

CITY OF KYLE



Notice of Regular City Council Meeting

Kyle City Hall, 100 W. Center St., Kyle,
Texas 78640

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on April 19, 2016, at Kyle City Hall, 100 W. Center St., Kyle, Texas 78640, for the purpose of discussing the following agenda.

Posted this 15th day of April, 2016, prior to 7:00 p.m.

I. Call Meeting To Order

II. Approval of minutes

1. City Council Emergency Meeting Minutes - March 25, 2016. ~ *Amelia Sanchez, City Secretary*

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. Presentation

2. A Resolution of the City of Kyle, Texas, solemnly remembering the many young lives lost during a tragic plane crash at Ardmore Airfield on April 22, 1966, acknowledging the contributions of Kyle resident Rosalio Tobias, Jr., who survived that crash, acknowledging his contributions to the City of Kyle and Hays Consolidated School District And showing sincere appreciation for his outstanding civic involvement on behalf of the citizens of Kyle. ~ *Diane Hervol, Council Member*

V. Appointments

3. Consider nomination and take possible action for appointment to Planning & Zoning Commission to fill vacancy. ~ *Todd Webster, Mayor*

- Bradley Growt

VI. Consent Agenda

4. Authorize the Mayor to execute a Special Use Agreement by and between the City of Kyle and the Hays County/Hays County Historical Commission for the use, occupation, management and control of the Historic Train Depot located at 100 N. Front Street in Kyle, Texas. ~ *Kerry Urbanowicz, Director of Parks, Recreation and Facilities*
5. Authorize the acceptance of a grant from the Texas State Library and Archives Commission in the amount of \$10,000 for the purchase of digital E-Books and to authorize the expenditure of existing funds pending the reimbursement from the TSLAC. ~ *Paul Pehan, Director of Library Services*
6. Approve Change Order No. 1 and Change Order No. 2 to SOUTHERN TRENCHLESS SOLUTIONS, LLC., Houston, Texas, to add \$6,255.00 and \$15,750.00, respectively, for additional work required on the 2015 Manhole Rehabilitation Project, Bid Schedule A, increasing the total contract amount to \$153,945.50 for quantity changes as directed by the City's inspector and additional specialty work required in one of the manholes. ~ *Leon Barba, P.E., City Engineer*
7. Authorize award and execution of a Purchase Order to MAGNUM TRAILERS, Austin, Texas in an amount not to exceed \$26,539.71 for the purchase of a new Haul Trailer through the Buy Board Purchasing Co-operative for the Public Works Department. ~ *Harper Wilder, Director of Public Works*
8. Approve a contract with SHERIDAN ENVIRONMENTAL DBA SHERIDAN CLEARWATER, LLC, and the City of Kyle for the handling and disposal of biosolids from the wastewater treatment plant at an estimated cost of \$49,200.00 per year. ~ *Harper Wilder, Director of Public Works*
9. A Resolution by the City of Kyle, Texas, ("city") responding to the application of CenterPoint Energy Resources Corp., South Texas Division, to increase rates under the gas reliability infrastructure program; suspending the effective date of this rate application for forty-five days; authorizing the city to continue to participate in a coalition of cities known as the "Alliance of CenterPoint Municipalities"; determining that the meeting at which this Resolution was adopted complied with the Texas Open Meetings Act; making such other findings and provisions related to the subject; and declaring an effective date. ~ *Jerry Hendrix, Chief of Staff*

VII. Consider and Possible Action

10. (*Second Reading*) An Ordinance of the City of Kyle, Texas, annexing approximately 529.6 acres of land located in Hays County, Texas all of which are lying within the City's extraterritorial jurisdiction and to incorporate such properties into the City of Kyle as shown in the attached exhibit; Making finding of fact; Providing a severability clause; Providing an effective date; and Providing for open meetings and other related matters. ~ *Howard J. Koontz, Director of Planning and Community Development*
11. (*First Reading*) An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas for the purpose of assigning original zoning to approximately 10.1 acres of land

from Agriculture "AG" to Warehouse District "W" on property located at 880 Windy Hill Road, in Hays County, Texas. (Jacob Jisha - Z-16-003). ~ *Howard J. Koontz, Director of Planning and Community Development*

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

• **PUBLIC HEARING**

12. Plum Creek Phase 1, Section 6H-1 - Final Plat (FP-15-012) 11.466 acres; 79 single family lots and 6 park lots, located east of Sanders and north of Fairway. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 4-2 to recommend approval.

13. Plum Creek Phase 1, Section 6H - Preliminary Plan (PP-15-005) 26.603 acres; 176 single family lots, 14 park lots and 3 landscape easement lots located within the 1500 block of Sanders. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 4-2 to recommend approval.

14. Consider and Possible Action to approve Aqua/Kyle Wastewater Effluent Reclamation Project Agreement, and Settlement Agreement and Mutual Release. ~ *J. Scott Sellers, City Manager*

15. Consider and Possible Action on Repairs to Windy Hill Road. ~ *Leon Barba, P.E., City Engineer*

16. Approve Change Order No. 1 in the amount of \$23,250.00 to TRI-STATE COATINGS, Wadena, MN, increasing the total contract amount to \$308,750.00 for additional work based on field conditions for Well No. 3 Water Tanks Rehabilitation Project. ~ *Leon Barba, P.E., City Engineer*

17. (*First Reading*) An Ordinance amending the Code of Ordinances of the City of Kyle, Texas, by amending various sections of Article IX, Sections 11-275 through 11-295, to Chapter 11 (Business Regulations), Commercial Towing and Wrecker Services. ~ *Damon Fogley, Council Member*

VIII. City Manager's Report

18. 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*
 - Drug Take Back event - April 30, 2016, 10 a.m. - 2 p.m. at KPD

IX. Executive Session

19. 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.
 - o Potential Incentive for Development
 - o Attorney-Client Consultation concerning discussion of possible settlement of litigation.
 2. 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.
 - o Project Steel Blue
 - o Potential Incentive for Development
20. Take action on items discussed in Executive Session.

X. ADJOURN

At any time during the Regular City Council Meeting, the City Council may adjourn into an Executive Session, as needed, on any item listed on the agenda for which state law authorizes Executive Session to be held

*Per Texas Attorney General Opinion No. JC-0169; Open Meeting & Agenda Requirements, Dated January 24, 2000: The permissible responses to a general member communication at the meeting are limited by 551.042, as follows: "SEC.551.042. Inquiry Made at Meeting. (a) If, at a meeting of a government body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by the subchapter, the notice provisions of this subchapter, do not apply to:(1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry. (b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.



CITY OF KYLE, TEXAS

City Council Emergency Meeting Minutes, 3-25-16

Meeting Date: 4/19/2016
Date time: 7:00 PM

Subject/Recommendation: City Council Emergency Meeting Minutes - March 25, 2016. ~ *Amelia Sanchez, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- 2016 0325 Emergency City Council Meeting Minutes

REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on March 25, 2016 at Kyle City Hall with the following persons present:

Mayor Todd Webster
Mayor Pro Tem David Wilson
Council Member Diane Hervol
Council Member Becky Selbera
Council Member Shane Arabie
Council Member Damon Fogley
Council Member Daphne Tenorio
Scott Sellers, City Manager
James Earp, Assistant City Manager
Jerry Hendrix, Chief of Staff
Robert Olvera, IT Manager
Harper Wilder, Public Works Director

I. Call Meeting To Order

Mayor Webster called the meeting to order at 5:02 p.m. Mayor Webster asked the secretary to call roll. Present were Mayor Webster, Mayor Pro Tem Wilson, Council Member Hervol, Council Member Selbera, Council Member Arabie, Council Member Fogley, Council Member Tenorio

II. Consider and Possible Action

1. Discussion and possible action for an emergency expenditure for sanitary sewer overflow. ~ R. Todd Webster, Mayor

Mayor Webster introduced Item No. 1. Mr. Sellers presented the issue. He stated that the initial assumption is that a power outage occurred as a result of the storm that took place on Thursday morning at the lift station at Bunton Branch. TCEQ has been notified. The extent of the spill is unknown at this time. While there is a fish kill on site, there are visible live fish as well. Due to live fish still in the creek, TCEQ advised the city to not drain the creek. An estimated 10-14 days are required to clean the water, and introduce more fresh water into the stream at that point. A preliminary cost estimation is \$20,000 - \$30,000. An electrician is on site looking at the generator. A phone system is connected, but the connection was found to be loose. Mr. Sellers stated there is money in the budget for SCADA this fiscal year, but it may not cover the full recovery. According to Jason Biemer, Division Manager - Treatment Operations, Mr. Sellers stated they will be \$15,000 - \$20,000 short.

Mayor Webster stated that he doesn't want staff to be locked into \$30,000. Mayor Pro Tem Wilson asked about whether TCEQ will fine the city. Mr. Sellers stated that the fine typically goes up when there is a fish kill, and the volume of sewage overflow. Mr. Sellers continued that

CITY COUNCIL MEETING MINUTES

March 25, 2016 – Page 2

Kyle City Hall

the city is currently going through the Sanitary Sewer Overflow Initiative (SSOI) process with TCEQ, which is a partnership with TCEQ to overhaul the city's system and shows that the City is taking steps to remediate flaws in our system. He said that when cities receive a fine from TCEQ, there are things that can be done in lieu of cash fines such as restocking fish, providing education, and hosting a recycling program. Mayor Webster asked about efforts to assist the property owner. City Manager Scott Sellers stated Mr. Schlortt has been cooperative, and penned up cattle to keep them from drinking contaminated water, while the city has provided an alternate water source for the cattle. Harper Wilder, Public Works Director, spoke stating they have addressed the downstream first and troughs had been purchased for the cattle.

Council Member Hervol moved to approve an emergency expenditure for sanitary sewer overflow clean up not to exceed \$50,000. Council Member Arabie seconded the motion.

Council Member Hervol moved to amend her motion to include that funds are to come out of cash reserves. Council Member Arabie seconded the amended motion.

All votes aye; motion carried 7-0.

III. ADJOURN

Council Member Hervol moved to adjourn. Mayor Pro Tem Wilson seconded the motion.

With no further business to discuss, the City Council adjourned at 5:33 p.m.

R. Todd Webster, Mayor

Attest: Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Resolution - Rosalio Tobias

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: A Resolution of the City of Kyle, Texas, solemnly remembering the many young lives lost during a tragic plane crash at Ardmore Airfield on April 22, 1966, acknowledging the contributions of Kyle resident Rosalio Tobias, Jr., who survived that crash, acknowledging his contributions to the City of Kyle and Hays Consolidated School District And showing sincere appreciation for his outstanding civic involvement on behalf of the citizens of Kyle. ~ *Diane Hervol, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Resolution - Rosalio Tobias Jr.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS, SOLEMNLY REMEMBERING THE MANY YOUNG LIVES LOST DURING A TRAGIC PLANE CRASH AT ARDMORE AIRFIELD ON APRIL 22, 1966, ACKNOWLEDGING THE CONTRIBUTIONS OF KYLE RESIDENT ROSALIO TOBIAS, JR., WHO SURVIVED THAT CRASH, ACKNOWLEDGING HIS CONTRIBUTIONS TO THE CITY OF KYLE AND HAYS CONSOLIDATED SCHOOL DISTRICT AND SHOWING SINCERE APPRECIATION FOR HIS OUTSTANDING CIVIC INVOLVEMENT ON BEHALF OF THE CITIZENS OF KYLE.

WHEREAS, on April 22, 1966 the third worst air crash in military history occurred outside Ardmore Oklahoma, resulting in the immediate and tragic death of 82 American servicemen and 6 crew members with only 17 survivors; and,

WHEREAS, Rosalio Tobias Jr., a citizen of Kyle, was one of those fortunate survivors of American Flyers Flight 280 and spent the next year recovering in hospitals across three states in Oklahoma, Texas and Georgia; and,

WHEREAS, his newly wed wife, Angelita Garza Tobias, devotedly stood by his side through the ordeal, and among the few surviving personal belongings of Mr. Tobias to have survived the conflagration of the crash was their marriage license; and,

WHEREAS, despite a life of chronic pain resulting from his injuries, Rosalio Tobias Jr. turned tragedy and adversity into a life-long commitment to education, family and community. Along with his wife Angelita, he raised three children, graduated from Southwest Texas State University in 1973, ran a successful ranching enterprise, and made numerous civic contributions to the community and particularly, St. Anthony's Church, where he served as one of the original founders of the Knights of Columbus Council; and,

WHEREAS, Rosalio Tobias Jr. became the first Hispanic to be elected to the Hays Consolidated ISD Board of Trustees in 1981, and served as President of the Board from 1988 to 1993; and,

WHEREAS, the superintendent of schools stated: "He is a pillar of strength I can always lean on," Rosalio Tobias Jr. ensured diversity on the school board by working for single member districts to replace the unwritten "gentleman's agreement" put in place with the initial consolidation of schools in 1967; and,

WHEREAS, Rosalio Tobias Jr.'s dedication to education will be remembered by the awarding of the Texas Association for Bilingual Education's Honoree Award for Community Advocacy in 2000 and the Texas State Board of Education's "Hero for Children Award" in 2001, his role in the founding of the Hays CISD Education Foundation in 1998, the naming of the Tobias Learning Resource Center at Kyle Elementary School in 1997, and the naming of the Rosalio Tobias International Elementary School in his honor in 2001; and,

WHEREAS, this year marks the 50th Anniversary of the tragic air crash that is being commemorated at the former Ardmore Army Air Field (now the Ardmore Industrial Airpark) on April 22nd by the survivors, their families and first responders.

THEREFORE, The City of Kyle proclaims April 22, 2016 as a day to solemnly remember the many young lives lost in the tragic event of April 22, 1966 and to give thanks for the safe return of Rosalio Tobias Jr. who has made so many contributions to our community and to the education of our children.

FINALLY PASSED AND APPROVED on this the 19th day of April, 2016.

R. Todd Webster, Mayor

Attest:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Appointment to P&Z

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Consider nomination and take possible action for appointment to Planning & Zoning Commission to fill vacancy. ~ *Todd Webster, Mayor*

- Bradley Growt

Other Information: See attached applications.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- ☐ Bradley Growt



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 Bradley Growt

Physical Address 4456 Mather Dr

City Kyle State TX Zip 78640

Mailing Address (if different from above) _____

City _____ State _____ Zip _____

Phone number 512-657-7934

Email texbobcat@gmail.com

Current position/employer: IT Manager - Applications - PEC

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? No

Professional Qualification(s) and/or Work Experience.

MBA Texas State Univeristy
Past experience Kyle Mobility Committee 35 million dollar bond package
Charter Review Committee Kyle 2015
15 Years of professional business experience at both the corporate and
local level.

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

No prior experience on P&Z other than master plan review and work with
Kyle city council.

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

Working on establishing a non profit / exploratory stage at this point

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

I view it as a way to serve the community as I have done before.

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

My work with the two preivous committees in the city of Kyle
has helped me prepare for work on this committee and I hope to help
shape Kyle's future through my work.

Additional volunteer information

BG

Brad Growt <brad.growt@outlook.com>

Reply

To:

Howard J. Koontz;

Debbie Guerra;

4:42 PM

Howard/Debbie,

I noticed my name is up on the agenda this evening for Planning and Zoning. I wanted to add information to volunteer information as I was recently elected to the Plummer Creek HOA and was unsure if I had listed it until it was posted.

Regards,
Brad Growt

Sent from my T-Mobile 4G LTE Device



CITY OF KYLE, TEXAS

Depot Use Agreement

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize the Mayor to execute a Special Use Agreement by and between the City of Kyle and the Hays County/Hays County Historical Commission for the use, occupation, management and control of the Historic Train Depot located at 100 N. Front Street in Kyle, Texas. ~ *Kerry Urbanowicz, Director of Parks, Recreation and Facilities*

Other Information: This Special Use Agreement is entered into the 19th day of April, 2016 by and between the City of Kyle, Hays County, Texas (hereinafter referred to as "City"), by and through its City Council and Hays County by and through the Hays County Historical Commission (hereinafter referred to as the "County"), each acting through its duly authorized representatives, for the use, occupation, management and control of certain real property owned by the City of Kyle and known as the Historic Kyle Depot located at 100 North Front Street in Kyle, Texas (hereinafter referred to as the "Depot").

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Depot Use Agreement
- Exhibit A

SPECIAL USE AGREEMENT

By and Between

The City of Kyle
and
Hays County/Hays County Historical Commission

THIS SPECIAL USE AGREEMENT is entered into the 19th day of April, 2016 by and between the City of Kyle, Hays County, Texas (hereinafter referred to as "City"), by and through its City Council and Hays County by and through the Hays County Historical Commission (hereinafter referred to as the "County"), each acting through its duly authorized representatives, for the use, occupation, management and control of certain real property owned by the City of Kyle and known as the Historic Kyle Depot located at 100 North Front Street in Kyle, Texas (hereinafter referred to as the "Depot").

Section 1. The City hereby agrees to allow the special use unto Hays County and its representative, the Hays County Historical Commission, of the Depot located at 100 North Front Street, Kyle, Texas beginning at midnight of the date the associated Agreement is approved and adopted by the Kyle City Council.

Section 2. The term of this Special Use Agreement shall be for a period of twelve (12) months from the date agreement was entered into, with automatic renewals each year without action on the part of the City of Kyle or Hays County. If either party wishes to edit, alter, amend or revise this agreement, notification to the other party shall be made ninety (90) days prior to agreement expiration.

Section 3. It is expressly acknowledged and agreed by the parties hereto that the Depot building is owned in its entirety by the City of Kyle and the ground on which it sits, as well as the surrounding ground (see attachment A), are leased to the City of Kyle from Union Pacific. Any and all authority relative to same, implied or otherwise, is derived solely from authority granted by the City of Kyle, by and through the Kyle City Council and the terms of its lease with Union Pacific.

Section 4. Hays County acknowledge it is understood and agreed that the Depot shall be used by the Hays County Historical Commission for purposes related to the operations and functions of a Historical Rail Depot and Museum, and said Depot shall not be used for any other purpose without consent of City first obtained in writing, except for those uses as specifically provided for herein. It is mutually understood and acknowledged that the Hays County Historical Commission shall have the right to utilize the exterior features of the building such as the decks and ground's boundary within the lease with Union Pacific (see attachment A). It is further understood and agreed that neither Hays County nor the Hays County Historical Commission shall make any permanent improvements or physical alterations to the building or the surrounding landscape contained within the lease with Union Pacific without prior written consent of the Kyle Depot Board and the City of Kyle.

Section 5. It is understood and hereby acknowledged by the parties hereto that Hays County and the Hays County Historical Commission shall not use the Depot building and the surrounding landscape contained within the lease with Union Pacific (attachment A) in such a way as to conflict or be inconsistent with the policies, philosophy or ordinances of the Kyle Depot Board or the City of Kyle, as determined by the Kyle Depot Board and the Kyle City Council.

Section 6. The City will provide reasonable costs associated with basic utilities such as electricity, water, waste water, natural gas and trash disposal. The Hays County/Hays County Historical Commission will provide the costs for telephone, internet and cable services. The City will carry liability coverage to insure personal injury, structure and permanent contents. This includes items on permanent loan to the Historical Rail Depot and Museum. City will provide routine and scheduled maintenance of the building's mechanical systems. After the City receives notice of needed repairs, the City shall within five (5) working days of such notification inspect the Depot or grounds to determine the extent of repair(s) required. If funding is available, the City shall complete the repairs within ninety (90) days from the date of notice. Keys to the building will be stamped with "Do Not Duplicate" and will be numbered. The City shall keep the master set of keys and will maintain the locks on the doors. The City agrees to provide the County with a reasonable number of duplicated keys to the building and the County agrees to manage the distribution of duplicated keys. The County shall be responsible for the security of the building.

Section 7. It is understood and hereby acknowledged that it is the intent of the City to provide primary occupancy of the Depot building to the County and the Hays County Historical Commission for the operation of a Historic Rail Depot and Museum for the City of Kyle. It will be the responsibility of the Hays County Historical Commission to staff and maintain the Historic Rail Depot and Museum for the City of Kyle with no labor costs to the City of Kyle.

Section 8. The City acknowledges that all of the interior items and furnishings, including but not limited to, exhibition displays and furnishings, audio visual and sound equipment, historical artifacts, historical furniture, and other furnishings, belong to Hays County. Should the County and the Hays County Historical Commission wish to terminate this Special Use Agreement, the City agrees to return all items to Hays County.

Section 9. The Hays County/Hays County Historical Commission is requested to submit a Capital Improvement Project (CIP) for up to the next five (5) years on or before May 1st of each year. The CIP should be submitted with priorities over the next five (5) years with costs estimates and guidelines to follow. The City will submit the CIP for consideration and approval of funding. The Hays County/Hays County Historical Commission understands and accepts that adopted funding for maintenance and operation of the Train Depot is the budget for maintenance, repairs, materials and operating expenses. Any written requests to increase the budget in the next fiscal year must be submitted on or before May 1st with the CIP proposal.

Section 10. The City shall maintain the property in a condition equal to the City's maintenance of other city properties. Hays County will provide custodial and cleaning services. Hays County agrees to reimburse the City promptly in the amount of the loss, property damage or cost of repairs or services caused by negligence or improper use by the County, its members, or its agents not covered by insurance, including deductible. The County shall be responsible for any

damage resulting from windows or doors being left open or unlocked if they were the last users of the Depot building.

Section 11. The County agrees that any duly authorized representative of the City shall, at all reasonable times, have immediate access to any and all portions of the Depot building; and such right of access shall remain for the entire time of this agreement.

Section 12. Hays County and the Hays County Historical Commission shall not assign this Special Use Agreement, nor sublet the Depot building or any part of the surrounding landscape under lease from Union Pacific, nor permit its interest under this Special Use Agreement to be sold under legal process. If the County or the Hays County Historical Commission shall, without the consent of the City, do or suffer to be done any of the things forbidden herein, or if the County shall use the building for any unlawful purpose, or if the County shall fail or neglect to perform any of the conditions or covenants required herein, then the City may, at its option, terminate this Special Use Agreement without reference to the time which this Agreement might otherwise expire. The Hays County Historical Commission has the expressed approval of the City to sell, offer to sell, collect fees for merchandise, products, vendor space or rent out the building for special events so long as the City of Kyle is held harmless, as is described in Section 13 of this Agreement, and so long that the Commission is responsible for any clean up or repairs after event(s).

Section 13. The City shall not be liable for any damages or losses to person or property caused by Hays County/Hays County Historical Commission or other persons. The City shall not be liable for personal injury or personal property damage or loss from theft, vandalism, fire, water, rainstorms, explosions, sonic booms, or other causes whatsoever unless same is due to the negligence of the City. The City strongly encourages the Hays County/Hays County Historical Commission to secure insurance to protect itself against all the above occurrences. It is further agreed by the parties hereto that the City may continue to maintain customary building and contents insurance on the property that is the subject of this agreement provided, however, that Hays County/Hays County Historical Commission shall indemnify and hold harmless the City for any loss or damages to any property owned, leased, or otherwise possessed by Hays County/Hays County Historical Commission for the conduct of its activities; or for any loss or damage arising on account of, or as a result of any intentional or negligent act on the part of Hays County/Hays County Historical Commission, its employees, agents or members which is not otherwise covered by such insurance. A complete inventory report shall be submitted to the City to list contents for insurance purposes as mentioned in this agreement.

Section 14. It is hereby expressly understood and agreed by the parties hereto that either the City or the County has the right to revoke this agreement with a majority vote of its members in a public meeting upon giving the other party written notice of its intention to revoke the agreement. Said notice shall be given thirty (30) days prior to the public meeting to the other party.

Section 15. This document (with attachment A) constitutes the entire Agreement between the City and the County and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof.

WITNESS the signatures of the parties hereto on the ____ day of _____ 2016

Judge Cobb, Hays County

Mayor Todd Webster, City of Kyle



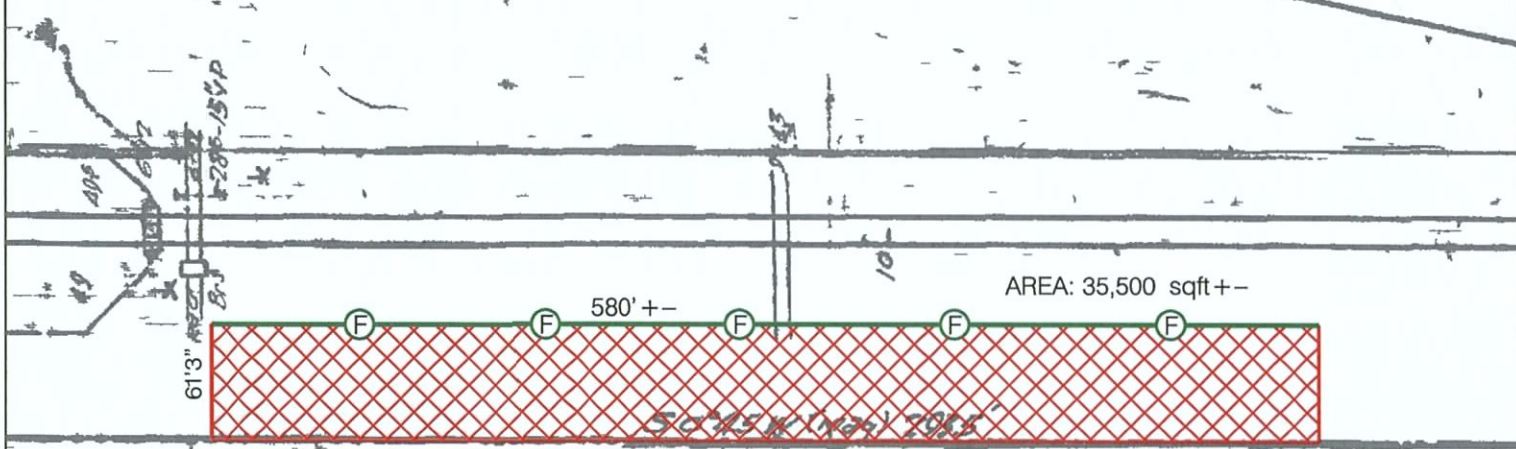
100 150 60 50

RAIL ROAD

750

N 6° 45'

Coit Mill Spur-

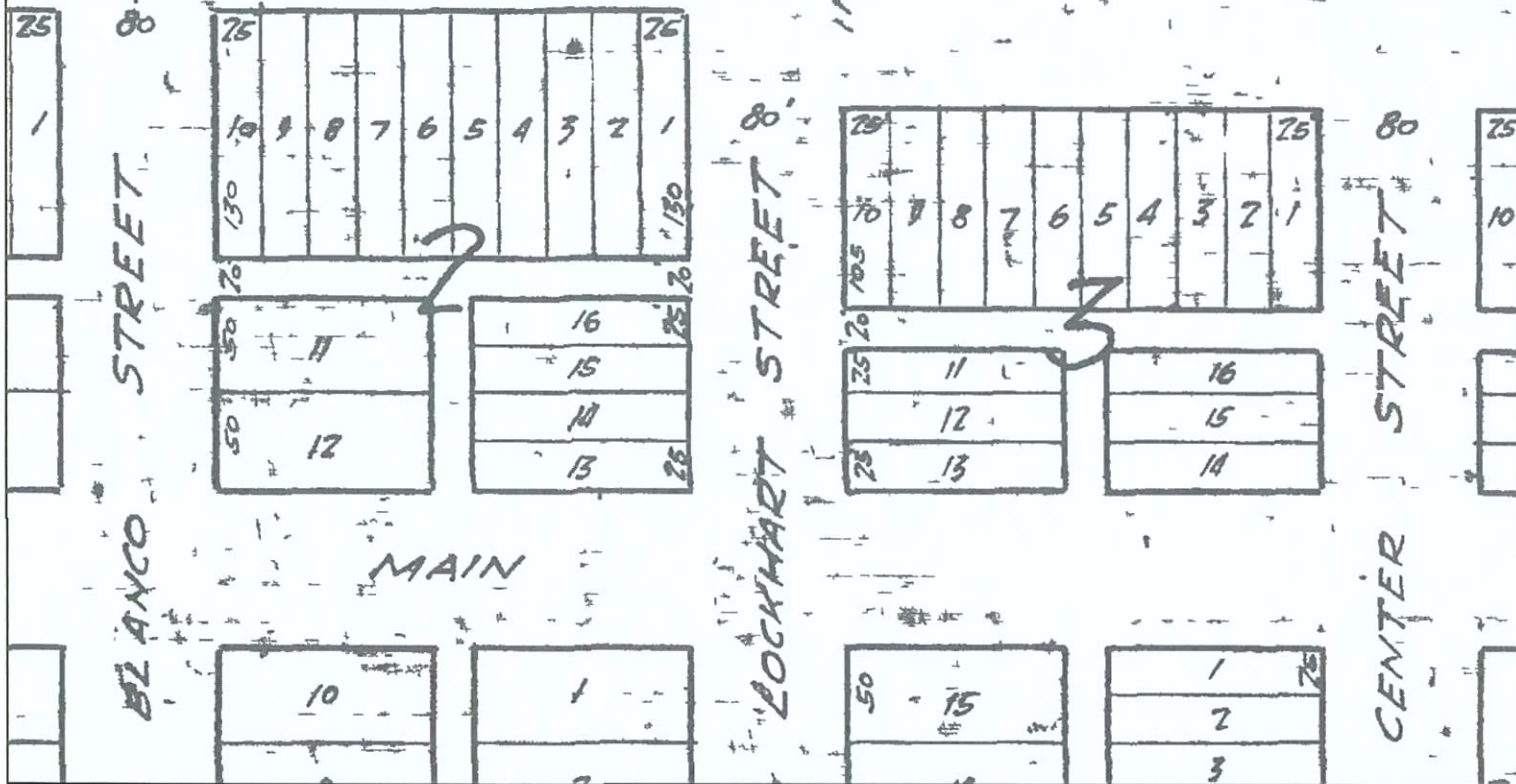


AREA: 35,500 sqft +-

580' +-

61'3" R/W

FRONT 60



SCALE: 1" = 100'

LEGEND

- U.P.R.R. RIGHT OF WAY
- LEASE AREA SHOWN
- FENCE SHOWN

EXHIBIT "A"
UNION PACIFIC RAILROAD CO.
 TO ACCOMPANY AGREEMENT WITH
 CITY OF KYLE
 KYLE, HAYS COUNTY, TX.
 M.P. 200.9+- AUSTIN SUB.
 IGN TX V 9 / S-6
 REAL ESTATE DEPARTMENT OMAHA NE.
 FILE #2172-92 DATE: 7-25-2011 T.D.A.

Item # 4



CITY OF KYLE, TEXAS

TSLAC Impact Grant Acceptance

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize the acceptance of a grant from the Texas State Library and Archives Commission in the amount of \$10,000 for the purchase of digital E-Books and to authorize the expenditure of existing funds pending the reimbursement from the TSLAC. ~ *Paul Pehan, Director of Library Services*

Other Information: This grant will allow the Kyle Public Library to select and purchase E-Books specifically for use by patrons of the Kyle library. Currently, E-Books are available from a consortium and they are shared among a much larger population, making some of the more popular titles difficult to reserve.

Legal Notes:

Budget Information: The TSLAC will reimburse the Kyle Public Library for the purchase of up to \$10,000 of E-Books. There is also a small fee of \$93.92 the the library will pay from existing funds that is not reimbursable.

ATTACHMENTS:

Description

- TSLAC Impact Grant Invoice
- SFY 2016 SLTA Subrecipient Disclosures
- TSLAC Impact Grant Invoice



INVOICE

One OverDrive Way
 Cleveland OH 44125
 Phone: (216) 573-6886 Fax: (216) 573-6888
 Email: invoicing@overdrive.com

Invoice Number	ADV-0002705
Date	04/08/2016
Page	1 of 1

Remittance Address:
 PO Box 72117
 Cleveland, OH 44192-0002

Bill To:
 Kyle Public Library
 409 W Blanco St
 Kyle TX 78640

Sold To:
 Kyle Public Library
 409 W Blanco St
 Kyle TX 78640

Advantage Customer ID	Customer Email	Purchase Order No.	Payment Terms
2231-1021	pphelan@cityofkyle.com		Net 30
Description		Amount Due	
Collection Credit For Selected Titles on Advantage Order Form		\$93.92	
Deposit On Account For Content Purchases		\$10,000.00	
		Total	\$10,093.92
		Tax Amount	\$0.00
		Amount Due	\$10,093.92 USD
Please make check payable to OverDrive, Inc.			Item # 5



SFY 2016 LSTA Subrecipient Disclosures

The Texas State Library and Archives Commission (TSLAC) and its subrecipients, as recipients of federal funds through the federal Library Services and Technology Act (LSTA), are required to follow the guidance of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Parts 200 and 3187 (Supercircular))*. The guidelines require subrecipients to meet certain requirements and follow certain processes, including those listed below.

As a SFY 2016 TSLAC grant subrecipient, please read the following requirements related to financial management, internal controls, procurement, conflict of interest, and criminal law violations. Please acknowledge receipt by signing and returning the last page **by November 18, 2015**, to: TSLAC Library Development and Networking, via e-mail at ld@tsl.texas.gov or fax 512-936-2306, with the subject line of "2016 Competitive Grants Disclosures."

Financial Management and Internal Controls

Your organization's financial management system and internal controls must meet applicable federal requirements, including the following:

The financial management system must provide the following:

- (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received.
- (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§200.327 Financial reporting and 200.328 Monitoring and reporting program performance.
- (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
- (4) Effective control over, and accountability for, all funds, property, and other assets. The subrecipient must adequately safeguard all assets and assure that they are used solely for authorized purposes.
- (5) Comparison of expenditures with budget amounts for each Federal award.
- (6) Written procedures to implement the requirements of §200.305 Payment, as applicable.
- (7) Written procedures for determining the allowability of costs in accordance with Subpart E (Cost Principles) of 2 CFR part 200 and the terms and conditions of the Federal award.

The subrecipient must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the subrecipient's compliance with statutes, regulations and the terms and conditions of Federal awards.

- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

Procurement (2 CFR sections 200.317–200.326, and Appendix II to 2 CFR part 200)

Subrecipients must comply with the applicable procurement standards in 2 CFR sections 200.317 – 200.326, including Appendix II to 2 CFR part 200 (Contract Provisions for non-Federal Entity Contracts Under Federal Awards). The procurement standards include, but are not limited to: procurements by states; general procurement standards; competition (including having written standards for procurement transactions); methods of procurement to be followed; contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms; procurement of recovered materials; contract cost and price; Federal awarding agency or TSLAC review; and contract provisions to be contained in the subrecipient’s contracts.

Conflict of Interest (2 CFR 200.112 and 200.318)

As a subrecipient, you must follow IMLS conflict of interest policies for Federal awards. You must disclose to TSLAC if you are a subrecipient or contractor. This disclosure must take place immediately whether you are an applicant or have an active IMLS award.

The IMLS conflict of interest policies apply to subawards as well as contracts, and are as follows:

1. As a subrecipient, you must maintain written standards of conduct covering conflicts of interest and governing the performance of your employees engaged in the selection, award, and administration of subawards and contracts.
2. None of your employees may participate in the selection, award, or administration of a subaward or contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an organization considered for a subaward or contract. The officers, employees, and agents of the subrecipient must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or contractors or parties to subawards or contracts.
3. If you have a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, you must also maintain written standards of conduct covering organizational conflicts of interest. “Organizational conflicts of interest” means that because of relationships with a parent company, affiliate, or subsidiary organization, you are unable or appear to be unable to be impartial in conducting a subaward or procurement action involving a related organization.

Criminal Disclosures (2 CFR 200.113, 2 CFR part 3185)

You must also disclose, in a timely manner, in writing to TSLAC all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.



SFY 2016 LSTA Subrecipient Disclosures — Acknowledgment

This form should be signed by the subrecipient's financial manager to acknowledge receipt of the document and returned **by November 18, 2015**, to:

TSLAC Library Development and Networking
Subject: **2016 Competitive Grants Disclosures**
e-mail: ld@tsl.texas.gov
fax: 512-936-2306

I acknowledge receipt of the *SFY 2016 LSTA Subrecipient Disclosures* document and understand that this now becomes part of my grant documentation.

Financial Manager's Signature: _____

Printed Name: _____

Title: _____

Date: _____

Library/Organization: _____

Legal Entity Name: _____

**TEXAS STATE LIBRARY & ARCHIVES COMMISSION
IMPACT GRANT PROGRAM**

Grant Number: 475-16017

I. CONTRACTING PARTIES

Grantor: Texas State Library and Archives Commission (TSLAC)
Subrecipient: City of Kyle, Kyle Public Library
PO Box 2349
Kyle, TX 78640
DUNS No.: 088485016

II. TERM OF GRANT

September 1, 2015, through August 31, 2016 (SFY 2016)

III. STATEMENT OF SERVICES TO BE PERFORMED

Subrecipient shall provide services as outlined in the approved grant application (Impact3 Grant for State FY16) as approved by TSLAC. Grant funds must be used to meet TSLAC and Federal goals. The Subrecipient must report information relating to best practices and performance outcomes and will comply during the period of this contract. The approved grant application submitted by Subrecipient is incorporated into this contract as if fully set forth herein. In the event of any conflict between the grant application and this contract, this contract shall prevail.

IV. GRANT AMOUNTS AND DISBURSEMENT REQUIREMENTS

- A. The total amount of the grant shall not exceed: \$10,000.00. Indirect costs, as included in the total amount awarded, shall not exceed 0% or \$0.00 as indicated in the budget below.
- B. Source of funds:
Institute of Museum and Library Services (IMLS)
CFDA Name: LSTA State Grants CFDA #: 45.310
Federal Award Identification #: LS-00-15-0044-15; Federal Award Date: January 28, 2015
- C. The Subrecipient is restricted to one of two methods for requesting funds from TSLAC. The Subrecipient may request reimbursement of actual expenditures for the Subrecipient's normal billing cycle, or advance payment for estimated expenditures to be incurred in the 30-day period following the request. Only Subrecipients providing documentation to demonstrate a lack of sufficient working capital and the ability to minimize the time elapsing between transfer of funds from TSLAC and disbursement of grant funds will be allowed to request advance payments.
- D. The Subrecipient must request payments from TSLAC using TSLAC's Request for Funds form (RFF) via the electronic TSLAC Grant Management System (GMS), located at <https://gms.tsl.texas.gov/>. Requests may be submitted to TSLAC no more often than once per month, and no less often than once per quarter. Funds will be processed and paid to the Subrecipient provided TSLAC has received a fully executed contract, and Subrecipient has fulfilled all reporting and training requirements for current and preceding contracts and submitted supporting documentation with the RFF.
- E. When submitting an RFF for reimbursement, the Subrecipient must provide TSLAC with documentation, such as invoices, time sheets, and/or pay stubs, and Attachment A (RFF Supporting Documentation Summary) to support the amount requested before payment will be processed. Subrecipient must submit the final request for reimbursement no later than **September 30, 2016**.
- F. The Subrecipient may not obligate or encumber grant funds after **August 31, 2016**. All obligations and encumbrances must be liquidated or paid no later than **October 15, 2016**.
- G. Interest earned in excess of \$500 on advanced funds, must be returned to TSLAC, per requirements in the State of Texas Uniform Grant Management Standards (UGMS). All unexpended grant funds must also be returned to TSLAC with the Final Financial Status Report (FSR) per requirements in UGMS. See Section VII. C. of this contract for FSR due dates. As part of the reporting requirements in Section VII, the Subrecipient will notify TSLAC of the amount of projected unexpended funds with each FSR submitted. If the Subrecipient does not expend funds on a regular basis and/or provide notice relating to unexpended funds, TSLAC reserves the right to act as necessary to reduce any unexpended balances, including reducing the grant amount specified in Section IV. A. above.
- H. Per the approved grant application, funds are authorized according to the following budget:

<u>Personnel</u>	<u>\$0.00</u>
<u>Fringe Benefits</u>	<u>\$0.00</u>
<u>Travel</u>	<u>\$0.00</u>
<u>Equipment/Property</u>	<u>\$0.00</u>
<u>Supplies</u>	<u>\$0.00</u>
<u>Supplies-Equipment</u>	<u>\$0.00</u>
<u>Services</u>	<u>\$10,000.00</u>
<u>Consultant Fees</u>	<u>\$0.00</u>
<u>Indirect Costs</u>	<u>\$0.00</u>
<u>Total</u>	<u>\$10,000.00</u>

V. REQUEST FOR FISCAL AND PROGRAMMATIC CHANGES

The Subrecipient must request a Budget and/or Program Revision for fiscal and/or programmatic changes as outlined in this Section. Subrecipient must submit a request for Budget and/or Program Revision electronically on TSLAC's GMS. Under no condition may a Subrecipient request to exceed the total grant amount. TSLAC must receive all change requests on or before **July 15, 2016**. Requests received after this date will generally be denied, but may be considered on a case-by-case basis if extenuating circumstances exist. **Subrecipient must submit a Budget and/or Program Revision to TSLAC before obligating or expending grant funds under any of the following conditions.**

- A. Fiscal changes require an approved Budget Revision under any of the following conditions:
 - 1. Making cumulative transfers among budget cost categories or projects which are expected to exceed ten (10) percent of the total grant; and/or,
 - 2. Transferring any funds into a budget cost category that currently equals zero (\$0); and/or,
 - 3. Expending any program income earned through the utilization of resources funded by this grant; and/or,
 - 4. Changing the items listed in the approved budget categories if an item's cost or features are substantially different from what the approved grant application specifies, or from a previously approved fiscal or program revision.
- B. Programmatic changes to the approved grant application require an approved Program Revision under any of the following conditions:
 - 1. Obtaining the services of a third party to perform activities that are central to the purposes of the grant; and/or,
 - 2. Changing the scope or objectives of the approved program, regardless of whether there is an associated budget revision. A change in scope is a substantive difference in the approach or method used to reach program objectives.

VI. EQUIPMENT AND PROPERTY REQUIREMENTS

- A. If conditions described in Section V.A.1. are met, fiscal changes to items listed in the Equipment/Property Budget category specified in Section IV. G of this contract require a pre-approved Budget Revision. This is defined as the cost of the equipment and/or property, including any cost necessary to put the item into service, such as the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make the item usable for the purpose for which it is acquired. Ancillary charges such as taxes, duty, protective in-transit insurance, freight, and installation may be included in or excluded from the expenditure cost in accordance with the Subrecipient's regular accounting practices and Generally Accepted Accounting Practices (GAAP)
- B. The Subrecipient will comply with UGMS Part III, Subpart C, Sec. 32 (d)(3) requiring certain items of equipment to be maintained on inventory if the item's cost is between \$500 and \$1000.
- C. The Subrecipient agrees to submit the most current TSLAC Equipment/Property Report electronically via TSLAC's GMS after the Final FSR is submitted, but no than **October 31, 2016**, for all equipment/property purchased with grant funds during the SFY14 grant year. This list must balance with the equipment/property purchased under the approved grant application and all subsequently approved Budget and/or Program Revisions.
- D. Subrecipient must furnish a statement to TSLAC certifying the governing entity's capitalization level with the signed grant contract.. Subrecipient agrees to maintain records on all equipment/property with an acquisition cost above governing entity's capitalization level.
- E. Subject to the obligations and conditions set forth in the UGMS, title to equipment acquired under a grant will vest in the Subrecipient upon acquisition. Subrecipient must include any equipment/property acquired with grant funds in the required biennial property inventory, and follow the UGMS requirement that the Subrecipient reconcile the equipment/property records with a physical inventory of the equipment/property every two years. This biennial inventory does not need to be submitted to TSLAC, but must be maintained by the Subrecipient and will be subject to review and/or audit by TSLAC. When property is vested in the Subrecipient, Subrecipient will dispose of equipment/property in accordance with UGMS. When the Subrecipient has been given federally or state-owned equipment/property, Subrecipient will follow the guidance as set forth in UGMS.

VII. REPORTING REQUIREMENTS

The State Legislature has charged TSLAC with submitting performance measurement reports that specify the level of services provided by its programs and services. In accepting these grant funds, the Subrecipient acknowledges responsibility for performing certain services on behalf of TSLAC, as outlined in the approved grant application. Therefore, the Subrecipient is responsible for submitting periodic reports that reflect the Subrecipient's level of performance on these services to TSLAC. To comply with these requirements, the Subrecipient agrees to submit reports that are timely, accurate, auditable, and consistent with definitions.

- A. The Subrecipient agrees to develop or revise, as necessary, any specific written documentation of its current procedures for (1) collecting and reporting performance measures; (2) conducting a fixed asset inventory; and/or, (3) any other issues identified in Subrecipient's internal audit report or grant activities. Drafts of this procedural documentation will be submitted to TSLAC by dates established mutually between TSLAC and Subrecipient. TSLAC will provide review and guidance to enable final versions to be approved on or before established deadlines.
- B. The Subrecipient agrees to submit performance reports detailing grant-funded activities via TSLAC's GMS on or before due dates listed in the following schedule. In the event that a due date falls on a weekend or state holiday, the respective report will be due on the next business day. Subrecipient agrees to submit Legislative Budget Board (LBB) measures as defined by TSLAC, in the reports, and to work with agency staff in the development and reporting of Project outcomes. LBB measures may include the numbers of: a) books and other materials purchased with grant funds; b) persons provided grant-sponsored services; and/or c) library staff trained or assisted in order to carry out the grant-funded activities.

Reporting Period

P1 (September 1, 2015–February 29, 2016)
P2 (March 1, 2016–August 31, 2016)

Due Date

March 7, 2016
September 7, 2016

- C. The Subrecipient agrees to submit Financial Status Reports via TSLAC's GMS on or before the due dates listed in the following schedule. In the event that a due date falls on a weekend or state holiday, the respective report will be due on the next business day. Subrecipient should submit a Final FSR once all grant funds have been expended and reimbursed.

Reporting Period

P1 (September 1, 2015–February 29, 2016)
P2 (March 1, 2016–August 31, 2016)

Due Date

March 31, 2016
September 30, 2016

In the event the Subrecipient has not received the final reimbursement by August 31, 2016, a final FSR must be submitted no later than **October 31, 2016**, to report any funds received after August 31, 2016.

- D. The Subrecipient will assure that all fiscal reports or vouchers requesting payment under this agreement will include a certification, signed by an official who is authorized to legally bind the Subrecipient, that the reports are true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the award. The Subrecipient acknowledges that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject the official to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. (2 CFR §200.415(a))
- E. The Subrecipient agrees to submit the Grant Contract Checklist to TSLAC no later than **October 31, 2016**.
- F. The Subrecipient agrees to submit an audit certification form for the auditable period encompassing August 31, 2016, to TSLAC no later than **December 31, 2016**.
- G. If a single audit is required, the Subrecipient will comply with the Supercircular (2 CFR §200.512 Report Submission). The audit shall be completed and the required data collection form submitted to the Federal Audit Clearinghouse (FAC) within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the state agency that provided the funding or a different period is specified in a program-specific audit guide.
- H. TSLAC reserves the right to withhold final payment on this Grant until all required reports and forms are received.

VIII. GENERAL TERMS AND CONDITIONS

- A. The Subrecipient will comply with the Impact Grant Program Guidelines for SFY 2016.
- B. The Subrecipient will comply with the Rules for Administering the Impact Grant, Texas Administrative Code, Title 13, Part 1, Chapter 2, Subchapter C, Division 9, Rules 2.910–2.912; and Title 13, Part 1, Chapter 2, Subchapter C, Division 1, Rules 2.110–2.119 regarding General Grant Guidelines.
- C. The Subrecipient will comply with the following rules and guidance as applicable:
- 1) Texas Uniform Grants Management Standards (UGMS) (comptroller.texas.gov/procurement/catrad/ugms.pdf); and
 - 2) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Parts 200 and 3187 (Supercircular)) (www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards#h-4).
- D. The Subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. IMLS and TSLAC reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal or state government purposes. (2 CFR Part 200.315)
- E. Subrecipient understands that the federal awarding agency, IMLS, and TSLAC have the right to:
- 1) obtain, reproduce, publish or otherwise use, the data produced under a Federal award; and
 - 2) authorize others to receive, reproduce, publish or otherwise use such data for Federal or state government purposes.
- F. All publicity relating to the grant award must include acknowledgment of the Institute of Museum and Library Services (www.imls.gov/recipients/imls_acknowledgement.aspx), and the Texas State Library and Archives Commission. Publicity includes, but is not limited to press releases, media events, public events, displays in the benefiting library, announcements on the Subrecipient's website, and materials distributed through the grant project. The Subrecipient will provide TSLAC with one set of all public relations materials produced under this grant with the Final Performance Report.
- G. Subrecipient understands that acceptance of funds under this contract acts as acceptance of the authority of duly authorized representatives of TSLAC, IMLS, the Comptroller General of the United States, and the Texas State Auditor's Office, or any successor agencies, to conduct an audit or investigation in connection with those funds. Subrecipient further agrees to cooperate fully with said representatives in the conduct of the audit or investigation and agrees to provide access to all books, documents, papers, examinations, excerpts, transcripts, copies, and any other records necessary to conduct the audit and/or investigation. Subrecipient will ensure that this clause concerning the authority to audit funds received indirectly by Sub-Subrecipients through Subrecipient, and the requirement to cooperate, is included in the contract for any sub-grant awarded.
- H. The Subrecipient agrees to maintain all financial and programmatic records, supporting documents, statistical records, and other records relating to this grant award for three years after the last State Program Report for the Texas LSTA 5-Year Plan 2013-2017 is submitted on December 31, 2018. **The Subrecipient must maintain all grant related records through December 31, 2021.**

Subrecipients that operate as state agencies must comply with S.B. 20 (Section 441.1855) relating to state agency contracting and the retention of all contract-related documents.

In the event the Subrecipient or receiving entity no longer exists, the Subrecipient will notify TSLAC in writing providing the name of the legal entity that will maintain the records and the location of said records.

- I. This grant may be terminated by written notice and mutual agreement of both parties. The termination notice must be given no less than 30 days prior to the termination date. Where notice of termination is given, the Subrecipient shall:
 1. Take immediate steps to bring the work or grant activities to a close in a prompt and orderly manner. Subrecipient will complete reporting requirements outlined in Section VII of this document and in a manner mutually agreed upon by both parties as part of the closeout process.
 2. Reduce expenses to a minimum and not undertake any forward commitment. All contracted funds that are not spent, encumbered or obligated at the time of notice of termination shall revert back to TSLAC according to processes established in Section IV of this document and according to a timeline mutually agreed upon by both parties.

In the event the Subrecipient loses all staff prior to the end of the grant period or the termination date, whichever is earlier, the Subrecipient is obligated to fulfill all terms and conditions of the grant with regard to reporting requirements, retention of records and requirements for disposition of equipment and supplies.

IX. ENFORCEMENT

- A. Remedies for noncompliance. If a Subrecipient materially fails to comply with any term of the contract, whether stated in a state or federal statute or regulation, an assurance in a state plan or application, a notice of award, or elsewhere, TSLAC may take one or more of the following actions or impose other sanctions as appropriate in the circumstances:
 1. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient, or more severe enforcement action by TSLAC;
 2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the current contract for the Subrecipient's program;
 4. Withhold further awards for the program; or
 5. Take other remedies that may be legally available.
- B. Hearings, appeals. In taking an enforcement action, TSLAC will provide the Subrecipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Subrecipient is entitled under any statute or regulation applicable to the action involved. Appeal/protest procedures are outlined in the Texas Administrative Code (TAC), Title 13, Part 1, Chapter 2, Subchapter A, Rule 2.55.
- C. Effects of suspension and termination. Costs to Subrecipient resulting from obligations incurred by the Subrecipient during a suspension or after termination of an award are not allowable unless TSLAC expressly authorizes them. Other Subrecipient costs incurred during suspension or after termination that are necessary and not reasonably avoidable are allowable if:
 1. The costs resulting from obligations that were properly incurred by the Subrecipient before the effective date of suspension or termination are not in anticipation of it and, in the case of a termination, are noncancelable; and,
 2. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- D. Relationship to Debarment and Suspension — The enforcement remedies identified in this section, including suspension and termination, do not preclude Subrecipient from being subject to "Debarment and Suspension" under Executive Order 12549 and state law.

X. CONTACTS AT TSLAC

Questions or concerns about programmatic issues, budget and/or program revisions, performance reports, and equipment/property should be directed to:

Erica McCormick, Grants Administrator
Phone: 512-463-5527 / Fax: 512-936-2306
E-mail: emccormick@tsl.texas.gov

Questions or documentation relating to required requests for funds and financial status reports should be directed to:

Tamra Lavin, Grants Accountant
Phone: 512-463-5472 / Fax: 512-475-0185
E-mail: tlavin@tsl.texas.gov or grants.accounting@tsl.texas.gov

Questions or concerns about advance payments and other financial issues should be directed to:

Rebecca Cannon, Manager, Accounting and Grants
Phone: 512-463-6626 / Fax: 512-475-0185
E-mail: rcannon@tsl.texas.gov

Payments from Subrecipient to TSLAC, such as those for excess advanced funds or for interest earned on advanced funds, should be mailed with a revised FSR, an explanation of the purpose of the payment, and the grant number. This information shall be directed to:

Grants Accountant
Accounting and Grants Department
Texas State Library and Archives Commission
PO Box 12516
Austin, TX 78711-2516

XI. APPLICABLE AND GOVERNING LAW

- A. The laws of the State of Texas shall govern this grant.
- B. All duties of either party shall be legally performable in Texas. The applicable law for any legal disputes arising out of this contract shall be the law of (and all actions hereunder shall be brought in) the State of Texas, and the forum and venue for such disputes shall be Travis County District Court.
- C. This grant contract is subject to the availability of funds. TSLAC may reduce or terminate this grant contract when the availability of funding is reduced or eliminated.

XII. GRANT CERTIFICATIONS

- A. TSLAC certifies that: (1) the services specified in the approved grant application and this contract are necessary and essential for activities that are properly within the statutory functions and programs of the affected organizations; (2) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest bidder; and, (3) the grant is in compliance with Texas Government Code §441.006; Texas Government Code §441.135 ; Texas Administrative Code, Title 13, Part 1, Chapter 2, Subchapter C, Division 9, Rules 2.910–2.912, regarding the Impact Grant; Texas Administrative Code, Title 13, Part 1, Chapter 2, Subchapter C, Division 1, Rules 2.110–2.119 regarding General Grant Guidelines; the Library Services and Technology Act (LSTA); the State Plan for the LSTA in Texas; and UGMS.
- B. The Subrecipient certifies that all costs included in this grant award are properly allocable to federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.
- C. The Subrecipient certifies that the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently, and the negotiating agency will be notified of any accounting changes that would affect the predetermined rate.
- D. The Subrecipient affirms that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract. The Subrecipient further affirms that its employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to any sub-agreements.
- E. The Subrecipient certifies by this contract that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid for such purpose, the Subrecipient shall complete and submit OMB form SF-LLL, Disclosure of Lobbying Activities, in accordance with its instructions. The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly, as specified in Title 31 U.S. Code, Sec. 1352.
- F. Subrecipient has provided to TSLAC the mandatory Internet Safety Certification (Certification) that it is in compliance with requirements of the Children’s Internet Protection Act (CIPA) for any Federal funds under this grant that will be used to purchase computers used to access the Internet or pay for the direct costs of accessing the Internet. Subrecipient agrees to collect, as required and appropriate, Certification forms from all libraries receiving benefits of Federal funds expended under this contract.
- G. Subrecipient certifies by this contract that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this program by any Federal department or agency, as required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participant's responsibilities, 2 CFR Part 180 Subchapter C. 180.335. Where the Subrecipient is unable to certify to any of the statements in this certification, the Subrecipient shall attach an explanation to this contract.
- H. Subrecipient certifies that neither subrecipient nor any of its principals (a) are presently excluded or disqualified; (b) have been convicted within the preceding three years of any of the offenses listed in 2 CFR Part 180.800(a) or had a civil judgment rendered against it or them for one of those offenses within that time period; (c) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in 2 CFR Part 180.800(a); or (d) have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default. Where the Subrecipient is unable to certify to any of the statements in this certification, the Subrecipient shall attach an explanation to these Certifications.
- I. The Subrecipient certifies that no Federal funds from this grant award will be made available for a public library, or public elementary or secondary school library that does not currently receive E-rate services, to purchase computers used to access the Internet or pay for the direct costs of accessing the Internet, unless the library has certified compliance with the applicable CIPA requirements. Should Federal funds awarded as part of this grant be used to purchase computers for a public library, or public

elementary or secondary school library that does not currently receive E-rate services, to be used to access the Internet or pay for the direct costs of accessing the Internet, Subrecipient will ensure Certification forms are received from all libraries receiving benefits of Federal funds expended under this contract.

- J. The Subrecipient, *if a private entity*, will comply with Federal law pertaining to trafficking in persons. Subrecipient and its employees may not:
- a. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - b. Procure a commercial sex act during the period of time that the award is in effect; or
 - c. Use forced labor in the performance of the award or subawards under the award.
- K. The Subrecipient certifies all applicable activities related to this grant will be in compliance with the Copyright Law of the United States (Title 17, U.S. Code).
- L. In addition to Federal requirements, state law requires a number of assurances from applicants for Federal pass-through or other state-appropriated funds. (UGMS Part III, Subpart B, Sec. 14 – State Assurances):
1. A Subrecipient must comply with Texas Government Code, Chapter 573, Vernon's 1994, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
 2. A Subrecipient must insure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon's 1994, unless otherwise expressly prohibited by law.
 3. A Subrecipient must comply with Texas Government Code, Chapter 551, which requires all regular, special or called meetings of governmental bodies to be open to the public, except as otherwise provided by law.
 4. A Subrecipient must comply with the Texas Family Code Section 261.101 that requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Subrecipients shall also ensure that all program personnel are properly trained and aware of this requirement.
 5. Subrecipients will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, religion or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of disability and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
 6. Subrecipients will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §§276c and 18 U.S.C. §§874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for Federally assisted construction subagreements.
 7. Subrecipients will comply with the provisions of the Hatch Political Activity Act (5 U.S.C. §7321-29), that limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.
 8. Subrecipients will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
 9. Subrecipients will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA. (EO 11738).
 10. Subrecipients will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
 11. Subrecipients will comply with Public Law 103-277, also known as the Pro-Children Act of 1994 (Act), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.
 12. Subrecipients will comply with all Federal tax laws and are solely responsible for filing all required state and Federal tax forms.

- 13. Subrecipients will comply with all applicable requirements of all other Federal and state laws, executive orders, regulations and policies governing this program.
- 14. Subrecipients must adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

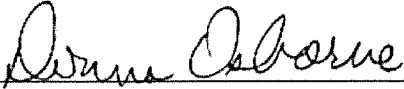
XIII. SIGNATURES

TSLAC

Texas State Library and Archives Commission

Mark Smith, Director and Librarian

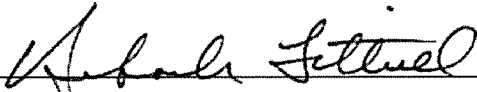
Date



Donna Osborne, Chief Financial Officer

8/13/15

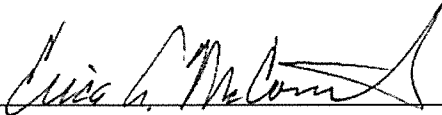
Date



Deborah Littrell, Library Development and Networking Director

8/13/15

Date



Erica McCormick, Grants Administrator

8/13/15

Date

SUBRECIPIENT

City of Kyle, Kyle Public Library

Signature (official empowered to enter into contracts)

Typewritten or Printed Name

Title

Date



CITY OF KYLE, TEXAS

2015 Manhole Rehabilitation Project - Change Order No. 1 and No. 2

Meeting Date: 4/19/2016
Date time: 7:00 PM

Subject/Recommendation: Approve Change Order No. 1 and Change Order No. 2 to SOUTHERN TRENCHLESS SOLUTIONS, LLC., Houston, Texas, to add \$6,255.00 and \$15,750.00, respectively, for additional work required on the 2015 Manhole Rehabilitation Project, Bid Schedule A, increasing the total contract amount to \$153,945.50 for quantity changes as directed by the City's inspector and additional specialty work required in one of the manholes. ~ *Leon Barba, P.E., City Engineer*

Other Information: Change Order No. 1 - During the preparation of the project, estimated quantities were provided to the contractor. Actual field observations by the City's inspector determined the exact quantities thus changing the final quantities.

Change Order No. 2 - A fabricated stainless steel system for a drop pipe will be constructed in one of the manholes. This will avoid compromising the walls of the rehabilitated manhole.

Legal Notes: N/A

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- Southern Trenchless Change Order No. 1
- Southern Trenchless Change Order No. 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.: ONE DATE: February 23, 2016 NWA JOB NO.: 1190-555

PROJECT: Bid Schedule "A"
2015 Manhole Rehabilitation

OWNER: City of Kyle

ORIGINAL CONTRACT AMOUNT:	\$	131,940.50
NET EFFECT OF PREVIOUS CHANGE ORDER(S):	\$	0.00
REVISED CONTRACT AMOUNT BY ABOVE CHANGE ORDER(S):	\$	131,940.50
NET EFFECT OF THIS CHANGE ORDER:	\$	6,255.00
REVISED CONTRACT AMOUNT BY THIS CHANGE ORDER:	\$	138,195.50

DESCRIPTION OF WORK: Change in rehabilitation procedure based on field observation by City Inspector. See attached Detail of Change Order No. 1 & Final.

JUSTIFICATION: Adjustment of final quantities.

EFFECT OF CHANGE: The lump sum of Six Thousand Two Hundred Fifty-Five and no/100 dollars (\$6,255.00) 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 February 23, 2016
Neptune-Wilkinson Associates, Inc. TBPE Firm# F-359 Date

SOUTHERN TRENCHLESS SOLUTIONS, LLC.

CITY OF KYLE

By: [Signature]
Eric Dupfe, President

By: _____
R. Todd Webster, Mayor

Date: 3.8.2016

Date: _____

DETAIL OF CHANGE ORDER NO. 1 & FINAL
FOR
CITY OF KYLE
2015 MANHOLE REHABILITATION - BID SCHEDULE "A"
February 23, 2016

Bid Item	Description	Contract Quantity	Installed Quantity	Change in Quantity	Unit	Unit Price	Total
2	4' I.D. Manhole Condition A/B	181.5	147.5	(34.00)	VF	115.00	(3,910.00)
3	5' I.D. Manhole Condition A/B	92.5	34.5	(58.00)	VF	150.00	(8,700.00)
4	4' I.D. Manhole Condition D	158.5	184.0	27.50	VF	200.00	5,500.00
5	5' I.D. Manhole Condition D	110.5	134.0	23.50	VF	240.00	5,640.00
6	4' I.D. Manhole Condition E	15.5	19.00	3.50	VF	250.00	875.00
7	5' I.D. Manhole Condition E	41.5	71.0	29.50	VF	300.00	8,850.00
9	Drop Pipe	4.0	2.0	(2.00)	EA	1,000.00	(2,000.00)
SUBTOTAL							\$6,255.00

TOTAL AMOUNT OF CHANGE ORDER NO. 1 & FINAL \$ 6,255.00

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: April 7, 2016 NWA JOB NO.: 1190-555

Bid Schedule "A"
PROJECT: 2015 Manhole Rehabilitation OWNER: City of Kyle

ORIGINAL CONTRACT AMOUNT:	\$	131,940.50
NET EFFECT OF PREVIOUS CHANGE ORDER(S):	\$	6,255.00
REVISED CONTRACT AMOUNT BY ABOVE CHANGE ORDER(S):	\$	138,195.50
NET EFFECT OF THIS CHANGE ORDER:	\$	15,750.00
REVISED CONTRACT AMOUNT BY THIS CHANGE ORDER:	\$	153,945.50

DESCRIPTION OF WORK: Install 10" bowl and pipe using stainless steel rail system attached to wall of Manhole# A-23 4' above inlet pipe and to floor of the bench. Fabricate rail system according to Sketch A-23 (five sheets) attached.

JUSTIFICATION: To accommodate a required drop pipe using a rail system necessitated by compromised wall strength in the rehabilitated manhole due to inflow repairs.

EFFECT OF CHANGE: The lump sum of Fifteen Thousand Seven Hundred Fifty and no/100 dollars (\$15,750.00) 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 Bantle
Neptune-Wilkinson Associates, Inc. TBPE Firm# F-359

April 7, 2016
Date

SOUTHERN TRENCHLESS SOLUTIONS, LLC.

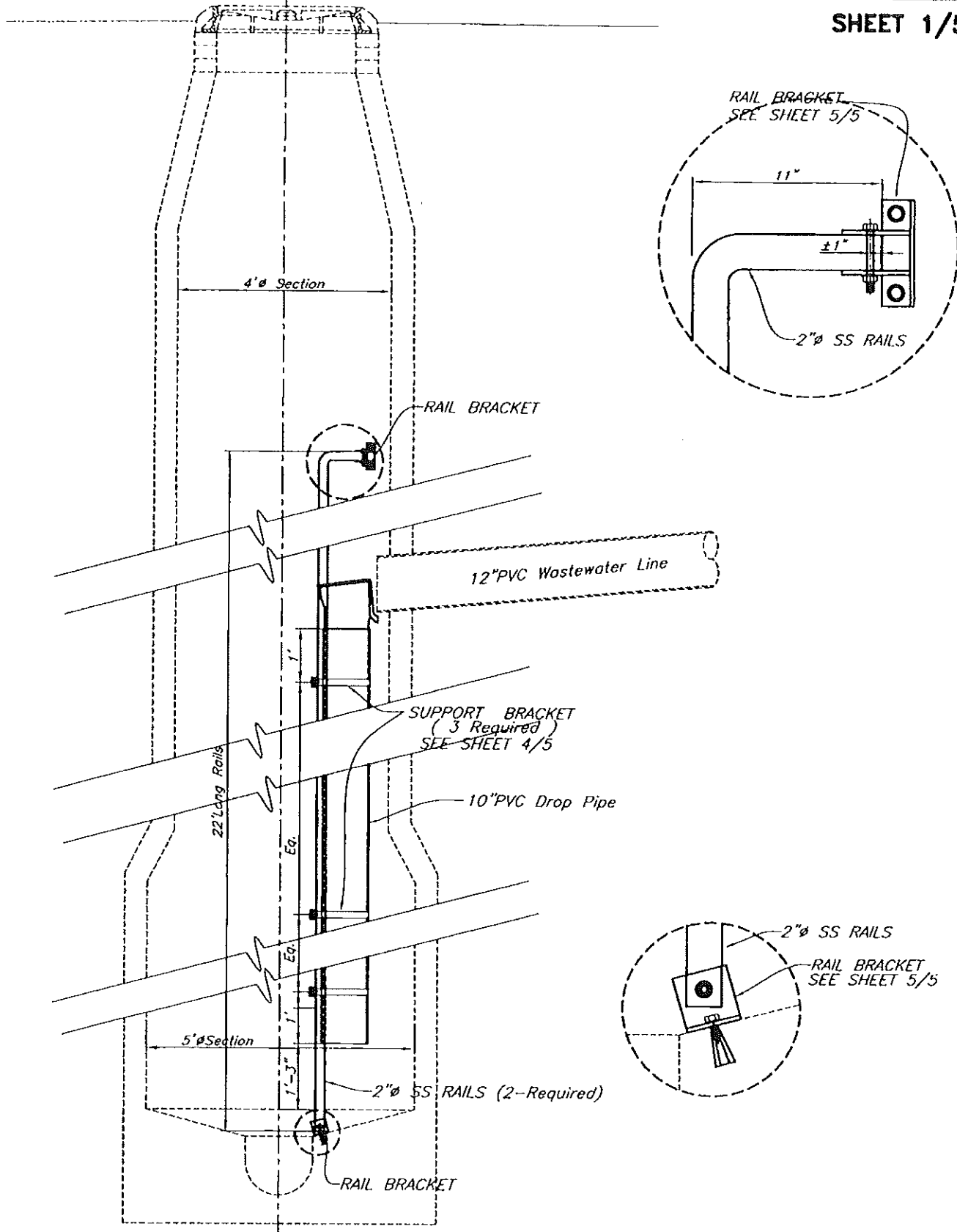
CITY OF KYLE

By: Eric Dupre'
Eric Dupre, President

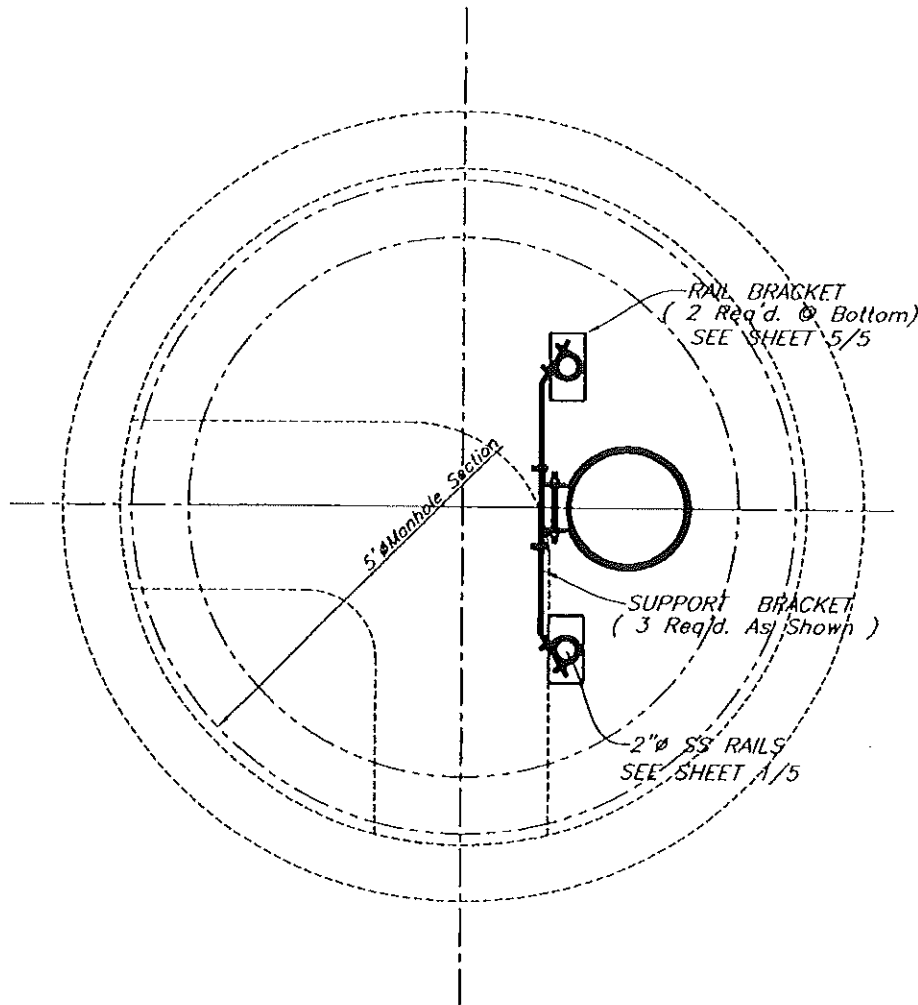
By: _____
R. Todd Webster, Mayor

Date: 4.7.2016

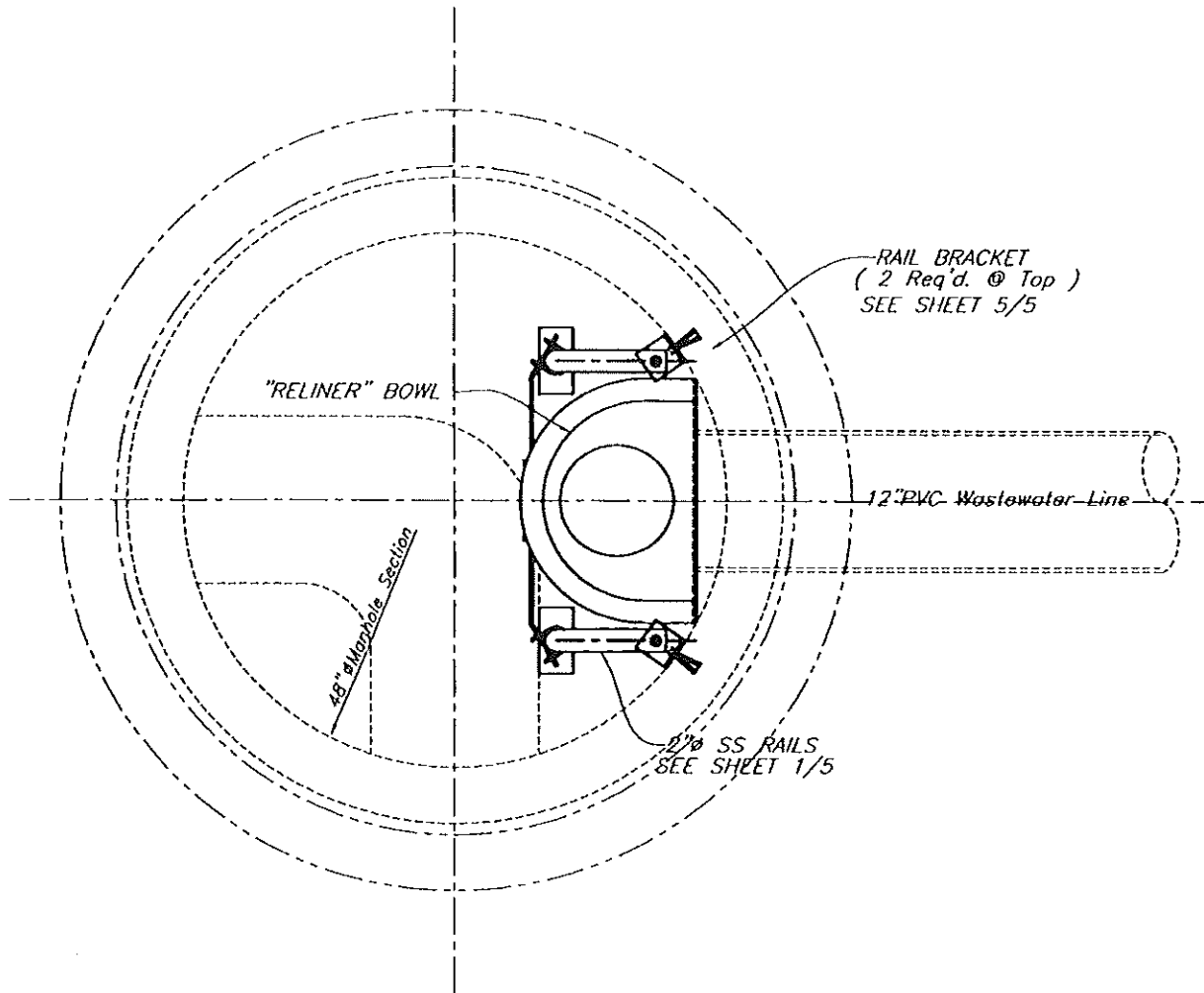
Date: _____



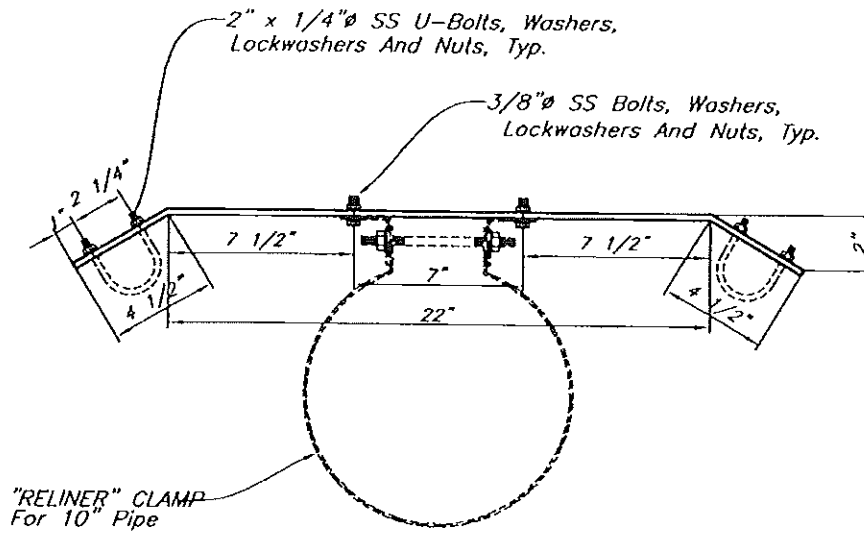
SECTION AT EXISTING MANHOLE
SKETCH A23 ADDITIONAL RAILS



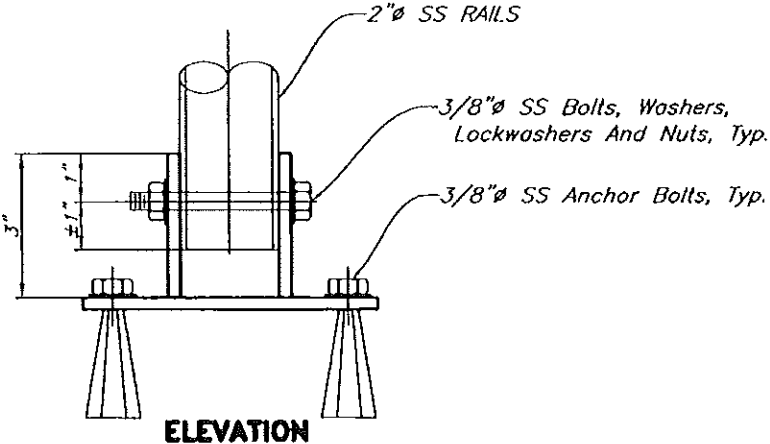
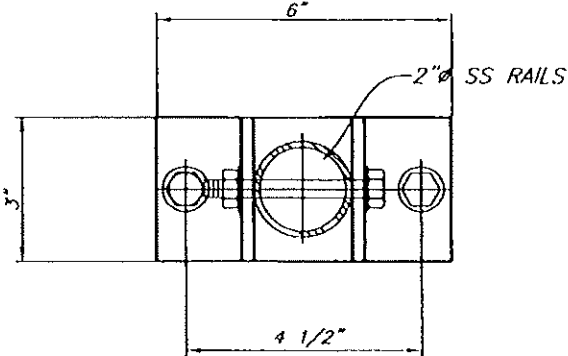
PLAN ○ PIPE SUPPORT BRACKET
SKETCH A23 ADDITIONAL RAILS



PLAN OF RAIL BRACKET @ BOWL
SKETCH A23 ADDITIONAL RAILS



PIPE SUPPORT BRACKET
3 - REQUIRED
SKETCH A23 ADDITIONAL RAILS



Fabricated From 1/4" 314 Stainless Steel

RAIL END BRACKET (Top & Bottom)
4 - REQUIRED
SKETCH A23 ADDITIONAL RAILS

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: April 19, 2016
CONTACT CITY DEPARTMENT: Engineering Services
CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

SUBJECT:

Approve Change Order No. 1 and Change Order No. 2 to SOUTHERN TRENCHLESS SOLUTIONS, LLC, Houston, Texas, to add \$6,255.00 and \$15,750.00 respectively for additional work required on the 2015 Manhole Rehabilitation Project, Bid Schedule A, increasing the total contract amount to \$153,945.50 for quantity changes as directed by the City's inspector and additional specialty work required in one of the manholes.

CURRENT YEAR FISCAL IMPACT:

This Change Order to SOUTHERN TRENCHLESS SOLUTIONS, LLC, for the 2015 Manhole Rehabilitation Project will require expenditure of funds from the Fiscal Year 2015-16 approved budget of the Public Works Department as follows:

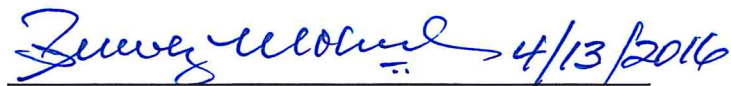
1. City Department:	Public Works
2. Project Name:	2015 Manhole Rehabilitation
3. Funding Source:	Water and Wastewater Utility Fund
4. Budget/Accounting Code(s):	310-825-53144
5. Current Appropriation:	\$ 412,320.50
6. Unencumbered Balance:	\$ 216,990.93
7. Amount of This Action:	<u>\$(22,005.00)</u>
8. Remaining Balance:	<u>\$ 194,985.93</u>

FUNDING SOURCE OF THIS ACTION:

The funding for this Change Order in the amount of \$22,005.00 will be provided from the approved operating budget of the Public Works Department for Fiscal Year 2015-16.

ADDITIONAL INFORMATION/COUNCIL ACTION:

On September 15, 2015, City Council awarded the manhole rehabilitation contract in an amount not to exceed \$131,940.50 to SOUTHERN TRENCHLESS SOLUTIONS, LLC.

 4/13/2016

Pervez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

Haul Trailer

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize award and execution of a Purchase Order to MAGNUM TRAILERS, Austin, Texas in an amount not to exceed \$26,539.71 for the purchase of a new Haul Trailer 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

- Haul Trailer Quote
- Fiscal Note

MAGNUM Trailers

- Austin - 10806 Hwy 620 N**
512-258-4101 FAX 512-258-2701
- San Antonio - 11210 IH35 N**
210-599-2325 FAX 210-599-1220
- Georgetown - 1209 IH35 N**
512-868-9900 FAX 512-869-7277
- San Marcos - 2501 IH35 S**
512-392-6246 FAX 512-392-6247

SALES

PARTS

SERVICE

Buyboard #425-13

QUOTE

Quote # 022616-01 Salesman: Steve Date: 4/12/2016
 Customers Name: City of Kyle Customer Email: wchristian@cityofkyle.com
 Address: 520 East F.M. 150 City: Kyle State: Texas Zip: 78640
 Phone: 512-262-3024 Cell: 512-738-7292 Fax: _____
 Year: 2016 Model: LY30 Make: PJ Serial # _____

Model or Part #	Description	Qty.	Price	Amount
LY30	30 x 102 Low Pro Flatdeck	1	\$ 14,265.00	\$ 14,265.00
P	Pintle	1	\$ -	\$ -
J2AS	(2) 15K Air/Spring axles	1	\$ 8,100.00	\$ 8,100.00
	Hydraulic Dovetail	1	\$ -	\$ -
BWFL	Blackwood Lumber Full Deck	30	\$ 29.82	\$ 894.60
5	Solar Battery Charger	1	\$ 121.71	\$ 121.71
V	Side-mount Toolbox	1	\$ 357.89	\$ 357.89
4	Plate for Winch	1	\$ 136.17	\$ 136.17
C	12"oc Crossmembers	1	\$ 179.55	\$ 179.55

Trade In	Serial #	Year:	Sub Total	\$ 24,054.92
	Make:	Color:	Less Trade	

Attention: By law the vehicle may require brakes and/or other safety devices.
 We assume no responsibility if purchased without.

Quote Good for 15 Days

Other Options Not Included:			

Plus any taxes and fees applical			
GVWR:	30000	Net Carry:	Empty WT:

Build Time 5 to 6 weeks

Approved By:			
PMT	CASH	CHECK	CC

Excise Tax	\$ 2,404.79
License	
Title Fee	
Road & Bridge	
Documentation	
Temp Tag Fee	\$ 5.00
Freight	\$ 75.00
State Inspection	
Mail Plate	
Parts Ticket	
Service Ticket	
Total	\$ 26,539.71
Less Down Payment	
Balance Due	\$ 26,539.71

Any change order after the order has been placed will have a \$75.00 fee applied.
DOWN PAYMENTS ON SPECIAL ORDERS ARE NON-REFUNDABLE

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: April 19, 2016
CONTACT CITY DEPARTMENT: Public Works Department
CONTACT CITY STAFF: Harper Wilder, Director

SUBJECT:

Authorize award and execution of a Purchase Order to MAGNUM TRAILERS, Austin, Texas, in an amount not to exceed \$26,539.71 for the purchase of a new haul trailer through the Buy Board Purchasing Co-operative for the Public Works Department.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to MAGNUM TRAILERS 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) Haul Trailer
3. Funding Source:	General Fund
4. Budget/Accounting Code(s):	110-161-57125
5. Current Appropriation:	\$ 73,883.00
6. Unencumbered Balance:	\$ 73,883.00
7. Amount of This Action:	<u>\$ (8,846.57)</u>
8. Remaining Balance:	<u>\$ 65,036.43</u>
9. Funding Source:	Water Utility Fund
10. Budget/Accounting Code(s):	310-820-57125
11. Current Appropriation:	\$ 8,884.00
12. Unencumbered Balance:	\$ 8,884.00
13. Amount of This Action:	<u>\$ (8,846.57)</u>
14. Remaining Balance:	<u>\$ 37.43</u>
15. Funding Source:	Wastewater Utility Fund
16. Budget/Accounting Code(s):	310-825-57125
17. Current Appropriation:	\$ 8,883.00
18. Unencumbered Balance:	\$ 8,883.00
19. Amount of This Action:	<u>\$ (8,846.57)</u>
20. Remaining Balance:	<u>\$ 36.43</u>

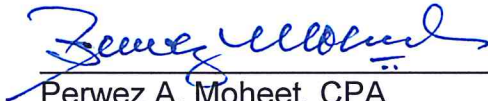
FUNDING SOURCE OF THIS ACTION:

The funding 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 \$26,539.71 will be equally allocated or \$8,846.57 each to the General Fund, Water Utility Fund and the Wastewater Utility Fund as itemized above.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

 4/13/2016
Pervez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

Sheridan Environmental Contract

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Approve a contract with SHERIDAN ENVIRONMENTAL DBA SHERIDAN CLEARWATER, LLC, and the City of Kyle for the handling and disposal of biosolids from the wastewater treatment plant at an estimated cost of \$49,200.00 per year. ~
Harper Wilder, Director of Public Works

Other Information:

Legal Notes:

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- Agreement
- Fiscal Note

BIOSOLIDS
HAULING SERVICES AGREEMENT

This SLUDGE PRESSING AND CAKE HAULING SERVICE AGREEMENT (hereinafter called the AGREEMENT) made and entered into this ____ day of _____ 2016 (“EFFECTIVE DATE”) by and between **City of Kyle, TX**, a municipal corporation (“CUSTOMER”), and **Sheridan Environmental dba Sheridan Clearwater, LLC**, an independent contractor (“CONTRACTOR” which term shall include its successors and assigns).

WITNESSETH:

In consideration of the following covenants and AGREEMENTS, the CUSTOMER and the CONTRACTOR hereby mutually agree as follows:

1. SCOPE

- 1.1. The CONTRACTOR shall provide sludge pressing and cake hauling services that include pressing, loading, hauling, unloading and disposal according to the requirements and limits of CUSTOMER’S permit (TPDES Permit No. WQ0011041002, attached hereto as **ATTACHMENT A** and incorporated herein for all purposes, and as amended (“PERMIT”)) and the terms of this AGREEMENT (“SERVICES”) of the CUSTOMER’S biosolids which will constitute at least 15% solids content as achieved by the CONTRACTOR’S sludge pressing services, prior to transport (“BIOSOLIDS”) as generated by the City of Kyle Wastewater Treatment Facility, SIC Code 4952, located at 941 New Bridge Drive, Kyle, approximately 2.7 miles northwest of the intersection of State Route 21 and Farm-to-Market Road 2720 in Hays County, Texas 78640 (“PLANT”).
- 1.2. It is understood that the relationship of CUSTOMER and CONTRACTOR is that of independent contractor. CONTRACTOR assumes full responsibility for the safety of the work hereunder. CONTRACTOR shall not order materials or equipment as an agent of CUSTOMER or in any other manner present itself to be an agent of CUSTOMER.
- 1.3. All grounds, facilities and equipment owned by CUSTOMER or acquired by CUSTOMER shall remain the property of CUSTOMER.
- 1.4. All grounds, facilities and equipment owned by CONTRACTOR or acquired by CONTRACTOR shall remain the property of CONTRACTOR.

2. CONTRACTOR OBLIGATIONS

The CONTRACTOR shall:

- 2.1. Within twenty-one (21) calendar days after receipt of the Purchase Order from CUSTOMER, cause the commencement of sludge pressing, hauling and disposal

of CUSTOMER'S BIOSOLIDS to adequately meet the output needs of the PLANTS. The CONTRACTOR shall own, furnish and operate adequate pressing equipment to meet the output needs of the PLANT and be able to dewater the BIOSOLIDS to no less than 15% solids prior to hauling for disposal. BIOSOLIDS shall be loaded by CONTRACTOR and transported by CONTRACTOR in CONTRACTOR'S 20 cubic yard bins and vehicles. The dewatered BIOSOLIDS from the PLANTS shall be hauled and disposed of in accordance with the CUSTOMER'S PERMIT and any other applicable LEGAL REQUIREMENTS.

- 2.2. Notify the CUSTOMER of any notice of violation, action, suit, claim, or legal proceeding against CONTRACTOR relating to any aspect of the CUSTOMER'S BIOSOLIDS pressed, transported or disposed of pursuant to this AGREEMENT.
- 2.3. Provide proof of various liability insurances, as set forth in Section 4 of this AGREEMENT.
- 2.4. **INDEMNIFY, CITY OF KYLE AS CUSTOMER, AND HOLD HARMLESS CITY OF KYLE AND ANY OF ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS AND ITS RESPECTIVE CITY COUNSEL PERSONS, OFFICERS, EMPLOYEES, AND REPRESENTATIVES (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS SECTION AS INDEMNITEES), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, FINES, PENALTIES, REGULATORY ACTIONS, AND CAUSES OF ACTION, TOGETHER WITH REASONABLE COSTS, EXPENSES, AND ATTORNEYS' FEES ASSOCIATED THEREWITH AND ALL AMOUNTS PAID IN DEFENSE OR SETTLEMENT OF THE FOREGOING, WHICH MAY BE IMPOSED UPON OR INCURRED BY INDEMNITEES OR ASSERTED AGAINST INDEMNITEES BY ANY OTHER PERSON OR PERSONS (INCLUDING GOVERNMENTAL REGULATORY AUTHORITIES), TO THE EXTENT CAUSED BY EITHER CONTRACTOR'S NEGLIGENT ACTS OR OMISSIONS, OR CONTRACTOR'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR VIOLATION OF APPLICABLE LEGAL REQUIREMENTS. CONTRACTOR SHALL NOT PROVIDE INDEMNIFICATION FOR THE SOLE NEGLIGENT ACTS OR OMISSIONS OF THE CITY, OR THEIR RESPECTIVE CITY COUNCIL PERSONS, OFFICERS, EMPLOYEES AND REPRESENTATIVES.**
- 2.5. Comply in all material respects with all LEGAL REQUIREMENTS applicable to CONTRACTOR'S provision of the SERVICES including, but not limited to maintain any separate CONTRACTOR regulatory permits required to perform such SERVICES through the term of this Agreement.
- 2.6. Be partially or completely relieved of its obligations to haul BIOSOLIDS during events or periods of Force Majeure, during which time the SERVICES shall be

partially or wholly suspended. CONTRACTOR agrees to employ reasonable efforts to mitigate the impacts of a Force Majeure.

- 2.7. CONTRACTOR shall provide equipment capable of pressing, loading and transporting in their own 20 cubic yard roll off bins or trucks in addition to all labor, handling equipment, fuel, maintenance, insurance and other costs necessary for all BIOSOLIDS pressing, loading, hauling, unloading, disposal and distributing operations, except for electricity used for pressing which will be provided by CUSTOMER free of charge. In case of equipment breakdown, the CONTRACTOR also shall provide additional equipment and/or labor at no additional expense to avoid interruption for any cause in PLANT operations.
- 2.8. CONTRACTOR shall be solely responsible, at no additional cost to CUSTOMER, for the upkeep, repair and maintenance of the loading and pressing area, and the 20' immediately surrounding said area, and will keep the area in a reasonable and safe condition.
- 2.9. CONTRACTOR shall be solely responsible, at no additional cost to CUSTOMER, for any reasonable and necessary investigation, monitoring, clean-up, containment, removal, storage, remediation or restoration work associated with BIOSOLIDS intentionally or accidentally spilled by CONTRACTOR during pressing, loading, transportation, or BIOSOLIDS disposal as conducted by CONTRACTOR and/or its agents.

3. CUSTOMER

The CUSTOMER shall:

- 3.1. Provide to CONTRACTOR for pressing and hauling, 100% of the annual volume of BIOSOLIDS generated at the PLANT.
- 3.2. Provide CONTRACTOR with reasonable access to the CUSTOMER'S BIOSOLIDS delivery system, except as reasonably required for safety or emergency considerations, or planned shutdown of the PLANT. It is agreed that when safety, emergency or shutdown conditions prevent CONTRACTOR access, that both parties will attempt to mitigate such adverse conditions as expeditiously as safely possible.
- 3.3. Provide CONTRACTOR any information which CONTRACTOR reasonably may request to facilitate its compliance with applicable LEGAL REQUIREMENTS, as may be applicable to the SERVICES. CONTRACTOR shall have the undisputed right to rely upon any information or certification provided by CUSTOMER, and shall not have any independent duty to investigate or inquire regarding the subject matter of any CUSTOMER'S certification, or of the information which CUSTOMER provides to CONTRACTOR.

- 3.4. Not provide to CONTRACTOR any BIOSOLIDS which contain HAZARDOUS MATERIAL or are hazardous in accordance with 40 C.F.R. Part 261, other federal law, state law, or which contains a concentration of polychlorinated biphenyls equal to or greater than 50 milligrams per kilogram of total solids (on a dry weight basis).
- 3.5. Notify the CONTRACTOR of any significant CUSTOMER operating changes or any other conditions that would reasonably be expected to affect the BIOSOLIDS managed by CONTRACTOR under this AGREEMENT.
- 3.6. Notify the CONTRACTOR of any opportunity for CUSTOMER to engage in local application of BIOSOLIDS for beneficial use in the area in and around CUSTOMER location, and at such time, engage in NEGOTIATION of amendment to current contract to provide for hauling of BIOSOLIDS by CONTRACTOR to those site(s).

4. INSURANCE

The CONTRACTOR shall maintain and provide the CUSTOMER evidence of insurance as follows:

- A. Commercial General Liability
 1. Bodily Injury \$1,000,000 each occurrence
 2. Property Damage \$1,000,000 each occurrence
- B. Personal Injury Coverage \$1,000,000 each occurrence
- C. Workers' Compensation As required by Texas Law
Employer's Liability \$500,000.00 single limit
- D. Comprehensive Business Automobile Liability Insurance (applicable to owned, non-owned and hired vehicles)
 1. Bodily Injury \$50,000 each person, \$1,000,000 each occurrence
 2. Property Damage \$1,000,000 each occurrence
- E. Pollution Control Liability (Minimum Amount Available on Claims Made Basis)
- F. Umbrella Excess Liability \$3,000,000.00 each occurrence

All insurance in the above amounts except for Worker's Compensation, shall name the City of Kyle as an additional insured.

5. PAYMENT

The CONTRACTOR shall provide the CUSTOMER with an accounting of the tons and cubic yards of BIOSOLIDS removed from the CUSTOMER'S PLANTS. The CUSTOMER will be provided with manifests or other records for all BIOSOLID loads removed by the CONTRACTOR. CONTRACTOR and CUSTOMER agree that CUSTOMER, at CUSTOMER'S sole expense, has the right to periodically take weight measurements and percent solids tests of bins loaded with BIOSOLIDS, to confirm confrmance with AGREEMENT. Results will be shared with CONTRACTOR. CONTRACTOR, at its own expense, may conduct similar weight and percent solids analysis and compare the results with CUSTOMER.

5.1. The CONTRACTOR shall submit invoices once each month for SERVICES provided by CONTRACTOR, using the rates and the volume amounts agreed to in Section 10 of this AGREEMENT. The CUSTOMER shall pay all uncontested invoices within thirty (30) days after receipt of the invoice.

5.2. It is agreed that in the event of any dispute concerning invoice amount, CUSTOMER will pay undisputed invoice amounts, or portions thereof, within thirty (30) days after receipt of the invoice.

6. RECORD KEEPING

The CONTRACTOR shall maintain volumetric records and submit summary reports to the CUSTOMER monthly and on an annual, cumulative basis. Reports shall include information regarding, but not be limited to:

6.1. Number of bin loads transported. Total number of cubic yards transported. Total tons transported. Percent solids of BIOSOLIDS hauled.

6.2. Such other information or certifications, including any weight samples and BIOSOLID disposal locations, as will reasonably allow CUSTOMER to fulfill its recordkeeping and reporting requirements under applicable PERMIT and LEGAL REQUIREMENTS.

7. NOTICES

Except as otherwise provided herein, any notice, demand or other communication shall be in writing and shall be personally served; sent by commercial courier service or prepaid registered or certified mail; or sent by telephonic facsimile delivery with confirmation thereof. Any such notice shall be deemed communicated upon receipt.

7.1. The following address is hereby designated as the legal address of the CONTRACTOR. Such address may be changed at any time by notice in writing delivered to CUSTOMER.

Contractor

Sheridan Environmental LLC D.B.A . Sheridan Clearwater LLC

3600 North Fm 973

Austin, TX 78725

- 7.2. The following address is hereby designated as the legal address of the CUSTOMER. Such address may be changed at any time by notice in writing delivered to CONTRACTOR.

City of Kyle, Texas

8. FORCE MAJEURE

Wherever the word “Force Majeure” is used, it should be understood to mean:

- 8.1. Acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards, freezes and other severe and unusual adverse and inclement weather for the Kyle, Texas area, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riots or civil disturbances;
- 8.2. labor disputes, strikes, employee Work slowdowns, or Work stoppages;
- 8.3. orders or judgments of any Federal, State or local court, administrative regulatory agency or governmental body with proper jurisdiction, if not the result of willful or negligent action of the party relying thereon;
- 8.4. power failure and outages affecting the BIOSOLID production PLANT; and
- 8.5. any other similar cause or event, including a change in law, regulation, ordinance or permit, provided that the foregoing is beyond the reasonable control of the party claiming Force Majeure.

If, because of Force Majeure any party’s cost is increased by more than 15%, or any party hereto is rendered unable, wholly or in part, to carry out its obligations under this Contract, then such party shall give to the other party prompt written notice of the Force Majeure with reasonable full details concerning it; thereupon the obligation of the party giving the notice, so far as they are affected by the Force Majeure, shall be partially or completely suspended during, but no longer than, the continuance of the Force Majeure. The affected party shall use all possible diligence to remove the Force Majeure as quickly as possible, but this obligation shall not be deemed to require the settlement of any strike, lockout, or other labor difficulty contrary to the wishes of the party involved. If, because

of Force Majeure the CONTRACTOR'S cost is increased, then CUSTOMER agrees to negotiate an increase in the price paid to CONTRACTOR to cover those increased costs for the duration of the Force Majeure. However, if because of Force Majeure CONTRACTOR'S cost is increased by more than 15%, then CUSTOMER may suspend Contract performance for the duration of the Force Majeure, and may exercise CUSTOMER'S right to terminate the Agreement. It is acknowledged by CONTRACTOR that an increase in diesel fuel and/or gasoline prices will specifically not be considered a FORCE MAJEURE.

9. TERM

9.1. The term of this AGREEMENT shall commence on the EFFECTIVE DATE and shall terminate twenty-four (24) months later (the "INITIAL TERM"). At the end of this INITIAL TERM, this AGREEMENT may be extended for an additional twelve (12) months option as may be mutually agreed in writing by both parties. Either party may terminate this AGREEMENT and shall have no further obligations to the other under this AGREEMENT: if (i) the other party fails to observe or perform any material covenant or agreement contained in this AGREEMENT, without cure, for fifteen (15) calendar days after written notice thereof has been given to such other party, or (ii) at any time upon the insolvency of the other party, or the institution by or against the other party of any proceeding in bankruptcy or insolvency; or for the appointment of a receiver or trustee or for an assignment for the benefit of creditors. **IT IS EXPRESSLY HEREBY ACKNOWLEDGED BY THE PARTIES THAT THE AGREEMENT MAY ALSO BE CANCELLED FOR THE CONVENIENCE OF EITHER PARTY, WITHOUT RECOURSE DAMAGE CLAIMS, BY GIVING AT LEAST NINETY (90) CALENDAR DAYS ADVANCE WRITTEN NOTICE TO THE OTHER PARTY.**

9.2. CONTRACTOR may terminate this AGREEMENT for cause at any time upon twenty (20) calendar days advanced written notice to CUSTOMER, and have no further obligation to CUSTOMER if:

9.2.1. The CONTRACTOR is unable to press, haul and dispose of the BIOSOLIDS due to an unexpected and substantial change in any LEGAL REQUIREMENTS that renders the SERVICES (or any part thereof) illegal.

9.2.2. CUSTOMER breaches its obligations under this AGREEMENT.

10. PRICE

10.1. Except as otherwise provided in this AGREEMENT, CUSTOMER will pay the following fixed prices for CONTRACTOR'S SERVICES hereunder for the duration of the INITIAL TERM of this Agreement:

PLANT

\$76.00 /per wet ton of BIOSOLIDS
(minimum 15% solids content)

10.2. **Billing.** CONTRACTOR shall submit its monthly invoices to the following address:

City of Kyle

11. MISCELLANEOUS COMMERCIAL PROVISIONS.

11.1. **Assignment.** The CUSTOMER and/or CONTRACTOR shall have the right to assign this AGREEMENT in writing to any successor in interest, subject to the written approval of the other party, which approval shall not be unreasonably withheld.

11.2. **Governing Law.** THIS AGREEMENT AND ALL THE RIGHTS AND DUTIES OF THE PARTIES ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY IT, SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, IN HAYS COUNTY, TEXAS.

11.3. **Costs and Fees.** The prevailing party in any legal proceeding brought by or against the other party to enforce any provision or term of this AGREEMENT shall be entitled to recover against the non-prevailing party the reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party.

11.4. **Consent to Breach Not Waiver.** No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent is placed in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach by the other party shall constitute a consent to, waiver of, or excuse of any other different or subsequent breach.

11.5. **Severability.** If any term or provision of this AGREEMENT should be declared invalid by a court of competent jurisdiction: (i) the remaining terms and provisions of this AGREEMENT shall be unimpaired; and (ii) the invalid term or provision shall be replaced by such valid term or provision as comes closest to the intention of both parties underlying the invalid term or provision.

11.6. **ENTIRE AGREEMENT.** THIS AGREEMENT, THE CUSTOMER'S ADVERTISEMENT FOR BIDS AND THE CONTRACTOR'S

UNQUALIFIED BID CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES WITH REGARD TO THE MATTERS SET FORTH HEREIN, AND IT SUPERSEDES ALL OTHER INFORMAL DISCUSSIONS, AGREEMENTS, PROPOSALS, AND REPRESENTATIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH REGARD THERETO.

11.7. **Amendments.** This AGREEMENT may be amended from time to time only by an instrument in writing signed by the legally authorized parties to this AGREEMENT.

11.8. **Counterparts.** This AGREEMENT may be executed in counterparts, which together shall constitute one and the same Contract. The parties may execute more than one copy of this AGREEMENT, each of which shall constitute an original.

12. DEFINITIONS

12.1. "AUTHORIZATIONS" means all authorizations, permits, applications, notices of intent, registrations, variances, and exemptions, required for the lawful hauling and disposal of BIOSOLIDS in compliance with all applicable LEGAL REQUIREMENTS.

12.2. "BIOSOLIDS" means municipal wastewater treatment plant sewage sludge that has been dewatered by CONTRACTOR, to a minimum of 15% solids concentration at CONTRACTOR'S expense. BIOSOLIDS do not include any hazardous materials or other substances prohibited under the applicable laws and regulations for the desired method of disposal.

12.3. "ENVIRONMENTAL LAWS" means any AUTHORIZATION and any applicable federal, state, or local law, rule, regulation, ordinance, order, decision, principle of common law, consent decree or order, of any GOVERNMENTAL AUTHORITY, now or hereafter in effect relating to HAZARDOUS MATERIALS, BIOSOLIDS, or the protection of the environment, health and safety, or a community's right to know, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Emergency Planning and Community Right to Know Act, the Hazardous Materials Transportation Act, the Occupational Safety and Health Act, and any analogous state or local law, as may be periodically amended.

12.4. "GOVERNMENTAL AUTHORITY" means any foreign governmental authority, the United States of America, any State within the United States of America, any local authority, and any political subdivision of any of the foregoing, and any agency, department, commission, board, bureau, court, tribunal or any other governmental authority having jurisdiction over this AGREEMENT, BIOSOLIDS


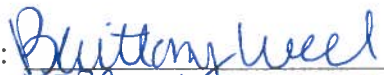
regulation, CUSTOMER or CONTRACTOR, or any of their respective assets, properties, sites, facilities or operations.

12.5. "HAZARDOUS MATERIALS" means any "petroleum," "oil," "hazardous waste," "hazardous substance," "toxic substance," and "extremely hazardous substance" as such terms are defined, listed, or regulated under ENVIRONMENTAL LAWS, or as they become defined, listed, or regulated under ENVIRONMENTAL LAWS.

12.6. "LEGAL REQUIREMENT" means any AUTHORIZATION and any applicable federal, state, or local law, rule, regulation, ordinance, order, decision, principle of common law, consent decree or order, of any GOVERNMENTAL AUTHORITY, now or hereafter in effect, including without limitation, ENVIRONMENTAL LAWS.

IN WITNESS WHEREOF, the parties to this AGREEMENT have hereunto set their lawfully and authorized hands and seals, dated as of the day and year first herein written.

City of Kyle, Texas ("CUSTOMER")

By:  ATTEST: 
Name & Title: Phillip S. McDaniel - D Name & Title: Office Manager
Date: March 25, 2016

("CONTRACTOR")

By: _____ ATTEST: _____
Name & Title: _____ Name & Title: _____
Date: _____

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: April 19, 2016
CONTACT CITY DEPARTMENT: Public Works Department
CONTACT CITY STAFF: Harper Wilder, Director

SUBJECT:

Approve a contract with SHERIDAN ENVIRONMENTAL DBA SHERIDAN CLEARWATER, LLC, and the City of Kyle for the handling and disposal of bio-solids from the wastewater treatment plant at an estimated cost of \$49,200.00 per year.

CURRENT YEAR FISCAL IMPACT:

This Change Order to SHERIDAN ENVIRONMENTAL 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:	Bio-solids Disposal
3. Funding Source:	Wastewater Utility Fund
4. Budget/Accounting Code(s):	310-826-55639
5. Current Appropriation:	\$ 50,000.00
6. Unencumbered Balance:	\$ 50,000.00
7. Amount of This Action:	\$ <u>(49,200.00)</u>
8. Remaining Balance:	\$ <u>800.00</u>

FUNDING SOURCE OF THIS ACTION:

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

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

 4/14/2016

Perwez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

CenterPoint Energy Resolution

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: A Resolution by the City of Kyle, Texas, ("city") responding to the application of CenterPoint Energy Resources Corp., South Texas Division, to increase rates under the gas reliability infrastructure program; suspending the effective date of this rate application for forty-five days; authorizing the city to continue to participate in a coalition of cities known as the "Alliance of CenterPoint Municipalities"; determining that the meeting at which this Resolution was adopted complied with the Texas Open Meetings Act; making such other findings and provisions related to the subject; and declaring an effective date. ~ *Jerry Hendrix, Chief of Staff*

Other Information:

On about March 31, 2016, CenterPoint-South Texas filed its latest "GRIP" application with the City of Kyle. GRIP is an acronym for "gas reliability infrastructure program."

Unfortunately, there is little a city may do to influence the outcome of the case. A recent Supreme Court opinion said that a GRIP case is (1) not a "ratemaking proceeding;" (2) cities have no right to "intervene" in the case at the Railroad Commission; (3) while a city may take action on the merits of the application, it is of no consequence and the final decision is within the Railroad Commission's discretion; and (4) the city may file "comments" with the Railroad Commission.

The city may, however, undertake limited discovery with regard to the filing and with that through lobbying of the Staff at the Railroad Commission, attempt to affect the outcome. The law firm of Herrera and Boyle has offered undertake those efforts on a Pro Bono basis for all the cities that have previously participated in the Alliance of CenterPoint Municipalities. These cities include: Aransas Pass, Bishop, Converse, El Campo, Elgin, Garden Ridge, Giddings, Goliad, Ingleside, Kingsville, La Coste, La Grange, Mathis, Orange Grove, Palacios, Pleasanton, Point Comfort, Portland, Port Lavaca, Poteet, Taft, and Victoria (collectively "Steering Committee of Cities" or "SCC"); the cities of Alice, Austin, Bastrop, Buda, Cibolo, Jourdanton, Kyle, New Braunfels, San Marcos, Seguin, Smithville, and Universal City.

Also, the city may suspend the proposed effective date for the statutory period of 45 days. Staff recommends that we suspend the proposed effective date for the 45 days, delaying the increase from May 30, 2016 to July 14, 2016.

Legal Notes:

Budget Information: N/A

ATTACHMENTS:

Description

- 2016 CenterPoint Gas Resolution
- CenterPoint GRIP Info Sheet

RESOLUTION NO. _____

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

WHEREAS: on or about March 31, 2016 CenterPoint Energy Resources Corp., South Texas Division ("CenterPoint") filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program ("GRIP"), resulting in a requested increase in the monthly customer charge for a residential customer from \$20.07 to \$21.21; and

WHEREAS: In 2012, through its "GRIP" tariff, CenterPoint increased its customer charge for Residential customers from \$13.95 to \$15.28, an increase of about 9.53%; and

WHEREAS: In 2013, through its "GRIP" tariff, CenterPoint increased its customer charge for Residential customers from \$15.28 to \$16.89, an increase of about 10.54%; and

WHEREAS: In 2014, through its "GRIP" tariff, CenterPoint increased its customer charge for Residential customers from \$16.89 to \$17.89, an increase of about 5.92%; and

WHEREAS: In 2015, through its "GRIP" tariff, CenterPoint increased the customer charge for Residential customers from \$17.89 to \$20.07, an increase of about 12.19%; and

WHEREAS: With its most recent application filed on March 31, 2016, CenterPoint proposes to increase its customer charge for Residential customers by an additional \$1.14, from a charge of \$20.07 to a proposed charge of \$21.21, which represents an increase of about 5.68% over its current customer charge; and

WHEREAS: In total, since 2012, CenterPoint has increased its customer charge for Residential customers by over 52%; and

WHEREAS: the City has a special responsibility to exercise due diligence with regard to rate increases of monopoly utilities who operate within its boundaries; and

WHEREAS: the application to increase rates by CenterPoint is complex; and

WHEREAS: it is necessary to suspend the effective date for the increase in rates for forty-five days, so that the City can assure itself that the data and calculations in CenterPoint's rate application are correctly done; and

WHEREAS: the effective date proposed by CenterPoint is May 30, 2016 but a suspension by the City will mean that the rate increase cannot go into effect prior to July 14, 2016.

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

Section 1. That the statements and findings set out in the preamble to this Resolution are hereby in all things approved and adopted.

Section 2. The City suspends the requested effective date by CenterPoint for forty-five days pursuant to the authority granted the City under Section 104.301 of the Texas Utilities Code. The City finds that additional time is needed in order to review the data and calculations that provide the basis for the rate increase application.

Section 3. The City shall continue to act jointly with other cities that are part of a coalition of cities known as the Alliance of CenterPoint Municipalities ("ACM").

Section 4. The City authorizes the law firm of Herrera & Boyle, PLLC, to act on its behalf in connection with CenterPoint's application to increase rates.

Section 5. To the extent allowed by law, CenterPoint is ordered to pay the City's reasonable rate case expenses incurred in response to CenterPoint's rate increase application within 30 days of receipt of invoices for such expenses to the extent allowed by law.

Section 6. The meeting at which this Resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 7. This Resolution shall be effective immediately upon passage.

PASSED AND APPROVED this _____ day of _____, 2016.

MAYOR

ATTEST:

CITY SECRETARY

AGENDA INFORMATION SHEET

AGENDA ITEM NO. _____

ACTION TO SUSPEND THE EFFECTIVE DATE PROPOSED BY CENTERPOINT ENERGY RESOURCES CORP., SOUTH TEXAS DIVISION, TO INCREASE RATES UNDER THE GAS RELIABILITY INFRASTRUCTURE PROGRAM FOR 45 DAYS, AND AUTHORIZE THE CITY'S CONTINUED PARTICIPATION IN A COALITION OF CITIES KNOWN AS THE "ALLIANCE OF CENTERPOINT MUNICIPALITIES"

ALLIANCE OF CENTERPOINT MUNICIPALITIES

The City is a member of the Alliance of CenterPoint Municipalities (ACM). The ACM group was organized by a number of municipalities served by CenterPoint Energy Resources Corp., South Texas Division (“CenterPoint”) and has been represented by the law firm of Herrera & Boyle, PLLC (through Mr. Alfred R. Herrera) to assist in reviewing applications to change rates submitted by CenterPoint.

“GRIP” RATE APPLICATION

Under section 104.301 of the Gas Utility Regulatory Act (GURA), a gas utility is allowed to request increases in its rates to recover a return on investments it makes between rate cases. This section of GURA is commonly referred to as the “GRIP” statute, that is, the “Gas Reliability Infrastructure Program.”

Under a recent decision by the Supreme Court of Texas, the Court concluded that a filing made under the GRIP statute permitted gas utilities the opportunity to recover return on capital expenditures made during the interim period between rate cases by applying for interim rate adjustment and that proceedings under the GRIP statute did not contemplate either adjudicative hearings or substantive review of utilities' filings for interim rate adjustments. Instead, the Court concluded, the GRIP statute provides for a *ministerial* review of the utility’s filings to ensure compliance with the GRIP statute and the Railroad Commission’s rules, and that it is within the Railroad Commission’s authority to preclude cities from intervening and obtaining a hearing before the Railroad Commission.

CENTERPOINT’S “GRIP” APPLICATION

On or about March 31, 2016 CenterPoint Energy Resources Corp., South Texas Division (“CenterPoint”) filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program (“GRIP”). CenterPoint’s application if approved by the Commission will result in an increase in the monthly customer charges as shown below:

Rate Schedules	Current Customer Charge	2016 “GRIP” Adjustment	Adjusted Charge
R-2085-GRIP 2016 - Residential	\$20.07 per customer per month	\$1.14 per customer per month	\$21.21 per customer per month
GSS-2085-GRIP 2016 - General Service Small	\$32.44 per customer per month	\$2.31 per customer per month	\$34.75 per customer per month
GSLV-616-GRIP 2016 - General Service Large Volume	\$174.75 per customer per month	\$13.50 per customer per month	\$188.25 per customer per month

HISTORY OF CENTERPOINT’S “GRIP” FILINGS SINCE 2012:

In 2012, through its “GRIP” tariff, CenterPoint increased its customer charge for Residential customers from \$13.95 to \$15.28, an increase of about 9.53%.

In 2013, through its “GRIP” tariff, CenterPoint increased its customer charge for Residential customers from \$15.28 to \$16.89, an increase of about 10.54%.

In 2014, through its “GRIP” tariff, CenterPoint increased its customer charge for Residential customers from \$16.89 to \$17.89, an increase of about 5.92%.

In 2015, through its “GRIP” tariff, CenterPoint increased the customer charge for Residential customers from \$17.89 to \$20.07, an increase of about 12.19%.

With its most recent application filed on March 31, 2016, CenterPoint proposes to increase its customer charge for Residential customers by an additional \$1.14 from \$20.07 to \$21.21, which represents an increase of about 12.19% over its current customer charge for Residential customers.

In total, since 2012, CenterPoint has increased its customer charge for Residential customers by over 52%.

CenterPoint has also increased the customer charges for its commercial customers and its industrial customers in a similar fashion, all with limited to no review.

These increases occur because current state law and the Railroad Commission allow CenterPoint to increase rates with little to no review.

REVIEW AND ACTION RECOMMENDED

Although the City's ability to review and effectuate a change in CenterPoint's requested increase is limited, the City should exercise due diligence with regard to rate increases of monopoly utilities who operate within its boundaries, including increases requested under the GRIP statute to ensure compliance with the requirements of that law.

To exercise its due diligence, it is necessary to suspend CenterPoint's proposed effective date of May 30, 2016 for forty-five days, so that the City can evaluate whether the data and calculations in CenterPoint's rate application are correctly done.

Therefore, ACM's Special Counsel, the law firm of Herrera & Boyle, PLLC (through Alfred R. Herrera) recommends that the City adopt a resolution suspending CenterPoint's proposed effective date for 45 days. Assuming a proposed effective date of May 30, 2016, CenterPoint's proposed effective date is suspended until July 14, 2016.



CITY OF KYLE, TEXAS

Involuntary Annexation

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: *(Second Reading)* An Ordinance of the City of Kyle, Texas, annexing approximately 529.6 acres of land located in Hays County, Texas all of which are lying within the City's extraterritorial jurisdiction and to incorporate such properties into the City of Kyle as shown in the attached exhibit; Making finding of fact; Providing a severability clause; Providing an effective date; and Providing for open meetings and other related matters. ~
Howard J. Koontz, Director of Planning and Community Development

Other Information: Please see attachment.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Ordinance with Exhibits A, B & C

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, ANNEXING APPROXIMATELY 529.6 ACRES OF LAND LOCATED IN HAYS COUNTY, TEXAS ALL OF WHICH ARE LYING WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION AND TO INCORPORATE SUCH PROPERTIES INTO THE CITY OF KYLE AS SHOWN IN THE ATTACHED EXHIBIT; MAKING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the City of Kyle, Texas (the "City"), is a home rule municipality authorized by State law and the City's Charter to annex territory lying adjacent and contiguous to the City;

WHEREAS, the City Council, in compliance with §43.021, *Tex. Local Gov't Code*, instituted proceedings for the annexation of certain properties more particularly described herein (the "subject property"); and

WHEREAS, the subject properties hereby annexed are adjacent and contiguous to the present City limits; and

WHEREAS, the boundaries of the City are contiguous to the subject properties on at least two sides; and

WHEREAS, two separate public hearings were conducted prior to consideration of this Ordinance in accordance with § 43.063, *Tex. Loc. Gov't. Code*; and

WHEREAS, the hearings were conducted and held not more than forty (40) nor less than twenty (20) days prior to the institution of annexation proceedings; and

WHEREAS, notice of the public hearings was published in a newspaper of general circulation in the City and the territory proposed to be annexed not more than twenty (20) nor less than ten (10) days prior to the public hearings;

WHEREAS, the City heard arguments with respect to such annexation and has decided to annex the area and intends to provide services to the subject properties to be annexed according to the Service Plan attached hereto as Exhibit "C".

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

SECTION 1. That all of the above premises and findings of fact are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. That the following described properties (hereinafter referred to as the "Annexed Properties") are hereby annexed into the corporate limits of the City of Kyle:

All those certain tracts or parcels of land being a total of approximately 529.6 acres of land, located in Hays County, Texas, and being more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "Property"), as shown in the maps in Exhibit "B".

SECTION 3. That the Service Plan submitted herewith is hereby approved as part of this Ordinance, made a part hereof and attached hereto as Exhibit "C".

SECTION 4. That the future owners and inhabitants of the Annexed Properties shall be entitled to all of the rights and privileges of the City as set forth in the Service Plan attached hereto as Exhibit "C", and are further bound by all acts, ordinances, and all other legal action now in full force and effect and all those which may be hereafter adopted.

SECTION 5. That the official map and boundaries of the City, heretofore adopted and amended, be hereby amended so as to include the Annexed Properties as part of the City of Kyle.

SECTION 6. That the Annexed Properties located between South Old Stagecoach Road and IH-35 shall be assigned to Council District No. 2. That the Annexed Properties located on Goforth Road shall be assigned to Council District No. 6.

SECTION 7. That the Annexed Properties shall be temporarily zoned Agricultural District "A" as provided in the City Zoning Ordinance, as amended, until permanent zoning is established therefore.

SECTION 8. That if any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 9. That 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 10. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED on First Reading this ___ day of April, 2016.

FINALLY PASSED AND APPROVED on this ___ day of April, 2016.

ATTEST:

CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

R. Todd Webster, Mayor

EXHIBIT "A"
Property Descriptions

Scott St Area
2016 Annexation

Description of a 59.46 acre tract of land in the Z. Hinton survey, Hays County, Texas abstract number 220, and the J. Pharass survey, Hays County, Texas abstract number 631, comprised of the following Hays Central Appraisal District reference numbers:

R14647, R14651, R14670, R14676, R14710, R14715, R14725, R14740, R14741, R17001, R27791, R27792, R27793, R27794, R27796, R27797, R27798, R27799, R27800, R27801, R27802, R27803, R27804, R27805, R27806, R27807, R27808, R27809, R27810, R27811, R27812, R27813, R27814, R27815, R27816, R27817, R27818, R27819, R27820.

The tract is more particularly described by the following metes and bounds calculated from GIS data using bearing basis in the Texas State Plane coordinate system, South Central Zone, NAD 1983, U.S. Feet:

Beginning at coordinate 2,320,811.56 N, 13,905,249.95 E, also being the southernmost point in the Bradford Meadows Subdivision;

THENCE S43-05-08W, 148.72 feet to the northern corner of the intersection of South Sledge St and Opal Ln;

THENCE with the north line of the right-of-way of Opal Ln through the following six courses:

- 1) **N47-56-18W, 324.91 feet;**
- 2) **N46-53-54W, 528.32 feet;**
- 3) **N43-49-10W, 265.05 feet;**
- 4) **N42-07-27W, 162.81 feet;**
- 5) **N48-45-38W, 326.76 feet;**
- 6) **S43-57-30W, 578.16 feet** to the intersection of South Old Stagecoach Rd;

THENCE with the eastern right-of-way of South Old Stagecoach Rd through the following three courses:

- 1) **N07-09-03E, 704.41 feet;**
- 2) **N09-46-19E, 640.76 feet;**
- 3) **N01-46-13W, 219.79 feet;**

THENCE with the existing city limit line of the City of Kyle through the following seventeen courses:

- 1) **N88-35-46E, 323.49 feet;**
- 2) **S00-28-00E, 212.38 feet;**
- 3) **N86-40-13E, 191.18 feet;**
- 4) **N41-52-38E, 525.89 feet;**
- 5) **S46-23-28E, 913.80 feet;**
- 6) **S88-07-59E, 90.60 feet;**
- 7) **N50-31-34E, 241.43 feet** with the western right-of-way of Scott St;

Scott St Area
2016 Annexation

- 8) N44-24-24E, 94.76 feet with the western right-of-way of Scott St;
- 9) S08-20-02W, 64.62 feet crossing the Scott St right-of-way;
- 10) S45-52-13W, 19.40 feet;
- 11) S42-06-23W, 17.52 feet;
- 12) S51-44-27W, 121.89 feet;
- 13) S46-20-27E, 132.44 feet;
- 14) S08-20-48W, 508.501 feet;
- 15) S83-21-04E, 84.21 feet;
- 16) S43-32-27W, 1089.32 feet;
- 17) S46-54-10E, 526.89 feet to the Point of Beginning containing 59.46 acres of land more or less.

Opal Ln North Area
2016 Annexation

Description of a 114.23 acre tract of land in the Z. Hinton survey, Hays County, Texas abstract number 220, comprised of the following Hays Central Appraisal District reference numbers:

R111355, R120341, R14631, R14669, R14681, R14683, R14701, R14709,
R14823, R95723.

The tract is more particularly described by the following metes and bounds calculated from GIS data using bearing basis in the Texas State Plane coordinate system, South Central Zone, NAD 1983, U.S. Feet:

Beginning at coordinate 2,320,747.993 N, 13,905,120.005 E, also being the southernmost point in the intersection of South Sledge St and Opal Ln;

THENCE N01-47-48W, 25.05 feet;

THENCE N43-23-46E, 246.35 feet with the southeastern right-of-way of South Sledge St;

THENCE S47-32-41E, 637.03 feet to the southern corner of the 17.2 acre tract owned by Tom & Mary Ayers;

THENCE N43-48-43E, 1125.261 feet to the east corner of said 17.2 acre tract;

THENCE N46-22-11W, 643.48 feet to the north corner of said 17.2 acre tract;

THENCE N43-17-19E, 236.25 feet with the southeastern right-of-way of South Sledge St;

THENCE S81-41-54E, 1519.13 feet with the existing Kyle city limits across West Third St to the southwestern boundary of the M.E. Moore Addition;

THENCE S47-53-52E, 616.20 feet with the boundary of the M.E. Moore Addition;

THENCE in a southerly direction with the existing Kyle city limits through the following seven courses:

- 1) **S04-02-45W, 605.41 feet;**
- 2) **S24-32-23W, 71.33 feet;**
- 3) **S20-37-30W, 65.57 feet;**
- 4) **S16-52-30W, 65.57 feet;**
- 5) **S14-13-41W, 65.87 feet;**
- 6) **S07-16-43W, 116.10 feet;**
- 7) **S04-35-19W, 353.37 feet;**

THENCE S44-18-39W, 1460.89 feet along the southeastern boundary of the 117 acre tract owned by Randy Graef and Petra Ann Landry et al;

THENCE N46-16-30W, 1827.24 feet along the southwestern boundary of said 117 acre tract also being the northern right-of-way Opal Ln;

THENCE along the northern right-of-way Opal Ln in the following three courses:

- 1) **N45-34-25W, 158.61 feet;**
- 2) **N46-21-11W, 449.14 feet;**
- 3) **N46-16-08W, 167.75 feet,** returning to the Point of Beginning, containing 114.23 acres more or less;

Roland Ln Area
2016 Annexations

Description of a 182.47 acre tract of land in the Z. Hinton survey, Hays County, Texas abstract number 220, and the J.W. Williams survey, Hays County, Texas abstract number 473, comprised of the following Hays Central Appraisal District reference numbers:

R14711, R14786, R14868, R18883, R18894, R18895, R18896, R60126, R89476,
R95020, R100844

The tract is more particularly described by the following metes and bounds calculated from GIS data using bearing basis in the Texas State Plane coordinate system, South Central Zone, NAD 1983, U.S. Feet:

Beginning at coordinate 2323085.56 N, 13902173.51 E, also being the westernmost point in the Green Oaks Subdivision;

THENCE **N43-20-31E, 456.26 feet** with the northwestern boundary of the Green Oaks Farms Subdivision;

THENCE **46-04-19E, 197.11 feet** with the northeastern boundary of the Green Oaks Farms Subdivision;

THENCE **S43-20-31W, 454.24 feet** with the southeastern boundary of the Green Oaks Farms Subdivision;

THENCE **S46-35-52E, 401.94 feet** along the northern right-of-way of Opal Ln to the existing Kyle city limits;

THENCE along the existing Kyle city limits through the following two courses:

- 1) **S05-34-27W, 631.34 feet;**
- 2) **S09-34-14W, 2046.29 feet;**

THENCE along the northern right-of-way of Roland Ln through the following nine courses:

- 1) **N46-58-43W, 2063.87 feet;**
- 2) **N39-48-20W, 101.53 feet;**
- 3) **N46-36-05W, 1005.72 feet;**
- 4) **N46-25-50W, 487.10 feet;**
- 5) **N26-51-39W, 43.13 feet;**
- 6) **N06-05-14W, 52.88 feet;**
- 7) **N11-16-14E, 41.01 feet;**
- 8) **N43-46-45E, 454.65 feet;**
- 9) **N46-09-45W, 278.49 feet;**

THENCE leaving the Roland Ln right-of-way along the northwestern boundary of the 50 acres tract owned by Ky-Tex Properties through the following two courses:

- 1) **N43-23-57E, 1004.56 feet;**

Roland Ln Area
2016 Annexations

2) N43-43-49E, 1158.87 feet;

THENCE S46-17-41E, 819.77 feet along the northern right-of-way of Opal Ln;

THENCE S00-42-34W, 75.35 feet;

THENCE N78-36-46E, 11.82 feet;

THENCE S84-57-27E, 11.38 feet;

THENCE S59-04-37E, 11.70 feet;

THENCE S45-36-48E, 568.43 feet;

THENCE S44-05-53W, 226.11 feet;

THENCE S48-57-41E, 191.91 feet;

THENCE S43-38-39W, 239.07 feet;

THENCE S47-07-36E, 249.11 feet to the Point of Beginning containing 182.47 acres of land more or less.

Goforth Rd area
2016 Annexation

Description of a 173.43 acre tract of land in the J. Stuart survey, Hays County, Texas abstract number 14, comprised of the following Hays Central Appraisal District reference numbers:

R102361, R107234, R108170, R114275, R11510, R11544, R11545, R11546,
R134432, R37739, R37740, R37741, R37742, R37743, R37744, R42560, R42562,
R42563, R42564, R42565, R42566, R42567, R42568, R42569, R42571, R71900,
R71901, R71903, R94126, R98873.

The tract is more particularly described by the following metes and bounds calculated from GIS data using bearing basis in the Texas State Plane coordinate system, South Central Zone, NAD 1983, U.S. Feet:

Beginning at coordinate 2334208.207 N, 13911066.181 E, also being the southernmost point of the subdivision Southlake Ranch Phase 1 Amended Plat;

THENCE with the southeastern border of the Southlake Ranch Subdivision through the following three courses:

- 1) **N42-34-34E, 951.33 feet;**
- 2) **N42-44-18E, 675.53 feet;**
- 3) **N43-42-46E, 1482.34 feet;**

THENCE **N38-15-21E, 67.00 feet;**

THENCE **N72-03-10E, 35.84 feet;**

THENCE **N43-42-09E, 1717.47 feet;**

THENCE **N39-17-50W, 220.30 feet;**

THENCE **N43-23-48E, 189.59 feet** to the southernmost corner of Kensington Trails Subdivision Phase 5B & 5C;

Thence with the southeastern border of Kensington Trails Subdivision Phase 5B & 5C through the following four courses:

- 1) **N43-27-40E, 196.48 feet;**
- 2) **N43-27-31E, 152.49 feet;**
- 3) **N42-55-49E, 648.45 feet;**
- 4) **N43-39-52E, 362.65 feet;**

THENCE along the southern right-of-way line of Bebee Rd through the following two courses;

- 1) **S48-29-17E, 670.31 feet** to the northernmost corner of the Southbend I Subdivision;
- 2) **S46-58-26E, 691.17 feet** along the northeast border of the Southbend I Subdivision to the intersection of Goforth Rd;

THENCE along the southeast border of the Southbend I Subdivision, also being the northern right-of-way line of Goforth Rd, through the following two courses:

Goforth Rd area
2016 Annexation

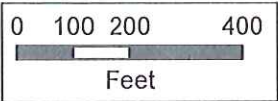
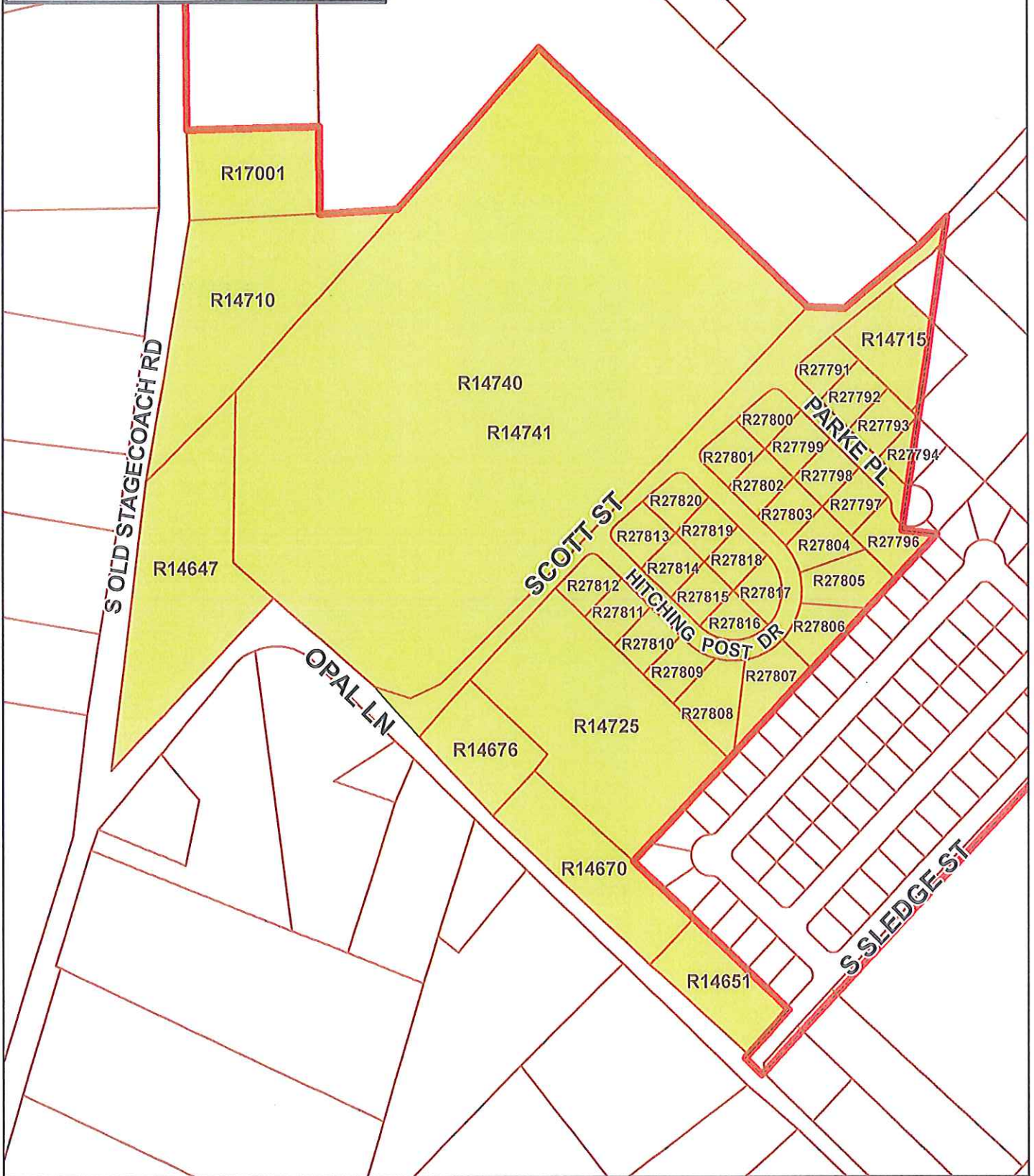
- 1) S43-53-31W, 1793.02 feet;
- 2) S43-50-33W, 608.88 feet;

THENCE continuing with northern right-of-way line of Goforth Rd through the following eleven courses:

- 1) S44-52-14W, 1511.37 feet;
- 2) S45-09-22W, 843.76 feet;
- 3) S43-40-31W, 879.35 feet;
- 4) S42-57-38W, 775.66 feet;
- 5) S50-35-57W, 25.16 feet;
- 6) S64-00-32W, 31.68 feet;
- 7) S78-56-42W, 30.56 feet;
- 8) S90-00-00W, 27.13 feet;
- 9) N79-41-40W, 24.26 feet;
- 10) N67-38-53W, 25.77 feet;
- 11) N46-26-11W, 966.98 feet, returning to the Point of Beginning, containing 173.43 acres more or less;

EXHIBIT "B"
Location Maps

Scott St Area Annexation
April 2016



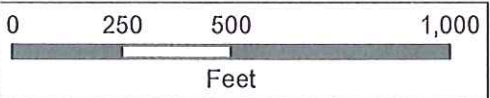
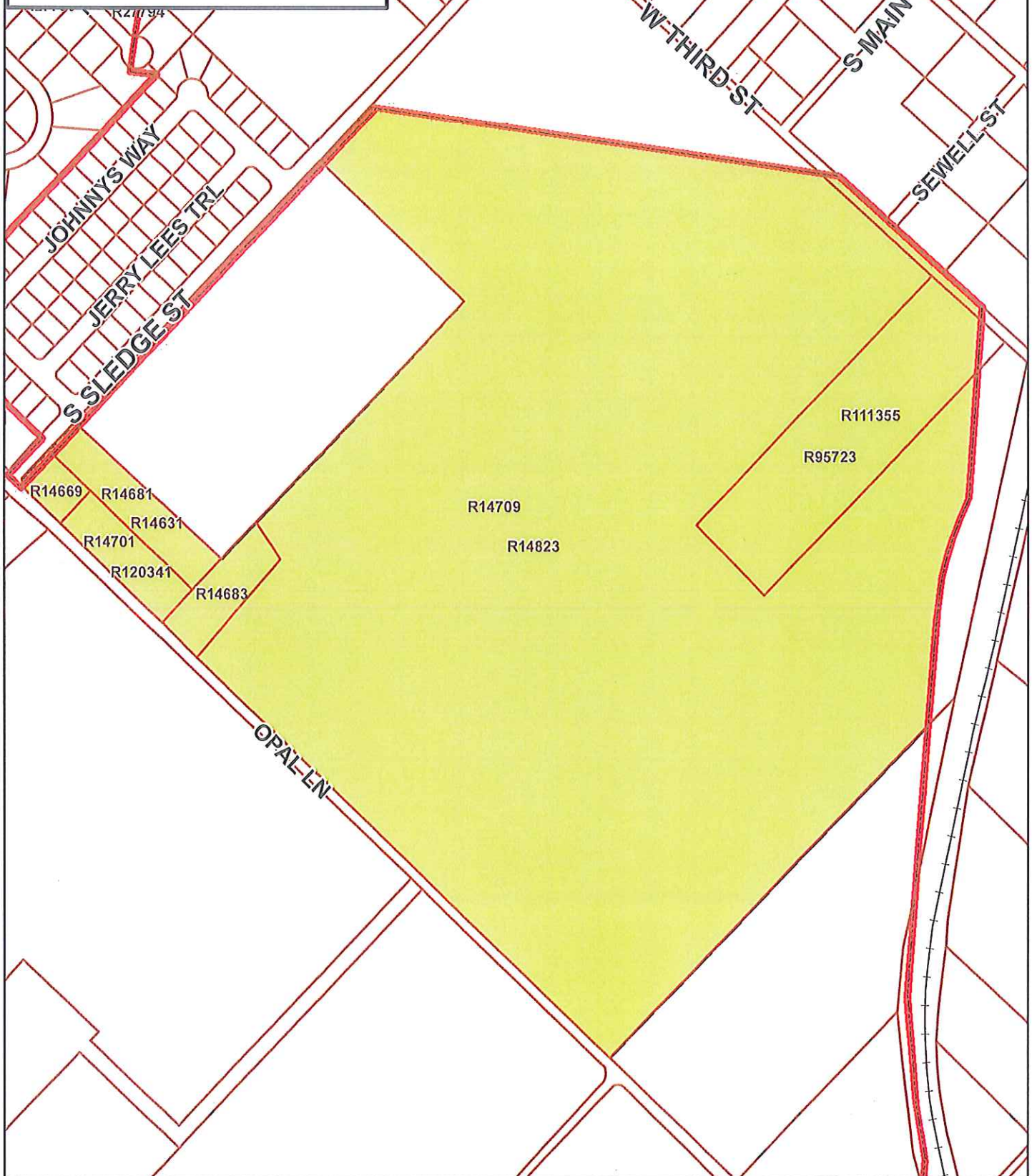
Parcel Lines

Parcels to be Annexed

Previous Kyle City Limits

Opal Ln Area Annexation

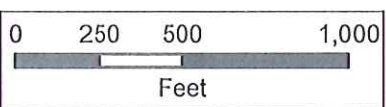
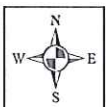
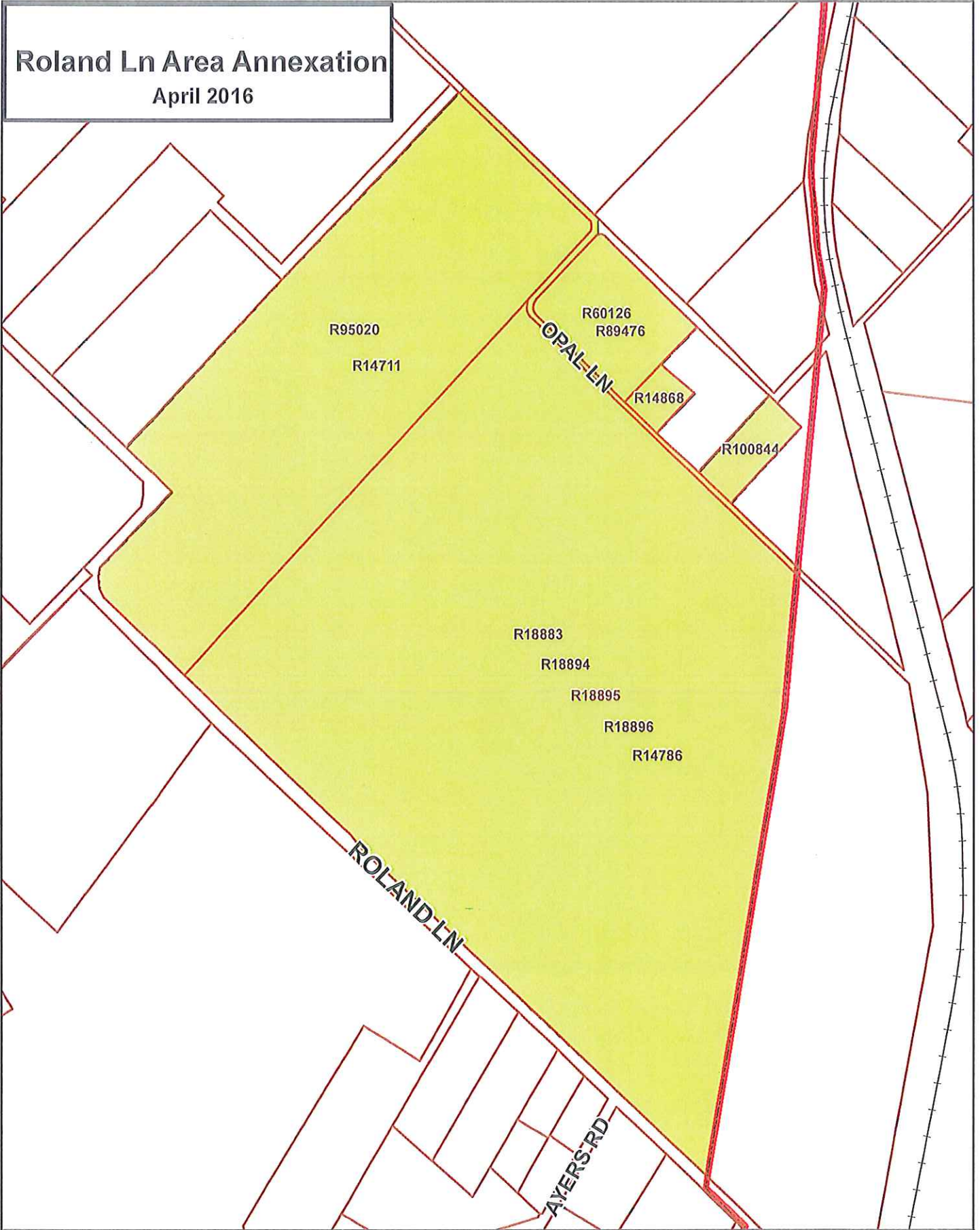
April 2016



- Parcel Lines
- Previous Kyle City Limits

Parcels to be Annexed

Roland Ln Area Annexation
April 2016



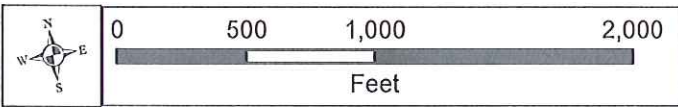
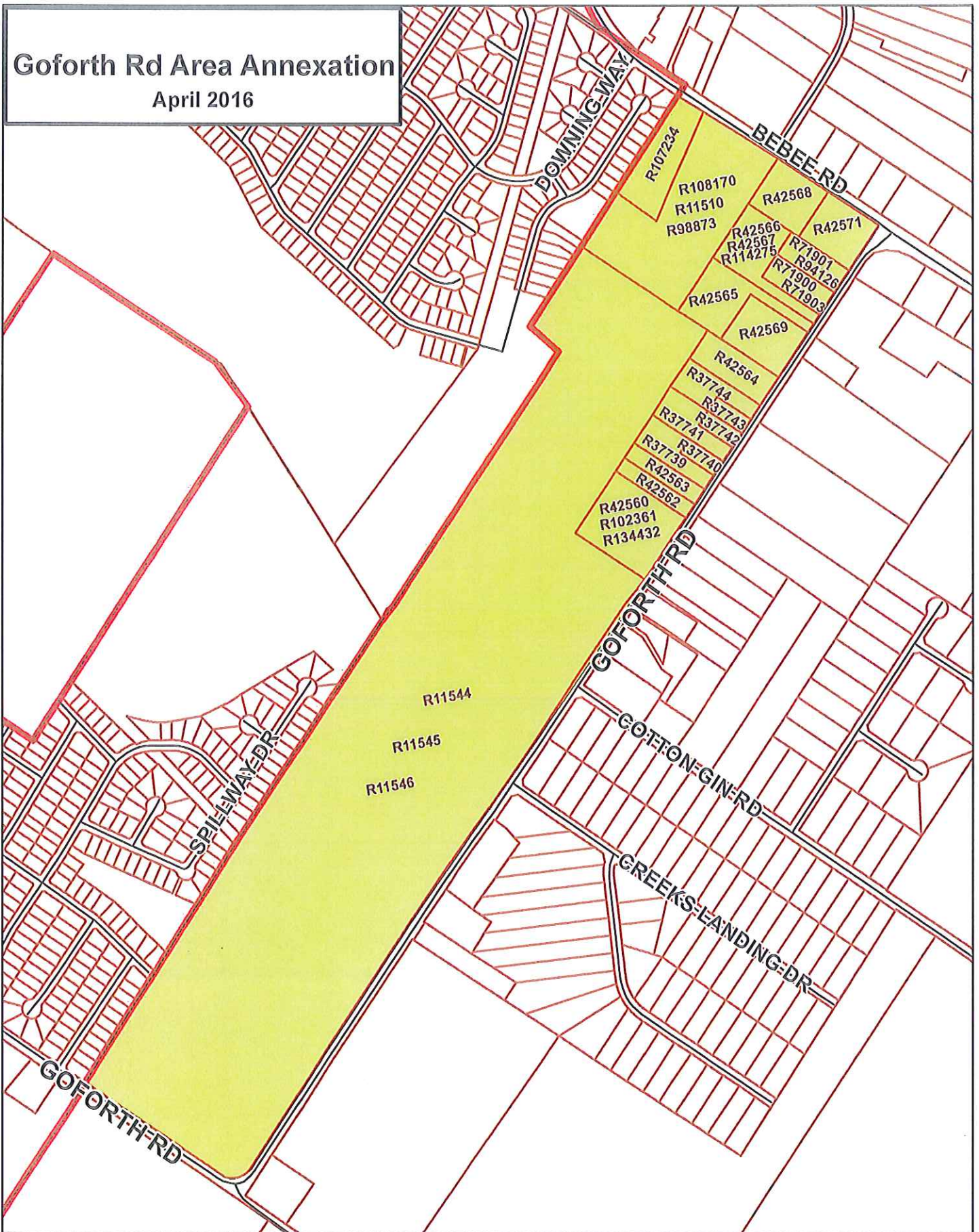
Parcel Lines

Previous Kyle City Limits

Parcels to be Annexed

Goforth Rd Area Annexation

April 2016






 Parcel Lines	 Parcels to be Annexed
 Previous Kyle City Limits	

Exhibit "C"

MUNICIPAL SERVICES PLAN FOR PROPERTY TO BE ANNEXED TO THE CITY OF KYLE

WHEREAS, the City of Kyle, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "Property");

WHEREAS, *Section 43.056, Loc. Gov't. Code*, requires a municipal service plan be adopted with the annexation ordinance;

WHEREAS, the Property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that are existing are sufficient to service the Property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements by the City are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City;

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the Property into the City; and

WHEREAS, the Property will benefit from the City's development restrictions and zoning requirements, as well as other municipal services provided by the City, which are good and valuable consideration for this service plan

NOW, THEREFORE, the City agrees to provide the following municipal services for the Property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to this Plan, the following municipal services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the personnel serving the area and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned Agricultural District "A" with the intent to rezone the Property upon request of the landowner(s) or city staff. The Planning & Zoning Commission and the City Council will consider rezoning the Property at future times in response to requests submitted by the landowner(s) or requested by city staff.

(2) **Scheduled Municipal Services.** Depending upon the Property owner's plans and schedule for the development of the Property or redevelopment of the Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines or wells as provided by statutes of the State of Texas.

(ii) In accordance with the rules and regulations for water service extension, water service will be provided by the utility holding a water certificate of convenience and necessity ("CCN") for the Property, or absent a utility holding a CCN, in whose jurisdiction the Property is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's system, the Property owner(s) shall construct the internal water lines and pay the costs of water line extension and necessary facilities to service the Property as required in City ordinances at the time of the request. The Property owner(s) agree the Property in its current state has adequate water service and no capital improvements by the City are required. The Property owner(s) agree as the Property develops and water services are sought from the utility holding the CCN for the Property that the City's ordinances, policies, or

agreements between the City and the Property owner(s) shall govern the extension of water services to the Property and the City shall have no obligation to service in another CCN.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines or septic systems as provided by statutes of the State of Texas.

(ii) The Property owner(s) shall construct the internal and off-site sewer lines and facilities (the "Sewer System") and pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Sewer System, sewer service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The Sewer System will be accepted and maintained by the City in accordance with its usual policies. Requests for new sewer extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

C. Maintenance of public streets and rights-of-way as appropriate as follows:

(i) Provide maintenance services on public streets within the Property that are dedicated and finally accepted by the City. The maintenance of such public streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.;

(B) Routine maintenance as presently performed by the City;

and

(C) The Property owner(s) have specifically agreed that maintenance services will be of little benefit and will not be required or needed on the Property, prior to the Property owner(s), its grantees, successors and assigns completing the construction and dedication of streets to the City in compliance with City subdivision regulations.

(ii) Following installation of the roadways, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain the public streets, roadways and rights-of-way within the boundaries of the Property if dedicated and accepted, as follows:

- (A) As provided in C (i)(A)&(B) above;
- (B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;
- (C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and
- (D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the Property abut existing roadways. The Property owner(s) agree that no City improvements are required on such roadways to service the Property. If the owner(s) develop the Property so as to impact abutting roadways pursuant to the City's subdivision regulation, the owner(s) agree to comply with such ordinances.

(3) **Special Services and Actions.** Although the City reserves all its governmental authority, powers and discretion, if the City shall unreasonably refuse to grant the permits and approvals above provided in (2)(A), (B) & (C), then in that event the owner(s) may request and obtain disannexation of the Property pursuant to this service plan; provided that if the City shall, in the exercise of its discretion and authority, approve the permits and events set forth in (2)(A), (B) & (C) above, the Property shall be and remain within the corporate limits of the City.

(4) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the Property or redevelopment, the landowner(s) will be responsible for the development costs the same as a developer or landowner in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the Property. The Property owner(s) for itself, its grantees, successors, and assigns agree that no capital improvements are required to service the Property the same as similarly situated properties already within the City.

(5) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(6) **Property Description.** The legal description and map of the Property are as set forth in Exhibits "A" and "B" that are attached to the Ordinance to which this negotiated municipal service plan is attached as Exhibit "C".



CITY OF KYLE, TEXAS

Jacob Jisha - Zoning

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: *(First Reading)* An ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas for the purpose of assigning original zoning to approximately 10.1 acres of land from Agriculture "AG" to Warehouse District "W" on property located at 880 Windy Hill Road, in Hays County, Texas. (Jacob Jisha - Z-16-003). ~ *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 at 880 Windy Hills Road, on the southwest corner of Parks Drive and Windy Hill Road. The property, comprising 10.1 acres, is currently zoned AG (Agriculture), and is developed with six (6) single story, steel-sided, self-storage warehouse structures, primarily located on the front half (north) of the lot, as well as ample outdoor paved and gravel storage lots behind the buildings. The adjacent lots to the north (Meadows at Kyle subdivision, across Windy Hill Road) are zoned R-1-A (single family attached); the lot to the south and west are zoned AG (Agriculture). The properties to the east are located out of the city's corporate limits, but still the the Kyle extraterritorial jurisdiction.

Please see attached for additional information.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Ordinance with Exhibits A & B
- Staff Memo
- Application Packet
- Project Location Map
- Letters of Opposition

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING TO APPROXIMATELY 10.1 ACRES OF LAND FROM AGRICULTURE "AG" TO WAREHOUSE DISTRICT "W", ON PROPERTY LOCATED AT 880 WINDY HILL ROAD, IN HAYS COUNTY, TEXAS. (JACOB JISHA - Z-16-003); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the zoning district map of the City of Kyle adopted in Chapter 53 (Zoning) be and the same is hereby amended to assign original zoning to approximately 10.1 acres from Agriculture "AG" to Warehouse District "W", on property located at 880 Windy Hill Road, and the property location map labeled Exhibit B.

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

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

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

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

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the ___ day of _____, 2016, at which a quorum was

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

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2016, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____ day of _____, 2016.

R. Todd Webster, Mayor

ATTEST:

Amelia Sanchez, City Secretary

EXHIBIT "A"

10019860 OPR Bk Vol Pg
3929 374

Lamberts & Associates Surveying, Inc.
BOUNDARY * ALTA * TOPOGRAPHIC * CONSTRUCTION
618 COMAL STREET * NEW BRAUNFELS, TX. 78130
PHONE (830) 625-0337 FAX (830) 625-0858
lambertssurveying@yahoo.com

FIELD NOTES FOR A 10.100 ACRE TRACT OF LAND

BEING a 10.100 acre tract of land out of the L.K. Miller Survey No. 2, Abstract No. 337, Hays County, Texas, and being out of that certain tract called 32.377 acres recorded in Volume 1165, Page 279, Official Public Records, Hays County, Texas; Said 10.100 acre tract of land being more particularly described by metes and bounds as follows, with all ½" rebar set having a yellow cap stamped LAMBERTS SURVEYING:

BEGINNING at a ½" rebar (no ID) found in the southerly right-of-way line of Windy Hill Road (County Road #131) for the northeast corner of this tract, the northeast corner of said 32.377 acre tract and the northwest corner of Park South Subdivision as recorded in Volume 2, Page 349-350, Plat Records, Hays County, Texas

THENCE, departing said right-of-way line, along the common line of this tract and said Park South Subdivision, being along a portion of the west right-of-way line of Park South Drive, Lot 1, Lot 3, Lot 5 and a portion of Lot 7, same being the easterly boundary line of said 32.377 acre tract, S 0°35'00" W (basis of bearings), 831.08 feet (called S 0°35' W, 830.55') to a ½" rebar found for angle;

THENCE, continuing along the common line of this tract, said Park South Subdivision, being along a portion of said Lot 7 and a portion of Lot 9 and said east boundary of said 32.377 acre tract, S 0°24'36" W, a distance of 168.92 feet (called S 0°24' W) to a ½" rebar set for the southeast corner of this tract;

THENCE, departing said Park South Subdivision, into said 32.377 acre tract, N 89°35'24" W, a distance of 439.26 feet to a ½" rebar set for the southwest corner of this tract;

THENCE, N 0°24'36" E, a distance of 998.41 feet to a ½" rebar set in the aforementioned right-of-way line of Windy Hill Road for the northwest corner of this tract, from which a concrete nail found for the northwest corner of said 32.377 acre tract bears N 89°48'00" W, a distance of 355.92 feet (called N 89°44' W);

THENCE, along the common lines of this tract and said right-of-way, S 89°48'00" E, a distance of 415.53 feet (called S 89°44' E, total distance called 771.19') to a P.K. (MAG) Nail set for angle and S 89°44'00" E, a distance of 26.25 feet (called S 89°40' E, 26.24') to the POINT-of-BEGINNING and containing 10.100 acres of land.

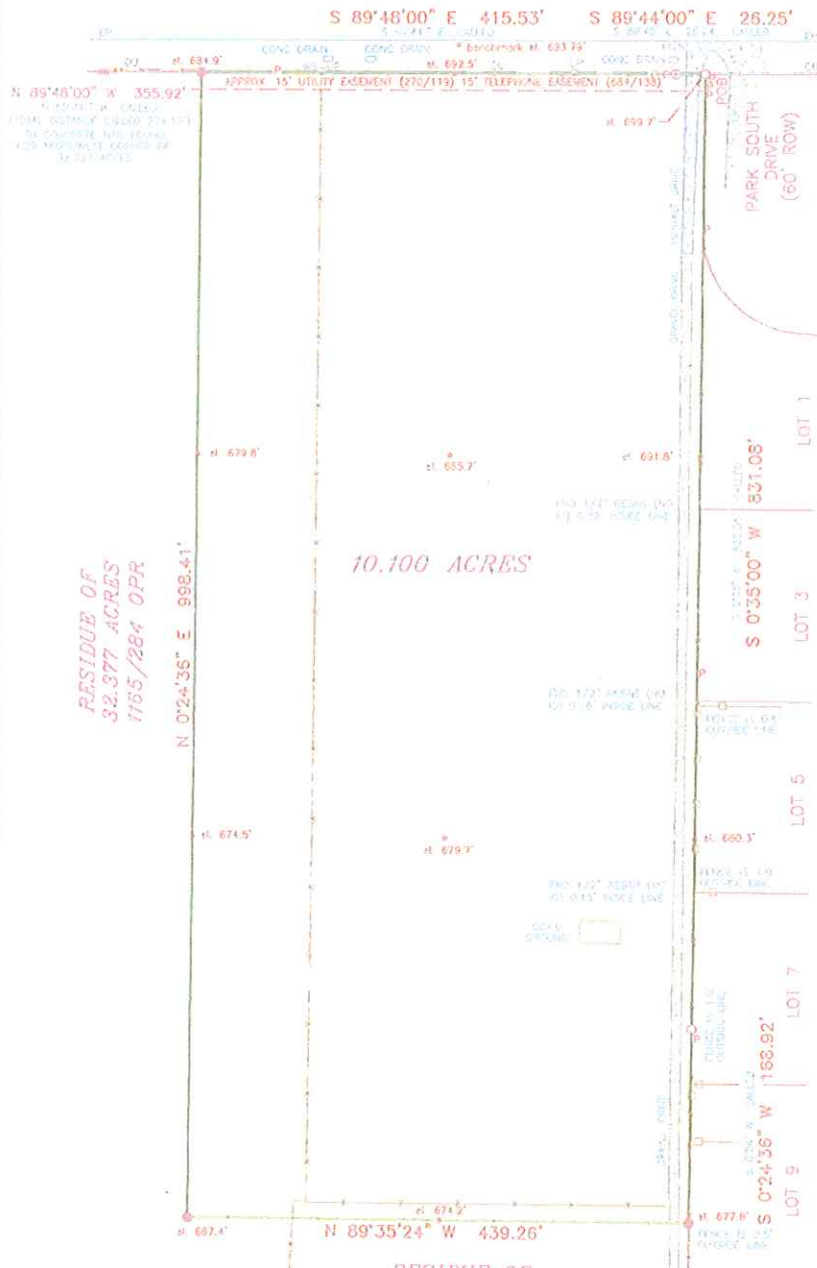
This description is based on an on-the-ground survey performed under my supervision completed on 6-7-10. (SURVEY PLAT PREPARED)



Donald Duane Hyatt
Donald Duane Hyatt
Registered Professional Land Surveyor
5215 Job # 10-0229

Scale: 1" = 100'

WINDY HILL ROAD (Co. Rd. #131)



LEGEND:

---	LINE OF RECORD
---	LINE OF EASEMENT
---	UTILITY POLE
---	EASEMENT UTILITIES
---	ROADWAY
---	WELL
---	WATER PIPE
---	CONCRETE CURB
---	WIRE FENCE
---	WOODEN FENCE
---	ROUND 1/2" RINGS
---	2" X 2" FLUSH CAPS
---	SURVEY MONUMENT
---	SETBACK MARKS

NOTE: ELEVATIONS SHOWN HEREON ARE BASED ON NAVD83 DATUM

- REFERENCES:**
- VOL. 1165, PG. 279
 - VOL. 328, PG. 495
 - VOL. 1165, PG. 274
 - VOL. 270, PG. 119 *
 - VOL. 297, PG. 408 **
 - VOL. 297, PG. 409 **
 - VOL. 684, PG. 138

* DOCUMENT STATES EASEMENT LOCATED ALONG NORTH PROPERTY LINE OR ALONG PIPE AS INSTALLED. EASEMENT SHOWN HEREON IS APPROXIMATE

** DOCUMENT HAS CONFLICTING WIDTH FOR EASEMENT (15' AND 20'). STATES EASEMENT IS CENTERED ON PIPE AS INSTALLED. SURVEYOR FOUND NO EVIDENCE ON THE GROUND TO LOCATE EASEMENT

SURVEY PLAT SHOWING: A 10.100 ACRE TRACT OF LAND OUT OF THE L.K. MILLER SURVEY NO. 2, ABSTRACT NO. 337, HAYS COUNTY, TEXAS, AND BEING OUT OF THAT CERTAIN TRACT CALLED 32.377 ACRES RECORDED IN VOL. 1165, PG. 279, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS LEGAL DESCRIPTION PREPARED

LAMBERTS & ASSOCIATES SURVEYING, INC.
 618 COMAL STREET
 NEW BRAUNFELS, TEXAS 78130
 PHONE: (830) 625-0337

© 2010 LAMBERTS & ASSOCIATES SURVEYING, INC.

THIS PLAT SHOWS THE LOCATION OF EASEMENTS, RESTRICTIONS, AND BUILDING SETBACK LINES AS SET FORTH IN SCHEDULE B OF TITLE CO. SAN MARCOS-TITLE O.F. # 0259555M7 DATED: 05-03-10 THE SURVEYOR HAS NOT ABSTRACTED THE SUBJECT PROPERTY.

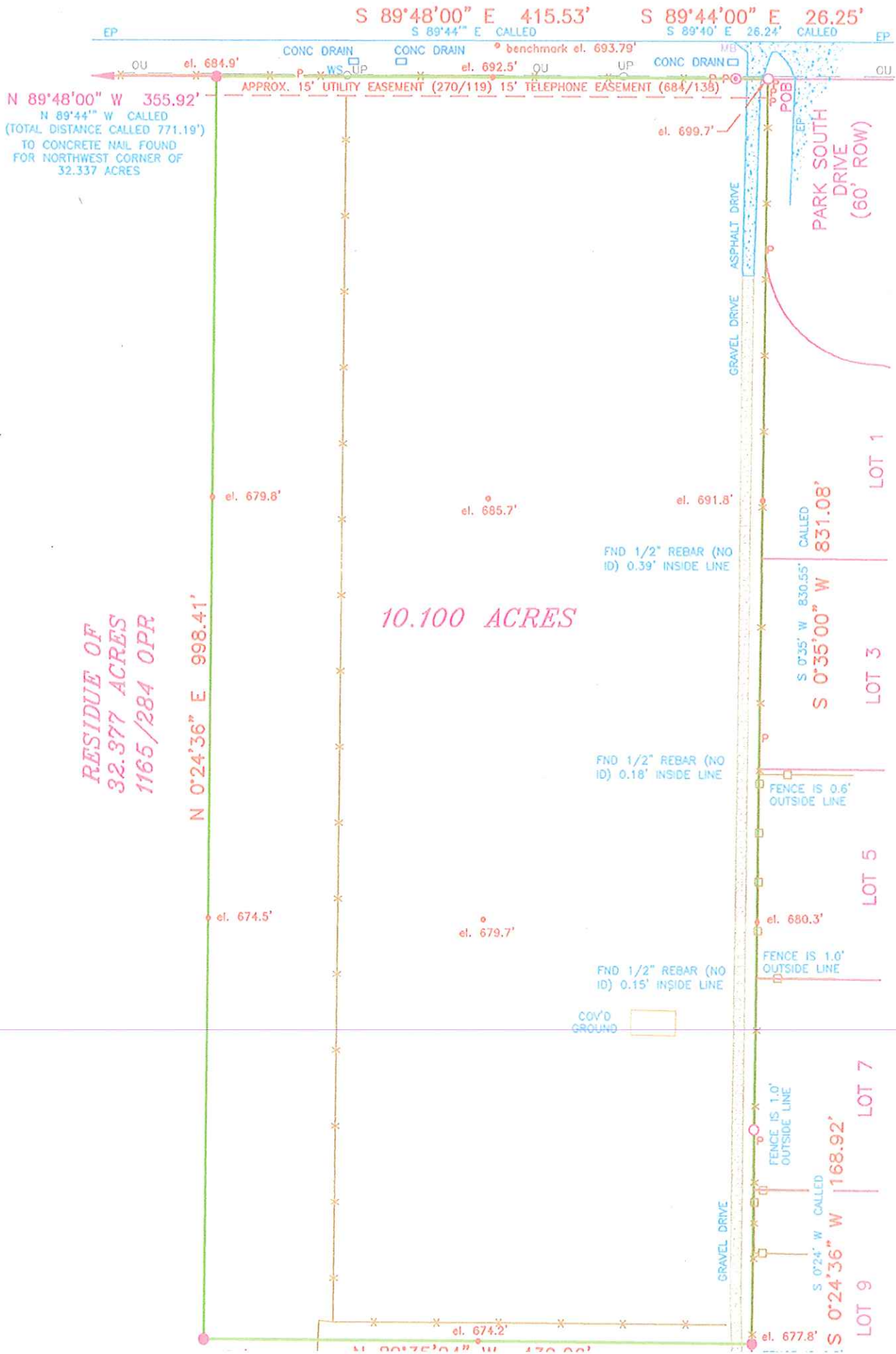
REFERENCE BEARING: OBTAINED FROM RECORDED DESCRIPTION OF SUBJECT TRACT

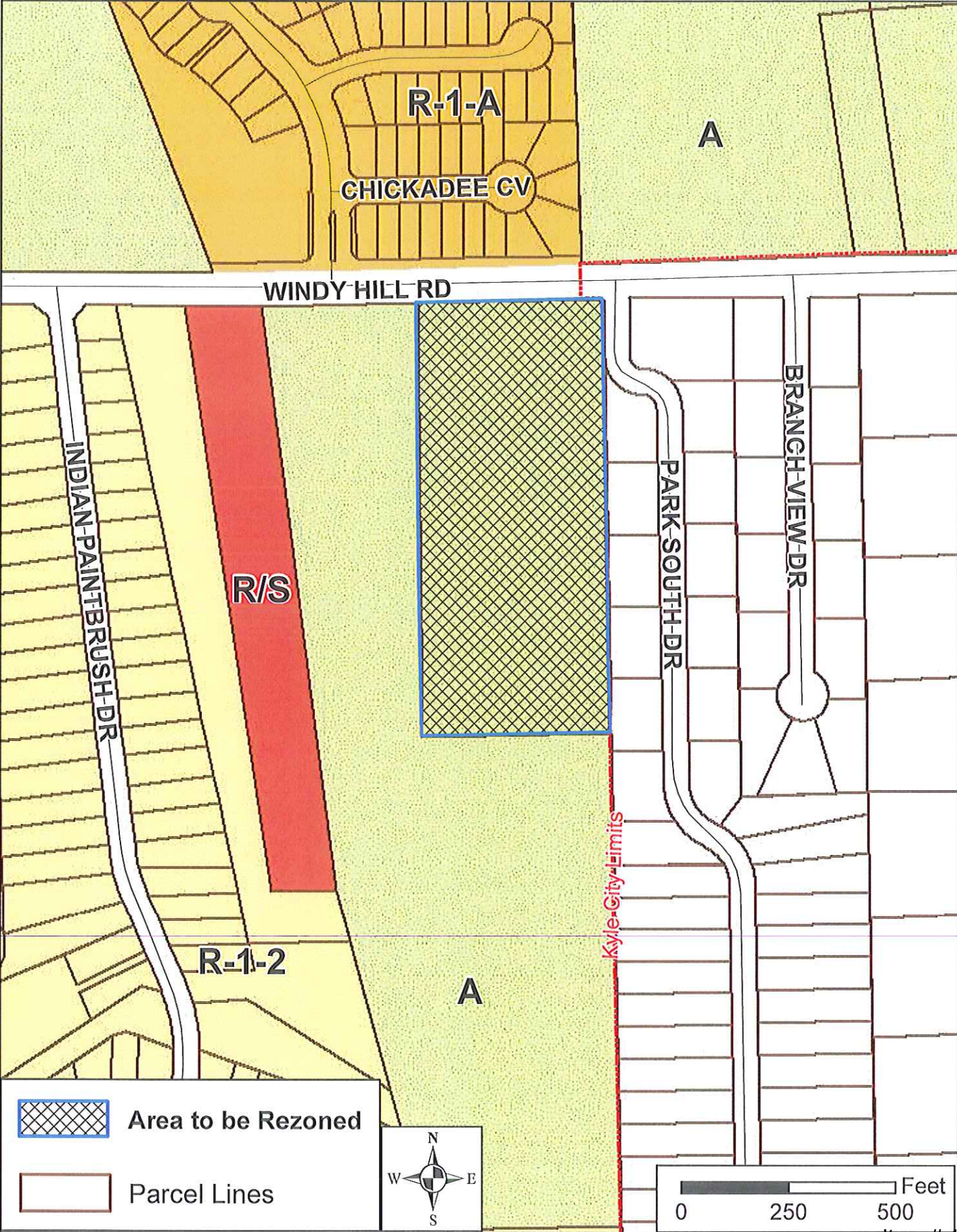
ADDRESS: WINDY HILL ROAD

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THIS SURVEY AND THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN ABOVE.

Donald Eugene Hatt
 DONALD EUGENE HATT
 REGISTERED PROFESSIONAL LAND SURVEYOR
 # 5215
 TEXAS REGISTRATION NO.
 SURVEY NOT VALID UNLESS ORIGINAL SIGNATURE IS IN RED INK
 300 # 10-0229
 DATE: 06-07-10 ELEVATIONS ADDED 06-25-10

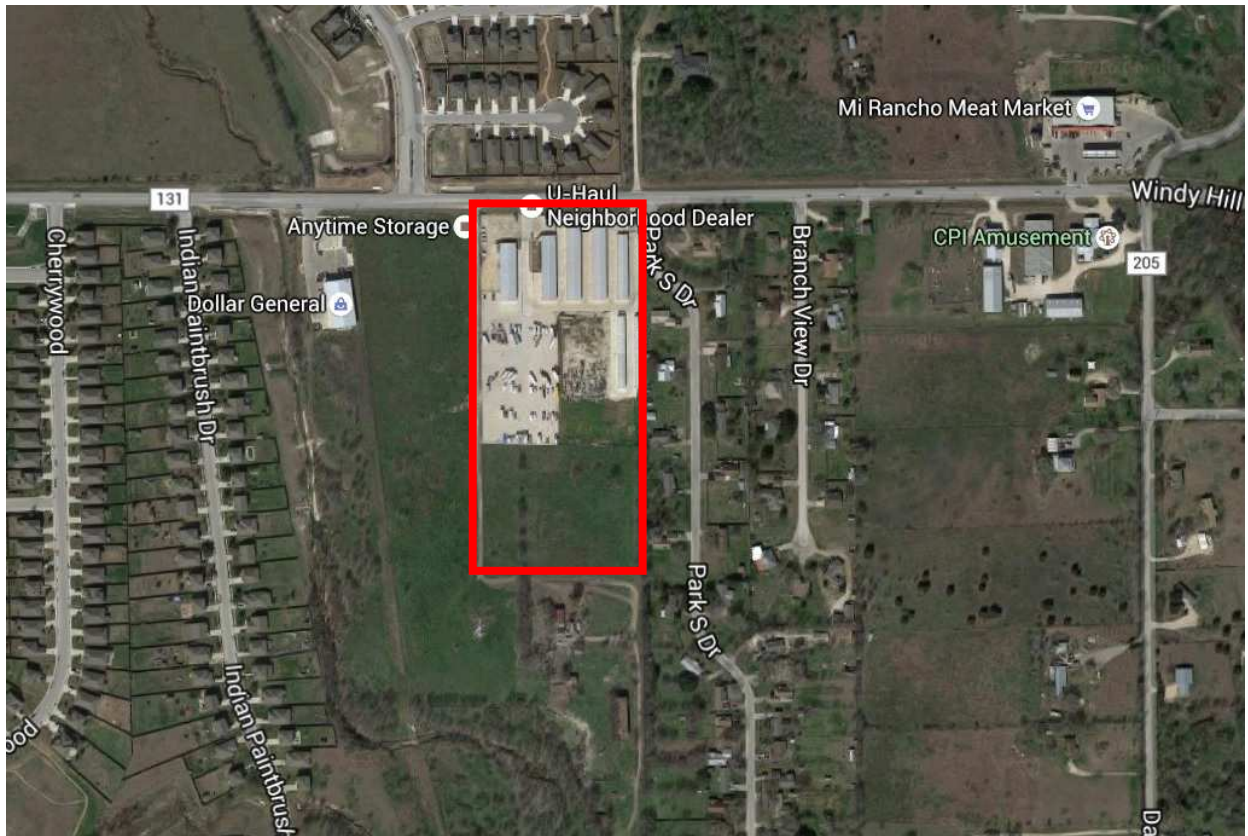






Property Location	880 Windy Hill Road
Petitioner/Owner	Jacob Jisha 8081 FM 466 Suguin, Texas 78155
Request	Rezone 10.1 acres from AG (Agriculture) to W (Warehouse)

Vicinity Map



The site is located at 880 Windy Hill Road, on the southwest corner of Parks Drive and Windy Hill Road. The property, comprising 10.1 acres, is currently zoned AG (Agriculture), and is developed with six (6) single story, steel-sided, self-storage warehouse structures, primarily located on the front half (north) of the lot, as well as ample outdoor paved and gravel storage lots behind the buildings. The adjacent lots to the north (Meadows at Kyle subdivision, across Windy Hill Road) are zoned R-1-A (single family attached); the lot to the south and west are zoned A (Agriculture). The properties to the east are located out of the city’s corporate limits, but still in the Kyle extraterritorial jurisdiction.

Rezoning Request

This lot was developed as a self-storage facility beginning in 2011. In 2013, the city of Kyle annexed the property, and in so doing assigned the new land the 'A' zoning designation, in accordance with established zoning code. Newly annexed properties are permitted to operate at their existing land use standard as non-conformities once incorporated into the city limits. But the operator of the property, Mr. Jisha, today seeks permission to expand the self-storage activities into a greater area of his lot. Because non-conforming land uses may not be expanded, the property needs to be assigned a zoning designation that would permit the self-storage use by right. The least permissive zoning category available in Kyle for this use is 'W', Warehouse. Therefore, the applicant seeks to rezone the subject property to 'W' (Warehouse), a commercial zoning category crafted "to provide assembly, packaging, treatment, processing and manufacture of products that do not pose any materially potential hazard to persons and property outside the boundaries of the property". Warehouse zoning is more consistent with the use, architecture, and operation(s) of the property, and is being requested as inaugural zoning to rectify the disparity between the current non-conforming status and the property's existence in the city limits.

Conditions of the Zoning Ordinance

§53-1205 – Amendments

...

(d) Referral of amendment to planning and zoning commission. Upon its own motion, a request by the planning and zoning commission, or the receipt of an administratively complete petition and application to zone or rezone a lot, tract or parcel of land, which petition and application has been examined and approved as to form by the city manager, shall be referred to the planning and zoning commission for consideration, public hearing, and recommendation to the city council. The council may not enact a rezoning amendment until the planning and zoning commission has held a public hearing and made its recommendation to the city council, or has made a final vote on the matter without obtaining a majority, on the zoning or rezoning of the property.

(e) Action by the planning and zoning commission. The planning and zoning commission shall cause such study and review to be made as advisable and required, shall give public notice and hold a public hearing as provided by state law, and shall recommend to the council such action as the planning and zoning commission deems proper...

Comprehensive Plan Text

The subject site is located in the 'New Town Community' character area. In 'New Town Community', it is recommended that the allowable zoning districts be limited by right to R-1-1, R-1-2, R-1-C, R-1-T, R-2, R-3-2, R-3-3, CC and NC, and conditionally to A, C/M, E, HS, R-1-A, R-3-1, R/S, RV, T/U, UE and W.

New Town “Character”: “Currently consisting primarily of residential uses, open fields, some commercial uses along I-35, and the City’s new Performing Arts Center, the New Town District will likely experience significant development pressures in the near future. This District straddles both I-35 and FM 1626, and growth from Austin and Buda is spreading south along these roadways. This District should be livable, comfortable, and convenient for all residents of Kyle and the surrounding region. Elements of form and design are critical to ensuring transitions between neighboring uses.”

New Town “Intent”: “The New Town District is designed to contain a horizontal mix of land uses that should be integrated across the area to express a cohesive community form. Many differing uses are encouraged throughout the District, but are distributed in autonomous land parcels instead of vertically aggregated in fewer land parcels. Horizontal mixed uses provide a transition to integrate the community form of New Town with surrounding communities, landscapes, and nodes. The purpose of the New Town District is to harness economic development potential and establish its position as the sustainable center of surrounding growth. This District should provide economic support to Kyle based on locational advantages gained by access to growth advancing from south Austin and nodal developments on the northern side of Kyle. Mixed-use development should be encouraged, not only permitted, to maximize economic development. This can be achieved by aggregating appropriate densities in order to support a mixture of uses. Development patterns and employment opportunities should be created in the New Town District that do not conflict with the surrounding community fabric. Public spaces in this District should be used to preserve the character of ranch heritage, where appropriate.”

Recommendation

In this case, a Warehouse designation is appropriate for this parcel, on the condition that the existing use that has been in place for a number of years already. The applicant seeks to rectify the discrepancy between the pre-existing land use and the institution of the city boundary after the fact. This request should be considered favorably.

Planning Commission

At their regular meeting on April 12, 2016, the Planning Commission held a Public Hearing related to this request. There were no public comments. Following discussion from the applicant’s representative, the Commission unanimously moved to recommend approval of the proposal 6-0 (Melendez absent).

Attachments

- Application
- Letter of intent
- Zoning map of the subject vicinity

APPLICATION & CHECKLIST – ZONING CHANGE

Zoning: **JACOB JISHA**

(Name of Owner)

3/9/16

(Submittal Date)

INSTRUCTIONS:

(2-16-003)

- Fill out the following application and checklist completely prior to submission.
- Place a check mark on each line when you have complied with that item.
- Use the most current application from the City's website at www.cityofkyle.com or at City Hall. City ordinances can be obtained from the City of Kyle.

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the Zoning Application to be accepted.

- 1. Completed application form with owner's original signature.
- 2. Letter explaining the reason for the request.
- 3. Application fee: \$428.06, plus \$3.62 per acre or portion thereof.

CITY OF KYLE

MAR 09 2016

PLANNING DEPARTMENT

Newspaper Publication Fee: \$190.21

Total Fee: **\$654.47**

- 4. A map or plat showing the area being proposed for rezoning.
- 5. A clear and legible copy of field notes (metes and bounds) describing the tract (when not a subdivided lot).
- 6. Certified Tax certificates: County ___ School ___ City ___
- 7. Copy of Deed showing current ownership.

*** A submittal meeting is required. Please contact Debbie Guerra at (512) 262-3959 to schedule an appointment.

1. Zoning Request:

Current Zoning Classification: AG

Proposed Zoning Classification: W

Proposed Use of the Property: **STORAGE FACILITY**

Acreage/Sq. Ft. of Zoning Change: **10.1 ACRES**

2. Address and Legal Description:

Provide certified field notes describing the property being proposed for rezoning.
Provide complete information on the location of the property being proposed for rezoning.

Street Address: **880 WINDY HILL RD. , KYLE, TX 78640**

Subdivision Name/Lot & Block Nos.: **Legal Description: A0337 L K MILLER SURVEY, ACRES 10.00
Neighborhood: C-KYLE-NE(C-KYLE-NE Commercial Kyle NE)**

Property Recording Information: Hays County
Volume/Cabinet No. 3429

Page/Slide No. 371

3. **Ownership Information:**
Name of Property Owner(s): JACOB JISHA

(If property ownership is in the name of a partnership, corporation, joint venture, trust or other entity, please list the official name of the entity and the name of the managing partner.)

Address of Owner: 8081 FM 466
SEGUIN, TX 78640

Phone Number: 830-743-2448

Fax Number: _____

Email Number: BROOKEJISHA@HOTMAIL.COM

I hereby request that my property, as described above, be considered for rezoning:

Signed: Jacob Jisha

Date: 3-8-16

4. **Agent Information:**

If an agent is representing the owner of the property, please complete the following information:

Agent's Name: _____

Agent's Address: _____

Agent's Phone Number: _____

Agent's Fax Number: _____

Agent's Mobile Number: _____

Agent's Email Number: _____

I hereby authorize the person named above to act as my agent in processing this application before the Planning and Zoning Commission and City Council of the City of Kyle:

Owner's Signature: _____

Date: _____

Do Not Write Below This Line
Staff Will Complete

Tax Certificates: County School City

Certified List of Property Owners Within 200'

CITY OF KYLE

All Fees Paid: Filing/Application Mail Out Costs

MAR 09 2016

Attached Map of Subject Property

Accepted for Processing By: Debbie A. Grunna Date: ANNING DEPARTMENT

Date of Public Notification in Newspaper: 3/23/16

Date of Public Hearing Before Planning and Zoning Commission: 4/12/16

Date of Public Hearing Before City Council: 4/19/16 & 5/3/16

To whom it may concern,

My property located at 880 Windy Hill Rd., Kyle, TX 78640

Had been in the City of Kyle ETJ when I built a Storage Facility on the property in 2011.

It was annexed at the end 2013 or beginning of 2014 and the city rezoned it Ag.

Even though the storage facility was already built at the address referenced above.

I am expanding my facility and need to have the zoning changed.

Jacob Jisha

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

Date: June 28, 2010

Grantor: GILBERT E. DAVILA and FLORINDA DAVILA, married persons

Grantor's Mailing Address:

P. O. Box 83
Buda, Texas 78610

Grantee: JACOB JISHA

Grantee's Mailing Address:

1509 Well Street
New Bruanfels, Texas 78130

Consideration: Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements):

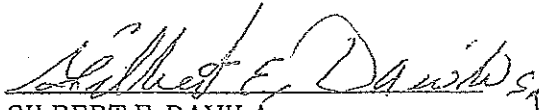
10 ACRES OF LAND, MORE OR LESS, OUT OF THE 32.377 ACRE TRACT OR PARCEL OF LAND, MORE OR LESS, OUT OF THE L. K. MILLER SURVEY NO. 2 IN HAYS COUNTY, TEXAS AS DESCRIBED IN WARRANTY DEED DATED JULY 31, 1995, TO GILBERT E. DAVILA AND FLORINDA DAVILA, RECORDED IN VOLUME 1165, PAGE 279, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 10 ACRES IS DESCRIBED BY METES AND BOUNDS IN EXHIBIT "A" THAT IS ATTACHED HERETO AND MADE A PART HEREOF.

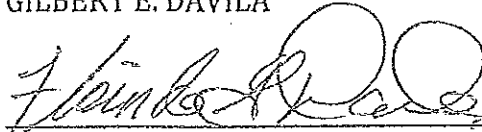
Reservations from Conveyance: None

Exceptions to Conveyance and Warranty: Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property; and taxes for 2010, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

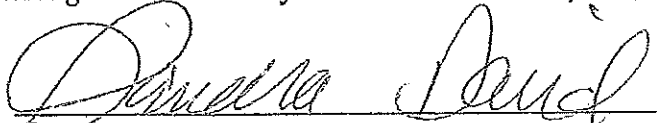

GILBERT E. DAVILA

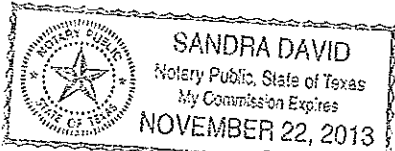

FLORINDA DAVILA

STATE OF TEXAS)

COUNTY OF HAYS)

This instrument was acknowledged before me by Gilbert E. Davila on June 28, 2010.

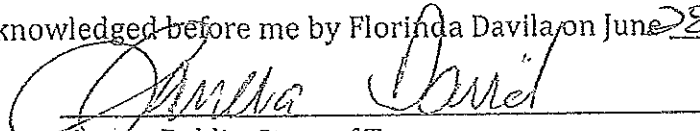

Notary Public, State of Texas

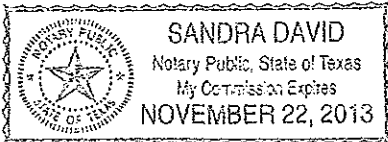


STATE OF TEXAS)

COUNTY OF HAYS)

This instrument was acknowledged before me by Florinda Davila on June 28, 2010.


Notary Public, State of Texas



PREPARED IN THE LAW OFFICE OF PATRICK ROSE, P.C.
100 E. SAN ANTONIO ST
SUITE 201-A
SAN MARCOS, TEXAS 78666
Phone/Fax: (512) 667-6608

EXHIBIT "A"

10019860 Bk Vol Pa
0PR 3929 374

Lamberts & Associates Surveying, Inc.
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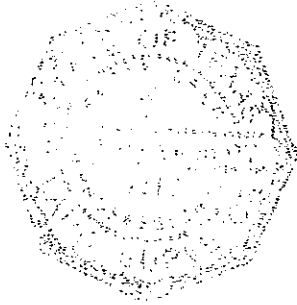
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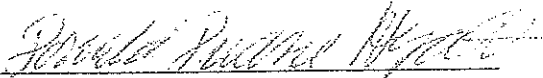
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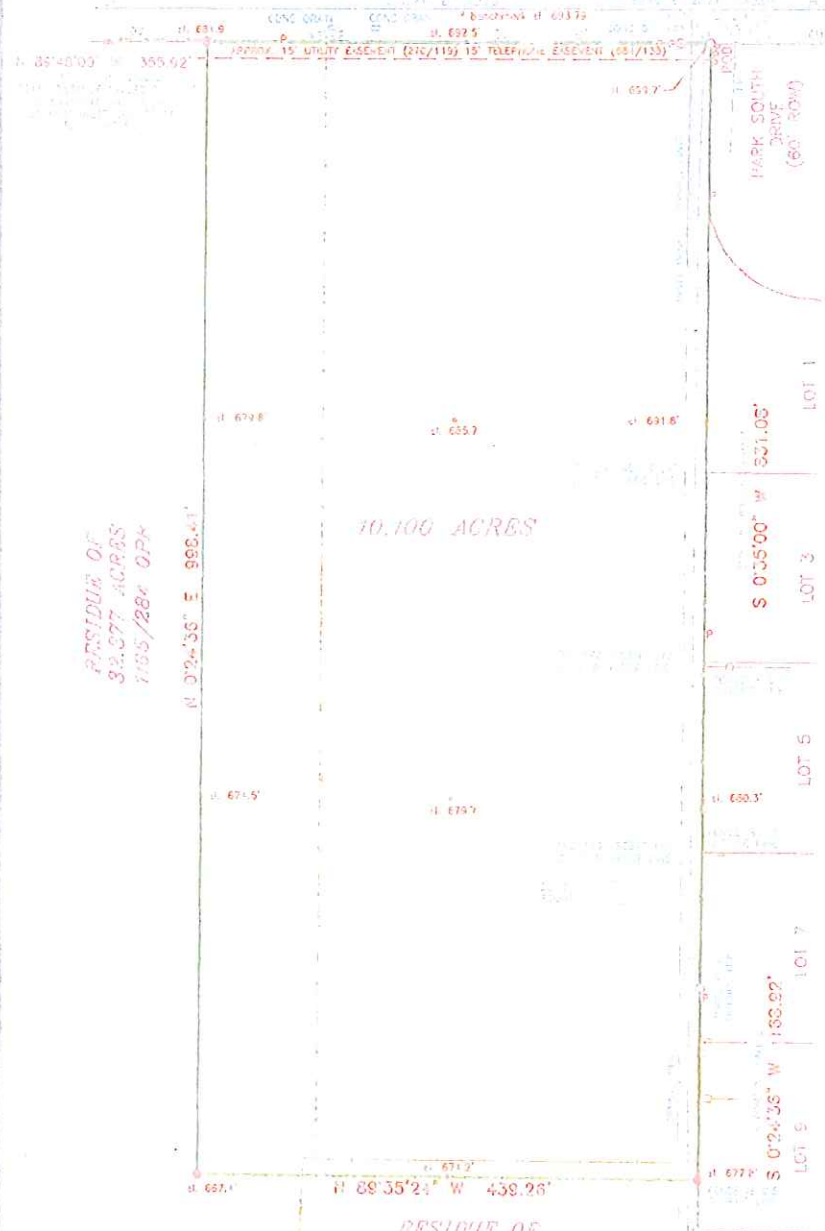



Donald Duane Hyatt
Registered Professional Land Surveyor
5215 Job # 10-0229

WINDY HILL ROAD (Co. Rd. #131)

Scale: 1" = 100'

S 89°46'00" E 415.53' S 89°44'00" E 26.25'



LEGEND
NOTE: ELEVATIONS SHOWN HEREON ARE BASED ON NAVD83 DATUM

REFERENCES:
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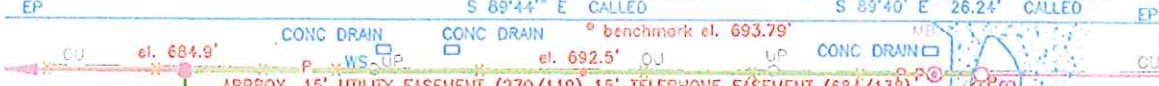
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REFERENCE BEARING: OBTAINED FROM RECORDED DESCRIPTION OF SUBJECT TRACT
ADDRESS: WINDY HILL ROAD

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THIS SURVEY AND THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN ABOVE.

Donald Eugene Hart
DONALD EUGENE HART
REGISTERED PROFESSIONAL LAND SURVEYOR
5215
TEXAS REGISTRATION NO.
SURVEY NOT VALID UNLESS ORIGINAL SIGNATURE IS IN RED INK
JOB # 10-0229
DATE 05-07-10 ELEVATIONS ADDED 05-25-10

S 89°48'00" E 415.53' S 89°44'00" E 26.25'



N 89°48'00" W 355.92'
N 89°44' W CALLED
(TOTAL DISTANCE CALLED 771.19')
TO CONCRETE NAIL FOUND
FOR NORTHWEST CORNER OF
32.337 ACRES

APPROX. 15' UTILITY EASEMENT (270/119) 15' TELEPHONE EASEMENT (684/135)

el. 699.7'



RESIDUE OF
32.377 ACRES
1165/284 OPR

N 0°24'36" E 998.41'

10.100 ACRES

el. 679.8'

el. 655.7'

el. 691.8'

FND 1/2" REBAR (NO ID) 0.39' INSIDE LINE

831.08'
CALLED

LOT 1

FND 1/2" REBAR (NO ID) 0.18' INSIDE LINE

FENCE IS 0.6' OUTSIDE LINE

S 0°35' W 830.55'
S 0°35'00" W

LOT 3

el. 674.5'

el. 679.7'

el. 680.3'

FND 1/2" REBAR (NO ID) 0.15' INSIDE LINE

FENCE IS 1.0' OUTSIDE LINE

LOT 5

COVD GROUND

FENCE IS 1.0' OUTSIDE LINE

168.92'

LOT 7

GRAVEL DRIVE

S 0°24' W CALLED

S 0°24'36" W

LOT 9

el. 674.2'

el. 677.8'

PARK SOUTH SUBDIVISION
2/349-350 PR

TAX CERTIFICATE

Luanne Caraway Tax Assessor-Collector, Hays County

712 S. Stagecoach Trail

San Marcos, TX 78666

Ph: 512-393-5545 Fax: 512-393-5517

This certificate includes tax years up to 2015

Entities to which this certificate applies:

SHA - Hays Consolidated ISD
 WPC - Plum Creek Groundwater District
 FHA - Hays Co ESD #5
 ACCD - AUSTIN COMMUNITY COLLEGE DISTRICT

PCC - Plum Creek Conservation District
 RSP - Special Road Dist
 GHA - Hays County
 CKY - City Of Kyle

Property Information

Property ID : 10-0337-0004-00001-2
 Quick-Ref ID : R133055

Value Information

	Land HS	:	\$0.00
880 WINDY HILL RD KYLE, TX 78640	Land NHS	:	\$273,000.00
	Imp HS	:	\$0.00
	Imp NHS	:	\$712,770.00
A0337 L K MILLER SURVEY, ACRES 10.00	Ag Mkt	:	\$0.00
	Ag Use	:	\$0.00
	Tim Mkt	:	\$0.00
	Tim Use	:	\$0.00
	HS Cap Adj	:	\$0.00
	Assessed	:	\$985,770.00

Owner Information

Owner ID : O0205953

JISHA JACOB
 8081 FM 466
 SEGUIN, TX 78155-7520

Ownership: 100.00%

This Document is to certify that after a careful check of the Tax Records of this Office, the following Current or Delinquent Taxes, Penalties, and Interest are due on the Property for the Taxing Entities described above:

Entity	Year	Tax	Discount	P&I	Atty Fee	TOTAL
PCC	2015	221.80	0.00	0.00	0.00	0.00
SHA	2015	15,158.19	0.00	0.00	0.00	0.00
RSP	2015	431.77	0.00	0.00	0.00	0.00
WPC	2015	211.94	0.00	0.00	0.00	0.00
GHA	2015	4,171.78	0.00	0.00	0.00	0.00
FHA	2015	985.77	0.00	0.00	0.00	0.00
CKY	2015	5,764.79	0.00	0.00	0.00	0.00
ACCD	2015	990.70	0.00	0.00	0.00	0.00

Total for current bills if paid by 3/31/2016 : \$0.00

Total due on all bills 3/31/2016 : \$0.00


2015 taxes paid for entity PCC \$221.80
 2015 taxes paid for entity SHA \$15,158.19
 2015 taxes paid for entity RSP \$431.77
 2015 taxes paid for entity WPC \$211.94
 2015 taxes paid for entity GHA \$4,171.78
 2015 taxes paid for entity FHA \$985.77
 2015 taxes paid for entity CKY \$5,764.79
 2015 taxes paid for entity ACCD \$990.70

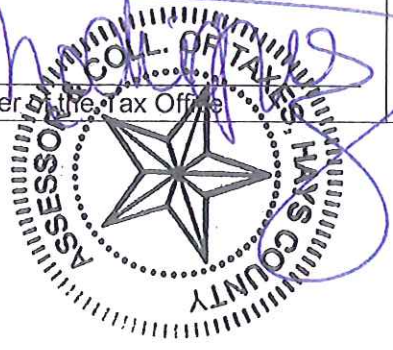
2015 Total Taxes Paid : \$27,936.74

Date of Last Payment : 12/11/15

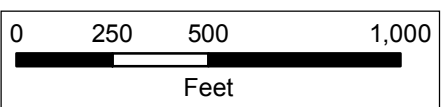
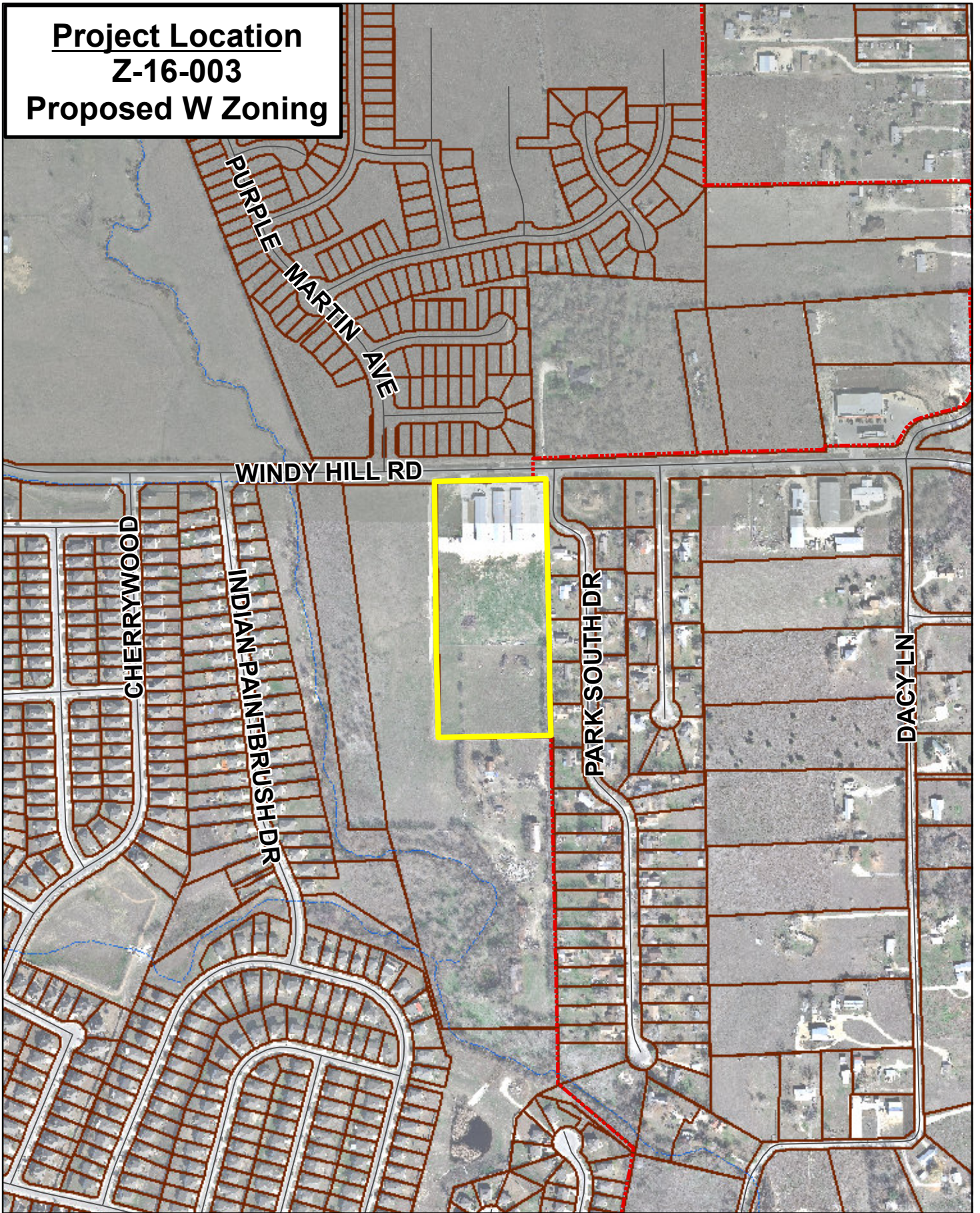
If applicable, the above-described property is receiving special valuation based on its use. Additional rollback taxes that may become due based on the provisions of the special valuation are not indicated in this document.

This certificate does not clear abuse of granted exemptions as defined in Section 11.43, Paragraph (i) of the Texas Property Tax Code.

 Signature of Authorized Officer of the Tax Office	Date of Issue : 03/08/2016
	Requestor : JISHA JACOB
	Receipt : KY-2016-31573
	Fee Paid : \$10.00
	Payer : ANYTIME STORAGE



Project Location
Z-16-003
Proposed W Zoning



 Property Boundary

 Parcel Lines



CITY OF KYLE

100 W. Center • P.O. Box 40 • Kyle, Texas 78640 • (512) 262-1010 • FAX (512) 262-3800

Notice of Public Hearings on a Proposed Zoning Change

CITY OF KYLE

APR 11 2016

NOTICE IS HEREBY GIVEN TO ALL INTERESTED PERSONS, THAT:
Z-16-003

PLANNING DEPARTMENT

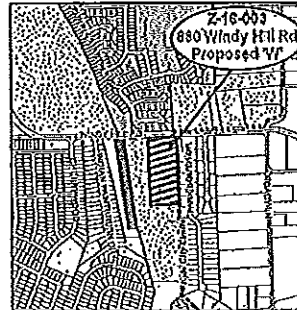
The City of Kyle shall hold a public hearing on a request by Jacob Jisha to assign original zoning to approximately 10.1 acres of land from Agriculture "AG" to Warehouse District "W" on property located at 880 Windy Hill Road, in Hays County, Texas.

A public hearing will be held by the Planning and Zoning Commission on Tuesday, April 12, 2016 at 6:30pm.

A public hearing will be held by the Kyle City Council on Tuesday, April 19, 2016 at 7:00pm.

Council action and second reading may be considered at the meeting to follow the public hearing (May 3, 2016).

Kyle City Hall, Council Chambers
100 W. Center St., Kyle, Texas



Owner: Jacob Jisha
Phone: (830) 743-2448

For more information regarding this application
call the Planning Department at (512) 262-3925

o o

You may send your written comments to the Planning Department, 100 W. Center St., Kyle, Texas 78640
(attention: Zoning File #: Z-16-003)

Name: Kara Huta Address: 170 Chickadee Cove

I am in favor, this is why _____ I am not in favor, and this is why we like

_____ right across the street and would
_____ not want to have warehouses
right out our back window!

You may send your written comments to the Planning Department, 100 W. Center St., Kyle, Texas 78640
(attention: Zoning File #: Z-16-003)

Name: Rito Aldape Address: 136 PARK SOUTH DR. KYLE, TX 7864

- I am in favor, this is why _____
- I am not in favor, and this is why bad
- For human health and environment
 - Do not want anything behind my house please.

CITY OF KYLE

APR 11 2016

PLANNING DEPARTMENT



CITY OF KYLE

100 W. Center • P.O. Box 40 • Kyle, Texas 78640 • (512) 262-1010 • FAX (512) 262-3800

CITY OF KYLE

APR 13 2016

Notice of Public Hearings on a Proposed Zoning Change

PLANNING DEPARTMENT

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Z-16-003

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100 W. Center St., Kyle, Texas

Owner: Jacob Jisha
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For more information regarding this application
call the Planning Department at (512) 262-3925



You may send your written comments to the Planning Department, 100 W. Center St., Kyle, Texas 78640
(attention: Zoning File #: Z-16-003)

Name: Jeremy & Laura Price Address: 137 Park South Dr.

I am in favor, this is why _____

- I am not in favor, and this is why Not good for our health and kids.
- More pollution to the earth.
- More buildings of concrete.
- More construction in our area.
- More accidents.





CITY OF KYLE, TEXAS

Plum Creek Phase 1 Section 6H-1 - Final Plat

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Plum Creek Phase 1, Section 6H-1 - Final Plat (FP-15-012) 11.466 acres; 79 single family lots and 6 park lots, located east of Sanders and north of Fairway. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 4-2 to recommend approval.

Other Information: Please see attachments.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Staff Memo
- Plat
- Project Location Map



CITY OF KYLE

Community Development Department



To: Kyle Mayor & City Council
From: Howard J. Koontz, AICP
Community Development Director
Date: April 19, 2016
Re: Plum Creek Phase 1 Sections 6H (PP-15-005) and 6H-1 (FP-15-012)

At the regular April meeting of the Planning Commission, questions were asked by Commissioner Mike Wilson about flood elevations as they relate to the preliminary and final plats proposed for Section 6H in Plum Creek.

Specifically, the questions concerned not the spot elevations for proposed homes in the phase, but instead the location of the base flood elevations located in and across proposed street locations that serve the proposed properties.

Floodplain and flood way information indicated on the proposed plats are derived from FEMA map data, much of which is outdated and no longer accurately reflects current, post-development conditions in the field. Be that as it may, the requirements to place that data on the sheets is law.

There are two significant actions that have been undertaken on the project that make the plat code compliant today. (1) There has been a change to the elevations of the land adjacent to the waterway, where the paths of the street networks have been raised up above the flood elevations noted in the FEMA data, and (2) the spillway elevation of the pond that is downstream is no less than three (3) feet lower than the lowest proposed street pavement elevation, so that any water impounded in the area would begin clearing itself downstream long before there was a chance for ponding around these newest sections.

The plats as submitted are compliant with current code and are recommended by staff for approval.

PLUM CREEK PHASE I, SECTION 6H-1

FOR REVIEW ONLY

STATE OF TEXAS
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS, THAT WE, PC OPERATING PARTNERS, LTD., A LIMITED PARTNERSHIP ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS...

- 1. A PORTION OF THAT CALLED 24.806 ACRE TRACT OF LAND, DESIGNATED AS TRACT EIGHT, PARCEL ONE IN VOLUME 5233, PAGE 170, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.
2. ALL OF THAT CALLED 0.228 ACRE TRACT OF LAND DESIGNATED AS TRACT EIGHT, PARCEL TWO IN VOLUME 5233, PAGE 198, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.
3. A PORTION OF THAT CALLED 0.415 ACRE TRACT OF LAND DESIGNATED AS TRACT EIGHT, PARCEL THREE IN VOLUME 5233, PAGE 198, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.
4. ALL OF THAT CALLED 0.499 ACRE TRACT OF LAND, DESIGNATED AS TRACT EIGHT, PARCEL FIVE IN VOLUME 5233, PAGE 198, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

DO HEREBY SUBDIVIDE SAID 11.466 ACRES AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE PLUM CREEK PHASE I, SECTION 6H-1 SUBDIVISION TO THE CITY OF KYLE, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO...

WHEREOF THE SAID PC OPERATING PARTNERS, LTD., OWNER, HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS GENERAL PARTNER, PCOP GP, LLC, THEREUNTO DULY AUTHORIZED, GENERAL PARTNER HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS MEMBER/MANAGER, BENCHMARK LAND & EXPLORATION, INC.

PC OPERATING PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP
BY: PCOP GP, LLC, GENERAL PARTNER
BY: BENCHMARK LAND & EXPLORATION, INC., A MEMBER/MANAGER
BY: MYRA J. GOEPP, VICE PRESIDENT

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED, MYRA J. GOEPP, VICE PRESIDENT OF BENCHMARK LAND & EXPLORATION, INC., KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

BY: NOTARY PUBLIC

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS: THAT, LIZ Q. GONZALEZ, CLERK OF HAYS COUNTY COURT DOES HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND THE CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORDS IN MY OFFICE ON THE DAY OF 2015, A.D., IN THE PLAT RECORDS OF SAID COUNTY AND STATE IN PLAT CABINET PAGE(S) WITNESS MY HAND AND SEAL OF OFFICE OF COUNTY CLERK OF SAID COUNTY ON THIS THE DAY OF 2015, A.D.

BY: LIZ Q. GONZALEZ
COUNTY CLERK
HAYS COUNTY, TEXAS

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING COMMISSION OF THE CITY OF KYLE HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: CHAIRPERSON

THIS PLAT (PLUM CREEK PHASE 1, SECTION 6H) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COMMISSION.

DATED THIS DAY OF 2015.

BY: ATTEST: SECRETARY

THIS PLAT (PLUM CREEK PHASE 1, SECTION 6H) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS DAY OF 2015.

BY: ATTEST: SECRETARY

STATE OF TEXAS
COUNTY OF TRAVIS

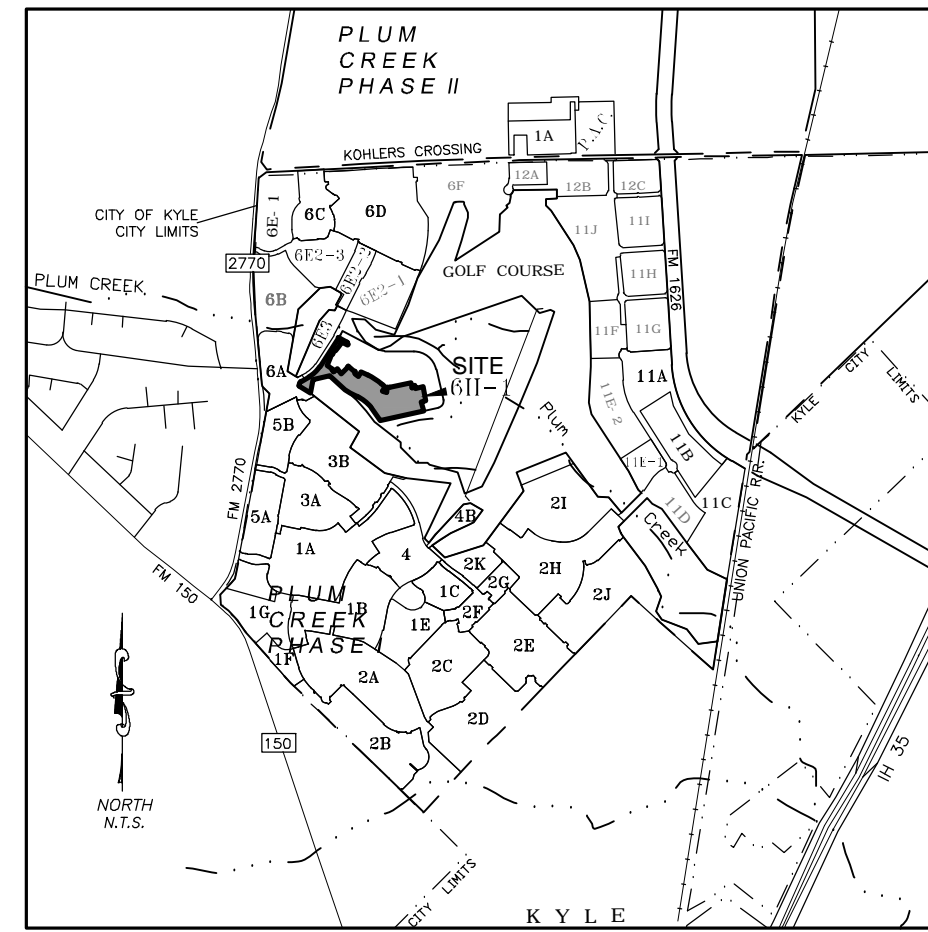
I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

BY: ALAN D. RHAMES, P.E.
REGISTERED PROFESSIONAL ENGINEER
NO. 72089 - STATE OF TEXAS
TYPE FIRM NO. F-43
AXIOM ENGINEERS INC.
13276 RESEARCH BLVD., ST. 208
AUSTIN, TEXAS 78750
512-306-9335

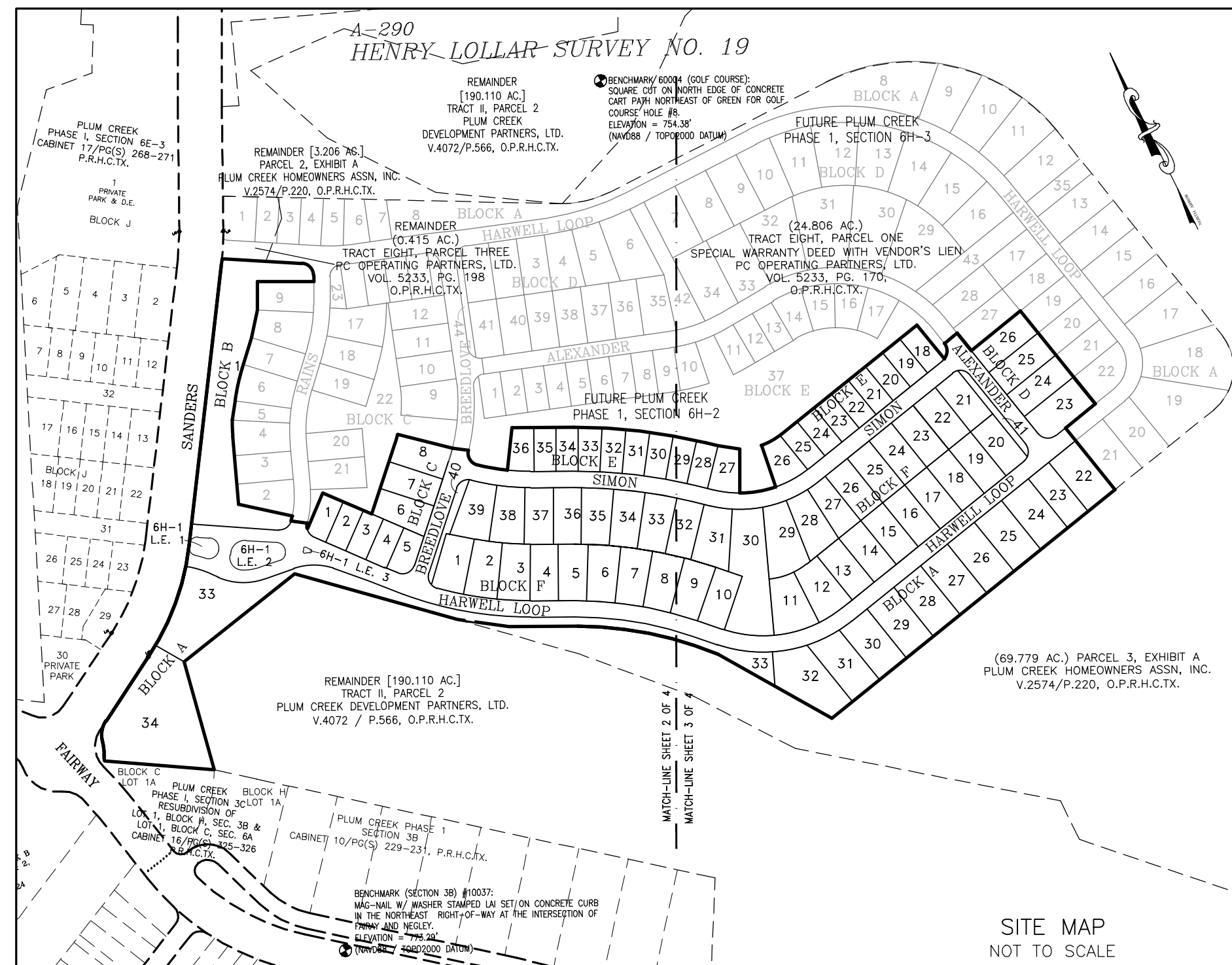
STATE OF TEXAS
COUNTY OF TRAVIS

I, JOHN D. BARNARD, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER MY DIRECTION AND SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

BY: JOHN D. BARNARD
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 5749 - STATE OF TEXAS
BOWMAN CONSULTING GROUP, LTD.
3101 BEE CAVE ROAD, SUITE 100
AUSTIN, TEXAS 78746
512-327-1180



LOCATION MAP NOT TO SCALE



SITE MAP NOT TO SCALE

FLOOD NOTE: A PORTION OF THIS SUBDIVISION (PLUM CREEK PHASE I, SECTION 6H-1) IS CONTAINED IN THE 100 YEAR FLOOD ZONE, PER FLOOD INSURANCE RATE MAP FOR HAYS COUNTY TEXAS (UNINCORPORATED AREA) COMMUNITY-PANEL NUMBER 48209C 0270 F, EFFECTIVE DATE: SEPTEMBER 2, 2005, AS MODIFIED BY APPROVED CLOMR CASE NO. 07-06-0898R, DATED MARCH 25, 2008.

Table with 4 columns: FILE, DATE, SCALE, JOB. Contains drawing file path, date, scale, and job number.

PCDP, LTD. REVIEW & APPROVAL DATE INITIAL

BIGLOW HOMES REVIEW & APPROVAL DATE INITIAL



Bowman Consulting Group, Ltd.
3101 Bee Cave Road, Suite 100, Austin, Texas 78746
Phone: (512) 327-1180 Fax: (512) 327-4062
www.bowmanconsulting.com

SHEET 1 OF 4
FINAL PLAT
PLUM CREEK
PHASE I - SECTION 6H-1
HAYS COUNTY, TEXAS

PLAN NO. 1153

PLUM CREEK PHASE I, SECTION 6H-1

FOR REVIEW ONLY

BEARING BASIS NOTES:

- 1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.
2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS; TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.9999907.

SEE SHEET 4 FOR LINE AND CURVE TABLES.

0 60 120

SCALE: 1"=60'

NOVEMBER, 2015
HAYS COUNTY, TEXAS

LEGEND

- 1/2" IRON ROD FOUND (Unless Otherwise Noted)
LAI 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LAI" PREVIOUSLY SET
LOOMIS 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LOOMIS" PREVIOUSLY SET
MAG NAIL SET
CALCULATED POINT
P.U.E. (Public Utility Easement)
L.E. (Landscape Easement)
LOT & STREET R.O.W. LINE
EASEMENT LINE
FEMA FIRM PANEL FLOODPLAIN
APPROVED CLOMR 100 YEAR FLOODPLAIN
RECORD DEED LINE
PUBLIC UTILITY EASEMENT
PRIVATE UTILITY SERVICE EASEMENT
R.O.W.
L.E.
LANDSCAPE EASEMENT
RECORD INFORMATION
ADJOINER INFORMATION
PLAT RECORDS OF HAYS COUNTY, TEXAS
OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
CONDITIONAL LETTER OF MAP REVISION

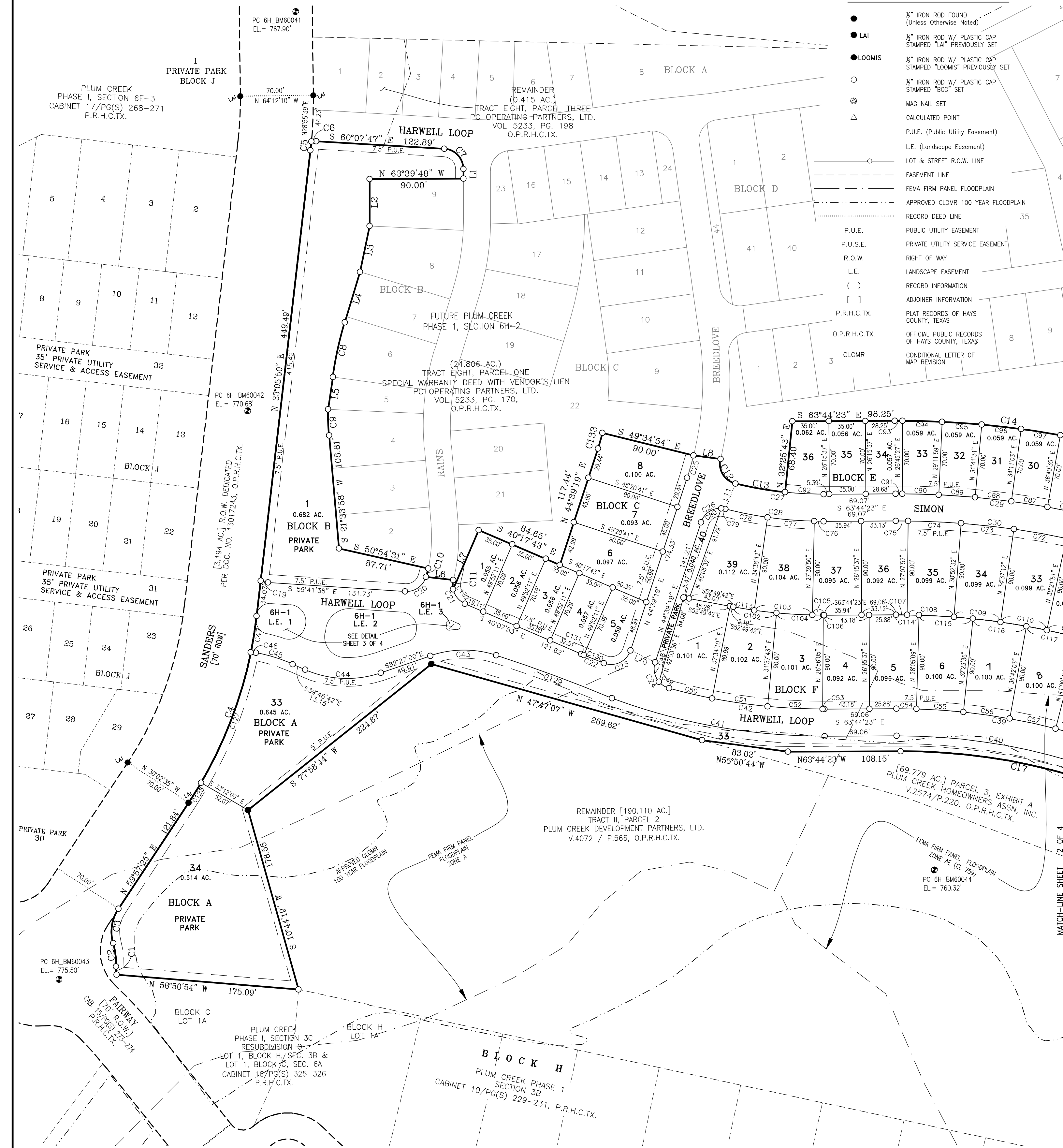


Table with 4 columns: FILE, DATE, SCALE, JOB. Contains drawing file path, date, scale, and job number.

PCDP, LTD. REVIEW & APPROVAL DATE INITIAL

BIGLOW HOMES REVIEW & APPROVAL DATE INITIAL

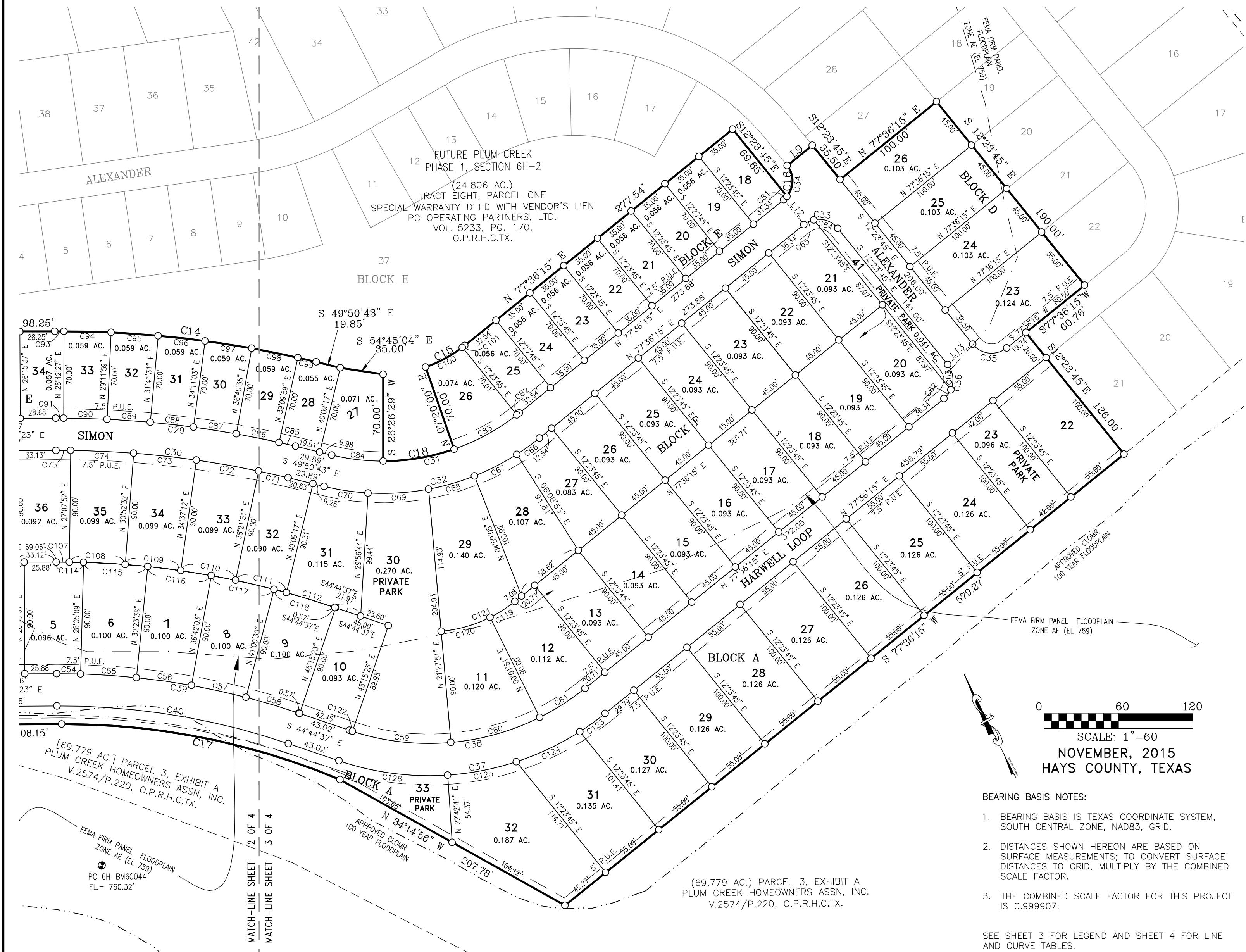


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SHEET 2 OF 4
FINAL PLAT
PLUM CREEK
PHASE I - SECTION 6H-1
HAYS COUNTY, TEXAS

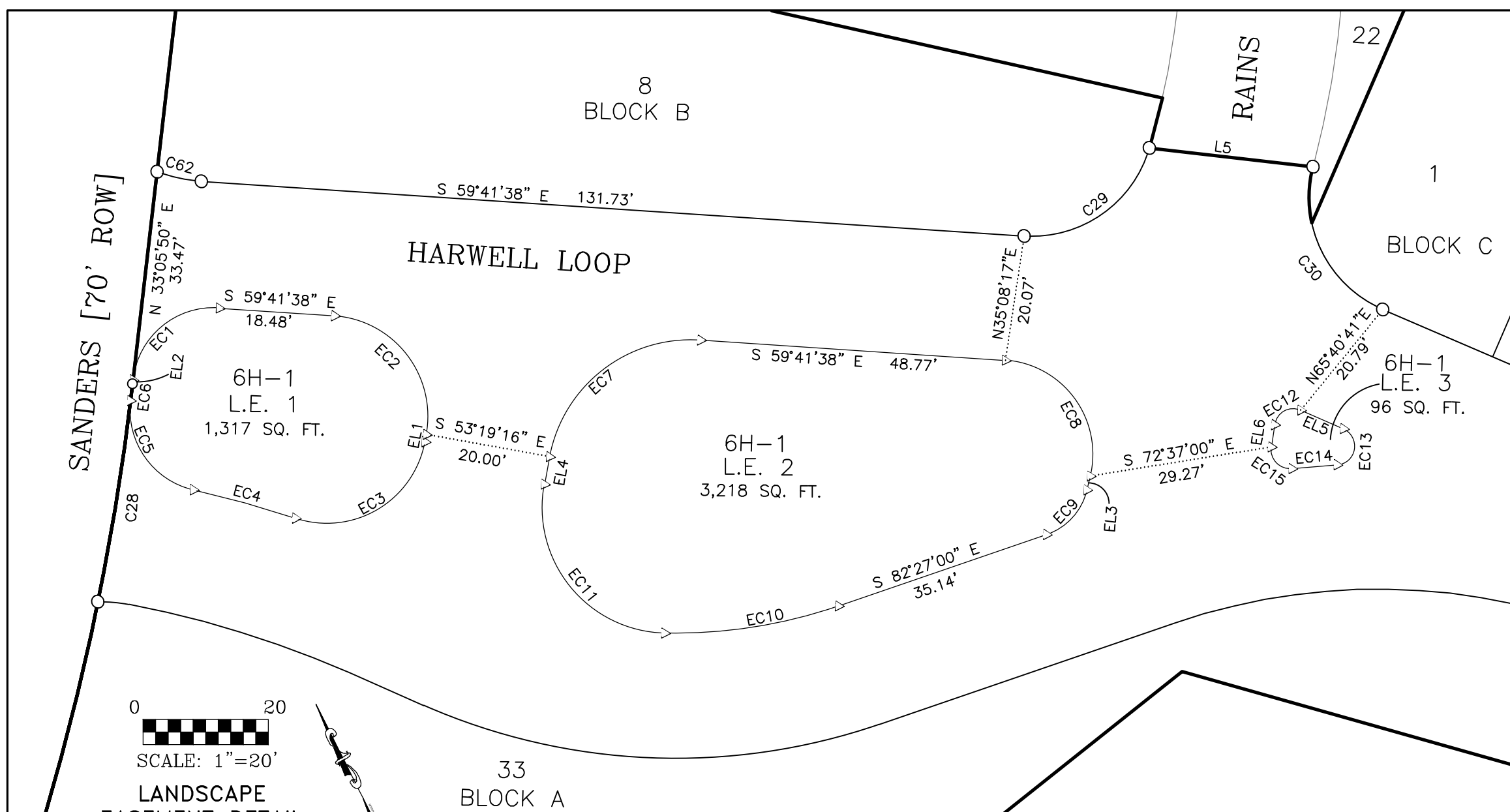
PLAN NO. 1153

PLUM CREEK PHASE I, SECTION 6H-1
FOR REVIEW ONLY



LEGEND

- 1/2" IRON ROD FOUND (Unless Otherwise Noted)
- LAI 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LAI" PREVIOUSLY SET
- LOOMIS 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LOOMIS" PREVIOUSLY SET
- 1/2" IRON ROD W/ PLASTIC CAP STAMPED "BCG" SET
- ⊙ MAG NAIL SET
- △ CALCULATED POINT
- - - P.U.E. (Public Utility Easement)
- - - L.E. (Landscape Easement)
- - - LOT & STREET R.O.W. LINE
- - - EASEMENT LINE
- - - FEMA FIRM PANEL FLOODPLAIN
- - - APPROVED CLOMR 100 YEAR FLOODPLAIN
- - - RECORD DEED LINE
- - - P.U.E. PUBLIC UTILITY EASEMENT
- - - P.U.S.E. PRIVATE UTILITY SERVICE EASEMENT
- - - R.O.W. RIGHT OF WAY
- - - L.E. LANDSCAPE EASEMENT
- () RECORD INFORMATION
- [] ADJOINER INFORMATION
- P.R.H.C.T.X. PLAT RECORDS OF HAYS COUNTY, TEXAS
- O.P.R.H.C.T.X. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
- CLOMR CONDITIONAL LETTER OF MAP REVISION



FILE: H:\SURVEY\PLUM_CRK_PHT\SECTION-6H\SEC-6H\WORK\PLATS\6H-1-1\PLUM-6H-1-FINAL_PLAT.DWG
DATE: 11-09-15 DRAWN BY: KM CREW:
SCALE: 1"=60' CHECKED BY: JB FB #:
JOB #: 5549-05-002 DRAWING #: FINAL PLAT PLAN #: 1153

PCDP, LTD. REVIEW & APPROVAL DATE: INITIAL:
BIGELOW HOMES REVIEW & APPROVAL DATE: INITIAL:

PLOT DATE: Mar 15, 2016-8:17am

Bowman CONSULTING

Bowman Consulting Group, Ltd.
3101 Bee Cave Road, Suite 100, Austin, Texas 78746
Phone: (512) 327-1180 Fax: (512) 327-4062
www.bowmanconsulting.com © Bowman Consulting Group, Ltd.
TBPE Firm No. F-2986 | TBPLS Firm No. 101206-00

SHEET 3 OF 4
FINAL PLAT
PLUM CREEK
PHASE I - SECTION 6H-1
HAYS COUNTY, TEXAS

PLAN NO. 1153

PLUM CREEK PHASE I, SECTION 6H-1
FOR REVIEW ONLY

CURVE TABLE

CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C1	42.00'	7.85'	N 22°58'06" E	7.84'
C2	74.50'	22.68'	N 19°35'59" E	22.59'
C3	40.00'	34.26'	N 35°25'04" E	33.23'
C4	410.00'	192.20'	N 48°31'38" E	190.45'
C5	405.00'	8.49'	N 32°39'30" E	8.49'
C6	24.50'	4.75'	S 65°40'57" E	4.74'
C7	19.50'	29.43'	S 16°53'48" E	26.71'
C8	341.00'	53.77'	S 38°50'00" W	53.71'
C9	253.00'	25.08'	S 24°24'20" W	25.07'
C10	137.00'	8.28'	S 40°49'20" W	8.28'
C11	19.50'	9.05'	S 27°43'45" W	8.97'
C12	19.50'	30.44'	S 04°48'16" E	27.44'
C13	344.00'	48.34'	S 53°32'44" E	48.30'
C14	875.00'	212.69'	S 56°48'17" E	212.17'
C15	105.00'	36.16'	N 87°28'07" E	35.98'
C16	19.50'	26.95'	N 27°11'43" E	24.85'
C17	575.00'	230.19'	N 52°14'24" W	228.66'
C18	175.00'	58.36'	S 73°06'46" E	58.09'
C19	24.50'	7.25'	S 51°12'38" E	7.23'
C20	19.50'	26.46'	N 81°25'47" E	24.48'
C21	19.50'	27.62'	S 02°44'30" E	25.37'
C22	551.00'	23.36'	S 41°20'51" E	23.35'
C23	19.50'	31.58'	S 88°57'12" E	28.24'
C24	19.50'	31.54'	S 01°41'06" E	28.21'
C25	300.00'	22.18'	N 42°32'13" E	22.18'
C26	19.50'	29.39'	S 87°49'46" W	26.68'
C27	344.00'	85.38'	S 56°37'47" E	85.16'
C28	370.00'	95.21'	S 56°22'05" E	94.95'
C29	805.00'	195.22'	N 56°47'33" W	194.74'
C30	779.00'	188.91'	N 56°47'33" W	188.45'
C31	175.00'	160.51'	S 76°07'14" E	154.94'
C32	201.00'	184.35'	S 76°07'13" E	177.96'
C33	19.50'	30.63'	N 57°23'45" W	27.58'
C34	19.50'	30.63'	N 32°36'15" E	27.58'
C35	19.50'	30.63'	S 57°23'45" E	27.58'
C36	19.50'	30.63'	N 32°36'15" E	27.58'
C37	226.00'	227.41'	N 73°34'11" W	217.93'
C38	200.00'	201.24'	S 73°34'11" E	192.86'
C39	599.00'	198.60'	S 54°14'30" E	197.69'
C40	573.00'	189.98'	N 54°14'30" W	189.11'
C41	576.00'	208.36'	N 53°22'37" W	207.22'
C42	550.00'	150.85'	S 55°52'57" E	150.38'
C43	100.00'	64.44'	N 63°59'24" W	63.33'
C44	100.00'	74.48'	N 61°06'51" W	72.77'
C45	162.00'	36.80'	N 46°17'10" W	36.72'
C46	24.50'	5.00'	N 58°38'44" W	5.00'
C47	410.00'	35.26'	N 35°33'40" E	35.25'
C48	19.50'	19.70'	N 15°42'40" E	18.87'
C49	19.50'	11.84'	S 30°37'44" E	11.66'
C50	550.00'	42.29'	N 50°13'40" W	42.28'

CURVE TABLE

CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C51	550.00'	53.83'	N 55°14'04" W	53.80'
C52	550.00'	52.91'	N 60°47'39" W	52.89'
C53	550.00'	1.82'	N 63°38'42" W	1.82'
C54	599.00'	19.13'	N 62°49'30" W	19.13'
C55	599.00'	45.01'	N 59°45'28" W	45.00'
C56	599.00'	45.01'	N 55°27'08" W	45.00'
C57	599.00'	45.01'	N 51°08'49" W	45.00'
C58	599.00'	44.44'	N 46°52'08" W	44.43'
C59	200.00'	80.50'	N 57°00'17" W	79.96'
C60	200.00'	74.82'	N 78°15'09" W	74.38'
C61	200.00'	43.38'	S 83°49'03" W	43.29'
C62	19.50'	8.97'	S 64°25'17" W	8.89'
C63	19.50'	21.66'	S 19°25'17" W	20.56'
C64	19.50'	21.66'	S 44°12'47" E	20.56'
C65	19.50'	8.97'	S 89°12'47" E	8.89'
C66	201.00'	22.52'	N 80°48'49" E	22.50'
C67	201.00'	38.46'	N 89°30'13" E	38.40'
C68	201.00'	38.46'	S 79°32'04" E	38.40'
C69	201.00'	49.11'	S 67°03'14" E	48.99'
C70	201.00'	35.82'	S 54°56'59" E	35.77'
C71	779.00'	24.37'	S 02°44'30" E	24.37'
C72	779.00'	50.89'	S 53°30'35" E	50.88'
C73	779.00'	50.89'	S 57°15'09" E	50.88'
C74	779.00'	50.89'	S 60°59'44" E	50.88'
C75	779.00'	11.87'	S 63°18'12" E	11.87'
C76	370.00'	9.06'	S 63°02'17" E	9.06'
C77	370.00'	45.03'	S 58°50'59" E	45.00'
C78	370.00'	41.12'	S 52°10'48" E	41.10'
C79	19.50'	4.05'	S 54°56'50" E	4.04'
C80	19.50'	25.34'	N 81°52'43" E	23.59'
C81	19.50'	3.68'	S 72°11'43" W	3.68'
C82	175.00'	2.46'	S 78°00'26" W	2.46'
C83	175.00'	57.80'	S 87°52'18" W	57.54'
C84	175.00'	41.88'	N 56°42'07" W	41.79'
C85	805.00'	13.88'	N 50°20'22" W	13.88'
C86	805.00'	35.00'	N 52°04'45" W	35.00'
C87	805.00'	35.00'	N 54°34'14" W	35.00'
C88	805.00'	35.00'	N 57°03'43" W	35.00'
C89	805.00'	35.00'	N 59°33'11" W	35.00'
C90	805.00'	35.00'	N 62°02'40" W	35.00'
C91	805.00'	6.32'	N 63°30'54" W	6.32'
C92	344.00'	37.03'	N 60°39'20" W	37.02'
C93	875.00'	7.30'	S 63°31'46" E	7.30'
C94	875.00'	38.05'	S 62°02'41" E	38.04'
C95	875.00'	38.05'	S 59°33'12" E	38.04'
C96	875.00'	38.05'	S 57°03'43" E	38.04'
C97	875.00'	38.05'	S 54°34'14" E	38.04'
C98	875.00'	38.04'	S 52°04'45" E	38.04'
C99	875.00'	15.15'	S 50°20'15" E	15.15'
C100	105.00'	33.69'	N 88°08'25" E	33.55'

FIRE LANE STRIPING CHART

STREET	FROM	TO	STRIPING SIDE	STA FROM	STA TO
HARWELL LOOP	SANDERS	RAINS	BOTH SIDES	0+00	2+08
HARWELL LOOP	RAINS	BREEDLOVE	NORTH	2+08	4+27
HARWELL LOOP	BREEDLOVE	ALEXANDER	NORTH	4+27	15+29
HARWELL LOOP	ALEXANDER	BREEDLOVE	WEST & SOUTH	15+29	30+53
HARWELL LOOP	BREEDLOVE	SANDERS	SOUTH	30+53	34+43
RAINS	HARWELL LOOP (SOUTH END)	HARWELL LOOP (NORTH END)	WEST	0+00	END
BREEDLOVE	HARWELL LOOP (SOUTH END)	HARWELL LOOP (NORTH END)	EAST	0+00	END
ALEXANDER	BREEDLOVE	HARWELL LOOP	SOUTH & WEST	0+00	END
SIMON	BREEDLOVE	ALEXANDER	NORTH	0+00	END

LINE TABLE

LINE #	BEARING	DISTANCE
L1	S 26°20'12" W	9.23'
L2	S 26°20'12" W	45.00'
L3	S 38°19'46" W	45.00'
L4	S 43°21'02" W	50.48'
L5	S 34°48'26" W	31.29'
L6	S 56°58'14" E	26.30'
L7	N 49°52'11" E	61.79'
L8	S 55°55'21" E	26.15'
L9	N 77°36'15" E	26.00'
L10	N 37°56'59" W	26.22'
L11	N 47°53'17" E	26.20'
L12	S 12°23'45" E	26.00'
L13	N 77°36'15" E	26.00'

BENCHMARK LIST: - DATUM - NAVD88

BENCHMARK 60004 (GOLF COURSE): SQUARE CUT ON NORTH EDGE OF CONCRETE CART PATH NORTHEAST OF GREEN FOR GOLF COURSE HOLE #8. ELEVATION = 754.38'

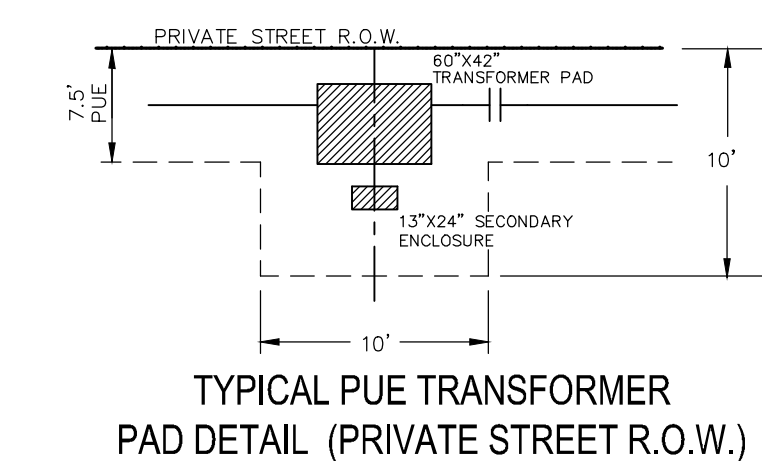
BENCHMARK 10037 (SECTION 3B): MAG NAIL W/ WACHER STAMPED LAI SET ON CONCRETE CURB IN THE NORTHEAST RIGHT-OF-WAY AT THE INTERSECTION OF FAIRWAY AND NEGLY. ELEVATION = 773.29'

BENCHMARK 60041 (SECTION 6H): MAG NAIL SET IN CONCRETE HEADWALL ON EAST SIDE OF SANDERS DRIVE. ELEVATION = 767.90'

BENCHMARK 60042 (SECTION 6H): MAG NAIL SET IN CURB AT NORTHEAST CORNER OF ISLAND MEDIAN OF SANDERS DRIVE. ELEVATION = 770.68'

BENCHMARK 60043 (SECTION 6H): MAG NAIL SET IN CURB OF ROUNDABOUT ON SANDERS DRIVE AT FAIRWAY. ELEVATION = 775.50'

BENCHMARK 60044 (SECTION 6H): MAG NAIL SET NEAR NORTH EDGE OF CONCRETE CART PATH. (NOTE: CART PATH IS CRACKING) ELEVATION = 760.32'



NOT TO SCALE

FILE: H:\SURVEY\PLUM_CRK_PHT\SECTION-6H\SEC-6H\WORK\PLATS\6H-1-1\PLUM-6H-1-FINAL_PLAT.DWG
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SCALE: N.T.S. CHECKED BY: JB FB #:
JOB #: 5549-05-002 DRAWING #: FINAL PLAT PLAN #: 1153

PCDP, LTD. REVIEW & APPROVAL DATE: INITIAL:
BIGELOW HOMES REVIEW & APPROVAL DATE: INITIAL:

PLOT DATE: Mar 15, 2016-8:17am

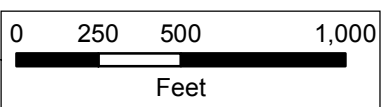
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SHEET 4 OF 4
FINAL PLAT
PLUM CREEK
PHASE I - SECTION 6H-1
HAYS COUNTY, TEXAS

PLAN NO. 1153

**Property Location
Plum Creek Section 6H-1
FP-15-012**



 Property Boundary

 Parcel Lines



CITY OF KYLE, TEXAS

Plum Creek Phase 1 Section 6H - Preliminary Plan

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Plum Creek Phase 1, Section 6H - Preliminary Plan (PP-15-005) 26.603 acres; 176 single family lots, 14 park lots and 3 landscape easement lots located within the 1500 block of Sanders. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 4-2 to recommend approval.

Other Information: Please see attachments.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

- Staff Memo
- Preliminary Plan
- Project Location Map



CITY OF KYLE

Community Development Department



To: Kyle Mayor & City Council
From: Howard J. Koontz, AICP
Community Development Director
Date: April 19, 2016
Re: Plum Creek Phase 1 Sections 6H (PP-15-005) and 6H-1 (FP-15-012)

At the regular April meeting of the Planning Commission, questions were asked by Commissioner Mike Wilson about flood elevations as they relate to the preliminary and final plats proposed for Section 6H in Plum Creek.

Specifically, the questions concerned not the spot elevations for proposed homes in the phase, but instead the location of the base flood elevations located in and across proposed street locations that serve the proposed properties.

Floodplain and flood way information indicated on the proposed plats are derived from FEMA map data, much of which is outdated and no longer accurately reflects current, post-development conditions in the field. Be that as it may, the requirements to place that data on the sheets is law.

There are two significant actions that have been undertaken on the project that make the plat code compliant today. (1) There has been a change to the elevations of the land adjacent to the waterway, where the paths of the street networks have been raised up above the flood elevations noted in the FEMA data, and (2) the spillway elevation of the pond that is downstream is no less than three (3) feet lower than the lowest proposed street pavement elevation, so that any water impounded in the area would begin clearing itself downstream long before there was a chance for ponding around these newest sections.

The plats as submitted are compliant with current code and are recommended by staff for approval.

PLUM CREEK PHASE I, SECTION 6H

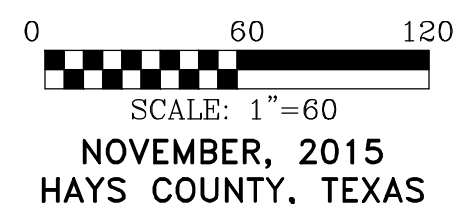
PRELIMINARY PLAT

FOR REVIEW ONLY

BEARING BASIS NOTES:

1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.
2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS; TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.999907.

SEE SHEET 3 FOR LEGEND, SHEET 4 FOR LINE TABLE AND SHEET 5 FOR CURVE TABLE.



FILE: H:\SURVEY\PLUM_CRK_PH1\SECTION-6H\SEC-6H\WORK\PLATS\PLUM-6H-PRELIMINARY PLAT.DWG	
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SCALE: 1"=60'	CHECKED BY: JB
JOB #: 5549-05-002	DRAWING #: PRELIM PLAT
PCDP, LTD. REVIEW & APPROVAL	DATE _____ INITIAL _____
BIGELOW HOMES REVIEW & APPROVAL	DATE _____ INITIAL _____



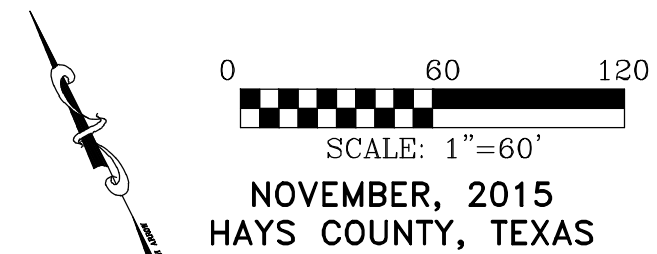
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SHEET 2 OF 5
PRELIMINARY PLAT
 PLUM CREEK
 PHASE I - SECTION 6H
 HAYS COUNTY, TEXAS

PLUM CREEK PHASE I, SECTION 6H

PRELIMINARY PLAT

FOR REVIEW ONLY



NOVEMBER, 2015
HAYS COUNTY, TEXAS

BEARING BASIS NOTES:

1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.
2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS; TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.999907.

SEE SHEET 4 OF 5 FOR LINE TABLE AND SEE SHEET 5 OF 5 FOR CURVE TABLE.

(69.779 AC.) PARCEL 3, EXHIBIT A
PLUM CREEK HOMEOWNERS ASSN, INC.
V.2574/P.220, O.P.R.H.C.TX.



A-290
HENRY LOLLAR SURVEY NO. 19

LEGEND

- 1/2" IRON ROD FOUND (Unless Otherwise Noted)
- LAI 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LAI" PREVIOUSLY SET
- LOOMIS 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LOOMIS" PREVIOUSLY SET
- 1/2" IRON ROD W/ PLASTIC CAP STAMPED "BCG" SET
- ⊙ MAG NAIL SET
- △ CALCULATED POINT
- P.U.E. (Public Utility Easement)
- - - L.E. (Landscape Easement)
- LOT & STREET R.O.W. LINE
- EASEMENT LINE
- FEMA FIRM PANEL FLOODPLAIN
- APPROVED CLOMR 100 YEAR FLOODPLAIN
- RECORD DEED LINE
- P.U.E. PUBLIC UTILITY EASEMENT
- P.U.S.E. PRIVATE UTILITY SERVICE EASEMENT
- R.O.W. RIGHT OF WAY
- L.E. LANDSCAPE EASEMENT
- () RECORD INFORMATION
- [] ADJOINER INFORMATION
- P.R.H.C.TX. PLAT RECORDS OF HAYS COUNTY, TEXAS
- O.P.R.H.C.TX. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
- CLOMR CONDITIONAL LETTER OF MAP REVISION

(69.779 AC.) PARCEL 3, EXHIBIT A
PLUM CREEK HOMEOWNERS ASSN, INC.
V.2574/P.220, O.P.R.H.C.TX.

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BIGELOW HOMES REVIEW & APPROVAL	DATE _____	INITIAL _____

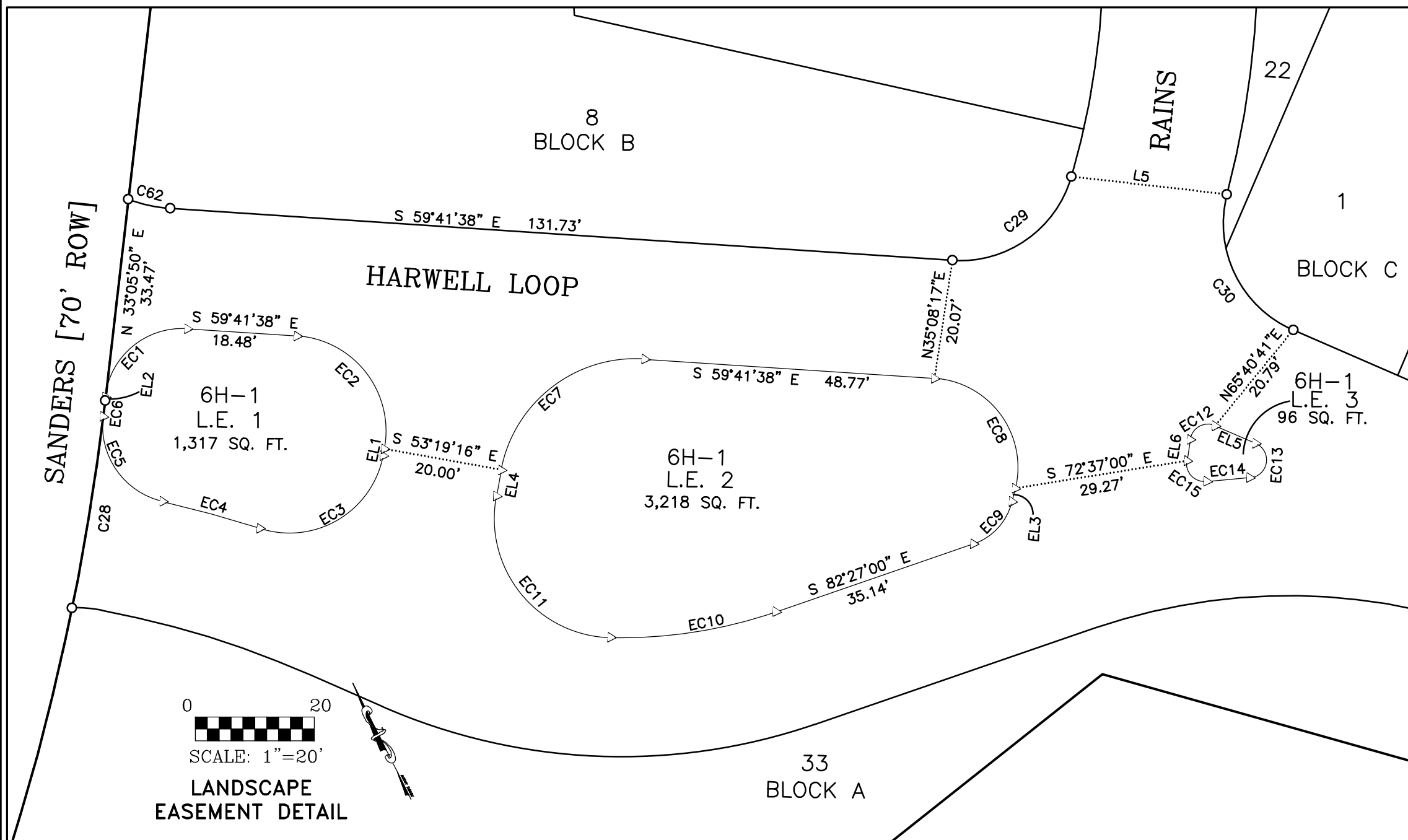


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SHEET 3 OF 5
PRELIMINARY PLAT
PLUM CREEK
PHASE I - SECTION 6H
HAYS COUNTY, TEXAS

PLUM CREEK PHASE I, SECTION 6H
PRELIMINARY PLAT

FOR REVIEW ONLY



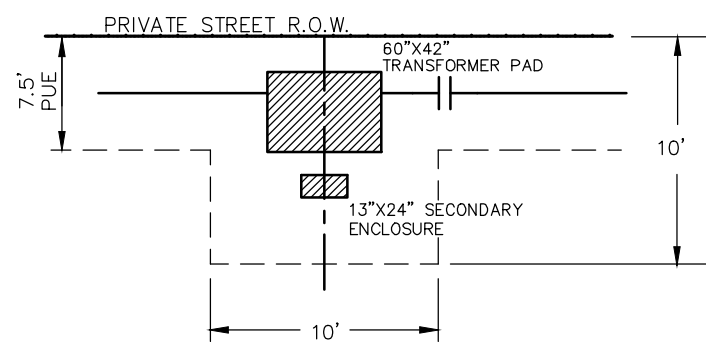
EASEMENT CURVE TABLE				
CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
EC1	13.00'	19.79'	N 76°42'06" E	17.93'
EC2	16.00'	27.10'	S 11°10'26" E	23.97'
EC3	16.00'	27.17'	S 85°59'49" W	24.02'
EC4	182.00'	16.94'	N 48°01'07" W	16.93'
EC5	13.00'	19.10'	N 08°36'16" W	17.42'
EC6	410.00'	2.71'	N 33°17'12" E	2.71'
EC7	23.00'	33.30'	N 78°49'34" E	30.47'
EC8	15.00'	26.13'	S 09°47'44" E	22.95'
EC9	10.00'	10.03'	S 68°49'35" W	9.61'
EC10	80.00'	28.25'	N 72°19'55" W	28.11'
EC11	20.00'	34.75'	N 12°26'02" W	30.54'
EC12	3.00'	5.47'	N 87°35'44" E	4.75'
EC13	3.00'	8.04'	S 36°37'33" W	5.84'
EC14	120.00'	7.23'	N 68°20'41" W	7.23'
EC15	3.00'	5.52'	N 17°22'29" W	4.77'

EASEMENT LINE TABLE		
LINE #	BEARING	DISTANCE
EL1	S 37°20'46" W	1.16'
EL2	N 33°05'50" E	0.60'
EL3	S 40°06'10" W	2.28'
EL4	N 37°20'46" E	4.48'
EL5	S 40°07'49" E	7.44'
EL6	N 35°19'17" E	3.62'

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	N 59°25'38" W	26.07'
L2	N 75°58'00" W	26.08'
L3	N 77°36'15" E	26.00'
L4	N 37°56'59" W	26.22'
L5	S 56°58'14" E	26.30'
L6	N 47°53'17" E	26.20'
L7	N 19°13'07" E	26.00'
L8	S 12°23'45" E	26.00'

NOTES:

- TOTAL ACREAGE: 26.603 ACRES.
- THE TOTAL AREA OF PRIVATE STREET RIGHT OF WAY (HARWELL LOOP, RAINS, GROSS, ALEXANDER AND SIMON) TO BE DEDICATED IN THIS SUBDIVISION IS 4.033 ACRES.
- TOTAL NUMBER OF LOTS: 193
176 SINGLE FAMILY LOTS
14 PARK LOTS
3 L.E. (LANDSCAPE EASEMENT) LOTS
- PLAT COMPLETELY CONFORMS WITH PLUM CREEK P.U.D. ORDINANCE 311, PLUM CREEK SUBDIVISION ORDINANCE 308, & ORDINANCE 690.
- ALL UTILITIES WITHIN THE SUBDIVISION WILL BE UNDERGROUND.
- ALL PRIVATE STREETS, ALLEYS, PEDESTRIAN RIGHT-OF-WAYS, PARK/DRAINAGE EASEMENT LOTS, ACCESS EASEMENTS, AND ALL LANDSCAPE EASEMENT AREAS SHOWN ON THIS PLAT SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION (HOA) OR ASSIGNS. IT SHALL BE THE HOA'S RESPONSIBILITY FOR KEEPING SAID RIGHT-OF-WAYS, LOTS AND LANDSCAPE EASEMENT AREAS NEATLY CUT, FREE OF DEBRIS AND FREE OF ALL TREE/BRUSH REGROWTH.
- PUBLIC UTILITY EASEMENTS ARE HEREBY DEDICATED AS SHOWN HEREON.
- A 7.5 FOOT PUBLIC UTILITY EASEMENT ADJACENT TO AND PARALLEL WITH ALL PUBLIC STREETS IS HEREBY DEDICATED.
- ACCESS TO ALL PRIVATE RIGHT-OF-WAYS HEREON IS GRANTED TO CITY OF KYLE FOR THE PURPOSE OF ACCESSING AND MAINTAINING CITY OWNED FACILITIES CONTAINED THEREIN.
- HOME BUILDER IS RESPONSIBLE FOR INSTALLING SIDEWALK IN COURTYARD AND ALONG FRONTAGE OF ALL PRIVATE OR PUBLIC STREETS. DEVELOPER IS RESPONSIBLE FOR SIDEWALK ALONG PARK STREET FRONTAGE.
- THE FINISHED FLOOR ELEVATION OF ALL STRUCTURES IN THIS SUBDIVISION SHALL BE ABOVE 764.5 FEET ELEVATION OR A MINIMUM OF EIGHT INCHES ABOVE THE HIGHEST GROUND GRADE ADJACENT TO THE FOUNDATION, WHICHEVER IS HIGHER.



**TYPICAL PUE TRANSFORMER
PAD DETAIL (PRIVATE STREET R.O.W.)**
NOT TO SCALE

BENCHMARK LIST: - DATUM - NAVD88

- BENCHMARK 60004 (GOLF COURSE):
SQUARE CUT ON NORTH EDGE OF CONCRETE CART PATH
NORTHEAST OF GREEN FOR GOLF COURSE HOLE #8.
ELEVATION = 754.38'
- BENCHMARK 10037 (SECTION 3B):
MAG-NAIL SET IN CONCRETE CURB IN THE NORTHEAST RIGHT-OF-WAY AT THE
INTERSECTION OF FAIRWAY AND NEGLLEY.
ELEVATION = 773.29'
- BENCHMARK 60041 (SECTION 6H):
MAG NAIL SET IN CONCRETE HEADWALL ON EAST
SIDE OF SANDERS DRIVE.
ELEVATION = 767.90'
- BENCHMARK 60042 (SECTION 6H):
MAG NAIL SET IN CURB AT NORTHEAST CORNER
OF ISLAND MEDIAN OF SANDERS DRIVE.
ELEVATION = 770.68'
- BENCHMARK 60043 (SECTION 6H):
MAG NAIL SET IN CURB OF ROUNDABOUT
ON SANDERS DRIVE AT FAIRWAY.
ELEVATION = 775.50'
- BENCHMARK 60044 (SECTION 6H):
MAG NAIL SET NEAR NORTH EDGE OF
CONCRETE CART PATH.
(NOTE: CART PATH IS CRACKING)
ELEVATION = 760.32'
- BENCHMARK 60045 (SECTION 6H):
COTTON GIN SPINDLE SET IN
13.5" LIVE OAK - TAG# 7638
ELEVATION = 763.22'
- BENCHMARK 60046 (SECTION 6H):
COTTON GIN SPINDLE SET IN LIMESTONE
CREEK BED NEAR HOLE #.8
ELEVATION = 752.68'

FIRE LANE STRIPING CHART

STREET	FROM	TO	STRIPING SIDE	STA FROM	STA TO
HARWELL LOOP	SANDERS	RAINS	BOTH SIDES	0+00	2+08
HARWELL LOOP	RAINS	BREEDLOVE	NORTH	2+08	4+27
HARWELL LOOP	BREEDLOVE	ALEXANDER	NORTH	4+27	15+29
HARWELL LOOP	ALEXANDER	BREEDLOVE	WEST & SOUTH	15+29	30+53
HARWELL LOOP	BREEDLOVE	SANDERS	SOUTH	30+53	34+43
RAINS	HARWELL LOOP (SOUTH END)	HARWELL LOOP (NORTH END)	WEST	0+00	END
BREEDLOVE	HARWELL LOOP (SOUTH END)	HARWELL LOOP (NORTH END)	EAST	0+00	END
ALEXANDER	BREEDLOVE	HARWELL LOOP	SOUTH & WEST	0+00	END
SIMON	BREEDLOVE	ALEXANDER	NORTH	0+00	END

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JOB #: 5549-05-002 DRAWING #: PRELIM PLAT PLAN #: 1152

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SHEET 4 OF 5
PRELIMINARY PLAT
PLUM CREEK
PHASE I - SECTION 6H
HAYS COUNTY, TEXAS

**PLUM CREEK PHASE I, SECTION 6H
PRELIMINARY PLAT**

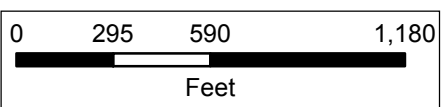
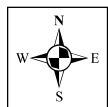
FOR REVIEW ONLY

CURVE TABLE				
CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C1	410.00'	192.20'	N 46°31'38" E	190.45'
C2	405.00'	52.74'	N 29°31'41" E	52.71'
C3	175.00'	78.12'	S 76°58'19" E	77.47'
C4	300.00'	408.53'	S 51°24'28" E	377.69'
C5	85.00'	133.52'	S 32°36'15" W	120.21'
C6	575.00'	230.19'	N 52°14'24" W	228.66'
C7	42.00'	7.85'	N 22°58'06" E	7.84'
C8	74.50'	22.68'	N 19°35'59" E	22.59'
C9	40.00'	34.26'	N 35°25'04" E	33.23'
C10	24.50'	4.55'	S 54°48'44" E	4.54'
C11	210.00'	41.92'	S 65°50'56" E	41.85'
C12	400.00'	133.58'	S 81°08'07" E	132.96'
C13	426.00'	142.26'	S 81°08'07" E	141.60'
C14	341.00'	466.05'	N 51°32'56" W	430.61'
C15	315.00'	430.51'	N 51°32'56" W	397.78'
C16	76.00'	119.38'	N 32°36'15" E	107.48'
C17	50.00'	78.54'	N 32°36'15" E	70.71'
C18	226.00'	227.41'	S 73°34'11" E	217.93'
C19	200.00'	201.24'	S 73°34'11" E	192.86'
C20	573.00'	189.98'	N 54°14'30" W	189.11'
C21	599.00'	198.60'	N 54°14'30" W	197.69'
C22	576.00'	208.36'	S 53°22'37" E	207.22'
C23	550.00'	150.85'	S 55°52'57" E	150.38'
C24	100.00'	64.44'	N 63°59'24" W	63.33'
C25	100.00'	74.48'	S 61°06'51" E	72.77'
C26	162.00'	36.80'	N 46°17'10" W	36.72'
C27	24.50'	5.00'	N 58°38'44" W	5.00'
C28	410.00'	35.26'	N 35°33'40" E	35.25'
C29	19.50'	26.46'	N 81°25'47" E	24.48'
C30	19.50'	27.62'	S 00°26'45" W	25.37'
C31	137.00'	50.18'	N 32°03'35" E	49.90'
C32	163.00'	55.35'	N 31°17'41" E	55.09'
C33	251.00'	95.43'	S 32°27'30" W	94.86'
C34	225.00'	85.55'	S 32°27'30" W	85.03'
C35	225.00'	66.81'	N 34°50'37" E	66.57'
C36	251.00'	74.53'	N 34°50'37" E	74.26'
C37	19.50'	29.43'	N 16°53'48" W	26.71'
C38	19.50'	29.36'	S 69°28'12" W	26.66'
C39	19.50'	30.63'	N 26°34'05" W	27.58'
C40	19.50'	30.63'	S 63°25'55" W	27.58'
C41	19.50'	29.37'	S 65°17'04" W	26.67'
C42	19.50'	30.63'	S 26°34'05" E	27.58'
C43	19.50'	29.39'	S 87°49'46" W	26.68'
C44	19.50'	30.44'	S 04°48'16" E	27.44'
C45	370.00'	95.21'	S 56°22'05" E	94.95'
C46	344.00'	85.38'	S 56°37'47" E	85.16'
C47	779.00'	188.91'	N 56°47'33" W	188.45'
C48	805.00'	195.22'	N 56°47'33" W	194.74'
C49	201.00'	184.35'	S 76°07'13" E	177.96'
C50	175.00'	160.51'	S 76°07'14" E	154.94'
C51	19.50'	30.63'	N 57°23'45" W	27.58'
C52	19.50'	30.63'	N 32°36'15" E	27.58'
C53	19.50'	30.63'	N 32°36'15" E	27.58'
C54	19.50'	30.63'	S 57°23'45" E	27.58'
C55	200.00'	283.63'	N 53°01'24" W	260.46'
C56	226.00'	320.51'	N 53°01'24" W	294.32'
C57	215.00'	82.86'	S 82°36'34" E	82.35'
C58	241.00'	92.89'	S 82°36'34" E	92.31'
C59	24.50'	4.75'	N 65°40'57" W	4.74'
C60	19.50'	31.58'	S 88°57'12" E	28.24'
C61	19.50'	31.54'	S 01°41'06" E	28.21'
C62	24.50'	7.25'	S 51°12'38" E	7.23'
C63	551.00'	23.36'	S 41°20'51" E	23.35'
C64	300.00'	183.93'	S 72°51'19" E	181.07'
C65	300.00'	72.07'	S 48°24'30" E	71.90'
C66	300.00'	72.80'	S 34°34'24" E	72.63'
C67	300.00'	72.93'	S 20°39'26" E	72.75'
C68	300.00'	6.79'	S 13°02'40" E	6.79'
C69	85.00'	93.55'	S 19°08'03" W	88.90'
C70	85.00'	39.97'	S 64°08'03" W	39.60'
C71	410.00'	22.59'	N 58°22'43" E	22.59'
C72	410.00'	134.35'	N 47°24'45" E	133.75'
C73	19.50'	27.45'	N 66°39'51" E	25.24'
C74	405.00'	8.49'	N 32°39'30" E	8.49'
C75	19.50'	1.91'	S 70°12'08" E	1.91'
C76	405.00'	13.37'	N 26°44'33" E	13.37'
C77	225.00'	11.21'	S 27°45'51" W	11.21'
C78	225.00'	55.60'	S 36°16'16" W	55.46'
C79	251.00'	39.58'	S 38°50'00" W	39.54'
C80	251.01'	22.95'	S 31°41'50" W	22.94'
C81	251.00'	32.91'	S 25°19'19" W	32.88'
C82	137.00'	41.90'	S 30°19'43" W	41.74'
C83	137.00'	8.28'	S 40°49'20" W	8.28'
C84	19.50'	18.57'	N 12°50'53" W	17.88'
C85	19.50'	9.05'	N 27°43'45" E	8.97'
C86	163.00'	53.44'	N 31°37'54" E	53.20'
C87	163.00'	1.92'	N 21°54'11" E	1.92'
C88	225.00'	13.90'	N 23°20'08" E	13.90'
C89	225.00'	69.85'	N 33°59'56" E	69.57'
C90	225.00'	1.80'	N 43°07'18" E	1.80'

CURVE TABLE				
CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C91	251.00'	25.77'	N 40°24'34" E	25.76'
C92	251.00'	44.53'	N 32°23'10" E	44.47'
C93	251.00'	4.24'	N 26°49'13" E	4.24'
C94	300.00'	54.97'	S 26°30'29" W	54.90'
C95	300.00'	45.35'	S 36°05'17" W	45.31'
C96	300.00'	22.18'	S 42°32'13" W	22.18'
C97	551.00'	20.86'	N 41°28'38" W	20.86'
C98	551.00'	2.49'	N 40°15'46" W	2.49'
C99	19.50'	11.84'	N 30°37'44" W	11.66'
C100	19.50'	19.70'	N 15°42'40" E	18.87'
C101	19.50'	25.34'	N 81°52'43" E	23.59'
C103	19.50'	4.05'	S 54°56'50" E	4.04'
C104	19.50'	19.25'	N 50°24'51" E	18.48'
C105	19.50'	10.12'	S 86°26'18" W	10.01'
C106	19.50'	9.92'	N 56°59'25" W	9.82'
C107	19.50'	20.71'	N 11°59'25" W	19.75'
C108	19.50'	20.71'	N 48°51'15" E	19.75'
C109	19.50'	9.92'	S 86°08'45" E	9.82'
C110	426.00'	37.82'	S 74°06'42" E	37.81'
C111	426.00'	44.91'	S 79°40'31" E	44.89'
C112	426.00'	53.13'	S 86°16'04" E	53.09'
C113	426.00'	6.41'	N 89°43'43" E	6.41'
C114	315.00'	23.87'	S 88°31'54" E	23.86'
C115	315.00'	68.49'	S 80°07'56" E	68.35'
C116	315.00'	77.35'	S 66°52'10" E	77.15'
C117	315.00'	78.05'	S 52°44'14" E	77.85'
C118	315.00'	78.05'	S 38°32'28" E	77.85'
C119	315.00'	73.33'	S 24°46'26" E	73.17'
C120	315.00'	31.39'	S 15°15'01" E	31.37'
C121	341.00'	21.40'	N 14°11'36" W	21.39'
C122	341.00'	54.97'	N 20°36'32" W	54.91'
C123	341.00'	55.06'	N 29°51'09" W	55.00'
C124	341.00'	55.06'	N 39°06'13" W	55.00'
C125	341.00'	279.56'	N 67°12'57" W	271.80'
C126	210.00'	10.14'	N 70°11'04" W	10.14'
C127	210.00'	31.78'	N 64°27'55" W	31.75'
C128	76.00'	37.67'	N 56°25'21" E	37.28'
C129	76.00'	45.49'	N 25°04'35" E	44.81'
C130	76.00'	26.96'	N 02°14'00" W	26.82'
C131	76.00'	9.26'	N 74°06'46" E	9.26'
C132	19.50'	21.66'	S 19°25'17" W	20.56'
C133	19.50'	8.97'	S 64°25'17" W	8.89'
C134	19.50'	8.97'	S 89°12'47" E	8.89'
C135	19.50'	21.66'	S 44°12'47" E	20.56'
C136	19.50'	26.95'	S 27°11'43" W	24.85'
C137	19.50'	3.68'	S 72°11'43" W	3.68'
C138	200.00'	43.38'	S 83°49'03" W	43.29'
C139	200.00'	74.82'	N 79°15'09" W	74.38'
C140	200.00'	80.50'	N 57°00'17" W	79.96'
C141	200.00'	2.55'	N 45°06'31" W	2.55'
C142	226.00'	88.93'	S 56°00'58" E	88.35'
C143	226.00'	56.48'	S 74°26'52" E	56.33'
C144	226.00'	56.73'	S 88°47'56" E	56.59'
C145	226.00'	25.27'	N 80°48'25" E	25.25'
C146	130.00'	135.89'	S 63°42'16" E	129.79'
C147	105.00'	36.16'	S 87°28'07" W	35.98'
C148	875.00'	212.69'	N 56°48'17" W	212.17'
C149	311.00'	56.41'	S 76°45'53" E	56.34'
C150	370.00'	41.12'	S 52°10'48" E	41.10'
C151	370.00'	45.03'	S 58°50'59" E	45.00'
C152	370.00'	9.06'	S 63°02'17" E	9.06'
C153	550.00'	1.82'	N 63°38'42" W	1.82'
C154	550.00'	52.91'	N 60°47'39" W	52.89'
C155	550.00'	53.83'	N 55°14'04" W	53.80'
C156	550.00'	42.29'	N 50°13'40" W	42.28'
C157	599.00'	44.44'	N 46°52'08" W	44.43'
C158	599.00'	45.01'	N 51°08'49" W	45.00'
C159	599.00'	45.01'	N 55°27'08" W	45.00'
C160	599.00'	45.01'	N 59°45'28" W	45.00'
C161	599.00'	19.13'	N 62°49'30" W	19.13'
C162	201.00'	35.82'	S 54°56'59" E	35.77'
C163	201.00'	49.11'	S 67°03'14" E	48.99'
C164	201.00'	38.46'	S 79°32'04" E	38.40'
C165	201.00'	38.46'	N 89°30'13" E	38.40'
C166	201.00'	22.52'	N 80°48'49" E	22.50'
C167	175.00'	2.46'	S 78°00'26" W	2.46'
C168	175.00'	57.80'	S 87°52'18" W	57.54'
C169	175.00'	58.36'	N 73°06'46" W	58.09'
C170	175.00'	41.88'	N 56°42'07" W	41.79'
C171	200.00'	47.53'	N 86°50'35" W	47.42'
C172	200.00'	53.85'	N 72°19'20" W	53.68'
C173	200.00'	53.85'	N 56°53'48" W	53.68'
C174	200.00'	53.85'	N 41°28'15" W	53.68'
C175	200.00'	74.57'	S 23°04'37" E	74.14'
C176	226.00'	34.11'	N 16°43'10" W	34.08'
C177	226.00'	34.60'	N 25°25'46" W	34.57'
C178	226.00'	60.54'	N 37°29'23" W	60.36'
C179	226.00'	55.14'	N 52°09'10" W	55.00'
C180	226.00'	63.96'	N 67°14'57" W	63.74'
C181	226.00'	62.15'	N 83°14'04" W	61.95'

CURVE TABLE				
CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C183	241.00'	3.77'	S 72°00'59" E	3.77'
C184	241.00'	35.10'	S 76°38'11" E	35.06'
C185	241.00'	31.63'	S 84°34'08" E	31.61'
C186	241.00'	22.38'	N 89°00'36" E	22.38'
C187	215.00'	23.28'	S 89°27'04" W	23.27'
C188	215.00'	48.87'	N 80°56'08" W	48.76'
C189	215.00'	10.72'	N 72°59'46" W	10.72'
C190	344.00'	37.03'	S 60°39'20" E	37.02'
C191	344.00'	48.34'	N 53°32'44" W	48.30'
C192	215.00'	13.35'	S 88°55'23" E	13.35'
C193	215.00'	100.91'	S 73°41'54" E	99.99'
C194	215.00'	87.21'	S 48°37'53" E	86.62'
C195	215.00'	92.37'	S 24°42'11" E	91.66'
C196	215.00'	16.29'	N 88°31'54" W	16.29'
C197	215.00'	46.74'	N 80°07'56" W	46.65'
C198	215.00'	52.79'	N 66°52'10" W	52.66'
C199	215.00'	53.27'	N 52°44'14" W	53.13'
C200	215.00'	53.27'	N 38°32'28" W	53.13'
C201	215.00'	50.05'	N 24°46'26" W	49.94'
C202	215.00'	21.42'	N 15°15'01" W	21.41'
C203	875.00'	7.30'	S 63°31'46" E	7.30'
C204				

**Property Location
Plum Creek Section 6H
PP-15-005**



 Property Boundary

 Parcel Lines



CITY OF KYLE, TEXAS

Aqua

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Consider and Possible Action to approve Aqua/Kyle Wastewater Effluent Reclamation Project Agreement, and Settlement Agreement and Mutual Release. ~ *J. Scott Sellers, City Manager*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Wastewater Effluent Reclamation Project Agreement
- Settlement Agreement

**AQUA/KYLE WASTEWATER EFFLUENT RECLAMATION
PROJECT AGREEMENT**

STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS:

COUNTY OF HAYS §

WHEREAS, the City of Kyle, Texas, a Texas municipal corporation (hereinafter referred to as “Kyle”), and Aqua Operations, Inc., a Delaware corporation (hereinafter referred to as “Aqua”), enter into this Aqua/Kyle Wastewater Effluent Reclamation Project Agreement (hereinafter referred to as the “Wastewater Reclamation Agreement” or “Contract”);

WHEREAS, Aqua and Kyle desire to undertake a wastewater effluent reclamation project, mutually beneficial to both Aqua and Kyle, to explore the feasibility of converting treated wastewater effluent from Kyle’s wastewater treatment plant (the “WWTP”) to potable water and using such water for purposes of storage, recharge, replenishment in, and recovery/retrieval for beneficial use from the Edwards Aquifer or any other aquifer; and

WHEREAS, Kyle and Aqua enter into this Wastewater Reclamation Agreement so as to set forth the parties’ respective rights and obligations in connection with the intended aquifer storage, recharge, and replenishment and other reclamation project activities;

NOW, THEREFORE, IN CONSIDERATION OF BENEFITS, MUTUAL COVENANTS AND CONSIDERATIONS SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS:** As used in this Contract, the following terms, when capitalized, shall have the following meanings.
 - A. “Aqua” means Aqua Operations, Inc., a Delaware corporation.
 - B. “Chapter 26” means Chapter 26 of the Texas Water Code, as the same may be amended from time to time.
 - C. “Delivery Point” means the point at which Aqua shall connect the WWTP with Aqua’s equipment, pipelines, and facilities; the Delivery Point shall be located in close proximity to the point where Kyle currently allows Effluent diversion for third-party irrigation use on the Plum Creek Golf Club golf course and prior to the point where Kyle discharges Effluent to Plum Creek.
 - D. “Effective Date” means January 1, 2016, but this Contract shall not be effective as of that date unless and until this Contract is fully executed by both Parties and ratified by the Kyle City Council and Aqua board of directors as applicable in accordance with the ratification requirement terms herein.
 - E. “Effluent” means wastewater that has been treated at the WWTP.

- F. “Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy or terrorist, orders or actions of any kind of government of the United States, the State of Texas or any local government or political subdivision, or any civil or military authority, insurrections, riots, terrorist act or incident, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to pumps, booster stations, treatment and /or storage facilities, machinery, pipelines, canals, or other structures, partial or entire failure of the Effluent supply including pollution (accidental or intentional), and any inability on the part of Kyle to deliver Effluent to Aqua or for Aqua to perform Effluent reclamation on account of any other cause not reasonably within the control of either Aqua or Kyle.
- G. “Kyle” means the City of Kyle, Texas, a Texas municipal corporation.
- H. “Parties” means Kyle and Aqua.
- I. “Project” means the Aqua/Kyle Wastewater Effluent Reclamation Project consisting of: (1) Aqua exploring whether converting the Effluent to potable water that may be injected into and stored in an aquifer, using that water as recharge and replenishment for same, and subsequently retrieving that water for beneficial use is feasible in light of technical, legal, cost, and other constraints; (2) Kyle making at least 750,000 gallons per day of Effluent, as defined herein, available to Aqua at the Delivery Point; (3) Aqua financing, developing, designing, constructing, operating, and maintaining all equipment necessary to take delivery of Effluent, as defined herein, from Kyle at the Delivery Point if Aqua so requests; (4) Aqua financing, developing, designing, constructing, operating, and maintaining all equipment, pipelines, and facilities that may be necessary to convert any Effluent taken by Aqua at the Delivery Point to potable water that may be injected into and stored in an aquifer, used as recharge and replenishment for same, and subsequently retrieved for beneficial use in accordance with all applicable law; (5) Aqua completing such reclamation of WWTP Effluent that may be feasible in accordance with technical, legal, cost and other constraints that may be identified by Aqua; (6) Aqua obtaining all necessary permits or other regulatory approvals needed for such reclamation of WWTP Effluent with Kyle’s cooperation if Aqua deems necessary; and (7) Aqua securing groundwater withdrawal credits from the Edwards Aquifer Authority or any other applicable regulated aquifer groundwater conservation district in the name of and for the benefit of Kyle, Aqua, or both as Aqua deems appropriate, or otherwise ensuring that the re-treated, injected, stored and recovered water may be used beneficially in accordance with this Contract and, if executed, the Reclaimed Water Use Agreement included as **Exhibit 1**.
- J. “Reclaimed Water Use Agreement” means the draft form Reclaimed Water Use Agreement between Kyle and Aqua attached to this Contract as **Exhibit 1**.

- K. “TPDES Permit” means Kyle’s TPDES Permit No. WQ0011041002 issued by TCEQ pursuant to Chapter 26, Texas Water Code, currently expiring on February 1, 2020 and as may be renewed or amended.
- L. “WWTP” means the wastewater treatment plant located approximately 2.7 miles northwest of the intersection of State route 21 and Farm-to-Market Road 2720, in Hays County, Texas 78640.

2. RATIFICATION:

- A. The acceptance and signing of this Contract by a representative of Kyle is subject to ratification and approval by Kyle’s city council, and the acceptance and signing of this Contract by a representative of Aqua is subject to ratification and approval by the board of directors of Aqua.
- B. Kyle represents to Aqua that Kyle’s city council has the lawful authority to ratify and approve this Contract and to fully obligate Kyle under this Contract, and Aqua represents to Kyle that Aqua’s board of directors holds full legal authority to ratify and approve this Contract and to fully obligate Aqua under this Contract.
- C. The Kyle city council will not consider whether to ratify this Contract unless and until Kyle is provided an original signed and sealed certificate evidencing that Aqua’s board of directors has unconditionally approved and ratified this Contract and Aqua has submitted a copy of its HB 1295 form to Kyle.
- D. This Contract shall be null and void unless ratified by both the Kyle city council and the Aqua board of directors within forty-five days after this Contract is signed by representatives of Kyle and Aqua.

3. DUTIES OF KYLE.

- A. Kyle hereby grants Aqua:
 - i. An option to perform, at Aqua’s sole cost, the following activities: to construct equipment Aqua deems necessary to take delivery of Effluent from Kyle at the Delivery Point for use in the Project, to obtain the necessary permits to enable Aqua to use the Effluent in the Project, facilitate an interlocal cooperation contract between Kyle and the EAA or other contract under the terms of this Contract that accomplishes Project goals if deemed necessary by Aqua for the Project, and to take any other Project steps Aqua deems necessary for the substantial completion of a fully operational Project (collectively, the “Triggering Events”).
 - ii. The exclusive right to prepare and file an application in Kyle’s name with the EAA for a permit under section 1.44 of the Edwards Aquifer Authority Act, as described in more detail in Section 3(E) of this Contract, if Aqua determines in its sole discretion that such a contract is necessary for the Project.

iii. An option to enter into the Reclaimed Water Use Agreement with the same payment terms and in substantially the same form as the Reclaimed Water Use Agreement document included as **Exhibit 1** to this Contract, the exercise of such option being subject to Aqua completing each of the following:

a. Causing an amendment of the EAA Act, the adoption of rules by the EAA, or otherwise effecting a regulatory circumstance whereby persons other than political subdivisions may obtain recharge credits for activities such as the Project if Aqua determines to locate the Project within the EAA's jurisdiction;

b. Obtaining all permits required for the construction and operation of the Project;

c. Completion of the construction and acquisition of the facilities and equipment for the Project to the point of a completely functional and operational Project;

d. Transfer or assignment to Aqua of Kyle's rights and obligations under any contract with the EAA or permit from the EAA in Kyle's name relating to the Project if the Project is located within the EAA's jurisdiction and such is deemed necessary for the Project; and

e. Resolution of all claims then pending against the City by third-parties relating to this Contract, if any, to the reasonable satisfaction of the City.

Aqua will not have the right to demand or take Effluent prior to the execution of the Reclaimed Water Use Agreement except as provided in Section 3(F) of this Contract.

B. Kyle hereby grants Aqua the following with respect to WWTP property access:

i. Access for Design. Upon reasonable advance notice to Kyle, Kyle shall allow Aqua's representatives, engineers and contractors to enter the WWTP property for the purpose of designing equipment to take delivery of Effluent from the Delivery Point. This access will be allowed only in the company of Kyle representatives and only during normal business days and hours. Any Aqua representative, engineer, or contractor entering the WWTP property shall strictly comply with Kyle's safety requirements and shall provide evidence of insurance satisfactory to Kyle.

ii. Easement for Construction and Operation. If the Delivery Point cannot feasibly be located outside the boundaries of the Kyle WWTP property, then prior to Aqua initiating construction of facilities required to take Effluent from the Delivery Point to the edge of the WWTP property, Kyle and Aqua will designate a mutually agreeable area for the location of those facilities. Upon such designation, Kyle shall grant Aqua a non-exclusive easement in a form mutually agreeable to both Kyle and Aqua that provides Aqua rights to construct, operate, and maintain the facilities required to take Effluent from the Delivery Point to the

WWTP property boundaries. The easement will not and should not be construed to grant Aqua any right to manipulate valves, timers, or other equipment upstream of the Delivery Point. Upon written request by Kyle, Aqua shall construct an intruder resistant fence around the area subject to the easement. Kyle reserves the right to fence or otherwise segregate the easement area where the facilities are located from the remainder of the WWTP property at Aqua's expense if Aqua fails to do so prior to complete construction of the facilities. If Kyle grants an easement to Aqua under this Section 3(B)(ii) and this Contract expires prior to Aqua completing all the Triggering Events, Aqua shall sign and file a release of the easement in the real property public records of Hays County.

- C. Following the Effective Date of this Contract, Kyle shall not grant any person other than Aqua the right to take delivery of any Effluent if such grant will make it impossible for Kyle to supply Aqua up to 750,000 gallons per day of Effluent under the Reclaimed Water Use Agreement.
- D. Following the Effective Date of this Contract, Kyle agrees that it will not take actions that duplicate Project activities, enter into any agreement with any other party with terms that are inconsistent with the obligations of the parties under this Agreement, use the Effluent to obtain aquifer withdrawal credits from a regulatory authority or by other means through an aquifer storage, recharge or recovery project, or otherwise achieve the goals contemplated by the Project without Aqua or Aqua's written agreement in recognition of Aqua's sole and exclusive Project rights granted to Aqua by Kyle through this Agreement. In such event, Kyle shall reimburse Aqua for all its Project costs and expenses, including legal and consulting expenses.
- E. If Aqua determines in its sole discretion that the Project should or must be structured as an Artificial Recharge project under Section 1.44 of the Edwards Aquifer Authority ("EAA") Act (the "Act") and rules (as such Act and rules may be amended) in order to accomplish Project goals, Kyle agrees to use best efforts to execute an interlocal cooperation contract with the EAA under Chapter 791 of the Texas Government Code facilitated by Aqua and shall not unreasonably withhold agreement to same. The terms of the agreement with the EAA shall be consistent with the terms of this Agreement and the Reclaimed Water Use Agreement. If Kyle becomes party to any agreement for an Artificial Recharge project utilizing effluent from the WWTP under Section 1.44 of the EAA Act without the consent of Aqua or on terms to which Aqua has not agreed or consented, Kyle shall reimburse Aqua for all its Project expenses, including legal and consulting expenses. Kyle appoints Aqua as its agent for the limited purpose of preparing and filing an application with the EAA and obtaining EAA's approval of the application, all at Aqua's sole expense. Kyle agrees to work with Aqua to explore potential legislative and regulatory changes that might be implemented to eliminate the need for Kyle involvement in such an interlocal cooperation contract to accommodate an EAA jurisdiction Project.

- F. Kyle shall allow Aqua to take delivery of up to 750,000 gallons per day of Effluent for the purpose of bench tests, pilot projects, facility testing, and start-up of the Project prior to the execution of the Reclaimed Water Use Agreement, but the volume shall be limited to the volume required for such purposes and such use, if any, shall be subject to the same limitations, conditions, and agreements as set forth in the Reclaimed Water Use Agreement; provided, however, there will be no charge for Aqua to take delivery of such limited volumes of Effluent except as provided in Section 6(B) if applicable.

4. DUTIES OF AQUA.

- A. Aqua shall be responsible for developing any feasibility studies relating to the Project. However, the need for such studies shall be determined solely by Aqua and nothing in this provision shall obligate Aqua to seek or obtain any such feasibility studies.
- B. Aqua shall be responsible for any permitting or other regulatory approvals required for the Project. However, the need for such permitting or regulatory approvals shall be determined solely by Aqua and nothing in this provision shall obligate Aqua to seek or obtain any such permitting or regulatory approvals if Aqua, in its sole discretion, determines the cost or likelihood of obtaining such permits or approvals is excessive, impractical, or not feasible. Kyle shall not be entitled to utilize any studies or reports prepared by Aqua, regardless of when such documents were shared with Kyle, unless Aqua makes a determination not to seek or obtain permitting or regulatory approvals for the Project and Kyle reimburses Aqua for all of Aqua's out of pocket expenses for obtaining all such reports or studies, including legal and consulting expenses.
- C. Aqua shall be responsible for the financing, development, design, construction, operation, and maintenance of any equipment necessary for Aqua to take delivery of Effluent made available at the Delivery Point for the Project that Aqua may request. However, the decision whether to commence any such Project tasks shall be made solely by Aqua and nothing in this provision shall obligate Aqua to make any initial or additional installation of equipment for the Project. In making such determinations Aqua's considerations may include, but are not limited to, the overall financial viability of the Project and whether the terms of any third party agreement by Kyle or any interlocal agreement between Kyle and the EAA adversely impact Aqua. Instances of Force Majeure may be determined by Aqua to adversely impact Project feasibility. Aqua shall ensure that its development, design, construction, operation, and maintenance of equipment intended to take delivery of Effluent at the Delivery Point for Project uses, if any, does not interfere with or impair Kyle's intake of untreated wastewater at the WWTP, treatment of such wastewater, or discharge or conveyance of any Effluent not conveyed to Aqua via the Delivery Point.
- D. Aqua shall be responsible for any conveyance, discharge, storage, recharge, replenishment, delivery, sale, or other use of Effluent after Aqua successfully

takes delivery of same from Kyle at the Delivery Point if Aqua requests such Effluent delivery. Nothing in this provision shall obligate Aqua to request or accept Effluent delivery by Kyle at the Delivery Point.

- E. If Aqua determines in its sole discretion that the Project should or must be structured as an Artificial Recharge project under Section 1.44 of the Edwards Aquifer Authority (“EAA”) Act (the “Act”) and rules (as such Act and rules may be amended), Aqua agrees to use best efforts to facilitate execution of an interlocal cooperation contract under Chapter 791 of the Texas Government Code between Kyle and EAA. Aqua shall have the right to review and approve or reject the terms of any such interlocal agreement. In the event Aqua does not approve or consent to the terms of such interlocal agreement, Aqua may terminate this Agreement without further obligation to Kyle and the reimbursement provisions of Section 3(E) shall apply. Aqua agrees to work with Kyle to explore potential legislative and regulatory changes that might be implemented to eliminate the need for Kyle involvement in such an interlocal cooperation contract to accommodate an EAA jurisdiction Project.

5. CONSIDERATION.

Part of the consideration for this Agreement is the mutual release of all claims in Cause No. 13-0894, Aqua Operations, Inc. v. City of Kyle, Texas, in the 428th Judicial District Court, Hays County, Texas. Other consideration for this Agreement is Aqua’s commitment of financial resources to the Project in furtherance of Aqua’s Project reclamation services for Kyle.

6. TERM AND TERMINATION.

- A. Except as provided by Section 6(B), this Contract shall expire the earlier of either: (i) April 30, 2021; or the (ii) execution of the Reclaimed Water Use Agreement.
- B. Aqua shall have the option to extend the expiration date of this Contract to April 30, 2022 by notifying Kyle in writing that it so elects this option on or before March 31, 2021 and by paying Kyle an option fee in the amount of \$12,500 if Aqua anticipates at the time of such notice that the following conditions will exist as of April 30, 2022: (i) Aqua has obtained the permit(s) required to construct and operate the Project; (ii) the permit(s) is subject to an appeal; (iii) Aqua has deferred commencement of Project construction as a result of the appeal and, thus, the Project is not operational; and (iv) Aqua has completed all the Triggering Events except completion of an operational Project. Thereafter, Aqua may extend this Contract for two additional one year periods, so long as within each year Aqua anticipates the conditions described above will exist as of April 30, Aqua notifies Kyle in writing by that it so elects this option by March 31, and Aqua pays the annual option fee prior to March 31.
- C. Aqua may terminate this Contract at any time upon written notice to Kyle.

D. In the event this Contract terminates and any claims relating to this Contract are filed with or against Kyle by third-parties during the term of this Contract or within the time allowed for such claims under applicable law, Section 7 of this Contract, relating to indemnification, shall survive such termination until the claim is resolved.

7. **INDEMNIFICATION.**

AQUA SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS KYLE, AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, ATTORNEYS, AFFILIATES, BENEFICIARIES, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITIES AND OBLIGATIONS ARISING FROM ANY AND ALL THIRD-PARTY CLAIMS ARISING FROM (i) THIS CONTRACT; OR (ii) AQUA'S EXERCISE OF ITS RIGHTS AND PRIVILEGES PURSUANT TO THIS CONTRACT.

8. NOTICES. All notices called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, or after being delivered to the other party by registered or certified mail, return receipt requested, or by courier mail service, addressed as follows unless and until written notice is provided to the other Party of a change in address:

AQUA OPERATIONS, INC.:

Aqua Operations, Inc.
1106 Clayton Lane
Suite 400W
Austin, Texas 78723

CITY OF KYLE:

City of Kyle
c/o City Secretary
100 W. Center Street
Kyle, Texas 78640

9. **GENERAL PROVISIONS.**

A. CAPTIONS. The captions used herein are for convenience purposes only and shall not affect the construction or interpretation of this Contract.

B. NUMBER AND GENDER. Any reference herein to the singular number shall be deemed to include, where the context so requires, the plural and vice-versa, and any reference herein to any gender shall be deemed to include the male, female and neuter genders.

- C. **SUCCESSORS AND ASSIGNS.** This Contract shall be binding on the representatives, successors, and assigns of both Parties. The following provisions shall apply to assignments.
- i. Except as otherwise authorized by this Section 9(C), neither Party may sell, assign, transfer, or otherwise dispose of their interests or obligations in this Contract to a third-party without the written approval of the other Party, which approval will not be unreasonably withheld or delayed.
 - ii. Subject to the requirements of Section 9(C)(iv) below, notwithstanding the provisions of Section 9(C)(i) above, Kyle shall be entitled to assign its obligations pursuant to this Contract to any qualified private corporate or public governmental entity or political subdivision authorized to undertake the same type of obligations of Kyle set forth in this Contract without Aqua's consent so long as such assignment does not adversely affect the Project and assignee has agreed to assume and fulfill all Contract obligations of Kyle.
 - iii. Subject to the requirements of Subsection 9(C)(iv) below, notwithstanding the provisions of Section 9(C)(i) above, Aqua shall be entitled to assign its obligations pursuant to this Contract to any other qualified private corporate entity, including another entity owned by Aqua America, Inc., or to a public governmental entity or political subdivision authorized to undertake the same type of obligations of Aqua set forth in this Contract without Kyle's consent so long as such assignment does not adversely affect the Project and assignee has agreed to assume and fulfill all Contract obligations of Aqua.
 - iv. No assignment of this Contract shall be effective until the non-assigning Party receives a copy of the written assignment executed by the assignee, affirmatively and unequivocally assuming the obligation to fully, diligently, and timely perform all of the obligations of the assigning Party.
 - v. Assignment of this Contract shall relieve the assigning Party of its prospective obligations and/or liability pursuant to this Contract; provided, however, that the assigning Party shall remain liable for any and all obligations accruing prior to the Effective Date of the assignment.
- D. **ATTORNEYS' FEES.** In the event that either Party hereto shall bring an action to enforce the terms hereof, to seek damages for breach of the terms hereof, or to declare rights hereunder, the prevailing party in any such action shall be entitled to its court costs and reasonable attorneys' fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited

to, attorneys' fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

- E. **APPLICABLE LAW.** This Contract shall be governed by, construed and interpreted in accordance with, and subject to the laws of the State of Texas.
- F. **NO ORAL AGREEMENT; THIS IS THE COMPLETE AGREEMENT.** Except as otherwise stated in this Contract, this written contract contains the complete agreement of the Parties concerning the Project, and this Contract supersedes and replaces any other agreements heretofore executed by the Parties concerning the Project. No other representations or agreements of the Parties concerning the Project, expressed or implied, shall be in force and effect unless the same are reduced to writing as an identified addendum or modification to this Contract and signed by both Parties.
- G. **AVAILABILITY OF COMMON LAW DEFENSES.** By execution and ratification of this Contract, the City and its City Council agree that Kyle is subject to the generally applicable common law principles of estoppel, waiver, and laches, and that either Party may be held by a court of competent jurisdiction to have waived its rights and privileges under this Contract by its action or inaction in accordance with generally applicable principles of Texas law.
- H. **GOODS AND SERVICES.** The Parties agree that the mutual Project commitments stated in this Contract intended to achieve reclamation of Kyle Effluent constitute an agreement by Aqua to provide goods and services to Kyle, and that this Contract is subject to Chapter 271, Subchapter I, of the Texas Local Government Code. In the event Kyle commits a breach of this Contract or otherwise takes any action that adversely impacts Project success or Aqua's ability to achieve the Triggering Events, the Parties agree that Kyle shall reimburse Aqua for all its Project costs and expenses, including without limitation legal and consulting expenses. Further, in such event Aqua shall be entitled to all other and further relief provided by applicable law.
- I. **MULTIPLE COPIES.** The parties acknowledge that this Contract may be executed in multiple copies, in one or more counterparts, each of which shall be deemed to be an original document, but all when taken together shall constitute but one and the same instrument.

AQUA OPERATIONS, INC.

By: _____

Name: _____

Title: _____

Date: _____

RATIFIED AND APPROVED BY ITS BOARD OF DIRECTORS ON _____, 2016.

CITY OF KYLE, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

RATIFIED AND APPROVED BY ITS CITY COUNCIL ON _____, 2016.

STATE OF TEXAS §

COUNTY OF TRAVIS §

On the _____ day of _____, 2016, Robert L. Laughman did appear before the undersigned notary public, and did, under oath, state that he is President of **AQUA OPERATIONS, INC.**, a Texas corporations, and that he did sign and did execute the foregoing contract in that capacity and for the considerations recited therein, in witness of which I place my hand and seal of office.

Notary Public, State of Texas

(print name)

Commission expires: _____

STATE OF TEXAS §

COUNTY OF HAYS §

On the _____ day of 2016, Todd Webster did appear before the undersigned notary public, and did, under oath, state that he is the Mayor of the **CITY OF KYLE, TEXAS**, a Home Rule Municipality and Political Subdivision of the State of Texas, and that he did execute the foregoing contract in that capacity and for the considerations recited therein, in witness of which I place my hand and seal of office.

Notary Public, State of Texas

(print name)

Commission expires: _____

EXHIBIT 1

RECLAIMED WATER USE AGREEMENT

BETWEEN

CITY OF KYLE, TEXAS
“PRODUCER”

&

AQUA OPERATIONS, INC., “USER”

STATE OF TEXAS §
 §
COUNTY OF HAYS §

RECLAIMED WATER USE AGREEMENT

This Reclaimed Water Use Agreement (the “Agreement”) is made and entered into as of the ____ day of _____ 20___, (the “Effective Date”), by and between the City of Kyle, Texas, a municipal corporation, (hereinafter “Producer”) and Aqua Operations, Inc. (hereinafter “User”). Producer and User may be referred to collectively herein as the “Parties,” or individually as the “Party.”

Recitals

WHEREAS, Producer owns and operates a wastewater treatment facility (the “Plant”) located approximately 2.7 miles northwest of the intersection of State route 21 and Farm-to-Market Road 2720, in Hays County, Texas 78640;

WHEREAS, Producer currently holds TPDES Permit No. WQ0011041002 (the “Permit”) issued by the Texas Commission on Environmental Quality authorizing the discharge of treated effluent from the Plant;

WHEREAS, the current Permit authorizes Producer to treat and discharge an annual average flow not to exceed 3.0 million gallons per day (“MGD”) of treated wastewater (the “Effluent”), but once an expansion is completed, the annual average flow may increase up to 4.5 MGD;

WHEREAS, User desires to purchase Effluent from the Plant to continue reclamation efforts that have started pursuant to a Aqua/Kyle Wastewater Effluent Reclamation Project Agreement dated _____, 2016 (“Reclamation Project Agreement”);

WHEREAS, Producer desires to sell Producer’s Effluent to User for the Project described in the Reclamation Project Agreement; and

WHEREAS, Producer and User desire to enter into this Agreement to memorialize the terms and conditions of their respective rights and obligations acting prospectively under this Agreement and comply with regulations applicable to the delivery and use of reclaimed wastewater;

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement; Ten and no/100ths Dollars (\$10.00); and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Producer and User agree as follows:

Article I
Definitions

Section 1.1 Defined Terms.

The following terms and expressions used in this Agreement, unless otherwise defined herein, or where the context clearly requires otherwise, shall, for purposes of this Agreement, have the following meanings:

“Chapter 26” means Chapter 26 of the Texas Water Code, as the same may be amended from time to time,

“Contract Year” means each twelve-month period beginning October 1 and ending September 30 during the term of this Agreement, except during the first year of the Agreement during which the term Contract Year shall mean the prorated period commencing on the Effective Date and ending on September 30.

“Effluent” means the treated wastewater produced by Producer at the Plant.

“Effective Date” means the date first written above.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy or terrorist, orders or actions of any kind of government of the United States, the State of Texas or any local government or political subdivision, or any civil or military authority, insurrections, riots, terrorist act or incidents, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to pumps, booster stations, treatment and/or storage facilities, machinery, pipelines, canals, or other structures, partial or entire failure of the Effluent supply including pollution (accident or intentional), and any inability on the part of Producer to deliver Effluent pursuant to this Agreement on account of any other cause not reasonably within the control of Producer.

“Monthly Purchase” means the volume of Effluent User purchases from Producer on a monthly basis.

“Monthly Delivered Amount” means the total volume of Effluent that Producer delivers to User’s Meter each month.

“Notice” means any notice, communication, or payment between the Parties to this Agreement.

“Other Customer” means any potential future customer, other than User, with whom Producer may ever contract with to supply Effluent from the Plant, regardless of when Producer and the other customer enter into any contract for the supply of such Effluent.

“Permit” means Producer’s TPDES Permit No. WQ0011041002 issued by TCEQ pursuant to Chapter 26, Texas Water Code, currently expiring on February 1, 2020 and as may be renewed or amended.

“Plant” means all current, and any future, facilities for the receipt and treatment, of wastewater at Producer’s Plant authorized by State Permit, as the Permit may be amended and/or renewed from time to time.

“Purchase Price” means the per 1,000 gallons charge assessed by Producer for the Effluent.

T.A.C. means the Texas Administrative Code.

“TCEQ” or **“Commission”** means the Texas Commission on Environmental Quality and any successor agency.

“TPDES” means the Texas Pollutant Discharge Elimination System administered by TCEQ pursuant to Chapter 26, Texas Water Code.

“User’s Delivery Point(s)” means the location authorized either pursuant to this Agreement and the Permit, or otherwise by TCEQ, at which Producer will continue delivering Effluent from the Plant to the User under this Agreement. The Parties have identified the delivery point location(s) in Exhibit “A” attached hereto and incorporated herein by reference.

“User’s Improvements” means piping, valving and metering infrastructure necessary to implement this Agreement that has or will be constructed by User.

“User’s Meter(s)” means the meter owned and operated by Producer and located at User’s Delivery Point.

“User’s Project” means Aqua’s “Project” as that term is defined and described in the Reclamation Project Agreement.

Article II Option

Section 2.1. Option. Pursuant to the Reclamation Project Agreement, Kyle granted Aqua the option to enter into this Agreement if, within the term of the Reclamation Project Agreement, Aqua satisfied certain requirements as set forth therein (the “Triggering Events”). The Parties have determined that Aqua has, during the term of the Reclamation Project Agreement, satisfied those requirements.

Section 2.2. Reclamation Project Agreement Expiration. Upon the effective date of this Agreement, the Reclamation Project Agreement will expire unless it has already expired by its terms except for provisions that survive the expiration of the Reclamation Project Agreement.

Section 2.3. Assignment. Kyle transfers and assigns to Aqua, or to Aqua’s designee(s), the following: (i) Kyle’s rights, if any, in the Project; (ii) the agreement(s), if any, between Kyle and the Edwards Aquifer Authority (the “EAA”), if any; and (iii) the permit(s), if any, issued by the EAA to Kyle relating to the Project. Aqua or Aqua’s designee(s) shall be responsible for

performing all obligations under the assigned agreements and permits upon the effective date of the assignment and agrees to indemnify, defend and hold harmless Kyle for any claims by third-parties relating to the Project, the contracts, or the permits after the effective date of this Agreement.

Article III
Delivery of Effluent

Section 3.1. Reservation/Options. Kyle hereby: (i) reserves 750,000 gallons per day (“gpd”) of Effluent exclusively for Aqua’s use in User’s Project; (ii) grants Aqua the option to take Effluent at the User’s Delivery Point up to 750,000 gpd; and (iii) will make additional Effluent available to Aqua for use upon request if available, provided with respect to (i)-(iii) that Aqua timely pays Kyle for the amount of Effluent reserved for Aqua at the User’s Delivery Point whether or not Aqua takes any Effluent, Aqua pays for Effluent taken at the then-effective volumetric rate agreed upon by the Parties, and Aqua is not in default for payments to Kyle owed under this Agreement.

Section 3.2. Effluent Source. The Effluent shall be water that is discharged from Kyle’s Plant and User acknowledges that the Effluent conditionally made available under this Agreement is deliverable solely out of Producer’s production of Effluent from the Plant as, if, and when wastewater is received and treated at the Plant. Producer has made no representations or warranties, and in fact, expressly disclaims any and all representations and warranties, both express and implied, regarding the quantity of the Effluent and the quality of the Effluent that may be available for delivery pursuant to this Agreement and that may be produced by the Plant from time to time.

(a) Quality. Aqua has sole discretion on whether Aqua chooses to take the Effluent, at its then-existing quality, whether known or knowable. Kyle expressly disclaims any representation, warranty or agreement that the quality of any Effluent provided to Aqua under this Agreement is compliant with Federal and Texas statutes and regulations applicable to discharges into a state watercourse and the Permit in effect for the Plant at the time of Aqua’s request to take delivery of same. The Effluent made available for delivery to Aqua will be of the same quality as the Effluent produced by the Plant at the time. Aqua shall monitor and sample the Effluent at Aqua’s expense and at a location outside of the Plant property on the pipeline constructs to Aqua’s treatment plant. Aqua acknowledges and agrees that the design and operation of User’s Project shall be sufficient to pre-treat and/or treat the Effluent taken by Aqua to satisfy the intended purpose of the Project regardless of whether proper treatment has occurred at the Plant, but if Aqua determines Effluent is delivered that is not compliant with applicable regulations pursuant to this paragraph, Aqua will notify Kyle so that Kyle may address the problem. No provision in this Agreement is intended to grant Aqua any right to operate the WWTP or to require Kyle to operate the WWTP in any particular manner other than that required by applicable law.

(b) Volume. The minimum amount of Effluent that Kyle will reserve exclusively for Aqua to take from the Plant at the User’s Delivery Point on a daily basis is 750,000 gpd.

Section 3.3. Permit Compliance. Producer shall be responsible at its sole expense for the maintenance in good standing of the Plant Permit. Kyle shall be responsible for the discharge,

storage, use, reuse, or other handling of its Effluent in accordance with applicable law for any Effluent amounts not diverted by Aqua.

Section 3.5. Access. Prior to execution of this Agreement, if User's Delivery Point or User's Project improvements are located on the Plant property and Aqua has designed and constructed facilities required to take Effluent from the Delivery Point to the edge of the WWTP property, Kyle and Aqua will designate a mutually agreeable area for the location of those facilities. Upon such designation, Kyle shall grant Aqua a non-exclusive easement in a form mutually agreeable to both Kyle and Aqua that provides Aqua rights to construct, operate, and maintain the facilities required to take Effluent from the Delivery Point to the WWTP property boundaries. The easement will not and should not be construed to grant Aqua any right to manipulate valves, timers, or other equipment upstream of the Delivery Point. If installed prior to execution of this Agreement in response to a written request by Kyle, Aqua shall maintain an intruder resistant fence around the area subject to the easement. Kyle reserves the right to maintain such fence or otherwise segregate the easement area where Aqua's facilities are located from the remainder of the WWTP property at Aqua's expense if Aqua fails to do so after reasonable notice in writing to Aqua by Kyle.

Article IV Duties of Aqua

Section 4.1. Permitting. Aqua shall be solely responsible for any permitting or other regulatory approvals required for User's Project. However, the need for such permitting or regulatory approvals shall be determined solely by Aqua.

Section 4.2. Financing and Construction. Aqua shall be solely responsible for the financing, development, design, construction, operation, and maintenance of any equipment necessary for Aqua to take delivery of Effluent made available at the User's Delivery Point and use it for User's Project. Aqua shall ensure that its equipment used to take delivery of Effluent at the User's Delivery Point for User's Project uses does not interfere with or impair Producer's intake of untreated wastewater at the WWTP, treatment of such wastewater, or discharge or conveyance of any Effluent not conveyed to Aqua via the User's Delivery Point.

Section 4.3. Effluent Diversion. Nothing in this provision shall obligate Aqua to request or accept Effluent delivery by Kyle at the User's Delivery Point under this Agreement. Aqua shall have sole discretion in determining the timing and quantity of any Effluent that it accepts from the WWTP, subject to the limitations on the maximum amount of Effluent that Aqua may take under this Agreement. Aqua is without obligation to accept any minimum amount of Effluent despite Kyle's reservation of same for Aqua's benefit and has sole discretion in determining when Effluent should be utilized for User's Project.

Section 4.4. User's Project Discharge. Aqua shall be solely responsible for any conveyance, discharge, storage, recharge, replenishment, delivery, sale, or other use of Effluent after Aqua takes delivery of same from Kyle at the User's Delivery Point for User's Project.

Section 4.5. **INDEMNIFICATION.** USER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS PRODUCER, AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, ATTORNEYS, AFFILIATES, BENEFICIARIES, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITIES AND OBLIGATIONS ARISING FROM ANY AND ALL THIRD-PARTY CLAIMS ARISING FROM USER'S: (i) EXERCISE OF THE RIGHTS AND PRIVILEGES PROVIDED IN THIS AGREEMENT; (ii) PERFORMANCE OF USER'S OBLIGATIONS PURSUANT TO THIS AGREEMENT; OR (iii) THE PROJECT.

Section 4.6. Permits, Easements & Right-of-Way. User shall be solely responsible for securing any and all permits and approvals, public or private easements, rights-of-way and/or access, at User's cost, for User's Project on property located outside the Plant property if necessary for beneficial use of the Effluent.

Section 4.7. User's Storage & Delivery System. User shall be responsible for all facilities beyond the User's Delivery Point necessary for beneficial use of the Effluent.

Section 4.8. Authorized Uses. Aqua shall use the Effluent taken by Aqua pursuant to this Agreement solely for User's Project. Aqua shall not use the Effluent for any other purpose or sell, assign, lease, or otherwise transfer any portion of the Effluent to any other person, except as a customer of Aqua's Project. Aqua shall not sell, supply, transfer, or assign Effluent or water from the Project for use within Kyle's corporate limits or territory within Kyle's water utility certificate of convenience and necessity, as the corporate limits or territory may change from time to time.

Section 4.9. Insurance. Immediately following the execution of this Agreement, User shall furnish to the Producer, upon request, Certificates of Liability Insurance evidencing the following minimum required insurance coverage:

Comprehensive General Liability	\$2,000,000 (each occurrence)
Bodily Injury / Property Damage	\$2,000,000 (aggregate)
Excess Liability	\$5,000,000 (each occurrence); \$5,000,000 (aggregate)
Contractor Pollution Liability	\$5,000,000 (per claim and aggregate)

User shall list the Producer as an additional insured on the general liability and excess liability policies, but not the workers' compensation, employer's liability and any professional errors and omissions insurance that Vendor may carry. User shall maintain the above insurance coverages during the entire term of this Agreement. The User will provide not less than 10 days' prior written notice of any cancelation or termination of the required coverages. User will provide certificates of insurance upon renewal or replacement of any required policy. User waives any claims it may have against the Producer based on the required policies and User's obligations under this Agreement. The required policies must include a waiver of subrogation against the Producer as agreed by contract or by endorsement. The Commercial General Liability Policy shall also include a "protective liability" clause providing coverage to Producer pursuant to the obligations assumed by User under the section of this Agreement entitled Indemnification.

Article V
Pricing and Payment

Section 5.1. Reservation. Aqua shall pay Kyle annually the sum of \$12,500 for the reservation of the Effluent and the amount is due and payable regardless of whether Aqua takes delivery of any Effluent. The annual sum shall be paid in twelve equal monthly installments and Aqua shall tender the monthly installment to Kyle by the tenth (10th) calendar day of each month without the need for an invoice or demand in any form by Kyle.

Section 5.2. Rate. In addition to the annual reservation charge required to be paid pursuant to Section 5.1 above, Aqua shall pay Kyle for the amount of Effluent taken by Aqua each month. The amount of Effluent water taken by Aqua will be based upon the meter at the Point of Delivery. The initial volumetric rate for Effluent taken by User from Producer shall be \$1.00 per 1,000 gallons delivered to User's Meter. This rate may be modified from time to time by further agreement, but not more frequently than once per Contract Year, based on a market survey conducted by Producer. Kyle agrees, however, the volumetric rate for Effluent paid by Aqua to Kyle under this Agreement shall not exceed the volumetric rate for effluent or reclaimed water then in effect as set by the City of San Marcos. At the end of each thirty day period of time, Kyle shall read the meter and determine the monthly charge based upon the amount of Effluent water taken and submit an invoice to Aqua. Aqua shall pay Kyle the amount due within ten calendar days after receipt of the invoice.

Section 5.3. Suspension of Delivery. In addition to other remedies available to Producer for User's failure to timely pay the Purchase Price, in such event occurring on or after October 16 of the applicable Contract Year Producer shall be entitled to terminate the delivery of Effluent to User until such time as User has paid current all such amounts then past due and owing to Producer pursuant to this Agreement. This remedy is cumulative of all other remedies available to Producer and may be exercised without giving any prior written notice to User and without application of any cure period prescribed by this Agreement.

Article VI
Duties of Producer

Section 6.1 Producer's Responsibilities.

(a) Producer shall be under no obligation to obtain any additional necessary permits and/or authorizations to implement this Agreement, including without limitation a Reclaimed Water Permit issued by TCEQ pursuant to all applicable Chapter 210 Rules authorizing the use of and transport of the Effluent.

(b) In the event that Producer determines to exercise its right to terminate the Agreement pursuant to one or more of the provisions of this Agreement, then in such event Producer shall provide written notice of such termination to User.

Section 6.2 Amendments to Producer's Permit. Prior to exercising its option to enter into this Agreement, Aqua has determined that the Permit, as in effect, is sufficient for User's needs. Producer shall be under no obligation to amend the Permit in order to deliver Effluent to User

under this Agreement, but in the event Producer chooses to secure any amendment(s) to either the Permit or additional authorizations pursuant to 30 T.A.C. Chapter 210, or any of them, in order to lawfully deliver Effluent to User under the terms of this Agreement, then the costs associated with securing such amendment(s) shall be borne by User if necessary for User's Project under applicable law. Otherwise, such costs shall be borne by Producer.

Article VII
Title

Section 7.1 Title. All title to the Effluent made available for diversion by User pursuant to this Agreement and taken by the User shall pass from Producer to User just beyond User's Meter(s) at the User's Delivery Point(s).

Article VIII
Taxes, Fees and Assessments

Section 8.1 Taxes, Fees and Assessments.

(a) User shall be responsible for the payment of any lawful assessment, tax or other fee or charge ever levied, or assessed against User's purchase and/or use of the Effluent subject to this Agreement during the term hereof. Producer agrees to provide User with notice of any such assessments, taxes, fees or charges within twenty (20) business days of the date Producer ever receives notice of any such potential future third-party charges.

(b) In the event that User fails to pay any such lawfully imposed assessment, tax or other fee, Producer shall have the right, but not the obligation, to pay such assessment, tax or fee. User shall be obligated to reimburse Producer within ten (10) business days for any such assessment, fee or tax paid by Producer on User's behalf pursuant to this Section 8.1.

(c) User's failure to reimburse Producer for any such expenses within thirty (30) days of the date of receipt of a written invoice for same from Producer shall constitute an Event of Default pursuant to this Agreement and give rise to Producer's various remedies available at law, or in equity, pursuant to other provisions of the Agreement.

Article IX
Assignment and Transfer

Section 9.1 Assignability.

(a) Except as otherwise authorized by this Section 9.1, neither Party may sell, assign, transfer, or otherwise dispose of their interests or obligations in this Agreement to a third-party without the written approval of the other Party, which approval will not be unreasonably withheld or delayed.

(b) Subject to the requirements of subsection (d) below, notwithstanding the provisions of subsection (a) above, Producer shall be entitled to assign its obligations pursuant to this Agreement to any qualified private corporate or public governmental entity or political subdivision authorized to undertake the type of obligations of Producer set forth in this Agreement without User's consent so long as such assignment does not adversely affect User's Project and assignee has agreed to assume and fulfill all Agreement obligations of Producer.

(c) Subject to the requirements of subsection (d) below, notwithstanding the provisions of subsection (a) above, User shall be entitled to assign its obligations pursuant to this Agreement to any qualified private corporate entity, including another entity owned by Aqua America, Inc., or a public governmental entity or political subdivision authorized to undertake the type of obligations of User set forth in this Agreement without Producer's consent so long as such assignment does not adversely affect User's Project and assignee has agreed to assume and fulfill all Agreement obligations of User.

(d) No assignment of this Agreement shall be effective until the non-assigning Party receives a copy of the written assignment executed by the assignee, affirmatively and unequivocally assuming the obligation to fully, diligently, and timely perform all of the obligations of the assigning Party.

(e) Assignment of this Agreement shall relieve the assigning Party of its prospective obligations and/or liability pursuant to this Agreement; provided, however, that the assigning Party shall remain liable for any and all obligations accruing prior to the Effective Date of the assignment.

Section 9.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Article X Default & Remedy

Section 10.1 Events of Default.

Each of the following acts, omissions or occurrences shall constitute an "Event of Default" and a material breach of this Agreement by User:

(a) Failure by User to timely pay any portion of the Purchase Price required to be paid prior to the expiration of thirty (30) days after Producer's delivery of written notice to User of such failure.

(b) Failure by User to either perform or observe any other covenant, condition, or provision of this Agreement to be performed or observed by User prior to the expiration of thirty (30) days after Producer's delivery of written notice to User of such failure.

(c) Notwithstanding the provisions of subsection (b) of this Section 10.1, in the event User is unable to cure any such default within said thirty (30) days, no such default shall be deemed to exist so long as User has commenced and is using reasonable due diligence to cure such default, and continues to do so until the matter is cured.

Each of the following acts, omissions or occurrences shall constitute an “Event of Default” and a material breach of this Agreement by Producer:

(d) Failure by Producer to reserve Effluent for User’s Project in accordance with this Agreement.

(e) Failure by Producer to either perform or observe any other covenant, condition, or provision of this Agreement to be performed or observed by Producer prior to the expiration of thirty (30) days after User’s delivery of written notice to Producer of such failure.

(f) Notwithstanding the provisions of subsection (e) of this Section 10.1, in the event Producer is unable to cure any such default within said thirty (30) days, no such default shall be deemed to exist so long as Producer has commenced and is using reasonable due diligence to cure such default, and continues to do so until the matter is cured.

Section 10.2 Producer’s Remedies.

(a) Upon the occurrence of any Event of Default which, after proper notice, User fails to timely cure, Producer may, at its option, in addition to any and all other rights, remedies or recourses available to it pursuant to the terms of this Agreement, immediately terminate this Agreement by giving written notice to User. User shall immediately cease use of the Effluent upon receipt of any such notice from Producer.

(b) In the event Producer elects to terminate the Agreement by reason of the occurrence of an Event of Default, then notwithstanding any such termination, User shall be liable for and shall pay to Producer the sum of the entire outstanding balance of the Purchase Price for that Contract Year, plus any other indebtedness due and owing to Producer accrued prior to the date of such termination. In addition to all other remedies available to Producer pursuant to this Agreement, Producer shall be able to seek specific performance of this Agreement. In such event, User shall not contest Producer’s request for an expedited hearing.

Section 10.3. User’s Remedies.

(a) Upon the occurrence of any Event of Default which, after proper notice, Producer fails to timely cure, User may, at its option, in addition to any and all other rights, remedies or recourses available to it pursuant to the terms of this Agreement, immediately terminate this Agreement by giving written notice to Producer. Producer shall immediately cease delivery of Effluent upon receipt of any such notice from User.

(b) In the event Producer is able, but refuses, to deliver Effluent to User’s Delivery Point pursuant to this Agreement, User shall be able to seek specific performance of this Agreement in addition to all other remedies available to User pursuant to this Agreement. In such event, Producer shall not contest User’s request for an expedited hearing.

Section 10.4. Remedies. If the breaching Party fails to fully cure the breach specified in the notice within the applicable cure period, the non-breaching Party will be entitled to seek a writ of injunction or mandamus issued by a district judge in Hays County Texas and requiring the defaulting Party to observe and perform the terms of this Agreement. The non-defaulting Party may not bring an action for any other legal or equitable remedies (other than termination)

available to it not specified in either Section 10.2 or 10.3 of this Agreement. Each party agrees in the event of any default on its part that each party shall have available to it the equitable remedy of mandamus and/or specific performance. It is the intent of the parties to this Agreement that any default shall be subject to the remedy of specific performance and/or mandamus to the extent that specific performance and/or mandamus is possible under the existing circumstances. The remedy of specific performance and/or mandamus shall be first requested by either party in the event of default by the other party. Neither party shall object to requests for an expedited hearing on specific performance made by the other party.

Section 10.5. Dispute Resolution. If any dispute between the Parties, other than a dispute regarding the amount of money owed by User to Producer, cannot be resolved to the mutual satisfaction of the Parties after meeting to resolve the dispute, then within three business days following the notice to the other Party(ies) of the dispute, each Party to the dispute shall appoint an engineer with a minimum of ten years' experience in designing or operating water and wastewater treatment systems in the greater Austin metropolitan area who shall confer and attempt to mutually agree upon a resolution of the disputed matter within ten business days following their appointment. If the appointed engineers mutually agree on a resolution of the matter, the parties agree to bring the agreed resolution to their governing bodies for approval. In the event that the appointed engineers cannot mutually agree on a resolution of the dispute, then within three business days following the expiration of such ten-business-day resolution period, the engineers shall mutually appoint a disinterested engineer with a minimum of ten years' experience in designing or operating water and wastewater systems in the greater Austin metropolitan area that is not then employed by any Party to determine such matter within seven business days following appointment. If the appointed engineers mutually agree on a resolution of the matter, the parties agree to bring the agreed resolution to their governing bodies for approval. The Parties agree to implement the dispute resolution procedures provided for in this section prior to any Party exercising any of the applicable remedies provided for in this Agreement.

Article XI Term & Termination

Section 11.1. Primary Term.

The primary term of this Agreement shall commence with the Effective Date and shall end the earlier of either (i) at 11:59 p.m., Central Standard Time, on September 30, 2031; or (ii) when Aqua submits written notice to Kyle that Aqua desires to cancel the Contract; or (iii) upon the expiration date of the Permit as extended by the most recent application to renew the Permit; or (iv) the life of the Project used for depreciation or tax purposes, whichever is less.

Section 11.2. Secondary Term.

This Agreement may be extended by mutual agreement for successive five year periods beginning October 1 and ending September 30.

Section 11.3 Termination.

(a) Aqua may terminate this Agreement unilaterally during the Primary Term or Secondary Term at any time upon one year written notice to Kyle.

(b) Kyle may terminate this Agreement during the Secondary Term upon one year written notice to Aqua, provided, however, Kyle shall pay Aqua a cancellation fee in the amount of two times Aqua's Project costs and expenses, including without limitation legal and consulting expenses. This amount shall decrease by one-tenth percent each year for up to 20 years during the Secondary Term. After twenty years, the cancellation fee will only amount to Aqua's Project costs and expenses without any premium. Upon payment of the cancellation fee by Kyle to Aqua and written request by Kyle, Aqua shall transfer and assign all of Aqua's rights and title in the Project to Kyle, including related contracts and permits.

(c) Notwithstanding the provisions of subsection (b) above or any other provision of this Agreement, Producer may immediately terminate this Agreement in the event of any of the following:

(1) Producer's Permit, is terminated, suspended or not renewed by TCEQ (involuntarily); or

(2) Producer's authorization from TCEQ to deliver Effluent from the Plant to the User's Delivery Point is interrupted or terminated;

(d) In addition to all other termination rights granted to Producer pursuant to this Agreement, Producer shall be entitled to terminate this Agreement pursuant to Section 10.2 of this Agreement upon the occurrence of "Events of Default" by User.

(e) The Parties agree that in most circumstances an Event of Default shall not result in termination of this Agreement until thirty (30) days after the date that the alleged defaulting Party receives written notice from the Party alleging default, specifying the default and the requirements to cure the same. Specific limited exceptions to this provision are set forth elsewhere in this Agreement.

Section 11.4 Rights After Termination.

(a) Unless specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement except as prescribed in Subsection (b) below.

(b) Termination shall not relieve either Party of any obligation or liability incurred pursuant to the Agreement that arose prior to the Effective Date of the termination of the Agreement, including without limitation, and by way of illustration only:

(1) User's obligation to make payments to Producer for Effluent during that Contract Year;

(2) Producer's obligation to provide Effluent prior to the actual cessation of Effluent delivery date;

(3) User's obligation to indemnify, defend, and hold harmless Producer for claims filed prior to termination or claims filed after termination if the claim is based, in whole or in part, on events that occurred prior to termination.

(c) The obligations contemplated by Subsection (b) above shall survive Termination of this Agreement and remain in full force and effect until satisfied.

Article XII

Meters

Section 12.1. Meters.

(a) Producer shall provide, own, operate, maintain, read and record User's Meter, which shall record Effluent delivered at the User's Delivery Point for supply to User. All meters shall be conventional commercial/industrial types of TCEQ approved meter(s) which measure accuracy within a tolerance of that allowed by the AWWA.

(b) Producer shall keep records of all measurements of Effluent required to be metered under this Agreement for a period of five (5) years from the date of the measurement. Producer's measuring device(s) and measurement records shall be open for inspection at all reasonable times. Measuring devices and recording equipment shall be accessible for adjusting and testing and the installation of check meter(s) under the supervision of Producer. At least once in each calendar year, Producer shall calibrate User's Meter(s). Producer shall give User notice of the date(s) and time(s) when any such calibration is to be made and, if a representative of User is not present at the scheduled time, calibration and adjustment may proceed in the absence of any representative of User.

(c) User shall be entitled, at User's sole cost, to install, maintain and repair, a "check meter" at User's Delivery Point(s). Such User check meter shall be a TCEQ approved meter which measures accuracy within a tolerance then allowed by the AWWA.

(d) If upon any test of User's Meter(s), the percentage of inaccuracy of such metering equipment is found to be in excess of the tolerance then-allowed by the AWWA, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than six (6) months. If User's Meter(s) is out of service or out of repair, so that the amount of Effluent delivered cannot be ascertained or computed from the reading thereof, the amount of Effluent delivered through the period User's Meter(s) is out of service or out of repair shall be estimated and agreed upon by the Parties using the best data available, and Producer shall at its election either install a new meter or repair the existing meter. If the Parties fail to agree on the amount of Effluent delivered during such period, the amount of Effluent delivered may be estimated by:

- (1) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or

- (2) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately or alternatively, using the rated value of the transfer pump(s) multiplied by the amount of time that the pump(s) run as shown by the information stored on the City's SCADA system.

Article XIII
General Terms

Section 13.1 Governing Law.

This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

Section 13.2 Venue.

The obligations and undertakings of each of the Parties to this Agreement shall be performed, or deemed to be performed, in Hays County, Texas. Accordingly, the Parties agree that any lawsuit involving this Agreement, brought by either Party, shall be brought in Hays County, Texas.

Section 13.3 Severability and Savings Clause.

In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal and/or otherwise unenforceable in any respect, this invalidity, illegality and/or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if the invalid, illegal and/or unenforceable provision had never been contained herein.

Section 13.4 Force Majeure.

(a) If for any reason of Force Majeure, either Producer or User shall be rendered unable, wholly or in part, to carry out their respective obligations under this Agreement, other than the obligation of User to make the various payments to Producer required under the terms of this Agreement, then, if the Party claiming Force Majeure shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure and such adversely affected Party is attempting in good faith to mitigate it, shall be suspended during the continuance of the inability then claimed, but for no longer period.

Section 13.5 Agreement Modification.

This Agreement may be modified only by an instrument signed by the duly authorized representatives of each of the Parties upon authorization of the Party's governing body.

Section 13.6 No-Third-Party Beneficiary.

The Parties are entering into this Agreement solely for the benefit of themselves and

agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto and their permitted assigns.

Section 13.7 Waiver.

Any waiver at any time by either Party with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

Section 13.8 Captions.

The captions and headings appearing in this Agreement are inserted merely to facilitate reference and are not to be considered a part of this Agreement, and in no way shall they affect the interpretation of any of the provisions of this Agreement.

Section 13.9 Notices.

All notices, payments and communication (“Notices”) required or allowed by this Agreement shall be in writing and be given by depositing the Notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the Party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) calendar days after the Notice is deposited in the mail. Courier deliveries with proper receipting will also be considered as adequate notice. For purposes of this Section 13.9, the addresses of and the designated representative for receipt of Notice for each of the Parties shall be as set forth on the signature page of this Agreement.

Either Party may change its address by giving written notice of the change to the other Party at least fourteen (14) calendar days before the change becomes effective.

Section 13.10 Sole Agreement.

This Agreement, including the Exhibits hereto, constitutes the sole and only contract between the Parties related to the sale and purchase of Effluent from the Plant. The Parties further stipulate and agree that this Agreement supersedes any and all prior understandings, and/or informal, oral or written agreement(s), between the Parties respecting any and all aspects of the subject matter of this Agreement.

Section 13.11 Counterparts & Duplicate Originals.

This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Producer and User, acting under authority of their respective governing bodies and officers, have authorized the execution of this Agreement in multiple counterparts, each of which shall constitute an original.

Section 13.12 Attorneys Fees.

In no event shall either Party be entitled to seek, or recover attorneys’ fees for any claim made under this Agreement or related to this Agreement; provided, however, if any amount due

and owing by User for Effluent delivery is placed with an attorney for collection by Producer, then User shall pay Producer, in addition to all other payments provided for by this Agreement, including interest, Producer's collection expenses and any related court costs and attorney's fees.

Section 13.13 Further Assurances.

Each of the Parties shall take all further required actions and shall execute and deliver to the other Party any other document or instrument which is determined to be necessary or useful to fully carry out the transactions evidenced by this Agreement.

Section 13.14 Goods and Services.

The Parties agree that the mutual commitments stated in this Agreement intended to achieve reclamation of Kyle Effluent constitute an agreement by Aqua to provide goods and services to Kyle, and that this Agreement is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

IN WITNESS WHEREOF, the Parties below have executed this Agreement on the dates shown below to be effective as of the Effective Date.

AQUA OPERATIONS, INC.
1106 Clayton Lane
Suite 400W
Austin, Texas 78723

CITY OF KYLE:
City of Kyle
100 W. Center Street
Kyle, Texas 78640

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: Mayor

*RATIFIED AND APPROVED BY ITS
BOARD OF DIRECTORS ON*
_____, 2016.

*RATIFIED AND APPROVED BY ITS CITY
COUNCIL ON*
_____, 2016.

EXHIBIT A
USER'S DELIVERY POINT LOCATION MAP

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

In consideration of the following recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Aqua Operations, Inc. (“Aqua”) and the City of Kyle (“Kyle”) enter into this Settlement Agreement and Mutual Release (the “Agreement”).

RECITALS

WHEREAS, effective February 15, 1999, the City of Kyle, Texas (“Kyle”) entered into a contract with AquaSource Services and Technologies, Inc., entitled “Agreement for Financing, Design, Construction, Operations, Maintenance and Management Services” (the “Wastewater Contract”), under which AquaSource Services and Technologies, Inc. agreed to provide services to Kyle relating to the financing, design, construction, operation, maintenance, and management of certain wastewater collection and treatment facilities, and Kyle agreed to pay compensation therefor;

WHEREAS, on or about November 22, 2002, AquaSource Services and Technologies, Inc. assigned the Agreement to AquaSource Operations, Inc., which subsequently changed its name to Aqua Operations, Inc. (“Aqua”);

WHEREAS, disputes relating to the Wastewater Contract have arisen between the Parties and the Parties have asserted various causes of action against each other in Cause No. 13-0894, *Aqua Operations, Inc. v. City of Kyle, Texas*, in the 428th Judicial District Court of Hays County, Texas (the “Lawsuit”);

WHEREAS, Aqua contests and denies each of the claims asserted by Kyle in the Lawsuit, and Kyle contests and denies each of the claims asserted by Aqua in the Lawsuit;

WHEREAS, the Parties entered into a Settlement Agreement and Mutual Release in July 2015 (the “July Partial Settlement”), under which the Parties resolved and settled certain claims and counterclaims that were asserted in the Lawsuit; and

WHEREAS, the Parties now desire to resolve all claims and disputes between them relating to the Wastewater Contract and the Lawsuit as well as enter into an Wastewater Effluent Reclamation Project Agreement;

NOW, THEREFORE, in consideration of the covenants and agreements set out herein and in the Wastewater Effluent Reclamation Project Agreement executed contemporaneously with this Agreement, Aqua and Kyle agree as follows.

AGREEMENTS

1. Wastewater Effluent Option Agreement. As part of the consideration for this Agreement, the Parties agree to execute the Wastewater Effluent Reclamation Project Agreement, attached as Exhibit A hereto.

2. Billing Dispute Funds. The City has put a portion of each monthly fee due under the Wastewater Contract from November 2010 through November 2015 in an escrow account where it has remained during the pendency of the Lawsuit. The Parties agree that in connection with this settlement, the City is entitled to all of said funds and interest that has accrued on said funds.

3. Agreed Dismissal of Claims. The Parties shall file an agreed motion to dismiss with prejudice all claims in the Lawsuit. The agreed motion to dismiss and proposed order of dismissal shall be in substantially the same form as attached hereto as Exhibit B and Exhibit C. It is intended and agreed that any order of dismissal of the 428th District Court shall be final and non-appealable in all respects upon its being signed by the Court, and the Parties hereby waive any right to appeal or otherwise contest the enforceability of Order of Dismissal. It is the intent of the Parties that compliance with this Paragraph constitutes the provision of services by both Parties.

4. Ratification of Agreement and Wastewater Effluent Reclamation Project Agreement. The acceptance and signing of this Agreement and the Wastewater Effluent Reclamation Project Agreement by a representative of Aqua is contingent on ratification and approval by Aqua's board of directors, and the acceptance and signing of this Agreement and the Wastewater Effluent Reclamation Project Agreement by a representative of Kyle is contingent on ratification and approval by Kyle's city council.

5. Stay of Proceedings. The Parties agree to stay or voluntarily abate any further prosecution of the Lawsuit pending ratification of this Agreement pursuant to Paragraph 3 and agreed dismissal pursuant to Paragraph 2.

6. Release by Aqua. In exchange for the agreements and good and valuable consideration set forth herein, Aqua hereby releases and discharges Kyle, and Kyle's past, present, and future employees, officials, and agents, from any and all claims or counterclaims, causes of action, remedies, damages, liabilities, debts, suits, demands, actions, costs, expenses, fees, controversies, set-offs, third-party actions or proceedings of whatever kind or nature, whether at law, in equity, administrative proceedings, arbitration, or otherwise, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, which it may have had or has ever had against any of them arising from or relating to the Lawsuit or the Wastewater Contract, or any other claims or causes of action that were or could have been brought in the Lawsuit, or that could have been asserted in connection with the Wastewater Contract. This Agreement is intended to resolve forever any and all claims that Aqua may now have or has ever had against Kyle relating to the Lawsuit or the Wastewater Contract.

7. Release by Kyle. In exchange for the agreements and good and valuable consideration set forth herein, Kyle hereby releases and discharges Aqua, its affiliates, subsidiaries, and parents (the "Aqua Entities"), and the Aqua Entities' past, present, and future employees, stockholders, officers, directors, and agents, from any and all claims or counterclaims, causes of action, remedies, damages, liabilities, debts, suits, demands, actions, costs, expenses, fees, controversies, set-offs, third-party actions or proceedings of whatever kind or nature, whether at law, in equity, administrative proceedings, arbitration, or otherwise, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, suspected or

unsuspected, which it may have had or has ever had against any of them arising from or relating to the Lawsuit or the Wastewater Contract, or any other claims or causes of action that were or could have been brought in the Lawsuit, or that could have been asserted in connection with the Wastewater Contract. This Agreement is intended to resolve forever any and all claims that Kyle may now have or has ever had against the Aqua Entities relating to the Lawsuit or the Wastewater Contract.

8. Costs, Expenses, and Attorneys' Fees. The Parties will each pay their own costs, fees, and expenses, including attorneys' fees, with respect to or relating to the Lawsuit. However, to the extent that further litigation is necessary due to an alleged breach of this Agreement by either party, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs associated with that litigation.

9. No Release of Claims for Breach of This Agreement. Notwithstanding any other language in this Agreement, nothing herein shall be deemed a release of any rights created by this Agreement, the Contract between the City of Kyle, Texas and Aqua Operations, Inc. Relating to the Purchase of an Existing Wastewater Treatment Plant and Related Permit Equipment and Other Rights ("the Asset Purchase Agreement"), and the Wastewater Effluent Reclamation Project Agreement.

9. No Prior Conveyance. The Parties, and each of them, expressly warrant that no claims, demands, controversies, actions, causes of action, liabilities, damages, injuries, losses, or other rights released, assigned or waived herein have been previously conveyed, assigned, or transferred in any manner, whether in whole or in part, to any person, entity, or other third party.

10. Competency and Fairness. The Parties, and each of them, warrant and represent that they have full legal standing and capacity to enter into this Agreement, that they are not under any form of legal disability or incapacity at the time of signing this Agreement, that this is an arms-length transaction entered into without undue influence or duress, that they join in the execution of this Agreement freely and voluntarily, that they have read it fully and understand the terms of this Agreement, that they have had the opportunity to seek the advice of an independent attorney regarding this Agreement, and that they enter into and execute this Agreement without relying on any promises, conditions, terms, statements, or representations that are not expressly contained in this Agreement.

11. Not a Mere Recital. This Agreement is contractual, not a mere recital, and is a full and final settlement of the matters designated herein and is binding on all affiliates, owners, predecessors, successors, and/or assigns of Aqua and Kyle.

12. No Admission of Liability. This Agreement is a compromise of doubtful and disputed claims in order to avoid the further trouble and expense of litigation and shall not be construed as an admission of liability by either of the Parties.

13. Integration Clause. This Agreement, the Asset Purchase Agreement, and the Wastewater Effluent Reclamation Project Agreement contain the entire understanding between the Parties concerning the matters set forth herein, and there are no representations, warranties, agreements, promises, understandings, or arrangements, oral or written, express or implied,

between the Parties relating to the subject matter of this Agreement except those recited herein. Also, this Agreement, the Asset Purchase Agreement and the Wastewater Effluent Reclamation Project Agreement supersede all previous representations, warranties, agreements, promises, understandings, or arrangements, oral or written, relating to the subject matter of this Agreement, all of which are canceled, null, void, and of no effect. .

14. Amendment of Agreement. This Agreement may be amended only by written agreement signed by the Parties, and a breach of this Agreement may be waived only by written waiver signed by the party granting the waiver. The waiver of any breach of this Agreement shall not operate or be construed as a waiver of any similar or prior or subsequent breach of this Agreement.

15. Choice of Law. This Agreement shall be governed by and construed pursuant to the laws of the State of Texas.

16. Partial Invalidity. In the event any portion of this Agreement is deemed unenforceable, void, voidable, or of no force and effect, no other portion will be thereby affected, and the remainder of this Agreement will continue in full force and effect.

17. Adequate Consideration. Each of the Parties represents and warrants that each has received adequate consideration for their respective representations, warranties, and agreements herein.

18. No Construction Against the Parties. This Agreement has been prepared by the joint efforts of the Parties, and each of the parties hereto acknowledges that they have read the Agreement and that the Agreement expresses the entire agreement concerning the settlement of the Lawsuit. This Agreement shall not be strictly construed against any party hereto.

19. Further Actions. The Parties agree they will each execute such other and further instruments and documents or take such other steps as may become necessary to carry out the intent of this Agreement.

20. Two or More Counterparts. This Agreement may be executed simultaneously in two or more counterparts, to be transmitted by facsimile, e-mail or otherwise, and said counterparts together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth hereafter.

AQUA OPERATIONS, INC.

By: _____

Name: _____

Title: _____

Date: _____

RATIFIED AND APPROVED BY ITS BOARD OF DIRECTORS ON THE ____ DAY OF _____, 2016.

CITY OF KYLE, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

RATIFIED AND APPROVED BY ITS CITY COUNCIL ON THE ____ OF _____, 2016.

EXHIBIT

A

**AQUA/KYLE WASTEWATER EFFLUENT RECLAMATION
PROJECT AGREEMENT**

STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS:

COUNTY OF HAYS §

WHEREAS, the City of Kyle, Texas, a Texas municipal corporation (hereinafter referred to as “Kyle”), and Aqua Operations, Inc., a Delaware corporation (hereinafter referred to as “Aqua”), enter into this Aqua/Kyle Wastewater Effluent Reclamation Project Agreement (hereinafter referred to as the “Wastewater Reclamation Agreement” or “Contract”);

WHEREAS, Aqua and Kyle desire to undertake a wastewater effluent reclamation project, mutually beneficial to both Aqua and Kyle, to explore the feasibility of converting treated wastewater effluent from Kyle’s wastewater treatment plant (the “WWTP”) to potable water and using such water for purposes of storage, recharge, replenishment in, and recovery/retrieval for beneficial use from the Edwards Aquifer or any other aquifer; and

WHEREAS, Kyle and Aqua enter into this Wastewater Reclamation Agreement so as to set forth the parties’ respective rights and obligations in connection with the intended aquifer storage, recharge, and replenishment and other reclamation project activities;

NOW, THEREFORE, IN CONSIDERATION OF BENEFITS, MUTUAL COVENANTS AND CONSIDERATIONS SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS:** As used in this Contract, the following terms, when capitalized, shall have the following meanings.
 - A. “Aqua” means Aqua Operations, Inc., a Delaware corporation.
 - B. “Chapter 26” means Chapter 26 of the Texas Water Code, as the same may be amended from time to time.
 - C. “Delivery Point” means the point at which Aqua shall connect the WWTP with Aqua’s equipment, pipelines, and facilities; the Delivery Point shall be located in close proximity to the point where Kyle currently allows Effluent diversion for third-party irrigation use on the Plum Creek Golf Club golf course and prior to the point where Kyle discharges Effluent to Plum Creek.
 - D. “Effective Date” means January 1, 2016, but this Contract shall not be effective as of that date unless and until this Contract is fully executed by both Parties and ratified by the Kyle City Council and Aqua board of directors as applicable in accordance with the ratification requirement terms herein.
 - E. “Effluent” means wastewater that has been treated at the WWTP.

- F. “Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy or terrorist, orders or actions of any kind of government of the United States, the State of Texas or any local government or political subdivision, or any civil or military authority, insurrections, riots, terrorist act or incident, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to pumps, booster stations, treatment and /or storage facilities, machinery, pipelines, canals, or other structures, partial or entire failure of the Effluent supply including pollution (accidental or intentional), and any inability on the part of Kyle to deliver Effluent to Aqua or for Aqua to perform Effluent reclamation on account of any other cause not reasonably within the control of either Aqua or Kyle.
- G. “Kyle” means the City of Kyle, Texas, a Texas municipal corporation.
- H. “Parties” means Kyle and Aqua.
- I. “Project” means the Aqua/Kyle Wastewater Effluent Reclamation Project consisting of: (1) Aqua exploring whether converting the Effluent to potable water that may be injected into and stored in an aquifer, using that water as recharge and replenishment for same, and subsequently retrieving that water for beneficial use is feasible in light of technical, legal, cost, and other constraints; (2) Kyle making at least 750,000 gallons per day of Effluent, as defined herein, available to Aqua at the Delivery Point; (3) Aqua financing, developing, designing, constructing, operating, and maintaining all equipment necessary to take delivery of Effluent, as defined herein, from Kyle at the Delivery Point if Aqua so requests; (4) Aqua financing, developing, designing, constructing, operating, and maintaining all equipment, pipelines, and facilities that may be necessary to convert any Effluent taken by Aqua at the Delivery Point to potable water that may be injected into and stored in an aquifer, used as recharge and replenishment for same, and subsequently retrieved for beneficial use in accordance with all applicable law; (5) Aqua completing such reclamation of WWTP Effluent that may be feasible in accordance with technical, legal, cost and other constraints that may be identified by Aqua; (6) Aqua obtaining all necessary permits or other regulatory approvals needed for such reclamation of WWTP Effluent with Kyle’s cooperation if Aqua deems necessary; and (7) Aqua securing groundwater withdrawal credits from the Edwards Aquifer Authority or any other applicable regulated aquifer groundwater conservation district in the name of and for the benefit of Kyle, Aqua, or both as Aqua deems appropriate, or otherwise ensuring that the re-treated, injected, stored and recovered water may be used beneficially in accordance with this Contract and, if executed, the Reclaimed Water Use Agreement included as **Exhibit 1**.
- J. “Reclaimed Water Use Agreement” means the draft form Reclaimed Water Use Agreement between Kyle and Aqua attached to this Contract as **Exhibit 1**.

- K. “TPDES Permit” means Kyle’s TPDES Permit No. WQ0011041002 issued by TCEQ pursuant to Chapter 26, Texas Water Code, currently expiring on February 1, 2020 and as may be renewed or amended.
- L. “WWTP” means the wastewater treatment plant located approximately 2.7 miles northwest of the intersection of State route 21 and Farm-to-Market Road 2720, in Hays County, Texas 78640.

2. RATIFICATION:

- A. The acceptance and signing of this Contract by a representative of Kyle is subject to ratification and approval by Kyle’s city council, and the acceptance and signing of this Contract by a representative of Aqua is subject to ratification and approval by the board of directors of Aqua.
- B. Kyle represents to Aqua that Kyle’s city council has the lawful authority to ratify and approve this Contract and to fully obligate Kyle under this Contract, and Aqua represents to Kyle that Aqua’s board of directors holds full legal authority to ratify and approve this Contract and to fully obligate Aqua under this Contract.
- C. The Kyle city council will not consider whether to ratify this Contract unless and until Kyle is provided an original signed and sealed certificate evidencing that Aqua’s board of directors has unconditionally approved and ratified this Contract and Aqua has submitted a copy of its HB 1295 form to Kyle.
- D. This Contract shall be null and void unless ratified by both the Kyle city council and the Aqua board of directors within forty-five days after this Contract is signed by representatives of Kyle and Aqua.

3. DUTIES OF KYLE.

- A. Kyle hereby grants Aqua:
 - i. An option to perform, at Aqua’s sole cost, the following activities: to construct equipment Aqua deems necessary to take delivery of Effluent from Kyle at the Delivery Point for use in the Project, to obtain the necessary permits to enable Aqua to use the Effluent in the Project, facilitate an interlocal cooperation contract between Kyle and the EAA or other contract under the terms of this Contract that accomplishes Project goals if deemed necessary by Aqua for the Project, and to take any other Project steps Aqua deems necessary for the substantial completion of a fully operational Project (collectively, the “Triggering Events”).
 - ii. The exclusive right to prepare and file an application in Kyle’s name with the EAA for a permit under section 1.44 of the Edwards Aquifer Authority Act, as described in more detail in Section 3(E) of this Contract, if Aqua determines in its sole discretion that such a contract is necessary for the Project.

iii. An option to enter into the Reclaimed Water Use Agreement with the same payment terms and in substantially the same form as the Reclaimed Water Use Agreement document included as **Exhibit 1** to this Contract, the exercise of such option being subject to Aqua completing each of the following:

a. Causing an amendment of the EAA Act, the adoption of rules by the EAA, or otherwise effecting a regulatory circumstance whereby persons other than political subdivisions may obtain recharge credits for activities such as the Project if Aqua determines to locate the Project within the EAA's jurisdiction;

b. Obtaining all permits required for the construction and operation of the Project;

c. Completion of the construction and acquisition of the facilities and equipment for the Project to the point of a completely functional and operational Project;

d. Transfer or assignment to Aqua of Kyle's rights and obligations under any contract with the EAA or permit from the EAA in Kyle's name relating to the Project if the Project is located within the EAA's jurisdiction and such is deemed necessary for the Project; and

e. Resolution of all claims then pending against the City by third-parties relating to this Contract, if any, to the reasonable satisfaction of the City.

Aqua will not have the right to demand or take Effluent prior to the execution of the Reclaimed Water Use Agreement except as provided in Section 3(F) of this Contract.

B. Kyle hereby grants Aqua the following with respect to WWTP property access:

i. Access for Design. Upon reasonable advance notice to Kyle, Kyle shall allow Aqua's representatives, engineers and contractors to enter the WWTP property for the purpose of designing equipment to take delivery of Effluent from the Delivery Point. This access will be allowed only in the company of Kyle representatives and only during normal business days and hours. Any Aqua representative, engineer, or contractor entering the WWTP property shall strictly comply with Kyle's safety requirements and shall provide evidence of insurance satisfactory to Kyle.

ii. Easement for Construction and Operation. If the Delivery Point cannot feasibly be located outside the boundaries of the Kyle WWTP property, then prior to Aqua initiating construction of facilities required to take Effluent from the Delivery Point to the edge of the WWTP property, Kyle and Aqua will designate a mutually agreeable area for the location of those facilities. Upon such designation, Kyle shall grant Aqua a non-exclusive easement in a form mutually agreeable to both Kyle and Aqua that provides Aqua rights to construct, operate, and maintain the facilities required to take Effluent from the Delivery Point to the

WWTP property boundaries. The easement will not and should not be construed to grant Aqua any right to manipulate valves, timers, or other equipment upstream of the Delivery Point. Upon written request by Kyle, Aqua shall construct an intruder resistant fence around the area subject to the easement. Kyle reserves the right to fence or otherwise segregate the easement area where the facilities are located from the remainder of the WWTP property at Aqua's expense if Aqua fails to do so prior to complete construction of the facilities. If Kyle grants an easement to Aqua under this Section 3(B)(ii) and this Contract expires prior to Aqua completing all the Triggering Events, Aqua shall sign and file a release of the easement in the real property public records of Hays County.

- C. Following the Effective Date of this Contract, Kyle shall not grant any person other than Aqua the right to take delivery of any Effluent if such grant will make it impossible for Kyle to supply Aqua up to 750,000 gallons per day of Effluent under the Reclaimed Water Use Agreement.
- D. Following the Effective Date of this Contract, Kyle agrees that it will not take actions that duplicate Project activities, enter into any agreement with any other party with terms that are inconsistent with the obligations of the parties under this Agreement, use the Effluent to obtain aquifer withdrawal credits from a regulatory authority or by other means through an aquifer storage, recharge or recovery project, or otherwise achieve the goals contemplated by the Project without Aqua or Aqua's written agreement in recognition of Aqua's sole and exclusive Project rights granted to Aqua by Kyle through this Agreement. In such event, Kyle shall reimburse Aqua for all its Project costs and expenses, including legal and consulting expenses.
- E. If Aqua determines in its sole discretion that the Project should or must be structured as an Artificial Recharge project under Section 1.44 of the Edwards Aquifer Authority ("EAA") Act (the "Act") and rules (as such Act and rules may be amended) in order to accomplish Project goals, Kyle agrees to use best efforts to execute an interlocal cooperation contract with the EAA under Chapter 791 of the Texas Government Code facilitated by Aqua and shall not unreasonably withhold agreement to same. The terms of the agreement with the EAA shall be consistent with the terms of this Agreement and the Reclaimed Water Use Agreement. If Kyle becomes party to any agreement for an Artificial Recharge project utilizing effluent from the WWTP under Section 1.44 of the EAA Act without the consent of Aqua or on terms to which Aqua has not agreed or consented, Kyle shall reimburse Aqua for all its Project expenses, including legal and consulting expenses. Kyle appoints Aqua as its agent for the limited purpose of preparing and filing an application with the EAA and obtaining EAA's approval of the application, all at Aqua's sole expense. Kyle agrees to work with Aqua to explore potential legislative and regulatory changes that might be implemented to eliminate the need for Kyle involvement in such an interlocal cooperation contract to accommodate an EAA jurisdiction Project.

- F. Kyle shall allow Aqua to take delivery of up to 750,000 gallons per day of Effluent for the purpose of bench tests, pilot projects, facility testing, and start-up of the Project prior to the execution of the Reclaimed Water Use Agreement, but the volume shall be limited to the volume required for such purposes and such use, if any, shall be subject to the same limitations, conditions, and agreements as set forth in the Reclaimed Water Use Agreement; provided, however, there will be no charge for Aqua to take delivery of such limited volumes of Effluent except as provided in Section 6(B) if applicable.

4. DUTIES OF AQUA.

- A. Aqua shall be responsible for developing any feasibility studies relating to the Project. However, the need for such studies shall be determined solely by Aqua and nothing in this provision shall obligate Aqua to seek or obtain any such feasibility studies.
- B. Aqua shall be responsible for any permitting or other regulatory approvals required for the Project. However, the need for such permitting or regulatory approvals shall be determined solely by Aqua and nothing in this provision shall obligate Aqua to seek or obtain any such permitting or regulatory approvals if Aqua, in its sole discretion, determines the cost or likelihood of obtaining such permits or approvals is excessive, impractical, or not feasible. Kyle shall not be entitled to utilize any studies or reports prepared by Aqua, regardless of when such documents were shared with Kyle, unless Aqua makes a determination not to seek or obtain permitting or regulatory approvals for the Project and Kyle reimburses Aqua for all of Aqua's out of pocket expenses for obtaining all such reports or studies, including legal and consulting expenses.
- C. Aqua shall be responsible for the financing, development, design, construction, operation, and maintenance of any equipment necessary for Aqua to take delivery of Effluent made available at the Delivery Point for the Project that Aqua may request. However, the decision whether to commence any such Project tasks shall be made solely by Aqua and nothing in this provision shall obligate Aqua to make any initial or additional installation of equipment for the Project. In making such determinations Aqua's considerations may include, but are not limited to, the overall financial viability of the Project and whether the terms of any third party agreement by Kyle or any interlocal agreement between Kyle and the EAA adversely impact Aqua. Instances of Force Majeure may be determined by Aqua to adversely impact Project feasibility. Aqua shall ensure that its development, design, construction, operation, and maintenance of equipment intended to take delivery of Effluent at the Delivery Point for Project uses, if any, does not interfere with or impair Kyle's intake of untreated wastewater at the WWTP, treatment of such wastewater, or discharge or conveyance of any Effluent not conveyed to Aqua via the Delivery Point.
- D. Aqua shall be responsible for any conveyance, discharge, storage, recharge, replenishment, delivery, sale, or other use of Effluent after Aqua successfully

takes delivery of same from Kyle at the Delivery Point if Aqua requests such Effluent delivery. Nothing in this provision shall obligate Aqua to request or accept Effluent delivery by Kyle at the Delivery Point.

- E. If Aqua determines in its sole discretion that the Project should or must be structured as an Artificial Recharge project under Section 1.44 of the Edwards Aquifer Authority (“EAA”) Act (the “Act”) and rules (as such Act and rules may be amended), Aqua agrees to use best efforts to facilitate execution of an interlocal cooperation contract under Chapter 791 of the Texas Government Code between Kyle and EAA. Aqua shall have the right to review and approve or reject the terms of any such interlocal agreement. In the event Aqua does not approve or consent to the terms of such interlocal agreement, Aqua may terminate this Agreement without further obligation to Kyle and the reimbursement provisions of Section 3(E) shall apply. Aqua agrees to work with Kyle to explore potential legislative and regulatory changes that might be implemented to eliminate the need for Kyle involvement in such an interlocal cooperation contract to accommodate an EAA jurisdiction Project.

5. CONSIDERATION.

Part of the consideration for this Agreement is the mutual release of all claims in Cause No. 13-0894, Aqua Operations, Inc. v. City of Kyle, Texas, in the 428th Judicial District Court, Hays County, Texas. Other consideration for this Agreement is Aqua’s commitment of financial resources to the Project in furtherance of Aqua’s Project reclamation services for Kyle.

6. TERM AND TERMINATION.

- A. Except as provided by Section 6(B), this Contract shall expire the earlier of either: (i) April 30, 2021; or the (ii) execution of the Reclaimed Water Use Agreement.
- B. Aqua shall have the option to extend the expiration date of this Contract to April 30, 2022 by notifying Kyle in writing that it so elects this option on or before March 31, 2021 and by paying Kyle an option fee in the amount of \$12,500 if Aqua anticipates at the time of such notice that the following conditions will exist as of April 30, 2022: (i) Aqua has obtained the permit(s) required to construct and operate the Project; (ii) the permit(s) is subject to an appeal; (iii) Aqua has deferred commencement of Project construction as a result of the appeal and, thus, the Project is not operational; and (iv) Aqua has completed all the Triggering Events except completion of an operational Project. Thereafter, Aqua may extend this Contract for two additional one year periods, so long as within each year Aqua anticipates the conditions described above will exist as of April 30, Aqua notifies Kyle in writing by that it so elects this option by March 31, and Aqua pays the annual option fee prior to March 31.
- C. Aqua may terminate this Contract at any time upon written notice to Kyle.

D. In the event this Contract terminates and any claims relating to this Contract are filed with or against Kyle by third-parties during the term of this Contract or within the time allowed for such claims under applicable law, Section 7 of this Contract, relating to indemnification, shall survive such termination until the claim is resolved.

7. **INDEMNIFICATION.**

AQUA SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS KYLE, AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, ATTORNEYS, AFFILIATES, BENEFICIARIES, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITIES AND OBLIGATIONS ARISING FROM ANY AND ALL THIRD-PARTY CLAIMS ARISING FROM (i) THIS CONTRACT; OR (ii) AQUA'S EXERCISE OF ITS RIGHTS AND PRIVILEGES PURSUANT TO THIS CONTRACT.

8. NOTICES. All notices called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, or after being delivered to the other party by registered or certified mail, return receipt requested, or by courier mail service, addressed as follows unless and until written notice is provided to the other Party of a change in address:

AQUA OPERATIONS, INC.:

Aqua Operations, Inc.
1106 Clayton Lane
Suite 400W
Austin, Texas 78723

CITY OF KYLE:

City of Kyle
c/o City Secretary
100 W. Center Street
Kyle, Texas 78640

9. GENERAL PROVISIONS.

A. CAPTIONS. The captions used herein are for convenience purposes only and shall not affect the construction or interpretation of this Contract.

B. NUMBER AND GENDER. Any reference herein to the singular number shall be deemed to include, where the context so requires, the plural and vice-versa, and any reference herein to any gender shall be deemed to include the male, female and neuter genders.

- C. **SUCCESSORS AND ASSIGNS.** This Contract shall be binding on the representatives, successors, and assigns of both Parties. The following provisions shall apply to assignments.
- i. Except as otherwise authorized by this Section 9(C), neither Party may sell, assign, transfer, or otherwise dispose of their interests or obligations in this Contract to a third-party without the written approval of the other Party, which approval will not be unreasonably withheld or delayed.
 - ii. Subject to the requirements of Section 9(C)(iv) below, notwithstanding the provisions of Section 9(C)(i) above, Kyle shall be entitled to assign its obligations pursuant to this Contract to any qualified private corporate or public governmental entity or political subdivision authorized to undertake the same type of obligations of Kyle set forth in this Contract without Aqua's consent so long as such assignment does not adversely affect the Project and assignee has agreed to assume and fulfill all Contract obligations of Kyle.
 - iii. Subject to the requirements of Subsection 9(C)(iv) below, notwithstanding the provisions of Section 9(C)(i) above, Aqua shall be entitled to assign its obligations pursuant to this Contract to any other qualified private corporate entity, including another entity owned by Aqua America, Inc., or to a public governmental entity or political subdivision authorized to undertake the same type of obligations of Aqua set forth in this Contract without Kyle's consent so long as such assignment does not adversely affect the Project and assignee has agreed to assume and fulfill all Contract obligations of Aqua.
 - iv. No assignment of this Contract shall be effective until the non-assigning Party receives a copy of the written assignment executed by the assignee, affirmatively and unequivocally assuming the obligation to fully, diligently, and timely perform all of the obligations of the assigning Party.
 - v. Assignment of this Contract shall relieve the assigning Party of its prospective obligations and/or liability pursuant to this Contract; provided, however, that the assigning Party shall remain liable for any and all obligations accruing prior to the Effective Date of the assignment.
- D. **ATTORNEYS' FEES.** In the event that either Party hereto shall bring an action to enforce the terms hereof, to seek damages for breach of the terms hereof, or to declare rights hereunder, the prevailing party in any such action shall be entitled to its court costs and reasonable attorneys' fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited

to, attorneys' fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

- E. **APPLICABLE LAW.** This Contract shall be governed by, construed and interpreted in accordance with, and subject to the laws of the State of Texas.
- F. **NO ORAL AGREEMENT; THIS IS THE COMPLETE AGREEMENT.** Except as otherwise stated in this Contract, this written contract contains the complete agreement of the Parties concerning the Project, and this Contract supersedes and replaces any other agreements heretofore executed by the Parties concerning the Project. No other representations or agreements of the Parties concerning the Project, expressed or implied, shall be in force and effect unless the same are reduced to writing as an identified addendum or modification to this Contract and signed by both Parties.
- G. **AVAILABILITY OF COMMON LAW DEFENSES.** By execution and ratification of this Contract, the City and its City Council agree that Kyle is subject to the generally applicable common law principles of estoppel, waiver, and laches, and that either Party may be held by a court of competent jurisdiction to have waived its rights and privileges under this Contract by its action or inaction in accordance with generally applicable principles of Texas law.
- H. **GOODS AND SERVICES.** The Parties agree that the mutual Project commitments stated in this Contract intended to achieve reclamation of Kyle Effluent constitute an agreement by Aqua to provide goods and services to Kyle, and that this Contract is subject to Chapter 271, Subchapter I, of the Texas Local Government Code. In the event Kyle commits a breach of this Contract or otherwise takes any action that adversely impacts Project success or Aqua's ability to achieve the Triggering Events, the Parties agree that Kyle shall reimburse Aqua for all its Project costs and expenses, including without limitation legal and consulting expenses. Further, in such event Aqua shall be entitled to all other and further relief provided by applicable law.
- I. **MULTIPLE COPIES.** The parties acknowledge that this Contract may be executed in multiple copies, in one or more counterparts, each of which shall be deemed to be an original document, but all when taken together shall constitute but one and the same instrument.

AQUA OPERATIONS, INC.

By: _____

Name: _____

Title: _____

Date: _____

RATIFIED AND APPROVED BY ITS BOARD OF DIRECTORS ON _____, 2016.

CITY OF KYLE, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

RATIFIED AND APPROVED BY ITS CITY COUNCIL ON _____, 2016.

STATE OF TEXAS §

COUNTY OF TRAVIS §

On the _____ day of _____, 2016, Robert L. Laughman did appear before the undersigned notary public, and did, under oath, state that he is President of **AQUA OPERATIONS, INC.**, a Texas corporations, and that he did sign and did execute the foregoing contract in that capacity and for the considerations recited therein, in witness of which I place my hand and seal of office.

Notary Public, State of Texas

(print name)

Commission expires: _____

STATE OF TEXAS §

COUNTY OF HAYS §

On the _____ day of 2016, Todd Webster did appear before the undersigned notary public, and did, under oath, state that he is the Mayor of the **CITY OF KYLE, TEXAS**, a Home Rule Municipality and Political Subdivision of the State of Texas, and that he did execute the foregoing contract in that capacity and for the considerations recited therein, in witness of which I place my hand and seal of office.

Notary Public, State of Texas

(print name)

Commission expires: _____

EXHIBIT 1

RECLAIMED WATER USE AGREEMENT

BETWEEN

CITY OF KYLE, TEXAS
“PRODUCER”

&

AQUA OPERATIONS, INC., “USER”

STATE OF TEXAS §
 §
COUNTY OF HAYS §

RECLAIMED WATER USE AGREEMENT

This Reclaimed Water Use Agreement (the “Agreement”) is made and entered into as of the ____ day of _____ 20__, (the “Effective Date”), by and between the City of Kyle, Texas, a municipal corporation, (hereinafter “Producer”) and Aqua Operations, Inc. (hereinafter “User”). Producer and User may be referred to collectively herein as the “Parties,” or individually as the “Party.”

Recitals

WHEREAS, Producer owns and operates a wastewater treatment facility (the “Plant”) located approximately 2.7 miles northwest of the intersection of State route 21 and Farm-to-Market Road 2720, in Hays County, Texas 78640;

WHEREAS, Producer currently holds TPDES Permit No. WQ0011041002 (the “Permit”) issued by the Texas Commission on Environmental Quality authorizing the discharge of treated effluent from the Plant;

WHEREAS, the current Permit authorizes Producer to treat and discharge an annual average flow not to exceed 3.0 million gallons per day (“MGD”) of treated wastewater (the “Effluent”), but once an expansion is completed, the annual average flow may increase up to 4.5 MGD;

WHEREAS, User desires to purchase Effluent from the Plant to continue reclamation efforts that have started pursuant to a Aqua/Kyle Wastewater Effluent Reclamation Project Agreement dated _____, 2016 (“Reclamation Project Agreement”);

WHEREAS, Producer desires to sell Producer’s Effluent to User for the Project described in the Reclamation Project Agreement; and

WHEREAS, Producer and User desire to enter into this Agreement to memorialize the terms and conditions of their respective rights and obligations acting prospectively under this Agreement and comply with regulations applicable to the delivery and use of reclaimed wastewater;

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement; Ten and no/100ths Dollars (\$10.00); and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Producer and User agree as follows:

Article I
Definitions

Section 1.1 Defined Terms.

The following terms and expressions used in this Agreement, unless otherwise defined herein, or where the context clearly requires otherwise, shall, for purposes of this Agreement, have the following meanings:

“Chapter 26” means Chapter 26 of the Texas Water Code, as the same may be amended from time to time,

“Contract Year” means each twelve-month period beginning October 1 and ending September 30 during the term of this Agreement, except during the first year of the Agreement during which the term Contract Year shall mean the prorated period commencing on the Effective Date and ending on September 30.

“Effluent” means the treated wastewater produced by Producer at the Plant.

“Effective Date” means the date first written above.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy or terrorist, orders or actions of any kind of government of the United States, the State of Texas or any local government or political subdivision, or any civil or military authority, insurrections, riots, terrorist act or incidents, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to pumps, booster stations, treatment and/or storage facilities, machinery, pipelines, canals, or other structures, partial or entire failure of the Effluent supply including pollution (accident or intentional), and any inability on the part of Producer to deliver Effluent pursuant to this Agreement on account of any other cause not reasonably within the control of Producer.

“Monthly Purchase” means the volume of Effluent User purchases from Producer on a monthly basis.

“Monthly Delivered Amount” means the total volume of Effluent that Producer delivers to User’s Meter each month.

“Notice” means any notice, communication, or payment between the Parties to this Agreement.

“Other Customer” means any potential future customer, other than User, with whom Producer may ever contract with to supply Effluent from the Plant, regardless of when Producer and the other customer enter into any contract for the supply of such Effluent.

“Permit” means Producer’s TPDES Permit No. WQ0011041002 issued by TCEQ pursuant to Chapter 26, Texas Water Code, currently expiring on February 1, 2020 and as may be renewed or amended.

“Plant” means all current, and any future, facilities for the receipt and treatment, of wastewater at Producer’s Plant authorized by State Permit, as the Permit may be amended and/or renewed from time to time.

“Purchase Price” means the per 1,000 gallons charge assessed by Producer for the Effluent.

T.A.C. means the Texas Administrative Code.

“TCEQ” or **“Commission”** means the Texas Commission on Environmental Quality and any successor agency.

“TPDES” means the Texas Pollutant Discharge Elimination System administered by TCEQ pursuant to Chapter 26, Texas Water Code.

“User’s Delivery Point(s)” means the location authorized either pursuant to this Agreement and the Permit, or otherwise by TCEQ, at which Producer will continue delivering Effluent from the Plant to the User under this Agreement. The Parties have identified the delivery point location(s) in Exhibit “A” attached hereto and incorporated herein by reference.

“User’s Improvements” means piping, valving and metering infrastructure necessary to implement this Agreement that has or will be constructed by User.

“User’s Meter(s)” means the meter owned and operated by Producer and located at User’s Delivery Point.

“User’s Project” means Aqua’s “Project” as that term is defined and described in the Reclamation Project Agreement.

Article II Option

Section 2.1. Option. Pursuant to the Reclamation Project Agreement, Kyle granted Aqua the option to enter into this Agreement if, within the term of the Reclamation Project Agreement, Aqua satisfied certain requirements as set forth therein (the “Triggering Events”). The Parties have determined that Aqua has, during the term of the Reclamation Project Agreement, satisfied those requirements.

Section 2.2. Reclamation Project Agreement Expiration. Upon the effective date of this Agreement, the Reclamation Project Agreement will expire unless it has already expired by its terms except for provisions that survive the expiration of the Reclamation Project Agreement.

Section 2.3. Assignment. Kyle transfers and assigns to Aqua, or to Aqua’s designee(s), the following: (i) Kyle’s rights, if any, in the Project; (ii) the agreement(s), if any, between Kyle and the Edwards Aquifer Authority (the “EAA”), if any; and (iii) the permit(s), if any, issued by the EAA to Kyle relating to the Project. Aqua or Aqua’s designee(s) shall be responsible for

performing all obligations under the assigned agreements and permits upon the effective date of the assignment and agrees to indemnify, defend and hold harmless Kyle for any claims by third-parties relating to the Project, the contracts, or the permits after the effective date of this Agreement.

Article III
Delivery of Effluent

Section 3.1. Reservation/Options. Kyle hereby: (i) reserves 750,000 gallons per day (“gpd”) of Effluent exclusively for Aqua’s use in User’s Project; (ii) grants Aqua the option to take Effluent at the User’s Delivery Point up to 750,000 gpd; and (iii) will make additional Effluent available to Aqua for use upon request if available, provided with respect to (i)-(iii) that Aqua timely pays Kyle for the amount of Effluent reserved for Aqua at the User’s Delivery Point whether or not Aqua takes any Effluent, Aqua pays for Effluent taken at the then-effective volumetric rate agreed upon by the Parties, and Aqua is not in default for payments to Kyle owed under this Agreement.

Section 3.2. Effluent Source. The Effluent shall be water that is discharged from Kyle’s Plant and User acknowledges that the Effluent conditionally made available under this Agreement is deliverable solely out of Producer’s production of Effluent from the Plant as, if, and when wastewater is received and treated at the Plant. Producer has made no representations or warranties, and in fact, expressly disclaims any and all representations and warranties, both express and implied, regarding the quantity of the Effluent and the quality of the Effluent that may be available for delivery pursuant to this Agreement and that may be produced by the Plant from time to time.

(a) Quality. Aqua has sole discretion on whether Aqua chooses to take the Effluent, at its then-existing quality, whether known or knowable. Kyle expressly disclaims any representation, warranty or agreement that the quality of any Effluent provided to Aqua under this Agreement is compliant with Federal and Texas statutes and regulations applicable to discharges into a state watercourse and the Permit in effect for the Plant at the time of Aqua’s request to take delivery of same. The Effluent made available for delivery to Aqua will be of the same quality as the Effluent produced by the Plant at the time. Aqua shall monitor and sample the Effluent at Aqua’s expense and at a location outside of the Plant property on the pipeline constructs to Aqua’s treatment plant. Aqua acknowledges and agrees that the design and operation of User’s Project shall be sufficient to pre-treat and/or treat the Effluent taken by Aqua to satisfy the intended purpose of the Project regardless of whether proper treatment has occurred at the Plant, but if Aqua determines Effluent is delivered that is not compliant with applicable regulations pursuant to this paragraph, Aqua will notify Kyle so that Kyle may address the problem. No provision in this Agreement is intended to grant Aqua any right to operate the WWTP or to require Kyle to operate the WWTP in any particular manner other than that required by applicable law.

(b) Volume. The minimum amount of Effluent that Kyle will reserve exclusively for Aqua to take from the Plant at the User’s Delivery Point on a daily basis is 750,000 gpd.

Section 3.3. Permit Compliance. Producer shall be responsible at its sole expense for the maintenance in good standing of the Plant Permit. Kyle shall be responsible for the discharge,

storage, use, reuse, or other handling of its Effluent in accordance with applicable law for any Effluent amounts not diverted by Aqua.

Section 3.5. Access. Prior to execution of this Agreement, if User's Delivery Point or User's Project improvements are located on the Plant property and Aqua has designed and constructed facilities required to take Effluent from the Delivery Point to the edge of the WWTP property, Kyle and Aqua will designate a mutually agreeable area for the location of those facilities. Upon such designation, Kyle shall grant Aqua a non-exclusive easement in a form mutually agreeable to both Kyle and Aqua that provides Aqua rights to construct, operate, and maintain the facilities required to take Effluent from the Delivery Point to the WWTP property boundaries. The easement will not and should not be construed to grant Aqua any right to manipulate valves, timers, or other equipment upstream of the Delivery Point. If installed prior to execution of this Agreement in response to a written request by Kyle, Aqua shall maintain an intruder resistant fence around the area subject to the easement. Kyle reserves the right to maintain such fence or otherwise segregate the easement area where Aqua's facilities are located from the remainder of the WWTP property at Aqua's expense if Aqua fails to do so after reasonable notice in writing to Aqua by Kyle.

Article IV Duties of Aqua

Section 4.1. Permitting. Aqua shall be solely responsible for any permitting or other regulatory approvals required for User's Project. However, the need for such permitting or regulatory approvals shall be determined solely by Aqua.

Section 4.2. Financing and Construction. Aqua shall be solely responsible for the financing, development, design, construction, operation, and maintenance of any equipment necessary for Aqua to take delivery of Effluent made available at the User's Delivery Point and use it for User's Project. Aqua shall ensure that its equipment used to take delivery of Effluent at the User's Delivery Point for User's Project uses does not interfere with or impair Producer's intake of untreated wastewater at the WWTP, treatment of such wastewater, or discharge or conveyance of any Effluent not conveyed to Aqua via the User's Delivery Point.

Section 4.3. Effluent Diversion. Nothing in this provision shall obligate Aqua to request or accept Effluent delivery by Kyle at the User's Delivery Point under this Agreement. Aqua shall have sole discretion in determining the timing and quantity of any Effluent that it accepts from the WWTP, subject to the limitations on the maximum amount of Effluent that Aqua may take under this Agreement. Aqua is without obligation to accept any minimum amount of Effluent despite Kyle's reservation of same for Aqua's benefit and has sole discretion in determining when Effluent should be utilized for User's Project.

Section 4.4. User's Project Discharge. Aqua shall be solely responsible for any conveyance, discharge, storage, recharge, replenishment, delivery, sale, or other use of Effluent after Aqua takes delivery of same from Kyle at the User's Delivery Point for User's Project.

Section 4.5. **INDEMNIFICATION.** USER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS PRODUCER, AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, ATTORNEYS, AFFILIATES, BENEFICIARIES, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITIES AND OBLIGATIONS ARISING FROM ANY AND ALL THIRD-PARTY CLAIMS ARISING FROM USER'S: (i) EXERCISE OF THE RIGHTS AND PRIVILEGES PROVIDED IN THIS AGREEMENT; (ii) PERFORMANCE OF USER'S OBLIGATIONS PURSUANT TO THIS AGREEMENT; OR (iii) THE PROJECT.

Section 4.6. Permits, Easements & Right-of-Way. User shall be solely responsible for securing any and all permits and approvals, public or private easements, rights-of-way and/or access, at User's cost, for User's Project on property located outside the Plant property if necessary for beneficial use of the Effluent.

Section 4.7. User's Storage & Delivery System. User shall be responsible for all facilities beyond the User's Delivery Point necessary for beneficial use of the Effluent.

Section 4.8. Authorized Uses. Aqua shall use the Effluent taken by Aqua pursuant to this Agreement solely for User's Project. Aqua shall not use the Effluent for any other purpose or sell, assign, lease, or otherwise transfer any portion of the Effluent to any other person, except as a customer of Aqua's Project. Aqua shall not sell, supply, transfer, or assign Effluent or water from the Project for use within Kyle's corporate limits or territory within Kyle's water utility certificate of convenience and necessity, as the corporate limits or territory may change from time to time.

Section 4.9. Insurance. Immediately following the execution of this Agreement, User shall furnish to the Producer, upon request, Certificates of Liability Insurance evidencing the following minimum required insurance coverage:

Comprehensive General Liability	\$2,000,000 (each occurrence)
Bodily Injury / Property Damage	\$2,000,000 (aggregate)
Excess Liability	\$5,000,000 (each occurrence); \$5,000,000 (aggregate)
Contractor Pollution Liability	\$5,000,000 (per claim and aggregate)

User shall list the Producer as an additional insured on the general liability and excess liability policies, but not the workers' compensation, employer's liability and any professional errors and omissions insurance that Vendor may carry. User shall maintain the above insurance coverages during the entire term of this Agreement. The User will provide not less than 10 days' prior written notice of any cancelation or termination of the required coverages. User will provide certificates of insurance upon renewal or replacement of any required policy. User waives any claims it may have against the Producer based on the required policies and User's obligations under this Agreement. The required policies must include a waiver of subrogation against the Producer as agreed by contract or by endorsement. The Commercial General Liability Policy shall also include a "protective liability" clause providing coverage to Producer pursuant to the obligations assumed by User under the section of this Agreement entitled Indemnification.

Article V
Pricing and Payment

Section 5.1. Reservation. Aqua shall pay Kyle annually the sum of \$12,500 for the reservation of the Effluent and the amount is due and payable regardless of whether Aqua takes delivery of any Effluent. The annual sum shall be paid in twelve equal monthly installments and Aqua shall tender the monthly installment to Kyle by the tenth (10th) calendar day of each month without the need for an invoice or demand in any form by Kyle.

Section 5.2. Rate. In addition to the annual reservation charge required to be paid pursuant to Section 5.1 above, Aqua shall pay Kyle for the amount of Effluent taken by Aqua each month. The amount of Effluent water taken by Aqua will be based upon the meter at the Point of Delivery. The initial volumetric rate for Effluent taken by User from Producer shall be \$1.00 per 1,000 gallons delivered to User's Meter. This rate may be modified from time to time by further agreement, but not more frequently than once per Contract Year, based on a market survey conducted by Producer. Kyle agrees, however, the volumetric rate for Effluent paid by Aqua to Kyle under this Agreement shall not exceed the volumetric rate for effluent or reclaimed water then in effect as set by the City of San Marcos. At the end of each thirty day period of time, Kyle shall read the meter and determine the monthly charge based upon the amount of Effluent water taken and submit an invoice to Aqua. Aqua shall pay Kyle the amount due within ten calendar days after receipt of the invoice.

Section 5.3. Suspension of Delivery. In addition to other remedies available to Producer for User's failure to timely pay the Purchase Price, in such event occurring on or after October 16 of the applicable Contract Year Producer shall be entitled to terminate the delivery of Effluent to User until such time as User has paid current all such amounts then past due and owing to Producer pursuant to this Agreement. This remedy is cumulative of all other remedies available to Producer and may be exercised without giving any prior written notice to User and without application of any cure period prescribed by this Agreement.

Article VI
Duties of Producer

Section 6.1 Producer's Responsibilities.

(a) Producer shall be under no obligation to obtain any additional necessary permits and/or authorizations to implement this Agreement, including without limitation a Reclaimed Water Permit issued by TCEQ pursuant to all applicable Chapter 210 Rules authorizing the use of and transport of the Effluent.

(b) In the event that Producer determines to exercise its right to terminate the Agreement pursuant to one or more of the provisions of this Agreement, then in such event Producer shall provide written notice of such termination to User.

Section 6.2 Amendments to Producer's Permit. Prior to exercising its option to enter into this Agreement, Aqua has determined that the Permit, as in effect, is sufficient for User's needs. Producer shall be under no obligation to amend the Permit in order to deliver Effluent to User

under this Agreement, but in the event Producer chooses to secure any amendment(s) to either the Permit or additional authorizations pursuant to 30 T.A.C. Chapter 210, or any of them, in order to lawfully deliver Effluent to User under the terms of this Agreement, then the costs associated with securing such amendment(s) shall be borne by User if necessary for User's Project under applicable law. Otherwise, such costs shall be borne by Producer.

Article VII
Title

Section 7.1 Title. All title to the Effluent made available for diversion by User pursuant to this Agreement and taken by the User shall pass from Producer to User just beyond User's Meter(s) at the User's Delivery Point(s).

Article VIII
Taxes, Fees and Assessments

Section 8.1 Taxes, Fees and Assessments.

(a) User shall be responsible for the payment of any lawful assessment, tax or other fee or charge ever levied, or assessed against User's purchase and/or use of the Effluent subject to this Agreement during the term hereof. Producer agrees to provide User with notice of any such assessments, taxes, fees or charges within twenty (20) business days of the date Producer ever receives notice of any such potential future third-party charges.

(b) In the event that User fails to pay any such lawfully imposed assessment, tax or other fee, Producer shall have the right, but not the obligation, to pay such assessment, tax or fee. User shall be obligated to reimburse Producer within ten (10) business days for any such assessment, fee or tax paid by Producer on User's behalf pursuant to this Section 8.1.

(c) User's failure to reimburse Producer for any such expenses within thirty (30) days of the date of receipt of a written invoice for same from Producer shall constitute an Event of Default pursuant to this Agreement and give rise to Producer's various remedies available at law, or in equity, pursuant to other provisions of the Agreement.

Article IX
Assignment and Transfer

Section 9.1 Assignability.

(a) Except as otherwise authorized by this Section 9.1, neither Party may sell, assign, transfer, or otherwise dispose of their interests or obligations in this Agreement to a third-party without the written approval of the other Party, which approval will not be unreasonably withheld or delayed.

(b) Subject to the requirements of subsection (d) below, notwithstanding the provisions of subsection (a) above, Producer shall be entitled to assign its obligations pursuant to this Agreement to any qualified private corporate or public governmental entity or political subdivision authorized to undertake the type of obligations of Producer set forth in this Agreement without User's consent so long as such assignment does not adversely affect User's Project and assignee has agreed to assume and fulfill all Agreement obligations of Producer.

(c) Subject to the requirements of subsection (d) below, notwithstanding the provisions of subsection (a) above, User shall be entitled to assign its obligations pursuant to this Agreement to any qualified private corporate entity, including another entity owned by Aqua America, Inc., or a public governmental entity or political subdivision authorized to undertake the type of obligations of User set forth in this Agreement without Producer's consent so long as such assignment does not adversely affect User's Project and assignee has agreed to assume and fulfill all Agreement obligations of User.

(d) No assignment of this Agreement shall be effective until the non-assigning Party receives a copy of the written assignment executed by the assignee, affirmatively and unequivocally assuming the obligation to fully, diligently, and timely perform all of the obligations of the assigning Party.

(e) Assignment of this Agreement shall relieve the assigning Party of its prospective obligations and/or liability pursuant to this Agreement; provided, however, that the assigning Party shall remain liable for any and all obligations accruing prior to the Effective Date of the assignment.

Section 9.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Article X Default & Remedy

Section 10.1 Events of Default.

Each of the following acts, omissions or occurrences shall constitute an "Event of Default" and a material breach of this Agreement by User:

(a) Failure by User to timely pay any portion of the Purchase Price required to be paid prior to the expiration of thirty (30) days after Producer's delivery of written notice to User of such failure.

(b) Failure by User to either perform or observe any other covenant, condition, or provision of this Agreement to be performed or observed by User prior to the expiration of thirty (30) days after Producer's delivery of written notice to User of such failure.

(c) Notwithstanding the provisions of subsection (b) of this Section 10.1, in the event User is unable to cure any such default within said thirty (30) days, no such default shall be deemed to exist so long as User has commenced and is using reasonable due diligence to cure such default, and continues to do so until the matter is cured.

Each of the following acts, omissions or occurrences shall constitute an “Event of Default” and a material breach of this Agreement by Producer:

(d) Failure by Producer to reserve Effluent for User’s Project in accordance with this Agreement.

(e) Failure by Producer to either perform or observe any other covenant, condition, or provision of this Agreement to be performed or observed by Producer prior to the expiration of thirty (30) days after User’s delivery of written notice to Producer of such failure.

(f) Notwithstanding the provisions of subsection (e) of this Section 10.1, in the event Producer is unable to cure any such default within said thirty (30) days, no such default shall be deemed to exist so long as Producer has commenced and is using reasonable due diligence to cure such default, and continues to do so until the matter is cured.

Section 10.2 Producer’s Remedies.

(a) Upon the occurrence of any Event of Default which, after proper notice, User fails to timely cure, Producer may, at its option, in addition to any and all other rights, remedies or recourses available to it pursuant to the terms of this Agreement, immediately terminate this Agreement by giving written notice to User. User shall immediately cease use of the Effluent upon receipt of any such notice from Producer.

(b) In the event Producer elects to terminate the Agreement by reason of the occurrence of an Event of Default, then notwithstanding any such termination, User shall be liable for and shall pay to Producer the sum of the entire outstanding balance of the Purchase Price for that Contract Year, plus any other indebtedness due and owing to Producer accrued prior to the date of such termination. In addition to all other remedies available to Producer pursuant to this Agreement, Producer shall be able to seek specific performance of this Agreement. In such event, User shall not contest Producer’s request for an expedited hearing.

Section 10.3. User’s Remedies.

(a) Upon the occurrence of any Event of Default which, after proper notice, Producer fails to timely cure, User may, at its option, in addition to any and all other rights, remedies or recourses available to it pursuant to the terms of this Agreement, immediately terminate this Agreement by giving written notice to Producer. Producer shall immediately cease delivery of Effluent upon receipt of any such notice from User.

(b) In the event Producer is able, but refuses, to deliver Effluent to User’s Delivery Point pursuant to this Agreement, User shall be able to seek specific performance of this Agreement in addition to all other remedies available to User pursuant to this Agreement. In such event, Producer shall not contest User’s request for an expedited hearing.

Section 10.4. Remedies. If the breaching Party fails to fully cure the breach specified in the notice within the applicable cure period, the non-breaching Party will be entitled to seek a writ of injunction or mandamus issued by a district judge in Hays County Texas and requiring the defaulting Party to observe and perform the terms of this Agreement. The non-defaulting Party may not bring an action for any other legal or equitable remedies (other than termination)

available to it not specified in either Section 10.2 or 10.3 of this Agreement. Each party agrees in the event of any default on its part that each party shall have available to it the equitable remedy of mandamus and/or specific performance. It is the intent of the parties to this Agreement that any default shall be subject to the remedy of specific performance and/or mandamus to the extent that specific performance and/or mandamus is possible under the existing circumstances. The remedy of specific performance and/or mandamus shall be first requested by either party in the event of default by the other party. Neither party shall object to requests for an expedited hearing on specific performance made by the other party.

Section 10.5. Dispute Resolution. If any dispute between the Parties, other than a dispute regarding the amount of money owed by User to Producer, cannot be resolved to the mutual satisfaction of the Parties after meeting to resolve the dispute, then within three business days following the notice to the other Party(ies) of the dispute, each Party to the dispute shall appoint an engineer with a minimum of ten years' experience in designing or operating water and wastewater treatment systems in the greater Austin metropolitan area who shall confer and attempt to mutually agree upon a resolution of the disputed matter within ten business days following their appointment. If the appointed engineers mutually agree on a resolution of the matter, the parties agree to bring the agreed resolution to their governing bodies for approval. In the event that the appointed engineers cannot mutually agree on a resolution of the dispute, then within three business days following the expiration of such ten-business-day resolution period, the engineers shall mutually appoint a disinterested engineer with a minimum of ten years' experience in designing or operating water and wastewater systems in the greater Austin metropolitan area that is not then employed by any Party to determine such matter within seven business days following appointment. If the appointed engineers mutually agree on a resolution of the matter, the parties agree to bring the agreed resolution to their governing bodies for approval. The Parties agree to implement the dispute resolution procedures provided for in this section prior to any Party exercising any of the applicable remedies provided for in this Agreement.

Article XI Term & Termination

Section 11.1. Primary Term.

The primary term of this Agreement shall commence with the Effective Date and shall end the earlier of either (i) at 11:59 p.m., Central Standard Time, on September 30, 2031; or (ii) when Aqua submits written notice to Kyle that Aqua desires to cancel the Contract; or (iii) upon the expiration date of the Permit as extended by the most recent application to renew the Permit; or (iv) the life of the Project used for depreciation or tax purposes, whichever is less.

Section 11.2. Secondary Term.

This Agreement may be extended by mutual agreement for successive five year periods beginning October 1 and ending September 30.

Section 11.3 Termination.

(a) Aqua may terminate this Agreement unilaterally during the Primary Term or Secondary Term at any time upon one year written notice to Kyle.

(b) Kyle may terminate this Agreement during the Secondary Term upon one year written notice to Aqua, provided, however, Kyle shall pay Aqua a cancellation fee in the amount of two times Aqua's Project costs and expenses, including without limitation legal and consulting expenses. This amount shall decrease by one-tenth percent each year for up to 20 years during the Secondary Term. After twenty years, the cancellation fee will only amount to Aqua's Project costs and expenses without any premium. Upon payment of the cancellation fee by Kyle to Aqua and written request by Kyle, Aqua shall transfer and assign all of Aqua's rights and title in the Project to Kyle, including related contracts and permits.

(c) Notwithstanding the provisions of subsection (b) above or any other provision of this Agreement, Producer may immediately terminate this Agreement in the event of any of the following:

(1) Producer's Permit, is terminated, suspended or not renewed by TCEQ (involuntarily); or

(2) Producer's authorization from TCEQ to deliver Effluent from the Plant to the User's Delivery Point is interrupted or terminated;

(d) In addition to all other termination rights granted to Producer pursuant to this Agreement, Producer shall be entitled to terminate this Agreement pursuant to Section 10.2 of this Agreement upon the occurrence of "Events of Default" by User.

(e) The Parties agree that in most circumstances an Event of Default shall not result in termination of this Agreement until thirty (30) days after the date that the alleged defaulting Party receives written notice from the Party alleging default, specifying the default and the requirements to cure the same. Specific limited exceptions to this provision are set forth elsewhere in this Agreement.

Section 11.4 Rights After Termination.

(a) Unless specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement except as prescribed in Subsection (b) below.

(b) Termination shall not relieve either Party of any obligation or liability incurred pursuant to the Agreement that arose prior to the Effective Date of the termination of the Agreement, including without limitation, and by way of illustration only:

(1) User's obligation to make payments to Producer for Effluent during that Contract Year;

(2) Producer's obligation to provide Effluent prior to the actual cessation of Effluent delivery date;

(3) User's obligation to indemnify, defend, and hold harmless Producer for claims filed prior to termination or claims filed after termination if the claim is based, in whole or in part, on events that occurred prior to termination.

(c) The obligations contemplated by Subsection (b) above shall survive Termination of this Agreement and remain in full force and effect until satisfied.

Article XII

Meters

Section 12.1. Meters.

(a) Producer shall provide, own, operate, maintain, read and record User's Meter, which shall record Effluent delivered at the User's Delivery Point for supply to User. All meters shall be conventional commercial/industrial types of TCEQ approved meter(s) which measure accuracy within a tolerance of that allowed by the AWWA.

(b) Producer shall keep records of all measurements of Effluent required to be metered under this Agreement for a period of five (5) years from the date of the measurement. Producer's measuring device(s) and measurement records shall be open for inspection at all reasonable times. Measuring devices and recording equipment shall be accessible for adjusting and testing and the installation of check meter(s) under the supervision of Producer. At least once in each calendar year, Producer shall calibrate User's Meter(s). Producer shall give User notice of the date(s) and time(s) when any such calibration is to be made and, if a representative of User is not present at the scheduled time, calibration and adjustment may proceed in the absence of any representative of User.

(c) User shall be entitled, at User's sole cost, to install, maintain and repair, a "check meter" at User's Delivery Point(s). Such User check meter shall be a TCEQ approved meter which measures accuracy within a tolerance then allowed by the AWWA.

(d) If upon any test of User's Meter(s), the percentage of inaccuracy of such metering equipment is found to be in excess of the tolerance then-allowed by the AWWA, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than six (6) months. If User's Meter(s) is out of service or out of repair, so that the amount of Effluent delivered cannot be ascertained or computed from the reading thereof, the amount of Effluent delivered through the period User's Meter(s) is out of service or out of repair shall be estimated and agreed upon by the Parties using the best data available, and Producer shall at its election either install a new meter or repair the existing meter. If the Parties fail to agree on the amount of Effluent delivered during such period, the amount of Effluent delivered may be estimated by:

- (1) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or

- (2) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately or alternatively, using the rated value of the transfer pump(s) multiplied by the amount of time that the pump(s) run as shown by the information stored on the City's SCADA system.

Article XIII General Terms

Section 13.1 Governing Law.

This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

Section 13.2 Venue.

The obligations and undertakings of each of the Parties to this Agreement shall be performed, or deemed to be performed, in Hays County, Texas. Accordingly, the Parties agree that any lawsuit involving this Agreement, brought by either Party, shall be brought in Hays County, Texas.

Section 13.3 Severability and Savings Clause.

In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal and/or otherwise unenforceable in any respect, this invalidity, illegality and/or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if the invalid, illegal and/or unenforceable provision had never been contained herein.

Section 13.4 Force Majeure.

(a) If for any reason of Force Majeure, either Producer or User shall be rendered unable, wholly or in part, to carry out their respective obligations under this Agreement, other than the obligation of User to make the various payments to Producer required under the terms of this Agreement, then, if the Party claiming Force Majeure shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure and such adversely affected Party is attempting in good faith to mitigate it, shall be suspended during the continuance of the inability then claimed, but for no longer period.

Section 13.5 Agreement Modification.

This Agreement may be modified only by an instrument signed by the duly authorized representatives of each of the Parties upon authorization of the Party's governing body.

Section 13.6 No-Third-Party Beneficiary.

The Parties are entering into this Agreement solely for the benefit of themselves and

agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto and their permitted assigns.

Section 13.7 Waiver.

Any waiver at any time by either Party with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

Section 13.8 Captions.

The captions and headings appearing in this Agreement are inserted merely to facilitate reference and are not to be considered a part of this Agreement, and in no way shall they affect the interpretation of any of the provisions of this Agreement.

Section 13.9 Notices.

All notices, payments and communication (“Notices”) required or allowed by this Agreement shall be in writing and be given by depositing the Notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the Party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) calendar days after the Notice is deposited in the mail. Courier deliveries with proper receipting will also be considered as adequate notice. For purposes of this Section 13.9, the addresses of and the designated representative for receipt of Notice for each of the Parties shall be as set forth on the signature page of this Agreement.

Either Party may change its address by giving written notice of the change to the other Party at least fourteen (14) calendar days before the change becomes effective.

Section 13.10 Sole Agreement.

This Agreement, including the Exhibits hereto, constitutes the sole and only contract between the Parties related to the sale and purchase of Effluent from the Plant. The Parties further stipulate and agree that this Agreement supersedes any and all prior understandings, and/or informal, oral or written agreement(s), between the Parties respecting any and all aspects of the subject matter of this Agreement.

Section 13.11 Counterparts & Duplicate Originals.

This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Producer and User, acting under authority of their respective governing bodies and officers, have authorized the execution of this Agreement in multiple counterparts, each of which shall constitute an original.

Section 13.12 Attorneys Fees.

In no event shall either Party be entitled to seek, or recover attorneys’ fees for any claim made under this Agreement or related to this Agreement; provided, however, if any amount due

and owing by User for Effluent delivery is placed with an attorney for collection by Producer, then User shall pay Producer, in addition to all other payments provided for by this Agreement, including interest, Producer's collection expenses and any related court costs and attorney's fees.

Section 13.13 Further Assurances.

Each of the Parties shall take all further required actions and shall execute and deliver to the other Party any other document or instrument which is determined to be necessary or useful to fully carry out the transactions evidenced by this Agreement.

Section 13.14 Goods and Services.

The Parties agree that the mutual commitments stated in this Agreement intended to achieve reclamation of Kyle Effluent constitute an agreement by Aqua to provide goods and services to Kyle, and that this Agreement is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

IN WITNESS WHEREOF, the Parties below have executed this Agreement on the dates shown below to be effective as of the Effective Date.

AQUA OPERATIONS, INC.
1106 Clayton Lane
Suite 400W
Austin, Texas 78723

CITY OF KYLE:
City of Kyle
100 W. Center Street
Kyle, Texas 78640

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: Mayor

*RATIFIED AND APPROVED BY ITS
BOARD OF DIRECTORS ON*
_____, 2016.

*RATIFIED AND APPROVED BY ITS CITY
COUNCIL ON*
_____, 2016.

EXHIBIT A
USER'S DELIVERY POINT LOCATION MAP

EXHIBIT

B

CAUSE NO. 13-0894

AQUA OPERATIONS, INC.,
Plaintiff,

v.

CITY OF KYLE, TEXAS
Defendant.

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HAYS COUNTY, TEXAS

428TH JUDICIAL DISTRICT

AGREED MOTION TO DISMISS

COME NOW Plaintiff and Counter-Defendant Aqua Operations, Inc. (“Aqua”) and Defendant and Counter-Plaintiff City of Kyle, Texas (“Kyle”) (collectively, the “Parties”) and file this their Agreed Motion to Dismiss and respectfully show the Court as follows.

The Parties have agreed to a full and final settlement of all claims in this suit. Pursuant to the terms of the settlement agreement, the Parties request the Court dismiss all claims asserted by the Parties.

WHEREFORE, PREMISES CONSIDERED, the Parties respectfully request the Court grant this Agreed Motion to Dismiss and dismiss all claims in this cause with prejudice to their being refiled.

Respectfully submitted,

DAVIDSON TROILO REAM & GARZA P.C.

By: _____

Lea Ream
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Keith Kendall
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Fax: (512) 474-9888
pterrill@terrill-law.com

Attorneys for Aqua Operations, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated on this ___ day of _____, 2016 to the following:

VIA FACSIMILE TO: (512) 474-9888

G. Alan Waldrop
The Waldrop Firm
810 West 10th Street
Austin, Texas 78701

Paul M. Terrill III
Ryan D. V. Greene
The Terrill Firm, P.C.
810 West 10th Street
Austin, Texas 78701

ATTORNEYS FOR
AQUA OPERATIONS, INC.

EXHIBIT

C

CAUSE NO. 13-0894

AQUA OPERATIONS, INC.,
Plaintiff,

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

HAYS COUNTY, TEXAS

CITY OF KYLE, TEXAS
Defendant.

428TH JUDICIAL DISTRICT

AGREED ORDER OF DISMISSAL

Came on to be considered the Agreed Motion to Dismiss filed by Plaintiff Aqua Operations, Inc. and Defendant City of Kyle, Texas. The Parties have settled all disputes between them and have requested the Court dismiss with prejudice all claims in this cause. Therefore,

IT IS ORDERED, ADJUDGED AND DECREED that all claims filed in this cause be and are hereby DISMISSED with prejudice to their being refiled.

SIGNED this ____ day of _____, 2016.

HAYS COUNTY DISTRICT JUDGE

AGREED:

G. Alan Waldrop
State Bar No. 20685700
THE WALDROP FIRM
810 West 10th Street
Austin, Texas 78701
Tel: (512) 982-9950
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ATTORNEYS FOR AQUA OPERATIONS, INC.

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lream@dtrglaw.com

ATTORNEYS FOR CITY OF KYLE, TEXAS



CITY OF KYLE, TEXAS

Windy Hill Road Repairs

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Consider and Possible Action on Repairs to Windy Hill Road. ~ *Leon Barba, P.E., City Engineer*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Well No. 3 Site Tanks Rehabilitation - Change Order No. 1

Meeting Date: 4/19/2016

Date time: 7:00 PM

Subject/Recommendation: Approve Change Order No. 1 in the amount of \$23,250.00 to TRI-STATE COATINGS, Wadena, MN, increasing the total contract amount to \$308,750.00 for additional work based on field conditions for Well No. 3 Water Tanks Rehabilitation Project. ~ *Leon Barba, P.E., City Engineer*

Other Information: During the rehabilitation process, additional work was identified based on field conditions. The attachment identifies all of the additional work that was required on the ground storage tank, the standpipe and the elevated tank.

Legal Notes: N/A

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- Well Site No. 3 - Change Order No. 1
- Fiscal Note

CHANGE ORDER

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

CHANGE ORDER NO.: ONE DATE: March 31, 2016 NWA JOB NO.: 1190-557

PROJECT: Well No. 3 Site Tanks Rehabilitation OWNER: City of Kyle

ORIGINAL CONTRACT AMOUNT:	\$	285,500.00
NET EFFECT OF PREVIOUS CHANGE ORDER(S):	\$	0.00
REVISED CONTRACT AMOUNT BY ABOVE CHANGE ORDER(S):	\$	285,500.00
NET EFFECT OF THIS CHANGE ORDER:	\$	23,250.00
REVISED CONTRACT AMOUNT BY THIS CHANGE ORDER:	\$	308,750.00

DESCRIPTION OF WORK: See attached Detail of Change Order and Field Orders No. 1 and No. 2.

JUSTIFICATION: Additions to the work based on field conditions.

EFFECT OF CHANGE: The lump sum of Twenty Three Thousand Two Hundred Fifty and no/100 Dollars (\$23,250.00) 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 November 27, 2015.

Recommended By: John A. Bartle March 31, 2016
Neptune-Wilkinson Associates, Inc.
TBPE Firm# F-359 Date

TRI STATE COATINGS

CITY OF KYLE

By: Rory Grangruth
Rory Grangruth, Owner

By: _____
R. Todd Webster, Mayor

Date: 4/5/2016

Date: _____

**DETAIL OF CHANGE ORDER NO. 1
FOR
CITY OF KYLE
WELL NO. 3 SITE TANKS REHABILITATION
March 31, 2016**

<u>Item</u>	<u>Description</u>	<u>Amount</u>
1	Overcoat Interior of Ground Storage Tank (Bid Item S5)	\$10,000.00
2	Repair Floor of Standpipe (Bid Item S2)	1,250.00
3	Line Floor of Standpipe (Bid Item S3)	1,000.00
4	Replace Vent on Standpipe and Elevated Tank (Bid Item S4 x 2)	5,000.00
5	Replace Drain Nozzle in Standpipe (FO#1)	1,000.00
6	Install Sampling Coupling in Three Tanks (FO#1)	500.00
7	Repair Standpipe Overflow Pipe and Redirect Discharge (FO#1)	1,000.00
8	Replace Interior Ladder in Elevated Tank	1,000.00
9	Add Shell Manway in Elevated Tank	2,000.00
10	Adhesion Test (FO#2)	0.00
11	Replace Cable Safety Climb on Elevated Tank Exterior Ladder	<u>500.00</u>
TOTAL AMOUNT OF CHANGE ORDER NO. 1		\$23,250.00

#1190-557

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: April 19, 2016
CONTACT CITY DEPARTMENT: Engineering Services Department
CONTACT CITY STAFF: Leon Barba, P.E., City Engineer

SUBJECT:

Approve Change Order No. 1 in the amount of \$23,250.00 to TRI-STATE COATINGS, Wadena, MN, increasing the total contract amount to \$308,750.00 for additional work based on field conditions for Well No. 3 Tanks Rehabilitation Project.

CURRENT YEAR FISCAL IMPACT:

This Change Order to TRI-STATE COATINGS for Well No. 3 Tank Rehabilitation Project will require expenditure of funds from the approved CIP budget for Fiscal year 2015-16 as follows:

1. City Department:	Engineering Services Department
2. Project Name:	Water Reservoir Rehabilitation
3. Funding Source:	Water Utility Fund - CIP
4. Budget/Accounting Code(s):	332-867-57214
5. Current Appropriation:	\$ 500,000.00
6. Unencumbered Balance:	\$ 214,500.00
7. Amount of This Action:	\$ (23,250.00)
8. Remaining Balance:	<u>\$ 191,250.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding for this Change Order in the amount of \$23,250.00 will be provided from the approved CIP budget for Fiscal Year 2015-16.

ADDITIONAL INFORMATION/COUNCIL ACTION:

On November 17, 2015, City Council awarded the tank rehabilitation contract in an amount not to exceed \$285,500.00 for Well No. 3 to TRI-STATE COATINGS.

 4/13/2016

Perwez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

(First Reading) An Ordinance Amending Article IX Commercial Towing And Wrecker Services

Meeting Date: 4/19/2016

Date time:7:00 PM

Subject/Recommendation: *(First Reading)* An Ordinance amending the Code of Ordinances of the City of Kyle, Texas, by amending various sections of Article IX, Sections 11-275 through 11-295, to Chapter 11 (Business Regulations), Commercial Towing and Wrecker Services. ~ *Damon Fogley, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Draft Wrecker Ordinance
- Redline Version

ORDINANCE NO. _____

AN ORDINANCE AMENDING, CHAPTER 11 (BUSINESS REGULATIONS), ARTICLE IX "COMMERCIAL TOWING AND WRECKER SERVICES" OF THE CODE OF ORDINANCES OF THE CITY OF KYLE, TEXAS BY ADDING A DEFINITION AND MAKING AMENDMENTS TO ASSIST IN THE IMPLEMENTATION OF THE REGULATIONS FOR COMMERCIAL TOWING AND WRECKER SERVICES; THAT THIS ARTICLE SHALL GOVERN OVER PREVIOUSLY ADOPTED ORDINANCES AND RESOLUTIONS IN CONFLICT WITH SAID ARTICLE; PROVIDING FOR SEVERABILITY; FOR CODIFICATION; FOR PUBLICATION; FOR AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

WHEREAS, commercial towing and wrecker services constitute a business enterprise that operates on the public roadways of the city; and,

WHEREAS, such services are subject to regulation by ordinance and under Texas law, the City may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace or order of the municipality; and,

WHEREAS, the City Council has previously adopted Ordinance 839 in March 2015 and now finds and determines that these are reasonable and necessary to protect the public health, safety, and welfare;

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

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

Section 2. Amendments to Chapter 11. Chapter 11 ("Business Regulations") shall be amended as set forth herein and incorporated by reference, which is entitled "Commercial Towing and Wrecker Services" and which shall have the full force of law and shall read as follows: .

**ARTICLE IX
COMMERCIAL TOWING AND WRECKER SERVICES**

"Sec. 11-276. Definitions.

CONVICTION means a finding of guilt by a judge or jury, or any plea of guilty or nolo contendere unless such conviction has been held invalid by the courts, or the proceedings against the defendant have been dismissed and the defendant is discharged by the court.

"Sec. 11-282. Inspection Certificates Required for Wreckers and Heavy Wrecker.

No person shall operate a wrecker or heavy duty wrecker to remove a vehicle within the city, for the Kyle Police Department as a Police Pull / Rotation / Rotation Pull, unless a wrecker inspection certificate for such wrecker has been issued by the Chief of Police or designee. Such certificate shall be affixed securely to the inside of the windshield of such wrecker and displayed at all times.

"Sec. 11-283. Procedure for Acquiring Inspection Certificates, Wrecker Rotation List.

(A) Any wrecker company desiring to engage in the wrecker business in the city shall annually apply in writing to the Chief of Police or designee on a form provided for that purpose by the Chief of Police or designee for an inspection certificate for each wrecker proposed to be operated. The application shall contain the name, address and telephone number of the wrecker company, the number and types of wreckers to be operated, the legal owner of the company concerned and a statement that the applicant does or does not desire to appear on the "wrecker rotation list," and other information as required by the Chief of Police or designee to properly administer this ordinance.

(B) A Wrecker Company desiring to be placed on the Kyle Police Departments Wrecker Rotation List must provide proof that the Vehicle Storage Facility is in compliance with all City of Kyle Ordinances, Building Codes, and Rules & Regulations, on a form provided, before any inspections will take place by the Kyle Police Department

(C) The applicant shall submit an acceptable payment of a fee at the time of submitting the application in the amount of \$250.00 per application, which said fee shall be included in the City's Fee Schedule as adopted or amended by the City of Kyle city council.

(D) Every application, when filed, shall be sworn to by the applicant and filed with the Kyle Police Department.

"Sec. 11-284. Qualifications, Equipment, Insurance.

The Chief of Police or designee shall issue an inspection certificate for each qualified wrecker which shall be valid until December 31st of the year in which same was issued. If, that on January 1st of the following year, no Wrecker Company has been approved to be on the Wrecker Rotation List, the Rotation Wrecker List from the previous year shall remain in effect, until the first Wrecker Company is approved to be on the Rotation Wrecker List for the new year, at which time the Wrecker Rotation List will be rest, removing all unapproved Wrecker Companies.

(A) Each wrecker shall be not less than one ton in size and shall have a gross vehicle weight of not less than 10,000 pounds.

(B) Each wrecker shall be equipped with a lifting device, winch line and boom with a rated lifting capacity of not less than 8,000 pounds, single-line capacity.

(C) Each wrecker shall carry as standard equipment towing mechanisms, safety chains, a properly functioning fire extinguisher and emergency lighting as approved by the Chief or Police or designee. Standard equipment for wreckers shall also include a broom, square point shovel and a receptacle for holding debris.

(D) Wreckers which are qualified for the rotation list shall be equipped with flashing or rotating beacons capable of warning motorists, and such beacons shall be used in accordance with the Texas Transportation Code and, if approved, police radio communications of a type approved by the Chief of Police or designee.

(E) Each wrecker shall have inscribed on both the passenger and driver doors, in letters not less than three inches in height, the name, city and telephone number of the wrecker company.

(F) Each owner of a wrecker must furnish evidence of the minimum insurance coverage at the time of the application as defined and required for a tow truck by state law.

(G) Each policy of said insurance coverage must contain an endorsement providing for ten (10) days' notice to the city in the event of any material change or cancellation of any policy and shall name the city as an additional insured while the wrecker company is performing a wrecker job for the city.

(H) Each wrecker company shall provide a telephone number to the Kyle Police dispatch division that will be the primary contact point for the Police Department, and such number shall be promptly answered twenty-four hours per day on each day of the year. The Kyle Police Department Dispatch is not obligated to contact any other number, other than the primary contact number when called for Police Pull / Rotation / Rotation Pull.

"Sec. 11 -285. Requirements for Wrecker Rotation List.

In order to qualify for the wrecker rotation list, and to maintain a place on said list, the following requirements shall be met:

(A) All delinquent taxes due to the city by a wrecker company must be paid prior to the wrecker company being added to the rotation list;

(B) The applicant shall have a minimum of two wreckers and two certified drivers that meet the requirements of the Texas Department of Licensing and Regulation and that are available for wrecker service at all times, one of which may be a rollback unit as defined herein. It is not required for a Wrecker Company to station a Wrecker at a Vehicle Storage Facility at all times.

(C) If a wrecker company elects to be added to the heavy-duty wrecker rotation list, the wrecker

company must have a minimum of one heavy duty wrecker available for service at all times;

(D) The applicant shall file a sworn statement that the applicant has no financial or ownership interest in any other wrecker service which is on the city's wrecker rotation list; and,

(E) Wrecker companies with inquiries or questions directed to the Kyle Police Department, regarding the execution of this ordinance, are to send inquiries to the Chief of Police or the Chief's designee in writing. Complaints by Wrecker Companies on other Wrecker Companies or Kyle Police Officers must be submitted to the Chief of Police or his designee in writing. Inquiries or questions regarding the compliance, execution of this ordinance, or complaints are not to be directed to the Kyle Emergency Communications Center.

(F) The applicant must have an individually-owned or leased vehicle storage facility within the city limits of Kyle ~~unless the service is provided by a heavy duty wrecker company.~~ Each Vehicle Storage Facility located within the City of Kyle must comply with all City of Kyle Ordinances, Building Codes, and Rules & Regulations prior to operating within the City of Kyle. Heavy-duty wrecker companies are not required to have a storage facility within the city limits.

"Sec. 11-286. Grounds for Suspension or Removal.

(1) After an administrative hearing, the Chief of Police may recommend suspension or removal of any wrecker company from the rotation list if:

(A) The place on the wrecker rotation list was procured by fraudulent conduct, concealment of or false statement of a material fact concerning the wrecker company at the time of the wrecker company makes its application or such fraudulent conduct is subsequently discovered; or

(B) The wrecker company violates the provisions of this chapter or any other city ordinance or any state law regulating vehicular traffic or wrecker companies; or,

(C) The wrecker company fails to comply with the provisions of a storage area for wrecked or disabled vehicles; or,

(D) The wrecker company fails to protect the vehicle in its care as a result of a wrecker pull and fails to prevent parts, accessories and personal belongings from being removed from the vehicle, except as may be necessary to protect such items from theft; or,

(E) The wrecker company fails to deliver a vehicle directly to said company's vehicle storage facility, the location within the city limits as designated by the owner or legal custodian of the vehicle, or to the location designated by the police officer investigating the accident, provided such vehicle can be legally delivered to such location as designated by said officer, but this provision shall not apply when it is necessary to remove a vehicle to its ultimate destination by two separate tows because of an emergency or breakdown of a wrecker, and

no charge is levied which is greater than the amount provided in §11-289 for a single tow from one point on a street to another location within the city limits; this shall not prohibit the wrecker company and the owner or legal custodian of the vehicle ~~of the vehicle~~ from entering into an agreement to deliver the vehicle to any other location, provided that the police officer investigating the accident has not required otherwise; or

(F) The wrecker company is repeatedly tardy without justification acceptable to the Police Chief or designee in arriving after being called to the scene of an accident by the Police Department for a rotation, rotation pull or police pull; or

(G) The wrecker company or its employee intentionally provides confidential arrest information learned by the wrecker company or its employee, as a result of a police action, from the scene of a rotation pull or police pull and provides this information to any other person, party or business in the city that may find it advantageous to acquire such information; or

(H) The conviction of the Wrecker Company, as defined in this ordinance, of fraud, theft or any felony, as defined in the Texas Penal Code, in the conduct or operation of the Wrecker Company.

(1) Any lapse in the required insurance shall be cause for an immediate revocation of its municipal permit. Any costs, expenses or liabilities incurred during such lapse or suspension are to be borne in their entirety by the wrecker company.

(2) The Chief of Police shall give ten-days' notice of the time and place for the administrative hearing concerning suspension, cancellation or removal as provided above and is empowered to administer oaths to witnesses and to conduct hearings as otherwise provided by law.

(3) Findings of the Chief of Police and said Chief's written order of suspension or removal from the rotation list shall terminate all authority and permission theretofore granted. The period of suspension or removal from the rotation list shall not exceed one year, unless the violation occurs under division (A), (G) or (H) above, in which case removal from the rotation list will be permanent. If ownership of the permanently removed wrecker company changes, the new owners may apply to join the rotation list. The Chief of Police will present the application to the City Council, who has the final authority to affirm, reject or modify the application.

(4) Any order of the Chief of Police in this section may be appealed to the City Council within ten days from the date of suspension or removal. The City Council shall have authority to reverse, affirm, vacate or modify the order of the Chief of Police; provided, that in the event of affirmance of the order, the suspension shall commence upon the date of action by the City Council.

"Sec. 11-287. Procedure Used In Wrecker Selection.

(A) When a police officer investigating an accident determines that any vehicle which has been involved in an accident should be removed by a wrecker, the officer shall first determine whether or not the legal custodian of the vehicle has already made arrangements with an authorized wrecker service or, if appropriate, a restricted use wrecker, for the removal of the vehicle.

(B) If not, the officer shall request the legal custodian of the vehicle to either designate an authorized company or allow a wrecker to be called from the wrecker rotation list as follows:

(1) If the legal custodian of the vehicle selects a wrecker company, the investigating officer shall notify the Police Department dispatcher to call the wrecker company. If the requested wrecker company is unable to promptly respond, then the wrecker company first up on the rotation list will be called. If the first-up wrecker company is unavailable to respond, other wrecker companies in order on said list shall be called until an available company is located.

(2) If the legal custodian of the vehicle does not designate a wrecker company to be called, the investigating police officer shall notify the dispatcher to call the wrecker company first-up on the wrecker rotation list and furnish its name to the investigating officer. In such event, the investigating officer shall notify the police dispatcher who shall call the wrecker company next up from the wrecker rotation list and dispatch it to the scene. The vehicle or vehicles to be removed shall be taken to the place designated by the owner, legal custodian of the vehicle or by the investigating officer or to the wrecker company's storage facility if no designation is made. ~~If the responding wrecker company is unable to immediately provide a wrecker for each wrecked vehicle at the scene, the wrecker service next on the rotation list shall be called to remove excess vehicles.~~

(C) On each succeeding accident or call, the next wrecker company on the rotation list will be called to respond. The Chief of Police will establish a fair and consistent rotation procedure to ensure equal service for each wrecker company on the rotation list.

(D) To effect the wrecker rotation and heavy duty wrecker list procedure, the Police Department shall keep a master list of all wrecker companies which meet all the requirements of this chapter and are qualified to be on the wrecker rotation list and the heavy duty wrecker rotation list.

"Sec. 11-288. Storage; Wrecker Company Responsibility.

It shall be the responsibility of each wrecker company to provide a storage area for wrecked or disabled vehicles which are moved or towed as the result of a police or rotation pull. The storage area may be inspected by the Chief of Police or designee to determine whether it complies with the provisions of this section. A wrecker company or storage facility shall meet all requirements set forth ~~in the Texas Administrative Code, Chapter 18. Chapters A through G~~ by the Texas Department of Licensing and Regulation, which establish the minimum standards for motor carrier laws and storage facilities, in order to qualify for participation on the rotation list. The storage area must also be located within the incorporated city limits of Kyle.

"Sec. 11-289. Fees for Service, Towing and Storage.

(A) Towing. It is not the policy of the city to regulate the fees for towing or services provided by a wrecker company on the rotation list. However, no wrecker company on the rotation list shall charge a higher fee or rate for calls originating by virtue of the rotation list than for calls for similar services from other sources.

(B) Rate sheet required. Each wrecker company shall provide to the Chief of Police or designee a rate sheet listing its published rates for towing and storage for each class, annually, or sooner if there is a rate change. This list shall also include all charges for ancillary services such as the use of dollies, dropping, hooking linkage, clearing debris off the roadway and similar charges. No charge shall be greater than those listed on the rate sheet.

(C) Storage. Storage fees shall not exceed the limitations as set forth in state law. ~~All storage charges shall cease at the time the owner or legal custodian of a stored vehicle requests the vehicle from the storage yard of the wrecker company, provided the request is made during regular business hours.~~

(D) Other charges. Any ancillary services are to be performed only if required and appropriate.

(E) Waiting time. A charge of not more than \$15.00 for each 1/2 hour of time spent shall be allowed for waiting to tow a vehicle.

"Sec. 11-290. Fee Regulation or Police Pull Not Involving Accident.

On a police pull for a vehicle that is in safe driving condition, but no owner or legal custodian of the vehicle or licensed operator is present to drive the vehicle from the site, the wrecker company called from the rotation list shall observe and maintain the same maximum fees provided for in this chapter. ~~In the event a police pull is made for a tow-away zone or traffic law violator, the vehicle shall not be released to the owner or any other person until authorization is granted by the Police Department.~~ If a police officer requests a hold placed on the vehicle, then the wrecker company and/or storage facility operator may not release the vehicle to any other person until authorization is granted by the Police Department.

"Sec. 11-291. Rules for Extraordinary Conditions; Large Vehicles.

(A) If a vehicle is wrecked or disabled and a wrecker of ordinary lifting capacity cannot move the vehicle, the investigating police officer will summon a wrecker from the heavy-duty wrecker rotation list that has the capacity to move the vehicle. Charges rendered for services of wreckers of extraordinary lifting capacity shall not exceed the usual and customary charges for like services provided in the wrecker industry.

(B) If the Wrecker Company determines that additional wrecker is needed, the Wrecker Company will either provide the additional wrecker (of their choice) or request the Police Officer in charge of the scene to call another Wrecker Company. If the primary Wrecker Company provides an additional wrecker or has the Police Officer in charge of the scene summon another Wrecker

Company, the primary Wrecker Company must advise the Police Officer in charge of the scene, the reason for the needed assistance and the approximate time delay in the removal of vehicles and debris from the scene. If the determination of need for an additional wrecker is based on the lack of equipment normally required to be present on the primary wrecker, the company will not be compensated for the additional wrecker called to the scene.

(C) If, in the opinion of fire or police officials, a wrecked or disabled vehicle or its cargo constitutes a hazard to the public, any wrecker company shall act at the direction of the said official. Said Official may take any actions needed within state law to preserve life, property or the public peace, to include restoring the normal flow of traffic to public roadways.

"Sec. 11-292. Removal of Wrecks and Debris.

The operator of a wrecker shall remove from the street, along with the disabled vehicle, all broken or shattered glass and other debris and parts coming from the disabled vehicle to include fluid spills of less than 5 gallons. Failure to do so shall constitute a misdemeanor punishable as provided in the city's Code of Ordinances and subject to cancellation of the wrecker license. A truck and trailer or pulled or transported items shall constitute one vehicle and shall be treated as such by the wrecker company.

"Sec. 11-295. Establishment of Rotation Schedules.

The Chief of Police or designee shall establish a rotation procedure intended to provide equal service potential for each wrecker business on the rotation list. The procedures established by the Chief of Police shall be subject to review by the city council upon request by any wrecker company that alleges the procedures established are illegal. The Chief of Police or designee shall issue a valid inspection certificate for each qualified wrecker which shall be valid until December 31st of the year in which the same was issued. If, on January 1st of the following year, no Wrecker Company has been approved to be on the wrecker rotation list, the list from the previous year shall remain in effect until the first Wrecker Company is approved to be on the wrecker rotation list for the new calendar year. At that time, the wrecker rotation list will be reset by removing all unapproved wrecker companies."

Section 3. The remainder Chapter 11, Article IX "COMMERCIAL TOWING AND WRECKER SERVICES" composed of Sections 11-275 to 11-295 shall remain unchanged.

Section 4. Compliance with Open Meetings Act. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the city council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting as required by the Open Meetings Law, Chapter 55I, TEX. GOV'T CODE, and that this meeting has been open to the public as required by law at all times during which this Article and the subject matter thereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. Conflict. Any and all ordinances and resolutions and parts of ordinances and resolutions that are in conflict herewith are hereby repealed to the extent of the conflict only.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 7. Codification. It is the intention of the city council that this ordinance shall become a part of the Code of Ordinances of the City of Kyle, and it may be renumbered and codified therein accordingly. Upon codification, at least four sections shall be reserved for future use.

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

PASSED on first reading this _____ day of _____, 2016.

FINALLY PASSED this _____ day of _____, 2016.

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST: _____
Amelia Sanchez, City Secretary

APPROVED AS TO FORM: _____
Frank Garza, City Attorney

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 11 (BUSINESS REGULATIONS) OF SAID CODE; ARTICLE IX "COMMERCIAL TOWING AND WRECKER SERVICES OF THE CODE OF ORDINANCES OF THE CITY OF KYLE, TEXAS, ~~BY ADDING ARTICLE IX, SECTIONS 11-275 THROUGH 11-295, TO CHAPTER 11 (BUSINESS REGULATIONS) OF SAID CODE; NAMING ARTICLE IX "COMMERCIAL TOWING AND WRECKER SERVICES"; PROVIDING FOR DEFINITIONS, REGULATIONS OF WRECKER SERVICE FOR VEHICLE DISABILITIES, ACCIDENTS, AND INCAPACITATED OPERATORS; REQUIRING WRECKER REGISTRATION, CERTIFICATION AND QUALIFICATIONS; ESTABLISHING A ROTATION LIST; REQUIRING STORAGE FACILITIES TO BE LOCATED WITHIN THE CITY LIMITS; PROVIDING FOR PENALTIES; PROVIDING FOR APPEALS TO CITY COUNCIL; ESTABLISHING FEES; REQUIRING RECORD-KEEPING BY WRECKING COMPANIES; PROVIDING PUBLIC NOTICE PURSUANT TO THE TEXAS OPEN MEETINGS ACT; BY ADDING A DEFINITION AND ESTABLISHING~~ MAKING AMENDMENTS TO ASSIST IN THE IMPLEMENTAITON OF THE REGULATIONS FOR COMMERCIAL TOWING AND WRECKER SERVICES; THAT THIS ARTICLE SHALL GOVERN OVER PREVIOUSLY ADOPTED ORDINANCES AND RESOLUTIONS IN CONFLICT WITH SAID ARTICLE; PROVIDING FOR SEVERABILITY; FOR CODIFICATION; FOR PUBLICATION; FOR AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

RECITALS

WHEREAS, commercial towing and wrecker services constitute a business enterprise that operates on the public roadways of the city; and,

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WHEREAS, such services are subject to regulation by ordinance and under Texas law, the City may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace or order of the municipality; and,

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WHEREAS, the City Council has previously adopted Ordinance 839 in March 2015 and now finds and determines that ~~these regulation of commereial towing and wrecker services on the public roadways~~ are reasonable and necessary to protect the public health, safety, and welfare; ~~and;~~

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

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

Section 2. Amendment to Chapter 11. Chapter 11 ("Business Regulation s") shall be amended ~~to~~

add Article IX, sections 11-275 through 11-295, as set forth herein and incorporated by reference, which ~~shall be~~ entitled "Commercial Towing and Wrecker Services" and which shall have the full force of law and shall read as follows:.

~~Section 3. Article IX. Chapter 11 ("Business Regulations") of the Code of Ordinances of the City of Kyle shall be amended to add Article IX to read as follows:~~

ARTICLE IX
COMMERCIAL TOWING AND WRECKER SERVICES

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~~"Sec. 11-275. Purpose:~~

~~The purpose of this Article is to provide the city with requirements set forth for voluntary participation or privately owned commercial towing and wrecker services with the city. This article shall apply to all commercial towing and wrecker services whose principal place of business is located within the corporate limits of the city and to all commercial towing and wrecker services, both within and without the city, who participate in nonconsent tows in the city.~~

~~"Sec. 11-276. Definitions.~~

~~The following words, terms, and phrases when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.~~

~~*ACCIDENT* means an occurrence in the operation of a motor vehicle that results in injury to any person or damage to property.~~

~~*CHIEF OF POLICE* means the chief police official of the city or such other Police Department official as he or she shall designate.~~

~~*CONVICTION* means a finding of guilt by a judge or jury, or any plea of guilty or nolo contendere unless such conviction has been held invalid by the courts, or the proceedings against the defendant have been dismissed and the defendant is discharged by the court.~~

~~*DISABLED* means any vehicle which had been rendered unsafe to be driven upon the streets as the result of some occurrence other than a wreck, reasonably requiring that such vehicle be removed by a wrecker.~~

~~*HEAVY DUTY WRECKER* means a wrecker not less than two tons in size.~~

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~~*HOLD* means a request made to the wrecker company by a police officer on behalf of the Kyle Police Department to maintain custody of a vehicle until approval to release the vehicle to the proper owner is given by the Police Department.~~

~~*MOTOR VEHICLE* means any vehicle which is self-propelled.~~

~~*NONCONSENT TOW* means the removal of any motor vehicle from a public or private place without the effective consent of the vehicle's owner.~~

~~*OWNER'S REQUEST* means the operator or owner or legal custodian of the vehicle of a wrecked or disabled vehicle may select a wrecker company to remove his or her vehicle and authorizes the Police Department to call that wrecker company on behalf of the individual.~~

~~*POLICE DEPARTMENT* means the Kyle Police Department.~~

~~*POLICE PULL* means when the Police Department has called a wrecker company from the rotation list to remove a wrecked or disabled vehicle or to remove a vehicle in a safe driving condition when the driver is absent, in custody or otherwise incapable of making authorization.~~

~~*PRIVATE PROPERTY COMMONLY USED BY THE PUBLIC* shall mean supermarkets or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients or patrons and parking areas owned and operated for the convenience of, and commonly used by the public.~~

~~*PUBLIC PROPERTY* means any property owned by a governmental entity.~~

~~*RESTRICTED USE WRECKER* means a wrecker which otherwise complies with the terms and conditions of this chapter, including a current inspection certificate and all required equipment and insurance as set out in section 11 284 and 11 285, but which is operated by a company other than a wrecker company and is used exclusively for the purpose of hauling or towing vehicles owned or operated by the same company owning the wrecker.~~

~~*ROLLBACK UNIT* means a specific type of wrecker consisting of a drive-on hydraulic tilting, flat-surface bed truck equipped with a forward mounted winch manufactured with the intent of being able to remove heavily damaged vehicles from the road surface by having the bed unit tilt to the surface and winching the vehicle up onto the flat surface bed. Any rollback unit used under this chapter shall meet all State of Texas tow truck requirements for its intended purpose. A rollback unit meeting all applicable requirements of this chapter and of state law shall be considered a qualified wrecker for the purpose of this chapter, subject to other limitations as set out herein; provided, however, that a rollback unit shall not qualify as a heavy-duty wrecker under this chapter.~~

~~*ROTATION* shall mean when the operator of a wrecked or disabled vehicle fails to designate a specific wrecker operator to remove the vehicle and he or she has authorized the Police Department to call a wrecker or heavy duty wrecker from the appropriate rotation list, a police-initiated pull will utilize the same rotation list. A separate rotation list will exist for both wreckers and heavy duty wreckers. The Chief of Police will establish the fair and equal rotation lists.~~

~~*ROTATION PULL* means and refers to a wrecker company called from the wrecker rotation list.~~

~~*STREET* means any street, alley, avenue, lane, public place or highway within the corporate limits of the city.~~

~~*TOW TRUCK* means a vehicle equipped with a lifting device which is designed, made or adapted to tow or carry other vehicles but which does not meet the minimum requirements for a wrecker. Vehicles which are commonly referred to as "two-car haulers" or "three-car haulers" are included in this definition of TOW TRUCK.~~

~~*VEHICLE* means any device in, upon or by which any person or property is, or may be, transported or drawn upon a street, except devices moved by human power or used exclusively upon stationary rails or tracks.~~

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~~VEHICLE STORAGE FACILITY means a garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year or as amended by the Texas Administrative Code.~~

~~WRECKED means the status of any vehicle that has been damaged as the result of an accident so as to reasonably require that such vehicle be removed by a wrecker.~~

~~WRECKER means a motor vehicle used for the purpose of towing or removing disabled or wrecked vehicles which meets all the State of Texas tow truck requirements.~~

~~WRECKER BUSINESS means any wrecker company that hauls, tows or in any way moves vehicles by the use of a wrecker or tow truck.~~

~~WRECKER COMPANY means any individual, corporation, partnership or association engaged in the business of towing vehicles on public streets or highways for compensation or with the expectation of compensation for the towing, storage or repair of vehicles. The term WRECKER COMPANY includes the owner, operator, employee or agent of a towing company but does not include cities, counties or other political subdivisions of the state.~~

~~WRECKER SELECTION means the selection process provided for in section 11-287.~~

"Sec. 11-282. Inspection Certificates Required for Wreckers and Heavy Wrecker.

No person shall operate a wrecker or heavy duty wrecker to remove a vehicle within the city, for the Kyle Police Department as a Police Pull / Rotation / Rotation Pull, unless a wrecker inspection certificate for such wrecker has been issued by the Chief of Police or designee. Such certificate shall be affixed securely to the inside of the windshield of such wrecker and displayed at all times.

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"Sec. 11-283. Procedure for Acquiring Inspection Certificates, Wrecker Rotation List.

(A) Any wrecker company desiring to engage in the wrecker business in the city shall annually apply in writing to the Chief of Police or designee on a form provided for that purpose by the Chief of Police or designee for an inspection certificate for each wrecker proposed to be operated. The application shall contain the name, address and telephone number of the wrecker company, the number and types of wreckers to be operated, the legal owner of the company concerned and a statement that the applicant does or does not desire to appear on the "wrecker rotation list," and other information as required by the Chief of Police or designee to properly administer this ordinance.

(B) A Wrecker Company desiring to be placed on the Kyle Police Departments Wrecker Rotation List must provide proof that the Vehicle Storage Facility is in compliance with all City of Kyle Ordinances, Building Codes, and Rules & Regulations, on a form provided, before any inspections will take place by the Kyle Police Department

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(C) The applicant shall submit an acceptable payment of a fee at the time of submitting the application in the amount of \$250.00 per application, which said fee shall be included in the City's Fee Schedule as adopted or amended by the City of Kyle city council.

(D) Every application, when filed, shall be sworn to by the applicant and filed with the Kyle Police Department.

"Sec. 11-284. Qualifications, Equipment, Insurance.

The Chief of Police or designee shall issue an inspection certificate for each qualified wrecker which shall be valid until December 31st of the year in which same was issued. If, that on January 1st of the following year, no Wrecker Company has been approved to be on the Wrecker Rotation List, the Rotation Wrecker List from the previous year shall remain in effect, until the first Wrecker Company is approved to be on the Rotation Wrecker List for the new year, at which time the Wrecker Rotation List will be rest, removing all unapproved Wrecker Companies.

(A) Each wrecker shall be not less than one ton in size and shall have a gross vehicle weight of not less than 10,000 pounds.

(B) Each wrecker shall be equipped with a lifting device, winch line and boom with a rated lifting capacity of not less than 8,000 pounds, single-line capacity.

(C) Each wrecker shall carry as standard equipment towing mechanisms, safety chains, a properly functioning fire extinguisher and emergency lighting as approved by the Chief or Police or designee. Standard equipment for wreckers shall also include a broom, square point shovel and a receptacle for holding debris.

(D) Wreckers which are qualified for the rotation list shall be equipped with flashing or rotating beacons capable of warning motorists, and such beacons shall be used in accordance with the Texas Transportation Code and, if approved, police radio communications of a type approved by the Chief of Police or designee.

(E) Each wrecker shall have inscribed on both the passenger and driver doors, in letters not less than three inches in height, the name, city and telephone number of the wrecker company.

(F) Each owner of a wrecker must furnish evidence of the minimum insurance coverage at the time of the application as defined and required for a tow truck by state law.

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(G) Each policy of said insurance coverage must contain an endorsement providing for ten (10) days' notice to the city in the event of any material change or cancellation of any policy and shall name the city as an additional insured while the wrecker company is performing a wrecker job for the city.

(H) Each wrecker company shall provide a telephone number to the Kyle Police dispatch division that will be the primary contact point for the Police Department, and such number shall be promptly answered twenty-four hours per day on each day of the year. The Kyle Police Department Dispatch is not obligated to contact any other number, other than the primary contact number when called for Police Pull / Rotation / Rotation Pull.

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"Sec. 11 -285. Requirements for Wrecker Rotation List.

In order to qualify for the wrecker rotation list, and to maintain a place on said list, the following

requirements shall be met:

(A) All delinquent taxes due to the city by a wrecker company must be paid prior to the wrecker company being added to the rotation list;

(B) The applicant shall have a minimum of two wreckers and two certified drivers that meet the requirements of the Texas Department of Licensing and Regulation and that are available for wrecker service at all times, one of which may be a rollback unit as defined herein. It is not required for a Wrecker Company to station a Wrecker at a Vehicle Storage Facility at all times.

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(C) If a wrecker company elects to be added to the heavy-duty wrecker rotation list, the wrecker company must have a minimum of one heavy duty wrecker available for service at all times;

(D) The applicant shall file a sworn statement that the applicant has no financial or ownership interest in any other wrecker service which is on the city's wrecker rotation list; and,

(E) Wrecker companies with inquiries or questions directed to the Kyle Police Department, regarding the execution of this ordinance, are to send inquiries to the Chief of Police or the Chief's designee in writing. Complaints by Wrecker Companies on other Wrecker Companies or Kyle Police Officers must be submitted to the Chief of Police or his designee in writing. Inquiries or questions regarding the compliance, execution of this ordinance, or complaints are not to be directed to the Kyle Emergency Communications Center.

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(F) The applicant must have an individually-owned or leased vehicle storage facility within the city limits of Kyle ~~unless the service is provided by a heavy duty wrecker company.~~ Each Vehicle Storage Facility located within the City of Kyle must comply with all City of Kyle Ordinances, Building Codes, and Rules & Regulations prior to operating within the City of Kyle. Heavy-duty wrecker companies are not required to have a storage facility within the city limits.

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"Sec. ~~11~~ -286. Grounds for Suspension or Removal.

(1) After an administrative hearing, the Chief of Police may recommend suspension or removal of any wrecker company from the rotation list if:

(A) The place on the wrecker rotation list was procured by fraudulent conduct, concealment of or false statement of a material fact concerning the wrecker company at the time of the wrecker company makes its application or such fraudulent conduct is subsequently discovered; or

(B) The wrecker company violates the provisions of this chapter or any other city ordinance or any state law regulating vehicular traffic or wrecker companies; or,

(C) The wrecker company fails to comply with the provisions of a storage area for wrecked or disabled vehicles; or,

(D) The wrecker company fails to protect the vehicle in its care as a result of a wrecker pull and fails to prevent parts, accessories and personal belongings from being removed from the vehicle, except as may be necessary to protect such items from theft; or,

(E) The wrecker company fails to deliver a vehicle directly to said company's vehicle storage facility, the location within the city limits as designated by the owner or legal custodian of the vehicle, or to the location designated by the police officer investigating the accident, provided such vehicle can be legally delivered to such location as designated by said officer, but this provision shall not apply when it is necessary to remove a vehicle to its ultimate destination by two separate tows because of an emergency or breakdown of a wrecker, and no charge is levied which is greater than the amount provided in §11-289 for a single tow from one point on a street to another location within the city limits; this shall not prohibit the wrecker company and the owner or legal custodian of the vehicle ~~of the vehicle~~ from entering into an agreement to deliver the vehicle to any other location, provided that the police officer investigating the accident has not required otherwise; or

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(F) The wrecker company is repeatedly tardy without justification acceptable to the Police Chief or designee in arriving after being called to the scene of an accident by the Police Department for a rotation, rotation pull or police pull; or

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(G) The wrecker company or its employee intentionally provides confidential arrest information learned by the wrecker company or its employee, as a result of a police action, from the scene of a rotation pull or police pull and provides this information to any other person, party or business in the city that may find it advantageous to acquire such information; or

(H) The conviction of the Wrecker Company, as defined in this ordinance, of fraud, theft or any felony, as defined in the Texas Penal Code, in the conduct or operation of the Wrecker Company.

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(I) Any lapse in the required insurance shall be cause for an immediate revocation of its municipal permit. Any costs, expenses or liabilities incurred during such lapse or suspension are to be borne in their entirety by the wrecker company.

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(2) The Chief of Police shall give ten-days' notice of the time and place for the administrative hearing concerning suspension, cancellation or removal as provided above and is empowered to administer oaths to witnesses and to conduct hearings as otherwise provided by law.

(3) Findings of the Chief of Police and said Chief's written order of suspension or removal from the rotation list shall terminate all authority and permission theretofore granted. The period of suspension or removal from the rotation list shall not exceed one year, unless the violation occurs under division (A), (G) or (H) above, in which case removal from the rotation list will be permanent. If ownership of the permanently removed wrecker company changes, the new owners may apply to join the rotation list. The Chief of Police will present the application to the City Council, who has the final authority to affirm, reject or modify the application.

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(4) Any order of the Chief of Police in this section may be appealed to the City Council within ten days from the date of suspension or removal. The City Council shall have authority to reverse, affirm, vacate or modify the order of the Chief of Police; provided, that in the event of affirmance of the order, the suspension shall commence upon the date of action by the City Council.

"Sec. 11-287. Procedure Used In Wrecker Selection.

(A) When a police officer investigating an accident determines that any vehicle which has been involved in an accident should be removed by a wrecker, the officer shall first determine whether or not the legal custodian of the vehicle has already made arrangements with an authorized wrecker service or, if appropriate, a restricted use wrecker, for the removal of the vehicle.

(B) If not, the officer shall request the legal custodian of the vehicle to either designate an authorized company or allow a wrecker to be called from the wrecker rotation list as follows:

(1) If the legal custodian of the vehicle selects a wrecker company, the investigating officer shall notify the Police Department dispatcher to call the wrecker company. If the requested wrecker company is unable to promptly respond, then the wrecker company first up on the rotation list will be called. If the first-up wrecker company is unavailable to respond, other wrecker companies in order on said list shall be called until an available company is located.

(2) If the legal custodian of the vehicle does not designate a wrecker company to be called, the investigating police officer shall notify the dispatcher to call the wrecker company first-up on the wrecker rotation list and furnish its name to the investigating officer. In such event, the investigating officer shall notify the police dispatcher who shall call the wrecker company next up from the wrecker rotation list and dispatch it to the scene. The vehicle or vehicles to be removed shall be taken to the place designated by the owner, legal custodian of the vehicle or by the investigating officer or to the wrecker company's storage facility if no designation is made. ~~If the responding wrecker company is unable to immediately provide a wrecker for each wrecked vehicle at the scene, the wrecker service next on the rotation list shall be called to remove excess vehicles.~~

(C) On each succeeding accident or call, the next wrecker company on the rotation list will be called to respond. The Chief of Police will establish a fair and consistent rotation procedure to ensure equal service for each wrecker company on the rotation list.

(D) To effect the wrecker rotation and heavy duty wrecker list procedure, the Police Department shall keep a master list of all wrecker companies which meet all the requirements of this chapter and are qualified to be on the wrecker rotation list and the heavy duty wrecker rotation list.

"Sec. 11-288. Storage; Wrecker Company Responsibility.

It shall be the responsibility of each wrecker company to provide a storage area for wrecked or disabled vehicles which are moved or towed as the result of a police or rotation pull. The storage area may be inspected by the Chief of Police or designee to determine whether it complies with the provisions of this section. A wrecker company or storage facility shall meet all requirements set forth ~~in the Texas Administrative Code, Chapter 18, Chapters A through G~~ by the Texas Department of Licensing and Regulation, which establish the minimum standards for motor carrier laws and

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storage facilities, in order to qualify for participation on the rotation list. The storage area must also be located within the incorporated city limits of Kyle.

"Sec. 11-289. Fees for Service, Towing and Storage.

(A) Towing. It is not the policy of the city to regulate the fees for towing or services provided by a wrecker company on the rotation list. However, no wrecker company on the rotation list shall charge a higher fee or rate for calls originating by virtue of the rotation list than for calls for similar services from other sources.

(B) Rate sheet required. Each wrecker company shall provide to the Chief of Police or designee a rate sheet listing its published rates for towing and storage for each class, annually, or sooner if there is a rate change. This list shall also include all charges for ancillary services such as the use of dollies, dropping, hooking linkage, clearing debris off the roadway and similar charges. No charge shall be greater than those listed on the rate sheet.

(C) Storage. Storage fees shall not exceed the limitations as set forth in state law. ~~All storage charges shall cease at the time the owner or legal custodian of a stored vehicle requests the vehicle from the storage yard of the wrecker company, provided the request is made during regular business hours.~~

(D) Other charges. Any ancillary services are to be performed only if required and appropriate.

(E) Waiting time. A charge of not more than \$15.00 for each 1/2 hour of time spent shall be allowed for waiting to tow a vehicle.

"Sec. 11-290. Fee Regulation or Police Pull Not Involving Accident.

On a police pull for a vehicle that is in safe driving condition, but no owner or legal custodian of the vehicle or licensed operator is present to drive the vehicle from the site, the wrecker company called from the rotation list shall observe and maintain the same maximum fees provided for in this chapter. ~~In the event a police pull is made for a tow away zone or traffic law violator, the vehicle shall not be released to the owner or any other person until authorization is granted by the Police Department.~~ If a police officer requests a hold placed on the vehicle, then the wrecker company and/or storage facility operator may not release the vehicle to any other person until authorization is granted by the Police Department.

"Sec. 11-291. Rules for Extraordinary Conditions; Large Vehicles.

(A) If a vehicle is wrecked or disabled and a wrecker of ordinary lifting capacity cannot move the vehicle, the investigating police officer will summon a wrecker from the heavy-duty wrecker rotation list that has the capacity to move the vehicle. Charges rendered for services of wreckers of extraordinary lifting capacity shall not exceed the usual and customary charges for like services provided in the wrecker industry.

(B) If the Wrecker Company determines that additional wrecker is needed, the Wrecker Company will either provide the additional wrecker (of their choice) or request the Police Officer in charge of the scene to call another Wrecker Company. If the primary Wrecker Company provides an additional wrecker or has the Police

Officer in charge of the scene summon another Wrecker Company, the primary Wrecker Company must advise the Police Officer in charge of the scene, the reason for the needed assistance and the approximate time delay in the removal of vehicles and debris from the scene. If the determination of need for an additional wrecker is based on the lack of equipment normally required to be present on the primary wrecker, the company will not be compensated for the additional wrecker called to the scene.

(C) If, in the opinion of fire or police officials, a wrecked or disabled vehicle or its cargo constitutes a hazard to the public, any wrecker company shall act at the direction of the said official. ~~Said official will not be found to be in violation of any portion of this ordinance.~~ Said Official may take any actions needed within state law to preserve life, property or the public peace, to include restoring the normal flow of traffic to public roadways.

"Sec. 11-292. Removal of Wrecks and Debris.

The operator of a wrecker shall remove from the street, along with the disabled vehicle, all broken or shattered glass and other debris and parts coming from the disabled vehicle to include fluid spills of less than 5 gallons. Failure to do so shall constitute a misdemeanor punishable as provided in the city's Code of Ordinances and subject to cancellation of the wrecker license. A truck and trailer or pulled or transported items shall constitute one vehicle and shall be treated as such by the wrecker company.

~~"Sec. 11-293. Nonresident Wrecker Companies.~~

~~No provisions in this Article shall be construed to prohibit a nonresident wrecker company from transporting a wrecked or disabled vehicle from some point in the city other than the site of an original accident to some point outside the city, nor shall it be construed to prohibit a nonresident wrecker company from transporting a wrecked or disabled vehicle from a point outside the city limits to a destination inside the city limits.~~

"Sec. 11-294. Companies to Keep Records.

~~(A) Every wrecker company qualified for and whose name appears at its request on the wrecker rotation list shall maintain at its storage facility any and all records pertaining to all vehicles moved by the wrecker company.~~

~~(B) The records shall contain the following information:~~

~~(1) Make, model and identification numbers of the disabled vehicle moved by the company;~~

~~(2) Location from which a disabled vehicle was removed and the final destination of the vehicle;~~

~~(3) Total amount charged for towing;~~

~~(4) Storage rate per day;~~

~~(5) A detailed description of all personal property within the disabled vehicle at the time of its removal; and,~~

~~(6) The date, time, and name of the wrecker operator(s) involved in the tow.~~

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~~(C) The records described in subsection (B) of this section shall be preserved by the wrecker company for at least six (6) months from the date such company came into possession of the vehicle.~~

~~(D) The wrecker company shall make available to the Chief of Police or designee said records upon request and within a reasonable time.~~

"Sec. 11-295. Establishment of Rotation Schedules.

The Chief of Police or designee shall establish a rotation procedures intended to provide equal service potential for each wrecker business on the rotation list. The procedures established by the Chief of Police shall be subject to review by the city council upon request by any wrecker company that alleges the procedures established are illegal. The Chief of Police or designee shall issue a valid inspection certificate for each qualified wrecker which shall be valid until December 31st of the year in which the same was issued. If, on January 1st of the following year, no Wrecker Company has been approved to be on the wrecker rotation list, the list from the previous year shall remain in effect until the first Wrecker Company is approved to be on the wrecker rotation list for the new calendar year. At that time, the wrecker rotation list will be reset by removing all unapproved wrecker companies."

Section ~~43~~. The remainder Chapter 11, Article IX "COMMERCIAL TOWING AND WRECKER SERVICES" composed of Sections 11-275 to 11-295 shall remain unchanged

Section 4. Compliance with Open Meetings Act. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the city council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting as required by the Open Meetings Law, Chapter 55I, TEX. Gov'T CODE, and that this meeting has been open to the public as required by law at all times during which this Article and the subject matter thereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. Conflict. Any and all ordinances and resolutions and parts of ordinances and resolutions that are in conflict herewith are hereby repealed to the extent of the conflict only.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 7. Codification. It is the intention of the city council that this ordinance shall become a part of the Code of Ordinances of the City of Kyle, and it may be renumbered and codified therein accordingly. Upon codification, at least four sections shall be reserved for future use.

~~Section 8. Publication. The City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Kyle in compliance with the provisions of the City Charter.~~

Section ~~98~~. Effective Date. This ordinance shall take effect from and after its final passage and

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publication as required by law.

PASSED on first reading the _____ day of _____, 2016.

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST: _____
Amelia Sanchez, City Secretary

APPROVED AS TO FORM: _____
Frank Garza, City Attorney

DRAFT



CITY OF KYLE, TEXAS

City Manager's Report

Meeting Date: 4/19/2016

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*

- Drug Take Back event - April 30, 2016, 10 a.m. - 2 p.m. at KPD

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Convene-Executive Session

Meeting Date: 4/19/2016

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.
 - o Potential Incentive for Development
 - o Attorney-Client Consultation concerning discussion of possible settlement of litigation.
2. 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.
 - o Project Steel Blue
 - o Potential Incentive for Development

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Reconvene

Meeting Date: 4/19/2016

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