

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 5/15/2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas for the purpose of discussing the following agenda.

Posted this 10th day of May, 2012 prior to 7:00 p.m.

I. Call Meeting To Order

II. Approval of Minutes

1. City Council Regular Meeting - May 1, 2012 ~ *Amelia Sanchez, City Secretary*

 [Attachments](#)

III. Citizen Comment Period With City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak 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.

IV. Presentation

2. The Kyle City Council will recognize Council Members Jaime Sanchez and Russ Huebner for their dedication and service to the City of Kyle ~ *Lucy Johnson, Mayor*

 [Attachments](#)

V. Proclamations

3. Proclamation of the City of Kyle recognizing May 28, 2012 as "Memorial Day" in Kyle, Texas ~ *David Wilson, Mayor Pro Tem*

 [Attachments](#)

4. Proclamation of the City of Kyle recognizing May 15, 2012 as "Gary Van der Wege Day" in Kyle, Texas ~ *David Wilson, Mayor Pro Tem*

 [Attachments](#)

5. Proclamation of the City of Kyle Designating May 13-19, 2012 as "Police Week" in the Kyle, Texas ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

VI. Appointments

6. Consideration of Nomination for Appointment to the Planning and Zoning Commission

~ *Lucy Johnson, Mayor*

- *Dan Ryan*

 [Attachments](#)

VII. Consider and Possible Action

7. A RESOLUTION BY THE CITY OF KYLE CERTIFYING THE ELECTION RESULTS OF THE SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, INCLUDING MIXED BEVERAGES; AND PROVIDING AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

 [Attachments](#)

8. (*First Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS; AUTHORIZING THE ADOPTION OF A SETTLEMENT OF THE APPLICATION FOR AN INCREASE IN WATER AND SEWER RATES BY MONARCH UTILITIES I, L.P. NEGOTIATED BY REPRESENTATIVES OF THE COALITION OF CITIES, (INCLUDING THE CITIES OF BLUE MOUND, BUDA, IVANHOE AND KYLE), TAMER (ON BEHALF OF ENVIRONS CUSTOMERS), THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION OF ENVIRONMENTAL QUALITY, MONARCH UTILITIES I, L.P., AND OTHER PARTIES WHO ARE EXPECTED TO JOIN IN ADOPTING THE PROPOSED SETTLEMENT; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

- *Public Hearing*

 [Attachments](#)

9. (*First Reading*) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, ("CITY") APPROVING IMPLEMENTATION OF THE FEBRUARY 10, 2012, INTERIM RATE ADJUSTMENT FILING PURSUANT TO THE TEXAS UTILITIES CODE SEC. 104.301 OF TEXAS GAS SERVICE COMPANY, A DIVISION OF ONEOK, INC. ("TGS" OR "COMPANY"); AND DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; AND DECLARING AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

 [Attachments](#)

10. Authorize the negotiation of a Professional Services Agreement with RPS ESPEY to perform the Engineering Services associated with the “E 11-12-01” City of Kyle “Southside Wastewater and Elliott Branch Wastewater Interceptor Improvements” (Impact Fee Capital Improvements) Projects ~ *Steven Widacki, P.E., City Engineer*

 [Attachments](#)

11. Authorize the Execution of a Professional Services Agreement with NEPTUNE-WILKINSON ASSOCIATES, INC. (NWA) to perform the Engineering Services associated with "Kyle Parkway and Bebee Road Alignment Study" in an amount Not to Exceed \$6,500.00 ~ *Steven Widacki, P.E., City Engineer*

 [Attachments](#)

12. Authorize Execution of Advance Funding Agreement (AFA) with Texas Department of Transportation for a Metropolitan Mobility and Rehabilitation Project On-System to Construct Sidewalks and Bike Lanes on FM 2770 from Hays High School to RM 150 (Rebel Drive) and on RM 150 from FM 2770 to N. Burleson Street. Funding from Federal and State participation for Engineering and Construction totals \$963,000.00. Total Project Funds under the AFA are \$1,010,298.00 to cover State Costs for Review, Inspection and Oversight of work performed. Local (City of Kyle) participation in the overall project cost is estimated to be \$0.00 ~ *Steven Widacki, P.E., City Engineer*

 [Attachments](#)

13. Authorize the Execution of a Professional Services Agreement with DIANNA L. TINKLER (DLT) to perform the services associated with “Right of Way Services – Bunton Creek WW Interceptor, Ph. 3” (WW Impact Fee Project) in an amount Not to Exceed \$29,785.00 ~ *Steven Widacki, P.E., City Engineer*

 [Attachments](#)

14. Authorize the Execution of a Professional Services Agreement with ECS TEXAS, LLP (ECS) to perform the Engineering Services associated with “Subsurface Exploration - Bunton Creek WW Interceptor” (WW impact fee project) in an amount Not to Exceed \$4,401.25 ~ *Steven Widacki, P.E., City Engineer*

 [Attachments](#)

VIII. City Managers Report

15. Update on Various Capital Improvement Projects, Road Projects, Building Program, and/or General Operational Activities ~ *Lanny Lambert, City Manager*
 - Update on next Community Visioning Session

 [Attachments](#)

IX. Executive Session

16. Convene into Executive Session pursuant to Section 551.071 (Consultation with Attorney) to discuss water fee dispute with United Apartment Group

 [Attachments](#)

17. Reconvene into Open Session to take action as deemed appropriate in the City Council's discretion regarding water fee dispute with United Apartment Group

 [Attachments](#)

X. 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

City Council Regular Meeting - May 1, 2012

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: City Council Regular Meeting - May 1, 2012 ~ *Amelia Sanchez, City Secretary*

Other Information: This item is for formal approval of the minutes from the May 1st Regular Meeting of the City Council, a copy of which is included with the meeting packet.

Budget Information: N/A

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

Attachments / click to download

[City Council Regular Meeting Minutes - May 1, 2012](#)

REGULAR CITY COUNCIL MEETING

The City Council of the City of Kyle, Texas met in Regular Session on May 1, 2012 at 7:00 pm at Kyle City Hall, with the following persons present:

Mayor Lucy Johnson	Todd Webster
Mayor Pro Tem David Wilson	Elizabeth Hernandez
Council Member Diane Hervol	Diego Rangel
Council Member Becky Selbera	Chris Stokes
Council Member Russ Huebner	Tim Miller
Council Member Brad Pickett	
Lanny Lambert, City Manager	
James Earp, Assistant City Manager	
Jerry Hendrix, Director of Communications	
Perwez Moheet, Director of Finance	
Mario Perez, Building Official	
Sophia Nelson, Director of Planning	
Kerry Urbanowicz, Director Parks and Recreation	
Connie Brooks, Library Director	
Jeff Barnett, Chief of Police	
Frank Garza, City Attorney	

CALL MEETING TO ORDER

Mayor Johnson called the meeting to order at 7:07 pm.

ROLL CALL

Mayor Johnson called for roll call. Present were Mayor Johnson, Council Members Hervol, Selbera, Huebner, Pickett and Mayor Pro Tem Wilson.

Mayor Johnson stated she got word that Council Member Sanchez would not attend.

APPROVAL OF MINUTES

CITY COUNCIL REGULAR MEETING – April 17, 2012 ~ *AMELIA SANCHEZ, CITY SECRETARY*

Council Member Huebner moves to approve the minutes of the April 17, 2012 Regular City Council Meeting. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

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.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

Mayor Johnson opened the citizens comment period at 7:08 pm and called for comments on items not on the agenda or posted for public hearing. Todd Webster spoke about a home in his neighborhood that is a major concern to the neighbors. He stated that the home is a gathering place for thugs and that he has witnessed drug consumption going on, loitering and trash everywhere. He stated that the neighbors are fearful, that his own 9 year old child does not feel safe, and that they would be re-establishing the neighborhood association and would appreciate any help the Council could give. Elizabeth Hernandez, spoke and stated that she lives across the street from these same people and that her home day care was being negatively affected. She stated that she has heard screaming, and a gun shot and has had a parent withdraw her child from the daycare. Her daughter does not feel safe either and that friends will not come over due to the problems created by the people in that home. Ms. Hernandez stated that it is getting very scary over there and that she has trouble sleeping at night. Diego Rangel spoke about the same neighbors and stated that his nephews do not want to come over to visit because they are afraid of the 10 to 15 people that are at this house and that the children are intimidated by them as well as other family members that visit. Chris Stokes spoke on item #24 on the agenda representing Lamar Advertising, his employer, and they are wanting to change the facing on one of their billboards located in the City to a digital facing. He stated that they have the support of the local Chamber and business community and it would help bring in traffic off of 35 into Kyle and increase the City's tax revenue. Tim Miller spoke and stated that parameters are the core of all civilizations and that we need our City leaders to develop parameters such as ordinances that will protect and uphold standards in the whole community. He stated that recently some heritage oak trees were cut down to make way for more development and that citizens were upset but that the City of Kyle does not have a tree ordinance that protects heritage oaks in the city limits or its ETJ. He stated that the Council had reviewed ordinance material but fortunately no action was made because it made no mention of protecting heritage oaks only of cutting down of trees. He stated that as the city grows so should ordinances or parameters. With no one else wishing to speak Mayor Johnson closed citizen's comments at 7:18 pm.

Mayor Johnson states that at the request of Staff and Council she will move to item #3.

RECOGNITION OF THE INAUGURAL GRADUATING CLASS OF THE KYLE POLICE CITIZENS ACADEMY ~ JEFF BARNETT, CHIEF OF POLICE

Police Chief Jeff Barnett introduces the first graduating class of the Kyle Police Citizens Academy.

CITY COUNCIL REGULAR MEETING
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 Kyle City Hall

- *John Atkins*
- *Kenneth Christie*
- *Denis Fahy*
- *Mike Fulton*
- *Cindy Lawton*
- *Richard Lawton*
- *Melodee Lujano*
- *Kendra Marsteller*
- *Kim Parham*
- *Ken Pelech*
- *Jessie Ramirez*
- *Maria Requejo Lee*
- *Mike Rubsam*
- *Roberto Sierra*
- *Maximo Vasquez*

PRESENTATION

RECOGNITION OF EMPLOYEE OF THE MONTH FOR THE MONTH OF APRIL ~
 LANNY LAMBERT, CITY MANAGER

Nathan Wehrman, Building Maintenance Tech

Lanny Lambert, presented the Employee of the Month award to Nathan Wehrman.

PROCLAMATIONS

PROCLAMATION OF THE CITY OF KYLE, TEXAS DECLARING THE WEEK OF
 APRIL 29TH THROUGH MAY 5TH, 2012 AS "MUNICIPAL CLERKS WEEK" IN
 THE CITY OF KYLE, TEXAS ~ *LUCY JOHNSON, MAYOR*

Mayor Johnson read and presented a Proclamation of the City of Kyle, Texas Declaring the Week of April 29th through May 5th, 2012 as "Municipal Clerks Week" in the City of Kyle, Texas to City Secretary Amelia Sanchez.

PROCLAMATION OF THE CITY OF KYLE, TEXAS DECLARING THE MONTH
 OF MAY 2012 AS OLDER AMERICANS MONTH 2012 -"NEVER TOO OLD TO
 PLAY" IN THE CITY OF KYLE, TEXAS ~ *COUNCIL MEMBER BRAD PICKETT*

Mayor Johnson read a Proclamation of the City of Kyle, Texas Declaring the Month of May 2012 as Older Americans Month 2012 -"Never too Old to Play" in the City of Kyle, Texas, and was accepted by Ed Winn on behalf of KASZ.

CITY COUNCIL REGULAR MEETING

May 1, 2012 – Page 4

Kyle City Hall

CONSENT AGENDA

CONSIDERATION AND APPROVAL OF A RESOLUTION TO UPDATE AND REAFFIRM SIGNATURE AUTHORITY OF CITY'S AUTHORIZED REPRESENTATIVES FOR INVESTMENT OF CITY FUNDS IN TEXAS LOCAL GOVERNMENT INVESTMENT POOL (TEXPOOL) ~ *PERWEZ A. MOHEET, CPA, DIRECTOR OF FINANCE*

KYLE PROJECT LLC SUBDIVISION (SFP-12-002) 3.009 ACRES; 1 LOT LOCATED SOUTH OF WINDY HILL ROAD JUST WEST OF MATHIAS OWNER: NABI, LLC AGENT: RICHARD RALF, PROFESSIONAL LAND SURVEYING
~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning Commission voted 6-0 to approve the short form plat

PLUM CREEK PHASE 1 SECTION 6D AMENDED PLAT OF LOTS 1 & 12, BLOCK B; LOTS 1, 12 & 18, BLOCK E, LOTS 9 & 15, BLOCK J AND LOTS 9 & 15, BLOCK K (AFP-12-001) 1.42 ACRES; 9 SINGLE FAMILY LOTS LOCATED IN PLUM CREEK PHASE 1 SECTION 6D NEAR THE INTERSECTION OF HERZOG AND KIRBY; AGENT: ALAN RHAMES, P.E., AXIOM ENGINEERS, INC.
~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning Commission voted 6-0 to approve the Amended Plat

AUTHORIZE THE CITY MANAGER TO ACCEPT A MONETARY DONATION IN THE AMOUNT OF \$1,000.00 FROM THE PEDERNALES ELECTRIC COOPERATIVE, INC., OF JOHNSON CITY, TEXAS, FOR THE BENEFIT OF THE CITY'S PUBLIC LIBRARY ~ *CONNIE BROOKS, DIRECTOR OF PUBLIC LIBRARY*

Council Member Huebner moves to approve Consent Agenda Items #6 ~ A Resolution to update and reaffirm signature authority of City's authorized representatives for investment of City funds in Texas Local Government Investment Pool (TexPool; Item #7 ~ Kyle Project LLC Subdivision (SFP-12-002) 3.009 acres; 1 Lot; Located south of Windy Hill Road just west of Mathias; Owner: NABI, LLC.; Agent: Richard Ralf, Professional Land Surveying; Item #8 ~ Plum Creek Phase 1 Section 6D Amended Plat of Lots 1 & 12, Block B; Lots 1, 12 & 18, Block E, Lots 9 & 15, Block J and Lots 9 & 15, Block K (AFP-12-001) 1.42 acres; 9 Single Family Lots; Located in Plum Creek Phase 1 Section 6D near the intersection of Herzog and Kirby; Agent: Alan Rhames, P.E., Axiom Engineers, Inc.; Item #9 ~ Authorize the City Manager to accept a monetary donation in the amount of \$1,000.00 from the Pedernales Electric Cooperative, Inc., of

Johnson City, Texas, for the benefit of the City's Public Library. Council Member Hervol seconds the motion. All votes aye. Motion carried.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

CONSIDER AND POSSIBLE ACTION

Mayor Johnson states that she will recuse from Item #10 due to close family ties.

A RESOLUTION OF THE CITY OF KYLE, TEXAS RECOGNIZING THE BURDINE JOHNSON FOUNDATION FOR THEIR CONTRIBUTION OF A \$200,000 GRANT FOR THE NEW KYLE PUBLIC LIBRARY FOR UPDATING AND ENLARGING THE LIBRARY'S BOOK COLLECTION; RESOLVING THAT THE COMMUNITY MEETING AREA OF THE NEW PUBLIC LIBRARY BE NAMED "THE BURDINE AND JACK JOHNSON WING"; MAKING FINDINGS OF FACT AND PROVIDING FOR RELATED MATTERS ~ *CONNIE BROOKS, DIRECTOR OF KYLE PUBLIC LIBRARY*

Mayor Pro Tem Wilson moves to approve A Resolution of the City of Kyle, Texas recognizing the Burdine Johnson Foundation for their contribution of a \$200,000.00 grant for the new Kyle Public Library for updating and enlarging the Library's Book Collection; Resolving that the Community Meeting Area of the New Public Library be named "The Burdine and Jack Johnson Wing". Council Member Hervol seconds the motion. All votes aye. Motion carried.

Mayor Johnson returns to the dais.

A RESOLUTION OF THE CITY OF KYLE, TEXAS RECOGNIZING THE CONTRIBUTIONS FOR THE NEW KYLE PUBLIC LIBRARY IN MEMORY OF CHARLENE DORMAN; RESOLVING THAT A PLAQUE STATING THAT THE FURNISHINGS FOR THE LIBRARY'S QUIET READING ROOM HAVE BEEN GIVEN IN MEMORY OF CHARLENE DORMAN BY KEN AND DIANA DORMAN AND FRIENDS AND BE PLACED IN THE QUIET READING ROOM; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS ~ *CONNIE BROOKS, DIRECTOR OF PUBLIC LIBRARY*

Council Member Huebner moves to approve A Resolution of the City of Kyle, Texas recognizing the contributions for the New Kyle Public Library in Memory of Charlene Dorman Resolving that a Plaque stating that the Furnishings for the Library's Quiet Reading Room have been given in Memory of Charlene Dorman by Ken and Diana Dorman and Friends and to be Placed in the Quiet Reading Room. Council Member Pickett seconds the motion.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

AUTHORIZE AWARD AND EXECUTION OF A PURCHASE ORDER TO LESLIE'S SWIMMING POOL SUPPLIES OF PHOENIX, ARIZONA, IN AN AMOUNT NOT TO EXCEED \$6,134.99 TO PURCHASE AN ADA COMPLIANT POOL LIFT FOR THE CITY POOL ~ *ERIN BLANTON, POOL MANAGER*

Council Member Huebner moves to approve and Authorize award and execution of a Purchase Order to LESLIE'S SWIMMING POOL SUPPLIES of Phoenix, Arizona, in an amount Not to Exceed \$6,134.99 to purchase an ADA compliant Pool Lift for the City Pool. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

DACY VILLAGE PRELIMINARY PLAN (PP-11-002) 23.77 ACRES; 43 LOTS LOCATED ON THE SOUTHSIDE OF BEBEE ROAD JUST WEST OF DACY LANE OWNER: DACY LANE, LLC; AGENT: HUGO ELIZONDO, JR., P.E., CUATRO CONSULTANTS ~ *SOFIA NELSON, DIRECTOR OF PLANNING*

PLANNING AND ZONING COMMISSION VOTED 6-0 TO DENY TO PARKLAND VARIANCE REQUEST AS OUTLINED BY APPLICANT.

- *ACT ON PARKLAND VARIANCE REQUEST*

Mayor Johnson moves to approve the Dacy Village Preliminary Plan and recommend that any improvements made to the waste water line that services the Kyle Vista Park shall be deducted from the required park land fees and request all fees at the time of building permitting. Council Member Selbera seconds the motion.

Mayor Johnson withdraws the motion.

Mayor Johnson moves to approve the Dacy Village Preliminary Plan also moving that any improvements made to the waste water line that services the Kyle Vista Park shall be deducted from the required park fees and that the fees related to the Town Home Lots be paid prior to final plat and the fees with Single Multi Family Lots be paid at the building permit. Council Member Huebner seconds the motion.

Mayor Johnson calls for a roll call vote. Mayor Johnson, Mayor Pro Tem Wilson, Council Members Selbera, Huebner, and Pickett vote aye. Council Member Hervol votes nay. Motion carried 5-1.

D.A. YOUNG ADDITION REPLAT OF LOTS 7 AND 8, BLOCK 10.33 ACRES; 1 LOT LOCATED AT 808 FIRST STREET; OWNER: RODOLFO AND SANTOS CEDILLO; AGENT: KELLY KILBER, P.E., PRO-TECH ENGINEERING GROUP, INC. ~ *SOFIA NELSON, DIRECTOR OF PLANNING*

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 Kyle City Hall

PLANNING AND ZONING COMMISSION VOTED 6-0 TO APPROVE THE REPLAT AND VARIANCE REQUEST

Act on variance request to relieve property owner of the obligation to open existing platted alley.

Council Member Huebner moves to approve the D.A. Young Addition Replat of Lots 7 and 8, Block 1; 0.33 acres; 1 Lot; Located at 808 First Street; and to relieve the property owner of the obligation of paving the existing alley. Owner: Rodolfo and Santos Cedillo. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

FELLOWSHIP CHURCH AT PLUM CREEK (SD-11-012) 3.077 ACRES; 10,770 SQUARE FOOT BUILDING LOCATED WITHIN THE 1700 BLOCK OF KIRBY; APPLICANT: FELLOWSHIP AT PLUM CREEK, LP; AGENT: LYNN ALDERSON, P.E., ALDERSON GROUP, INC.~ *SOFIA NELSON, DIRECTOR OF PLANNING*

PLANNING AND ZONING COMMISSION VOTED 6-0 TO APPROVE THE SITE PLAN

- *PUBLIC HEARING*

Mayor Johnson opens the Public Hearing at 8:55 P. M. to hear comments on Fellowship Church at Plum Creek. With no one wishing to speak Mayor Johnson closes the Public Hearing at 8:55 P. M.

Council Member Huebner moves to approve the Fellowship Church at Plum Creek (SD-11-012)3.077 acres; 10,770 square foot building; Located within the 1700 block of Kirby. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

OVERLOOK AT PLUM CREEK (SD-11-017) 5 ACRES; 122,950 SQUARE FOOT BUILDING LOCATED AT THE NORTHWEST CORNER OF CROMWELL AND FUTURE SAMPSON; APPLICANT: KYLE DMA HOUSING, LP; AGENT: LAWRENCE M. HANRAHAN, P.E., HANRAHAN PRITCHARD ENGINEERING, INC.~ *SOFIA NELSON, DIRECTOR OF PLANNING*

PLANNING AND ZONING COMMISSION VOTED 5-1 TO APPROVE THE SITE PLAN AND PARKING VARIANCE REQUEST

- *PUBLIC HEARING*
- *ACT ON PARKING VARIANCE REQUEST*

Mayor Johnson opens the Public Hearing for the Overlook at Plum Creek at 8:57 P.M. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:57 P.M.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

Council Member Pickett moves to Approve the Overlook at Plum Creek (SD-11-017) 5 acres; 122,950 square foot building located at the northwest corner of Cromwell and future Sampson including approval of the parking gates adding a grass creek on the proposed side of Sampson Road. Council Member Hervol seconds the motion. All votes aye. Motion carried.

CONSIDER AND AUTHORIZE THE CITY MANAGER TO ACCEPT THE DONATION OF A 1998 CHEVROLET MOBILE COMMAND POST AND CRIME SCENE UNIT FROM THE TEXAS DEPARTMENT OF INSURANCE FOR THE KYLE POLICE DEPARTMENT ~ *JEFF BARNETT, CHIEF OF POLICE*

Council Member Selbera moves to Authorize the City Manager to Accept the Donation of a 1998 Chevrolet Mobile Command Post and Crime Scene Unit from the Texas Department of Insurance for the Kyle Police Department. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

CONSIDERATION AND POSSIBLE ACTION TO AUTHORIZE THE CITY MANAGER AND THE CHIEF OF POLICE TO EXECUTE THE EQUITABLE SHARING AGREEMENT AND CERTIFICATION WITH THE UNITED STATES DEPARTMENT OF JUSTICE AND THE UNITED STATES DEPARTMENT OF THE TREASURY ~ *JEFF BARNETT, CHIEF OF POLICE*

Council Member Huebner moves to Authorize the City Manager and the Chief of Police to Execute the Equitable Sharing Agreement and Certification with the United States Department of Justice and the United States Department of the Treasury. Council Member Pickett seconds the motion. All votes aye. Motion carried.

(First Reading) AN ORDINANCE AMENDING CHAPTER 23 OF THE CODE OF ORDINANCES, MISCELLANEOUS OFFENSES OF THE CITY OF KYLE SO AS TO ADD ARTICLE IX MASS GATHERINGS AND ESTABLISH PERMIT REQUIRMENTS, APPLICATION PROCESS AND REGULATE NOISE LEVELS FROM SUCH EVENTS, DECLARING A PUBLIC PURPOSE, ESTABLISHING A PENALTY AND SETTING AN EFFECTIVE DATE ~ *Jeff Barnett, Chief of Police*

Council Member Selbera moves to approve (First Reading) An Ordinance Amending Chapter 23 of the Code of Ordinances, Miscellaneous Offences of the City of Kyle so as to add Article IX Mass Gatherings and Establish Permit Requirements, Application Process and Regulate Noise Levels from such events, Declaring a Public Purpose, Establishing a Penalty and Setting an Effective Date adding Council Member Hervol's comments and with a correction made to page 5 changing the City of Bulverde to City of Kyle. Mayor Pro Tem Wilson seconds the motion with item B added concerning the Race Track for an annual permit versus each activity.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

Council Member Selbera withdraws her motion and moves to table this item. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

A RESOLUTION OF THE CITY OF KYLE, TEXAS DECLARING A NEED FOR THE SAN MARCOS HOUSING AUTHORITY TO EXERCISE ITS POWER IN THE CITY OF KYLE; AUTHORIZING AND AGREEING TO HAVE THE KYLE HOUSING AUTHORITY TRANSFER ITS TEN (10) SECTION 8 HOUSE CHOICE VOUCHERS (HCV) TO THE SAN MARCOS HOUSING AUTHORITY; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS ~ *Lanny Lambert, City Manager*

Council Member Pickett moves to approve A Resolution of the City of Kyle, Texas Declaring a need for the San Marcos Housing Authority to exercise its power in the City of Kyle; Authorizing and Agreeing to have the Kyle Housing Authority transfer its ten (10) Section 8 House Choice Vouchers (HCV) to the San Marcos Housing Authority. Council Member Selbera seconds the motion. All votes aye. Motion carried.

A RESOLUTION BY THE CITY OF KYLE, TEXAS, ("CITY") RESPONDING TO THE APPLICATION OF CENTERPOINT ENERGY ENTEX, SOUTH TEXAS DIVISION TO INCREASE RATES UNDER THE GAS RELIABILITY INFRASTRUCTURE PROGRAM; SUSPENDING THE EFFECTIVE DATE OF THIS RATE APPLICATION FOR FORTY-FIVE DAYS; AUTHORIZING THE CITY TO CONTINUE TO PARTICIPATE IN A COALITION OF CITIES KNOWN AS THE "ALLIANCE OF CENTERPOINT MUNICIPALITIES"; REQUIRING THE REIMBURSEMENT OF COSTS; DETERMINING THAT THE MEETING AT WHICH THE RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

Mayor Pro Tem Wilson moves to approve A Resolution by the City of Kyle, Texas, ("City") Responding to the Application of Centerpoint Energy Entex, South Texas Division to Increase Rates under the Gas Reliability Infrastructure Program; Suspending the Effective Date of this Rate Application fro Forty Five Days; Authorizing the City to Continue to Participate in a Coalition of Cities known as the "Alliance of Centerpoint Municipalities". Requiring the Reimbursement of Costs; Determining that the Meeting at which the Resolution was Adopted Complied with the Texas Open Meetings Act; Making such other findings and Provisions Related to the Subject; And Declaring an Effective Date. Council Member Pickett seconds the motion. All votes aye. Motion carried.

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CONSIDERATION AND POSSIBLE ACTION REGARDING A SUPPLEMENTAL AGREEMENT BETWEEN THE CITY AND UNION PACIFIC RAILROAD DELETING CERTAIN AREAS FROM THE LEASE THAT HAVE BEEN SOLD BY THE RAILROAD ~ *JERRY HENDRIX, DIRECTOR OF COMMUNITY DEVELOPMENT*

Council Member Pickett moves to table Consideration and Possible Action regarding a Supplemental Agreement between the City and Union Pacific Railroad deleting certain areas from the lease that have been sold by the railroad. Council Member Huebner seconds the motion. All votes aye. Motion carried.

CONSIDERATION AND POSSIBLE ACTION REGARDING THE APPROVAL OF A CONTRACT WITH HOLT CONSULTING IN AN AMOUNT NOT TO EXCEED \$3,900 FOR INDEPENDENT THIRD PARTY INSPECTIONS OF THE DRILLING OF FOUNDATION SUPPORT PIERS ~ *JERRY HENDRIX, DIRECTOR OF COMMUNITY DEVELOPMENT*

Council Member Pickett moves to approve the Approval of a Contract with Holt Consulting in an amount Not to Exceed \$3,900 for independent third party inspections of the drilling of foundation support piers. Council Member Selbera seconds the motion. All votes aye. Motion carried.

GENERAL DISCUSSION AND POSSIBLE ACTION

(DISCUSSION ONLY) SIGN ORDINANCE AMENDMENT TO ALLOW FOR THE REPLACEMENT OF EXISTING BILLBOARD FACES WITH A DIGITAL BILLBOARD FACE ~ *MARIO PEREZ, BUILDING OFFICIAL*

Mario Perez, Building Official discussed a Sign Company request of converting a standard billboard face with a digital billboard face and Council suggested it be sent to a City Committee and was it decided that it be forwarded to the Board of Adjustments.

CITY MANAGERS REPORT

UPDATE ON VARIOUS CAPITAL IMPROVEMENT PROJECTS, ROAD PROJECTS, BUILDING PROGRAM, AND/OR GENERAL OPERATIONAL ACTIVITIES ~ *LANNY LAMBERT, CITY MANAGER*

- Update on next Community Visioning Session

City Manager Lanny Lambert stated he just wanted to remind Council about the Community Visioning scheduled on May 19 and the Library Grand Opening on May 12.

CITY COUNCIL REGULAR MEETING
May 1, 2012 – Page 11
Kyle City Hall

ADJOURN

With no further business to discuss Council Member Huebner moves to adjourn. Council Member Pickett seconds the motion. All votes aye. Motion carried.

The City Council meeting adjourned at 10:25 P.M.

Lucy Johnson, Mayor

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Council Member Recognition

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: The Kyle City Council will recognize Council Members Jaime Sanchez and Russ Huebner for their dedication and service to the City of Kyle ~ *Lucy Johnson, Mayor*

Other Information:

Budget Information:

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

Attachments / click to download



CITY OF KYLE, TEXAS

Memorial Day Proclamation

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Proclamation of the City of Kyle recognizing May 28, 2012 as "Memorial Day" in Kyle, Texas ~ *David Wilson, Mayor Pro Tem*

Other Information:

Budget Information:

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[Memorial Day Proclamation](#)

CITY OF KYLE



City Council Proclamation

WHEREAS, there are in excess of 1,000,000 Veterans of all wars in which the United States has participated who have lost their lives in defense of our Country; and

Attachment number 1 \nPage 1

WHEREAS, the citizens of Kyle understand that this annual event honors those brave men and women, sons, daughters, husbands, wives, friends, and neighbors, who have willingly answered the call to service, some even giving their lives in defense of our democratic principles; and

WHEREAS, Kyle/Buda Veterans of Foreign War's Post 12058 performs an annual Memorial Day Ceremony to honor not only all US Veterans but specifically the Kyle/Buda veterans who served their country, many of whom made the supreme sacrifice in defense of their country and who are no longer with us but who's sacrifice and honorable service remain emblazoned in our memory; and

WHEREAS, we are very proud that many veterans from each of the service branches call the City of Kyle "home" and that by doing so further enriches our civic pride and patriotism, and

WHEREAS, all residents of the City of Kyle are called upon to remember the service of our veterans and also their national spirit of unity, by commemorating the sacrifices of America's fallen from the Revolutionary War to the present and recognize those who served and who continue to serve our great nation reminding all Americans of our common heritage and duty.

NOW THEREFORE, BE IT RESOLVED that we, the Kyle City Council, do hereby proclaim May 28, 2012 as

"MEMORIAL DAY"

IN THE CITY OF KYLE AND HONOR THE SACRIFICES THROUGHOUT THE MONTH OF JUNE, IN APPRECIATION AND GRATITUDE FOR THE PATRIOTIC AND UNSELFISH SACRIFICES MADE BY VETERANS AND THEIR FAMILIES TO PRESERVE OUR WAY OF LIFE.

SIGNED AND ENTERED THIS 15th DAY OF May 2012

Lucy Johnson, Mayor

Diane Hervol, Council District 1

David Wilson, Mayor Pro Tem

Becky Selbera, Council District 2

Brad Pickett, Council District 3

Jaime Sanchez, Council District 5

Russ Huebner, Council District 6



CITY OF KYLE, TEXAS

Para-Olympian

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Proclamation of the City of Kyle recognizing May 15, 2012 as "Gary Van der Wege Day" in Kyle, Texas ~ *David Wilson, Mayor Pro Tem*

Other Information:

Budget Information:

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[Gary Van der Wege Proclamation](#)

CITY OF KYLE



City Council Proclamation

WHEREAS, Olympic competition serves as a great source of not only civic and national pride, but also an even greater source of self pride and accomplishment among those that participate, and Attachment number 1 \nPage 1

WHEREAS, Olympians and Para-Olympians are the individuals who encompass the true spirit of the competitions and carry that spirit in a wholesome manner that sets an example for others to emulate, and

WHEREAS, Gary Van der Wege is a resident of Kyle and will represent the United States in Paralympics Fencing in this year's Paralympics Games to be held in London, France, and

WHEREAS, Mr. Van Der Wege's other achievements also include being a Six-time US National Champion, winning a Gold Medal in the 2011 Pan-American Championships, and representing the United States on the Paralympics Fencing Team in 2004, and

WHEREAS, in the performance of his duties as a participant in these games, has admirably served as an ambassador for inspiration in overcoming adversity and acceptance of those with disabilities, and

WHEREAS, Mr. Van der Wege serves as an example for all people, regardless of disabilities, to persevere through obstacles and challenges to overcome and achieve at a high level and to use that perseverance as an inspiration to others.

NOW, THEREFORE, I, Lucy Johnson, Mayor of the City of Kyle, do hereby proclaim that Tuesday, May 15th, 2012 is

"Gary Van der Wege Day"

in Kyle, Texas, and call on all citizens to applaud and recognize the accomplishments of Gary Van der Wege, both as a competitor and as a citizen of the City of Kyle, Texas, and of these United States, and ask that all of us use his example of courage, perseverance and dedication as a cornerstone of our daily lives.

SIGNED AND ENTERED THIS 15th DAY OF MAY, 2012

Lucy Johnson, Mayor

Diane Hervol, Council District 1

David Wilson, Mayor Pro Tem

Becky Selbera, Council District 2

Brad Pickett, Council District 3

Jaime Sanchez, Council District 5

Russ Huebner, Council District 6



CITY OF KYLE, TEXAS

Police Week

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Proclamation of the City of Kyle Designating May 13-19, 2012 as "Police Week" in the Kyle, Texas ~ *Jeff Barnett, Chief of Police*

Other Information:

Budget Information:

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[Police Week](#)

CITY OF KYLE



City Council Proclamation

WHEREAS, there are approximately 900,000 law enforcement officers serving in communities across the United States, including the dedicated members of the Kyle Police Department; and

WHEREAS, nearly 60,000 assaults against law enforcement officers are reported each year, resulting in approximately 16,000 injuries; and

WHEREAS, since the first recorded death in 1791, almost 20,000 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty, including 11 from the State of Texas; and

WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, D.C.; and

WHEREAS, 361 new names of fallen heroes are being added to the National Law Enforcement Officers Memorial this spring, including 163 officers killed in 2011 and 199 officers killed in previous years; and

WHEREAS, the service and sacrifice of all officers killed in the line of duty will be honored during the National Law Enforcement Officers Memorial Fund's 24th Annual Candlelight Vigil, on the evening of May 13, 2012; and

WHEREAS, the Candlelight Vigil is part of National Police Week, which takes place this year on May 13- 19; and

WHEREAS, May 15 is designated as Peace Officers Memorial Day, in honor of all fallen officers and their families; and

NOW, THEREFORE, BE IT RESOLVED that I, Lucy Johnson, Mayor of Kyle, formally designate May 13- 19, 2012, as

"Police Week"

in Kyle, Texas, and publicly salute the service of law enforcement officers in our community and in communities across the nation.

SIGNED AND ENTERED THIS 15th DAY OF MAY, 2012

Lucy Johnson, Mayor

Diane Hervol, Council District 1

David Wilson, Mayor Pro Tem

Becky Selbera, Council District 2

Brad Pickett, Council District 3

Jaime Sanchez, Council District 5

Russ Huebner, Council District 4tem # 5



CITY OF KYLE, TEXAS

Planning and Zoning Commissioner

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Consideration of Nomination for Appointment to the Planning and Zoning Commission
~ *Lucy Johnson, Mayor*

- *Dan Ryan*

Other Information: N/A

Budget Information: N/A

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[Dan Ryan Committee Application](#)



Grace Nino <gracenino@cityofkyle.com>

City of Kyle Texas Website submission: Committee Volunteer Application

City of Kyle Texas <webmaster@cityofkyle.com>

Wed, Feb 8, 2012 at 8:57 PM

To: gracenino@cityofkyle.com

Submitted on Wednesday, February 8, 2012 - 20:57

Submitted by anonymous user: [24.28.29.177]

Submitted values are:

Name: Dan Ryan

Address: 386 oxford Kyle Tx 78640

E-Mail: Raynskytx@agamil.com

Best Phone Number to Reach You: 268 3809

Sub Division: Kensington

Committees you are interested in: P and Z

Professional, Education and Work Background: Worked with developers in Kyle

Previous or Current Community/Committee Involvements: Planning and Zoning for 5 years

Special Knowledge or Experience: Sub division development

How long have you been a Kyle resident? 12

Today's Date: 2012-02-08

Other Comments:



CITY OF KYLE, TEXAS

Executive Session-Convene-United Apt Group

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Convene into Executive Session pursuant to Section 551.071
(Consultation with Attorney) to discuss water fee dispute with United
Apartment Group

Other Information:

Budget Information:

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

Attachments / click to download



CITY OF KYLE, TEXAS

Executive Session-Reconvene-United Apt Group

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Reconvene into Open Session to take action as deemed appropriate in the City Council's discretion regarding water fee dispute with United Apartment Group

Other Information:

Budget Information:

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Attachments / click to download



CITY OF KYLE, TEXAS

Canvass

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: A RESOLUTION BY THE CITY OF KYLE CERTIFYING THE ELECTION RESULTS OF THE SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, INCLUDING MIXED BEVERAGES; AND PROVIDING AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

Other Information:

Budget Information:

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Attachments / click to download

[Canvass Election Local Option](#)

RESOLUTION NO.**A RESOLUTION BY THE CITY OF KYLE CERTIFYING THE ELECTION RESULTS OF THE SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, INCLUDING MIXED BEVERAGES; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, on May 12, 2012, a special election was held in the City of Kyle, Hays County, Texas to hold a local option election to determine whether or not to permit the legal sale of alcoholic beverages, including mixed beverages within the city limits of Kyle; and

WHEREAS, the election was held and conducted and the returns thereof were made, all as required by laws of the United States and the State of Texas, including particularly the Texas Election Code; together with all amendments and additions thereto; and

WHEREAS, notice of said election has been given to the qualified voters of the City and all other interested persons as required by law; and

WHEREAS, the returns of said election were regularly made to the City Council by the officers of said election as provided by the Texas Election Code, as amended, and after canvassing the returns of said elections, does hereby find and declare the results as follows:

Shall the City of Kyle, permit the legal sale of all alcoholic beverages including mixed beverages.

_____ FOR _____ AGAINST

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

Section 1. Said election was duly called, notice thereof given in accordance with law, and conducted in the manner required by law and as provided in the Order Calling the Election.

Section 2. A majority of the voters of the City of Kyle at said election voted "AGAINST/FOR" as to whether or not to permit the legal sale of alcoholic beverages, including mixed beverages within the city limits of Kyle.

Section 3. (This section only if voted in FAVOR): The legal sale of all alcoholic beverages including mixed beverages, the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option election held under this code.

Section 4. If any part or parts of this resolution are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts shall remain in full force and effect, and to that extent this Ordinance is considered severable.

Section 5. This resolution shall be effective immediately upon adoption.

PASSED AND APPROVED this ____ day of May, 2012.

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Monarch

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation:

(First Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS; AUTHORIZING THE ADOPTION OF A SETTLEMENT OF THE APPLICATION FOR AN INCREASE IN WATER AND SEWER RATES BY MONARCH UTILITIES I, L.P. NEGOTIATED BY REPRESENTATIVES OF THE COALITION OF CITIES, (INCLUDING THE CITIES OF BLUE MOUND, BUDA, IVANHOE AND KYLE), TAMER (ON BEHALF OF ENVIRONS CUSTOMERS), THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION OF ENVIRONMENTAL QUALITY, MONARCH UTILITIES I, L.P., AND OTHER PARTIES WHO ARE EXPECTED TO JOIN IN ADOPTING THE PROPOSED SETTLEMENT; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

- *Public Hearing*

Other Information:

Budget Information:

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Attachments / click to download

- [Settlement backup for rate changes](#)
- [Kyle settlement ordinance](#)
- [Settlement Appendix A](#)
- [Kyle settlement savings](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS; AUTHORIZING THE ADOPTION OF A SETTLEMENT OF THE APPLICATION FOR AN INCREASE IN WATER AND SEWER RATES BY MONARCH UTILITIES I, L.P. NEGOTIATED BY REPRESENTATIVES OF THE COALITION OF CITIES, (INCLUDING THE CITIES OF BLUE MOUND, BUDA, IVANHOE AND KYLE), TAMER (ON BEHALF OF ENVIRONS CUSTOMERS), THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION OF ENVIRONMENTAL QUALITY, MONARCH UTILITIES I, L.P., AND OTHER PARTIES WHO ARE EXPECTED TO JOIN IN ADOPTING THE PROPOSED SETTLEMENT; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, on November 10, 2011 Monarch Utilities I, L.P. (“Monarch”) filed a Statement of Intent with the City Secretary for the City of Kyle, Texas (“City”) to increase water rates on a system-wide basis by 62.3%; and

WHEREAS, the settlement increases the revenue requirement on a system-wide basis by approximately 8.7% on June 1, 2012 and by approximately 4% on, January 1, 2013, but increases for many customers will involve much smaller increases due to an inverted rate design aimed at encouraging conservation; and

WHEREAS, for the first time since Monarch begin providing water service the base rate or minimum monthly charge will decrease for residential customers from the current monthly rate and customers using a small amount of water, 2000 gallons, will experience almost no increase in cost; and

WHEREAS, the settlement involves very substantial reductions for residential customers from the water rates requested by Monarch, for consumption after June 1, 2012 (phase 1) , as follows:

<u>CHARGES</u>	<u>REQUESTED</u>	<u>SETTLEMENT</u>	<u>DECREASE¹</u>
MIN. CHARGE	\$59.82/mo.	\$39.95/mo.	\$19.87/mo
2000 GALLONS	\$73.82/mo	\$50.95/mo	\$22.87/mo
5000 GALLONS	\$94.82/mo	\$71.47/mo	\$23.45/mo
10,000 GALLONS	\$129.82/mo	\$105.67	\$24.14/mo

¹ Decrease from the requested increase. The minimum charge is reduced from the current rate by 8.1%.

WHEREAS, for consumption after June 1, 2013 (phase 2), the decreases from the requested amounts are slightly smaller, except that the base charge remains the same, as follows:

<u>CHARGES</u>	<u>REQUESTED</u>	<u>SETTLEMENT</u>	<u>DECREASE</u>
MIN. CHARGE	\$59.82/mo.	\$39.95/mo.	\$19.87/mo
2000 GALLONS	\$73.82/mo	\$52.05/mo	\$21.97/mo
5000 GALLONS	\$94.82/mo	\$74.40/mo	\$20.42/mo
10,000 GALLONS	\$129.82/mo	\$111.65/mo	\$18.17/mo

WHEREAS, unlike most water rate proceedings, the settlement provides that no rate case expenses be borne by ratepayers.

WHEREAS, the settlement provides for a moratorium on any additional rate increases before January 1, 2014 except for purchased water adjustments but the Coalition of Cities will be given notice of any such adjustments filed at the TCEQ; and

WHEREAS, the settlement provides that Monarch shall not request a valuation of its invested capital or seek to set depreciation rates at the Texas Commission on Environmental Quality before the next general rate case; and

WHEREAS, the rate increase for sewer service was also a part of the settlement with Monarch, resulting in no overall increase in rates for sewer customers.

WHEREAS, Monarch withdrew its request to acquire seven stand-alone water utilities and three sewer utilities which would have caused ratepayers inside the City to subsidize many of the stand-alone utilities.

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

Section 1. The facts contained in the Preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. The settlement, attached hereto as Appendix A, with an addendum, is hereby adopted and approved.

Section 3. Special Counsel, Herrera & Boyle, PLLP, for the City of Kyle, is instructed to do all things consistent with promoting the adoption of the settlement by the Texas Commission on Environmental Quality.

Section 4. A copy of this ordinance will be sent to Mr. George Freitag, Rate Manager, Monarch Utilities I, L.P., 12535 Reed Road, Sugar Land, Texas 77478 and to Mr. Jim Boyle, Herrera & Boyle, PLLP, 816 Congress, Suite 1250, Austin, Texas 78701.

Section 5. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6 This resolution shall be effective immediately upon passage.

PASSED AND APPROVED this 15th day of May, 2012.

Mayor, Lucy Johnson

ATTEST:

Amelia Sanchez, City Secretary

APPENDIX A

SETTLEMENT AGREEMENT

**MONARCH UTILITIES I, L.P.
REQUEST TO INCREASE RATES**

**SOAH DOCKET NO 582-11-8685
TCEQ DOCKET NO. 2011-1280-UCR**

SOAH DOCKET NO. 582-11-8685**TCEQ DOCKET NO. 2011-1280-UCR**

ALJs Richard R. Wilfong and Tommy L. Broyles

Monarch I LP; CCN Nos. 12873, 20899; Application Nos. 37049-R; 37050-R.

The following is our settlement in SOAH Docket No. 582-11-8685 (consolidated) on May 2, 2012.

Agreements

1. Increase in revenue in the amount of \$2.6 million to be included in rates to be effective in the Cities and the environs as follows:

June 1, 2012 =	\$1.7 million
January 1, 2013 =	<u>plus \$0.9 million</u>
	\$2.6 million
2. Moratorium on effective date for a new rate increase until January 1, 2014. Monarch is not seeking a rate base or depreciation rate determination as part of the settlement. No rate base determination or depreciation rate filing will be made before the next general rate case.
3. No surcharge for recovery of rate case expenses, and no more payment of city rate case expenses by Monarch.
4. No agreement regarding the transfer of utility systems to Blue Mound or Oak Point.
5. Monarch agrees to one week extension from 04/30/2012 to 05/07/2012 for responses to Monarch's motions to lift abatement and for leave to amend the application.
6. Miscellaneous charges and all other tariff provisions as filed in the rate application.
7. Add additional language to Franchise Fee Pass through Clause in the Monarch tariff to clarify that the charge is limited to 2% or amount charged by the municipality for water and sewer.
8. Monarch will serve attorneys for Collation of Cities and TAMER with notice of any filing at TCEQ for implementation of purchased water pass through clause.
9. This agreement is subject to approval by city councils for those parties who are municipalities.
10. The parties agree upon the following water rates to be effective on the first meter read after June 1, 2012, and January 1, 2013:

June 1, 2012: Step 1

Base monthly fee: \$39.95

Gallonage charge per 1000 gallons:

0 to 2,000 \$5.50

2,001 to 20,000 \$6.84

over 20,000 \$9.00

Meter Size	Equivalency Factor	Monthly Rate
5/8 x 3/4"		\$ 39.95
3/4"		\$ 59.93
1"		\$ 99.88
1 1/2"		\$ 199.75
2"		\$ 319.60
3"		\$ 599.25
4"		\$ 998.75
6"		\$ 1,997.50
8"		\$ 3,196.00

January 1, 2013: Step 2

Base monthly fee: \$39.95

Gallage charge per 1000 gallons:

0 to 2,000 \$6.05

2,001 to 10,000 \$7.45

10,001 to 20,000 \$8.45

over 20,000 \$9.00

Meter Size	Equivalency Factor	Monthly Rate
5/8 x 3/4"		\$ 39.95
3/4"		\$ 59.93
1"		\$ 99.88
1 1/2"		\$ 199.75
2"		\$ 319.60
3"		\$ 599.25
4"		\$ 998.75
6"		\$ 1,997.50
8"		\$ 3,196.00

11. The parties agree upon the following sewer rates to be effective on the first meter read after June 1, 2012:

Base monthly rate: \$59.90

Gallage Charge per 1000 gallons based on winter average: \$2.10

REFUNDS/SURCHARGES:

YES

NO

(Additional pages attached 2)

ATTACHMENTS:

X ATTACHMENT A

X ATTACHMENT B

PARTIES:

TCEQ Exec. Director:

Brian Marshall

*Charles W. [unclear]
MONARCH UTILITIES.*

Public Interest Council:

Army Swankholm

Utility:

Shirley [unclear] attorney for Monarch Utilities I, L.P.

Protestants:

David O. [unclear] for Texas Against Monopolies' Excessive Rates

Water

SUPPLEMENTAL EMERGENCY SERVICE FEE

Applicable to nonresidential water service customers that require supplemental service over and above their existing water service from time to time. Usage to be determined by customer. The minimum diameter for supplemental service meter shall be 2 inches.

Monthly Supplemental Service Rate = \$13.43 per inch diameter of service connection meter.

MISCELLANEOUS FEES AND CHARGES-TO ALL CUSTOMERS

TAP FEE (5/8 x 3/4" meter)	\$700.00
TAP FEE (unique costs)	Actual Cost
LARGE METER TAP FEE	Actual Cost
RECONNECTION FEE	
a) Non payment of bill	\$25.00
b) Customer's request	\$50.00
TRANSFER FEE	\$45.00
LATE CHARGE	10% of the delinquent bill
RETURNED CHECK CHARGE	\$25.00
CUSTOMER DEPOSIT – RESIDENTIAL	\$50.00
CUSTOMER DEPOSIT – NON-RESIDENTIAL	1/6 th Est. Annual Bill
METER TEST FEE	\$25.00
SEASONAL RECONNECTION FEE	Base rate times number of months off the system not to exceed six months when leave and return within a twelve month period.
METER RELOCATION FEE	Actual cost to relocate that meter
METER CONVERSION FEE	Actual cost to convert that meter

LINE EXTENSION AND CONSTRUCTION CHARGES:

Refer to Tariff Section 2.12 Specific Utility Service Rules and Section 3.02 Specific Utility Extension Policy for terms, conditions, and charges.

GOVERNMENTAL TESTING, INSPECTION AND COSTS SURCHARGE CLAUSE:

Increases in inspection fees and water testing costs imposed by state or federal law may be passed through as an adjustment to the monthly base rate charge under the terms and conditions of 30 T.A.C. 291.21(k)(2) after notice to customers and upon written approval by the TCEQ.

PURCHASED WATER AND/OR DISTRICT FEE PASS THROUGH CLAUSE – ALL WATER SUPPLY SUBJECT TO FEE:

Changes in fees imposed by any non-affiliated third party water supplier or underground water district having jurisdiction over the Utility shall be passed through utility-wide as an adjustment to the water gallonage charge according to the following formula:

AG	=	G + B/(1-L), where
AG	=	adjusted gallonage charge, rounded to the nearest one cent;
G	=	approved gallonage charge (per 1,000 gallons);
B	=	change (per 1,000 gallons) due to purchased water/district gallonage changes;
		and
L	=	system average line loss for preceding 12 months not to exceed 0.15.

PURCHASED WATER AND/OR DISTRICT FEE PASS THROUGH CLAUSE – PORTION OF WATER SUPPLY SUBJECT TO FEE:

Upon notice from a water supplier of either an increase or decrease in the cost of purchased water, the utility shall provide notice to customers and the Commission of its intent to implement rates imposed by any non-affiliated third party water supplier or underground water district having

Attachment A

Water

Notice of proposed water/sewer rate change (cont'd)

jurisdiction over the Utility shall be passed through utility-wide as an adjustment to the water gallonage charge according to the following formula:

$$\begin{aligned} \text{Adjustment to the gallonage rate} &= \text{AG} = (\text{CP}/\text{GB}) \times 1,000 \\ \text{Adjustment to the minimum bill} &= \text{AMB} = \text{GMB} \times \text{AG} \end{aligned}$$

- CP = CP1 - CP0 = change in cost of purchased water;
 CP1 = Cost of purchased water during the most recent 12 month period at the new rate;
 CP0 = Cost of purchased water during the most recent 12 month period at the previous rates;
 GMB = Number of gallons in the minimum bill, divided by 1,000; and
 GB = Number of gallons billed to customers in excess of the amount included in the monthly minimum bill for the 12 month period used above.

TEMPORARY WATER RATE:

Unless otherwise superseded by TCEQ order or rule, if the Utility is ordered by a court or governmental body of competent jurisdiction to reduce its pumpage, production, or water sales, the Utility shall be authorized to increase its approved gallonage charge according to the formula:

$$\text{TGC} = \text{cgc} + \frac{(\text{pr})(\text{cgc})(r)}{(1.0-r)}$$

Where:

TGC = temporary gallonage charge;

cgc = current gallonage charge;

r = water use reduction expressed as a decimal fraction (the pumping restriction); and

pr = percentage of revenues to be recovered

expressed as a decimal fraction. For this tariff pr shall equal 0.5.

To implement the Temporary Water Rate, the Utility must comply with all notice and other requirements of 30 T.A.C. 291.21(l).

METER TAMPERING, DAMAGE OR SERVICE DIVERSION PENALTY:

One time penalty for tampering with or damaging a water meter or any appurtenance thereto including locks and meter boxes or service diversion of one hundred dollars (\$100.00).

FRANCHISE FEE PASS THROUGH CLAUSE:

Charges a municipality makes for use of streets and alleys pursuant to Tax Code §182.025 or other applicable state law shall be passed through utility-wide as an adjustment to the water gallonage charge according to the following formula:

$$\begin{aligned} \text{AG} &= \text{G} + \text{B}, \text{ where} \\ \text{AG} &= \text{adjusted gallonage charge, rounded to the nearest one cent;} \\ \text{G} &= \text{approved gallonage charge (per 1,000 gallons) and} \\ \text{B} &= \text{projected franchise fees payable (per 1,000 gallons).} \end{aligned}$$

8

Sewer

Residential sewer service will be billed year round using that service connection's average winter water consumption during December, January and February. Single family residential service connections without an historic winter average will have an imputed average of 5,000 gallons until they have established an average. Multi-family residential service connections without an historic winter average will have an imputed average of 5,000 gallons per residential unit until they have established an average.

Non-residential service connections will be billed on actual monthly water consumption without the use of winter averaging.

MISCELLANEOUS FEES AND CHARGES-TO ALL CUSTOMERS

TAP FEE (gravity sewer, street or easement installation)	\$700.00
TAP FEE (pressure sewer, non-rock installation)	\$1,525.00
TAP FEE (pressure sewer, rock installation)	\$3,776.00
LARGE METER TAP FEE	Actual cost
ACCOUNT SET UP FEE (sewer only customers)	\$25.00
RECONNECTION FEE	
a) Non payment of bill	\$25.00
b) Customer's request	\$50.00

SEASONAL RECONNECTION FEE

Base rate times number of months off the system not to exceed six months when leave and return within a twelve month period.

TRANSFER FEE	\$45.00
LATE CHARGE	10% of the delinquent bill
RETURNED CHECK CHARGE	\$25.00
CUSTOMER DEPOSIT – RESIDENTIAL	\$50.00
CUSTOMER DEPOSIT – NON-RESIDENTIAL	1/6 th Est. Annual Bill
SERVICE RELOCATION FEE	Actual cost to relocate that connection

LINE EXTENSION AND CONSTRUCTION CHARGES:

Refer to Section 2.12 Specific Utility Service Rules and Section 3.02 Utility Specific Extension Policy for terms, conditions, and charges.

GOVERNMENTAL TESTING, INSPECTION AND COSTS SURCHARGE CLAUSE:

Increases in inspection fees and water testing costs imposed by state or federal law may be passed through as an adjustment to the monthly base rate charge under the terms and conditions of 30 T.A.C. 291.21(k)(2) after notice to customers and upon written approval by the TCEQ.

DAMAGE OR SERVICE DIVERSION PENALTY:

One time penalty for tampering with or damaging a sewer service connection or any appurtenance thereto including pumps or service diversion of one hundred dollars (\$100.00).

FRANCHISE FEE PASS THROUGH CLAUSE:

Charges a municipality makes for use of streets and alleys pursuant to Tax Code §182.025 or other applicable state law shall be passed through utility-wide as an adjustment to the sewer gallonage charge according to the following formula:

AG = G + B, where
AG = adjusted gallonage charge, rounded to the nearest one cent:
G = approved gallonage charge (per 1,000 gallons) and
B = projected franchise fees payable (per 1,000 gallons).

PURCHASED SEWER PASS THROUGH CLAUSE:

Changes in fees imposed by any non-affiliated third party wholesale sewer service provider shall be passed through utility-wide as an adjustment to the sewer gallonage charge according to the following formula:

AG = G + B, where
AG = adjusted gallonage charge, rounded to the nearest one cent:
G = approved gallonage charge (per 1,000 gallons) and
B = change in purchased sewer service gallonage charge (per 1,000 gallons).

Attachment B

SOAH DOCKET NO. 582-11-8685

TCEQ DOCKET NO. 2011-1280-UCR

ALJs Richard R. Wilfong and Tommy L. Broyles

Monarch I LP; CCN Nos. 12873, 20899; Application Nos. 37049-R; 37050-R.

The following is an addendum to paragraph 11 of our settlement in SOAH Docket No. 582-11-8685 (consolidated) on May 2, 2012. Paragraph 11 set forth sewer rates and provided the correct gallonage charge and the correct rate for a 5/8x3/4" meter. The parties inadvertently omitted sewer rates for meter sizes 3/4" to 8" and are therefore adding that information to the settlement.

Agreement

11. The parties agree upon the following sewer rates to be effective on the first meter read after June 1, 2012:

Meter Size	Equivalency Factor	Monthly Rate
5/8 x 3/4 "		\$ 59.90
3/4"		\$ 89.85
1"		\$ 149.75
1 1/2"		\$ 299.50
2"		\$ 479.20
3"		\$ 898.50
4"		\$ 1,497.50
6"		\$ 2,995.00
8"		\$ 4,792.00

Gallonage Charge per 1000 gallons based on winter average for residential customers and actual usage for other customers: \$2.10

PARTIES:

	SIGNATURE	DATE
TCEQ Exec. Director:	<i>Brian MacLeod</i>	5/4/12
Public Interest Council:		
Utility:	<i>Charles W. Ruffing</i>	5/7/12
Protestants:	<i>Coalition of Cities</i>	5/8/12

Monarch Utilities I, L.P.

Test Year Ended December 31, 2010
Amended April 16, 2012

ALTERNATIVE RATE DESIGN WORKSHEET
TEST YEAR 12/31/2010

Water AS AMENDED CORRECTED - Agreed Step 1 Revenue Increase

Revenues:	Test Year Per Books	Revenue Requirement	Amended Filed Revenue Requirement	Difference
Total Revenues Normalized	\$20,412,638	\$30,122,457	\$30,109,997	\$12,460
LESS:				
Tap	\$141,858	\$141,858	\$141,858	\$0
Penalties	\$680,484	\$680,484	\$680,484	\$0
Other	\$15,286	\$15,286	\$15,286	\$0
Annualized Rate Change Water Service Revenues:	\$19,575,011	\$29,284,829	\$29,272,369	\$12,460
Less: Revenue Held in Abeyance		(\$8,004,811)	(\$6,477,352)	(\$1,527,459)
Revenue to be Recovered From Proposed Rates		\$21,280,018	\$22,795,017	(\$1,514,999)

Commodity Sales :	Usage Tier	Sales (gal x 1000)	Eff Aug 1, 2011 Noticed Rates	Amended Proposed Rates	Amended Revenues Gallorage		Difference
	0 to 2,000	461,655	\$7.00	\$5.50	\$2,539,103	\$1,015,900	\$1,523,203
	2,000 to 20,000	837,093	\$7.00	\$6.84	\$5,725,716	\$6,220,383	(\$494,667)
	over 20,000	117,715	\$9.00	\$9.00	\$1,059,435	\$924,491	\$134,944
	Total	1,416,463			\$9,324,254	\$8,160,774	\$1,163,480
	Base per Customer Equivalent				\$39.95	\$48.90	

Test Year Connections:	Number	Equivalents	Eff Aug 1, 2011 Noticed Rates	Amended Proposed Rates	Amended Revenues Calculated		Difference	
5/8" x 3/4" Meter	23,855	23,855	\$59.82	\$39.95	\$11,436,087	\$13,998,114	(\$2,562,027)	
3/4"	-	-	\$89.73	\$59.93	\$0	\$0	\$0	
1"	136	340	\$149.55	\$99.88	\$163,004	\$199,528	(\$36,524)	
1 1/2"	28	140	\$299.10	\$199.75	\$67,116	\$82,159	(\$15,043)	
2"	28	224	\$478.56	\$319.60	\$107,386	\$131,453	(\$24,068)	
3"	2	30	\$897.30	\$599.25	\$14,382	\$17,605	(\$3,223)	
4"	3	75	\$1,495.50	\$998.75	\$35,955	\$44,013	(\$8,058)	
6"	-	-	\$2,991.00	\$1,997.50	\$0	\$0	\$0	
8"	-	-	\$4,785.60	\$3,196.00	\$0	\$0	\$0	
Wholesale	275	275	\$59.82	\$39.95	\$131,835	\$161,370	(\$29,535)	
Total Active Connections	24,327	24,939			\$11,955,765	\$14,634,243	(\$2,678,478)	
					Revenues from Sales	\$21,280,018	\$22,795,017	(\$1,514,999)
					Sales Revenue Increase	\$1,705,008	\$2,845,327	(\$1,140,319)

Bill Impacts

	Current	Proposed	Increase	
2k	\$50.71	\$50.95	0.47%	\$0.24
5k	\$65.29	\$71.47	8.65%	\$6.18
10k	\$89.59	\$105.67	15.22%	\$16.08
30k	\$208.39	\$264.07	21.09%	\$55.68
Overall Increase			8.71%	

City of Kyle, Texas
 Monarch Water Utilities
 SOAH Docket No. 582-11-8685, TCEQ Docket No. 2011-1280-UCR
 Settlement Summary - Customer Impact

	Monarch Rate Application <u>August 2011</u>		Settlement Rates <u>June 2012</u>		<u>June 2013</u>
Average Monthly Water Bill (assumes 5,000 gallons of consumption)	\$ 94.82	\$	71.47	\$	74.40

Customer Savings Resulting from City's Intervention

August 2011 - June 2012

Requested Rate	\$ 94.82			
Actual Rate	65.29			
Variance	\$ 29.53			
Number of Months	10			
Subtotal		\$	295.30	

June 2012 - June 2013

Requested Rate	\$ 94.82			
Settlement Rate	71.47			
Variance	\$ 23.35			
Number of Months	12			
Subtotal		\$	280.20	

June 2013 - January 2014

Requested Rate	\$ 94.82			
Settlement Rate	74.40			
Variance	\$ 20.42			
Number of Months	7			
Subtotal		\$	142.94	

Total Savings for Average Customer @ 5,000 gallons	\$ 718.44
Number of Customers - City of Kyle	910
Total Economic Impact	\$ 653,780



CITY OF KYLE, TEXAS

Texas Gas Service Interim Rate Adjustment

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation:

(First Reading) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, ("CITY") APPROVING IMPLEMENTATION OF THE FEBRUARY 10, 2012, INTERIM RATE ADJUSTMENT FILING PURSUANT TO THE TEXAS UTILITIES CODE SEC. 104.301 OF TEXAS GAS SERVICE COMPANY, A DIVISION OF ONEOK, INC. ("TGS" OR "COMPANY"); AND DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; AND DECLARING AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

Other Information:

Budget Information:

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

Attachments / click to download

- [Ordinance approving Texas Gas GRIP](#)
 - [Texas Gas Service Rate Schedule](#)
-

ORDINANCE: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, (“CITY”) APPROVING IMPLEMENTATION OF THE FEBRUARY 10, 2012, INTERIM RATE ADJUSTMENT FILING PURSUANT TO THE TEXAS UTILITIES CODE § 104.301 OF TEXAS GAS SERVICE COMPANY, A DIVISION OF ONEOK, INC. (“TGS” OR “COMPANY”); AND DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, on February 10, 2012, TGS made an interim rate adjustment filing pursuant to the Texas Utilities Code §104.301 with the City; and,

WHEREAS, in accordance with the Texas Utilities Code § 104.301, the proposed interim rate adjustment will go into effect for meters read on or after May 25, 2012, with no action by the City; and,

WHEREAS, in accordance with the Texas Utilities Code § 104.301, the proposed interim rate adjustment is subject to full review and, if appropriate, refund at the time of the next general rate case; and,

WHEREAS, allowing the proposed interim rate adjustment to go into effect is in the public interest;

WHEREAS, the City has conducted a ministerial review and the Company’s interim rate adjustment filing complies with the terms of Texas Utilities Code § 104.301

WHEREAS, the City Council finds that it is reasonable to allow the Company to defer recovery of expenses incurred by the City in connection with this proceeding until the next general rate case, such deferral to be without interest or return,

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

Section 1. That the findings set forth in this Ordinance are hereby in all things approved.

Section 2. That the City Council finds that it is in the public interest to allow the interim rate adjustment as reflected in the attached Rate Schedules, attached hereto and incorporated herein as Exhibit "A," to take effect on the proposed effective date of May 25, 2012.

Section 3. That TGS is authorized to recover in the next general rate case reasonable and necessary rate case expenses incurred in association with its interim rate adjustment filing.

Section 4. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

Section 5. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6. That this Ordinance shall become effective from and after its passage.

PASSED AND APPROVED this _____ day of May, 2012

CITY OF KYLE

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

TEXAS GAS SERVICE COMPANY
Central Texas Service Area

RATE SCHEDULE IRA
Page 1 of 3

INTERIM RATE ADJUSTMENT

A. APPLICABILITY

This Interim Rate Adjustment (IRA) applies to all general service rate schedules of Texas Gas Service Company (Company) currently in force in the incorporated areas of Austin, Cedar Park, Kyle, Rollingwood, Sunset Valley, and West Lake Hills, Texas. Applicable rate schedules include 10, 20, 22, 30, 32, 40, 42, 48, CNG-1, and T-1.

B. PURPOSE

Section 104.301, Subchapter G of the Texas Utility Code, effective on September 1, 2003, provides for an interim adjustment in a gas utility's monthly customer charge or initial block usage rate to recover the cost of changes in the utility's infrastructure investment and related expenses and revenues for providing gas utility service. The filing date of the utility's most recent rate case establishing rates for the area in which the interim rate adjustment will apply shall be no more than two years prior to the date the utility files its initial interim rate adjustment application for that area. The interim adjustment shall be recalculated on an annual basis, unless the utility files a written request and obtains approval from the regulatory authority to suspend the operation of the interim adjustment rate schedule for any year. This rate schedule establishes the interim adjustment provisions consistent with Section 104.301, Subchapter G of the Texas Utility Code.

C. BILLING

The following Interim Rate Adjustments (IRA-2010 and IRA-2011) will be added to the applicable Rate Schedule Customer Charge for each monthly billing period:

Rate Schedule	Customer Class	Current Customer Charge	2010 Interim Rate Adjustment	2011 Interim Rate Adjustment	Total Customer Charge
10	Residential	\$9.75	\$0.46	\$1.12	\$11.33
20	Commercial	\$12.75	\$1.61	\$4.05	\$18.41
22	Lg. Commercial	\$80.00	\$17.84	\$60.84	\$158.68
30	Industrial	\$40.00	\$6.26	\$18.08	\$64.34
32	Lg. Industrial	\$80.00	\$25.10	\$61.52	\$166.62
40	Public Authority	\$20.00	\$2.22	\$5.71	\$27.93
42	Lg. Public Authority	\$80.00	\$31.13	\$74.95	\$186.08
48	Public Schools Space Heating	\$40.00	\$6.86	\$17.31	\$64.17
CNG-1	Compressed Natural Gas	\$25.00	\$4.27	\$9.67	\$38.94

All applicable fees and taxes will be added to the above rate.

Supersedes Same Sheet Dated
 May 27, 2011

Meters Read On and After
 May 25, 2012

INTERIM RATE ADJUSTMENT
(Continued)

Rate Schedule	Customer Class	Current Customer Charge	2010 Interim Rate Adjustment	2011 Interim Rate Adjustment	Total Customer Charge
T-1	Commercial	\$75.00	\$11.38	\$27.04	\$113.42
T-1	Lg. Commercial	\$150.00	\$37.03	\$91.51	\$278.54
T-1	Industrial	\$80.00	\$17.61	\$42.72	\$140.33
T-1	Lg. Industrial	\$150.00	\$74.19	\$181.83	\$406.02
T-1	Public Authority	\$25.00	\$3.16	\$6.48	\$34.64
T-1	Lg. Pub Auth	\$100.00	\$41.64	\$108.05	\$249.69
T-1	Public Schools				
T-1	Space Heating	\$60.00	\$7.03	\$17.41	\$84.44
T-1	CNG	\$40.00	\$1.57	\$3.85	\$45.42

All applicable fees and taxes will be added to the above rate.

D. COMPUTATION OF IRA RATE

The amount the Company shall adjust its utility rates upward or downward under this rate schedule each calendar year is based on the difference between the value of the invested capital for the preceding calendar year and the value of the invested capital for the calendar year preceding that calendar year. The value of the invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment.

Based on the difference between the values of the invested capital amounts as determined above, the Company may adjust only the following related components of its revenue requirement: return on investment, depreciation expense, ad valorem taxes, revenue related taxes and incremental federal income taxes. The factors for these components shall be the same as those established in the Company's most recent rate case for the service area in which this interim rate adjustment is to be implemented.

The revenue requirement calculated pursuant to this rate schedule shall be allocated among the Company's customer classes for this service area in the same manner as the cost of service was allocated among customer classes in the Company's latest effective rates for this area.

E. FILING WITH THE REGULATORY AUTHORITY

1. The Company shall file either the initial interim adjustment or the annual interim adjustment with the regulatory authority at least 60 days before the proposed implementation date. During the 60-day period, the regulatory authority may act to suspend implementation of the adjustment.
2. The Company shall provide notice to customers by bill insert or direct mail not later than the 45th day after the date of filing the interim adjustment.

Supersedes Same Sheet Dated
May 27, 2011

Meters Read On and After
May 25, 2012

INTERIM RATE ADJUSTMENT
(Continued)**E. FILING WITH THE REGULATORY AUTHORITY (cont.)**

3. The Company shall file with the regulatory authority an annual report describing the investment projects completed and placed in service during the preceding calendar year and the investments retired or abandoned during the preceding calendar year. The annual report shall also state the cost, need, and customers benefited by the change in investment.
4. In addition, the Company shall file with the regulatory authority an annual earnings monitoring report demonstrating the Company's earnings during the preceding calendar year. Should the Company earn a return of more than 75 basis points above the return established in the latest effective rates implemented under this rate schedule, the Company shall file a statement stating the reasons why the rates are not unreasonable or in violation of the law.
5. After the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, any change in investment that has been included in an approved interim adjustment shall no longer be subject to subsequent review for reasonableness or prudence. All amounts collected under this rate schedule are subject to refund until the issuance of a final decision in the next rate case filing for this service area.
6. The Company shall file a rate case no later than the 180th day after the fifth anniversary date its initial interim rate adjustment for this service area became effective.
7. The provisions under Section 104.301, Subchapter G of the Texas Utility Code for this interim adjustment do not limit the power of the regulatory authority under Section 104.151.

Supersedes Same Sheet Dated
May 27, 2011

Meters Read On and After
May 25, 2012



CITY OF KYLE, TEXAS

Southside/Elliott Branch Wastewater Engineering Services

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize the negotiation of a Professional Services Agreement with RPS ESPEY to perform the Engineering Services associated with the "E 11-12-01" City of Kyle "Southside Wastewater and Elliott Branch Wastewater Interceptor Improvements" (Impact Fee Capital Improvements) Projects ~ *Steven Widacki, P.E., City Engineer*

Other Information: The City solicited Requests for Qualifications for professional services for the above referenced project. A total of seventeen (17) firms submitted statements of qualifications (SOQ). A review committee evaluated the SOQ's, ranking them in order and elected to interview the top three (3) ranked firms. Interviews of these firms resulted in the final rankings as attached.

With City Council's authorization, City Staff will negotiate for the engagement of the above firm to perform professional services for the development of Construction Plans, Specifications, Estimates, Bid and basic Construction Services for the construction of the Blanco Basin and Elliott Branch Wastewater Interceptor projects as defined in the "Preliminary Engineering Report (PER) for City of Kyle Southside Wastewater Service" (Neptune-Wilkinson Assoc., Inc., Rev. 9/13/2011). The referenced authorization will include verification of routes proposed in the Study, all permitting, identification of utility requirements and conflicts, required utility adjustments and replacement, coordination with utility companies and attending of utility coordination meetings, public involvement, and any other items necessary to successfully develop the project.

The Impact Fee Wastewater Improvements consists of a lift station and two wastewater lines to provide wastewater service to areas within the City.

- The 1,200 GPM first phase of an ultimate capacity 2,400 GPM lift station will be located on the east side of Post Road at its crossing of Yarrington Road as part of the Southside Wastewater Improvements. A 12" force main will extend from the lift station to the east and follow the route of the gravity lines a distance of 12,200 feet as described in the subsequent section including a bore across I-35.
- The Southside Wastewater Improvements also include approximately 13,300 feet of 15", 12", 10" and 8" gravity

wastewater line from the lift station described previously extending to the east and crossing I-35 in a bore. The line will then turn north extending along the east ROW line of I-35 a distance of approximately 8,000 feet serving the Southside service area. Another gravity line will continue north in the Plum Creek service area along the east ROW line of I-35 and connect to a manhole near the City's Public Works facility along RM 150. A 15" gravity line will also be stubbed to the west of the lift station site crossing under the Union Pacific Railroad in a bored section.

- The Elliott Branch Wastewater Interceptor includes approximately 5,900 feet of 15", 12", and 8" gravity wastewater line extending from a manhole on the north gravity line segment described previously. The line will extend west in a bore across I-35, then generally follow the route of Elliott Branch to the south and east including a bore under the Union Pacific Railroad. The improvements will end at the Elliott Branch crossing at Scott Street.

The WW lines and LS to be constructed consist of the following: a) Blanco Basin - Gravity Line East of IH-35; b) Blanco Basin - Gravity Line West of IH-35; c) Blanco Basin - Phase I Lift Station, and: d) Elliott Branch Interceptor. The estimated probable cost to construct these facilities is \$3,853,000 including engineering and contingencies per the PER.

These professional services (as well as the constructed WW improvements) will be completed using WW impact fee funds.

City Staff will negotiate the planned scope of services, project deliverables and the proposed budget for the services to be provided by RPS Espey; amount not to exceed \$321,150. We recommend use of a 'sample contract' to be provided by the selected consultant to be adapted to the City's needs in concert with the City's attorney and the selected consultant. Any attendant legal services are not a part of this authorization.

Budget Information: A Fiscal Note is attached.

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

Attachments / click to download

[RFQ E 11-12-001 SOQ INTVW](#)

[Fiscal Note - Eng Southside/Elliott Branch WW Espey](#)

No.	Firm Submitting	FINAL RANK	TOTAL SCORE AVG.	INT'VW. TOTAL SCORE AVG. (50 pts. MAX)	SOQ TOTAL SCORE AVG. (100 pts. MAX)
8	URS Corporation	3	118.6	29.5	89.1
11	Lockwood, Andrews & Newnam, Inc.	2	129.6	40.3	89.3
14	RPS Espey	1	132.9	44.5	88.4

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: May 15, 2012
 CONTACT CITY DEPARTMENT: Engineering
 CONTACT CITY STAFF: Steven Widacki, City Engineer

SUBJECT: Approve award and authorize the negotiation of a professional services agreement with RPS ESPEY CONSULTANTS, INC., to perform the engineering services associated with the "e 11-12-01" City of Kyle "Southside Wastewater and Elliott Branch Wastewater Interceptor Improvements" projects.

CURRENT YEAR FISCAL IMPACT:

This engineering services contract with RPS ESPEY CONSULTANTS, INC., will require expenditure of funds from accumulated wastewater impact fees.

1. City Department:	Engineering
2. Project Name:	Southside Wastewater & Elliot Branch Wastewater Imps.
3. Budget/Accounting Code(s):	342-888-57313
4. Funding Source:	Wastewater Impact Fee Fund
5. Current Appropriation:	\$ 7,185,594.00
6. Unencumbered Balance:	\$ 7,165,594.00
7. Amount of This Action:	<u>\$(Undetermined)</u>
8. Remaining Balance:	<u>\$ Undetermined)</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this engineering services contract in the amount of (undetermined at this time) will be provided from accumulated wastewater impact fees.

The City Council's approval of this item will also authorize staff to appropriate and apply accumulated funds from the Wastewater Impact Fee Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.



CITY OF KYLE, TEXAS

Bebee Road & Kyle Parkway Alignment Study

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize the Execution of a Professional Services Agreement with NEPTUNE-WILKINSON ASSOCIATES, INC. (NWA) to perform the Engineering Services associated with "Kyle Parkway and Bebee Road Alignment Study" in an amount Not to Exceed \$6,500.00 ~ *Steven Widacki, P.E., City Engineer*

Other Information: City Staff has determined the need to establish alignments for the future right-of-way (ROW) needs for:
Kyle Parkway from Dacy Lane to Sapphire Lake Drive, and;
Bebee Road from IH-35 to Dacy Lane.

These alignments are necessary to provide guidance to several affected development projects along each reach of the referenced roadways.

The work will consist of a desktop survey establishing horizontal curvature and alignment relative to property lines as established from record deed information sufficient to determine the location of property to be acquired for new roadway alignments and establish needed ROW widths.

Proposed alignments will be based upon the City of Kyle Comprehensive Plan and AASHTO design criteria as appropriate.

Up to three options for each road will be evaluated and discussed with City Staff prior to preparation of a final exhibit which would be sufficient for use in preparing a metes and bounds description of the ROW needed to be acquired.

With the information determined from this study City Staff can establish perimeter road fees and ROW widths to be dedicated by each development.

City Staff recommends approval of these services.

Attached: Letter Proposal from NWA (3 pp)

Budget Information: A Fiscal Note is attached.

Cover Memo

Item # 13

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

Attachments / click to download

 [Beebe Kyle Pkwy NWA ltr proposal](#)

 [Fiscal Note - Beebe Road Alignment Study Neptune-Wilkinson](#)

NEPTUNE - WILKINSON ASSOCIATES, INC.
Consulting Engineers
TBPE Firm# F-359

4010 Manchaca Road
Austin, Texas 78704

(512) 462-3373
(FAX) 462-3469

May 2, 2012

Steven Widacki, P.E., City Engineer
City of Kyle
P.O. Box 40
Kyle, Texas 78640

Re: Letter Proposal for Engineering Services
Kyle Parkway and Bebee Road Alignment Study
NWA# 1190-551/552

Dear Steven:

As requested, Neptune-Wilkinson Associates, Inc. (NWA) proposes to prepare an Alignment Study for establishing the right-of-way location for the following two segments of roadway:

- 1) Kyle Parkway from Dacy Lane to Sapphire Lake Drive, and
- 2) Bebee Road from IH-35 to Dacy Lane.

The work will consist of a desktop survey establishing right-of-way widths, horizontal curvature and alignment relative to property lines as established from record deed information sufficient to determine the location of property to be acquired for the new roadway alignments.

The proposed alignment will be based on the City of Kyle Comprehensive Plan, Thoroughfare Master Plan and AASHTO design criteria as appropriate.

Up to three options for each road will be evaluated and discussed with City staff prior to preparing a final exhibit which would be sufficient for use in preparing a metes and bounds description of the right-of-way needed to be acquired.

Not included in this scope of work is field surveying, roadway design, engineered plan and profile sheets, preparation of metes and bounds description(s) for needed property acquisition, verification of current property ownership, title research, or any interfacing with property owners or developers.

Attachment number 1 \nPage 2

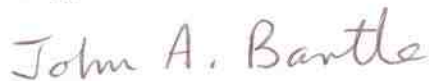
It is estimated the Kyle Parkway Alignment Study would require \$3,500.00 in services and Bebee Road Alignment Study will require \$3,000.00. NWA proposes to perform the above described work for a cost not to exceed \$6,500.00 unless previously authorized. The cost will be determined by time expended and charges incurred at the rates listed in attached Exhibit "A".

If additional services are requested and approved, the cost of such service will also be calculated using the time expended and hourly rates in Exhibit "A".

NWA will begin work on the Alignment Study upon approval of this letter proposal by City Council and propose to complete the Study in about 30 days after given notice to proceed.

We are pleased to offer these services to the City and if additional information is needed, simply contact our office.

Sincerely,



John A. Bartle, P.E.

JAB:jm

Proposal Accepted and Authorization to Proceed

Signature: _____

Print Name: _____

Date: _____

City of Kyle

EXHIBIT "A"
PAYMENTS FOR ENGINEERING SERVICES AUTHORIZED
TO BE BASED ON TIME EXPENDED AT THE FOLLOWING RATES

Principal	\$120.00 per hour
Engineer	95.00 per hour
Engineering Technician	45.00 per hour
Survey Technician	45.00 per hour
CAD Technician (Drafter)	45.00 per hour
Administrative/Clerical	35.00 per hour

Attachment number 1 \nPage 3

Direct expenses will be billed at the engineer's cost plus 10%. Travel expenses will be billed at the rate of \$0.48 per mile. Principal time charged by NWA for meeting attendance on behalf of CLIENT will be for the approximate time expended on engineering and/or related technical consultation which occurs during the meeting, but not less than two (2) hours will be charged for any one meeting.

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: May 15, 2012
CONTACT CITY DEPARTMENT: Public Works
CONTACT CITY STAFF: Steven Widacki, City Engineer

SUBJECT: Authorize the execution of a professional services agreement with NEPTUNE-WILKINSON ASSOCIATES, INC., to perform the engineering services associated with "Kyle Parkway and BeBee Road Alignment Study" in an amount not to exceed \$6,500.00.

CURRENT YEAR FISCAL IMPACT:

This professional services agreement with NEPTUNE-WILKINSON ASSOCIATES, INC., will require transfer of budgeted funds from various expenditure line items in the Street Maintenance Division of the Public Works Department. The funding for this study is being provided from the following specific budget line items of the Street Maintenance Division:

a) Street Repair Materials:	\$1,000.00
b) Safety Signs & Barricades:	\$1,000.00
c) Striping/Street Signs/Poles:	\$1,000.00
d) Building Materials:	\$1,000.00
e) Sand & Gravel:	\$1,000.00
f) Chemicals/Supplies:	<u>\$1,500.00</u>
Total:	<u>\$6,500.00</u>

1. City Department:	Public Works
2. Project Name:	BeBee Road Alignment Study
3. Budget/Accounting Code(s):	110-161-55117 (Other Contract Services)
4. Funding Source:	Street Maintenance/Public Works (General Fund)
5. Current Appropriation:	\$ 5,802.94 (before budget transfer)
6. Unencumbered Balance:	\$ 12,302.94 (after budget transfer)
7. Amount of This Action:	<u>\$(6,500.00)</u>
8. Remaining Balance:	<u>\$ 5,802.94</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this professional services agreement in the amount of \$6,500.00 will be provided from FY 2011-12 budgeted funds for the Street Maintenance Division of the Public Works Department.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.



CITY OF KYLE, TEXAS

FM 2770 & RM 150 Sidewalk Advance Funding Agreement w/ TxDOT

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation:

Authorize Execution of Advance Funding Agreement (AFA) with Texas Department of Transportation for a Metropolitan Mobility and Rehabilitation Project On-System to Construct Sidewalks and Bike Lanes on FM 2770 from Hays High School to RM 150 (Rebel Drive) and on RM 150 from FM 2770 to N. Burleson Street. Funding from Federal and State participation for Engineering and Construction totals \$963,000.00. Total Project Funds under the AFA are \$1,010,298.00 to cover State Costs for Review, Inspection and Oversight of work performed. Local (City of Kyle) participation in the overall project cost is estimated to be \$0.00 ~ *Steven Widacki, P.E., City Engineer*

Other Information:

The City submitted an application to the Capital Area Metropolitan Planning Organization (CAMPO) for State Transportation Plan Metropolitan Mobility (STPMM) funding to enhance mobility and access for area residents. The primary objective was to provide safer route(s) for students walking/biking to one of the five area schools along FM 2770 and RM 150. CAMPO selected the project for funding under the STPMM program.

The attendant AFA is the funding mechanism to perform the engineering and construction associated with these improvements. Standard practice is to get the AFA in place prior to performance of any work under this contract for which reimbursement will be provided by or through the State. Additionally, the City Engineer has completed the necessary training and received the attendant certificate for the course entitled Local Government Project Procedures Qualification for the Texas Department of Transportation, or LGPP, which is required as a condition of this AFA.

All provisions of the AFA must be complied with to receive the full amount of funding. These provisions include: provision for environmental assessment and mitigation; compliance with Texas Accessibility Standards; project design(s) in accordance with TxDOT standards, including material specifications; compliance with Disadvantaged Business Enterprises (DBE) program requirements; etc.

City Staff will administer the project under the required provisions of LGPP and will solicit professional services to complete the project design.

City Staff recommends approval and execution of the referenced AFA for the project.

The following documents are attached to provide detailed information:

1. Cover Letter for AFA from TxDOT dated April 26, 2012
2. Advance Funding AgreementL
3. GPP Certificate for Steven Widacki

Budget Information: There is no budgetary impact to the City.

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

Attachments / click to download

- [AFA Cover Letter](#)
 - [AFA 16](#)
 - [LGPP Certificate SDW](#)
-



Texas Department of Transportation

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

April 26, 2012

Hays County
CSJ 3210-01-012 & 0805-04-025
Sidewalks on FM 2770 and RM 150
STP MM

Mr. Steven Widacki, P.E.
City Engineer
City of Kyle
520 East RM 150
Kyle, Texas 78640

Item # 14

Dear Mr. Widacki:

Attached for partial execution are two copies of an Advance Funding Agreement (AFA) for the above referenced recently selected CAMPO project to construct sidewalks under the STP MM program.

Please return both signed and dated documents to this office for further execution. Include a copy of Council action agreeing to enter into the agreement which will be designated as Attachment A in the Agreement. A fully executed Agreement will be returned for your records.

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

Sincerely,

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

Attachments

cc: Don Nyland, P.E., S Travis/Hays County Area Engineer

THE TEXAS PLAN

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CSJ # 3210-01-012 and 0805-04-025
District # 14 – Austin
Code Chart 64 # 22850
Project: FM 2770 and RM 150
Federal Highway Administration
CFDA # 20.205
Not Research and Development

STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For A
METROPOLITAN MOBILITY and REHABILITATION PROJECT
ON-SYSTEM**

Item # 14

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, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 112824, authorizing the State to undertake and complete a highway improvement generally described as construct sidewalks and bike lanes called the "Project"; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment "A" for the improvement covered by this agreement. A map showing the Project location appears in Attachment "B," which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this agreement, it is agreed as follows:

AGREEMENT

1. Period of the Agreement

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Scope of Work

Construct sidewalks and bike lanes on FM 2770 from Hays High School to RM 150 (Rebel Drive) and on RM 150 From FM 2770 to N Burleson Street in Kyle, Texas as shown on Attachment "B", Location Map Showing Project.

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in the Project Budget – Attachment "C", which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Governments, or other parties is shown in Attachment "C". The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- B. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C. This Project cost estimate shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.

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- E.** The Local Government will be responsible for all non-federal or non-state participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this agreement or approved otherwise in an amendment to this agreement.
- F.** Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the Project. 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 cost.
- G.** 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.
- H.** 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 to the State Project.
- I.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party. 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.
- J.** The State will not pay interest on any funds provided by the Local Government.
- K.** If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local Project, unless this agreement is terminated at the request of the Local Government prior to completion of the Project.
- L.** If the Project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule.
- M.** If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- N.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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.

Item # 14

- O. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
- P. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- Q. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this agreement.

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4. Termination of this Agreement

This agreement shall remain in effect until the project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

6. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

7. 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.

8. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this agreement.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- D. The Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this Project.
- E. Before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of all projects subject to this agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The Local Government has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable *State's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

11. Construction Responsibilities

- A. The Local Government 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 that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

- B. The Local Government will use its approved contract letting and award procedures to let and award the construction contract.
- C. Prior to their execution, the State will be given the opportunity to review and approve all contract change orders.
- D. Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- E. For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

12. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

13. Right of Way and Real Property

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to TxDOT before funds may be expended for the improvement of the right of way or real property.
- B. If the Local Government is the owner of any part of the Project site under this agreement, the Local Government shall permit TxDOT or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to TxDOT and its representatives for review and inspection.
- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to TxDOT, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The

Local Government shall be responsible for securing any additional real property required for completion of the Project.

- E. In the event real property is donated to the Local Government after the date of TxDOT's authorization, the Local Government will provide all documentation to TxDOT regarding fair market value of the acquired property. TxDOT will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. TxDOT will not reimburse the Local Government for any real property acquired.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to TxDOT for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to TxDOT and to submit to TxDOT a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values.
- H. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by TxDOT prior to its execution. A copy of the executed agreement shall be provided to TxDOT.

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14. 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, addressed to such party at the following addresses:

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 District # 14 – Austin
 Code Chart 64 # 22850
 Project: FM 2770 and RM 150
 Federal Highway Administration
 CFDA # 20.205
 Not Research and Development

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

Item # 14

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided by 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.

15. Legal Construction

If 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 any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

16. 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.

17. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

18. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

22. Inspection of Books and Records

The parties to this agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Civil Rights Compliance

The Local Government shall comply with the regulations of the United States Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

24. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.

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- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this LPAFA. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this LPAFA. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

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25. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

26. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

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Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Item # 14

27. 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 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.

28. Federal Funding Accountability and Transparency Act Requirements

A. Any recipient or sub-recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

B. For sub-awards greater than \$25,000, the Local Government, as a recipient of federal funding, shall:

1. Obtain and provide to the State and the Federal government, a Central Contracting (CCR) number with the Federal government (Federal Acquisition Regulation, Part 4, Sub-part 4.1100). The CCR number may be obtained by visiting the CCR website whose address is: <https://www.bpn.gov/ccr/default.aspx>;
2. Obtain and provide to the State and the Federal government, a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top executives to the State and Federal government if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and

CSJ # 3210-01-012 and 0805-04-025
District # 14 – Austin
Code Chart 64 # 22850
Project: FM 2770 and RM 150
Federal Highway Administration
CFDA # 20.205
Not Research and Development

- ii. Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

29. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/contact_us/audit.htm.
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

Item # 14

30. Signatory Warranty

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

CSJ # 3210-01-012 and 0805-04-025
District # 14 – Austin
Code Chart 64 # 22850
Project: FM 2770 and RM 150
Federal Highway Administration
CFDA # 20.205
Not Research and Development

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

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

Item # 14

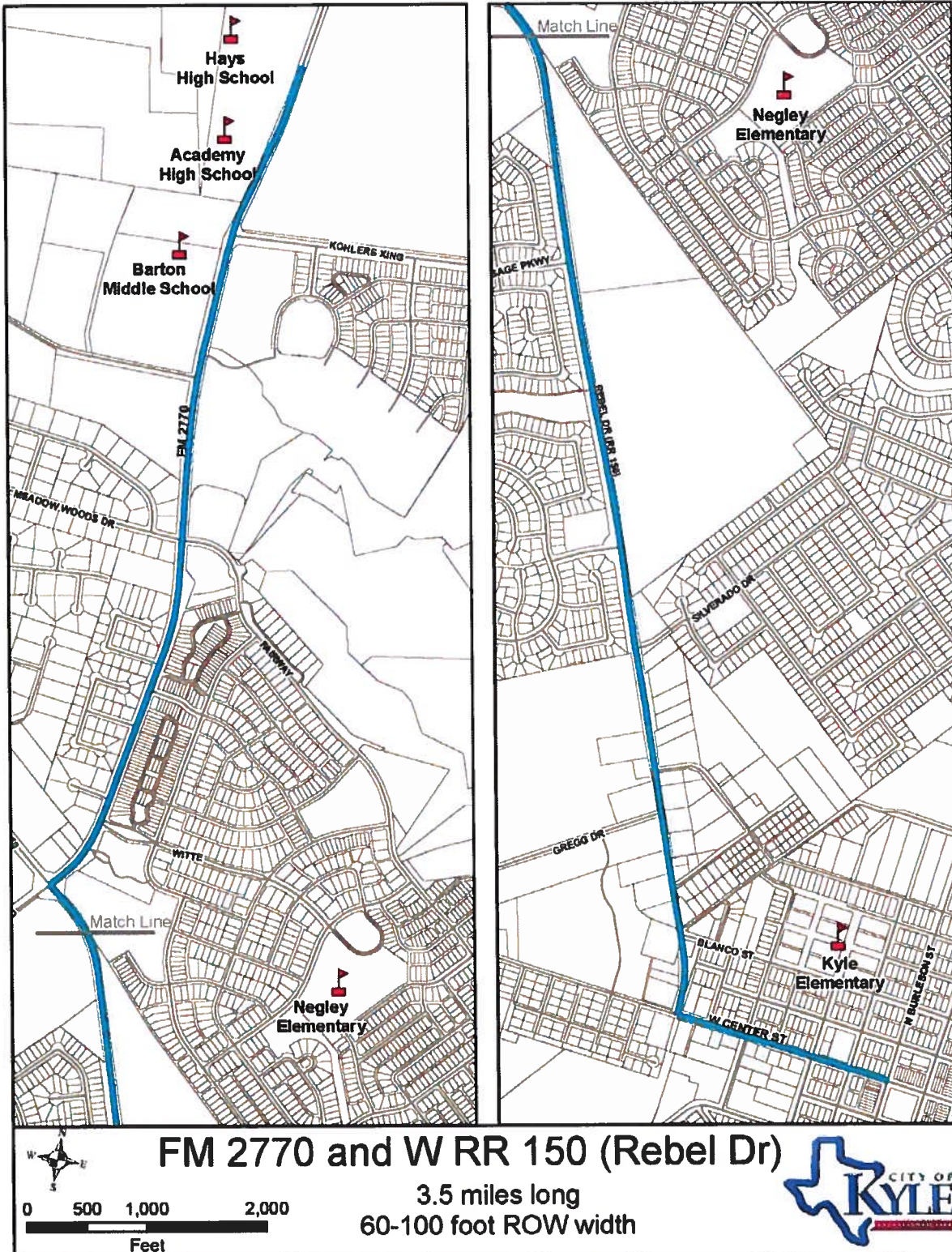
CSJ # 3210-01-012 and 0805-04-025
District # 14 – Austin
Code Chart 64 # 22850
Project: FM 2770 and RM 150
Federal Highway Administration
CFDA # 20.205
Not Research and Development

ATTACHMENT A
RESOLUTION OR ORDINANCE

Item # 14

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ATTACHMENT B - LOCATION MAP SHOWING PROJECT



Item # 14

CSJ # 3210-01-012 and 0805-04-025
 District # 14 – Austin
 Code Chart 64 # 22850
 Project: FM 2770 and RM 150
 Federal Highway Administration
 CFDA # 20.205
 Not Research and Development

**ATTACHMENT C
 PROJECT BUDGET**

Costs will be allocated based on 80% Federal funding and 20% Local Government funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

CSJ: 3210-01-012									Item #
Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation			
		%	Cost	%	Cost	%	Cost		
Preliminary Engineering (By Local)	\$100,000	80%	\$80,000	20%	\$20,000	0%	\$0		
Construction (By Local)	\$319,700	80%	\$255,760	20%	\$63,940	0%	\$0		
Subtotal	\$419,700		\$335,760		\$83,940		\$0		
CSJ: 0805-04-025									
Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation			
		%	Cost	%	Cost	%	Cost		
Preliminary Engineering (By Local)	\$100,000	80%	\$80,000	20%	\$20,000	0%	\$0		
Construction (By Local)	\$443,300	80%	\$354,640	20%	\$88,660	0%	\$0		
Subtotal	\$543,300		\$434,640		\$108,660		\$0		
State Costs for Review, Inspection and Oversight of Work Performed									
Preliminary Engineering Direct State Costs (\$11,756) 1.5%	Environmental (20%)	\$2,351	0%	\$0	100%	\$2,351	0%	\$0	
	Right of Way (20%)	\$2,351	0%	\$0	100%	\$2,351	0%	\$0	
	Professional Engineering (40%)	\$4,703	0%	\$0	100%	\$4,703	0%	\$0	
	Utilities (20%)	\$2,351	0%	\$0	100%	\$2,351	0%	\$0	
Construction Direct State Costs (.7%)	\$5,030	0%	\$0	100%	\$5,030	0%	\$0		
Indirect State Costs (7.27%)	\$30,512	0%	\$0	100%	\$30,512	0%	\$0		
Subtotal	\$47,298		\$0		\$47,298		\$0		
Total	\$1,010,298		\$770,400		\$239,898		\$0		

Initial payment by the Local Government to the State: \$0
 Payment by the Local Government to the State before construction: \$0
 Estimated total payment by the Local Government to the State \$0
 This is an estimate. The final amount of Local Government participation will be based on actual costs.



CERTIFICATE OF TRAINING

Awarded to

Steven Widacki

in recognition of participation in

Local Govrnmt Proj Procedures

Presented By

TEEX - ITSII

On

April 25, 2012

Phil Carlson
Executive Director # 14

Contact Hours: 12.00

Continuing Education Units 0.00



CITY OF KYLE, TEXAS

Professional Services for Easement Acquisition

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize the Execution of a Professional Services Agreement with DIANNA L. TINKLER (DLT) to perform the services associated with “Right of Way Services – Bunton Creek WW Interceptor, Ph. 3” (WW Impact Fee Project) in an amount Not to Exceed \$29,785.00 ~ *Steven Widacki, P.E., City Engineer*

Other Information: Dianna L. Tinkler is working with Neptune-Wilkinson Associates, Inc. on the Bunton Creek WW Interceptor, Ph. 3, which is to provide service in the Bunton Creek basin and relieve some of the flows currently diverted to the Plum Creek basin. City Staff has determined the need for right-of-way/easement acquisition services associated with the subject wastewater interceptor.

The project includes the construction of a wastewater line beginning at the existing Plum Basin Interceptor at the City’s WWTP. The proposed line will continue north crossing the divide between the Plum Creek and Bunton Creek basins toward Bunton Road, then turn west-northwest generally following the alignment of Bunton Creek beyond its crossing of Goforth Road.

With these services the easements needed to construct the referenced improvements will be acquired, allowing final design and construction to proceed.

City Staff recommends approval of these services.

Attached: Letter Proposal from DLT (3 pp)

Budget Information: Project is to be completed with Wastewater Impact Fee funds; to be provided by Finance Dept.

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

Attachments / click to download

 [Fiscal Note - ROW Acquisitions Bunton Crk WW Dianna Tinkler](#)

 [Bunton WW Project acqu svcs DL Tinkler](#)

Cover Memo

Item # 15

DIANNA L. TINKLER

P. O. Box 9814, Austin, Texas 78766-9814

dianna.tinkler@sbcglobal.net

Cell 512-413-9817

Fax 512-467-6012

**PROPOSAL FOR RIGHT OF WAY SERVICES
BUNTON CREEK WASTEWATER INTERCEPTOR, PHASE 3
CITY OF KYLE
May 2, 2012**

SCOPE

The purpose of this proposal is to estimate the cost of right of way services to obtain six (6) permanent wastewater easements and one (1) temporary construction easement (total of seven (7) parcels) from landowners for the Bunton Creek Interceptor, Phase 3 Project in Kyle, Texas.

I. Easement Acquisitions for the Following Types of Negotiations:

- A) Donations without appraisals
- B) Negotiated settlements based on Hays County Appraisal District (HCAD) assessed values

Negotiation, Signature, and Closing of Easement Donation

16 hours per parcel x 7 parcels x \$90 per hour	\$10,080.00
---	-------------

II. Easement Acquisitions for the Following Types of Negotiations:

- A) Independent fee appraisal requested by owner
- B) If unable to negotiate settlement without an Independent fee appraisal
- C) If unable to reach agreement and must condemn required easements

Negotiation, Signature, Closing or Condemnation of Easement

20 hours per parcel x 7 parcels x \$90 per hour	\$12,600.00
---	-------------

III. Signature for Lender Consent and Tenant Consent, if applicable

8 hours per parcel x 7 parcels x \$90 per hour	\$ 5,040.00
--	-------------

IV. Materials

A) Mileage (360 miles x 7 parcels @ \$0.555)	\$1,400.00	
B) Postage (\$45 per parcel x 7 parcels)	315.00	
C) Copies (250 copies x 7 parcels @ \$0.20/copy)	350.00	\$ 2,065.00

TOTAL NOT TO EXCEED	\$29,785.00
----------------------------	--------------------

NOTE: See Page 2 for terms and limiting conditions for right of way services.

Terms and limiting conditions for right of way services:

- 1) City of Kyle will provide Dianna Tinkler with the approved field notes for all permanent and temporary construction easements to be acquired.
- 2) City of Kyle will provide templates or actual documents for all easements, i.e. Public Utility Easement, Wastewater Easement, Temporary Construction Easement, and any other pertinent forms in an acceptable format to be filed in the Official Public Records (OPR) of Hays County, Texas.
- 3) Dianna Tinkler will provide standard templates for Purchase Contracts and Tenant Consents to be executed by the owner and approved by the City.
- 4) Dianna Tinkler will provide Lender Consents, if applicable, in an acceptable format to be filed in the OPR of Hays County, Texas.
- 5) Dianna Tinkler will coordinate ordering of title research to confirm accuracy of ownership and resolve any title issues so that clear title is acquired.
- 6) City of Kyle will pay title research costs for all parcels.
- 7) City of Kyle will pay or reimburse Dianna Tinkler for any processing fees assessed by lenders for lender consent requests.
- 8) City of Kyle will pay or reimburse Dianna Tinkler for all recording fees for the easements in the OPR in Hays County, Texas.
- 9) If an owner is unwilling to donate the required easement, then an independent fee appraisal must be completed. Cost of the independent fee appraisals will be invoiced directly to the City.
- 10) Maximum of three meetings with the owner are included in the sixteen hours for Negotiation, Signature, and Closing of the Easement Donation.
- 11) If an owner requests an appraisal, negotiations for the required easements will be re-initiated based on the appraised value.
- 12) Maximum of three meetings with the owner are included in the twenty hours for Negotiation, Signature, and Closing or Condemnation of Easement.
- 13) The Total Not To Exceed amount of \$29,785.00 includes right of way services for each parcel obtaining a signed easement by the owner or expired final offer letter with parcel file being submitted to City for condemnation.
- 14) Dianna Tinkler will invoice the City monthly for the right of way services provided and payment is due within 30 days of receipt of the invoice .
- 15) The number of parcels is based on the preliminary route established in the Easement Plan for Bunton Creek Interceptor, Phase 3 prepared by Neptune-Wilkinson Associates, Inc.

Right of way services invoiced as additional services:

- 1) Any meetings in excess of the maximum three meetings for donations or based on HCAD assessed values with owner to obtain an executed easement donation will be invoiced at \$90 per hour in accordance with the attached billing schedule by itemized acquisition task.
- 2) Any meetings, in excess of the maximum three meetings, with owner to obtain an executed easement based on an independent fee appraisal will be invoiced at \$90 per hour in accordance with the attached billing schedule by itemized acquisition task.
- 3) Any testimony or preparation for condemnation proceedings will be invoiced at the rate of \$90 per hour in accordance with the attached billing schedule by itemized acquisition task.

- 4) Tracts with multiple undivided interest ownership and/or business entities requiring multiple signatures to convey a property interest will be invoiced at \$90 per hour for any additional meetings required to accommodate individual owner's needs.
- 5) Tracts with bankruptcy, Abstracts of Judgment, foreclosures, Veterans Land Board contracts, and/or railroad ownership will be invoiced at \$90 per hour to resolve these title issues.
- 6) Route changes/realignments after field notes finalized and distributed to agent and appraiser to begin acquisition process will be invoiced at the rate of \$90 per hour in accordance with the attached billing schedule by itemized acquisition task.
- 7) Parcel files submitted to City Attorney for condemnation, then returned to agent to finalize easement acquisition and closing with owner per City Attorney's request will be invoiced at \$90 per hour in accordance with the attached billing schedule by itemized acquisition task.

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: May 15, 2012
CONTACT CITY DEPARTMENT: Engineering
CONTACT CITY STAFF: Steven Widacki, City Engineer

SUBJECT: Authorize the execution of a professional services agreement with DIANNA L. TINKLER to perform the services associated with "right of way services – Bunton Creek Wastewater Interceptor, Ph. 3" in an amount not to exceed \$29,785.00.

CURRENT YEAR FISCAL IMPACT:

This professional services agreement with DIANNA L. TINKLER for right-of-way acquisition services will require expenditure of funds from accumulated wastewater impact fees.

1. City Department:	Engineering
2. Project Name:	Bunton Creek Wastewater Interceptor
3. Budget/Accounting Code(s):	342-889-57224
4. Funding Source:	Wastewater Impact Fee Fund
5. Current Appropriation:	\$ 7,185,594.00
6. Unencumbered Balance:	\$ 7,161,192.75
7. Amount of This Action:	<u>\$(29,785.00)</u>
8. Remaining Balance:	<u>\$ 7,131,407.75)</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this professional services agreement in the amount of \$29,785.00 will be provided from accumulated wastewater impact fees.

The City Council's approval of this item will also authorize staff to appropriate and apply accumulated funds from the Wastewater Impact Fee Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

In 2010, the City Council approved an engineering services contract with Hanrahan Pritchard Engineering, Inc., in the amount of \$31,550.00 (as amended) to provide design phase services, survey phase services, construction plans services, and bidding and construction administrative phase services for the Bunton Creek Wastewater Interceptor project (ACC Wastewater Line).



CITY OF KYLE, TEXAS

Professional Services for Subsurface Exploration

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize the Execution of a Professional Services Agreement with ECS TEXAS, LLP (ECS) to perform the Engineering Services associated with "Subsurface Exploration - Bunton Creek WW Interceptor" (WW impact fee project) in an amount Not to Exceed \$4,401.25 ~ *Steven Widacki, P.E., City Engineer*

Other Information: ECS Texas, LLP is working with Hanrahan-Pritchard Engineering on the Bunton Creek WW Interceptor, Ph. 2A, which is to serve the ACC project site as well as future portions of the Plum Creek development north of Kohler's Crossing.
City Staff has determined the need to characterize the subsurface conditions associated with the subject wastewater interceptor.

The project includes the construction of a wastewater line beginning at the existing Bunton WW Interceptor west of IH-35 in the Plum Creek development. The proposed line will continue west for about 2,000 feet crossing under the Union Pacific RR (UPRR), then turn north for about 1,800 feet along the UPRR on the ACC site and then cross to the north side of Kohler's Crossing. Both the UPRR and Kohler's Crossing crossings will be in bored or tunneled sections.

With the information determined from this subsurface exploration construction techniques can be determined as well as materials to be encountered during construction operations.

City Staff recommends approval of these services.

Attached: Letter Proposal from ECS (8 pp)

Budget Information: A Fiscal Note is attached.

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

Attachments / click to download

- [17-3699 Bunton Creek Interceptor ECS proposal](#)
- [Fiscal Note - GeoTech Bunton Crk WW ECS Texas](#)

Cover Memo

Item # 16



ECS TEXAS, LLP

GEOTECHNICAL • CONSTRUCTION MATERIALS • ENVIRONMENTAL • FACILITIES

PROPOSAL FOR SUBSURFACE EXPLORATION

BUNTON CREEK WW INTERCEPTOR KYLE, TEXAS



Item # 16

www.ecslimited.com

**ECS TEXAS, LLP**

Geotechnical • Construction Materials • Environmental • Facilities

"Setting the Standard for Service"

TX Registered Engineering Firm F-8461

April 26, 2012

Mr. Larry Hanrahan, P.E.
Hanrahan Pritchard Engineering, Inc.
8333 Cross Park Drive
Austin, Texas 78754

ECS Proposal No. 17-3699

Reference: Proposal for Subsurface Exploration
Bunton Creek WW Interceptor
Kyle, Texas

Dear Mr. Hanrahan:

As requested, ECS-Texas, LLP (ECS) is pleased to present the following estimated fee proposal to provide a subsurface exploration for the proposed wastewater interceptor. We appreciate the opportunity to work with you on this project.

PROJECT INFORMATION

The site is located near Kohler's Crossing and the Union Pacific railroad in Kyle, Texas. The project includes the construction of a wastewater line, beginning at the intersection of Kohler's Crossing and the railroad, continuing south for about 1,800 feet, then crossing under the railroad and continuing east for about 2,000 feet. The wastewater line will range from about 14 to 30 feet below current grades. We anticipate that the site will be accessible for truck-mounted drilling equipment.

SCOPE OF SERVICES

Based on our understanding of the project, we will drill two test borings near the bore pits to depths of 30 and 35 feet, and we propose to drill 5 borings in the alignment of the wastewater line to depths of 20 and 30 feet. The total planned drilling is 195 linear feet.

Our services will include drilling of the test boring by drill crews under our direct supervision, visual/manual classification of soils encountered, and the preparation of a letter report describing the field exploration, geologic information, and soils encountered.

FEES – GEOTECHNICAL

The estimated cost associated with the scope of services identified above is as follows:

Description	Quantity	Unit	Unit Rate	Estimated Cost
Field Exploration				
Drill Rig Mobilization (Truck)	1	Each	\$500.00	\$500.00
Drilling/Utility Coordination and Boring Layout	4	Hours	\$70.00	\$280.00
Borings - Soil	70	Feet	\$13.00	\$910.10
Borings – Rock	125	Feet	\$16.25	\$2,031.25
Field Exploration Subtotal:				\$3,721.25
Report Preparation				
Principal Engineer	2	Hours	\$150.00	\$300.00
Project Engineer	4	Hours	\$95.00	\$380.00
Report Preparation Subtotal:				\$680.00
Total Estimated Cost:				\$4,401.25

SCHEDULE

We anticipate that we can mobilize to the site within one week after written authorization to proceed. Drilling operations will require about two to three days, and classification, after drilling is completed, will require a few days. Therefore, for time budget purposes, the entire scope should take about two to three weeks from initial written authorization through final report submission.

UTILITY CLEARANCE AND SITE RESTORATION

We will contact Digtess to locate underground utilities at the site; however, our experience indicates that Digtess will normally not locate private utilities. We can provide a private utility line locator to mark underground utilities not indicated by Digtess for an additional fee (if required, the use of a private utility locator may delay the drilling schedule).

We will backfill each of the borings with the excavated soil and patch the paving areas with an equivalent material and thickness as the current conditions dictate. Please note that some disturbance to the ground surface will occur. We will attempt to minimize such disturbance; however, we have not budgeted for full restoration of the site. If necessary, additional site restoration can be provided upon request at an additional cost.

CLOSING

If other items are required because of unexpected field conditions encountered in our field exploration program, or because of a request for additional services, they would be invoiced in accordance with our current Fee Schedule. Before modifying or expanding the extent of our exploration program, you would be informed of our intentions for both your review and authorization.

Attached to this letter, and an integral part of our proposal, are our "Terms and Conditions of Service". These conditions represent the current recommendations of the ASFE Professional Firms Practicing in the GeoSciences, the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing and returning the enclosed copy to us. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

Respectfully,

ECS-TEXAS, LLP



Paul L. Zinnecker, E.I.T.
Project Manager



Rob W. Archer, P.E.
Principal Engineer

Attachments: Proposal Acceptance
Terms and Conditions

PROPOSAL ACCEPTANCE

ECS-TEXAS, LLP

Proposal No.: 17-3699
Scope of Work: Subsurface Exploration
Project: Bunton Creek WW Interceptor
Location: Kyle, Texas

Client Signature: _____ Date: _____

Please complete and return this page to ECS to indicate acceptance of this proposal and to initiate work on the above-referenced project. The Client's signature above also indicates that he/she has read or has had the opportunity to read the accompanying Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service.

BILLING INFORMATION

(Please Print or Type)

Name of Client: _____

Name of Contact Person: _____

Telephone No. of Contact Person: _____

E-mail Address of Contact Person: _____

Party Responsible for Payment: _____

Company Name: _____

Person/Title: _____

Department: _____

Billing Address: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Client Project/Account Number: _____

TERMS AND CONDITIONS OF SERVICE

ECS TEXAS, LLP

These Terms and Conditions of Service, including any supplements that may be agreed to, along with the accompanying Scope of Services and Professional Fees constitute the entire Agreement ["AGREEMENT"] under which Services are to be provided by ECS Texas, LLP ["ECS"] (including its employees, officers, successors and assigns) for Client ["CLIENT"] (including its employees, officers, successors and assigns).

such risks cannot be eliminated and agrees that the Scope of Services is that which CLIENT agrees suits CLIENT'S own risk tolerances. CLIENT may request ECS to evaluate the risks and provide a higher level of exploration to reduce such risks, if desired or appropriate.

1.0 INDEPENDENT CONSULTANT STATUS

- 1.1 Except as may be otherwise noted herein, ECS shall serve as an independent professional consultant to CLIENT and shall have control over, and responsibility for, the means and methods for providing the Services under this AGREEMENT, including the retention of Subcontractors and Subconsultants. Unless expressly stated in ECS' Scope of Services, ECS shall not serve as CLIENT'S agent or representative.

2.0 SCOPE OF SERVICES

- 2.1 It is understood that the Scope of Services, Professional Fees, and time schedule defined in the Scope of Services are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, or if conditions are discovered that could not be foreseen by a reasonable person, the Scope of Services may change, even while the Services are in progress.

3.0 STANDARD OF CARE

- 3.1 ECS shall strive to perform its professional Services in a manner consistent with that level of skill and care ordinarily exercised by competent members of the same profession providing similar Services in the same region, under similar conditions during the same time period. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any ECS report, opinion, plan or other Document of Service, in connection with ECS' Services.
- 3.2 CLIENT understands and agrees that ECS' professional judgment must rely on the facts learned during performance of the Scope of Services. CLIENT acknowledges that such data collection is limited to the immediate area that is sampled, tested and/or observed. Consequently, CLIENT agrees that it shall not bring a claim, based upon facts subsequently learned, regarding conditions between sampling/testing points, in areas not evaluated by ECS, or which were not part of the immediate area(s) explicitly evaluated by ECS.
- 3.3 ECS' professional Services shall be provided in a manner consistent with sound engineering and professional practices. If a situation arises that causes ECS to believe compliance with CLIENT'S wishes could result in ECS violating applicable Laws or Regulations, or will expose ECS to claims or other charges, ECS shall so advise CLIENT. If CLIENT'S actions or inaction result in a violation of applicable Laws or Regulations, ECS shall have the right to terminate its Services in accordance with the TERMINATION provisions of this AGREEMENT.
- 3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if ECS is required to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make. CLIENT also agrees that ECS shall not bear liability for failing to report conditions that are CLIENT'S responsibility to report.

4.0 CLIENT DISCLOSURES

- 4.1 CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed beneath the Site's surface, where the Scope of Services requires ECS to penetrate the Site surface.
- 4.2 CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site. Such Hazardous Materials shall include but not be limited to any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form ["Hazardous Materials"].
- 4.3 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services are initiated, a Changed Condition shall exist.

5.0 INFORMATION PROVIDED BY OTHERS

- 5.1 CLIENT waives any claim of liability against ECS regarding any claim for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents and other information in any form provided to ECS, including such information that becomes incorporated into ECS Documents of Service.

6.0 CONCEALED RISKS

- 6.1 CLIENT acknowledges that special risks are associated with the identification of concealed conditions [i.e., subsurface conditions, conditions behind a wall, etc., that are hidden from view, are not readily apparent, or cannot be accessed for sampling/testing].
- 6.2 Conditions that ECS infers to exist between sampling/testing points may differ significantly from the conditions that exist at the sampling/testing points. Since some conditions can change substantially over time, the CLIENT recognizes that, because of natural occurrences or human intervention at or near the Site, actual conditions discovered through sampling/testing may be subject to rapid or gradual change.
- 6.3 ECS will make reasonable efforts to anticipate and identify potential concealed conditions for exploration, sampling or testing. However, CLIENT understands that

7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES

- 7.1 CLIENT warrants that it possesses the authority to provide right of entry permission for the performance of ECS' Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property owned by CLIENT and/or other(s) in order for ECS to perform the Scope of Services.
- 7.2 Except where ECS' Scope of Services explicitly includes obtaining permits, licenses, and/or utility clearances for the performance of ECS' Services, CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS.
- 7.3 ECS will take reasonable precautions to limit damage to the Site and Improvements during the performance of ECS' Services. CLIENT understands that use of exploration, sampling, or testing equipment may cause some damage, the correction and restoration of which is not part of this AGREEMENT, unless explicitly stated in ECS' Scope of Services, and reflected in the Professional Fees.
- 7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss allegedly arising from procedures associated with exploration, sampling or testing activities, or discovery of Hazardous Materials, or suspected Hazardous Materials, or ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

- 8.1 In addition to CLIENT-furnished information regarding underground utilities, ECS shall take reasonable and locally customary precautions, possibly including contacting local public and/or private utility locating services, and/or conducting research of publicly available information, to identify underground utilities, as deemed appropriate in ECS' professional opinion. The extent of such precautions shall be at ECS' sole discretion.
- 8.2 CLIENT recognizes that despite due care, ECS may be unable to identify the locations of all subsurface utility lines and man-made features, and that information obtained by ECS and/or ECS' subcontractor(s) or provided to ECS from any entity may contain errors or be incomplete.
- 8.3 CLIENT agrees that ECS shall not be liable for damage or injury, consequential economic damages, and/or penalties resulting from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing and correctly shown on the diagram(s) furnished by CLIENT or CLIENT'S consultants, or for underground features not marked, or improperly located by governmental or quasi-governmental locators, utility owners, or private utility locating services.

9.0 SAMPLES

- 9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are the property of CLIENT. ECS will store samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from those samples, unless other arrangements are mutually agreed upon in writing. Samples consumed by laboratory testing procedures will not be stored as outlined above.
- 9.2 Unless CLIENT directs otherwise, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process byproducts in accordance with applicable Laws.

10.0 ENVIRONMENTAL RISKS

- 10.1 All substances on, in, or under CLIENT'S Site, or obtained from CLIENT'S Site as samples or as byproducts of the sampling process, are and will remain CLIENT'S property.
- 10.2 When Hazardous Materials are known, assumed, or suspected to exist at the Site, ECS shall take appropriate precautions deemed prudent in ECS' sole and professional opinion to comply with applicable Laws and Regulations, and to reduce the risks to ECS' employees, public health, safety, and welfare, and the environment. CLIENT agrees to compensate ECS for such precautions.
- 10.3 When Hazardous Materials are known, assumed, or suspected to exist at the Site, ECS will handle such materials as Hazardous Materials. ECS or ECS' subcontractors will containerize and label such Materials in accordance with applicable Law, and will leave the containers on Site. CLIENT is responsible for the retrieval and lawful removal, transport and disposal of such contaminated samples, and sampling process byproducts.
- 10.4 Unless explicitly stated in ECS' Scope of Services, ECS shall not subcontract nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT, not ECS, shall make final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by Hazardous Materials contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
- 10.5 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT) to the

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contrary) so that ECS shall not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

10.6 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of ECS' Services indicated herein, CLIENT agrees this risk cannot be eliminated. CLIENT will not hold ECS liable for such cross-contamination if ECS provides its Services in accordance with the applicable Standard of Care.

10.7 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected by one or more Recognized Environmental Conditions. Given the foregoing, CLIENT'S acceptance of this AGREEMENT shall signify that CLIENT understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

11.1 With the exception of the copies of the ECS Documents of Service provided to the CLIENT, all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by ECS ["Documents of Service"] maintained in any form deemed appropriate by ECS, are and remain, the property of ECS.

11.2 Any exploration, reconnaissance, data review, observations, testing, surveys or similar Services, analyses and recommendations associated with the Services shall be provided by ECS (including subcontracted Services) for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT is not permitted.

11.3 CLIENT agrees to not use ECS' Documents of Service for any other projects, or for the Project which has changed in scope, or extensions of the Project, from the details contemplated in ECS' Documents of Service. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s).

11.4 CLIENT agrees that ECS' Documents of Service may not under any circumstances be altered by any party except ECS. CLIENT warrants that ECS' Documents of Service shall be used only and exactly as submitted by ECS.

11.5 Except for daily field reports and concrete test reports sent electronically by ECS to CLIENT and CLIENT'S designees, the following shall apply to all electronic files: Files in electronic media format of text, data, graphics, or other types that are furnished by ECS are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

12.0 SAFETY

12.1 CLIENT agrees that ECS is responsible solely for the basic safety of ECS' employees on the Project Site. These responsibilities shall not be inferred by any party to mean that ECS has responsibility for any portion of site safety for any reason. Unless otherwise expressly agreed to in writing, ECS' Scope of Services excludes responsibility for any aspect of site safety other than for ECS' own employees, and nothing herein shall be construed to relieve CLIENT and/or its other contractors, consultants, or other parties from their responsibility for the safety of their own employees. For active construction sites, CLIENT also agrees that the General Contractor is solely responsible for Project Site safety, and that ECS personnel rely on the safety measures provided by the General Contractor.

12.2 In the event ECS expressly assumes health and safety responsibilities for toxic or other concerns specified, the acceptance of such responsibility does not and shall not be deemed an acceptance of responsibility for any other health and safety requirements, such as those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

13.1 CLIENT understands that construction testing and observation Services are conducted to reduce, not eliminate, the risk of problems arising during or after construction or remediation, and that provision of such Services does not create a warranty or guarantee of any type.

13.2 Monitoring and/or testing Services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction, nor for complying with applicable Laws and codes.

13.3 The professional activities of ECS, or the presence of ECS employees and subcontractors, shall not be construed to imply ECS has any responsibility for the means, methods, techniques, sequencing of construction, or procedures of construction selected, for safety precautions and programs incidental to the Contractor's Work. Furthermore, ECS does not and shall not have or accept authority to supervise, direct, control, or stop Contractor's Work.

13.4 ECS strongly recommends that CLIENT retain ECS to provide its Services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the increased risks that a significantly lower level of construction quality may occur and that such defects may not be undetected by ECS' part time observations. Therefore CLIENT waives any and all claims against ECS related to unsatisfactory quality or performance of elements observed or tested by ECS on a part time basis.

14.0 CERTIFICATIONS

14.1 CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding Services provided by ECS. Any "certification" required of

ECS by the CLIENT, or jurisdiction(s) having authority over some or all aspects of the Project, shall consist of ECS' inferences and professional opinions based on limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. ECS' "certification" shall consist of ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of responsibilities or obligations such parties have. CLIENT agrees not to make resolution of any dispute with ECS or payment of any amount due to ECS in any way contingent upon ECS signing any such "certification" documents.

15.0 BILLINGS AND PAYMENTS

15.1 Billings will be based on the unit rates, travel costs, and other reimbursable expenses stated in the Professional Fees. Any Estimate of Professional Fees stated in this AGREEMENT shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated in this AGREEMENT.

15.2 Should ECS identify a Changed Condition, ECS shall notify the CLIENT of the Changed Condition(s) that in ECS' professional judgment require an amendment of the Professional Fees, time schedule, and/or Scope of Services. ECS and CLIENT shall promptly and in good faith negotiate an amendment to this AGREEMENT.

15.3 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material part of the consideration of this AGREEMENT. Payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices shall be due and payable upon receipt.

15.4 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within twenty-one (21) calendar days of the invoice date and agrees to pay the undisputed amount of such invoice promptly.

15.5 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment will first be applied to accrued interest and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.

15.6 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit in which ECS is not involved, upon CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in enforcing any provision of the AGREEMENT, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.

15.7 Payment of any invoice by the CLIENT shall be taken to mean that the CLIENT agrees to the provisions of the AGREEMENT and is satisfied with ECS' Services and is not aware of any defects in those Services, unless CLIENT has provided notice to ECS in accordance with the DEFECTS IN SERVICE provisions of this AGREEMENT.

16.0 DEFECTS IN SERVICE

16.1 CLIENT and CLIENT'S personnel and contractors shall promptly inform ECS of any actual or suspected defects in ECS' Services, to help ECS take those prompt, effective measures that in ECS' opinion will help reduce or eliminate the consequences of any such defect. Corrections of defects attributable to ECS' Services shall be provided at no cost to CLIENT, except in the case that the deficiency is directly attributable to CLIENT-furnished information, CLIENT shall compensate ECS for the costs of correcting such defects.

16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects in Services. CLIENT shall compensate ECS for Additional Services required as a result of jurisdictional review requirements.

17.0 INSURANCE

17.1 ECS represents that it and its subcontractors and subconsultants are protected by Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies which it deems reasonable and adequate.

17.2 ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance, the cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

18.1 CLIENT AGREES TO ALLOCATE CERTAIN OF THE RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT, SUBJECT TO AVAILABLE INSURANCE PROCEEDS, ARISING FROM ECS' PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW, AS FOLLOWS. For projects where ECS' Fee Estimate or proposed fees are:

18.1.1 \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$5,000, or the total fee for the services rendered, whichever is greater.

18.1.2 In excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$50,000, or the total fee for the services rendered, whichever is greater.

18.2 CLIENT agrees that ECS shall not be responsible for bodily injury and property damage or losses arising directly or indirectly, in whole or in part, from acts or

omissions by the CLIENT, its employees, agents, staff, consultants or subcontractors or by any other person or combination of persons to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants or subcontractors.

19.0 INDEMNIFICATION

19.1 ECS agrees, subject to the limitation of liability provisions of this AGREEMENT, to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services to the extent that such injury is found to be caused by ECS' negligent acts, errors or omissions, specifically excluding any damages caused by any third party or by the CLIENT.

19.2 To the fullest extent permitted by applicable Law, CLIENT agrees to indemnify, defend, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT and CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) injury to or loss of value to tangible personal property; or (c) a breach of this AGREEMENT, except to the extent such Damage is caused by the sole negligence or willful misconduct of ECS.

19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability, or any share of any amount levied to recognize more than actual economic damages, subject to any limitations of liability and INDEMNIFICATION provisions contained in this AGREEMENT.

19.4 If CLIENT is a HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT LEGAL COUNSEL BE RETAINED BY CLIENT BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.

19.5 If CLIENT is a residential builder or residential developer, CLIENT shall indemnify, defend and hold harmless ECS against any and all claims or demands due to injury or loss initiated by one or more homeowners, unit-owners, or their homeowners' association, cooperative board, or similar entity against CLIENT which results in ECS being brought into the dispute.

20.0 CONSEQUENTIAL DAMAGES

20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other, regardless of the nature of the fault, or wherever committed by the CLIENT or ECS, their employees, consultants, agents, contractors or subcontractors, or whether such liability arises in breach of contract or warranty, tort (including negligence), Statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

21.1 All claims for damages related to the Services provided under this AGREEMENT shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, unless such claims are based on acts unrelated to the provision of Services under this AGREEMENT.

21.2 CLIENT agrees that it will not seek Damages from any individual associated with ECS as an officer, principal, partner, employee, or owner, from any and all claims or liability for injury or loss that would require such individual to relinquish personal assets to satisfy such claim.

22.0 THIRD PARTY CLAIMS EXCLUSION

22.1 This AGREEMENT shall not create any rights or benefits to parties other than CLIENT and ECS. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without both CLIENT'S and ECS' written consent and the third-party's agreement to be bound to the same terms and conditions contained in this AGREEMENT as CLIENT, and third-party's agreement that ECS' Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

23.1 All claims, disputes or controversies ["Disputes"] arising out of, or in relation to the interpretation, application or enforcement of this AGREEMENT shall be decided as follows:

23.1.1 CLIENT and ECS agree to attend a dispute resolution meeting within fourteen (14) days of identification of a Dispute by either party. CLIENT and ECS agree to negotiate in good faith to resolve the Dispute.

23.1.2 Should negotiation fail to resolve the dispute, CLIENT and ECS agree to mediate their dispute via a mediator selected by either party, and acceptable to both parties.

23.1.3 Should mediation fail to result in resolution of the Dispute, CLIENT and ECS agree that litigation may be brought by either party.

23.2 Should third-party dispute resolution be required, through mediation or litigation, the non-prevailing party shall reimburse the prevailing party for the prevailing party's

documented legal costs, in addition to whatever other judgments or settlement sums may be due. Such legal costs include, but are not be limited to, reasonable attorney's fees, court costs, forensic consultants and expert witness fees, and other documented expenses.

23.3 Where legal action is brought by either party to resolve a dispute, the claim shall be brought and tried in the judicial jurisdiction of the county in which ECS' office contracting with the CLIENT is located. CLIENT waives the right to remove any litigation action to any other jurisdiction, unless mutually agreed to by both parties.

23.4 This AGREEMENT including all matters related to performance and remediation shall be interpreted according to the substantive Laws of the state of Virginia (but not including its choice of law rules).

24.0 CURING A BREACH

24.1 A party that believes the other has materially breached this AGREEMENT shall issue a written termination notice to the other, identifying the cause for termination within five (5) business days of identifying such cause. Both parties shall then bargain promptly and in good faith to cure such cause. If an acceptable cure can be achieved within fourteen (14) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by this AGREEMENT in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

25.1 CLIENT or ECS may terminate this AGREEMENT for breach of this AGREEMENT, or for any other reasons which may arise. In the event of termination, the party effecting termination shall so notify the other party in writing, and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred, in accordance with ECS' prevailing Fee Schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination, as well as those associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 TIME BAR TO LEGAL ACTION

26.1 Unless prohibited by Law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that claims by either party arising out of this AGREEMENT or the Services provided hereunder shall not be initiated more than two (2) years from the time the party knew, or should have known, of the condition giving rise to its claim, and shall under no circumstances be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 ASSIGNMENT

27.1 Except for Services normally or customarily subcontracted by ECS in the performance of its Services including, but not limited to surveyors, specialized consultants, drilling and excavating subcontractors, and testing laboratories, neither the CLIENT nor ECS may delegate, assign, sublet or transfer its duties, responsibilities or interests in this AGREEMENT without the written consent of the other party.

28.0 SEVERABILITY

28.1 Any provision of this AGREEMENT later held to violate a Law, Statute, or Regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of, or at least addresses, the issues covered by the original provision.

29.0 TITLES

29.1 The titles used in this AGREEMENT are for general reference only and are not part of the AGREEMENT.

30.0 SURVIVAL

30.1 All obligations arising prior to the termination of this AGREEMENT and all provisions of this AGREEMENT allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of this AGREEMENT.

31.0 ENTIRE AGREEMENT

31.1 This AGREEMENT including the Scope of Services and Professional Fees and all exhibits, appendixes, and other documents appended to it, constitute the entire AGREEMENT between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this AGREEMENT. CLIENT acknowledges acceptance of these terms by submitting a CLIENT Work Authorization to ECS.

31.2 CLIENT and ECS agree that subsequent modifications to this AGREEMENT shall not be binding unless made in writing and signed by authorized representatives of both parties.

31.3 All preprinted Terms and Conditions on CLIENT'S purchase order or Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by this AGREEMENT.

31.4 If CLIENT fails to provide ECS with a signed copy of this AGREEMENT or a Work Authorization, by the act of authorizing and accepting the services of ECS, CLIENT agrees to be fully bound by the terms of this AGREEMENT as if signed by CLIENT.

< END OF TERMS AND CONDITIONS OF SERVICE >

Item # 16

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: May 15, 2012
 CONTACT CITY DEPARTMENT: Engineering
 CONTACT CITY STAFF: Steven Widacki, City Engineer

SUBJECT: Authorize the execution of a professional services agreement with ECS TEXAS, LLP (ECS) to perform the engineering services associated with "subsurface exploration - Bunton Creek WW Interceptor" in an amount not to exceed \$4,401.25.

CURRENT YEAR FISCAL IMPACT:

This engineering services contract with ECS TEXAS, LLP will require expenditure of funds from accumulated wastewater impact fees.

1. City Department:	Engineering
2. Project Name:	Bunton Creek Wastewater Interceptor
3. Budget/Accounting Code(s):	342-889-57313
4. Funding Source:	Wastewater Impact Fee Fund
5. Current Appropriation:	\$ 7,185,594.00
6. Unencumbered Balance:	\$ 7,165,594.00
7. Amount of This Action:	<u>\$(4,401.25)</u>
8. Remaining Balance:	<u>\$ 7,161,192.75)</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this engineering services contract in the amount of \$4,401.25 will be provided from accumulated wastewater impact fees.

The City Council's approval of this item will also authorize staff to appropriate and apply accumulated funds from the Wastewater Impact Fee Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

In 2010, the City Council approved an engineering services contract with Hanrahan Pritchard Engineering, Inc., in the amount of \$31,550.00 (as amended) to provide design phase services, survey phase services, construction plans services, and bidding and construction administrative phase services for the Bunton Creek Wastewater Interceptor project (ACC Wastewater Line).



CITY OF KYLE, TEXAS

City Managers Report

Meeting Date: 5/15/2012
Date time: 7:00 PM

Subject/Recommendation: Update on Various Capital Improvement Projects, Road Projects, Building Program, and/or General Operational Activities ~ *Lanny Lambert, City Manager*

- Update on next Community Visioning Session

Other Information:

Budget Information:

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

Attachments / click to download

[Financial Impact Analysis](#)

City of Kyle, Texas
Estimated Project Costs
En 'Vision' Priorities - May 19, 2012

Summary of Estimated Property Tax & Utility Rate Impact

Project Description	Estimated Project Cost	Annual Requirement	Property Tax Rate Inc.	Avg. Home Tax Bill Inc.	Water Rate Inc.	Avg. Annual Water Bill Inc.	WWater Rate Inc.	Avg. Annual WWater Bill Inc.	Combined Annual Impact
1. Economic Development	\$ 25,162,034	\$ 3,136,440	\$ 0.1289	\$ 162.06	24.71%	\$ 150.01	0.00%	\$ -	\$ 312.07
2. Public Safety	\$ 19,882,600	\$ 4,475,322	\$ 0.3170	\$ 398.46	0.00%	\$ -	0.00%	\$ -	\$ 398.46
3. Infrastructure	\$ 58,400,000	\$ 7,282,268	\$ 0.4810	\$ 604.42	3.09%	\$ 18.75	9.98%	\$ 35.30	\$ 658.47
4. Quality of Life	\$ 22,067,830	\$ 2,106,837	\$ 0.1491	\$ 187.46	0.00%	\$ -	0.00%	\$ -	\$ 187.46
TOTAL FOR ALL INITIATIVES:	\$ 125,512,464	\$ 17,000,867	\$ 1.0760	\$ 1,352.40	27.80%	\$ 168.76	9.98%	\$ 35.30	\$ 1,556.46

City of Kyle, Texas
Estimated Project Costs
En 'Vision' Priorities - May 19, 2012

Summary of Estimated Property Tax & Utility Rate Impact

Project Description	Estimated Project Cost	Annual Requirement	Property Tax Rate Inc.	Avg. Home Tax Bill Inc.	Water Rate Inc.	Avg. Annual Water Bill Inc.	WWater Rate Inc.	Avg. Annual WWater Bill Inc.	Combined Annual Impact
1. Economic Development:									
a. Reallocate 0.5% Sales Tax	\$ 1,162,034	\$ 1,162,034	\$ 0.0823	\$ 103.46	0.00%	\$ -	0.00%	\$ -	\$ 103.46
b. Purchase Monarch's System	\$ 16,000,000	\$ 1,316,271	\$ -	\$ -	24.71%	\$ 150.01	0.00%	\$ -	\$ 150.01
c. Developmnet of R&D Park	\$ 8,000,000	\$ 658,135	\$ 0.0466	\$ 58.60	0.00%	\$ -	0.00%	\$ -	\$ 58.60
Total Economic Development:	\$ 25,162,034	\$ 3,136,440	\$ 0.1289	\$ 162.06	24.71%	\$ 150.01	0.00%	\$ -	\$ 312.07
2. Public Safety:									
a. Police Headquarters	\$ 15,000,000	\$ 1,234,004	\$ 0.0874	\$ 109.87	0.00%	\$ -	0.00%	\$ -	\$ 109.87
b. Police Staffing	\$ 3,672,100	\$ 3,034,149	\$ 0.2149	\$ 270.14	0.00%	\$ -	0.00%	\$ -	\$ 270.14
c. Community Policing	\$ 10,500	\$ 10,500	\$ 0.0008	\$ 0.94	0.00%	\$ -	0.00%	\$ -	\$ 0.94
d. Ladder Fire Truck	\$ 1,200,000	\$ 196,669	\$ 0.0139	\$ 17.51	0.00%	\$ -	0.00%	\$ -	\$ 17.51
Total Public Safety:	\$ 19,882,600	\$ 4,475,322	\$ 0.3170	\$ 398.46	0.00%	\$ -	0.00%	\$ -	\$ 398.46
3. Infrastructure:									
a. Reconstruction of Roadways	\$ 34,700,000	\$ 2,854,662	\$ 0.2022	\$ 254.17	0.00%	\$ -	0.00%	\$ -	\$ 254.17
b. Extension Kyle Parkway	\$ 10,200,000	\$ 839,123	\$ 0.0595	\$ 74.71	0.00%	\$ -	0.00%	\$ -	\$ 74.71
c. Engineering New Roads	\$ 2,700,000	\$ 2,700,000	\$ 0.1913	\$ 240.38	0.00%	\$ -	0.00%	\$ -	\$ 240.38
d. Marketplace Extension	\$ 4,800,000	\$ 394,881	\$ 0.0280	\$ 35.16	0.00%	\$ -	0.00%	\$ -	\$ 35.16
e. Water Issues	\$ 2,000,000	\$ 164,534	\$ -	\$ -	3.09%	\$ 18.75	0.00%	\$ -	\$ 18.75
f. Wastewater Issues	\$ 4,000,000	\$ 329,068	\$ -	\$ -	0.00%	\$ -	9.98%	\$ 35.30	\$ 35.30
Total Infrastructure:	\$ 58,400,000	\$ 7,282,268	\$ 0.4810	\$ 604.42	3.09%	\$ 18.75	9.98%	\$ 35.30	\$ 658.47
4. Quality of Life:									
a. Park Improvements	\$ 1,000,000	\$ 82,267	\$ 0.0058	\$ 7.32	0.00%	\$ -	0.00%	\$ -	\$ 7.32
b. Recreation Center	\$ 20,600,000	\$ 1,694,698	\$ 0.1199	\$ 150.76	0.00%	\$ -	0.00%	\$ -	\$ 150.76
c. Library Enhancements	\$ 467,830	\$ 329,872	\$ 0.0234	\$ 29.38	0.00%	\$ -	0.00%	\$ -	\$ 29.38
Total Quality of Life:	\$ 22,067,830	\$ 2,106,837	\$ 0.1491	\$ 187.46	0.00%	\$ -	0.00%	\$ -	\$ 187.46
TOTAL FOR ALL INITIATIVES:	\$ 125,512,464	\$ 17,000,867	\$ 1.0760	\$ 1,352.40	27.80%	\$ 168.76	9.98%	\$ 35.30	\$ 1,556.46

City of Kyle, Texas
Estimated Project Costs
En 'Vision' Priorities - May 19, 2012

ECONOMIC DEVELOPMENT

Project Description	Estimated Project Cost	Annual Requirement	Property Tax Rate Inc.	Avg. Home Tax Bill Inc.	Water Rate Inc.	Avg. Annual Water Bill Inc.	WWater Rate Inc.	Avg. Annual WWater Bill Inc.	Combined Annual Impact
1. Reallocate 0.5% of City's Share of Sales Tax:	\$ 1,162,034	\$ 1,162,034	\$ 0.0823	\$ 103.46	0.00%	\$ -	0.00%	\$ -	\$ 103.46
2. Purchase Monarch's Water Utility System in Kyle:	16,000,000	1,316,271	-	-	24.71%	150.01	0.00%	-	150.01
3. Development of R & D Park Land & Infrastructure Only:	8,000,000	658,135	0.0466	58.60	0.00%	-	0.00%	-	58.60
TOTAL ECONOMIC DEV:	\$ 25,162,034	\$ 3,136,440	\$ 0.1289	\$ 162.06	24.71%	\$ 150.01	0.00%	\$ -	\$ 312.07

City of Kyle, Texas
Estimated Project Costs
En 'Vision' Priorities - May 19, 2012

PUBLIC SAFETY

Project Description	Estimated Project Cost	Annual Requirement	Property Tax Rate Inc.	Avg. Home Tax Bill Inc.	Water Rate Inc.	Avg. Annual Water Bill Inc.	WWater Rate Inc.	Avg. Annual WWater Bill Inc.	Combined Annual Impact
1. Police Headquarters at Plum Creek (Land Cost Not Included)	\$ 15,000,000	\$ 1,234,004	\$ 0.0874	\$ 109.87	0.00%	\$ -	0.00%	\$ -	\$ 109.87
2. Police Staffing	\$ 1,862,500	\$ 1,862,500	\$ 0.1320	\$ 165.82	0.00%	\$ -	0.00%	\$ -	\$ 165.82
a. Police Officers (25)	174,000	174,000	0.0123	15.49	0.00%	-	0.00%	-	15.49
b. Lieutenants/Sergeants (2)	150,000	150,000	0.0106	13.35	0.00%	-	0.00%	-	13.35
c. Communication Spec. (3)	84,600	84,600	0.0060	7.53	0.00%	-	0.00%	-	7.53
d. Records Spec. (2)	42,300	42,300	0.0030	3.77	0.00%	-	0.00%	-	3.77
e. Administrative Assistant (1)	196,000	196,000	0.0139	17.45	0.00%	-	0.00%	-	17.45
f. Fuel & Fleet Maintenance	399,700	399,700	0.0283	35.59	0.00%	-	0.00%	-	35.59
g. Other Support Costs	243,000	39,826	0.0028	3.55	0.00%	-	0.00%	-	3.55
h. Equipment	520,000	85,223	0.0060	7.59	0.00%	-	0.00%	-	7.59
i. Police Vehicles									
Total Police Staffing:	\$ 3,672,100	\$ 3,034,149	\$ 0.2149	\$ 270.14	0.00%	\$ -	0.00%	\$ -	\$ 270.14
3. Community Policing	\$ 2,500	\$ 2,500	\$ 0.0002	\$ 0.22	0.00%	\$ -	0.00%	\$ -	\$ 0.22
a. Citizen Police Academy	2,000	2,000	0.0001	0.18	0.00%	-	0.00%	-	0.18
b. National Night Out	1,000	1,000	0.0001	0.09	0.00%	-	0.00%	-	0.09
c. Crime Prevention Pres.	5,000	5,000	0.0004	0.45	0.00%	-	0.00%	-	0.45
Total Community Policing:	\$ 10,500	\$ 10,500	\$ 0.0008	\$ 0.94	0.00%	\$ -	0.00%	\$ -	\$ 0.94
4. Ladder Fire Truck	\$ 1,200,000	\$ 196,669	\$ 0.0139	\$ 17.51	0.00%	\$ -	0.00%	\$ -	\$ 17.51
TOTAL PUBLIC SAFETY:	\$ 19,882,600	\$ 4,475,322	\$ 0.3170	\$ 398.46	0.00%	\$ -	0.00%	\$ -	\$ 398.46

City of Kyle, Texas
Estimated Project Costs
En 'Vision' Priorities - May 19, 2012

INFRASTRUCTURE

Project Description	Estimated Project Cost	Annual Requirement	Property Tax Rate Inc.	Avg. Home Tax Bill Inc.	Water Rate Inc.	Avg. Annual Water Bill Inc.	WWater Rate Inc.	Avg. Annual WWater Bill Inc.	Combined Total Impact
1. Reconstruction of Roadways:									
a. Lehman	\$ 8,000,000	\$ 658,135	\$ 0.0466	\$ 58.60	0.00%	\$ -	0.00%	0.00%	\$ 58.60
b. Burleson	12,500,000	1,028,337	0.0729	91.56	0.00%	-	0.00%	0.00%	\$ 91.56
c. Goforth	9,800,000	806,216	0.0571	71.78	0.00%	-	0.00%	0.00%	\$ 71.78
d. Bunton	4,400,000	361,974	0.0256	32.23	0.00%	-	0.00%	0.00%	\$ 32.23
Total Reconstruction:	\$ 34,700,000	\$ 2,854,662	\$ 0.2022	\$ 254.17	0.00%	\$ -	0.00%	\$ -	\$ 254.17
2. Extension of Kyle Parkway to Goforth:	\$ 10,200,000	\$ 839,123	\$ 0.0595	\$ 74.71	0.00%	\$ -	0.00%	0.00%	\$ 74.71
3. Engineering of New Roads To Be Ready When Funding Becomes Available:									
a. Kyle Pkwy (Dacy to Goforth)	\$ 900,000	\$ 900,000	\$ 0.0638	\$ 80.13	0.00%	\$ -	0.00%	0.00%	\$ 80.13
b. Bebee Rd. (I-35 to Dacy)	700,000	700,000	0.0496	62.32	0.00%	-	0.00%	0.00%	\$ 62.32
c. Windy Hill Rd. (I-35 to Dacy)	700,000	700,000	0.0496	62.32	0.00%	-	0.00%	0.00%	\$ 62.32
d. Marketplace (Kohlers to 1626)	400,000	400,000	0.0283	35.61	0.00%	-	0.00%	0.00%	\$ 35.61
Total Engineering New Roads:	\$ 2,700,000	\$ 2,700,000	\$ 0.1913	\$ 240.38	0.00%	\$ -	0.00%	\$ -	\$ 240.38
4. Marketplace Extension North of HEB Development	\$ 4,800,000	\$ 394,881	\$ 0.0280	\$ 35.16	0.00%	\$ -	0.00%	0.00%	\$ 35.16
5. Water Issues (Trinity Well & Model) Wastewater (Plant Exp. & ACC WW)	\$ 2,000,000	\$ 164,534	\$ -	\$ -	3.09%	\$ 18.75	0.00%	\$ -	\$ 18.75
Total Water & Wastewater:	\$ 6,000,000	\$ 493,602	\$ -	\$ -	3.09%	\$ 18.75	9.98%	\$ 35.30	\$ 54.05
TOTAL INFRASTRUCTURE:	\$ 58,400,000	\$ 7,282,268	\$ 0.4810	\$ 604.42	3.09%	\$ 18.75	9.98%	\$ 35.30	\$ 658.47

City of Kyle, Texas
Estimated Project Costs
En 'Vision' Priorities - May 19, 2012

QUALITY OF LIFE

Project Description	Estimated Project Cost	Annual Requirement	Property Tax Rate Inc.	Avg. Home Tax Bill Inc.	Water Rate Inc.	Avg. Annual Water Bill Inc.	WWater Rate Inc.	Avg. Annual WWater Bill Inc.	Combined Total Impact
1. Park Improvements:									
a. Gregg-Clarke Park	\$ 250,000	\$ 20,567	\$ 0.0015	\$ 1.83	0.00%	\$ -	0.00%	\$ -	\$ 1.83
b. Steeplechase Park	400,000	32,907	0.0023	2.93	0.00%	-	0.00%	-	2.93
c. Waterleaf Park	350,000	28,793	0.0020	2.56	0.00%	-	0.00%	-	2.56
Total Park Improvements:	\$ 1,000,000	\$ 82,267	\$ 0.0058	\$ 7.32	0.00%	\$ -	0.00%	\$ -	\$ 7.32
2. Recreation Center:									
a. Infrastructure	\$ 1,000,000	82,267	\$ 0.0058	\$ 7.32	0.00%	-	0.00%	\$ -	\$ 7.32
b. Community Center Bldg.	8,000,000	658,135	0.0466	58.60	0.00%	-	0.00%	-	58.60
c. Community Pools	11,000,000	904,936	0.0641	80.57	0.00%	-	0.00%	-	80.57
d. Regional Park	600,000	49,360	0.0034	4.27	0.00%	-	0.00%	-	4.27
e. Tennis Center	-	-	-	-	0.00%	-	0.00%	-	-
Total Recreation Center:	\$ 20,600,000	\$ 1,694,698	\$ 0.1199	\$ 150.76	0.00%	\$ -	0.00%	\$ -	\$ 150.76
3. Library Enhancements:									
a. Book Mobile	\$ 165,000	27,042	\$ 0.0019	\$ 2.41	0.00%	-	0.00%	\$ -	\$ 2.41
b. Books	5,000	5,000	0.0004	0.45	0.00%	-	0.00%	-	0.45
c. Mid-Level Librarian (1)	69,478	69,478	0.0049	6.19	0.00%	-	0.00%	-	6.19
d. Mobile Library Clerk (2)	72,384	72,384	0.0051	6.44	0.00%	-	0.00%	-	6.44
e. Library Clerk (4)	144,768	144,768	0.0103	12.89	0.00%	-	0.00%	-	12.89
f. Fuel/Maintenance	11,200	11,200	0.0008	1.00	0.00%	-	0.00%	-	1.00
Total Library Enhancements:	\$ 467,830	\$ 329,872	\$ 0.0234	\$ 29.38	0.00%	\$ -	0.00%	\$ -	\$ 29.38
TOTAL QUALITY OF LIFE:	\$ 22,067,830	\$ 2,106,837	\$ 0.1491	\$ 187.46	0.00%	\$ -	0.00%	\$ -	\$ 187.46