

RESOLUTION NO. 1053

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AMENDING RESOLUTION 1033, ADOPTED BY THE CITY COUNCIL ON AUGUST 24, 2016 BY REVISING THE PUBLIC IMPROVEMENT DISTRICT POLICY PROVIDED HEREIN AS “EXHIBIT A”; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, Chapter 372 of the Texas Local Government Code allows for the creation of public improvement districts; and

WHEREAS, the City Council of the City of Kyle established a policy for the consideration of said petitions by adopting Resolution 981 on June 15, 2015; and

WHEREAS, the City Council of the City of Kyle amended that policy to allow for Economic Development Incentives by adopting Resolution 1022 on May 17, 2016; and

WHEREAS, the City Council of the City of Kyle amended that policy to require notification of PID Assessment through Escrow and/or through Multiple Listing Service or other similar sales listings by adopting Resolution 1033 on August 24, 2016; and

WHEREAS, the City Council wishes to amend the Public Improvement District (PID) policy provided herein as “Exhibit A”;

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

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

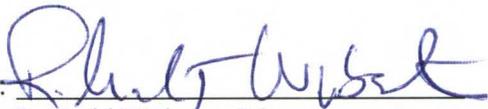
**Section 2. PID Policy.** The PID Policy, as presented herein as “Exhibit A”, is hereby adopted and approved.

**Section 3. Effective Date.** This resolution shall be effective from and after its approval and passage in accordance with the city charter.

**Section 4. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Loc. Gov’t. Code.

FINALLY PASSED AND ADOPTED on this 7th day of February, 2017.

THE CITY OF KYLE, TEXAS

BY:   
R. Todd Webster, Mayor

ATTEST:

  
Jennifer A. Vetrano, City Secretary

# CITY OF KYLE, TEXAS

## Public Improvement District Policy

### OVERVIEW

Public Improvement Districts (“PIDs”), per the Texas Local Government Code Chapter 372 (“the Code”), provide the City of Kyle (“the City”) an economic development tool that permits the financing of qualified public improvement costs that confers a special benefit on a definable part of the City, including both its corporate limits and its extra-territorial jurisdiction. A PID can finance capital costs and fund supplemental services to meet community needs which could not otherwise be constructed or provided. The costs of the capital improvements and/or supplemental services are paid entirely by property owners within the Public Improvement District (“PID”) who receive special benefits from the capital improvements or services. **A PID may only be used to pay for public improvements.**

A PID is a defined area of properties, whose owners have petitioned the City to form a PID. The City Council establishes a PID by adoption of a resolution after a public hearing. The public hearing is publicized per the Code and written notification of the hearing is mailed to all property owners in the proposed PID. By petition, the owners pledge to pay an assessment in order to receive enhanced services and/or improvements within the District. The PID must demonstrate that it confers a benefit, not only to the properties within the District, but also to the “public” which includes the City.

The purpose of this PID policy is to outline the issues and requirements that must be addressed by the petitioner before the City Council can support the establishment of a PID. The PID policy outlines such things as petition requirements, qualified costs, financing criteria, information disclosures to property owners, developer and landowner’s continuing disclosure obligations associated with the issuance of PID bonds, and the determination of annual plans of services, budgets and assessments.

### GENERAL

1. A PID may be created and utilized to construct qualified public improvements and/or reimburse a developer’s actual and documented costs above and beyond the costs for standard infrastructure required to serve the development. Such incremental costs shall be associated with the construction of qualified public improvements.
2. PIDs must be self-sufficient and not require the City to incur any costs associated with the formation of the PID, bond issuance costs, PID administration or the construction of PID improvements.
3. PID petition signatures should reflect that a reasonable attempt was made to obtain the full support of the PID by the majority of the property owners located within the proposed PID. Priority will be given to PIDs with the support of 100% of the landowners within a PID.
4. Priority will be given to PID improvements:
  - a. In support of development that will generate economic and superior development benefits to the City beyond what normal development would;
  - b. In the public right of way (e.g., entryways, landscaping, fountains, specialty lighting,

- art, decorative and landscaped streets and sidewalks, bike lanes, multi-use trails, signage); and,
- c. Which meet community needs (e.g., enhanced drainage improvements, parks and off- street public parking facilities, wastewater and/or water on or off-site improvements).
  - d. Improvements or services that advance City's adopted Master Plan; and
  - e. Projects that increase or enhance City's multimodal transportation and roadway plans.
5. A PID's budget shall include sufficient funds to pay for all costs including but not limited to all administrative and/or operational costs associated with the administration and management of the PID.
  6. A Landowner's Agreement must be recorded in the Official Public Records of the County in which the PID is located which, among other things, will notify any prospective owner of the existence or proposal of special assessments on the property. All closing statements and sales contracts for lots must specify who is responsible for payment of any existing PID assessment or a *pro rata* share thereof until such time as the PID assessment is paid in full
  7. Any requested adjustments and or deviations from the terms and conditions of the City's PID Policy shall be clearly requested and explained in the PID petition for that PID. Any adjustments or deviations to be granted shall be at the sole discretion of the City Council.
  8. A PID zone must be identified as a PID with use of Signage along the main entry/exits located at the boundaries of the PID. All signage shall be a clearly visible to all motorist entering and exiting the PID.
  9. All purchasers of property within a PID that elect to set up an escrow account to pay for mortgage payments, property taxes, insurance and/or other related expenses; shall be required to include the payment of any PID Annual Installments in the amounts collected via such escrow account.
  10. All property owners within a PID that elect to utilize the Multiple Listing Service (or other comparable mass distribution service of available properties for sale) are required to include within such listing the presence of the PID and the estimated Annual Installments due.
  11. Property owned by the City of Kyle that is located in the boundaries of the PID shall not be subject to any assessment by the PID.
  12. No PIDs will be allowed to be created that overlap the boundaries of another PID.
  13. The City reserves the right and shall select and retain the services of any professionals and or consultants in association with the creation and administering of the PID including but not limited to: financial advisor, bond counsel, underwriter, trustee, PID administrator, and appraiser.

## **PETITION REQUIREMENTS**

In accordance with Texas Local Government Code §372.005(a) the petition must include the following:

1. the general nature of the proposed improvements;
2. the estimated cost of the improvements;
3. the boundaries of the proposed assessment district;

4. the proposed method of assessment, which may specify included or excluded classes of assessable property;
5. the proposed apportionment of costs between the public improvement district and the municipality or county as a whole;
6. whether the district will be managed by the municipality or county, by the private sector, or by a partnership of the two;
7. that the persons signing the petition request or concur with the establishment of the district; and
8. that an advisory body may be established to develop and recommend an improvement plan to the governing body of the municipality or county.

Additional requirements include:

1. PID petitions shall include this additional note: “With respect to community property, the City may accept the signature of a spouse as a representation of both spouses that they support the creation or renewal of the PID absent a separate property agreement. *However, if City staff is made aware of any disagreement among owners of community property, those petitions will not be counted.*”
2. Signatures for PID petitions must be gathered not more than six months preceding submittal of the PID Application.

For a district to be established, a petition shall include the following:

1. Evidence that the petition’s signatures meet the state law requirements or the petition must be accompanied by a reasonable fee to cover the City’s costs of signature verification. If the proposed district is an expansion of an existing district, a petition for the new portion of the district must identify each subdivision, or portion thereof, within the proposed boundaries of the new district, and each subdivision or portion thereof, that is not currently in an existing PID shall individually satisfy the requirements for a petition under Section 372.005 of the Texas Local Government Code. Subdivision has the meaning assigned by Section 232.021 of the Texas Local Government Code.
2. Map of the area, a legal description of the boundaries of the district for the legal notices and a “commonly known” description of the area to be included in the district.
3. Statement that the petitioners understand that the annual budget for the district is subject to review by City staff with final approval by the City Council.
4. Upon approval of the PID, the boundaries of the PID will be immediately annexed into the City of Kyle.

In addition, the following issues must be addressed before the City Council will take action on a petition:

1. A non-refundable and non-negotiable application fee to the City of Kyle in the amount of \$25,000.00 will be required with the filing of a petition to create a PID. This application fee is to cover the costs for evaluating the PID petition by City staff.
2. In addition, a separate Deposit and Reimbursement Agreement acceptable to the City must be entered into at the time the petition is submitted to the City. The Deposit and Reimbursement Agreement shall cause the developer to deposit funds to cover the City’s cost for retaining the services of professionals and consultants in evaluating the petition, formation of the district, the levy of assessments, and the issuance of bonds, including,

without limitation, costs and expenses relating to the following, as applicable: (a) the property appraisal, (b) the absorption study, (c) noticing and publication expenses, (d) the assessment consultant, (e) district, assessment, and Bond administration, (f) City costs including, but not limited to, Attorneys, Engineer, PID Administrator, etc., and City's other external costs as may be required and necessary. The developer shall deposit a sum of \$50,000.00 with the City of Kyle as the initial deposit with the Deposit and Reimbursement Agreement at the time the PID petition is submitted to the City.

3. A current tax roll with the signatures of the owners registering support of the petition next to the account for the owner's property on the tax rolls shall be attached.
4. A copy of the Market Feasibility study shall be submitted with the Petition.
5. If the PID developer plans to seek cost reimbursement through PID assessments to be levied and collected with or without PID bond financing shall provide a written and signed assurance letter from the Hays County Tax Assessor-Collector to state that (1) the Hays County Tax Assessor-Collector will ensure that any and all PID assessments to be levied against real property located within the boundaries of the PID shall be a clearly described separately itemized line item on the annual ad valorem tax (property tax) bill for each real property, (2) that the Hays County Tax Assessor-Collector shall be responsible for collecting such PID assessments and remitting to the City of Kyle including any late payment penalties, and (3) that the Hays County Tax Assessor-Collector shall be responsible for implementing all delinquency procedures should the property owner fail to pay PID assessments.

## **PID ADMINISTRATION**

1. The City may contract with a qualified third party company to manage and administer the PID, subject to appropriate oversight by City staff.
2. Any management firm retained by the City for PID administration shall be required, at a minimum, to submit quarterly reports of all activities and expenditures to the City; perform and submit an annual independent audit of all PID expenditures to the City; and shall hold an annual meeting open to all property owners and held in a public meeting space with written notice to all property owners in the PID at least two weeks prior to this meeting to provide an opportunity for property owner questions, comments and input to be considered during the PID Budget and Service Plan approval process.
3. If the City elects to retain the services of a third-party PID administrator, the administrator will coordinate the annual development of the Budget and Five Year Service Plan which will be submitted to the City Council for consideration following a public hearing conducted in accordance with the Code and any other applicable State of Texas law. The PID Service Plan shall also contain procedures for the termination of the PID without imposing any costs on the City of Kyle.

## **BOND SIZE LIMITATIONS**

The following limitations and performance standards shall apply to a PID debt issue approved by the City:

1. Minimum overall appraisal by an independent 3<sup>rd</sup> party appraiser, provides for a value to lien ratio at date of each bond issue of 3:1.
2. Minimum appraisal by an independent 3<sup>rd</sup> party appraiser, provides for a value to lien ratio

at date of each bond issue of 2.5:1 for each individual parcel.

- |  |          |
|--|----------|
| 3. Maximum annual permitted increase in annual assessment installment:   | 2%       |
| 4. Maximum years of capitalized interest for each bond issue:            | 3        |
| 5. Maximum maturity for each series of bonds (to extent allowed by law): | 20 years |

The aggregate principal amount of bonds required to be issued shall not exceed an amount sufficient to fund: (i) the actual costs of the qualified public improvements (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than 3 years from the date of the initial delivery of the bonds and (iii) any costs of issuance. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future Bond issuances.

## **FINANCING CRITERIA**

1. The PID may seek bond issues in advance of construction of an individual Phase of a Project subject to compliance with these standards. All such PID bond issue will be subject to approval of the City Council.
2. No General Obligation or Certificate of Obligation bonds will be utilized by the City to fund or support the PID Bonds.
3. If in any calendar year the City issues bonds that would constitute a bank qualified debt issuance but for the issuance of the PID bonds, then the Developer shall pay to the City a fee to compensate the City for the interest savings the City would have achieved had the debt issued by the City been bank qualified provided that all other developers or owners benefitting from the City issuing debt are similarly burdened with an obligation to compensate the City.
4. All proposed subsequent PID bond issues for a Project, if any, will be subject to approval by the City Council.
5. If the City Council authorizes the issuance of PID bonds, the City shall issue all such PID bonds in accordance with the protocols and procedures adhered to by the City's Director of Finance for issuing long-term debt instruments including tax notes and bonds.
6. Special assessments on any given portion of the property may be adjusted in connection with subsequent bond issues as long as an agreed-upon maximum annual assessment rate is not exceeded, and the special assessments are determined in accordance with the Service and Assessment Plan and the PID Act. Special assessments on any portion of the property will bear a direct proportionate relationship to the special benefit of the public improvements to that improvement area. In no case will assessments be increased for any parcel unless the property owner of the parcel consents to the increased assessment.
7. The City shall not be obligated to provide any funds for any improvement except from the proceeds of the PID Bonds and PID assessments.
8. The City's cost of reviewing a developer payment request from PID Bond proceeds, including City staff time and third party consultant costs, shall be netted out of the amount paid to the developer.
9. Each PID Bond Indenture will contain specific language precluding the City from having any obligations for making any debt service payments for the PID Bonds other than only from available special assessment revenues.

10. In addition, each PID Bond Indenture will clearly state that all debt service payments for the PID bonds shall be payable solely from and secured by the pledged assessments levied against properties within the PID.
11. A PID will be responsible for payment of all of the City's reasonable and customary costs and expenses including the cost of any appraisal.
12. Improvements funded with PID proceeds will be exempt from any public bidding or other purchasing and procurement policies per Texas Local Government Code Section 252.022(a) (9) which states that a project is exempt from such requirements if "paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements."
13. Any PID Bond issued will include a Reserve Fund in an amount equal to the lesser of: (i) the maximum annual debt service on the bonds, (ii) 10 percent of the Bond Par Amount, or (iii) 125 percent of the average annual debt service and that such Reserve Fund will be funded from bond proceeds at the time bonds are issued.
14. Pursuant to the PID Act, the interest rate for assessments may exceed the interest rate of the bonds by no more than one half of one percent (0.50%). The City may allocate up to 0.50% of the interest rate component to fund a delinquency reserve, prepayment reserve, or for any other use that provides a direct benefit to the PID.
15. Should the PID developer in their PID petition request the City for a waiver or exception from the City's annexation requirements as specified in the PID Policy, then the Developer must agree to pay a cash contribution to the City's General Fund, in an amount equal to ten percent (10%) of total PID eligible project costs or if PID bonds are issued then an amount equal to ten percent (10%) of the net proceeds of the PID bonds, at the time of the closing of the PID bonds from sources other than the PID bond proceeds, for the exclusive use by the City solely at its discretion for any lawful purposes.
16. All Developers and significant landowners will provide any required continuing disclosure obligations associated with the issuance of PID bonds as required under the Indenture or any other regulatory agreement or regulatory agency. Failure to abide by continuing disclosure requirements may limit access to proceeds and/or future bond issues.
17. Developer is required to demonstrate committed capital (e.g., cash deposit, proof of bank financing, or letter of credit) to the City on the closing date of the PID Bonds in an amount confirmed by an engineer's estimate of probable cost, which represents the difference between the budgeted cost to complete the public improvements assumed to be complete in the appraisal and the net proceeds of the PID bonds.
18. During a material event of default under the terms of the PID petition or the PID agreement by the Developer, the City shall, after providing notice and opportunity to cure, have the right to recapture reimbursements and/or terminate its obligations to the developer.
19. All construction of improvements is subject to City review and approval and if applicable, provisions shall be made for dedication to City or to another appropriate entity.
20. Improvements to be funded by the PID are limited to those defined as Authorized Improvements under Texas Local Government Code Section 372.003(b):
  - a. Landscaping and irrigation in public rights of way;
  - b. Erection of fountains, distinctive lighting, backlit street signs and way finding signs;
  - c. Acquiring, constructing, improving, widening, narrowing, closing or rerouting

- sidewalks, streets or any other roadway or their rights-of-way;
  - d. Construction or improvement of pedestrian malls;
  - e. Acquisition and installation of pieces of public art;
  - f. Acquisition, construction or improvement of libraries;
  - g. Acquisition, construction or improvement of public off-street parking facilities;
  - h. Acquisition, construction, improvement or rerouting of mass transportation facilities;
  - i. Acquisition, construction or improvement of water, wastewater or drainage improvements;
  - j. The establishment or improvement of parks;
  - k. Acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
  - l. Acquisition, by purchase or otherwise, of real property that shall be designated as conservation habitat, protected with a conservation easement, or used in furtherance of the protection of endangered species, or aquifer recharge features;
  - m. Special supplemental services for improvement and promotion of the district, including services related to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and culture enhancement;
  - n. Payment of expenses incurred in the establishment, administration, and operation of the district, including expenses related to the operation and maintenance of mass transportation facilities; and
  - o. The development, rehabilitation, or expansion of affordable housing.
21. Any trails, parks, streets or other public amenities that are located within a gated community or otherwise inaccessible location to the general public may not be funded or reimbursed by the PID.
  22. All public parks and trails must be dedicated to the City, but maintained by a mandatory dues paying HOA.
  23. All roads must be within dedicated rights-of-ways that are conveyed to either the City or, in the case of out of City PIDS, to the County government.

## **PROJECT CRITERIA**

In agreeing to form a PID for which debt will be issued to fund the costs of constructing qualified public improvements, the City will require the following:

1. The property owner must demonstrate to the City that it has the expertise to complete the new development that the PID will support.
2. The property owner must provide the City with its sources of funding the Public Improvements not being funded by the PID.
3. The proposed development must be consistent with the entitlements on the property. All required zoning, other required land use approvals or other required permits must be in place for the development prior to the issuance of any PID bonds.
4. The property owner must provide evidence to the City that the utility service provider has sufficient capacity to provide all necessary utility services.
5. All reasonable estimated costs must be identified before a decision is reached on a request to issue bonds for a PID. Costs to be identified include costs related to establishing the

district; costs for construction and/or the acquisition of improvements, the maintenance and operation of improvements (if any) and PID administrative costs.

6. If the City elects to hire a qualified third party PID administrator to administer the PID, the costs for such administration shall be paid for with PID funds. The PID administrator will be required to review and comment on the Budget and to attend the annual public hearing regarding the Service and Assessment Plan.
7. The PID Financing Agreement (or other applicable PID documentation) shall contain a section, which clearly identifies the benefit of the PID to the affected property owners and to the City as a whole ((i.e., public purpose) and also evidence of insurance.
8. The Service and Assessment Plan shall describe, if applicable, all City-owned land within the district as well as its proposed share of project costs.
9. Specified assurances that the construction of improvements in the public right-of-way will be dedicated to and maintained by the City after the PID has dissolved. For the life of the PID, public infrastructure will be maintained by the PID, unless otherwise stated in a subsequent agreement.

The PID may not finance improvements or services within a gated community or a development that is not accessible to the general public.

### **Developer Reimbursement**

1. The Developer will submit expenses for reimbursements.
2. The appointed designee will verify expenses' validity towards the PID agreement.
3. Once expenses have been verified, payment will be processed within thirty (30) days.

### **Miscellaneous**

1. Severability: If any section, subsection, sentence, clause, phrase, or word of this policy is declared unconstitutional or invalid for any purpose, the remainder of this policy shall not be affected.
2. Any requests for adjustments, exceptions, or waivers to this policy must be reviewed and approved by the City Council of the City of Kyle.
3. The City shall, upon reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer's records, books, and all other relevant records related to Reimbursable Amounts under this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.
4. Recapture. In the event of default by Developer under the negotiated Agreement related to Reimbursement Amount Requests, the City shall, after providing Developer notice and an opportunity to cure, have the right to recapture Reimbursement Amount Requests.
5. No Personal Liability of Public Officials. No public official or employee shall be personally responsible for any liability arising under or growing out of any approved PID. Any obligation or liability of the Developer whatsoever that may arise at any time under the approved PID or any obligation or liability which may be incurred by the Developer pursuant to any other instrument transaction or undertaking as a result of the PID shall be satisfied out of the assets of the Developer only and the City shall have no liability.
6. All PID Agreements shall include Indemnification language as follows:

**Indemnification. 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 AND RELATING TO DEVELOPER'S ACTIONS ON 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 TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'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. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S TENANTS' 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.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE DEVELOPER SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTEREPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFCATION OF THE CITY AND / OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW**

# Re: Revisions to PID policy

Jennifer Vetrano

Fri 2/10/2017 3:55 PM

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

Please note that while working on the minutes I came across a discrepancy - the Council voted to remove "or bond" from the options in No. 17.

*Jennifer Vetrano*

City Secretary  
Assistant to the City Manager  
City of Kyle, TX  
[jvetrano@cityofkyle.com](mailto:jvetrano@cityofkyle.com)  
(o) 512.262.3981

**From:** Scott Sellers  
**Sent:** Thursday, February 9, 2017 5:21 PM  
**To:** Jennifer Vetrano; James Earp  
**Subject:** Re: Revisions to PID policy

Do you have the word version? If so, the only changes are

**#17 Developer is required to ~~pay~~ demonstrate committed capital (e.g. cash deposit, proof of bank financing, letter of credit, or bond) in a form acceptable to the City on the closing date of the PID Bonds ~~a contribution in an amount~~ confirmed by an engineer's estimate of probable cost, which represents the difference between the budgeted cost to complete the public improvements assumed to be complete in the appraisal and the net proceeds of the PID bonds.**

**#18 ~~In the~~ During a material event of default under the terms of the PID petition or the PID agreement by the developer, the City shall, after providing notice and opportunity to cure, have the right to recapture reimbursements and/or terminate its obligations to the developer.**

**From:** Jennifer Vetrano  
**Sent:** Thursday, February 9, 2017 1:50:30 PM  
**To:** James Earp; Scott Sellers  
**Subject:** Re: Revisions to PID policy

Who will be making the final approved revisions to the PID Policy?

*Jennifer Vetrano*

City Secretary  
Assistant to the City Manager  
City of Kyle, TX

EXHIBIT A

CITY OF KYLE, TEXAS

Public Improvement District  
Policy

OVERVIEW

Public Improvement Districts ("PIDs"), per the Texas Local Government Code Chapter 372 ("the Code"), provide the City of Kyle ("the City") an economic development tool that permits the financing of qualified public improvement costs that confers a special benefit on a definable part of the City, including both its corporate limits and its extra-territorial jurisdiction. A PID can finance capital costs and fund supplemental services to meet community needs which could not otherwise be constructed or provided. The costs of the capital improvements and/or supplemental services are paid entirely by property owners within the Public Improvement District ("PID") who receive special benefits from the capital improvements or services. **A PID may only be used to pay for public improvements.**

Deleted: , all other expenditures not related to public improvements may not be reimbursed.

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Deleted: to

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4. Priority will be given to PID improvements:
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  - b. In the public right of way (e.g., entryways, landscaping, fountains, specialty lighting, art, decorative and landscaped streets and sidewalks, bike lanes, multi-use trails, signage); and,
  - c. Which meet community needs (e.g., enhanced drainage improvements, parks and off-street public parking facilities, wastewater and/or water on or off-site improvements).
  - d. Improvements or services that advance City's adopted Master Plan; and
  - e. Projects that increase or enhance City's multimodal transportation and roadway plans
5. A PID's budget shall include sufficient funds to pay for all costs, including but not limited to all administrative and/or operational costs associated with the administration and management of the PID.
6. A Landowner's Agreement must be recorded in the Official Public Records of the County in which the PID is located which, among other things, will notify any prospective owner of the existence or proposal of special assessments on the property. All closing statements and sales contracts for lots must specify who is responsible for payment of any existing PID assessment or a *pro rata* share thereof until such time as the PID assessment is paid in full.
7. Any requested adjustments and or deviations from the terms and conditions of the City's PID Policy shall be clearly requested and explained in the PID petition for that PID. Any adjustments or deviations to be granted shall be at the sole discretion of the City Council.
8. A PID zone must be identified as a PID with use of Signage along the main entry/exits located at the boundaries of the PID. All signage shall be a clearly visible to all motorist entering and exiting the PID.
9. All purchasers of property within a PID that elect to set up an escrow account to pay for mortgage payments, property taxes, insurance and/or other related expenses; shall be required to include the payment of any PID Annual Installments in the amounts collected via such escrow account.
10. All property owners within a PID that elect to utilize the Multiple Listing Service (or other comparable mass distribution service of available properties for sale) are required to include within such listing the presence of the PID and the estimated Annual Installments due.
11. Property owned by the City of Kyle that is located in the boundaries of the PID shall not be subject to any assessment by the PID.
12. No PIDs will be allowed to be created that overlap the boundaries of another PID.
- 13.
14. The City reserves the right and shall select and retain the services of any professionals and or consultants in association with the creation and administering of the PID including but not limited to: financial advisor, bond counsel, underwriter, trustee, PID administrator, and appraiser.
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Deleted: The boundaries of existing PIDs can be modified during a renewal process (with updated map as part of the petition). However, a boundary change during the existing term of a PID may only be considered if a repetition of the entire PID area (both current boundary and proposed modified areas) meets the minimum criteria for creation/renewal and application fee as described below is submitted.

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## PETITION REQUIREMENTS

In accordance with Texas Local Government Code §372.005(a) the petition must include the following:

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1. the general nature of the proposed improvements;
2. the estimated cost of the improvements;
3. the boundaries of the proposed assessment district;
4. the proposed method of assessment, which may specify included or excluded classes of assessable property;
5. the proposed apportionment of costs between the public improvement district and the municipality or county as a whole;
6. whether the district will be managed by the municipality or county, by the private sector, or by a partnership of the two;
7. that the persons signing the petition request or concur with the establishment of the district; and
8. that an advisory body may be established to develop and recommend an improvement plan to the governing body of the municipality or county.

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Additional requirements include:

1. PID petitions shall include this additional note: "With respect to community property, the City may accept the signature of a spouse as a representation of both spouses that they support the creation or renewal of the PID absent a separate property agreement. However, if City staff is made aware of any disagreement among owners of community property, those petitions will not be counted."
2. Signatures for PID petitions must be gathered not more than six months preceding submittal of the PID Application.

For a district to be established, a petition shall include the following:

1. Evidence that the petition's signatures meet the state law requirements or the petition must be accompanied by a reasonable fee to cover the City's costs of signature verification. If the proposed district is an expansion of an existing district, a petition for the new portion of the district must identify each subdivision, or portion thereof, within the proposed boundaries of the new district, and each subdivision or portion thereof, that is not currently in an existing PID shall individually satisfy the requirements for a petition under Section 372.005 of the Texas Local Government Code. Subdivision has the meaning assigned by Section 232.021 of the Texas Local Government Code.
2. Map of the area, a legal description of the boundaries of the district for the legal notices and a "commonly known" description of the area to be included in the district.
3. Statement that the petitioners understand that the annual budget for the district is subject to review by City staff with final approval by the City Council.
4. Upon approval of the PID, the boundaries of the PID will be immediately annexed into the City of Kyle.

In addition, the following issues must be addressed before the City Council will take action on a petition:

1. A non-refundable and non-negotiable application fee to the City of Kyle in the amount of \$25,000.00 will be required with the filing of a petition to create a PID. This application fee is to cover the costs for evaluating the PID petition by City staff.
2. In addition, a separate, Deposit and Reimbursement Agreement acceptable to the City must be entered into at the time the petition is submitted to the City. The Deposit and Reimbursement Agreement shall cause the developer to deposit funds to cover the City's cost for retaining the services of professionals and consultants in evaluating the petition, formation of the district, the levy of assessments, and the issuance of bonds, including, without limitation, costs and expenses relating to the following, as applicable: (a) the property appraisal, (b) the absorption study, (c) noticing and publication expenses, (d) the assessment consultant, (e) district, assessment, and Bond administration, (f) City costs including, but not limited to, Attorneys, Engineer, PID Administrator, etc., and City's other external costs as may be required and necessary. The developer shall deposit a sum of \$50,000.00 with the City of Kyle as the initial deposit with the Deposit and Reimbursement Agreement at the time the PID petition is submitted to the City.
3. A current tax roll with the signatures of the owners registering support of the petition next to the account for the owner's property on the tax rolls shall be attached.
4. A copy of the Market Feasibility study shall be submitted with the Petition.
5. If the PID developer plans to seek cost reimbursement through PID assessments to be levied and collected with or without PID bond financing shall provide a written and signed assurance letter from the Hays County Tax Assessor-Collector to state that (1) the Hays County Tax Assessor-Collector will ensure that any and all PID assessments to be levied against real property located within the boundaries of the PID shall be a clearly described separately itemized line item on the annual ad valorem tax (property tax) bill for each real property, (2) that the Hays County Tax Assessor-Collector shall be responsible for collecting such PID assessments and remitting to the City of Kyle including any late payment penalties, and (3) that the Hays County Tax Assessor-Collector shall be responsible for implementing all delinquency procedures should the property owner fail to pay PID assessments.

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### PID ADMINISTRATION

1. The City may contract with a qualified third party company to manage and administer the PID, subject to appropriate oversight by City staff.
2. Any management firm retained by the City for PID administration shall be required, at a minimum, to submit quarterly reports of all activities and expenditures to the City; perform and submit an annual independent audit of all PID expenditures to the City; and shall hold an annual meeting open to all property owners and held in a public meeting space with written notice to all property owners in the PID at least two weeks prior to this meeting to provide an opportunity for property owner questions, comments and input to be considered during the PID Budget and Service Plan approval process.
3. If the City elects to retain the services of, a third-party PID administrator, the administrator will coordinate the annual development of the Budget and Five Year Service Plan which will be submitted to the City Council for consideration following a public hearing conducted in accordance with the Code and any other applicable State of Texas law. The PID Service Plan shall also contain procedures for the termination of the PID without

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imposing any costs on the City of Kyle. ,

## BOND SIZE LIMITATIONS

The following limitations and performance standards shall apply to a PID debt issue approved by the City:

1. Minimum overall appraisal by an independent 3<sup>rd</sup> party appraiser, provides for a value to lien ratio at date of each bond issue of 3:1.
2. Minimum appraisal by an independent 3<sup>rd</sup> party appraiser, provides for a value to lien ratio at date of each bond issue of 2.5:1 for each individual parcel.
3. Maximum annual permitted increase in annual assessment installment: 2%
4. Maximum years of capitalized interest for each bond issue: 3
5. Maximum maturity for each series of bonds (to extent allowed by law): 20 years

The aggregate principal amount of bonds required to be issued shall not exceed an amount sufficient to fund: (i) the actual costs of the qualified public improvements (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than 3 years from the date of the initial delivery of the bonds and (iii) any costs of issuance. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future Bond issuances.

## FINANCING CRITERIA

1. The PID may seek bond issues in advance of construction of an individual Phase of a Project subject to compliance with these standards. All such PID bond issue will be subject to approval of the City Council.
2. No General Obligation or Certificate of Obligation bonds will be utilized by the City to fund or support the PID Bonds.
3. If in any calendar year the City issues bonds that would constitute a bank qualified debt issuance but for the issuance of the PID bonds, then the Developer shall pay to the City a fee to compensate the City for the interest savings the City would have achieved had the debt issued by the City been bank qualified provided that all other developers or owners benefitting from the City issuing debt are similarly burdened with an obligation to compensate the City.
4. All proposed subsequent PID bond issues for a Project, if any, will be subject to approval by the City Council.
5. If the City Council authorizes the issuance of PID bonds, the City shall issue all such PID bonds in accordance with the protocols and procedures adhered to by the City's Director of Finance for issuing long-term debt instruments including tax notes and bonds.
6. Special assessments on any given portion of the property may be adjusted in connection with subsequent bond issues as long as an agreed-upon maximum annual assessment rate is not exceeded, and the special assessments are determined in accordance with the Service and Assessment Plan and the PID Act. Special assessments on any portion of the property will bear a direct proportionate relationship to the special benefit of the public

Page 5 of 10

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- improvements to that improvement area. In no case will assessments be increased for any parcel unless the property owner of the parcel consents to the increased assessment.
7. The City shall not be obligated to provide any funds for any improvement except from the proceeds of the PID Bonds and PID assessments.
  8. The City's cost of reviewing a developer payment request from PID Bond proceeds, including City staff time and third party consultant costs, shall be netted out of the amount paid to the developer.
  9. Each PID Bond Indenture will contain specific language precluding the City from having any obligations for making any debt service payments for the PID Bonds other than only from available special assessment revenues.
  10. In addition, each PID Bond Indenture will clearly state that all debt service payments for the PID bonds shall be payable solely from and secured by the pledged assessments levied against properties within the PID.
  11. A PID will be responsible for payment of all of the City's reasonable and customary costs and expenses including the cost of any appraisal.
  12. Improvements funded with PID proceeds will be exempt from any public bidding or other purchasing and procurement policies per Texas Local Government Code Section 252.022(a) (9) which states that a project is exempt from such requirements if "paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements."
  13. Any PID Bond issued will include a Reserve Fund in an amount equal to the lesser of: (i) the maximum annual debt service on the bonds, (ii) 10 percent of the Bond Par Amount, or (iii) 125 percent of the average annual debt service and that such Reserve Fund will be funded from bond proceeds at the time bonds are issued.
  14. Pursuant to the PID Act, the interest rate for assessments may exceed the interest rate of the bonds by no more than one half of one percent (0.50%). The City may allocate up to 0.50% of the interest rate component to fund a delinquency reserve, prepayment reserve, or for any other use that provides a direct benefit to the PID.
  15. Should the PID developer in their PID petition request the City for a waiver or exception from the City's annexation requirements as specified in the PID Policy, then the Developer must agree to pay a cash contribution to the City's General Fund, in an amount equal to ten percent (10%) of total PID eligible project costs from source other than PID assessments, or if PID bonds are issued then an amount equal to ten percent (10%) of the net proceeds of the PID bonds, at the time of the closing of the PID bonds, from sources other than the PID bond proceeds, for the exclusive use by the City solely at its discretion for any lawful purposes.
  16. All Developers and significant landowners will provide any required continuing disclosure obligations associated with the issuance of PID bonds as required under the Indenture or any other regulatory agreement or regulatory agency. Failure to abide by continuing disclosure requirements may limit access to proceeds and/or future bond issues.
  17. Developer is required to pay to the City on the closing date of the PID Bonds a contribution confirmed by an engineer's estimate of probable cost, which represents the difference between the budgeted cost to complete those public improvements assumed to be complete in the appraisal and the net proceeds of the PID bonds.

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18. In the event of default under the terms of the PID petition or the PID agreement, the City shall, after providing notice and opportunity to cure, have the right to recapture reimbursements and/or terminate its obligations.
19. All construction of improvements is subject to City review and approval and if applicable, provisions shall be made for dedication to City or to another appropriate entity.
20. Improvements to be funded by the PID are limited to those defined as Authorized Improvements under Texas Local Government Code Section 372.003(b):
- a. Landscaping and irrigation in public rights of way;
  - b. Erection of fountains, distinctive lighting, backlit street signs and way finding signs;
  - c. Acquiring, constructing, improving, widening, narrowing, closing or rerouting sidewalks, streets or any other roadway or their rights-of-way;
  - d. Construction or improvement of pedestrian malls;
  - e. Acquisition and installation of pieces of public art;
  - f. Acquisition, construction or improvement of libraries;
  - g. Acquisition, construction or improvement of public off-street parking facilities;
  - h. Acquisition, construction, improvement or rerouting of mass transportation facilities;
  - i. Acquisition, construction or improvement of water, wastewater or drainage improvements;
  - j. The establishment or improvement of parks;
  - k. Acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
  - l. Acquisition, by purchase or otherwise, of real property that shall be designated as conservation habitat, protected with a conservation easement, or used in furtherance of the protection of endangered species, or aquifer recharge features;
  - m. Special supplemental services for improvement and promotion of the district, including services related to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and culture enhancement;
  - n. Payment of expenses incurred in the establishment, administration, and operation of the district, including expenses related to the operation and maintenance of mass transportation facilities; and
  - o. The development, rehabilitation, or expansion of affordable housing.
21. Any trails, parks, streets or other public amenities that are located within a gated community or otherwise inaccessible location to the general public may not be funded or reimbursed by the PID.
22. All public parks and trails must be dedicated to the City, but maintained by a mandatory dues paying HOA.
23. All roads must be within dedicated rights-of-ways that are conveyed to either the City or, in the case of out of City PIDS, to the County government.

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## PROJECT CRITERIA

In agreeing to form a PID for which debt will be issued to fund the costs of constructing qualified public improvements, the City will require the following:

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All landowners will provide any required continuing disclosure obligations associated with the issuance of PID Bonds as required under the Indenture or any other regulatory agreement or regulatory agency.¶

1. The property owner must demonstrate to the City that it has the expertise to complete the new development that the PID will support.
2. The property owner must provide the City with its sources of funding the Public Improvements not being funded by the PID.
3. The proposed development must be consistent with the entitlements on the property. All required zoning, other required land use approvals or other required permits must be in place for the development prior to the issuance of any PID bonds.
4. The property owner must provide evidence to the City that the utility service provider has sufficient capacity to provide all necessary utility services.
5. All reasonable estimated costs must be identified before a decision is reached on a request to issue bonds for a PID. Costs to be identified include costs related to establishing the district: costs for construction and/or the acquisition of improvements, the maintenance and operation of improvements (if any) and PID administrative costs.
6. If the City elects to hire a qualified third party PID administrator to administer the PID, the costs for such administration shall be paid for with PID funds. The PID administrator will be required to review and comment on the Budget and to attend the annual public hearing regarding the Service and Assessment Plan.
7. The PID Financing Agreement (or other applicable PID documentation) shall contain a section, which clearly identifies the benefit of the PID to the affected property owners and to the City as a whole (i.e., public purpose) and also evidence of insurance.
8. The Service and Assessment Plan shall describe, if applicable, all City-owned land within the district as well as its proposed share of project costs.
9. [The PID may not finance improvements or services within a gated community or a development that is not accessible to the general public.](#)

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### Developer Reimbursement

1. The Developer will submit expenses for reimbursements.
2. The appointed designee will verify expenses' validity towards the PID agreement.
3. Once expenses have been verified, payment will be processed within thirty (30) days.

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### Miscellaneous

1. Severability: If any section, subsection, sentence, clause, phrase, or word of this policy is declared unconstitutional or invalid for any purpose, the remainder of this policy shall not be affected.
2. Any [requests for adjustments, exceptions, or](#) waivers to this policy must be [reviewed and](#) approved by the City Council of the City of Kyle.
3. The City shall, upon reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer's records, books, and all other relevant records related to Reimbursable Amounts under this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.
4. Recapture. In the event of default by Developer under the negotiated Agreement related to Reimbursement Amount Requests, the City shall, after providing Developer notice and an opportunity to cure, have the right to recapture Reimbursement Amount Requests.

5. No Personal Liability of Public Officials. No public official or employee shall be personally responsible for any liability arising under or growing out of any approved PID. Any obligation or liability of the Developer whatsoever that may arise at any time under the approved PID or any obligation or liability which may be incurred by the Developer pursuant to any other instrument transaction or undertaking as a result of the PID shall be satisfied out of the assets of the Developer only and the City shall have no liability.
6. All PID Agreements shall include Indemnification language as follows:

Indemnification. **DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY (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 AND RELATING TO DEVELOPER'S ACTIONS ON 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 TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'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. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S TENANTS' 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.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY**

**PROVIDED TO THE CITY AND THE DEVELOPER SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTEREPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFCATION OF THE CITY AND / OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW**