

DRAFT

4-17-2014

INTERLOCAL COOPERATION ACT AGREEMENT

Between The

CITY OF KYLE AND LONE STAR RAIL DISTRICT

This Interlocal Cooperation Agreement is authorized by Chapter 791 of the Texas Government Code and by Chapter 173 of the Texas Transportation Code (Chapter 173) and is by and between the City of Kyle, a Texas home-rule municipal corporation (City) and Lone Star Rail District, a Texas Intermunicipal Rail District (LSRD) (Parties) and has an effective date of _____, 2014.

RECITALS

This agreement (Agreement) is an interlocal agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each party represents and warrants that the compensation to be made to the performing party contemplated in this Agreement are in amounts that fairly compensate the performing party for the services or functions described in this Agreement, and are made from current revenues available to the paying party.

Chapter 173 authorizes local governments to enter into interlocal cooperation agreements with intermunicipal rail districts for the creation of a Transportation Infrastructure Zone. A transportation infrastructure zone establishes a mechanism for a local government to capture increments of ad valorem taxes from the increased tax revenue attributable to the construction and operation of an intermunicipal rail system within the territory of the participating local government.

LSRD and the City wish to create a transportation infrastructure zone to facilitate the City's contribution of financing for the LSRD rail system. The zone created by LSRD and the City (Zone) will be comprised of the one LSRD rail station that is planned to be located within the City's territory. The City will contribute tax increment financing for the design, construction, operation, and maintenance of infrastructure within the Zone, as stated in this Agreement. (Each discrete element of infrastructure for which increment financing will be used in this Agreement is referred to below as "Project").

LSRD wants a transportation infrastructure zone created on or before December 31, 2014 to establish the tax increment base and also wants a method of providing financing for rail purposes within the Zone to be established at this time. The City and LSRD acknowledge that creating the Zone and establishing the date for determining the tax increment base on or before December 31 provides significant value to LSRD and that establishing a mechanism for financing the Zone at this time is also of significant value to both parties.

In consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

DEFINITIONS

1. "Agreement" means this Interlocal Agreement approved by the Parties as shown in Exhibit "B".
2. "Captured Appraised Value" – The value of the taxable property in the Zone for a taxable year as of December 31 less the value of the Tax Increment Base.
3. "Project Plan" is the plan by Lone Star Rail District for transportation facilities and related improvements in or related to service in the Territory of the local government and is attached to this Agreement as Exhibit "A".
4. "Tax Increment" – Taxes levied and collected on the amount of the Captured Appraised Value on taxable property within the Zone.
5. "Tax Increment Base" – The appraised value of all taxable property located in the Zone as of December 31st of the first year during which this Agreement is effective. Tax Increment Base shall not include properties zoned single-family or duplex residential provided that when such property is rezoned, such property shall be included within the Tax Increment Base for the year during which the rezoning occurs and the value of the property for the year during which rezoning occurs shall be added to the Tax Increment Base.
6. "Tax Increment Payment" shall be made semi-annually on March 1 and September 1 (or the first business day thereafter).
7. "Territory" is the city limits of the City.
8. "Zone" means the Transportation Infrastructure Zone and the area within the Zone, as defined on the Exhibit "C" to this Agreement. If there are separate stations in the Zone, the separate areas may be referred to by the station name portion of the Zone.

A. TERM

1. The initial term of this Agreement is 36 years and may be extended for an additional 20 years upon approval by the City Council and LSRD.
2. No later than two years (24 months) before the end of the initial term of this Agreement, the City Council will consider and vote on whether to approve an extension of the term. LSRD will notify the City of the approaching end of the initial term of this Agreement and the option to extend the agreement for an additional 20 years no later than two and a half years (30 months) before the initial termination date.
3. In the event the Council votes to not exercise an extension, the City shall provide

LSRD a written notice no later than 30 days following the Council action stating its intent to not extend the term.

4. Notwithstanding any other term or condition, this Agreement may be terminated by any one of the Parties by giving written notice to the other parties in the month of July preceding an upcoming Renewal Date.
5. It is the intent and understanding of the Parties that the obligations of each party under this Agreement shall remain effective only so long as and provided that there are current revenues available to the paying party for the purposes of this Agreement.

B. GENERAL OBLIGATION OF EACH PARTY

1. LSRD's Requirements:

a. Measure of Viability and Timelines

- i. Measure for Determining Project Viability: LSRD has a contractual agreement or agreements with Union Pacific (UP) for transfer of ownership of Union Pacific's existing rail right of way to or for the benefit of LSRD and LSRD has secured all necessary capital funding for the proposed rail bypass and the proposed passenger rail transportation facilities necessary to initiate service. LSRD also has a financial plan and commitment for funding its operations, capital improvements plan, and repayment for any loans or debt related to its capital funding.
- ii. Regional Cooperation Timeline: If by January 1, 2016, the cities of Austin and San Marcos and the counties of Hays and Travis have not approved an interlocal agreement for participation in funding the operation of the proposed rail transportation facilities, then the City or LSRD, at either's option, may terminate the Agreement and all funds accumulated in the City's Rail Tax Increment Financing Fund will be available for Council to redirect to any lawful municipal purpose.
- iii. Project Timeline: If by January 1, 2020, the LSRD has not met the Measure for Determining Project Viability, then the City or LSRD, at either's option, may terminate the Agreement and all funds accumulated in the City's Rail Tax Increment Financing Fund will be available for Council to redirect to any lawful municipal purpose.

b. Construction Requirements

- i. LSRD will design and plan the transportation facilities and related improvements that are to be constructed in the Zone in a manner consistent with the Project Plan in effect on the Effective Date of this Agreement. The plans and specifications for the infrastructure shall comply with all federal, state, and local design and construction standards, including the Texas Accessibility Standards, and the applicable provisions of the Americans with

Disabilities Act (ADA), and rail and traffic safety standards, in effect at the time of construction.

- ii. The plans and specifications for transportation facilities and related improvements shall be subject to the City's review as provided by statute, code, and applicable local laws; provided, however, the plans and specifications for utility infrastructure for utilities that will be supplied by LSRD (including, without limitation, electric and thermal) shall be in accordance with LSRD requirements and not subject to City approval. LSRD agrees to consult with the City with respect to the design aspects of the transportation facilities and related improvements not directly governed by City code that relate to community integration and general aesthetics. To the extent commercially reasonable and within the financial capacity of LSRD, LSRD shall endeavor to implement the City's recommendations with respect to those design aspects of the transportation facilities and related improvements.
- iii. All sets of plans, as-built drawings, and specifications required to be provided to the City in this Section and elsewhere in this Agreement shall be delivered to the City as complete sets of print and electronic drawings. The electronic drawings shall be in a program format agreed upon by the Parties.
- iv. The plans and specifications for transportation facilities and related improvements in the Zone shall include all track improvements and all other improvements as set forth in the Project Plan. The plans and specifications for the transportation facilities and related improvements shall comply with all federal, state, and local design and construction standards, including the Texas Accessibility Standards, and the applicable provisions of the Americans with Disabilities Act (ADA), and rail and traffic safety standards, in effect at the time of construction.
- v. LSRD's obligation to comply with the Project Plan is subject to the City's provision of funding pursuant to Section B.2.b. of this Agreement, and to LSRD's right to terminate this Agreement. LSRD agrees to provide prior written notice of any proposed material or substantial change to the scope of the work, cost estimates, or project schedule for the Project Plan that is not caused by an event of Force Majeure, as defined herein. LSRD shall have the right to amend and modify the Project Plan without providing prior written notice if the proposed change is not a material or substantial change.

The City shall have a period of 45 business days from the date of receipt of such notice of a material change to provide comments and objections to the proposed change. The absence of written objections or comments by the City will constitute approval of the proposed material change by the City. If the City provides written notice to the LSRD that it objects to the proposed material change, and the objection, as set out in the notice, is not resolved

within 45 business days from the date of such notice, then the City and LSRD shall meet to resolve the noticed objections.

If the City and LSRD are unable to resolve the objections, no change to the Project Plan shall be made which has the effect of increasing the City's costs of participation, delaying the project schedule for the Project Plan, or reducing rail service levels. LSRD shall repair or otherwise make the city whole for any damage to City Property that is the result of its development or construction activities under the Project Plan.

c. Excess Funds and Limitations on Funds.

When the Zone is in operation and Tax Increment Payments are being made, LSRD will annually identify any excess funds not needed for operating reserves, operations and maintenance, or for capital or equipment replacement of the Project and return the excess funds to the City.

2. City's Requirements:

a. Rail Tax Increment Financing Fund

The City shall establish a Rail Tax Increment Financing Fund as a Special Revenue Fund, to account for the property tax increment revenue that is collected in the Transportation Investment Zone related to the proposed rail station within the territory of the City. The property tax increment revenue will accumulate for potential future use in accordance with the terms of this Agreement as the City's contribution of financing for the LSRD rail system. The City may terminate, suspend participation in, or withdraw from this Agreement as stated in Section A.4, Section B. I., and Section E. I. In the event the City terminates, withdraws, or suspends its participation in this Agreement, the City Council may redirect accumulated balances in the City's Rail Tax Increment Financing Fund to any lawful municipal purpose.

b. City's Participation Level

The City's percent increment participation level will be evaluated and may be revised following completion of the City's analysis of its total cost for Project Connect expected to occur in 2014. Setting a percent increment participation level higher than the initial value of zero will require an amendment to the Agreement.

c. Limits on the Rail Increment Financing Fund

- 1) Only the revenue sources or operational support (other than appropriated annual membership payments) designated in this Agreement will be used or provided by the City for its contribution of financing for the LSRD rail system and its operations.
- 2) The City's percent property tax increment participation level shall be ~~fifty-one~~ one percent (~~150~~%) of the Tax Increment unless otherwise stipulated

in this agreement. The City Tax Increment Payment may be increased by an amount up to fifty (50%) percent of the Tax Increment by amendment to this Agreement agreed to by the Parties. The City agrees that it will consider and make the decision on this amendment no later than July 1, 2014. The failure of the Parties to agree on an amendment of this Agreement that sets the City's Tax Increment Payment in an amount sufficient to provide passenger rail service to the City's territory shall entitle the Rail District to terminate this Agreement.

- 3) In addition to the Tax Increment Payment provided to be made by the City in the preceding section, the City shall make an additional payment into the Tax Increment Fund on the dates provided for payments into the Tax Increment Fund equal to ~~50~~1% of the amount of sales tax revenue collected by the City within the Zone which amount exceeds the sales tax revenue collected by the City within the Zone for the year of the Tax Increment Base. The City Tax Increment Payment may be increased by an amount up to fifty (50%) percent of the Tax Increment by amendment to this Agreement agreed to by the Parties. The City agrees that it will consider and make the decision on this amendment no later than July 1, 2014. The failure of the Parties to agree on an amendment of this Agreement that sets the City's Tax Increment Payment in an amount sufficient to provide passenger rail service to the City's territory shall entitle the Rail District to terminate this Agreement.

For the purposes of this Agreement, the amount of sales tax revenues collected by the City within the zone annually will exclude any revenues received from light industrial uses employers with facility space in excess of 60,000 square feet to the lower of either the percentage set in the preceding paragraph or its amended percent level or 25%. Light industrial use shall be identified as currently defined in the City's zoning ordinances and included in Exhibit "D".

- 4) The City shall maintain custody and manage any and all funds deposited in the City's Rail Tax Increment Financing Fund. LSRD shall have no access to, control over, nor any right to manage the City's Rail Tax Increment Financing Fund.
- 5) Preexisting Economic Development or Tax Payment Agreement. If any property is included within the Zone and at the time of inclusion within the Zone, the property is under a preexisting TIF district, 380/381 economic development agreement or tax abatement agreement ("Preexisting Agreement"), by one or more Parties, the property under the Preexisting Agreement will contribute Tax Increment Payments to the Tax Increment Fund as to the respective Party for the duration of the Preexisting Agreement at an amount equal to the net difference between the Preexisting Agreement payment obligation and the Tax Increment Payment. After expiration of the Preexisting Agreement, the Tax Increment Payment shall be governed by this Agreement. Subsequent to the effective date of this Agreement, the City shall not grant any economic

development benefit or enter into any economic development agreement that would result in a reduction in its Tax Increment Payment of the Tax Increment Fund.

d. Uses of City's Rail Tax Increment Financing Fund

- 1) Until the conditions in the Measure for Determining Project Viability are met, no monies shall be disbursed to LSRD from the City's Rail Tax Increment Financing Fund.
- 2) Once the conditions in the "Measure for Determining Project Viability" are met, LSRD may request reimbursements for uses of the City's Rail Tax Increment Financing Fund. Requests for reimbursement must be made in a form approved by the City and shall be submitted to the City 45 days or more before the date of a Tax Increment Payment. The City shall reimburse LSRD only for Projects designed and constructed as stated in Section B.l.b, *Construction Requirements*, above. Reimbursements may be used only for the purposes stated in Texas Transportation Code Section 173.256 (e) "Financing of Certain Transportation Infrastructure," which currently reads as follows:
 - i. To provide a local match for the acquisition of right-of-way in the territory of the local government; or
 - ii. For design, construction, operation, or maintenance of transportation facilities in the territory of the local government.
- 3) During the 24 months before the initiation of passenger rail services, LSRD may request funding for reasonable and necessary start-up costs that are allowable under Texas Transportation Code Section 173.256 (e), excluding rolling stock. These costs may include costs for staff necessary to drive and test rail equipment functionality to meet Federal inspection requirements, security service and insurance on rail facilities. Requests for funding must be made in a form approved by the City and shall be submitted to the City 45 days or more before date of a Tax Increment Payment. Reimbursements may be used only for the purposes stated in Texas Transportation Code Section 173.256 (e) "Financing of Certain Transportation Infrastructure".
- 4) When LSRD begins providing passenger rail service to Kyle residents, the City will begin making Tax Increment Payments of the property tax increment revenue collected and deposited in the City's Rail Tax Increment Financing Fund to Lone Star Rail District semi-annually on March 1 and September 1 (or the first business day thereafter). In addition, the first scheduled payment will include any accumulated balance in the City's Rail Increment Financing Fund.

e. In-Kind Support and Other Funding Sources

- 1) In-Kind Contributions by the City. In addition to the tax increment funds provided herein, City shall provide for all stations served by the District within the portion of the Territory located within the city limits of the City custodial services, maintenance of the station, platform, grounds and landscaping, and expenses related to utilities (water, electric, wastewater services and trash removal) and security. Maintenance and other standards for these services shall be set out in a separate agreement between City and District.
- 2) The Parties may consider other funding options after the conditions in the Measure for Determining Project Viability are met. Any agreement to provide other funding sources will require an amendment to this Agreement approved by the governing bodies of both Parties.

f. No Other Funding Obligation

- 1) Except for contributing its respective Tax Increment Payments to the Tax Increment Fund and providing its In-Kind Contributions as set out in this Agreement, the City shall not have any obligation or responsibility for any costs or expenses associated with the development of the Zone or the implementation of the Project Plan, including, without limitation, any obligation to pay or repay any debt.

f. City's Economic Development Agreements

Subsequent to the effective date of this Agreement, the City may grant economic development agreements or create other tax or fee agreements for property within the Zone. Such agreements shall not reduce the City's participation level established pursuant to Section B.2.b. of this Agreement. The City will inform LSRD of public meetings and hearings relating to these agreements so that it may inform the City of any impact such an agreement may have on the operations of the Project.

g. Project Management

- 1) The City Manager or his designee (the "City's Director") will act on behalf of the City regarding the City's responsibility under this Agreement with respect to the development, maintenance and operations of projects within the Zone and shall coordinate with LSRD, receive and transmit information and instructions, and will have complete authority to interpret and define the City's policies and decisions with respect to the Parties' obligations and performance under this Agreement. The City's Director may designate a City Project Manager and may designate other representatives to transmit instructions and act on behalf of the City with respect to the Parties' obligations and performance under this Agreement.
- 2) The Executive Director of LSRD or his designee (the "LSRD's Director") will act on behalf of LSRD with respect to the development, maintenance and operations of projects within the Zone, and shall coordinate with the

City, receive and transmit information and instructions, and will have complete authority to interpret and define LSRD's policies and decisions with respect to the Parties' obligations and performance under this Agreement. LSRD's Director will designate a LSRD Project Manager and may designate other representatives to transmit instructions and act on behalf of LSRD with respect to the Parties' obligations and performance under this Agreement.

- 3) If a disagreement between the City and LSRD arises regarding any requirement or provision of this Agreement, and the disagreement is not resolved by the City Project Manager and the LSRD Project Manager, it shall be referred as soon as possible to the City's Director and LSRD's Director for resolution. If the Directors do not resolve the issue, it shall be referred as soon as possible to the City's City Manager and LSRD's Director for resolution.

h. City Actions regarding the Zone

- 1) After a Zone is established, the City will endeavor to support station area planning and development implementation that may result in multi-use/transit oriented development (TOD) or other rail supportive growth within each Zone. City staff will inform the Planning and Zoning Commission and the City Council of the conformance of their pending decisions on land use/zoning within the Zone with multi use/TOD or other passenger rail supportive uses within the Zone.
- 2) If appropriate, the City will support and work with LSRD, as necessary, for the establishment and use of other funding mechanisms (such as public improvement districts or municipal management districts) that allow private property owners within the Zone to participate in funding the establishment and ongoing provision of rail service in the Zone.

i. Annual Membership Fee

If LSRD meets the Regional Cooperation Timeline requirement established in paragraph B.1.a.ii of this Agreement, the City shall commence payment of LSRD membership fees commensurate with those paid by other member cities under LSRD established policy commencing with the City's new fiscal year immediately following January 1, 2016.

3. Reporting Requirements of Each Party

a. LSRD Reporting Requirements

- i. LSRD shall provide the City access to its budget calendar, proposed annual budget (operating and capital), and give written notice of adoption of Rail District budgets (operating and capital). LSRD shall provide access to both proposed and approved budgets.

- ii. Once the Measure for Determining Project Viability has been met, LSRD shall prepare an annual report to be provided to all Parties no later than 180 days following the District's year-end (September 30). Such report shall include, at a minimum, the audited financial statements for LSRD, Report on Internal Controls, Single Audit Report, Report on any and all Transportation Infrastructure Zone Funds, Capital Program Status Report, and trend data covering operational statistics and service level metrics.
- iii. Every five years after the effective date of this Agreement, LSRD shall provide no later than 180 days following the District's year-end (September 30) a written, comprehensive 20 year financial forecast covering operations and capital programs accompanied by the underlying forecast assumptions. This forecast shall also include a comprehensive description of rail service levels, anticipated changes in service levels, and the timing of such changes.

b. City Reporting Requirements

The City of Austin shall provide LSRD with annual reports on the City's Rail Tax Increment Financing Fund including, but not limited to, annual tax increment revenue, assessed valuation for properties in the Zone, and accumulated balances in the City's Rail Tax Increment Financing Fund.

c. Right to Audit

LSRD agrees that representatives of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all records of LSRD related to the performance under this Agreement. LSRD shall retain all such records for a period of three years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of LSRD are resolved, whichever is longer. LSRD agrees to refund to the City, in accordance with a schedule reasonably agreed to by the Parties, any overpayments by the City to LSRD disclosed by any such audit. LSRD will pursue reimbursement of overpayments by LSRD to subcontractors discovered by a City audit in a timely manner consistent with passenger rail industry practices. LSRD shall include the preceding language in all subcontractor agreements entered into in connection with this Agreement.

The City agrees that authorized representatives of LSRD shall have access to, and the right to audit, examine or reproduce any and all records of the City's Rail Tax Increment Financing Fund related to the performance under this Agreement. The City shall retain all such records for a period of three years after final payment on this Agreement or until all audit and litigation matters that the LSRD has brought to the attention of the City are resolved, whichever is longer. The City agrees to pay to LSRD any underpayments disclosed by any such audit.

In the event, there is an additional calculation or redetermination of payments by the City or LSRD, the Party providing payments shall have no obligation to make any additional payment if the redetermination or recalculation occurs

more than eighteen (18) months after the date of a payment.

4. Management of the Project and Operations

The Rail District is the only Party with any responsibility for managing or administering the Project or determining the schedule and operations of transportation improvements. The City understands that the service currently contemplated for the City is “skip-stop” service as defined in Exhibit “A” – Project Plan. The City may inspect Project sites and review Project plans and drawings at times and intervals, and comment on the Project. The City shall manage the Zone prior to LSRD successfully meeting the timeline provision in Section B.1.a, *Project Timeline*, above. After LSRD has met the timeline provision of Section B.1.a, *Project Timeline*, the Rail District shall manage the Zone.

C. TRANSPORTATION INFRASTRUCTURE ZONE

1. **Property Included Within the Zone.** All property designated on the maps or in the list of properties attached as Exhibit "C" shall be included within the Zone.
 - a. Property under common ownership, identified as Undivided Property on Exhibit "C" shall be included within the Zone. Such property shall be included in the Tax Increment on a prorated basis for the acreages designated for the property on Exhibit "C" or for the subdivided portions of the property at least 50% within one-half (1/2) mile radius of the corresponding station property or 50% within one-quarter (1/4) mile radius for the corresponding Station property.
 - b. Property designated as tax exempt shall be included in the Zone but shall not be a part of the Tax Increment until the beginning of the year during which it is no longer designated as tax exempt.
2. **Station Locations.** Final Station location decisions are subject to compliance with National Environmental Policy Act (NEPA) requirements. In the event a final determination is made under NEPA to adjust, extend or alter the station location in relation to a Zone designated on the maps as Exhibit "C", the Parties agree that they shall amend the description of the Zone and the maps and listing of properties in Exhibit "C" to reflect property within the one-half (1/2) mile radius of the corresponding station platform, subject to the terms and conditions of this Agreement. LSRD shall be obligated to notify the City as soon as feasible if and when a NEPA determination is made to adjust, extend or alter a station location. Other than agreeing to amend the description of the Zone, the City shall not be responsible or liable for any costs or work associated with adjusting a station location as directed pursuant to NEPA.

D. PERIODIC REVIEW OF AGREEMENT

1. The proposed rail system is currently in the planning phase. Beginning with five years following the Effective Date of this Agreement, and every five years thereafter, the City and LSRD shall re-evaluate the provisions of this Agreement to determine if

any revisions are needed to address changes in operations, capital programs, service levels, or other factors that were not anticipated during the planning phase or prior five-year period. As a result, amendments to the Agreement may be needed.

2. Equity of Funding Effort. LSRD agrees that interlocal agreements for funding of the Project involving other cities and counties in Central Texas will contain funding agreements based on singular funding concepts or providing equivalent funding from other sources. As other Central Texas cities and counties sign interlocal agreements, the City will be provided copies of such interlocal agreements by LSRD and for a period of 60 calendar days after the agreements are provided, the City may object in writing that the funding efforts do not provide equity of effort between the corresponding local government entities.

If the City's objections are not resolved within 60 calendar days after notice to LSRD, the City, until the objection is resolved, shall have the right to suspend payment of that portion of their Tax Increment Payment that the City deems to be unequal in effort to the corresponding local government entities.

E. GENERAL TERMS AND CONDITIONS

1. Termination

Notice of any claims of material breach shall be given in writing to the other Parties, identifying the breach claimed with particularity, and stating the time permitted for cure, such time to be commercially and legally reasonable. Such a notice of claim of breach is sufficient to constitute termination of this Agreement. Without waiving any legal rights, the Parties agree to voluntary mediation of any disputes.

2. Force Majeure

- a. Each party to this Agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent that failure is caused by an event of Force Majeure. Force Majeure means acts and events not within the control of the party, and which the party could not use due diligence to avoid or prevent. Events of Force Majeure include acts of God, strikes, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods and landslides. Force Majeure does not include economic or market conditions, which affect a party's cost, but not its ability to perform.
- b. The party invoking Force Majeure shall give timely and adequate notice to the other party, by facsimile transmission, or telephone confirmed promptly in writing, or electronic mail, of the event. The party shall use due diligence to remedy the effects of Force Majeure as soon as possible. If a party's performance is delayed by the event of Force Majeure, the Parties will mutually agree to extend the time for completion of obligations by a period of time necessary to overcome the effect of the Force Majeure event.

3. Severability

If a term or provision of this Agreement is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law.

4. Notices

Any notices to be given under this Agreement shall be considered delivered (i) upon personal service upon the person designated in this Agreement for such notice; (ii) within three days of deposit if mailed by first-class United States mail, postage prepaid, registered or certified, and addressed to the person designated for receipt of notice; or (iii) one business day after being sent for overnight delivery by a reputable commercial courier having the ability to track shipping and delivery of the notices. In cases where there is an emergency or other need for immediate notice to be given, written notice may be faxed to the person designated for service, provided a written copy of such notice is also delivered promptly to such designated person by one of the three means identified above.

The Parties designate the following persons for receipt of notice:

to LSRD:

Executive Director
Lone Star Rail District
P.O. Box 1618
San Marcos, Texas 78667
Attention: Ross Milloy

With copies to:

William H. Bingham
McGinnis Lochridge
600 Congress Avenue,
Suite 2100
Austin, Texas 78701
Attorneys for LSRD

to City of Kyle:

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

With copies to:

City Attorney

City of Kyle
100 W. Center Street
P.O. Box 40
Kyle, Texas 78640
Attention: City Attorney

The Parties may change the person designated for receipt of notice from time to time by giving notice in writing to the other Parties, identifying the new person designated for receipt of service and identifying his/her name, title, address for notice and phone number.

5. Complete Agreement

This is the complete Agreement by and between the Parties on the subject matter of the Agreement. It supersedes any other agreement or understanding between the Parties, written or oral, and any other commitments, promises, undertakings, understandings, proposals or representations of the Parties to each other, written or oral, concerning the subject matter of this Agreement.

6. Amendment in Writing

This Agreement may be modified only in writing duly executed by each of the Parties. Neither any representation or promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, shall be binding on the Parties unless made in writing and duly executed by each of the Parties.

7. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement.

SIGNATURE PAGE FOLLOWS

APPOVED AND AGREED UPON this ____ day of _____, 2014

LONE STAR RAIL DISTRICT (“LSRD”)

BY: _____
NAME: _____
TITLE: _____

CITY OF KYLE, TEXAS

BY: _____
Lucy Johnson, Mayor

ATTEST: _____
Amelia Sanchez, City Secretary

APPROVED AS TO FORM:

W. Ken Johnson, City Attorney

EXHIBIT A – PROJECT PLANLone Star Rail District Project Plan - LSTAR Passenger Rail Service

Lone Star Rail District (LSRD) will develop and operate a passenger rail service, LSTAR, with proposed stations as shown in the map on Exhibit A-1 plus any added alternate or skip stop stations, running primarily in the right of way of the current Union Pacific Railroad (UPRR) corridor between the Austin and San Antonio metropolitan regions. The development of this service will be accomplished through the construction and/or purchase of:

- Track improvements to bring initial maximum passenger train speed to 79 mph (with provisions that may increase that speed incrementally to 110 mph), including but not necessarily limited to track geometry and/or condition improvements, train control system improvements, and grade crossing adjustments to meet vehicular and pedestrian traffic safety requirements.
- Curve remediation to increase or eliminate current speed limits imposed by track curvature.
- Additional track and related infrastructure (rail bridges, turnout, switch, and train control apparatus, communications apparatus, and so forth) as guided by LSRD's joint service planning effort with UPRR, the goal of which is to identify the improvements needed to support reliable, on-time regular passenger train service while maintaining UPRR's ability to serve its customers in the corridor.
- Stations, including at a minimum platforms, canopies, lighting, seating, passenger information systems, ticket vending equipment (if necessary), and pedestrian bridges.
- Operations and Maintenance Facilities, to include the following:
 - Maintenance shops and yards where LSTAR locomotives and passenger coaches will be stored, inspected, maintained, cleaned, and repaired
 - Operations Control Center where rail system control and communication operations will be centered
 - Maintenance of Way base to function as headquarters and storage for engineering/infrastructure maintenance functions
 - LSRD administrative headquarters to provide space for management and administrative functions of the LSRD and the rail system
- Layover facilities at one or other or both the ends of the line, or mid-line may be needed to provide minor inspection and maintenance of rail rolling stock stored at passenger terminals, and
- Rail Rolling Stock, taking into account the conceptual initial service plan goal's peak equipment requirement plus a margin to account for "shopped" equipment (for inspection, maintenance, or repair). Current plans include a sufficient number of locomotives, bi-level passenger cars, and bi-level passenger/cab cars necessary for the funded service level. In addition to passenger rail rolling stock, LSRD will also acquire in the same fashion specialized track maintenance vehicles, plus a sufficient fleet of highway vehicles to support operations supervision, maintenance, and transit security functions.

Under current project development plans, one (1) station will serve the City of Kyle. The projected station location is a planning location only at this time, and final station location will be determined through the National Environmental Policy Act (NEPA) process. The location of the Operations and Maintenance Facilities has not yet been finalized, but current planning does not envision these facilities being located in the City of Kyle. However, final location of the facilities is subject to the results of the NEPA process and LSTAR operational needs. Track improvements, curve remediation, and additional track and related infrastructure will be built on the proposed LSTAR route through Kyle; the number and magnitude of those improvements will be determined through the NEPA and final design processes. LSTAR rail rolling

stock will serve the Kyle rail station. It is anticipated that Kyle will receive skip-stop or better service within the LSTAR system's funded service level. Skip-stop service splits the funded level of service for one station between two stations based on ridership, funding provision and operational considerations. Facilities, line improvements and rolling stock are also subject to available capital budget resources and contracting or purchasing requirements.

The LSTAR capital program and service levels will be commensurate respectively with the available capital and operations funding levels. The LSTAR service is planned to be built in stages - LSRD will not delay LSTAR passenger rail service initiation until the completion of the entire passenger rail project, but rather commission and operate a minimum logical service (to be analyzed during the NEPA process), while continuing to bring new segments online as they are completed. Project development may also include the phasing of improvements within a segment in order to allow the initiation of service in a timely fashion with available resources and allowing for ongoing or future development of subsequent phases within a segment toward full completion of planned improvements. It is provisionally believed by LSRD planners that the system will generally be built and put in operation from north to south, due to the likely capital investment cash flows, the higher projected ridership in the Central Texas region, and fewer construction challenges (based on conceptual engineering analyses). The schedule for initiation of project development and service provision is to be determined by the completion of the NEPA process and availability of capital funding.

Capital cost estimates are preliminary, and are based on the conceptual service development plan (discussed below). Those costs are:

	<u>Initial Service</u>	<u>Base Service</u>	<u>Full Service</u>
<u>Entire Line</u>	<u>\$700 *</u>	<u>\$840 *</u>	<u>\$1,400 *</u>
<u>Kyle Portion of Line</u>	<u>\$38 *</u>	<u>\$46 *</u>	<u>\$76 *</u>

* All figures are in millions of dollars and are estimates of not to exceed amounts.

It should be noted that the costs above are not additive, but cumulative totals – i.e. to go from Initial to Base Service, the incremental cost for the entire line is \$140 million (\$840 million - \$700 million). Capital cost estimates will be further refined during the NEPA process.

LSTAR service levels will be commensurate with the available funding from participating local jurisdictions (cities, counties, college districts, etc.). For planning purposes LSTAR has prepared its operations and maintenance (O&M) projections based on the following conceptual service level goals:

<u>Initial Service Goal –</u>	<u>60 minute headway on peak</u>
	<u>120 minute headway off peak</u>
	<u>12 total round trips per weekday</u>
	<u>Weekend and holiday service</u>
<u>Base Service Goal –</u>	<u>30 minute headway on peak</u>
	<u>60 minute headway off peak</u>
	<u>20 total round trips per weekday</u>
	<u>Weekend and holiday service</u>
<u>Full Service Goal –</u>	<u>15 minute headway on peak</u>
	<u>60 minute headway off peak</u>
	<u>28-32 total round trips per weekday (including express trips)</u>
	<u>Weekend and holiday service</u>

For estimating purposes here, operations and maintenance costs have been determined for each conceptual level of service goal. The annual net O&M cost (after fares and miscellaneous revenue is accounted for) is planned to be split into thirds, with one third paid by the taxing jurisdictions in the smaller cities in the corridor, another third by the Austin/Travis County metropolitan region taxing jurisdictions, and the final third by the San Antonio/Bexar County metropolitan region taxing jurisdictions. The following table details the net O&M cost projections:

<u>Service Level Goal:</u>	<u>Initial Service**</u>	<u>Base Service**</u>	<u>Full Service**</u>
<u>Smaller Cities</u>	<u>\$ 9.32 mil</u>	<u>\$ 12.60 mil</u>	<u>\$ 20.14 mil</u>
<u>Austin/Travis County Metro</u>	<u>\$ 9.32 mil</u>	<u>\$ 12.60 mil</u>	<u>\$ 20.14 mil</u>
<u>San Antonio/Bexar County Metro</u>	<u>\$ 9.32 mil</u>	<u>\$ 12.60 mil</u>	<u>\$ 20.14 mil</u>
<u>Total</u>	<u>\$ 27.96 mil</u>	<u>\$ 37.80 mil</u>	<u>\$ 60.42 mil</u>

** All numbers are current year/present value estimated amounts and are not escalated to year of expenditure.

Further allocation of the smaller cities portion of costs to each of the smaller cities is estimated by allotting 20% of the total smaller cities costs by the number of stations (full service and split service stations) within each city and allotting the remaining 80% of total smaller cities costs by estimated city ridership activity (departures and arrivals) for the planning horizon year of the LSTAR service (2035). The following percentages (assuming likely skip-stop service, averaged for the initial 15 years of LSTAR service and rounded to the nearest tenth of a percent here) provide an estimate of the smaller cities allocations that would be applied to the total smaller cities portion of total O&M costs (1/3 of the estimated total O&M costs): 1) Georgetown 15.9%; 2) Round Rock 28%; 3) Buda 5.2%; 4) Kyle 13.1%; 5) San Marcos 16.5%; 6) New Braunfels 12.2%; and 7) Schertz 9.1%.

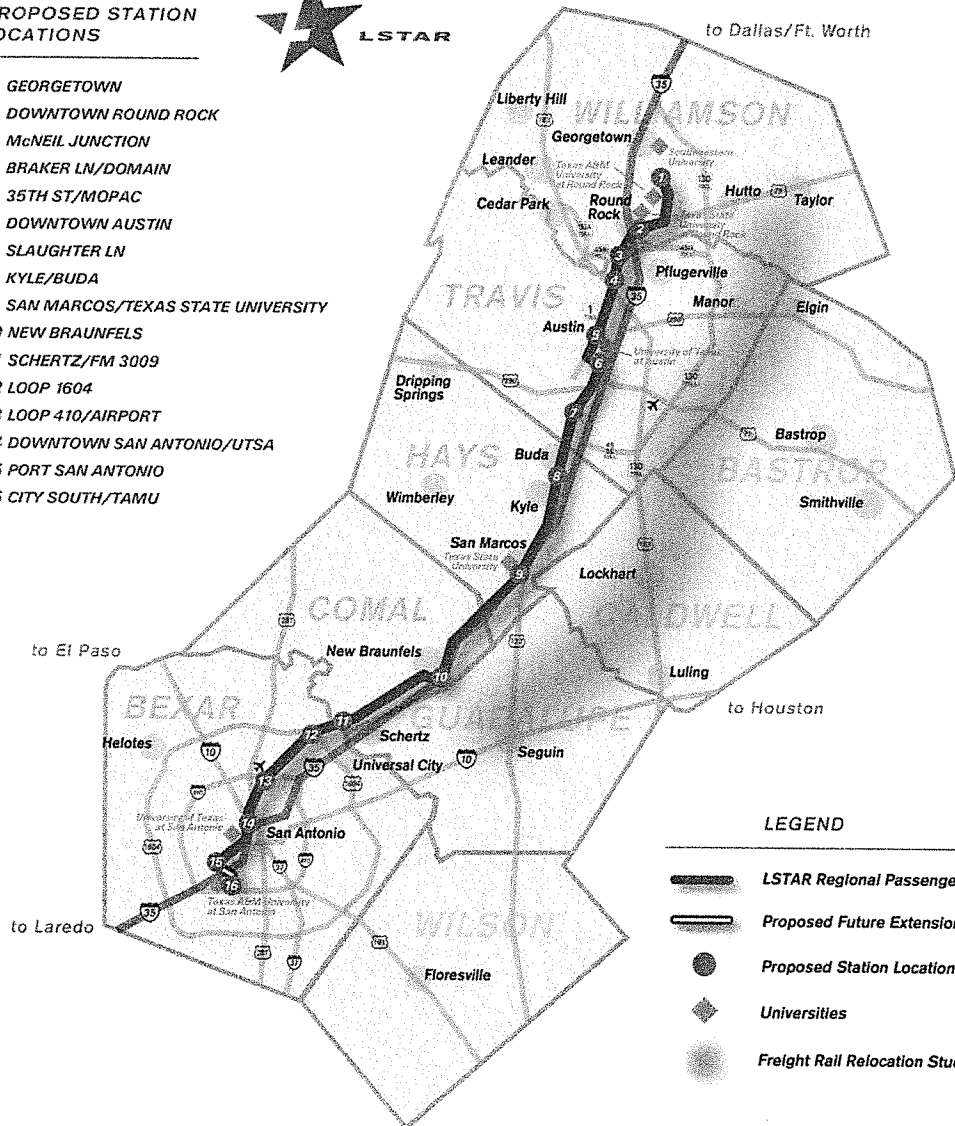
The service levels, and related cost allocation percentages, are planning goals only. Should the actual funding support provided by the participating local jurisdictions be unable to support the planned levels of LSTAR service, the service levels actually provided will be reduced to a level commensurate with the provided local funding. All allocations are for cost estimating purposes only and may be updated over time. Actual allocations may be based upon the availability of funding from individual local government entities supporting the LSTAR service.

LONE STAR RAIL SYSTEM MAP

PROPOSED STATION LOCATIONS



- 1 GEORGETOWN
- 2 DOWNTOWN ROUND ROCK
- 3 McNEIL JUNCTION
- 4 BRAKER LN/DOMAIN
- 5 35TH ST/MOPAC
- 6 DOWNTOWN AUSTIN
- 7 SLAUGHTER LN
- 8 KYLE/BUDA
- 9 SAN MARCOS/TEXAS STATE UNIVERSITY
- 10 NEW BRAUNFELS
- 11 SCHERTZ/FM 3009
- 12 LOOP 1604
- 13 LOOP 410/AIRPORT
- 14 DOWNTOWN SAN ANTONIO/UTSA
- 15 PORT SAN ANTONIO
- 16 CITY SOUTH/TAMU



LEGEND

- LSTAR Regional Passenger Rail
- Proposed Future Extension
- Proposed Station Location
- Universities
- Freight Rail Relocation Study Area

LONE STAR RAIL DISTRICT

DRAFT

EXHIBIT B

EXHIBIT C – MAP OF ZONE

Lone Star Rail District Transportation Infrastructure Zone

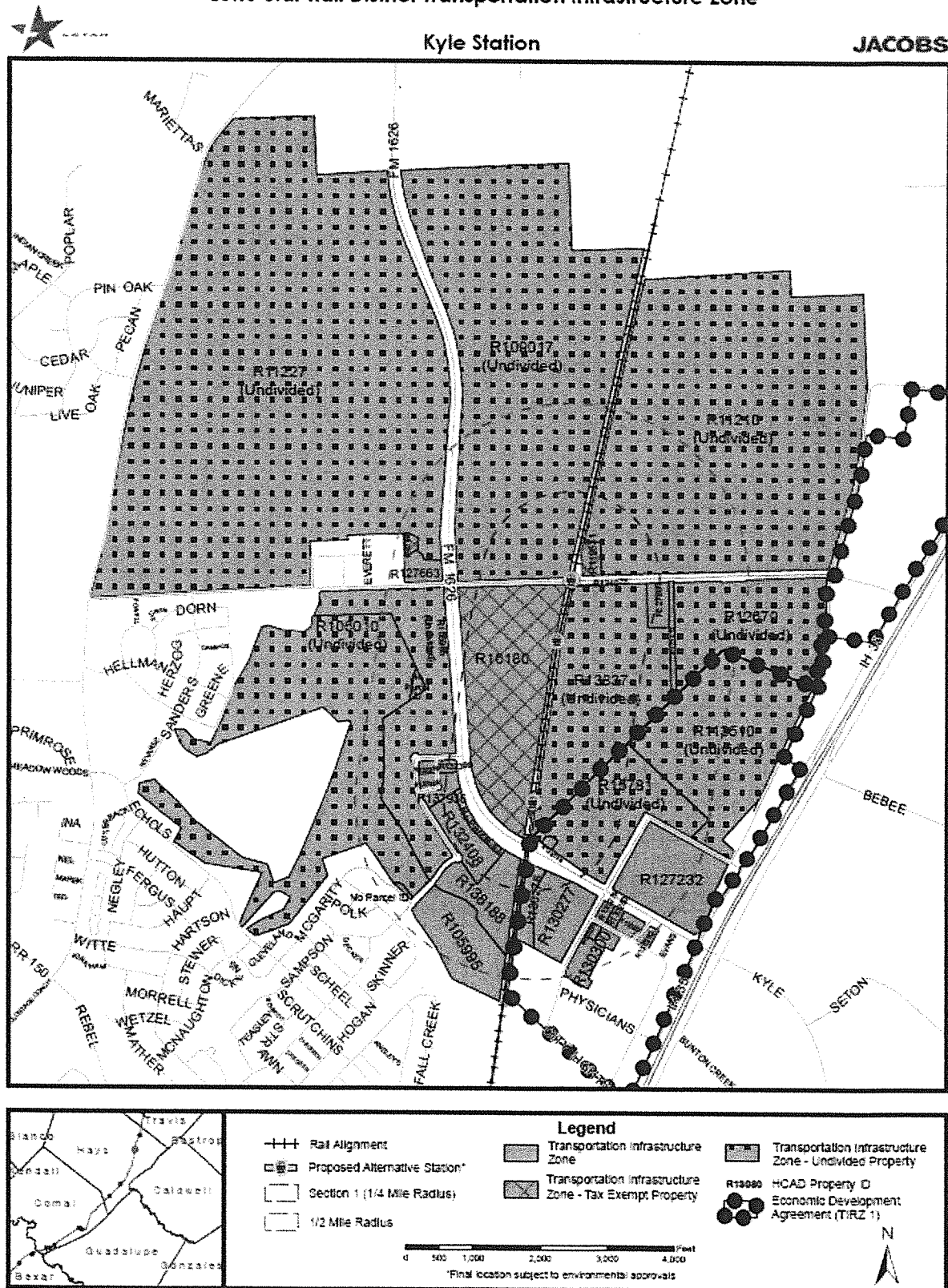


EXHIBIT C (continued)

City of Kyle - ACC/Plum Creek Station
(Hays County Appraisal District Parcel Identification No.)

HCAD Parcel Identification Number	Total Property Area (Acres)	½ Mile Radius Area (Acres)	Percent within ½ Radius
Transportation Infrastructure Zone			
R105995	28.77		
R123972	3.23		
R124076	0.13		
R127232	37.55		
R127266	5.03		
R127663	4.87		
R129189	0.64		
R130276	6.06		
R130277	19.05		
R130279	1.29		
R130280	1.11		
R130281	2.35		
R130282	1.38		
R130299	0.89		
R130300	7.46		
R132398	1.14		
R132399	1.19		
R132408	12.37		
R137936	1.40		
R137936	3.39		
R138188	20.26		
Tax Exempt Property			
No Parcel Id	1.24		
No Parcel Id	2.72		
No Parcel Id	0.52		
R102949	1.26		
R119631	3.21		
R16180	93.82		
Transportation Infrastructure Zone - Undivided Property			
R105985	71.50	63.13	88%
R106010	170.07	43.85	26%
R109017	325.66	110.75	34%
R11210	363.97	95.08	26%
R11227	616.27	13.68	2%
R113510	96.92	44.44	46%
R12679	69.31	30.04	43%

DRAFT

R13837	101.92	101.92	100%
R15781	52.95	52.95	100%

DRAFT

EXHIBIT D