

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 2/16/2016, at Kyle City Hall, 100 W. Center St., Kyle, Texas 78640 for the purpose of discussing the following agenda.

Posted this 12th day of February, 2016, prior to 7:00 p.m.

I. Call Meeting To Order

II. Approval of Minutes

1. City Council Regular Meeting - January 19, 2016. ~ *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 are encouraged to sign in before the meeting begins. Speakers may be provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit.

IV. Appointments

2. Consider nomination and take action for appointment to the Planning and Zoning Commission to fill unexpired term. ~ *Howard J. Koontz, Director of Planning and Community Development*
 - Allison Wilson - Seat 4

 [Attachments](#)

V. Consent Agenda

3. A resolution of the City Council of the City of Kyle, Texas authorizing the filing of a grant application to the Office of the Governor, General Juvenile Justice and Delinquency Prevention Program to continue to fund a full-time Juvenile Specialist Officer at Kyle Police Department. ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

4. A resolution of the City Council of the City of Kyle, Texas authorizing the filing of a grant application to the Office of the Governor, General Victim Assistance Direct Services Program;

and authorize applicable matching funds from the Police Department's approved operating budget for FY 2017, to continue to fund the Police Department's full-time Victim's Coordinator position. ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

5. Approve Change Order No. 2 to JKB CONSTRUCTION CO., LLC, Liberty Hill, Texas, to add \$12,085.00 for additional work required on the Union Pacific Railroad wastewater crossing at Moreno Street and to decrease contract award by \$11,600.00 for material reductions, a net increase of \$485.00 to the contract amount for a revised total \$288,098.00. ~ *Leon Barba, P.E., City Engineer*

 [Attachments](#)

6. A Resolution supporting the City's desire to become a certified "Film Friendly Texas" Community through the State of Texas Film Commission; and adoption of the Guidelines for Filming in the City of Kyle ~ *Diana Torres, Director of Economic Development*

 [Attachments](#)

7. Authorize award and execution of a Purchase Order to FREIGHTLINER OF AUSTIN, Austin, Texas in an amount not to exceed \$103,327.00 for the purchase of a new 2016 Freightliner 15-Yard Dump Truck through the Buy Board Purchasing Co-operative for the Public Works Department. ~ *Harper Wilder, Director of Public Works*

 [Attachments](#)

8. Authorize award and execution of a Purchase Order to BLUEBONNET MOTORS, New Braunfels, in an amount not to exceed \$18,665.78 for the installation of a new diesel engine in the 2009 Ford 350 hydraulic truck for the Public Works Department. *Harper Wilder, Director of Public Works*

 [Attachments](#)

9. Authorize award and execution of a Contract and a Purchase Order to PYRO SHOWS OF TEXAS, Fort Worth, Texas, in an amount not to exceed \$20,000.00 for the 2016 July 4th Independence Day Celebration fireworks show. ~ *Kerry Urbanowicz, Director of Parks and Recreation*

 [Attachments](#)

10. Amend the court collections service agreement with LINEBARGER GOGGAN BLAIR & SAMPSON, LLP, to include collection of past due balances for utility services and to extend the term to expire on March 15, 2018. ~ *Perwez A. Moheet, CPA, Director of Finance*

 [Attachments](#)

11. Approve amendment to the lease agreement between the UNION PACIFIC RAILROAD

COMPANY (lessor) and the City of Kyle (lessee) to include additional area for use by City and change lease amount to \$6,970.00 per year. ~ *Perwez A. Moheet, CPA, Director of Finance*

 [Attachments](#)

12. *(Second Reading)* An ordinance amending Chapter 50 “Utilities”, of the Code of Ordinances of the City of Kyle, Texas, by the addition of Article IX, “stormwater regulations; providing findings and definitions; providing for the regulation non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by both the United States Environmental Protection Agency and the Texas Commission on Environmental Quality; providing for penalties; repealing all ordinances or parts of ordinances in conflict herewith; providing a savings clause; providing for the inclusion in the Code of Ordinances; providing for an effective date associated training. ~ *Leon Barba, P.E., City Engineer; Kathy Roecker, Stormwater Management Plan Administrator*

 [Attachments](#)

13. Authorize an amendment to the Tri-Party Development Agreement between the City of Kyle, The Meadows at Kyle, Ltd. and the Meadows at Kyle II, Ltd. having the City of Kyle grant an extension of a deadline for the construction and completion of off-site improvements as contained in the amendment. ~ *Howard J. Koontz, Director of Planning and Community Development*

 [Attachments](#)

VI. Consider and Possible Action

14. Consider and possible action to amend or rescind the Vigilant Solutions Memorandum of Understanding. ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

15. Consider and approve partnership with Gateway Planning/Catalyst Commercial team for Sustainable Development Initiative in Kyle. ~ *J. Scott Sellers, City Manager*

 [Attachments](#)

16. *(First Reading)* An Ordinance of the City of Kyle, Texas, amending the City of Kyle, TX Code of Ordinances; amending Chapter 41, Article V. Sec. 41-141. Utility Easements, to require certain utility considerations for gated communities; providing for repeal of conflicting ordinances; providing for an effective date and open meetings clauses; and providing for related matters. ~ *James R. Earp, Assistant City Manager*

 [Attachments](#)

17. Consider a request by Central Texas Speedway for a conditional use permit to hold a Hays County Fair and Crawfish Boil from April 7, 2016 to April 9, 2016 on property located at 24801 IH-35. (CUP-16-002) ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 6-0 to recommend approval of the request.

- **PUBLIC HEARING**

 [Attachments](#)

18. Discuss and possible action on public transportation program in the City of Kyle. ~ *Diane Hervol, Council Member*

 [Attachments](#)

19. Discussion and possible action on vehicle idling within the city limits of Kyle. ~ *Daphne Tenorio, Council Member*

 [Attachments](#)

20. Consider and possible action to join Central Texas Clean Air Coalition. ~ *Daphne Tenorio, Council Member*

 [Attachments](#)

VII. City Managers Report

21. Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *J. Scott Sellers, City Manager*

 [Attachments](#)

VIII. Executive Session

22. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.

1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
2. Property acquisitions for road bond projects. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
3. Personnel matters pursuant to Section 551.074.
4. Economic Development negotiations pursuant to Section 551.087.

 [Attachments](#)

23. Take action on items discussed in Executive Session.

 [Attachments](#)

IX. 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 Meeting Minutes, 1-
19-16

Meeting Date: 2/16/2016
Date time: 7:00 PM

Subject/Recommendation: City Council Regular Meeting - January 19, 2016. ~ *Amelia Sanchez, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2016 0119 City Council Minutes

REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on January 19, 2016 at Kyle City Hall with the following persons present:

Mayor Todd Webster	Tim Miller
Mayor Pro Tem David Wilson	Kyle Taylor
Council Member Diane Hervol	Juanita Parsons
Council Member Becky Selbera	Lila Knight
Council Member Shane Arabie	Michael Whitehurst
Council Member Damon Fogley	Dennis Rose
Council Member Daphne Tenorio	Angelita Tobias
Scott Sellers, City Manager	Stacey Pfefferkorn
James Earp, Assistant City Manager	
Frank Garza, City Attorney	
Jerry Hendrix, Chief of Staff	
Leon Barba, City Engineer	
Perwez Moheet, Finance Director	
Howard Koontz, Community Development Director	
Jeff Barnett, Chief of Police	

I. Call Meeting To Order

Mayor Webster called the meeting to order at 7:00 p.m.

Mayor called for roll call. Present were Mayor Webster, Mayor Pro Tem Wilson, Council Member Hervol, Council Member Selbera, Council Member Arabie, Council Member Fogley, and Council Member Tenorio.

II. Citizen Comment Period With City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak are encouraged to sign in before the meeting begins. Speakers may be provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit.

Mayor Webster opened citizen comments at 7:01 p.m. He announced that no one would be permitted to speak without having first filled out a form. Tim Miller was called to speak. He spoke in opposition to the annexations of current farm land. He said the annexations are about providing water and sewer lines through Opal, Roland, and Stagecoach without regard for the heritage oaks and rural character. He said it is also about the major highway for the GLO Tract development. He stated that he is proud to be an organic farmer and tax payer. He said that annexation would significantly increase costs for him to provide a paved parking lot. Mr. Miller stated that the GLO Developer needs to have a presentation to the citizens of Hays County, Kyle,

CITY COUNCIL MEETING MINUTES

January 19, 2016 – Page 2

Kyle City Hall

Buda, Mountain City and Driftwood about their subdivision plans for Kyle's roads and new location for the highway. He wants to see detailed maps before the city annexes them in as well. Fire Chief Kyle Taylor spoke regarding the ESD Board meeting next week. They will be discussing and taking action on increase in sales tax of one cent outside the city limits, which will affect future annexations for the city. He will be working with City Staff on a Memorandum of Understanding. Juanita Parsons spoke about her 3.5 acres that she has acquired in Kyle. She stated that she'd heard she may be annexed into the City, and she'd like to meet her leaders. With that she invited the Council to her home and property to meet on February 4th from 4:00 - 5:30 p.m. to see the property and to meet with them. She wants to work with the Council. Lila Knight spoke in opposition to Item No. 15. She stated that she is concerned that the Council has yet to address the need for public transportation for the elderly, disabled, and other citizens who just don't have the money. She said the budget has allowed for 20 new employees, a raise for the city manager, and other improvements, but no funds have been found for public transportation. She stated if we don't have money for public transportation, then she is concerned about how we will have money for an additional 3,000 acres to be annexed. She stated that is another 5 miles of badly maintained roads by the county and the city will have to provide more services with more police officers. Her concern is that we will go too far too fast and will not be able to take care of the citizens within our city limits. Michael Whitehurst spoke regarding Item No. 15. He moved into the Hays County area 23 years ago. He said that the 4/10 of a mile of Roland Lane is already developed. He stated that each piece of property is more than an acre. He would like to stay out of the City Limits. He concluded that the benefits to Kyle would be very minimal. Dennis Rose was called to speak. He lives on Opal Lane. He has almost paid off his house over the last 29 years. He's served on the Citizens Water Committee and helped develop the Long Range Planning, and sat on the committee. He doesn't feel like his voice has been heard in recent times. He stated that he's not against growth or annexation, but is against this annexation at this time. He would like our community to be preparing for worst case scenario with respect to national issues. He stated that he would like to participate in the annexation plan. He wants to negotiate best options for the city, developers, and homeowners. Angelita Tobias was called to speak. She asked for transparency to let people know what the plans are. She asked for reconsideration of the item today to give time to notice the home owners. She expressed concern that she didn't know this was coming up and would like the city to take time to involve the residents about the development of the area. Mayor Webster explained that this is the beginning of the process, that the decision today is not a final annexation. He stated there will be public hearings and other steps before the annexation is brought up for decision. With no one else wishing to speak and no objections to closing Citizens Comments, Mayor Webster closed citizen comments at 7:22 p.m.

III. Presentation

1. Presentation on Katherine Anne Porter. ~ J. Scott Sellers, City Manager and Stacey Pfefferkorn, Administrative Intern

Item 1 Cover Sheet

Mr. Sellers opened the presentation and introduced Ms. Pfefferkorn who presented on the Katherine Anne Porter program as a downtown niche. No action was taken.

IV. Consent Agenda

2. (Second Reading) Approve an Ordinance amending the City's Code of Ethics as adopted by Ordinance No. 581, to amend Part G, Section 2(d) items (2) and (3) pertaining to the itemized list of disqualifications from serving on the Ethics Commission as follows; Section 2(d)(2) is amended to read "an elected city official" instead of "an elected public official" and Section 2(d)(3) is amended to read "a candidate for elected city office" instead of "a candidate for elected public office." ~ Frank Garza, City Attorney

Item 2

3. (Second Reading) An Ordinance of the City of Kyle, Texas amending the membership of boards; Providing terms, appointments, qualifications for ex officio members; Amending Section 2-40 Definitions and adding Section 2-50 to the Code of Ordinances; Providing an effective date; and Making such other findings and provisions related hereto. ~ Frank Garza, City Attorney

Item 3

4. (Second Reading) Approve an Ordinance amending the City's Approved Budget for Fiscal Year 2015-16 by increasing total appropriations for expenditures by \$79,500.00 to complete storm related repairs authorized for various City parks and decreasing fund balance by the same amount in the Park Development Fund. ~ Perwez A. Moheet, CPA, Director of Finance

Item 4

5. Approve Change Order No. 1 to CAPITAL EXCAVATION COMPANY, Buda, Texas, in the amount of \$8,985.00 for a total contract amount not to exceed \$3,807,876.00 for additional work required for the Marketplace Avenue improvement project. ~ Leon Barba, P.E., City Engineer

Item 5

6. Approve Supplement No. 6 to FREESE AND NICHOLS, INC., Austin, Texas, in an amount not to exceed \$25,605.00 for a total contract award of \$1,323,995.00 for the purpose of performing additional Right of Way (R.O.W) services and preparing documents needed for the N. Burleson Street improvement project. ~ Leon Barba, P.E., City Engineer

Item 6

Mayor Webster asked if there were any items requested to be pulled from the Consent Agenda. There were none. With no objections, Mayor Webster placed Consent Agenda Item Nos. 2, 3, 4, 5, and 6 on the table for discussion.

Mayor Pro Tem Wilson moved to approve Consent Agenda Item Nos. 2, 3, 4, 5, and 6. Council Member Hervol seconded the motion. All votes aye; motion carried 7-0.

V. Consider and Possible Action

7. (First Reading) An Ordinance calling a Special Election to be held on May 7, 2016 in the City of Kyle, Texas to submit propositions on amendments to the City of Kyle Home Rule Charter; Making provision for the conduct of the election; Resolving other matters incident and related to such election; Providing for severability and setting an effective date. ~ Frank Garza, City Attorney

Item 7

With no objections, Mayor Webster placed Item No. 7 on the table for discussion. Mr. Garza presented the item.

Mayor Pro Tem Wilson moved to approve Item No. 7 as stated. Council Member Arabie seconded the motion. All votes aye; motion carried 7-0.

8. (First Reading) An Ordinance of the City of Kyle, Texas, ordering the May 7, 2016 General Election; Establishing the procedure therefore; and Providing for related matters. ~ Frank Garza, City Attorney

Item 8

With no objections, Mayor Webster placed Item No. 8 on the table for discussion. Mr. Garza presented the item.

Mayor Pro Tem Wilson moved to approve Item No. 8 as stated. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0.

9. Consider and take possible action to execute an agreement between Hays Consolidated Independent School District and the city to hold a joint election in certain voting precincts for the May 7, 2016 election. ~ Frank Garza, City Attorney

Item 9

With no objections, Mayor Webster placed Item No. 9 on the table for discussion. Mr. Garza presented the item.

Council Member Tenorio moved to approve Item No. 9 as stated. Council Member Arabie seconded the motion. All votes aye; motion carried 7-0.

CITY COUNCIL MEETING MINUTES

January 19, 2016 – Page 5

Kyle City Hall

10. Consider and take possible action to execute an agreement in an estimated amount of \$5,238.20 with the Hays County Elections Officer for election services relating to the May 7, 2016 city election. ~ Frank Garza, City Attorney

Item 10

With no objections, Mayor Webster placed Item No. 10 on the table for discussion. Mr. Garza presented the item.

Council Member Tenorio moved to approve Item No. 10 as stated. Council Member Arabie seconded the motion. All votes aye; motion carried 7-0.

VI. General Discussion

11. Progress report on all five road bond projects including latest project cost estimates. ~ Daphne Tenorio, Council Member

Item 11 Cover Sheet

Leon Barba, City Engineer presented the item. No action was taken.

VII. City Managers Report

12. Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ J. Scott Sellers, City Manager

Item 12 Cover Sheet

Mr. Sellers informed Council and citizens of the soft opening of the Train Depot this Saturday from 10:00 - noon.

VIII. Executive Session

13. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.

1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
 - a. Legal issues regarding Annexation.
 - b. Legal issues regarding Future Development.

CITY COUNCIL MEETING MINUTES

January 19, 2016 – Page 6

Kyle City Hall

2. Property acquisitions for road bond projects. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
 - a. Discussion of E FM 150 wastewater line relocation.
3. Personnel matters pursuant to Section 551.074.
4. Economic Development negotiations pursuant to Section 551.087.

Item 13 Cover Sheet

Mayor Pro Tem Wilson moved to convene into executive session. Council Member Arabie seconded the motion. All votes aye; motion carried 7-0.

The Council convened into executive session at 8:05 p.m.

Council Member Tenorio moved to reconvene into open session. Mayor Pro Tem Wilson seconded the motion. All votes aye; motion carried 7-0.

The Council reconvened into open session at 9:44 p.m.

Council Member Hervol announced that no action took place in Executive Session; however, action would be taken now.

14. Take action on items discussed in Executive Session.

Item 14 Cover Sheet

Mayor Webster moved to postpone Agenda Item No. 14. Mayor Pro Tem Wilson seconded the motion. All votes aye; motion carried 7-0.

15. A Resolution to provide for the possible extension of the Kyle municipal boundaries via both petition of the associated land owner and via authority vested with the City of Kyle in Chapter 43 of the TLGC; Setting the dates and times of two public hearings for the purpose of annexing property and Setting an effective date. ~ Howard J. Koontz, Director of Planning and Community Development

Item 15

With no objections, Mayor Webster placed Item No. 15 on the table.

Mayor Webster moved to approve Item No. 15 as stated. Council Member Arabie seconded the motion. Mayor Webster called for a roll call vote. Council Member Hervol voted nay, Mayor Pro Tem Wilson voted aye, Council Member Arabie voted aye, Council Member Tenorio voted nay, Mayor Webster voted aye, Council Member Fogley voted aye, and Council Member Selbera voted aye. Motion carried 5-2.

CITY COUNCIL MEETING MINUTES

January 19, 2016 – Page 7

Kyle City Hall

IX. ADJOURN

Council Member Tenorio moved to adjourn. Council Member Hervol seconded the motion. All votes aye; motion carried 7-0.

With no further business to discuss, the Council adjourned at 9:50 p.m.

R. Todd Webster, Mayor

Attest: Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Appointment to P&Z - Allison Wilson

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Consider nomination and take action for appointment to the Planning and Zoning Commission to fill unexpired term. ~ *Howard J. Koontz, Director of Planning and Community Development*

- Allison Wilson - Seat 4

Other Information: N/A

Legal Notes: N/A

Budget Information:

ATTACHMENTS:

Description

Application



Planning and Zoning Commission Application

Thank you for your interest in serving on the City of Kyle Planning and Zoning Commission. The Planning and Zoning Commission, in appropriate cases and subject to appropriate conditions and safeguards, makes special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance. This form provides city staff with basic information about applicants who will be considered for appointment by the Mayor and confirmed by the City Council.

(Please print or type)

Candidate Name Allison Wilson

Physical Address 1408 Twin Cove

City Kyle State TX Zip 78640

Mailing Address (if different from above) _____

City _____ State _____ Zip _____

Phone number 512-557-9983

Email mrsWilson529@gmail.com

Current position/employer: vice president of Black Armor Helmets

Are you a registered voter in the City of Kyle? yes

Are you related to an elected official or employee of the City of Kyle? yes

Professional Qualification(s) and/or Work Experience:

My husband and I currently own our own business. Creating a business from scratch has given me insight into the steps one must take now, to ensure positive growth in the future. I have also created a comprehensive business plan, making plans for the future based on projections. Additionally, throughout my 10-year career as a Certified Elementary School Teacher, I gained much experience looking at concerns from a variety of viewpoints and working to address those concerns to mutually beneficial outcomes.

Please list any prior experience(s) serving as a Planning and Zoning Commissioner:

Though I have not served on a Planning and Zoning Commission, I am eager to learn more about the process.

What other volunteer commitment(s) do you currently have?

I currently sit on the executive board for the PTA at Tobias Elementary School, serve as the treasurer for the organization, and volunteer at the school as often as my schedule allows. I also serve on the booster club for my daughter's dance team.

Why are you interested in serving as a Planning and Zoning Commissioner?

Before moving to Kyle, we lived and worked in Houston. Houston was not a safe place to raise my children and when the opportunity opened up to move to Kyle, we jumped at the chance. Kyle was appealing because of its small town charm and country living with amenities in near proximity. In just the short time we've lived here, there has been tremendous growth in the city. I believe that growth and change are exciting in our small town. As a mother I'd like to ensure that the growth is logical, done in such a way that it keeps the best interest of current and future residents in mind, and guarantees my children will continue to enjoy a safe and family friendly place to live for many years to come. From a business owner's viewpoint, I look forward to making Kyle an appealing place for quality new business to choose to settle.

Please share any other information you feel important for consideration of your application to serve as a Planning and Zoning Commissioner.

There are many "armchair critics" in the community that believe they know best how the city should be run. It is my belief that one should not criticize without being informed and that there are many factors that the general public may not see involved in making decisions for the city. I welcome the opportunity to learn more about the process myself and pass that information on to others, when appropriate.



CITY OF KYLE, TEXAS

Juvenile Officer Grant

Meeting Date: 2/16/2016

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 to the Office of the Governor, General Juvenile Justice and Delinquency Prevention Program to continue to fund a full-time Juvenile Specialist Officer at Kyle Police Department. ~ *Jeff Barnett, Chief of Police*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Resolution - 2017 Juvenile Officer Grant

RESOLUTION NO _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE OFFICE OF THE GOVERNOR, JUVENILE JUSTICE AND DELINQUENCY PREVENTION – LOCAL PROGRAM, FOR THE PURPOSE OF FUNDING THE COSTS OF A FULL-TIME JUVENILE SPECIALIST OFFICER POSITION AT THE KYLE POLICE DEPARTMENT FROM OCTOBER 1, 2016, TO SEPTEMBER 30, 2017; AGREEING AND ASSURING THAT IN THE EVENT OF LOSS OR MISUSE OF SAID GRANT FUNDS, THE CITY WILL RETURN THE TOTAL AMOUNT OF FUNDS TO THE OFFICE OF THE GOVERNOR’S CRIMINAL JUSTICE DIVISION; AUTHORIZING THE ACTING CITY MANAGER OR CITY MANAGER TO APPLY FOR, ACCEPT, REJECT, ALTER OR TERMINATE THE GRANT ON BEHALF OF THE CITY COUNCIL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

WHEREAS, the city council finds that it in the best interest of the health, safety, and welfare of the city’s residents that a juvenile specialist officer position of the Kyle Police Department be operated and funded for Fiscal Year 2017; and,

WHEREAS, the city council finds that authorizing the submission of a grant application to the Office of the Governor, Juvenile Justice and Delinquency Prevention – Local Program, is for the purpose of funding the costs of a full time juvenile specialist officer at Kyle Police Department from October 1, 2016, until September 30, 2017;

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 of acceptance of grant. The city council authorizes the submission of the said grant for the purpose of funding the costs of a juvenile specialist officer position at Kyle Police Department from October 1, 2016, to September 30, 2017.

Section 3. Return of grant funds. The city council agrees and assures that in the event of loss or misuse of said grant funds, the total amount of funds will be returned to the Office of the Governor’s Criminal Justice Division.

Section 4. Authorized official. The acting city manager or city manager is authorized to apply for, accept, reject, alter or terminate the grant on behalf of the city council.

Section 5. 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.

Section 6. 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.

PASSED, and APPROVED this _____ day of February, 2016.

CITY OF KYLE, TEXAS

R. Todd Webster, Mayor

ATTEST:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Victim Services Grant

Meeting Date: 2/16/2016

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 to the Office of the Governor, General Victim Assistance Direct Services Program; and authorize applicable matching funds from the Police Department's approved operating budget for FY 2017, to continue to fund the Police Department's full-time Victim's Coordinator position. ~ *Jeff Barnett, Chief of Police*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Resolution - 2017 Victims Services Grant

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE OFFICE OF THE GOVERNOR, GENERAL VICTIM ASSISTANCE DIRECT SERVICES PROGRAM FOR THE PURPOSE OF FUNDING PARTIAL COSTS OF THE KYLE POLICE DEPARTMENT'S VICTIMS SERVICES COORDINATOR FULL-TIME POSITION FOR FISCAL YEAR 2017; AUTHORIZING AND PROVIDING APPLICABLE MATCHING FUNDS FROM THE KYLE POLICE DEPARTMENT'S APPROVED BUDGET FOR FISCAL YEAR 2017; AGREEING AND ASSURING THAT IN THE EVENT OF LOSS OR MISUSE OF SAID GRANT FUNDS, THE CITY WILL RETURN THE TOTAL AMOUNT OF FUNDS TO THE CRIMINAL JUSTICE DIVISION OF THE OFFICE OF THE GOVERNOR; AUTHORIZING THE ACTING CITY MANAGER OR CITY MANAGER TO APPLY FOR, ACCEPT, REJECT, ALTER OR TERMINATE THE GRANT ON BEHALF OF THE CITY COUNCIL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

WHEREAS, the city council finds that it in the best interest of the health, safety, and welfare of the city's residents that a victims services coordinator full-time position be funded for Fiscal Year 2017; and,

WHEREAS, the city council finds that authorizing the submission of a grant application to the Office of the Governor, General Victim Assistance Direct Services Program is for the purpose of funding partial costs of the full-time coordinator position for Fiscal Year 2017;

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 of acceptance of grant. The city council authorizes the acceptance of the said grant for the purpose of providing funding for partial costs of the full-time coordinator position for Fiscal Year 2017 for the General Victim Assistance Direct Services Program.

Section 3. Matching funds. The city council authorizes and agrees to provide applicable matching funds from the Kyle Police Department's approved budget for Fiscal Year 2017, as required by the terms and conditions of said grant project.

Section 4. Return of grant funds. The city council agrees and assures that in the event of loss or misuse of said grant funds, the total amount of funds will be returned to the Criminal Justice Division of the Governor's Office.

Section 5. Authorized official. The acting city manager or city manager is authorized to apply for, accept, reject, alter or terminate the grant on behalf of the city council.

Section 6. 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.

Section 7. 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.

PASSED, and APPROVED this _____ day of February, 2016.

CITY OF KYLE, TEXAS

R. Todd Webster, Mayor

ATTEST:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Change Order for JKB Construction
for Moreno St. Wastewater Crossing
Construction Change Order #2

Meeting Date: 2/16/2016
Date time: 7:00 PM

Subject/Recommendation: Approve Change Order No. 2 to JKB CONSTRUCTION CO., LLC, Liberty Hill, Texas, to add \$12,085.00 for additional work required on the Union Pacific Railroad wastewater crossing at Moreno Street and to decrease contract award by \$11,600.00 for material reductions, a net increase of \$485.00 to the contract amount for a revised total \$288,098.00. ~ *Leon Barba, P.E., City Engineer*

Other Information: Due to conflicts with existing fiber optic cables the proposed 18" wastewater line had to be lowered. Most of the additional cost to deepen the two manholes and line totaling \$12,085.00 were offset by the deduction totaling \$11,600.00 for 250 feet of chain link fence and 280 sq. yd. of erosion control matting from the contract.

Legal Notes: N/A

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- Moreno St. CO #2
- Fiscal Note

CHANGE ORDER

Neptune-Wilkinson Associates, Inc.
Consulting Engineers TBPE Firm# F-359
4010 Manchaca Road
Austin, Texas 78704
(512) 462-3373

CHANGE ORDER NO.: TWO DATE: January 27, 2016 NWA JOB NO.: 1190-556

PROJECT: Union Pacific Railroad
Wastewater Crossing at Moreno Street OWNER: City of Kyle

ORIGINAL CONTRACT AMOUNT:	\$	231,753.00
NET EFFECT OF PREVIOUS CHANGE ORDER(S):	\$	55,860.00
REVISED CONTRACT AMOUNT BY ABOVE CHANGE ORDER(S):	\$	287,613.00
NET EFFECT OF THIS CHANGE ORDER:	\$	485.00
REVISED CONTRACT AMOUNT BY THIS CHANGE ORDER:	\$	288,098.00

DESCRIPTION OF WORK: Change the grade of the 18" line between Manhole #2 and Manhole #4 to 0.50% per Field Order No. 1. Deepen Manholes #3 and #4 as required. Deduct chainlink fence and erosion control matting. See attached Detail.

JUSTIFICATION: To avoid conflict with fiber optic cables in Railroad right-of-way.

EFFECT OF CHANGE: The lump sum of Four Hundred Eighty-Five dollars and no/100 dollars (\$485.00) shall be **added to** the previous contract price.

AGREEMENT: By the signatures below the duly authorized agents hereby agree and append this Change Order to the original contract between themselves dated September 28, 2015.

Recommended By: John A Bartle January 27, 2016
Neptune-Wilkinson Associates, Inc. Date

JKB CONSTRUCTION COMPANY, INC.

CITY OF KYLE

By: 
Justin K. Byrn, President / CEO

By: _____
Title: _____

Date: 01/28/2016

Date: _____

**DETAIL OF CHANGE ORDER NO. 2
FOR
CITY OF KYLE
UNION PACIFIC RAILROAD WASTEWATER CROSSING AT MORENO STREET
January 27, 2015**

DEDUCT ITEMS

Bid					
<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
14	Chain Link Fence	(250)	LF	24.00	(6,000.00)
S2	Erosion Control Matting	(280)	SY	20.00	(5,600.00)
SUBTOTAL DEDUCT ITEMS					-\$11,600.00

ADDITIONAL ITEMS

	<u>Description</u>			<u>Price</u>	<u>Total</u>
CO2	Excavation to Deepen Line	1	LS	7,000.00	7,000.00
CO2	Additional Depth - Manhole #3	1	LS	1,435.00	1,435.00
CO2	ReOrder Manhole #4	1	LS	3,650.00	3,650.00
SUBTOTAL ADDITIONAL ITEMS					\$12,085.00

TOTAL AMOUNT OF CHANGE ORDER NO. 2 **\$485.00**

NWA# 1190-556

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: February 16, 2016
CONTACT CITY DEPARTMENT: Engineering Services
CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

SUBJECT:

Approve Change Order No. 2 to JKB CONSTRUCTION CO., LLC, Liberty Hill, Texas, to add \$12,085.00 for additional work required on the Union Pacific Railroad wastewater crossing at Moreno Street and to decrease contract award by \$11,600.00 for material reductions, a net increase of \$485.00 to the contract amount for a revised total of \$288,098.00.

CURRENT YEAR FISCAL IMPACT:

This Change Order No. 2 to the construction contract with JKB CONSTRUCTION CO., LLC, will require expenditure of funds from the approved CIP budget for Fiscal Year 2015-16 designated for wastewater Improvements as follows:

1. City Department:	Engineering Services
2. Project Name:	Wastewater Line Improvements
3. Funding Source:	Wastewater Utility Fund
4. Budget/Accounting Code(s):	341-874-57131
5. Current Appropriation:	\$ 500,000.00
6. Unencumbered Balance:	\$ 417,135.00
7. Amount of This Action:	\$ (485.00)
8. Remaining Balance:	<u>\$ 416,650.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding for this construction contract Change Order will be provided from the approved CIP budget for Fiscal Year 2015-16.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A

 2/1/2016

Perwez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

"Film Friendly Community" Resolution

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: A Resolution supporting the City's desire to become a certified "Film Friendly Texas" Community through the State of Texas Film Commission; and adoption of the Guidelines for Filming in the City of Kyle ~ *Diana Torres, Director of Economic Development*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Kyle Filming Guidelines & Application
- Location Agreement
- Neighborhood Signoff
- Notification Letter Samples
- Resolution

Guidelines for Filming in Kyle, TX

- I. Purpose
- II. City Control/City Manager Authority
- III. Permit Requirements and Fees
- IV. Application Fee
- V. Use of City Equipment and Personnel
- VI. Use of City-Owned Real Estate
- VII. Vehicles and Equipment
- VIII. Hours of Filming
- IX. Notification of Neighbors
- X. Certificate of Insurance
- XI. Damage to Public or Private Property
- XII. Hold Harmless Agreement

Guidelines for Filming in Kyle, Texas

I. PURPOSE

The Guidelines contained in this policy are intended to create a program for promoting economic development activity within Kyle and the vicinity of the City. The following Guidelines are also intended to protect the personal and property rights of Kyle, Texas residents and businesses, and to promote the public health, safety and welfare. The City Manager reserves the right to impose additional regulations in the interest of public health, safety and welfare, or if otherwise deemed appropriate by the City Manager.

These Guidelines cover requests for commercial use of City-owned property (including but not limited to streets, rights-of-way, parks, and/or public buildings), commercial use of private property which may affect adjacent public or private property, and the use of City equipment and personnel in all types of motion picture production, including, but not limited to, feature films, television programs, commercials, music videos and corporate films.

II. CITY CONTROL/CITY MANAGER AUTHORITY

The City Manager may authorize the use of any street, right-of-way, park, or public building, equipment or personnel for commercial uses in the filming or taping of movies, television programs, commercials, or training films and related activities. In conjunction with these uses, the City Manager may require that any or all of the conditions and/or remuneration herein and as specified on the application be met as a prerequisite to that use.

The Applicant agrees that the City of Kyle shall have exclusive authority to grant the Applicant the use of public streets, rights-of-way, parks and public buildings of the City, as well as authority to regulate the hours of production and the general location of the production. The City reserves the full and absolute right to prohibit all filming or to order cessation of filming in order to promote the public health, safety or welfare.

The Applicant shall allow City departments (e.g., Police, Fire, Building) to inspect all structures, property, devices and equipment to be used in connection with the filming and taping, as deemed appropriate by the City Manager.

III. PERMIT REQUIREMENTS

Before filing an application for filming in Kyle, the Office of the City Manager must be contacted to discuss the production's specific filming requirements and the feasibility of filming in Kyle, TX.

Any commercial producer who desires to undertake a commercial production in Kyle is required to complete and return the attached application for filming to the Office of the City Manager, within the time frames below:

- **Commercials or episodic television:** a minimum of two (2) business days prior to the commencement of filming or any substantial activity related to the project.
- **Feature films:** a minimum of five (5) business days prior to the commencement of filming or any substantial activity related to the project.

IV. APPLICATION FEE

An application processing fee of \$25.00 should accompany each application for filming in Kyle.

The City Manager may waive this fee upon proof of an organization's non-profit status or for any other reason deemed appropriate by the City Manager.

V. USE OF CITY EQUIPMENT AND PERSONNEL

The Applicant shall pay for all costs of any Police, Fire, Public Works, or other City personnel assigned to the project (whether or not specifically requested by the production). Remuneration rates for the use of any City equipment, including police cars and fire equipment, will be established on a case-by-case basis as determined by the City Manager. The Applicant shall pay all costs in full within ten (10) days after receipt of an invoice for said costs. The City Manager may, at his/her discretion, require an advance

deposit for all costs related City personnel and/or the use of City equipment.

The City Manager, in consultation with the Chief of Police and/or Fire Chief, shall have the authority to stipulate additional fire or police requirements and level of staffing for same, at any time during a film project if it is determined to be in the best interest of public health, safety and welfare, which cost shall be borne entirely by the Applicant.

Off-duty police officers and firefighters shall be paid by the production company at a rate no less than one and one-half times their hourly rate.

VI. USE OF CITY-OWNED REAL ESTATE

The City Manager may authorize the use of any street, right-of-way, park or public building, use of Kyle, Texas name, trademark or logo and/or use of City equipment and/or personnel for commercial uses in motion picture production. In conjunction with these uses, the City Manager may require that any or all of the conditions and/or remuneration as specified herein and on the application be met as a prerequisite to that use. A security or damage deposit may be required within the discretion of the City Manager.

The Applicant shall reimburse the City for inconveniences when using public property. Following is the rate schedule:

<u>Activity</u>	<u>Cost per calendar day</u> maximum of ___ hours/day
Total or disruptive use (regular operating hours) of a public building, park, right-of-way, or public area	\$500 per day
Partial, non-disruptive use of a public building, park, right-of-way, or public area	\$250 per day
Total closure or obstruction of public street or right-of-way, including parking lots and on-street parking	\$50 per block, per day
Partial closure or obstruction of public street or right-of-way, including parking lots and on-street parking	\$25 per block, per day
Use of City parking lots, parking areas, and City streets (for the purpose of parking film trailers, buses, catering trucks, and other large vehicles)	\$50 per block or lot, per day

The Applicant acknowledges and agrees that the City of Kyle, Texas, possesses and retains exclusive authority to grant the Applicant a revocable license for the use of its name, trademark, and logo, public streets, rights-of-way, parks and buildings of the City as well as control over the hours of production and the general location of the production. The City reserves the full and absolute right to prohibit all filming or to order cessation of filming activity in order to promote the public health, safety and/or welfare.

VII. VEHICLES AND EQUIPMENT

The Applicant shall provide a report listing the number of vehicles and types of equipment to be used during the filming, including proposed hours of use and proposed parking locations. Such locations will need to be specifically approved by the City Manager. On-street parking or use of public parking lots is subject to City approval.

The use of exterior lighting, power generators, or any other noise- or light-producing equipment requires on-site approval of the City Manager.

VIII. HOURS OF FILMING

Unless express written permission has been obtained from the City Manager in advance, and affected property owners, tenants and residents have been notified, filming will be limited to the following hours:

Monday through Friday: 7:00 a.m. to 9:00 p.m.

Saturday, Sunday and holidays: 8:00 a.m. to 8:00 p.m.

IX. NOTIFICATION OF NEIGHBORS

The Applicant shall provide a short written description, approved by the City Manager, of the schedule for the proposed production to the owners, tenants and residents of each property in the affected neighborhood(s). The Applicant, or his or her designee, shall make a good faith effort to notify each owner, tenant and resident of all such property, and shall submit, as part of this application, a report noting owners, tenants and/or residents' comments, along with their signatures, addresses and phone numbers. Based upon this community feedback, and other appropriate factors considered by the City Manager, the City Manager may grant or deny the filming application.

X. CERTIFICATE OF INSURANCE

The Applicant shall attach a valid certificate of insurance, issued by a company authorized to conduct business in the state of Texas, naming the City of Kyle and its agents, officers, elected officials, employees and assigns, as additional insured, in an amount not less than \$1,000,000 general liability, including bodily injury and property damage with a \$5,000,000 umbrella; and automobile liability (if applicable) in an amount not less than \$1,000,000 including bodily injury and property damage.

XI. DAMAGE TO PUBLIC OR PRIVATE PROPERTY

The Applicant shall pay in full, within ten (10) days of receipt of an invoice, the costs of repair for any and all damage to public or private property, resulting from or in connection with, the production, and restore the property to its original condition prior to the production, or to better than original condition.

XII. HOLD HARMLESS AGREEMENT

The Applicant shall sign the following Hold Harmless Agreement holding the City harmless from any claim that may arise from their use of designated public property, right-of-way, or equipment in conjunction with the permitted use:

I certify that I represent the firm which will be performing the filming/taping at the locations specified on the attached permit application. I further certify that I and my firm will perform in accordance with the directions and specifications of The City of Kyle, Texas, and that I and my firm will indemnify and hold harmless the City of Kyle, Texas and its elected officials, officers, servants, employees, successors, agents, departments and assigns from any and all losses, damages, expenses, costs and/or claims of every nature and kind arising out of or in connection with the filming/taping and other related activities engaged in pursuant to this Application.

I further certify that the information provided on this Application is true and correct to the best of my knowledge, and that I possess the authority to sign this and other contracts and agreements with the City of Kyle, Texas on behalf of the firm.

Signed: _____

Title: _____

Date: _____

THE CITY OF KYLE, TX

Application for Commercial Filming

Title of project

Type of production (feature film, television production, commercial, corporate, music video, etc.)

Proposed Filming Locations (attach additional pages if necessary)

Date(s) of prep/filming

Primary Contact

Name

Cell phone

Email

Location Manager (if different from Primary Contact)

Name

Cell phone

Email

Production Company Information

Name of Production Company

Address

City/State/Zip

Web Site

Primary Contact's Name

Primary Contact's Phone

Primary Contact's Email

Is this production already in contact with the Texas Film Commission? _____

If yes, who is your contact at the Texas Film Commission?

Name

Phone

Email

PRODUCTION (*Attach additional sheets if necessary.*)

1. Production schedule and activities, including stunts, pyrotechnics, special effects, aerial photography, amplified sound or use of animals: (Give dates and times and rain dates. Hours should include set-up, holding of sets and restoration.)

2. Approximate number of persons involved with the production, including cast and crew:

3. Anticipated need of City personnel, equipment or property:

4. Public areas in which public access will be restricted during production:

5. Describe alterations to public property:

6. Number and type of production vehicles to be used and location(s) where vehicles will be parked:

7. Location where crew will be fed, if not at filming location:

8. Location where extras will be held, if not at filming location:

9. Please attach map of anticipated street closure(s) or other public area use.

Applicant (production company representative):

_____ Date: _____

Name

Title

Application approved by **Kyle** representative:

_____ Date: _____

The "Guidelines for Filming in Kyle, Texas" apply to all motion picture production in Kyle.

The Office of the City Manager may require the applicant to acknowledge receipt of the Guidelines prior to approving this application.

LOCATION AGREEMENT

Working Title of Motion Picture

Date

Set Name

Scene Numbers

Name (herein called "Licensor")

Phone Number

Business Address

hereby grants to (Production Company with address) (herein called "Company"), and its employees, agents, independent producers, contractors and suppliers, permission to enter upon and use the premises located at: _____

and all signs, fixtures, and other personal and real property on and around said premises (all of which, together with said premises, shall be referred to herein as the "Property") for the purpose of still photography and making motion pictures, videotapes and sound recordings in connection with the production, exhibition, advertising and exploitation of the motion picture, commencing on or about _____ (subject to change on account of weather conditions or changes in production schedule), and continuing until completion of all scenes and work required.

CHARGES: *(Rates and/or rate schedule—this can vary as to flat day rate, hourly charges—this is negotiated by the production and the location owner)*

All charges are payable on completion of all work contemplated, unless specifically agreed to the contrary. Company is not obligated to actually use the Property or produce any motion picture or include material photographed or recorded hereunder in the motion picture. Company may at any time elect not to use the Property by giving Licensor written notice of such election, in which case neither party shall have any obligation hereunder.

Company may place all necessary facilities and equipment, including temporary sets, and park vehicles if appropriate, on the Property, and agrees to remove same after completion of work and leave the Property in as good condition as when received, reasonable wear and tear from uses permitted herein excepted. Signs on the Property may, but need not, be removed or changed, but, if removed or changed, must be replaced. Licensor agrees to execute a location restoration release in Company's favor upon Company's reasonable request following restoration of the Property. In connection with the motion picture, Company may refer to the Property or any part thereof by any actual or fictitious name and may attribute any real or fictitious events as occurring on the Property. Licensor irrevocably grants to Company and Company's successors and assigns the right, in perpetuity, throughout the universe, to duplicate and re-create all or a portion of the Property, to alter such duplicates and re-creations, and to use such duplicates and re-creations in any media and/or manner now known or hereafter devised in connection with the motion picture, including without limitation sequels thereto, merchandising, theme parks and studio tours, and in connection with publicity, promotion and/or advertising for any or all of the foregoing.

Company agrees to use reasonable care to prevent damage to said Property, and will indemnify Licensor, and all other parties lawfully in possession of said Property, and hold each of them harmless from any claims and demands of any person or persons arising out of or based upon personal injuries, death or property damage suffered by such person or persons resulting directly from any act of negligence on Company's part in connection with the work hereunder.

All rights of every kind in and to all still pictures, motion pictures, videotapes, photographs and sound recordings made hereunder shall be and remain vested in Company and its successors, assigns and licensees, and neither Licensor nor any tenant, or other party now or hereafter having an interest in said Property, shall have any right of action against Company or any other party arising out of any use of said still pictures, motion pictures, videotapes, photographs and/or sound recordings, whether or not such use is, or may be claimed to be, defamatory, untrue or censorable in nature.

At any time within 6 months from the date Company completes its use of the Property hereunder, Company may, upon not less than 5 days prior written notice to Licensor, re-enter and use the Property for such period as may be reasonably necessary to photograph retakes, added scenes, etc. desired by Company upon the same terms and conditions as contained in this agreement.

Licensor warrants that Licensor is the owner or authorized agent for the owner of the Property and that Licensor has full authority to enter into this agreement and grant the rights herein granted.

Licensor's sole remedy for a breach by Company of any of Company's obligations hereunder shall be an action at law for damages, it being agreed that in no event shall Licensor or its successors and assigns, or any other party now or hereafter having an interest in said Property seek or be entitled to injunctive or other equitable relief for breach by Company of any of its obligations under this Agreement.

If the box below is checked, the attached Addendum shall constitute part of this agreement. This is the entire agreement. This agreement cancels and supersedes all prior negotiations and undertakings relating to the Property and contains all of the terms, covenants, conditions, representations and warranties, written or oral, of the parties hereto in the premises. No other authorization is necessary to enable Company to use the Property for the purposes herein contemplated.

ACCEPTED:

(Company)

Licensor: _____

By: _____
Its: Authorized Signatory

By: _____
Its:

Terms confirmed by:

Address: _____

Location Manager

Federal I.D.# _____

Check here if Addendum attached

KYLE, TX — PROPOSED FILMING PERMIT NOTIFICATION AND SIGNOFF REQUEST

Kyle, Texas requires that all property owners / residents whose property is adjacent to the area sought to be closed must be notified and provided with a map of the area, which indicates all obstructions to be placed in the closure area. The notification must indicate by signature, whether the property owner / resident approves or disapproves of the proposed closure.

For additional information concerning the actual filming at this location, please contact:

_____ (Film Company's Contact Name) _____ (Phone Number)

_____ is applying for a FILMING PERMIT for the following film:
(Company Name)

_____ (Name of Film)

The filming is scheduled for the following dates and times: _____

The filming will close or partially close the following streets: _____

The filming will consist of the following: _____

PROPERTY OWNER / RESIDENT	
Please fill out the this section completely as this information is used by Kyle, Texas to determine whether or not the filming activities indicated above will be approved or denied.	
<input type="radio"/> APPROVE	<input type="radio"/> DISAPPROVE
RECEIVED MAP:	<input type="radio"/> YES <input type="radio"/> NO
_____ (Print Name and Title)	_____ (Signature)
_____ (Print Address)	_____ (Phone Number)
<input type="radio"/> RESIDENCE	<input type="radio"/> BUSINESS (Choose One)
Comments: _____ _____ _____	

Street: _____ Block Number: _____

Received by Kyle, Texas City Manager's Office on: _____

PRODUCTION COMPANY LETTERHEAD

SAMPLE #1: MERCHANTS AND BUSINESS DISTRICT

June 14, 2006

Dear Neighbor:

My name is Joe Smith and I am a Location Scout for the upcoming movie, "THE MOVIE". Shooting will be taking place in Providence beginning in August 2006 and continuing through November 2006.

Some of our locations are in your building's area, and we wanted to inform you of our upcoming presence beginning Friday, August 11th. On this day as well as Monday, August 14th and Tuesday, August 15th we will be filming outside the Turks Head Building. Wednesday, August 16th through Saturday, August 17th we will be filming on Washington Street between. We are going to need to down many of the surrounding streets, as well as posting "No Parking" signs with the help of the City of Providence. We are going to have multiple Providence Police Detail Officers on hand to help direct traffic and ensure public safety.

We apologize for any inconvenience that this may cause, but thank you in advance for your cooperation. If you have any questions or concerns, please feel free to contact me on my cell phone at 401-555-1234, or my colleague Emily Jones at 401-555-6789.

Thank you,

Joe Smith
Location Scout

PRODUCTION COMPANY LETTERHEAD

SAMPLE #2: RESIDENTIAL NEIGHBORHOOD

September 1, 2006

Dear Waterman Street Neighbor:

We are presently filming the television show "TeeVee Show" in Providence. One of our recurring locations is in your neighborhood and we wanted to inform you of our upcoming presence.

On Thursday, October 19, 2006 we will be filming a few scenes on Waterman Street that will require us to clear the street, as well as intermittently close the street down throughout the day. We are currently working on alternative parking nearby for those we will be affecting the most and thank you in advance for your patience with that.

We understand that this may be an inconvenience to your everyday activities, but ask for your cooperation during filming. Without the support of the residents of Providence, it would not be possible for us to shoot locally. If you have any questions or concerns, please contact us at 401-555-4321 or send an e-mail to emailaddress@tv.com.

Thank you,

The Locations Department
TeeVee Show Productions

PRODUCTION COMPANY LETTERHEAD

SAMPLE #3: RESIDENTIAL NEIGHBORHOOD, PRODUCTION TRUCK PARKING

September 1, 2006

Dear Hope Street Neighbor:

We are presently filming the television show "TeeVee Show" in Providence. One of our recurring locations is in your neighborhood and we wanted to inform you of our upcoming presence.

On Tuesday, November 13, 2006 we will be filming a few scenes on nearby Governor Street that will require us to clear that street, as well as intermittently close it down throughout the day. We will also need to park some of our production trucks and vehicles on Hope Street. We are currently working on alternative parking nearby for those we will be affecting the most and thank you in advance for your patience with that.

We understand that this may be an inconvenience to your everyday activities, but ask for your cooperation during filming. Without the support of the residents of Providence, it would not be possible for us to shoot locally. If you have any questions or concerns, please contact us at 401-555-4321 or send an e-mail to emailaddress@tv.com.

Thank you,

The Locations Department
TeeVee Show Productions

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, IN SUPPORT OF THE CITY'S ECONOMIC DEVELOPMENT EFFORTS TO BECOME CERTIFIED BY THE STATE OF TEXAS FILM COMMISSION AS A "FILM FRIENDLY TEXAS" COMMUNITY AND APPROVING THE CITY'S GUIDELINES FOR COMMERCIAL FILMING.

WHEREAS, the City of Kyle, Texas, has many unique assets that distinguish the community as a favorable location for various media projects; and

WHEREAS, a goal of the City of Kyle, Texas, is to provide opportunity for economic development and increase the overall exposure of the community; and

WHEREAS, the State of Texas Film Commission requires interested municipalities to adopt Guidelines for Filming in order to become a "Film Friendly Texas" community; and

WHEREAS, the City of Kyle, Texas, recognizes the economic benefit to the community to be gained from encouraging the use of the City for commercial filming and taping of movies, television programs, commercials, training films and related activities; and

WHEREAS, the City of Kyle, Texas, desires to encourage commercial filming and taping of movies, television programs, commercials, training films and related activities within the City; and

WHEREAS, the purpose of the Guidelines for Commercial Filming, attached hereto as Exhibit A, is to set out a process to be followed for approval to film or tape movies, television programs, commercials, training films and related activities, using City-owned property, personnel and equipment; and

WHEREAS, the City Council of the City of Kyle, Texas, has reviewed the City's Guidelines for Commercial Filming; now, therefore,

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

PART 1: That the City Council hereby approves the City's Guidelines for Commercial Filming, attached hereto as Exhibit A, as required to be considered for "Film Friendly Texas" certification by the State of Texas Film Commission.

PART 2: That the City of Kyle, Texas, supports promoting the community for various media projects.

PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, A.D. 2016.

ATTEST:

APPROVED:

City Secretary

Mayor



CITY OF KYLE, TEXAS

Purchase Order for New Dump Truck - Public Works

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize award and execution of a Purchase Order to FREIGHTLINER OF AUSTIN, Austin, Texas in an amount not to exceed \$103,327.00 for the purchase of a new 2016 Freightliner 15-Yard Dump Truck through the Buy Board Purchasing Co-operative for the Public Works Department. ~ *Harper Wilder, Director of Public Works*

Other Information:

Legal Notes:

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- Price Quotation
- Fiscal Note

Prepared for:
 Harper Wilder
 City of Kyle
 520 E. RR150
 Kyle, TX 78640
 Phone: 512-262-3024

Prepared by:
 Dana Hanson
 FREIGHTLINER OF AUSTIN
 1701 SMITH ROAD
 AUSTIN, TX 78721
 Phone: 512-389-0000

Q U O T A T I O N

M2 106 CONVENTIONAL CHASSIS

SET BACK AXLE - TRUCK	12,000# DUAL TAPERLEAF FRONT SUSPENSION
CUM ISL 350 HP @ 2000 RPM, 2200 GOV RPM, 1000 LB/FT @ 1400 RPM	106 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL CAB
ALLISON 3000 RDS AUTOMATIC TRANSMISSION WITH PTO PROVISION	4725MM (186 INCH) WHEELBASE
MT-40-14XP 40,000# R-SERIES TANDEM REAR AXLE	11/32X3-1/2X10-15/16 INCH STEEL FRAME (8.73MMX277.8MM/0.344X10.94 INCH) 120KSI
TUFTRAC 40,000# REAR SPRING SUSPENSION	1600MM (63 INCH) REAR FRAME OVERHANG
DETROIT DA-F-12.0-3 12,000# FF1 71.5 KPI/3.74 DROP SINGLE FRONT AXLE	1/4 INCH (6.35MM) C-CHANNEL INNER FRAME REINFORCEMENT

			PER UNIT		TOTAL
VEHICLE PRICE	TOTAL # OF UNITS (1)	\$	103,127	\$	103,127
EXTENDED WARRANTY		\$	200	\$	200
DEALER INSTALLED OPTIONS		\$	0	\$	0
CUSTOMER PRICE BEFORE TAX		\$	103,327	\$	103,327

TAXES AND FEES

TAXES AND FEES	\$	0	\$	0
OTHER CHARGES	\$	0	\$	0

TRADE-IN

TRADE-IN ALLOWANCE	\$	(0)	\$	(0)
---------------------------	----	-----	----	-----

BALANCE DUE	(LOCAL CURRENCY)	\$	103,327	\$	103,327
--------------------	------------------	----	---------	----	---------

COMMENTS: Per buy board contract 430-13

Projected delivery on 3/31/2016 provided the order is received before 1/15/2016.

APPROVAL:

Please indicate your acceptance of this quotation by signing below:

Customer: X _____ Date: ___ / ___ / ___.

Daimler Truck Financial

Financing that works for you.

See your local dealer for a competitive quote from Daimler Truck Financial, or contact us at Information@dtffoffers.com.

Daimler Truck Financial offers a variety of finance, lease and insurance solutions to fit your business needs. For more information about our products and services, visit our website at www.daimler-truckfinancial.com.



City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: February 16, 2016
CONTACT CITY DEPARTMENT: Public Works Department
CONTACT CITY STAFF: Harper Wilder, Director

SUBJECT:

Authorize award and execution of a Purchase Order to FREIGHTLINER OF AUSTIN, Austin, Texas, in an amount not to exceed \$103,327.00 for the purchase of a new 2016 Freightliner 15-yard dump truck through the Buy Board Purchasing Co-operative for the Public Works Department.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to FREIGHTLINER OF AUSTIN will require expenditure of funds from the Fiscal Year 2015-16 approved budget of the Public Works Department as follows:

1. City Department:	Public Works Department
2. Project Name:	Purchase of One (1) 15-Yard Dump Truck
3. Funding Source:	General Fund
4. Budget/Accounting Code(s):	110-161-57123
5. Current Appropriation:	\$ 91,667.00
6. Unencumbered Balance:	\$ 43,386.00
7. Amount of This Action:	<u>\$ (34,442.34)</u>
8. Remaining Balance:	<u>\$ 8,943.66</u>
9. Funding Source:	Water Utility Fund
10. Budget/Accounting Code(s):	310-820-57123
11. Current Appropriation:	\$ 41,667.00
12. Unencumbered Balance:	\$ 41,667.00
13. Amount of This Action:	<u>\$ (34,442.33)</u>
14. Remaining Balance:	<u>\$ 7,224.67</u>
15. Funding Source:	Wastewater Utility Fund
16. Budget/Accounting Code(s):	310-825-57123
17. Current Appropriation:	\$ 41,667.00
18. Unencumbered Balance:	\$ 41,667.00
19. Amount of This Action:	<u>\$ (34,442.33)</u>
20. Remaining Balance:	<u>\$ 7,224.67</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this Purchase Order will be provided from the Fiscal Year 2015-16 approved budget of the Public Works Department from three separate sources of funds. A total of \$34,442.34 will be provided from the General Fund, \$34,442.33 from the Water Utility Fund and the remaining \$34,442.33 from the Wastewater Utility Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.



2/1/2016

Pervez A. Moheet, CPA
Director of Finance

- Date



CITY OF KYLE, TEXAS

Purchase Order for Bluebonnet Motors for New Engine - Public Works

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize award and execution of a Purchase Order to BLUEBONNET MOTORS, New Braunfels, in an amount not to exceed \$18,665.78 for the installation of a new diesel engine in the 2009 Ford 350 hydraulic truck for the Public Works Department. *Harper Wilder, Director of Public Works*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Invoice - Bluebonnet Motors Engine Replacement
- Fiscal Note

LOT LOCATION:
CUSTOMER #: 88243

283335



351 I.H. 35 S.
New Braunfels, Texas 78130
Phone: (830) 606-8011
Fax: (830) 609-7035
www.bbmotors.com

INVOICE

CITY OF KYLE
PO BOX 40
KYLE, TX 78640-0040
HOME: 512-262-3910 CONT: 512-262-3910
BUS: CELL:

DUPLICATE 1
PAGE 1

SERVICE ADVISOR: 4255 JOSE ALVARADO

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN/OUT	TAG	
OXFORD-WHI	09	FORD F-350	1FDSW35R69EA79489		46375/46375	T3808	
DEL. DATE	PROD. DATE	WARR. EXP.	PROMISED	PO NO.	RATE	PAYMENT	INV. DATE
10APR09 IS			17:00 12NOV15		0.00	CASH	30DEC15
10APR09 DD							
R.O. OPENED	READY	OPTIONS:					
16:08 12NOV15	16:11 30DEC15	W-COMP:G STK:TEA79489 DLR:52E752 ENG:99R					

LINE	OPCODE	TECH	TYPE	HOURS	LIST	NET	TOTAL	
A		LACKS	POWER-WILL MISFIRE					
		20	DIESEL DIAGNOSTICS					
			4725 CSLT			3796.00	3796.00	
		1	8C3Z*6007*AARM REMAN ENGINE ASY		14882.36	14732.26	14732.26	
			CORE CHARGE C			3200.00	3200.00	
		1	7C3Z*6L612*B GASKET		9.50	9.50	9.50	
		-1	8C3Z*6007*AARM CORE RETURN		14882.36	3200.00	-3200.00	
		3	VC*7*B ANTI-FREEZE		16.71	16.71	50.13	
		2	XT*5*QMC FLUID - TRANSMISSION		6.47	6.47	12.94	
		15	XO*15W40*QSD OIL - ENGINE		4.33	4.33	64.95	
PARTS:		14869.78	LABOR:	3796.00	OTHER:	0.00	TOTAL LINE A:	18665.78

ROAD TEST. VEHICLE LACK POWER AND IS BLOWING SMOKE. RUN KOEO AND KOER TESTS. CODE P0266 PRESENT FOR #2 CONTRIBUTION. ALSO FOUND OIL TO BE OVER FULL AND WATERED DOWN WITH DIESEL. RUN POWER BALANCE TEST. CYLINDER #2 DROPPING OUT 80%. RUN RELATIVE COMPRESSION TEST CYLINDER #2 DROPPING OUT 50% REMOVE OIL FILL CAP. CYLINDER BLOWING OUT OF CAP. CHECK FUEL PRESSURE. GOOD AT 6 PSI. REMOVE OIL FILTER AND FUEL FILTER CAPS. BEARING DEBRIS PRESENT IN OIL. METAL DEBRIS PRESENT IN UPPER FUEL FILTER HOUSING. REMOVE LEFT VALVE COVER AND INSPECT VALVE TRAIN. ALL STILL INTACT. PERFORM DEBRIS TEST ON FUEL RAIL. DEBRIS PRESENT AT FUEL RAIL. FUEL SYSTEM REPLACEMENT NEEDED. M TIME TO PERFORM MANUAL COMPRESSION CHECK. CYLINDER 1 AT 450PSI, 2 80 PSI, 3 IS AT 450, 4 IS AT 300, 5 IS AT 450 6 IS AT 450, 7 IS AT 450 AND 8 IS AT 450. TEAR DOWN AND INSPECT. #2 AND #4 CYLINDER WASHED OUT LIKELY BY HUNG OPEN INJECTOR. PERFORM TURBO CLEARANCE CHECK. HP TURBO FOUND TO HAVE EXCESSIVE PLAY. BEARING DEBRIS CONTAMINATION FOUND TO HAVE ENTERED BOTH TURBOS. COMPLETE ENGINE REPLACEMENT RECOMMENDED. M TIME TO REMOVE AFTER MARKET WIRING FOR ACCESORIES. REMOVE CAB. REPAIR TWO SPUN FRONT SHEET METAL SPUN CAGE NUTS, ONE BODY SUPPORT #1 SPUN CAGE NUT AND 2 BODY SUPPORT #3 SPUN CAGE NUT. REMOVE HP FUEL PUMP AND INSPECT ITP. RUST PRESENT. FORD DECLINES ANY ASSISTANCE. REPLACE ENGINE ASSEMBLY. DROP CAB. FILL FLUIDS AND CHANGE FUEL FILTERS. CLEAN DEBRIS FROM FUEL TANK. ROAD TEST. REPAIRS VERIFIED.

STATEMENT OF DISCLAIMER

The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items. Payable in Comal County, Texas.

I have read, understand and accept all provisions of the Warranty Statement covering this vehicle and/or service parts. PARTS AND LABOR WARRANTED 12,000 MILES OR 12 MONTHS. I ACKNOWLEDGE RECEIPT OF THE PARTS AND LABOR LISTED BELOW.

ON BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWISE SHOWN. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO OWNER. THERE WAS NO INDICATION FROM THE APPEARANCE OF THE VEHICLE OR OTHERWISE THAT ANY PART REPAIRED OR REPLACED UNDER THIS CLAIM HAD BEEN CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISUSE. RECORDS SUPPORTING THIS CLAIM ARE AVAILABLE FOR (1) YEAR FROM THE DATE OF PAYMENT NOTIFICATION AT THE SERVICING DEALER FOR INSPECTION BY REPRESENTATIVES OF THE VEHICLE MANUFACTURER.

X _____ (SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

NOTICE PURSUANT TO TEXAS PROPERTY CODE §70.001

I AM THE PERSON OR AGENT ACTING ON BEHALF OF THE PERSON WHO IS OBLIGATED TO PAY FOR THE REPAIR OF THE MOTOR VEHICLE SUBJECT TO THE REPAIR AGREEMENT. I UNDERSTAND THAT VEHICLE IS SUBJECT TO REPOSESSION IN ACCORDANCE WITH BUSINESS & COMMERCE CODE §9.609 IF PAYMENT FOR THE REPAIR OF THE MOTOR VEHICLE BY CHECK, MONEY ORDER, OR CREDIT CARD TRANSACTION IS STOPPED, DISHONORED BECAUSE OF INSUFFICIENT FUNDS, NO FUNDS, OR BECAUSE THE MAKER OR DRAWER OF THE ORDER OR THE CREDIT CARD HOLDER HAS NO ACCOUNT UPON WHICH IT IS DRAWN OR THE CREDIT CARD ACCOUNT HAS BEEN CLOSED.

X _____ SIGNATURE OF THE PERSON RESPONSIBLE OR AGENT RESPONSIBLE FOR PAYMENT

DESCRIPTION	TOTALS
LABOR AMOUNT	
PARTS AMOUNT	
GAS, OIL, LUBE	
SUBLET AMOUNT	
MISC. CHARGES	
TOTAL CHARGES	
LESS INSURANCE	
SALES TAX	
PLEASE PAY THIS AMOUNT	

CUSTOMER COPY



Item # 8

LOT LOCATION:
 CUSTOMER #: 88243

283335



351 I.H. 35 S.
 New Braunfels, Texas 78130
 Phone: (830) 606-8011
 Fax: (830) 609-7035
 www.bbmotors.com

CITY OF KYLE
 PO BOX 40
 KYLE, TX 78640-0040
 HOME:512-262-3910 CONT:512-262-3910
 BUS: CELL:

INVOICE
 DUPLICATE 1
 PAGE 2

SERVICE ADVISOR: 4255 JOSE ALVARADO

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN / OUT	TAG	
OXFORD-WHI	09	FORD F-350	1FDSW35R69EA79489		46375/46375	T3808	
DEL. DATE	PROD. DATE	WARR. EXP.	PROMISED	PO NO.	RATE	PAYMENT	INV. DATE
10APR09 IS							
10APR09 DD			17:00 12NOV15		0.00	CASH	30DEC15
R.O. OPENED	READY	OPTIONS: W-COMP:G STK:TEA79489 DLR:52E752 ENG:99R					
16:08 12NOV15	16:11 30DEC15						

LINE	OPCODE	TECH	TYPE	HOURS	LIST	NET	TOTAL
46390				MILES OUT. 5426 HRS			

B VEHICLE INSPECTION REPORT

Q99P VEHICLE INSPECTION..CHECK LIST

4725 CPF		0.00	0.00
GBK BRAKE LININGS ARE OK AT THIS TIME			
4725 CPF		0.00	0.00
GBATT BATTERY CONDITION IS GOOD .			
4725 CPF		0.00	0.00
GTIRE TIRE TREAD AND WEAR IS OK AT THIS TIME .			
4725 CPF		0.00	0.00
PARTS: 0.00 LABOR: 0.00 OTHER: 0.00	TOTAL LINE B:	0.00	0.00

MO 12/30/15 TREAD 7/32 ALL
 DATE CODE: 2213 ALL

Trk # 123

City of Kyle, Texas
 Approved For Payment
 Signature _____ Date _____

STATEMENT OF DISCLAIMER

The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items. Payable in Comal County, Texas.
 I have read, understand and accept all provisions of the Warranty Statement covering this vehicle and/or service parts. PARTS AND LABOR WARRANTED 12,000 MILES OR 12 MONTHS. I ACKNOWLEDGE RECEIPT OF THE PARTS AND LABOR LISTED BELOW.

ON BEHALF OF SERVICING DEALER, I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREON IS ACCURATE UNLESS OTHERWISE SHOWN. SERVICES DESCRIBED WERE PERFORMED AT NO CHARGE TO OWNER. THERE WAS NO INDICATION FROM THE APPEARANCE OF THE VEHICLE OR OTHERWISE THAT ANY PART REPAIRED OR REPLACED UNDER THIS CLAIM HAD BEEN CONNECTED IN ANY WAY WITH ANY ACCIDENT, NEGLIGENCE OR MISUSE. RECORDS SUPPORTING THIS CLAIM ARE AVAILABLE FOR (1) YEAR FROM THE DATE OF PAYMENT NOTIFICATION AT THE SERVICING DEALER FOR INSPECTION BY REPRESENTATIVES OF THE VEHICLE MANUFACTURER.

NOTICE PURSUANT TO TEXAS PROPERTY CODE §70.001

I AM THE PERSON OR AGENT ACTING ON BEHALF OF THE PERSON, WHO IS OBLIGATED TO PAY FOR THE REPAIR OF THE MOTOR VEHICLE SUBJECT TO THE REPAIR AGREEMENT. I UNDERSTAND THAT VEHICLE IS SUBJECT TO REPOSSESSION IN ACCORDANCE WITH BUSINESS & COMMERCE CODE §9.609 IF PAYMENT FOR THE REPAIR OF THE MOTOR VEHICLE BY CHECK, MONEY ORDER OR CREDIT CARD TRANSACTION IS STOPPED, DISHONORED BECAUSE OF INSUFFICIENT FUNDS, NO FUNDS, OR BECAUSE THE MAKER OR DRAWER OF THE ORDER OR THE CREDIT CARD HOLDER HAS NO ACCOUNT UPON WHICH IT IS DRAWN OR THE CREDIT CARD ACCOUNT HAS BEEN CLOSED.

DESCRIPTION	TOTALS
LABOR AMOUNT	3796.00
PARTS AMOUNT	14869.78
GAS, OIL, LUBE	0.00
SUBLET AMOUNT	0.00
MISC. CHARGES	0.00
TOTAL CHARGES	18665.78
LESS INSURANCE	0.00
SALES TAX	0.00
PLEASE PAY THIS AMOUNT	18665.78



City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: February 16, 2016
CONTACT CITY DEPARTMENT: Public Works Department
CONTACT CITY STAFF: Harper Wilder, Director

SUBJECT:

Authorize award and execution of a Purchase Order to BLUEBONNET MOTORS, New Braunfels, in an amount not to exceed \$18,665.78 for the installation of a new diesel engine in the 2009 Ford 350 hydraulic truck for the Public Works Department.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to BLUEBONNET MOTORS, INC., will require expenditure of funds from the Fiscal Year 2015-16 approved budget of the Public Works Department as follows:

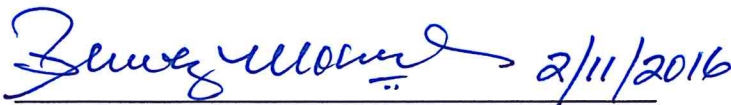
- | | |
|-------------------------------|--|
| 1. City Department: | Public Works Department |
| 2. Project Name: | New Diesel Engine F350 Hydraulic Truck |
| 3. Funding Source: | Water Utility Fund |
| 4. Budget/Accounting Code(s): | 310-820-54131 |
| 5. Current Appropriation: | \$ 25,000.00 |
| 6. Unencumbered Balance: | \$ 18,776.65 |
| 7. Amount of This Action: | <u>\$(18,665.78)</u> |
| 8. Remaining Balance: | <u>\$ 110.87</u> |

FUNDING SOURCE OF THIS ACTION:

The funding source for this Purchase Order will be provided from the Fiscal Year 2015-16 approved budget of the Public Works Department.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

 2/11/2016

Perwez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

Fireworks 2016

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize award and execution of a Contract and a Purchase Order to PYRO SHOWS OF TEXAS, Fort Worth, Texas, in an amount not to exceed \$20,000.00 for the 2016 July 4th Independence Day Celebration fireworks show. ~ *Kerry Urbanowicz, Director of Parks and Recreation*

Other Information: As approved in the FY2016 budget, this will be year 3 of a three 3 agreement for Pyro Shows of Texas as part of an RFP for fireworks provider.

Legal Notes:

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- Pyro of Texas Contract
- Kyle Proposal 2016
- Fiscal Note

**PYRO SHOWS OF TEXAS
6601 NINE MILE AZLE ROAD
FORT WORTH, TX 76135**

Contract Agreement

This Agreement, made this 1st Day of February, 2016, by and between **PYRO SHOWS OF TEXAS, Inc.**, a Texas Corporation, whose address is 6601 Nine Mile Azle Road, Fort Worth, Texas 76135, and hereinafter referred to as **PYRO SHOWS** and **CITY OF KYLE**, with its principle place of business located at P.O. Box 40 Kyle, Texas 78640 hereinafter referred to as "Customer."

WITNESSETH

In consideration of the mutual promises and undertakings set forth herein, receipt of said consideration being acknowledged, the parties hereby agree as follows:

I. FIREWORKS DISPLAY: PYRO SHOWS agrees to furnish to customer a firework display (hereinafter "SHOW") pursuant to our custom proposal 16-TX-07-04-CUST-20000-0046 dated this 1st Day of February, 2016. The show will be given on the **4th Day of July, 2016**. In case of rainout, display show will be held on **July 5, 2016**.

II. CANCELLATION: PYRO SHOWS shall determine what weather conditions prohibit PYRO SHOWS from proceeding with the Show; in which case, PYRO SHOWS agrees to present the Show on the following day or previously agreed upon rain date. In addition to contracted Show cost, Customer shall remit the actual additional expenses PYRO SHOWS shall incur in presenting the show on subsequent occasion to include labor, lodging, per diem etc.; in no event shall these additional expenses be less than ten percent (10%) of the contracted price of the Show. In the event the Show must be **RESCHEDULED** to a mutually agreed upon date other than the previously agreed upon rain date, In addition to contracted Show cost, Customer shall remit the actual additional expenses PYRO SHOWS shall incur in presenting the Show on subsequent occasion to include labor, lodging, per diem etc.; in no event shall these expenses be less than thirty percent (30%) of the contracted price of the Show. Should Customer elect to **CANCEL** the Show for any reason, Customer must provide PYRO SHOWS with a thirty (30) days' written notice by certified mail, return receipt, to PYRO SHOWS' address as set forth above. Customer agrees that PYRO SHOWS shall incur substantial expense in preparation for the Show and, accordingly, agrees to pay PYRO SHOWS fifty percent (50%) of the total contract price for the show as liquidated damages for cancellation. If the Customer does not provide PYRO SHOWS with notice as set forth herein, Customer shall pay PYRO SHOWS the entire amount or one hundred percent (100%) of the contract price for the Show as liquidated damages.

III. SECURITY AREA: Customer agrees to furnish sufficient space for PYRO SHOWS to properly conduct the Show as determined by NFPA 1123-2010 (hereinafter "Security Area"). Customer agrees to provide adequate security protection to preclude persons unauthorized by PYRO SHOWS from entering the Security Area. For the purposes of the Agreement, "Unauthorized Persons" shall mean anyone other than the employees of PYRO SHOWS or persons specifically designated in writing by the sponsor, and submitted and approved, to PYRO SHOWS prior to the event.

IV. SITE CLEANUP: PYRO SHOWS shall be responsible for basic cleanup of the launch area to include policing of the fallout zone for any unexploded ordnance and removal of all large paper debris, wood, wire, foil, racks, mortars and firing equipment used in the setup for the show. Customer shall be responsible for cleanup of debris located in and around fallout zone.

V. INDEMNIFICATION AND HOLD HARMLESS: To the extent permitted by law, Customer agrees to hold PYRO SHOWS harmless from any damages caused to Customer which result as a consequence of unauthorized persons entering the Security Area. Furthermore, Customer agrees to defend and indemnify PYRO SHOWS from any and all claims brought against PYRO SHOWS for damages caused wholly or in part by Unauthorized Person who have entered the Security Area.

VI. AMENDMENT & ASSIGNMENT: To the extent permitted by law, this agreement is deemed personal and confidential to Customer, his heirs, executors and administrators only, and may not be sold, assigned, amended, or transferred without the prior written consent of PYRO SHOWS.

VII. COMPLIANCE WITH THE LAWS AND REGULATIONS: Promptly upon the execution of this Agreement, Customer shall apply for the approval hereof to any agency, officer or authority of any government if such approval is required by any applicable law, ordinance, code or regulation. Customer agrees to indemnify and hold harmless PYRO SHOWS from against all claims, suits, and causes of action, demands, penalties, losses or damages which may arise or accrue because of the failure or neglect of customer to obtain such approval. This Agreement is made expressly subject to and Customer expressly agrees to comply with and abide by all applicable laws, ordinances, codes and regulations insofar as the same may be applicable to the terms and conditions of this Agreement, including all rules and regulations now existing or that may be promulgated under and in accordance with any such law or laws.

VIII. PERMITS AND LICENSES: Customer shall assist PYRO SHOWS in the acquisition and maintenance of all necessary permits and licenses to enable PYRO SHOWS to perform fully hereunder unless otherwise forbidden by any other applicable statute, rule or otherwise. **Any expenses for security or stand by fire protection shall be the responsibility of the customer.** It is hereby stipulated that this Agreement is to be construed and governed by the laws of the State of Texas, and any suit involving this contract shall be brought in the Courts of Tarrant County in the State of Texas, and the Customer hereby submits itself to the jurisdiction of said Courts and waives its rights to proceed against PYRO SHOWS in and other actions, in any other jurisdiction.

IX. LATE PAYMENT: PYRO SHOWS shall charge, and Customer agrees to pay, one and one half percent (1 1/2%) per month late payment fee for each month until PYRO SHOWS is paid the amount set forth in Paragraph XIV herein. The stated late payment fee shall begin to run from the applicable date(s) established in Section XV, unless this provision is prohibited by law.

X. ADVERTISEMENT AND PROMOTIONS: Customer agrees to state that fireworks display is being provided by Pyro Shows in all advertisements and promotions. Furthermore, Customer agrees to allow Pyro Shows to use sponsors name in Pyro Shows list of clients and any Pyro Shows advertisements and promotions.

XI. COMPLAINTS: In the event that Customer has a complaint concerning the Show, or any material or product used in or pursuant to the Show, or of the conduct of the Show by PYRO SHOWS, or any act or omission of PYRO SHOWS or its agents, either directly or indirectly, without limitation, Customer shall make complaint known to PYRO SHOWS in writing by certified mail to PYRO SHOWS' address as set forth above, within ten (10) days after the date of the Show. In the event that Customer fails to register any complaint in the time and in the manner specified, Customer agrees that it shall not claim such complaint as cause for an offset or withhold any payment due to PYRO SHOWS hereunder on account of or because of such complaint or any matter arising from, relating to or a consequence of the complaint. Furthermore, Customer agrees that should PYRO SHOWS have to collect any amount due PYRO SHOWS hereunder which Customer claims as an offset or which is withheld by Customer on account of, or because of, a complaint not registered with PYRO SHOWS in the time and in the manner specified herein, by law or through an Attorney-at-Law, PYRO SHOWS shall be entitled to collect attorneys' fees in the amount of 15% of the amount owing PYRO SHOWS or the maximum amount allowed by law, whichever is greater, along with all cost of collection.

XII. WORKER'S COMPENSATION/EMPLOYEES: PYRO SHOWS shall provide Worker's Compensation insurance for its employees only.

XIII. INSURANCE: Pyro Shows will provide General Liability Insurance and Automobile Liability in the amount of \$5,000,000, combined single limit, covering its activities and services in connection with the show described in this contract. Pyro Shows also agrees to include Customer and Customer's Sponsors as additional insured's under the terms of this coverage. Customer shall furnish Pyro Shows a list of those entities to be covered under this Liability Insurance.

XIV. PAYMENT TERMS: CITY OF KYLE shall pay PYRO SHOWS \$20,000 plus all applicable taxes according to the terms and conditions set forth in the attached Proposal for presenting the Show. Customer shall submit a 50% deposit (\$10,000) upon return of signed contract by March 4, 2016. Balance will be due in PYRO SHOWS office prior to the day of show.

XV. TAXES: Customer shall be responsible for all applicable sales taxes.

IMPORTANT: Checks must be payable to PYRO SHOWS OF TEXAS, INC.

All the terms and conditions set forth on any addendum attached to this Agreement are made part of this Agreement and incorporated by reference herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

PYRO SHOWS OF TEXAS, INC.

BY: _____ Date _____
Steve Frantz, Vice President

CITY OF KYLE

BY: _____ Signature _____ Print Name _____ Title _____ Date _____

WARRANTY EXCLUSIONS

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

No representation of affirmation of fact including but not limited to statement regarding capacity, suitability for use, or performance of equipment or products shall be, or be deemed to be, a warranty by PYRO SHOWS for any purpose, nor give rise to any liability or obligation of PYRO SHOWS whatsoever.

IN NO EVENT SHALL PYRO SHOWS BE LIABLE FOR ANY LOSS OF PROFITS OR OTHER ECONOMIC LOSS, INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY CLAIMED BREACH OF OBLIGATIONS HEREUNDER.



Custom Proposal for

CITY OF KYLE



July 4, 2016



*Transforming special occasions into **EPIC EVENTS***

Item # 9

All information is proprietary and confidential. No part may be copied or forwarded without the expressed permission of Pyro Shows.



At Pyro Shows of Texas, our mission is to provide an **EPIC** fireworks event to excite and delight your audience while attracting a larger number of spectators to your venue!

We place great emphasis on product value, quality, and performance. Our dedication behind the scenes ensures the outstanding results that we are known to provide.

Enjoy reviewing this proposal and remember, “customization” is the key. We will be happy to make adjustments to the proposal to achieve your vision of the show.



Pyro Shows is pleased to submit the following customized proposal for the City of Kyle fireworks display on July 4, 2016.

We look forward to hearing from you.

Janson Stanley
Sales Representative

Item # 9



CUSTOM PROPOSAL
16-TX-07-04-CUST-20000-0046
February 1, 2016

PRESENTED TO:

The City of Kyle
PO Box 40
Kyle, Texas, 78640

For

Kyle 4th of July Celebration
July 4, 2016
\$20,000

By

Pyro Shows of Texas
6601 Nine Mile Azle Road
Fort Worth, Texas 76135
800-488-7976

Item # 9



**Fourth of July Celebration for the National Park Service
by Pyro Shows, Inc.**



SHOW OVERVIEW

Kyle, Texas

Program Cost: \$20,000
Program Date: July 4, 2016
Length of Show: 15-16 minutes

Included Services

Insurance Liability Coverages:

General Liability	\$5,000,000.00
Automobile Liability	\$5,000,000.00

Workers Compensation:

Full coverage as required by State and Federal law, including United States Longshoreman and Harbormaster coverage.

Insurance Agency:

Britton-Gallagher and Associates
1375 E. 9th Street, 30th Floor
Cleveland, OH 44114

Compliance:

Pyro Shows adheres to the following regulatory requirements:

- BATFE – Bureau Alcohol, Tobacco, Firearms & Explosives
- FAA – Federal Aviation Administration
- NFPA 1123, 1124
- U.S. Coast Guard
- Department of Transportation
- OSHA
- State and Local Code Ordinance

MANUFACTURERS

Pyro Shows uses a wide variety of American, Spanish, Japanese, and Chinese manufacturers to provide the widest assortment of colors and effects.

All **ELECTRIC THUNDER SALUTES** are selected from Sunny, Lidu, or Icon for the best Titanium effects, tail duration, and reliable performance.

Our **FANCY COLORED SHELLS** are selected from Golden Peak, Freedom, or Dancing. Although priced economically, they provide a vivid array of bright primary and pastel colors.

Our **EXTRA FANCY SHELLS** are selected from Glorious, Sunny, An Ping, Flower King, and Lidu to combine great colors with astonishing secondary effects such as crackles, whistles, and shell of shells. These assortments also include pattern shells such as smiling faces, hearts, stars, cubes, spirals, and atomic rings.

Our **SUPER DELUXE SHELLS** are selected from Icon, Vulcan, and other International suppliers, and include magnalium compositions for extra bright colors. Some of the aerial shells are cylinder in shape to accommodate additional special effects such as whistles, serpents, and tourbillions.

Our **SPECIAL EFFECT AND MULTIPLE BREAK SHELLS** include the ultimate in art and science. These shells come from Vulcan in China or one of the several Caballer factories in Valencia, Spain. They include farfallas, fish and whistles, serpents and stars, gold twinkle crossettes, battle in the clouds, gold kamuro to fuchsia strobe, and other stunning effects.

MAIN BODY



The Main Body of your fireworks program is the opportunity to artistically explore the full range of shell varieties, design elements, and intensity levels.

In the main body of your show, Pyro Shows will feature a combination of unique shells that will provide vibrant effects. We will choose from a selection of colorful peonies; color-changing chrysanthemums; dazzling gold and silver palms and crossettes and pattern shells such as hearts, stars, pulsating French, Spanish, and Chinese Roman candles; and high-caliber mines and salutes.

MAIN BODY

3" DIAMETER AERIAL SHELLS

- 30 ELECTRIC THUNDER SALUTES.** These are real sky shakers. These aerial bombs contain the maximum amount of high powered flash powder and titanium. This provides a blast of sound and flash of light to resemble the crash of thunder and lightning.
- 105 FANCY COLORED SHELLS** - These specially selected aerial shells are composed of cylinder and ball shells to give you a combination of superior quality and quantity in a wide variety of effects. Some of the combinations and effects include brocade, crossette, peony, and diadem. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request.
- 105 EXTRA FANCY SHELLS** - These more intricate multiple effect and precision shells are composed of many of the very best imported shells from France, Germany, Spain, China, Taiwan, & the USA, made throughout the world. The variety includes The Golden Butterfly, Bees, Palm Trees, Color Chrysanthemum, Atomic Rings, Saturn Rings, Dragon Eggs, Thousand Oriental Flowers, and more.
- 30 SUPER DELUXE** - These shells also come in cylinder and sphere shapes, and they are made exclusively in the U.S. All shell colors are magnesium compounds to provide the brightest and most vivid colors available. These very powerful shells often break with the size, pattern, and density of shells twice their size. Colors include Glittering Tiger Tail to Purple Willow, Golden Dahlia, Rainbow, Orange and Silver Flitter, Weeping Cascade, and Golden Brocade Kamuro.
- 30 SPECIAL EFFECT/ MULTIPLE BREAK SHELLS** - This class includes the ultimate in the art and science of pyrotechnology. It includes such favorites as Fish & Whistles, Serpents & Stars, Whistles and Color, Silver or Gold Glitter Crossettes, Artillery, and Tourbillion.

MAIN BODY

4" DIAMETER AERIAL SHELLS

- 160 FANCY COLORED SHELLS** - These specially selected aerial shells are composed of cylinder and ball shells to give you a combination of superior quality and quantity in a wide variety of effects. Some of the combinations and effects include brocade, crossette, peony, and diadem. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request.
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MAIN BODY

5" DIAMETER AERIAL SHELLS

- 24 FANCY COLORED SHELLS** - These specially selected aerial shells are composed of cylinder and ball shells to give you a combination of superior quality and quantity in a wide variety of effects. Some of the combinations and effects include brocade, crossette, peony, and diadem. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request.
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- 6 SUPER DELUXE** - These shells also come in cylinder and sphere shapes, and they are made exclusively in the U.S. All shell colors are magnesium compounds to provide the brightest and most vivid colors available. These very powerful shells often break with the size, pattern, and density of shells twice their size. Colors include Glittering Tiger Tail to Purple Willow, Golden Dahlia, Rainbow, Orange and Silver Flitter, Weeping Cascade, and Golden Brocade Kamuro.
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MAIN BODY

6" DIAMETER AERIAL SHELLS

- 22 FANCY COLORED SHELLS** - These specially selected aerial shells are composed of cylinder and ball shells to give you a combination of superior quality and quantity in a wide variety of effects. Some of the combinations and effects include brocade, crossette, peony, and diadem. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request.
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GRAND FINALE



The Grand Finale! It's what puts an epic *exclamation point* in the show and it's everyone's favorite part! Pyro Shows is known for our powerful, vibrant, grand finales. A variety of shell sizes will transform the sky into a massive wall of color. As the grand finale progresses, a gradual shift will occur from color to thundering booms. The closing moments will feature an earth-shaking barrage of salutes ending with a flight of towering brocade and colored chrysanthemums.



Item # 9

GRAND FINALE

The sweetest taste of the night is provided by your splendid GRAND FINALE. The selection of shells will provide a sparkling and dynamic ending to your show. It will include a variety of highest-quality color shells, reports, and comets. Light 'er up and let 'er rip!

Your customized GRAND FINALE:

3" DIAMETER AERIAL SHELLS

240 FANCY COLORED SHELLS - These specially selected aerial shells are composed of cylinder and ball shells to give you a combination of superior quality and quantity in a wide variety of effects. Some of the combinations and effects include brocade, crossette, peony, and diadem. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request.

4" DIAMETER AERIAL SHELLS

90 EXTRA FANCY SHELLS - These more intricate multiple effect and precision shells are composed of many of the very best imported shells from France, Germany, Spain, China, Taiwan, & the USA, made throughout the world. The variety includes The Golden Butterfly, Bees, Palm Trees, Color Chrysanthemum, Atomic Rings, Saturn Rings, Dragon Eggs, Thousand Oriental Flowers, and more.

5" DIAMETER AERIAL SHELLS

20 SPECIAL EFFECT/ MULTIPLE BREAK SHELLS - This class includes the ultimate in the art and science of pyrotechnology. It includes such favorites as Fish & Whistles, Serpents & Stars, Whistles and Color, Silver or Gold Glitter Crossettes, Artillery, and Tourbillion.

6" DIAMETER AERIAL SHELLS

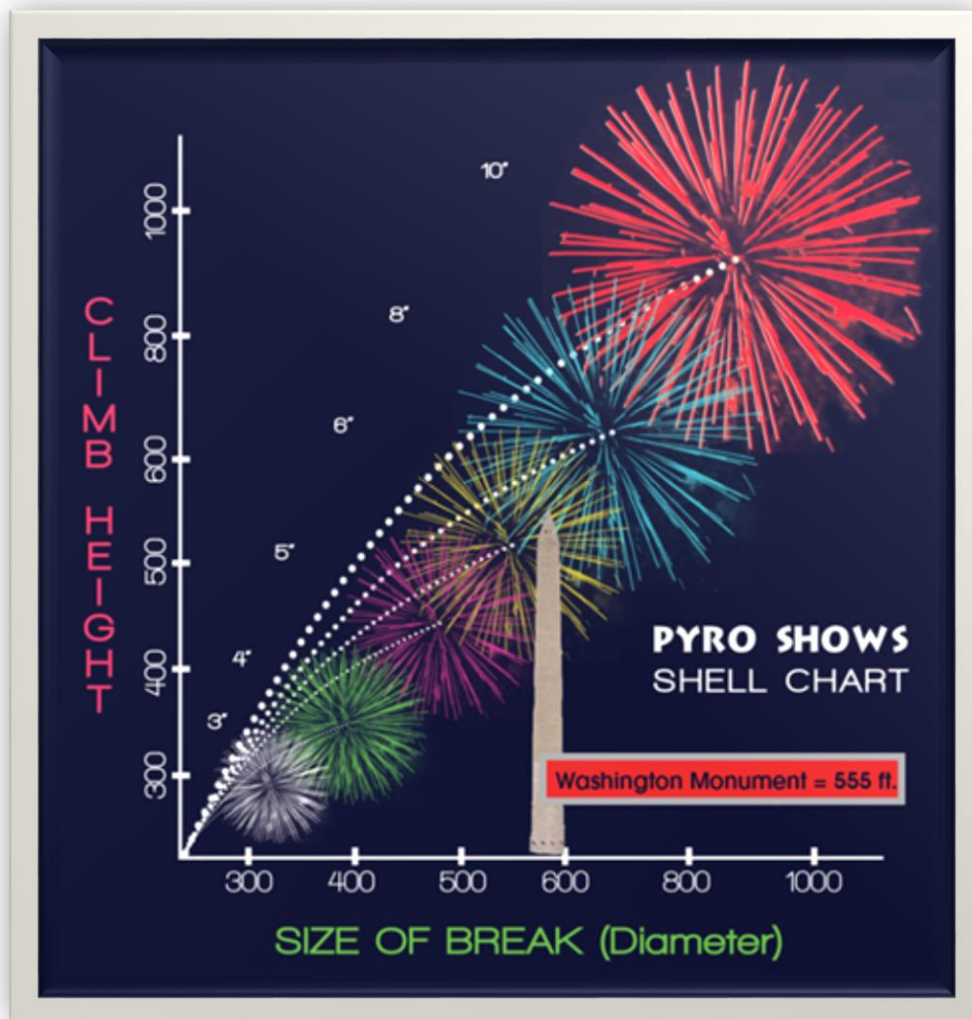
18 SUPER DELUXE - These shells also come in cylinder and sphere shapes, and are magnesium compounds to provide the brightest and most vivid colors available. These very powerful shells often break with the size, pattern, and density of shells twice their size. Colors include Glittering Tiger Tail to Purple Willow, Golden Dahlia to Emerald Star, Rainbow Magnesium, Orange and Silver Flitter, Weeping Cascade, and Golden Brocade Kamuro with Twinkling Tips.

AERIAL SHELL INFORMATION

The bigger the boom, the bigger the break! In the world of fireworks, the size of the shell determines the “climb height” and the size of the break.

We’ve illustrated a visual reference scale we use to calculate the specific altitude of customized shows.

As shown, the climb height and the size of the break of a 10” shell is substantially larger than that of a 3” shell. The larger the shell, the more robust the result!





SHELL SUMMARY

**City of Kyle
Monday, July 04, 2016**

\$20,000.00

<u>SHELL SIZE</u>	<u>MAIN BODY</u>	<u>FINALE</u>	<u>TOTAL</u>
3"	300	240	540
4"	400	90	490
5"	60	20	80
6"	54	18	72
TOTAL SHELL COUNT			1,182

Fireworks 1.3 G Display
Largest Shell 6"
Safety Radius 420'

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: February 16, 2016
CONTACT CITY DEPARTMENT: Parks and Recreation
CONTACT CITY STAFF: Kerry Urbanowicz, Director

SUBJECT:

Authorize award and execution of a Contract and a Purchase Order to PYRO SHOWS OF TEXAS, Fort Worth, Texas, in an amount not to exceed \$20,000.00 for the 2016 July 4th Independence Day Celebration fireworks show.

CURRENT YEAR FISCAL IMPACT:

This contract award for the City's 4th of July fireworks display will require expenditure of funds from the Fiscal Year 2015-16 approved budget of the Parks and Recreation Department as follows:

1. City Department:	Parks and Recreation
2. Project Name:	4th of July Fireworks Display
3. Funding Source:	General Fund
4. Budget/Accounting Code(s):	110-131-52143
5. Current Appropriation:	\$ 20,500.00
6. Unencumbered Balance:	\$ 20,500.00
7. Amount of This Action:	<u>\$ (20,000.00)</u>
8. Remaining Balance:	<u>\$ 500.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this contract award to PYRO SHOWS OF TEXAS, INC., will be provided from the Fiscal Year 2015-16 approved budget of the Parks and Recreation Department (General Fund).

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

 2/1/2016

Perwez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

Amend Court Collection Service Agreement with Linebarger Goggan Blair & Sampson, LLP

Meeting Date: 2/16/2016
Date time: 7:00 PM

Subject/Recommendation: Amend the court collections service agreement with LINEBARGER GOGGAN BLAIR & SAMPSON, LLP, to include collection of past due balances for utility services and to extend the term to expire on March 15, 2018. ~ Perwez A. Moheet, CPA, Director of Finance

Other Information: The City of Kyle currently has an agreement with the firm of Linebarger Goggan Blair & Sampson, LLP, to provide collection services for past due municipal court fines. This agreement will expire in March 2017. This amendment to the current collection service agreement with Linebarger Goggan Blair & Sampson, LLP, will provide the following:

1. Include the collection of delinquent utility accounts for water, wastewater, and refuse services provided by the City.
2. The collection fee for delinquent utility accounts is at the same rate (30%) as established for the court collections. The fee will be 30% of actual amounts collected.
3. Extend the term of the agreement to expire in March 2018 with the option to extend for three additional one-year periods.

The City of Kyle is currently carrying in excess of \$1.0 million in delinquent utility account balances which are mostly three years or older. Below is a breakdown by age of the delinquent balances:

	<u>Amount</u>	<u>No. of Accounts</u>
• 31 to 60 Days:	\$ 50,125	523
• 61 to 90 Days:	\$ 19,942	120
• 91 to 120 Days:	\$ 14,920	86
• 121 to 180 Days:	\$ 32,627	105
• 181 to 1 Year:	\$ 60,408	254
• 1 to 2 Years:	\$113,664	474
• 2 to 3 Years:	\$118,988	485
• Over 3 Years:	\$656,784	2,820

In an effort to increase the collection rate on these delinquent accounts, staff recommends amending the agreement for court collections to include these past due utility balances.

Legal Notes:

Budget Information: A Fiscal Note is not required. Any collection fee due to the vendor will be paid from delinquent amounts collected.

ATTACHMENTS:

Description

- Draft Agreement

Contract for Fines and Fees / Utilities Collection Services

STATE OF TEXAS

COUNTY OF HAYS

THIS CONTRACT (hereinafter "AGREEMENT") is made and entered into by and between the City of Kyle acting herein by and through its governing body, hereinafter styled "CLIENT", and Linebarger Goggan Blair & Sampson, LLP, hereinafter styled "FIRM".

Article I

Nature of Relationship and Authority for Contract

1.01 The parties hereto acknowledge that this AGREEMENT creates an attorney-client relationship between CLIENT and FIRM.

1.02 The CLIENT hereby employs the FIRM to provide the services hereinafter described for compensation hereinafter provided.

1.03 This AGREEMENT, as applicable, is entered into pursuant to and as authorized by Subsection (a) of ART. 103.0031, Texas Code of Criminal Procedure.

Article 2

Scope of Services

2.01 CLIENT agrees to employ and does hereby employ FIRM to provide specific legal services provided herein to:

(a) enforce the collection of delinquent court fees and fines that are subject to this AGREEMENT, pursuant to the terms and conditions described herein; and,

(b) enforce the collection of delinquent utility accounts that are subject to this AGREEMENT, pursuant to the terms and conditions described herein.

Such legal services shall include but not be limited to recommendations and legal advice to CLIENT to take legal enforcement action; representing CLIENT in any dispute or legal challenge over authority to collect such accounts; defending CLIENT in litigation or challenges of its collection authority; and representing CLIENT in collection interests in bankruptcy matters as determined by FIRM and CLIENT. This AGREEMENT supersedes all prior oral and written agreements between the parties regarding court fees and fines and/or utilities, and can only be amended if done so in writing and signed by all parties. Furthermore, this contract cannot be transferred or assigned by either party without the written consent of all parties.

2.02 The CLIENT may from time-to-time specify in writing additional actions that should be taken by the FIRM in connection with the collection of accounts identified in 2.01 above and that are subject to this AGREEMENT. CLIENT further constitutes and appoints the FIRM as CLIENT's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to pursue collection of the CLIENT's claims.

2.03 (a) Fines and fees that are subject to this AGREEMENT are those that are more than sixty (60) days past due as of the effective date hereof and those that become more than sixty (60) days past due during the term hereof. As used in this section, "more than 60 days past due" has that meaning assigned by Subsection (f) of Art. 103.0031, Texas Code of Criminal Procedure [as amended by Senate Bill 782, 78th Legislature (2003), effective June 18, 2003]. The meaning assigned to the phrase "more than 60 days past due" shall, for the term and purposes of this AGREEMENT, survive any future amendments to, or repeal of, Article 103.0031, Texas Code of Criminal Procedure, or any parts thereof.

(b) Utility accounts that are subject to this AGREEMENT are those that are more than sixty (60) days past due as of the effective date hereof and as may be otherwise determined by CLIENT.

2.04 The CLIENT agrees to provide to the FIRM data regarding any fines and fees or utility accounts that are subject to this AGREEMENT. The data shall be provided by electronic medium in a file format specified by the FIRM. The CLIENT and the FIRM may from time-to-time agree in writing to modify this format. The CLIENT shall provide the data to the FIRM not less frequently than monthly or as otherwise mutually agreed.

2.05 The FIRM, in all communications seeking the collection of fines and fees or utilities, shall direct all payments directly to the CLIENT at an address designated by the CLIENT. If any fines and fees or utilities are paid to the FIRM, said payments shall be expeditiously turned over to the CLIENT.

Article 3 *Compensation*

3.01 The CLIENT agrees to pay the FIRM as compensation for the services required hereunder as follows:

(a) With respect to those fines and fees accounts identified in 2.01 (a), thirty (30%) percent of the total amount of all fines and fees [exclusive of any collection fee assessed by the CLIENT pursuant to Subsection (b) of Article 103.0031, Texas Code of Criminal Procedure] subject to the terms of this AGREEMENT as set forth in Section 2.03 above that are collected by the CLIENT during the term of this AGREEMENT as a result of the commission of a criminal or civil offense committed after June 18, 2003 and as provided by section 2.03 (a) above;

And,

(b) With respect to those utility accounts identified in 2.01 (b) thirty (30%) percent of the total amount of all utilities subject to the terms of this AGREEMENT as set forth in Section 2.03 (b) above that are collected by the CLIENT during the term of this AGREEMENT.

All compensation shall become the property of the FIRM at the time payment of the fines and fees or utilities is made to the CLIENT.

3.02 The CLIENT shall pay the FIRM by the twentieth day of each month all compensation earned by the FIRM for the previous month as provided in this Article 3. The CLIENT shall provide an accounting showing all collections for the previous month with the remittance.

Article 4 *Intellectual Property Rights*

4.01 The CLIENT recognizes and acknowledges that the FIRM owns all right, title and interest in certain proprietary software that the FIRM may utilize in conjunction with performing the services provided in this AGREEMENT. The CLIENT agrees and hereby grants to the FIRM the right to use and incorporate any information provided by the CLIENT ("CLIENT Information") to update the databases in this proprietary software, and, notwithstanding that CLIENT Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the CLIENT shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the CLIENT shall be entitled to obtain a copy of such data that directly relates to the CLIENT's accounts at any time.

4.02 The FIRM agrees that it will not share or disclose any specific confidential CLIENT Information with any other company, individual, organization or agency, without the prior written consent of the CLIENT, except as may be required by law or where such information is otherwise publicly available. It is agreed that the FIRM shall have the right to use CLIENT Information for internal analysis, improving the proprietary software and database, and generating aggregate data and statistics that may inherently contain CLIENT Information. These aggregate statistics are owned solely by the FIRM and will generally be used internally, but may be shared with the FIRM's affiliates, partners or other third parties for purposes of improving the FIRM's software and services.

Article 5 *Costs*

5.01 The FIRM and CLIENT recognize that certain costs may be incurred in the process of providing any additional services contemplated in Section 2.02 above or in providing any special litigation services. The CLIENT agrees that all such costs shall be billed to the CLIENT, but that the FIRM will either (i) advance such costs on behalf of the CLIENT or, (ii) when possible, arrange with the vendor or agency providing the service

that the costs of services will not be paid unless and until such costs are recovered by the CLIENT from the debtor.

5.02 The CLIENT acknowledges that the FIRM may provide such services with its own employees or with other entities or individuals who may be affiliated with the FIRM, but the FIRM agrees that any charges for such services will be reasonable and consistent with what the same services would cost if obtained from a third party.

5.03 The CLIENT agrees that upon the recovery of such costs, the CLIENT will (i) pay the FIRM for any such costs that have been advanced by the FIRM or performed by the FIRM and (ii) pay any third party agency or vendor owed for performing such services.

Article 6

Term and Termination

6.01 This AGREEMENT shall be effective March 15, 2016 (the "Effective Date") and shall expire on March 14, 2018 (the "Expiration Date") unless extended as hereinafter provided.

6.02 Unless prior to thirty (30) days before the Expiration Date, the CLIENT or the FIRM notifies the other in writing that it does not wish to continue this AGREEMENT beyond its initial term, the CLIENT shall have the option to extend the term of the contract for three (3) additional one-year periods without the necessity of any further action by either party. Thereafter, this agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless either party gives prior notice of termination.

6.03 If, at any time during the initial term of this AGREEMENT or any extension hereof, the CLIENT determines that the FIRM's performance under this AGREEMENT is unsatisfactory, the CLIENT shall notify the FIRM in writing of the CLIENT's determination. The notice from the CLIENT shall specify the particular deficiencies that the CLIENT has observed in the FIRM's performance. The FIRM shall have sixty (60) days from the date of the notice to cure any such deficiencies. If, at the conclusion of that sixty (60) day remedial period, the CLIENT remains unsatisfied with the FIRM's performance, the CLIENT may terminate this AGREEMENT effective upon the expiration of thirty (30) days following the date of written notice to the FIRM of such termination ("Termination Date").

6.04 Whether this AGREEMENT expires or is terminated, the FIRM shall be entitled to continue to collect any items and to pursue collection of any claims that were referred to and placed with the FIRM by the CLIENT prior to the Termination Date or Expiration Date for an additional ninety (90) days following termination or expiration. The CLIENT agrees that the FIRM shall be compensated as provided by Article 3 for any such item or pending matters during the ninety (90) day period.

6.05 The CLIENT agrees that the FIRM shall be reimbursed for any costs advanced and shall be paid for any services performed pursuant to Article 5 when such costs are recovered by or on behalf of the CLIENT, regardless of the date recovered. It is expressly agreed that neither the expiration nor the termination of this AGREEMENT constitutes a waiver by the FIRM of its entitlement to be reimbursed for such costs and to be paid for such services. It is further expressly agreed that the expiration of any ninety (90) day period under Section 6.04 does not constitute any such waiver by the FIRM.

Article 7
Miscellaneous

7.01 Subcontracting. The FIRM may from time-to-time obtain co-counsel or subcontract some of the services provided for herein to other law firms or entities. In such cases, the FIRM will retain supervisory control and responsibility for any services provided by such co-counsel or subcontractors and shall be responsible to pay any compensation due to any such co-counsel or subcontractor.

7.02 Arbitration. Any controversy between the parties to this AGREEMENT involving the construction or application of any of the terms, covenants, or conditions of this AGREEMENT shall, on the written request of one party served on the other, be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act.

7.03 Integration. This AGREEMENT contains the entire AGREEMENT between the parties hereto and may only be modified in a written amendment, executed by both parties.

7.04 Representation of Other Governmental Entities. The CLIENT acknowledges and consents to the representation by the FIRM of other governmental entities that may be seeking the payment of fines and fees and/or utilities or other claims from the same person(s) as the CLIENT.

7.05 Notices. For purposes of sending any notice under the terms of this contract, all notices from CLIENT shall be sent to FIRM by certified United States mail, or delivered by hand or by courier, and addressed as follows:

Linebarger Goggan Blair & Sampson, LLP
Attention: Director of Client Services
P.O. Box 17428
Austin, Texas 78760-7428

All notices from the FIRM to the CLIENT shall be sent to CLIENT by certified United States mail, or delivered by hand or by courier, and addressed as follows:

Office of the City Manager
City of Kyle
P.O. Box 40
100 W. Center Street
Kyle, Texas 78640

EXECUTED ON the ____ day of _____, 2016.

City of Kyle

By: _____
Honorable Todd Webster, Mayor

Linebarger Goggan Blair & Sampson, LLP

By: _____
Jeff Garcia, Partner
For the FIRM



CITY OF KYLE, TEXAS

UPRC Supplemental Lease Agreement for Utility Payment Box

Meeting Date: 2/16/2016
Date time: 7:00 PM

Subject/Recommendation: Approve amendment to the lease agreement between the UNION PACIFIC RAILROAD COMPANY (lessor) and the City of Kyle (lessee) to include additional area for use by City and change lease amount to \$6,970.00 per year. ~ *Perwez A. Moheet, CPA, Director of Finance*

Other Information: This lease amendment will be between the Union Pacific Railroad Company and the City of Kyle. The City will add additional area by the VFW Building to be covered under the lease agreement. This amendment to the lease agreement includes the following changes:

1. Adds the horseshoe shaped paved section adjacent to the VFW Building on Front Street for use by the City to install a utility payment drop-box on concrete pad and for the installation of a street lamppost to provide security lighting.
2. Adds the parking area on the east side of the VFW Building to provide additional parking for the VFW Building. This area has been used as a parking area for and by the VFW Building occupants and visitors but was never included or provided for in the lease agreement.
3. Increases the annual lease payment amount from \$5,395.50 to \$6,970.00, an increase of \$1,574.50 in 2016. The current lease agreement has a 2% annual rate adjustment (increase) provision which will continue.

The following documents are attached to provide complete information regarding this agenda item:

- Supplemental lease agreement
- Revised Exhibit A (leased area map)
- Copy of current lease agreement
- Photo of City's Utility Payment Drop-box

Legal Notes:

Budget Information: The approved budget for FY 2015-16 includes \$6,415.00 for the lease payment with Union Pacific Railroad Company for the VFW Building area. An additional \$555.00 will be provided from cost savings to cover the amended lease payment amount of \$6,970.00 that will be due in FY 2015-16.

ATTACHMENTS:

Description

- Lease Amendment
- Existing Lease Agreement
- Photo of Payment Box

Audit: 222199
Folder: 01919-05

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is entered into on the _____ day of _____, 2016, between **UNION PACIFIC RAILROAD COMPANY** (“Lessor”) and **CITY OF KYLE**, a Texas municipal corporation whose address is P. O. Box 40, Kyle, Texas 78640 (“Lessee”).

RECITALS:

By instrument dated September 19, 2001, as supplemented by instrument dated July 3, 2013, Lessor and Lessee, or their predecessors in interest, entered into an agreement (“Basic Agreement”), identified as Audit No. 222199, at Kyle, Texas.

AGREEMENT:

IT IS AGREED between Lessor and Lessee to modify the Basic Agreement as follows:

Article 1. EFFECTIVE DATE.

This Supplemental Agreement is effective February 15, 2016.

Article 2. SUBSTITUTION OF PRINT.

The print dated January 29, 2016, attached as Exhibit 'A', shall be substituted for the print dated August 11, 2010, attached to the Basic Agreement.

Article 3. RENT.

A. Effective February 15, 2016, Lessee agrees to pay to Lessor Six Thousand Nine Hundred Seventy Dollars (\$6,970.00) annually. The rent shall be increased by Two Percent (2%) annually cumulative and compounded.

B. Not more than once every three (3) years Lessor may redetermine the rent. In the event that Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article 4. CULVERTS.

Lessee shall be responsible for and maintain any and all drainage ways and culverts on or within the Agreement Area as shown on Exhibit A hereto.

Article 5. AGREEMENT SUPPLEMENT.

Nothing in this Supplemental Agreement shall be construed as amending or modifying the Basic Agreement unless specifically provided herein.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of the day and year first written.

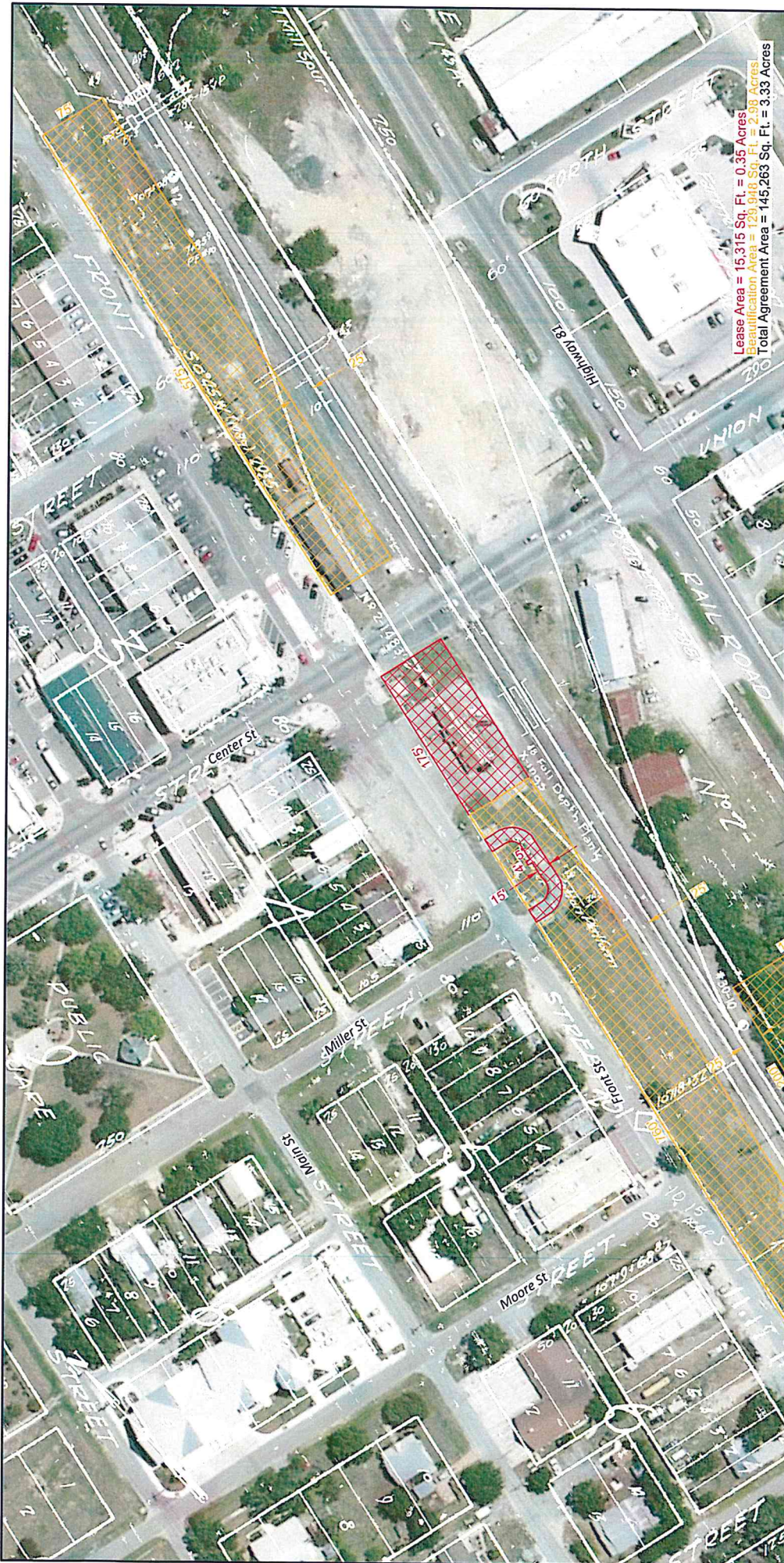
UNION PACIFIC RAILROAD COMPANY

KYLE, CITY OF

By: _____
Senior Manager - Real Estate

By: _____
Name: _____
Title: _____

NOTE:



Lease Area = 15,315 Sq. Ft. = 0.35 Acres
 Beautification Area = 139,948 Sq. Ft. = 3.18 Acres
 Total Agreement Area = 145,263 Sq. Ft. = 3.33 Acres

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY
 KYLE, HAYS COUNTY, TX
 M.P. 200.76 TO M.P. 201.06 - AUSTIN SUB
 TO ACCOMPANY AGREEMENT WITH
 CITY OF KYLE
 MP TX V-9 / S-6
 SCALE: 1" = 100'
 OFFICE OF REAL ESTATE
 OMAHA, NEBRASKA DATE: 12/29/2016
 AJM FILE: 1919-05

LEGEND:

- LEASE AREA
- BEAUTIFICATION AREA
- UPPRCO. R/W OUTLINED

0191905.dgn

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CADD FILENAME

SCAN FILENAME



February 04, 2016
Folder: 01919-05

KESHAV R. GNAWALI
KYLE, CITY OF
P. O. BOX 40
KYLE TX 78640

RE: Supplemental Agreement for Lease Audit No. 222199, Covering Use of Railroad Property at Kyle, Texas

Dear Mr. Gnawali:

Pursuant to your request, attached for execution please find the above-referenced Supplemental Agreement.

Please return the following to my attention at the address below:

1. **TWO (2) ORIGINALS** of the Agreement signed by the appropriate party. If approved by the Railroad Company, a fully-executed original will be returned to you for your records.

If you have any questions regarding this Agreement, please contact me at (402) 544-8558 or jshertzler@up.com.

Sincerely,

John S. Hertzler
Senior Manager - Real Estate

Item # 11

REMS FileNet Cover Sheet

AUD NBR: 230088
FLDR NBR: 0217292
CITY: KYLE
STATE: TX
PARTY NAME: KYLE CITY OF
PURPOSE: LEASE OF PROPERTY
AGMT. DATE: 07/16/2003
MP STRT: 200.9
PRIM CRC7: AX282
BOX NBR: 0
BATCH: 0

AUDIT 230088

DUPLICATE ORIGINAL RAILROAD COPY

Folder: 02172-92

LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on the 16th day of July, 2003, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and CITY OF KYLE, whose address is 300 W Center, Po Box 40, Kyle, Texas 78640 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article I. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Kyle, Texas, as shown on the print dated May 22, 2003, marked Exhibit "A", hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for placement of an old "Railroad Depot" and beautification and for purposes incidental thereto, only, and for no other purpose.

Article II. TERM.

A. The term of this Lease shall commence on July 15, 2003, and unless sooner terminated as provided in this Lease, shall extend for one year; and thereafter, shall automatically be extended from year to year.

Article III. RENT

A. Lessee shall pay to Lessor, in advance, rent of Three Thousand One Hundred Dollars (\$3,100.00) annually. The rent shall be increased by Two Percent (2%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the rent. In the event that Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article IV. SPECIAL PROVISION -- INSURANCE

A. At all times during the term of this Lease, Lessee shall, at Lessee's sole cost and expense, procure and maintain the following insurance coverage:

General Public Liability providing bodily injury, including death, personal injury and property damage coverage with combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence and a general aggregate limit of at least One Million Dollars (\$1,000,000.00). This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, severability of interests, and name Lessor as an additional insured. If coverage is purchased on a 'claims-made' basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked if insurance covering the time period of this Agreement is canceled.

By: **CODED**
R.E.W.
Date: **AUG 07 2003**

B. Lessee shall furnish Lessor with certificate(s) of insurance, identifying Folder No. 2172-92, evidencing the required coverage and, upon request, a certified duplicate original of the policy. The insurance company issuing the policy shall notify Lessor, in writing, of any material alteration including any change in the retroactive date in any 'claims-made' policies or substantial reduction of aggregate limits, or cancellation at least thirty (30) days prior thereto. The insurance policy shall be written by a reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class VII or better, and which is authorized to transact business in the state where the Premises are located.

C. Lessee hereby waives its right of subrogation under the above insurance policy against Lessor for payment made to or on behalf of employees of Lessee or its agents or for loss of its owned or leased property or property under its care, custody and control while on or near the Premises or any other property of Lessor. Lessee's insurance shall be primary with respect to any insurance carried by Lessor.

SPECIAL PROVISION – FENCE/BARRICADE

Lessee, at Lessee's sole cost and expense, shall construct and maintain, at all times during the term of this Lease, a fence/barricade of a design satisfactory to Lessor, in the location shown on the attached Exhibit A.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

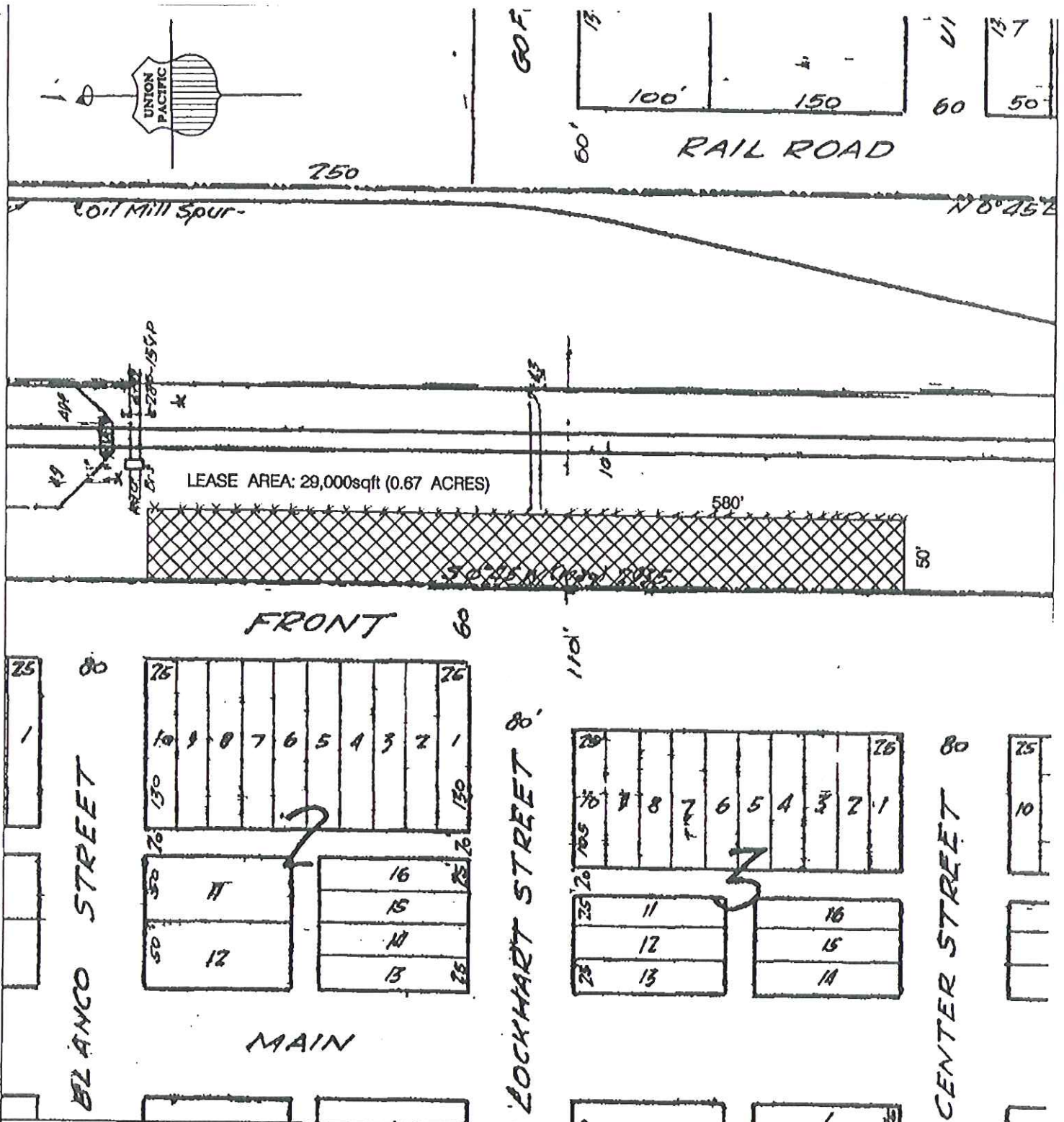
UNION PACIFIC RAILROAD COMPANY

KYLE CITY OF

By: 
Manager - Real Estate

By: 
Title: CITY MANAGER

NOTE:



SCALE: 1" = 100'

LEGEND

U.P.R.R. RIGHT OF WAY

LEASE AREA SHOWN

Fernando Barralada KKR01

EXHIBIT "A"

UNION PACIFIC RAILROAD CO.

TO ACCOMPANY AGREEMENT WITH
CITY OF KYLE

KYLE, HAYS COUNTY, TX.
M.P. 200.90+- AUSTIN SUB.
IGN TX V 9 /S-6 (T105K0S6)

REAL ESTATE DEPARTMENT OMAHA NE. Item # 11
FILE #2172-92 DATE: 5-22-2003 T.D.A.

IND LS 11/15/99
APPROVED, LAW

EXHIBIT B

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Section 3. PAYMENT OF RENT.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

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C. If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the

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APPROVED, LAW

Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

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APPROVED, LAW

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Notwithstanding the term of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A), at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

IND LS 11/15/99
APPROVED, LAW

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: Assistant Vice President - Real Estate, Real Estate Department, 1800 Farnam Street, Omaha, Nebraska 68102; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

IND LS 11/15/99
APPROVED, LAW

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III., this Lease may be amended only by a written instrument signed by Lessor and Lessee.

669449



REMS FileNet Cover Sheet

AUDIT NUMBER	222199
FOLDER NUMBER	0191905
CITY	KYLE
STATE	TX
PARTY NAME	KYLE, CITY OF
PRIMARY PURPOSE	Lease of Land for General Office Bldings
EFF. DATE	8/1/2001
MP START	201
MP END	
PRIMARY CIRC7	AX282
DESCRIPTION	Lease of Property
BOX NUMBER	0
BATCH	00

LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on the 19TH day of SEPTEMBER, 2001, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and CITY OF KYLE, a Texas municipal corporation, whose address is P. O. Box 40, Kyle, Texas 78640 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article I. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Kyle, Texas, as shown on the print dated June 25, 2001, marked Exhibit "A", hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for maintenance and operation of municipal police station and also for beautification activities (mowing, cleaning, vegetation control, etc.) only on those additional parcels as shown on the attached Exhibit "A" and for no other purposes. Lessee may also place municipal greeting signage not to exceed five feet (5') in height at one location of Lessee's choice within beautification area, so long as such signage, in opinion of Lessor, does not present visual hazard to person or persons approaching or crossing Lessor's adjacent railroad tracks.

Article II. TERM.

A. The term of this Lease shall commence on August 1, 2001, and unless sooner terminated as provided in this Lease, shall extend for one year; and thereafter, shall automatically be extended from year to year.

Article III. RENT

A. Lessee shall pay to Lessor, in advance, rent of Three Thousand Dollars (\$3,000.00) annually. The rent shall be increased by Two Percent (2%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the rent. In the event that Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article IV. PREPARATION FEES

Waived in this application.

CODED
M.C.W.

By:

Date:

SEP 20 2001

Item # 11

Article V. SPECIAL PROVISION -- INSURANCE

A. At all times during the term of this Lease, Lessee shall, at Lessee's sole cost and expense, procure and maintain the following insurance coverage:

General Public Liability providing bodily injury, including death, personal injury and property damage coverage with combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence and a general aggregate limit of at least One Million Dollars (\$1,000,000.00). This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, severability of interests, and name Lessor as an additional insured. If coverage is purchased on a 'claims-made' basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked if insurance covering the time period of this Agreement is canceled.

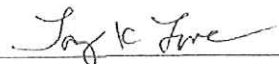
B. Lessee shall furnish Lessor with certificate(s) of insurance, identifying Folder No. 01919-05, evidencing the required coverage and, upon request, a certified duplicate original of the policy. The insurance company issuing the policy shall notify Lessor, in writing, of any material alteration including any change in the retroactive date in any 'claims-made' policies or substantial reduction of aggregate limits, or cancellation at least thirty (30) days prior thereto. The insurance policy shall be written by a reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class VII or better, and which is authorized to transact business in the state where the Premises are located.

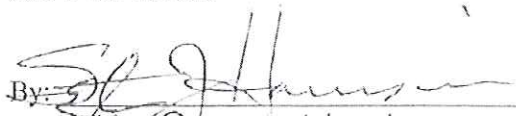
C. Lessee hereby waives its right of subrogation under the above insurance policy against Lessor for payment made to or on behalf of employees of Lessee or its agents or for loss of its owned or leased property or property under its care, custody and control while on or near the Premises or any other property of Lessor. Lessee's insurance shall be primary with respect to any insurance carried by Lessor.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

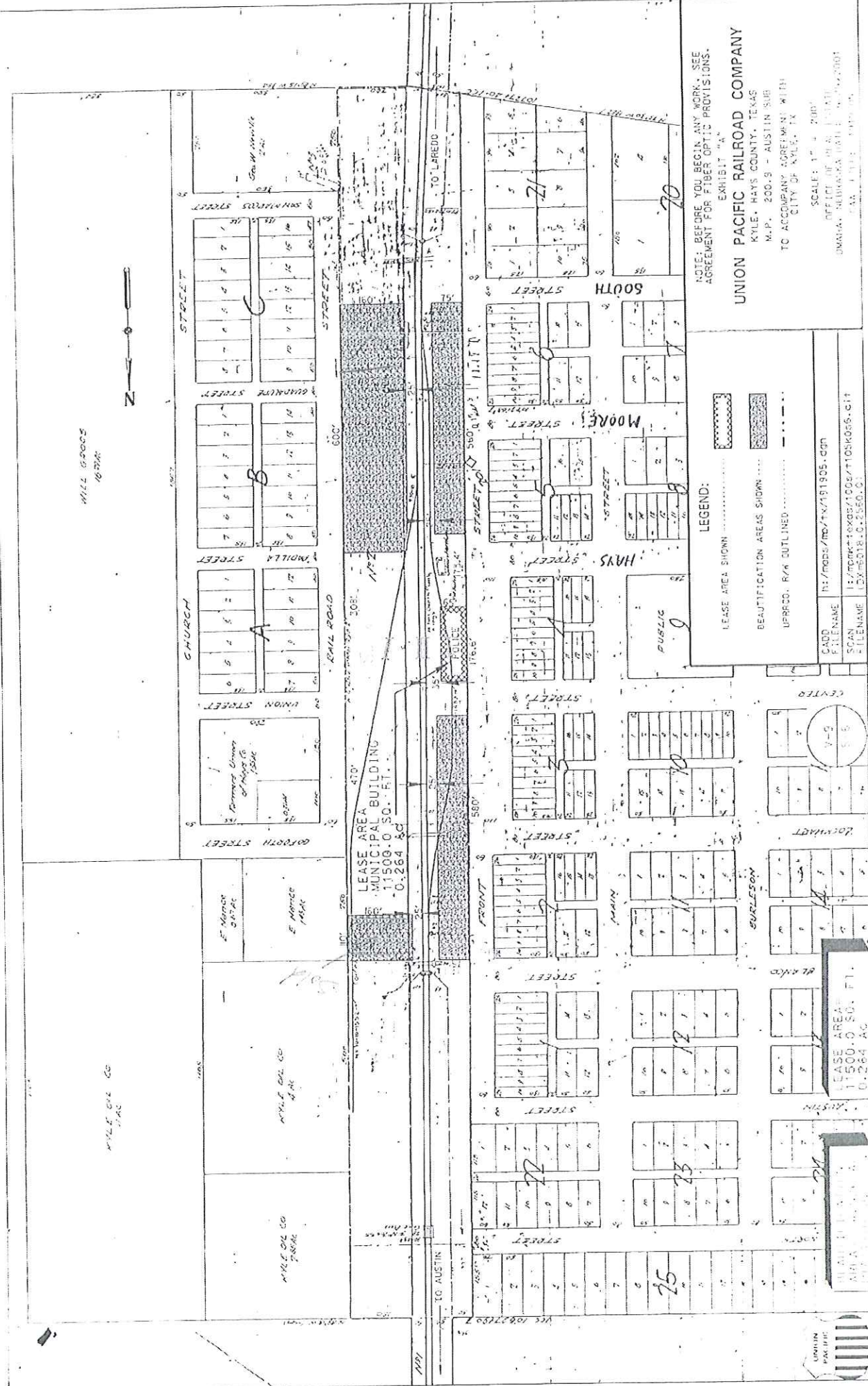
UNION PACIFIC RAILROAD COMPANY

CITY OF KYLE

By: 
Senior Manager- Real Estate
DIRECTOR

By: 
Title: CITY MANAGER

NOTE: Reflects City's acquisition of former Balcones Bank building for police facility.



WILL 0000
10/24/04

WILEY CO
1/2 AC

WILEY CO
1/2 AC

WILEY CO
1/2 AC

WILEY CO
1/2 AC

LEASE AREA MUNICIPAL BUILDING
11500.0 SO. FT.
0.284 AC

LEASE AREA MUNICIPAL BUILDING
11500.0 SO. FT.
0.284 AC

LEASE AREA MUNICIPAL BUILDING
11500.0 SO. FT.
0.284 AC

LEASE AREA MUNICIPAL BUILDING
11500.0 SO. FT.
0.284 AC

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"
UNION PACIFIC RAILROAD COMPANY

KYLE, HAYS COUNTY, TEXAS
M.P. 200.9 - AUSTIN (SB)
TO ACCOMPANY AGREEMENT WITH
CITY OF KYLE, TX

SCALE: 1" = 200'
OFFICE OF THE CITY ENGINEER
CITY OF KYLE, TEXAS

LEGEND:

- LEASE AREA SHOWN
- BEAUTIFICATION AREAS SHOWN
- UPRCD, RVA OUTLINED

CADD FILENAME: H:\MDS\MS\TX\151905.GDN
SCAN FILENAME: 151905\151905\151905.GIT
DRAWING FILENAME: 151905\151905.DWG

LEASE AREA
11500.0 SO. FT.
0.284 AC

EXHIBIT B

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Section 3. PAYMENT OF RENT.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

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C. If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the

Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Notwithstanding the term of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A), at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(es), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: Assistant Vice President - Real Estate, Real Estate Department, 1800 Farnam Street, Omaha, Nebraska 68102; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III., this Lease may be amended only by a written instrument signed by Lessor and Lessee.

↓ DEPOSIT HERE ↓

UTILITY BILL PAYMENTS

DO NOT DEPOSIT CASH



NOT RESPONSIBLE FOR CASH DEPOSITS

PAYMENTS DEPOSITED AFTER 9:00A.M.
WILL BE PROCESSED ON
THE NEXT BUSINESS DAY

UTILITY BILL PAYMENTS

DO NOT DEPOSIT CASH



NOT RESPONSIBLE FOR CASH DEPOSITS
PAYMENTS DEPOSITED AFTER 9:00A.M.
WILL BE PROCESSED ON
THE NEXT BUSINESS DAY



CITY OF KYLE, TEXAS

(Second Reading) Stormwater Ordinance

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: *(Second Reading)* An ordinance amending Chapter 50 “Utilities”, of the Code of Ordinances of the City of Kyle, Texas, by the addition of Article IX, “stormwater regulations; providing findings and definitions; providing for the regulation non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by both the United States Environmental Protection Agency and the Texas Commission on Environmental Quality; providing for penalties; repealing all ordinances or parts of ordinances in conflict herewith; providing a savings clause; providing for the inclusion in the Code of Ordinances; providing for an effective date associated training.
~ Leon Barba, P.E., City Engineer; Kathy Roecker, Stormwater Management Plan Administrator

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Ordinance - Stormwater
- Appendix A

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 50 "UTILITIES", OF THE CODE OF ORDINANCES OF THE CITY OF KYLE, TEXAS, BY THE ADDITION OF ARTICLE IX, "STORMWATER REGULATIONS; PROVIDING FINDINGS AND DEFINITIONS; PROVIDING FOR THE REGULATION NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM TO THE MAXIMUM EXTENT PRACTICABLE AS REQUIRED BY BOTH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR PENALTIES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City of Kyle to utilize its police power in order to protect the public health, safety and welfare of its citizens; and

WHEREAS, it is the intent of the City of Kyle to comply with the regulations mandated by both the United States Environmental Protection Agency and the Texas Commission on Environmental Quality through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law; and

WHEREAS, this ordinance establishes methods for controlling the introduction of pollutants into the municipal storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process; and

WHEREAS, Texas Local Government Code Section 51.001 provides that the governing body of a municipality may adopt, publish or repeal an ordinance that is for the good government, peace, or order of the municipality.

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

SECTION 1. Article IX, Stormwater Regulations, Sections 50-400 to 50-424 are hereby added to Chapter 50 "Utilities" of the Code of Ordinances, and is hereby amended to read and be as follows:

ARTICLE IX. STORMWATERREGULATIONS

Sec. 50-400. - Purpose and intent.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Kyle through the regulation of non-stormwater discharges to the Municipal Separate Storm Sewer System (MS4) of any land within the city limits, ETJ to the maximum extent practicable as required by federal and state law. This ordinance establishes methods

for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (a) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- (b) To prohibit illicit connections and discharges to the MS4.
- (c) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

Sec. 50-401. - Definitions.

For the purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs) means any activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Business Day means any day of the week, excluding Saturdays, Sundays, and legal holidays.

Calendar Day means any day of the week, including Saturdays, Sundays, and legal holidays, with no days being exempted.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Common Plan of Development means a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a “common plan of development or sale”) is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects within the jurisdiction of the city. Construction of roads or buildings in different parts of the city would be considered separate “common plans,” with only the interconnected parts of a project being considered part of a “common plan” (e.g., a building and its associated parking lot and driveways, building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same “common plan” is not included in the area to be disturbed.

Construction Activity means the disturbance of soils associated with, but not limited to, clearing, grubbing, grading, excavating, and demolition activities or other construction activities.

Conveyance means any of the following by way of illustration and not limited to: stream channel, drainage way, drainage/dry well, ephemeral stream, floodplain, karst feature, storm drainage system, drainage system appurtenance, waterbody, watercourse, waterway, curbs, gutters, man-made channels and ditches, drains, pipes, or other constructed features designed or used for flood control, or to otherwise transport stormwater runoff.

Discharge means any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the Municipal Separate Storm Sewer System (MS4), storm drain system, or conveyances.

Discharger means any person who causes, allows, permits, or is otherwise responsible for a discharge, including and without limitation, any person or operator of a construction site and/or industrial facility.

Final Stabilization means a construction site status where all soil disturbing activities at the site have been completed and a uniform (that is, evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Hazardous Materials means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Connection means any connection defined as either of the following:

- (1) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the storm drain system including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the city or,
- (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent

records and approved by the city.

Illicit Discharge means any direct or indirect non-stormwater discharge to the storm drain system, MS4, or conveyances, except as specifically exempted in this ordinance.

Industrial Activity means any activities subject to National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater Permits as defined in 40 CFR, Section 122.26 (b) (14) or Texas Pollutant Discharge Elimination System (TPDES) Industrial Stormwater Permits as defined in the TPDES Multi-Sector Industrial General Permit for Stormwater TXR050000.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances by which stormwater is collected and/or conveyed, including but not limited to sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, inlets, pumping facilities, retention and detention basins, natural and/or human-made drainage channels, reservoirs, storm drains and/or other drainage structures that are not used for collecting or conveying sewage.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means any permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-stormwater Discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Operator means the person or persons associated with a large or small construction activity that is either a primary or secondary operator as defined below:

- (1) **Primary Operator** means the person or persons associated with a large or small construction activity that meets either of the following two criteria:
 - (A) the person or persons have on-site operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 - (B) the person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a Stormwater Pollution Prevention Plan (SWP3) for the site or other permit conditions (for example, they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).
- (2) **Secondary Operator** means the person or entity, often the property owner, whose operational control is limited to:
 - (A) the employment of other operators, such as a general contractor, to perform or supervise construction activities; or
 - (B) the ability to approve or disapprove changes to construction plans and

specifications, but who does not have day-to-day on-site operational control over construction activities at the site.

Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications. If there is not a primary operator at the construction site, then the secondary operator is defined as the primary operator and must comply with the requirements for primary operators.

Person means any individual, association, homeowners association, organization, partnership, co-partnership, firm, company, corporation, trust, estate, operator, governmental entity, or any other legal entity, or their legal representatives, agents, lessees, or assigns. This term shall also include all federal, state, and local governmental entities.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; silt, sediment, sand, soil; and noxious or offensive matter of any kind. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Repeat violation means the same violation is documented two (2) times within the most recent 5-year period at the same premises, including the notification for the current violation.

Storm Drainage System means see definition for *Municipal Separate Storm Sewer System (MS4)*.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan (SWP3) means a plan required by either the construction general permit, TXR150000, or the industrial general permit, TXR050000, which describes BMPs and ensures the implementation of such BMPs used by a person or business to reduce pollutants to the Maximum Extent Practicable in stormwater discharges associated with construction and/or industrial activity for a specific location.

Texas Pollutant Discharge Elimination System (TPDES) means the state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act §§ 307, 402, 318 and 405, Texas Water Code, and Texas Administrative Code regulations.

Violator means any individual, association, homeowners association, organization, partnership, co-partnership, firm, company, corporation, trust, estate, operator, governmental entity, or any other legal entity, or their legal representatives, agents, lessees, or assigns who knowingly or unknowingly commits an offense of this ordinance. This term shall also include all federal, state, and local governmental entities.

Wastewater means all liquids and waterborne waste, drainage water, and sewage, whether treated or untreated, from residential dwellings, commercial buildings, or industrial or manufacturing facilities and institutions.

Watercourse means see definition for *Conveyance*.

Sec. 50-402. - Applicability.

This ordinance shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the city. This ordinance applies to developed and/or undeveloped lands within the city limits, ETJ or any property owned by the City.

Sec. 50-403. - Responsibility for administration.

The city shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the city may be delegated by the City Manager to persons or entities acting in the beneficial interest of or in the employ of the city.

Sec. 50-404 - Compatibility with other regulations.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Sec. 50-405. - Minimum standards.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance with this ordinance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants. Additionally, no inference is intended that compliance with this article will serve to extend any deadline established by a state or federal standard requirement, nor is any inference intended that compliance with this ordinance will relieve a

person of liability for any violation or continuing violation.

Sec. 50-406. - Prohibitions.

(a) Prohibition of Illicit Discharges.

No person within the city limits, extraterritorial jurisdiction, or property of the city shall dump, spill, leak, pump, pour, emit, empty, leach, dispose, or otherwise introduce, discharge, cause, allow, or permit to be introduced any materials, including but not limited to pollutants or waters containing any pollutants, into the city's MS4 or conveyances.

(b) Prohibition of Illicit Connections.

- (1) The construction, use, maintenance or continued of a new or existing illicit connection(s) to the storm drain system, MS4, or any conveyances is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm drain system, shall be located by the owner or occupant of that property upon written notice from the city requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm drain, sanitary sewer or other, and that the outfall location or point of connection to the storm drain system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city.

(c) Allowable Discharges.

- (1) A discharge authorized by, and in full compliance with, a TPDES permit;
- (2) a discharge or flow resulting from firefighting by the Fire Department;
- (3) a discharge or flow of fire protection water that does not contain oil or hazardous substances;
- (4) agricultural stormwater runoff;
- (5) a discharge or flow from water line flushing, but not including a discharge from water line disinfection by super chlorination or other means unless the total residual chlorine (TRC) has been reduced to less than 1.0 mg/l and it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
- (6) a discharge or flow from lawn watering, or landscape irrigation, or other irrigation water;
- (7) a discharge or flow from a diverted stream or natural spring;
- (8) a discharge or flow from uncontaminated pumped groundwater or rising groundwater;
- (9) uncontaminated groundwater infiltration (as defined as 40 C.F.R. § 35.2005(20)) to the MS4;
- (10) uncontaminated discharge or flow from a foundation drain, crawl space pump, footing

- drain, or sump pump;
- (11) a discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
 - (12) a discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
 - (13) a discharge or flow from individual residential car washing;
 - (14) a discharge or flow from water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
 - (15) stormwater runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or any other source of pollutant;
 - (16) swimming pool water that has been dechlorinated so that total residual chlorine (TRC) is less than 1.0 mg/l and that contains no harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning.

Sec. 50-407. - Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Sec. 50-408. - Industrial activity discharges.

Any person subject to an industrial activity NPDES/TPDES stormwater discharge permit shall comply with all provisions of such permit. The city can enforce compliance with said permit regarding discharges to the MS4.

Sec. 50-409. - Construction activity discharges.

Any person subject to a TPDES Construction General Permit (CGP) shall comply with all provisions of such permit. The city can enforce compliance with said permit regarding discharges to the MS4.

- (a) Upon determination made by the city, erosion and sedimentation controls may be required for all construction, development and redevelopment, regardless of how much land will be disturbed, conducted with or without a permit, including without limitation to commercial, multi-family, single-family, and duplex construction, roads, utilities, parks, golf courses, water quality basins, detention basins, and all other activities utilizing clearing, trenching, grading or other construction techniques.

Sec. 50-410. - Erosion and sediment controls (ESCs).

- (a) ESCs shall be designed, installed and maintained to minimize the discharge of pollutants.

- (b) Soil stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.
- (c) Best Management Practices (BMPs) shall be designed, installed, implemented, and maintained to minimize the discharge of pollutants to the small MS4. At a minimum, such BMPs must be designed, installed, implemented and maintained to:
 - (1) minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters;
 - (2) minimize the off-site vehicle tracking of sediments and the generation of dust;
 - (3) minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and
 - (4) minimize the discharge of pollutants from spills and leaks.
- (d) Temporary ESCs:
 - (1) are required for all construction activities until permanent revegetation or final stabilization has been established; and
 - (A) must be removed after all soil disturbing activities at the site have been completed and final stabilization has been achieved.
 - (B) for individual lots in a residential construction site, temporary ESCs must be removed after all soil disturbing activities at the site have been completed and final stabilization has been achieved by either:
 - (i) the homebuilder completing final stabilization as specified in condition (A) above; or
 - (ii) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization. If temporary stabilization is not feasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or BMPs, and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization.
- (e) Modification of ESCs.
 - (1) The city may require modifications to ESCs:
 - (A) if the modification is a minor change to upgrade erosion controls or reflect construction progress; or
 - (B) the city determines that the erosion and sediment controls are inappropriate or inadequate.
- (f) A person commits an offense if the person allows sediment from a construction site to enter a waterway or migrate off-site by failing to maintain ESCs.
 - (1) If the temporary or permanent controls fail such that construction sediment evades the controls and migrates off the site, it shall be the responsibility of the contractor to:
 - (A) retrieve the fugitive sediment to the satisfaction of the city;
 - (B) restore the off-site areas impacted by fugitive sediment to pre-disturbance conditions determined by the city; and

- (C) revise or repair ESCs within 48 hours of failure to the satisfaction of city.
- (g) The city can proceed with enforcement immediately in the following situations:
 - (1) starting construction prior to the preconstruction meeting.
 - (2) initiating construction without having installed temporary controls.
 - (3) significant or irreparable damage is determined to be occurring on a construction site.

Sec. 50-411. - Overland flow.

- (a) Drainage patterns must be designed to:
 - (1) prevent erosion;
 - (2) maintain infiltration and recharge of local seeps and springs;
 - (3) attenuate the harm of contaminants collected and transported by stormwater; and
 - (4) where possible, maintain and restore overland sheet flow, maintain natural drainage features and patterns, and disperse runoff back to sheet flow.
- (b) The applicant shall design an enclosed storm drain to mitigate potential adverse impacts on water quality by using methods to prevent erosion and dissipate discharges from outlets. Applicant shall locate discharges to maximize overland flow through buffer zones or grass-lined swales wherever practicable.

Sec. 50-412. - Long-term maintenance of post-construction stormwater control measures.

Maintenance performed by the owner or operator of a new development or redeveloped site shall have a maintenance plan. The maintenance plan must be filed in the real property records of the county in which the property is located. The owner or operator of any new development or redeveloped site shall develop and implement a maintenance plan addressing maintenance requirements for any structural control measures installed on site. Operation and maintenance performed shall be documented and retained on site, such as at the offices of the owner or operator, and made available for review by the city.

Sec. 50-413. - Low impact development.

The city encourages the use of Low Impact Development. See Appendix A – Low impact development.

Sec. 50-414. - Compliance monitoring.

- (a) *Right of Entry: Inspection and Sampling.*

This section applies to all facilities that have stormwater discharges associated with industrial activity and/or construction activity. The city shall be permitted to enter and inspect premises subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance and have the right to enter the premises of any person or entity discharging stormwater to the MS4 or to waters of the United States to determine if the discharger is complying with all requirements of this ordinance.

- (1) The city shall have immediate access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES/TPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (2) If a discharger has security measures in force which require proper identification and

clearance before entry into/onto its premises, the person shall make the necessary arrangements to allow city staff access, upon presentation of identification, without delay for the purposes of performing the city's responsibilities.

- (3) The city shall have the right to set up on any discharger's property, or require installation on the discharger's property, such devices as the city deems necessary to conduct monitoring, sampling, and/or metering of the discharger's operations.
- (4) The city may require the discharger to conduct specific sampling, testing, analysis, and other monitoring of its stormwater discharges at the discharger's expense, and may specify the frequency and parameters of any such monitoring.
- (5) The city may require the discharger to install monitoring equipment as necessary at the discharger's expense. All equipment used to measure flow and quality of discharges shall be maintained at all times in a safe and proper operating condition and calibrated to ensure accuracy at the discharger's expense.
- (6) Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (7) Unreasonable delays in allowing the city access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES/TPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (8) Unreasonable delays in allowing the city access to the discharger's premises shall be deemed a violation of this ordinance.

(b) *Search Warrants.*

If the city has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 50-415. - Requirement to prevent, control, and reduce stormwater pollutants by the use of BMPs.

The city will require BMPs for any activity, operation, or premises which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or premises shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the city's storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to

prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES/TPDES permit authorizing the discharge of stormwater associated with industrial activity and/or construction activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a SWP3 as necessary for compliance with requirements of the NPDES/TPDES permit.

Sec. 50-416. - Notifications of spills.

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, premises or operation, or person responsible for emergency response for a facility, premises or operation, has information of any known or suspected release of materials which are resulting, may result, or has resulted in an illicit discharge or pollutants discharging into stormwater, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such discharge.
- (1) In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
 - (2) In the event of a release of non-hazardous materials, said person shall notify the city's Stormwater Management Plan Administrator in person, by phone or facsimile no later than the next business day.
 - (3) A written notification of any and all discharges shall be confirmed, addressed and mailed to the city's Stormwater Management Plan Administrator within three (3) business days, of the date of the discharge.
 - (4) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for a minimum of three (3) years.
 - (5) Failure to provide notification of a release as provided above is a violation of this ordinance.

Sec. 50-417. - Enforcement.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the city is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The city is authorized to seek costs of the abatement as outlined in this ordinance.

(a) *Notice of Violation (NOV).*

- (1) Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the city may order compliance by written NOV to the responsible person. Such notice may require without limitation:
 - (A) the performance of monitoring, analyses, and reporting;

- (B) the elimination of illicit connections or discharges;
 - (C) that violating discharges, practices, or operations shall cease and desist;
 - (D) the abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (E) payment of a fine to cover administrative and remediation costs;
 - (F) the implementation of source control or treatment BMPs.
- (2) Within ten calendar days from the date of the NOV, the alleged violator shall submit to the Stormwater Management Plan Administrator, a written description of actions taken, including supporting documentation, to correct and prevent the reoccurrence of the alleged violation. Submission of corrective actions taken shall in no way relieve the alleged violator of liability for any alleged violation occurring before or after receipt of the NOV. Nothing herein shall limit the authority of the city to take action, including emergency action or any other enforcement action, in the absence of the issuance of an NOV.
- (b) *Repeat violations.*
Civil penalties may be imposed if the same violation is documented two (2) times within the most recent 5-year period, including the notification for the current violation.
- (c) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore the affected property within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- (d) *Compensatory Action.*
In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the city may impose upon a violator, alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.
- (e) *Suspension of MS4 Access.*
- (1) *Emergency Cease and Desist Orders*
When the city finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has/have caused or contributed to an actual or potential discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:
- (A) immediately comply with all ordinance requirements; and
 - (B) take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.
- (2) Any person notified of an emergency cease and desist order shall immediately comply and stop or eliminate the discharge. In the event of a violator's failure to immediately comply voluntarily with the emergency order, the city may take such steps as deemed

necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a premises and/or facility's water supply, sewer connection, or other municipal utility services. The city may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the city that the period of endangerment has passed, unless further termination proceedings are initiated against the violator under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the discharge and the measures taken to prevent any future occurrence, to the city's Stormwater Management Plan Administrator within three (3) calendar days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(f) *Suspension due to Illicit Discharges in Emergency Situations.*

The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or potential discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(g) *Suspension due to the Detection of Illicit Discharge.*

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The city will notify a discharger of the proposed termination of its MS4 access. The discharger may petition the city for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the city.

Sec. 50-418. - Civil Penalties.

In the event a person fails to take the remedial measures set forth in the NOV, otherwise fails to resolve the violations within the specified deadlines, or receives a repeat violation at the same premises, the city may impose a penalty not to exceed \$2,000.00 per violation per calendar day the violation(s) remains unresolved after receipt of the NOV or upon the second time the person receives a repeat violation.

Sec. 50-419. - Criminal Prosecution.

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$2,000.00 per violation per calendar day and/or imprisonment for a period of time not to exceed 10 calendar days. Each act of violation and each day upon which any violation occur shall constitute a separate offense. The city may recover all attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Sec. 50-420. - Appeal of NOV.

Any person receiving an NOV may appeal the determination of the city. The notice of appeal must be received within 10 calendar days from the date of the NOV. Hearing on the appeal shall take place within 30 calendar days from the date of receipt of the notice of appeal. The decision of the City Manager or their designee shall be final.

Sec. 50-421. - Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the NOV, or in the event of an appeal, within 10 calendar days of the decision of the municipal authority upholding the decision of the city, then representatives of the city shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Sec. 50-422. - Cost of abatement of the violation.

Within 30 calendar days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 calendar days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments.

Sec. 50-423. - Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the discharger's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Sec. 50-424. - Remedies not exclusive.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the city to seek cumulative remedies. The city may recover all attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 2. SEVERABILITY CLAUSE: If any section, subsection, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be stricken from the ordinance, and such holding shall not affect

the validity of the remaining portions thereof. The balance of the ordinance shall be construed as one instrument and as if the offending portion had not been included.

SECTION 3. SAVINGS CLAUSE: All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

SECTION 4. EFFECTIVE DATE: Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the provisions of this ordinance will apply within the developed and/or undeveloped lands within the city limits, ETJ or any property owned by the City of Kyle, Texas.

PASSED AND ADOPTED this ____ day of _____, 2016.

R. Todd Webster, Mayor

ATTEST:

Amelia Sanchez, City Secretary

APPROVED AS TO LEGAL FORM:

Frank J. Garza, City Attorney

APPENDIX A - LOW IMPACT DEVELOPMENT

INTRODUCTION

This document is intended to provide a set of guidelines for the use of Low Impact Development (LID) and Green Infrastructure (GI) techniques. Over the last couple of years there has been an increased public interest in the regulatory adoption of LID and GI techniques as a potential land development option to address drainage and stormwater quality requirements.

These criteria do not require new development or re-development projects to follow these LID requirements at this time, nor do they intend for every project to be a LID project. However, these requirements should apply to any new development or re-development project choosing to incorporate LID practices for detention, infrastructure, stormwater quality, or other applicable requirements.

These criteria are not are not all encompassing for LID and GI techniques and requirements.

BACKGROUND

Increased impervious area changes the natural flow of water and decreases the quantity of water that infiltrates into the ground. Increased runoff increases sediment transport and decreases water quality. LID seeks to restore pre-development infiltration rates at the project site through one or more LID Integrated Management Practices (IMPs).

DEFINITION OF LOW IMPACT DEVELOPMENT

LID is a stormwater management strategy designed to maintain site hydrology and mitigate the adverse impacts of stormwater runoff and nonpoint source pollution. LID actively manages stormwater runoff by mimicking a project site's pre-development hydrology using design techniques that infiltrate, store, and evaporate runoff close to its source of origin. LID strategies provide decentralized hydrologic source control for stormwater runoff. In short, LID seeks to manage the rain, beginning at the point where it falls. The LID features are distributed small scale controls that closely mimic hydrological behavior of the pre-project sites for a design storm event.

DESIGN OBJECTIVES

Establishing Pre-Development Condition

The overall design objective for each applicable project is to maintain predevelopment hydrology and prevent any net increase in stormwater runoff. The City of Kyle ("city") defines predevelopment hydrology as the pre-project hydrologic conditions of temperature, rate, volume, and duration of stormwater flow from the project site. The analysis of the predevelopment hydrology must include site-specific factors (such as soil type, ground cover, and ground slope) and use modeling or other recognized tools to establish the design objective for the water volume to be managed from the project site. Designs must document the existing features that comprise the existing development condition. Manage the increase in runoff between pre and post-development conditions on the project site, to the maximum extent technically feasible, through interception, infiltration, storage, or evapotranspiration processes. Other design requirements may need to be considered. Calculations must be performed indicating the difference between the

post-development hydrology and pre-development hydrology for the design storm event. Calculations must demonstrate “No net increase” in stormwater runoff where technically feasible.

Design Storm Event

The design storm event is the 95th percentile rainfall depth and is based on the 24-hour (daily) rainfall depth averaged over a minimum of 10 years, ideally 30 years where 30 or more years of rainfall records are available. To calculate the 95th percentile rainfall depth based on rainfall records, rainfall records can be obtained from NOAA at:

<http://www.ncdc.noaa.gov/?datasetabbv=SOD&countryabbv=&georegionabbv=>

Maximum Extent Technically Feasible (METF)

Evaluate project site options to achieve the design objective to the maximum extent technically feasible. The “maximum extent technically feasible” criterion requires full employment of accepted and reasonable stormwater retention and reuse technologies subject to in-situ site conditions and applicable regulatory constraints (e.g., site size, soil types, vegetation, demand for recycled water, existing structural limitations and state or local prohibitions on water collection).

DOCUMENTATION

The following documentation should be developed at the pre-final design stage:

- Pre-development condition (i.e., soil conditions, groundwater table of the project site, description of typical surrounding natural lands, and a brief history of existing development; including impervious area, lawns, meadows, forested area, wetlands, and water bodies).
- Calculations for pre-development and post-development runoff volumes and rates using the 95th percentile rainfall event to identify the volume of stormwater requiring management and the extent to which the design objective was met.
- Documentation of technical constraints, if applicable.
- Stormwater management practices used to meet the design objective and whether they were located on-site, off-site or both.
- Provide post-construction validation documentation indicating that the LID features have been constructed according to plans and specifications.

DESIGN OPTIONS FOR LID FEATURES

LID implementation is achieved by selecting a set of LID features that can closely maintain or replicate hydrological behavior of the pre-project site for the design storm event. Most LID features are distributed small-scale controls that increase rainfall interception and slow the time of concentration (T_c). Some LID features provide greater benefits (i.e. groundwater recharge, reduced T_c) than others. Give priority to those LID features that are proven for the Central Texas area, provide the most benefits in relation to replicating pre-project hydrology, and have the lowest lifecycle costs. LID features typically include natural features with low maintenance costs. Selecting appropriate LID features with the lowest long-term maintenance cost will extend the useful life of the LID features. Highly developed sites, sites with a high ratio of impervious to pervious area and (i.e., industrial sites) may require more costly, higher maintenance LID

features in order to meet the design objective within the constraint of maximum extent technically feasible (see paragraph titled Maximum Extent Technically Feasible (METF)).

Verify with the city the capability to maintain LID features prior to selecting for use on-site. LID features that cannot be maintained by the city or the owner with current capability may not be used. LID features can generally be categorized into the following categories:

Engineered Natural Treatment

Engineered natural treatment provides depression storage, infiltration, and evapotranspiration. These design options are typically the least costly and easiest to accomplish if site availability, soils and groundwater table are conducive. Site features such as bioretention, vegetated swales, rain gardens, vegetated filter strips, downspout disconnection, reduced impervious area, tree preservation or re-vegetation using native plants, soil amendments, and open space fall under this general category and are advisable due to lower lifecycle costs.

Engineered Subsurface Treatment

Engineered subsurface treatment provides infiltration and prevents concentrated flow. Site features may include permeable pavements and infiltration trenches. Engineered subsurface treatment may be the next most lifecycle cost effective method, as compared to engineered natural treatment, in meeting the design objective. These design options may be limited by wheel loading, traffic, ability to provide maintenance and foreign object debris danger. Avoid locating infiltration trenches and similar features under pavements wherever possible.

Non-Potable Rainwater Harvesting

Rainwater harvesting systems store stormwater for non-potable uses, such as irrigation or toilet flushing. Site features may include LID features like cisterns and rain barrels. This design option may be used if adequate demands for reuse water exist. Certain types of facilities, such as a warehouse, may not have adequate water demand to make reuse lifecycle cost effective. Consider freeze protection for winter months.

Green (Vegetative) Roofs

Vegetative roofs decrease the T_c and increase seasonal evapotranspiration. They do not assist in infiltrating water into the ground at the source and have high initial and maintenance cost. Because of the high cost and limited technical advantages, vegetative roofs are the least preferred design option. Vegetative roofs are a design option where other design options do not meet the design objective. Vegetative roofs should be assessed with consideration of other benefits such as lower energy costs and noise reduction.

OFF-SITE OPTIONS

If the design objectives cannot be met within the project footprint, LID measures may be applied at nearby locations on city property (e.g., downstream from the project) to manage the remaining design water volume within available resources. Off-site options are generally less desirable than

on-site options, as many of the benefits of managing the stormwater close to the source may be lost.

PLANNING COMPONENT

Successful implementation of LID begins during the planning process, which is one of the first steps. During the planning phase, the exact configuration of LID features and the ways in which LID will shape the site design is not expected to be determined. This section provides the organizational tools and steps to build upon in considering LID in the final project.

Organizing the Planning Process and Timeline

- 1) Identify the LID objectives and legal requirements for the project (e.g., stormwater permits, erosion control, and flood requirements). Estimate runoff volume, peak runoff rate, duration, frequency, and water quality.
- 2) Make assumptions on existing stormwater infrastructure in terms of how well it functions with respect to each of these aspects.
- 3) Evaluate the goals and feasibility for control of runoff volume, duration, and water quality, as well as on-site use of stormwater (e.g. irrigation).
- 4) Prioritize and rank basic objectives.
- 5) Identify all applicable regulations or codes.
- 6) Determine typical LID features required to meet objectives as best as possible (i.e. infiltration, filtration, discharge frequency, volume of discharges, and groundwater recharge) taking into consideration available space, underground utilities, soil infiltration characteristics, slope, drainage patterns, groundwater table protected areas, setbacks, easements, topographic features, and other site features that should be protected such as floodplains, steep slopes, and wetlands.

Consider non-structural site planning techniques:

- Minimize total site impervious area.
- Use alternative roadway layouts that minimize imperviousness.
- Reduce road widths and drive aisles where safety considerations allow.
- Limit sidewalks to one side of roads.
- Reduce on-street parking.
- Use permeable paving materials where it does not reduce the functionality and is permitted.
- Minimize directly connected impervious areas.
- Disconnect roof drains and direct drainage to vegetated areas.
- Site layout to direct flows from paved areas to stabilized vegetated areas.
- Site layout to break up flow directions from large paved surfaces.
- Site development to encourage sheet flow through vegetated areas.
- Locate impervious areas so that they drain to permeable areas.
- Maximize overland sheet flow.
- Maximize use of open swale systems.
- Increase (or augment) the amount of vegetation on the site.
- Use site fingerprinting. Restrict ground disturbance to the smallest possible area.
- Reduce construction on highly permeable soils.
- Locate impervious areas to avoid removal of existing trees.

- Maintain existing topography and associated drainage divides to encourage dispersed flow paths.
- Locate new buildings, parking, and ponds in areas that have lower hydrologic function, such as clayey or disturbed soils.

STORMWATER MANAGEMENT (SWM)

Human development increases impervious surfaces. Buildings, roads, sidewalks, and parking lots quickly shed rainwater and increase the percentage of rainfall that ends up as runoff. The resulting increase in runoff volume and the peak flows create negative consequences such as stream degradation and flooding risk. The principal objective of LID is to retain this increase in runoff on-site. LID techniques allow the developed site to mimic the pre-development hydrologic conditions.

LID builds on the conventional SWM philosophies and carries them a step further. LID processes begin at the point where the rain falls. Consideration for incorporating LID concepts, tools, and approaches requires assessment of the following at a minimum:

- Will the concept closely mimic the hydrology of pre-development condition?
- Will the concept mitigate adverse effects from increased stormwater runoff from the project?
- Can the drainage conveyance structures be optimized and reduce the overall cost of the project?
- What might be the hurdles for public acceptance? If required for the project to move forward, can these be reasonably achieved?

Conventional SWM Vs. LID

Conventional SWM facilities are primarily designed to temporarily store runoff, control flooding and downstream impacts due to increased runoff. These SWM facilities also provide water quality benefits. Whereas decentralized LID features include infiltration, increasing the length and time of flow over pervious areas, and disconnecting impervious areas that drain to stormwater collection systems. This helps to retain the increase in runoff from new development on-site.

Water Quality and Pollution Prevention

Use LID features that are distributed small-scale controls, closely maintaining or replicating the hydrology of pre-development site conditions. LID features may address additional regulatory requirements or other resource protection goals. Similarly, in meeting the regulatory requirements, BMPs can be designed to act as effective, practicable means of minimizing the impacts of development associated with water quality and quantity control.

Because of the very nature of decentralized hydrologic source control, the nonpoint source pollution is greatly reduced, thereby, increasing the water quality of the receiving water bodies.

First-Flush Water Quality Volume

Many localities have adopted the conventional approach of collecting and treating the first-flush or water-quality depth of rainfall. The city defines the first flush as the depth generated during the first one inch of rainfall. The water quality volume is equated to the volume of stormwater

runoff generated by the first-flush rainfall depth. It may be practical to design LID features to handle the first-flush rainfall depth. Additionally, conventional SWM practices may also be required.

Design Storage of LID Features

For the selected design storm event, the LID volume is equal to or greater than the total net increase in runoff from the pre- to post-development states. Typically, the total volume of stormwater runoff generated during the post-development conditions exceeds the total volume of stormwater runoff generated from the site during the predevelopment conditions. The design storage volume of LID features would be the difference in total volume of stormwater runoff generated between pre- and post-development conditions.

Develop Operation and Maintenance Procedures

Development of Operation and Maintenance Support Information (OMSI) is critical to ensure LID features are properly maintained in order to function properly. LID features should be viewed as environmental systems that have specific maintenance requirements. O&M procedures for each of the LID practices implemented in a site plan should be developed as part of the OMSI documents. Different types of LID features will have different maintenance requirements, but some general principles will apply:

- 1) Keep LID features and flow paths clear of debris.
- 2) Regular trash pickup will be required.
- 3) Use native, drought-tolerant plantings that can tolerate periods of saturation. If required, water vegetation regularly during dry periods. Use special care in selecting plants in areas of tidal influence.
- 4) Consider impact on plants by road salts.
- 5) Grassed areas should be mowed regularly using a longer length cut.
- 6) Plantings should be pruned as needed.
- 7) Deep raking and tilling of depression storage should be done on a yearly basis or as indicated.

CONCLUSIONS

The methods for calculating, modeling, and sizing stormwater runoff are based on the design storm. The design storm is a designation that defines a unit depth of rainfall in order to quantify the volume of rainfall generated for a given site. This data is needed in order to calculate the impact of development on a particular piece of land.

By design, LID methods do not control runoff in excess of the pre-development condition, but are intended to bypass larger storm volumes to flood control measures as defined by the conventional stormwater management techniques. LID is in addition to the requirements of the stormwater permits required. There are other regulatory requirements that also affect the design of stormwater management, quality, and control that are specific to local regions and areas not covered in this document.

The application of LID to infrastructure development program is practical and achievable, but it will require a change of thinking on the part of the site designer. The LID features fall into five categories, as follows:

- 1) Site Utilization:
Begin the site process by reducing the impervious footprint if possible. Narrower streets, vertical construction, parking structures, and the removal of curb, gutter, and paved swales are a few of the ways to reduce impervious surfaces. It is crucial to mimic the pre-development hydrologic conditions in order for LID to be effective. Choose rougher surfaces, disconnect impervious areas, and increase the time of concentration (T_c). Retain as much of the natural tree cover as practical, and place the impervious structures in areas of the poorest soil types where possible.
- 2) Filtration:
Include filtration practices in the site design. Vegetative buffers, filter strips, vegetative swales, check dams, sediment traps, and overland flow will provide natural water quality treatment and increase T_c .
- 3) Interception and Infiltration:
The infiltration techniques of LID are the backbone of the runoff volume reduction. Depression storage, bio-infiltration, pervious pavements, open pavers, rain gardens, infiltration trenches, and tree boxes are gaining wide acceptance as tools in the SWM toolbox. Interception can also play a major role in reducing runoff volumes. Interception techniques include deep mulch beds, tree cover, and soil amendments.
- 4) Retention of Stormwater Volumes:
Retention can play an important part in successful LID implementation. Retention seeks to hold runoff from localized impervious surfaces for subsequent treatment after the rainfall event. Rain barrels, cisterns, and parking lot storage that slowly infiltrates into the ground are examples of retention techniques.
- 5) Structural Solutions:
Structural solutions represent the last line of defense in LID features. Structural solutions will increase the facility construction cost and must be balanced with mission requirements. In urban and industrial areas, sensitive environments, or known contaminated sites, structural solutions are often the only solution. These techniques are engineered solutions for the particular facility and can include green roofs, rainwater reuse systems, parking structures, and irrigation storage systems.

The site designer is encouraged to contact the city to coordinate LID and GI requirements with applicable stormwater programs.



CITY OF KYLE, TEXAS

Sunset Hills - Development Agreement Amendment

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize an amendment to the Tri-Party Development Agreement between the City of Kyle, The Meadows at Kyle, Ltd. and the Meadows at Kyle II, Ltd. having the City of Kyle grant an extension of a deadline for the construction and completion of off-site improvements as contained in the amendment. ~ *Howard J. Koontz, Director of Planning and Community Development*

Other Information: Please see attachment.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Development Agreement Third Amendment

**THIRDSECOND AMENDMENT TO TRI-PARTY DEVELOPMENT AGREEMENT
FOR THE MEADOWS AT KYLE and SUNSET HILLS SUBDIVISIONS**

This *Second Amendment to Tri-Party Development Agreement For The Meadows At Kyle and Sunset Hills Subdivisions* ("Amendment") is effective as set forth below (the "Effective Date"), and is by and between the **City of Kyle, Texas**, a Texas municipal corporation (the "City"), and **The Meadows at Kyle, Ltd.**, a Texas limited partnership, and **The Meadows at Kyle II, Ltd.**, a Texas limited partnership. The City and the Developer are sometimes referred to herein as the "Parties." The Parties hereby agree as follows:

Recitals

A. WHEREAS, on or about the 17th day of April, 2007, the parties formally entered into that one certain *Tri-Party Development Agreement For The Meadows At Kyle and Sunset Hills Subdivisions* (the "Development Agreement"); and

B. WHEREAS, on or about the 30th day of April, 2008, the parties formally entered into that one certain *First Amendment to Tri-Party Development Agreement for the Meadows at Kyle and Sunset Hills Subdivisions* (the "First Amendment"); and

C. WHEREAS, due to various changes in certain conditions in the single family residential housing sector within the City, the Parties desire to clarify, amend, and restate the terms and conditions of the Development Agreement and First Amendment as specifically set out below.

NOW, THEREFORE, in exchange for the mutual promises and consideration herein expressed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, and further subject to the terms and conditions of this Amendment, the Parties hereby agree as follows:

1. Unless otherwise expressly provided for in this Amendment, all capitalized terms used herein shall have the same meanings which are ascribed to them in the Development Agreement.

2. All deadlines before which the Developer is to commence and/or complete construction of off-site improvements, i.e. the wastewater facilities, as set forth in the Development Agreement, are hereby extended to April 17, 20186.

3. Any provisions of the City's Subdivision Ordinance to the contrary notwithstanding, the initial expiration dates for the Preliminary Plans for The Meadows at Kyle and Sunset Hills are extended to September 18, 2015.

4. Developer agrees to contribute an additional \$300 per single family residential lot (LUE) as an additional “park development fee” (to be used for improvements at the city park currently known as Kyle Vista Park) payable at the time of final platting of each phase of lots within each Subdivision for the lots subject to each plat.

5. Except as specifically provided otherwise in this Amendment, all other terms and conditions of the Development Agreement continue to govern the rights and obligations of the Parties. In the event of any inconsistency, the terms and provisions of this Amendment shall control over and modify the terms and provisions of the Development Agreement.

6. The “Effective Date” of this Amendment shall be the date upon which all Parties have executed same.

EXECUTED in multiple originals to be effective as stated above.

Attest:

City of Kyle, Texas

By: _____
Amelia Sanchez, City Secretary

By: _____
~~Todd Webster~~ Luey Johnson, Mayor

Date: August __, 2011

The Meadows at Kyle, Ltd.

By: The Meadows at Kyle Development Co., LLC

By: _____
Bradley D. Whittington, Authorized Agent

Date: August ___, 2011

The Meadows at Kyle II, Ltd.

By: The Meadows at Kyle Development Co. II, LLC

By: _____
Bradley D. Whittington, Authorized Agent

Date: August ___, 2011

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of August, 2011, by Bradley D. Whittington, Authorized Agent of The Meadows at Kyle Development Co., LLC, the sole general partner of The Meadows at Kyle, Ltd. on behalf of said entity.

NOTARY PUBLIC, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of August, 2011, by Bradley D. Whittington, Authorized Agent of The Meadows at Kyle Development Co. II, LLC, the sole general partner of The Meadows at Kyle II, Ltd. on behalf of said entity.

NOTARY PUBLIC, State of Texas



CITY OF KYLE, TEXAS

Vigilant Solutions Amendment

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Consider and possible action to amend or rescind the Vigilant Solutions Memorandum of Understanding. ~ *Jeff Barnett, Chief of Police*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Vigilant Solutions Email
- Vigilant Solutions Revised MOU

Vigilant Solutions MOU Proposed Revisions for CC Agenda

Jeff Barnett

Wed 2/10/2016 10:03 AM

To: Jennifer Vetrano <jvetrano@cityofkyle.com>; Amelia Sanchez <asanchez@cityofkyle.com>;

Cc: James Earp <jrearp@cityofkyle.com>; Scott Sellers <ssellers@cityofkyle.com>;

📎 1 attachment (299 KB)

Vigilant Solutions Revised MOU.docx;

Jennifer,

Please see the email from Joe Harzewski and the revised MOU documents. Can you please attach them both to the City Council agenda item for their review? Thank you.

Hi Chief Barnett,

Attached is the revision of the agreement the City of Kyle signed. This agreement does three things:

1. Makes provisions for a court side or PD office payment Kiosk at no charge to the City (See Exhibit C)
 - a. This was added after the City of Kyle signed the agreement
2. Makes provisions for letter notification service of Court direct mailings to defendants at no charge to the City (See Exhibit C)
 - a. This was added after the City of Kyle signed the agreement
3. Makes provisions for deleting all data from the Vigilant LPR server upon termination (Page 1 Section D)
 - a. This was revised to shed clarity as a result of recent media activity

Please let me know if the City is OK with signing this agreement. If you have any questions, my information is below.

Regards,

Joe Harzewski
Vice President
(818) 915-8085

www.vigilantsolutions.com

Thank you,

Jeff Barnett

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

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and between:

Vendor: Vigilant Solutions, Inc.
2021 Las Positas Court, Suite #101
Livermore, CA 94551

Agency: _____

A. Purpose. To allow the Agency to utilize license plate recognition products and services provided by Vendor to increase the efficiency of the redemption and clearing of outstanding warrants and fines owed to Agency.

B. Roles and Responsibilities. The following details the roles, responsibilities, and deliverables necessary to insure the success of the warrant redemption and fine collection activities of the Agency:

Vendor agrees to deliver to Agency the license plate recognition products and services, payment processing products and services, and warrant clearing support activities set forth in Exhibit A.

Agency agrees to utilize the license plate recognition products and services, payment processing products and services, and clearing support activities provided by Vendor in the manner and as described by Exhibit B.

C. Financial Implications to Agency. No financial commitment by Agency is required to participate in this program. This program and MOU is intended to have zero fiscal impact on Agency for use of Vendor’s license plate recognition products and services in Agency’s efforts to increase the efficiency of the redemption, and collectability of outstanding warrants and fines owed to Agency.

D. Timeframe. The MOU shall commence once executed and shall continue until terminated. Either party may terminate this MOU for its convenience, and in its sole discretion, by providing the other party thirty (30) days prior written notice of termination. Upon termination of this MOU, Agency will immediately cease all use of Vendor deliverables and will return all hardware furnished pursuant to Exhibit A back to Vigilant.

Upon termination of this MOU and upon Agency providing written request to Vigilant, Agency will be provided a copy of all license plate recognition (“LPR”) data collected by Agency. Such data shall be provided in standard XML format. The original LPR vehicle location data shall be removed from the Vendor’s server, and therefore permanently deleted from vendor server.

E. Processing and Handling Fees. Agency agrees that it will collect processing and handling fees at the time payment is made through Vendor’s payment processing service pursuant to the fee schedule set forth in Exhibit C as permitted by Texas Statute, Chapter 132 of the Local Government Code, which is attached as Exhibit D.

F. Indemnification. Each Party to this MOU shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this MOU. For tort liability purposes, no participating Party shall be considered the agent of the other participating Party. Each Party to this MOU shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Under no circumstances shall this MOU be interpreted to create a partnership

Item # 14

or agency relationship between the Parties. During the term of this Agreement, Vigilant shall maintain insurance with the types and limits set forth in Exhibit F.

G. Ownership of LPR Hardware and Software. The deliverables provided by Vendor pursuant to Exhibit A remain the property of Vendor. The hardware and software components are owned by and titled to Vigilant. This MOU does not constitute sale of any piece, part or portion of Vendor’s deliverables. Vendor retains title and ownership of the software and hardware components related to all deliverables and all other materials included as part of the deliverables package provided pursuant to Exhibit A.

H. Ownership of Agency Warrant Data. All warrant data transmitted by Agency to Vendor pursuant to this MOU, regardless of form, is confidential, proprietary information owned by the Agency. Except as specifically provided in this Agreement, Vendor and its agents, employees, and contractors shall not disclose such data to any third person without the prior written consent of the Chief of Police of the Agency, or other Agency designee.

I. Notices. All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by facsimile transmission To the facsimile number below and indicating receipt at the facsimile number where sent; (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-paid and return receipt requested.

<p>Vigilant Solutions, Inc. Attn: Sales Administration 2021 Las Positas Court - Suite # 101 Livermore, CA 94551 Fax: (925) 398-2113</p>	<p>Agency: _____ Attn: _____ Address: _____ _____ Fax: _____</p>
--	---

IN WITNESS WHEREOF, Vigilant the Agency have caused this MOU to be signed on the date set forth below and be effective on the last date specified below.

Vendor:	Vigilant Solutions, Inc.	Agency:	_____
Authorization:	Joseph L. Harzewski III	Officer:	_____
Title:	Vice President	Title:	_____
Date:	_____	Date:	_____
Signature:	_____	Signature:	_____

Address Correspondence about this document to:
 Joe Harzewski - Vice President
 Tel: 818-915-8085 / Fax: 925-398-2113
 Email: joe.harzewski@vigilantsolutions.com

Exhibit A

Vigilant Deliverables:

Upon execution of this MOU, Vigilant will deliver the following to Agency:

1. Access and licenses to utilize Vigilant's CarDetector mobile LPR software.
2. Vigilant shall deliver one (1) complete mobile LPR systems to the designated Agency address. Each system shall include three (3) mobile LPR cameras, GPS receiver, Power stabilizer and payment processing hardware package. Each payment processing hardware package shall include one credit card swiper and receipt printer which shall be connected to an existing agency mobile data computer via USB. Additional payment processing hardware packages to support court house payment terminals are available upon request.
3. An unlimited number of general user accounts to access Vigilant's Law Enforcement Archival Reporting Network ("LEAN") server which shall provide up to four (4) user accounts limited access to Vigilant's private LPR database. Such access shall be limited to access to LPR data contained within the nearest major metropolitan area of the jurisdiction's physical address.
4. Printed warrant notification 'Tags' which shall be placed upon unoccupied vehicles located on public property by the Agency or by Vigilant representatives. The design, agency logo/seal placement and content messaging for Agency disseminated 'Tags' shall be pre-approved by Agency prior to being printed and delivered to Agency.
5. Use of Vigilant's warrant notice text messaging service to allow the Agency to send text message warrant and/or delinquent payment notices to offenders. The content messaging contained in the text message shall be pre-approved by Agency prior to being communicated to the warrant holder. The text messaging service shall contain the 'Click to Pay' warrant redemption module allowing the warrant holder to pay directly from the text message via smartphone and/or internet terminal.
6. Use of Vigilant's warrant notice "Tag" delivery service to deliver/attach warrant notice "Tags" by Vigilant representatives onto unoccupied vehicles identified to be located in public space in the State of Texas. Warrant records shall be sent to Vigilant representatives operating mobile LPR systems for warrant notice 'Tag' delivery onto the windshield of unoccupied vehicles. No Personally Identifying information shall be made available to any Vigilant representative delivering "Tags", but rather only the following information shall be used for warrant notice "Tag" delivery:
 - A. Offender license plate Number and corresponding state of registration
 - B. PIN number for PMW website payment, to be authenticated only by the offender via Date Of Birth
 - C. Agency Name
 - D. Agency Point of Contact Name and Phone (for response feedback and direct offender communication)

Vigilant Obligations:

Upon execution of this MOU and delivery of the deliverables identified above, the following are the key obligations of Vigilant:

1. A Vigilant certified technician will schedule both on-site and after-visit telephone support events in order to assist in the implementation of Agency's mobile LPR system(s) as may be required dependent upon agency's expertise.
2. Vigilant will make available to Agency a standard LEARN Server and 'Pay My Warrant' account and support their use throughout WRP participation period, including Agency general LPR use
3. Vigilant will facilitate the data sharing of all acquired LPR data (vehicle locations), resulting from Agency's use of the mobile LPR systems, with the local Law Enforcement Agency servicing the City's public safety needs. This shall include offering the city's local Police Department with full access to Vigilant's LEARN server and all associated data analytics and criminal analysis tool sets.
4. Vigilant will facilitate data sharing of all warrant records with other WRP participating Agencies as to support synergetic 'Cross Jurisdictional Warrant Processing' with such warrant data sharing being managed via ~~Item # 14~~ LEARN account

5. Vigilant shall provide all standard warranty coverage on all hardware items provided at no charge to the Agency.

Vigilant Warrant-List Support:

Upon execution of this MOU, Vigilant shall provide the following support to Agency related to the Warrant List:

1. The warrant file (and associated Agency updates) shall be accessible to Vigilant's Court Management System (CMS) Integration Partner via server download with Agency server access provided by your Agency.
2. Vigilant's CMS will make updates to update warrant data to include the most current information available based on public record sources. Specifically, Vigilant (or CMS partner) shall extract the list of then outstanding warrant data from the Agency server so that Vigilant's 3rd party public records providers may update the warrant data (within the context of the client's law enforcement permissible purpose) to attach current vehicle registration data (license plates) and cell phone data, in an effort to create a suitable warrant list for law enforcement use in conjunction with the Agency's use of the mobile LPR system.
3. Warrant information and any appended vehicle registration information shall only be made available to Agency, Vigilant, Vigilant Representatives, and the CMS integration partner. There shall be no other dissemination or use of warrant data other than for the specific use of providing services to Agency in accordance with this MOU.
4. The aforementioned process is referred to as "Warrant-list Hygiene" and Vigilant (in conjunction with its CMS integrator) shall perform this Warrant-List Hygiene procedure upon execution of this MOU, and shall continue to perform such Hygiene on an 'As Needed' basis' such that new warrant data can be added to the Warrant-List as needed.
5. Vigilant may provide warrant processing updates to Agency's Case Management Software (to the extent your Agency desires such updates) upon having outstanding warrants settled in full. Each warrant processing update shall contain the 'Warrant Value' which includes the monetary value that represents a financial settlement amount satisfactory to the Agency.

Exhibit B

Agency Obligations:

Upon execution of this MOU, the following are the key obligations of Agency:

1. Agency will apply for a Credit Card Processing Merchant Account and become the Merchant of record for all financial warrant/fine settlement transactions. This allows for warrant settlement funds to be deposited directly into the Agency's bank account(s).
2. Agency shall sign a 'Split-Funding Agreement', as found in Exhibit E, regarding the warrant/fine settlements which are collect pursuant to the fee schedule contained in Exhibit C.
3. Agency shall be willing to receive and, if requested by Vigilant, return the Vigilant deliverables provided pursuant to Exhibit A.
4. Agency shall complete the following within 30 days of execution of this MOU:
 - a. Schedule installation of the mobile LPR systems with Vigilant certified technician.
 - b. Install the Vigilant deliverables (software/hardware) onto your Agency provided mobile data computers contained within Agency patrol vehicles.
 - c. Insure that Agency mobile data computers used for this program have the required broadband internet connectivity necessary to process warrant/fine collection activities. Agency shall contact Vigilant for detailed MDC hardware and software requirements to ensure compliance.
5. Agency shall put forward 'Best Efforts' to support and enforce financial warrant settlement payments through each of the Vigilant deliverables where/when appropriate, therefore expediting and accelerating the normal rate of warrant clearance and redemption. This includes payment transactions via 1) Mobile LPR systems; 2) Cross jurisdictional settlement processing (other agency warrants); 3) use of warrant notification via text messaging service by the Agency, and 4) use of warrant notice Tag notification delivery by Vigilant representatives
6. Agency shall provide a Warrant-List (target offender list) containing valid 'C' class warrants and fine data, with automated update access of the warrant data file, to Vigilant for public records hygiene and updating as required to facilitate Vigilant's Warrant List support obligations. Each warrant record shall contain as a minimum:
 - a. Full offender name
 - b. Offender Date of Birth
 - c. Offender last best address
 - d. Offender best license plate number and corresponding state of registration

Exhibit C

Processing and Handling Fees

Agency agrees that Vigilant shall process payments in accordance with the fee schedule set forth below. Agency authorizes Vigilant to charge such fees at the time or processing payment on behalf of Agency.

The permitted fee schedule is as follows:

Credit Card Processing Fee: 5% of the total fine amount processed.

Credit Card Handling Fee: 5% of the total fine amount processed.

Vendor Transaction Fee: 15% of the total fine amount processed The Vendor Transaction Fee includes the following services as a minimum:

- a. Warrant Record Hygiene
- b. Mobile LPR and Payment Processing System Hardware & Software Use
- c. 'Tag' and 'Text' service User
- d. Unlimited 'Tag' prints
- e. Court Side Kiosk Unit
- f. Notification Letters Service

Financial Economic Example:

Warrant Value	Total Vendor Fees	Total Settlement	Vigilant Split Payment	Payment to Agency	Vigilant Remuneration
\$ 400.00	25.0%	\$ 500.00	20.0%	\$ 400.00	\$ 100.00

** Vigilant agrees to pay back all 'Charge Back' monies, charged back to the Agency from offender payment conflicts, in full on a monthly basis by way of check by mail, based on Charge Back claims reported to Vigilant per the Notices section of this agreement by the Agency within thirty (30) days of offender actual Charge Back.

Exhibit D

COPY OF LOCAL GOVERNMENT CODE TITLE 4. FINANCES

SUBTITLE C. FINANCIAL PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 132. PAYMENT OF FEES AND OTHER COSTS BY CREDIT CARD OR ELECTRONIC MEANS IN MUNICIPALITIES AND COUNTIES

Please refer to the following web page:

<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.132.htm>

Exhibit E

SPLIT-FUNDING AGREEMENT

This Split-Funding Agreement (“Agreement”) is entered into between Vigilant Solutions Inc. (“Payee”) and _____ (“Merchant”) and shall be effective as of the _____ day of _____ 20____ (“Effective Date”).

BACKGROUND: Merchant has executed the Merchant Processing Agreement (“Agreement”) by and between ECS and Merchant, with services provided by a transaction processor (“Processor”) and a card association sponsor bank (“Bank”) to provide credit and debit processing services. Merchant has executed an agreement with Vigilant Solutions Inc. (“Payee”) that stipulates/requires Merchant direct and pay a percentage of its future credit and debit card receipts to Payee (“WRP MOU”) and that Merchant cause ECS and the processor to take certain other actions described in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and conditions contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, Merchant, ECS, and Payee agree as follows:

1. Merchant Authorization. Merchant irrevocably authorizes and instructs ECS to (i) withhold (or cause to withhold) 20.0% (Twenty Percent) of Merchant’s daily gross credit and debit card processing receipts (“Split Payment”) from deposit into Merchant’s Settlement Account and to (ii) redirect and pay (or cause to redirect and pay) such percentage to an account designated by Payee (“Payee Account”) until Payee sends written notice to ECS that the Merchant has satisfied its obligations under the WRP MOU.

2. Acknowledgment. Merchant acknowledges that nothing in this Split-Funding Agreement shall relieve Merchant of its obligations or deprive ECS of its rights under the Merchant Agreement.

3. Indemnification. Merchant will indemnify and hold harmless each of ECS, processor, and sponsoring bank and their respective agents, employees, representatives and their respective successors and assigns harmless from all liabilities, claims, demands, actions or judgments, including but not limited to attorneys’ fees, arising out of or resulting from the acts or omissions of the Merchant, its employees, officers, or agents in connection with this Split-Funding Agreement. Each of Merchant and Payee will indemnify, defend and hold ECS from and against all liabilities, losses, claims, damages and disputes suffered or incurred as a result of any actions in reliance on the terms of this Split-Funding Agreement or otherwise in connection with the Agreement.

4. Term and Termination. This Agreement shall commence on the Effective Date and shall continue in force until Payee sends written notice to ECS, that the Merchant has satisfied its obligations under the WRP MOU.

5. General. If any provision of this Agreement is declared invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired, and the parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that reflects the original intent of the parties as nearly as possible in accordance with applicable law. This Agreement together with the Merchant Processing Agreement contains the full and complete understanding of Payee and Merchant regarding the matters described in this Split-Funding Agreement and supersedes all prior agreements and understandings between the parties with respect to the entire subject matter. This Split-Funding Agreement shall be governed by California law. The sole and exclusive venue for hearing disputes under this Agreement shall be the state or federal courts of Orange County, California. This Split-Funding Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns, and to the benefit of Payee.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above:

Payee: Vigilant Solutions Inc.	Merchant: _____
By: Joseph L Harzewski III	By: _____
Title: Vice President	Name: _____
Signature: _____	Signature: _____
E-Mail for Notices: joe.harzewski@vigilantsolutions.com	E-Mail for Notices: _____

Exhibit F

Insurance Coverage



CERTIFICATE OF LIABILITY INSURANCE

VIGIL-1

OP ID: BN

DATE (MM/DD/YYYY)
07/31/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Andreini & Company-San Mateo License 0208825 220 West 20th Ave San Mateo, CA 94403	Phone: 650-573-1111 Fax: 650-378-4361	CONTACT NAME: PHONE (A/C No. Ext): E-MAIL ADDRESS:	FAX (A/C No.):																					
INSURED Vigilant Solutions, Inc. 2021 Las Positas Court #101 Livermore, CA 94551		<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>Associated Industries of</td> <td>33758</td> </tr> <tr> <td>INSURER B:</td> <td>Golden Eagle Ins. Corp.</td> <td>10836</td> </tr> <tr> <td>INSURER C:</td> <td>Lloyd's of London</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td>Travelers Property Casualty</td> <td>36161</td> </tr> <tr> <td>INSURER E:</td> <td>Fireman's Fund Ins. Co.</td> <td>21873</td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Associated Industries of	33758	INSURER B:	Golden Eagle Ins. Corp.	10836	INSURER C:	Lloyd's of London		INSURER D:	Travelers Property Casualty	36161	INSURER E:	Fireman's Fund Ins. Co.	21873	INSURER F:		
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INSURER F:																								

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	AUTO NR	SUBR #/VIO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			AES1030714	05/10/2015	05/10/2016	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ Excluded
	GENL AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ Excluded
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OPAGG \$ 2,000,000
B	AUTOMOBILE LIABILITY			BAS56519801	05/10/2015	05/10/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
E	UMBRELLA LIAB			SSE48834634	05/10/2015	05/10/2016	EACH OCCURRENCE \$ 3,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE \$ 3,000,000
	<input type="checkbox"/> CLAIMS-MADE						
	DED <input checked="" type="checkbox"/> RETENTION \$ 0						
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			UB2214L81914	04/25/2015	04/25/2016	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NY)	<input type="checkbox"/> Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability			JCS260189015	05/10/2015	05/10/2016	Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101. Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER 	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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ACORD 25 (2010/05)

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CITY OF KYLE, TEXAS

Sustainable Development Initiative

Meeting Date: 2/16/2016
Date time: 7:00 PM

Subject/Recommendation: Consider and approve partnership with Gateway Planning/Catalyst Commercial team for Sustainable Development Initiative in Kyle. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Memo to Council

MEMORANDUM

To: Mayor and City Council

From: Scott Sellers

Re: Kyle Sustainable Development Initiative

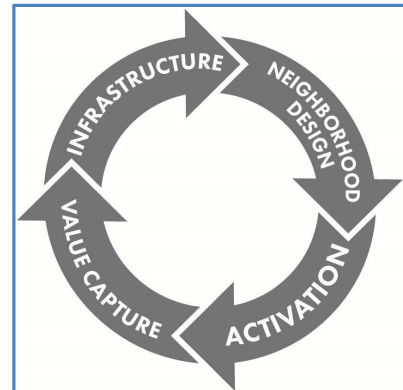
Date: February 4, 2016

The Gateway Planning/Catalyst Team is proposing to partner with the City to craft and execute a strategy for sustainable growth. The work effort will emphasize the following outcomes:

- Leveraging development projects with local and regional economic development opportunities
- Relating specific development projects to one another in order to secure sustainable development patterns, enduring neighborhoods, positive tax base and incentives for developments to stretch the market
- Aligning development outcomes with the broader goals of the community, creating an opportunity to update the comprehensive plan to reflect resonance rather than conflict between the development community and residents

Harnessing Regional Opportunities

As we discussed with the Development Community, Kyle is on a steep growth curve with several significant projects in the advanced planning stages. Additional activity includes the next phase and maturation of Plum Creek, the emergence of several other large master-planned communities, demand for significant infrastructure investments, and associated annexations pending. To ensure long term financial health, meaningful economic development opportunity, and enduring community character, development should not be implemented ad hoc. Rather, it should be related within a city-wide “business plan” in order to place Kyle’s fiscal future on a course of sustainable investment and reinvestment.



The virtuous circle to the right graphically describes how targeted and contextually designed infrastructure—combined with effective activation of neighborhoods and commercial centers—will drive sustainable tax base, which in turn provides more resources for lifecycle reinvestment of the infrastructure if captured through a policy of targeted value capture and incentives.

We are at an inflection point in Kyle's history. In order to maximize community priorities, execute public-private partnerships, justify incentives and take advantage of one of the more robust regional economies in the world, development must be executed in a framework rather than ad hoc through patchwork. In this context, Gateway Planning and Catalyst Commercial have developed a detailed work program to execute this strategy.

A partnership with Kyle's landowners and developers provides an opportunity for Kyle to advance this strategy. The City wants to do so in an effective and comprehensive way, believing that the development community agrees based on the meeting held before the end of the year. As was discussed with the developers, private sector support financially as an investment shared across the various land interests would be necessary to do the work effectively.

Funding Approach

The Gateway/Catalyst Team has developed a detailed scope of work to be funded by the developers. When we receive sufficient commitments for that funding the larger scope will move forward. In the meantime, we want to secure the services of the Gateway/Catalyst Team to advance opportunities with some key properties and developments.

Those services will be reimbursed by the specific developers engaged for these short-term efforts. Accordingly, we need to provide a mechanism for engagement of Gateway and Catalyst now to provide services for the near term opportunities to elevate development potential of some of the key locations now under discussion. To initiate this work, we recommend that City Staff contract with Gateway Planning so that we can begin work immediately. The specifics of the work would be negotiated with the developers through task orders subject to the City's goals.



CITY OF KYLE, TEXAS

Gated Communities

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: *(First Reading)* An Ordinance of the City of Kyle, Texas, amending the City of Kyle, TX Code of Ordinances; amending Chapter 41, Article V. Sec. 41-141. Utility Easements, to require certain utility considerations for gated communities; providing for repeal of conflicting ordinances; providing for an effective date and open meetings clauses; and providing for related matters. ~ *James R. Earp, Assistant City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE CITY OF KYLE, TX CODE OF ORDINANCES; AMENDING CHAPTER 41, ARTICLE V. SEC. 41-141. UTILITY EASEMENTS, TO REQUIRE CERTAIN UTILITY CONSIDERATIONS FOR GATED COMMUNITIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City has grown substantially over the last decade primarily through the construction of entry level homes; and,

Whereas, the City desires to encourage additional housing products to be built within the city limits; and,

Whereas, the City desires that gated communities be added to the potential housing stock of the community; and,

Whereas, Gated communities can bring certain challenges to the provision of public services if not properly planned for; and,

Whereas, the City finds that roads within a gated community are not for the public good and therefore shall be privately maintained; and,

Whereas, the City has determined that utilities within the gated community may still meet the requirements of public health and safety in certain situations and therefore utility easements must be made superior to other claims upon the land to prohibit undue delay when needed repairs must be made where a public utility line crosses private right of way, private roads, or private drives.

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

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Amendment of Chapter 41, Article V, Section 41-141 Utility Easements. City of Kyle, Texas, Code of Ordinances is hereby amended insofar, and insofar only, as is herein set forth, and in no other respect whatsoever.

Adding Paragraph (f):

(f) Private or Gated Communities. Public utilities may be allowed within the confines of a Private or Gated Community upon the approval of the City Engineer, or his designee. This allowance applies only to a Private or Gated Community of single family homes. Multi-family projects that are Private or Gated shall have private utilities within the project and be served by a master-meter on the public side periphery of any fence or gate, in which there is proper access granted for access as determined by the City Engineer, or his designee.

If a Private or Gated Community is allowed to have public utilities then all utilities inside of the Private or Gated Community shall be placed within an easement of sufficient size, as accepted by the City Engineer, or his designee, and which easement shall have in addition to standard requirements, added the following characteristics:

- (1) Shall be superior to any other easements or rights of way, whether private or public, such that future repairs to the utility shall not be impeded by failure of another entity to provide sufficient permission to proceed;
- (2) Permission to utilize existing private drives or roadways to facilitate a repair, including but not limited to:
 - a. access;
 - b. the temporary storage or stockpile of material;
 - c. the ability to temporarily close access, entirely or in part, on a private drive or roadway;
 - d. removal of vehicle(s) that may be impeding a repair.
- (3) Permission to cut or otherwise demolish portions of private drives or roadways needed to facilitate a repair, to include the waiver of any requirement to return the private drive or roadway affected to its original condition.
- (4) City, at its sole cost and expense, shall be obligated to restore the surface of the soil of the easement that has been removed, relocated, altered as a result of City's use of the easement. City will not be obligated to restore or relocate any other improvements including, but not limited to, irrigation systems, walkways, driveways, access roads, parking areas, fences, landscaping items, and any movable structures such as benches, gazebos or other similar items, located in, upon, under or across the easement.

Section 3. Amendment of Ordinances. The City of Kyle, Texas Code of Ordinances is hereby amended to the extent of any conflict or inconsistency herewith only and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the city, the terms and provisions of this Ordinance shall govern.

Section 4. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

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 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.

PASSED AND APPROVED on First Reading this ____ day of _____, 2016.

FINALLY PASSED AND APPROVED on this ____ day of _____, 2016.

ATTEST:

THE CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

R. Todd Webster, Mayor



CITY OF KYLE, TEXAS

Hays County Fair & Crawfish Boil - CUP

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Consider a request by Central Texas Speedway for a conditional use permit to hold a Hays County Fair and Crawfish Boil from April 7, 2016 to April 9, 2016 on property located at 24801 IH-35. (CUP-16-002) ~ *Howard J. Koontz, Director of Planning and Community Development*
Planning and Zoning Commission voted 6-0 to recommend approval of the request.

- **PUBLIC HEARING**

Other Information: The site is located behind Roger Beasley Hyundai, on the east side of Interstate 35 near the city's southern border. The property is zoned 'E' (Entertainment District), and is surrounded by Agriculture-zoned property on three sides, and 'W' (Warehouse District) property to the northwest. The closest property with a residential zoning designation is nearly 1,000 feet away to the northeast (Quail Ridge Subdivision). The applicant's request is to operate the "Hays County Fair and Crawfish Boil" from Thursday, April 7 until Saturday, April 9, 2016.

Conditional Use Analysis

The site proposed for this conditional use is the grounds of Central Texas Speedway, a 39-acre paved oval automobile racetrack venue. The Hays County Fair and Crawfish Boil will operate typical carnival rides and live music, as well as helicopter rides, go-karting, a motorcycle "poker run", and food and merchandise vendors. The fair is a temporary use, and therefore the applicant plans no changes to the existing structures or the site at which the structures exist, and plans only to use venue for its size and ample parking.

Please see attachments for additional information.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Staff Memo
- Project Location Map
- Site Layout and Hours of Operation

Application Type:	Conditional Use Permit
Property Location	Central Texas Speedway 24801 IH 35 South Kyle, Texas 78640
Owner/Petitioner	Rick & Hunter Coleman/Meredith Murray
Request	Conditional Use Permit to operate the “Hays County Fair and Crawfish Boil”

Vicinity Map



The site is located behind Roger Beasley Hyundai, on the east side of Interstate 35 near the city’s southern border. The property is zoned E (Entertainment district), and is surrounded by Agriculture-zoned property on three sides, and ‘W’ (Warehouse District) property to the northwest. The closest property with a residential zoning designation is nearly 1,000 feet away to the northeast (Quail Ridge subdivision). The applicant’s request is to operate the “Hays County Fair and Crawfish Boil” from Thursday, April 7 until Saturday, April 9, 2016.

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Conditions of the Zoning Ordinance

Article 6, Division 2 of the City of Kyle Zoning Ordinance identifies the following procedures for approving a conditional use application, and those uses which require a conditional use permit:

“**Sec. 53-1046.** - Purpose.

The city council may by ordinance, adopted by four affirmative votes after receiving the recommendation of the [planning] commission, grant a conditional use permit in compliance with this division for the conditional uses as listed in section 53-1047. The city council may impose appropriate conditions and safeguards, including a specified period of time for the permit, to protect the comprehensive plan and to conserve and protect property and property values in the neighborhood.

“**Sec. 53-1047.** - Authorized conditional uses.

The following listed conditional uses, and none other, may be authorized subject to the terms of this section and compliance with all conditional terms, regulations and requirements established by the city council:

...

(3) Circus or carnival; but not within 300 feet of any residential district;”

Planning Commission

At the Regular Meeting on February 9th, the Planning Commission heard this request at a duly advertised Public Hearing. With limited discussion, the Commission recommended the application be approved 6-0.

Recommendation

Staff recommends the application, as detailed and submitted to city staff, be approved, subject to the following conditions:

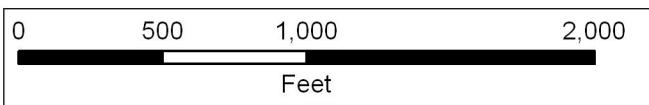
1. The special land use permit is non-transferable;
2. The permit is granted for the expressed purpose of a fair and crawfish festival, including all usual and customary operations for that activity;

3. The permit is valid from Thursday April 7, 2016 until Saturday April 9, 2016.

Attachments

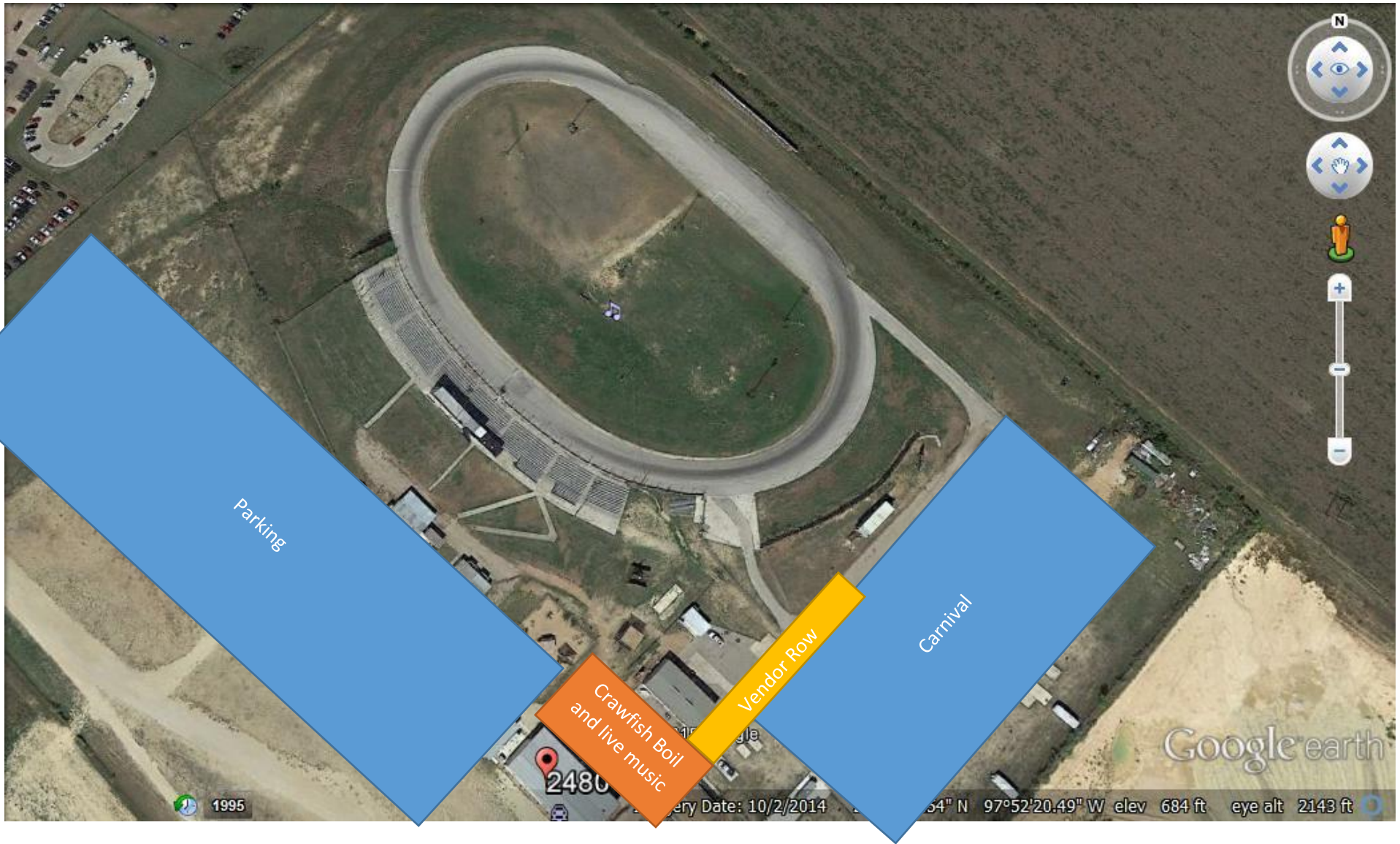
- Application packet

**Location Map
Hays County Fair
& Crawfish Boil
CUP-16-002**



 Project Location

 Parcel Lines # 17



Hays County Fair and Crawfish Boil

Hours of Operation: (Approximate Time Frames)

Thurs. April 7 5PM-11PM

Fri. April 8 5PM-11PM

Sat. April 9 12Noon-12AM

Crawfish Boil is Saturday ONLY



CITY OF KYLE, TEXAS

Transportation Program

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Discuss and possible action on public transportation program in the City of Kyle. ~
Diane Hervol, Council Member

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Truck Idling

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Discussion and possible action on vehicle idling within the city limits of Kyle. ~ *Daphne Tenorio, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS
Central Texas Clean Air Coalition

Meeting Date: 2/16/2016
Date time: 7:00 PM

Subject/Recommendation: Consider and possible action to join Central Texas Clean Air Coalition. ~ *Daphne Tenorio, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

City Managers Report

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Convene-Executive Session

Meeting Date: 2/16/2016

Date time:7:00 PM

Subject/Recommendation: Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.

1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
2. Property acquisitions for road bond projects.Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
3. Personnel matters pursuant to Section 551.074.
4. Economic Development negotiations pursuant to Section 551.087.

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Reconvene

Meeting Date: 2/16/2016

Date time: 7:00 PM

Subject/Recommendation: Take action on items discussed in Executive Session.

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available