

CITY OF KYLE



Notice of City Council Workshop 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 10/3/2013, at Kyle City Hall, 100 West Center Street, Kyle, Texas for the purpose of discussing the following agenda.

Posted this 26th day of September, 2013 prior to 7:00 p.m.

Notice of City Council Workshop Meeting

I. Call Meeting To Order

II. Consider and Possible Action

1. Consideration and General Discussion of Any and All Issues regarding the Emergency Services District #5; and Providing for Related Matters ~ *Lanny Lambert, City Manager*

 [Attachments](#)

III. 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

ESD #5

Meeting Date: 10/3/2013
Date time: 7:00 PM

Subject/Recommendation: Consideration and General Discussion of Any and All Issues regarding the Emergency Services District #5; and Providing for Related Matters ~ *Lanny Lambert, City Manager*

Other Information:

Budget Information:

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

Attachments / click to download

[ESD #5 Interlocal Agreement](#)

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF KYLE, TEXAS
AND HAYS COUNTY EMERGENCY SERVICES DISTRICT #5
DBA KYLE FIRE FOR THE ALLOCATION OF SALES TAX,
RENT AND OTHER FINANCIAL CONSIDERATIONS.**

This Interlocal Cooperation between the City of Kyle, Texas; and Hays County HCESD 5 DBA Kyle Fire, (“ILA”) is entered into and effective as of the ____ day of ____, 2013, by and between the City of Kyle, Texas, a Texas general law municipality, whose offices are located at 100 W. Center Street, Kyle, Texas 78640 (“City”), and the Hays County Emergency Services District #5 DBA Kyle Fire located at, 210 West Moore Street Kyle, TX 78640 a special district formed for emergency services (“HCESD 5”). In this ILA City and ESD#5 are sometimes individually referred to as a “Party” and collectively referred to as the “the Parties” or “the Parties to this ILA.”

RECITALS

WHEREAS, the City has been created, established, organized and exists as a Home Rule municipal corporation under the laws of the State of Texas; and,

WHEREAS, HCESD 5 exists and operates under the authority of Article III, Section 48 of the Texas Constitution and Chapter 775, Texas Health & Safety Code; and,

WHEREAS, the City has, among its powers, the power of annexation and the imposing of a local sales and use tax within its jurisdiction, subject to all applicable provisions of the Texas Tax Code and other applicable laws; and,

WHEREAS, HCESD 5 has, among its powers, the power of annexation and imposing of a local sales and use tax within its jurisdiction, subject to all applicable provisions of the Texas Tax Code, Chapter 775, Texas Health and Safety Code, and other applicable laws; and,

WHEREAS, the City pursuant to law and its Municipal Charter has the power to undertake improvement projects separately or jointly with other persons or entities, to pay all or part of the costs of capital improvement projects, including capital improvement projects that improve, enhance, or support, among other matters, road construction, building development, water supply, enforcement of building and fire regulations, and the availability of public safety and security, fire protection, emergency medical services, or law enforcement in the City; and,

WHEREAS, HCESD 5 pursuant to law has the power, among others, to enter into and perform necessary contracts, impose and collect taxes as provided by Chapter 775, Texas Health & Safety Code, contract with other entities, including other districts or municipalities for reciprocal operation of services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to HCESD 5, and perform other acts to carry out the intent of Chapter 775, Texas Health & Safety Code; and,

WHEREAS, the City and HCESD 5 have overlapping boundaries and jurisdictions and the City is located within the boundary of HCESD 5; and,

WHEREAS, pursuant to Chapter 321 of the Texas Tax Code (Sec. 321.102), when a municipality annexes for full purposes territory contained within an emergency services district that had theretofore imposed a local sales and use tax and where the local sales and use tax in the annexed area is at the two percent maximum rate for local sales and use tax, the local sales and use tax imposed by the emergency services district remains allocated to the emergency services district and is not allocated by the Texas Comptroller to the municipality; and,

WHEREAS, HCESD 5 has proposed an increase in its local sales and use tax of one and one-half percent in its territorial limits, excluding from the imposition of such sales and use tax any area of HCESD 5 then at two percent, including, but not limited to, the City, at an election to be held on the common election date in November, 2013, and the City may annex for full purposes territory outside its current jurisdictional boundaries after said election within the boundaries of HCESD 5 described in the attached Exhibit "A" ("HCESD 5 Boundaries") and consequently the local sales and use tax within such annexed areas would be at the two percent maximum rate for local sales and use tax and would be allocated by the Texas Comptroller to HCESD 5 thereby prohibiting the City from collecting additional sales and use tax in the Future Annexation Area and precluding the future development of the City and HCESD 5 through tax abatements, tax increment reinvestment zones, or other development agreements of said areas in the Future Annexation Area; and,

WHEREAS, the Parties hereby find and determine that the City would require additional sales tax revenue from the Future Annexation Area upon full purposes annexation by the City to provide services and foster development to such areas and to assist with construction of capital improvement projects and to provide funding for street repair and maintenance, water supply, health and safety inspections and enforcement of municipal building and fire codes; and,

WHEREAS, the Parties find that the any future capital improvement projects, economic development and regulatory enforcement within the City's current and future full purposes annexed areas contained within HCESD 5 including the Future Annexation Area will be of benefit to HCESD 5, in terms of (a) providing additional revenue and (b) enhancing the capability of delivering emergency services by HCESD 5 to the Future Annexed Area by virtue of the municipal services to be provided by the City, including but not limited to additional revenue (both ad valorem and sales tax revenues), via the creation of economic development, road improvements and other capital improvement projects (including water supply), police protection, enforcement of municipal building and fire codes, and the provision other services and projects; and,

WHEREAS, the parties find that due to the provisions of the Texas Tax Code (Sec. 321.102), the City will not have authority to impose its full sales tax or to receive any sales tax revenue from any areas contained within HCESD 5 which may be annexed for full purposes by the City after the full purpose annexation of the Future Annexation Area; and,

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WHEREAS, the parties find that it is in the best interests of and for the benefit of the City and HCESD 5 if the City and HCESD 5 enter into this Agreement to allocate, as provided herein, the District's local sales and use tax revenues in the Future Annexation Area that may be annexed for full purposes by the City at a later date, and only if said increase is approved by the qualified voters of the District at the election to be held November, 2013; and,

WHEREAS, the parties find that the Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Interlocal Act"), provides authorization for any local government to contract with one or more other local governments to perform governmental functions and services under the terms of the Interlocal Act and funding thereunder; and,

WHEREAS, the City and HCESD 5 jointly find that each are local governments and taxing units as provided under the Interlocal Act and other applicable law, and the agreements and provisions herein relate to the respective government functions of each; and,

WHEREAS, the City and HCESD 5 jointly find and determine that the allocation of the local sales and use tax contemplated under this agreement is an expenditure for the district's support and purposes authorized by Chapter 775 of the Texas Health & Safety Code by virtue of the City's provision of services including but not limited to additional revenue (both ad valorem and sales tax revenues), via the creation of economic development, road improvements and other capital improvement projects (including water supply), police protection, enforcement of municipal building and fire codes, and the provision other services and projects; and,

WHEREAS, the City and HCESD 5 wish to memorialize other considerations as a part of this ILA dealing with real property and other financial considerations to be a part of the sales tax agreement; and,

WHEREAS, the City has issued debt and constructed a facility to serve as a fire station located at 150 Bunton Road, Kyle, TX 78640 (Fire Station #2); and,

WHEREAS, the HCESD 5 has been the sole lessee of Fire Station #2 and,

WHEREAS, the City provides at its sole cost property and liability coverage for personal and real property owned by HCESD 5; and,

WHEREAS, the City provides certain financial consideration to HCESD 5 annually and HCESD 5 wishes to memorialize said financial consideration.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the City and HCESD 5 agree as follows:

I. SALES TAX ALLOCATION AGREEMENT

- A. Recitals. The foregoing recitals are hereby found to be true and correct and are hereby adopted as findings of fact and conclusions of law by the Board of Emergency Services Commissioners of Hays County Emergency Services District No. 5 and the City Council of the City of Kyle, Texas, and made a part hereof for all purposes.
- B. Allocation of Sales Tax. Upon the City annexing any part of the Future Annexed Area (“Annexed Property”) after the passage of the November, 2013 HCESD 5 sales and use tax, the implementation and collection of said sales and use tax by the Texas Comptroller, and the Effective Date of this Agreement, HCESD 5 agrees to allocate to the City on a monthly basis HCESD 5’s local sales and use tax revenue actually received in hand by HCESD 5 from the Texas Comptroller for the Future Annexed Area and Annexed Property, excluding any deductions or re-allocations by the Texas Comptroller, and derived from Annexed Property in the Future Annexed Area. It is the intent of the parties hereto that Hays County shall receive one-half of one percent of the maximum allowed two percent of the local sales and use tax for the Future Annexed Area and Annexed Property, and the City shall receive one and one-half percent of the maximum allowed two percent of the local sales and use tax for the Future Annexed Area and Annexed Property.
- C. Payments of Sales Tax. The payment under I.B Allocation of Sales Tax of such allocated local sales and use tax revenue received in hand by HCESD 5 from the Texas Comptroller, minus all deductions and accountings set forth herein, shall be paid monthly to the City as soon as possible, but in no event later than 30 days after actual receipt of said funds by HCESD 5 paid in had from the Texas Comptroller. The parties hereto agree HCESD 5 may request, and the City shall grant, and extension for any payments due hereunder by 15 days from the dates set forth above if necessary to allow HCESD 5 to make a proper accounting of the amounts due hereunder. The payments by HCESD 5 may be made via a wire or ACH transfer of funds or by HCESD 5 bank draft or check. The obligation of HCESD 5 to make any payments hereunder shall accrue 30 days after the date of written notice to HCESD 5 from the City as set forth in Section 4, below, of any annexation in the Future Annexed Area and inclusion of the Annexed Property in the City.
- D. Notification of Annexation. The City shall notify HCESD 5 in writing of the annexation of any Annexed Property in the Future Annexed Area, and in this written notification, the City shall provide HCESD 5 with written findings by the City that the payments to be made hereunder by HCESD 5 to the City shall be used by the City and/or the Kyle Economic Development Corporation for expenditures for HCESD 5’s support and purposes authorized by Chapter 775, Texas Health & Safety Code, by virtue of the City’s provision of services, including, but not limited to, additional revenue (both ad valorem and sales and use tax revenues) for HCESD 5 and the City via the creation of economic development, road improvements and other capital improvement projects (including water supply), police protection, enforcement of municipal building and fire codes, and the provision of other services and projects. It

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is agreed and understood that HCESD 5 shall have no duty or obligation to pay to the City any funds set forth in this Agreement until such time as this written notice of annexation and findings by the City has been received by the District.

II. RENT AND LEASE AGREEMENT

- A. General. The City and HCESD 5 desire to enter into a Lease in relation to certain real property owned by the City known as Fire Station #2 (shown in Exhibit B Depiction of City Property). This ILA will serve as the lease and will supersede any executed instrument that may have been executed prior for the purpose of establishing a Lease. During the term of this ILA HCESD 5 agrees to continue to expend funds as necessary for maintenance and upkeep on Fire Station #2 and its grounds, keeping said facility in full repair. In exchange City grants use and privileges of Fire Station #2 to HCESD 5.
- B. Common Room. The City retains the rights and privileges related to scheduling and the use of the common room in Fire Station #2 known as the Community Meeting Room, for such events as should be deemed appropriate by City. These events typically include Home Owner Association meetings, Health Fairs, training classes, and other such activities.
- C. Access. The City shall at all times retain keys and security codes to gain entry into Fire Station #2 without prior notification.
- D. Utilities. HCESD 5 is responsible for all utility costs associated with Fire Station #2.
- E. Maintenance and Upkeep. HCESD 5 shall expend whatever funds are necessary on maintenance and upkeep of Fire Station #2 and it's grounds to maintain the facility in proper working order, repair, and with proper landscaping. Fire Station #2 was newly constructed for HCESD 5, and HCESD 5 has been the only tenant of said property and is wholly responsible for all upkeep, maintenance and repair.
- F. Rent. The terms set forth in this ILA shall be interpreted to be a gesture of cooperation and goodwill between the City and HCESD 5, and therefore the City sets the annual rent for Fire Station #2 to be \$1.00 per annum. This may be waived in full or in part by the City for the term of the ILA upon proper motion of the governing body of the City.

III. OTHER FINANCIAL CONSIDERATIONS

- A. Property and Liability Insurance The City, in consideration of this agreement, shall carry property and liability insurance coverage for real and personal property owned by HCESD 5, at it's sole cost, through the Texas Municipal League Intergovernmental Risk Pool, as well as Fire Station #2, owned by the City, and will continue to do so during the term of this ILA.

- B. Annual Consideration. The City, in consideration of this agreement, shall contribute five thousand dollars (\$5,000) annually on October 1 as a part of its budget cycle to HCESD 5 to be used by HCESD 5 general fund for support of HCESD 5 activities and will continue to do so during the terms of this ILA.

IV. GENERAL PROVISIONS

- A. Term. The term of this Agreement shall be for ten (10) years from the effective date hereof, and, except as specifically provided herein, neither of the parties shall have any further obligation or liability to the other party herein. Upon the expiration of said 10 year term set forth above, this Agreement shall automatically renew for new, consecutive ten (10) year terms unless otherwise terminated by either HCESD 5 or the City. A party desiring to terminate this Agreement shall provide written notice of termination of this Agreement to the other party at least one year prior to the effective date of the termination hereunder. The City and HCESD 5 may, by addendum hereto, agree to extend the term of this Agreement.
- B. Beneficiary. This Agreement is intended for the benefit of the named Parties only, and is in no way intended to benefit any other person, either directly or indirectly, including members of the public. Nothing in the Agreement shall or shall be construed to create a partnership or other type of joint enterprise, the sole intent being to create a contractual relationship between the Parties. By entering into this Agreement, HCESD 5 and the City agree that each party paying for the performance of governmental functions or services hereunder must make the payments called for herein from current revenues available to the paying party.
- C. Liability. Nothing in this Agreement is intended to expand any liability that any Party to this Agreement may have to any other person other than a named Party to this Agreement.
- D. Assignability. This Agreement is not assignable by any Party without the written consent of the other Party.
- E. Hold Harmless. Notwithstanding the provisions of the Texas Government Code, the Texas Local Government Code, or other applicable statute, law, rule, or regulation, and unless prohibited by Texas law, each Party shall defend, indemnify, and hold harmless the other Parties and its officers, agents, employees and representatives from any and all losses, liability, damages, claims, suits, actions and administrative proceedings, and demands and all expenditures and cost relating to acts or omissions of the indemnitor, its officers, agents or employees arising out of or incidental to the performance of any of the provisions of this Agreement. No Party assumes liability for the acts or omissions of persons other than each Party's respective officers, agents or employees. This indemnification clause shall survive this Agreement.
- F. Waiver of Rights. By entering into this Agreement, neither Party waives any of the

rights, immunities, or defenses provided by the Texas Government Code, the Texas Local Government Code, other applicable provisions of law, or the common law. This Agreement is not intended to confer any legal rights or benefits on any person or entity other than the Parties of this Agreement.

- G. Effective Date and Affect of Sales Tax Election on the Agreement. The Effective Date of this Agreement is the date of the last party to ratify. SECTION I. ALLOCATION OF SALES TAX is wholly contingent upon the passage by the qualified voters of the District of the referenced one and one-half percent sales and use tax of the District at the November, 2013 election for same, and if said election does not pass, this Agreement shall continue in force except that SECTION I. ALLOCATION OF SALES TAX shall be of no force or effect and shall automatically be deemed severed without further action by HCESD 5 or the City and neither party shall have any further obligation or liability to the other party herein under SECTION I. ALLOCATION OF SALES TAX. If said election on adoption of District's local sales and use tax does pass at said November, 2013 election and said increased sales and use tax is implemented in the District, SECTION I. ALLOCATION OF SALES TAX of this Agreement shall take effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date on which the Texas Comptroller receives notice of the results of said November, 2013 election, and if the Texas Comptroller determines that an effective date provided above will occur before the Texas Comptroller can reasonably take the action required to begin collecting the one and one-half sales and use tax on behalf of the District, the Effective Date of this Agreement shall be extended until the first day of the next succeeding calendar quarter, pursuant to applicable law, including, but not limited to Chapter 775, Texas Health & Safety Code, Chapter 321, Texas Tax Code, and Chapter 323, Texas Tax Code.
- H. Authority. This ILA is made in part under the authority conferred in *Chapter 791, Texas Government Code; Chapt. 253, Tex. Loc. Gov't. Code; and Chapt. 263, Tex. Loc. Gov't. Code.*
- I. Severability. The provisions of this ILA are severable and, if any provision of this ILA is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this ILA will not be affected and this ILA will be construed as if the invalid portion had never been contained herein.
- J. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this ILA.
- K. Entire ILA. Except as otherwise expressly provided herein, this ILA contains the entire ILA of the Parties regarding the lease of Fire Station #2, and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

- L. Amendments. Any amendment of this ILA must be in writing and will be effective only if approved by the governing body and executed by the authorized representatives of the Parties. Neither this Agreement nor any term or provision of this Agreement, may be changed, waived, discharged, amended, or modified orally, or in any other manner than by an instrument in writing signed by all the Parties.
- M. Applicable Law; Venue. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas. Any suit brought to enforce, interpret, or receive damages under any provision of this Agreement shall be brought in Hays County, Texas.
- N. Notices. All notices hereunder shall be sent certified mail, return receipt requested to the addresses set forth below the signatures of the Parties to the Agreement. Notices are deemed given and completed upon deposit in the United States Mail. Either Party may change its address by providing ten (10) days written notice of such change to the other Party in the manner provided for above. A party hereto may change the addresses set forth below for notices upon written notice as provided for herein.

HCESD 5: HCESD 5
 Board President
 210 West Moore Street
 Kyle, TX 78640
 Telephone: (512) 268-3131
 Fax: (512) 268-6162

City of Kyle: City Manager
 PO Box 40
 100 W. Center Street
 Kyle, Texas 78640
 Telephone: (512) 262-1010
 Fax: (512) 262-3987

- O. Force Majeure. Parties shall not be deemed in violation of this ILA if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or due to circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.
- P. Counterparts. This ILA may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

V. INTERLOCAL AGREEMENT

- A. Authority. 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

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certain governmental functions and services. As defined in §791.003 of the Texas Government Code, such governmental functions and services include the purchase and sale of real property.

- B. Authorization. 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.
- C. Current Funds. 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.

AS EVIDENCED BY THE DULY AUTHORIZED SIGNATURES, BELOW, THE PARTIES DO HEREBY AGREE TO THE TERMS AND CONDITIONS DESCRIBED ABOVE.

Attest:

HAYS COUNTY EMERGENCY SERVICES DISTRICT 5, TEXAS

Liz Gonzalez, County Clerk
Ex-Officio Clerk of the
Hays County Commissioners Court

By: _____
Beth Smith, President HCESD 5
Date Signed: _____

Attest:

CITY OF KYLE, TEXAS

Amelia Sanchez
Kyle City Secretary

By: _____
Lanny Lambert, Kyle City Manager
Date Signed: _____

STATE OF TEXAS

COUNTY OF HAYS

The foregoing instrument was acknowledged before me on _____
by _____, the authorized representative and
_____ of Plum Creek Development Partners, Ltd., a Texas limited partnership.

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Notary Public

Printed Name: _____

My Commission Expires:

Exhibit "B"
●●●●
Depiction of City Property



City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: July 17, 2013
 CONTACT CITY DEPARTMENT: Office of the City Manager
 CONTACT CITY STAFF: James R. Earp, CPM
 Assistant City Manager

SUBJECT:

Consideration and possible action as may be required in regards to an Interlocal Agreement between the City of Kyle and the Emergency Services District #5 (dba Kyle Fire) for the allocation of sales tax revenue, rent, and other financial considerations.

CURRENT YEAR FISCAL IMPACT:

The draft interlocal agreement requires the City of Kyle to make the following financial support either directly to and on behalf of the Kyle Fire Department:

1. Annual cash contribution:	\$ 5,000.00
2. Property & casualty insurance premiums:	\$23,787.50 (Est. for FY 2014)
3. Generator maintenance:	<u>\$ 2,000.00</u>
4. Sub-total:	\$30,787.50
5. (Less) Rent for Fire Station #2:	(<u>\$ 1.00</u>)
6. Total City Financial Support:	<u>\$30,786.50</u>

It should be noted that both the City's financial support for the Kyle Fire Department's property and casualty insurance premiums and generator maintenance are subject to annual increases. The City's approved budget for FY 2012-13 includes \$28,594.00 for all of the financial support items listed above to be made this fiscal year by the City either directly to and on behalf of the Kyle Fire Department.


The City collects 1.50% sales tax within its city limits only and accordingly, it does not collect any sales tax in its extra territorial jurisdiction (ETJ). The draft inter local agreement allows the City to collect its full sales tax rate upon annexation of properties currently located within its ETJ.

FUNDING SOURCE OF THIS ACTION:

The City's General Fund will be the sole funding source for this action.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

 7/11/2013
 Perwez A. Moheet, CPA - Date
 Director of Finance