

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 June 7, 2016, at Kyle City Hall, 100 W. Center St., Kyle, Texas 78640, for the purpose of discussing the following agenda.

Posted this 3rd day of June, 2016, prior to 7:00 p.m.

I. Call Meeting To Order

II. Approval of minutes

1. City Council Regular Meeting Minutes - May 17, 2016. ~ *Jennifer Vetrano, 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. Appointments

2. Consider nomination and take possible action for appointment to the Library Board to fill vacancy. ~ *Paul Phelan, Director of Library Services*
 - Brandon Vasquez

V. Consent Agenda

3. (Second Reading) An Ordinance regulating traffic, authorizing and directing the installation and erection of stop signs for the traffic control at the intersections of Amberwood Loop and Amberwood South, Amberwood Loop and Maplewood North, Amber Ash Drive and Cherrywood, and Amberwood Loop and Pecanwood South all in the city limits of Kyle; repealing any ordinance or resolution in conflict; providing a severability clause; declaring a penalty; and providing an effective date. ~ *Diane Hervol, Council Member*

4. Authorize the City Manager to execute a 60-month lease with BUSINESS SOLUTIONS USA INC., Austin, Texas, for a Konica Minolta bizhub Model 364e photocopier for the Kyle Public Library, in the amount of \$149.60 per month based on an average monthly volume of 4,400. Copy overages will be charged at .0080 per copy. ~ *Paul Phelan, Director of Library Services*
5. Approve a professional services agreement with HDR ENGINEERING, INC., Austin, Texas, in the amount of \$28,749.00 to conduct the Water and Wastewater Impact Fee Study and update all required schedules and reports in compliance with state law. ~ *Perwez A. Moheet, CPA, Director of Finance*
6. Authorize the Hays County Tax Assessor-Collector to accept bid received in the amount of \$694.00 for real property described as Lot 16, Block 1, M.E. Moore Addition, held in trust by Hays County for non payment of property taxes due to taxing jurisdictions in Hays County. ~ *Perwez A. Moheet, CPA, Director of Finance*
7. Approve an Interlocal Agreement between the City of Kyle and Hays County in an amount not to exceed \$53,018.88 for application of bridge aesthetics located within and adjacent to the Yarrington Road Bridge Overpass at IH 35. ~ *Leon Barba, P.E., City Engineer*
8. Approve a service agreement with L&J MANAGEMENT CONCEPTS, LLC, DBA GRIND HOUSE COFFEE & COCKTAILS, Kyle, Texas, to provide and manage the sale of alcoholic beverages at the Kyle Hogwash Festival on October 21 and 22, 2016, at Gregg-Clarke Park. ~ *Cindy Stohr, Special Events & Programs Coordinator*
9. Approve a service agreement with SERGIO SOTO, Austin, Texas, in an amount not to exceed \$3,000.00 to provide stage lighting, audio, back line and staffing for both Kyle Field Day on September 17-18, 2016, at Gregg-Clarke Park and the Kyle Hogwash Festival on October 21-22, 2016, at Gregg-Clarke Park and direct the City Manager to provide funding for this service agreement from the Hotel Occupancy Tax Fund in the FY 2016-17 budget. ~ *Cindy Stohr, Special Events & Programs Coordinator*
10. Approve a service agreement with CTK ENTERTAINMENT, Buda, Texas, in an amount not to exceed \$2,000.00 to schedule a 90-minute headline performance by the Midnight River Choir at the Kyle Hogwash Festival on October 21-22, 2016, at Gregg-Clarke Park and direct the City Manager to provide funding for this service agreement from the Hotel Occupancy Tax Fund in the FY 2016-17 budget. ~ *Cindy Stohr, Special Events & Programs Coordinator*

VI. Consider and Possible Action

11. Authorize the City's Director of Finance to initiate process, prepare bond documents, and incur necessary expenses for the refunding of approximately \$9,020,000.00 in outstanding Certificates of Obligations, Series 2007, 2008, and 2009 in order to achieve approximately \$1,110,000.00 in interest cost savings for the City of Kyle. ~ *Perwez A. Moheet, CPA, Director of Finance*

12. Approve a contract with SHERIDAN ENVIRONMENTAL DBA SHERIDAN CLEARWATER, LLC, and the City of Kyle for wet handling and disposal of biosolids from the wastewater treatment plant at a cost of \$76 per wet ton, estimated annual cost of \$350,000. ~ *Harper Wilder, Director of Public Works*
13. Consider and possible action in regards to approval of a development agreement with KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC, a Texas limited liability company for the development of approximately 126 acres on FM 150 known as Cool Springs. ~ *James R. Earp, Assistant City Manager*

VII. City Manager's Report

14. 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*

VIII. Executive Session

15. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
 1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
 2. 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
16. Take action on items discussed in Executive Session.

IX. ADJOURN

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

*Per Texas Attorney General Opinion No. JC-0169; Open Meeting & Agenda Requirements, Dated January 24, 2000: The permissible responses to a general member communication at the meeting are limited by 551.042, as follows: "SEC. 551.042. Inquiry Made at Meeting. (a) If, at a meeting of a government body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by the subchapter, the notice provisions of this

subchapter, do not apply to:(1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry. (b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting."



CITY OF KYLE, TEXAS

City Council Regular Meeting Minutes, 5-17-16

Meeting Date: 6/7/2016
Date time:7:00 PM

Subject/Recommendation: City Council Regular Meeting Minutes - May 17, 2016. ~ *Jennifer Vetrano, City Secretary*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- ☐ 2016 0517 City Council Meeting Minutes

REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on May 17, 2016 at Kyle City Hall with the following persons present:

Mayor Todd Webster	Russell Smith
Mayor Pro Tem David Wilson	Ivan Trujillo
Council Member Diane Hervol	Michael Garcia
Council Member Becky Selbera	Michele Chae
Council Member Shane Arabie	Marco Pizana
Council Member Damon Fogley	Paulina Arellano
Council Member Daphne Tenorio	Amy Reyna
Scott Sellers, City Manager	Maria Martinez
James Earp, Assistant City Manager	Lisa Aidala
Frank Garza, City Attorney	Dan Ekakiadis
Jerry Hendrix, Chief of Staff	Trista Fugate
Jennifer Vetrano, Acting City Secretary	Jesse Espinoza
Leon Barba, City Engineer	Dr. Glen Hurlston
Paul Phelan, Library Director	Scott Ingalls
Howard Koontz, Community Development Director	
Jeff Barnett, Police Chief	
Harper Wilder, Public Works Director	

I. Call Meeting To Order

Mayor Webster called the meeting to order at 7:00 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, and Council Member Tenorio.

II. Approval of minutes

1. City Council Regular Meeting Minutes - May 3, 2016. ~ Jennifer Vetrano, Acting City Secretary
Item No. 1 Attachments

Council Member Tenorio moved to approve City Council Regular Meeting Minutes for May 3, 2016. Council Member Hervol seconded the motion. All votes aye; motion carried 7-0.

IV. Presentation

With no objection, Mayor Webster placed Presentations on the table ahead of Citizen Comments.

CITY COUNCIL MEETING MINUTES

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Kyle City Hall

2. Memorial Day Resolution. ~ David Wilson, Shane Arabie, Damon Fogley, Council Members
Item No. 2 Attachments

Mayor Webster placed Item No. 2 on the table for discussion and gave the floor to Mayor Pro Tem Wilson.

Mayor Pro Tem Wilson moved to approve a Resolution of the City of Kyle recognizing the one million plus veterans of all wars who have sacrificed their lives for our freedom, honoring these men and women along with the sons, daughters, wives and other friends and family members who share their sacrifice, recognizing the Kyle/Buda Veterans of Foreign Wars Post 12058 and AMVET Post 115 for their contributions and support of our veterans and their families, and calling on all Kyle residents to take pause on this Memorial Day to remember and honor our veterans. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

3. Presentation for Recognition of Members of the Kyle Police Department for Meritorious and Life Saving Acts. ~ Jeff Barnett, Chief of Police
Item No. 3 Cover Sheet

Mayor Webster placed Item No. 3 on the table for discussion. Chief Barnett recognized Lieutenant Marmolejo and Officers Shuler, Congdon, Clark, and Pates. Vehicle accident victims, Russell Smith, Ivan Trujillo, and Michael Garcia each spoke in appreciation for the officers' actions that evening.

4. Kyle Public Library Lehman High School Branch Program for summer 2016. ~ Paul Phelan
Library Director
Item No. 4 Cover Sheet

Mayor Webster placed Item No. 4 on the table for discussion. Mr. Phelan introduced Michele Chae, Principal of Lehman High School. She presented the program, which involves a partnership between Lehman High School and the City's Library to provide Library Services to the east side of Kyle. Mr. Phelan provided information on the dates, times, and services available.

5. Progress report on all five road bond projects including latest project cost estimates. ~ Leon Barba, P.E., City Engineer
Item No. 5 Cover Sheet

Mayor Webster placed Item No. 5 on the table for discussion. Mr. Barba presented an update on the road bond project. No action was taken.

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.

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Mayor Webster opened citizen comments at 7:37 p.m.

Marco Pizana, a Hays Criminal Justice teacher, was called to speak. He and his student crime scene investigation team wanted to recognize Kyle PD for assisting them with preparing them for regional and state competition. They ultimately placed second out of 57 teams. He recognized Detective Watson, Detective Carrasco, Kelly Sheridan, Mary Ann Rodriguez, Detective Diane Talamantes, and Chief Barnett. Paulina Arellano, Amy Reyna, and Maria Martinez each spoke regarding their testimonies of the assistance and support given by the Police Department.

Lisa Aidala was called to speak. She is a City of Kyle resident and Lyft driver. She spoke about Lyft services, operations, and purposes.

Dan Ekakiadis, former Council Member was called to speak. He stated that he is proud of the events tonight, recognizing the Veterans and the Police. He wanted to speak about safety. He spoke of his roommate, who saw a coyote in the front yard at his house in Spring Branch. She ran from it and tripped, and had to go to the emergency room. He believes the construction may be pushing the wildlife out to the neighborhood. He also spoke about traffic safety related to the Burleson circle. He said we need to start enforcing our laws, but he thinks people are not going to yield to the left.

Trista Fugate was called to speak. She invited the Mayor and Council, and all PEC members to the PEC annual meeting scheduled for Saturday, June 18, 2016 at the Performing Arts Center in PEC.

Jesse Espinoza was called to speak. He spoke regarding a complaint he made on Chief Barnett on November 18, 2014, and provided a sealed envelope of evidence to James Earp. He stated that the very next day he was served two complaints against him, which he described as retaliation. He stated that the evidence he provided was never opened. Mr. Espinoza continued stating the records related to his indefinite suspension have been withheld from Open Records Requests. He spoke about his EEOC complaint against the City of Kyle. He asked the council to take his concerns seriously and break the cycle of deception and corruption by the City of Kyle.

Dr. Glen Hurlston was called to speak. He spoke about Jesse Espinoza Jr.'s medical history and recovery. He stated that he is a happy healthy boy except for Chief Barnett, James Earp, and Mayor Webster having accused his father of wrongfully accepting a gift that helped save his life. He spoke of other officers from other departments stating that they too have been subjected to retaliation by Chief Barnett during his time in Princeton, Texas. Dr. Hurlston continued speaking about an open records request submitted by one of the officers for Chief Barnett's phone records, and that Chief Barnett had listed Dr. Hurlston's ex-wife as an informant. He alleged that his ex-wife was not an informant. The officer, he said, was denied the records, and was dishonorably discharged from the force.

Frank Garza, City Attorney, stated that the Council cannot respond with regard to the last two speakers. He stated there is currently a lawsuit filed by Dr. Hurlston in the Eastern District of Texas that is currently on appeal, which was dismissed by the Judge, and that decision has now

CITY COUNCIL MEETING MINUTES

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Kyle City Hall

been appealed. He continued, stating that Dr. Hurlston has also filed criminal charges against City of Kyle personnel, and those have been transferred to an investigator with the Texas Rangers, who, as of April 27th has dismissed all charges based on insufficient evidence against the officials of the City of Kyle. Mr. Garza stated that with regard to Jesse Espinoza, his indefinite suspension is on appeal, and the council may not discuss those matters in public due to its status on appeal.

With no one else wishing to speak, and no objections to closing citizen comments, Mayor Webster closed citizen comments at 7:58 p.m.

V. Consent Agenda

Mayor Webster asked if there were any items to be pulled from the Consent Agenda. There were none. With no objections, Mayor Webster placed Item Nos. 6, 7, 8, and 9 on the table for discussion.

6. Authorize award and execution of a Purchase Order to CENTERLINE SUPPLY LTD., San Antonio, Texas in an amount not to exceed \$36,742.50 for the purchase of a new Thermo Plastic Applicator Machine through the Buy Board Purchasing Co-operative for the Public Works Department. ~ Harper Wilder, Director of Public Works
Item No. 6 Attachments
7. Approve Supplement No. 1 to Task Order No. 1 to NEPTUNE-WILKINSON ASSOCIATES, INC., Austin, Texas, in an amount of \$2,500.00, increasing the total contract amount to not exceed \$16,250.00 for additional services required for the design and administration of a rail system in an existing manhole. ~ Leon Barba, P.E., City Engineer
Item No. 7 Attachments
8. Approve a service agreement with CRABTREE AMUSEMENTS, INC., Austin, Texas to provide and manage a selection of carnival rides and games appropriate for the Kyle Hogwash Festival on October 21 and 22, 2016, at Gregg-Clarke Park. ~ Cindy Stohr, Special Events & Programs Coordinator
Item No. 8 Attachments
9. Approve a service agreement with TEXAS DISPOSAL SYSTEMS, Austin, Texas in an amount not to exceed \$3,873.00 to provide portable restrooms, trash receptacle, and recycling services for the Kyle Hogwash Festival on October 21-22, 2016 at Gregg-Clarke Park and direct the City Manager to provide funding for this service agreement from the Hotel Occupancy Tax Fund in the Fiscal Year 2016-17 budget. ~ Cindy Stohr, Special Events & Programs Coordinator
Item No. 9 Attachments

Mayor Pro Tem Wilson moved to approve Consent Agenda Item Nos. 6, 7, 8, and 9. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0.

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VI. Consider and Possible Action

10. A Resolution Canvassing the Returns and Declaring the Results of the May 7, 2016, General and Special Elections of the City of Kyle, Texas. ~ R. Todd Webster, Mayor
Item No. 10 Attachments

Mayor Webster placed Item No. 10 on the table for discussion. He provided the results of the General and Special Elections on May 7, 2016. Council District 1 between Diane Hervol and Travis Mitchell, there is a tie with 510-510 votes. Council District 3 between Randall Lloyd and Shane Arabie, 393-533. Proposition One passed 806-183, Proposition Two passed 871-136, Proposition Three passed 643-345, Proposition Four failed 468-489, Proposition 5 passed 765-212, Proposition Six passed 702-265, Proposition Seven passed 718-246, Proposition Eight passed 859-114, Proposition Nine passed 836-130, Proposition Ten passed 802-155, and Proposition Eleven passed 912-82.

Mayor Webster moved to approve a Resolution Canvassing the Returns and Declaring the Results of the May 7, 2016, General and Special Elections of the City of Kyle, Texas. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

11. A Resolution of the City of Kyle, Texas, calling a Runoff Election on Saturday, June 11, 2016, for the purpose of electing Council Member at large, Position One; providing for early voting and for notice of the election; authorizing Mayor to execute agreement(s) to reserve polling locations on election day and on the conduct of the election; and providing for other matters relating to the election and setting an effective date. ~ R. Todd Webster, Mayor
Item No. 11 Attachments

Mayor Webster placed Item No. 11 on the table for discussion. He stated that a Petition was received to have a Saturday early voting date. He stated the schedule for early voting: Tuesday, May 31 from 7:00 a.m. - 7:00 p.m., Wednesday, June 1 from 8:00 a.m. - 5:00 p.m., Thursday, June 2 from 8:00 a.m. - 5:00 p.m., Friday June 3 from 8:00 a.m. - 5:00 p.m., Saturday, June 4 from 10:00 a.m. - 2:00 p.m., Monday, June 6 from 7:00 a.m. - 7:00 p.m., and Tuesday, June 7 from 8:00 a.m. - 5:00 p.m. Election Day will be Saturday, June 11 and polls are open from 7:00 a.m. - 7:00 p.m.

Mayor Webster moved to approve a Resolution of the City of Kyle, Texas, calling a Runoff Election on Saturday, June 11, 2016, for the purpose of electing Council Member at large, Position One; providing for early voting and for notice of the election; authorizing Mayor to execute agreement(s) to reserve polling locations on election day and on the conduct of the election; and providing for other matters relating to the election and setting an effective date. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

12. (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, for the purpose of assigning original zoning to approximately 1.118 acres of land from Agriculture "AG" to Retail Service District "RS" for property located at 289 Anton Drive, in Hays

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County, Texas. (Jassiel Reyes - Z-16-004) ~ Howard J. Koontz, Director of Planning and Community Development

Planning and Zoning Commission voted 7-0 to recommend approval of the request.

a. PUBLIC HEARING

Item No. 12 Attachments

Mayor Webster placed Item No. 12 on the table for discussion. Mr. Koontz presented the item.

With no objections, Mayor Webster opened the public hearing at 8:07 p.m.

Scott Ingalls spoke regarding the change from AG to RS. He is not opposed to the zoning change, but is opposed to the intended use of the property - an inspection station. He stated that the owner has been using the property to sell cars. He is concerned about traffic congestion related to a service station.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 8:11 p.m.

Council Member Arabie moved to approve an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, for the purpose of assigning original zoning to approximately 1.118 acres of land from Agriculture "AG" to Retail Service District "RS" for property located at 289 Anton Drive, in Hays County, Texas. Mayor Pro Tem Wilson seconded the motion. All votes aye; motion carried 7-0.

13. (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 3.576 acres from Single Family Residential 1 "R-1" to Community Commercial "CC" for property located on the southwest corner of Porter Street and Cockerham Street, in Hays County, Texas. (WS Live Oak Kyle, LLC. - Z-16-006) ~ Howard J. Koontz, Director of Planning and Community Development Planning and Zoning Commission voted 7-0 to recommend approval of the request.

a. PUBLIC HEARING

Item No. 13 Attachments

Mayor Webster placed Item No. 13 on the table for discussion. Mr. Koontz presented the item.

With no objections, Mayor Webster opened the public hearing at 8:14 p.m.

With no one wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 8:14 p.m.

Council Member Tenorio moved to approve an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 3.576 acres from Single Family Residential 1 "R-1" to Community Commercial "CC" for property located on the southwest corner

CITY COUNCIL MEETING MINUTES

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Kyle City Hall

of Porter Street and Cockerham Street, in Hays County, Texas. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0.

Mayor Webster asked if there were any objections to Item No. 13 being finally passed. There were none. Mayor Webster asked if there were any objections to Item No. 12 being finally passed. There were none. Both items were declared finally passed.

14. A Resolution of the City Council of the City of Kyle, Texas amending Resolution 981, adopted by the City Council on June 15, 2015 by revising the Public Improvement District Policy to allow for Economic Development Incentives; making findings of fact; and providing for related matters. ~ J. Scott Sellers, City Manager
Item No. 14 Attachments

Mayor Webster placed Item No. 14 on the table for discussion. Mr. Sellers presented the item. He stated that under the section Financing Criteria, Items 10 and 13 are the same. He proposed the Council strike Item 13 and keep Item 10. Mr. Sellers stated one change is the City Council would not be incentivizing strictly residential development through a PID. It should be used for a larger development that may have a residential component, but is not to be used to incentivize residential. The second change, he said, is to allow the city use of up to 10 percent of the cumulative PID bond amount for off-site PID related expenses, such as wastewater improvements, water system, drainage improvements, and road improvements, to be determined by development agreement.

Mayor Webster moved to approve a Resolution of the City Council of the City of Kyle, Texas amending Resolution 981, adopted by the City Council on June 15, 2015 by revising the Public Improvement District Policy to allow for Economic Development Incentives; making findings of fact; and providing for related matters, with an amendment on page 2, Item 12, insert "Development" between Economic Incentives, and on page 7, striking all of Item 13. Mayor Pro Tem Wilson seconded the motion. Motion carried 5-2 with Council Members Hervol and Tenorio dissenting.

VII. City Manager's Report

15. 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
 - a. Comprehensive Plan
 - b. Marketplace Avenue Ribbon CuttingItem No. 15 Attachments

Mr. Sellers gave a report on the Comprehensive Plan based on Planning and Zoning Commission's Memo. Mayor Webster stated that his intention is to have a joint meeting between Planning & Zoning Commission and the Council. Mayor Pro Tem Wilson stated that he believes the City of Kyle can do this without spending hundreds or thousands of dollars on consultants. Mr. Sellers stated that the mid-term update is mostly updating zoning and maps, and his recommendation is to do it in this forum. Mr. Sellers stated that a facilitation could happen either on the staff level or

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at the retreat/workshop. Council Member Tenorio stated that she likes the idea of an outside facilitator to keep the conversations open.

Mr. Sellers recognized Jo Ann Garcia for her part in shepherding the project and finishing ahead of schedule. He announced the Marketplace Avenue Road Dedication Ceremony taking place tomorrow at 3:00 p.m. at the intersection of Marketplace Avenue and City Lights. Mayor Pro Tem Wilson mentioned complaints about water damage on Bunton. Council Member Hervol gave her thanks to the staff involved in this project at Marketplace. She said it's a great shortcut, and great for the west side of Kyle. Council Member Selbera thanked Leon Barba and Jo Ann Garcia.

VIII. Executive Session

16. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
 1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
 - a. Potential incentive for development
 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.
 - a. Potential incentive for development
 - b. Project Steel Blue

Item No. 16 Cover Sheet

Mayor Pro Tem Wilson moved to convene into executive session. 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 - Potential incentive for development. 4. Economic Development negotiations pursuant to Section 551.087 - Potential incentive for development. The City Council did not discuss Project Steel Blue. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

The City Council convened into Executive Session at 8:38 p.m. Council Member Hervol was absent for Executive Session.

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Kyle City Hall

17. Take action on items discussed in Executive Session.
Item No. 17 Cover Sheet

Council Member Tenorio moved to reconvene into open session. Council Member Arabie seconded the motion. All votes aye; motion carried 6-0.

The City Council reconvened into Open Session at 8:59 p.m. Mayor Webster announced that no action took place in Executive Session and none would be taken now.

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

Mayor Pro Tem Wilson moved to adjourn. Council Member Tenorio seconded the motion. All votes aye; motion carried 6-0.

With no further business to discuss, the City Council adjourned at 8:59 p.m.

R. Todd Webster, Mayor

Attest: Jennifer A. Vetrano, City Secretary



CITY OF KYLE, TEXAS

Appointment to the Library Board

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Consider nomination and take possible action for appointment to the Library Board to fill vacancy. ~ *Paul Phelan, Director of Library Services*

- Brandon Vasquez

Other Information: The Library Board voted unanimously on May 12, 2016 to recommend appointment of Brandon Vasquez.

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Brandon Vasquez Board Application

Kyle Library Board

Application

Name: **Brandon Michael Vasquez**

Address: 140 Jasmine Cove, Kyle, TX 78640

Email: brandonvasquez@gmail.com

Best phone number: 210-557-5495

City of Kyle resident? **Yes**

How long have you resided in Kyle?: **Less than 1 year (since August 2015)**

Subdivision: **Waterleaf Falls**

EDUCATION:

University of North, Texas, Denton, TX, M.L.I.S. (G.P.A. 3.4)

St. Mary's University, San Antonio, TX, M.B.A., Management Information Technology (G.P.A. 3.7)

St. Mary's University, San Antonio, TX, B.B.A., Corporate Financial Management (G.P.A. 3.2)

PROFESSIONAL EXPERIENCE:

Legislative Reference Library of Texas

Austin, TX (December 2014 - present)

Reference/Technical Reference Librarian

St. Mary's University School of Law, Sarita Kenedy East Law Library

San Antonio, TX (March 2003 - November 2014)

Communications Coordinator/Circulation Supervisor

San Antonio Independent School District,

San Antonio, TX (January 1996 – March 2003)

Substitute Teacher

Previous or Current Community/ Committee Involvements:

Special Knowledge or Experience:

I have worked in a library setting (both academic and government) for more than a dozen years. I feel this experience gives me insight into how libraries work and their greater context within the community.

Why are you interested in serving on the Library Board?

The city of Kyle's Library Board should consist of individuals dedicated to the library's mission of service and its ability to continue that mission as the city grows. I feel I could bring a consistent and reasonable perspective to matters of budget, policy, planning, and values, that the members of the Library Board are looking to fill.

What contributions do you feel you could make to the Library Board:

One of my strongest qualities is that of diplomacy; aiding in my ability to work with people on both sides of the political spectrum, and respect each individual's right to their point of view. My business school background combined with my library experience, gives me some insight not only into library management and operations but also ensuring that the citizens of our growing community have access to the best library services possible.

Other comments:

As a relatively new member of the City of Kyle, I look forward to serving my new community. Although I do work at the Legislative Reference Library in the Capitol, I assure you I can attend regular Board meetings and commit to serving on weekends. Thank you for your time and consideration.



CITY OF KYLE, TEXAS

Stop Signs - Amberwood

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: (Second Reading) An Ordinance regulating traffic, authorizing and directing the installation and erection of stop signs for the traffic control at the intersections of Amberwood Loop and Amberwood South, Amberwood Loop and Maplewood North, Amber Ash Drive and Cherrywood, and Amberwood Loop and Pecanwood South all in the city limits of Kyle; repealing any ordinance or resolution in conflict; providing a severability clause; declaring a penalty; and providing an effective date. ~ *Diane Hervol, Council Member*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Ordinance - Amberwood Stop Signs

ORDINANCE NO. _____

AN ORDINANCE REGULATING TRAFFIC, AUTHORIZING AND DIRECTING THE INSTALLATION AND ERECTION OF STOP SIGNS FOR THE TRAFFIC CONTROL AT THE INTERSECTIONS OF AMBERWOOD LOOP AND AMBERWOOD SOUTH, AMBERWOOD LOOP AND MAPLEWOOD NORTH, AMBER ASH AND CHERRYWOOD, AND AMBERWOOD LOOP AND PECANWOOD SOUTH ALL IN THE CITY LIMITS OF KYLE; REPEALING ANY ORDINANCE OR RESOLUTION IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the regulation of traffic, motor vehicles and conveyances upon all public streets, roadway and right-of-ways within the City limits of the City of Kyle (the “City”) is essential and necessary to protect the traveling public and to preserve and protect the public safety of the City; and

WHEREAS, the: Police Chief; City Engineer; Public Works Director; City Manager; and, City Council have reviewed the situation and issues that are the subject matter of this Ordinance; and

WHEREAS, the City Council of the City find that the safety and welfare of the citizens of the City requires that stop signs be provided at such points within the City;

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

SECTION 1: Findings. The recitals are hereby found to be true and correct and are hereby incorporated as part of this Ordinance.

SECTION 2: That all vehicles proceeding along the following streets shall come to a full stop immediately before reaching the intersections hereinafter set forth;

- AT THE INTERSECTION OF AMBERWOOD LOOP AND AMBERWOOD SOUTH;
- AT THE INTERSECTION OF AMBERWOOD LOOP AND MAPLEWOOD NORTH;
- AT THE INTERSECTION OF AMBER ASH AND CHERRYWOOD;
- AT THE INTERSECTION OF AMBERWOOD LOOP AND PECANWOOD SOUTH.

SECTION 3: That at each place designated in Section 2 of this ordinance, for vehicles to stop in proceeding along the street, there shall be placed a sign, either in the surface of the street or at the side thereof, directing traffic to stop at such point, and no provisions of this ordinance for which signs are required shall be enforceable against an alleged violator, if at the time and place of the alleged violation the sign herein required is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

SECTION 4: That it shall be unlawful for the operator of any vehicle to disobey the instructions of the stop sign placed in accordance with the provisions of this ordinance.

SECTION 5: That it shall be unlawful for any person to willfully deface, injure, move, remove, obstruct or interfere with any stop sign under the provisions of this ordinance.

SECTION 6: Any person violating any provisions of this Ordinance shall be subject to the penalty provided in Section 1-14 of the Code of Ordinances.

SECTION 7. Conflicting Ordinances or Resolutions. All resolutions or ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted and amended herein, are hereby REPEALED to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other resolution, code or ordinance of the City, or parts thereof, the terms and provisions of this ordinance shall govern.

SECTION 8. 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 9. Effective Date. This ordinance shall be effective from and after its approval and passage in accordance with the Texas Local Government Code and the city charter.

PASSED AND APPROVED on first reading this 3rd day of May, 2016.

FINALLY PASSED AND APPROVED on this 7th day of June, 2016.

THE CITY OF KYLE, TEXAS

R. Todd Webster, Mayor

ATTEST:

Jennifer A. Vetrano, City Secretary



CITY OF KYLE, TEXAS

Approve a lease agreement with
Business Solutions for a copier to be
used by the Kyle Public Library

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize the City Manager to execute a 60-month lease with BUSINESS SOLUTIONS USA INC., Austin, Texas, for a Konica Minolta bizhub Model 364e photocopier for the Kyle Public Library, in the amount of \$149.60 per month based on an average monthly volume of 4,400. Copy overages will be charged at .0080 per copy. ~ *Paul Phelan, Director of Library Services*

Other Information: The Konica Minolta bizhub 364e will replace a Xerox 5335 in the library workroom.

Legal Notes:

Budget Information: The funds budgeted in 110-141-54175 for the expiring Xerox 5335 lease will be used to pay for the new copier lease.

ATTACHMENTS:

Description

- Lease Agreement
- Business Solutions Bid
- Clear Choice Bid
- Dahill Bid

Appendix D to DIR Contract Number DIR-TSO-3082

MASTER LEASE AGREEMENT

1. Scope.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule (“Schedule”), which is a separate agreement executed from time to time by Lessor and Lessee and makes specific reference to this Master Lease Agreement (“MLA”). The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term “Equipment” shall refer to the Products and any related Services as allowed within said Contract number DIR-TSO-3082, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Equipment for its own use, DIR is not a party to any Schedule executed under this MLA and is not responsible for Rents, payments or any other obligations under such Lessee’s Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or the Lessor or both of them arising from the use of this MLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 of this MLA.

Any reference to “MLA” shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by DIR and Lessor.

As to conditions precedent to Lessor’s obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the Schedule, the Acceptance Certificate, Opinion of Counsel, and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee’s financial condition except as provided for within Section 7 of this MLA.

2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of DIR Contract Number DIR-TSO-3082 and shall continue until (i) the obligations of Lessee under every Schedule are

fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

The term for each Schedule, executed in conjunction to this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee (“Commencement Date”), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor’s election to cancel the Schedule pursuant to Section 24 of this MLA.

4. Administration of MLA.

- (a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.
- (b) All leasing activities in conjunction to this MLA shall be treated as a “purchase sale” in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.
- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-3082 on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by

the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MLA and any Schedule. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to the Lessor. Any sum received by the Lessor later than ten (10) business days after its due date will bear interest from such due date at the rate of one-percent (1%) per month (or the maximum rate allowable by law, if less) until paid. Late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed

upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

- (a) This paragraph applies only to Lessees designated as state agencies defined in Section 2054.003, Texas Government Code, including institutions of higher education as defined in Texas Education Code, Section 61.003 and those state agencies utilizing a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be so terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

- (b) This paragraph applies only to Lessees designated as local government entities.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the

Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor agrees, to the extent they are assignable, to assign the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

9. Inspection and Acceptance.

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the tenth (10th) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

10. Installation and Delivery; Use of Equipment; Repair and Maintenance.

(a) All transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a

place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.

- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Texas without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

12. Ownership.

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

13. Purchase and Renewal Options; Location and Surrender of Equipment.

(a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together with all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.

(b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location,

unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians, approved by Lessor and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, without notice or demand, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Equipment. As an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Texas, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

14. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 23 of the MLA) has not occurred.

15. Warranties.

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

16. No Warranties.

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED

DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

17. Indemnification.

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.
- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR individually and collectively assume all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR agree to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.
- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment.

18. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

19. Insurance.

At its expense, Lessee shall keep the Equipment insured against all risks of loss and damage with companies acceptable to Lessor for an amount equal to the original cost of the Equipment, with Lessor or its assign(s) named as a loss payee. Lessee shall also maintain comprehensive general liability insurance, with Lessor or its assign(s) named as an additional insured. Lessee shall be liable for any loss not covered by insurance. All said insurance shall be in form and amount satisfactory to Lessor. Lessee shall pay the premiums therefor and deliver to Lessor or its assign(s) the certificates of insurance or duplicates thereof or other evidence satisfactory to Lessor or its assign(s) of such insurance coverage. Evidence of such insurance coverage shall be furnished no later than the Schedule Commencement Date of each Schedule and from time to time as Lessor or its assign(s) may request. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any said insurance policy. Lessee may self-insure with respect to the required coverage.

Further, Lessees that are defined as state agencies in accordance with Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, may self-insure their obligations in this section.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;
- (b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;
- (d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and
- (h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;
- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result

in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and

- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (c) failure by Lessee to perform or observe any other term, covenant or condition of this MLA, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being or becoming untrue in any material respect.

24. Remedies.

- (a) Upon the occurrence of an "Event of Default" and at any time thereafter Lessor may, in its sole discretion, do any one or more of the following: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate any or all Schedules executed by Lessor and the defaulting Lessee; (ii) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages, including all of Lessor's economic loss for the breach thereof; (iii) whether or not the Schedule is terminated, upon notice to Lessee, take possession of the Equipment wherever located, without demand, liability, court order or other process of law, and for such purposes Lessee, to the extent authorized by Texas law, hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Equipment is located or cause Lessee, and Lessee hereby agrees, to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Equipment is not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Equipment at the end of the Schedule Term as determined by Lessor, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without

Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

- (b) Upon return or repossession of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Equipment shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at the Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.
- (c) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- (d) Neither DIR nor non-defaulting Lessees shall be deemed in default under the MLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default

shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor’s right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and DIR and each Lessee leasing Equipment under the MLA understand and agree that Lessor’s assigns may each do the same (hereunder collectively “Assignment”). All such Assignments shall be subject to each Lessee’s rights under the Schedule(s) executed between it and Lessor and to DIR’s rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Each Lessee leasing Equipment through Schedules under this MLA and DIR acknowledge that the assigns do not assume Lessor’s obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which DIR or the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor’s assigns do not perform Lessor’s obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.

- (b) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR’S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE’S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR’S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER.** Without the prior written consent of Lessor, DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement;

provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Opinion of Counsel; (c) proof of self-insurance acceptable to Lessor; (d) Financial Statements; (e) Incumbency Certificate; and (f) Other documents as reasonably required by Lessor.

28. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives the following rights and remedies conferred upon Lessee by the Uniform Commercial Code: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time.

29. Security Interest and UCC Filings.

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code ("UCC"). Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

30. Miscellaneous.

- (a) **Applicable Law and Venue.** The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, exclusive venue for any legal action shall be in the state court where Lessee has its principal office or where the Equipment is located, with the following exception: if a

Lessee is designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, then exclusive venue shall be in the state district court of Travis County, Texas.

- (b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an “Original” for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a “Copy”. NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY “COPY” OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE “ORIGINAL” COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-3082 and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.
- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) Lessor Certifications. Lessor certifies that:
 - (i) it has not given, offered to give, and does not intend 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 MLA and/or any Schedules executed hereunder;

- (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it , nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision making authority,
- (vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;
- (vii) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;
- (viii) Lessor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (ix) as of the effective date of the MLA, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (x) to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xi) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;

- (xii) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.
- (xiii) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xiv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (xv) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- (xvi) Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

During the term of the MLA, Lessor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties

- (i) Dispute Resolution. The following paragraph applies only to Lessees designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

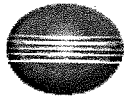
Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this

chapter. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time (“Chapter 2260”), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

(j) Sovereign Immunity. Nothing herein shall be construed to waive the State’s sovereign immunity.

31. Amendments.

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and DIR.



KONICA MINOLTA

Giving Shape to Ideas

Financial Considerations

Proposed Configuration and Financial Considerations:

Konica Minolta bizhub 364e

- 36 ppm copier with Copy/Scan/Print/Fax
- 600 x 600 dpi Scanning Resolution
- Scan to Email Capability
- Single Pass Dual Scan Document Feeder for optimal efficiency and reliability
- 50 Sheet Stapling Floor Finisher
- Large 9" Color Display
- Simitri® HD Polymerized Toner which leads to less toner being used, and lower toner consumption results in cost savings.
- Fax Capability
- bizhub SECURE

Maintenance Agreement Includes

- All parts, labor, preventative maintenance, service calls, toner and staples

Texas DIR Contract Pricing 60 Month Term

Monthly Hardware Costs	\$114.40
Service Cost based on monthly 4,400 impression average**	\$35.20
Estimated Total Monthly Spend	\$149.60

****Impressions billed at cost per copy rate of .0080**

*45 Day Free Trial of eCopy PDF Pro is included

*Pricing valid for accepting delivery no later than 4/30/16

Qty	Description	Unit Price	Ext. Price
	Support		
	Lexmark MPS Elite Program / PrintSolv Agreement Annual Imaging Supplies: (.0199/page all copies) - Billed seperately outside of lease payments - No monthly minimum volume amount required. (Example: 4,400 b/w copies/month = \$87.56/month)		
1	Basic Installation & Training	\$250.00	\$250.00
1	Shipping (secured freight)	\$195.00	\$195.00

SubTotal	\$7,995.00
Tax	\$0.00
Shipping	\$0.00
Total	\$7,995.00

Please see below for payment options and monthly rates.

Payment Options

Select your preferred payment option / purchase terms*:

- Purchase (Credit Card) \$7,995.00
- Lease \$7,995.00. 12 month lease, FMV Lease purchase option, 12 monthly payments of \$680.37 with 0 payment(s) upfront.
- Lease \$7,995.00. 24 month lease, FMV Lease purchase option, 24 monthly payments of \$342.99 with 0 payment(s) upfront.
- Lease \$7,995.00. 36 month lease, FMV Lease purchase option, 36 monthly payments of \$227.86 with 0 payment(s) upfront.
- Lease \$7,995.00. 48 month lease, FMV Lease purchase option, 48 monthly payments of \$187.08 with 0 payment(s) upfront.
- Lease \$7,995.00. 60 month lease, FMV Lease purchase option, 60 monthly payments of \$154.30 with 0 payment(s) upfront.

* If this quote contains lease payment options, the lease options are provided as an estimate only. Final lease payment amount is subject to credit verification and applicable taxes as required by law.

COST PER COPY AGREEMENT
Fixed Purchase Option
(State and Local Governmental Transactions Only)



Dealer Dahill		Lease Agreement Number	
CUSTOMER INFORMATION			
Full Legal Name Kyle, City of		DBA	
Billing Address P.O. Box 40		City Kyle	State TX
Phone 512-268-7411		Contact Name Paul Phelan	ZIP Code 78640
		Contact Email PPHELAN@CITYOFKYLE.COM	Customer PO# (Optional)

EQUIPMENT			
Qty	Equipment Description	Qty	Equipment Description
1	Xerox 5335		

Equipment Location (if different from Billing Address) **550 Opal Ln, Kyle, TX 78640 (Public Library)**

TERM AND PAYMENT	PURCHASE OPTION	IMAGE TYPE	IMAGES INCLUDED	EXCESS CHARGE	PRINTS INCLUDED	EXCESS CHARGE
Monthly Lease Payment \$194.00 , plus applicable taxes	Fixed Purchase Option: \$1	B&W	4,400	\$.0085	n/a	n/a
		Color	n/a	n/a	n/a	n/a
Everyday Color		n/a	n/a	N/A	N/A	
Term in months: 60					N/A	N/A
					N/A	N/A

CUSTOMER ACCEPTANCE

BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU ARE ENTERING INTO A NON-CANCELLABLE LEASE AND THAT YOU HAVE READ AND AGREE TO ALL APPLICABLE TERMS AND CONDITIONS SET FORTH ON PAGES 1 AND 2 OF THIS LEASE.

Authorized Signer X	Date	Federal Tax ID # (Required)
Print Name	Title (indicate President, Partner, Proprietor, etc.)	

LESSOR ACCEPTANCE

Accepted By: Xerox Financial Services LLC	Name and Title	Date
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TERMS & CONDITIONS

1. Definitions. The words "you" and "your" mean the legal entity identified in "Customer Information" above, and "we," "us" and "our" means Xerox Financial Services LLC. "Party" means you or us, and "Parties" means both you and us. "Dealer" means the entity identified in "Dealer Name" above. "UCC" means the Uniform Commercial Code of the State of Connecticut (C.G.S.A. §§42a-1-101 et seq.). "Equipment" means the items identified in "Equipment" above and in any attached Equipment Schedule. "Lease" means this Cost Per Copy Agreement, including any attached Equipment Schedule. "Excess Charges" means the applicable excess copies and/or prints charges. "Lease Payment" means the Monthly Lease Payment specified above, which includes the fixed component of maintenance charges and any included Images payable to Dealer, the Excess Charges (unless otherwise agreed by you, Dealer and us), and other charges you, Dealer and we agree will be invoiced by us on a monthly basis, plus Taxes. "Inception Date" means (a) the date the Dealer determines Equipment installed by the Dealer is operating satisfactorily and is available for your use, or (b) the date Equipment identified by the Dealer as being installable by you is delivered to your premises.

2. Lease, Payments and Late Payments. You agree and represent all Equipment was selected by you based upon your own judgment and has been, or is being, supplied by the Dealer. We have acquired, or will acquire, the same to lease to you under this Lease and you agree to lease the same from us. You agree to pay us each Lease Payment and all other amounts that become due and payable under this Lease. The first Lease Payment is due twenty (20) days after the invoice date on that invoice and each subsequent Lease Payment is due on the same date each month thereafter, whether or not we invoice you. Payment of other amounts payable under this Lease, which may include charges you, Dealer and we agree will be invoiced by us, is due twenty (20) days after the invoice date therefor. If any payment is not paid in full by sixty (60) days after its due date, you will pay a late charge in accordance with the laws of the state of Texas not to exceed the maximum amount permitted by law. For each dishonored or returned payment instrument, you will be assessed the applicable returned item fee, which shall not exceed \$35. Restrictive covenants on any payment instrument will not reduce your obligations or affect our rights.

3. Equipment and Software. Equipment may contain or have software delivered with it. You agree that as to software only that (a) you will execute a separate license agreement with the Dealer or a third party for such software, and (b) we have no responsibility whatsoever for any such software or license agreement under this Lease. You agree the Equipment (including software) is for your business use in the United States (including its possessions and territories), will not be used for personal, household or family purposes and is not being acquired for resale. You will not attach the Equipment as a fixture to real estate or make any permanent alterations to it.

4. Non-Cancellable Lease. THIS LEASE CANNOT BE CANCELLED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN. YOUR OBLIGATION TO MAKE ALL LEASE PAYMENTS, AND TO PAY ALL OTHER AMOUNTS DUE OR TO BECOME DUE, IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF DEALER, ANY THIRD PARTY OR US.

5. Lease Term. The Initial Lease Term, which is indicated above or identified in any attached Equipment Schedule, commences on the Inception Date. If, during the Initial Lease Term, you enter into a new lease for upgraded or replacement equipment that incorporates the remaining payments under this Lease and the new lease is subsequently terminated, we may reinstate this Lease.

6. Payment of Fixed Purchase Amount. At the end of the Initial Lease Term, provided that you are not in default hereunder and amounts due under this Lease have been paid in full, you have the option to purchase the Equipment for one-dollar (\$1.00).



CITY OF KYLE, TEXAS

Water & Wastewater Impact Fee Study

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Approve a professional services agreement with HDR ENGINEERING, INC., Austin, Texas, in the amount of \$28,749.00 to conduct the Water and Wastewater Impact Fee Study and update all required schedules and reports in compliance with state law. ~
Perwez A. Moheet, CPA, Director of Finance

Other Information: Chapter 395 of the Texas Local Government Code (LGC) requires that a political subdivision which has adopted an impact fee shall update such impact fee at least every five (5) years including the land use assumptions and capital improvements plan developed for the calculation of the impact fee.

On April 29, 2016, the City issued a Request for Proposal (RFP) soliciting proposals from qualified firms to update the Water and Wastewater Impact Fee Report including but not limited to updating the Impact Fee Land use Assumptions, the Impact Fee Capital Improvements Plan, the Impact Fee Schedules, and the Impact Fee Ordinance in accordance with the requirements of Texas laws and regulations.

The RFP closed on May 16, 2016 and the City received a total of two (2) proposals in response from the following firms:

- HDR Engineering, Inc.
- Kimley-Horn and Associates, Inc.

The two proposals were evaluated and scored by City staff using the following criteria:

- Completeness of proposal
- Understanding of work/services requested
- Firm's related experience
- Experience of personnel assigned to the project
- Firm's ability to complete project within City's timeframe
- Compensation/professional fees

The following documents are attached to provide complete details for scope of services requested, qualification requirements, selection criteria, and project timeline:

1. Draft agreement
2. Public notice published for RFP
3. RFP
4. Addendum #1 - Q&As
5. Evaluation score tabulation
6. Fiscal note

City staff recommends approval of this professional services agreement with HDR

Engineering, Inc., to conduct the Water and Wastewater Impact Fee Study.

Legal Notes:

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- Draft Agreement
- Notice - RFP Impact Fee Study
- RFP - Impact Fee Study
- Addendum - RFP Impact Fee Study
- Evaluation Score Tabulation Sheet
- Fiscal Note



May 27, 2016

Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle
PO Box 40
Kyle, TX 78640

RE: Water and Wastewater Impact Fee Update

Dear Mr. Moheet,

At the request of City staff, HDR Engineering is submitting this scope of work to perform a water and wastewater impact fee update for City Council consideration. Our efforts will be compliant with Chapter 395 of the Local Government Code regulating the development and use of impact fees in Texas. The requested efforts will encompass developing the underlying information behind the fees, calculating the maximum fee amounts, preparing material for and facilitating meetings of a required Advisory Committee, preparing the Committee's report and a draft notice, and providing support in the required public hearings and Council consideration.

As reflected in Attachment A, HDR proposes this effort for an amount of \$28,749 proposed on a fixed fee basis, not to be exceeded without advanced written approval from the City. This budget assumes that the City will provide the necessary data for input on the 10-year Water and Wastewater CIP, including costs for projects considered as part of this update. Billing will be made monthly with payment due net 45 days from the date of the invoice. Other standard terms and conditions (shown in Attachment B) will also apply. The impact fee update effort will occur in an approximate four-month period following the notice to proceed.

If you concur with this proposal, please sign all originals in the space indicated and return one to us for our files. Your signature will serve as our notice to proceed.

Sincerely,
HDR Engineering, Inc.

Grady Reed
Project Manager

Kelly J. Kaatz, PE
Senior Vice President

Accepted with Notice to Proceed:

By: _____
Authorized City of Kyle Representative

Date: _____

Attachment "A"

**Proposed Scope of Services, Schedule & Fee
City of Kyle Impact Fee Study**

Scope of Work and Related Services

Task 1 – Develop Land Use, Capacity & New CIP Data for Impact Fee Update

HDR will develop the land use assumptions and update the Capital Improvements Plan (with information provided by the City) underlying the calculation of the impact fees in compliance with Texas Local Government Code 395. In particular, these issues will be reviewed:

- Where will the City likely charge the fees, i.e. its impact fee service area?
- What are the current and prospective land use mix, densities, or land use/equivalent service unit assumptions?
- What is the current available utility capacity, if any, in the existing system?
- What capital projects (with excess capacity) have already been funded?
- What new capital projects are needed in the 5- to 10-year time frame?

Each of the existing capital projects with excess capacity or new capital project items discussed above needs to be identified or quantified in terms of:

- ✓ Type of facility
 - Water
 - water supply
 - treatment
 - ground storage
 - elevated storage
 - pumping & transmission
 - Wastewater
 - wastewater treatment
 - pumping & interceptors
- ✓ Cost to construct
- ✓ Used/available capacity
- ✓ Cost per Living Unit Equivalent for new capacity

Neighborhood water distribution and wastewater collection facilities will not be assessed as part of the fee basis as either: (a) these facilities are developer contributed; or (b) City-spending on these facilities is for rehabilitation or replacement benefit for existing customers (both of which are fee ineligible items).

HDR will develop existing (2016) and projected (2025) land use and population data for the City and its ETJ service areas in order to be used as a consistent basis for defining facility demand in the separate water and wastewater service areas. It will be the City's responsibility to provide information relating to any outstanding debt associated with existing water and wastewater facilities.

Data to be supplied, developed or compiled by the parties to this agreement are listed in Table 1.

Table 1
Information to be Supplied by the Parties

City of Kyle

- Water and wastewater service area delineation.
- Electronic file of map of intended impact fee service area.
- A recent month meter size inventory of: (a) water customers; and (b) sewer customers.
- A fixed assets model listing of existing water and wastewater infrastructure and original cost, grouped by type of facility and subtotaled by:
 - water supply
 - water treatment
 - pumping
 - elevated storage
 - ground storage
 - water transmission (not distribution)
 - wastewater treatment
 - lift stations
 - interceptors (not collection)
- Capacity of existing water and sewer facilities aggregated by type of facility listed above.
- Outstanding water and wastewater debt by type of facility listed above.
- Placing of public notices and payment of advertising costs.
- Coordination with City Attorney, as needed.

HDR Engineering

- Calculation of unit capital costs, rate credits and maximum fee amounts.
- Water and sewer utility service area population growth and land use data for the “snapshot” years 2016 and 2025 (this will be developed with input from the City).
- An updated 10-year Capital Improvements Plan (for spending expected to occur between 2016-2025) listing type of facility, project name, projected installed costs, and anticipated service capacities for future projects underlying the proposed fees (developed with input from City staff).
- If new projects provide for service to existing customers, what percent of new project capacity is available for growth.
- Paper or electronic file mock-ups of the public notices.
- Presentation on the fee assumptions and proposal.
- An Advisory Committee report.
- A draft revised municipal ordinance.
- A copy of the electronic spreadsheet used to model and calculate the fees.

Task 2 - Impact Fee Calculation and Application

HDR will use the land use and capital improvements program information previously developed to calculate maximum fee amounts. The first step is to develop a weighted average cost of capital per service unit for each type of utility facility. The fee calculation will consider capital payments through the rates or the 50% deduction allowed in Texas Local Government Code 395. The calculations and fee design will also be divided into component parts of the water and wastewater utilities to allow for credits or offsets against a full fee amount should the entity paying the fee provide for an acceptable portion of eligible capital at their own expense. It should be noted that HDR's ability to develop component fees is dependent upon the City being able to segregate its outstanding debt into facility types.

The full cost of capital for these utility components will be calculated and then pro-rated to a lesser amount should the Committee and/or Council decide to recommend a fee less than the maximum allowable. Data will also be provided to scale the base fee per standard service unit to allow for appropriate fee levies for larger service requirements.

HDR will provide technical and production support for the preparation of an Advisory Committee report.

Task 3 - Review Impact Fee Ordinance

Based on input from the Committee, Council and the public, HDR will review the City's existing ordinance for needed changes and provide that feedback to City staff and the City attorney.

Task 4 – Impact Fee Coordination with Committee, Council and the Public & Reporting

HDR will develop support materials and coordinate with various interested stakeholders in the fee development process to assure that provisions of Texas Local Government Code 395 are met and that all key parties are adequately informed.

The proposed formal coordination effort includes the following activities:

City Staff – Two Meetings. The first meeting will be to review and update the project list and costs for those projects to be included in the Capital Improvements Plan (CIP). At this meeting, the land use assumptions would also be reviewed. The second meeting will be to review the draft results of the fee study and suggested ordinance revisions.

Impact Fee Advisory Committee – Two Meetings. The first meeting will be to coordinate the draft impact fee calculation and seek Committee concurrence with any revised fee proposal that would be presented at the public hearing. The second meeting with the Committee will be to review Committee feedback, make any revisions to the fee calculations, review the draft Committee report, and seek Committee adoption for filing with the City Council.

Public Hearings – One Meeting. Texas Local Government Code 395 calls for a one-hearing process for the update of existing water and wastewater impact fees. These public hearings must be preceded by a 30-day advance published public notice. HDR will prepare the necessary information required under Texas Local Government Code 395 for the public notices for public hearing(s). It is understood that the City will provide for the cost of publication and any certified mailings that may be required.

2nd Reading Ordinance – One Meeting. Assuming that Council will take action on the first reading of the impact fee ordinance after the closing of the public hearing that same evening, HDR has budgeted for one subsequent meeting with Council to provide any needed support at a second reading of the ordinance, if required.

HDR will prepare 10 draft and 10 final copies of the Technical Advisory Committee report to the City Council outlining the Committee's recommendations on land use assumptions, 10-year Capital Improvements Plan, fee design and calculation, offset credits, and any policy or fee issues that may affect the pending ordinance provisions.

HDR will also work with the City Attorney to prepare a draft ordinance for City consideration.

Schedule

The schedule below represents an efficient effort to accomplish the water and wastewater impact fee update. The schedule of the impact fee update is dependent upon: the date of the notice to proceed; appointment of an Advisory Committee; provision of needed data by the City; and actions by the Advisory Committee, City staff and City Council. HDR has developed an anticipated schedule, which may be subject to change. Our past experience indicates that it normally takes about four months to complete the process.

ANTICIPATED SCHEDULE WATER AND WASTEWATER IMPACT FEE UPDATE

Activities	June				July				August				September				
Notice to Proceed	X																
Task 1 - Update Land Use, Capacity, and CIP Data																	
Task 2 - Impact Fee Calculation and Application					gmt. report												
Task 3 - Revise Ordinance																	
Task 4 - Coordination																	
Meet with City Staff			S1			S2											
Meet with Advisory Committee						A1		A2									
Public Hearing													H1				H2
City Council Meeting											C1						C2

- S1 - Staff review CIP, unit cost information, and demand allocations to facilities.
- S2 - Staff review draft impact fee calculations.
- A1 - Review draft CIAC report and seek comments.
- A2 - Consider any changes and seek adoption and filing of Committee report to Council.
- H1 - After C1, provide public notice (three weekly notices between 60 and 30 days before hearing).
- H2 - Public Hearing on amended data and fee.
- C1 - Council adopts order for public hearing and provides for publication 30-day advance public notice..
- C2 - Possible council action to adopt.

FEE

HDR proposes to develop the impact fee study for \$28,749, proposed as a fixed fee, not to be exceeded without advance written approval from the City. This level of effort assumes that the City will identify the needed CIP information for the impact fee study. Extra coordination meetings, beyond that identified in the scope above, would be additional services at the appropriate hourly rate.

PROPOSED PROJECT FEE WATER/WASTEWATER IMPACT FEE UPDATE

Activity	Hourly Effort				Total Hours	Total Cost
	Project Manager	Project Principal	QA/QC	Clerical		
Task 1 - Gather/Develop Consistent Planning Data	20.0	2.0	-	-	22.0	\$ 3,776
Task 2 - Derive Maximum Impact Fees	64.0	2.0	8.0	-	74.0	\$ 12,774
Task 3 - Review/Revise Ordinance	16.0	2.0	-	-	18.0	\$ 3,098
Task 4 - Reporting and Coordination	40.0	2.0	4.0	4.0	50.0	\$ 8,184
Total Hours	140.0	8.0	12.0	4.0	164.0	
Total Salary-related Expenses	\$ 23,744	\$ 1,536	\$ 2,304	\$ 248		\$ 27,832

Item	Quantity	Unit	Price		Total Cost
Mileage - Round-trip Austin/Kyle	6	round-trips	\$ 35	per trip	\$ 210
Technology Charge	164	hours	\$ 3.70	per hour	\$ 607
Reproduction	20	copies	\$ 5.00	ea.	\$ 100
Total Non-Labor Expenses					\$ 917

C. TOTAL PROJECT BUDGET	\$ 28,749
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Attachment “B”
Standard Terms and Conditions
City of Kyle Impact Fee Study

HDR Engineering, Inc.

Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and/or cost of capital) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any

OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments to ENGINEER within thirty (30) days of OWNER's receipt of ENGINEER's invoice.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support

of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date OWNER receives ENGINEER's invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate,

remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$100,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY INSURANCE POLICY.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.



**NOTICE OF REQUEST FOR PROPOSALS
RFP NO. 2016-02-PM**

WATER & WASTEWATER IMPACT FEE UPDATE

The City of Kyle will accept proposals from qualified firms for the Water and Wastewater Impact Fee Update until 2:00 p.m., on May 16, 2016, in the City's Financial Services Department. Proposals received after this time will not be considered.

A complete copy of the Request for Proposal (RFP) No. 2016-02-PM for Water and Wastewater Impact Fee Update is available on the City of Kyle website and can be downloaded at:

<http://www.cityofkyle.com/finance/rfp-water-wastewater-impact-fee-update>

Perwez A. Moheet, CPA
Director of Finance
City of Kyle, Texas

April 29, 2016



CITY OF KYLE, TEXAS

REQUEST FOR PROPOSALS (RFP)

**RFP 2016-02-PM
WATER & WASTEWATER IMPACT FEE UPDATE**

**PROPOSAL DUE DATE:
MAY 16, 2016 AT 2:00 P.M. (CST)**

ISSUED BY:

**City of Kyle, Texas
Financial Services Department**



**NOTICE OF REQUEST FOR PROPOSALS
RFP NO. 2016-02-PM**

WATER & WASTEWATER IMPACT FEE UPDATE

The City of Kyle will accept sealed Proposals for Water and Wastewater Impact Fee Update **until 2:00 P.M., May 16, 2016**, in the City's Financial Services Department. **Proposals received after this time will not be considered.**

Proposals will be acknowledged on May 17, 2016 at 8:00 A.M. Attendance is not required. All interested persons are invited to attend the acknowledgement at the City of Kyle, Financial Services Department's Conference Room, Kyle City Hall, 100 W. Center Street, Kyle, Texas.

Please mark on the outside of the envelope and on any carrier's envelope: "RFP No. 2016-02-PM Impact Fee Update", and send to the attention of Mr. Perwez A. Moheet, CPA, Director of Finance, 100 W. Center Street, Kyle, Texas 78640 (physical location) or P.O. Box 40, Kyle, Texas, 78640 (mailing address).

The City of Kyle will not be responsible in the event that the U.S. Postal Service or any other courier system fails to deliver the sealed proposals to the City of Kyle by the given deadline above. Facsimile of Proposals will not be accepted.

The City of Kyle reserves the right to reject any or all responses and to waive irregularities contained therein and to accept any response deemed most advantageous to the City of Kyle.

Perwez A. Moheet, CPA
Director of Finance
City of Kyle, Texas



ETHICS STATEMENT
(Complete and Return this Form with Response)

The undersigned firm, by signing and executing this RFP, certifies and represents to the City of Kyle that the firm has not offered, conferred or agreed to confer any pecuniary benefit, as defined by 1.07 (a) (6) of the Texas Penal Code, or any other thing of value as consideration for the receipt of information or any special treatment of advantage relating to this RFP; the firm also certifies and represents that the firm has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this RFP, the firm certifies and represents that firm has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the City of Kyle concerning this RFP on the basis of any consideration not authorized by law; the firm also certifies and represents that firm has not received any information not available to other firms so as to give the undersigned a preferential advantage with respect to this RFP; the firm further certifies and represents that firm has not violated any state, federal, or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that firm will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value of any officer, trustee, agent or employee of the City of Kyle in return for the person having exercised their person's official discretion, power or duty with respect to this RFP; the firm certifies and represents that it has not now and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent, or employee of the City of Kyle in connection with information regarding this RFP, the submission of this RFP, the award of this RFP or the performance, delivery or sale pursuant to this RFP.

THE FIRM SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY OF KYLE, ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDING, COSTS, DAMAGES AND LIABILITIES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF FIRM OR ANY AGENT OR EMPLOYEE OF FIRM IN THE EXECUTION OR PERFORMANCE OF THIS RFP.

I have read all of the specifications and general RFP requirements and do hereby certify that all items submitted meet specifications.

FIRM: _____

OFFICER NAME: _____

OFFICER SIGNATURE: _____

ADDRESS: _____

CITY: _____

STATE: _____ ZIP CODE: _____

TELEPHONE: _____ TELEFAX: _____

FEDERAL ID#: _____ AND/OR SOCIAL SECURITY #: _____

DEVIATIONS FROM SPECIFICATIONS IF ANY:



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS
(Complete and Return this Form with Response)**

Name of Entity: _____

The prospective participant certifies to the best of their knowledge and belief that they, the principals in the firm, and the firm:

1. Are not presently debarred, suspended, proposed for debarment, and or declared ineligible from providing water and wastewater impact fee study, any associated engineering services, and or voluntarily surrendered their license to provide such related services in the State of Texas and or the United States of America.
2. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from conducting any business and or financial transactions by any department or agency of Federal, State, and or local government.
3. Have not been convicted of, had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, Local) with commission of any of the offenses enumerated in item 3 above of the certification; and
5. Have not within a ten (10) year period preceding this RFP had one or more public transactions (Federal, State, Local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Section 1001, a false statement may result in a fine up to a \$10,000.00 or imprisonment for up to five (5) years, or both.

Name and Title of Authorized Representative (Typed)

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.



**WATER & WASTEWATER IMPACT FEE UPDATE
(RFP 2016-02-PM)**

A. DESCRIPTION OF THE CITY

The City of Kyle is a political subdivision and municipal corporation of the State of Texas (the "State"), duly organized and existing under the laws of the State including the City's Home Rule Charter, initially adopted by the voters in the year 2000.

The City operates as a Home Rule City under a Council-Manager form of government with a City Council comprised of the Mayor and six Council Members. The City Manager is the chief executive officer for the City of Kyle. The City covers approximately nineteen square miles and has an estimated population of 34,000 in 2015.

Kyle is a thriving community having easy access to major highways and roadways including Interstate Highway 35. Kyle is strategically located eight miles north of San Marcos, twenty miles south of Austin and sixty miles north of San Antonio. Kyle is the second largest city in Hays County and enjoys a south central location convenient to most major population and employment centers in Texas.

B. THE CITY COUNCIL

The governing body of the City, the City Council, is comprised of a Mayor and six Council Members each elected for a term of three years. The Mayor and Council Members for Place 1, 3, and 5 are elected from the City at-large. Council Members for Place 2, 4, and 6 are elected from single member districts. The current members of the City Council are:

Mayor:	R. Todd Webster
Mayor Pro Tem:	David Wilson, District 4
Council Members:	Diane Hervol, District 1 Becky Selbera, District 2 Shane Arabie, District 3 Damon Fogley, District 5 Daphne Tenorio, District 6

C. REQUEST FOR PROPOSAL (RFP)

The City of Kyle, Texas, hereinafter referred to as "the City", is requesting proposals from qualified firms to update the City's Water and Wastewater Impact Fee Report including but not limited to updating the Impact Fee Land Use Assumptions, the Impact Fee Capital Improvements Plan, the Impact Fee Schedules, and the Impact Fee Ordinance in accordance with the requirements of Texas laws and regulations.



By submitting proposal in response to this RFP, all responding firms will be deemed to agree to the service provisions contained herein. This RFP and the proposal submitted will be incorporated into and form the basis for the professional services agreement.

D. PROPOSAL SUBMISSION PROCESS, DUE DATE, AND REQUIRED DOCUMENTS

One (1) original and two (2) copies of the response, including all required forms and applicable supporting documentation, are required. The original must be clearly marked “ORIGINAL”.

Proposals are due no later than May 16, 2016 by 2:00 p.m., Central Standard Time. The responses must be bound and sealed when submitted. The response material must be addressed and delivered to:

**Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle**

**Physical Address
100 West Center Street
Kyle, Texas 78640**

**Mailing Address
P.O. Box 40
Kyle, Texas 78640**

The outside of the sealed envelope or container must state:

RFP #2016-02-PM – IMPACT FEE UPDATE

Responses received after the above date and time submission deadline will be rejected. Timely proposals will be opened on the date specified in the RFP. All proposals that have been submitted shall be open to public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals marked “confidential” by the proper responding party.

E. CLARIFICATION OF REQUIREMENTS

All requests for additional information or clarification concerning this Request for Proposals must be submitted, in writing, no later than 10:00 a.m. on May 6, 2016 and shall be emailed to Mr. Perwez Moheet, CPA, Director, Financial Services Department at pmoheet@cityofkyle.com.



It is the intent and purpose of the City that this RFP permits competitive proposals. It is the Offeror's responsibility to advise the Director, Financial Services Department, City of Kyle, if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source.

F. PROCESS TIMELINE & KEY DATES

- April 29, 2016: RFP Issued
- May 16, 2016: Proposals Due
- June 7, 2016: Contract Award
- June 9, 2016: Notice to Proceed/Project Start
- November 15, 2016: Council Presentation & Adoption of Ordinance

G. CANCELLATION

The City reserves the right to terminate the contract if the successful Offeror does not perform under the contract to the City's satisfaction.

The City of Kyle is a home-rule municipal corporation operated and funded on an October 1 to September 30 basis; accordingly, the City reserves the right to terminate, without liability to the City, any contract (or renewal option) for which funding is not available.

H. REQUIRED SERVICES & KEY PROJECT TASKS

The City requests that qualified firms submitting proposals in response to this solicitation ensure their proposal clearly reflect demonstrated experience in the following principal elements:

1. Develop project schedule identifying key tasks and completion dates so as to meet the City's project completion date of November 15, 2016.
2. Review all current City of Kyle's Impact Fee associated documents including but not limited to, Land Use Assumptions, Capital Improvements Plan, Fee Schedules, Impact Fee Report, and City Resolutions and Ordinances.
3. Review City's planning and development projections including discussions with the City's planning staff as appropriate to complete project tasks.
4. Review City's water and wastewater model based projections including discussions with the City's engineering staff as appropriate to complete tasks.
5. Update the Impact Fee Land Use Assumptions for the City's water and wastewater system in compliance with the requirements of state laws and regulations including Texas Local Government Code 395.



6. Update Impact Fee Capital Improvements Plan for the City's water and wastewater system in compliance with the requirements of state laws and regulations including Texas Local Government Code 395.
7. Review and assess legislative requirements to determine any consequences on the City's Impact Fee development and implementation.
8. Assist the City in establishing its Impact Fee Advisory Committee as required by state law including Texas Local Government Code 395.
9. Assist in scheduling and participate in all public meetings including all required public hearings for the City's Water and Wastewater Impact Fee Update.
10. Assist in the development and preparation of public notices, news releases, and City's newsletter.
11. Prepare the City's Water and Wastewater Impact Fee Land Use Assumptions Report in compliance with the requirements of state laws and regulations including Texas Local Government Code 395.
12. Prepare the City's Water and Wastewater Impact Fee Capital Improvements Plan Report in compliance with the requirements of state laws and regulations including Texas Local Government Code 395.
13. Prepare the City of Kyle's Water and Wastewater Impact Fee Ordinance for the Council's consideration and adoption in compliance with the requirements of state laws and regulations including Texas Local Government Code 395.

I. COMPENSATION

The City of Kyle will engage the services of a qualified firm for the Water and Wastewater Impact Fee Update based on a fixed fee compensation. The proposal must provide a fixed fee amount to be charged by the proposing firm to complete the Water and Wastewater Impact Fee Update for the City of Kyle.

J. QUALIFICATIONS OF OFFEROR

By submitting a proposal, the Offeror certifies that they are duly qualified, capable, and otherwise bondable business entity that is not in receivership or contemplates same, nor has filed for bankruptcy. The Offeror must not be indebted to the City and shall not owe any back taxes to the City. The Offeror warrants that they are familiar with all laws, regulations, and customs applicable to the type of professional services required herein.

K. EXCEPTIONS

Any exceptions to the requirements stated herein must be stated, in writing, in the Offeror's response. Explanation must be made for each item for which exception is taken, giving in detail the extent of the exception, and the reason for which it is taken, in order for consideration to be given to the proposal.



L. PROPOSAL FORMAT

The proposer must include the following items in their proposal and discuss each in complete detail:

1. A Transmittal Letter from an authorized representative of the responding firm that has the authority to bind the firm by entering into a formal agreement for the professional services required for the Water and Wastewater Impact Fee Update.
2. Discuss understanding of the scope of work being requested by the City of Kyle under this solicitation.
3. Discuss in detail how the responding firm will complete the scope of work and related services.
4. Provide resume of firm's personnel that will be assigned to perform tasks and services to complete the City of Kyle's Water and Wastewater Impact Fee Update.
5. Provide a fixed fee amount to be charged by the proposing firm to complete the Water and Wastewater Impact Fee Update for the City of Kyle.

M. SELECTION AND AWARD PROCESS

All proposals received by the City of Kyle in response to this RFP will be reviewed by an evaluation team, which may include senior management representatives, a financial officer, and/or an independent consultant.

1. Selection will be based on the evaluation factors described in this RFP.
2. The evaluation team will recommend a qualified firm to the Kyle City Council. The City Council will make the final selection based on the evaluation team's recommendation and whether the qualified Offeror's proposal is determined to be the most advantageous to the City.
3. No individual City employee or any City Department has the authority to legally and/or financially commit the City to any contract or agreement for goods or services.

N. EVALUATION FACTORS

The City will evaluate all proposals received under this solicitation using but not limited to the following factors:

1. Completeness of proposal submitted
2. Understanding of the scope of work and services required
3. Firm's experience and of its assigned personnel
4. Ability to complete project by November 2016
5. Compensation: fixed fee amount



O. RIGHT OF THE CITY TO REQUEST FURTHER DOCUMENTATION

The City reserves the right to request additional documentation that it deems appropriate and necessary for the review and award process during both the initial proposal review process and the negotiation phase.

P. RIGHT OF THE CITY TO CANCEL REQUEST FOR PROPOSALS, ELECT NOT TO AWARD, REJECT PROPOSALS, AND WAIVE INFORMALITIES OR IRREGULARITIES

The City expressly reserves the right to cancel this RFP at any time, to elect not to award any or all of the contracts cited in this RFP, to reject any or all proposals, to waive any informality or irregularity in any proposal received, and to be the sole judge of the merits of the respective proposals received.

Q. EQUAL OPPORTUNITY IN CITY BUSINESS CONTRACTING

Race, religion, sex, color, ethnicity, and national origin will not be used as criteria in the City's business contracting practices. Every effort will be made to ensure that all persons regardless of race, religion, sex, color, ethnicity and national origin have equal access to contracts and other business opportunities with the City.

R. EXAMINATION OF DOCUMENTS AND REQUIREMENTS

Each Offeror shall carefully examine all RFP documents and thoroughly familiarize itself with all requirements prior to submitting a proposal to ensure that the proposal meets the intent and requirements of this RFP.

Before submitting a proposal, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the Offeror from obligation to comply, in every detail, with all provisions and requirements of the Request for Proposal.

S. PROPOSAL COPIES

OFFEROR MUST SUBMIT AN ORIGINAL AND TWO (2) COPIES OF THE SEALED PROPOSAL PRIOR TO THE DUE DATE/TIME DEADLINE AT THE FOLLOWING ADDRESS:

Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle
P.O. Box 40
Kyle, Texas 78640



FAILURE TO SUBMIT THE ADDITIONAL COPIES MAY RESULT IN THE PROPOSAL BEING DECLARED NON-RESPONSIVE. The original must be clearly marked "ORIGINAL".

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all electronic media, reports, charts, and other documentation submitted by Offerors shall become the property of the City of Kyle, Texas when received.

T. PROPOSAL PREPARATION COSTS

Issuance of this RFP does not commit the City of Kyle, Texas, in any way, to pay any costs incurred in the preparation and submission of a proposal. The issuance of this RFP does not obligate the City of Kyle, Texas to enter into contract for any services or equipment. All costs related to the preparation and submission of a proposal shall be paid by the Offeror.

U. TRADE SECRETS, CONFIDENTIAL INFORMATION AND THE TEXAS PUBLIC INFORMATION ACT

If you consider any portion of your proposal to be privileged or confidential by statute or judicial decision, including trade secrets and commercial or financial information, clearly identify those portions.

Proposals will be opened in a manner that avoids disclosure of the contents to competing Offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for inspection.

The City of Kyle, Texas will honor your notations of trade secrets and confidential information and decline to release such information initially, but please note that the final determination of whether a particular portion of your proposal is in fact a trade secret or commercial or financial information that may be withheld from public inspection will be made by the Texas Attorney General or a court of competent jurisdiction. In the event a public information request is received for a portion of your proposal that you have marked as being confidential information, you will be notified of such request and you will be required to justify your legal position in writing to the Texas Attorney General pursuant to Section 552.305 of the Government Code. In the event that it is determined by opinion or order of the Texas Attorney General or a court of competent jurisdiction that such information is in fact not privileged and confidential under Section 552.110 of the Government Code and Section 252.049 of the Local Government Code, then such information will be made available to the requester.

Marking your entire proposal CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Open Records Act.



V. CONFLICT OF INTEREST

The Offeror shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City of Kyle, Texas.

By signing and submitting the Proposal, the Offeror certifies and represents to the City the Offeror has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value for the receipt of special treatment, advantage, information, recipient's decision, opinion, recommendation, vote or any other exercise of discretion concerning this Request for Proposal.

W. ANTI-LOBBYING PROVISION

During the period between proposal submission date and the contract award, Offerors, including their agents and representatives, shall not discuss or promote their proposal with any member of the Kyle City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

This provision is not meant to preclude Offerors from discussing other matters with City Council members or City Staff. This policy is intended to create a level playing field for all potential Offerors, assure that contract decisions are made in public, and to protect the integrity of the RFP process. Violation of this provision may result in rejection of the Offeror's proposal.

X. AUTHORIZATION TO BIND SUBMITTER OF PROPOSAL

Proposals must show name and address of Offeror. The original proposal must be manually signed by an officer of the company having the authority to bind the submitter to its provisions. Person signing proposal must show title or **AUTHORITY TO BIND THEIR FIRM IN A CONTRACT**. Failure to manually sign proposal will disqualify the proposal from being accepted by the City of Kyle, Texas.

Y. TERM APPLIED INTERCHANGEABLY

The term offeror, proposer, contractor, firm, consultant, or responder are interchangeably used throughout this RFP document to mean the same qualified entity submitting a proposal in response to this solicitation.



ABOUT THIS DOCUMENT

This document is a Request for Proposal (RFP). It differs from an Invitation to Bid in that the City of Kyle, Texas is seeking a solution, as described in the RFP, not a bid/quotation meeting firm specifications for the lowest price. As such, the lowest price proposal will not guarantee an award recommendation. Sealed proposals will be evaluated based upon criteria formulated around the most important features of a product or service, of which quality, testing, references, availability or capability, may be overriding factors, and price may not be determinative in the issuance of a contract or award.

The proposal evaluation criteria should be viewed as standards that measure how well an Offeror's approach meets the desired requirements and needs of the City of Kyle, Texas. Those criteria that will be used and considered in evaluation for award are set forth in this document. The City will thoroughly review all proposals received. The City will also utilize its best judgment when determining whether to schedule a pre-proposal conference (before proposals are accepted), or meetings with Offerors (after receipt of all proposals).

A Purchase Order/Contract may be awarded to a qualified Offeror submitting the best proposal. The City reserves the right to select, and subsequently recommend for an award, the proposed service which best meets its required needs, quality levels, and budget constraints.

The final selection and award of a contract can only be authorized by the City Council of the City of Kyle, Texas.



APPENDIX A

CITY OF KYLE CONTRACTOR INSURANCE REQUIREMENTS

Contractors providing goods, materials and services for the City of Kyle, Texas shall, during the term of the contract with the City or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein.

Insurance Company Qualification: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

Certificate of insurance: A certificate of insurance evidencing the required insurance shall be submitted by the successful Offeror prior to contract execution. If the contract is renewed or extended by the City a certificate of insurance shall also be provided to the City prior to the date the contract is renewed or extended. All coverage amounts listed shall be in United States dollars.

Type of Contract

Type and Amount of Insurance

Professional Services

General Liability insurance for Personal Injury (including death) and Property Damage with a minimum of \$1 million per occurrence and \$2 million aggregate, including Advertising Injury, Products Coverage.

Professional Liability Insurance with a minimum of \$1 million per occurrence and \$2 million aggregate.

Workers Compensation insurance as required by state law.

The Offeror shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All copies of the Certificates of Insurance shall reference the project name or RFP number for which the insurance is being supplied.

All notices shall be given to the City at the following address:

Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle
P.O. Box 40
Kyle, Texas 78640





ADDENDUM NO. 1 – MAY 4, 2016

**RFP NO. 2016-02-PM
WATER & WASTEWATER IMPACT FEE UPDATE**

All clarification questions received from interested firms by the deadline of 10:00 a.m. on May 6, 2016, regarding this solicitation and the City's response will be posted as an addendum.

Q1. Does the City already have a water and wastewater CIP developed for inclusion into the impact fee study, or would that work needed to be completed as part of the study?

A1. As part of the budget process, the City's 5-year CIP document is updated each year. This is already in the works by the City Engineer, Public Works Director, Parks Director, and the City Manager. A copy of the current 5-year CIP document can be downloaded at:

<http://www.cityofkyle.com/finance/5-year-capital-improvements-plan-fiscal-years-2016-20>

Q2. Would it be possible for you to email me a copy of the current Water and Wastewater Impact Fee Report?

A2. Attached is the City of Kyle's current Water & Wastewater Impact Fee Ordinance and Impact Fee Report.



City of Kyle, Texas
Confirmation of Proposals Received
WATER & WASTEWATER IMPACT FEE UPDATE

	<u>Name of Firm</u>	<u>Mailing Address</u>	<u>Deadline Met</u>
1.			
2.			
3.			
4.			
5.			
6.			



City of Kyle, Texas
 Score Tabulation Sheet
 WATER & WASTEWATER IMPACT FEE UPDATE
 RFP No. 2016-01-PM

Scored By: Review Panel

Evaluation Factors & Maximum Points Allowed

	Name of Firm Responding	Evaluation Factors & Maximum Points Allowed					Total Points (100 Points)	%	
		Completeness of Proposal (10 Points)	Understanding Work/Services (10 Points)	Firm's Related Experience (20 Points)	Assigned Personnel's Experience (20 Points)	Firm's Ability to Complete Project (20 Points)			Compensation Fee Charged (20 Points)
1.	HDR	9.0	10.0	19.0	19.0	19.0	20.0	96.0	96.0%
2.	Kimley Horn	7.0	10.0	19.0	19.0	17.5	-	72.5	72.5%
3.	N/A	-	-	-	-	-	-	-	0.0%
4.	N/A	-	-	-	-	-	-	-	0.0%

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION:
CONTACT CITY DEPARTMENT:
CONTACT CITY STAFF:

June 7, 2016
Financial Services
Perwez A. Moheet, CPA
Director of Finance

SUBJECT:

Approve a professional services agreement with HDR ENGINEERING, INC., Austin, Texas, in the amount of \$28,749.00 to conduct the Water and Wastewater Impact Fee Study and update all required schedules and reports in compliance with state law.

CURRENT YEAR FISCAL IMPACT:

The fee paid under this professional services agreement with HDR ENGINEERING, INC., will require expenditure of funds from the approved budget for Fiscal Year 2015-16 as follows:

- | | |
|--------------------------------|-------------------------------------|
| 1. City Department: | Financial Services Department |
| 2. Project Name: | Water & Wastewater Impact Fee Study |
| 3. Funding Source: | Water Impact Fee Fund |
| 4. Budget/Accounting Code(s): | 332-868-57240 (50%) |
| 5. Current Appropriation: | \$ 15,000.00 |
| 6. Unencumbered Balance: | \$ 15,000.00 |
| 7. Amount of This Action: | <u>\$ (14,374.50)</u> |
| 8. Remaining Balance: | <u>\$ 625.50</u> |
| 9. Funding Source: | Wastewater Impact Fee Fund |
| 10. Budget/Accounting Code(s): | 342-868-57240 (50%) |
| 11. Current Appropriation: | \$ 15,000.00 |
| 12. Unencumbered Balance: | \$ 15,000.00 |
| 13. Amount of This Action: | <u>\$ (14,374.50)</u> |
| 14. Remaining Balance: | <u>\$ 625.50</u> |

FUNDING SOURCE OF THIS ACTION:

The funding source for this professional service agreement to conduct the Water and Wastewater Impact Fee Study will be provided from the FY 2015-16 approved budget (Water & Wastewater Impact Fee Funds).

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

 5/25/2016

Perwez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

Acceptance of Bid for Property Held in Trust for Tax Due

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize the Hays County Tax Assessor-Collector to accept bid received in the amount of \$694.00 for real property described as Lot 16, Block 1, M.E. Moore Addition, held in trust by Hays County for non payment of property taxes due to taxing jurisdictions in Hays County. ~ *Perwez A. Moheet, CPA, Director of Finance*

Other Information: The Hays County Tax Assessor-Collector has requested the City of Kyle to accept bid received in the amount of \$694.00 for the real property described as Lot 16, Block 1, M.E. Moore Addition and held in trust by Hays County for non payment of property taxes due to the taxing jurisdictions in Hays County.

The tax years in judgment is 2000 to 2008 and amounts now due are as follows:

- Hays Consolidated Independent School District \$1,816.00
- Hays County \$592.92
- City of Kyle \$374.89

The bid amount will only cover court costs (\$586.00) and publication fee (\$108.00) and will not recover any taxes due.

The following documents are attached to this agenda item in order to provide complete disclosure:

1. Offer made by Lop Land Trust
2. Bid Acceptance/Rejection Sheet
3. Map Showing Property Location
4. Property Tax Account Summary

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Bid Offer, Tax Documents, & Property Map

04/25/2016

Dear Kelly,

Enclosed is an offer for the following parcel.
Upon acceptance, please make title out to the following:

Lop Land Trust, c/o Jeremy Weaver, Trustee, dated March 8, 2014

Property ID	Account #	Minimum Bid Offer
11-5535-0100-01600-2	R35982	\$3,470.00
		\$694.00

Legal: Lot 16, Block 1, M. E. Moore, Hays County, Texas being that property more particularly described in Volume U, Page 377, Deed Records, Hays County, Texas

Agreed and Accepted:



Jeremy Weaver
772-985-3474 cell
Jeremylee.weaver@gmail.com
290 NW Peacock Blvd #881655
Port St. Lucie, FL 34986

Cause Number 2008-1187
Hays County v. Thomas H. Franklin

Account Number R35982

Lot 16, Block 1, M. E. Moore, Hays County, Texas

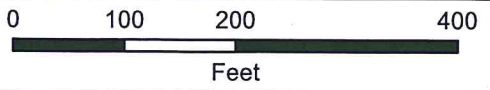
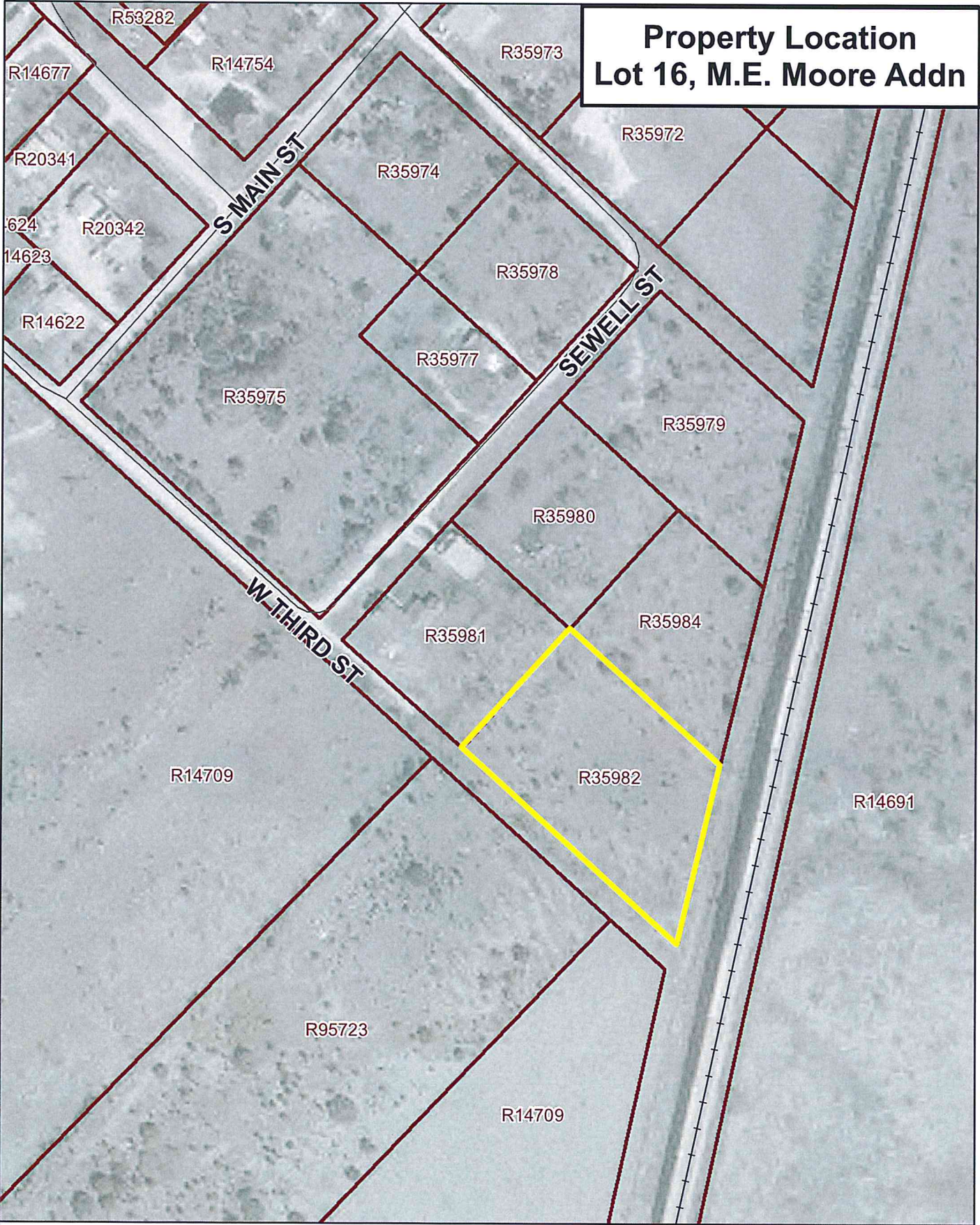
Bidder: Jeremy Weaver
290 NW Peacock Blvd #881655
Port S. Lucie, FL 34986

Bid Amount: \$694.00

Judgment Date	Tax Years in Judgment and Amount Now Due	Property Value	Tax Sale Date	Entity	Post-Judgment Taxes Recovered	Judgment Taxes Recovered	Total Taxes Recovered	Costs of Suit and Sale Recovered	Total Recovery
8/26/09	HCISD 2000-2008 \$1,816.10 County 2000-2008 \$592.92 City of Kyle 2000-2008 \$374.89	\$4,000.00	12/1/09	HCISD County City	N/A N/A N/A	\$-0- \$-0- \$-0-	\$-0- \$-0- \$-0-	Court Costs \$586.00 Pub Fee: \$108.00 (of \$351.00 due)	0%

Bid Approved _____ Bid Rejected _____

Property Location Lot 16, M.E. Moore Addn



 Property Boundary

 Parcel Lines

Account Summary

Luanne Caraway Tax Assessor-Collector, Hays County
 712 S. Stagecoach Trail
 San Marcos, TX 78666
 Ph: 512-393-5545 Fax: 512-393-5517

Visit us at www.hayscountytx.com

Property: 11-5535-0100-01600-2
 Quick Ref ID: R35982
 Owner: HAYS COUNTY
 Legal Description: M E MOORE, BLOCK 1, LOT 16 (EXEMPT % 12/01/09)

HAYS COUNTY
 712 S STAGECOACH TRL
 SAN MARCOS, TX 78666-6073

Assessment Values
 LAND HS: 0 Exemptions: EX
 LAND NHS: 4,000
 IMP HS: 0
 IMP NHS: 0
 AG MKT VALUE: 0
 AG USE VALUE: 0

Tax Bill (Effective Date: 05/13/2016) Balance Due if Paid By May 31, 2016: 2,783.91

Bill	Levy		Collection		Date Paid	Amt Paid	Balance
	Levy	Balance	P & I	Penalty			
2000							
City Of Kyle	16.56	16.56	32.46	7.35		0.00	56.37
Hays Co ESD #5	1.20	1.20	2.35	0.63		0.00	4.08
Hays Consolidated ISD	60.62	60.62	118.62	26.92		0.00	206.36
Hays County	14.32	14.32	28.07	6.35		0.00	48.74
Plum Creek Conservation	0.80	0.80	1.57	0.36		0.00	2.73
Special Road Dist	3.84	3.84	7.53	1.71		0.00	13.08
Totals	97.34	97.34	190.80	43.22		0.00	331.36
2001							
City Of Kyle	15.53	15.53	28.59	6.62		0.00	50.74
Hays Co ESD #5	1.20	1.20	2.20	0.51		0.00	3.91
Hays Consolidated ISD	63.85	63.85	117.48	27.20		0.00	208.53
Hays County	14.81	14.81	27.25	6.31		0.00	48.37
Plum Creek Conservation	0.76	0.76	1.40	0.32		0.00	2.48
Special Road Dist	3.04	3.04	5.59	1.29		0.00	9.92
Totals	99.19	99.19	182.51	42.25		0.00	323.95
2002							
City Of Kyle	14.18	14.18	24.39	5.78		0.00	44.35
Hays Co ESD #5	1.20	1.20	2.06	0.49		0.00	3.75
Hays Consolidated ISD	67.20	67.20	115.58	27.41		0.00	210.19
Hays County	15.00	15.00	25.80	6.12		0.00	46.92
Plum Creek Conservation	0.70	0.70	1.20	0.28		0.00	2.18
Special Road Dist	2.84	2.84	4.88	1.16		0.00	8.88
Totals	101.12	101.12	173.91	41.24		0.00	316.27
2003							
City Of Kyle	12.76	12.76	20.41	4.97		0.00	38.14
Hays Co ESD #5	1.80	1.80	2.88	0.70		0.00	5.38
Hays Consolidated ISD	69.18	69.18	110.69	26.99		0.00	206.85
Hays County	15.00	15.00	24.00	5.85		0.00	44.85
Plum Creek Conservation	0.70	0.70	1.12	0.27		0.00	2.09
Plum Creek Groundwater	0.80	0.80	1.28	0.31		0.00	2.39
Special Road Dist	2.84	2.84	4.54	1.11		0.00	8.49

Account Summary

Luanne Caraway Tax Assessor-Collector, Hays County
 712 S. Stagecoach Trail
 San Marcos, TX 78666
 Ph: 512-393-5545 Fax: 512-393-5517

Property: 11-5535-0100-01600-2
 Quick Ref ID: R35982
 Owner: HAYS COUNTY
 Legal Description: M.E. MOORE BLOCK 1, LOT 16 (EXEMPT % 12/01/09)

Bill	Levy	Levy Balance	P & I	Penalty	Collection	Date Paid	Amt Paid	Balance
Tax Bill (Effective Date: 05/13/2016) Balance Due if Paid By May 31, 2016: 2,783.91								
2004	103.08	103.08	164.92	40.19			0.00	308.19
City Of Kyle	11.49	11.49	17.01	4.27			0.00	32.77
Hays Co ESD #5	1.80	1.80	2.67	0.67			0.00	5.14
Hays Consolidated ISD	71.78	71.78	106.23	26.70			0.00	204.71
Hays County	15.68	15.68	23.20	5.83			0.00	44.71
Plum Creek Conservation	0.66	0.66	0.98	0.25			0.00	1.89
Plum Creek Groundwater	0.76	0.76	1.12	0.28			0.00	2.16
Special Road Dist	2.84	2.84	4.20	1.06			0.00	8.10
Totals	105.01	105.01	155.41	39.06			0.00	299.48
2005	11.11	11.11	15.11	3.93			0.00	30.15
City Of Kyle	11.11	11.11	15.11	3.93			0.00	30.15
Hays Co ESD #5	2.01	2.01	2.73	0.71			0.00	5.45
Hays Consolidated ISD	75.05	75.05	102.08	26.57			0.00	203.70
Hays County	15.38	15.38	20.92	5.44			0.00	41.74
Plum Creek Conservation	0.69	0.69	0.94	0.24			0.00	1.87
Plum Creek Groundwater	0.76	0.76	1.03	0.27			0.00	2.06
Special Road Dist	2.84	2.84	3.86	1.00			0.00	7.70
Totals	107.84	107.84	146.67	38.16			0.00	292.67
2006	10.90	10.90	13.52	3.67			0.00	28.09
City Of Kyle	10.90	10.90	13.52	3.67			0.00	28.09
Hays Co ESD #5	3.08	3.08	3.82	1.04			0.00	7.94
Hays Consolidated ISD	71.12	71.12	88.18	23.89			0.00	183.19
Hays County	15.16	15.16	18.80	5.10			0.00	39.06
Plum Creek Conservation	0.69	0.69	0.85	0.23			0.00	1.77
Plum Creek Groundwater	0.70	0.70	0.86	0.23			0.00	1.79
Special Road Dist	2.84	2.84	3.52	0.85			0.00	7.31
Totals	104.49	104.49	129.55	35.11			0.00	269.15
2007	10.83	10.83	12.13	3.45			0.00	26.41
City Of Kyle	10.83	10.83	12.13	3.45			0.00	26.41
Hays Co ESD #5	3.08	3.08	3.45	0.98			0.00	7.51
Hays Consolidated ISD	58.45	58.45	65.46	18.59			0.00	142.50
Hays County	14.86	14.86	16.85	4.73			0.00	35.24
Plum Creek Conservation	0.71	0.71	0.80	0.23			0.00	1.74
Plum Creek Groundwater	0.72	0.72	0.81	0.23			0.00	1.76
Special Road Dist	3.44	3.44	3.85	1.09			0.00	8.38
Totals	92.09	92.09	103.15	29.30			0.00	224.54
2008	14.92	14.92	14.92	4.48			0.00	34.32
City Of Kyle	14.92	14.92	14.92	4.48			0.00	34.32
Hays Co ESD #5	3.40	3.40	3.40	1.02			0.00	7.82
Hays Consolidated ISD	58.45	58.45	58.45	17.54			0.00	134.44
Hays County	14.99	14.99	14.99	4.49			0.00	34.47

Account Summary

Luanne Caraway Tax Assessor-Collector, Hays County
 712 S. Stagecoach Trail
 San Marcos, TX 78666
 Ph: 512-393-5545 Fax: 512-393-5517

Property: 11-5535-0100-01600-2
 Quick Ref ID: R55982
 Owner: HAYS COUNTY
 Legal Description: M E MOORE, BLOCK 1, LOT 16 (EXEMPT % 12/01/09)

Bill	Levy	Balance	P & I	Penalty	Collection	Date Paid	Amt Paid	Balance
Plum Creek Conservation	0.72	0.72	0.72	0.22			0.00	1.66
Plum Creek Groundwater	0.72	0.72	0.72	0.22			0.00	1.66
Special Road Dist	3.20	3.20	3.20	0.96			0.00	7.36
Totals	96.40	96.40	96.40	28.93			0.00	221.73
2009								
City Of Kyle	15.52	15.52	13.65	4.38			0.00	33.55
Hays Co ESD #5	3.39	3.39	2.99	0.96			0.00	7.34
Hays Consolidated ISD	53.48	53.48	47.07	15.08			0.00	115.63
Hays County	15.30	15.30	13.46	4.31			0.00	33.07
Plum Creek Conservation	0.68	0.68	0.60	0.19			0.00	1.47
Plum Creek Groundwater	0.68	0.68	0.60	0.19			0.00	1.47
Special Road Dist	1.87	1.87	1.64	0.53			0.00	4.04
Totals	90.92	90.92	80.01	25.64			0.00	196.57
Totals	997.48	997.48	1,423.33	363.10			0.00	2,783.91

Balance Due if Paid By May 31, 2016:	
Pay By	Total Due
June 30, 2016	2,795.40
July 31, 2016	2,806.92
August 31, 2016	2,818.45

Hays CAD eSearch

Property ID: R35982 For Year 2016

Property Details	
Account	
Property ID:	R35982
Legal Description:	M E MOORE, BLOCK 1, LOT 16 (EXEMPT % 12/01/09)
Geographic ID:	11-5535-0100-01600-2
Agent Code:	
Type:	Real
Location	
Address:	
Map ID:	
Neighborhood CD:	MEMO
Owner	
Owner ID:	O0018186
Name:	HAYS COUNTY
Mailing Address:	712 S STAGECOACH TRL SAN MARCOS, TX 78666
% Ownership:	100.0%
Exemptions:	EX - Exempt Property For privacy reasons not all exemptions are shown online.

Property Values	
Improvement Homesite Value:	N/A
Improvement Non-Homesite Value:	N/A
Land Homesite Value:	N/A
Land Non-Homesite Value:	N/A
Agricultural Market Valuation:	N/A
Market Value:	N/A
Ag Use Value:	N/A
Appraised Value:	N/A
HS Cap:	N/A
Assessed Value:	N/A

DISCLAIMER Information provided for research purposes only. Legal descriptions and acreage amounts are for appraisal district use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

Property Taxing Jurisdiction			
Entity	Description	Market Value	Taxable Value
ACCD	AUSTIN COMMUNITY COLLEGE DIST	N/A	N/A
CAD	APPRAISAL DISTRICT	N/A	N/A
CKY	CITY OF KYLE	N/A	N/A
FHA	HAYS CO ES DIST #5	N/A	N/A
GHA	HAYS COUNTY	N/A	N/A
PCC	PLUM CREEK CONSERVATION DIST	N/A	N/A
RSP	SPECIAL ROAD	N/A	N/A
SHA	HAYS CISD	N/A	N/A
WEU	Edwards Undgr Water Dist	N/A	N/A
WPC	PLUM CREEK GROUND WATER CONSERVATION DISTRICT	N/A	N/A

Property Improvement - Building

Property Land							
Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
C1	Vac Platted - 5.00 Ac Or Less					N/A	N/A

Property Roll Value History							
Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed	
2016		N/A	N/A	N/A	N/A	N/A	N/A
2015		\$0	\$4,000	\$0	\$4,000	\$0	\$0
2014		\$0	\$4,000	\$0	\$4,000	\$0	\$0
2013		\$0	\$4,000	\$0	\$4,000	\$0	\$0
2012		\$0	\$4,000	\$0	\$4,000	\$0	\$0
2011		\$0	\$4,000	\$0	\$4,000	\$0	\$0
2010		\$0	\$4,000	\$0	\$4,000	\$0	\$0
2009		\$0	\$4,000	\$0	\$4,000	\$0	\$4,000

Property Deed History							
Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Number
12/1/2009	CONST	Constable's Deed		HAYS COUNTY	3796	520	90033076
3/26/1999	CONST	Constable's Deed		STRABOR INC	COPY	DEED	

DISCLAIMER Information provided for research purposes only. Legal descriptions and acreage amounts are for appraisal district use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

Trust Property

Luanne Caraway <luanne@co.hays.tx.us>

Fri 5/20/2016 11:44 AM

To: Perwez Moheet <pmoheet@cityofkyle.com>;

 1 attachment (665 KB)

Weaver.pdf;

Perwez,

Hope all is well with you!

We have received a bid on a piece of property held in trust by Hays County for all other taxing entities. I am attaching a synopsis of this bid and property taxes due. You will notice on the bid sheet that the property has been off of the tax roll since 2009 and the amount of the bid only covers a portion of the court costs and publication fees that are due and no tax recovery. However, it would get this property back on the tax roll and we could once again start collecting taxes.

Please have this placed on your next available agenda for action by your council.

Thanks and let me know if you have any questions

Luanne Caraway, CTOP, PCC

Hays County Tax Assessor-Collector
712 S. Stagecoach Trail
San Marcos, Texas 78666
512-393-5545



CITY OF KYLE, TEXAS

Interlocal Agreement between City of Kyle and Hays County for Yarrington Road Bridge Overpass/IH 35 Aesthetic Applications

Meeting Date: 6/7/2016
Date time: 7:00 PM

Subject/Recommendation: Approve an Interlocal Agreement between the City of Kyle and Hays County in an amount not to exceed \$53,018.88 for application of bridge aesthetics located within and adjacent to the Yarrington Road Bridge Overpass at IH 35. ~ *Leon Barba, P.E., City Engineer*

Other Information: Hays County will use payments made by the City under this agreement solely for the installation of bridge aesthetics to the Yarrington Road Overpass over IH 35. The bridge aesthetics will include obelisks at bridge ends, decorative retaining wall panels, modified outside bridge beams with recessed lettering and ranch brands.

The City's participation is 100% of the actual cost of the obelisks at the bridge ends and the ranch brands. The costs for the decorative retaining wall panels and the recessed lettering are subsidiary to the various construction items and are not included in the estimated cost of \$53,018.88.

The Texas Department of Transportation (TxDOT) will inspect the installation of the bridge aesthetics and final payment for this work will be subject to TxDOT's standards, approval and acceptance.

Legal Notes: N/A

Budget Information: A Fiscal Note is attached.

ATTACHMENTS:

Description

- ILA Between City and Hays County - Yarrington Rd Bridge Aesthetics
- Fiscal Note

INTERLOCAL AGREEMENT BETWEEN THE CITY OF KYLE, TEXAS AND HAYS
COUNTY, TEXAS FOR THE AESTHETIC APPLICATIONS AT THE YARRINGTON
ROAD/INTERSTATE 35 INTERSECTION

This Agreement is made and entered into by Hays County, a political subdivision of the State of Texas (“County”) and the City of Kyle, Texas (“City”) under the authority of Chapter 791, of the Texas Government Code. The above-cited parties are hereinafter collectively referred to as “the Parties” or “the Parties to this Agreement.”

For and in consideration of the mutual agreements herein exchanged, the Parties hereby contract as follows:

Article I: Purpose and Legal Authority.

- 1.1 The purpose of this Agreement is to provide an understanding between the Parties that facilitates the application of bridge aesthetics located within and adjacent to the project limits for the improvement of the Yarrington Road bridge overpass (such applications are hereinafter the “Bridge Aesthetics,” as further defined below). This Agreement will delineate the responsibilities of each party regarding the application of aesthetics to the Yarrington Road bridge.
- 1.2 This Agreement has been approved by the Hays County Commissioner’s Court and the Kyle City Council as required by §791.011 of the Texas Government Code.

Article II: Term of Agreement.

- 2.1 This Agreement is made for a term beginning on the ____ day of _____ (the “Effective Date”) and shall remain in effect until the Bridge Aesthetics has been satisfactorily completed.

Article III: Definitions.

- 3.1 As used in this Agreement the following terms will be used.
- 3.2 “*TxDOT*” means Texas Department of Transportation with which the County has entered into an agreement for the Project, defined below.
- 3.3 “*Project*” means highway improvements completed by TxDOT in partnership with the County on IH-35 from approximately 1425 feet north of Yarrington Road to approximately 1340 feet south of Yarrington Road related to the construction of the Yarrington Road bridge and turnaround bridges pursuant to a Pass Through Financing Agreement between TxDOT and the County.
- 3.4 “*Estimated Cost*” means the Contractor’s bid’s estimate for the cost to complete the work related to the Bridge Aesthetics, as itemized in Exhibit “A.”
- 3.4 “*Bridge Aesthetics*” means the application of all City approved aesthetics by TxDOT, its agents and contractors, requested to be installed as part of the Project for the estimated Cost, in accordance with the description of work in Exhibit “A.” The City approved aesthetics are depicted the Yarrington Bridge plan sheets attached to this Agreement as Exhibit “B”.

Article IV: City’s Obligations

- 4.1 City shall pay for all work to be performed by TxDOT for the Bridge Aesthetics in the Estimated Cost (Attachment A). The Estimated Cost is in accordance with the lowest bid amount quoted within the awarded Contractor’s bid tabulation or change order proposal. This payment shall be due thirty (30) days after the execution of this Agreement.
- 4.2 Upon completion of the Bridge Aesthetics, the County shall coordinate with TxDOT for a final construction cost of the Bridge Aesthetic improvements. The City shall pay an

invoice from the County for any additional costs over the Estimated Cost and payment shall be due thirty (30) days after receipt of the invoice.

- 4.3 City understands that TxDOT will inspect installation of all work related to the Project, including the Bridge Aesthetics and final payment for the work will be subject to the TxDOT's acceptance of the work according to TxDOT's standards and approval.

Article V: County's Obligations

- 5.1 The County shall use payments made by the City under this Agreement solely for the installation of Bridge Aesthetics. If the actual cost for the of the Bridge Aesthetics is less than the payment made by the City under this Agreement, the County shall refund such remaining balance to the City within thirty (30) days after completion of the application of Bridge Aesthetics. If the actual cost of the Bridge Aesthetics is more than the payment made by the City, the County shall provide an invoice to the City for the additional costs over the Estimated Cost and payment shall be due thirty (30) days after receipt of the invoice.
- 5.2 The County will pay for the cost of the installation of aesthetics to the IH-35 at Yarrington Bridge bridge structure including obelisks at bridge ends, decorative retaining wall panels, modified outside bridge beams with recessed lettering, and ranch brands. The City's participation is 100% of the actual cost of the obelisks and the ranch brands. The costs for the recessed lettering and the decorative retaining wall panels are subsidiary to the various construction items and will not be added to the Estimated Cost. The Estimated Cost of the obelisks and ranch brands is \$53,018.88. The State will provide

construction engineering and inspection, and administration costs. **City participation is estimated to be \$53,018.88.**

Article VI: Coordination Prior to Beginning Work

- 6.1 Before TxDOT begins work for which funding is provided under this Agreement, the County will be responsible for and shall schedule such meetings and coordinate such communications among the authorized representatives of the City, the County and TxDOT for the purpose of establishing a mutually agreed schedule of tasks, sequencing of events and timelines necessary to implement the purposes of this Agreement. No City funds shall be disbursed by the County before such mutual agreement has been reached.

Article VII: Amendments and Related TxDOT Agreements.

- 7.1 This Agreement can be amended only by written approval of the Hays County Commissioners Court and the Kyle City Council.
- 7.2 The County will ensure that all contracts between the County and TxDOT regarding the Bridge Aesthetics and the cost therefor are consistent with this Agreement. No agreement shall be entered into providing for increased costs or any material change in the scope of work for the application of Bridge Aesthetics without a prior amendment to this Agreement reflecting such increase or material change.

Article VIII: Authorization to Sign.

8.1 Bert Cobb, Hays County Judge, is authorized to sign this Agreement on behalf of Hays County, Texas. Scott Sellers, City Manager, is authorized to sign this Agreement on behalf of the City of Kyle, Texas.

Article IX: Representations.

9.1 City and County each make the following representations to each other as inducements to enter into this Agreement:

- a. That it has the legal authority to enter into this Agreement for the purposes stated herein and to perform the obligations it has undertaken hereunder;
- b. That it has been represented by legal counsel and has had legal counsel available to it for consultation prior to entering into this Agreement;
- c. That the officer who signed this Agreement has the legal authority to sign documents on its behalf; and

Article X: Severability.

10.1 If any clause, sentence, paragraph or article of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion. To this extent, the provisions of this Agreement are declared to be severable.

Article XI: Entire Agreement.

11.1 This Agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be modified or amended except by written agreement duly executed by City and County and approved in the manner provided in Article IX above.

Article XII: Interpretation.

12.1 The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Interlocal Cooperation Act, which is codified as Chapter 791 Texas Government Code. All terms and provisions hereof are to be construed and interpreted consistently with that Act. This Agreement shall not be more strictly construed against either City or County.

Article XIII: Applicable Law and Venue.

13.1 This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Hays County, Texas, and venue for any action arising hereunder shall be in Hays County, Texas.

Article XIV: Coordination Prior to Beginning Work

14.1 Before any Party begins work under this Agreement, the authorized representatives of each Party will coordinate with each other and will establish a schedule of tasks,

sequencing of events and timelines necessary to implement the purposes of this Agreement.

EXECUTED IN DUPLICATE ORIGINALS THIS _____ DAY OF _____ 2015.

CITY OF KYLE, TEXAS

HAYS COUNTY, TEXAS

R. TODD WEBSTER
MAYOR

BERT COBB, M.D.
COUNTY JUDGE

ATTEST:

ATTEST:

JENNIFER VETRANO
CITY SECRETARY

LIZ GONZALEZ
HAYS COUNTY CLERK

APPROVED AS TO FORM

Mark Kennedy, Attorney for Hays County

Exhibit A
Yarrington Bridge Aesthetics Estimated Cost

Item	Description	Quantity	Unit	Unit Cost	Total
420-2003	CL C Conc (Abut)	48*	CY	\$ 948.31**	\$45,518.88
Subsidiary	Decorative Retaining Wall Panels	Subsidiary Cost to Construction			\$ 0.00
Subsidiary	Precision Formed Recessed Letters	Subsidiary Cost to Construction			\$ 0.00
CO	Ranch Brands	6	EA	\$1,250.00	\$ 7,500.00

Yarrington Bridge Aesthetics Cost \$ 53,018.88

*6.0 CY per obelisk from Yarrington Plans

** Unit Price Bid by TxDOT's Contractor for this Item

Exhibit B

Yarrington Bridge Plan Sheets (*Next Page*)

RANCH BRANDS

Ranch Brands to be provided by City of Kyle, who has no preference in placement other than the Kyle brand, which should go on the center positions facing traffic coming northbound into the City of Kyle City Limits.

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION:
CONTACT CITY DEPARTMENT:
CONTACT CITY STAFF:

June 7, 2016
Engineering Services
Leon Barba, P.E., City Engineer

SUBJECT:

Approve an Interlocal Agreement between the City of Kyle and Hays County in an amount not to exceed \$53,018.88 for application of bridge aesthetics located within and adjacent to the Yarrington Road Bridge Overpass at IH 35.

CURRENT YEAR FISCAL IMPACT

The City's cost of aesthetic improvements to the Yarrington Road Bridge Overpass will require expenditure of funds from the 2008 Certificate of Obligations Fund.

1. City Department:	Engineering Services
2. Project Name:	Aesthetic Imps - Yarrington Road Bridge
3. Funding Source:	2008 Certificate of Obligations Fund
4. Budget/Accounting Code(s):	184-664-57227
5. Total Appropriations:	\$ 53,100.00
6. Unencumbered Balance:	\$ 53,100.00
7. Amount of This Action:	<u>\$(53,018.88)</u>
8. Remaining Balance:	<u>\$ 81.12</u>

FUNDING SOURCE OF THIS ACTION:

The funding for the City's cost of aesthetic improvements for the overpass bridge will require expenditure of funds from the 2008 Certificate of Obligations Bond Fund. The City Council's approval of this item will also authorize staff to appropriate and apply funds in the same amount from the 2008 Certificate of Obligations Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

 → 6/1/2016

Pervez A. Moheet, CPA - Date
Director of Finance



CITY OF KYLE, TEXAS

Grind House Coffee & Cocktails Service Agreement

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Approve a service agreement with L&J MANAGEMENT CONCEPTS, LLC, DBA GRIND HOUSE COFFEE & COCKTAILS, Kyle, Texas, to provide and manage the sale of alcoholic beverages at the Kyle Hogwash Festival on October 21 and 22, 2016, at Gregg-Clarke Park. ~ *Cindy Stohr, Special Events & Programs Coordinator*

Other Information: Under the provisions of this service agreement, L&J Management will provide all equipment, product, licensure and staffing necessary to operate a beer/wine/spirits garden during operating hours of the festival. The City of Kyle will not pay a deposit for this service.

The City of Kyle and L&J Management will divide all net profit 50/50 after all expenses incurred by L&J Management are paid.

In the event that total revenue from the sale of alcoholic beverages is insufficient to cover all associated expenses incurred by L&J Management, then the City of Kyle will be responsible for covering the shortfall and paying the difference to L&J Management.

Legal Notes:

Budget Information: This contract will require expenditure of funds in next fiscal year (FY 2016-17). Funding for this contract is contingent on budget approval by City Council to apply funds from the Hotel Occupancy Tax Fund in the City's budget for next fiscal year (FY 2016-17). ~ Director of Finance

ATTACHMENTS:

Description

- Grind House Coffee Contract- Kyle Hogwash

L&J Management Concepts, LLC
dba Grind House Coffee & Cocktails

SERVICES CONTRACT

THIS CONTRACT is entered into on June 7, 2016 between L&J Management Concepts, LLC dba Grind House Coffee & Cocktails (herein after referred to as the "Vendor") and the City of Kyle, Texas (herein after referred to as the "City"), a political subdivision and municipal corporation of the State of Texas, duly organized and existing under the laws of the State including the City's Home Rule Charter, who agree as follows:

WHEREAS, the City conducts the annual event known as Kyle Hogwash Festival (herein after referred to as the "Festival".)

WHEREAS, the City desires the Vendor to provide services for the Festival.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF SERVICES

The Vendor agrees to perform all beverage services exclusively at the Festival described in Exhibit A, in accordance with the below stated terms and conditions. Exhibit A is attached to and made a part of this Contract. Vendor agrees to obtain all licenses from Federal and State authorities permitting Vendor to carry on its activities hereunder and further agrees to at all times comply with all Federal, State and Municipal Laws and Ordinances relative to its activities hereunder, and all rules and regulations. All servers shall maintain current TABC server certificates

2. ASSESSMENTS

The City will be paid a percentage by the Vendor in the event that a net profit is a result of total festival sales. All incurred expenses, permits and taxes required to provide service will be deducted from all revenue acquired at the Festival. After all expenses have been paid, the balance of net profit will be split 50/50 between the Vendor and the City. The Vendor will provide to the City a full accounting of all receipts and expenditures within ten (10) business days of the conclusion of the Festival. The City has the right to have its designated CPA audit all accounting records for the event, at its own expense.

No assessments will be paid that have not been disclosed to and agreed by the Vendor.

2. PAYMENT OF ASSESSMENTS

If at the conclusion of reconciling the Festival payment is found due to the City (see 2. Assessments) for services referred to in Exhibit A, the Vendor shall make payments to the City

in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

3. TERM

a. Either party may terminate this Contract at its convenience and without cause upon fifteen (15) days' with written notice to the other. Except as provided in this Contract, in no event shall the City be liable for costs incurred by or on behalf of Vendor after the effective date of a notice of termination.

b. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid.

For purposes of this Contract, all notices to the Vendor shall be addressed as follows:

Grind House Coffee & Cocktails 109 W Center St. Kyle, Texas 78640 _____ VENDOR INITIAL

For purposes of this Contract, all notices to the City shall be addressed as follows:

City of Kyle c/o Cindy Stohr 100 W. Center St. Kyle, Texas 78640 _____ CITY INITIAL

c. If City terminates this Contract for convenience before the Vendor completes the services in Exhibit A, Vendor shall then be entitled to recover its costs expended up to that point plus a reasonable profit, but no other loss, cost, damage, expense or liability may be claimed, requested or recovered.

d. See Exhibits for payment terms.

4. INDEMNIFICATION

a. To the extent allowed by law, the City, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless the Vendor, its officers, employees, partners, directors, subcontractors or agents from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with operations under this Contract, or with the performance of this Contract.

b. To the extent allowed by law, vendor covenants and agrees to the extent allowed by law, to FULLY INDEMNIFY and HOLD HARMLESS, the City and the employees, officers and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, fines, penalties, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal bodily injury, death and property damage, made upon the City, directly or indirectly arising out of, resulting from or related to Vendor's activities under this AGREEMENT, including any acts or

omissions of Vendor, any agent, officer, director, representative of Vendor, while in the exercise or performance of the rights or duties under this AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and are not intended to create or grant any rights, Contractual or otherwise, to any other person or entity. Vendor shall promptly advise the City of any injury which occurs during the performance of the AGREEMENT and in writing of any claim or demand against the City or Vendor known to the Vendor related to or arising out of Vendor's activities under this AGREEMENT.

5. ATTRITION - FOOD & BEVERAGE (F&B)

If the Festival fails to make the minimum projected, by a City Festival representative, in Exhibit A the City will pay a total amount not to exceed totals in Exhibit C, which is attached to and made a part of this Contract. All incurred expenses, permits and taxes required to provide service will be deducted from any revenue gained at the Festival and a total loss will be submitted to the City for payment.

6. PAYMENT DUE TO ATTRITION

City shall make payments to the Vendor in accordance with the provisions described in Exhibit D, which is attached to and made a part of this Contract.

7. DISPUTE RESOLUTION

A Dispute Resolution of mediation shall be used by the parties in resolving contractual disputes. If no agreement can be met through mediation and litigation is used to resolve grievance, the parties will waive their ability to have a jury decide the case.

8. INSURANCE

Contractor shall purchase and maintain at its expense the following types of insurance, issued by companies acceptable to the Rey Feo Consejo Educational Foundation:

1. Statutory Workers Compensation insurance. Workers Compensation insurance with a waiver of subrogation endorsement in the favor of the City.
2. Comprehensive General Liability Insurance with a liquor host and liquor liability rider with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
3. Any other insurance as required by state law.

9. ENTIRE CONTRACT

a. The terms and conditions of this Contract, all exhibits attached and any documents expressly incorporated by reference represent the entire Contract between the parties with respect to the subject matter of this Contract. This Contract shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Vendor. No other contract, statement, or promise relating to the subject matter of this Contract shall be valid or binding except by a written amendment to this Contract.

b. If any conflicts arise between the terms and conditions of this Contract and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Contract shall control.

10. MISCELLANEOUS PROVISIONS

- A. **Amendment.** This Agreement may not be altered, modified or amended, except by instrument in writing, signed by both parties by authorized representatives.
- B. **Binding Nature.** This Agreement shall be binding upon and inure to the undersigned parties and their prospective successors and permitted assigns.
- C. **Applicable Law.** This Agreement shall be construed as if fully negotiated, executed and performable in Hays County, Texas.
- D. **Independent Contractor.** The Vendor and City mutually agree the Vendor's exercise of the authority granted by the City in this Agreement constitutes Contractor as an independent contractor and not an agent of the City.
- E. **Notice.** All notices required or desired to be given hereunder by either party to the other shall be in writing and given by United States Certified Mail, Return Receipt Requested, first-class postage prepaid or by receipted hand delivery, or by telecopy and be effective upon actual receipt by the addressee thereof or three (3) days after deposited by the United States Mail. Notice to the respective parties shall be addressed or telecopied as indicated in the opening paragraph of the Agreement. Either party may, by like written notice, designate a new address to which notices shall be directed which shall be effective thirty (30) days after receipt by the addressee.

IN WITNESS WHEREOF, City and Vendor have executed this Contract as of the date written on the first paragraph of this Contract.

L&J Management Concepts, LLC dba Grind House Coffee & Cocktails

Name (print)

Signature

Title (print)

Tax Identification # _____

Witness Name (print)

Witness Signature

FOR CITY OF KYLE

Signed by: Countersigned by:

City of Kyle Manager

City of Kyle Chief of Staff

EXHIBIT A

SCOPE OF SERVICES

L&J Management Concepts, LLC dba Grind House Coffee & Cocktails will provide bar service exclusively at the first annual Kyle Hogwash Festival. All estimates and guarantees for service are based on 5,000 event patrons, as per request by City of Kyle festival representative.

Event Date: October 21st & 22nd, 2016.

Hours of Operation: Friday October 21st, 3pm-12am

Saturday October 22nd 12pm-12am

Service:

During Festival Hours of Operation staff will be available to sell beverages to include beer and water to Festival patrons.

Setup and Breakdown of Bar Station:

Bar area will consist of two 10x20 tents surrounded by nine 6-foot folding tables to serve as counter tops as well as customer and staff separation tools. Behind said tables will be six 5-foot beer tubs that will be used for serving product to customers. L&J Management Concepts, LLC will be solely responsible for all setup and breakdown of the bar area. Bar area is to be completed and ready to go an hour before serving time and broken down within an hour of the last item being sold.

EXHIBIT B

PAYMENT DUE TO THE CITY OF KYLE

All payments to the City from the Vendor will be made in the form of a check.

Made payable to: _____
(print)

Mailing address: _____

All payments must be postmarked no later than fifteen (15) business days after the last day of the Festival.

EXHIBIT C

EXPECTED EXPENSES (based on 5,000 Festival patrons as requested by City of Kyle)

L&J Management Concepts, LLC dba Grind House Coffee & Cocktails are guaranteeing the availability of beer and water to a percentage of the anticipated Festival patrons.

Setup...	\$300.00
Breakdown...	\$300.00
Permit...	\$251.00
Insurance addition...	\$475.00
Liquor Liability / Workmans Comp	\$1,000.00
Inventory (non-refundable)...	\$1,450.00
Dry Goods...	\$1200.00
Sales/Liquor Tax (14.9%)...	\$894.00
Wages...	\$552.00
Payroll Taxes (approx.)...	\$156.70
	\$6,578.70 Est. Total Expenses

EXHIBIT D

PAYMENT DUE TO L&J MANAGEMENT CONCEPTS, LLC DBA GRIND HOUSE COFFEE & COCKTAILS

All payments to the Vendor from the City will be made in the form of a check.

Made payable to: Grind House Coffee & Cocktails

Mailing address: 109 W Center St. Kyle, Texas 78640

All payments must be postmarked no later than five (5) business days after the last day of the Festival.



CITY OF KYLE, TEXAS

Special Events- Sergio Soto Contract

Meeting Date: 6/7/2016

Date time:7:00 PM

Subject/Recommendation: Approve a service agreement with SERGIO SOTO, Austin, Texas, in an amount not to exceed \$3,000.00 to provide stage lighting, audio, back line and staffing for both Kyle Field Day on September 17-18, 2016, at Gregg-Clarke Park and the Kyle Hogwash Festival on October 21-22, 2016, at Gregg-Clarke Park and direct the City Manager to provide funding for this service agreement from the Hotel Occupancy Tax Fund in the FY 2016-17 budget. ~ *Cindy Stohr, Special Events & Programs Coordinator*

Other Information: Mr. Soto charges \$1,000.00 per day for these services. He will be providing two days of service for Kyle Field Day and one day of service for Hogwash.

Legal Notes:

Budget Information: This contract will require expenditure of funds in next fiscal year (FY 2016-17). Funding for this contract is contingent on budget approval by City Council to apply funds from the Hotel Occupancy Tax Fund in the City's budget for next fiscal year (FY 2016-17). ~ Director of Finance

ATTACHMENTS:

Description

- Sergio Soto- Special Events Contract

SOUND AND LIGHT CONTRACTING AGREEMENT

Agreement made this 31st day of May, 2016, by and between Sergio Soto (Sound Company), (hereinafter referred to as the "Contractor") and City of Kyle, (hereinafter referred to as the "Buyer") for the purpose of contracting sound reinforcement between the undersigned parties.

EVENT I- Kyle Field Day

1. Contractor hereby agrees to provide all the sound and lighting equipment and warrants that the equipment is in good working order.

2. The Contractor shall have the equipment provided, set up and ready to be operated at:

Street: Gregg Clarke Park

City: Kyle State: TX, Zip: 78640

Phone (512) 938-8098

by 12 pm am/pm September 17, 2016.

11 am am/pm September 18, 2016.

3. Load-in may commence at: 8 am am/pm September 17, 2016.

4. Sound-check may commence at: 11 am am/pm September 17, 2016
10 am am/pm September 18, 2016

5. Showtime is: 12 pm am/pm September, 17, 2016.
11 am am/pm September, 18, 2016

6. The Contractor shall operate and leave the equipment set up until: 4 pm am/pm September 18, 2016, after which the Contractor shall remove all equipment and personnel from the venue.

7. Buyer shall pay to Contractor the amount of \$ \$500.00 upon the execution of this agreement as a non-refundable deposit for Contractor's services. At the completion of sound-check, with Contractor's equipment in place and tested, Buyer shall pay to Contractor, in U.S. currency or certified cashier's check the balance of \$ \$1,500.00.

EVENT II- Kyle "Hog Wash"

Street: Gregg Clarke Park

City: Kyle State: TX, Zip: 78640

Phone (512) 938-8098

by 12 pm am/pm October 22, 2016.

3. Load-in may commence at: 8 am am/pm October 22, 2016.

4. Sound-check may commence at: 11 am am/pm October 22, 2016.

5. Showtime is: 12 pm am/pm October 22, 2016.

6. The Contractor shall operate and leave the equipment set up until: 12
am am/pm October 22, 2016, after which the Contractor shall
remove all equipment and personnel from the venue.

7. Buyer shall pay to Contractor the amount of \$ \$250.00 upon the execution
of this agreement as a non-refundable deposit for Contractor's services. At the
completion of sound-check, with Contractor's equipment in place and tested, Buyer shall
pay to Contractor, in U.S. currency or certified cashier's check the balance of
\$ \$750.00.

8. Contractor will provide qualified personnel to operate all equipment provided for
in this Agreement. No other personnel, including Buyer and/or his employees, shall
operate the Contractor's equipment without the express consent of Contractor.

9. Buyer shall provide adequate security to protect the Contractor's equipment and
personnel during the term of this Agreement. Buyer will provide the following security
personnel at the following times and places:

a) N/A backstage security person(s) at the equipment access door
during load-in

b) N/A security person(s) at the main mixing console fifteen (15) minutes before the public is admitted into the venue; to remain there until the public has left the venue.

c) N/A security person(s) at the monitor mixing console 15 minutes before the public is admitted into the venue; to remain there until the public has left the venue.

d) N/A security person(s) in the stage area from show-time until the performance is completed, including encores.

e) N/A security person(s) at the equipment access door during load-out.

10. Buyer shall issue all-access permits to all designated employees of the Contractor in advance of Contractor's arrival at the venue. The personnel designated for such access are:

Buyer shall be notified in advance of Contractor's arrival at the venue if there are any changes in the list of Contractor's personnel required to complete the terms of this Agreement. Contractor will use only personnel directly connected to the production of the event under the terms of this Agreement.

11. Buyer shall provide the electrical power and circuits necessary for Contractor to perform his duties hereunder. Power must be in place, one hour before the load-in time specified herein.

12. Buyer will provide adequate parking immediately adjacent to the staging area for the loading and unloading of equipment and parking/vehicle access permits (if required), to Contractor and his designated vehicles. Parking shall be reserved in advance for any vehicle the Contractor may need in the performance of his duties

hereunder. It is Buyer's responsibility to retain access to and from the stage area and to secure Contractor's parking during the entire term of this Agreement.

13. Contractor is acting as an independent contractor in the performance of his duties herein. Buyer is not responsible for any workman compensation insurance of any kind for Contractor or Contractor's employees or personnel. All expenses pertaining to Contractor's employees and personnel, including but not limited to taxes, insurance, union or guild dues or any other expenses regarding Contractor's employees or personnel are the sole responsibility of the Contractor

14. This Agreement is for service rendered rain or shine. Contractor has the right to interrupt the performance of his duties hereunder in the event of inclement weather or any other conditions which Contractor or Buyer regard as hazardous to any person or persons. Any such interruption, postponement or cancellation of services shall not affect the Contractor's compensation specified herein.

15. ADDITIONAL TERMS AND CONDITIONS:

-Set-up will includes PA/ FOH Sound, Stage monitors, LED stage lighting, Full professional BACKLINE, Pearl drum kit, Ampeg or MarkBass bass amp, Fender or Vox guitar amp. And qualified personnel to run everything.

Basically, all the band has to bring is their individual instruments. And drummers, provide their own cymbals and sticks.

16. This Agreement is the complete understanding between the parties and supersedes and replaces all previous agreements or representations both written and oral.

THE UNDERSIGNED PARTIES have read and understand the terms and conditions of this Agreement and do hereby set their hands.

Sergio Soto
Contractor

Todd Webster
Buyer

Sergio Soto

Signed _____

Address: 2302 Jenibeth Lane
Austin, TX. 78744

Phone (830) 968-3186

City of Kyle,

Signed _____

Address: 100 W. Center St. Kyle, TX. 78640

Cindy Stohr

Phone (512) 938-8098



CITY OF KYLE, TEXAS

Kyle Hogwash- CTK Contract

Meeting Date: 6/7/2016

Date time:7:00 PM

Subject/Recommendation: Approve a service agreement with CTK ENTERTAINMENT, Buda, Texas, in an amount not to exceed \$2,000.00 to schedule a 90-minute headline performance by the Midnight River Choir at the Kyle Hogwash Festival on October 21-22, 2016, at Gregg-Clarke Park and direct the City Manager to provide funding for this service agreement from the Hotel Occupancy Tax Fund in the FY 2016-17 budget. ~ *Cindy Stohr, Special Events & Programs Coordinator*

Other Information: 50% of this fee (\$1,000.00) is required within three weeks of signing the contract to hold this booking. CTK has reduced the price of booking this group in order to partner with this first-year event.

Legal Notes:

Budget Information: This contract will require expenditure of funds in next fiscal year (FY 2016-17). Funding for this contract is contingent on budget approval by City Council to apply funds from the Hotel Occupancy Tax Fund in the City's budget for next fiscal year (FY 2016-17). ~ Director of Finance

ATTACHMENTS:

Description

- ☐ CTK Contract- Kyle Hogwash



This CONTRACT is made by and between **Midnight River Choir** (hereinafter referred to as "Artist") and **City of Kyle, Todd Webster** (hereinafter referred to as "Purchaser"). Both parties are aware that CTK Entertainment, LLC is acting as the agent between both parties. This contract is to be signed by Purchaser and returned to CTK Entertainment, LLC, WITHIN 14 DAYS OF ISSUE DATE ALONG WITH A 50% DEPOSIT MADE PAYABLE TO CTK Entertainment, LLC, and this contract shall consist of all provisions listed below as well as any attachments.

Date Of Show : 10/22/2016

Date Contract Issued : 06/01/16

Name Of Artist : Midnight River Choir

Venue Information

Name Of Venue : Gregg-Clarke Park
Venue Address : 1100 W Center St
Venue City : Kyle
Venue State : TX
Venue Zip : 78640
Venue Contact :
Venue Phone : 512-938-8098
Venue Email : cstohr@cityofkyle.com
Venue Website : www.kylehogwash.com
Venue Contact Email :

Buyer Information

Company : City of Kyle
Name : Todd Webster
Email : cstohr@cityofkyle.com
Phone : 512-938-8098
Cell Phone :
Address : 100 W Center St
City / State / Zip : Kyle / TX / 78640

Day of Contact Information

Name : Cindy Stohr
Phone : 512-938-8098

Guarantee : \$2,000.00
Stipulations : \$2,000 Flat Guarantee
Tax Rate : 0.00%
Hotel Rooms : None
Capacity : Outdoors
Billing : Headline
Show Lineup/Support : TBD
Time Of Show : TBD
Length Of Set : One 90 Minute Set
Doors :
Load In Time : Per Advance
Type of Engagements : Full Band

Merchandise Rate : soft: 100% / 0% rec: 100% / 0%
Who Sells : Artist
Age Limit : All Ages
Radio Sta. Presenting :
Radius Clause : None

Type Of Show : Full Band

Ticket Prices

Ticket 1 @ Rate 1 :	0	@ \$0.00
Ticket 2 @ Rate 2 :	0	@ \$0.00
Ticket 3 @ Rate 3 :	0	@ \$0.00
Ticket 4 @ Rate 4 :	0	@ \$0.00
Ticket 5 @ Rate 5 :	0	@ \$0.00

Sound and Lights : PA and Sound Engineer Provided by Buyer

Additional Information:

Deposit Due Date: 07/01/2016

Deposit Amount Due: \$1,000.00

ANY AND ALL RIDERS ATTACHED HERETO HEREBY MADE A PART OF THIS CONTRACT*
This contract may become void at the AGENT'S discretion if PURCHASER fails to return contract and deposit by stated due date.
PLEASE RETURN CONTRACTS SIGNED VIA EMAIL, FAX OR BY MAIL TO CTK Entertainment, LLC.

Buyer : _____

Artist : _____

Todd Webster

Midnight River Choir

PAYMENT - All deposits stated herein must be sent within fourteen (14) days of issue date in the form of a cashier's or business check to CTK Entertainment,LLC and be made payable to CTK Entertainment,LLC. All day of show payments must be made immediately prior to first performance in the form of cash or cashier's check only and payable to PRODUCER/ARTIST's representative unless otherwise agreed upon in writing in advance. Earned percentages, overages and/or bonuses, if applicable, are to be paid to PRODUCER/ARTIST in **Cash Only** immediately following the show. When the PRODUCER/ARTIST is to be paid based upon a percentage and/or expenses are factored into the wage agreed, the PURCHASER shall provide:

- i. Printer's manifest and a box office statement signed by PURCHASER
- ii. PRODUCER's representative shall have access to box office at all times during performance
- iii. Verification of all expenses relating to the show (invoices, receipts, ad schedules, logos, etc.)
- iv. A final accounting of all gate receipts

***All shall be presented in an organized manner upon final settlement with PRODUCER/ARTIST's representative.

TICKET PRICE/VENUE CAPACITY - PURCHASER shall not raise the ticket price or increase the venue capacity as set forth in the section above. If ticket price or venue capacity increases, One Hundred Percent (100%) of excess revenue generated from the unauthorized increase will be paid in full to the PRODUCER/ARTIST in cash immediately upon completion of the performance. If the ticket price or capacity is lower than stated on the face of this agreement, PURCHASER shall make up the difference and the difference shall be paid in cash in full upon completion of show to PRODUCER/ARTIST. Absolutely no unmanifested tickets or seats of any type will be allowed. If PRODUCER/ARTIST discovers any unmanifested tickets or seats, then PURCHASER agrees to pay in Liquidated Damages a fee of one hundred (100) times the amount charged for all unmanifested items. This amount will be paid by PURCHASER to PRODUCER/ARTIST immediately following the performance.

CANCELLATION - Cancellation by the PURCHASER within 48 hours of the date this agreement was issued will not carry a cancellation fee. In the case that the PURCHASER cancels the event after this initial 48 hour period, the PURCHASER agrees to pay PRODUCER/ARTIST, as liquidated damages, the full agreed upon amount on page one of this agreement, unless the ARTIST/PRODUCER agrees in writing to waive all or any part of that payment. Unless otherwise agreed in writing, PURCHASER agrees that PRODUCER/ARTIST may cancel the engagement hereunder without liability by giving the PURCHASER notice at least forty-five (45) days prior to the day of show. PRODUCER/ARTIST shall have the right to terminate this agreement without liability in the event that the PURCHASER fails to sign and return this Contract and the required 50% deposit within fourteen (14) Days of the issue date on page one of this Contract.

FORCE MAJEURE - In the event that ARTIST is unable and/or prevented from performance due to serious illness, accidents or accidents to means of transportation, civil tumult, strike, riots, epidemics, war conditions or similar circumstances, acts of God, or any other legitimate condition beyond their control, it is understood and agreed that there shall be no claim for damages by PURCHASER and PRODUCER'S obligations as to such performance shall be deemed waived.

OUTDOOR ENGAGEMENTS - For outdoor engagements where performance is deemed impossible, infeasible and/or unsafe, PURCHASER shall provide an alternative indoor performance location. PRODUCER/ARTIST is to be paid the full contract price "rain, shine, or inclement weather" and regardless of stage location.

NO PERFORMANCE RECORDINGS, VIDEOGRAPHY AND/OR PHOTOGRAPHY - No performance of the engagement shall be recorded, broadcast, televised, photographed, transmitted and/or reproduced in any manner whatsoever and/or by any means whatsoever without the express written consent of ARTIST and/or management.

RELATIONSHIP - The relationship between PRODUCER/ARTIST and PURCHASER is that of independent contractors. The parties mutually agree that nothing in this Contract is intended to create a legal relationship between the parties as a partnership, joint venture, employee/employer relationship, principal/agent relationship and/or other relationship and neither party shall represent itself to third parties as such.

UNION/ GUILD - Members of unions and/or guilds, which may include ARTIST, agree to accept sole responsibility for complying with the rules and regulations of said unions and/or guilds of which they may be members.

AGENT - CTK Entertainment,LLC acts herein only as agent for PRODUCER/ARTIST and is not responsible for any act and/or omission on the part of PRODUCER, ARTIST and/or PURCHASER. In furtherance thereof and for the benefit of CTK Entertainment,LLC, it is mutually agreed that neither PURCHASER nor PRODUCER will name and/or join CTK Entertainment,LLC as a party in any civil action or lawsuit arising out of, in connection with, and/or related to any acts of commission or omission of PRODUCER, ARTIST and/or PURCHASER.

INSURANCE/INDEMNITY - PURCHASER shall provide, at its sole cost, Commercial General Liability insurance covering any and all claims, liabilities and/or losses, directly and/or indirectly, resulting from injuries to any person (including bodily and personal injury) and/or from any property damage and/or loss in connection with the Engagement. Such insurance shall be in the amount required by the venue but shall not be less than One Million Dollars (\$1,000,000.00) aggregate and One Million Dollars (\$1,000,000.00) per event. The aforementioned insurance shall be in full force and effect at all times herein. PURCHASER shall provide ARTIST with a copy of the Certificate of Insurance no less than 14 days prior to the performance. Also, PURCHASER shall indemnify and hold ARTIST and ARTIST's employees and representatives harmless from and against any and all claims, demands, actions, damages, liabilities, costs and/or expenses, including but not limited to attorney's fees, arising out of or in conjunction with any personal injury, death, loss and/or damage to property which occurs in connection with any performance by ARTIST unless caused by the sole conduct of ARTIST.

ENTIRE AGREEMENT - This Contract contains all of the terms and conditions agreed upon by the parties, and no other agreements, oral or otherwise regarding the subject matter of this Contract or performance for the event stated on this Contract, shall be deemed to exist. No waiver or modification of this Agreement shall be valid unless in writing and duly executed by the party to be charged with the same.

BREACH/DISPUTES - In case of breach of contract by PURCHASER, PURCHASER agrees to pay the compensation agreed upon on page 1 of the contract, plus reasonable attorney's fees, court and legal interests. In the event that any disputes arise while this agreement is in force, that results in litigation or arbitration, all reasonable attorney's fees and costs of the prevailing party will be paid by the losing party.

GOVERNING LAW/ JURISDICTION/ VENUE - This Contract and the performance hereof shall be governed, interpreted, construed and regulated under and pursuant to the laws of the State of Texas. Any dispute and/or legal proceeding involving CTK Entertainment,LLC regarding the Agreement shall only take place in the County of Travis, in the State of Texas.

Buyer : _____

Artist : _____

Todd Webster

Midnight River Choir



CITY OF KYLE, TEXAS

Authorization to Refund COs Totaling \$9.02 Million

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Authorize the City's Director of Finance to initiate process, prepare bond documents, and incur necessary expenses for the refunding of approximately \$9,020,000.00 in outstanding Certificates of Obligations, Series 2007, 2008, and 2009 in order to achieve approximately \$1,110,000.00 in interest cost savings for the City of Kyle. ~ *Perwez A. Moheet, CPA, Director of Finance*

Other Information: This City Council is to authorize the City's Director of Finance to initiate and coordinate all appropriate actions with the City's Financial Advisor, Hilltop Securities (First Southwest), the City's Bond Counsel, Bickerstaff Heath Delgado Acosta, LLP, and to incur all necessary expenditures to refund approximately \$9,020,000.00 in Certificates of Obligations, Series 2007, 2008, and 2009 including but not limited to the following actions:

1. Analyze and select optimal refunding options
2. Prepare and solicit underwriter bids
3. Select underwriters
4. Prepare Official Statement for the bond issuance
5. Develop credit documents
6. Confer with bond rating agency (S&P)
7. Solicit credit rating for the bonds
8. Issue notice of public hearing

The following existing bond debt is being planned for refunding:

- \$750,000 Certificates of Obligations, Series 2007
- \$2,160,000 Certificates of Obligations, Series 2008
- \$6,110,000 Certificates of Obligations, Series 2009

It is estimated that this bond refunding transaction will result in approximately \$1,100,000.00 in interest cost savings to the City of Kyle.

In August 2016, City staff will request City Council's authorization for the actual issuance of the refunding bonds, approval of all bond documents, closing of bond transaction, and settlement of funds.

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Draft Refunding Timetable

Financing Timetable
\$8,370,000*
City of Kyle, Texas
General Obligation & Refunding Bonds, Series 2016

June							July							August						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
			1	2	3	4						1	2	31	1	2	3	4	5	6
5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27
26	27	28	29	30			24	25	26	27	28	29	30	28	29	30	31			
							31													

<i>Completion Date</i>	<i>Event</i>	<i>Responsibility</i>
Tues – June 7	⇒ City Council Meeting: Apprise Council of refunding opportunity	FWG, UW
Tues – June 14	⇒ Distribute first draft of Preliminary Official Statement (“POS”) to Working Group (“WG”)	FA
Tues – June 21	⇒ Submit comments on 1 st draft POS to FA	FWG
Fri – June 24	⇒ Distribute 2 nd draft of POS	FA
	⇒ Distribute credit packages to rating agencies	FA
Thurs – June 30	⇒ Submit comments on 2nd draft POS to FA	FWG
Week of July 4	⇒ Rating calls	City, FA
Thurs – July 7	⇒ Distribute 3rd draft of POS to Working Group	FA
Thurs – July 14	⇒ Receive ratings	City, FA
	⇒ Submit final comments on POS to FA	FWG
Thurs – July 21	⇒ Distribute electronic POS to potential investors	FA
Tues – Aug 2	⇒ City Council Meeting: Bond Pricing; Approve Bond Resolution, POS & document / Execute BPA	FA
Thurs – Aug 4	⇒ Distribute draft of final Official Statement (“OS”)	FA
	⇒ Submit transcript for Attorney General approval	BC
Tues – Aug 9	⇒ Return comments on final OS to FA	FWG, UW
Thurs – Aug 11	⇒ Print and distribute final OS	FA
Tues – Aug 16	⇒ Distribute draft closing memo to working group	FA
Tues – Aug 23	⇒ Submit comments on draft closing memo	FWG
Wed – Aug 24	⇒ Distribute final closing memorandum to working group	FA
Tues – Aug 30	⇒ Receive approval from Attorney General / Pre-closing	FWG
Wed – Aug 31	⇒ Closing	FWG, UW

**Preliminary Subject To Change*
FirstSouthwest

Symbol Key

FWG	Finance Working Group	Includes City, BC & FA
City	Issuer	City of Kyle, Texas
BC	Bond Counsel	Bickerstaff Heath Delgado Acosta LLP
FA	Financial Advisor	FirstSouthwest
UW	Senior Underwriter	<i>TBD</i>



CITY OF KYLE, TEXAS

Sludge Pressing Contract

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Approve a contract with SHERIDAN ENVIRONMENTAL DBA SHERIDAN CLEARWATER, LLC, and the City of Kyle for wet handling and disposal of biosolids from the wastewater treatment plant at a cost of \$76 per wet ton, estimated annual cost of \$350,000. ~ *Harper Wilder, Director of Public Works*

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

- Sludge Handling Contract

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

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 twelve (12) 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: _____ Name & Title: _____
 Date: _____

(“CONTRACTOR”)

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



CITY OF KYLE, TEXAS

Cool Springs DA

Meeting Date: 6/7/2016

Date time: 7:00 PM

Subject/Recommendation: Consider and possible action in regards to approval of a development agreement with KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC, a Texas limited liability company for the development of approximately 126 acres on FM 150 known as Cool Springs. ~ *James R. Earp, Assistant City Manager*

Other Information: There are three attachments:
The original agreement with all of the appendices;
A Legal Redline of that agreement;
A clean version of the language portion (without attachments) that will replace the original.

Legal Notes: Reviewed and approved by Frank Garza - his redline is attached.
Redline accepted by owner representative.

Budget Information:

ATTACHMENTS:

Description

- Original with appendices
- Legal Redline as accepted
- Clean Final without appendices

STATE OF TEXAS

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COUNTY OF HAYS

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DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF KYLE
AND
KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC

This Development Agreement (“Agreement”) by and between the City of Kyle, Texas, a municipal corporation (“City”), and KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC, a Texas limited liability company (“Developer”), is made pursuant to Section 212.172, Texas Local Government Code, and entered into this _____ day of _____, 2016. The term “Parties” or “Party” means the City and the Developer collectively or singularly.

RECITALS

WHEREAS, Developer owns a parcel of real property (the “Property”) in Hayes County, Texas, which is more particularly described in the attached Exhibit “A”;

WHEREAS, the City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

WHEREAS, the City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area;

WHEREAS, the City Council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interest and welfare of the public;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits described in this Agreement, and other good and valuable consideration, the sufficiency of which is acknowledged by both parties, the City and Developer agree as follows:

**ARTICLE 1
PROJECT AND TERMS**

1.01 Project Defined. The Project established by the Agreement includes a master-planned residential subdivision that will include single-family lots, a commercial tract, and amenity area(s) with recreational facilities. The Project, includes, the subdivision of the Property, the construction

of off-site and on-site utility facilities and Subdivision of Property and Infrastructure (defined below) to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (“Project”). The Project may include multiple phases for platting and construction purposes.

1.02 Terms. The term of this Agreement will commence on the Effective Date and continue for the duration of the development of the entire subdivision.

1.03 Control of Development. Developer intends to develop the Property in a manner, which results in enhancing the tax base of the City. Notwithstanding any provision of the Code of Ordinances or uncodified ordinances of the City (“Code”), in effect on the effective date of this agreement, to the contrary, the timing and sequencing of the development of the Property will be based on market demand and conditions and will be completed as and when Developer determines it to be economically feasible.

The described Parkland Property as shown in the Preliminary Plat, (Exhibit “B”) will be dedicated to the City upon the installation of the improvements as specified in Section 2.07 of this agreement. The agreed upon infrastructure for the improvements to the dedicated property will be completed in accordance with the timing outlined in Section 2.07.

ARTICLE 2 DEVELOPMENT STANDARDS AND REVIEW PROCEDURES

2.01 Generally. Except as provided in this Agreement, all development applications and development of the Property will comply with the Code in effect as of the Effective Date, as if the Property were inside the corporate limits of the City. The preceding sentence controls even if the City has not annexed the Property. If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control.

2.02 Residential. The Parties agree that Developer has been granted an R-1-2 Single Family Residential for the subject Property. Notwithstanding the requirements in Chart 1 in Chapter 53 of the Code, the maximum number of fifty-five foot (55’) wide single family residential lots allowed to be subdivided on the Property will be twenty-five percent (25%) of the total number of single-family residential subdivision lots ultimately platted on the preliminary plan, which any existing plan may be modified in order to achieve the maximum number of lots, approved for the Property. For purposes of clarifying the preceding sentence, there is no limit to the number of fifty-five foot (55’) wide lots that may be contained in an individual final plat so long as the cumulative total of fifty-five foot (55’) wide single family residential lots contained in all recorded final plats of the Property do not exceed twenty-five percent (25%) of all single family lots shown on the approved preliminary plan. No single family residential lot shall be less than fifty-five foot (55’) at the building setback line.

2.03 Commercial. Notwithstanding Section 2.02 above, approximately 1.75 acres of the Property, as described in the attached Exhibit “C” shall be subject to use and development standards as to the City’s Community Commercial “CC” zoning district.

2.04 Site Plan. Developer has submitted to the City a site plan for the subdivision and development of the Property. A copy of the site plan is attached hereto and incorporated herein for all purposes as Exhibit “D” (the “Site Plan”). Developer hereby confirms that the Site Plan for the subdivision of the Property complies with the City’s Subdivision Ordinance requirements for site plans, the zoning district regulations applicable to the Property as set forth in this Agreement, and the City’s Comprehensive Master Plan is acceptable to the City pursuant to Section 212.172 of the Tex. Local Government Code, notwithstanding the provisions otherwise required by the Code. The Site Plan constitutes a development plan for the Property, as provided in Subchapter G.

Subject to the allowable uses set forth in Sections 2.02 and 2.03, a) the total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents (LUEs) as measured for water and wastewater service connections; and b) the intensity and timing of development within the Property will be determined solely by Developer; provided, however, that the intensity of development of the Property shall not exceed 450 LUEs. Upon full build out, any remaining LUE’s shall become non-transferrable and cannot be committed to another outside property or project. So long as Developer does not increase the total level of allowable development, as measured by water and wastewater service connections, Developer may amend the Site Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Agreement. The Site Plan will be effective for the Term of this Agreement.

2.05 City Review and Approval. This Agreement will supplement the City’s rules, but not replace said rules, and shall govern the review of preliminary plans, subdivision plats, subdivision construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Developer. The City will review and accept applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the preliminary plans, final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Site Plan and the allowable uses set forth herein.

2.06 Parkland Fees. The Developer and the City agree that in lieu of paying parkland dedication fees, the Developer will dedicate the agreed upon property per Exhibit “B” (“Parkland”) which shall satisfy all obligations for the payment of parkland dedication fees by the Developer.

2.07 Parkland Improvements. The Developer and the City agree that in lieu of paying parkland improvement fees the Developer shall construct the improvements in the Parkland described below (“Parkland Improvements”) at a cost equal to, but not to exceed \$223,200. For the purposes of this agreement the calculations will be based on 372 lots at the amount of Six Hundred Dollars (\$600.00) per lot totaling \$223,200. Any single-family residential lots over the proposed 372 lots shall be subject to the payment of the parkland improvement fees. However, should the Developer demonstrate that the Parkland Improvements cost exceeded \$223,200, the additional amounts shall be credited and applied to any parkland improvement fees or additional fees that may become due. Parkland Improvements shall consist of the following:

(a) A trail system that shall be a minimum eight feet (8') wide and will consist of crushed granite, or other mutually agreed upon material in all areas that are less than one and one-half percent (1½%) slope, and shall be concrete where the slope is greater than one and one-half percent (1½%).

(b) A two (2) room restroom facility.

(c) A disc golf course facility.

The trail system shall be completed prior to the completion of Phase I, Section 2 (Roadway Channel Crossing). The remaining Parkland Improvements shall be completed prior to any Certificates of Occupancy's being issued on more than 100 homes in the Project. Upon completion of the Parkland Improvements, the Parkland shall be dedicated to the City and the City shall assume all responsibility and or obligation to maintain, operate, repair or replace the Parkland Improvements.

2.08 Other Fees. Except for fees or expenses otherwise specifically provided for in this Agreement, all fees will be paid to the City in accordance with City regulations.

2.09 Fencing. Developer shall construct and maintain a stone/masonry fence and or berm and landscaping along all homes along the FM 150 (Lots 1-14) and FM 158 (Lots 215-245) corridor. Homes must have stone or masonry on all 4 sides; no hardiplank will be allowed on these homes (see attached diagram of lots Exhibit "E"). Developer may assign to a property owners association the obligation to maintain, repair or replace said as required by the Code.

2.10 Additional Amenities. Developer shall form a property owners association for the residential lots which association shall be a non-profit corporation. ("POA"). The POA shall be formed prior to the conveyance of a residential lot to a third-party with a completed residence thereon. The POA shall require dues and will be responsible for the maintenance, repair and replacement of any amenities or common areas conveyed by the Developer to the POA.

ARTICLE 3 SUBDIVISION INFRASTRUCTURE

3.01 Subdivision Infrastructure. All streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property ("Subdivision Infrastructure"), will be constructed by Developer to meet Code standards and will be dedicated and conveyed to the City at no cost to the City.

3.02 Compatibility and Neighborhood Feel.

The Developer agrees that all homes along the FM 150 (Lots 1-14) and FM 158 (Lots 215-245) corridor will have stone or masonry on all 4 sides; no hardiplank will be allowed on these homes.

No Driveways shall be allowed to access the Cool Springs Boulevard.

Developer shall be allowed to narrow Cool Springs Boulevard width to a minimum of thirty-two feet (32') from face of curb to face of curb in order to reduce vehicle speed for safety purposes, as

well as improve the aesthetics of the subdivision; excluding the portion between FM 150 and the Copper Lane/Cool Springs Blvd. intersection.

No garbage pickup will be allowed along Cool Springs and at least one side of Cool Springs will be signed for “No Parking” to maintain two-way traffic.

Developer shall include roundabout intersections in lieu of standard two (2) or four (4) way stop signs at the intersection of Silver Springs and Blue Springs Pass with Cool Springs Blvd.

Maximum posted speed shall not exceed 30 mph.

Stop signs shall be placed in designated areas to help control speed as warranted.

The crossover connecting Phase I and II shall be safely marked as a pedestrian zone.

The wet pond located in the far Southeast corner of Phase II, between lot #137 and #247, shall be maintained by the POA.

ARTICLE 4 WASTEWATER SERVICE

4.01 Intent of the Parties Regarding Utility Services. As of the Effective Date, the City has sufficient wastewater treatment capacity to allow service connections for 450 LUEs wastewater service to the Property. The Parties acknowledge that the Property will build out over a number of years and that the City may decide to incrementally construct additional utility system improvements over time. Developer acknowledges that it is the City’s responsibility to determine if the utility system needs to be expanded and how the City will expand its utility system to enable the City to meet its utility service obligations under this Agreement. Developer further acknowledges the City’s desire to retain flexibility on deciding which utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Developer requires certainty regarding the City’s plans for meeting City’s utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City’s wastewater utility systems for the purpose of the City meeting its Utility Service obligations in accordance with the terms of this Agreement.

4.02 Utility Improvement Construction Obligations. Developer shall be solely responsible for the construction of facilities within the property and offsite improvements as needed to connect to the City or water district existing utilities.

4.03 Use of City Property and Easements. The City hereby consents, at no cost to Developer, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct an Subdivision Infrastructure, or for Developer to perform its obligations under this Agreement; provided, however, that the City’s consent is subject to City approval of the location of a Utility Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements.

4.04 Easement Acquisition. The Utility Improvements and related easements are necessary and required by the City for the City to provide water and wastewater service to the Property. The City further agrees that there exists a public necessity for the construction of the Utility Improvements therefore; the City agrees to cooperate and support Developer's acquisition of necessary easements from third parties.

4.05 Satisfactory Completion of Subdivision Infrastructure. Upon completion of construction of each of Subdivision Infrastructure, Developer shall provide the City with final "record" drawings of the Subdivision Infrastructure, in both hard copy and digital (PDF or CAD, as requested by the City). Developer's engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of Subdivision Infrastructure within a reasonable time period. The City shall, within a reasonable time period of conducting the final inspection, provide a list of deficiencies found in the inspection so that when the deficiencies are corrected, Subdivision Infrastructure will meet the requirements for acceptance by the City for ownership, operation and maintenance. Developer shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect Subdivision Infrastructure within a reasonable period of time, and if all deficiencies have been remedied to the City's satisfaction, the City shall furnish a Letter of Satisfactory Completion to Developer stating that Subdivision Infrastructure has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept Subdivision Infrastructure for ownership, operation and maintenance.

4.06 City Acceptance of Subdivision Infrastructure.

- (a) As a precondition to the City's final acceptance of a Subdivision Infrastructure, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to Subdivision Infrastructure to be accepted will also be delivered to the City. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of Subdivision Infrastructure.
- (b) Upon the City issuing a Letter of Satisfactory Completion, Developer shall dedicate the Subdivision Infrastructure to the City. The City shall accept each such completed Subdivision Infrastructure for ownership, operation and maintenance within a reasonable time of Developer's dedication of the Subdivision Infrastructure to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Subdivision Infrastructure.

4.07 City to Own, Operate and Maintain Subdivision Infrastructure. From and after the time of the City's final acceptance of Subdivision Infrastructure, the City will own, operate, and maintain each Utility Improvement as part of the City's utility system and shall be responsible for all costs associated with same. Upon the City's acceptance of all the Utility Improvements within

a particular Utility Facility Phase and the City's acceptance of water and wastewater service lines within a recorded final plat, Developer shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that the City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements.

ARTICLE 5 ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

5.01 Assignment of Developer Rights. Developer may assign in whole or part its rights and obligations under this Agreement to the POA or persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective. This Agreement may be assigned by Developer without the consent of the City to any Developer-affiliated or related entity, but any assignment of Developer's rights and obligations hereunder will not release Developer of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

5.02 Lot Conveyance Not an Assignment. The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein.

5.03 Agreement Binding on Assigns. This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developer or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

ARTICLE 6 DEFAULT AND NOTICE

6.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

6.02 Remedies for Default. Whether in contract or tort or otherwise, Developer agrees to waive all claims to damages and other remedies, including specific or strict performance, lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever. Damages, if any, will be limited to amounts recoverable under §271.153 of the Texas Local Government Code.

6.03 Enforcement. This Agreement may be enforced by Developer, but only as provided under §271.153 of the Texas Local Government Code, or by the City by any proceeding at law or equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

6.04 Litigation. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Developer and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the City Council. The filing of any third party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

6.05 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section I; or (iii) one business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

Kalogridis and Kalogridis Development, LLC
Attn: Mitchell Kalogridis, President
2110-B Boca Raton Drive, Suite 102
Austin, TX 78747

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 7

PROPERTY AND MORTGAGEE OBLIGATIONS

7.01 Mortgagee Acceptance. Developer shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property with notice of and subject to this Agreement. Developer shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

7.02 Mortgagee Protection. This Agreement will not affect the right of Developer to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property (“Lender”) may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to cooperate with Developer and its Lenders’ representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

(a) Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Property.

(b) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 6.05, provide the Lender with a copy of any written notice of default given to Developer under this Agreement within ten (10) days of the date such notice is given to Developer.

(c) Upon default by Developer under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.

(d) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to the Lender’s acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that Property until all delinquent fees and other obligations of Developer under this Agreement that relate to the Property have been paid or performed.

7.03 Certificate of Compliance. Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

- (a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;

- (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and
- (c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

**ARTICLE 8
MISCELLANEOUS**

8.01 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

8.02 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

8.03 Recordation. A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas.

8.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Agreement shall remain in full force and effect. This Agreement is performable in Hays County, Texas.

8.05 Termination or Amendment By Agreement. This Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Developer, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developer of only the portion of the Property affected by the amendment or termination.

8.06 No Third Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

8.07 Effective Date. This Agreement will be effective as of the date upon which all Parties have executed the Agreement.

DEVELOPER:

Kalogridis and Kalogridis Development, LLC.

By: _____
Mitchell Kalogridis, President

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

Amelia Sanchez, City Secretary

APPROVED AS TO FORM:

W. Ken Johnson, City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This document was acknowledged before me on the _____ day of _____, 2016,
by Mitchell Kalogridis, President of KALOGRIDIS AND KALOGRIDIS DEVELOPMENT,
LLC, a Texas limited company on behalf of said limited company.

Notary Public State of Texas

(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

126.410 ac.
M.B. Atkinson Sur., A-21
William Hemphill Sur. A-221
R.T. Hughes Sur., A-237
James W. Williams Sur., A-473
Hays County, Texas

Project No. 06-788
Field Book 360 Sept 13

A DESCRIPTION OF A CERTAIN 126.410 ACRE TRACT OF LAND SITUATED IN HAYS COUNTY, TEXAS, ESTIMATED TO CONSIST OF: 66.31 ACRES OUT OF THE MILTON B. ATKINSON SUR., A-21; 58.94 ACRES OUT OF THE WILLIAM HEMPHILL SUR., A-221; 0.58 ACRES OUT OF THE R.T. HUGHES SUR., A-237; AND THE BALANCE BEING OUT OF THE JAMES W. WILLIAMS SUR., A-473

SAID 126.410 ACRE TRACT BEING THAT SAME LAND CONVEYED BY A.W. GREGG ET UX TO A.W. GREGG, JR., TRUSTEE BY WARRANTY DEED DATED FEBRUARY 1, 1971 RECORDED IN VOLUME 254 AT PAGE 365 OF THE HAYS COUNTY DEED RECORDS (THE CONTENTS OF THAT TRACT CONVEYED TO A.W. GREGG, JR., TRUSTEE, BEING RECITED AS 126.51 ACRES IN SAID DEED, BUT FINDING THE ACTUAL CONTENTS TO BE 126.41 ACRES BY RESURVEY), AND OF WHICH 126.410 ACRES, 0.436 ACRES LIES WITHIN THE RIGHT-OF-WAY OF HAYS COUNTY ROAD 158 AS FOUND PRESENTLY FENCED AND USED UPON THE GROUND;

BEING ALSO THAT SAME LAND CONVEYED BY L.A. FARRIS ET UX TO CLEMENS ARMBRUSTER AS DESCRIBED IN WARRANTY DEED DATED MARCH 1, 1951 RECORDED IN VOLUME 149 AT PAGE 228 HCDR;

AND SAID 126.410 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ACCORDING TO SURVEYS PERFORMED UPON THE GROUND THROUGH SEPTEMBER 19, 2006 UNDER THE DIRECTION OF KENT NEAL MCMILLAN, REGISTERED PROFESSIONAL LAND SURVEYOR, AS FOLLOWS:

Bearings of lines in the following description refer to Grid North of the Texas Coordinate System of 1983 (South Central Zone) as computed from GPS vectors;

Distances are Horizontal Surface Distances in units of US Survey Feet computed using a project average Combined Grid Factor of 0.999895 (Surface Distance = Grid Distance / 0.999895)

In the following description, "Standard Rod and Cap" denotes a Punchmark on a 2 in. Aluminum Cap stamped "KENT MCMILLAN, SURVEYOR, RPLS 4341" (and numbered as noted) affixed to a 5/8 in. Iron Rod and

"Dixon Rod and Cap" denotes an Orange Plastic Cap imprinted "DIXON, RPLS 4324" affixed to a 1/2 in. Iron Rod;

Underlined Numbers in this description refer to the Coordinate List.

Coordinates in the following list are in US Survey Feet and refer to the Texas Coordinate System of 1983 (South Central Zone), NAD83 (CORS96) Epoch 2002.0 as derived from L1/L2 GPS observations of more than 4 hrs. duration on each of three different days in September, 2006, processed using rapid orbits via the National Geodetic Survey's OPUS software and extended across the project by GPS and conventional methods adjusted in combination by least squares:

No.	N	E
34	13898509.770	2334280.090
79	13899867.222	2332872.713
81	13899147.034	2333625.764
98	13900507.477	2332363.443
111	13900105.120	2332747.596
601	13898769.012	2329345.656
602	13899668.924	2331936.191
605	13899215.714	2333552.303
606	13899215.551	2333552.666
608	13898663.736	2333019.059
609	13898617.885	2332974.621
610	13898571.953	2332930.236
611	13898525.790	2332885.694
612	13898479.929	2332841.200
613	13898433.876	2332796.756
614	13898387.827	2332752.278
615	13898342.093	2332707.622
626	13900050.234	2332690.321
627	13900254.799	2332492.395
629	13900255.156	2332492.210
632	13897920.549	2330240.864
633	13897576.693	2329923.291
634	13897550.650	2329912.773
635	13897525.667	2329919.142
638	13896529.550	2330966.348
639	13896531.972	2330957.642
643	13897899.503	2330261.829
647	13900049.975	2332690.052
650	13897909.844	2330250.932
651	13896524.781	2330950.688

652	13898137.510	2332510.199
653	13899216.274	2333553.365
654	13896531.561	2330957.244
655	13899198.431	2333536.111
656	13900452.455	2332305.427
657	13900256.756	2332492.445
658	13898310.541	2329828.690
659	13897910.261	2330229.674
660	13897544.111	2329886.246
662	13897919.941	2330240.292

BEGINNING at the top center of a Concrete Right-of-Way Marker 79 found on the Southwest line of the 80 ft. wide Right-of-Way of F.M. Highway 150 opposite Engineer's Centerline Station 111+44.9, same being at the Southeast end of a curve on the Southwest line of that certain 1.36 acre strip of land conveyed by Charlie F. Hitzfeld et ux to the State of Texas by Right-of-Way Deed dated February 18, 1947 recorded in Volume 137 at Page 273 of the Hays County Deed Records (HCDR), noting that from said Point:

- the Top Center of a Concrete Right-of-Way Marker 81 found on the Southwest line of the original 80 ft. wide Right-of-Way of F.M. 150 opposite Engineer's Centerline Station 121+86.4 bears S46°16'40"W, 1042.11 ft.
- 1) **THENCE** along the Southwest line of F.M. 150, same being the Southwest line of the above-mentioned 1.36 ac. strip conveyed by Hitzfeld to the State of Texas, and being also the true Northeast line of that certain 126.51 acre tract of land conveyed by Otto Ambruster et al to A. W. Gregg as described in Warranty Deed recorded in Volume 246 Page 796 HCDR, S46°16'40"E, 941.92 ft. to an Unmarked Point 653 at the intersection of the Southeast line of that certain 126.6 acre tract of land conveyed by Edward F. Rouss, Trustee, to Will Hill by Warranty Deed dated May 4, 1923 recorded in Volume 85 at Page 188 HCDR, Point 653 being the North corner of that certain 101.1435 acre tract of land conveyed by Wilna R. Ehrlich to Kyle Riverbend-Cottonwood Investments, L.C. as described in Warranty Deed dated June 24, 2002 recorded in Volume 2021 at Page 830 HCDR and a Point on the Southeast line of the former 126.6 acre Will Hill tract as determined by Charles R. Swart, RPLS, in 1999 (said line being evidenced upon the ground by an old Wire Fence), Point 653 being occupied by a Hackberry tree where the undersigned surveyor deemed it impractical to try to establish a survey marker, but referencing its position as follows:
- a 1/2 in. Iron Rod 605 found on the Northwest side of the base of a 9 in. Cedar Fence Corner Post bears S62°12'32"W, 1.20 ft., said Rod being taken for the "iron stake" placed by James E. Byrn, PE, in October, 1971 (but found to be somewhat erroneously located);
 - Point 606 at the center of the Base of a 9 in. Cedar Fence Corner Post bears S44°02'W, 1.01 ft., said Point being on the Southeast line of the former 126.6

acre Will Hill tract as determined by Charles R. Swart, RPLS, in 1999 as described in the deed to Kyle Riverbend-Cottonwood Investments, L.C. recorded in Volume 2021 at Page 830 HCDR

- a Standard Rod and Cap 655 set to mark a point on the Southeast line of the above-mentioned 126.6 acre Will Hill tract and true Southeast line of the A.W. Gregg tract bears S44°02'20"W, 24.82 ft.

and noting also that from Point 653:

- a Point 639 at the Center of the base of a 6-1/2 in. Pole Post with Tin Disc stamped "103" and 3/4 in. Round Tag stamped "C.R. SWART" bears S44°02'20"W, 3734.46 ft. (and from Point 639, a 2 in. Aluminum Cap 638 stamped "EHRLICH, 1999, REFERENCE, MONUMENT, 93, CHARLES R. SWART, SURVEYOR", affixed to a 5/8 in. Iron Rod, bears S74°27'06"E, 9.04 ft.), Point 639 being the West corner of that certain 101.1435 acre tract of land conveyed by Wilna R. Ehrlich to Kyle Riverbend-Cottonwood Investments, L.C. as described in Warranty Deed dated June 24, 2002 recorded in Volume 2021 at Page 830 HCDR and a Point on the Southeast line of the former 126.6 acre Will Hill tract as determined by Charles R. Swart, RPLS, in 1999,

2) THENCE S44°02'20"W, along the recognized Southeast line of the former 126.6 acre Will Hill tract as evidenced by old wire fencing,

- at 24.82 ft. passing Standard Rod and Cap 655 set on line,
- at 768.70 ft. passing a Dixon Rod and Cap 608 found on line (approximately 1.0 ft. Northwest of old Wire Fence) marking the North corner of Lot 1 in Block I of WOODLANDS PART PHASE I REPLAT, a Subdivision according to the Plat recorded in Plat Book 11 at Pages 157-159 of the Hays County Plat Records,
- at 832.56 ft. passing a Dixon Rod and Cap 609 found 0.07 ft. Northwest of line (approximately 0.9 ft. Northwest of old Wire Fence) marking the Northwest common corner of Lots 1 and 2 in said Block I,
- at 896.44 ft. passing a Dixon Rod and Cap 610 found 0.05 ft. Northwest of line (approximately 1.2 ft. Northwest of old Wire Fence) marking the Northwest common corner of Lots 2 and 3 in Block I,
- at 960.60 ft. passing a Dixon Rod and Cap 611 found 0.02 ft. Southeast of line (approximately 1.1 ft. Northwest of old Wire Fence) marking the Northwest common corner of Lots 3 and 4 in Block I,

- at 1024.50 ft. passing a Dixon Rod and Cap 612 found 0.08 ft. Northwest of line (approximately 1.2 ft. Northwest of old Wire Fence) marking the Northwest common corner of Lots 4 and 5 in Block I,
- at 1088.51 ft. passing a Dixon Rod and Cap 613 found 0.02 ft. Northwest of line (approximately 0.9 ft. Northwest of old Wire Fence) marking the Northwest common corner of Lots 5 and 6 in Block I,
- at 1152.54 ft. passing a Dixon Rod and Cap 614 found 0.02 ft. Southeast of line (approximately 1.1 ft. Northwest of old Wire Fence) marking the Northwest common corner of Lots 6 and 7 in Block I,
- at 1216.46 ft. passing a Dixon Rod and Cap 615 found 0.29 ft. Northwest of line (approximately 1.2 ft. Northwest of old Wire Fence) marking the West corner of Lot 7 in Block I
- at 1500.80 ft. passing a Standard Rod and Cap 652 set on line,
- at 3734.46 ft. passing Point 639 at the Center of the base of a 6-1/2 in. Pole Post as described above,

in all for a total distance of 3735.03 ft. to a Standard Rod and Cap 654 set to mark the intersection of the Northeast line of Hays County Road 158 as presently fenced and used upon the ground, and from which Point:

- Standard Rod and Cap 635 set by a 6 in. Pole Post at Angle in Wire Fence to mark an Angle Point in said present road right-of-way as fenced bears N46°14'25"W, 1437.48 ft. (the Northeast and Southeast lines of Hays County Road 158 as found presently fenced and used upon the ground running from Standard Rod and Cap 654 to 635 to 634 to 633 to 650 as herein after described);

- 3) **THENCE** S44°02'20"W, 9.43 ft. to a Standard Rod and Cap 651 set (within the present right-of-way of Hays County Road 158 as fenced and used) to mark the South corner of the former 126.6 acre Will Hill tract and the South corner of the 126.51 acre tract conveyed to A.W. Gregg, Jr., Trustee;
- 4) **THENCE** along the Southwest line of said 126.51 acre Gregg tract, same being the Southwest line of the former 126.6 acre Will Hill tract, N46°14'25"W, 1473.95 ft. to to an Unmarked Point 660 on the Asphalt Pavement of Hays County Road 158, said Point being in the reconstructed Position of a Fence Corner Post at the West corner of the former 126.6 acre Will Hill tract as reported by James E. Byrn, PE, in 1971 (Volume 246 Page 796 HCDR) and from which:

- a 1/2 in. Iron Rod 659 found and taken for the "iron stake" set by Mr. Bryn to mark the Ell corner on the Northwest line of the 126.51 acre tract conveyed to A. W. Gregg bears N43°09'58"E, 502.06 ft. (Bryn's call of 505.25 ft. being considered to be in error)
 - a Standard Rod and Cap 633 set by a 6 in. Pole Post at Angle in Wire fence to mark an Angle point in the Right-of-way of Hays County Road 158 as presently fenced and used bears N48°40'06"E, 49.34 ft.
 - a Standard Rod and Cap 634 set by a 5 in. Pole Post at Angle in Wire fence to mark an Angle point in the Right-of-way of Hays County Road 158 as presently fenced and used bears N76°09'12"E, 27.32 ft.
 - a Standard Rod and Cap 635 set by a 6 in. Pole Post at Angle in Wire fence to mark an Angle point in the Right-of-way of Hays County Road 158 as presently fenced and used bears S60°43'17"E, 37.72 ft.
 - a 3/8 in. Spike 632 set in an old 5 in. Cedar Post leaning well off plumb bears N43°17'26"E, 517.22 ft., said Cedar Post being taken for the identical Cedar Post described as marking an Ell Corner on the Southwest line of that certain 126.6 acre tract of land conveyed by Edward F. Reuss, Trustee, to Will Hill by Warranty Deed dated May 4, 1923 recorded in Volume 85 at Page 188 HCDR;
- 5) **THENCE** along the Northwest line of the former Will Hill 126.6 ac. tract, N43°17'26"E, 516.38 ft. to an Unmarked Point 662 at the intersection of the Southwest line of that certain 33.30 ac. tract of land described in Contract of Sale and Purchase between the Veteran's Land Board of Texas and Freddie Lee Sturdivant, Purchaser, dated May 21, 1969 recorded in Volume 230 at Page 391 HCDR and from which Point 662:
- Spike 632 described above bears N43°17'26"E, 0.84 ft.
- 6) **THENCE** S46°29'59"E, along the Southwest line of the 33.30 acre Sturdivant tract, 14.67 ft. to a Point 650 set on the Northeasterly prolongation of the Southeast line of Hays County Road 158 as fenced, and from which:
- the above-mentioned Standard Rod and Cap 633 at an Angle Point on the Southeast line of Hays County Road 158 as fence bears S44°31'20"W, 467.32 ft.;
- 7) **THENCE** along the Southwest line of said 33.30 acre Freddie Lee Sturdivant tract, S46°29'59"E, 15.02 ft. to an old 3/4 in. Galvanized Iron Pipe 643 found, taken for the identical "iron stake" placed in February, 1969 by William F. Brooks, RPS, to

mark the South corner of that certain 151.50 acre tract of land conveyed by John Hancock Mutual Life Insurance Company to Alex B. Kercheville and W. A. Word by Deed recorded in Volume 124 at Page 58 HCDR and the South corner of the 33.30 acre Freddie Lee Sturdivant tract, and noting that from said Pipe 643:

- an old 1-1/4 in. Galvanized Iron Pipe 658 found marking the West corner of said 33.30 acre Sturdivant tract bears N46°29'59"W, 597.19 ft., said Pipe being taken for the identical "iron stake" placed by William F. Brooks, RPS in February, 1969;
 - the original West corner of the Albert Pace Sur. 55, A-367, an old Stone Mound found by the undersigned in September, 2001 (later destroyed by construction) bears S46°29'59"E, 20.00 ft.; N43°25'08"E, 5584.90 ft.; and S46°37'19"E, 2462.58 ft.;
 - the original Northerly Ell corner of the Milton B. Atkinson Sur. 10, A-21, a Standard Rod and Cap set to replace the rotten stub of a Cedar Stake in an old Stone Mound found bears S46°29'59"E, 20.00 ft.; N43°25'08"E, 5218.23 ft.; N46°34'52"W, 1626.71 ft.; and N43°25'08"E, 6961.18 ft.;
 - the Position of the original North corner of the William Hemphill Sur. 4, A-221, as reported by Hays County Surveyor B.C. Hardin in 1871 (located from the above corners of the Pace and Atkinson Surveys) bears S46°29'59"E, 20.00 ft.; N43°25'08"E, 5584.90 ft.;
- 8) **THENCE N43°25'08"E**, along the Northwest line of that certain tract of land conveyed by L.A. Farris et ux to Clemens Armbruster by Warranty Deed dated March 1, 1951 recorded in Volume 149 at Page 228 HCDR as the same was resurveyed and marked by William F. Brooks, RPS, in February, 1969,
- at 2436.31 ft. passing on line an old 1 in. Galvanized Iron Pipe 602 found (8 in. Up) on the Southwest side of the Corner Post of a Wire Fence (approximately 2.8 ft. Northwest of another Wire Fence), said Pipe being taken for the identical "iron stake" placed by Mr. Brooks to mark the East corner of the 33.30 acre Sturdivant tract on the Northwest line of the said Armbruster tract, said Pipe 602 marking also the South corner of that certain 37.99 acre tract of land conveyed by W.A. Word et ux and Alex B. Kercheville et ux to Henry Crew Armbruster and William M. Johnson by Warranty Deed dated May 12, 1969 recorded in Volume 230 at Page 402 HCDR and marking the South corner of that certain 5.99 acre tract of land conveyed by Rhonda Kay Sturdivant to J.D. Sturdivant by Special Warranty Deed dated March 12, 1969 recorded in Volume 1513 at Page 874 HCDR;

in all for a total distance of 3245.69 ft. to an old 1 in. Galvanized Iron Pipe 657 (found leaning well off plumb and taken to have been disturbed) reset plumb on the Southwest line of the 80 ft. wide Right-of-way of F.M. 150 to mark a Point on the Southeast line of the former 151.50 acre Kercheville and Word tract described Volume 124 Page 58 HCDR as resurveyed and marked upon the ground by William F. Brooks, RPS, in February, 1969, same Pipe being taken for the identical "iron stake" placed by Mr. Brooks to mark the East corner of the above-mentioned 37.99 acre tract of land conveyed by Word and Kercheville to Armbruster and Johnson as described in Deed recorded in Volume 230 at Page 402 HCDR, and noting that from Pipe 657:

- an old 3/4 in. Galvanized Iron Pipe 656 found on the West side of a broken and leaning Concrete Right-of-way Marker on the Southwest line of the 80 ft. Right-of-way opposite Engineer's Centerline Station 103+32.1 bears N43°42'02"W, 270.72 ft.,
 - a Standard Rod and Cap 98 stamped "98, FD ROW CM" set by the undersigned in September, 2001 in the broken stub of a Concrete Right-of-way Marker on the Northeast line of F.M. 150 opposite Engineer's Centerline Station 103+32.1 bears N43°42'02"W, 270.72 ft. and N46°31'02"E, 79.97 ft.
 - a Point 622 at the center of the Base of a 9 in. leaning Cedar Fence Corner Post bears S8°20'W, 1.62 ft.;
 - a 1/2 in. Iron Rod 627 found on the Southeast side of the Base of the above Post bears S1°27'W, 1.96 ft., said Rod being taken for the "iron stake" placed by James E. Byrn, PE, in October, 1971 as described Volume 246 Page 796 HCDR (but found to be erroneously located);
- 9) THENCE along the Southwest line of F.M. 150, same being the Southwest line of that certain 1.36 acre strip of land conveyed by Charlie F. Hitzfeld et ux to the State of Texas by Right-of-Way Deed dated February 18, 1947 recorded in Volume 137 at Page 273 HCDR and the true Northeast line of the A.W. Gregg tract, S43°42'02"E, 286.05 ft. to a Standard Rod and Cap 647 set opposite Engineer's Centerline Station 108+88.2 to mark the beginning of a 5769.58 ft. radius curve, concave to the Northeast in the Southwest right-of-way line, and from said Rod and Cap 647:
- a 3/8 in. Steel Spike 626 set by the undersigned in September, 2001 in the center of the broken stub of a Concrete Right-of-way Marker bears N46°13'10"E, 0.37 ft.
 - the Top Center of a Concrete Right-of-way Marker 111 bears N46°13'10"E, 79.71 ft., and

- the center of said curve bears $N46^{\circ}17'52''E$, 5769.58 ft.;

10) **THENCE** along said 5769.58 ft. radius curve, in a Southeasterly direction for an arc distance of 258.44 ft., the chord of said arc bearing $S44^{\circ}59'08''E$, 258.41 ft. to the **POINT OF BEGINNING**;

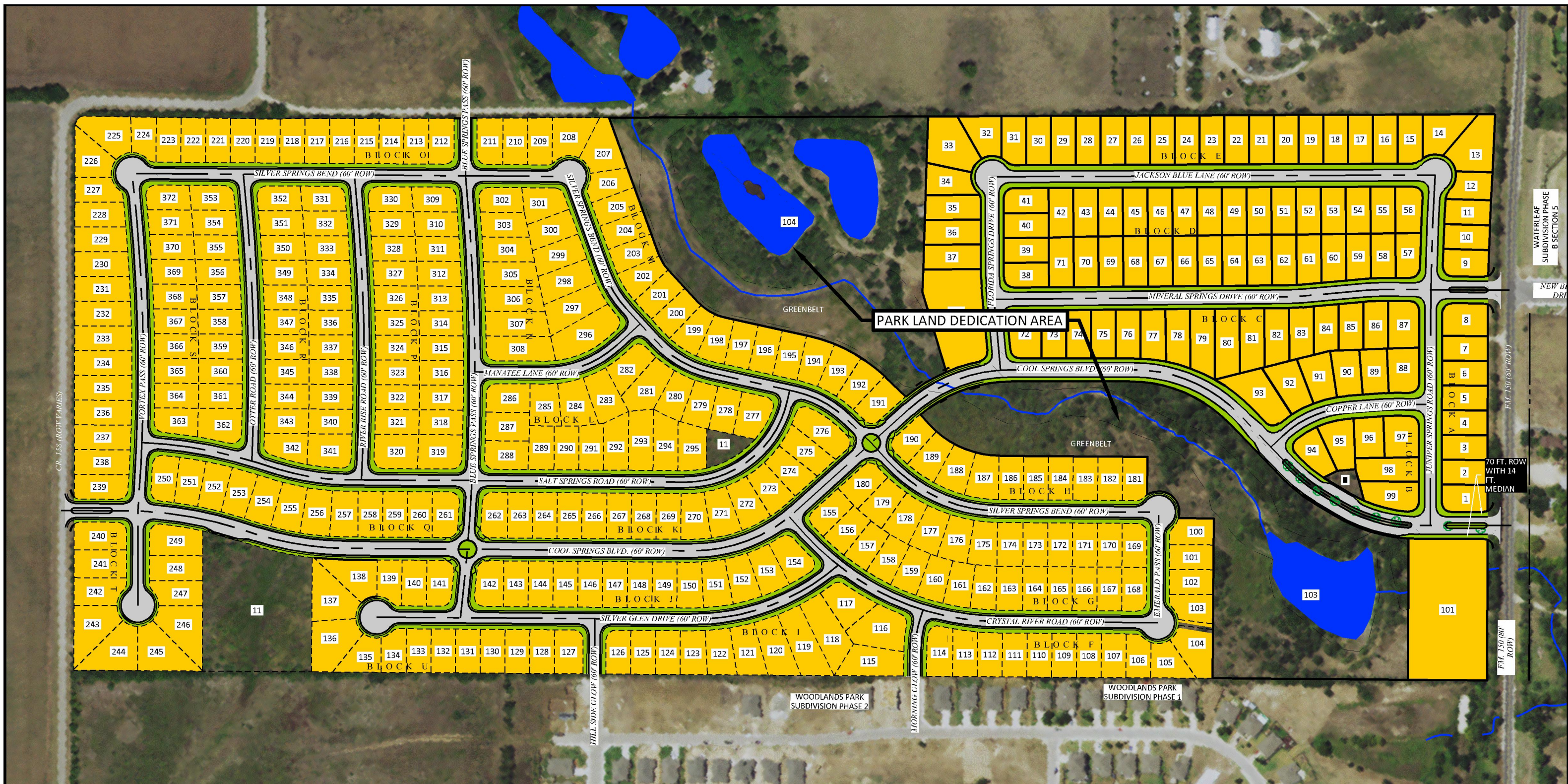
CONTAINING in all 126.41 acres of land within the above described metes and bounds as determined by this resurvey.

I, Kent Neal McMillan, a Registered Professional Land Surveyor, hereby certify that the above is a true and correct description of the results of an actual survey performed under my supervision on the ground, completed September 19, 2006.






Kent Neal McMillan

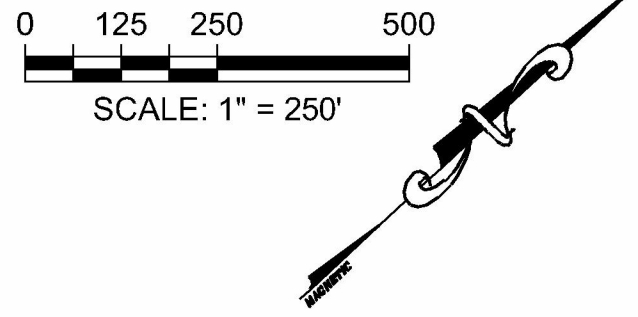
Kent Neal McMillan
Registered Professional Land Surveyor
418 Ridgewood Road
Austin TX 78746
Telephone (512) 445-5441



LAND USE TABLE

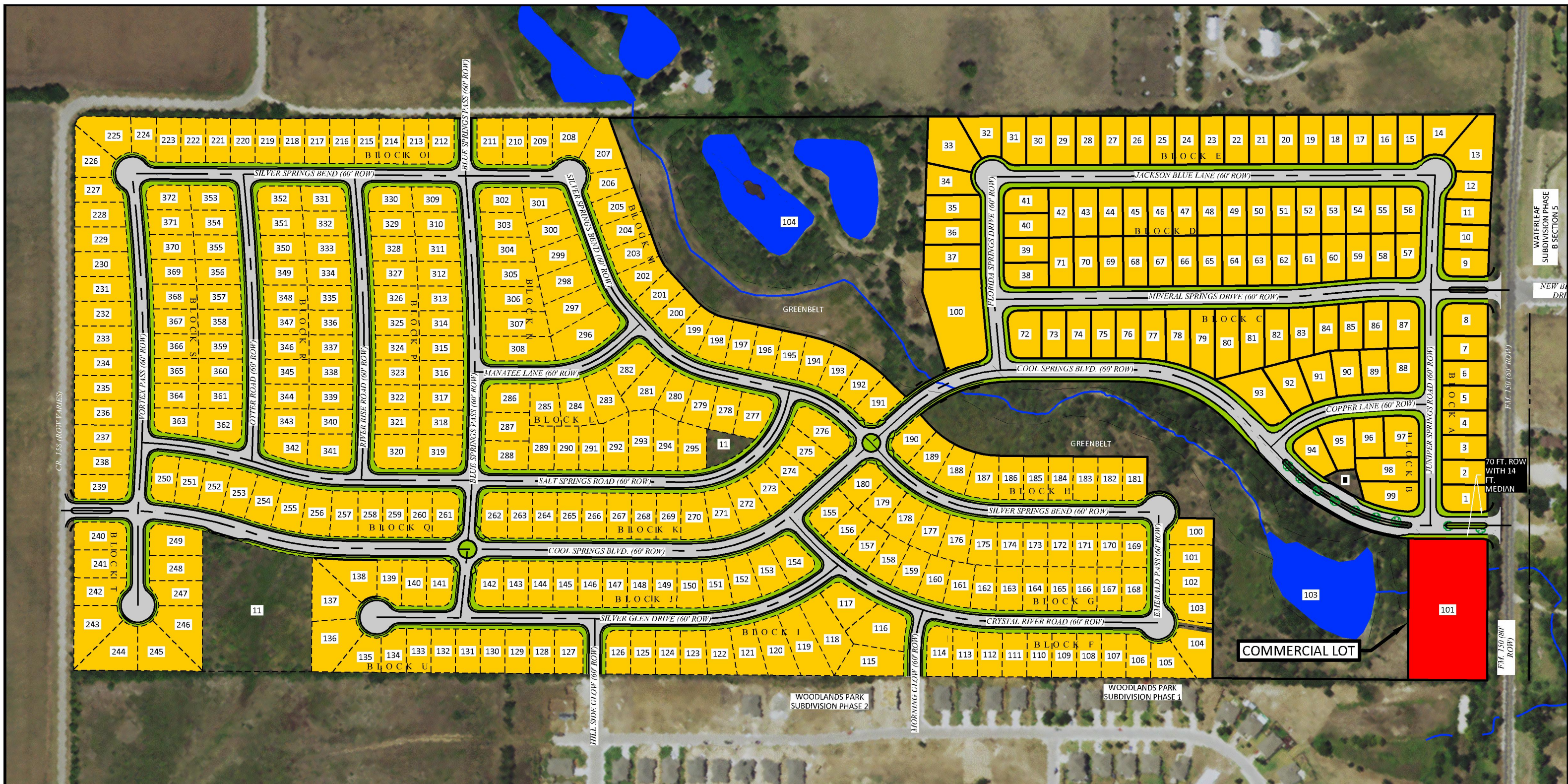
	372 SINGLE FAMILY LOTS (R1-2 ZONING)
	STREET R.O.W.
	ROADWAY/ PAVEMENT

 WET PONDS



COOL SPRINGS SUBDIVISION - EXHIBIT "B"
APPROVED PRELIMINARY PLAT

 CHAN & PARTNERS CONSULTING CIVIL ENGINEERS	CHAN & PARTNERS ENGINEERING, LLC 4319 JAMES CASEY STREET, #300 AUSTIN, TEXAS 78745 512-480-8155 (PH) • 512-480-8811 (FAX) E-mail: info@chanpartners.com WWW.CHANPARTNERS.COM TEXAS REGISTRATION NO. F-13013	SHEET 1 OF 1
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LAND USE TABLE

- 372 SINGLE FAMILY LOTS (R1-2 ZONING)
- STREET R.O.W.
- ROADWAY/ PAVEMENT
- WET PONDS

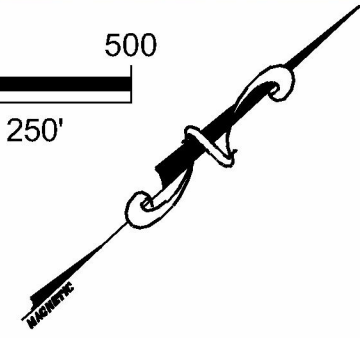
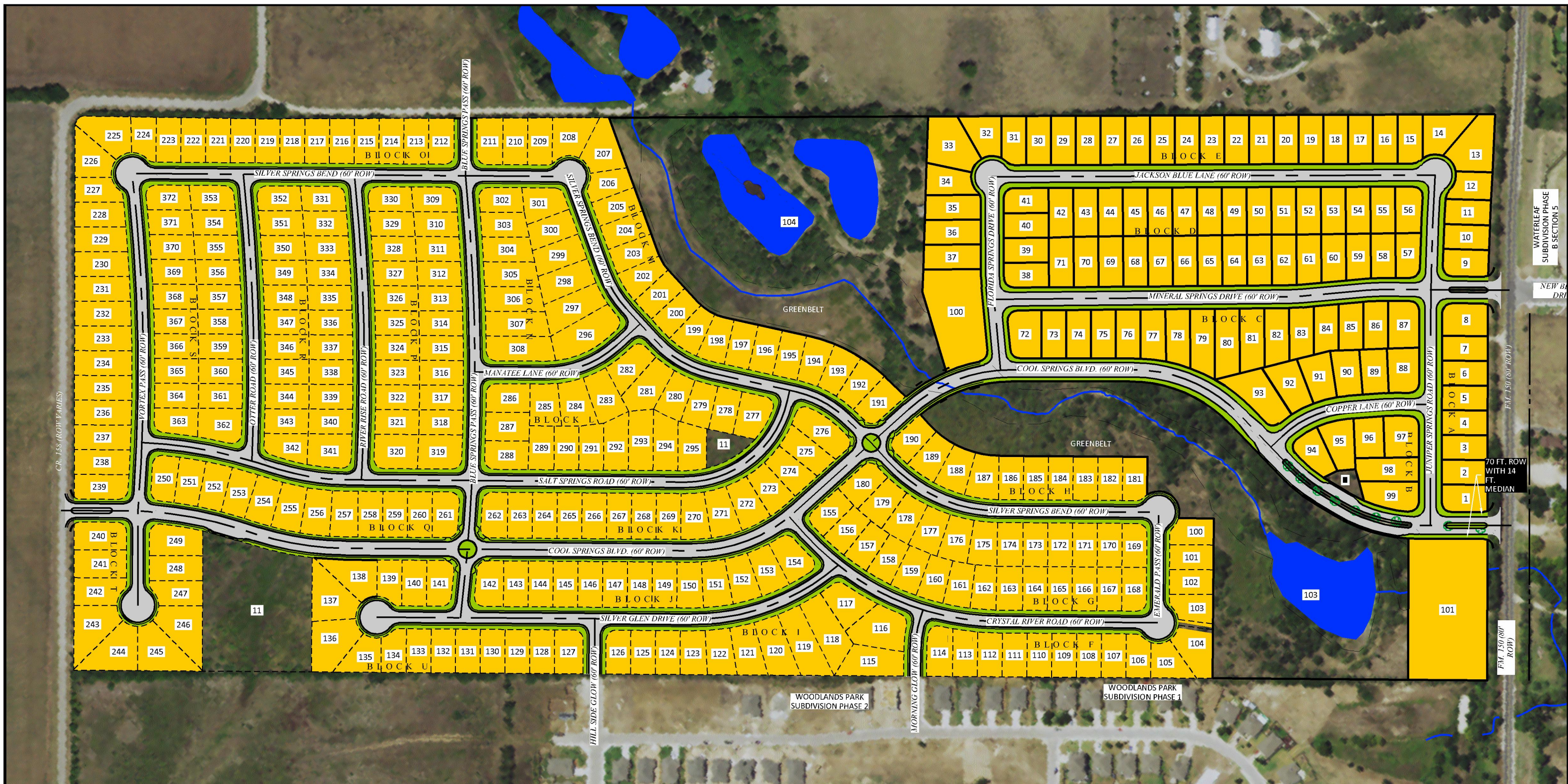





EXHIBIT C

**COOL SPRINGS SUBDIVISION
COMMUNITY COMMERCIAL ("CC") LOT**

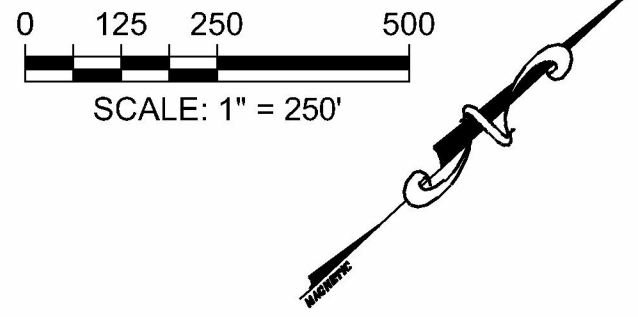
	CHAN & PARTNERS ENGINEERING, LLC	SHEET 1 OF 1
	4319 JAMES CASEY STREET, #300 AUSTIN, TEXAS 78745 512-480-8155 (PH) • 512-480-8811 (FAX) E-mail: info@chanpartners.com WWW.CHANPARTNERS.COM TEXAS REGISTRATION NO. F-13013	
	NEW BARRIERS DRIVE WATERLEAF SUBDIVISION PHASE B SECTION 5	
	70 FT. ROW WITH 14 FT. MEDIAN JUNIPER SPRINGS ROAD (60' ROW) FAL 150 (60' ROW)	



LAND USE TABLE

	372 SINGLE FAMILY LOTS (R1-2 ZONING)
	STREET R.O.W.
	ROADWAY/ PAVEMENT

 WET PONDS



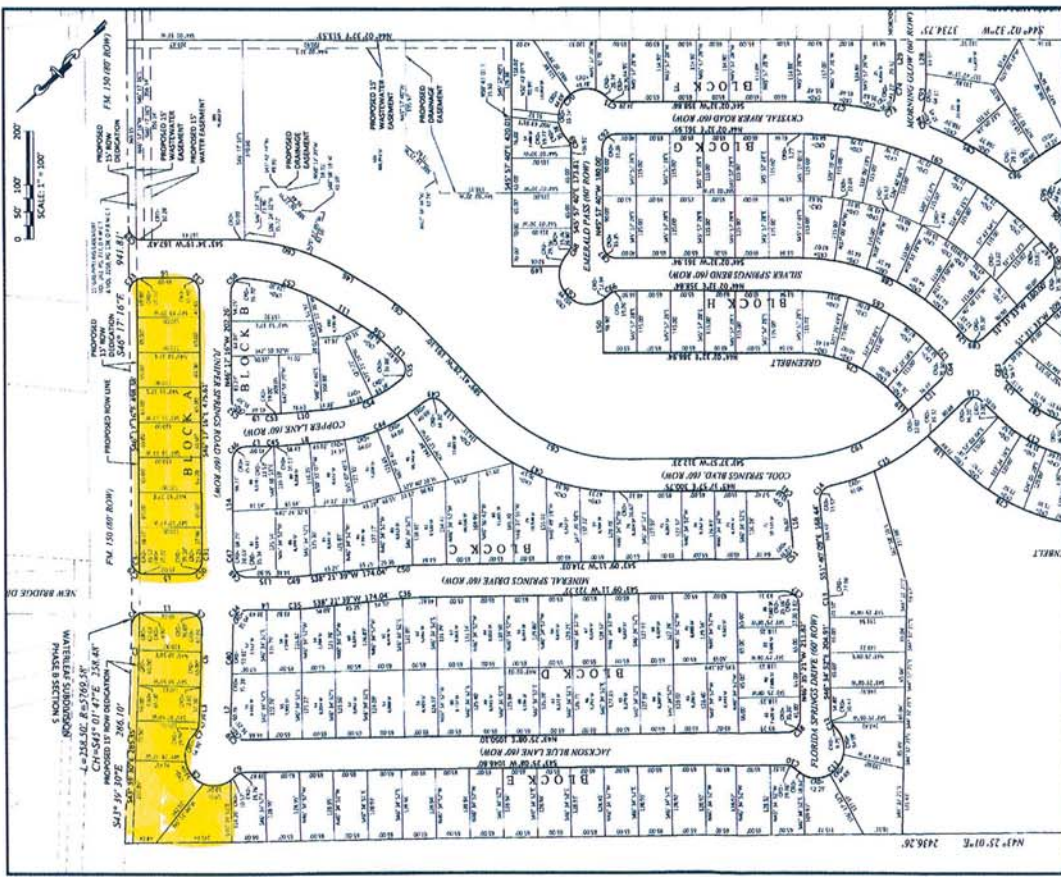
COOL SPRINGS SUBDIVISION
SITE PLAN - EXHIBIT "D"

 CHAN & PARTNERS CONSULTING CIVIL ENGINEERS	CHAN & PARTNERS ENGINEERING, LLC 4319 JAMES CASEY STREET, #300 AUSTIN, TEXAS 78745 512-480-8155 (PH) • 512-480-8811 (FAX) E-mail: info@chanpartners.com WWW.CHANPARTNERS.COM TEXAS REGISTRATION NO. F-13013	SHEET 1 OF 1
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FM 150 AND FM 158 CORRIDOR

PLAT SHEET 1

TRACT NO.	AREA	ACRES	OWNER	DEED NO.	DEED DATE	DEED BOOK	DEED PAGE
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STATE OF TEXAS

§

§

COUNTY OF HAYS

§

DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF KYLE
AND
KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC

This Development Agreement (“Agreement”) by and between the City of Kyle, Texas, a municipal corporation (“City”), and KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC, a Texas limited liability company (“Developer”), is made pursuant to Section 212.172, Texas Local Government Code, and entered into this _____ day of _____, 2016. The term “Parties” or “Party” means the City and the Developer collectively or singularly.

RECITALS

WHEREAS, Developer owns a parcel of real property (the “Property”) in Hays County, Texas, which is more particularly described in the attached Exhibit “A”;

WHEREAS, the City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

WHEREAS, the Property is located inside the corporate limits of the City and the Developer seeks to protect and enhance the beauty, heritage and economic value of the Property;

WHEREAS, the City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area;

WHEREAS, the City Council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interest and welfare of the public;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits described in this Agreement, and other good and valuable consideration, the sufficiency of which is acknowledged by both parties, the City and Developer agree as follows:

ARTICLE 1 PROJECT AND TERMS

1.01 Project Defined. The Project established by the Agreement includes a master-planned residential subdivision that will include single-family lots, a commercial tract, and amenity area(s) with recreational facilities. The Project, includes, the subdivision of the Property, the construction of off-site and on-site utility facilities and Subdivision of Property and Infrastructure (defined below) to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (“Project”). The Project may include multiple phases for platting and construction purposes.

1.02 Terms. The term of this Agreement will commence on the Effective Date and continue for ~~the duration of the development of the entire subdivision.~~ twenty (20) years thereafter, unless sooner terminated under this Agreement as provided herein, (the “Initial Term”). Prior to the end of the Initial Terms, the Owners, any of their respective successors and assigns, may request for an extension of this Agreement

1.03 Control of Development. Developer intends to develop the Property in a manner, which results in enhancing the tax base of the City. Notwithstanding any provision of the Code of Ordinances or uncodified ordinances of the City (“Code”), in effect on the effective date of this agreement, to the contrary, the timing and sequencing of the development of the Property will be based on market demand and conditions and will be completed as and when Developer determines it to be economically feasible.

The described Parkland Property as shown in the Preliminary Plat, (Exhibit “B”) will be dedicated to the City upon the installation of the improvements as specified in Section 2.07 of this agreement. The agreed upon infrastructure for the improvements to the dedicated property will be completed in accordance with the timing outlined in Section 2.07.

ARTICLE 2 DEVELOPMENT STANDARDS AND REVIEW PROCEDURES

2.01 Generally. Except as provided in this Agreement, all development applications and development of the Property will comply with the Code in effect as of the Effective Date, ~~as if the Property were inside the corporate limits of the City. The preceding sentence controls even if the City has not annexed the Property.~~ If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control unless Developer agrees to comply with the Code provision in conflict.

2.02 Residential. The Parties agree that Developer has been granted an R-1-2 Single Family Residential for the subject Property. Notwithstanding the requirements in Chart 1 in Chapter 53 of the Code, the maximum number of fifty-five foot (55’) wide single family residential lots allowed to be subdivided on the Property will be twenty-five percent (25%) of the total number of single-family residential subdivision lots ultimately platted on the preliminary plan, which any existing plan may be modified in order to achieve the maximum number of lots, approved for the Property. For purposes of clarifying the preceding sentence, there is no limit to the number of

fifty-five foot (55') wide lots that may be contained in an individual final plat so long as the cumulative total of fifty-five foot (55') wide single family residential lots contained in all recorded final plats of the Property do not exceed twenty-five percent (25%) of all single family lots shown on the approved preliminary plan. No single family residential lot shall be less than fifty-five foot (55') at the building setback line.

2.03 Commercial. Notwithstanding Section 2.02 above, approximately 1.75 acres of the Property, as described in the attached Exhibit "C" shall be subject to use and development standards as to the City's Community Commercial "CC" zoning district.

2.04 Site Plan. Developer has submitted to the City a site plan for the subdivision and development of the Property. A copy of the site plan is attached hereto and incorporated herein for all purposes as Exhibit "D" (the "Site Plan"). Developer hereby confirms that the Site Plan for the subdivision of the Property complies with the City's Subdivision Ordinance requirements for site plans, the zoning district regulations applicable to the Property as set forth in this Agreement, and the City's Comprehensive Master Plan is acceptable to the City pursuant to Section 212.172 of the Tex. Local Government Code, notwithstanding the provisions otherwise required by the Code. The Site Plan constitutes a development plan for the Property, as provided in [Chapter 212 of the Texas Local Government Code](#), Subchapter G.

Subject to the allowable uses set forth in Sections 2.02 and 2.03, a) the total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents (LUEs) as measured for water and wastewater service connections; and b) the intensity and timing of development within the Property will be determined solely by Developer; provided, however, that the intensity of development of the Property shall not exceed 450 LUEs. Upon full build out, any remaining LUE's shall become non-transferrable and cannot be committed to another outside property or project. So long as Developer does not increase the total level of allowable development, as measured by water and wastewater service connections, Developer may amend the Site Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Agreement. The Site Plan will be effective for the Term of this Agreement.

2.05 City Review and Approval. This Agreement will supplement the City's [rulesCode](#), but not replace said [rulesCode](#), and shall govern the review of preliminary plans, subdivision plats, subdivision construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Developer. The City will review and accept applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the preliminary plans, final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Site Plan and the allowable uses set forth herein. [Any preliminary plans, final plats, subdivision construction plans and site development permits for the Property not consistent with the Site Plan will require City approval.](#)

2.06 Parkland Fees. The Developer and the City agree that in lieu of paying parkland dedication fees, the Developer will dedicate the agreed upon property per Exhibit "B" ("Parkland") which shall satisfy all obligations for the payment of parkland dedication fees by the Developer.

2.07 Parkland Improvements. The Developer and the City agree that in lieu of paying parkland improvement fees the Developer shall construct the improvements in the Parkland described below (“Parkland Improvements”) at a cost equal to, but not to exceed \$223,200. For the purposes of this agreement the calculations will be based on 372 lots at the amount of Six Hundred Dollars (\$600.00) per lot totaling \$223,200. Any single-family residential lots over the proposed 372 lots shall be subject to the payment of the parkland improvement fees. However, should the Developer demonstrate that the Parkland Improvements cost exceeded \$223,200, the additional amounts shall be credited and applied to any parkland improvement fees or additional fees that may become due. Parkland Improvements shall consist of the following:

(a) A trail system that shall be a minimum eight feet (8’) wide and will consist of crushed granite, or other mutually agreed upon material in all areas that are less than one and one-half percent (1½%) slope, and shall be concrete where the slope is greater than one and one-half percent (1½%).

(b) A two (2) room restroom facility.

(c) A disc golf course facility.

The trail system shall be completed prior to the completion of Phase I, Section 2 (Roadway Channel Crossing). The remaining Parkland Improvements shall be completed prior to any Certificates of Occupancy’s being issued on more than 100 homes in the Project. Upon completion of the Parkland Improvements, the Parkland shall be dedicated to the City and the City shall assume all responsibility and or obligation to maintain, operate, repair or replace the Parkland Improvements.

2.08 Other Fees. Except for fees or expenses otherwise specifically provided for in this Agreement, all fees will be paid by Developer to the City in accordance with City regulationsCode.

2.09 Fencing. Developer shall construct and maintain a stone/masonry fence and or berm and landscaping along all homes along the FM 150 (Lots 1-14) and FM 158 (Lots 215-245) corridor. Homes must have stone or masonry on all 4 sides; no hardiplank will be allowed on these homes (see attached diagram of lots Exhibit “E”). Developer may assign to a property owners association the obligation to maintain, repair or replace said as required by the Code.

2.10 Additional Amenities. Developer shall form a property owners association for the residential lots which association shall be a non-profit corporation. (“POA”). The POA shall be formed prior to the conveyance of a residential lot to a third-party with a completed residence thereon. The POA shall require dues and will be responsible for the maintenance, repair and replacement of any amenities or common areas conveyed by the Developer to the POA.

ARTICLE 3 SUBDIVISION INFRASTRUCTURE

3.01 Subdivision Infrastructure. All streets, roads, sidewalks, drainage, water and

wastewater lines and facilities and all other infrastructure within the Property (“Subdivision Infrastructure”), will be constructed by Developer to meet Code standards and will be dedicated and conveyed to the City at no cost to the City.

3.02 Compatibility and Neighborhood Feel.

- (a) The Developer agrees that all homes along the FM 150 (Lots 1-14) and FM 158 (Lots 215-245) corridor will have stone or masonry on all 4 sides; no hardiplank will be allowed on these homes.
- (b) No Driveways shall be allowed to access the Cool Springs Boulevard.
- (c) Developer shall be allowed to narrow Cool Springs Boulevard width to a minimum of thirty-two feet (32’) from face of curb to face of curb in order to reduce vehicle speed for safety purposes, as well as improve the aesthetics of the subdivision; excluding the portion between FM 150 and the Copper Lane/Cool Springs Blvd. intersection.
- (d) No garbage pickup will be allowed along Cool Springs and at least one side of Cool Springs will be signed for “No Parking” to maintain two-way traffic.
- (e) Developer shall include roundabout intersections in lieu of standard two (2) or four (4) way stop signs at the intersection of Silver Springs and Blue Springs Pass with Cool Springs Blvd.
- (f) Maximum posted speed shall not exceed 30 mph.
- (g) Stop signs shall be placed in designated areas to help control speed as warranted.
- (h) The crossover connecting Phase I and II shall be safely marked as a pedestrian zone.
- (i) The wet pond located in the far Southeast corner of Phase II, between lot #137 and #247, shall be maintained by the POA.

**ARTICLE 4
WASTEWATER SERVICE**

4.01 Intent of the Parties Regarding Utility Services. As of the Effective Date, the City has sufficient wastewater treatment capacity to allow service connections for 450 LUEs wastewater service to the Property. The Parties acknowledge that the Property will build out over a number of years and that the City may decide to incrementally construct additional utility system improvements over time. Developer acknowledges that it is the City’s responsibility to determine if the utility system needs to be expanded and how the City will expand its utility system to enable the City to meet its utility service obligations under this Agreement. Developer further acknowledges the City’s desire to retain flexibility on deciding which utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Developer requires certainty regarding the City’s plans for meeting City’s utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City’s wastewater utility systems for the purpose

of the City meeting its Utility Service obligations in accordance with the terms of this Agreement.

4.02 Utility Improvement Construction Obligations. Developer shall be solely responsible for the construction of facilities within the property and offsite improvements as needed to connect to the City or water district existing utilities.

4.03 Use of City Property and Easements. The City hereby consents, at no cost to Developer, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct an Subdivision Infrastructure, or for Developer to perform its obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements.

4.04 Easement Acquisition. The Utility Improvements and related easements are necessary and required by the City for the City to provide water and wastewater service to the Property. The City further agrees that there exists a public necessity for the construction of the Utility Improvements therefore; the City agrees to cooperate and support Developer's acquisition of necessary easements from third parties.

4.05 Satisfactory Completion of Subdivision Infrastructure. Upon completion of construction of each of Subdivision Infrastructure, Developer shall provide the City with final "record" drawings of the Subdivision Infrastructure, in both hard copy and digital (PDF or CAD, as requested by the City). Developer's engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of Subdivision Infrastructure within a reasonable time period. The City shall, within a reasonable time period of conducting the final inspection, provide a list of deficiencies found in the inspection so that when the deficiencies are corrected, Subdivision Infrastructure will meet the requirements for acceptance by the City for ownership, operation and maintenance. Developer shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect Subdivision Infrastructure within a reasonable period of time, and if all deficiencies have been remedied to the City's satisfaction, the City shall furnish a Letter of Satisfactory Completion to Developer stating that Subdivision Infrastructure has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept Subdivision Infrastructure for ownership, operation and maintenance.

4.06 City Acceptance of Subdivision Infrastructure.

- (a) As a precondition to the City's final acceptance of a Subdivision Infrastructure, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to Subdivision Infrastructure to be accepted will also be delivered to the City. Utility easements for water and wastewater lines and other utility

facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of Subdivision Infrastructure.

- (b) Upon the City issuing a Letter of Satisfactory Completion, Developer shall dedicate the Subdivision Infrastructure to the City. The City shall accept each such completed Subdivision Infrastructure for ownership, operation and maintenance within a reasonable time of Developer's dedication of the Subdivision Infrastructure to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Subdivision Infrastructure.

4.07 City to Own, Operate and Maintain Subdivision Infrastructure. From and after the time of the City's final acceptance of Subdivision Infrastructure, the City will own, operate, and maintain each Utility Improvement as part of the City's utility system and shall be responsible for all [future maintenance](#) costs associated with same. Upon the City's acceptance of all the Utility Improvements within a particular Utility Facility Phase and the City's acceptance of water and wastewater service lines within a recorded final plat, Developer shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that the City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements.

ARTICLE 5

ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

5.01 Assignment of Developer Rights. Developer may assign in whole or part its rights and obligations under this Agreement to the POA or persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective. This Agreement may be assigned by Developer without the consent of the City to any Developer-affiliated or related entity, but any assignment of Developer's rights and obligations hereunder will not release Developer of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

5.02 Lot Conveyance Not an Assignment. The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein.

5.03 Agreement Binding on Assigns. This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the

portion or portions of the Property so assigned. Any reference to Developer or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

ARTICLE 6 DEFAULT AND NOTICE

6.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

6.02 Remedies for Default. Whether in contract or tort or otherwise, Developer agrees to waive all claims to damages and other remedies, including specific or strict performance, lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever. Damages, if any, will be limited to amounts recoverable under §271.153 of the Texas Local Government Code.

6.03 Enforcement. This Agreement may be enforced by Developer, but only as provided under §271.153 of the Texas Local Government Code, or by the City by any proceeding at law or equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

6.04 Litigation and Indemnification.

(a) In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Developer and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the City Council. The filing of any third party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

(b) DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS,

ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY RELATING TO DEVELOPER'S ACTIONS ON THE DEVELOPMENT AND CONSTRUCTION OF THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S CONTRACTORS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR CONTRACTORS, TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF OWNER OR OWNER'S TENANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S CONTRACTORS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH

6.05 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section 1; or (iii) one business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

Kalogridis and Kalogridis Development, LLC
Attn: Mitchell Kalogridis, President
2110-B Boca Raton Drive, Suite 102
Austin, TX 78747

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 7 PROPERTY AND MORTGAGEE OBLIGATIONS

7.01 Mortgage Acceptance. Developer shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property with notice of and subject to this Agreement. Developer shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

7.02 Mortgage Protection. This Agreement will not affect the right of Developer to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property (“Lender”) may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to cooperate with Developer and its Lenders’ representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

- (a) Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Property.
- (b) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 6.05, provide the Lender with a copy of any written notice of default given to Developer under this Agreement within ten (10) days of the date such notice is given to Developer.
- (c) Upon default by Developer under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.
- (d) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to the Lender’s

acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that Property until all delinquent fees and other obligations of Developer under this Agreement that relate to the Property have been paid or performed.

7.03 Certificate of Compliance. Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

- (a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;
- (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and
- (c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

ARTICLE 8 MISCELLANEOUS

8.01 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

8.02 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

8.03 Recordation. A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas.

8.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Agreement shall remain in full force and effect. This Agreement is performable in Hays County, Texas.

8.05 Termination or Amendment By Agreement. This Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Developer, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developer of only the portion of the Property affected by the amendment or termination.

8.06 No Third Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

8.07 Effective Date. ~~This Agreement will be effective as of the date upon which all Parties have executed the Agreement~~ This Agreement is legally effective and enforceable on the date it is approved by the City Council of Kyle. This Agreement was approved by the City Council of Kyle on _____, 2016, which date is referred to herein as the "Effective Date."

DEVELOPER:

Kalogridis and Kalogridis Development, LLC.

By: _____
Mitchell Kalogridis, President

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

~~Amelia Sanchez~~ Jennifer Vetrano, Interim City Secretary

APPROVED AS TO FORM:

~~W. Ken Johnson~~ Frank J. Garza, City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This document was acknowledged before me on the _____ day of _____, 2016, by Mitchell Kalogridis, President of KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC, a Texas limited company on behalf of said limited company.

Notary Public State of Texas

(Seal)

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF KYLE
AND
KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC

This Development Agreement (“Agreement”) by and between the City of Kyle, Texas, a municipal corporation (“City”), and KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC, a Texas limited liability company (“Developer”), is made pursuant to Section 212.172, Texas Local Government Code, and entered into this _____ day of _____, 2016. The term “Parties” or “Party” means the City and the Developer collectively or singularly.

RECITALS

WHEREAS, Developer owns a parcel of real property (the “Property”) in Hays County, Texas, which is more particularly described in the attached Exhibit “A”;

WHEREAS, the City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

WHEREAS, the Property is located inside the corporate limits of the City and the Developer seeks to protect and enhance the beauty, heritage and economic value of the Property;

WHEREAS, the City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area;

WHEREAS, the City Council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interest and welfare of the public;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits described in this Agreement, and other good and valuable consideration, the sufficiency of which is acknowledged by both parties, the City and Developer agree as follows:

**ARTICLE 1
PROJECT AND TERMS**

1.01 Project Defined. The Project established by the Agreement includes a master-planned residential subdivision that will include single-family lots, a commercial tract, and amenity area(s) with recreational facilities. The Project, includes, the subdivision of the Property, the construction of off-site and on-site utility facilities and Subdivision of Property and Infrastructure (defined below) to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (“Project”). The Project may include multiple phases for platting and construction purposes.

1.02 Terms. The term of this Agreement will commence on the Effective Date and continue for twenty (20) years thereafter, unless sooner terminated under this Agreement as provided herein, (the “**Initial Term**”). Prior to the end of the Initial Terms, the Owners, any of their respective successors and assigns, may request for an extension of this Agreement

1.03 Control of Development. Developer intends to develop the Property in a manner, which results in enhancing the tax base of the City. Notwithstanding any provision of the Code of Ordinances or uncodified ordinances of the City (“Code”), in effect on the effective date of this agreement, to the contrary, the timing and sequencing of the development of the Property will be based on market demand and conditions and will be completed as and when Developer determines it to be economically feasible.

The described Parkland Property as shown in the Preliminary Plat, (Exhibit “B”) will be dedicated to the City upon the installation of the improvements as specified in Section 2.07 of this agreement. The agreed upon infrastructure for the improvements to the dedicated property will be completed in accordance with the timing outlined in Section 2.07.

**ARTICLE 2
DEVELOPMENT STANDARDS AND REVIEW PROCEDURES**

2.01 Generally. Except as provided in this Agreement, all development applications and development of the Property will comply with the Code in effect as of the Effective Date. If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control unless Developer agrees to comply with the Code provision in conflict.

2.02 Residential. The Parties agree that Developer has been granted an R-1-2 Single Family Residential for the subject Property. Notwithstanding the requirements in Chart 1 in Chapter 53 of the Code, the maximum number of fifty-five foot (55’) wide single family residential lots allowed to be subdivided on the Property will be twenty-five percent (25%) of the total number of single-family residential subdivision lots ultimately platted on the preliminary plan, which any existing plan may be modified in order to achieve the maximum number of lots, approved for the Property. For purposes of clarifying the preceding sentence, there is no limit to the number of fifty-five foot (55’) wide lots that may be contained in an individual final plat so long as the cumulative total of fifty-five foot (55’) wide single family residential lots contained in all recorded final plats of the Property do not exceed twenty-five percent (25%) of all single family

lots shown on the approved preliminary plan. No single family residential lot shall be less than fifty-five foot (55') at the building setback line.

2.03 Commercial. Notwithstanding Section 2.02 above, approximately 1.75 acres of the Property, as described in the attached Exhibit "C" shall be subject to use and development standards as to the City's Community Commercial "CC" zoning district.

2.04 Site Plan. Developer has submitted to the City a site plan for the subdivision and development of the Property. A copy of the site plan is attached hereto and incorporated herein for all purposes as Exhibit "D" (the "Site Plan"). Developer hereby confirms that the Site Plan for the subdivision of the Property complies with the City's Subdivision Ordinance requirements for site plans, the zoning district regulations applicable to the Property as set forth in this Agreement, and the City's Comprehensive Master Plan is acceptable to the City pursuant to Section 212.172 of the Tex. Local Government Code, notwithstanding the provisions otherwise required by the Code. The Site Plan constitutes a development plan for the Property, as provided in Chapter 212 of the Texas Local Government Code, Subchapter G.

Subject to the allowable uses set forth in Sections 2.02 and 2.03, a) the total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents (LUEs) as measured for water and wastewater service connections; and b) the intensity and timing of development within the Property will be determined solely by Developer; provided, however, that the intensity of development of the Property shall not exceed 450 LUEs. Upon full build out, any remaining LUE's shall become non-transferrable and cannot be committed to another outside property or project. So long as Developer does not increase the total level of allowable development, as measured by water and wastewater service connections, Developer may amend the Site Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Agreement. The Site Plan will be effective for the Term of this Agreement.

2.05 City Review and Approval. This Agreement will supplement the City's Code, but not replace said Code, and shall govern the review of preliminary plans, subdivision plats, subdivision construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Developer. The City will review and accept applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the preliminary plans, final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Site Plan and the allowable uses set forth herein. Any preliminary plans, final plats, subdivision construction plans and site development permits for the Property not consistent with the Site Plan will require City approval.

2.06 Parkland Fees. The Developer and the City agree that in lieu of paying parkland dedication fees, the Developer will dedicate the agreed upon property per Exhibit "B" ("Parkland") which shall satisfy all obligations for the payment of parkland dedication fees by the Developer.

2.07 Parkland Improvements. The Developer and the City agree that in lieu of paying parkland improvement fees the Developer shall construct the improvements in the Parkland described below ("Parkland Improvements") at a cost equal to, but not to exceed \$223,200. For

the purposes of this agreement the calculations will be based on 372 lots at the amount of Six Hundred Dollars (\$600.00) per lot totaling \$223,200. Any single-family residential lots over the proposed 372 lots shall be subject to the payment of the parkland improvement fees. However, should the Developer demonstrate that the Parkland Improvements cost exceeded \$223,200, the additional amounts shall be credited and applied to any parkland improvement fees or additional fees that may become due. Parkland Improvements shall consist of the following:

(a) A trail system that shall be a minimum eight feet (8') wide and will consist of crushed granite, or other mutually agreed upon material in all areas that are less than one and one-half percent (1½%) slope, and shall be concrete where the slope is greater than one and one-half percent (1½%).

(b) A two (2) room restroom facility.

(c) A disc golf course facility.

The trail system shall be completed prior to the completion of Phase I, Section 2 (Roadway Channel Crossing). The remaining Parkland Improvements shall be completed prior to any Certificates of Occupancy's being issued on more than 100 homes in the Project. Upon completion of the Parkland Improvements, the Parkland shall be dedicated to the City and the City shall assume all responsibility and or obligation to maintain, operate, repair or replace the Parkland Improvements.

2.08 Other Fees. Except for fees or expenses otherwise specifically provided for in this Agreement, all fees will be paid by Developer to the City in accordance with City Code.

2.09 Fencing. Developer shall construct and maintain a stone/masonry fence and or berm and landscaping along all homes along the FM 150 (Lots 1-14) and FM 158 (Lots 215-245) corridor. Homes must have stone or masonry on all 4 sides; no hardiplank will be allowed on these homes (see attached diagram of lots Exhibit "E"). Developer may assign to a property owners association the obligation to maintain, repair or replace said as required by the Code.

2.10 Additional Amenities. Developer shall form a property owners association for the residential lots which association shall be a non-profit corporation. ("POA"). The POA shall be formed prior to the conveyance of a residential lot to a third-party with a completed residence thereon. The POA shall require dues and will be responsible for the maintenance, repair and replacement of any amenities or common areas conveyed by the Developer to the POA.

ARTICLE 3 SUBDIVISION INFRASTRUCTURE

3.01 Subdivision Infrastructure. All streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property ("Subdivision Infrastructure"), will be constructed by Developer to meet Code standards and will be dedicated and conveyed to the City at no cost to the City.

3.02 Compatibility and Neighborhood Feel.

- (a) The Developer agrees that all homes along the FM 150 (Lots 1-14) and FM 158 (Lots 215-245) corridor will have stone or masonry on all 4 sides; no hardiplank will be allowed on these homes.
- (b) No Driveways shall be allowed to access the Cool Springs Boulevard.
- (c) Developer shall be allowed to narrow Cool Springs Boulevard width to a minimum of thirty-two feet (32') from face of curb to face of curb in order to reduce vehicle speed for safety purposes, as well as improve the aesthetics of the subdivision; excluding the portion between FM 150 and the Copper Lane/Cool Springs Blvd. intersection.
- (d) No garbage pickup will be allowed along Cool Springs and at least one side of Cool Springs will be signed for "No Parking" to maintain two-way traffic.
- (e) Developer shall include roundabout intersections in lieu of standard two (2) or four (4) way stop signs at the intersection of Silver Springs and Blue Springs Pass with Cool Springs Blvd.
- (f) Maximum posted speed shall not exceed 30 mph.
- (g) Stop signs shall be placed in designated areas to help control speed as warranted.
- (h) The crossover connecting Phase I and II shall be safely marked as a pedestrian zone.
- (i) The wet pond located in the far Southeast corner of Phase II, between lot #137 and #247, shall be maintained by the POA.

**ARTICLE 4
WASTEWATER SERVICE**

4.01 Intent of the Parties Regarding Utility Services. As of the Effective Date, the City has sufficient wastewater treatment capacity to allow service connections for 450 LUEs wastewater service to the Property. The Parties acknowledge that the Property will build out over a number of years and that the City may decide to incrementally construct additional utility system improvements over time. Developer acknowledges that it is the City's responsibility to determine if the utility system needs to be expanded and how the City will expand its utility system to enable the City to meet its utility service obligations under this Agreement. Developer further acknowledges the City's desire to retain flexibility on deciding which utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Developer requires certainty regarding the City's plans for meeting City's utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City's wastewater utility systems for the purpose of the City meeting its Utility Service obligations in accordance with the terms of this Agreement.

4.02 Utility Improvement Construction Obligations. Developer shall be solely responsible for the construction of facilities within the property and offsite improvements as needed to connect to the City or water district existing utilities.

4.03 Use of City Property and Easements. The City hereby consents, at no cost to Developer, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct a Subdivision Infrastructure, or for Developer to perform its obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements.

4.04 Easement Acquisition. The Utility Improvements and related easements are necessary and required by the City for the City to provide water and wastewater service to the Property. The City further agrees that there exists a public necessity for the construction of the Utility Improvements therefore; the City agrees to cooperate and support Developer's acquisition of necessary easements from third parties.

4.05 Satisfactory Completion of Subdivision Infrastructure. Upon completion of construction of each of Subdivision Infrastructure, Developer shall provide the City with final "record" drawings of the Subdivision Infrastructure, in both hard copy and digital (PDF or CAD, as requested by the City). Developer's engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of Subdivision Infrastructure within a reasonable time period. The City shall, within a reasonable time period of conducting the final inspection, provide a list of deficiencies found in the inspection so that when the deficiencies are corrected, Subdivision Infrastructure will meet the requirements for acceptance by the City for ownership, operation and maintenance. Developer shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect Subdivision Infrastructure within a reasonable period of time, and if all deficiencies have been remedied to the City's satisfaction, the City shall furnish a Letter of Satisfactory Completion to Developer stating that Subdivision Infrastructure has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept Subdivision Infrastructure for ownership, operation and maintenance.

4.06 City Acceptance of Subdivision Infrastructure.

- (a) As a precondition to the City's final acceptance of a Subdivision Infrastructure, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to Subdivision Infrastructure to be accepted will also be delivered to the City. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of Subdivision Infrastructure.

- (b) Upon the City issuing a Letter of Satisfactory Completion, Developer shall dedicate the Subdivision Infrastructure to the City. The City shall accept each such completed Subdivision Infrastructure for ownership, operation and maintenance within a reasonable time of Developer's dedication of the Subdivision Infrastructure to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Subdivision Infrastructure.

4.07 City to Own, Operate and Maintain Subdivision Infrastructure. From and after the time of the City's final acceptance of Subdivision Infrastructure, the City will own, operate, and maintain each Utility Improvement as part of the City's utility system and shall be responsible for all future maintenance costs associated with same. Upon the City's acceptance of all the Utility Improvements within a particular Utility Facility Phase and the City's acceptance of water and wastewater service lines within a recorded final plat, Developer shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that the City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements.

ARTICLE 5

ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

5.01 Assignment of Developer Rights. Developer may assign in whole or part its rights and obligations under this Agreement to the POA or persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective. This Agreement may be assigned by Developer without the consent of the City to any Developer-affiliated or related entity, but any assignment of Developer's rights and obligations hereunder will not release Developer of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

5.02 Lot Conveyance Not an Assignment. The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein.

5.03 Agreement Binding on Assigns. This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developer or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**ARTICLE 6
DEFAULT AND NOTICE**

6.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

6.02 Remedies for Default. Whether in contract or tort or otherwise, Developer agrees to waive all claims to damages and other remedies, including specific or strict performance, lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever. Damages, if any, will be limited to amounts recoverable under §271.153 of the Texas Local Government Code.

6.03 Enforcement. This Agreement may be enforced by Developer, but only as provided under §271.153 of the Texas Local Government Code, or by the City by any proceeding at law or equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

6.04 Litigation and Indemnification.

- (a) In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Developer and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the City Council. The filing of any third party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

- (b) DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY RELATING TO DEVELOPER'S ACTIONS ON THE DEVELOPMENT AND CONSTRUCTION OF THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR

INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S CONTRACTORS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR CONTRACTORS, TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF OWNER OR OWNER'S TENANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S CONTRACTORS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH

6.05 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section 1; or (iii) one business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

Kalogridis and Kalogridis Development, LLC
Attn: Mitchell Kalogridis, President
2110-B Boca Raton Drive, Suite 102
Austin, TX 78747

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 7
PROPERTY AND MORTGAGEE OBLIGATIONS

7.01 Mortgage Acceptance. Developer shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property with notice of and subject to this Agreement. Developer shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

7.02 Mortgage Protection. This Agreement will not affect the right of Developer to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property (“Lender”) may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to cooperate with Developer and its Lenders’ representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

(a) Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Property.

(b) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 6.05, provide the Lender with a copy of any written notice of default given to Developer under this Agreement within ten (10) days of the date such notice is given to Developer.

(c) Upon default by Developer under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.

(d) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to the Lender’s acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that Property until all delinquent fees and other obligations of Developer under this Agreement that relate to the Property have been paid or performed.

7.03 Certificate of Compliance. Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

- (a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;
- (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and
- (c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

**ARTICLE 8
MISCELLANEOUS**

8.01 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

8.02 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

8.03 Recordation. A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas.

8.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Agreement shall remain in full force and effect. This Agreement is performable in Hays County, Texas.

8.05 Termination or Amendment By Agreement. This Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Developer, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developer of only the portion of the Property affected by the amendment or termination.

8.06 No Third Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

8.07 Effective Date. This Agreement is legally effective and enforceable on the date it is approved by the City Council of Kyle. This Agreement was approved by the City Council of Kyle on _____, 2016, which date is referred to herein as the “**Effective Date.**”

DEVELOPER:

Kalogridis and Kalogridis Development, LLC.

By: _____
Mitchell Kalogridis, President

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

Jennifer Vetrano, City Secretary

APPROVED AS TO FORM:

Frank J. Garza, City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This document was acknowledged before me on the _____ day of _____, 2016,
by Mitchell Kalogridis, President of KALOGRIDIS AND KALOGRIDIS DEVELOPMENT,
LLC, a Texas limited company on behalf of said limited company.

Notary Public State of Texas

(Seal)



CITY OF KYLE, TEXAS

City Manager's Report

Meeting Date: 6/7/2016

Date time:7:00 PM

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

Other Information: See attached.

Legal Notes: N/A

Budget Information: N/A

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Convene-Executive Session

Meeting Date: 6/7/2016

Date time:7:00 PM

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

1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
2. 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.
 - Project Steel Blue

Other Information:

Legal Notes:

Budget Information:

ATTACHMENTS:

Description

No Attachments Available



CITY OF KYLE, TEXAS

Reconvene

Meeting Date: 6/7/2016

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