



City of Killeen

Agenda

City Council

Tuesday, October 25, 2016

5:00 PM

Killeen City Hall
City Council Chambers
101 North College Street
Killeen, Texas 76541

Call to Order and Roll Call

___ Jose Segarra, Mayor	___ Brockley Moore
___ Shirley Fleming	___ Jonathan Okray
___ Gregory Johnson	___ Juan Rivera
___ Jim Kilpatrick	___ Dick Young

Invocation

Pledge of Allegiance

Approval of Agenda

Minutes

[MN-16-028](#) Consider Minutes of Regular City Council Meeting of October 11, 2016.

Attachments: [Minutes](#)

Resolutions

[RS-16-126](#) Consider a memorandum/resolution appointing members to the Youth Advisory Commission.

Attachments: [Council Memorandum](#)

[RS-16-127](#) Consider a memorandum/resolution authorizing a commercial lease at 207 and 209 West Avenue D, Killeen, Texas.

Attachments: [Council Memorandum](#)

[Lease](#)

[RS-16-128](#) Consider a memorandum/resolution adopting a master plan and approving an airport layout plan for Skylark Field.

Attachments: [Council Memorandum](#)

[RS-16-129](#) Consider a memorandum/resolution authorizing the lease with purchase option of a wheel loader for the Solid Waste Transfer Station.

Attachments: [Council Memorandum](#)
[Quote](#)
[Finance Proposal](#)
[Wheel Loader](#)
[Certificate of Interested Parties](#)

[RS-16-130](#) Consider a memorandum/resolution authorizing Change Order No. 29 to the Stagecoach Road Reconstruction, Phase 2 Project with McLean Construction, Inc.

Attachments: [Council Memorandum](#)
[Change Order](#)
[Quote](#)
[Change Order List](#)
[Certificate of Interested Parties](#)

[RS-16-131](#) Consider a memorandum/resolution authorizing the award of a construction contract to Austin Filter System, Inc., for the South Nolan Creek Capital Improvement Program Bank Stabilization Phase 2 project.

Attachments: [Council Memorandum](#)
[Recommendation Letter](#)
[Bid Comparison](#)
[References](#)
[TCEQ Letter](#)
[Certificate of Interested Parties](#)

[RS-16-132](#) Consider a memorandum/resolution appointing a replacement to the Technical Advisory Committee for the Killeen Temple Metropolitan Planning Organization.

Attachments: [Council Memorandum](#)

[RS-16-133](#) Consider a memorandum/resolution appointing citizen members to the City of Killeen Audit Committee.

Attachments: [Council Memorandum](#)

[RS-16-134](#) Consider a memorandum/resolution to create an evaluation committee to review forensic audit RFQs.

Attachments: [Council Memorandum](#)

[RS-16-135](#) Consider a memorandum/resolution creating a Citizens' Advisory Committee to assist in the selection of the new City Manager.

Attachments: [Council Memorandum](#)

Ordinances

[OR-16-022A](#) Consider an ordinance to amend the Fire Department Classification

Plan and Rank Structure.

Attachments: [Council Memorandum](#)
[Ordinance](#)

[OR-16-022B](#) Consider an ordinance to amend the Fire Department pay plan.

Attachments: [Council Memorandum](#)
[Ordinance](#)

Public Hearings

[PH-16-036](#) HOLD a public hearing and consider an ordinance requested by Scott Lewellen of SiteExcel L.L.C. on behalf of Garland and Jo Ann Kelley (Case #Z16-17) to rezone approximately .229 acre (100 x 100 foot area), being part of the M. T. Martin Survey, Abstract No. 963, from "A" (Agricultural District) to "A" (Agricultural District) with a Conditional Use Permit (CUP) for a 120' tall monopole communication tower. The subject area is located approximately 3,000 feet east of S. Fort Hood Street and approximately 2,500 feet west of Kelley Lane, Killeen, Texas. (Requires a 3/4 majority vote.)

Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Application](#)
[Site Plan](#)
[Location Map](#)
[Buffer Map](#)
[Considerations](#)
[Response](#)

Adjournment

I certify that the above notice of meeting was posted on the Internet and on the bulletin boards at Killeen City Hall and at the Killeen Police Department on or before 5:00 p.m. on October 21, 2016.

Dianna Barker, City Secretary

The public is hereby informed that notices for City of Killeen meetings will no longer distinguish between matters to be discussed in open or closed session of a meeting. This practice is in accordance with rulings by the Texas Attorney General that, under the Texas Open Meetings Act, the City Council may convene a closed session to

discuss any matter listed on the agenda, without prior or further notice, if the matter is one that the Open Meetings Act allows to be discussed in a closed session.

This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7700, City Manager's Office, or TDD 1-800-734-2989.

Notice of Meetings

The Mayor and/or City Council have been invited to attend and/or participate in the following meetings/conferences/events. Although a quorum of the members of the City Council may or may not be available to attend this meeting, this notice is being posted to meet the requirements of the Texas Open Meetings Act and subsequent opinions of the Texas Attorney General's Office. No official action will be taken by Council.

- *GKCC Military Relations Council Social, October 26, 2016, 6:00 p.m., Big Hoss Barb-B-Que*
- *GKCC Military Relations Council Luncheon, November 4, 2016, 11:30 a.m., Grace Christian Center*

Dedicated Service -- Every Day, for Everyone!



City of Killeen

Legislation Details

File #: MN-16-028 **Version:** 1 **Name:** Minutes of Regular City Council Meeting of October 11, 2016
Type: Minutes **Status:** Minutes
File created: 10/11/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider Minutes of Regular City Council Meeting of October 11, 2016.
Sponsors: City Secretary
Indexes:
Code sections:
Attachments: [Minutes](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

City of Killeen
Regular City Council Meeting
Killeen City Hall
October 11, 2016 at 6:17 p.m.

Presiding: Mayor Jose L. Segarra

Attending: Mayor Pro-Tem Brockley Moore, Councilmembers Jim Kilpatrick, Juan Rivera, Shirley Fleming, Gregory Johnson, Jonathan Okray, and Richard Young

Also attending were Assistant City Manager Lillian Ann Farris, City Attorney Kathryn Davis, City Secretary Dianna Barker, and Sergeant-at-Arms Gilman.

Mr. Jones gave the invocation, and Councilmember Kilpatrick deferred leading everyone in the Pledge of Allegiance to James Ralston.

Approval of Agenda

Motion was made by Mayor Pro-Tem Moore to approve the agenda postponing OR-16-020 from consideration. Motion seconded by Councilmember Fleming. The motion carried unanimously.

Minutes

Motion was made by Councilmember Kilpatrick to approve the minutes of the September 27th Regular City Council meeting and the October 4th Special City Council meeting. Motion was seconded by Councilmember Young. Motion carried unanimously.

Resolutions

RS-16-120 Consider a memorandum/resolution awarding Bid No. 16-11 for the procurement of supplies and materials needed for new services, repairs, and maintenance to the water distribution system.

Staff comments: David Olson

Staff recommends that the following vendors are awarded the corresponding bids and that the Interim City Manager is expressly authorized to execute any and all change orders within the amounts set by state and local law.

Section 1

Items 1 - 2: Staff recommends that these items be awarded to Ferguson Waterworks.

Items 3 - 10: Staff recommends that these items be awarded to ACT Pipe & Supply.

Section 2

Items 1 & 3: Staff recommends that these items be awarded to Zenner Performance Meters Inc.

Items 2 & 4: Staff recommends that these items be awarded to Thirkettle Corporation dba Aqua Metric Sales Company.

Item 5: Staff recommends that this item be awarded to ACT Pipe & Supply.

Section 3

Items 1, 3, 9, & 10: Staff recommends that these items be awarded to HD Supply Waterworks.

Items 2, 4-8, 12, 13, 15, 16, & 19: Staff recommends that these items be awarded to ACT Pipe and Supply.

Items 11, 14, 17 & 18: Staff recommends that these items be awarded to Ferguson Waterworks.

Motion was made by Councilmember Young to approve RS-16-120. Motion was seconded by Councilmember Rivera. Motion carried unanimously.

RS-16-121 Consider a memorandum/resolution authorizing the rejection of Bid No. 16-12 for the construction of Brookhaven/Rancier Hike & Bike Trail.

Staff comments: David Olson

City staff recommends the City Council authorize rejection of Bid No. 16-12 for the Brookhaven/Rancier Hike & Bike Trail project due to the lack of a FPAA agreement. The Project will be re-advertised and re-bid.

Motion was made by Mayor Pro-Tem Moore to approve RS-16-121. Motion was seconded by Councilmember Fleming. Motion carried unanimously.

RS-16-122 Consider a memorandum/resolution awarding Bid No. 16-28 for renovation of the Army Radar Approach Control (ARAC) Building at Robert Gray Army Airfield to Unified Services of Texas, Inc.

Staff comments: Matthew Van Valkenburgh

Staff recommends City Council award a construction contract for the repair and rehabilitation of the ARAC to Unified Services of Texas, Inc. in the amount of \$2,056,630. Additionally, that it authorize the acting City Manager to execute all necessary contract documents and all change orders or supplemental agreements for the project within the amounts set by state and local law.

Motion was made by Councilmember Okray to approve RS-16-122. Motion was seconded by Councilmember Rivera. Motion carried unanimously.

RS-16-123 Consider a memorandum/resolution approving Supplemental Agreement No. 3 to the professional services contract for engineering/design of the Army Radar Control Facility with Garver, LLC.

Staff comments: Matthew Van Valkenburgh

During the design process, several new and complicated elements were added to the project, including asbestos abatement, and it was determined the complexity of project was such that a full-time construction manager was necessary. To that end, staff negotiated a supplemental agreement with Garver for an additional \$62,710.00 for a full-time onsite construction manager. Staff recommends the City Council approve Supplemental Agreement No. 3 for the ARAC Facility design with Garver, LLC and authorize the acting City Manager to execute same.

Motion was made by Councilmember Kilpatrick to approve RS-16-123. Motion was seconded by Councilmember Rivera. Motion carried 6 to 1 with Councilmember Johnson opposing.

RS-16-124 Consider a memorandum/resolution awarding Bid No. 16-26 for the construction of a Runway End Identifier Light (REIL) system at Skylark Field to F&W Electrical Contractors, Inc.

Staff comments: Matthew Van Valkenburgh

The bids were evaluated by representatives of Garver, LLC, the engineer of record, on behalf of staff. It was determined the bid from F&W Electrical Contractors, Inc. in the amount \$54,453.00 was the lowest responsive and responsible bid for this project. Staff recommends City Council award a construction contract for the installation of the REIL system at Skylark Field to F&W Electrical Contractors, Inc. in the amount of \$54,453.00. Additionally, that it authorize the acting City Manager to execute all necessary contract documents and all change orders or supplemental agreements for the project within the amounts set by state and local law.

Motion was made by Councilmember Fleming to approve RS-16-124. Motion was seconded by Mayor Pro-Tem Moore. Motion carried unanimously.

RS-16-125 Consider a memorandum/resolution appointing an Interim City Manager.

Motion was made by Councilmember Kilpatrick to appoint Police Chief Dennis Baldwin as Interim City Manager. Motion was seconded by Councilmember Rivera. Motion carried 4 to 3 with Councilmember Johnson, Councilmember Okray, and Mayor Pro-Tem Moore opposing.

Chief Baldwin will assign his Police Chief duties to Assistant Police Chief Young during his tenure as Interim City Manager. There will be no increase in pay or benefits for Chief Baldwin or Assistant Chief Young.

Councilmember Okray stated for the record that he did not participate in this decision.

Mayor Pro-Tem Moore stated that he has no problem with Chief Baldwin but does not believe he can do duties on both sides of the house.

Chief Baldwin addressed council and stated his commitment to provide leadership at all levels.

Ordinances

This item was postponed from consideration.

OR-16-020 Consider an ordinance to approve, for FY 17, suspension of compensation step increases for all city employees, including civil service employees. (Tabled from September 27, 2016 Regular City Council Meeting.)

Adjournment

With no further business, upon motion being made by Councilmember Okray, seconded by Councilmember Rivera, and unanimously approved, the meeting was adjourned at 6:37 p.m.



City of Killeen

Legislation Details

File #: RS-16-126 **Version:** 1 **Name:** Youth Advisory Swear In
Type: Resolution **Status:** Resolutions
File created: 10/3/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution appointing members to the Youth Advisory Commission.
Sponsors: Volunteer Services
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

APPOINTMENT OF MEMBERS TO THE YOUTH ADVISORY COMMISSION

ORIGINATING DEPARTMENT

Community Services/Volunteer Services

BACKGROUND INFORMATION

The City Council is responsible for making appointments to the boards and commissions. As vacancies occur, appointments are brought to City Council.

DISCUSSION/CONCLUSION

Appointments are needed for the Youth Advisory Commission for the 2016-2017 year. The following recommendations are for City Council consideration:

KILLEEN VOLUNTEERS, INC.-YOUTH ADVISORY COMMISSION		
<i>Sub-Committee: All Council</i>		
Current Members	New YAC Members	Special Qualifications
Kayla Anderson	Jeremiah Belser	Student Representative
Jeremiah Belser	Hyelim Choung	Student Representative
De'Veon Bradford	Hyewon Choung	Student Representative
Janella Calvillo	Arianna Chavez	Student Representative
Camryn Cotton	Julian Chavez	Student Representative
Ravyn Dietzman	Ravyn Dietzman	Student Representative
Sara Drussell	Abraham Everett	Student Representative
Abraham Everett	Loveless Gatewood	Student Representative
Loveless Gatewood	Crystal Graupman	Student Representative
Isaiah Grant	Madison Henry	Student Representative
Madison Henry	Lexy Hicks	Student Representative
Sierra Holland	Mychel Howard	Student Representative
Delano Hudson	Joseph Low	Student Representative
Keith Huey	Kaitlyn Low	Student Representative
Alejandro Jimenez	JoAnn Lomas-Mathis	Student Representative
Madison LaValley	Jason McDonald	Student Representative
JoAnn Lomas-Mathis	Joshua Moses	Student Representative
Adrian Manning	Demetra Paizanis	Student Representative
Rolando Mendoza	Michalis Paizanis	Student Representative
Joshua Moses	Jaelyn Rivas	Student Representative
Aimee Nazario-Ovalle	Mark Thomas	Student Representative
Jacob Nichols	Markeisha Thomas	Student Representative
Wesley Orolla	Skylar Vanderberg	Student Representative
Demetra Paizanis	Daniel Watford III	Student Representative
Deanta Pittman	MyAzia Williams	Student Representative

Keshawn Pittman	Olivia Winder	Student Representative
Nathan Rarangol	Vacancy	Student Representative
Cody Reinhard	Vacancy	Student Representative
Jaelyn Rivas	Vacancy	Student Representative
Jada Roper	Vacancy	Student Representative
Alana Shoemo	Vacancy	Student Representative
Kristiane Smith	Vacancy	Student Representative
Monika Symonds	Vacancy	Student Representative
Markeisha Thomas	Vacancy	Student Representative
Skylar Vanderberg	Vacancy	Student Representative
Olivia Winder	Vacancy	Student Representative
Megan Young	vacancy	Student Representative

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDATION

It is recommended that the City Council appoint the nominated individuals.



City of Killeen

Legislation Details

File #: RS-16-127 **Version:** 1 **Name:** Commercial lease
Type: Resolution **Status:** Resolutions
File created: 9/27/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution authorizing a commercial lease at 207 and 209 West Avenue D, Killeen, Texas.
Sponsors: Support Services Department
Indexes:
Code sections:
Attachments: [Council Memorandum Lease](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Commercial lease at 207 and 209 West Avenue D, Killeen, Texas

ORIGINATING DEPARTMENT

Support Services

BACKGROUND INFORMATION

Printing Services and Purchasing Division have occupied leased space at 207 and 209 West Avenue D, Killeen, Texas, since October, 2012. Staff continues to explore options that relocate these staff sections into property owned by the City of Killeen.

DISCUSSION/CONCLUSION

The current lease agreement ends on September 30, 2016. Staff and International Realtors have coordinated a 1-year lease extension through September 30, 2017.

Section III (Obtaining Goods and Services) of the City of Killeen Purchasing Manual states the council will approve all leases for real property and all other leases that exceed \$50,000.00.

FISCAL IMPACT

The monthly rent in FY17 is \$3,000, for an annual total of \$36,000.00. Funds are available in accounts 010-2130-460.44-55 (Purchasing, \$18,000.00) and 010-2134-460.44-55 (Printing Services, \$18,000.00).

RECOMMENDATION

Staff recommends council authorize the City Manager to sign a commercial lease for the period October 1, 2016, to September 30, 2017, for property located at 207 and 209 West Avenue D, Killeen, Texas.



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2014

1. PARTIES: The parties to this lease are:

Landlord: International Realtors _____ ; and

Tenant: City of Killeen _____

2. LEASED PREMISES:

A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements (Check only one box):

(1) Multiple-Tenant Property: Suite or Unit Number _____ containing approximately _____ square feet of rentable area in _____ (project name) at _____ (address) in _____ (city), _____ (county), Texas, which is legally described on attached Exhibit _____ or as follows: _____

(2) Single-Tenant Property: The real property containing approximately _____ square feet of rentable area at: 207-A & B and 209 W. Ave. D _____ (address) in Killeen, Texas (city), Bell (county), Texas, which is legally described on attached Exhibit _____ or as follows: 55 feet of Lot 3 and the East 50 feet of the West 95 feet of the South 85 feet of Lot 3, Blk. 60 of the Original Townsite of the City of Killeen.

B. If Paragraph 2A(1) applies:

- (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
- (2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property. The rentable area will will not be adjusted if re-measured.

3. TERM:

A. Term: The term of this lease is 12 months and _____ days, commencing on: October 1, 2016 (Commencement Date) and ending on September 30, 2017 (Expiration Date).

B. Delay of Occupancy: If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially

Commercial Lease concerning: Killeen, Texas,

complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant for such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. If Tenant is unable to occupy the leased premises after the 90th day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by cleaning or repairs.

C. Certificate of Occupancy: Unless the parties agree otherwise, Tenant is responsible for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

4. RENT AND EXPENSES:

A. Base Monthly Rent: On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit _____ or as follows:

Dates		Rate per rentable square foot (optional)		Base Monthly Rent \$
From	To	\$ Monthly Rate	\$ Annual Rate	
10/01/2016	09/30/2017	/ rsf / month	/ rsf / year	3,000.00
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	

B. Additional Rent: In addition to the base monthly rent, Tenant will pay Landlord all other amounts, as provided by the attached (Check all that apply.):

- (1) Commercial Lease Addendum for Expense Reimbursement (TAR-2103)
- (2) Commercial Lease Addendum for Percentage Rent (TAR-2106)
- (3) Commercial Lease Addendum for Parking (TAR-2107)
- (4) _____

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

C. First Full Month's Rent: The first full monthly rent is due on or before October 1, 2016

D. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.

E. Place of Payment: Tenant will remit all amounts due to Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Name: International Realtors
 Address: 2001 E. Rancier, Killeen, TX.

F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any

check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.

G. **Late Charges:** If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 10% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.

H. **Returned Checks:** Tenant will pay \$ 25.00 for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.

5. SECURITY DEPOSIT:

A. Upon execution of this lease, Tenant will pay \$ _____ to Landlord as a security deposit.

B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.

C. Within 60 days after Tenant surrenders the leased premises and provides Landlord written notice of Tenant's forwarding address, Landlord will refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease.

6. TAXES: Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises.

7. UTILITIES:

A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. (Check all that apply.)

	<u>N/A</u>	<u>Landlord</u>	<u>Tenant</u>
(1) Water	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2) Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(3) Electric	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(4) Gas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(5) Telephone	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(6) Internet	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(7) Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(8) Trash	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(9) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(10) All other utilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider except that if Tenant selects the provider, any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay

and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.

- C. **Notice: Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.**
- D. **After-Hours HVAC Charges:** "HVAC services" means heating, ventilating, and air conditioning of the leased premises. *(Check one box only.)*
- (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.
- (2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of \$ _____ per hour. Tenant will pay Landlord the charges under this paragraph immediately upon receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services under this paragraph.
- (3) Tenant will pay for the HVAC services under this lease.

8. INSURANCE:

- A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:
- (1) public liability insurance naming Landlord as an additional insured with policy limits on an occurrence basis in a minimum amount of: *(check only (a) or (b) below)*
- (a) \$1,000,000; or
- (b) \$2,000,000.
- If neither box is checked the minimum amount will be \$1,000,000.
- (2) personal property damage insurance for the business operations being conducted in the leased premises and contents in the leased premises in an amount sufficient to replace such contents after a casualty loss; and
- (3) business interruption insurance sufficient to pay 12 months of rent payments;
- B. Before the Commencement Date, Tenant must provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.
- C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:
- (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or
- (2) exercise Landlord's remedies under Paragraph 20.
- D. Unless the parties agree otherwise, Landlord will maintain in full force and effect insurance for: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property; and (2) any public liability insurance in an amount that Landlord determines reasonable and appropriate.
- E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately

after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8E will be equal to the actual amount of the increase in Landlord's insurance premium.

9. USE AND HOURS:

- A. Tenant may use the leased premises for the following purpose and no other: any legal purposes

- B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.
- C. The Property maintains operating hours of *(specify hours, days of week, and if inclusive or exclusive of weekends and holidays)*: _____

10. LEGAL COMPLIANCE:

- A. Tenant may not use or permit any part of the leased premises or the Property to be used for:
 - (1) any activity which is a nuisance or is offensive, noisy, or dangerous;
 - (2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
 - (3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
 - (4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
 - (5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
 - (6) the permanent or temporary storage of any hazardous material; or
 - (7) _____
- B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.
- C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.

11. SIGNS:

- A. Tenant may not post or paint any signs or place any decoration outside the leased premises or on the Property without Landlord's written consent. Landlord may remove any unauthorized sign or decorations, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign or decorations.

- B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.
- C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs or decorations that were placed on the Property or leased premises by or at the request of Tenant. Any signs or decorations that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

12. ACCESS BY LANDLORD:

- A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.
- B. During the last 60 days of this lease, Landlord may place a "For Lease" or similarly worded sign on the leased premises.

13. MOVE-IN CONDITION: Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease or in an addendum. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:

- A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

15. MAINTENANCE AND REPAIRS:

- A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles. Landlord Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the property type. Tenant will maintain any grease trap on the Property which Tenant uses, including but not limited to periodic

emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.

- B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.
- C. Repair and Maintenance Responsibility: Except as otherwise provided by this Paragraph 15, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises (if any). The specified items must be maintained in clean and good operable condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. *(Check all that apply.)*

	N/A	Landlord	Tenant
(1) Foundation, exterior walls, roof, and other structural components.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(2) Glass and windows.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(3) Fire protection equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(4) Fire sprinkler systems	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(5) Exterior & overhead doors, including closure devices, molding, locks, and hardware	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(6) Grounds maintenance, including landscaping and irrigation systems	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(7) Interior doors, including closure devices, frames, molding, locks, and hardware	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(8) Parking areas and walks.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(9) Plumbing systems, drainage systems and sump pumps	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(10) Electrical systems, mechanical systems	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(11) Ballast and lamp replacement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(12) Heating, Ventilation and Air Conditioning (HVAC) systems	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(13) HVAC system replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(14) Signs and lighting:			
(a) Pylon.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) Facia.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(c) Monument.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(d) Door/Suite.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(e) Other:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(15) Extermination and pest control, excluding wood-destroying insects.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(16) Fences and Gates	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(17) Storage yards and storage buildings.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(18) Wood-destroying insect treatment and repairs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(19) Cranes and related systems	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(20) <u>Major sewer or water line breaks</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(21)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(22) All other items and systems.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

- D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

- E. HVAC Service Contract: If Tenant maintains the HVAC system under Paragraph 15C(12), Tenant is is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and Tenant will reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord's remedies under Paragraph 20.
- F. Common Areas: Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and regulations. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.
- G. Notice of Repairs: Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.
- H. Failure to Repair: Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

16. ALTERATIONS:

- A. Tenant may not alter (including making any penetrations to the roof, exterior walls or foundation), improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.
- B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.
- C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order and in compliance with Paragraphs 16A and 17.
- D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.
17. **LIENS**: Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.
18. **LIABILITY**: To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:

- A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;
- B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

19. **INDEMNITY:** Each party will indemnify, defend, and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

20. **DEFAULT:**

- A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.
- B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 10 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.
- C. If Tenant is in default, Landlord may, with at least 3 days written notice to Tenant: (i) terminate this lease, or (ii) terminate Tenant's right to occupy the leased premises without terminating this lease and may accelerate all rents which are payable during the remainder of this lease or any renewal period. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:
 - (1) any lost rent;
 - (2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
 - (3) repairs to the leased premises for use beyond normal wear and tear;
 - (4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
 - (5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
 - (6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
 - (7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
 - (8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property; and
 - (9) any other recovery to which Landlord may be entitled under this lease or under law.

21. **ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.

22. **HOLDOVER:** If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will

indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 150% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

23. LANDLORD'S LIEN AND SECURITY INTEREST: To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code.

24. ASSIGNMENT AND SUBLETTING: Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.

25. RELOCATION:

- A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationary and business cards. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.
- B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.

26. SUBORDINATION:

- A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
- (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
 - (2) all advances made under any such lien, encumbrance, or ground lease;
 - (3) the interest payable on any such lien or encumbrance;
 - (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
 - (5) any restrictive covenant affecting the leased premises or the Property; and
 - (6) the rights of any owners' association affecting the leased premises or Property.
- B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

27. ESTOPPEL CERTIFICATES & FINANCIAL INFORMATION:

- A. Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies the terms and conditions of this lease.

- B. Within 30 days after receipt of a written request from Landlord, Tenant will provide to Landlord Tenant's current financial information (balance sheet and income statement). Landlord may request the financial information no more frequently than once every 12 months.

28. CASUALTY LOSS:

- A. Tenant must immediately notify Landlord of any casualty loss in the leased premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the leased premises are less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss.
 - B. If the leased premises are less than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the leased premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this lease.
 - C. If the leased premises are more than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord may: (1) terminate this lease; or (2) restore the leased premises to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the leased premises within the time required, Tenant may terminate this lease.
 - D. If Landlord notifies Tenant that Landlord cannot substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this lease by notifying Landlord within 10 days.
 - E. If this lease does not terminate because of a casualty loss, rent will be reduced from the date Tenant notifies Landlord of the casualty loss to the date the leased premises are substantially restored by an amount proportionate to the extent the leased premises are unusable.
- 29. CONDEMNATION:** If after a condemnation or purchase in lieu of condemnation the leased premises are totally unusable for the purposes stated in this lease, this lease will terminate. If after a condemnation or purchase in lieu of condemnation the leased premises or Property are partially unusable for the purposes of this lease, this lease will continue and rent will be reduced in an amount proportionate to the extent the leased premises are unusable. Any condemnation award or proceeds in lieu of condemnation are the property of Landlord and Tenant has no claim to such proceeds or award. Tenant may seek compensation from the condemning authority for its moving expenses and damages to Tenant's personal property.
- 30. ATTORNEY'S FEES:** Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the nonprevailing party.

31. REPRESENTATIONS:

- A. Tenant's statements in this lease and any application for rental are material representations relied upon by Landlord. Each party signing this lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign the lease. If Tenant makes any misrepresentation in this lease or in any application for rental, Tenant is in default.
- B. Landlord is not aware of any material defect on the Property that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Property that would affect the

Commercial Lease concerning: Killeen, Texas,

health or safety of an ordinary person, except: _____

C. Each party and each signatory to this lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this lease or any transaction related to this lease for a Specially Designated and Blocked Person. Any party or any signatory to this lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

32. BROKERS:

A. The brokers to this lease are:

Principal Broker: _____ Cooperating Broker: _____

Agent: _____ Agent: _____

Address: _____ Address: _____

Phone & Fax: _____ Phone & Fax: _____

E-mail: _____ E-mail: _____

License No.: _____ License No.: _____

Principal Broker: *(Check only one box)*

represents Landlord only.

represents Tenant only.

is an intermediary between Landlord and Tenant.

Cooperating Broker represents Tenant.

B. Fees:

(1) Principal Broker's fee will be paid according to: *(Check only one box)*.

(a) a separate written commission agreement between Principal Broker and:

Landlord Tenant.

(b) the attached Commercial Lease Addendum for Broker's Fee (TAR-2102).

(2) Cooperating Broker's fee will be paid according to: *(Check only one box)*.

(a) a separate written commission agreement between Cooperating Broker and:

Principal Broker Landlord Tenant.

(b) the attached Commercial Lease Addendum for Broker's Fee (TAR-2102).

33. ADDENDA: Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

34. NOTICES: All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by facsimile transmission to:

Landlord at: International realtors

Address: 2001 E. Rancier, Killeen, TX

Commercial Lease concerning: 207-A & B and 209 W. Ave. D
Killeen, Texas,

Phone: (254) 634-2114 Fax: (254) 634-2114
and a copy to: _____

Address: _____
Phone: _____ Fax: _____

Landlord also consents to receive notices by e-mail at: mangeld@austin.rr.com

Tenant at the leased premises,
and a copy to: City of Killeen

Address: 101 College St., Killeen, TX
Phone: (254) 501-7717 Fax: (254) 634-8399

Tenant also consents to receive notices by e-mail at: _____

35. SPECIAL PROVISIONS:

1. Owner is a Real Estate Agent.
2. The City of Killeen has the option of purchasing 207 A&B W. Ave. D and 209 W. Ave. D anytime during this lease for \$675,000.
3. During the time this lease is in effect, the tenant will maintain in full force and effect a Fire & EC insurance policy insuring the leased property for at least \$300,000 and naming International Realtors as Loss Payee under this policy.

36. AGREEMENT OF PARTIES:

- A. Entire Agreement: This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. Binding Effect: This lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, or refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its renewal, or its termination is binding on all Tenants.
- D. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this lease.
- E. Severable Clauses: If any clause in this lease is found invalid or unenforceable by a court of law, the remainder of this lease will not be affected and all other provisions of this lease will remain valid and enforceable.
- F. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this lease.

Commercial Lease concerning: Killeen, Texas,

- G. Quiet Enjoyment: Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.
- H. Force Majeure: If Landlord's performance of a term in this lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, flood, or any cause outside Landlord's control, the time for Landlord's performance will be abated until after the delay.
- I. Time: Time is of the essence. The parties require strict compliance with the times for performance.

Brokers are not qualified to render legal advice, property inspections, surveys, engineering studies, environmental assessments, tax advice, or compliance inspections. The parties should seek experts to render such services. READ THIS LEASE CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.

Landlord: International Realtors

Tenant: City of Killeen

JEW

By: _____

By: _____

By (signature): 

By (signature): _____

Printed Name: Miguel A. Diaz Jr.

Printed Name: _____

Title: OWNER Date: 09/08/2016

Title: _____ Date: _____

254. 279. 1340

By: _____

By: _____

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____ Date: _____

Title: _____ Date: _____



City of Killeen

Legislation Details

File #: RS-16-128 **Version:** 1 **Name:** Adoption of Master Plan and Approval of Airport Layout Plan for ILE
Type: Resolution **Status:** Resolutions
File created: 10/3/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution adopting a master plan and approving an airport layout plan for Skylark Field.
Sponsors: Aviation Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

ADOPTION OF MASTER PLAN AND APPROVAL OF AIRPORT LAYOUT PLAN FOR SKYLARK FIELD

ORIGINATING DEPARTMENT

AVIATION

BACKGROUND INFORMATION

On November 26, 2013, Council approved a Project Participation Agreement with TxDOT Aviation Division to provide for the development of a new master plan for Skylark Field. The last master plan included what was then known as Killeen Municipal Airport and was adopted by Council on October 29, 2002. That master plan was an airport system master plan which included proposed development that was to become Killeen-Fort Hood Regional Airport.

DISCUSSION/CONCLUSION

In February, 2014, TxDOT issued a request for qualifications (RFQ) for qualified airport planning firms to perform a master plan for Skylark Field. A selection team composed of TxDOT, City Planning and Development Staff, and Killeen Aviation Department Staff reviewed qualifications of companies submitting qualifications and conducted interviews of finalists. Garver, LLC was selected to perform the necessary professional services. On August 8, 2014, TxDOT Aviation Division executed a contract with Garver, LLC to perform the master plan.

For oversight of the master plan, two committees were established to provide guidance and direction to the consultant. The Executive Committee was comprised of the Executive Director of Aviation, other City staff (including City Planning and Development), and TxDOT Aviation; the Project Steering Committee included airport users, aviation business operators, airport tenants, Central Texas College, the Killeen Chamber of Commerce, and the Harker Heights Chamber of Commerce.

Components of the master planning process included a SWOT (strength, weakness, opportunities, and threat) analysis, an inventory of existing airport facilities, activity forecasting, consideration of current FAA design standards, review of development alternatives, a public meeting, a financial review, development of a new airport layout plan, development of a capital improvement plan, and numerous other elements.

While the master plan includes a development schedule, this schedule assumes the demand for the particular improvement exists at the time the development would occur and that funding is available to finance the capital improvement. One of the most important products of the master plan is that it identifies the locations where specific types of development should occur to maximize the use of the limited space available for airport development.

FISCAL IMPACT

Adoption of the master plan and approval of the airport layout plan serves as a roadmap for future airport development, and it does not obligate the City for any immediate or future expenditures. The plan may be adjusted as aviation needs (demand) change or upon the availability of airport development funds.

RECOMMENDATION

City Council adopt the master plan for Skylark Field and authorize the City Manager to approve the Skylark Field Airport Layout Plan on behalf of the City upon its completion of review and approval by the Federal Aviation Administration and TxDOT Aviation Division.



City of Killeen

Legislation Details

File #: RS-16-129 **Version:** 1 **Name:** Lease w/purchase option of a wheel loader for the Solid Waste Transfer Station

Type: Resolution **Status:** Resolutions

File created: 9/15/2016 **In control:** City Council

On agenda: 10/25/2016 **Final action:**

Title: Consider a memorandum/resolution authorizing the lease with purchase option of a wheel loader for the Solid Waste Transfer Station.

Sponsors: Fleet Services, Solid Waste, Transfer Station

Indexes:

Code sections:

Attachments: [Council Memorandum](#)
[Quote](#)
[Finance Proposal](#)
[Wheel Loader](#)
[Certificate of Interested Parties](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Authorize lease with purchase option of a wheel loader for the Solid Waste Transfer Station.

ORIGINATING DEPARTMENT

Fleet Services / Solid Waste

BACKGROUND INFORMATION

The three-year lease on one of the transfer station's existing wheel loaders expired in August 2016. Due to the environment in which this unit operates and the projected cost of maintaining this heavy equipment, staff does not feel that purchasing the existing unit would be in the best interest of the City. The Transfer Station is therefore requesting to initiate a new three-year wheel loader lease with a purchase option at the end of the lease.

This machine is used on the floor of the Solid Waste Transfer Station to move waste that is unloaded from the city's refuse trucks into the transfer trailers. These transfer trailers then haul the solid waste to the landfill.

DISCUSSION/CONCLUSION

The City of Killeen is a member of several purchasing cooperatives that are in compliance with the Texas Local Government Code section 271.102. Purchases made through a cooperative satisfy competitive bid requirements. After considering four different wheel loader manufacturers, staff recommends a three-year lease of a Caterpillar 938M provided by Holt CAT of Waco utilizing the TASB BuyBoard Purchasing Cooperative. The lease with purchase option would again be facilitated through Caterpillar Financial Services Corporation per the attached finance proposal.

Vendor	Make/Model	Mthly Cost	Purchase Option	Total Cost 3-yr + Purch.
Holt CAT	2016 Cat 938M	\$2,231.80	\$133,744.00	\$214,088.80

FISCAL IMPACT

Funding for this lease is available in account 540-3475-439.44-10. The FY17 budget for this account is \$77,258.

RECOMMENDATION

Staff recommends the procurement of the wheel loader from Holt CAT, through the TASB BuyBoard, on a three-year lease of \$2,231.80 per month, and that the City Manager or designee is authorized to approve the purchase of the equipment at the end of the three-year lease period for \$133,744.00 if the purchase is approved in the FY19 budget, and that the City

Manager or designee is expressly authorized to execute any and all change orders within the amounts set by state and local law.



September 16, 2016

CITY OF KILLEEN FLEET SERVICES
 PO BOX 1329
 KILLEEN, TEXAS 76540-1329

Attention: GRANT ROACH

RE: Quote 176843-01

BUY BOARD QUOTE: #424-13

Dear Grant Roach,

Thank you for this opportunity to quote Caterpillar products for your business needs. We are pleased to quote the following for your purchase consideration.

One (1) New CATERPILLAR INC Model: 938M Wheel Loaders & with all standard equipment in addition to the additional specifications listed below:

	STOCK NUMBER:	SERIAL NUMBER:	YEAR:	SMU:
STANDARD EQUIPMENT				

POWERTRAIN - Axle seal guards - Auto Idle shut down feature - Cat C7.1ACERT engine - -Power Modes (Standard and Performance) - -Power by Range (High Power in Range 4) - -Tier 4 Final/Stage IV compliant - -Turbocharged and aftercooled - -Filtered crankcase breather - -Diesel particulate filter - -Selective Catalyst Reduction - Coolant protection to -34C (-29F) - Differential lock in front axle - Dry type air cleaner - Enclosed wet disc full hydraulic brakes - Fuel priming pump, automatic - Fuel water separator - Hydraulically driven demand cooling fan - Hydrostatic transmission with electronic - control - -Operator Modes (Default, TC, Hystat and - Ice) - -Directional Shift Agressiveness (Fast, - Medium, Slow) - -Rimpull control, adjust wheel torque - -Creeper control, adjust ground speed - Lubed for life driveshafts - Parking brake, electric - Single plane cooling package wide 6 fins - per inch density - S-O-S port,engine,coolant,transmission - oil -

HYDRAULICS - Automatic lift and bucket kickouts, - adjustable in-cab - Bucket and Fork Modes, adjustable in-cab - Cylinder damping at kickout and - mechanical end stops - Fine Mode control (Fast, Medium, Slow) - in Fork Mode - Hydraulic Response setting (Fast, - Medium, Slow) - Hydraulic diagnostic connectors and - S-O-S ports - Hydraulic sight gauge, visible - Load sensing hydraulics and steering - Seat mounted hydraulic joystick controls

ELECTRICAL - Alternator, 115-amp, heavy duty - 12V power supply in cab (2) - Batteries, 1,000 CCA (2) 24 volt system, - disconnect switch - Back up alarm - Emergency shutdown switch - Halogen work lights front and rear, LED - rear stop and turn lights - Heavy duty gear reduction starter - Product Link PRO w/3 year subscription - Remote jump start post - Resettable main and critical function - breakers - Roofing lights front and rear

OPERATOR ENVIRONMENT - 75 mm (3 in) retractable seatbelt - Automatic temperature control - Cab, enclosed ROPS/FOPS pressurized - and sound suppressed - Cup holders - External heated mirrors with lower - parabolic - Ground level cab door release - Gauges - -Digital hour meter, odometer and - tachometer - -Digital ground speedometer and - direction indicator - -Engine coolant temperature gauge - -Fuel and Diesel Exhaust Fluid level - indicator - -Hydraulic oil temperature gauge - Hydraulic control lockout - Interior cab lighting, door and dome - Interior rearview mirrors (2) - Lunch box storage - Operator warning system indicators - Radio ready speakers - Rear window defrost, electric - Seat mounted electronic implement - controls, adjustable - Sliding glass on the side

windows - Column mounted multi function control - lights, wipers, turn signal - Suspension seat, fabric - Tilt and telescope steering wheel - Tinted front glass - Wet arm wiper/washer, 2-speed and - intermittent, front - Wet arm wiper washer, rear -

OTHER STANDARD EQUIPMENT - Large-access enclosure doors with - adjustable close/open force - Parallel lift loader linkage - Recovery hitch with pin - Remote mounted lubrication points - Vandalism protection- - lockable compartments -

MACHINE SPECIFICATIONS

938M WHEEL LOADER	430-2807
LANE 2 - AVAILABLE FROM CLAYTON FACTORY - BASE ORDERS PROGRAM	
LANE 3 - AVAILABLE FROM CLAYTON FACTORY - NON BASE ORDERS PROGRAM	
LANE 3 ORDER	0P-9003
PREP PACK, UNITED STATES	430-2943
HYD,2V,PIN-ON,STD LIFT	430-2841
STEERING, STANDARD	333-6858
DIFFERENTIAL, OPEN REAR	349-8014
ENVIRONMENT, MEDIUM DEBRIS	430-2865
WEATHER, STANDARD	454-0612
ENGINE AR	430-3038
CAB, STANDARD	423-7152
SEAT, STANDARD	423-7200
LIGHTS, STD HALOGEN	488-1112
RADIO, READY	342-0130
PRODUCT LINK, CELLULAR PL641	454-0589
FENDERS, DEFLECTORS	419-8851
COUNTERWEIGHT, STANDARD, LIGHT	348-4657
KIT,SERIALIZED TECHNICAL MEDIA	0P-2491
RIDE CONTROL	430-2860
WARNING, BEACON, LED STROBE	333-1425
GUARD, WINDSHIELD	342-0250
GUARD, TILT CYLINDER, STD LIFT	433-9751
GUARD, POWERTRAIN, LOWER	349-8165
GUARD, POWERTRAIN, SIDE	425-1425
GUARD, CRANKCASE	349-8163
GUARD, DRIVESHAFT	349-8164
GUARD, STEERING CYLINDER	430-2917
FILM GP, WASTE HANDLER	387-4096
BUCKET, LM, 6.5, YD3, PO	360-3317
GUARD, HITCH	391-1990
SHIPPING/STORAGE PROTECTION	0P-2266
INLAND FREIGHT	0P-2488
TIRES, 20.5R25 TI MXL * L3	376-0830
CUTTING EDGE GP, RUBBER, 108"	444-1522
ADDITIONAL LIGHTING & ALAMS	

Sell Price	\$199,199.00
Ext Warranty	Included
Total	\$199,199.00

WARRANTY

Standard Warranty: 12 Month / Unlimited Hour Total Machine
Extended Warranty: 3YR / 6000 HOUR POWERTRAIN WARRANTY

F.O.B/TERMS: Hrs - Waco

Accepted by _____ on _____

Signature

Thank you for your interest in Holt CAT and Caterpillar products for your business needs. This quotation is valid for 30 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.

Sincerely,

Bryan Taylor
Machine Sales Representative
Holt CAT
Bryan.Taylor@holtcat.com
254.709.7572

Finance Proposal

CUSTOMER

Name: CITY OF KILLEEN 938M 36M 5000HR LEASE

Address
 City
 State
 Zip code
 County

Good if:
 Acknowledged by Nov-23-16
 Funded by Nov-23-16

DEALER

HOLT TEXAS, LTD
 Sales person BRYAN TAYLOR
 Dealer contact MATT CRAVEN
 Telephone

Quote number 518-5662
 Fax number
 Quote date 09/01/2016
 Quote time 11:34:31

FINANCE PROPOSAL

This is Caterpillar Financial Services Corporation's confirmation of the following finance proposal. This is a proposal only and is subject to credit approval, execution of documentation, and execution and approval of the application survey.

Financing type GOVERNMENTAL
 Number of payments 36 Monthly
 Payments in Arrears

Quoted by e140mc
 Report created by e140jrb

	Model	Ann. Hours	Qty	Sale Price	Amount Financed	Payment	Balloon	Fixed Rate
New	938M	2000	1	199,199.00	199,199.00	2,231.80	133,744.00	2.9567

Special Conditions:

938M
 Model Year - 2016, Industrial Environment; Major Attachments-Tires, Ride Control, Cab; Blades/Buckets/Rippers-General Purpose Bucket, Rear Counterweight

	Model	Insurance	Payment w/Insurance
New	938M	214.97	2,446.77

The estimate for insurance is provided through Caterpillar Insurance Company (Provided by Westchester Insurance Company in Rhode Island) and is not an offer to contract for insurance.

CONDITIONS

Insurance: The customer must provide evidence of physical damage and liability insurance in an amount and from an insurance carrier satisfactory to CFSC. CFSC must be named on the policies, as loss payee and additional insured, as applicable, and a certificate of insurance, in form and substance acceptable to CFSC, must be provided to CFSC.

Taxes: All taxes are the responsibility of the customer and may or may not be included in the above payment amount.

Equipment: The equipment cannot be delivered until all documents are executed by CFSC. All equipment must reside in the United States at all times.

Approval: This proposal is subject to, among other things, final pricing, credit approval and document approval by CFSC.

The terms and conditions outlined herein are not all-inclusive and are based upon information provided to date. This proposal may be withdrawn or modified by Lessor at anytime. This proposal does not represent an offer or commitment by CFSC to enter into a transaction or to provide financing, and does not create any obligation for CFSC. A commitment to enter into the transaction described herein may only be extended by CFSC after this transaction has been approved by all appropriate credit and other authorities within CFSC.

Please indicate your acceptance of this proposal by executing this proposal and returning it to my attention along with the Proposal Fee at the address below. Please be sure to indicate which financing option you have accepted.

Caterpillar Financial Services Corporation
 2120 West End Avenue, Nashville, TN 37203
 (615)-341-1000

We appreciate the opportunity to provide you a proposal for this transaction.

Proposed by:

Acknowledged by:

Caterpillar Financial Services Corporation

Finance Proposal

Caterpillar Financial Services Corporation

CITY OF KILLEEN 938M 36M 5000HR LEASE Date



CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:

2016-113056

Date Filed:

09/16/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Holt Texas, LTD.
San Antonio, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Killeen, City of

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

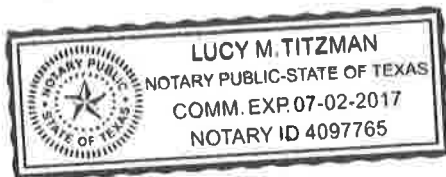
424-13
Purchase 938M Wheel Loader

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	TAYLOR, Bryan	Holland, TX United States		X
	RICHTER, Corinna Holt	San Antonio, TX United States	X	
	HOLT , Peter J.	San Antonio, TX United States	X	
	HOLT , Julianna	San Antonio, TX United States	X	
	HOLT , Peter M.	San Antonio, TX United States	X	

5 Check only if there is NO Interested Party.

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Paul C. Hensley
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Paul C. Hensley, this the 16 day of September, 2016, to certify which, witness my hand and seal of office.

Lucy M. Titzman Lucy M. Titzman Executive Assistant- Finance
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath
Notary Notary Notary



City of Killeen

Legislation Details

File #: RS-16-130 **Version:** 1 **Name:** Stagecoach Rd Recon CO #29
Type: Resolution **Status:** Resolutions
File created: 9/30/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution authorizing Change Order No. 29 to the Stagecoach Road Reconstruction, Phase 2 Project with McLean Construction, Inc.
Sponsors: Public Works Department, Transportation Division
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Change Order](#)
[Quote](#)
[Change Order List](#)
[Certificate of Interested Parties](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

AUTHORIZE CHANGE ORDER NO. 29 TO THE STAGECOACH ROAD RECONSTRUCTION, PHASE 2 PROJECT WITH MCLEAN CONSTRUCTION, INC.

ORIGINATING DEPARTMENT

Public Works - Transportation Division

BACKGROUND INFORMATION

On July 30, 2013 (CCM/R 13-087R), City Council authorized the award of a construction contract (Bid 13-12) for the Stagecoach Road Reconstruction, Phase 2 project to McLean Construction, Inc. in the amount of \$17,171,171.10. This four and one-half mile project is a continuation of the Stagecoach Road reconstruction project from East Trimmier Road to Tyrel Drive. This project consists of rebuilding the existing 2-lane rural roadway section with roadside ditches to a 5-lane urban roadway section that contains a continuous center left turn lane with curb and gutter.

DISCUSSION/CONCLUSION

The improvements to Stagecoach Road lowered the profile of the roadway at Shelton Plumbing and caused an undue burden on the adjacent property. Additionally, the new grade of the roadway has affected the entrances to the business which prevents vehicular access to the driveways and parking lot. To correct this elevation difference, the driveways will need to be re-graded, the parking lot will need to be re-paved, and a Keystone wall will need to be added for stabilization. This work will add 30 days to the project time.

FISCAL IMPACT

The total cost of the project before this Change Order No. 29 request was \$16,081,161.80. The total cost of this change is a net increase of \$118,923.00, resulting in a revised total contract price of \$16,200,084.80, or a cumulative 5.66% decrease to the original contract. Funds for this change order are available in the 2011 Certificate of Obligation Bond, Stagecoach Improvements account number 343-3490-800.58-36.

RECOMMENDATION

City staff recommends that City Council authorize the Interim City Manager to execute Change Order No. 29 in the amount of \$118,923.00 for the Stagecoach Road Reconstruction, Phase 2 project with McLean Construction, Inc.

CHANGE ORDER

No. 29DATE OF ISSUANCE September 20, 2016

EFFECTIVE DATE _____

OWNER: City of KilleenCONTRACTOR: McLean ConstructionContract: Stagecoach Road Reconstruction Phase 2Project: Stagecoach Road Reconstruction Phase 2OWNER's Contract No. 310-004-C

ENGINEER's Contract No. _____

ENGINEER: Walker Partners, LLC.

You are directed to make the following changes in the Contract Documents:

Description: Regrade the parking lot and two (2) driveways at Shelton Plumbing off Stagecoach Road at approximately STA 9+00 to include asphalt and base removal and reconstruct with base and 2" asphalt; install curb & gutter, retaining walls, ADA ramp, and striping; remove Limestone block wall and install Keystone wall; remove and replace fence and gates.

Reason for Change Order: The new roadway elevation lowered the profile and caused the private property entrance grade to be too steep to allow access of vehicular ingress and egress.

Attachments: McLean Construction Change Order #29 Request form.

CHANGE IN CONTRACT PRICE:
Original Contract Price \$ <u>17,171,171.10</u>
Net Increase (Decrease) from previous Change Orders No. <u>1</u> to <u>28</u> : \$ <u><1,090,009.30></u>
Contract Price prior to this Change Order: \$ <u>16,081,161.80</u>
Net Increase of this Change Order: \$ <u>118,923.00</u>
Contract Price with all approved Change Orders: \$ <u>16,200,084.80</u>

CHANGE IN CONTRACT TIMES:
Original Contract Times: Substantial Completion: <u>880</u> Ready for final payment: <u>910</u> (days or dates)
Net change from previous Change Orders No. <u>01</u> to No. <u>28</u> : Substantial Completion: <u>158</u> Ready for final payment: <u>158</u> (days)
Contract Times prior to this Change Order: Substantial Completion: <u>1095</u> Ready for final payment: <u>1125</u> (days or dates)
Net increase (decrease) this Change Order: Substantial Completion: <u>30</u> Ready for final payment: <u>30</u> (days)
Contract Times with all approved Change Orders: Substantial Completion: <u>1125</u> Ready for final payment: <u>1155</u> (days or dates)

RECOMMENDED:

APPROVED:

ACCEPTED:

By: _____
ENGINEER (Authorized Signature)By: _____
OWNER (Authorized Signature)By: _____
CONTRACTOR (Authorized Signature)

Date: _____

Date: _____

Date: _____

EJCDC 1910-8-B (1996 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

CHANGE ORDER

INSTRUCTIONS

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

McLean Construction

P.O. Box 10759

Killeen, Texas 76547

Phone (254) 634-4514 Fax (254) 634-4694



To: City of Killeen – Transportation
3201-A South WS Young Drive
Killeen TX 76542

23AUG16

Change Order #29 Request

(233)	Shelton Front Portion	1	Is	118,923.00
	<i>Demo Ex. Asphalt & Base Include Haul Off</i>	1	Is	46,191.20
	<i>Curb & Gutter, Retaining Walls, And Ramps</i>	1	Is	27,473.60
	<i>2" Asphalt</i>	1	Is	28,683.20
	<i>Pavement Marking & Wheel Stops</i>	1	Is	1,680.00
	<i>Limestone Block Wall Remove</i>	1	Is	2,000.00
	<i>Keystone Wall Replacement Along Stagecoach</i>	1	Is	6,720.00
	<i>Fence Remove & Replace Include Gates</i>	1	Is	3,200.00
	<i>Add Bond Fee</i>	1	Is	2,975.00
				\$ 118,923.00

- Shelton Parking Area

Total Request change order amount is \$ 118,923.00

Request to Add 30 Days

CHANGE ORDER(S) FOR

Stagecoach Road Reconstruction Phase 2 Project
(Project Name)

Department/Division:	Public Works	Bid No.:	13-12	NOTE 1. If individual Change Order request is ≥ \$50,000, please attach CCMR in front of Change Order request for Council approval 2. If, cumulatively, Change Orders are ≥ 25% of awarded contract amount please attach CCMR in front of Change Order request for Council approval
Vendor Name:	McLean Constructicon	CCMR No.:	13-087R	
Original Contract Amount:	\$17,171,171.10			
Date CCMR Approved:	07/30/13			

HISTORY OF CHANGE ORDERS

CO#	Proposed or Approved	Date CCMR Approved	CCMR#	Amount	Account Number <small>(xxx-xxxx-xxx-xx.xx)</small>	BRIEF Reason for Change Order Request (must fit in allotted space)	Updated Contract Amount	% Change in Contract
1	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	04/17/14	N/A	\$49,350.90	384-3495-800.54-91	To remove items and add an additional wastewater line for future expansion of the City's wastewater collection system into areas served by septic systems.	\$17,220,522.00	0.29%
2	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	08/12/14	14-102R	-\$1,909,861.40	343-3490-800.58-36	Deduct materials not used; add work for additional items	\$15,310,660.60	-10.84%
3	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	08/12/14	14-103R	\$150,837.20	575-3435-495.63-01	Rerouting storm drain and culvert crossing on Onion Road	\$15,461,497.80	-9.96%
4	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved		N/A	\$31,907.50	343-3490-800.58-36	Lower 16" FM; ROW agreement changes; R&R sidewalk; Sewer Services	\$15,493,405.30	-9.77%
5	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	03/18/15	N/A	\$45,864.00	343-3490-800.58-36	Add Keystone Block retaining wall at school property	\$15,539,269.30	-9.50%
6	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	03/31/15	15-028R	\$51,975.00	343-3490-800.58-36	Relocate waterline Bowfield to Featherline.	\$15,591,244.30	-9.20%
7	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	04/20/15	NA	\$13,000.00	343-3490-800.58-36	Excavate, remove, and replace waterline fill material between Rein and Flannigan.	\$15,604,244.30	-9.13%
8	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	06/17/15		\$16,522.00	343-3490-800.58-36	Relocate waterline, valves and fire hydrant between Shelton Plumbing and Flannigan Dr.	\$15,620,766.30	-9.03%
9	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	06/17/15		\$45,114.00	343-3490-800.58-36	Relocate waterline, and fire hydrant between WS Young & Featherline and extend waterline at Llewellyn.	\$15,665,880.30	-8.77%
10	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	10/23/15		\$31,509.90	343-3490-800.58-36	Remove and install flex base on roadway and embankment in various locations on Stagecoach.	\$15,697,390.20	-8.58%
11	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	10/23/15		\$36,434.00	343-3490-800.58-36	McAffrey property right-of-way agreement changes.	\$15,733,824.20	-8.37%
12	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$32,230.90	343-3490-800.58-36	Gordon property right-of-way agreement changes.	\$15,766,055.10	-8.18%
13	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$11,290.00	343-3490-800.58-36	Struve property right-of-way agreement changes.	\$15,777,345.10	-8.12%
14	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$3,007.50	343-3490-800.58-36	Brewer property right-of-way agreement changes.	\$15,780,352.60	-8.10%
15	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$7,363.20	343-3490-800.58-36	Lackmeyer property right-of-way agreement changes.	\$15,787,715.80	-8.06%
16	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$1,201.50	343-3490-800.58-36	McLeane property right-of-way agreement changes.	\$15,788,917.30	-8.05%

17	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$42,192.00	343-3490-800.58-36	Chapman property right-of-way agreement changes.	\$15,831,109.30	-7.80%
18	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$4,710.40	343-3490-800.58-36	Haun property driveway improvements.	\$15,835,819.70	-7.78%
19	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/25/15	15-130R	\$73,405.30	343-3490-800.58-36	George & Patricia Mayo property right-of-way agreement changes.	\$15,909,225.00	-7.35%
20	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$1,575.00	343-3490-800.58-36	Deerkop property right-of-way agreement changes.	\$15,910,800.00	-7.34%
21	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$16,240.00	343-3490-800.58-36	Eubank property right-of-way agreement changes.	\$15,927,040.00	-7.25%
22	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$48,195.00	343-3490-800.58-36	Westside Baptist Church property right-of-way agreement changes.	\$15,975,235.00	-6.96%
23	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$32,719.00	343-3490-800.58-36	First Church of Nazerene property right-of-way agreement changes.	\$16,007,954.00	-6.77%
24	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$3,367.00	343-3490-800.58-36	First Church of New Commandment property right-of-way agreement changes.	\$16,011,321.00	-6.75%
25	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	11/23/15		\$34,695.00	343-3490-800.58-36	Remove and install flex base on roadway and embankment between Trimmer & SH 195 on Stagecoach.	\$16,046,016.00	-6.55%
26	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	06/01/16		\$7,475.00	343-3490-800.58-36	Bowfield Dr lowering; R & R residential driveway	\$16,053,491.00	-6.51%
27	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	09/08/16		\$19,605.80	343-3490-800.58-36	Yowell ranch main gate and low water crossing	\$16,073,096.80	-6.39%
28	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	09/08/16		\$8,065.00	343-3490-800.58-36	Thompson ROW	\$16,081,161.80	-6.35%
29	<input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Approved			\$118,923.00	343-3490-800.58-36	Shelton parking lot and driveways	\$16,200,084.80	-5.66%

Vendor Signature/Date

Dept. Head Signature/Date

Recommended:

Purchasing Manager/Date

Recommended:

Director of Finance/Date

Recommended:

City Attorney/Date

Approved/Disapproved:

City Manager/Date

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
McLean Construction
Killeen, TX United States

Certificate Number:
2016-124225

Date Filed:
10/14/2016

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
City of Killeen

Date Acknowledged:

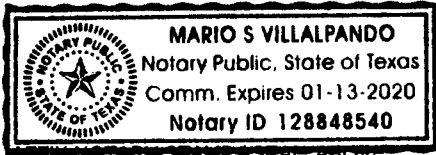
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
0909-36-147
Shelton Parking Lot

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	McLean Construction	Killeen, TX United States	X	

5 Check only if there is NO Interested Party.

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



[Handwritten Signature]
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Steve Shepherd, this the 14 day of OCT, 2016, to certify which, witness my hand and seal of office.

[Handwritten Signature] Signature of officer administering oath
Mario S Villalpando Printed name of officer administering oath
Title of officer administering oath



City of Killeen

Legislation Details

File #: RS-16-131 **Version:** 1 **Name:** SNC CIP Bank Stabilization Phase 2
Type: Resolution **Status:** Resolutions
File created: 9/30/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution authorizing the award of a construction contract to Austin Filter System, Inc., for the South Nolan Creek Capital Improvement Program Bank Stabilization Phase 2 project.
Sponsors: Public Works Department, Transportation Division
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Recommendation Letter](#)
[Bid Comparison](#)
[References](#)
[TCEQ Letter](#)
[Certificate of Interested Parties](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Award of a construction contract to Austin Filter System, Inc., for the South Nolan Creek Capital Improvement Program Bank Stabilization Phase 2 project

ORIGINATING DEPARTMENT

Public Works - Transportation/CIP

BACKGROUND INFORMATION

In 2004, the City of Killeen engaged Jacobs Engineering Group (formerly Carter & Burgess) for Drainage Master Planning Services. Within the adopted Drainage Master Plans for the City of Killeen, the City Council authorized implementation of a Major Drainage Capital Improvement Program (CIP). Several of the major CIP projects in the 2006 Drainage Bond included drainage improvements along South Nolan Creek between Fort Hood Street and 28th Street. The Drainage Master Plan identified the following drainage problems within this reach of South Nolan Creek that should be addressed through the City's Major Capital Improvement Program: structure flooding and structures located with the FEMA 100-year floodplain, significant channel and bank instability, bridge scour, vegetative overgrowth, and accumulation of trash and debris.

On July 30, 2013, City Council authorized contract Amendment 7 (CCM/R 13-084R) to provide bank stabilization by various techniques. A portion of this project is a Supplemental Environmental Project (SEP). The SEP is being performed as a result of a Texas Commission on Environmental Quality enforcement action plan resulting from a sanitary sewer overflow that occurred in 2013.

DISCUSSION/CONCLUSION

Advertisements for the South Nolan Creek CIP: Bank Stabilization-Phase 2 project were placed on August 28 and September 4, 2016. Bids were opened for the project on September 21, 2016, where one bid was received. Austin Filter Systems, Inc. submitted a base bid in the amount of \$875,168 and an add alternate bid in the amount of \$268,883.50 for a total bid amount of \$1,144,051.50. The engineer's opinion of probable cost for this project was \$869,746 for the base bid and \$367,274 for the add alternate for a total amount of \$1,237,020. The difference in the engineer's opinion of probable cost and the bid is due to market conditions in the Killeen area.

Austin Filter Systems, Inc. is the only responsible responsive bid.

FISCAL IMPACT

Funds for this project in the amount of \$1,107,593 are available in the Drainage Utility 2006 Certificate of Obligation Bond, account 576-9591-495.63-04 and the remaining amount of \$36,458 are available in the Water & Sewer Improvements 2013, Sewer Line Rehab Ph 2 account 386-3495-800.54-94.

RECOMMENDATION

City staff recommends the City council award a construction contract to the lowest responsible responsive bidder meeting the specifications, Austin Filter System, Inc. in the amount of \$1,144,051.50.

September 29, 2016

David Olson, P.E., CFM
City of Killeen
Interim Executive Public Works Director
Director of Transportation
3201-A South W.S. Young Dr.
Killeen, Texas 76542

Reference: South Nolan Creek CIP: Bank Stabilization – Phase 2

Dear David:

Bids were opened for the South Nolan Creek CIP: Bank Stabilization – Phase 2, ITB No. 16-25 Project on September 21, 2016. This project consists of rehabilitation of the existing stream bank for South Nolan Creek between 10th Street and East Veteran's Memorial Boulevard (US 190 BUS), along with associated grading and placement of a stacked gabion retaining wall and gabion mattresses. One bid was received for the project.

Austin Filter Systems, Inc. was the only bidder with a base bid amount of \$875,168.00 and an add alternate bid amount of \$268,883.50. Jacobs Engineering Group, Inc. has tabulated Austin Filter Systems' bid and found that the amounts listed on the bid form are the correct amounts based on tabulation of the unit prices. The amount, \$875,168.00 (base bid) and \$268,883.50 (add alternate), on the bid form was read aloud during the bid opening. A bid tabulation of the bid received is enclosed herein. The engineer's opinion of probable cost for this project was \$869,746.00 (base bid) and \$367,274.00 (add alternate). The difference in the engineer's opinion of probable cost and the bid is due to market conditions in the Killeen area.

We have also checked their references and none of the references supplied to us have indicated that Austin Filter Systems, Inc. would be unable to perform the work for which they bid. In addition, their bid bonding company appears to be in good standing with the State Insurance Board.

Based on the information we have received in our evaluation of Austin Filter Systems, Inc., we see no reason not to award this contract to them for their base bid amount.

Sincerely,

JACOBS ENGINEERING GROUP, INC.



Thomas C. Davies, P.E.
Project Engineer

Enclosures

cc: Joan Flowers, Jacobs
Leah Garrett, COK

Base Bid

Item No.	Description	Est Quant.	Measure	Bidder 1		Bidder 2		Bidder 3	
				Unit Price	Unit Amount				
				Austin Filter Systems, Inc.					
1	Mob & Demob	1	L.S.	\$66,000.00	\$66,000.00				
2	Excavation	1,138	C.Y.	\$41.00	\$46,658.00				
3	12" Thick PVC Coated Gabion Mattress	856	S.Y.	\$109.00	\$93,304.00				
4	3' x 3' Stacked Gabion Retaining Wall	1,125	C.Y.	\$534.00	\$600,750.00				
5	1.5' x 3' Stacked Gabion Basket	35	C.Y.	\$300.00	\$10,500.00				
6	Erosion Control SWPPP	1	L.S.	\$11,000.00	\$11,000.00				
7	Seeding	1,383	S.Y.	\$2.00	\$2,766.00				
8	Asphalt overlay on road	2,455	S.Y.	\$18.00	\$44,190.00				
Total					\$875,168.00				
Total Materials					\$210,000.00				

Base Bid

Item No.	Description	Est Quant.	Measure	Bidder 1	
				Unit Price	Unit Amount
1	Mob & Demob	1	L.S.	\$66,000.00	\$66,000.00
2	Excavation	1,138	C.Y.	\$41.00	\$46,658.00
3	12" Thick PVC Coated Gabion Mattress	856	S.Y.	\$109.00	\$93,304.00
4	3' x 3' Stacked Gabion Retaining Wall	1,125	C.Y.	\$534.00	\$600,750.00
5	1.5' x 3' Stacked Gabion Basket	35	C.Y.	\$300.00	\$10,500.00
6	Erosion Control SWPPP	1	L.S.	\$11,000.00	\$11,000.00
7	Seeding	1,383	S.Y.	\$2.00	\$2,766.00
8	Asphalt overlay on road	2,455	S.Y.	\$18.00	\$44,190.00

Total	\$875,168.00
Total Materials	\$210,000.00

Add Alternate

Item No.	Description	Est Quant.	Measure	Unit Price	Unit Amount
1	Excavation	632	C.Y.	\$30.00	\$18,960.00
2	12" Thick PVC Coated Gabion Mattress	380	S.Y.	\$85.00	\$32,300.00
3	3' x 3' Stacked Gabion Retaining Wall	507	C.Y.	\$380.00	\$192,660.00
4	1.5' x 3' Stacked Gabion Basket	20	C.Y.	\$230.00	\$4,600.00
5	Erosion Control SWPPP	1	L.S.	\$7,100.00	\$7,100.00
6	Seeding	361	S.Y.	\$3.50	\$1,263.50
7	Timber Guardrail	200	L.F.	\$60.00	\$12,000.00

Total	\$268,883.50
Total Materials	\$85,000.00

Engineer's Estimate

Est Quant.	Measure	Unit Price	Unit Amount
1	L.S.	\$55,000.00	\$55,000.00
1,138	C.Y.	\$21.23	\$24,156.00
856	S.Y.	\$240.00	\$205,440.00
1,125	C.Y.	\$484.46	\$545,015.00
35	C.Y.	\$240.00	\$8,400.00
1	L.S.	\$15,000.00	\$15,000.00
1,383	S.Y.	\$5.00	\$6,915.00
2,455	S.Y.	\$4.00	\$9,820.00

	\$869,746.00
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Est Quant.	Measure	Unit Price	Unit Amount
632	C.Y.	\$33.36	\$21,084.00
380	S.Y.	\$240.00	\$91,200.00
507	C.Y.	\$468.21	\$237,385.00
20	C.Y.	\$240.00	\$4,800.00
1	L.S.	\$5,000.00	\$5,000.00
361	S.Y.	\$5.00	\$1,805.00
200	L.F.	\$30.00	\$6,000.00

	\$367,274.00
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Questions for References

**Job: South Nolan Creek CIP – Bank Stabilization; City of Killeen, Texas
Phase 2**

Reference: City of Arlington

Date Called: 9/29/2016

Person Giving Reference: Jessie Allen

Contractor: Austin Filter Systems, Inc.

1. What work did they do for you? Emergency repair of 66" sanitary sewer crossing. The encasement structure was failing. Used concrete riprap to stabilize.
2. Did they complete work on time? Yes, actually ahead of schedule.
3. How were they to work with? Very easy to work with. They came in under budget. Did not use the contingency.
4. Did they nickel and dime you for change orders? No.
5. Did they have any change orders? No change orders.
6. Were you satisfied with their work? Yes.
7. Did any litigation result from their work on the project? No.

Questions for References

**Job: South Nolan Creek CIP – Bank Stabilization; City of Killeen, Texas
Phase 2**

Reference: City of New Braunfels

Date Called: 9/29/2016

Person Giving Reference: Adam Michie

Contractor: Austin Filter Systems, Inc.

1. What work did they do for you? They did 2 projects. Both were bank stabilization projects using gabions and Redi-Rock.
2. Did they complete work on time? Yes.
3. How were they to work with? Good. They are honest and recommend improvements that are beneficial to the City.
4. Did they nickel and dime you for change orders? No.
5. Did they have any change orders? A few but they were beneficial to the City to correct problems that arose.
6. Were you satisfied with their work? Yes.
7. Did any litigation result from their work on the project? No.

Questions for References

**Job: South Nolan Creek CIP – Bank Stabilization; City of Killeen, Texas
Phase 2**

Reference: City of New Austin

Date Called: 9/29/2016

Person Giving Reference: Dennis Crabill

Contractor: Austin Filter Systems, Inc.

1. What work did they do for you? Gabion projects. 3 to 5 projects over the past 10 years.
2. Did they complete work on time? Yes.
3. How were they to work with? Fine
4. Did they nickel and dime you for change orders? No.
5. Did they have any change orders? A few but not more than usual.
6. Were you satisfied with their work? Yes.
7. Did any litigation result from their work on the project? No.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

August 11, 2016

FIRST CLASS MAIL

Glenn Morrison, City Manager
The Honorable Dan A. Corbin, Mayor
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

RE: City of Killeen
TCEQ Docket No. 2013-1545-WQ-E; TCEQ ID No. NONE
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Office of the Chief Clerk at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script that reads "Bridget C. Bohac".

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

cc: Claudia Corrales, Enforcement Coordinator, TCEQ Enforcement Division
Meaghan Bailey, SEP Coordinator, TCEQ Enforcement Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS
HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOCUMENT WHICH IS FILED IN THE PERMANENT RECORDS

AUG 11 2016

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON

Bridget C. Baker
BRIDGET C. BAKER, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF KILLEEN
RN103174306

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2013-1545-WQ-E

At its AUG 03 2016 agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Killeen ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater collection system located at 2003 Little Nolan Road, which includes: manhole No. 811MH00438 located behind a residence located at 1901 Wright Way ("Site No. 1"); manhole No. Fo8MH02134 located behind a business building on the southeast corner of the intersection of East Veterans Memorial

Boulevard and South 2nd Street ("Site No. 2"); and manhole No. J07MH05304 located adjacent to a residence at 301 Bauman Drive ("Site No. 3"), in Killeen, Bell County, Texas.

2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on May 3, 2013, TCEQ staff documented that the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state. Specifically, on May 3, 2013, approximately 2,700 gallons of untreated wastewater discharged from manhole No. 811MH00438 into Long Branch Creek, resulting in the fish kill of approximately 159 fish.
4. During an investigation conducted on July 2, 2013, TCEQ staff documented that the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state. Specifically, on July 2, 2013, approximately 9,450 gallons of untreated wastewater discharged from manhole No. F08MH02134 into Nolan Creek, resulting in the fish kill of approximately 2,226 fish.
5. During an investigation conducted on October 2, 2013, TCEQ staff documented that the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state. Specifically, from October 1, 2013 to October 2, 2013, approximately 14,400 gallons of untreated wastewater discharged from manhole No. J07MH05304 into an unnamed tributary of Nolan Creek, resulting in the fish kill of approximately 591 fish.
6. The Respondent received notices of the violations on August 12, 2013; September 26, 2013; and December 9, 2013.
7. The Executive Director recognizes that the Respondent has implemented the following corrective measures:
 - a. At Site No. 1:
 - i. By May 3, 2013:
 - (a) The blockage causing the unauthorized discharge was cleared and the discharge ceased; and
 - (b) The dead fish were removed from Long Branch Creek and properly disposed of.
 - ii. By May 4, 2013:
 - (a) Sanitized the affected area; and

- (b) The wastewater discharged into Long Branch Creek was pumped from Long Branch Creek into the Respondent's wastewater collection system and fresh water from an upstream fire hydrant was dechlorinated and pumped into the Creek.
 - iii. By May 9, 2013, a total of 1,266 feet of 10 inch and 12 inch collection system piping upstream and downstream was inspected and cleaned.
 - b. At Site No. 2:
 - i. By July 2, 2013:
 - (a) The blockage at manhole Fo8MH02134 was cleared and the discharge ceased;
 - (b) The dead fish were removed from Nolan Creek and properly disposed of; and
 - (c) Removed wastewater and debris from the ground surrounding manhole Fo8MH02134 and the adjacent concrete flume and sanitized both affected areas with a 10% solution of sodium hypochlorite.
 - ii. By July 5, 2013:
 - (a) Inspected and cleaned a total of 1,780 feet of collection system piping downstream; and
 - (b) Identified a collapsed clay wastewater main downstream of the Site.
 - iii. By July 11, 2013, replaced the collapsed wastewater main with a polyvinyl chloride main.
 - c. At Site No. 3:
 - i. By October 2, 2013:
 - (a) The blockage at manhole Jo7MH05304 was cleared and the discharge ceased;
 - (b) The dead fish were removed from the unnamed tributary and properly disposed of;
 - (c) Removed wastewater and debris from the area surrounding manhole Jo7MH05304 and sanitized the affected area with a 10% solution of sodium hypochlorite; and

- (d) The wastewater discharged into the unnamed tributary was pumped from the tributary into the Respondent's wastewater collection system and fresh water from a nearby fire hydrant was dechlorinated and pumped into the tributary.
- ii. By October 3, 2013, completed the inspection of collection system piping upstream and downstream.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact Nos. 3, 4, and 5, the Respondent failed to prevent unauthorized discharges of wastewater from the collection system into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Killeen, Docket No. 2013-1545-WQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The Respondent shall undertake the following technical requirements for Site No. 2:
 - a. Within 30 days after the effective date of this Agreed Order, update operational guidance and conduct employee training to ensure that at a minimum, the following corrective actions are initiated within 24 hours after becoming aware of an unauthorized discharge of wastewater into or adjacent to water in the state:
 - i. Notify the appropriate state, federal, and local agencies;
 - ii. Identify the cause(s) of the unauthorized discharge and begin taking the appropriate corrective action(s) to cease the unauthorized discharge;
 - iii. Contain, collect, remove, and properly dispose of all wastewater discharged into and adjacent to water in the state and properly remediate the affected areas; and
 - iv. Collect, remove, and properly dispose of any dead aquatic wildlife.
 - b. Within 45 days after the effective date of this Agreed Order:
 - i. Submit written certification of compliance with Ordering Provision No. 3.a, in accordance with Ordering Provision No. 3.c below; and
 - ii. Submit written certification to the addresses listed in Ordering Provision No. 3.c below that all future unauthorized discharges of wastewater into or adjacent to water in the state will be addressed, at a minimum, in accordance with the corrective actions listed under Ordering Provision No. 3.a above. The written certification shall also be notarized by a State of Texas Notary Public and include the certification language in Ordering Provision No. 3.c below.

- c. The written certifications of compliance required by Ordering Provisions Nos. 3.b.i and 3.b.ii shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certifications shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with copies to:

Water Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
9. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
10. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw
For the Commission

8-9-16

Pam Manley
For the Executive Director

5/26/16
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Killeen. I am authorized to agree to the attached Agreed Order on behalf of the City of Killeen, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Killeen waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Glenn Morrison
Signature HC
890
Glenn Morrison
Name (Printed or typed)
Authorized Representative of
City of Killeen

8/12/14
Date
City Manager
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2013-1545-WQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Killeen
Penalty Amount:	Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875)
SEP Offset Amount:	Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875)
Type of SEP:	Custom
Project Name:	<i>Nolan Creek Erosion Control Project</i>
Location of SEP:	Bell County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to perform a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall bid and hire a contractor to repair erosion to the south bank of Nolan Creek located between 10th Street and Veteran’s Memorial Boulevard (Business 190) in Killeen, Bell County, Texas. Contractor shall install gabion baskets along the southern bank of Nolan Creek to stabilize the earthen walls of the creek bed (the “Project”). Any advertisement, including publication related to the SEP, must include the enforcement statement as stated in Section 6, Publicity. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent has no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

The SEP will reduce the amount of sediment being released into the creek. Accelerated streambank erosion leads to a disproportionate sediment supply, stream channel

instability, land loss, habitat loss, and other adverse effects. Excess sediment within a watercourse can also reduce the level of oxygen in the water that is supplied to plants and wildlife.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the project described in Section 1, above, and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Wall: 3' x 3' PVC coated Gabion Basket (in place)	208	\$240.00	Each cubic yard	\$49,920
Total				\$49,920

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 365 days after the effective date of this Agreed Order.

3. Records and Reporting

A. Progress Report

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions performed to date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day timeframe set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project
90	Actions completed during previous 60-day period

Days from Effective Order Date	Information Required
180	Actions completed during previous 90-day period
270	Actions completed during previous 90-day period
365	Notice of SEP completion

B. Final Report

Within 365 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Copies of proof of advertisement for bids (all advertisements must include the statement that “the SEP is being performed as a result of a TCEQ enforcement action”), if applicable;
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the erosion site(s);
6. Dated photographs of the Project showing the creek bed walls before, during the construction, and after installation of the gabion baskets;
7. A copy of the engineering plans, specifications, and permit(s); and
8. Any additional information Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.

C. Address

Respondent shall submit all SEP reports and any additional information as requested to the following address:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

4. Additional Information and Access

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to “Texas Commission on Environmental Quality,” and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

6. Publicity

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

Respondent shall not include this Project in any application made to TCEQ under the “Clean Texas” (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2016-112039

Date Filed:
09/14/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Austin Filter Systems, Inc.
Austin, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Killeen

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

ITB # 16.25
South Nolan Creek CIP Bank Stabilization - Phase 2 BD: 09/21/2016

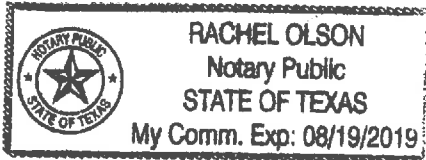
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	NONE			

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



[Handwritten Signature]

Signature of authorized agent of contracting business entity
Mark Toungate - President

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Mark Toungate, this the 21st day of Sept, 2016, to certify which, witness my hand and seal of office.

[Handwritten Signature]

Signature of officer administering oath

Rachel Olson

Printed name of officer administering oath

Corp. Secretary

Title of officer administering oath



City of Killeen

Legislation Details

File #: RS-16-132 **Version:** 1 **Name:** Appoint TAC Replacement
Type: Resolution **Status:** Resolutions
File created: 10/13/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution appointing a replacement to the Technical Advisory Committee for the Killeen Temple Metropolitan Planning Organization.
Sponsors: City Manager Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

**APPOINTMENT TO TECHNICAL ADVISORY
COMMITTEE/KTMPO**

ORIGINATING DEPARTMENT

MAYOR/COUNCIL

BACKGROUND INFORMATION

The City of Killeen is a member of the Killeen Temple Metropolitan Planning Organization (KTMPO). In 2013, a Technical Advisory Committee was formed by KTMPO to review technical issues and develop preferred technical alternatives for Policy Board action. The City Manager was appointed to serve as a voting member on the Committee.

DISCUSSION/CONCLUSION

In order to ensure the City of Killeen continues to have a vote Council action is required to appoint a new member to fill the City Manager vacancy.

RECOMMENDATION

It is recommended that the City Council appoint Dennis Baldwin to replace Ann Farris.



City of Killeen

Legislation Details

File #: RS-16-133 **Version:** 1 **Name:** Appoint Citizen Members to Audit Committee
Type: Resolution **Status:** Resolutions
File created: 10/19/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution appointing citizen members to the City of Killeen Audit Committee.
Sponsors: City Auditor, City Attorney Department, City Council
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

**RESOLUTION ADDING CITIZEN MEMBERS TO
THE AUDIT COMMITTEE**

ORIGINATING DEPARTMENT

CITY ATTORNEY

BACKGROUND INFORMATION

At its meeting of October 7, 2016, the City of Killeen Audit Committee reached a consensus to recommend adding two citizen members to the Committee to provide another perspective for the forensic audit. The City Council indicated its support of this recommendation at its workshop on October 18, 2016.

DISCUSSION/CONCLUSION

The Audit Committee recommends that James "Jack" Ralston and Bob Blair be added to the Audit Committee, effective on October 19, 2016, to participate in the work associated with the forensic audit and that the duration of their service be directly related to this audit.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council appoint James "Jack" Ralston and Bob Blair to the Audit Committee.



City of Killeen

Legislation Details

File #: RS-16-134 **Version:** 1 **Name:** Create Evaluation Committee
Type: Resolution **Status:** Resolutions
File created: 10/19/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution to create an evaluation committee to review forensic audit RFQs.
Sponsors: City Auditor, City Attorney Department, City Council
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

**RESOLUTION CREATING EVALUATION
COMMITTEE TO REVIEW FORENSIC AUDIT
RFQs**

ORIGINATING DEPARTMENT

CITY ATTORNEY

BACKGROUND INFORMATION

On October 9, 2016, the City of Killeen issued an RFQ for qualified certified public accountant firms to conduct a forensic audit for fiscal years 2006 through 2015. Submittals are due on November 4, 2016. The RFQ calls for a committee to screen all submittals. Council reached a consensus to appoint an evaluation committee consisting of seven public members and three council members.

DISCUSSION/CONCLUSION

The Council wishes to appoint the following individuals to the Evaluation Committee:

Councilmember Jim Kilpatrick (Chair)
Councilmember Dick Young
Richard Banta
David Cole

Councilmember Shirley Fleming

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council appoint the above individuals to the evaluation committee.



City of Killeen

Legislation Details

File #: RS-16-135 **Version:** 1 **Name:** Citizens' Advisory Committee
Type: Resolution **Status:** Resolutions
File created: 10/19/2016 **In control:** City Council Workshop
On agenda: 10/25/2016 **Final action:**
Title: Consider a memorandum/resolution creating a Citizens' Advisory Committee to assist in the selection of the new City Manager.
Sponsors: Human Resources Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

Creating a Citizens' Advisory Committee

ORIGINATING DEPARTMENT

Human Resources

BACKGROUND INFORMATION

On April 27, 2016, the City of Killeen issued an RFQ for qualified executive search firms to help with recruiting for a City Manager. Submittals were due May 25, 2016, and Strategic Government Resources (SGR) provided the best value. As part of the interview process, SGR recommends that the City Council create and utilize a Citizens' Advisory Committee to assist in the selection of the new City Manager. Council reached a consensus to appoint a Citizens' Advisory Committee of eight public members.

DISCUSSION/CONCLUSION

The council wishes to appoint the following individuals to the Citizens' Advisory Committee:

Joseph Solomon
Tim Hancock
Dr. John Craft

Frank Plowick
Ramon Alvarez
Maureen Jouett

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council appoint the above individuals to the Citizens' Advisory Committee.



City of Killeen

Legislation Details

File #: OR-16-022A **Version:** 1 **Name:** FD Career Ladder Ordinance
Type: Ordinance **Status:** Ordinances
File created: 9/27/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider an ordinance to amend the Fire Department Classification Plan and Rank Structure.
Sponsors: City Attorney Department, Fire Department
Indexes:
Code sections:
Attachments: [Council Memorandum Ordinance](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

**Amend the Fire Department Classification
Plan and Rank Structure**

ORIGINATING DEPARTMENT

Fire Department

BACKGROUND INFORMATION

On August 13, 1977, the voters of Killeen adopted the civil service law for the police and fire departments of the City of Killeen. State law required that the City Council, upon the recommendation of the Civil Service Commission, adopt a classification plan for each department. The classification plans set forth the positions within the departments by classification (known commonly as rank) and by authorized number in each classification. Ordinance No 77-58 established the City's first classification plan for the police and fire departments.

In 1994, the Killeen City Council passed resolution #94-29R that changed the structure of the Killeen Fire Department. The then-current classification plan and pay grade resulted in a bottleneck in the promotional plan at the position of Fire Prevention Officer (FPO) for two reasons: (1) the pay of the rank of FPO was between the Lieutenants (now Captains) and FRO rank and (2) there were a limited number of authorized positions in the FPO rank. To eliminate this bottleneck, separate career ladders for members of the Fire Prevention and Suppression Divisions were established. Under this change, there is one entry level classification of Fire Rescue Officer (FRO). From that position, a choice is exercised by the individual officer as to whether he/she would prefer advancement into Fire Suppression or Fire Prevention. Under this structure, Fire Prevention essentially becomes a limited career ladder because the only career opportunity above it is the sole position of Fire Marshal.

DISCUSSION/CONCLUSION

Today, the two issues that created the bottleneck in the promotional system no longer exist. First, the issue of pay has been resolved; the pay of the FPO rank is equal to the pay of the Captain rank, thus making the FPO and Captain equal on the career ladder under civil service law. The issue of authorized positions still exists with the number of authorized positions at three (3) FPOs; however, allowing the FPO classification to be merged with the Captain classification will allow for the lateral transfer of the FPOs to the Captain rank and would eliminate this issue.

The Fire Chief is requesting that the City Council eliminate the two-career-ladder promotional system by merging the separate career ladders in the Fire Department into one, creating a seamless promotional progression through the Fire Department rank structure. This can be accomplished by: (1) merging the Fire Marshal classification with the current Deputy Chief classification, as the two positions are already equal in pay; (2) merging the Fire Prevention Officer classification with the Captain classification as they are already equal in pay; (3) assigning a Deputy Chief to the Fire Marshal's Office as an assignment; and (4) assigning three

(3) Captains to the Fire Marshal's Office as an assignment. This internal restructuring does not involve any changes in existing staffing salaries or duties.

This action does not create any new classifications, nor does it create any new positions in any existing classifications. The intent of merging is to transfer positions from one classification to another within the same grade level; this action does not constitute a promotion or demotion of a person occupying any position affected.

These changes will allow the Fire Department FROs to promote to Captain, Captains to promote to Battalion Chiefs, and Battalion Chiefs to promote to Deputy Chief, and allow all personnel equal opportunity to progress through the Fire Department career ladder. All Fire Marshal's Office personnel will be assigned by the Fire Chief to their duties in the Fire Marshal's Office.

FISCAL IMPACT

The fiscal impact to the City of Killeen will be the cost of badges and insignia for the classification changes. The impact will be more than offset by the elimination of the \$3,500 to \$7,800 expense for each FPO and Fire Marshal test when there is a vacancy in that rank. This internal restructuring does not involve any changes in existing staffing salaries or duties. The cost of the badges and insignia will be covered by the current FY 17 Fire Department budget, not causing the budget cap to be exceeded.

RECOMMENDATION

Staff recommends that the City Council authorize the changes to the Fire Department structure by changing the Fire Department to a single career ladder.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF KILLEEN, TEXAS, MERGING CLASSIFICATIONS IN THE FIRE DEPARTMENT OF THE CITY OF KILLEEN; ABOLISHING ALL CLASSIFICATIONS IN CONFLICT HEREWITH AND HERETOFORE EXISTING IN SUCH DEPARTMENT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; TO COMPLY WITH THE PROVISIONS OF TEXAS LOCAL GOVERNMENT CODE §143.021; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the Killeen Fire Department, pursuant to an election of the voters in 1977, operates under the civil service laws provided in Texas Local Government Code chapter 143; and

WHEREAS, since 1994 the Killeen Fire Department has operated with a dual career ladder system;

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

SECTION I. That the City Council authorizes the following civil service classifications of employees in the Fire Department of the City of Killeen shall be amended for the purpose of covering such employees under the provisions of Texas Local Government Code 143.021(a) as required by that statute. That all ordinances or parts of ordinances creating, changing, or increasing positions, classes and classifications in the Fire Department of the City of Killeen be, and the same are hereby, merged and consolidated in this ordinance so that all positions, classes, and classifications in conflict herewith or not included herein, are hereby expressly abolished and the following positions, classes, and classifications are hereby created in said department, so that hereafter the following, and none other, shall exist therein.

These classifications and no others shall exist with the number shown indicating the number of positions in each classification:

<u>CLASSIFICATION</u>	<u>NUMBER IN EACH CLASSIFICATION</u>	
	<u>FY 16-17 (Current)</u>	
	<u>(Base Authorization)</u>	<u>(Over hire)</u>
Fire & Rescue Officer	190	7
Fire Prevention Officer	3	0
Fire Captain	26	0
Fire Battalion Chief	6	0
Deputy Chief of Fire	4	0
Fire Marshal	1	0

<u>CLASSIFICATION</u>	<u>NUMBER IN EACH CLASSIFICATION</u>	
	<u>FY 16-17 (amended October 2016)</u>	
	<u>(Base Authorization)</u>	<u>(Over hire)</u>
Fire & Rescue Officer	190	7
Fire Captain	29	0
Fire Battalion Chief	6	0
Deputy Chief of Fire	5	0

SECTION II. That the City Council authorizes the amendment of the fire pay plan to reflect the changes in the civil service classifications herein under the provisions of Texas Local Government Code 143.041 as required by that statute.

SECTION III. That the City Council hereby provides, with respect to the Fire Marshal position merged into the Deputy Chief position herein above, that such designation is intended to operate merely as a change in title in the “Fire Marshal” position heretofore existing, and shall not affect the status, classification, salary or tenure of the person holding such position, and the person heretofore holding the classification “Fire Marshal” shall hereafter be classified as “Deputy Chief.”

SECTION IV. That the City Council hereby provides, with respect to the three Fire Prevention Officer positions merged into the Captain positions herein above, that such

designation is intended to operate merely as a change in title in the “Fire Prevention Officer” position heretofore existing, and shall not affect the status, classification, salary or tenure of the persons holding such position, and the persons heretofore holding the classification “Fire Prevention Officer” shall hereafter be classified as “Captain.”

SECTION V. That the City Council hereby provides, that such designation is intended merely as a change in title in classification, that time served in the rank of Fire Marshal, shall be credited as time served in the Deputy Chief rank and that time served in the rank of Fire Prevention Officer shall be credited as time served in the Captain rank for the purpose of seniority in rank and promotional testing. Hereafter all competitive Civil Service promotional examinations given to establish a list of eligible candidates for Deputy Chief or Captain shall use the study materials approved by the Civil Service Commission for use by applicants taking a promotional examination for a Deputy Chief or Captain position.

SECTION VI. Hereafter the job description of Deputy Chief shall be changed to include the additional job duties of the Fire Marshal in the special requirements section of the Deputy Chief Job Description, as a requirement for the Deputy Chief assigned to the Fire Marshal’s Office.

SECTION VII. Hereafter the job description of Captain shall be changed to include the additional job duties of the Fire Prevention Officer in the special requirements section of the Captain Job Description, as a requirement for the Captains assigned to the Fire Marshal’s Office.

SECTION VIII. That this action does not create any new classifications, nor does it create any new positions in any existing classification. The intent of merging the positions above is to transfer one classification into another within the same grade level and such action is not intended to constitute a promotion or demotion of any person.

SECTION IX. That all other ordinances or parts of ordinances that are in conflict with the provisions of this ordinance are repealed to the extent of such conflict.

SECTION X. That should any part of this ordinance be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.

SECTION XI. That this ordinance shall be effective immediately after its passage and publication according to law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas this 25th day of October , 2016, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM:

Kathryn H. Davis, CITY ATTORNEY



City of Killeen

Legislation Details

File #: OR-16-022B **Version:** 1 **Name:** Fire Department Pay Plan Restructure
Type: Ordinance **Status:** Ordinances
File created: 10/3/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: Consider an ordinance to amend the Fire Department pay plan.
Sponsors: Human Resources Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Ordinance](#)
[Fire Pay Plan FY 1617](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Amendment of Fire Department Pay Plan

ORIGINATING DEPARTMENT

Human Resources

BACKGROUND INFORMATION

On August 13, 1977, the voters of Killeen adopted the civil service law for the police and fire departments of the City of Killeen. State law required that the City Council, upon the recommendation of the Civil Service Commission, adopt a pay plan for each rank. The pay plans set forth the positions known as rank. Ordinance No 77-58 established the City's first classification plan for the police and fire departments.

DISCUSSION/CONCLUSION

The Fire Chief has requested that the City Council eliminate the two career ladder promotional system by merging the separate career ladders in the Fire Department into one, eliminating the pay rank of Fire Marshal and Fire Prevention Officer. This action does not create any new pay ranks, nor does it create any new positions in any existing pay plan. The intent of merging is to merge pay rank of Fire Prevention Officer to Fire Captain pay scale and the Fire Marshal pay rank to Fire Deputy Chief pay scale.

FISCAL IMPACT

The pay plan changes will have no fiscal impact to the City of Killeen.

RECOMMENDATION

Staff recommends that the City Council authorize the changes to the Fire Department pay plan to reflect the change in the Fire Department to a single career ladder.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF KILLEEN, TEXAS AMENDING THE FIRE DEPARTMENT PAY PLAN; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the Killeen Fire Department, pursuant to an election of the voters in 1977, operates under the civil service laws provided in Texas Local Government Code chapter 143; and

WHEREAS, since 1994 the Killeen Fire Department has operated with a dual career ladder system;

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

SECTION I. That the City Council authorizes the amendment of the fire pay plan establishing the salary of employees in the fire rescue officer positions and those in classifications authorized under the provisions of Texas Local Government Code 143.041 as required by that statute.

SECTION II. That all other ordinances or parts of ordinances that are in conflict with the provisions of this ordinance are repealed to the extent of such conflict.

SECTION III. That should any part of this ordinance be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.

SECTION IV. That this ordinance shall be effective immediately after its passage and publication according to law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas this 25th day of October, 2016, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM:

Kathryn Hoffman-Davis, CITY ATTORNEY



City of Killeen

Legislation Details

File #: PH-16-036 **Version:** 1 **Name:** Zoning 16-17
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 10/3/2016 **In control:** City Council
On agenda: 10/25/2016 **Final action:**
Title: HOLD a public hearing and consider an ordinance requested by Scott Lewellen of SiteExcel L.L.C. on behalf of Garland and Jo Ann Kelley (Case #Z16-17) to rezone approximately .229 acre (100 x 100 foot area), being part of the M. T. Martin Survey, Abstract No. 963, from "A" (Agricultural District) to "A" (Agricultural District) with a Conditional Use Permit (CUP) for a 120' tall monopole communication tower. The subject area is located approximately 3,000 feet east of S. Fort Hood Street and approximately 2,500 feet west of Kelley Lane, Killeen, Texas. (Requires a 3/4 majority vote.)
Sponsors: Planning & Development Dept
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Application](#)
[Site Plan](#)
[Location Map](#)
[Buffer Map](#)
[Considerations](#)
[Response](#)

Date	Ver.	Action By	Action	Result
10/18/2016	1	City Council Workshop		

CITY COUNCIL MEMORANDUM

AGENDA ITEM

ZONING CASE #Z16-17 "A" (AGRICULTURAL DISTRICT) TO "A" (AGRICULTURAL DISTRICT) WITH A CONDITIONAL USE PERMIT (CUP)

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Scott Lewellen of SiteExcel L.L.C. submits this request on behalf of Garland and Jo Ann Kelley, to rezone a .229 acre (100 x 100 foot) area out of the M.T. Martin Survey, Abstract No. 963, from "A" (Agricultural District) to "A" (Agricultural District) with a Conditional Use Permit (CUP) for a 120' tall monopole communication tower. The subject area is located approximately 3,000 feet east of S. Fort Hood Street and approximately 2,500 feet west of Kelley Lane, Killeen, Texas.

Criteria for approval:

Conditional Use Permits for communication towers must be approved by the majority of the Planning and Zoning Commission and then by the City Council with a three-fourths affirmative vote. The City Council may impose reasonable conditions and safeguards deemed appropriate to that application in order to protect the health, safety, and welfare of the public and protect property and property values. The Planning and Zoning Commission shall recommend disapproval of an application if it finds one or more of the following, or other valid justifications, to be true:

- (A) The proposed use will be incompatible with existing or permitted uses on surrounding sites because of use, building height, bulk and scale, setbacks and open spaces, coverage, landscaping and screening, drainage, or access and circulation features;
- (B) The proposed use is not suitable to the premises or structure(s) in which it will be conducted;
- (C) The proposed use will be detrimental to the public health, safety or welfare, or will negatively affect the property or improvements in the vicinity;
- (D) The proposed use fails to reasonably protect persons and property from erosion, flood or water damage, fire, noise, glare, odors, or similar hazards or impacts;
- (E) The proposed use will materially and adversely affect traffic control or adjacent properties by inappropriate location, lighting or types of signs;
- (F) The proposed use fails to provide adequate and convenient off-street parking and loading facilities; or

(G) The proposed use will incorporate the sale or distribution of alcoholic beverages for on-premises consumption except where the applicant seeks a temporary permit, not to exceed two (2) months in duration, to allow for the on-premises sale, distribution or consumption of alcoholic beverages for temporary events in compliance with a Texas Alcoholic Beverage Commission issued permit and the Texas Alcoholic Beverage Code, as amended.

Property Specifics

Applicant/Property Owner: Garland and Jo Ann Kelley

Property Location: The subject area is located approximately 3,000 feet east of S. Fort Hood Street and approximately 2,500 feet west of Kelley Lane, Killeen, Texas.

Legal Description: M.T. Martin Survey, Abstract No. 963

Zoning/ Plat Case History:

- There is no recent zoning activity for this property.
- The property has not been platted.

Character of the Area

Existing Land Use(s) on the Property: The property is largely undeveloped with some ancillary structures and City of Killeen water towers.

Historic Properties: There are no historic structures on this property.

Figure 1. Zoning Map

See attachment

Infrastructure and Community Facilities

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: This memorandum is to advise that utility services are not currently available to the subject tract. Natural undisturbed drainage patterns are present. It shall be noted that Public Works personnel have performed only a basic assessment of publicly-dedicated water and sanitary sewer infrastructure that would serve this property. The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for re-development of the subject property, shall coordinate tie in to all publicly dedicated infrastructure with the Public Works Department.

Transportation:

Existing conditions: There is no improved public right-of-way serving this portion of the tract. Access onto the property is currently facilitated via a 20' access easement recorded in Volume 1659, Page 603, Bell County public records; additionally, a 15' wide access easement is illustrated on the applicant's plan sets.

Proposed Improvements: There are no planned transportation improvements as part of this zoning request.

Projected Traffic Generation: There will be no substantive increase in traffic as a result of this consideration.

Environmental Assessment

Topography/Regulated Floodplain/Floodway/Creek: This site ranges in elevation from 1058' to 1069'. This parcel is not located within a FEMA regulatory Special Flood Hazard Area (SFHA).

Land Use Analysis

Land Use Plan: This area is designated as 'Parks and Recreation' and 'Rural' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

Plan Recommendation: The Comprehensive Plan does not address uses such as communication towers.

Consistency: The applicant's Conditional Use Permit request does not trigger a change to the FLUM.

Public Notification

The staff notified two (2) surrounding property owners regarding this request. Staff has received one response from Mr. Wayne Duncan; he is not in opposition to the request.

Recommendation

The Planning & Zoning Commission recommended approval (vote of 6 to 0) of the applicant's Conditional Use Permit request. The recommendation is based upon the adherence to the submitted site plan and communication monopole design, as well as the installation of an obstruction light for the tower.

Figure 1. Location Map



**MINUTES
PLANNING AND ZONING COMMISSION MEETING
OCTOBER 3, 2016**

**CASE #Z16-17
“A” to “A” w/CUP**

HOLD a public hearing and consider a request by Garland and Jo Ann Kelley to rezone an approximate .229 acre (100x100 foot) area out of the M.T. Martin Survey, Abstract No. 963, from “A” (Agricultural District) to “A” (Agricultural District) with a Conditional Use Permit (CUP) for a 120’ tall monopole communication structure. The subject area is located approximately 3,000 feet east of S. Fort Hood Street and approximately 2,500 feet west of Kelley Lane, Killeen, Texas.

Chairman Frederick asked for staff comments.

City Planner Tony McIlwain stated that Mr. Scott Lewellen of SiteExcel L.L.C. submitted this request on behalf of Garland and Jo Ann Kelley. They are requesting a Conditional Use Permit for the erection of a 120’ monopole communication tower. The property is zoned “A” (Agricultural District). The Planning and Zoning Commission and the City Council may impose reasonable conditions and safeguards deemed appropriate to that application in order to protect the health, safety, and welfare of the public and protect property and property values. The property is largely undeveloped with some ancillary structures and City of Killeen water towers.

The staff notified two (2) surrounding property owners within a 200’ notification boundary regarding this request and one response was received from Mr. Wayne Duncan. Mr. Duncan had a question in reference to accessing the property and had no objection.

Staff recommends approval of the applicant’s Conditional Use Permit request subject to adherence to the site plan and communication monopole design submitted by the applicant with this zoning request as well as the installation of an obstruction light.

Mr. Scott Lewellen, 33300 Kanis Road, Paron, AR, was present to represent this request. Commissioner Cooper had concerns with the obstruction light and Mr. Lewellen stated that they will work with staff to meet the requirements.

Commissioner Harkin asked if the existing access road was going to be used and Mr. Lewellen stated that a new access road to the tower will be created.

Chairman Frederick opened the public hearing. With no one requesting to speak, the public hearing was closed.

Vice Chair Dorroh motioned to recommend approval of Conditional Use Permit for Case Z16-17 with the installation of an obstruction light as recommended. Commissioner Purser seconded the motion. The motioned was approved by a vote of 6 to 0.

Chairman Frederick stated that this will be forwarded to City Council with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM “A” (AGRICULTURAL DISTRICT) TO “A” (AGRICULTURAL DISTRICT) WITH A CONDITIONAL USE PERMIT (CUP) FOR A 120’ MONOPOLE COMMUNICATION TOWER; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, SiteExcell L.L.C. on behalf of Garland and Jo Ann Kelley has presented to the City of Killeen a request for amendment of the Zoning Ordinance of the City of Killeen by changing the classification of approximately .229 acre, being part of the M. T. Martin Survey, Abstract No. 963, Killeen, Texas, from “A” (Agricultural District) to “A” (Agricultural District) with a Conditional Use Permit (CUP) for a 120’ monopole communication tower with an obstruction light, said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 3rd day of October 2016, and due notice of the filing of said request and the date of hearing thereon was given as required by law, and hearing on said request was set for 5:00 P.M., on the 25th day of October 2016, at the City Hall, City of Killeen;

WHEREAS, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission and the evidence in support thereof, and the City Council being of a $\frac{3}{4}$ majority that the request should be approved;

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

Section I. That the zoning classification of the following described tract be changed from “A” (Agricultural District) to “A” (Agricultural District) with a Conditional Use Permit

(CUP) for a 120' monopole communication tower with an obstruction light for a .229 acre area, being part of M. T. Martin Survey, Abstract No. 963, Killeen, Texas. The subject area is located approximately 3,000 feet east of S. Fort Hood Street and approximately 2,500 feet west of Kelley Lane, Killeen, Texas.

Section II. That should any section or part of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the validity, force, or effect of any other section or parts of this ordinance.

Section III. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section IV. That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 25th day of October 2016, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis, City Attorney

Case #16-17
Ord. #



Date Paid:	<u>9/16/17</u>
Amount Paid:	\$ <u>500.00</u>
Cash/MO #/Check #:	# <u>320424</u>
Receipt #:	<u>458</u>

CASE #: Z16-17

City of Killeen Zoning Change Application

General Zoning Change \$300.00 Conditional Use Permit \$500.00

Name(s) of Property Owner: Garland and Jo Ann Kelley

Current Address: 410 Tower Hill Lane

City: Killeen State: Texas Zip: 76542 - 8907

Home Phone: (254) 634-2977 Business Phone: () N/A Cell Phone: (254) 681-0963

Email: None for Garland or Jo Ann, though city may use grand-daughter's - brandy.l.kelley@gmail.com

Name of Applicant: American Tower Corporation through Scott Lewellen of SiteExcell, LLC as Agent
(If different than Property Owner)

Address: 33300 Kanis Road (SiteExcell, LLC)

City: Paron State: Arkansas Zip: 72122

Home Phone: () N/A Business Phone: (501) 231-7800 Cell Phone: (501) 231-7800

Email: scott@siteexcell.com

Address/Location of property to be rezoned: No rezoning required

Legal Description: A0963BC M T MARTIN, 4, ACRES 179.293

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO No rezoning required
If NO, a FLUM amendment application must be submitted.

Type of Ownership: Sole Ownership Partnership Corporation Other

Present Zoning: Agricultural Present Use: Undeveloped

Proposed Zoning: N/A Proposed Use: 120' cellular tower on a 100' x 100' lease area

Conditional Use Permit for: 120' Cellular Tower to be constructed and owned by American Tower Corporation

This property was conveyed to owner by deed dated 02-06-1987 and recorded in Volume 1303,
Page 64, Instrument Number _____ of the Bell County Deed Records.
(Attached)

Is this the first rezoning application on a unilaterally annexed tract? N/A
Yes _____ (Fee not required) No _____ (Submit required fee)

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Scott J. Lewellen, SiteExcell, LLC

Mailing Address: 33300 Kanis Road

City: Paron State: AR Zip: 72122

Home Phone: () Business Phone: (501) 231-7800

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me.

I understand that the City will deal only with a fully authorized agent. If at any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application, are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to "I", "my," or "me" is a reference to the entity.

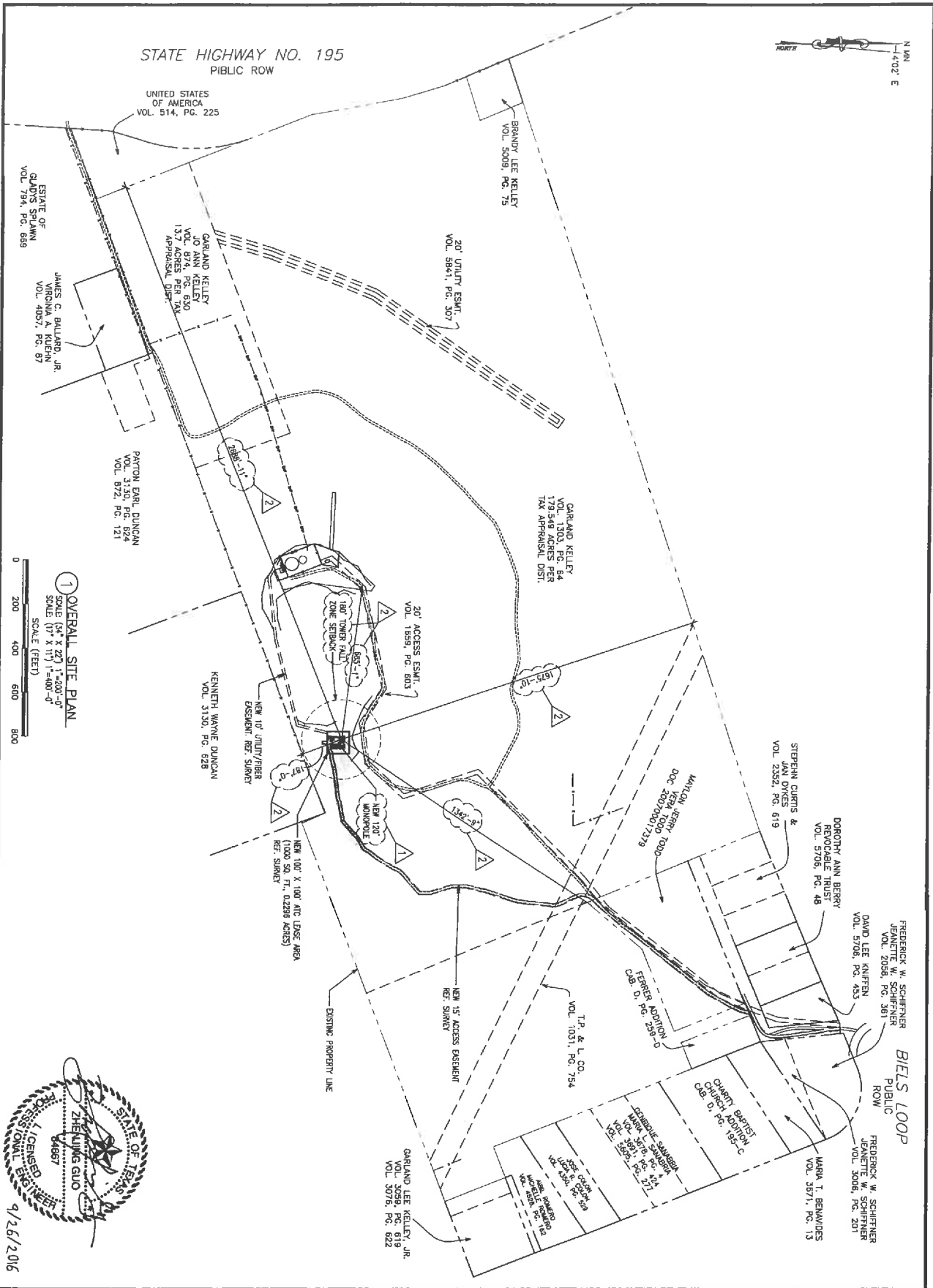
Signature of Agent [Signature] Title Project Manager
Printed/Typed Name of Agent Scott J. Lewellen Date 09-12-16

Signature of Property Owner [Signature] Title Owner
Printed/Typed Name of Property Owner Garland L. Kelley Sr Date _____

Signature of Property Owner [Signature] Title Owner
Printed/Typed Name of Property Owner Ann J. Kelley Date _____

Signature of Property Owner [Signature] Title Sr Counsel
Printed/Typed Name of Property Owner Margaret Robinson Date 8-23-16
Senior Counsel

* Applications must be signed by the individual applicant, each partner of a partnership, or by an authorized officer of a corporation or association. Revised October 2015



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REVISIONS	DATE
AS-BUILT FOR CONSTRUCTION	06/22/18
REVISION FOR DISCREPANCY	06/20/18
REVISION FOR DISCREPANCY	09/26/16

SITE NAME
KILLEN II TX

ATC SITE NUMBER
201942

AMERICAN TOWER

verizon wireless

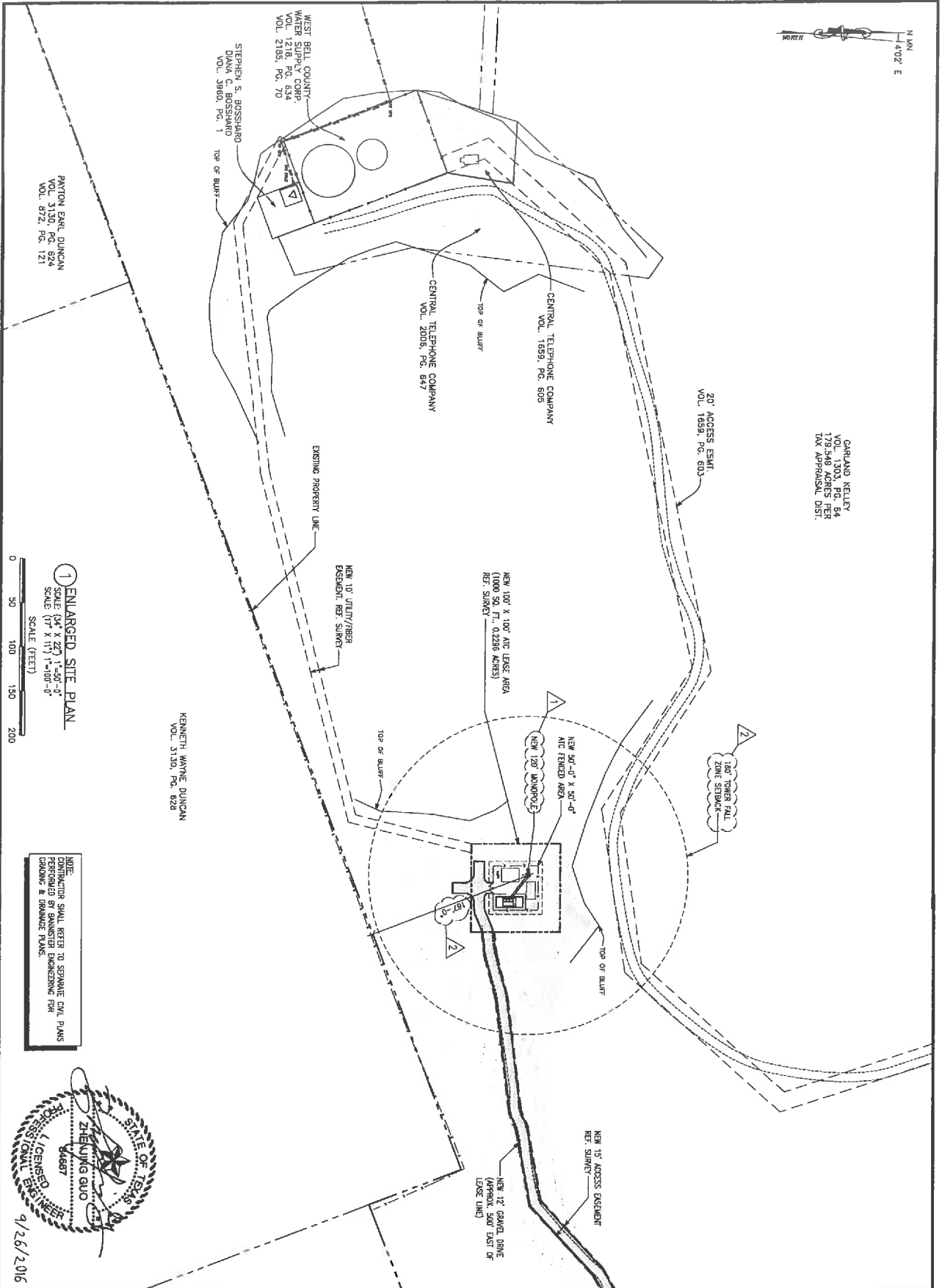
CELARIS GROUP

CONSULTING ENGINEERS

AMINGTON, TX 75006
2000 E. Lamar Blvd., Suite 550
Frisco, TX 75034
Phone: 817.460.0700
Fax: 817.460.0700
IX Perm Reg. # 1-13092

CELARIS PROJECT NO.: 15-0142

NO.	DATE	DESCRIPTION



1 ENLARGED SITE PLAN
 SCALE (1/4" X 22") 1"=50'-0"
 SCALE (1/4" X 11") 1"=100'-0"
 SCALE (FEET)
 0 50 100 150 200

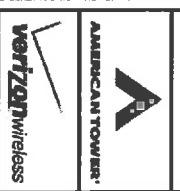
NOTE:
 CONTRACTOR SHALL REFER TO SEPARATE CIVIL PLANS
 FOR ALL UTILITIES AND ERECTION WORKING FOR
 CHANGE & BRANCHED PLANS.



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OWNER: BA	DATE: 09/26/16
DESIGNER: A02	PROJECT: ENLARGED SITE PLAN
SCALE: ENLARGED SITE PLAN	

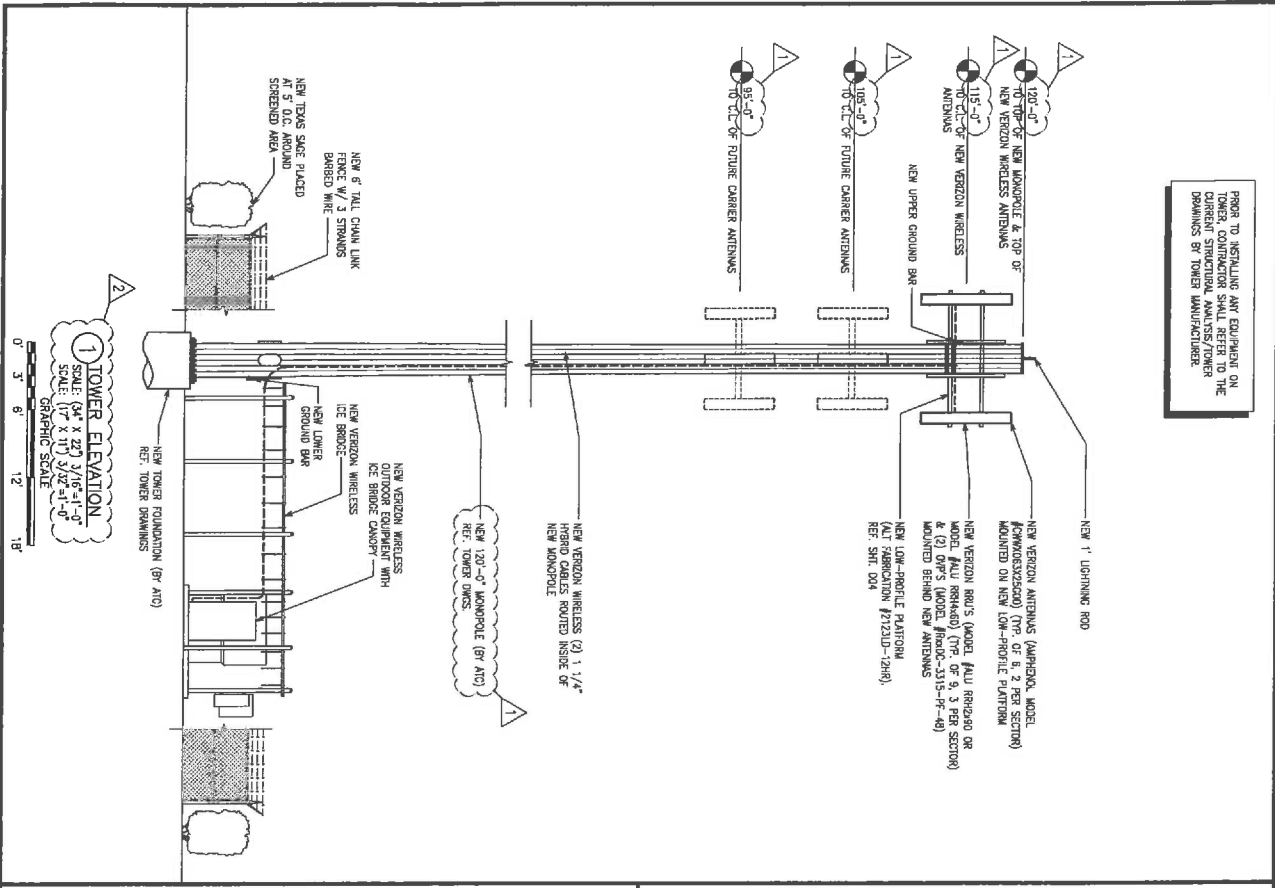
SITE NAME: KILLEEN II TX
A/C SITE NUMBER: 201942



CELERIS GROUP
 CONSULTING ENGINEERS
 2300 S. LEON ROAD, SUITE 500
 KILLEEN, TX 76744
 Office: 817.446.1709
 Fax: 817.440.0077
 TX Firm Reg. # 19992

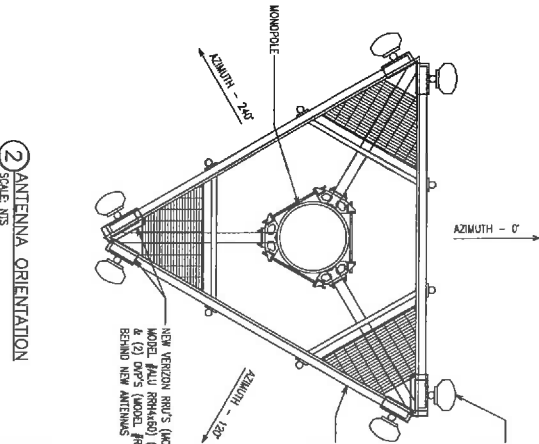
CELEERS PROJECT NO.: 15-8142	
REVISIONS	DATE
△ CHANGED FOR CONSTRUCTION	06/22/16
△ RINGED FOR CONSTRUCTION	06/29/16
△ RINGED FOR CONSTRUCTION	06/29/16

NOTE: PRIOR TO INSTALLING ANY EQUIPMENT ON THIS TOWER, THE CONTRACTOR SHALL REFER TO THE CURRENT STRUCTURAL ANALYSIS DRAWINGS BY TOWER MANUFACTURER.



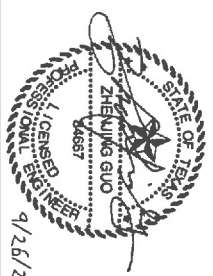
1 TOWER ELEVATION
SCALE: 3/4" x 2 1/2" = 1'-0"
SCALE: 1 1/4" x 1 1/2" = 1'-0"
GRAPHIC SCALE

NOTE: BEFORE INSTALLING ANY EQUIPMENT CONTRACTOR SHALL REFER TO THE CURRENT STRUCTURAL ANALYSIS DRAWINGS BY TOWER MANUFACTURER AND VERIZON WIRELESS FOR ENGINEER FOR MOST RECENT RE CONFIGURATION SHEET.



2 ANTENNA ORIENTATION
SCALE: NTS

NOTE: ALL CONNECTIONS FOR HANGERS, SUPPORTS, BRACKETS, ETC. SHALL BE INSTALLED PER TOWER MANUFACTURER'S STANDARD DETAILS.



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REVISIONS	DATE
Δ DESIGN FOR CONSTRUCTION	04/22/16
Δ REVISION FOR CONSTRUCTION	06/29/16
Δ REVISION FOR CONSTRUCTION	09/26/16

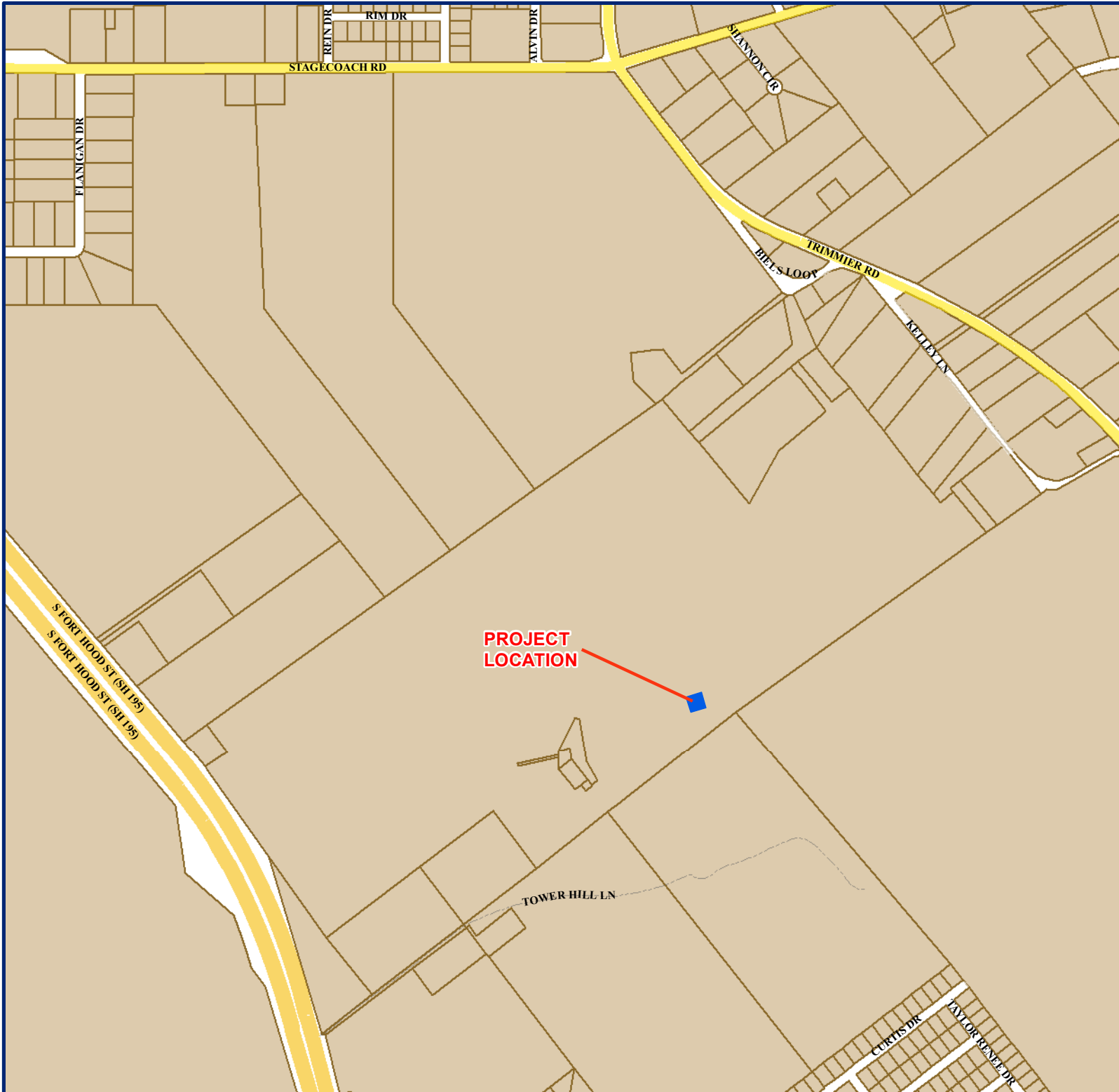
OWNER: BA
CHECKED BY: [Signature]
DATE: 09/26/16
PROJECT: TOWER ELEVATION / ANTENNA ORIENTATION
SHEET NO. A04

SITE NAME: KILLEN II TX
ATC SITE NUMBER: 201942

AMERICAN TOWER
verizon wireless

CELERIS GROUP
CORPORATE OFFICE
2800 S. Central Expressway, Suite 500
Frisco, TX 75034
Office: 817.446.1700
Fax: 817.460.0277
TX Perm Reg. #: 15992

CELERIS PROJECT NO.: 13-8142



**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:
Z16-17

ZONING FROM:
A To A w/ CUP

APPLICANT:
AMERICAN TOWER
CORPORATION

PROPERTY OWNER:
GARLAND AND
JO ANN KELLEY

LEGAL DESCRIPTION:
A0963BC M T MARTIN, 4,
ACRES 179.293

Legend

- Zoning Case
- Parcel
- City Limits





**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-17

ZONING FROM:

A To A w/ CUP

APPLICANT:

AMERICAN TOWER
CORPORATION







PROPERTY OWNER:

GARLAND AND
JO ANN KELLEY

LEGAL DESCRIPTION:

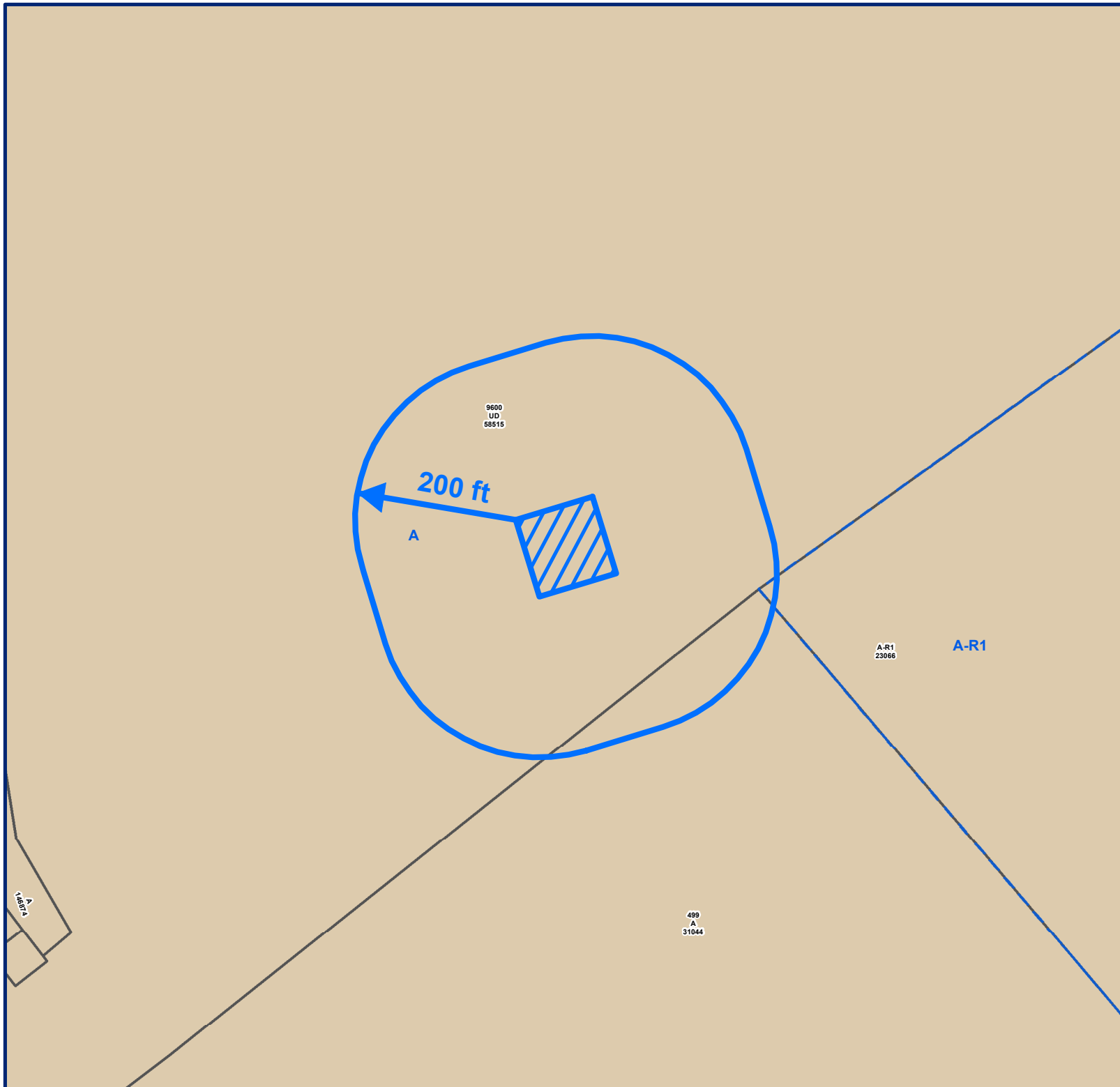
A0963BC M T MARTIN, 4,
ACRES 179.293

LEGEND

-  200' Buffer
-  Zoning Case
-  Current Zoning
-  Subdivision
-  Parcel
-  City Limits



Date: 9/19/2016



CONSIDERATIONS

Texas Supreme Court in Pharr v. Tippitt, 616 S. W 2nd 173 (Tex 1981) established general guidelines which the Planning and Zoning Commission and City Council should take into consideration when making their respective recommendation and decision on a zoning request.

A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

Is the request designed to lessen congestion in the streets; secure safety from fire, panic or other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; or facilitate the adequate provision of transportation, water, sewers, schools, parks and other public requirements?

What if any, is the nature and degree of an adverse impact upon neighboring lands?

The suitability or unsuitability of the tract for use as presently zoned.

Whether the amendment bears a substantial relationship to the public health, safety, morals or general welfare or protects and preserves historical and cultural places and areas.

Whether there is a substantial public need or purpose for the new zoning.

Whether there have been substantially changed conditions in the neighborhood.

Is the new zoning substantially inconsistent with the zoning of neighboring lands? (Whether the new zoning is more or less restrictive.)

The size of the tract in relation to the affected neighboring lands – is the tract a small tract or isolated tract asking for preferential treatment that differs from that accorded similar surrounding land without first proving changes in conditions?

Any other factors which will substantially affect the health, safety, morals or general welfare.


B. Conditional Use Permit (if applicable)

Whether the use is in harmonious with and adaptable to buildings, structures and use of abutting property and other property in the vicinity of the premises under construction.

C. Conditions to Consider

1. Occupation shall be conducted only by members of family living in home.
2. No outside storage or display
3. Cannot change the outside appearance of the dwelling so that it is altered from its residential character.
4. Cannot allow the performance of the business activity to be visible from the street.
5. Cannot use any window display to advertise or call attention to the business.
6. Cannot have any signs
7. No off-street parking or on-street parking of more than two (2) vehicles at any one time for business related customer parking.
8. No retail sales.
9. Length of Permit.

-----CUT HERE-----

YOUR NAME:	PHONE NUMBER:
CURRENT ADDRESS:	
ADDRESS OF PROPERTY OWNED:	
COMMENTS:	'A' to 'A' w/CUP
1. hope they use existing road on N side to reach top of hill	
2. power is at W end of hill none on E	
3. W end has had 2 towers	RECEIVED
4. no objection from me	SEP 26 2016
	PLANNING
SIGNATURE: 	SPO #Z16-17/ 01

PO BOX 1329 KILLEEN TEXAS 76540-1329 254.501.7630 254.501.7628 FAX
WWW.CIKILLEEN.TX.US