

CITY OF KYLE



Notice of Regular City Council Meeting

KYLE CITY HALL
100 W. Center Street

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on 12/18/2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas for the purpose of discussing the following agenda.

Posted this 13th day of December, 2012 prior to 7:00 p.m.

I. Call Meeting To Order

II. Approval of Minutes

1. City Council Regular Meeting - December 4, 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. Presentation of the Ethics Commission 2012 Annual Report ~ *Gary Rush, Chairman, Ethics Commission*

 [Attachments](#)

V. Proclamations

3. Proclamation of the City of Kyle, Texas Proclaiming December 18th, 2012 as "Adell Hurst Day" in the City of Kyle, Texas ~ *David Wilson, Council Member District 4 & Samantha LeMense, Council Member District 5*

 [Attachments](#)

VI. Appointments

4. Consideration of Nomination for Appointment to the City of Kyle's Board of Tax Increment Refinancing Zone No.1. ~ *Lucy Johnson, Mayor*

- *Greg Blackwell*

 [Attachments](#)

5. Consideration of Nomination(s) for Appointment to the Ethics Commission ~
Lucy Johnson, Mayor

- *District 6, Re-appointment, Gary Rush*
- *District 3, Re-appointment, Jerry Lopez*
- *District 2, New Appointment, Marta Ortiz*

 [Attachments](#)

6. Consideration of Nomination(s) for Appointment to the Public Works & Service Committee ~ *Lucy Johnson, Mayor*

- *Terri Slaughter*

 [Attachments](#)

VII. Consent Agenda

7. Authorize award and execution of a 36-month contract with THOMSON REUTERS WEST of New York City, NY in an amount not to exceed \$7,774.20 for an online Law Library subscription for the City Attorney ~ *Mark Shellard, Director of Information Technology*

 [Attachments](#)

8. Authorize award and execution of Purchase Order to WALLTECH of Austin, Texas, in an amount not to exceed \$4,250.00 to purchase seventeen (17) 5-drawer lateral file cabinets for the Police Department ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

VIII. Consider and Possible Action

9. Consider a request by Minerva, Ltd. (7 Eleven Store) located at 22553 IH-35 for a Conditional Use Permit to construct a 3,010 square foot building located within the Interstate Highway 35 Corridor District.
~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-1 to approve the Conditional Use Permit with Conditions outlined in Staff Report.

- *Public Hearing*

 [Attachments](#)

10. (*Second Reading*) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 53, ZONING ARTICLE III-OVERLAY DISTRICTS, DIVISION 4 - CONDITIONAL USE OVERLAY DISTRICTS OF THE CITY OF KYLE CITY CODE TO AMEND AND ESTABLISH SPECIFIC DEVELOPMENT REQUIREMENTS FOR PROPERTY

WITHIN THE IH-35 OVERLAY DISTRICT; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE; PROVIDING FOR RELATED MATTERS.

~ Sofia Nelson, Director of Planning

Planning and Zoning Commission voted 6-1 to Recommend Approval.

- *Public Hearing*

 [Attachments](#)

11. Approve a Resolution authorizing the City Manager to seek funding in the amount of \$311,851.00 under the Transportation Enhancement Program of the Texas Department of Transportation for the final phase of the Train Depot Renovation Project. The City will be required to provide \$77,963.00 in matching cash contribution for the grant funding ~ *Joshua Moreno, Grants Administrator*

 [Attachments](#)

12. Approve a Resolution authorizing the City Manager to submit a loan funding invitation request to the Texas Water Development Board under the Clean Water State Revolving Fund in an amount totaling \$4,300,000.00 for the expansion of the City's wastewater treatment plant from 3.0 MGD to 4.5 MGD ~ *Joshua Moreno, Grants Administrator*

 [Attachments](#)

13. A RESOLUTION OF THE CITY OF KYLE, TEXAS, ACKNOWLEDGING THE CONTRIBUTIONS OF KYLE RESIDENT ADELL HURST, PARTICULARLY HER CONTRIBUTIONS FOR THE SENIOR CITIZENS OF KYLE AND THE PRESERVATION OF THE CITY'S HISTORY AND HERITAGE, AND TO MEMORIALIZE THOSE CONTRIBUTIONS BY RENAMING THE KYLE HISTORIC CITY HALL TO THE ADELL HURST SENIOR CITIZENS CENTER AND THEREBY HONORING HER FOR HER OUTSTANDING CIVIC INVOLVEMENT ON BEHALF OF THE CITY OF KYLE ~ *David Wilson, Council Member District 4*

 [Attachments](#)

14. Authorize the City Manager to negotiate and execute a 5-year professional services agreement with BICKERSTAFF HEATH DELGADO ACOSTA, LLP of Austin, Texas, with one 5-year extension option to provide bond counsel and related advisory services to the City of Kyle ~ *Perwez A. Moheet, CPA, Director of Finance*

 [Attachments](#)

15. Authorize the City Manager to execute the First Amendment to Interlocal Agreement between Hays County and the City of Kyle to establish a 6-year annual payment schedule for the reimbursement of City's share totaling \$1,921,241.28 (24.39%) of construction costs for Dacy Lane roadway improvements. In

addition, interest cost will accrue and due if payment in full is not made by the first year. Construction cost for the entire Dacy Lane project totaled \$7,877,168.00 ~ *Lanny Lambert, City Manager*

 [Attachments](#)

16. A RESOLUTION OF THE CITY OF KYLE, TEXAS DECLARING GOALS FOR THE LEGISLATIVE SESSION TO INCLUDE PRIORITIES DETERMINED BY THE CITY COUNCIL THAT RANGE FROM WATER UTILITY REGULATION AND FIRE CONTROLS WITHIN CITY LIMITS, CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORITY OF CITIES, STATE FUNDING FOR LIBRARY SERVICES, EXTRATERRITORIAL JURISDICTION (ETJ) ISSUES AND ANNEXATION POWERS INCLUDING RIGHTS FOR LAND OWNERS THAT ARE ADJACENT TO ANOTHER CITY'S ETJ, AUTHORITY TO INCLUDE A CITY'S ABILITY TO COLLECT SALES TAX ON NEW CAR SALES TO THAT OF THE STATE, AND TO ADDRESS REASONABLE MUNICIPAL COURT FINES AND THE SHARE OF SUCH FINES WITH THE STATE OF TEXAS ~ *Lanny Lambert, City Manager*

 [Attachments](#)

17. Consideration and Possible Action to Authorize the City Manager to Execute Memorandum of Understanding regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise Program by City of Kyle ~ *Steven D. Widacki, P.E., City Engineer*

 [Attachments](#)

18. Authorize the Kyle Parks and Recreation Department to plan for a new special event called The Full Moon Jubilee and accept the event as a city sponsor event ~ *Kerry Urbanowicz, Director of Parks and Recreation*

 [Attachments](#)

IX. City Managers Report

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

- Discuss annexation procedure

 [Attachments](#)

X. Executive Session

20. Convene Into Executive Session pursuant to Section 551.074, Tex. Government Code, Personnel Matters, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of various personnel positions

 [Attachments](#)

21. Reconvene Into Public Session and take action as appropriate in the Council's discretion regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of various personnel positions

 [Attachments](#)

XI. 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 -
December 4, 2012

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: City Council Regular Meeting - December 4, 2012 ~ *Amelia Sanchez,*
City Secretary

Other Information: This item is for formal approval of the minutes from the December 4th
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 - December 4, 2012](#)

REGULAR CITY COUNCIL MEETING

The City Council of the City of Kyle, Texas met in Regular Session on December 4, 2012 at 7:00 pm at Kyle City Hall, with the following persons present:

Mayor Lucy Johnson	Kay Rush
Mayor Pro Tem Diane Hervol	Jeff Barton
Council Member Samantha LeMense	Maxwell Fisher
Council Member Becky Selbera	Jeff Barnett
Council Member Ray Bryant	
Council Member Pickett	
Council Member David Wilson	
Lanny Lambert, City Manager	
James Earp, Asst. City Manager	
Jerry Hendrix, Director of Communications	
Perwez Moheet, Finance Director	
Sophia Nelson, Director of Planning	
Connie Brooks, Library Director	
Diana Blank, Director of Economic Development	
Kerry Urbanowicz, Director Parks & Rec	
Harper Wilder, Director of Public Works	
Steven Wadacki, City Engineer	
Mark Shellard , I T Director	
Jeff Barnett, Police Chief	
Frank Garza, City Attorney	
Julian Grant, City Attorney	

CALL MEETING TO ORDER

Mayor Johnson called the meeting to order at 7:00 P.M.

ROLL CALL

Mayor Johnson called for roll call. Present were Mayor Johnson, , Council Members LeMense, Selbera, Bryant, Pickett and Wilson.

Mayor Johnson stated that she had heard from Mayor Pro Tem Hervol and that she would be arriving shortly.

APPROVAL OF MINUTES

CITY COUNCIL SPECIAL CALLED MEETING -NOVEMBER 7, 2012 ~ AMELIA SANCHEZ, CITY SECRETARY

CITY COUNCIL REGULAR MEETING NOVEMBER 20, 2012 ~ AMELIA SANCHEZ, CITY SECRETARY

CITY COUNCIL REGULAR MEETING

December 4, 2012 – Page 2

Kyle City Hall

Council Member LeMense moves to approve the minutes of the Special Called City Council Meeting - November 7, 2012 and the Regular City Council Meeting November 20, 2012 meeting. Council Member Bryant seconds the motion. All votes aye. Motion carried.

CITIZEN COMMENT PERIOD WITH CITY COUNCIL

Mayor Johnson opened the citizens comment period at 7:02 pm and called for comments on items not on the agenda or posted for public hearing. Kay Rush spoke about Monarch Water and asked the Council and Mayor to think of the word under which they operate. She stated that they operate as Investor Owned Utility in a rural area but since they purchased the water company that is currently in Amberwood and in Indian Paintbrush they are inside the city limits. She asked if they could look at the laws and see if there is room to amend it that when you are operating within a city you will need to conform to the same rates and utility facts that the city has to conform to and keep them from being able to adjust rates every two years and to be allowed as the law currently stands and let them get the 12% raise. She also asked Council to look at the Long Range Planning and the I35 corridor and have consistency and standards and that everyone would be happy now and in the future. Chief Barnett presented a new Officer to the Police Department. With no one else wishing to speak, Mayor Johnson closed the public hearing at 7:07 pm.

Mayor Pro Tem Diane Hervol arrived at 7:05

PRESENTATION

PRESENTATION OF EMPLOYEE OF THE MONTH FOR THE MONTH OF NOVEMBER ~ *LANNY LAMBERT, CITY MANAGER*

- *Siro Castelan, Utility Tech 1, Water Dept., Public Works*

City Manager Lanny Lambert presents Siro Castelan as the employee of the month and thanks him for his service to the City.

RECOGNITION OF THE 2ND GRADUATING CLASS OF THE KYLE CITIZEN'S POLICE ACADEMY ~ *JEFF BARNETT, CHIEF OF POLICE*

Police Chief Barnett presents the 2nd Graduating Class of the Kyle Citizen's Police Academy.

- *Gary Anderson* *Ivan Cervantes* *Deborah Lovell* *Samuel Meneses* *Gary Rush*
- *Melanie Atkins* *Jorge Escoto* *Dallas Lee Jr.* *Serena Moriarty* *Roger Thomson*
- *Richard Baggett* *Ivana Flowers* *Betty Maul* *Armando Paz* *Patricia Ray*
- *Sylvester Bennet*

CITY COUNCIL REGULAR MEETING
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Kyle City Hall

APPOINTMENTS

CONSIDERATION OF NOMINATION(S) FOR APPOINTMENT TO THE PUBLIC WORKS & SERVICE COMMITTEE ~ *LUCY JOHNSON, MAYOR*

- *Lisa Marie Bartels, New Appointment, Place 1*
- *Paula Alvarez, Re-appointment, Place 2*
- *New Appointment, Place 3*
- *Alan McPherson, Re-appointment, Place 4*
- *Mark Schultz, Re-Appointment, Place 5*
- *Kay Rush, Re-appointment, Place 6*

Mayor Johnson moves to appoint all nominees to the Public Works and Service Committee. Mayor Pro Tem Hervol seconds the motion. All votes aye. Motion carried.

CONSIDERATION OF NOMINATION(S) FOR APPOINTMENT TO THE TAX INCREMENT REFINANCING ZONE #1 BOARD ~ *LUCY JOHNSON, MAYOR*

- *Diane Hervol, Mayor Pro Tem*

Mayor Johnson moves to appoint Mayor Pro Tem Hervol to the Tax Increment Refinancing Zone Board. Council Member Wilson seconds the motion. All aye. Motion carried.

CONSENT AGENDA

(Second Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ORDINANCE NO. 708 ADOPTED ON SEPTEMBER 5, 2012 MAKING APPROPRIATIONS FOR THE SUPPORT OF THE CITY FOR FISCAL YEAR BEGINNING OCTOBER 1, 2012 AND ENDING SEPTEMBER 30, 2013; BY INCREASING THE AMOUNT OF APPROPRIATIONS FOR THE PUBLIC WORKS DEPARTMENT BY APPROPRIATING \$20,000.00 FROM THE FUND BALANCE OF THE CITY'S GENERAL FUND TO PROVIDE FUNDING FOR THE PAYMENT OF EXPENDITURES FOR BUNTON CREEK ROAD REPAIRS AS AUTHORIZED BY CITY COUNCIL ON NOVEMBER 7, 2012 ~ *Perwez A. Moheet, CPA, Director of Finance*

RATIFY AWARD AND EXECUTION OF A PURCHASE ORDER TO CABLE COM, INC., OF AUSTIN, TEXAS IN AN AMOUNT NOT TO EXCEED \$10,663.16 FOR THE INSTALLATION OF 5,000 FEET OF CAT 6 CABLE, 2,000 FEET OF COAX CABLE, DATA JACKS, AND OTHER HARDWARE INCLUDING LABOR

COSTS FOR USE BY THE POLICE DEPARTMENT AT THEIR NEW FACILITY ~
MARK SHELLARD, DIRECTOR OF INFORMATION TECHNOLOGY

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

AUTHORIZE AWARD AND EXECUTION OF A PURCHASE ORDER TO FORTRESS GRAND CORPORATION OF PLYMOUTH, IN, IN AN AMOUNT NOT EXCEED \$2,163.87 FOR FORTY-TWO (42) FORTRESS SOFTWARE LICENSES WITH A 3-YEAR MAINTENANCE AND SUPPORT SERVICE AGREEMENT FOR USE BY THE KYLE PUBLIC LIBRARY ~ *MARK SHELLARD, DIRECTOR OF INFORMATION TECHNOLOGY*

CONSIDER AND POSSIBLE ACTION REGARDING FINDING 505 USED LIBRARY AUDIO BOOKS ON CASSETTES TO BE OF LITTLE TO NO VALUE, AND DIRECTING THE LIBRARY DIRECTOR TO DISPOSE OF THE USED SURPLUS BY GIFTING IT TO THE LIBRARY THRIFT SHOP WHERE IT POSSIBLY CAN BE SOLD AND AN INVESTMENT RETURNED TO THE LIBRARY ~ *CONNIE BROOKS, LIBRARY DIRECTOR*

BUNTON CREEK PHASE 6A (FP-08-001) 5.93 ACRES; 20 SINGLE FAMILY LOTS LOCATED SOUTH SIDE OF BUNTON LANE, JUST EAST OF GOFORTH ROAD; APPLICANT: QUALICO, KP, LLC.; AGENT: GEOFF GUERRERO, CARLSON, BRIGANCE & DOERING, INC.
 ~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning Commission voted 7-0 to Approve with Conditions listed in Staff Report.

BUNTON CREEK PHASE 1A (FP-08-002) 17.499 ACRES; 69 SINGLE FAMILY, 1 PARKLAND AND DE LOT; LOCATED SOUTH SIDE OF BUNTON LANE, JUST EAST OF GOFORTH ROAD; APPLICANT: QUALICO, KP, LLC; AGENT: GEOFF GUERRERO, CARLSON, BRIGANCE & DOERING, INC.
 ~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning Commission voted 7-0 to Approve with Conditions list in Staff Report

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, ACCEPTING PLUM CREEK PHASE 1 SECTION 11C SUBDIVISION IMPROVEMENTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Steven D. Widacki, City Engineer*

CITY COUNCIL REGULAR MEETING

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PLUM CREEK PHASE 1 SECTION 6A, BLOCK B REPLAT OF LOTS 1 & 2 (SFP-12-009) 3.939 ACRES; 3 LOTS LOCATED AT THE SOUTH EAST CORNER OF FAIRWAY AND FM 2770; APPLICANT: PLUM CREEK DEVELOPMENT PARTNERS, LTD; AGENT: ALAN RHAMES, P.E., AXIOM ENGINEERS, INC.
~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning voted 7-0 to Statutorily Disapprove the Plat

Statutory Disapproval (Note: In accordance with the statutory requirements of the Texas Local Government Code reflected in Sections 12.03.001, 12.05.004, 12.06.004 the following applications are recommended for statutory disapproval in order to allow the City to process the application. These applications will continue through the review process without bias and will be placed on the agenda in a timely manner once the review process is complete. Statutory disapproval in order to meet statutory requirements under these sections shall not bias future consideration of this application by the City Council).

Mayor Pro Tem Hervol moves to Approve Consent Agenda **Item #7** ~ An Ordinance of the City of Kyle, Texas, Amending Ordinance No. 708 Adopted on September 5, 2012 making Appropriations for the Support of the City for Fiscal Year beginning October 1, 2012 and ending September 30, 2013, by Increasing the amount of Appropriations for the Public Works Department by Appropriating \$20,000.00 from the Fund Balance of the City's General Fund to Provide Funding for the Payment of Expenditures for Bunton Creek Road Repairs as Authorized by City Council on November 7, 2012; **Item #8** ~ Ratify award and execution of a Purchase Order to CABLE COM, INC., of Austin, Texas in an amount not to exceed \$10,663.16 for the installation of 5,000 feet of Cat 6 cable, 2,000 feet of coax cable, data jacks, and other hardware including labor costs for use by the Police Department at their new facility; **Item #9** ~ Authorize award and execution of a Purchase Order to FORTRESS GRAND CORPORATION of Plymouth, IN, in an amount not exceed \$2,163.87 for forty-two (42) Fortress Software licenses with a 3-year maintenance and support service agreement for use by the Kyle Public Library; **Item #10** ~ Consider and possible action regarding finding 505 used library audio books on cassettes to be of little to no value, and directing the Library Director to dispose of the used surplus by gifting it to the Library Thrift Shop where it possibly can be sold and an investment returned to the library; **Item #11** ~ Bunton Creek Phase 6A (FP-08-001) 5.93 acres; 20 Single Family Lots Located south side of Bunton Lane, just east of Goforth Road; **Item #12** ~ Bunton Creek Phase 1A (FP-08-002) 17.499 acres; 69 Single Family, 1 Parkland and DE Lot Located south side of Bunton Lane, just east of Goforth Road; **Item #13** ~ A Resolution of the City Council of the City of Kyle, Texas, accepting Plum Creek Phase 1 Section 11C Subdivision improvements; Finding and Determining that the Meeting at which this Resolution is Passed was Noticed and is Open to the Public as Required by Law.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

Item # 14 ~ Plum Creek Phase 1 Section 6A, Block B Replat of Lots 1 & 2 (SFP-12-009) 3.939 acres; 3 Lots Located at the south east corner of Fairway and FM 2770. Council Member Bryant seconds the motion. All aye. Motion carried.

CONSIDER AND POSSIBLE ACTION

CONSIDER A REQUEST BY MINERVA, LTD. (7 ELEVEN STORE) LOCATED AT 22553 IH-35 FOR A CONDITIONAL USE PERMIT TO CONSTRUCT A 3,010 SQUARE FOOT BUILDING LOCATED WITHIN THE INTERSTATE HIGHWAY 35 CORRIDOR DISTRICT.

~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-1 to approve the Conditional Use Permit with Conditions outlined in Staff Report.

- PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 7:20 P.M. to hear comments on a request by Minerva, Ltd. (7 Eleven Store) located at 22553 IH-35 for a Conditional Use Permit to construct a 3,010 square foot building located within the Interstate Highway 35 Corridor District. With no one wishing to speak Mayor Johnson closed the Public Hearing at 7:20 P. M.

Mayor Johnson moved to table this item until the next meeting as requested by applicant. Mayor Pro Tem Hervol seconds the motion. All votes aye. Motion carried.

(First Reading) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 53, ZONING ARTICLE III-OVERLAY DISTRICTS, DIVISION 4 - CONDITIONAL USE OVERLAY DISTRICTS OF THE CITY OF KYLE CITY CODE TO AMEND AND ESTABLISH SPECIFIC DEVELOPMENT REQUIREMENTS FOR PROPERTY WITHIN THE IH-35 OVERLAY DISTRICT; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE; PROVIDING FOR RELATED MATTERS.

~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-1 to Recommend Approval.

- Public Hearing

Mayor Johnson opened the Public Hearing at 7:25 P. M. to hear comments An Ordinance of the City Council of the City of Kyle, Texas Amending Chapter 53, Zoning Article III-

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

Overlay Districts, Division 4 - Conditional Use Overlay Districts of the City of Kyle City Code to amend and establish specific development requirements for property within the IH-35 Overlay District; Providing for the Amendment of the Zoning Ordinance; Providing for Related Matters. Jeff Barton Kyle business owner, spoke and stated that he was speaking on the overlay ordinance and representing clients who could not attend. He thanked Dan Ryan and the Planning and Zoning board along with Sophia Nelson, the Planning Director for providing answers to his questions and all the hard work they put into developing this Overlay Ordinance. He stated that he was in favor of what P&Z and staff had created up to this point with possibly a little more work needed on requirements for sidewalks and garage doors. Maxwell Fisher of Master Plan Dev. spoke and stated that they represented North American Development Group that owns an 80 acre property identified as Kyle Town Center. He stated that several of their concerns had been addressed and with just a few more they could support the document or that if adopted as is they would be fine with it. Some of the changes they would like Council to consider were decreasing vegetative coverage of building elevation from 60 to 25 %, specify other acceptable special building materials treatments, eliminate or minimize landscaped medians in parking lots and decrease the minimum sidewalk width from 12 feet to 8 feet adjacent to retail buildings 30,000 square feet or greater. With no one else wishing to speak Mayor Johnson closed the Public Hearing at 7:37 P. M.

Council Member Wilson moved to approve An Ordinance of the City Council of the City of Kyle, Texas Amending Chapter 53, Zoning Article III Overlay Districts, Division 4 - Conditional Use Overlay Districts of the City of Kyle City Code to amend and establish specific development requirements for property within the IH-35 Overlay District with the addition of recommendations that were added this evening as presented by the Planning Director Sophia Nelson. Council Member Selbera seconds the motion. Mayor Johnson asks Council Member Wilson if he would amend his motion to include eliminating the first bullet point under item #2, orientation of streets; eliminating the requirement to the same materials as the building facade of the primary entrance. All other requirements like architectural treatments such as canopy's, the enclosure of dumpsters, and the screening of all of those areas would stay the same. Council Member Wilson asks the Planning Director for her input on Mayor Johnson's proposed amendment. Ms. Nelson stated that they could add something that says while the same materials on the building do not need to be utilized on all four sides, those sides of buildings facing a public street must be within the same design character as the front. Mayor Johnson changes her proposed amendment to change the first bullet point to say excluding window glazing, employ the same materials and colors or the same design character as the building facade with the primary entrance. Council Member Wilson accepts the amendment and includes Council Member LeMense's request that at second reading this ordinance not be placed under consent agenda and that a Public Hearing be provided as well. Council Member Selbera agrees with the amendments. Mayor Johnson asks for a roll call vote. Mayor Pro Tem Hervol, Council Members LeMense,

Selbera, Mayor Johnson, Council Members Bryant and Wilson vote aye. Council Member Pickett votes nay. Motion carried 6-1.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

CONSIDER A REQUEST BY STEEPLECHASE CARWASH, LLC (PATRIOT CARWASH) FOR A CONDITIONAL USE PERMIT TO CONSTRUCT A 602 SQUARE FOOT BUILDING LOCATED WITHIN THE INTERSTATE HIGHWAY 35 CORRIDOR DISTRICT. 1.099 ACRES LOCATED AT 21195 N. IH-35

APPLICANT: STEEPLECHASE CARWASH, LLC.

AGENT: HUGO ELIZONDO, JR., P.E., CUATRO CONSULTANTS

~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning Commission voted 6-1 to Approve the Conditional Use Permit

PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:30 P. M. to hear comments on a request by Steeplechase Carwash, LLC (Patriot Carwash) for a Conditional Use Permit to construct a 602 square foot building located within the Interstate Highway 35 Corridor District. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:30 P. M.

Council Member Pickett moved to approve a request by Steeplechase Carwash, LLC (Patriot Carwash) for a Conditional Use Permit to construct a 602 square foot building located within the Interstate Highway 35 Corridor District. Council Member LeMense seconds the motion. All aye. Motion carried.

CONSIDER A REQUEST BY SAFE -N- SOUND SELF STORAGE, LTD. FOR A CONDITIONAL USE PERMIT TO CONSTRUCT A 58,200 SQUARE FOOT BUILDING LOCATED WITHIN THE GOFORTH ROAD ZONING OVERLAY DISTRICT. ~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning voted 7-0 to Approve the Conditional Use Permit.

PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:44 P. M. to hear comments on a request by Safe -N- Sound Self Storage, Ltd. for a Conditional Use Permit to construct a 58,200 square foot building located within the Goforth Road Zoning Overlay District. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:44 P. M.

CITY COUNCIL REGULAR MEETING

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Mayor Pro Tem Hervol moved to approve a request by Safe -N- Sound Self Storage, Ltd. for a Conditional Use Permit to construct a 58,200 square foot building located within the Goforth Road Zoning Overlay District. Council Member Bryant seconds the motion. All votes aye, motion carried with Council Member Selbera off the dais and not voting,

CONSIDER APPROVAL OF LETTER OF SUPPORT FOR DACY LANE MULTIFAMILY HOUSING PROJECT ~ *LUCY JOHNSON, MAYOR*

Council Member Wilson moves to approve a Letter of Support for Dacy Lane Multifamily Housing Project. Council Member Selbera seconds the motion. All aye. Motion carried.

DISCUSSION OF STREET BOND ISSUE ~ *BRAD PICKETT, COUNCIL MEMBER DISTRICT 3*

Steven Widaki provided Council with the Mobility Committee recommendation for a schedule of road priorities. Council Member Pickett stated that he wanted to start discussions early so details can be worked out and not fail as before. Council scheduled a joint workshop with the Mobility Committee for Thursday, December 13, 2012 at 7:00 P.M.

A RESOLUTION BY THE CITY OF KYLE, TEXAS AUTHORIZING THE GUADALUPE-BLANCO RIVER AUTHORITY APPLICATION FOR FLOOD PROTECTION PLANNING GRANT ASSISTANCE FILED WITH THE TEXAS WATER DEVELOPMENT BOARD ~ *Steven Widacki, P.E., City Engineer*

Council Member Wilson moves to approve A Resolution by the City of Kyle, Texas authorizing the Guadalupe-Blanco River Authority application for Flood Protection Planning Grant Assistance filed with the Texas Water Development Board. Council Member LeMense seconds the motion. All aye. Motion carried.

CITY MANAGERS REPORT

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

City Manager Lanny Lambert informed Council that the Mayor had called a Special Called City Council Meeting scheduled for Tuesday, January 22, 2013 to Award the Bunton Creek Construction Contract. He stated there was a need to move this along because ACC would tie into the sewer line once they open.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

EXECUTIVE SESSION

CONVENE INTO EXECUTIVE SESSION PURSUANT TO SECTION 551.071, CONSULTATION WITH ATTORNEY, TO DISCUSS AGREEMENT BY AND BETWEEN CITY OF KYLE, TEXAS AND MONARCH UTILITIES, INC.

CONVENE INTO EXECUTIVE SESSION PURSUANT TO SECTION 551.074, TEX. GOVERNMENT CODE, PERSONNEL MATTERS, TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF VARIOUS PERSONNEL POSITION

Mayor Johnson moved to Convene into Executive Session at 9:08 P. M. pursuant to Section 551.071, Consultation with Attorney, to discuss Agreement by and between City of Kyle, Texas and Monarch Utilities, Inc., and Convene Into Executive Session pursuant to Section 551.074, Tex. Government Code, Personnel Matters, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of various personnel position. Mayor Pro Tem seconds the motion. All aye. Motion carried. Council Member Wilson was off the dais and did not vote.

RECONVENE INTO OPEN SESSION TO TAKE ACTION AS DEEMED APPROPRIATE IN THE CITY COUNCIL'S DISCRETION REGARDING THE AGREEMENT BY AND BETWEEN CITY OF KYLE, TEXAS AND MONARCH UTILITIES, INC

RECONVENE INTO PUBLIC SESSION AND TAKE ACTION AS APPROPRIATE IN THE COUNCIL'S DISCRETION REGARDING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF VARIOUS PERSONNEL POSITIONS

Mayor Johnson moved to Reconvene into Open Session at 9:40 P.M. to Take Action as Deemed Appropriate in the City Council's Discretion regarding the Agreement by and between City of Kyle, Texas and Monarch Utilities Inc., and Reconvene Into Public Session and take action as appropriate in the Council's discretion regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of various personnel positions. Council Member LeMense seconds the motion. All aye. Motion carried.

Mayor Johnson stated that No Action was taken during Executive Session and that no action needed to be taken now.

CITY COUNCIL REGULAR MEETING
December 4, 2012 – Page 11
Kyle City Hall

ADJOURN

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

The City Council meeting adjourned at 9:40 P.M.

Lucy Johnson, Mayor

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Ethics Commission Annual Report

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Presentation of the Ethics Commission 2012 Annual Report ~ *Gary Rush, Chairman, Ethics Commission*

Other Information:

Budget Information:

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[Ethics Commission 2012 Annual Report](#)

Cover Memo

Item # 2

December 18, 2012

City of Kyle
 City Council
 100 W. Center St.
 Kyle, Texas 78640

Re: Ethics Commission 2012 Annual Report

The Ethics Commission respectfully submits the following report for the 2012 activities of the Ethics Commission. The Ethics Commission met on the following dates:

- January 13, 2012
- February 1, 2012
- November 12, 2012
- December 10, 2012

On January 13, 2012, the Ethics Commission met to review a possible ethics violation. A formal complaint was not issued; although a formal notification of a possible ethics violation was provided to the Ethics Commission along with potential evidence. The Commission convened in executive session along with City Attorney, Frank Garza.

Based on the evidence provided and the fact that the City of Kyle did not have an institutionalized ethics policy and training, the Commission determined that no ethics violation occurred. However, the Commission strongly recommended to the City Council that the city should institute annual ethics training for all existing and newly hired employees and elected officials. As a result, the City of Kyle instituted ethics training for city employees, elected officials, appointed officials and the City of Kyle Police Department.

The Ethics Commission also recommended to members of the Council the need to reappoint and to fill vacant positions on the Ethics Commission. At present there are two members whose term expired and one individual who has resigned and no longer attends Commission meetings. It is imperative that these positions are reappointed or filled with new individuals. Due to the nature of the Ethics Commission and the duty to the City to review possible ethics violations, it is extremely important to have a full Commission with current appointment status.

<u>Ethics Commission Members</u>	<u>Elected</u>	<u>Term Expires</u>
Felicia Svendsen Lucy Johnson, Mayor	10/3/11	9/30/14
Lynn Cohee Diane Hervol Dist. 1	11/1/11	9/30/14

Ed Winn Becky Selbera, Dist. 2	10/3/11	9/30/14 (RESIGNED)
Jerry Lopez Brad Picket, Dist. 3	9/1/04	9/30/07 (EXPIRED)
Christina Vaca David Wilson, Dist. 4	10/18/11	9/30/14
Andrea Cunningham Jamie Sanchez, Dist. 5	11/1/11	9/30/14
Gary Rush – Chair Russ Huebner	1/20/09	9/30/11 (EXPIRED)

Respectfully,

Gary Rush
Ethics Commission Chair

Prepared by Felicia Svendsen



CITY OF KYLE

100 W. Center St. - P.O. Box 40 - Kyle, Texas 78640 (512) 262-1010 FAX (512) 262-3987

Ethics Commission

	ELECTED	TERM EXPIRES
Felicia Svendsen Lucy Johnson, Mayor 721 Abundance Lane Kyle, Texas 78640 HM: (512) 563-0241	10/3/11 May 2011	9/30/14 May 2014
	EMAIL: fsvendsen@austin.rr.com	
Lynn Cohee Diane Hervol, Council Member District 1 1556 Amber wood Lp Kyle, Texas 78640 (512) 940-8547	11/1/11 May 2010 Nov. 1, 2011	9/30/14 May 2013 Sept. 30, 2011
	E-MAIL: lynn.e.cohee@austin.rr.com	
Ed Winn Becky Selbera, Council Member District 2 704 W. Blanco, P.O. Box 311 Kyle, TX 78640 HM: (512) 268-7231 CELL: (512) 557-1183	10/3/11 May 2011 Nov. 1, 2011	9/30/14 <u>Resigned 10-10-12</u> May 2014 Sept. 30, 2011
	EMAIL: ewinn2@austin.rr.com	
Jerri Lopez Brad Pickett, Council Member District 3 230 Bluestem St. Kyle, Texas 78640 HM: (512) 268-6220	9/2004 May 2010	9//30/2007 May 2013
	EMAIL: jerrihalllopez@gmail.com	
Christina Vaca David Wilson, Council Member District 4 331 Silverado Dr Kyle, TX 78640 PHONE:	10/18/11 May 2011	9/30/14 May 2014
	EMAIL: christina.vaca@yahoo.com	
Andrea Cunningham Jaime Sanchez Council Member District 5 151 Trinity Dr Kyle, Texas 78640 HM: (512) 268-6637	11/1/11 Feb. 2010	9/30/14 May 2012
	EMAIL: ac1820@txstate.edu	
Gary Rush Russ Huebner, Council Member District 6 356 Amber Ash Dr. Kyle, Texas 78640 HM: (512) 262-0527	01/20/09 May 2009	09/30/11 May 2012
	EMAIL: kgsagebrush@aol.com	



CITY OF KYLE

Notice of Ethics Commission Meeting

Notice is hereby given that the Ethics Commission of the City of Kyle, Texas will meet at 6:00 p.m. on the 13th of January 2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas, in the Minerva Falcon Community Room for the purpose of discussing the following agenda.


Amelia Sanchez, City Secretary

Posted this the 10th day of January 2012 prior to 6:00 p.m.

AGENDA

1. **Call Meeting to Order**
 - Roll Call
2. **Consider and Possible Action**
 - Election of Chairman to the Ethics Commission
 - Election of Vice Chairman to the Ethics Commission
3. **Review of Ethics Ordinance**
4. **Executive Session**
 - Convene into Executive Session pursuant to Section 551.071, Tex. Gov't Code, and Section 1.05, Tex. Disciplinary Rules of Professional Conduct to Consult with Legal Counsel regarding report of possible ethics violation
 - Reconvene into Open Session to take action as deemed appropriate in the discretion of Ethics Commission (Board) regarding the report of possible ethics violation
5. **Adjourn**

*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

Notice of Ethics Commission Meeting

Notice is hereby given that the Ethics Commission of the City of Kyle, Texas will meet at 7:00 p.m. on the 1st of February 2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas, in the Minerva Falcon Community Room for the purpose of discussing the following agenda.


Amelia Sanchez, City Secretary

Posted this the 27th day of January 2012 prior to 6:00 p.m.

AGENDA

I. Call Meeting To Order

II. Approval of Minutes

1. Ethics Commission Meeting –January 13, 2012 ~ *Amelia Sanchez, City Secretary*

III. Discussion and Possible Action

2. Discussion and Possible Action regarding rules, policies, procedures and protocol pertaining to conducting meetings.

ADJOURN

*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

Notice of Ethics Commission Meeting

Notice is hereby given that the Ethics Commission of the City of Kyle, Texas will meet at 7:00 p.m. on the 11th of April 2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas, in the Minerva Falcon Community Room for the purpose of discussing the following agenda.

Amelia Sanchez, City Secretary

Posted this the 5th day of April 2012 prior to 6:00 p.m.

AGENDA

- I. **Call Meeting to Order**
 - Roll Call

- II. **Approval of Minutes**
 1. Ethics Commission Meeting – February 1, 2012 ~ Amelia Sanchez, City Secretary

- III. **Adjourn**

*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.

CANCELLED



CITY OF KYLE

Notice of Ethics Commission Meeting

Notice is hereby given that the Ethics Commission of the City of Kyle, Texas will meet at 6:30 p.m. on the 10th of December 2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas, in the City Council Chambers for the purpose of discussing the following agenda.

Amelia Sanchez, City Secretary

Posted this the 6th day of December 2012 prior to 6:00 p.m.

AGENDA

- I. **Call Meeting to Order**
Roll Call
- II. **Approval of Minutes**
 1. Ethics Commission Meeting – February 1, 2012 ~ Amelia Sanchez, City Secretary
- III. **Consider and Possible Action**
 1. Discussion of items and date for annual report to put on City Council agenda
 2. Review and discuss generally topics for recommended changes for clarification to the current Ethics Ordinance
 3. Discussion of Board Composition and Terms
- IV. **Adjourn**

*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

Adell Hurst Day

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Proclamation of the City of Kyle, Texas Proclaiming December 18th, 2012 as "Adell Hurst Day" in the City of Kyle, Texas ~ *David Wilson, Council Member District 4 & Samantha LeMense, Council Member District 5*

Other Information:

Budget Information:

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CITY OF KYLE, TEXAS

Appointment to TIRZ Board

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Consideration of Nomination for Appointment to the City of Kyle's Board of Tax Increment Refinancing Zone No.1. ~ *Lucy Johnson, Mayor*

- *Greg Blackwell*

Other Information:

Background Information:

The purpose of the Tax Increment Refinancing Zone No. 1 was established by the Kyle City Council by adopting City Ordinance No. 457 on November 16, 2004.

Below are highlights from the Ordinance:

- The finding for the Ordinance states " the City Council finds and declares that the creation of the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the City."
- Duration of the Zone took effect on November 2, 2004 and termination occurs on December 31, 2035 or earlier time designated by subsequent Ordinance.
- A 5-member Board of Directors governs the TIRZ; 4 appointed by City Council and 1 by the HaysCounty.
- HaysCounty has assigned its 1 Board seat to the City for appointment .
- Each Board member must be a qualified voter of the City or a person at least 18 years of age who owns property within the boundaries of TIRZ 1.
- Regular Board meetings shall be held at such times and places as shall be designated, from time to time, by resolution of the Board.
- A majority of the directors fixed by the Ordinance constitutes a quorum for Board meetings.

Board Membership:

Current Board members on record are:

Cover Memo

Item # 4

- Lucy Johnson, Mayor
- Diane Hervol, Mayor Pro Tem
- James Earp, Assistant City Manager
- Andy Alejandro, Staff Accountant

Establishing City Ordinance:

A copy of City Ordinance No. 457 which established the Tax Increment Refinancing Zone No. 1 in Kyle, Texas is attached.

Budget Information:

A Fiscal Note for this agenda item is not required.

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 [Ordinance #457_TIF](#)

ORDINANCE NO. 457**AN ORDINANCE DESIGNATING A CONTIGUOUS GEOGRAPHIC AREA WITHIN CITY OF KYLE, TEXAS AS REINVESTMENT ZONE NUMBER ONE, CITY OF KYLE, TEXAS, FOR TAX INCREMENT FINANCING PURPOSES PURSUANT TO CHAPTER 311 OF THE TEXAS TAX CODE; CREATING A BOARD OF DIRECTORS FOR SUCH ZONE; CONTAINING FINDINGS AND PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND PROVIDING A SEVERABILITY CLAUSE**

WHEREAS, pursuant to Chapter 311 of the Texas Tax Code, as amended (“Act”) a city may designate a contiguous geographic area within such city as a reinvestment zone if the area satisfies the requirements of certain sections of the Act;

WHEREAS, the City of Kyle, Texas (the “City”) has prepared a preliminary reinvestment zone financing plan, which provides that City ad valorem taxes are to be deposited into the tax increment fund, and that ad valorem taxes of other taxing units may be utilized in the financing of the proposed zone;

WHEREAS, the City has provided written notice of the public hearing on the creation of the proposed zone, complying with the requirements of Act, to the governing body of all taxing units levying taxes on property in the proposed zone;

WHEREAS, a notice of the October 12, 2004 public hearing on the creation of the proposed zone was published on September 29, 2004, in the Kyle Free Press a newspaper of general circulation in the City;

WHEREAS, at the public hearing on October 12, 2004, interested persons were allowed to speak for or against the creation of the proposed zone, its boundaries, or the concept of tax increment financing; and owners of property in the proposed zone were given a reasonable opportunity to protest the inclusion of their property in the proposed zone;

WHEREAS, evidence was received and presented at the public hearing in favor of the creation of the proposed zone under the provisions of Act;

WHEREAS, no owner of real property in the proposed zone protested the inclusion of their property in the proposed zone;

WHEREAS, the City has provided all information, made all presentations, given all notices and done all other things required by Chapter 311, Texas Tax Code, or other law as a condition to the creation of the proposed zone;

WHEREAS, the lack of adequate street layout has hindered the accessibility and usefulness of the property meeting the requirements of 311.005, Tex. Tax Code; and

WHEREAS, the total area within the proposed zone is approximately 475 acres, excluding property that is publicly owned;

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

Section 1. Findings.

(a) That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct and are adopted as part of this Resolution for all purposes.

(b) That the City Council further finds and declares that the creation of the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the City.

(c) That the City Council further finds and declares that the Zone meets the criteria and requirements of Section 311.005 of the Act because the Zone contains: (i) substantial areas that are predominantly open and underdeveloped; (ii) lack public water distribution, wastewater collection and storm drainage facilities; and (iii) lack adequate roadway systems for mobility, access and orderly development, each of which cause conditions that substantially impair and arrest the sound growth of the City.

(d) That the City Council, pursuant to the requirements of the Act, further finds and declares:

- (1) that the Zone is a contiguous geographic area located wholly within the corporate limits of the City of Kyle;
- (2) that the total appraised value of taxable real property in the Zone does not exceed fifteen percent of the total appraised value of taxable real property in the City and in the industrial districts created by the City;
- (3) that the Zone does not contain more than fifteen percent of the total appraised value of real property taxable by Hays County, the Hays Independent School District, Plum Creek Conservation, and the Hays County Rural Fire #5; and
- (4) that the development of the property in the Zone will not occur solely through private investment in the reasonably foreseeable future.

Section 2. Designation of the Zone. That the City, acting under the provisions of Chapter 311, Texas Tax Code, including Section 311.005(a), does hereby designate as a reinvestment zone, and create and designate a reinvestment zone over, the area described in Exhibit "A" and depicted in the

map attached hereto as Exhibit "B" to promote the redevelopment of the area. The reinvestment zone shall hereafter be named for identification as Reinvestment Zone Number One, City of Kyle, Texas, (the "TIRZ 1"). The City Council specifically declares that the Zone is designated pursuant to Section 311.005(a)(1) and (2) of the Texas Tax Code.

Section 3. Board of Directors. TIRZ 1 shall be governed by a five (5) person Board of Directors (the "Board"). One member of the Board may be appointed by the Hays County Commissioners Court (the "County"). The Board of Trustees of the Hays County Independent School District ("HISD"), the Board of the Plum Creek Conservation ("PCC"), and the Board of the Hays County Rural Fire #5 ("HCRF 5") have waived appointment of a board member in writing prior to the date of this ordinance. Four members of the Board shall be appointed by the City Council. If the County waives the appointment of a board member, the position shall be filled by an appointment made by the City Council.

(a) Qualifications. Each member of the Board shall be a qualified voter of the City, or a person at least eighteen (18) years of age who owns property within the boundaries of TIRZ 1.

(b) Term of Office. The term of each initial director shall be determined by lot and then recorded in the minutes of the organizational meeting of TIRZ 1. Two of the initial directors shall serve an initial term of one (1) year, and three shall serve an initial term of (2) years. The term of each subsequent director shall be two (2) years. Vacancies shall be filled for the remainder of the unexpired term, by appointment made by the governing body that appointed the director who served in the vacated position.

(c) Officers. The City Council shall annually appoint a member of the Board to serve as chairman of the Board for a one year term beginning January 1st and ending December 31st. The Board may elect a vice-chairman to serve in the absence of the chairman, and other officers as it deems appropriate.

(d) Meetings of Directors. The Board may hold its meetings at any place within the City as the Board may from time to time determine; provided that, in the absence of any such determination by the Board, the meetings shall be held at the City Council Chambers of the City. The Board shall conduct its meetings in accordance with the requirements of the Act and the Texas Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*, as amended. Regular meetings of the Board shall be held at such times and places as shall be designated, from time to time, by resolution of the Board. Notice of regular meetings need not be given to each of the Directors but public notice of each meeting shall be given in the manner prescribed by law. Special meetings of the Board shall be held whenever called by the chairman, the vice-chairman in the absence of the chairman, or upon advice of or request by the Mayor. A majority of the directors fixed by this Ordinance shall constitute a quorum for Board meetings. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law.

(e) Authority. The Board shall have the authority specifically given to the Board in *Chapt. 311, Tex. Tax. Code*. The Board shall have such other authority, as may be lawfully delegated by the City

Council, as is delegated by the City Council acting by a formal, written resolution or ordinance. Action by the Board that is expressly or impliedly provided in *Chapt. 311*, or by other state law, to be subject to approval by the City Council, shall not be effective until approved in writing by the City Council.

(f) **Duties.** The Board shall perform each duty and obligation required to be performed by the Board, by *Chapt. 311*, any project or plan approved by the City Council, and each such duty and obligation lawfully imposed on the Board by the City Council consistent with *Chapt. 311*.

(g) **Plan.** The Board of Directors shall make recommendations to the City Council concerning the administration of the Zone. The Board of Directors shall prepare or cause to be prepared and adopt a project plan and a reinvestment zone financing plan for the Zone as described in Section 311.011 of the Act, and shall submit such plans to the City Council for its approval. The City hereby delegates to the Board of Directors all powers necessary to prepare the project plan and reinvestment zone financing plan, subject to approval by the City Council, including the power to employ any necessary consultants, that may be reasonably necessary or convenient to assist the Board of Directors in the preparation of the project plan and reinvestment zone financing plan.

Section 4. Duration of the Zone That the Zone shall take effect on November 2, 2004, for the deposit of tax increments into the Tax Increment Fund established pursuant to Section 6 of this Ordinance, and termination of the operation of the Zone shall occur on December 31, 2035, or at an earlier time designated by subsequent ordinance, or at such time, subsequent to the issuance of tax increment bonds, if any, that all project costs, obligations secured with tax increment revenues, and the interest thereon, have been paid in full.

Section 5. Tax Increment Base That the Tax Increment Base of the City or any other taxing unit participating in the Zone for the Zone is the total appraised value of all real property taxable by the City or other taxing unit participating in the Zone and located in the Zone, determined as of November 2, 2004, the year in which the Zone was designated as a reinvestment zone (the "Tax Increment Base").

Section 6. Tax Increment Fund That there is hereby created and established a Tax Increment Fund for the Zone which may be divided into subaccounts as authorized by subsequent ordinances. All Tax Increments, as defined below, shall be deposited in the Tax Increment Fund. The Tax Increment Fund and any subaccount shall be maintained at the depository bank of the City and shall be secured in the manner prescribed by law for funds of Texas cities. The annual Tax Increment shall equal the property taxes levied by the City and any other taxing unit participating in the Zone for that year on the captured appraised value, as defined by the Act, of real property located in Zone that is taxable by the City or any other taxing unit participating in the Zone, less any amounts that are to be allocated from the Tax Increment pursuant to the Act. All revenues from the sale of any tax increment bonds, notes or other obligations hereafter issued for the benefit of the Zone by the City, if any; revenues from the sale of property acquired as part of the project plan and reinvestment zone financing plan, if any; and other revenues to be used in the Zone shall be deposited into the Tax Increment Fund. Prior to the termination of the Zone, money shall be disbursed from the Tax

Increment Fund only to pay project costs, as defined by the Texas Tax Code, for the Zone, to satisfy the claims of holders of tax increments bonds or notes issued for the Zone, or to pay obligations incurred pursuant to agreements entered into to implement the project plan and reinvestment zone financing plan and achieve their purpose pursuant to Section 311.010(b) of the Texas Tax Code.

Section 7. Severability If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person to set circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining provisions of this Ordinance or their application to other persons or set of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or regulations connected herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any portion hereof, and all provisions of this Ordinance are declared severable for that purpose.

Section 8. Effective Date. This ordinance shall take effect immediately from and after its passage.

Section 9. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

Section 10. Notices. The contents of the notice of the public hearing, which hearing was held before the City Council on October 12, 2004, and the publication of said notice, are hereby ratified, and confirmed.

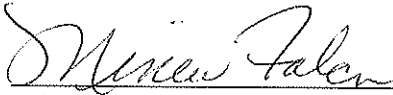
PASSED AND APPROVED on first reading this the 12th day of October, 2004.

PASSED AND APPROVED on second reading this the 1st day of November, 2004.

FINALLY PASSED AND APPROVED on this the 16th day of November, 2004.

ATTEST:

CITY OF KYLE, TEXAS


Minerva Falcon, City Secretary



James Adkins, Mayor

EXHIBIT A

THIS IS A DESCRIPTION OF A TRACT OF LAND CONTAINING APPROXIMATELY 475 ACRES OUT OF THE JOHN KING SURVEY, THE DAN DOWNER SURVEY, THE THOMAS G. ALLEN SURVEY NO. 26, THE HENREY LOLLER SURVEY, ABSTRACT 280 AND THE J. M. GREEN SURVEY IN HAYS COUNTY, TEXAS, TO BE USED FOR POLITICAL MEANS. THIS WAS NOT SURVEYED ON THE GROUND AND IS A BOUNDS DESCRIPTION ONLY ASSEMBLED FROM THE BEST AVAILABLE EVIDENCE INCLUDING DEED RESEARCH AND APPRAISAL DISTRICT MAPS. REFERENCES TO ALL DOCUMENTS OF RECORD REFER TO THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. THIS TYPE OF DESCRIPTION IS ALLOWED UNDER THE TEXAS ADMINISTRATIVE CODE, PART 29, CHAPTER 663, SUBCHAPTER B, RULE 663.21 AND IS FURTHER DESCRIBED AS FOLLOWS:

BEGINNING at the most northerly northeast corner of the herein described tract, same being the most northerly north east corner of Kyle Towne Center, a subdivision of record in Book 11, Page 356 of the Official Public Records of Hays County, Texas, same also being in the westerly right-of-way line of Interstate Highway No. 35;

THENCE, with the easterly line of said Kyle Towne Center and the westerly right-of-way line of Interstate Highway No. 35 to the southeast corner of said Kyle Towne Center, same being the northeast corner of a tract of land described in a deed to Les Crane in Volume 399, Page 294;

THENCE with the easterly line of said Crane Tract and the westerly right-of-way line of Interstate Highway No. 35 to the southeast corner of said Crane tract same being the Northeast corner of Kyle Industrial Park;

THENCE, with the southerly line of said Crane Tract, and the northerly line of Kyle Industrial Park, to the easterly right of way line of County Road No. 210;

THENCE, with the easterly right-of-way line of County Road No. 210 to the southwest corner of said Kyle Industrial Park;

THENCE, the southerly line of said Kyle Industrial Park to the westerly right-of-way line of Interstate Highway No. 35;

THENCE, with the westerly right-of-way line of Interstate Highway No. 35 to a point where the westerly right-of-way line of Interstate Highway No. 35 intersects the easterly right-of-way line of County Road No. 210;

THENCE, crossing said County Road No. 210, in a southwesterly direction to a point on the westerly right-of-way line of said Interstate Highway No. 35, same being the easterly line of a tract of land described as EVANS Tract I in a deed to SHELDON-TANGLEWOOD LTD. of record in Volume 2495, Page 677;

THENCE with the northwesterly right-of-way line Interstate Highway No. 35, same being the southeasterly line of said SHELDON-TANGLEWOOD LTD. Tract approximately 927 feet to a northeast corner of a tract of land described as EVANS II in a deed to SHELDON-TANGLEWOOD LTD of record Volume 2495 Page 677;

THENCE, continuing with the northwesterly right-of-way line of Interstate Highway No. 35, same being the southeasterly line of Evans Tract II, passing at approximately 1693 feet the most southerly corner of Evans Tract II, same being a northeasterly corner of a tract of land described as Kirkham Tract II of record in a deed to SHELDON-TANGLEWOOD LTD. as recorded in Volume 2495, Page 658, and continuing with the southeasterly line of said Kirkham Tract II, same being the northwesterly right-of-way line of Interstate Highway No. 35, to the most southerly corner of said Kirkham Tract II, same being an easterly corner of lot 2 of Plum Creek Park, a subdivision of record in Volume 7, Page 297;

THENCE, with the common line of said Lot 2 and said Kirkham Tract II to the southeasterly right-of-way line of the Missouri & Pacific Railroad Company Tract;

THENCE, with the easterly line of the Missouri & Pacific Railroad Tract, same being the west line of said Kirkham Tract II, to the approximate west corner of said Kirkham Tract I;

THENCE, with the northwesterly lines of said Kirkham Tract I and said Evans Tract I, in a northeasterly direction approximately 4000 feet to the North corner of said Evans Tract I;

THENCE, with the northeasterly line of said Evans Tract I, in a southeasterly direction to the northeast corner of said Evans Tract I in the westerly right-of-way line of County Road No. 210;

THENCE with the westerly right-of-way line of said County Road No. 210 to the intersection of the southerly right-of-way line of Kohler's Crossing Road;

THENCE, crossing said County Road No. 210 to the southwest corner of said Kyle Towne Center;

THENCE with the west lines of Kyle Towne Center, same being the east right-of-way line of County Road No. 210 to the southwest corner of a 10 acre tract of land to Palm Harbor Manufacturing L.P. of record in Volume 1907, Page 576;

THENCE, with the south line of said Palm Harbor Manufacturing L.P., same being the north line of said Kyle Towne Center to the southeast corner of said Palm Harbor Tract;

EXHIBIT B





CITY OF KYLE, TEXAS

Ethics Commission Appointments

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Consideration of Nomination(s) for Appointment to the Ethics Commission ~ *Lucy Johnson, Mayor*

- *District 6, Re-appointment, Gary Rush*
- *District 3, Re-appointment, Jerry Lopez*
- *District 2, New Appointment, Marta Ortiz*

Other Information:

Budget Information:

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

Attachments / click to download

[Marta Ortiz Committee Application](#)



Grace Nino <gracenino@cityofkyle.com>

City of Kyle Texas Website submission: Committee Volunteer Application

City of Kyle Texas <webmaster@cityofkyle.com>

Fri, Dec 7, 2012 at 5:07 PM

To: gracenino@cityofkyle.com

Submitted on Friday, December 7, 2012 - 17:07

Submitted by anonymous user: [68.241.40.165]

Submitted values are:

Name: Marta G. Ortiz

Address: 108 Agate Lake Dr

E-Mail: martag_ortiz@yahoo.com

Best Phone Number to Reach You: (512) 749-5428

Sub Division: South Lake Ranch

Committees you are interested in: [Ethics Committee](#)

Professional, Education and Work Background: Communications Major at the University of Texas at Austin. B.S. Degree in Radio-TV-Film. As part of my major, I undertook a Professional Communications Ethics class which left a great impression on my outlook as a young professional. After graduation I began work with Seton Healthcare Network Government Programs. I was responsible for the entire Hispanic CHIP population in our 7 central counties. I left Seton to attend my newborn and then toddler, and opened my own voice talent and interpreting business which I operate till now.

Previous or Current Community/Committee Involvements: I am deeply involved at my church, Sinai Pentecostal Church in San Marcos, TX. Under my Director, Melba Montoya, I help run our ASELSI Bible School Extension. I am in charge of finance, grades, bookkeeping, attendance and report to headquarters in Guatemala. We have 34 students, and are divided in 3 classes (2 English, 1 Spanish). Besides helping coordinate the school for the past 2 years, I am also enrolled as a 1st year student.

Special Knowledge or Experience:

Bilingual- Spanish and English 100% proficiency

How long have you been a Kyle resident? 5 years

Today's Date: 2012-12-07

Other Comments: I am a Kyle citizen, a wife, a mother, a business owner, and a prospective law school student, who would like to help our community. I hold the Bible as the highest norm of ethics, and personal guide.

Item # 5



CITY OF KYLE, TEXAS

Public Works Committee Appointment

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Consideration of Nomination(s) for Appointment to the Public Works & Service Committee ~ *Lucy Johnson, Mayor*

- *Terri Slaughter*

Other Information:

Budget Information: A Fiscal Note is not required.

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

Attachments / click to download

 [Terri Slaughter Committee Application](#)



Grace Nino <gracenino@cityofkyle.com>

City of Kyle Texas Website submission: Committee Volunteer Application

City of Kyle Texas <webmaster@cityofkyle.com>

Tue, Dec 4, 2012 at 4:20 PM

To: gracenino@cityofkyle.com

Submitted on Tuesday, December 4, 2012 - 16:20

Submitted by anonymous user: [24.155.185.195]

Submitted values are:

Name: Teresa (Terri) Slaughter

Address: 136 Invierno St

E-Mail: terrislaughter1395@yahoo.comBest Phone Number to Reach You: [512-300-8612](tel:512-300-8612)

Sub Division: Four Seasons Farm Phase One

Committees you are interested in:

Community Relations Committee

Public Works and Service Committee

Safety and Emergency Services Committee

Professional, Education and Work Background:

Education: BA in Political Science, emphasis on Public Policy Texas A & M Corpus Christi

57 hrs towards masters in Public Administration Texas State

Current Licenses: Vocational Nursing (33yrs)

Last 7 years working for Ascension Health (parent company to Seton Healthcare Family) working to develop and implement an electronic health record. Primary focus is on Physician IT support for all areas of IT beyond the health record.

Experience in Medicare/Medicaid regulations, development of web based and classroom training. Experience in change management at professional level. Exp in Case Management, resource utilization, revenue reimbursement.

Experience managing teams, strong written/verbal communication skills, strong organizational skills.

Previous or Current Community/Committee Involvements:

Presently, committee member for the Modification/Beautification committee for the Four Seasons Farm subdivision.

Previously: VP member of League of Women Voters, (LWV) Austin, Texas. Also, involved in LWV in San Marcos. Many years past when my children were small I was involved with our city's (Hurst, Texas) Pee Wee Football and Cheerleading organization.

Special Knowledge or Experience: My positions have all required me to have strong communication skills with all types of people in all types of positions. While nursing, it was therapeutic communication, while working with physicians in a large change management, organizational development processes, I must be sensitive to their workflow processes, educational learning style and frustrations with such a large change. I believe these skills will be beneficial on any one of these committees to work to have a positive impact on our citizens of Kyle.

How long have you been a Kyle resident? Since August 2011 1 yr 4 months

Today's Date: 2012-12-04

Other Comments: I believe a city is only as strong as its citizens who work to serve it. More volunteer community involvement means a stronger place to raise families and enjoy the harmony and trials of growing together.

Item # 6



CITY OF KYLE, TEXAS

Law Library Subscription Contract

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize award and execution of a 36-month contract with THOMSON REUTERS WEST of New York City, NY in an amount not to exceed \$7,774.20 for an online Law Library subscription for the City Attorney ~ *Mark Shellard, Director of Information Technology*

Other Information: The online Law Library subscription is to begin January 1, 2013 and ends December 31, 2015.

- 1st year subscription rate is \$205.50 per month.
- 2nd year subscription rate is \$215.78 per month (5% increase).
- 3rd year subscription rate is \$226.57 per month (5% increase).

Budget Information: A Fiscal Note is attached.

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

Attachments / click to download

[Online Law Library Subscription Contract](#)

[Fiscal Note - Online Law Library Subscription](#)

WEST®**Order Notification**

A Thomson Reuters business

Contact your representative karl.pollard@thomsonreuters.com with any questions. Thank you.Order ID: **388989****Subscriber Information****Account Address:**

Account #: **1000131076**
 CITY OF KYLE
 GRACE NINO
 PO Box 40
 KYLE, TX 78640
 US
 512-262-3920

Shipping Address:

Account #: **1000131076**
 CITY OF KYLE
 GRACE NINO
 PO Box 40
 KYLE, TX 78640
 US
 512-262-3920

Billing Address:

Account #: **1000131076**
 CITY OF KYLE
 GRACE NINO
 PO Box 40
 KYLE, TX 78640
 US
 512-262-3920

Payment and Shipping Information**Payment Method:**

Payment Method: **WestAccount**
 Account Number: **1000131076**

Shipping Information:

Shipping Method: **FREE Ground Shipping - U.S. Only**

Additional Information

Created By: **0112482**
 Order Source: **27**
 Revenue Channel: **30**
 Order Date: **11/29/2012 10:05:32 AM**
 P.O. Number:
 Additional Data B: **1**

Order Contact Information

First Name	Last Name	Email Address	Phone	Contact Description	Contact Number
Mark	Shellard	mshellard@cityofkyle.com		Order Confirmation Contact	28
Mark	Shellard	mshellard@cityofkyle.com		Primary Password Contact	24
Mark	Shellard	mshellard@cityofkyle.com		Quickview Contact	Quickview

Internal Comments

- Worksheet: <https://ordermation.west.thomson.com/esigs/of.aspx?pordergroupid=c7f5b9fd-e712-4f17-a720-6c88941cfbd0&pfv=true>
- OF Ver: <https://ordermation.west.thomson.com/esigs/ofversion.aspx?pfv=true&ordergroupid=6aa2783c-0977-4aaa-b5fa-272b62eb89a4&isofview=yes>

New Products - WestlawPRO/CD/WLEC/Other

Qty	Product	Material ID	Item #
1	Government Select Level 1 States (WestlawNext™); (Banded)	40988732	

Modules to include in Custom PRO:

Material ID	Description
40982568	Primary Law with KeyCite®: All — Texas (WestlawNext™;)
40984370	Employment Practitioner Core — Texas (WestlawNext™;)
40981466	Federal Materials — Texas (WestlawNext™;)
40981636	Municipal Law Practitioner Core — Texas (WestlawNext™;)
40982220	Texas Practice Series (WestlawNext™;)

Special Options: Short-Term Bridge/Contract 1 Month

Monthly Charges ("Monthly Charges") are billed on the date West processes Subscriber's order and continue for a minimum of 12 complete calendar months ("Minimum Term"). Upon conclusion of the Minimum Term, charges for CD-ROM products are billed thereafter at then-current rates. If Subscriber elects a longer Minimum Term the Monthly Charges for WestlawPRO and/or West LegalEdcenter products will be billed as set forth herein.

Subscriber agrees to commit to a Minimum Term of **36 months** and the Monthly Charges for the second 12 months not to increase by more than **5%** over the Monthly Charges for the initial 12 months and the Monthly Charges for the third 12 months not to increase by more than **5%** over the Monthly Charges for the second 12 months.

NON-GOVERNMENT SUBSCRIBERS ONLY:

Upon conclusion of the WestlawPRO Minimum Term, including West LegalEdcenter product(s) that are part of a WestlawPRO Select, the Subscriber Agreement and this Order Form will automatically renew for consecutive 12-month periods ("Renewal Term"), and the Monthly Charges for the Renewal Term will increase 7% per year unless either party gives written notice of cancellation to the other party at least 30 days in advance of any Renewal Term, including the first Renewal Term. Additionally, West may at its discretion provide Subscriber with notice at least 60 days in advance of any Renewal Term of a Monthly Charge increase different from 7% after which Subscriber shall have 30 days to provide West with written notice of cancellation if Subscriber does not wish to renew. Excluded Charges may be modified as set forth in the Subscriber Agreement (as defined herein). Subscriber is responsible for all Excluded Charges as incurred. During any Renewal Term, Subscriber's access to and use of Westlaw shall be governed by the Subscriber Agreement. Upon conclusion of the West LegalEdcenter Minimum Term, as applicable solely to West LegalEdcenter product(s) that are not part of a WestlawPRO Select, charges for West LegalEdcenter products are billed thereafter at up to then-current rates.

GOVERNMENT SUBSCRIBERS ONLY:

Upon conclusion of the WestlawPRO and/or West LegalEdcenter Minimum Term, Monthly Charges are billed thereafter at up to then-current rates. Excluded Charges and Monthly Charges (after the Minimum Term) may be modified as set forth in the Subscriber Agreement (as defined herein). Subscriber is responsible for all Excluded Charges as incurred. After the Minimum Term, Subscriber's access to and use of Westlaw shall be governed by the Subscriber Agreement.

1 attorneys (partners, shareholders, associates, contract or staff attorneys, of counsel and the like), corporate users, students and Personnel if ordering Paralegal Plans or publicly accessible terminals (used for Patron Access and Correctional Facility Products) at the location identified above (for WestlawPRO, CD-ROM case law orders and/or West LegalEdcenter Charges). If West learns that the actual number exceeds this number, West reserves the right to increase Subscriber Monthly Charges as applicable.

User	Start Date	Position	Email
Grant, Julian		Attorney	

Order Subtotal:	N/A
* Estimated Tax:	TBD
Order Total:	\$0.00
Products Under 36 month contract term:	\$205.50
** Billed Monthly Total:	\$205.50

* Sales tax for your order will reflect applicable state and local taxes and will be finalized upon shipment. In accordance with applicable laws, tax will be applied to products and shipping. Actual tax may vary slightly from that shown above.

*Free shipping is not applicable to print orders that will be shipped from affiliates of Thomson Reuters that are located outside of the United States, its territories and possessions. For such products, transportation and handling charges (FOB origin) will be added.

** First full month billing will be invoiced at the monthly billed detail set forth above. Pricing is subject to the price increase pursuant to the terms and conditions set forth in agreement.

SHORT TERM BRIDGE WestlawPRO BRIDGE AMENDMENT

Amendment to Subscriber Agreement for Westlaw and CD-ROM Libraries between Subscriber and West, a Thomson Reuters business ("West") as follows:

1. Effect of Amendment. The underlying Subscriber Agreement for Westlaw and CD-ROM Libraries, of even date herewith including all Schedules and Order Forms thereto ("Subscriber Agreement"), between Subscriber and West is amended as specifically set forth herein to incorporate the terms of this Amendment. As amended, the Subscriber Agreement shall remain in full force and effect according to its terms and conditions. All terms used in this Amendment shall have the meanings attributed to them in the Subscriber Agreement. This Amendment embodies the entire understanding between the parties with respect to the subject matter of this Amendment and supersedes any and all prior understandings and agreements, oral or written, relating to the subject

2. Term and Termination. The Subscriber Agreement and this Amendment shall become effective upon approval and acceptance by West in St. Paul, Minnesota and shall continue in force and effect as set forth herein.

3. Bridge

3.1 From the effective date of this Amendment and continuing for a minimum of one (1) complete calendar month for 40988732 at \$0.00 complete calendar month thereafter ("Period 1"), Subscriber shall receive access, at the rates set forth on the Order Form, to the WestlawPRO product(s) elected by Subscriber on the Order Form. Access to and use of Westlaw Excluded Charges shall be billed to Subscriber at then-current Schedule A WestlawPRO rates.

3.2 From the end of Period 1 and continuing through the end of the Minimum Term (or Renewal Term) of 36 months for 40988732 months for 36 months for 40988732("Period 2"), Subscriber shall receive access to the WestlawPRO product(s) elected by Subscriber on the Order Form, at the rates set forth therein. All access to and use of Westlaw Excluded Charges will be billed at the then-current Schedule A WestlawPRO rates.

3.3 The Minimum Term for the new Westlaw PRO products on the Order Form shall be extended by the length of Period 1.

3.4 All other terms and conditions of the Subscriber Agreement shall remain unchanged.

Subscription Service, Passwords and West km Software. Subscription services may consist of updates and/or supplements to the service, including but not limited to: (a) CD-ROM Libraries: updated, replacement or supplemental CD-ROMs and online updates, and other related supplemental material; (b) Print Products: pocket parts, pamphlets, replacement or ancillary volumes; loose-leaf pages and other related supplemental materials; all of which may be billed separately at then-current rates. Subscriber hereby requests that West provide subscription services for the herein-described products at then-current rates until such subscription services are cancelled by West or cancelled upon written request by Subscriber (or as provided for in the Subscriber Agreement for CD-ROM products). Any passwords issued herein may only be used by the person to whom the password is issued and sharing of passwords is STRICTLY PROHIBITED. Subscribers licensing only LiveNote/Case NoteBook/Timeline/Publisher Software will not be issued Westlaw passwords. Any West km software licensed hereunder must reside on a dedicated server provided and maintained by Subscriber at Subscriber's expense, and such server must be accessible to all Subscriber's authorized users. Subscriber's Westlaw Doc Form Builder Data will be web hosted by West. Upon termination of any Westlaw Doc & Form Builder subscription, West will provide Subscriber access to and the ability to export related Westlaw Doc & Form Builder Data for 180 days at no charge. After a commercially reasonable time has passed, but no less than 180 days after the termination of this agreement, West will delete such Westlaw Doc & Form Builder Data.

General Provisions for Non Government Subscribers Only. This Order Form is subject to approval by West, a Thomson Reuters business ("West") in St. Paul, Minnesota, and is governed by Minnesota law. The state and federal courts sitting in Minnesota will have exclusive jurisdiction over any claim arising from or related to this agreement. Applicable sales, use, personal property, value added tax (VAT) or equivalent, ad valorem and other taxes are payable by Subscriber. Subscriber may be charged interest for overdue installments and subscriptions and for other open account charges. If any installments, subscriptions, subscription services, Westlaw Charges or open account charges remain unpaid 30 days after becoming due, all unmatured installments, including all amounts that are or would become due and payable for the remaining term of Subscriber's Subscriber Agreement, shall become immediately due and payable at the sole option of West. Interest charged may be adjusted to the then-highest current rate allowable on Minnesota contracts. This Order Form is nontransferable. All collection fees, including but not limited to attorneys fees, are payable by Subscriber. Transportation and handling (FOB origin) charges will be added for print products. West may request a current financial statement and/or obtain consumer credit report on the undersigned individual to determine creditworthiness. West will only request consumer credit information on the undersigned if the undersigned is applying for credit as an individual or if the undersigned's consumer credit information is necessary for West to consider granting credit to the aforementioned company. If Subscriber inquires whether a credit report was requested, West will provide information of such, if a report was received and the name, address and telephone number of the agency that supplied the report.

General Provisions for Government Subscribers Only. This Order Form is subject to approval by West in St. Paul, Minnesota, and is governed by the laws of Subscriber's state. The courts sitting in Subscriber's state will have exclusive jurisdiction over any claim arising from or related to this agreement. If Subscriber is a U.S. Federal Government subscriber, this Order Form is governed by the laws of the United States of America. Applicable sales, use, personal property, value added tax (VAT) or equivalent, ad valorem and other taxes are payable by Subscriber. This Order Form is non-transferable. Transportation and handling (FOB origin) will be added to print products.

Returns. If Subscriber is not completely satisfied with any print or CD-ROM product received from West, the product may be returned within 45 days of the invoice date for a full refund or credit, in accordance with West's then-current returns policies. Charges for Westlaw and West LegalEdcenter products are non-refundable.

Additional Contract Information

NON-AVAILABILITY OF FUNDS FOR WestlawPRO GOVERNMENT SUBSCRIBERS (not available to non-government subscribers).

If Subscriber fails to receive sufficient appropriation of funds or authorization for the expenditure of sufficient funds to continue service under the Order Form, or if Subscriber receives a lawful order issued in or for any fiscal year during the Minimum Term or Renewal Term of the Order Form that reduces the funds appropriated or authorized in such amounts as to preclude making the payments set out therein, Subscriber may submit a written notice to West seeking cancellation of the service, the Subscriber Agreement and the Order Form, if permitted under applicable law. Subscriber shall provide West with notice not less than thirty (30) days prior to the date of cancellation, and shall include a written statement documenting the reason for cancellation, including the relevant statutory authority for cancelling, and an official document certifying the non-availability of funds (e.g., executive order, an officially printed budget or other official government communication). Upon West's receipt of a valid cancellation notice, Subscriber shall pay all charges incurred for any products and/or services received prior to the effective date of the cancellation (and in the case of print/CD-ROM products, return all unpaid print/CD-ROM

For questions regarding this order, please contact West Customer Service at 1-800-328-4880.

Signature for Order ID: 388989

The Subscriber Agreement for Westlaw and CD-ROM Libraries, the applicable Schedule A price plan, (for WestlawPRO products and/or CD-ROM Libraries products) and/or the West LegalEdcenter Subscriber Agreement (for West LegalEdcenter products) individually or jointly, as applicable, ("Subscriber Agreement") is/are hereby incorporated by reference and made part of this order. In the event there is a conflict between the terms and conditions of the Subscriber Agreement and the terms and conditions of this order, the terms and conditions of this Order Form shall control. Subscriber by his/her signature below, acknowledges his/her understanding and acceptance of the terms and conditions of the Subscriber Agreement.

Signature of Authorized Representative for order

Title

Printed Name

Date

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Subscriber Agreement for Westlaw® and CD-ROM Libraries



AGREEMENT entered into between "Subscriber" as set forth on the West order form ("Order Form") and West, a Thomson Reuters business ("West"), regarding Westlaw and/or CD-ROM Libraries, as follows:

1. **Westlaw and CD-ROM Libraries.** Subscriber may subscribe to Westlaw, West's online legal research service, via certain packaged Westlaw Schedule A price plans, and/or CD-ROM libraries ("Libraries") by submitting a then-current Order Form. All references herein to CD-ROM, CD-ROM Libraries or Libraries shall also include the DVD-ROM, USB and similar format/media. All Library subscriptions shall include access to Westlaw. Westlaw and CD-ROM Libraries are licensed to Subscriber subject to the terms and conditions of this Agreement, the Order Form, the applicable Schedule A or as otherwise agreed by the parties in writing. This Agreement supplements but does not supersede any Westlaw Subscriber Agreement in effect between Subscriber and West as of the effective date of this Agreement ("Existing Westlaw Agreement").

2. License.

(a) **Grant.** Subscriber is granted a non-exclusive, non-transferable, limited license to access Westlaw and the CD-ROM Library(ies) to which Subscriber subscribes. Such license includes the right to access data made available through Westlaw ("Westlaw Data") and data contained in the CD-ROM Library(ies) ("CD-ROM Data," collectively "Data" which includes "Downloaded Data" as defined below). Subscriber may use the Data internally solely in the regular course of legal and other research and related work. Except as otherwise provided, the license includes the right to download and temporarily store insubstantial portions of Data ("Downloaded Data") to a storage device under Subscriber's exclusive control solely (i) to display internally such Downloaded Data and (ii) to quote and excerpt such Downloaded Data (appropriately cited and credited) by electronic cutting and pasting or other means in memoranda, briefs and similar work product created by Subscriber in the regular course of its research and work. Subscriber may also create printouts of Data for internal use and for distribution to third parties for purposes that are consistent with the terms and conditions of this Agreement if such third parties agree not to further distribute the printouts.

(b) **Limitations.** Subscriber may not copy, download, scrape, store, publish, transmit, retransmit, transfer, distribute, disseminate, broadcast, circulate, sell, resell or otherwise use the Data or any portion of the Data, in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with West's prior written permission, or (iii) if not otherwise expressly prohibited by this Agreement or by the "Additional Terms" (as defined below), as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. § 107). Downloaded Data shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement or as quoted in Subscriber's work product. Subscriber shall not sell, license, sublicense or distribute Data (including printouts or Downloaded Data) to third parties or use Data as a component of or as a basis for any material offered for sale, license or distribution.

(c) **Westlaw.** Westlaw consists of various West-owned and third party content, services, functions and remotely-accessed gateways (collectively "Features"), which may change from time to time. Access to certain Features may be restricted. Certain Features are licensed subject to paragraphs 3, 6 and 7, which take precedence over the license granted in this paragraph, or additional terms ("Additional Terms"), which apply to certain third-party Features and may be different from those set forth in this Agreement. Subscriber will be given an opportunity to review Additional Terms by receiving notice of such Additional Terms in writing or online. Additional Terms may be modified effective upon West giving Subscriber notice (in writing or online) of the modification. By using Features governed by Additional Terms, Subscriber agrees to, and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms will be considered part of this Agreement. Subscriber may, on an occasional basis and via Westlaw functionality, direct West to transmit individual documents in electronic format to internal user(s) or transmit West-proprietary documents (i.e. documents not licensed by West from third-parties) to internal user(s) or to a third party who is an individual if such third party agrees not to further disseminate such documents. Subscriber acknowledges its responsibility in assuring compliance with the foregoing by any third party to whom Subscriber transmits documents pursuant to the preceding sentence. Direct transmission of electronic copies by Subscriber is prohibited, except as provided in the electronic brief terms of paragraph 3 herein.

(d) **CD-ROM Libraries.** Each Library is licensed for use at a single Subscriber office location ("Site"). In addition, Subscriber's personnel who work at or are assigned to a licensed Site may access the Libraries by remote dial-in access to the Site or off-Site on stand-alone PCs. Each Library is licensed for use on stand-alone PCs or on a single local area network ("LAN") installed at a licensed Site that is electronically linked and capable of sharing the use of one or more CD-ROMs. The Order Form will indicate the number of concurrent users authorized to access each Library licensed for use on a LAN. Each such Library will be licensed with a proprietary control file, which Subscriber may install only on the single LAN. Subscriber may transfer the CD-ROM Data contained in the Library to a single storage drive under Subscriber's exclusive control and to maintain such CD-ROM Data as a searchable CD-ROM Software (as defined herein) compatible database subject to the terms and conditions of this Agreement. Subscriber may also use, only at the Site, West-proprietary Data available as part of a Library as set forth in paragraph 3. Access to

Data through wide area networks, multiple LANs, multiple sites or similar arrangements is strictly prohibited.

(e) **Rights in Data.** Except for the license granted in this Agreement, all right, title and interest in the Data, in all languages, formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of West and other contributors ("Contributors"). The CD-ROM Data architecture, including the format, layout and data structures, are proprietary. Subscriber may not reverse engineer or otherwise attempt to discern such proprietary architecture. The CD-ROMs and West Software, as defined herein, are and will remain the exclusive property of West, its affiliates and software owners.

3. **West Proprietary Data.** West grants a non-exclusive, non-transferable, limited license to individual users within Subscriber entities to store and use West-proprietary Downloaded Westlaw Data and CD-ROM Data (i.e., documents not licensed by West from third parties) in a searchable database maintained in connection with an ongoing project of the user ("Project Database"). Such database must consist preponderantly of users' work product with access limited to those internal users actively working on the project. The West-proprietary Downloaded Data may be maintained in the Project Database so long as the project remains active or until any termination of this Agreement, whichever occurs first. Retention of Downloaded Data in a Project Database after the project ends, in an archival database as used as a research tool or in a database accessible to external users is prohibited. West further grants to Subscriber a limited, non-exclusive, non-transferable license to include West-proprietary Downloaded Data in briefs prepared for a specific cause of action for a specific court in an electronic format. Distribution or dissemination of such West-proprietary Downloaded Data in connection with or as part of a brief is limited to the court before which the cause of action is to be heard, the parties to the cause of action, or their representatives. Any further distribution is prohibited without written permission of West. West-proprietary Downloaded Data included in such briefs must retain West copyright notices and indicate that use of, distribution and dissemination to the permitted parties is with the permission of West.

4. West Software and Internet Based Services.

(a) **West Software.** West may make available to Subscriber, on a subscription basis, software for use in connection with Westlaw ("Westlaw Software") or to access third party gateway services and certain Westlaw Features not available when accessing Westlaw with CD-ROM software ("CD-ROM Software" including, but not limited to PREMISE®, LawDesk and Folio® used to access the Libraries). Subscriber hereby subscribes to Westlaw Software and CD-ROM Software (collectively "West Software") and updates and accompanying documentation as indicated on the Order Form. West Software will be licensed under a license agreement, which will accompany the West Software. By using the West Software (including each update) and taking such other action as may be referenced in the license agreement as constituting acceptance, Subscriber agrees to be bound by the terms and conditions of the accompanying license agreement. If Subscriber does not so agree, Subscriber must return any tangible copies of the West Software in its possession or control.

(b) **Internet Based Services.** Westlaw may be accessed by Internet based services such as westlaw.com and next.westlaw.com ("Internet Based Services"). West grants Subscriber a non-exclusive, non-transferable, limited license to use Internet Based Services (including all versions and updates). Subscriber may not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of Internet Based Services, nor may Subscriber reproduce all or any portion of the components of Internet Based Services. Subscriber may use Westlaw Data cached in Subscriber's local disk drive solely in support of its use of Internet Based Services. Certain software used by Subscriber may not be capable of supporting Internet Based Services. The performance of Internet Based Services varies with the manufacturers' equipment with which it is used.

5. **Charges and Modification of Charges.** Charges payable for access to Westlaw ("Westlaw Charges") will be as stated on the Order Form and the applicable Schedule A or as otherwise agreed upon in writing by the parties. Westlaw Charges shall commence on the date Subscriber first accesses Westlaw or any Feature or as otherwise stated on the Schedule A or Order Form. Westlaw Charges may be modified upon at least 30 days prior notice to Subscriber in writing or online or pursuant to the terms stated on the Order Form (for the Monthly WestlawPRO Charges associated with the WestlawPRO products elected by Subscriber on the Order Form). The charges currently payable by Subscriber for each Library are as set forth on the Order Form ("CD-ROM Charges"). CD-ROM Charges also include, without limitation, charges for Library additions and Features introduced after the effective date of this Agreement. CD-ROM Charges will be determined by West and may be modified at any time without notice. Modification of any charges shall not be considered as an amendment to this Agreement that permits termination of this Agreement pursuant to paragraph 12 (ii) herein. All charges are exclusive of sales, use, value added tax (VAT) or equivalent, ad valorem, personal property and other taxes, which are the responsibility of Subscriber. Subscriber will pay all invoices in full within 30 days from date of invoice. If full payment is not made, Subscriber may be charged up to the maximum legal interest on the unpaid balance.

6. Usage Restrictions and Information Protection.

(a) **Use of Westlaw Data.** Subscriber shall not use any Data and shall not distribute any Data to a third party for use in a manner contrary to or in violation of any applicable federal, state, or local law, rule or regulation. West is not a consumer reporting agency and Subscriber certifies that it will not use any Data as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, for employment purposes or for any other purpose authorized under section 1681b of the Fair Credit Reporting Act (15 U.S.C.A. §

1681b). Subscriber acknowledges that access to certain Data available on Westlaw, including but not limited to credit header Data, motor vehicle Data, driver license Data, and voter registration Data is regulated by state or federal laws, such as the Gramm Leach Bliley Act ("GLBA"), the Driver's Privacy Protection Act ("DPPA"), or other state or federal laws and regulations, or is subject to Contributor restrictions. Subscriber agrees not to access such Data for any purpose that is not allowed by the GLBA, by the DPPA, by any other applicable state or federal laws or regulations, or that is contrary to Contributor restrictions. West retains the right to temporarily or permanently block access to certain Data if West, in its sole discretion, believes that the Data may be used for an improper purpose or otherwise in violation of the terms of this Agreement, or that the terms of West's Contributor agreements requires West to block such access. By accessing Data, Subscriber acknowledges that from time to time, West and its Contributors and/or various government entities may require Subscriber to identify a permissible use and may inquire as to Subscriber's compliance with applicable laws or this Agreement. Subscriber agrees to cooperate with any inquiry, subject to any attorney-client confidentiality. Subscriber shall report to West any misuse, abuse, or compromise of Data of which Subscriber becomes aware.

(b) **Protection of Personal Information.** West and Subscriber acknowledge that both parties may be required to comply with various privacy and security requirements, including but not limited to those set forth in paragraph 4.a. above, the European Union Directive on Data Protection (95/46) and all other applicable legal directives and applicable industry standards (collectively "Privacy Laws") pursuant to which each party wishes to obtain certain undertakings from the other with regard to the use and protection for the Personal Information of either party. For purposes of this Agreement, "Personal Information" shall refer to, without limitation, the following types of information: name, address, e-mail address, age, date of birth, telephone number, fax, social security number or equivalent or similar government identification numbers, credit/debit card information, bank account information, logins, passwords, or medical or health records of an identifiable human being. Each party shall be responsible for any collection, access, use and disclosure of Personal Information subject to this Agreement. Without limiting the foregoing, each party shall employ appropriate administrative, physical, and technical safeguards in order to sufficiently protect the Personal Information and any information assets and resources in question. Each party shall promptly notify the other of any event that may result in the unauthorized collection, access, use, or disclosure of Personal Information subject to this Agreement ("Information Protection Incident"). The parties shall make reasonable efforts to assist one another in relation to the investigation and remedy of any such Information Protection Incident and any claim, allegation, action, suit, proceeding, or litigation with respect to the unauthorized access, use, or disclosure of Personal Information. Furthermore, any access to or use of Personal Information must be in accordance with all applicable law. No individual shall access records that require a permissible purpose unless such a purpose exists for such individual. For purposes of its obligations hereunder, any acts or omissions by the personnel of each party shall also be deemed to be the acts or omissions of West and/or Subscriber, respectively.

7. **West Legal Directory™.** Subscriber may use Westlaw Data and CD-ROM Data contained in West Legal Directory ("WLD") internally in the regular course of Subscriber's business. Subscriber may also create printouts of insubstantial portions of Data consisting of individual WLD listings or selected names and addresses for its own use. Use of WLD to create mailing or marketing lists for commercial purposes or for distribution to third parties is prohibited.

8. **Responsibility for Certain Matters.** Subscriber shall provide to West the office location and address associated with Subscriber's Westlaw passwords issued under this Agreement. Subscriber's personnel may also access Westlaw via home computers, laptops or other wireless devices. Subscriber is responsible for notifying West in writing of persons to whom Westlaw passwords are to be issued or from whom passwords are to be revoked. Subscriber is solely responsible for maintaining security of Westlaw passwords. Subscriber is also responsible for all access to and use of Libraries, CD-ROM Data, CD-ROM Software, Westlaw, Westlaw Data, West Software and Internet Based Services (collectively the "Deliverables") by Subscriber's personnel or Westlaw passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Sharing of Westlaw passwords that have been issued to individual users of Subscriber is strictly prohibited.

9. **Disclaimer of Warranties and Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE DELIVERABLES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND WEST'S AND/OR CONTRIBUTORS' ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE DELIVERABLES WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF CHARGES PAID BY SUBSCRIBER RELATIVE TO THE LIBRARY, WESTLAW FEATURE OR THE WEST SOFTWARE, AS APPLICABLE, WHICH IS THE BASIS OF THE CLAIM(S) DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL WEST OR CONTRIBUTORS BE LIABLE TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO (i) SUBSCRIBER'S INABILITY OR FAILURE TO PERFORM LEGAL OR OTHER RESEARCH OR RELATED WORK OR TO PERFORM SUCH LEGAL OR OTHER RESEARCH OR WORK PROPERLY OR COMPLETELY, EVEN IF ASSISTED BY WEST, OR ITS CONTRIBUTORS, OR ANY DECISION MADE OR

ACTION TAKEN BY SUBSCRIBER IN RELIANCE UPON WESTLAW DATA AND CD-ROM DATA; (ii) ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS HEREUNDER OR USE OF, OR INABILITY TO USE, THE DELIVERABLES, EVEN IF WEST OR CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (iii) THE PROCURING, COMPILING, INTERPRETING, EDITING, WRITING, REPORTING OR DELIVERING WESTLAW DATA AND CD-ROM DATA. FURTHER, WEST SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM(S) RELATING IN ANY WAY TO ANY THIRD PARTY FEATURE. NEITHER WEST NOR CONTRIBUTORS MAKE ANY WARRANTY THAT ACCESS TO WESTLAW WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE. NOR DOES WEST MAKE ANY WARRANTY AS TO THE LIFE OF ANY URL OR THIRD PARTY WEB SERVICE. SUBSCRIBER ACKNOWLEDGES THAT PROVISION OF INTERNET BASED SERVICES ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF WESTLAW DATA OR DAMAGE TO MEDIA.

10. **Limitation of Claims.** Except for claims relating to Westlaw Charges or CD-ROM Charges, or improper use of the Deliverables, no claim, regardless of form, which in any way arises out of this Agreement may be made, nor action based upon such claim brought under this Agreement more than one year after the basis for the claim becomes known to the party desiring to assert it.

11. **Effect of Agreement.** This Agreement (which includes all applicable Order Forms, any Existing Westlaw Agreement, current and future Schedules and Additional Terms, license agreements and the like) embodies the entire understanding between the parties with respect to the subject matter of this Agreement and except as otherwise provided herein supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. Except as otherwise provided in this Agreement, West may amend the terms and conditions of this Agreement by giving Subscriber at least 30 days prior written notice. Any other amendment must be in writing and signed by both parties.

12. **Term and Termination.** This Agreement and each Order Form may not be terminated prior to a Minimum Term of one year after the date West processes this Agreement and that Order Form. In the event Subscriber requests a Minimum Term in excess of one year as set forth in the Order Form, this Agreement may not be terminated prior to the expiration of such Minimum Term. Upon expiration of the Minimum Term or any Renewal Term set forth in the Order Form, either party may terminate this Agreement by providing the other party 30 days prior written notice of such termination. Notwithstanding the foregoing, (i) West may terminate a Library subscription upon 30 days prior written notice if such Library is no longer commercially available; (ii) Subscriber may terminate this Agreement immediately by giving written notice of termination after receiving notice of any amendment (as permitted under paragraphs 2(c) and 11), which contains new terms that materially alter the terms of this Agreement and are unacceptable to Subscriber; (iii) West may terminate this Agreement immediately upon giving written notice of termination to Subscriber if Subscriber commits a material breach of any obligation to West under any other agreement between the parties; (iv) West may terminate this Agreement immediately upon giving written notice of termination to Subscriber if West reasonably believes that Subscriber's use of Data violates any applicable law or regulation, this Agreement or may result in a risk to public safety, including but not limited to the safety of private individuals; and (v) either party may terminate this Agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach of this Agreement. Upon termination of any Library subscription by either party, Subscriber shall immediately destroy the terminated Library(ies) and destroy all CD-ROM Data maintained on a permanent storage drive. Upon any termination of this Agreement, the West Software licenses shall also terminate.

13. **Force Majeure.** West's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

14. **Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing to West at 610 Opperman Drive, P.O. Box 64833, St. Paul, Minnesota 55164-0833, Attention: Customer Service, and to Subscriber at the address on the Order Form.

15. **General Provisions.** This Agreement will be governed by and construed under the law of the state of Minnesota, U.S.A. without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Minnesota will have exclusive jurisdiction over any claim arising out of this Agreement and each party consents to the exclusive jurisdiction of such courts. Neither this Agreement nor any part or portion hereof may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected. Failure of either party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this Agreement are inserted for convenience only and do not constitute a part hereof. West, as used herein, applies to West Publishing Corporation, Thomson Reuters Applications Inc., West Services Inc., Thomson Reuters (Legal) Inc., and their affiliates.

16. **Ideas and Concepts.** Any and all title, ownership rights, and intellectual property rights concerning any ideas, concepts, suggestions, materials and the like that Subscriber provides to West regarding Westlaw, Internet Based Services or Westlaw Software or Libraries shall become the exclusive property of West and may be used for its business purposes in its sole discretion without any payment, accounting, remuneration or attribution to Subscriber.

Plan 2 WestlawPRO® for State and Local Government Entities — Government Service

Available only to employees of state, county, and city government entities with 40 or fewer affiliated attorneys (up to 100 attorneys for Government Select products) accessing Westlaw® for government or legal services/legal aid purposes. Government entities are defined as executive, judicial, and legislative agencies, correctional facilities (behind the desk staff access), government law libraries (behind the desk staff access), and legal services/legal aid entities. Not available to educational institutions for academic purposes. Westlaw access by inmates of correctional facilities or patrons of government law libraries is STRICTLY PROHIBITED.

Plan 2 WestlawPRO for State and Local Government Agencies. Paragraphs 1 through 5 below set forth charges that apply to both westlaw.com and WestlawNext™ (next.westlaw.com). Not all Westlaw subscribers have access to WestlawNext.

1. WestlawPRO Obligations and Restrictions. Subscriber must submit to West a copy of its current letterhead or a certified list of all affiliated attorneys at the location identified on the Order Form and must promptly notify West of any changes in the number of affiliated attorneys. **Westlaw passwords may only be used by the person to whom the password is issued. Sharing of Westlaw passwords between or among Subscriber's personnel or persons not employed by Subscriber is STRICTLY PROHIBITED.** In the event West learns that the number of attorneys employed by Subscriber exceeds the number certified by Subscriber or a Westlaw password has been used by a person other than the person to whom the password has been issued, West reserves the right to increase Subscriber's monthly WestlawPRO charges ("Monthly WestlawPRO Charges") to then-current rates for each attorney employed by Subscriber, change Subscriber to another price plan or, in the alternative, terminate the Westlaw password(s) used by a person other than the person to whom it is issued.

2. Monthly WestlawPRO Charges. Monthly WestlawPRO Charges for the products elected by Subscriber appear on the Order Form and include usage, communications, WestClip (non-continuous), offline transmission (as limited by the Subscriber Agreement), certain KeyCite® Alert (non-continuous), transactional charges (excluding online citation checking) and certain offline automated citation checking charges. Monthly WestlawPRO Charges apply regardless of Subscriber's actual use. A listing of the current WestlawPRO Databases appears in the Westlaw Directory. Charges associated with the databases, Features and services that are not part of the WestlawPRO products elected by Subscriber will be billed in addition to the Monthly WestlawPRO Charges at the rates set forth below ("Excluded Charges"). West may, at its option, make certain databases, Features and services Excluded Charges if West is contractually bound or otherwise required to do so by a Contributor of Data or if the databases, Features or services are enhanced or released after the effective date of the Subscriber Agreement and the Order Form.

3. Training Charges

Training and technical support charges are as set forth on the Order Form.

4. West Reporter Images

West Reporter Images \$16.00 per image
No offline transmission charges apply.

5. Rise of American Law

Rise of American Law – Time	\$33.33	per minute
Rise of American Law – Search	500.00	per transaction
Rise of American Law – Finds	300.00	per transaction
Rise of American Law – Images	300.00	per image

Plan 2 WestlawPRO Government for State and Local Government Agencies. Paragraphs 6 through 16 set forth the charges that apply to westlaw.com.

Upon accessing westlaw.com, a user may elect either per minute or transactional billing in the Options Directory. Such billing election will be effective for all subsequent sessions unless the election is changed. The SUBSCRIBER Database lists the per minute billing classifications, transactional charges and per document charges for each database.

6. Per Minute Charges

A. Per Minute Usage Charges	Per Minute Rate
i. Combination Databases	\$ 1.05
ii. Highlights Databases	2.85
iii. Basic Databases	3.42
iv. Westlaw Standard Databases	6.25
v. Westlaw Standard Databases-Codes	7.50
vi. Deluxe Databases	7.68
vii. Specialty Databases	7.85
viii. Premium Databases	8.50
ix. Allfile Databases	10.80
x. Multi-Search Databases	11.20
xi. Super Allfile Databases	13.50
xii. Select Databases	15.50
xiii. Super Premium Databases	16.38
xiv. Super Select Databases	13.83
xv. ResultsPlus Standard Databases	7.81
xvi. ResultsPlus Premium Databases	10.63
xvii. ResultsPlus Allfiles Databases	13.50
xviii. ResultsPlus Super Allfiles Databases	16.88
xix. ResultsPlus Select Databases	19.38
xx. ResultsPlus Super Premium Databases	21.43
xxi. Westlaw Tax Time Class Databases	8.25-23.38

Usage charges begin when Subscriber's password is transmitted and end when the session ends.

B. Communications Charges. \$0.22 per minute.

Communications charges begin when Subscriber's password is transmitted and end when the session ends - they apply to the entire Westlaw session, excluding offline transmission, offline automated citation checking, Dockets™ and the SUBSCRIBER Database (when accessing Westlaw via transactional billing).

7. Transactional Charges

A.

i. Search Charges

Each search query will incur a search charge. Search charges range from \$0 to \$230 per search. The search charge applicable to each database is available in the SUBSCRIBER Database. For sales tax purposes only, a percent of each search charge is allocated to communications.

Search charges for multiple database searches are discounted as follows:

1 database	No discount
2-3 databases	10% discount
4-10 databases	20%
11+ databases	N/A

ii. Westlaw Legal Calendaring \$20.00 per transaction

13. Dockets Charges

The following charges apply in lieu of per minute and transactional charges:

Search	\$7 – 14	per transaction
View document	5	per document
Update document	2 – 8	per document
Dockets Alert *	5	per transaction
Multi-Base Searches	20 – 145	per transaction
Docket Tracking *	2 – 10	per transaction
Case Calendaring		
Information Update	2	per transaction
Tracking Service	1	per transaction
Integration Service	1	per transaction
Document retrieval services	At then-current rates	

* Limit of 99 alerts/tracks per password

14. PDF Charges

Attorney Medical Advantage	\$225.00	per image
Blaussen Medical Illustration		
Standard Collection	250.00	per image
Premier Collection	275.00	per image
Experian Reports	8.00-44.95	per report
Briefs/Trial Docs/State Surveys	65.00	per image
DE Chancery Docket	65.00	per image
Deed Image	25.00	per image
Dockets PDF	4.00	per image
Expert Witness/Courtroom Transcripts	65.00	per image
Legal Due Diligence Reports	200.00	per image
Investext	9.95	per page
Real Property Parcel Maps	15.00	per image
Patent Image	3.00	per image
ResultsPlus Investext	14.95	per 1 st page
(Each additional page)	9.95	per page

No offline transmission charges apply.

15. West Batch Processing

Charges of \$.05 - \$2.00 per row shall apply in lieu of per minute or transactional charges. Any users of West Batch Processing must be credentialed prior to accessing.

16. Westlaw Doc & Form Builder

Westlaw Doc & Form Builder	\$10.00-\$95.00	per document
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Plan 2 WestlawPRO for State and Local Government Agencies. Paragraphs 17 through 22 below set forth charges that apply to WestlawNext. Not all content and Features are accessible via WestlawNext.

Upon accessing next.westlaw.com, a user may elect either per minute or transactional billing in Preferences. Such billing election will be effective for all subsequent sessions unless the election is changed. The SUBSCRIBER link in the Tools tab lists the per minute, transactional and offline transmission charges for a multiple content categories.

17. Per Minute Charges

- A. Home, Content and Topical Pages** \$4.00 per minute
- B. Viewing a Search Result List** \$8.00 per minute
- C. Per Minute Charges for Viewing Full Text Documents**
Range from \$9.34 per minute to \$45.34 per minute.
- D. Communications Charges** \$.22 per minute

Communications charges apply to sessions when per minute billing is selected. They begin when a password is transmitted and end when the session ends - they apply to the entire WestlawNext session.

18. Transactional Charges

- A. Search Charges** \$48 per search

Each search query will incur a search charge.

- B. Document Display Charges**

Range from \$9 to \$104 per document

Each document display will incur a transactional charge. No offline transmission charges apply.

C. Online Citation Checking Charges

KeyCite	\$9.00 per citation
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D. Docket Charges

The following charges apply in lieu of per minute and transactional charges*:

Document Display	\$9.00	per document
Docket PDF	\$4.00	per image
Document Update	\$2.00-\$8.00	per document
DE Court of Chancery PDF	\$69.00	per image
View Document from Alert	\$5.00	per document

* See Pricing Guide for additional details.

19. Foldering

Documents in folders may be accessed at no charge for 12 months after the initial chargeable view. In transactional billing sessions, the initial chargeable view occurs the first time a document is viewed inside or outside of a folder. For hourly billing sessions, the initial chargeable view occurs the first time a document is viewed within a folder. This initial chargeable view will be charged at the applicable transactional document display charge. Documents viewed in a folder after 12 months will incur the then current WestlawNext transactional document display charge. Hourly billing (including Communications Charges) is suspended while browsing folders.

20. WestlawNext Access Charges

Search	\$10	per search
Document Display	\$5	per document display
KeyCite	\$2	per citation

WestlawNext Access Charges will be billed in addition to WestlawNext charges, for those Subscribers that access WestlawNext and have not purchased a WestlawNext subscription. These charges will be billed on a transactional basis for hourly and transactional sessions.

21. Offline Transmission Charges

A user may elect either per line or per document offline transmission billing in Preferences. Such election will be effective for all subsequent sessions unless the election is changed. Offline transmission charges apply to all printing and downloading to storage devices and e-mailing via WestlawNext functionality for hourly billing sessions, unless otherwise indicated.

Per line charges range from \$0.04 to \$0.08

Per document charges range from \$10.00 to \$25.00

22. PDF Charges

Briefs	69.00	per image
Trial Docs/State Surveys	69.00	per image
Expert Witness/Courtroom Transcripts	69.00	per Image

No offline transmission charges apply.

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: December 18, 2012
 CONTACT CITY DEPARTMENT: Information Technology
 CONTACT CITY STAFF: Mark Shellard, Director

SUBJECT: Authorize award and execution of a 36-month contract with THOMSON REUTERS WEST of New York City, NY in an amount not to exceed \$7,774.20 for an online Law Library subscription for the City Attorney.

CURRENT YEAR FISCAL IMPACT:

A total of \$1,849.50 for nine months at \$205.50 per month of the 36-month subscription will be expended in the current Fiscal Year 2012-13. The remaining subscription for 27 months under this contract will be expended in future fiscal years.

1. City Department:	Office of the City Manager
2. Project Name:	Online Law Library Subscription Service
3. Budget/Accounting Code(s):	110-110-51184
4. Funding Source:	General Fund
5. Current Appropriation:	\$ 3,100.00
6. Unencumbered Balance:	\$ 3,100.00
7. Amount of This Action:	\$ (1,849.50)
8. Remaining Balance:	\$ <u>1,250.50</u>

9. Funding to be Provided From Future Budgets: \$5,924.70

FUNDING SOURCE OF THIS ACTION:

The funding source for this online law library service in the amount of \$1,849.50 will be provided from the Approved FY 2012-13 Budget of the Office of the City Manager (General Fund). The remaining \$5,924.70 for this 36-month service contract will be provided from future budgets of the City's General Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A



CITY OF KYLE, TEXAS

Purchase Used File Cabinets for KPD (WallTech)

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize award and execution of Purchase Order to WALLTECH of Austin, Texas, in an amount not to exceed \$4,250.00 to purchase seventeen (17) 5-drawer lateral file cabinets for the Police Department
~ *Jeff Barnett, Chief of Police*

Other Information:

Budget Information: A Fiscal Note is attached.

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

Attachments / click to download

- [Quote for Lateral File Cabinets \(WALLTECH\)](#)
 - [Fiscal Note - Purchase of File Cabinets for PD \(WALLTECH\)](#)
-

Cover Memo

Item # 8

WALLTECH * 10519 Boyer Boulevard * Austin, Texas 78758

Jeff Barnett
 City of Kyle (Police Station Project)
 100 W. Center St.
 Kyle, TX 78640
 ph: (512) 410-9502

Quote #: 10226
 Date: 10/22/12

Price Quotation--Herman Miller Action Office System
Refurbished / As-Is Product

Part No	Description	Qty	Unit Net	Total Net
	HM 5-Drawer 30" Lateral File W/Key and File Bars Sand Finish Herman Miller Lateral File 65" Tall x 30" Wide	17	350.00	5,950.00
	Total Materials			5,950.00
	Project Discount			-1,700.00
	Delivery & Installation (Normal Business Hours)			Included
			Total	4,250.00

Plus applicable sales tax.

Terms: 65% Deposit with order, Balance net 10 upon installation

Subject to Credit Approval/Acceptance

Seller retains a Security Interest in all materials listed in this proposal
 until account is paid in full.

FOB our dock. Subject to prior sale.

Accounts over 15 days are subject to a finance charge of 1½% monthly.

All Pricing based on Total Project purchase

Bobby Sullivan
 WALLTECH
 Account Manager

Accepted by: _____

Date: _____

WALLTECH * 10519 Boyer Boulevard * Austin, Texas 78758

Jeff Barnett
City of Kyle (Police Station Project)
100 W. Center St.
Kyle, TX 78640
ph: (512) 410-9502

Quote #: 10226
Date: 10/22/12

Price Quotation--Herman Miller Action Office System
Refurbished / As-Is Product

Part No	Description	Qty	Unit Net	Total Net
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WALLTECH * 10519 Boyer Boulevard * Austin, Texas 78758

Jeff Barnett
City of Kyle (Police Station Project)
100 W. Center St.
Kyle, TX 78640
ph: (512) 410-9502

Quote #: 10226
Date: 10/22/12

Price Quotation--Herman Miller Action Office System
Refurbished / As-Is Product

Part No	Description	Qty	Unit Net	Total Net
				

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: December 18, 2012
 CONTACT CITY DEPARTMENT: Police Department
 CONTACT CITY STAFF: Jeff Barnett, Chief

SUBJECT: Authorize award and execution of a Purchase Order to WALLTECH of Austin, Texas, in an amount not to exceed \$4,250.00 for the purchase of seventeen (17) 5-drawer lateral file cabinets for the Police Department.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to WALLTECH will require expenditure of funds from the FY 2012-13 approved budget of the Police Department as follows:

- | | |
|-------------------------------|---|
| 1. City Department: | Police Department |
| 2. Project Name: | Purchase of 17 Lateral File Cabinets |
| 3. Budget/Accounting Code(s): | 110-151-52211 |
| 4. Funding Source: | FY 2012-13 Approved Budget (General Fund) |
| 5. Current Appropriation: | \$ 4,250.00 |
| 6. Unencumbered Balance: | \$ 4,250.00 |
| 7. Amount of This Action: | <u>\$(4,250.00)</u> |
| 8. Remaining Balance: | <u>\$ 0.00</u> |

FUNDING SOURCE OF THIS ACTION:

The funding source for this Purchase Order for the purchase of file cabinets in an amount not to exceed \$4,250.00 will be provided from the FY 2012-13 approved budget of the Police Department.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.



CITY OF KYLE, TEXAS

Executive Session-Convene-Personnel Matter

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Convene Into Executive Session pursuant to Section 551.074, Tex. Government Code, Personnel Matters, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of various personnel positions

Other Information:

Budget Information:

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

Attachments / click to download



CITY OF KYLE, TEXAS

Executive Session-Reconvene- Personnel Matter

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Reconvene Into Public Session and take action as appropriate in the Council's discretion regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of various personnel positions

Other Information:

Budget Information:

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CITY OF KYLE, TEXAS

7 Eleven CUP

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Consider a request by Minerva, Ltd. (7 Eleven Store) located at 22553 IH-35 for a Conditional Use Permit to construct a 3,010 square foot building located within the Interstate Highway 35 Corridor District.
~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-1 to approve the Conditional Use Permit with Conditions outlined in Staff Report.

- *Public Hearing*

Other Information: Please see attachments

Budget Information: N/A

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[Color Rendering/Elevations](#)

[Staff Report](#)

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Planning Director

DATE: November 27, 2012

SUBJECT: **CONDITIONAL USE OVERLAY**
7-11- 22553 IH-35

PLANNING AND ZONING COMMISSION RECOMMENDATION: On Tuesday, November 27th the Planning and Zoning Commission recommended, with a vote of 6-1 (Commissioner Christie opposed), to approve the request with the following conditions:

- The gas pump canopy fascia must be the same color as the dominant color of the main building. Striping and banding on canopies is prohibited.(see example of 7-11 in Fort Worth that has been built to this standard)
- Canopy support poles must include decorative corbels consistent with the overall architectural theme of the site, or pole covers at least 18 in. wide with a similar surface material and architectural treatments as the dominant material on the main structure (see example of 7-11 in Fort Worth that has been built to this standard).

Background

Request:

The applicant is requesting approval of a Conditional Use permit for the construction of an approximately 3,010 square foot 7-11 convenience store within the I-35 Overlay District. The property is zoned Retail Services "RS" and as a result the use of property as a convenience store with gas sales is permitted by right.

Location:

The subject property is located at the intersection of N. IH-35 frontage road and Center Street.

Overlay District

The Interstate Highway 35 corridor conditional use overlay district extends from the northernmost city limit boundary at I-35 to the southernmost city limit boundary at I-35, and includes all real property within 1,500 feet of the outer most edge of the highway right-of-way of I-35.

a) The purpose of the of the overlay district is to maintain a high character and quality of community development, to promote compatible uses and standards, to preserve and enhance property values, to promote economic growth, to provide for orderly development, to provide for proper movement of traffic,

and to secure the general safety of citizens by regulating the exterior architectural characteristics of structures

(b)The conditional use overlay districts will assist the community to recognize and preserve the distinctive architectural character of this community, which has been greatly influenced by the architecture of an earlier period in this community's history. This purpose shall be served by the regulation of exterior design, use of materials, the finish grade line, ingress and egress, and landscaping and orientation of all structures hereinafter altered, constructed, reconstructed, reacted, enlarged, remodeled, removed, or demolished in the conditional use overlay district.

Proposal

The proposed 7-11 store is approximately 3,010 square feet in size and is proposed to sit on a 1.04 acre lot. The front door of the store will face Interstate 35 with the gas pumps in front of the store. The proposed building materials will include acme brick, a burgundy color along the majority of the building with an acme limestone "lueders buff" used as a wainscoting along the bottom quarter of the building fronts.

STAFF ANALYSIS AND RECOMMENDATION

COMPREHENSIVE MASTER PLAN GUIDENCE

The Comprehensive Master Plan identifies the site to be located within the Super Regional Node. The Comprehensive Master characterizes the Super Regional Node as follows:

- Should contain large-scale, institutional, commercial, and retail land uses, with the Seton Medical Center as the key distinguishing feature.
- The aggregation of commercial square footage in this Node should create a significant commercial destination that will be visible to regional travelers along the I-35 corridor.
- The purpose of the Super Regional Node is to capture employment opportunities and create a commercial destination within Kyle.

The Urban Design Plan identifies the stretch of I-35 the subject property fronts on to be located in the urban core along the destination segment of I-35. The Urban Design Plan states the following:

The Interstate 35 Destination is that portion of I-35 lying between the FM 1626 overpass and the Center Street overpass. This portion of I-35 is identified as a unique section in order to transform the freeway experience from one of passing through to one of arrival. Therefore the Destination section of I-35 has an appearance that is dramatically different than those portions north of FM 1626 or south of Center Street.

Location:

Generally located between two of Kyle's four landmark bridges (at the FM 1626 overpass and the Center Street overpass). This section of I-35 is clearly defined with a bridge portal at both ends and high embankments along its length.

Primary Function:

To transform the normal pass-through experience of the Interstate to an arrival experience and make sections of I-35 north of FM 1626 and south of Center Street function as approachways.

Staff Analysis

While the applicant has requested the conditional use permit be reviewed prior to the site plan a basic site plan has been attached to this memo for a layout of the proposed site. The applicant will be responsible for all zoning and site requirements outlined in the code at the time of site development.

The Planning and Zoning commission will determine through the conditional use permit process if the proposed use, occupancy and structure will promote, preserve, and enhance, and will not damage or detract from the distinctive character of the community; will preserve and protect property values and taxable values; will not be detrimental or inconsistent with neighboring uses and occupancies; will not be detrimental to the general interests of the citizens; and will not be detrimental to the public health, safety and welfare. In conducting its review, the planning and zoning commission shall make examination of and give consideration to the traffic flow, development density, neighboring historical designs, neighboring uses, and elements of the application including, but not limited to:

- (1) Height, which shall conform to the zoning requirements;
- (2) Building mass, which shall include the relationship of the building width to its height and depth, and its relationship to the visual perception;
- (3) Exterior detail and relationships, which shall include all projecting and receding elements of the exterior, including, but not limited to, porches and overhangs and the horizontal or vertical expression which is conveyed by these elements;
- (4) Roof shape, which shall include type, form, and materials;
- (5) Materials, texture, and color, which shall include a consideration of material compatibility among various elements of the structure;
- (6) Compatibility of design and materials, which shall include the appropriateness of the use of exterior design details;
- (7) Landscape design and plantings, which shall include lighting and the use of landscape details to highlight architectural features or screen or soften undesirable views;
- (8) Vehicular and pedestrian access, which shall include location, width, and type of surface for all points of ingress and egress;
- (9) Signage, which shall include, in addition to the requirements [chapter 29](#), pertaining to signs, the appropriateness of signage to the building in relation location, historical significance of the structure and neighboring structures, traffic visibility; obstruction of views from neighboring property;

(10) Exterior lighting, which shall include location, type, and/or design of lighting and/or lighting fixtures to be used.

Staff is recommending approval with the following conditions:

- The gas pump canopy fascia must be the same color as the dominant color of the main building. Striping and banding on canopies is prohibited. (see example of 7-11 in Fort Worth that has been built to this standard)
- Canopy support poles must include decorative corbels consistent with the overall architectural theme of the site, or pole covers at least 18 in. wide with a similar surface material and architectural treatments as the dominant material on the main structure (see example of 7-11 in Fort Worth that has been built to this standard).



CITY OF KYLE, TEXAS

IH-35 Overlay

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: *(Second Reading)* AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 53, ZONING ARTICLE III-OVERLAY DISTRICTS, DIVISION 4 - CONDITIONAL USE OVERLAY DISTRICTS OF THE CITY OF KYLE CITY CODE TO AMEND AND ESTABLISH SPECIFIC DEVELOPMENT REQUIREMENTS FOR PROPERTY WITHIN THE IH-35 OVERLAY DISTRICT; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE; PROVIDING FOR RELATED MATTERS.

~ Sofia Nelson, Director of Planning

Planning and Zoning Commission voted 6-1 to Recommend Approval.

- *Public Hearing*

Other Information: Please see attachments

Budget Information: N/A

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- [Staff Memo](#)
- [Written Feedback](#)
- [ordinance](#)
- [requirements after 1st reading](#)

MEMO

To: City Council

From: Sofia Nelson, Director of Planning

Date: November 28, 2012

Re: **I-35 Overlay Development Standards**

The purpose of this memo is to update you on the status of the development standards for the existing I-35 Overlay District. This memo is broken down into the following sections for your review:

- Recommendation from the Planning and Zoning Commission
- Recommendation from the Economic Development Committee
- The process the Planning and Zoning Commission has taken to reach the current draft ordinance

Planning and Zoning Commission Recommendation

On November 27th the Planning and Zoning Commission recommended, with a vote of 6-1 (Christie voted nay), to approve the I-35 Overlay Development Standards with the following conditions:

- Update the standards to require street trees every 40' instead of every 30'
- Update the standards to allow evergreen landscaping to screen mechanical equipment
- Update the standards to allow utility boxes to be a uniform earth tone color or to match the wall color upon which the box is located.
- Update the standards to allow internal pedestrian walkways to be distinguished from driving surfaces by textured pavement or paint.
- Update to require parking lots to visually and functionally segment into smaller lots with no more than 250 parking spaces (rather than 150 parking spaces) per parking area.
- Update the building massing and form requirements to reduce the glazing requirement for option 1 from 40% to 30%
- Update the building massing and form requirements for non-retail development and retail development and retail development option 2- to reduce the design features from five different design features for buildings under 50,000 square feet, seven design features for buildings over 50,000 square feet, and nine design features for buildings

over 100,000 square feet to five features for buildings over 100,000 square feet and six features for buildings over 100,000 square feet.

Economic Development Committee Recommendation

On November 8th the Economic Development and Tourism and Committee recommended to approve the draft presented with additional clustered landscape zone on page 16 and adjust the parking ratio to square feet of building instead of a hard number requirement.

Process

Below is an outline of public meetings and public outreach held to discuss the I-35 Overlay District.

- September 4, 2012-** City Council received an update on the I-35 Overlay Ordinance. Staff reviewed the proposed draft, discussed the scheduling of public workshop, and asked for feedback from the City Council.
- September 13, 2012-** City staff mailed public notice to all property owners within the existing I-35 Overlay District.
- September 17, 2012-** Planning and Zoning Commission hosted a public workshop. Staff presented current draft and received feedback from attendees
- September 19, 2012-** City staff spoke at the Amberwood HOA meeting at the request of the HOA to give a briefing on the intent of the I-35 Overlay District.
- September 25, 2012-** The Planning and Zoning Commission received an update from staff on feedback received and discussed possible ways for amending the ordinance to reflect the public feedback received.
- October 18, 2012-** Presentation to the Economic Development Committee
- October 23, 2012-** Public Hearing and Presentation at the Planning and Zoning Commission Meeting
- November 8, 2012-** Presentation to the Economic Development Committee
- November 27, 2012-** Public Hearing and Presentation at the Planning and Zoning Commission meeting.

**Prior to the above meetings the Planning and Zoning Commission met 5 times (April 10th, June 26th, July 31st, August 16th, August 28th) to draft the ordinance.

From: Jeff Barton
To: Sofia Nelson; Steve Widacki;
cc: Bert Bryan; Rick Sheldon;
Subject: thanks for meeting
Date: Tuesday, September 25, 2012 3:45:32 PM
Attachments: JWB signature.png

Sofia and Steve,

Thanks for taking time to meet this morning about the proposed I-35 Overlay Ordinance. As we discussed, I'll plan to be at the P&Z meeting tonight as well, but I want to reiterate that we appreciate the opportunity to meet in advance and discuss in detail some of the practical implications of the ordinance language.

It's encouraging to see you so open to input and to addressing the concerns of landowners, the business community, and others who will actually use the rules. I know we won't agree on every item, but I thought it was a good meeting, and I believe Mr. Howell and Mr. Bryant felt the same way. I will share our discussion with my client, Rick Sheldon, and with friends in the engineering and business community.

Your willingness to consider slowing the process down just a little bit -- to let everyone get comfortable, and to make sure we've had the chance to work through the changes together -- is much appreciated. I know the final decision on timing will be up to the P&Z, and perhaps council, but thanks again for your open-mindedness on that score. As I said, I think it would go along way toward reassuring landowners that this is not a "railroad job" but rather something to be accomplished as public-private partners with a common interest in the welfare of Kyle.

As for one of the other big areas we discussed -- four-sided masonry -- I thought we made good progress. I think you go the idea, but I'll look through my photo catalogue to see if I can find something that illustrates what I was talking about.

Thanks again for taking the time, for the positive tone, and for your welcoming reaction to suggestions for improvement. In addition, I want to mention that I will definitely be speaking out in favor of taking this opportunity with the Overlay Ordinance to streamline the process and allow for certain decisions to be made administratively at the staff level without requiring a P&Z and council visit for every issue. I think that idea

makes sense on its own -- but it would also help applicants feel better about the new rules and any associated costs that may accrue out of those rules. I hope you will convey to your board that many professionals and landowners would view delegating some of these "consent" decisions to staff as good policy and good economics.

I'm copying Rick Sheldon and his assistant. We discussed his property (corner of Kyle Marketplace and Kyle Parkway) as an example.

Jeff

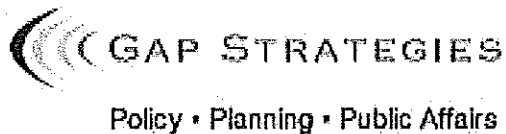
Jeff Barton, AICP

Principal

Gap Strategies

jeff@jeffersonbarton.com

(512) 964-0918





12 October 2012

Sofia Nelson, Director of Planning
City of Kyle
P.O. Box 40
Kyle, TX 78640

TO: Sofia Nelson

FROM: Maxwell Fisher, AICP and Dallas Cothrum, PhD

This memorandum pertains to the City of Kyle's consideration of adoption of new development standards for the Interstate Highway 35 (IH35) corridor. The services of Masterplan have been retained to engage in the development and consideration of the proposed IH35 Development Standards. Masterplan has played an integral role in the zoning and development entitlement for numerous large scale and high profile developments across Texas. As such, we have significant experience in the formulation of development standards that provide for quality development in its appropriate context.

North American Development Group (NADG), one of North America's leading shopping center acquisition and development companies, owns the 80-acre site area south of Kyle Crossing and west of IH35. The northern end of the property contains a successful anchor, Home Depot (separately owned), while the great majority of this parcel remains undeveloped.

NADG has finalized a contract for a multi-screen theater for the site as well as other retail development. A theatre would provide significant revenues and tax base as well as provide restaurant and entertainment options for the project and City. Under the proposed plan, such a theater could not feasibly open and operate in Kyle.

NADG was not notified of the City's consideration of the adoption of development standards until September 24th, well after the creation and initial consideration of the standards at the initial public workshop on Monday, September 17th and at the Planning and Zoning Commission meeting on September 25th. At this juncture, we have missed opportunities to provide input.

Notwithstanding, after reviewing the draft development standards available on the City's website, we are expressly against the proposal as it will severely limit and hand-cuff the development and materially adversely impact the current and future value of the project. There are elements of the standards that are impractical along an interstate highway and threaten the development in a predominately rural area. Moreover, these burdensome standards, stemming from unrealistic expectations, would particularly impede the development of large retail primary and junior anchors, which is what this project has been planned as, and has been developed as. Should the standards thwart a primary anchor, as the impetus for

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a retail center, it would have extensive ramifications on the City of Kyle's ability to attract the full spectrum of retailers. We also do not see how the existing Home Depot development would tie into any development subject to the proposed new standards. Most notably, without the ability to attract significantly sized anchors at complete economic levels, an 80-acre development cannot move forward economically in a rural area. Anchor tenants are not willing to significantly adjust or alter their standard format in suburban locations; hence, such catalysts for a development would not have interest in opening in Kyle under such circumstances.

Given our property investment in Kyle and the lack of appropriate notice of this effort, we expect that the City will not place the item on the Planning and Zoning Commission agenda for action on October 23rd.

VESTING:

Our understanding is that properties with an approved development plan tied to zoning or property that has been platted or permitted for construction are exempt from any new standards adopted by City Council. Besides Home Depot, the undeveloped portion of the site area will be subdivided to accommodate future development and users. We are concerned that although the property has been platted, any subdivision of the property for future development would be subject to the new standards.

COMMENTS:

Page 4: "Development that does not turn its back on streets"

Development will inevitably back up to certain streets given the multiple roadways necessary to serve a community or regional scale retail development along the IH35 corridor. In order to achieve a town center approach, buildings will have to back to external streets. Consideration should be given to clarifying that rear facades are permitted to back to streets provided adequate screening of service bays is employed. In this particular case of the NADG tract, there is no development around the site that would be impacted by building orientation.

Page 8: "Electrical meters, switch boxes, panels, conduit, and related utility equipment must be placed in the most inconspicuous location possible." "All new utility lines must be placed underground."

These statements are vague and could be very costly in the event equipment is relegated to remote locations. Consideration should be given to generally re-wording language to state, "Ground-mounted utility equipment should be placed in inconspicuous locations when feasible; however, in the event that equipment is placed in a front or side yard adjacent to and visible from a street or residential district, it must be screened with vegetation or a wall."

Page 9: "Blank walls adjacent to a public street are prohibited"

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Consideration should be given to providing exclusionary language for development backing minor streets. It is unreasonable to expect the side and rear elevations of medium to large-scale retail shopping centers to adhere to this requirement. Reasonable provisions for development include high quality building materials and textures as well as appropriate screening of loading and services areas to minimize visual impact; however, application of vertical and horizontal articulation on rear and side building elevations is excessive and overly burdensome. The rear and side of buildings is generally a necessary service area for retail operation. Lessening this requirement would allow for funds to be invested in more visible areas of the site where aesthetics and site function are unequivocally more important.

Moreover, requiring large blank walls to be covered with vegetation or other screening devices can be problematic and an ongoing maintenance issue for the city and property owner. Large buildings should be exempt meeting this requirement, particularly on those western and southern elevations facing the sun. Regardless, requiring 60% of building elevations to be covered by vegetation is excessive. In certain applications, such as on front/side elevations of small to medium sized buildings, a much smaller percentage of coverage is adequate to break the monotony of expansive elevations and provide visual interest. These requirements would result in high watering and maintenance costs from these requirements. A minimum degree of building articulation is a realistic alternative to avoiding a monotonous building façade.

Page 9: "For large areas, trellises should be used in conjunction with other blank wall treatments...Other methods such as murals or special building material treatments may also be approved."

"Large areas" needs to be defined and clarify "special building material treatments".

Page 10: "Orientation to Streets"

The concept of glazing and pedestrian connections throughout developments works in urban areas with interconnected street and pedestrian systems and in planned town centers; however, it isn't feasible to apply these standards throughout the corridor, particularly on larger retail development in exurban and rural millieus. Instead of requiring these standards for all development, consideration should be given to provide exclusionary language or a defined variance process based on certain criteria.

Page 12: "Water bodies and Detention/Retention Areas"

Curvilinear vs. straight peripheries

This requirement will waste space and could cause stagnant water issues without rigorous maintenance. Ponds and detention/retention facilities can be minimally shaped in an organic form to create an aesthetic appearance while conserving land. Also, these facilities can serve as landscape buffers with plantings along the periphery, thereby maximizing use of land.

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Page 13: "Parking Lots"

Fifteen foot landscape peninsulas or medians in the middle of a parking lot is excessive and displaces convenient parking to more distant or remote locations, in addition to raising the cost of construction. For retail buildings of 50,000 square feet or greater, requiring 50% of the parking behind the building is totally unreasonable for patrons unless development is such that there are multiple entrances such as found with a department store or town center. This provision could prevent retailers from developing on certain sites along IH35 in an already challenged economy. Anchor stores will not agree to this condition. It will eliminate development.

Consideration should be given to limiting internal parking lot landscaping and buffering to landscape islands of smaller sizes. This is an inefficient use of land requiring additional water and maintenance for the property owner. As opposed to requiring large landscape areas in the parking lot, consideration should be given to the requirement of additional drought tolerant plant material to increase site aesthetics. This improves site quality and aesthetics while avoiding impact to parking areas and creating ongoing maintenance costs. Also, adequate pedestrian connections can still be provided and demarcated with painting or enhanced paving applications at key locations within the parking lot without linear and raised landscaped corridors.

Consideration should also be given to reducing parking requirements for multiple uses on a site with complimentary times of peak trip generation. This provision would allow for increased landscaping opportunities, as opposed to requiring larger landscaped areas.

Page 14: "Buildings constructed shall have a minimum of 90% masonry walls as defined below."

Change 90% to 75% to allow for some flexibility in building materials while restricting or prohibiting questionable materials.

Page 15: "Four-sided Design"

The side or rear street-facing façade of large buildings should not be held to the same standard of no more than 30 feet of uninterrupted wall. Also, side or rear elevations not facing the street are many times hidden or less visible from the public. Requiring false windows and door openings on these less visible elevations is excessive and particularly burdens large-scale retail and other multi-tenant buildings on those elevations with minimal to no public interface.

Page 15: "Building Massing and Form" "A single large dominant building mass must be avoided in new buildings.

There needs to be exclusions for big-box retail. This would eliminate a Costco, Sam's, Wal-Mart or other large retail store from locating in this district.

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Also, providing four of the design elements would be challenging for big-box retail. Consideration should be given to reducing the number of required design elements to 2 or 3, or providing more options for compliance for big-box retail to avoid impractical display windows, patios, overhangs and peaked roof forms.

Page 16: "All building fronts shall have at least five different design features to break the wall plane; buildings over 50,000 square feet in size shall have at least seven different design features, and buildings over 100,000 square feet shall have at least nine different design features."

Require fewer design features for large retail users.

Page 16: "Walkway Width and Design"

The requirement for 12-foot walkways is excessive unless it is in an urban/downtown, form-based or mixed use concept. This is not in context with the predominate development pattern in this area.

Page 17: "Open Space"

These standards are suitable for a downtown area or town center development but not for all retail development along IH35. The IH35 corridor is vehicle oriented and as such, customers of convenience goods and services users will want the ability to quickly access these businesses.

While we appreciate the intention of providing standards that provide for quality development to improve the quality of life for the City of Kyle citizens and the surrounding communities, without significant changes, prospective retail development will go to neighboring cities with fewer entitlement hurdles. These standards will deter major retailers, which in turn, would thwart spin-off retailers from locating to Kyle. Ultimately, the City of Kyle will miss out on key economic development opportunities along its corridor, impacting the city's tax base.

We would be happy to convene with City officials to determine if there are mutually beneficial changes that could be adopted to enhance the property's current zoning and entitlements.

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13 October 2012

Planning and Zoning Commissioners
 City of Kyle
 P.O. Box 40
 Kyle, TX 78640

TO: Planning and Zoning Commissioners

FROM: Maxwell Fisher, AICP and Dallas Cothrum, PhD

This is a follow-up memorandum pertaining to the City of Kyle's consideration of adoption of new development standards for the Interstate Highway 35 (IH35) corridor. As we mentioned in previous correspondence, North American Development Group (NADG) owns the 80-acre undeveloped property identified as Kyle Town Centre. Besides the Home Depot (separately owned), the great majority of this area remains undeveloped.

We expressed our concerns about the potential impact these standards will have on our impending transaction for a theatre as well as other restaurant and retail opportunities. It is important to note that greater regulation doesn't guarantee high quality development. High quality retailers and development is predominately a function of demographics. Our experience is that cities should encourage high quality residential development that attracts affluent homeowners. In turn, high quality retailers will follow after those roof-tops.

Although we appreciate the city making certain changes to the draft proposal, additional changes are necessary to accommodate larger retail development, which is the impetus for smaller retail development.

Here is a summarized list of the standards we would like changes and the reasons for our changes:

- 1) Decrease the amount of parking required behind the front building line of large retail from 40% to 10%.**

Justification: Requires multiple entrances in many instances, impacts business efficiency and increases security risks; unused parking, employee safety.

- 2) Eliminate landscaped medians in parking lots; limit to smaller landscape islands and peripheral locations.**

Justification: Displaces patron parking to remote locations; disrupts traffic flow; excessive development expense.

- 3) Eliminate the minimum 25% glazing/window requirement on retail buildings 30,000 square feet or greater.**

Justification: Impractical on large retail buildings; security issue; visual interest can be achieved through other building design features.

- 4) Increase the allowable uninterrupted wall length or exempt medium to large retail buildings.**

Justification: Unnecessarily increases costs; minimum articulation and design elements break building monotony and provide adequate visual interest.

- 5) Provide other options for compliance besides vines and trellises.**

Justification: Maintenance issues on certain elevations; expensive and impractical on large buildings.

- 6) Eliminate native stone requirement for water body stabilization structures out of public view**

Justification: Native stone increases cost, and it would not be visible and therefore unappreciated.

Our understanding is that another revised draft will be available in the next couple of weeks. We look forward to continuing to work with the city and anticipate favorable changes in the next draft. Feel free to contact us at 214.761.9197 should you have any comments or questions.

October 15, 2012

To: Mayor Lucy Johnson, Kyle City council, and Sofia Nelson – Director of Planning

From: John B. Sanford, Realtor

Re: Proposed I 35 Overlay District - Development Standards

I represent many small commercial property owners in the area. Some of these are local residents and taxpayers. The proposed IH 35 overlay standards would impose undue hardships on many of them.

At this point in time many of the larger businesses that would want to locate along IH 35 have already done so. These include Wal-Mart, Home Depot, Lowes, Target, Kohls, HEB-plus, Seton Hospital, related medical offices, and others.

All of these developments were approved without these standards and these larger projects will have a long term advantage over medium and small developments that will be approved in the future if these standards are adopted. The larger developments are in place and the mid-sized to small developments that plan to follow them will have to bear the brunt of the costs of these new standards.

- (1) For a small business that would be locating on just an acre or two the requirement of the 12 foot wide sidewalks, the 25 foot set-back green area between IH 35 and parking lots, and interior plaza requirements and open space requirements represent a virtual taking of some of their most valuable and usable property. The size and shape of water detention ponds should be dictated by the low point on the site and by the slope of the terrain as indentified by a professional engineer.

One solution to insuring that mid-sized to small businesses do not bear the brunt of the costs of these new standards is to only have them required only on developments of 20 acres or more.

- (2) The income considerations for tax money for the city of Kyle should also be taken into consideration. By eliminating the outdoor sale of new and used automobiles the city of Kyle will lose out on a significant amount of sales tax that these businesses generate. Again two used car dealerships have already opened in Kyle on IH 35. They did not have to abide by this restriction and now will have a competitive advantage over similar businesses that will locate along IH 35 later. This should generate more sales tax income for Buda, San Marcos, and Lockhart.
- (3) Another tax income consideration is that if the city of Kyle is at a point of needing additional tax revenue the policy should be to lessen requirements for businesses to locate in the area not make them more costly. If the costs to develop are high and they cannot use a portion of the land that they buy, many will decide to open in Buda, San Marcos, or Lockhart. From what is

reported in the newspaper, the city of Kyle is at a point financially that it can afford to have these businesses locate elsewhere because of new costly development standards.

One solution to insuring that Kyle has adequate new tax money generated by new businesses is to delay implementing these development standards for 5 years. This time would give Kyle the opportunity to build up its cash reserves before it implements standards that could put the brakes on new development.

Kyle has made a similar mistake once before. This mistake was when difficult development standards were created for new homes in the area. This problem along with a recession did put the brakes on new home construction for a long time. Kyle is just now starting to recover from the combination of those new development standards and the recession. There was a lawsuit because of these residential standards, and Kyle did eventually win the lawsuit. What Kyle lost was new home construction and permit fees for many years. A city can take this kind of financial loss if it has determined that it has plenty of cash reserves.

- (4) Why have these development standards on a major highway where the speed of the drivers is 50 to 65 miles per hour. These drivers will not even be able to see these setbacks, sidewalks, and open areas?

Possible Solution - Some cities take the position the IH 35 will be the place that they maximize development and maximize their sales tax income. They encourage dense development on IH 35. Development Standards and beautification projects are then located on east west arterials where the traffic is slower and the passengers in the cars are going slow enough to appreciate what has been created.

Respectfully submitted,

John b. Sanford, Realtor 312-1301 922-5633



16 October 2012

MEMORANDUM RE: IH35 Development Standards

TO: Sophia Nelson, Director of Planning, City of Kyle

FROM: Maxwell Fisher, AICP and Dallas Cothrum, PhD

This memorandum pertains to the City of Kyle's consideration of adoption of new development standards for the Interstate Highway 35 (IH35) corridor. As conveyed in our initial memorandum to the city, we have a number of concerns regarding the proposed development standards. Our greatest concerns pertain to the following concepts and standards:

DEV. STDS.	PROPOSED	SUGGESTED
Siting and Orientation, Blank Walls	Building elevation treatments on blank walls	Eliminate as a requirement or provide additional options as trellises, wall-clinging vegetation and windows are not feasible on large retail buildings.
Building Elevations	Development that does not turn its back on streets. Provide four-sided design elements.	Provide exceptions for large retailers; reduced standards for side/rear elevations.
Building Elevations	Prohibit blank walls adjacent to public streets.	Reduction in requirements for retail buildings with side/rear elevations facing minor streets.
Orientation to Streets	Require glazing and pedestrian connections throughout development.	Provide exemptions for larger retailers/big-box on all elevations; exemptions from glazing on side/rear elevations facing streets. Pedestrian connections limited to enhanced paving or painting.
Parking Lots	Require 50% of parking behind building line (for buildings in excess of 50,000 s.f.).	Eliminate this requirement.
Parking Lots	Require 15-foot landscape median in internal location of parking lots.	Eliminate this requirement; limit to clustered landscaped islands and medians at peripheral locations of parking areas.

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 Dallas, Texas 75202
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Item # 12



16 October 2012

MEMORANDUM RE: IH35 Development Standards

TO: Sophia Nelson, Director of Planning, City of Kyle

FROM: Maxwell Fisher, AICP and Dallas Cothrum, PhD

This memorandum pertains to the City of Kyle's consideration of adoption of new development standards for the Interstate Highway 35 (IH35) corridor. As conveyed in our initial memorandum to the city, we have a number of concerns regarding the proposed development standards. Our greatest concerns pertain to the following concepts and standards:

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Item # 12



26 October 2012

Planning and Zoning Commissioners
City of Kyle
P.O. Box 40
Kyle, TX 78640

TO: Planning and Zoning Commissioners

FROM: Dallas Cothrum, PhD and Maxwell Fisher, AICP

This is a follow-up memorandum pertaining to the City of Kyle's consideration of adoption of new development standards for the Interstate Highway 35 (IH35) corridor. As we mentioned in previous correspondence, North American Development Group (NADG) owns the 80-acre property identified as Kyle Town Centre. Besides the Home Depot (separately owned), the great majority of this area remains undeveloped. We expressed our concerns about the potential impact these standards will have on our impending transaction for a theatre as well as other restaurant and retail opportunities.

As reflected in the latest draft of the standards, the city has made a number of changes to accommodate retail development. Of these changes, we appreciate excluding the parking lot location requirements, and minimizing the fenestration, frequency of building elevation off-sets, and other architectural requirements. These changes will aid in maintaining viable retail development opportunities in the IH35 Corridor.

There remain some development standards that would impede retail development by unnecessarily raising development costs, and affecting patron convenience. Please give full consideration to amending the following standards:

- 1) Eliminate landscaped medians in parking lots; limit landscaping to smaller landscape islands and peripheral locations.**

Justification: Displaces patron parking to remote locations; disrupts traffic flow; excessive development expense.

- 2) Decrease the minimum number of required building design features on buildings greater than 50,000 square feet from 7 to 5 and on buildings with 100,000 square feet from 9 to 6.**

Justification: Excessive number inconsistent with the established retail development in and outside of Kyle; application of 4 or 5 features per building is sufficient to provide substantial visual interest; greater building size should be proportionate to the frequency of design features in lieu of the number of different types.

3) Decrease the vegetative coverage of building elevations from 60 to 25 percent.

Justification: Sixty percent is excessive and unsustainable on large elevations; a minimal percentage of coverage would break any visual monotony and provide visual interest.

4) Specify other acceptable "special building material treatments."

Justification: Sets acceptable expectations for developers; limits subjective interpretation by staff.

5) Decrease the minimum sidewalk width from 12 to 8 feet adjacent to retail buildings 30,000 square feet or greater.

Justification: A 12-foot sidewalk is excessive next to large retail buildings; the additional width would be wasted given that outdoor seating would go severely unutilized outside a big-box; larger sidewalks should be limited to smaller retail buildings accommodating boutiques and restaurants and the associated pedestrian traffic and outdoor seating.

Our understanding is the City Council would consider and potentially act on approving these standards at their regularly scheduled December 3rd meeting. We look forward to continuing to work with the city and hope these two remaining standards are revised accordingly. Feel free to contact us at 214.761.9197 should you have any comments or questions.



22 October 2012

TO: City of Kyle Planning and Zoning Commissioners

FROM: Maxwell Fisher, AICP and Dallas Cothrum, PhD

This memorandum pertains to the City of Kyle's consideration of adoption of new development standards for the Interstate Highway 35 (IH35) corridor. North American Development Group shares the same interest as the city in providing quality retail development. Nonetheless, there are certain development standards that are impractical, and will raise the costs of development, and may cause retailers to look elsewhere. The table below summarizes are recommended changes to the standards:

TYPE	CITY PROPOSED	RECOMMENDED
Uses	Outdoor Vehicle Sales (new or uses) prohibited in Overlay.	Allow new/used with conditional use permit in certain base zoning district in Overlay.
Site Standards	"Front Door Feel."	Clarify orientation language.
Utilities	Clarify language.	I.D. type of screening: vegetation, wall or earthen berm.
Blank Walls	General Comment.	I.D. "special building material treatments" so that big box retail can use other treatments excluding trellises, windows and vines.
Orientation to Streets	Buildings oriented towards right-of-way.	How would this impact big box facing but set back from right-of-way?
Conflict Points	Require lighting for internal walkways.	Specify acceptable lighting types; include pole and building mounted lighting, in addition to bollards.
Water Bodies	Structural stabilization shall be limited to the use of native stone on 30% of perimeter.	When screened with vegetation, berms, or other structures, or combination thereof, no restrictions on type or amount of structural stabilization.
Parking Lots	Functionally segmented parking lots with minimum 15-foot landscape medians.	Eliminate median requirement in internal locations of parking lots. Limit parking lot landscaping to islands and perimeter.

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Dallas, Texas 75202



Parking Lots – Drives and Location	<ul style="list-style-type: none"> ➤ Max. of 1 drive way for buildings no more than 20K sf ➤ Buildings 20K-50K = 50% of parking behind building line ➤ Buildings >50K = 40% of parking behind building line 	<ul style="list-style-type: none"> ➤ Max. of 1 driveway for buildings no more than 10K sf ➤ Buildings >20K = no greater than 20% of parking behind building
Parking Lots - Exemptions	Allow 10% reduction of required parking if 150% of landscaping provided.	Allow 10% reduction of required parking if 125% of landscaping provided.
Outdoor Storage	n/a – General Comment	Clarify language to ensure big boxes can have outdoor/nursery sales and temporary sales items against building.
Building Materials – Four-sided Design	Exterior walls can't have a blank uninterrupted wall for more than 30 feet	Exempt big-box or large retail buildings 50K sf or greater, or increase to 60 feet.
Building Materials – Four-sided Design	Side or rear walls which do not face public street sidewalk, or interior pathways may include false window and door openings defined by frames, sills, lintels, or similar modulations, when actual doors/windows are not feasible.	Eliminate requirement.
Building Massing and Form	Retail: A single large dominant building mass must be avoided in new buildings.	Eliminate requirement or exempt larger buildings.
Walkway Width and Design	12-foot walkway along façade with 8-foot unobstructed	Reduce to minimum of 8-foot.

MASTERPLAN

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City of Kyle IH35 Development Standards

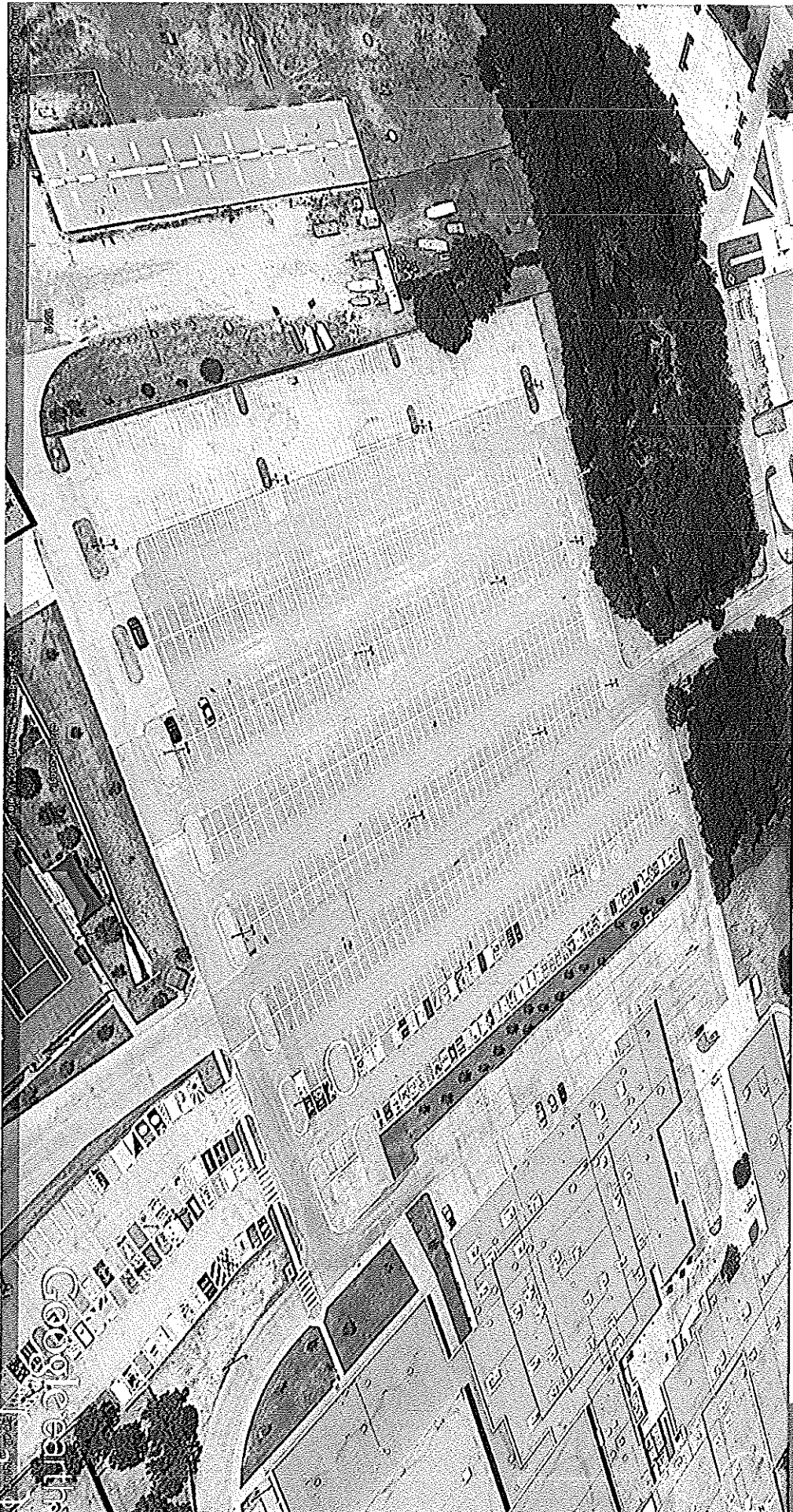
Impact on Retail Development

Planning and Zoning Commission

October 23, 2012

Impractical Development Standards: Long-term Impact

- Raises Development Expenses
- Thwart development – retailers would locate in competing adjacent communities
- Results in loss of conveniently located retail
- Minimizes the attraction of residents
- Loss in ad valorem and retail sales taxes

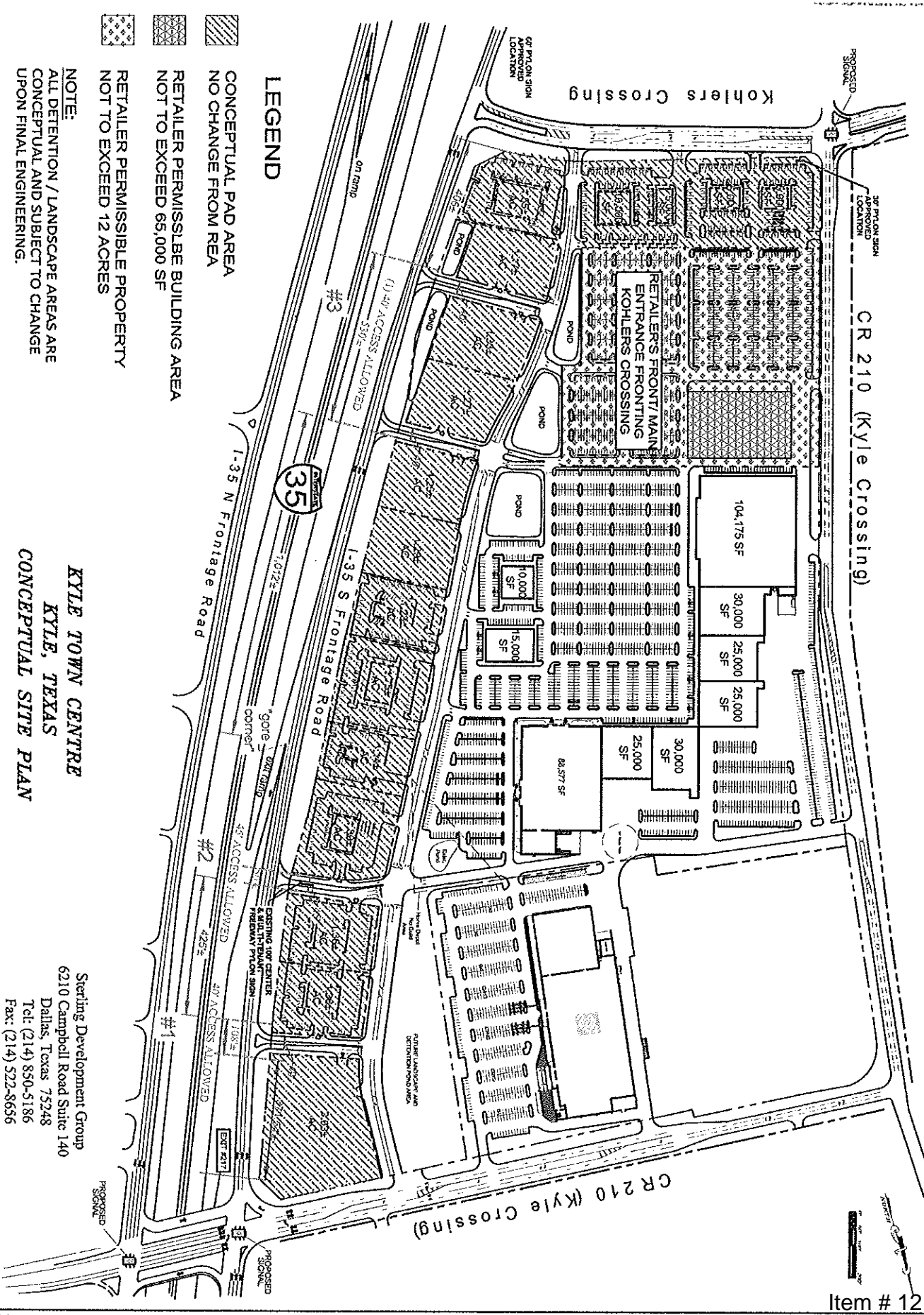


Item # 12



4

Item # 12



LEGEND

- CONCEPTUAL PAD AREA NO CHANGE FROM REA
- RETAILER PERMISSIBLE BUILDING AREA NOT TO EXCEED 65,000 SF
- RETAILER PERMISSIBLE PROPERTY NOT TO EXCEED 12 ACRES

NOTE:
 ALL DETENTION / LANDSCAPE AREAS ARE CONCEPTUAL AND SUBJECT TO CHANGE UPON FINAL ENGINEERING.

KYLE TOWN CENTRE
 KYLE, TEXAS
 CONCEPTUAL SITE PLAN

Sterling Development Group
 6210 Campbell Road Suite 140
 Dallas, Texas 75248
 Tel: (214) 850-5186
 Fax: (214) 522-8656

PROPOSED

SUGGESTED

BLANK WALLS & BUILDING MATERIALS: Trellises, vines, planting beds, or windows

Exempt retail buildings 50K SF or larger from blank wall requirement; require no more than 4 types of architectural features.

LIGHTING: Internal Walkways

Allow pole- and wall-mounted lighting sources.

WATER BODIES: Structural Stabilization - masonry and limited to 30% of structure

Eliminate when screened with vegetation or other structure, eliminate restriction on type of material.

PARKING LOTS: Functionally segment with 15' landscaped median

Eliminate median requirement; limit landscaping to islands and perimeters.

PARKING LOTS, DRIVES & LOCATIONS: Parking behind building line

Reduce parking behind building line to 20% for buildings 50K SF or greater.

FOUR-SIDE ARCHITECTURE: Side or rear walls that don't face public street must provide several architectural elements

Eliminate or reduce for large retail when not facing street or walkway/public area.

WALKWAY: 12-foot walkway along façade, minimum 8-foot unobstructed

Reduce to 8-foot in total.

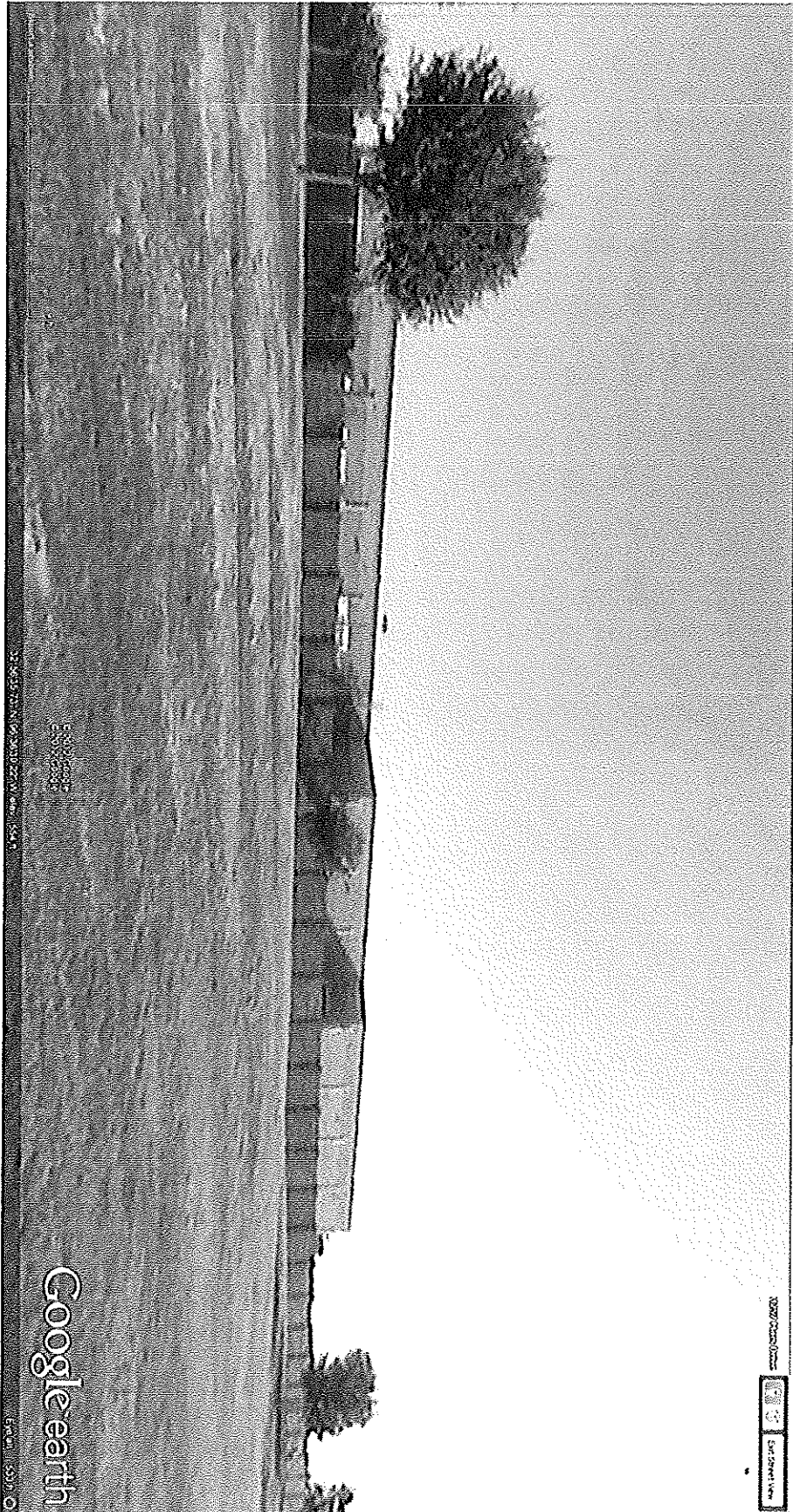
Location of Parking



Google earth

(7)

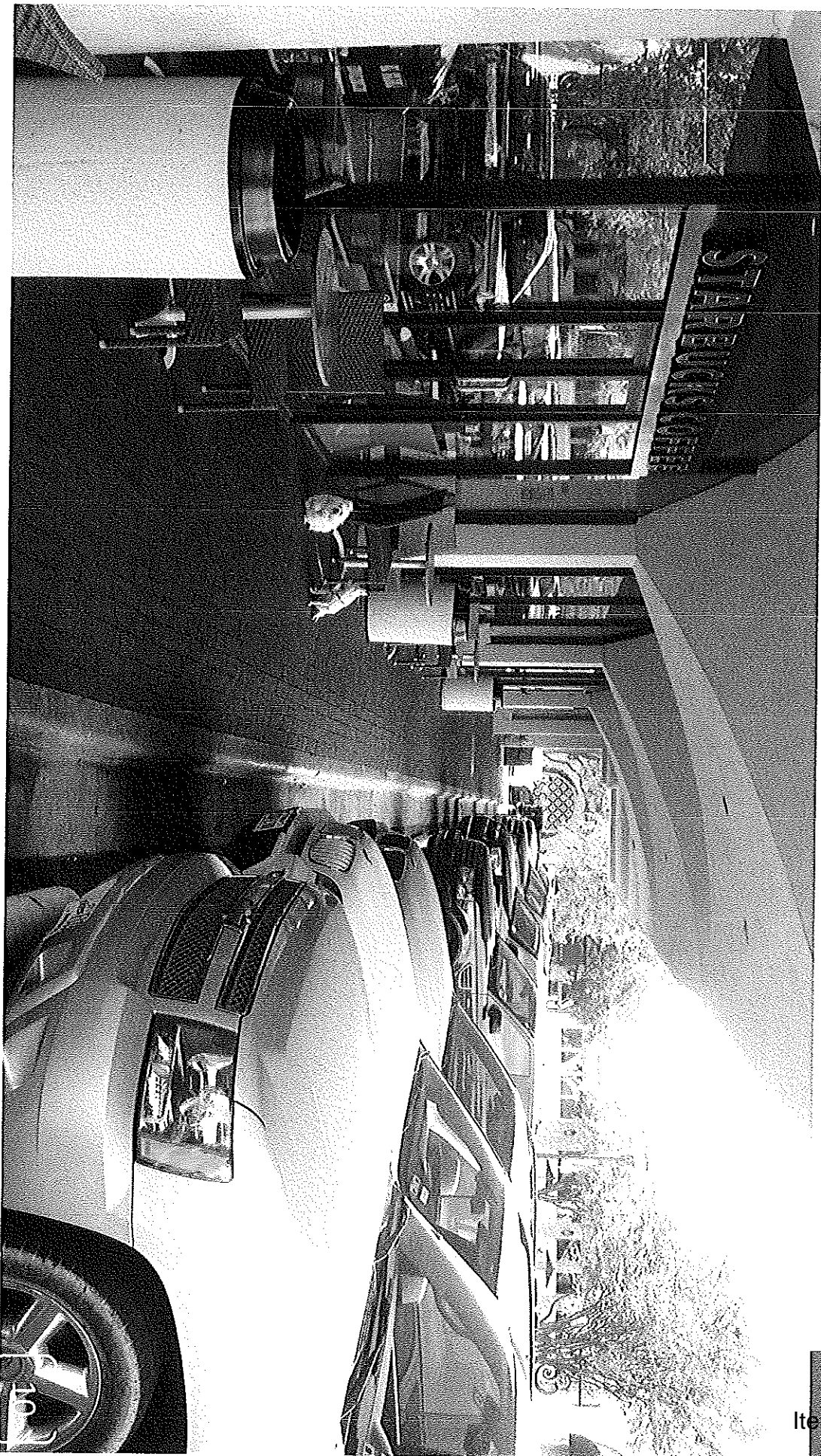
Rear Building Elevations



Highland Park Village



{ 6 }



Item # 12



November 12, 2012

Mayor Lucy Johnson
City of Kyle
Kyle City Hall
100 W. Center Street
Kyle, TX 78640

Dear Mayor Johnson,

I recently learned of the proposed overlay standards for your city. I have reviewed these standards and wanted to write a brief letter expressing my concerns. The Retail Connection has a significant presence in the greater Austin area. We are exclusively focused on retail and retailers. Our primary objective is to continually create value for our clients by helping them maximize the connection with their customers. Our core focus is driving the expansion plans of our retail clients. As such, we are continually monitoring any challenge that might thwart their expansion opportunities.

I have been a real estate professional for more than twenty years and have significant experience in almost all areas of retail development. As a professional in commercial real estate, I endorse standards that both ensure quality and attract business. The goal of harmonizing these two standards is difficult and, in my professional judgment, I am seriously concerned that they cannot be met by the overlay standards as they are currently written.

Our current cycle is the most challenging of my career. Providing additional restrictions to architecture and site planning makes development that much more difficult and expensive. In fact, I believe that well-intentioned standards can lead to cities being bypassed for adjacent communities. Once a community has been passed over, the choice retail options are no longer available. As such, sales tax dollars flows out of a community.

I would ask that you take more time in evaluating this initiative. It does not appear that the city is under siege from a rash of poorly conceived and inferior retail. As a result, I fail to see the reason to push these hearings so quickly. Based on the overlay standards, I worry that the city's desire to impact design and site planning standards will cause much less new development. Surely, this is not the intent of a proposed ordinance. Often, however, I have found that city standards create concerns, perhaps not always well founded, that drive retail decisions. In general, I believe that highly restrictive standards will deter development and allow another city to reap the benefits.

Stephen J. Hefner
President – Connected Acquisition Services
2525 McKinnon Street # Suite 700
Dallas, Texas 75201
214-572-8455 direct # 214-572-0009 fax
shefner@theretailconnection.net

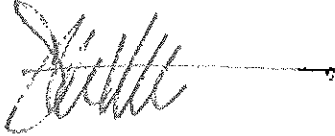
In the Dallas region this has been the case with the Town of Flower Mound. The town has taken a number of initiatives that have thwarted development. In the last year, however, the town has initiated efforts to draw retailers to the town. The newly elected mayor was elected by promising to keep sales tax dollars at home, rather than losing them to Grapevine, Lewisville, and Highland Village.

Retailers have long wanted to be in the Town of Flower Mound due to its key geographic location and demographics, but they have often decided to locate in other jurisdictions because of highly restrictive design criteria. These requirements limit the signage options, minimize corporate branding, and drive up the cost of construction.

Some design standards are not unreasonable, but they must be measured against what is customarily done by major retailers. Requiring fake windows and requiring multiple entrances will not be acceptable to most retailers. There are other concerning issues pertaining to landscape medians in the middle of parking lots and increased design standards for larger buildings. These proposed requirements should be reevaluated from functional and financial standpoints.

I believe that the restrictions under consideration will be a hindrance to many retailers that are already coming back in the Texas market. It will be easy for them to simply locate in another jurisdiction. I worry that the city's desire to impact standards will ensure that there will be no development. Thanks for hearing my concerns and thanks for your consideration.

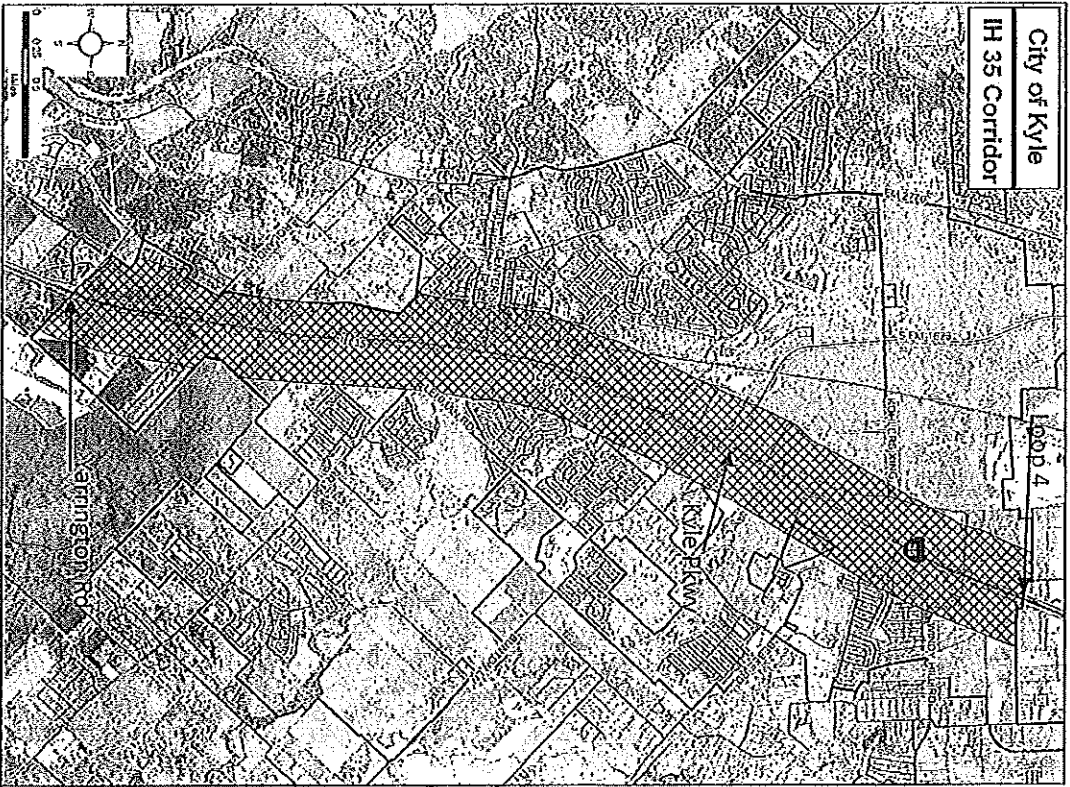
Regards,



Stephen J. Hefner

cc: City Council members
Planning and Zoning Commission Members
Lanny Lambert
Sophia Nelson
Diana Blank

Reviewed 11/27/12



Handwritten notes:
 City of Kyle - City of Kyle
 IH 35 Corridor
 Springtown

(d) Uses

Permitted uses of the property shall be determined by regulations set forth in the base zoning district for property except as follows:

Outdoor sales of vehicle sales (new or used) shall not be permitted within the I-35 overlay district

(e) Site Standards

The purpose of the site standards outlined within this overlay district are to create development patterns that accommodate motorists, pedestrians, and cyclists while maintaining development standards that visually and functionally establish a separation from the ordinary landscape. Development within the I-35 overlay district should have a "front door" feel in the way they face the roadway. The layout of parking areas and landscaping should promote safe and efficient pedestrian

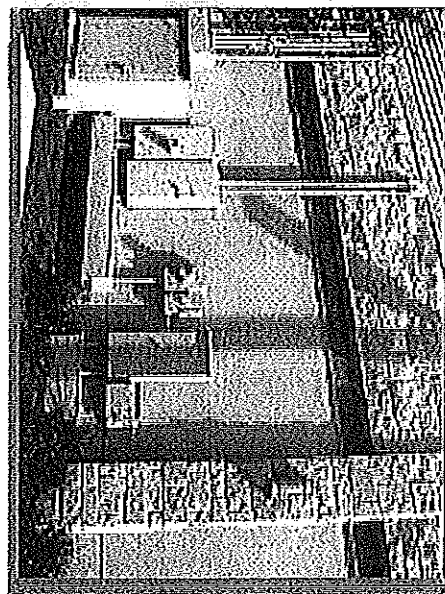
Design standards are intended to:

Preserve and protect Kyle's character through clear design goals and policies and minimum standards.

Encourage and promote Kyle's long-term vitality through standards that encourage high quality development, discouraging less attractive and less enduring development.

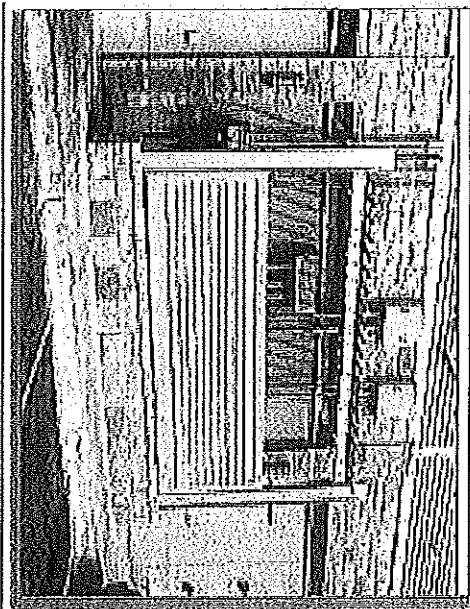
(3) Utilities

Utility boxes greater than 2 ft. tall cannot be placed in the clear vision area, or interfere with use of streets, alleys, sidewalks, and bicycle paths. When utility equipment is required by the electric company to be placed in clear vision of streets, alleys, or sidewalks written notice of the requirement from the electric company must be submitted with the site plan along with a landscaping plan for the screening of the utility equipment. Utility boxes must a uniform earth tone color. *OR NOTICE THE SIGN COLOR UPON WHICH THE BOX IS LOCATED.*



(4) Utility equipment screening

- Utility equipment located adjacent to a public street, viewable from a public street or circulation path or in an area frequently seen by the general public must be screened with a wing wall architecturally integrated into the host structure. *OR WITH EVERGREEN LANDSCAPING.*



(2) Orientation to streets

The primary facade and pedestrian entrance of a building *shall* be oriented towards the public right-of-way or courtyard. If a building cannot have its primary entrance facing a public right-of-way, then the requirements for the facade facing the public right-of-way shall include the following:

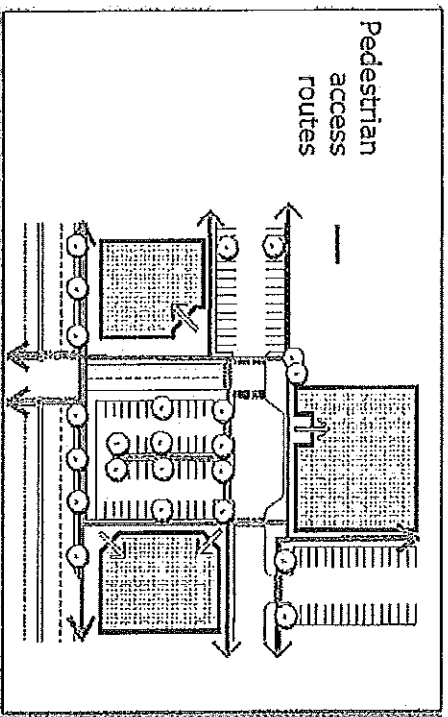
- Excluding window glazing, employ the same materials and colors as the building facade with the primary entrance.
- Utilize architectural treatments, detail and scale elements such as canopies, that are consistent with the primary building facade.
- Enclose dumpsters, recycle bins and compactors with screening walls that match materials, style and colors of the adjacent building.
- Locate dumpsters and service areas on the side of the buildings.
- Screen service areas, including storage, meter banks, HVAC equipment, generators and similar equipment with screening walls and landscaping.

(3) Orientation to walkways

One main building entrance must open directly onto a connecting walkway with pedestrian frontage.

(4) Circulation

Circulation patterns must be as simple as possible. All likely pedestrian routes must be considered in the design phase of a development to prevent shortcuts through parking and landscape areas. An internal pedestrian walkway, ADA accessible, at least 6 ft. wide must be provided from the perimeter public sidewalk to the primary public entrance.



Example of an integrated pedestrian circulation system. Note the connection from the street, between buildings through parking lots and adjacent sites.

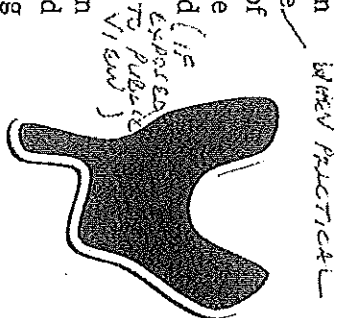
[g] Water bodies and detention / retention areas

Shape

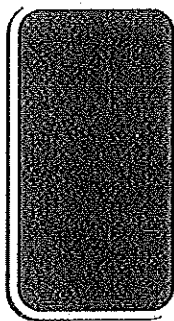
Detention and water quality ponds shall utilize earthen berms and be designed with a curvilinear contoured shape. Any structural stabilization shall be limited to the use of native stone (except for outlet structure) and shall be limited to not more than 30% of the perimeter of the pond and shall be seamlessly integrated with landscape.

Natural and manmade water bodies at least 20,000 sq. ft. in size placed next to a public right-of-way must be integrated into the overall design of a project in one of the following ways:

- Provide a walkway, with native trees on average 25 ft. centers
- Provide a public access area with covered structure and seating and appropriate pedestrian access.
- Provide a plaza or courtyard with shaded benches and/or picnic tables next to the water body.



Do this



Not this

- Stucco/Plaster/Synthetic Stucco to be used in detail applications only, ^{OR}
- Concrete sandblasted, textured and painted ^{FILE}

The 10% of the exterior walls not included in masonry ^{AND/OR} design ^{OR} requirements may be covered with a variety of materials that could include but not limited to non-reflective corrugated steel panels, wood, prefinished metal panels, glass block, or other materials that are compatible with the overall design and use for the specific areas in which they are placed. ^{PHASE DESIGN IS ALLOWED - SEE DEFINITION}

(2) Four-sided design

All walls must include materials and ^{OR} design characteristics consistent with those on the front of the building.

Exterior walls facing a driveway, public ROW, courtyard, sidewalk or circulation path or residential district or residential use cannot have a blank, uninterrupted length greater than 30 ft. without including two or more of the below features. Buildings over 50,000 sf. shall not be allowed an uninterrupted length greater than 50' without including two or more of the below features.

- change in plane
- change in texture
- masonry pattern
- windows, or
- other equivalent element(s) that subdivide the wall into human scale proportions.

Side or rear walls which do not face a driveway, public ROW, sidewalk, circulation path, courtyard, residential district or residential use shall maintain the same materials ^{AND/OR} with those on the front of the building but are not required to adhere to the uninterrupted length requirement outlined above.

(2) Roof

The continuous plane of a roof line cannot be more than 100 feet. All roof mounted mechanicals must be screened from public view.

(3) Building Massing and Form

a. Retail

A single large dominant building mass must be avoided in new buildings. Buildings shall be constructed to one of the following two standards:

Option 1-

40% of the wall area below ten (10) feet as measured from the finish floor level of the facade's entry shall consist of glazing (windows / doors).

Windows shall have a maximum exterior reflectivity of twenty percent (20%)

Horizontal off-sets, recesses or projections, porches, breezeways, porte-cocheres, courtyards, awnings, canopies, alcoves, recessed entries, ornamental cornices, display or other ornamental windows, vertical "elevation" off-sets, peaked roof forms, arches, outdoor patios, architectural details such as tile work or moldings integrated into the facade, integrated planters or wing walls, accent materials, varied roof heights, premium roofing materials such as tile or standing seam metal, or similar design features approved by the Director of Planning and appealable to the Planning and Zoning Commission.

Appeals, Technical Review, List Item 1, Chapter in Code, 14.01.01.01

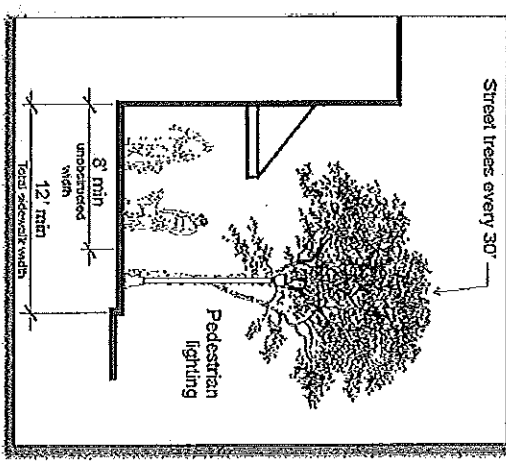
Warehouse, mini-warehouse and overhead (commercial service) doors shall not be oriented so as to face a street(s) or residential property or shall be screened from view from the street(s) or residential property unless approved by the Director of Planning, appealable to the Planning and Zoning Commission, determines that there is no other feasible.

(K) Walkway Width and Design

Sidewalks and walkways along the facades of mixed-use and retail buildings 100 feet or more in length (measured along the facades) that are not located adjacent to a street must be at least 12 feet wide (8' of the sidewalk shall remain unobstructed) and include the following:

- Trees shall be placed at an average of 30 feet on-center and placed in grates (except where trees are placed in planting strips). Breaks in the tree coverage will be allowed near major building entries to enhance visibility. However, no less than one tree per 60 lineal feet of building facades must be provided.

Tree Overlays - Copy of Plans



Do this

COMMENTS ON KYLE OVERLAY PROPOSAL

NOV. 27TH, 2012

GAP STRATEGIES AND RICK SHELDON REAL ESTATE
WITH COMMENTS FROM HODGES ARCHITECTS

New draft continues to improve

Recommendations for a few changes

Item # 12

- P. 7, Sidewalks -- The draft calls for street trees every 30 ft. between street and sidewalk. We suggest allowing clustering -- an **average** of every 30 ft. And, we suggest allowing greater spacing (perhaps 40 ft.) if developers plant larger/more mature trees than otherwise required.
- P. 8, Utilities -- We suggest adding a phrase at the end of the last sentence: “or match the wall color upon which the box is located.” ✓
- P. 8, Utility screening -- We recommend adding a phrase at the end of the paragraph: [into the host structure], “or with evergreen landscaping.” ✓
- P. 9, Blank Walls -- Based on advice from Hodges commercial architects, we recommend adding an additional bullet: “accent lighting fixtures.” ✓

Recommendations, continued:

Item # 12

- P. 10, Orientation to streets -- The draft (first sentence of this page) says buildings “must” be oriented towards the public ROW. We suggest “should,” to give flexibility to the City in cases of unusual siting or design.
- P. 12, Water bodies and detention -- A number of retail developers have expressed concerns about this, but we believe the very latest draft incorporates language that makes aesthetic requirements applicable only when the water feature is in a “public place.” This goes a long way to address business concerns. ✓
- P. 13, Parking lots -- The Overlay promotes the idea of breaking up parking lots into “rooms,” an idea with merit but one that is challenging for retail drive aisle design. Hodges architects requests that if “rooms” are used they be larger than the 150 parking spaces identified in the ordinance -- 250 or 300 spaces large. This draft does improve feasibility over earlier drafts.

Still more recommendations...

Item # 12

- P. 15, top of the page, materials standards -- We suggest adding a bullet to specifically allow "Tile." Based on Rick Sheldon's experience with shopping centers in major metro areas, Hodges architects recommends adding language to allow for "Trade Dress" -- *Trade Dress means architectural features that contain a tenant's or owner's unique or distinct colors, materials, elements, shapes, designs, or other similar features that are trademarked, service marked, or copyrighted designs that identify a regional or national business that presents to the public a recognizable brand or business concept. Trade Dress may apply to buildings, signs, and other structures.*
- P 15, second column, talking about using the same materials on all four sides, add: "and/or same design character." This would allow builders to vary actual materials so long as they were consistent with the theme of the building, and the overall character (in other words, still no "Hollywood sets" with no attention whatsoever to back walls).

Final suggestions

Item # 12

- P. 17, first paragraph: ... materials such as tile or standing seam metal, [add the words] “architectural lighting, change in color, change in materials,” or similar design features approved by the Director of Planning.
- P. 17, Walkway Design -- City of Frisco has similar language. Has caused problems limiting visibility for retail stores and geo-tech problems with watering soils under sidewalks, according to Hodges.
- P. 18 Garage Doors -- Second bullet, change “cannot face a public street” to “should not without additional screening face a public street.”
- P. 18, Open Space -- Suggest spaces should include “three of the following five items” instead of all. Also, allow benches, fireplaces, planter walls to count.



26 October 2012

Planning and Zoning Commissioners
 City of Kyle
 P.O. Box 40
 Kyle, TX 78640

TO: Planning and Zoning Commissioners

FROM: Dallas Cothrum, PhD and Maxwell Fisher, AICP

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As reflected in the latest draft of the standards, the city has made a number of changes to accommodate retail development. Of these changes, we appreciate excluding the parking lot location requirements, and minimizing the fenestration, frequency of building elevation off-sets, and other architectural requirements. These changes will aid in maintaining viable retail development opportunities in the IH35 Corridor.

There remain some development standards that would impede retail development by unnecessarily raising development costs, and affecting patron convenience. Please give full consideration to amending the following standards:

- 1) **Eliminate landscaped medians in parking lots; limit landscaping to smaller landscape islands and peripheral locations.**

Justification: Displaces patron parking to remote locations; disrupts traffic flow; excessive development expense.

- 2) **Decrease the minimum number of required building design features on buildings greater than 50,000 square feet from 7 to 5 and on buildings with 100,000 square feet from 9 to 6.**

Justification: Excessive number inconsistent with the established retail development in and outside of Kyle; application of 4 or 5 features per building is sufficient to provide substantial visual interest; greater building size should be proportionate to the frequency of design features in lieu of the number of different types.

3) Decrease the vegetative coverage of building elevations from 60 to 25 percent.

Justification: Sixty percent is excessive and unsustainable on large elevations; a minimal percentage of coverage would break any visual monotony and provide visual interest.

4) Specify other acceptable "special building material treatments."

Justification: Sets acceptable expectations for developers; limits subjective interpretation by staff.

5) Decrease the minimum sidewalk width from 12 to 8 feet adjacent to retail buildings 30,000 square feet or greater.

Justification: A 12-foot sidewalk is excessive next to large retail buildings; the additional width would be wasted given that outdoor seating would go severely unutilized outside a big-box; larger sidewalks should be limited to smaller retail buildings accommodating boutiques and restaurants and the associated pedestrian traffic and outdoor seating.

Our understanding is the City Council would consider and potentially act on approving these standards at their regularly scheduled December 4th meeting. We look forward to continuing to work with the city and hope these two remaining standards are revised accordingly. Feel free to contact us at 214.761.9197 should you have any comments or questions.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 53, ZONING ARTICLE III-OVERLAY DISTRICTS, DIVISION 4- CONDITIONAL USE OVERLAY DISTRICTS OF THE CITY OF KYLE CITY CODE TO AMEND AND ESTABLISH SPECIFIC DEVELOPMENT REQUIREMENTS FOR PROPERTY WITHIN THE IH-35 OVERLAY DISTRICT ; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE; PROVIDING FOR RELATED MATTERS

WHEREAS, the ordinances of the City establishing zoning districts within the City limits should be amended to better provide an attractive living environment and to protect the health, safety and welfare of the present and future residents of the City;

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

Section 1. Authority. This Ordinance is adopted pursuant to the police powers of the City of Kyle and under the authority of the City Charter of the City, and the Constitution and general laws of the State of Texas, including particularly Chapter 211, Tex. Loc. Gov't. Code

Section 2. Amendment of Chapter 53, Article III. The City of Kyle Zoning Ordinance is hereby modified and amended to amend and establish specific development requirements for property within the IH-35 Overlay District as established in Exhibit A.

Section 3. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the City of Kyle Code.

Section 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

Section 5. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on First Reading this ___ day of _____, 2012.

FINALLY PASSED AND APPROVED on this ___ day of _____, 2012.

ATTEST:

CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

Lucy Johnson, Mayor

Exhibit A

I-35 Overlay District Development Standards Section 53-899

(a) Purpose

The I-35 Overlay Development Standards are intended to be concise and user-friendly. The development review process is intended to be predictable and flexible, and to facilitate the timely approval of projects that conform to the general development principles outlined in the comprehensive master plan for I-35.

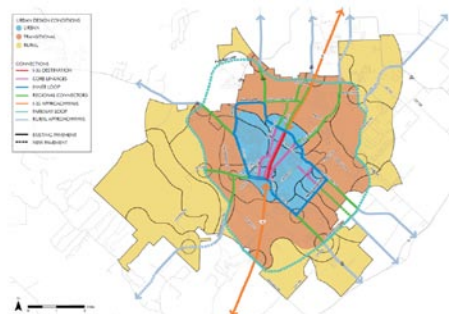
The requirements outlined in this document are intended to implement the vision, goals, policies and objectives outlined in the Comprehensive Master Plan and to ensure new development incorporates the following:

- Development that does not turn its back to I-35 and other major arterials and in cases when it has to that the back it presents is as attractive as possible.
- Streets and sidewalks that form a connected network, providing a variety of pedestrian and vehicular routes to any single destination in and out of the development.
- Building facades that create visual interest through horizontal and vertical articulation with windows, multiple entrances facing streets and sidewalks, and minimizing blank walls.

(b) Background

In 2010 the City of Kyle adopted a Comprehensive Master Plan that contains a variety of elements which shape the requirements outlined in this document. The Urban Design Plan (UDP) is a component of the Comprehensive Master Plan, which provides direct guidance regarding development within the public and private realm.

The UDP complements land use and zoning regulations by providing a more specific depiction of community, project and building attributes by establishing three different design conditions (urban, transitional, and rural). It is strongly recommended that property owners and developers review the urban design plan in conjunction with this document.



(c) Applicability

(1)Location: These standards apply to all new non-residential development within the I-35 Overlay District.

(2)Exemptions: These standards do not apply to the following:

- Change in use of an existing structure or expansion of an existing use that is lawfully permitted by the underlying zoning district.
- Use or development for which only a single-family residential building permit or certificate of occupancy is required.
- Rehabilitation of an existing building or structure that does not change the use or enlarge the building or structure.

(3) Relationship to Other Regulatory Documents:

The I-35 Overlay District standards supplement the base zoning district classification. Whenever there is a conflict between the I-35 Overlay District requirements and other sections of the City of Kyle Zoning Ordinance or other applicable regulations, the more restrictive requirement shall prevail.

(4)Variances: Any variances to the standards within this document shall be approved by the Planning and Zoning Commission and appeals of the Commission's decision shall be reviewed by the City Council.

(5) Review and Approval: The review of the following standards shall take place at the time of site development and building permit review.

(d)Uses

The permitted uses of the property shall be determined by the use regulations set forth in the base zoning district for the property except as follows:

- All outdoor sales of vehicle sales (new or used) within the I-35 overlay district shall require a conditional use permit.

(e) Site Standards

Intent: The purpose of the site standards outlined within this document are to create development patterns that welcome motorists, pedestrians, and cyclists while establishing development standards that visually and cognitively establish a separation from the ordinary Interstate landscape. Development within the I-35 overlay district should have a "front door" feel in the way they address or face the roadway. The layout of parking areas and buildings should promote safe and efficient pedestrian travel.

The following standards are intended to:

- Enhance and protect Kyle’s character through clear development design goals and policies and minimum design standards.
- Protect and promote Kyle’s long-term vitality through design standards that encourage high quality development, while discouraging less attractive and less enduring alternatives.

(1) Sidewalks

A minimum of a 5 foot sidewalk is required along all public streets. Street trees on an average of every 40 feet shall be planted between the street and the sidewalk within a tree planting zone of no-less than 7 feet wide (trees may be clustered without a reduction in the overall number of trees). Sidewalks and trees are to be installed within the public right-of-way. Sidewalks and street trees may be installed within private property if not feasible to construct within the right-of-way due to limited width, location of utilities, or other public agencies.

(2) Screening

Loading areas must be fully screened from view of public ROWs and residential districts (a minimum of a 14’ screening wall must be provided for all loading areas). Wing walls, landscape screens, changes in building orientation, and/or other architectural elements must be used to buffer loading docks and mechanical equipment. Waste and recycling disposal areas must be screened from public streets, pedestrian gathering areas, and primary entrances with walls and/or landscaping.



Wing wall used to screen loading dock

Do this



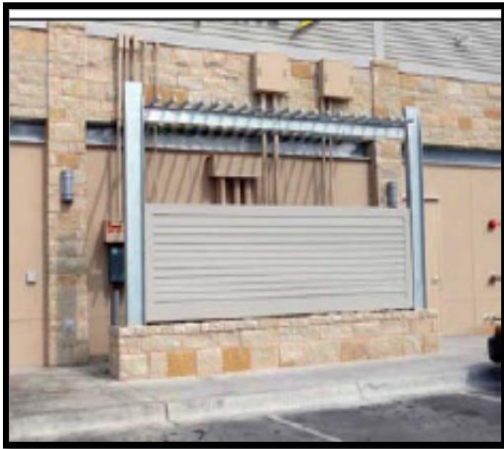
Example of unshielded utility and waste disposal areas

Not this

Utility boxes greater than 2 ft. tall cannot be placed in the clear vision area, or interfere with use of streets, alleys, sidewalks, and bicycle paths. When utility equipment is required by the electric company to be placed in clear vision of streets, alleys, or sidewalks written notice of the requirement from the electric company must be submitted with the site plan along with a landscaping plan for the screening of the utility equipment. Utility boxes must be a uniform earth tone color or if mounted to a building shall match the wall color upon which the box is located.

(4) Utility equipment screening

Utility equipment located adjacent to a public street, viewable from a public street or circulation path or in an area frequently seen by the general public must be screened with a wing wall architecturally integrated into the host structure or evergreen landscaping.



(f) Siting and Orientation

(1) Blank Walls

Blank walls adjacent to a public street, sidewalks, trails, or interior pathways are prohibited.

Design methods to eliminate blank walls can include:

- Transparent windows or doors.
- Display windows.
- Decorative accent lighting
- Landscape planting bed at least 5 feet wide or a raised planter bed at least 2 feet high and 3 feet wide in front of the wall. Such planting areas shall include planting materials that are sufficient to obscure or screen at least 30 percent of the wall's surface within 3 years.
- Installing a vertical trellis in front of the wall with climbing vines or plant materials sufficient to obscure or screen at least 30 percent of the wall's surface within 3 years. For large areas, trellises should be used in conjunction with other blank wall treatments.
- A repeating pattern of wall recesses and projects, such as bays, offsets, reveals or projecting ribs, that has a relief of at least eight inches
- A repeating pattern of pilasters projecting from the façade wall by a minimum of eight inches or architectural or decorative columns.
- Architectural details such as arches, friezes, tile work, murals, or moldings
- Changes in plan with a depth of at least 24 inches, either diagonally, horizontally, or vertically, at intervals of not less than 20 feet and not more than 100 feet.* *when not in conflict with the minimum articulation requirements of section j-building requirements*
- Enhanced exterior light features such as wall sconces, decorative light coves with concealed light sources, decorative lighting, ground-mounted accent lighting, or decorative pedestal lights.





(2) Orientation to streets

The primary façade and pedestrian entrance of a building must be oriented towards the public right-of-way or courtyard. If a building cannot have its primary entrance facing a public right-of-way, then the requirements for the façade facing the public right-of-way shall include the following:

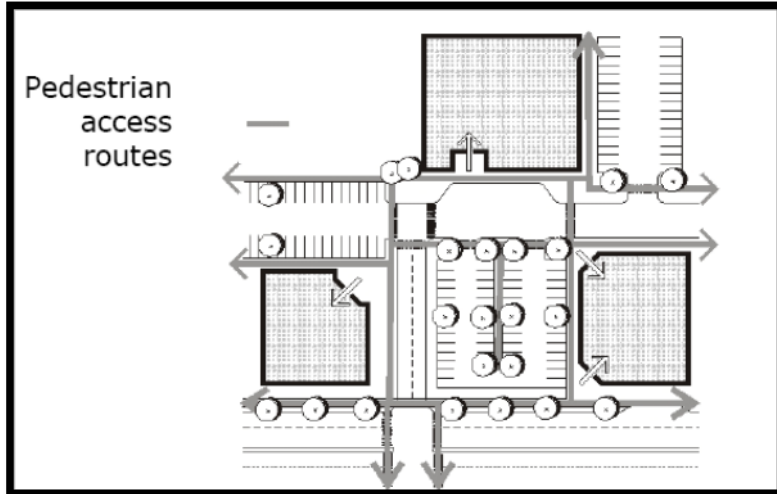
- Excluding window glazing, employ the same design character and colors as the building façade with the primary entrance or
- Utilize architectural treatments, detail and scale elements such as canopies, that are consistent with the primary building façade.
- Enclose dumpsters, recycle bins and compactors with screening walls that match materials, style and colors of the adjacent building.
- Locate dumpsters and service areas on the side of the buildings.
- Screen service areas, including storage, meter banks, HVAC equipment, generators and similar equipment with screening walls and landscaping.

(3) Orientation to walkways

One main building entrance must open directly onto a connecting walkway with pedestrian frontage.

(4) Circulation

Circulation patterns must be as simple as possible. All likely pedestrian routes must be considered in the design phase of a development to prevent shortcuts through parking and landscape areas. An internal pedestrian walkway, ADA accessible, at least 6 ft. wide must be provided from the perimeter public sidewalk to the primary public entrance.



Example of an integrated pedestrian circulation system. Note the connection from the street, between buildings through parking lots and adjacent sites.

(5) Conflict points

Internal pedestrian walkways must be distinguished from driving surfaces by textured pavement or painted pavement and lighting.



An example of a walkway with bollards that include light fixtures to clearly identify the pedestrian access.

(g) Water bodies and detention/ retention areas

Shape

Detention and water quality ponds shall utilize earthen berms and be designed with a curvilinear contoured shape. Any structural stabilization shall be limited to the use of native stone (except for outlet structure) and shall be limited to not more than 30% of the perimeter of the pond and shall be seamlessly integrated with landscape.

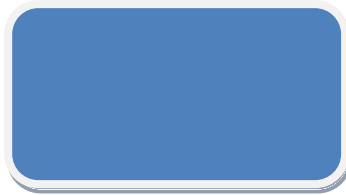
Natural and manmade water bodies at least 20,000 sq. ft. in size placed next to a public right-of-way must be integrated into the overall design of a project in one of the following ways:

- Provide a walkway, with native trees on average 25 ft. centers
- Provide a public access area with covered structure and seating and appropriate pedestrian access.
- Provide a plaza or courtyard with shaded benches and/or picnic tables next to the water body.

If a detention pond or water quality pond is not visible from or adjacent to a public or private street, sidewalk/ trail, commercial or residential used or zoned property, circulation path, parking lot, or courtyard than shape and stabilization requirements shall not apply.



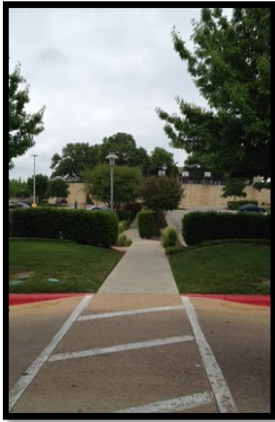
Do this



Not this

(h) Parking lots

(1) Large parking lots must be visually and functionally segmented into smaller lots with no more than 250 parking spaces per parking area. For every parking area a minimum of a 15 foot landscape median/divider shall be installed to help break up “rooms” of large parking fields. These medians shall contain pedestrian walkways to offer safe, marked routes between parking spaces and building entries.



Do this



Not this

(i) Outdoor Display/ Storage

(1) Outdoor display of merchandise is permitted when such display is of merchandise from a permanent business located in a permanent legal structure on site and such display is limited to not more than thirty percent (30%) of the gross floor area of the building which houses the business displaying such merchandise.

(2) Display is not permitted within required setbacks.

Except for items that would normally be utilized and stored outside, outdoor display shall occur only during the business hours of the applicable business establishment.

(3) Outdoor storage and container storage are permitted as an accessory use as follows:

a. Such storage does not exceed twenty percent (20%) of the gross floor area of the primary building that houses the business storing such materials,

- b. Such storage or container is located no closer to a street frontage than the primary building that houses the business storing such materials,
- c. Such storage or container is screened from view from adjacent properties
- d. Such storage or container is not permitted within required setbacks.

(j) Building Requirements

(1) Materials

Buildings constructed shall have a minimum of 90% masonry walls as defined below. The City of Kyle would like to encourage and support the use of red brick and white limestone, as used on Kyle City Hall. Retail buildings utilizing red brick and white limestone on 90% or more of new buildings shall be allowed a 10% reduction in glazing requirements and shall be allowed an uninterrupted length of up to 40 feet rather than 30 feet. Non-retail buildings utilizing red brick and white limestone on 90% or more of new buildings shall be allowed a reduction of 50% of the required number of building front design features.

Masonry shall be defined to include the following:

- Brick
- Natural Stone
- Concrete Masonry Units (Decorative)*
- Stucco/Plaster/Synthetic Stucco to be used in detail applications only
- Concrete sandblasted, textured and painted

The 10% of the exterior walls not included in masonry requirements may be covered with a variety of materials that could include but not limited to non-reflective corrugated steel panels, wood, prefinished metal panels, glass block, or other materials that are compatible with the overall design and use for the specific areas in which they are placed.

*Includes highly textured finish, such as split faced, intended, hammered, fluted, ribbed or similar architectural finish;

(2) Four-sided design

All walls must include materials and design characteristics consistent with those on the front of the building and/or same design character.

Exterior walls facing a driveway, public ROW, courtyard, sidewalk or circulation path or residential district or residential use cannot have a blank, uninterrupted length greater than 30 ft. without including two or more of the below features. Buildings over 50,000 sf. shall not be allowed an uninterrupted length greater than 50' without including two or more of the below features.

- change in plane
- change in texture

- masonry pattern
- windows, or
- other equivalent element(s) that subdivide the wall into human scale proportions.

Side or rear walls which do not face a driveway, public ROW, sidewalk, circulation path, courtyard, residential district or residential use shall maintain the same materials with those on the front of the building but are not required to adhere to the uninterrupted length requirement outlined above.

(2) Roof

The continuous plane of a roof line cannot be more than 100 feet. All roof mounted mechanicals must be screened from public view.

(3) Building Massing and Form

a. Retail

A single large dominant building mass must be avoided in new buildings. Buildings shall be constructed to one of the following two standards:

Option 1-

30% of the wall area below ten (10) feet as measured from the finish floor level of the façade's entry shall consist of glazing (windows / doors).

Windows shall have a maximum exterior reflectivity of twenty percent (20%)

Option 2-

A minimum of twenty five percent (25%) of the front primary building façade shall consist of window or door openings. Window and door areas of the front façade may be reduced to 15% of area of façade if one additional architectural feature is added beyond the requirement

All building fronts shall have at least five different design features to break the wall plane, buildings under 100,000 square feet in size shall have at least five different design features, and buildings over 100,000 square feet shall have at least six different design features.

The following are examples of the types of design features

that shall be utilized: horizontal off-sets, recesses or projections, porches, breezeways, porte-cocheres, courtyards, awnings, canopies, alcoves, recessed entries, ornamental cornices, display or other ornamental windows, vertical "elevation" off-sets, decorative accent lighting, peaked roof forms, arches, outdoor patios, architectural details such as tile work or moldings integrated into the façade, a clustered landscape zoned with integrated planters or wing walls, accent materials, varied roof heights, premium roofing materials such as tile or standing seam metal

All Retail anchor stores, at least 25% of the stores in a shopping center, and freestanding, single-use buildings, must have a clearly defined, highly visible customer entrance with four or more of the following elements:

- o Arcades
- o Arches

- o Canopies or porticos

- o Details such as tile work and moldings integrated into the building structure and design

- o Display windows

- o Integral planters or wing walls that include landscaped areas and/or places for sitting

- o Outdoor patios

- o Overhangs

- o Peaked roof forms

- o Raised corniced parapets over the door

- o Recesses and/or projections

b. Non-retail/ Office Buildings

All building fronts shall have at least five different design features to break the wall plane, buildings under 100,000 square feet in size shall have at least five different design features, and buildings over 100,000 square feet shall have at least six different design features. The following are examples of the types of design features that shall be utilized:

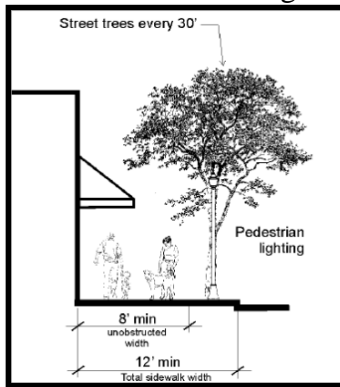
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Warehouse, mini-warehouse and overhead (commercial service) doors shall not be oriented so as to face a street(s) or residential property or shall be screened from view from the street(s) or residential property unless approved by the Director of Planning, appealable to the Planning and Zoning Commission, determines that there is no other feasible.

(k) Walkway Width and Design

Sidewalks and walkways along the facades of mixed-use and retail buildings 100 feet or more in length (measured along the facades) that are not located adjacent to a street must be at least 12 feet wide (8' of the sidewalk shall remain unobstructed) and include the following:

- Trees shall be placed at an average of 30 feet on-center and placed in grates (except where trees are placed in planting strips). Breaks in the tree coverage will be allowed near major building entries to enhance visibility. However, no less than one tree per 60 lineal feet of building facades must be provided.



Do this



Not this

(l)Garage doors

o Garage bay doors must be segmented, with windows covering at least 50% of the garage surface. Garage doors must be recessed at least 2 ft. behind the building façade.

o Vehicle service areas and bays must be screened or sited so visibility from the public right-of-way is as low as possible. Bay doors cannot face a public street.

o Garage bay doors must be integrated into the overall design of the site with color, texture, and windows.

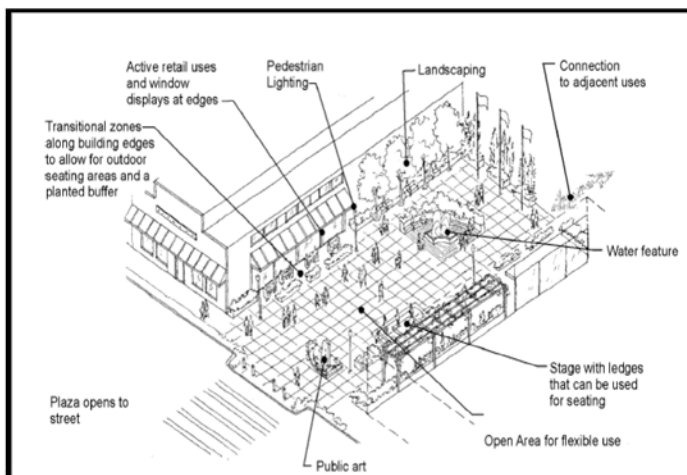
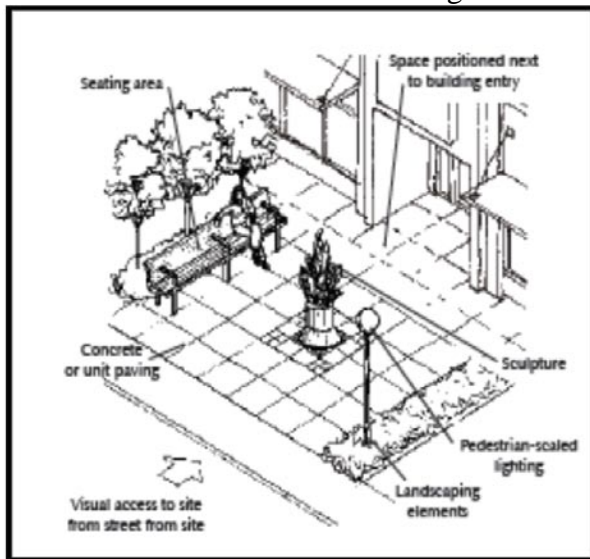
(m)Open Space

Intent: To provide a variety of accessible and inviting areas for outdoor dining, socializing and relaxing in commercial areas and to enhance the pedestrian environment.

All commercial developments, 3 acres or more in size, shall incorporate open space on-site. This could include a single public open space for larger developments or a variety of pedestrian-oriented spaces.

These are predominately hard-surfaced, plaza or courtyard type spaces. Pedestrian-oriented space shall have the following:

- Pedestrian-scaled lighting (no more than 15 feet in height) may be on-site or building-mounted lighting.
- Be sited in areas with significant pedestrian traffic to provide interest and security, such as adjacent to a building entry.
- Integrate landscaping features that add interest to the space.
- Pedestrian amenities, such as a water feature, drinking fountain, tables, and/or distinctive paving or artwork.
- Pedestrian-oriented building facades on some or all buildings facing the space.





**I-35 Overlay
District
Development
Standards
Section 53-899**



Table of Contents

- Purpose
- Background
- Applicability
- Site Design Standards
- Building Design Standards
- Open Space

(a) Purpose

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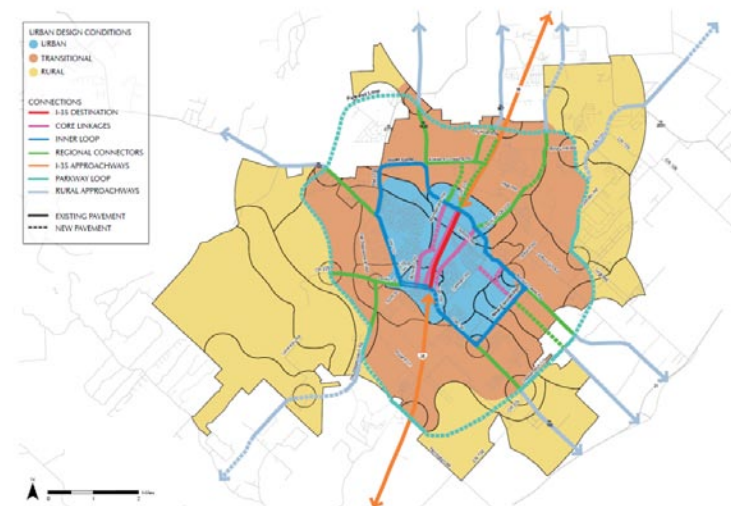
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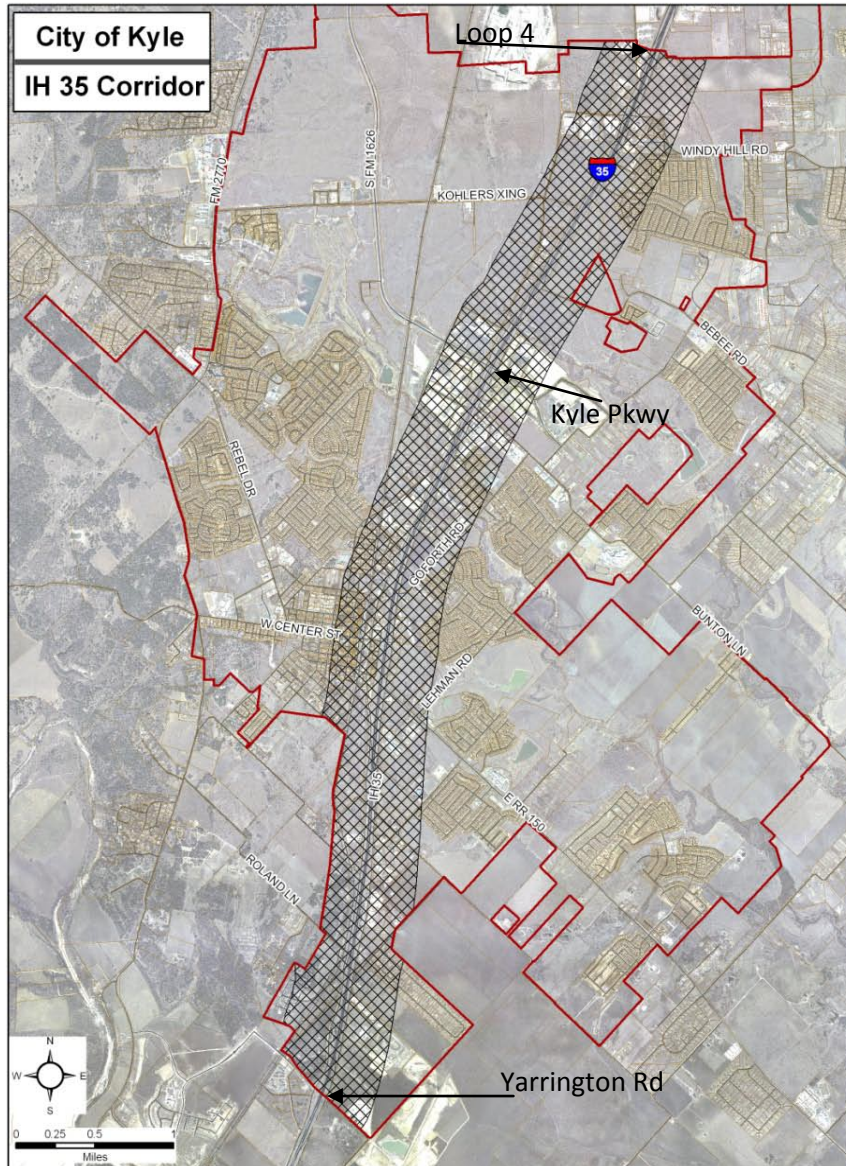
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The I-35 Overlay District standards supplement the base zoning district classification. Whenever there is a conflict between the I-35 Overlay District requirements and other sections of the City of Kyle Zoning Ordinance or other applicable regulations, the more restrictive requirement shall prevail.

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Permitted uses of the property shall be determined by regulations set forth in the base zoning district for the property except as follows:

1. Outdoor sales of vehicle sales (new or used) within the I-35 overlay district shall require an additional use permit.

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The purpose of the site standards outlined within the overlay district are to create development patterns that accommodate motorists, pedestrians, and cyclists while maintaining development standards that visually and functionally establish a separation from the ordinary residential landscape. Development within the I-35 overlay district should have a “front door” feel in the way they approach or face the roadway. The layout of parking areas and building footprints should promote safe and efficient pedestrian

The following standards are intended to:

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A minimum of a 5 foot sidewalk is required along all public streets. Street trees on an average of every 40 feet shall be planted between the street and the sidewalk within a tree planting zone of no-less than 7 feet wide (trees may be clustered without a reduction in the overall number of trees). Sidewalks and trees are to be installed within the public right-of-way. Sidewalks and street trees may be installed within private property if not feasible to construct within the right-of-way due to limited width, location of utilities, or other public agencies.

(2) Screening

Loading areas must be fully screened from view of public ROWs and residential districts (a minimum of a 14' screening wall must be provided for all loading areas). Wing walls, landscape screens, changes in building orientation, and/or other architectural elements must be used to buffer loading docks and mechanical equipment. Waste and recycling disposal areas must be screened from public streets, pedestrian gathering areas, and primary entrances with walls and/or landscaping.



Wing wall used to screen loading dock

Do this



Example of unscreened utility and waste disposal areas

Not this

(3) Utilities

Utility boxes greater than 2 ft. tall cannot be placed in the clear vision area, or interfere with use of streets, alleys, sidewalks, and bicycle paths. When utility equipment is required by the electric company to be placed in clear vision of streets, alleys, or sidewalks written notice of the requirement from the electric company must be submitted with the site plan along with a landscaping plan for the screening of the utility equipment. Utility boxes must be a uniform earth tone color or if mounted to a building shall match the wall color upon which the box is located.



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 - A repeating pattern of wall recesses and projects, such as bays, offsets, reveals or projecting ribs, that has a relief of at least eight inches
 - A repeating pattern of pilasters projecting from the façade wall by a minimum of eight inches or architectural or decorative columns.
- Architectural details such as arches, friezes, tile work, murals, or moldings
 - Changes in plan with a depth of at least 24 inches, either diagonally, horizontally, or vertically, at intervals of not less than 20 feet and not more than 100 feet.* *when not in conflict with the minimum articulation requirements of section j-building requirements*
 - Enhanced exterior light features such as wall sconces, decorative light coves with concealed light sources, decorative lighting, ground-mounted accent lighting, or decorative pedestal lights.





This single-story commercial building has similar detailing on all visible walls.



This commercial building on a street corner has a similar level of detail on each facade.

- Enclose dumpsters, recycle bins and compactors with screening walls that match materials, style and colors of the adjacent building.
- Locate dumpsters and service areas on the side of the buildings.
- Screen service areas, including storage, meter banks, HVAC equipment, generators and similar equipment with screening walls and landscaping.

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One main building entrance must open directly onto a connecting walkway with pedestrian frontage.

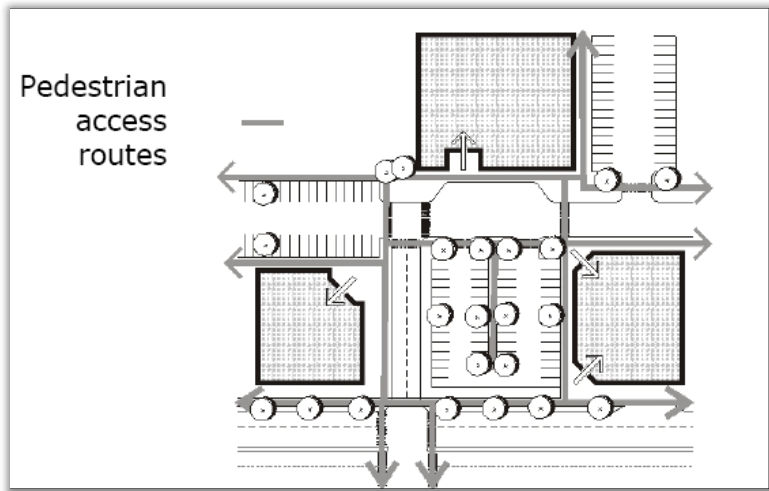
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Circulation patterns must be as simple as possible. All likely pedestrian routes must be considered in the design phase of a development to prevent shortcuts through parking and landscape areas. An internal pedestrian walkway, ADA accessible, at least 6 ft. wide must be provided from the perimeter public sidewalk to the primary public entrance.



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(g) Water bodies and detention/ retention areas

Shape

Detention and water quality ponds shall utilize earthen berms and be designed with a curvilinear contoured shape. Any structural stabilization shall be limited to the use of native stone (except for outlet structure) and shall be limited to not more than 30% of the perimeter of the pond and shall be seamlessly integrated with landscape.

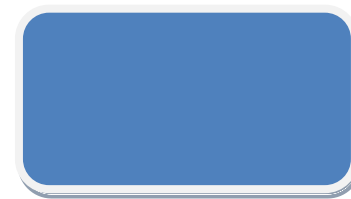
Natural and manmade water bodies at least 20,000 sq. ft. in size placed next to a public right-of-way must be integrated into the overall design of a project in one of the following ways:

- Provide a walkway, with native trees on average 25 ft. centers
- Provide a public access area with covered structure and seating and appropriate pedestrian access.
- Provide a plaza or courtyard with shaded benches and/or picnic tables next to the water body.

If a detention pond or water quality pond is not visible from or adjacent to a public or private street, sidewalk/ trail, commercial or residential used or zoned property, circulation path, parking lot, or courtyard than shape and stabilization requirements shall not apply.



Do this



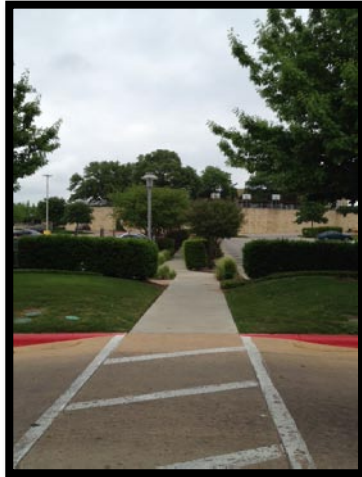
Not this

(h) Parking lots

(1) Large parking lots must be visually and functionally segmented into smaller lots with no more than 250 parking spaces per parking area. For every parking area a minimum of a 15 foot landscape median/divider shall be installed to help break up “rooms” of large parking fields. These medians shall contain pedestrian walkways to offer safe, marked routes between parking spaces and building entries.



Not this



Do this

(i) Outdoor Display/ Storage

(1) Outdoor display of merchandise is permitted when such display is of merchandise from a permanent business located in a permanent legal structure on site and such display is limited to not more than thirty percent (30%) of the gross floor area of the building which houses the business displaying such merchandise.

(2) Display is not permitted within required setbacks. Except for items that would normally be utilized and stored outside, outdoor display shall occur only during the business hours of the applicable business establishment.

(3) Outdoor storage and container storage are permitted as an accessory use as follows:

- a. Such storage does not exceed twenty percent (20%) of the gross floor area of the primary building that houses the business storing such materials,
- b. Such storage or container is located no closer to a street frontage than the primary building that houses the business storing such materials,
- c. Such storage or container is screened from view from adjacent properties
- d. Such storage or container is not permitted within required setbacks.

(j) Building Requirements



(1) Materials

Buildings constructed shall have a minimum of 90% masonry walls as defined below. The City of Kyle would like to encourage and support the use of red brick and white limestone, as used on Kyle City Hall. Retail buildings utilizing red brick and white limestone on 90% or more of new buildings shall be allowed a 10% reduction in glazing requirements and shall be allowed an uninterrupted length of up to 40 feet rather than 30 feet. Non-retail buildings utilizing red brick and white limestone on 90% or more of new buildings shall be allowed a reduction of 50% of the required number of building front design features.

Masonry shall be defined to include the following:

- Brick
- Natural Stone
- Concrete Masonry Units (Decorative)*

- Stucco/Plaster/Synthetic Stucco to be used in detail applications only
- Concrete sandblasted, textured and painted

The 10% of the exterior walls not included in masonry requirements may be covered with a variety of materials that could include but not limited to non-reflective corrugated steel panels, wood, prefinished metal panels, glass block, or other materials that are compatible with the overall design and use for the specific areas in which they are placed.

*Includes highly textured finish, such as split faced, intended, hammered, fluted, ribbed or similar architectural finish;

(2)Four-sided design

All walls must include materials and design characteristics consistent with those on the front of the building and/or same design character.

Exterior walls facing a driveway, public ROW, courtyard, sidewalk or circulation path or residential district or residential use cannot have a blank, uninterrupted length greater than 30 ft. without including two or more of the below features. Buildings over 50,000 sf. shall not be allowed an uninterrupted length greater than 50' without including two or more of the below features.

- change in plane
- change in texture
- masonry pattern

- windows, or
- other equivalent element(s) that subdivide the wall into human scale proportions.

Side or rear walls which do not face a driveway, public ROW, sidewalk, circulation path, courtyard, residential district or residential use shall maintain the same materials with those on the front of the building but are not required to adhere to the uninterrupted length requirement outlined above.

(2)Roof

The continuous plane of a roof line cannot be more than 100 feet. All roof mounted mechanicals must be screened from public view.

(3)Building Massing and Form

a. Retail

A single large dominant building mass must be avoided in new buildings. Buildings shall be constructed to one of the following two standards:

Option1-

30% of the wall area below ten (10) feet as measured from the finish floor level of the façade's entry shall consists of glazing (windows / doors).

Windows shall have a maximum exterior reflectivity of twenty percent (20%)

Option 2-

A minimum of twenty five percent (25%) of the front primary building façade shall consist of window or door openings. Window and door areas of the front façade may be reduced to 15% of area of façade if one additional architectural feature is added beyond the requirement

All building fronts shall have at least five different design features to break the wall plane, buildings under 100,000 square feet in size shall have at least five different design features, and buildings over 100,000 square feet shall have at least six different design features.

The following are examples of the types of design features that shall be utilized: horizontal off-sets, recesses or projections, porches, breezeways, porte-cocheres, courtyards, awnings, canopies, alcoves, recessed entries, ornamental cornices, display or other ornamental windows, vertical “elevation” off-sets, decorative accent lighting, peaked roof forms, arches, outdoor patios, architectural details such as tile work or moldings integrated into the façade, a clustered landscape zoned with integrated planters or wing walls, accent materials, varied roof heights, premium roofing materials such as tile or standing seam metal

All Retail anchor stores, at least 25% of the stores in a shopping center, and freestanding, single-use buildings, must have a clearly defined, highly visible customer entrance with four or more of the following elements:

- o Arcades

- o Arches

- o Canopies or porticos

- o Details such as tile work and moldings integrated into the building structure and design

- o Display windows

- o Integral planters or wing walls that include landscaped areas and/or places for sitting

- o Outdoor patios

- o Overhangs

- o Peaked roof forms

- o Raised corniced parapets over the door

- o Recesses and/or projections

b. Non-retail/ Office Buildings

All building fronts shall have at least five different design features to break the wall plane, buildings under 100,000 square feet in size shall have at least five different design features, and buildings over 100,000 square feet shall have at least six different design features. The following are examples of the types of design features that shall be utilized:

Horizontal off-sets, recesses or projections, porches, breezeways, porte-cocheres, decorative accent lighting, courtyards, architectural lighting, change in materials, awnings, canopies, alcoves, recessed entries, ornamental cornices, display or other ornamental windows, vertical “elevation” off-sets, peaked roof forms, arches, outdoor patios, architectural details such as tile work or moldings integrated into the façade, integrated planters or wing walls, accent materials, varied roof heights, premium roofing materials such as tile or standing seam metal, or similar design features approved by the Director of Planning and appealable to the Planning and Zoning Commission.

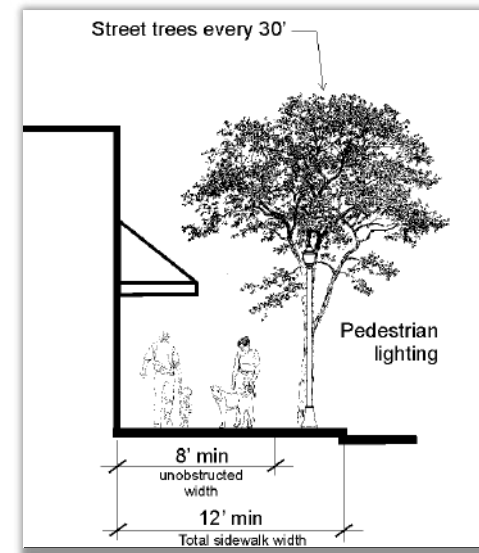
Warehouse, mini-warehouse and overhead (commercial service) doors shall not be oriented so as to face a street(s) or residential property or shall be screened from view from the street(s) or residential property unless approved by the Director of Planning, appealable to the Planning and Zoning Commission, determines that there is no other feasible.

(k) Walkway Width and Design

Sidewalks and walkways along the facades of mixed-use and retail buildings 100 feet or more in length (measured along the facades) that are not located adjacent to a street must be at least 12 feet wide (8’ of the sidewalk shall remain unobstructed) and include the following:

- Trees shall be placed at an average of 30 feet on-center and placed in grates (except where trees are placed in planting strips). Breaks in the tree coverage will be allowed near major building entries to enhance visibility. However, no less than one tree

per 60 lineal feet of building facades must be provided.



Do this



Not this

(l) Garage doors

o Garage bay doors must be segmented, with windows covering at least 50% of the garage surface. Garage doors must be recessed at least 2 ft. behind the building façade.

o Vehicle service areas and bays must be screened or sited so visibility from the public right-of-way is as low as possible. Bay doors cannot face a public street.

o Garage bay doors must be integrated into the overall design of the site with color, texture, and windows.

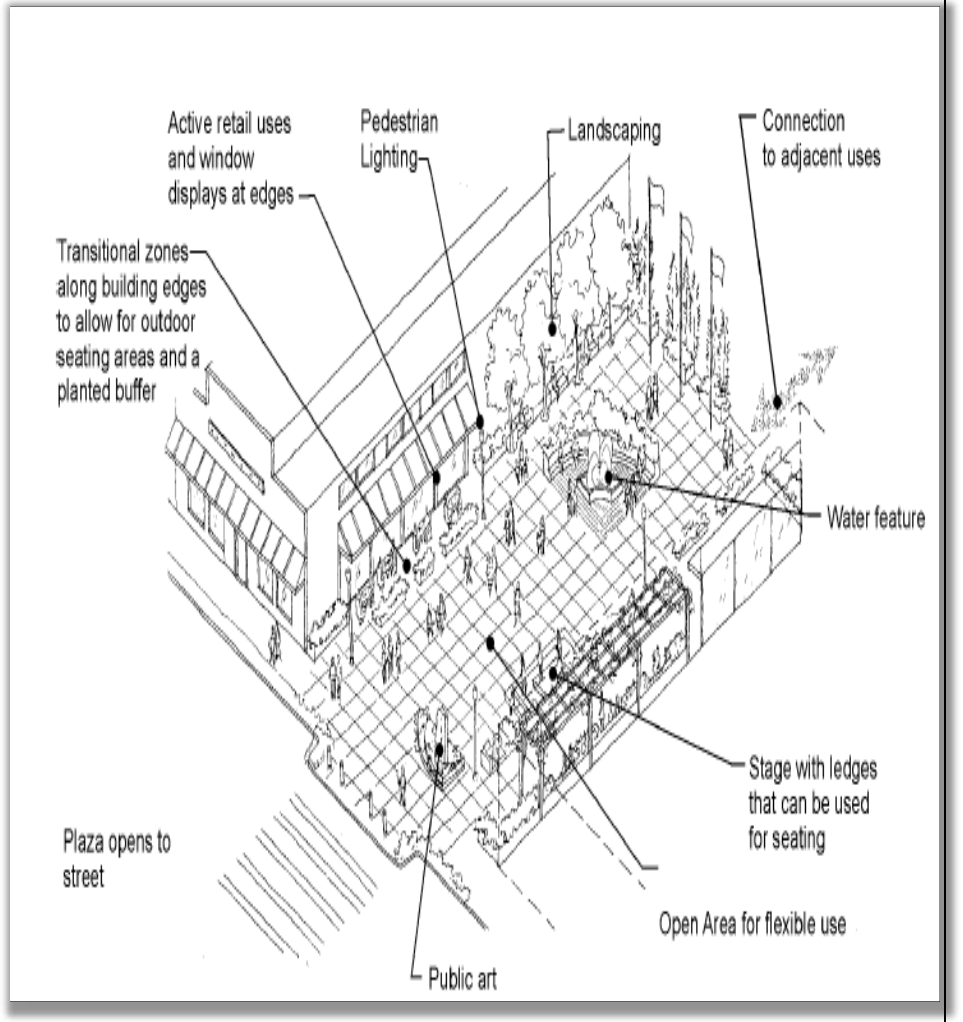
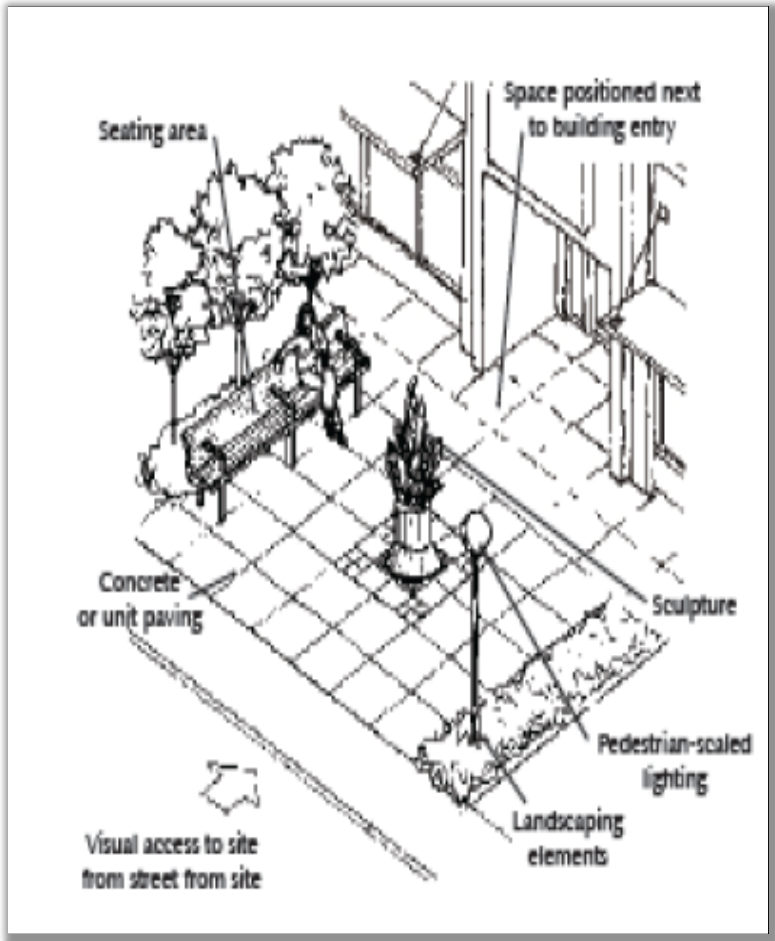
(m) Open Space

Intent: To provide a variety of accessible and inviting areas for outdoor dining, socializing and relaxing in commercial areas and to enhance the pedestrian environment.

All commercial developments, 3 acres or more in size, shall incorporate open space on-site. This could include a single public open space for larger developments or a variety of pedestrian-oriented spaces.

These are predominately hard-surfaced, plaza or courtyard type spaces. Pedestrian-oriented space shall have the following:

- Pedestrian-scaled lighting (no more than 15 feet in height) may be on-site or building-mounted lighting.
- Be sited in areas with significant pedestrian traffic to provide interest and security, such as adjacent to a building entry.
- Integrate landscaping features that add interest to the space.
- Pedestrian amenities, such as a water feature, drinking fountain, tables, and/or distinctive paving or artwork.
- Pedestrian-oriented building facades on some or all buildings facing the space.





CITY OF KYLE, TEXAS

Funding and Support of Train Depot Rehabilitation Project

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Approve a Resolution authorizing the City Manager to seek funding in the amount of \$311,851.00 under the Transportation Enhancement Program of the Texas Department of Transportation for the final phase of the Train Depot Renovation Project. The City will be required to provide \$77,963.00 in matching cash contribution for the grant funding
~ *Joshua Moreno, Grants Administrator*

Other Information: The Transportation Enhancement Program will reimburse 80% of the total cost of the final phase of the Train Depot Renovation project. A total amount of 389,814.00 will be required to fund all of the direct construction costs for Phase III, the final phase of a three phase rehabilitation project.

If the funding application is approved by TxDOT, the City will be eligible to receive reimbursement totaling 80% or \$311,851.00 for direct construction costs including TxDOT's \$50,845 administrative fee. In addition, the City will be required to provide \$77,963.00 in matching cash contribution for the grant funding.

Budget Information: The City will be required to fund 100% of the construction costs upfront and then submit reimbursement requests to TxDOT. It is important to note that should TxDOT deny City's reimbursement requests based on non conformance with grant conditions, the City will be responsible for the amount that is not reimbursed by TxDOT.

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

Attachments / click to download

- [Depot Rehab Resolution](#)
- [Nomination Form](#)

Resolution No. _____

A RESOLUTION TO AUTHORIZE LOCAL FUNDING AND SUPPORT OF THE TRAIN DEPOT REHABILITATION PROJECT TO THE STATEWIDE TRANSPORTATION ENHANCEMENT PROGRAM FOR FUNDING COMPETITION IN THE TEXAS DEPARTMENT OF TRANSPORTATION 2012 PROGRAM CALL FOR PROJECTS

Whereas, the Texas Department of Transportation issued a call for nominations in September 2012 for communities to apply for federal highway funding assistance made available through the Transportation Enhancement Program; and

Whereas, the fully restored Depot will provide a two fold purpose, each critical to the City of Kyle. First, the Train Depot will serve as a visitor's center and museum to the public, and the northern end of the Depot to serve as the Kyle Chamber of Commerce's offices; and

Whereas, the program requires a minimum 20% local funding match and the City has allocated and will provide the minimum match requirement in the amount of \$77,963; thereby pledging 20% local matching funds, plus 100% of any overruns above the total project estimate of \$389,814:

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

- Sec. 1. The City of Kyle supports funding this project as shown in the nomination budget and commits to the project's development, implementation, construction, maintenance, management, and financing. The City is willing and able to enter into an agreement with TxDOT by resolution or ordinance.
- Sec. 2. That the City adopts a resolution approving the submission of the project nomination; and the support and funding of the project should it receive federal funds.
- Sec. 3. That the City Manager is hereby authorized to act on behalf of the City in all matters relating to this funding nomination and to execute all necessary applications, assurances, certifications, and other documents, relative to the submission, later acceptance, and administration of such funds.
- Sec. 4. That it is hereby officially found and determined that this meeting at which this resolution is passed is open to the public as required by law, and that the public notice of the time, place and purpose of said meeting was given as required. The regular meeting of the Kyle City Council was called to order at 7:00PM on December 18, 2012 in Kyle, Texas by Mayor Lucy Johnson.

Resolution _____ was presented and passed on this _____ day of December 2012, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Kyle, Texas.;

ATTEST:

City Secretary, Amelia Sanchez

Mayor, Lucy Johnson



TRANSPORTATION ENHANCEMENT PROGRAM NOMINATION FORM 2012

*Additional information can be found in the Transportation Enhancement Program Guide:
www.txdot.gov/business/governments/te.htm*

1. Project Name

The Historic Kyle Depot

2. Project Location

100 N. Front Street

County: ▼

TxDOT District: ▼

Project Limits (point to point):

Project Length (feet/miles), if applicable:

Building Dimensions, (size in square feet), if applicable:

State of Texas/Legislature

House of Representatives

District #: Name:

District #: Name:

District #: Name:

State Senate

District #: Name:

District #: Name:

District #: Name:

Federal Congressional

House of Representatives

District #: Name:

District #: Name:

District #: Name:

3. Qualifying Category

▼

4. Nominating Entity

▼

5. Nominating Entity Contact Information

Contact Person:

Title:

Mailing Address:

City:

State:

Zip Code:

Fax:

Daytime Telephone:

Email:

6. Project Description

(Limited to 3500 Characters with spaces)

Located on FM 150 (2 blocks east of I-35), the historic Kyle Depot (1917) represents 1 of only 2 surviving depots in Hays County and the only depot in its original location. As a railroad town, the depot is a key landmark to the city. Located at Front and Center (FM 150) Streets, it serves as the Gateway to the City and its historic downtown. It provides the perfect location for a Visitor's Center and Transportation Museum for the City of Kyle. The City of Kyle funded \$250,000 in revenue bonds for the restoration of the exterior. Additional funding was provided by LCRA, the Burdine Johnson Foundation, and private individuals. The preparation of a Master Plan (Clayton & Little, 2011) provided a phased approach to the project. Phase 1 of the exterior is complete (foundations, roof, asbestos removal). Phase 2 is underway (painting, repairing windows and new gutters). We are requesting funding for Phase 3, the interior restoration, electrical and plumbing systems (incl. HVAC), site improvements (sidewalks, benches, plaza, restrooms), new platform and ADA ramp, and relocation of the caboose to new tracks.

As a "combination" type depot, the passenger rooms were segregated from the freight storage by the station master's offices in the center of the building. The station master's office will be restored to their original configuration as a transportation museum focusing on the role of the train in Kyle's history (original furniture is retained). The segregated waiting rooms will be restored with the African-American room devoted to black history in Kyle. The larger waiting room will be a Visitor's Center for Kyle and the I-35 Corridor in Hays County. Offices of the Chamber of Commerce will occupy the freight storage room. Landscaping includes sidewalks along FM 150 and north to a new public plaza with outdoor restrooms for the comfort of visitors and residents alike. Ornamental fencing will provide a barrier from the nearby train tracks. Benches and informational kiosks will also be installed.

Both existing measured drawings and construction drawings are complete for the project. All work is being done in accordance with the Secretary of the Interior's Standards for Rehabilitation.

Preliminary engineering and architectural drawings are complete. The project will be ready for letting immediately. Future operation and maintenance of the building will be provided by the City of Kyle using Hotel Tax funds. There will be no expected income from the project. The tremendous support for the project is evidenced by the letters, grants and private donations.

The Historic Kyle Depot has a significant relationship to transportation in its location on FM 150, just two blocks east of I-35. Originally sited in the middle of Center Street, it was moved to the north in 1955 when FM 150 was built. As a railroad town, it represents one of the most significant historic buildings from Kyle's history. THC determined it NRHP eligible under Criteria A (transportation) and C. The project qualifies under several areas: #4-visitors center; #5-landscaping; #6-historic preservation; #7-rehabilitation of historic transportation buildings. Benefits of the project are: * Provide visitors information to I-35 Corridor sites and businesses* Educational benefits of museum* Serve as Gateway to Downtown Kyle and the Hill Country along FM 150 * Beautify downtown and preserve important building * Plans ready to go* Additional local match to stretch federal dollars

7. Project Information

Directional Maps, Site Maps, General Floor Plans, and Photographs
(Label Attachment as 'Project Information - Attachment A')
(No more than 10 pieces)

8. Official Local Government Funding Resolution

(Label attachment as 'Certification of Funding and Support - Attachment B')
(No more than 10 pieces)

9. MPO Letter of Support (if applicable)

(Label attachment as 'MPO/COG Letter of Support - Attachment E')
(No more than 10 pieces)

10. Evidence of Public Involvement and Support

(Label attachments as 'Evidence of Public Involvement and Support - Attachment C')

(No more than 10 pieces)

A. Attach letters of support and other documentary evidence of public interest.
(No more than 10 pieces)

B. Provide dates and information about public meetings and events held to discuss the project.
(Limited to 1,640 Characters with spaces)

April 6, 2004 - City of Kyle, by ordinance, establishes the Kyle Train Depot Board of Directors to oversee the development, operation, maintenance, and management of the Depot renovation; Train Depot board meets monthly in compliance with Open Meetings Act; 2009 City Council passed \$250,000 in tax revenue bonds for additional funding for Depot;

Letters of support: City of Kyle Mayor, Seton Medical Center Hays, Hays County Commissioner Ingalsbe, Hays County Justice of the Peace, Hays County Historical Commission, Kyle Chamber of Commerce, Kyle Elementary School;

September 9, 2012 - Austin YNN wrote an article about renovations to the Depot and also provides contact information of the Train Depot Board in case there are individuals interested in helping to fund the project;

October 29, 2012 - Hays Free Press wrote an article about the status of, and future plans of the Train Depot renovation, while providing historical insight on Depot;

Funding sources of Depot includes donations from the Burdine Johnson Foundation, Pedemales Electric Cooperative, Soliref, Texas Historical Foundation, and various Private Contributors;

C. Ranking by Nominator

1

of

1

11. Property Ownership and Acquisition Information

(Label attachments as 'Property Ownership and Acquisition Information - Attachment D')

(No more than 10 pieces)

All proposals must provide documentation of the Nominator's property rights by title of ownership, lease, or easement for all property within the project limits.

Is the property needed for the project already acquired? Yes No

If No - How will it be acquired? Describe. (include commitment letter by current owner that the property's interest will be transferred upon approval)

If Yes - When was the property acquired and how? Describe.

City of Kyle ("Lessee") entered into a Lease Agreement on the 15 day of July, 2003, with Union Pacific Railroad ("Lessor") for lease of premises. See attachment for lease details.

Was the property acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act? Yes No

12. SHPO Certificate of Eligibility - National Register of Historic Places (if applicable)

(Contact the State Historic Preservation Officer through THC)

(Label attachment as 'SHPO Certificate of Eligibility - Attachment F')

13. Scenic Easement/Historic Site Designation (if applicable)

Projects proposing acquisition of scenic easements and scenic or historic sites, must provide documentary evidence from the appropriate city, county, state or national entity indicating official designation. (Label attachment as 'Scenic Easement/Historic Site Designation - Attachment G')

14. Evaluation of Work Involving Environmental Mitigation (if applicable)

Projects proposing environmental mitigation must provide documentary evidence from the Texas Commission on Environmental Quality or the Texas Parks and Wildlife Department indicating their technical evaluation of the project.

(Label attachment as 'Evaluation of Work Involving Environmental Mitigation - Attachment H')

15. Railroad Right of Entry Letter/Agreement (if applicable)

Projects proposing to encroach or cross railroad right of way, must include documentary evidence from the railroad granting a right of entry or an executed encroachment agreement.

(Label attachment as 'Railroad Right of Entry Letter/Agreement - Attachment I')

16. Local Bicycle Plan (if applicable)

Projects proposing to build facilities for bicycles must include documentary evidence from the city or county stating that the project has been included in the entity's bicycle plan, if applicable, or the bicycle element of the transportation component of the entity's comprehensive plan.

(Label attachment as 'Local Bicycle Plan - Attachment J')

17. Projected Time Estimate

Estimate the amount of time it will take to complete the project from start to finish. Approximate the time required for each activity. The activities can run concurrently causing the total time to be different from the total of the activities. Consider time for (but not limited to):

Months

Planning Activities
(Executing contract, hiring consultant, planning, schematic and design, utility relocation, etc.)

Environmental Clearance
(Assessments, possible mitigation for Hazardous Materials, permits, review by THC, COE, etc.)

ROW Acquisition
(Surveying, appraisals, title transfer, clearance...)

Project Design and Plan Preparation of PS&E Package
(Including PS&E Review by TxDOT District, Austin Divisions, TDLR, and other agencies...)

Project Construction/Implementation
(Advertising/hiring contractor, demolition, construction, inspection...)

Other

Projected Time in Months

18. Maintenance and Operations

Estimate maintenance and operations costs of the project. If applicable, determine the amount of any anticipated income derived from the project. (yearly basis)

Maintenance \$

Operations \$

Income \$

Identify all parties responsible for the maintenance and operations of the project:

City of Kyle will be responsible for the maintenance and operations of the project; and no income will be derived from project.

Itemized Construction Costs:

Work Activities:	Quantity	Unit	Unit Price	Amount
Site Superintendent	8.00	wks	1,650.00	13,200
Project Manager - 20%	8.00	wks	385.00	3,080
Labor Burden - 35%	1.00	ls	5,698.00	5,698
Small Tools and Ladders	2.00	mo	500.00	1,000
Misc. Tools and Equipment	2.00	mo	350.00	700
Temporary Toilets	8.00	wks	75.00	600
Dumpster - Site	8.00	load	350.00	2,800
Final Clean	2,374.00	sf	0.50	1,187
General Site Clean-up	8.00	wks	240.00	1,920
Ice, Cups, and Water Barrels	8.00	wks	50.00	400
Jobsite Pick-up Truck - 1 ea	8.00	mo	1,000.00	8,000
Fire Extinguishers and Safety Equipment	1.00	ea	200.00	200
First Aid Kit	8.00	wks	50.00	400
Temporary Protection (Fencing)	1.00	ls	2,000.00	2,000
Sidewalk Repair	1.00	ls	500.00	500
Remove Existing Wood Flooring	2,192.00	sf	1.00	2,192
Remove Existing Ceiling	2,174.00	sf	0.50	1,087
Remove Existing HVAC	1.00	ls	1,000.00	1,000
Remove Existing Plumbing	1.00	ls	500.00	500
Remove Existing Electrical	1.00	ls	500.00	500
Bench (Allowance)	3.00	ea	500.00	1,500
New Stained Concrete Plaza	2,019.00	sf	6.00	12,114
Rail Tracks	200.00	lf	125.00	25,000
Concrete Planter Wall & Footing- 1'-3'	550.00	sf	25.00	13,750
Landscaping in Planters	968.00	sf	5.00	4,840
New Wood Deck	1,120.00	sf	15.00	16,800
Wood Steps to Deck	20.00	lf	8.00	160
Stair/Ramp/Deck Metal Railing	189.00	lf	30.00	5,670
Gravel	2,558.00	sf	0.60	1,535
Brick Pavers	457.00	sf	12.00	5,484
Ornamental Steel Fence	240.00	lf	40.00	9,600
Sidewalk	800.00	sf	4.00	3,200
Landscaping near Street	682.00	sf	5.00	3,410
Misc. Wood Repair & Carpentry	1.00	ls	1,000.00	1,000
New Bead Board Ceiling	369.00	sf	5.00	1,845
Pantry - 4' Wide	2.00	ea	600.00	1,200
New Lower & Upper Cabinets	11.00	lf	400.00	4,400
Bookshelf - 2'-6" Wide	1.00	ea	375.00	375
Reinstall Salvaged Shelf	1.00	ea	50.00	50
Spray Insulation at Roof Rafters	2,400.00	sf	1.90	4,560
Joint Sealers	1.00	ls	500.00	500
New Interior Wood Door, Frame & Hardware	4.00	ea	750.00	3,000
Refurbish Existing Interior Doors	2.00	ea	200.00	400
New Ticket Window and Transaction Counter	1.00	ea	500.00	500
Interior Walls - 2x4 Wood Stud	1,219.00	sf	6.00	7,314
Subtotal:				\$175,171

19. Project Budget Summary

List all construction costs to be incurred by the nominating entity on pages 6-8 for a complete itemized cost estimate. **Generally, preliminary engineering (including planning, design, and plans, specifications, and estimates) are not allowable costs.**

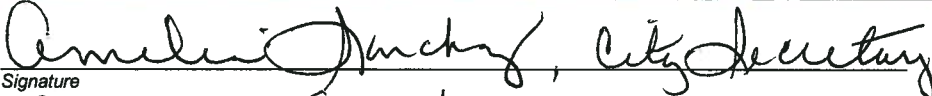
Total Construction Costs:	1.	338,969
Planning Costs (Category 2, 4, 9, 10 Only):	2.	0
Right of Way Costs (Category 3 Only):	3.	0
Subtotal of Expenses (Line 1 - Line 3):	4.	338,969
TxDOT Administrative Expenses (15% of Line 4)	5.	50,845
Total Project Cost:	6.	\$389,814
Local Match:		
20% of Total Project Cost (Line 6)	7.	\$77,963
Federal Funds Requested:		
80% of Line 6	8.	\$311,851

The minimum amount of local cash match required is 20%. Sponsors are not limited in their maximum local match. If a larger local match is provided, please adjust the percentages accordingly.

20. Project Commitment

By submitting an application, the nominating entity commits that if this project is selected for funding, it will be brought to a successful bid award within four years from selection. The construction plans for this project are currently:

- Complete
 % Complete
 Not Started


Signature
Amelia Sanchez
Printed Name
11-15-12
Date

The nomination form must be signed by a representative of the local entity that has signature authority.

Complete nomination packages must be received at the district by the final due date and include one signed original, three additional copies and three CDs containing an electronic file of the nomination form in a Microsoft Windows Excel 2010 format (.xlsm), including PDF versions of all attachments.

**FINAL SUBMISSION DUE DATE FOR ALL DOCUMENTATION
Friday, November 16, 2012 by 5:00pm CST**



CITY OF KYLE, TEXAS

Local Funding and Support of WWTP Expansion

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Approve a Resolution authorizing the City Manager to submit a loan funding invitation request to the Texas Water Development Board under the Clean Water State Revolving Fund in an amount totaling \$4,300,000.00 for the expansion of the City's wastewater treatment plant from 3.0 MGD to 4.5 MGD ~ *Joshua Moreno, Grants Administrator*

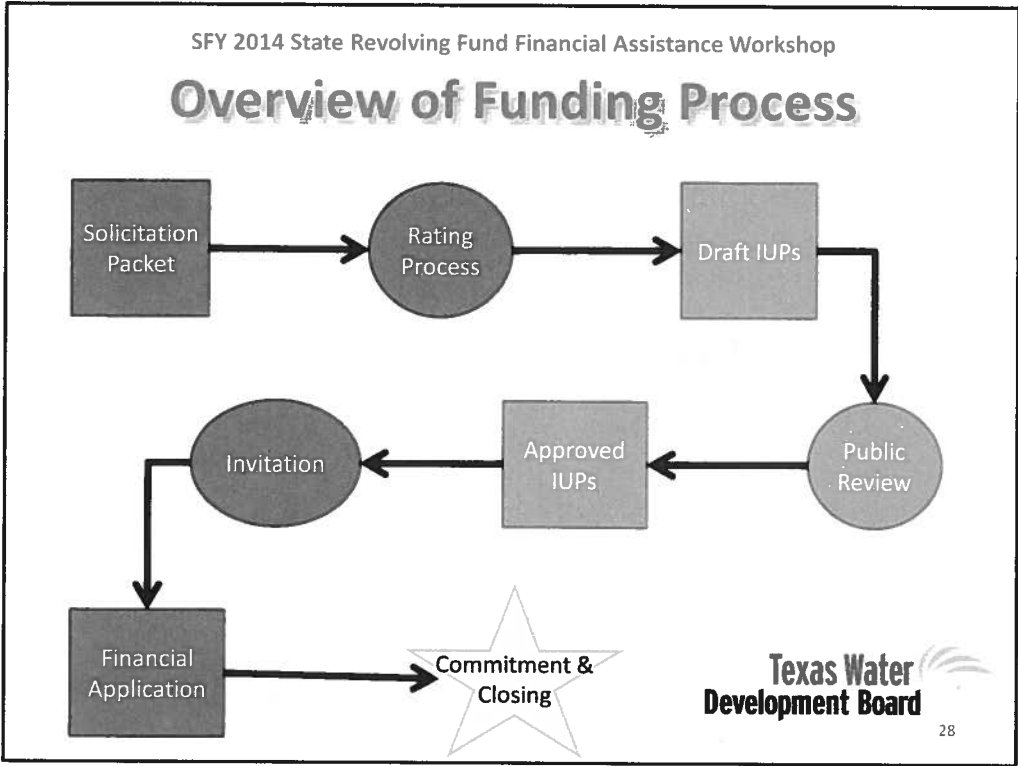
Other Information: The Project Information Form must be completed and submitted for all projects to be considered for SRF funding. The TWDB is instituting a resolicitation for project information. The deadline to submit forms are due Friday, Jan. 4, 2013. Once all Project Information Forms have been received, the TWDB, in coordination with TCEQ, rate and rank the projects based on a series of factors and draft an Intended Use Plan with a list of projects in priority order is produced. The City is only submitting a PIF at this point.

Budget Information: The Clean Water State Revolving Fund (CWSRF) provides fixed and variable rate loans at subsidized rates which will be used to cover the total cost of the WWTP expansion, including planning, design, and construction. An amount of \$4.3 million will be sought through the CWSRF to begin with the planning phase of the proposed project. If funding is approved by TWDB, The Clean Water funding has a 1.85% origination fee that is applied to the loan amount only and offers a repayment period up to 10 years for planning and design loans and up to 30 years for construction loans.

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

Attachments / click to download

- [TWDB Overview](#)
- [TWDB Resolution](#)



Here is an overview of the process involved with receiving funding from the TWDB’s SRF programs.

Resolution No. _____

A RESOLUTION TO AUTHORIZE LOCAL FUNDING AND SUPPORT OF A WASTEWATER TREATMENT PLANT (WWTP) EXPANSION TO THE TEXAS WATER DEVELOPMENT BOARD FOR FUNDS IN THE CLEAN WATER STATE REVOLVING FUND 2013 SOLICITATION FOR PROJECT INFORMATION FORMS

Whereas, the Texas Water Development Board opened a solicitation for Project Information Forms in December 2012 to eligible applicants to provide fixed and variable rate loans at subsidized interest rates made available through the Clean Water State Revolving Fund; and

Whereas, the WWTP Expansion will increase the capacity of daily average flow from 3.0 million gallons per day to 4.5 million gallons per day; and the City intends to submit a Project Information Form to be rated and placed on the state's annual invited projects list; and

Whereas, the loans can be used for planning, design, and construction of wastewater treatment facilities; and the need for the City of Kyle to expand its wastewater treatment capabilities; thereby pledging local funds to meet the total project estimate of \$4.3 million:

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

- Sec. 1. The City of Kyle supports funding this project as shown in the Project Information Form and commits to the project's development, implementation, construction, maintenance, management, and financing. The City is willing and able to enter into an agreement with TWDB by resolution or ordinance.
- Sec. 2. That the City adopts a resolution approving the submission of the Project Information Form; and the support and funding of the project should it receive loan funds.
- Sec. 3. That the City Manager is hereby authorized to act on behalf of the City in all matters relating to this funding Information Form and to execute all necessary applications, assurances, certifications, and other documents, relative to the submission, later acceptance, and administration of such funds.
- Sec. 4. That it is hereby officially found and determined that his meeting at which this resolution is passed is open to the public as required by law, and that the public notice of the time, place and purpose of said meeting was given as required. The regular meeting of the Kyle City Council was called to order at 7:00PM on December 18, 2012 in Kyle, Texas by Mayor, Lucy Johnson.

Resolution _____ was presented and passed on this _____ day of December 2012, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Kyle, Texas.;

ATTEST:

City Secretary, Amelia Sanchez

MAYOR, Lucy Johnson

Item # 14



CITY OF KYLE, TEXAS

Naming of Adell Hurst Senior Center

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: A RESOLUTION OF THE CITY OF KYLE, TEXAS, ACKNOWLEDGING THE CONTRIBUTIONS OF KYLE RESIDENT ADELL HURST, PARTICULARLY HER CONTRIBUTIONS FOR THE SENIOR CITIZENS OF KYLE AND THE PRESERVATION OF THE CITY'S HISTORY AND HERITAGE, AND TO MEMORIALIZE THOSE CONTRIBUTIONS BY RENAMING THE KYLE HISTORIC CITY HALL TO THE ADELL HURST SENIOR CITIZENS CENTER AND THEREBY HONORING HER FOR HER OUTSTANDING CIVIC INVOLVEMENT ON BEHALF OF THE CITY OF KYLE ~ *David Wilson, Council Member District 4*

Other Information:

Budget Information:

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[Adell Hurst Resolution](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS, ACKNOWLEDGING THE CONTRIBUTIONS OF KYLE RESIDENT ADELL HURST, PARTICULARLY HER CONTRIBUTIONS FOR THE SENIOR CITIZENS OF KYLE AND THE PRESERVATION OF THE CITY'S HISTORY AND HERITAGE, AND TO MEMORIALIZE THOSE CONTRIBUTIONS BY RENAMING THE KYLE HISTORIC CITY HALL TO THE ADELL HURST SENIOR CITIZENS CENTER AND THEREBY HONORING HER FOR HER OUTSTANDING CIVIC INVOLVEMENT ON BEHALF OF THE CITY OF KYLE.

Whereas, the City of Kyle is fortunate to have a vigorous and active senior citizen's community; and

Whereas, the City's senior citizens have organized to form the Kyle Area Senior Zone (KASZ) for the purposed of giving Kyle's senior citizens an outlet for recreation, socialization and support; and

Whereas, the City of Kyle's Historic City Hall is an icon of Kyle's history and heritage; and

Whereas, the Historic City Hall was recently restored to its original glory with the assistance of KASZ and its members; and

Whereas, Adell Hurst is a founding member of KASZ and has dedicated countless hours of time and energy towards its mission; and,

Whereas, Adell Hurst was also a driving force in the efforts to restore the Kyle Historic City Hall and then to secure its use for the benefit of senior services and KASZ activities, and;

Whereas, it is just and appropriate to bestow the name of Adell Hurst on the building that encompasses so much of her life and spirit so that others may know of her importance to the history of the City of Kyle, and:

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

The Kyle City Council does hereby resolve and authorize the Kyle Historic City Hall to be renamed the Adell Hurst Senior Citizens Center, and by doing so ask that all who use and visit this historic facility give thanks to the many people who have benefited from the work and personal love for life that Adell Hurst gave to this city and especially to this city's senior citizens.

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Effective Date. This Resolution shall take effect from and after the date of its passage as authorized by the Charter of the City of Kyle.

Section 3. Open Meetings. That it is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

FINALLY PASSED AND APPROVED on this the ____ day of _____, 2012.

ATTEST:

THE CITY OF KYLE, TEXAS

Amelia Sanches, City Secretary

Lucy Johnson, Mayor

City of Kyle Resolution No. _____



CITY OF KYLE, TEXAS

Authorize Contract Award for Bond Counsel

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize the City Manager to negotiate and execute a 5-year professional services agreement with BICKERSTAFF HEATH DELGADO ACOSTA, LLP of Austin, Texas, with one 5-year extension option to provide bond counsel and related advisory services to the City of Kyle ~ *Perwez A. Moheet, CPA, Director of Finance*

Other Information: On November 13, 2012, the City of Kyle recently issued a Request for Qualification Statements (RFQ No. 2012-02-PM) from qualified and experienced firms performing bond counsel and related advisory services interested in providing such services to the City of Kyle's City Council and its management team.

The City of Kyle posted the Public Notice and the Request for Qualification Statements for a Bond Counsel & Related Advisory Services on its website effective November 13, 2012. The City of Kyle accepted Statement of Interest and Qualifications until 10:00 a.m., December 6, 2012 in the City's Financial Services Department.

A copy of the City's Public Notice and the Request for Qualification Statements for a Bond Counsel is attached. This document provides complete details for:

1. Qualification requirements
2. Scope of services
3. Selection criteria

Budget Information: A Fiscal Note for this agenda item is not required. All payments for bond counsel and related advisory services will be made from future bond proceeds including refunding transactions.

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Cover Memo

Item # 16



CITY OF KYLE, TEXAS

Dacy Lane Interlocal Agreement

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize the City Manager to execute the First Amendment to Interlocal Agreement between Hays County and the City of Kyle to establish a 6-year annual payment schedule for the reimbursement of City's share totaling \$1,921,241.28 (24.39%) of construction costs for Dacy Lane roadway improvements. In addition, interest cost will accrue and due if payment in full is not made by the first year. Construction cost for the entire Dacy Lane project totaled \$7,877,168.00 ~ *Lanny Lambert, City Manager*

Other Information:

Budget Information: A Fiscal Note is attached.

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

Attachments / click to download

- [1st Amendment to ILA w/Hays County for Dacy Lane](#)
- [City's Share of Costs for Dacy Lane](#)
- [Agreement Dacy Lane Original](#)
- [Fiscal Note - Dacy Lane 1st Amendment](#)
- [Email - Amendment to Dacy Agreement](#)

**FIRST AMENDMENT TO
INTERLOCAL AGREEMENT BETWEEN
HAYS COUNTY AND THE CITY OF KYLE (DACY LANE)**

This 1st Amendment to an Agreement first executed on or about the 20th day of September, 2011 ("Amendment") is made this 30 day of October, 2012, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of Kyle, Texas (hereinafter referred to as "City"). The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

The parties agree to amend their original Interlocal Agreement as follows:

Section 2.1 shall be modified so that full payment of Two Million Dollars (\$2,000,000 USD), as may be adjusted under Sections 2.3 or 2.4, is no longer *due* on or about September 30th of the fiscal year in which the Project reaches substantial completion. Instead, payment shall be *payable in full* beginning on or about the thirtieth (30th) day after the City receives written notice that the Project has reached substantial completion (hereinafter "the Payable Date"), subject to the terms of payment detailed below.

- 1) Final payment shall be due seven (7) years after the Payable Date ("Final Payment Date"). There shall be no prepayment penalty for payment in full prior to Final Payment Date.
- 2) Beginning on the Payable Date, interest shall accrue on the payment due at a rate of three and eighty-nine one-hundredths percent (3.89%) per annum. However, interest shall not accrue until one (1) year after the Payable Date.
- 3) If the City pays in full the amount owed under Section 2.1 within one (1) year of the Payable Date, then the City shall not be required to pay interest on the amount owed.
- 4) Until such time that the City has made payment in full, the City shall be obligated to make a minimum payment of two hundred thousand dollars (\$200,000.00 USD) each year beginning the second (2nd) year after the Payable Date and ending the fourth (4th) year after the Payable Date.
- 5) Until such time that the City has made payment in full, the City shall be obligated to make a minimum payment of four hundred thousand dollars (\$400,000.00 USD) each year beginning the fifth (5th) year after the Payable Date and ending the sixth (6th) year after the Payable Date.

EXCEPT FOR THE ABOVE MODIFICATIONS, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

This 1st Amendment to Interlocal Agreement between Hays County and the City of Kyle (Dacy Lane) is hereby executed this the 30 day of October, 2012, as is evidenced by the authorized signatures of the Parties, below.

CITY

BY: LANNY LAMBERT
KYLE CITY MANAGER

ATTEST: _____

BY:
KYLE CITY CLERK

COUNTY



Bert Cobb
BY: _____
HAYS COUNTY, TEXAS
JUDGE BERT COBB, M.D.
HAYS COUNTY JUDGE

ATTEST: _____

Liz Q. Gonzalez
BY: _____
LIZ Q. GONZALEZ
HAYS COUNTY CLERK



Amendment to Dacy Agreement

Mark Kennedy <mark.kennedy@co.hays.tx.us>
To: PerwezMoheet <pmoheet@cityofkyle.com>, l.lambert@cityofkyle.com

Fri, Dec 7, 2012 at 3:55 PM

Please see the email below and the document attached.

- Mark Kennedy

----- Forwarded message -----
From: **Bill Herzog** <bherzog@co.hays.tx.us>
Date: Fri, Dec 7, 2012 at 10:02 AM
Subject: RE: Amendment to Dacy Agreement
To: Mark Kennedy <mark.kennedy@co.hays.tx.us>

See attached itemization of Dacy Lane Project costs. The figures in the upper right hand corner of the schedule shows the allocation of costs based upon Kyle's 24.39% share. I can prepare an amortization schedule if I have the beginning date as well as the expected dates that the minimum payments will be paid to the County .

Thanks

Bill

From: kennedylaw@gmail.com [mailto:kennedylaw@gmail.com] **On Behalf Of** Mark Kennedy
Sent: Thursday, December 06, 2012 6:03 PM
To: Perwez Moheet
Cc: l.lambert@cityofkyle.com; Michael Perkins; Bill Herzog
Subject: Re: Amendment to Dacy Agreement

Perwez - Michael, my assistant told me today that someone from Kyle called wanting to know if I had ever gotten the email from you below. I did a search for it and found it, but I must say that I had not seen it before. My sincere apologies for not having responded earlier. My initial responses to your questions are in red, below. Let me know if you need further feedback.

[Quoted text hidden]

--
[Quoted text hidden]

 **Dacy Lane-project recon-12-7-12.pdf**
19K

Item # 17

Dacy Lane - project reconciliation

7,970,000	County Funds - Debt Proceeds
91,900	Other Financing Sources
<u>(61,900)</u>	Issuance Costs
8,000,000	Total County Funds
23,598	Interest thru October 2012
(7,936,391)	Invoices paid to date
<u>(751.01)</u>	Balance of construction contract
86,456	Balance



Estimated Total Project Cost	7,877,168.00
City of Kyle portion	1,921,241.28
Hays County portion	5,955,926.72

Engineering/Design Services:

CC Approved	Contract		Invoice No.	Invoice Date	Date Paid	Amount	
	Amount	Contractor				Paid	Balance
3/10/2009	891,580	LAN, Inc.	1	6/2/2009	7/7/2009	29,154.42	862,425.58
		(Sub-Chaparral)	9773	3/31/2009	7/7/2009	10,250.00	852,175.58
		(Sub-Chaparral)	9805	4/30/2009	7/7/2009	18,750.00	833,425.58
		(Sub-Chaparral)	9832	5/31/2009	7/7/2009	8,500.00	824,925.58
			2	6/30/2009	8/18/2009	45,834.66	779,090.92
			3	7/27/2009	10/13/2009	49,936.59	729,154.33
			4	9/14/2009	10/13/2009	104,064.11	625,090.22
			5	10/8/2009	12/8/2009	75,714.67	549,375.55
			6	11/3/2009	12/8/2009	74,917.35	474,458.20
		(Sub-Chaparral)	10042	10/27/2009	12/8/2009	18,250.00	456,208.20
		(Sub-Chaparral)	10070	11/6/2009	12/8/2009	500.00	455,708.20
			7	12/1/2009	2/9/2010	49,949.20	405,759.00
			8	1/5/2010	2/9/2010	70,103.10	335,655.90
		(Sub-Chaparral)	10113	11/30/2009	2/9/2010	500.00	335,155.90
			9	1/26/2010	2/23/2010	124,983.22	210,172.68
			10	2/23/2010	3/30/2010	49,920.25	160,252.43
		(Sub-Chaparral)	10223	2/28/2010	3/30/2010	800.00	159,452.43
			11	4/7/2010	6/1/2010	98,958.00	60,494.43
		(Sub-Chaparral)	10263	3/31/2010	6/1/2010	675.00	59,819.43
			12	5/4/2010	5/25/2010	29,126.42	30,693.01
			13	6/3/2010	7/6/2010	19,238.58	11,454.43
		(Sub-Chaparral)	10240	3/24/2010	7/6/2010	1,035.00	10,419.43
			14	6/30/2010	7/27/2010	9,159.43	1,260.00
		(Sub-Chaparral)	10446	8/25/2010	7/6/2010	1,260.00	(0.00)
							(0.00)
Total Contract:	891,580.00						
Pd LAN:	(831,060.00)						
Pd Chaparral:	<u>(60,520.00)</u>						
Balance:	(0.00)						

Right of Way Services:

CC Approved	Contract		Invoice No.	Invoice Date	Date Paid	Amount	
	Amount	Contractor				Paid	Balance
3/10/2009	256,500	LAN, Inc.	325977	7/13/2009	7/28/2009	2,500.00	254,000.00
			325933	6/12/2009	8/25/2009	21,000.00	233,000.00
			325988	8/13/2009	8/25/2009	1,000.00	232,000.00
			326032	11/17/2009	12/8/2009	3,500.00	228,500.00
			326121	12/18/2009	1/19/2010	4,200.00	224,300.00
			326131	1/12/2010	2/9/2010	1,000.00	223,300.00
			326149	2/4/2010	2/23/2010	17,400.00	205,900.00
			326165	3/15/2010	3/30/2010	1,800.00	204,100.00
			326180	4/15/2010	5/4/2010	10,400.00	193,700.00
			326196	5/10/2010	5/25/2010	5,600.00	188,100.00
			326212	6/11/2010	7/6/2010	8,400.00	179,700.00
			326297	7/16/2010	8/3/2010	12,200.00	167,500.00
			326306	8/9/2010	9/14/2012	11,200.00	156,300.00

326321	9/16/2010	9/28/2010	19,600.00	136,700.00
326381	10/14/2010	9/30/2010	5,600.00	131,100.00
326496	1/20/2011	2/15/2011	1,000.00	130,100.00
326573	5/11/2011	5/24/2011	1,000.00	129,100.00
		<i>Credit</i>	(1,000.00)	130,100.00

Total Budget: 256,500.00
 Invoices Paid: (126,400.00)
 Balance: 130,100.00

Construction Administration:

Contract	Amount	Contractor	Invoice No.	Invoice Date	Date Paid	Amount Paid	Balance
CC Approved							
8/3/2010	254,596.00	LAN, Inc.	1	9/3/2010	9/30/2010	9,096.90	245,499.10
			2	9/30/2010	9/30/2010	3,065.40	242,433.70
			3	11/5/2010	12/7/2010	11,649.36	230,784.34
			4	12/6/2010	1/18/2011	16,879.05	213,905.29
			5	1/3/2011	2/15/2011	9,770.45	204,134.84
			6	2/1/2011	3/1/2011	11,239.59	192,895.25
			7	2/28/2011	3/15/2011	12,401.65	180,493.60
			8	4/11/2011	5/24/2011	26,322.10	154,171.50
			9	5/9/2011	5/24/2011	20,395.25	133,776.25
			10	6/3/2011	6/14/2011	15,463.32	118,312.93
			11	7/5/2011	7/26/2011	9,107.50	109,205.43
			12	8/15/2011	8/30/2011	36,536.77	72,668.66
			13	9/14/2011	9/30/2011	17,602.83	55,065.83
			14	10/7/2011	9/30/2011	11,286.25	43,779.58
			15	11/4/2011	11/22/2012	14,844.13	28,935.45
			16	12/7/2011	12/7/2012	10,203.75	18,731.70
			17	1/5/2012	1/31/2012	5,609.50	13,122.20
			18	1/27/2012	3/27/2012	10,060.50	3,061.70
	29,322.00		19	3/2/2012	3/13/2012	9,921.03	22,462.67
			20	6/4/2012	6/12/2012	18,514.88	3,947.79
			21	6/28/2012	7/17/2012	2,122.74	1,825.05
			22	8/1/2012	8/21/2012	1,110.00	715.05
			23	10/15/2012	10/23/2012	715.05	0.00

Total Budget: 283,918.00
 Invoices Paid: (283,918.00)
 Balance: -

Construction:

Contract	Amount	Contractor	Pay App #	Invoice Date	Date Paid	Amount Paid	Balance
CC Approved							
7/6/2010	5,724,468.14	Capital Excavation	1	10/31/2010	12/7/2010	189,202.49	5,535,265.65
			2	11/30/2010	1/18/2011	17,344.80	5,517,920.85
			3	12/31/2010	2/15/2011	502,902.38	5,015,018.47
	18,214.53	CO #1	4	1/31/2011	1/31/2011	525,267.82	4,507,965.18
	(1,600.00)	CO #2	5	2/28/2011	3/29/2011	204,702.77	4,301,662.41
			6	3/31/2011	4/26/2011	829,348.02	3,472,314.39
			7	4/30/2011	6/14/2011	346,285.52	3,126,028.87
	(7,946.60)	CO #3	8	5/31/2011	5/31/2011	244,779.40	2,873,302.87
			9	6/30/2011	6/30/2011	315,874.94	2,557,427.93
			10	7/30/2011	8/30/2011	298,163.56	2,259,264.37
			11	8/30/2011	9/30/2011	318,296.76	1,940,967.61
			12	9/30/2011	9/30/2011	335,890.50	1,605,077.11
			13	10/31/2011	11/22/2011	295,714.09	1,309,363.02
	68,036.30	CO #4	14	11/30/2011	1/31/2012	308,693.83	1,068,705.49
			15	12/31/2011	3/13/2012	(4,849.86)	1,073,555.35
			16	1/31/2012	3/13/2012	103,672.49	969,882.86
			17	2/29/2012	4/10/2012	102,480.28	867,402.58

			18	3/31/2012	5/22/2012	154,602.76	712,799.82
26,206.75	CO #5		19	4/30/2012	5/29/2012	126,489.33	612,517.24
			20	5/30/2012	7/17/2012	395,336.45	217,180.79
180,022.84	CO #6		21	6/30/2012	7/31/2012	255,216.05	141,987.58
			22	7/30/2012	8/28/2012	50,676.60	91,310.98
			23	8/30/2012	9/30/2012	31,980.46	59,330.52
			24	9/30/2012	10/30/2012	59,330.52	0.00
751.01			25		11/6/2012		751.01

Total Budget: 6,008,152.97
 Invoices Paid: (6,007,401.96)
 Contract Bal: 751.01

Right of Way Acquisition:

	<u>Invoice No.</u>	<u>Invoice No.</u>	<u>Date Paid</u>	<u>Amount Paid</u>
Duvall Gruning Dietz	Eminent Domain	1001403	3/30/2010	82.50
Gracy Title	Right of Way	GF903012	3/30/2010	124,889.00
Gracy Title	Right of Way	GF100028	3/30/2010	78,873.00
Duvall Gruning Dietz	Eminent Domain	1001403B	4/20/2010	30.00
Gracy Title	Right of Way	GF100028A	5/4/2010	81,428.00
Gracy Title	Right of Way	GF100028B	5/4/2010	33,797.00
Danny & Donna Fay Green	Right of Way	50710	5/18/2010	12,805.00
Dena Campbell	Right of Way	50710A	5/18/2010	495.00
Duvall Gruning Dietz	Eminent Domain	1001403C	6/1/2010	172.50
Irma Gomez-Palacios	Right of Way	60110	6/8/2010	2,504.70
Duvall Gruning Dietz	Eminent Domain	1001403D	6/29/2010	390.00
Gracy Title	Right of Way	GF903014	6/29/2010	105,426.36
Gracy Title	Right of Way	GF903018	6/29/2010	176,314.00
Duvall Gruning Dietz	Eminent Domain	1001403E	7/6/2010	120.00
Duvall Gruning Dietz	Eminent Domain	1001403F	7/6/2010	52.50

Total Paid: 617,379.56

Utility Relocation:

Verizon	12611	2/22/2011	18,849.83
Verizon Refund	12611	9/14/2011	(9,137.92)

Total Paid: 9,711.91

Item # 17



Amendment to Dacy Agreement

Mark Kennedy <mark.kennedy@co.hays.tx.us>

Thu, Dec 6, 2012 at 6:02 PM

To: Perwez Moheet <pmoheet@cityofkyle.com>

Cc: l.lambert@cityofkyle.com, Michael Perkins <michael.perkins@co.hays.tx.us>, Bill Herzog <bherzog@co.hays.tx.us>

Perwez - Michael, my assistant told me today that someone from Kyle called wanting to know if I had ever gotten the email from you below. I did a search for it and found it, but I must say that I had not seen it before. My sincere apologies for not having responded earlier. My initial responses to your questions are in red, below. Let me know if you need further feedback.

1. The final cost per Jennifer Scott came to \$7,865,356.03 and applying City's pro-rata share of 24.39% (per section 2.3 and 2.4 of original agreement), the City's adjusted share is \$1,918,360.34 for the Dacy Lane project. This is the base amount that the City is responsible for plus any accrued interest, correct? **That is my understanding. I have placed a call with Bill Herzog seeking confirmation of the exact money amounts. He mentioned that he was going to calculate the City's portion not long ago, so he can probably send me his calculations on that, as well. When he does, I will forward them to you.**
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Again, I want to apologize for the delay in getting this to you. Please let me know how else I can help.

Sincerely,

Mark D. Kennedy
Chief - Civil Division
Hays County Criminal District Attorney's Office
Hays County, Texas
111 E. San Antonio, Suite 204
San Marcos, Texas 78666
(512) 393-2208
(512) 393-2246 (fax)

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On Wed, Nov 14, 2012 at 10:17 AM, Perwez Moheet <pmoheet@cityofkyle.com> wrote:
[Quoted text hidden]

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INTERLOCAL AGREEMENT BETWEEN
HAYS COUNTY AND CITY OF KYLE
(DACY LANE)

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Interlocal Agreement (the “Agreement”) is entered into as of this 20th day of September, 2011, by and between Hays County, a political subdivision of the State of Texas (the “County”) and the City of Kyle, a political subdivision of the State of Texas (the “City”) (collectively, the “Parties”).

RECITALS

WHEREAS, V.T.C.A., Government Code, Chapter 791, cited as the Texas Interlocal Cooperation Act, provides that any one or more local governments may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties;

WHEREAS, the County and the City each entered into Economic Development Incentives Agreements (“EDIAs”)with the Daughters of Charity Health Services of Austin d/b/a/ Seton Family of Hospitals (“Seton”);

WHEREAS, the County, in its EDIA with Seton agreed to make improvements to the portion of Dacy Lane that abuts the western side of the Seton property, improving, at a minimum, that roadway to three lanes in width and to a county road standard;

WHEREAS, the City expressed a desire to have the County construct this portion of Dacy Lane to a higher standard than required by the County’s EDIA with Seton;

WHEREAS, the City, in order to induce the County to construct this portion of Dacy Lane to a higher standard, expressed a desire and intent to participate with the County in the funding of the Dacy Lane Project; and

WHEREAS, the Parties wish to commit their agreement to writing, as is required by Chapter 791 of the Texas Government Code.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the County agree as follows:

A.

TERMS AND CONDITIONS**1. Project Description.**

1.1 The Project. The Dacy Lane Project consists of widening and improving the roadway to a 4-Lane, curb-and-gutter, urban-arterial roadway. Additionally, Dacy Lane will be straightened north of Goforth Road to facilitate safety and mobility of traffic, including emergency vehicles associated with the Seton Hospital development. The total Project has been estimated to be Eight Million, Two-Hundred Thousand Dollars (\$8,200,000.00 USD) ("Project Costs").

2. Party Obligations.

2.1 City Payment. In return for the County's willingness to build the Dacy Lane project to a higher road standard, the City shall pay Two Million Dollars (\$2,000,000 USD) as its share of the Project Costs. The City's payment, which may be adjusted under Sections 2.3 and 2.4 below, shall be due on or about September 30th of the fiscal year in which the Project reaches substantial completion (currently anticipated to be FY 2012, which would make payment due September 30, 2012). If the Parties agree to further payment arrangements, then those arrangements shall be reflected in a written amendment to this Agreement, which shall be duly authorized and executed by the Parties.

2.2 County Payment. The County shall be responsible for all costs related to the environmental permitting, project design, acquisition of right-of-way, and construction costs for the Dacy Lane Project.

2.3 Pro-Rata Reimbursement. Each Party shall be responsible for an amount that is equal to that Party's pro rata contribution to the Project Costs. The pro rata contribution for the City under this Amended Agreement is 24.39%. The pro rata contribution for the County under this Amended Agreement is 75.61%. If final project costs are *less* than the Project Costs cited in Section 1.1, above, then the City shall only be obligated to pay 24.39% of final project costs.

2.4 Additional Pro-Rata Contribution. Each Party shall be responsible for an amount that is equal to that Party's pro rata contribution to the Project Costs. The pro rata contribution for the City under this Agreement is 24.39%. The pro rata contribution for the County under this Agreement is 75.61%. If final project costs are *more* than the Project Costs cited in Section 1.1, above, then the City shall be obligated to pay 24.39% of final project costs, even though that amount exceeds Two Million Dollars (\$2,000,000 USD).

2.5 Written Notice of Final Project Costs. At or about the time of substantial completion, the County shall provide the City with written notice of the final project

costs associated with the Dacy Lane Project. Said written notice shall include an accounting of expenditures related to the Project. This written notice shall begin the time period for the City's payment obligations under Section 2.1, above.

B.

MISCELLANEOUS PROVISIONS

1. **Execution.** This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.
2. **Governing Law.** This Agreement will be governed by the Constitution and laws of the State of Texas.
3. **Successors and Assigns.** The assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party.
4. **Headings.** The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.
5. **Partial Invalidity.** If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.
6. **Waiver.** Any waiver by any party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.
7. **Amendments.** This Agreement may be amended or modified only by written agreement duly authorized and executed by the duly authorized representatives of the Parties. The Parties anticipate that, if SJR 26 from the Regular 82nd Legislative Session, which was filed with the Texas Secretary of State on May 27, 2011, is passed into law by voters on November 8, 2011, this Agreement will be amended to accommodate the City's request for a longer pay period under Section 2.1, above, the length of which shall be determined by the Parties.
8. **Cooperation.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.
9. **Venue.** All obligations of the Parties are performable in Hays County, Texas and venue for any action arising hereunder will be in Hays County.

10. **Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.
11. **Representations.** Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, will not be merged, and will survive the termination or expiration of this Agreement.
12. **Exhibits.** All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.
13. **Entire Agreement.** This Agreement, including any attached exhibits, contains the entire agreement between the Parties with respect to the subject matter and supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matters.
14. **Term.** This Agreement shall automatically terminate if a contract for the Project is not awarded within three (3) years after this Agreement is executed by both parties.


C.

INTERLOCAL AGREEMENT

1. The City and the County, as units of local government, are authorized by §791.011 of the Texas Government Code to contract with each other to perform certain governmental functions and services. As defined in §791.003 of the Texas Government Code, such governmental functions and services include the construction and improvement of roadways.
2. Pursuant to §791.011(d)(1) of the Texas Government Code, this Agreement has been duly authorized by the governing body of both the City and the County.
3. Pursuant to §791.011(d)(3) of the Texas Government Code, the Parties agree that the funds being committed by the County and the City under this Agreement shall be paid from current revenues available the County and the City, respectively.
4. Pursuant to §791.011(f) of the Texas Government Code, this Agreement shall automatically renew on the 1st day of October of each calendar year unless otherwise validly terminated by the Parties under Section 14.

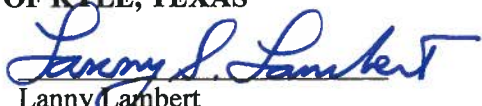
IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

HAYS COUNTY

By: 
Judge Bert Cobb, M.D.
Hays County Judge

Date: 11-8-2011 10AM CST

CITY OF KYLE, TEXAS

By: 
Lanny Lambert
City Manager

Date: 9-20-11



Grace Nino <gracenino@cityofkyle.com>

Fwd: Amendment to Dacy Agreement

Lanny Lambert <l.lambert@cityofkyle.com>

Fri, Dec 7, 2012 at 7:41 AM

To: Perwez Moheet <pmoheet@cityofkyle.com>, GRACE NINO <gracenino@cityofkyle.com>

grace, copy for me, thanks, lan

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

From: Mark Kennedy <mark.kennedy@co.hays.tx.us>

Date: Thu, Dec 6, 2012 at 6:02 PM

Subject: Re: Amendment to Dacy Agreement

To: Perwez Moheet <pmoheet@cityofkyle.com>

Cc: l.lambert@cityofkyle.com, Michael Perkins

<michael.perkins@co.hays.tx.us>, Bill Herzog <bherzog@co.hays.tx.us>

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Item # 17

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Mark D. Kennedy

Chief - Civil Division

Hays County Criminal District Attorney's Office

Hays County, Texas

111 E. San Antonio, Suite 204

San Marcos, Texas 78666

(512) 393-2208

(512) 393-2246 (fax)

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City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: December 18, 2012
CONTACT CITY DEPARTMENT: Office of the City Manager
CONTACT CITY STAFF: Lanny Lambert, City Manager

SUBJECT: Authorize the City Manager to execute the First Amendment to Interlocal Agreement (ILA) between Hays County and the City of Kyle to establish a 6-year annual payment schedule for the reimbursement of City's share totaling \$1,921,241.28 (24.39%) of construction costs for Dacy Lane roadway improvements. In addition, interest cost will accrue and due if payment in full is not made by the first year. Construction cost for the entire Dacy Lane project totaled \$7,877,168.00

CURRENT YEAR FISCAL IMPACT:

This amendment to the ILA with Hays County will require expenditure of funds from the General Fund in future fiscal years beginning in FY 2013-14. It should be noted that this First Amendment to the ILA establishes **minimum annual payments** to be made by the City of Kyle to Hays County as follows:

Year 1 (FY 2012-13):	\$0.00
Year 2 (FY 2013-14):	\$200,000.00
Year 3 (FY 2014-15):	\$200,000.00
Year 4 (FY 2015-16):	\$200,000.00
Year 5 (FY 2016-17):	\$400,000.00
Year 6 (FY 2017-18):	\$400,000.00
Year 7 (FY 2018-19):	\$521,241.28 Plus Accrued Interest

FUNDING SOURCE OF THIS ACTION:

The funding source for the repayment of City's share of construction costs for Dacy Lane roadway improvements plus all accrued interest will be provided from future budgets of the City's General Fund.

Accordingly, sufficient funding will have to be planned and appropriated in future annual budget of the City to make the principal and interest payments each year. **It is estimated that the average debt service payment for both principal and interest due to Hays County will total approximately \$360,000.00 each year for six fiscal years (Years 2 through 7) beginning in FY 2013-14.**

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A



CITY OF KYLE, TEXAS

Resolution setting Legislative Issues

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation:

A RESOLUTION OF THE CITY OF KYLE, TEXAS DECLARING GOALS FOR THE LEGISLATIVE SESSION TO INCLUDE PRIORITIES DETERMINED BY THE CITY COUNCIL THAT RANGE FROM WATER UTILITY REGULATION AND FIRE CONTROLS WITHIN CITY LIMITS, CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORITY OF CITIES, STATE FUNDING FOR LIBRARY SERVICES, EXTRATERRITORIAL JURISDICTION (ETJ) ISSUES AND ANNEXATION POWERS INCLUDING RIGHTS FOR LAND OWNERS THAT ARE ADJACENT TO ANOTHER CITY'S ETJ, AUTHORITY TO INCLUDE A CITY'S ABILITY TO COLLECT SALES TAX ON NEW CAR SALES TO THAT OF THE STATE, AND TO ADDRESS REASONABLE MUNICIPAL COURT FINES AND THE SHARE OF SUCH FINES WITH THE STATE OF TEXAS ~ *Lanny Lambert, City Manager*

Other Information:

Budget Information:

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

Attachments / click to download

[Resolution Setting Legislative Issues](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS DECLARING GOALS FOR THE LEGISLATIVE SESSION TO INCLUDE PRIORITIES DETERMINED BY THE CITY COUNCIL THAT RANGE FROM WATER UTILITY REGULATION AND FIRE CONTROLS WITHIN CITY LIMITS, CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORITY OF CITIES, STATE FUNDING FOR LIBRARY SERVICES, EXTRATERRITORIAL JURISDICTION (ETJ) ISSUES AND ANNEXATION POWERS INCLUDING RIGHTS FOR LAND OWNERS THAT ARE ADJACENT TO ANOTHER CITY'S ETJ, AUTHORITY TO INCLUDE A CITY'S ABILITY TO COLLECT SALES TAX ON NEW CAR SALES TO THAT OF THE STATE, AND TO ADDRESS REASONABLE MUNICIPAL COURT FINES AND THE SHARE OF SUCH FINES WITH THE STATE OF TEXAS

WHEREAS, The City of Kyle is a home-rule municipality with all powers enabled to it by the State Legislature under Chapter 51 of the Local Government Code; AND,

WHEREAS, The City Council is the elected ruling body of the City of Kyle; AND,

WHEREAS, The City Council has identified and described legislative changes that are of a priority nature to the citizens of Kyle; AND,

WHEREAS, The City of Kyle has identified that these priorities pose an immediate and direct threat to the home-rule doctrine expressed by the State Legislature in Chapter 51 of the Local Government Code; AND,

WHEREAS, The City of Kyle wishes to petition the duly elected Officials that represent the interests of the citizens of Kyle before the State Legislature to include these said priorities in the upcoming Legislative Session;

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

- 1) The City of Kyle finds the following issues relevant and timely to the upcoming Legislative Session and wishes for them to be included by all elected officials that are duly representing the interests of the City of Kyle;
 - a. That Fire Safety Authority of a City should include all areas of the incorporated boundaries of a City, including certain holders of Certificates of Convenience and Necessity (CCN) that are deemed exempt from providing Fire Protection through determinations of the Texas Commission on Environmental Quality under the requirements of Rural Water Corporations, more especially since the very fact that the CCN has been duly annexed by the City would indicate that increased density of development that occurs within the boundaries of cities would preclude

the annexed area from being considered “rural” and therefore exempt from providing fire protection that is expected within more dense areas; and,

- b. That Cities, which the Legislature has granted numerous powers for local control, be given powers that would include a simplified process for adding adjoining CCN’s within their ETJ or City Limits to their own to minimize expenses incurred to offer improved service to rate payers of said areas, broaden the ability and lessen restrictions for a City to file for Dual Certification in areas within it’s ETJ and City Limits, specify the process for condemning utilities within the ETJ and City Limits, and empower original jurisdiction over rates within the City Limits and ETJ; and,
 - c. That funding for Libraries removed in the last Legislative Session, especially that funding for new books, e-books, and the Tx Star Program be reinstated as it unfairly negatively effects smaller systems and the literacy of the citizens those systems serve; and,
 - d. That while the state has empowered property owners of greater than a certain amount of acreage that are adjacent to another CCN to determine which CCN they prefer to be in, it failed to allow for property owners that are adjacent to another city’s ETJ or City Limits to determine which City the landowner would prefer to be included in. This results in an unfair burden being placed on these property owners who may prefer the utility services of an adjoining city, to which they have a right, but would be forced to have double standards placed upon them for development purposes since there is no such escape clause for the adjoining City’s jurisdiction; and,
 - e. That while the State of Texas has authorized sales tax collection by the State on sales of new cars, it precluded local governments from doing the same. The City would request that new car sales no longer be exempt from local sales tax; and,
 - f. That collections of Municipal Court Fines for violations in the local jurisdiction are unfairly distributed with the bulk of any said fines going to the State of Texas. The City would request a more equitable way of distributing levied fines that would result a higher percentage of fines being kept local, where the laws are enforced, the court is held, and the fines collected.
- 2) The findings of fact, recitations, and provisions set out in the preamble of this Resolution are adopted and made a part of the body of this Resolution, as fully as if the same were set forth herein.

PASSED AND APPROVED THIS ____ day of _____, 2012,

CITY OF KYLE, TEXAS

By: _____
LUCY JOHNSON, MAYOR

ATTEST:

Amelia Sanchez, City Secretary

DRAFT



CITY OF KYLE, TEXAS

Memo of Understanding for FM 2770/RM 150 Bide/Ped Improvements

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Consideration and Possible Action to Authorize the City Manager to Execute Memorandum of Understanding regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise Program by City of Kyle ~ *Steven D. 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.

As a condition of this project and the attendant funding source the City must follow certain requirements stipulated by TxDOT as follows:

From time to time the City of Kyle receives federal funds from the Federal Highway Administration (FHWA) through TxDOT to assist the City with the construction and design of projects partially or wholly funded through FHWA. As a sub-recipient of funds, the City is required by 49 CFR 26 to implement a program for disadvantaged business enterprises (DBEs), as defined by 49 CFR 26 (DBE Program). TxDOT has implemented a DBE Program that is approved by FHWA pursuant to 49 CFR 26. Because certain aspects of the City's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and the City and TxDOT undertake substantially similar projects and use a 'same pool' of contractors, the City can adopt TxDOT's DBE Program to meet the federal requirements.

This Memorandum of Understanding (MOU) will be followed for the FM 2770 & RM 150 Sidewalks and Bicycle Lane Improvements project and all future projects where the City is a sub-recipient of federal funds through TxDOT. The Attachments referenced in the MOU (1-4 and A-F) will also be utilized as a condition of the approval of this MOU.

City Staff recommends approval and execution of the referenced MOU for this and all future projects where the City is a sub-recipient ^{Cover Memo} ~~item~~ # 19

federal funds through TxDOT.

The following documents are attached to provide detailed information:

1. MOU (TxDOT Form 2395) [6 pp.]
2. TxDOT MOU Instructions & Requirements
3. MOU Attachments (1-4 and A-F) [214 pp.]

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

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

Attachments / click to download

[TxDOT Form 2395 DBE MOU](#)

[MOU instructions TxDOT DBE](#)



**MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF
TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM BY CITY OF KYLE**

This Memorandum of Understanding (MOU) is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)**, an agency of the State of Texas; and
CITY OF KYLE, a political subdivision of the State of Texas.

Whereas, from time to time CITY OF KYLE receives federal funds from the Federal Highway Administration (FHWA) through TxDOT to assist CITY OF KYLE with the construction and design of projects partially or wholly funded through FHWA; and

Whereas, CITY OF KYLE, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises (DBEs), as defined by 49 CFR 26 (DBE Program); and

Whereas, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFR part 26; and

Whereas, certain aspects of CITY OF KYLE's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

Whereas, CITY OF KYLE and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, CITY OF KYLE desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and CITY OF KYLE find it appropriate to enter into this MOU to memorialize the obligations, expectations and rights each has as related to CITY OF KYLE's adoption of the TxDOT DBE's Program to meet the federal requirements;

Now, therefore, TxDOT and CITY OF KYLE, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) CITY OF KYLE is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The CITY OF KYLE receives its federal assistance through TxDOT. As a sub-recipient, CITY OF KYLE has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as CITY OF KYLE, adopt the DBE program, administered through TxDOT, and CITY OF KYLE by its prescribed protocol adopted the TxDOT DBE Program as of the date when adoption occurred.

(3) This MOU evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by CITY OF KYLE to achieve its DBE participation in federally assisted Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for CITY OF KYLE and for TxDOT.

(5) CITY OF KYLE and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by CITY OF KYLE :

(a) CITY OF KYLE will be responsible for project monitoring and data reporting to TxDOT. CITY OF KYLE will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, to CITY OF KYLE.

(b) CITY OF KYLE will recommend contract-specific DBE goals consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. CITY OF KYLE's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. CITY OF KYLE and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority regarding DBE goals.

(c) TxDOT will cooperate with CITY OF KYLE in an effort to meet the timing and other requirements of CITY OF KYLE projects.

(d) CITY OF KYLE will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on CITY OF KYLE construction projects or design projects subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).

(f) CITY OF KYLE will conduct reviews and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort (GFE), Commercially Useful Function (CUF), etc. CITY OF KYLE and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews. CITY OF KYLE shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations. CITY OF KYLE will require contractors for its FHWA federally assisted projects to use the attached forms as follows:

Attachment 1 – Disadvantaged Business Enterprise (DBE) Program Commitment Agreement
Form SMS 4901

Attachment 2 – DBE Monthly Progress Report Form SMS 4903

Attachment 3 – DBE Final Report Form SMS 4904

Attachment 4 – Prompt Payment Certification Form (Federal-air Projects) 2177

(g) CITY OF KYLE will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding CITY OF KYLE's administration of the DBE Program through TxDOT.

(h) CITY OF KYLE will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs.

CITY OF KYLE and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in CITY OF KYLE area.

(j) CITY OF KYLE will submit DBE semi-annual progress reports to TxDOT.

(k) CITY OF KYLE will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, DBE Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on CITY OF KYLE projects in the DBE Education and Outreach Programs.

(l) The Executive Director of CITY OF KYLE will implement all federal requirements, including those stated in Attachments A through F, which are incorporated as though fully set out herein for all purposes.

(m) In accordance with 23 CFR 200.1, CITY OF KYLE shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in , and beneficiaries of Sate highway programs, i.e., relocatees, impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's Office of Civil Rights (OCR).

(n) CITY OF KYLE will comply with 49 CFR 26.29 as stated in Attachment F.

(6) In the event there is a disagreement between TxDOT and CITY OF KYLE about the implementation of the TxDOT DBE Program by CITY OF KYLE the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible in consultation with FHWA. Non-compliance by CITY OF KYLE can result in restitution of federal funds to TxDOT and withholding of further federal funds upon consultation with FHWA.

(7) This MOU becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this MOU is terminated for any reason, CITY OF KYLE will be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non-compliant with 49 CFR Part 26.

(9) This MOU applies only to projects for which CITY OF KYLE is a sub-recipient of federal funds through TxDOT. CITY OF KYLE may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. CITY OF KYLE may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.

(10) The following attachments to this MOU are also incorporated as if fully set out herein for all purposes:

Attachment A – FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973);

Attachment B – SPECIAL PROVISION – LOCAL GOVERNMENT / RMA / NON-STANDARD CONTRACTS

Attachment C – 49 CFR §26.13 (contractual assurances)

Attachment D – DBE Program Compliance Guidance for Local Government Agencies

Attachment E – FHWA Form 1273

Attachment F – Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program with attachments as follows:

Attachment F1 – DBE Regulations: 49 CFR Part 26

Attachment F2 – DBE Special Provisions 000-1966

Attachment F3 – TxDOT's Organizational Chart

Attachment F4 – Measurement and Payment Special Provision 009-007

Attachment F5 – Texas Unified Certification Program (TUCP) DBE directory
example and website address to the directory

Attachment F6 – DBE Goal Methodology

Attachment F7 – DBE Bidder Certification

Attachment F8 – DBE Joint Check Approval Form

Attachment F9 – TUCP Standard Operating Procedures (SOP)

Attachment F10 – TUCP Memorandum of Agreement (MOA)

Attachment F11 – Forms list

(11) The following procedure shall be observed by the parties in regard to any notifications:

(a) Any notice required or permitted to be given under this MOU shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by

registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

CITY OF KYLE

NAME: LANNY S. LAMBERT
TITLE: CITY MANAGER

Hand Delivery:

100 W. CENTER ST., KYLE, TX 78640

Registered or Certified Mail (Return receipt requested):

100 W. CENTER ST., KYLE, TX 78640

TEXAS DEPARTMENT OF TRANSPORTATION
DBE Liaison
Office of Civil Rights
Address: 125 E. 11th Street
Austin, Texas 78701

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This MOU may be modified or amended only by written instrument, signed by both

CITY OF KYLE and the TxDOT and dated subsequent to the effective date(s) of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances shall not be affected; provided, however,

CITY OF KYLE and TxDOT may mutually agree to terminate this MOU.

(14) The following provisions apply in regard to construction of this MOU:

(a) Words of any gender in this MOU shall be construed to include the other, and words in either number shall be construed to include the other, unless the context in this MOU clearly requires otherwise.

(b) When any period of time is stated in this MOU, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or national holiday, or state or county holiday, these days shall be omitted from the computation. All hours stated in this MOU are stated in Central Standard Time or in Central Daylight Savings Time, as applicable.

(15) This MOU shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

EXECUTED in duplicate originals by TxDOT and CITY OF KYLE, acting through each duly authorized official and effective on the latest date signed.

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

CITY OF KYLE

By: _____
Phil Wilson
Executive Director

By: _____
Lanny S. Lambert
City Manager

Date: _____

Date: _____

Texas Department of Transportation (TxDOT) Memorandum of Understanding (MOU) Instructions & Requirements

All Local Government Entities ***must*** download both the MOU Form 2395 and MOU Attachments file containing MOU attachments 1-4 and A-F.

- The enforcement date of the MOU will be the actual date and time that it has been fully executed by the TxDOT Executive Director. The agenda and minutes or resolution approving the adoption of the DBE Program **MUST** accompany the signed **duplicate** counterpart originals of the MOU when presented to TxDOT Executive Director for signature. The originals must be signed by someone who has contract signature authority and can legally bind the Local Government Entity.
- If there is no such statute, ordinance, or delegation of authority, the Local Government Entity will need to convene a special meeting and pass such a resolution or ordinance and send those documents to TxDOT. The MOU cannot be fully executed prior to the authorization and confirmation of those documents.
- If this is a city, we'll need to receive a copy of the ordinance, city charter or other legal authority that gives the City Manager the authority to bind the City to the terms and conditions of the MOU; or
- That the mayor has the authority to delegate signature authority, and we'll need a letter from the Mayor acknowledging that authority. If the Mayor has delegated signature authority, the execution date on the MOU cannot be prior to the date on the Mayor's signature authority letter. A legal citing of the state law or statute granting this authority will also be required and need to be sent to TxDOT.

After successfully downloading and reviewing all of the above documents, complete and sign two (2) originals of the MOU by someone in an official capacity with the authority to bind the entity to the MOU agreement and then return to the address below:

Texas Dept. of Transportation
Office of Civil Rights
Attn. - Local Government MOUs
125 E 11th Street
Austin, TX 78701

For more information contact TxDOT's Office of Civil Rights at 512-486-5500 or email gloria.brown@txdot.gov



CITY OF KYLE, TEXAS

Full Moon Jubilee

Meeting Date:
12/18/2012
Date time: 7:00 PM

Subject/Recommendation: Authorize the Kyle Parks and Recreation Department to plan for a new special event called The Full Moon Jubilee and accept the event as a city sponsor event ~ *Kerry Urbanowicz, Director of Parks and Recreation*

Other Information: A new event at Lake Kyle called The Full Moon Jubilee. This event will take place on April 26, 2013 at Lake Kyle Park, from 6:00 pm to Midnight. ~ Deidre Flores, Recreation Manager for Kyle Parks, Recreation & Facilities Other Information: It is a goal of the Parks and Recreation Department to provide one new special event to the community each year. This year we would like to add the Full Moon Jubilee. While this event is still in its early planning stages, we hope to provide an event that will allow for night fishing, bring in some acoustic music, provide games and activities for kids and families, and minimal food vendors. This is just a short list of ideas that have we are brainstorming for this new event.

Budget Information: We do not have a budget for this event, however, we do have a line in the budget, Movies in the Park/Festivals (110-131-52146) for events such as this one. We estimate it will cost about \$3000 to put this event on, and plan to aggressively solicit sponsorship money to pay for the cost of it. We also plan to charge a minimal fee to enter this event. Fee will be dependent on the amount of sponsorship money we bring in and the overall cost of the event itself.

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

Attachments / click to download



CITY OF KYLE, TEXAS

City Managers Report

Meeting Date:
12/18/2012
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*

- Discuss annexation procedure

Other Information:

Budget Information:

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

Attachments / click to download
