

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

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE MAYOR AND CITY MANAGER TO REPEEL THE EXECUTED AGREEMENT, ATTACHED TO RESOLUTION 537 APPROVED ON MARCH 6, 2007, WITH THE KYLE AREA SENIOR ZONE AND THE CITY OF KYLE AND EXECUTE A NEW SPECIAL USE AGREEMENT BETWEEN THE CITY OF KYLE AND THE KYLE AREA SENIOR ZONE AS RELATED TO USE, UTILITIES, MAINTENANCE, OPERATION AND OTHER ASSOCIATED ITEMS OF THE HISTORIC KYLE CITY HALL LOCATED WITHIN CITY SQUARE PARK AT 100 SOUTH BURLESON; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

**Whereas**, the City of Kyle has made a large investment in the restoration and improvements to the Historic Kyle City Hall located within City Square Park at 100 S Burleson; and,

**Whereas**, the Kyle Area Senior Zone (KASZ), a Texas non-profit corporation, was duly formed in 2006 to provide a wide range of services, programs and activities to senior citizens of Kyle; and

**Whereas**, The agreement approved on March 6, 2007 was made prior to restorations and improvements made during 2009 and 2010; and,

**Whereas**, the City of Kyle has previously stated its intentions to form a partnership with the Kyle Area Senior Zone (KASZ) with a goal to facilitate the conversion of the Historic Kyle City Hall within City Square Park at 100 S Burleson into a Senior Citizen and Community Center for the benefit of all citizens of Kyle; and,

**Whereas**, The City of Kyle Staff, City Council and Board of the Kyle Area Senior Zone have negotiated the Special Use Agreement attached as Exhibit A and has made a recommendation to approve said agreement as described.

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

**Section 1. Findings.** The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Authorization.** The Mayor and City Manager is hereby authorized to execute the agreement between the City of Kyle and the Kyle Area Senior Zone, a copy of which is attached hereto and marked Exhibit A; and made part of this Resolution as if copied verbatim herein.

**Section 3. Budget Approval.** The current *FY2009-10 Annual Operating Budget* for utilities, maintenance and operation of the Historic Kyle City Hall may need to be amended in a future budget amendment. Future budgets

shall include a line item within the Facility Maintenance budget for annual expenses associated with utilities, insurance, maintenance and operating the building.

**Section 4. Certification of Funds.** The City Manager and/or Finance Director do hereby certify, in compliance with the specific requirements of Article VIII, Section 8.10 of the *Kyle City Charter*, that there is to the credit of such office, department, or agency as described herein sufficient unencumbered funds and appropriations, as approved in the aforementioned *FY2009-10 Annual Operating Budget* and unencumbered reserve funds, to pay for the utilities, supplies, materials, equipment and/or contractual services that are the subject matter of this Resolution.

**Section 5. Effective Date.** This Resolution shall take effect from and after the date of its passage as authorized by the Charter of the City of Kyle.

**Section 6. Open Meetings.** That it is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

**FINALLY PASSED AND APPROVED on this the \_\_\_\_ day of \_\_\_\_\_, 2010.**

**Attest:**

**THE CITY OF KYLE, TEXAS**

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
City Manager

## ***Exhibit “A”***

# SPECIAL USE AGREEMENT

By and between

***The City of Kyle***

***And***

***The Kyle Area Senior Zone***

THIS SPECIAL USE AGREEMENT is entered into this \_\_\_\_th day of \_\_\_\_\_, 2010 by and between *the City of Kyle, Hays County, Texas* (hereinafter referred to as “City”), by and through its Mayor and City Manager and the *Kyle Area Senior Zone*, a Texas non-profit corporation (hereinafter referred to as “KASZ”), acting through its duly authorized representatives, for the use, occupation, management and control of certain real property owned by the City of Kyle and known as the Historic Kyle City Hall located within City Square Park located at 100 South Burleson Street, Kyle, Texas, hereinafter referred to as “Historic Kyle City Hall”.

**Section 1** The City hereby agrees to allow special use unto the KASZ of the Historic Kyle City Hall located within City Square Park located at 100 S. Burleson, Kyle, Texas beginning at midnight of the date the associated Resolution is approved and adopted by Kyle City Council.

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

**Section 3** KASZ acknowledges it is understood and agreed that the Historic Kyle City Hall shall only be used by the KASZ for purposes related to operations and functions of the Kyle Area Senior Zone, and said Historic Kyle City Hall shall not be used for any other purpose without consent of City first obtained in writing, except for those uses as specifically provided for herein. The City Square Park, except for designated parking spaces and sidewalks needed to enter and exit the Historic Kyle City Hall, shall not be used for any other purpose without consent of the City first obtained in writing, except for those uses as specifically provided for herein. It is mutually understood and acknowledged that KASZ shall be authorized to occupy and use the Historic Kyle City Hall for the purpose of maintaining its administrative offices and for the conduct of KASZ customary and usual activities. It is further understood and agreed that KASZ shall not make any permanent improvements or physical alterations to the building and/or City Square Park without prior written consent of the City.

**Section 4** It is understood and hereby acknowledged by the parties hereto that KASZ shall not use the building and/or City Square Park in such a way as to conflict or be inconsistent with the policies and/or philosophy of the City of Kyle, as determined by the Kyle City Council.

**Section 5** It is expressly acknowledged and agreed by the parties hereto that the Historic Kyle City Hall building and the City Square Park is owned in its entirety by the City of Kyle. Any and all authority relative to same, implied or otherwise, is derived solely from authority granted by the City of Kyle, by and through the Kyle City Council.

**Section 6** The City will provide for costs associated with basic utilities including but not limited to water, wastewater, electricity, natural gas and trash disposal. The City of Kyle will carry liability coverage to insure the personal injury, structure and permanent contents. The City of Kyle will provide routine and scheduled maintenance of the building and will repair and/or replace supplies needed and necessary for daily operation of Historic Kyle City Hall. The City of Kyle will supply janitorial services and supplies. The City will provide all associated cost for cutting and distribution of keys to the Historic Kyle City Hall building as well as maintaining and updating door locks. The City shall issue the KASZ as many duplicate keys as requested. The KASZ acknowledge and agree that they will not duplicate keys or change locks. The KASZ further acknowledges and agrees that they will be responsible for all keys issued to them in a manner to keep the building secure. The KASZ will provide for costs associated with additional utility services above listed basics, such as but not limited to telephone, cable TV, internet and other public utilities.

**Section 7** It is understood and hereby acknowledged that while it is the intent of the City to provide primary occupancy of the Historic Kyle City Hall building to the KASZ, the City may continue to utilize the Historic Kyle City Hall building for periodic and/or onetime community events, programs and activities. These may include, but are not limited to Market Days, Halloween Carnivals, Holiday events and/or any other community event approved by the City Council. These events may require full access and utilization of the entire Historic Kyle City Hall building and City Square Park. The City will work diligently with KASZ to coordinate such events in a manner that is sensitive to KASZ uses and/or programs.

**(a)** Use of the Historic Kyle City Hall by City of Kyle sponsored events and activities will have first option of scheduling. All City sponsored events and activities will be scheduled at least six (6) months in advance or will be scheduled as to not conflict with scheduled KASZ sponsored events and activities at time of scheduling. All City of Kyle sponsored events and activities will not be charged a use fee or be required to hold a Use Permit. City Staff will be responsible for opening the building, closing and securing the building, conduct of participants and cleaning of building to pre-event condition.

**(b)** Use of the Historic Kyle City Hall by KASZ sponsored events and activities will have second option of scheduling. All KASZ sponsored events and activities will be scheduled at least six (6) months in advance or will be scheduled as to not conflict with scheduled City sponsored events and activities at time of scheduling. All KASZ sponsored events and activities will not be charged a use fee or be required to hold a Use Permit. KASZ representative will be responsible for opening the building, closing and securing the building, conduct of participants and cleaning of building to pre-event condition.

**(c)** Use of Historic Kyle City Hall by any other person, group or organization not sponsored by City of Kyle or KASZ will be able to schedule use of the building through the City of Kyle. A Use Permit will be required by user to have building opened. Fees to obtain a Use Permit will be established by City Council.

**Section 8** Should the KASZ desire to construct capital improvements or upgrades to the Historic Kyle City Hall building and/or City Square Park, the KASZ shall provide a proposal of upgrades, costs and any information necessary to comply with all applicable codes and requirements for such improvements. The City graciously accepts and acknowledges the improvements and

additions made by the KASZ that will become part and whole of the Historic Kyle City Hall. These items include, but not limited to, kitchen appliances, tables and chairs, office furniture, audio/visual system and window covers. Should the KASZ wish to relocate and leave the Historic Kyle City Hall, the City agrees to reimburse KASZ for all items added to building and left behind at an amortized value according to accounting principles as to the life expectancy of the improvements and additions.

**Section 9** It is understood and hereby acknowledged by the parties hereto that the City of Kyle will carry insurance for damages or losses to person or property at the Historic Kyle City Hall and City Square Park. The KASZ shall indemnify and hold harmless City and City Staff for any loss or damages to any property owned, leased, or otherwise possessed by KASZ for the conduct of its activities: or for any loss or damage arising on account of, or as a result of any intentional or negligent act on the part of KASZ, its employees, agents or members which is not otherwise covered by such insurance.

**Section 10** KASZ shall not assign this Special Use Agreement, nor sublet the building or any part of City Square Park nor permit its interest under this Agreement to be sold under legal process. If KASZ shall, without the consent of the City, do or suffer to be done any of the things forbidden herein, or if the KASZ shall use the building for any unlawful purpose or if the KASZ shall fail or neglect to perform any of the conditions or covenants required herein, then the City may, at its option, terminate this Special Use Agreement without reference to the time which this Agreement might otherwise expire.

**Section 11** KASZ shall maintain property in a condition equal to or better than its condition at the approval date of this agreement. KASZ agrees to reimburse the City promptly in the amount of the loss, property damage, or cost of repairs or services caused by negligence or improper use by KASZ, its members, agents and/or guests not recovered by insurance, including deductible. KASZ shall be responsible for any damage resulting from windows or doors being left open or unlocked if the KASZ, or KASZ sponsored event, was that last scheduled user of the building.

**Section 12** If KASZ fails to reimburse City under the conditions set out in Section 11 of this agreement; or if KASZ or other occupants or guests sponsored by the KASZ materially and repeatedly violate this agreement or applicable state or local laws; or if the KASZ abandons the Historic Kyle City Hall building, then the City may terminate KASZ right of occupancy by giving KASZ at least three (3) days notice in writing. Notice may be served by mail or personal delivery to KASZ.

**Section 13** KASZ agree that any duly authorized representative of the City shall, at all reasonable times, have immediate access to any and all portions of the Historic Kyle City Hall building; and such right of access shall remain for the entire time of this agreement.

**Section 14** The City shall not amend this Special Use Agreement in any respect without thirty (30) days prior written notification to KASZ. Any such amendment shall be in writing and properly acknowledged by each of the parties to this agreement.

**Section 15** KASZ have examined and accept the condition of the Historic Kyle City Hall building at the commencement of this agreement. KASZ shall use reasonable diligence in care of the Historic Kyle City Hall building and may not make structural alterations on the property without the written consent of the City. If and when KASZ vacate the building, KASZ agree to surrender property in the same condition as when received, with reasonable wear expected.

**Section 16** It is hereby expressly understood and agreed by the parties hereto that the City has the right to revoke this agreement, completely at the discretion of the Kyle City Council and with a majority vote of its members thereof in a public meeting and upon giving KASZ written notice of its intention to revoke this agreement. Said notice shall be given thirty (30) days prior to the date City elects as a termination date.

**Section 17** This document constitutes the entire Agreement between the City and the KASZ and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof.

**Section 18** No member, official or employee of the City of Kyle and/or Kyle Area Senior Zone shall have any personal interest, direct or indirect, in this agreement; nor shall any such member, official or employee participate in any decision relating to this agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly intercepted.

WITNESS the signatures of the parties hereto.

WITNESS OR ATTEST:

**CITY OF KYLE, TEXAS**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

WITNESS OR ATTEST:

**KYLE AREA SENIOR ZONE**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Vice-President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Secretary