

# 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 3/18/2014, at Kyle City Hall, 100 West Center Street, Kyle, Texas for the purpose of discussing the following agenda.

Posted this 13th day of March, 2014 prior to 7:00 p.m.

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### I. Call Meeting To Order

### II. Approval of Minutes

1. City Council Regular Meeting - March 4, 2014 ~ *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. Consent Agenda

2. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, ACCEPTING HOMETOWN KYLE PHASE 4 SECTION 2 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. ~ *Leon Barba, P. E., City Engineer*

 [Attachments](#)

3. *(Second Reading)* AN ORDINANCE OF THE CITY KYLE, TEXAS, ZONING FOR TRAFFIC AND RATE OF SPEED THEREIN ON IH 35 SB FRONTAGE ROAD IN THE CITY LIMITS OF THE CITY OF KYLE; DEFINING SPEEDING AND FIXING A PENALTY THEREFORE; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; WITH A SAVING CLAUSE REPEALING CONFLICTING LAWS AND DECLARING AN EMERGENCY. ~ *Leon Barba, P. E., City Engineer*

 [Attachments](#)

4. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AUTHORIZING THE FILING OF A GRANT APPLICATION IN THE AMOUNT OF \$32,000 TO THE OFFICE OF THE GOVERNOR, VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT; AND AUTHORIZE \$22,600 IN MATCHING FUNDS FROM THE POLICE DEPARTMENT'S APPROVED OPERATING BUDGET FOR FY2015, TO CONTINUE TO FUND THE POLICE DEPARTMENT'S

 [Attachments](#)

5. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AUTHORIZING THE FILING OF A GRANT APPLICATION IN THE AMOUNT OF \$77,900 TO THE OFFICE OF THE GOVERNOR, DJ-EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM, TO FUND THE CITY OF KYLE FULL-TIME MENTAL HEALTH OFFICER POSITION FOR FY2015, ENDING SEPTEMBER 30, 2015; ~ *Josh Moreno, Grants Administrator*

 [Attachments](#)

6. *(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ORDINANCE 438, ARTICLE II-ZONING DISTRICTS AND REGULATIONS (SECTION 53-33.GENERAL REQUIREMENTS AND LIMITATIONS) TO EXEMPT PROPERTIES WITHIN THE ORIGINAL TOWN OF KYLE FROM THE RESIDENTIAL REQUIREMENT OF CONSTRUCTION OF A GARAGE. AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 438 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

*The Planning Commission approved the amendment with a vote of 6-0.*

 [Attachments](#)

7. *(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8-“MXD” MIXED USE TO INSERT SECTION (9) OPERATING HOURS FOR “MXD” COMMERCIAL USES. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*Planning and Zoning voted 6-0 to approve the amendment*

 [Attachments](#)

8. *(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 5 “R-3” MULTI-FAMILY RESIDENTIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS; SECTION 6 “NC” NEIGHBORHOOD COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS,

SECTION 8 “MXD” MIXED USE PUD DISTRICT (D) SITE DEVELOPMENT REGULATIONS, SECTION 9 “EMP” EMPLOYMENT PUD DISTRICT (C) SITE DEVELOPMENT STANDARDS, SECTION 10 “LI LIGHT INDUSTRIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS- TO ADD A REQUIREMENT TO PROVIDE A LETTER OF APPROVAL FROM THE ARCHITECTURAL REVIEW COMMITTEE WITH THE APPLICATION FOR A SITE PLAN. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ Sofia Nelson, Director of Planning

*Planning and Zoning Commission voted 6-0 to approve the amendment.*

 [Attachments](#)

9. *(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8-“MXD” MIXED USE (D) SITE DEVELOPMENT REGULATIONS (6)(D) MAXIMUM HEIGHT: TO INSERT A REQUIREMENT FOR A COMPATIBILITY SETBACK WHEN A MXD DEVELOPMENT IS ADJACENT TO A R-1 DEVELOPMENT. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ Sofia Nelson, Director of Planning

*The Planning and Zoning Commission voted 6-0 to approve the amendment.*

 [Attachments](#)

10. *(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS TO ADD A REQUIREMENT FOR SITE LIGHTING- REQUIRING ALL PARKING LOT LIGHTS, SECURITY LIGHTS AND OTHER LIGHTS TO BE DESIGNED TO DIRECT LIGHT DOWN ONTO THE SITE AND AWAY FROM ADJACENT RESIDENTIAL PROPERTY WITH NO EXPOSED LIGHTING SOURCES VISIBLE FROM ADJACENT PROPERTIES WITH USE CATEGORIES OF R-1 OR R-2. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ Sofia Nelson, Director of Planning

*Planning and Zoning Commission voted 6-0 to approve the amendment.*

 [Attachments](#)

11. *(Second Reading)* AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 3.104 ACRES OF LAND FROM 'AG' AGRICULTURE TO 'RS' RETAIL SERVICE DISTRICT, ON PROPERTY LOCATED AT 1250 DACY LANE, IN HAYS COUNTY, TEXAS. (SERGIO AND TERESA LOPEZ Z-14-003); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

 [Attachments](#)

12. Village at Kohler's Crossing - Site Plan (SD-13-014)  
2.932 acres; 34,200 square foot building  
Location: Southeast corner of Kohler's Crossing and extension of Benner  
Applicant: Jon Kasling, ATX Plum Creek Partners I, LP, Vice-President  
Agent: Jeff Shindler, P.E., Texas Design Interests, LLC  
~ *Sofia Nelson, Director of Planning*

*Planning and Zoning Commission voted 6-0 to approve the site plan with the condition that the plat be recorded or fiscal posted.*

 [Attachments](#)

13. *(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE RATE INCREASE REQUEST OF MONARCH UTILITIES I, L.P.; ADOPTING A FINAL DETERMINATION DENYING THE REQUESTED INCREASE IN RATES; FINDING THAT THE APPLICATION TO INCREASE RATES IS IN VIOLATION OF LAW AND UNREASONABLE; ORDERING THAT NO INCREASE IN RATES OCCUR; REQUIRING THE REIMBURSEMENT OF RATE CASE EXPENSES; ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE; CONTAINING A SAVING CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE TEXAS OPEN MEETINGS ACT; ESTABLISHING THAT THIS ORDINANCE SHALL GOVERN OVER PREVIOUSLY ADOPTED RESOLUTIONS; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO. ~ *Jerry Hendrix, Chief of Staff*

 [Attachments](#)

14. *(Second Reading)* AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS, PENDING HEARING AND DECISION BY THE CITY COUNCIL. ~ *Jerry Hendrix, Chief of Staff*

 [Attachments](#)

15. *(First and Final Reading)* AN ORDINANCE AUTHORIZING THE ISSUANCE OF APPROXIMATELY \$1,950,000 "CITY OF KYLE, TEXAS TAX NOTES, SERIES 2014"; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX ON ALL TAXABLE PROPERTY WITHIN THE CITY TO PAY THE PRINCIPAL OF AND INTEREST ON SAID NOTES AND TO CREATE A SINKING FUND FOR THE REDEMPTION THEREOF AND THE ASSESSMENT AND COLLECTION OF SUCH TAXES; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID NOTES. ~ *Perwez A. Moheet, CPA, Director of Finance, Chris W. Allen, Senior Vice President, First Southwest Company (City's Financial Advisor), Tom Pollan, Bickerstaff Heath Delgado Acosta, LLP (City's Bond Counsel)*

 [Attachments](#)

16. Presentation and acceptance of Comprehensive Annual Financial Report and Independent Auditors' Report for Fiscal Year Ended September 30, 2013. ~ *Perwez A. Moheet, CPA, Director of Finance and Michael W. O'Brien, CPA, Partner, Padgett Stratemann, Certified Public Accountants.*

 [Attachments](#)

17. A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A SITE ACCESS LICENSE AGREEMENT WITH DALLAS MTA, L.P., D/B/A VERIZON WIRELESS, TO ALLOW FOR ENVIRONMENTAL TESTING AND SAMPLING PERTAINING TO THE SUITABILITY OF CERTAIN CITY-OWNED REAL PROPERTY LOCATED AT 172 KIRKHAM CIRCLE, KYLE, TEXAS, FOR THE PLACEMENT, MAINTENANCE AND USE OF A COMMUNICATIONS FACILITY; MAKING FINDINGS OF FACT; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS CONSIDERED WAS LEGALLY NOTICED AND OPEN TO THE PUBLIC. ~ *Harper Wilder, Director of Public Works*

 [Attachments](#)

18. *(First Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE MASTER PLAN APPLICATION CHARTS AS FOLLOWS AND AS SHOWN ON EXHIBIT A:

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS NOT RECOMMENDED WITHIN IN THE LOCAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS WITHIN THE REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE CBD1 AND CBD2 AS NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SUPER-REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS NOT RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A NOT

RECOMMENDED ZONING DISTRICT WITHIN THE RIPARIAN LANDSCAPE FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A NOT RECOMMENDED ZONING DISTRICT WITHIN THE FARM LANDSCAPE FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE RANCH LANDSCAPE FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CBD-1 AND CBD-2 TO CONDITIONAL ZONING DISTRICTS, R-1-1 AND R-1-2 (SINGLE FAMILY RESIDENTIAL) AS A RECOMMENDED ZONING DISTRICTS, AND R-3-3 AS NOT RECOMMENDED ZONING DISTRICTS WITHIN THE OLD TOWN FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A CONDITIONAL ZONING DISTRICT WITHIN THE CORE AREA TRANSITION FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE HISTORIC CORE AREA TRANSITION FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE MIDTOWN COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A RECOMMENDED ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT AND CHANGE R-3-2 (APARTMENT RESIDENTIAL), M-2 (MANUFACTURED HOME SUBDIVISION) AND M-3 (MANUFACTURED HOME PARK) AS CONDITIONAL ZONING DISTRICTS WITHIN NEW SETTLEMENT COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS WITHIN THE NEW TOWN COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE HOSPITAL SERVICES (HS) AND ENTERTAINMENT (E) AS CONDITIONAL ZONING DISTRICTS WITHIN THE EMPLOYMENT COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CONSTRUCTION MANUFACTURING (CM), RETAIL SERVICES (RS), ENTERTAINMENT (E) AND WAREHOUSE (W) TO NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SENSITIVE/SUSTAINABLE DEVELOPMENT FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A

RECOMMENDED ZONING DISTRICT AND COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT WITHIN THE HERITAGE COMMUNITY FUTURE LAND USE DISTRICT.

PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS ~ *Sofia Nelson, Director of Planning*

*The Planning and Zoning Commission voted 6-0 to approve the amendments.*

1 Public Hearing

 [Attachments](#)

19. A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$1,001,269.26 WITH LOCKWOOD, ANDREWS, & NEWNAM, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO GOFORTH ROAD (IH-35 TO BUNTON CREEK ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

 [Attachments](#)

20. A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$697,000.00 WITH HDR ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO LEHMAN ROAD (FM 150 TO GOFORTH ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

 [Attachments](#)

21. A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$484,274.34 WITH LJA ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO BUNTON CREEK ROAD (IH-35 TO LEHMAN ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

 [Attachments](#)

22. A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$959,692.00 WITH FREESE AND NICHOLS, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO N. BURLESON STREET (MILLER STREET TO IH 35); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P.E., City Engineer*

 [Attachments](#)

23. A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$364,134.00 WITH K FRIESE & ASSOCIATES, INC., FOR

DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO MARKETPLACE AVENUE (N. BURLISON STREET TO CITY LIGHTS DR.); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P.E., City Engineer*

 [Attachments](#)

## **VI. City Managers Report**

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

1. Discuss 2013 Employee Satisfaction Survey Results
2. Discuss proposed big trucks route
3. Discuss G200 Texas Public Officials Workshop for City Council
4. Discuss the City Council Workshop scheduled for April 15, 2014 at 6:30 p.m. regarding the Greater San Marcos Partnership and the City of Kyle's participation level.

 [Attachments](#)

## **VII. Staff Report**

25. Presentation of the Police Department's Annual Racial Profiling Report for 2013 ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

## **VIII. 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 - March 4, 2014

**Meeting Date: 3/18/2014**  
**Date time: 7:00 PM**

**Subject/Recommendation:** City Council Regular Meeting - March 4, 2014 ~ *Amelia Sanchez, City Secretary*

**Other Information:** This item is for formal approval of the minutes from the March 4th Regular Meeting of the City Council, a copy of which is included with the meeting packet.

**Budget Information:** N/A

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

Attachments / click to download

 [City Council Regular Meeting Minutes - March 4, 2014](#)

## REGULAR CITY COUNCIL MEETING

The City Council of the City of Kyle, Texas met in Regular Session on March 4, 2014 at 7:00 pm at Kyle City Hall, with the following persons present:

Mayor Lucy Johnson	Gene Harris
Council Member Diane Hervol	Kay Rush
Council Member Selbera	Gary Rush
Council Member Ray Bryant	Laurie Luttrell
Council Member Chad Benninghoff	
Council Member David Wilson	
Nikolas Fisher, Honorary Council Member	
Lanny Lambert, City Manager	
Jerry Hendrix, Chief of Staff	
Perwez Moheet, Finance Director	
Sandra Duran, HR Director	
Diana Blank, Director of Economic Development	
Leon Barba, City Engineer	
Sofia Nelson, Planning Director	
Harper Wilder, Public Works Director	
Robert Olvera, IT	
Jeff Barnett, Police Chief	
Ken Johnson, City Attorney	

## CALL MEETING TO ORDER

Mayor Johnson called the meeting to order at 7:01 P.M.

Mayor Johnson stated that Council Member Selbera would be late and that Mayor Pro Tem LeMense was ill and moved to excuse her absence. Council Member Hervol seconds the motion. All aye. Motion carried.

## ROLL CALL

Mayor Johnson called for roll call. Present were Mayor Johnson, Council Member Hervol, Council Member Bryant, Council Member Benninghoff, Council Member Wilson and Nikolas Fisher, Honorary Member.

## APPROVAL OF MINUTES

CITY COUNCIL REGULAR MEETING - FEBRUARY 18, 2014 ~ *AMELIA SANCHEZ,*  
*CITY SECRETARY*

Council Member Wilson moved to approve the City Council Regular Meeting Minutes - February 18, 2014. Council Member Hervol seconds the motion. All votes aye. Motion carried.

## CITY COUNCIL REGULAR MEETING

March 4, 2013 – Page 2

Kyle City Hall

## CITIZEN COMMENT PERIOD WITH CITY COUNCIL

Mayor Johnson opened the citizens comment period at 7:08 P.M. and called for comments on items not on the agenda or posted for public hearing. Gene Harris spoke in favor of Item # 17 supporting a zoning change request by property owners. Kay Rush spoke and asked Council to approve an Ordinance against the proposed rate hike by Monarch Utilities and stated Monarch had an unjust policy of rates with them paying the highest rates within the city. Gary Rush spoke and asked the Council to approve the Ordinance against the rate increase by Monarch, stating they provided bad service and high rates. Laurie Luttrell spoke and stated that the Texas DMV does not register or license golf carts and that state law covers the operation of golf carts in Master Planned Communities with golf courses like Plum Creek and no further regulation from the City of Kyle was needed. With no one else wishing to speak Mayor Johnson closed Citizen's Comments at 7:07 P.M.

## PRESENTATION

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

- Catlyn Bone, Kyle Police Officer

City Manager Lanny Lambert presented the Employee of the Month for the Month of February award to Catlyn Bone.

PRESENTATION FROM BUDGET INFOGRAPHICS ~ *LUCY JOHNSON, MAYOR*

Larry Peterson with Budget Infographics provided a short presentation on new technology for budget understanding.

PRESENTATION OF KYLE CHAMBER OF COMMERCE QUARTERLY REPORT FOR REPORTING PERIOD OCTOBER 2013 THROUGH DECEMBER 2013 ~ *JULIE SNYDER, CEO, KYLE AREA CHAMBER OF COMMERCE & VISITOR'S BUREAU*

Julie Snyder, CEO, Kyle Area Chamber of Commerce & Visitor's Bureau presented the Kyle Chamber of Commerce Quarterly Report for the period of October 2013 through December 2013.

## APPOINTMENTS

CONSIDERATION OF NOMINATION(S) FOR APPOINTMENT TO THE LIBRARY BOARD ~ *LUCY JOHNSON, MAYOR*

## CITY COUNCIL REGULAR MEETING

March 4, 2013 – Page 3

Kyle City Hall

- Leata Bartlett

Mayor Johnson moved to appoint Leata Bartlett to the Library Board. Council Member Wilson seconds the motion. All aye. Motion carried.

CONSIDERATION OF NOMINATION(S) FOR APPOINTMENT TO THE COMMUNITY RELATIONS COMMITTEE ~ LUCY JOHNSON, MAYOR

- Jenny Bennett

Mayor Johnson moved to appoint Jenny Bennett to the Community Relations Committee. Council Member Hervol seconds the motion. All aye. Motion carried.

CONSIDERATION OF NOMINATION(S) FOR APPOINTMENT TO THE PARKS & RECREATION COMMITTEE ~ LUCY JOHNSON, MAYOR

- Scott Stoker, Alternate

Mayor Johnson moved to appoint Scott Stoker, Alternate to the Parks & Recreation Committee. Council Member Wilson seconds the motion. All aye. Motion carried.

CONSENT AGENDA

*(Second Reading)* AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 0.17 ACRES OF LAND FROM 'R-1' SINGLE FAMILY TO 'R-1-A' SINGLE FAMILY ATTACHED, ON PROPERTY LOCATED AT 350 W. THIRD STREET, IN HAYS COUNTY, TEXAS. (ELISA ALICE FLORES AND OLIVER BILLINGSLEY Z-14-002); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*(Second Reading)* AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF REZONING APPROXIMATELY 0.13 ACRES OF LAND ON LOT 6 AND APPROXIMATELY 0.13 ACRES OF LAND ON LOT 7 FROM 'R-1' SINGLE FAMILY TO 'R-1-A' SINGLE FAMILY ATTACHED, ON PROPERTY LOCATED AT 307 W. MOORE STREET, IN HAYS COUNTY, TEXAS. (MARCO & YOLANDA CANTU Z-14-001); AUTHORIZING THE CITY

## CITY COUNCIL REGULAR MEETING

March 4, 2013 – Page 4

Kyle City Hall

SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

Plum Creek Phase 1 Section 6E-1, Lots 22-24, Block L – Amended Plat (AFP-14-002)  
2 acres; 3 Lots Located off of Kirby and Grace; Owner: Plum Creek Development Partners  
Agent: Scott Bauer, Bigelow Development, LLC ~ *Sofia Nelson, Director of Planning*

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

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, ESTABLISHING A DEDICATED FUND TITLED STREET MAINTENANCE & IMPROVEMENT FUND IN THE CITY'S FINANCIAL MANAGEMENT AND REPORTING SYSTEM TO ACCOUNT FOR ALL RECEIPTS, DISBURSEMENTS, AND OR OBLIGATIONS ASSOCIATED WITH PERIMETER STREET FEES. ~ *Perwez A. Moheet, CPA, Director of Finance*

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS AUTHORIZING AND DIRECTING THE INSTALLATION AND ERECTION OF FOUR WAY STOP SIGNS FOR THE ZONING OF TRAFFIC CONTROL ON KYLE CENTER DRIVE AT THE INTERSECTION OF SHELDON DRIVE IN THE CITY LIMITS OF KYLE; FIXING A PENALTY THEREFOR; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF ~ *Leon Barba, P. E., City Engineer*

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, ACCEPTING THE VILLAS AT CREEKSIDE 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. ~ *Leon Barba, P. E., City Engineer*

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 47, TRAFFIC AND VEHICLES, AS AMENDED, TO PERMIT THE USE OF GOLF CARTS IN THE CITY ON CERTAIN PUBLIC STREETS SUBJECT TO COMPLIANCE HAVING SPECIFIED SAFETY EQUIPMENT AND MOTOR VEHICLE INSURANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR A PENALTY; PROVIDING FOR EXCEPTIONS; PROVIDING FOR AN EFFECTIVE DATE;

MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT ~  
*Jeff Barnett, Chief of Police*

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Council Member Bryant asked that Item #14 be removed from the Consent Agenda.

Council Member Hervol moved to approve Consent Agenda **Item #8** ~ *(Second Reading)* An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 0.17 acres of land from 'R-1' Single Family to 'R-1-A' Single Family Attached, on property located at 350 W. Third Street, in Hays County, Texas. (Elisa Alice Flores and Oliver Billingsley Z-14-002; **Item #9** ~*(Second Reading)* An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 0.13 acres of land on Lot 6 and approximately 0.13 acres of land on Lot 7 from 'R-1' Single Family to 'R-1-A' Single Family attached, on property located at 307 W. Moore St., in Hays County, Texas. (Marco & Yolanda Cantu Z-14-001); **Item # 10** ~ Plum Creek Phase 1 Section 6E-1, Lots 22-24, Block L – Amended Plat (AFP-14-002) 2 acres; 3 Lots Located off of Kirby and Grace; Owner: Plum Creek Development Partners; **Item # 11** ~ *(Second Reading)* An Ordinance of the City of Kyle, Texas, establishing a dedicated fund titled Street Maintenance & Improvement Fund in the City's Financial Management and Reporting System to account for all receipts, disbursements, and or obligations associated with Perimeter Street Fees; **Item #12** ~ *(Second Reading)* An Ordinance of the City of Kyle, Texas, authorizing and directing the installation and erection of four way stop signs for the zoning of traffic control on Kyle Center Drive at the intersection of Sheldon Drive in the city limits of Kyle; **Item #13** ~ A Resolution of the City Council of the City of Kyle, Texas accepting the Villas at Creekside Subdivision Improvements finding and determining that the meeting at which this Resolution is passed was noticed and was open to the public as required by law. Council Member Selbera seconds the motion. All aye. Motion carried.

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 47, TRAFFIC AND VEHICLES, AS AMENDED, TO PERMIT THE USE OF GOLF CARTS IN THE CITY ON CERTAIN PUBLIC STREETS SUBJECT TO COMPLIANCE HAVING SPECIFIED SAFETY EQUIPMENT AND MOTOR VEHICLE INSURANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR A PENALTY; PROVIDING FOR EXCEPTIONS; PROVIDING FOR AN EFFECTIVE DATE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT ~  
*Jeff Barnett, Chief of Police*

Council Member Bryant moved to table *(Second Reading)* An Ordinance of the City of Kyle, Texas, amending Chapter 47, Traffic and vehicles, as amended, to permit the use of Golf Carts in the City on certain public streets subject to compliance having specified safety equipment and motor vehicle insurance. Council Member Wilson seconds the motion and asks Council Member Bryant if he will modify the motion to have the Homeowners

Association of Plum Creek address the issues that are coming out of Plum Creek. Council Member Bryant agrees.

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Mayor Johnson asked for a roll call vote. Council Member Hervol votes nay, Council Member Selbera votes nay, Mayor Johnson votes nay, Council Member Bryant votes aye, Council Member Benninghoff votes nay, Council Member Wilson votes aye. Motion failed 2-4.

Council Member Hervol moved to approve the Ordinance with the revisions that the City Attorney had provided Council in an email. Mayor Johnson seconds the motion. Council Member Hervol requests that staff will reach out to UPS and with Plum Creek Golf Course. Mayor Johnson agrees to the request. Honorary Member Fisher stated that he supports any kind of legislation regulating golf carts but not necessarily this legislation. Mayor Johnson asked for a roll call vote. Council Member Hervol votes aye, Council Member Selbera votes aye, Mayor Johnson votes aye, Council Member Bryant votes nay, Council Member Benninghoff votes aye, Council Member Wilson votes nay. Motion carried 4-2.

#### CONSIDER AND POSSIBLE ACTION

*(First Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE RATE INCREASE REQUEST OF MONARCH UTILITIES I, L.P.; ADOPTING A FINAL DETERMINATION DENYING THE REQUESTED INCREASE IN RATES; FINDING THAT THE APPLICATION TO INCREASE RATES IS IN VIOLATION OF LAW AND UNREASONABLE; ORDERING THAT NO INCREASE IN RATES OCCUR; REQUIRING THE REIMBURSEMENT OF RATE CASE EXPENSES; ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE; CONTAINING A SAVING CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE TEXAS OPEN MEETINGS ACT; ESTABLISHING THAT THIS ORDINANCE SHALL GOVERN OVER PREVIOUSLY ADOPTED RESOLUTIONS; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO. ~ *Jerry Hendrix, Chief of Staff*

#### PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 7:59 P.M. to hear comments on *(First Reading)* An Ordinance of the City of Kyle, Texas, reviewing the rate increase request of Monarch Utilities I, L. P; Adopting a final determination denying the requested increase in rates; Finding the application to increase rates in violation of law and unreasonable; Ordering that no increase in rates occur; Requiring the reimbursement of rate case expenses; Establishing an effective date for this Ordinance; Contain a saving clause; Providing for severability; Providing for Public Notice pursuant to the Texas Open Meetings Act; Establishing that this Ordinance shall govern over previously adopted Resolutions; Making such other findings and provisions related hereto.

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Gary Rush spoke and stated that Monarch's rates and service were poor and water rates continue to increase and they were choking the economy on that side of town. Sharon Ryan spoke and stated she left hurricanes and big taxes in Galveston to come to Kyle. She stated she started studying the increases in the water and asked Council to stop it as she could not handle the increases. Kay Rush spoke and asked the Council to pass this Ordinance denying the increase in rates by Monarch. She stated the water smelled bad and she had complained to TCEQ and had the water tested a couple of times, that it didn't taste good and filled with lots of scale. Tammy Swaton asked the Council to deny the rate increase by Monarch for all the previously stated reasons. One being the quality of water, and during drought they are the fastest rise in the drought stage, getting up to 4 or 5 every year. Jo Fenedy stated that she was new to Amberwood and when she applied for service she had to deal with some very rude people and she had never seen water rates like these. She encouraged Council to go get them. Linda Ramos spoke and stated that the water tasted bad and residents are treated like second class citizens. With no one else wishing to speak Mayor Johnson closed the Public Hearing at 8:09.

Council Member Hervol moved to approve (*First Reading*) An Ordinance of the City of Kyle, Texas, reviewing the rate increase request of Monarch Utilities I, L. P; Adopting a final determination denying the requested increase in rates; Finding the application to increase rates in violation of law and unreasonable; Ordering that no increase in rates occur; Requiring the reimbursement of rate case expenses; Establishing an effective date for this Ordinance; Contain a saving clause; Providing for severability; Providing for Public Notice pursuant to the Texas Open Meetings Act; Establishing that this Ordinance shall govern over previously adopted Resolutions; Making such other findings and provisions related hereto. Council Member Bryant seconds the motion. All aye. Motion carried.

(*First Reading*) AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS, PENDING HEARING AND DECISION BY THE CITY COUNCIL. ~  
*Jerry Hendrix, Chief of Staff*

Council Member Hervol moved to approve (*First Reading*) An Ordinance suspending the implementation of the Interim Rate Adjustment under Section 104.301 of the Texas Utilities Code by Texas Gas Service Company within the City of Kyle, Texas, Pending hearing and decision by the City Council. Council Member Bryant seconds the motion. All aye. Motion carried.

(*First Reading*) AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 3.104 ACRES OF LAND FROM 'AG' AGRICULTURE TO 'RS' RETAIL SERVICE DISTRICT, ON PROPERTY LOCATED AT 1250 DACY LANE, IN



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HAYS COUNTY, TEXAS. (SERGIO AND TERESA LOPEZ Z-14-003); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*Planning and Zoning Commission voted 6-0 to approve the request*

## PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:17 P.M. to hear comments on (*First Reading*) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning Original Zoning to approximately 3.104 acres of land from ‘AG’ Agriculture to ‘RS’ Retail Service District, on property located at 1250 Dacy Lane, in Hays County, Texas. (Sergio and Teresa Lopez z-14-003). With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:17 P.M.

Mayor Johnson moved to approve (*First Reading*) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning Original Zoning to approximately 3.104 acres of land from ‘AG’ Agriculture to ‘RS’ Retail Service District, on property located at 1250 Dacy Lane, in Hays County, Texas. (Sergio and Teresa Lopez z-14-003); Authorizing the City Secretary to amend the Zoning Map of the City of Kyle so as to reflect this change; Providing for publication and effective date; Providing for severability; And ordaining other provisions related to the subject matter thereof; Finding and determining that the meeting at which this was passed was open to the public as required by law. Council Member Benninghoff seconds the motion. All aye. Motion carried.

(*First Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ORDINANCE 438, ARTICLE II-ZONING DISTRICTS AND REGULATIONS (SECTION 53-33.GENERAL REQUIREMENTS AND LIMITATIONS) TO EXEMPT PROPERTIES WITHIN THE ORIGINAL TOWN OF KYLE FROM THE RESIDENTIAL REQUIREMENT OF CONSTRUCTION OF A GARAGE. AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 438 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

*The Planning Commission approved the amendment with a vote of 6-0.*

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PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:22 P.M. to hear comments on (*First reading*) an Ordinance of the City of Kyle, Texas, Amending Ordinance 438, Article I I-Zoning Districts and Regulations (Section 53-33.General Requirements and Limitations) to exempt properties within the Original Town of Kyle from the residential requirement of construction of a garage. ). With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:22 P.M.

Council Member Hervol moved to approve (*First reading*) an Ordinance of the City of Kyle, Texas, Amending Ordinance 438, Article I I-Zoning Districts and Regulations (Section 53-33.General Requirements and Limitations) to exempt properties within the Original Town of Kyle from the residential requirement of construction of a garage. Authorizing the City Secretary to amend Ordinance 438 of the City of Kyle so as to reflect this change; Providing for publication date; Providing for severability; And determining that the meeting at which this Ordinance was passed was open to the public as required by law. Council Member Wilson seconds the motion. All aye. Motion carried.

(*First Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE MASTER PLAN APPLICATION CHARTS AS FOLLOWS AND AS SHOWN ON EXHIBIT A:

- • TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS NOT RECOMMENDED WITHIN IN THE LOCAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS WITHIN THE REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE CBD1 AND CBD2 AS NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SUPER-REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS NOT RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A NOT RECOMMENDED ZONING DISTRICT WITHIN THE RIPARIAN LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A

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- CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A NOT RECOMMENDED ZONING DISTRICT WITHIN THE FARM LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE RANCH LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CBD-1 AND CBD-2 TO CONDITIONAL ZONING DISTRICTS, R-1-1 AND R-1-2(SINGLE FAMILY RESIDENTIAL) AS A RECOMMENDED ZONING DISTRICTS, AND R-3-3 AS NOT RECOMMENDED ZONING DISTRICTS WITHIN THE OLD TOWN FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A CONDITIONAL ZONING DISTRICT WITHIN THE CORE AREA TRANSITION FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE HISTORIC CORE AREA TRANSITION FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE MIDTOWN COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A RECOMMENDED ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT AND CHANGE R-3-2 (APARTMENT RESIDENTIAL), M-2 (MANUFACTURED HOME SUBDIVISION) AND M-3

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- (MANUFACTURED HOME PARK) AS CONDITIONAL ZONING DISTRICTS WITHIN NEW SETTLEMENT COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS WITHIN THE NEW TOWN COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE HOSPITAL SERVICES (HS) AND ENTERTAINMENT (E) AS CONDITIONAL ZONING DISTRICTS WITHIN THE EMPLOYMENT COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CONSTRUCTION MANUFACTURING (CM), RETAIL SERVICES (RS), ENTERTAINMENT (E) AND WAREHOUSE (W) TO NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SENSITIVE/SUSTAINABLE DEVELOPMENT FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A RECOMMENDED ZONING DISTRICT AND COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT WITHIN THE HERITAGE COMMUNITY FUTURE LAND USE DISTRICT.

PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS

*The Planning and Zoning Commission voted 6-0 to approve the amendments*

Mayor Johnson opened the Public Hearing at 8:26 P.M. to hear comments on (*First Reading*) An Ordinance of the City of Kyle, Texas, Amending the Comprehensive Master Plan Application Charts as follows and as shown on Exhibit A Providing for the Amendment of the Plan; Providing for related matters. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:26 P.M.

Council Member Wilson asked the City Attorney regarding the Public Hearing just held, that since it was not on the agenda did another Public Hearing need to be held? City Attorney Ken Johnson replied that Sofia Nelson, Planning Director stated it was published

in the newspaper for this meeting but could not say if that was adequate or not at the moment, and that the most cautious approach would be to delay the vote and re-post.

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Council Member Wilson moved to table (*First Reading*) An Ordinance of the City of Kyle, Texas, Amending the Comprehensive Master Plan Application Charts as follows and as shown on Exhibit A Providing for the Amendment of the Plan; Providing for related matters. Council Member Benninghoff seconds the motion. All aye. Motion carried.

*(First Reading)*. AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS TO ADD A REQUIREMENT FOR SITE LIGHTING- REQUIRING ALL PARKING LOT LIGHTS, SECURITY LIGHTS AND OTHER LIGHTS TO BE DESIGNED TO DIRECT LIGHT DOWN ONTO THE SITE AND AWAY FROM ADJACENT RESIDENTIAL PROPERTY WITH NO EXPOSED LIGHTING SOURCES VISIBLE FROM ADJACENT PROPERTIES WITH USE CATEGORIES OF R-1 OR R-2. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.  
~ Sofia Nelson, Director of Planning

*Planning and Zoning Commission voted 6-0 to approve the amendment*

#### PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:38 P.M. to hear comments on (*First Reading*). An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance). Article ii- PUD Districts: Regulations and Performance Standards, Part C Zoning, Section 7”C” Commercial PUD District (c) Site Development Regulations to add a requirement for site lighting- requiring all parking lot lights, security lights and other lights to be designed to direct light down onto the site and away from adjacent residential property with no exposed lighting sources visible from adjacent properties with use categories of R-1 or R-2. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:38 P.M.

Council Member Hervol moved to approve (*First Reading*). An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance). Article ii- PUD Districts: Regulations and Performance Standards, Part C Zoning, Section 7”C” Commercial PUD District (c) Site Development Regulations to add a

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requirement for site lighting- requiring all parking lot lights, security lights and other lights to be designed to direct light down onto the site and away from adjacent residential property with no exposed lighting sources visible from adjacent properties with use categories of R-1 or R-2. authorizing the City Secretary to amend the Ordinance 311 of the City of Kyle so as to reflect this change; Providing for publication date; Providing for severability; And determining that the meeting at which this Ordinance was passed was open to the public as required by law. Council Member Benninghoff seconds the motion. All aye. Motion carried.

*(First Reading)*. AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 5 “R-3” MULTI-FAMILY RESIDENTIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS; SECTION 6 “NC” NEIGHBORHOOD COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS, SECTION 8 “MXD” MIXED USE PUD DISTRICT (D) SITE DEVELOPMENT REGULATIONS, SECTION 9 “EMP” EMPLOYMENT PUD DISTRICT (C) SITE DEVELOPMENT STANDARDS, SECTION 10 “LI LIGHT INDUSTRIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS- TO ADD A REQUIREMENT TO PROVIDE A LETTER OF APPROVAL FROM THE ARCHITECTURAL REVIEW COMMITTEE WITH THE APPLICATION FOR A SITE PLAN. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ Sofia Nelson, Director of Planning

*Planning and Zoning Commission voted 6-0 to approve the amendment*

## PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:46 P.M. to hear comments on*(First Reading)*. An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance). With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:46 P.M.

Council Member Hervol moved to approve *(First Reading)*. An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance). Article ii-PUD Districts: Regulations and Performance Standards, part C Zoning, Section 5 “R-3” Multi-Family Residential PUD District (c) Site Development Regulations; Section 6 “NC” Neighborhood Commercial PUD district (c) Site Development

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Regulations, Section 7”C” Commercial PUD District (c) Site Development Regulations, Section 8 “MXD” Mixed Use PUD District (d) Site Development Regulations, Section 9 “EMP” Employment PUD District (c) Site Development Standards, Section 10 “LI Light Industrial PUD District (c) Site Development Regulations- to add a requirement to provide a letter of approval from the architectural review committee with the application for a site plan. Authorizing the City Secretary to amend the Ordinance 311 of the City of Kyle so as to reflect this change; Providing for publication date; Providing for severability; And determining that the meeting at which this ordinance was passed was open to the public as required by law. Council Member Bryant seconds the motion. All aye. Motion carried.

*(First Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8- “MXD” MIXED USE (D) SITE DEVELOPMENT REGULATIONS (6)(D)MAXIMUM HEIGHT: TO INSERT A REQUIREMENT FOR A COMPATIBILITY SETBACK WHEN A MXD DEVELOPMENT IS ADJACENT TO A R-1 DEVELOPMENT. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*The Planning and Zoning Commission voted 6-0 to approve the amendment.*

## PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:48 P.M. to hear comments on(*First Reading*). An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance) Part C Zoning, Section 8. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:48 P.M.

Council Member Hervol moved to approve (*First Reading*). An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance). Article II-PUD Districts: Regulations and Performance Standards, Article ii-PUD Districts: Regulations and Performance Standards, Part C Zoning, Section 8- “MXD” Mixed Use (d) Site Development Regulations (6)(d)Maximum Height: To insert a Requirement for a compatibility setback when a MXD Development is adjacent to a R-1

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development authorizing the City Secretary to amend the Ordinance 311 of the City of Kyle so as to reflect this change; Providing for publication date; Providing for severability; And determining that the meeting at which this Ordinance was passed was open to the public as required by law. Authorizing the City Secretary to amend the Ordinance 311 of the City of Kyle so as to reflect this change; Providing for publication date; Providing for severability; And determining that the meeting at which this ordinance was passed was open to the public as required by law. Mayor Johnson seconds the motion. All aye. Motion carried.

*(First Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8- “MXD” MIXED USE TO INSERT SECTION (9) OPERATING HOURS FOR “MXD” COMMERCIAL USES. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*Planning and Zoning voted 6-0 to approve the amendment*

## PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 8:50 P.M. to hear comments on *(First Reading)*. An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance) Article ii-PUD Districts: Part C Zoning, Section 8 MXD” Mixed Use to insert Section (9) operating hours for “MXD” Commercial Uses. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:50 P.M.

Council Member Hervol moved to approve *(First Reading)* An Ordinance amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance). Article II-PUD Districts: Regulations and Performance Standards, Part C Zoning, Section 8- “MXD” Mixed Use to insert Section (9) operating hours for “MXD” Commercial Uses. Authorizing the City Secretary to amend the Ordinance 311 of the City of Kyle so as to reflect this change; Providing for publication date; Providing for severability; And determining that the meeting at which this Ordinance was passed as open to the public as required by law; Authorizing the City Secretary to amend the Ordinance 311 of the City of Kyle so as to reflect this change; Providing for publication date;



Providing for severability; And determining that the meeting at which this ordinance was passed was open to the public as required by law. Council Member Bryant seconds the motion. All aye. Motion carried.

#### CITY COUNCIL REGULAR MEETING

March 4, 2013 – Page 16

Kyle City Hall

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$703,997.00 WITH HDR ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO LEHMAN ROAD (FM 150 TO GOFORTH ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$1,009,992.21 WITH LOCKWOOD, ANDREWS, & NEWNAM, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO GOFORTH ROAD (IH-35 TO BUNTON CREEK ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$579,454.34 WITH LJA ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO BUNTON CREEK ROAD (IH-35 TO LEHMAN ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$974,262.00 WITH FREESE AND NICHOLS, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO N. BURLESON STREET (MILLER STREET TO IH 35); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P.E., City Engineer*

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$412,448.00 WITH K FRIESE & ASSOCIATES, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO MARKETPLACE AVENUE (N. BURLESON STREET TO CITY LIGHTS DR.); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P.E., City Engineer*

Mayor Johnson moved to table Items # 24, 25, 26, 27, and 28 to the next meeting when we can bring back exact figures to be taken out of the contracts. Council Member Bryant seconds the motion. All aye. Motion carried.

## CITY COUNCIL REGULAR MEETING

March 4, 2013 – Page 17

Kyle City Hall

*(First Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, ZONING FOR TRAFFIC AND RATE OF SPEED THEREIN ON IH 35 SB FRONTAGE ROAD IN THE CITY LIMITS OF THE CITY OF KYLE; DEFINING SPEEDING AND FIXING A PENALTY THEREFORE; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; WITH A SAVING CLAUSE REPEALING CONFLICTING LAWS AND DECLARING AN EMERGENCY. ~ *Leon Barba, P. E., City Engineer*

Council Member Wilson moved to approve *(First Reading)* An Ordinance of the City of Kyle, Texas, Zoning for traffic and rate of speed therein on IH 35 SB Frontage Road in the City Limits of the City of Kyle; Defining Speeding and Fixing a penalty therefore; Declaring what may be a sufficient complaint in prosecutions hereunder; with a saving clause repealing conflicting laws and declaring an emergency. Council Member Hervol seconds the motion. Motion carried 4-1 with Council Member Benninghoff voting nay. Council Member Selbera was off the dais and did not vote.

CONSIDER AUTHORIZING A CONTRACT FOR PROFESSIONAL SERVICES WITH SISK-ROBB, INCORPORATED OF LEANDER, TEXAS IN AN AMOUNT NOT TO EXCEED \$1,760.00, FOR THE REMOVAL AND PROPER DISPOSAL OF ASBESTOS FROM THE KYLE POLICE DEPARTMENT BUILDING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO COMPLETE THIS TRANSACTION. ~ *HARPER WILDER, DIRECTOR OF PUBLIC WORKS*

Council Member Wilson moved to approve a contract for professional services with SISK-ROBB, INCORPORATED of Leander, Texas in an amount not to exceed \$1,760.00, for the removal and proper disposal of asbestos from the Kyle Police Department Building, and authorizing the City Manager to execute all documents necessary to complete this transaction. Council Member Bryant seconds the motion. All aye. Motion carried.

CONSIDER AUTHORIZING A CONTRACT FOR PROFESSIONAL SERVICES WITH TERRACON CONSULTANTS, INC., OF AUSTIN, TEXAS IN AN AMOUNT NOT TO EXCEED \$1,970.00, FOR ON-SITE INSPECTION/AIR MONITORING, ASBESTOS ABATEMENT PROJECT MANAGEMENT, AND PROVIDING ASBESTOS ABATEMENT DESIGN DOCUMENTS AND FINAL PROJECT DOCUMENTATION FOR THE ABATEMENT REMOVAL PROJECT AT THE KYLE POLICE DEPARTMENT BUILDING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO COMPLETE THIS TRANSACTION. ~ *HARPER WILDER, DIRECTOR OF PUBLIC WORKS*

Council Member Wilson moved to approve a contract for professional services with TERRACON CONSULTANTS, INC., of Austin, Texas in an amount not to exceed \$1,970.00, for on-site inspection/air monitoring, asbestos abatement project management,

## CITY COUNCIL REGULAR MEETING

March 4, 2013 – Page 18

Kyle City Hall

and providing asbestos abatement design documents and final project documentation for the abatement removal project at the Kyle Police Department Building, and authorizing the City Manager to execute all documents necessary to complete this transaction. Council Member Selbera seconds the motion. All aye. Motion carried.

CONSIDER AUTHORIZING THE CITY MANAGER TO REIMBURSE AQUA TEXAS, INC., IN AN AMOUNT NOT TO EXCEED \$24,797.45 FOR EMERGENCY REPAIRS TO THE CLARIFIER DRIVE AT THE WASTEWATER TREATMENT PLANT. ~ *HARPER WILDER, DIRECTOR OF PUBLIC WORKS*

Council Member Hervol moved to approve authorizing the City Manager to reimburse AQUA TEXAS, INC., in an amount not to exceed \$24,797.45 for emergency repairs to the clarifier drive at the wastewater treatment plant.. Council Member Bryant seconds the motion. All aye. Motion carried.

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH CINESTARZ ENTERTAINMENT, LLC; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Diana Blank-Torres, Director of Economic Development*

Council Member Hervol moved to approve A Resolution of the City of Kyle, Texas, authorizing the City Manager to negotiate and execute an Economic Development Incentive Agreement with CINESTARZ Entertainment, LLC. Council Member Benninghoff 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

1. Discuss Warrant Roundup
2. Discuss Emergency Services District #8 Sales Tax Agreement
3. Discuss the date for the first step of the Proposal to Assist in the Developing Policies and Practices to Ensure High Performance Professional Relationships

City Manager Lanny Lambert stated that Council Member Benninghoff had mentioned 18 wheelers crossing the railroad tracks at 150 and stated staff has contacted Hays County, and TXDOT to see if a truck route can be designed. He stated they would be taking the proposals to the Public Safety Committee and the Mobility Committee and ask for their input.

## CITY COUNCIL REGULAR MEETING

March 4, 2013 – Page 19

Kyle City Hall

Mr. Lambert stated that the Police Department would be participating in the 2014 warrant round up during the month of March.

Mr. Lambert stated he has had no success in arranging a meeting with ESD #8 the Fire Department out of Buda.

Mr. Lambert stated he met with Professor Longoria in charge of the MBA program at Texas State and he was excited about the project regarding the 3 positions managed by City Council. He stated that he would bring the contract at the next meeting.

Mayor Johnson stated that during their discussions with Commissioner Conley he requested a workshop with the City of Kyle regarding the Greater San Marcos Partnership and tentatively set for March 18 at 6:30 P.M. before the Council meeting. All agreed to the date and time.

## ADJOURN

With no further business to discuss Council Member Hervol moved to adjourn. Council Member Selbera seconds the motion. All votes aye. Motion carried.

The City Council meeting adjourned at 9:41 pm.

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Lucy Johnson, Mayor

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Amelia Sanchez, City Secretary



# CITY OF KYLE, TEXAS

## Hometown Kyle Phase 4 Section 2 Subdivision Improvements

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, ACCEPTING HOMETOWN KYLE PHASE 4 SECTION 2 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. ~ *Leon Barba, P. E., City Engineer*

**Other Information:**

**Budget Information:**

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

**Attachments / click to download**

 [Hometown Kyle Phase 4 Section 2 Subdivision Improvements](#)

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, ACCEPTING HOMETOWN KYLE PHASE 4 SECTION 2 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.**

**WHEREAS**, the developer of this subdivision has completed construction of the improvements in general accordance with plans approved by the City of Kyle; and

**WHEREAS**, the subdivision improvements are defined as water, wastewater, street and drainage systems installed within public rights-of-way and any dedicated drainage or public utility easements within the subdivision; and

**WHEREAS**, the contractor has also provided the City a two (2) year maintenance bond in an amount of thirty five percent (35%) of the cost of the construction for any repairs that may be necessary during a two-year period from the date of acceptance by City Council.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS** hereby accepts the public improvements and certifies completion of the improvements for Hometown Kyle Phase 4 Section 2. The current maintenance surety is hereby \$300,049.05 being thirty five percent of the total cost of required improvements, to be held for two years from this date.

**SECTION 1.** That the subdivision improvements within Hometown Kyle Phase 4 Section 2 are hereby accepted for operation and maintenance.

**SECTION 2.** That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF KYLE, TEXAS

\_\_\_\_\_  
Lucy Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Amelia Sanchez, City Secretary

**EXHIBIT A**

**STAFF ACCEPTANCE MEMO**



## CITY OF KYLE

520 E. RR 150  
Office (512) 262-3024

Kyle, Texas 78640  
Fax (512) 262-3403

### MEMORANDUM

TO: Lanny S. Lambert, City Manager

FROM: Leon Barba, P.E., City Engineer *LS*

DATE: March 3, 2014

SUBJECT: Hometown Kyle Phase 4 Section 2  
Final Acceptance

The referenced subdivision is recommended for acceptance by the City of Kyle.

A final walkthrough was completed on February 11, 2014. The punch list items have been completed on the project. The grading, drainage, water, wastewater and street improvements have been constructed in substantial accordance with the City's requirements. Record drawings have been provided to the City.

A Maintenance Bond (SureTec Insurance Company – Bond No. 4391559MNT) has been provided for a period of two (2) years.

Please let me know if you need any additional information.

Xc: Harper Wilder, Public Works Dept.  
Perwez Moheet, Finance Dept.  
Debbie Guerra, Planning and Zoning



**GARRETT- IHNEN**  
CIVIL ENGINEERS

12007 Technology Blvd., Ste. 150  
Austin, TX 78727

512.454.2400  
866.512.4423

February 4, 2014

ENGINEER'S CONCURRENCE

FOR

PROJECT ACCEPTANCE

PROJECT: Hometown Kyle, Phase 4, Section 2

Water, Wastewater, Street and Drainage Improvements

Owner's Name and Address:

Consultant Engineer's Name and Address:

Ryland Homes

Garrett-Ihnen Civil Engineers

1101 Arrow Point Drive, Ste 101

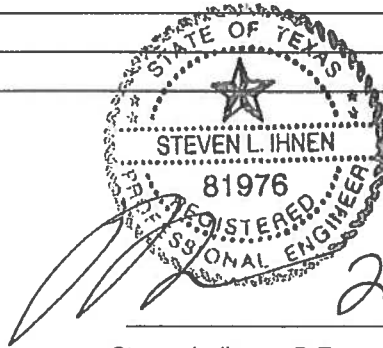
12007 Technology Blvd, Ste 150

Cedar Park TX 78613

Austin TX 78727

On this day, the undersigned professional engineer, my representative, or I met with representative of the Owner and the Project Contractor and made a visual inspection of the above-referenced project. No discrepancies in approved construction plans or deficiencies in construction were visible or brought to my attention by the parties at the meeting except those listed below. I, therefore, recommend acceptance of this project by the City of Kyle, once the following listed items are corrected to the satisfaction of the Engineer.

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



2-21-14

81976

Steven L. Ihnen, P.E. Texas Registration Number

**EXHIBIT B**

MAINTENANCE BOND



## SureTec Insurance Company

9737 Great Hills Trail, Suite 320  
Austin, Tx 78759  
512-732-0099

**Bond No. 4391559MNT**

### MAINTENANCE BOND

**KNOW ALL MEN BY THESE PRESENTS**, that we Joe Bland Construction, LP as Principal, and SureTec Insurance Company, a corporation organized under the laws of the State of Texas, and duly authorized to do business in the State of Texas as Surety, are held and firmly bound unto City of Kyle as Obligee, in the penal sum of Three Hundred Thousand Forty Nine and 05/100's Dollars (\$300,049.05) to which payment well and truly to be made we do bind ourselves, and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

**WHEREAS**, the said Principal has completed, and owner has inspected and accepted as being complete in accordance with applicable design documents (failing which, this bond shall become effective only upon such completion and inspection) that certain work (herein referred to as the "Work") described as: Hometown Kyle Phase 4 Section 2.

**WHEREAS**, said Obligee requires that the Principal furnish a bond conditioned to guarantee for the period of Two year (s) after substantial completion of the Work against defects in workmanship and materials which are the responsibility of the Principal under the contract under which the Work was constructed, and which did not appear prior to the final completion of the Work.

**NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH** that, if the Principal shall indemnify the Obligee for all loss that the Obligee may sustain by reason of defective materials or workmanship which may first become apparent, and with respect to which written notice is delivered to Surety, before the expiration of the period of Two year (s) from and after date of substantial completion of the Work, then this obligation shall be void, otherwise to remain in full force and effect.

This obligation does not cover normal wear and tear of materials, misuse or abuse by the Obligee or third parties, failure of Owner to perform owner-required maintenance, nor

any defects known to Obligee prior to final completion of the Work nor any defects discovered or occurring after the expiration of the period set forth above.

Surety's liability on any performance bond previously executed in connection with the Work shall terminate automatically upon acceptance of this Bond and Surety's liability shall thereafter be determined exclusively in accordance with the terms of this Bond.

No right of action shall accrue hereunder to or for the benefit of any person or entity other the Obligee named herein, nor shall any suit be filed or action maintained on this bond more than twenty five (25) months after the date of the earliest timely notice of defect by Obligee to Surety.

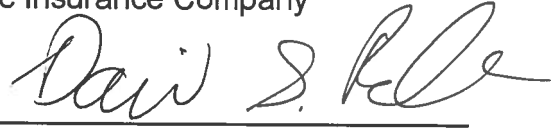
**SIGNED, SEALED AND DATED THIS 11th day of February, 2014.**

Joe Bland Construction, LP

Principal

By:  Joe Bland  
President, Bland, Inc.  
General Partner

SureTec Insurance Company

By:  David S. Ballew  
David S. Ballew, Attorney-in-Fact

POA #: 4221356

# SureTec Insurance Company

## LIMITED POWER OF ATTORNEY

**Know All Men by These Presents**, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

David S. Ballew

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Three Million Dollars and no/100 (\$3,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 12/31/2015 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

*Be it Resolved*, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-in-Fact* may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved*, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20<sup>th</sup> of April, 1999.)

**In Witness Whereof**, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 21st day of March, A.D. 2013.

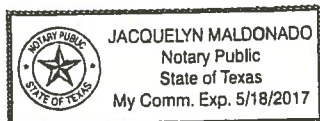
State of Texas                      ss:  
County of Harris



SURETEC INSURANCE COMPANY

By:   
John Knox Jr., President

On this 21st day of March, A.D. 2013 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Jacquelyn Maldonado, Notary Public  
My commission expires May 18, 2017

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 11th day of February, 2014, A.D.

M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.  
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

Item # 2

<p style="text-align: center;"><b>SureTec Insurance Company</b> <b>THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION</b></p>
--

**Statutory Complaint Notice**

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company  
9737 Great Hills Trail, Suite 320  
Austin, Tx 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write the Texas Department of Insurance at

PO Box 149104  
Austin, TX 78714-9104  
Fax#: 512-475-1771

**PREMIUM OR CLAIM DISPUTES:** Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

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**Terrorism Risks Exclusion**

The Bond to which this Rider is attached does not provide coverage for, and the surety shall not be liable for, losses caused by acts of terrorism, riot, civil insurrection, or acts of war.

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**Exclusion of Liability for  
Mold, Mycotoxins, Fungi & Environmental Hazards**

The Bond to which this Rider is attached does not provide coverage for, and the surety thereon shall not be liable for, molds, living or dead fungi, bacteria, allergens, histamines, spores, hyphae, or mycotoxins, or their related products or parts, nor for any environmental hazards, bio-hazards, hazardous materials, environmental spills, contamination, or cleanup, nor the remediation thereof, nor the consequences to persons, property, or the performance of the bonded obligations, of the occurrence, existence, or appearance thereof.

RH of Texas, LP

10415 Morado Circle

Building 2, Suite 100

Austin, Texas 78759

Joe Bland Construction, L.P.

13111 Dessau Road

Austin, Texas 78754

## Hometown Kyle Phase 4 Section 2

## Final Cost and Quantities

27-Jan-14

Description	Change Order No.	Unit	Original Quantity	Change Order Quantity	Revised Quantity	Unit Price	Original Amount	Change Order Amount	Revised Amount
<b>Streets</b>									
ROW Excavation		CY	6,587		6587	\$9.00	\$59,283.00	0.00	\$59,283.00
Subgrade Preparation (1' from BOC)		SY	6,994		6994	\$2.00	\$13,988.00	0.00	\$13,988.00
1.5" HMAC		SY	5,767		5767	\$8.00	\$46,136.00	0.00	\$46,136.00
8" Compacted Flexible Base		SY	6,994		6994	\$9.00	\$62,946.00	0.00	\$62,946.00
6" Curb & Gutter		LF	3,680		3680	\$9.50	\$34,960.00	0.00	\$34,960.00
4" Sidewalk, 4' or 6' wide		SF	0		0	\$5.00	\$0.00	0.00	\$0.00
Skidwalk Handicap Ramp		EA	4		4	\$885.00	\$3,540.00	0.00	\$3,540.00
Concrete Valley Gutter		EA	2		2	\$3,500.00	\$7,000.00	0.00	\$7,000.00
12' X 2' Stop Bar Markings (White)		EA	2		2	\$500.00	\$1,000.00	0.00	\$1,000.00
Standard Barricade		EA	1		1	\$1,000.00	\$1,000.00	0.00	\$1,000.00
4" Pavement Markings (White)		LS	1		1	\$500.00	\$500.00	0.00	\$500.00
Type II Driveway		SF	180		180	\$25.00	\$4,500.00	0.00	\$4,500.00
Remove Street End Barricade		EA	2		2	\$400.00	\$800.00	0.00	\$800.00
							<b>\$235,663.00</b>	<b>\$0.00</b>	<b>\$235,663.00</b>
<b>Drainage</b>									
18" Class III R.C.P.		LF	130		130	\$50.00	\$6,500.00	0.00	\$6,500.00
24" Class III R.C.P.		LF	55		55	\$60.00	\$3,300.00	0.00	\$3,300.00
30" Class III R.C.P.		LF	547		547	\$80.00	\$43,760.00	0.00	\$43,760.00
36" Class III R.C.P.		LF	245		245	\$100.00	\$24,500.00	0.00	\$24,500.00
42" Class III R.C.P.		LF	340		340	\$125.00	\$42,500.00	0.00	\$42,500.00
4' Dia Storm Sewer Manhole		EA	4		4	\$3,500.00	\$14,000.00	0.00	\$14,000.00
10' Storm Sewer Inlets		EA	3		3	\$3,000.00	\$9,000.00	0.00	\$9,000.00
20' Storm Sewer Inlets		EA	4		4	\$5,000.00	\$20,000.00	0.00	\$20,000.00
Relocate 6'x5' Area Inlet		EA	1		1	\$2,500.00	\$2,500.00	0.00	\$2,500.00
Raise Castings		LF	4		4	\$400.00	\$1,600.00	0.00	\$1,600.00
Trench Safety		LF	1317		1317	\$1.00	\$1,317.00	0.00	\$1,317.00
							<b>\$168,977.00</b>	<b>\$0.00</b>	<b>\$168,977.00</b>

RH of Texas, LP

10415 Morado Circle  
 Building 2, Suite 100  
 Austin, Texas 78759

Joe Bland Construction, L.P.  
 13111 Dessau Road  
 Austin, Texas 78754

## Hometown Kyle Phase 4 Section 2

## Final Cost and Quantities

27-Jan-14

Description	Change Order No.	Unit	Original Quantity	Change Order Quantity	Revised Quantity	Unit Price	Original Amount	Change Order Amount	Revised Amount
<b>Sanitary Service</b>									
8" SDR-26 Wastewater Line 0-12' Deep		LF	2,017		2017	\$39.00	\$78,663.00	0.00	\$78,663.00
8" SDR-26 Wastewater Line 12-14' Deep		LF	131		131	\$50.00	\$6,550.00	0.00	\$6,550.00
8" SDR-26 Wastewater Line 14-16' Deep		LF	91		91	\$80.00	\$5,480.00	0.00	\$5,480.00
8" SDR-26 Wastewater Line 16-18' Deep		LF	157		157	\$70.00	\$10,990.00	0.00	\$10,990.00
8" SDR-26 Wastewater Line 18-20' Deep		LF	38		38	\$85.00	\$3,230.00	0.00	\$3,230.00
Standard Manhole, 0-10' Depths		EA	6		6	\$4,000.00	\$24,000.00	0.00	\$24,000.00
Standard Manhole, 10'-12' Depths		EA	3		3	\$5,000.00	\$15,000.00	0.00	\$15,000.00
Standard Manhole, 16-18' Depths		EA	2		2	\$6,500.00	\$13,000.00	0.00	\$13,000.00
Bolted Lid for Manhole		EA	2		2	\$480.00	\$960.00	0.00	\$960.00
Protective Manhole Coating		EA	12		12	\$1,200.00	\$14,400.00	0.00	\$14,400.00
Double WW Service Incl 6" Pipe		EA	19		19	\$1,500.00	\$28,500.00	0.00	\$28,500.00
Single WW Service Incl 6" Pipe		EA	4		4	\$1,400.00	\$5,600.00	0.00	\$5,600.00
Raise Castings		EA	9		9	\$400.00	\$3,600.00	0.00	\$3,600.00
Concrete Encasement		LF	64		64	\$65.00	\$4,160.00	0.00	\$4,160.00
Trench Safety		LF	2434		2434	\$1.00	\$2,434.00	0.00	\$2,434.00
Remove Plug and Connect to Existing Manhole Stub		EA	1		1	\$1,250.00	\$1,250.00	0.00	\$1,250.00
WW Clean-out		EA	1		1	\$800.00	\$800.00	0.00	\$800.00
							\$218,597.00		\$218,597.00
<b>Water</b>									
12" AWWA 0900 DR-14 Water Line Incl fittings		LF	1120		1120	\$58.00	\$62,720.00	0.00	\$62,720.00
8" AWWA C900 DR-14 Water Line Incl fittings		LF	567		567	\$35.00	\$19,845.00	0.00	\$19,845.00
Remove 8" plug - tie to existing stub		EA	1		1	\$1,000.00	\$1,000.00	0.00	\$1,000.00
Remove 12" plug - tie to existing stub		EA	1		1	\$1,500.00	\$1,500.00	0.00	\$1,500.00
Relocate blow off hydrant		EA	1		1	\$1,250.00	\$1,250.00	0.00	\$1,250.00
12" Gate Valve with Box		EA	2		2	\$2,500.00	\$5,000.00	0.00	\$5,000.00
8" Gate Valve with Box		EA	2		2	\$1,500.00	\$3,000.00	0.00	\$3,000.00
Double Water Incl 1-1/2" Pipe		EA	18		18	\$1,350.00	\$24,300.00	0.00	\$24,300.00
Single Water Incl 1-1/2" Pipe		EA	5		5	\$1,250.00	\$6,250.00	0.00	\$6,250.00
Fire Hydrant Assembly, 6" Gate Valve		EA	5		5	\$3,900.00	\$19,500.00	0.00	\$19,500.00
Flush Valve		EA	1		1	\$3,000.00	\$3,000.00	0.00	\$3,000.00
Valve Adjustment		EA	9		9	\$250.00	\$2,250.00	0.00	\$2,250.00
Trench Safety		LF	1,881		1,881	\$1.00	\$1,881.00	0.00	\$1,881.00
							\$151,496.00		\$151,496.00



**RH of Texas, LP**  
**10415 Morado Circle**  
**Building 2, Suite 100**  
**Austin, Texas 78759**

**Joe Bland Construction, L.P.**  
**13111 Dessau Road**  
**Austin, Texas 78754**

**Hometown Kyle Phase 4 Section 2**

**Final Cost and Quantities**

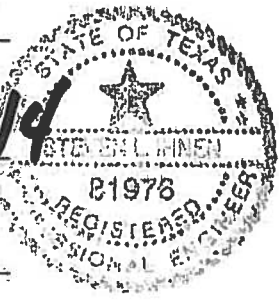
27-Jan-14

Description	Change Order No.	Unit	Original Quantity	Change Order Quantity	Revised Quantity	Unit Price	Original Amount	Change Order Amount	Revised Amount
<b>Erosion &amp; Sedimentation Controls</b>									
Sill Fence		LF	4,657		4657	\$3.00	\$13,971.00	0.00	\$13,971.00
Revegetation		SY	38,185		38185	\$0.75	\$28,623.75	0.00	\$28,623.75
Rock Berm		LF	188		188	\$20.00	\$3,360.00	0.00	\$3,360.00
Stabilized Construction Entrance		EA	1		1	\$1,200.00	\$1,200.00	0.00	\$1,200.00
Inlet Protection		EA	9		9	\$100.00	\$900.00	0.00	\$900.00
Clearing & Grubbing		LS	1		1	\$6,000.00	\$6,000.00	0.00	\$6,000.00
Tree Fence Protection		LF	217		217	\$3.25	\$705.25	0.00	\$705.25
Stabilized Construction Entrance		EA	1		1	\$1,200.00	\$1,200.00	0.00	\$1,200.00
							<b>\$55,960.00</b>		<b>\$55,960.00</b>
<b>TOTAL BASE CONTRACT</b>									<b>\$830,683.00</b>
									<b>\$830,683.00</b>
<b>Street Signs and Lights</b>									
Street/Stop Signs	1	ea.	0.0	2	2	\$3,500.00		\$7,000.00	\$7,000.00
Street Signs	1	ea.	0.0	1	1	\$2,600.00		\$2,600.00	\$2,600.00
Street Lights	1	ea.	0.0	5	5	\$3,400.00		\$17,000.00	\$17,000.00
<b>TOTAL CHANGE ORDER</b>								<b>\$0.00</b>	<b>\$26,600.00</b>
									<b>\$26,600.00</b>
<b>TOTAL REVISED CONTRACT</b>								<b>\$0.00</b>	<b>\$857,283.00</b>
									<b>\$830,683.00</b>
									<b>\$857,283.00</b>

Submitted by: *[Signature]* John C. Fenley, Senior Project Manager  
 Date: 1/27/14

Recommended by: *[Signature]* Steve Ihnen, P.E.  
 Date: 1-28-14

Approved by: Leanna Einhaus, Project Manager  
 Date:



**EXHIBIT C**  
**SUBDIVISION MAP**

JOHN PHARASS SURVEY NO. 13  
HAYS COUNTY, TEXAS  
APRIL 2013

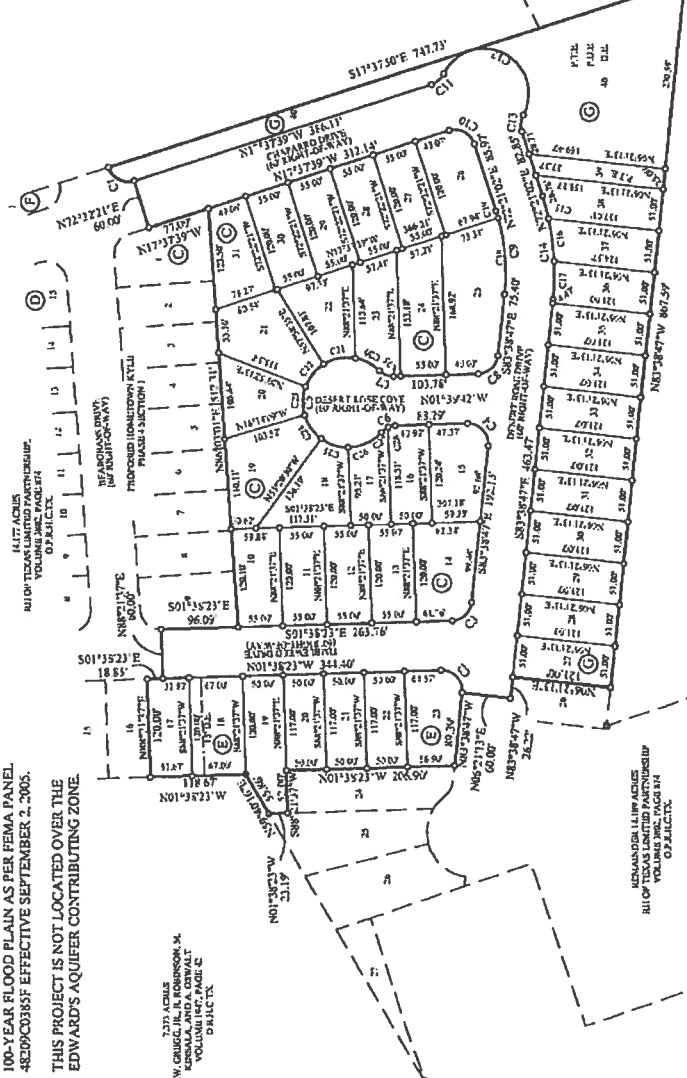
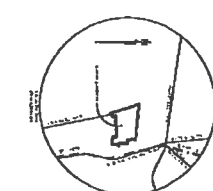


OWNER/DEVELOPER  
RH OF TEXAS LIMITED PARTNERSHIP  
1101 ARROW POINT DRIVE  
SUITE 101  
CEDAR PARK, TEXAS 78613

ENGINEER  
GICE  
3600 W. PARKER LANE, SUITE 212  
AUSTIN, TEXAS 78727

SURVEYOR  
DELTA SURVEY GROUP, INC.  
813 BRODIE LANE, SUITE 102  
AUSTIN, TEXAS 78745

NO.	AREA (SQ. FT.)	PERCENT
1	17,000	1.25
2	18,000	1.30
3	19,000	1.35
4	20,000	1.40
5	21,000	1.45
6	22,000	1.50
7	23,000	1.55
8	24,000	1.60
9	25,000	1.65
10	26,000	1.70
11	27,000	1.75
12	28,000	1.80
13	29,000	1.85
14	30,000	1.90
15	31,000	1.95
16	32,000	2.00
17	33,000	2.05
18	34,000	2.10
19	35,000	2.15
20	36,000	2.20
21	37,000	2.25
22	38,000	2.30
23	39,000	2.35
24	40,000	2.40
25	41,000	2.45
26	42,000	2.50
27	43,000	2.55
28	44,000	2.60
29	45,000	2.65
30	46,000	2.70
31	47,000	2.75
32	48,000	2.80
33	49,000	2.85
34	50,000	2.90
35	51,000	2.95
36	52,000	3.00
37	53,000	3.05
38	54,000	3.10
39	55,000	3.15
40	56,000	3.20
41	57,000	3.25
42	58,000	3.30
43	59,000	3.35
44	60,000	3.40
45	61,000	3.45
46	62,000	3.50
47	63,000	3.55
48	64,000	3.60
49	65,000	3.65
50	66,000	3.70
51	67,000	3.75
52	68,000	3.80
53	69,000	3.85
54	70,000	3.90
55	71,000	3.95
56	72,000	4.00
57	73,000	4.05
58	74,000	4.10
59	75,000	4.15
60	76,000	4.20
61	77,000	4.25
62	78,000	4.30
63	79,000	4.35
64	80,000	4.40
65	81,000	4.45
66	82,000	4.50
67	83,000	4.55
68	84,000	4.60
69	85,000	4.65
70	86,000	4.70
71	87,000	4.75
72	88,000	4.80
73	89,000	4.85
74	90,000	4.90
75	91,000	4.95
76	92,000	5.00
77	93,000	5.05
78	94,000	5.10
79	95,000	5.15
80	96,000	5.20
81	97,000	5.25
82	98,000	5.30
83	99,000	5.35
84	100,000	5.40



- LEGEND**
- 1 INCH IRON PPS-1000
  - 2 INCH IRON 100 WITH "HAYS SURV" CAP FOUND
  - 2 INCH IRON 100 HOUND
  - 2 INCH IRON 100 WITH "DELTA SURV" CAP SET
  - BUILDING SETBACK LINE
  - PUBLIC TRAIL EASEMENT
  - PUBLIC UTILITY EASEMENT
  - ACQUIT OF WAY
  - BOUNDARY EASEMENT
  - P.P.S. MARKERS OFFICIAL PUBLIC RECORD, HAYS COUNTY, TEXAS
  - P.P.S. MARKERS PLAT RECORD, HAYS COUNTY, TEXAS
  - P.P.S. MARKERS DISC RECORD, HAYS COUNTY, TEXAS
  - BLOCK IDENTIFIER

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C2	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C3	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C4	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C5	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C6	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C7	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C8	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C9	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C10	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C11	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C12	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C13	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C14	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C15	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C16	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C17	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C18	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C19	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C20	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C21	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C22	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C23	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C24	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C25	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C26	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C27	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C28	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C29	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"
C30	25.00'	39.27'	39.27'	N27°00'00"	90°00'00"

NOTES:  
NO PORTION OF THIS PROJECT IS WITHIN A  
100-YEAR FLOOD PLAIN AS PER FEMA PANEL  
48209C03857 EFFECTIVE SEPTEMBER 2, 2005.  
THIS PROJECT IS NOT LOCATED OVER THE  
EDWARDS AQUIFER CONTRIBUTING ZONE.

HOMETOWN KYLE  
PHASE 4 SECTION 2

Delta Survey Group Inc.  
813 Brodie Lane, Ste. 102, Austin, TX, 78745  
OFFICES: (512) 282-5200 FAX: (512) 282-5210

STATE OF TEXAS

KNOW ALL THESE MEN BY PRESENTS:

COUNTY OF HAYS

THAT, RH OF TEXAS LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS, WITH HOME ADDRESS AT 1101 ARROW POINT DRIVE, SUITE 101, CEDAR PARK, TEXAS 78613, OWNER OF THAT CERTAIN 14.177 ACRE TRACT OF LAND OUT OF THE SAMUEL PHARASS SURVEY 14, ABSTRACT 360 AND THE JOHN PHARASS SURVEY 13, ABSTRACT 361, SITUATED IN HAYS COUNTY, TEXAS, AS CONVEYED TO HIM BY DEED DATED OCTOBER 23, 2004, AND RECORDED IN VOLUME 2367, PAGE 514, OFFICIAL PUBLIC RECORDS, HAYS COUNTY TEXAS, AND OWNER OF THAT CERTAIN 14.189 ACRE TRACT OF LAND OUT OF THE JOHN PHARASS SURVEY 13, ABSTRACT 361, SITUATED IN HAYS COUNTY, TEXAS, AS CONVEYED TO IT BY DEED DATED JANUARY 6, 2010, AND RECORDED IN VOLUME 3302, PAGE 874, OFFICIAL PUBLIC RECORDS, HAYS COUNTY TEXAS, TOGETHER DO HEREBY SUBDIVIDE A COMBINED TOTAL OF 10.464 ACRES OF LAND OUT OF THE JOHN PHARASS SURVEY 13, ABSTRACT 361, TO BE KNOWN AS "HOMETOWN KYLE SUBDIVISION, PHASE 4 SECTION 2", IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS, PUBLIC TRAILS, AND EASEMENTS SHOWN HEREON.

IN WITNESS WHEREOF THE SAID RH HOMES OF TEXAS LIMITED PARTNERSHIP, A MARYLAND LIMITED PARTNERSHIP HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS VICE PRESIDENT, SCOTT TEETER, THE REUNTO DAILY AUTHORIZED, THIS DAY OF \_\_\_\_\_, 20\_\_ A.D.

ROYCE O. RIPPY, VICE PRESIDENT, LAND  
1101 ARROW POINT DRIVE  
SUITE 101  
CEDAR PARK, TEXAS 78613

STATE OF TEXAS  
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED ROYCE O. RIPPY, KNOWN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE DAY OF \_\_\_\_\_, 20\_\_ A.D.

(NOTARY PUBLIC IN AND FOR STATE OF TEXAS)

(PRINT OR TYPE NOTARY'S NAME)

STATE OF TEXAS  
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS:

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

LIZ Q. GONZALES  
COUNTY CLERK  
HAYS COUNTY, TEXAS

THIS FINAL PLAT (HOMETOWN KYLE SUBDIVISION, PHASE 4 SECTION 2) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY SUCH PLANNING AND ZONING COMMISSION.  
DATED THIS DAY OF \_\_\_\_\_, 20\_\_

HY: \_\_\_\_\_ ATTEST:  
CHAIRPERSON

STATE OF TEXAS  
COUNTY OF HAYS

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

**PRELIMINARY NOT FOR RECORDATION**

JOHN C. NIELSEN  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 5541 - STATE OF TEXAS  
DELTA SURVEY GROUP, INC.  
8213 BRODIE LANE, SUITE 102  
AUSTIN, TEXAS 78745

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT.

STEVE L. HINEN  
PROFESSIONAL ENGINEER  
No. 81916 STATE OF TEXAS  
GARRETT HINEN CIVIL ENGINEERS  
3600 WEST PARKER LANE, 5TH 212  
AUSTIN, TEXAS 78727

II, THE UNDERSIGNED, CITY ENGINEER OF THE CITY OF KYLE, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION ORDINANCE AND RECOMMEND APPROVAL.

STEVEN WIDACKL, P.E.  
CITY OF KYLE  
100 WEST CENTER  
KYLE, TX 78640

I, THE UNDERSIGNED, MAYOR OF THE CITY OF KYLE, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE CITY OF KYLE AND RECOMMEND APPROVAL.

LUCY JOHNSON  
MAYOR

I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF HOMETOWN KYLE SUBDIVISION, PHASE 4 SECTION 2 ADDITION TO THE CITY OF KYLE, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF KYLE ON THE DAY OF \_\_\_\_\_, 20\_\_ SAID ADDITION SHALL BE SUBJECT TO ALL THE REQUIREMENTS OF THE SUBDIVISION ORDINANCE OF THE CITY OF KYLE, TEXAS.

WITNESS MY HAND THIS DAY OF \_\_\_\_\_, 20\_\_

ANIELLA SANCHEZ  
CITY SECRETARY

GENERAL NOTES:

1. A 20-FOOT PUBLIC UTILITY EASEMENT AND DRAINAGE EASEMENT IS HEREBY DEDICATED ADJACENT AND PARALLEL TO THE FRONT OF ALL LOTS EXCEPT FOR SIDE YARDS AND CORNER LOTS.
2. A 10-FOOT PUBLIC UTILITY EASEMENT AND DRAINAGE EASEMENT IS HEREBY DEDICATED ADJACENT AND PARALLEL TO THE RIGHT-OF-WAY WHERE THERE IS A 15-FOOT BUILDING LINE SHOWN ON THE FACE OF THE PLAT.
3. A 10-FOOT PUBLIC UTILITY EASEMENT AND DRAINAGE EASEMENT IS HEREBY DEDICATED ALONG THE REAR PROPERTY LINES.
4. A 3-FOOT PUBLIC UTILITY EASEMENT AND DRAINAGE EASEMENT IS HEREBY DEDICATED ALONG THE SIDE PROPERTY LINES.
5. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOTS IN THIS SUBDIVISION, SITE DEVELOPMENT PERMITS AND BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF KYLE.
6. SIDEWALKS SHALL BE BUILT ALONG BOTH SIDES OF ALL STREETS WITHIN THE HOMETOWN KYLE SUBDIVISION, PHASE 4 SECTION 2. ALL SIDEWALKS SHALL BE A MINIMUM OF 4 FEET IN WIDTH AND BUILT IN COMPLIANCE WITH THE REQUIREMENTS OF THE CITY OF KYLE. HANDICAP RAMPABLE TO BE BUILT AS PART OF THE SUBDIVISION CONSTRUCTION AND SHALL BE IN PLACE PRIOR TO SUBDIVISION ACCEPTANCE. SIDEWALKS ACROSS FRONTAGE OF ALL HOMEOWNERS ASSOCIATION LOTS AND EASEMENTS LOTS SHALL BE BUILT AS PART OF SUBDIVISION STREET CONSTRUCTION.
7. NO OBJECTS INCLUDING SIGNAGE, BUILDING, ACCESSORY BUILDING, FENCING OR LANDSCAPING WHICH WOULD INTERFERE WITH CONVEYANCE OF STORM WATER SHALL BE PLACED OR ERECTED WITHIN ANY DRAINAGE EASEMENT WITHOUT PRIOR APPROVAL OF THE CITY OF KYLE.
8. EACH PROPERTY OWNER OF A LOT ON WHICH DRAINAGE EASEMENT(S) ARE PLATED SHALL BE RESPONSIBLE FOR MAINTENANCE AND REPAIRS NEATLY CUT AND FASHIONED AREA FREE OF THIRDS AND TREE BRUSH REGROWTH.
9. OWNER(S) OF PROPERTY WITH DRAINAGE AND UTILITY EASEMENT(S) SHALL ALLOW ACCESS FOR INSPECTIONS, REPAIR, MAINTENANCE AND RECONSTRUCTION AS MAY BE NECESSARY.
10. PLACEMENT OF FILL MATERIAL, OR STRUCTURES, OR CHANNEL MODIFICATIONS WITHIN 100-YEAR FLOOD PLAIN IS PROHIBITED.
11. MAINTENANCE AND UPKEEP OF DETENTION BASINS AND RELATED APPURTENANCES SHALL BE THE RESPONSIBILITY OF THE HOMEOWNERS ASSOCIATION LOTS UPON WHICH FACILITIES ARE LOCATED.
12. ACCESS TO EVERY LOT IS LIMITED TO ONLY STREETS PLATED AS PART OF THIS SUBDIVISION. ACCESS TO ANY LOT FROM FM 150 OR OLD STAGLE COACH ROAD IS PROHIBITED.
13. ALL SETBACKS SHALL CONFORM TO THE CITY OF KYLE ZONING ORDINANCE.
14. LOT 1, BLOCK G, IS A PUBLIC UTILITY EASEMENT, DRAINAGE EASEMENT AND PUBLIC TRAIL EASEMENT AND SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
15. LOT 2, BLOCK G, IS A PUBLIC TRAIL EASEMENT AND SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION.

DESCRIPTION OF A 10.464 ACRE TRACT PREPARED BY DELTA SURVEY GROUP INC., IN SEPTEMBER 2012, LOCATED IN THE JOHN PHARASS SURVEY NO. 13, HAYS COUNTY, TEXAS AND BEING A PORTION OF A 14.177 ACRE TRACT CONVEYED TO RH OF TEXAS LIMITED PARTNERSHIP, AS DESCRIBED IN VOLUME 2667, PAGE 514, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, AND ALSO BEING A PORTION OF A 14.189 ACRE TRACT CONVEYED TO RH OF TEXAS IN VOLUME 3301, PAGE 874 OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, SAID 10.464 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1 inch iron pipe found for the north corner of that 20.00 acre tract conveyed to Hays County Independent School District (HCISD) and recorded in Volume 513 Page 822, Real Property Records, Hays County, Texas, same being the southeast corner of a 6.69 acre tract conveyed to Ky-Tex Properties, Inc. in Volume 203, Page 26, Deed Records, Hays County, Texas for the southeast corner of this tract and the POINT OF BEGINNING;

THENCE with the north line of the said HCISD tract, same being the south line of 14.177 acre and said 14.189 acre tract N83°39'47"W, a distance of 857.59 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set;

THENCE leaving said common line and crossing said 14.189 acre tract the following seven (7) courses and distances:

1. N06°11'13"E, a distance of 121.00 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
2. N83°38'47"W, a distance of 362.22 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
3. N06°11'13"E, a distance of 60.00 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
4. N83°38'47"W, a distance of 69.39 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
5. S01°38'23"W, a distance of 206.00 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
6. S55°23'37"W, a distance of 322.00 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set, and
7. N01°32'23"W, a distance of 23.19 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set in the south line of that 7.373 acre tract conveyed to A.W. Gregg, Jr., R. Robinson, M. Kinastis, and A. Orrant in Volume 1917, Page 42, Deed Records, Hays County, Texas, same being a north line of the said 14.189 acre tract.

THENCE with the north and east lines of said 7.373 acre tract, same being a north and west lines of said 14.189 acre tract the following two (2) courses and distances:

1. N59°40'16"E, a distance of 53.56 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set, and
2. N91°32'23"W, a distance of 118.67 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set in said common line;

THENCE leaving said common line and crossing said 14.177 acre tract and said 14.189 acre tract the following eight (8) courses and distances:

1. N88°21'37"E, a distance of 120.00 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
2. S01°32'23"W, a distance of 18.55 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
3. N88°21'37"E, a distance of 60.00 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
4. S01°32'23"W, a distance of 96.09 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
5. N59°40'16"E, a distance of 512.21 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
6. N17°37'33"W, a distance of 77.09 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set,
7. N72°22'11"E, a distance of 60.00 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set, and
8. With a curve to the right a distance of 39.27 feet, through a central angle of 50°09'03", having a radius of 25.00 feet, and whose chord bears N71°22'09"E, a distance of 35.35 feet to a 1/2 inch iron rod with plastic "DELTA SURVEY" cap set in the east line of the said 14.177 acre tract, same being the west line of a 34.3 acre tract conveyed to Ky-Tex Properties, Inc. in Volume 185, Page 391, Deed Records, Hays County, Texas, for the northeast corner of this tract;

THENCE with the west line of said 34.3 acre tract and the west line of the aforesaid 6.69 acre tract, S17°37'50"E, a distance of 747.73 feet to the POINT OF BEGINNING and containing 10.454 acres of land more or less.

BEARING BASIS: Texas State Plane Coordinate System, South Central Zone, NAD83 HARN

SHEET  
2  
OF  
2

Delta Survey Group Inc.  
8213 Brodie Lane Ste. 102 Austin, TX. 78745  
office: (512) 282-5200 fax: (512) 282-9230

HOMETOWN KYLE  
PHASE 4 SECTION 2

Item # 2



# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

TxDot change of Speed limit located along I-35 southbound frontage road

**Subject/Recommendation:** *(Second Reading)* AN ORDINANCE OF THE CITY KYLE, TEXAS, ZONING FOR TRAFFIC AND RATE OF SPEED THEREIN ON IH 35 SB FRONTAGE ROAD IN THE CITY LIMITS OF THE CITY OF KYLE; DEFINING SPEEDING AND FIXING A PENALTY THEREFORE; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; WITH A SAVING CLAUSE REPEALING CONFLICTING LAWS AND DECLARING AN EMERGENCY. ~ *Leon Barba, P. E., City Engineer*

**Other Information:**

**Budget Information:**

---

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

**Attachments / click to download**

- [IH 35 SB Frontage Road - Letter](#)
- [Mobility Committee Minutes-2.6.14](#)
- [PW Committee Responses for Council Review](#)
- [Safety & Emergency Services Committee Responses for Council Review](#)
- [IH 35 SB Frontage Road Ordinance of the City of Kyle](#)
- [IH 35 westaccess kyle hays UPDATED PT2](#)

## ORDINANCE # \_\_\_\_\_

AN ORDINANCE OF THE CITY KYLE, TEXAS, ZONING FOR TRAFFIC AND RATE OF SPEED THEREIN, ON IH 35 SB FRONTAGE ROAD IN THE CITY LIMITS OF THE CITY OF KYLE; DEFINING SPEEDING AND FIXING A PENALTY THEREFORE; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; WITH A SAVING CLAUSE REPEALING CONFLICTING LAWS AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF KYLE:

## Section 1

It is hereby determined upon the basis of an Engineering and Traffic investigation that the prima facie maximum speed limit on those portions of IH 35 SB Frontage Road routed in the City of Kyle, is hereby stated, which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the prima facie maximum speed limit so declared towit.

## Speed Zone

FOR SOUTHBOUND TRAFFIC

Beginning at the northern city limit of Kyle at milepoint 15.156 to milepoint 16.617, a distance of 1.461 miles, a prima facie maximum speed limit of 50 miles per hour.

## SECTION II

That all of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this ordinance shall be guilty of a misdemeanor, which is named " The Offense of Speeding " and that the said offense is punishable by a fine in any sum not to exceed Two Hundred dollars (\$200.00). That the use of the word " Speeding " shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than fixed by City Ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.

That in prosecutions under this ordinance, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of " Speeding ".

## SECTION III

That should any section or any portion of any section hereof be decreed to be void, the invalidity of such section or such portion thereof shall not affect the validity of the remaining portions of this ordinance; and that each section and each portion thereof not decreed to be invalid shall remain valid and enforceable.

That all ordinances and parts of ordinances that are in conflict with this ordinance are hereby repealed.

That the fact that prompt action should be taken in the regulation of traffic, on the streets of this city, in the manner provided for in this ordinance creates an emergency requiring that the rules that provide that an ordinance shall be read at three separate meetings of the city council before final passage, be suspended; and that the said rules are hereby suspended, and this ordinance is here and now passed, and that it is ordered that it take effect from and after its passage and publication.

PASSED AND APPROVED and approved this the 4th day of March, 2014.

FINALLY PASSED AND APPROVED and approved this the 18th day of March, 2014.

---

Lucy Johnson, Mayor, City of Kyle

Attest:

---

Amelia Sanchez, City Secretary



February 13, 2014

Control: 16-02  
Highway: IH 35 SB Frontage Road  
County: Hays

Leon Barba  
City Engineer  
P.O. Box 40  
Kyle, Texas 78640

Dear Mr. Barba:

Our Traffic Engineering Office has completed speed studies on [IH 35 SB Frontage Road](#) within the city of [Kyle](#) and have received approval from our Division office to make some adjustments within the existing speed zones. Attached for your review is a copy of the proposed speed zone strip map, which shows the results of these studies as well as our recommendations.

Also attached are two copies of an Ordinance which would regulate these speeds within the city limits of [Kyle](#).

When the city council has passed this Ordinance please forward one signed copy to this office for our files and so that we can proceed with making the necessary signing changes.

Your interest to the safety of the traveling public is appreciated. If you should have any further questions concerning this matter please contact me at (512) 832-7142.

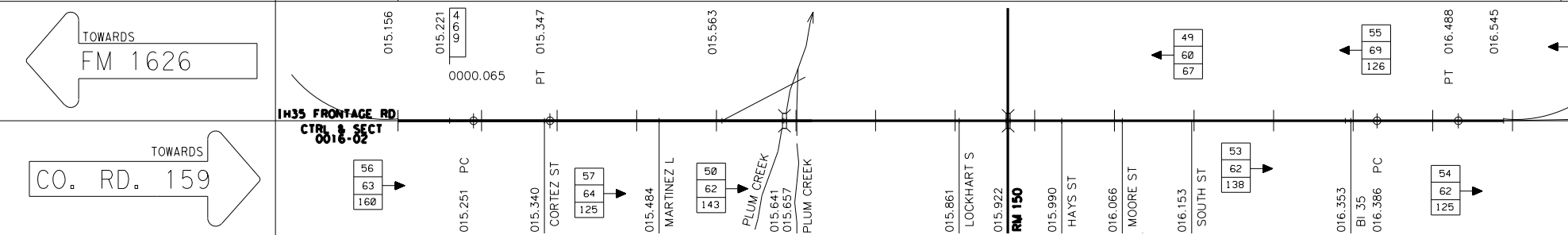
Sincerely,

Ed Butler, P.E.  
Transportation Engineer  
Traffic Operations  
Austin District

cc: [Ben Engelhardt](#), P.E., [South Travis Area](#) Office  
[Henry Ramirez](#), [Hays](#) Maintenance Supervisor  
attachments



DEVELOPMENT		15.156	CITY OF KYLE, INC.	16.617
RES SIGHT DISTANCE				
BALL BANK OR ADVISORY SPEED				
CURVES OVER 2°				
GRADES OVER 3%				
SURFACE WIDTH AND TYPE				
R.O.W. AND R.O.B.D. WIDTH				
ACCIDENTS				
ZONE LENGTHS	MILE		1.461 MILES	
ZONE SPEEDS	MPH		50 MPH	



ZONE SPEEDS	MPH		50 MPH
ZONE LENGTHS	MILE		1.461 MILES
ACCIDENTS			
R.O.W. AND R.O.B.D. WIDTH			
SURFACE WIDTH AND TYPE			
GRADES OVER 3%			
CURVES OVER 2°			
BALL BANK OR ADVISORY SPEED			
RES SIGHT DISTANCE			
DEVELOPMENT			CITY OF KYLE, INC.

DIS. NAME: AUSTIN	COUNTY: HAYS	MINUTE NO	DATE
HIGHWAY: IH35 FRONTAGE RD	CITY: KYLE	REPLACES	DATE
DATE OF SURVEY: 7/24/13	SCALE: 1"= 0.1 MI	CANCELED BY	DATE

LIMITS OF ZONE											
SECTION ONE			SECTION TWO			SECTION THREE					
STA OR MP	CONT & SECT	PROJECT	STA OR MP	CONT & SECT	PROJECT	STA OR MP	CONT & SECT	PROJECT	STA OR MP	CONT & SECT	PROJECT
BEGINS			BEGINS			BEGINS			BEGINS		
15.156	16-02	--									
INTERSECTION WITH IH 35											
ENDS			ENDS			ENDS			ENDS		
16.617	16-02	--									
INTERSECTION WITH IH 35											

- |     |
|-----|
| 68  |
| 75  |
| 125 |

85th PERCENTILE SPEED  
TOP SPEED MEASURED  
NUMBER OF CARS CHECKED
- |   |
|---|
| ● |
|---|

FATAL ACCIDENTS
- |   |
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| ◐ |
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PERSONAL INJURY ACCIDENT
- |   |
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PROPERTY DAMAGE ACCIDENT
- |   |
|---|
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INDICATES SECTION ZONED  
BY COMMISSION MINUTE

# SPEED ZONE

## **Kyle Mobility Committee Meeting**

**February 6, 2014**

**Meeting Called to Order.** Meeting was called to order at 7:00 pm

**Roll Call.** Motion was made by Chair, seconded by Danton Bankay to excuse David Repp and Joe Bacon. Motion carried. All other members were present with an alternate, James Battle representing Mr. Repp.

**Approval of minutes.** Motion made by Chair, seconded by Brad Growt. Carried unanimously.

**Citizen Comments.** None made.

**Request to amend Transportation Master Plan.** City engineer, Leon Barba, presented maps from CAMPO with past and projected usage for the next 10 years. Member Brad Growt expressed his concern on the 2010 plan presented as it did not reflect where we are as a community now. Discussion followed which included both members of the committee and citizens present. (Mr. Gonzales reiterated that it is his property that will be impacted by the work on Dacy Lane.) Motion made by Brad Growt to recommend that the Dacy lane extension be removed the Master Paln, seconded by Lucy Kirkby. Motion carried unanimously. Mr. Barba and Ms. LaMense informed us that even though this was passed at this level, it would be a long process to get it actually done finally.

**Installation of Stop Signs at Sheldon Dr. and Kyle Center Dr.** Mr. Barba, in consultation with Harper and Chief Barnett is of the opinion that it is a good idea to install Stop signs at the intersection in question, making it a Four Way Stop intersection. Chair Meister moved that we recommend the installation of additional Stop signs, at the intersection ,secondedby Lucy Kirkby and passed unanimously. Brad Growt made the motion to direct City Staff to come up with a strategic plan to sweep the city for safety of intersections, to see if there is a need to address other intersections as well. Motion was passed. Chair Meister asked if the businesses in the area were asked if they would assist with the funding of same. That question can be addressed to the developer.

**Recommendation to change Speed Limit on IH 35 South Bound Frontage road.** The recommendation is, to make it 55 mph from the gas station through Center St. and south of that. Lucy Kirkby moved that the speed limit not be increased and remain as is. Brad wished to amend the motion to make it 40 for the entire stretch. The original motion stood and was seconded by John Atkins. It carried unanimously. The final decision however, remains one that TxDot has control over.

**Update on 2013 Road Bond Projects.** Mr. Barba informed the committee that the new City Attorney has recommended that the Council table the current contracts for the 5 road bond packages that were to be brought to City Council on Tuesday, February 4<sup>th</sup>, 2014. He feels that language can be tightened up on each of these that will protect the city in the long run. Council agreed and the contracts were tabled. Amended contracts will be brought to the City Council again on February 18. Brad asked if the roads were eligible for CAMPO funding, Samantha responded with word from the organization that because they are not arterial roads, they are NOT eligible for funding from CAMPO. This is because of Federal guidelines that the City of Kyle was unaware of. Samantha will look into where funding sources for CAMPO come from and see if any of those might be ones that our packages were eligible for, i.e. and State funds. We may still be eligible for the Safety funding part of their requirements. The City of Kyle will have a contracted Project Manager, funded through the Road Bond package, who will oversee the project.

**Update on FM 2770/RM 150 Bicycle and Sidewalk Improvements.** 100% plans were submitted by the City Engineer today. Final details including minority goals will be submitted early next week to TxDot. With a May letting, construction will be happening during the school year.

**Transportation Map Update Workshops.** There is funding available to get an RFQ out which Mr. Barba is pursuing. This would affect the 2015 Master Transportation Plan. The current Comprehensive Plan is one that has just been slightly edited from the 2005 plan. The hope is that through workshops we can strategically overhaul the Master Transportation Plan to accurately reflect our growing community's needs. The recommendation is that we set up a series of workshops over a long period of time, 6-8 months at least to brainstorm ideas to other committees. Chair Meister has requested more information on the projected growth of the city, how much, which direction etc. Members will email Samantha with available dates to set up our first sessions for said workshops.

**Citizen Comments.** None made.

**Committee Member items.** John Atkins brought a printed form of the committee information from the website that needed some corrections. These include both the offices held by members as well as term limits indicated. Samantha will take comments to web manager. Brad asked that the request for a stop sign at Wetzell be revisited.

**Adjournment.** Motion to adjourn was made by John, seconded by Brad and passed unanimously at 8:52 pm.



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

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## Re: PW Committee Responses for Council Review

---

Lanny Lambert &lt;l.lambert@cityofkyle.com&gt;

Thu, Jan 30, 2014 at 7:15 PM

To: Harper Wilder &lt;hwilder@cityofkyle.com&gt;, GRACE NINO &lt;gracenino@cityofkyle.com&gt;, Jeff Barnett &lt;jbarnett@cityofkyle.com&gt;, City Engineer &lt;cityengineer@cityofkyle.com&gt;

Harper/Leon, please prepare an ordinance reflecting same to be considered by the City Council at the next Meeting.... Grace, in the Friday letter, thanks, Ian

On Thu, Jan 30, 2014 at 6:04 PM, Harper Wilder <hwilder@cityofkyle.com> wrote:

The PW Committee met last night 1-29-14. The Committee responses are listed below.

### 1) Request for stop signs to be installed at the intersection of Kyle Center Dr. and Sheldon Dr.

Adhering to our newly formed stop sign request process, the City Engineer, Chief of Police and PW Director all previously reviewed the above request. We unanimously agreed that a stop sign should be placed on either side of Kyle Center Dr. Each of us must then take the request to our respective committees (Mobility Committee, Safety Committee and PW Committee) for review and recommendation to Council. The PW Committee voted unanimously to install the two stop signs on Kyle Center Dr., including "All Way Stop" wording on a separate sign located directly below the stop sign.

-The PW Committee also requested that white thermo plastic stop bars and the words "STOP" were placed on the pavement at each sign location. I advised the PW Committee that our PW striping machine administers the regular paint and does not have the ability to apply the thermo plastic (which has a much longer life span and is used by TxDot). The PW Committee then suggested that this request be accomplished by an outside contractor then. I am currently looking into the preformed thermo plastic which utilizes a "pear" burner and may possibly be applied by our own City staff. I also advised the Committee that one of the existing stop sign locations is located inside a "private" drive (the exit of the Target/Khols parking area) and that I did not know if we had the authority to paint on that same private drive. I advised that I can attempt to make contact with the owner and see if they would allow us to perform the work (if approved by Council), or if the owner would perhaps be willing to complete the work for that one particular sign themselves even. I will await Council recommendation before proceeding.

### 2. Advised Committee about the TxDot change of Speed limit, located along I-35 southbound frontage road.

The area of the southbound frontage that is currently 40mph (from approximately the Los Vega Restaurant - to South St.) is proposed to be changed to 55mph (by TxDot). According to TxDot, the 40mph zone was a mistake and should have been posted as 55mph when the project was being constructed. TxDot has sent documentation in justification of the correction and if Council approves, the current ordinance would need to be amended. The PW Committee voted unanimously for the change in the speed limit, from the current 40mph to the corrected 55mph. This will make the frontage road consistent with the other frontage roads in the City as well.

Please let me know if you have any questions. Thank you.

Item # 3

--

***Harper Wilder*****Public Works Director**

City of Kyle Public Works  
520 E. RR150  
Kyle, Tx. 78640

**Off.#** [512-262-3024](tel:512-262-3024) / **ext. 4002****E-mail:** [hwilder@cityofkyle.com](mailto:hwilder@cityofkyle.com)

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Item # 3



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

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## Re: PW Committee Responses for Council Review

---

Lanny Lambert &lt;l.lambert@cityofkyle.com&gt;

Tue, Feb 11, 2014 at 3:37 PM

To: HARPER Wilder &lt;hwilder@cityofkyle.com&gt;, City Engineer &lt;cityengineer@cityofkyle.com&gt;, GRACE NINO &lt;gracenino@cityofkyle.com&gt;

grace, in the Friday letter, thanks, lan

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

From: **Jeff Barnett** <jbarnett@cityofkyle.com>

Date: Tue, Feb 11, 2014 at 3:36 PM

Subject: Re: PW Committee Responses for Council Review

To: Harper Wilder &lt;hwilder@cityofkyle.com&gt;

Cc: Lanny Lambert &lt;llambert@cityofkyle.com&gt;, James Earp &lt;jrearp@cityofkyle.com&gt;, City Engineer &lt;lbarba@cityofkyle.com&gt;, Jerry Hendrix &lt;jhendrix@cityofkyle.com&gt;, Pedro Hernandez &lt;phernandez@cityofkyle.com&gt;

Mr. Lambert and all,

The Safety and Emergency Services Committee met last night and discussed both issues outlined in Harper's email. The S&ES Committee voted to approve both items. See below:

### **Item # 1: Stop Signs at Kyle Center Drive and Sheldon Drive**

The Committee voted to recommend the installation of stop signs for all directions, to install "All Way Stop" signs in all directions, and to apply the thermo plastic stop bars and the words "STOP" placed on the pavement at each sign location. This item was passed unanimously.

### **Item # 2 Speed Limit Change on SB IH-35 West Access Near Center Street**

The Committee voted unanimously to support TxDOT's recommended speed change to 55 MPH along the SB West Access of IH 35 south of FM 1626 and ending at Center Street.

I will attach the Agenda for this meeting, and I will forward the Minutes once the Committee Secretary has completed and submitted these to me.

On Thu, Jan 30, 2014 at 6:04 PM, Harper Wilder <hwilder@cityofkyle.com> wrote:

The PW Committee met last night 1-29-14. The Committee responses are listed below.

#### **1) Request for stop signs to be installed at the intersection of Kyle Center Dr. and Sheldon Dr.**

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Item # 3

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Please let me know if you have any questions. Thank you.

--

***Harper Wilder***

**Public Works Director**

City of Kyle Public Works  
520 E. RR150  
Kyle, Tx. 78640

**Off.# 512-262-3024 / ext. 4002**  
**E-mail: [hwilder@cityofkyle.com](mailto:hwilder@cityofkyle.com)**

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*Jeff Barnett*

Item # 3

Jeff Barnett  
Chief of Police  
Kyle Police Department  
Office: (512)-268-0859  
Fax: (512)-268-2330  
<http://www.cityofkyle.com/police>



**Safety and Emergency Services Committee Agenda February 10, 2014.docx**

166K





# CITY OF KYLE, TEXAS

## Victim's Coordinator

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AUTHORIZING THE FILING OF A GRANT APPLICATION IN THE AMOUNT OF \$32,000 TO THE OFFICE OF THE GOVERNOR, VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT; AND AUTHORIZE \$22,600 IN MATCHING FUNDS FROM THE POLICE DEPARTMENT'S APPROVED OPERATING BUDGET FOR FY2015, TO CONTINUE TO FUND THE POLICE DEPARTMENT'S FULL-TIME VICTIM'S COORDINATOR POSITION ENDING MARCH 30, 2015. ~ *Josh Moreno, Grants Administrator*

**Other Information:**

**Budget Information:**

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**Attachments / click to download**

- [Resolution-Victim's Coordinator](#)
- [Victim's Coordinator-Project Budget Details](#)

**RESOLUTION NO**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AUTHORIZING THE FILING OF A GRANT APPLICATION IN THE AMOUNT OF \$32,000 TO THE OFFICE OF THE GOVERNOR, VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT; AND AUTHORIZE \$22,600 IN MATCHING FUNDS FROM THE POLICE DEPARTMENT'S APPROVED OPERATING BUDGET FOR FY2015, TO CONTINUE TO FUND THE POLICE DEPARTMENT'S FULL-TIME, VICTIM'S COORDINATOR POSITION ENDING MARCH 30, 2015.**

**Whereas**, The City Council of the City of Kyle, Texas finds it in the best interest of the citizens of the City of Kyle, Texas that the Victims Services Coordinator be operated for the FY 2014-2015; and

**Whereas**, The City Council of the City of Kyle, Texas agrees to provide applicable matching funds for the said project as required by the Criminal Justice Division (CJD) of the Governor's Office, Violent Crimes Against Women Criminal Justice and Training Projects- grant application; and

**Whereas**, The City Council of the City of Kyle, Texas agrees that in the event of loss or misuse of the Criminal Justice Division funds, the City Council of the City of Kyle, Texas assures that the funds will be returned to the Criminal Justice Division in full.

**Whereas**, The City Council of the City of Kyle, Texas designates Lanny S. Lambert, City Manager as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

**NOW THEREFORE, BE IT RESOLVED** that the City Council, of the City of Kyle, Texas approves the submission of the grant application for the Victims Services Coordinator to the Office of the Governor, Criminal Justice Division.

Passed and Approved this \_\_\_\_\_ of \_\_\_\_\_, 2014

**Signed by:**

**Attest:**

\_\_\_\_\_  
Mayor, Lucy Johnson

\_\_\_\_\_  
City Secretary, Amelia Sanchez

Grant Number: 2557603

Agency Name: Kyle, City of      Grant/App: 2557603      Start Date: 10/1/2014  
 Project Title: Victims Services Program      Status: Pending Applicant Response [FUND HOLD]      End Date: 3/30/2015      Fund Source: WF-Violence Against Women Formula Grants  
 Current Grant Manager: Reilly Webb      Current Program Manager: Jason Buckner      Liquidation Date:  
 CFDA: 16.588

- Eligibility
  - Profile
  - Narrative
  - Activities
  - Measures
  - Budget
  - Documents
  - Conditions of Funding
  - Submit PRR
  - Summary
  - My Mail
  - My Home
- Details    Source of Match    Budget Summary

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General Information and Instructions

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Select and Enter Budget Line Item Details


	New Budget Item	Budget Category	OOG Funds	Cash Match	In Kind Match	GPI	Total Project	
		Personnel	\$30,000.00	\$22,600.00	\$0.00	\$0.00	\$52,600.00	
<b>OOG-Defined Line Item</b>			<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	
		Coordinator	\$30,000.00	\$22,600.00	\$0.00	\$0.00	\$52,600.00	
<b>Edit</b>	<b>Grantee-Defined Line Item</b>		<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	<b>Qty / % of Salary</b>
	Victim's Coordinator is responsible for filling gap between victim's services during the criminal justice process. The salary and fringe, combined here will fund only the coordinator position. This position will cover 100% dedication to victim's services only. This position is responsible for the victim's advocacy, outreach, education, and victim's assistance to obtain services needed following a violent crime. Salary for the position totals \$39,600; fringe total \$12,900, for total costs to be \$52,500. The City of Kyle will provide a cash match of \$22,600 to cover fringe benefit costs and 25 percent of salary. The Fringe was determined by calculating the maximum increase allowed, and the fringe total is subject to change (if changed, the original totals in our proposal will only decrease) once the increase amount is finalized and set in the budget for FY2014-2015.		\$30,000.00	\$22,600.00	\$0.00	\$0.00	\$52,600.00	100
		Contractual and Professional Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		Travel and Training	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		Supplies and Direct Operating Expenses	\$2,000.00	\$0.00	\$0.00	\$0.00	\$2,000.00	
<b>OOG-Defined Line Item</b>			<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	
		Cellular, Fax, Pager, and/or Office Telephone	\$1,200.00	\$0.00	\$0.00	\$0.00	\$1,200.00	
<b>Edit</b>	<b>Grantee-Defined Line Item</b>		<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	<b>Qty / % of Salary</b>
	A 12 month phone plan @ approximately \$100/month cell phone service. Phone is provided to Victim's Coordinator for all victim's assistance-related phone calls and position-related phone calls. CJD would provide full funding for this item.		\$1,200.00	\$0.00	\$0.00	\$0.00	\$1,200.00	0
		Office Equipment and/or Furniture (Valued Under \$1,000)	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	
<b>Edit</b>	<b>Grantee-Defined Line Item</b>		<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	<b>Qty / % of Salary</b>
	Misc. office supplies (paper, pens, stapler, files, etc.)		\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0
		Office Storage and/or Workstation (Valued Under \$1,000)	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00	
<b>Edit</b>	<b>Grantee-Defined Line Item</b>		<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	<b>Qty / % of Salary</b>
	Storage shelving is needed to store the vast of community donations to the program. Some items included: clothing, toys, books, etc...		\$300.00	\$0.00	\$0.00	\$0.00	\$300.00	0
		Indirect Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

Item # 4

Budget Summary Totals

OOG Funds:	Cash Match:	In Kind Match:	GPI:	Total Project:
<input type="text" value="\$32,000.00"/>	<input type="text" value="\$22,600.00"/>	<input type="text" value="\$0.00"/>	<input type="text" value="\$0.00"/>	<input type="text" value="\$54,600.00"/>

Export Your Budget Detail Item(s)

[Export To Excel](#) 

Notes by Grantee to OOG:

Note from Grantee to OOG



**Enter on: 3/3/2014 1:19:28 PM By: Reilly Webb**

Please remove "etc..." from Misc. office supplies and office storage. Itemize to fullest extent possible.

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Item # 4



# CITY OF KYLE, TEXAS

## Mental Health Officer

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AUTHORIZING THE FILING OF A GRANT APPLICATION IN THE AMOUNT OF \$77,900 TO THE OFFICE OF THE GOVERNOR, DJ-EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM, TO FUND THE CITY OF KYLE FULL-TIME MENTAL HEALTH OFFICER POSITION FOR FY2015, ENDING SEPTEMBER 30, 2015; ~ *Josh Moreno, Grants Administrator*

**Other Information:**

**Budget Information:**

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**Attachments / click to download**

- [Resolution-Mental Health Officer](#)
- [Mental Health Officer-Project Budget Details](#)

**RESOLUTION NO**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AUTHORIZING THE FILING OF A GRANT APPLICATION IN THE AMOUNT OF \$77,900 TO THE OFFICE OF THE GOVERNOR, DJ-EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM, TO FUND THE CITY OF KYLE, FULL-TIME MENTAL HEALTH OFFICER POSITION FOR FY2015, ENDING SEPTEMBER 30, 2015;**

**Whereas**, The City Council of the City of Kyle, Texas finds it in the best interest of the citizens of the City of Kyle, Texas that the Mental Health Officer be operated for the FY 2014-2015; and

**Whereas**, The City Council of the City of Kyle, Texas agrees to provide applicable matching funds for the said project as required by the Criminal Justice Division (CJD) of the Governor's Office, Edward Byrne Memorial Justice Assistance Grant Program application; and

**Whereas**, The City Council of the City of Kyle, Texas agrees that in the event of loss or misuse of the Criminal Justice Division funds, the City Council of the City of Kyle, Texas assures that the funds will be returned to the Criminal Justice Division in full.

**Whereas**, The City Council of the City of Kyle, Texas designates Lanny S. Lambert, City Manager as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

**NOW THEREFORE, BE IT RESOLVED** that the City Council, of the City of Kyle, Texas approves the submission of the grant application for the Mental Health Officer to the Office of the Governor, Criminal Justice Division.

Passed and Approved this \_\_\_\_\_ of \_\_\_\_\_, 2014

**Signed by:**

**Attest:**

\_\_\_\_\_  
Mayor, Lucy Johnson

\_\_\_\_\_  
City Secretary, Amelia Sanchez

Grant Number: 2557303

Agency Name: Kyle, City of Grant/App: 2557303 Start Date: 10/1/2014  
 Project Title: Mental Health Officer Position Status: Pending OOG Review End Date: 9/30/2015 Fund Source: DJ-Edward Byrne Memorial Justice Assistance Grant Program  
 Current Grant Manager: Toni Kanetzky Current Program Manager: Judy Switzer Liquidation Date:  
 CFDA: 16.738

- Eligibility Profile Narrative Activities Measures Budget Documents Conditions of Funding Summary My Mail My Home
- Details Source of Match Budget Summary

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General Information and Instructions

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Select and Enter Budget Line Item Details

Budget Category	OOG Funds	Cash Match	In Kind Match	GPI	Total Project	
Personnel	\$69,100.00	\$0.00	\$0.00	\$0.00	\$69,100.00	
<b>OOG-Defined Line Item</b>	<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	
Certified Peace Officer - Police Department	\$69,100.00	\$0.00	\$0.00	\$0.00	\$69,100.00	
<b>Grantee-Defined Line Item</b>	<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	<b>Qty / % of Salary</b>
Certified Peace Officer, Mental Health Officer. This position will be responsible for responding to calls involving individuals with mental health issues. The Officer will be responsible for handling caseloads involving mental health persons and assisting fellow officers with calls for service involving individuals with mental health issues, including but not limited to answering initial calls for service, transport to appropriate facility, and caseload follow-up/close out. Salary = \$52,191 Fringe= \$16,909 (Breakdown of fringe package: FICA/Social Security-\$4,440, Workers Compensation-\$544, State Unemployment Taxes-\$320, Retirement-TMRS-\$5,030, Health Insurance-\$5,483, Dental Insurance-\$429, Life Insurance-\$58, ST/LT Disability Insurance-\$458, Vision Insurance-\$137, AD&D-\$10) Fringe increase is calculated based on the maximum increase allowed, and total is subject to change (if changed, the original totals in our proposal will only decrease) once the increase amount is finalized and set in the budget for FY2013-2014	\$69,100.00	\$0.00	\$0.00	\$0.00	\$69,100.00	100
Contractual and Professional Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Travel and Training	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Equipment	\$8,000.00	\$0.00	\$0.00	\$0.00	\$8,000.00	
<b>OOG-Defined Line Item</b>	<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	
Equipment / Accessories for Law Enforcement Vehicle (purchased separately from vehicle)	\$8,000.00	\$0.00	\$0.00	\$0.00	\$8,000.00	
<b>Grantee-Defined Line Item</b>	<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	<b>Qty / % of Salary</b>
The M-7 In-Vehicle Computer System will allow the Mental Health Officer to be more accessible throughout the region, enhancing the potential for regional coordination efforts and creating an overall safer, more efficient, and more capable operation. With the success of the program through its first two years of implementation, the in-vehicle computer system will only enhance the quality and legitimacy of the City's Mental Health Services program.	\$8,000.00	\$0.00	\$0.00	\$0.00	\$8,000.00	1
Supplies and Direct Operating Expenses	\$800.00	\$0.00	\$0.00	\$0.00	\$800.00	
<b>OOG-Defined Line Item</b>	<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	
Project Supplies (e.g., binocular, battery, flexicuff, drug testing kit)	\$800.00	\$0.00	\$0.00	\$0.00	\$800.00	
<b>Grantee-Defined Line Item</b>	<b>OOG Funds</b>	<b>Cash Match</b>	<b>In Kind Match</b>	<b>GPI</b>	<b>Total Project</b>	<b>Qty / % of Salary</b>
An EDP Bag, modified for split second deployment, is easily maintained and will allow for increased security when transporting emotionally disturbed individuals. The bag will decrease the need for additional law enforcement when those certain situations arise, thus, allowing for greater efficiency of the police force.	\$800.00	\$0.00	\$0.00	\$0.00	\$800.00	0
Indirect Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

Item # 5

Budget Summary Totals

OOG Funds:	Cash Match:	In Kind Match:	GPI:	Total Project:
\$77,900.00	\$0.00	\$0.00	\$0.00	\$77,900.00

Export Your Budget Detail Item(s)

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Notes by Grantee to OOG:

Note from Grantee to OOG 

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# CITY OF KYLE, TEXAS

## Garage Requirement for Old Town

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:**

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ORDINANCE 438, ARTICLE II-ZONING DISTRICTS AND REGULATIONS (SECTION 53-33.GENERAL REQUIREMENTS AND LIMITATIONS) TO EXEMPT PROPERTIES WITHIN THE ORIGINAL TOWN OF KYLE FROM THE RESIDENTIAL REQUIREMENT OF CONSTRUCTION OF A GARAGE. AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 438 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

*The Planning Commission approved the amendment with a vote of 6-0.*

**Other Information:**

See attachments

**Budget Information:**

N/A

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Attachments / click to download

- [exhibit a](#)
- [Ordinance](#)

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ORDINANCE 438, ARTICLE II-ZONING DISTRICTS AND REGULATIONS (SECTION 53-33.GENERAL REQUIREMENTS AND LIMITATIONS) TO EXEMPT PROPERTIES WITHIN THE ORIGINAL TOWN OF KYLE FROM THE RESIDENTIAL REQUIREMENT OF CONSTRUCTION OF A GARAGE. AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 438 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW

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

SECTION 1. Ordinance 438 amended as set forth in Exhibit A. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate and consistent with the existing numbering and formatting of the existing ordinance.

SECTION 2. That the City Secretary is hereby authorized and directed to update the City of Kyle code to reflect the changes made in Exhibit A and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the \_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lucy Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Amelia Sanchez, City Secretary



## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE I. IN GENERAL

**ARTICLE I. IN GENERAL**

[Sec. 53-1. Authority.](#)

[Sec. 53-2. Title.](#)

[Sec. 53-3. Purpose and intent.](#)

[Sec. 53-4. Jurisdiction and intent.](#)

[Sec. 53-5. Definitions.](#)

[Sec. 53-6. Application.](#)

[Sec. 53-7. Exemptions.](#)

[Sec. 53-8. Enforcement of regulations.](#)

[Secs. 53-9—53-32. Reserved.](#)

Sec. 53-7. Exemptions.

The provisions of this chapter shall not:

- (1) Prohibit the continuation of plans, construction or designed use of a building for which a building permit was lawfully issued and which:
  - a. Is completed in its entirety within one year from the effective date of the ordinance from which this chapter is derived; and
  - b. For which construction shall have been started within 90 days after the effective date of the ordinance from which this chapter is derived; provided that any such building, construction or use that is not in compliance with this chapter shall be a nonconforming use; or
- (2) Apply to permits or commitments given by the city with reference to construction of public utility buildings prior to the passage of the ordinance from which this chapter is derived shall be observed.
- (3) Residential development located within the Original Town of Kyle shall be exempt from constructing a garage. Should a garage be constructed the garage location requirements of the zoning district shall be observed.

(Ord. No. 438, § 7, 11-24-2003)



# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## Plum Creek- Hours of Operation

**Subject/Recommendation:** *(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8- "MXD" MIXED USE TO INSERT SECTION (9) OPERATING HOURS FOR "MXD" COMMERCIAL USES. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*Planning and Zoning voted 6-0 to approve the amendment*

**Other Information:** Please see attachments

**Budget Information:** N/A

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Attachments / click to download

[Ordinance](#)

[Exhibit A](#)

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8- "MXD" MIXED USE TO INSERT SECTION (9) OPERATING HOURS FOR "MXD" COMMERCIAL USES. AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. Ordinance 311 amended as set forth in Exhibit A. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate and consistent with the existing numbering and formatting of the existing ordinance.

SECTION 2. That the City Secretary is hereby authorized and directed to update the City of Kyle code to reflect the changes made in Exhibit A and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the \_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014,

at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lucy Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Amelia Sanchez, City Secretary

## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

**ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS**

## PART C

[Sec. 1. PUD district regulations and performance standards.](#)

[Sec. 2. "OS" open space PUD district.](#)

[Sec. 3. "R-1" residential PUD district.](#)

[Sec. 4. "R-2" residential PUD district.](#)

[Sec. 5. "R-3" multi-family residential PUD district.](#)

[Sec. 6. "NC" neighborhood commercial PUD district.](#)

[Sec. 7. "C" commercial PUD district.](#)

[Sec. 8. "MXD" mixed use development PUD district.](#)

[Sec. 9. "EMP" employment PUD district](#)

[Sec. 10. "LI" Light industrial PUD district](#)

**Sec. 1. PUD district regulations and performance standards.**

The PUD district regulations and performance standards set forth herein shall apply within the boundaries of the Plum Creek PUD; provided, however, that the following uses shall be permitted in all PUD districts:

- (a) Churches;
- (b) Facilities owned and operated by the federal government, the state and political subdivisions thereof;
- (c) Schools and educational institutions;
- (d) Fire stations;
- (e) Public utilities;
- (f) Athletic fields, sports facilities, playgrounds, recreational center and swimming pools;
- (g) Greenbelt and recreational areas; and
- (h) Parking lots associated with the PUD district uses, provided that parking lots in the "R-1" and "R-2" residential PUD districts are subject to city council approval.

**Sec. 2. "OS" open space PUD district.**

- (A) *Purpose.* An open space PUD district is a tract of land provided as a general benefit for the community. Common open space may be usable for recreational purposes or may provide visual, aesthetic and environmental amenities. The uses authorized for the common open space should be appropriate to the scale and character of the surrounding development considering its size, density,



## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

expected population, topography, and the number and type of dwellings to be provided. Common open space should be improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. Any buildings, structures and improvements to be located in the common open space must be appropriate to the uses which are intended and, therefore, must conserve and enhance the amenities of the common open space having regard to its topography and the intended function of the common open space, and must be secondary to open space component.

- (B) *Permitted uses.* The following uses shall be permitted uses in "OS" open space PUD district:
- (1) Cemeteries (with conditional use permit issued by the city council);
  - (2) Conservation areas;
  - (3) Golf courses;
  - (4) Outdoor recreational and athletic facilities;
  - (5) Outdoor swimming pools;
  - (6) Parks, playgrounds and playfields;
  - (7) Wildlife sanctuaries;
  - (8) Outdoor performance stages and amphitheaters;
  - (9) Streams, lakes, impounded waterways, or their drainageways; and
  - (10) Wetlands.
- (C) *[Secondary uses.]* The following uses shall be permitted as secondary uses in this "OS" open space PUD district:
- (1) Club houses and community centers.
  - (2) Retail-oriented uses which are clearly secondary and customarily or necessarily incidental to the permitted use, including but not necessarily limited to the following:
    - (a) Retail sales and services operated as part of a golf course, recreational or athletic facility.
    - (b) Retail sales and services sponsored by service clubs, non-profit societies or organizations and concessions contracted with the city, property owners association or other community-related organization.
    - (c) Food and beverage sales, including alcoholic beverages.
    - (d) Restaurants including alcoholic beverage sales which are operated as part of or in conjunction with a golf course, club house, or other community related facility.
    - (e) Caretaker residence.
    - (f) Maintenance buildings required to house equipment and material to maintain the site.
- (D) *Site development regulations.* Use regulations in the "OS" open space PUD district.
- (1) Maximum height of buildings: 35 feet.
  - (2) Density - maximum floor area shall not exceed 0.1.
  - (3) Lot size - minimum lot area for any building: 3,500 square feet.
  - (4) Lot width - minimum lot width: 35 feet.
  - (5) Front yard - minimum required building setback: 15 feet.

## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

- (6) Side yard - minimum required building setback: 10 feet.
- (7) Rear yard - minimum required building setback: 10 feet.
- (8) Garages shall either be attached or detached and accessible from a public or private street or alley.

**Sec. 3. "R-1" residential PUD district.**

- (A) *Purpose.* This district is an area for low density single-family residential use, with a minimum lot size of 6,000 square feet. This district is appropriate for single-family neighborhoods.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-1" residential PUD district:
  - (1) The following uses that are permitted uses in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Single family dwellings for residential use.
  - (3) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
  - (4) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
  - (5) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
  - (6) Accessory buildings, which shall be located only in rear yards, and accessory uses customarily incident to the use set out in subsection (B)(2) above and located on the same lot therewith, not involving the conduct of a retail business. The term accessory use shall also include:
    - (a) A home occupation such as the office of a physician, surgeon, dentist, accountant or bookkeeper, dressmaker, beauty shop, or artist, provided that such uses are located in the dwelling used by such a person as his or her private residence and no outside employees are present on the premises.
    - (b) An unilluminated "For Sale" or "For Rent" sign not more than four square feet in area may be permitted as an accessory use; provided however, that churches may display signs, symbols, and emblems similar in kind and nature as is customary and normal for such churches, and provided further, that during construction of a building, one unilluminated sign advertising contractors and/or architects on such premises shall be permitted, provided that such sign shall not be more than four square feet in area and shall be set

## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

back of the established or customary building line, and such sign shall be removed immediately upon completion of the building.

- (7) Residential accessory dwelling units, subject to the following site development requirements:
- (a) A lot intended for use for a single-family detached dwelling unit may contain both a principal dwelling unit and an accessory dwelling unit under the following restrictions and conditions:
- (i) Maximum floor area of an accessory dwelling unit shall be 1,000 square feet in size.
  - (ii) Maximum height of an accessory dwelling unit shall be two stories or 25 feet; provided, however, that an accessory dwelling unit shall not be constructed to a height greater than the principal residence.
  - (iii) No more than one accessory dwelling unit per lot is allowed.
  - (iv) Parking for an accessory dwelling unit shall not be less than one parking space per accessory dwelling unit.
  - (v) The LUE requirement (whether a whole LUE or any fraction thereof) for an accessory dwelling unit shall be counted toward the maximum number of LUEs available to be issued in the Plum Creek PUD, and in the subdivision within which the lot is platted.
  - (vi) In addition to compliance with all applicable city codes and regulations including, but not limited to, those dealing with building, plumbing, electrical, fire, safety, health and sanitation, property maintenance and rental housing licensing, the construction, occupancy and use of an accessory dwelling unit shall be controlled by the following restrictions:
    - (A) At least one of the dwelling units on a lot containing an accessory dwelling unit shall be occupied by an owner of the lot.
    - (B) Maximum occupancy of an accessory dwelling unit shall be in accordance with the table identified as schedule B as set forth herein below.
    - (C) An accessory dwelling unit must be constructed concurrently with but not before a principal residence.
    - (D) A separate water and sewer tap shall be obtained for each accessory dwelling unit. The cost of each such separate tap for accessory units shall be the same cost as a water or sewer tap for the primary single-family dwelling unit. Impact fees for both water and wastewater shall be paid and LUEs issued for each such accessory unit as required by ordinance. Not less than one-half of a water LUE and one-half of a wastewater LUE shall be required for each accessory unit; and the number, or fraction thereof, of an LUE required shall be as provided in schedule A. LUEs shall be counted and credited as they are allocated, whether in whole numbers or in fractions thereof.
    - (E) Each lot eligible for a residential accessory dwelling unit shall be identified on the subdivision plat and to the commission and city council during the subdivision approval process, and each such residential accessory dwelling unit shall be identified on the site development plan submitted by the owner.
    - (F) The subdivider/developer of a single-family residential subdivision that includes lots for which an accessory dwelling unit is permitted, shall clearly identify all such lots in restrictive covenants filed of record in the real property records of Hays County, Texas.

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- (C) *Site development regulations.* The following regulations shall be the requirements for buildings within the "R-1" residential PUD district:
- (1) *Minimum lot size, lot area.* No building shall be constructed on any lot of less than 6,000 square feet.
  - (2) *Minimum lot width.* The lot shall have a minimum of 50 feet of width along the front property line, except when a lot is on a cul-de-sac, where it may be a minimum width of 30 feet along the front property line.
  - (3) *Maximum dwelling units per lot.* One principal dwelling unit and one accessory dwelling unit.
  - (4) *Maximum height.* No building shall exceed 35 feet in height.
  - (5) *Area.* No building or structure, nor any enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
  - (6) *Minimum setbacks.*
    - (a) *Front yard.* There shall be a front yard having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, covered terrace, balcony or bay.
    - (b) *Side yard.* A yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.
    - (c) *[Between dwellings.]* The minimum distance between dwellings on adjoining lots shall be ten feet.
    - (d) *Rear yard.* There shall be a rear yard setback of not less than 25 feet from the rear most wall of the principal dwelling unit to the back property line. There shall be a rear yard setback of not less than five feet from the rear most wall of any accessory building and garage to the back property line.
  - (7) *[Garages.]* Garages shall either be attached or detached and accessible from a public or private street, or alley.

## SCHEDULE A

Unit Size	LUE Count
0 to 699 square feet	Minimum 0.50 LUE
700 to 849 square feet	0.50/LUE
850 to 1,000 square feet	0.75/LUE

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## SCHEDULE B

Unit Size	Maximum Number Of Occupants
0 to 699 square feet	2
700 to 849 square feet	3
850 to 1,000 square feet	4

**Sec. 4. "R-2" residential PUD district.**

(A) *Purpose.* This district is intended as an area for medium density, single-family residential use. In appropriate locations, this district shall accommodate single-family detached, duplex, and single-family attached residential uses permitted under residential standards.

(B) *Permitted uses.*

(1) The following uses shall [be] permitted uses in the "R-2" residential PUD district:

(a) The following uses that are permitted uses in the "OS" open space PUD district:

- (i) Wetlands;
- (ii) Conservation areas;
- (iii) Golf courses;
- (iv) Outdoor recreational and athletic facilities;
- (v) Outdoor swimming pools;
- (vi) Parks, playgrounds and playfields;
- (vii) Wildlife sanctuaries;
- (viii) Streams, lakes, impounded waterways, or their drainageways; and

(b) Any uses permitted in "R-1" residential PUD district.

(c) Duplexes.

(d) Medium density single-family detached residential.

(e) Single family attached residential.

(g)[f] Courtyard.

(2) No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses set forth in this section.

(C) *Site development regulations.* The following regulations shall be the site development regulations for development within the "R-2" residential PUD district:

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- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
- (3) The following alternative site development regulations shall be exclusively applicable to duplexes within the "R-2" residential PUD district:

## (a) Alternative No. 1:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 6,000 square feet.
- (ii) Minimum lot width: 50 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

or,

## (b) Alternative No. 2:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 7,200 square feet.
- (ii) Minimum lot width: 60 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

Provided, however, that alternative No. 1 may be utilized only if open space is provided within the "R-2" development so as to result in the same level of density that would result from the application of alternative No. 2 criteria in this subsection 4.(C)(3).

## (c) Minimum setbacks:

- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
- (ii) Side yard. There shall be a side yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.

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- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (d) Garages shall be permitted in the "R-2" development pursuant to the following requirements:
  - (i) Garages shall be either attached or detached and accessible from a public or private street, or alley.
  - (ii) A minimum of two parking spaces is required for each unit. The driveway may be included in the counting of the required minimum as one of the two spaces required for each unit.

Provided, however, that these requirements do not apply to any "R-1" development located within a primarily "R-2" development area.
- (4) The following site development regulations shall be exclusively applicable to medium density single-family detached residential within the "R-2" residential PUD district:
  - (a) Minimum lot size: 3,600 square feet.
  - (b) Minimum lot width: 35 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height. No building shall exceed 35 feet.
  - (e) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargement.
  - (f) Minimum setbacks:
    - (i) Front yard. There shall be a front yard setback having a depth of not less than eight feet from the property line to the front line of the building, including a covered porch, covered terrace, balconies, or bays.
    - (ii) Side yard. There shall be a side yard of not less than five feet from the walls of the building or accessory building to the side property line.
    - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than five feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (g) Garages shall be either attached or detached and accessible from a public or private street, or alley.
- (5) The site development regulations set forth below shall be exclusively applicable to single-family attached residential.
  - (a) Minimum lot size: 2,500 square feet.
  - (b) Minimum lot width: 25 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height: 35 feet.
  - (e) Minimum setbacks:

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- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
  - (ii) Side yard. No setback required.
  - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than 25 feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (f) Garages shall either be attached or detached and accessible from a public or private street or alley.
- (6) The site development regulations set forth below shall be exclusively applicable to courtyard residential.
- (a) Minimum lot size: 2,000 sq. ft.
  - (b) Minimum lot width: None.
  - (c) Maximum dwelling units per lot: One principle dwelling unit and one accessory dwelling unit.
  - (d) Maximum height: 35 feet.
  - (e) Area: No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargements.
  - (f) Minimum setbacks:
    - (i) Front yard: There shall be a front yard setback having the depth of not less than four feet from the courtyard walk to the front line of the building.
    - (ii) Side yard: There shall be no side yard set back required. Except that there shall be a side yard ser back having a depth of not less than eight feet from the property at public or private streets to the side line of the building.
    - (iii) Rear yard: There shall be no rear yard setback required
  - (g) Garages and carports: May either be attached or detached and accessible from private street or alley.
  - (h) Each courtyard shall have a "gateway" (examples: trellis, fencing, and/or landscaping).
  - (i) Each courtyard shall have a gathering place with a minimum of four chairs or two benches.
  - (j) The courtyard sidewalk(s) shall be the following minimum width for at least 70 percent of the length:
    - (k)[i] Single sidewalk: Five feet.
    - (l)[ii] Double sidewalk: Four feet to six [feet].
  - (m)[k.] Each dwelling unit shall have a front porch or front patio having an area with a minimum depth of five feet and a minimum length of seven feet.
  - (n)[l.] Minimum separation between interior dwelling units from back side of porch or garden patio to back side of porch or garden patio: 24 feet.
  - (o)[m.] Minimum separation of dwelling units at street: 16 feet.
  - (p)[n.] Minimum separation of dwelling units at rear of courtyard: Ten feet.



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(Ord. No. 687, § 1(Exh. A), 1-17-2012)

**Sec. 5. "R-3" multi-family residential PUD district.**

- (A) *Purpose.* This district is intended as an area for medium density single-family, duplex, and condominium uses. In appropriate locations, this district shall accommodate a variety of housing types, primarily multiple family dwellings and shall be designed to provide the widest range of housing types, as well as highest density in the community. Mobile homes and manufactured homes are excluded from this district.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-3" multi-family residential PUD district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in "R-2" residential PUD district, excluding the following "R-1" uses:
    - (a) Single family dwelling for residential use, as described in article II, part C, section 3 of this ordinance.
    - (b) Residential accessory dwelling units.
    - (c) Apartment buildings.
    - (d) Convalescent and hospice homes, assisted living, and retirement housing.
    - (e) Condominiums.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) The following site development regulations shall be exclusively applicable to apartment buildings, convalescent and hospice homes, assisted living, and retirement housing, and condominiums.
    - (a) Minimum lot size: 6,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Maximum dwelling units per lot: 36 units per acre.

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- (d) Maximum height: 60 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the "R-3" site which limits maximum building height to 40 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
- (e) Minimum setbacks:
  - (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
  - (ii) Side yard. There shall be a side yard setback of not less than 15 feet from the walls of the building or accessory building to the side property line.
  - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (f) Garages shall either be attached or detached and accessible from a public or private street, or alley.
- (4) The site development regulations set forth below shall be exclusively applicable to condominium residential.
  - (a) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

### **Sec. 6. "NC" neighborhood commercial PUD district.**

- (A) *Purpose.* This area is intended to provide for the location of offices and small businesses serving neighborhood community needs, which may be located within or adjacent to a residential district of the PUD for the convenience of nearby residents. The businesses shall be conducive to and fit into the residential pattern of development, and not create land use, architectural or traffic conflicts. The following standards for the neighborhood commercial district are intended to preserve the residential atmosphere and be consistent with the Plum Creek PUD master plan.
- (B) *Permitted uses.* The following uses shall be permitted in "NC" neighborhood commercial district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;

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- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in "R-1" residential PUD district, except the following:
  - (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.
- (3) Any use permitted in the "R-2" residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (4) Any use permitted in the "R-3" multi-family residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (5) Grocery stores or specialty food store.
- (6) Barber and/or beauty shop.
- (7) Daycare services and child development centers.
- (8) Clothes cleaning agency.
- (9) Laundromat.
- (10) Video rental store.
- (11) Coffee shop, cafe or, delicatessen not exceeding 2,500 square feet of gross floor area.
- (12) Pharmacy.
- (13) Electronic service center providing photocopying, faxing, and computer service.
- (14) Computer or communications network access.
- (15) Mail box rental and package shipping/receiving store.
- (16) Accessory buildings customarily appurtenant to a permitted use.
- (17) Dwelling units that are located above or behind a permitted commercial use and secondary to that commercial use.
- (18) Neighborhood automobile service stations.
- (19) Bed and breakfast establishment, subject to the following requirements:
  - (a) A maximum of four guest bedrooms shall be provided.
  - (b) Paying guests shall not stay more than seven consecutive days.
  - (c) Only overnight guests may be served meals at the establishment, except that luncheons and receptions may be held for attendees of organized social functions and tours.
  - (d) Only one sign is permitted, and it shall be non-illuminated, no greater than two square feet, and affixed flush with the wall of the dwelling.
  - (e) Each bed and breakfast establishment shall provide a minimum of two off-street parking spaces, plus one additional parking space for each guest room. This requirement may be waived when the owner can show that adequate off-street parking is available at an adjacent commercial site under common ownership or lease. Any parking area located adjacent to a residential zoned property shall provide a privacy fence at least six feet in height and buffer between the parking area and the adjacent residential property.

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- (f) The bed and breakfast establishment shall comply with all licensing requirements of the county health department for storage, preparation, and serving of food and beverages.
- (20) Rooming and boarding houses.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
  - (3) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (4) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (5) The following site development regulations shall be applicable to the "NC" neighborhood commercial district.
    - (a) Minimum lot size: 5,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Minimum lot depth: 100 feet.
    - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 50 feet in height. A 25 minimum foot compatibility setback shall be required adjacent to a "R-2" development within the neighborhood commercial (NC) site which limits maximum building height to 35 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
    - (e) Minimum setbacks:
      - (i) Front yard. The building setback for the front yard shall be the same as adjacent residential area, but not less than 15 feet.
      - (ii) Side yard. Five feet, except when a side lot line is abutting a residential lot and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet, when the building abuts a residential lot.
      - (iii) Rear yard. Ten feet, except when a rear lot line is abutting a residential lot and then the rear yard shall be a minimum of 15 feet.
- (D) *Off-street parking and loading.* Off-street parking and loading space shall be provided as required in article II, part D, section 2 herein, except that if nine or more spaces are required, up to two designated parking spaces on the street may be counted toward the required spaces.
- (E) *Additional site development requirements.*
- (1) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.
  - (2) In any "NC" neighborhood commercial PUD district directly across the street or alley from residential district, the parking and loading area shall be set back at least ten feet from the street or alley right-of-way and said set back area shall be appropriately landscaped to be consistent with the character of adjoining and adjacent residential property. Such landscaping shall be maintained regularly by the property owner.

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- (3) The front of buildings should be sited at the front yard build-to line (consistent with the adjacent residential areas) with a pedestrian walkway connecting the sidewalk and an entrance to the building. The building and any eaves, overhangs, or awnings shall not interfere with the required clear vision area at corners or driveways.
- (4) Buildings within the neighborhood commercial area should have external architectural features such as roofline, exterior materials, window size and location, doors, porches, and entrances that are similar to the predominant residential pattern in the area.
- (5) Landscaped areas shall be planted with live ground cover, shrubs, lawn, flowers and trees that are typical adjacent residential areas.
- (6) Lighting fixtures shall be designed to direct light down onto the site and away from residential property. No pole light shall exceed 12 feet in height.
- (7) Operating hours for neighborhood commercial uses shall be limited to the period from 6:00 a.m. to 10:00 p.m.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

**Sec. 7. "C" commercial PUD district.**

- (A) *Purpose.* This area is intended to provide for the location of offices and commercial uses serving neighborhood and community needs. No building or land shall be used and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated. The "C" commercial PUD district is designed for commercial, wholesale, retail and office classification.
- (B) *Permitted uses.* The following uses shall be permitted in the "C" commercial PUD district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) The following uses that are uses permitted in the "R-1" residential PUD district:
    - (a) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
    - (b) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
    - (c) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.

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- (3) Antique shops.
- (4) Art gallery.
- (5) Auction sales.
- (6) Automobile repair shops without outside garages, with work conducted wholly within the enclosed building.
- (7) Bakeries.
- (8) Banks and savings and loan institutions.
- (9) Barber shops, beauty shops, and any other personal service shops business, music, dance schools.
- (10) Billiard and pool rooms.
- (11) Books or stationery stores.
- (12) Bowling alleys.
- (13) Business, music, dance or commercial schools.
- (14) Cafes, cafeterias, and restaurants.
- (15) Camera shops and photographic supplies.
- (16) Carpet and rug cleaners.
- (17) Catering establishments.
- (18) Cleaning and dry cleaning establishments.
- (19) Clinics.
- (20) Clothing stores.
- (21) Craft and hobby shop, but without outside garage.
- (22) Dance halls.
- (23) Department, furniture, and home appliance stores.
- (24) Drug stores, soda fountains, soft drink stands, candy, and tobacco shops.
- (25) Dry cleaners.
- (26) Electrical appliance shops and repairs.
- (27) Employment agencies.
- (28) Florist shop, nursery, or greenhouses.
- (29) Furniture, appliance stores, (sales and service).
- (30) Gasoline service stations.
- (31) Grocery stores.
- (32) Hardware, paint, and wallpaper stores.
- (33) Hospitals, sanitariums, nursing homes, hospices, or convalescent homes.
- (34) Hotels.
- (35) Household and office furniture, furnishings, and appliance stores.

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- (36) Ice cream or ice sales.
  - (37) Laundries, laundrettes and Laundromats.
  - (38) Jewelry and optical goods stores.
  - (39) Meat markets.
  - (40) Mortuaries.
  - (41) Nursery or horticulture businesses.
  - (42) Painting and decorating shops.
  - (43) Pet shops or animal hospitals when conducted wholly within the enclosed building.
  - (44) Photographers, or artists' studios.
  - (45) Plumbing, heating, and roofing supply and workshops.
  - (46) Printing shops.
  - (47) Offices.
  - (48) Radio and television stations (no towers).
  - (49) Radio, television or electronic sales and service.
  - (50) Recreation establishments.
  - (51) Restaurants.
  - (52) Retail stores and services.
  - (53) Shoe sales and repair shops.
  - (54) Sporting goods, novelty, or toy shops.
  - (55) Tailor and dressmaking shops.
  - (56) Taverns or retail sale of alcoholic liquors, subject to the regulations of other adopted ordinances of the city.
  - (57) Telegraph and telephone service stations.
  - (58) Temporary building incidental only to construction of a permitted use.
  - (59) Theater, indoor.
  - (60) Tire shop (no vulcanizing or retreading).
  - (61) Variety stores.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) The following site development regulations shall be exclusively applicable to the "C" neighborhood commercial PUD district.
    - (a) Minimum lot size: 4,000 square feet.
    - (b) Minimum lot width: 35 feet.
    - (c) Minimum lot depth: 100 feet.

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- (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 3½ stories or 50 feet.
- (e) Minimum setbacks.
  - (i) Front yard: none.
  - (ii) Side yard: none.
  - (iii) Rear yard: none.
- (f) Maximum floor area ratio: 1.5 FAR of the lot area.

**Sec. 8. "MXD" mixed use development PUD district.**

(A) *Purpose.* This area is intended to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents in the PUD. Mixed use development areas of this type are intended to be located and developed in a manner consistent with the Plum Creek PUD master plan and a site development plan. It is intended to allow for a mix of uses that:

- (1) Provide a variety of employment opportunities and housing types;
- (2) Foster pedestrian and other non-motor vehicle activity;
- (3) Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design; and
- (4) Ensure compatibility of uses within mixed use developments with other uses within such development and with the surrounding area and minimize off-site impacts associated with the development.

A site development plan shall be reviewed and approved by the planning commission and the city council prior to the actual development and construction in an MXD PUD district.

(B) *Permitted uses.* Uses permitted in the "R-1" residential PUD district are specifically prohibited and the following uses are permitted in the mixed use development district:

- (1) The following uses that are uses permitted in the "OS" open space PUD district:
  - (a) Wetlands;
  - (b) Conservation areas;
  - (c) Golf courses;
  - (d) Outdoor recreational and athletic facilities;
  - (e) Outdoor swimming pools;
  - (f) Parks, playgrounds and playfields;
  - (g) Wildlife sanctuaries;
  - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in the "R-2" residential PUD district, except the following "R-1" residential PUD district uses:
  - (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.



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- (3) Any use permitted in the "R-3" multi-family residential PUD district.
  - (4) Any use permitted in the "NC" neighborhood commercial areas.
  - (5) Any use permitted in the "C" commercial PUD district.
- (C) *Additional permitted uses.* In addition to uses permitted in (B) above, the following uses are specifically allowed:
- (1) Branch banks and other financial institutions designed to serve the area businesses and adjacent neighborhoods.
  - (2) Business support service including copying, blueprinting, film developing and processing, photo reproduction, accounting, computer services, building and grounds maintenance, security services, and temporary help.
  - (3) Studio for manufacturing of pottery items, metal sculpture, and other artistic products.
  - (4) Hotel or similar lodging facilities.
  - (5) Conference center and meeting facilities when associated with a motel, hotel or similar lodging facility.
  - (6) Commercial recreational facilities such as indoor theaters and athletic clubs, but excluding intensive outdoor facilities such as go-cart tracks, bumper cars and boats, BMX courses, and target ranges.
  - (7) Offices.
  - (8) Restaurants, delicatessens, cafes, and similar food service establishments.
  - (9) Dwelling units that are located above or behind a permitted commercial or neighborhood commercial use and secondary to that commercial use.
- (D) *Site development regulations.* Because of the mixed-use character of this district, the commission's review of site development plans and amendments to the Plum Creek PUD master plan, and recommendation to the city council are required. The city council's approval of site development plans and amendments to the Plum Creek PUD master plan are required prior to construction for each development submitted. The plan, pursuant to the applicable requirements of this ordinance must ensure that each development satisfies parking and compatibility requirements.
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (4) Development of any use permitted in the "NC" neighborhood commercial PUD district shall conform with the site development regulations established in the "NC" neighborhood commercial PUD district.
  - (5) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
  - (6) The following site development regulations shall be applicable to nonresidential development within the MXD area:
    - (a) Minimum lot size: 4,000 square feet.

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- (b) Minimum lot width: 35 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed five stories or 65 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the commercial site which limits maximum building height to three and one-half stories or 50 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
  - (e) Minimum setbacks:
    - (i) Front yard: none.
    - (ii) Side yard: none.
    - (iii) Rear yard: none.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
- (7) Site development standards for residential development. Residential development within the MXD area shall conform to the applicable site development standards established for the "R-2" residential PUD district, "R-3" multi-family residential PUD district and "NC" neighborhood commercial PUD district as set forth in this ordinance.
- (8) Additional site development requirements.
- (a) Lighting: Parking lot lights, security lights, and other lights on a mixed-use site shall be designed to direct light down onto the site and away from adjacent residential property.
  - (b) Air emissions: There shall be no emission of odorous, toxic, noxious matter, or dust in such quantities from operations as to be readily detectable along or outside the MXD area so as to produce a public nuisance or hazard.
  - (c) Landscaping and open space. The design and development of landscaping and open space within the MXD area shall:
    - (i) Include street trees and parking area trees which are in scale with the development.
    - (ii) Provide a cohesive open space and pedestrian network within the development, with appropriate connections to surrounding properties and uses.
  - (d) Include open spaces and plazas which are in scale with the development and invite activity appropriate to adjoining uses.
  - (e) Refuse collection and recycling areas for business shall be enclosed with a fence, wall or structure high enough to screen all collection bins.
  - (f) Outside mechanical equipment, industrial or commercial heating, ventilation air conditioning, or other mechanical equipment on rooftops or ground, shall be screened with a material and design that is visually compatible with the building.

(9) Operating hours for "MXD" commercial uses shall be limited to the following when the MXD property shares a common property line with a R-1 or R-2 PUD designated property: Sunday- Thursday 6 am to 11pm and Friday and Saturday 6am to 1am ( except civic structures, medical use facilities, and pharmacies).

(Ord. No. 490, § 2, 2-20-2007; Ord. No. 690, § 1(Exh. A), 2-21-2012)

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**Sec. 9. "EMP" employment PUD district**

- (A) *Purpose.* This area is intended to provide a place to locate commercial businesses, services, and industries compatible with adjacent residential areas for the convenience of nearby residents and the greater community at large. The use of an EMP area within a proposed mixed use development is intended to be compatible with the residential pattern of the development and not create unreasonable traffic or land use conflicts.
- (B) *Permitted uses.* The following uses shall be permitted in an "EMP" employment PUD district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in the "C" commercial PUD district;
  - (3) Manufacture, assembly, and packaging of products from previously prepared material such as cloth, plastic, paper, leather, and precious or semi-precious metal or stone;
  - (4) Manufacture, assembly, and processing of food and beverages, excluding meat packing plants and similar processes that place a significant demand on wastewater or water treatment;
  - (5) Manufacture, assembly, and testing of communication equipment, medical instruments and apparatus, optics, photographic equipment and supplies, timing equipment, musical instrument and related equipment;
  - (6) Research, engineering and development facilities or laboratories;
  - (7) Motion picture or video production facilities and sound stages;
  - (8) Printing, publishing, and book binding;
  - (9) Warehouse, storage, and distribution center, provided development does not exceed a maximum of 15,000 square feet of building area;
  - (10) Instrument and component manufacturing;
  - (11) Apparel manufacturing;
  - (12) Electric and electronic assembly;
  - (13) Greenhouses and wholesale growers;
  - (14) Office equipment and supplies manufacturing;
  - (15) Warehouses;
  - (16) Offices;
- (C) *Site development standards.*

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- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (3) The following regulations shall be applicable to the "EMP" employment district:
  - (a) Minimum lot size: 5,750 square feet.
  - (b) Minimum lot width: 50 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 45 feet.
  - (e) Minimum setbacks:
    - (i) Front yard: None.
    - (ii) Side yard: None.
    - (iii) Rear yard: None.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
  - (g) Paved Sidewalks, driveways and parking areas are required.
  - (h) Screening of loading and storage facilities is required.

**Sec. 10. "LI" Light industrial PUD district**

- (A) *Purpose.* This district is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users. The uses included primarily serve other commercial and industrial enterprises. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one (1) or more of the uses hereinafter enumerated. The "LI" light industrial PUD district is designated for selected sales, manufacturing and industrial classifications.
- (B) *Permitted uses.* The following uses shall be permitted uses in the "LI" light industrial PUD district:
  - (1) Any use permitted in the "EMP" employment PUD district;
  - (2) Agricultural implement sales and services;
  - (3) Air conditioning and heating sales and services;
  - (4) Automobile repair shops without outside garages and when conducted wholly within the enclosed building;
  - (5) Artificial limb manufacturers;
  - (6) Battery and tire service stations without outside garages and when conducted wholly within the enclosed building;
  - (7) Beverage bottling and distributing stations;
  - (8) Blacksmith shops;
  - (9) Book binding shops;
  - (10) Box manufacturers;

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- (11) Broom manufacturers;
- (12) Bus lines shops and garages;
- (13) Car wash;
- (14) Canvas goods fabrication;
- (15) Crating express storage;
- (16) Computer and computer parts manufacturers;
- (17) Hatcheries;
- (18) Clothing and dress manufacturers;
- (19) Craft and hobby shop with outside garage;
- (20) Creameries;
- (21) Drapery and bedding manufacturers;
- (22) Expressing, baggage, and transfer delivery services;
- (23) Farm implement sales or repair;
- (24) Food processing and dehydrating operations;
- (25) Frozen food lockers;
- (26) Furniture manufacturers and upholsterers;
- (27) Garages;
- (28) Ice cream and ice manufacturers and sales;
- (29) Instrument and electronic component manufacturing;
- (30) Lumber and building sales and storage;
- (31) Machine shops;
- (32) Machine and metal products shops;
- (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
- (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;
- (35) Public utility substations and distributing centers, regulations centers, and underground holder stations;
- (36) Rail-served industries consistent with uses indicated above;
- (37) Sheet metal fabrication shop;
- (38) Sign shops;
- (39) Stone, marble, and granite grinding and cutting operations;
- (40) Storage and warehouses;
- (41) Storage of household goods;
- (42) Taxi service stations;
- (43) Temporary building incidental only to construction of a permitted use;
- (44) Tire shops (retreading only);

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- (45) Tool and die shops;
  - (46) Warehouses; and
  - (47) Welding shops.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
  - (3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
  - (4) The following regulations shall be applicable to the "LI" light industrial PUD district:
    - (a) Minimum lot size: 5,750 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Minimum lot depth: 100 feet.
    - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
    - (e) Minimum setbacks.
      - (i) Front yard: none.
      - (ii) Side yard: none.
      - (iii) Rear yard: none.
    - (f) Maximum floor area ratio: 1.5 FAR of the lot area.



# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## Plum Creek PUD-ARC approval

**Subject/Recommendation:**

*(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 5 “R-3” MULTI-FAMILY RESIDENTIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS; SECTION 6 “NC” NEIGHBORHOOD COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS, SECTION 8 “MXD” MIXED USE PUD DISTRICT (D) SITE DEVELOPMENT REGULATIONS, SECTION 9 “EMP” EMPLOYMENT PUD DISTRICT (C) SITE DEVELOPMENT STANDARDS, SECTION 10 “LI LIGHT INDUSTRIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS- TO ADD A REQUIREMENT TO PROVIDE A LETTER OF APPROVAL FROM THE ARCHITECTURAL REVIEW COMMITTEE WITH THE APPLICATION FOR A SITE PLAN. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*Planning and Zoning Commission voted 6-0 to approve the amendment.*

**Other Information:**

Please see attachments

**Budget Information:**


N/A

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

Cover Memo

Item # 8

Attachments / click to download

-  [exhibit a](#)
-  [Ordinance](#)

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 5 “R-3” MULTI-FAMILY RESIDENTIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS; SECTION 6 “NC” NEIGHBORHOOD COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS, SECTION 8 “MXD” MIXED USE PUD DISTRICT (D) SITE DEVELOPMENT REGULATIONS, SECTION 9 “EMP” EMPLOYMENT PUD DISTRICT (C) SITE DEVELOPMENT STANDARDS, SECTION 10 “LI LIGHT INDUSTRIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS- TO ADD A REQUIREMENT TO PROVIDE A LETTER OF APPROVAL FROM THE ARCHITECTURAL REVIEW COMMITTEE WITH THE APPLICATION FOR A SITE PLAN. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. Ordinance 311 amended as set forth in Exhibit A. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate and consistent with the existing numbering and formatting of the existing ordinance.

SECTION 2. That the City Secretary is hereby authorized and directed to update the City of Kyle code to reflect the changes made in Exhibit A and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.



READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the \_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lucy Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Amelia Sanchez, City Secretary

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**ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS**

## PART C

[Sec. 1. PUD district regulations and performance standards.](#)

[Sec. 2. "OS" open space PUD district.](#)

[Sec. 3. "R-1" residential PUD district.](#)

[Sec. 4. "R-2" residential PUD district.](#)

[Sec. 5. "R-3" multi-family residential PUD district.](#)

[Sec. 6. "NC" neighborhood commercial PUD district.](#)

[Sec. 7. "C" commercial PUD district.](#)

[Sec. 8. "MXD" mixed use development PUD district.](#)

[Sec. 9. "EMP" employment PUD district](#)

[Sec. 10. "LI" Light industrial PUD district](#)

**Sec. 1. PUD district regulations and performance standards.**

The PUD district regulations and performance standards set forth herein shall apply within the boundaries of the Plum Creek PUD; provided, however, that the following uses shall be permitted in all PUD districts:

- (a) Churches;
- (b) Facilities owned and operated by the federal government, the state and political subdivisions thereof;
- (c) Schools and educational institutions;
- (d) Fire stations;
- (e) Public utilities;
- (f) Athletic fields, sports facilities, playgrounds, recreational center and swimming pools;
- (g) Greenbelt and recreational areas; and
- (h) Parking lots associated with the PUD district uses, provided that parking lots in the "R-1" and "R-2" residential PUD districts are subject to city council approval.

**Sec. 2. "OS" open space PUD district.**

- (A) *Purpose.* An open space PUD district is a tract of land provided as a general benefit for the community. Common open space may be usable for recreational purposes or may provide visual, aesthetic and environmental amenities. The uses authorized for the common open space should be appropriate to the scale and character of the surrounding development considering its size, density,

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expected population, topography, and the number and type of dwellings to be provided. Common open space should be improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. Any buildings, structures and improvements to be located in the common open space must be appropriate to the uses which are intended and, therefore, must conserve and enhance the amenities of the common open space having regard to its topography and the intended function of the common open space, and must be secondary to open space component.

- (B) *Permitted uses.* The following uses shall be permitted uses in "OS" open space PUD district:
- (1) Cemeteries (with conditional use permit issued by the city council);
  - (2) Conservation areas;
  - (3) Golf courses;
  - (4) Outdoor recreational and athletic facilities;
  - (5) Outdoor swimming pools;
  - (6) Parks, playgrounds and playfields;
  - (7) Wildlife sanctuaries;
  - (8) Outdoor performance stages and amphitheaters;
  - (9) Streams, lakes, impounded waterways, or their drainageways; and
  - (10) Wetlands.
- (C) *[Secondary uses.]* The following uses shall be permitted as secondary uses in this "OS" open space PUD district:
- (1) Club houses and community centers.
  - (2) Retail-oriented uses which are clearly secondary and customarily or necessarily incidental to the permitted use, including but not necessarily limited to the following:
    - (a) Retail sales and services operated as part of a golf course, recreational or athletic facility.
    - (b) Retail sales and services sponsored by service clubs, non-profit societies or organizations and concessions contracted with the city, property owners association or other community-related organization.
    - (c) Food and beverage sales, including alcoholic beverages.
    - (d) Restaurants including alcoholic beverage sales which are operated as part of or in conjunction with a golf course, club house, or other community related facility.
    - (e) Caretaker residence.
    - (f) Maintenance buildings required to house equipment and material to maintain the site.
- (D) *Site development regulations.* Use regulations in the "OS" open space PUD district.
- (1) Maximum height of buildings: 35 feet.
  - (2) Density - maximum floor area shall not exceed 0.1.
  - (3) Lot size - minimum lot area for any building: 3,500 square feet.
  - (4) Lot width - minimum lot width: 35 feet.
  - (5) Front yard - minimum required building setback: 15 feet.

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- (6) Side yard - minimum required building setback: 10 feet.
- (7) Rear yard - minimum required building setback: 10 feet.
- (8) Garages shall either be attached or detached and accessible from a public or private street or alley.

**Sec. 3. "R-1" residential PUD district.**

- (A) *Purpose.* This district is an area for low density single-family residential use, with a minimum lot size of 6,000 square feet. This district is appropriate for single-family neighborhoods.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-1" residential PUD district:
  - (1) The following uses that are permitted uses in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Single family dwellings for residential use.
  - (3) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
  - (4) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
  - (5) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
  - (6) Accessory buildings, which shall be located only in rear yards, and accessory uses customarily incident to the use set out in subsection (B)(2) above and located on the same lot therewith, not involving the conduct of a retail business. The term accessory use shall also include:
    - (a) A home occupation such as the office of a physician, surgeon, dentist, accountant or bookkeeper, dressmaker, beauty shop, or artist, provided that such uses are located in the dwelling used by such a person as his or her private residence and no outside employees are present on the premises.
    - (b) An unilluminated "For Sale" or "For Rent" sign not more than four square feet in area may be permitted as an accessory use; provided however, that churches may display signs, symbols, and emblems similar in kind and nature as is customary and normal for such churches, and provided further, that during construction of a building, one unilluminated sign advertising contractors and/or architects on such premises shall be permitted, provided that such sign shall not be more than four square feet in area and shall be set

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back of the established or customary building line, and such sign shall be removed immediately upon completion of the building.

- (7) Residential accessory dwelling units, subject to the following site development requirements:
- (a) A lot intended for use for a single-family detached dwelling unit may contain both a principal dwelling unit and an accessory dwelling unit under the following restrictions and conditions:
- (i) Maximum floor area of an accessory dwelling unit shall be 1,000 square feet in size.
  - (ii) Maximum height of an accessory dwelling unit shall be two stories or 25 feet; provided, however, that an accessory dwelling unit shall not be constructed to a height greater than the principal residence.
  - (iii) No more than one accessory dwelling unit per lot is allowed.
  - (iv) Parking for an accessory dwelling unit shall not be less than one parking space per accessory dwelling unit.
  - (v) The LUE requirement (whether a whole LUE or any fraction thereof) for an accessory dwelling unit shall be counted toward the maximum number of LUEs available to be issued in the Plum Creek PUD, and in the subdivision within which the lot is platted.
  - (vi) In addition to compliance with all applicable city codes and regulations including, but not limited to, those dealing with building, plumbing, electrical, fire, safety, health and sanitation, property maintenance and rental housing licensing, the construction, occupancy and use of an accessory dwelling unit shall be controlled by the following restrictions:
    - (A) At least one of the dwelling units on a lot containing an accessory dwelling unit shall be occupied by an owner of the lot.
    - (B) Maximum occupancy of an accessory dwelling unit shall be in accordance with the table identified as schedule B as set forth herein below.
    - (C) An accessory dwelling unit must be constructed concurrently with but not before a principal residence.
    - (D) A separate water and sewer tap shall be obtained for each accessory dwelling unit. The cost of each such separate tap for accessory units shall be the same cost as a water or sewer tap for the primary single-family dwelling unit. Impact fees for both water and wastewater shall be paid and LUEs issued for each such accessory unit as required by ordinance. Not less than one-half of a water LUE and one-half of a wastewater LUE shall be required for each accessory unit; and the number, or fraction thereof, of an LUE required shall be as provided in schedule A. LUEs shall be counted and credited as they are allocated, whether in whole numbers or in fractions thereof.
    - (E) Each lot eligible for a residential accessory dwelling unit shall be identified on the subdivision plat and to the commission and city council during the subdivision approval process, and each such residential accessory dwelling unit shall be identified on the site development plan submitted by the owner.
    - (F) The subdivider/developer of a single-family residential subdivision that includes lots for which an accessory dwelling unit is permitted, shall clearly identify all such lots in restrictive covenants filed of record in the real property records of Hays County, Texas.

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- (C) *Site development regulations.* The following regulations shall be the requirements for buildings within the "R-1" residential PUD district:
- (1) *Minimum lot size, lot area.* No building shall be constructed on any lot of less than 6,000 square feet.
  - (2) *Minimum lot width.* The lot shall have a minimum of 50 feet of width along the front property line, except when a lot is on a cul-de-sac, where it may be a minimum width of 30 feet along the front property line.
  - (3) *Maximum dwelling units per lot.* One principal dwelling unit and one accessory dwelling unit.
  - (4) *Maximum height.* No building shall exceed 35 feet in height.
  - (5) *Area.* No building or structure, nor any enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
  - (6) *Minimum setbacks.*
    - (a) *Front yard.* There shall be a front yard having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, covered terrace, balcony or bay.
    - (b) *Side yard.* A yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.
    - (c) *[Between dwellings.]* The minimum distance between dwellings on adjoining lots shall be ten feet.
    - (d) *Rear yard.* There shall be a rear yard setback of not less than 25 feet from the rear most wall of the principal dwelling unit to the back property line. There shall be a rear yard setback of not less than five feet from the rear most wall of any accessory building and garage to the back property line.
  - (7) *[Garages.]* Garages shall either be attached or detached and accessible from a public or private street, or alley.

## SCHEDULE A

Unit Size	LUE Count
0 to 699 square feet	Minimum 0.50 LUE
700 to 849 square feet	0.50/LUE
850 to 1,000 square feet	0.75/LUE

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## SCHEDULE B

Unit Size	Maximum Number Of Occupants
0 to 699 square feet	2
700 to 849 square feet	3
850 to 1,000 square feet	4

**Sec. 4. "R-2" residential PUD district.**

(A) *Purpose.* This district is intended as an area for medium density, single-family residential use. In appropriate locations, this district shall accommodate single-family detached, duplex, and single-family attached residential uses permitted under residential standards.

(B) *Permitted uses.*

(1) The following uses shall [be] permitted uses in the "R-2" residential PUD district:

(a) The following uses that are permitted uses in the "OS" open space PUD district:

- (i) Wetlands;
- (ii) Conservation areas;
- (iii) Golf courses;
- (iv) Outdoor recreational and athletic facilities;
- (v) Outdoor swimming pools;
- (vi) Parks, playgrounds and playfields;
- (vii) Wildlife sanctuaries;
- (viii) Streams, lakes, impounded waterways, or their drainageways; and

(b) Any uses permitted in "R-1" residential PUD district.

(c) Duplexes.

(d) Medium density single-family detached residential.

(e) Single family attached residential.

(g)[f] Courtyard.

(2) No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses set forth in this section.

(C) *Site development regulations.* The following regulations shall be the site development regulations for development within the "R-2" residential PUD district:

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- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
- (3) The following alternative site development regulations shall be exclusively applicable to duplexes within the "R-2" residential PUD district:

## (a) Alternative No. 1:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 6,000 square feet.
- (ii) Minimum lot width: 50 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

or,

## (b) Alternative No. 2:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 7,200 square feet.
- (ii) Minimum lot width: 60 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

Provided, however, that alternative No. 1 may be utilized only if open space is provided within the "R-2" development so as to result in the same level of density that would result from the application of alternative No. 2 criteria in this subsection 4.(C)(3).

## (c) Minimum setbacks:

- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
- (ii) Side yard. There shall be a side yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.



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- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (d) Garages shall be permitted in the "R-2" development pursuant to the following requirements:
  - (i) Garages shall be either attached or detached and accessible from a public or private street, or alley.
  - (ii) A minimum of two parking spaces is required for each unit. The driveway may be included in the counting of the required minimum as one of the two spaces required for each unit.

Provided, however, that these requirements do not apply to any "R-1" development located within a primarily "R-2" development area.
- (4) The following site development regulations shall be exclusively applicable to medium density single-family detached residential within the "R-2" residential PUD district:
  - (a) Minimum lot size: 3,600 square feet.
  - (b) Minimum lot width: 35 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height. No building shall exceed 35 feet.
  - (e) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargement.
  - (f) Minimum setbacks:
    - (i) Front yard. There shall be a front yard setback having a depth of not less than eight feet from the property line to the front line of the building, including a covered porch, covered terrace, balconies, or bays.
    - (ii) Side yard. There shall be a side yard of not less than five feet from the walls of the building or accessory building to the side property line.
    - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than five feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (g) Garages shall be either attached or detached and accessible from a public or private street, or alley.
- (5) The site development regulations set forth below shall be exclusively applicable to single-family attached residential.
  - (a) Minimum lot size: 2,500 square feet.
  - (b) Minimum lot width: 25 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height: 35 feet.
  - (e) Minimum setbacks:

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- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
  - (ii) Side yard. No setback required.
  - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than 25 feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (f) Garages shall either be attached or detached and accessible from a public or private street or alley.
- (6) The site development regulations set forth below shall be exclusively applicable to courtyard residential.
- (a) Minimum lot size: 2,000 sq. ft.
  - (b) Minimum lot width: None.
  - (c) Maximum dwelling units per lot: One principle dwelling unit and one accessory dwelling unit.
  - (d) Maximum height: 35 feet.
  - (e) Area: No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargements.
  - (f) Minimum setbacks:
    - (i) Front yard: There shall be a front yard setback having the depth of not less than four feet from the courtyard walk to the front line of the building.
    - (ii) Side yard: There shall be no side yard set back required. Except that there shall be a side yard ser back having a depth of not less than eight feet from the property at public or private streets to the side line of the building.
    - (iii) Rear yard: There shall be no rear yard setback required
  - (g) Garages and carports: May either be attached or detached and accessible from private street or alley.
  - (h) Each courtyard shall have a "gateway" (examples: trellis, fencing, and/or landscaping).
  - (i) Each courtyard shall have a gathering place with a minimum of four chairs or two benches.
  - (j) The courtyard sidewalk(s) shall be the following minimum width for at least 70 percent of the length:
    - (k)[i] Single sidewalk: Five feet.
    - (l)[ii] Double sidewalk: Four feet to six [feet].
  - (m)[k.] Each dwelling unit shall have a front porch or front patio having an area with a minimum depth of five feet and a minimum length of seven feet.
  - (n)[l.] Minimum separation between interior dwelling units from back side of porch or garden patio to back side of porch or garden patio: 24 feet.
  - (o)[m.] Minimum separation of dwelling units at street: 16 feet.
  - (p)[n.] Minimum separation of dwelling units at rear of courtyard: Ten feet.

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(Ord. No. 687, § 1(Exh. A), 1-17-2012)

**Sec. 5. "R-3" multi-family residential PUD district.**

- (A) *Purpose.* This district is intended as an area for medium density single-family, duplex, and condominium uses. In appropriate locations, this district shall accommodate a variety of housing types, primarily multiple family dwellings and shall be designed to provide the widest range of housing types, as well as highest density in the community. Mobile homes and manufactured homes are excluded from this district.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-3" multi-family residential PUD district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in "R-2" residential PUD district, excluding the following "R-1" uses:
    - (a) Single family dwelling for residential use, as described in article II, part C, section 3 of this ordinance.
    - (b) Residential accessory dwelling units.
    - (c) Apartment buildings.
    - (d) Convalescent and hospice homes, assisted living, and retirement housing.
    - (e) Condominiums.
- (C) *Site development regulations-a letter of approval from the architectural review committee shall be submitted with an application for a site plan.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) The following site development regulations shall be exclusively applicable to apartment buildings, convalescent and hospice homes, assisted living, and retirement housing, and condominiums.
    - (a) Minimum lot size: 6,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Maximum dwelling units per lot: 36 units per acre.

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- (d) Maximum height: 60 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the "R-3" site which limits maximum building height to 40 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
  - (e) Minimum setbacks:
    - (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
    - (ii) Side yard. There shall be a side yard setback of not less than 15 feet from the walls of the building or accessory building to the side property line.
    - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (f) Garages shall either be attached or detached and accessible from a public or private street, or alley.
- (4) The site development regulations set forth below shall be exclusively applicable to condominium residential.
- (a) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

### Sec. 6. "NC" neighborhood commercial PUD district.

- (A) *Purpose.* This area is intended to provide for the location of offices and small businesses serving neighborhood community needs, which may be located within or adjacent to a residential district of the PUD for the convenience of nearby residents. The businesses shall be conducive to and fit into the residential pattern of development, and not create land use, architectural or traffic conflicts. The following standards for the neighborhood commercial district are intended to preserve the residential atmosphere and be consistent with the Plum Creek PUD master plan.
- (B) *Permitted uses.* The following uses shall be permitted in "NC" neighborhood commercial district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;

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- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in "R-1" residential PUD district, except the following:
  - (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.
- (3) Any use permitted in the "R-2" residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (4) Any use permitted in the "R-3" multi-family residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (5) Grocery stores or specialty food store.
- (6) Barber and/or beauty shop.
- (7) Daycare services and child development centers.
- (8) Clothes cleaning agency.
- (9) Laundromat.
- (10) Video rental store.
- (11) Coffee shop, cafe or, delicatessen not exceeding 2,500 square feet of gross floor area.
- (12) Pharmacy.
- (13) Electronic service center providing photocopying, faxing, and computer service.
- (14) Computer or communications network access.
- (15) Mail box rental and package shipping/receiving store.
- (16) Accessory buildings customarily appurtenant to a permitted use.
- (17) Dwelling units that are located above or behind a permitted commercial use and secondary to that commercial use.
- (18) Neighborhood automobile service stations.
- (19) Bed and breakfast establishment, subject to the following requirements:
  - (a) A maximum of four guest bedrooms shall be provided.
  - (b) Paying guests shall not stay more than seven consecutive days.
  - (c) Only overnight guests may be served meals at the establishment, except that luncheons and receptions may be held for attendees of organized social functions and tours.
  - (d) Only one sign is permitted, and it shall be non-illuminated, no greater than two square feet, and affixed flush with the wall of the dwelling.
  - (e) Each bed and breakfast establishment shall provide a minimum of two off-street parking spaces, plus one additional parking space for each guest room. This requirement may be waived when the owner can show that adequate off-street parking is available at an adjacent commercial site under common ownership or lease. Any parking area located adjacent to a residential zoned property shall provide a privacy fence at least six feet in height and buffer between the parking area and the adjacent residential property.

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- (f) The bed and breakfast establishment shall comply with all licensing requirements of the county health department for storage, preparation, and serving of food and beverages.
- (20) Rooming and boarding houses.
- (C) *Site development regulations*—*a letter of approval from the architectural review committee shall be submitted with an application for a site plan.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
  - (3) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (4) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (5) The following site development regulations shall be applicable to the "NC" neighborhood commercial district.
    - (a) Minimum lot size: 5,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Minimum lot depth: 100 feet.
    - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 50 feet in height. A 25 minimum foot compatibility setback shall be required adjacent to a "R-2" development within the neighborhood commercial (NC) site which limits maximum building height to 35 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
    - (e) Minimum setbacks:
      - (i) Front yard. The building setback for the front yard shall be the same as adjacent residential area, but not less than 15 feet.
      - (ii) Side yard. Five feet, except when a side lot line is abutting a residential lot and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet, when the building abuts a residential lot.
      - (iii) Rear yard. Ten feet, except when a rear lot line is abutting a residential lot and then the rear yard shall be a minimum of 15 feet.
- (D) *Off-street parking and loading.* Off-street parking and loading space shall be provided as required in article II, part D, section 2 herein, except that if nine or more spaces are required, up to two designated parking spaces on the street may be counted toward the required spaces.
- (E) *Additional site development requirements.*
- (1) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.
  - (2) In any "NC" neighborhood commercial PUD district directly across the street or alley from residential district, the parking and loading area shall be set back at least ten feet from the street or alley right-of-way and said set back area shall be appropriately landscaped to be

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consistent with the character of adjoining and adjacent residential property. Such landscaping shall be maintained regularly by the property owner.

- (3) The front of buildings should be sited at the front yard build-to line (consistent with the adjacent residential areas) with a pedestrian walkway connecting the sidewalk and an entrance to the building. The building and any eaves, overhangs, or awnings shall not interfere with the required clear vision area at corners or driveways.
- (4) Buildings within the neighborhood commercial area should have external architectural features such as roofline, exterior materials, window size and location, doors, porches, and entrances that are similar to the predominant residential pattern in the area.
- (5) Landscaped areas shall be planted with live ground cover, shrubs, lawn, flowers and trees that are typical adjacent residential areas.
- (6) Lighting fixtures shall be designed to direct light down onto the site and away from residential property. No pole light shall exceed 12 feet in height.
- (7) Operating hours for neighborhood commercial uses shall be limited to the period from 6:00 a.m. to 10:00 p.m.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

**Sec. 7. "C" commercial PUD district.**

- (A) *Purpose.* This area is intended to provide for the location of offices and commercial uses serving neighborhood and community needs. No building or land shall be used and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated. The "C" commercial PUD district is designed for commercial, wholesale, retail and office classification.
- (B) *Permitted uses.* The following uses shall be permitted in the "C" commercial PUD district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) The following uses that are uses permitted in the "R-1" residential PUD district:
    - (a) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
    - (b) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.

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- (c) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
- (3) Antique shops.
  - (4) Art gallery.
  - (5) Auction sales.
  - (6) Automobile repair shops without outside garages, with work conducted wholly within the enclosed building.
  - (7) Bakeries.
  - (8) Banks and savings and loan institutions.
  - (9) Barber shops, beauty shops, and any other personal service shops business, music, dance schools.
  - (10) Billiard and pool rooms.
  - (11) Books or stationery stores.
  - (12) Bowling alleys.
  - (13) Business, music, dance or commercial schools.
  - (14) Cafes, cafeterias, and restaurants.
  - (15) Camera shops and photographic supplies.
  - (16) Carpet and rug cleaners.
  - (17) Catering establishments.
  - (18) Cleaning and dry cleaning establishments.
  - (19) Clinics.
  - (20) Clothing stores.
  - (21) Craft and hobby shop, but without outside garage.
  - (22) Dance halls.
  - (23) Department, furniture, and home appliance stores.
  - (24) Drug stores, soda fountains, soft drink stands, candy, and tobacco shops.
  - (25) Dry cleaners.
  - (26) Electrical appliance shops and repairs.
  - (27) Employment agencies.
  - (28) Florist shop, nursery, or greenhouses.
  - (29) Furniture, appliance stores, (sales and service).
  - (30) Gasoline service stations.
  - (31) Grocery stores.
  - (32) Hardware, paint, and wallpaper stores.
  - (33) Hospitals, sanitariums, nursing homes, hospices, or convalescent homes.



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- (34) Hotels.
  - (35) Household and office furniture, furnishings, and appliance stores.
  - (36) Ice cream or ice sales.
  - (37) Laundries, laundrettes and Laundromats.
  - (38) Jewelry and optical goods stores.
  - (39) Meat markets.
  - (40) Mortuaries.
  - (41) Nursery or horticulture businesses.
  - (42) Painting and decorating shops.
  - (43) Pet shops or animal hospitals when conducted wholly within the enclosed building.
  - (44) Photographers, or artists' studios.
  - (45) Plumbing, heating, and roofing supply and workshops.
  - (46) Printing shops.
  - (47) Offices.
  - (48) Radio and television stations (no towers).
  - (49) Radio, television or electronic sales and service.
  - (50) Recreation establishments.
  - (51) Restaurants.
  - (52) Retail stores and services.
  - (53) Shoe sales and repair shops.
  - (54) Sporting goods, novelty, or toy shops.
  - (55) Tailor and dressmaking shops.
  - (56) Taverns or retail sale of alcoholic liquors, subject to the regulations of other adopted ordinances of the city.
  - (57) Telegraph and telephone service stations.
  - (58) Temporary building incidental only to construction of a permitted use.
  - (59) Theater, indoor.
  - (60) Tire shop (no vulcanizing or retreading).
  - (61) Variety stores.
- (C) *Site development regulations: -a letter of approval from the architectural review committee shall be submitted with an application for a site plan.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) The following site development regulations shall be exclusively applicable to the "C" neighborhood commercial PUD district.
    - (a) Minimum lot size: 4,000 square feet.

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- (b) Minimum lot width: 35 feet.
- (c) Minimum lot depth: 100 feet.
- (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 3½ stories or 50 feet.
- (e) Minimum setbacks.
  - (i) Front yard: none.
  - (ii) Side yard: none.
  - (iii) Rear yard: none.
- (f) Maximum floor area ratio: 1.5 FAR of the lot area.

**Sec. 8. "MXD" mixed use development PUD district.**

- (A) *Purpose.* This area is intended to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents in the PUD. Mixed use development areas of this type are intended to be located and developed in a manner consistent with the Plum Creek PUD master plan and a site development plan. It is intended to allow for a mix of uses that:
- (1) Provide a variety of employment opportunities and housing types;
  - (2) Foster pedestrian and other non-motor vehicle activity;
  - (3) Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design; and
  - (4) Ensure compatibility of uses within mixed use developments with other uses within such development and with the surrounding area and minimize off-site impacts associated with the development.

A site development plan shall be reviewed and approved by the planning commission and the city council prior to the actual development and construction in an MXD PUD district.

- (B) *Permitted uses.* Uses permitted in the "R-1" residential PUD district are specifically prohibited and the following uses are permitted in the mixed use development district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in the "R-2" residential PUD district, except the following "R-1" residential PUD district uses:

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- (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.
  - (3) Any use permitted in the "R-3" multi-family residential PUD district.
  - (4) Any use permitted in the "NC" neighborhood commercial areas.
  - (5) Any use permitted in the "C" commercial PUD district.
- (C) *Additional permitted uses.* In addition to uses permitted in (B) above, the following uses are specifically allowed:
- (1) Branch banks and other financial institutions designed to serve the area businesses and adjacent neighborhoods.
  - (2) Business support service including copying, blueprinting, film developing and processing, photo reproduction, accounting, computer services, building and grounds maintenance, security services, and temporary help.
  - (3) Studio for manufacturing of pottery items, metal sculpture, and other artistic products.
  - (4) Hotel or similar lodging facilities.
  - (5) Conference center and meeting facilities when associated with a motel, hotel or similar lodging facility.
  - (6) Commercial recreational facilities such as indoor theaters and athletic clubs, but excluding intensive outdoor facilities such as go-cart tracks, bumper cars and boats, BMX courses, and target ranges.
  - (7) Offices.
  - (8) Restaurants, delicatessens, cafes, and similar food service establishments.
  - (9) Dwelling units that are located above or behind a permitted commercial or neighborhood commercial use and secondary to that commercial use.
- (D) *Site development regulations.* Because of the mixed-use character of this district, the commission's review of site development plans and amendments to the Plum Creek PUD master plan, and recommendation to the city council are required. The city council's approval of site development plans and amendments to the Plum Creek PUD master plan are required prior to construction for each development submitted. The plan, pursuant to the applicable requirements of this ordinance must ensure that each development satisfies parking and compatibility requirements. -A letter of approval from the architectural review committee shall be submitted with an application for a site plan.
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (4) Development of any use permitted in the "NC" neighborhood commercial PUD district shall conform with the site development regulations established in the "NC" neighborhood commercial PUD district.

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- (5) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (6) The following site development regulations shall be applicable to nonresidential development within the MXD area:
  - (a) Minimum lot size: 4,000 square feet.
  - (b) Minimum lot width: 35 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed five stories or 65 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the commercial site which limits maximum building height to three and one-half stories or 50 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
  - (e) Minimum setbacks:
    - (i) Front yard: none.
    - (ii) Side yard: none.
    - (iii) Rear yard: none.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
- (7) Site development standards for residential development. Residential development within the MXD area shall conform to the applicable site development standards established for the "R-2" residential PUD district, "R-3" multi-family residential PUD district and "NC" neighborhood commercial PUD district as set forth in this ordinance.
- (8) Additional site development requirements.
  - (a) Lighting: Parking lot lights, security lights, and other lights on a mixed-use site shall be designed to direct light down onto the site and away from adjacent residential property.
  - (b) Air emissions: There shall be no emission of odorous, toxic, noxious matter, or dust in such quantities from operations as to be readily detectable along or outside the MXD area so as to produce a public nuisance or hazard.
  - (c) Landscaping and open space. The design and development of landscaping and open space within the MXD area shall:
    - (i) Include street trees and parking area trees which are in scale with the development.
    - (ii) Provide a cohesive open space and pedestrian network within the development, with appropriate connections to surrounding properties and uses.
  - (d) Include open spaces and plazas which are in scale with the development and invite activity appropriate to adjoining uses.
  - (e) Refuse collection and recycling areas for business shall be enclosed with a fence, wall or structure high enough to screen all collection bins.
  - (f) Outside mechanical equipment, industrial or commercial heating, ventilation air conditioning, or other mechanical equipment on rooftops or ground, shall be screened with a material and design that is visually compatible with the building.

(Ord. No. 490, § 2, 2-20-2007; Ord. No. 690, § 1(Exh. A), 2-21-2012)

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**Sec. 9. "EMP" employment PUD district**

- (A) *Purpose.* This area is intended to provide a place to locate commercial businesses, services, and industries compatible with adjacent residential areas for the convenience of nearby residents and the greater community at large. The use of an EMP area within a proposed mixed use development is intended to be compatible with the residential pattern of the development and not create unreasonable traffic or land use conflicts.
- (B) *Permitted uses.* The following uses shall be permitted in an "EMP" employment PUD district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in the "C" commercial PUD district;
  - (3) Manufacture, assembly, and packaging of products from previously prepared material such as cloth, plastic, paper, leather, and precious or semi-precious metal or stone;
  - (4) Manufacture, assembly, and processing of food and beverages, excluding meat packing plants and similar processes that place a significant demand on wastewater or water treatment;
  - (5) Manufacture, assembly, and testing of communication equipment, medical instruments and apparatus, optics, photographic equipment and supplies, timing equipment, musical instrument and related equipment;
  - (6) Research, engineering and development facilities or laboratories;
  - (7) Motion picture or video production facilities and sound stages;
  - (8) Printing, publishing, and book binding;
  - (9) Warehouse, storage, and distribution center, provided development does not exceed a maximum of 15,000 square feet of building area;
  - (10) Instrument and component manufacturing;
  - (11) Apparel manufacturing;
  - (12) Electric and electronic assembly;
  - (13) Greenhouses and wholesale growers;
  - (14) Office equipment and supplies manufacturing;
  - (15) Warehouses;
  - (16) Offices;
- (C) *Site development standards.* *-A letter of approval from the architectural review committee shall be submitted with an application for a site plan.*

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- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (3) The following regulations shall be applicable to the "EMP" employment district:
  - (a) Minimum lot size: 5,750 square feet.
  - (b) Minimum lot width: 50 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 45 feet.
  - (e) Minimum setbacks:
    - (i) Front yard: None.
    - (ii) Side yard: None.
    - (iii) Rear yard: None.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
  - (g) Paved Sidewalks, driveways and parking areas are required.
  - (h) Screening of loading and storage facilities is required.

**Sec. 10. "LI" Light industrial PUD district**

- (A) *Purpose.* This district is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users. The uses included primarily serve other commercial and industrial enterprises. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one (1) or more of the uses hereinafter enumerated. The "LI" light industrial PUD district is designated for selected sales, manufacturing and industrial classifications.
- (B) *Permitted uses.* The following uses shall be permitted uses in the "LI" light industrial PUD district:
  - (1) Any use permitted in the "EMP" employment PUD district;
  - (2) Agricultural implement sales and services;
  - (3) Air conditioning and heating sales and services;
  - (4) Automobile repair shops without outside garages and when conducted wholly within the enclosed building;
  - (5) Artificial limb manufacturers;
  - (6) Battery and tire service stations without outside garages and when conducted wholly within the enclosed building;
  - (7) Beverage bottling and distributing stations;
  - (8) Blacksmith shops;
  - (9) Book binding shops;
  - (10) Box manufacturers;

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- (11) Broom manufacturers;
- (12) Bus lines shops and garages;
- (13) Car wash;
- (14) Canvas goods fabrication;
- (15) Crating express storage;
- (16) Computer and computer parts manufacturers;
- (17) Hatcheries;
- (18) Clothing and dress manufacturers;
- (19) Craft and hobby shop with outside garage;
- (20) Creameries;
- (21) Drapery and bedding manufacturers;
- (22) Expressing, baggage, and transfer delivery services;
- (23) Farm implement sales or repair;
- (24) Food processing and dehydrating operations;
- (25) Frozen food lockers;
- (26) Furniture manufacturers and upholsterers;
- (27) Garages;
- (28) Ice cream and ice manufacturers and sales;
- (29) Instrument and electronic component manufacturing;
- (30) Lumber and building sales and storage;
- (31) Machine shops;
- (32) Machine and metal products shops;
- (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
- (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;
- (35) Public utility substations and distributing centers, regulations centers, and underground holder stations;
- (36) Rail-served industries consistent with uses indicated above;
- (37) Sheet metal fabrication shop;
- (38) Sign shops;
- (39) Stone, marble, and granite grinding and cutting operations;
- (40) Storage and warehouses;
- (41) Storage of household goods;
- (42) Taxi service stations;
- (43) Temporary building incidental only to construction of a permitted use;
- (44) Tire shops (retreading only);

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- (45) Tool and die shops;
  - (46) Warehouses; and
  - (47) Welding shops.
- (C) *Site development regulations. -A letter of approval from the architectural review committee shall be submitted with an application for a site plan.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
  - (3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
  - (4) The following regulations shall be applicable to the "LI" light industrial PUD district:
    - (a) Minimum lot size: 5,750 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Minimum lot depth: 100 feet.
    - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
    - (e) Minimum setbacks.
      - (i) Front yard: none.
      - (ii) Side yard: none.
      - (iii) Rear yard: none.
    - (f) Maximum floor area ratio: 1.5 FAR of the lot area.





# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## Plum Creek PUD- MXD and NC compatibility setback

**Subject/Recommendation:** *(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8- "MXD" MIXED USE (D) SITE DEVELOPMENT REGULATIONS (6)(D) MAXIMUM HEIGHT: TO INSERT A REQUIREMENT FOR A COMPATIBILITY SETBACK WHEN A MXD DEVELOPMENT IS ADJACENT TO A R-1 DEVELOPMENT. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW. ~ *Sofia Nelson, Director of Planning*

*The Planning and Zoning Commission voted 6-0 to approve the amendment.*

**Other Information:** Please see attachments

**Budget Information:** N/A

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Attachments / click to download

- [exhibit a](#)
- [Ordinance](#)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 8- "MXD" MIXED USE (D) SITE DEVELOPMENT REGULATIONS (6)(D)MAXIMUM HEIGHT: TO INSERT A REQUIREMENT FOR A COMPATIBILITY SETBACK WHEN A MXD DEVELOPMENT IS ADJACENT TO A R-1 DEVELOPMENT. AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. Ordinance 311 amended as set forth in Exhibit A. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate and consistent with the existing numbering and formatting of the existing ordinance.

SECTION 2. That the City Secretary is hereby authorized and directed to update the City of Kyle code to reflect the changes made in Exhibit A and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the \_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lucy Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Amelia Sanchez, City Secretary

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**ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS**

## PART C

[Sec. 1. PUD district regulations and performance standards.](#)

[Sec. 2. "OS" open space PUD district.](#)

[Sec. 3. "R-1" residential PUD district.](#)

[Sec. 4. "R-2" residential PUD district.](#)

[Sec. 5. "R-3" multi-family residential PUD district.](#)

[Sec. 6. "NC" neighborhood commercial PUD district.](#)

[Sec. 7. "C" commercial PUD district.](#)

[Sec. 8. "MXD" mixed use development PUD district.](#)

[Sec. 9. "EMP" employment PUD district](#)

[Sec. 10. "LI" Light industrial PUD district](#)

**Sec. 1. PUD district regulations and performance standards.**

The PUD district regulations and performance standards set forth herein shall apply within the boundaries of the Plum Creek PUD; provided, however, that the following uses shall be permitted in all PUD districts:

- (a) Churches;
- (b) Facilities owned and operated by the federal government, the state and political subdivisions thereof;
- (c) Schools and educational institutions;
- (d) Fire stations;
- (e) Public utilities;
- (f) Athletic fields, sports facilities, playgrounds, recreational center and swimming pools;
- (g) Greenbelt and recreational areas; and
- (h) Parking lots associated with the PUD district uses, provided that parking lots in the "R-1" and "R-2" residential PUD districts are subject to city council approval.

**Sec. 2. "OS" open space PUD district.**

- (A) *Purpose.* An open space PUD district is a tract of land provided as a general benefit for the community. Common open space may be usable for recreational purposes or may provide visual, aesthetic and environmental amenities. The uses authorized for the common open space should be appropriate to the scale and character of the surrounding development considering its size, density,

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expected population, topography, and the number and type of dwellings to be provided. Common open space should be improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. Any buildings, structures and improvements to be located in the common open space must be appropriate to the uses which are intended and, therefore, must conserve and enhance the amenities of the common open space having regard to its topography and the intended function of the common open space, and must be secondary to open space component.

- (B) *Permitted uses.* The following uses shall be permitted uses in "OS" open space PUD district:
- (1) Cemeteries (with conditional use permit issued by the city council);
  - (2) Conservation areas;
  - (3) Golf courses;
  - (4) Outdoor recreational and athletic facilities;
  - (5) Outdoor swimming pools;
  - (6) Parks, playgrounds and playfields;
  - (7) Wildlife sanctuaries;
  - (8) Outdoor performance stages and amphitheaters;
  - (9) Streams, lakes, impounded waterways, or their drainageways; and
  - (10) Wetlands.
- (C) *[Secondary uses.]* The following uses shall be permitted as secondary uses in this "OS" open space PUD district:
- (1) Club houses and community centers.
  - (2) Retail-oriented uses which are clearly secondary and customarily or necessarily incidental to the permitted use, including but not necessarily limited to the following:
    - (a) Retail sales and services operated as part of a golf course, recreational or athletic facility.
    - (b) Retail sales and services sponsored by service clubs, non-profit societies or organizations and concessions contracted with the city, property owners association or other community-related organization.
    - (c) Food and beverage sales, including alcoholic beverages.
    - (d) Restaurants including alcoholic beverage sales which are operated as part of or in conjunction with a golf course, club house, or other community related facility.
    - (e) Caretaker residence.
    - (f) Maintenance buildings required to house equipment and material to maintain the site.
- (D) *Site development regulations.* Use regulations in the "OS" open space PUD district.
- (1) Maximum height of buildings: 35 feet.
  - (2) Density - maximum floor area shall not exceed 0.1.
  - (3) Lot size - minimum lot area for any building: 3,500 square feet.
  - (4) Lot width - minimum lot width: 35 feet.
  - (5) Front yard - minimum required building setback: 15 feet.

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- (6) Side yard - minimum required building setback: 10 feet.
- (7) Rear yard - minimum required building setback: 10 feet.
- (8) Garages shall either be attached or detached and accessible from a public or private street or alley.

**Sec. 3. "R-1" residential PUD district.**

- (A) *Purpose.* This district is an area for low density single-family residential use, with a minimum lot size of 6,000 square feet. This district is appropriate for single-family neighborhoods.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-1" residential PUD district:
  - (1) The following uses that are permitted uses in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Single family dwellings for residential use.
  - (3) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
  - (4) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
  - (5) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
  - (6) Accessory buildings, which shall be located only in rear yards, and accessory uses customarily incident to the use set out in subsection (B)(2) above and located on the same lot therewith, not involving the conduct of a retail business. The term accessory use shall also include:
    - (a) A home occupation such as the office of a physician, surgeon, dentist, accountant or bookkeeper, dressmaker, beauty shop, or artist, provided that such uses are located in the dwelling used by such a person as his or her private residence and no outside employees are present on the premises.
    - (b) An unilluminated "For Sale" or "For Rent" sign not more than four square feet in area may be permitted as an accessory use; provided however, that churches may display signs, symbols, and emblems similar in kind and nature as is customary and normal for such churches, and provided further, that during construction of a building, one unilluminated sign advertising contractors and/or architects on such premises shall be permitted, provided that such sign shall not be more than four square feet in area and shall be set

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back of the established or customary building line, and such sign shall be removed immediately upon completion of the building.

- (7) Residential accessory dwelling units, subject to the following site development requirements:
- (a) A lot intended for use for a single-family detached dwelling unit may contain both a principal dwelling unit and an accessory dwelling unit under the following restrictions and conditions:
- (i) Maximum floor area of an accessory dwelling unit shall be 1,000 square feet in size.
  - (ii) Maximum height of an accessory dwelling unit shall be two stories or 25 feet; provided, however, that an accessory dwelling unit shall not be constructed to a height greater than the principal residence.
  - (iii) No more than one accessory dwelling unit per lot is allowed.
  - (iv) Parking for an accessory dwelling unit shall not be less than one parking space per accessory dwelling unit.
  - (v) The LUE requirement (whether a whole LUE or any fraction thereof) for an accessory dwelling unit shall be counted toward the maximum number of LUEs available to be issued in the Plum Creek PUD, and in the subdivision within which the lot is platted.
  - (vi) In addition to compliance with all applicable city codes and regulations including, but not limited to, those dealing with building, plumbing, electrical, fire, safety, health and sanitation, property maintenance and rental housing licensing, the construction, occupancy and use of an accessory dwelling unit shall be controlled by the following restrictions:
    - (A) At least one of the dwelling units on a lot containing an accessory dwelling unit shall be occupied by an owner of the lot.
    - (B) Maximum occupancy of an accessory dwelling unit shall be in accordance with the table identified as schedule B as set forth herein below.
    - (C) An accessory dwelling unit must be constructed concurrently with but not before a principal residence.
    - (D) A separate water and sewer tap shall be obtained for each accessory dwelling unit. The cost of each such separate tap for accessory units shall be the same cost as a water or sewer tap for the primary single-family dwelling unit. Impact fees for both water and wastewater shall be paid and LUEs issued for each such accessory unit as required by ordinance. Not less than one-half of a water LUE and one-half of a wastewater LUE shall be required for each accessory unit; and the number, or fraction thereof, of an LUE required shall be as provided in schedule A. LUEs shall be counted and credited as they are allocated, whether in whole numbers or in fractions thereof.
    - (E) Each lot eligible for a residential accessory dwelling unit shall be identified on the subdivision plat and to the commission and city council during the subdivision approval process, and each such residential accessory dwelling unit shall be identified on the site development plan submitted by the owner.
    - (F) The subdivider/developer of a single-family residential subdivision that includes lots for which an accessory dwelling unit is permitted, shall clearly identify all such lots in restrictive covenants filed of record in the real property records of Hays County, Texas.

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- (C) *Site development regulations.* The following regulations shall be the requirements for buildings within the "R-1" residential PUD district:
- (1) *Minimum lot size, lot area.* No building shall be constructed on any lot of less than 6,000 square feet.
  - (2) *Minimum lot width.* The lot shall have a minimum of 50 feet of width along the front property line, except when a lot is on a cul-de-sac, where it may be a minimum width of 30 feet along the front property line.
  - (3) *Maximum dwelling units per lot.* One principal dwelling unit and one accessory dwelling unit.
  - (4) *Maximum height.* No building shall exceed 35 feet in height.
  - (5) *Area.* No building or structure, nor any enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
  - (6) *Minimum setbacks.*
    - (a) *Front yard.* There shall be a front yard having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, covered terrace, balcony or bay.
    - (b) *Side yard.* A yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.
    - (c) *[Between dwellings.]* The minimum distance between dwellings on adjoining lots shall be ten feet.
    - (d) *Rear yard.* There shall be a rear yard setback of not less than 25 feet from the rear most wall of the principal dwelling unit to the back property line. There shall be a rear yard setback of not less than five feet from the rear most wall of any accessory building and garage to the back property line.
  - (7) *[Garages.]* Garages shall either be attached or detached and accessible from a public or private street, or alley.

## SCHEDULE A

Unit Size	LUE Count
0 to 699 square feet	Minimum 0.50 LUE
700 to 849 square feet	0.50/LUE
850 to 1,000 square feet	0.75/LUE



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## SCHEDULE B

Unit Size	Maximum Number Of Occupants
0 to 699 square feet	2
700 to 849 square feet	3
850 to 1,000 square feet	4

**Sec. 4. "R-2" residential PUD district.**

(A) *Purpose.* This district is intended as an area for medium density, single-family residential use. In appropriate locations, this district shall accommodate single-family detached, duplex, and single-family attached residential uses permitted under residential standards.

(B) *Permitted uses.*

(1) The following uses shall [be] permitted uses in the "R-2" residential PUD district:

(a) The following uses that are permitted uses in the "OS" open space PUD district:

- (i) Wetlands;
- (ii) Conservation areas;
- (iii) Golf courses;
- (iv) Outdoor recreational and athletic facilities;
- (v) Outdoor swimming pools;
- (vi) Parks, playgrounds and playfields;
- (vii) Wildlife sanctuaries;
- (viii) Streams, lakes, impounded waterways, or their drainageways; and

(b) Any uses permitted in "R-1" residential PUD district.

(c) Duplexes.

(d) Medium density single-family detached residential.

(e) Single family attached residential.

(g)[f] Courtyard.

(2) No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses set forth in this section.

(C) *Site development regulations.* The following regulations shall be the site development regulations for development within the "R-2" residential PUD district:

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- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
- (3) The following alternative site development regulations shall be exclusively applicable to duplexes within the "R-2" residential PUD district:

## (a) Alternative No. 1:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 6,000 square feet.
- (ii) Minimum lot width: 50 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

or,

## (b) Alternative No. 2:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 7,200 square feet.
- (ii) Minimum lot width: 60 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

Provided, however, that alternative No. 1 may be utilized only if open space is provided within the "R-2" development so as to result in the same level of density that would result from the application of alternative No. 2 criteria in this subsection 4.(C)(3).

## (c) Minimum setbacks:

- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
- (ii) Side yard. There shall be a side yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.

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- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (d) Garages shall be permitted in the "R-2" development pursuant to the following requirements:
  - (i) Garages shall be either attached or detached and accessible from a public or private street, or alley.
  - (ii) A minimum of two parking spaces is required for each unit. The driveway may be included in the counting of the required minimum as one of the two spaces required for each unit.

Provided, however, that these requirements do not apply to any "R-1" development located within a primarily "R-2" development area.
- (4) The following site development regulations shall be exclusively applicable to medium density single-family detached residential within the "R-2" residential PUD district:
  - (a) Minimum lot size: 3,600 square feet.
  - (b) Minimum lot width: 35 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height. No building shall exceed 35 feet.
  - (e) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargement.
  - (f) Minimum setbacks:
    - (i) Front yard. There shall be a front yard setback having a depth of not less than eight feet from the property line to the front line of the building, including a covered porch, covered terrace, balconies, or bays.
    - (ii) Side yard. There shall be a side yard of not less than five feet from the walls of the building or accessory building to the side property line.
    - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than five feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (g) Garages shall be either attached or detached and accessible from a public or private street, or alley.
- (5) The site development regulations set forth below shall be exclusively applicable to single-family attached residential.
  - (a) Minimum lot size: 2,500 square feet.
  - (b) Minimum lot width: 25 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height: 35 feet.
  - (e) Minimum setbacks:

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- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
  - (ii) Side yard. No setback required.
  - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than 25 feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (f) Garages shall either be attached or detached and accessible from a public or private street or alley.
- (6) The site development regulations set forth below shall be exclusively applicable to courtyard residential.
- (a) Minimum lot size: 2,000 sq. ft.
  - (b) Minimum lot width: None.
  - (c) Maximum dwelling units per lot: One principle dwelling unit and one accessory dwelling unit.
  - (d) Maximum height: 35 feet.
  - (e) Area: No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargements.
  - (f) Minimum setbacks:
    - (i) Front yard: There shall be a front yard setback having the depth of not less than four feet from the courtyard walk to the front line of the building.
    - (ii) Side yard: There shall be no side yard set back required. Except that there shall be a side yard ser back having a depth of not less than eight feet from the property at public or private streets to the side line of the building.
    - (iii) Rear yard: There shall be no rear yard setback required
  - (g) Garages and carports: May either be attached or detached and accessible from private street or alley.
  - (h) Each courtyard shall have a "gateway" (examples: trellis, fencing, and/or landscaping).
  - (i) Each courtyard shall have a gathering place with a minimum of four chairs or two benches.
  - (j) The courtyard sidewalk(s) shall be the following minimum width for at least 70 percent of the length:
    - (k)[i] Single sidewalk: Five feet.
    - (l)[ii] Double sidewalk: Four feet to six [feet].
  - (m)[k.] Each dwelling unit shall have a front porch or front patio having an area with a minimum depth of five feet and a minimum length of seven feet.
  - (n)[l.] Minimum separation between interior dwelling units from back side of porch or garden patio to back side of porch or garden patio: 24 feet.
  - (o)[m.] Minimum separation of dwelling units at street: 16 feet.
  - (p)[n.] Minimum separation of dwelling units at rear of courtyard: Ten feet.

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(Ord. No. 687, § 1(Exh. A), 1-17-2012)

**Sec. 5. "R-3" multi-family residential PUD district.**

- (A) *Purpose.* This district is intended as an area for medium density single-family, duplex, and condominium uses. In appropriate locations, this district shall accommodate a variety of housing types, primarily multiple family dwellings and shall be designed to provide the widest range of housing types, as well as highest density in the community. Mobile homes and manufactured homes are excluded from this district.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-3" multi-family residential PUD district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in "R-2" residential PUD district, excluding the following "R-1" uses:
    - (a) Single family dwelling for residential use, as described in article II, part C, section 3 of this ordinance.
    - (b) Residential accessory dwelling units.
    - (c) Apartment buildings.
    - (d) Convalescent and hospice homes, assisted living, and retirement housing.
    - (e) Condominiums.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) The following site development regulations shall be exclusively applicable to apartment buildings, convalescent and hospice homes, assisted living, and retirement housing, and condominiums.
    - (a) Minimum lot size: 6,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Maximum dwelling units per lot: 36 units per acre.

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- (d) Maximum height: 60 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the "R-3" site which limits maximum building height to 40 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
- (e) Minimum setbacks:
  - (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
  - (ii) Side yard. There shall be a side yard setback of not less than 15 feet from the walls of the building or accessory building to the side property line.
  - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (f) Garages shall either be attached or detached and accessible from a public or private street, or alley.
- (4) The site development regulations set forth below shall be exclusively applicable to condominium residential.
  - (a) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

**Sec. 6. "NC" neighborhood commercial PUD district.**

- (A) *Purpose.* This area is intended to provide for the location of offices and small businesses serving neighborhood community needs, which may be located within or adjacent to a residential district of the PUD for the convenience of nearby residents. The businesses shall be conducive to and fit into the residential pattern of development, and not create land use, architectural or traffic conflicts. The following standards for the neighborhood commercial district are intended to preserve the residential atmosphere and be consistent with the Plum Creek PUD master plan.
- (B) *Permitted uses.* The following uses shall be permitted in "NC" neighborhood commercial district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;

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- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in "R-1" residential PUD district, except the following:
  - (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.
- (3) Any use permitted in the "R-2" residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (4) Any use permitted in the "R-3" multi-family residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (5) Grocery stores or specialty food store.
- (6) Barber and/or beauty shop.
- (7) Daycare services and child development centers.
- (8) Clothes cleaning agency.
- (9) Laundromat.
- (10) Video rental store.
- (11) Coffee shop, cafe or, delicatessen not exceeding 2,500 square feet of gross floor area.
- (12) Pharmacy.
- (13) Electronic service center providing photocopying, faxing, and computer service.
- (14) Computer or communications network access.
- (15) Mail box rental and package shipping/receiving store.
- (16) Accessory buildings customarily appurtenant to a permitted use.
- (17) Dwelling units that are located above or behind a permitted commercial use and secondary to that commercial use.
- (18) Neighborhood automobile service stations.
- (19) Bed and breakfast establishment, subject to the following requirements:
  - (a) A maximum of four guest bedrooms shall be provided.
  - (b) Paying guests shall not stay more than seven consecutive days.
  - (c) Only overnight guests may be served meals at the establishment, except that luncheons and receptions may be held for attendees of organized social functions and tours.
  - (d) Only one sign is permitted, and it shall be non-illuminated, no greater than two square feet, and affixed flush with the wall of the dwelling.
  - (e) Each bed and breakfast establishment shall provide a minimum of two off-street parking spaces, plus one additional parking space for each guest room. This requirement may be waived when the owner can show that adequate off-street parking is available at an adjacent commercial site under common ownership or lease. Any parking area located adjacent to a residential zoned property shall provide a privacy fence at least six feet in height and buffer between the parking area and the adjacent residential property.

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- (f) The bed and breakfast establishment shall comply with all licensing requirements of the county health department for storage, preparation, and serving of food and beverages.
- (20) Rooming and boarding houses.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
  - (3) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (4) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (5) The following site development regulations shall be applicable to the "NC" neighborhood commercial district.
    - (a) Minimum lot size: 5,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Minimum lot depth: 100 feet.
    - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 50 feet in height. A 25 minimum foot compatibility setback shall be required adjacent to a "R-1 or" "R-2" development within the neighborhood commercial (NC) site which limits maximum building height to 35 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
    - (e) Minimum setbacks:
      - (i) Front yard. The building setback for the front yard shall be the same as adjacent residential area, but not less than 15 feet.
      - (ii) Side yard. Five feet, except when a side lot line is abutting a residential lot and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet, when the building abuts a residential lot.
      - (iii) Rear yard. Ten feet, except when a rear lot line is abutting a residential lot and then the rear yard shall be a minimum of 15 feet.
- (D) *Off-street parking and loading.* Off-street parking and loading space shall be provided as required in article II, part D, section 2 herein, except that if nine or more spaces are required, up to two designated parking spaces on the street may be counted toward the required spaces.
- (E) *Additional site development requirements.*
- (1) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.
  - (2) In any "NC" neighborhood commercial PUD district directly across the street or alley from residential district, the parking and loading area shall be set back at least ten feet from the street or alley right-of-way and said set back area shall be appropriately landscaped to be consistent with the character of adjoining and adjacent residential property. Such landscaping shall be maintained regularly by the property owner.



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- (3) The front of buildings should be sited at the front yard build-to line (consistent with the adjacent residential areas) with a pedestrian walkway connecting the sidewalk and an entrance to the building. The building and any eaves, overhangs, or awnings shall not interfere with the required clear vision area at corners or driveways.
- (4) Buildings within the neighborhood commercial area should have external architectural features such as roofline, exterior materials, window size and location, doors, porches, and entrances that are similar to the predominant residential pattern in the area.
- (5) Landscaped areas shall be planted with live ground cover, shrubs, lawn, flowers and trees that are typical adjacent residential areas.
- (6) Lighting fixtures shall be designed to direct light down onto the site and away from residential property. No pole light shall exceed 12 feet in height.
- (7) Operating hours for neighborhood commercial uses shall be limited to the period from 6:00 a.m. to 10:00 p.m.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

**Sec. 7. "C" commercial PUD district.**

- (A) *Purpose.* This area is intended to provide for the location of offices and commercial uses serving neighborhood and community needs. No building or land shall be used and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated. The "C" commercial PUD district is designed for commercial, wholesale, retail and office classification.
- (B) *Permitted uses.* The following uses shall be permitted in the "C" commercial PUD district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) The following uses that are uses permitted in the "R-1" residential PUD district:
    - (a) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
    - (b) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
    - (c) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.

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- (3) Antique shops.
- (4) Art gallery.
- (5) Auction sales.
- (6) Automobile repair shops without outside garages, with work conducted wholly within the enclosed building.
- (7) Bakeries.
- (8) Banks and savings and loan institutions.
- (9) Barber shops, beauty shops, and any other personal service shops business, music, dance schools.
- (10) Billiard and pool rooms.
- (11) Books or stationery stores.
- (12) Bowling alleys.
- (13) Business, music, dance or commercial schools.
- (14) Cafes, cafeterias, and restaurants.
- (15) Camera shops and photographic supplies.
- (16) Carpet and rug cleaners.
- (17) Catering establishments.
- (18) Cleaning and dry cleaning establishments.
- (19) Clinics.
- (20) Clothing stores.
- (21) Craft and hobby shop, but without outside garage.
- (22) Dance halls.
- (23) Department, furniture, and home appliance stores.
- (24) Drug stores, soda fountains, soft drink stands, candy, and tobacco shops.
- (25) Dry cleaners.
- (26) Electrical appliance shops and repairs.
- (27) Employment agencies.
- (28) Florist shop, nursery, or greenhouses.
- (29) Furniture, appliance stores, (sales and service).
- (30) Gasoline service stations.
- (31) Grocery stores.
- (32) Hardware, paint, and wallpaper stores.
- (33) Hospitals, sanitariums, nursing homes, hospices, or convalescent homes.
- (34) Hotels.
- (35) Household and office furniture, furnishings, and appliance stores.

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- (36) Ice cream or ice sales.
  - (37) Laundries, laundrettes and Laundromats.
  - (38) Jewelry and optical goods stores.
  - (39) Meat markets.
  - (40) Mortuaries.
  - (41) Nursery or horticulture businesses.
  - (42) Painting and decorating shops.
  - (43) Pet shops or animal hospitals when conducted wholly within the enclosed building.
  - (44) Photographers, or artists' studios.
  - (45) Plumbing, heating, and roofing supply and workshops.
  - (46) Printing shops.
  - (47) Offices.
  - (48) Radio and television stations (no towers).
  - (49) Radio, television or electronic sales and service.
  - (50) Recreation establishments.
  - (51) Restaurants.
  - (52) Retail stores and services.
  - (53) Shoe sales and repair shops.
  - (54) Sporting goods, novelty, or toy shops.
  - (55) Tailor and dressmaking shops.
  - (56) Taverns or retail sale of alcoholic liquors, subject to the regulations of other adopted ordinances of the city.
  - (57) Telegraph and telephone service stations.
  - (58) Temporary building incidental only to construction of a permitted use.
  - (59) Theater, indoor.
  - (60) Tire shop (no vulcanizing or retreading).
  - (61) Variety stores.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) The following site development regulations shall be exclusively applicable to the "C" neighborhood commercial PUD district.
    - (a) Minimum lot size: 4,000 square feet.
    - (b) Minimum lot width: 35 feet.
    - (c) Minimum lot depth: 100 feet.

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- (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 3½ stories or 50 feet.
- (e) Minimum setbacks.
  - (i) Front yard: none.
  - (ii) Side yard: none.
  - (iii) Rear yard: none.
- (f) Maximum floor area ratio: 1.5 FAR of the lot area.

**Sec. 8. "MXD" mixed use development PUD district.**

(A) *Purpose.* This area is intended to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents in the PUD. Mixed use development areas of this type are intended to be located and developed in a manner consistent with the Plum Creek PUD master plan and a site development plan. It is intended to allow for a mix of uses that:

- (1) Provide a variety of employment opportunities and housing types;
- (2) Foster pedestrian and other non-motor vehicle activity;
- (3) Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design; and
- (4) Ensure compatibility of uses within mixed use developments with other uses within such development and with the surrounding area and minimize off-site impacts associated with the development.

A site development plan shall be reviewed and approved by the planning commission and the city council prior to the actual development and construction in an MXD PUD district.

(B) *Permitted uses.* Uses permitted in the "R-1" residential PUD district are specifically prohibited and the following uses are permitted in the mixed use development district:

- (1) The following uses that are uses permitted in the "OS" open space PUD district:
  - (a) Wetlands;
  - (b) Conservation areas;
  - (c) Golf courses;
  - (d) Outdoor recreational and athletic facilities;
  - (e) Outdoor swimming pools;
  - (f) Parks, playgrounds and playfields;
  - (g) Wildlife sanctuaries;
  - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in the "R-2" residential PUD district, except the following "R-1" residential PUD district uses:
  - (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.

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- (3) Any use permitted in the "R-3" multi-family residential PUD district.
  - (4) Any use permitted in the "NC" neighborhood commercial areas.
  - (5) Any use permitted in the "C" commercial PUD district.
- (C) *Additional permitted uses.* In addition to uses permitted in (B) above, the following uses are specifically allowed:
- (1) Branch banks and other financial institutions designed to serve the area businesses and adjacent neighborhoods.
  - (2) Business support service including copying, blueprinting, film developing and processing, photo reproduction, accounting, computer services, building and grounds maintenance, security services, and temporary help.
  - (3) Studio for manufacturing of pottery items, metal sculpture, and other artistic products.
  - (4) Hotel or similar lodging facilities.
  - (5) Conference center and meeting facilities when associated with a motel, hotel or similar lodging facility.
  - (6) Commercial recreational facilities such as indoor theaters and athletic clubs, but excluding intensive outdoor facilities such as go-cart tracks, bumper cars and boats, BMX courses, and target ranges.
  - (7) Offices.
  - (8) Restaurants, delicatessens, cafes, and similar food service establishments.
  - (9) Dwelling units that are located above or behind a permitted commercial or neighborhood commercial use and secondary to that commercial use.
- (D) *Site development regulations.* Because of the mixed-use character of this district, the commission's review of site development plans and amendments to the Plum Creek PUD master plan, and recommendation to the city council are required. The city council's approval of site development plans and amendments to the Plum Creek PUD master plan are required prior to construction for each development submitted. The plan, pursuant to the applicable requirements of this ordinance must ensure that each development satisfies parking and compatibility requirements.
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (4) Development of any use permitted in the "NC" neighborhood commercial PUD district shall conform with the site development regulations established in the "NC" neighborhood commercial PUD district.
  - (5) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
  - (6) The following site development regulations shall be applicable to nonresidential development within the MXD area:
    - (a) Minimum lot size: 4,000 square feet.

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- (b) Minimum lot width: 35 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed five stories or 65 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-1" or "R-2" development within the commercial site which limits maximum building height to three and one-half stories or 50 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
  - (e) Minimum setbacks:
    - (i) Front yard: none.
    - (ii) Side yard: none.
    - (iii) Rear yard: none.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
- (7) Site development standards for residential development. Residential development within the MXD area shall conform to the applicable site development standards established for the "R-2" residential PUD district, "R-3" multi-family residential PUD district and "NC" neighborhood commercial PUD district as set forth in this ordinance.
- (8) Additional site development requirements.
- (a) Lighting: Parking lot lights, security lights, and other lights on a mixed-use site shall be designed to direct light down onto the site and away from adjacent residential property.
  - (b) Air emissions: There shall be no emission of odorous, toxic, noxious matter, or dust in such quantities from operations as to be readily detectable along or outside the MXD area so as to produce a public nuisance or hazard.
  - (c) Landscaping and open space. The design and development of landscaping and open space within the MXD area shall:
    - (i) Include street trees and parking area trees which are in scale with the development.
    - (ii) Provide a cohesive open space and pedestrian network within the development, with appropriate connections to surrounding properties and uses.
  - (d) Include open spaces and plazas which are in scale with the development and invite activity appropriate to adjoining uses.
  - (e) Refuse collection and recycling areas for business shall be enclosed with a fence, wall or structure high enough to screen all collection bins.
  - (f) Outside mechanical equipment, industrial or commercial heating, ventilation air conditioning, or other mechanical equipment on rooftops or ground, shall be screened with a material and design that is visually compatible with the building.

(Ord. No. 490, § 2, 2-20-2007; Ord. No. 690, § 1(Exh. A), 2-21-2012)

### Sec. 9. "EMP" employment PUD district

- (A) *Purpose.* This area is intended to provide a place to locate commercial businesses, services, and industries compatible with adjacent residential areas for the convenience of nearby residents and the greater community at large. The use of an EMP area within a proposed mixed use development is

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intended to be compatible with the residential pattern of the development and not create unreasonable traffic or land use conflicts.

(B) *Permitted uses.* The following uses shall be permitted in an "EMP" employment PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

- (a) Wetlands;
- (b) Conservation areas;
- (c) Golf courses;
- (d) Outdoor recreational and athletic facilities;
- (e) Outdoor swimming pools;
- (f) Parks, playgrounds and playfields;
- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Any use permitted in the "C" commercial PUD district;

(3) Manufacture, assembly, and packaging of products from previously prepared material such as cloth, plastic, paper, leather, and precious or semi-precious metal or stone;

(4) Manufacture, assembly, and processing of food and beverages, excluding meat packing plants and similar processes that place a significant demand on wastewater or water treatment;

(5) Manufacture, assembly, and testing of communication equipment, medical instruments and apparatus, optics, photographic equipment and supplies, timing equipment, musical instrument and related equipment;

(6) Research, engineering and development facilities or laboratories;

(7) Motion picture or video production facilities and sound stages;

(8) Printing, publishing, and book binding;

(9) Warehouse, storage, and distribution center, provided development does not exceed a maximum of 15,000 square feet of building area;

(10) Instrument and component manufacturing;

(11) Apparel manufacturing;

(12) Electric and electronic assembly;

(13) Greenhouses and wholesale growers;

(14) Office equipment and supplies manufacturing;

(15) Warehouses;

(16) Offices;

(C) *Site development standards.*

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.

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- (3) The following regulations shall be applicable to the "EMP" employment district:
- (a) Minimum lot size: 5,750 square feet.
  - (b) Minimum lot width: 50 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 45 feet.
  - (e) Minimum setbacks:
    - (i) Front yard: None.
    - (ii) Side yard: None.
    - (iii) Rear yard: None.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
  - (g) Paved Sidewalks, driveways and parking areas are required.
  - (h) Screening of loading and storage facilities is required.

**Sec. 10. "LI" Light industrial PUD district**

- (A) *Purpose.* This district is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users. The uses included primarily serve other commercial and industrial enterprises. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one (1) or more of the uses hereinafter enumerated. The "LI" light industrial PUD district is designated for selected sales, manufacturing and industrial classifications.
- (B) *Permitted uses.* The following uses shall be permitted uses in the "LI" light industrial PUD district:
- (1) Any use permitted in the "EMP" employment PUD district;
  - (2) Agricultural implement sales and services;
  - (3) Air conditioning and heating sales and services;
  - (4) Automobile repair shops without outside garages and when conducted wholly within the enclosed building;
  - (5) Artificial limb manufacturers;
  - (6) Battery and tire service stations without outside garages and when conducted wholly within the enclosed building;
  - (7) Beverage bottling and distributing stations;
  - (8) Blacksmith shops;
  - (9) Book binding shops;
  - (10) Box manufacturers;
  - (11) Broom manufacturers;
  - (12) Bus lines shops and garages;
  - (13) Car wash;



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- (14) Canvas goods fabrication;
- (15) Crating express storage;
- (16) Computer and computer parts manufacturers;
- (17) Hatcheries;
- (18) Clothing and dress manufacturers;
- (19) Craft and hobby shop with outside garage;
- (20) Creameries;
- (21) Drapery and bedding manufacturers;
- (22) Expressing, baggage, and transfer delivery services;
- (23) Farm implement sales or repair;
- (24) Food processing and dehydrating operations;
- (25) Frozen food lockers;
- (26) Furniture manufacturers and upholsterers;
- (27) Garages;
- (28) Ice cream and ice manufacturers and sales;
- (29) Instrument and electronic component manufacturing;
- (30) Lumber and building sales and storage;
- (31) Machine shops;
- (32) Machine and metal products shops;
- (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
- (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;
- (35) Public utility substations and distributing centers, regulations centers, and underground holder stations;
- (36) Rail-served industries consistent with uses indicated above;
- (37) Sheet metal fabrication shop;
- (38) Sign shops;
- (39) Stone, marble, and granite grinding and cutting operations;
- (40) Storage and warehouses;
- (41) Storage of household goods;
- (42) Taxi service stations;
- (43) Temporary building incidental only to construction of a permitted use;
- (44) Tire shops (retreading only);
- (45) Tool and die shops;
- (46) Warehouses; and
- (47) Welding shops.

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(C) *Site development regulations.*

- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
- (4) The following regulations shall be applicable to the "LI" light industrial PUD district:
  - (a) Minimum lot size: 5,750 square feet.
  - (b) Minimum lot width: 50 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
  - (e) Minimum setbacks.
    - (i) Front yard: none.
    - (ii) Side yard: none.
    - (iii) Rear yard: none.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.



# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## Plum Creek-lighting

**Subject/Recommendation:**

*(Second Reading)* AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS TO ADD A REQUIREMENT FOR SITE LIGHTING- REQUIRING ALL PARKING LOT LIGHTS, SECURITY LIGHTS AND OTHER LIGHTS TO BE DESIGNED TO DIRECT LIGHT DOWN ONTO THE SITE AND AWAY FROM ADJACENT RESIDENTIAL PROPERTY WITH NO EXPOSED LIGHTING SOURCES VISIBLE FROM ADJACENT PROPERTIES WITH USE CATEGORIES OF R-1 OR R-2. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.  
~ Sofia Nelson, Director of Planning

*Planning and Zoning Commission voted 6-0 to approve the amendment.*

**Other Information:**

Please see attachments

**Budget Information:**

N/A

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

Attachments / click to download

- [exhibit a](#)
- [Ordinance](#)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE). ARTICLE II- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS, PART C ZONING, SECTION 7”C” COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS TO ADD A REQUIREMENT FOR SITE LIGHTING- REQUIRING ALL PARKING LOT LIGHTS, SECURITY LIGHTS AND OTHER LIGHTS TO BE DESIGNED TO DIRECT LIGHT DOWN ONTO THE SITE AND AWAY FROM ADJACENT RESIDENTIAL PROPERTY WITH NO EXPOSED LIGHTING SOURCES VISIBLE FROM ADJACENT PROPERTIES WITH USE CATEGORIES OF R-1 OR R-2. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. Ordinance 311 amended as set forth in Exhibit A. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate and consistent with the existing numbering and formatting of the existing ordinance.

SECTION 2. That the City Secretary is hereby authorized and directed to update the City of Kyle code to reflect the changes made in Exhibit A and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the \_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lucy Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Amelia Sanchez, City Secretary

## PART II - CODE OF ORDINANCES

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## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

**ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS**

## PART C

[Sec. 1. PUD district regulations and performance standards.](#)

[Sec. 2. "OS" open space PUD district.](#)

[Sec. 3. "R-1" residential PUD district.](#)

[Sec. 4. "R-2" residential PUD district.](#)

[Sec. 5. "R-3" multi-family residential PUD district.](#)

[Sec. 6. "NC" neighborhood commercial PUD district.](#)

[Sec. 7. "C" commercial PUD district.](#)

[Sec. 8. "MXD" mixed use development PUD district.](#)

[Sec. 9. "EMP" employment PUD district](#)

[Sec. 10. "LI" Light industrial PUD district](#)

**Sec. 1. PUD district regulations and performance standards.**

The PUD district regulations and performance standards set forth herein shall apply within the boundaries of the Plum Creek PUD; provided, however, that the following uses shall be permitted in all PUD districts:

- (a) Churches;
- (b) Facilities owned and operated by the federal government, the state and political subdivisions thereof;
- (c) Schools and educational institutions;
- (d) Fire stations;
- (e) Public utilities;
- (f) Athletic fields, sports facilities, playgrounds, recreational center and swimming pools;
- (g) Greenbelt and recreational areas; and
- (h) Parking lots associated with the PUD district uses, provided that parking lots in the "R-1" and "R-2" residential PUD districts are subject to city council approval.

**Sec. 2. "OS" open space PUD district.**

- (A) *Purpose.* An open space PUD district is a tract of land provided as a general benefit for the community. Common open space may be usable for recreational purposes or may provide visual, aesthetic and environmental amenities. The uses authorized for the common open space should be appropriate to the scale and character of the surrounding development considering its size, density,

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expected population, topography, and the number and type of dwellings to be provided. Common open space should be improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. Any buildings, structures and improvements to be located in the common open space must be appropriate to the uses which are intended and, therefore, must conserve and enhance the amenities of the common open space having regard to its topography and the intended function of the common open space, and must be secondary to open space component.

- (B) *Permitted uses.* The following uses shall be permitted uses in "OS" open space PUD district:
- (1) Cemeteries (with conditional use permit issued by the city council);
  - (2) Conservation areas;
  - (3) Golf courses;
  - (4) Outdoor recreational and athletic facilities;
  - (5) Outdoor swimming pools;
  - (6) Parks, playgrounds and playfields;
  - (7) Wildlife sanctuaries;
  - (8) Outdoor performance stages and amphitheaters;
  - (9) Streams, lakes, impounded waterways, or their drainageways; and
  - (10) Wetlands.
- (C) *[Secondary uses.]* The following uses shall be permitted as secondary uses in this "OS" open space PUD district:
- (1) Club houses and community centers.
  - (2) Retail-oriented uses which are clearly secondary and customarily or necessarily incidental to the permitted use, including but not necessarily limited to the following:
    - (a) Retail sales and services operated as part of a golf course, recreational or athletic facility.
    - (b) Retail sales and services sponsored by service clubs, non-profit societies or organizations and concessions contracted with the city, property owners association or other community-related organization.
    - (c) Food and beverage sales, including alcoholic beverages.
    - (d) Restaurants including alcoholic beverage sales which are operated as part of or in conjunction with a golf course, club house, or other community related facility.
    - (e) Caretaker residence.
    - (f) Maintenance buildings required to house equipment and material to maintain the site.
- (D) *Site development regulations.* Use regulations in the "OS" open space PUD district.
- (1) Maximum height of buildings: 35 feet.
  - (2) Density - maximum floor area shall not exceed 0.1.
  - (3) Lot size - minimum lot area for any building: 3,500 square feet.
  - (4) Lot width - minimum lot width: 35 feet.
  - (5) Front yard - minimum required building setback: 15 feet.

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- (6) Side yard - minimum required building setback: 10 feet.
- (7) Rear yard - minimum required building setback: 10 feet.
- (8) Garages shall either be attached or detached and accessible from a public or private street or alley.

**Sec. 3. "R-1" residential PUD district.**

- (A) *Purpose.* This district is an area for low density single-family residential use, with a minimum lot size of 6,000 square feet. This district is appropriate for single-family neighborhoods.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-1" residential PUD district:
  - (1) The following uses that are permitted uses in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Single family dwellings for residential use.
  - (3) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
  - (4) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
  - (5) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
  - (6) Accessory buildings, which shall be located only in rear yards, and accessory uses customarily incident to the use set out in subsection (B)(2) above and located on the same lot therewith, not involving the conduct of a retail business. The term accessory use shall also include:
    - (a) A home occupation such as the office of a physician, surgeon, dentist, accountant or bookkeeper, dressmaker, beauty shop, or artist, provided that such uses are located in the dwelling used by such a person as his or her private residence and no outside employees are present on the premises.
    - (b) An unilluminated "For Sale" or "For Rent" sign not more than four square feet in area may be permitted as an accessory use; provided however, that churches may display signs, symbols, and emblems similar in kind and nature as is customary and normal for such churches, and provided further, that during construction of a building, one unilluminated sign advertising contractors and/or architects on such premises shall be permitted, provided that such sign shall not be more than four square feet in area and shall be set



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back of the established or customary building line, and such sign shall be removed immediately upon completion of the building.

- (7) Residential accessory dwelling units, subject to the following site development requirements:
- (a) A lot intended for use for a single-family detached dwelling unit may contain both a principal dwelling unit and an accessory dwelling unit under the following restrictions and conditions:
- (i) Maximum floor area of an accessory dwelling unit shall be 1,000 square feet in size.
  - (ii) Maximum height of an accessory dwelling unit shall be two stories or 25 feet; provided, however, that an accessory dwelling unit shall not be constructed to a height greater than the principal residence.
  - (iii) No more than one accessory dwelling unit per lot is allowed.
  - (iv) Parking for an accessory dwelling unit shall not be less than one parking space per accessory dwelling unit.
  - (v) The LUE requirement (whether a whole LUE or any fraction thereof) for an accessory dwelling unit shall be counted toward the maximum number of LUEs available to be issued in the Plum Creek PUD, and in the subdivision within which the lot is platted.
  - (vi) In addition to compliance with all applicable city codes and regulations including, but not limited to, those dealing with building, plumbing, electrical, fire, safety, health and sanitation, property maintenance and rental housing licensing, the construction, occupancy and use of an accessory dwelling unit shall be controlled by the following restrictions:
    - (A) At least one of the dwelling units on a lot containing an accessory dwelling unit shall be occupied by an owner of the lot.
    - (B) Maximum occupancy of an accessory dwelling unit shall be in accordance with the table identified as schedule B as set forth herein below.
    - (C) An accessory dwelling unit must be constructed concurrently with but not before a principal residence.
    - (D) A separate water and sewer tap shall be obtained for each accessory dwelling unit. The cost of each such separate tap for accessory units shall be the same cost as a water or sewer tap for the primary single-family dwelling unit. Impact fees for both water and wastewater shall be paid and LUEs issued for each such accessory unit as required by ordinance. Not less than one-half of a water LUE and one-half of a wastewater LUE shall be required for each accessory unit; and the number, or fraction thereof, of an LUE required shall be as provided in schedule A. LUEs shall be counted and credited as they are allocated, whether in whole numbers or in fractions thereof.
    - (E) Each lot eligible for a residential accessory dwelling unit shall be identified on the subdivision plat and to the commission and city council during the subdivision approval process, and each such residential accessory dwelling unit shall be identified on the site development plan submitted by the owner.
    - (F) The subdivider/developer of a single-family residential subdivision that includes lots for which an accessory dwelling unit is permitted, shall clearly identify all such lots in restrictive covenants filed of record in the real property records of Hays County, Texas.

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- (C) *Site development regulations.* The following regulations shall be the requirements for buildings within the "R-1" residential PUD district:
- (1) *Minimum lot size, lot area.* No building shall be constructed on any lot of less than 6,000 square feet.
  - (2) *Minimum lot width.* The lot shall have a minimum of 50 feet of width along the front property line, except when a lot is on a cul-de-sac, where it may be a minimum width of 30 feet along the front property line.
  - (3) *Maximum dwelling units per lot.* One principal dwelling unit and one accessory dwelling unit.
  - (4) *Maximum height.* No building shall exceed 35 feet in height.
  - (5) *Area.* No building or structure, nor any enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
  - (6) *Minimum setbacks.*
    - (a) *Front yard.* There shall be a front yard having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, covered terrace, balcony or bay.
    - (b) *Side yard.* A yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.
    - (c) *[Between dwellings.]* The minimum distance between dwellings on adjoining lots shall be ten feet.
    - (d) *Rear yard.* There shall be a rear yard setback of not less than 25 feet from the rear most wall of the principal dwelling unit to the back property line. There shall be a rear yard setback of not less than five feet from the rear most wall of any accessory building and garage to the back property line.
  - (7) *[Garages.]* Garages shall either be attached or detached and accessible from a public or private street, or alley.

## SCHEDULE A

Unit Size	LUE Count
0 to 699 square feet	Minimum 0.50 LUE
700 to 849 square feet	0.50/LUE
850 to 1,000 square feet	0.75/LUE

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## SCHEDULE B

Unit Size	Maximum Number Of Occupants
0 to 699 square feet	2
700 to 849 square feet	3
850 to 1,000 square feet	4

**Sec. 4. "R-2" residential PUD district.**

- (A) *Purpose.* This district is intended as an area for medium density, single-family residential use. In appropriate locations, this district shall accommodate single-family detached, duplex, and single-family attached residential uses permitted under residential standards.
- (B) *Permitted uses.*
- (1) The following uses shall [be] permitted uses in the "R-2" residential PUD district:
    - (a) The following uses that are permitted uses in the "OS" open space PUD district:
      - (i) Wetlands;
      - (ii) Conservation areas;
      - (iii) Golf courses;
      - (iv) Outdoor recreational and athletic facilities;
      - (v) Outdoor swimming pools;
      - (vi) Parks, playgrounds and playfields;
      - (vii) Wildlife sanctuaries;
      - (viii) Streams, lakes, impounded waterways, or their drainageways; and
    - (b) Any uses permitted in "R-1" residential PUD district.
    - (c) Duplexes.
    - (d) Medium density single-family detached residential.
    - (e) Single family attached residential.
    - (g)[f] Courtyard.
  - (2) No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses set forth in this section.
- (C) *Site development regulations.* The following regulations shall be the site development regulations for development within the "R-2" residential PUD district:

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- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
- (3) The following alternative site development regulations shall be exclusively applicable to duplexes within the "R-2" residential PUD district:

## (a) Alternative No. 1:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 6,000 square feet.
- (ii) Minimum lot width: 50 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

or,

## (b) Alternative No. 2:

- (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 7,200 square feet.
- (ii) Minimum lot width: 60 feet along the front property line.
- (iii) Maximum dwelling units per lot: Two dwelling units.
- (iv) Maximum height. No building shall exceed 35 feet.
- (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

Provided, however, that alternative No. 1 may be utilized only if open space is provided within the "R-2" development so as to result in the same level of density that would result from the application of alternative No. 2 criteria in this subsection 4.(C)(3).

## (c) Minimum setbacks:

- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
- (ii) Side yard. There shall be a side yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.

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- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (d) Garages shall be permitted in the "R-2" development pursuant to the following requirements:
  - (i) Garages shall be either attached or detached and accessible from a public or private street, or alley.
  - (ii) A minimum of two parking spaces is required for each unit. The driveway may be included in the counting of the required minimum as one of the two spaces required for each unit.

Provided, however, that these requirements do not apply to any "R-1" development located within a primarily "R-2" development area.
- (4) The following site development regulations shall be exclusively applicable to medium density single-family detached residential within the "R-2" residential PUD district:
  - (a) Minimum lot size: 3,600 square feet.
  - (b) Minimum lot width: 35 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height. No building shall exceed 35 feet.
  - (e) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargement.
  - (f) Minimum setbacks:
    - (i) Front yard. There shall be a front yard setback having a depth of not less than eight feet from the property line to the front line of the building, including a covered porch, covered terrace, balconies, or bays.
    - (ii) Side yard. There shall be a side yard of not less than five feet from the walls of the building or accessory building to the side property line.
    - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than five feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (g) Garages shall be either attached or detached and accessible from a public or private street, or alley.
- (5) The site development regulations set forth below shall be exclusively applicable to single-family attached residential.
  - (a) Minimum lot size: 2,500 square feet.
  - (b) Minimum lot width: 25 feet.
  - (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
  - (d) Maximum height: 35 feet.
  - (e) Minimum setbacks:

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- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
  - (ii) Side yard. No setback required.
  - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than 25 feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
  - (f) Garages shall either be attached or detached and accessible from a public or private street or alley.
- (6) The site development regulations set forth below shall be exclusively applicable to courtyard residential.
- (a) Minimum lot size: 2,000 sq. ft.
  - (b) Minimum lot width: None.
  - (c) Maximum dwelling units per lot: One principle dwelling unit and one accessory dwelling unit.
  - (d) Maximum height: 35 feet.
  - (e) Area: No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargements.
  - (f) Minimum setbacks:
    - (i) Front yard: There shall be a front yard setback having the depth of not less than four feet from the courtyard walk to the front line of the building.
    - (ii) Side yard: There shall be no side yard set back required. Except that there shall be a side yard ser back having a depth of not less than eight feet from the property at public or private streets to the side line of the building.
    - (iii) Rear yard: There shall be no rear yard setback required
  - (g) Garages and carports: May either be attached or detached and accessible from private street or alley.
  - (h) Each courtyard shall have a "gateway" (examples: trellis, fencing, and/or landscaping).
  - (i) Each courtyard shall have a gathering place with a minimum of four chairs or two benches.
  - (j) The courtyard sidewalk(s) shall be the following minimum width for at least 70 percent of the length:
    - (k)[i] Single sidewalk: Five feet.
    - (l)[ii] Double sidewalk: Four feet to six [feet].
  - (m)[k.] Each dwelling unit shall have a front porch or front patio having an area with a minimum depth of five feet and a minimum length of seven feet.
  - (n)[l.] Minimum separation between interior dwelling units from back side of porch or garden patio to back side of porch or garden patio: 24 feet.
  - (o)[m.] Minimum separation of dwelling units at street: 16 feet.
  - (p)[n.] Minimum separation of dwelling units at rear of courtyard: Ten feet.

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(Ord. No. 687, § 1(Exh. A), 1-17-2012)

**Sec. 5. "R-3" multi-family residential PUD district.**

- (A) *Purpose.* This district is intended as an area for medium density single-family, duplex, and condominium uses. In appropriate locations, this district shall accommodate a variety of housing types, primarily multiple family dwellings and shall be designed to provide the widest range of housing types, as well as highest density in the community. Mobile homes and manufactured homes are excluded from this district.
- (B) *Permitted uses.* The following uses shall be permitted in the "R-3" multi-family residential PUD district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in "R-2" residential PUD district, excluding the following "R-1" uses:
    - (a) Single family dwelling for residential use, as described in article II, part C, section 3 of this ordinance.
    - (b) Residential accessory dwelling units.
    - (c) Apartment buildings.
    - (d) Convalescent and hospice homes, assisted living, and retirement housing.
    - (e) Condominiums.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) The following site development regulations shall be exclusively applicable to apartment buildings, convalescent and hospice homes, assisted living, and retirement housing, and condominiums.
    - (a) Minimum lot size: 6,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Maximum dwelling units per lot: 36 units per acre.

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- (d) Maximum height: 60 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the "R-3" site which limits maximum building height to 40 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
- (e) Minimum setbacks:
  - (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
  - (ii) Side yard. There shall be a side yard setback of not less than 15 feet from the walls of the building or accessory building to the side property line.
  - (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (f) Garages shall either be attached or detached and accessible from a public or private street, or alley.
- (4) The site development regulations set forth below shall be exclusively applicable to condominium residential.
  - (a) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

**Sec. 6. "NC" neighborhood commercial PUD district.**

- (A) *Purpose.* This area is intended to provide for the location of offices and small businesses serving neighborhood community needs, which may be located within or adjacent to a residential district of the PUD for the convenience of nearby residents. The businesses shall be conducive to and fit into the residential pattern of development, and not create land use, architectural or traffic conflicts. The following standards for the neighborhood commercial district are intended to preserve the residential atmosphere and be consistent with the Plum Creek PUD master plan.
- (B) *Permitted uses.* The following uses shall be permitted in "NC" neighborhood commercial district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;



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- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in "R-1" residential PUD district, except the following:
  - (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.
- (3) Any use permitted in the "R-2" residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (4) Any use permitted in the "R-3" multi-family residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (5) Grocery stores or specialty food store.
- (6) Barber and/or beauty shop.
- (7) Daycare services and child development centers.
- (8) Clothes cleaning agency.
- (9) Laundromat.
- (10) Video rental store.
- (11) Coffee shop, cafe or, delicatessen not exceeding 2,500 square feet of gross floor area.
- (12) Pharmacy.
- (13) Electronic service center providing photocopying, faxing, and computer service.
- (14) Computer or communications network access.
- (15) Mail box rental and package shipping/receiving store.
- (16) Accessory buildings customarily appurtenant to a permitted use.
- (17) Dwelling units that are located above or behind a permitted commercial use and secondary to that commercial use.
- (18) Neighborhood automobile service stations.
- (19) Bed and breakfast establishment, subject to the following requirements:
  - (a) A maximum of four guest bedrooms shall be provided.
  - (b) Paying guests shall not stay more than seven consecutive days.
  - (c) Only overnight guests may be served meals at the establishment, except that luncheons and receptions may be held for attendees of organized social functions and tours.
  - (d) Only one sign is permitted, and it shall be non-illuminated, no greater than two square feet, and affixed flush with the wall of the dwelling.
  - (e) Each bed and breakfast establishment shall provide a minimum of two off-street parking spaces, plus one additional parking space for each guest room. This requirement may be waived when the owner can show that adequate off-street parking is available at an adjacent commercial site under common ownership or lease. Any parking area located adjacent to a residential zoned property shall provide a privacy fence at least six feet in height and buffer between the parking area and the adjacent residential property.

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- (f) The bed and breakfast establishment shall comply with all licensing requirements of the county health department for storage, preparation, and serving of food and beverages.
- (20) Rooming and boarding houses.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
  - (3) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (4) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (5) The following site development regulations shall be applicable to the "NC" neighborhood commercial district.
    - (a) Minimum lot size: 5,000 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Minimum lot depth: 100 feet.
    - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 50 feet in height. A 25 minimum foot compatibility setback shall be required adjacent to a "R-2" development within the neighborhood commercial (NC) site which limits maximum building height to 35 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
    - (e) Minimum setbacks:
      - (i) Front yard. The building setback for the front yard shall be the same as adjacent residential area, but not less than 15 feet.
      - (ii) Side yard. Five feet, except when a side lot line is abutting a residential lot and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet, when the building abuts a residential lot.
      - (iii) Rear yard. Ten feet, except when a rear lot line is abutting a residential lot and then the rear yard shall be a minimum of 15 feet.
- (D) *Off-street parking and loading.* Off-street parking and loading space shall be provided as required in article II, part D, section 2 herein, except that if nine or more spaces are required, up to two designated parking spaces on the street may be counted toward the required spaces.
- (E) *Additional site development requirements.*
- (1) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.
  - (2) In any "NC" neighborhood commercial PUD district directly across the street or alley from residential district, the parking and loading area shall be set back at least ten feet from the street or alley right-of-way and said set back area shall be appropriately landscaped to be consistent with the character of adjoining and adjacent residential property. Such landscaping shall be maintained regularly by the property owner.

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- (3) The front of buildings should be sited at the front yard build-to line (consistent with the adjacent residential areas) with a pedestrian walkway connecting the sidewalk and an entrance to the building. The building and any eaves, overhangs, or awnings shall not interfere with the required clear vision area at corners or driveways.
- (4) Buildings within the neighborhood commercial area should have external architectural features such as roofline, exterior materials, window size and location, doors, porches, and entrances that are similar to the predominant residential pattern in the area.
- (5) Landscaped areas shall be planted with live ground cover, shrubs, lawn, flowers and trees that are typical adjacent residential areas.
- (6) Lighting fixtures shall be designed to direct light down onto the site and away from residential property. No pole light shall exceed 12 feet in height.
- (7) Operating hours for neighborhood commercial uses shall be limited to the period from 6:00 a.m. to 10:00 p.m.

(Ord. No. 690, § 1(Exh. A), 2-21-2012)

**Sec. 7. "C" commercial PUD district.**

- (A) *Purpose.* This area is intended to provide for the location of offices and commercial uses serving neighborhood and community needs. No building or land shall be used and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated. The "C" commercial PUD district is designed for commercial, wholesale, retail and office classification.
- (B) *Permitted uses.* The following uses shall be permitted in the "C" commercial PUD district:
  - (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) The following uses that are uses permitted in the "R-1" residential PUD district:
    - (a) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
    - (b) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
    - (c) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.

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- (3) Antique shops.
- (4) Art gallery.
- (5) Auction sales.
- (6) Automobile repair shops without outside garages, with work conducted wholly within the enclosed building.
- (7) Bakeries.
- (8) Banks and savings and loan institutions.
- (9) Barber shops, beauty shops, and any other personal service shops business, music, dance schools.
- (10) Billiard and pool rooms.
- (11) Books or stationery stores.
- (12) Bowling alleys.
- (13) Business, music, dance or commercial schools.
- (14) Cafes, cafeterias, and restaurants.
- (15) Camera shops and photographic supplies.
- (16) Carpet and rug cleaners.
- (17) Catering establishments.
- (18) Cleaning and dry cleaning establishments.
- (19) Clinics.
- (20) Clothing stores.
- (21) Craft and hobby shop, but without outside garage.
- (22) Dance halls.
- (23) Department, furniture, and home appliance stores.
- (24) Drug stores, soda fountains, soft drink stands, candy, and tobacco shops.
- (25) Dry cleaners.
- (26) Electrical appliance shops and repairs.
- (27) Employment agencies.
- (28) Florist shop, nursery, or greenhouses.
- (29) Furniture, appliance stores, (sales and service).
- (30) Gasoline service stations.
- (31) Grocery stores.
- (32) Hardware, paint, and wallpaper stores.
- (33) Hospitals, sanitariums, nursing homes, hospices, or convalescent homes.
- (34) Hotels.
- (35) Household and office furniture, furnishings, and appliance stores.

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- (36) Ice cream or ice sales.
  - (37) Laundries, laundrettes and Laundromats.
  - (38) Jewelry and optical goods stores.
  - (39) Meat markets.
  - (40) Mortuaries.
  - (41) Nursery or horticulture businesses.
  - (42) Painting and decorating shops.
  - (43) Pet shops or animal hospitals when conducted wholly within the enclosed building.
  - (44) Photographers, or artists' studios.
  - (45) Plumbing, heating, and roofing supply and workshops.
  - (46) Printing shops.
  - (47) Offices.
  - (48) Radio and television stations (no towers).
  - (49) Radio, television or electronic sales and service.
  - (50) Recreation establishments.
  - (51) Restaurants.
  - (52) Retail stores and services.
  - (53) Shoe sales and repair shops.
  - (54) Sporting goods, novelty, or toy shops.
  - (55) Tailor and dressmaking shops.
  - (56) Taverns or retail sale of alcoholic liquors, subject to the regulations of other adopted ordinances of the city.
  - (57) Telegraph and telephone service stations.
  - (58) Temporary building incidental only to construction of a permitted use.
  - (59) Theater, indoor.
  - (60) Tire shop (no vulcanizing or retreading).
  - (61) Variety stores.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) The following site development regulations shall be exclusively applicable to the "C" neighborhood commercial PUD district.
    - (a) Minimum lot size: 4,000 square feet.
    - (b) Minimum lot width: 35 feet.
    - (c) Minimum lot depth: 100 feet.

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- (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 3½ stories or 50 feet.
- (e) Minimum setbacks.
  - (i) Front yard: none.
  - (ii) Side yard: none.
  - (iii) Rear yard: none.
- (f) Maximum floor area ratio: 1.5 FAR of the lot area.

(g) Lighting. Parking lot lights, security lights, and other lights shall be designed to direct lighting down onto the site and away from adjacent residential property. No exposed lighting sources shall be visible from adjacent properties with use categories of R-1 or R-2.

**Sec. 8. "MXD" mixed use development PUD district.**

(A) *Purpose.* This area is intended to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents in the PUD. Mixed use development areas of this type are intended to be located and developed in a manner consistent with the Plum Creek PUD master plan and a site development plan. It is intended to allow for a mix of uses that:

- (1) Provide a variety of employment opportunities and housing types;
- (2) Foster pedestrian and other non-motor vehicle activity;
- (3) Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design; and
- (4) Ensure compatibility of uses within mixed use developments with other uses within such development and with the surrounding area and minimize off-site impacts associated with the development.

A site development plan shall be reviewed and approved by the planning commission and the city council prior to the actual development and construction in an MXD PUD district.

(B) *Permitted uses.* Uses permitted in the "R-1" residential PUD district are specifically prohibited and the following uses are permitted in the mixed use development district:

- (1) The following uses that are uses permitted in the "OS" open space PUD district:
  - (a) Wetlands;
  - (b) Conservation areas;
  - (c) Golf courses;
  - (d) Outdoor recreational and athletic facilities;
  - (e) Outdoor swimming pools;
  - (f) Parks, playgrounds and playfields;
  - (g) Wildlife sanctuaries;
  - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in the "R-2" residential PUD district, except the following "R-1" residential PUD district uses:

## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

- (a) Single family dwelling for residential use.
  - (b) Residential accessory dwelling units.
  - (3) Any use permitted in the "R-3" multi-family residential PUD district.
  - (4) Any use permitted in the "NC" neighborhood commercial areas.
  - (5) Any use permitted in the "C" commercial PUD district.
- (C) *Additional permitted uses.* In addition to uses permitted in (B) above, the following uses are specifically allowed:
- (1) Branch banks and other financial institutions designed to serve the area businesses and adjacent neighborhoods.
  - (2) Business support service including copying, blueprinting, film developing and processing, photo reproduction, accounting, computer services, building and grounds maintenance, security services, and temporary help.
  - (3) Studio for manufacturing of pottery items, metal sculpture, and other artistic products.
  - (4) Hotel or similar lodging facilities.
  - (5) Conference center and meeting facilities when associated with a motel, hotel or similar lodging facility.
  - (6) Commercial recreational facilities such as indoor theaters and athletic clubs, but excluding intensive outdoor facilities such as go-cart tracks, bumper cars and boats, BMX courses, and target ranges.
  - (7) Offices.
  - (8) Restaurants, delicatessens, cafes, and similar food service establishments.
  - (9) Dwelling units that are located above or behind a permitted commercial or neighborhood commercial use and secondary to that commercial use.
- (D) *Site development regulations.* Because of the mixed-use character of this district, the commission's review of site development plans and amendments to the Plum Creek PUD master plan, and recommendation to the city council are required. The city council's approval of site development plans and amendments to the Plum Creek PUD master plan are required prior to construction for each development submitted. The plan, pursuant to the applicable requirements of this ordinance must ensure that each development satisfies parking and compatibility requirements.
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
  - (3) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
  - (4) Development of any use permitted in the "NC" neighborhood commercial PUD district shall conform with the site development regulations established in the "NC" neighborhood commercial PUD district.
  - (5) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.

## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

- (6) The following site development regulations shall be applicable to nonresidential development within the MXD area:
- (a) Minimum lot size: 4,000 square feet.
  - (b) Minimum lot width: 35 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed five stories or 65 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the commercial site which limits maximum building height to three and one-half stories or 50 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.
  - (e) Minimum setbacks:
    - (i) Front yard: none.
    - (ii) Side yard: none.
    - (iii) Rear yard: none.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
- (7) Site development standards for residential development. Residential development within the MXD area shall conform to the applicable site development standards established for the "R-2" residential PUD district, "R-3" multi-family residential PUD district and "NC" neighborhood commercial PUD district as set forth in this ordinance.
- (8) Additional site development requirements.
- (a) Lighting: Parking lot lights, security lights, and other lights on a mixed-use site shall be designed to direct light down onto the site and away from adjacent residential property.
  - (b) Air emissions: There shall be no emission of odorous, toxic, noxious matter, or dust in such quantities from operations as to be readily detectable along or outside the MXD area so as to produce a public nuisance or hazard.
  - (c) Landscaping and open space. The design and development of landscaping and open space within the MXD area shall:
    - (i) Include street trees and parking area trees which are in scale with the development.
    - (ii) Provide a cohesive open space and pedestrian network within the development, with appropriate connections to surrounding properties and uses.
  - (d) Include open spaces and plazas which are in scale with the development and invite activity appropriate to adjoining uses.
  - (e) Refuse collection and recycling areas for business shall be enclosed with a fence, wall or structure high enough to screen all collection bins.
  - (f) Outside mechanical equipment, industrial or commercial heating, ventilation air conditioning, or other mechanical equipment on rooftops or ground, shall be screened with a material and design that is visually compatible with the building.

(Ord. No. 490, § 2, 2-20-2007; Ord. No. 690, § 1(Exh. A), 2-21-2012)



## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

**Sec. 9. "EMP" employment PUD district**

- (A) *Purpose.* This area is intended to provide a place to locate commercial businesses, services, and industries compatible with adjacent residential areas for the convenience of nearby residents and the greater community at large. The use of an EMP area within a proposed mixed use development is intended to be compatible with the residential pattern of the development and not create unreasonable traffic or land use conflicts.
- (B) *Permitted uses.* The following uses shall be permitted in an "EMP" employment PUD district:
- (1) The following uses that are uses permitted in the "OS" open space PUD district:
    - (a) Wetlands;
    - (b) Conservation areas;
    - (c) Golf courses;
    - (d) Outdoor recreational and athletic facilities;
    - (e) Outdoor swimming pools;
    - (f) Parks, playgrounds and playfields;
    - (g) Wildlife sanctuaries;
    - (h) Streams, lakes, impounded waterways, or their drainageways; and
  - (2) Any use permitted in the "C" commercial PUD district;
  - (3) Manufacture, assembly, and packaging of products from previously prepared material such as cloth, plastic, paper, leather, and precious or semi-precious metal or stone;
  - (4) Manufacture, assembly, and processing of food and beverages, excluding meat packing plants and similar processes that place a significant demand on wastewater or water treatment;
  - (5) Manufacture, assembly, and testing of communication equipment, medical instruments and apparatus, optics, photographic equipment and supplies, timing equipment, musical instrument and related equipment;
  - (6) Research, engineering and development facilities or laboratories;
  - (7) Motion picture or video production facilities and sound stages;
  - (8) Printing, publishing, and book binding;
  - (9) Warehouse, storage, and distribution center, provided development does not exceed a maximum of 15,000 square feet of building area;
  - (10) Instrument and component manufacturing;
  - (11) Apparel manufacturing;
  - (12) Electric and electronic assembly;
  - (13) Greenhouses and wholesale growers;
  - (14) Office equipment and supplies manufacturing;
  - (15) Warehouses;
  - (16) Offices;
- (C) *Site development standards.*

## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (3) The following regulations shall be applicable to the "EMP" employment district:
  - (a) Minimum lot size: 5,750 square feet.
  - (b) Minimum lot width: 50 feet.
  - (c) Minimum lot depth: 100 feet.
  - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 45 feet.
  - (e) Minimum setbacks:
    - (i) Front yard: None.
    - (ii) Side yard: None.
    - (iii) Rear yard: None.
  - (f) Maximum floor area ratio: 1.5 FAR of the lot area.
  - (g) Paved Sidewalks, driveways and parking areas are required.
  - (h) Screening of loading and storage facilities is required.

**Sec. 10. "LI" Light industrial PUD district**

- (A) *Purpose.* This district is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users. The uses included primarily serve other commercial and industrial enterprises. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one (1) or more of the uses hereinafter enumerated. The "LI" light industrial PUD district is designated for selected sales, manufacturing and industrial classifications.
- (B) *Permitted uses.* The following uses shall be permitted uses in the "LI" light industrial PUD district:
  - (1) Any use permitted in the "EMP" employment PUD district;
  - (2) Agricultural implement sales and services;
  - (3) Air conditioning and heating sales and services;
  - (4) Automobile repair shops without outside garages and when conducted wholly within the enclosed building;
  - (5) Artificial limb manufacturers;
  - (6) Battery and tire service stations without outside garages and when conducted wholly within the enclosed building;
  - (7) Beverage bottling and distributing stations;
  - (8) Blacksmith shops;
  - (9) Book binding shops;
  - (10) Box manufacturers;

## PART II - CODE OF ORDINANCES

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## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

- (11) Broom manufacturers;
- (12) Bus lines shops and garages;
- (13) Car wash;
- (14) Canvas goods fabrication;
- (15) Crating express storage;
- (16) Computer and computer parts manufacturers;
- (17) Hatcheries;
- (18) Clothing and dress manufacturers;
- (19) Craft and hobby shop with outside garage;
- (20) Creameries;
- (21) Drapery and bedding manufacturers;
- (22) Expressing, baggage, and transfer delivery services;
- (23) Farm implement sales or repair;
- (24) Food processing and dehydrating operations;
- (25) Frozen food lockers;
- (26) Furniture manufacturers and upholsterers;
- (27) Garages;
- (28) Ice cream and ice manufacturers and sales;
- (29) Instrument and electronic component manufacturing;
- (30) Lumber and building sales and storage;
- (31) Machine shops;
- (32) Machine and metal products shops;
- (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
- (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;
- (35) Public utility substations and distributing centers, regulations centers, and underground holder stations;
- (36) Rail-served industries consistent with uses indicated above;
- (37) Sheet metal fabrication shop;
- (38) Sign shops;
- (39) Stone, marble, and granite grinding and cutting operations;
- (40) Storage and warehouses;
- (41) Storage of household goods;
- (42) Taxi service stations;
- (43) Temporary building incidental only to construction of a permitted use;
- (44) Tire shops (retreading only);

## PART II - CODE OF ORDINANCES

## Chapter 53 - ZONING

## ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

- (45) Tool and die shops;
  - (46) Warehouses; and
  - (47) Welding shops.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
  - (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
  - (3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
  - (4) The following regulations shall be applicable to the "LI" light industrial PUD district:
    - (a) Minimum lot size: 5,750 square feet.
    - (b) Minimum lot width: 50 feet.
    - (c) Minimum lot depth: 100 feet.
    - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
    - (e) Minimum setbacks.
      - (i) Front yard: none.
      - (ii) Side yard: none.
      - (iii) Rear yard: none.
    - (f) Maximum floor area ratio: 1.5 FAR of the lot area.



# CITY OF KYLE, TEXAS

## Sergio and Teresa Lopez - Zoning

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** *(Second Reading)* AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 3.104 ACRES OF LAND FROM 'AG' AGRICULTURE TO 'RS' RETAIL SERVICE DISTRICT, ON PROPERTY LOCATED AT 1250 DACY LANE, IN HAYS COUNTY, TEXAS. (SERGIO AND TERESA LOPEZ Z-14-003); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.  
~ *Sofia Nelson, Director of Planning*

**Other Information:** Please see attachments.

**Budget Information:** N/A

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**Attachments / click to download**

- [Ordinance and Exhibit's](#)
- [staff memo](#)

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 3.104 ACRES OF LAND FROM 'AG' AGRICULTURE TO 'RS' RETAIL SERVICE DISTRICT, ON PROPERTY LOCATED AT 1250 DACY LANE, IN HAYS COUNTY, TEXAS. (SERGIO AND TERESA LOPEZ Z-14-003); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the zoning district map of the City of Kyle adopted in Chapter 53 (Zoning) be and the same is hereby amended to assign original zoning to approximately 3.104 acres from 'AG' Agriculture to 'RS' Retail Service District, on property located at 1250 Dacy Lane, and the property location map labeled Exhibit B.

SECTION 2. That the City Secretary is hereby authorized and directed to designate the tract of land zoned herein as such on the zoning district map of the City of Kyle and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the \_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was

present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lucy Johnson, Mayor

ATTEST:

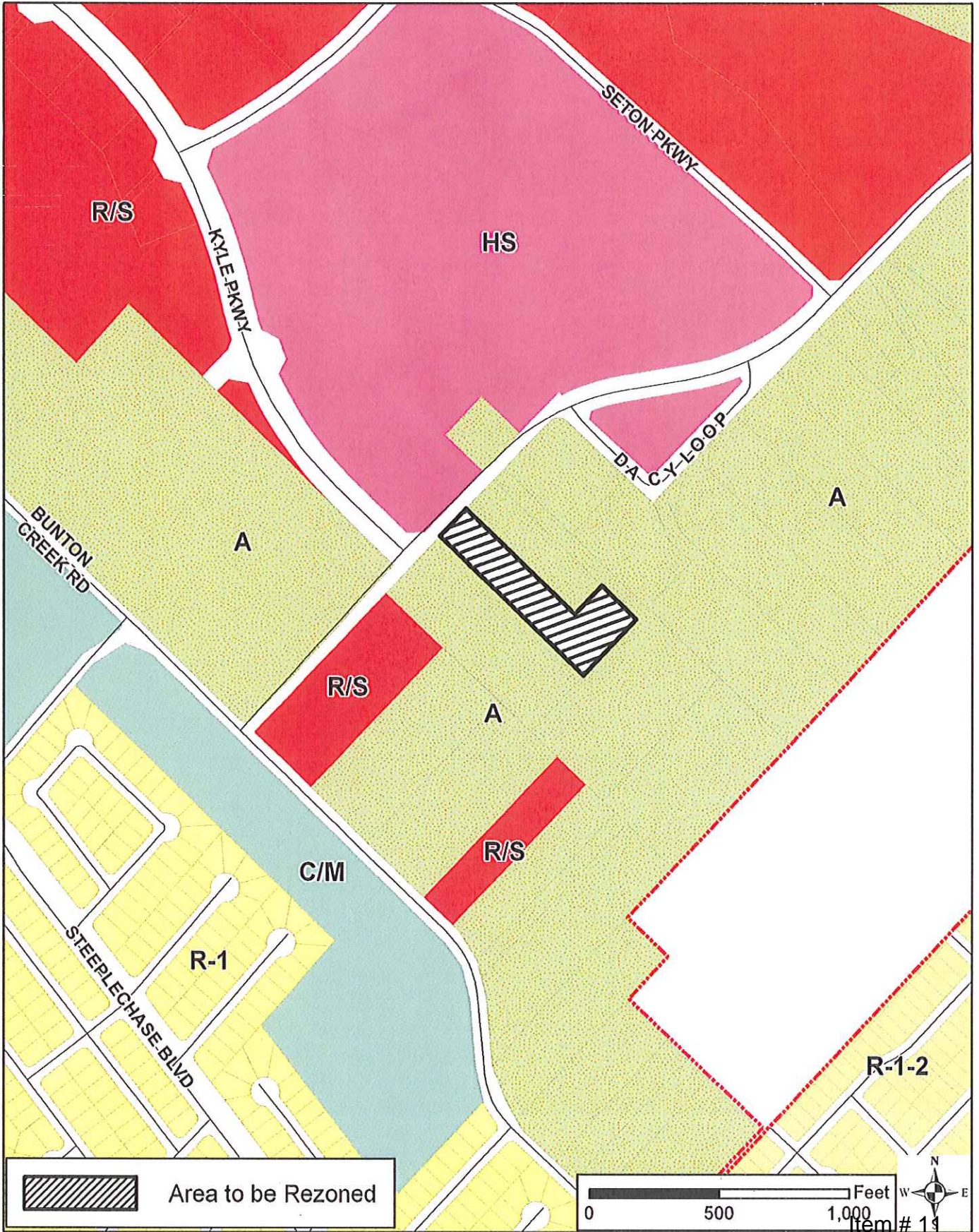
\_\_\_\_\_  
Amelia Sanchez, City Secretary

**EXHIBIT A**

KYLE HEIGHTS SECTION 2, LOT 13B



# Exhibit B



March 4, 2014

*City Council*

Zoning

**Case Number: Z-14-003**

**Planning and Zoning Commission Recommendation:** On February 25<sup>th</sup> the Planning and Zoning Commission voted 6-0 to approve the request for Retail Services.

**OWNER/APPLICANT:** Sergio & Teresa Lopez

**LOCATION:** 1250 Dacy Lane

**AREA:** 3.104

**PROPOSED CITY COUNCIL HEARINGS:** First Reading: March 4, 2014  
Second Reading: March 18, 2014

**EXISTING ZONING:** A (Agriculture)

**PROPOSED ZONING:** R/S

**SITE INFORMATION:**

***Transportation:*** The subject property is located north of the intersection of Kyle Pkwy and Dacy Lane (across the street from Seton Medical Center).

***Surrounding Zoning:***

- *North: Agriculture (interim zoning)*
- *South: Agriculture (interim zoning)*
- *East : Agriculture (interim zoning)*
- *West: Dacy Lane*

***Future Land Use Designation:*** Super Regional Node & New Town Community

**PUBLIC INPUT:**

Notice of the proposed change was sent to property owners within 200' of the subject property. No phone calls or correspondence has been received in support or in opposition of this request. Under the new notification requirements a sign was also posted on the site.

**STAFF ANALYSIS:**

***Background***

The subject property has historically been used residentially. The property owner is seeking to sell the property as a commercial property to allow for the commercial development of the site. The property owner is seeking Retail Services zoning to allow a dialysis clinic and other commercial uses. The subject property is a long narrow lot (approximately 750'+/- in depth and across the frontage of the lot is approximately 150'+/- in width).

***Comprehensive Plan Guidance***

The purpose of the Super Regional Node is to capture employment opportunities and create a commercial destination within Kyle. This Node should take advantage of the medical center and of I-35 traffic to increase Kyle's competitiveness in the surrounding region.

The New Town District is designed to contain a horizontal mix of land uses that should be integrated across the area to express a cohesive community form. Many differing uses are encouraged throughout the District, but are distributed in independent land parcels instead of vertically aggregated in fewer land parcels.

***Proposed Zoning District***

The Retail and Services district allows for general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes,

March 4, 2014

*City Council*

Zoning

**Case Number: Z-14-003**

including most in-store retail sales of goods and products that do not pose a fire or health hazard to neighboring areas, e.g., clothing, prescription drugs, furniture, toys, hardware, electronics, pet supply, variety, department, video rental and antique stores, art studio or gallery, hobby shops and florist shops, and the retail sale of goods and products (additionally any use permitted in CBD-1 or CBD-2 and RS districts).

***Recommendation***

The subject property is located along Dacy Lane. Over the last couple of years Dacy Lane has been improved from a rural roadway to a four lane improved roadway. In addition to the roadway improvements, the primarily rural residential development pattern that once existed along Dacy Lane has transitioned to commercial development and single family neighborhoods. In general, the area is in the early stages of development and the comprehensive master plan encourages care to be taken to ensure that as development occurs it is in keeping with the character and intent of the future land use district.

Due to the location of the subject property between the two future land use districts it appears that Dacy Lane will function as a transition from general big box development along I-35 to a variety of residential uses to the east of Dacy Lane. As a result of the transition from big box/regional commercial development to residential development staff is recommended an alternative zoning designation of Community Commercial (CC).

The alternative recommendation of CC will allow additional buffering considerations to be made to the site should the development abut single family residential development or zoned property. Additionally, since the property is not located within an overlay district the CC district will allow for increased attention to the site and building design features.

The purpose of the community commercial district [CC] is to provide for slightly more intense commercial uses than allowed in the neighborhood commercial zoning district. The district is established to provide areas for quality retail establishments and service facilities. This district should generally consist of retail nodes located along or at the intersection of major collectors or thoroughfares to accommodate higher traffic volumes.



# CITY OF KYLE, TEXAS

## Village at Kohler's Crossing - Site Plan

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** Village at Kohler's Crossing - Site Plan (SD-13-014)  
2.932 acres; 34,200 square foot building  
Location: Southeast corner of Kohler's Crossing and extension of Benner  
Applicant: Jon Kasling, ATX Plum Creek Partners I, LP, Vice-President  
Agent: Jeff Shindler, P.E., Texas Design Interests, LLC  
~ *Sofia Nelson, Director of Planning*

*Planning and Zoning Commission voted 6-0 to approve the site plan with the condition that the plat be recorded or fiscal posted.*

**Other Information:** Please see attachments

**Budget Information:** N/A

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

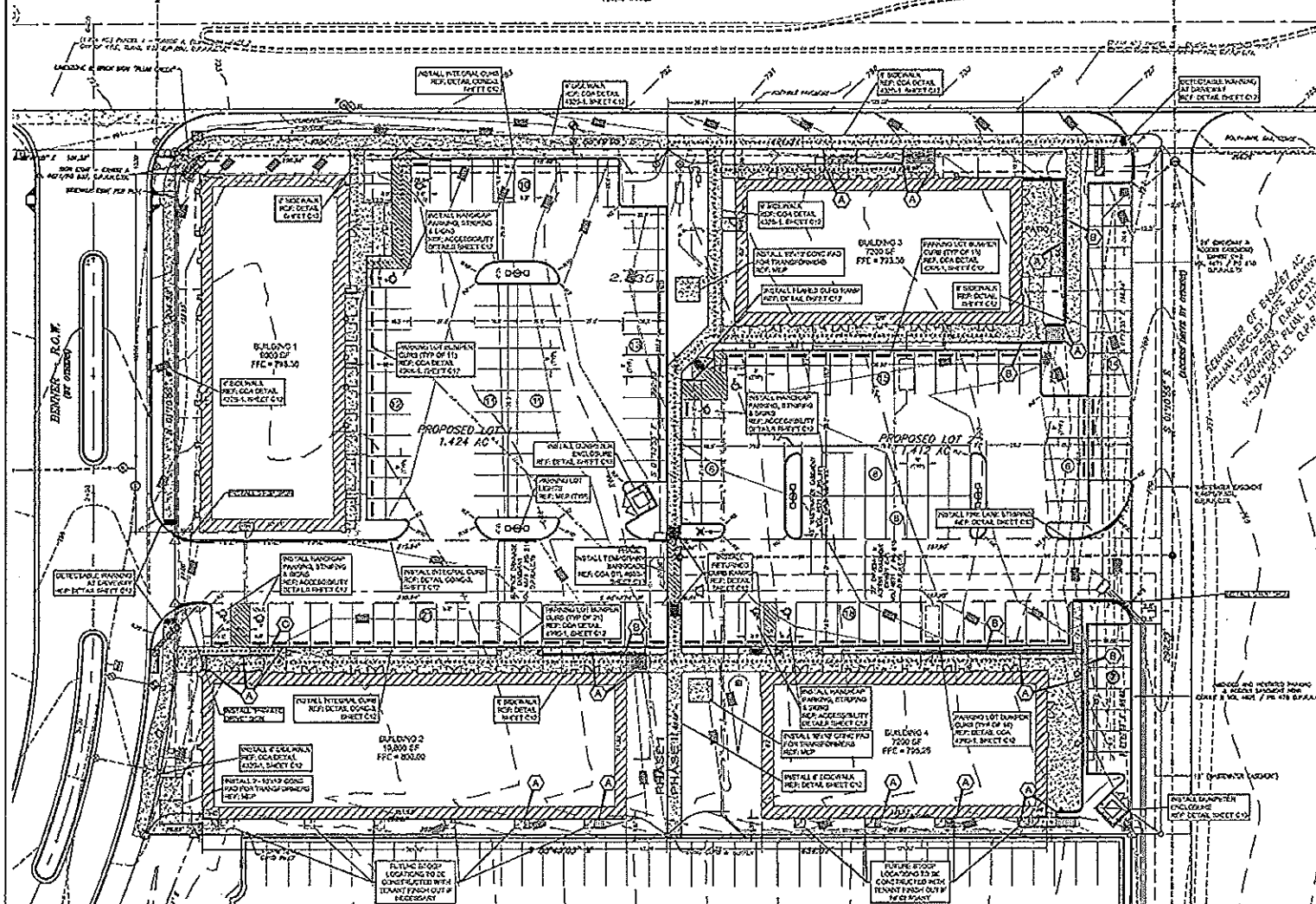
Attachments / click to download

 [Site and Landscape Plan](#)

Cover Memo

Item # 12

KOHLER'S CROSSING  
(R.R. 171)  
Rt. 404, W. 404S



SCALE: 1" = 20'

LEGEND

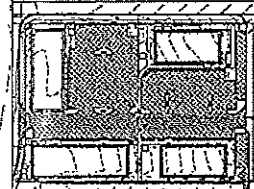
- BOUNDARY
- AS PAVED DRIVEWAY
- DRAINAGE LINE
- EASEMENT
- EXISTING CONTOUR
- WATER LINE
- WATER METER LINE
- STORMWATER LINE
- OVERHEAD ELECTRIC
- FIRE
- HOV-3 PARKING
- PARKING COAT
- FUTURE NEAR HANDING (SEE DETAIL SHEET)
- RETAINING WALL (CHECK BY OTHERS)
- ADA HANDICAP (SEE SPEC)
- CONCRETE SIDEWALK
- ACCESSIBLE DRIVE

SITE NOTES

1. ALL MATERIALS, METHODS, TESTS, AND STANDARDS SHALL COMPLY WITH THE LATEST EDITIONS OF THE CITY OF RYLE STANDARD SPECIFICATIONS.
2. ALL HANDICAP PARKING AND PARKING SPACES SHALL BE PAINTED AND ADA COMPLIANT. EACH HANDICAP PARKING SPACE SHALL HAVE REQUIRED SIGNATURE AND MARKINGS.
3. NO FENCING OR OTHER IMPROVEMENTS SHALL OBSTRUCT ACCESS TO FIRE HYDRANTS.
4. FIRE LANE SHALL BE MARKED WITH RED PAINT WITH THE WORDS "FIRE LANE" IN LARGE LETTERS TO BE PAINTED IN FOUR HIGH CONTRAST LETTERS ON CURB ONE (1) FEET FROM THE FIRE LANE.
5. A SIGN POST BY OTHERS WILL BE REQUIRED PRIOR TO CONSTRUCTION OF A SIGN POST ON SITE.
6. CONTRACTOR SHALL COORDINATE WITH CITY OF RYLE PUBLIC WORKS PRIOR TO COMMENCEMENT OF ANY WORK IN THE RIGHT-OF-WAY.
7. FUTURE DETAIL DRAWING SHALL BE SUBMITTED TO THE ENGINEER FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
8. ALL OUTDOOR LIGHTING SHALL BE DIRECTED DOWNWARD AND SHALL NOT PRODUCE OR GLARE INTO THE ADJACENT STREET OR NEIGHBORHOODS.
9. ACCESSIBLE ROUTE SHALL COMPLY WITH ALL CITY, STATE & FEDERAL REGULATIONS. ACCESSIBLE ROUTE SHALL BE IN A GRASSY AREA WITH A SLOPE OF 1% OR LESS, NOT SHALL BE GREATER THAN 2%.
10. ALL ACCESSIBILITY NEEDS SHALL BE REVIEWED BY THE ENGINEER & REQUIRED PRIOR TO ANY DETAIL DEVELOPMENT.

NOTE

REVISIONS TO KOHLER'S CROSSING & BARRIERSHOP BY C. ARE SHOWN IN APPROVED. CONTRACTOR SHALL VERIFY ALL LOCATIONS & GRADES PRIOR TO CONSTRUCTION & NOTIFY ENGINEER OF ANY DISCREPANCY.



SITE INFORMATION

OVERALL SITE AREA	161,992 SQ. FT.
EXISTING	142,100 SQ. FT.
LAND USE	OFFICE/RETAIL/RESIDENTIAL
PHASE I AREA	42,174 SQ. FT. (26.0%)
PHASE II AREA	119,818 SQ. FT. (74.0%)

PARKING CALCULATIONS - PHASE I

VEHICLE	OFFICE/RETAIL/RESIDENTIAL
AREA	42,174 SQ. FT.
PARKING RATIO	33:1,000 SQ. FT.
TOTAL REQUIRED SPACES	1,284 SPACES (30.2%)

PARKING CALCULATIONS - PHASE II

VEHICLE	OFFICE/RETAIL/RESIDENTIAL
AREA	119,818 SQ. FT.
PARKING RATIO	33:1,000 SQ. FT.
TOTAL REQUIRED SPACES	3,631 SPACES (30.3%)

IMPERVIOUS COVER	EXISTING	PHASE I	PHASE II
BUILDING FOOTPRINT	0.34 (0.21%)	0.12 (0.28%)	0.12 (0.10%)
PAVING	0.01 (0.01%)	0.01 (0.01%)	0.01 (0.01%)
TOTAL	0.35 (0.22%)	0.13 (0.29%)	0.13 (0.11%)

BENCHMARK DATA

MARKER SHALL BE SET ON TOP OF CURB OR GRADE AT 28.00' TO 30.00' FROM THE SOUTHWEST CORNER OF LOT 1. ELEVATION = 783.55' (NAVD 83).

601 W. WILLIAM CANNON  
BUILDER #2, SUITE 203-C  
AUSTIN, TX 78740  
(512) 301-9888  
(512) 301-9889  
(512) 301-9890

TEXAS  
DESIGN  
INTERESTS, LLC  
AUSTIN + HOUSTON

COMMERCIAL/RESIDENTIAL - CIVIL & STRUCTURAL PROJECTS

VILLAGE AT KOHLER'S CROSSING  
KOHLER'S CROSSING  
Rt. 404, TEXAS

NOACK-LITTLE ARCHITECTURE

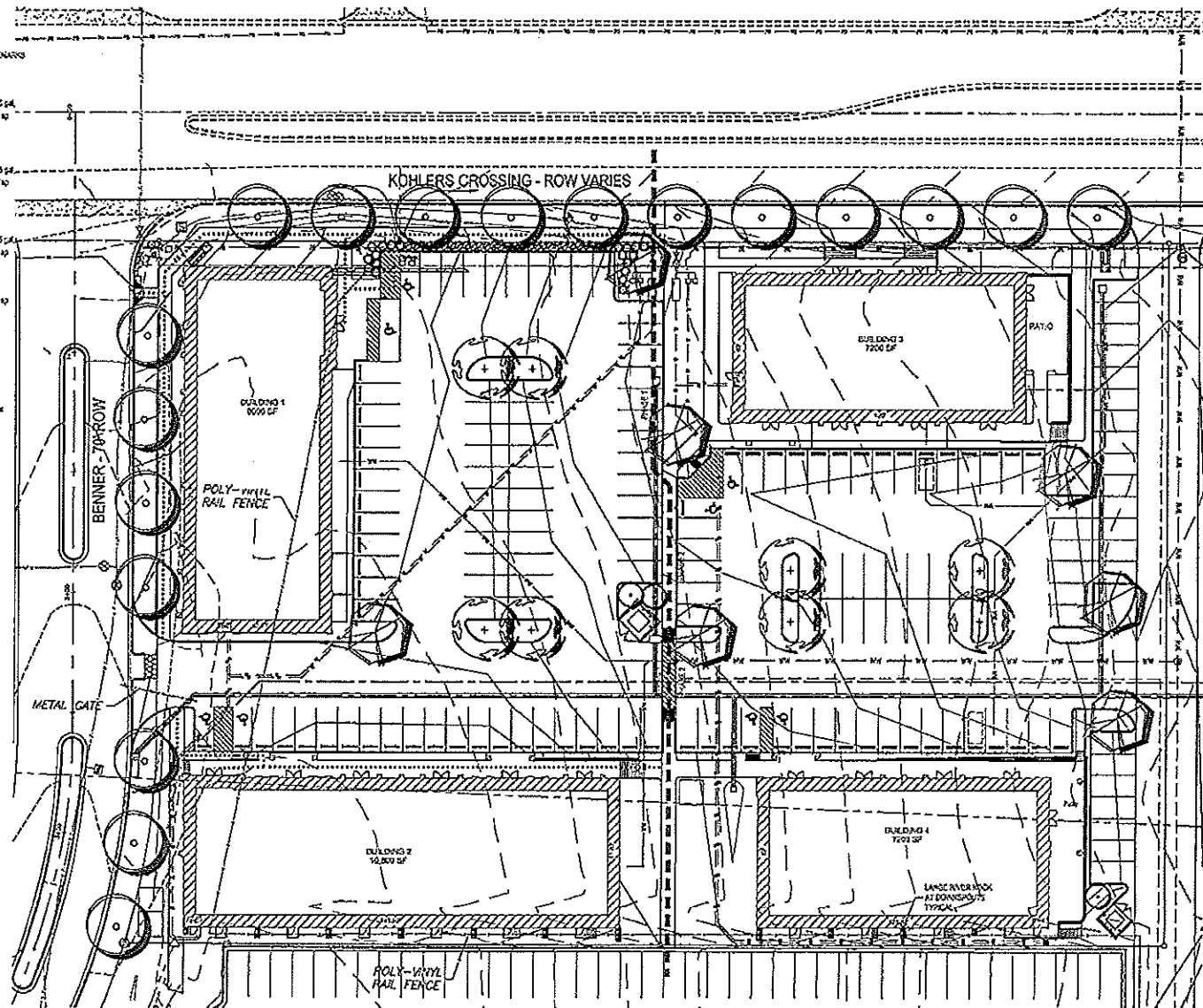
SEAL AND SIGNATURE AREA

SITE PLAN  
PROJECT # 187-121  
DATE 3/21/14

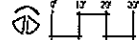
SHEET  
C6  
6 OF 18

PLANT MATERIAL SCHEDULE

SYM	QTY	COMMON BOTANICAL NAME	600 H20/1000
<b>TREES</b>			
ES	3' cal. 05 ea.	Live Oak <i>Quercus virginiana</i>	14' H. 8' W.
7	3' cal. 05 ea.	Morrey Oak <i>Quercus polymorpha</i>	14' H. 8' W.
8	3' cal. 05 ea.	Chickasaw Oak <i>Quercus muhlenbergii</i>	14' H. 8' W.
3	2' cal.	Crape Myrtle <i>Lagerstrœmia indica</i> (var. <i>Natchez</i> )	12' H. 4' W.
<b>SHRUBS &amp; GROUNDCOVERS</b>			
25	3' ea.	Burnside <i>Muhlenbergia frutescens</i>	
26	3' ea.	Cottonwood <i>Cotoneaster sp.</i>	
<b>TURF</b>			
		Quoniam Turf's Grass (Hybridized) Cynodon dactylon	1000 sq ft



LANDSCAPE PLAN



Russ Bragg Landscape Architects  
2001 East Oak Street, Suite 200, Austin, Texas 78702  
512.333.2222 • 512.333.2227  
rbragg@rbragg.com

Village at Kohlers Crossing  
Kyle, Texas  
LANDSCAPE DEVELOPMENT

DRAWN BY	ES
REVISED	
PROJECT #	1504
SHEET TITLE	LANDSCAPE PLAN
SHEET #	L-1 OF 2



# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## Monarch Rate Ordinance

**Subject/Recommendation:**

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE RATE INCREASE REQUEST OF MONARCH UTILITIES I, L.P.; ADOPTING A FINAL DETERMINATION DENYING THE REQUESTED INCREASE IN RATES; FINDING THAT THE APPLICATION TO INCREASE RATES IS IN VIOLATION OF LAW AND UNREASONABLE; ORDERING THAT NO INCREASE IN RATES OCCUR; REQUIRING THE REIMBURSEMENT OF RATE CASE EXPENSES; ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE; CONTAINING A SAVING CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE TEXAS OPEN MEETINGS ACT; ESTABLISHING THAT THIS ORDINANCE SHALL GOVERN OVER PREVIOUSLY ADOPTED RESOLUTIONS; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO. ~ *Jerry Hendrix, Chief of Staff*

**Other Information:**

**Budget Information:**

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 [Monarch Rate Ordinance](#)

**ORDINANCE NO. \_\_\_**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE RATE INCREASE REQUEST OF MONARCH UTILITIES I, L.P.; ADOPTING A FINAL DETERMINATION DENYING THE REQUESTED INCREASE IN RATES; FINDING THAT THE APPLICATION TO INCREASE RATES IS IN VIOLATION OF LAW AND UNREASONABLE; ORDERING THAT NO INCREASE IN RATES OCCUR; REQUIRING THE REIMBURSEMENT OF RATE CASE EXPENSES; ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE; CONTAINING A SAVING CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE TEXAS OPEN MEETINGS ACT; ESTABLISHING THAT THIS ORDINANCE SHALL GOVERN OVER PREVIOUSLY ADOPTED RESOLUTIONS; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.**

**WHEREAS**, Monarch Utilities I, L.P. (“Monarch”) filed an application to change rates/tariffs with the City Secretary for the City of Kyle (“City”) on or about September 5, 2013; and

**WHEREAS**, in this proceeding Monarch has failed to show why ratepayers in the City of Kyle should pay such a large portion of the costs of Monarch’s parent, Southwest Water Company in comparison to ratepayers in other states; and

**WHEREAS**, Monarch made little effort to show that the costs of its parent, Southwest Water Company, which are being allocated to ratepayers in Kyle, are reasonable and necessary; and

**WHEREAS**, the request by Monarch to have its ratepayers pay a return on equity of 11.25% is exorbitant for a monopoly which has a guaranteed set of customers; and

**WHEREAS**, Monarch is attempting to charge ratepayers for federal income tax it will not pay; and

**WHEREAS**, the Fourth Set of Requests for Information was served by the City on Monarch through its attorneys on January 27, 2014. Responses were due on February 17, 2014. No responses were filed by Monarch in a timely manner; and

**WHEREAS**, Monarch has not met its burden of proof to show that it is entitled to an increase in rates.

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

**Section 1.** That the facts contained in the Preamble of this Ordinance are determined to be true



and correct and are hereby adopted as part of this Ordinance.

**Section 2.** The rates proposed by Monarch are unlawful and unreasonable and in violation of law.

**Section 3.** That the statement of intent and application to increase rates filed by Monarch with the City of Kyle, Texas on or about September 5, 2013 is hereby denied and rejected in whole and in part.

**Section 4.** Monarch is ordered not to increase rates within the municipal boundaries of Kyle, Texas as a result of its request to change rates which was filed with the City on September 5, 2013.

**Section 5.** That to the extent Monarch implements any change in rates in contradiction of this Ordinance, Monarch shall refund any increase in rates in full, plus interest calculated at the rate being earned on customer deposits.

**Section 6.** That the effective date for this Ordinance is the date of its adoption.

**Section 7.** That this Ordinance is a final determination or final decision with regard to Monarch's statement of intent or application to change rates which was filed with the City on or about September 5, 2013.

**Section 8.** Monarch shall reimburse the rate case expenses of the City of Kyle, or of any coalition of cities of which the City of Kyle is a member, within 30 days of receipt of the invoices submitted by the City; provided that there should be no hold back greater than 10%.

**Section 9.** That if any section or part of any section, paragraph, or clause of this Ordinance is declared invalid or unconstitutional for any reason, such declaration shall not be held to invalidate or impair the validity, force, or effect of any other section or sections, part of section, paragraph, or clause of this Ordinance.

**Section 10.** That this Ordinance shall govern with regard to any conflicts with previously adopted resolutions or ordinances by the City Council.

**Section 11.** That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

**Section 12.** That the City Secretary is hereby directed to send a true and copy of this Ordinance to Mr. George Freitag, Rate and Regulation Manager for Monarch Utilities I, L.P., 12535 Reed Road, Sugar Land, Texas 77478 and to Mr. Jim Boyle, Herrera & Boyle, PLLC, Suite 1250, 816 Congress, Austin, Texas 78701.

**INTRODUCED, READ and PASSED** by the affirmative vote of the City Council of the City of Kyle, Texas on this the 4th day of March, 2014.

CITY OF KYLE, TEXAS

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Lucy Johnson, Mayor

ATTEST:

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Amelia Sanchez  
City Secretary



# CITY OF KYLE, TEXAS

## Texas Gas Service Interim Rate Adjustment Filing

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** *(Second Reading)* AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS, PENDING HEARING AND DECISION BY THE CITY COUNCIL. ~ *Jerry Hendrix, Chief of Staff*

**Other Information:**

**Budget Information:**

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 [2014 Draft GRIP Ordinance to Suspend jr](#)

**ORDINANCE NO. \_\_\_\_\_****AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS, PENDING HEARING AND DECISION BY THE CITY COUNCIL.**

**WHEREAS**, on February 11, 2014, Texas Gas Service Company (“TGS” or the “Company”) filed with the City of Kyle, Texas (the “City”) an interim rate adjustment and associated Rate Schedule IRA that would allow the Company to recover the incremental costs of new investment it has made within its Central Texas Service Area (“CTXSA”). Parallel requests were filed by TGS that same day with all nine municipalities (Austin, Bee Cave, Cedar Park, Dripping Springs, Kyle, Lakeway, Rollingwood, Sunset Valley and West Lake Hills) in the CTXSA. If applied on a total system basis for the entire CTSA (all nine municipalities and their environs), the proposed rate and tariff changes would allow the Company to recover its capital invested in the CTXSA from January 1, 2013, through December 31, 2013, in the amount of \$5,664,928; and

**WHEREAS**, TGS proposed an effective date for said interim rate adjustment and Rate Schedule IRA to become effective on April 12, 2014; and

**WHEREAS**, in support of said interim rate adjustment and Rate Schedule IRA TGS has submitted the requisite supporting documentation, including Schedules, Earnings Report, and Investment Reports; and

**WHEREAS**, pursuant to Texas Utilities Code § 104.301(a), the City is authorized to suspend the implementation of said interim rate adjustment and Rate Schedule IRA for a period not to exceed 45 days beyond the effective date proposed by the Company; and

**WHEREAS**, the City Council hereby finds that it requires additional time to review and consider the IRA tariff and supporting documentation filed by the Company;

**NOW, THEREFORE, BE IT ORDAINED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF KYLE THAT:**

The implementation of the interim rate adjustment and associated Rate Schedule IRA filed by TGS, and the Company’s proposed effective date of April 12, 2014, shall be and hereby are **SUSPENDED** within the City of Kyle, Texas pursuant to Section 104.301(a) the Texas Utilities Code for 45 days beyond said date (that is, through May 27, 2014), or until adoption by the City Council of a final ordinance addressing the implementation of the Company’s interim rate adjustment and IRA tariff, whichever shall first occur.

This ordinance takes effect on \_\_\_\_\_, \_\_\_\_\_.

**PASSED AND APPROVED ON:**

\_\_\_\_\_

\_\_\_\_\_  
Lucy Johnson, Mayor

**APPROVED:** \_\_\_\_\_  
Ken, Johnson, City Attorney

**ATTEST:** \_\_\_\_\_  
Amelia Sanchez, City Secretary



# CITY OF KYLE, TEXAS

## Ordinance Authorizing Issuance of \$1,950,000\* Tax Notes, Series 2014

Meeting Date: 3/18/2014

Date time: 7:00 PM

**Subject/Recommendation:**

*(First and Final Reading)* AN ORDINANCE AUTHORIZING THE ISSUANCE OF APPROXIMATELY \$1,950,000 "CITY OF KYLE, TEXAS TAX NOTES, SERIES 2014"; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX ON ALL TAXABLE PROPERTY WITHIN THE CITY TO PAY THE PRINCIPAL OF AND INTEREST ON SAID NOTES AND TO CREATE A SINKING FUND FOR THE REDEMPTION THEREOF AND THE ASSESSMENT AND COLLECTION OF SUCH TAXES; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID NOTES. ~ *Perwez A. Moheet, CPA, Director of Finance, Chris W. Allen, Senior Vice President, First Southwest Company (City's Financial Advisor), Tom Pollan, Bickerstaff Heath Delgado Acosta, LLP (City's Bond Counsel)*

**Other Information:**

During budget worksession number 5 on August 25, 2013, the City Council reviewed and approved a list of capital assets totaling \$2,219,908 that would be acquired with the proceeds of the planned issuance of Tax Notes, Series 2014.

On February 18, 2014, the City Council considered and approved the final list of capital assets and authorized the City Manager to begin the process for the issuance of Tax Notes, Series 2014 by April 30, 2014 in the amount of \$1,866,033 plus the cost of issuance in order to provide funding for various equipment, system software, infrastructure improvements, and vehicles for City Departments.

This short-term debt will be structured such that the first debt service payment for principal and interest will be due in Fiscal Year 2014-15. The semi-annual debt service (principal and interest) payments due on this short-term debt will be proportionately paid from ad valorem tax receipts and water and wastewater utility revenue each fiscal year over the 7-year term of the Tax Notes, Series 2014. The property tax rate that will be set and adopted by the City Council in September 2014 will include an increase in the Interest and Sinking Fund (I&S) component of the property tax rate to adequately cover the principal and interest payments due on this new issue of Tax Notes, Series 2014 as part of the Fiscal Year 2015 budget process. Similarly, water and wastewater utility rates for Fiscal Year 2014-15 will be adjusted to provide for the proportionate share of the debt service payments for this short-term debt issue.

Cover Memo

Item # 15

**Budget Information:**

The fiscal impact of this short-term debt issue is deferred until Fiscal Year 2014-15.

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 [Draft Ordinance - Tax Notes Series 2014](#)

 [Planned Assets for Tax Notes 2014](#)

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**AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$1,950,000 "CITY OF KYLE, TEXAS TAX NOTES, SERIES 2014"; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX ON ALL TAXABLE PROPERTY WITHIN THE CITY TO PAY THE PRINCIPAL OF AND INTEREST ON SAID NOTES AND TO CREATE A SINKING FUND FOR THE REDEMPTION THEREOF AND THE ASSESSMENT AND COLLECTION OF SUCH TAXES; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID NOTES**

WHEREAS, the City of Kyle, Texas (the "City") needs to acquire vehicles; computer hardware and software, defibrillators, police radio system upgrades, a police radar trailer, a maintainer and 48" Drum, a sewer robot camera and enclosed trailer, and an aluminum panel shield; construct a storage building; and make certain repairs to and the rehabilitation of the City's water reservoir;

WHEREAS, the City will issue anticipation notes (the "Notes") secured by ad valorem taxes to fund such items; and

WHEREAS, Chapter 1431, Texas Government Code (the "Act"), authorizes cities to issue anticipation notes the proceeds of which may be used to (1) pay a contractual obligation incurred or to be incurred for the construction of any public work; (2) pay a contractual obligation incurred or to be incurred for the purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for an issuer's authorized needs; (3) pay a contractual obligation incurred or to be incurred for professional services, including services provided by tax appraisal engineers, engineers, architects, attorneys, mapmakers, auditors, financial advisors, and fiscal agents; (4) pay operating expenses or current expenses; or (5) fund the issuer's cumulative cash flow deficit; and

WHEREAS, on the 18th day of March, 2014, the City Council of the City convened at 7:00 p.m. and considered passage of an Ordinance authorizing the issuance of said Notes (the "Ordinance"); and

WHEREAS, the City has determined that the Notes should be sold for cash in accordance with the provisions of Chapter 1431.010, Texas Government Code, as amended; and

WHEREAS, this City hereby finds and determines that Notes in the par amount of \$1,950,000 should be issued and sold at this time; and

WHEREAS, the City desires to issue the Notes under the Act the proceeds of which are to be used for the purposes described below.

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

Section 1. DEFINITIONS. Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

"City" means City of Kyle, Texas.

"City Council" means the City Council of the City.

"Code" means the Internal Revenue Code of 1986, as amended, including the regulations and published rulings thereunder.

"Construction Fund" means the construction fund established by Section 8 of this Ordinance.

"Date of Delivery" means the date the Notes are delivered to the Initial Purchaser.

"Designated Payment/Transfer Office" means the office of the Paying Agent which is designated for the presentment of the Notes.

"DTC" means The Depository Trust Company, New York, New York, or any successor securities depository.

"DTC Participant" means any broker, dealer, bank, trust company, clearing corporation or certain other organizations with bonds credited to an account maintained on its behalf by DTC.

"Initial Note" means the initial note described in Sections 4 and 6 of this Ordinance.

"Initial Purchaser" means \_\_\_\_\_, the initial purchaser of the Notes.

"Interest and Sinking Fund" means the interest and sinking fund established by Section 7 of this Ordinance.

"Interest Payment Date" means the date or dates upon which interest on each Note is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being February 15 and August 15 of each year, commencing February 15, 2015.

"Note" or "Notes" means the Notes authorized to be issued by Section 2 of this Ordinance and designated as "City of Kyle, Texas Tax Notes, Series 2014," in the aggregate principal amount of \$1,950,000, and includes all substitute Notes exchanged



therefor, as well as all other substitute Notes and replacement Notes issued pursuant to this Ordinance.

"Paying Agent/Registrar" means initially Wilmington Trust, National Association, Dallas, Texas, or any successor thereto as provided in this Ordinance.

"Record Date" means the close of business on the last business day of the month preceding the month in which an Interest Payment Date occurs.

"Register" means the register specified in Section 5 of this Ordinance.

"Registered Owner" or "Owner" means the person who is the registered owner of a Note or Notes, as shown in the Register.

Section 2. AUTHORIZATION, AMOUNT AND PURPOSE OF NOTES. The City's tax notes (the "Notes") are hereby authorized to be issued in the aggregate principal amount of \$1,950,000 for the purpose of paying contractual obligations incurred for (1) acquisition of vehicles, computer hardware and software, defibrillators, police radio system upgrades, a police radar trailer, a maintainer and 48" Drum, a sewer robot camera and enclosed trailer, and an aluminum panel shield; (2) construction of a storage building; (3) certain repairs and rehabilitation of the City's water reservoir; and, (4) paying costs of issuance and professional services related thereto.

Section 3. DESIGNATION. The Notes shall be designated as the "City of Kyle, Texas Tax Notes, Series 2014."

Section 4. GENERAL TERMS AND PROVISIONS OF NOTES.

(a) *Dates, Denominations, Maturities and Interest Rates.* There shall be issued, sold, and delivered registered Notes, without interest coupons, dated as of April 15, 2014 (which date shall be the Dated Date noted on the Notes), in the respective denominations and principal amounts hereinafter stated, numbered separately from R-1 upward, payable to the respective Registered Owners thereof, except the Initial Note which shall be numbered I-1 and registered in the name of the Initial Purchaser (as designated in Section 18 hereof), or to the registered assignee or assignees of said Notes or any portion or portions thereof (in each case, the "Registered Owner"), and the Notes shall mature serially and be payable on February 15 in each of the years and in the respective amounts as set forth below and the Notes shall bear interest from the Date of Delivery at the following rates per annum based upon a 360-day year of twelve 30-day months:

<u>Maturity Date</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
2015	\$	%
2016		%
2017		%
2018		%
2019		%
2020		%
2021		%

(b) *Optional Redemption.* The Notes are not subject to redemption prior to their stated maturities.

(c) *Unclaimed Amounts.* Any money deposited with the Paying Agent/Registrar for the payment of the principal of, premium, if any, or interest on any Note will be subject to the unclaimed property laws of the State of Texas. If any security or interest check shall not be presented for payment within three (3) years following the stated maturity, the amount shall be reported and disposed of by the Paying Agent/Registrar in accordance with the applicable provisions of Texas law including, to the extent applicable, Title 6 of the Texas Property Code, as amended. Once the Paying Agent/Registrar has complied with the applicable unclaimed property law, the Holder of such Security shall thereafter look only to the procedures in the unclaimed property law for payment thereof, and all liability of the Paying Agent/Registrar with respect to such money shall thereupon cease.

#### Section 5. CHARACTERISTICS OF THE NOTES.

(a) *Registration, Transfer, Conversion, and Exchange; Authentication.* The City shall keep or cause to be kept at the Designated Payment/Transfer Office of Wilmington Trust, National Association, Dallas, Texas (the "Paying Agent/Registrar") books or records for the registration of the transfer, conversion, and exchange of the Notes (the "Register"), and the City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions, and exchanges under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions, and exchanges as herein provided. Attached hereto as Exhibit A is a copy of the Paying Agent/Registrar Agreement between the City and the Paying Agent/Registrar which is hereby approved in substantially final form, and the Mayor and City Secretary of the City are hereby authorized to execute the Paying Agent/Registrar Agreement and approve any changes in the final form thereof.

(b) *Payment of Notes and Interest.* The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Notes, all as provided in this Ordinance. The Paying Agent/Registrar shall keep

proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Notes.

(c) *In General.* The Notes (i) shall be issued in the principal amount of \$5,000 or any integral multiple thereof, (ii) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Notes to be payable only to the Registered Owners thereof, (iii) may not be redeemed prior to their scheduled maturities, (iv) may be transferred and assigned, (v) may be converted and exchanged for other Notes, (vi) shall have the characteristics, (vii) shall be signed, sealed, executed, and authenticated, (viii) shall be payable as to the principal and interest, and (ix) shall be administered and the Paying Agent/Registrar and the City shall have certain duties and responsibilities with respect to the Notes, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF NOTE set forth in this Ordinance. The Notes initially issued and delivered pursuant to this Ordinance (on which is printed or to which Notes is attached the Registration Certificate of the Comptroller of Public Accounts) are not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Note issued in conversion of and exchange for any Note or Notes issued under this Ordinance the Paying Agent/Registrar shall execute the AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF NOTE.

(d) *Substitute Paying Agent/Registrar.* The City covenants with the Registered Owners of the Notes that at all times while the Notes are outstanding the City will provide a competent and legally qualified bank, trust company, financial institution, or other agency to act as and perform the services of Paying Agent/Registrar for the Notes under this Ordinance, and that the Paying Agent/Registrar will be one entity. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice to the Paying Agent/Registrar, to be effective not later than 60 days prior to the next principal or Interest Payment Date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Register (or a copy thereof), along with all other pertinent books and records relating to the Notes, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each Registered Owner of the Note, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(e) *Book-Entry-Only System.* (i) The definitive Notes shall be initially issued in the form of a separate single fully registered Note for each of the maturities thereof. Upon initial issuance, the ownership of each such Note shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 5(f) hereof, all of the outstanding Notes shall be registered in the name of Cede & Co., as nominee of DTC.

(ii) With respect to Notes registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Notes, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Notes, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Notes, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Notes. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Note is registered in the Register as the absolute Owner of such Note for the purpose of payment of principal of, premium, if any, and interest on the Notes, for the purpose of giving notices of redemption and other matters with respect to such Note, for the purpose of registering transfer with respect to such Note, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Notes only to or upon the Ordinance of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Notes to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the Registered Owner at the close of business on the Record Date, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(f) *Successor Securities Depository; Transfer Outside Book-Entry-Only System.* In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter by and between the City, the Paying Agent/Registrar and DTC (the "Representation Letter"), and that it is in the best interest of the Owners of the Notes that they be able to obtain certificated Notes, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a

successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended; notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Notes to such successor securities depository; or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Notes and transfer one or more separate Notes to DTC Participants having Notes credited to their DTC accounts, as identified by DTC. In such event, the Notes shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Notes shall designate, in accordance with the provisions of this Ordinance.

(g) *Payments to Cede & Co.* Notwithstanding any other provision of this Ordinance to the contrary, so long as any Notes are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Notes, and all notices with respect to such Notes, shall be made and given, respectively, in the manner provided in the Representation Letter.

#### Section 6. FORMS.

(a) *Forms Generally.* The Notes, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Authentication Certificate of Paying Agent/Registrar, and the Assignment form to appear on each of the Notes, (i) shall be substantially in the form set forth in this Section, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Notes, as evidenced by their execution thereof.

(b) *Placement of Text.* Any portion of the text of any Notes may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Notes.

(c) *Definitive Notes.* The Notes shall be typed, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Notes, as evidenced by their execution thereof.

(d) *Initial Note.* The Initial Note submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

(e) *Form of the Notes.* The form of the Notes, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the

form of Authentication Certificate of Paying Agent/Registrar and the form of Assignment appearing on the Notes, shall be substantially as follows, with such additions, deletions and variations as may be necessary or desirable and not prohibited by this Ordinance.

FORM OF NOTE

United States of America  
State of Texas

NUMBER  
R-\_\_\_\_\_  
REGISTERED

DENOMINATION  
\$\_\_\_\_\_  
REGISTERED

CITY OF KYLE, TEXAS  
TAX NOTE  
SERIES 2014

INTEREST RATE	MATURITY DATE:	DATED DATE:	CUSIP NO:
_____%	_____	April 15, 2014	_____

DATE OF DELIVERY: \_\_\_\_\_, 2014

REGISTERED OWNER:

PRINCIPAL AMOUNT:     DOLLARS

CITY OF KYLE, TEXAS (the "City"), a political subdivision of the State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Ordinance of the Registered Owner, specified above, or registered assigns thereof (the "Registered Owner"), on the Maturity Date, specified above, upon presentation and surrender of this Note at the Designated Payment/Transfer Office of Wilmington Trust, National Association, Dallas, Texas, or its successor (the "Paying Agent/Registrar"), the Principal Amount, specified above, in lawful money of the United States of America, and to pay interest thereon at the Interest Rate, specified above, calculated on the basis of a 360-day year of twelve 30-day months, from the later of the Date of Delivery or the most recent date to which interest has been paid or duly provided for. Interest on this Note is payable by check on February 15, 2015, and on each August 15 and February 15 thereafter, mailed to the Registered Owner of record as shown on the Register kept by the Paying Agent/Registrar, as of the date which is the last business day of the month next preceding the Interest Payment Date (the "Record Date"), or in such other manner as may be acceptable to the Registered Owner and the Paying Agent/Registrar.

THIS NOTE is one of a series of notes (the "Notes") dated as of April 15, 2014, of like designation, date, and tenor, except as to number, interest rate, denomination,

and maturity issued pursuant to the Ordinance adopted by the City Council on March 18, 2014 (the "Ordinance"), in the original aggregate principal amount of \$1,950,000 for the purpose of paying contractual obligations incurred to acquire vehicles; computer hardware and software, defibrillators, police radio system upgrades, a police radar trailer, a maintainer and 48" Drum, a sewer robot camera and enclosed trailer, and an aluminum panel shield; construct a storage building; make certain repairs to and the rehabilitation of the City's water reservoir; and, for the payment of costs of issuance and professional services related thereto, by virtue of the laws of the State of Texas, including particularly Chapter 1431, Texas Government Code, as amended.

THE NOTES are issued pursuant to the Ordinance whereunder the City Council of the City has levied a continuing, direct, annual ad valorem tax on all taxable property within the City, within the limits prescribed by law, for each year while any part of the Notes are considered outstanding under the provisions of the Ordinance, in sufficient amount to pay interest on each Note as it becomes due, to provide a sinking fund for the payment of the principal of the Notes when due, and to pay the expenses of assessing and collecting such tax. Reference is hereby made to the Ordinance for provisions with respect to the custody and application of the City's funds, remedies in the event of a default hereunder or thereunder, and the other rights of the Registered Owner. By acceptance of this Note, the Registered Owner consents to all of the provisions of the Ordinance, a certified copy of which is on file in the office of the City Secretary.

THE NOTES ARE NOT SUBJECT TO REDEMPTION PRIOR TO THEIR STATED MATURITIES.

THIS NOTE IS TRANSFERABLE OR EXCHANGEABLE only upon presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar. If this Note is being transferred, it shall be duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner, or his authorized representative, subject to the terms and conditions of the Ordinance. If this Note is being exchanged, it shall be in the principal amount of \$5,000 or any integral multiple thereof, subject to the terms and conditions of the Ordinance. The Registered Owner of this Note shall be deemed and treated by the City and the Paying Agent/Registrar as the absolute owner hereof for all purposes, including payment and discharge of liability upon this Note to the extent of such payment, and the City and the Paying Agent/Registrar shall not be affected by any notice to the contrary.

ANY ACCRUED INTEREST DUE at maturity of this Note shall be paid to the Registered Owner upon presentation and surrender of this Note for payment at the Designated Payment/Transfer Office of the Paying Agent/Registrar. The City covenants with the Registered Owner of this Note that on or before each principal payment date, Interest Payment Date, and accrued Interest Payment Date for this Note it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Notes, when due.

IF THE DATE for the payment of the principal of or interest on this Note shall be a Saturday, a Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive Ordinance to close, or the United States Postal Service is not open for business, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close, or the United States Postal Service is not open for business; and payment on such date shall have the same force and effect as if made on the original date payment was due.

ALL NOTES OF THIS SERIES are issuable solely as fully registered Notes, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Ordinance, this Note, or any unredeemed portion hereof, may, at the request of the Registered Owner, or the assignee or assignees hereof, be assigned, transferred, and exchanged for a like aggregate principal amount of fully registered Notes, without interest coupons, payable to the appropriate Registered Owner, assignee, or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate Registered Owner, assignee, or assignees, as the case may be, upon surrender of this Note to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Ordinance. Among other requirements for such assignment and transfer, this Note must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Note or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Note or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Note may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Note or any portion or portions hereof from time to time by the Registered Owner. The person requesting such transfer and exchange shall pay the Paying Agent/Registrar's reasonable standard or customary fees and charges for transferring and exchanging any Note or portion thereof. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the person requesting such assignment, transfer, or exchange, as a condition precedent to the exercise of such privilege. The foregoing notwithstanding, in the case of the exchange of a portion of a Note which has been redeemed prior to maturity, as provided herein, and in the case of the exchange of an assigned and transferred Note or Notes or any portion or portions thereof, such fees and charges of the Paying Agent/Registrar will be paid by the City.

IN THE EVENT OF A NON-PAYMENT OF INTEREST on a scheduled payment date and for 30 days thereafter, a new Record Date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar if and when



funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of the Registered Owner appearing on the Register of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

IN THE EVENT any Paying Agent/Registrar for the Notes is changed by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners.

IT IS HEREBY CERTIFIED, COVENANTED, AND REPRESENTED that all acts, conditions, and things necessary to be done precedent to the issuance of the Notes in Ordinance to render the same legal, valid, and binding obligations of the City have happened and have been accomplished and performed in regular and due time, form, and manner, as required by law; that provision has been made for the payment of the principal of and interest on the Notes by the levy of a continuing, direct, annual ad valorem tax upon taxable property within the City, within the limits prescribed by law; and that issuance of the Notes does not exceed any constitutional or statutory limitation.

BY BECOMING the Registered Owner of this Note, the Registered Owner thereby acknowledges all of the terms and provisions of the Ordinance, agrees to be bound by such terms and provisions, and agrees that the terms and provisions of this Note and the Ordinance constitute a contract between each Registered Owner and the City.

IN WITNESS WHEREOF this Note has been signed with the manual or facsimile signature of the Mayor of the City, countersigned with the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly impressed, or placed in facsimile, on this Note.

CITY OF KYLE, TEXAS

COUNTERSIGNED:

\_\_\_\_\_  
City Secretary  
City of Kyle, Texas

\_\_\_\_\_  
Mayor  
City of Kyle, Texas

[CITY SEAL]

FORM OF REGISTRATION CERTIFICATE OF

COMPTROLLER OF PUBLIC ACCOUNTS\*

\*Print on or attach to Initial Note only

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. \_\_\_\_\_  
STATE OF TEXAS:

I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to the effect that the Attorney General of the State of Texas has examined and finds that this Note has been issued in conformity with the laws of the State of Texas and is a valid and binding obligation of City of Kyle, Texas, and further that this Note has been registered this day by me.

WITNESS my signature and seal of office this \_\_\_\_\_.

(COMPTROLLER'S SEAL)

\_\_\_\_\_  
Comptroller of Public Accounts of  
the State of Texas

FORM OF AUTHENTICATION CERTIFICATE\*\*

\*\*Print on Definitive Notes only

AUTHENTICATION CERTIFICATE

This Note is one of the Notes described in and delivered pursuant to the within-mentioned Ordinance, and this Note has been issued in conversion of and exchanged for, or replacement of, a Note, Notes, or a portion of a Note or Notes, which was originally approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

WILMINGTON TRUST, NATIONAL  
ASSOCIATION  
Dallas, Texas

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

By: \_\_\_\_\_  
Authorized Signature

FORM OF ASSIGNMENT

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

\_\_\_\_\_/\_\_\_\_\_  
(Please print or typewrite name and address, including zip code, of Transferee) (Please insert Social Security or Taxpayer Identification Number)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney, to register the transfer of the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240-17Ad-15).

\_\_\_\_\_  
NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Note in every particular, without alteration or enlargement or any change whatsoever.

(f) *Form of Initial Note.* The Initial Note shall be in the form set forth in subsection (e) of this Section, except the following shall replace the heading and the first paragraph:

NO. I-1 \$1,950,000

United States of America  
State of Texas  
CITY OF KYLE, TEXAS  
TAX NOTE  
SERIES 2014

Dated Date: April 15, 2014

Registered Owner:

Principal Amount: ONE MILLION EIGHT HUNDRED SIXTY THOUSAND DOLLARS

CITY OF KYLE, TEXAS (the "City"), a political subdivision of the State of Texas, promises to pay to the Registered Owner, specified above, or registered assigns (the "Registered Owner"), on February 15 in each of the years, and bearing interest at per annum rates in accordance with the following schedule:

<u>YEARS OF STATED MATURITIES</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATES</u>
2015	\$	%
2016		%
2017		%
2018		%
2019		%
2020		%
2021		%

upon presentation and surrender of this Note to Wilmington Trust, National Association, or its successor (the "Paying Agent/Registrar"), at its Designated Payment/Transfer Office in Dallas, Texas, the Principal Amount, specified above, in lawful money of the United States of America, and to pay interest thereon at the Interest Rate, specified above, calculated on the basis of a 360-day year of twelve 30-day months, from the later of the Date of Delivery or the most recent date to which interest has been paid or duly provided for. Interest on this Note is payable by check on February 15, 2015 and on each August 15 and February 15 thereafter, mailed to the Registered Owner of record as shown on the Register kept by the Paying Agent/Registrar, as of the date which is the last business day of the month next preceding the Interest Payment Date (the "Record Date"), or in such other manner as may be acceptable to the Registered Owner and the Paying Agent/Registrar.

Section 7. INTEREST AND SINKING FUND. The "City of Kyle, Texas Tax Notes, Series 2014 Interest and Sinking Fund" (the "Interest and Sinking Fund"), is hereby authorized and shall be established and maintained in a depository bank of the City, so long as the Notes, or interest thereon, are outstanding and unpaid for the purpose described in Section 9.

Section 8. CONSTRUCTION FUND.

(a) *Establishment of Construction Fund.* A special fund or account, to be designated the "City of Kyle, Texas Tax Notes, Series 2014 Construction Fund" (the "Construction Fund") is hereby created and shall be established and maintained by the City at the official City depository. The Construction Fund shall be kept separate and apart from all other funds and accounts of the City. The proceeds from the sale of the Notes shall be deposited in the Construction Fund and payments from the Construction Fund shall be made as provided below.

(b) *Payments from Construction Fund.* Payments from the Construction Fund shall be used solely for the purpose of paying contractual obligations incurred to acquire vehicles; computer hardware and software, defibrillators, police radio system upgrades, a police radar trailer, a maintainer and 48" Drum, a sewer robot camera and enclosed trailer, and an aluminum panel shield; construct a storage building; make certain repairs

to and the rehabilitation of the City's water reservoir; and the payment of costs of issuance and professional services related thereto.

(c) *Surplus Construction Funds.* Any moneys remaining in the Construction Fund after completion of the entirety of the contractual obligations authorized hereby shall be deposited into the Interest and Sinking Fund.

Section 9. TAX LEVY. During each year while any of the Notes are outstanding and unpaid, the City Council shall compute and ascertain a rate and amount of ad valorem tax which will be sufficient to raise and produce the money required to pay the interest on the Notes as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Notes as such principal matures (but never less than 2% of the original principal amount of the Notes as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the City for each year while any of the Notes are outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Notes, as such interest comes due and such principal matures, are hereby pledged to such payment, within the limits prescribed by law.

Section 10. EFFECT OF PLEDGE. Chapter 1208, Texas Government Code, applies to the issuance of the Notes and the pledge of the taxes granted by the City under Section 9 of this Ordinance, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Notes are outstanding and unpaid such that the pledge of the taxes granted by the City under Section 9 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in Ordinance to preserve to the Registered Owners of the Notes the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

Section 11. SECURITY FOR FUNDS. All Funds created by this Ordinance shall be secured in the manner and to the fullest extent permitted or required by law for the security of public funds, and such Funds shall be used only for the purposes and in the manner permitted or required by this Ordinance.

Section 12. DISCHARGE AND DEFEASANCE OF NOTES.

(a) If the City shall pay or cause to be paid, the principal of, premium, if any, and interest on the Notes, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and all covenants, agreements,

and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

The Notes, or any principal amount(s) thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Notes or the principal amount(s) thereof at the stated maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or any trust company or commercial bank that does not act as a depository for the City, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Notes, or the principal amount(s) thereof, on and prior to the stated maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof.

Any money so deposited with the Paying Agent/Registrar, and all income from Government Securities held in trust by the Paying Agent/Registrar, or any trust company or commercial bank that does not act as a depository for the City, pursuant to this Section which is not required for the payment of the Notes, or any principal amount(s) thereof, or interest thereon with respect to which such money has been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Notes and remaining unclaimed for a period of three (3) years after the stated maturity of the Notes or applicable redemption date, such money was deposited and is held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Notes that is made in conjunction with the payment arrangements specified in subsection (i) or (ii) above shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the City expressly reserves the right to call the defeased Notes for redemption; (2) gives notice of the reservation of that right to the owners of the defeased Notes immediately following the defeasance; (3) directs that notice of the reservation be included in any redemption notices that it authorizes; and (4) at the time of the redemption, satisfies the conditions of (i) or (ii) above with respect to such defeased debt as though it was being defeased at the time of the exercise of the option to redeem the defeased Notes, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the defeased Notes.

(b) The term "Government Securities" means (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent; or (iii) noncallable obligations of a state or an agency or a City, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent.

Section 13. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED NOTES.

(a) *Replacement Notes.* In the event any outstanding Note is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new Note of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Note, in replacement for such Note in the manner hereinafter provided.

(b) *Application for Replacement Notes.* Application for replacement of damaged, mutilated, lost, stolen, or destroyed Notes shall be made by the Registered Owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Note, the Registered Owner applying for a replacement Note shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Note, the Registered Owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Note, as the case may be. In every case of damage or mutilation of a Note, the Registered Owner shall surrender to the Paying Agent/Registrar for cancellation the Note so damaged or mutilated.

(c) *No Default Occurred.* Notwithstanding the foregoing provisions of this Section 13, in the event any such Note shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on this Note, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Note) instead of issuing a replacement Note, provided security or indemnity is furnished as above provided in this Section 13.

(d) *Charge for Issuing Replacement Notes.* Prior to the issuance of any replacement Note, the Paying Agent/Registrar shall charge the Registered Owner of such Note with all legal, printing, and other expenses in connection therewith. Every replacement Note issued pursuant to the provisions of this Section 13 by virtue of the

fact that any Note is lost, stolen, or destroyed shall constitute an obligation of the City whether or not the lost, stolen, or destroyed Note shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Notes duly issued under this Ordinance.

(e) *Authority for Issuing Replacement Notes.* In accordance with Chapter 1431, Texas Government Code, as amended, this Section 13 of this Ordinance shall constitute authority for the issuance of any such replacement Note without necessity of further action by the City or any other body or person, and the duty of the replacement of such Notes is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Notes in the form and manner and with the effect, as provided in Section 5(a) of this Ordinance for Notes issued in conversion and exchange of other Notes.

Section 14. CUSTODY, APPROVAL, AND REGISTRATION OF NOTES; BOND COUNSEL OPINION, CUSIP NUMBERS, STATEMENT OF INSURANCE. The City Judge is hereby authorized to have control of the Notes initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Notes pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Notes said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Notes, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The legal opinion of the City's Bond Counsel, and the assigned CUSIP numbers may, at the option of the City, be printed on or attached to the Notes issued and delivered under this Ordinance, but none of such opinion, statement, or number shall have any legal effect, and shall be solely for the convenience and information of the Registered Owners of the Notes. A statement relating to a municipal bond insurance policy, if any, to be issued for the Notes may be printed on each Note.

Section 15. REMEDIES IN EVENT OF DEFAULT. In addition to all of the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees that in the event of default in payment of principal of or interest on any of the Notes when due, or, in the event it fails to make the payments required to be made into the Interest and Sinking Fund or defaults in the observance of performance of any other of the contracts, covenants, conditions, or obligations set forth in this Ordinance or in the Notes, the following remedies shall be available:

(a) the Registered Owners shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the City and the officials thereof to observe and perform the contracts, covenants, obligations, or conditions prescribed in this Ordinance; and

(b) any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor be construed to be a



waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 16. FEDERAL TAX COVENANTS.

(a) The City hereby represents that the proceeds of the Notes are needed at this time for the purposes specified in Section 2 hereof; that based on current facts, estimates and circumstances, it is reasonably expected that final disbursement of the proceeds of the Notes will occur within three years after the closing date, that substantial binding obligations to commence such acquisitions will be incurred within six months of the closing date and that the accomplishment of the projects for which the Notes are hereby issued will proceed with due diligence to completion; that it is not reasonably expected that the proceeds of the Notes or money deposited in the Interest and Sinking Fund will be used or invested in a manner that would cause the Notes to be or become "arbitrage bonds," within the meaning of Section 148 of the Code; and that, except for the Interest and Sinking Fund, no other funds or accounts have been established or pledged to the payment of the Notes.

(b) The City will not take any action or fail to take any action with respect to the investment of the proceeds of the Notes or any other funds of the City, including amounts received from the investment of any of the foregoing, which act or omission based upon the facts, estimates, and circumstances known on the closing date, would result in constituting the Notes "arbitrage bonds," within the meaning of Section 148 of the Code, and the City will not take any deliberate action motivated by arbitrage that would have such result.

(c) The City will comply with the provisions of Section 148(f) of the Code (relating to paying certain excess earnings of investment proceeds of the Notes to the United States) and the regulations promulgated thereunder.

(d) The City will not take any action or fail to take any action which act or omission would result in the interest on the Notes being includable in gross income for federal tax purposes.

(e) The City will not take any action or fail to take any action which act or omission would result in the Notes being treated as "private activity bonds" within the meaning of Section 141(a) of the Code.

(f) The City will not take any action or fail to take any action which act or omission would result in the Notes being treated as "federally guaranteed" within the meaning of Section 149(b) of the Code.

(g) Proper officers of the City charged with the responsibility of issuing the Notes are hereby directed to make, execute and deliver certifications as to facts, estimates and circumstances in existence as of the closing date and stating whether

there are any facts, estimates or circumstances that would materially change the City's current expectations.

(h) The covenants and representations made or required by this Section are for the benefit of the Owners and may be relied upon by the Owners and Bond Counsel for the City.

It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In furtherance of such intention, the City hereby authorizes and directs the Mayor and City Secretary to execute any documents, certificates, or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Notes. In the event that regulations or rulings are hereafter promulgated which modify, or expand provisions of the Code, as applicable to the Notes, the City will not be required to comply with any covenant contained herein to the extent that such modification or expansion, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Notes under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Notes, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Notes under section 103 of the Code.

Section 17. QUALIFIED TAX-EXEMPT OBLIGATIONS. The City hereby designates the Notes as "qualified tax-exempt obligations" for purposes of section 265(b) of the Code. In connection therewith, the City represents: (a) that the aggregate amount of tax-exempt obligations issued by the City during calendar year 2014, including the Notes, which have been designated as "qualified tax-exempt obligations" under section 265(b)(3) of the Code, does not exceed \$10,000,000, and (b) that the reasonably anticipated amount of tax-exempt obligations which will be issued by the City during calendar year 2014 including the Notes, will not exceed \$10,000,000. For purposes of this Section, the term "tax-exempt obligations" does not include "private activity bonds" within the meaning of section 141 of the Code, other than "qualified 501(c)(3) bonds" within the meaning of section 145 of the Code. In addition, for purposes of this Section, the City includes all governmental units which are aggregated with the City under the Code.

Section 18. SALE OF NOTES. The Notes have been duly advertised for public sale; bids have been received pursuant thereto; and the Notes are hereby sold and shall be delivered to \_\_\_\_\_ (the "Initial Purchaser"), at a purchase price of \$\_\_\_\_\_, being the best bid submitted at the public sale, such bid being submitted electronically using the PARITY electronic bid system, such bid as submitted is attached hereto as Exhibit B. The Initial Note shall be registered in the name of \_\_\_\_\_. Delivery of said Notes shall be made to such Initial Purchaser as

soon as practicable after the adoption of this Ordinance and upon payment for said Notes. The Mayor and other appropriate officials are hereby authorized and directed to execute such Official Bid Form on behalf of the City, and the Mayor and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Notes. **The City Council further directs that the cash premium be applied to costs of issuance.**

Section 19. USE OF PROCEEDS. The City hereby covenants that the proceeds of the sale of the Notes will be used as soon as practicable for the purposes for which the Notes are issued. Obligations purchased as an investment of money in a fund shall be deemed to be a part of such fund.

Section 20. APPROVAL OF OFFICIAL STATEMENT. The form and substance of the Official Statement for the Notes and any addenda, supplement or amendment thereto (the "Official Statement") presented to and considered at this meeting is hereby in all respects approved and adopted. The Mayor and the City Secretary are hereby authorized and directed to execute the same and deliver appropriate numbers of executed copies thereof to the Initial Purchaser. The use and distribution of the Preliminary Official Statement by the City's Financial Advisor, First Southwest Company, and the Initial Purchaser, is hereby ratified, approved and confirmed and is hereby deemed final as of its date (except for the omission of pricing and related information) within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, by the City Council. The Initial Purchaser is hereby authorized to use and distribute the Official Statement in the reoffering, sale, and delivery of the Notes to the public. The City Secretary is hereby authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting.

Section 21. AUTHORITY FOR OFFICERS TO EXECUTE DOCUMENTS. The Mayor, City Secretary, and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the seal of the City and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Notes, the Official Statement, and the Paying Agent/Registrar Agreement.

Section 22. CONTINUING DISCLOSURE UNDERTAKING.

(a) *Definitions*. As used in this Section, the following terms have the meanings ascribed to such terms below:

"EMMA" means the Electronic Municipal Market Access System established by the MSRB.

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

"SEC" means the United States Securities and Exchange Commission.

(b) *Annual Reports.* The City shall provide annually to the MSRB through EMMA, within six months after the end of each fiscal year ending in or after 2014, financial information and operating data with respect to the City that is of the general type included in the Official Statement authorized by Section 20, being the information described in Tables numbered 1 through 4 and 6 through 9 and in APPENDIX B. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles the City may be required to employ from time to time in accordance with State law, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide (1) unaudited financial statements for such fiscal year within such six month period, and (2) audited financial statements for the applicable fiscal year to the MSRB through EMMA when and if the audit report on such statements becomes available.

If the City changes its fiscal year, it will notify the MSRB through EMMA of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB, that theretofore has been provided to the MSRB through EMMA or filed with the SEC).

(c) *Event Notices.* The City shall notify the MSRB through EMMA, in a timely manner not in excess of ten business days after the occurrence, of any of the following events with respect to the Notes:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Notes or other material events affecting the tax status of the Notes;
7. Modifications to rights of holders of the Notes, if material;
8. Redemption calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Notes, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(d) *Limitations, Disclaimers, and Amendments.* The City shall be obligated to observe and perform the covenants specified in this Section with respect to the City and the Notes while, but only while, the City remains an "obligated person" with respect to the Notes within the meaning of the Rule, except that the City in any event will give notice required by subsection (c) of this Section of any bond calls and defeasance that cause the City to no longer be such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and Beneficial Owners of the Notes, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other

person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the financial results, condition, or prospects of the City or the State of Texas or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Notes at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY NOTE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under the Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Notes in the primary offering of the Notes in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Notes consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and Beneficial Owners of the Notes. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 23. FURTHER PROCEDURES. The Mayor, City Secretary and all other officers, employees, and agents of the City, and each of them, shall be and they are

hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things to execute, acknowledge and deliver in the name and under the official seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in Ordinance to carry out the terms and provisions of this Ordinance, the Notes, the sale of the Notes and the Paying Agent/Registrar Agreement. In addition, prior to the initial delivery of the Notes, the Mayor, City Secretary and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in Ordinance to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance, (ii) obtain a rating from any of the national bond rating agencies or satisfy any requirements of the provider of a municipal bond insurance policy, if any, or (iii) obtain the approval of the Notes by the Attorney General's office. In case any officer whose signature shall appear on any Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 24. ORDINANCE A CONTRACT; AMENDMENTS. The Ordinance shall constitute a contract with the Owners, from time to time, of the Notes, binding on the City and its successors and assigns, and shall not be amended or repealed by the City as long as any Note remains outstanding except as permitted in this Section. The City may amend the Ordinance without the consent of or notice to any Owners in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission therein. In addition, the City may, with the written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding affected thereby, amend, add to, or rescind any of the provisions of the Ordinance; except that, without the consent of the Owners of all the Notes affected, no such amendment, addition, or rescission may (1) change the date specified as the date on which the principal of any installment of interest on any Note is due and payable, reduce the principal amount thereof, or the rate of interest thereon, change the place or places at or the coin or currency in which any Note or interest thereon is payable, or in any other way modify the terms of payment of the principal of or interest on the Notes, (2) give any preference to any Note over any other Note, or (3) reduce the aggregate principal amount of the Notes required for consent to any amendment, addition, or waiver.

Section 25. INCORPORATION OF RECITALS. The City hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City hereby incorporates such recitals as a part of this Ordinance.

Section 26. EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect upon and after its passage.

*[The remainder of this page intentionally left blank.]*

PASSED AND APPROVED this 18th day of March, 2014.

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Mayor  
City of Kyle, Texas

ATTEST:

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City Secretary  
City of Kyle, Texas

[CITY SEAL]



**EXHIBIT A**

Form of Paying Agent/Registrar Agreement

**EXHIBIT B**

Accepted Bid

City of Kyle, Texas  
Proposed Tax Notes, Series 2014  
Schedule of Assets for Short-Term Financing  
Reviewed and Approved By City Council on February 18, 2014 (Council Agenda Item #23)

Attachment number 2 \nP

	Description of Capital Item	Category	Department	General Fund	Utility Fund	Total
1.	IT System Hardware Improvements	Equipment	Information Technology	\$ 80,100	\$ 26,700	\$ 106,800
2.	Defibrillator - Library	Equipment	Parks and Recreation	3,000	-	3,000
3.	Defibrillator - Historic City Hall	Equipment	Parks and Recreation	3,000	-	3,000
4.	Defibrillator - City Hall	Equipment	Parks and Recreation	3,000	-	3,000
5.	Defibrillator - Public Works	Equipment	Parks and Recreation	-	3,000	3,000
6.	Defibrillator - Parks Lake Kyle	Equipment	Parks and Recreation	3,000	-	3,000
7.	Defibrillator - Parks Maintenance	Equipment	Parks and Recreation	3,000	-	3,000
8.	Defibrillator - Police	Equipment	Parks and Recreation	3,000	-	3,000
9.	Radio System Upgrade	Equipment	Police	208,663	-	208,663
10.	Radar Trailer	Equipment	Police	13,945	-	13,945
11.	Maintainer and 48" Drum	Equipment	Public Works	240,000	-	240,000
12.	Aluminum Panel Shield	Equipment	Public Works	4,000	4,000	8,000
13.	Sewer Robot Camera & Enclosed Trailer	Equipment	Public Works	-	100,000	100,000
14.	Toughbook Laptop w/Stand	Equipment	Public Works	-	3,875	3,875
15.	Toughbook Laptop w/Stand	Equipment	Public Works	-	3,250	3,250
16.	Total Equipment:			<u>\$ 564,708</u>	<u>\$ 140,825</u>	<u>\$ 705,533</u>
17.	Storage Building	Facility	Parks and Recreation	5,500	-	5,500
18.	Water Reservoir Rehabilitation	Facility	Public Works	-	450,000	450,000
19.	Total Facility:			<u>\$ 5,500</u>	<u>\$ 450,000</u>	<u>\$ 455,500</u>
20.	Model - Water System	Software	Engineering	-	150,000	150,000
21.	Model - Wastewater System	Software	Engineering	-	150,000	150,000
22.	Total Software Systems:			<u>\$ -</u>	<u>\$ 300,000</u>	<u>\$ 300,000</u>
23.	Chevrolet Tahoe	Vehicle	Police	\$ 75,000	\$ -	\$ 75,000
24.	Chevrolet Tahoe	Vehicle	Police	75,000	-	75,000
25.	Chevrolet Tahoe	Vehicle	Police	75,000	-	75,000
26.	Pickup Truck	Vehicle	Public Works	35,000	-	35,000
27.	Pickup Truck	Vehicle	Public Works	-	35,000	35,000
28.	Pickup Truck - Heavy Duty w/Lift	Vehicle	Public Works	-	50,000	50,000
29.	Van	Vehicle	Public Works	-	25,000	25,000
30.	Pickup Truck - Meter Reading	Vehicle	Financial Services	-	35,000	35,000
31.	Total Vehicles:			<u>\$ 260,000</u>	<u>\$ 145,000</u>	<u>\$ 405,000</u>
32.	COMBINED TOTAL:			<u>\$ 830,208</u>	<u>\$ 1,035,825</u>	<u>\$ 1,866,033</u>
				44.49%	55.51%	100.00%



# CITY OF KYLE, TEXAS

## Presentation & Acceptance of City's CAFR & Independent Auditors' Report for FY 2013.

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** Presentation and acceptance of Comprehensive Annual Financial Report and Independent Auditors' Report for Fiscal Year Ended September 30, 2013. ~ *Perwez A. Moheet, CPA, Director of Finance and Michael W. O'Brien, CPA, Partner, Padgett Stratemann, Certified Public Accountants.*

**Other Information:**

Article VIII, Section 8.13, of the City Charter requires that at the close of each fiscal year, an independent audit shall be made of all accounts of the City by a certified public accountant experienced in auditing cities. The audit shall be completed on or before March 30th of each year. Upon acceptance of the audit, summary thereof shall be published immediately in a newspaper of general circulation in the City and copies of the audit report shall be placed on file in the City Secretary's as a public record.

The City management is pleased to present the Comprehensive Annual Financial Report (CAFR) for the City of Kyle for the fiscal year ended September 30, 2013.

The Management's Discussion and Analysis (MD&A) section of the CAFR presents a narrative overview and analysis of the financial activities of the City of Kyle for the year ended September 30, 2013. The analysis is intended to assist readers in focusing on key financial issues and changes in the City's financial position and in identifying any significant variances from the approved budget.

We encourage our readers to consider the information presented in this section of the annual report in conjunction with additional information that we have provided in our letter of transmittal and the financial statements furnished in this report.

### FINANCIAL HIGHLIGHTS

- 1 The City's total assets exceeded total liabilities at the end of fiscal year 2013 resulting in a net position of \$91.5 million as of September 30, 2013. Of the total \$91.5 million net position, \$9.5 million remained unrestricted and is available to meet any future obligations of the City.

Cover Memo

Item # 16

- 1 Net position for all governmental activities totaled \$33.4 million and \$58.1 million for business-type activities at September 30,

2013.

- 1 \$4.8 million or 34.7% increase in the combined fund balance totaling \$18.7 million for all governmental activities at September 30, 2013 as compared to the prior fiscal year.
  
- 1 \$1.5 million or 34.3% increase in the ending balance of the City's General Fund totaling \$6.0 million at September 30, 2013 as compared to the prior fiscal year.

For additional detailed information, a copy of the transmittal letter to City Council is attached and a complete copy of the City's Comprehensive Annual Financial Report (CAFR) for the City of Kyle, Texas for the fiscal year ended September 30, 2013 will be posted on the City's website.

**Budget Information:** A Fiscal Note is not required.

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Attachments / click to download

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# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## Verizon Site Access Agreement

**Subject/Recommendation:**

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A SITE ACCESS LICENSE AGREEMENT WITH DALLAS MTA, L.P., D/B/A VERIZON WIRELESS, TO ALLOW FOR ENVIRONMENTAL TESTING AND SAMPLING PERTAINING TO THE SUITABILITY OF CERTAIN CITY-OWNED REAL PROPERTY LOCATED AT 172 KIRKHAM CIRCLE, KYLE, TEXAS, FOR THE PLACEMENT, MAINTENANCE AND USE OF A COMMUNICATIONS FACILITY; MAKING FINDINGS OF FACT; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS CONSIDERED WAS LEGALLY NOTICED AND OPEN TO THE PUBLIC. ~ *Harper Wilder, Director of Public Works*

**Other Information:**

**Budget Information:**

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Attachments / click to download

- [Resolution-Verizon Site Access](#)
- [Verizon Site Access License Agreement](#)

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A SITE ACCESS LICENSE AGREEMENT WITH DALLAS MTA, L.P., D/B/A VERIZON WIRELESS, TO ALLOW FOR ENVIRONMENTAL TESTING AND SAMPLING PERTAINING TO THE SUITABILITY OF CERTAIN CITY-OWNED REAL PROPERTY LOCATED AT 172 KIRKHAM CIRCLE, KYLE, TEXAS, FOR THE PLACEMENT, MAINTENANCE AND USE OF A COMMUNICATIONS FACILITY; MAKING FINDINGS OF FACT; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS CONSIDERED WAS LEGALLY NOTICED AND OPEN TO THE PUBLIC.**

WHEREAS, Dallas MTA, L.P., d/b/a Verizon Wireless (“Licensee”) has requested to enter a site access agreement and obtain a license (collectively referred to as “Agreement”) from the City of Kyle to allow for environmental testing and sampling pertaining to the suitability for the placement, maintenance and use of a communications facility (“Use”) on certain real property located at 172 Kirkham Circle, Kyle, Texas, further described in Exhibit “A” attached hereto and made a part hereof; and,

WHEREAS, the City agrees to enter said Agreement and issue a license to allow said Use of said Property in accordance with the terms and conditions of the Agreement.

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

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

Section 2. Authorization. The city manager is hereby authorized to execute said Agreement granting said Licensee a license for Use on said Property, a copy of said Agreement being marked Exhibit “B” attached hereto and made a part hereof as if copied verbatim.

Section 3. 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, Texas.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public as required by the Open Meetings Act, Chapter 551, Local Government Code, and that public notice of the time, place, and purpose of said meeting was given as required by said Act.

PASSED AND APPROVED this \_\_\_\_\_ day of March, 2014.

**CITY OF KYLE, TEXAS**

ATTEST:

\_\_\_\_\_  
Lucy Johnson, Mayor

\_\_\_\_\_  
Amelia Sanchez, City Secretary

## **EXHIBIT “A”**

Licensee Site Name: Dove Hollow  
Site Address: 172 Kirkham Circle, Kyle, Hays County, Texas  
Plum Creek water tower (located just behind Sonic drive-in restaurant)



**EXHIBIT “B”**

**SITE ACCESS LICENSE AGREEMENT  
(ATTACHED)**

Licensee Site Name: Dove Hollow

## SITE ACCESS LICENSE AGREEMENT

This Site Access License Agreement (“Agreement”) is executed by Dallas MTA, L.P., d/b/a Verizon Wireless (“Licensee”), whose principal business address is 180 Washington Valley Road, Bedminster, NJ 07921, and The City of Kyle (“Owner”) whose mailing address is 100 W. Center Street, Kyle, TX 78640, and both of whom may be referred to collectively as the “parties.”

### BACKGROUND

As part of Licensee’s investigations and consideration pertaining to the suitability of that certain real property (“Property”) located in Kyle, Hays County, Texas, as more fully described in Exhibit “A” attached hereto and incorporated herein, for the placement, maintenance and use of a communications facility, Owner has agreed to grant to Licensee and other persons as described herein, a site access license to conduct environmental inspection, testing and sampling activities on the Property.

The purpose of this Agreement is to memorialize the understandings of Licensee and Owner regarding the foregoing investigations, including without limitation, the terms and conditions of the environmental testing and sampling to be conducted by Licensee’s authorized agents, contractors, consultants and employees, and to enter a site access license to implement same.

NOW THEREFORE, in consideration of the mutual promises, covenants, undertakings, and other considerations set forth in this License, Licensee and Owner agree as follows:

1. **Ownership & Effect.** Owner hereby represents to Licensee that: (1) Owner is the owner of the Property; (2) Owner has exclusive and absolute control over the Property; and (3) Owner is under no legal obligation to restrict Licensee’s access or use of the Property in a manner inconsistent with the terms of this Agreement. Owner hereby grants a license that is limited in purpose and scope to the least amount of access which is required to undertake and fully complete the investigations contemplated herein, and this Agreement does not represent a lease or create in Licensee any interest in the Property or any other property owned by Owner or create a partnership, joint venture or any association or relationship between Owner and Licensee.
2. **Access to Property and Owner’s Consent.** Owner grants to Licensee and its agents, advisors, employees, consultants, representatives, and independent contractors, including environmental contractors and consultants hired directly or indirectly by Licensee (collectively, “Licensee Representatives”) the right, but not the obligation, of ingress to, egress from, and access under, above, and through, the Property for the purpose of allowing the Licensee Representatives to:
  - (1) conduct radio tests, including the placing of radio broadcast/receive equipment on the Property for necessary periods;
  - (2) conduct physical, structural and geotechnical testing;
  - (3) conduct environmental inspections, tests, collect samples of soil, water, soil vapor, indoor air, building materials and other substances, including in regard to painted surfaces, sufficient samples of paint by removing it from the structure for laboratory analysis, and perform any other environmental assessment activities that they reasonably determine to be appropriate;

Licensee Site Name: Dove Hollow

- (4) establish wetland and other natural system jurisdictional delineations in cooperation with the appropriate governmental agencies, if applicable; and,
- (5) conduct boundary and other surveys deemed necessary by Licensee, in Licensee's sole discretion.

Without limiting the generality of the foregoing, the Licensee Representatives may drill into the soil, drill through pavement, remove reasonable amounts of soil, install and sample monitoring wells, and perform other tests, actions, procedures, and treatments to assess:

- (A) the environmental condition of the Property;
- (B) past or present compliance with all environmental, health and safety laws applicable to the Property;
- (C) the business operations conducted on the Property; and
- (D) the structural, electro-mechanical, radio broadcast/receive, or other attributes of the Property necessary to assess its suitability as a communications facility.

The Licensee Representatives shall undertake all activities on the Property in compliance with applicable laws and shall use commercially reasonable efforts to minimize the extent and duration of any interference with Owner's business operations on the Property. As between Owner and Licensee, the cost of all such activities shall be the responsibility of Licensee.

3. **Advance Notice.** Before undertaking any activity on the Property, Licensee Representatives shall give Owner reasonable advance notice, either orally (by telephone or in person), or in writing, of planned activity that can reasonably be expected to require invasive activities into the Property's subsurface, including notice of the areas of the Property that are expected to be materially affected by any sampling, monitoring, installation, or similar action. Notwithstanding anything contained herein to the contrary, 48 hours advance notice given by Licensee or Licensee Representatives to Owner shall constitute reasonable advance notice for purposes of this Agreement.
4. **Installation, Sampling, and Removal.** Owner shall cooperate with Licensee Representatives regarding all installation, monitoring, sampling, removal, and related activities that Licensee Representatives desire to conduct on the Property. Owner shall cooperate in locating buried utilities and improvements on the Property at the request of any agent or contractor of Licensee or Licensee Representatives and shall assist Licensee Representatives in avoiding impacts to such buried or concealed features. At Owner's specific request, Licensee Representatives shall use commercially reasonable efforts to schedule its activities to avoid times of peak business activity on the Property. Owner authorizes Licensee Representatives to obstruct temporarily, but only for a reasonable period of time, access to, or use of, limited areas of the Property for the purpose of safety, operation of equipment, testing and sampling activities, and installation or removal of monitoring wells. Licensee Representatives may use any electrical or other utility outlets or connections on the Property to conduct its activities. Licensee Representatives shall split all samples with Owner upon Owner's request, so long as Owner pays for any and all additional cost

Licensee Site Name: Dove Hollow

incurred by Licensee Representatives for this request. After completing the activities contemplated by this License, Licensee shall ensure that Licensee Representatives remove their equipment and restore any part of the Property that was affected by its activities to a condition that is substantially similar to the condition of the Property at the time immediately preceding the commencement of said activities.

5. **Indemnification.** (a) Licensee shall indemnify and hold harmless Owner from damage to the Property to the extent caused by any of Licensee Representatives as a result of the activities of Licensee Representatives on the Property. Owner shall promptly notify Licensee and the affected contractor or party in writing of any damage to the Property that has allegedly been caused by any Licensee Representatives pursuant to any activity of Licensee Representatives on the Property, and Licensee shall not have any liability or obligation to indemnify or hold harmless Owner for any damage to the Property unless Licensee receives from Owner written notice of the damage within 30 days of the alleged damage. Licensee's obligations to indemnify and hold harmless pursuant to this agreement are also conditioned upon (a) Licensee being provided with the opportunity to fully manage any indemnified matter as it deems appropriate (including any required remediation or defense of claims) with employees, agents, contractors, consultants and attorneys of Licensee's choosing and the reasonable cooperation of any indemnified party (including the signing of any properly completed forms that will allow for the continued current use of the property). Before it will be liable to provide any monetary payment to Owner for any indemnified damage to the Property, Licensee and the affected Licensee Representatives shall have the right to restore the part of the Property that has been damaged, using contractors and consultants selected by them. The site access granted to Licensee and/or Licensee Representatives pursuant to this Agreement extends to any repair or restoration work required to remediate any damage to the Property that is indemnified pursuant to this Section. (b) Owner hereby agrees to indemnify and hold Licensee and the Licensee Representatives harmless from: (1) penalties, legal actions, or suits from regulatory or third party sources, the basis of which are not directly related to the actions or inactions of Licensee or Licensee Representative, and (2) any type of cost, expense or liability, the basis of which are not directly related to the actions or inactions of Licensee or Licensee Representative and (3) any other damages or injuries to Licensee Representatives persons and/or property which arise from or relate to: (i) any existing hazardous waste, pollutant or hazardous substance presence or release associated with or related to the Property, (ii) any act or omission of Owner or Owner's tenants, invitees, licensees or other Owner-authorized persons, (iii) any condition or other appurtenance of the Property which was not fully disclosed to Licensee Representatives as to its nature, location and peril, or (iv) any misrepresentation in or breach of warranty of this Agreement.
6. **Confidentiality and Test Results.** Owner understands and acknowledges that the environmental testing to be undertaken herein may create legal duties applicable solely to Owner if conditions of pollution are discovered. Licensee has advised Licensee Representatives and its contractors to make laboratory test results, wetland and other surveys, if applicable, and sample locations available to Owner upon Owner's request. However, any reports prepared by Licensee's contractors are confidential, and Licensee may, but is not obligated to provide its confidential reports, other than laboratory test reports and sample locations, to Owner. Owner acknowledges and agrees that it is the sole and lawful owner of any samples that are taken during the activities undertaken pursuant to this License, and any investigation-derived media (i.e., drill cuttings, well purge water) generated by the investigation, and that this media may require off-site disposal

Licensee Site Name: Dove Hollow

based upon test results. Owner agrees to execute all manifests as requested by Licensee Representatives for proper disposal. The cost of off-site disposal of media will be paid for by Licensee or the appropriate Licensee Representative, not Owner.

(a) Owner understands and acknowledges that when it is provided test results regarding the environmental condition of the Property, that Owner may have obligations to report such conditions to the appropriate regulatory agency(s). Licensee accepts no responsibility for such reporting, as Licensee does not own, operate, control or otherwise have any interest in the Property at the time of discovery of any such condition.

(b) None of the test or inspection results are warranted or guaranteed for any reason whatsoever. Owner understands and acknowledges that any investigation performed by Licensee is solely for the purpose of Licensee obtaining comfort with the condition of the property. The inspections are not intended to comply with any regulatory requirements or to uncover all contamination or conditions that may exist at the time of the inspections. Owner shall not rely upon the test and/or inspection results as being accurate or sufficient for any particular purpose.

7. **Termination.** This Agreement may be terminated at any time by mutual written agreement of the parties, or otherwise shall terminate automatically on the earlier of: (1) execution of a lease agreement for any part of the Property between Licensee and Owner, or (2) the date of December 1, 2014.
8. **Waiver; Modification; Severability.** An extension, amendment, modification, cancellation, or termination of this Agreement will be valid and effective only if it is in writing and signed by each party to this Agreement, except as provided otherwise in this Agreement. In addition, a waiver of any duty, obligation, or responsibility of a party under this Agreement will be valid and effective only if it is evidenced by a writing signed by, or on behalf of, the party against whom the waiver or discharge is sought to be enforced. Whenever possible, each provision of this Agreement should be construed and interpreted so that it is valid and enforceable under applicable law. However, if a provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that provision will be deemed severable from the remaining provisions of this Agreement and will not affect the validity, interpretation, or effect of the other provisions of this Agreement or the application of that provision to other circumstances in which it is valid and enforceable.
9. **Assignment; Third Party Beneficiaries.** Neither the entry of this Agreement or any action taken by Licensee hereunder shall create any third party beneficiary or third party beneficiary rights.
10. **Legal Matters.** The validity, construction, enforcement, and interpretation of this Agreement are governed by the laws of the State of Texas and the federal laws of the United States of America.
11. **Notices.** Except for oral notices specifically authorized in this Agreement, every notice, consent, demand, request, and approval required or permitted by this Agreement will be valid only if it is in writing, delivered personally or by e-mail, telecopy, commercial courier, or first class, postage

Licensee Site Name: Dove Hollow

prepaid, United States mail (whether or not certified or registered and regardless of whether a return receipt is requested or received by the sender), and addressed by the sender to the intended recipient at its address set forth in the first paragraph of this Agreement, or to such other address as the intended recipient may designate by notice given to the sender in accordance with this section. A validly given notice, consent, demand, request, or approval will be effective on the earlier of its receipt, if delivered personally or by e-mail, telecopy, or commercial courier, or the third day after it is postmarked by the United States Postal Service, if delivered by first class, postage prepaid, United States mail. Each party promptly shall notify the other of any change in its mailing address or telephone contact number stated in this Agreement.

12. **Complete Agreement; Survival.** This Agreement records the entire understanding between the parties regarding the subjects addressed in it and supersedes any previous or contemporaneous agreement, understanding, or representation, oral or written, by either of them.
13. **Execution and Effectiveness.** The parties may execute this Agreement in counterparts. Each executed counterpart will constitute an original document, and all executed counterparts, together, will constitute the same agreement. This Agreement will become effective upon the last signatory's delivery of the fully executed document to the other party, and the last signatory shall fill in the EXECUTED date below prior to such delivery.

<Signature Page to Follow>

Licensee Site Name: Dove Hollow

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

**OWNER:**

**The City of Kyle**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title \_\_\_\_\_

**LICENSEE:**

Dallas MTA, L.P.  
d/b/a Verizon Wireless

By Verizon Wireless Texas, LLC,  
Its General Partner

By: \_\_\_\_\_  
Print Name: H. Lee Maschmann  
Title: Executive Director - Network

The undersigned "Licensee Representative" has reviewed this Agreement and hereby agrees to comply with all obligations pertaining to, and imposed on, Licensee Representatives contained herein.

Agreed to and accepted by:

Aarcher, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Licensee Site Name: Dove Hollow

**EXHIBIT "A"**

Licensee Site Name: Dove Hollow  
Site Address: 172 Kirkham Circle, Kyle, Hays County, Texas  
Plum Creek water tower (located just behind Sonic drive-in restaurant)





# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## Proposed Comprehensive Plan Amendments

**Subject/Recommendation:**

*(First Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE MASTER PLAN APPLICATION CHARTS AS FOLLOWS AND AS SHOWN ON EXHIBIT A:

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS NOT RECOMMENDED WITHIN IN THE LOCAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS WITHIN THE REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE CBD1 AND CBD2 AS NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SUPER-REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS NOT RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A NOT RECOMMENDED ZONING DISTRICT WITHIN THE RIPARIAN LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A NOT RECOMMENDED ZONING DISTRICT WITHIN THE FARM LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE RANCH LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CBD-1 AND CBD-2 TO CONDITIONAL ZONING DISTRICTS, R-1-1 AND R-1-2(SINGLE-FAMILY RESIDENTIAL) AS A RECOMMENDED ZONING DISTRICTS, AND R-3-3 AS NOT RECOMMENDED ZONING

Cover Memo

Item # 18

DISTRICTS WITHIN THE OLD TOWN FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A CONDITIONAL ZONING DISTRICT WITHIN THE CORE AREA TRANSITION FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE HISTORIC CORE AREA TRANSITION FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE MIDTOWN COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A RECOMMENDED ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT AND CHANGE R-3-2 (APARTMENT RESIDENTIAL), M-2 (MANUFACTURED HOME SUBDIVISION) AND M-3 (MANUFACTURED HOME PARK) AS CONDITIONAL ZONING DISTRICTS WITHIN NEW SETTLEMENT COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS WITHIN THE NEW TOWN COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE HOSPITAL SERVICES (HS) AND ENTERTAINMENT (E) AS CONDITIONAL ZONING DISTRICTS WITHIN THE EMPLOYMENT COMMUNITY FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CONSTRUCTION MANUFACTURING (CM), RETAIL SERVICES (RS), ENTERTAINMENT (E) AND WAREHOUSE (W) TO NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SENSITIVE/SUSTAINABLE DEVELOPMENT FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A RECOMMENDED ZONING DISTRICT AND COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT WITHIN THE HERITAGE COMMUNITY FUTURE LAND USE DISTRICT.

PROVIDING FOR THE AMENDMENT OF THE PLAN;  
PROVIDING FOR RELATED MATTERS ~ *Sofia Nelson, Director of Planning* <sup>Cover Memo</sup>

Item # 18

*The Planning and Zoning Commission voted 6-0 to approve the*

*amendments.*

<sup>1</sup> Public Hearing







**Other Information:** Please see attachments

**Budget Information:** N/A

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

**Attachments / click to download**

-  [workshop sign in sheets and evaluations](#)
  -  [Ordinance](#)
  -  [exhibit a-planning and zoning commission recommendations](#)
  -  [Long Range Planning Comm. recommendations](#)
  -  [workshop notes](#)
  -  [minutes from previous planning and zoning and council meetings](#)
-

# Sign In Sheet

<u>NAME</u>	<u>PHONE</u>	<u>EMAIL</u>
Frida Alway	924-2575	
Susan Meckel	512-922-5738	susanmeckel@aol.com
Carol Chloewens	512-262-4297	ONCENTRESTREET@gmail.com
Edwin Winn	512-268-7231	WINN2@austin.rr.com
Jean Winn	"	"
Alicy Kay	512.557.4203	
Timothy Kay	"	
Becky Selberg		
Samantha Bellows-Lemense	512-262-0268	WTCARDS@yahoo.com
Ken Christie		
Diana Howell	512-566-2689	

Sign In Sheet

<u>NAME</u>	<u>PHONE</u>	<u>EMAIL</u>
JERRY KOLOCHNY	512.268.0378	
Richard Baggott	618.889.5050	
Lele Kunkel		
Cassey Norman	512 261 6213	
Sageleine L. Dismore	512 262 6979	
Dennis Rose	268-9212	
Greg Blackwell	512-618-7369	igblackwell@yahoo.com
Wanda Wilson	512-589-5551	distrikt4vp@cityofhyle.com
JAMES MASSARO	512 508-3084	massaro.engineering@yahoo.com
Lamy S. Lambert	512-504-6139	l.lambert@cityofhyle.com
James Earp	512-262-3924	je@earp@cityofhyle.com

6/29/13

NAME

EMAIL

PHONE

Item # 18

MIKE CONTE

MCANT18@SMAIL.COM

512-268-0536

Susan Meckel

susanmeckel@aol.com

512-922-5738

KERD CHRISTIE

WTCARDS@YAHOO.COM

512-262-0268

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Samantha Lettense

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Bruce King

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512-964-0918

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Michael Sanchez

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512-560-8700

Kim Schofield

kaschofield@hotmail.com

512-560-8700

6/29/13

Public Works Building

# COMPREHENSIVE Plans Workshop

Item # 18

NAME

EMAIL

PHONE

Paul Ryan

268 3800

Robert Norman  
~~Robert Norman~~

robert@starcad.com 512 761 6213  
~~robert.dennis@me.com 512-235-6185~~

Angie Chapa

achapa18@austin.mn.com 512-268-9381 9282

Mike Rubsam

512 295 4304

Mike Fulton

TIMOTHY A. KAY @ gmfi.com - 512-268-0323

Dickie Kay  
Timothy Kay

Gordon & Tasha Wilbo

gordon@sustainedkyle.com (512) 504-3221

Pat J... ..

pat@heart-properties.com 512-665-1120

Attila Zambrowski  
Ray Bryant

Attila.Zambrowski@sho.com 512-997-2485  
RayBryant@compkyle.com 512-487-2718

Jerry at Tolamy

Jerry R Kyle @ verizon.net

Workshop Evaluation and Feedback Form

Item # 18

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Probably - mainly the concern that Old Town return its neighbor hood character

Was the presented information clear, concise, and useful?

YES

All the terms & info hard to absorb.

neighbor hood character

How did you hear about the workshop?

from neighbor

Suggestions for improving future workshops?

Will have to think about it - lots to learn.



- ESTABLISH AN OLD TOWNS COMMITTEE  
- CHANGED DURING FIRST DINNER SHIP.  
- CHANGES HANDS AND ORIGINAL ZONING WAS  
- EXPLAIN WHAT HAPPENS WHEN A PROPERTY

- NOT RECOMMENDED
- CONDITIONAL
- RECOMMENDED

- CLEARLY DEFINE TERMS:

Suggestions for improving future workshops?

ATTENDED LAST ONE

How did you hear about the workshop?

NO

YES

Was the presented information clear, concise, and useful?

NO

YES

Do you feel your comments/ suggestions were captured accurately?

NO

YES

considering?

Was the information presented helpful in understanding what City Council will be

Workshop Evaluation and Feedback Form

Item # 18

SOPHIA IS GREAT

Timothy A. Kay  
E. Smith  
.com

Workshop Evaluation and Feedback Form

Item # 18

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

email

Suggestions for improving future workshops?

*in workshop*

Limited public participation compared to extensive participation in the master planning process

Should be weighed carefully and the intent

of the plan must be respected as a whole.

Updates should be as heavy and completely

noted to the public as the original

planning process or there may be skewed in put.

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES  NO

Do you feel your comments/ suggestions were captured accurately?

YES  NO

Was the presented information clear, concise, and useful?

YES  NO

How did you hear about the workshop?

THROUGH CITY MEETING

Suggestions for improving future workshops?

IMPROVE NOTIFICATIONS FOR ALL MEETINGS

PLANNING WORKSHOPS BEFORE ISSUE GETS VOTED

Have a ~~to~~ planning workshop  
4 times a year.

Suggestions for improving future workshops?

City Council Meeting

How did you hear about the workshop?

NO

YES

Was the presented information clear, concise, and useful?

NO

YES

Do you feel your comments/ suggestions were captured accurately?

NO

YES

Was the information presented helpful in understanding what City Council will be considering?

Workshop Evaluation and Feedback Form

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

*R. Z. Gorman*

Suggestions for improving future workshops?  
*Staff but more room for less noise*

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

- YES
- NO

Do you feel your comments/ suggestions were captured accurately?

- YES
- NO

Was the presented information clear, concise, and useful?

- YES
- NO

How did you hear about the workshop?

*Direct order*

Suggestions for improving future workshops?

*Less noise*

Notification process for workshop

Suggestions for improving future workshops?

City mtg

How did you hear about the workshop?

NO

YES

Was the presented information clear, concise, and useful?

NO

YES

Do you feel your comments/ suggestions were captured accurately?

NO

YES

Was the information presented helpful in understanding what City Council will be considering?

Workshop Evaluation and Feedback Form

Workshop Evaluation and Feedback Form

Item # 18

Was the information presented helpful in understanding what City Council will be considering?

YES - still some miscommunication, understanding of definition of conditional, <sup>or</sup> recommended not recommended

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?  
email & website

Suggestions for improving future workshops?  
little more time



Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

*Email - City website*

Suggestions for improving future workshops?

Workshop Evaluation and Feedback Form

Item # 18

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

*email*

Suggestions for improving future workshops?

*I wish more citizens would have been notified.*

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES  
 NO

Do you feel your comments/ suggestions were captured accurately?

YES  
 NO

Was the presented information clear, concise, and useful?

YES  
 NO

How did you hear about the workshop?

Lila Knight, Town Clerk

Suggestions for improving future workshops?

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

*Steps 3 & 4 Cross*

Suggestions for improving future workshops?

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

- YES
- NO

Do you feel your comments/ suggestions were captured accurately?

- YES
- NO

Was the presented information clear, concise, and useful?

- YES
- NO

How did you hear about the workshop?

City Council

Suggestions for improving future workshops?

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

P+2

Suggestions for improving future workshops?

Thought it was great! Good job Sophia!  
love the info, clear & easy to read &  
understand.

Workshop Evaluation and Feedback Form

Item # 18

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

Suggestions for improving future workshops?

Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

Suggestions for improving future workshops?



Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

*City Council*

Suggestions for improving future workshops?

*Sam Holman*

Suggestions for improving future workshops?

How did you hear about the workshop?  
*E.MAIL*

NO

YES

Was the presented information clear, concise, and useful?

NO

YES

Do you feel your comments/ suggestions were captured accurately?

NO

YES

Was the information presented helpful in understanding what City Council will be considering?

Workshop Evaluation and Feedback Form

Suggestions for improving future workshops? *MORE TIME ALLOTTED*

How did you hear about the workshop? *SPOUSE (P&Z)*

Was the presented information clear, concise, and useful?  
 NO  
 YES

Do you feel your comments/ suggestions were captured accurately?  
 NO  
 YES

Was the information presented helpful in understanding what City Council will be considering?  
 NO  
 YES

Workshop Evaluation and Feedback Form

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?

YES

NO

- Do you feel your comments/ suggestions were captured accurately?

YES

NO

- Was the presented information clear, concise, and useful?

YES

NO

- How did you hear about the workshop?

- Suggestions for improving future workshops?

Literacy tests required for public comment.  
Councilmember Selbera must do something about  
her hair, it is clearly out of order, and  
in violation of city ordinances against  
public nuisance.

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?

YES

NO

- Do you feel your comments/ suggestions were captured accurately?

YES

NO

- Was the presented information clear, concise, and useful?

YES

NO

- How did you hear about the workshop?

*By phone*

- Suggestions for improving future workshops?

*Make sure the population of Kyle has the information ahead of time. Very few people knew of this meeting.*

## Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

NO

Was the presented information clear, concise, and useful?

YES

NO

How did you hear about the workshop?

Sofia told me via word of mouth and emails

Suggestions for improving future workshops?

This workshop was dominated by  
1. Staff

2. P42

3. Council?

1, 2 and 3 should provide info. as to  
The workshop, answer questions,  
be able to explain each issue.

Allow citizens more time to  
express their ideas.

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?

YES

NO

- Do you feel your comments/ suggestions were captured accurately?

YES

NO

- Was the presented information clear, concise, and useful?

YES

NO

- How did you hear about the workshop?

*E-mail*

- Suggestions for improving future workshops?

*Thank you for taking time  
to hear from the  
community!*

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?

YES

NO

- Do you feel your comments/ suggestions were captured accurately?

YES

NO

- Was the presented information clear, concise, and useful?

YES

NO

- How did you hear about the workshop?

*Email from Jerry Hendrix & Penny Probert*

- Suggestions for improving future workshops?

*More outlets for notifying citizens regarding meetings, etc.  
Facebook?*



## Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

- YES
- NO

*SORT OF*

Do you feel your comments/ suggestions were captured accurately?

- YES
- NO

*HAVE NO IDEA*

Was the presented information clear, concise, and useful?

- YES
- NO

*SORT OF*

How did you hear about the workshop?

*BEING ON LONG RANGE PLANNING*

Suggestions for improving future workshops?

*Jenny Kalany*

## Workshop Evaluation and Feedback Form

Was the information presented helpful in understanding what City Council will be considering?

YES

NO

Do you feel your comments/ suggestions were captured accurately?

YES

THE TIME WAS TOO LIMITED TO FULLY EXPRESS OPINIONS ON ALL TOPICS.

NO

Was the presented information clear, concise, and useful?

YES

THERE WAS CONFUSION THAT COULD HAVE BEEN AVOIDED BY HAVING ADDITIONAL RESOURCES AVAILABLE. (ORDINANCE, ETC.)

NO

How did you hear about the workshop?

INTERNET NOTICE

Suggestions for improving future workshops?

LONGER DURATION & ALL CITY WARDS & GUIDES AVAILABLE.

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?

YES  
 NO

- Do you feel your comments/ suggestions were captured accurately?

YES  
 NO

- Was the presented information clear, concise, and useful?

YES }  
 NO } NOT SURE

- How did you hear about the workshop?

COUNCIL MTH & ONLINE

- Suggestions for improving future workshops?

MORE TIME OR LESS CONTENT

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?
  - YES
  - NO
- Do you feel your comments/ suggestions were captured accurately?
  - YES
  - NO
- Was the presented information clear, concise, and useful?
  - YES
  - NO
- How did you hear about the workshop?

On city council

- Suggestions for improving future workshops?

Do not allow committee members to participate? (Limit?) As we are only repeating the same opinion. Please notify in advance if you want council to help facilitate. Possibly assign different districts to different groups to assure all districts are discussed (then open it up to the other groups to discuss together)

~~Record~~ Try to condense info a bit more  
Record workshop or have minute taker.

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?

YES

NO

- Do you feel your comments/ suggestions were captured accurately?

YES

NO

- Was the presented information clear, concise, and useful?

YES

NO

- How did you hear about the workshop?

Planning a Zoning Commission meeting

- Suggestions for improving future workshops?

More publicity

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?
- YES
- NO
- Do you feel your comments/ suggestions were captured accurately?
- YES
- NO
- Was the presented information clear, concise, and useful?
- YES
- NO
- How did you hear about the workshop?

CITY ANNOUNCEMENTS

- Suggestions for improving future workshops?

I WAS VERY PLEASED WITH THIS WORKSHOP. SOPHIA NELSON DID A VERY GOOD JOB. SHE PUT TOGETHER A VERY WELL PREPARED AND THOROUGH PRESENTATION. SHE IS VERY WELL INFORMED AND BEHAVED VERY PROFESSIONALLY. THANK-YOU FOR PROVIDING THIS WORKSHOP, I LOOK FORWARD TO ATTENDING FUTURE WORKSHOPS.

TIMOTHY KAY

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?

YES

NO

- Do you feel your comments/ suggestions were captured accurately?

YES

NO

- Was the presented information clear, concise, and useful?

YES

NO

- How did you hear about the workshop?

City announcements

- Suggestions for improving future workshops?

Provide materials (packet) ahead of time for public (maybe on website or email sign up sheet?) to review & become familiar prior to workshop. I know everything is already available, but this packet was wonderful & having it easily accessible is helpful & saves time

## Workshop Evaluation and Feedback Form

- Was the information presented helpful in understanding what City Council will be considering?
  - YES
  - NO
- Do you feel your comments/ suggestions were captured accurately?
  - YES
  - NO
- Was the presented information clear, concise, and useful?
  - YES
  - NO
- How did you hear about the workshop?
  
- Suggestions for improving future workshops?



## **ORDINANCE \_\_\_\_\_**

(FIRST READING) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE MASTER PLAN APPLICATION CHARTS AS FOLLOWS AND AS SHOWN ON EXHIBIT A:

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS NOT RECOMMENDED WITHIN IN THE LOCAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS WITHIN THE REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE CBD1 AND CBD2 AS NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SUPER-REGIONAL NODE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS NOT RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A NOT RECOMMENDED ZONING DISTRICT WITHIN THE RIPARIAN LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A NOT RECOMMENDED ZONING DISTRICT WITHIN THE FARM LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE RANCH LANDSCAPE FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CBD-1 AND CBD-2 TO CONDITIONAL ZONING DISTRICTS, R-1-1 AND R-1-2(SINGLE FAMILY RESIDENTIAL) AS A RECOMMENDED ZONING DISTRICTS, AND R-3-3 AS NOT RECOMMENDED ZONING DISTRICTS WITHIN THE OLD TOWN FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND

COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) TO A CONDITIONAL ZONING DISTRICT WITHIN THE CORE AREA TRANSITION FUTURE LAND USE DISTRICT.

- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE HISTORIC CORE AREA TRANSITION FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS CONDITIONAL ZONING DISTRICTS AND CHANGE RETAIL SERVICES (RS) AS A ZONING DISTRICT NOT RECOMMENDED WITHIN THE MIDTOWN COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A RECOMMENDED ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT AND CHANGE R-3-2 (APARTMENT RESIDENTIAL), M-2 (MANUFACTURED HOME SUBDIVISION) AND M-3 (MANUFACTURED HOME PARK) AS CONDITIONAL ZONING DISTRICTS WITHIN NEW SETTLEMENT COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS WITHIN THE NEW TOWN COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) AS RECOMMENDED ZONING DISTRICTS AND CHANGE HOSPITAL SERVICES (HS) AND ENTERTAINMENT (E) AS CONDITIONAL ZONING DISTRICTS WITHIN THE EMPLOYMENT COMMUNITY FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A CONDITIONAL ZONING DISTRICT, COMMUNITY COMMERCIAL (CC) AS A NOT RECOMMENDED ZONING DISTRICT AND CHANGE CONSTRUCTION MANUFACTURING (CM), RETAIL SERVICES (RS), ENTERTAINMENT (E) AND WAREHOUSE (W) TO NOT RECOMMENDED ZONING DISTRICTS WITHIN THE SENSITIVE/SUSTAINABLE DEVELOPMENT FUTURE LAND USE DISTRICT.
- TO IDENTIFY NEIGHBORHOOD COMMERCIAL (NC) AS A RECOMMENDED ZONING DISTRICT AND COMMUNITY COMMERCIAL (CC) AS A CONDITIONAL ZONING DISTRICT

WITHIN THE HERITAGE COMMUNITY FUTURE LAND USE  
DISTRICT.  
PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR  
RELATED MATTERS

**WHEREAS**, it is necessary and reasonable for the City of Kyle, Texas, a Texas home rule municipality, (herein the “City”) to provide for, modify and amend a Comprehensive Plan for the City in accordance with Chapters 211 and 213 of the Texas Local Government Code and the City Charter;

**WHEREAS**, the City in anticipation of growth and expansion desires to plan for the orderly and efficient growth of the City;

**WHEREAS**, the City desires to facilitate the lessening of congestion in the streets; the securing of its citizens and visitors from fire, panic and other dangers; the promotion of the general health and welfare; the provision of adequate light and air, the prevention of the overcrowding of property and undue concentration of populations; and the adequate provision of transportation, water, sewers, schools, parks and other public requirements;

**WHEREAS**, the Planning and Zoning Commission, after conducting public hearings, recommended amendment of the Comprehensive Plan; and,

**WHEREAS**, after review, inquiry and the opportunity for the public to give testimony and present written evidence at public hearings and after review by the Planning and Zoning Commission, the City Council has found the amendment of the Comprehensive Plan herein after set forth and listed in this ordinance is reasonable and necessary for the public health, safety, morals and welfare.

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

**Section 1. Findings.** The foregoing 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. Comprehensive Plan.** Having held a public hearing and after receiving a recommendation from the Planning and Zoning Commission, the City Council hereby adopts and approves the amendments to the Comprehensive Plan as shown in Exhibit A. The Comprehensive Plan shall be kept in the office of the City Secretary and shall be available for public inspection during normal office hours. Zoning uses, as amended from time to time at the request of the landowner or on motion of the City, shall be amended to be made consistent with the Comprehensive Plan. The City may amend the Comprehensive Plan in the discretion of the City Council to plan for the changing plans of the City.

**Section 3. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final

judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

**Section 4. Effective Date.** This Ordinance shall be in force and effect from and after its passage on the date shown below.

**Section 5. 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, *Chapt. 551, Tex. Gov't. Code.*

**PASSED AND APPROVED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

**THE CITY OF KYLE,  
TEXAS**

\_\_\_\_\_  
Amelia Sanchez, City Secretary

\_\_\_\_\_  
Lucy Johnson, Mayor

## Exhibit A

## Planning and Zoning Commission Recommendations made 1-25-14

<b>District</b>	<b>Neighborhood Commercial</b>	<b>Community Commercial</b>	<b>Additional Recommendations</b>
Local Node	Recommended	Recommended	change Retail/Services to NOT Recommended
Regional Node	Recommended	Recommended	---
Super-Regional Node	Conditional	Conditional	Change CBD-1 to NOT Recommended Change CBD-2 to NOT Recommended
Riparian Landscape	Not Recommended	Not Recommended	change Retail/Services to NOT Recommended
Farm Landscape	Conditional	Not Recommended	change Retail/Services to NOT Recommended
Ranch Landscape	Conditional	Not Recommended	change Retail/Services to NOT Recommended
Old Town Community	Conditional	Not Recommended	change CBD-1 to Conditional change CBD-2 to Conditional add R-1-1 as Recommended add R-1-2 as recommended change R-3-3 as not recommended
Core Area Transition	Recommended	Recommended	change Retail/Services to Conditional
Historic Core Area Transition	Conditional	Not Recommended	change Retail/Services to NOT Recommended
Mid-Town Community	Conditional	Conditional	change Retail/Services to NOT Recommended

<b>District</b>	<b>Neighborhood Commercial</b>	<b>Community Commercial</b>	<b>Additional Recommendations</b>
New Settlement Community	Recommended	Conditional	R-3-3 Change Apts.- Residential to Conditional  Change M-2 to Conditional  Change M-3 to Conditional
New Town Community	Recommended	Recommended	Add RV as Conditional
Employment Community	Recommended	Recommended	Add HS as Conditional  Add E as Conditional
Sensitive/Sustainable Development	Conditional	Not Recommended	Change CM to NOT Recommended  Change RS to NOT Recommended  Change E to NOT Recommended  Change W to NOT Recommended
Heritage Community	Recommended	Conditional	----

***Long Range Planning Committee Recommendations-1/16/14***

Proposed Amendments to the Comprehensive Plan  
Final Recommendations to the Planning and Zoning Commission

<b>District</b>	<b>Neighborhood Commercial</b>	<b>Community Commercial</b>	<b>Additional Recommendations</b>
Local Node	Recommended	Recommended	change Retail/Services to NOT Recommended
Regional Node	Recommended	Recommended	---
Super-Regional Node	Conditional	Conditional	Change CBD-1 to NOT Recommended  Change CBD-2 to NOT Recommended
Riparian Landscape	Not Recommended	Not Recommended	change Retail/Services to NOT Recommended
Farm Landscape	Conditional	Not Recommended	change Retail/Services to NOT Recommended
Ranch Landscape	Conditional	Not Recommended	change Retail/Services to NOT Recommended
Old Town Community	Recommended	Not Recommended	change CBD-1 to Conditional  change CBD-2 to Conditional  add R-1-1 as Recommended
Core Area Transition	Recommended	Recommended	change Retail/Services to Conditional
Historic Core Area Transition	Conditional	Not Recommended	change Retail/Services to NOT Recommended
Mid-Town Community	Conditional	Conditional	change Retail/Services to NOT Recommended

<b>District</b>	<b>Neighborhood Commercial</b>	<b>Community Commercial</b>	<b>Additional Recommendations</b>
New Settlement Community	Conditional	Conditional	Change Apts.-Residential to Conditional  Change M-2 to Conditional  Change M-3 to Conditional
New Town Community	Recommended	Recommended	Add RV as Conditional
Employment Community	Recommended	Recommended	Add HS as Conditional  Add E as Conditional
Sensitive/Sustainable Development	Recommended	Not Recommended	Change CM to NOT Recommended  Change RS to NOT Recommended  Change E to NOT Recommended  Change W to NOT Recommended
Heritage Community	Recommended	Conditional	----



- Conditional, Recommended / NOT Recommended
- 6-digit (not 8-digit) codes
- Simplify Zoning Districts - CBD1 = NC

• Mid-Town - Local Node

• Change Positions of local nodes inside of Mid-Town Communities.

"Apts" s/B "Multifam. 1, 2, 3"

Urban Farm / Community Garden

Group	Wilson / Rubsam		
Old Town - CBD1	Rec → Cond	Fail	2/6
CBD2	" "	Split	4/4
R-1-1	Not " → Rec	OK all	
R-1-2	" " → "	" "	
R-3-3	Cond → Not Rec	OK all	
NC	→ Cond →	Pass	5/3
CC	→ Not Rec.	Split	4/4

Empby.

Ent. <del>from</del>	Not Rec → Cond.	OK
Hosp. from	" " → Cond.	OK
NC	→ Rec.	OK
CC	→ "	OK



Local

Regional

Super Regional

Local -

NC - Rec

CC - Cond

RS - Not Rec

Regional -

NC - Rec

CC - Rec

SUPER Regional

NC - Cond

CC - Cond

CBD-1 - Not Rec

CBD-2 - Not Rec

\*RS - fixed already - Rec

USE Tax Gap Analysis

Old Town District  
General

How can we get word out?

↳ more involvement?

Newspaper

↳ diff section. No one looks @ public

↳ as public gets educated → living d

Emails / Electronic

New Settlement

New Town

→ RV

"Preferred" = "Recommended"

# Core Transition

④ → OK w/  
AMMendment.

suggest of  
discuss

## Manufacturing

-for  
ATC

## OLD TOWN

CBD 1 - 3 } Recom.  
CBD 2 - 3 } Recom.

\* Concern  
for listing of

- ① Recommended
- ② NOT Recom
- ③ Conditional

TOO Constructive for  
Business - NOT  
"friendly" for  
development - eg. banks

---

NOT enough info  
you CC + M - what  
business is allowed

---

DO NOT restrict  
any Business in  
any area

Residential 1/2 } OK  
R 3/3 } OK  
CC - } Condition  
NC - } OK



# Old Town

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CBD-1 Cond ✓

CBD-2 Cond ✓

Neighborhood Comm - 1

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## Changes

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Old Town - R-3-1 Cond.

R-3-2 ~~not~~ not ✓

R-3-3 ~~not~~

---

Historical Core Area - Agree ✓

Regional Node - Agree ✓

Super Regional Node -

R/S - Recommended

Entertainment - Recommended

Local Node - Agree ✓

New Settlement - Agree

Cove Area - Agree

Midtown -

Neighborhood Comm - Recom.

Community Comm - Conditional



New Town -

RV - not recommended



Focused on Old Town - South

Historic Core →

Diff CC? RS

→ not sure which is approp

→ hours of operation, masonry

→ lack of flexibility (log house)

Local Nodes

Diff in size? use mix

CC? RS

→ still unsure of approp

Mid Town

CC Conditional → should be not r

RS more restrictive on hours → <sup>should be</sup> condit

New Settlement

RV Park - not recommended → <sup>should</sup> be Cond

↳ already one there

Old Town

CBD-1/2 → conditional ok

→ general opposition to "arms" or

MF R3-2 - <sup>should be</sup> not recommend

General

Ranch/Riparian

Sensitive? Sustainable

} Any ste  
on animals  
What are we  
talking ab  
→ what e  
→ truly s

**REGULAR MEETING OF THE  
PLANNING AND ZONING COMMISSION**

The Planning and Zoning Commission of the City of Kyle, Texas met in regular session February 26, 2013 at 6:30 p.m. at Kyle City Hall, with the following persons present:

Commissioner Cicely Kay  
Commissioner Alfred Zambrano  
Commissioner Mike Fulton  
Chairman Dan Ryan  
Vice-Chair Pat Fernandez  
Commissioner Mike Rubsam  
Commissioner Michele Christie  
Director of Planning, Sofia Nelson  
Assistant City Manager, James Earp

Lila Knight  
Tim Miller  
Scott Dye

***CALL MEETING TO ORDER***

Chairman Ryan called the meeting to order at 6:30 p.m.

***ROLL CALL OF BOARD***

Chairman Ryan called for roll call. No one was absent.

***CITIZENS COMMENTS***

Chairman Ryan opened the citizens comment period at 6:30 pm and called for comments on items not on the agenda or posted for public hearing. There were no comments. Chairman Ryan closed the citizens comment period at 6:30 pm.

***MINUTES: Planning and Zoning Commission Meeting – January 22, 2013 & February 12, 2013.***

Commissioner Rubsam moved to approve the Planning and Zoning Commission Meeting Minutes from January 22, 2013 & February 12, 2013. Commissioner Christie seconds the motion. All votes aye. Motion carried.

***COMPREHENSIVE MASTER PLAN:***

**Consider the following proposed amendments to the Comprehensive Master Plan:**

- **Recommendations for which future land use districts should allow the recently adopted Neighborhood Commercial and Community Commercial Zoning Designations as well as updates to the zoning districts recommended for each future land use district.**
- **An amendment to the future land use map to include a proposal for a new regional node within the I-35 and Center Street area.**

Chairman Ryan opened the (1<sup>st</sup> of 2) public hearings at 8:40 p.m. and called for comments for or against the proposed amendments to the Comprehensive Master Plan. There were no comments. Chairman Ryan closed the public hearing at 8:40 p.m.

**REGULAR MEETING OF THE  
PLANNING AND ZONING COMMISSION**

The Planning and Zoning Commission of the City of Kyle, Texas met in regular session March 26, 2013 at 6:30 p.m. at Kyle City Hall, with the following persons present:

Commissioner Cicely Kay  
Commissioner Alfred Zambrano  
Commissioner Mike Fulton  
Chairman Dan Ryan  
Commissioner Michele Christie  
Director of Planning, Sofia Nelson

Lila Knight  
Tim Miller

***CALL MEETING TO ORDER***

Chairman Ryan called the meeting to order at 6:30 p.m.

***ROLL CALL OF BOARD***

Chairman Ryan called for roll call. Commissioners Fernandez and Rubsam were absent. Commissioner Zambrano was absent from Roll Call.

***CITIZENS COMMENTS***

Chairman Ryan opened the citizens comment period at 6:30 pm and called for comments on items not on the agenda or posted for public hearing. There were no comments. Chairman Ryan closed the citizens comment period at 6:31 pm.

***COMPREHENSIVE MASTER PLAN:***

**Consider the following proposed amendments to the Comprehensive Master Plan:**

- **Recommendations for which future land use districts should allow the recently adopted Neighborhood Commercial and Community Commercial Zoning Designations as well as updates to the zoning districts recommended for each future land use district.**
- **An amendment to the future land use map to include a proposal for a new regional node within the I-35 and Center Street area.**

Chairman Ryan opened the (2nd of 2) public hearings at 6:39 p.m. and called for comments for or against the proposed amendments to the Comprehensive Master Plan. Lila Knight addressed the Commission stating that she believes that Retail Services as Conditional is perfect for the New Settlement area. Tim Miller addressed the Commission stating his concerns with future development for Opal Lane. Mr. Miller also stated that he would like to see round-abouts on Opal Lane. Chairman Ryan closed the public hearing at 6:43 p.m.

Commissioner Zambrano arrived at 6:43 p.m.

Commissioner Kay moved to approve with the conditions that the proposed amendments to the Comprehensive Plan presented by the Long Range Planning Committee as well as Commissioner Kay's additional comments discussed including instead of RS not being recommended for New Settlement and being conditional also, for the amendment to include a new regional node within the I-35 and Center Street area. Commissioner Fulton seconds the motion. Commissioners Kay, Zambrano, Fulton, and Christie vote aye. Chairman Ryan votes nay. Motion carried.

The City Council of the City of Kyle, Texas met in Regular Session on April 2, 2013 at 7:00 pm at Kyle City Hall, with the following persons present:

Mayor Lucy Johnson  
 Mayor Pro Tem Diane Hervol  
 Council Member Samantha LeMense  
 Council Member Becky Selbera  
 Council Member David Wilson  
 Lanny Lambert, City Manager  
 James Earp, Assistant City Manager  
 Jerry Hendrix, Director of Communications  
 Perwez Moheet, Finance Director  
 Sandra Duran, HR Director  
 Diana Blank, Director of Economic Development  
 Steven Wadacki, City Engineer  
 Sofia Nelson, Director of Planning  
 Mark Shellard, IT Director  
 Jeff Barnett, Police Chief  
 Frank Garza, City Attorney

#### CALL MEETING TO ORDER

Mayor Johnson called the meeting to order at 7:01 P.M.

*(First Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE PLAN APPLICATION CHARTS AS FOLLOWS: AMENDED THE LOCAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED, AND IDENTIFY RETAIL SERVICES (RS) AS NOT RECOMMENDED; AMENDED THE REGIONAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED; AMENDED THE SUPER-REGIONAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS CITY COUNCIL REGULAR MEETING

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CONDITIONAL, CENTRAL BUSINESS DISTRICT 1(CBD-1) AND CENTRAL BUSINESS DISTRICT 2(CBD-2) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE RIPARIAN LANDSCAPE FUTURE LAND USE DESIGNATION TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), AND RETAIL SERVICES ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE FARM LANDSCAPE FUTURE LAND USE DISTRICT TO IDENTIFY THE

NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE RANCH LANDSCAPE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE OLD TOWN FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AS NOT RECOMMENDED, CBD-1 AND CBD-2 AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS RECOMMENDED, SINGLE FAMILY RESIDENTIAL 2(R-1-2) AS RECOMMENDED, APARTMENTS RESIDENTIAL (R-3-3) TO NOT RECOMMENDED; AMENDED THE CORE AREA TRANSITION FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED, RETAIL SERVICES (RS) AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 2 (R-1-2) AS CONDITIONAL; AMENDED THE HISTORIC CORE AREA TRANSITION FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL AND COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) DISTRICTS AS NOT RECOMMENDED; AMENDED THE MID-TOWN COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS CONDITIONAL, RETAIL SERVICES (RS) DISTRICTS AS NOT RECOMMENDED, AND SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS RECOMMENDED; AMENDED THE NEW SETTLEMENT COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) DISTRICT AS RECOMMENDED AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS CONDITIONAL, APARTMENTS RESIDENTIAL (R-3-3), MANUFACTURED HOME SUBDIVISION (M-2) AND MANUFACTURED HOME PARK (M-3) AS CONDITIONAL ZONING DESIGNATIONS; AMENDED THE NEW TOWN COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS RECOMMENDED AND RECREATIONAL VEHICLE (RV) ZONING DESIGNATION AS CONDITIONAL; AMENDED THE EMPLOYMENT COMMUNITY FUTURE LAND

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USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS RECOMMENDED, HOSPITAL SERVICES (HS) AS CONDITIONAL AND ENTERTAINMENT (E) AS CONDITIONAL; AMENDED THE SENSITIVE/ SUSTAINABLE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS RECOMMENDED AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICT AS NOT RECOMMENDED, IDENTIFY CONSTRUCTION MANUFACTURING (CM), RETAIL SERVICES (RS), ENTERTAINMENT (E) AND WAREHOUSE (W) AS NOT



RECOMMENDED; AMENDED THE HERITAGE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS RECOMMENDED AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICT AS CONDITIONAL ( AS SHOWN ON EXHIBIT A) PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS ~ *Sofia Nelson, Director of Planning*

## PUBLIC HEARING

Mayor Johnson opened the Public Hearing at 7:22 PM. With no one wishing to speak Mayor Johnson closed the Public Hearing at 7:22 P M.

Council Member LeMense moves to approve (*First Reading*) An Ordinance of the City of Kyle, Texas, amending the Comprehensive Plan Application Charts as follows: Amended the Local Node Future Land Use District to identify the Neighborhood Commercial (NC) and Community Commercial (CC), Zoning Districts as recommended, and identify Retail Services (RS) as not recommended; Amended the Regional Node Future Land Use District to identify the Neighborhood Commercial (NC), Community Commercial (CC), Zoning Districts as recommended; Amended the Super-Regional Node Future Land Use District to identify the Neighborhood Commercial (NC), Community Commercial (CC), Zoning Districts as Conditional, Central Business District 1(CBD-1) and Central Business District 2(CBD-2) Zoning Districts as not recommended; Amended the Riparian Landscape Future Land Use designation to identify the Neighborhood Commercial (NC), Community Commercial (CC), and Retail Services Zoning Districts as not recommended; Amended the Farm Landscape Future Land Use District to identify the Neighborhood Commercial (NC) Zoning District as conditional, Community Commercial (CC) and Retail Services (RS) Zoning Districts as not recommended; Amended the Ranch Landscape Future Land Use District to identify the Neighborhood Commercial (NC) Zoning District as conditional, Community Commercial (CC) and Retail Services (RS) Zoning Districts as not recommended; Amended the Old Town Future Land Use District to identify the Neighborhood Commercial (NC) Zoning District as conditional, Community Commercial (CC) as not recommended, CBD-1 and CBD-2 as conditional, Single Family Residential 1 (R-1-1) as recommended, Single Family Residential 2(R-1-2) as recommended, Apartments Residential (R-3-3) to not recommended; Amended the Core Area Transition Future Land Use District to identify

## CITY COUNCIL REGULAR MEETING

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the Neighborhood Commercial (NC) and Community Commercial (CC), Zoning Districts as recommended, Retail Services (RS) as conditional, Single Family Residential 1 (r-1-1) as conditional, Single Family Residential 2 (R-1-2) as conditional; Amended the Historic Core Area Transition Future Land Use District to identify the Neighborhood Commercial (NC) Zoning District as conditional and Community Commercial (CC) and Retail Services (RS) Districts as not recommended; Amended the Mid-Town Community Future Land Use District to identify the Neighborhood Commercial (NC) and Community Commercial (CC) Zoning Districts as Conditional, Retail Services (RS) Districts as not recommended, and Single Family Residential 1

(R-1-1) as recommended; Amended the New Settlement Community Future Land Use District to identify the Neighborhood Commercial (NC) District as recommended and Community Commercial (CC) Zoning Districts as conditional, Apartments Residential (R-3-3), Manufactured Home Subdivision (M-2) and Manufactured Home Park (M-3) as conditional zoning designations; Amended the New Town Community Future Land Use District to identify the Neighborhood Commercial (NC) and Community Commercial (CC) Zoning Districts as recommended and Recreational Vehicle (RV) zoning designation as conditional; Amended the Employment Community Future Land Use District to identify the Neighborhood Commercial (NC) and Community Commercial (CC) zoning districts as recommended, Hospital Services (HS) as conditional and Entertainment (E) as conditional; Amended the Sensitive/ Sustainable Future Land Use District to identify the Neighborhood Commercial (NC) zoning district as recommended and Community Commercial (CC) zoning district as not recommended, Identify Construction Manufacturing (CM), Retail Services (RS), Entertainment (E) and Warehouse (W) as not recommended; Amended the Heritage Future Land Use District to identify the Neighborhood Commercial (NC) zoning district as recommended and Community Commercial (CC) zoning district as conditional ( as shown on exhibit a) providing for the amendment of the plan; providing for related matters. There is no second. Motion fails.

Mayor Johnson moves to approve with the following amendments. In the New Settlement District M3 Manufactured Home Park be considered not recommended and Old Town District CBD1 kept as recommended. Council Member Selbera seconds the motion.

Mayor Johnson amends her motion to make CBD1 in Old Town District Conditional and Neighborhood Commercial recommended. Council Member Selbera agrees to amendment. All aye. Motion carried.

## REGULAR CITY COUNCIL MEETING

The City Council of the City of Kyle, Texas met in Regular Session on April 16, 2013 at 7:00 pm at Kyle City Hall, with the following persons present:

Mayor Lucy Johnson	Simone Schrott
Mayor Pro Tem Diane Hervol	Ed Winn
Council Member Samantha LeMense	Angie Chapa
Council Member Becky Selbera	Paula Perez
Council Member Ray Bryant	Carol Whisenant
Council Member Brad Pickett	David Aston
Council Member David Wilson	Tim Miller
Lanny Lambert, City Manager	Jacqueline Whisenant
James Earp, Assistant City Manager	Cindy Crossett
Jerry Hendrix, Director of Communications	John Macuich
Perwez Moheet, Finance Director	Roger Faulk
Diana Blank, Director of Economic Development	Gordon Wybo
Connie Brooks, Library Director	Kimberly Schofield
Sofia Nelson, Director of Planning	Fidel Alvarez
Mark Shellard, IT Director	Dan Ryan
Josh Moreno, Grant Writer	Darlene Motley
Jeff Barnett, Police Chief	James Adkins
Cody Faulk, City Attorney	Cicely Kay

### CALL MEETING TO ORDER

Mayor Johnson called the meeting to order at 7:04 P.M.

2013 minutes. Council Member LeMense seconds the motion. All aye. Motion carried.

### CITIZEN COMMENT PERIOD WITH CITY COUNCIL

Mayor Johnson opened the citizens comment period at 7:06 P.M. and called for comments on items not on the agenda or posted for public hearing

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Simone Schrott a resident of Silverado stated that her home backs up to a pasture and Golden Chick and she was concerned due to the weeds and brush creating a fire hazard and asked Council to look into the matter. Ed Winn stated that citizens had worked hard to create the Comprehensive Plan and that plans are meant to be changed but changes in Ordinances affect many citizens and he stated the when they considered the second reading they would go into detail to explain the changes. Angie Chapa stated she had attended an Old Town Advocate meeting to inform citizens about the candidates and the 36 million for road bonds and proposed changes to the Comprehensive Plan and stated this was the first time she had heard about these

items and asked Council to vote no to the proposed changes. Paula Perez did not approach the podium but stated from her seat that she agreed with what Angie Chapa and Ed Winn said. Carol Whisenant asked that item #11 be pulled from Consent the Ordinance regarding the updates to the Comprehensive Master Plan. She stated that as a business owner she wanted to appeal to Council's civic responsibility preserving the integrity of the business and economic growth of the downtown community by supporting the agenda as strategic planning goals published in 2007 states and that the Mayor and Council Members Selbera and Wilson needed to show their support. David Aston spoke against the possible changes to the CBD as it relates to zoning and that Kyle has changed and developed and that the changes being proposed is a step back. Tim Miller spoke on the proposed Tree Ordinance and stated that sitting in on the tree ordinance meetings ideas were changed or left out. He stated that P&Z did not recognize the importance of trees and that an advisory group was needed for the Tree Ordinance. Jacqueline Whisenant stated that she was a business owner and requested Council pull from consent the proposed changes to the Comprehensive Plan. She stated that communication with the future generation was needed to see what they wanted and that the proposed changes directly affected her and that these changes were not published in the newspaper. Cindy Crossett stated she was speaking on her behalf and the future ACC students regarding the proposed roundabout at 1626 and Collier. She stated that the proposed roundabout would increase travel time and that students would not use it properly and that a traffic light was needed. John Macuich spoke and stated that he was not happy about the roundabout because people will not know how to use it and that a traffic light was needed instead. Roger Faulk stated he was a new property owner in Kyle and that good city government concentrates on the 4 c's. Communication, consistency, confidence and community and that Item #11 violates all of these and that changing rules does not impose confidence. He stated that owners need to be notified of proposed changes and asked that Council not pass Item #11 because it was not good policy. Gordon Wybo spoke and stated that he echoed the sentiments of all prior speakers on Item #11. Planning and Zoning advised him that because it was a change to the Comprehensive Plan notices did not have to go out. He stated that by making the changes it would stifle growth and knock down small businesses. He also spoke on the Tree Ordinance and stated that that due to lack of staff the City cuts and pastes from other City's ordinances and much is taken out of context. Kimberly Schofield spoke on Item

#### CITY COUNCIL REGULAR MEETING

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#11 and stated she owned property in Kyle under CBD1 and expects to recoup her investment in CBD1. Fidel Alvarez spoke and stated that he agreed with everyone who had spoken against Item #11 and that Council needed to educate and write things where people can understand. He stated people in attendance lived along Burselson Road and wanted to know what was going on. Dan Ryan spoke and stated that Item #11 be skipped and that is was confusing. He also stated that roundabouts work if they are well designed. Darlene Motley stated she was a property owner on Center street and that she did not know what was going on. She stated she bought the property for investment and knew there was growth coming and asked if the city couldn't just grow and go forward. Mr. Alvarez asked to give Council a handout he forgot to give them and Mayor allowed him to hand it out. James Adkins spoke and stated he appreciated the Mayor's

support and supported the road bonds and thought Council was doing a great job, but information did need to get out and involve the people. Cicely Kay spoke and stated that Planning & Zoning made the recommendations to Council, there were public hearings held and no one showed up and she recommended starting the process all over again. She stated that roundabouts not good around high school and ACC and that she was proud of the work done on the Tree Ordinance. Darlene Motley spoke again and stated that CBD and CBD2 were redone and re-talked about and that she is tired of it. With no one else wishing to speak Mayor Johnson closed Citizen's Comments at 8:02 P. M.

## CONSENT AGENDA

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE PLAN APPLICATION CHARTS AS FOLLOWS: AMENDED THE LOCAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED, AND IDENTIFY RETAIL SERVICES (RS) AS NOT RECOMMENDED; AMENDED THE REGIONAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED; AMENDED THE SUPER-REGIONAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS CONDITIONAL, CENTRAL BUSINESS DISTRICT 1(CBD-1) AND CENTRAL BUSINESS DISTRICT 2(CBD-2) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE RIPARIAN LANDSCAPE FUTURE LAND USE DESIGNATION TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), AND RETAIL SERVICES ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE FARM LANDSCAPE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE CITY COUNCIL REGULAR MEETING

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RANCH LANDSCAPE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE OLD TOWN FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AS NOT RECOMMENDED, CBD-1 AND CBD-2 AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS RECOMMENDED, SINGLE FAMILY RESIDENTIAL 2(R-1-2) AS RECOMMENDED, APARTMENTS RESIDENTIAL (R-3-3) TO NOT RECOMMENDED; AMENDED THE CORE AREA TRANSITION FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED, RETAIL SERVICES (RS) AS CONDITIONAL,

SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 2 (R-1-2) AS CONDITIONAL; AMENDED THE HISTORIC CORE AREA TRANSITION FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL AND COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) DISTRICTS AS NOT RECOMMENDED; AMENDED THE MID-TOWN COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS CONDITIONAL, RETAIL SERVICES (RS) DISTRICTS AS NOT RECOMMENDED, AND SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS RECOMMENDED; AMENDED THE NEW SETTLEMENT COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) DISTRICT AS RECOMMENDED AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS CONDITIONAL, APARTMENTS RESIDENTIAL (R-3-3), MANUFACTURED HOME SUBDIVISION (M-2) AND MANUFACTURED HOME PARK (M-3) AS CONDITIONAL ZONING DESIGNATIONS; AMENDED THE NEW TOWN COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS RECOMMENDED AND RECREATIONAL VEHICLE (RV) ZONING DESIGNATION AS CONDITIONAL; AMENDED THE EMPLOYMENT COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS RECOMMENDED, HOSPITAL SERVICES (HS) AS CONDITIONAL AND ENTERTAINMENT (E) AS CONDITIONAL; AMENDED THE SENSITIVE/ SUSTAINABLE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS RECOMMENDED AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICT AS NOT RECOMMENDED, IDENTIFY CONSTRUCTION MANUFACTURING (CM), RETAIL SERVICES (RS), ENTERTAINMENT (E) AND WAREHOUSE (W) AS NOT RECOMMENDED; AMENDED THE HERITAGE

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FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS RECOMMENDED AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICT AS CONDITIONAL ( AS SHOWN ON EXHIBIT A) PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS ~ *Sofia Nelson, Director of Planning*

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE MASTER PLAN- FUTURE LAND USE PLAN TO INCLUDE A REGIONAL NODE AT THE INTERSECTION OF CENTER STREET AND I-35 (BOUNDED ON THE NORTH BY GOFORTH ROAD, ON THE SOUTH JUST SOUTH OF FM 150, ON THE EAST ON LEHMAN ROAD, AND ON THE WEST BY THE UNION PACIFIC RAILROAD TRACKS) AND AS DEPICTED IN EXHIBIT A; PROVIDING FOR THE

AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS ~ *Sofia Nelson,*  
*Director of Planning*

Mayor Pro Tem Hervol moves to Approve **Item #12** ~ (*Second Reading*) An Ordinance of the City of Kyle, Texas, Amending the Comprehensive Master Plan Future Land Use Plan to include a Regional Node at the intersection of Center Street and i-35 (bounded on the North by Goforth road, on the South just south of FM 150, on the East on Lehman Road, and on the West by the Union Pacific Railroad tracks) and as depicted in Exhibit A, Providing for the Amendment of the Plan; Providing for Related Matters; **Item #13** ~ Post Oak Subdivision Phase 5A (FP-13-005) 15.411 acres; 72 lots located off of E. RR 150 within the Post Oak Subdivision (extension of Langely, Goddard and Wallops); **Item #14** ~ Authorize Award and Execution of a Purchase Order to Sunbusters of San Marcos, Texas, in an amount not to exceed \$2,794.58 for the installation of window tint film on all exterior windows of the new Police Department Headquarters; **item #15** ~ A Resolution of the City of Kyle, Texas, Authorizing the City Manager to accept an approval letter, No. Dr-19999-020, from the Texas Department of Public Safety (TDPS); Hazard Mitigation Grant Program (HMGP), and to accept a grant award total of \$3,600, and provide \$1,200 in local, non-federal funds to purchase a two year subscription for a citizen's observer, web based alert system; and **Item #16** ~ A Resolution of the City of Kyle, Texas, Authorizing the City Manager to agree to an acceptance letter from the Texas State Library and Archives Commission; and Authorize the acceptance of a grant award up to \$7,000 through the Mobile Solutions Program, for the purchase and implementation of a library mobile app, and costs related to the Kyle, Public Library's Mobile Solutions Project. Council Member Bryant seconds the motion. All aye. Motion carried.

Mayor Johnson goes back to item #11

(*SECOND READING*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE COMPREHENSIVE PLAN APPLICATION CHARTS AS FOLLOWS: AMENDED THE LOCAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED, AND IDENTIFY RETAIL SERVICES (RS) AS NOT RECOMMENDED; AMENDED THE REGIONAL NODE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED; AMENDED THE SUPER-REGIONAL NODE FUTURE

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LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS CONDITIONAL, CENTRAL BUSINESS DISTRICT 1(CBD-1) AND CENTRAL BUSINESS DISTRICT 2(CBD-2) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE RIPARIAN LANDSCAPE FUTURE LAND USE DESIGNATION TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC), COMMUNITY COMMERCIAL (CC), AND RETAIL SERVICES ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE

FARM LANDSCAPE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) ZONING DISTRICTS AS NOT RECOMENDED; AMENDED THE RANCH LANDSCAPE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL, COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) ZONING DISTRICTS AS NOT RECOMMENDED; AMENDED THE OLD TOWN FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS RECOMMENDED, COMMUNITY COMMERCIAL (CC) AS NOT RECOMMENDED, CBD-1 AND CBD-2 AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS RECOMMENDEDED, SINGLE FAMILY RESIDENTIAL 2(R-1-2) AS RECOMMENDED, APARTMENTS RESIDENTIAL (R-3-3) TO NOT RECOMMENDED; AMENDED THE CORE AREA TRANSITION FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC), ZONING DISTRICTS AS RECOMMENDED, RETAIL SERVICES (RS) AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS CONDITIONAL, SINGLE FAMILY RESIDENTIAL 2 (R-1-2) AS CONDITIONAL; AMENDED THE HISTORIC CORE AREA TRANSITION FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS CONDITIONAL AND COMMUNITY COMMERCIAL (CC) AND RETAIL SERVICES (RS) DISTRICTS AS NOT RECOMMENDED; AMENDED THE MID-TOWN COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS CONDITIONAL, RETAIL SERVICES (RS) DISTRICTS AS NOT RECOMMENDED, AND SINGLE FAMILY RESIDENTIAL 1 (R-1-1) AS RECOMMENDED; AMENDED THE NEW SETTLEMENT COMMUNITY FUTURE

LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) DISTRICT AS RECOMMENDED AND RETAIL SERVICES (RS) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS CONDITIONAL,APARTMENTS RESIDENTIAL (R-3-3), MAUNFACTURED HOME SUBDIVISION (M-2) AS CONDITIONAL AND MANUFACTURED HOME PARK (M-3) AS NOT RECOMMENDED; AMENDED THE NEW TOWN COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD

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COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS RECOMMENDED AND RECREATIONAL VEHICLE (RV) ZONING DESIGNATION AS CONDITIONAL; AMENDED THE EMPLOYMENT COMMUNITY FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICTS AS RECOMMENDED, HOSPITAL SERVICES (HS) AS CONDITIONAL AND ENTERTAINMENT (E) AS CONDITIONAL; AMENDED THE SENSITIVE/ SUSTAINABLE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS RECOMMNEDED AND COMMUNITY COMMERCIAL (CC) ZONING



DISTRICT AS NOT RECOMMENDED, IDENTIFY CONSTRUCTION MANUFACTURING (CM), RETAIL SERVICES (RS), ENTERTAINMENT (E) AND WAREHOUSE (W) AS NOT RECOMMENDED; AMENDED THE HERITAGE FUTURE LAND USE DISTRICT TO IDENTIFY THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICT AS RECOMMENDED AND COMMUNITY COMMERCIAL (CC) ZONING DISTRICT AS CONDITIONAL ( AS SHOWN ON EXHIBIT A) PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS ~ *SOFIA NELSON, DIRECTOR OF PLANNING*

Council Member Pickett moves to table Item # 11 and instruct city staff to schedule a public meeting within the next 30 days with an announcement in the newspaper with a minimum of 2 weeks ahead of time with city staff attending, City Council, Planning and Zoning and the public invited. Council Member Selbera seconds the motion. Council Member Wilson offers an amendment to give them an opportunity with all the people that have attended tonight to go through the Planning and Zoning process, give another shot with input as has been provided tonight and suggested by Cicely Kay. Mayor Johnson clarifies that the amendment was to direct P&Z reconsider the ordinance. Council Member Pickett and Council Member Selbera agree to the amendment. Mayor Pro Tem amends the motion directing Long Range Planning Committee to reconsider the ordinance and to attend the meetings if possible. Council Member Pickett and Council Member Selbera agree to the amendment. Council Member LeMense offers an amendment to have 3 joint meetings of P&Z, Council and Long Range Planning Committee. Council Member Pickett clarifies his motion stating that the public meeting intent was not specific but that he would be now and that is for all groups to meet each time and be an interactive discussion, everyone in one room and each citizen can walk up to whomever they would like to and discuss whatever issue they would like to. We could have a formal presentation at the beginning but would like for there to be one on one discussion and that this is his main purpose of the public meeting and amends his motion to include 2 meetings with one on each side of town. Council Member LeMense said she was fine with that. All aye. Motion carried.



# CITY OF KYLE, TEXAS

## Professional Services Agreement - LAN

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$1,001,269.26 WITH LOCKWOOD, ANDREWS, & NEWNAM, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO GOFORTH ROAD (IH-35 TO BUNTON CREEK ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

**Other Information:**

**Budget Information:** A Fiscal Note is attached.

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

**Attachments / click to download**

- [Fiscal Note](#)
- [Memo-Renegotiated Road Bond Projects](#)
- [Mar 18 Agenda - LAN K](#)
- [Mar 18 Agenda - RESOL - LAN](#)
- [LAN-Scope of Work & Schedule-Goforth](#)

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$1,001,269.26 WITH LOCKWOOD, ANDREWS, & NEWNAM, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO GOFORTH ROAD (IH-35 TO BUNTON CREEK ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

WHEREAS, the City of Kyle requested qualifications from professional engineering firms to provide design services for certain street and road improvements; and,

WHEREAS, the City desires to obtain design services from Lockwood, Andrews & Newnam, Inc., for street improvements related to Goforth Road (IH-35 to Bunton Creek Road);

WHEREAS, Lockwood, Andrews & Newnam, Inc., is qualified and capable of performing the professional engineering design services proposed herein and is willing to enter into an Agreement with the City of Kyle to perform such services; and,

WHEREAS, an agreement that defines the scope of services and fees has been negotiated between Lockwood, Andrews & Newnam, Inc., and the City of Kyle and is attached hereto as EXHIBIT "A" and incorporated by reference herein.

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

Section 1. Findings. The hereinabove 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. Authorization. The city manager is hereby authorized to execute a professional services agreement in an amount not to exceed \$1,001,269.26 with Lockwood, Andrews & Newnam, Inc., of Houston, Texas, for design services for street improvements related to Goforth Road (IH-35 to Bunton Creek Road), attached as Exhibit "A" hereto.

Section 3. 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, Texas.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution was 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.

PASSED AND APPROVED this \_\_\_\_\_ day of March, 2014.

THE CITY OF KYLE, TEXAS

ATTEST:

\_\_\_\_\_  
Lucy Johnson, Mayor

\_\_\_\_\_  
Amelia Sanchez, City Secretary

**EXHIBIT "A"**  
**PROFESSIONAL SERVICES AGREEMENT**

**[SEE ATTACHED]**

**CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES  
FOR GOFORTH ROAD IMPROVEMENTS**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF HAYS**         §

THIS IS AN AGREEMENT by and between the CITY OF KYLE, Texas, a Texas home rule City (hereinafter called "CITY"), acting through its duly authorized agent, Lanny S. Lambert, City Manager, and LOCKWOOD, ANDREWS & NEWNAM, INC. (hereinafter called DESIGN PROFESSIONAL") for engineering design professional services (hereinafter called "the Agreement")

WHEREAS, the CITY desires to obtain DESIGN PROFESSIONAL's services for street improvements related to Goforth Road (Interstate Highway 35 to Bunton Creek Road), hereinafter called the "PROJECT";

WHEREAS, the CITY desires to obtain professional engineering design services in connection with the PROJECT; and

WHEREAS, the DESIGN PROFESSIONAL is qualified and capable of performing the professional engineering design services proposed herein, which are acceptable to the CITY, and is willing to enter into an Agreement with the CITY to perform such services.

NOW, THEREFORE, the parties hereto do mutually CONTRACT and AGREE as follows:

**ARTICLE 1  
SERVICES TO BE PROVIDED**

**1.1** The CITY agrees to retain the DESIGN PROFESSIONAL, and the DESIGN PROFESSIONAL agrees to perform professional services for the PROJECT as an independent contractor and professional consultant as set forth in the sections following; and CITY agrees to pay, and the DESIGN PROFESSIONAL agrees to accept fees as specified in the sections following as full and final compensation for the work accomplished.

**1.2** The DESIGN PROFESSIONAL shall provide its services in accordance with the normal degree of care and skill of other reputable Engineers providing similar services on similar projects of like size and nature at the same time and in the same locale as this PROJECT. No other guarantee or warranty of any kind, unless expressed or implied at common law or created by statute, is extended, made, or intended by the rendition of DESIGN PROFESSIONAL's services.

## ARTICLE 2 SCOPE OF WORK

The DESIGN PROFESSIONAL agrees to provide all services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this contract Agreement.

## ARTICLE 3 PROJECT SCHEDULE

The DESIGN PROFESSIONAL agrees to perform the Engineer’s Scope of Work in accordance with the **Exhibit “B” – Project Schedule** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes.

## ARTICLE 4 COMPENSATION

### 4.1 DEFINITION OF COMPENSATION TERMS

**4.1.1 Hourly Rates (HR)** - Hourly rates is the cost of salaries of DESIGN PROFESSIONALS (Technicians, drafters, stenographers, surveyors, clerks, laborers, etc.), fringe benefits (social security contributions, unemployment excise and payroll taxes, employment compensation insurance, medical and other insurance benefits, sick leave, vacation, holiday pay, contributions to a pension or retirement plan), overhead and profit for time directly chargeable to the PROJECT. Hourly rates for Basic and Additional Services for this PROJECT will not exceed those listed in **Exhibit “C” Summary of Compensation** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes. DESIGN PROFESSIONAL shall provide documentation of said hourly rates upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said hourly rates not customarily or ordinarily attributable to “Hourly Rates” The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.2 Direct Non-Labor Expenses (DNLE)**- Direct non-labor expenses are defined as all non-labor expenses incurred by the DESIGN PROFESSIONAL which are directly chargeable to the PROJECT, which is defined as expenses for supplies, transportation, equipment, travel, communications, subsistence and lodging, field office expenses, reproductions, and similar incidentals. DESIGN PROFESSIONAL shall provide documentation of said expenses upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said expenses not customarily or ordinarily attributable to DNLE or which are in excess in an amount which are not customarily or ordinarily attributable to DNLE. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1)

time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.3 Lump Sum (LS)** - The CITY shall pay the DESIGN PROFESSIONAL a Lump Sum amount for the specified category of services. The “Lump Sum” is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and DNLE. The portion of the Lump Sum amount billed for the DESIGN PROFESSIONAL'S services shall be based upon DESIGN PROFESSIONAL'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. The CITY has the option of agreeing to this amount before making Lump Sum payment to the DESIGN PROFESSIONAL.

**4.1.4 Unit Price (UP)** - The CITY shall pay the DESIGN PROFESSIONAL an amount equal to the Unit Price times the actual quantity of unit(s) for the specified category of services. The amount equal to the Unit Price is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and Reimbursable Expenses. The portion of the amount billed for Engineer's services shall be based upon Engineer's estimate of the proportion of the Unit Price for services actually completed during the billing period to the Unit Price. The CITY has the option of agreeing to this amount before making Unit Price payments to the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

## 4.2 PAYMENT FOR SERVICES

Based upon applications for payment submitted by the DESIGN PROFESSIONAL and approved by the CITY, the CITY will make progress payments as scheduled hereafter for services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this Agreement and incorporated herein by reference. The application for payment will be computed on the basis of hourly rates, direct non-labor expenses, lump sum and unit price work items shown in **Exhibit “C” - Summary of Compensation**. The DESIGN PROFESSIONAL will be paid a TOTAL amount not to exceed **\$1,001,269.26** for design and construction phase services. Partial payments will be made upon presentation of statements to CITY in the manner otherwise set forth in this Agreement.

## 4.3 PAYMENT FOR ADDITIONAL SERVICES

**4.3.1** As determined by the DESIGN PROFESSIONAL or the CITY or both parties, when the need for additional services arises, the scope of work, compensation terms and total compensation will be negotiated between the CITY and DESIGN PROFESSIONAL before said additional work shall begin. In the event said additional work is begun before the CITY gives its prior written approval, the CITY has the option to ratify its approval of said additional work. Payment for additional services will be computed on the basis of hourly rates,

direct non-labor expenses, lump sum and/or unit prices for additional work. For the services of personnel described in this section, the DESIGN PROFESSIONAL will be compensated in accordance with the schedule for various employees of the DESIGN PROFESSIONAL as set forth in **Exhibit “C” – Summary of Compensation.**

**4.3.2** Payment for Additional Services will be made in the manner otherwise set forth in this Agreement, based upon presentation of invoices, statements and billings to the CITY sufficient to show the work accomplished. Under no conditions will any additional services be paid for until the DESIGN PROFESSIONAL has received written authorization from the CITY for such work.

#### **4.4 ADDITIONAL COPIES OF PRINTED DOCUMENTS**

Additional copies, above the number due as part of the basic services outlined in Article 2, of reproduced plans, specifications, maps and exhibits will be available to the CITY at actual invoice cost to the DESIGN PROFESSIONAL.

### **ARTICLE 5 SERVICES BY THE CITY**

**5.1** In general, the CITY will render services as follows:

- 5.1.1** Provide available criteria and full information as to the CITY’s requirements for the PROJECT.
- 5.1.2** Assist the DESIGN PROFESSIONAL by placing at his disposal all available written data pertinent to previous operations, reports, and any other data affecting the design and/or construction of the PROJECT.
- 5.1.3** Acquire all land and rights-of-way required for the PROJECT and any related off-site work, including rights of ingress and egress on private property.
- 5.1.4** Respond in writing no later than thirty (30) calendar days to requests by the DESIGN PROFESSIONAL for authorization to proceed with specific activities deemed desirable.
- 5.1.5** No later than thirty (30) calendar days from the date of submittal, examine documents submitted by the DESIGN PROFESSIONAL and render decisions pertaining thereto in order to avoid delay in the progress of the DESIGN PROFESSIONAL’s services.
- 5.1.6** Timely provide to DESIGN PROFESSIONAL information that is required or necessary for the orderly progress of the work.



**5.2** The DESIGN PROFESSIONAL will be entitled to rely upon the CITY's engineer regarding decisions made by the CITY pertaining to this PROJECT and rely upon the accuracy and completeness of all information and data provided by or through the CITY or its Engineer; further, all notices or information will be deemed made when conveyed in writing to the DESIGN PROFESSIONAL.

**5.3** The services, information and reports required above will be furnished at the CITY's expense.

## **ARTICLE 6 PROJECT DOCUMENTS**

All documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed, with the exception of those standard details and specifications regularly used by the DESIGN PROFESSIONAL in its normal course of business, will upon payment of all amounts rightfully owed by the CITY to the DESIGN PROFESSIONAL herein be the property of the CITY. The latest version of all documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed will be available to the CITY no later than thirty (30) calendar days from the date the CITY makes a verbal or written request to DESIGN PROFESSIONAL. DESIGN PROFESSIONAL, its subcontractors, agents and employees will be liable to the CITY for any loss or damage to any such documents while they are in the possession of or while being worked upon by the DESIGN PROFESSIONAL or anyone connected with him. All documents so lost or damaged will be replaced or restored by DESIGN PROFESSIONAL without cost to the CITY. Any reuse or modification of such Documents for purposes other than those intended by the DESIGN PROFESSIONAL shall be at the CITY's sole risk and without liability to the DESIGN PROFESSIONAL unless said unintended reuse or modification occurs as a result of DESIGN PROFESSIONAL'S negligence, malfeasance, or willful misconduct. Upon completion of the PROJECT, all documents shall be transferred to the CITY. DESIGN PROFESSIONAL shall not be required to maintain the records but may do so in accordance with its Document Retention Policy.

## **ARTICLE 7 NOTICE TO PROCEED; SCHEDULING OF WORK**

It is understood and agreed that the DESIGN PROFESSIONAL will work as an Independent Contractor by the CITY, will have ultimate control of the services to be rendered except as otherwise provided in this Agreement or in the event said control shall be in violation of this Agreement, and that no work will be done under this Agreement until the DESIGN PROFESSIONAL is instructed in writing to proceed with the work. In the event the DESIGN PROFESSIONAL does work before it is instructed in writing to proceed, the CITY shall not be obligated or in any way liable for payment of compensation or other reimbursements to the DESIGN PROFESSIONAL.

## **ARTICLE 8 ASSIGNMENT**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party will assign, sublet nor transfer any interest in this Agreement without the written authorization of the other.

## **ARTICLE 9 TERMINATION**

**9.1** In connection with the work outlined in this contract, it is agreed and fully understood by the DESIGN PROFESSIONAL that the CITY may cancel or indefinitely suspend further work hereunder or terminate this Agreement upon fifteen (15) days written notice to the DESIGN PROFESSIONAL with the understanding that immediately upon receipt of said notice all work and labor being performed under this contact will cease. As a condition precedent for termination for cause, the DESIGN PROFESSIONAL shall have the 15 day notice period to cure such cause and shall have failed to so cure. Before the end of such fifteen (15) day period DESIGN PROFESSIONAL will invoice CITY for all work completed satisfactorily to the CITY and will be compensated in accordance with the terms of this Agreement. All drawings, field surveys, maps, estimates, investigation, studies, and other data work related to the PROJECT will become the property of the CITY upon termination of the Agreement.

**9.2** Nothing contained in paragraph 9.1 above will require the CITY to pay for any work which fails to meet the Standard of Care. The CITY will not be required to make any payments to the DESIGN PROFESSIONAL when the DESIGN PROFESSIONAL is in default under this Agreement. The CITY and the DESIGN PROFESSIONAL retain their respective rights and remedies under law and this Agreement does not, nor shall be interpreted, to waive or otherwise modify said rights.

**9.3** The DESIGN PROFESSIONAL understands and agrees that time is of the essence and that any failure of the DESIGN PROFESSIONAL to complete its services within the time limit established herein solely due to the fault of the DESIGN PROFESSIONAL will constitute a material breach of this Agreement. However, it is agreed that DESIGN PROFESSIONAL must use sound professional practices. The DESIGN PROFESSIONAL will be fully responsible for any delays or for failures to use its professional efforts in developing contractual documents in accordance with the terms of this Agreement. Where damage is caused to the CITY due to the DESIGN PROFESSIONAL's failure to perform in this manner, as determined by the governing body of the CITY, the CITY may withhold all or any portion of the DESIGN PROFESSIONAL's payments hereunder without waiver of any of either PARTY's additional legal rights or remedies.

**9.4** The DESIGN PROFESSIONAL will have the right to terminate this Agreement, on fifteen (15) days written notice to the CITY should the CITY fail to perform its

obligation herein to the satisfaction of the DESIGN PROFESSIONAL. In the event of termination, the DESIGN PROFESSIONAL will be paid for all services rendered to date of termination. Nothing contained herein will constitute a waiver of DESIGN PROFESSIONAL's right to bring a suit for damages or to enforce specific performances of this Agreement under these circumstances. In the event of termination hereunder, DESIGN PROFESSIONAL will invoice CITY for all work satisfactorily completed up to the date of this notice of termination and will be compensated in accordance with the terms of Agreement.

**9.5** Notwithstanding anything contained herein to the contrary, the CITY will have the right to withdraw from this Agreement on the last day of CITY's current fiscal year in the event of non-appropriation of funds by its governing body, and providing ten (10) days written notice from CITY to DESIGN PROFESSIONAL.

#### **ARTICLE 10 VENUE**

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement will lie exclusively in a court of competent jurisdiction Hays County, Texas, and such court will interpret this Agreement in accordance with the laws of the State of Texas.

#### **ARTICLE 11 ENTIRE AGREEMENT**

This instrument represents the entire understanding between the CITY and the DESIGN PROFESSIONAL in respect to the PROJECT and may only be modified in writing signed by both parties.

#### **ARTICLE 12 SEVERABILITY**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

**ARTICLE 13**  
**RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

**13.1** Approval by the CITY will not constitute nor be deemed a release of the responsibility and liability of the DESIGN PROFESSIONAL, its employees, subcontractors, agents and consultants for the accuracy and competency of their designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for the DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents prepared by the DESIGN PROFESSIONAL, his employees, subcontractors, agents and consultants.

**13.2** The CITY agrees the DESIGN PROFESSIONAL is not responsible for damages arising from any circumstances beyond the DESIGN PROFESSIONAL's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; failure of any governmental agency to act in a timely manner; failure of performance by the CITY or the CITY's other subcontractors or consultants; or discovery of any hazardous substances or differing and unforeseeable site conditions.

**ARTICLE 14**  
**INDEMNIFICATION**

The DESIGN PROFESSIONAL will indemnify and hold the CITY and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expense, including costs of court, reasonable attorneys' fees, expert witnesses' and consultants' fees, on account of damage to property and injuries, including death, to all persons, whether caused by DESIGN PROFESSIONAL or its officers, agents, employees, subcontractors, licensees, or invitees to the extent caused by any act of negligence or intentionally wrongful act or material breach of any obligation under this Agreement, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them, or any of them in connection herewith resulting from such act of negligence or intentional act or breach for which DESIGN PROFESSIONAL is found to be legally liable.

In no event shall either PARTY be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

The indemnity obligations herein shall survive the termination of the contract for any reason and shall survive the completion of the work on the PROJECT.

It is understood and agreed that the indemnity and defense obligations contained and described herein shall be interpreted in accordance with Texas law current as of the date of this Agreement and that any indemnity or defense obligation, if at all, shall be claimed, interpreted and enforced on a comparative basis of fault and responsibility. Neither Party to this Agreement will allege, claim, file suit or otherwise demand that the other Party provide any indemnity or defense as such may relate to the negligent acts, errors or omissions of the claiming Party.

## **ARTICLE 15 INSURANCE**

The DESIGN PROFESSIONAL will maintain at all times professional liability or errors and omissions insurance covering any claim hereunder occasioned by DESIGN PROFESSIONAL's negligent act, or error or omission in an amount of not less than \$250,000 per claim and \$500,000 annual aggregate. DESIGN PROFESSIONAL agrees to maintain professional liability insurance during the term of this agreement and, if the policy is on a claims made basis, for a period of not less than five (5) years after the Project is complete and provide proof of such continuing coverage providing such coverage is readily available and financially feasible. DESIGN PROFESSIONAL further agrees to provide proof of coverage as needed for prior acts back to the date of execution of this agreement if DESIGN PROFESSIONAL changes insurance carriers during this extended indemnity period.

DESIGN PROFESSIONAL will further maintain general commercial liability coverage with minimum limits for damages resulting from bodily injury or death of \$250,000 per person and \$500,000 per occurrence, and \$100,000 per occurrence for property damage, or single limit of \$500,000.

DESIGN PROFESSIONAL further agrees that with respect to the above required liability insurance, the CITY will:

1. Be named as additional insured for general liability insurance.
2. Be provided with a waiver of subrogation, in favor of CITY.
3. Be provided with thirty (30) days advance written notice of cancellation, or nonrenewal (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate).
4. Upon execution of this Agreement by DESIGN PROFESSIONAL, be provided through the office of the City Clerk with either their original Certificate of Insurance or their insurance policy evidencing the above limits and requirements and subject to approval by the City Attorney.

The insurance requirements set out in this section are independent from all other obligations of DESIGN PROFESSIONAL under this Agreement and apply whether or not required by any other provision of this Agreement.

## **ARTICLE 16 COMPLIANCE WITH LAWS**

The DESIGN PROFESSIONAL, its consultants, agents and employees and subcontractors, will comply with all applicable federal and state laws, the Charter and Code of Ordinances of the City of Kyle, and all other applicable rules and regulations promoted by all local, state and national boards, bureaus and agencies.

## **ARTICLE 17 NOTICES**

This contract will be administered on the CITY's behalf by the City Engineer. All notices, documentation, or questions arising under this Agreement should be addressed to the CITY's Engineer at:

City Manager  
Kyle City Hall  
100 W. Center Street  
Kyle, Texas 78640

All written notices from CITY to DESIGN PROFESSIONAL will be addressed to the DESIGN PROFESSIONAL as follows:

Lockwood, Andrews & Newnam, Inc.  
Attn: Mr. Robert D. Austin, P.E.  
10101 Reunion Place, Suite 200  
San Antonio, TX 78216

## **ARTICLE 18 CAPTIONS**

The captions of this Agreement are for information purposes only and will not in any way affect the substantive terms and conditions of this Agreement.

## **ARTICLE 19 MEDIATION**

In the event a dispute arises between the CITY and the DESIGN PROFESSIONAL in the application or interpretation of this Agreement, or one or more of its provisions, the parties may mutually agree to take such dispute to a mediator mutually agreed upon by both parties to this Agreement for resolution. Neither party is bound to the mediator's decision.

**ARTICLE 20  
EXECUTION AND EFFECTIVE DATE OF AGREEMENT**

The execution of this Agreement shall proceed as follows: signature of the DESIGN PROFESSIONAL shall be affixed hereto, whereupon the Agreement shall be submitted to the City Attorney for review, and then to the City Council for final review and approval. After such approval from the City Council, the Agreement shall then be signed by the City Manager. This Agreement will become effective immediately upon the signature of both parties. An executed original of this Agreement shall be kept on file in the City Clerk’s office.

**IN WITNESS WHEREOF**, the City of Kyle, Texas has caused these presents to be executed by its City Manager and attested by its City Clerk and executed by \_\_\_\_\_ on behalf of \_\_\_\_\_.

**THE CITY OF KYLE, TEXAS**

**DESIGN PROFESSIONAL:  
LOCKWOOD, ANDREWS &  
NEWNAM, INC.**

\_\_\_\_\_  
Lanny S. Lambert, City Manager

\_\_\_\_\_  
Robert D. Austin, P.E., Team Leader

**ATTEST:**

\_\_\_\_\_  
Amelia Sanchez, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
W. Ken Johnson, City Attorney

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**       §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014,  
by Lanny S. Lambert, City Manager of the City of Kyle, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

Notary Public, State of Texas

**CORPORATE ACKNOWLEDGEMENT**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**       §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014, by  
LOCKWOOD, ANDREWS & NEWNAM, INC., a Texas corporation, on behalf of such  
corporation.

\_\_\_\_\_  
Notary Public, State of Texas



**Exhibit "A"**  
**Scope of Work**

## Exhibit "A" – Engineer's Scope of Services

### Goforth Road Widening and Reconstruction

#### Services to be provided by the LAN Team

##### Project Description

The work to be performed by the LAN Team under this contract will consist of developing a schematic layout, preparing environmental documents, preparing right of way acquisition documents (metes and bounds and parcel plats), and developing plans, specifications and estimates (PS&E) for the Goforth Road project in Kyle, Texas. The facility is proposed to include a combination of 4-lane (2-lanes each way) and 3-lane (1-lane each way with a continuous left turn lane), a curb and gutter typical section, a bridge at Plum Creek, drainage improvements and a sidewalk along at least one side. Finally, it will provide utility adjustment plans, joint-bidding for several utilities and include surveying, SUE, geo-technical, bidding and construction phase services as described within this Scope of Services.

##### Limits:

From: IH 35 Northbound Frontage Road

To: Bunton Creek Rd. intersection

Project Length: 1.2 miles

##### General Requirements:

**Plans** — This project will be developed using English units of measure and all final plan sheets will be 11"x17" except where a different size is specified. Whenever possible, CITY or TxDOT standard drawings, standard specifications, or previously approved special provisions and/or special specifications will be used. A TxDOT Standard will be used if no CITY of Kyle Standard exists for the work needed. The plans will be developed using MicroStation V8 and the design speed will be 45 mph. The posted speed will be provided by the City of Kyle.

**Design Criteria** — The ENGINEER will prepare all work in accordance with the TxDOT Roadway Design Manual, May 2010 version, and the AASHTO Green Book (A Policy on Geometric Design of Highways and Streets, 6th Edition), including its references to other manuals, guidelines, etc.

##### Base Scope of Services

The base Scope of Services to be provided by the LAN Team is organized by TxDOT function codes below in the event that federal funding is provided for the project.



## Exhibit "A" – Engineer's Scope of Services

### Preliminary Design Phase

#### Function Code 110 - Route and Design Studies

##### 110.2 Traffic Analysis and Study

1. Data Collection. Per CITY direction, the CITY of Kyle (CITY) shall collect traffic counts required for this project. The following counts should be collected on a Tuesday, Wednesday or Thursday when school is in session:

- 24-hr bidirectional traffic counts on
  - Goforth Road south of Bunton Creek Road
  - Goforth Road immediately east of the east IH 35 Frontage Road
  - Brent Blvd immediately west of Lex Word Lane
  - Bluestein Street east of Goforth Road
  - Bunton Creek Road west of Goforth Road
  - Goforth Road west of Dacy Lane
  - "Noname" Street between the IH35FR and Masonwood Dr
  - Masonwood Dr
  - Buttercup St
- 12-hour turning movement counts (including pedestrians & bikes)
  - Bunton Creek Road and Goforth Road
  - Goforth Road and Brent Blvd (during school arrival and departure peak hours only)
- 24-hour bidirectional vehicle classification counts (FHWA 13-Category Scheme)
  - Goforth Road south of Bunton Creek Road
  - Goforth Road south of Masonwood Drive

It is understood that the CITY is performing design engineering work for Bunton Creek Road from IH 35 to Dacy Lane. The ENGINEER will coordinate with the CITY to obtain traffic counts collected for the Bunton Creek Road preliminary engineering. Based on comments from the scoping meeting, the CITY is performing a Traffic Warrant Signal Analysis (TWSA) at Goforth Road and Bunton Creek Road. The ENGINEER will review said TWSA and coordinate future signal plans with the Goforth Road project.

The ENGINEER shall conduct a site visit to observe morning drop-off and afternoon pickup traffic circulation at Susie Fuentes Elementary. The ENGINEER will contact Susie Fuentes Elementary School staff prior to collecting data, including written observations and taking photographs.

Upon NTP, the ENGINEER shall coordinate with Capital Area Metropolitan Planning Organization (CAMPO) to obtain the most recent travel demand models.

2. HCISD coordination. The ENGINEER shall conduct two (2) meetings with Susie Fuentes Elementary School and relevant Hays County Independent School District staff.

First Meeting: During the first meeting, we will discuss/review existing circulation patterns, drop-off and pick-up operations, expected mode share of students walking, biking, bussed, or being driven. We will also discuss/review parking, queuing locations and other drop-off/pickup procedures and concepts for improvement.

Second Meeting: The second meeting will finalize recommendations on parking, queuing locations, drop-off/pickup procedures, and how they will be included into the geometric design and handled during construction.

## Exhibit “A” – Engineer’s Scope of Services

3. Traffic Operations Analysis Report. The ENGINEER shall prepare a Traffic Operations Analysis Report for Goforth Road from IH-35 to Bunton Creek Road. The Traffic Operations Report will have, at a minimum, the sections listed below.

*Introduction*  
*Existing Conditions*  
*Future Conditions*  
*Capacity Analysis*

The ENGINEER shall use the procedures in *Highway Capacity Manual 2010* to determine the capacity requirements for Goforth Road. Daily and peak hour capacity will be checked for the year construction is completed (2015) and for the design year 20 years out (2035). We will identify future traffic demands by using available travel demand models from the Capital Area Metropolitan Planning Organization (CAMPO) and TIAs provided by the CITY.

The ENGINEER shall use Synchro 7 to identify improvements at the intersection of Goforth Road and Bunton Creek Road. The following models will be produced:

- 2015 AM No Build
- 2015 AM Build
- 2015 AM Build + Improvements
- 2035 AM No Build
- 2035 AM Build
- 2035 AM Build + Improvements
- 2015 PM No Build
- 2015 PM Build
- 2015 PM Build + Improvements
- 2035 PM No Build
- 2035 PM Build
- 2035 PM Build + Improvements

### *Recommendations*

- The typical section based on build year (2015) and design year (2035) volumes and design constraints, including cost and available ROW.
- Identify turn bay locations
- Bicycle and pedestrian accommodations, including
  - Proposed bicycle facilities, such as shared lanes, shared-use path, or bike lanes
  - Locations where median refuge is desirable to facilitate pedestrian crossing
  - Demonstrate pedestrian connectivity from Susie Fuentes Elementary School to access points of neighborhoods served by Goforth Road
- Signing and striping elements to facilitate drop-off and pick-up circulation at Susie Fuentes Elementary School.

A draft of the Traffic Operations Analysis Report will be submitted electronically to the CITY for comment. If necessary, the CITY and ENGINEER shall meet to discuss comments. Upon receipt and resolution of CITY’s final comments, the ENGINEER will submit three (3) final hard-copies and one electronic copy to the CITY.

### Traffic Operational Analysis & Report Deliverables:

- Meeting Minutes of each meeting with the HCISD/Susie Fuentes Elementary School personnel
- Traffic Operational Analysis Report (draft & final per above)

## Exhibit "A" – Engineer's Scope of Services

### **110.5 Schematics, TCP&CP, Constructability, Cost Savings Analysis, X-Secs & Cost Estimates**

1. Project Initiation, Data Collection / Review and Design Summary Report (DSR).
  - a. Perform a site visit, take digital pictures, prepare a photo log and complete the field analysis checklist.
  - b. Review the 2D schematic, the Utility plans, etc. from the City
  - c. Prepare the DSR Form
  - d. Attend the initial project kick-off meeting
  - e. Revise the DSR Form and prepare meeting minutes
  
2. Typical Section & Preliminary Layout Development: The Alternative Typical Sections & preliminary layouts will be developed using planimetrics obtained from available aerial photography, photogrammetry and surveying. They will be developed after reviewing data provided by the City (including the CITY's Urban Design Plan), TxDOT, LAN Team Surveyor and the Utilities. This includes existing geometric conditions, utilities, drainage data, and the Goforth Road Traffic Operational Analysis. The layouts will be developed at a scale of 1"=50' Horizontal & 1"=10' Vertical & will be developed in accordance with TxDOT's Roadway Design Manual.

Based upon the above information, develop the following two alternative typical sections, preliminary layouts, develop cross sections every station and perform a cost estimate for each.

Three Lane Layout: Develop a three lane typical section & layout within the limits recommended by the Traffic Operational Analysis Report. Use limits of Brent Blvd to IH35FR for purposes of scope/fee development. Incorporate needed turning bays, queue lanes & shared outer vehicle/bike lanes per the Traffic Operational Analysis. Use a curb & gutter section and measure the outer lanes from the lip of gutter. Incorporate a sidewalk on at least one side.

For the 3-lane section, use: 14'+12'+14' lanes.

Four Lane Layout: Develop a four lane typical section & layout within the limits recommended by the Traffic Operational Analysis Report. Use limits of Brent Blvd to Bunton Creek Rd for purposes of scope/fee development. Incorporate needed turning bays, queue lanes & shared outer vehicle/bike lanes per the Traffic Operational Analysis. Use a curb & gutter section and measure the outer lanes from the lip of gutter. Incorporate a sidewalk on at least one side.

For the 4-lane section, use: 14'+11'+11'+14' lanes.

Develop the following layout framework once and use for each of the 3-lane & 4-lane Layouts:

- A layout at a scale of 1" = 50' Horizontal & 1" = 10' Vertical
- A Title Block containing general project information including project limits, length, a project location map, a legend, design speed, scales, index, and functional classification.
- Existing typical sections
- Existing horizontal & vertical (H&V) alignments
- Existing edges of pavement, curbs and right of way (ROW) of Goforth & intersecting streets
- Existing bridges, storm drains and culverts
- Utility Lines per available Utility Maps & SUE

Then, for each layout, develop/add the proposed elements to complete the layout:

- Two proposed typical sections – (develop the pavement cross slope, lane and shoulder widths & fill/cut slope ratios)
- The proposed Goforth horizontal alignment
- Lane lines and/or arrows indicating the number of proposed lanes
- The proposed Goforth profile
- Proposed right of way (ROW) requirements
- Proposed bridges, culverts and storm sewers

## Exhibit "A" – Engineer's Scope of Services

- The geometry of speed change lanes such as acceleration, deceleration and staging lanes (turn bays)
- Proposed pavement, proposed curbs, sidewalks and/or shared use paths

3. Preliminary Schematic Development. When each layout is recommended by the LAN Team and approved by the CITY, the LAN Team will add the following to the layout to develop it fully into a Preliminary Schematic (to take forward for public involvement and to include in the environmental documentation to be approved):

- Existing & proposed H&V alignments of Goforth's intersecting streets
- Current traffic volumes provided by the City
- Projected traffic volumes per the Goforth Road Traffic Study (to be developed early on)
- Direction of traffic flow on all roadways
- Proposed Utility Lines
- Property owners (from the Tax Appraisal District)
- Cross Slope Transition Data
- Cross walks

Develop up to two Driveway Penetration Agreements & Exhibits.

4. Preliminary Traffic Control Plan & Construction Phasing (TCP&CP) Development. The preliminary TCP&CP concepts will be developed concurrently with the preliminary design concepts for the entire project. The LAN Team will coordinate with the CITY regarding time of work hours, lane closure restrictions and attend up to two TCP&CP/safety review meetings with the CITY. The TCP&CP roll plots will be developed from the preliminary schematic and will include:

- TCP Narrative describing multiple phase construction, major items of work, general TCP notes, allowable time for lane closures, working at the school, and work expectations
- Preliminary phasing typical sections for TCP configurations
- Up to three phases for the construction of these improvements
- Phasing for proposed drainage facilities
- Phasing for proposed utility replacements or adjustments
- Up to 3 TCP&CP Roll Plots – one/phase). Roll plots shall show areas under construction and areas of traffic. Include lane configurations, lane transitions and major traffic control devices (concrete barrier, barrels, etc.). Temporary signs will not be included.
- TCP TxDOT Standards applicable to project

Develop a Contract Time Determination Schedule.

5. Geometric Schematic Development. Upon input from public involvement and from a cost savings analysis, the preliminary schematic will be refined to become the Geometric Schematic and will be included in the environmental document that is submitted for approval. This stage will be considered 30% completion.

6. Preliminary Cross Sections. The Engineer will develop preliminary cross sections for the project length including side streets. The cross sections will include existing ground, centerline and stationing, pavement section, medians, curb, sidewalk, ditch alignment, side slopes and existing utilities with assumed depths. The cross sections for each roadway typical section will be provided every 100' and at these key locations: at the ends of Goforth, Plum Creek bridge abutments and center, centerline of side streets & driveways. The Cross Section Roll Plot to accompany the Preliminary Schematic will contain cross sections every 50' at a scale of 1"=20 Horizontal and 1"= 5' Vertical. We will:

## Exhibit “A” – Engineer’s Scope of Services

- Use the proposed roadway horizontal and vertical (H&V) alignment to develop the cross sections using Microstation and Geopak
- Develop the roadway shape files using Geopak to incorporate the roadway geometry and cross slope transitions
- Compute the cross slope transitions (super-elevations) in order to input data within shape files
- Coordinate with Drainage Task Leader and develop input data for ditch alignments & profiles and incorporate ditch geometry into cross sections.
- Develop preliminary criteria input data to reflect roadway features on cross sections and identify grading limits
- Develop preliminary input data for existing utilities at known (or assumed) depths
- Develop preliminary input data for the proposed storm sewer system
- Develop earthwork from the preliminary cross sections for the 3-lane & 4-lane layouts

The preliminary cross sections will include the existing utilities. The proposed utilities will be added to the cross sections once they are designed.

7. Preliminary Cost Estimate. A Preliminary Cost Estimate will be provided for the 3-lane & 4-lane layouts using City of Austin bid items and TxDOT bid items when favorable for the CITY. The preliminary cost estimate will use the average low bid prices within the area as much as possible. A preliminary cost estimate will be developed for the Preliminary Schematic and for the Geometric Schematic.

Each discipline will develop quantities based on the 3-lane & 4-lane layouts, the preliminary schematic and the approved geometric schematic. These disciplines include roadway, drainage, signing and pavement markings, traffic control plans (TCPs), SW3P, and structures. Signalization will be included with the Bunton Creek Road project and the LAN Team will coordinate with the LJA Team. We will:

1. Develop roadway quantities.
2. Develop earthwork quantities.
3. Develop drainage quantities.
4. Develop TCP quantities
5. Develop SW3P quantities.
6. Develop signing and pavement marking quantities.
7. Develop Structures quantities.
8. Develop Proposed Utilities quantities.

### Schematics, TCP&CP, X-Secs & Cost Estimates Deliverables:

- 3-Lane Layout with cross sections and a cost estimate
- 4-Lane Layout with cross sections and a cost estimate
- Preliminary Schematic with cross sections and a cost estimate
- Preliminary Traffic Control & Construction Phasing Plan (A Roll-Plot for each phase) – submitted once for review and updated and submitted with the Preliminary Schematic
- Contract Time Determination Schedule to be provided on Sure Track (11X17)
- Geometric Schematic with cross sections and a cost estimate
- Preliminary Cost Estimates for the 3-lane & 4-lane layouts, the preliminary schematic & the geometric schematic. (Estimates will be provided in Excel format).

## Exhibit "A" – Engineer's Scope of Services

### Geotechnical Investigation

LAN Team member HVJ proposes to drill eight (8) soil borings for pavement to depths of 15 feet below the existing ground surface, two (2) bridge borings to a depth of 50 feet, and two (2) retaining wall borings to a depth of 25 feet each. Total drilling footage is 270 feet. The pavement borings will be spaced at approximately 750 feet taking into account the bridge and retaining wall borings.

At the time of writing this letter HVJ has assumed one bridge and four retaining walls less than 200 feet in length. Alignments and P&P's have not been generated currently and HVJ's proposal will be updated following receipt of the plans. HVJ proposes to follow TxDOT criteria for spacing borings and sampling including Texas Cone Penetrometer testing as per TxDOT geotechnical manual dated 2010 for bridges.

The soil borings will be properly backfilled with bentonite chips and a single lift of cold patch asphalt where applicable. The soil samples will be obtained using Shelby tubes and/or split-spoon samplers. Field-testing of soil samples will include pocket penetrometer in the cohesive soils and Standard Penetration Test (SPT) in the cohesionless soils.

All the field sampling and laboratory tests will be performed according to typical geotechnical standards, where applicable, or with other well established procedures. HVJ will perform appropriate laboratory tests on soil samples recovered from the borings. Laboratory testing will include moisture content, liquid limit, plastic limit, unconfined compression, particle size analysis tests, and two Texas Triaxial tests.

Additional detail regarding pavement design scope follows.

**Pavement Design Scope.** LAN Team member HVJ will design three flexible pavement section alternatives (HMAC over FLEX, HMAC over HMAC, and HMAC over recycled existing pavement material stabilized with Portland cement) to achieve a 20-Year Design Life. One temporary pavement flexible pavement cross section alternative will also be developed to be used during the construction phase only. The City of Kyle will approve the materials to be considered for this design.

The pavement design will include consideration of traffic loads, lab test results, and borings. The TxDOT pavement design procedure will be followed, using the FPS21 analysis program. The traffic data will be developed by HVJ for pavement design, based on current traffic count data to be collected as part of HVJ's scope. Traffic data require includes current and projected AADT traffic counts, growth rates, truck percentages, truck load factors, and estimated ATDWL (Average of the Ten Heaviest Wheel Loads Daily) value. The ATDWL is required by FPS21 to make the necessary Texas Triaxial design check. Any existing traffic data shall be provided to HVJ for consideration in the design traffic development.

Because the proposed alignment is along an existing road, HVJ proposes to utilize nondestructive deflection testing (NDT) with the Falling Weight Deflectometer (FWD) to calculate subgrade design parameters, as per TxDOT requirements. The data may also be used to finalize boring locations to ensure geotechnical data is collected for any changes in subgrade conditions identified in profiles of the NDT data.

**Engineering Report Deliverables.** LAN Team member HVJ anticipates providing geotechnical and pavement design deliverables for the Preliminary Design Phase. The deliverables will include a draft geotechnical report with pavement design and recommendations related to the proposed bridge and retaining walls submitted to LAN for review and LAN comments addressed for the draft report submittal. The final geotechnical report will be prepared following receipt of comments from Hays County, City of Kyle, and TxDOT as appropriate.



## Exhibit “A” – Engineer’s Scope of Services

In general, the following items will be included in HVJ’s geotechnical report:

- Site Vicinity map,
- Geology map,
- Plan of borings,
- Boring logs,
- Laboratory test results summary,
- Swell potential evaluations,
- Groundwater conditions,
- Generalized subsurface conditions,
- Slope stability analysis of the MSE wall cross section (one cross section)
- Sliding, Bearing Capacity, and Overturning factors of safety
- Pavement thickness design,
- Subgrade stabilization, if determined necessary, and
- General earthwork recommendations.

### Schedule

The estimated schedule for the geotechnical and pavement design work is as follows:

<b>Task</b>	<b>Estimated Schedule</b>
Field coordination and permitting	1 to 2 Weeks following Notice to Proceed
Field Investigations (NDT/Drilling)	1 to 2 Weeks (dependent on weather)
Laboratory test assignments	1 Week after completion of field work
Laboratory Testing	2 Weeks after test assignments
Draft Geotechnical Report for LAN review	2 Weeks after completion of laboratory testing
Draft Geotechnical Report addressing LAN comments	2 Weeks after completion of receipt of comments
Final Geotechnical Report	2 Weeks following receipt of comments from Hays County, City of Kyle, and TxDOT

## Exhibit "A" – Engineer's Scope of Services

### Hydrology and Hydraulics

1. Data Collection - The ENGINEER shall collect and review available drainage data from nearby roadways, watershed studies, FEMA maps, aerial imagery, and/or other relevant information. The ENGINEER shall perform site visits to initially understand drainage patterns in the project vicinity. The ENGINEER will request and review, if available, hydrologic and hydraulic analysis data for all streams within the project limits that have detailed studies performed for the Flood Insurance Study (FIS).
2. Hydrologic Analysis – The ENGINEER shall prepare a drainage area map for inclusion in the Hydraulic Report. Drainage Areas will be delineated for all culvert and bridge crossings. The ENGINEER shall use hydrologic methods per CITY drainage criteria to determine design discharges for each culvert and bridge crossing.
3. Hydraulic Analysis - The ENGINEER will perform preliminary hydraulic computations for each culvert and bridge crossing per CITY criteria. The ENGINEER will consider use of prior modeling information, if available. The ENGINEER will ensure that the hydraulic design of the proposed bridge and culvert crossings will meet all CITY and FEMA hydraulic criteria and assumes that a Conditional Letter of Map Revision (CLOMR) will not be required.
4. Preliminary Creek Crossing Design - Preliminary design of three (3) existing creek crossings (bridge/culvert) will be completed. The three existing crossings are 1) Plum Creek, 2) South of Blue Stem Street and 3) North of Mason wood Dr. No additional crossings are expected to be added due to this roadway project. A preliminary determination of bridge or culvert for each crossing will be made based on approximate cost information, hydraulic modeling and design criteria. No plan and profile sheets will be prepared in the schematic.
5. Preliminary Storm Sewer Design - The ENGINEER will prepare hydrologic calculations associated with a preliminary layout of a storm sewer design. Interior Drainage Area Maps that show inlet-level drainage areas and hydraulic data sheets will not be prepared. A preliminary storm sewer and ditch alignment layout as part of the schematic road layout roll plot will be prepared. Preliminary hydraulic computations will be performed to determine whether detention may be required for the project.
6. Hydraulic Report - The ENGINEER will prepare and submit two copies of a draft Preliminary Drainage Study Report that summarizes the H&H analysis for road crossings and extent of FEMA (or local FPA) coordination that could be required. The ENGINEER will incorporate one set of review comments from the County into a final report.
7. Meetings - Drainage engineers will attend up to three (3) meetings with client, agency, and/or public meetings to discuss the preliminary design approach and results.

### Preliminary Bridge Design

Develop and submit with the Geometric Schematic Submittal, 3 sets of 11" x 17" plan sheets of the Bridge Layouts and Typical Sections for the CITY Review.

## Exhibit “A” – Engineer’s Scope of Services

### **Function Code 120 – Social, Economic and Environmental Studies and Public Involvement**

The work to be performed by LAN Team member Raba Kistner Consultants, Inc. shall consist of providing Environmental Consulting services for approximately 1.2 miles of added capacity to Goforth Road so as to document potential environmental impacts.

#### **Scope of Services with No federal Funding**

Since the Goforth Road project ties into the I-35 frontage road, some environmental documentation and coordination with TxDOT will be required.

#### **Task A – Scoping Documents**

In compliance with TxDOT’s new environmental rules (new statutory requirements passed by the 82nd Texas Legislature) related to the environmental review process for transportation projects, which were effective April 16, 2012, a scoping meeting must be held and a “project scope” must be agreed to at the outset to define the work that will be completed as part of preparing the environmental document. As part of the scoping process, the required scoping documents must be completed and submitted to TxDOT for approval.

#### **Task B – Environmental Issues Checklist for State D-List Programmatic Categorical Exclusion (PCE) Projects**

The scope of services includes a field visit, the Environmental Issues checklist, photographs of the project site, an archeological desktop study, Hazardous Materials ISA (initial site assessment), Texas Parks and Wildlife’s Natural Diversity Database report, resource agency coordination, and PCE memo documentation.

### **Function Code 130 –Utility Design**

#### **Utility Design**

#### **Preliminary Water and Waste Water Design**

Water and Wastewater System Planning:

1. Attend a pre-design project kickoff meeting with CITY staff to confirm and clarify scope, understand CITY objectives and requirements.
2. Data Collection - ENGINEER will collect data from the CITY on their existing water and wastewater utility lines and any planned improvements in the area.
3. ENGINEER will prepare for and attend two (2) meetings with the CITY to discuss design criteria, and possible improvements.

The Conceptual Design shall be submitted to CITY per the approved Project Schedule. The purpose of the conceptual design is for the ENGINEER to:

- Study the project,
- Identify and develop alternatives
- Present (through the defined deliverables) these alternatives to the CITY
- Recommend the alternatives that successfully addresses the design problem, and
- Obtain the CITY’s endorsement of this concept.

## Exhibit "A" – Engineer's Scope of Services

ENGINEER will develop the conceptual design based on detailed tasks described herein. Prepare and submit four (4) copies of the Conceptual Design Package which includes the following:

Water and Wastewater Layout Plans - drawings showing recommended alignment, connection points and possible utility conflicts:

1. Construction Phasing Plan.
2. Opinion of Probable Construction Cost.
3. Design Memorandum documenting summary of proposed project, construction methods, and number of water service lines, existing meter connections/disconnections, water shut-outs, hot taps, and proposed valve locations, and materials of construction.
4. Quality Control Review of above referenced documents
5. Conceptual Review Meeting with the CITY to receive their input on the plan.

### Deliverables:

- Water and Wastewater Layout Plans
- Design Memorandum
- Opinion of Probable Construction Cost

### 60% DESIGN PLANS

The PS&E will be continuously developed from 0% to 60% complete based on the approved Geometric Schematic. The fee spreadsheet shows hours to develop the 30 % PS&E; however, there will be no 30% PS&E submittal since the Geometric Schematic advances the design to approximately 30%. Draft 60% Design (PS&E) Documents shall be submitted to CITY per the approved Project Schedule. The ENGINEER will develop the Draft Design Documents as follows:

1. Draft Design Drawings. Prepare and deliver four (4) copies of 11" x 17" drawings including:
  - 1.1 General Notes. Standard CITY utility construction notes.
  - 1.2 Quantities Sheet. Sheet summarizing water and wastewater bid items broken out by sheet number.
  - 1.3 Overall Water Plan. Overall project layout sheet for the water design, including property owner information.
  - 1.4 Overall Wastewater Plan. Overall project layout sheet for the wastewater design, including property owner information.
  - 1.5 Water Plan and Profile sheets. P&P shall show the following: proposed water plan/profile and recommended pipe size, fire hydrants, water service lines and meter boxes, gate valves, isolation valves, existing meter numbers and sizes that are to be replaced, existing sample locations, existing fire line locations, existing utilities and utility easements, and all pertinent information needed to construct the project. Legal description (Lot Nos., Block Nos., and Addition Names) along with property ownership shall be provided on the plan view. Make provisions for reconnecting all identifiable water service lines which connect directly to any main being replaced, including replacement of existing service lines within City right-of-way or utility easement. When the existing alignment of a water main or lateral is changed, provisions will be made in the final plans and/or specifications by the ENGINEER to relocate all service lines which are connected to the existing main and connect said service lines to the relocated main.

## Exhibit "A" – Engineer's Scope of Services

- 1.6 Wastewater Plan and Profile sheets. P&P shall show the following: proposed wastewater plan/profile and recommended pipe size, manholes, service lines, existing utilities and utility easements, and all pertinent information needed to construct the project. Legal description (Lot Nos., Block Nos., and Addition Names) along with property ownership shall be provided on the plan view. Make provisions for reconnecting all identifiable wastewater service lines which connect directly to any main being replaced, including replacement of existing service lines within City right-of-way or utility easement. When the existing alignment of a wastewater main or lateral is changed, provisions will be made in the final plans and/or specifications by the ENGINEER to relocate all service lines which are connected to the existing main and connect said service lines to the relocated main.
  - 1.7 Prepare standard detail sheets for water line installation. These may include connection details between various parts of the project, general restraints/blocking, bedding and backfill, waterline relocations, pavement replacement, and valve installations.
  - 1.8 Prepare standard detail sheets for wastewater line installation. These may include connection details between various parts of the project, manhole details, bedding and backfill, and wastewater line relocations.
  - 1.9 Specifications - Prepare and submit four (4) copies of the table of contents for the anticipated water and wastewater technical specifications along with draft version(s) of any anticipated special specifications for review by the CITY.
2. As part of the 60% Design Phase, Engineer shall perform the following:
- 2.1 ENGINEER shall prepare for and attend two (2) coordination meetings with dry utilities in the area. It is assumed that Cobb Fendley will prepare the agenda for the meeting, send out all notifications and will conduct the meetings.
  - 2.2 Opinion of Probable Construction Cost - Prepare an Opinion of Probable Construction Cost and submit with Draft Design Documents
  - 2.3 Constructability Review / QC Review – Prior to the 60 percent review meeting with the CITY, the ENGINEER shall perform a quality control review of the prepared plans and specifications.
  - 2.4 ENGINEER shall attend the design review meeting with the CITY.

### **Deliverables:**

- Draft Design drawings and specifications table of contents and draft special specifications
- Estimate of probable construction cost

### **90 % AND 100% DESIGN PHASE**

Upon approval of the Draft Design Documents, ENGINEER will prepare construction plans as follows:

1. Final Draft Design Drawings. Prepare and deliver four (4) copies of 11" x 17" drawings including:
  - 1.1 Response to CITY comments to the Draft Design Package.
  - 1.2 ENGINEER shall prepare for and attend one (1) coordination meeting with dry utilities in the area. It is assumed that Cobb Fendley will prepare the agenda for the meeting, send out all notifications and will conduct the meetings.
  - 1.3 Prepare and submit 90% construction plans to the CITY; submit four (4) copies of 11"x17" drawings to the CITY per the approved Project Schedule.

## Exhibit "A" – Engineer's Scope of Services

- 1.4 Prepare and submit 90% specifications including all technical specifications and any special specifications.
- 1.5 Prepare and submit an updated Opinion of Probable Construction Cost with the 90% package.
- 1.6 Perform constructability and quality control review of the 90% design package.
2. Final/Sealed Design Drawings. Prepare and deliver four (4) copies of 11" x 17" drawings including:
  - 1.1 Response to CITY comments to the 90% Design Package.
  - 1.2 Prepare and submit final construction plans to the CITY. Each plan sheet shall be stamped, dated, and signed by the ENGINEER registered in State of Texas.
  - 1.3 Prepare and submit final specifications including all technical specifications and any special specifications.
  - 1.5 Prepare and submit the final Opinion of Probable Construction Cost.
  - 1.6 Perform constructability and quality control review of the final design package.

### **Deliverables:**

- 90% construction plans and specifications.
- 100% construction plans and specifications – sealed by registered engineer.
- Detailed estimates of probable construction costs including summaries of bid items and quantities.

### **BID PHASE SERVICES.**

ENGINEER will support the bid phase of the project as follows.

1. Support during Bidding
  - 1.1 The ENGINEER shall answer bidders' questions and requests for additional information related to the water and wastewater portion of the project. The ENGINEER will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders' questions and requests, in the form of addenda. The ENGINEER shall provide any necessary addenda to all plan holders.
  - 1.2 Conformed Documents - Incorporate all addenda into the contract documents and issue four (4) 11"x17" size drawings and specifications to City.

### **Deliverables:**

- Addenda
- Conformed Set of Construction documents

### **CONSTRUCTION PHASE SERVICES.**

ENGINEER will support the construction phase of the project as follows.

1. Construction Support

## Exhibit "A" – Engineer's Scope of Services

- 1.1 The ENGINEER shall visit the project site at requested intervals as construction proceeds to observe and report on progress for the water and wastewater portion. Up to eight (8) visits are included in the basic scope of services.
- 1.2 The ENGINEER shall attend regularly scheduled project meetings to get an update on progress to date and to discuss any outstanding issues. Up to two (w) meetings are included in the basic scope of services.
- 1.3 The ENGINEER shall review and comment on Contractor generated submittals and shop drawings for conformance to the project specifications. Review will be limited to up to twelve (12) submittals, including up to one re-review of each.
- 1.1 The ENGINEER shall review and respond to up to five (5) Contractor generated requests for information (RFIs).
- 1.2 The ENGINEER shall attend the "Substantial Completion" and "Final" project walk-throughs and assist with preparation of punch lists.
- 1.3 Record Drawings
  - The ENGINEER shall prepare Record Drawings from information provided by the CITY depicting any changes made to the Final Drawings during construction. The following information shall be provided by the CITY:
    - As-Built Survey
    - Red-Line Markups from Contractor
    - Red-Line Markups from City Inspector
    - Copies of Approved Change Orders
    - Approved Substitutions
  - The ENGINEER shall modify the Final Drawings electronically and shall place a stamp on the plans indicating that they represent Record Drawings of the project as constructed.
  - The following disclaimer shall be included with the Record Drawing stamp:
    - These Record Drawings were prepared using information provided by others and represent the as constructed conditions to the extent that documented changes were provided for recording. The ENGINEER assumes no liability for undocumented changes and certifies only that the documented changes are accurately depicted on these drawings.
  - The ENGINEER shall submit a set of Final Drawings, modified and stamped as Record Drawings, on mylar for record storage. The ENGINEER may keep copies of the information provided by the CITY for their files, but all original red-lined drawings shall be returned to the CITY with the mylars.
  - Record Drawings shall also be submitted in Adobe Acrobat PDF format (version 6.0 or higher) format.

### Deliverables:

- Response to Contractor's Submittals and Shop Drawings
- Response to Contractor's Request for Information
- Substantial Completion and Final Punch List items
- Record Drawings on mylar and electronically as PDFs

## Exhibit "A" – Engineer's Scope of Services

### Function Code 150 – Field Surveying & Photogrammetry

Provide a design survey for Goforth Road ROW to ROW, and areas determined appropriate outside of ROW as discussed with Project Manager, from the centerline-centerline intersection at IH 35 North Frontage Road northeast to the intersection of Bunton Creek Road (1.2 miles plus  $\pm$  7500' of cross streets and drainage cross sections and topography of Detention Basins) as described below. The work shall be performed as follows:

Prepare Digital Terrain Modeling (DTM) topography for use in design of replacement roadway.

Show the entire length of the project on the cover sheet.

Show all evidence of the existence of above ground, observable utilities.

#### A. Project Control:

1. The Texas Coordinate System of 1983 (NAD 83 State Plane Coordinates) South Central Zone (4204) and Vertical (NAVD 88), in U.S. Survey Feet, as established for the ROW described above shall be used as the basis for all coordinates derived for this project, unless otherwise directed by Project Team.
2. The Combined Surface Adjustment Factor (CSF) for this project shall be derived and applied to Grid Values to derive Surface Coordinates which are the Project Coordinates.
3. Establish Secondary Control as needed to provide a field DTM of entire project with Horizontal values established with RTK or VRS and tied twice, once in the morning and again in the afternoon. Vertical values established with a digital level.

#### B. DTM:

1. The DTM shall include a minimum of break lines, roadway striping, edge of pavement or edge of gravel, top and bottom of bank, spot elevations and high and low points.
2. TxDOT feature codes will be used.
3. Topo shots will not exceed 750 feet from the instrument and distance between ground shots should not exceed 100 feet (50 feet on paved surfaces).
4. Locate all trees within ROW with a trunk diameter of 6" or greater at chest height with species, trunk diameter and drip line diameter.
5. Locate road signs with description of sign type and labeling on sign.



## Exhibit "A" – Engineer's Scope of Services

6. Provide a sketch and/or explanation of unusual or complicated situations.
7. Tie in all drainage structures defining break lines around each end of culverts or bridge with a field drawing of headwalls, etc. and areas as shown on Survey\_DRN\_GoforthRoad.pdf provided.
8. Locate all visible observable above ground utilities within project limits.
9. Locate all driveways and cross section 200 feet into cross streets.
10. Quality Control/Quality Assurance (QC/QA) shall be performed on all procedures and products delivered.

### C. Project Deliverables

#### 1. Topographic:

##### 1.1 Provide the following for Initial Preliminary submittal review:

- Electronic File
- Copies of field sketches

##### 1.2 Provide the following for final submittal:

- PDF versions of all final deliverables
- One set of DVD's with electronic files described above
- One complete set of 2d and 3d (.dgn) files compatible with MicroStation v8 in surface coordinates.
- ASCII files with X, Y and Z coordinates and descriptions of all points in surface coordinates.

## Exhibit "A" – Engineer's Scope of Services

### PS&E Development

#### Function Code 160 – Roadway Design Controls

##### Roadway Design (60%, 90%, 100%)

The PS&E will be continuously developed from 0% to 60% complete based on the approved Geometric Schematic. Since the Geometric Schematic advances the design to approximately 30%, there will be no 30% PS&E submittal. Therefore, 60% Design (PS&E) Documents shall be submitted to CITY per the approved Project Schedule. The ENGINEER will:

1. Update the Design Summary Report as needed. Identify any needed roadway design exceptions and waivers as applicable. Include existing and proposed typical sections, location map and exhibits for design exceptions and waivers.
2. Develop existing and proposed roadway typical section sheets.
3. Update the roadway and sidewalk geometry.
4. Prepare horizontal alignment data sheets.
5. Prepare project layout sheets.
6. Prepare roadway removal sheets.
7. Prepare super-elevation table sheet.
8. Prepare plan & profile sheets for Goforth and intersecting streets.
9. Prepare Driveway detail sheets.
10. Prepare Driveway summary sheet.
11. Develop miscellaneous roadway details sheet.
12. Calculate roadway quantities.
13. Prepare roadway grading summary sheet.
14. Update proposed cross sections per changes from the schematic to 60% design.
15. Develop GEOPAK cross section sheets with complete labeling (existing and proposed).
16. Compute the earthwork.
17. Create and provide a proposed GEOPAK (.tin) file for the entire project (roadway, ditches, bridges).

#### Function Code 161 – Drainage

##### Drainage Design (60%, 90%, 100%)

1. **Hydrologic Analysis (60%, 90%, 100%):** LAN shall develop overall drainage boundaries, identify major crossings for planned culvert/bridge crossings, and develop peak flow rates for design storms according to CITY criteria for each proposed crossing. A drainage area map showing flows at all crossing locations will be prepared. Peak flows will only be developed for the design and check flood events. Axiom Engineers are currently doing the HEC-HMS/RAS study on Plum Creek and the CITY will provide this information to LAN for their further use.
2. **Cross Drainage Analysis and Design (60%, 90%, 100%):** LAN shall develop peak flood elevations for design storms and determine sizes of culverts and/or minimum required spans/heights of bridges. Flood elevations will only be developed for the design and check flood events. Up to three crossings are anticipated at this time. One crossing is anticipated to be culvert and LAN is planning to prepare Culvert Plan and Profile Sheets for each submittal. Scour analysis is anticipated for the bridge crossing and a 1-2 page letter report will be prepared to summarize the results. The crossings will be designed such that will qualify for no-rise certification. LAN will produce hydraulic data sheets for all crossings.
3. **Parallel Drainage Analysis and Design (60%, 90%, and 100%):** An urban road section is planned with curb and sidewalk. LAN will perform the storm sewer analyses in GEOPAK and will prepare storm layout and profile sheets. LAN will provide ditches sizes and driveway culvert sizes

## Exhibit "A" – Engineer's Scope of Services

to Roadway for preparing plan sheets and cross sections. Design of driveway culverts will be performed as part of this task. LAN will produce hydraulic data sheets (ditch or storm sewer hydraulic summary tables) as part of this task. The storm sewer on north along Bunton Creek Road will bring flow to Goforth Road. LAN anticipates designing a large storm sewer trunk line from Bunton Creek Road to the outfall at Plum Creek which will address capacity needs and loss of ditch conveyance due to widening. Use of Low impact development strategies will be considered where possible to overall lower cost of the project.

4. **Quantities:** LAN will develop quantities as part of 30%, 60%, 90% and 100%.
5. **Comments/Responses (60%, 90%, 100%):** LAN shall respond to review comments by CITY, TxDOT, or other reviewers as requested by CITY for 4 submittals. LAN anticipates review comments from agencies/reviewers will be addressed while preparing for the following submittal and additional submittals will not be required.
6. **Specifications and Details (60%, 90%, 100%):** LAN will utilize CITY or TxDOT standards and develop additional details and specifications as needed for culvert and headwall design.
7. **Meetings:** LAN anticipates up to three (3) meetings for this design phase (60%, 90%, and 100%) to discuss 60/90/100 submittals.
8. **Coordination with CITY and Hays County Floodplain Administrator:** LAN will coordinate with CITY and Hays County Floodplain Administrator regarding the construction of the proposed roadway within the 100-yr floodplain of Plum creek. LAN anticipates no FEMA submittals will be required. If a CLOMR/LOMR submittal is requested or required, it shall be considered additional services to this scope.
9. **Coordination with other agencies / consultants:** The proposed storm sewer from Bunton Creek Road will bring flow to Goforth Road. LAN will coordinate with CITY and other consultants to design a large storm sewer trunkline from Bunton Creek Road to the outfall at Plum Creek for 25-year and 100-year flows according to CITY regulations. LAN will coordinate with the environmental consultant in addressing USACE or other environmental permitting concerns. LAN will coordinate with the geotechnical consultant to obtain appropriate information anticipated to be needed for scour analysis.
10. **SW3P Design:** The Engineer will prepare SW3P sheets for 60%, 90% and 100% design phases.

### Drainage Bid Phase Services

1. LAN anticipates responses to 100% comments and/or questions from contractors may result in addendum(s) to the bid documents. LAN anticipates assisting with up to two (2) addenda related to LAN's plan sheets (Drainage Area Maps, Culvert P&P, Hydraulic Data Sheets) or LAN's drainage calculations that could affect others sheets (Roadway P&P, cross sections, SWPPP, etc.) during the bid phase.

### Function Code 162 – Signing, Pavement Markings

The Engineer shall perform miscellaneous roadway design in accordance to the State Roadway Design Manual, Highway Illumination Manual, Geotechnical Manual, TMUTCD Manual, PS&E Preparation Manual and other applicable State manuals, standards and guidelines, which includes the preparation of the following:

#### Signing Design (60%, 90%, 100%)

1. Prepare Sign Layout Sheets
2. Quantify Signs
3. Prepare Small Sign Summary Sheet
4. Prepare Small Sign Detail Sheet

## Exhibit "A" – Engineer's Scope of Services

### Pavement Marking Design (60%, 90%, 100%)

1. Prepare Pavement Marking Layout Sheets
2. Calculate Pavement Marking Quantities
3. Prepare Pavement Marking Summary Sheet

### FC163 – Miscellaneous

The Engineer shall perform miscellaneous roadway design in accordance to the State Roadway Design Manual, Highway Illumination Manual, Geotechnical Manual, TMUTCD Manual, PS&E Preparation Manual and other applicable State manuals, standards and guidelines, which includes the preparation of the following:

### Miscellaneous Roadway (60%, 90%, 100%)

1. Prepare Project Title Sheet
2. Prepare Index of Sheets
3. Prepare Miscellaneous Roadway Detail Sheet
4. Prepare Ty C Curb Limits and Details
5. Prepare Schedule of Advance Warning Devices Sheet
6. Prepare Detour Layout Sheets
7. Prepare TCP Typical Section Sheets
8. Prepare Traffic Control Phasing Layout Sheets
9. Calculate TCP Quantities and Provide Documented, Calculated Quantities to the State
10. Prepare TCP Summary Sheets
11. Prepare Sequence Of Construction Narrative
12. Prepare Construction Time Determination Schedule (Suretrak)
25. Prepare SW3P sheets for each phase of construction
27. Prepare SW3P narrative sheet
28. Develop and coordinate plans for permanent BMP's
29. Calculate SW3P quantities
30. Prepare SW3P summary sheet
34. Prepare cost estimate in excel
35. Prepare general notes
36. Prepare Special Specifications for non-standard items and Special Provisions with the Form 1814.
37. Prepare plans for submittals at 30%, 60%, and 95%
38. Select and prepare standard detail sheets
39. Prepare and furnish signed and sealed mylars
40. QA/QC the PS&E at 30%, 60%, 95%, Mylar and pre-letting. Provide copy of internal QA/QC review to the CITY.
41. Provide CD/DVD of project archives.
42. Provide CD/DVD of CADD files in DGN formats.
43. Roadway Illumination Layouts.

**Subsurface Utility Engineering:** While the location of the proposed test holes are undefined, the SUE team will assist the engineer to determine the best location for test holes on any of the utilities that may be in conflict with the proposed improvements. Once the utility and location of the utility is determined SUE crews will expose the utility utilizing nondestructive methods to determine an exact horizontal and vertical location. Once uncovered, the utility will be surveyed. The type, composition, condition and size of the utility will be reported. Per LAN at this time it is estimated that 5 test holes may be required.

## Exhibit "A" – Engineer's Scope of Services

It is understood that as roadway plans are developed the quantity of test holes required may increase or decrease.

All of the SUE services mentioned above will be done in accordance with ASCE 38-02.

### **FC 164 – Project Management**

1. Perform sub-consultant management, coordination, contracting and invoicing.
2. Prepare for, attend, and provide meeting minutes for the following meetings:
  - a. Design Concept Conference
  - b. Environmental Scoping Meeting
  - c. Meeting to discuss Traffic Analysis & Alternatives to develop
  - d. Meeting to review the alternatives and select the preferred alternative to bring to the public
  - e. Meeting to review the preliminary schematic, the preliminary TCP&CP, the H&H Study and plan the public meeting
  - f. Meeting to discuss the public meeting input and decide on schematic updates (if any)
  - g. Meeting to submit the Geometric Schematic, design cross sections and hold Design Conference
  - h. Meeting to submit/discuss the typical sections, bridge layouts, the project layouts and the P/Ps
  - i. 60% Review Meeting
  - j. 90% Review Meeting
  - k. 100% Submittal & Bid Coordination Meeting
  - l. Three additional meetings as requested by the CITY
3. Provide Monthly Project Update Narratives (18 Months).
4. Provide Monthly Project Invoicing.
5. Perform Quality Assurance and Quality Control reviews of preliminary engineering and PS&E deliverables.

### **FC170 Bridge Design**

1. Produce bridge layouts in accordance to the State PS&E Preparation Manual, TxDOT Bridge Project Development Manual and the 2001 TxDOT Bridge Detailing Manual.
2. Review existing "As Built" plans for the bridges.
3. Submit preliminary bridge layout to the CITY for approval once a preferred alternative is selected (submit with the geometric schematic).
4. Design and provide structural details in accordance to the State Bridge Design Manual and AASHTO Load and Resistance Factor Bridge Design Specifications, 5<sup>th</sup> edition.
5. Provide Bridge Detailed Summary of the bid items for all bridges and bearing seat elevations in accordance to the Bridge Detailing Manual.

### **Deliverables**

#### **Plans**

The Engineer shall provide the following information at each submittal:

1. 60% Plans Submittal (3 sets of everything):
  - 1.1. 11" x 17" plan sets for the CITY Review.
  - 1.2. Estimate of bridge construction cost.

## Exhibit "A" – Engineer's Scope of Services

2. 90% Plans Submittal (3 sets of everything):
  - 2.1. 3 sets of 11" x 17" plan sheets.
  - 2.2. Estimate of bridge construction cost.
  - 2.3. TxDOT Specifications & General Notes
  - 2.4. New Special Specifications and Special Provisions with Form 1814, if applicable.
  - 2.5. Revised supporting documents from 60% review comments
  
3. 100% Plans Submittal:
  - 3.1. TxDOT Specifications, Special Provisions & General notes.
  - 3.2. Bridge Estimate.
  - 3.3. New Special Specifications and Special Provisions with Form 1814, if applicable.
  - 3.4. 1 mylar set (11" x 17")
  - 3.5. Revised supporting documents from 90% review comments.

### **Electronic Copies**

1. The Engineer shall furnish the CITY with a CD/DVD of the final plans in the current CADD system used by TxDOT, .pdf format, and in the CITY's File Management System (FMS) format.

### **Calculations**

1. The Engineer shall provide a 3-ring binder with all quantity and structural design calculations.
2. The Engineer may provide the requested information on a CD/DVD. Submit element normally bound using a .pdf format.

### **Bridge Assumptions**

1. 57 ft wide and 120 ft long
2. Two phase stage construction
3. Three span prestressed slab beam bridge
4. Sidewalk (s) on the bridge
5. Temporary Special Shoring Plan and Profile to be provided by Roadway
6. Riprap Layout Sheet (if applicable) to be provided by Roadway
7. No Aesthetic Details on Bridge since it's a stream crossing

## Exhibit "A" – Engineer's Scope of Services

### SERVICES EXCLUDED FROM THE BASIC SCOPE OF SERVICES

CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Construction inspection services
- Design phase public hearing
- Performance of materials testing or specialty testing services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services related to Survey Construction Staking
- Joint bidding utilities other than water and sanitary sewer
- **Water Quality:** Since the proposed project doesn't fall within the Edwards Aquifer Recharge Zones, no permanent (post-construction) water quality requirements are anticipated. No coordination with TCEQ is anticipated.
- **Detention Pond Design or Retrofits:** The CITY regulates storm water detention requirements. No storm water detention is anticipated for this project. It is anticipated at this time that the Engineer can demonstrate that time to peak for the Goforth Road will be much earlier than time to peak for the Plum Creek watershed at the Goforth Road crossing. The preliminary design schematic will indicate any need for detention. If project needs any detention it can be provided as an additional scope item.
- **FEMA and LOMR/CLOMR:** No FEMA or LOMR/CLOMR requirements are expected as part of this work. Only coordination with the CITY and Hays County Floodplain Administrator to verify this approach is planned in the scope described above.
- **Hydraulic Report:** It is anticipated that no hydraulic report will be prepared during the design phases. The hydraulic report will be prepared only during the preliminary engineering (schematic) phase.

### Services to be provided by the CITY

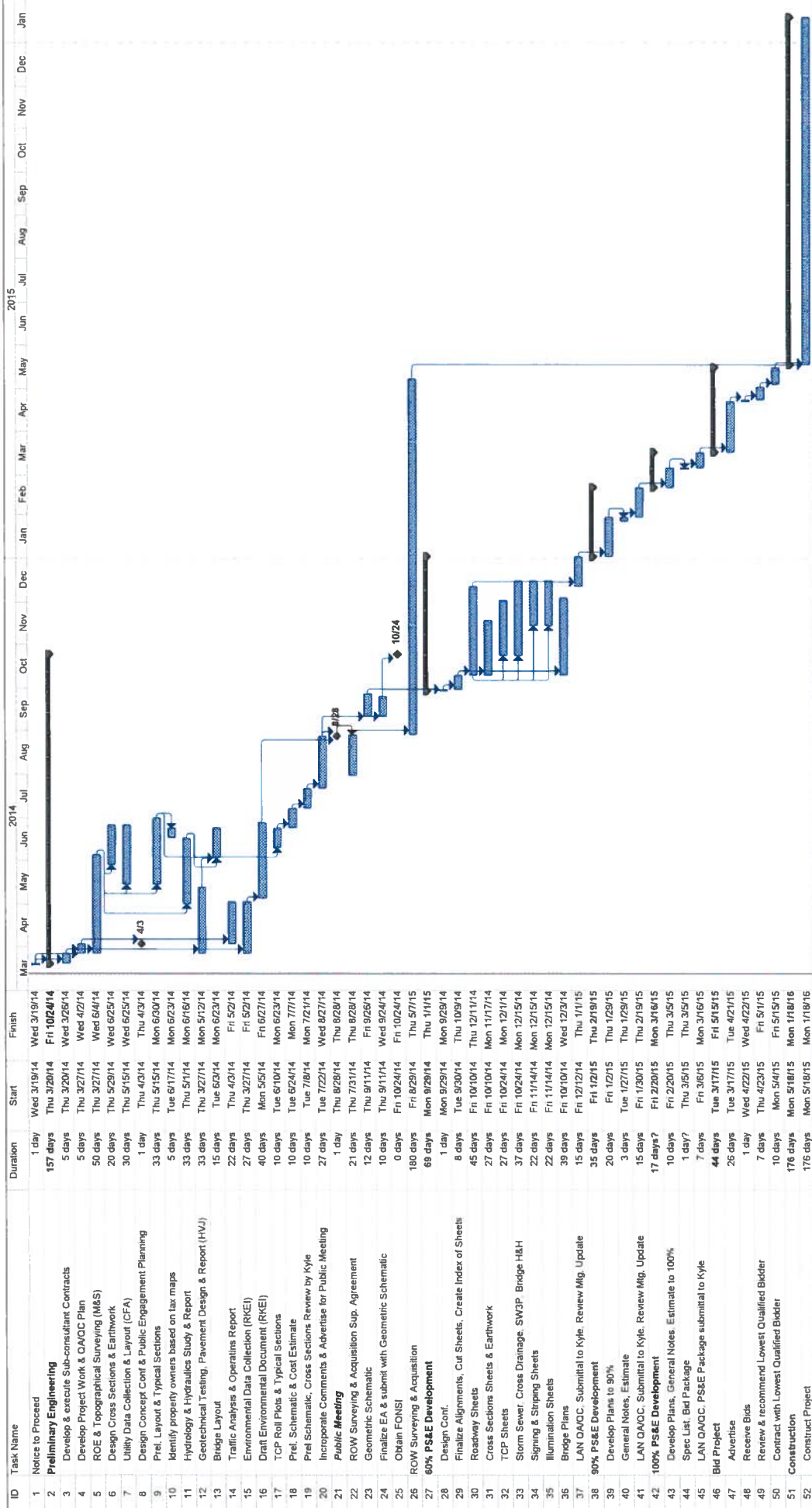
The CITY shall provide:

1. Available traffic studies, such as traffic impact analyses (TIAs) for development or traffic signal warrant analyses, if available that include Goforth Road within the study area.
2. Items mentioned in the Scoping Meeting (Traffic Counts and Turning Movement Counts for Goforth Road), and as outlined on page 2 (110.2.1) of this scope of work.
3. Provide the BRINSAP report for the existing Plum Creek Culvert.
4. A City Project Manager to conduct the Public Meeting.

**Exhibit "B"**  
**Project Schedule**



### Exhibit "B" - Goforth Road Schedule



Item # 19

Project Goforth Road  
Date Thu 3/13/14

Task Split Milestone Summary

Project Summary External Tasks External Milestone Inactive Task

Duration-only Manual Summary Rollup Manual Summary Start-only

Finish-only Progress Deadline

Page 1

**Exhibit "C"**  
**Summary of Compensation**

City of Kyle, Texas  
 Summary Breakdown of Engineering Design Services Contract Compensation  
 For City Council Meeting on March 18, 2014

Name of Road: Goforth Road (IH 35 to Bunton Creek Road)  
Name of Firm: Lockwood, Andrews & Newnam, Inc.

Item	Project Phase	Work Task	Compensation Type	Compensation
1.	<b><u>Preliminary Engineering</u></b>	Survey Control/Topographic/RWO Surveying	Lump Sum	42,055.00
2.		Geotechnical Investigation & Pavement Design	Lump Sum	37,755.00
3		Traffic Operations Report		30,055.00
4		Schematic Design (once done = 30% designed)	Lump Sum	84,100.00
5		Environmental Permitting Evaluation	Lump Sum	21,325.36
6		Public Involvement	Cost Plus	-
7		Utility Coordination	Lump Sum	7,535.00
8		Bridge Schematic Layout, Cost Estimate		11,240.00
9		Drainage Study & Report		42,620.00
10		Sub-total:		<u>\$ 276,685.36</u>
11	<b><u>Design</u></b>	30% Plans, Specifications, & Estimates	Lump Sum	191,411.50
12		60% Plans, Specifications, & Estimates	Lump Sum	191,411.50
13		90% Plans, Specifications, & Estimates	Lump Sum	109,113.75
14		100% Plans, Specifications, & Estimates	Lump Sum	36,371.25
15		Direct Expenses	Cost Plus	31,293.35
16		Sub-total:		<u>\$ 559,601.35</u>
17	<b><u>Bidding</u></b>	Bid Phase Services	Lump Sum	17,920.00
		Sub-total:		<u>\$ 17,920.00</u>
18	<b><u>Construction</u></b>	Construction Administration & Close-Out	Lump Sum	40,658.00
		Sub-total:		<u>\$ 40,658.00</u>
19		<b>Total Base Compensation</b>		<u>\$ 894,864.71</u>
20	<b><u>Additional Services</u></b>			
21	<b><u>Utilities</u></b>	Water and Wastewater Line Replacement	Lump Sum	100,154.55
22	<b><u>ROW Acquisition</u></b>	Parcel Surveying	Lump Sum	-
23	<b><u>ROW Acquisition</u></b>	ROW Acquisition Services (Land Cost Not Included)	Lump Sum	-
24.	<b><u>Subsurface Utility Engineering</u></b>	Quality Level "A"	Unit Price	6,250.00
25.	<b><u>Total Additional Services</u></b>	Sub-total:		<u>\$ 106,404.55</u>
26.		<b>Total Compensation for Base &amp; Additional Services:</b>		<u>\$ 1,001,269.26</u>

City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 18, 2014  
CONTACT CITY DEPARTMENT: Engineering Services  
CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

SUBJECT:

A Resolution of the City of Kyle, Texas, authorizing the City Manager to execute an agreement in an amount not to exceed \$1,001,269.26 with LOCKWOOD, ANDREWS, & NEWNAM, INC., for design and construction phase services relating to Goforth Road (IH-35 to Bunton Creek Road); making findings of fact; and providing for related matters.

CURRENT YEAR FISCAL IMPACT:

This engineering services contract LOCKWOOD, ANDREWS & NEWNAM, INC., will require expenditure of funds from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.


1. City Department:	Engineering Services
2. Project Name:	Engineering - Goforth Road
3. Budget/Accounting Code(s):	188-681-57313
4. Funding Source:	2013 GO Bond Fund (Road Bonds)
5. Current Appropriation:	\$ 5,410,000.00
6. Unencumbered Balance:	\$ 5,015,893.00
7. Amount of This Action:	<u>\$( 1,001,269.26)</u>
8. Remaining Balance:	<u>\$ 4,014,623.74</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this professional services agreement for engineering services with LOCKWOOD, ANDREWS & NEWNAM, INC., in an amount not to exceed \$1,001,269.26 will be provided from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.

ADDITIONAL INFORMATION/COUNCIL ACTION:

On November 6, 2013, City Council authorized a Master Service Agreement with M&S ENGINEERING, LLC, of Spring Branch, Texas, in an amount not to exceed \$10,000.00 to facilitate general engineering professional services and to provide specific engineering services related to negotiation of professional scopes and fees for North Burleson Street and Marketplace Avenue.

 3/12/2014

Perwez A. Moheet, CPA - Date  
Director of Finance



# CITY OF KYLE

520 E. RR 150  
Office (512) 262-3024

Kyle, Texas 78640  
Fax (512) 262-3403

## MEMORANDUM

TO: Lanny S. Lambert, City Manager

FROM: Leon Barba, P.E., City Engineer *LB*

DATE: March 13, 2014

SUBJECT: Renegotiated Road Bond Projects

Based on direction from City Council and staff recommendations, the engineering consultants were asked to remove any Public Information/Public Outreach and any real estate acquisition fees from the proposed contracts. Additionally, all contracts are to include the 30, 60, 90 and 100% review milestones. Following is an update on the proposed engineering fees for the five road bond projects:

### **Lehman Rd. – FM 150 to Goforth Rd. (HDR)**

Initial Proposal	\$ 703,997.00
Current Proposal	<u>\$ 697,000.00</u>
Reduction	\$ 6,997.00

### **Goforth Rd. – IH 35 to Bunton Creek Rd. (LAN)**

Initial Proposal	\$1,009,992.00
Current Proposal	<u>\$1,001,269.26</u>
Reduction	\$ 8,722.74

### **Bunton Creek Rd. – IH 35 to Lehman (LJA)**

Initial Proposal	\$ 579,454.34
Current Proposal	<u>\$ 484,274.34</u>
Reduction	\$ 95,180.00

**N. Burleson – Miller St. to IH 35 (FNI)**

Initial Proposal	\$ 974,262.00
Current Proposal	<u>\$ 959,692.00</u>
Reduction	\$ 14,570.00

**Marketplace Avenue - Burleson Rd. to City Lights (KFA)**

Initial Proposal	\$ 412,448.00
Current Proposal	<u>\$ 364,134.00</u>
Reduction	\$ 48,314.00

The total reduction for the five projects is \$173,783.74. Please let me know if you need any additional information.

Xc: Harper Wilder, Public Works Dept.  
Perwez Moheet, Finance Dept.



# CITY OF KYLE, TEXAS

## Professional Services Agreement - HDR

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$697,000.00 WITH HDR ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO LEHMAN ROAD (FM 150 TO GOFORTH ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

**Other Information:**

**Budget Information:** A Fiscal Note is attached.

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

#### Attachments / click to download

- [Fiscal Note](#)
- [Memo-Renegotiated Road Bond Projects](#)
- [Mar 18 Agenda - HDR K](#)
- [Mar 18 Agenda - RESOL - HDR](#)
- [HDR-Scope of Work & Schedule-Lehman Road](#)

Cover Memo

Item # 20

**RESOLUTION NO.****A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$697,000.00 WITH HDR ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO LEHMAN ROAD (FM 150 TO GOFORTH ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

WHEREAS, the City of Kyle requested qualifications from professional engineering firms to provide design services for certain street and road improvements; and,

WHEREAS, the City desires to obtain design services from HDR Engineering, Inc., for street improvements related to Lehman Road (FM 150 to Goforth Road);

WHEREAS, HDR Engineering, Inc., is qualified and capable of performing the professional engineering design services proposed herein and is willing to enter into an Agreement with the City of Kyle to perform such services; and,

WHEREAS, an agreement that defines the scope of services and fees has been negotiated between HDR Engineering, Inc., and the City of Kyle and is attached hereto as EXHIBIT "A" and incorporated by reference herein.

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

Section 1. Findings. The hereinabove 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. Authorization. The city manager is hereby authorized to execute a professional services agreement in an amount not to exceed \$697,000.00 with HDR Engineering, Inc., of Omaha, Nebraska, for design services for street improvements related to Lehman Road (FM 150 to Goforth Road), attached as Exhibit "A" hereto.

Section 3. 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, Texas.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution was 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.

PASSED AND APPROVED this \_\_\_\_ day of March, 2014.

THE CITY OF KYLE, TEXAS

ATTEST:

\_\_\_\_\_  
Lucy Johnson, Mayor

\_\_\_\_\_  
Amelia Sanchez, City Secretary



**EXHIBIT "A"**  
**PROFESSIONAL SERVICES AGREEMENT**

**[SEE ATTACHED]**

**CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES  
FOR LEHMAN ROAD IMPROVEMENTS**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF HAYS**       §

THIS IS AN AGREEMENT by and between the CITY OF KYLE, Texas, a Texas home rule City (hereinafter called "CITY"), acting through its duly authorized agent, Lanny S. Lambert, City Manager, and HDR ENGINEERING, INC. (hereinafter called DESIGN PROFESSIONAL") for engineering design professional services (hereinafter called "the Agreement")

WHEREAS, the CITY desires to obtain DESIGN PROFESSIONAL's services for street improvements related to Lehman Road (FM 150 to Goforth Road), hereinafter called the "PROJECT";

WHEREAS, the CITY desires to obtain professional engineering design services in connection with the PROJECT; and

WHEREAS, the DESIGN PROFESSIONAL is qualified and capable of performing the professional engineering design services proposed herein, which are acceptable to the CITY, and is willing to enter into an Agreement with the CITY to perform such services.

NOW, THEREFORE, the parties hereto do mutually CONTRACT and AGREE as follows:

**ARTICLE 1  
SERVICES TO BE PROVIDED**

**1.1** The CITY agrees to retain the DESIGN PROFESSIONAL, and the DESIGN PROFESSIONAL agrees to perform professional services for the PROJECT as an independent contractor and professional consultant as set forth in the sections following; and CITY agrees to pay, and the DESIGN PROFESSIONAL agrees to accept fees as specified in the sections following as full and final compensation for the work accomplished.

**1.2** The DESIGN PROFESSIONAL shall provide its services in accordance with the normal degree of care and skill of other reputable Engineers providing similar services on similar projects of like size and nature at the same time and in the same locale as this PROJECT. No other guarantee or warranty of any kind, unless expressed or implied at common law or created by statute, is extended, made, or intended by the rendition of DESIGN PROFESSIONAL's services.

## ARTICLE 2 SCOPE OF WORK

The DESIGN PROFESSIONAL agrees to provide all services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this contract Agreement.

## ARTICLE 3 PROJECT SCHEDULE

The DESIGN PROFESSIONAL agrees to perform the Engineer’s Scope of Work in accordance with the **Exhibit “B” – Project Schedule** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes.

## ARTICLE 4 COMPENSATION

### 4.1 DEFINITION OF COMPENSATION TERMS

**4.1.1 Hourly Rates (HR)** - Hourly rates is the cost of salaries of DESIGN PROFESSIONALS (Technicians, drafters, stenographers, surveyors, clerks, laborers, etc.), fringe benefits (social security contributions, unemployment excise and payroll taxes, employment compensation insurance, medical and other insurance benefits, sick leave, vacation, holiday pay, contributions to a pension or retirement plan), overhead and profit for time directly chargeable to the PROJECT. Hourly rates for Basic and Additional Services for this PROJECT will not exceed those listed in **Exhibit “C” Summary of Compensation** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes. DESIGN PROFESSIONAL shall provide documentation of said hourly rates upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said hourly rates not customarily or ordinarily attributable to “Hourly Rates” The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.2 Direct Non-Labor Expenses (DNLE)**- Direct non-labor expenses are defined as all non-labor expenses incurred by the DESIGN PROFESSIONAL which are directly chargeable to the PROJECT, which is defined as expenses for supplies, transportation, equipment, travel, communications, subsistence and lodging, field office expenses, reproductions, and similar incidentals. DESIGN PROFESSIONAL shall provide documentation of said expenses upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said expenses not customarily or ordinarily attributable to DNLE or which are in excess in an amount which are not customarily or ordinarily attributable to DNLE. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1)

time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.3 Lump Sum (LS)** - The CITY shall pay the DESIGN PROFESSIONAL a Lump Sum amount for the specified category of services. The “Lump Sum” is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and DNLE. The portion of the Lump Sum amount billed for the DESIGN PROFESSIONAL'S services shall be based upon DESIGN PROFESSIONAL'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. The CITY has the option of agreeing to this amount before making Lump Sum payment to the DESIGN PROFESSIONAL.

**4.1.4 Unit Price (UP)** - The CITY shall pay the DESIGN PROFESSIONAL an amount equal to the Unit Price times the actual quantity of unit(s) for the specified category of services. The amount equal to the Unit Price is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and Reimbursable Expenses. The portion of the amount billed for Engineer's services shall be based upon Engineer's estimate of the proportion of the Unit Price for services actually completed during the billing period to the Unit Price. The CITY has the option of agreeing to this amount before making Unit Price payments to the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

## 4.2 PAYMENT FOR SERVICES

Based upon applications for payment submitted by the DESIGN PROFESSIONAL and approved by the CITY, the CITY will make progress payments as scheduled hereafter for services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this Agreement and incorporated herein by reference. The application for payment will be computed on the basis of hourly rates, direct non-labor expenses, lump sum and unit price work items shown in **Exhibit “C” - Summary of Compensation**. The DESIGN PROFESSIONAL will be paid a TOTAL amount not to exceed **\$697,000.00** for design and construction phase services. Partial payments will be made upon presentation of statements to CITY in the manner otherwise set forth in this Agreement.

## 4.3 PAYMENT FOR ADDITIONAL SERVICES

**4.3.1** As determined by the DESIGN PROFESSIONAL or the CITY or both parties, when the need for additional services arises, the scope of work, compensation terms and total compensation will be negotiated between the CITY and DESIGN PROFESSIONAL before said additional work shall begin. In the event said additional work is begun before the CITY gives its prior written approval, the CITY has the option to ratify its approval of said additional work. Payment for additional services will be computed on the basis of hourly rates,

direct non-labor expenses, lump sum and/or unit prices for additional work. For the services of personnel described in this section, the DESIGN PROFESSIONAL will be compensated in accordance with the schedule for various employees of the DESIGN PROFESSIONAL as set forth in **Exhibit “C” – Summary of Compensation.**

**4.3.2** Payment for Additional Services will be made in the manner otherwise set forth in this Agreement, based upon presentation of invoices, statements and billings to the CITY sufficient to show the work accomplished. Under no conditions will any additional services be paid for until the DESIGN PROFESSIONAL has received written authorization from the CITY for such work.

#### **4.4 ADDITIONAL COPIES OF PRINTED DOCUMENTS**

Additional copies, above the number due as part of the basic services outlined in Article 2, of reproduced plans, specifications, maps and exhibits will be available to the CITY at actual invoice cost to the DESIGN PROFESSIONAL.

### **ARTICLE 5 SERVICES BY THE CITY**

**5.1** In general, the CITY will render services as follows:

- 5.1.1** Provide available criteria and full information as to the CITY’s requirements for the PROJECT.
- 5.1.2** Assist the DESIGN PROFESSIONAL by placing at his disposal all available written data pertinent to previous operations, reports, and any other data affecting the design and/or construction of the PROJECT.
- 5.1.3** Acquire all land and rights-of-way required for the PROJECT and any related off-site work, including rights of ingress and egress on private property.
- 5.1.4** Respond in writing no later than thirty (30) calendar days to requests by the DESIGN PROFESSIONAL for authorization to proceed with specific activities deemed desirable.
- 5.1.5** No later than thirty (30) calendar days from the date of submittal, examine documents submitted by the DESIGN PROFESSIONAL and render decisions pertaining thereto in order to avoid delay in the progress of the DESIGN PROFESSIONAL’s services.
- 5.1.6** Timely provide to DESIGN PROFESSIONAL information that is required or necessary for the orderly progress of the work.

**5.2** The DESIGN PROFESSIONAL will be entitled to rely upon the CITY's engineer regarding decisions made by the CITY pertaining to this PROJECT and rely upon the accuracy and completeness of all information and data provided by or through the CITY or its Engineer; further, all notices or information will be deemed made when conveyed in writing to the DESIGN PROFESSIONAL.

**5.3** The services, information and reports required above will be furnished at the CITY's expense.

## **ARTICLE 6 PROJECT DOCUMENTS**

All documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed, with the exception of those standard details and specifications regularly used by the DESIGN PROFESSIONAL in its normal course of business, will upon payment of all amounts rightfully owed by the CITY to the DESIGN PROFESSIONAL herein be the property of the CITY. The latest version of all documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed will be available to the CITY no later than thirty (30) calendar days from the date the CITY makes a verbal or written request to DESIGN PROFESSIONAL. DESIGN PROFESSIONAL, its subcontractors, agents and employees will be liable to the CITY for any loss or damage to any such documents while they are in the possession of or while being worked upon by the DESIGN PROFESSIONAL or anyone connected with him. All documents so lost or damaged will be replaced or restored by DESIGN PROFESSIONAL without cost to the CITY. Any reuse or modification of such Documents for purposes other than those intended by the DESIGN PROFESSIONAL shall be at the CITY's sole risk and without liability to the DESIGN PROFESSIONAL unless said unintended reuse or modification occurs as a result of DESIGN PROFESSIONAL'S negligence, malfeasance, or willful misconduct. Upon completion of the PROJECT, all documents shall be transferred to the CITY. DESIGN PROFESSIONAL shall not be required to maintain the records but may do so in accordance with its Document Retention Policy.

## **ARTICLE 7 NOTICE TO PROCEED; SCHEDULING OF WORK**

It is understood and agreed that the DESIGN PROFESSIONAL will work as an Independent Contractor by the CITY, will have ultimate control of the services to be rendered except as otherwise provided in this Agreement or in the event said control shall be in violation of this Agreement, and that no work will be done under this Agreement until the DESIGN PROFESSIONAL is instructed in writing to proceed with the work. In the event the DESIGN PROFESSIONAL does work before it is instructed in writing to proceed, the CITY shall not be obligated or in any way liable for payment of compensation or other reimbursements to the DESIGN PROFESSIONAL.

## **ARTICLE 8 ASSIGNMENT**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party will assign, sublet nor transfer any interest in this Agreement without the written authorization of the other.

## **ARTICLE 9 TERMINATION**

**9.1** In connection with the work outlined in this contract, it is agreed and fully understood by the DESIGN PROFESSIONAL that the CITY may cancel or indefinitely suspend further work hereunder or terminate this Agreement upon fifteen (15) days written notice to the DESIGN PROFESSIONAL with the understanding that immediately upon receipt of said notice all work and labor being performed under this contact will cease. As a condition precedent for termination for cause, the DESIGN PROFESSIONAL shall have the 15 day notice period to cure such cause and shall have failed to so cure. Before the end of such fifteen (15) day period DESIGN PROFESSIONAL will invoice CITY for all work completed satisfactorily to the CITY and will be compensated in accordance with the terms of this Agreement. All drawings, field surveys, maps, estimates, investigation, studies, and other data work related to the PROJECT will become the property of the CITY upon termination of the Agreement.

**9.2** Nothing contained in paragraph 9.1 above will require the CITY to pay for any work which fails to meet the Standard of Care. The CITY will not be required to make any payments to the DESIGN PROFESSIONAL when the DESIGN PROFESSIONAL is in default under this Agreement. The CITY and the DESIGN PROFESSIONAL retain their respective rights and remedies under law and this Agreement does not, nor shall be interpreted, to waive or otherwise modify said rights.

**9.3** The DESIGN PROFESSIONAL understands and agrees that time is of the essence and that any failure of the DESIGN PROFESSIONAL to complete its services within the time limit established herein solely due to the fault of the DESIGN PROFESSIONAL will constitute a material breach of this Agreement. However, it is agreed that DESIGN PROFESSIONAL must use sound professional practices. The DESIGN PROFESSIONAL will be fully responsible for any delays or for failures to use its professional efforts in developing contractual documents in accordance with the terms of this Agreement. Where damage is caused to the CITY due to the DESIGN PROFESSIONAL's failure to perform in this manner, as determined by the governing body of the CITY, the CITY may withhold all or any portion of the DESIGN PROFESSIONAL's payments hereunder without waiver of any of either PARTY's additional legal rights or remedies.

**9.4** The DESIGN PROFESSIONAL will have the right to terminate this Agreement, on fifteen (15) days written notice to the CITY should the CITY fail to perform its

obligation herein to the satisfaction of the DESIGN PROFESSIONAL. In the event of termination, the DESIGN PROFESSIONAL will be paid for all services rendered to date of termination. Nothing contained herein will constitute a waiver of DESIGN PROFESSIONAL's right to bring a suit for damages or to enforce specific performances of this Agreement under these circumstances. In the event of termination hereunder, DESIGN PROFESSIONAL will invoice CITY for all work satisfactorily completed up to the date of this notice of termination and will be compensated in accordance with the terms of Agreement.

**9.5** Notwithstanding anything contained herein to the contrary, the CITY will have the right to withdraw from this Agreement on the last day of CITY's current fiscal year in the event of non-appropriation of funds by its governing body, and providing ten (10) days written notice from CITY to DESIGN PROFESSIONAL.

#### **ARTICLE 10 VENUE**

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement will lie exclusively in a court of competent jurisdiction Hays County, Texas, and such court will interpret this Agreement in accordance with the laws of the State of Texas.

#### **ARTICLE 11 ENTIRE AGREEMENT**

This instrument represents the entire understanding between the CITY and the DESIGN PROFESSIONAL in respect to the PROJECT and may only be modified in writing signed by both parties.

#### **ARTICLE 12 SEVERABILITY**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

#### **ARTICLE 13 RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

**13.1** Approval by the CITY will not constitute nor be deemed a release of the responsibility and liability of the DESIGN PROFESSIONAL, its employees,



subcontractors, agents and consultants for the accuracy and competency of their designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for the DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents prepared by the DESIGN PROFESSIONAL, his employees, subcontractors, agents and consultants.

**13.2** The CITY agrees the DESIGN PROFESSIONAL is not responsible for damages arising from any circumstances beyond the DESIGN PROFESSIONAL's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; failure of any governmental agency to act in a timely manner; failure of performance by the CITY or the CITY's other subcontractors or consultants; or discovery of any hazardous substances or differing and unforeseeable site conditions.

#### **ARTICLE 14 INDEMNIFICATION**

The DESIGN PROFESSIONAL will indemnify and hold the CITY and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expense, including costs of court, reasonable attorneys' fees, expert witnesses' and consultants' fees, on account of damage to property and injuries, including death, to all persons, whether caused by DESIGN PROFESSIONAL or its officers, agents, employees, subcontractors, licensees, or invitees to the extent caused by any act of negligence or intentionally wrongful act or material breach of any obligation under this Agreement, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them, or any of them in connection herewith resulting from such act of negligence or intentional act or breach for which DESIGN PROFESSIONAL is found to be legally liable.

In no event shall either PARTY be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

The indemnity obligations herein shall survive the termination of the contract for any reason and shall survive the completion of the work on the PROJECT.

It is understood and agreed that the indemnity and defense obligations contained and described herein shall be interpreted in accordance with Texas law current as of the date of this Agreement and that any indemnity or defense obligation, if at all, shall be claimed,

interpreted and enforced on a comparative basis of fault and responsibility. Neither Party to this Agreement will allege, claim, file suit or otherwise demand that the other Party provide any indemnity or defense as such may relate to the negligent acts, errors or omissions of the claiming Party.

## **ARTICLE 15 INSURANCE**

The DESIGN PROFESSIONAL will maintain at all times professional liability or errors and omissions insurance covering any claim hereunder occasioned by DESIGN PROFESSIONAL's negligent act, or error or omission in an amount of not less than \$250,000 per claim and \$500,000 annual aggregate. DESIGN PROFESSIONAL agrees to maintain professional liability insurance during the term of this agreement and, if the policy is on a claims made basis, for a period of not less than five (5) years after the Project is complete and provide proof of such continuing coverage providing such coverage is readily available and financially feasible. DESIGN PROFESSIONAL further agrees to provide proof of coverage as needed for prior acts back to the date of execution of this agreement if DESIGN PROFESSIONAL changes insurance carriers during this extended indemnity period.

DESIGN PROFESSIONAL will further maintain general commercial liability coverage with minimum limits for damages resulting from bodily injury or death of \$250,000 per person and \$500,000 per occurrence, and \$100,000 per occurrence for property damage, or single limit of \$500,000.

DESIGN PROFESSIONAL further agrees that with respect to the above required liability insurance, the CITY will:

1. Be named as additional insured for general liability insurance.
2. Be provided with a waiver of subrogation, in favor of CITY.
3. Be provided with thirty (30) days advance written notice of cancellation, or nonrenewal (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate).
4. Upon execution of this Agreement by DESIGN PROFESSIONAL, be provided through the office of the City Clerk with either their original Certificate of Insurance or their insurance policy evidencing the above limits and requirements and subject to approval by the City Attorney.

The insurance requirements set out in this section are independent from all other obligations of DESIGN PROFESSIONAL under this Agreement and apply whether or not required by any other provision of this Agreement.

**ARTICLE 16**  
**COMPLIANCE WITH LAWS**

The DESIGN PROFESSIONAL, its consultants, agents and employees and subcontractors, will comply with all applicable federal and state laws, the Charter and Code of Ordinances of the City of Kyle, and all other applicable rules and regulations promoted by all local, state and national boards, bureaus and agencies.

**ARTICLE 17**  
**NOTICES**

This contract will be administered on the CITY's behalf by the City Engineer. All notices, documentation, or questions arising under this Agreement should be addressed to the CITY's Engineer at:

City Manager  
Kyle City Hall  
100 W. Center Street  
Kyle, Texas 78640

All written notices from CITY to DESIGN PROFESSIONAL will be addressed to the DESIGN PROFESSIONAL as follows:

Allen R. Crozier, P.E.  
HDR Engineering, Inc.  
4401 West Gate Blvd., Suite 400  
Austin, TX 78745

**ARTICLE 18**  
**CAPTIONS**

The captions of this Agreement are for information purposes only and will not in any way affect the substantive terms and conditions of this Agreement.

**ARTICLE 19**  
**MEDIATION**

In the event a dispute arises between the CITY and the DESIGN PROFESSIONAL in the application or interpretation of this Agreement, or one or more of its provisions, the parties may mutually agree to take such dispute to a mediator mutually agreed upon by both parties to this Agreement for resolution. Neither party is bound to the mediator's decision.

**ARTICLE 20  
EXECUTION AND EFFECTIVE DATE OF AGREEMENT**

The execution of this Agreement shall proceed as follows: signature of the DESIGN PROFESSIONAL shall be affixed hereto, whereupon the Agreement shall be submitted to the City Attorney for review, and then to the City Council for final review and approval. After such approval from the City Council, the Agreement shall then be signed by the City Manager. This Agreement will become effective immediately upon the signature of both parties. An executed original of this Agreement shall be kept on file in the City Clerk’s office.

**IN WITNESS WHEREOF**, the City of Kyle, Texas has caused these presents to be executed by its City Manager and attested by its City Clerk and executed by \_\_\_\_\_ on behalf of \_\_\_\_\_.

**THE CITY OF KYLE, TEXAS**

**DESIGN PROFESSIONAL:  
LOCKWOOD, ANDREWS &  
NEWNAM, INC.**

\_\_\_\_\_  
Lanny S. Lambert, City Manager

\_\_\_\_\_  
Robert D. Austin, P.E., Team Leader

**ATTEST:**

\_\_\_\_\_  
Amelia Sanchez, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
W. Ken Johnson, City Attorney

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**     §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014,  
by Lanny S. Lambert, City Manager of the City of Kyle, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

Notary Public, State of Texas

**CORPORATE ACKNOWLEDGEMENT**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**     §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014, by  
LOCKWOOD, ANDREWS & NEWNAM, INC., a Texas corporation, on behalf of such  
corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit “A”**  
**Engineer’s Scope of Services**

## EXHIBIT "A"

### SERVICES TO BE PROVIDED BY CITY

In addition to the services listed in Article 5 of the Contract Agreement, CITY will provide the following services.

- Furnish a Project/Contract Manager/Administrator to coordinate all aspects of the Project with CITY staff.
- CITY will provide **ALL** public involvement services.
  - Prepare and coordinate public outreach and involvement plan including social media and website hosting for the project.
  - Develop, design, produce and print Project newsletters, that communicate important information related to stakeholders.
  - Develop, design, produce and send Project E-blasts featuring certain project milestones, information and upcoming meeting notices.
  - Prepare notices for public meeting and public hearing and advertise in appropriate newspapers and on City website.
  - Prepare and mail public meeting and public hearing notification letters to stakeholders and regulatory agencies.
  - Conduct meetings with key stakeholders, public meeting and public hearing. Coordinate and secure meeting space, supplies (tables/chairs/markers) and court reporter for public meeting and public hearing. The CITY will facilitate the meeting itself and provide both electronic and written opportunities for comment to the public. The City will provide language assistance at the meeting for Spanish speaking people who may not feel comfortable making comments in English, and provide avenues, if requested by any member of the public, to share information before or after the meeting in Spanish (or any other language recognized as an ESL language group by a school district in CITY).  
If deemed appropriate per Chapter 26, Texas Parks and Wildlife Code requirements, the public meeting and public hearing will be held in accordance with Chapter 26, Texas Parks and Wildlife Code.
  - Prepare public meeting and hearing summaries and analyses in accordance with State rules.
- Prepare and submit the necessary documentation to place the project on the Transportation Improvement Program (TIP) if Federal funding is sought.
- Provide timely reviews and approvals of required documentation including, working documents, reports, and drawings.
- Perform timely review and processing of monthly invoice submissions.

## SERVICES TO BE PROVIDED BY THE ENGINEER

### GENERAL PROJECT OVERVIEW

The scope of services for this project includes the preparation of the environmental document, survey, design schematic, right-of-way determination, utility coordination, preparation of Plans, Specifications and Estimate (PS&E), bid phase services, and construction support services for approximately 1.6-miles of improvements to Lehman Road from FM 150 to CR 157 (Goforth Road) as part of the 2013 Kyle Road Bond Program.

Project includes the addition of selected sections of 4-lane roadway near the intersections with FM 150 and CR 157 along with a continuous left turn lane in between. Project also includes traffic signal warrant study at CR 157 and safety lighting at the intersections with FM 150 and CR 157. Safety lighting at the Masonwood Drive, Primrose Blvd., Hiver St./Goldenrod St., and Brutus Drive intersections would also be provided.

The CITY desires to maintain eligibility for construction funding through CAMPO or other sources. Therefore, all plans will be developed in accordance with the TxDOT Austin District PS&E Development Guide and other pertinent TxDOT design manuals and guidelines.

The project will be developed in English units utilizing Microstation V8i and Geopak Software.

The design schematic will be submitted on 36" wide roll plots.

The PS&E plan sheets will be 11"x 17" sheets with final submittal on 11" x 17" paper.

Scope of work assumes the project will be let for construction by the CITY and that the Engineer shall provide construction management and inspection services through a supplemental agreement added at a later date.

### PROJECT MANAGEMENT

- **Project management.**
  - Prepare monthly project invoices with progress report (18 months).
  - Prepare project schedule and update monthly (Submit with project invoices).
  - Project filing.
- **Subconsultant coordination.** The ENGINEER will conduct monthly team meetings with project subconsultants (18 meetings at 1 hour per meeting).
- **CITY Coordination.**
  - ENGINEER will conduct the following coordination meetings with the CITY.
    - Project Kickoff – Establish CITY expectations, communication protocols and invoicing requirements.
    - Preliminary Design Schematic Review – Present preliminary schematic at for review, comment and approval by the CITY.
    - Final Schematic / 30% Submittal Review Meeting – Present final schematic for review, comment and approval by the CITY.
    - 60% PS&E Review Meeting – Meeting to review comments and responses on 60% plan submittal.
    - 90% PS&E Review Meeting – Meeting to review comments and responses on 90% plan submittal.



- Final PS&E Review Meeting – Meeting to review comments and responses on Final plan submittal.
  - Quarterly Coordination/Progress Meetings (6 meetings at 2 hours per meeting) to coordinate and provide progress updates to CITY staff.
- **Hays County coordination.**
  - Hays County currently has an on-going project for FM 150 from Lehman Road to SH 21. ENGINEER will coordinate with Bowman Consulting, Inc., the FM 150 design consultant, during the schematic and PS&E development process to integrate the two projects and verify interaction of construction traffic control plans (2 meetings at 2 hours per meeting). FM 150 project anticipated to begin construction early summer 2014.
- **Goforth Road (CR 157) Designer Coordination Meeting.**
  - Coordination meetings with Lockwood, Andrews and Newnam, Inc. the CR 157 (Goforth Rd) designer. CITY will determine which project will be let first such that designers can determine the sequence of work (2 meetings at 2 hours per meeting).

### ENVIRONMENTAL STUDIES

- **Purpose and Need Statement.** The ENGINEER will develop the project statement of purpose and need that will serve as the basis for the project and define the project scope.
- **Resource and Regulatory Agency Coordination.** The ENGINEER will coordinate with the appropriate agencies throughout the duration of the project in order to obtain input, clarification and guidance and to facilitate timely reviews and approvals.
- **Natural Resources.** The ENGINEER will identify and characterize vegetation types and provide vegetation and habitat descriptions.
- **Water Resources.** The ENGINEER will conduct a delineation and proposed jurisdictional determination of waters of the U.S., including wetlands, in accordance with the U.S. Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual and the Great Plains Regional Supplemental within the proposed ROW. It is anticipated that the proposed Project would require coverage under Nationwide Permit (NWP) 14 (transportation projects) for impacts to jurisdictional waters up to ½ acre. If a pre-construction notification (PCN) for a NWP is necessary (for impacts to jurisdictional waters between 1/10 and ½ acre), the ENGINEER would accomplish that under separate scope.
- **Cultural Resources.** Scope for cultural resources will be provided by sub-consultant AmaTerra (See attached).
- **Hazardous Materials.** The ENGINEER shall perform an initial assessment for potential hazardous materials impacts. The initial assessment shall determine the potential for encountering hazardous materials in the study area. The initial hazardous materials assessment shall also be in accordance with the American Society for Testing and Materials (ASTM) Environmental Site Assessment standard practices (ASTM E 1527 and ASTM E 1528) or equivalent (i.e., satisfies "due diligence" and "appropriate inquiry" requirements under the Comprehensive Environmental Response and Compensation Liability Act (42 USC 9601(35)(B))). The following components of the initial hazardous materials assessment shall be reviewed, assessed, and/or documented to an appropriate project-specific level:

- Existing and previous land use information from readily available resources (topographic maps, available aerial photos, right-of-way maps, files and other information);
- Initial site/corridor field surveys by the hazardous materials expert;
- A regulatory agency database search (list search) and/or review of regulatory agency files.
- Note: A Phase I Environmental Site Assessment (ESA) in accordance with procedures contained in the American Society for Testing and Materials (ASTM) Standard E1527-05, Standard Practices for ESAs: Phase I ESA Process (which includes the federally-mandated All Appropriate Inquiries requirements) is not included in this scope of work. A Phase I ESA is typically only considered valid for six (6) months; therefore, it is assumed it will be developed during the final real estate phase, if necessary.
- **Public Involvement:** CITY will provide ALL public involvement services. The ENGINEER will not participate in Open House / Public Meeting or Public Hearing. Exhibits will be limited to the draft/final schematic and constraints map. All other meeting materials will be prepared and provided by the CITY. The ENGINEER will meet with the CITY after the public meeting/hearing to collect public input gathered by CITY staff.
- **Environmental Document Preparation.**
  - **Final EA.** The ENGINEER shall prepare an EA which shall include discussions of purpose and need, existing and proposed design, alternative descriptions, alternatives analysis, historical/archeological assessment, vegetation and habitat review, ROW, hazardous materials, water quality, wetlands, floodplains, and construction impacts. The ENGINEER assumes that the EA will evaluate the No-Build Alternative and Build Alternative.
  - The ENGINEER shall prepare exhibits including, but not limited to, the following: vicinity map, floodplain map, existing and proposed typical sections, line diagrammatic schematic, wetlands inventory map, USGS map, site photographs and hazardous sites map, as appropriate.
  - Exhibits in the document shall be limited in size to 8 1/2" x 11" or 11" x 17" for ease of reproduction. Illustrations shall be developed using GIS (ArcView) and/or CADD (MicroStation) software.
  - The ENGINEER shall schedule and attend up to three review meetings to be held with the CITY for the Project. The purpose of the review is for the ENGINEER to receive comments from the CITY on the environmental document.
  - The ENGINEER shall revise the EA, addressing those comments obtained from the CITY.

## **DELIVERABLES**

- **Environmental Document.** If federal funding is identified, a supplement will be necessary to complete coordination efforts with TXDOT, complete 4(f) requirements including a public hearing, perform an air quality analysis, perform a noise analysis, perform additional analysis in the EA document (displacements, socioeconomic analysis and environmental justice impacts, indirect and cumulative impacts, and environmental permits, issues, and commitments), respond to TxDOT review comments, and obtain environmental clearance.

## **PRELIMINARY DRAINAGE**

- **Data Collection.** The ENGINEER will collect and review available drainage data from nearby roadways, watershed studies, FEMA maps, aerial imagery, or other relevant information. Flood pool elevation data for the NRCS Site 2 flood retarding structure will be obtained from the NRCS. The ENGINEER shall perform site visits to understand drainage patterns on site.
- **Preliminary Hydrology.** The ENGINEER will develop overall drainage boundaries, identify major crossings for planned culvert/bridge crossings, and develop preliminary peak flow rates for design storms according to TxDOT criteria for each proposed crossing. The ENGINEER will only develop peak flows for the design and check flood events. It is assumed that the Plum Creek development hydrologic model will be available from the CITY to use as a base model to start from.
- **Preliminary Cross Drainage.** The ENGINEER will develop preliminary peak flood elevations for design storms and determine preliminary sizes of culverts and minimum required spans/heights of bridges. The ENGINEER will only develop flood elevations for the design and check flood events. Cross drainage will be designed for zero rise to the 100-year base flood elevations unless directed otherwise by the CITY. The ENGINEER anticipates no FEMA submittals. A CLOMR/LOMR submittal shall be considered additional services to this scope.
- **Preliminary Parallel Drainage.** The ENGINEER will develop preliminary layout of parallel drainage system. This system is expected to include storm sewers, ditches, and driveway culverts. Prior to beginning this preliminary effort, a decision between curb and gutter or rural section is expected, alternative or multiple analyses are not anticipated.
- **Preliminary Design Plans and Estimate.** The ENGINEER will prepare schematic design plans for proposed drainage facilities. Plans shall include preliminary culvert and bridge layouts and parallel drainage concepts in plan view only, as part of a scroll plot. A preliminary quantity estimate shall be provided.
- **Comment / Response.** The ENGINEER will respond to review comments by CITY.
- **Meetings.** The ENGINEER anticipates up to 1 meeting for the schematic phase.

## **DESIGN SCHEMATIC**

- **Design Concept Conference.** The ENGINEER will prepare for and attend a design concept conference with the CITY to determine key design features.
  - Set typical section.
  - Set design criteria (TxDOT 3R).
  - Prepare TxDOT Design Summary Report (DSR) and Page 3 of TxDOT Form 1002.

- **Conduct Alternatives Analysis.**
  - The ENGINEER will determine evaluation criteria (traffic, engineering, etc.).
  - The ENGINEER will develop conceptual alternative(s) to evaluate against the no-build alternative.
  - The ENGINEER determine reasonable alternative(s) (including the no-build)
- **Data Collection.**
  - The ENGINEER will determine data needs assessment (existing drainage reports, existing traffic data, known environmental impacts, etc.).
  - Project site visits (no more than 6).
  - The ENGINEER will collect 24-hour bi-directional traffic counts including vehicle classifications on Lehman Road (south of Goldenrod Street).
  - The ENGINEER will collect 24-hour uni-directional traffic counts for signal warrant analysis at the following locations:
    - Goforth Road Eastbound, west of FM 150
    - Goforth Road Westbound, east of FM 150
    - Lehman Road Northbound, south of Goforth Road
  - Perform signal warrant analysis as per 2011 Texas MUTCD requirements at the following intersections and submit a memorandum summarizing results.
    - Lehman Road and CR 157 (Goforth Road).
- **Develop design schematic.** A design schematic will be prepared for Lehman Road and presented on a roll plot utilizing a 1"=100-ft scale. The following design elements will be provided.
  - The ENGINEER will develop typical sections for the proposed roadway and existing roadway widenings. Proposed section will consist of a minimum of two 12-ft travel lanes (one each direction) and a 14-ft continuous center turn lane. Select regions of the project near the intersections with FM 150 and CR 157 will consist of 2-12-ft travel lanes in each direction.
  - The ENGINEER will develop the horizontal alignment with curve data. Horizontal alignment will meet 3R design criteria in accordance with the TxDOT Roadway Design Manual as determined during the Design Concept Conference meeting with TxDOT.
  - The ENGINEER will develop the vertical profile with vertical curve data. The vertical profile will meet 3R design criteria in accordance with the TxDOT Roadway Design Manual as determined during the Design Concept Conference meeting with TxDOT.
  - The ENGINEER will develop preliminary cross sections necessary for the determination of ROW needs along the project corridor. Cross sections will be presented on a roll plot at 1"=10-ft horizontal and vertical scales.
  - The ENGINEER will determine preliminary culvert/bridge lengths based on hydraulic opening needs at the four drainage crossings.
  - The ENGINEER will establish limits of the 4-lane section and 3-lane section with continuous left turn lane as determined by the traffic analysis.
  - The ENGINEER will layout pavement markings on schematic in accordance with the Texas Manual for Uniform Traffic Control Devices, TxDOT Roadway Design Manual and applicable standards.
  - The ENGINEER will layout safety lighting at intersections only.

- The ENGINEER will prepare traffic signal warrant studies at the proposed intersections of the Lehman Road at:
  - CR 157 (Goforth Road).
- The ENGINEER will coordinate with the CITY for schematic review.
  - schematic review.
  - Submit final schematic / Schematic approval.
- The ENGINEER will perform QC reviews before each submittal.

#### **DELIVERABLE**

- Roll plot of the design schematic for ultimate roadway section at a 1"=100-ft horizontal and 1"=10-ft vertical scales.

#### **DESIGN SURVEYING – SEE BAKER-AICKLEN & ASSOCIATES, INC. PROPOSAL**

#### **MISCELLANEOUS (FC 163)**

- **Utility Coordination.** The ENGINEER will perform utility coordination/engineering services related to the number of existing utilities identified to date.
  - The ENGINEER has identified the following utilities as being present within the project limits. The number of existing utilities or utility identification within the project limits are not confirmed at this time; the utilities found by Texas One-Call System and Site Visit/Field Check, generated the following tentative list:
    - ATT
    - County Line Special Utility District
    - Pedernales Electric Cooperative
    - Texas Gas Service
    - Time Warner Cable
    - Verizon
  - These services include, utility adjustment coordination activities including but not limited to, meeting and contact with utilities on the project, initial project notifications, preparation of existing utility layouts, providing progress reports, preparation of contacts lists, preparation & submission of reimbursable utility agreement assemblies as required, utility joint use acknowledgements, reviewing conflicts between the utilities and the proposed project, resolutions of utility conflicts, creation of a utility conflict list, creating a utility tracking report, review of the proposed utility adjustments, and recommendations for the proposed locations of the utility adjustments. The above list of services is general in nature and should not be considered inclusive to the ENGINEER's responsibilities, as listed in the following scope.
  - The ENGINEER will identify existing utilities; the UC will identify and coordinate existing utility information using available data sources, including:
    - Information provided by design team
    - Site visit
    - Survey information
    - Utility Coordination Meetings
    - Utility block maps
    - Record drawings
    - As-built drawings
    - Any other information provided by the utility companies.

- The ENGINEER will create a Utility Tracking Report. The UC will create, provide and maintain a Utility Tracking Report spreadsheet, in Excel format, containing at a minimum the following information:
  - Name of Utility
  - Contact Name/Address/Phone/E-Mail
  - Type of Facility
  - Utility Notification Date
  - Last Date of Contact
  - Within ROW or Private Easement
  - Eligible for Reimbursement
  - Possible conflict
  - Potential Conflict Location Data Information
  - Location of possible conflict
  - Utility Relocation
  - ROW Acquired
  - Notice to Proceed
  - Construction Start Date
  - Construction Complete Date
  - ROW Cleared
  - Comments Section – this section will be used to track coordination from each utility company week to week via e-mail, phone call, meeting, etc. This section will contain dates of correspondence.
  - Action Item Required – this section will list any action items that are necessary from any party.
  - Action Item Due Date

This Tracking Report will be a live document updated continually as the project progresses. Each week it will be saved with a new ending date to ensure that a history can be found throughout the life of the project.

- The ENGINEER will send out a Notification Package to utility companies: ENGINEER will prepare Notification Packages for every identified utility company that will include a Draft Existing Utility Layout and copies of the available design plans. It will also include a Notification Letter notifying the utility company of the project, listing the limits of the project, estimated construction cost, letting date and date and time of a Utility Coordination Meeting that will be held at the CITY of Kyle Office, if CITY prefers. Requests will be made for utility companies to provide all utility block maps, record drawings, As-Builts and any other information they have pertaining to their existing facility within the project limits.
- The ENGINEER will prepare a utility layout: using all utility information found, prepare a roll-plate utility exhibit that shows:
  - Existing utilities
  - Existing and Proposed ROW
  - Existing and Proposed Easements
  - Existing and Proposed edge of roadway

- All existing and proposed storm sewer, bridge structures, retaining walls as well as any other pertinent structures in which the utility could be in conflict with
- Background Image
  - Size, location, ownership, and number of lines in a particular utility facility
- The ENGINEER will create a Conflict Matrix: from the utility layout, identify potential conflicts. Work with utility companies to determine if additional horizontal and/or vertical information is needed (this may require SUE Quality Level B or A). Conflict matrix will calculate separation distance with proposed improvements as well as depth of cover, revealing potential conflicts with proposed improvements. Calculations will be based upon CITY's criteria of minimum clearance requirements and minimum depth of cover requirements.
- The ENGINEER will determine SUE Needs: Subsurface Utility Engineering (SUE): No SUE services have been completed by the CITY. The ENGINEER will utilize the utility layout and conflict matrix to evaluate the nature of the conflict, and develop a plan to perform SUE investigations in a cost-effective manner should the need become necessary. Should additional SUE be required at a later date, a supplemental work authorization will be necessary.
- Resolve Conflicts: Evaluate Alternatives / Utility Coordination Meetings / Determine reimbursement eligibility: The ENGINEER will arrange and attend meetings with utility companies to coordinate data collection and work with the design engineers (includes coordination, Agenda and meeting minutes), the CITY and the utility companies to determine if design modifications can be reasonably done to reduce and maybe remove the conflict as many times small tweaks in the profile, storm sewer, etc, can completely avoid a conflict. Also determination of which utilities will be eligible for reimbursement, if any, will be established.
- The ENGINEER will review utility company's relocation plans, schedule and agreement: The ENGINEER will assist the utility company with preparing their relocation plans by providing an assigned alignment and reviewing their plans for compliance and assuring no conflicts with future improvements or other utilities. The ENGINEER will also assist with any agreement execution if eligible for reimbursement, which will include betterment review, if any. The ENGINEER will move the agreement through complete execution and provide NTP to utility company
- Utility Reimbursement Agreement: The ENGINEER will coordinate with CITY and CITY's Legal Counsel to create and approve verbiage of Agreement.
- The ENGINEER will perform QA/QC. The ENGINEER will perform a QA/QC review of the Utility Layout and the Utility Conflict Matrix at 30%, 60% and 90% Design Phases
- Review/Approve Payment Request. The ENGINEER will review payment requests for conformance with the utility estimate and verify the work has been performed. This includes tracking/requesting detailed back up to support the invoiced amount in order to recommend payment.

## DELIVERABLE

- Provide Utility Companies Contact List
- Coordinate with Utility Companies on Design of their relocations (provide Meeting Minutes)
- Provide Pre-Construction Meeting Minutes
- Provide Utility Adjustment Status Reports
- Provide Utility Payment Requests (if required)
- Provide Utility Layouts
- Provide Utility Tracking Report
- Provide Conflict Matrix
- Provide individual Plan/Profile of conflict when necessary

## GEOTECHNICAL

- **Roadway Soil Borings.**
  - Roadway Borings. The ENGINEER will conduct drilling, sampling and testing at 13 locations along the proposed roadway. Roadway bore holes will be approximately 10' deep. We will obtain samples for Gradation, Atterberg Limits, Moisture content and Texas Cone Penetration from each bore holes
  - Bridge Borings. The ENGINEER will conduct drilling, sampling and testing at 4 locations along the proposed roadway at probable bridge locations. Bridge bore holes will be up to 100' deep.
  - The ENGINEER will conduct soil classification on all samples obtained from borings
  - The ENGINEER will prepare boring logs using TxDOT WINCORE program.
- **Propose Pavement Section.** The ENGINEER will use TxDOT FPS program to develop the proposed pavement section design.

## DELIVERABLE

- **Geotechnical Report.** The ENGINEER will provide the findings of the soil borings and proposed pavement section in a Geotechnical Report for the project prepared on 8.5" x 11" sheets with 11" X 17" sheets for exhibits as necessary.

## PLANS, SPECIFICATIONS & ESTIMATE

### ROADWAY GEOMETRICS

The ENGINEER will develop the PS&E package in accordance with latest TxDOT policy and preferences. TxDOT Standard detail sheets shall be utilized to the maximum extent possible to minimize plan development work. Plan sheets shall be 11" x 17" in size and shall be of uniform style and quality. Plans shall be submitted for CITY review at 30%, 60%, 90% and Final completion stages.

Project shall be governed by the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges adopted June 1, 2004.



Roadway geometry shall be developed utilizing Geopak and in accordance with the latest version of the TxDOT Roadway Design Manual.

- Prepare Typical Sections.
- Horizontal alignment data sheets.
- Prepare Plan and Profile Sheets.  
Scale 1"=100-ft Horizontal. & 1"=10-ft Vertical
- Prepare cross-sections. Cross-sections will be prepared on 11" x 17" sheets at a scale of 1" = 10-ft horizontally and vertically.
- Roadway Standard Details.
  - TxDOT Seal Coat Material Selection Table.
  - MB(11)-1
  - Austin District – Mailstop Turnout sheet
  - Austin District – Concrete Driveways, Sidewalks and Riprap Medians

## DRAINAGE

**Final Hydrology & Hydraulics.** The ENGINEER will finalize overall drainage boundaries, verify major crossings for culvert/bridge crossings, and develop final peak flow rates for design storms according to TxDOT criteria for each proposed crossing. The ENGINEER shall only develop peak flows for the design and check flood events.

- **Final Cross Drainage.** The ENGINEER will develop peak flood elevations for design storms and determine sizes of culverts and minimum required spans/heights of bridges. A scour analysis for bridges shall be performed at 60% design. The ENGINEER shall only develop flood elevations for the design and check flood events.
- **Final Parallel Drainage.** The ENGINEER will develop layout of parallel drainage system. This system is expected to include storm sewers, ditches, and driveway culverts. Alternative or multiple analyses are not anticipated.
- **SWPPP Design.** The ENGINEER will develop SWPPP designs to comply with TCEQ TPDES requirements.
- **NRCS Coordination.** The ENGINEER will prepare a summary letter for the NRCS for impacts/mitigation to the NRCS Site 2 flood retarding structure. **Final Design Plans and Estimate.** The ENGINEER will prepare design plans for proposed drainage and SWPPP facilities. Plans shall include culvert and bridge layouts, parallel drainage concepts, and SWPPP features. Miscellaneous and standard drainage and SWPPP details will be provided at 60%/90%/Final
- **Comment / Response.** The ENGINEER will respond to review comments by CITY.
- **Permitting.**
  - City of Kyle Floodplain Administrator. The ENGINEER will coordinate with the City's Floodplain Administrator including submittal of hydrologic and hydraulic models. Assume no CLOMR/LOMR required.
- **Meetings.** The ENGINEER anticipates up to 3 meetings for this final design phase:
  - 3 – 60%/90%/Final CITY design review meetings.

## **SIGNING, PAVEMENT MARKING, AND ILLUMINATION**

All signing, pavement marking and delineators shall be in accordance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD).

- The ENGINEER will prepare Signing and Pavement marking plans.
- The ENGINEER will prepare sign summaries. TxDOT SOSS & SOLS sheets.
- The ENGINEER will prepare intersection safety lighting details.
  - Conduct a field review to note and verify physical constraints, power connection, utility placement, and any other details necessary for illumination plan preparation.
  - Attend meeting in the field with CITY and utility company to identify power source for illumination. One (1) meeting has been assumed.
  - Perform photometric analysis using VISUAL software to identify pole locations and fixture types to maintain adequate light levels along the entire corridor.
  - Illuminations plans will include complete illumination layout sheets, new pole schedule, conduit and conductor schedule and voltage drop calculations. It should be noted that the illumination plans will be prepared in accordance with TxDOT standards.
- The ENGINEER will prepare sign standard details.
  - TSR(1)-08 thru TSR(5)-08
  - SMD(GEN)-08
  - SMD(SLIP-1)-08 thru SMD(SLIP-3)-08
  - SMD(2-1)-08 thru SMD(2-3)-08
- The ENGINEER will prepare pavement marking standard details.
  - D&OM(1)-10
  - D&OM(2)-04 thru D&OM(5)-04
  - D&OM(VIA)-04
  - PM(1)-12 thru PM(3)-12
- The ENGINEER will prepare Electrical and Illumination Standard Details.
  - ED(1)-03 to ED(13)-03
  - RID(LUM1)-07 & RID(LUM2)-07
  - RID(FND)-11
  - RIP(1)-11 thru RIP(4)-11

## **MISCELLANEOUS**

- **PS&E Plan Sheet Preparation.**
  - The ENGINEER will prepare title sheet.
  - The ENGINEER will prepare Summary of Quantities.
    - Traffic Control.
    - Signing / Pavement Markings.
    - SW3P.
    - Removals.
    - Retaining walls.
    - Roadway.
    - Bridge.
  - The ENGINEER will project Layout / Control.
  - The ENGINEER will traffic control narrative / sequence of construction

- The ENGINEER shall prepare from the schematic design files, a Traffic Control Plan (TCP) roll plot. The TCP roll plot shall include a plan view, at a scale of 1"=100-ft, showing each phase of construction and a phasing narrative and will be submitted with the 60% plan set. For the subsequent 90% and Final Paper submittals, The ENGINEER shall prepare the TCP on 11" x 17" sheets and include needed typical section(s), a plan view showing each phase of construction where traffic exists, advance warning / construction signs, a phasing narrative, and a TCP Summary Sheet. TxDOT TCP standards will be used and incorporated into the plans when possible.
- The ENGINEER will prepare removal plans.
- The ENGINEER will prepare the necessary miscellaneous roadway detail sheets.
- The ENGINEER will prepare EPIC. Environmental Permits, Issues and Commitments sheet.
- The ENGINEER will prepare standard details
  - Traffic Control Plans.
    - BC(1)-07 thru BC(12)-07
    - WZ(TD)-03
    - WZ(STPM)-03
    - WZ(UL)-03
    - WZ(BTS-1)-03
    - WZ(BTS-2)-03
    - WZ(BRK)-03
    - TCP(1-3)-12
    - TCP(2-3)-12
    - TCP(7-1)-98
- The ENGINEER will coordinate with the CITY for plan reviews.
  - 30% PS&E Review
  - 60% PS&E Review
  - 90% PS&E Review
  - Final Submittal
- The ENGINEER will perform QC review of before each submittal (applicable disciplines).
- The ENGINEER will prepare / update engineer's opinion of probable construction cost for review by the CITY at each submittal.
  - 60%
  - 90%
  - Final
  - QC review of each submittal
- The ENGINEER will prepare supporting documents to be submitted to CITY with the final plan submittal.
  - General notes utilizing the most current version of the Austin District Master General Notes list.
  - Special Provisions / Special Specifications
  - Construction time determination using accepted production rates for construction elements.
  - List of governing specifications.

## BRIDGE DESIGN

- **Bridge Design and Detailing.**
  - The ENGINEER will design bridges and bridge class culverts for an HL93 live load in accordance with the latest edition of the AASHTO LRFD Bridge Design Specifications, TxDOT LRFD Design Manual and pertinent online guidelines. Bridges will utilize TxDOT standard prestressed concrete TX-Girder shapes.
  - The ENGINEER will prepare culvert layouts in accordance with the TxDOT Bridge Detailing Manual and TxDOT Hydraulic Manual for each of the four proposed drainage channel crossings. The ENGINEER will utilize TxDOT standard culvert details for each crossing.
  - Should it be determined that a bridge will be required at locations other than the Plum Creek crossing, a supplement to this work authorization will be required for preparation of the bridge layout and structural details.
  - The ENGINEER will prepare TxDOT Bridge Standard Detail Sheets.
    - BAS-A
    - CRR
    - CSAB
    - FD
    - ODSR
    - PCP
    - PCP-FAB
    - PMDF
    - SEJ-A
    - T551
    - IGD
    - IGEB
    - IGMS
    - IGND
    - IGTS
    - MEBR(C)

## DELIVERABLES

- Design Summary Report (DSR).
- 30%, 60%, 90% and Final Submittals (5 Copies).
- 30% Submittal will be in the form of the Final Schematic roll plot.
- 60% Submittal
  - 60% Submittal will address comments from the 30% review;
  - Update Title Sheet with Index of Sheets (including standards);
  - Project Layout;
  - Final Existing and Proposed Typical Sections;
  - Preliminary Summary Sheets;
  - Preliminary Traffic Control & Sequence of Work;
  - Alignment Data Sheets;
  - Plan and Profile Sheets for all Alignments;
  - Preliminary Intersection Layouts;
  - Miscellaneous Roadway Details;

- Drainage Area Maps;\*\*
- Hydraulic Computations;\*\*
- Final Culvert and Bridge Layouts;\*\*
- Final Storm Sewer Layouts;\*\* (if necessary)
- Final Utility Exhibits;
- Preliminary Signing Layouts;
- Preliminary Pavement Marking Layouts and Delineation;
- Preliminary SW3P Layouts;
- Update Cross-Sections;
- Updated Quantities and Construction Cost Estimate;
- All standard sheets requiring review and/or modification;
- Proposed special provisions or special specifications requiring approval; and
- Preliminary Construction Schedule.
- (\*\* Details final upon approval of 60% level)
- 90% Submittal
  - 90% Submittal will address comments from the 60% review;
  - Update Title Sheet with Index of Sheets;
  - Project Layout;
  - Final Existing and Proposed Typical Sections;
  - Final Summary Sheets;
  - Final Traffic Control Plan with Signing and Warning Devices;
  - Final Alignment Sheets;
  - Final Plan and Profile Sheets;
  - Final Intersection Layouts;
  - Final Miscellaneous Roadway Details;
  - Drainage Area Map;
  - Hydraulic Computations;
  - Final Culvert and Bridge Layouts;
  - Final Storm Sewer Layouts (If necessary);
  - Final Utility Exhibits;
  - Final Signing Layouts;
  - Final Pavement Markings Layouts and Delineation;
  - Final SW3P Layouts;
  - Final Cross-Sections;
  - Updated Quantities, Construction Cost Estimate and Construction Schedule.
  - General Notes, Specification Data Sheets, Special Provisions, Special Specifications, Contract Time Determination, Other Supporting Paperwork.
- Final Submittal (1 Copy)
  - The final submittal will include items from the 90% submittal with resolution to a review comments. Plan sheets must be submitted on 11" X 17" paper and signed / sealed by a Professional Engineer or Survey licensed / registered within the State of Texas;
  - Complete PS&E package including the construction cost estimate, construction schedule, and necessary forms.

## **BIDDING AND AWARD PHASE SERVICES**

- Prepare contract documents. CITY will provide documents, in Microsoft Word format, from a recently completed similar project for use as the basis of the contract documents.
- Assist in advertising for and obtaining proposals.
- Process deposits for contract documents.
- Respond to bidder questions.
- Issue addenda as appropriate to interpret, clarify or expand the contract documents.
- Attend pre-bid meeting.
- Attend bid opening.
- Review bids, evaluate contractor and prepare a letter of recommendation for award.
- Attend City Council meeting for award of construction contract.

## **CONSTRUCTION PHASE SERVICES**

- Attend preconstruction meeting (2 people at 3 hours each).
- Attend construction progress/coordination meeting with Construction Manager, Construction Inspector, City staff and Contractor at project site (2 people, no more than 5 meets at 3 hours each).
- Respond to contractor Requests For Information (RFI) (no more than 10).
- Review of shop drawings
  - Precast concrete box culverts.
  - Aesthetic roadway illumination poles.
  - non-standard signs.

## **ADDITIONAL SERVICES (NOT INCLUDED IN THIS SCOPE OF SERVICES)**

The ENGINEER shall, at the request of the CITY, provide the following additional services. Any additional services requested will require a Supplemental Agreement to this Work Authorization.

- Services resulting from significant changes in the general project scope, extent or character of the project or scope of work, and revising previously accepted studies, reports, design documents, or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports, or documents, or are due to any other causes beyond the ENGINEER's control.
- The ENGINEER anticipates no FEMA submittals. A CLOMR/LOMR submittal shall be considered additional services to this scope.
- Design of permanent water quality BMPs.
- Design / topographic mapping services beyond those described herein, including ground survey of obscured areas in excess of 10 acres.
- Infrastructure for traffic signals (ground boxes and conduits only) are included in this agreement. Actual design of traffic signal systems, timing, etc. will require a supplemental agreement.
- Staking of the ENGINEER's proposed baseline / centerline or proposed ROW.
- SUE services beyond that identified in the scope herein.
- Title abstracting or courthouse records research beyond that scoped herein.
- Surveying and document preparation for drainage easements, temporary construction easements or access denial lines.

- Additional work due to changes in alignment made by the CITY after initial acquisition is performed.
- Physical verification of utility relocations.
- Assistance in connection with bid protests, re-bidding, or re-negotiating contracts for construction, materials, equipment or services.
- Construction management, engineering, inspection or materials testing for construction purposes.
- Preparation of contractor requested/City approved change orders.
- Preparing to serve or serving as an Engineer or witness for the CITY in any litigation, arbitration, or other legal or administrative proceeding.
- Any other services not specifically stated within this scope of work.



September 19, 2013

Mr. Allen R. Crozier, PE  
 HDR Engineering  
 4401 West Gate Blvd, Ste 400  
 Austin, TX 78745

Re: Lehman Road, Kyle- Geotechnical Exploration and Pavement Design

Dear Mr. Crozier,

Thank you for the opportunity to provide our services with regards to Geotechnical Exploration, Geotechnical Testing and Pavement design for above referenced City of Kyle project. Based on our understanding of the scope and requirements of this project we offer the following testing methodology and related fees;

1. Bridge Borings: we will provide a maximum of 4 bore holes with depth of up to 100' for bridges. We plan to have 2 bore holes at Drainage Crossing # 1 (Stream Plum-1) and 2 bore holes at Drainage Crossing # 3 (Plum Creek). We will conduct Hydrometer analysis at each bridge bore hole to determine D50 values for scour analysis. We will auger to refusal and will collect samples for Gradation, Atterberg Limits, Moisture content and Texas Cone Penetration data from each bore hole. We will obtain rock cores from 2 bore locations to determine rock quality.
2. Roadway Borings: we will conduct drilling, sampling and testing at 13 locations along the proposed roadway. Roadway bore holes will be approximately 10' deep. We will obtain samples for Gradation, Atterberg Limits, Moisture content and Texas Cone Penetration from each bore hole.
3. We will conduct soil classification on all samples obtained from borings.
4. We will prepare boring logs using TxDOT WINCORE program.
5. We will use TxDOT FPS program to develop the proposed pavement section design.

We have prepared a cost estimate for conducting work described in this proposal and this estimate is shown in attached table.

Please let us know if you require additional information.

Sincerely,

Maghsoud Tahmoressi, PE  
 President  
 PaveTex Engineering & Testing, Inc.  
 Dripping Springs, Texas

3989 East Highway 290  
 Dripping Springs, TX 78620  
 (512) 858-2993

12804 County Rd 2500  
 Lubbock, TX 79404  
 (806) 771-7283

4611 Langland Rd, Ste. 101  
 Dallas, TX 75244  
 (972) 980-0782

2700 S. Fort Hood St, Ste. A  
 Killeen, TX 76542  
 (254) 228-9282



**FEE PROPOSAL  
GEOTECHNICAL INVESTIGATION**

PaveTex Engineering & Testing, Inc.  
3989 Hwy 290 E  
Dripping Springs, TX 78620  
Office (512) 894-3040  
Fax (512) 858-2921

Client: HDR  
Project: Lehman Road  
Location: Kyle, TX  
Date: 9/20/2013  
Revised 12/30/2013

<b>Geotechnical Investigation</b>	<b>Fee</b>	<b>Qty</b>	<b>Estimate</b>
Geotech Borings Per Foot (Auger With Sampling)	\$ 12.65	530	\$ 6,704.50
Geotech Borings Per Foot (Rock Coring, Soft Rock)	\$ 19.50	20	\$ 390.00
Drill Rig Mobilization	\$ 250.00	1	\$ 250.00
Air compressor	\$ 85.00	7	\$ 595.00
NX Core Box	\$ 16.00	20	\$ 320.00
<b>Laboratory Tests</b>			
Atterburg Limits	\$ 50.00	65	\$ 3,250.00
Classification of soils (inc washed grad)	\$ 50.00	65	\$ 3,250.00
Moisture content	\$ 10.00	65	\$ 650.00
Hydrometer Analysis (D50)	\$ 385.00	4	\$ 1,540.00
Rock Compressive Strength	\$ 100.00	4	\$ 400.00
<b>Technician / Engineering</b>			
Field Technician (Hourly)	\$ 50.00	60	\$ 3,000.00
Vehicle Fee	\$ 50.00	6	\$ 300.00
Engineering Time	\$ 175.00	50	\$ 8,750.00
		<b>Total</b>	<b>\$ 29,399.50</b>



**PROPOSAL**  
**CULTURAL RESOURCE INVESTIGATIONS**  
**LEHMAN ROAD: FROM FM 150 TO GOFORTH ROAD**  
**HAYS COUNTY, TEXAS**

Task 1: Project Coordination Request, Archeological Background Study Report, and NEPA Text

- A) AmaTerra shall prepare a Non-Archeological Historic Resources Project Coordination Request (October 2009 version) for review and comment by TxDOT-ENV.
- B) AmaTerra will review the existing files held by the Texas Archeological Research Laboratory (TARL) and the Texas Historical Commission (THC) to determine if any previously recorded sites or archeological surveys occur within or near the proposed project area. The location of any previously recorded sites and surveys will be plotted onto USGS 7.5-minute topographic maps for use in the compliance coordination process. Archeologists will also consult the USDA NRCS soil survey maps for Hays County, relevant aerial photography, historical maps, land use maps, and the Geologic Atlas of Texas in order to assess the likelihood for unrecorded archeological resources and make recommendations regarding the need for further field surveys. The results of this effort will be integrated into a background study and Pre-coordination Request (PCR) report that conforms to TxDOT's *Standards of Uniformity (SOUs) for Pre-Coordination Request* (June 2011 version) for review and comment by TxDOT-ENV.
- C) AmaTerra shall provide Client with language for the Cultural Resources section of the draft NEPA document.

Task 2: Archeological Field Survey and Survey Report

Should an archeological survey be warranted, AmaTerra will develop an application for a Texas Antiquities Permit and submit it to TxDOT-ENV for review and processing. Upon issuance of the permit, AmaTerra will conduct a field survey. AmaTerra will deploy a team of two archeologists to conduct a pedestrian survey including shovel testing along the entire length of the proposed APE. AmaTerra will follow the THC requirement of 16 shovel tests per mile per transect. All excavated soil will be screened through ¼ inch mesh and all artifacts will be analyzed in the field and reburied; no artifacts will be collected. Sites (if any are discovered) will be delineated by digging additional manual shovel tests and their locations will be documented by sub-meter GPS. Sites will be recorded on State of Texas archeological data sheets, photographed and sketch mapped. Backhoe trenching is not anticipated as part of this scope of work.

AmaTerra will prepare a professional report documenting the results of the fieldwork. The report will fully document all methods and results of the survey and will offer clear assessments of NRHP/SAL eligibility for all sites. The report will present explicit management recommendations for each site. The draft report will be presented in electronic format to HDR for review and comment and upon approval will be submitted in hard copy for submission to TxDOT. Upon receipt of review comments, AmaTerra will prepare the final report and distribute these in compliance with the terms of the permit.

**SCHEDULE**

To be determined in consultation with Client.

*Cultural Resources Investigations  
Lehman Road: From FM 150 to Goforth Road  
Hays County, Texas*

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**ASSUMPTIONS AND CONDITIONS**

1. If TxDOT does not require historic resources work beyond Task 1, AmaTerra shall only invoice Client for the work performed.

**COMPENSATION**

Client will compensate AmaTerra on a time-and-materials basis in accordance with the attached spreadsheets.

**Cost Breakdown**

*AmaTerra Environmental*

**Lehman Road  
19-Sep-13**

Permit and  
Research

LABOR	PCR prep	Design	Fieldwork	Draft Report	Final Report	Admin	Total	Unit	Rate	Cost
Principal						2	2	hr	\$ 206.00	\$ 412.00
Sr. Hist Arch	4						4	hr	\$ 124.00	\$ 496.00
Hist III							0	hr	\$ 103.00	\$ -
Hist II	12						12	hr	\$ 62.00	\$ 744.00
Sr. Archeologist/ PI	6	4		6	2		18	hr	\$ 123.00	\$ 2,214.00
Arch III/Field Dir	8	6	10	24	2		50	hr	\$ 69.00	\$ 3,450.00
Arch I/Field Tech			10	8			18	hr	\$ 51.00	\$ 918.00
GIS Tech	4	2		4	1		11	hr	\$ 74.00	\$ 814.00
Administrative					2	4	6	hr	\$ 80.00	\$ 480.00
Clerical				8	4		12	hr	\$ 30.00	\$ 360.00
<b>TOTAL LABOR</b>	<b>34</b>	<b>12</b>	<b>20</b>	<b>50</b>	<b>11</b>	<b>6</b>	<b>133</b>		<b>\$</b>	<b>\$ 9,888.00</b>
<b>EXPENSES</b>										
Mileage, mile			52				52	mile	\$ 0.556	\$ 28.91
TARL Fees						0.25	0.25	drawer	\$ 2,264.00	\$ 566.00
Overnight mail						1	1	each	\$ 25.00	\$ 25.00
copies, b/w	20	10	50	150	200	20	450	copy	\$ 0.10	\$ 45.00
copies, color	10	5	10	100	125	10	260	copy	\$ 1.00	\$ 260.00
<b>TOTAL EXPENSES</b>									<b>\$</b>	<b>\$ 924.91</b>
<b>TOTAL</b>									<b>\$</b>	<b>\$ 10,812.91</b>

Notes	
Mileage	Austin-Kyle 21
	On-project 10
	Kyle-Austin 21
	<u>52</u>

TBPE #F-45 / TLSF #100231 / TBAE #1787

## LIMITED SERVICES AUTHORIZATION

<b>Design</b>	<u>BAKER-AICKLEN &amp; ASSOC., INC.</u>	<b>Client:</b>	<u>HDR Engineering, Inc.</u>
<b>Professional</b>	<u>507 West Liberty Avenue</u>		<u>Attn: Allen Crozier</u>
<b>Firm:</b>	<u>Round Rock, Texas 78664</u>		<u>4401 West Gate Blvd., Ste. 400</u>
<b>Date:</b>	<u>January 2, 2014</u>		<u>Austin, TX 78745</u>
		<b>Phone/Fax:</b>	<u>Ph 512.912.5148 Mbl 512.461.5498</u>
		<b>Email:</b>	<u>Allen.Crozier@hdrinc.com</u>
		<b>Contract No.</b>	<u>13-3143R2</u>

**Project Name/Location:**

Lehman Road, Kyle, Texas

**Scope/Intent and Extent of Services:**

**A. Survey Control**

Surveyor will establish Primary Horizontal and Vertical Control for the Design and Right-of-Way survey. Secondary control will be established as necessary. Project coordinates shall be based on NAD83/93/NAVD88 values for the Texas State Plane Coordinate System, South Central Zone. Horizontal and Vertical Control to be related to control established for Hays County F.M. 150 improvement project.

**B. Topographic/Design Survey**

Perform a topographic design survey of Lehman Road, from C.R. 157 (Goforth Rd.) to F.M. 150. Limits to include the existing right-of-way and extend 25-feet outside of right-of-way. Additionally, the survey will extend east and west on C.R. 157 and F.M. 150, 250-feet from their respective intersections with the centerline of Lehman Road. Survey to extend 75-feet up connecting roads (Masonwood Dr., Primrose Blvd., Hivers St., Golden Rod St., Hallie Dr., and Brutus Dr.). The scope of these services is defined as follows:

1. Establish a benchmark system for four (4) locations within the project limits. Differential level lines will be conducted for establishing the elevation at each benchmark. A list of benchmarks with coordinates (to be used for locating purposes only), descriptions, and reported elevations will be included in the project deliverables.
2. Collect spot elevations and grade breaks along the project route at intervals conducive to precise DTM generation (at no greater than 100-foot intervals). The data will include curbs, gutters, culverts, driveways, portions of parking areas, visible utilities, drainage features (including flowline elevations), striping, trees 6-inches or larger within limits and any other visible improvements within the defined area. Elevations will be determined for three (3) points on the crest of the SCS Dam and two (2) points in the emergency spillway of SCS Dam. Locations are to be specified by Engineer. Perform cross sections on creeks crossing Lehman Road: ten (10) sections at southernmost creek (leading to SCS Dam), four (4) sections at northern tributary to southernmost creek, six (6) sections at creek located between Goldenrod St. and Hallie Dr. and six (6) sections at creek along south boundary of Lehman High School. Determine the finish floor elevations on four (4) homes located in the Trails, Phase 1A Subdivision. Generate a one-foot contour interval DTM file of the project area.
3. Coordinate with Texas811 and Utility Locators to request that underground utilities be marked for limits of survey. Survey in visible utilities, paint markings & pin flags indicating the presence and approximate location of subsurface utilities and add all record (if made available) and field utility information to the drawing.

**C. Right-of-Entry Requests**

Prepare and submit Right-of-Entry requests to all impacted landowners. Request to cover HDR Engineering, Inc., Baker-Aicklen and Associates, Inc., Geotechnical subcontractor and Environmental subcontractor.

**D. Survey Deliverables**

- One set of electronic files in MicroStation V8.
- 2D DGN files of the planimetric feature collection data.
- 3D DTM files in GeoPak format.
- GeoPak .tin file.
- GeoPak crossing features and duplicate point Error Report.
- Word doc file of surveyed points list and TxDOT descriptor code list.
- Survey Control Index Sheet and Horizontal and Vertical Control Sheet signed, sealed, and dated by a Registered Professional Land Surveyor on 11x17 white mylar and pdf.
- PDF file of scanned field book copies.

**Fee Arrangement:**

Hourly plus reimbursable-expense basis for a budget of: \$37,327.00

**Special Conditions:**

1. Assisting the Client in resolution of any boundary conflicts or discrepancies identified during the course of the survey will be handled as an additional service.
2. Any requested services not specifically covered by the above-listed Scope of Services will be provided on an actual time and materials expended basis in accordance with the attached Standard Rate Schedule.

**Prepared by:**

Parker J. Graham, R.P.L.S. / Survey Manager  
(printed name/title)



The **Professional Services Agreement** as well as the attached rate schedule are a part of this Agreement.

**Offered by:**

R. David Strutton  
(signature) January 2, 2014  
date

**Accepted by:**

\_\_\_\_\_  
(signature) date

R. David Strutton, Vice President  
(printed name/title)

\_\_\_\_\_  
(printed name/title)

Baker-Aicklen & Associates, Inc.  
(name of Design Professional Firm)

\_\_\_\_\_  
(name of Client)

**STANDARD RATE SCHEDULE**  
**Labor Rate Table 60**

Effective January 1, 2013 the following rates are recommended for work performed on an hourly-charge basis. Rates include company overhead and profit for services accomplished during regular working hours.

**DIRECT LABOR**

**OFFICE PERSONNEL SERVICES**

<u>Classification</u>	<u>Rates</u>
Sr. Project Manager .....	\$175 per hour
Managing Planner .....	\$170 per hour
Managing Landscape Architect .....	\$170 per hour
Managing Surveyor/GIS .....	\$170 per hour
Managing Construction Manager .....	\$170 per hour
Project Manager .....	\$160 per hour
Sr. Landscape Architect .....	\$150 per hour
Sr. Project Engineer/Surveyor/Planner .....	\$150 per hour
Construction Manager .....	\$150 per hour
Sr. Project Engineering/Surveying/Planning/GIS Coordinator .....	\$140 per hour
Project Engineer/Surveyor/Planner .....	\$130 per hour
Project Engineering/Surveying/Planning/GIS Coordinator .....	\$130 per hour
Sr. Project Engineering/Surveying/Planning/GIS Designer .....	\$120 per hour
Sr. Project Engineering/Surveying/Planning/GIS Associate .....	\$115 per hour
Project Engineering/Surveying/Planning/GIS Designer .....	\$110 per hour
Project Landscape Architect .....	\$110 per hour
Engineering/Surveying/Planning/GIS Associate .....	\$105 per hour
Engineering/Surveying/Planning/GIS Assistant .....	\$100 per hour
Sr. Engineering/Surveying/GIS CAD Technician .....	\$90 per hour
Engineering/Surveying/GIS CAD Technician .....	\$85 per hour
CAD/GIS Computer Operator .....	\$70 per hour
Administrative Assistant .....	\$70 per hour
Expert Witness/Testimony/Deposition Services .....	Double Rate
Department Manager .....	\$175 per hour
Principal (as appropriate) .....	\$240 per hour *

**FIELD PARTY SERVICES**

	<u>Rates</u>
1-Man Field Party .....	\$85 per hour
2-Man Field Party .....	\$150 per hour
3-Man Field Party .....	\$185 per hour
4-Man Field Party .....	\$225 per hour

**DIRECT EXPENSES**

Transportation:

By Firm's Passenger Vehicles .....	Charged at current IRS allowable rate
By Firm's Survey Trucks (Notes 1, 2, & 3) .....	Charged at current IRS allowable rate
Direct Expense - Reproduction & Printing by Firm, .....	Prevailing
Survey Stakes, Lathes, Iron Rods, .....	Commercial Rates Or
Subsistence of out-of-city services, and other Direct Expense .....	Cost Plus 15%

\* Not default rates. These rates are used as required in special situations only and with Client notification.

**NOTES:**

- Field Party rates include equipment, supplies and survey vehicles. Abnormal use of stakes, lathes, etc., used such as during the construction phase of a project will be charged as indicated.
- Field party time charge will be made for show-up time and return to office, resulting from inclement weather conditions, etc.
- Field Party stand-by time will be charged for at the above-shown appropriate rates.
- The firm's professional liability is limited to the total amount of compensation under the Professional Services Agreement to a maximum of \$50,000.

04-01-13


**BAKER-AICKLEN  
& ASSOCIATES, INC.**

Engineers | Surveyors | GIS | Planners | Inspectors | Architects  
**Item # 20**



**MACIAS & ASSOCIATES, L.P.**  
LAND SURVEYORS

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**Surveyor Rate Schedule**

**OFFICE PROFESSIONAL/TECHNICAL SERVICES**

Principal Registered Professional Land Surveyor	\$145.00 per hour
Registered Professional Land Surveyor	\$130.00 per hour
Senior Technician	\$ 80.00 per hour
Technician	\$ 70.00 per hour
Secretarial/Typist	\$ 47.00 per hour

**FIELD CREW SERVICES**

2-Man Crew	\$135.00 per hour
3-Man Crew	\$145.00 per hour
4-Man Crew	\$160.00 per hour

**GLOBAL POSITIONING SERVICES**

GPS Services	From 1 to 10 Points	\$750.00 for each point
	10 + Points	Negotiated fee

**SUE SERVICES**

Quality Level A - Testhole Excavation (Depth < 10 feet) (Approximately) (Depth > 10 feet will be re-negotiated)	\$ 3,500.00/ea site
Quality Levels B – D	Negotiable Fee
Traffic Control Plan	Negotiable Fee
Permitting	Negotiated Fee



**Exhibit “B”  
Project Schedule**

ID	Task Mode	Task Name	Duration	Start	2014				2015				2016				2017				
					Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	
1		<b>Lehman Road Street Improvement Project</b>	<b>865 days</b>	<b>Fri 11/1/13</b>																	
2		<b>Professional Services Negotiations Phase</b>	<b>98 days</b>	<b>Fri 11/1/13</b>																	
3		Prepare Scope, Fee and Contract Documentation	26 days	Fri 11/1/13																	
4		Contract Negotiations	70 days	Mon 12/9/13																	
5		City Council Award	1 day	Tue 3/18/14																	
6		Notice to Proceed	1 day	Wed 3/19/14																	
7		<b>Preliminary Engineering (Survey / Geotechnical) and Schematic Development Phase</b>	<b>105 days</b>	<b>Mon 3/24/14</b>																	
8		<b>Environmental Document Development Phase</b>	<b>225 days</b>	<b>Mon 5/5/14</b>																	
9		<b>PS&amp;E Design &amp; Development Phase</b>	<b>155 days</b>	<b>Mon 2/2/15</b>																	
10		<b>Bid Phase Services</b>	<b>90 days</b>	<b>Mon 9/21/15</b>																	
11		Advertise and Letting	60 days	Mon 9/21/15																	
12		Negotiate and Execute Contract	30 days	Mon 12/14/15																	
13		<b>Construction</b>	<b>264 days</b>	<b>Mon 2/22/16</b>																	

Project: Lehman Schedule  
Date: Tue 3/11/14

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only			
Summary		Inactive Task		Duration-only		Finish-only			

**Exhibit “C”  
Summary of Compensation**

City of Kyle, Texas  
 Summary Breakdown of Engineering Design Services Contract Compensation  
 For City Council Meeting on March 18, 2014

Name of Road: Lehman Road (FM 150 to Goforth Rd.)  
Name of Firm: HDR Engineering, Inc.

Item	Project Phase	Work Task	Compensation Type	Compensation
1.	<b><u>Schematic &amp; Environmental</u></b>	Survey Control/Topographic	Lump Sum	\$ 37,327.00
2.		Geotechnical Investigation & Pavement Design	Lump Sum	29,399.50
3.		Schematic Design	Lump Sum	134,974.95
4.		Environmental Document / Permitting	Lump Sum	\$90,774.70
5.		Public Involvement (Provided by the City)		-
6.		Sub-total:		<u>\$ 292,476.15</u>
7.	<b><u>Design</u></b>	30% Plans, Specifications, & Estimates	Lump Sum	\$ 91,502.43
8.		60% Plans, Specifications, & Estimates	Lump Sum	136,116.63
9.		90% Plans, Specifications, & Estimates	Lump Sum	91,502.43
10.		100% Plans, Specifications, & Estimates	Lump Sum	35,898.86
11.		Sub-total:		<u>\$ 355,020.35</u>
12.	<b><u>Bidding</u></b>	Bid Phase Services	Lump Sum	\$25,514.25
13.		Sub-total:		<u>\$ 25,514.25</u>
14.	<b><u>Construction</u></b>	Construction Phase Support Services	Lump Sum	\$23,989.25
15.		Sub-total:		<u>\$ 23,989.25</u>
16.		<b>Total Base Compensation</b>		<u>\$ 697,000.00</u>
17.	<b><u>Additional Services</u></b>			
18.	<b>ROW Acquisition</b>	Parcel Surveying (By CITY)		\$ -
19.	<b>ROW Acquisition</b>	ROW Acquisition (Land Cost Not Included)(By CITY)		\$ -
20.	<b>Subsurface Utility Engineering</b>	Quality Level "A" (By supplement if required).	Unit Price	\$ -
21.		<b><u>Total Additional Services</u></b>	Sub-total:	<u>\$ -</u>
22.		<b>Total Compensation for Base &amp; Additional Services:</b>		<u>\$ 697,000.00</u>

City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 18, 2014  
 CONTACT CITY DEPARTMENT: Engineering Services  
 CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

**SUBJECT:**

A Resolution of the City of Kyle, Texas, authorizing the City Manager to execute an agreement in an amount not to exceed \$697,000.00 with HDR ENGINEERING, INC., for design and construction phase services relating to Lehman Road (FM 150 to Goforth Road); making findings of fact; and providing for related matters.

**CURRENT YEAR FISCAL IMPACT:**

This engineering services HDR ENGINEERING, INC., will require expenditure of funds from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.

1. City Department:	Engineering Services
2. Project Name:	Engineering - Lehman Road
3. Budget/Accounting Code(s):	188-682-57313
4. Funding Source:	2013 GO Bond Fund (Road Bonds)
5. Current Appropriation:	\$ 5,410,000.00
6. Unencumbered Balance:	\$ 4,014,623.74
7. Amount of This Action:	<u>\$( 697,000.00)</u>
8. Remaining Balance:	<u>\$ 3,317,623.74</u>

**FUNDING SOURCE OF THIS ACTION:**

The funding source for this professional services agreement for engineering services with HDR ENGINEERING, INC., in an amount not to exceed \$697,000.00 will be provided from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.

**ADDITIONAL INFORMATION/COUNCIL ACTION:**

On November 6, 2013, City Council authorized a Master Service Agreement with M&S ENGINEERING, LLC, of Spring Branch, Texas, in an amount not to exceed \$10,000.00 to facilitate general engineering professional services and to provide specific engineering services related to negotiation of professional scopes and fees for North Burleson Street and Marketplace Avenue.

 → 3/12/2014

Perwez A. Moheet, CPA - Date  
 Director of Finance



# CITY OF KYLE

520 E. RR 150  
Office (512) 262-3024

Kyle, Texas 78640  
Fax (512) 262-3403

## MEMORANDUM

TO: Lanny S. Lambert, City Manager

FROM: Leon Barba, P.E., City Engineer *LB*

DATE: March 13, 2014

SUBJECT: Renegotiated Road Bond Projects

Based on direction from City Council and staff recommendations, the engineering consultants were asked to remove any Public Information/Public Outreach and any real estate acquisition fees from the proposed contracts. Additionally, all contracts are to include the 30, 60, 90 and 100% review milestones. Following is an update on the proposed engineering fees for the five road bond projects:

### **Lehman Rd. – FM 150 to Goforth Rd. (HDR)**

Initial Proposal	\$ 703,997.00
Current Proposal	<u>\$ 697,000.00</u>
Reduction	\$ 6,997.00

### **Goforth Rd. – IH 35 to Bunton Creek Rd. (LAN)**

Initial Proposal	\$1,009,992.00
Current Proposal	<u>\$1,001,269.26</u>
Reduction	\$ 8,722.74

### **Bunton Creek Rd. – IH 35 to Lehman (LJA)**

Initial Proposal	\$ 579,454.34
Current Proposal	<u>\$ 484,274.34</u>
Reduction	\$ 95,180.00

**N. Burleson – Miller St. to IH 35 (FNI)**

Initial Proposal	\$ 974,262.00
Current Proposal	<u>\$ 959,692.00</u>
Reduction	\$ 14,570.00

**Marketplace Avenue - Burleson Rd. to City Lights (KFA)**

Initial Proposal	\$ 412,448.00
Current Proposal	<u>\$ 364,134.00</u>
Reduction	\$ 48,314.00

The total reduction for the five projects is \$173,783.74. Please let me know if you need any additional information.

Xc: Harper Wilder, Public Works Dept.  
Perwez Moheet, Finance Dept.



# CITY OF KYLE, TEXAS

## Professional Services Agreement - LJA

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$484,274.34 WITH LJA ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO BUNTON CREEK ROAD (IH-35 TO LEHMAN ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P. E., City Engineer*

**Other Information:**

**Budget Information:** A Fiscal Note is attached.

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

**Attachments / click to download**

- [Fiscal Note](#)
- [Memo-Renegotiated Road Bond Projects](#)
- [Mar 18 Agenda - LJA Engineering K](#)
- [Mar 18 Agenda - RESOL - LJA ENGINEERING](#)
- [LJA-Scope of Work & Schedule-Bunton Creek](#)



**RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$484,274.34 WITH LJA ENGINEERING, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO BUNTON CREEK ROAD (IH-35 TO LEHMAN ROAD); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

WHEREAS, the City of Kyle requested qualifications from professional engineering firms to provide design services for certain street and road improvements; and,

WHEREAS, the City desires to obtain design services from LJA Engineering, Inc., for street improvements related to Bunton Creek Road (IH-35 to Lehman Road);

WHEREAS, LJA Engineering, Inc., is qualified and capable of performing the professional engineering design services proposed herein and is willing to enter into an Agreement with the City of Kyle to perform such services; and,

WHEREAS, an agreement that defines the scope of services and fees has been negotiated between LJA Engineering, Inc., and the City of Kyle and is attached hereto as EXHIBT "A" and incorporated by reference herein.

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

Section 1. Findings. The hereinabove 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. Authorization. The city manager is hereby authorized to execute a professional services agreement in an amount not to exceed \$484,274.34 with LJA Engineering, Inc., of Houston, Texas, for design services for street improvements related to Bunton Creek Road (IH-35 to Lehman Road), attached as Exhibit "A" hereto.

Section 3. 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, Texas.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution was 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.

PASSED AND APPROVED this \_\_\_\_\_ day of March, 2014.

THE CITY OF KYLE, TEXAS

ATTEST:

\_\_\_\_\_  
Lucy Johnson, Mayor

\_\_\_\_\_  
Amelia Sanchez, City Secretary

**EXHIBIT "A"**  
**PROFESSIONAL SERVICES AGREEMENT**

**[SEE ATTACHED]**

**CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES  
FOR BUNTON CREEK ROAD IMPROVEMENTS**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF HAYS**         §

THIS IS AN AGREEMENT by and between the CITY OF KYLE, Texas, a Texas home rule City (hereinafter called "CITY"), acting through its duly authorized agent, Lanny S. Lambert, City Manager, and LJA ENGINEERING, INC. (hereinafter called DESIGN PROFESSIONAL") for engineering design professional services (hereinafter called "the Agreement")

WHEREAS, the CITY desires to obtain DESIGN PROFESSIONAL's services related to Bunton Creek Road improvements (from Interstate Highway 35 to Lehman Road) hereinafter called the "PROJECT";

WHEREAS, the CITY desires to obtain professional engineering design services in connection with the PROJECT; and

WHEREAS, the DESIGN PROFESSIONAL is qualified and capable of performing the professional engineering design services proposed herein, which are acceptable to the CITY, and is willing to enter into an Agreement with the CITY to perform such services.

NOW, THEREFORE, the parties hereto do mutually CONTRACT and AGREE as follows:

**ARTICLE 1  
SERVICES TO BE PROVIDED**

**1.1** The CITY agrees to retain the DESIGN PROFESSIONAL, and the DESIGN PROFESSIONAL agrees to perform professional services for the PROJECT as an independent contractor and professional consultant as set forth in the sections following; and CITY agrees to pay, and the DESIGN PROFESSIONAL agrees to accept fees as specified in the sections following as full and final compensation for the work accomplished.

**1.2** The DESIGN PROFESSIONAL shall provide its services in accordance with the normal degree of care and skill of other reputable Engineers providing similar services on similar projects of like size and nature at the same time and in the same locale as this PROJECT. No other guarantee or warranty of any kind, unless expressed or implied at common law or created by statute, is extended, made, or intended by the rendition of DESIGN PROFESSIONAL's services.

## **ARTICLE 2 SCOPE OF WORK**

The DESIGN PROFESSIONAL agrees to provide all services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this contract Agreement.

## **ARTICLE 3 PROJECT SCHEDULE**

The DESIGN PROFESSIONAL agrees to perform the Engineer’s Scope of Work in accordance with the **Exhibit “B” – Project Schedule** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes.

## **ARTICLE 4 COMPENSATION**

### **4.1 DEFINITION OF COMPENSATION TERMS**

**4.1.1 Hourly Rates (HR)** - Hourly rates is the cost of salaries of DESIGN PROFESSIONALS (Technicians, drafters, stenographers, surveyors, clerks, laborers, etc.), fringe benefits (social security contributions, unemployment excise and payroll taxes, employment compensation insurance, medical and other insurance benefits, sick leave, vacation, holiday pay, contributions to a pension or retirement plan), overhead and profit for time directly chargeable to the PROJECT. Hourly rates for Basic and Additional Services for this PROJECT will not exceed those listed in **Exhibit “C” Summary of Compensation** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes. DESIGN PROFESSIONAL shall provide documentation of said hourly rates upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said hourly rates not customarily or ordinarily attributable to “Hourly Rates”. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.2 Direct Non-Labor Expenses (DNLE)** - Direct non-labor expenses are defined as all non-labor expenses incurred by the DESIGN PROFESSIONAL which are directly chargeable to the PROJECT, which is defined as expenses for supplies, transportation, equipment, travel, communications, subsistence and lodging, field office expenses, reproductions, and similar incidentals. DESIGN PROFESSIONAL shall provide documentation of said expenses upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said expenses not customarily or ordinarily attributable to DNLE or which are in excess in an amount which are not customarily or ordinarily attributable to DNLE. The

DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.3 Lump Sum (LS)** - The CITY shall pay the DESIGN PROFESSIONAL a Lump Sum amount for the specified category of services. The “Lump Sum” is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and DNLE. The portion of the Lump Sum amount billed for the DESIGN PROFESSIONAL'S services shall be based upon DESIGN PROFESSIONAL'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. The CITY has the option of agreeing to this amount before making Lump Sum payment to the DESIGN PROFESSIONAL.

**4.1.4 Unit Price (UP)** - The CITY shall pay the DESIGN PROFESSIONAL an amount equal to the Unit Price times the actual quantity of unit(s) for the specified category of services. The amount equal to the Unit Price is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and Reimbursable Expenses. The portion of the amount billed for Engineer's services shall be based upon Engineer's estimate of the proportion of the Unit Price for services actually completed during the billing period to the Unit Price. The CITY has the option of agreeing to this amount before making Unit Price payments to the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

## 4.2 PAYMENT FOR SERVICES

Based upon applications for payment submitted by the DESIGN PROFESSIONAL and approved by the CITY, the CITY will make progress payments as scheduled hereafter for services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this Agreement and incorporated herein by reference. The application for payment will be computed on the basis of hourly rates, direct non-labor expenses, lump sum and unit price work items shown in **Exhibit “C” - Summary of Compensation**. The DESIGN PROFESSIONAL will be paid a TOTAL amount not to exceed **\$484,274.34** for design and construction phase services. Partial payments will be made upon presentation of statements to CITY in the manner otherwise set forth in this Agreement.

## 4.3 PAYMENT FOR ADDITIONAL SERVICES

**4.3.1** As determined by the DESIGN PROFESSIONAL or the CITY or both parties, when the need for additional services arises, the scope of work, compensation terms and total compensation will be negotiated between the CITY and DESIGN PROFESSIONAL before said additional work shall begin. In the event said additional work is begun before the CITY gives its prior written

approval, the CITY has the option to ratify its approval of said additional work. Payment for additional services will be computed on the basis of hourly rates, direct non-labor expenses, lump sum and/or unit prices for additional work. For the services of personnel described in this section, the DESIGN PROFESSIONAL will be compensated in accordance with the schedule for various employees of the DESIGN PROFESSIONAL as set forth in **Exhibit “C” – Summary of Compensation.**

- 4.3.2** Payment for Additional Services will be made in the manner otherwise set forth in this Agreement, based upon presentation of invoices, statements and billings to the CITY sufficient to show the work accomplished. Under no conditions will any additional services be paid for until the DESIGN PROFESSIONAL has received written authorization from the CITY for such work.

#### **4.4 ADDITIONAL COPIES OF PRINTED DOCUMENTS**

Additional copies, above the number due as part of the basic services outlined in Article 2, of reproduced plans, specifications, maps and exhibits will be available to the CITY at actual invoice cost to the DESIGN PROFESSIONAL.

### **ARTICLE 5 SERVICES BY THE CITY**

**5.1** In general, the CITY will render services as follows:

- 5.1.1** Provide available criteria and full information as to the CITY’s requirements for the PROJECT.
- 5.1.2** Assist the DESIGN PROFESSIONAL by placing at his disposal all available written data pertinent to previous operations, reports, and any other data affecting the design and/or construction of the PROJECT.
- 5.1.3** Acquire all land and rights-of-way required for the PROJECT and any related off-site work, including rights of ingress and egress on private property.
- 5.1.4** Respond in writing no later than thirty (30) calendar days to requests by the DESIGN PROFESSIONAL for authorization to proceed with specific activities deemed desirable.
- 5.1.5** No later than thirty (30) calendar days from the date of submittal, examine documents submitted by the DESIGN PROFESSIONAL and render decisions pertaining thereto in order to avoid delay in the progress of the DESIGN PROFESSIONAL’s services.
- 5.1.6** Timely provide to DESIGN PROFESSIONAL information that is required or necessary for the orderly progress of the work.

**5.2** The DESIGN PROFESSIONAL will be entitled to rely upon the CITY's engineer regarding decisions made by the CITY pertaining to this PROJECT and rely upon the accuracy and completeness of all information and data provided by or through the CITY or its engineer; further, all notices or information will be deemed made when conveyed in writing to the DESIGN PROFESSIONAL.

**5.3** The services, information and reports required above will be furnished at the CITY's expense.

## **ARTICLE 6 PROJECT DOCUMENTS**

All documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed, with the exception of those standard details and specifications regularly used by the DESIGN PROFESSIONAL in its normal course of business, will upon payment of all amounts rightfully owed by the CITY to the DESIGN PROFESSIONAL herein be the property of the CITY. All documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed will be available to the CITY no later than thirty (30) calendar days from the date the CITY makes a verbal or written request to DESIGN PROFESSIONAL. DESIGN PROFESSIONAL, its subcontractors, agents and employees will be liable to the CITY for any loss or damage to any such documents while they are in the possession of or while being worked upon by the DESIGN PROFESSIONAL or anyone connected with him. All documents so lost or damaged will be replaced or restored by DESIGN PROFESSIONAL without cost to the CITY. Any reuse or modification of such Documents for purposes other than those intended by the DESIGN PROFESSIONAL shall be at the CITY's sole risk and without liability to the DESIGN PROFESSIONAL unless said unintended reuse or modification occurs as a result of DESIGN PROFESSIONAL'S negligence, malfeasance, or willful misconduct. Upon completion of the PROJECT, all documents shall be transferred to the CITY. DESIGN PROFESSIONAL shall not be required to maintain the records but may do so in accordance with its Document Retention Policy.

## **ARTICLE 7 NOTICE TO PROCEED; SCHEDULING OF WORK**

It is understood and agreed that the DESIGN PROFESSIONAL will work as an Independent Contractor by the CITY, will have ultimate control of the services to be rendered except as otherwise provided in this Agreement or in the event said control shall be in violation of this Agreement, and that no work will be done under this Agreement until the DESIGN PROFESSIONAL is instructed in writing to proceed with the work. In the event the DESIGN PROFESSIONAL does work before it is instructed in writing to proceed, the CITY shall not be obligated or in any way liable for payment of compensation or other reimbursements to the DESIGN PROFESSIONAL.

## **ARTICLE 8 ASSIGNMENT**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party will assign, sublet nor transfer any interest in this Agreement without the written authorization of the other.

## **ARTICLE 9 TERMINATION**

**9.1** In connection with the work outlined in this contract, it is agreed and fully understood by the DESIGN PROFESSIONAL that the CITY may cancel or indefinitely suspend further work hereunder or terminate this Agreement upon fifteen (15) days written notice to the DESIGN PROFESSIONAL with the understanding that immediately upon receipt of said notice all work and labor being performed under this contract will cease. As a condition precedent for termination for cause, the DESIGN PROFESSIONAL shall have the 15 day notice period to cure such cause and shall have failed to so cure. Before the end of such fifteen (15) day period DESIGN PROFESSIONAL will invoice CITY for all work completed satisfactorily to the CITY and will be compensated in accordance with the terms of this Agreement. All drawings, field surveys, maps, estimates, investigation, studies, and other data work related to the PROJECT will become the property of the CITY upon termination of the Agreement.

**9.2** Nothing contained in paragraph 9.1 above will require the CITY to pay for any work which fails to meet the Standard of Care. The CITY will not be required to make any payments to the DESIGN PROFESSIONAL when the DESIGN PROFESSIONAL is in default under this Agreement. The CITY and the DESIGN PROFESSIONAL retain their respective rights and remedies under law and this Agreement does not, nor shall be interpreted, to waive or otherwise modify said rights.

**9.3** The DESIGN PROFESSIONAL understands and agrees that time is of the essence and that any failure of the DESIGN PROFESSIONAL to complete its services within the time limit established herein solely due to the fault of the DESIGN PROFESSIONAL will constitute a material breach of this Agreement. However, it is agreed that DESIGN PROFESSIONAL must use sound professional practices. The DESIGN PROFESSIONAL will be fully responsible for any delays or for failures to use its professional efforts in developing contractual documents in accordance with the terms of this Agreement. Where damage is caused to the CITY due to the DESIGN PROFESSIONAL's failure to perform in this manner, as determined by the governing body of the CITY, the CITY may withhold all or any portion of the DESIGN PROFESSIONAL's payments hereunder without waiver of any of either PARTY's additional legal rights or remedies.

**9.4** The DESIGN PROFESSIONAL will have the right to terminate this Agreement, on fifteen (15) days written notice to the CITY should the CITY fail to perform its



obligation herein to the satisfaction of the DESIGN PROFESSIONAL. In the event of termination, the DESIGN PROFESSIONAL will be paid for all services rendered to date of termination. Nothing contained herein will constitute a waiver of DESIGN PROFESSIONAL's right to bring a suit for damages or to enforce specific performances of this Agreement under these circumstances. In the event of termination hereunder, DESIGN PROFESSIONAL will invoice CITY for all work satisfactorily completed up to the date of this notice of termination and will be compensated in accordance with the terms of Agreement.

**9.5** Notwithstanding anything contained herein to the contrary, the CITY will have the right to withdraw from this Agreement on the last day of CITY's current fiscal year in the event of non-appropriation of funds by its governing body, and providing ten (10) days written notice from CITY to DESIGN PROFESSIONAL.

#### **ARTICLE 10 VENUE**

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement will lie exclusively in a court of competent jurisdiction Hays County, Texas, and such court will interpret this Agreement in accordance with the laws of the State of Texas.

#### **ARTICLE 11 ENTIRE AGREEMENT**

This instrument represents the entire understanding between the CITY and the DESIGN PROFESSIONAL in respect to the PROJECT and may only be modified in writing signed by both parties.

#### **ARTICLE 12 SEVERABILITY**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

#### **ARTICLE 13 RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

**13.1** Approval by the CITY will not constitute nor be deemed a release of the responsibility and liability of the DESIGN PROFESSIONAL, its employees,

subcontractors, agents and consultants for the accuracy and competency of their designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for the DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents prepared by the DESIGN PROFESSIONAL, his employees, subcontractors, agents and consultants.

**13.2** The CITY agrees the DESIGN PROFESSIONAL is not responsible for damages arising from any circumstances beyond the DESIGN PROFESSIONAL's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; failure of any governmental agency to act in a timely manner; failure of performance by the CITY or the CITY's other subcontractors or consultants; or discovery of any hazardous substances or differing and unforeseeable site conditions.

#### **ARTICLE 14 INDEMNIFICATION**

The DESIGN PROFESSIONAL will indemnify and hold the CITY and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expense, including costs of court, reasonable attorneys' fees, expert witnesses' and consultants' fees, on account of damage to property and injuries, including death, to all persons, whether caused by DESIGN PROFESSIONAL or its officers, agents, employees, subcontractors, licensees, invitees, or other persons to the extent caused by any act of negligence or intentionally wrongful act or material breach of any obligation under this Agreement, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them, or any of them in connection herewith resulting from such act of negligence or intentional act or breach for which DESIGN PROFESSIONAL is found to be legally liable.

In no event shall either PARTY be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

The indemnity obligations herein shall survive the termination of the contract for any reason and shall survive the completion of the work on the PROJECT.

It is understood and agreed that the indemnity and defense obligations contained and described herein shall be interpreted in accordance with Texas law current as of the date of this Agreement and that any indemnity or defense obligation, if at all, shall be claimed,

interpreted and enforced on a comparative basis of fault and responsibility. Neither Party to this Agreement will allege, claim, file suit or otherwise demand that the other Party provide any indemnity or defense as such may relate to the negligent acts, errors or omissions of the claiming Party.

## **ARTICLE 15 INSURANCE**

The DESIGN PROFESSIONAL will maintain at all times professional liability or errors and omissions insurance covering any claim hereunder occasioned by DESIGN PROFESSIONAL's negligent act, or error or omission in an amount of not less than \$250,000 per claim and \$500,000 annual aggregate. DESIGN PROFESSIONAL agrees to maintain professional liability insurance during the term of this agreement and, if the policy is on a claims made basis, for a period of not less than five (5) years after the Project is complete and provide proof of such continuing coverage providing such coverage is readily available and financially feasible. DESIGN PROFESSIONAL further agrees to provide proof of coverage as needed for prior acts back to the date of execution of this agreement if DESIGN PROFESSIONAL changes insurance carriers during this extended indemnity period.

DESIGN PROFESSIONAL will further maintain general commercial liability coverage with minimum limits for damages resulting from bodily injury or death of \$250,000 per person and \$500,000 per occurrence, and \$100,000 per occurrence for property damage, or single limit of \$500,000.

DESIGN PROFESSIONAL further agrees that with respect to the above required liability insurance, the CITY will:

1. Be named as additional insured for general liability insurance.
2. Be provided with a waiver of subrogation, in favor of CITY.
3. Be provided with thirty (30) days advance written notice of cancellation, or nonrenewal (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate).
4. Upon execution of this Agreement by DESIGN PROFESSIONAL, be provided through the office of the City Clerk with either their original Certificate of Insurance or their insurance policy evidencing the above limits and requirements and subject to approval by the City Attorney.

The insurance requirements set out in this section are independent from all other obligations of DESIGN PROFESSIONAL under this Agreement and apply whether or not required by any other provision of this Agreement.

**ARTICLE 16**  
**COMPLIANCE WITH LAWS**

The DESIGN PROFESSIONAL, its consultants, agents and employees and subcontractors, will comply with all applicable federal and state laws, the Charter and Code of Ordinances of the City of Kyle, and all other applicable rules and regulations promoted by all local, state and national boards, bureaus and agencies.

**ARTICLE 17**  
**NOTICES**

This contract will be administered on the CITY's behalf by the City Engineer. All notices, documentation, or questions arising under this Agreement should be addressed to the CITY's Engineer at:

City Manager  
Kyle City Hall  
100 W. Center Street  
Kyle, Texas 78640

All written notices from CITY to DESIGN PROFESSIONAL will be addressed to the DESIGN PROFESSIONAL as follows:

Kenneth G. Schrock  
5316 Highway 290 West  
Suite 150  
Austin, TX 78735

**ARTICLE 18**  
**CAPTIONS**

The captions of this Agreement are for information purposes only and will not in any way affect the substantive terms and conditions of this Agreement.

**ARTICLE 19**  
**MEDIATION**

In the event a dispute arises between the CITY and the DESIGN PROFESSIONAL in the application or interpretation of this Agreement, or one or more of its provisions, the parties may mutually agree to take such dispute to a mediator mutually agreed upon by both parties to this Agreement for resolution. Neither party is bound to the mediator's decision.

**ARTICLE 20  
EXECUTION AND EFFECTIVE DATE OF AGREEMENT**

The execution of this Agreement shall proceed as follows: signature of the DESIGN PROFESSIONAL shall be affixed hereto, whereupon the Agreement shall be submitted to the City Attorney for review, and then to the City Council for final review and approval. After such approval from the City Council, the Agreement shall then be signed by the City Manager. This Agreement will become effective immediately upon the signature of both parties. An executed original of this Agreement shall be kept on file in the City Clerk’s office.

**IN WITNESS WHEREOF**, the City of Kyle, Texas has caused these presents to be executed by its City Manager and attested by its City Clerk and executed by \_\_\_\_\_ on behalf of \_\_\_\_\_.

**THE CITY OF KYLE, TEXAS**

**DESIGN PROFESSIONAL: LJA  
ENGINEERING, INC.**

\_\_\_\_\_  
Lanny S. Lambert, City Manager

\_\_\_\_\_  
Jeff P. Collins, Executive Vice President

**ATTEST:**

\_\_\_\_\_  
Amelia Sanchez, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
W. Ken Johnson, City Attorney

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**     §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014,  
by Lanny S. Lambert, City Manager of the City of Kyle, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

**CORPORATE ACKNOWLEDGEMENT**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**     §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014, by LJA  
Engineering, Inc., a Texas corporation, on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit "A"**  
**Scope of Work**

## EXHIBIT A

### SERVICES TO BE PROVIDED BY THE ENGINEER

**Roadway:** Bunton Creek Road  
**City:** Kyle  
**Limits:** From IH-35 to Lehman Road

**Assumptions:**

1. All necessary rights-of-entry will be secured by the City.
2. City will provide as-built drawings for existing roadways, detention ponds, and other infrastructure in the vicinity of the project. The City will provide examples of any special details or elements for inclusion in the project including but not limited to antique street lighting, aesthetic details, and unique street signs.
3. City will attend all public meetings and work with the LJA Team to secure a location for the meetings.
4. City will provide timely reviews in conjunction with the agreed upon schedule provided in Exhibit B.
5. City will pay for the construction contract advertisement in the newspapers and other media as required.
6. City will provide all City permits necessary.
7. City staff will install traffic counting devices in areas directed by the LJA Team to collect traffic data. The traffic counting devices are to be provided by the City. The data collected will be sent to the LJA Project Manager.

**General Work Description:** Provide preliminary engineering report, limited environmental studies, public involvement, schematic, plans, specifications, and estimate (PS&E) development, utility coordination & design, geo-technical analysis, pavement design to develop Bunton Creek Road.

No application for funding is included in this scope and fee. If desired a supplemental agreement will be required.

The Engineer will perform the following tasks listed below each Major Heading as shown:

<b>TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION PLAN</b>	<b>4</b>
<b>1.1 Project Management</b>	4
<b>1.1.1 Project Management Plan</b>	4
<b>1.1.2 Meetings</b>	4
<b>1.2 QA/QC &amp; Document Control</b>	5
<b>1.3 Invoicing, Contract Document Coordination</b>	5
<b>1.4 Sub Consultant Management</b>	5



1.5	Project Scheduling	5
<b>TASK 2 – ROUTE AND DESIGN STUDIES</b>		<b>6</b>
2.1	Field Reconnaissance	6
2.2	Traffic Signal Warrant Analysis	6
2.3	Preliminary Drainage	6
2.4	Bunton Creek Road Schematic Development	7
2.5	Preliminary Construction Estimates	9
<b>TASK 3 – RIGHT-OF-WAY DOCUMENTS</b>		<b>9</b>
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<b>TASK 5 – FIELD SURVEYING</b>		<b>9</b>
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6.1	City Council Meetings	9
6.2	Exhibit Preparation for Stake Holder Meetings	10
6.3	Stake Holder Meetings	10
<b>TASK 7 - UTILITIES</b>		<b>10</b>
7.1	Utility Adjustment Coordination & Utility Engineering	10
<b>TASK 8 - ENVIRONMENTAL STUDIES</b>		<b>10</b>
<b>TASK 9 - GEOTECHNICAL SERVICES</b>		<b>10</b>
<b>TASK 10 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&amp;E) DEVELOPMENT</b>		<b>10</b>
10.1	Plans, Specifications, and Estimate (PS&E) Development	10
10.2	Drainage Design	11
10.3	Signing, Marking, and Signalization	12
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<b>10.6</b>	<b>Construction Estimates</b>	<b>13</b>
<b>10.7</b>	<b>ADA Compliance</b>	<b>14</b>
<b>TASK 11 - CONSTRUCTION PHASE SERVICES</b>		<b>14</b>
<b>11.1</b>	<b>Advertising, Bidding Phase</b>	<b>14</b>
<b>11.2</b>	<b>Construction Management</b>	<b>14</b>

## TASK 1 – PROJECT MANAGEMENT AND COMMUNICATION PLAN

### 1.1 Project Management

**Purpose:** To coordinate and integrate the work of the project team (Engineer and City) in an efficient and timely manner; and to ensure the highest quality work on all tasks.

#### 1.1.1 Project Management Plan

- Develop a Project Management Plan that will establish all the responsibilities and roles of the team members, including the prime firm and subs. The plan will also detail the procedure process for all submittals and the QA/QC process that will be followed.
- The basis for the design criteria will be from the latest versions (unless otherwise noted) of the following manuals and publications (other manuals/publications referenced in these manuals are to be understood to be included: The City of Kyle Urban Design Plan, TxDOT Roadway Design Manual, A Policy on Geometric Design of Highways and Streets (AASHTO "Green Book"), TxDOT Hydraulic Design Manual, TxDOT Standard Specifications for Construction of Highways, Streets, and Bridges (2004), Texas Manual on Uniform Traffic Control Devices, and the Highway Capacity Manual - Transportation Research Board.

#### Deliverables:

- Project Management Plan

#### 1.1.2 Meetings

The Engineer will:

- Hold initial kick-off meeting with all team members during the first week after receiving the notice to proceed. QA/QC procedures will be detailed during this meeting.
- Hold initial kick-off meeting with the City of Kyle after receiving the notice to proceed. Project Management Plan will be reviewed, as will schedule.
- Hold weekly staff meetings at the Engineers office beginning with the second week of the project. The staff attending will be appropriate based upon the current assignments.
- Hold a Schematic Concept/Criteria Determination Meeting to discuss constraints that will aid in establishing the criteria. The Engineer will document various criteria including (but not limited to) roadway, hydraulic, environmental, bicycle and pedestrian design criteria based on (and in the following order): City of Kyle Design Guidelines; TxDOT; and AASHTO.
- Milestone Meetings will be held for each of the following submittals: Schematic, 30%, 90% PS&E, and 100% PS&E.

## **1.2 QA/QC & Document Control**

The Engineer will:

- Perform Document Control throughout the entire project. All documents and submittals from every member of the Engineers team will go to the QA/QC manager. Appropriate reviews and documentation of that review will be required at that time. Upon approval by the QA/QC manager the document will be given to the Project Manager for inclusion in the current submittal package.
- Require these reviews: Detailed Check Review for all designs, Inter-discipline coordination review, detailed plan review, and City reviews.
- PM will maintain documentation of the reviews and it will be made available to the City at their request.

## **1.3 Invoicing, Contract Document Coordination**

The Engineer will:

- Prepare monthly progress reports.
- Prepare monthly invoices for submission to the City for all requests for payment.

**Deliverables:**

- Monthly invoices and progress reports.

## **1.4 Sub Consultant Management**

The Engineer will:

- Monitor and supervise sub consultant activities (staff and schedule).
- Review all work products prepared by sub consultants In accordance with QA/QC Process
- Require sub consultant to perform Detailed Check Reviews of their own work and participate in Inter-discipline Coordination Reviews.
- Review and approve sub consultant progress reports and invoices.

## **1.5 Project Scheduling**

The Engineer will:

- Prepare an initial critical path schedule for approval by the City indicating tasks, milestones, major meetings, and reviews.

**Deliverables:**

- Initial schedule and updates after milestone submittals.

---

## **TASK 2 – ROUTE AND DESIGN STUDIES**

### **2.1 Field Reconnaissance**

The Engineer will:

- At various times throughout the schematic design process, the Engineer will conduct site visits to collect data on geometry, drainage issues, and other engineering aspects, and collect additional photography of existing conditions. For the purposes of estimating the effort for this task, it is assumed that the design team will conduct eight (8) site visits using two (2) personnel.

#### **Deliverables:**

- Brief Field Reconnaissance Reports/pictures detailing any findings which could affect schematic development.

### **2.2 Traffic Signal Warrant Analysis**

The Engineer will perform a traffic signal warrant analysis for the new intersection of Bunton Creek Road at Dacy Lane and the existing intersection of Bunton Creek Road at Goforth Road.

The Engineer will:

- Conduct traffic signal warrant analysis in accordance with the procedures listed in the Texas Manual on Uniform Traffic Control Devices.
- Collect 24 hour traffic counts along Dacy Lane and Goforth Lane at the proposed location of the intersection with Bunton Creek Road and then project the amount of traffic which will be present on Bunton Creek Road after the project's completion. These traffic volumes will be used in the traffic signal warrant analysis. Traffic collection devices will be placed by city staff in locations directed by the Engineer.
- Prepare a memorandum of the findings and submit to the City of Kyle. Should this signal warrant analysis indicate that a traffic signal will be warranted at this intersection following the opening of Bunton Creek Road, the Engineer will negotiate with the City of Kyle for a supplemental agreement for the design of the proposed traffic signal.
- Address comments received from the City and prepare three (3) copies and one (1) pdf copy of the final traffic signal warrant report sealed by a Professional Engineer licensed to practice in the State of Texas. Provide spreadsheet containing count data collected for project in electronic format.
- Design conduit runs and traffic signal pole locations for future traffic signal.

#### **Deliverables:**

- Warrant Analysis Report - three (3) copies and one (1) pdf copy.

### **2.3 Preliminary Drainage**

The Engineer shall develop and perform the following for the preliminary drainage design as related to the project layout to determine the preliminary storm sewer and culvert designs, and determine ditch design to convey the runoff properly:

- Visit the project site and collect pertinent and available data.
- Delineate off-site drainage area maps.
- Obtain existing drainage design as-builts and reports for existing detention in the area.
- Calculate hydrologic peak flows for the 5-, 10-, and 100-year storm events.
- Delineate on-site drainage areas.
- Calculate the existing peak flows from the proposed ROW and the proposed peak flows from the proposed ROW.
- Perform Impact Analysis to determine if the project requires mitigation for increased flows and produce report of findings.
- Determine preliminary detention pond sizing. Pond will be sized so post development conditions for the 10-, and 100-year storms will be at or below pre-development conditions. (If necessary)
- Determine potential alternative methods for mitigation from potential impacts. The alternatives will include an on-site alternative and off-site alternatives by utilizing other City ponds in the area if possible.
- Preliminary drainage analysis to determine need for ditch to capture off-site flows, size for conveyance and potential for erosion (based on shear calculations) to determine if additional ROW or special grading is required.
- Preliminarily size potential new cross culverts, assess extending existing cross culverts, and assess maintaining existing cross culverts. Assessment will include inspection of existing culverts to determine if they can remain in place or be extended based on their current condition. There are 4 existing culverts along existing Bunton Creek Road.

**Deliverables:**

- Impact Analysis & Drainage Report.
- Preliminary detention pond layout with easements if needed.

**2.4 Bunton Creek Road Schematic Development**

The Engineer will develop a Geometric Schematic for the proposed Bunton Creek Road based on the alignment presented in the scoping meeting and approved by the City. The content shown on the schematic will include items mutually agreed upon by the Engineer and the City such as listed in items 1 thru 12.

1. Existing and proposed typical sections
2. The location of intersecting roadways and driveways
3. Horizontal and Vertical alignments for proposed improvements. Vertical alignments may be shown on a separate plot.
4. Proposed pavement markings

5. Existing and proposed ROW information
6. Existing 2013 and projected 2030 traffic volumes
7. Traffic flow arrows (lane designations)
8. Proposed lanes, cross streets, right turn lanes, left turn lanes, etc.
9. Existing utility information
10. Proposed widening of existing structures, replacement structures, and new structures
11. Design speeds of lanes and cross streets
12. Existing and proposed hydraulic information for cross drainage structures including detention facilities (if any)

The completion of the schematics will be accomplished in the following subtasks:

### **Typical Sections**

The Engineer will develop typical sections for existing Bunton Creek Road. The Bunton Creek Road typical section will include an urban section roadway for a 3-, 4-, and 5-lane section. The Bunton Creek Road typical section will include a shared use path/sidewalk on one side to be determined during design. The width of the right-of-way will be 80-90'. The value engineering study may result in a ditch behind the curb to convey off-site flow to reduce cost in storm sewer. The typical section will include that section, and the right-of-way adjusted accordingly.

### **Develop Horizontal Alignments**

The Engineer will develop horizontal alignments for Bunton Creek Road and for each cross street that intersects Bunton Creek Road as follows:

1. IH 35 Southbound Frontage Road
2. Goforth Road
3. Dacy Lane
4. Brandi Circle
5. Lehman Road

### **Develop Vertical Profiles and balance earthwork**

The Engineer will develop vertical profiles for all lanes and locations on Bunton Creek Road. The Engineer will evaluate the geometry, cross slopes, earthwork balancing, and anticipated operations when developing the vertical profiles.

### **Develop Cross Sections**

The Engineer will develop existing and proposed cross sections, at 100 foot intervals at a scale of 1" = 20' horizontally and 1" = 10' vertically on a roll plot of Bunton Creek Road within the limits of construction and of cross streets within 200 feet of Bunton Creek Road. This will help to evaluate cross slopes, limit cut/fill, identify and evaluate existing and proposed drainage issues, and other potential construction issues or impacts.

### **Geometric Schematic**

The Engineer will perform the following prior to submission of the final Geometric Schematic for approval:

The Engineer will compile and display the design working drawings in final deliverable format. The schematic full scale will be 1"=100' horizontal and 1"=10' vertical. The Engineer will submit three (3) originals of the Draft Geometric Schematic on roll plots at half scale. The Engineer will incorporate the revisions by the City and deliver the final Design Schematic. The Geometric Schematic deliverables will include:

**Deliverables:**

- Three (3) color paper originals of the Draft Geometric Schematic on roll plots at half scale
- Two (2) color paper originals of the Geometric Schematic on roll plot at full scale and one (1) at half scale
- Graphic files on CD-ROM, used in developing the schematic

**2.5 Preliminary Construction Estimates**

As part of the Schematic Design the Engineer will prepare a preliminary construction estimate for Bunton Creek Road project.

The estimate will be in Microsoft Excel spreadsheet format, reflect current bid items and descriptions, and contain all major items that will likely be on the project (e.g., earthwork, pavement structure items, MBGF, signing, drainage features, etc.) Current TxDOT unit bid prices, with a reasonable adjustment for inflation to the anticipated bid opening date, will be used in preparation of the estimates.

**Deliverables:**

Preliminary Construction Estimate for Bunton Creek Road in Excel Format.

**TASK 3 – RIGHT-OF-WAY DOCUMENTS**

NOT INCLUDED IN THIS CONTRACT

**TASK 4 – RIGHT-OF-WAY AQUISITION**

NOT INCLUDED IN THIS CONTRACT

**TASK 5 – FIELD SURVEYING**

SEE McGRAY & McGRAY SCOPE ATTACHED

**TASK 6 – PUBLIC INVOLVEMENT**

NOT INCLUDED IN THIS CONTRACT

**6.1 City Council Meetings**

NOT INCLUDED IN THIS CONTRACT



**6.2 Exhibit Preparation for Stake Holder Meetings**

NOT INCLUDED IN THIS CONTRACT

**6.3 Stake Holder Meetings**

NOT INCLUDED IN THIS CONTRACT

**TASK 7 - UTILITIES****7.1 Utility Adjustment Coordination & Utility Engineering**

SEE COBB FENDLEY & ASSOCIATES SCOPE ATTACHED

**TASK 8 - ENVIRONMENTAL STUDIES**

SEE COX|McLAIN SCOPE ATTACHED

**TASK 9 - GEOTECHNICAL SERVICES**

SEE RODRIGUEZ ENGINEERING LABROTORIES SCOPE ATTACHED

**TASK 10 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) DEVELOPMENT****10.1 Plans, Specifications, and Estimate (PS&E) Development****Roadway Design**

The Engineer shall develop the following design packages:

1. Bunton Creek Road from IH35 to just west of Brandi Circle, with an overlay to Lehman Road.

The Engineer will develop the following plan sheets or perform the following engineering tasks in accordance with City of Kyle's guidelines:

- Roadway plan and profiles
- Typical sections required for Bunton Creek Road shall incorporate the pavement design developed by the engineer and approved by the City.
- Earthwork: The Engineer shall analyze the earthwork to develop cut and fill.
- Cross Sections: Develop final design cross sections at 50' intervals along Bunton Creek Road and along each cross street for up to 200' back from the Bunton Road centerline. The Engineer will develop the Cross Sections at a scale of 1" = 20' horizontally and 1" =

10' vertically and shall be delivered on 11" x 17" sheets. Electronic files will be delivered on CD along with all other PS&E files.

- Miscellaneous Roadway Details Sheet.
- Bunton Creek Road/ IH35 Intersection Layout.
- Bunton Creek Road/ Dacy Lane Intersection Layout.
- Bunton Creek Road/Goforth Road Intersection Layout.
- Driveway plan and profiles
- Title Sheet (with Index of Sheets thereon or on a separate Index of Sheets).
- Project Layout / Horizontal Alignment Layout with Horizontal Alignment Data shown thereon.
- Summaries for Grading, Erosion Control, Signing, Pavement Markings & Delineation, Drainage, Illumination and SW3P.
- E&Q Sheet: Estimate and Quantity Data Sheet

### **General Notes and Specifications**

- **General Notes:** The Engineer shall prepare general notes for the project using standard City of Kyle notes obtained from the City. Additional notes will be added by the Engineer as necessary.
- **Specifications:** The Engineer shall prepare a list of specifications complete with standard and special specifications with applicable special provisions needed for the project.

### **Deliverables**

The following will be provided for each design phase:

- **Electronic Graphics Submittal** - The Engineer shall provide to the City, an electronic deliverable (CD-ROM) of the plans (including standard drawings) submit both PDF & MicroStation Format
- **Final Mylar Drawing (100%)** - The Engineer shall provide one set of 11"x 17" originals with a registered Professional Engineer's seal on each applicable sheet, and including all applicable standards as required for the 100% submittal.
- **Submittals – 30%, 90%, and 100% submittals** will be made. Comments and revisions requested at the review meetings shall be incorporated into the plans for the subsequent submittal.

## **10.2 Drainage Design**

**Drainage Structure Design** – develop construction plans for the conveyance of the design storm event and check the 100-year storm event.

Design storm event for cross culverts and ponds: 10-Year

Design storm event for storm sewer and ditches: 5-Year

For storm sewer, cross culverts, pavement drainage, ditch design, and pond design the Engineer shall:

- Finalize cross-culvert hydrology and hydraulics developed under the schematic phase of the project.

- Perform a value engineering approach to ensure the most cost efficient design of the storm sewer system.
- Compute pavement drainage runoff, and design storm sewer system, ditches and driveway culverts to convey runoff. The Engineer shall include end treatments for the driveway culverts. The design and calculations will be done in accordance with the City of Kyle and TxDOT Design guidelines.
- Design storm sewer system to convey the 5-year storm event providing that the 100-year storm events hydraulic grade-line is contained within the system and does not exceed the gutter.
- Use preliminary drainage study to finalize detention pond and locations.
- Design adequate SW3P and erosion control for the site in accordance with City of Kyle and TxDOT standards.

### **Deliverables**

The Engineer shall prepare the following drainage PS&E sheets:

- Overall Drainage Area Map
- Drainage Area Maps
- Storm Sewer Plan and Profile Sheets
- Storm Sewer Hydraulic Data Sheets
- Culvert Hydraulic Data Sheets for cross-culverts.
- Culvert Plan and Profile Sheets
- Detention Pond Layouts (If necessary)
- Outfall Structure Details
- Ditch design and data tables,
- Driveway culvert design and data tables.
- Drainage Standard Details
- Storm Water Pollution Prevention Plan (SW3P) Sheets
- Temporary and Permanent Erosion Control Sheets

### **10.3 Signing, Marking, and Signalization**

#### **Signing and Pavement Marking Layouts**

Prepare signing and pavement marking layouts (1"=100') for Bunton Creek Road. Layouts will include centerline with station numbering and proposed edge of pavement, pavement markings, object markers, delineators, and proposed signs in accordance with City of Kyle, TxDOT design standards, the Texas Manual on Uniform Traffic Control Devices (TxMUTCD), and Texas Department of Transportation Sign Crew Field Book.

#### **Sign Details**

Provide sign details for non-standard signs including size, color, wording using SignCad software.

#### **Summary of Pavement Markings**

Compute quantities and summarize in the plans and prepare a bid item list and estimated prices for all pavement markings, markers, object markers and delineators.

#### **Small Sign Summary**

Determine the mounting requirements for each sign or sign cluster based on TxDOT standards. List all the signs on the TxDOT Standard Summary sheets together with totals for each mount type.

#### **Signal Layout – Goforth Road at Bunton Creek Road and Dacy Lane at Bunton Creek Road**

NOT INCLUDED IN THIS CONTRACT - This would be added as a supplemental if needed based on the Signal Warrant.

#### **Assemble Applicable Standards**

Identify and acquire all applicable TxDOT or City of Kyle standards. Modify standards as needed. Plot sheets and incorporate into the plans.

### **10.4 Traffic Control**

**Traffic Control/Sequencing plans will be developed for the following locations.**

Traffic Control/Sequencing plans will be developed for the following locations.

- IH-35 SB Frontage Road– Develop traffic control plans and signing plans for temporary pavement, overlay, transitions, temporary drainage, striping, remove striping, barricades/barrels, advanced warning signs, etc.
- Bunton Creek Road from IH-35 to Kyle Parkway – Develop traffic control plans and signing plans for temporary pavement, overlay, transitions, temporary drainage, striping, remove striping, barricades/barrels, advanced warning signs, etc.

### **10.5 Illumination**

The engineer shall prepare plans for continuous lighting along Bunton Creek Road from IH-35 to Kyle Parkway. Plans shall include illumination layouts, electric service locations, circuit diagrams, and standards. The engineer will provide foundation design and details for all illumination elements as necessary. Engineer will coordinate electric service details with electric service provider. Engineer will obtain illumination assembly details from the city's preferred supplier and incorporate into the plan set. It is anticipated these illumination assemblies will be standard lighting (not antique style similar to illumination installed in downtown Kyle). Street and guide signs will not require illumination.

Note: See Traffic Section regarding design of conduit runs and traffic signal pole locations for future traffic signal

### **10.6 Construction Estimates**

The cost estimate started in the preliminary phase will be updated at 30%, 90%, and Final Plan submittals. They will be in Microsoft Excel spreadsheet format, reflect current bid items and descriptions, and contain all major items that will likely be on the project (e.g., earthwork, pavement structure items, MBGF, signing, drainage features, etc.) Current TxDOT unit bid prices, with a reasonable adjustment for inflation to the anticipated bid opening date, will be used in preparation of the estimates. An estimated construction schedule will be prepared to reflect the Engineer's opinion of construction duration for each phased construction task.

### **Deliverables**

- Construction Cost Estimate for the selected alternative developed in Microsoft Excel format for Bunton Creek Road
- Construction Duration Estimate

### **10.7 ADA Compliance**

A Certified RAS specialist will review roadway, bike lane and sidewalks for ADA Compliance.

- Review 90%, and Final Plans for Compliance
- Post construction inspection

## **TASK 11 - CONSTRUCTION PHASE SERVICES**

### **11.1 Advertising, Bidding Phase**

The Engineer will:

- Assist the City with Contract advertisement for the Bunton Creek Road including preparation of notice and arranging for placement of the advertisement in appropriate newspapers and other media as required. Fees for the advertising will be paid directly by the City and are not included within this Contract.
- Coordinate with local print shop to distribute plans and project manuals to interested bidders.
- Conduct a pre-bid conference.
- Conduct the bid opening.
- Prepare the bid tabulation and provide the City with a recommendation of award.
- Assist the City in execution of the construction contract.
- Attend the preconstruction meeting.

### **11.2 Construction Management**

The Engineer will:

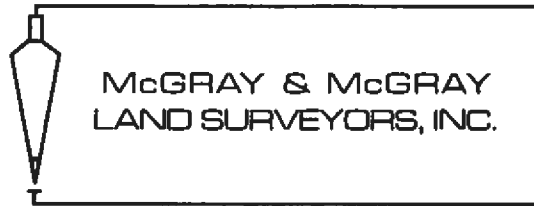
- Conduct preconstruction meeting
- Answer RFI's
- Review and approve submittals
- Attend monthly construction meetings

- Create and process change orders (if necessary)
- Process pay applications
- Coordinate with city inspector and contractor

The following Construction Phase will require a supplemental contract and are not included in the scope and fee for this project:

- Material Testing
- Construction Inspection

January 2, 2014



Kenneth Schrock, P.E.  
LJA Engineering, Inc.  
5316 Highway 290 West, Ste. 150  
Austin, TX 78735  
(512) 439-4732

VIA EMAIL  
kschrock@ljaengineering.com

**RE: Proposal for Surveying Services for the Bunton Creek Road Project, City of Kyle, Texas**

Dear Mr. Schrock:

We appreciate the opportunity to present you with this proposal for the above referenced project. The following represents our understanding of the area to survey, scope of services, and our fee proposal.

**Area to Survey:**

- Bunton Creek Road from IH 35 to future Kyle Parkway extension and a new location which ties Bunton Creek Road to Kyle Parkway, same being a northerly extension of Goforth Road.

**Scope of Services:**

**Horizontal & Vertical Control:**

- Establish horizontal and vertical control from existing TxDOT survey reference on previous City of Kyle projects and/or in the area. The following datums and specifications will be used:
  - Horizontal – North American Datum 1983;
  - Vertical – North American Vertical Datum 1988;
  - Projection: State Plane Coordinate System, Texas South Central, FIPS 4204;
  - Units of Measure: US Survey Feet;
  - Surface to Grid conversion factor: minimum of 8 decimal points.
- Establish survey monuments at 1000 – foot intervals not in conflict with proposed construction. Provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum. Show the benchmarks on the survey drawing.

Item # 21

Mr. Schrock  
January 2, 2014  
Page 2 of 4

### **Design Survey:**

- Coordinate with you prior to entering any property that is not owned by the City of Kyle. Contact private property owners to obtain permission to enter and survey within private properties. If we encounter an uncooperative or hostile property owner, we will consult with you and/or the City of Kyle for directions for resolution. There may be some properties we cannot enter.
- Coordinate with DIGTESS for marking all underground utilities and with the City of Kyle's Utility Department for marking city owned underground utilities. Provide you with a copy of the DIGTESS call ticket within one (1) week of receipt of the DIGTESS ticket. DIGTESS is a free service and no guaranties can be made that they will locate any utilities.
- Cross sections shall be taken at 50 - foot intervals along with break lines as required to provide a digital topographic design file at 1 - foot interval contours from 10 feet past the south ROW to 50 feet past north ROW or building to building. Side streets, alleys and drainage ways shall be surveyed a minimum of 200-feet in each direction from the primary road unless otherwise specified. The limits of survey are as shown on your two attached maps. Both top of curb and gutter elevations (edge of pavement if no curb) shall be provided. Pavement elevations shall be obtained at the centerline of the roadway, edge of travel way (shoulder line) and edge of pavement. Typically top of pavement shall be obtained to the 0.01 foot accuracy and top of ground to 0.10 foot accuracy.
- Locate and identify all above ground features within the survey limits including buildings, fences, visible utilities, sidewalks, driveways, handicap ramps, guardrails, signs, manholes, water valves, telecom boxes, utility poles, mailboxes, irrigation heads, water meters, sanitary sewer clean outs, etc. The outside limits of dense tree and vegetation growth shall be identified. Trees 6-inches and larger in diameter shall be measured, identified and tagged with a point number.
- Locate all soil borings, horizontally and vertically, which typically will occur at a date later than the original boundary/topo survey.
- Show locations of existing utilities based on drawings provided by you and from field locates provided by DIGTESS.
- Locate and identify types of existing pavement surfaces for streets, alleys, sidewalks, driveways, etc. Locate and identify existing lane markings and signage in detail [color, width, words, symbols, etc.]. Locate and identify existing traffic signals including base, mast arms, and control boxes. Locate and identify any planters, mailboxes (with type) and other improvements.
- Invert elevations and size/type of utility and drainage pipes and culverts shall be identified for all manholes and culverts within the project limits. For all gravity flow



Mr. Schrock  
January 2, 2014  
Page 3 of 4

utilities (i.e. storm water and sanitary sewer) tie in the manhole upstream and downstream of the last manhole within the project limits. This may result in having to tie in manholes that are outside of the project limits as defined by you. Note any relevant information (damaged, silted in, etc.)

**Right-of-Way:**

- Locate and identify property lines and property corners within the survey limits. Identify existing Right-of-Way within the survey limits. Identify property owners, business name and type, parks, cemeteries, etc., street addresses and deed recording information within the survey limits. Locate property and easement corners to the extent necessary to provide an existing Right-of-Way file.

**Electronic File Requirements:**

- A. Survey shall be provided in Microstation (.dgn) and AutoCAD (.dwg) format.
- B. The units of the drawing file shall be U.S. survey feet.
- C. All submittals shall include all of the control points utilized for the project. All control points shall have their own unique point number, northing and easting coordinate, elevation, and point description.
- D. All electronic submittals shall include a text block that states the coordinate system (horizontal and vertical) that the survey is using along with any scale factors used for GPS applications, i.e. surface to grid scale factor.

**Deliverables:**

- A. All survey electronic deliverables shall include data for the entire project, including previously submitted data. Hard copy deliverables may only include new data; previously submitted hard copy data is not required for future submittals.
- B. Sign and seal a project control drawing sheet that will be included in the construction plans. This drawing shall include the following:
  - Control Points
    - Control Point Table with the following: point number, northing, easting, elevation, monument description, and monument location relative to nearby permanent structure
  - Coordinate System
  - Scale Factors (when applicable)
  - Date survey was performed in field
  - Existing Improvements

Mr. Schrock  
January 2, 2014  
Page 4 of 4

**Additional Services Scope: These services would require additional fees not currently budgeted for and are not included in our proposal.**

A. Provide surveying and right-of-way services.

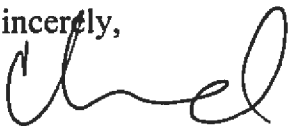
- Be responsible for the survey and abstract research for proposed right of way acquisitions.
- Provide corner recovery and ties to the property corners.
- Provide boundary survey resolution.
- Provide a parcel plat and metes and bounds description in field notes.
- Set parcel corners in the field.
- Provide strip maps for areas with parcels located adjacent to each other as requested by you.

We will proceed as soon as we receive notice to proceed. We estimate it will take approximately 8 to 10 weeks (weekends and holidays excluded) from notice to proceed to complete this project, weather and circumstances beyond our control permitting. Please let us know if we need to accelerate this schedule.

We will invoice time and materials actually used for this survey. As we get into this survey we may allocate our resources slightly differently, but we will not exceed the proposed fee without authorization from you.

Thank you for including us on this project. We look forward to the opportunity to work with you. If you think we have omitted any service you require or misinterpreted your request, please let me or Chris Conrad know.

Sincerely,



For  
Judith J. McGray, RPLS  
President  
TBPLS Firm #10095500

Authorized to Proceed by:

<hr/>	
Signature	Date
<hr/>	
Print Name	Title

JJM:CIC:kkp  
encl.

Item # 21

March 12, 2014

Mr. Ken Schrock, PE  
Vice President  
LJA Engineering, Inc.  
5316 Highway 290 West  
Suite 150  
Austin, TX 78735

RE: Bunton Creek Road Reconstruction – IH35 to Brandi Circle  
Utility Coordination (Local)  
**Exhibit A - Scope**

Mr. Schrock:

Cobb, Fendley & Associates (CobbFendley) is excited to present this proposal for utility coordination services for the above referenced project. Below is a description of our proposed scope of services.

#### Task B. Utility Coordination

Utility adjustment coordination includes utility coordination meetings with individual utility companies, communication and coordination with utilities, conflict assessment and analysis, and preparation of utility agreements, including reimbursable and non-reimbursable. All utility coordination activities will be in accordance with the City of Kyle Guidelines and TxDOT UAR, where applicable.

Utilities anticipated on the project include City of Kyle (water), CenterPoint Energy (gas), Verizon (telecom), PEC (electric distribution), and Time Warner Cable.

- B1.1. Develop Utility Contact List. CobbFendley establish contact with existing Utility Companies within and adjacent to the Project and create a utility contact list. This list will be maintained throughout the project.
- B1.2 Written Notification Letters. CobbFendley will prepare and mail written notification letters to all known Utility Owners within and adjacent to the project site at each of the design milestones (initial, 30<sup>o</sup>, 90<sup>o</sup>, 100<sup>o</sup>). A CD will be included with the letter containing milestone design plan sheets (\*.pdf and \*.dgn format).
- B1.3. Group Utility Coordination Meetings. CobbFendley shall establish contact with existing Utility Companies within and adjacent to the Project and set up a utility coordination kick-off meeting to discuss design concepts and options for construction. This meeting will be held between project kick-off and 30<sup>o</sup> design submittal and will include meeting preparation, travel time, meeting and follow-up meeting minutes. CobbFendley will set agenda for the coordination meeting as directed by the City and LJA.

Item # 21

- B1.4. Individual Utility Coordination Meetings.** CobbFendley will set-up utility coordination meetings with individual Utility Owners to discuss relocation plans, relocation alternatives, schedule, etc. CobbFendley will set agenda for all coordination meetings as directed by the City and LJA. There are 6 individual utility coordination meetings included in this estimate and include meeting preparation, travel time, meeting and follow-up meeting minutes
- B1.5. Reimbursable Utility Agreements.** If a utility is located within an easement, the utility company may have a compensable interest. The utility company must furnish a copy of their easement document. CobbFendley will determine whether or not a compensable interest exists and the owner's degree of eligibility. We will prepare a packaged agreement utilizing City of Kyle reimbursement agreement forms, plans on 11x17 sheets, easement documentation, estimate and schedule of work. We will submit a copy of the reimbursement package to the City of Kyle by letter recommending approval (3 copies of each). The utility shall be reimbursed all cost incurred within their easement limits for replacement in kind. There are 3 reimbursable utility agreements estimated for this project.
- B1.6. Non-Reimbursable Utility/Permits.** CobbFendley will assist each non-reimbursable utility in preparing and submitting necessary permits for construction (City and/or TxDOT). There are 2 non-reimbursable utilities estimated for this project.
- B1.7 Existing Utility Layout.** CobbFendley shall maintain a utility layout in the latest version of Microstation V8. This layout shall include all existing utilities which are to remain in place or be abandoned. This layout will be utilized to assist in conflict assessment, monitor necessity of relocations and evaluate alternatives.
- B1.8. Utility Conflict Assessment.** CobbFendley will determine which utilities will conflict with roadway construction, City guidelines, or the TxDOT "Utility Accommodation Rules" (UAR) and make the utility company aware of these conflicts. We will be reviewing for direct conflicts with proposed roadway improvements, constructability conflicts, and conflicts with current rules/guidelines. A detailed list will be prepared at each of the design milestones and will be communicated with the Utility Owners and design team.
- B1.9. Evaluate Relocation Alternatives.** CobbFendley will evaluate alternatives in the adjustment of utilities balancing the needs of both the City and the Utility.
- B1.10. Review Utility Relocation Plans.** CobbFendley shall review utility relocation plans to ensure compliance with City design criteria, UAR (where applicable), and to ensure that the proposed relocation will not conflict with proposed roadway improvements. Relocation plan reviews are for compliance with proposed location data. The responsibility for quality and accuracy of utility adjustment plans will remain with the Utility Company. There are 5 utility relocation plans reviews estimated for this project.
- B1.11. Review Utility Relocation Estimates.** CobbFendley will review the utility adjustment estimates for reasonableness of cost. There are 3 relocation estimate reviews anticipated for this project.



**B1.12. Utility Schedule and Sequencing.** CobbFendley will review the utility adjustment schedule in relation to construction sequencing and schedule for timely relocation of the utility.

**B1.13. Utility Certifications.** CobbFendley will provide a list of any outstanding utility issues prior to project construction.

Utility adjustment monitoring and verification and utility payment processing are not included in this scope of services.

Please let me know if you have any questions or comments.

Sincerely,

Sandee Khoury, PE  
Principal

cc: Julie Hastings, PE  
Melissa Horn

Item # 21

March 12, 2014

Mr. Ken Schrock, PE  
 Vice President  
 LJA Engineering, Inc.  
 5316 Highway 290 West  
 Suite 150  
 Austin, TX 78735

RE: **Bunton Creek Road Reconstruction – IH35 to Brandi Circle  
 Water and Wastewater Line Design  
 Exhibit A - Scope of Services**

Mr. Schrock:

Cobb, Fendley & Associates (CobbFendley) is excited to present this proposal for design phase services for the above referenced project. Below is a description of our proposed scope of services.

#### Task A. Water and Wastewater Line Design

- New waterline services to approximately twelve (12) properties on the northside of Bunton Creek Road from Dacy Lane to Lehman Road;
- New 8" wastewater line from Brandi Circle to Lehman Road (approximately 800'); and
- 4" waterline along IH35 across Bunton Creek Road

Below is a detailed description of CobbFendley's scope to perform design phase services for the project described above.

- A1. Plans. CobbFendley will prepare design plans for inclusion in the overall roadway construction plan set. LJA will provide a title block template into which we will insert our logo and PE seal. We anticipate the following sheets to be included in our design set.
- A1.1 General Notes. Assemble a set of general notes with respect to water and wastewater line design that will be included on the General Notes sheet for the roadway construction plan set.
- A1.2 Water Service Plan sheets. Prepare two (2) plan (no profile) sheets showing the location for water service installations.
- A1.3 Wastewater Line P&Ps. Prepare Plan & Profile Sheets for the wastewater line design at a scale of 1"=20' on a 22"x34" plan sheet. Assume two (2) sheets.
- A1.4 4" Waterline. Prepare one (1) plan (no profile) sheet for the 4" waterline crossing Bunton Road at IH35. This proposal does not include coordination with TxDOT obtaining the TxDOT permit for this utility crossing.
- A1.5 Detail Sheets. Prepare detail sheets showing standard details as well as special project-specific details.

- A2. Specifications. CobbFendley will assemble standard technical specifications that pertain to the waterline design. A full set of specifications will be included with the 90% and Final

Item # 21

submittals.

- A3. Quantity Take Off. CobbFendley will perform a quantity take off and submit quantities to LJA for inclusion in the overall contract documents. A quantity take off will be performed at the 90<sup>o</sup> and 100<sup>o</sup> submittals.
- A4. Cost Estimate. CobbFendley will prepare an opinion of probable construction cost for the 90<sup>o</sup> (+/- 10<sup>o</sup>) and 100<sup>o</sup> (+/- 10<sup>o</sup>) submittals.
- A5. QA/QC. CobbFendley will perform quality control reviews on the plans and specifications prior to each submittal to LJA. Corporate quality assurance procedures will be followed to ensure and document QC activities.
- A6. Prepare 3 submittal packages. CobbFendley will assemble plans and specifications and submit to LJA for inclusion in the overall construction packet. This proposal assumes there will be a 30<sup>o</sup>, 90<sup>o</sup>, and 100<sup>o</sup> submittal. We will provide electronic copies of plans and specs for 30<sup>o</sup> and 90<sup>o</sup> submittals and will sign originals for the 100<sup>o</sup> submittal.
- A7. Respond to comments. CobbFendley will review comments provided by the Client and the Owner and prepare a written response to the comments for inclusion with the subsequent submittal. Assumes two (2) sets of comments.
- A8. Coordination meetings. This proposal assumes there will be two (2) coordination meetings with the Client and/or Owner during the design phase.

Please let me know if you have any questions or comments.

Sincerely,



Julie Hastings, PE  
Regional Municipal Manager

cc: Sandee Khoury, PE

**SCOPE OF WORK—TECHNICAL MEMO  
SERVICES TO BE PROVIDED BY CMEC  
BUNTON ROAD PROJECT**

**SERVICES TO BE PROVIDED BY COXIMcLAIN ENVIRONMENTAL CONSULTING (CMEC)**

**ENVIRONMENTAL STUDIES**

1. Identify and evaluate the social, economic, and environmental consequences of the planned improvements and prepare an Environmental Technical Memo. Scope of services is based on the assumption that no NEPA triggers will be encountered (federal funding or permitting) and that all investigations will be conducted based on existing literature and mapped data, aerial photography and field reconnaissance. A TxDOT environmental document is not required nor included in this scope of services.
2. Wetlands and other Waters of the U.S - perform 1) background research (i.e., floodplains, topography, soils, National Wetland Inventory Maps) on the project vicinity; 2) a field investigation to identify, characterize, and map Waters of the U.S. potentially affected by the project (i.e. perform a Wetland Determination); 3) the preparation of portions of the Technical Memo documenting the methods and results of the Waters of the U.S. investigation; and 4) identification of the appropriate Nationwide Permits or Individual Permit, if necessary. The field investigation would follow current U.S. Army Corps of Engineers guidance regarding waters of the U.S. under Section 404 of the Clean Water Act. Right-of-entry would be provided by LJA, to be obtained for the preferred alternative.
3. Preparation of a USACE pre-construction notification (PCN), Individual Permit, or a mitigation plan are not included in this scope of services.
4. Biological Issues - perform characterization of project area ecological resources including descriptions of vegetation and wildlife habitat resources. Ecologically sensitive resources, if any, will be identified and discussed in the document. During field investigations, an assessment of the suitability of affected habitats to support species listed as threatened and/or endangered by the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department will be performed. The City will be notified if presence/absence surveys are recommended or if agency consultation will be required. A tree survey, if required, will be completed by the project surveyor and surveyed by an RPLS.
5. No coordination under the Endangered Species Act is considered necessary and included in this scope of services.
6. Cultural Resources – project archeologists will conduct background research at the Texas Archeological Research Laboratory (TARL) and summarize findings and recommendations in the Technical Memo. For the preferred alternative only, an archeological survey (pedestrian survey including standard shovel tests and limited backhoe trenches) will be performed for the project, and summarized in a report suitable for submittal to the THC. Any required testing or data recovery would be performed under an additional scope and budget. Historic structures surveys are not included in this scope of services.
7. Traffic Noise and Air Quality - a quantitative or qualitative traffic noise analysis and air quality analysis will not be necessary for this locally funded project and is not included in this scope of services.
8. Geologic Assessment - project is not located over the Edwards Aquifer Recharge Zone. Geologic Assessment or Water Pollution Abatement Plan will not be prepared.
9. Hazardous Materials - conduct transaction screening to identify and inventory potential contamination source areas that may affect the project. A database search and visual inspection within the proposed right-of-way will be conducted to determine existing conditions. If recommended based on these efforts, a Phase I ESA would be accomplished under an additional scope and budget.
10. Public Involvement - Attend one meeting and one Open House. Two (2) staff members will attend each meeting to ensure adequate staff would be available to answer any environmental constraints and compliance questions.
11. Environmental Documentation (Environmental Technical Memo) - a draft Environmental Technical Memo

Item # 21



will be prepared to summarize environmental studies and constraints, plus the alternatives analysis, documenting potential environmental impacts and anticipated permitting requirements.

12. Deliverables:

- a. Draft and Final *Environmental Technical Memo* (5 hard copies and 1 electronic copy)
- b. Draft and final archeological survey report.



**Proposed Bunton Creek Road Project**  
**"From IH-35 NBFR to future Kyle Pkwy Ext."**  
**Kyle, Texas**

**SCOPE OF WORK**

It is our understanding from information provided by LJA Engineering, Inc. (Design Engineer) that the proposed Bunton Creek Road project will connect IH-35 NBFR with future Kyle Parkway Extension. Also, the project includes the extension of New Location Road to connect Goforth Road. The project consists of design and construction of a new pavement structure, drainage, and utility improvements. This project is located in City of Kyle, Texas.

The proposed section for Bunton Creek Road will include four travel lanes; and the proposed New Location Extension will include three travel lanes.

The scope of work for the geotechnical investigation to be performed by Rodriguez Engineering Laboratories at the above referenced project includes the following:

**FIELD SAMPLE COLLECTION:**

1. Rodriguez Engineering Laboratories will contact Texas One Call services for utility locations prior to starting any drilling. Staking the borings and legal access to the boring locations will be handled by the Design Engineer. Clearing will be charged at cost of materials plus labor if needed. Borings may need to be extended in cut areas; this will be based on survey data and will need to be determined by the Design Engineer prior to drilling.
2. Obtain soil samples from the areas to be evaluated. Ten borings to a depth of 10 feet and four borings to a depth of 5 feet were proposed as follows:
  - 2.1. Drill eight borings to a depth of 10 feet along the proposed new Bunton Creek Road alignment and four borings to a depth of 5 feet along the existing pavement. The borings will be located at a maximum boring spacing of 700 feet on proposed roadway alignment and located randomly on existing pavement. A boring log will be recorded for each of these borings to document material field description and thickness of every soil strata.
    - 2.1.1 Obtain soil samples to determine material properties. Approximately two soil samples per every 5 feet of drilling, obtain additional soil samples if material changes.
    - 2.1.2 Obtain subgrade samples to perform Texas Triaxial test, soluble sulfate content, and lime stabilization effectiveness by pH-lime method.
    - 2.1.3 The soil samples will be properly sealed and protected from moisture evaporation.
    - 2.1.4 All borings will be properly backfilled after completion.
  - 2.2 Drill two borings to a depth of 10 feet along the proposed alignment of New Location Roadway Extension. The borings will be located at a maximum boring spacing of 700 feet. A boring log will be recorded for each of these borings to document material field description and thickness of every soil strata.
    - 2.2.1 Obtain soil samples to determine material properties. Approximately two soil samples per every 5 feet, obtain additional soil samples if material changes.
    - 2.2.2 The soil samples will be properly sealed and protected from moisture evaporation.
    - 2.2.3 The borings will be properly backfilled after completion.

Item # 21



**Proposed Bunton Creek Road Project**  
**“From IH-35 NBFR to future Kyle Pkwy Ext.”**  
**Kyle, Texas**

**SCOPE OF WORK**

**LABORATORY TESTING:**

1. A testing program will be conducted on the soil and subgrade samples to aid in classification and evaluation of the engineering properties required for analysis.
2. Each of the estimated 42 soil samples will be tested for the following properties:
  - 2.1. Determining Moisture Content of Soil Materials (Tex-103-E)
  - 2.2. Determining Atterberg Limits of Soils (Tex-104, 105, & 106-E)
  - 2.3. Determining Sieve Analysis of Soils (Tex-110-E)
  - 2.4. Determining the Amount of Material in Soils Finer than No. 200 Sieve (Tex-111-E)
  - 2.5. Laboratory Classification of Soils for Engineering Purposes (Tex-142-E)
3. A subgrade sample will be obtained from the project to perform the following tests:
  - 3.1. Moisture-Density Relationship Test (Tex-114-E), 1 test
  - 3.2. Texas Triaxial Test (Tex-117-E), 1 test
  - 3.3. Determining Lime Stabilization Effectiveness by pH Method (Tex-121-E, Part III), 1 test
  - 3.4. Determining Water Soluble Sulfate Content (Tex-145-E), 8 tests, approx. one test every 1,000 ft.

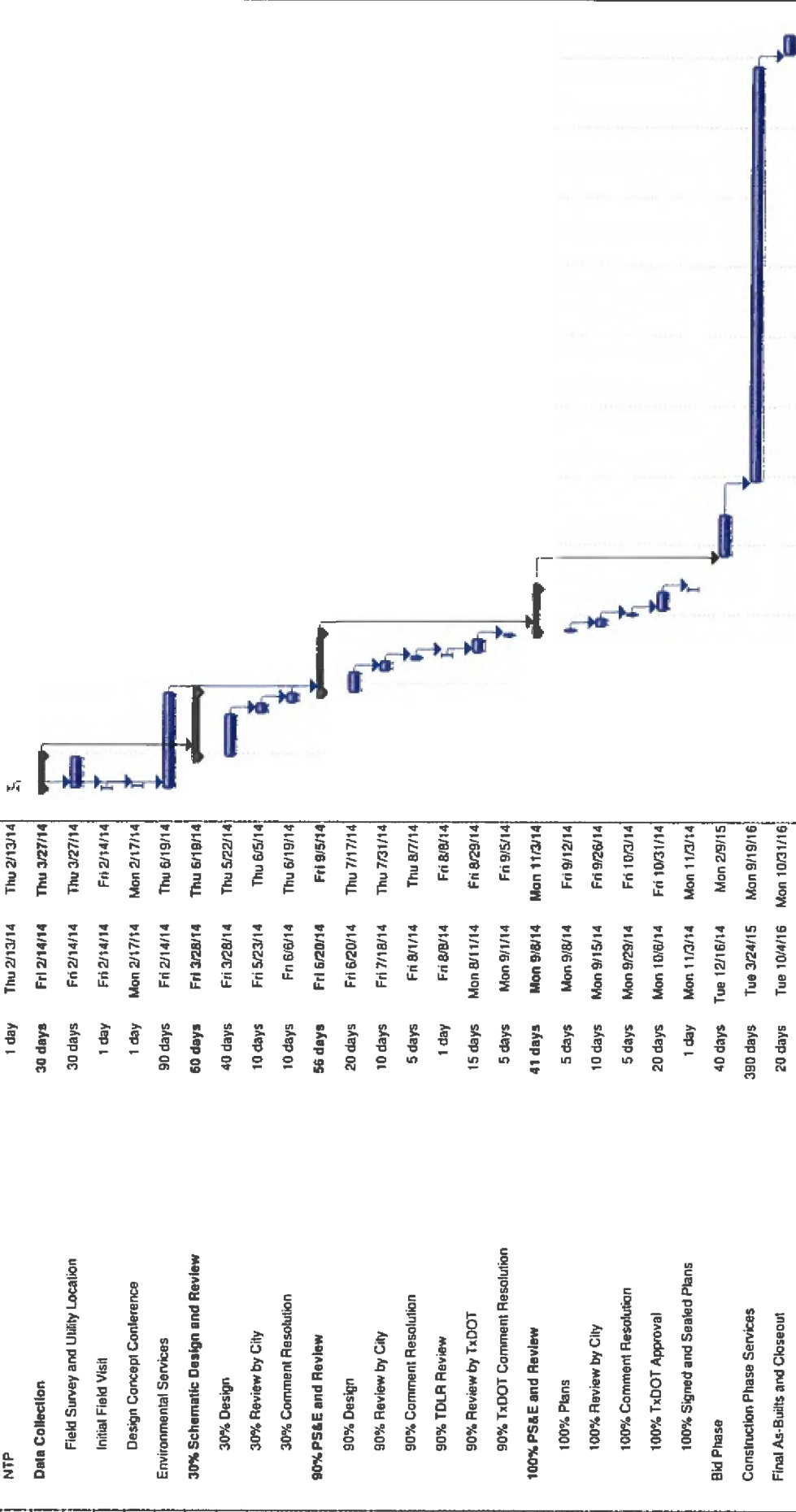
**GEOTECHNICAL REPORT:**

1. The geotechnical investigation report will include the following:
  - 1.1. A summary of field and laboratory test results will be provided.
  - 1.2. PCC pavement design recommendations satisfying the requirements of the AASHTO Guide for Design of Pavement Structures will be provided. Additional information will be required in order to determine the recommended pavement section.
  - 1.3. Soil stabilization will be recommended if needed.
2. The geotechnical investigation report and pavement design will not include potential vertical rise (PVR). Additional geotechnical investigation should be performed if PVR values are desired by the Design Engineer.

**Exhibit “B”  
Schedule**

**Exhibit B**

ID	Task Name	Duration	Start	Finish
1	<b>TOTAL PROJECT TIME</b>	708 days	Thu 2/13/14	Mon 10/31/16



Item # 1

Project: Exhibit B  
Date: 11/24/14

Task  
Split  
Progress

Milestone  
Summary  
Project Summary

External Tasks  
External Milestone  
Deadline

**Exhibit "C"**  
**Basis of Compensation**

**EXHIBIT C**  
City of Kyle, Texas  
Summary Breakdown of Engineering Design Services Contract Compensation  
For City Council Meeting on March 18, 2014

Name of Road: Bunton Creek Road  
Name of Firm: LJA Engineering

Item	Project Phase	Work Task	Compensation Type	Compensation
1.	<b><u>Schematic &amp; Environmental</u></b>	Survey Control/Topographic/RWO Surveying	Lump Sum	\$ 51,056.00
2.		Geotechnical Investigation & Pavement Design	Lump Sum	16,819.00
3.		Schematic Design	Lump Sum	102,540.00
4.		Environmental Permitting Evaluation	Lump Sum	22,556.84
5.		RR Permitting	Lump Sum	NA
6.		Public Involvement	Lump Sum	NA
7.		TDLR Review	Lump Sum	725.00
8.		Util Coordination & Water Line Design	Lump Sum	\$ 74,070.00
9.		Sub-total:		<u>\$ 267,766.84</u>
10.	<b><u>Design</u></b>	30% Plans, Specifications, & Estimates	Lump Sum	\$ 73,049.00
11.		60% Plans, Specifications, & Estimates	Lump Sum	57,723.00
12.		90% Plans, Specifications, & Estimates	Lump Sum	37,699.00
13.		100% Plans, Specifications, & Estimates	Lump Sum	20,024.00
14.		ODC		4,387.50
		Sub-total:		<u>\$ 192,882.50</u>
15.	<b><u>Bidding</u></b>	Bid Phase Services	Lump Sum	\$ 8,255.00
		Sub-total:		<u>\$ 8,255.00</u>
16.	<b><u>Construction</u></b>	Construction Phase Services	Lump Sum	
		Sub-total:		<u>\$ 15,370.00</u>
17.		<b>Total Base Compensation</b>		<u>\$ 484,274.34</u>
18.	<b><u>Additional Services</u></b>			
19.	<b>Utilities</b>		Lump Sum	NA
20.	<b>ROW Acquisition</b>	Parcel Surveying	Lump Sum	NA
21.	<b>ROW Acquisition</b>	ROW Acquisition Services (Land Cost Not Included)	Lump Sum	NA
22.				
23.				
24.	<b>Subsurface Utility Engineering</b>	Quality Level "A"	Unit Price	NA
25.	<b>Total Additional Services</b>	Sub-total:		<u>\$ -</u>
26.		<b>Total Compensation for Base &amp; Additional Services:</b>		<u>\$ 484,274.34</u>

City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 18, 2014  
 CONTACT CITY DEPARTMENT: Engineering Services  
 CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

SUBJECT:

A Resolution of the City of Kyle, Texas, authorizing the City Manager to execute an agreement in an amount not to exceed \$484,274.34 with LJA ENGINEERING, INC., for design and construction phase services relating to Bunton Creek Road (IH-35 to Lehman Road); making findings of fact; and providing for related matters.

CURRENT YEAR FISCAL IMPACT:

This engineering services LJA ENGINEERING, INC., will require expenditure of funds from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.


1. City Department:	Engineering Services
2. Project Name:	Engineering - Bunton Creek Road
3. Budget/Accounting Code(s):	188-679-57313
4. Funding Source:	2013 GO Bond Fund (Road Bonds)
5. Current Appropriation:	\$ 5,410,000.00
6. Unencumbered Balance:	\$ 3,317,623.74
7. Amount of This Action:	<u>\$( 484,274.34)</u>
8. Remaining Balance:	<u>\$ 2,833,349.40</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this professional services agreement for engineering services with LJA ENGINEERING, INC., in an amount not to exceed \$484,274.34 will be provided from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.

ADDITIONAL INFORMATION/COUNCIL ACTION:

On November 6, 2013, City Council authorized a Master Service Agreement with M&S ENGINEERING, LLC, of Spring Branch, Texas, in an amount not to exceed \$10,000.00 to facilitate general engineering professional services and to provide specific engineering services related to negotiation of professional scopes and fees for North Burleson Street and Marketplace Avenue.

  
 Perwez A. Moheet, CPA - Date  
 Director of Finance





# CITY OF KYLE

520 E. RR 150  
Office (512) 262-3024

Kyle, Texas 78640  
Fax (512) 262-3403

## MEMORANDUM

TO: Lanny S. Lambert, City Manager

FROM: Leon Barba, P.E., City Engineer *LB*

DATE: March 13, 2014

SUBJECT: Renegotiated Road Bond Projects

Based on direction from City Council and staff recommendations, the engineering consultants were asked to remove any Public Information/Public Outreach and any real estate acquisition fees from the proposed contracts. Additionally, all contracts are to include the 30, 60, 90 and 100% review milestones. Following is an update on the proposed engineering fees for the five road bond projects:

### **Lehman Rd. – FM 150 to Goforth Rd. (HDR)**

Initial Proposal	\$ 703,997.00
Current Proposal	<u>\$ 697,000.00</u>
Reduction	\$ 6,997.00

### **Goforth Rd. – IH 35 to Bunton Creek Rd. (LAN)**

Initial Proposal	\$1,009,992.00
Current Proposal	<u>\$1,001,269.26</u>
Reduction	\$ 8,722.74

### **Bunton Creek Rd. – IH 35 to Lehman (LJA)**

Initial Proposal	\$ 579,454.34
Current Proposal	<u>\$ 484,274.34</u>
Reduction	\$ 95,180.00

**N. Burleson – Miller St. to IH 35 (FNI)**

Initial Proposal	\$ 974,262.00
Current Proposal	<u>\$ 959,692.00</u>
Reduction	\$ 14,570.00

**Marketplace Avenue - Burleson Rd. to City Lights (KFA)**

Initial Proposal	\$ 412,448.00
Current Proposal	<u>\$ 364,134.00</u>
Reduction	\$ 48,314.00

The total reduction for the five projects is \$173,783.74. Please let me know if you need any additional information.

Xc: Harper Wilder, Public Works Dept.  
Perwez Moheet, Finance Dept.



# CITY OF KYLE, TEXAS

## Professional Services Agreement - F&N

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$959,692.00 WITH FREESE AND NICHOLS, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO N. BURLESON STREET (MILLER STREET TO IH 35); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P.E., City Engineer*

**Other Information:**

**Budget Information:** A Fiscal Note is attached.

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

#### Attachments / click to download

- [Fiscal Note](#)
- [Memo-Renegotiated Road Bond Projects](#)
- [Mar 18 Agenda - Freese & Nichols K](#)
- [Mar 18 Agenda - RESOL - Freese and Nichols](#)
- [Freese & Nichols-Scope of Work & Schedule-Burleso](#)

Cover Memo

Item # 22

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$959,692.00 WITH FREESE AND NICHOLS, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO N. BURLESON STREET (MILLER STREET TO INTERSTATE HIGHWAY 35); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

WHEREAS, the City of Kyle requested qualifications from professional engineering firms to provide design services for certain street and road improvements; and,

WHEREAS, the City desires to obtain design services from Freese and Nichols, Inc., for street improvements related to N. Burleson Street (Miller Street to Interstate Highway 35);

WHEREAS, Freese and Nichols, Inc., is qualified and capable of performing the professional engineering design services proposed herein and is willing to enter into an Agreement with the City of Kyle to perform such services; and,

WHEREAS, an agreement that defines the scope of services and fees has been negotiated between Freese and Nichols, Inc., and the City of Kyle and is attached hereto as EXHIBIT "A" and incorporated by reference herein.

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

Section 1. Findings. The hereinabove 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. Authorization. The city manager is hereby authorized to execute a professional services agreement in an amount not to exceed \$959,692.00 with Freese and Nichols, Inc., of Fort Worth, Texas, for design services for street improvements related to N. Burleson Street (Miller Street to Interstate Highway 35), attached as Exhibit "A" hereto.

Section 3. 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, Texas.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution was 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.

PASSED AND APPROVED this \_\_\_\_ day of March, 2014.

THE CITY OF KYLE, TEXAS

ATTEST:

\_\_\_\_\_  
Lucy Johnson, Mayor

\_\_\_\_\_  
Amelia Sanchez, City Secretary

**EXHIBIT "A"**  
**PROFESSIONAL SERVICES AGREEMENT**

**[SEE ATTACHED]**

**CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES  
FOR N. BURLESON STREET IMPROVEMENTS**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF HAYS**         §

THIS IS AN AGREEMENT by and between the CITY OF KYLE, Texas, a Texas home rule City (hereinafter called "CITY"), acting through its duly authorized agent, Lanny S. Lambert, City Manager, and FREESE AND NICHOLS, INC. (hereinafter called DESIGN PROFESSIONAL") for engineering design professional services (hereinafter called "the Agreement")

WHEREAS, the CITY desires to obtain DESIGN PROFESSIONAL's services for street improvements related to N. Burleson Street (Miller Street to Interstate Highway 35), hereinafter called the "PROJECT";

WHEREAS, the CITY desires to obtain professional engineering design services in connection with the PROJECT; and

WHEREAS, the DESIGN PROFESSIONAL is qualified and capable of performing the professional engineering design services proposed herein, which are acceptable to the CITY, and is willing to enter into an Agreement with the CITY to perform such services.

NOW, THEREFORE, the parties hereto do mutually CONTRACT and AGREE as follows:

**ARTICLE 1  
SERVICES TO BE PROVIDED**

**1.1** The CITY agrees to retain the DESIGN PROFESSIONAL, and the DESIGN PROFESSIONAL agrees to perform professional services for the PROJECT as an independent contractor and professional consultant as set forth in the sections following; and CITY agrees to pay, and the DESIGN PROFESSIONAL agrees to accept fees as specified in the sections following as full and final compensation for the work accomplished.

**1.2** The DESIGN PROFESSIONAL shall provide its services in accordance with the normal degree of care and skill of other reputable Engineers providing similar services on similar projects of like size and nature at the same time and in the same locale as this PROJECT. No other guarantee or warranty of any kind, unless expressed or implied at common law or created by statute, is extended, made, or intended by the rendition of DESIGN PROFESSIONAL's services.

## ARTICLE 2 SCOPE OF WORK

The DESIGN PROFESSIONAL agrees to provide all services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this contract Agreement.

## ARTICLE 3 PROJECT SCHEDULE

The DESIGN PROFESSIONAL agrees to perform the Engineer’s Scope of Work in accordance with the **Exhibit “B” – Project Schedule** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes.

## ARTICLE 4 COMPENSATION

### 4.1 DEFINITION OF COMPENSATION TERMS

**4.1.1 Hourly Rates (HR)** - Hourly rates is the cost of salaries of DESIGN PROFESSIONALS (Technicians, drafters, stenographers, surveyors, clerks, laborers, etc.), fringe benefits (social security contributions, unemployment excise and payroll taxes, employment compensation insurance, medical and other insurance benefits, sick leave, vacation, holiday pay, contributions to a pension or retirement plan), overhead and profit for time directly chargeable to the PROJECT. Hourly rates for Basic and Additional Services for this PROJECT will not exceed those listed in **Exhibit “C” Summary of Compensation** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes. DESIGN PROFESSIONAL shall provide documentation of said hourly rates upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said hourly rates not customarily or ordinarily attributable to “Hourly Rates” The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.2 Direct Non-Labor Expenses (DNLE)** - Direct non-labor expenses are defined as all non-labor expenses incurred by the DESIGN PROFESSIONAL which are directly chargeable to the PROJECT, which is defined as expenses for supplies, transportation, equipment, travel, communications, subsistence and lodging, field office expenses, reproductions, and similar incidentals. DESIGN PROFESSIONAL shall provide documentation of said expenses upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said expenses not customarily or ordinarily attributable to DNLE or which are in excess in an amount which are not customarily or ordinarily attributable to DNLE. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1)

time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.3 Lump Sum (LS)** - The CITY shall pay the DESIGN PROFESSIONAL a Lump Sum amount for the specified category of services. The “Lump Sum” is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and DNLE. The portion of the Lump Sum amount billed for the DESIGN PROFESSIONAL'S services shall be based upon DESIGN PROFESSIONAL'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. The CITY has the option of agreeing to this amount before making Lump Sum payment to the DESIGN PROFESSIONAL.

**4.1.4 Unit Price (UP)** - The CITY shall pay the DESIGN PROFESSIONAL an amount equal to the Unit Price times the actual quantity of unit(s) for the specified category of services. The amount equal to the Unit Price is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and Reimbursable Expenses. The portion of the amount billed for Engineer's services shall be based upon Engineer's estimate of the proportion of the Unit Price for services actually completed during the billing period to the Unit Price. The CITY has the option of agreeing to this amount before making Unit Price payments to the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

## 4.2 PAYMENT FOR SERVICES

Based upon applications for payment submitted by the DESIGN PROFESSIONAL and approved by the CITY, the CITY will make progress payments as scheduled hereafter for services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this Agreement and incorporated herein by reference. The application for payment will be computed on the basis of hourly rates, direct non-labor expenses, lump sum and unit price work items shown in **Exhibit “C” - Summary of Compensation**. The DESIGN PROFESSIONAL will be paid a TOTAL amount not to exceed **\$959,692.00** for design and construction phase services. Partial payments will be made upon presentation of statements to CITY in the manner otherwise set forth in this Agreement.

## 4.3 PAYMENT FOR ADDITIONAL SERVICES

**4.3.1** As determined by the DESIGN PROFESSIONAL or the CITY or both parties, when the need for additional services arises, the scope of work, compensation terms and total compensation will be negotiated between the CITY and DESIGN PROFESSIONAL before said additional work shall begin. In the event said additional work is begun before the CITY gives its prior written approval, the CITY has the option to ratify its approval of said additional work. Payment for additional services will be computed on the basis of hourly rates,



direct non-labor expenses, lump sum and/or unit prices for additional work. For the services of personnel described in this section, the DESIGN PROFESSIONAL will be compensated in accordance with the schedule for various employees of the DESIGN PROFESSIONAL as set forth in **Exhibit “C” – Summary of Compensation.**

**4.3.2** Payment for Additional Services will be made in the manner otherwise set forth in this Agreement, based upon presentation of invoices, statements and billings to the CITY sufficient to show the work accomplished. Under no conditions will any additional services be paid for until the DESIGN PROFESSIONAL has received written authorization from the CITY for such work.

#### **4.4 ADDITIONAL COPIES OF PRINTED DOCUMENTS**

Additional copies, above the number due as part of the basic services outlined in Article 2, of reproduced plans, specifications, maps and exhibits will be available to the CITY at actual invoice cost to the DESIGN PROFESSIONAL.

### **ARTICLE 5 SERVICES BY THE CITY**

**5.1** In general, the CITY will render services as follows:

- 5.1.1** Provide available criteria and full information as to the CITY’s requirements for the PROJECT.
- 5.1.2** Assist the DESIGN PROFESSIONAL by placing at his disposal all available written data pertinent to previous operations, reports, and any other data affecting the design and/or construction of the PROJECT.
- 5.1.3** Acquire all land and rights-of-way required for the PROJECT and any related off-site work, including rights of ingress and egress on private property.
- 5.1.4** Respond in writing no later than thirty (30) calendar days to requests by the DESIGN PROFESSIONAL for authorization to proceed with specific activities deemed desirable.
- 5.1.5** No later than thirty (30) calendar days from the date of submittal, examine documents submitted by the DESIGN PROFESSIONAL and render decisions pertaining thereto in order to avoid delay in the progress of the DESIGN PROFESSIONAL’s services.
- 5.1.6** Timely provide to DESIGN PROFESSIONAL information that is required or necessary for the orderly progress of the work.

**5.2** The DESIGN PROFESSIONAL will be entitled to rely upon the CITY's engineer regarding decisions made by the CITY pertaining to this PROJECT and rely upon the accuracy and completeness of all information and data provided by or through the CITY or its Engineer; further, all notices or information will be deemed made when conveyed in writing to the DESIGN PROFESSIONAL.

**5.3** The services, information and reports required above will be furnished at the CITY's expense.

## **ARTICLE 6 PROJECT DOCUMENTS**

All documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed, with the exception of those standard details and specifications regularly used by the DESIGN PROFESSIONAL in its normal course of business, will upon payment of all amounts rightfully owed by the CITY to the DESIGN PROFESSIONAL herein be the property of the CITY. The latest version of all documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed will be available to the CITY no later than thirty (30) calendar days from the date the CITY makes a verbal or written request to DESIGN PROFESSIONAL. DESIGN PROFESSIONAL, its subcontractors, agents and employees will be liable to the CITY for any loss or damage to any such documents while they are in the possession of or while being worked upon by the DESIGN PROFESSIONAL or anyone connected with him. All documents so lost or damaged will be replaced or restored by DESIGN PROFESSIONAL without cost to the CITY. Any reuse or modification of such Documents for purposes other than those intended by the DESIGN PROFESSIONAL shall be at the CITY's sole risk and without liability to the DESIGN PROFESSIONAL unless said unintended reuse or modification occurs as a result of DESIGN PROFESSIONAL'S negligence, malfeasance, or willful misconduct. Upon completion of the PROJECT, all documents shall be transferred to the CITY. DESIGN PROFESSIONAL shall not be required to maintain the records but may do so in accordance with its Document Retention Policy.

## **ARTICLE 7 NOTICE TO PROCEED; SCHEDULING OF WORK**

It is understood and agreed that the DESIGN PROFESSIONAL will work as an Independent Contractor by the CITY, will have ultimate control of the services to be rendered except as otherwise provided in this Agreement or in the event said control shall be in violation of this Agreement, and that no work will be done under this Agreement until the DESIGN PROFESSIONAL is instructed in writing to proceed with the work. In the event the DESIGN PROFESSIONAL does work before it is instructed in writing to proceed, the CITY shall not be obligated or in any way liable for payment of compensation or other reimbursements to the DESIGN PROFESSIONAL.

## **ARTICLE 8 ASSIGNMENT**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party will assign, sublet nor transfer any interest in this Agreement without the written authorization of the other.

## **ARTICLE 9 TERMINATION**

**9.1** In connection with the work outlined in this contract, it is agreed and fully understood by the DESIGN PROFESSIONAL that the CITY may cancel or indefinitely suspend further work hereunder or terminate this Agreement upon fifteen (15) days written notice to the DESIGN PROFESSIONAL with the understanding that immediately upon receipt of said notice all work and labor being performed under this contact will cease. As a condition precedent for termination for cause, the DESIGN PROFESSIONAL shall have the 15 day notice period to cure such cause and shall have failed to so cure. Before the end of such fifteen (15) day period DESIGN PROFESSIONAL will invoice CITY for all work completed satisfactorily to the CITY and will be compensated in accordance with the terms of this Agreement. All drawings, field surveys, maps, estimates, investigation, studies, and other data work related to the PROJECT will become the property of the CITY upon termination of the Agreement.

**9.2** Nothing contained in paragraph 9.1 above will require the CITY to pay for any work which fails to meet the Standard of Care. The CITY will not be required to make any payments to the DESIGN PROFESSIONAL when the DESIGN PROFESSIONAL is in default under this Agreement. The CITY and the DESIGN PROFESSIONAL retain their respective rights and remedies under law and this Agreement does not, nor shall be interpreted, to waive or otherwise modify said rights.

**9.3** The DESIGN PROFESSIONAL understands and agrees that time is of the essence and that any failure of the DESIGN PROFESSIONAL to complete its services within the time limit established herein solely due to the fault of the DESIGN PROFESSIONAL will constitute a material breach of this Agreement. However, it is agreed that DESIGN PROFESSIONAL must use sound professional practices. The DESIGN PROFESSIONAL will be fully responsible for any delays or for failures to use its professional efforts in developing contractual documents in accordance with the terms of this Agreement. Where damage is caused to the CITY due to the DESIGN PROFESSIONAL's failure to perform in this manner, as determined by the governing body of the CITY, the CITY may withhold all or any portion of the DESIGN PROFESSIONAL's payments hereunder without waiver of any of either PARTY's additional legal rights or remedies.

**9.4** The DESIGN PROFESSIONAL will have the right to terminate this Agreement, on fifteen (15) days written notice to the CITY should the CITY fail to perform its

obligation herein to the satisfaction of the DESIGN PROFESSIONAL. In the event of termination, the DESIGN PROFESSIONAL will be paid for all services rendered to date of termination. Nothing contained herein will constitute a waiver of DESIGN PROFESSIONAL's right to bring a suit for damages or to enforce specific performances of this Agreement under these circumstances. In the event of termination hereunder, DESIGN PROFESSIONAL will invoice CITY for all work satisfactorily completed up to the date of this notice of termination and will be compensated in accordance with the terms of Agreement.

**9.5** Notwithstanding anything contained herein to the contrary, the CITY will have the right to withdraw from this Agreement on the last day of CITY's current fiscal year in the event of non-appropriation of funds by its governing body, and providing ten (10) days written notice from CITY to DESIGN PROFESSIONAL.

#### **ARTICLE 10 VENUE**

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement will lie exclusively in a court of competent jurisdiction Hays County, Texas, and such court will interpret this Agreement in accordance with the laws of the State of Texas.

#### **ARTICLE 11 ENTIRE AGREEMENT**

This instrument represents the entire understanding between the CITY and the DESIGN PROFESSIONAL in respect to the PROJECT and may only be modified in writing signed by both parties.

#### **ARTICLE 12 SEVERABILITY**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

#### **ARTICLE 13 RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

**13.1** Approval by the CITY will not constitute nor be deemed a release of the responsibility and liability of the DESIGN PROFESSIONAL, its employees, subcontractors, agents and consultants for the accuracy and competency of their

designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for the DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents prepared by the DESIGN PROFESSIONAL, his employees, subcontractors, agents and consultants.

**13.2** The CITY agrees the DESIGN PROFESSIONAL is not responsible for damages arising from any circumstances beyond the DESIGN PROFESSIONAL's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; failure of any governmental agency to act in a timely manner; failure of performance by the CITY or the CITY's other subcontractors or consultants; or discovery of any hazardous substances or differing and unforeseeable site conditions.

#### **ARTICLE 14 INDEMNIFICATION**

The DESIGN PROFESSIONAL will indemnify and hold the CITY and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expense, including costs of court, reasonable attorneys' fees, expert witnesses' and consultants' fees, on account of damage to property and injuries, including death, to all persons, whether caused by DESIGN PROFESSIONAL or its officers, agents, employees, subcontractors, licensees, or invitees to the extent caused by any act of negligence or intentionally wrongful act or material breach of any obligation under this Agreement, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them, or any of them in connection herewith resulting from such act of negligence or intentional act or breach for which DESIGN PROFESSIONAL is found to be legally liable.

In no event shall either PARTY be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

The indemnity obligations herein shall survive the termination of the contract for any reason and shall survive the completion of the work on the PROJECT.

It is understood and agreed that the indemnity and defense obligations contained and described herein shall be interpreted in accordance with Texas law current as of the date of this Agreement and that any indemnity or defense obligation, if at all, shall be claimed, interpreted and enforced on a comparative basis of fault and responsibility. Neither

Party to this Agreement will allege, claim, file suit or otherwise demand that the other Party provide any indemnity or defense as such may relate to the negligent acts, errors or omissions of the claiming Party.

## **ARTICLE 15 INSURANCE**

The DESIGN PROFESSIONAL will maintain at all times professional liability or errors and omissions insurance covering any claim hereunder occasioned by DESIGN PROFESSIONAL's negligent act, or error or omission in an amount of not less than \$250,000 per claim and \$500,000 annual aggregate. DESIGN PROFESSIONAL agrees to maintain professional liability insurance during the term of this agreement and, if the policy is on a claims made basis, for a period of not less than five (5) years after the Project is complete and provide proof of such continuing coverage providing such coverage is readily available and financially feasible. DESIGN PROFESSIONAL further agrees to provide proof of coverage as needed for prior acts back to the date of execution of this agreement if DESIGN PROFESSIONAL changes insurance carriers during this extended indemnity period.

DESIGN PROFESSIONAL will further maintain general commercial liability coverage with minimum limits for damages resulting from bodily injury or death of \$250,000 per person and \$500,000 per occurrence, and \$100,000 per occurrence for property damage, or single limit of \$500,000.

DESIGN PROFESSIONAL further agrees that with respect to the above required liability insurance, the CITY will:

1. Be named as additional insured for general liability insurance.
2. Be provided with a waiver of subrogation, in favor of CITY.
3. Be provided with thirty (30) days advance written notice of cancellation, or nonrenewal (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate).
4. Upon execution of this Agreement by DESIGN PROFESSIONAL, be provided through the office of the City Clerk with either their original Certificate of Insurance or their insurance policy evidencing the above limits and requirements and subject to approval by the City Attorney.

The insurance requirements set out in this section are independent from all other obligations of DESIGN PROFESSIONAL under this Agreement and apply whether or not required by any other provision of this Agreement.

## **ARTICLE 16 COMPLIANCE WITH LAWS**

The DESIGN PROFESSIONAL, its consultants, agents and employees and subcontractors, will comply with all applicable federal and state laws, the Charter and Code of Ordinances of the City of Kyle, and all other applicable rules and regulations promoted by all local, state and national boards, bureaus and agencies.

## **ARTICLE 17 NOTICES**

This contract will be administered on the CITY's behalf by the City Engineer. All notices, documentation, or questions arising under this Agreement should be addressed to the CITY's Engineer at:

City Manager  
Kyle City Hall  
100 W. Center Street  
Kyle, Texas 78640

All written notices from CITY to DESIGN PROFESSIONAL will be addressed to the DESIGN PROFESSIONAL as follows:

Freese and Nichols, Inc.  
Mike Nichols, P.E.  
10814 Jollyville Rd., Bldg. 4, STE 100  
Austin, TX 78759

## **ARTICLE 18 CAPTIONS**

The captions of this Agreement are for information purposes only and will not in any way affect the substantive terms and conditions of this Agreement.

## **ARTICLE 19 MEDIATION**

In the event a dispute arises between the CITY and the DESIGN PROFESSIONAL in the application or interpretation of this Agreement, or one or more of its provisions, the parties may mutually agree to take such dispute to a mediator mutually agreed upon by both parties to this Agreement for resolution. Neither party is bound to the mediator's decision.

## **ARTICLE 20 EXECUTION AND EFFECTIVE DATE OF AGREEMENT**

The execution of this Agreement shall proceed as follows: signature of the DESIGN PROFESSIONAL shall be affixed hereto, whereupon the Agreement shall be submitted to the City Attorney for review, and then to the City Council for final review and

approval. After such approval from the City Council, the Agreement shall then be signed by the City Manager. This Agreement will become effective immediately upon the signature of both parties. An executed original of this Agreement shall be kept on file in the City Clerk's office.

**IN WITNESS WHEREOF**, the City of Kyle, Texas has caused these presents to be executed by its City Manager and attested by its City Clerk and executed by \_\_\_\_\_ on behalf of \_\_\_\_\_.

**THE CITY OF KYLE, TEXAS**

**DESIGN PROFESSIONAL: FREESE AND NICHOLS, INC.**

\_\_\_\_\_  
Lanny S. Lambert, City Manager

\_\_\_\_\_  
John New, Vice President

**ATTEST:**

\_\_\_\_\_  
Amelia Sanchez, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
W. Ken Johnson, City Attorney



**STATE OF TEXAS** §  
§  
**COUNTY OF HAYS** §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014,  
by Lanny S. Lambert, City Manager of the City of Kyle, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

Notary Public, State of Texas

**CORPORATE ACKNOWLEDGEMENT**

**STATE OF TEXAS** §  
§  
**COUNTY OF HAYS** §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014, by  
FREESE AND NICHOLS, INC., a Texas corporation, on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit “A”**  
**Engineer’s Scope of Services**

## Exhibit “A”

### ENGINEER’S SCOPE OF SERVICES

#### ARTICLE I

**BASIC SERVICES:** FNI will develop a schematic layout, plans, specifications and estimate for N Burlson St from Miller Street to a new connection with the IH 35 Frontage Road. The goal of this project is to reconstruct and widen N. Burlson St. to a three lane curb and gutter section (1 lane each way with a continuous left turn lane). The project will also include the elimination of the low water crossing at Plum Creek, drainage improvements including improved culvert at Live Oak Street, and a sidewalk along one side of the road.

FNI understands that the City of Kyle has limited funding in the amount of \$8,500,000 (eight million five hundred thousand). This amount is for the surveying, design, construction and land acquisition of N. Burlson Road. FNI understands the cost for design and construction of new water and wastewater lines will not come from the \$8,500,000 funds. FNI will endeavor to develop the design so as to meet the City’s budgetary constraints. FNI shall render the following professional services in connection with the development of the Project:

#### A. COORDINATION AND MEETINGS

1. Attend a Project kick-off meeting with representatives from the City and other team members to discuss the scope, scheduling, coordination and quality control and quality assurance.
2. Attend up to four (4) progress meetings with City staff to present project deliverables. The utility coordination meeting will be held concurrently with the progress meeting.
  - i. 30% Plans Review and Utility Coordination Meeting
  - ii. 60% Plans Review and Utility Coordination Meeting
  - iii. 90% Plans Review and Utility Coordination Meeting
  - iv. 100% Plan Review and Utility Coordination Meeting
3. Coordinate with the Design Consultant for Marketplace Ave. (K. Friese and Associates) regarding the interface between N. Burlson Street and Marketplace Avenue. Due to the ROW constraints of N. Burlson Street, the design of N. Burlson Street will dictate the design of Marketplace Avenue. The Marketplace Ave. consultant will need to develop their design to match the N. Burlson Street design at the north curb return of the N. Burlson Street – Marketplace Avenue intersection. Friese and Nichols will provide sufficient design data including electronic files to K. Friese in order for them to develop the Marketplace Avenue design.
4. Public Involvement
  - i. Engineer will not provide any services for Public Involvement.
5. Subsurface Utility Engineering (SUE) test holes. Level “A” SUE test holes are to be provided on a per test hole basis. The location and number of test holes will be determined during the design. The compensation will be based on the depth of the required test hole. See McGray and McGray Proposal for more details.
6. Rail Road Crossing at UPRR
  - i. Provide engineering services for Quiet Zone implementation for the railroad crossing at N. Burlson Street only.
7. Provide monthly project status updates in the form of FNI One Page Reports with invoices and to the Project Manager and the City’s designated representative.
8. Pre-Bid Meeting
9. Bid Opening.

## Exhibit "A"

- B. DATA COLLECTION - This task will be to collect detailed information necessary for the development of final design improvements including:
1. "As Built" drawings, engineering reports, and hydrologic and hydraulic models related to existing developments within the drainage area, including the Star of Texas and Church developments;
  2. City GIS database for the project area;
  3. Subdivision plats and easements within the project area;
  4. Comprehensive plan and design criteria manual;
  5. Perform field visits for the purposes of validating survey data, observing existing drainage patterns, and laying out proposed design.
- C. SCHEMATIC PHASE
1. Develop a Schematic
    - 1.1. Prepare plan and profile schematic layouts on a roll plot at 1" = 100' scale. Develop plan view layouts for each alternate to include proposed roadway improvements (curb, sidewalk and medians), typical sections, right of way requirements, for the roadway only; no drainage. Provide a vertical profile for the recommended alternate only. The alternate solutions shall be limited to not more than three.
      - 1.1.1. Alternate solutions to be provided:
        - 1.1.1.1. One option for sidewalks on both side of N. Burleson Street with no bike lanes.
        - 1.1.1.2. One option for a sidewalk on one side of the street and a shared use path on the opposite side of the road with no bike lanes.
        - 1.1.1.3. One option for a sidewalk on both sides and a bike lane.
        - 1.1.1.4. Within two options above examine two different options for the future connection to the IH 35 frontage road.
        - 1.1.1.5. Within two of the options above examine two different options for the intersection of Center Street comparing a two lane option versus a three lane option.
        - 1.1.1.6. Develop five (5) alignment alternatives for the intersection of Burleson St. at Marketplace Ave. Provide alignment alternatives to the Marketplace Ave. consultant for incorporation into the Marketplace environmental document.
    - 1.2. FNI shall use the results of a Hydrologic and Hydraulic Analysis to develop preliminary sizing of the drainage system for the purposes of developing a conceptual cost estimate for the project.
    - 1.3. Refine Design Criteria as needed.
    - 1.4. Identify ROW and Easement acquisition needs/requirements and costs.
    - 1.5. Provide opinions of probable construction costs for the alternates, which include estimates of contingencies. In arriving at its opinion of probable construction cost for the Project, FNI will utilize locally advertised average unit cost.
    - 1.6. Furnish 2 hard copies of the schematic, one electronic PDF on a CD, and present and review it in person with Owner.
  2. Surveying

## Exhibit “A”

- 2.1. Right of Way Mapping. Mapping of existing right of way will be a right-of-way retracement. If a right-of-way retracement is required for parcels in which right of way is not being acquired, it will be as an additional services.
- 2.2. Topographic Surveying/ Base Mapping. Provide the horizontal and vertical survey required to map existing features. Obtain written permission (Rights-of-Entry) from property owners so that the Surveyor and/or their assigns are able to enter upon their property for surveying purposes. Coordinate with Marketplace Avenue consultant to tie into their horizontal and vertical control to ensure both projects are designed using the same survey control. See McGray and McGray Land Surveyors, Inc. Proposal for more details.

### 3. Environmental Permitting Evaluation -

FNI assumes that the reconstruction will not require TxDOT environmental clearance. Consequently, no documentation under the National Environmental Policy Act (NEPA) will be required; however, certain other environmental regulations must still be considered by the City, including the Endangered Species Act, Migratory Bird Treaty Act, and Section 404 of the Clean Water Act. This scope assumes that the roadway can be designed and authorized under the terms and conditions of Nationwide Permit (NWP) 14, Linear Transportation Projects, without a pre-construction notification (PCN). FNI proposes the following scope of services to address these requirements.

- 3.1. Compile Information. Assemble data such as aerial photos and project limits in digital format for site visit. Create Data Dictionary for GPS data logger for data collection.
  - 3.2. Conduct Site Visit. FNI environmental scientists will conduct a site visit to observe and document readily apparent existing conditions (environment) and assess project impacts along the proposed ROW. The presence and general locations of waters of the U.S., including wetlands; potential threatened/endangered species habitat; migratory birds and/or nests; and vegetation will be identified within the proposed project limits. This scope does not include a wetland delineation.
  - 3.3. Prepare Technical Memorandum. FNI will prepare a technical memorandum documenting the results of the site visit including water crossing data forms, photos, GPS information, and an opinion on the Section 404 permitting requirements. FNI will then recommend what, if any, additional studies are needed and a proposed course of action needed to get the project authorized under NWP 14 without a PCN. Additional studies are not included in this scope of services.
  - 3.4. Project Team Coordination. FNI environmental scientists will coordinate with the project team regarding the site visit findings and provide environmental input during design.
4. Phase I Environmental Site Assessment (HAZMAT). The following Scope of Services describes tasks and responsibilities for Freese and Nichols, Inc. to conduct a Phase I Environmental Site Assessment (ESA) for the North Burleson Street improvements for the City of Kyle between the future connection to Marketplace Avenue and Miller Street.
- 4.1. Phase I ESA Services. This Phase I ESA will be conducted based on standards published by the Environmental Protection Agency All Appropriate Inquiries (AAI) Final Rule and ASTM International (ASTM) under Standard Guideline E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.”

## Exhibit "A"

As a note, a Phase I ESA can reduce, but not eliminate, the level of risk for unidentified environmental contamination. No Phase I ESA can guarantee the absence of contamination. Only sampling and analysis can confirm the presence or absence of chemical contamination at a site. Sampling and analysis are beyond the Scope of Services for this Phase I ESA. Additionally, this Phase I ESA does not include an investigation or survey for the presence of mold or asbestos.

In the absence of any standards, the opinions and conclusions found in the Phase I ESA will be based on caution and conservatism by an experienced professional. Environmental regulations are continually changing, and a site determined to be uncontaminated based on current regulations and/or technical standards could be considered a contaminated site in the future based on new or amended regulations or standards.

This scope of work assumes that the City will provide Freese and Nichols with access to any environmental records or other information possessed by the City regarding the subject property, including but not limited to permits, confirmation sampling results, hazardous substance inventories, disposal records, records of spills or complaints, etc.

Freese and Nichols shall render the following professional services in connection with completion of the Phase I ESA:

### 4.1.1. Historical Land Use Review

Perform an investigation into prior ownership and past land uses on the subject property. Freese and Nichols will attempt to identify obvious uses of the subject property from the present back to the property's first developed use, or back to 1950, whichever is earlier. To accomplish this task, Freese and Nichols will review the following records (if available):

- a. Interviews with City representatives and property owners/tenants.
- b. Historical aerial photography.
- c. City directory abstracts.
- d. Sanborn fire insurance maps.
- e. Recorded environmental easements or liens on the subject property.

### 4.1.2. Regulatory Agency Records Review.

Freese and Nichols will review information found in federal and state regulatory records for the subject property, including records related to environmental-related permits, notices-of-violation, and incidents involving use, disposal, or accidental release of hazardous substances, petroleum products, or other waste materials. Local records, if available, related to the subject property will also be reviewed for indications of environmental concern.

### 4.1.3. Site Reconnaissance Visit

Freese and Nichols will perform a site reconnaissance visit to the subject property. Existing environmental conditions will be documented on the site.

## Exhibit "A"

Freese and Nichols will look for potential indicators of environmental concerns such as stained soils or other surfaces, stressed vegetation, exposed piping, and evidence of improper use or disposal of regulated substances. Freese and Nichols will document the condition of each property using photographs. Copies of photographs will be included in the report.

### 4.1.4. Report Preparation

Following the completion of Tasks 1 through 3, a report will be prepared for the subject property documenting our findings. The report will contain a narrative of our findings, recommendations for additional environmental investigations, as needed, and copies of all data obtained relevant to each subject property. The report will contain appropriate maps, figures, and photographs.

## D. DESIGN PHASE:

After Owner has accepted the schematic and has issued written authorization to proceed with the Design Phase. FNI shall prepare Design Submittals at the 30%, 60%, 90% and Issued for Construction stages of completion. FNI shall provide professional services in this phase as follows:

1. Roadway. Roadway design will be based on Texas Department of Transportation (TxDOT), City of Kyle and/or American Association State Highway Design criteria.
  - 1.1. Establish Typical Roadway Cross sections showing lane, sidewalk, and clear zone widths, etc. for various roadways in project area
  - 1.2. Develop Plan and Profile sheets for 1" = 40' plans; Existing ground profiles at
    - 1.2.1. Centerline
    - 1.2.2. Left ROW
    - 1.2.3. Right ROW
  - 1.3. Establish Horizontal Roadway alignments showing
    - 1.3.1. Centerline geometry (centerline bearings, PI, PC, and PT stations, centerline curve data, curb return radii, etc.)
    - 1.3.2. Curb locations and geometry
    - 1.3.3. Lane widths
    - 1.3.4. Sidewalk widths and locations
    - 1.3.5. Transitions and extent of construction of intersecting streets
    - 1.3.6. Prepare Retaining wall plans for retaining walls over 5' tall. Retaining walls less than 5' tall that are adjacent to and tied into sidewalk will not be profiled, but will dimensioned on the roadway plans and standard details will be provided.
    - 1.3.7. Horizontal and vertical profile will be developed to stay within the existing right of way between Miller Street and the U.P.R.R. railroad. Between the U.P.R.R. railroad and the IH 35 frontage road, the roadway alignment will be on new territory.
  - 1.4. Prepare Cross sections
    - 1.5. Roadway cross sections at 50' intervals
    - 1.6. Channel cross sections as needed.
    - 1.7. Box culvert excavation cross sections as needed.

## Exhibit “A”

2. H&H Services - Drainage design will be based on TxDOT, City of Kyle, or City of Austin drainage design criteria.
  - 2.1. Hydrologic Analysis – FNI shall develop runoff and modeling parameters for calculation of fully developed flood inflow hydrographs to each design point for the 2-, 10-, 25- and 100-year storm runoff events using HEC-HMS. Model will define both pre-project and project conditions for the drainage system in order to ensure no adverse impact due to proposed project. The work shall include:
    - 2.1.1. Delineation of sub-areas contributing runoff to each design point;
    - 2.1.2. Computation of times of concentration for all drainage sub-areas;
    - 2.1.3. Computation of Natural Resource Conservation Service runoff curve numbers for all drainage sub-areas;
    - 2.1.4. Confirmation of upstream detention facilities rating curves obtained from as-built drawings for use as storage facilities in the hydrologic model;
    - 2.1.5. For the project conditions model, computation of rating curves for proposed detention and/or water quality facilities;
    - 2.1.6. Development of peak discharge results at each design point.
  - 2.2. Hydraulic Analysis
    - 2.2.1. Prepare a HEC-RAS hydraulic model of the eastern channel in order to assess the capacity of the channel while taking into account downstream controls like the railroad crossings. This model shall also be used to determine tailwater conditions for the existing and proposed drainage systems, and to evaluate possible channel improvement alternates.
    - 2.2.2. Prepare normal depth analyses using FlowMaster to assess the capacity of existing and proposed open drainage swales.
    - 2.2.3. Prepare a StormCAD model of each proposed storm drain system, including inlets, outlets, junctions and pipes, within the Project Area using the peak Q2 through Q100 inflow rates calculated in Task 4 above. For each segment in the proposed storm drain system, determine the following:
      - 2.2.3.1. Peak flow capacity and bypass flow of each proposed inlet;
      - 2.2.3.2. Develop proposed drainage improvements within Project area. Increases in the peak flow rate at the discharge points will be avoided. Incorporate proposed improvements into the StormCAD model.
      - 2.2.3.3. Determine the Q25 and Q100 hydraulic grade lines, energy grade lines, flow velocities, peak flow capacity of the pipes, inlets and outlets.
  - 2.3. Drainage Design
    - 2.3.1. The system shall be designed to capture runoff resulting from fully developed upstream conditions and, if possible, to meet the following criteria:
      - 2.3.1.1. Convey Q25 peak flows within the storm drain system;
      - 2.3.1.2. Convey Q100 peak flows within defined street rights-of-way and easements;
      - 2.3.1.3. Maintain Q25 cross intersection flows less than 3 cfs;
      - 2.3.1.4. Maintain Q25 cross street flows less than 3 cfs;
      - 2.3.1.5. Provide roadway clear widths during storm events in accordance with the criteria in the Drainage Criteria Manual.
    - 2.3.2. In developing the plans for improvements, FNI shall include consideration of:



## Exhibit “A”

- 2.3.2.1. improvements to gutters and crowns;
  - 2.3.2.2. improvements to driveways;
  - 2.3.2.3. improvements to street intersection geometry;
  - 2.3.2.4. addition of storm drain inlets to existing storm drainage systems;
  - 2.3.2.5. addition of storm drain inlets, piping and outlets;
  - 2.3.2.6. alignments;
  - 2.3.2.7. existing utilities;
  - 2.3.2.8. traffic impacts;
  - 2.3.2.9. traffic controls during construction;
  - 2.3.2.10. neighborhood concerns and input;
  - 2.3.2.11. easement requirements;
  - 2.3.2.12. construction materials;
  - 2.3.2.13. construction cost.
  - 2.3.3. FNI shall prepare structural drawings, details, and technical specifications sufficient to implement the drainage repairs.
  - 2.3.4. FNI shall evaluate the feasibility of including low maintenance low impact development practices in to the design;
  - 2.3.5. FNI shall evaluate the need for detention facilities to ensure no adverse impact to downstream properties.
3. Utility Coordination. The ENGINEER will consult with the City of Kyle’s Water Department, Department of Engineering, and other departments, public utilities, and private utilities to determine the approximate location of above and underground utilities, and other facilities that have an impact or influence on the project.
- 3.1. FNI will utilize DIGTESS to notify utility companies within the project limits and request that each utility company mark their facilities in the field to be surveyed. Water and waste water companies (City of Kyle) will be contacted separately.
  - 3.2. A database of utility companies with facilities within the project limits will be develop to include the name of the company, representative of the company with telephone number, fax number and email address.
  - 3.3. Initial contact with utility companies will include a project location map and description of the scope of work. FNI will request information from the utility companies regarding the location, age, and size of exiting utilities in the form of as-built plans, block maps or GIS shapefiles as well as information regarding any planned replacement or improvements to their facilities within the project limits.
  - 3.4. An existing utility base map will be prepared based on topographic survey of existing features and information provided by the utility companies in the form of block maps, as-built plans or shapefiles. Existing utility base map will be a SUE level “C”.
  - 3.5. Additional utility locates at a SUE Level “A” will be performed at locations of potential conflicts after the 60% design.
  - 3.6. Design information (plans and/or electronic files) will be conveyed to utility companies at each interim submittal (30%, 60%, 60%, Final).
  - 3.7. Utility companies will be invited to attend submittal review meetings and asked to provide input on the mitigation of potential conflicts.
  - 3.8. A conflict matrix will be developed and maintained during design to identify the potential conflict type and location. The conflict matrix will be transmitted to the utility companies before the submittal review meetings and as needed to coordinate conflict mitigation.
  - 3.9. FNI will endeavor to develop the roadway, drainage, landscaping, water and waste water design to avoid or minimize conflicts with existing utilities.

## Exhibit “A”

4. Illumination Design (Pedestrian Lighting)
  - 4.1. Develop illumination design in accordance with the City of Kyle’s 2010 Comprehensive Plan, specifically; the Urban Design Plan, Urban Component 1: Core Linkages utilizing TxDOT and City of Kyle standards and specification for pedestrian lighting.
  - 4.2. Illumination layouts including plan sheets indicating locations of illumination poles, pull/junction boxes and conduit runs. Preliminary at the 60% submittal, final at the 90% submittal.
  
5. Pavement Design
  - 5.1. Design pavement sections using AASHTO pavement design criteria
  - 5.2. See Arias and Associates Proposal for more details.
  
6. Landscape Design
  - 6.1. Develop landscape and pedestrian enhancements in accordance with the City of Kyle’s 2010 Comprehensive Plan, specifically; the Urban Design Plan, Urban Component 1: Core Linkages.
  
7. Traffic Signal Design – Develop plans utilizing TxDOT standards and specifications
  - 7.1. Modify the existing signals at the intersection of N. Burlison Street, and FM 150 to accommodate roadway improvements.
  - 7.2. Develop traffic signal design in accordance with the City of Kyle’s 2010 Comprehensive Plan, specifically; the Urban Design Plan, Urban Component 1: Core Linkages
  - 7.3. Obtain turning movement counts during peak hours and 24-hr volume counts at the intersection of N. Burlison Street and FM 150 (W. Center Street). See Gram Traffic Counting, Inc. proposal for more details.
  
8. Geotechnical Engineering
  - 8.1. Provide Geotechnical investigations, studies and reports. See Arias and Associates proposal for more details.
  
9. Design Submittals
  - 9.1. Schematic Design: FNI shall provide two (2) copies of the final schematic on 36” roll plot and 1” = 100’ scale, and 2 copies of the Engineer’s opinion of probable construction cost.
  - 9.2. 30% Submittal – Provide six (6) sets of 11” X 17” plans for review by the City. As required, the 30% design plans shall include the following:
    - 9.2.1. Preliminary Title Sheet and Index of Sheets
    - 9.2.2. Existing and Proposed Roadway Typical Sections
    - 9.2.3. Preliminary Summary Sheets
    - 9.2.4. Plan and Profiles Sheets showing proposed right-of-way, alignments, proposed roadways, curbs, and driveways.
    - 9.2.5. Drainage layouts including: Drainage area maps; complete hydrologic analyses and catch basin spread analyses conducted for design of the proposed drainage system; preliminary plan view layout of all proposed storm drainage features; and preliminary culvert layouts.

## Exhibit “A”

- 9.2.6. Preliminary utility plan sheets indicating horizontal alignments of proposed and existing water and waste water utilities (no profiles of the proposed) [if authorized].
- 9.2.7. Preliminary Construction Phasing Plan showing the basic concept of how to handle traffic during construction, including preliminary phasing and sequence of work narrative.
- 9.2.8. Preliminary Opinion of Probable Construction Cost utilizing local average low bid unit prices.
- 9.3. 60% Submittal – Provide six (6) sets of 11” X 17” plans for review by the City. As required, the 60% design plans shall include the following:
  - 9.3.1. Updated Title Sheet and Index of Sheets
  - 9.3.2. Updated Existing and Proposed Typical Sections
  - 9.3.3. Updated Summary Sheets
  - 9.3.4. Traffic Control Plan & SW3P Layout
  - 9.3.5. Updated Roadway Plan and Profile Sheets
  - 9.3.6. Updated Drainage Layouts.
  - 9.3.7. Final Culvert Layouts
  - 9.3.8. Complete and final hydrologic and hydraulic analyses, catch basin spread analyses, and all other calculations conducted for design of the proposed drainage system.
  - 9.3.9. Proposed right-of-way lines, proposed property lines, proposed permanent and temporary easement lines, and proposed limits of construction. Right-of-way and/or easements shall be sufficient to encompass all improvements, including landscaping;
  - 9.3.10. Preliminary location (plan and profile) of all proposed storm drainage features showing all crossing utilities in plan and profile.
  - 9.3.11. Preliminary location of construction work areas showing which existing features may be impacted by construction (fences, trees, sheds, etc.) and identifying the party responsible for removal and/or re-establishment;
  - 9.3.12. Plan sheets indicating horizontal alignments and vertical profiles of proposed water and waste water utilities [if authorized].
  - 9.3.13. Typical cross-sections of water quality and/or detention facilities, if applicable.
  - 9.3.14. Typical cross-sections of open channels showing armoring techniques, if applicable;
  - 9.3.15. Typical cross-sections of outfall structures, if applicable.
  - 9.3.16. Preliminary Signing Layouts
  - 9.3.17. Preliminary Pavement Marking and Delineation Layouts
  - 9.3.18. Preliminary Signal Layouts.
  - 9.3.19. Revised Preliminary Opinion of Probable Construction Cost.
  - 9.3.20. Updated Design Contract Schedule
  - 9.3.21. Updated Cross Sections.
- 9.4. 90% Submittal – Provide six (6) sets of 11” X 17” plans for review by the City. As required, the 90% design plans shall include the following:
  - 9.4.1. Updated Title Sheet and Index of Sheets
  - 9.4.2. Final Existing and Proposed Typical Sections
  - 9.4.3. Final Summary Sheets
  - 9.4.4. Final Traffic Control & SW3P Layouts
  - 9.4.5. Updated Roadway Plan and Profile Sheets.
  - 9.4.6. Final Miscellaneous Details

## Exhibit “A”

- 9.4.7. Final Miscellaneous Structures
  - 9.4.8. Final Drainage Layouts
  - 9.4.9. Final Culvert Layouts
  - 9.4.10. Final Signing Layouts
  - 9.4.11. Final Pavement Marking and Delineation Layouts
  - 9.4.12. Final Signal Layouts
  - 9.4.13. Final water and sewer plan and profiles with details [if authorized].
  - 9.4.14. Details sufficient for the construction of all proposed facilities;
  - 9.4.15. General Notes, Standard specifications, special provisions to the specifications, and special specifications;
  - 9.4.16. Revised Preliminary Opinion of Probable Construction Cost
  - 9.4.17. Updated Design Contract Schedule
  - 9.4.18. Updated Cross Sections.
  - 9.4.19. Construction Time Determination Schedule utilizing the Critical Path Method for scheduling and local published production rates for construction.
  - 9.4.20. Assist the City in the development of a value for Liquidated Damage to include in the construction contract.
  - 9.4.21. Assist the City with the inclusion of a railroad force account to fund the railroad crossing cost in the form of an allowance to be included in the bid items for construction.
  - 9.5. Issued for Bid - Upon City approval prepare construction documents for electronic advertisement. Provide up to two (2) half size (11” X 17”) sets of construction documents to the City for display at City office. One (1) complete electronic version of the “Issued for Bid” documents will be issued on electronic media (plans and specifications will be in PDF format).
10. Regulatory Coordination. Submit drawings, specifications, and Construction Contract Documents to the following local, federal and state agency(s) for approval:
- 10.1. TxDOT for the tie-in at FM 150 (W. Center Street) and IH 35 frontage road utilizing plans developed as part of the scope.
  - 10.2. Texas Commission on Environmental Quality (TCEQ) to meet local, state and federal water and sewer main design regulations.
  - 10.3. Union Pacific Railroad for the railroad permit. Fees for the Railroad permit would be paid for by the City.
  - 10.4. Prepare the design and the UPRR “Exhibit A” for the railroad replanking.
  - 10.5. Provide railroad coordination to secure water line crossing.
  - 10.6. Texas Department of Licensing and Regulations (TDLR) review and inspection to meet ADA compliance.
11. Other Plans
- 11.1. Prepare Traffic Control Plans to manage traffic during construction.
    - 11.1.1. The traffic phasing and traffic control during construction will developed as a stand along project not considering that Marketplace will be constructed before or during construction of N. Burleson Street.
12. Furnish Owner, when requested, the engineering data necessary for applications for routine permits required by local, state and federal authorities. Preparation of applications and supporting documents for government grants or for planning advances is an Additional Service.
13. Furnish such information necessary to utility companies whose facilities may be affected or services may be required for the Project

## Exhibit "A"

- E. BID PHASE. Upon completion of the design services and approval of "Final" drawings and specifications by Owner, FNI will proceed with the performance of services in this phase as follows:
1. N. Burleson Street is expected to be a local let project utilizing City of Kyle Bond funds only. It is anticipated that the FNI standard General Conditions for construction projects will be used for the contract documents. If other documents are used, development of the bid documents are an additional service.
  2. Finalize plans, specifications, special conditions, and estimate and provide to City Project Manager for review.
  3. Submit Special Provisions and Project Specific Documents to City Project Manager.
  4. Assist the City of Kyle in advertisement of the project and securing bids utilizing online bidding
  5. Assist the City of Kyle in conducting a pre-bid conference for the construction projects and coordinate responses with Owner. Response to the pre-bid conference will be in the form of addenda issued after the conference.
  6. Respond to questions and interpret the bid documents.
  7. Prepare addenda to the bid documents and provide to the City for distribution to plan holders.
  8. Attend the bid opening.
  9. Analyze bids and provide recommendations.

- D. CONSTRUCTION PHASE SERVICES. Upon completion of the bid phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect Owner in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

These services are based on the use of FNI standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If general conditions other than FNI standards are used, the Owner agrees to include provisions in the construction contract documents that will require the construction contractor to include FNI and their subconsultants on this project to be listed as an additional insured on contractor's insurance policies.

1. Assist Owner in conducting pre-construction conference with the Contractor, and prepare meeting minutes.
2. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
3. Make two (2) site visits per month to the site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the Owner against defects and deficiencies in the work of Contractors and will report any observed deficiencies to Owner. Visits to the site in excess of the specified number are an additional service.

## Exhibit “A”

4. Notify the City of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
5. Interpret the drawings and specifications for Owner and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by Owner, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
6. Prepare change order documentation for approved changes for execution by the Owner. Documentation of field orders, where cost to Owner is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Owner are an additional service. Substitutions of materials or equipment or design modifications requested by the Owner are an additional service.
7. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the Owner on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the Owner if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
8. Conduct, in company with Owner’s representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Assist the City in the Preparation of a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.
9. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. One (1) set of prints and one PDF of “Record Drawings” shall be provided by FNI to Owner.

## ARTICLE II

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with Exhibit “B” – Project Schedule.

If FNI’s services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI,

**Exhibit "A"**

governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Exhibit "C" Summary of Compensation.



# ARIAS & ASSOCIATES

Geotechnical • Environmental • Testing

September 23, 2013  
Arias Job No. 2013-756

VIA Email: [jcc@freese.com](mailto:jcc@freese.com)

John C. Colquhoun, P.E.  
Freese and Nichols, Inc.  
4040 Broadway, Suite 600  
San Antonio, Texas 78209

**RE: Proposal for Geotechnical Engineering Services**  
North Burleson Street  
from W. Center Street to Market Place Avenue  
Kyle, Texas

Dear Mr. Colquhoun:

We understand that we have been selected to provide geotechnical engineering services for the referenced project based on our qualifications. The purpose of this proposal is to provide a work scope, fee estimate, and General Conditions so that Freese and Nichols, Inc (FNI) can negotiate the fee for this project with the City of Kyle.

### **Project Information**

We understand that Freese and Nichols is providing engineering services to develop plans, specifications, and estimates (PS&E) for proposed upgrades to North Burleson Street in Kyle, Texas. The project limits will begin at W. Center Street (FM 150) and will follow the existing alignment to the Union Pacific Rail Road (UPRR). East of the UPRR, the project will include 2 new roadway segments that will be provided as part of the upgrades. One of the segments will connect Burleson Road to a planned extension of Market Place Avenue while a second segment will be provided to connect the project to the existing IH 35 Frontage Road. Information provided by FNI indicates that North Burleson Street is functionally classified as a Major Arterial.

We understand the project will likely include upgrades and modifications to an existing detention pond in the vicinity of the project.

Arias & Associates, Inc. (Arias) will provide Geotechnical Services for the project. Our scope will include soil borings along the planned roadway alignment to provide soil data to assist in the pavement design. We will perform a pavement analysis for the traffic conditions which will be provided to us, and our report will include pavement design sections, recommendations, material specifications, and construction considerations. In addition, we will perform field infiltration (percolation) tests and laboratory sieve analyses, so that the design team can use the results to review for the potential use of rain gardens and bio-swales.

### **Proposal Assumptions**

Items that need to be addressed prior to our field exploration and engineering analysis include the following:

1. FNI and Arias will select boring locations and FNI will provide GPS coordinates at the proposed boring locations so that Arias can prepare a boring location plan on a recent aerial photograph. Arias will submit the boring location plan, coordinate the field work with the City of Kyle, mark borings in the field, and call in utility locates. The project will include new roadway segments that will be provided along a new alignment. We have assumed that FNI and the City of Kyle will assist

1295 Thompson Rd  
Eagle Pass, Texas 78852  
(830) 757-8891  
(830) 757-8899 Fax

142 Chula Vista  
San Antonio, Texas 78232  
(210) 308-5884  
(210) 308-5886 Fax

5233 IH 37, Suite B-12  
Corpus Christi, Texas 78408  
(361) 288-2670  
(361) 288-4672 Fax

5213 Davis Blvd, Suite 212 G  
North Richland Hills, TX 76180  
(817) 812-3500

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in coordinating right-of-entry into private properties and will assist in obtaining TxDOT work permits that may be required for the portions of the project.

2. We understand that the roadway is functionally classified as a Major Arterial. The pavement design analyses will be performed using City of Austin traffic values for a Major Arterial. We have assumed that FNI will assist in selecting appropriate design parameters for use in our analysis and/or traffic estimates in Equivalent 18-kip Single Axle Loads (ESALs).

### **Proposed Scope of Services**

Arias proposes the following geotechnical services for the project:

1. A pre-drilling field reconnaissance operation will be conducted in order to determine existing site conditions at each of the boring locations and to initiate the subsurface utility clearance activities. Information will be collected as needed to determine access to the boring locations (to include the need for site clearing) and to determine the necessary traffic control measures for the field drilling activities.
2. Traffic control measures will be implemented as required by the City of Kyle during the drilling activities. Partial lane closures are anticipated at this time. Either two flagmen and/or a police officer will be provided as directed by the City of Kyle. This scope of services does not include the development of a detailed Traffic Control Plan (TCP) and/or coordination of our work with TxDOT. If a TCP or total roadway closures are required as part of the work permits, those costs will be invoiced as an additional service.
3. Our scope of services will include 11 borings drilled to depths of about 10 feet in the areas of the planned roadway. Arias will retain a subcontract driller to perform drilling; however, Arias personnel will work with FNI and on-site personnel to locate the borings, will direct the sampling efforts, and will visually classify recovered samples. Soil borings will be taken using auger drilling techniques to the depths specified above. Soil samples will be obtained at 2-ft intervals to a depth of 10 feet. Clay soils will be sampled by pushing thin-walled tubes in general accordance with ASTM D 1587 or by driving a split-barrel sampler in general accordance with ASTM D 1586 for the Standard Penetration Test (SPT). For gravel, sand, and/or silt soils, samples will be obtained by performing SPT sampling. A bulk sample will be obtained for the Proctor and CBR test and the lime series noted below.

Groundwater levels within the open boreholes will be recorded during and after completion of drilling. Borings drilled through the existing pavement will be backfilled upon the completion of drilling. At the conclusion of the drilling activities and/or groundwater measurements, we will backfill the holes with soil cuttings. In pavement areas, the upper 3 feet will be backfilled with flowable fill.

4. Ten (10) shallow 8-inch diameter test holes will be drilled in the project area each to a maximum depth of 3 feet to provide data for the site soil conditions. Four (4) locations will be provided in the detention pond area and six (6) locations will be provided along the new roadway alignment to review for the potential use of rain garden and bio-swales. The testing will be done in general accordance with the guidelines provided in the *Construction Standards for On-site Sewerage Facilities*, dated November 5, 1989. The test holes will be drilled when the pavement borings are done. The test procedure specifies a 24-hour soaking period to prepare the hole for testing and requires a return visit on the following day to perform the percolation testing. The test results will be reported as a percolation rate in terms of minutes per inch.
5. FNI will have the as-drilled boring locations surveyed to determine the coordinates and surface elevations, and will provide the survey information to Arias.
6. Laboratory testing will be performed on recovered samples selected by the geotechnical engineer to aid in soil classification and to measure engineering properties. Laboratory testing is expected to include moisture content, Atterberg limits, fines content, complete grain size, sulfate, unconfined compression tests, proctor and CBR, and lime series to evaluate lime treatment. The actual

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laboratory program will depend upon the type of soils encountered.

7. We will issue an electronic copy of our formal engineering report prepared by a licensed professional engineer in Texas that will include:
  - Description of the field exploration program;
  - Description of the laboratory testing program;
  - Soil boring plan that depicts borehole locations on a base map provided by Client;
  - Soil boring logs with soil classifications based on the Unified Soil Classification System (ASTM D 2487);
  - Description of site geology based on location of the site on the Geologic Atlas of Texas;
  - Generalized site stratigraphy and engineering properties developed from field and laboratory data at the explored locations;
  - Depth where groundwater was encountered during drilling and its impact on construction; and,
  - Flexible pavement section design thicknesses for the proposed pavements. Our pavement design recommendations will be developed using methods outlined in the 1993 AASHTO Guide for Design of Pavement Structures.

Our scope of services will be limited to providing pavement design recommendations for the planned roadways. Foundation recommendations for proposed site structures (i.e. light poles, retaining walls, park space/landscape features, culverts/drainage structures, etc.) will not be provided as part of this study.

Our pavement design will be developed using AASHTO design methods. Additional engineering review and analysis to evaluate the proposed pavement sections using Flexible Pavement Design System (FPS) software to meet TxDOT requirements is not included as part of our budget. If required, supplement recommendations to address TxDOT review comments will be provided as an additional services item.

The percolation testing will be limited to reporting the test results. A detailed evaluation of the test results to assist in the design for pond liners or infiltration design of landscape features is beyond the scope of services.

### **Proposed Fee and Schedule**

We propose that the fee for the performance of the scope of work for this project as previously herein be **\$19,180.00** and that the work will be performed as outlined in the General Conditions listed below. We will submit monthly progress billing during the course of our study; invoicing will be based on the percentage of project completion to bill for project tasks as they are completed (i.e. site mobilization of geotechnical field testing equipment and personnel, completion of field work and laboratory testing, design services, report preparation, etc.).

*We have prepared our scope and fee with the understanding that the borings will be drilled with a truck-mounted drill rig, no special access will be required, and no pavement coring will be required. We have assumed that FNI will provide free access to the site. We understand that traffic control requirements will be established by the City of Kyle. The planned field infiltration (percolation) locations will be located in grassy areas along the project alignment at locations that will not conflict with daily traffic/pedestrian access; the testing requires the excavations to remain open for 24 hours and will not allow for testing to be provided in the areas of the existing roadway.*

Upon receiving written authorization, Arias in consultation with FNI will establish proposed boring locations, and FNI will provide the GPS coordinates for the locations. Arias will prepare a boring location plan on a recent aerial photograph and will submit the information to FNI and the City of Kyle for approval. Arias will also locate the proposed boring locations using a hand-held GPS unit, and will coordinate utility locate services. Based on our experience with similar projects, we anticipate that 2 to 3 weeks will be required to obtain approval from the City of Kyle, locate the borings, and clear underground utilities. The field #02 can

begin 2 to 3 days after receipt of permits and utility clearances and will take 2 working days to complete. Laboratory testing will require about one 1 week. Our draft geotechnical report will be delivered to you about 2 weeks after completion of our laboratory testing. If this schedule does not meet your needs, please inform us since we can typically accommodate an expedited schedule.

Delays sometime occur due to adverse weather, utility clearance requirements, site clearing requirements for drill rig access, obtaining drilling permits, obtaining Right of Entries and other factors outside of our control. In this event, we will communicate the nature of the delay with you and provide a revised schedule at the earliest possible date.

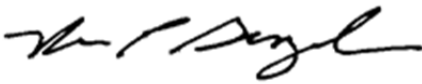
**Proposal Acceptance**

Please let us know if this proposal meets your expectations. Please return the entire signed proposal to us by fax, mail or email to [rgonzales@ariasinc.com](mailto:rgonzales@ariasinc.com). If the billing address is different, include that information as well.

Should you have any questions, please do not hesitate to contact me. We appreciate the opportunity provided and look forward to being an integral part of the Project Team.

Sincerely,

**ARIAS & ASSOCIATES, INC.**  
TBPE Registration No: F-32



Rene P. Gonzales, P.E.  
Senior Geotechnical Engineer



Spencer A. Higgs, P.E.  
Director of Engineering

**ARIAS & ASSOCIATES, INC.**  
**PROFESSIONAL SERVICES AGREEMENT**  
**GEOTECHNICAL AND ENVIRONMENTAL**  
**GENERAL CONDITIONS**  
(20130708R1)

This Professional Services AGREEMENT between Arias & Associates, Inc., hereinafter defined as "ARIAS" and CLIENT includes the attached Proposal and these General Conditions which constitute the AGREEMENT. ARIAS will perform its Services under this Agreement as an independent contractor.

1. Parties. CLIENT is defined as the entity that authorizes performance of services as stated in the Proposal by ARIAS and any entity that accepts responsibility for payment as stated in these General Conditions. If the CLIENT is ordering the services on behalf of another, the CLIENT represents and warrants that the CLIENT is authorized to act on behalf of said party in ordering and directing ARIAS' services. ARIAS will provide the proposed services to and for the CLIENT. The AGREEMENT is not intended to benefit any other person or entity. Contractor is defined as the contractor or contractors, and including its/their subcontractors of every tier, retained to perform construction Work on the Project for which ARIAS is providing Services under this AGREEMENT.
2. Work. Work is defined as the labor, materials, equipment and services of Contractor.
3. Testing. Testing is defined as the measurement, examination, performance of tests, and any other activities to determine the characteristics or performance of materials.
4. Scope of Services. The scope of services is outlined in the Proposal, which along with these General Conditions, constitutes the Agreement. "Services" means the specific analytical, testing or other service to be performed by ARIAS & ASSOCIATES INC, hereinafter referred to as ARIAS, as set forth in ARIAS' proposal, CLIENT's acceptance thereof and these General Conditions. The CLIENT has sole responsibility for determining whether the scope of ARIAS' services is adequate and sufficient based on the CLIENT's needs and budgetary constraints. The verbal or written ordering of services of ARIAS shall constitute acceptance of the terms of ARIAS' proposal and these General Conditions, regardless of the terms of any subsequently issued document. Arias has no right or responsibility to approve, accept, reject or stop work of any agent or the CLIENT.
5. On-Site Responsibilities and Risks. Unless otherwise agreed, CLIENT will furnish right-of-entry and obtain permits as required for ARIAS to perform the fieldwork. ARIAS will take reasonable precautions to minimize damage to land and other property caused by ARIAS's operations, but ARIAS has not included in the fee the cost of restoration of damage that may occur. If CLIENT desires ARIAS to restore the site to its former conditions and if ARIAS agrees to do so, ARIAS will undertake the repairs and add the cost to the fee.
6. Toxic and Hazardous Materials. CLIENT will provide ARIAS with all information within its possession or knowledge as to the potential occurrence of toxic or hazardous materials at the site being investigated. If toxic or hazardous materials are encountered though not anticipated as stated in ARIAS's Proposal, ARIAS reserves the right to demobilize field operations at CLIENT's expense. Remobilization may proceed upon agreement by ARIAS and with CLIENT's acceptance of proposed safety fee adjustments.
7. Utilities and Pipelines/Subsurface Indemnification. While performing fieldwork, ARIAS will take reasonable precautions to avoid damage to sub-surface structures, pipelines and utilities. CLIENT AGREES TO HOLD ARIAS AND ITS OFFICERS, AGENTS, EMPLOYEES AND SUBCONTRACTORS HARMLESS FROM ALL CLAIMS, SUITS, LOSSES, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES AS A RESULT OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE OCCURRING WITH RESPECT TO THE PERFORMANCE OF ARIAS'S SERVICES AND ARISING FROM SUBSURFACE CONDITIONS WHICH ARE NOT CALLED TO ARIAS'S ATTENTION AND/OR CORRECTLY SHOWN ON PLANS FURNISHED.
8. Representations. CLIENT acknowledges that subsurface conditions may vary from those encountered at the location where borings, surveys, tests or explorations are made and that our data, interpretations and recommendations are based solely on the information available to us, constitute opinion based on professional judgment and should not be interpreted as representations of fact. CLIENT represents that it has disclosed to ARIAS all information about conditions at the site of which CLIENT or any representative of CLIENT is aware.
9. Use of Information by Others. ARIAS is not responsible for the interpretation by those other than the CLIENT of the information provided to our CLIENT. CLIENT represents and agrees that any person or entity to which CLIENT transmits ARIAS' services will be provided with this Agreement and that said person or entity must agree and accept as a condition precedent to the right to use ARIAS' services that ARIAS' obligations to said person or entity are no greater than as set forth in this Agreement.
10. Limitation of Liability. IN RECOGNITION OF THE RELATIVE RISKS, REWARDS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND ARIAS, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES THAT TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF ARIAS TO THE CLIENT, FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, DAMAGES OR CLAIM EXPENSES ARISING OUT OF THIS AGREEMENT FOR ANY CAUSE OR CAUSES MUST NOT EXCEED \$50,000. SUCH CAUSES INCLUDE BUT ARE NOT LIMITED TO THE FIRM'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY.
11. Invoices and Payment. An invoice will be submitted monthly or upon completion of ARIAS' scope of services. Payment is due upon receipt of invoice. CLIENT agrees to pay a finance charge of 1.5% per month or the maximum legal rate on past due accounts.
12. Credit Check. ARIAS reserves the right to inquire with third parties as to CLIENT's credit and ARIAS reserves the right to cancel this Proposal and Agreement with CLIENT if ARIAS, in its sole discretion, is not fully satisfied with such inquiry.
13. Construction Observation. ARIAS shall not supervise, direct or have control over the Contractor's services nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor. Arias is not responsible for the Contractor's safety precautions or programs in connection with the Services. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents. ARIAS shall not be responsible for any acts or omissions of the Contractor, subcontractor, or any entity performing any portions of the Services, or any agents or employees of any of them. ARIAS does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Services in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

Observations and standardized sampling, inspection and testing procedures employed by ARIAS will indicate conditions of materials and construction activities only at the precise location and time where and when Services were performed. CLIENT recognizes that conditions of materials and construction activities at other locations may vary from those measured or observed and that conditions at other locations

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and time do not necessarily indicate the conditions of apparently identical materials(s) at other locations and times. Services of ARIAS, even if performed on a continuous basis, should not be interpreted to mean that ARIAS is observing, verifying, testing or inspecting all materials on the Project. ARIAS is responsible only for those data, interpretations, and recommendations regarding the actual materials and construction activities observed, sampled, inspected or tested and is not responsible for other parties' interpretations or use of the information developed. ARIAS may make certain inferences based upon the information derived from these procedures to formulate professional opinions regarding conditions in other areas.

14. Termination of Services. This Agreement may be terminated with or without cause by the CLIENT or ARIAS upon written notice. In the event of termination, the CLIENT shall pay ARIAS for all services rendered to the date of termination and all reimbursable expenses due to termination. If termination for cause is determined not to exist, then the termination will be considered a termination for convenience.
15. Changed Conditions. The CLIENT shall rely on ARIAS' judgment as to the continued adequacy of the Scope of Services of this Agreement in light of occurrences or discoveries that were not originally contemplated by or known to ARIAS. Should ARIAS call for contract renegotiation, ARIAS shall identify the changed project or subsurface conditions necessitating renegotiation and the CLIENT shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement. ARIAS reserves the right to refuse to perform services not expressly included in the scope of services outlined in the proposal.
16. Indemnification. THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS ARIAS, ITS OFFICERS, DIRECTORS, EMPLOYEES AND SUBCONSULTANTS (COLLECTIVELY, ARIAS) AGAINST ALL DAMAGES, LIABILITIES OR COSTS INCLUDING REASONABLE ATTORNEY'S FEES AND DEFENSE COSTS, TO THE EXTENT CAUSED BY THE CLIENT'S NEGLIGENT ACTS IN CONNECTION WITH THE PROJECT AND THE ACTS OF ITS REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, OR CONSULTANTS OR ANYONE FOR WHOM THE CLIENT IS LEGALLY LIABLE.  
  
ARIAS AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS CLIENT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND SUBCONSULTANTS AGAINST ALL DAMAGES, LIABILITIES OR COSTS INCLUDING REASONABLE ATTORNEY'S FEES AND DEFENSE COSTS, TO THE EXTENT CAUSED BY ARIAS'S NEGLIGENT ACTS IN CONNECTION WITH THE PROJECT AND THE ACTS OF ITS REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, OR CONSULTANTS OR ANYONE FOR WHOM ARIAS IS LEGALLY LIABLE.  
  
NEITHER ARIAS NOR THE CLIENT SHALL BE OBLIGATED TO INDEMNIFY THE OTHER PARTY IN ANY MANNER WHATSOEVER FOR THE OTHER PARTY'S OWN NEGLIGENCE.  
  
THE TERMS AND CONDITIONS OF THE LIMITATION OF LIABILITY PARAGRAPH 10 PREVAIL AND TAKE PRECEDENCE OVER THE TERMS AND CONDITIONS OF THIS INDEMNIFICATION PARAGRAPH 16.
17. Mediation/Choice of Law & Venue. All disputes between the parties regarding this Agreement or the services performed hereunder shall be subject to mandatory mediation prior to either party instituting arbitration or litigation. All disputes shall be resolved in accordance with the laws of the State of Texas and the parties agree that the venue for any mediation, arbitration, or litigation shall be in Bexar County, Texas.
18. Duration of Offer. The rate pricing, scope, and conditions offered in this proposal will remain in force and effect for a period of 60 days from the date of this proposal. If the proposal has not been accepted by execution and returned within the 60-day period, ARIAS reserves the right to revise any rate pricing, scope or condition in the proposal as may be necessary.
19. Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or ARIAS. ARIAS' services under this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against ARIAS because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and ARIAS agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in the Project to carry out the intent of this provision.
20. Assignment. Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by ARIAS shall not be considered as an assignment for purposes of this Agreement.
21. No Personal Liability. CLIENT and ARIAS intend that Arias' services will not subject Arias' individual employees, officers or directors to any personal liability. Therefore, and notwithstanding any other provision of this Agreement, CLIENT agrees as its sole and exclusive remedy to direct or assert any claim, demand or suit only against Arias & Associates, Inc.
22. Insurance. ARIAS will maintain the following minimum coverages: Statutory Workers' Compensation/Employer's Liability Insurance; Commercial General Liability Insurance with a combined single limit of \$1,000,000; Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and ; Professional Liability Insurance in amounts of \$1,000,000 per claim and annual aggregate. ARIAS will provide CLIENT with certificates of insurance evidencing the existence of these policies. Except for Professional Liability and Workers' Compensation Insurance, all policies required under this AGREEMENT shall contain a waiver of subrogation.
23. Integration and Severability. This AGREEMENT reflects the parties' entire Agreement with respect to its terms and limitations and supersedes all prior Agreements, written and oral. If any portion of this AGREEMENT is found void or voidable, such portion will be deemed stricken and the AGREEMENT reformed to as closely approximate the stricken portions as law allows. These terms and conditions survive the completion of the Services under and the termination of the Agreement, whether for cause or for convenience.
24. Standard of Care. In providing services under this AGREEMENT, ARIAS will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to ARIAS and by mutual AGREEMENT between the parties, ARIAS will without additional compensation, correct those services not meeting such a standard. ARIAS makes no warranty, express or implied, as to its professional services rendered under this AGREEMENT.
25. Consequential Damages. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Arias, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

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Arias and CLIENT hereby agree to the terms and conditions of this Proposal and have caused this Agreement to be executed by their duly authorized officers and made effective as of the day and year first written above.

Consultant: **ARIAS & ASSOCIATES, INC.**

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

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

Address: 142 Chula Vista  
San Antonio, Texas 78232

Phone: (210) 308-5884 Fax: (210) 308-5886

CLIENT: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_



November 13, 2013

**John C. Colquhoun, P.E.**  
 Transportation – Central Division  
**Freese and Nichols, Inc.**  
 4040 Broadway, STE 600  
 San Antonio, Texas 78209  
 210-298-3805  
 210-298-3801 fax

**Corporate Office**

21220 Jakeshill Rd., Bldg. 1  
 Hutto, TX 78634-5475  
[info@gramtraffic.com](mailto:info@gramtraffic.com)  
 Ofc: 512-832-8650  
 Fax: 512-833-6471  
 Toll Free: 888-315-6141

**Houston Office**

1506 Festival Dr  
 Houston, TX 77062  
[vance@gramtraffic.com](mailto:vance@gramtraffic.com)  
 Cell: 832-752-3303

**San Antonio Office**

6323 Sovereign Drive,  
 Suite 178  
 San Antonio, TX 78229  
[frank@gramtraffic.com](mailto:frank@gramtraffic.com)  
 Ofc: 210-348-6067  
 Fax: 512-833-6471

[www.gramtraffic.com](http://www.gramtraffic.com)

**GRAM Traffic will perform the following Traffic Data Collection in Kyle, TX**

**Turning Movement Counts (7:00 – 9:00 AM) (4:00 – 6:00 PM)**

\*\*\*\*School locations will have an extra hour to be determined\*\*\*\*

**Counts Along N Burleson St**

1. FM 150 (W. Center Street)

**1 Counters for a total of 4 hours @ \$50.00/hour = \$200.00**

**24 Hour Automated Bi Directional Volume Counts**

2 Mid Block locations to be determined

**2 Locations @ \$140.00/location = \$280.00**

**Mileage 220 Miles @ .50/mile = \$121.00**

**Project Total = \$601.00**

**This is being submitted for Lump Sum Invoicing/Price Good for 90 days**

NOTICE: Please provide a fee schedule and/or a copy of your contract that sets out the terms and conditions as it applies to the work GRAM is contracted to complete, if any. If this information is not provided by the agency or firm authorizing the work requested and no other price changes have been authorized by GRAM prior to the signing of this Work Authorization Agreement, said agency or firm agrees to pay the price as quoted and agreed to in this Work Authorization Agreement.

**By Authorized Representative:**

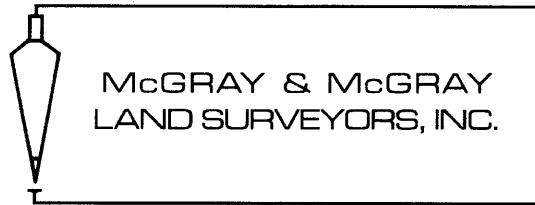
\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature

submitted by Robert Nassour

September 30, 2013



John Colquhoun, P.E.  
 Freese & Nichols, Inc.  
 4040 Broadway, Ste. 600  
 San Antonio, TX 78209  
 (210) 298-3805

VIA EMAIL:  
 jcc@freese.com

**RE: Second Revised Proposal for Surveying Services for N. Burleson Street from Miller Street to IH 35 Frontage Road in Kyle, Hays County, Texas.**

Dear Mr. Colquhoun:

We appreciate the opportunity to present you with this second revised proposal for the above referenced project. The following represents our understanding of the area to survey, scope of services, and our fee proposal.

**Area to Survey:**

- The project is generally described as N. Burleson Street from Miller Street to IH 35 Frontage Road as shown in your Exhibit A, enclosed.

**Scope of Services:**

- Attend several meeting with you to establish and verify the limits of the survey and discuss any special issues.

**Horizontal & Vertical Control:**

- Establish horizontal and vertical control from existing TxDOT survey reference on previous City of Kyle projects and/or in the area. The following datums and specifications will be used:
  - Horizontal – North American Datum 1983;
  - Vertical – North American Vertical Datum 1988;
  - Projection: State Plane Coordinate System, Texas South Central, FIPS 4204;
  - Units of Measure: US Survey Feet;
  - Surface to Grid conversion factor: minimum of 8 decimal points.
- Establish survey monuments at 1000 – foot intervals not in conflict with proposed construction. Provide horizontal and vertical coordinates of the benchmarks in the required coordinate system and datum. Show the benchmarks on the survey drawing.

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Mr. Colquhoun  
September 30, 2013  
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### **Design Survey:**

- Coordinate with you prior to entering any property that is not owned by the City of Kyle. Coordinate with the appropriate railroad company for right-of-entry onto Railroad Company's Right-of-Way. Contact private property owners to obtain permission to enter and survey within private properties. If we encounter an uncooperative or hostile property owner, we will consult with you and/or the City of Kyle for directions for resolution. There may be some properties we cannot enter.
- Coordinate with DIGTESS for marking all underground utilities and with the City of Kyle's Utility Department for marking city owned underground utilities. Provide you with a copy of the DIGTESS call ticket within one (1) week of receipt of the DIGTESS ticket. DIGTESS is a free service and no guaranties can be made that they will locate any utilities.
- Cross sections shall be taken at 50 - foot intervals along with break lines as required to provide a digital topographic design file at 1 - foot interval contours from 10 feet past ROW to 10 feet past ROW or building to building. Side streets, alleys and drainage ways shall be surveyed a minimum of 200-feet in each direction from the primary road unless otherwise specified. The limits of survey are as shown on your Exhibit A. Both top of curb and gutter elevations (edge of pavement if no curb) shall be provided. Pavement elevations shall be obtained at the centerline of the roadway, edge of travel way (shoulder line) and edge of pavement. Typically top of pavement shall be obtained to the 0.01 foot accuracy and top of ground to 0.10 foot accuracy.
- Locate and identify all above ground features within the survey limits including buildings, fences, visible utilities, sidewalks, driveways, handicap ramps, guardrails, signs, manholes, water valves, telecom boxes, utility poles, mailboxes, irrigation heads, water meters, sanitary sewer clean outs, etc. The outside limits of dense tree and vegetation growth shall be identified. Trees 6-inches and larger in diameter shall be measured, identified and tagged with a point number.
- Show the finished floor elevations for all buildings between Lockhart Street and Miller Street adjacent to the survey limits.
- Locate all soil borings, horizontally and vertically, which typically will occur at a date later than the original boundary/topo survey.
- Show locations of existing utilities based on drawings provided by you and from field locates provided by DIGTESS.
- Tie into the nearest FEMA monuments.

Mr. Colquhoun  
September 30, 2013  
Page 3 of 8

- Locate and survey drainage features including; the outlet infrastructure for two upstream detention facilities, including upstream and downstream flowlines, pipe sizes and material, entrance and exit structures, embankment elevations, etc.; the top and bottom slope elevations for all sides of two upstream detention facilities; the railroad crossing data for two crossings (upstream and downstream flowlines, pipe sizes and material, entrance and exit structures, railroad elevations, etc.); Survey the full extent of the drainage easement within the St. Anthony's Church property.
- Locate critical environmental features, ordinary high water mark and wetlands, if any, identified by you.
- Provide ten cross sections at locations deemed by you at indiscernible drainage sites.
- Locate and identify types of existing pavement surfaces for streets, alleys, sidewalks, driveways, etc. Locate and identify existing lane markings and signage in detail [color, width, words, symbols, etc.]. Locate and identify existing traffic signals including base, mast arms, and control boxes. Locate and identify any planters, mailboxes (with type) and other improvements.
- Invert elevations and size/type of utility and drainage pipes and culverts shall be identified for all manholes and culverts within the project limits. For all gravity flow utilities (i.e. storm water and sanitary sewer) tie in the manhole upstream and downstream of the last manhole within the project limits. This may result in having to tie in manholes that are outside of the project limits as defined by you. Note any relevant information (damaged, silted in, etc.)
- Provide a hard copy of all field notes within two (2) days of delivery of the electronic version.
- Provide electronic file of digital terrain model including tin (break) lines. Electronic file shall include the location of underground utilities (Level C Subsurface Utility Engineering) based on the field information and Record Drawings. Provide ASCII file of all point numbers with northing and easting coordinates, elevations and descriptions for each. Cardno TBE will be provided utility research. (See attached proposal.)
- Provide a list of definitions of all abbreviation used for points. (i.e. TOC = Top of Curb)

Mr. Colquhoun  
September 30, 2013  
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**Right-of-Way:**

- Locate and identify property lines and property corners within the survey limits. Identify existing Right-of-Way and all easements within the survey limits. Courthouse Direct will provide abstracts for adjacent properties. Identify property owners, business name and type, parks, cemeteries, etc., street addresses and deed recording information within the survey limits. Locate property and easement corners to the extent necessary to overlay and verify legal descriptions and plats.
  - A. Research potential drainage easement parallel to Live Oak St./Moreno St. to the from N. Burleson St. to the UPRR.
  - B. Research potential drainage easement parallel and west of Burleson St. from Live Oak St. to Post Rd Circle.
- Tie into TxDOT monuments located on or adjacent to the project.
- Give you a minimum of 48 hour's notice prior to staking/setting any proposed property/easement corners.

**Electronic File Requirements:**

- A. Follow your CAD drafting standards as described in the attached document titled "Survey CAD Requirements", for text size, level names, weights, line styles. See attached document titled "Survey CAD Requirements" for additional requirements related to the electronic file deliverables.
- B. Survey shall be provided in Microstation (.dgn) and AutoCAD (.dwg) format.
- C. The units of the drawing file shall be U.S. survey feet.
- D. The scale of plan sheets shall be 1 inch = 40 feet.
- E. Sheets shall be oriented from west to east or from south to north and text direction shall be aligned accordingly.
- F. All submittals shall include all of the control points utilized for the project. All control points shall have their own unique point number, northing and easting coordinate, elevation, and point description.
- G. All electronic submittals shall include a text block that states the coordinate system (horizontal and vertical) that the survey is using along with any scale factors used for GPS applications, i.e. surface to grid scale factor.

Mr. Colquhoun  
September 30, 2013  
Page 5 of 8

**Deliverables:**

- A. All survey electronic deliverables shall include data for the entire project, including previously submitted data. Hard copy deliverables may only include new data; previously submitted hard copy data is not required for future submittals.
- B. Sign and seal a project control drawing sheet that will be included in the construction plans. This drawing shall include the following:
  - Control Points
    - Control Point Table with the following: point number, northing, easting, elevation, monument description, and monument location relative to nearby permanent structure
  - Coordinate System
  - Scale Factors (when applicable)
  - Date survey was performed in field
  - Existing Improvements
- C. Copies of all field notes, pictures and sketches will be submitted in both hardcopy and digital format.
- D. Prior to acceptance and use of the survey, you shall conduct a field review to verify that the survey is complete and accurate, and that it meets the requirements of this scope.

**Additional Services Scope:**

- A. Provide surveying and right-of-way services.
  - Be responsible for the survey and abstract research for proposed right of way acquisitions.
  - Provide corner recovery and ties to the property corners.
  - Provide boundary survey resolution.
  - Provide a parcel plat and metes and bounds description in field notes.
  - Set parcel corners in the field.
  - Provide strip maps for areas with parcels located adjacent to each other as requested by you.

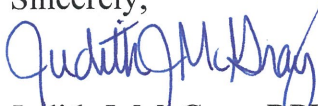
Mr. Colquhoun  
 September 30, 2013  
 Page 8 of 8

We will proceed as soon as we receive notice to proceed. We estimate it will take approximately 10 to 12 weeks (weekends and holidays excluded) from notice to proceed to complete this project, excluding additional services, weather and circumstances beyond our control permitting. Please let us know if we need to accelerate this schedule.

We will invoice time and materials actually used for this survey. As we get into this survey we may allocate our resources slightly differently, but we will not exceed the proposed fee without authorization from you.

Thank you for including us on this project. We look forward to the opportunity to work with you. If you think we have omitted any service you require or misinterpreted your request, please let me or Chris Conrad know.

Sincerely,



Judith J. McGray, RPLS  
 President  
 TBPLS Firm #10095500

Authorized to Proceed by:

<hr/>	
Signature	Date
<hr/>	
Print Name	Title

JJM:CIC:kkp  
 encl.



N. BURLESON STREET  
SURVEY SCOPE "EXHIBIT A"



September 16, 2013  
13TX175

Chris Conrad  
McGray & McGray Land Surveyors  
3301 Hancock Drive, Suite 6  
Austin, TX 78731  
chrisc@mcgray.com

Re: N. Burlison Street – City of Kyle  
Subsurface Utility Engineering Services

Cardno TBE

2590 Oakmont Drive  
Suite 410  
Round Rock, TX 78665  
USA  
Phone 512 459 6300  
Fax 512 520 2571  
Email tbe@CardnoTBE.com

www.CardnoTBE.com

Dear Mr. Conrad:

Cardno TBE is pleased to submit our proposal for Subsurface Utility Engineering services for the above referenced project to McGray & McGray Land Surveyors (Client). This proposal is based on correspondence between Mr. Chris Conrad (Client) and Mr. Travis Isaacson (Cardno TBE).

### **Scope of Services**

Using the information discussed during our conversation, Cardno TBE has developed a general scope of work required for this project. The scope of work may be modified, with the Clients' concurrence, during the performance of the work, if warranted by actual field findings. All SUE services provided by Cardno TBE for this project will be completed in conformance with the ASCE/CI 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data".

Based upon our understanding of the project's requirements the general description of the scope of work involves Cardno TBE researching available existing utility records and completing an ASCE Quality Level C investigation (above ground utility feature survey reconciled with utility records) with the objective mapping the horizontal location of existing utilities within the project limits of the N. Burlison Street project in Kyle, TX. The limits of the investigation are from Miller Street to the IH-35 Frontage Rd and are shown highlighted in yellow on Attachment "A" to this proposal. The investigation will include the full right-of-way width for N. Burlison Street within those limits. The scope also includes completing test holes (QL A) with locations and quantity to be determined by the client at a later date. A unit price for test holes within specified depth ranges has been included within the fee schedule of this proposal. To accomplish this scope of work Cardno TBE will perform the following tasks.

I. As part of the Records Research effort Cardno TBE will perform the following:

- Contact the applicable "one call" agency and acquire records from all available utility owners including local municipalities (cities, counties, etc.), and Client.
- Perform in-field visual site inspection. Compare utility record information with actual field conditions. Record indications of additional utility infrastructure and visual discrepancies with record drawings.

Australia • Belgium • Indonesia • Kenya • New Zealand • Papua New Guinea  
United Arab Emirates • United Kingdom • United States • Operations in 60 countries

- Interview available utility owners for needed clarification, resolution of found discrepancies, and details not provided on the record drawings.
- Coordinate with the Client for survey of all above ground utility features and appurtenances.
- Review the survey provided by the Client and reconcile the information with record maps obtained from utility owners.
- Provide a composite utility map in AutoCAD format showing existing utilities. Each utility type will be assigned a unique linestyle and color.

III. As part of the Locating Effort Cardno TBE will perform the following:

- Employ vacuum excavation to verify the horizontal and vertical location of the existing utilities at the test hole locations specified on the project. **NOTE: Test hole quantities and locations have not been specified on this project. A unit price per test hole has been provided within the fee schedule.** Once each utility is located, Cardno TBE will record the utility type, size, material, depth to top and general direction. Each test hole will be assigned a unique ID number and will be marked with rebar/cap. Test hole numbers will be painted in the field next to each completed test hole. A survey lath labeled with the test hole ID number and other pertinent utility information will be placed at each test hole location. If rock or concrete is encountered during the excavation and Cardno TBE is not able to excavate through our normal test hole procedures then the client will be immediately notified of the field condition. Excavation in rock or to a depth greater than 15 feet is considered beyond the scope of this proposal and can be estimated for the Client on a case by case basis.
- Coordinate with the Client for survey of the utility test hole locations once all Cardno TBE field work has been completed.
- We anticipate that excavation permits from the City of Kyle will be required for this project. Cardno TBE will obtain all required permits and ensure that coordination and compliance with the City inspector is provided during this phase of the project. These services can be provided at the unit price shown within the fee schedule.
- We anticipate that maintenance of traffic for lane closures and sidewalk closures will be required for this project. Cardno TBE will acquire the services of a qualified MOT Subcontractor and ensure that adequate traffic control is provided during this phase of the project. These services can be provided at the unit price shown within the fee schedule.
- We anticipate that coring of asphalt/concrete pavement and concrete sidewalk will be required at the locations as shown on Attachment A. Cardno TBE will provide labor and equipment to core the pavement to a depth of 8 inches and will ensure that backfill and pavement repair are completed in compliance with City standards. These services can be provided at the unit price shown within the fee schedule.



### **Deliverable(s)**

Cardno TBE will provide the following as final Deliverables to the Client:

- 11"x17" SUE Plan Sheets utilities mapped on the project. These plans will be signed and sealed by a Professional Engineer and delivered to the Client in hard copy (2 originals) and electronic PDF form.
- 8.5"x11" SUE Test Hole Data forms for all test holes completed on the project. These plans will be signed and sealed by a Professional Engineer and delivered to the Client in hard copy (2 originals) and electronic PDF form.
- One (1) CD copy containing electronic AutoCAD files depicting all designated and located utilities, PDF plans sheets, and any record maps obtained from utility owners.
- In addition to the hard copy plans, paint survey flags, and test hole monuments will be placed on the ground marking all utility locations at the site.

### **Client Shall Provide the Following**

- An electronic AutoCAD file of the existing background topography survey for input of the utility data into electronic field sketches and final SUE plan deliverable.
- All surveying required on the project.
- The Client shall provide Cardno TBE access to the job-site for our equipment and personnel including Right of Entry letters, permits or any other pertinent documentation, if needed. Any construction or clearing activities required for access to perform field services will be considered beyond the scope of this proposal.

### **Schedule**

Cardno TBE is prepared to proceed with the scope described above within five (5) working days after receipt of a written notice to proceed from the Client.

It will take an estimated **four (4) weeks** for the scope of work described above to be completed. However, the schedule may be modified due to unforeseen circumstances due to the following: inclement weather, waiting for information from client, subcontractor availability, etc. In the event the schedule has to change, Cardno TBE will notify the Client and provide an updated schedule.

### **Basis for Compensation**

Cardno TBE proposes to perform this work utilizing our standard rates for an amount of **\$7,722.00**. Our estimate for this project can be seen in the attached Fee Schedule (Attachment "B") for the Subsurface Utility Engineering services. All prices offered shall remain firm for thirty (30) calendar days from the date of this proposal.

N. Burleson Street – City of Kyle  
 September 16, 2013  
 Page 4 of 4

**Terms & Conditions:** Attached and included as a part of this proposal and its acceptance are “Cardno Terms and Conditions” which shall be incorporated by reference.

**Limitation of Warranty & Standard of Care:** Subsurface Utility Engineering is a professional service defined by the American Society of Civil Engineers (ASCE.) Cardno TBE conducts utility investigations in accordance with ASCE 38-02: Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data. Identifying and mapping underground utilities is a result of gathering evidence and therefore exact utility locations are not guaranteed unless visually exposed and surveyed, and then only at those specific exposed locations. Cardno TBE warrants only that the services provided under this proposal will meet the prevailing standard of care and does not guarantee that all utilities can or will be identified, detected or precisely mapped.

Cardno TBE looks forward to working with you on this very important project. We are confident that our services will be a great benefit to you and keep your project on schedule and on budget. If you agree to this proposal, please sign and date below and return to me by email. Your signature below will also serve as written acceptance of the proposal. If required, Cardno TBE’s Standard Contract will be sent to you for your execution. If you have any questions or require additional information, please feel free to contact me at any time.

Sincerely,



Travis S. Isaacson, PE  
 Director / Branch Manager

**Accepted on:** Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

**Company** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Title** \_\_\_\_\_



# Cardno Terms and Conditions

Cardno shall perform the services proposed for the stated fee in accordance with these terms and conditions:

- 1) **Access To Site (if applicable):** Upon execution of this Agreement, the Client represents that they have secured legal rights to access the property and authorizes Cardno staff to access the site for activities necessary for the performance of the services.
- 2) **Payment:** Invoices for Cardno's services shall be submitted on a monthly basis. Invoices shall be payable within thirty (30) days after the invoice date. In the event that the Client disputes any portion of an invoice, client shall notify Cardno of such disputed items within ten (10) days of invoice date. Retainers/deposits shall be credited on the final invoice. Failure to make any payment when due is a material breach of this Agreement and will entitle Cardno, at its option, to suspend or terminate this Agreement and the provision of the Services. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest allowable. In the event any invoice has not been paid in full within ninety (90) days of the invoice date, Cardno shall have the right to immediately suspend all or any portion of the Services hereunder indefinitely pending payment in full of such invoice(s).
- 3) **Indemnification:** Cardno and Client shall indemnify and hold harmless each other from and against damages, liabilities, costs and expenses, including but not limited to reimbursement of reasonable attorney fees arising out of damages or injuries to persons or property to the extent caused by the negligence, gross negligence or willful misconduct by the other party or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement; provided that each party's aforesaid indemnity agreement shall not be applicable to any liability based upon willful misconduct or negligence of the other party. In no event shall either party be responsible for any form of consequential damages, including, but not limited to loss of sales, loss of profits, and attorney fees thereon. For purposes of this Paragraph, the duty to indemnify does not include the duty to pay for or to provide an up-front defense against unproven claims or allegations. Where any claim results from the joint negligence, gross negligence or willful misconduct by Client and Cardno, the amount of such damage for which Client or Cardno is liable as indemnitor under this Paragraph shall equal (i) the proportionate part that the amount of such claim attributable to such indemnitor's negligence, gross negligence or willful misconduct bears to (ii) the amount of the total claim attributable to the joint negligence, gross negligence or willful misconduct at issue.
- 4) **Limitation of Liabilities:** Notwithstanding any other provision in this Agreement, the Client agrees to strictly limit Cardno's liability under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, to the lesser of the fees paid to Cardno for the Services or \$ 25,000.00. No claim may be brought against Cardno in contract or tort more than two (2) years after the cause of action arose. Any claim, suit, demand or action brought under this Agreement shall be directed and/or asserted only against Cardno and not against any of Cardno's employees, shareholders, officers or directors. Cardno's liability with respect to any claims arising out of this Agreement shall be limited as provided herein to direct damages arising out of the performance of the Services and Cardno shall not be held responsible or liable whatsoever for any consequential damages, injury or damage incurred by the actions or inactions of the Client, including but not limited to claims for loss of use, loss of profits and loss of markets.
- 5) **Termination:** Subject to Paragraph 2, this Agreement will continue in effect until terminated by either party upon thirty (30) days written notice to the other party. In the event of any termination, Cardno shall be paid for all services rendered and reimbursables incurred through the date of notice of termination. In the event of termination, the Client shall pay all additional costs reasonably related to termination of the project and a proportionate amount of the consideration hereunder commensurate with the portion of the project accomplished.
- 6) **Force Majeure:** Any suspension, temporary or permanent, in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophic events, or any other similar event beyond the reasonable control or contemplation of either party.
- 7) **Assignment:** Neither party to this Agreement shall, without the prior written consent, of the other party, which shall not be unreasonably withheld, assign the benefit or in any way transfer any claim or obligation under this Agreement or any part hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
- 8) **Ownership of Documents:** All report documents produced by Cardno under this Agreement shall be made available to the Client upon receipt of full payment for services rendered. Cardno shall retain ownership of all field notes, computer files and project files used to produce the work products and may make copies of all work products.
- 9) **Governing Law:** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and governed by the laws of the State of Texas.
- 10) **Legal Construction:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 11) **Notices:** Any notices or written statements hereunder shall be deemed to have been given when mailed by certified or registered mail or via email, with receipt of reply, to the party entitled thereto at its address noted at the top of this Agreement or at such other latest address as it may designate in writing to the other party for this purpose.
- 12) **Entire Agreement:** This Agreement includes Cardno's proposed scope and budget and these terms and conditions. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matter of this Agreement and is the entire understanding and agreement related thereto. This Agreement may be amended by mutual consent of the parties in writing to be attached hereto and incorporated herein, executed by Cardno's and the Client's respective representatives.
- 13) **Non-Solicitation:** Neither party shall knowingly solicit, recruit, hire or otherwise employ or retain the employees of the other working under this Agreement during the term of this Agreement and for one (1) year following the termination or expiration of this Agreement without the prior written consent of the other party.
- 14) **Waiver:** Failure by one party to notify the other party of a breach of any provision of this Agreement shall not constitute a waiver of any continuing breach. Failure by one party to enforce any of its rights under this Agreement shall not constitute a waiver of those rights. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.



N. BURLESON STREET  
SURVEY SCOPE "EXHIBIT A"

Cardno TBE

**ATTACHMENT "B" - FEE SCHEDULE**  
**N. Burleson Street - City of Kyle**  
**McGray & McGray Land Surveyors**  
**Subsurface Utility Engineering Services**  
**Cardno TBE**  
**9/16/2013**  
**13TX175**

LABOR COSTS	LABOR CLASS.	PROJECT ENGINEER	PROJECT MANAGER	SUE MANAGER	CADD TECH	ADMIN/CLERICAL	TOTAL HOURS
		\$170.00	\$145.00	\$85.00	\$82.00	\$55.00	
Records Research			16.0	8.0			24.0
Production/Review of SUE plan deliverables		4.0	4.0		36.0		44.0
Project Meetings / Safety Orientation							0.0
Permit Coordination/Acquisition							0.0
Contract Administration			2.0			4.0	6.0
<b>SUBTOTAL HOURS</b>		4.0	22.0	8.0	36.0	4.0	74.0
<b>SUBTOTAL DOLLARS</b>		<b>\$680.00</b>	<b>\$3,190.00</b>	<b>\$680.00</b>	<b>\$2,952.00</b>	<b>\$220.00</b>	<b>\$7,722.00</b>
<b>SUBSURFACE UTILITY ENGINEERING COSTS</b>							
		QTY	RATE	UNIT			TOTAL
<b>Designating (Quality Level "B") (2-Man Crew &amp; Equipment)</b>			\$ 235.00	per hour			\$0.00
<b>Locating (Quality Level "A" - Test Holes)</b>							
This unit price includes personnel and equipment for vacuum excavation and backfill							
		0 feet to 4.99 feet	\$ 750.00	per hole			\$0.00
		over 5.00 feet to 9.99 feet	\$ 1,100.00	per hole			\$0.00
		over 10.00 feet to 15.00 feet	\$ 1,400.00	per hole			\$0.00
<b>Locating (Air-Vacuum Excavation - Quality Level "A") (3-Man Crew &amp; Equipment)</b>			\$ 295.00	per hour			\$0.00
<b>Mobilization / Demobilization</b>							
Vacuum Excavation Truck / Trip (includes crew time, vehicle time & fuel)				each			\$0.00
Designating Vehicle / Trip				each			\$0.00
<b>Miscellaneous Items</b>							
Replacement of Concrete Sidewalk (per panel, including sidewalk closure)			\$ 1,300.00	each			\$0.00
Asphalt/Concrete Pavement Repair			\$ 100.00	each			\$0.00
<b>Traffic Control</b>							
Single Lane Closure - Daily Rate (Includes Warning Signs & Cones, Arrow Board, Delivery & Pickup)			\$ 350.00	each			\$0.00
Single Lane Closure - NIGHT WORK (Includes Warning Signs & Cones, Arrow Board, Delivery & Pickup)			\$ 700.00	each			\$0.00
Double Lane Closure (& Intersection) - Setup Per Day (Includes Warning Signs & Cones, Arrow Board, Delivery & Pickup)			\$ 800.00	each			\$0.00
Police Escort (required for lane closures on TxDOT roadways)			\$ 35.00	hour			\$0.00
<b>Survey</b>							
Surveying (2-Man Crew & GPS Equipment)			\$ 1,500.00	per day			\$0.00
<b>SUBTOTAL DOLLARS</b>							<b>\$0.00</b>
<b>DIRECT EXPENSES</b>							
		QTY	COST				TOTAL
Per Diem (Includes Lodging)			\$ 135.00	per day			\$0.00
Permit / Inspection Fees			\$ 300.00	each			\$0.00
<b>SUBTOTAL DOLLARS</b>							<b>\$0.00</b>
<b>TOTAL ESTIMATED FEE</b>							<b>\$7,722.00</b>

**PREWITT & ASSOCIATES, INC.**  
**CULTURAL RESOURCES SERVICES**  
*Since 1979*

2105 DONLEY DR., SUITE 400  
 AUSTIN, TEXAS 78758-4513  
 FAX (512) 459-3851  
 (512) 459-3349  
[www.paiarch.com](http://www.paiarch.com)

## **PROPOSED SCOPE OF WORK FOR CULTURAL RESOURCES STUDIES: IMPROVEMENTS ALONG N. BURLESON STREET, CITY OF KYLE, TEXAS**

This scope of work describes the cultural resources services proposed by Prewitt and Associates, Inc. (PAI) for proposed improvements to N. Burleson Street in the City of Kyle, Texas. The proposed improvements will take place with an 80-ft wide right-of-way along N. Burleson Street from its intersection with Miller Street to the southbound frontage road of Interstate 35. The cultural resources studies will cover archeological and historical resources.

PAI will prepare the cultural resources studies reports in accordance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 Federal Regulation 44716–42) and take into consideration the National Historic Preservation Act of 1966, as amended (Public Law 96–515); the National Environmental Policy Act of 1969 (Public Law 90–190); the Archeological and Historical Preservation Act of 1974 (Public Law 93–291); Executive Order No. 11593 (“Protection and Enhancement of the Cultural Environment”); and the Antiquities Code of Texas (Texas Natural Resources Code of 1977, Title 9, Heritage, Chapter 191). This scope of work was prepared for primary contractor and team leader Freese and Nichols, Inc. (FNI), on behalf of the City of Kyle. FNI will supply necessary information for cultural resources studies to proceed including, but not limited to, complete definition and description of the Area of Potential Effects (APE), parcel data, estimated construction-letting date, and right of entry.

### ***Archeological Resources Studies***

For the archeological resources studies, PAI will initially complete a Project Coordination Request (PCR) for archeological studies and submit the completed form to the Environmental Affairs Division’s (ENV) Archeological Studies program at TxDOT for review. After the initial review, any information insufficiencies in the PCR will be addressed by PAI and the PCR resubmitted to the Archeological Studies program. Once approved, TxDOT will complete any necessary coordination with the Texas Historical Commission (THC) and relevant Federally-recognized Native American groups.

The archeological resources studies for this project will consist of an initial constraints analysis, with an option for an archeological survey pending the results of the former. The constraints analysis will consist of a file search and literature review aimed at assessing whether the project is likely to impact any archeological sites that are eligible for listing in the National Register of Historic Places (NRHP) or designation as State Antiquities Landmarks (SAL). Research concerning known archeological resources will include examination of the Texas Historical Commission’s Archeological Sites Atlas and reports on previous investigations nearby. Research concerning potential archeological

resources will include examination of USGS topographic, geologic, and soils maps and the Texas Department of Transportation's Texas Historic Overlay. The findings of the constraints analysis will be presented in a draft letter report along with recommendations regarding archeological survey. The draft letter report will be prepared as a stand-alone document that will meet TxDOT's Standards of Uniformity (SOU) for technical reports. The draft letter report will be electronically submitted to FNI, for distribution to the City of Kyle for review and comments. Once the review comments are received, PAI will submit a revised draft letter report in print and electronic formats to the ENV's Archeological Studies program for review. After receipt of any review comments, PAI will complete the appropriate TxDOT review forms addressing the comments and will make any necessary revisions to the letter report. Once completed the revised draft letter report will be submitted to the THC for review and concurrence. Once all review comments are received and satisfactorily addressed, a final letter report will be submitted in print and electronic formats as a stand-alone document or, if necessary or requested, will be prepared as a section for a larger CE document.

Should the results of the constraints analysis recommend an archeological survey and TxDOT and the THC concur, the optional service of archeological survey will take place and consist of three tasks. The first task will consist of the completion of an application for a Texas Antiquities Permit from the THC, the permitting and reviewing agency for the State of Texas. The permit is required because the survey will take place on lands owned or controlled by a political subdivision of the State of Texas (City of Kyle). PAI will prepare the permit application along with a scope of work detailing the methodology to be used for the survey. Once completed, the permit application will be submitted to the City of Kyle and TxDOT for approval and signatures. Once the permit application is signed by the City of Kyle and TxDOT, it will be submitted along with the final research design to the THC. PAI will also contact Texas One Call to have all utilities marked where excavations might take place within the project area.

The second task will start once the permit has been obtained from THC and will consist of an intensive archeological survey conducted by a two-person crew, consisting of qualified archeologists. The crew will examine the ground surface and natural subsurface exposures for archeological materials. The survey will be of sufficient intensity to determine the nature, extent, and, if possible, potential significance of any surface or subsurface archeological sites located within the project area. Shovel testing (if necessary) will be used as a means of site detection in areas where the ground surface visibility is low and in areas where there is a potential for buried archeological materials. The intensity of shovel testing will meet or exceed the requirements of the THC's survey standards, unless areas of disturbance, erosion, or long-term stable surfaces preclude the use of shovel testing or survey standard levels of intensity. Where possible, shovel tests will be approximately 30 cm in diameter and excavated in arbitrary 20-cm levels to 100 cm below surface or culturally sterile deposits, whichever comes first. The matrix from each shovel test will be screened through ¼-inch mesh, and the location of each excavation will be plotted using a hand-held WAAS-enabled GPS unit. Each shovel test will be recorded on a standardized form to document the excavations. Any discovered sites, both prehistoric and historic, will be recorded on State of Texas Archeological Site Data Forms for subsequent submittal in TexSite format to the Texas Archeological Research Laboratory. For all sites, UTM coordinates will be obtained using a hand-held WAAS-enabled GPS receiver. All recorded sites will be plotted on USGS 7.5-minute topographic maps and appropriate project maps

for planning purposes. Additional shovel tests may be excavated to define site boundaries within the project area. The archeologists will only collect artifacts that need further identification in the laboratory to determine the age and/or type of artifact, other wise artifacts will be identified and documented in the field. Any artifacts collected and records generated during this project will be curated at the Texas Archeological Research Laboratory, The University of Texas at Austin.

Once Tasks 1 and 2 have been completed, Task 3, the preparation of a draft report of the investigations, will commence. The draft technical report prepared by PAI will conform to THC, Council of Texas Archeologists, Antiquities Code of Texas, and TxDOT's SOU reporting standards. It will document the general nature of the project area, the methodology used in the investigations, the presence and condition of any previously recorded sites revealed in the records review, the general nature and extent of cultural resources encountered during the archeological survey, recommendations on the need for further work, and the potential significance of the cultural resources in regards to future development and State Archeological Landmark status. The draft technical report will be electronically submitted to FNI, for distribution to the City of Kyle for review and comment. Once the review comments are received, PAI will submit a revised draft technical report in print and electronic formats to the ENV's Archeological Studies program for review. After receipt of any review comments, PAI will complete the appropriate TxDOT review forms addressing the comments and will make any necessary revisions to the technical report. Once completed, the revised draft technical report will be submitted to the THC for review and concurrence. Once all review comments are received and satisfactorily addressed, a final technical report will be submitted in print and electronic formats as a stand-alone document or, if necessary or requested, will be prepared and formatted as a section for a larger CE document.

### ***Historical Resources Studies***

For the historical resources studies, PAI will initially complete a Project Coordination Request (PCR) for historic studies and submit the completed form to the Environmental Affairs Division's (ENV) Historic Structures program at TxDOT for review. After the initial review, any information insufficiencies in the PCR will be addressed by PAI and the PCR resubmitted to the Historic Structures program.

The historical resources studies will include research, survey, and documentation performed at the reconnaissance level to satisfy requirements for determining the presence of historically significant properties in the APE, and effects the proposed improvements may have to these properties. The APE for portions of the roadway project that parallel existing transportation corridor will be 150 ft beyond the proposed right of way and all land parcels partially or wholly therein; the APE for portions of the roadway project in new location will be 300 ft beyond the proposed right of way and all land parcels partially or wholly therein. The study area will be defined as 1,300 ft beyond the proposed right of way.

PAI will conduct a file search and literature review to establish appropriate historical contexts for the study area, determine information requirements, and direct the survey effort with development of a research design. The research design will meet the TxDOT's SOU for research designs. The file search will review records from: the National Register, Official Texas Historical Marker (Recorded Texas Historic Landmarks, and



subject, grave, and centennial markers), SAL, cemetery, survey, and museum files at the THC; records from the Texas Department of Agriculture's Family Land Heritage Program; appraisal district records; and the Historic American Buildings Survey, Historic American Engineering Record, and Historic American Landscape Survey of the National Park Service. The literature review will include consulting the following sources: the Texas Historic Overlay, USGS topographic maps and aerial photographs; the Sanborn Map Company; *The Handbook of Texas Online*; and pertinent secondary sources available on the Internet. The research design will note previously designated and documented historic properties in the study area and present contexts appropriate to resources likely to be identified in the APE. PAI will electronically submit the research design to FNI for distribution to the City of Kyle for review and comment. Once comments are received and satisfactorily addressed, PAI will submit a revised draft report in print and electronic formats to the THC and other regulatory agencies for review.

Field investigations will occur after the research design has been approved and right of entry, to the degree possible, has been provided. Based on the recommendations of the research design and comments provided by the reviewing entities, PAI will conduct a reconnaissance survey of each historic-age resource defined as a building, structure, object, at least 45 years old at the time of construction letting in the APE. Digital photographic documentation for each historic-age resource will include a view of the primary façade and an oblique view with the subject filling the frame. Any limitations to photographic documentation shall be noted. Photographs of representative historic-age and nonhistoric resources will reflect the presence of potential historic districts, or the lack thereof. Survey forms will present information about each historic-age resource by resource number including name, location, property type and subtype, stylistic influence or form, known or estimated construction date, brief listing of integrity issues, and National Register eligibility recommendation. Each resource will be plotted on a map that shows project boundaries, APE, and eligibility recommendations.

PAI will complete a report presenting findings of the file search, literature review, and reconnaissance survey that meets the TxDOT's SOU for reconnaissance survey reports. The report will include an introduction, methodology, brief synthesis of pertinent historic contexts, and assessments and recommendations regarding National Register eligibility and effects to significant resources. The report will also include appropriate maps, survey forms with photographs, and an inventory of all historic-age resources. The report will include sufficient detail and clarity to provide a basis for making determinations of National Register eligibility without requiring submission of additional documentation, or alternatively, make recommendations concerning the scope of intensive survey if necessary to finalize National Register determinations. PAI will electronically submit a draft report to FNI for distribution to the City of Kyle for review and comment. Once comments are received and satisfactorily addressed, PAI will submit a revised draft report in print and electronic formats to the THC and other regulatory agencies for review. Once concurrence has been obtained, PAI will complete and submit a final report in print and electronic formats. The final report will be a stand-alone document or, if necessary or requested, will be prepared and formatted as a section for a larger CE document.

**Exhibit “B”  
Project Schedule**



**Exhibit “C”**  
**Summary of Compensation**

Exhibit "C"  
N. Burleson Street (Miller Street to IH 35 Frontage Road)  
Summary of Compensation

Project Phase	Work Task	Compensation Type	Amount
Schematic and Environmental	Survey Control/Topographic/ROW Surveying	Lump Sum	\$ 152,416.00
	Geotechnical Investigation & Pavement Design	Lump Sum	\$ 22,594.00
	Schematic Design	Lump Sum	\$ 141,270.30
	Environmental Permitting Evaluation	Lump Sum	\$ 34,223.00
	RR Permitting	Lump Sum	\$ 22,755.00
	Public Involvement	Lump Sum	\$ -
	Quiet Zone Implementation at Burleson Street	Lump Sum	\$ 14,005.00
	Sub-Total		\$ 387,263.30
Design	30% Plans, Specifications, & Estimates	Lump Sum	\$ 124,902.30
	60% Plans, Specifications, & Estimates	Lump Sum	\$ 145,205.30
	90% Plans, Specifications, & Estimates	Lump Sum	\$ 121,835.30
	100% Plans, Specifications, & Estimates	Lump Sum	\$ 50,699.80
	Sub-Total		\$ 442,642.70
Bidding	Bid Phase Services	Lump Sum	\$ 22,979.00
		Sub-Total	\$ 22,979.00
Construction	Construction Phase Services	Lump Sum	\$ 91,707.00
		Sub-Total	\$ 91,707.00
Additional Services	SUE - Quality Level "A"	Lump Sum	\$ 15,100.00
		Sub-Total	\$ 15,100.00
<b>Total Basic Services Compensation</b>			<b>\$ 959,692.00</b>

City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 18, 2014  
 CONTACT CITY DEPARTMENT: Engineering Services  
 CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

SUBJECT:

A Resolution of the City of Kyle, Texas, authorizing the City Manager to execute an agreement in an amount not to exceed \$959,692.00 with FREESE AND NICHOLS, INC., for design and construction phase services relating to N. Burleson Street (Miller Street to IH 35); making findings of fact; and providing for related matters.

CURRENT YEAR FISCAL IMPACT:

This engineering services FREESE AND NICHOLS, INC., will require expenditure of funds from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.

1. City Department:	Engineering Services
2. Project Name:	Engineering - N. Burleson Street
3. Budget/Accounting Code(s):	188-680-57313
4. Funding Source:	2013 GO Bond Fund (Road Bonds)
5. Current Appropriation:	\$ 5,410,000.00
6. Unencumbered Balance:	\$ 2,833,349.40
7. Amount of This Action:	<u>\$( 959,692.00)</u>
8. Remaining Balance:	<u>\$ 1,873,657.40</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this professional services agreement for engineering services with FREESE AND NICHOLS, INC., in an amount not to exceed \$959,692.00 will be provided from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.

ADDITIONAL INFORMATION/COUNCIL ACTION:

On November 6, 2013, City Council authorized a Master Service Agreement with M&S ENGINEERING, LLC, of Spring Branch, Texas, in an amount not to exceed \$10,000.00 to facilitate general engineering professional services and to provide specific engineering services related to negotiation of professional scopes and fees for North Burleson Street and Marketplace Avenue.

 3/12/2014

Perwez A. Moheet, CPA - Date  
 Director of Finance



# CITY OF KYLE

520 E. RR 150  
Office (512) 262-3024

Kyle, Texas 78640  
Fax (512) 262-3403

## MEMORANDUM

TO: Lanny S. Lambert, City Manager

FROM: Leon Barba, P.E., City Engineer *LB*

DATE: March 13, 2014

SUBJECT: Renegotiated Road Bond Projects

Based on direction from City Council and staff recommendations, the engineering consultants were asked to remove any Public Information/Public Outreach and any real estate acquisition fees from the proposed contracts. Additionally, all contracts are to include the 30, 60, 90 and 100% review milestones. Following is an update on the proposed engineering fees for the five road bond projects:

### **Lehman Rd. – FM 150 to Goforth Rd. (HDR)**

Initial Proposal	\$ 703,997.00
Current Proposal	<u>\$ 697,000.00</u>
Reduction	\$ 6,997.00

### **Goforth Rd. – IH 35 to Bunton Creek Rd. (LAN)**

Initial Proposal	\$1,009,992.00
Current Proposal	<u>\$1,001,269.26</u>
Reduction	\$ 8,722.74

### **Bunton Creek Rd. – IH 35 to Lehman (LJA)**

Initial Proposal	\$ 579,454.34
Current Proposal	<u>\$ 484,274.34</u>
Reduction	\$ 95,180.00

**N. Burleson – Miller St. to IH 35 (FNI)**

Initial Proposal	\$ 974,262.00
Current Proposal	<u>\$ 959,692.00</u>
Reduction	\$ 14,570.00

**Marketplace Avenue - Burleson Rd. to City Lights (KFA)**

Initial Proposal	\$ 412,448.00
Current Proposal	<u>\$ 364,134.00</u>
Reduction	\$ 48,314.00

The total reduction for the five projects is \$173,783.74. Please let me know if you need any additional information.

Xc: Harper Wilder, Public Works Dept.  
Perwez Moheet, Finance Dept.





# CITY OF KYLE, TEXAS

## Professional Services Agreement - KF&A

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$364,134.00 WITH K FRIESE & ASSOCIATES, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO MARKETPLACE AVENUE (N. BURLESON STREET TO CITY LIGHTS DR.); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS. ~ *Leon Barba, P.E., City Engineer*

**Other Information:**

**Budget Information:** A Fiscal Note is attached.

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

#### Attachments / click to download

- [Fiscal Note](#)
- [Memo-Renegotiated Road Bond Projects](#)
- [Mar 18 Agenda - K Friese & Associates K](#)
- [Mar 18 Agenda - RESOL - K Friese & Associates](#)
- [KFA-Scope of Work & Schedule-Marketplace](#)

Cover Memo

Item # 23

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$364,134.00 WITH K FRIESE & ASSOCIATES, INC., FOR DESIGN AND CONSTRUCTION PHASE SERVICES RELATING TO MARKETPLACE AVENUE (N. BURLESON STREET TO CITY LIGHTS); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

WHEREAS, the City of Kyle requested qualifications from professional engineering firms to provide design services for certain street and road improvements; and,

WHEREAS, the City desires to obtain design services from K Friese & Associates, Inc., for street improvements related to Marketplace Avenue (N. Burleson Street to City Lights);

WHEREAS, K Friese & Associates, Inc., is qualified and capable of performing the professional engineering design services proposed herein and is willing to enter into an Agreement with the City of Kyle to perform such services; and,

WHEREAS, an agreement that defines the scope of services and fees has been negotiated between K Friese & Associates, Inc., and the City of Kyle and is attached hereto as EXHIBIT "A" and incorporated by reference herein.

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

Section 1. Findings. The hereinabove 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. Authorization. The city manager is hereby authorized to execute a professional services agreement in an amount not to exceed \$364,134.00 with K Friese & Associates, Inc., of Austin, Texas, for design services for street improvements related to Marketplace Avenue (N. Burleson Street to City Lights) attached as Exhibit "A" hereto.

Section 3. 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, Texas.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution was 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.

PASSED AND APPROVED this \_\_\_\_\_ day of March, 2014.

THE CITY OF KYLE, TEXAS

ATTEST:

\_\_\_\_\_  
Lucy Johnson, Mayor

\_\_\_\_\_  
Amelia Sanchez, City Secretary Item # 23

**EXHIBIT “A”  
PROFESSIONAL SERVICES AGREEMENT**

**[SEE ATTACHED]**

**CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES  
MARKETPLACE AVENUE STREET IMPROVEMENTS**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF HAYS**         §

THIS IS AN AGREEMENT by and between the CITY OF KYLE, Texas, a Texas home rule City (hereinafter called "CITY"), acting through its duly authorized agent, Lanny S. Lambert, City Manager, and K FRIESE & ASSOCIATES, INC. (hereinafter called DESIGN PROFESSIONAL") for engineering design professional services (hereinafter called "the Agreement")

WHEREAS, the CITY desires to obtain DESIGN PROFESSIONAL's services for Marketplace Avenue street improvements (N. Burleson Street to City Lights), hereinafter called the "PROJECT";

WHEREAS, the CITY desires to obtain professional engineering design services in connection with the PROJECT; and

WHEREAS, the DESIGN PROFESSIONAL is qualified and capable of performing the professional engineering design services proposed herein, which are acceptable to the CITY, and is willing to enter into an Agreement with the CITY to perform such services.

NOW, THEREFORE, the parties hereto do mutually CONTRACT and AGREE as follows:

**ARTICLE 1  
SERVICES TO BE PROVIDED**

**1.1** The CITY agrees to retain the DESIGN PROFESSIONAL, and the DESIGN PROFESSIONAL agrees to perform professional services for the PROJECT as an independent contractor and professional consultant as set forth in the sections following; and CITY agrees to pay, and the DESIGN PROFESSIONAL agrees to accept fees as specified in the sections following as full and final compensation for the work accomplished.

**1.2** The DESIGN PROFESSIONAL shall provide its services in accordance with the normal degree of care and skill of other reputable Engineers providing similar services on similar projects of like size and nature at the same time and in the same locale as this PROJECT. No other guarantee or warranty of any kind, unless expressed or implied at common law or created by statute, is extended, made, or intended by the rendition of DESIGN PROFESSIONAL's services.

## ARTICLE 2 SCOPE OF WORK

The DESIGN PROFESSIONAL agrees to provide all services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this contract Agreement.

## ARTICLE 3 PROJECT SCHEDULE

The DESIGN PROFESSIONAL agrees to perform the Engineer’s Scope of Work in accordance with the **Exhibit “B” – Project Schedule** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes.

## ARTICLE 4 COMPENSATION

### 4.1 DEFINITION OF COMPENSATION TERMS

**4.1.1 Hourly Rates (HR)** - Hourly rates is the cost of salaries of DESIGN PROFESSIONALS (Technicians, drafters, stenographers, surveyors, clerks, laborers, etc.), fringe benefits (social security contributions, unemployment excise and payroll taxes, employment compensation insurance, medical and other insurance benefits, sick leave, vacation, holiday pay, contributions to a pension or retirement plan), overhead and profit for time directly chargeable to the PROJECT. Hourly rates for Basic and Additional Services for this PROJECT will not exceed those listed in **Exhibit “C” Summary of Compensation** attached to the Agreement, and which is wholly incorporated into the Agreement for all purposes. DESIGN PROFESSIONAL shall provide documentation of said hourly rates upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said hourly rates not customarily or ordinarily attributable to “Hourly Rates”. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.2 Direct Non-Labor Expenses (DNLE)**- Direct non-labor expenses are defined as all non-labor expenses incurred by the DESIGN PROFESSIONAL which are directly chargeable to the PROJECT, which is defined as expenses for supplies, transportation, equipment, travel, communications, subsistence and lodging, field office expenses, reproductions, and similar incidentals. DESIGN PROFESSIONAL shall provide documentation of said expenses upon written request of the CITY and shall be in a form and include information requested by the CITY. The CITY reserves the right and option to contest any said expenses not customarily or ordinarily attributable to DNLE or which are in excess in an amount which are not customarily or ordinarily attributable to DNLE. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1)

time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.3 Lump Sum (LS)** - The CITY shall pay the DESIGN PROFESSIONAL a Lump Sum amount for the specified category of services. The “Lump Sum” is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and DNLE. The portion of the Lump Sum amount billed for the DESIGN PROFESSIONAL'S services shall be based upon DESIGN PROFESSIONAL'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. The CITY has the option of agreeing to this amount before making Lump Sum payment to the DESIGN PROFESSIONAL.

**4.1.4 Unit Price (UP)** - The CITY shall pay the DESIGN PROFESSIONAL an amount equal to the Unit Price times the actual quantity of unit(s) for the specified category of services. The amount equal to the Unit Price is defined as compensation for Engineer's services, services of Consultants, if any, labor, overhead, profit, and Reimbursable Expenses. The portion of the amount billed for Engineer's services shall be based upon Engineer's estimate of the proportion of the Unit Price for services actually completed during the billing period to the Unit Price. The CITY has the option of agreeing to this amount before making Unit Price payments to the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall not bill the CITY more frequently than one (1) time per every thirty (30) days unless and until the CITY agrees in writing to a more frequent or less frequent billing cycle.

**4.1.5**

## **4.2 PAYMENT FOR SERVICES**

Based upon applications for payment submitted by the DESIGN PROFESSIONAL and approved by the CITY, the CITY will make progress payments as scheduled hereafter for services described in **Exhibit “A” – Engineer’s Scope of Services** attached to this Agreement and incorporated herein by reference. The application for payment will be computed on the basis of hourly rates, direct non-labor expenses, lump sum and unit price work items shown in **Exhibit “C” - Summary of Compensation**. The DESIGN PROFESSIONAL will be paid pursuant to this Agreement a TOTAL amount not to exceed **\$364,134.00** for design and construction phase services. Partial payments will be made upon presentation of statements to CITY in the manner otherwise set forth in this Agreement.

## **4.3 PAYMENT FOR ADDITIONAL SERVICES**

**4.3.1** As determined by the DESIGN PROFESSIONAL or the CITY or both parties, when the need for additional services arises, the scope of work, compensation terms and total compensation will be negotiated between the CITY and DESIGN PROFESSIONAL before said additional work shall begin. In the event said additional work is begun before the CITY gives its prior written

approval, the CITY has the option to ratify its approval of said additional work. Payment for additional services will be computed on the basis of hourly rates, direct non-labor expenses, lump sum and/or unit prices for additional work. For the services of personnel described in this section, the DESIGN PROFESSIONAL will be compensated in accordance with the schedule for various employees of the DESIGN PROFESSIONAL as set forth in **Exhibit “C” – Summary of Compensation.**

- 4.3.2** Payment for Additional Services will be made in the manner otherwise set forth in this Agreement, based upon presentation of invoices, statements and billings to the CITY sufficient to show the work accomplished. Under no conditions will any additional services be paid for until the DESIGN PROFESSIONAL has received written authorization from the CITY for such work.

#### **4.4 ADDITIONAL COPIES OF PRINTED DOCUMENTS**

Additional copies, above the number due as part of the basic services outlined in Article 2, of reproduced plans, specifications, maps and exhibits will be available to the CITY at actual invoice cost to the DESIGN PROFESSIONAL.

### **ARTICLE 5 SERVICES BY THE CITY**

**5.1** In general, the CITY will render services as follows:

- 5.1.1** Provide available criteria and full information as to the CITY’s requirements for the PROJECT.
- 5.1.2** Assist the DESIGN PROFESSIONAL by placing at his disposal all available written data pertinent to previous operations, reports, and any other data affecting the design and/or construction of the PROJECT.
- 5.1.3** Acquire all land and rights-of-way required for the PROJECT and any related off-site work, including rights of ingress and egress on private property.
- 5.1.4** Respond in writing no later than thirty (30) calendar days to requests by the DESIGN PROFESSIONAL for authorization to proceed with specific activities deemed desirable.
- 5.1.5** No later than thirty (30) calendar days from the date of submittal, examine documents submitted by the DESIGN PROFESSIONAL and render decisions pertaining thereto, in order to avoid delay in the progress of the DESIGN PROFESSIONAL’s services.
- 5.1.6** Timely provide to DESIGN PROFESSIONAL information that is required or necessary for the orderly progress of the work.

**5.2** The DESIGN PROFESSIONAL will be entitled to rely upon the CITY's engineer regarding decisions made by the CITY pertaining to this PROJECT and rely upon the accuracy and completeness of all information and data provided by or through the CITY or its Engineer; further, all notices or information will be deemed made when conveyed in writing to the DESIGN PROFESSIONAL.

**5.3** The services, information and reports required above will be furnished at the CITY's expense.

## **ARTICLE 6 PROJECT DOCUMENTS**

All documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed, with the exception of those standard details and specifications regularly used by the DESIGN PROFESSIONAL in its normal course of business, will upon payment of all amounts rightfully owed by the CITY to the DESIGN PROFESSIONAL herein be the property of the CITY. The latest version of all documents including, but not limited to, tracings, drawings, estimates, specifications, investigations, and studies completed or partially completed will be available to the CITY no later than thirty (30) calendar days from the date the CITY makes a verbal or written request to DESIGN PROFESSIONAL. DESIGN PROFESSIONAL, its subcontractors, agents and employees will be liable to the CITY for any loss or damage to any such documents while they are in the possession of or while being worked upon by the DESIGN PROFESSIONAL or anyone connected with him. All documents so lost or damaged will be replaced or restored by DESIGN PROFESSIONAL without cost to the CITY. Any reuse or modification of such Documents for purposes other than those intended by the DESIGN PROFESSIONAL shall be at the CITY's sole risk and without liability to the DESIGN PROFESSIONAL unless said unintended reuse or modification occurs as a result of DESIGN PROFESSIONAL'S negligence, malfeasance, or willful misconduct. Upon completion of the PROJECT, all documents shall be transferred to the CITY. DESIGN PROFESSIONAL shall not be required to maintain the records but may do so in accordance with its Document Retention Policy.

## **ARTICLE 7 NOTICE TO PROCEED; SCHEDULING OF WORK**

It is understood and agreed that the DESIGN PROFESSIONAL will work as an Independent Contractor by the CITY, will have ultimate control of the services to be rendered except as otherwise provided in this Agreement or in the event said control shall be in violation of this Agreement, and that no work will be done under this Agreement until the DESIGN PROFESSIONAL is instructed in writing to proceed with the work. In the event the DESIGN PROFESSIONAL does work before it is instructed in writing to proceed, the CITY shall not be obligated or in any way liable for payment of compensation or other reimbursements to the DESIGN PROFESSIONAL.



## **ARTICLE 8 ASSIGNMENT**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party will assign, sublet nor transfer any interest in this Agreement without the written authorization of the other.

## **ARTICLE 9 TERMINATION**

**9.1** In connection with the work outlined in this contract, it is agreed and fully understood by the DESIGN PROFESSIONAL that the CITY may cancel or indefinitely suspend further work hereunder or terminate this Agreement upon fifteen (15) days written notice to the DESIGN PROFESSIONAL with the understanding that immediately upon receipt of said notice all work and labor being performed under this contact will cease. As a condition precedent for termination for cause, the DESIGN PROFESSIONAL shall have the 15 day notice period to cure such cause and shall have failed to so cure. Before the end of such fifteen (15) day period DESIGN PROFESSIONAL will invoice CITY for all work completed satisfactorily to the CITY and will be compensated in accordance with the terms of this Agreement. All drawings, field surveys, maps, estimates, investigation, studies, and other data work related to the PROJECT will become the property of the CITY upon termination of the Agreement.

**9.2** Nothing contained in paragraph 9.1 above will require the CITY to pay for any work which fails to meet the Standard of Care. The CITY will not be required to make any payments to the DESIGN PROFESSIONAL when the DESIGN PROFESSIONAL is in default under this Agreement. The CITY and the DESIGN PROFESSIONAL retain their respective rights and remedies under law and this Agreement does not, nor shall be interpreted, to waive or otherwise modify said rights.

**9.3** The DESIGN PROFESSIONAL understands and agrees that time is of the essence and that any failure of the DESIGN PROFESSIONAL to complete its services within the time limit established herein solely due to the fault of the DESIGN PROFESSIONAL will constitute a material breach of this Agreement. However, it is agreed that DESIGN PROFESSIONAL must use sound professional practices. The DESIGN PROFESSIONAL will be fully responsible for any delays or for failures to use its professional efforts in developing contractual documents in accordance with the terms of this Agreement. Where damage is caused to the CITY due to the DESIGN PROFESSIONAL's failure to perform in this manner, as determined by the governing body of the CITY, the CITY may withhold all or any portion of the DESIGN PROFESSIONAL's payments hereunder without waiver of any of either PARTY's additional legal rights or remedies.

**9.4** The DESIGN PROFESSIONAL will have the right to terminate this Agreement, on fifteen (15) days written notice to the CITY should the CITY fail to perform its

obligation herein to the satisfaction of the DESIGN PROFESSIONAL. In the event of termination, the DESIGN PROFESSIONAL will be paid for all services rendered to date of termination. Nothing contained herein will constitute a waiver of DESIGN PROFESSIONAL's right to bring a suit for damages or to enforce specific performances of this Agreement under these circumstances. In the event of termination hereunder, DESIGN PROFESSIONAL will invoice CITY for all work satisfactorily completed up to the date of this notice of termination and will be compensated in accordance with the terms of Agreement.

**9.5** Notwithstanding anything contained herein to the contrary, the CITY will have the right to withdraw from this Agreement on the last day of CITY's current fiscal year in the event of non-appropriation of funds by its governing body, and providing ten (10) days written notice from CITY to DESIGN PROFESSIONAL.

#### **ARTICLE 10 VENUE**

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement will lie exclusively in a court of competent jurisdiction Hays County, Texas, and such court will interpret this Agreement in accordance with the laws of the State of Texas.

#### **ARTICLE 11 ENTIRE AGREEMENT**

This instrument represents the entire understanding between the CITY and the DESIGN PROFESSIONAL in respect to the PROJECT and may only be modified in writing signed by both parties.

#### **ARTICLE 12 SEVERABILITY**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

**ARTICLE 13**  
**RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

**13.1** Approval by the CITY will not constitute nor be deemed a release of the responsibility and liability of the DESIGN PROFESSIONAL, its employees, subcontractors, agents and consultants for the accuracy and competency of their designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for the DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents and work, nor will such approval be deemed to be an assumption of such responsibility by the CITY for DESIGN PROFESSIONAL's negligent acts, errors or omissions in the performance of the professional services that are the subject of this agreement, including the preparation of the designs, drawings, or other documents prepared by the DESIGN PROFESSIONAL, his employees, subcontractors, agents and consultants.

**13.2** The CITY agrees the DESIGN PROFESSIONAL is not responsible for damages arising from any circumstances beyond the DESIGN PROFESSIONAL's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; failure of any governmental agency to act in a timely manner; failure of performance by the CITY or the CITY's other subcontractors or consultants; or discovery of any hazardous substances or differing and unforeseeable site conditions.

**ARTICLE 14**  
**INDEMNIFICATION**

The DESIGN PROFESSIONAL will indemnify and hold the CITY and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expense, including costs of court, reasonable attorneys' fees, expert witnesses' and consultants' fees, on account of damage to property and injuries, including death, to all persons, whether caused by DESIGN PROFESSIONAL or its officers, agents, employees, subcontractors, licensees, or invitees to the extent caused by any act of negligence or intentionally wrongful act or material breach of any obligation under this Agreement, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them, or any of them in connection herewith resulting from such act of negligence or intentional act or breach for which DESIGN PROFESSIONAL is found to be legally liable.

In no event shall either PARTY be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

The indemnity obligations herein shall survive the termination of the contract for any reason and shall survive the completion of the work on the PROJECT.

It is understood and agreed that the indemnity and defense obligations contained and described herein shall be interpreted in accordance with Texas law current as of the date of this Agreement and that any indemnity or defense obligation, if at all, shall be claimed, interpreted and enforced on a comparative basis of fault and responsibility. Neither Party to this Agreement will allege, claim, file suit or otherwise demand that the other Party provide any indemnity or defense as such may relate to the negligent acts, errors or omissions of the claiming Party.

## **ARTICLE 15 INSURANCE**

The DESIGN PROFESSIONAL will maintain at all times professional liability or errors and omissions insurance covering any claim hereunder occasioned by DESIGN PROFESSIONAL's negligent act, or error or omission in an amount of not less than \$250,000 per claim and \$500,000 annual aggregate. DESIGN PROFESSIONAL agrees to maintain professional liability insurance during the term of this agreement and, if the policy is on a claims made basis, for a period of not less than five (5) years after the Project is complete and provide proof of such continuing coverage providing such coverage is readily available and financially feasible. DESIGN PROFESSIONAL further agrees to provide proof of coverage as needed for prior acts back to the date of execution of this agreement if DESIGN PROFESSIONAL changes insurance carriers during this extended indemnity period.

DESIGN PROFESSIONAL will further maintain general commercial liability coverage with minimum limits for damages resulting from bodily injury or death of \$250,000 per person and \$500,000 per occurrence, and \$100,000 per occurrence for property damage, or single limit of \$500,000.

DESIGN PROFESSIONAL further agrees that with respect to the above required liability insurance, the CITY will:

1. Be named as additional insured for general liability insurance.
2. Be provided with a waiver of subrogation, in favor of CITY.
3. Be provided with thirty (30) days advance written notice of cancellation, or nonrenewal (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate).
4. Upon execution of this Agreement by DESIGN PROFESSIONAL, be provided through the office of the City Clerk with either their original Certificate of Insurance or their insurance policy evidencing the above limits and requirements and subject to approval by the City Attorney.

The insurance requirements set out in this section are independent from all other obligations of DESIGN PROFESSIONAL under this Agreement and apply whether or not required by any other provision of this Agreement.

## **ARTICLE 16 COMPLIANCE WITH LAWS**

The DESIGN PROFESSIONAL, its consultants, agents and employees and subcontractors, will comply with all applicable federal and state laws, the Charter and Code of Ordinances of the City of Kyle, and all other applicable rules and regulations promoted by all local, state and national boards, bureaus and agencies.

## **ARTICLE 17 NOTICES**

This contract will be administered on the CITY's behalf by the City Engineer. All notices, documentation, or questions arising under this Agreement should be addressed to the CITY's Engineer at:

City Manager  
Kyle City Hall  
100 W. Center Street  
Kyle, Texas 78640

All written notices from CITY to DESIGN PROFESSIONAL will be addressed to the DESIGN PROFESSIONAL as follows:

K Friese & Associates, Inc.  
Mr. Tom Owens, P.E.  
1120 S. Capital of Texas Highway  
Building 2, Suite 100  
Austin, TX 78746

## **ARTICLE 18 CAPTIONS**

The captions of this Agreement are for information purposes only and will not in any way affect the substantive terms and conditions of this Agreement.

## **ARTICLE 19 MEDIATION**

In the event a dispute arises between the CITY and the DESIGN PROFESSIONAL in the application or interpretation of this Agreement, or one or more of its provisions, the parties may mutually agree to take such dispute to a mediator mutually agreed upon by

both parties to this Agreement for resolution. Neither party is bound to the mediator's decision.

**ARTICLE 20  
EXECUTION AND EFFECTIVE DATE OF AGREEMENT**

The execution of this Agreement shall proceed as follows: signature of the DESIGN PROFESSIONAL shall be affixed hereto, whereupon the Agreement shall be submitted to the City Attorney for review, and then to the City Council for final review and approval. After such approval from the City Council, the Agreement shall then be signed by the City Manager. This Agreement will become effective immediately upon the signature of both parties. An executed original of this Agreement shall be kept on file in the City Clerk's office.

**IN WITNESS WHEREOF**, the City of Kyle, Texas has caused these presents to be executed by its City Manager and attested by its City Clerk and executed by \_\_\_\_\_ on behalf of \_\_\_\_\_.

**THE CITY OF KYLE, TEXAS**

**DESIGN PROFESSIONAL: K Friese & Associates, Inc.**

\_\_\_\_\_  
Lanny S. Lambert, City Manager

\_\_\_\_\_  
Tom Owens, P.E., Executive Vice President

**ATTEST:**

\_\_\_\_\_  
Amelia Sanchez, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
W. Ken Johnson, City Attorney

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**       §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014,  
by Lanny S. Lambert, City Manager of the City of Kyle, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

**CORPORATE ACKNOWLEDGEMENT**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**       §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2014, by Tom  
Owens, P.E., Executive Vice President of K Friese & Associates, Inc., a Texas  
corporation, on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit “A”  
Engineer’s Scope of Services**



EXHIBIT "A"  
ENGINEER'S SCOPE OF SERVICES  
MARKETPLACE AVENUE

**WORK SUMMARY**

K Friese and Associates, Inc. (KFA) will provide the necessary engineering and technical services for the development of the plans, specifications and estimates (PS&E) and contract documents to design Marketplace Avenue from the intersection with the North Burleson Street Improvement project to the existing southern terminus of Marketplace Avenue at City Lights Drive. Below is a sketch of the Marketplace Avenue project area.

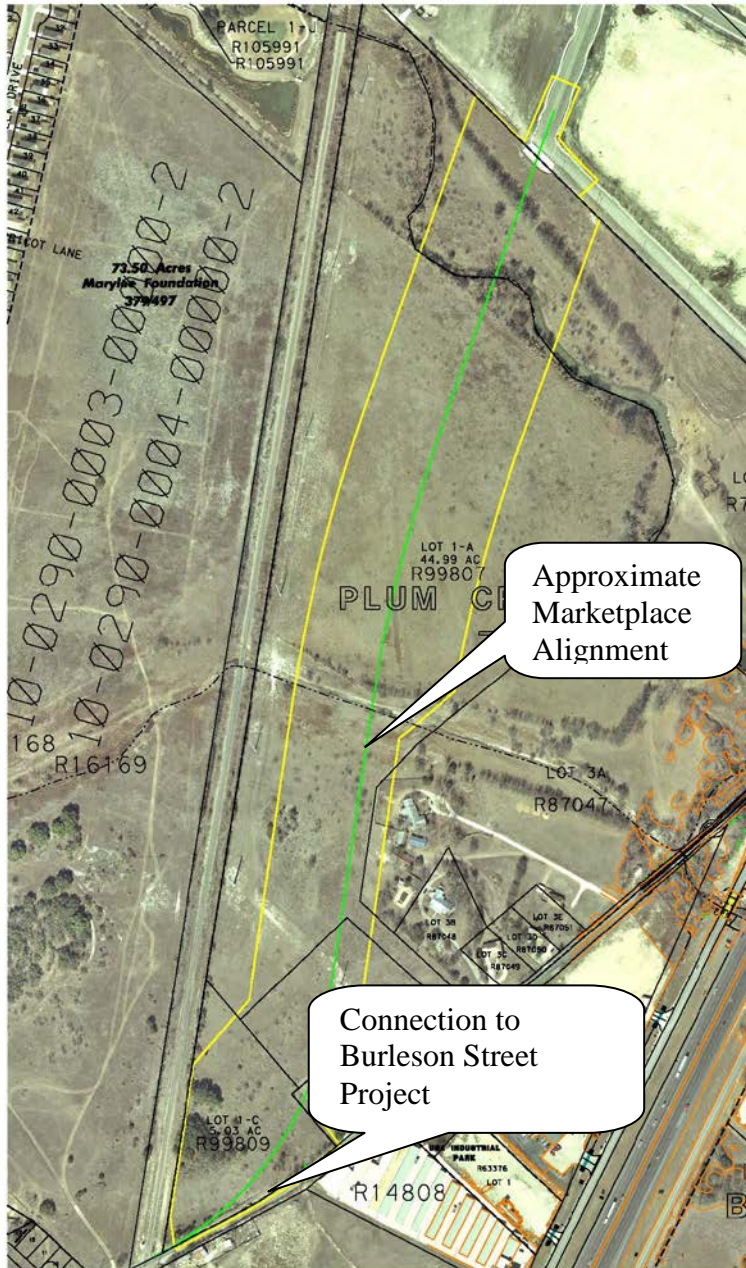


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According to the City bond program information, the overall available funds for survey, engineering, and construction is \$4.0 Million. KFA will provide the city with timely estimates of project costs, to help the City ensure the project remains within the constraints of the bond program funding. This budget does not include the 16" waterline.

*The City of Kyle anticipates this project will be implemented using State and/or Federal funds. This project shall be developed, bid and constructed using TxDOT's current Local Government Project Procedures. The PM or a team member shall be LGPP certified and the consultant shall provide all services in accordance with these procedures. The consultant shall assist the City of Kyle in complying with all the LGPP requirements and provide project specific information needed to satisfy these requirements. KFA shall provide information to the City of Kyle to confirm and verify the DBE contracting goal of 5% is being met.*

Also included in this project is the design of a 16-inch waterline. The proposed alignment will follow the proposed roadway alignment in an as signment to be coordinated with the City. The design will include two bridges.

KFA will perform design services related to the design and plan production for this project in accordance with City of Kyle design criteria, AASHTO, and Texas Department of Transportation (TxDOT) specifications. Special details and specifications will be developed for the project when necessary. KFA shall include the tasks and deliverables more fully described in the following task descriptions.

### **PROJECT MANAGEMENT**

1. Overall Project Management – KFA will conduct internal meetings, schedule work, and coordinate on an ongoing basis with the City and project team. This task includes coordinating with subconsultants on field work, work products, and deliverables. Progress reports will be provided with all invoices.
2. City of Kyle Meetings – Meetings will be conducted with the City and /or TxDOT as shown in the project schedule and after each submittal to discuss the City's comments. Six (6) meetings have been assumed. Time is included in this task for meeting preparation and documentation of the meeting.
3. Public Outreach – Not included in this contract

### **PHASE I – PRELIMINARY ENGINEERING PHASE**

1. Kick-off Meeting and Initial Site Visit and Reconnaissance – KFA will conduct a kick-off meeting with the design team and an initial site visit to walk the project, coordinate field work, discuss project schedule, and identify issues. The City will be invited to attend the site visit.

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2. Data Gathering – KFA will compile and forward a list of data needs for items typically retained by the City, such as as-built drawings. KFA will review existing subdivision plats and plans and roadway and utility plans from adjacent projects. Commonly available data items, such as floodplain mapping will be obtained directly by KFA.
3. North Burluson Coordination – KFA will coordinate with Freese & Nichols, Inc. to determine the configuration of the intersection of Marketplace Avenue and the North Burluson Street improvements project.
4. Environmental Documentation – ACI Consulting (ACI) will perform environmental investigations for the preparation of an environmental summary memo, which is intended to document compliance with environmental regulations that are applicable to a City-funded project, in addition to an Archeological Survey for compliance with the Antiquities Code of Texas

**TASK 1 – ENVIRONMENTAL BACKGROUND STUDIES:** To determine the background environmental conditions of select environmental resources, ACI will perform the following required studies: 1a) potentially jurisdictional waters and wetlands, 1b) hazardous materials, 1c) threatened and endangered species and migratory birds, 1d) historic-age structures, and, 1e) cultural resources investigation.

- Task 1A – Jurisdictional Waters and Wetlands Investigation; ACI will perform an analysis of the most currently available aerial photographs, topographical maps, the National Wetlands Inventory (NWI) database, soil surveys, USGS Quadrangles, jurisdictional waters assessments and wetlands determinations previously performed in the area, and conduct the appropriate field work necessary to identify USACE potentially jurisdictional waters and wetlands within the study area. Field investigations will include evaluating the study area, in accordance with Section 404 of the Clean Water Act, the 1987 Wetland Delineation Manual, and the Final Great Plains Regional Supplement to the Corps of Engineers Wetland Delineation Manual, to identify the location and extent of potential waters of the U.S., including wetlands and make a preliminary determination of USACE jurisdictions. Potential waters of the U.S., including wetlands, will be recorded using a Global Positioning System (GPS) Receiver with sub-meter accuracy, and the boundaries will be mapped. Digital photographs will be taken, one upstream and one downstream, within and at the upper and lower extents of potential waters. As needed, this investigation may include soil samples, vegetation assessment, and recording with sub-meter GPS. The findings will be documented in the environmental summary memo.
- Task 1B – Hazardous Materials - ACI will conduct a hazardous materials reconnaissance review for the project area by completing an ASTM-standard environmental background search and field reconnaissance. This examination of the proposed environmental setting for the project will not

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include the ASTM 1527-05 level of review; however, the findings will be incorporated into the environmental summary.

- Task 1C – Threatened and Endangered Species - A threatened and endangered species habitat assessment will be performed along the project alignment. A CI will perform a desktop evaluation project alignment for federally listed species known to occur in Hays County, Texas, as well as a visual inspection along the project alignment. This task does not include right-of-entry coordination by ACI. The findings will be incorporated into the environmental technical summary
- Task 1D – Historic Age Resources Survey - In order to identify historic resources that are listed in the National Register of Historic Places (NRHP), or have the potential to be eligible to the NRHP, ACI will undertake a records search, reviewing the Texas Historical Commission (THC) Historic Sites Atlas and online survey files, the NRHP database, the list of State Archeological (Antiquities) Landmarks (SAL); and the list of Recorded Texas Historic Landmarks (RTHL). ACI will also review the Texas Historic Maps Overlay and Sanborn maps, as applicable, to aide in the identification of historic-age resources within the primarily rural environment within the study area. A field survey of all identified historic-age resources (45 years of age or older at the projected time of project letting) will be conducted. Data collected for each resource will include property address, a basic property type description, approximate date of construction, and an impact assessment.

These data will be incorporated into the environmental summary memo.

- Task 1E – Archaeological Intensive Survey, Antiquities Code Permit and Background Research - ACI will conduct a background study of the study area in accordance with the TxDOT Standards of Uniformity (SOU) for Archeological Background Studies, as well as complete the TxDOT Standards of Uniformity (SOU) Review Standards for Antiquities Permit Application for an archeological survey of the proposed project study area corridor, which will be a new ROW.

This task will involve completing both the Background Study report and a THC Antiquities Permit application, which includes developing a research design and compiling the background information that can be relied upon in the subsequent report in Task 5. Task includes background research at THC, the Texas Archeological Research Laboratory (TARL), and preliminary archival file searches. The task will also include any meetings/coordination with THC or TxDOT.

This task will involve a pedestrian survey and shovel testing of the Area of Potential Effect (APE) (linear survey of approximately 500-foot wide alignment by approximately 3,700 feet of proposed study area). This task

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includes recording newly discovered archeological resources to THC, and CTA standards, as well as site assessment for both NRHP and SAL eligibility.

This task will involve the analysis of the data collected from the field work survey. Any new sites will be submitted to TARL for site numbers and site records submission. This task will also include the production of a draft report submitted to TxDOT and THC for coordination and concurrence. Any comments by agencies will be addressed and a final report will be submitted to TxDOT and THC, as well as the client as part of the deliverables per individual requirements of each agency. All field documents will be curated, as is required by Antiquities Permits, at the TARL. This will be a non-collection survey; therefore, no artifacts will need to be curated. Updates on findings and recommendations will also be incorporated in the NEPA document.

4. Design & ROW Survey – Not included in this contract
5. Geotechnical Investigation and Pavement Design – HVJ Associates, Inc... (HVJ) will perform six (6) geotechnical borings at a depth of fifteen-feet (15') below existing grade along the proposed roadway alignment and four (4) bridge borings (two at each bridge location) to a depth of 50 feet.; conduct appropriate laboratory testing; and summarize the field investigation results and bedding, earthwork, and pipe design recommendations in a Geotechnical Report. The report will also include pavement design recommendations for the proposed roadway improvements.
6. Utility Investigations and coordination – KFA will contact the appropriate utility providers to help identify all existing utilities located within the project area and acquire record information SUE QL-D. Before survey commences, KFA and Inland survey will request utility locates, so that they may be identified on our survey, consistent with SUE Quality Level QL-C The design will consider all viable alternatives to mitigate potential conflicts. The roadway design will consider the existing city of Kyle wastewater lines and be designed to avoid any wastewater line relocations. Minor manhole adjustments will be designed by KFA as part of the roadway design, if necessary.
7. Roadway Schematic – KFA will prepare a roll plot schematic of the proposed roadway showing edge of pavement, culvert crossings, sidewalks, driveways and intersections. The schematic design tasks will include:
  - a. Preliminary intersection designs at North Burluson Street and the existing Marketplace Avenue terminus, including coordination with Freese & Nichols.
  - b. Preliminary roadway profiles and cross-sections to determine slope easement locations, if necessary,

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- c. Preliminary drainage design; including sizing of storm sewer trunk lines and bridge opening, and cross culverts. The preliminary analysis of the Plum Creek tributary crossing will also include a culvert option.
  - d. Preliminary Bridge Layouts
  - e. Preliminary quantities and opinion of probable construction costs
  - f. Identification of ROW/Easement requirements
  - g. Construction sequencing and traffic control concepts
  - h. Review design criteria for appropriateness.
8. Coordination with Adjacent Developer – The Marketplace Avenue project is located within an active development. KFA will coordinate with the third party developer and their engineer to ensure that the design of the Marketplace Avenue meets all project requirements and is compatible with the developer's plans. The City of Kyle and/or the developer or engineer will cooperate to the extent possible and provide information to KFA pertaining to the development as necessary to facilitate this coordination. This information may include boundary and topographic surveys, plats, preliminary development plans, schematic layouts, preliminary plans, CLOMR's, environmental studies, permits and other information necessary to convey the preliminary layout and design of the development and corresponding infrastructure. KFA's coordination effort shall span all phases of work identified in this contract.
9. Developer information – In the course of certain development activities, the third party developer has produced information that KFA shall review and use, as appropriate in the provision of the scope of services under this agreement. The City of Kyle reserves the right to acquire this information from the Developer and provided it to KFA to avoid duplication of effort and unnecessary costs.

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**PHASE II – DESIGN & BID PHASE**

1. Construction Plans – KFA and subconsultants will produce the following sheets (11" x 17" Full-Size) as appropriate for the revised roadway design. TxDOT design standards will be used when available. QA/QC is included in each sheet task. Plan will be submitted at 30%, 60%, 90% and 100% for review.

a. MISCELLANEOUS PLANS

1. TITLE SHEET (1 Sheet)
2. INDEX OF SHEETS (1 Sheet)
3. QUANTITY/SUMMARY SHEETS (6 Sheets) –
  1. Roadway Quantities
  2. Summary of Drainage Structures and Erosion Control
  3. Summary of Pavement Markings and Traffic Controls
  4. Illumination Summary
  5. Waterline Quantity Summary
  6. Summary of Small Signs
4. GENERAL NOTES (2 Sheets)
5. HORIZONTAL ALIGNMENT DATA & SURVEY CONTROL (1 Sheet)

b. ROADWAY PLANS & GEOMETRY

1. TYPICAL SECTIONS (1 Sheet) – Existing and proposed typical sections
2. ROADWAY PLAN AND PROFILE SHEETS (4 Sheets)

c. GRADING AND DETAILS

1. CROSS-SECTIONS – (12 Sheets) KFA will complete design cross-sections at 100-foot stations and other locations as necessary for the determination of cut and fill quantities and to further refine the design vertical geometry.
2. INTERSECTION DETAIL SHEETS (2 Sheets) – KFA will provide intersection details for the North Burleson intersection and the existing Marketplace Avenue terminus as necessary including a 1"=40' scale plan view and spot grading at all PC, PT, edge of pavement and street tie-ins.
3. ROADWAY DETAILS (5 Sheets) – KFA will include miscellaneous detail sheets for the project.

d. DRAINAGE PLANS

1. DRAINAGE AREA MAP (1 Sheet)
2. BRIDGE HYDRAULIC CALCULATIONS (2 Sheets)
3. BRIDGE SCOUR DATA SHEETS (2 Sheets)

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4. STORM SEWER PLAN & PROFILE SHEETS (4 Sheets)
5. STORM SEWER HYDRAULIC CALCULATIONS (2 Sheets)
6. DRAINAGE DETAIL SHEETS (5 Sheets)

e. BRIDGE PLANS

1. QUANTITIES AND BEARING SEAT ELEVATIONS (2 Sheets)
2. BRIDGE LAYOUTS (2 Sheets)
3. ABUTMENT DETAILS (4 Sheets)
4. BENT DETAILS (2 Sheets)
5. SPAN DETAILS (2 Sheets)
6. BRIDGE STANDARDS (28 Sheets)

f. TRAFFIC CONTROL PLANS

1. SEQUENCE OF CONSTRUCTION NARRATIVE (1 Sheet)
2. TRAFFIC CONTROL PLAN SHEETS (2 Sheets)
3. TRAFFIC CONTROL STANDARD SHEETS (5 Sheets)

g. SIGNING AND MARKING

1. SIGNING AND PAVEMENT MARKING LAYOUTS (2 Sheets)
2. SIGNING AND PAVEMENT MARKING STANDARDS (5 Sheets)

h. EROSION CONTROL SHEETS – The project assumes that permanent erosion control will be limited to topsoil and seeding, with vegetative watering. Permanent irrigation or more detailed landscape design is not currently proposed with this project.

1. STORMWATER POLLUTION PREVENTION PLAN (1 Sheet)
2. EROSION CONTROL PLAN SHEETS (2 Sheets)
3. EROSION CONTROL STANDARD SHEETS (3 Sheets)
4. TxDOT Environmental Permits, Issues and Commitments EPIC Sheet.

i. ILLUMINATION SHEETS – Illumination standards and luminaire styles will be coordinated with the Burluson Street project and existing downtown Kyle improvements. Landscaping and Pedestrian Lighting shall be designed in accordance with the City of Kyle's 2010 Comprehensive Plan. Specifically the core linkages depicted in the Urban Design Plan, Urban Component 1, shall be incorporated using TxDOT and City of Kyle standards and specifications for pedestrian lighting.

1. ILLUMINATION PLAN SHEETS (2 Sheets)
2. ELECTRICAL CIRCUIT DIAGRAMS (1 Sheet)
3. STREET LIGHT BASE DETAIL (1 Sheet)
4. ILLUMINATION STANDARD SHEETS (7 Sheets)



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- j. WATERLINE SHEETS
1. WATERLINE PLAN & PROFILE SHEETS (4 Sheets)
  2. WATERLINE STANDARD SHEETS (5 Sheets)
2. Opinion of Probable Construction Cost – KFA will prepare and submit an engineer's opinion of probable construction cost in Microsoft Excel format at the schematic, 60%, 90% and 100% and Final submittals to the City.
  3. Construction Duration Estimate – KFA will prepare and submit an estimated construction schedule reflecting construction duration for each phased construction task.
  4. Contract Documents – KFA will prepare a set of construction contract documents in accordance with City of Kyle Standards including:
    - a. CONTRACT REQUIREMENTS
      1. Invitation for Bids
      2. Instructions to Bidders
      3. Proposal and Bid Schedule
      4. Statement of Materials Incorporated into Realty Improvements
      5. Bid Bond
      6. Statement of Bidder's Experience
      7. Agreement
      8. Performance Bond
      9. Payment Bond
      10. General Conditions
      11. Special Conditions of Agreement
    - b. Technical Specifications and Provisions
      1. City of Kyle Standard Specifications
      2. Texas Department of Transportation Specifications
      3. Special Technical Specifications
      4. Special Provisions
  5. Permitting - For purposes of this proposal, it is assumed that the final roadway and utility design will require the following permits:
    - a. TCEQ Chapter 290 Review – KFA will prepare and submit the required documentation to TCEQ per Chapter 290 for approval of waterline construction.
    - b. TCEQ NPDES – A Contractor and Owner NOI will be prepared in conjunction with the SWPPP plans. The SWPPP will be provided to the Contractor awarded the project.

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- c. TDLR (TAS) Review – KFA will prepare and submit the required documentation for a review and approval of the pedestrian facilities in accordance with TDLR/TAS regulations. *Altura Solutions, LP* will perform the third party TDLR Review and inspections
6. FEMA Letters of Map Revision – KFA coordinate with the City and the adjacent developer to include the proposed roadway alignment and geometry within the adjacent developer's Conditional Letter of Map Revision (CLOMR) for each of the two creek crossings through the Federal Emergency Management Agency (FEMA). KFA anticipates four meetings to coordinate the CLOMR application with the City and the developer.
  7. Bid & Award – KFA will assist the City of Kyle with contract administration during the bid phase of the project.
    - a. Bid Solicitation – KFA will coordinate with the City of Kyle to publish the Invitation for Bid. We have assumed that the publication costs will be directly charged to the City by the newspaper and an expense has not been included.
    - b. Bid Document Distribution – KFA will coordinate with the City to distribute plans and project manuals through electronic means to interested bidders.
    - c. Pre-Bid Conference – KFA will attend the pre-bid conference, document any questions and responses provided at the meeting, and issue a follow-up addendum if necessary.
    - d. Addenda Preparation – KFA will interpret plans and specifications and draft addenda, as necessary, for issuance.
    - e. Bid Opening and Review – KFA will attend the public bid opening, tabulate the bids, and perform a review of the bid tabulation and Contractor's qualifications. KFA will issue a Recommendation for Award based on the lowest responsive bidder.
    - f. Contract Award – Following award of the Contract by the City, KFA will assemble the necessary Contract Documents and coordinate with the Contractor and City for execution.
    - g. Conforming Documents – Addenda items will be incorporated into a set of "conformed" documents. We have included reproduction of 8 sets of conformed documents to be issued for construction (4 to City; 4 to Contractor).

**PHASE III – CONSTRUCTION PHASE**

1. Construction Phase Services – KFA will assist the City of Kyle with contract administration during the construction phase of the project. We understand the City of Kyle will provide required construction inspection services, and have assumed that the construction duration will be approximately 12 months. KFA's services will include:

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- a. Pre-Construction Conference – KFA will attend a pre-construction conference with the City, Contractor, and other parties as appropriate, and prepare the meeting minutes.
- b. Progress Meetings and Site Visits –KFA will visit the site approximately every two weeks when construction is in progress to verify that the work is generally in conformance with the plans and specifications. For budgeting purposes, we have assumed sixteen (16) meetings/site visits.
- c. Submittal Review – KFA will maintain a log of all Contractor submittals, track review progress, review and approve submittals, and distribute submittals to the appropriate parties.
- d. Pay Estimate Review – KFA will review the Contractor's pay estimates after approval by the City of Kyle's on-site Inspector and make recommendations for payment.
- e. Preparation of Change Orders – KFA will review all Contractor's requests for Change Orders and prepare Change Orders as appropriate. For budgeting purposes we have assumed two (2) change orders.
- f. Requests for Information (RFIs) – KFA will provide answers to requests for information (RFI's) from Contractor as related to possible conflicts and clarifications needed between plans and specifications. Five (5) RFI's have been assumed.
- g. Contract Close-out. KFA will attend a final project walk-thru, document "punch list items", and issue an Engineer's Concurrence for Project Acceptance letter. KFA will also notify TCEQ and other jurisdictional agencies of project completion.
- h. Record Drawings. KFA will use the Contractor's redline as-built drawings to document as-built conditions in the final record drawings. KFA will supply the City of Kyle with one set of reproducible record drawings and provide one set of record drawings in .pdf format.

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**ASSUMPTIONS MADE FOR THIS PROPOSAL**

1. Permit Review and Processing Fees are not included in the attached fee.
2. No detention or permanent water quality controls are included in the above scope of services.
3. Aside from the new 16" waterline and its connections to existing facilities and minor wastewater manhole grade adjustments, additional City of Kyle utility relocation design is not included in this proposal.
4. Design of any required relocations to franchise utilities are not included in this proposal
5. It is assumed that the adjacent developer will prepare and process a FEMA Conditional Letter of Map Revision (CLOMR) application for their development, including the proposed Marketplace bridges. As, such the application and FEMA processing of the CLOMR is not included in the scope and fee. Post construction processing of final FEMA Letter of Map Revision (LOMR) is also not included in the scope & fee.
6. Planimetric, topographic, and ROW survey will be provided by the City of Kyle and/or the adjacent developer. All ROW strip maps, parcel sketches, and notes will be provided by the City of Kyle.
7. ROW acquisition will be performed by others.
5. All Public outreach will be performed by the City of Kyle.

## **Exhibit “B” Project Schedule**



**Exhibit “C”  
Summary of Compensation**

**City of Kyle - Marketplace Avenue  
Exhibit "C"**

**Market Place Avenue (N. Burlison St. to City Lights Drive)  
Compensation Summary**

<b>Project Phase</b>	<b>Work Task</b>	<b>Compensation Type</b>	<b>Amount</b>
Schematic and Environmental	Geotechnical Investigation & Pavement Design	Lump Sum	\$ 64,914.50
	Schematic Design	Lump Sum	\$ 37,275.60
	Environmental Documentation	Hourly/NTE	\$ 24,974.00
Design	30% PSE Submittal	Lump Sum	\$ 50,196.30
	60% PSE Submittal	Lump Sum	\$ 50,196.30
	90% PSE Submittal	Lump Sum	\$ 50,196.30
	100% PSE Submittal	Lump Sum	\$ 26,537.00
	Waterline Design	Lump Sum	\$ 16,664.00
Bidding	Bidding Phase Services	Lump Sum	\$ 10,310.00
Construction	Construction Administration and Close Out	Lump Sum	\$ 32,870.00
<b>Total Compensation</b>			<b>\$ 364,134.00</b>



City of Kyle, Texas  
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 18, 2014  
CONTACT CITY DEPARTMENT: Engineering Services  
CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

SUBJECT:

A Resolution of the City of Kyle, Texas, authorizing the City Manager to execute an agreement in an amount not to exceed \$364,134.00 with K. FRIESE & ASSOCIATES, INC., for design and construction phase services relating to Marketplace Avenue (N. Burleson Street to City Lights Dr.); making findings of fact; and providing for related matters.

CURRENT YEAR FISCAL IMPACT:

This engineering services K. FRIESE & ASSOCIATES, INC., will require expenditure of funds from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.


1. City Department:	Engineering Services
2. Project Name:	Engineering - Marketplace Avenue
3. Budget/Accounting Code(s):	188-683-57313
4. Funding Source:	2013 GO Bond Fund (Road Bonds)
5. Current Appropriation:	\$ 5,410,000.00
6. Unencumbered Balance:	\$ 1,873,657.40
7. Amount of This Action:	<u>\$( 364,134.00)</u>
8. Remaining Balance:	<u>\$ 1,509,523.40</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this professional services agreement for engineering services with K. FRIESE & ASSOCIATES, INC., in an amount not to exceed \$364,134.00 will be provided from the General Obligation Bonds, Series 2013 issued for engineering, design, and related services for the five (5) roadway improvement projects.

ADDITIONAL INFORMATION/COUNCIL ACTION:

On November 6, 2013, City Council authorized a Master Service Agreement with M&S ENGINEERING, LLC, of Spring Branch, Texas, in an amount not to exceed \$10,000.00 to facilitate general engineering professional services and to provide specific engineering services related to negotiation of professional scopes and fees for North Burleson Street and Marketplace Avenue.

 3/12/2014  
Perwez A. Moheet, CPA - Date  
Director of Finance



# CITY OF KYLE

520 E. RR 150  
Office (512) 262-3024

Kyle, Texas 78640  
Fax (512) 262-3403

## MEMORANDUM

TO: Lanny S. Lambert, City Manager

FROM: Leon Barba, P.E., City Engineer *LB*

DATE: March 13, 2014

SUBJECT: Renegotiated Road Bond Projects

Based on direction from City Council and staff recommendations, the engineering consultants were asked to remove any Public Information/Public Outreach and any real estate acquisition fees from the proposed contracts. Additionally, all contracts are to include the 30, 60, 90 and 100% review milestones. Following is an update on the proposed engineering fees for the five road bond projects:

### **Lehman Rd. – FM 150 to Goforth Rd. (HDR)**

Initial Proposal	\$ 703,997.00
Current Proposal	<u>\$ 697,000.00</u>
Reduction	\$ 6,997.00

### **Goforth Rd. – IH 35 to Bunton Creek Rd. (LAN)**

Initial Proposal	\$1,009,992.00
Current Proposal	<u>\$1,001,269.26</u>
Reduction	\$ 8,722.74

### **Bunton Creek Rd. – IH 35 to Lehman (LJA)**

Initial Proposal	\$ 579,454.34
Current Proposal	<u>\$ 484,274.34</u>
Reduction	\$ 95,180.00

**N. Burleson – Miller St. to IH 35 (FNI)**

Initial Proposal	\$ 974,262.00
Current Proposal	<u>\$ 959,692.00</u>
Reduction	\$ 14,570.00

**Marketplace Avenue - Burleson Rd. to City Lights (KFA)**

Initial Proposal	\$ 412,448.00
Current Proposal	<u>\$ 364,134.00</u>
Reduction	\$ 48,314.00

The total reduction for the five projects is \$173,783.74. Please let me know if you need any additional information.

Xc: Harper Wilder, Public Works Dept.  
Perwez Moheet, Finance Dept.



# CITY OF KYLE, TEXAS

Meeting Date: 3/18/2014  
Date time: 7:00 PM

## City Managers Report

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

1. Discuss 2013 Employee Satisfaction Survey Results
2. Discuss proposed big trucks route
3. Discuss G200 Texas Public Officials Workshop for City Council
4. Discuss the City Council Workshop scheduled for April 15, 2014 at 6:30 p.m. regarding the Greater San Marcos Partnership and the City of Kyle's participation level.

**Other Information:**

**Budget Information:**

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

**Attachments / click to download**

- [Part I-Results of Employee Satisfaction Survey for year 2013](#)
- [Part II-Employee Comments 2013](#)
- [Employee Survey-2013-cond2014](#)
- [G200 Texas Public Officials Workshop](#)
- [Trucks Routes guidelines](#)
- [Kyle truck route map](#)

Cover Memo

Item # 24

# ANNUAL EMPLOYEE SATISFACTION SURVEY-FOR YEAR-2013

Please answer all questions on the survey. This survey will be available online from January 8, 2014-January 22,2014. Thank you for your participation.

\* Required

## (A) WORKING CONDITIONS \*

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
My equipment is safe.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My equipment is of good quality.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I have adequate equipment to do my job effectively.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My job site is safe.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My work area is clean and attractive.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## COMMENTS-(A) WORKING CONDITIONS

## (B) TRAINING & SUPERVISION \*

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
My direct supervisor values my ideas and opinions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My direct supervisor is able to give and receive feedback.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My direct supervisor expresses appreciation for a job well done.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My direct supervisor communicates my effectiveness of my job.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My direct supervisor can explain city policy and procedures.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My direct supervisor is knowledgeable about my job.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I understand my job responsibilities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall my supervision is satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
I've been provided training opportunities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall my job training is satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**COMMENTS-(B) TRAINING & SUPERVISION****( C ) JOB PERCEPTION \***

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
I am satisfied with my job.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I take pride in my job.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My contribution is appreciated.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am "challenged" in my present job.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall, the City has a satisfactory pay plan.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The retirement plan is satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More education in retirement would be helpful.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The health insurance plan is satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall the personal/major medical, and annual/sick leave are satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**COMMENTS-( C ) JOB PERCEPTION****(D) EMPLOYEE/STAFF COMMUNICATIONS \***

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
My department is willing to ask for my ideas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Item # 24

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
My department communicates changes/plans to me.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My department communicates knowledge/information.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Communication between my department and me is satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Communication between my department head/supervisor is satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My department is able to communicate and work as a team.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My department is able to communicate effectively as a team.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is communication between all City departments.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Human Resources department addresses employee concerns.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**COMMENTS-(D) EMPLOYEE/STAFF COMMUNICATIONS**

**(E) ORGANIZATION QUALITY \***

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
I am encouraged by management to suggest changes or improvements.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is an effort to increase employee knowledge/skills.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am satisfied with the Performance Appraisal Process as a tool for Evaluating my Work Performance.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The performance goals and objectives have a positive effect on my habits/performance.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am familiar with the City's Personnel Policy.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
I understand the commitment to outstanding customer service.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I feel the City's commitment to technology is satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**COMMENTS-(E) ORGANIZATION QUALITY****(F) CITY SERVICES \***

	Unknown	Strongly Disagree	Disagree	Agree	Strongly Agree
I am comfortable providing information to citizens on City services.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am approached frequently regarding information on City issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would like more information regarding other depts., city services, citizens.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Citizens perceive quality of service satisfactory.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Leadership of City Manager is effective.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Leadership of my department head is effective.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**COMMENTS-(F) CITY SERVICES**

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Item # 24



COMMENTS-(A) WORKING CONDITIONS	COMMENTS-(B) TRAINING & SUPERVISION	COMMENTS-( C ) JOB PERCEPTION	COMMENTS-(D) EMPLOYEE/STAFF COMMUNICATIONS	COMMENTS-(E) ORGANIZATION QUALITY	COMMENTS-(F) CITY SERVICES
I believe the working conditions in the police department are poor. During the colder days, when the temperature becomes below 30 degrees, the police department's heat feels like it is not working. During this time employees, walk around with heavy coats and hoods on their heads. I believe this constitutes as poor working conditions.	I believe that across the board positive reinforcement and acknowledgement of hard work is needed. Staff is always aware of the things going wrong but I believe that it would go a long way to acknowledge on a routine basis the things are working. Once a month we highlight one person (employee of the month) but a lot of people and the work they perform go unnoticed and highlighted.	All employees should be receiving the standard 3 weeks vacation just like the Police Officers to make it equitable.	Communication within departments is very poor and causes issues that could be resolved with much better communication.	Although we complete these surveys I don't believe they have any effect on the policies and procedures that are in place. There is little effort to make sure that employees are constantly bettering themselves and learning about their positions. As far as technology goes City of Kyle's technology infrastructure is outdated at best.	Completely satisfied with the leadership of the Chief of Police.
I wish I had an office.	I have been blessed to have a supervisor who encourages and allows me to to participate in available training opportunities that are within budget and provide benefit to my department and City as a whole. I understand that not all employees within the City's various departments are allowed such opportunities.	Being overwhelmed with work and not having enough staff to do all that needs to be done is not a challenge it is a hardship. I would love to give more attention to certain areas of my job which need work and larger projects that would help streamline work productivity. An over worked staff does not equal a productive staff. I have 40 hours a week and I am trying to fit 60 hours of work in.  I was not satisfied with how the pay for those who were under paid was calculated. Its not ok to take an average when you have people who are making almost \$2 more an hour than others it skews the numbers.	I believe we have gotten better as a City to communicate with each other, but there is still room for improvement. I think HR needs to improve more on the way they handle things. Unfortunately, I cannot give an example without you figuring out who I am.	I believe there are so many technological tools available that would benefit better customer service and better quality of work for the employee, but we are unable to use because it would cost the customer too much to use (convenience fee) or the budget has to be at minimal due to mismanagement of funds in the past.	I often hear citizens complain about our streets. I explain how they need to go to the City Council meetings to stress their concerns. Also explain that the City has a very small Street department and are in need of equipment in order to repair or redo the streets. Our department head is doing a fine job. His/her concern for his/her employee(s) shows every day. I believe he/she doesn't expect anything less from us than he/she can deliver.
No money to buy needed equipment	I have never had any training since I've been at the City of Kyle. There is very little training related to my position and all other training is just basic customer service or has to do with ethics.	Directors need to be able to have the ability to move up employees without asking council every year in the budget process. It pins employees against each other and makes it personal rather than keeping it a professional process.	I work in the City Hall building and I rarely see everyone that works in the building. Sometimes I don't even know who comes to work because the parking lot is empty when I get here. I feel that workers that are on salary should have to clock in as well because some people abuse the salary system.	I think would be value in subordinates getting to evaluate their supervisor's to be forwarded to the next rank up. There may be fluff and non productive complaints but some of the feedback may turn out valuable to the higher ranking supervisor.	Management does not seem to be receptive to employees and their needs.
Recently we received new equipment to replace outdated equipment we were using but many other things still need updating and I would hardly consider anything to	My supervisor is extremely busy and hasn't had much time to provide us with more training yet. He does talk about it and hopes to get to it. I know my supervisor appreciates my work because I hear him tell others, but rarely says it to me. And I don't really know what my real job duties are as things have changed and nothing has been communicated to me of the added responsibilities that I have taken on because I know they need to be done.	I believe that my contribution are recognized by my immediate supervisor however, may not be by upper management.  One of the challenging duties of this job or any of the jobs is knowing how to handle the politics throughout the City.	Improvement can still be made for departments learning more about what other departments actually do. Maybe an internal brochure type document could help our employees with this.	If the City was committed to technology it would have a better equipped staff. The staff is dedicated but over worked. May of my issues are related to IT and they can not be fixed because TIME doesn't allow making my job and the job of other increasingly difficult.	Our Department brought a wealth of knowledge and experience to a department that was way behind times. In the short period of time that he has been here he has moved the department forward, bridged gaps between our department and other agencies as well as brought back the trust from the citizens of Kyle.

COMMENTS-(A) WORKING CONDITIONS	COMMENTS-(B) TRAINING & SUPERVISION	COMMENTS-( C ) JOB PERCEPTION	COMMENTS-(D) EMPLOYEE/STAFF COMMUNICATIONS	COMMENTS-(E) ORGANIZATION QUALITY	COMMENTS-(F) CITY SERVICES
<p>Sunray's do not allow for audio. Have to borrow equipment or bring in personal owned equipment to view webinars for training, research, etc.</p> <p>Software needs updating. Currently using office 2003....there have been several updates to this software since 2003 that will allow more proficiency in job task</p>	<p>Not enough training offered and the budget for training is extremely limited.</p>	<p>I feel like we should follow what the majority of cities in Texas by vesting in 5 years instead of 10. I think the 10 year vest discourages people from sticking around. It to me makes us feel devalued as an employee. Like its all about the money.</p> <p>Since we haven't had any significant raise in more than 5 years, I feel like we should at least be able to earn time, sick leave/vacation, as PD does. They have so many more perks than we do. They earn step increases every year. I realize they are a valuable asset to the community and they put their jobs are more dangerous, however, I think it still makes the rest of us city employees feel devalued to know that we don't even come close to getting anything they do.</p> <p>I understand that the city has been in a down cycle as it relates to budget, however, your employees are what makes the city run smoothly. We have been given no solid raise in more than 5 years. While the little we have gotten is appreciated, it really doesn't make much a difference to most of the people that work here. Especially those that are on the lower pay</p>	<p>There is a lack of communication with most of the departments. We don't work effectively as a TEAM.</p> <p>It's really discouraging when certain department heads are never here and then they complain about all the work they do and don't get compensated.</p> <p>The employee's are told the City has no money and there will be no raises then come to find out the department head who is never here gets an increase in pay (past budget not current).</p>	<p>We focus heavily on customer service but do not give the same focus to our employees who are also customers and internal customers.</p>	<p>The information I have for the other departments is sufficient for me and for the actual time I have to address other department's issues.</p> <p>Let me clarify, the leadership is there in both the City Manager and my department head, but the effectiveness should be consistent for all departments not one over the other, especially when a department is struggling and has been for too long.</p>
<p>The KPD building has asbestos and we where directed we couldn't even put nails in the wall to hang up pictures, but the south bathroom flooring was drilled into and smelled up the whole building. I do NOT appreciate having to breath this stuff in and the lack of concern is disrespectful and insulting.</p> <p>The walls in the building are solid full of crickets and its also probably not healthy to breath in the ammonia that dead crickets create.</p> <p>The smell of cat urine that has continued to stink up the police briefing room since our move into this building is very embarrassing when we have outsiders visit or train in our building!</p>	<p>Room for improvement on my Supervisor knowing what tasks his subordinates do and how to do/explain our tasks.</p>	<p>It is a pleasure to come to work. I work with a group of wonderful, loving and caring people. I am proud to be a City Employee. I think we have a great benefit package. There is a few things I would like to see. If the city could show their appreciation by giving its employee's their Birthday off with pay and it not have to be one of their vacation days. I would also like to see the Christmas party come back. The Christmas party was a highlight to my year. It is the only time you have the City Council and Employees together and getting to know each other. Don't get me wrong, I appreciate the extra day off at Christmas, but just miss the get together.</p>	<p>When changes need to occur that are beyond my position's control, i am not informed nor am I kept up to date about those or any changes that are being considered. If my contributions were appreciated i would be better informed; advised of any upcoming changes in my department and my experience and knowledge of the department would be taken into consideration for the outcome of those possible changes.</p> <p>If you stay on top of HR with the employee concerns then they will get addressed, but you have to consistently stay on top of the matter.</p>	<p>The question regarding City Manager is a hard one to answer. I believe he has some really great qualities however, is lacking in some.</p> <ul style="list-style-type: none"> <li>* He doesn't fully support staff.</li> <li>* Needs to improve on listening skills.</li> <li>* I believe his judgement is clouded at times by a couple of known citizen's.</li> <li>* The employee's need a CM to go to bat for them. Example: Reclassification's</li> </ul> <p>So, the good qualities are:</p> <ul style="list-style-type: none"> <li>* Changing the hours of operation. (REALLY boosted moral)</li> <li>* Believes in great customer service.</li> <li>* Is at work on time.</li> <li>* Attempts to be personable.</li> </ul> <p>(I'm sure there are many more good qualities)</p>	

COMMENTS-(A) WORKING CONDITIONS	COMMENTS-(B) TRAINING & SUPERVISION	COMMENTS-( C ) JOB PERCEPTION	COMMENTS-(D) EMPLOYEE/STAFF COMMUNICATIONS	COMMENTS-(E) ORGANIZATION QUALITY	COMMENTS-(F) CITY SERVICES
<p>The Police building is cold. The heater doesn't warm up the building properly. We cant have space heaters so we sit in the cold!</p>	<p>The one main thing that I wish I had training on was payroll. It seems as you make mistakes then it is brought to my attention on how it should have been done. All in all hands on has taught me how to do my part of the payroll for our department.</p>	<p>Let me clarify: I love my job, but I am not satisfied that council did not take into consideration that when they approved the hiring of more staff in one department that the work load the increased staff would create, would increase significantly for the companion department who has been understaffed for too many years, but are still expected to carry the load as if we were fully staffed and service with a smile.</p> <p>We are supposed to be happy that we have a job; I fully agree, but I would like to be paid my worth in my position with the City.</p>			<p>The reason I am not comfortable providing information to citizens is because I do not know much about what services other departments provide. This is related to a previous question on this survey regarding communication between departments which I feel is poor.</p>
<p>Tight working spaces. Need more storage area.</p>		<p>Pay scale is low for the same job in another city or in the private sector. We need less criticism and more appreciation shown to employees.</p>			
<p>We are currently working in the old Wells Fargo bank. There is Asbestos in the walls of the building which in time will cause illnesses. We have been told that the building is a temporary police station, yet there is no talk nor money for us to move anytime soon. Office space was limited when we were given the building and cubicles were a quick fix for the problem yet we have no way to secure the office space where documents and other items other than a small lock on a desk drawer.</p> <p>For a police station we are also working short staffed for a city of 30 thousand. Cities with a population of half of Kyle work with double the staff as the city provides us. With that said any one call could take the entire patrol division out of service on that call which leaves the city with out a police officer when a citizen has an emergency. This will be a problem until something major happens to someone of higher importance and or a law suit is filed against the city for something that could have been prevented with the right amount of staffing.</p>		<p>The City does not have a satisfactory pay plan in my honest opinion. Several salary survey's have been completed which highlight the fact that numerous positions are severely underpaid (not just management/department head positions). In order to be more competitive and retain valuable employee knowledge this should SERIOUSLY be looked at and ACTION taken to correct. I believe that an third party should be enlisted to complete a comprehensive compensation evaluation.</p>		<p>Opportunities for improvements for select only not available to all.</p>	<p>City Manager not supportive of all Directors</p>

COMMENTS-(A) WORKING CONDITIONS	COMMENTS-(B) TRAINING & SUPERVISION	COMMENTS-( C ) JOB PERCEPTION	COMMENTS-(D) EMPLOYEE/STAFF COMMUNICATIONS	COMMENTS-(E) ORGANIZATION QUALITY	COMMENTS-(F) CITY SERVICES
<p>We desperately need updated systems to do our job. Would love to see more money invested in technology and have a progressive, forward thinking and efficient team.</p>		<p>There are certain aspects of my job that I do not like but I am satisfied with many things. Some things that I dislike is my pay I feel we get paid decent but not enough. I very much dislike our retirement plan taking so long to be vested. I could almost go get a different job at a traditional company wait 3-5 years to be vested and it would still take less time than if I stayed with City of Kyle. I think it's a big reason so many people leave even though the 10 years is probably meant to keep people working towards that goal. I currently do not feel challenged by my current job and would love to move up to a job with more responsibilities within the City of Kyle but there is little to no room for upward movement.</p>			
<p>We need much more storage space at the main City Hall.</p>	<p>"I've been asking to get my water class C for a couple of years now as I fee this will benefit both the City &amp; myself"</p>	<p>"is good"</p>	<p>"very good"</p>	<p>"very good"</p>	<p>"very good"</p>
<p>"The Cheapest Substitute of equipment is purchased. A true embarrassment to be seen by visitors"</p>	<p>"very good"</p>			<p>"Numerous IT needs/projects go neglected @ the Police Department for months. Robert is either not available-or just behind on projects. He gets pulled from P.D. to work on Projecgs @ City Hall or Library or Old City Hall. The Police Department needs Robert to dedicate 100% of his time to police Department projects/needs."</p>	

COMMENTS-(A) WORKING CONDITIONS	COMMENTS-(B) TRAINING & SUPERVISION	COMMENTS-( C ) JOB PERCEPTION	COMMENTS-(D) EMPLOYEE/STAFF COMMUNICATIONS	COMMENTS-(E) ORGANIZATION QUALITY	COMMENTS-(F) CITY SERVICES
<p>"Inadequite workspace @ Police Deptment (possible health rists) due to construction-demolition, left incomplete with busted concrete and exposed plumbing/sewer lines. Police fleet is in bad shape. There are not enough vehicles for all personnel. Majority of current fleet is in poor condition most have high miles-always breaking down."</p>				<p>"Each truck should have a computer/database access to locate sewer/water lines"</p>	
<p>"The service3 camera is not adaquate. We needa a Inline camera. We also need a vaccum truck"</p>					



EMPLOYEE SATISFACTION SURVEY RESULTS [2013] CONDUCTED IN 2014	
TOTAL # OF ACTIVE EMPLOYEES	154
# OF EMPLOYEES PARTICIPATING	65
<b>PERCENTAGE OF EE PARTICIPATION</b>	<b>42%</b>

EMPLOYEE SATISFACTION SURVEY RESULTS [2012] CONDUCTED IN 2013	
TOTAL # OF ACTIVE EMPLOYEES	149
# OF EMPLOYEES PARTICIPATING	80
<b>PERCENTAGE OF EE PARTICIPATION</b>	<b>54%</b>

WORKING CONDITIONS	My equipment is safe.				
	UNKNOWN	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE
2013	3.1%	0.0%	1.6%	75.0%	20.3%
2012	1.3%	5.0%	6.3%	70.0%	17.5%
<small>Attachment number 3 \nPage 1 of 7</small>					
WORKING CONDITIONS	My equipment is of good quality.				
	2013	1.5%	1.5%	16.9%	69.2%
2012	0.0%	6.3%	20.0%	65.0%	8.8%
WORKING CONDITIONS	I have adequate equipment to do my job effectively.				
	2013	0.0%	6.2%	29.2%	55.4%
2012	0.0%	8.8%	22.5%	57.5%	10.0%
WORKING CONDITIONS	My job site is safe.				
	2013	0.0%	1.5%	6.2%	75.4%
2012	1.3%	5.0%	5.0%	76.3%	12.5%
WORKING CONDITIONS	My work area is clean and attractive.				
	2013	0.0%	1.6%	12.5%	71.9%
2012	0.0%	7.5%	13.8%	65.0%	12.5%



EMPLOYEE SATISFACTION SURVEY RESULTS [2013] CONDUCTED IN 2014	
TOTAL # OF ACTIVE EMPLOYEES	154
# OF EMPLOYEES PARTICIPATING	65
<b>PERCENTAGE OF EE PARTICIPATION</b>	<b>42%</b>

EMPLOYEE SATISFACTION SURVEY RESULTS [2012] CONDUCTED IN 2013	
TOTAL # OF ACTIVE EMPLOYEES	149
# OF EMPLOYEES PARTICIPATING	80
<b>PERCENTAGE OF EE PARTICIPATION</b>	<b>54%</b>

**TRAINING & SUPERVISION**

My supervisor values my ideas and opinions.					
	UNKNOWN	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE
2013	9.2%	7.7%	9.2%	47.7%	26.2%
2012	1.3%	7.5%	6.3%	65.0%	20.0%
My supervisor is able to give and receive feedback.					
2013	3.1%	6.3%	9.4%	54.7%	26.6%
2012	2.5%	7.5%	10.0%	58.8%	21.3%
<small>Attachment number 3 \nPage 2 of 7</small>					
My supervisor expresses appreciation for a job well done.					
2013	6.2%	4.6%	15.4%	47.7%	26.2%
2012	2.5%	10.0%	12.5%	50.0%	25.0%
My supervisor communicates my effectiveness of my job.					
2013	7.7%	1.5%	16.9%	49.2%	24.6%
2012	3.8%	8.8%	17.5%	46.3%	23.8%
My supervisor can explain city policy and procedures.					
2013	3.1%	4.6%	10.8%	53.8%	27.7%
2012	3.8%	6.3%	5.0%	60.0%	25.0%
My supervisor is knowledgeable about my job.					
2013	4.6%	3.1%	13.8%	58.5%	20.0%
2012	0.0%	3.8%	11.3%	58.8%	26.3%
I understand my job responsibilities.					
2013	0.0%	1.5%	1.5%	50.8%	46.2%
2012	0.0%	0.0%	0.0%	60.0%	40.0%
Overall my supervision is satisfactory.					
2013	4.6%	4.6%	7.7%	56.9%	26.2%
2012	1.3%	3.8%	11.3%	60.0%	23.8%
I've been provided training opportunities.					
2013	1.5%	6.2%	10.8%	60.0%	21.5%
2012	1.3%	5.0%	13.8%	56.3%	23.8%
Overall my job training is satisfactory.					
2013	3.1%	3.1%	10.8%	63.1%	20.0%
2012	2.5%	7.5%	15.0%	57.5%	17.5%



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**JOB PERCEPTION**

**I am satisfied with my job.**

	UNKNOWN	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE
2013	0.00%	3.08%	9.23%	66.15%	21.54%
2012	0.0%	1.3%	8.8%	61.3%	27.5%

**I have pride in my job.**

2013	0.00%	9.23%	1.54%	44.62%	44.62%
2012	0.0%	0.0%	1.3%	40.0%	57.5%

**My contribution is appreciated.**

2013	6.15%	3.08%	16.92%	56.92%	16.92%
2012	3.8%	6.3%	17.5%	47.5%	22.5%

**I am "challenged" in my present job.**

2013	3.08%	6.15%	13.85%	60.00%	16.92%
2012	0.0%	2.5%	15.0%	50.0%	31.3%

**Overall, the City has a satisfactory pay plan.**

2013	4.62%	10.77%	30.77%	49.23%	4.62%
2012	1.3%	15.0%	32.5%	41.3%	8.8%

**The retirement plan is satisfactory.**

2013	7.69%	4.62%	7.69%	73.85%	6.15%
2012	8.8%	2.5%	15.0%	60.0%	12.5%

**More education in retirement would be helpful.**

2013	13.85%	0.00%	13.85%	53.85%	18.46%
2012	8.8%	1.3%	13.8%	52.5%	22.5%

**The health insurance plan is satisfactory.**

2013	6.25%	1.56%	15.63%	67.19%	9.38%
2012	6.3%	13.8%	25.0%	51.3%	2.5%

**Overall the personal/major medical, and annual/sick leave are satisfactory.**

2013	4.69%	1.56%	14.06%	70.31%	9.38%
2012	0.0%	8.8%	17.5%	62.5%	10.0%





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**My department is willing to ask for my ideas.**

	UNKNOWN	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE
2013	3.1%	3.1%	15.4%	56.9%	21.5%
2012	1.3%	1.3%	10.0%	72.5%	13.8%

**My department communicates changes/plans to me.**

2013	0.0%	9.4%	15.6%	59.4%	15.6%
2012	3.8%	5.0%	17.5%	58.8%	13.8%

**My department communicates knowledge/information.**

2013	3.1%	4.7%	17.2%	59.4%	15.6%
2012	1.3%	7.5%	17.5%	62.5%	10.0%

**Communication between my department and me is satisfactory.**

2013	1.6%	3.1%	17.2%	60.9%	17.2%
2012	2.5%	6.3%	15.0%	63.8%	11.3%

**Communication between my department head/supervisor is satisfactory.**

2013	3.1%	6.3%	15.6%	53.1%	21.9%
2012	3.8%	3.8%	12.5%	58.8%	20.0%

**EMPLOYEE/STAFF COMMUNICATIONS**



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**My department is able to communicate and work as a team.**

	UNKNOWN	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE
<b>2013</b>	1.6%	0.0%	17.2%	60.9%	20.3%
<b>2012</b>	3.8%	2.5%	21.3%	56.3%	15.0%

Attachment number 3 \nPage 5 of 7

**My department is able to communicate effectively as a team.**

<b>2013</b>	1.6%	3.1%	18.8%	59.4%	17.2%
<b>2012</b>	2.5%	3.8%	22.5%	52.5%	16.3%

**There is communication between all City departments.**

<b>2013</b>	9.4%	20.3%	32.8%	34.4%	3.1%
<b>2012</b>	8.8%	18.8%	32.5%	35.0%	2.5%

**The Human Resources department addresses employee concerns.**

<b>2013</b>	9.4%	7.8%	18.8%	56.3%	7.8%
<b>2012</b>	16.3%	13.8%	16.3%	46.3%	5.0%

**EMPLOYEE/STAFF COMMUNICATIONS**



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<b>PERCENTAGE OF EE PARTICIPATION</b>	<b>54%</b>

**I am encouraged by management to suggest changes or improvements.**

	UNKNOWN	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE
2013	6.3%	7.8%	14.1%	60.9%	10.9%
2012	3.8%	7.5%	20.0%	60.0%	7.5%

**There is an effort to increase employee knowledge/skills.**

2013	3.1%	4.7%	17.2%	60.9%	14.1%
2012	5.0%	6.3%	17.5%	60.0%	8.8%

**I am satisfied with the Online Performance Appraisal System as a tool for Evaluating my Work Performance.**

2013	6.3%	7.8%	23.4%	50.0%	12.5%
2012	13.8%	12.5%	23.8%	43.8%	5.0%

**The performance goals and objectives have a positive effect on my habits/performance.**

2013	9.4%	7.8%	20.3%	51.6%	10.9%
2012	7.5%	13.8%	21.3%	48.8%	7.5%

**I am familiar with the City's Personnel Policy.**

2013	1.6%	3.1%	10.9%	73.4%	10.9%
2012	3.8%	1.3%	2.5%	65.0%	26.3%

**I understand the commitment to outstanding customer service.**

2013	0.0%	1.6%	1.6%	57.1%	39.7%
2012	0.0%	0.0%	0.0%	63.8%	35.0%

**I feel the City's commitment to technology is satisfactory.**

2013	3.2%	12.7%	28.6%	49.2%	6.3%
2012	8.8%	20.0%	16.3%	50.0%	3.8%

ORGANIZATION QUALITY



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TOTAL # OF ACTIVE EMPLOYEES	149
# OF EMPLOYEES PARTICIPATING	80
<b>PERCENTAGE OF EE PARTICIPATION</b>	<b>54%</b>

**I am comfortable providing information to citizens on City services.**

	UNKNOWN	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE
2013	1.6%	3.1%	15.6%	51.6%	28.1%
2012	2.5%	2.5%	13.8%	63.8%	17.5%

Attachment number 3 \nPage 7 of 7

**I am approached frequently regarding information on City issues.**

2013	3.1%	1.6%	35.9%	46.9%	12.5%
2012	1.3%	10.0%	33.8%	45.0%	10.0%

**I would like more information regarding other depts., city services, citizens.**

2013	3.1%	0.0%	21.9%	64.1%	10.9%
2012	6.3%	3.8%	20.0%	51.3%	18.8%

**Citizens perceive quality of service satisfactory.**

2013	7.8%	3.1%	10.9%	67.2%	10.9%
2012	17.5%	1.3%	11.3%	61.3%	8.8%

**Leadership of City Manager is effective.**

2013	10.9%	10.9%	23.4%	48.4%	6.3%
2012	10.0%	13.8%	18.8%	47.5%	10.0%

**Leadership of my department head is effective.**

2013	6.3%	4.7%	4.7%	54.7%	29.7%
2012	3.8%	6.3%	12.5%	50.0%	26.3%

CITY SERVICES

## Section 6 Truck Routes

### Introduction

Occasionally TxDOT is requested to assist local authorities in establishing alternate highway routes for trucks going through their city. The guidelines contained in this section were developed to facilitate the review of each request and to assure uniformity in the treatment of alternate routes throughout the state.

### Authority

TxDOT has no legal authority to prohibit the use of any highway by any class of vehicle. In other words, TxDOT cannot discriminate between types of vehicles, as long as they are within the weight and size limits established by law.

Local authorities may adopt traffic regulations controlling the movement of trucks on public roads within their jurisdiction, consistent with state law. By passage and enforcement of a city ordinance, a city may reroute trucks from a certain highway route within their corporate limits to an alternate highway route.

### Proposals

Cities should submit all proposals for re-routing on the state highway system in writing to the TxDOT district office for review and comment.

### Route Guidelines

If an alternate route affects another city, the city should obtain written consent from the affected city.

Weight and size carrying capability of the alternate route should be reasonably comparable.

An alternate route should not be confusing to follow and should be selected so as not to jeopardize public safety.

The city assumes all responsibility for the route, including enforcement and any other legal matters.

Any route involving the Interstate System should be approved by the Federal Highway Administration (FHWA). The Traffic Operations Division (TRF) coordinates the necessary approval with the FHWA.

## Signing Guidelines

The TRUCK ROUTE (R14-1) sign applies to truck routes. The *TMUTCD* explains the use of this sign.

Proposed truck route signing should be adequate and in compliance with current signing practice. All signs required must conform to current standards as set out in the *TMUTCD* with regard to shape, size, color, letter size and style, mounting, location, etc.

The city must submit to the district office a suitable sign design detail drawn to scale showing the proposed sign shape, color, size, text and locations.

TxDOT installs all signs on expressways and freeways. Depending on the provisions of the municipal maintenance agreement, a city may be allowed to install signs on a conventional highway within its corporate limits. TxDOT installs signs on highways outside the corporate limits of a city as necessary to achieve a continuous connecting route.

The city bears all costs for signs and sign installations.

The TRUCK (M4-4) panel sign is not used in conjunction with an interstate route marker. Designation of truck U.S. highway routes must be approved by AASHTO. The M4-4 sign should only be used on AASHTO designated truck routes.

## Map for Motor Carrier Division

After the city passes the ordinance establishing the truck route, the district should provide a map which clearly defines the route to TRF. TRF then forwards a copy of the map to the Motor Carrier Division (MCD).

**Process Summary**

The process of establishing a truck route is as follows:

1. City submits proposal for truck route to TxDOT district.
2. District reviews proposal and forwards it to TRF for approval.
3. TRF approves (or disapproves) proposal (obtaining FHWA approval if necessary) and notifies district.
4. District notifies city of approval.
5. City passes ordinance establishing truck route.
6. District or city installs signs.
7. District provides TRF with map clearly defining the route.
8. TRF forwards map to Motor Carrier Division (MCD).

**Restricted Truck Lanes**

For information on restricted truck lanes, see Section 8 of this chapter.

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

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**Fwd: G200 Public Officials Wksp**

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Lanny Lambert &lt;l.lambert@cityofkyle.com&gt;

Mon, Jan 27, 2014 at 3:47 PM

To: GRACE NINO &lt;gracenino@cityofkyle.com&gt;, Amelia Sanchez &lt;asanchez@cityofkyle.com&gt;

grace, include this in the Friday letter, thanks, lan..... Amelia, want to prepare a cover letter for this item? lanny

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

From: **Amelia Sanchez** <asanchez@cityofkyle.com>

Date: Mon, Jan 27, 2014 at 2:38 PM

Subject: Re: G200 Public Officials Wksp

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

Cc: JAMES EARP <jrearp@cityofkyle.com>

I spoke to Kharley Smith to ask about this and she said that they sent this notice to all Emergency Management Coordinators to inform them of this training. She said this **training is scheduled when needed and requested by the Coordinators through the District Coordinator for their county**. She said they were scheduling because there were 3 Hays County Officials that needed it and wanted to see if anyone else needed to attend.

Amelia Sanchez  
City Secretary

City of Kyle  
P O Box 40  
Kyle, TX 78640  
(512)262-3927 Fax:(512)262-3987  
asanchez@cityofkyle.com

On Mon, Jan 27, 2014 at 12:36 PM, Lanny Lambert <l.lambert@cityofkyle.com> wrote:

he says you should notify new council members that they have to take it as part of their orientation? lan

On Mon, Jan 27, 2014 at 11:34 AM, Amelia Sanchez <asanchez@cityofkyle.com> wrote:

I have never heard of this training nor gotten any info on it before but if it is emergency management training wouldn't that be James?

Amelia Sanchez  
City Secretary

City of Kyle  
P O Box 40  
Kyle, TX 78640  
(512)262-3927 Fax:(512)262-3987  
asanchez@cityofkyle.com

On Fri, Jan 24, 2014 at 7:57 AM, Lanny Lambert <l.lambert@cityofkyle.com> wrote:  
Amelia?

Item # 24

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

From: **James R. Earp, CPM** <jrearp@cityofkyle.com>  
Date: Thu, Jan 23, 2014 at 5:11 PM  
Subject: Re: G200 Public Officials Wksp  
To: Lanny Lambert <l.lambert@cityofkyle.com>

I'm not sure who, if any have. Kharley's explanation that it is required in the first 180 days is the first I've heard of that requirement. Amelia may have made sure they took it as a part of the other required classes after taking office. It'd be worth asking.

On Thursday, January 23, 2014, James R. Earp, CPM <jrearp@cityofkyle.com> wrote:  
Any council members that haven't.

On Thursday, January 23, 2014, Lanny Lambert <l.lambert@cityofkyle.com> wrote:  
who needs to take this for us? lanny

On Thu, Jan 23, 2014 at 10:27 AM, James R. Earp, CPM <jrearp@cityofkyle.com> wrote:

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

From: **Kharley Smith** <kharley.smith@co.hays.tx.us>  
Date: Wednesday, January 22, 2014  
Subject: G200 Public Officials Wksp  
To: Don Ferguson <dferguson@cityofwimberley.com>, John Sone <manager@cityofwoodcreek.com>, "Bell, Kenneth" <KBell@sanmarcostx.gov>, James Earp <jrearp@cityofkyle.com>, Mike Beggs <MBeggs@ci.buda.tx.us>, "Allen, Kay (kallen@cityofdrippingsprings.com)" <kallen@cityofdrippingsprings.com>

EMCs,

There is a need to hold a G200 - Texas Public Officials Workshop locally. Do any of you have elected or appointed officials that have not completed this course? Reminder that it is a requirement within the first 180 days in office. Please let me know if you have anyone within your jurisdiction that needs to attend so we can start to organize.

Course Description  
G-200 - Texas Public Officials Workshop

This 3-hour course is designed to introduce county judges and commissioners, mayors and city council members, and other elected and appointed officials to emergency management in Texas. This course addresses the legal authorities for emergency management in Texas, the local, state, and federal organization for emergency management, the local emergency management functions, the local responsibilities during the four phases of emergency management - mitigation, preparedness, response, and recovery, and the emergency management program activities, such as planning, training, and exercising.

How this course is offered:

Request for this course will need to go through the District Coordinator (DC) for your county.

Prerequisites & Other Information:

IS 100.B

Item # 24

Kharley Smith

Hays County  
Emergency Management Coordinator  
2171 Yarrington Rd  
San Marcos, TX 78666  
[512-393-5536](tel:512-393-5536) (ofc)  
[512-618-0247](tel:512-618-0247) (cell)

--

James R. Earp, CPM  
Assistant City Manager  
City of Kyle, TX  
(o) [512.262.3924](tel:512.262.3924)  
(f) [512.262.3987](tel:512.262.3987)

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James R. Earp, CPM  
Assistant City Manager  
City of Kyle, TX  
(o) [512.262.3924](tel:512.262.3924)  
(f) [512.262.3987](tel:512.262.3987)

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James R. Earp, CPM  
Assistant City Manager  
City of Kyle, TX  
(o) [512.262.3924](tel:512.262.3924)  
(f) [512.262.3987](tel:512.262.3987)



# CITY OF KYLE, TEXAS

## Racial Profiling Report

Meeting Date: 3/18/2014  
Date time: 7:00 PM

**Subject/Recommendation:** Presentation of the Police Department's Annual Racial Profiling Report for 2013 ~ *Jeff Barnett, Chief of Police*

**Other Information:**

**Budget Information:**

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

**Attachments / click to download**

- [KPD Captain's Complaint Review Memo Year 2013](#)
  - [KPD Racial Profiling and Bias Reduction policy PDF 2014](#)
  - [KPD Racial Profiling Memo 2013 Final](#)
  - [KPD Racial Profiling Report TCOLE 2013](#)
- 

Cover Memo

Item # 25



# KYLE POLICE DEPARTMENT

## Memorandum

To: Lanny Lambert, City Manager

Cc: James Earp, Assistant City Manager

Amelia Sanchez, City Secretary

Grace Nino, Executive Assistant

From: Jeff Barnett, Chief of Police

Date: February 27, 2014

Re: 2013 Annual Racial Profiling Report

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The Kyle Police Department is submitting the 2013 Racial Profiling Report as required by the Texas Code of Criminal Procedure. This report is required to be submitted to the governing body on or before March 1st of each year. Please find the following documents for your review and presentation to the City Council:

- Kyle Police Department Racial Profiling Policy Chapter 2.2;
- Kyle Police Department Annual Report – 2013 Data
- Memorandum from Captain Hernandez

As you may recall, the State of Texas enacted a law requiring certain actions on behalf of the local agency and the individual law enforcement officers when conducting traffic or pedestrian stops. The Kyle Police Department has a policy that prohibits officers from engaging in racial profiling as defined by state law, and our officers are directed to capture certain types of data pertaining to traffic and pedestrian detentions that result in a citation or arrest. The Kyle Police Department is assigned to the Tier 1 – Partial Exemption reporting category because our police vehicles that routinely engage in traffic and pedestrian stops are outfitted with audio and video equipment. These videos are retained for a period of not less than 90 days, and they are reviewed throughout the year by supervisory staff as required by the statute.

The Kyle Police Department does have a publicly promoted process by which an individual may file a complaint if the individual believes that a Kyle Police Officer has engaged in racial profiling. Furthermore, the Kyle Police Department only received one unfounded complaint of racial profiling during this reporting period.

# KYLE POLICE DEPARTMENT

## Memorandum

In reviewing the data, the Kyle Police Department conducted a total of 7,491 motor vehicle stops. The following table represents the percentage of individuals stopped by race/ethnicity:

<b>Race/Ethnicity</b>	<b>Percent of Total Stops</b>
African	5.89
Asian	1.01
Caucasian	54.30
Hispanic	37.94
Middle Eastern	0.63
Native American	0.23

Of the 7,491 motor vehicle stops, 80 vehicle searches were conducted. Of those 80 searches, 21 of them were consensual while 59 of them were based upon probable cause or incident to arrest. Of the same 7,491 traffic stops, only in 183 of the instances was the race/ethnicity of the vehicle operator known to the police officer prior to the vehicle stop.

This report has been filed with the Texas Commission on Law Enforcement as required. It is my understanding that this report will be provided to the City Council prior to the March 1st deadline, and I am prepared to make any presentations as directed by you in the future.

Please let me know if you would like any further information concerning this report. Thank you very much.

## TIER 1 - PARTIAL EXEMPTION RACIAL PROFILING REPORT

**Agency Name:** KYLE POLICE DEPT.  
**Reporting Date:** 02/27/2014  
**TCOLE Agency Number:** 209202  
**Chief Administrator:** JEFFREY B. BARNETT  
**Agency Contact Information:** Phone: 512-268-0859  
 Email: [kylepd@cityofkyle.com](mailto:kylepd@cityofkyle.com)  
 Mailing Address:  
 KYLE POLICE DEPT.  
 P.O. Box 40  
 Kyle, TX 78640

This Agency claims partial racial profiling report exemption because:

Our vehicles that conduct motor vehicle stops are equipped with video and audio equipment and we maintain videos for 90 days.

Certification to This Report 2.132 (Tier 1) – Partial Exemption

Article 2.132(b) CCP Law Enforcement Policy on Racial Profiling

KYLE POLICE DEPT. has adopted a detailed written policy on racial profiling. Our policy:

- (1) clearly defines acts constituting racial profiling;
- (2) strictly prohibits peace officers employed by the KYLE POLICE DEPT. from engaging in racial profiling;
- (3) implements a process by which an individual may file a complaint with the KYLE POLICE DEPT. if the individual believes that a peace officer employed by the KYLE POLICE DEPT. has engaged in racial profiling with respect to the individual;
- (4) provides public education relating to the agency's complaint process;
- (5) requires appropriate corrective action to be taken against a peace officer employed by the KYLE POLICE DEPT. who, after an investigation, is shown to have engaged in racial profiling in violation of the KYLE POLICE DEPT.'s policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
  - (A) the race or ethnicity of the individual detained;
  - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and



(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) The Commission on Law Enforcement; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

**I certify these policies are in effect.**

Executed by: **JEFFREY B. BARNETT**

Chief Administrator

KYLE POLICE DEPT.

Date: 02/27/2014

**KYLE POLICE DEPT. Motor Vehicle Racial Profiling Information****Number of motor vehicle stops:**

1. 7326 citation only
2. 125 arrest only
3. 40 both
4. 7491 Total (4, 11, 14 and 17 must be equal)

**Race or Ethnicity:**

5. 441 African
6. 76 Asian
7. 4068 Caucasian
8. 2842 Hispanic
9. 47 Middle Eastern
10. 17 Native American
11. 7491 Total (lines 4, 11, 14 and 17 must be equal)

**Race or Ethnicity known prior to stop?**


12. 183 Yes
13. 7308 No
14. 7491 Total (lines 4, 11, 14 and 17 must be equal)

**Search conducted?**

15. 80 Yes
16. 7411 No
17. 7491 Total (lines 4, 11, 14 and 17 must be equal)

**Was search consented?**

18. 21 Yes
19. 59 No
20. 80 Total (must equal line 15)

<p style="text-align: center;">GENERAL ORDER</p>  <p style="text-align: center;">Kyle Police Department</p>	Effective: 01-06-14	<b>Chapter 2.2</b>
	Section: Professional Standards and Conduct	Subject: <b>Racial Profiling and Bias Reduction</b>
	Approved: <i>Jeff Barnett</i> Chief of Police	

## I. POLICY

Members of the Kyle Police Department are responsible to police and protect the community in a proactive manner, to diligently investigate suspected violations of law, suspicious persons and circumstances, and enforce local, state, and federal law in a responsible and professional manner without regard to race, ethnicity or national origin. The practice of "Racial Profiling" by any member(s) of the Kyle Police Officers is unacceptable and strictly prohibited in the performance of an officer's duties; including traffic contacts, field contacts, criminal investigations and in asset seizure/forfeiture efforts.

## II. PURPOSE

The purpose of this directive is to affirm the Kyle Police Department's commitment to unbiased policing; to provide guidelines for officers in their enforcement of local, state and federal laws; to ensure that citizen contacts are performed in a professionally unbiased manner, and to safeguard and protect the rights of officers and citizens alike in the legitimate performance of our law enforcement mission.

## III. DEFINITIONS

- A. **Racial Profiling:** A law enforcement initiated action based upon an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
- B. **Reasonable Suspicion:** Also known as articulable suspicion. Suspicion that is more than a mere hunch and is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his / her training and experience, and/or reliable information received from a credible outside source.
- C. **Race or Ethnicity:** Means heritage of a particular descent, including Caucasian {W}, African {B}, Hispanic {H}, Asian {A}, Native American/Indian {I}, Middle Eastern {ME} descent.
- D. **Pedestrian Stop:** An interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.
- E. **Department:** Shall mean the Kyle Police Department.

## IV. PROCEDURES:

- A. No person shall be detained without reasonable suspicion except where otherwise provided for in the law; i.e. detaining those individuals who present an immediate danger to themselves or to prevent injury.
- B. Officers shall make arrests only on the basis of probable cause that an individual has committed

a specific offense.

- C. Each police vehicle regularly used to make traffic stops will record each traffic stop using audio/video equipment, if so equipped. Failure to record the traffic stop, when vehicle equipped for recording, may lead to disciplinary action.
- D. Race, ethnicity, or national origin *may be* legitimate factors in such a decision when used as part of a description of a suspect or witness for whom a peace officer is searching or detaining, but at no time will it be the sole factor in justifying the stop or detention.
- E. This directive shall not preclude officers from offering assistance, such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be lost, ill or confused. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

Requirements for Traffic Stops:

- A. A peace officer who makes a traffic stop which results in the issuance of a citation or an arrest shall record and report the following information:
  - 1. The race or ethnicity of the individual detained; and
  - 2. Whether the officer conducted a search as a result of the stop, and if so, whether the person detained consented to the search.
  - 3. Whether a search was conducted and, if so, whether the individual detained consented to the search
  - 4. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual.

Compilation and Reporting of Information Collected:

- A. The Department shall compile the information received in the reports collected under Section V. and submit an annual summary report to its City Council no later than March 1 of each year.
- B. This report will not include identifying information about a Kyle Police Officer who makes a stop or an individual who is stopped or arrested by the police officer.

Exemption of Reporting Requirements when Use of Police Video and Audio Equipment:

- A. A Kyle Police Officer is exempt from the reporting requirements under C.C.P. Article 2.133 and the Department is exempt from the compilation, analysis, and reporting requirements under C.C.P. Article 2.134 if:
  - 1. The Kyle Police Department police vehicle regularly used to make traffic and pedestrian stops is equipped with a video camera and the voice activated microphone equipment, and
  - 2. Each traffic and pedestrian stop capable of being recorded is recorded; or
  - 3. The City Council of the City and the Kyle Police Department certifies to the Department of Public Safety that the agency needs funds for equipment and the department does not receive sufficient state funds or equipment, as determined by DPS, to accomplish the purposes of this requirement.

- B. The Department shall retain the video and audio equipment documentation of each traffic or pedestrian stop for at least 90 days after the date of the stop. The video will be properly labeled with the start/end dates of recording and kept in a secured cabinet.
- C. Any police vehicle as defined in Section VII. A. (1.) (2.) that is found to have inoperable video/audio equipment will not be placed into service for normal patrol duty or used for traffic or pedestrian stops until the equipment is repaired or replaced and fully capable of video/audio recording.
- D. If a complaint is filed with the department alleging that a Kyle Police Officer has engaged in racial profiling with respect to a traffic or pedestrian stop, the department shall retain the video and audio recording of the stop until final disposition of the complaint.

**Complaints of Racial Profiling:**

- A. An individual stopped, detained or arrested on the basis of suspected racial profiling or other improper treatment may file a complaint with the Kyle Police Department. No member of the department shall discourage, intimidate, or coerce any individual from filing such a complaint, nor discriminate or retaliate against the person for filing such complaint.
- B. Any officer contacted by a person who wishes to file a complaint regarding racial profiling shall obtain the name and phone number of the person making the complaint, if they will provide it, and forward this information to his / her immediate supervisor.
- C. Police Supervisors shall investigate all complaints of alleged racial profiling. In the event that a complaint of racial profiling is filed by an individual involves an occurrence that was recorded on audio or video, the investigating supervisor shall, upon commencement of the investigation of the complaint and upon written notification by the officer, promptly provide a copy of the recording to the peace officer that is subject of the complaint. All such complaints shall be reviewed within a reasonable period of time and the results of the investigation and review shall be filed with the Chief of Police and the complainant notified of the outcome.
- D. The department shall provide education to the public concerning the racial profiling complaint process through its public information officer or person designated by the Chief of Police.

**Review Process:**

Sworn supervisors and the Patrol Captain shall periodically review randomly selected sampling of video and audio recordings made recently by all peace officers employed by this department.

In addition to reviewing stops and arrests pursuant to the statutory requirements, reviewing supervisors will also assess the individual officer's violator approach, interpersonal skills, officer safety skills, positioning of the patrol vehicle etc. for training purposes, employee coaching or discipline. Any specific incident meriting further consideration for racial profiling review by this process shall be forwarded to the Chief of Police for an Internal Affairs unit review.

By March 1 of each year, an annual administrative review of agency practices, collected data, and citizen complaints of racial profiling will be performed by the Division Head and forwarded to the Chief of Police.

**Corrective Action:**

- A. The prohibition against racial profiling, as stated before, does not preclude the use of race, ethnicity, or national origin as factors in a detention decision; however detaining an individual

and conducting an inquiry into that person's activities simply because of that individual's race, ethnicity or national origin is racial profiling. Examples of racial profiling include but are not limited to the following:

1. Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the cited driver's race, ethnicity, or national origin.
  2. Detaining the driver of a vehicle based on the determination that a person of that particular race, ethnicity or national origin is unlikely to own or possess that specific make or model of vehicle.
  3. Detaining an individual based upon the determination that a person of that particular race, ethnicity or national origin does not belong in a specific part of town or a specific place.
- B. Any Kyle Police Officer who is found, after investigation, to have engaged in racial profiling in violation of this policy shall be subject to corrective action, which may include a counseling, reprimand, diversity/sensitivity training or other appropriate training, paid or unpaid suspension; termination of employment, or other action(s) as deemed appropriate by the Chief of Police.

**Training of Law Enforcement Personnel:**

- A. All officers shall complete a TCLEOSE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.
- B. The Chief of Police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on racial profiling.

Statutory References: Article 2.131-2.137 of the Code of Criminal Procedures.



# KYLE POLICE DEPARTMENT

## Memorandum

Date: February 27, 2014

To: Jeff Barnett  
Chief of Police

From: Pedro F. Hernandez Jr.   
Police Captain

Re: Racial Profiling report

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I have reviewed the complaint log for 2013. In 2013 our department received one complaint in which a citizen alleged that Kyle Officers discriminate against Hispanics.

The complainant does not provide any specific details to support her allegation. She reports that she was issued a citation for speeding and that the officers were laughing and she found that to be disrespectful.

This complaint was closed out as unfounded.

A handwritten signature in blue ink that reads "Pedro F. Hernandez Jr." with a stylized flourish at the end.