written notice to Image Microsystems; whereupon:

- (a) the City shall not be required to pay, and Image Microsystems shall not be entitled to receive, any further payments under this Agreement; and
- (b) Both shall be released from any further compliance with the provisions of this Agreement.

4.06. Insurances; Subcontractors.

4.06.1 Image Microsystems shall maintain, at its own cost and expense, such usual, customary, and appropriate insurance as will protect Image Microsystems and City from all claims for damages to persons and to property which may arise from any operations under this Agreement, or any of its amendments. The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by

Image Microsystems and its contractors and subcontractors during the construction of the E-waste Recycling Plant. All insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the City . All such insurance shall remain in effect during the term of this Agreement as appropriate. Other than worker's compensation insurance, the City shall be named as an additional insured on all insurance policies required by this article and paragraph.

4.06.2 Prior to commencing any work, Image Microsystems shall request from and provide to the City at the address shown above, their contractors Certificates of Insurance under all such policies, certifying compliance with the minimum coverage outlined below. All policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, thirty (30) days advance written notice of such cancellation or reduction will be mailed to the City of Kyle.

4.06.3 Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A(-) or better.

4.06.5 If the coverage period shown on Image Microsystems or its contractors or sub contractors current certificate of coverage ends during the duration of the Project, Image Microsystems must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

4.06.6 Such policies shall include blanket waivers of subrogation as to the City.

4.07 Comprehensive General Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence, and \$2,000,000.00 aggregate. Such insurance shall include the following:

4.07.1 Entity's protective liability, covering liability for work sublet.

4.07.2 Image Microsystems has the contractual liability, insuring the indemnity agreements contracted in this Agreement.

4.08 Coverage for damage due to collapse of or structural injury to any buildings or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any other property below the surface of the ground.

4.08.1 Waiver of subrogation as to the City.

4.09 Comprehensive Automobile Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one person, and \$2,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence. Such coverage shall include owned, hired, and non-owned vehicles. Policy shall be endorsed as follows:

4.09.1 Waiver of subrogation as to the City.

4.10 The failure of Image Microsystems at anytime, after timely notice and opportunity to cure, to provide the insurance required herein shall be considered a material breach of this Agreement for which the City and shall be entitled to damages, including termination of the Agreement for uncured violations.

4.11 Employment of Undocumented Workers. During the term of this Agreement, Image Microsystems agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(f), Image Microsystems shall be in Default and repay the amount of the Grant and any other funds received by Image Microsystems from the CITY as of the date of such violation within one hundred twenty (120) days after the date Image Microsystems is notified by the City or CITY of such violation, plus interest at the rate of six percent (6.75%) compounded annually from the date of the violation until paid in full. Image Microsystems is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Image Microsystems or by a person with whom Image Microsystems contracts provided however that identical federal law. Image Microsystems shall provide a certification in the form attached as Exhibit D. hereto.

**4.12 INDEMNIFICATION. IMAGE MICROSYSTEMS COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, OR RESULTING FROM OR RELATED TO IMAGE MICROSYSTEMS'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF IMAGE MICROSYSTEMS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF IMAGE MICROSYSTEMS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY AND UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IMAGE MICROSYSTEMS SHALL PROMPTLY ADVISE CITY, IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY AND RELATED TO OR ARISING OUT OF IMAGE MICROSYSTEMS'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT IMAGE MICROSYSTEMS'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING IMAGE**

**MICROSYSTEMS OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, IS AN INDEMNITY EXTENDED BY IMAGE MICROSYSTEMS TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE; PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. IMAGE MICROSYSTEMS FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

**IMAGE MICROSYSTEMS SHALL ALSO INDEMNIFY THE CITY, AND ITS RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF IMAGE MICROSYSTEMS' AND IMAGE MICROSYSTEMS' GENERAL CONTRACTORS ACTIONS RELATED TO THE CONSTRUCTION OF THE E-WASTE RECYCLING PLANT.**

**IMAGE MICROSYSTEMS SHALL ALSO REQUIRE ITS GENERAL CONTRACTOR OR GENERAL CONTRACTORS WORKING ON THE CONSTRUCTION AND IMPROVEMENTS FOR THE E-WASTE RECYCLING PLANT TO INDEMNIFY THE CITY AND ITS OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THEIR ACTIONS RELATED TO CONSTRUCTION OF THE E-WASTE RECYCLING PLANT AS REQUIRED BY THIS AGREEMENT, UTILIZING THE SAME INDEMNIFICATION LANGUAGE CONTAINED HEREIN, IN ITS ENTIRETY.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AS PERMITTED BY LAW.**

#### **V. CITY OBLIGATIONS**

In consideration of Image Microsystems' establishment of the Project, the City agrees to make Chapter 380 Payments under the following terms and conditions:

5.01 Property Tax Incentive. As consideration for Image Microsystems' creating and maintaining the new Full-time Jobs as described in Section 4.02, and complying with the other provisions of this Agreement, the City, during the Five-Year Period: shall rebate 100% of the City property taxes levied on:

- (a) All new equipment and machinery acquired after the Effective Date, and
- (b) the incremental increase after the Effective Date in taxable value of all new real property improvements. Exhibit A includes a plat of the site that indicates the location at which improvements to the Existing Fab are constructed, and dimensions of the structure.

5.02 Sales Tax Incentive. As consideration for Image Microsystems' creating and maintaining the new Full-time Jobs as described in Section 4.02, and complying with the other provisions of this Agreement, the City, during the Five-Year Period: shall rebate 100% of the City's portion of the sales and use taxes that result from the one percent general City Sales Tax on the sales of taxable items collected on-site by Image Microsystems and remitted to the Comptroller of the State of Texas for the sales occurring from (fill in effective date of year 1) and (fill in end date of year 5):

- (a) Payment of Annual Sales Tax Incentive Payments. The City, by and through its Finance Department, shall pay each Annual Incentive Payment to the Developer by March 31<sup>st</sup> which follows the end of each respective Annual Incentive Payment Year. As an example the City of Kyle Annual Incentive Payment related to the sales and use taxes reimbursed to the City for the sales occurring during the period beginning January 1, 2012 and ending December 31, 2012 is due on March 31, 2013. The City Manager shall adopt appropriate procedures to implement the provisions of this subparagraph.
- (b) City Sales Tax Reporting. Image Microsystems shall cooperate with the City and assist the City in any manner required by the Comptroller to release and all information related to City Sales Tax collected within the Development. The City will request quarterly, or monthly if available, from the Comptroller all sales tax reports for City Sales Taxes collected within the Development. Image Microsystems shall use reasonable efforts to ensure timely submission of City Sales Taxes to the Comptroller and execution of any document reasonably required for the release of such information to the City, including registering the E-waste Recycling Plant as the point of sale for all products sold on-site at 3700 Kyle Crossing, Kyle, Texas, and to take such action with the Comptroller, and other entities as necessary, to assure the City Sales Tax is legally billed and payable, as provided by law for sales within the City, on all products that are sold on-site at the E-waste Recycling Plant.

### 5.03 Schedule for Chapter 380 Payments.

5.03.1 To properly identify the property eligible for rebate of City taxes, Image Microsystems shall work with HCAD to create a separate HCAD account for both new real property improvements, and personal property acquired after the Effective Date. Image Microsystems and the City agree that HCAD records shall be conclusive both as to the property specified by this Agreement as eligible for tax incentives and as to the value of the property specified by this Agreement as eligible for tax incentives under this Section 5.

5.03.2 With respect to the tax described in Sections 5.01 and 5.02 above, on or before March 1<sup>st</sup> of each year during the term of this Agreement, Image Microsystems shall deliver the Property Tax Notice to the City Finance Department.

5.03.2.1 The Chapter 380 Payments with respect to the property taxes shall be based on the amount stated in the Property Tax Notice.

5.03.2.2 Both real property and personal property Chapter 380 Payments shall be paid to Image Microsystems by the City on an annual basis for the preceding year, on or before October 30<sup>th</sup> following the tax hear for which they were paid. For example,

(a) the first Chapter 380 payment shall be based on taxes paid for the calendar year 2012, and shall be paid on or before October 30, 2013.

5.03.2.3 If Image Microsystems is required to pay more Property Tax on the Certified Appraised Value of Eligible Property than the amount stated in the Property Tax Notice for the year preceding the applicable October 30 payment date, then Image Microsystems shall provide the City with the Additional Property Tax Notice, and the City shall pay Image Microsystems the amount stated in the Additional Property Tax Notice at the same time as the next payment is due to Image Microsystems under this section 5.03. A summary explanation and examples of schedules for rebates of taxes and fees under this Agreement is attached as Exhibit "B".

5.04 Permit Fee Rebates. The City shall provide rebates for fees for building permits and re-zoning application fees, to Image Microsystems for the construction for the E-waste Recycling Plant, 3700 Kyle Crossing, Kyle Texas. Rebates of fees are subject to compliance with all terms of this Agreement, and are reimbursed at the same time as the rebates of property taxes. Image Microsystems must submit a request for reimbursement of fees paid during prior calendar year at the same time that the request for rebate of property tax is submitted, for the City to budget funds for next fiscal year. Failure of Image Microsystems to timely submit a request for reimbursement may result in the City delaying payments of the reimbursement to accommodate its budget process requirements.

5.05 Permitting and Inspections. The City shall work with Image Microsystems to expeditiously process building and related permit applications, and to expedite inspections of construction and related activity at the Existing Fab.

5.06 Additional Program Assistance. The City shall work with Image Microsystems and the Texas Governor's Office of Economic Development and Tourism to facilitate the process for submittal to the Texas Enterprise Zone Program. The City shall utilize on staff expertise to assist in completion of the Enterprise Project Application, which is typically the responsibility of the Company; and the City will cover the cost of the application fee not to exceed \$700, which is also typically the responsibility of the company. The City shall assist in facilitating conversations with outside agencies such as, but not limited to, the Texas Governor's Office of Economic Development and Tourism regarding the possibility of utilizing additional program resources that may be applicable to Image Microsystems.

## VI. GENERAL TERMS

### 6.01 Payments Subject to Future Appropriation.

6.01.1 This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Image Microsystems.

6.01.2 All payments or expenditures made by the City, under this Agreement are subject to the City's appropriation of funds such payments or expenditures to be paid in the budget year for which they are made.

6.01.3 The payments to be made to Image Microsystems, or other expenditures under the Agreement, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any applicable limitations or procedural requirements. Image Microsystems represents that it understands that any contributions made by Image Microsystems in anticipation of reimbursement from Grant funds shall not be, nor shall be construed to be, financial obligations of the City. Image Microsystems shall bear all risks associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of Grant funds, changes in tax rates or tax collections, changes in State law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

6.01.4 To the extent there is a conflict between this Section and any other language or covenant in this Economic Development Agreement, this section shall control, except as set out in Section 6.01.6 below.

6.01.5 Notwithstanding any other clause or covenant in this Agreement to the contrary, this Agreement shall not be subject to this Section 6.01, if Texas Constitutional Article II, Section 52-a, as amended as a result of the November 2, 2005 general election, permits the removal of this Section 6.01 without rendering this Agreement, or a portion hereof, void, voidable, or invalid. In such-event, this Section 6.01 shall not govern this Agreement or portion hereof; and this Agreement, or such portion, shall be interpreted and enforced as if this Section 6.01 were not contained in this Agreement.

6.02 Grant Limitations. The City shall not be obligated to pay any monies beyond the Grant amount, unless otherwise agreed by the Parties, and is only obligated to make Grants from approved sources by the City. Image Microsystems represents that it understands that any expenditures by the Image Microsystems in anticipation of reimbursement from Grant funds shall never be obligations of the general funds of the City, but are only obligations of the Grant funds and are subject to the extent of Grant approval by the City. Under no circumstances shall Image Microsystems be entitled to any reimbursements under this Agreement on any property other than the project property as defined in Section 2.18 hereof.

6.03 No Bonds or Notes. The City and Image Microsystems represent that they understand and agree that the City shall not issue any bonds or notes to cover any Project costs directly or indirectly related to the Image Microsystems in its completion of the Improvements and associated with the Project under this Agreement. The City understands that Image Microsystems may choose to issue notes utilizing Grant funds for Project costs directly or indirectly related to Improvements made by the Image Microsystems under this Agreement. The City will not be party to the Image Microsystems's notes.

6.04 Mutual Assistance. The City and Image Microsystems shall do those things commercially reasonable, necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions to put each other in the same economic condition contemplated by this Agreement regardless of changes in public policy, the law or taxes or assessments attributable to Image Microsystems facilities.

6.05 Representations and Warranties. The City represents to Image Microsystems that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Image Microsystems represents and warrants to the City that it has the requisite authority to enter into this Agreements.

6.06 Default. If either the City or Image Microsystems should default in the performances of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of 90 days after the receipt of said notice to cure such default, prior to instituting an action for breach or pursuing any other remedy for default; provided, however, in the event the breach that occurs is not reasonably susceptible of being cured within said 90-day period, then said 90 day period shall automatically be extended for the reasonable period of time required to cure such breach so long as the breaching party shall have commenced to cure said breach during said 90-day period and thereafter diligently pursues the cure thereof until cured. The defaulting party shall provide the other party written notification of





With copies to:  
 City: City Manager  
 100 West Center Street  
 Kyle, TX 78640  
 (PO Box 40)  
 512-262-1010

With copies to:  
 Director of Economic Development  
 100 West Center Street  
 Kyle, TX 78640  
 (PO Box 40)  
 512-262-3926

City Attorney  
 Frank J. Garza  
 Davidson & Troilo, P.C.  
 7550 W. IH10, Ste. 800  
 San Antonio, Texas 78229

Either party may designate a different address at any time upon written notice to the other party.

6.13 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the final draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

6.14 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Hays County, Texas.

6.15 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement, which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.16 Section Headings. The section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections.

6.17 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

6.18 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with Image Microsystems facilities or the design, construction or operation of any portion of the facilities.

6.19 Exhibits. The following Exhibits, "A", "B", and "C" are attached and incorporated by reference for all purposes:

- Exhibit "A": Plat and Drawing with outline of E-waste Recycling Plant
- Exhibit "B": Summary of Schedules and Examples for Rebates of Taxes and Fees
- Exhibit "C": For of Certificate of Compliance

This Agreement may be executed in Multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

EXECUTED by the authorized representatives of the parties to be effective this \_\_\_\_ day of \_\_\_\_\_, 2011.

**Image Microsystems**

By: \_\_\_\_\_  
Printed Name:  
Title:

**CITY OF KYLE, TEXAS,**  
a home-rule city and municipal corporation

Attest:  
\_\_\_\_\_  
Amelia Sanchez  
City Secretary

By: \_\_\_\_\_  
Lanny Lambert  
City Manager

Approved as to form:  
\_\_\_\_\_  
City Attorney

**Exhibit A**  
**Image Microsystems E-waste Recycling Plant**  
**3700 Kyle Crossing, Kyle, Texas**

**Exhibit B**  
**Summary of Schedules and Examples for Rebates of Taxes and Fees**

**Exhibit C**  
**Certificate of Compliance Form**

**Exhibit D.**  
**Undocumented Worker Certification**

STATE OF TEXAS §

**KNOW ALL BY THESE PRESENTS:**

COUNTY OF HAYS §

Chapter 2264, Subchapter A, Texas Government Code requires that any public agency or economic development corporation shall require a business that submits an application to receive a public subsidy to include a statement certifying that the business does not and will not knowingly employ an undocumented worker.

Image Microsystems certifies that its operation within the City of Kyle, Texas (“City”) does not and will not knowingly employ an undocumented worker, as defined in Chapter 2264, Subchapter A, Texas Government Code, as amended (the “Act”);

Pursuant to the Act, Image Microsystems is convicted of a violation under 8 U.S.C. Section 1324a(f), after receiving any public subsidy, Image Microsystems shall promptly give the City written notice of such violation and shall repay the amount of the Grants provided for herein with interest, at a rate of 6.75% per annum not later than the 120<sup>th</sup> day after the date Image Microsystems notifies the City of the violation.

I am authorized to make this application on behalf of Image Microsystems. I hereby certify that the information set forth herein is true and correct.

Image Microsystems

\_\_\_\_\_

Signature

\_\_\_\_\_

Type or Print Name

\_\_\_\_\_

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

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

Before me \_\_\_\_\_ on this day personally appeared \_\_\_\_\_ proved to me on the oath of \_\_\_\_\_ to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ 2012  
(SEAL) \_\_\_\_\_  
Notary Public in and for the State of Texas



My Commission Expires: \_\_\_\_\_

## Exhibit B

### Incentive Program Methodology

#### Property Tax Grant

1. Image Microsystems makes investment/improvements
2. HCAD appraises value of investment/improvements and records
3. Image Microsystems pays property taxes each year
4. City budgets each year for incentive payment based on taxes paid for previous year
5. City makes economic development grant each year to Image Microsystems based on taxes paid for previous year

*Note: Only property taxes on investments/improvements to the property are eligible for rebate.*

*Note: Only Fees paid by Image Microsystems for initial building permits and zoning application are eligible for rebate. Any additional fees during the period of this agreement do not qualify for rebate.*

#### Example Property Tax Grant

December, 2011	Image Microsystems invest in building, machinery and equipment
January 1, 2012	HCAD appraises Image Microsystems fixed assets
December, 2012	Image Microsystems pays property tax
March 1, 2013	Image Microsystems informs City of Kyle via letter of taxes paid on new investment
June, 2013	City of Kyle prepares budget
October 30, 2013	City of Kyle pays economic development property tax grant to Image Microsystems

#### Example Sales Tax Grant

December, 2011      Image Microsystems registers the E-waste Recycling Plant as the point of sale for all products sold on-site and cooperates with the City of Kyle in any manner required by the Comptroller to release information related to City Sales Tax collected by the Company

March 31, 2012

June 30, 2012

September 30, 2012

- December 31, 2012 City of Kyle requests quarterly sales tax report from State of Texas Comptroller (CoK will request monthly sales tax reports if available.)
- January 1, 2013 Image Microsystems informs City of Kyle via letter of payment
- March 31, 2013 City of Kyle pays economic development sales tax grant to Image Microsystems

**Example Fee Grant**

- December, 2011 Image Microsystems pays fees associated with new investment.
- March 1, 2012 Image Microsystems informs City of Kyle via letter of payment
- June, 2012 City of Kyle prepares budget
- October 30, 2013 City of Kyle pays fee rebate to Image Microsystems.

*Note: Image Microsystems will prepare a letter itemizing all rebate items for the city's review and will be responsible for completing and submitting certificate of compliance form (exhibit C).*

**Exhibit C**  
**Certificate of Compliance Form**

**Economic Development Agreement Reporting Form**  
**City of Kyle**

REPORTING YEAR \_\_\_\_\_

(YEAR \_\_\_\_\_ OUT OF 5)

**1.0 Employment**

**1.1** Total number of employees at facility for reporting year. Agreement requires at least 131 new full-time jobs in year one, create an additional 50 new full-time jobs in year two and maintain 181 full-time jobs for the remainder of the term of this agreement in connection with the Project and the operations of Image Microsystems in Kyle, Texas

**Number of FTE's for reporting year**

\_\_\_\_\_

**1.2** Average Annual Salary

**Avg. annual salary for reporting year**

\$ \_\_\_\_\_

**1.3** Total Payroll

**Total annual payroll for reporting year**

\$ \_\_\_\_\_

**1.4** Diverse Workforce (Section 4.01.2)  
Please attach information addressing this section including: 1) Enhancement of recruiting effort for minority job applicants; 2) Recruiting fairs; for new hires in the city; and 3) Texas Workforce Commission assistance in recruiting job seekers and citizens of the city of Kyle.

**2.0 Investment**

~ Agreement requires \$3,375,000 by (fill in the date) in new real property improvements and new equipment and machinery for the E-waste Recycling Plant during term of agreement (Section 4.02)

**2.1** Total investment since project start.

	<b>Real Property</b>	<b>Business Personal Property</b>
	\$ _____	\$ _____

**2.2** Reporting year investment

	\$ _____	\$ _____
--	----------	----------

**3.0 Reimbursement Request**

Agreement requires grant equal to City taxes paid on eligible real and business personal property over the Five-Year Period (Section 5.01), and grant 100% of the City's portion of the sales and use taxes that result from the one percent general City Sales Tax on the sales of taxable items collected on-site over the Five-Year Period (Section 5.02).

<b>3.1</b>	Property Taxes Paid	<b>Real Property</b>	<b>Business Personal Property</b>
	(reporting year)	\$ _____	\$ _____

-or-

<b>3.2</b>	Sales Taxes Paid (reporting year)	<b>City Sales Taxes Collected</b>	<b>1% of CoK Portion of Sales Tax Collected</b>
		\$ _____	\$ _____

\*Note: Property tax and sales tax reporting periods and payments fall on different calendar dates.

-----

**3.3 Total Reimbursement Request for Reporting Year** \$ \_\_\_\_\_

[City may request additional information or on-site visits to confirm compliance, per Section 4.05 of the Economic Development Agreement.]

I, as the authorized representative of Image Microsystems, hereby certify that the above information is correct and accurate pursuant to the terms of this Agreement:

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

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

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

Title: (Chief Financial Officer or equivalent) \_\_\_\_\_



## CITY OF KYLE, TEXAS

### Development Agreement between City of Kyle and Nomoland Company, LP

Meeting Date: 12/13/2011  
Date time: 7:00 PM

**Subject/Recommendation:**

Consider and Possible Action on the Economic Development Agreement between the City of Kyle and Nomoland Company, LP ~ *Diana Blank, Director of Economic Development*

**Other Information:**

**Budget Information:**

---

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [380 Agreement Nomoland Company](#)
  - [Sonic Exhibit A 380 Agreement](#)
  - [Nomoland exhibit B](#)
  - [Sonic Exhibit E 380 Agreement](#)
-

**CITY OF KYLE AND NOMOLAND COMPANY, LP,  
ECONOMIC DEVELOPMENT GRANT AGREEMENT**

**STATE OF TEXAS           §**

**KNOW ALL BY THESE PRESENTS:**

**COUNTY OF HAYS           §**

**THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT** (the “Agreement”) is made and entered into by and between the **CITY OF KYLE** (the “City”) and **NOMOLAND COMPANY, LP**, a Texas limited partnership, (the “Developer”), to be effective on this the \_\_\_\_ day of \_\_\_\_\_, 2011.

**RECITALS**

**WHEREAS**, the Developer is the owner of certain real property located within the corporate limits of the City of Kyle, Texas, as described on Exhibit “A” attached hereto (hereinafter referred to as the “Property”);

**WHEREAS**, the Developer intends to construct on the Property, a retail and commercial development which will include a Walgreens with approximately 7,700 square feet (“Walgreens”), a Sonic Drive-In with approximately 1,500 square feet, and additional commercial and retail facilities having an aggregate square footage totaling approximately 9,200 square feet (collectively, the “Development”);

**WHEREAS**, the successful commercial retail development of the Property will enhance the City’s ad valorem and sales tax bases, will create new employment opportunities, and will stimulate business and economic growth of the City;

**WHEREAS**, the Development will require construction of related improvements by the Developer, including, but not limited to, traffic signal and roadway improvements at the intersection of FM 150 and RM 2770, as depicted on Exhibit “B” attached hereto, and other street improvements in the neighborhood, as reflected on Exhibit “C” attached hereto (the “Development Improvements”), which will provide safety for motorists and enhanced mobility to the citizens of Kyle traveling in this area;

**WHEREAS**, the construction of the Development Improvements will improve traffic and safety for the Development, as well as other local commercial and retail developments and the residential population;

**WHEREAS**, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State’s economy and the elimination of unemployment or underemployment; and

**WHEREAS**, Chapter 380, Texas Local Government Code, the City of Kyle Charter, the Texas Constitution and other applicable laws authorize the offering of economic Grants to bring employment and other valuable benefits to the community; and

**WHEREAS**, in addition to the six and a quarter percent (6.25%) sales and use tax imposed by the State, the City imposes a one and one-half percent (1.50%) sales and use tax, as authorized by Section 321.101 of the Texas Tax Code tax; and

**WHEREAS**, the City Council of the City of Kyle, Texas intends, and in connection with such intention, has adopted an Ordinance (the "Ordinance") attached hereto as Exhibit "D," to refund one hundred (100%) of the annual sales and use tax proceeds generated by retail businesses located within the Property, up to and including the Maximum Grant Amount, which shall be used by the Developer to pay for actual Hard and Soft Costs associated with the Improvements, hereinafter defined for the purpose of encouraging business expansion and the creation of new jobs in the City.

**WHEREAS**, it is in the public interest of the City as determined by the City Council that this Agreement be reached with Developer to encourage the commercial development of the Property;

**WHEREAS**, in consideration of the representations made by Developer to the City, and the covenants and agreements of the Developer set forth herein, the receipt and sufficiency of which is hereby acknowledged, the City Council has approved and authorized this Agreement for development reimbursements and economic incentives;

**NOW, THEREFORE**, in consideration of the terms, conditions and covenants set forth herein, the parties hereby agree as follows:

## **I. AUTHORITY AND TERM**

### 1.1 Authority.

The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. The City acknowledges that Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of new businesses within the Property ("Property").

### 1.2 Term.

This Agreement shall become enforceable upon the Effective Date, as hereinafter established, and shall continue until the Expiration Date, as hereinafter established, or until the Maximum Grant Amount has been reached, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.



## II. DEFINITIONS

### 2.1 Definitions.

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall return their usual and customary meanings as ascribed by common and ordinary usage.

- (a) “Adversarial Proceeding” include any cause of action regarding this Agreement filed by the Developer in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration or mediation.
- (b) “Calendar Year” or “year” means a twelve month period of time commencing January 1, and extending therefrom for a period of twelve months to December 31.
- (c) “City” means the City of Kyle, a municipal corporation of the State of Texas.
- (d) “City Sales Tax” means the portion of such sales and use taxes as are remitted to the State of Texas by the Retail Occupants based on one and one-half percent (1.5%) of sales of taxable items and reimbursed to the City of Kyle by the State of Texas. For purposes of this Agreement, City Sales Tax shall be determined to be the amount remitted by a company or person to the State of Texas Comptroller of Public Accounts Office (the “Comptroller”) for the benefit of the City, as set forth in the records prepared by a company or person and submitted to the Comptroller for sales within the Development.
- (e) “Code” shall mean the City of Kyle Code of Ordinances.
- (f) “Contract Progress Payment Request” (“CPRR”) shall mean a request for payment due to the Developer and submitted by the Developer to the City for successfully completed work to substantiate Hard Costs and Soft Costs for Improvements, accompanied by customary documentation, including the name and address of the entity that performed the work, a description of the contract pursuant to which the payment is made, proof of payment or satisfaction, the amount of such payment, the original contract amount, total payments made to date on such contract, and estimate of remaining work to be completed on the specific improvement, the costs of such work, and any customary lien and/or subcontractor releases.
- (g) “Comply” and “compliance” mean timely, full, and complete performance of each and every requirement, obligation, duty, condition, or warranty as stated in this Agreement. “Comply” and “compliance” mean complete compliance in all material respects and do not mean substantial compliance, unless otherwise specifically stated.

- (h) “Construct” and “construction” mean construction in a good and workmanlike manner and in compliance with applicable State and local laws, codes, and regulations or valid waivers thereof or variances thereunder.
- (i) “Default” and “Act of Default” mean failure in some material respect to comply timely, fully and completely with one or more requirements, obligations, duties, terms, conditions or warranties set forth in this Agreement.
- (j) “Detailed Confidentiality Report” shall mean a report, attached hereto as Exhibit “C” provided by the State to the City in accordance with Texas Tax Code, Section 321.3022, which lists the amount of Sales and Use Tax paid (including any refunds, credits, or adjustments) by each Retailer in the Property and received by the City from the State for the sale of Taxable Items by the Retailers Consummated within the Property for specified periods which are to be used to justify the Developer’s CPRR, together with such supporting documentation required herein and as the City may request.
- (k) “Developer” means Nomoland Company, LP, a Texas limited partnership.
- (l) “Development” means the multi-phased development of commercial retail improvements as generally described in the second recital above to be located on the Property.
- (m) “Development Improvements” or “Improvements” means the improvements constructed by the Developer, including, but not limited to, traffic signal and roadway improvements at the intersection of FM 150 and RM 2770, as depicted on Exhibit “B” attached hereto, and other street improvements which will provide safety for motorists and enhanced mobility to the citizens of Kyle traveling in this area, and the other development costs identified on Exhibit “C” attached hereto.
- (n) “Economic Development Grants” or “GRANTS” shall collectively mean sales and use tax proceeds, pursuant to CPRR, made from the City to the Developer.
- (o) “Effective Date” shall mean the date a sales and use tax generating Retailer has commenced operations and consummated the sale of Taxable Items within the Property. GRANTS shall not be paid by the City to the Developer for Retailers that have commenced Improvements before the execution of the Agreement by the Parties.
- (p) “Expiration Date” shall mean the earlier of:
  - i. The date of the City’s reimbursement of the Maximum Grant Amount to the Developer for all Hard and Soft Costs associated with the Improvements;
  - ii. Ten (10) years from the Effective Date of this Agreement; or
  - iii. The expiration date of any “cure” period of an uncured default.

- (q) “Finance Department” means the Finance Department of the City of Kyle.
- (r) “Grant” shall mean, pursuant to the Agreement the payment of monies in the manner provided Article III., from the City’s portion of the sales and use taxes that result from the one and one-half percent (1.5%) general City Sales Tax on the sales of taxable items collected on-site by Image Microsystems and remitted to the Comptroller of the State of Texas for the purpose of promoting new or expanded Image Microsystems development and the creation of new jobs in the City.
- (s) “Hard Costs” shall mean the actual, substantiated costs of construction, labor, and materials incurred by the Developer or for Improvements.
- (t) “Maximum Grant Amount” shall mean the total Hard and Soft Costs for the Tenant Improvements including the amount the City has agreed to pay to the Developer to convey to the City the tract of land where the City’s water tower is located in a total amount not to exceed (\$270,000).
- (u) “On-Site” means on the Property and at the Development.
- (v) “Property” means the real property described on Exhibit “A” attached hereto.
- (w) “Project” shall mean the Improvements described in Exhibit “C” hereto for which Developer shall receive GRANTS from the sales and use tax generating Retailers.
- (x) “Retail Occupants” means all owners, and occupants of the Development and the additional retail and non-residential space uses conducting business in the Development.
- (y) “Sales and Use Tax” shall mean the one and one-half percent (1.50%) sales and use tax imposed by the City on the sale of Taxable Items Consummated in the City by the Retailers.
- (z) “Sales Tax Payment Period” or “Payment Period” shall mean a full quarter of the City’s Fiscal Year, except that the first Sales Tax Payment Period shall be from the Effective Date through and include the last date of the first full quarter of the City’s Fiscal Year following the Effective Date.
- (aa) “Sales Tax Receipts” shall mean one hundred percent (100%) of the City receipts from the Retailer’s collection of the one and one-half percent (1.50%) Sales and Use Tax as a result of the sale of Taxable Items consummated within the Property by the Retailer’s for the applicable Sales Tax Payment Period.
- (bb) “Subcontractor” or “contractor” shall mean an individual, firm, or corporation having a direct contract with the Developer or the in the performance of any part of the Project.

- (cc) “Soft Costs” shall mean the costs incurred by the Developer for engineering, legal, design, fiscal security, insurance, permits, project management (including contractor general condition expenses), and all other costs associated with the construction of Improvements which are not included in Hard Costs.
- (dd) “Taxable Items” and “taxable services” shall be ascribed the meaning provided by Chapter 151, Texas Tax Code.
- (ee) “Tenant” or “Tenants” shall mean a Retailer who pays rent to the Developer to use building space within the Property.

### **III. ECONOMIC DEVELOPMENT GRANTS**

#### 3.1 Grants

The City agrees to reimburse the Developer, after the commencement of the Effective Date through Economic Development Grants (“GRANTS”) not to exceed the Maximum Grant Amount for all Hard and Soft Costs and the amount the City has agreed to pay to the Developer as consideration for the Developer to convey to the City the tract of land where the City’s water tower is situated (“the Maximum Grant Amount”) associated with the Project. The City shall, as a condition precedent to the payment of any GRANT, reimburse the Developer only after a sales and use tax generating Retailer subject to this Agreement has commenced operations and Consummated the sale of Taxable Items within the Property.

#### 3.2 Grant Payments

The City shall remit to the Developer Sales Tax Receipts Consummated within the Property for the Sales Tax Payment Period requested by the Developer for actual Hard and Soft Costs incurred by the Developer for Improvements within the Property associated with the Project. The GRANT to the Developer will be paid to the Developer within sixty (60) days following the City’s receipt of a property completed CPRR from the Developer following the end of the City’s Fiscal Year Quarter beginning with the first full City Fiscal Year Quarter following the Effective Date, and shall continue until the full payment of the Maximum Grant Amount or other method of termination of this Agreement. The Parties agree that the payment of Sales Tax Receipts to the Developer is subject to the City’s actual collection of Sales Tax Receipts. In the event the Sales Tax Receipts are insufficient during the term of the Agreement to pay the GRANTS, the City shall not be obligated to pay the GRANTS and the Developer bears the risk of nonpayment. The City shall never be obligated to pay such deficit to the Developer which shall never become an obligation of any municipal fund. Notwithstanding any provision contained herein to the contrary, the Developer shall have the right to receive Sales Tax Receipt payments beginning with the first full City Fiscal Year Quarter following the Effective Date and continuing until the full payment of the Maximum Grant Amount or the Agreement is terminated by any other means

### 3.3 Grant Limitations.

The City shall never be obligated to pay any monies above the Maximum Grant Amount and is only obligated to make GRANTS for Sales Tax Receipts actually received by the City. Developer represents that it understands that any contributions by the Developer in anticipation of reimbursement from GRANTS shall never be obligations of the general funds of the City but are only obligations of the GRANTS fund, and are subject to the extent of the Project's capacity to reimburse the Developer.

### 3.4 Grant Funds.

GRANTS to be provided herein shall be paid solely from lawful, available funds to the City. Under no circumstances shall any GRANTS include any receipts from the City's imposition and collection of Sales and Use Tax for the sale of Taxable Items at any location, business, establishment, or entity Consummated within the City other than from the sale of Taxable Items by the Retailers Consummated within the Property.

#### 3.4.1 No Bonds or Notes.

The City and Developer represent that they understand and agree that the City shall not issue any bonds or notes to cover any Project costs directly or indirectly related to this Agreement. The City understands the Developer may choose to issue notes utilizing GRANT reimbursements for eligible costs directly or indirectly related to this Agreement. The City will not be Parties to the Developer's notes.

3.5 Economic Development Grant. Subject to the full and timely performance of each of the requirements and conditions precedent set forth herein, and compliance in all material respects, with this Agreement, the City agrees to grant Developer an Economic Development Grant as set forth in this Section.

3.5.1 Maximum Grant Payment. The City agrees to pay to the Developer, an Economic Development Grant the total amount of \$270,000 (the "Total Grant Payment"), to be paid as follows: the City shall rebate to the Developer one hundred percent (100%) of the City's portion of the sales and use taxes that result from the one percent (1%) general City Sales Tax remitted to the Comptroller of the State of Texas by the Retail Occupants On-Site, in annual installments, until the Maximum Grant Payment has been met.

3.5.2 Annual Grant Payments: The City of Kyle, by and through its Finance Department, shall make a payment to the Developer by each March 31st (the "Annual Incentive Payment") equal to the amount of the City Sales Taxes received by the City which were collected from and paid by the Retail Occupants On-Site for the sales occurring during the prior calendar year.

3.5.3 City Sales Tax Reporting. The Developer shall cooperate with the City and assist the City in any manner required by the Comptroller to release any and all information related to the City Sales Tax collected within the Development. The City will request quarterly, or monthly if available, from the Comptroller all sales tax reports for City Sales Taxes collected within the Development. The Developer shall use reasonable efforts to ensure that agreements with Retail Occupants provide for the timely submission of City Sales Taxes to the Comptroller and execution of any document reasonably required for the release of such information to the City, including registering the Development and the address of the various properties therein as the point of sale for all products sold On-Site at the Development, and to take such action with the Comptroller, and such other entities as necessary, to assure that the City Sales Tax is legally billed and payable, as provided by law for sales within the City, on all products that are sold On-Site at the Development.

3.6 Performance Criteria. The Developer agrees and covenants that it shall:

- (a) Upon execution of the Agreement, the Developer shall deposit in the escrow with the City \$240,000.00 (the "Nomoland Escrow"), which is the amount of the estimated construction costs of the Traffic Signal Improvements to be constructed by the State; and the City shall use the Nomoland Escrow to make the required payments to the State pursuant to the Advance Funding Agreement for the construction of the Traffic Signal Improvements; and
- (b) Construct or cause to be constructed the Development Improvements, in compliance with the plans and specifications approved by the City, with construction to commence within one hundred eighty (180) days from the date the City provides final approval of the construction plans therefor; and
- (c) Following completion of the construction of the Traffic Signal Improvements and payment in full by the City to the State pursuant to the Advance Funding Agreement, the City shall refund all funds remaining the Nomoland Escrow account to the Developer, including all accrued interest; and
- (d) Cause the Walgreens to open for business by September 30, 2012 and Sonic to be open for business by December 31, 2012.
- (e) Subject to the provisions of Paragraph 5.3 hereof, the Developer shall forfeit any and all rights to the GRANTS provided for in this Article if the Developer fails to meet the Performance Criteria set forth above.

#### **IV. CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS**

The obligation of the City to pay GRANTS shall be conditioned upon the Developer's continued compliance with and satisfaction of each of the conditions set forth below and in this

Agreement, as solely and finally determined by the City Council of the City of Kyle, Texas without recourse.

#### 4.1 CPPR.

Developer shall, as a condition precedent to the payment of any GRANT, provide the City with a CPPR reasonably suitable for the applicable GRANT period.

#### 4.2 Detailed Confidentiality Report.

As a condition to the payment of any GRANTS hereunder, the City shall receive a Detailed Confidentiality Report for the applicable Sales Tax Payment Period for which payment of a GRANT is requested. The City shall have no duty to calculate Sales Tax Receipts, determine the Developer's entitlement to any GRANT, or pay any GRANT during the term of this Agreement until such time as the City has been provided with a Detailed Confidentiality Report for the applicable Sales Tax Payment Period. At the request of the City, the State of Texas ("State") shall provide all such documentation as may be reasonably requested by the City to evidence, support, and establish the Sales and Use Tax paid and collected (including Sales and Use Tax paid directly to the State pursuant to a direct payment permit) by the Retailers for the sale of Taxable Items by Retailers Consummated within the Property and received by the City from the State. The Detailed Confidentiality Report shall, at a minimum, contain, include, or be accompanied by the following:

- (a) A schedule detailing the amount of Sales and Use Tax proceeds collected by the Retailers and paid to the State as a result of the sale of Taxable Items Consummated in the City within the Property for the previous City Fiscal Year Quarter; and
- (b) Information concerning any refund or credit of Sales and Use Tax received by the Retailers (including any Sales and Use Tax paid directly to the State pursuant to a direct payment permit) which have previously been reported by the Retailers as Sales and Use Tax paid or collected.

#### 4.3 Retailers' Report.

During the term of this Agreement beginning with the Effective Date, the Developer shall provide the City and maintain during the term of this Agreement a list of each Retailer that occupies or occupied the Property during the applicable Sales Tax Payment Period, including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), taxpayer name, taxpayer location as reported to the State of Texas, and any other information required by the State of Texas to generate and provide the City with the Comptroller's Detailed Confidentiality Report for the applicable Sales Tax Payment Period. During any Sales Tax Payment Period, the City shall only remit GRANTS for Retailers that appear on the Detailed Confidentiality Report that contracted with Developer to lease space within the Property during the Sales Tax Payment Period in which the City were notified by the Developer of the Retailers' occupancy status and who appear on the Sales Tax Certificate.

#### 4.4 Sales Tax Disclosure.

Developer shall use commercially reasonable efforts to include in each lease executed after the execution date of this Agreement, language which requires Retailers, and their successors and assigns to sign or cause to be signed any documentation necessary to authorize the State Comptroller's Office to release and disclose to the City, for the term of this Agreement, any and all Sales and Use Tax information relating to any Retailer generating Sales and Use Tax proceeds within the Property, including, as necessary, a form in materially the same format as that attached hereto as Exhibit "E."

#### 4.5 Audit.

Developer shall, upon reasonable prior written notice to the City Secretary and during normal business hours, have the right to audit and inspect the City's records, books, and all other relevant records related to this Agreement. The City shall, upon reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer's records, books, and all other relevant records related to this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by law.

#### 4.6 Recapture.

In the event of default, the City shall, after providing Developer notice and an opportunity to cure, have the right to recapture GRANTS, pursuant to Section 5.3 hereof, provided to Developer for the Improvements pursuant to this Agreement.

#### 4.7 Guidelines for Submission.

The City Manager or his designee shall develop guidelines setting forth the specific details and procedural requirements for the timely submission of CPPR(s) and the disbursement of GRANTS pursuant to this Agreement, including appropriate penalties for late, deficient, or untimely submissions. Such guidelines shall be implemented by written order signed by the City Manager.

### V. COVENANTS AND DUTIES

Developer makes the following covenants and warranties to the City, and agrees to timely and fully perform the obligations and duties contained this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Developer.

#### 5.1 Developer's Covenants and Duties. – DEVELOPER MAY NOT BE THE CONTRACTOR FOR IMPROVEMENTS.

5.1.1 Developer, is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.

5.1.2 The execution of this Agreement has been duly authorized by the Developer, and the individual signing this Agreement on behalf of the Developer is empowered to execute such Agreement and bind the company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's company agreement, by-laws, or of any agreement or instrument to which Developer is a party



to or by which it may be bound. No litigation or governmental proceeding is pending against or affecting the Developer and to the Developer's actual knowledge no such litigation of governmental proceeding is expected or anticipated.

5.1.3 The Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

5.1.4 To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

5.1.5 The funds herein granted shall be used solely for the purpose of constructing Improvements within the Property and associated with the Project, including all Hard Costs and Soft Costs.

5.1.6 Developer shall timely and fully comply with all of the terms and conditions of this Agreement.

5.1.7 Developer is not currently in arrears in any payment of ad valorem taxes (or any other obligation) to the City of Kyle, the Hays County Independent School District or Hays County.

5.1.8 Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of the Improvements within the Property. Developer shall not be entitled to any waiver of any municipal permit, inspection or other development fees imposed by City Code.

5.1.9 Developer shall prepare plans and specifications for the Improvements prior to starting any construction as required by City Code.

5.1.10 Developer agrees to require the Improvements to be constructed substantially in accordance with (i) the plans and specifications approved by the City, (ii) applicable federal, state, and local laws and ordinances, and (iii) this Agreement. Developer also agrees to provide bi-annual reports of leasing status upon the reasonable request of the City.

5.1.11 Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Developer's Tenants agree to comply with all City ordinances and rules in effect at the time this Agreement is executed. Developer, in its sole discretion, may choose to comply with any or all City ordinances and rules promulgated after the Effective Date of this Agreement.

5.1.12 Developer shall have a continuing duty to cooperate with the City in providing all necessary information to assist City in complying with this Agreement; and to execute such other and further documents as may be reasonably required to comply herewith.

5.1.13 Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the Developer in regard to the

development of the Project, the Property for all areas owned by the Developer during construction of the Project, and for so long as the Developer owns those areas.

5.1.14 With respect to Improvements, Developer or shall make a good faith effort to contract with or hire local qualified workers, companies, and Historically Underutilized Businesses in the manner prescribed by State Law in subcontracting any of the construction work required to be performed under the Improvements or this Agreement. Contracts for the construction of Improvements reimbursed by the Grant Funds shall be competitively bid in compliance with Chapter 252 of the Local Government Code, and be constructed by or on behalf of the Developer, in compliance with all applicable law. Should the Developer not competitively bid an Improvement, the Developer must obtain written approval by the City in order to be eligible for partial reimbursement of those Project Costs not competitively bid pursuant to the regulations set forth in Chapters 252 Local Government Code.

5.1.15 The provisions of Chapter 2258, Texas Government Code, are expressly made a part of this Agreement. In accordance with the provisions of Chapter 2258, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement shall be made part of this Agreement. Developer shall forfeit as a penalty to the City Sixty Dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by Developer or any subcontractor under the Developer. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement. The Developer, in the execution of this Agreement, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Developer shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation

5.1.16 Developer Bears Risk of Reimbursement. The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from GRANT funds shall not be, nor shall be construed to be, financial obligations of the City. The Developer shall bear all risks known or unknown associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of GRANT funds, changes in tax rates or tax collections, changes in State Law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by unanticipated events covered under legal doctrine of force majeure, and/or other unanticipated factors.

5.1.17 Financing. The cost of the Improvements and related expenses associated with the Project shall be funded through the use of the Developer's own capital or through credit secured solely by the Developer. The Developer may use any or part of the Property as collateral for the construction loan or loans, as required for the financing of the Project. The City will use

available GRANT funds, up to the Maximum Grant Amount provided herein, to reimburse the Developer for eligible Hard and Soft Costs it has expended. These GRANT fund reimbursements made to the Developer are not intended to fully reimburse the Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

## 5.2 City Covenants and Duties.

The City is obligated to pay the Developer an amount not to exceed the Maximum Grant Amount from sources contemplated by this Agreement over a period not to exceed ten (10) years, subject to Developer's timely and full satisfaction of all applicable duties and terms within this Agreement, as solely determined by the City Council of the City of Kyle, Texas. Further, City obligations to pay the Developer shall cease upon the earlier of: (1) payment in full of the Maximum Grant Amount; (2) reaching the Agreement's Expiration Date; or (3) Uncured Default by the Developer.

## 5.3 Substantial Compliance and Default.

5.3.1 Default by Developer. If the Developer should Default with respect to any obligation of this Agreement and should fail to cure within sixty (60) days after receipt of written notice of such Default from the City, then the Developer shall pay to the City liquidated damages as provided for herein. The harm caused by a breach of this Agreement is difficult to estimate and damages from a breach are not readily ascertainable and, therefore, the Parties agree that the following liquidated damages are a fair and reasonable forecast of the just compensation that should be paid by the Developer to the City if a breach occurs:

(a) Within years one -five from the Effective Date of this Agreement, the liquidated damages are seventy-five percent (75%) of the GRANT(S) paid to the Developer by the City to the date of the breach;

(b) Between years five-ten from the Effective Date of this Agreement, the liquidated damages are fifty percent (50%) of the GRANT(S) paid to the Developer by the City to the date of the breach;

5.3.2 Failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured within sixty (60) days of receiving written notice from the other Party. Failure of the Developer to timely and substantially cure a default will give the City the right to terminate this Agreement, as solely and finally determined by the City Council of the City of Kyle, Texas.

## VI. DEVELOPMENT STANDARDS

6.1 In any event of a conflict between any requirements of this Agreement, all Exhibits hereto, and any applicable Code requirement, the more stringent requirement shall control. For any issues not covered by this Agreement, the more stringent of the applicable Code section(s) or State law shall control.

## **VII. TERMINATION**

### 7.1 Termination.

This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement's Expiration Date;
- (c) An uncured Default by the Developer; or
- (d) The Payment of the Maximum Grant Amount.

### 7.2 Termination by Maximum Grant Amount.

If the Agreement is terminated by reaching the Maximum Grant Amount, the City is required to issue a letter to the Developer stating that the Maximum Grant Amount has been reached.

### 7.3 Extension beyond Term and Reimbursement.

In recognition of the fact that GRANTS are, by necessity, calculated and paid after taxes have been levied and paid to the City and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all GRANTS relating to applicable Sales Tax Receipts during the effective term of the Agreement have been paid in full by the City to the Developer. Notwithstanding the above, the Development Standards set forth in Section VI of this Agreement and all other substantive requirements imposed upon Developer shall be perpetual and shall not terminate unless specified otherwise in this Agreement. The Parties hereto agree that the City cannot guarantee that GRANT Funds shall completely reimburse the Developer, but that the GRANT Funds paid to Developer during the effective term hereof shall constitute the total reimbursement to the Developer for the construction of the Improvements regardless of the actual cost thereof.

## **VIII. DISPUTE RESOLUTION**

### 8.1 Mediation.

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, Dallas, Texas, before resorting to arbitration, litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has

attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration collectively known as alternate dispute resolution (“ADR”) shall be assessed equally between the City and Developer with each party bearing their own costs for attorney’s fees, experts, and other costs of ADR and any ensuing litigation

8.2 During the term of this Agreement, if Developer files and / or pursues an adversarial proceeding against the City regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the City’s option, all access to the GRANTS provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account until the resolution of such adversarial proceeding.

8.3 Under no circumstances will the GRANT funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against City.

## **IX. MISCELLANEOUS**

### 9.1 Binding Agreement.

The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, Developer, and their respective successors and assigns. The City Manager or his designee shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Kyle, Texas, on behalf of the City related thereto.

### 9.2 Mutual Assistance.

City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

### 9.3 Representations and Warranties.

City represents and warrants to the Developer that this Agreement is within its authority, and it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement.

### 9.4 Assignment.

Developer shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with the prior written approval of the City Council of the City of Kyle, Texas. The Agreement may not be assigned unless and until the Assignee

agrees to perform without limitation each and every obligation imposed on Assignor (Developer) herein, and the City receives and accepts adequate assurance in suitable form and manner of Assignee's ability to undertake such obligations. In the event of an assignment approved by the City as provided for herein, Developer shall be relieved of any and all liability under the Agreement incurred after the effective date thereof.

#### 9.5 Independent Contractors.

9.5.1 It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, the Developer shall never be an agent of the City and all consultants or contractors engaged by the Developer will be Developer's independent contractors. The Parties hereto understand and agree that the City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Developer.

9.5.2 By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of Parties, and nothing contained herein shall ever be construed as a waiver of sovereign or immunity by the City with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution of this Agreement.

#### 9.6 Notice.

Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If to City

City Manager  
City of Kyle  
PO Box 40  
Kyle, TX 78640

With a mandatory copy to:

Frank J. Garza  
Davidson & Troilo, P.C.  
7550 W. IH10, Ste. 800  
San Antonio, Texas 78229

If intended for Developer:

Nomoland Company, L.P.  
Attn: Reeder E. Ratliff  
P.O. Box 22775  
Oklahoma City, OK 73123-1775

Either Party may designate a different address at any time upon written notice to the other Party.

#### 9.7 Governing Law.

The Agreement shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in Hays County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

#### 9.8 Amendment.

This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council of the City of Kyle, Texas.

#### 9.9 Legal Construction.

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

#### 9.10 Interpretation.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

#### 9.11 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Kyle, Texas.

#### 9.12 Recitals.

The recitals to this Agreement are incorporated herein as findings of fact.

#### 9.13 Paragraph Headings.

The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

#### 9.14 Counterparts.

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

#### 9.15 Exhibits.

Any Exhibits attached hereto are incorporated by reference for all purposes.

#### 9.16 Survival of Covenants.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

#### 9.17 Employment of Undocumented Workers.

During the term of this Agreement, the Developer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), the Developer shall be in Default and pay the liquidated damages set forth in Section 5.3.1. The Developer is not liable for an unknown violation of this Section by a or by a person with whom the Developer contracts; provided, however, the identical federal law requirements provided for herein shall be included as part of any agreement or contract, which Developer enters into with any, subsidiary, assignee, affiliate, or franchisee for which GRANTS provided herein will be used. Nomoland, L.P. shall provide a certification in the form attached as Exhibit F. hereto.

#### 9.18 Indemnification.

**DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, ATTORNEYS AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY PROPERTY DAMAGE OR DEATH MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS OR SUBCONSULTANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE**



**EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, IS AN INDEMNITY EXTENDED BY DEVELOPER TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY ITS AGENTS, OFFICERS, EMPLOYEES AND ASSIGNS, FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE BUT NOT INTENTIONAL MISCONDUCT; PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. DEVELOPER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

**THE DEVELOPER SHALL ALSO INDEMNIFY THE CITY AND ITS RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THE DEVELOPER'S GENERAL CONTRACTOR'S ACTIONS RELATED TO THE CONSTRUCTION OF THE IMPROVEMENTS.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY SHALL SURVIVE THE TERMINATION AND OR**

**EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND ITS OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW.**

9.19 Insurances; Subcontractors.

9.19.1 The Developer shall maintain, at their own cost and expense, such usual, customary, and appropriate insurance as will protect Developer and City from all claims for damages to persons and to property which may arise from any operations under this Agreement, or any of its amendments. The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by the Developer, and its contractors and subcontractors during the construction of the Improvements. All insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the City. All such insurance shall remain in effect until completion and acceptance by the City of the Improvements. Except for worker's compensation insurance, both the City shall be named as additional insured on all policies of insurance provided for herein and the City shall be provided with certificates naming each entity on all policies of insurance required hereby.

9.19.2 Prior to commencing any work, Developer shall request from its Contractors and provide to the City at the address shown above Certificates of Insurance under all such policies, certifying compliance with the minimum coverage outlined below. All policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, thirty (30) days advance written notice of such cancellation or reduction will be mailed to the City of Kyle, P.O. Box 40 Kyle, Texas 78640.

9.19.3 Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A(-) or better.

9.19.4 Developer shall ensure and's contractor have Worker's Compensation and Employer's Liability Insurance.—A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement showing statutory worker's compensation insurance coverage for the 's and 's contractors' employees providing services on the Project for the duration of the Project must be submitted to the City.

9.19.4.1 If the coverage period shown on the Developer or Entity's current certificate of coverage ends during the duration of the Project, the Developer and s must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

9.19.4.2 Waiver of subrogation against the City.

9.19.5 Comprehensive General Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence, and \$2,000,000.00 aggregate. Such insurance shall include the following:

- 9.19.5.1 Entity's protective liability, covering liability for work sublet.
- 9.19.5.2 Developer has the contractual liability, insuring the indemnity agreements contracted in this Agreement.
- 9.19.5.3 Coverage for damage due to collapse of or structural injury to any buildings or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any other property below the surface of the ground.
- 9.19.5.4 Waiver of subrogation against the City.

9.19.6 Comprehensive Automobile Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one person, and \$2,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence. Such coverage shall include owned, hired, and non-owned vehicles. Policy shall be endorsed as follows:

- 9.19.6.1 Waiver of subrogation against the City.
- 9.19.6.2 City shall be shown as additional insured.

9.19.7 The failure of the Developer at anytime to provide the insurance required by Section 9.19 shall be considered a material breach of this Agreement for which the City shall be entitled to damages, including termination of the Agreement for uncured violations.

## 9.20 Additional Instruments.

City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

9.21 Forfeiture. The Developer shall forfeit any and all rights to the Annual Grant Payments set forth in Section 2 of this Agreement if the Developer fails to meet the Performance Criteria set forth in Section 3 above, subject to the provisions of Sections 5 and 6 hereof.

## 9.22 Force Majeure.

The term “force majeure” as employed herein shall mean and refer, without limitation, to acts of God; strikes and/or lockouts; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority (other than the City); insurrections; riots; lightning, earthquakes, fires, hurricanes, storms, floods and other natural disasters; washouts and other weather-related delays; restraint of government and people; civil disturbances; explosions; or other causes not reasonably within the control of the party claiming such inability.

If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

9.23 Representations and Warranties by the Developer. The Developer makes the following representation and warranties as applicable. Any false or substantially misleading statement contained herein shall be a Default under Section 5 above:

9.24 Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.25 Applicable Law and Venue. This Agreement is made and all obligations arising hereunder shall be construed and interpreted under the laws of the State of Texas and the venue for any action arising from this Agreement shall be Hays County, Texas,

9.26 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

Any party may change the address which notices are to be sent by giving the other parties written notice in the manner provided in this Section.

EXECUTED to be effective this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

NOMOLAND COMPANY, LP,  
a Texas limited liability company

By: \_\_\_\_\_  
SDI Finance, LLC, an Oklahoma limited  
liability company, its General Partner

By: \_\_\_\_\_  
Reeder E. Ratliff, Vice President

CITY OF KYLE, TEXAS  
a Home Rule Municipality and Political Subdivision  
of the State of Texas

By: \_\_\_\_\_  
Lucy Johnson  
Mayor

ATTEST:

By: \_\_\_\_\_  
Amelia Sanchez  
City Secretary

**APPROVED AS TO FORM**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney for the Nomoland Company, L.P.  
and SDI Finance, LLC, its General Partner

**APPROVED AS TO FORM:**

Frank J. Garza  
Davidson & Troilo, P.C.  
7550 W. IH10, Ste. 800  
San Antonio, Texas 78229

Attorney for the City of Kyle

EXHIBIT "A"  
Description of Property

EXHIBIT "B"  
Description of Traffic Signal Improvements

## EXHIBIT "C"

## Estimated Costs Associated with the Development Improvements

Estimated cost of construction of the Traffic Signal Improvements to be constructed by the State	\$240,000
Estimated costs of engineering, design and surveying fees relating to the Traffic Signal Improvements paid by the Developer	28,000
Estimated amount of consideration to be paid by the City to Developer for the conveyance of the tract of land under the City's water tower.	<u>2,000</u>
<b>Total Estimated Costs:</b>	<b>\$270,000</b>



Exhibit "D."  
Ordinance

Exhibit "E"  
Copy of Advance Funding Agreement

Exhibit F.  
Undocumented Worker Certification

STATE OF TEXAS §  
COUNTY OF HAYS §

**KNOW ALL BY THESE PRESENTS:**

Chapter 2264, Subchapter A, Texas Government Code requires that any public agency or economic development corporation shall require a business that submits an application to receive a public subsidy to include a statement certifying that the business does not and will not knowingly employ an undocumented worker.

Nomoland Company, L.P. and SDI Finances, LLC its General Partner certify that its operation within the City of Kyle, Texas ("City") does not and will not knowingly employ an undocumented worker, as defined in Chapter 2264, Subchapter B, Texas Government Code, as amended (the "Act");

Pursuant to the Act, if Nomoland Company, L.P. and/or SDI Finances, LLC its General Partner are convicted of a violation under 8 U.S.C. Section 1324a(f), after receiving any public subsidy, Nomoland Company, L.P. and SDI Finances, LLC its General Partner shall promptly give the City written notice of such violation and shall repay the amount of the Grants provided for herein with interest, at a rate of 6.75% per annum not later than the 120<sup>th</sup> day after the date Nomoland Company, L.P. and SDI Finances, LLC its General Partner notify the City of the violation.

I am authorized to make this application on behalf of Nomoland Company, L.P. and SDI Finances, LLC its General Partner. I hereby certify that the information set forth herein is true and correct.

Nomoland Company, L.P. and SDI  
Finances, LLC its General Partner

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

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

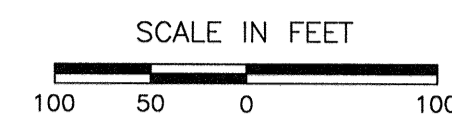
Date: \_\_\_\_\_

Before me \_\_\_\_\_ on this day personally appeared \_\_\_\_\_ proved to me on the oath of \_\_\_\_\_ to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

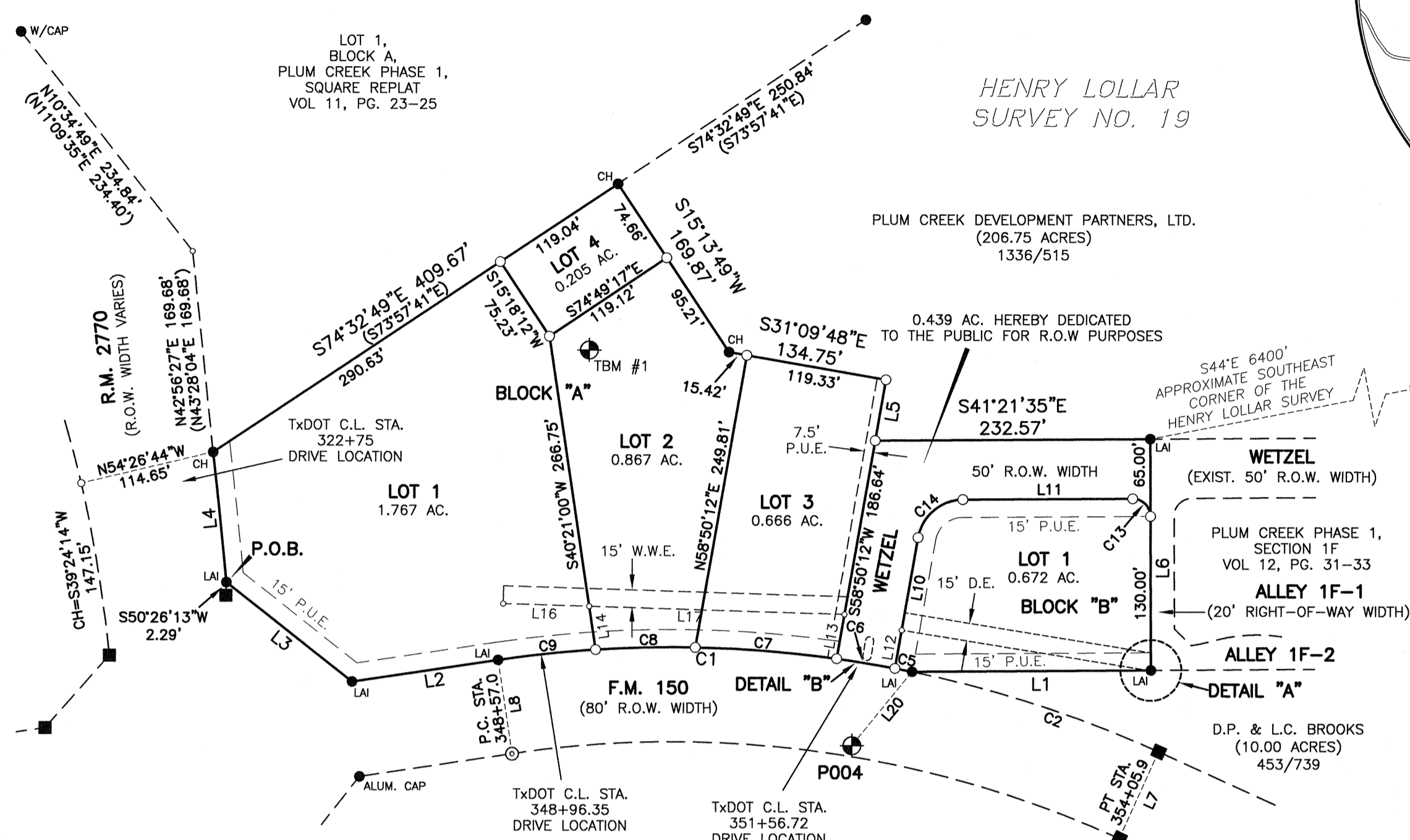
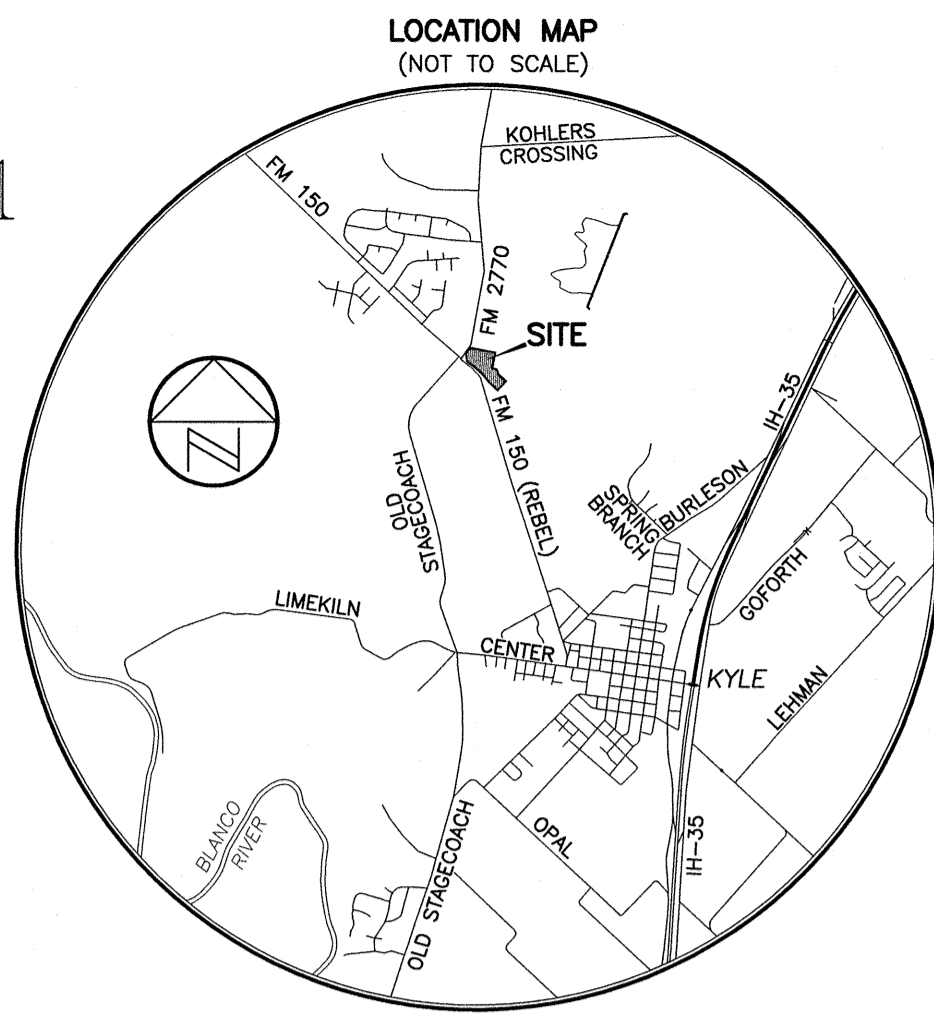
Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ 2011

(SEAL) \_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

CHAPARRAL CONTROL POINT P004:  
CONCRETE MONUMENT/DISC SET  
ELEV. 810.27 (1988 OPUS NGS)  
SURFACE COORDINATES:  
N 13918304.6864  
E 2319887.3555  
TEXAS SOUTH-CENTRAL ZONE  
STATE PLANE COORDINATES:  
N 13918304.6864  
E 2319887.3555  
COMBINED SCALE FACTOR:  
0.99998763  
BEARING BASIS IS GRID AZIMUTH  
FOR THE TEXAS SOUTH ZONE.



# PLUM CREEK PHASE 1 SECTION 1H HAYS COUNTY, TEXAS FINAL PLAT



HENRY LOLLAR  
SURVEY NO. 19

PLUM CREEK DEVELOPMENT PARTNERS, LTD.  
(206.75 ACRES)  
1336/515

- LEGEND**
- 1/2" REBAR FOUND
  - 1/2" REBAR WITH LAI CAP FOUND
  - 1/2" REBAR WITH CHAPARRAL CAP FOUND
  - 1/2" REBAR WITH CAP SET
  - CALCULATED POINT
  - ⊙ TxDOT TYPE II DISK FOUND
  - CONC. HIGHWAY MON. FOUND
  - ⊙ BENCHMARK/CONTROL POINT LOCATION
  - R.O.W. RIGHT-OF-WAY
  - W.E. WATER EASEMENT
  - WW.E. WASTEWATER EASEMENT
  - D.E. DRAINAGE EASEMENT
  - P.U.E. PUBLIC UTILITY EASEMENT
  - L.E. LANDSCAPE EASEMENT

BENCHMARK NOTE:  
COTTON SPINDLE SET IN BASE OF LIVE OAK TREE  
TAGGED NO. 12749  
ELEVATION=827.29'  
SOURCE: NAVD 88 FROM OPUS OBSERVATIONS

SURVEYORS CERTIFICATION:

STATE OF TEXAS  
COUNTY OF TRAVIS

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY, THAT THIS PLAT IS TRUE AND CORRECT, THAT IT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT ALL NECESSARY SURVEY MONUMENTS ARE CORRECTLY SET OR FOUND AS SHOWN.

TO THE BEST OF MY KNOWLEDGE, THIS PLAT COMPLIES WITH ORDINANCE NO. 308 OF THE CITY CODE OF KYLE, WITH THE EXCEPTION OF THE EASEMENT NOTED ON SHEET 2, WHICH IS TO BE VACATED, ALL PLOTTABLE EASEMENTS OF RECORD AS FOUND ON THE TITLE POLICY ISSUED BY ALAMO TITLE INSURANCE, G.F. NO. A33-2002101, EFFECTIVE DATE MAY 29, 2007, ISSUED TO THE OWNER OF THE PROPERTY, ARE SHOWN.

DATE OF SURVEY: JULY 01, 2008, REVISED MAY 20, 2011

ROBERT C. WATTS, JR.  
REGISTERED PROFESSIONAL LAND SURVEYOR 4995  
CHAPARRAL PROFESSIONAL LAND SURVEYING, INC.  
3500 McCall Lane  
AUSTIN, TEXAS 78744  
512-443-1724 T  
512-389-0943 F

ENGINEER'S CERTIFICATION:

STATE OF TEXAS  
COUNTY OF TRAVIS

I, GREGORY GRIFFIN, AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF ENGINEERING, AND HEREBY CERTIFY THAT THIS PLAT IS FEASIBLE FROM AN ENGINEERING STANDPOINT, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

THE TRACT SHOWN HEREON LIES WITHIN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD-PLAIN), AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, AS SHOWN ON MAP NO. 48208C02707, DATED SEPTEMBER 2, 2005, FOR HAYS COUNTY, TEXAS AND INCORPORATED AREAS. IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA.

GREGORY GRIFFIN, P.E.  
PROFESSIONAL ENGINEER  
NO. 64151 STATE OF TEXAS

ENGINEERING BY:  
GRIFFIN ENGINEERING GROUP INC.  
11711 NORTH LAMAR BLVD.  
AUSTIN, TEXAS 78753  
(512) 836-3113 PHONE

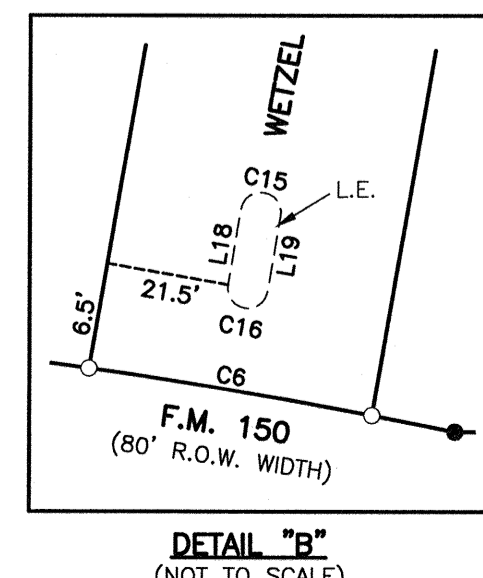
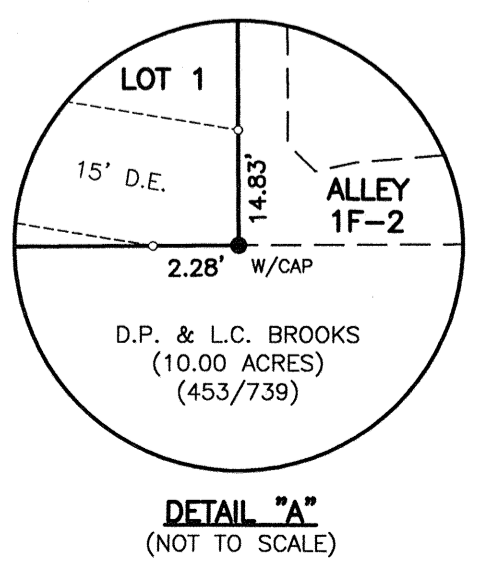
OWNER: MGCC TEXAS ENTERPRISES, LLC.  
ADDRESS: P.O. BOX 22775  
OKLAHOMA CITY, OK 73123-1775  
PHONE: (405) 722-9390 FAX: (405) 720-9113

ACREAGE: 4.616 AC.  
SURVEY: HENRY LOLLAR SURVEY NO. 19  
NUMBER OF LOTS AND PROPOSED USE: 4 COMMERCIAL  
DATE: MAY 20, 2011  
SURVEYOR: ROBERT C. WATTS, JR.  
PHONE: (512) 443-1724 FAX: (512) 389-0943  
ENGINEER: GREGORY GRIFFIN, P.E.  
PHONE: (512) 836-3113 FAX: (512) 836-3103

PROJECT NO.:  
533-001  
DRAWING NO.:  
533-001-PL4  
PLOT DATE:  
05/20/11  
PLOT SCALE:  
1"=100'  
DRAWN BY:  
JDB  
SHEET  
01 OF 02

No.	BEARING	LENGTH	BEARING
L1	N41°22'52"W	201.86'	(N40°48'20"W)
L2	N49°34'59"W	124.93'	(N48°59'36"W 124.92')
L3	N02°47'48"W	135.56'	(N02°16'36"W 135.66')
L4	N42°56'27"E	110.13'	(N43°27'39"E)
L5	S58°47'49"W	51.93'	
L6	S48°38'34"W	195.00'	(S49°12'05"W 195.00')
L7	S73°15'07"W	80.07'	
L8	S40°22'15"W	80.05'	
L9	S58°50'12"W	77.24'	
L10	N58°50'12"E	112.21'	
L11	S41°21'35"E	143.57'	
L12	S58°50'12"W	32.82'	
L13	S58°46'55"W	38.06'	
L14	N40°21'00"E	37.02'	
L15	N50°08'11"E	67.88'	
L16	N39°19'48"W	72.70'	
L17	S39°19'36"E	215.95'	
L18	N58°35'18"E	13.30'	
L19	S58°35'18"W	13.30'	
L20	S88°01'15"W	80.50'	

NO.	DELTA	RADIUS	TAN	ARC	CHORD	BEARING	(RECORD INFO)
C1	20°16'12"	994.93'	177.85'	351.99'	350.15'	N39°29'51"W	R=994.93', D=20°16'24"
C2	12°39'17"	994.93'	110.32'	219.75'	219.30'	N23°04'41"W	(S21°55'E 219.43')
C3	134°03'32"	60.00'	141.55'	140.39'	110.48'	S51°13'09"E	
C4	43°53'29"	25.00'	10.07'	19.15'	18.69'	S19°24'46"E	
C5	0°50'59"	994.93'	7.38'	14.76'	14.76'	N29°47'14"W	
C6	2°52'47"	994.93'	25.01'	50.01'	50.00'	N31°39'07"W	
C7	6°54'32"	994.93'	60.06'	119.97'	119.90'	N36°32'47"W	
C8	4°51'25"	994.93'	42.20'	84.34'	84.32'	N42°25'45"W	
C9	4°46'29"	994.93'	41.48'	82.91'	82.89'	N47°14'42"W	
C10	89°41'53"	17.00'	16.91'	26.61'	23.98'	S87°11'44"E	
C11	77°26'49"	60.00'	48.11'	81.10'	75.07'	S23°01'40"W	
C12	74°31'57"	26.00'	19.78'	33.82'	31.49'	N21°34'13"E	
C13	90°00'09"	15.00'	15.00'	23.56'	21.21'	N03°38'30"E	
C14	79°48'14"	38.50'	32.19'	53.62'	49.39'	N81°15'41"W	
C15	180°00'00"	3.50'	INFINITE'	11.00'	7.00'	N31°24'42"W	
C16	180°00'00"	3.50'	INFINITE'	11.00'	7.00'	S31°24'42"E	



Item # 9

# PLUM CREEK PHASE 1 SECTION 1H HAYS COUNTY, TEXAS FINAL PLAT

OWNER'S ACKNOWLEDGMENT

STATE OF OKLAHOMA  
COUNTY OF OKLAHOMA

KNOW ALL MEN BY THESE PRESENTS:

THAT MGCC TEXAS ENTERPRISES, LLC, AN OKLAHOMA LIMITED LIABILITY COMPANY, A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF OKLAHOMA, OWNER OF THAT CERTAIN 4.532 ACRE TRACT OF LAND OUT OF THE HENRY LOLLAR SURVEY 19, SITUATED IN HAYS COUNTY TEXAS, AS CONVEYED TO IT BY DEED DATED JUNE 1, 2007, AND RECORDED IN VOLUME 3182, PAGE 267, AND RE-RECORDED IN VOLUME 3214, PAGE 381, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS,

AND BEING THE OWNER OF THAT CERTAIN 0.106 ACRE TRACT OF LAND OUT OF THE HENRY LOLLAR SURVEY 19, SITUATED IN HAYS COUNTY TEXAS, AS CONVEYED TO IT BY DEED DATED \_\_\_\_\_, AND RECORDED IN VOLUME \_\_\_\_\_, PAGE \_\_\_\_\_, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS,

DOES HEREBY PLAT 4.616 ACRES, BEING THE LAND CONVEYED IN THE AFORESTATED DEED AND SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS "PLUM CREEK PHASE 1 SECTION 1H" AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS AND EASEMENTS THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

IN WITNESS WHEREOF, MGCC TEXAS ENTERPRISES, LLC, HAS CAUSED THIS INSTRUMENT TO BE EXECUTED BY RALPH L. MASON, MANAGER OF RLM, LLC, MANAGER OF MGCC TEXAS ENTERPRISES, LLC.

MGCC TEXAS ENTERPRISES, LLC  
P.O. BOX 22775  
OKLAHOMA CITY, OK 73123-1775

BY: RLM, LLC, MANAGER

BY: \_\_\_\_\_  
RALPH L. MASON, MANAGER

STATE OF OKLAHOMA  
COUNTY OF OKLAHOMA

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2008, BY RALPH L. MASON, AS MANAGER OF RLM, LLC, THE MANAGER OF MGCC TEXAS ENTERPRISES, LLC, AN OKLAHOMA LIMITED LIABILITY COMPANY, ON BEHALF OF SAID LIMITED LIABILITY COMPANY.

NOTARY PUBLIC, STATE OF OKLAHOMA

CONSENT OF LIEN HOLDER

STATE OF TEXAS  
COUNTY OF DALLAS

KNOW ALL MEN BY THESE PRESENTS THAT I HARLEY W. THOMAS, TRUSTEE, AGENT OF THE LIEN HOLDER OF THE CERTAIN TRACT OF LAND RECORDED IN THE ABOVE REFERENCED DOCUMENTS, OFFICIAL RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY CONSENT TO THE SUBDIVISION OF SAID 4.532 ACRES OF LAND SITUATED IN THE CITY OF KYLE, HAYS COUNTY, TEXAS, AND DO FURTHER HEREBY JOIN, APPROVE, AND CONSENT TO THE DEDICATION TO THE PUBLIC USE FOREVER THE STREETS, ALLEYS, EASEMENTS AND ALL OTHER LANDS INTENDED FOR PUBLIC DEDICATION SHOWN HEREON.

F&M BANK & TRUST COMPANY  
1330 S. HARVARD  
TULSA, OK 74112

BY: \_\_\_\_\_  
HARLEY W. THOMAS  
502 WEST SIXTH STREET  
TULSA, OK 74119

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2008, BY HARLEY W. THOMAS, ON BEHALF OF F&M BANK & TRUST COMPANY.

NOTARY PUBLIC, STATE OF TEXAS

PLANNING AND ZONING COMMISSION CERTIFICATION:

STATE OF TEXAS  
COUNTY OF HAYS

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KYLE HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: \_\_\_\_\_  
CHAIRPERSON

THIS PLAT (PLUM CREEK PHASE I, SECTION 1H) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COMMISSION.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D.

BY: \_\_\_\_\_

ATTEST:  
BY: \_\_\_\_\_  
CITY SECRETARY

THIS PLAT (PLUM CREEK PHASE I, SECTION 1H) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D.

BY: \_\_\_\_\_

ATTEST:  
BY: \_\_\_\_\_  
CITY SECRETARY

COUNTY CLERK CERTIFICATION

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS:

THAT LINDA FRITSCH, CLERK OF HAYS COUNTY COURT, DOES HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D. IN THE PLAT RECORDS OF SAID COUNTY AND STATE IN PLAT CABINET PAGE(S) \_\_\_\_\_, WITNESS MY HAND AND SEAL OF OFFICE OF THE COUNTY CLERK OF SAID COUNTY ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ FILED FOR RECORD AT \_\_\_\_ O'CLOCK \_\_\_\_M THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D.

LINDA FRITSCH  
COUNTY CLERK

EASEMENT NOTE:

A 20' WASTEWATER EASEMENT RECORDED IN VOLUME 956, PAGE 760, VOLUME 962, PAGE 790 AND VOLUME 976, PAGE 355 IS HEREBY RELEASED AND/OR VACATED BY THE CITY OF KYLE AND/OR OTHER INTERESTED PARTIES.

EASEMENTS ARE RESERVED AS FOLLOWS: A FIFTEEN (15) FOOT P.U.E. IS HEREBY DEDICATED ADJACENT TO ALL STREET R.O.W. (WITH THE EXCEPTION OF LOT 3, BLOCK A), A FIVE (5) FOOT P.U.E. IS HEREBY DEDICATED ALONG EACH SIDE LOT LINE AND A TEN (10) FOOT P.U.E. IS HEREBY DEDICATED ADJACENT TO ALL REAR LOT LINES ON ALL LOTS. A 7.5' P.U.E. IS HEREBY DEDICATED ADJACENT TO STREET R.O.W. FOR LOT 3.

SITE DEVELOPMENT NOTE:

SITE DEVELOPMENT PLAN FOR EACH LOT SHALL BE SUBMITTED FOR REVIEW AND APPROVAL BY THE CITY OF KYLE IN ACCORDANCE WITH ORDINANCE 311 PRIOR TO ISSUANCE OF SITE DEVELOPMENT PERMIT.

BUILDING LINE NOTE:

BUILDING SETBACKS SHALL CONFORM TO THE CITY OF KYLE ORDINANCE NO. 311.

SIDEWALK NOTE:

SIDEWALKS SHALL BE INSTALLED ON BOTH SIDES OF WETZEL.

DRAINAGE EASEMENT NOTE:

OBSTRUCTIONS WITHIN DRAINAGE EASEMENTS ARE PROHIBITED.

STREET NOTE:

AREA OF WETZEL IS 0.439 ACRES (APPROX. 19,104 SQ. FT.) AND IS 376 LF.

GENERAL NOTES:

THIS PLAN SHALL BE DEVELOPED IN COMPLIANCE WITH THE PLUM CREEK PUD, ORDINANCE 311 AND 308. DRIVEWAY ACCESS TO ALLEY 1F-1 AND ALLEY 1F-2 IS PROHIBITED FROM LOT 1, BLOCK B.

USERS OF LOTS 1, 2, AND 3 OF BLOCK A SHALL HAVE RECIPROCAL ACCESS FOR INGRESS AND EGRESS OVER DRIVE LANES, FIRE LANES AND DRIVEWAYS.

PERMIT APPROVAL FROM TxDOT SHALL BE REQUIRED FOR ANY DRIVEWAY AND STREET ACCESSING RM 2770 AND FM 150 NOT PREVIOUSLY PERMITTED BY TxDOT.

ELECTRIC UTILITY CONSTRUCTION ON A LOT SHALL BE INCLUDED IN THE SITE DEVELOPMENT PERMIT. ELECTRIC SERVICE TO EACH LOT SHALL BE UNDERGROUND.

THE MAINTENANCE AND IRRIGATION AREAS ARE THE RESPONSIBILITY OF LOT OWNERS OF SECTION 1H OR PLUM CREEK HOMEOWNERS ASSOCIATION.

4.616 AC.  
HENRY LOLLAR SURVEY NO. 19  
PERIMETER DESCRIPTION

A DESCRIPTION OF 4.616 ACRES (APPROX. 201,054 S.F.) IN THE HENRY LOLLAR SURVEY NO. 19, HAYS COUNTY, TEXAS, BEING A PORTION OF A 4.532 ACRE TRACT DESCRIBED IN A SPECIAL WARRANTY TO MGCC TEXAS ENTERPRISES, LLC, AN OKLAHOMA LIMITED LIABILITY COMPANY, DATED JUNE 1, 2007 AND RECORDED IN VOLUME 3192, PAGE 267, AND RE-RECORDED IN VOLUME 3214, PAGE 381 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING A PORTION OF A 206.75 ACRE TRACT DESCRIBED IN A SPECIAL WARRANTY DEED TO PLUM CREEK DEVELOPMENT PARTNERS, LTD., DATED AUGUST 11, 1997 OF RECORD IN VOLUME 1336, PAGE 515 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 4.616 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" rebar with LAI cap found at the intersection of the east right-of-way line of R.M. 2770 (right-of-way width varies) and the north right-of-way line of F.M. 150 (80' right-of-way width), also being in the west line of said 4.532 acre tract, from which a concrete highway monument found bears South 50°26'13" West, a distance of 2.29 feet;

THENCE North 42°56'27" East, with the east right-of-way line of said R.M. 2770 and the west line of the 4.532 acre tract, a distance of 110.13 feet to a 1/2" rebar with Chaparral cap found for the southwest corner of Lot 1, Block A Plum Creek Phase 1, Square Replat, a subdivision of record in Volume 11, Page 23-25 of the Hays County Plat Records;

THENCE South 74°32'49" East, with the north line of the 4.532 acre tract, being the south line of Lot 1, a distance of 409.67 feet to a 1/2" rebar with Chaparral cap found for the northeast corner of the 4.532 acre tract;

THENCE South 15°13'49" West, with the east line of the 4.532 acre tract, a distance of 169.87 feet to a 1/2" rebar with Chaparral cap found;

THENCE over and across the 206.75 acre tract, the following two (2) courses and distances:

1. South 31°09'48" East, a distance of 134.75 feet to a 1/2" rebar with Chaparral cap set;

2. South 58°47'49" West, a distance of 18.51 feet to a 1/2" rebar with Chaparral cap set in the east line of the 4.532 acre tract;

THENCE over and across the 4.532 acre tract, the following two (2) courses and distances:

1. South 58°47'49" West, a distance of 51.93 feet to a 1/2" rebar with Chaparral cap set;

2. South 41°21'35" East, a distance of 232.57 feet to a 1/2" rebar with LAI cap found in the northeast right-of-way line of Wetzel Street (50' right-of-way), for the southeast corner of the said 4.532 acre tract, being also the northernmost corner of Plum Creek Phase 1, Section 1F, a subdivision of record in Volume 12, Page 31 of the Plat Records of Hays County, Texas;

THENCE South 48°38'34" West, with the south line of the 4.532 acre tract, being also the north line of said Plum Creek Phase 1, Section 1F, a distance of 195.00 feet to a 1/2" rebar with LAI cap found in the south line of the 206.75 acre tract for the northwest corner of Plum Creek Phase 1, Section 1F and also being in the northeast line of a 10.00 acre tract described in Volume 453, Page 739 of the Deed Records of Hays County, Texas;

THENCE North 41°22'52" West, with the south line of the 206.75 acre tract and the north line of said 10.00 acre tract, a distance of 201.86 feet to a 1/2" rebar with LAI cap found in the north right-of-way line of said F.M. 150 for the northwest corner of the 10.00 acre tract, from which a concrete highway monument found for point of tangency station 354+05.9 bears along a curve to the right having a radius of 994.93 feet, an arc length of 219.75 feet and chord which bears South 25°04'41" East, a distance of 219.30 feet;

THENCE with the north right-of-way line of F.M. 150 and the south and west lines of the 206.75 acre tract, the following three (3) courses:

1. Along a curve to the left having a radius of 994.93 feet, an arc length of 351.99 feet and chord which bears North 39°29'51" West, a distance of 350.15 feet to a 1/2" rebar with LAI cap found at point of curvature station 348+57.0;

2. North 49°34'59" West, a distance of 124.93 feet to a 1/2" rebar with LAI cap found for the southwest corner of the 206.75 acre tract;

3. North 02°47'48" West, a distance of 135.56 feet to the POINT OF BEGINNING, containing 4.616 acres of land, more or less.

PUBLIC UTILITY INFORMATION:  
THIS SUBDIVISION IS SERVICED BY THE FOLLOWING UTILITIES -

WATER: CITY OF KYLE  
100 WEST CENTER  
KYLE, TX 78640

ELECTRIC: PEDERNALES ELECTRIC COOP.  
1810 FM 150 WEST  
KYLE, TX 78640

WASTEWATER: CITY OF KYLE  
100 WEST CENTER  
KYLE, TX 78640

GAS:  
TEXAS GAS SERVICE

PHONE: VERIZON  
6601 RANCH ROAD 3237  
WIMBERLEY, TX 78676

**GRIFFIN ENGINEERING GROUP, INC.**  
11711 NORTH LAMAR, AUSTIN, TEXAS 78753 (512) 836-3113

**Chaparral**  
Professional Land Surveying, Inc.  
Surveying and Mapping  
3500 McCall Lane  
Austin, Texas 78744  
512-443-1724

PROJECT NO.:  
533-001  
DRAWING NO.:  
533-001-PL4  
PLOT DATE:  
05/20/11  
PLOT SCALE:  
1"=100'  
DRAWN BY:  
JDB  
SHEET  
02 OF 02

**PROPOSED SIGNAL HEADS**

(12" L.E.D. SIGNALS W/ BACKPLATES)



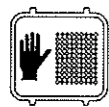
B, C, D, E, G, H, K



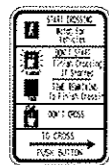
A, F, J

**PROPOSED PEDESTRIAN SIGNAL HEADS**

(AUDIBLE PED SIGNAL UNITS WITH L.E.D. COUNTDOWN SIGNAL HEADS)



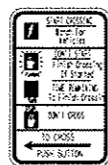
SIGNALS W1-W8



R10-3e (R) MOD (5"x9") Pb1, Pb3, Pb5, Pb7

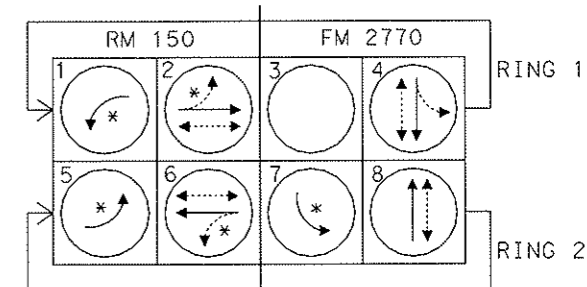


R10-3e (L) MOD (5"x9") Pb4



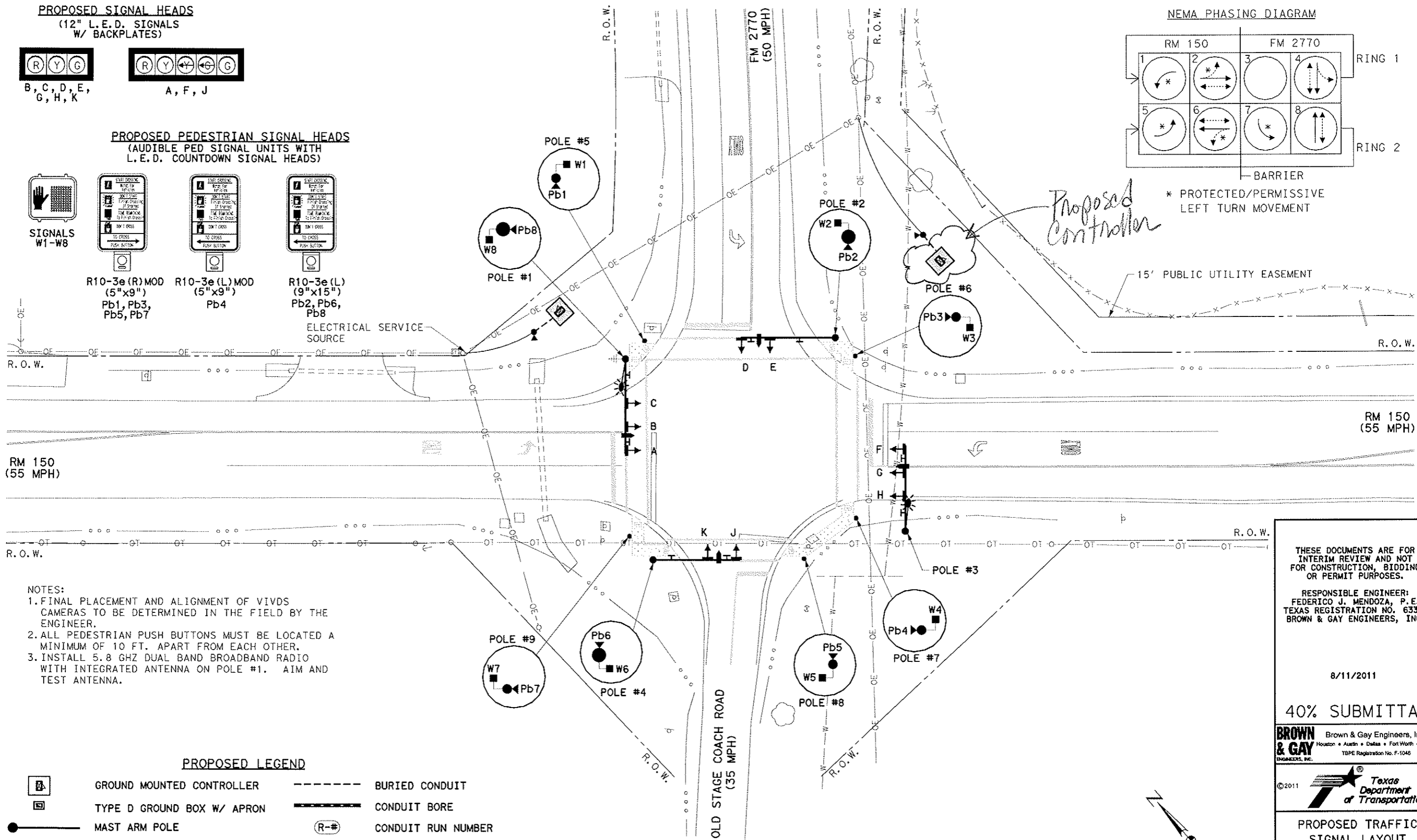
R10-3e (L) (9"x15") Pb2, Pb6, Pb8

**NEMA PHASING DIAGRAM**



\* PROTECTED/PERMISSIVE LEFT TURN MOVEMENT

*Proposed Controller*



- NOTES:**
1. FINAL PLACEMENT AND ALIGNMENT OF VIVDS CAMERAS TO BE DETERMINED IN THE FIELD BY THE ENGINEER.
  2. ALL PEDESTRIAN PUSH BUTTONS MUST BE LOCATED A MINIMUM OF 10 FT. APART FROM EACH OTHER.
  3. INSTALL 5.8 GHZ DUAL BAND BROADBAND RADIO WITH INTEGRATED ANTENNA ON POLE #1. AIM AND TEST ANTENNA.

**PROPOSED LEGEND**

- |  |                            |  |                        |
|--|----------------------------|--|------------------------|
|  | GROUND MOUNTED CONTROLLER  |  | BURIED CONDUIT         |
|  | TYPE D GROUND BOX W/ APRON |  | CONDUIT BORE           |
|  | MAST ARM POLE              |  | CONDUIT RUN NUMBER     |
|  | PEDESTRIAN SIGNAL POLE     |  | PEDESTRIAN SIGNAL HEAD |
|  | HORIZONTAL SIGNAL HEAD     |  | PEDESTRIAN PUSH BUTTON |
|  | VIDEO CAMERA AND NUMBER    |  | LUMINAIRE              |
|  | OVERHEAD SIGN              |  | BROADBAND ANTENNA      |
|  | SERVICE METER & DISCONNECT |  |                        |

POLE CHART	
Pole #	Description
1	30' Pole with 40' Mast Arm and Luminaire
2	19' Pole with 40' Mast Arm
3	30' Pole with 36' Mast Arm and Luminaire
4	19' Pole with 36' Mast Arm
5-9	Pedestrian Pole
10	ELECTRICAL SERVICE POLE

THESE DOCUMENTS ARE FOR INTERIM REVIEW AND NOT FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES.

RESPONSIBLE ENGINEER:  
FEDERICO J. MENDOZA, P.E.  
TEXAS REGISTRATION NO. 63311  
BROWN & GAY ENGINEERS, INC.

8/11/2011

40% SUBMITTAL

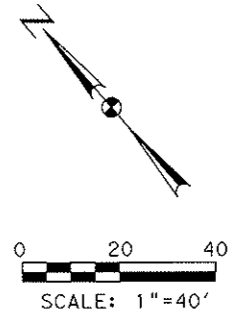
**BROWN & GAY** Brown & Gay Engineers, Inc.  
Houston • Austin • Dallas • Fort Worth • Frisco  
TYBE Registration No. F-1048



PROPOSED TRAFFIC SIGNAL LAYOUT

RM 150 AT FM 2770

SCALE: 1"=40'		PROJECT NO.
DWN: AAR	CKD: FJM	
STATE: TEXAS	FED. RD. DIST. NO.: 14	COUNTY: HAYS
CONT.	SECT.	JOB
		HWY. NO. SHEET NO.
		RM 150 3



Item # 9

8/11/2011 4:18:08 PM T:\Traffic Group \RM150 at FM 2770 - 02\*psig.dgn



# Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512) 832-7000

December 5, 2011

Hays County  
CSJ: 0914-00-262  
FM 150 at FM 2770 signal

Mr. Lanny Lambert  
City Manager  
City of Kyle  
100 W. Center Street  
Kyle, Texas 78640

Attn: Jerry Hendrix, Director of Community Development

Dear Mr. Lambert:

Attached for signatures are two copies of an Advance Funding Agreement for the above project. Construction consists of the installation of a traffic signal on RM 150 at RM 2770.

Please return both signed and dated documents to this office for further processing. A check made payable to the Texas Department of Transportation in the amount of \$162,367 will be due upon receipt of a fully executed agreement and before any work can be done by the State.

If you have any questions, please contact me at (512) 832-7050.

Sincerely,

Patricia L. Crews-Weight, P.E.  
Director of Design  
Austin District

cc: Donald E. Nyland, P.E., South Travis Area Engineer  
Mark Mohr

CSJ # 0914-00-262  
 District # 14 - Austin  
 Code Chart 64 # 22850  
 Project: Install Traffic Signal

STATE OF TEXAS       §  
 COUNTY OF TRAVIS   §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY  
 LOCAL GOVERNMENT CONTRIBUTIONS  
 TO TRANSPORTATION IMPROVEMENT  
 PROJECTS WITH NO REQUIRED MATCH  
 ON-SYSTEM**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the City of Kyle, acting by and through its duly authorized officials, called the "Local Government."

**WITNESSETH**

**WHEREAS**, Transportation Code, Chapters 201, 221, 227, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

**WHEREAS**, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

**WHEREAS**, Commission Minute Order Number 112237 authorizes the State to undertake and complete a highway improvement generally described as install traffic signal; and,

**WHEREAS**, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as install traffic signal on RM 150 at RM 2770, called the "Project"; and,

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the State;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

**AGREEMENT**

**1. Time Period Covered**

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described in this agreement has been completed and accepted by all parties or unless terminated, as provided for by this agreement.

**2. Project Funding and Work Responsibilities**

A. The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract. In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that



CSJ # 0914-00-262District # 14 - AustinCode Chart 64 # 22850Project: Install Traffic Signal

are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

- B. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs.
- C. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.

### 3. **Right of Access**

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

### 4. **Adjustments Outside the Project Site**

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

### 5. **Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

### 6. **Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

### 7. **Interest**

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

### 8. **Inspection and Conduct of Work**

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed

CSJ # 0914-00-262District # 14 - AustinCode Chart 64 # 22850Project: Install Traffic Signal

hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

## 9. Increased Costs

- A. In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within thirty (30) days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accordance with Article 11 – Termination. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.
- B. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

## 10. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

## 11. Termination

- A. This agreement may be terminated in the following manner:
1. By mutual written agreement and consent of both parties;
  2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
  3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B. If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.
- C. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

CSJ # 0914-00-262  
 District # 14 - Austin  
 Code Chart 64 # 22850  
 Project: Install Traffic Signal

## 12. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
City of Kyle Attn: City Manager 100 W. Center Street Kyle, Texas 78640	Director of Contract Services Texas Department of Transportation 125 E. 11 <sup>th</sup> Street Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

## 13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

## 14. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

## 15. Amendments

By mutual written consent of the parties, this agreement may be amended prior to its expiration.

## 16. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

## 17. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the

CSJ # 0914-00-262  
District # 14 - Austin  
Code Chart 64 # 22850  
Project: Install Traffic Signal

State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately and the State may recover damages and all costs of completing the work.

**18. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

\_\_\_\_\_  
Cathy T. Floyd, CPA  
South Regional Support Center Director

\_\_\_\_\_  
Date

CSJ # 0914-00-262  
 District # 14 - Austin  
 Code Chart 64 # 22850  
 Project: Install Traffic Signal

**ATTACHMENT A  
 PAYMENT PROVISION AND WORK RESPONSIBILITIES**

Description		Total Estimated Cost	Federal Participation		State Participation		Local Participation	
			%	Cost	%	Cost	%	Cost
Engineering (by Local Government)		\$ 30,000.00	0%	\$0	0%	\$0	100%	\$ 30,000.00
Construction (by State)		\$ 162,367.00	0%	\$0	0%	\$0	100%	\$ 162,367.00
Subtotal		\$ 192,367.00		\$0		\$0		\$ 192,367.00
Direct State Cost for Prelim. Engineer. \$ 4,428	Environm. Direct State Costs (20%)	\$ 0.00	0%	\$0	100%	\$ 0.00	0%	\$0
	Right of Way Direct State Costs (20%)	\$ 0.00	0%	\$0	100%	\$ 0.00	0%	\$0
	Engineer. Direct State Costs (40%)	\$ 4,428.00	0%	\$0	100%	\$ 4,428.00	0%	\$0
	Utility Direct State Costs (20%)	\$ 0.00	0%	\$0	100%	\$ 0.00	0%	\$0
Construction Engineering (by State)		\$ 13,280.00	0%	\$0	100%	\$ 13,280.00	0%	\$0
Construction Direct State Costs		\$ 1,461.00	0%	\$0	100%	\$ 1,461.00	0%	\$0
Indirect State Costs (7.27%)		\$ 13,985.08	0%	\$0	100%	\$ 13,985.08	0%	\$0
Subtotal		\$ 33,154.08		\$0		\$ 33,154.08		\$0
<b>TOTAL</b>		\$ 225,521.08		\$0		\$ 33,154.08		\$ 192,367.00

Initial payment by the Local Government to the State: \$0

Payment by the Local Government to the State before construction: \$ 162,367.00

Estimated total payment by the Local Government to the State \$ 162,367.00 This is an estimate.

The final amount of Local Government participation will be based on actual costs.

CSJ # 0914-00-262  
District # 14 - Austin  
Code Chart 64 # 22850  
Project: Install Traffic Signal

## **Work Responsibilities:**

### **1. Engineering Services**

- a. The Local Government shall prepare or cause to be prepared the engineering plans, specifications, and estimates (PS&E) necessary for the development of the Project. The PS&E shall be prepared in accordance with all applicable laws, policies and regulations, deemed necessary by the State.
- b. The engineering plans shall be developed in accordance with the Texas Department of Transportation *Roadway Design Manual*, the current edition of the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* and the Texas Accessibility Standards. A project development schedule of design activities shall be supplied to the TxDOT South Travis Area Engineer office upon initiation of the Project.
- c. The Local Government shall submit a copy of the redlined plans provided by the State with all applicable plan submittals to indicate that QC/QA was undertaken.
- d. The Local Government shall submit the completed PS&E to the State for review and approval a minimum of twenty weeks prior to the beginning of construction work.

### **2. Utilities**

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

### **3. Construction Responsibilities**

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments or additional work orders which may become necessary subsequent to the award of the construction contract.
- b. The State will use its approved contract letting and award procedures to let and award the construction contract.
- c. The State will award the contract up to a cost equal to 20% over the latest Engineer's Estimate. The Local Government shall be responsible for 100% of the construction costs of any contract so awarded.



# CITY OF KYLE, TEXAS

## Amending 2010 Transportation Plan

**Meeting Date: 12/13/2011**  
**Date time: 7:00 PM**

**Subject/Recommendation:**

Consideration and Possible Action as may be required regarding initiating action and taking action to Amend the 2010 Transportation Master Plan to include Bebee Road as a Minor Arterial Roadway, directing staff and the Planning and Zoning Commission to make such amendment to the 2010 Master Transportation Plan and submit said amended plan to CAMPO for an amendment to the CAMPO 2035 Plan and inclusion in such plan for possible consideration for future 2011/2012 TIP Funding ~ *Council Member Jaime Sanchez*

**Other Information:**

Bebee Rd was left off of the 2010 Master Transportation Plan and without its inclusion will be ineligible for possible TIP funding. This is an effort to have an amendment made to the 2035 Plan for inclusion.

**Budget Information:**

N/A

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Attachments / click to download

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## CITY OF KYLE, TEXAS

### Dacy Lane/FM 150 Agreements (FM 150))

**Meeting Date: 12/13/2011**  
**Date time: 7:00 PM**

**Subject/Recommendation:**

Consideration and Possible Action regarding the First Amended and Restated Interlocal Agreement between Hays County and the City of Kyle regarding FM 150 ~  
*Lanny Lambert, City Manager*

**Other Information:**

**Budget Information:**

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Attachments / click to download

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# CITY OF KYLE, TEXAS

## Wells Fargo Bldg Lease

Meeting Date: 12/13/2011

Date time: 7:00 PM

**Subject/Recommendation:**

Consideration and Possible Action to Extend the Interlocal Agreement for Commercial Office Lease of 111 N. Front Street, formerly known as the Wells Fargo Building, to Hays County for One Year ~ *Lanny Lambert, City Manager*

**Other Information:**

**Budget Information:**

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**Attachments / click to download**

- [Interlocal Agreement for Wells Fargo Bldg](#)
  - [Renewal Interlocal Agreement Hays County](#)
-

**INTERLOCAL AGREEMENT  
FOR  
COMMERCIAL OFFICE LEASE**

111 N. Front Street

This is a Interlocal Agreement for the Lease of Commercial Office Space (hereinafter "Agreement") dated 12/7/10 and entered into between the City of Kyle, Texas, a home-rule municipality, as (hereinafter "Lessor") and Hays County, a political subdivision of the State of Texas as (hereinafter "Lessee"), whether one or more. The above-cited parties shall be collectively referred to as "the parties to this Agreement" or "the parties".

**1.1 Interlocal Agreement.**

This is an Agreement made pursuant to the Interlocal Cooperation Act (Chapter 791, Texas Government Code), which empowers the parties to contract with each other in the performance of services that each party is authorized to perform individually, including the leasing of real property. As required by the Interlocal Cooperation Act, (i) the execution of this agreement is authorized by the governing body of each party to this Agreement; (ii) payments of rent by Lessee under this Agreement shall be made from current revenues that are available to Lessee; and (iii) the rents paid under this agreement are considered by the parties to be fair compensation to Lessor for the Leased Premises.

**1.2 The Leased Premises.**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the "Leased Premises" which consists of "Lessee's Office Space" as defined below.

(a) *Lessee's Office Space.* "Lessee's Office Space", to which Lessee shall have exclusive use rights to the office space outlined on the floor-plan contained in Exhibit A. Such space is located in the building on a tract of land, legally described by lot and block or metes and bounds in Exhibit B. The street address of the building is 111 N. Front Street, Kyle, Texas 78640.

**1.3 Useable Area.**

Intentionally Deleted.

**1.4 Rentable Area.**

Lessee's approximate "rentable area" is 8,098 square feet.

**2.1 Base Rent.**

As set forth below, Lessee shall pay to Lessor "base rent(s)" per square foot of net rentable area as set forth below, which amounts to the monthly and annualized rents set forth below.

<u>Base Rent:</u> <u>Time Period</u>	<u>Monthly</u> <u>Rent Rent</u>	<u>Annualized</u> <u>psf of NRA</u>	<u>Annual Rent</u>
<u>12</u> months	\$ 7,500.00	\$90,000.00	\$90,000.00

**3.1 Date and Place of Payment.**

The monthly rent shall be due on the first day of each calendar month without demand. Partial months shall be prorated. All rent and other sums are due in the county where the building is located at the address designated by Lessor from time to time. All sums due by Lessee are without right of setoff or deduction. Monies mailed are considered timely paid only if received by Lessor by the due date. Rent and late payment charges shall be paid without notice or demand. All other sums shall be due upon delivery of written notice in accordance with paragraph 27.1.

Building name: 111. N. Front Street  
Lessor's Name: City of Kyle, Texas  
Lessee's name: Hays County, Texas

Page 1

Lessor initials: JD  
Lessee initials: bc

Item # 12

### 3.2 Late Payments.

If any rent payment or other sum due by Lessee to Lessor is received and accepted by Lessor later than five (5) days after its due date, Lessee shall pay a late charge of the greater of \$ 10.00 or 5% of such rent payment, plus \$10.00 thereof for each day thereafter (for up to 15 days) until such rent or other sum is paid. Late charges shall be considered liquidated damages for Lessor's time inconvenience and overhead (except for attorneys fees and litigation costs) in collecting late rent. Lessor's acceptance of late rent or other sum shall not constitute permission for Lessee to pay the rent or other sum late thereafter and shall not constitute a waiver of Lessor's remedies for subsequent late payments. Late payment charges are due immediately upon notice or demand. All payments shall be by check or money order on a local bank, not cash. For each returned check, Lessee shall pay all applicable bank charges incurred by Lessor plus \$25.00. Payments of any kind received by Lessor on behalf of Lessee may be applied at Lessor's option to non-rent items first, then to rent. Payment of rent by Lessee shall be an independent covenant. If Lessee has not timely paid rentals and other sums due on two or more occasions, or if a check from Lessee is returned for insufficient funds or no account, Lessor may, for the next twelve (12) months or the remainder of the lease term, whichever is shorter, require that all rent and other sums due be paid by cashier's check, certified check, or money order, without prior notice.

### 3.3 Security Deposit.

The total additional security deposit to be provided by Lessee, in current funds, is \$3,500.00, at the time of execution of this lease. This security deposit will be held by Lessor to secure performance of Lessee's obligations under this lease. Lessor shall have a lien on the security deposit for that purpose. If Lessee fails to pay rent or other sums when due under this lease, Lessor may apply any cash security deposit toward amounts due and unpaid by Lessee. Lessee shall immediately restore the security deposit to its original amount after any portion of it is applied to amounts due and unpaid by Lessee. Lessor shall return the security deposit to Lessee within thirty (30) days after the termination of this Agreement, minus the cost of any damages to the Leased Premises caused by Lessee that are beyond normal wear and tear.

### 4.1 Term, Possession, and Anniversary.

The lease term shall be for 12 full calendar months from commencement date and the last day of the lease term being November 30, 2011. The commencement date of this lease shall be December 1, 2010. Rent will begin to accrue on the lease commencement date. Lessor requires Lessee to provide, in written documentation, sixty-days (60) notice to surrender premises before the termination date of this contract. Should lessee surrender leased premises prior to the end of the lease term, rent will be prorated through last day of the month Lessee surrenders the leased premises to the Lessor.

### 4.2 Acknowledgement of Lease.

Intentionally Deleted.

### 4.3 Delivery of Possession.

Lessor shall deliver keys and/or access cards or codes and possession of Lessee's office space to Lessee on the lease commencement date stated in paragraph 4.1 unless otherwise agreed in writing by the parties. Lessee shall not be liable for rent until Lessor delivers possession of the leased premises to Lessee. If there is a delay in delivery of possession, the commencement date shall be delayed until Lessee's office space is ready for occupancy; and neither Lessor nor Lessor's agents shall otherwise be liable for any damages; and the lease shall not terminate.

### 5.1 Tenant Finish-Out. (Check one):

Lessor shall allow Lessee full access to the Leased Premises during preparation for move-in in advance of delivery of possession and shall pay for all utilities up to the date Lessor delivers possession under Section 4.3 of this Agreement.

**6.1 Quiet Possession.**

If Lessee is current and in compliance with all of Lessee's obligations under this lease, Lessee shall be entitled to peaceful and quiet possession and enjoyment of Lessee's office space, subject to the terms and conditions of this lease. Lessee shall have access to common parking areas at all times, subject to paragraph 9.2. Lessor shall make diligent efforts to have all other tenants in the building, if any, comply with building rules. Failure of other tenants to otherwise comply with such rules shall not be considered a default by Lessor. Construction noise or vibrations shall not be considered a default by Lessor.

**7.1 Utilities and Services by Lessee.**

Except where otherwise stated in this lease, Lessee shall establish accounts in its name and pay for the following utilities:

- (a) trash collection services (dumpster or garbage cans);
- (b) water and wastewater services for Common Areas and the building;
- (c) pest control services as needed in the reasonable judgment of Lessor;

**7.2 Intentionally Deleted****7.3 Interruption of Utilities or Services.**

Temporary interruption or malfunction of utilities, services, and/or telephones shall not render Lessor liable for damages, rent abatements, or release of any Lessee obligation. Lessor shall use diligent efforts to have such utilities and services restored as soon as reasonably possible.

**8.1 Maintenance and Repairs by Lessor.**

Lessor shall repair and/or replace, as needed, the following items as a building expense under paragraph 29.1, so long as they are building standard items: including but not limited to ballasts, and fixtures; common area plumbing; hardware; appliances; doors; and wall and window coverings. Lessor shall use diligence to provide for the maintenance, repair, reconnection of interrupted utilities or services, subject to any reimbursement obligations of Lessee under paragraph 8.2. Lessor may rekey at any time. Lessor may temporarily close any part of the common facilities if reasonably necessary for repairs or construction. Repairs and maintenance shall be in accordance with applicable governmental requirements.

**8.2 Maintenance and Repairs by Lessee.**

Lessee shall promptly reimburse Lessor for the cost of maintaining including monthly electric utility service costs, repairing or replacing non-building standard items and the cost of repairing or replacing damage which is caused inside Lessee's office space by Lessee, Lessee's agents, employees, family, or licensees, invitees, visitors, or customers or outside Lessee's office space by Lessee or Lessee's employee's, agents, or contractors. Kitchen appliances, wet bars, sump pumps, and hot water heaters in the Premises, and plumbing in the Premises serving same are not considered building standard items. Lessor shall have right of approval of all repairmen or maintenance personnel. Lessee shall not damage or allow other persons listed above to damage any portion of the leased premises. Lessee shall pay for replacement of all non-building standard light bulbs and for unstopping any drains or water closets in Lessee's office space. If Lessee or Lessee's workmen or contractors are permitted to repair, alter, or modify Lessee's office space, Lessee shall warrant that no mechanic or materialman's lien shall be filed against the leased premises and that all such contractors shall provide evidence of liability insurance as required by Lessor. All such work shall be in accordance with applicable governmental requirements.

### 8.3 Telecommunications.

All telecommunications equipment necessary to serve Lessee shall be located in Lessee's office space and paid for by Lessee. Lessee may not require Lessor to install or allow others to install telecommunication lines or equipment elsewhere in the building. Lessee expressly waives any rights to require same under any circumstances.

### 9.1 Access, Keys, Locks, and Security.

(a) *Access.* Except in emergency situations, Lessee shall have access to the Leased Premises at all times during the Lease Term. Lessor shall have access to the Leased Premises during working hours for reasonable business purposes upon prior notice to Lessee except notice shall not be necessary in the event of an emergency threatening life or property or the lawful exercise of Lessor's remedies in case of default by Lessee. Lessor may show the Leased Premises six (6) months before the lease expiration date or the date Lessee gives notice to vacate, whichever is earlier.

(b) *Keys.* Lessor shall furnish Lessee up to five (5) keys or access codes or cards for the Leased Premises. An initial deposit of \$10.00 shall be charged for each key or access card provided by Lessor. Lessor shall not be liable for risk of loss resulting from Lessee's keys, access codes, or cards being stolen, lost or used by unauthorized persons. Lessor reserves the right to rekey or change locks for security reasons if new keys are timely furnished to Lessee.

(c) *Locks.* Lessee may not add locks, change locks, or rekey locks without written permission of Lessor. Locks may be changed at Lessee's request and expense. If locks to the Leased Premises are changed, Lessor may specify kind and brand of locks, placement, installation, master key compatibility, etc. If Lessee or any of Lessee's employees lock themselves out of Lessee's suite, said person must call a fellow-employee to gain access. Lessor is not authorized to unlock a door that accesses an area leased solely by Lessee except for emergency purposes.

(d) *Security.* Lessor shall have no duty to provide any security services of any kind unless expressly provided in this lease. Lessor shall not be liable to Lessee or Lessee's employees, family, customers, invitees, contractors, or agents for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism or other crimes. Lessee shall lock the doors of the Leased Premises when the last person leaves such Premises for the day. If such actions do not unreasonably interfere with Lessee's occupancy, Lessor may take reasonable measures that Lessor deems advisable for the security, safety, improvement, and preservation of the Building.

### 9.2 Parking.

(a) Lessor shall have sole control of private parking spaces included within the subject matter of this lease. If vehicles are parked in violation of Lessor parking rules, if any, or in violation of state statutes, Lessor may exercise vehicle removal remedies under Texas Transportation Code, Chapter 684 upon compliance with statutory notice. Reserved parking spaces must be established by written agreement of the parties.

(b) In consideration of the total rent due under paragraph 2.1, Lessee shall be entitled to a minimum of approximately four (4) parking spaces per eight hundred (800) square feet of Lessee's rentable area. Lessee and Lessee's employees and customers shall have exclusive right to park in Lessee's assigned parking spaces which shall be designated by the written agreement of the parties.

(c) Lessee shall make every effort to ensure that it's employees, agents, representatives and customers do not block access to the Automated Teller Machine (ATM) located at the south end of the property as depicted in Exhibit "X".

### 10.1 Occupancy, Nuisance, and Hazards.

Lessee's office space shall be occupied only by Lessee or Lessee's employees and shall not be left entirely vacant or used exclusively for storage. Lessee and Lessee's agents, employees, family, licensees, invitees, visitors, and

contractors shall comply with all federal, state, and local laws relating to occupancy or to criminal conduct while such persons are on the leased premises. Lessee and the persons listed above shall not (i) use, occupy, or permit the use or occupancy of the leased premises for any purpose which is directly or indirectly forbidden by such laws or which may be dangerous to life or property, (ii) permit any public or private nuisance, (iii) disturb the quiet enjoyment of other tenants, (iv) do anything which might emit offensive odors or fumes, (v) make undue noise or vibrations, (vi) permit anything which would cancel insurance coverage or increase the insurance rate on the building or contents, or (vii) otherwise damage the leased premises, except for normal wear and tear. Normal wear and tear is damage that occurs without carelessness, negligence, accident, or abuse.

### 11.1 Taxes.

Lessor shall be responsible for payment of all taxes and assessments against the building. Lessee shall timely pay all taxes assessed against Lessee's furniture, equipment, fixtures, or other personal property in Lessee's office space.

### 12.1 Insurance.

Lessor and Lessee shall comply with the respective insurance obligations as set forth below:

(a) *Lessor.* Lessor shall maintain commercial general liability insurance and all-risk insurance subject to standard policy exclusions and limitations through the Texas Municipal League Risk Pool.. Such insurance may contain policy exclusions as reasonably determined by Lessor. The coverage amounts shall be as Lessor may deem reasonably appropriate. Lessor shall have no responsibility to maintain any kind of insurance on Lessee's contents. Lessor shall have no responsibility to maintain fire and extended coverage insurance on Lessee's contents.

(b) *Lessee.* Lessee shall provide Lessee's own public liability insurance for its operations on the leased premises. In no event shall such coverage limits be less than three-hundred-thousand dollars in United States currency (\$300,000 USD) per offense (aggregate). Lessee is required to maintain adequate fire and extended coverage insurance (including theft, vandalism and malicious mischief) on the contents in Lessee's office space, including fixtures, furniture, equipment, supplies, inventory, and other personal property. Such personal property is not covered by Lessor's insurance.

(c) *Insurance certificates.* Lessee shall provide Lessor with a certificate of Lessee's insurance or a copy thereof as required above within seven (7) days after Lessee initially occupies Lessee's office space or any portion thereof.

### 12.2 Hold Harmless and Indemnity.

To the extent that it is not covered by Lessor's insurance, Lessee shall indemnify Lessor for and shall hold Lessor harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessee or Lessee's agents, employees, family, licensees, or invitees. To the extent that it is not covered by Lessee's insurance, Lessor shall indemnify Lessee for and shall hold Lessee harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessor or Lessor's agents, employees, family, licensees, or invitees. To the extent that it is covered by Lessor's insurance, Lessor and Lessee shall not be liable to the other or the other's agents, employees, or family for any damage to personal property resulting from any act, omission, or negligence of any other tenant, visitor, or occupant of the office building. This paragraph shall survive termination or expiration of this lease.

### 13.1 Alterations by Lessee.

Lessee may not make any alterations, improvements, door lock changes, or other modifications of any kind to the leased premises without Lessor's written consent. Consent for governmentally required changes may not be unreasonably withheld. "Alterations" include but are not limited to improvements glued, screwed, nailed, or otherwise permanently attached to the building, structural changes, roof and wall penetrations, and all plumbing, electrical, and HVAC changes. Requests for Lessor's approval shall be in writing and shall be detailed to Lessor's reasonable satisfaction. The foregoing shall be done only by Lessor's contractors or employees or by third parties

approved by Lessor in writing. Lessee shall pay in advance for any requested alterations, improvements, lock changes, or other modifications which are approved and performed by Lessor. If same are performed by Lessee with Lessor's permission, Lessee shall not allow any liens to be placed against the buildings as a result of such additions or alterations. Alterations, improvements, and modifications done at Lessee's request shall comply with all applicable laws. Changes in Lessee's alterations or improvements in Lessee's space which may be later required by governmental action shall also be paid for by Lessee.

### 13.2 Americans With Disabilities Act.

Lessor shall be responsible for any requirements under the Americans with Disabilities Act or similar state or local laws as they relate to any common area entrance and exit doorways and elevators and any doors into Lessee's office space and to structural building items that Lessor is required to maintain under the terms of this lease. Lessor agrees to indemnify Lessee for any liability Lessee shall incur as a result of Lessor's failure to comply with the provisions of this paragraph. Lessee agrees to cooperate fully with Lessor to enable Lessor to timely comply with the provisions of this paragraph and to immediately forward to Lessor any notice Lessee receives regarding complaints, injuries, or claims by anyone claiming that those items which are the responsibility of Lessor do not comply with the provisions of the Americans with Disabilities Act. Lessee shall be responsible for any requirements under such architectural barrier laws as they relate to Lessee's use of Lessee's office space, including, but not limited to, the positioning of Lessee's furnishings within the office space. Lessee agrees to indemnify Lessor for any liability Lessor incurs as a result of Lessee's failure to comply with the provisions of this paragraph. Lessor agrees to indemnify Lessee for any liability Lessee incurs as a result of Lessor's failure to comply with the provisions of the paragraph.

This Section shall not apply to for any requirements under the Americans with Disabilities Act or similar state or local laws as they relate to any common area entrance and exit doorways and elevators and any doors into Lessee's office space and to structural building items that arise from improvements made on the Leased Premises by Lessee.

### 14.1 Removal of Property by Lessee.

Lessee may remove its trade fixtures, furniture, and equipment only if (i) such removal is made prior to the end of the lease term, (ii) Lessee is not in default under this lease at time of removal, and (iii) such removal is not in anticipation of an early moveout prior to the end of the lease term. Lessee shall pay all costs of removal. Lessee shall have no rights to property remaining on the leased premises after moveout. Upon moveout, Lessee may not remove any alterations as defined in paragraph 13.1 or improvements such as wall-to-wall carpeting, book shelves, window coverings, drapes, cabinets, paneling, counters, kitchen or breakroom built-ins, shelving, wall covering, and anything else attached to the floor, walls, or ceilings. If and only if Lessor requests in writing no later than one month after Lessee moves out and receives the consent of Lessor, Lessee may remove alterations, fixtures, equipment, cabling, and other property installed by Lessee. Lessee shall pay for cleaning or repairing damage caused by Lessee's removal of any property.

### 15.1 Subletting and Assignment.

Lessee may not sublet, assign, pledge, or mortgage this lease and may not grant licenses, commissions, or other rights of occupancy to all or any part of the Leased Premises without Lessor's prior written approval.

### 16.1 Destruction by Fire or Other Casualty.

(a) *Total destruction, rent abatement, and restoration.* If Lessee's office space is totally damaged by fire or other casualty so that it cannot reasonably be used by Lessee and if this lease is not terminated as provided in subparagraph "d" below, there shall be a total abatement of Lessee's rent and Lessee's obligation to pay office building operating expenses until Lessee's office space is restored by Lessor and Lessee.

(b) *Partial destruction, rent abatement, and restoration.* If Lessee's office space is partially destroyed or damaged by fire or other hazard so that it can be only partially used by Lessee for the purposes allowed in this lease and if this lease is not terminated as provided in subparagraph "d" below, there shall be a partial abatement of

Lessee's rent and Lessee's obligation to pay office building operating expenses which fairly and reasonably corresponds to the time and extent to which Lessee's office space cannot reasonably be used by Lessee.

(c) *Restoration.* Lessor's obligation to restore shall be limited to the condition of the leased premises existing prior to the casualty. Lessor shall proceed with diligence to restore. During restoration, Lessee shall continue business to the extent practical in Lessee's reasonable judgment.

(d) *Lease termination.* If Lessee's office space or the office center is so badly damaged that restoration and repairs cannot be completed within six (6) months after the fire or casualty, then this lease may be terminated as of the date of the destruction by either Lessor or Lessee by serving written notice upon the other. Termination notice must be delivered within one (1) month after the casualty.

#### 17.1 Condemnation.

If the Leased Premises or any material portion thereof, including any portion of the parking lot is taken by condemnation and if the leased premises is thereby reasonably rendered unusable for Lessee's business use and activities, this lease shall automatically terminate as of the date title vests in the condemning authority pursuant to such taking or acquisition; and Lessor and Lessee shall be relieved of all further obligations under this lease. Lessor shall be entitled to recover from the condemning authority the full amount of Lessor's interest in this lease and in the property which is taken in condemnation; provided, however, if Lessee is not in default hereunder on the day of taking or acquisition by the condemning authority, Lessee shall be allowed to recover from the condemning authority, at Lessee's own expense, the value of Lessee's remaining leasehold interest and Lessee's trade fixtures, if any, which are taken in condemnation; but not otherwise. Lessee shall be responsible for Lessee's own attorney's fees and for proving its own damages.

#### 18.1 Default by Lessor.

Lessee shall be entitled to recover actual damages and terminate this lease if (i) Lessor fails to pay any sum due and owing to Lessee within seven (7) days after written demand from Lessee, or (ii) Lessor remains in default on any other obligation for seven (7) days after Lessee's written demand for performance. However, Lessor shall not be in default if Lessor promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default. If taxes and utilities are not timely paid, Lessee may pay same to the extent that it is necessary to avert foreclosure or cutoff. If Lessor fails to perform any covenant, term or condition of this lease that Lessor is obligated to perform and, as a consequence of such nonperformance, Lessee shall recover a money judgment against Lessor, such judgment shall be satisfied only out of Lessor's equity in the property. Lessor shall have no liability whatsoever for any deficiency, and no other property or assets of Lessor shall be subject to levy, execution or other enforcement procedures as a result of such judgment.

#### 19.1 Default by Lessee.

If Lessee defaults, Lessor shall have any or all remedies set forth below.

(a) *Definition of default.* The occurrence of any of the following shall constitute a default by Lessee: (i) failure to pay rent or any other sum due by Lessee under this lease within 3 days after written demand therefor by Lessor; (ii) failure to vacate on or before the last day of the lease term, renewal term, or extension period; (iii) failure to pay rent in advance on a daily basis in the event of unlawful holdover by Lessee; (iv) unauthorized early move-out or notice of same as set forth below; (v) acquisition of Lessee's interest in the lease by a third party by judicial or non-judicial process; or (vi) failure to comply with any other provision of the lease (including rules) if such failure to comply is not cured as soon as possible after delivery of written notice by Lessor to Lessee. However, Lessee shall not be in default under subclause (vi) above if Lessee promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default.

(b) *Utilities and services.* If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor hand delivers to Lessee or to Lessee's representative written notice of Lessor's intent to terminate utilities or services which are furnished by Lessor, then Lessor may terminate



such utilities or services after such 3-day notice period, without further notice. Lessor's right to terminate such utilities or services shall occur automatically and without notice if Lessee's rent is accelerated under subparagraph "d" below, relating to unlawful early move-out.

(c) *Acceleration after notice of rental delinquency.* If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor delivers to Lessee or to Lessee's office space a written notice of Lessor's intent to accelerate, then all rent for the remainder of the lease term shall be accelerated, due, and delinquent at the end of such 3-day notice period without further demand or notice. Such acceleration rights are in consideration of the rentals for the entire term being payable in monthly installments rather than in one lump sum at the beginning of the lease term. If Lessee has already vacated the leased premises, notice of acceleration may be delivered to Lessee pursuant to paragraph 27.1. Liability for additional rents accruing in the future (over and above any base rents) shall not be waived by such acceleration.

(d) *Acceleration upon early move-out.* City Council approved a no-acceleration clause whereby rent will be prorated through the end of the month in which the Lessee moves-out prior to the completion of the lease term.

(e) *Termination of possession.* If Lessee is in default as defined in subparagraph "a" above and if Lessee remains in default for three (3) days after Lessor gives notice of such default to Lessee, or if Lessee abandons the leased premises, Lessor may (with or without demand for performance) terminate Lessee's right of possession by giving one day's written notice to vacate; and Lessor shall be entitled to immediate possession without termination of Lessee's obligations under the lease. Lessor's repossession shall not be considered an election to terminate this lease unless written notice of such intention to terminate is given to Lessee by Lessor. Repossession may be by voluntary agreement or by eviction lawsuit. Commencement of an eviction lawsuit shall not preclude other Lessor remedies under this lease or other laws.

(f) *Reletting costs.* If Lessee is in default under this lease and if Lessor terminates Lessee's right of possession without terminating this lease and Lessee's space is released, Lessee shall pay upon Lessor's demand the following: (i) all costs of reletting (which in no event shall be less than one month's rent), including leasing commissions, rent concessions (whether in the form of assuming or buying out lease remainders elsewhere, free rent for a period of time, or reduced rental rates), utilities during the vacancy, advertising costs, administrative overhead, and all costs of repair, remodeling, or redecorating for replacement tenants in Lessee's office space, (ii) all rent and other indebtedness due from Lessee to Lessor through the date of termination of Lessee's right of possession, and (iii) all rent and other sums required to be paid by Lessee during the remainder of the entire lease term, subject to the acceleration paragraphs above.

(g) *Mitigation by Lessor.* Upon eviction or voluntary vacation of the leased premises by Lessee without the lease being terminated by Lessor, Lessor shall make reasonable efforts to relet the leased premises. After deduction of reasonable expenses incurred by Lessor, Lessee shall receive credit for any rentals received by Lessor through reletting the leased premises during the remainder of the lease term or renewal or extension period. Such deductible expenses may include real estate commissions, attorney's fees, and all other commercially reasonable expenses in connection with reletting. Lawsuit to collect amounts due by Lessee under this lease may be brought from time to time on one or more occasions without the necessity of Lessor's waiting until the expiration of the lease term. If judgment for accelerated rents is recovered, Lessor shall give credit against such judgment for subsequent payments made by Lessee and subsequent rentals received by Lessor from other tenants of Lessee's office space, less lawful deductions and expenses of reletting.

(h) *Termination of lease.* Lessor may terminate this lease upon default by Lessee or at any time after Lessor's lawful re-entry or repossession following default by Lessee. Lessor's agents have authority to terminate the lease only by written notice given pursuant to paragraph 29.1. After termination, Lessee shall remain liable to Lessor for all sums accruing and unpaid prior to termination and any year-end adjustments of building operating expense, prorated through the date of termination.

(i) *Damages.* In addition to other remedies, Lessor may recover actual damages incurred.

### 20.1 Late Payment Fees and Other Expenses.

Late payment fees as set forth in paragraph 3.2 shall be considered reasonable liquidated damages for the time, trouble, inconvenience, and administrative overhead expense incurred by Lessor in collecting late rentals, such elements of damages being uncertain and difficult to ascertain. Late payment fees shall not be liquidated damages for attorney's fees or for Lessor's loss of use of such funds during the time of delinquency. Whenever Lessee requests Lessor to take any action or give any consent required or permitted under this Lease, Lessee will reimburse Lessor for Lessor's reasonable costs incurred in reviewing the proposed action or consent, including reasonable attorneys', engineers', or architects' fees, within ten (10) days after Lessor's delivery to Lessee of a statement of such costs. Lessee shall be obligated to make such reimbursement without regard to whether Lessor consents to any such proposed action.

### 21.1 Nonwaiver.

The acceptance of monies past due or the failure to complain of any action, nonaction, delayed payment, or default, whether singular or repetitive, shall not constitute a waiver of rights or obligations under the lease. Lessor's or Lessee's waiver of any right or any default shall not constitute waiver of other rights, violations, defaults, or subsequent rights, violations, or defaults under this lease. No act or omission by Lessor or Lessor's agents shall be deemed an acceptance or surrender of the leased premises, and no agreement by Lessor to accept a surrender of the leased premises shall be valid unless it is in writing and signed by a duly authorized agent of Lessor.

### 22.1 Transfer of Ownership by Lessor.

If Lessor transfers ownership of the office building (other than as security for a mortgage) and if Lessor has delivered to the transferee all of Lessee's security deposits and any prepaid rents, Lessor shall be released from all liability under the lease for Lessor obligations (other than for Lessor defaults arising prior to the transfer and noted in any estoppel certificate signed by Lessee); and such transferee shall become liable as Lessor. Such right to be released of liability shall accrue to subsequent owners only if such transfer is in good faith and for consideration.

### 23.1 Mortgages.

Intentionally Deleted.

### 24.1 Surrender of Premises.

When Lessee moves out, Lessee shall surrender Lessee's office space in the same condition as on the date of lease commencement by Lessee (as changed or improved from time to time in accordance with this Agreement), less ordinary wear and tear. Removal of property from the leased premises is subject to paragraph 14.1. Upon surrender, Lessee shall provide Lessor with all of Lessee's keys, access codes and cards to the Leased Premises and the combination to all safes and vaults, if any in the Leased Premises.

### 25.1 Holding Over.

If Lessee remains in possession of the leased premises after the expiration of the lease (including valid lease extensions), then (i) Lessee shall be deemed to be occupying the leased premises as a tenant-at-sufferance on a daily basis, subject to all obligations of the lease, (ii) Lessee shall pay rent for the entire holdover period at the rate of 125% of the then-current rental rate under this lease, (iii) Lessee shall be subject to all other remedies of Lessor as provided in paragraph 19.1, and (iv) Lessee shall indemnify Lessor and/or prospective tenants for damages, including lost rentals, storage expenses, and attorney's fees. Holdover rents shall be immediately due on a daily basis and delinquent without notice or demand; and the prior written notice and waiting period requirements of this lease shall not be necessary in order for Lessor to exercise remedies thereunder. By written agreement of the parties, Lessee may avoid being subjected to the above terms and penalties by extending the lease term for a period of one month (and for as many one-month periods thereafter as agreed to by the parties) at a minimum rate of 125% of the then-current rental rate under this lease.

**26.1 Signs and Building Name.**

Except for standard suite signage and building directory listings, there shall be no signs, symbols, or identifying marks on or in the building, halls, elevators, staircases, entrances, parking areas, landscape areas, doors, walls, or windows without prior written approval of Lessor. All signs or lettering shall conform to the sign and lettering criteria established by Lessor. Unless otherwise agreed by the parties, suite signage and building directory changes shall be done exclusively by Lessor and at Lessee's expense. Lessor may remove all unapproved signs without prior notice to Lessee and at Lessee's expense.

**27.1 Notices.**

A 60-day written notice is required and must be provided by the Lessee to the Lessor should the Lessee intend to terminate lease agreement and move-out from leased premises prior to the completion of this 12-month lease agreement. Whenever written notice is required or permitted under this lease, such notice shall be in writing and shall be either (i) hand delivered personally to the party being notified, (ii) hand delivered to or inside such party's mailing address, (iii) delivered by fax provided there is a fax transmittal confirmation, or (iv) delivered at such party's mailing address by overnight commercial courier or by certified mail, return receipt requested. The mailing address of Lessor shall be the address to which Lessee normally mails or delivers the monthly rent unless Lessor notifies Lessee of a different address in writing. The mailing address of Lessee shall be Lessee's office space under this lease unless Lessee notifies Lessor of a different address in writing. Notice by noncertified mail is sufficient if actually received by the addressee or an employee or agent of addressee. The term "notice" shall be inclusive of notices, billings, requests, and demands.

**28.1 Successors.**

This lease shall bind and inure to the benefit of the parties, any guarantors of this lease, and their respective successors and assigns.

**29.1 Building Operating Expense.**

Unless otherwise agreed by the parties in writing, Lessor shall not charge Lessee for Building Operating Expenses, except those expenses defined in Section 8.2 of this Agreement. Valid charges for Building Operating Expenses including monthly electric utility service costs shall be invoiced pursuant to Section 3.1, and shall be provided to Lessee in writing. Lessee shall include payment of any outstanding Building Operating Expenses in its next regular rent payment.

**30.1 Representations and Warranties by Lessor.**

Lessor warrants that Lessor is the sole owner of the land and improvements comprising the Lease Premises and that Lessor has full right to enter into this lease. Lessor's duties and warranties are limited to those expressly stated in this lease and shall not include any implied duties or implied warranties, now or in the future. No representations or warranties have been made by Lessor other than those expressly contained in this lease.

**31.1 Place of Performance.**

Unless otherwise expressly stated in this lease, all obligations under this lease, including payment of rent and other sums due, shall be performed in the county where the office building is located, at the address designated from time to time by Lessor.

**32.1 Miscellaneous.**

This lease contains the entire agreement of the parties. **NO OTHER WRITTEN OR ORAL PROMISES OR REPRESENTATIONS HAVE BEEN MADE, AND NONE SHALL BE BINDING.** This lease supersedes and replaces any previous lease between the parties on Lessee's office space, including any renewals or extensions thereunder. Except for reasonable changes in written rules, this lease shall not be amended or changed except by written instrument, signed by both Lessor and Lessee. **LESSOR'S AGENTS DO NOT AND WILL NOT HAVE**

**AUTHORITY TO (1) MAKE EXCEPTIONS, CHANGES OR AMENDMENTS TO THIS LEASE, OR FACTUAL REPRESENTATIONS NOT EXPRESSLY CONTAINED IN THIS LEASE, (2) WAIVE ANY RIGHT, REQUIREMENT, OR PROVISION OF THIS LEASE, OR (3) RELEASE LESSEE FROM ALL OR PART OF THIS LEASE, UNLESS SUCH ACTION IS IN WRITING AND SIGNED BY BOTH PARTIES TO THIS LEASE.** Multiple lessees shall be jointly and severally liable under this lease. Notices, requests, or agreements to, from, or with one of multiple lessees shall be deemed to be to, from, or with all such Lessees. Under no circumstances shall Lessor or Lessee be considered an agent of the other. The lease shall not be construed against either party more or less favorably by reason of who drafted the lease or changes in the lease. Texas law applies. If any date of performance or exercise of a right ends on a Saturday, Sunday, or state holiday, such date shall be automatically extended through the next business day. Time is of the essence; and all performance dates, time schedules, and conditions precedent to exercising a right shall be strictly adhered to without delay except where otherwise expressly provided. Time for performance of non-monetary obligations of either party shall be reasonably extended to the extent delay is caused by force majeure (i.e. a cause such as riot, strikes, etc., beyond the control of the party obligated to perform). If any provision of this lease is invalid under present or future laws, the remainder of this lease shall not be affected.

### 33.1 Exhibit List.

The exhibits attached to this lease are listed below. All exhibits are hereby incorporated in this Agreement by reference as if written fully herein.

Exhibit A	Floor Plan of Lessee's Office Space
Exhibit B	Legal Description of Office Building
Exhibit K	Hazardous Materials Statement
Exhibit X	ATM Access Overview

### 34.1 Authority to Sign.

The names and signatures of all parties are shown below; and all persons signing have been duly authorized to sign.

(Signatures are located on the following page)

Building name: 111. N. Front Street  
 Lessor's Name: City of Kyle, Texas  
 Lessee's name: Hays County, Texas

Lessor initials: BS  
 Lessee initials: HC

**LESSOR**

CITY OF KYLE  
A TEXAS HOME-RULE MUNICIPALITY  
Printed name of company or firm (if applicable)

JAMES R. EARP, CPM  
Printed name of person signing

*J.R. Earp*  
Signature

Interim City Manager  
Title of person signing (if applicable)

100 W. Center Street, Kyle, Texas 78640  
Lessor Address

Jan. 05. 2011  
Date signed (Please initial all pages and exhibits)

**LESSEE**

HAYS COUNTY  
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS  
Printed name of company or firm (if applicable)

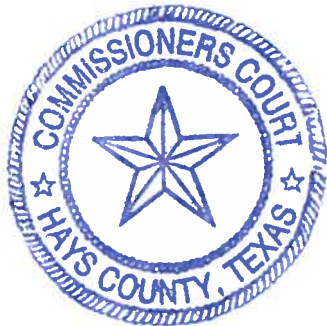
*Burt*  
BURT COBB, M.D.  
Printed name of person signing

*Burt Cobb*  
Signature

County Judge  
Title of person signing (if applicable)

111 E. San Antonio, San Marcos, Texas 78666  
Lessee Address

1/18/11  
Date signed (Please initial all pages and exhibits)



Attest: *Liz O'Connell*  
County Clerk

Building name: 111 N. Front Street  
Lessor's Name: City of Kyle, Texas  
Lessee's name: Hays County, Texas

Lessor initials: *RE*  
Lessee initials: *BC*

**EXHIBIT A**  
**(two pages)**

**Floor Plan of Lessee's Office Space**  
(see paragraph 1.1 of lease)

Building Name: 111 N. Front Street  
Suite Number(s): ALL

Usable SF: 8,098  
Rentable SF: 8,098

The parties agree that the floor plan outlined in bold or hashmarked below is a true and correct diagram of Lessee's office space referred to in paragraph 1.1.

(SEE THE FOLLOWING PAGE)

Building name: 111 N. Front Street  
Lessor's Name: City of Kyle, Texas  
Lessee's name: Hays County, Texas

Lessor initials: SP  
Lessee initials: bc

**EXHIBIT B**  
(one page)

**Legal Description of Office Building**  
by lot, block, subdivision, and county or  
by metes and bounds description  
(see paragraph 1.1 of lease)

**Legal Description:** ORIGINAL TOWN OF KYLE, BLOCK 3, LOT 5-6-7-8-9-10 & 22 FT OF 4, ACRES 0.4146  
**Acreage:** 0.4146  
**Cross Reference:** 11-4635-0300-00400-2  
**Undivided Interest:** 100%  
**Exemption Codes:**  
**Entity Codes:** CKY (CITY OF KYLE)  
EH2 (Hays CISD - CED)  
FHA (HAYS CO ES DIST #5)  
GHA (HAYS COUNTY)  
PCC (PLUM CREEK CONSERVATION DIST)  
RSP (SPECIAL ROAD)  
SHA (HAYS CISD)  
WEU (Edwards Undgr Water Dist)  
WPC (PLUM CREEK UNDERGROUND WATER)

**Building name:** 111. N. Front Street  
**Lessor's Name:** City of Kyle, Texas  
**Lessee's name:** Hays County, Texas

**Lessor initials:**   
**Lessee initials:** 

**EXHIBIT K**  
(one page)**Hazardous Materials Statement**

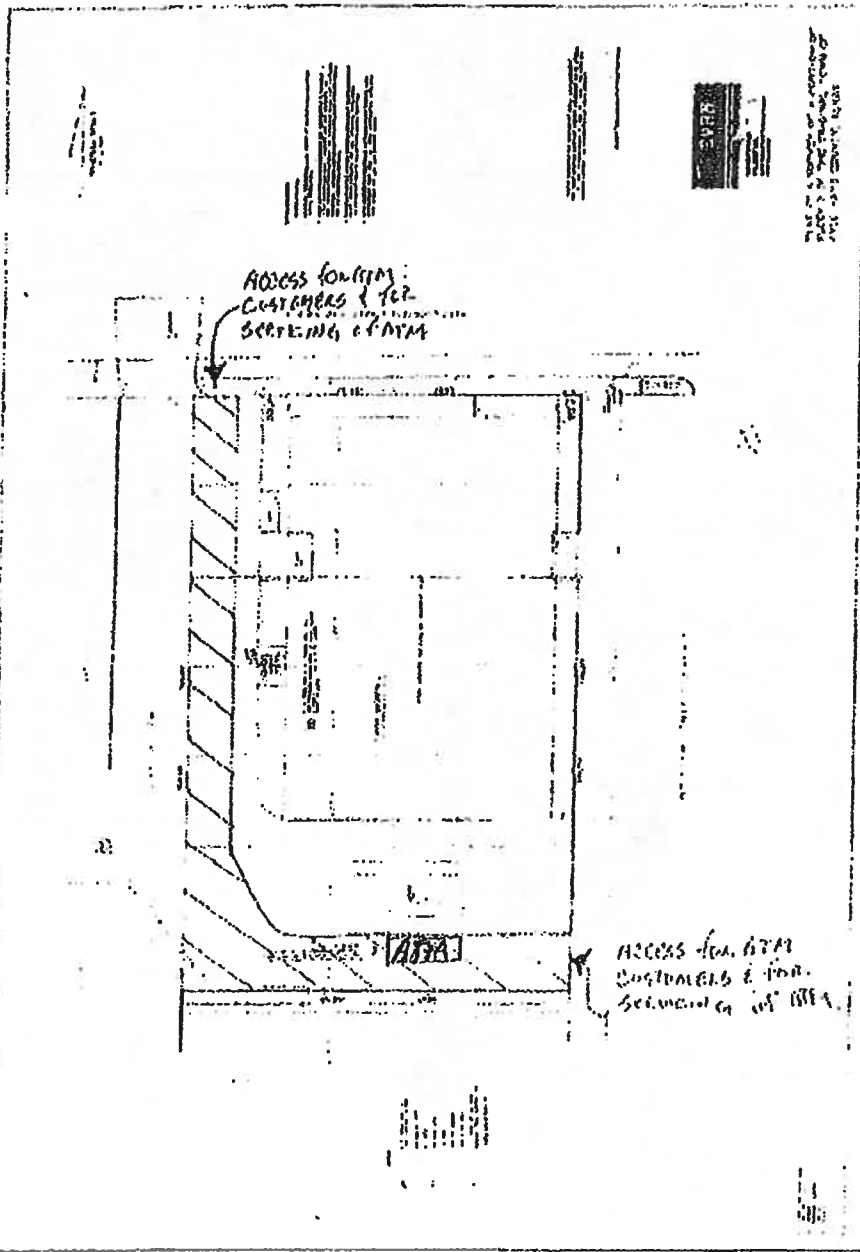
Various materials utilized in the construction of any improvements to the property or in the use thereof, past or present, may contain materials that have been or may in the future be determined to be hazardous. For example, some electrical transformers and other electrical components can contain PCBs, and asbestos may have been used in a wide variety of building components such as fire-proofing, air duct insulation, acoustical tiles, spray-on acoustical materials, linoleum, floor tiles and plaster. Such substances may be present on or in soils, underground water, building components or other portions of the leased premises in areas that may or may not be accessible or noticeable.

Current federal, state and local laws and regulations may require the clean-up of such hazardous or undesirable materials.

Lessor, real estate brokers, and leasing agents in this transaction have no expertise with respect to hazardous materials and have not made, nor will any of their statements constitute representations, either express or implied, regarding the existence or nonexistence of hazardous materials in or on the leased premises.



**EXHIBIT X**





**CERTIFIED COPY OF HAYS COUNTY COMMISSIONERS' COURT MINUTES**

\*\*\*\*\*

**STATE OF TEXAS \*  
COUNTY OF HAYS \***

**ON THIS THE 18<sup>TH</sup> DAY OF JANUARY A.D., 2011, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:**

**ALBERT H. COBB JR  
DEBBIE GONZALES INGALSBE  
MARK JONES  
WILL CONLEY  
RAY O. WHISENANT JR  
LIZ Q. GONZALEZ**

**COUNTY JUDGE  
COMMISSIONER, PCT. 1  
COMMISSIONER, PCT. 2  
COMMISSIONER, PCT. 3  
COMMISSIONER, PCT. 4  
COUNTY CLERK**

**AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:**

**27745      AUTHORIZE THE COUNTY JUDGE TO EXECUTE A LEASE AGREEMENT WITH THE CITY OF KYLE FOR THE COUNTY'S LEASE OF THE EXISTING PRECINCT 2 OFFICES AT 111 FRONT STREET IN KYLE, TEXAS**

A motion was made by Commissioner Jones, seconded by Commissioner Whisenant to authorize the County Judge to execute a Lease Agreement with the City of Kyle for the county's lease of the existing Precinct 2 offices at 111 Front Street in Kyle Texas also to amended the budget of \$21,000 annual. All voting "Aye". MOTION PASSED

**THE STATE OF TEXAS  
COUNTY OF HAYS**

I, Liz Q. Gonzalez, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Hays County, Texas, do hereby certify that the following contains a true and correct copy of the minutes of JANUARY 21, 2011 under Resolution #27745 in the Commissioners' Court Minutes of Hays County, Texas:

Given under my hand and seal of office at San Marcos, Texas this the 18<sup>TH</sup> day of JANUARY, 2011.

**LIZ Q. GONZALEZ, COUNTY CLERK AND  
EXOFFICIO CLERK OF THE HAYS  
COUNTY COMMISSIONERS' COURT**

BY

*[Handwritten signature of Liz Q. Gonzalez]*  
DEPUTY





DATE: JANUARY 21,2011

TO: CITY OF KYLE

FROM: HAYS COUNTY CLERK  
ROSE ROBINSON, DEPUTY

**SUBJECT:** EXECUTE A LEASE AGREEMENT WITH THE CITY OF KYLE FOR THE  
COUNTY'S LEASE OF THE EXISTING PRECINCT 2 OFFICES AT 111  
FRONT STREET IN KYLE

---

1. I've enclosed 1 original.
2. I've enclosed Certified Copy of the minutes of the approval.
3. Let me know if I can be of further assistance at 393-7333. Thanks

Hays County Clerk \* 137 N. Guadalupe, San Marcos, TX 78666 \* (512) 393-7330

**FIRST AMENDMENT AND RENEWAL OF INTERLOCAL AGREEMENT  
FOR  
COMMERCIAL OFFICE LEASE**

111 N. Front Street

This is the first amendment (hereinafter “Amended Agreement”) renewing the Interlocal Agreement for the Lease of Commercial Office Space (hereinafter “Agreement”) dated 12/7/10 and entered into by and between the City of Kyle, Texas a home-rule municipality, as (hereinafter “Lessor”) and Hays County, a political subdivision of the State of Texas as (hereinafter “Lessee”), whether one or more which is attached hereto as Exhibit “A-1,” and is incorporated herein by reference for all purposes as if fully copied and set forth at length. The above-cited parties shall be collectively referred to as “the parties to the Amended Agreement” or “the parties.”

In consideration of the renewal of the interlocal agreement for the commercial office lease, Lessee shall provide at no cost to Lessor herein, sufficient office space suitable to Lessor herein for the use of the City of Kyle Police Department in the Hays County Health Department Building located at: 150 Lockhart St., Kyle, TX 78640; said office space to be minimally provided during the term prescribed in Section 4.1 hereof. The provisions of the Agreement referenced below shall be amended in the manner specified herein. All other requirements of the Agreement aforementioned shall survive and be renewed in the manner prescribed herein. To the extent that any provision of this Amended Agreement shall conflict with the Agreement referenced herein, this document shall control.

**4.1 Term, Possession, and Anniversary.**

The lease term shall be for 12 full calendar months from commencement date and the last day of the lease term being November 30, 2012. The commencement date of this lease shall be December 1, 2011. Rent will begin to accrue on the lease commencement date. Lessor requires Lessee to provide, in written documentation, sixty-days (60) notice to surrender premises before the termination date of this contract. Should Lessee surrender leased premises prior to the end of the lease term, rent will be prorated through last day of the month Lessee surrenders the leased premises to Lessor.

*[This portion of the Agreement left intentionally blank]*

Building name: 111 N. Front Street  
Lessor's name: City of Kyle, Texas  
Lessee's name: Hays County Texas

Lessor's initials: \_\_\_\_\_  
Lessee's initials: \_\_\_\_\_

LESSOR

LESSEE

CITY OF KYLE  
A TEXAS HOME RULE MUNICIPALITY

HAYS COUNTY  
A POLITICAL SUBDIVISION OF THE  
STATE OF TEXAS

Lanny Lambert  
Printed name of person signing

Burt Cobb, M.D.  
Printed name of person signing

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

City Manager  
Title of person signing

County Judge  
Title of person signing

100 W. Center Street, Kyle, Texas 78640  
Lessor Address

111 E. San Antonio, San Marcos, Texas  
78666  
Lessor Address

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Date Signed

Building name: 111 N. Front Street  
Lessor's name: City of Kyle, Texas  
Lessee's name: Hays County Texas

Lessor's initials: \_\_\_\_\_  
Lessee's initials: \_\_\_\_\_

**EXHIBIT A-1**

(Attach copy of Interlocal Agreement for Commercial Office Lease.)

Building name: 111 N. Front Street  
Lessor's name: City of Kyle, Texas  
Lessee's name: Hays County Texas

Lessor's initials: \_\_\_\_\_  
Lessee's initials: \_\_\_\_\_

Item # 12



# CITY OF KYLE, TEXAS

## Plum Creek Golf Course Reclaimed Water Agreement

Meeting Date: 12/13/2011

Date time: 7:00 PM

**Subject/Recommendation:**

Consideration and Possible Action of Any and All Issues relating to the Renewal and Extension of the Reclaimed Water Agreement for the Plum Creek Golf Course; and Related Matters ~ *Diana Blank, Director of Economic Development*

**Other Information:**

**Budget Information:**

---

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [Plum Creek Water Use Agreement\\_DBC 11-8-11\\_2nd](#)
  - [City Redline - Plum Creek Water Use Agreement](#)
  - [Attachment A](#)
  - [Attachment B](#)
  - [Attachment C](#)
  - [City Attorney Concerns, Reclaimed Water Use Agreement](#)
  - [Reclaimed Water, Email](#)
-

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 \_\_\_\_\_ day of \_\_\_\_\_ 2011 is made by and between the City of Kyle, Texas, a Type A general law city ("City"), and Plum Creek Development Partners, Ltd. ("Purchaser").

W I T N E S S T H:

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

WHEREAS, Purchaser, as current owner of the 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, pursuant to the Development Agreement dated on or about April 15, 1997, between the City and Purchaser, upon completion of the Facilities (as defined below) the Purchaser has the right to all available Reclaimed Water (as defined below) from the City's wastewater plant through April 15, 2017;

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 “IRRIGATION SYSTEM” means the system installed on a portion of the Property for irrigation of the Property.

1.5 “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.

1.6 “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 that ensures a consistent and reliable deliverability of a minimum of 900,000 gallons a day (0.9 MGD) 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*.

1.7 “POINT OF DELIVERY” means the location at which title to the Reclaimed Water passes from the City to the Purchaser as such location is reflected on the facilities drawing

attached hereto for all purposes as *Attachments A and B*.

1.8 "PROPERTY" means the real property owned by Purchaser, and/or Purchaser's affiliates, which real property makes up the project known as Plum Creek. Some of the Property, has been developed as open space, as reflected on *Attachment C*, a portion of which is a golf course. A majority of the Reclaimed Water will be used on such open space.

1.9 "RECLAIMED WATER" means the treated wastewater effluent (also known as "grey water") produced from the City's Wastewater Treatment Plant.

1.10 "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.

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

1.12 "TREATED WASTEWATER EFFLUENT RATE" means the rate to be charged the Purchaser by the City (if the City owns the Facilities) per 1,000 gallons of Reclaimed Water that is equal to the City's operating and maintenance cost of the Facilities; provided that no such charge will be made by the City to Purchaser until after the City purchases the Facilities. After ten years from the date of this Agreement, the City may adjust the charge per 1,000 gallons annually based on actual increases in the City's operating and maintenance costs and market value, provided that the total charge does not exceed 125% of the City's actual operating and maintenance costs of the Facilities for the prior year.

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 use its best efforts to assist Purchaser with the relocation of any of its Facilities affected by such relocation, including, without limitation, obtaining and/or assigning to Purchaser any additional, necessary easements 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 in pursuant to terms and conditions acceptable to Purchaser, in Purchaser's reasonable discretion. 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. 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 (i) for irrigation of the Property , (ii) for irrigation of any other land owned or managed by Purchaser, (iii) to replenish lakes and ponds because of evaporation, (iv) for suppression of dust, and/or (v) for compaction of soil for construction purposes.

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, to 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).

### Section 4. QUANTITY AND UNIT MEASUREMENT

4.1 Quantity. The City agrees to sell and deliver Reclaimed Water to Purchaser at the Point of Delivery pursuant to this Agreement. Purchaser agrees to take at the Point of Delivery all Reclaimed Water desired for use by Purchaser pursuant to this Agreement during the entire term of this Agreement. 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 may not sell Reclaimed Water purchased from the City to any agency, individual, corporation, or other party.

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 lake and pond evaporation makeup, for dust suppression and/or for soil compaction related to construction on any part of the 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 to provide Reclaimed Water to Purchaser on and after the date of this Agreement in accordance with the terms of this Agreement.

6.2 Rate. If the City acquires the Facilities from Purchaser then the City shall charge Purchaser and Purchaser shall pay City for the Reclaimed Water delivered to the Purchaser at the Treated Wastewater Effluent Rate as defined in Section 1.12. The parties acknowledge and agree that as of the date of this Agreement and until the date the City acquires title to the Facilities from Purchaser, Purchaser shall not be charged for the Reclaimed Water provided to Purchaser pursuant to the terms of this Agreement.

6.3 Billing. If the City acquires title to the Effluent Pumping Facilities and the Effluent Transportation and Distribution Facilities from Purchaser, then the City shall bill Purchaser for Reclaimed Water sold under this Agreement as follows:

- a. Billing will be on a monthly basis.
- b. The City will submit to Purchaser a monthly statement for Reclaimed Water. The monthly statement will be payable on or before 10 days after receipt of the invoice.
- c. The City will retain the right to suspend water service if Purchaser has not paid its monthly statement by 10<sup>th</sup> day after receiving notice that the invoice is delinquent.

#### 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 feasible options, (ii) the City cannot locate another feasible 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 or to use the Reclaimed Water as a substitute for potable water in order to preserve public health. 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 objections 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 the Point of Delivery at which point title shall pass to Purchaser. The Point of Delivery is specifically delineated and shown on Attachment A and is located prior to the metering point where the water flowing from the City to Purchaser is measured.

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 fifteen (15) years.

10.2 Option for Renewal. The parties hereby agree that Purchaser shall have two option(s) to renew and extend the term of this Agreement, each for an additional ten (10) year term. Each such option shall be exercised in advance of the then current expiration date of this Agreement by Purchaser giving the City written notice one hundred eighty (180) days prior to the then current expiration date or within thirty (30) days of receipt of written notice from the City notifying Purchaser of its option rights, whichever comes later.

10.3 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.

10.4 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 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 SUPERSEDED

17.1 General. This Agreement constitutes the sole and only Agreement of the parties with respect to the delivery of Reclaimed Water to Purchaser and cancels and supersedes any prior understandings or oral or written Agreements between the parties respecting the subject matter.

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 \_\_\_ day of \_\_\_\_\_, 201\_, 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. Mahn, Vice President

THE CITY OF KYLE

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

ATTEST:

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

(SEAL)

**ATTACHMENT A**

[SEE EXHIBIT ATTACHED]

**ATTACHMENT B**

[SEE EXHIBIT ATTACHED]

**ATTACHMENT C**

[SEE EXHIBIT ATTACHED]

## ATTACHMENT D

### PARTIAL ASSIGNMENT OF EASEMENTS

Date: \_\_\_\_\_, 2011

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 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.

Reference is made to that certain Amended and Restated Reclaimed Water Use Agreement dated \_\_\_\_\_, 2011 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. Assignor, for the consideration and subject to the reservations from and exceptions to conveyance, grants, sells, assigns and conveys to Assignee the Easements, together with all and singular the rights and appurtenances thereto, in any wise belonging, to have and to hold them to Assignee, Assignee's successors and assigns forever. Assignor binds Assignor and its successors to warrant and forever defend all



and singular the Easements to Assignee and Assignee’s successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
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

By: BENCHMARK LAND DEVELOPMENT, INC.,  
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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
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.

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 \_\_\_\_ day of \_\_\_\_\_ 2011 is made by and between the City of Kyle, Texas, a Type A general law city (“City”), and Plum Creek Development Partners, Ltd. (“Purchaser”).

W I T N E S S T H:

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

WHEREAS, Purchaser, as current owner of the 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, pursuant to the Development Agreement dated on or about April 15, 1997, between the City and Purchaser, upon completion of the Facilities (as defined below) the Purchaser has the right to all available Reclaimed Water (as defined below) from the City’s wastewater plant through April 15, 2017;

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 “IRRIGATION SYSTEM” means the system installed on a portion of the Property for irrigation of the Property.

1.5 “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.

1.6 “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 that ensures a consistent and reliable deliverability of a minimum of 900,000 gallons a day (0.9 MGD) 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***.

1.7 "POINT OF DELIVERY" means the location at which title to the Reclaimed Water passes from the City to the Purchaser as such location is reflected on the facilities drawing attached hereto for all purposes as *Attachments A and B*.

1.8 "PROPERTY" means the real property owned by Purchaser, and/or Purchaser's affiliates, which real property makes up the project known as Plum Creek. Some of the Property, has been developed as open space, as reflected on *Attachment C*, a portion of which is a golf course. A majority of the Reclaimed Water will be used on such open space.

1.9 "RECLAIMED WATER" means the treated wastewater effluent (also known as "grey water") produced from the City's Wastewater Treatment Plant.

1.10 "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.

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

1.12 "TREATED WASTEWATER EFFLUENT RATE" means the rate to be charged the Purchaser by the City (if the City owns the Facilities) per 1,000 gallons of Reclaimed Water that is equal to the City's operating and maintenance cost of the Facilities; provided that no such charge will be made by the City to Purchaser until after the City purchases the Facilities. After ten years from the date of this Agreement, the City may adjust the charge per 1,000 gallons annually based on actual increases in the City's operating and maintenance costs and market value, provided that the total charge does not exceed 125% of the City's actual operating and maintenance costs of the Facilities for the prior year.

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 use its best efforts to assist Purchaser with the relocation of any of its Facilities affected by such relocation, including, without limitation, obtaining and/or assigning to Purchaser any additional, necessary easements 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 in pursuant to terms and conditions acceptable to Purchaser, in Purchaser's reasonable discretion. 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. 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 (i) for irrigation of the Property, (ii) for irrigation of any other land owned or managed by Purchaser, (iii) to replenish lakes and ponds because of evaporation, (iv) for suppression of dust, and/or (v) for compaction of soil for construction purposes.

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).

### Section 4. QUANTITY AND UNIT MEASUREMENT

4.1 Quantity. The City agrees to sell and deliver Reclaimed Water to Purchaser at the Point of Delivery pursuant to this Agreement. Purchaser agrees to take at the Point of Delivery all Reclaimed Water desired for use by Purchaser pursuant to this Agreement during the entire term of this Agreement. 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 may not sell Reclaimed Water purchased from the City to any agency, individual, corporation, or other party.

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 lake and pond evaporation makeup, for dust suppression and/or for soil compaction related to construction on any part of the 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 to provide Reclaimed Water to Purchaser on and after the date of this Agreement in accordance with the terms of this Agreement.

6.2 Rate. If the City acquires the Facilities from Purchaser then the City shall charge Purchaser and Purchaser shall pay City for the Reclaimed Water delivered to the Purchaser at the Treated Wastewater Effluent Rate as defined in Section 1.12. The parties acknowledge and agree that as of the date of this Agreement and until the date the City acquires title to the Facilities from Purchaser, Purchaser shall not be charged for the Reclaimed Water provided to Purchaser pursuant to the terms of this Agreement.

6.3 Billing. If the City acquires title to the Effluent Pumping Facilities and the Effluent Transportation and Distribution Facilities from Purchaser, then the City shall bill Purchaser for Reclaimed Water sold under this Agreement as follows:

- a. Billing will be on a monthly basis.
- b. The City will submit to Purchaser a monthly statement for Reclaimed Water. The monthly statement will be payable on or before 10 days after receipt of the invoice.

c. The City will retain the right to suspend water service if Purchaser has not paid its monthly statement by 10<sup>th</sup> day after receiving notice that the invoice is delinquent.

#### 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 ~~estimate~~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 ~~estimate~~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 objections 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 the Point of Delivery at which point title shall pass to Purchaser. The Point of Delivery is specifically delineated and shown on Attachment A and is located prior to the metering point where the water flowing from the City to Purchaser is measured.

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 fifteen (15) years.

10.2 Option for Renewal. The parties hereby agree that Purchaser shall have two option(s) to renew and extend the term of this Agreement, each for an additional ten (10) year term. Each such option shall be exercised in advance of the then current expiration date of this Agreement by Purchaser giving the City written notice one hundred eighty (180) days prior to the then current expiration date or within thirty (30) days of receipt of written notice from the City notifying Purchaser of its option rights, whichever comes later.

10.3 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.

10.4 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 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 SUPERSEDED

17.1 General. This Agreement constitutes the sole and only Agreement of the parties with respect to the delivery of Reclaimed Water to Purchaser and cancels and supersedes any prior understandings or oral or written Agreements between the parties respecting the subject matter.

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 \_\_\_ day of \_\_\_\_\_, 201\_, 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. Mahn, Vice President

THE CITY OF KYLE

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

ATTEST:

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

(SEAL)

**ATTACHMENT A**

[SEE EXHIBIT ATTACHED]

**ATTACHMENT B**

[SEE EXHIBIT ATTACHED]

**ATTACHMENT C**

[SEE EXHIBIT ATTACHED]

## ATTACHMENT D

### PARTIAL ASSIGNMENT OF EASEMENTS

Date: \_\_\_\_\_, 2011

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 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.

Reference is made to that certain Amended and Restated Reclaimed Water Use Agreement dated \_\_\_\_\_, 2011 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. Assignor, for the consideration and subject to the reservations from and exceptions to conveyance, grants, sells, assigns and conveys to Assignee the Easements, together with all and singular the rights and appurtenances thereto, in any wise belonging, to have and to hold them to Assignee, Assignee's successors and assigns forever. Assignor binds Assignor and its successors to warrant and forever defend all and singular the Easements to Assignee and Assignee's successors and assigns against every person

whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

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 \_\_\_\_\_, 2011.



**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.



Document comparison by Workshare Professional on Tuesday, November 08, 2011  
5:31:58 PM

Input:	
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Description	Plum Creek Water Use Agreement _DBC 9-30-11
Document 2 ID	interwovenSite://IMANAGE/Interwoven/1123824/14
Description	#1123824v14<Interwoven> - Plum Creek Water Use Agreement _DBC 11-8-11_2nd
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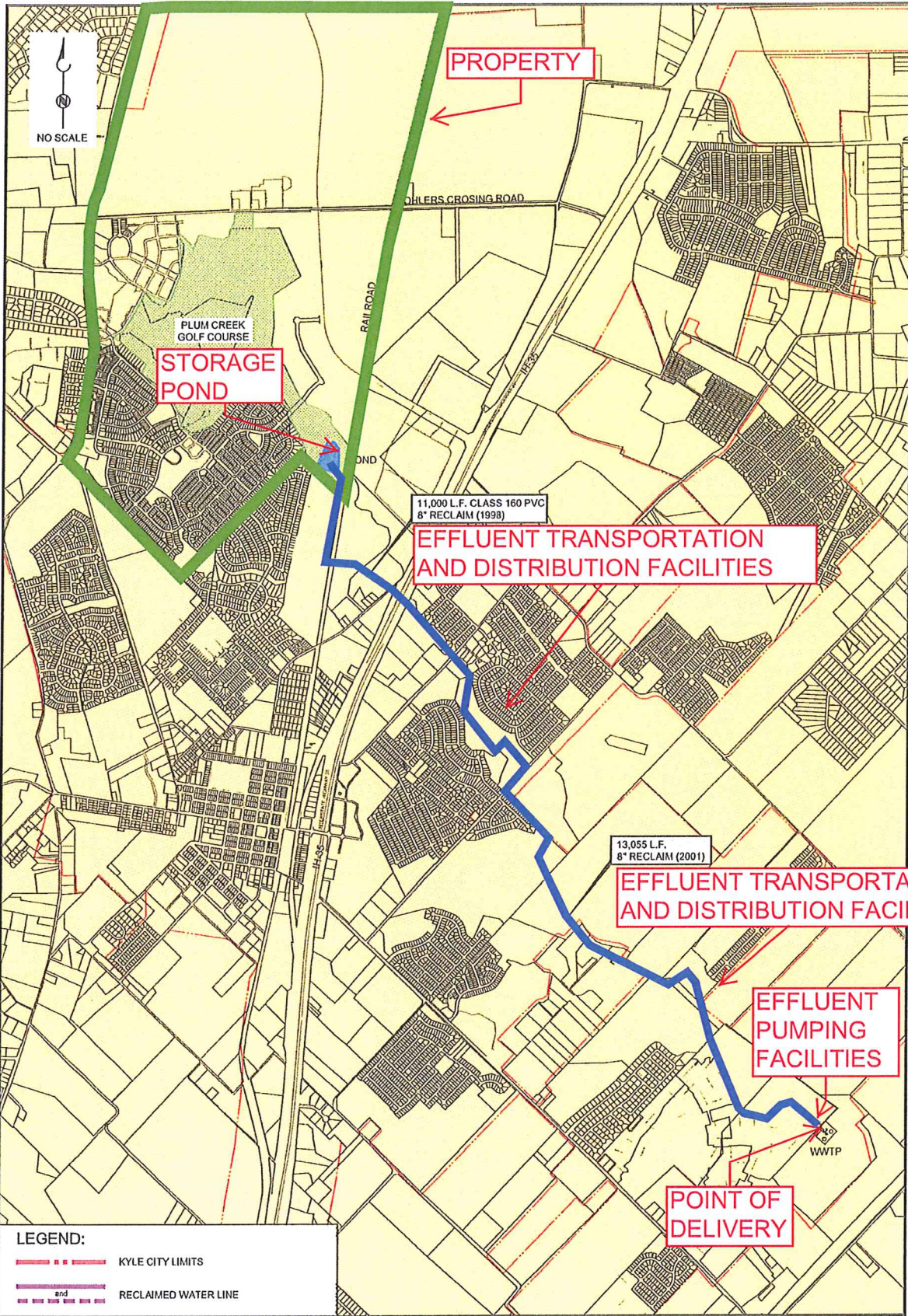
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<a href="#">Moved to</a>	
Style change	
Format change	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	8
Deletions	5
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	13

**City Attorney Concerns**  
**RE: Reclaimed Water Use Agreement**

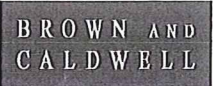
Contract Section

- 3d.** Whereas . . . Not entitled to all available reclaimed water
- 1.6** Not minimum of 900,000 gallons-per day but maximum of 900,000 gallons-per day
- 1.7** Point of Delivery is at mixer box
- 1.13** City not obligated to acquire row/easements for utility lines if plant moves
- 2.2** If facilities are conveyed to city – cost of conveyance should be identified . . . (i.e. construction cost less depreciation)
- 3.1** City will not guarantee or warrant quality of the reclaimed water
- 3.3** End use should be specified as for golf course irrigation only
- 4.2** Purchaser (golf course) may not sell reclaimed water to anyone
- 7.4** Emergency situation should not require 120 days written notice (30 days or less)
- 9.3** Effluent water always belongs to City
- 10.1** Term should be 10 years or less
- 10.2** No option to renew or renewal not automatic



**LEGEND:**  
 - - - - - KYLE CITY LIMITS  
 ——— RECLAIMED WATER LINE

P:\GIS\City of Kyle\122525-Kyle Water System\Map\011-Kyle\011-Kyle\Reclaimed Water System\Reclaimed Water System.mxd  
 04/16/2009 1:35pm



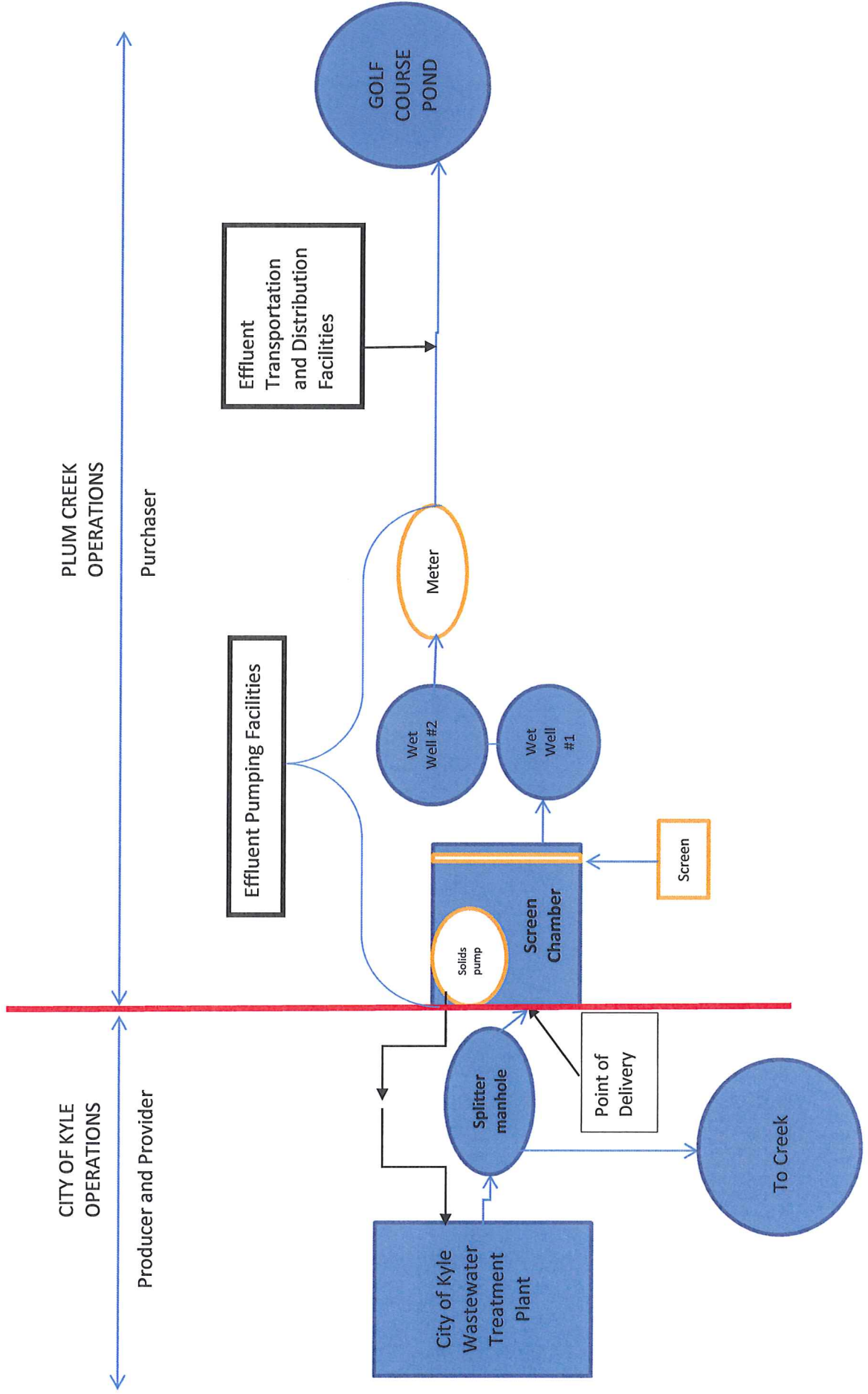
**RECLAIMED WATER TRANSMISSION FACILITIES EVALUATION**  
**EXISTING RECLAIMED WATER SYSTEM**



**ATTACHMENT A**

Item # 13

Attachment B  
System Schematic for Operation and Maintenance







Grace Nino &lt;gracenino@cityofkyle.com&gt;

## Fwd: Please provide us with your questions or comments in advance of tomorrow night's reclaimed water workshop

1 message

Lanny Lambert <l.lambert@cityofkyle.com>  
To: GRACE NINO <gracenino@cityofkyle.com>

Wed, Nov 30, 2011 at 8:02 AM

copy for me, thanks, lan

----- Forwarded message -----

From: peter french <[peterfrench@gmail.com](mailto:peterfrench@gmail.com)>  
Date: Mon, Nov 28, 2011 at 4:34 PM  
Subject: Please provide us with your questions or comments in advance of tomorrow night's reclaimed water workshop  
To: [mayor@cityofkyle.com](mailto:mayor@cityofkyle.com), [district4rep@cityofkyle.com](mailto:district4rep@cityofkyle.com), [beckydist2@yahoo.com](mailto:beckydist2@yahoo.com), [district3rep@cityofkyle.com](mailto:district3rep@cityofkyle.com), [district6rep@cityofkyle.com](mailto:district6rep@cityofkyle.com), [district1rep@cityofkyle.com](mailto:district1rep@cityofkyle.com), [district5rep@cityofkyle.com](mailto:district5rep@cityofkyle.com), [l.lambert@cityofkyle.com](mailto:l.lambert@cityofkyle.com), [jrearp@cityofkyle.com](mailto:jrearp@cityofkyle.com), Diana Blank <[diana@cityofkyle.com](mailto:diana@cityofkyle.com)>

Dear Mayor, Council and staff,

We look forward to seeing all of you at tomorrow night's workshop to discuss the proposed renewal of the Plum Creek Golf Course Reclaimed Water Agreement. In advance of that meeting we wanted to solicit any specific questions you might have so that we may be better prepared to answer them. Please feel free to email or call me on my mobile at [\(512\) 217-2786](tel:5122172786) with any questions or comments you may have.

We thought that it might also be helpful to provide you all with some additional history about the course and to bring you up to speed on some of the opportunities our team is currently contemplating. We want you to know that have also been working with your reclaimed water consultant to discuss how we can work with Kyle in the short and long-term to help you expand your system.

In the late 1990's Plum Creek Development gave the land for the Plum Creek Golf Course to a 3rd party so that they could build and operate a public golf course in the City of Kyle. At the same time the golf course developer worked with the city of Kyle to design, permit and build a pump and wet-well system and an 8" transmission line that would carry treated effluent water from the treatment plant to a lake in the Plum Creek Golf Course. This infrastructure was installed, continues to be owned by, and has been maintained at the sole cost of Plum Creek Golf. Because Plum Creek Development and the City of Kyle contemplated that this opportunity to partner would someday come, Section 3.06(b) was included in Plum Creek's Master Development Agreement with the City of Kyle before the golf course was built. An

Item # 13

excerpt from that Section of the Development Agreement from April of 1997 provides us with rights to all of the city's treated effluent through-out the term of our Development Agreement which runs through April of 2017.

"...upon completion of the effluent transportation and distribution facilities, storage pond and pumping facilities, the City shall provide all available treated effluent from the City's wastewater plan to the storage pond, subject to TNRCC approval."

We are NOT asking for all of the city's treated effluent, only the amount needed to irrigate the golf course in exchange for our continued and increased investment in the golf course and our investment in the maintenance and operations of the pumping and transportation system. We support and will continue to assist the City of Kyle in your efforts to expand your reclaimed water system so that a third-utility may someday be created in Kyle.

Over the years the golf course has gone bankrupt and changed hands four times. In 2010, the year before we acquired the course at a foreclosure auction on the steps of the Hays County Courthouse the golf course lost somewhere between \$300,000 and \$600,000. A component of the operating costs in each of those years was maintaining and cleaning the pumps and wet well that receives the treated effluent water. We estimate those annual costs to be between \$50,000 and \$60,000. The quality of the treated effluent has contributed to above average maintenance costs and since we have taken over the ownership of the facility we have designed and proposed to install at our cost a new screening chamber system which will help alleviate this problem and will result in fewer untreated solids being discharged downstream. We are proposing that we will continue to pay for these maintenance costs going forward.

Looking forward we are actively in negotiations with both the Men's and Women's Texas State University Golf teams to become the home course for their Division I golf programs. This would be a tremendous feather in the City of Kyle's cap, bringing both national recognition and tourism dollars to the city. Texas State's interest in Plum Creek Golf Course includes their desire to partner with us on improving our practice facilities and in the design of a new driving range. In order for Texas State University to justify making an investment with us at the Plum Creek Golf Course they need us to assure them that there will be a golf course over the long-term. In order for us to make this representation we in-tum need to secure a long-term agreement with Kyle for reclaimed water. We are being asked to make similar commitments to prospective buyers of commercial property that is contiguous to the golf course. The value of this property is directly related to the golf course, and there is a considerable amount of property tax revenue that could be generated by this upscale golf course housing.

We look forward to discussing all of this in more detail tomorrow but wanted to again invite your questions and comments now so that we can be more prepared.

Sincerely,

Peter French

(512) 217-2786

[peterfrench@gmail.com](mailto:peterfrench@gmail.com)

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