



# City of Killeen

## Agenda

### City Council Workshop

---

Tuesday, December 6, 2016

3:00 PM

Killeen City Hall  
Main Conference Room  
101 N. College Street  
Killeen, Texas 76541

---

**SPECIAL CITY COUNCIL WORKSHOP  
DISCUSSION ITEMS NOT COMPLETED BY 5:00 P.M. WILL RESUME IN THE MAIN  
CONFERENCE ROOM FOLLOWING THE REGULAR CITY COUNCIL MEETING**

#### Items for Discussion at Workshop

- [DS-16-180](#) Discuss Agenda Items for the Regular City Council Meeting of December 13, 2016
- [DS-16-181](#) Discuss Status of City Manager Search
- [DS-16-182](#) Discuss Evaluation Committee's Review of Solid Waste Outsourcing RFQ Responses, and Committee's Recommendation
- [DS-16-183](#) Discuss Rideshare Companies and Taxi Services
- [DS-16-184](#) Discuss Budget, to Include Transferring Unallocated Solid Waste Funds to the General Fund
- [DS-16-185](#) Briefing - Fire Station #9 Update
- [DS-16-186](#) Receive Report from Audit Advisory Committee Regarding Scope of Forensic Audit and Status of Contract Negotiations

#### Items for Regular City Council Meeting of December 13, 2016

#### Minutes

- [MN-16-032](#) Consider Minutes of Regular City Council Meeting of December 6, 2016.  
*Attachments:* [Minutes](#)

#### Resolutions

- [RS-16-147](#) Consider a memorandum/resolution approving the appointment of a City Auditor.  
*Attachments:* [Council Memorandum](#)  
[Resumé](#)

- [RS-16-148](#) Consider a memorandum/resolution approving the appointment of an Executive Director of Public Works.  
**Attachments:** [Council Memorandum](#)  
[Resumé](#)
- [RS-16-149](#) Consider a memorandum/resolution authorizing the award of Bid No. 17-01 for a construction contract to Battery Warehouse for the construction of Stewart Neighborhood Project Phase 3- Sidewalk Reconstruction.  
**Attachments:** [Council Memorandum](#)  
[Bid Analysis](#)  
[Cost Estimate](#)  
[Certificate of Interested Parties](#)
- [RS-16-150](#) Consider a memorandum/resolution authorizing the City Manager to enter into a professional services agreement with Mitchell and Associates, Inc. for the design of the Rosewood Drive Extension project.  
**Attachments:** [Council Memorandum](#)  
[Advance Funding Agreement](#)  
[Professional Services Agreement](#)  
[Certificate of Interested Parties](#)
- [RS-16-151](#) Consider a memorandum/resolution authorizing the City Manager to execute an advance funding agreement with the Texas Department of Transportation (TxDOT) to construct Heritage Oaks Hike and Bike Trail Segment 3A.  
**Attachments:** [Council Memorandum](#)  
[Advance Funding Agreement](#)
- [RS-16-152](#) Consider a memorandum/resolution authorizing Change Order No. 9 to RM Rodriguez Construction, LP for the Killeen Fort Hood Regional Trail, Segment 3 project.  
**Attachments:** [Council Memorandum](#)  
[Change Order](#)  
[Change Order Tracking Form](#)  
[Certificate of Interested Parties](#)
- [RS-16-153](#) Consider a memorandum/resolution authorizing the filing of interventions for the foreclosure of abatement liens, in conjunction with delinquent tax collection lawsuits filed by Bell County.  
**Attachments:** [Council Memorandum](#)
- [RS-16-154](#) Consider a memorandum/resolution to authorize participation in the Texas Water Development Board Grant for the Nolan Creek Regional Flood Protection Master Plan project.

**Attachments:** [Council Memorandum](#)  
[TWDB Notice of Award](#)  
[In-Kind Breakdown](#)  
[Nolan Creek Flood Protection Plan](#)

## Public Hearings

[PH-16-048A](#) Consider a memorandum/resolution authorizing the execution of a professional services contract amendment with CG Environmental - Cleaning Guys, LLC. for the August 12, 2016, emergency environmental response.

**Attachments:** [Council Memorandum](#)  
[Invoice](#)  
[Gas Fire Containment Map](#)  
[Situation Summary](#)  
[Certificate of Interested Parties](#)

[PH-16-048B](#) HOLD a public hearing and consider an ordinance amending the FY2017 Annual Budget and Plan of Municipal Services of the City of Killeen to increase an expense account for an emergency environmental response.

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

[PH-16-049](#) HOLD a public hearing and consider an ordinance requested by Christian House of Prayer, Inc. (Case #Z16-22) to rezone Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Addition Phase 3, from "B-3" (Local Business District) to "B-4" (Business District). The property is located on the southwest corner of E. Stan Schlueter Loop (FM 3470) and Cunningham Road.

**Attachments:** [Council Memorandum](#)  
[Attachment to CCMO](#)  
[Minutes](#)  
[Ordinance](#)  
[Application](#)  
[Location map](#)  
[Buffer map](#)  
[Exhibit](#)  
[Considerations](#)

## Ordinances

[OR-16-024](#) Consider an ordinance amending Chapter 30, Article IV, Division 1, Sections 30-102 & 103 water meter and tap fees.

**Attachments:** [Council Memorandum](#)  
[Ordinance](#)  
[Water Tap Cost Analysis](#)

[OR-16-025](#) Consider an ordinance granting an electric franchise to Bartlett Electric Cooperative, Inc. (1st of 3 Readings)

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

## 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 December 2, 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.*

**Dedicated Service -- Every Day, for Everyone!**





# City of Killeen

## Legislation Details

---

**File #:** DS-16-180    **Version:** 1    **Name:** Discuss Agenda Items  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 11/22/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Discuss Agenda Items for the Regular City Council Meeting of December 13, 2016  
**Sponsors:** City Manager Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



# City of Killeen

## Legislation Details

---

**File #:** DS-16-181    **Version:** 1    **Name:** Discuss Status of City Manager Search  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 11/8/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Discuss Status of City Manager Search  
**Sponsors:** City Manager Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



# City of Killeen

## Legislation Details

---

**File #:** DS-16-182    **Version:** 1    **Name:** Discuss Evaluation Committee's Review of Solid Waste Outsourcing RFQ Responses, and Committee's Recommendation

**Type:** Discussion Items    **Status:** Discussion Items

**File created:** 11/18/2016    **In control:** City Council Workshop

**On agenda:** 12/6/2016    **Final action:**

**Title:** Discuss Evaluation Committee's Review of Solid Waste Outsourcing RFQ Responses, and Committee's Recommendation

**Sponsors:** City Manager Department

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



# City of Killeen

## Legislation Details

---

**File #:** DS-16-183    **Version:** 1    **Name:** Discuss Rideshare Companies and Taxi Services  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 10/19/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Discuss Rideshare Companies and Taxi Services  
**Sponsors:** City Council  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



# City of Killeen

## Legislation Details

---

**File #:** DS-16-184    **Version:** 1    **Name:** Discuss Budget, Transferring Unallocated Solid Waste Funds to the General Fund

**Type:** Discussion Items    **Status:** Discussion Items

**File created:** 11/16/2016    **In control:** City Council Workshop

**On agenda:** 12/6/2016    **Final action:**

**Title:** Discuss Budget, to Include Transferring Unallocated Solid Waste Funds to the General Fund

**Sponsors:** City Manager Department, Finance Department

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



# City of Killeen

## Legislation Details

---

**File #:** DS-16-185    **Version:** 1    **Name:** Briefing - Fire Station #9 Update  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 11/18/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Briefing - Fire Station #9 Update  
**Sponsors:** Fire Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



# City of Killeen

## Legislation Details

---

**File #:** DS-16-186    **Version:** 1    **Name:** Receive Report from Audit Advisory Committee Regarding Scope of Forensic Audit and Status of Contract Negotiations

**Type:** Discussion Items    **Status:** Discussion Items

**File created:** 11/29/2016    **In control:** City Council Workshop

**On agenda:** 12/6/2016    **Final action:**

**Title:** Receive Report from Audit Advisory Committee Regarding Scope of Forensic Audit and Status of Contract Negotiations

**Sponsors:** City Manager Department, City Attorney Department

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



# City of Killeen

## Legislation Details

---

**File #:** MN-16-032    **Version:** 1    **Name:** Minutes of Regular City Council Meeting of December 6, 2016  
**Type:** Minutes    **Status:** Minutes  
**File created:** 11/22/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider Minutes of Regular City Council Meeting of December 6, 2016.  
**Sponsors:** City Secretary  
**Indexes:**  
**Code sections:**  
**Attachments:** [Minutes](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



**City of Killeen**  
Regular City Council Meeting  
Killeen City Hall  
December 6, 2016 at 5:00 p.m.

The Minutes of the Regular City Council Meeting of December 6, 2016 will be provided in City Council packets December 9, 2016.



# City of Killeen

## Legislation Details

---

**File #:** RS-16-147    **Version:** 1    **Name:** Appointment of City Auditor  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/30/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution approving the appointment of a City Auditor.  
**Sponsors:** Human Resources Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Resumé](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

**AGENDA ITEM**

**Appointment of City Auditor**

**ORIGINATING DEPARTMENT**

**Human Resources**

**BACKGROUND INFORMATION**

The position of City Auditor was approved in the FY 16-17 Budget. Section 40 of the City Charter authorizes the City Council to appoint a City Auditor.

**DISCUSSION/CONCLUSION**

The City Auditor position has been vacant since September 30, 2016. The vacancy was advertised on the City of Killeen website, Texas Municipal League Career Center, and Government Finance Officers Association of Texas websites. We received twenty-three (23) applications. The most highly qualified candidates, a total of three, were screened to interview, and two qualified applicants were interviewed by the City Council.

Of the candidates, Matthew Grady was selected to serve as City Auditor; his resume' is attached. If approved, Mr. Grady's first day of employment with the City of Killeen will be Tuesday, January 17, 2017.

**FISCAL IMPACT**

Sufficient funds are available in the City Manager's Department for this position.

**RECOMMENDATION**

That the City Council approve the selection of Matthew Grady as City Auditor.

**Matthew Patrick Grady, CPA**  
1713 Mill Springs Common, #109  
Livermore, California 94550

## General Information:

### Education:

San Jose State University, San Jose, CA – B.S. Accounting

### Certifications:

California Certified Public Accountant: License No. #82817, issued March 2002

Certified Forensic Accountant: No. 120115761, issued July 2013

## Employment Record:

Berkeley City Auditor/Performance Audit Division  
2180 Milvia Street, 3<sup>rd</sup> Floor, Berkeley, CA 94704  
Supervisor: Claudette Biemeret (510) 981-6750

Title: **Senior Auditor** (May 2015 – Present)

### Duties:

- Conduct and manage performance audits of programs and activities in the city departments, in accordance with U.S. Comptroller General Government Auditing Standards (Yellow Book).
- Provide training and assistance to junior auditors.
- Assist City Auditor in development of the annual audit work plan, training materials, and other projects.

### Accomplishments:

- Contributed significantly to office's productivity by writing reports for three audits that were in progress when I came on onboard in May 2015.
- Conducted and managed audit of [Berkeley's General Fund Reserve](#), which was well received and will be submitted for the Knighton Award competition for 2016.

Clark County Auditor's Office/Audit Services Group  
1300 Franklin Street, 5<sup>th</sup> Floor, Vancouver, WA 98666  
Supervisor: Mark Gassaway (360) 396-2310, Ext 4960

Title: **Audit Manager** (January 2014 – April 2015)

### Duties:

- Supervise audit staff in planning and execution of performance audits of County programs and activities, in accordance with the Yellow Book.
- Review/Edit audit reports.
- Conduct annual performance evaluations on audit staff.
- Perform risk assessment of county operations for biennial audit work plan.

### Accomplishments:

- [ALGA 2014 Knighton Award for Exemplary Audit for Small Audit Shop](#)
- [ALGA 2015 Knighton Award for Exemplary Audit for Small Audit Shop](#)<sup>1</sup>

---

<sup>1</sup> Managed audit through the fieldwork phase before accepting position with Berkeley City Auditor.

American Samoa Government/Treasury Dept, Finance Division  
Executive Office Bldg., Pago Pago, American Samoa 96799  
Supervisor: Ueli Tanumapeia, Treasurer (684) 633-4155

Title: **Comptroller** (March 2011 – January 2014)

Duties:

- Oversight over day-to-day financial management of approximately \$150 million in federal grants from multiple federal agencies for multiple local departments.
- Review, analyze and respond to reports issued by Territorial Audit Office, Federal audit groups, including Offices of the Inspector General.
- Develop policies and procedures over grants management to strengthen internal controls over the expenditure, tracking and reporting of grant expenditures.

**Accomplishments:**

- Worked with Deputy Director, Criminal Justice Planning Agency (CJPA) and U.S. Department of Justice to remove CJPA grant program from high-risk status.
- Worked with external CPA's to resolve disclaimer issues for American Samoa's FY 2013 Single Audit.

Department of Justice/Office of the Inspector General, Audit  
90 7<sup>th</sup> Street, Suite 3-100  
Immediate Supervisor: David Gaschke (415) 436-9627

Title: **Assistant Regional Audit Manager** (January 2001 – January 2011)

Duties:

- Immediate supervisor to 6-8 audit staff, ranging from entry level clerical staff to senior staff auditors.
- Supervise national and regional scope performance audits of the Departmental components including, the Federal Bureau of Investigations, the United States Marshals Service, the Office of Justice Programs, the Bureau of Prisons, and the Drug Enforcement Agency, in accordance with the Yellow Book.
- Review working papers and manage audit in TeamMate audit software environment.
- Review, edit, and issue audit reports.
- Develop individual training plans for audit staff.

**Awards/Accomplishments:**

- Identified \$7 million in questioned costs for medical payments in excess of allowable rates in review of the USMS) Prisoner Medical Care Program.
- Identified violations in Federal Acquisition Regulation in the USMS' procurement process that resulted in the awarding of multi-million dollar security guard contracts to a vendor with a history of both criminal and civil fraud convictions.
- Identified \$3.6 million in overpayments to the Government of Guam in a review of Interagency Agreement with the Government of Guam for bed space for federal prisoners.



# City of Killeen

## Legislation Details

---

**File #:** RS-16-148    **Version:** 1    **Name:** Appoint Executive Director of Public Works  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/30/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution approving the appointment of an Executive Director of Public Works.  
**Sponsors:** City Manager Department, Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Resumé](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------



---

# David A. Olson, P.E., CFM

1315 Yellow Rose  
Salado, TX 76571  
Phone: 512.639.0303

E-mail: [david.olson@aggienetwork.com](mailto:david.olson@aggienetwork.com)  
Website: [www.linkedin.com/in/davidolsonpe](http://www.linkedin.com/in/davidolsonpe)

## Objectives

Seeking a full-time position as the Executive Director of Public Works for the City of Killeen in an effort to use my knowledge and background in public and private sector public works improvement and administration to aid the City in providing dedicated service every day for everyone.

## Education

### **B.S. in Agricultural Engineering** (2006)

- ▶ Focus in Water Resources

## Experience

### **Director of Transportation** (Jan. 2016 –Present)

City of Killeen (Killeen, Texas)

Manage budget for Transportation, Streets, and Traffic Divisions. Plan and Implement Capital Improvements Program projects for Transportation, Environmental Services, and Water and Sewer. Prepare and implement programs to ensure compliance with local, state, and federal programs. Prepare and implement internal policies and procedures. Act as the City's liaison for outside agencies associated with federal, state, and local transportation programs. Attend city council meetings to provide staff input on various items. Currently serving as the Interim Executive Director of Public Works.

### **Project Manager** (Apr. 2015 –Jan. 2016)

Half Associates, Inc. (Austin, Texas)

Plan, schedule, and design infrastructure for land development and capital improvement projects across the Central Texas region. Prepare project proposals, cost estimates, and statements of qualification as required. Administer project budgets to ensure timely delivery of quality projects in a cost effective manner. Coordinate with public works and development staff at multiple cities to comply with federal, state, and local regulations.

### **Project Manager** (Aug. 2014 –Apr. 2015)

Baker-Aicklen & Associates, Inc. (Round Rock, TX)

Plan, schedule, and design infrastructure for land development and capital improvement projects across the Central Texas region. Prepare project proposals, cost estimates, and statements of qualification as required. Administer project budgets to ensure timely delivery of quality projects in a cost effective manner. Coordinate with public works and development staff at multiple cities to comply with federal,



state, and local regulations.

**Project Manager** (Apr. 2013 –Aug. 2014)

Mitchell & Associates, Inc. (Killeen, TX)

Manage daily activities. Plan, schedule, and prepare subdivision plats across the Greater Central Texas Area. Perform grading, drainage, street and utility design and analysis for commercial and residential land development projects. Prepare project proposals, cost estimates, and statements of qualification as required. Administer project budgets to ensure timely delivery of quality projects in a cost effective manner. Coordinate with public works and development staff at multiple cities to comply with federal, state, and local regulations.

**Engineering Department Manager** (Jul. 2011 –Apr. 2013)

Killeen Engineering & Surveying, Ltd. (Killeen, TX)

Manage daily activities and assign projects to engineering staff. Perform grading, drainage, street and utility design and analysis for commercial and residential land development and public works infrastructure projects. Prepare project proposals, cost estimates, and statements of qualification as required. Administer project budgets to ensure timely delivery of quality projects in a cost effective manner. Coordinate with public works and development staff at multiple cities to comply with federal, state, and local regulations.

**Project Engineer** (Sept. 2008 –Jul. 2011)

McClure & Browne Engineering/Surveying, Inc. (College Station, TX)

Perform grading, drainage, and utility design for commercial site plans and residential subdivisions.

**Engineering Associate** (Apr. 2007 –Sept. 2008)

Baker-Aicklen & Associates, Inc. (Georgetown, TX)

Design and permit commercial land development projects. Perform grading, drainage, and utility design.

**Skills**

- ▶ Professional Engineer, State of Texas (Lic. No. 108794)
- ▶ Certified Floodplain Manager (No. 2280-12N)
- ▶ AutoCAD Civil 3D Style and Template Development, Hydraflow and HEC Drainage Modeling Software, MS Office Suite, KY Pipes, EPANet
- ▶ Residential/Commercial Subdivision/Site Development Planning & Design



# City of Killeen

## Legislation Details

---

**File #:** RS-16-149    **Version:** 1    **Name:** Stewart Street Neighborhood Phase 3  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/16/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution authorizing the award of Bid No. 17-01 for a construction contract to Battery Warehouse for the construction of Stewart Neighborhood Project Phase 3- Sidewalk Reconstruction.  
**Sponsors:** Community Development Department, Public Works Department, Transportation Division, Streets  
**Indexes:** Stewart Street Project  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Bid Analysis](#)  
[Cost Estimate](#)  
[Certificate of Interested Parties](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

Consider a memorandum/resolution authorizing the award of a construction contract (Bid #17-01) to Battery Warehouse for the construction of Stewart Neighborhood Project Phase 3- Sidewalk Reconstruction.

### ORIGINATING DEPARTMENT

Public Works Street Services Division,  
Community Development

### BACKGROUND INFORMATION

During the FY 2016-17 budget process, the Public Works Environmental Services and Street Services Division was allocated \$148,130.00 of Community Development Block Grant (CDBG) (Ord. 16-036) funds to be used for sidewalk reconstruction in the Stewart Neighborhood (Street Services) and a natural walking trail with park benches, pet waste stations, environmental educational signage, plantings, and lighting (Environmental Services). The sidewalk improvements include demolition and installation of concrete sidewalks and tree/root removal on Alexander Street, Gray Drive, Culp Avenue, Carol Way, and Franz Drive, North of Rancier Avenue and East of Stewart Street. This project enhances the Stewart Neighborhood pedestrian connectivity between East Ward Elementary School, Stewart-Lions Park (in the final stage of improvements; FY2015 CDBG), Stewart Sidewalk Reconstruction (currently underway; FY2015 CDBG), and the coming Stewart Neighborhood Nature/Education Trail, funded with Community Development Block Grant (CDBG) for enhancements in the Stewart Neighborhood.

### DISCUSSION/CONCLUSION

The current project includes sidewalk reconstruction in the Stewart Neighborhood along Culp Avenue, Gray Drive, Carol Way, and Franz Way. On October 20, 2016, bids were open and read aloud. One (1) bidder submitted a bid for this section of improvement and is as follows: Battery Warehouse, McAllen, TX, concrete and tree/root removal - \$248,730, plus \$29,847.60 for mobilization. Upon the completion of a bid analysis, it was determined that funding was available to award a contract for line items 1 - 24 plus 12% mobilization totaling \$150,405.92.

### FISCAL IMPACT

The City of Killeen Public Works Department - Environmental Services and Street Services was allocated \$148,130.00 of Community Development Block Grant (CDBG) funds during the 2016-2017 budget process. Of that amount, \$120,000.00 is for the Stewart Neighborhood Project Phase 3 -Sidewalk Reconstruction. Funding in the amount of \$119,625.90 is available in account# 228-0067-495.51-82 after paying project advertising expenses . Additional funding in the amount of \$40,000.00 is available from FY 2014-2015 CDBG funds in account# 228-0065-495.51-80. The combined amount available for the project is \$159,625.90, which allows \$9,219.98 for contingencies.

## **RECOMMENDATION**

City staff recommends the City Council award a construction contract for sidewalk reconstruction and tree root removal associated with Stewart Neighborhood Project, Phase 3 - Sidewalk Reconstruction to the lowest responsive and responsible bidder for line item one (1) through line item twenty-four (24) to Battery Warehouse, McAllen, Texas, in the amount of \$150,405.92. Additionally, staff recommends that City Council authorize the City Manager to execute all necessary contract documents along with all change orders or supplemental agreements for the project within the amounts set by state and local law.

# **BID ANALYSIS**

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

**PROJECT INFORMATION:** concrete demolition and installation, tree/root removal associated with residential sidewalks in the Stewart Neighborhood (Culp Avenue, Gray Drive, Carol Way, Franz Drive).

This project is for work consisting of:

Removal of existing damaged sidewalks including tree and root removal to 1'-0" below finished grade and installation of new concrete sidewalks, driveway approaches, accessibility ramps along certain sections of Gray Drive, Culp Avenue, Carol Way, and Franz Drive) in the Stewart Neighborhood area and the remaining West side of Alexander Street North of Rancier Avenue.

This project is part of the final phase of the Stewart Neighborhood Project with revitalizing the neighborhood with connecting pedestrian walkways within the neighborhood and renovations to the Stewart-Lions Park, phase 2 of the Stewart Neighborhood Project.

City Staff from Community Development, Public Works-Engineering and Transportation-Streets Division worked together to produce a bid packet with residential address sections consisting of Sidewalks, Approaches, ADA Accessibility ramps, and Tree/Root removal. The objective was to achieve complete sections (concrete demo/installation and tree/root removal) adding each line item to ensure a contract award can be made within the available budget. The bid form contained line items for sidewalks, driveway approaches, accessibility ramps and tree/root removal. This methodology allows for one or more "sections" of the project to be completed with the available funding. Line item sections will be subtracted to arrive at a bid amount within the available budget; mobilization for the contractor will included prior to any line item section deductions.

As a requirement of the Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funding – the bidder is required to complete a contractor certification to affirm eligibility of receipt of federal contracts or be previously certified under this process.

## **DRAWINGS and SPECIFICATIONS:**

The drawings and specifications consisted of 116 pages defining the scope of work and conditions to complete the project, as well as the standard requirement for the use of Federal Wage Rates for TX160016 01/08/2016 TX16 for Heavy and Highway Projects (excluding tunnels, dams, work on sewage or water treatment plants or lift/pump stations) in Bell, Coryell, McLennan and Williamson Counties, Texas.

Street services Staff requested a minimum of six percent (6%) be held available for potential unknown factors that may trigger a change order to the approved contract award.

## **PROJECT FUNDING SOURCE (Development and Application):**

City of Killeen Community Development Block Grant Program funding – FY 2016-17(account #228 0067 495.51-82) \$120,000.00. An additional \$40,000.00 from Community Development Block Grant FY14-15 Stewart Neighborhood Project account 228 0065 495.51-80 are also available for this project.

# **BID ANALYSIS**

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

## **COMPETITIVE BIDDING PROCESS:**

The Invitation to Bid was placed on the City’s purchasing web page via Demand Star, the Electronic State Business Daily, and seven (7) Plans Rooms also received notice of the bid invitation on September 25, 2016.

The *Advertisement for Bids* was published September 25 and October 2, 2016 in the Killeen Daily Herald. Questions and clarifications were due to the Purchasing Division, in writing, by 2:00 p.m., October 6, 2016. The bid closed at 3:30 pm October 20, 2016 and all sealed bids received at the Purchasing Division were taken to Killeen City Hall Council Chambers and opened and read aloud at 3:45 p.m.

A required pre-bid conference was conducted for this project at 10:00 a.m. October 4, 2016 in the Community Development Training Room, Killeen Arts & Activities Center, Building E. Streets Division and Community Development Staff conducted the meeting for seven (7) attending bidders.

Written requests for clarification and questions were received by the October 6, 2016 2:00 p.m. due date – **Two (2) Addenda** were issued for this project. Addendum #1 provided answers to questions posed by interested bidders during the pre-bid meeting and via electronic transmission (email); clarification that bidders may bid on every trade item or either concrete only or tree/root removal only with anticipation that separate bids would be submitted for either concrete or tree/root removal; Addenda #2 extended the bid due date from the originally scheduled date due to final calculations of available funds from the FY2014-15 Stewart Neighborhood project fund. The Addenda were posted on the Purchasing “city bids” page; all known plan holders were sent - a copy of the addenda - via email.

## **BID PACKET REQUESTS:**

Bid packets were made available via the City’s Purchasing web page (City Bids) with a printed set of the specifications, bid forms and conditions available at the Community Development Department Office located at 802 N. 2<sup>nd</sup> Street, Building E, Killeen Arts & Activities Center, Killeen, Texas - Monday through Friday, 8:00 a.m. until 5:00 p.m. The electronically formatted documents were also made available at the Electronic State Business Daily (ESBD) and to the Central Texas Chapter of Associated General Contractors (Centex AGC, AGC Austin, and AGS of America), the AMTEK Information Services (Amtekusa), and Construction Data Company (CDCnews), Bidders’ Resource Inc. Construction Software Technologies, Inc. (iSqFt), Dodge Data & Analytics, and CMD – Construction Management Data (formerly Reed Elsevier, Inc.-Reed Business Information). All plan sets and bid packets were available at no charge.

The following is a list of known plan holders for this bid:

# BID ANALYSIS

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

## Plan Holder List

STEWART NEIGHBORHOOD PROJECT- PHASE 3 (Sidewalk Reconstruction)

#16.04/B-16-MC-48-0020 BIDS DUE: October 13, 2016 at 3:30 P.M.

**BID PACKET REQUESTS:**

Bid packets available via the City Bids web page at <http://www.killeentexas.gov/index.php?section=107>.  
Additionally, information can be obtained from various Plans Rooms

The following is a complete list of those contractor businesses and individuals that obtained a bid packet:

Date	Contact Person	Company Name and Address	Phone Number	Fax Number	E-Mail Address	Hard Copy/Email Packet No.
9/26/16	Elaine Hobbs	Central Texas AGC 4500 W. Waco Drive (76710-7047)	254 772-5400	254 772-5451	<a href="mailto:plans@centexAGC.org">plans@centexAGC.org</a>	email
9/27/16	Jake Valentine	Construct Connect The Rockwood Exchange 385 Edwards Rd, Suite 800 Cincinnati, OH 45209	800.364.2059 xt 7024	866.570.8187	<a href="mailto:jake.valentien@construcconnect.com">jake.valentien@construcconnect.com</a> <a href="http://www.constructconnect.com">www.constructconnect.com</a>	City Bids page
9/28/16	Tirzah Rivera Kirk DeMoss	SAM Engineering & Surveying 200 S. 10 <sup>th</sup> St. Suite 1607 McAllen, TX 78501	956.702.8880 956.433.6377	956.702.8883	<a href="mailto:tirzah@samengineering-surveying.com">tirzah@samengineering-surveying.com</a> <a href="mailto:kirk@samengineering-surveying.com">kirk@samengineering-surveying.com</a>	City Bids page
10/3/16	Jamie Posten	Concrete Magic Designs Kempner, TX	512-538-3679		<a href="mailto:postenjamie@gmail.com">postenjamie@gmail.com</a>	email
10/04/16	Eric Delgado	Myers Concrete Wimberley, TX	512-847-8000		<a href="mailto:info@myersconcrete.com">info@myersconcrete.com</a>	web

Pg 1

# BID ANALYSIS

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

## Plan Holder List

STEWART NEIGHBORHOOD PROJECT- PHASE 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 BIDS DUE: October 13, 2016 at 3:30 P.M.

Date	Contact Person	Company Name and Address	Phone Number	Fax Number	E-Mail Address	Hard Copy/Email Packet No.
10/04/16	Juan Bazan	Battery Warehouse	956-577-1708		<a href="mailto:Henry.Morales@att.net">Henry.Morales@att.net</a> Correct email confirmed-CH	City bids
		McAllen, TX				
10/04/16	John Morales	Texas Concrete & Demolition, Inc.	956-793-2561		<a href="mailto:texcondem0@gmail.com">texcondem0@gmail.com</a>	City bids
10/04/16	Henry Fitzgerald	Beck Reit & Sons Austin, TX	254-285-9718		<a href="mailto:henryr@beckreit.com">henryr@beckreit.com</a>	City bids
10/04/16	James Posten	Concrete Magic Designs Kempner, TX	512-538-3679		<a href="mailto:postenjamie@gmail.com">postenjamie@gmail.com</a>	email
10/04/16	Alonzo Javier	Yoko, Excavating Belton, Tx	817-319-1972		<a href="mailto:javierdirt@gmail.com">javierdirt@gmail.com</a>	City bids

Pg 2

As of 10/4/2016 5:00 pm

BIDDER QUALIFICATION SUMMARY: Each bidder is required by federal regulation, to be certified through the Community Development Department formal Certified Contractor Application Process (CCAP).

Two (2) plan holders were previously certified through the Community Development Department – Myers Concrete and Battery Warehouse.

### **BID CLOSING/OPENING:**

Sealed bids were received by the Purchasing Division by October 20, 2016, 3:30 p.m. bid closing date and time, which were then opened at 3:45 p.m. at Killeen City Hall Council Chambers.

Attendees at the bid opening included: John Morales-Texas Concrete; Henry Morales-Battery Warehouse; Sophonia Price, Purchasing Office and Cinda Hayward, CD Programs Manager – both of the City of Killeen.

The bid tabulation is as follows:




# BID ANALYSIS

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)**  
**#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

BID/PROPOSAL TABULATION

BID #17-01 STEWART NEIGHBORHOOD PROJECT – PHASE 3 (Sidewalk Reconstruction)  
 #16.04/B-16-MC-48-0020 BIDS DUE: OCTOBER 20, 2016 3:30 PM

Contractor's Submitting Bids/Proposals						
	Pattley Whiskard McAllentx					
<b>DESCRIPTION</b>						
<b>SIDEWALK RECONSTRUCTION</b> includes Sidewalks, Driveway Approaches, ADA RAMP demo/remove/replace, TREE & root removal 1'-0" below finish grade	248,730 <sup>00</sup>				No other bidders OK	
<b>TOTAL BID</b>	248,730 <sup>00</sup>					
<b>Addendum #1</b> "✓" indicates attached and executed	✓					
<b>Addendum #2</b> "✓" indicates attached and executed	✓					
<b>Bid Bond</b> "✓" indicates attached and executed	✓					
<b>KCDD Contractor Certification Application</b> "✓" indicates attached	None -					

Initials AW OMP

page 1 of 1

BID/PROPOSAL TABULATION

BID #17-01 STEWART NEIGHBORHOOD PROJECT – PHASE 3 (Sidewalk Reconstruction)  
 #16.04/B-16-MC-48-0020 BIDS DUE: OCTOBER 20, 2016 3:30 PM

Bids Opened by: Christywood CD Proj. Mgr. Date: 10/20/16  
Name and Position

Witnessed by: OMP - Sr. Purchasing Spec. Date: 10/20/16  
Name and Position

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_  
Name and Position

## **BID ANALYSIS**

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

The following bid was received for the project:

Concrete and Tree/Root Removal – Battery Warehouse - \$248,730.00, plus Mobilization at \$29,847.60.

The contractor understands his calculations are not equal to those calculated by the analysis form and will honor the amount(s) bid on the bid form submitted. (See attached letter from contractor)

Line item sections were deducted from the amounts submitted allowing for twenty-four (24) of the forty-six (46) line item sections to be completed. Mobilization equal to 12% of the cumulative line item bid is included in the Cumulative Total to ensure an adequate amount for mobilization of the contractor and necessary equipment.

# BID ANALYSIS

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

## STEWART NEIGHBORHOOD PROJECT- PHASE 3 (Sidewalk Reconstruction)

Probable Cost Estimate for Project								
BID #17-01	DESCRIPTION						Total Bid	
Item	DESCRIPTION						Total Bid	
Mob	Mobilization (12% of running bid amount)						\$ 28,854.48	
DESCRIPTION	Sidewalk demo/remove/replace	Driveway Approach demo/remove/replace	ADA Ramp demo/remove/replace TYPE 7	Tree tree & root removal 1'-0" below finish grade	Total Bid per line item	Cumulative Total with Mob		
ITEM	Unit Identification General Location (Address)	Estimated Cost \$67 SY	Estimated Cost \$ 72 SY	Estimated Cost \$1,425 per	Estimated Cost \$1,700 per	Amount		
<b>ALEXANDER STREET</b>								
1	1207	\$ 4,489.00	\$ 1,008.00	\$ 1,425.00	\$ 1,700.00	\$ 8,622.00	\$ 9,656.64	
2	1205	\$ 4,355.00	\$ 1,080.00			\$ 5,435.00	\$ 15,743.84	
3	1203	\$ 6,499.00	\$ 1,224.00			\$ 7,723.00	\$ 24,393.60	
4	1201	\$ 5,561.00			\$ 5,100.00	\$ 10,661.00	\$ 36,333.92	
5	1105	\$ 5,494.00	\$ 1,080.00		\$ 1,700.00	\$ 8,274.00	\$ 45,600.80	
6	1103	\$ 4,422.00	\$ 1,080.00			\$ 5,502.00	\$ 51,763.04	
7	1101	\$ 4,489.00	\$ 1,080.00			\$ 5,569.00	\$ 58,000.32	
8	1009	\$ 4,355.00	\$ 1,080.00		\$ 1,700.00	\$ 7,135.00	\$ 65,991.52	
9	1007	\$ 4,489.00	\$ 1,080.00			\$ 5,569.00	\$ 72,228.80	
10	1005	\$ 4,422.00				\$ 4,422.00	\$ 77,181.44	
11	1003	\$ 4,422.00	\$ 1,152.00		\$ 1,700.00	\$ 7,274.00	\$ 85,328.32	
12	1001	\$ 3,015.00	\$ 1,152.00	\$ 1,425.00	\$ 1,700.00	\$ 7,292.00	\$ 93,495.36	
13	City Park at Gray Drive			\$ 1,425.00		\$ 1,425.00	\$ 95,091.36	
14	City Park at Culp Ave.			\$ 1,425.00		\$ 1,425.00	\$ 96,687.36	
<b>GRAY DRIVE</b>								
15	1305	\$ 1,072.00	\$ 1,080.00		\$ 1,700.00	\$ 3,852.00	\$ 101,001.60	
16	1303	\$ 1,943.00	\$ 1,152.00			\$ 3,095.00	\$ 104,468.00	
17	1301	\$ 1,943.00	\$ 1,152.00		\$ 1,700.00	\$ 4,795.00	\$ 109,838.40	
18	1209	\$ 2,010.00	\$ 1,152.00		\$ 1,700.00	\$ 4,862.00	\$ 115,283.84	
19	1117	\$ 1,206.00			\$ 1,206.00	\$ 1,206.00	\$ 116,634.56	
20	1113	\$ 938.00			\$ 1,700.00	\$ 2,638.00	\$ 119,589.12	
21	1109	\$ 2,345.00	\$ 1,512.00		\$ 1,700.00	\$ 5,557.00	\$ 125,812.96	
22	1103			\$ 1,425.00		\$ 1,425.00	\$ 127,408.96	
23	1201	\$ 3,015.00	\$ 1,440.00	\$ 1,425.00		\$ 5,880.00	\$ 133,994.56	
24	1104	\$ 2,546.00	\$ 1,080.00		\$ 1,700.00	\$ 5,326.00	\$ 139,959.68	
25	1112	\$ 4,556.00	\$ 1,296.00		\$ 3,400.00	\$ 9,252.00	\$ 150,321.92	
26	1202	\$ 1,474.00		\$ 1,425.00		\$ 2,899.00	\$ 153,568.80	
27	1206	\$ 2,613.00	\$ 1,656.00	\$ 1,425.00	\$ 1,700.00	\$ 7,394.00	\$ 161,850.08	
28	Gray /Carol	\$ 3,350.00		\$ 1,425.00	\$ 1,700.00	\$ 6,475.00	\$ 169,102.08	

BATTERY WAREHOUSE, McALLEN, TX											
Item	DESCRIPTION										Total Bid
Mob	Mobilization (12% of running bid amount)										\$ 29,847.60
DESCRIPTION	Sidewalk demo/remove/replace	Approach demo/remove/replace	ADA Ramp demo/remove/replace	Tree tree & root removal 1'-0" below finish grade	Total Bid per line item	Cumulative Total with Mob					
ITEM	Unit Identification-General Location (Address)	Est. SY	Unit Price Bid @ \$81. per	Est. SY	Unit Price Bid @ \$93 per	ADA Ramp	Unit Price Bid @ \$1,300 per	Each	Unit Price Bid @ \$1,200 per	Amount	
<b>1-ALEXANDER STREET</b>											
1	22-1207	67	\$ 5,427.00	14	\$ 1,302.00	N/A		0		\$ 6,729.00	\$ 7,536.48
2	23-1205	65	\$ 5,265.00	15	\$ 1,395.00	N/A		0		\$ 6,660.00	\$ 14,995.68
3	24-1203	97	\$ 7,857.00	17	\$ 1,581.00	N/A		0		\$ 9,438.00	\$ 25,566.24
4	25-1201	83	\$ 6,723.00	0	\$ -	N/A		3	\$ 3,600.00	\$ 10,323.00	\$ 37,128.00
5	26-1105	82	\$ 6,642.00	15	\$ 1,395.00	N/A		1	\$ 1,200.00	\$ 7,842.00	\$ 45,911.04
6	27-1103	66	\$ 5,346.00	15	\$ 1,395.00	N/A		0	\$ -	\$ 6,741.00	\$ 53,460.96
7	28-1101	67	\$ 5,427.00	15	\$ 1,395.00	N/A		0	\$ -	\$ 6,822.00	\$ 61,101.60
8	29-1009	65	\$ 5,265.00	15	\$ 1,395.00	N/A		1	\$ 1,200.00	\$ 7,860.00	\$ 69,904.80
9	30-1007	67	\$ 5,427.00	15	\$ 1,395.00	N/A		0	\$ -	\$ 6,822.00	\$ 77,545.44
10	31-1005	66	\$ 5,346.00	0	\$ -	N/A		0	\$ -	\$ 5,346.00	\$ 83,532.96
11	32-1003	66	\$ 5,346.00	16	\$ 1,488.00	N/A		1	\$ 1,200.00	\$ 8,034.00	\$ 92,531.04
12	33-1001	45	\$ 3,645.00	16	\$ 1,488.00	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 7,633.00	\$ 101,080.00
13	2-15-City Park at Gray Drive	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 102,536.00
14	3-16-City Park at Culp Ave.	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 103,992.00
<b>4-GRAY DRIVE</b>											
15	1-1305	16	\$ 1,296.00	15	\$ 1,395.00	N/A	\$ -	1	\$ 1,200.00	\$ 3,891.00	\$ 108,349.92
16	2-1303	29	\$ 2,349.00	16	\$ 1,488.00	N/A	\$ -	0	\$ -	\$ 3,837.00	\$ 112,647.36
17	3-1301	29	\$ 2,349.00	16	\$ 1,488.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,037.00	\$ 118,288.80
18	4-1209	30	\$ 2,430.00	16	\$ 1,488.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,118.00	\$ 124,020.96
19	5-1117	18	\$ 1,458.00	0	\$ -	N/A	\$ -	0	\$ -	\$ 1,458.00	\$ 125,653.92
20	6-1113	14	\$ 1,134.00	0	\$ -	N/A	\$ -	1	\$ 1,200.00	\$ 2,334.00	\$ 128,268.00
21	7-1109	35	\$ 2,835.00	21	\$ 1,953.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,988.00	\$ 134,974.56
22	8-1103	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 136,430.56
23	9-1201	45	\$ 3,645.00	20	\$ 1,860.00	TYPE 7	\$ 1,300.00	0	\$ -	\$ 6,805.00	\$ 144,052.16
24	10-1104	38	\$ 3,078.00	15	\$ 1,395.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,673.00	\$ 150,405.92
25	11-1112	68	\$ 5,508.00	18	\$ 1,674.00	N/A	\$ -	2	\$ 2,400.00	\$ 9,582.00	\$ 161,137.76
26	12-1202	22	\$ 1,782.00	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 3,082.00	\$ 164,589.60
27	13-1206	39	\$ 3,159.00	23	\$ 2,139.00	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 7,798.00	\$ 173,323.36
28	14-Gray /Carol	50	\$ 4,050.00	0	\$ -	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 6,550.00	\$ 180,659.36

Amount entered by Contractor \$ 7,842.00  
actual \$9,237 \$ (1,395.00)

# BID ANALYSIS

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

CULP AVENUE								CULP AVENUE								*** Bid Sidewalk @ \$70 per beginning this point forward				
29	1306	\$ 2,412.00	\$ 2,232.00		\$ 4,644.00	\$ 174,303.36	29	24-1306***	36	\$ 2,520.00	31	\$ 2,883.00	N/A	\$ -	0	\$ -	\$ 5,403.00	\$ 186,710.72		
32	1302	\$ 1,273.00			\$ 1,273.00	\$ 175,729.12	32	23-1302	19	\$ 1,330.00	0	\$ -	N/A	\$ -	0	\$ -	\$ 1,330.00	\$ 188,200.32		
33	1206	\$ 1,876.00	\$ 2,232.00		\$ 4,108.00	\$ 180,330.08	33	22-1206	28	\$ 1,960.00	31	\$ 2,883.00	N/A	\$ -	0	\$ -	\$ 1,330.00	\$ 189,689.92	Amount entered by Contractor \$ 1,330.00	
34	Culp/Carol	\$ 2,412.00		\$ 1,425.00	\$ 3,400.00	\$ 7,237.00	\$ 188,435.52	34	17-Culp/Carol	36	\$ 2,520.00	0	\$ -	TYPE 7	\$ 1,300.00	2	\$ 2,400.00	\$ 6,220.00	\$ 196,656.32	actual \$4,843 (\$3,513.00)
35	Culp/Carol	\$ 4,355.00		\$ 1,425.00	\$ 3,400.00	\$ 9,180.00	\$ 198,717.12	35	18-Culp/Carol	65	\$ 4,550.00	0	\$ -	TYPE 7	\$ 1,300.00	2	\$ 2,400.00	\$ 8,250.00	\$ 205,896.32	
36	1206	\$ 1,876.00	\$ 2,232.00		\$ 4,108.00	\$ 203,318.08	36	22-1206	28	\$ 1,960.00	31	\$ 2,883.00	N/A	\$ -	0	\$ -	\$ 4,843.00	\$ 211,320.48		
37	1108	\$ 2,077.00	\$ 1,800.00		\$ 3,877.00	\$ 207,660.32	37	21-1108	31	\$ 2,170.00	25	\$ 2,325.00	N/A	\$ -	0	\$ -	\$ 4,285.00	\$ 216,119.68	Amount entered by Contractor \$4,285.00	
38	1106		\$ 2,520.00		\$ 2,520.00	\$ 210,482.72	38	20-1106	0	\$ -	35	\$ 3,255.00	N/A	\$ -	0	\$ -	\$ 3,255.00	\$ 219,765.28	actual \$4,495 (\$210.00)	
39	1102	\$ 5,025.00	\$ 1,872.00	\$ 1,425.00	\$ 5,100.00	\$ 13,422.00	\$ 225,515.36	39	19-1102	75	\$ 5,250.00	26	\$ 2,418.00	TYPE 7	\$ 1,300.00	3	\$ 3,600.00	\$ 12,568.00	\$ 233,841.44	
FRANZ DRIVE								6-FRANZ DRIVE												
40	Franz/Culp	\$ 2,948.00		\$ 1,425.00	\$ 4,373.00	\$ 230,413.12	40	30-Franz/Culp	44	\$ 3,080.00	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 4,380.00	\$ 238,747.04		
41	Franz/Culp*			\$ 1,425.00	\$ 1,425.00	\$ 232,009.12	41	31-Franz/Culp	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 240,203.04		
42	Franz to 18th	\$ 5,762.00	\$ 5,112.00	\$ 1,425.00	\$ 1,700.00	\$ 13,999.00	\$ 247,688.00	42	32-Franz to 18th	86	\$ 6,020.00	71	\$ 6,603.00	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 15,123.00	\$ 257,140.80	
43	18th to Franz	\$ 3,216.00		\$ 1,425.00	\$ 4,641.00	\$ 252,885.92	43	33-18th to Franz	48	\$ 3,360.00	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 4,660.00	\$ 262,360.00		
44	1008	\$ 3,350.00	\$ 1,224.00		\$ 1,700.00	\$ 6,274.00	\$ 259,912.80	44	34-1008	50	\$ 3,500.00	17	\$ 1,581.00	N/A	\$ -	1	\$ 1,200.00	\$ 6,281.00	\$ 269,394.72	
45	1014	\$ 938.00	\$ 1,296.00		\$ 2,234.00	\$ 262,414.88	45	35-1014	14	\$ 980.00	18	\$ 1,674.00	N/A	\$ -	0	\$ -	\$ 2,654.00	\$ 272,367.20		
46	1016	\$ 1,675.00	\$ 1,080.00		\$ 3,400.00	\$ 6,155.00	\$ 269,308.48	46	36-1016	25	\$ 1,750.00	15	\$ 1,395.00	N/A	\$ -	2	\$ 2,400.00	\$ 5,545.00	\$ 278,577.60	
Mobilization 12% of total bid = all line items as shown above at line 3								Mobilization 12% of total bid = all line items as shown above at line 3												
<b>Est Cost \$ 269,308.48</b>								<b>Contractor Bid \$ 283,695.60</b>												

**CONCLUSION:**

The total amount bid exceeds the available budget for the project. Line item sections 25-46 are deducted resulting in twenty-four sections to be including mobilization for a total of \$150,405.92 and six percent excess (\$9,024.36) for potential change orders for the project.

Funding for the Stewart Neighborhood Project Phase 3 (Sidewalk Reconstruction) PW- Environmental Services and Street Services, was allocated \$148,130.00, with \$120,000 available for the sidewalk reconstruction portion of the project, from the FY 2016 Community Development Block Grant (CDBG) during the annual budget process under Ordinance #16-036. After advertising costs are deducted, remaining CDBG funds from the FY2016 sidewalk reconstruction portion total \$119,625.90. An additional \$40,000.00 is also available from the Stewart Neighborhood Project FY2014 project for a total combined funding of \$159,625.90.

## **BID ANALYSIS**

**BID NO. 17-01 – Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction)  
#16.04/B-16-MC-48-0020 OPENING OCTOBER 20, 2016 AT 3:30 P.M.**

**Staff recommends City Council award bid #17-01 to Battery Warehouse of McAllen, Texas in the amount of \$150,405.92.**

Bids reviewed by: Cinda Hayward, CD Program Manager; Celeste Sierra, CD Specialist.

Prepared by: Cinda Hayward, CD Programs Manager, Community Development Department

STEWART NEIGHBORHOOD PROJECT- PHASE 3 (Sidewalk Reconstruction)

Probable Cost Estimate for Project							
BID #17-01	DESCRIPTION						Total Bid
Item	DESCRIPTION						Total Bid
Mob	Mobilization (12% of running bid amount)						\$ 28,854.48
DESCRIPTION	Sidewalk demo/remove/replace	Driveway Approach demo/remove/replace	ADA Ramp demo/remove/replace TYPE 7	Tree tree & root removal 1'-0" below finish grade	Total Bid per line item	Running Total with Mob	
ITEM	Unit Identification General Location (Address)	Estimated Cost \$67 SY	Estimated Cost \$72 SY	Estimated Cost \$1,425 per	Estimated Cost \$1,700 per	Amount	
<b>ALEXANDER STREET</b>							
1	1207	\$ 4,489.00	\$ 1,008.00	\$ 1,425.00	\$ 1,700.00	\$ 8,622.00	\$ 9,656.64
2	1205	\$ 4,355.00	\$ 1,080.00			\$ 5,435.00	\$ 15,743.84
3	1203	\$ 6,499.00	\$ 1,224.00			\$ 7,723.00	\$ 24,393.60
4	1201	\$ 5,561.00			\$ 5,100.00	\$ 10,661.00	\$ 36,333.92
5	1105	\$ 5,494.00	\$ 1,080.00		\$ 1,700.00	\$ 8,274.00	\$ 45,600.80
6	1103	\$ 4,422.00	\$ 1,080.00			\$ 5,502.00	\$ 51,763.04
7	1101	\$ 4,489.00	\$ 1,080.00			\$ 5,569.00	\$ 58,000.32
8	1009	\$ 4,355.00	\$ 1,080.00		\$ 1,700.00	\$ 7,135.00	\$ 65,991.52
9	1007	\$ 4,489.00	\$ 1,080.00			\$ 5,569.00	\$ 72,228.80
10	1005	\$ 4,422.00				\$ 4,422.00	\$ 77,181.44
11	1003	\$ 4,422.00	\$ 1,152.00		\$ 1,700.00	\$ 7,274.00	\$ 85,328.32
12	1001	\$ 3,015.00	\$ 1,152.00	\$ 1,425.00	\$ 1,700.00	\$ 7,292.00	\$ 93,495.36
13	City Park at Gray Drive			\$ 1,425.00		\$ 1,425.00	\$ 95,091.36
14	City Park at Culp Ave.			\$ 1,425.00		\$ 1,425.00	\$ 96,687.36
<b>GRAY DRIVE</b>							
15	1305	\$ 1,072.00	\$ 1,080.00		\$ 1,700.00	\$ 3,852.00	\$ 101,001.60
16	1303	\$ 1,943.00	\$ 1,152.00			\$ 3,095.00	\$ 104,468.00
17	1301	\$ 1,943.00	\$ 1,152.00		\$ 1,700.00	\$ 4,795.00	\$ 109,838.40
18	1209	\$ 2,010.00	\$ 1,152.00		\$ 1,700.00	\$ 4,862.00	\$ 115,283.84
19	1117	\$ 1,206.00				\$ 1,206.00	\$ 116,634.56
20	1113	\$ 938.00			\$ 1,700.00	\$ 2,638.00	\$ 119,589.12
21	1109	\$ 2,345.00	\$ 1,512.00		\$ 1,700.00	\$ 5,557.00	\$ 125,812.96
22	1103			\$ 1,425.00		\$ 1,425.00	\$ 127,408.96
23	1201	\$ 3,015.00	\$ 1,440.00	\$ 1,425.00		\$ 5,880.00	\$ 133,994.56
24	1104	\$ 2,546.00	\$ 1,080.00		\$ 1,700.00	\$ 5,326.00	\$ 139,959.68
25	1112	\$ 4,556.00	\$ 1,296.00		\$ 3,400.00	\$ 9,252.00	\$ 150,321.92
26	1202	\$ 1,474.00		\$ 1,425.00		\$ 2,899.00	\$ 153,568.80
27	1206	\$ 2,613.00	\$ 1,656.00	\$ 1,425.00	\$ 1,700.00	\$ 7,394.00	\$ 161,850.08
28	Gray /Carol	\$ 3,350.00		\$ 1,425.00	\$ 1,700.00	\$ 6,475.00	\$ 169,102.08

BATTERY WAREHOUSE, McALLEN, TX													
Item	DESCRIPTION												Total Bid
Mob	Mobilization (12% of running bid amount)												\$ 29,847.60
DESCRIPTION	Sidewalk demo/remove/replace	Driveway Approach demo/remove/replace	ADA Ramp demo/remove/replace	Tree tree & root removal 1'-0" below finish grade	Total Bid per line item	Running Total with Mob							
ITEM	Unit Identification/General Location (Address)	Est. SY	Unit Price Bid @ \$81. per	Est. SY	Unit Price Bid @ \$93 per	ADA Ramp Unit Price Bid @ \$1,300 per	Each	Unit Price Bid @ \$1,200 per	Amount	Running Total with Mob			
<b>1-ALEXANDER STREET</b>													
1	22-1207	67	\$ 5,427.00	14	\$ 1,302.00	N/A	0		\$ 6,729.00	\$ 7,536.48			
2	23-1205	65	\$ 5,265.00	15	\$ 1,395.00	N/A	0		\$ 6,660.00	\$ 14,995.68			
3	24-1203	97	\$ 7,857.00	17	\$ 1,581.00	N/A	0		\$ 9,438.00	\$ 25,566.24			
4	25-1201	83	\$ 6,723.00	0	\$ -	N/A	3	\$ 3,600.00	\$ 10,323.00	\$ 37,128.00			
5	26-1105	82	\$ 6,642.00	15	\$ 1,395.00	N/A	1	\$ 1,200.00	\$ 7,842.00	\$ 45,911.04			
6	27-1103	66	\$ 5,346.00	15	\$ 1,395.00	N/A	0	\$ -	\$ 6,741.00	\$ 53,460.96			
7	28-1101	67	\$ 5,427.00	15	\$ 1,395.00	N/A	0	\$ -	\$ 6,822.00	\$ 61,101.60			
8	29-1009	65	\$ 5,265.00	15	\$ 1,395.00	N/A	1	\$ 1,200.00	\$ 7,860.00	\$ 69,904.80			
9	30-1007	67	\$ 5,427.00	15	\$ 1,395.00	N/A	0	\$ -	\$ 6,822.00	\$ 77,545.44			
10	31-1005	66	\$ 5,346.00	0	\$ -	N/A	0	\$ -	\$ 5,346.00	\$ 83,532.96			
11	32-1003	66	\$ 5,346.00	16	\$ 1,488.00	N/A	1	\$ 1,200.00	\$ 8,034.00	\$ 92,531.04			
12	33-1001	45	\$ 3,645.00	16	\$ 1,488.00	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 7,633.00	\$ 101,080.00		
13	2-15-City Park at Gray Drive	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 102,536.00		
14	3-16-City Park at Culp Ave.	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 103,992.00		
<b>4-GRAY DRIVE</b>													
15	1-1305	16	\$ 1,296.00	15	\$ 1,395.00	N/A	\$ -	1	\$ 1,200.00	\$ 3,891.00	\$ 108,349.92		
16	2-1303	29	\$ 2,349.00	16	\$ 1,488.00	N/A	\$ -	0	\$ -	\$ 3,837.00	\$ 112,647.36		
17	3-1301	29	\$ 2,349.00	16	\$ 1,488.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,037.00	\$ 118,288.80		
18	4-1209	30	\$ 2,430.00	16	\$ 1,488.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,118.00	\$ 124,020.96		
19	5-1117	18	\$ 1,458.00	0	\$ -	N/A	\$ -	0	\$ -	\$ 1,458.00	\$ 125,653.92		
20	6-1113	14	\$ 1,134.00	0	\$ -	N/A	\$ -	1	\$ 1,200.00	\$ 2,334.00	\$ 128,268.00		
21	7-1109	35	\$ 2,835.00	21	\$ 1,953.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,988.00	\$ 134,974.56		
22	8-1103	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 136,430.56		
23	9-1201	45	\$ 3,645.00	20	\$ 1,860.00	TYPE 7	\$ 1,300.00	0	\$ -	\$ 6,805.00	\$ 144,052.16		
24	10-1104	38	\$ 3,078.00	15	\$ 1,395.00	N/A	\$ -	1	\$ 1,200.00	\$ 5,673.00	\$ 150,405.92		
25	11-1112	68	\$ 5,508.00	18	\$ 1,674.00	N/A	\$ -	2	\$ 2,400.00	\$ 9,582.00	\$ 161,137.76		
26	12-1202	22	\$ 1,782.00	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 3,082.00	\$ 164,589.60		
27	13-1206	39	\$ 3,159.00	23	\$ 2,139.00	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 7,798.00	\$ 173,323.36		
28	14-Gray /Carol	50	\$ 4,050.00	0	\$ -	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 6,550.00	\$ 180,659.36		

Amount entered by Contractor \$ 7,842.00  
actual \$9,237 \$ (1,395.00)

Probable Cost Estimate for Project							
BID #17-01							Total Bid
Item	DESCRIPTION					Total Bid	
<b>CULP AVENUE</b>							
29	1306	\$ 2,412.00	\$ 2,232.00			\$ 4,644.00	\$ 174,303.36
32	1302	\$ 1,273.00				\$ 1,273.00	\$ 175,729.12
33	1206	\$ 1,876.00	\$ 2,232.00			\$ 4,108.00	\$ 180,330.08
34	Culp/Carol	\$ 2,412.00		\$ 1,425.00	\$ 3,400.00	\$ 7,237.00	\$ 188,435.52
35	Culp/Carol	\$ 4,355.00		\$ 1,425.00	\$ 3,400.00	\$ 9,180.00	\$ 198,717.12
36	1206	\$ 1,876.00	\$ 2,232.00			\$ 4,108.00	\$ 203,318.08
37	1108	\$ 2,077.00	\$ 1,800.00			\$ 3,877.00	\$ 207,660.32
38	1106		\$ 2,520.00			\$ 2,520.00	\$ 210,482.72
39	1102	\$ 5,025.00	\$ 1,872.00	\$ 1,425.00	\$ 5,100.00	\$ 13,422.00	\$ 225,515.36
<b>FRANZ DRIVE</b>							
40	Franz/Culp	\$ 2,948.00		\$ 1,425.00		\$ 4,373.00	\$ 230,413.12
41	Franz/Culp*			\$ 1,425.00		\$ 1,425.00	\$ 232,009.12
42	Franz to 18th	\$ 5,762.00	\$ 5,112.00	\$ 1,425.00	\$ 1,700.00	\$ 13,999.00	\$ 247,688.00
43	18th to Franz	\$ 3,216.00		\$ 1,425.00		\$ 4,641.00	\$ 252,885.92
44	1008	\$ 3,350.00	\$ 1,224.00		\$ 1,700.00	\$ 6,274.00	\$ 259,912.80
45	1014	\$ 938.00	\$ 1,296.00			\$ 2,234.00	\$ 262,414.88
46	1016	\$ 1,675.00	\$ 1,080.00		\$ 3,400.00	\$ 6,155.00	\$ 269,308.48
Mobilization 12% of total bid = all line items as shown above at line 3							
<b>Est Cost</b>	<b>\$ 269,308.48</b>					<b>\$ 240,454.00</b>	

BATTERY WAREHOUSE, McALLEN, TX													
Item	DESCRIPTION											Total Bid	
<b>CULP AVENUE</b>													
29	24-1306***	36	\$ 2,520.00	31	\$ 2,883.00	N/A	\$ -	0	\$ -	\$ 5,403.00	\$ 186,710.72	*** Bid Sidewalk @ \$70 per beginning this point forward	
32	23-1302	19	\$ 1,330.00	0	\$ -	N/A	\$ -	0	\$ -	\$ 1,330.00	\$ 188,200.32		
33	22-1206	28	\$ 1,960.00	31	\$ 2,883.00	N/A	\$ -	0	\$ -	\$ 1,330.00	\$ 189,689.92	Amount entered by Contractor \$ 1,330.00	
34	17-Culp/Carol	36	\$ 2,520.00	0	\$ -	TYPE 7	\$ 1,300.00	2	\$ 2,400.00	\$ 6,220.00	\$ 196,656.32	actual \$4,843 (\$3,513.00)	
35	18-Culp/Carol	65	\$ 4,550.00	0	\$ -	TYPE 7	\$ 1,300.00	2	\$ 2,400.00	\$ 8,250.00	\$ 205,896.32		
36	22-1206	28	\$ 1,960.00	31	\$ 2,883.00	N/A	\$ -	0	\$ -	\$ 4,843.00	\$ 211,320.48		
37	21-1108	31	\$ 2,170.00	25	\$ 2,325.00	N/A	\$ -	0	\$ -	\$ 4,285.00	\$ 216,119.68	Amount entered by Contractor \$4,285.00	
38	20-1106	0	\$ -	35	\$ 3,255.00	N/A	\$ -	0	\$ -	\$ 3,255.00	\$ 219,765.28	actual \$4,495 (\$210.00)	
39	19-1102	75	\$ 5,250.00	26	\$ 2,418.00	TYPE 7	\$ 1,300.00	3	\$ 3,600.00	\$ 12,568.00	\$ 233,841.44		
<b>6-FRANZ DRIVE</b>													
40	30-Franz/Culp	44	\$ 3,080.00	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 4,380.00	\$ 238,747.04		
41	31-Franz/Culp	0	\$ -	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 1,300.00	\$ 240,203.04		
42	32-Franz to 18th	86	\$ 6,020.00	71	\$ 6,603.00	TYPE 7	\$ 1,300.00	1	\$ 1,200.00	\$ 15,123.00	\$ 257,140.80		
43	33-18th to Franz	48	\$ 3,360.00	0	\$ -	TYPE 7	\$ 1,300.00	0	\$ -	\$ 4,660.00	\$ 262,360.00		
44	34-1008	50	\$ 3,500.00	17	\$ 1,581.00	N/A	\$ -	1	\$ 1,200.00	\$ 6,281.00	\$ 269,394.72		
45	35-1014	14	\$ 980.00	18	\$ 1,674.00	N/A	\$ -	0	\$ -	\$ 2,654.00	\$ 272,367.20		
46	36-1016	25	\$ 1,750.00	15	\$ 1,395.00	N/A	\$ -	2	\$ 2,400.00	\$ 5,545.00	\$ 278,577.60		
Mobilization 12% of total bid = all line items as shown above at line 3													
<b>Contractor Bid</b>	<b>\$ 283,695.60</b>	1854	\$ 143,739.00	613	\$ 57,009.00	22	\$ 19,500.00	28	\$ 33,600.00	<b>\$ 248,730.00</b>		(\$5,118.00)	

\$ (278,577.60)  
\$ 5,118.00

\$ 248,730.00  
\$ 29,847.60  
\$ 278,577.60



# 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.**

battery warehouse  
mcallen, TX United States

Certificate Number:  
2016-122838

Date Filed:  
10/12/2016

Date Acknowledged:

**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.**

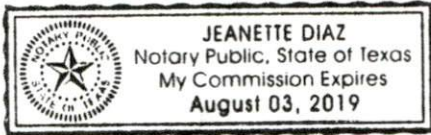
16.04/b-16-mc-48-0020  
concrete sidewalks.approaches, and tree removal

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

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.



*[Signature]*  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Enrique Morales Jr., this the 20th day of October, 2016, to certify which, witness my hand and seal of office.

*[Signature]*  
\_\_\_\_\_  
Signature of officer administering oath

Jeanette Diaz  
\_\_\_\_\_  
Printed name of officer administering oath

\_\_\_\_\_  
Title of officer administering oath





# City of Killeen

## Legislation Details

---

**File #:** RS-16-150    **Version:** 1    **Name:** Rosewood Dr Extension Professional Services Agreement

**Type:** Resolution    **Status:** Resolutions

**File created:** 11/21/2016    **In control:** City Council Workshop

**On agenda:** 12/6/2016    **Final action:**

**Title:** Consider a memorandum/resolution authorizing the City Manager to enter into a professional services agreement with Mitchell and Associates, Inc. for the design of the Rosewood Drive Extension project.

**Sponsors:** Public Works Department, Transportation Division

**Indexes:**

**Code sections:**

**Attachments:** [Council Memorandum](#)  
[Advance Funding Agreement](#)  
[Professional Services Agreement](#)  
[Certificate of Interested Parties](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**CONSIDER A MEMORANDUM/RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH MITCHELL AND ASSOCIATES, INC. FOR THE DESIGN OF THE ROSEWOOD DRIVE EXTENSION PROJECT**

### ORIGINATING DEPARTMENT

**Public Works - Transportation/CIP Division**

### BACKGROUND INFORMATION

On September 25, 2015, the Killeen-Temple Metropolitan Planning Organization (KTMPPO), in cooperation with the Federal Highway Administration, issued a call for project nominations for the Surface Transportation Program Metropolitan Mobility (STPMM) funding. Under the program, 80% of eligible projects costs can be reimbursed with the nominating entity providing at least 20% of the projects allowable costs.

On October 27, 2015, the City Council authorized the City Manager to submit a STPMM application for the extension of Rosewood Drive and Heritage Oaks Hike and Bike Trail, Segment 3, hereinafter called Rosewood Drive Extension (CCM/R 15-123R). On November 10, 2015, the City of Killeen submitted an application to KTMPPO requesting \$6,000,000 for the 2015 STPMM call for projects. The City was awarded a total amount of \$5,003,585 for the Rosewood Drive Extension project.

On February 9, 2016, the City Council authorized the City Manager to submit a Transportation Alternatives Program (TAP) application for the Heritage Oaks Hike and Bike Trail, Segment 3A (CCM/R 16-013R). On February 22, 2016, the City of Killeen submitted an application to KTMPPO requesting \$600,000 for the 2016 TAP call for projects. The City was awarded a total amount of \$600,000 for the Rosewood Drive Extension project design. The advanced funding agreement (AFA) is forthcoming.

It is also the City staff's intent to compete for an additional \$356,415 in FY '18 Category 7 funds through KTMPPO once funds are identified and a call for projects is issued (estimated to be in January 2017). If successful in securing the additional funds, the City's cost participation will be \$2,755,000 and the federal reimbursement amount will be \$6,000,000.

On March 22, 2016, City Council authorized entering into an AFA with the Texas Department of Transportation (TxDOT) for Rosewood Drive Extension and the Heritage Oaks Hike and Bike Trail, Segment 3 project; accepting the STPMM funds; and committing to the design and construction of the project (CCM/R 16-032R).

## **DISCUSSION/CONCLUSION**

The proposed project entails constructing a five (5)-lane roadway, including a bridge over Trimmier Creek and extending the existing Rosewood Drive south to Chaparral Road. The proposal also includes the continuation of Heritage Oaks Hike and Bike Trail, Segment 3, which will connect the existing trail along Rosewood Drive, to Harker Heights Purser Family Park and to the Heritage Oaks Park area and the recently-awarded Heritage Oaks Hike and Bike Trail, Segment 4.

In accordance with City Council's previous direction, City staff proposes entering into a professional services agreement with Mitchell & Associates, Inc. that conforms to the requirements and deadlines associated with the AFA entered into between the City and TxDOT and provides for engineering design, surveying, and environmental clearance services for the Rosewood Drive Extension and Heritage Oaks Hike and Bike Trail, Segment 3 project.

## **FISCAL IMPACT**

The total fiscal impact associated with this agreement is \$741,623. Funding in the amount of \$750,000 is available in account 351-3446-434.66-02.

**ORIGINAL**

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
FOR AN OFF-SYSTEM  
SURFACE TRANSPORTATION PROGRAM- METROPOLITAN MOBILITY PROJECT**

**THIS Local Project Advance Funding Agreement (LPAFA)** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the “State”, and the City of Killeen, acting by and through its duly authorized officials, called the “Local Government.”

**WITNESSETH**

**WHEREAS**, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number 114417 that provides for the development of, and funding for, the Project described herein; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated March 22, 2016, which is attached to and made a part of this agreement as Attachment A for the development of the Project. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

**AGREEMENT**

**1. Period of the Agreement**

The period of this LPAFA is as stated in the Master Agreement, without exception.

**2. Termination of this LPAFA**

Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. This LPAFA may be terminated by the State if the Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

**3. Amendments**

Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

**4. Scope of Work**

The scope of work for this LPAFA is described as constructing a four-lane roadway with center median and off-system bridge over Trimmier Creek.

**5. Right of Way and Real Property**

Right of way and real property shall be the responsibility of the Local Government as stated in the Master Agreement, without exception.

**6. Utilities**

Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement, without exception.

**7. Environmental Assessment and Mitigation**

Environmental assessment and mitigation will be carried out as stated in the Master Agreement. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**8. Compliance with Texas Accessibility Standards and ADA**

Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement, without exception.

**9. Architectural and Engineering Services**

Architectural and engineering services will be provided by the Local Government. The Local Government is responsible for performance of any required architectural or preliminary engineering work. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. The State shall review and may approve on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing local public purposes to the degree permitted by State and Federal law.

**10. Construction Responsibilities**

Construction responsibilities will be carried out by the Local Government as stated in the Master Agreement.

**11. Project Maintenance**

Project maintenance will be undertaken as provided for in the Master Agreement, without exception.

**12. Local Project Sources and Uses of Funds**

A. A Project Budget Estimate is provided in Attachment C. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the Federal spending authority is formally obligated.

- B.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures and Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C.** A Source of Funds estimate based on the Transportation Improvement Program (TIP) is also provided in Attachment C. Attachment C shows the percentage and estimated dollar amount to be contributed to the project by federal, state, and local sources. The parties agree that the LPAFA may be amended from time to time as required to meet the funding commitments based on revisions to the TIP, Federal Project Authorization and Agreement (FPAA), or other federal document.
- D.** The Local Government is responsible for all non-federal and non-state funding, unless otherwise provided for in this agreement or through amendment of this agreement. Where Special Approval has been granted by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.
- E.** Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs.
- F.** Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation." The check or warrant shall be deposited by the State and managed by the State. Funds may only be applied by the State to the Project. If after final Project accounting any excess funds remain, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- G.** If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

- H. When Special Approval has been granted by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification of those amounts.
- I. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Any entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- J. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
- K. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

### **13. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

### **14. Incorporation of Master Agreement Provisions**

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless an exception has been made in this agreement.

### **15. Insurance**

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

### **16. Debarment Certification**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance

Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

**17. Cost Principles and Office of Management and Budget (OMB) Audit Requirements**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

**18. Notices**

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<b>Local Government:</b>	<b>State:</b>
City Manager City of Killeen 101 North College Street Killeen, Texas 76541	Director of Contract Services Texas Department of Transportation 125 E. 11 <sup>th</sup> Street Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**19. Civil Rights Compliance**

**A. Compliance with Regulations:** The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time.



- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 45 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Local Government under the contract until the Local Government complies and/or
  - b. cancellation, termination, or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event an Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Local Government may request the Texas Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

## 20. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or

services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

## 21. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>

2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five (5) executives to the State if:
  - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

## 22. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- B. If threshold expenditures are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

## 23. Non-Discrimination Provisions

- A. Relocation Assistance: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects.
- B. Disability:
  - a. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. Seq.), as amended, prohibits discrimination on the basis of disability; and 49 CFR Part 27.
  - b. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by the Department of Transportation regulations at 49 C.F.R. parts 37 and 38.

- C. Age:** The Age Discrimination Act of 1974, as amended, (42 U.S.C. § 6101 et. Seq.), prohibits discrimination on the basis of age.
- D. Race, Creed, Color, National Origin, or Sex:**
- a. The Airport and Airway Improvement Act of 1982 (49 U.S.C. § 4.71, Section 4.7123), as amended, prohibits discrimination based on race, creed, color, national origin, or sex.
  - b. The Federal Aviation Administration's Nondiscrimination state (4 U.S.C. § 47123) prohibits discrimination on the basis of race, color, national origin, and sex.
  - c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et. seq.), prohibits discrimination on the basis of sex.
  - d. Title IX of the Education Amendments of 1972, as amended, prohibits discrimination because of sex in education program or activities (20 U.S.C. 1681 et. seq.).
- E. Civil Rights Restoration Act:** The Civil Rights Restoration Act of 1987 (PL 100-209), Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs and activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not.
- F. Minority Populations:** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority and low-income populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- G. Limited English Proficiency:** Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the Engineer must take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100).

**24. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT**

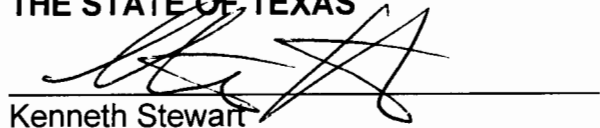


Lillian Ann Farris  
Interim City Manager  
City of Killeen, Texas



8/29/16  
Date

**THE STATE OF TEXAS**



Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation

09/08/16  
Date

**ATTACHMENT A  
RESOLUTION OR ORDINANCE**

Regular 03-22-16  
Item # RS-16-032  
CCM/R

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM** **AUTHORIZE THE CITY MANAGER TO ENTER INTO AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION TO DESIGN AND CONSTRUCT AN EXTENSION TO ROSEWOOD DRIVE AND HERITAGE OAKS HIKE AND BIKE TRAIL SEGMENT 3**

**ORIGINATING DEPARTMENT** **Public Works - Transportation Division**

**BACKGROUND INFORMATION**

On September 15, 2015, the Killeen Temple Metropolitan Planning Organization (MPO) in cooperation with the Federal Highway Administration issued a call for project nominations for the Surface Transportation Program Metropolitan Mobility (STPM) funding program. The program 80% eligible project costs can be reimbursed with the remainder of the project being at least 20% of the project's allowable costs.

On October 27, 2015, the City Council authorized the City Manager to submit an STPM application for the extension of Rosewood Drive and Heritage Oaks Hike and Bike Trail Segment 3 hereinafter called Rosewood Extension (CCM/R 15-103R). On November 16, 2015, the City of Killeen submitted an application to KTMPO requesting \$6,000,000 for the 2015 STPM eligible projects. The City was awarded a total amount of \$5,033,545 for the Rosewood Extension project.

This project provides for improved access and more transportation choices for the community, especially in commercial areas, by building a continuous drive corridor from the south-eastern City limits to La Cascada and US 190, as well as creating an alternate corridor and the City from US 190 to SH 198 via Chaparral. This project enhances mobility within the City of Killeen as well as for the region and will shorten public safety response times in the southern quadrant of the city.

**DISCUSSION/CONCLUSION**

The proposed project entails constructing a five (5) lane roadway, including a median, on the former Lizer and extending the existing Rosewood Drive south to Chaparral Road. The proposal will also include the continuation of Heritage Oaks Hike and Bike Trail segment 3, which will connect the existing trail along Rosewood Drive to Hiker's Park, the park at the Park and to the Heritage Oaks Park area and the recently awarded segment 4, which will be on the south of 1.

CSJ # 0909-36-156  
District # Waco (09)  
Code Chart 64 # 22300  
Project: Rosewood Extension  
Federal Highway Administration  
CFDA Title: Highway Planning & Construction  
CFDA No.:20.205  
Not Research and Development

By entering into an Advance Funding Agreement (AFA) with TxDOT, the City agrees to commit to the project's design, development, implementation, construction, maintenance, management and financing. The City of Killeen further agrees to provide a local match of 20% or greater of the total project cost, including being responsible for all non-federally funded items, TxDOT's administrative costs (15%), and 100% of all overruns. As with all AFAs, TxDOT requires an advance payment of the State's projected direct and indirect costs associated with design, inspection, administration, and oversight of the project. The estimated total payment to TxDOT for the agreement is \$47,646. With a commitment to this AFA, City Council can expect to see the following items on future agendas: a professional services agreement for the design of this project totaling approximately \$750,000 (\$600,000 federal funds with a \$150,000 City match), an advanced funding agreement for a portion of the construction of Heritage Oaks Park and Bike Trail, Segment 3 totaling approximately \$800,000 (\$640,000 federal funds with a \$160,000 City match), and finally a construction contract totaling approximately \$8,005,000 (\$4,403,585 federal funds with a \$2,961,415 City match). The agreement constitutes a total project cost of \$8,755,000, of which \$5,443,585 (64%) is reimbursed by the federal government and \$3,111,415 (35%) is funded by the City of Killeen. It is also City staff's intent to compete for an additional \$356,415 in FY 18 Category 7 funds through KFMPO and funds are identified and a call for projects issued (estimated in December 2017). If successful, secured the additional funds, the City's cost participation will be \$2,755,000 and the federal reimbursement amount will be \$6,000,000.

## **FISCAL IMPACT**

The total fiscal impact associated with this agreement is \$47,646, of which \$14,216 is due upon execution of the AFA with the remaining \$33,390 being due within 90 days prior to construction bid advertising. Funding is available in the account 347 3490 800 58 00. As in the past, federal or matching amounts will be repaid following the passage of a Reimbursement Resolution. Any amounts advanced will be repaid to the appropriate funding source upon receipt of revenue from a future issuance of Certificates of Obligation Bonds.

## **RECOMMENDATION**

City staff recommends that the City Council authorize entering into an Advance Funding Agreement with the Texas Department of Transportation for the Surface Transportation Program Metropolitan Mobility and further authorize the City Manager to execute the same.


## **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:**

That the above-stated recommendation is hereby approved and authorized.

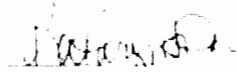
CSJ # 0909-36-156  
District # Waco (09)  
Code Chart 64 # 22300  
Project: Rosewood Extension  
Federal Highway Administration  
CFDA Title: Highway Planning & Construction  
CFDA No.:20.205  
Not Research and Development

**PASSED AND APPROVED** at a special meeting of the City Council of the City of Killeen, Texas, on the 12th day of March, 2016, at which meeting a quorum was present, had in accordance with the provisions of V.T.C.A., Government Code, § 551.001 et seq.


**APPROVED**

  
Scott Casper  
MAYOR

**APPROVED AS TO FORM:**

  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

  
Diana Barker  
CITY SECRETARY





CSJ # 0909-36-156  
District # Waco (09)  
Code Chart 64 # 22300  
Project: Rosewood Extension  
Federal Highway Administration  
CFDA Title: Highway Planning & Construction  
CFDA No.:20.205  
Not Research and Development

## ATTACHMENT B PROJECT LOCATION MAP



**ATTACHMENT C  
 PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

Costs will be allocated based on 80% Federal funding and 20% Local Government funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Environmental (by Local Government)	\$5,000	0%	\$0	0%	\$0	100%	\$5,000
Engineering (by Local Government)	\$750,000	80%	\$600,000	0%	\$0	20%	\$150,000
Construction (by Local Government)	\$5,265,981	80%	\$4,212,785	0%	\$0	20%	\$1,053,196
Construction (by Local Government)	\$1,695,519	0%	\$0	0%	\$0	100%	1,695,519
Subtotal	\$7,716,500		\$4,812,785		\$0		\$2,903,715
Environmental Direct State Costs	\$7,155	80%	\$5,724	0%	\$0	20%	\$1,413
Right of Way Direct State Costs	\$7,155	80%	\$5,724	0%	\$0	20%	\$1,413
Engineering Direct State Costs	\$50,085	80%	\$40,068	0%	\$0	20%	\$10,017
Utility Direct State Costs	\$7,155	80%	\$5,724	0%	\$0	20%	\$1,413
Construction Direct State Costs	\$166,950	80%	\$133,560	0%	\$0	20%	\$33,390
Indirect State Costs	\$8,000	0%	\$0	100%	\$8,000	0%	\$0
<b>TOTAL</b>	<b>\$7,963,000</b>		<b>\$5,003,585</b>		<b>\$8,000</b>		<b>\$2,951,415</b>

Initial payment by the Local Government to the State: \$14,256

Payment by the Local Government to the State before construction: \$33,390

Estimated total payment by the Local Government to the State \$47,646

This is an estimate. The final amount of Local Government participation will be based on actual costs.

RECEIVED - COK  
OCT 04 2016  
PW - TRANSPORTATION

RECEIVED  
SEP 07 2016  
CS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

---

AMERICAN CONSULTING ENGINEERS COUNCIL

---

AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition). For guidance on the completion and use of this Agreement, see EJCDC Users Guide, No. 1910-50.

Copyright ©1996 National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council  
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers  
345 East 47th Street, New York, NY 10017

**TABLE OF CONTENTS**

**Page**

ARTICLE 1 - SERVICES OF ENGINEER.....	2
1.01 Scope .....	2
ARTICLE 2 - OWNER'S RESPONSIBILITIES.....	2
2.01 General.....	2
ARTICLE 3 - TIMES FOR RENDERING SERVICES .....	2
3.01 General.....	2
3.02 Suspension.....	2
ARTICLE 4 - PAYMENTS TO ENGINEER.....	2
4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER .....	2
4.02 Other Provisions Concerning Payments.....	2
ARTICLE 5 - OPINIONS OF COST .....	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit.....	3
5.03 Opinions of Total Project Costs .....	3
ARTICLE 6 - GENERAL CONSIDERATIONS.....	3
6.01 Standards of Performance .....	3
6.02 Authorized Project Representatives .....	4
6.03 Design without Construction Phase Services.....	4
6.04 Use of Documents .....	5
6.05 Insurance.....	5
6.06 Termination .....	6
6.07 Controlling Law.....	6
6.08 Successors, Assigns, and Beneficiaries.....	6
6.09 Hazardous Environmental Condition.....	7
6.10 Allocation of Risks .....	7
6.11 Notices .....	8
6.12 Survival.....	8
6.13 Severability.....	8
6.14 Waiver .....	8
6.15 Headings .....	8
ARTICLE 7 - DEFINITIONS.....	8
7.01 Defined Terms .....	8
ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS .....	11
8.01 Exhibits Included.....	11
8.02 Total Agreement.....	11

STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) between  
\_\_\_\_\_ (“OWNER”) The City of Killeen, Texas  
and \_\_\_\_\_ (“ENGINEER”) Mitchell & Associates, Inc.

OWNER intends to provide surveying and engineering to develop PS&E for the extension of Rosewood Drive to Chaparral Drive. The improvements include pavement, sidewalk, drainage, and a bridge crossing of Trimmier Creek.  
 (“Project”).

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

## ARTICLE 1 - SERVICES OF ENGINEER

---

### 1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

## ARTICLE 2 - OWNER'S RESPONSIBILITIES

---

### 2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

## ARTICLE 3 - TIMES FOR RENDERING SERVICES

---

### 3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

### 3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

## ARTICLE 4 - PAYMENTS TO ENGINEER

---

### 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

### 4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In



addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C. Engineer shall not incur additional expenses after receipt of notice of termination, and shall make reasonable efforts to minimize costs.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

## ARTICLE 5 - OPINIONS OF COST

---

### 5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

### 5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

### 5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

## ARTICLE 6 - GENERAL CONSIDERATIONS

---

### 6.01 Standards of Performance

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

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit H.

## **6.02 Authorized Project Representatives**

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

## **6.03 Design without Construction Phase Services**

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

#### **6.04 Use of Documents**

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

#### **6.05 Insurance**

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project

D. OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

## 6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ENGINEER:

1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

## 6.07 Controlling Law

A. This Agreement is to be governed by the law of the state of Texas and venue shall be in Bell County.

## 6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and

exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

#### **6.09 Hazardous Environmental Condition**

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

#### **6.10 Allocation of Risks**

##### **A. Indemnification**

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. In addition to the indemnity provided under paragraph 6.10.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.10.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

4. The indemnification provision of paragraph 6.10.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any.

## 6.11 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

## 6.12 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

## 6.13 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## 6.14 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

## 6.15 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

## ARTICLE 7 - DEFINITIONS

---

### 7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other



design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a

substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCB's*--Polychlorinated biphenyls.

30. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

39. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

40. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or



furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

---

### 8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services" consisting of 15 pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of 3 pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 1 page.

~~D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 4 pages.~~

E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.

~~F. Exhibit F, "Construction Cost Limit," consisting of 1 page.~~

G. Exhibit G, "Insurance," consisting of 1 page.

H. Exhibit H, "Special Provisions," consisting of 3 pages.

### 8.02 Total Agreement

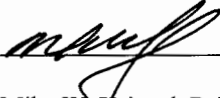
A. This Agreement (consisting of pages 1 to 12 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: CITY OF KILLEEN

ENGINEER: MITCHELL & ASSOCIATES, INC

By: Dr. Lillian Anne Farris

By:  Mike W. Kriegel, P. E., R.P.L.S.

Title: Interim City Manager

Title: Vice President

Date Signed: \_\_\_\_\_

Date Signed: 8-23-16

Address for giving notices:

Address for giving notices:

P.O. Box 1329

102 N. College

Killeen, TX 76540-1329

P.O. Box 1088

\_\_\_\_\_

Killeen, Texas 76541

\_\_\_\_\_

Designated Representative (paragraph 6.02.A):

Designated Representative (paragraph 6.02.A):

David Olson, P.E.

Ben Wilson, EIT

Title: Director of Transportation

Title: Project Manager

Phone Number: 254-616-3180

Phone Number: 254-634-5541

Facsimile Number: 254-616-3182

Facsimile Number: 254-634-2141

E-Mail Address: dolson@killeentexas.gov

E-Mail Address: bwilson@mitchellinc.net

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_  
ENGINEER mk

**ENGINEER's Services**

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

**PART 1 -- BASIC SERVICES**

**A1.01 Study and Report Phase - NOT APPLICABLE**

~~A. ENGINEER shall:~~

- ~~1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.~~
- ~~2. Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. Identify and evaluate \_\_\_\_\_ alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment meet OWNER's requirements for the Project.~~
- ~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.~~
- ~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables:~~
- ~~7. Furnish \_\_\_\_\_ review copies of the Report to OWNER within \_\_\_\_\_ days of authorization to begin services and review it with OWNER.~~
- ~~8. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish \_\_\_\_\_ final copies of the revised Report to the OWNER within \_\_\_\_\_ days after completion of reviewing it with OWNER.~~

~~B. ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.~~

A1.02 *Preliminary Design Phase*

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
2. Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER
4. Provide the necessary research and field surveys to accurately locate the existing Right of Way, and perform topographic and utility mapping adequate for performance of schematic design for the project. Utility mapping will be based upon information obtained from utility owners.
5. Work collaboratively with the Owner to Identify and evaluate alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment meet OWNER's requirements for the Project, as described below:
  - a. Provide preliminary design of Rosewood Drive based on the Owner's preliminary alignment as shown in the attached Exhibit H.
  - b. Provide preliminary hydraulic and hydrologic (H & H) design / revised FEMA model as shown in Item 9 below.
  - c. Provide preliminary bridge layout based on the H & H design.
6. Upon approval of the schematic concept collaboratively developed and prior to completion of the Preliminary Design Phase the Engineer shall be authorized to begin Final Design of the Project.
7. Complete topographic and utility mapping surveys adequate to complete final design of the project.
8. Based on the information contained in the Preliminary Design Phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
9. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:

**Hydrology and Hydraulics Study:**

A. Hydrology and Hydraulic Studies Report

1. Data Collection
  - a. ENGINEER will verify that the FEMA Effective Model and work maps, obtained in 2013, have not been updated and are appropriate for final design. If updated data is available ENGINEER will obtain from FEMA. FEMA usually takes 2 to 6 weeks to supply the models and work maps.
  - b. We anticipate some field surveys will be necessary for determination of the impacts to the existing floodplain.
  - c. A site visit will be made to verify / determine hydrologic and hydraulic conditions and parameters to allow for updating the hydraulic parameters of the effective model.
  - d. OWNER specific requirements will be coordinated.
  - e. ENGINEER will provide record drawings, based on as-built information provided by the Contractor, of the completed project certified by a Registered Professional Engineer for use in LOMR submittals.
  - f. OWNER will provide Compaction Certification of all fill placed in the FEMA Effective floodplain. This certification must show the fill was compacted to a minimum of 95%

Standard Proctor Dry Density.

2. Hydrologic Analyses

- a. Analyses will use the effective hydrologic models obtained from FEMA.
- b. Determine ultimate land use conditions in the watershed by obtaining zoning and land use plans from the OWNER. If zoning or land use maps are unavailable, we will conduct one meeting with the OWNER planning department to document and prepare ultimate land use assumptions for the watersheds.
- c. Update the effective model curve numbers and impervious cover percentages based on ultimate land use assumptions.
- d. Develop the ultimate conditions hydrologic model for describing the expected storm run-off through the study limits.
- e. Proposed bridge design will be based on the ultimate land use floodplain elevation plus OWNER required freeboard.
- f. Approved hydrology completed in previous FEMA models will be used without alteration for any existing land use model comparisons.

3. Corrective Effective Model

- a. Run effective floodplain and floodway models on in-house computer to duplicate results published in the FIS.
- b. Evaluate the model for errors within the project limits. These errors will be corrected if possible and the resulting corrected effective floodplain and floodway models will be compared to the FIS to insure the project models tie into the effective models.
- c. Add sections to FEMA model to adequately describe the existing topography of the study area including new sections that will be needed to evaluate the impact of a new bridge.
- d. Based on the above data, validate the corrective effective models and include: water Surface Profile Plots; Cross Section Plots; Floodplain Delineation; HEC-RAS Computer Models for the existing and ultimate land use assumptions.

4. Proposed Condition Hydraulic Analyses

- a. Modify the corrective effective model to include proposed changes to cross-sections and the proposed bridge to develop a proposed hydraulic model of the revised conditions through the site.
- b. Develop a proposed condition analysis and compare the results to the existing condition and ultimate condition flood levels and velocities to determine if there are any increases in 100-year flood levels or erosive velocities.
- c. Where 100-year flood levels increase or where erosive conditions existing coordinate with the OWNER and community to determine if these conditions are acceptable.
- d. Based on the above data complete: Water Surface Profile Plots; Cross Section Plots; Floodplain Delineation; Computer printouts of hydraulic models for the existing land use and ultimate land use conditions.
- e. Based on the results of preliminary bridge design, ENGINEER will develop proposed channel modifications to meet the goals for floodplain reclamation and/or reshaping.

Since it is possible to develop many designs that accomplish the same purpose we have included developing one design in the proposal.

5. Hydrology and Hydraulic Studies Final Report

ENGINEER will develop proposed channel modifications to meet the goals for floodplain reclamation and/or reshaping. Since it is possible to develop many designs that accomplish the same purpose we have included developing one design in the proposal. (It is understood that the ENGINEER will NOT prepare a submittal request to FEMA in support of a Conditional Letter of Map Revision (CLOMR) for approval of the design, but will be the responsibility of the City).

a. Revised Proposed Condition Hydraulic Analyses

1. Modify the proposed conditions hydraulic model to include proposed changes to cross-sections within the study area to achieve floodplain reclamation or reshaping goals developed earlier.
2. Develop a revised proposed condition analysis and compare the results to the existing condition and ultimate condition flood levels and velocities to determine if there are any increases in 100-year flood levels or erosive velocities.
3. Where 100-year flood levels increase or where erosive conditions exist coordinate with the CITY and community to determine if these conditions re acceptable.
4. Based on the above data complete: Water Surface Profile Plots; Cross Section Plots; Floodplain Delineation; Computer printouts of hydraulic models for the existing land use and ultimate land use conditions.

b. Report Preparation

1. Prepare three (3) copies of the report explaining the methodologies and results of the study and containing appropriate charts, graphs, plots, exhibits and printouts to describe the study.

c. Coordination

1. Provide necessary coordination with the OWNER to provide technical information in support of the report. Individual notification of impacted property owners is beyond the scope of the basic services. OWNER will coordinate and handle any CLOMR / LOMR revisions with FEMA and pay submittal and review costs directly.

**Geotechnical Investigations**

- A. Select the specific boring locations and provide to OWNER to mark locations. ENGINEER will then locate underground utilities using the Texas811 system.
- B. Subcontract with a geotechnical engineering firm to investigate the subsurface soil, rock and groundwater conditions along the proposed alignment by drilling test borings utilizing truck-mounted drilling equipment. It is anticipated that the subcontractor will drill a total of 3 borings to a depth of 50 feet for the bridge, and drill 4 additional borings of up to 15 feet along the roadway.

The subcontractor will complete the test borings utilizing air-rotary drilling methods due to subsurface lithologies anticipated to exist along the proposed alignment (Walnut Formation). During the test boring drilling operations, soil and rock samples will be obtained at 2-foot intervals to a depth of approximately 10-feet, and at approximately 5-foot intervals thereafter, or until competent limestone rock materials are encountered. Competent limestone samples will be

recovered utilizing rock-coring drilling methods. Texas Cone Penetration (TCP) tests will be performed at approximately 5-foot intervals within the test borings drilled for the proposed bridge crossing Trimmier Creek, in accordance with TxDOT Item 132-E.

The subcontractor will also measure the in-place strength properties of the subgrade soils by performing Dynamic Cone Penetrometer (DCP) tests at two (2) selected boring locations within the proposed roadway extension alignment. Additionally, a bulk sample of the subgrade soil from two (2) boring locations will be obtained in order to perform moisture/density and California Bearing Ratio (CBR) testing in the laboratory, as well as lime series curves and sulfate determinations.

Laboratory Testing Services - The laboratory-testing program may consist of the following:

- Visual soil classification (ASTM D2487) (all samples)
- Water content (ASTM D2216) (all samples)
- Atterberg limits (ASTM D4318) (3 per 15-foot test boring, 5 per 50-foot test boring)
- Percent finer than #200 sieve test (ASTM D1140) (3 per 15-foot test boring, 5 per 50-foot test boring)
- Unconfined compressive strength tests of cohesive soil (ASTM D2166) (as rock-core sample quality allows)
- Unconfined compressive strength tests of intact rock core specimens (ASTM D7012) (as rock-core sample quality allows)
- Laboratory California bearing ratio test (CBR) (ASTM D1883) (2 bulk samples)
- Standard Proctor test (ASTM D698) (2 bulk samples)
- Lime series test (TxDOT Method 121-E) (2 bulk samples)
- Sulfate content determination test (TxDOT Method 620-J) (2 bulk samples)
- pH test (EPA Methods 9045D) (2 bulk samples)

The phases of the laboratory-testing program will be performed in general accordance with applicable ASTM Specifications and will be performed at ambient room temperature and atmospheric pressure. All field and laboratory test results will be included on the boring logs or in the completed geotechnical engineering report.

Geotechnical Engineering Services - In addition to the field and laboratory testing, a geotechnical engineering report will be prepared and reviewed by a Professional Engineer licensed in the State of Texas. The geotechnical report will include the following:

- Subsurface soil, rock, and groundwater conditions encountered at the test boring locations
- A discussion of local geology based on a review of the Geologic Atlas of Texas
- DCP results and in-place CBR values
- Analytical test results
- Compressive strength of in-tact rock core specimens
- Rock Quality Designation (RQD) and rock competency of in-tact rock core specimens
- Existing pavement constituent thicknesses for the paved section of Rosewood Drive
- Pavement design recommendations for the proposed Rosewood Drive Extension
- Roadway embankment recommendations
- Drilled pier foundation and site preparation recommendations for the proposed bridge structure
- Subgrade compaction and stabilization recommendations
- Fill materials, utility trench backfill placement, and compaction recommendations
- General excavation considerations
- General discussion of expected construction related issues
- Boring location plan
- Logs of Boring with soil key for symbols used

## Environmental Evaluation

The scope outlined below assumes that there is no major opposition in the permitting process and that there are no unusual permitting problems. If opposition develops or permitting problems occur, the scope and fee limit will be revised and submitted to OWNER for approval. The scope of work does not include studies, reports, permit applications, etc. for electrical power line or other utility easements.

### A. Site Visit

1. Prior to making a field visit, ENGINEER will obtain information for the vicinity such as soils maps, National Wetland Inventory maps, topographic maps, floodplain maps, and other readily available, pertinent data. This information will be evaluated to guide the field survey described below. ENGINEER's scientists will conduct a pedestrian survey of the proposed area of work associated with the Rosewood Bridge at Trimmier Creek to identify environmental issues and document baseline conditions, including delineation of wetlands and identification of waters of the U.S.

### B. Section 404 Permitting

1. Waters of the U. S. are regulated by the USACE and require a permit for activities conducted within the jurisdictional boundaries. The presence of jurisdictional waters such as ephemeral, intermittent, or perennial streams; wetlands; or other open waters will be documented and mapped. ENGINEER will prepare a technical memorandum that will include a description of field observations described above; an opinion of whether or not jurisdictional waters are present, and if so, the type(s) of waters; an estimate of the area of impact to waters of the U.S.; and a discussion of potential USACE 404 permit options. If a Letter of Map Revision (LOMR) or Conditional Letter of Map Revision (CLOMR) is necessitated by FEMA then coordination with U.S. Fish and Wildlife Services (USFWS) is required.

### C. Threatened and Endangered Species

1. Threatened and Endangered Species. Conduct reconnaissance-level field surveys within the area of the proposed pipeline corridor to identify potential habitat and document any threatened or endangered (T&E) species encountered. Emphasis will be on federally listed species, but the Texas Parks and Wildlife Department T&E species database will be reviewed and documented. The results of the T&E species review will be documented in a site visit memorandum.

### D. Texas Antiquities Code Compliance

1. The Antiquities Code of Texas was passed in 1969. It requires that the Texas Historical Commission staff review any action that has the potential to disturb historic and archeological sites on public land.
2. Additional actions that need review under the Antiquities Code of Texas include any construction program that takes place on land owned or controlled by a state agency or a state political subdivision, such as a city or a county.
3. Projects that **require review** include:
  - a. Reservoirs constructed by river authorities and water districts;
  - b. Construction of recreational parks or the expansion of existing facilities by city governments;
  - c. Energy exploration by private companies on public land; and
  - d. Construction by a city or county government that exceeds 5 acres or 5,000 cubic yards,



whichever comes first. If the activity occurs inside a designated historic district or affects a recorded archeological site, it needs to be reviewed, regardless of project size.

4. If there is a requirement for a Section 404 permit, compliance with the conditions of the National Historic Preservation Act is required. No activity which may affect historic properties listed or eligible for listing in the National Register of Historic Places can be authorized until the USACE District Engineer has complied with the provisions of 33 CFR part 325, Appendix C.
5. ENGINEER will provide coordination with Texas Historic Commission (THC) to determine if additional site investigation is required. Subsequent activities, potentially including shovel test and/or backhoe trenching, may require the services of a qualified archeologist, as an additional service.

E. Texas Parks and Wildlife – Aquatic Resource Relocation Plans

1. ENGINEER will provide coordination with Texas Parks and Wildlife and provide a relocation plan for fish in the Trimmier Creek that could be impacted by the construction. Implementation of the plan and relocation of fish will be conducted by the City of Killeen. The plan will cover the following items:
  - Exact location.
  - Purpose of the activity.
  - Notification in advance to develop plan.
  - Method of collecting and moving the aquatic life.
  - Types and sizes of containers to be used.
  - Transportation methods and destination.
  - Documentation and disposal of dead and non-native fishes.
  - The best management practices (BMPs).
  - Estimation of the time expected to complete the fish and mussel removal operation.
  - Identify any state or federally threatened or endangered species that may occur.
  - Identify all freshwater mussels that may become stranded due to the operation.  
Explain what methods will be used to protect the mussels.

10. Furnish the Preliminary Design Phase documents to and review them with OWNER.

11. Submit to OWNER one final copy of the Preliminary Design Phase documents (Schematic, H & H, Preliminary Bridge Layout, and Geotechnical Only; Environmental tasks are excluded from this date as coordination efforts can last several months) and revised opinion of probable Construction Cost within **150 (one-hundred, fifty) days** after authorization to proceed with this project.

B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to OWNER.

A1.03 *Final Design Phase*

A. After authorization by the Owner to begin Final Design and in keeping with the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, utilizing TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges 2004 Edition for all roadway materials and activities. For other materials and activities specifications shall be in general conformance with the City of Killeen Transportation Details and Specifications.

2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.
3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
4. Perform or provide the following additional Final Design Phase tasks or deliverables:
  - a. The Engineer will prepare all necessary drawings required to issue a bid set for construction. Drawings will be prepared for reproduction on 11"x17" plan sheets.
  - b. Coordination and Submittals – The Engineer will coordinate all permits with the City of Killeen. Submission of the final plans to the City of Killeen will include bid specifications (2 copies), opinion of engineer's opinion of probable cost,; and, if applicable, a coordination letter and registration number assigned with the Texas Department of Licensing and Regulation (TDLR) for ADA compliance.
  - c. The general conditions for the bid documents will be the City of Killeen Standard General Conditions for Construction Contracts.
5. Prepare and furnish Bidding Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents within **150 (One-Hundred, fifty)** calendar days of authorization to proceed with this project, and review them with Owner. Within **15** days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
6. Revise the Bidding Documents in accordance with comments and instructions from the Owner, as appropriate, and submit 3 final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within **30** calendar days after receipt of Owner's comments and instructions.

B. In the event that the Work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is TWO.

D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.03.A.6 have been delivered to OWNER.

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend

pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.

2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents. Addenda will require submission, review, and approval by the City of Killeen and TxDOT (approval from TxDOT only if the project obtains TxDOT funding).
3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
4. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:
  - a. The ENGINEER will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders' questions and requests, in the form of addenda.
  - b. When substitution prior to award of contracts is allowed in the contract documents, the ENGINEER will advise the OWNER as to the acceptability of alternate materials and equipment proposed by bidders.
  - c. Incorporate all addenda into the contract documents and issue conformed sets.
5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

ASSUMPTIONS

- a. The project will be bid only once and awarded to one contractor.
- b. OWNER will perform all bid phase services not specifically listed above, including advertising, pre-bid meeting, bid opening, conformed construction documents, and bid award.

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, it is intended that the ENGINEER'S services are to be complete as it relates to Section 6.03 Design without Construction Phase Services. However, the OWNER will engage the ENGINEER for the following items to help owner in performing the Construction Phase:

- ~~1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.~~
- ~~2. *Resident Project Representative (RPR).*~~
- ~~3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.~~
4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
- ~~5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed.~~

6. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's work in progress while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress of the Work. Such visits and observations by ENGINEER are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to general observation of the Work in order to assist in preparing the As-Built Documents. It is the intent of this contract that the OWNER will provide Construction Management and will engage the Engineer only when needed to answer RFI's and review submittals that require the expertise of the ENGINEER.
  - b. The purpose of ENGINEER's visits to the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. ~~*Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.~~
8. ~~*Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.~~
9. ~~*Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.~~
10. ~~*Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.~~
11. ~~*Substitutes and "or equal."* Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~
12. ~~*Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or~~

~~approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.~~

13. *Disagreements between OWNER and Contractor.* Render formal written decisions on claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work when brought to the Engineer by OWNER for such purpose. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* ~~Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~

~~a.—Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.05.A.6.a are expressly subject to the limitations set forth in paragraph A1.05.A.6.b and other express or general limitations in this Agreement and elsewhere.~~

~~b.—By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.~~

15. *Contractor's Completion Documents.*

~~a.—Receive and review maintenance and operating instructions, schedules, and guarantees.~~

~~b.—Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as provided in paragraph A1.05.A.10.~~

~~c.—ENGINEER shall transmit these documents to OWNER.~~

~~16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.~~

17. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables:

- The ENGINEER shall prepare record drawings from information submitted by the inspector and/or Contractor.
- The ENGINEER shall submit a set of sealed conformed Mylar drawings for record storage.
- The ENGINEER shall provide an as-built survey of any changes to the riverine environment (for use by the OWNER in submitting for a LOMR). As-built information to be provided in Autocad and PDF format.

~~18. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A1.05.A.14.b) to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.~~

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by OWNER for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

~~A1.06 — *Post-Construction Phase — NOT APPLICABLE*~~

~~— A. Upon written authorization from OWNER, ENGINEER, during the Post-Construction Phase, shall:~~

- ~~1. Provide assistance in connection with the testing and adjusting of Project equipment or systems.~~
- ~~2. Assist OWNER in training OWNER's staff to operate and maintain Project, equipment, and systems.~~
- ~~3. Assist OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.~~
- ~~4. Together with OWNER, visit the Project to observe any apparent defects in the Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.~~
- ~~5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:~~
- ~~6. In company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.~~

~~— B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.~~

## **PART 2 -- ADDITIONAL SERVICES**

### *A2.01 Additional Services Requiring OWNER's Authorization in Advance*

- A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
  4. Services resulting from OWNER's request to evaluate additional alternative solutions beyond that identified in the Exhibit H including inclusion of aesthetic treatments (lighting, landscaping, irrigation, etc), trail design, water quality features and design.
  5. Services required as a result of OWNER's providing incomplete or incorrect Project information with respect to Exhibit B.
  6. Providing renderings or models for OWNER's use.
  7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
  8. Furnishing services of ENGINEER's Consultants for other than Basic Services.
  9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.
  10. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.
  11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
  12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.



13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
18. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
21. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.
22. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.
23. Arrange for geotechnical sampling and testing for use with the City of Killeen pavement section determination methodology, TxDOT FPS-19 pavement design, or AASHTO design methodologies.

*A2.02 Required Additional Services*

- A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.
  1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.



5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated \_\_\_\_\_,

Initial:

OWNER \_\_\_\_\_  
ENGINEER MK

### **OWNER's Responsibilities**

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
  3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.
  4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.
- M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:
1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.

2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.
- R. Perform or provide the following additional services:
1. City will provide for and oversee all construction management and inspection.

Initial:

OWNER \_\_\_\_\_  
ENGINEER                     

Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE ENGINEER

C4.01 *For Basic Services Having A Determined Scope*

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, as follows:

1. Progress payments in the amount of \$741,623.00 based on the following assumed distribution of compensation:

Engineering Services	
a. Preliminary Design Phase	\$175,035
b. Final Design Phase	\$408,415
c. Bidding Phase	\$15,614
d. Topographic Surveying	\$49,400
e. H&H Studies	\$33,719
f. Environmental Evaluations	\$22,840
g. Geotechnical Investigation	\$21,600
h. As-built Survey / FIS & Drainage Infrastructure update; as-built drawings	\$15,000

2. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the amount unless approved in writing by the OWNER.

3. The amount includes compensation for ENGINEER's services and services of ENGINEER's Consultants, if any. Appropriate amounts have been incorporated in the account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the

total services actually completed during the billing period.

5. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project than identified in Exhibit A, the ENGINEER shall be compensated an additional amount to be negotiated; however, in no case shall the amount of compensation exceed eighteen percent (18%) of the Project's estimated construction costs for all Basic Services for each prime contract added.

6. The construction period for this project is 3 calendar months (subject to Paragraph 3.02 (B)).

7. Per Exhibit A, A1.03.A.5 delivery of final plans and contract documents for this project to the City of Killeen will be **360** days following authorization to begin work under this agreement.

This is ~~EXHIBIT D~~, consisting of 4 pages, referred to in and part of the ~~Agreement between OWNER and ENGINEER for Professional Services~~ dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_

ENGINEER \_\_\_\_\_

**Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.02 — ~~Resident Project Representative~~ **N/A**

— A. ~~ENGINEER shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.~~

— B. ~~Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility of construction for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.~~

— C. ~~The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:~~

- ~~1. *General:* RPR is ENGINEER’s agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.~~
- ~~2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.~~
- ~~3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project related meetings, and prepare and circulate copies of minutes thereof.~~
- ~~4. *Liaison:*~~
  - ~~a. Serve as ENGINEER’s liaison with Contractor, working principally through Contractor’s superintendent and assist in understanding the intent of the Contract Documents.~~
  - ~~b. Assist ENGINEER in serving as OWNER’s liaison with Contractor when Contractor’s operations affect OWNER’s on Site operations.~~
  - ~~e. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.~~

- ~~5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.~~
- ~~6. *Shop Drawings and Samples:*
  - a. Record date of receipt of Samples and approved Shop Drawings.
  - b. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
  - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.~~
- ~~7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.~~
- ~~8. *Review of Work and Rejection of Defective Work:*
  - a. Conduct on Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.~~
- ~~9. *Inspections, Tests, and System Startups:*
  - a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
  - b. Verify that tests, equipment, and systems start ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
  - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.~~
- ~~10. *Records:*
  - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
  - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.~~

- ~~e. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.~~
  - ~~d. Maintain records for use in preparing Project documentation.~~
  - ~~e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.~~
- ~~11. Reports:~~
- ~~a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.~~
  - ~~b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~
  - ~~c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.~~
  - ~~d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.~~
- ~~12. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~
- ~~13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.~~
- ~~14. Completion:~~
- ~~a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.~~
  - ~~b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.~~
  - ~~c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.~~
  - ~~d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.~~
- ~~D. Resident Project Representative shall not:~~
- ~~1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or equal" items).~~
  - ~~2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.~~



- ~~3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.~~
- ~~4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.~~
- ~~5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.~~
- ~~6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.~~
- ~~7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.~~
- ~~8. Authorize OWNER to occupy the Project in whole or in part.~~

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER MMK

---

## NOTICE OF ACCEPTABILITY OF WORK

---

PROJECT: \_\_\_\_\_

OWNER:

OWNER's Construction Contract Identification:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To: OWNER

And To: CONTRACTOR

The undersigned hereby gives notice to the above OWNER and CONTRACTOR that the completed Work furnished and performed by CONTRACTOR under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

(Reverse side of Notice)

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work (“Notice”) on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER’s knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR’s work) under ENGINEER’s Agreement with OWNER and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER’s knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER’s Agreement with OWNER and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of CONTRACTOR’s performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is ~~EXHIBIT F~~, consisting of 1 page, referred to in and part of the ~~Agreement between OWNER and ENGINEER for Professional Services~~ dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Construction Cost Limit**

Paragraph 5.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

~~F5.02 Designing to Construction Cost Limit N/A~~

~~— A. A Construction Cost limit in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) is hereby agreed to.~~

~~— B. A bidding or negotiating contingency of \_\_\_\_\_ percent will be added to any Construction Cost limit established.~~

~~— C. The acceptance by OWNER at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~

~~— D. ENGINEER will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices to bring the Project within the Construction Cost limit.~~

~~— E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~

~~— F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), ENGINEER shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. In lieu of other compensation for services in making such modifications, OWNER shall pay ENGINEER's cost of such services, including the costs of the services of ENGINEER's Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to ENGINEER on account of such services. The providing of such services will be the limit of ENGINEER's responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or Bid exceeding the established Construction Cost limit.~~

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_  
ENGINEER MLK

**Insurance**

---

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 *Insurance*

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

a. Workers' Compensation:	Statutory
b. Employer's Liability --	
1) Each Accident:	\$ 1,000,000
2) Disease, Policy Limit:	\$ 1,000,000
3) Disease, Each Employee:	\$ 1,000,000
c. General Liability --	
1) Each Occurrence (Bodily Injury and Property Damage):	\$ 1,000,000
2) General Aggregate:	\$ 2,000,000
d. Excess or Umbrella Liability --	
1) Each Occurrence:	\$ 2,000,000
2) General Aggregate:	\$ 2,000,000
e. Automobile Liability --	
1) Combined Single Limit (Bodily Injury and Property Damage): Each Accident	\$ 1,000,000

f. Other (specify): On all policies except Workers Compensation and Professional Liability - "City of Killeen is named as Additional Insured on the General Liability and Auto Liability policies."

This is **EXHIBIT H**, consisting of 3 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_

ENGINEER MMK

**Special Provisions**

---

- Preliminary Alignment
- Proposed Typical Section

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

Initial:

OWNER \_\_\_\_\_  
ENGINEER mk

**DBE Goal**

---

DBE Goal 0%

# 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:  
2016-140921

Date Filed:  
11/29/2016

Date Acknowledged:

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

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.

090936156  
Project Construction drawings, bid manual, cost estimate for the Rosewood Drive Extension Project.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

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

Ben Wilson  
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Ben Wilson, this the 30<sup>th</sup> day of November 2016, to certify which, witness my hand and seal of office.

Jessica M. Kriegel      Jessica M. Kriegel      Admin. Assistant  
Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath





# City of Killeen

## Legislation Details

---

**File #:** RS-16-151    **Version:** 1    **Name:** Heritage Oaks H&B Trl Segment 3A  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/21/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution authorizing the City Manager to execute an advance funding agreement with the Texas Department of Transportation (TxDOT) to construct Heritage Oaks Hike and Bike Trail Segment 3A.  
**Sponsors:** Public Works Department, Transportation Division  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Advance Funding Agreement](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**AUTHORIZE THE CITY MANAGER TO EXECUTE AN ADVANCED FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) TO CONSTRUCT HERITAGE OAKS HIKE AND BIKE TRAIL SEGMENT 3A.**

### ORIGINATING DEPARTMENT

**Public Works- Transportation Division**

### BACKGROUND INFORMATION

On January 25, 2016, the Killeen - Temple Metropolitan Planning Organization (KTMPO), in cooperation with the Federal Highway Administration, issued a call for project nominations for the Transportation Alternatives Program (TAP) funding. Under the program, the KTMPO has received authority to allocate funds for qualifying non-motorized transportation alternative needs within the boundaries of designated metropolitan planning areas. The Texas Department of Transportation (TxDOT) refers to these funds as "Category 9."

Category 9 funds may be used for the construction of a variety of projects to include pedestrian/bicycle facilities, overlooks, trail heads, and viewing areas. Eligible projects are evaluated and ranked by the KTMPO Technical Advisory Committee. If awarded, the qualifying entity must provide a minimum of 20% matching funds with 80% of allowable project costs being reimbursable. Cost-reimbursement programs require sponsors to pay for project costs upfront with the funding agency providing reimbursement for expenses throughout various stages of the project. Funds are available for obligation for a period of three (3) years after the last day of the fiscal year for which the funds are authorized.

In recent project calls, the City of Killeen has successfully secured funding for several different hike and bike trail projects as well as one major roadway reconstruction project through other programs utilizing federal funds with similar requirements and obligations. Under the Transportation Alternatives Program (TAP), the City of Killeen has been awarded funding for the following: Andy K. Wells Hike and Bike Trail; Killeen Fort Hood Regional Trail, Segment 3; Heritage Oaks Hike and Bike Trail, Segment 4; and Brookhaven/Rancier Hike and Bike Trail. On September 24, 2015, the City of Killeen was awarded \$2,448,281 for the Heritage Oaks Hike and Bike Trail, Segment 4.

On May 18, 2016, the Killeen-Temple Metropolitan Planning Organization (KTMPO) awarded the City of Killeen \$640,000.00 to construct the Heritage Oaks Hike and Bike Trail Segment 3A.

### DISCUSSION/CONCLUSION

The scope of work for the project consists of constructing the 3,750 feet of hike and bike trail with lighting from Flagstone Dr. to Pyrite Dr. The proposed project entails constructing a 12-foot wide concrete trail with associated lighting and trail amenities. This project would provide improved access to transportation alternatives for the community.

By entering into an advanced funding agreement (AFA) with TxDOT (attached), the City agrees to commit to the projects, design, development, implementation, construction, maintenance, management, and funding. The city further agrees to provide a local match of 20% or greater, of the total project cost, including being responsible for all non- federally funded items, TxDOT's 15% of construction administrative costs, and 100% of all overruns. As with all AFA's, TxDOT requires advanced payment of the state's projected direct and indirect costs associated with review, inspection, administration, and oversight of the project.

### **FISCAL IMPACT**

The total fiscal impact associate with this agreement is \$24,000, of which \$7,200 is due upon the execution of the AFA with the remaining amount being due within 60 days prior to the construction contract being advertised for bids. Funding is available in account 351-3446-434.66-01 that has an available balance of \$240,000.

### **RECOMMENDATION**

City staff recommends that the City Council authorize the City Manager to enter into an advance funding agreement with the Texas Department of Transportation for the Transportation Alternatives Program and issue an initial payment in the amount of \$7,200 and subsequent payment in the amount of \$16,800 prior to bid advertising to the Texas Department of Transportation to accept the award funding and move forward with the project.

CSJ: 0909-36-160  
District #: Waco (09)  
Code Chart 64#: 22300  
Project: Heritage Oaks Phase 3A  
CFDA Title: Highway Planning & Construction  
CFDA Number: 20.205  
Federal Highway Administration  
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL PROJECT ADVANCE FUNDING AGREEMENT  
FOR A TRANSPORTATION ALTERNATIVES PROGRAM PROJECT  
MPO-Selected Off-System**

This Local Project Advance Funding Agreement (“LPAFA”) is made between the State of Texas (“**State**”), acting through the Texas Department of Transportation, and City of Killeen (“**Local Government**”), acting through its duly authorized officials.

**BACKGROUND**

Local Government and State have adopted a Master Agreement that states the general terms and conditions for transportation projects developed through this LPAFA.

Local Government prepared and submitted to State or Metropolitan Planning Organization (“**MPO**”) a nomination form for consideration under the Transportation Alternatives Program (“**TAP**”) for the project, which is briefly described as Heritage Oaks Phase 3A (“**Project**”).

Federal law establishes federally funded programs for transportation improvements to implement its public purposes.

Federal law, 23 USC § 134 and 49 USC § 5303, requires that State and MPOs develop transportation plans and programs for urbanized areas of Texas.

Tex. Transp. Code §§ 201.103 and 222.052 establish that State shall design, construct, and operate a system of highways in cooperation with local governments.

Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds.

The Texas Transportation Commission (“**Commission**”) passed Minute Order Number 114491 (“**MO**”) dated February 1, 2016 awarding funding for projects in the 2016 TAP Program Call of the Killeen-Temple MPO, including Project.

The rules and procedures for TAP are established in 23 USC § 213, and 43 Tex. Admin. Code Subchapter 11.F.

The governing body of Local Government has approved entering into this Agreement by resolution or ordinance dated March 22, 2016, which is attached to and made a part of this Agreement as Attachment A.

Therefore, State and Local Government agree as follows:

**AGREEMENT**

**1. Period of Agreement and Performance**

**1.1.** Period of Agreement. The period of this LPAFA is as stated in the Master Agreement, without exception.

**1.2.** Period of Performance.

1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization Agreement (“**FPA**A”) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (“**SLO**A”) for that phase of work.
2. The Performance Period for each phase of work ends on the date specified in the FPA A for that phase of work.

**2. Termination of the Agreement**

**2.1.** This Agreement may be terminated by any of the following conditions:

- a. By mutual written consent and agreement of all parties;
- b. By any party with 90 days written notice; or
- c. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.

**2.2.** If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

**2.3.** If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State’s cost accounting system and with 2 CFR Part 200 recapture requirements.

**2.4.** A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:

- a. Local Government fails to satisfy any requirements of the program rules cited in 43 Tex. Admin. Code Subchapter 11.F.
- b. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.
- c. Local Government withdraws from participation in Project.
- d. State determines that federal funding may be lost due to Project not being implemented and completed.
- e. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.

- f. The associated FPAA is not issued by the end of the third federal fiscal year following the federal fiscal year for which the funds are authorized. Federal fiscal years run October 1 through September 30.
  - g. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.
- 2.5. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice within 270 days of FPAA.

### 3. Amendments

Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

### 4. Scope of Work, Use of Project, and Project Location

- 4.1. The scope of work for Project (located as shown in Attachment B, Project Location Map) consists of: constructing 3,750 feet of hike and bike trail with lighting from Flagstone Dr. to Pyrite Dr.
- 4.2. Any project changes proposed must be submitted in writing by Local Government to State. Changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

### 5. Right of Way and Real Property Acquisition

- 5.1. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- 5.2. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC § 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR § 24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.
- 5.3. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, and (2) Local Government, otherwise. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.
- 5.4. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government

acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.

- 5.5.** Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values.
- 5.6.** For State-selected projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TAP Project.
- 5.7.** Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title.
- 5.8.** Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.
- 5.9.** If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment as outlined in 43 Tex. Admin. Code § 11.317. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.
- 5.10.** Local Government shall execute individually or produce a legal document as necessary to provide for Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- 5.11.** Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.

- 5.12.** Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

## **6. Utilities**

Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. Unless specified in (1) the nomination form approved by State or MPO in consultation with State and (2) this agreement, Local Government will not be reimbursed with federal or state funds for the cost of required utility work. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TAP participation if: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TAP funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

## **7. Environmental Assessment and Mitigation**

Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- 7.1.** Local Government is responsible for the identification and assessment of any environmental problems associated with the development of Project.
- 7.2.** Local Government is responsible for the cost of any environmental problem's mitigation and remediation. These costs will not be reimbursed or credited towards Local Government's financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.
- 7.3.** Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- 7.4.** Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

## **8. Architectural and Engineering Services**

Architectural and engineering services for preliminary engineering will be provided by Local Government. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services; and with Tex. Gov't Code Subchapter 2254.A., in all cases. Professional services contracts for federally funded projects must conform to federal requirements. For State-selected projects, architectural and engineering services are not eligible for TAP reimbursement.

- 8.1.** The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be



developed in accordance with State's applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials' ("AASHTO") publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

- 8.2. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.
- 8.3. When architectural and engineering services are provided by or through State, then the following applies:  
State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

## 9. Construction Responsibilities

- 9.1. Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.
- 9.2. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.
- 9.3. All contract change order review and approval procedures must be approved by State prior to start of construction.
- 9.4. Upon completion of Project, the party constructing Project will issue and sign a "Notification of Completion" acknowledging Project's construction completion.
- 9.5. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.
- 9.6. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

## **10. Project Maintenance**

- 10.1.** Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period of time commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project's original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.
- 10.2.** Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.
- 10.3.** Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.
- 10.4.** Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

## **11. Local Project Sources and Uses of Funds**

- 11.1.** A Project Budget Estimate and Source of Funds is provided as Attachment C, showing the total estimated development cost of Project. This estimate shows the itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- 11.2.** If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through State, Local Government must complete training in Local Government Procedures

Qualification for the Texas Department of Transportation before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on Project successfully completes and receives a certificate for the course. Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of Project. State in its discretion may deny reimbursement if Local Government has not designated a qualified individual to oversee Project.

- 11.3.** The Project budget and source of funds estimate based on the budget provided in the nomination form is included as Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal Transportation Alternative Program funds assigned by the Commission or MPO in consultation with State to Project. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the Transportation Improvement Program, Federal Project Authorization and Agreement (“FPAA”), or other federal documents.
- 11.4.** Local Government will be responsible for all non-federal participation costs associated with Project, including any overruns in excess of Project’s estimated budget and any operating or maintenance expenses.
- 11.5.** State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.
- 11.6.** Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment C for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment C for State’s estimated construction oversight and construction cost.
- 11.7.** In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment C and 100 percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State’s written notification.
- 11.8.** Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the “Texas Department of Transportation.” The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.
- 11.9.** Upon completion of Project, State will perform an audit of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party. If after final Project accounting, any excess funds remain, those funds may be applied by State to Local Government’s contractual obligations to State under another advance funding agreement with approval by appropriate personnel of Local Government.

- 11.10.** In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State's notification.
- 11.11.** If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.
- 11.12.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- 11.13.** State will not pay interest on any funds provided by Local Government.
- 11.14.** State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.
- 11.15.** Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.
- 11.16.** If Local government is an Economically Disadvantaged County ("EDC") and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

## **12. Document and Information Exchange**

Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State's document template. Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

## **13. Incorporation of Master Agreement Provisions**

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless an exception has been made in this agreement.

#### **14. Compliance with Laws**

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this LPAFA. When required, Local Government shall furnish State with satisfactory proof of this compliance.

#### **15. Disadvantaged Business Enterprise Program Requirements**

- 15.1.** The parties shall comply with the Disadvantaged Business Enterprise (“DBE”) Program requirements established in 49 CFR Part 26.
- 15.2.** Local Government shall adopt, in its totality, State’s federally approved DBE program.
- 15.3.** Local Government shall set an appropriate DBE goal consistent with State’s DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- 15.4.** Local Government shall follow all other parts of State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address: [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- 15.5.** Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).
- 15.6.** Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

*The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

#### **16. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

## **17. Lobbying Certification**

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- 17.1.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 17.2.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 17.3.** The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC § 1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **18. Insurance**

- 18.1.** Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.
- 18.2.** For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a "Loss Payee" should the building be destroyed.

## **19. Federal Funding Accountability and Transparency Act Requirements**

CSJ: 0909-36-160  
District #: Waco (09)  
Code Chart 64#: 22300  
Project: Heritage Oaks Phase 3A  
CFDA Title: Highway Planning & Construction  
CFDA Number: 20.205  
Federal Highway Administration  
Not Research and Development

**19.1.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (“**FFATA**”) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:

<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and

<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

**19.2.** Local Government agrees that it shall:

- a. Obtain and provide to State a System for Award Management (“**SAM**”) number (Federal Acquisition Regulation (“**FAR**”) Subpart 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is <https://www.sam.gov/portal/public/SAM/>
- b. Obtain and provide to State a Data Universal Numbering System (“**DUNS**”) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
- c. Report the total compensation and names of its top five executives to State if:
  1. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  2. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

## **20. Single Audit Report**

**20.1.** The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.

**20.2.** If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Audit Office as follows:

*We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_.*

**20.3.** For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

## **21. Signatory Warranty**

CSJ: 0909-36-160  
District #: Waco (09)  
Code Chart 64#: 22300  
Project: Heritage Oaks Phase 3A  
CFDA Title: Highway Planning & Construction  
CFDA Number: 20.205  
Federal Highway Administration  
Not Research and Development

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

Each party is signing this agreement on the date stated opposite that party's signature.

City of Killeen

Date: \_\_\_\_\_

By: \_\_\_\_\_

Ann Farris  
Interim City Manager  
City of Killeen, Texas

**THE STATE OF TEXAS**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation



CSJ: 0909-36-160  
District #: Waco (09)  
Code Chart 64#: 22300  
Project: Heritage Oaks Phase 3A  
CFDA Title: Highway Planning & Construction  
CFDA Number: 20.205  
Federal Highway Administration  
Not Research and Development

## ATTACHMENT A RESOLUTION OF LOCAL GOVERNMENT

**Regular** 03-22-16  
**Item #** RS-16-032  
**CCM/R** 16-032R

### CITY COUNCIL MEMORANDUM FOR RESOLUTION

**AGENDA ITEM**

**AUTHORIZE THE CITY MANAGER TO ENTER INTO AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION TO DESIGN AND CONSTRUCT AN EXTENSION TO ROSEWOOD DRIVE AND HERITAGE OAKS HIKE AND BIKE TRAIL SEGMENT 3**

**ORIGINATING DEPARTMENT**

**Public Works - Transportation Division**

**BACKGROUND INFORMATION**

On September 25, 2015, the Killeen-Temple Metropolitan Planning Organization (KTMPPO), in cooperation with the Federal Highway Administration, issued a call for project nominations for the Surface Transportation Program Metropolitan Mobility (STPMM) funding. Under the program, 80% of eligible project costs can be reimbursed with the nominating entity providing at least 20% of the project's allowable costs.

On October 27, 2015, the City Council authorized the City Manager to submit a STPMM application for the extension of Rosewood Drive and Heritage Oaks Hike and Bike Trail, Segment 3, hereinafter called Rosewood Extension (CCM/R 15-123R). On November 10, 2015, the City of Killeen submitted an application to KTMPPO requesting \$6,000,000 for the 2015 STPMM call for projects. The City was awarded a total amount of \$5,003,585 for the Rosewood Extension project.

This project provides for improved access and more transportation choices for the community, especially to commercial areas by building a continuous direct connection from the southernmost City limits to La Cascata and US 190, as well as creating another half-loop around the City from US 190 to SH 195 via Chaparral. This project enhances mobility within the City of Killeen as well as for the region and will shorten public safety response times in the southeast quadrant of the City.

**DISCUSSION/CONCLUSION**

The proposed project entails constructing a five (5)-lane roadway, including a bridge over Trimmier Creek and extending the existing Rosewood Drive south to Chaparral Road. The proposal would also include the continuation of Heritage Oaks Hike and Bike Trail Segment 3, which will connect the existing trail along Rosewood Drive, to Harker Heights' Purser Family Park, and to the Heritage Oaks Park area and the recently awarded Heritage Oaks Hike and Bike Trail, Segment 4.

CSJ: 0909-36-160  
District #: Waco (09)  
Code Chart 64#: 22300  
Project: Heritage Oaks Phase 3A  
CFDA Title: Highway Planning & Construction  
CFDA Number: 20.205  
Federal Highway Administration  
Not Research and Development

By entering into an Advance Funding Agreement (AFA) with TxDOT, the City agrees to commit to the project's design, development, implementation, construction, maintenance, management, and funding. The City of Killeen further agrees to provide a local match of 20% or greater of the total project cost, including being responsible for all non-federally funded items, TxDOT's administrative costs (15%), and 100% of all overruns. As with all AFAs, TxDOT requires advanced payment of the State's projected direct and indirect costs associated with review, inspection, administration, and oversight of the project. The estimated total payment to TxDOT for the aforementioned is \$47,646. With a commitment to this AFA, City Council can expect to see the following items on future agendas: a professional services agreement for the design of this project totaling approximately \$750,000 (\$600,000 federal funds with a \$150,000 City match), an advanced funding agreement for a portion of the construction of Heritage Oaks Hike and Bike Trail, Segment 3 totaling approximately \$800,000 (\$640,000 federal funds with a \$160,000 City match), and finally a construction contract totaling approximately \$8,005,000 (\$4,403,585 federal funds with a \$2,961,415 City match). The preceding constitutes a total project cost of \$8,755,000, of which \$5,643,585 (64%) is reimbursed by the federal government and \$3,111,415 (36%) is funded by the City of Killeen. It is also City staff's intent to compete for an additional \$356,415 in FY'18 Category 7 funds through KTMPO once funds are identified and a call for projects issued (estimated in December, 2016). If successful securing the additional funds, the City's cost participation will be \$2,755,000 and the federal reimbursement amount will be \$6,000,000.

### **FISCAL IMPACT**

The total fiscal impact associated with this agreement is \$47,646, of which \$14,256 is due upon execution of the AFA with the remaining \$33,390 being due within 60 days prior to construction bid advertising. Funding is available in the account 347-3490-800-58-96. As in the past, funding of matching amounts will be repaid following the passage of a Reimbursement Resolution. Any amounts advanced will be repaid to the appropriate funding source upon receipt of revenue from a future issuance of Certificates of Obligation Bonds.

### **RECOMMENDATION**

City staff recommends that the City Council authorize entering into an Advance Funding Agreement with the Texas Department of Transportation for the Surface Transportation Program Metropolitan Mobility and further authorize the City Manager to execute the same.


### **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:**

That the above stated recommendation is hereby approved and authorized.

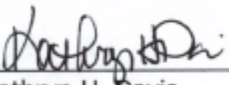
CSJ: 0909-36-160  
District #: Waco (09)  
Code Chart 64#: 22300  
Project: Heritage Oaks Phase 3A  
CFDA Title: Highway Planning & Construction  
CFDA Number: 20.205  
Federal Highway Administration  
Not Research and Development

**PASSED AND APPROVED** at a special meeting of the City Council of the City of Killeen, Texas, this the 22nd day of March, 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**

  
\_\_\_\_\_  
Scott Coper  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

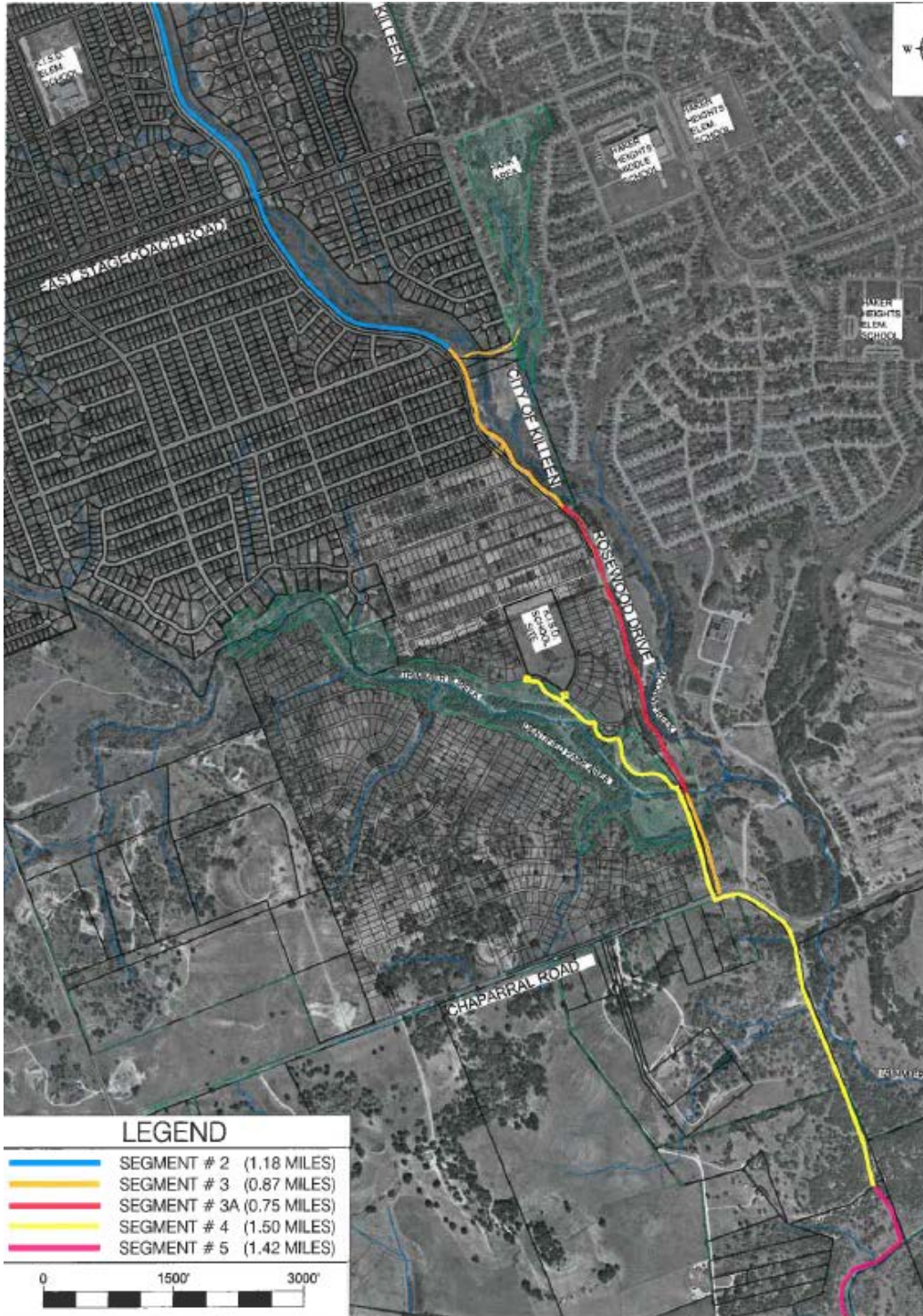
  
\_\_\_\_\_  
for Dianna Barker  
CITY SECRETARY





CSJ: 0909-36-160  
District #: Waco (09)  
Code Chart 64#: 22300  
Project: Heritage Oaks Phase 3A  
CFDA Title: Highway Planning & Construction  
CFDA Number: 20.205  
Federal Highway Administration  
Not Research and Development

## ATTACHMENT B PROJECT LOCATION MAP



CSJ: 0909-36-160  
 Code Chart 64#: 22300  
 Project: Heritage Oaks Phase 3A  
 CFDA Title: Highway Planning & Construction  
 CFDA No.: 20.205  
 Federal Highway Administration  
 Not Research and Development

**ATTACHMENT C**  
**PROJECT ESTIMATE AND SOURCE OF FUNDS**  
 LG Performs PE Work or Hires Consultant / LG Lets Project to Construction

Work Performed by Local Government ("LG")							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation <small>Includes additional percentage for TDC apportionment where applicable</small>		State Participation		Local Government (LG) Participation <small>Includes any EDC reduction where applicable</small>	
		%	Cost	%	Cost	%	Cost
Planning/Maps/Education/Non-CST	\$0	0%	\$0	0%	\$0	0%	\$0
Preliminary Engineering	\$10,000	0%	\$0	0%	\$0	100%	\$10,000
Environmental Cost	\$5,000	0%	\$0	0%	\$0	100%	\$5,000
Right of Way	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities	\$0	0%	\$0	0%	\$0	0%	\$0
Construction	\$800,000	80%	\$640,000	0%	\$0	20%	\$160,000
In-kind donation Value <small>(Add to Total Project Cost - 20% Maximum value)</small>	\$0	0%	\$0	0%	\$0	0%	\$0
<b>Work by LG Subtotal</b>	<b>\$815,000</b>		<b>\$640,000</b>		<b>\$0</b>		<b>\$175,000</b>
Work Performed by the State (Local Participation paid up front by LG to TxDOT)							
Preliminary Engineering <sup>1</sup>	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost <sup>1</sup>	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way <sup>3</sup>	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities <sup>2</sup>	\$0	0%	\$0	0%	\$0	0%	\$0
Construction <sup>2</sup>	\$0	0%	\$0	0%	\$0	0%	\$0
<b>Work by State Subtotal</b>	<b>\$0</b>		<b>\$0</b>		<b>\$0</b>		<b>\$0</b>

CSJ: 0909-36-160  
 Code Chart 64#: 22300  
 Project: Heritage Oaks Phase 3A  
 CFDA Title: Highway Planning & Construction  
 CFDA No.: 20.205  
 Federal Highway Administration  
 Not Research and Development

Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation <small>Includes additional percentage for TDC apportionment where applicable</small>		State Participation		Local Government (LG) Participation <small>Includes any EDC reduction where applicable</small>	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering <sup>1</sup>	\$5,040	0%	\$0	0%	\$0	100%	\$5,040
Environmental Cost <sup>1</sup>	\$720	0%	\$0	0%	\$0	100%	\$720
Right of Way <sup>1</sup>	\$720	0%	\$0	0%	\$0	100%	\$720
Utilities <sup>1</sup>	\$720	0%	\$0	0%	\$0	100%	\$720
Construction <sup>2</sup>	\$16,800	0%	\$0	0%	\$0	100%	\$16,800
Direct State Costs Subtotal	\$24,000	0%	\$0	0%	\$0	100%	\$24,000
Indirect State Costs	\$2,000		\$0		\$2,000		\$0
TOTAL PARTICIPATION	\$841,000		\$640,000		\$2,000		\$199,000
In-kind Contribution Credit Applied						0%	\$0
<b>TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION</b>							<b>\$0</b>

The estimated total participation by Local Government is \$199,000, plus 100% of overruns.

Total estimated payment by Local Government to State is \$24,000.

<sup>1</sup>Local Government's first payment of \$7,200 is due to State within 30 days from execution of this contract.

<sup>2</sup>Local Government's second payment of \$16,800 is due to State within 60 days prior to the Construction contract being advertised for bids.

<sup>3</sup>If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.

The eligible percent of required local match is stated in the nomination and must be 20% or greater, unless In-Kind, EDC adjustments or TDCs are applied.

This is an estimate, the final amount of Local Government participation will be based on actual costs.

Maximum federal TAP funds available for Project are \$640,000.



# City of Killeen

## Legislation Details

---

**File #:** RS-16-152    **Version:** 1    **Name:** Killeen Fort Hood Regional Trail Seg 3 CO #9  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/22/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution authorizing Change Order No. 9 to RM Rodriguez Construction, LP for the Killeen Fort Hood Regional Trail, Segment 3 project.  
**Sponsors:** Public Works Department, Transportation Division  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Change Order](#)  
[Change Order Tracking Form](#)  
[Certificate of Interested Parties](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**AUTHORIZE CHANGE ORDER NO. 9 TO RM RODRIGUEZ CONSTRUCTION, LP FOR THE CONSTRUCTION OF THE KILLEEN FORT HOOD REGIONAL TRAIL, SEGMENT 3 PROJECT**

### ORIGINATING DEPARTMENT

**PUBLIC WORKS - TRANSPORTATION DIVISION**

### BACKGROUND INFORMATION

In cooperation with the Federal Highway Administration, the Texas Highway Commission issued a call for project nominations for the statewide Transportation Enhancement Program (TE) on August 30, 2012. The call began on September 14, 2012, and closed on November 16, 2012. In two previous project calls, the City of Killeen (COK) had secured funding for two (2) hike and bike trails. Those projects have been extremely successful and beneficial to the City of Killeen (CCM/R 12-091R).

On July 26, 2013, the City received notification that it had been selected to receive \$1,455,498 for a TE award. The City of Killeen's proposed project ranked 4<sup>th</sup> out of 81 prospective projects that were submitted to the Texas Department of Transportation (TxDOT).

On February 11, 2014, the City Council authorized a reimbursement resolution which included funding for the Westside Trail (Killeen Fort Hood Regional Trail Segment 3) project (CCM/R 14-023R).

On March 25, 2014 City Council authorized entering in an Advance Funding Agreement with TxDOT for the TE award as documented by the Transportation Enhancement Program (CCM/R 14-035R).

### DISCUSSION/CONCLUSION

Change Order No. 9 will add or subtract quantities to balance changes made in the field. This change will be the final adjustment to quantities for the project and is a portion of the closeout process.

### FISCAL IMPACT

The total cost of the project before this Change Order No. 9 request was \$2,181,540.68. The total cost of this change is a net decrease of \$77,195.58, resulting in a revised total contract price of \$2,104,345.10, or cumulative 0.22% decrease to the original contract. Funds for this change order are available in the General Obligation Bonds 2014, Westside Trail account number 348-3490-800.58-81.



## **RECOMMENDATION**

City staff recommends City Council authorize the City Manager to execute Change Order No. 9 in the amount of <\$77,195.58> for the Killeen Fort Hood Regional Trail, Segment 3 project with RM Rodriguez Construction.

# CHANGE ORDER

No. 9DATE OF ISSUANCE November 22, 2016

EFFECTIVE DATE \_\_\_\_\_

OWNER: City of KilleenCONTRACTOR: RM Rodriguez Construction, LP.Contract: Killeen-Ft Hood Regional Trail (Segment #3)Project: Killeen-Ft Hood Regional Trail (Segment #3)OWNER's Contract No. 311-011CSJ: 0909-36-145

ENGINEER's Contract No. \_\_\_\_\_

ENGINEER: Half Associates, Inc.

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

Description: Change Order #9 will add or subtract quantities to adjust for changes made in the field.

Reason for Change Order: This change order will be the final adjustment to quantities for the project.

Attachments: RM Rodriguez Change Order #9 Proposal

CHANGE IN CONTRACT PRICE:
Original Contract Price \$ <u>\$2,109,000.00</u>
Net Increase (Decrease) from previous Change Orders No. <u>0</u> to <u>8</u> : \$ <u>72,540.68</u>
Contract Price prior to this Change Order: \$ <u>2,181,540.68</u>
Net Increase of this Change Order: \$ <u>-77,195.58</u>
Contract Price with all approved Change Orders: \$ <u>2,104,345.10</u>

CHANGE IN CONTRACT TIMES:
Original Contract Times: Substantial Completion: <u>180</u> Ready for final payment: <u>210</u> (days or dates)
Net change from previous Change Orders No. <u>0</u> to No. <u>8</u> : Substantial Completion: <u>90</u> Ready for final payment: <u>90</u> (days)
Contract Times prior to this Change Order: Substantial Completion: <u>330</u> Ready for final payment: <u>360</u> (days or dates)
Net increase (decrease) this Change Order: Substantial Completion: <u>0</u> Ready for final payment: <u>0</u> (days)
Contract Times with all approved Change Orders: Substantial Completion: <u>330</u> Ready for final payment: <u>360</u> (days or dates)

RECOMMENDED:

By: \_\_\_\_\_  
ENGINEER (Authorized Signature)

Date: \_\_\_\_\_

APPROVED:

By: \_\_\_\_\_  
OWNER (Authorized Signature)

Date: \_\_\_\_\_

ACCEPTED:

By: \_\_\_\_\_  
CONTRACTOR (Authorized Signature)Date: 11/22/16

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.

# Change Order Proposal 9



DATE: Tuesday, November 01, 2016

TO: City of Killeen  
 \_\_\_\_\_  
 \_\_\_\_\_

5116 S. General Bruce Dr., Suite A  
 Temple, TX 76502

ATTN: Bert Holmstrom

Phone (254) 742-0102  
 Fax (254) 742-0094

RE: Killeen Ft Hood Trail

ITEM NUMBER	Qty		Description	Unit Price	Total
101	(31.50)	SY	REMOVING CONC (RIPRAP)	\$52.00	(\$1,638.00)
105	(70.00)	SY	REMOVING CONC (FLUME)	\$38.00	(\$2,660.00)
119	1.40	CY	RIPRAP (CONC)(FLUME)	\$900.00	\$1,260.00
135	(70.00)	LF	ROCK FILTER DAMS (INSTALL)(TY 2)	\$25.00	(\$1,750.00)
136	(80.00)	LF	ROCK FILTER DAMS (INSTALL)(TY 3)	\$51.00	(\$4,080.00)
137	(150.00)	LF	ROCK FILTER DAMS (REMOVE)	\$2.00	(\$300.00)
140	(1800.00)	LF	TEMPORARY SEDIMENT CONTROL FENCE (INSTALL)	\$3.00	(\$5,400.00)
141	(1800.00)	LF	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	\$0.25	(\$450.00)
142	(1.00)	EA	CURB RAMPS (TY 2)	\$1,200.00	(\$1,200.00)
143	(1.00)	EA	CURB RAMPS (TY 7)	\$1,200.00	(\$1,200.00)
145	(93.00)	SY	CONC SIDEWALK (5")	\$49.00	(\$4,557.00)
154	(2.00)	EA	WOODEN WEIR CURB INLET PROTECTION	\$140.00	(\$280.00)
158	(88.00)	LF	ENCASEMENT PIPE 36" DIA, TYPE SPLIT STEEL	\$250.00	(\$22,000.00)
162	(1.00)	EA	ADJUST FIRE HYDRANT TO GRADE	\$750.00	(\$750.00)
165	(25.00)	TO	BOULDER PLACEMENT AND INSTALLATION	\$185.00	(\$4,625.00)
173	(3.00)	EA	BURR OAK (30 GAL)	\$1,200.00	(\$3,600.00)
177	(49.00)	SY	CONCRETE PAVING (5" CONCRETE WITH BASE)	\$59.00	(\$2,891.00)
179	(153.00)	LF	RAIL (HANDRAIL)(TY D) POWDERCOAT	\$131.86	(\$20,174.58)
**CO 4	(4.00)	EA	CO4 SINGLE GATE	\$225.00	(\$900.00)
			<b>TOTAL</b>		<b>(\$77,195.58)</b>

ACCEPTED:  
 \_\_\_\_\_  
 City of Killeen

By: \_\_\_\_\_  
 Signature Title

R M Rodriguez Construction, LP  
 \_\_\_\_\_

By: \_\_\_\_\_  
 Signature Title

## CHANGE ORDER(S) FOR Killeen-Fort Hood Regional Trail, Segment 3 Project

(Project Name)

<b>Department/Division:</b>	Public Works	<b>Bid No.:</b>	15-16	<b>NOTE</b> 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
<b>Vendor Name:</b>	RM Rodriguez Construction, LP	<b>CCMR No.:</b>	15-082R	
<b>Original Contract Amount:</b>	\$2,109,000.00			
<b>Date CCMR Approved:</b>	07/14/15			

### 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	02/17/16	N/A	\$10,345.50	348-3490-800.58-81	Add concrete rip rap and turn down between sidewalk and culvert headwall on the west side of Robinett	\$2,119,345.50	0.49%
2	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	04/07/16		\$1,605.18	348-3490-800.58-81	Replace paint with powercoating on handrails.	\$2,120,950.68	0.57%
3	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	04/29/16		\$0.00	348-3490-800.58-81	Add 90 days; ROW issue.	\$2,120,950.68	0.57%
4	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	07/07/16		\$16,560.00	348-3490-800.58-81	Add wood privacy fence at culvert channels and pickets in front yards at Stallion and Waterfall.	\$2,137,510.68	1.35%
5	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	08/10/16		\$32,980.00	348-3490-800.58-81	Add grouted (concrete) riprap	\$2,170,490.68	2.92%
6	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	08/10/16		\$0.00	348-3490-800.58-81	Add 60 Days; ROW issue.	\$2,170,490.68	2.92%
7	<input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Approved	09/08/16		\$8,850.00	348-3490-800.58-81	Reinforce base of retaining wall; base and rip rap.	\$2,179,340.68	3.34%
8	<input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Approved			\$2,200.00	348-3490-800.58-81	Signs and flood guage	\$2,181,540.68	3.44%
9	<input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Approved			-\$77,195.58	348-3490-800.58-81	Clean-up change order	\$2,104,345.10	-0.22%
10	<input type="checkbox"/> Proposed <input type="checkbox"/> Approved						\$2,104,345.10	-0.22%

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**

Certificate Number:  
2016-139730

Date Filed:  
11/23/2016

Date Acknowledged:

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

RM Rodriguez Construction LP  
Temple, 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, TX

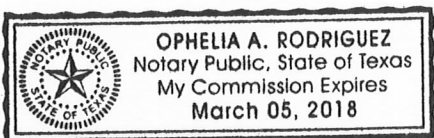
**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

090936145  
Construction of Hike and Bike Trail, Change Order 9

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

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 Rene Rodriguez, this the 28 day of November, 2016, to certify which, witness my hand and seal of office.

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of officer administering oath

Ophelia A. Rodriguez  
\_\_\_\_\_  
Printed name of officer administering oath

*[Handwritten Signature]*  
\_\_\_\_\_  
Title of officer administering oath



# City of Killeen

## Legislation Details

---

**File #:** RS-16-153    **Version:** 1    **Name:** Authorize Abatement Lien Foreclosures  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 12/1/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution authorizing the filing of interventions for the foreclosure of abatement liens, in conjunction with delinquent tax collection lawsuits filed by Bell County.  
**Sponsors:** City Attorney Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**Authorize the filing of interventions for the foreclosure of abatement liens, in conjunction with delinquent tax collection lawsuits filed by Bell County.**

### ORIGINATING DEPARTMENT

**City Attorney**

### BACKGROUND INFORMATION

The law firm of McCreary, Veselka, Bragg & Allen, P.C. represents the Bell County Tax Appraisal District in the collection of delinquent property taxes. Several properties that are subject to a pending delinquent tax collection lawsuit also have city health and safety liens for the abatement of weeds, grass, trash, rubbish, and/or substandard structures.

Typically, properties on which the city has liens are vacant and abandoned and collection of the liens via foreclosure is difficult, if not impossible. First, the owners of the properties may not have any non-exempt assets from which the city may collect the amount of its lien; so a personal judgment against the property owners has little or no impact. Second, the city's liens are inferior to the tax liens securing payment of the delinquent taxes on the property. Often, the total amount of the city's liens and the delinquent property taxes exceed the "true" market value of the property and therefore exceed the amount a purchaser will pay for the property at a tax lien foreclosure sale conducted by the Bell County Sheriff.

If the minimum bid required by law is not received by the Sheriff at the tax lien foreclosure sale, the property is struck off the tax roll, rendering the property tax exempt. Delinquent taxes are not collected, the property is exempt from current taxes, the city does not collect its liens, and the city will continue to incur costs for maintenance of the property.

Section 214.004 of the Local Government Code, Section 342.007(h) of the Health and Safety Code, and Section 33.41(c) of the Tax Code provide that the city may attempt to recover the amount of its liens in conjunction with a delinquent tax collection lawsuit. If the city intervenes in the county's delinquent tax collection lawsuits, the city's liens will be included in the judgment for the foreclosure of the tax liens. The city will receive the amount of its liens from the proceeds of the tax sale to the extent there are proceeds remaining after the payment of the delinquent taxes and costs of the foreclosure suit and sale. Since the city's liens are inferior to the tax liens, the city may not recover all or any of the amount of its liens, and the city's liens will be extinguished. However, the city will benefit from having the property sold to a new owner who will maintain the property and pay taxes on the property in the future. Furthermore, the city will obtain payment of the delinquent taxes, may obtain payment of its liens, and will be relieved from the future cost of maintenance of the property.



## **DISCUSSION/CONCLUSION**

Since the Tax Appraisal District is in the process of foreclosing several tax liens, the Appraisal District's attorney is offering to also represent the city by preparing an intervention for the city in the delinquent tax collection lawsuit in order that the city's liens may be included in the judgment for the foreclosure on the tax liens. There will be no charge by the law firm to the city for filing this intervention or for the recovery of all or part of the amount of the city's liens from the tax lien foreclosure sale. Additionally, the law firm has offered to include the city's unpaid liens in future delinquent tax collection lawsuits, as well.

## **FISCAL IMPACT**

There is no cost to the city for authorizing the Bell County Tax Appraisal's law firm to file this intervention on behalf of the city; however, there is the potential to obtain both delinquent city taxes and unpaid lien revenue from the city's participation in this lawsuit and future lawsuits.

## **RECOMMENDATION**

That the City Council authorize the law firm of McCreary, Veselka, Bragg & Allen, P.C. to file interventions on behalf of the City of Killeen for the foreclosure of abatement liens for the costs of abating weeds, grass, trash, rubbish, and/or substandard structures, in conjunction with the delinquent tax collection lawsuits filed by the Tax Appraisal District of Bell County, and authorizing the Interim City Manager to execute any and all required documents.



# City of Killeen

## Legislation Details

---

**File #:** RS-16-154    **Version:** 1    **Name:** TWDB Flood Grant  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/16/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution to authorize participation in the Texas Water Development Board Grant for the Nolan Creek Regional Flood Protection Master Plan project.  
**Sponsors:** Environmental Services  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[TWDB Notice of Award](#)  
[In-Kind Breakdown](#)  
[Nolan Creek Flood Protection Plan](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## **CITY COUNCIL MEMORANDUM**

### **AGENDA ITEM**

**Authorize participation in the Texas Water Development Board Grant for the Nolan Creek Regional Flood Protection Master Plan Project.**

### **ORIGINATING DEPARTMENT**

**Public Works / Environmental Services**

### **BACKGROUND INFORMATION**

The Texas Water Development Board (TWDB) Flood Protection Planning Program, created in 1991, is a grant program designed to assist political subdivisions in evaluating regional structural and nonstructural solutions to flooding problems. Only regional projects are eligible for this grant. Grants for flood protection planning in our area are limited to 50% of the total cost of the project. In-kind services may be substituted for any part of the local share if such services are directly in support of the planning effort, are properly documented, and approved in advance by the TWDB.

On May 9, 2016, the Central Texas Council of Governments (CTCOG) hosted a Nolan Creek watershed meeting to discuss the opportunity to apply for a TWDB grant to fund the creation of a Nolan Creek Flood Protection Master Plan. Representatives from Bell County, Bell County Water Control & Improvement District (WC&ID) #6, Belton, Brazos River Authority, Central Texas Council of Governments, Harker Heights, Nolanville, Killeen and Texas Agrilife all participated in the discussion on regional flood protection. On May 24, 2017, the City Council authorized the submission of a TWDB Flood Protection Planning Grant application for the Nolan Creek Regional Flood Protection Master Plan project (CCMR #16-059). On August 25, 2016, the TWDB awarded CTCOG a grant for this project. The Nolan Creek project scored #2 out of 41 applications submitted from across the state.

### **DISCUSSION/CONCLUSION**

Benefits of a regional flood protection master plan include prioritization and coordination of structural and nonstructural projects throughout the watershed, improved water quality, increased public education, and increased public safety. Participation in the CTCOG's TWDB proposed planning grant project does have some direct benefit to the residents of Killeen. One benefit is the shared expense of mapping and modeling the Nolan Creek watershed. This grant would allow the City to proceed with this 2012 Drainage Master Plan planned project, without having to wait for funding in a future drainage bond. Proposed flood retarding structures identified for construction within the City of Killeen would benefit Killeen by providing an area that could also be utilized as a park and a water quality feature. These structures would support our Vision 2030 plan by contributing to a higher quality of life for our residents and by helping to reduce the regulated pollutants in Nolan Creek. Reduction of pollutants assists the City in avoiding issuance of a regulated Total Maximum Daily Load (TMDL) by the TCEQ. Additional benefits include increased priority in other grant programs, potential revisions to the regulatory

Special Flood Hazard Area (SFHA) maps, and increased public safety through the development and use of early warning systems.

CTCOG provided a preliminary project cost breakdown based on four areas: hydrology, hydraulics, field survey, and population within the watershed. The total project cost is \$462,038. The awarded project includes \$231,019 in grant funds and requires a \$231,019 match to be funded by the political subdivisions within the watershed. The City of Killeen's identified portion of the match, based on the criteria identified above, is \$146,599.00. City staff has worked with the CTCOG to identify in-kind services that will offset a portion of the city's identified match.

### **FISCAL IMPACT**

Participation in this project will require in-kind services of \$92,371.33 and a cash contribution of \$54,227.67. Funding for the cash contribution is available in the fiscal year 2016-2017 drainage utility fund's environmental services professional services account 575-3476-432.47-20 that has an available budget of \$117,734.

### **RECOMMENDATION**

Recommend the City Council approve participation in the TWDB Flood Protection Planning Grant for the Nolan Creek Regional Flood Protection Master Plan project and authorize the City Manager to execute all contracts, change orders, documents, and agreements associated with the grant.

# \$3.5 million in flood protection grants approved by the TWDB

**For immediate release. Contact: Kimberly Leggett at 512-463-5129**

AUSTIN – (August 25, 2016) – Today, the Texas Water Development Board (TWDB) authorized \$3.5 million in flood protection grants from the Disaster Contingency Fund for 17 projects around the state. The grants will be used to finance flood early warning systems, flood response strategies, and flood protection planning.

“The severity of flood damage and resulting loss of life across Texas in recent years has demonstrated that communities need more financial resources to help them prepare for and respond to floods,” said TWDB Board Chairman Bech Bruun. “All 17 projects funded today include an early warning component and represent an important first step in implementing critical flood protection efforts.”

Last spring, the TWDB published a request for applications for \$2 million in flood protection grants and received 41 applications for a total requested amount of \$7,260,116.36. Because of the critical need and high demand for this funding, the TWDB allocated an additional \$1.5 million from the Disaster Contingency Fund toward these grants.

“The combination of statewide and local efforts allows the TWDB to capitalize on the strength of both to maximize flood outreach across the state,” said TWDB Board member Kathleen Jackson. “We are drawing on local innovation to meet local needs.”

The projects were prioritized according to their ability to protect the health, public safety, and economic prosperity of Texans. The TWDB limited the grants to no more than \$500,000 per applicant to enable more communities across the state to be served.

“Combined with the required local matching funds, the grants awarded today will result in the potential for approximately \$9.5 million of funding to be put to work for communities large and small,” said TWDB Board member Peter Lake. “These projects are one element of a wide range of flood initiatives that the TWDB has been working on in the last year.”

The 17 projects receiving flood protection grants are:

- **Bandera County River Authority and Groundwater District** – \$265,150 for an early warning system
- **Cameron County Drainage District No. 5** – \$112,500 for an early warning system, flood response, and flood protection planning
- **Cameron County Drainage District No. 1** – \$187,500 for an early warning system
- **Central Texas Council of Governments** – \$231,019 for an early warning system, flood response, and flood protection planning
- **City of Austin** – \$96,633.14 for an early warning system
- **City of Beaumont** – \$287,000 for an early warning system and flood protection planning
- **City of Buda** – \$292,890 for an early warning system
- **City of Fort Worth** – \$247,378 for an early warning system and flood response

- **City of Leon Valley** – \$11,309.86 for an early warning system
- **City of Sealy** – \$14,430 for an early warning system
- **Guadalupe Blanco River Authority – Caldwell County** – \$70,688 for an early warning system
- **Guadalupe Blanco River Authority – Hays County** – \$37,406 for an early warning system
- **Harris County Flood Control District** – \$250,000 for an early warning system, flood response, and flood protection planning
- **Hays County** – \$500,000 for an early warning system and flood response
- **North Central Texas Council of Governments** – \$159,096 for an early warning system
- **San Jacinto River Authority** – \$460,000 for an early warning system, flood response, and flood protection planning
- **Uvalde County** – \$277,000 for an early warning system

In addition to the grants awarded today, the Board approved a contract for \$150,000 to study stream gage and weather station placement requirements to improve flood forecasting in Texas. The study will be completed by December 31, 2016. The Board also approved funding for the U.S. Geological Society to install and maintain additional gages to support flood warning and forecasting.

Governor Greg Abbott authorized the transfer of \$6.8 million from the Disaster Contingency Fund to the TWDB in December 2015 to be used for flood protection. Prior to the transfer, Senator Kirk Watson authored an amendment to House Bill 6 directing funding to the Disaster Contingency Account for floodplain management in the 2015 legislative session.

For more information on the TWDB's flood programs, please visit [www.texasflood.org](http://www.texasflood.org).

The TWDB is the state agency charged with collecting and disseminating water-related data, assisting with regional planning and preparing the state water plan for the development of the state's water resources. The TWDB administers cost-effective financial assistance programs for the construction of water supply, wastewater treatment, flood control, and agricultural water conservation projects.

**Nolan Creek Flood Protection Plan  
2016 TWDB Grant  
In-Kind Services By Killeen**

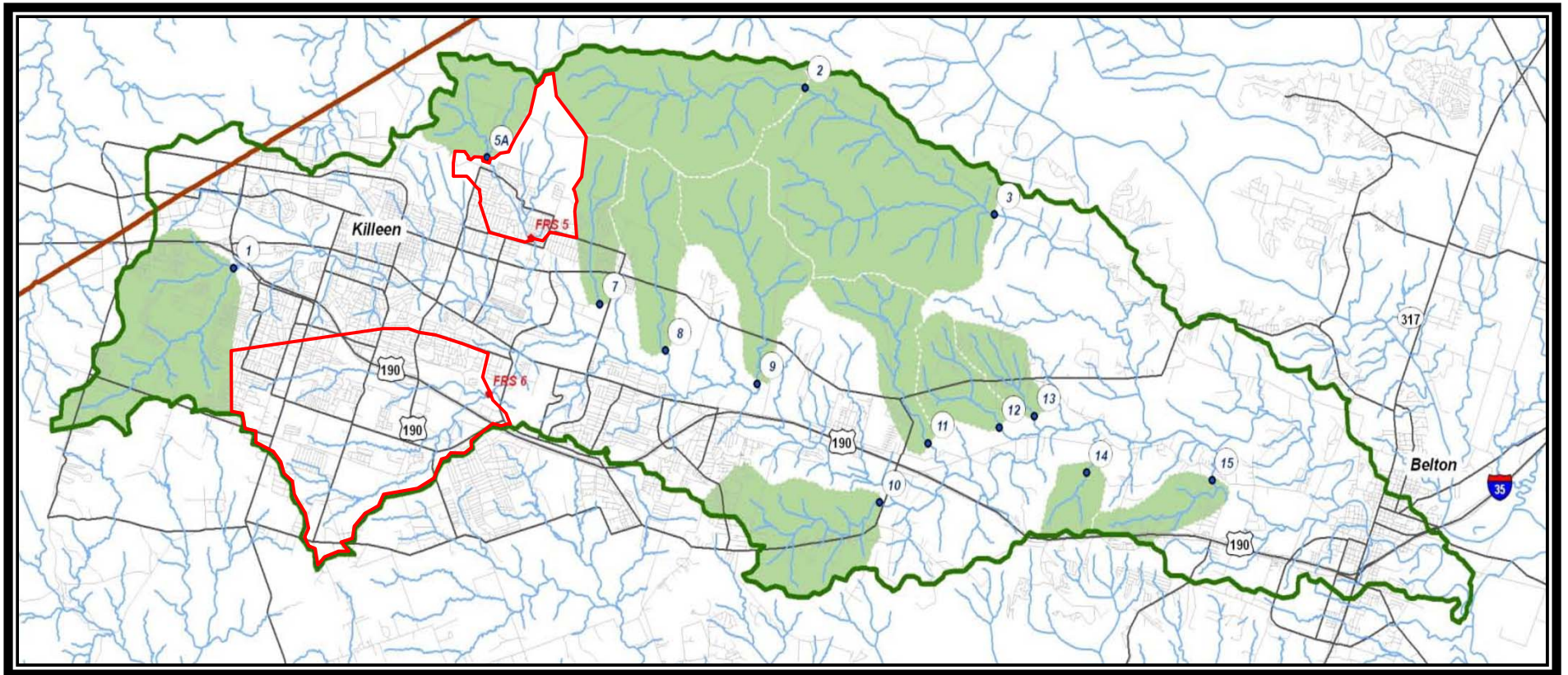
<b>Task Number</b>	<b>Task Description</b>	<b>Total In-Kind Hours</b>	<b>Total In-Kind Expense</b>
1	Collection and Review of Baseline Information	19.00	\$ 661.53
2	Development of a Base Map	56.00	\$ 1,288.42
3	Assessment of Environmental Constraints	58.00	\$ 1,409.04
4	Identification of Flood Early Warning System Improvements	-	\$ -
5	Identification of Flood Response Implementation Strategies	20.00	\$ 777.95
6	Initial Identification of Flood Problem Areas	26.00	\$ 987.23
7	Perform Field Survey	2,466.00	\$ 58,422.45
8	Develop Hydrologic Model	666.00	\$ 20,358.11
9	Develop Hydraulic Model	-	\$ -
10	Final Identification of Flood Problem Areas, Establishment of Flood Protection Criteria, and Evaluation of Flood Mitigation Alternatives	44.00	\$ 1,767.66
11	Perform Hydrologic/Hydraulic Analyses of Flood Mitigation Alternatives	136.00	\$ 4,798.98
12	Develop Benefit/Cost Analysis of Flood Mitigation Alternatives	18.00	\$ 846.93
13	Prepare Implementation and Phasing Plan	20.00	\$ 881.47
14	Review Draft and Final Reports	5.00	\$ 171.57
<b>Total</b>		<b>3,534.00</b>	<b>\$ 92,371.33</b>

# Nolan Creek Flood Protection Plan - TWDB Grant Opportunity

December 6, 2016



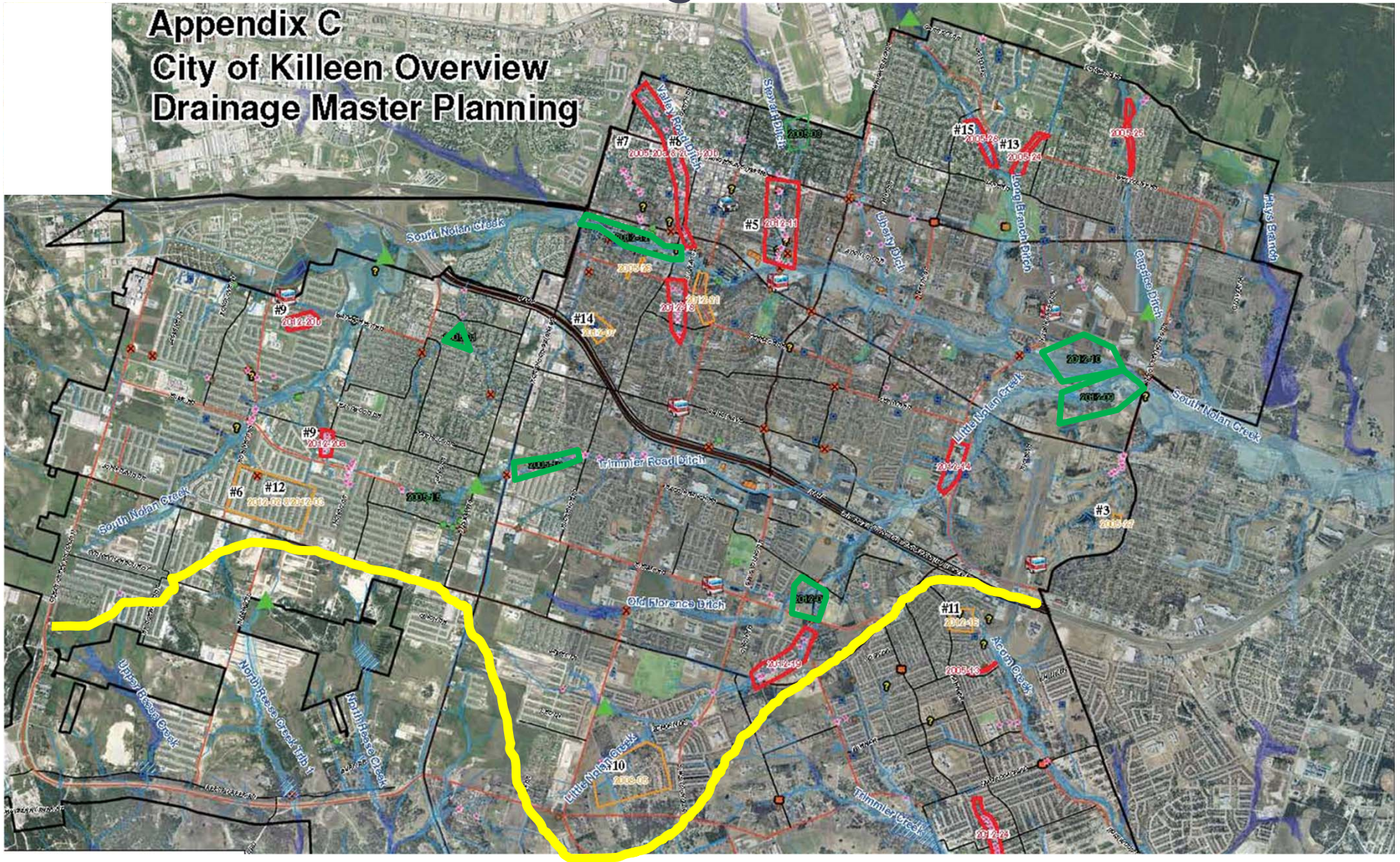
# Nolan Creek Watershed





# 2012 Drainage Master Plan

## Appendix C City of Killeen Overview Drainage Master Planning





# Nolan Creek Flood Protection Plan

## Benefits

- Coordinate additional monitoring stations along Nolan Creek and its tributaries.
- Develop early warning software.
- Update/amend Special Flood Hazard Area (SFHA) maps.



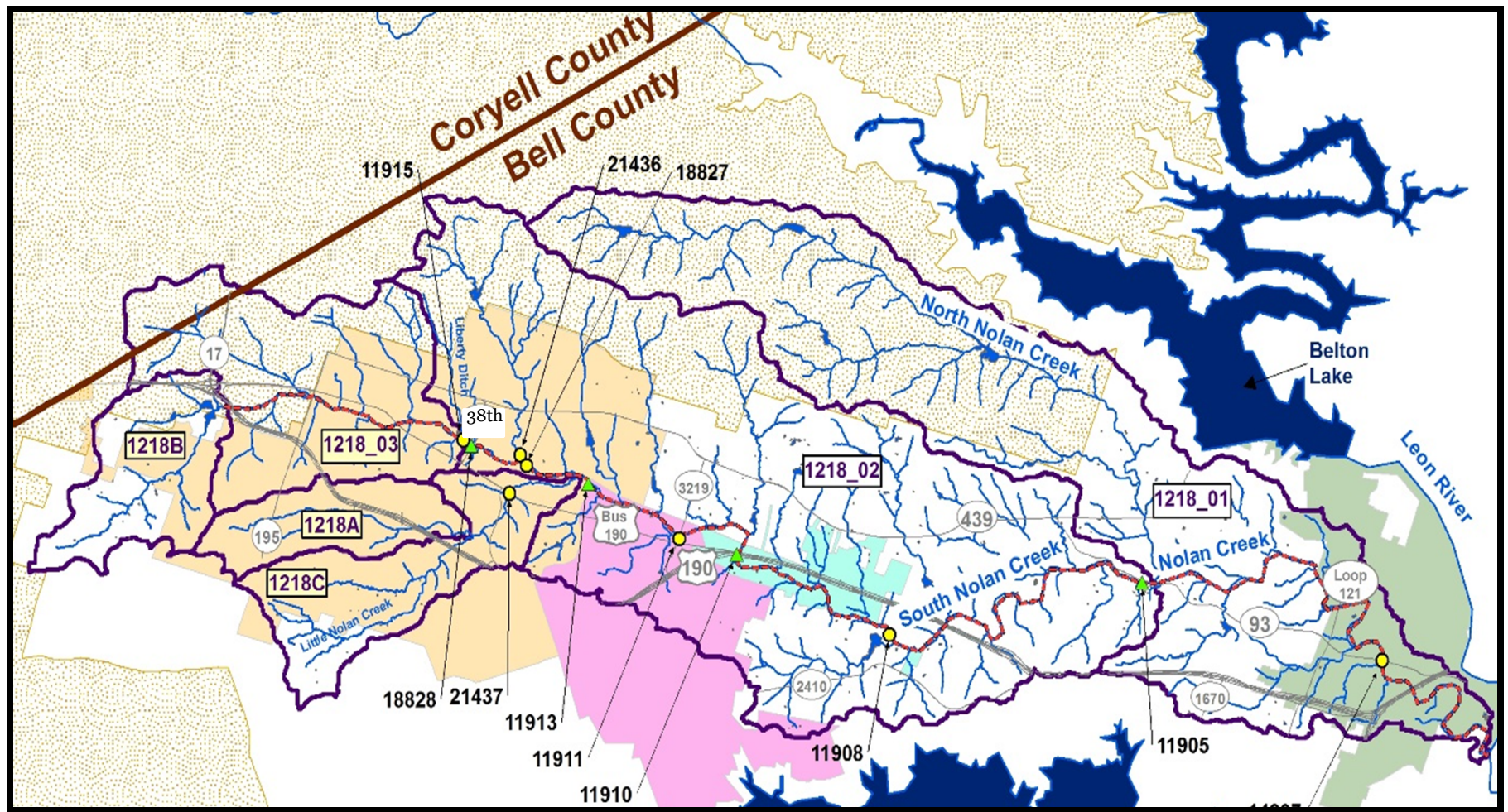


# Nolan Creek Flood Protection Plan

## Benefits

- Positions each entity and the watershed for participation in other grant programs to fund some of the projects identified.
- Identify construction projects within each entity that could lead to increased storage capacity & water quality. These projects may assist the City in avoiding issuance of a regulated Total Maximum Daily Load (TMDL) by the TCEQ.

# Nolan Creek Watershed





# 2012 Drainage Master Plan

Table 7-1  
Summary of CIPs Recommended for Capital Improvement Bond Funding

Overall Priority	Project Reference Number	Capital Improvement Project (CIP)	Type of Project	Description of Project	Estimated Cost (\$)*
1	N/A	Regional Watershed Modeling and Floodplain Mapping	Study	In light of the more recent information and rapid development a revised floodplain study is recommended. This study would allow for an organized and concise set of hydrologic/hydraulic models that could be used in watershed management and would serve as a starting point to build upon for the regional detention analysis.	250,000
2	N/A	Regional Detention Pond Analysis	Study	As the City continues to develop rapidly, it is recommended that a comprehensive watershed wide detention analysis be performed in order to assess the best locations for future regional detention ponds and to ensure that watershed timing is properly accounted for considering all detention ponds.	250,000



# Nolan Creek Flood Protection Plan

- **Regional Support of Grant Project:**
  - Bell County WCID #6
  - Belton
  - Brazos River Authority
  - Harker Heights
  - Nolanville
  - Killeen

# Nolan Creek Flood Protection Plan

## Cost of Participation

- CTCOG provided a preliminary cost breakdown for the \$462,038 project based on four areas:
  - Hydrology
  - Hydraulics
  - Field survey
  - Population
- Based on those areas, the City of Killeen's identified portion is \$146,599, which is approximately 63.5% of the required grant match (\$231,019).



# Nolan Creek Flood Protection Plan

## Cost of Killeen's Participation

- Cash Contribution: \$54,227.67
- In-Kind Services: \$92,371.33

	Hours	Expenses
GIS	489.00	\$ 9,914.97
Engineering	449.00	\$ 18,515.86
Environmental Services	59.00	\$ 3,214.02
Drainage Engineering	364.00	\$ 9,823.37
Drainage Maintenance	1,559.00	\$ 29,966.74
Transportation/CIP	614.00	\$ 20,936.36
Totals	3,534.00	\$ 92,371.33

# Nolan Creek Flood Protection Plan

Questions?





# City of Killeen

## Legislation Details

---

**File #:** PH-16-048A    **Version:** 1    **Name:** CG Environmental Contract  
**Type:** Resolution/Public Hearing    **Status:** Public Hearings  
**File created:** 11/16/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider a memorandum/resolution authorizing the execution of a professional services contract amendment with CG Environmental - Cleaning Guys, LLC. for the August 12, 2016, emergency environmental response.  
**Sponsors:** Environmental Services  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Invoice](#)  
[Gas Fire Containment Map](#)  
[Situation Summary](#)  
[Certificate of Interested Parties](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**Authorize the execution of a professional services contract amendment with CG Environmental - Cleaning Guys, LLC for the August 12, 2016, emergency environmental response.**

### ORIGINATING DEPARTMENT

**Public Works - Environmental Services**

### BACKGROUND INFORMATION

In December 2014, the City entered into a contract for emergency response services with CG Environmental - Cleaning Guys, LLC (CG). The services within that contract were for hazardous material cleanup, remediation, and disposal. The contract terms were for an as-needed emergency response basis not to meet or exceed \$50,000.00. Prior to August 12, 2016, CG responded to three emergency environmental responses and two hazardous disposals at total cost of \$29,159.29.

The City currently holds a Municipal Separate Storm Sewer System (MS4) permit with the Texas Commission on Environmental Quality (TCEQ). As part of that permit the City is responsible for the water quality in our watercourses. That TCEQ permit and current city ordinances require the City to respond to, contain, and remediate any known point discharge not comprised entirely of storm water.

### DISCUSSION/CONCLUSION

On the morning of Friday, August 12, 2016, the City responded to a gas fire at 4415 E. Veterans Memorial Boulevard. Staff evaluated the situation and determined that the level of response needed required professional assistance. As a result, staff utilized the existing contract authorization to contact CG to request assistance in the containment, remediation, and disposal of petroleum products that entered the soil and watercourse.

Staff coordinated emergency environmental response compliance with various regulatory agencies and CG. The regulatory agencies included Environmental Protection Agency (EPA), U.S. Department of Transportation, TCEQ, and Texas Parks & Wildlife (TPW). Due to the nature of the contamination testing, final disposal, and remediation were not completed until October 21, 2016, at a total cost of \$214,199.02. Interim reports were filed with all regulatory agencies on October 5, 2016, and October 11, 2016. The EPA and TCEQ require a formal final report documenting remediation methods and proof of permitted disposal within six months of the spill.

### FISCAL IMPACT

Funding in the amount of \$214,199.02 is available in the 575 Drainage Utility Fund's reserve accounts based on savings from last fiscal year. Once a budget amendment is authorized to

cover this expense, the funds will be available in the Professional Services - Special Services account (575-3476-432.47-99).

**RECOMMENDATION**

City staff recommends that the City Council authorize the City Manager to enter into a contract amendment with CG Environmental - Cleaning Guys, LLC for \$214,199.02 for the August 12, 2016 Emergency Environmental Response project.

## CG Environmental - Cleaning Guys, LLC.

Total to Date in the current contract (up to \$49,999.99) **\$29,159.29**

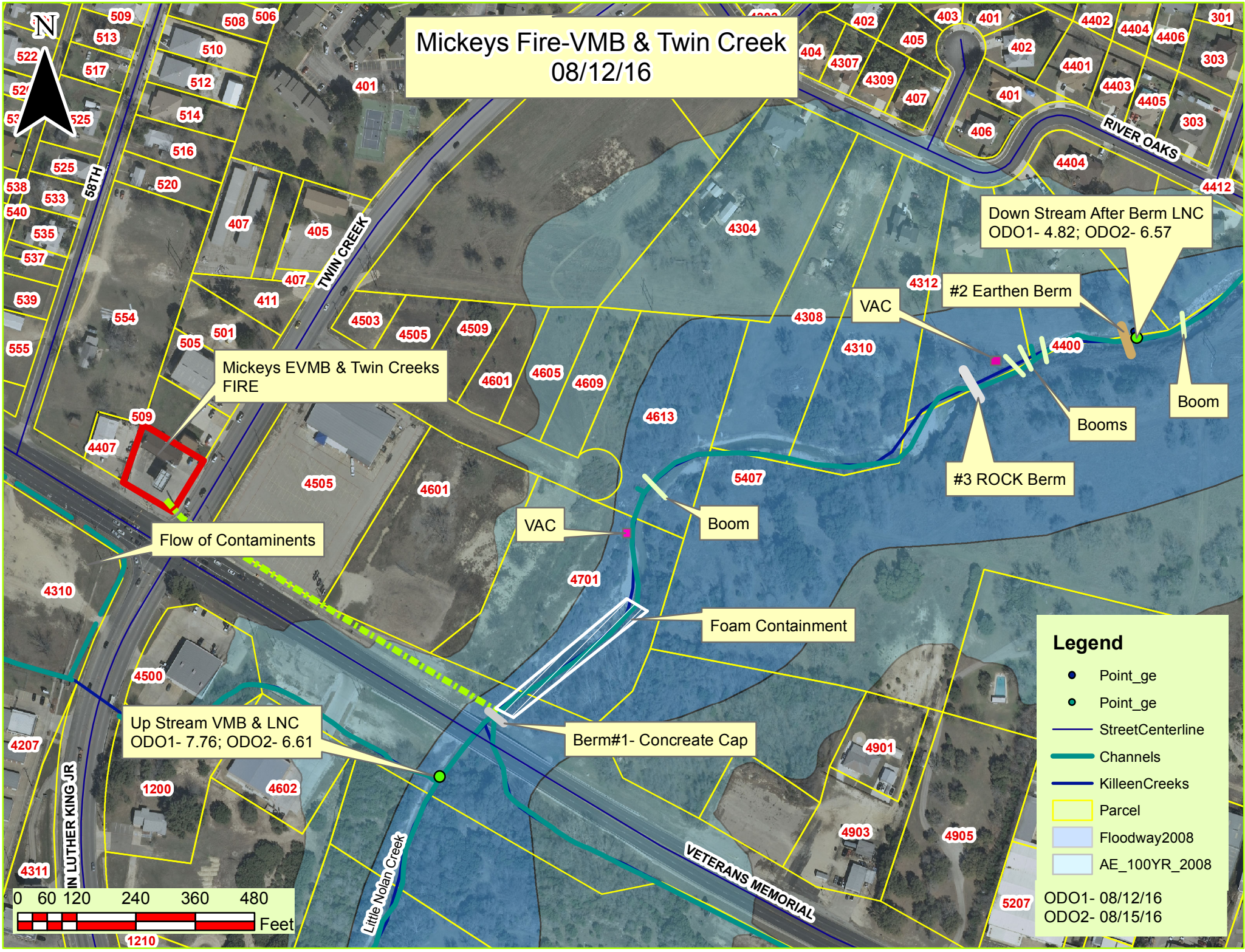
**Amount Remaining in Contract \$20,840.70**

<b>Date</b>	<b>Event</b>	<b>Invoice Amount</b>
1/30/2015	Car fire Clean Up (Reece Creek Road)	\$17,075.59
3/10/2015	Credit	-\$937.50
12/10/2015	Hazardous Waste 55 gal removal (various small clean ups)	\$790.00
5/5/2016	Plane Crash Fuel Cleanup (Skylark Airfield)	\$1,676.75
7/11/2016	Hazardous Waste 55 gal removal (various small clean ups)	\$1,741.00
7/11/2016	Car Fire Clean up (20th and Ave E)	\$8,813.45



# Mickeys Fire-VMB & Twin Creek

08/12/16



Mickeys EVMB & Twin Creeks FIRE

Flow of Contaminants

Up Stream VMB & LNC  
ODO1- 7.76; ODO2- 6.61

Berm#1- Concrete Cap

Foam Containment

#2 Earthen Berm

#3 ROCK Berm

Down Stream After Berm LNC  
ODO1- 4.82; ODO2- 6.57

**Legend**

- Point\_ge
- Point\_ge
- StreetCenterline
- Channels
- KilleenCreeks
- Parcel
- Floodway2008
- AE\_100YR\_2008

ODO1- 08/12/16  
ODO2- 08/15/16





## **8/12/16 GAS FIRE AT 4415 E. VETERANS MEMORIAL BLVD**

### **Situation Summary**

One privately owned vehicle (POV) was reported as crashing into a fuel tanker while it was refueling the gas tanks at Mickey's convenience store. This resulted in one death (the driver of the POV) and the reported discharge of ~2300 gallons of diesel fuel from the tanker, ~50 gallons of diesel fuel from the City of Killeen Fire Truck that caught on fire, and ~6,300 gallons of gasoline from the tanker. We believe that most of that discharge was burned and the rest went into Little Nolan Creek. Little Nolan Creek is approximately 0.3 miles from the crash site. Approximately 500 meters (0.31) miles of Little Nolan Creek were impacted by the tanker spill and fire fighting foam. The initial spill was contained, remediated, and the creek and soil restored.

### **08/12/2016**

0521 Director of Environmental Service (Kristina Ramirez) received activation call from the Fire Chief (Kenneth Hawthorne). Incident was reported as a fire and discharge into Little Nolan Creek due to a gas tanker exploding at the gas station on the northwest corner of VMB and Twin Creek.

0523 Public Works Incident Commander (Joe Stuart) received activation call from the Director.

0525 Public Works Incident Commander (IC-PW) notified Manager of Mowing and Drainage Services (Jeffrey Reynolds).

0530 IC-PW and Manager arrived at spill site.

0532 IC-PW and Manager inspected creek area for signs of contaminants.

0537 Manager notified Supervisor (Chris Noll) to activate Response Team 3 (ES Staff).

0600 Director arrived at spill site.

0610 ES staff searched downstream for contaminants.

0618 Director contacted City's contractor (CG Environmental) for response assistance.

0625 Director contacted Executive Director of Public Works (Scott Osburn) and notified him of actions taken, need for contract that may go over \$50K, and assignment of incident command for Public Works.

0642 Remainder of Response Team 3 and equipment arrived at spill site.

0700 CG Environmental staff arrived at spill site.

0712 Grones Environmental arrived downstream of spill site. Grones was notified that they were not acting under direction of the City of Killeen.

0720 ES staff constructs downstream earthen berm to contain fuel.



0733 Director coordinates with Bell County Emergency Response regarding environmental response contractors.

0747 Director contacted Executive Director of Public Works (Scott Osburn) and updated him on status and increased anticipated expenses.

0751 Bell County Emergency Response confirmed notification given to Grones. CG Environmental agreed to subcontract with Grones until CG Environmental's equipment arrived on site.

0805 ES Staff completed downstream earthen berm.

0826 Director reported spill to EPA hotline.

0910 Director is contacted by EPA (Brandi Todd) regarding clarification of spill.

0949 Director reported spill to Texas Parks & Wildlife hotline.

0954 Director reported spill to TCEQ Waco regional office.

0954 Structure (Gas Station) deemed unstable and demolition required by Killeen Fire Department (KFD). KFD requested assistance from IC-PW for demolition. KFD requested assistance from Traffic & Streets Crews to evaluate traffic signal and remove cable and debris laying across destroyed fire truck.

1041 TCEQ Waco regional office contacted Director for clarifications.

1045 Additional ES staff / equipment arrive on site for structure demolition.

1054 Solid Waste contacted to relocate dumpster from spill site.

1126 Texas Parks & Wildlife (Travis Tidwell) contacted Director for clarifications.

1130 Solid Waste relocated dumpster from spill site.

1143 EPA notified Director that two of their contractors would be inspecting the site.

1331 ES – Drainage Engineering staff arrived on site to take DO readings.

1332 EPA contractor (David Crowe) notified staff that they were on site. Waited for TCEQ to arrive before beginning inspection of affected area.

1334 Director contacted Director of Transportation (David Olson) requesting traffic barrels for a lane drop once the roadway was reopened.

1340 TCEQ arrived on site. Inspection of entire affected area by regulatory entities with Director & Manger.

1404 TPW arrived on site. Conducted inspection on his own and then met up with the rest of the regulatory entities, the Director, and Manager. TPW (Travis Tidwell) notified Director that due to the anticipated rain that evening, he would be conducting a dead fish survey.

1430 Dump trucks arrive on site with sand for transport of compromised air tanks.

1441 David Olson reported to the Director that they were reaching out to contractors in order to secure enough traffic control devices for the lane drop. Street Division's on call team (Taitague & Arroyo) called out to set up traffic control devices.

1514 ES staff began demolition of structure per KFD due to structural integrity.

1538 Valuables from structure removed by ES Staff and retrieved by property owner (ATM & Safe).

1603 Director contacted the Director of Water & Sewer Utilities (Steve Kana) and the Director of Water & Sewer Services (Robert White) regarding a manhole within the affected area that would need its collar repaired and to locate the sewer lines in the area where the contaminated soil was being removed.

1628 Structure demolition completed.

1700 Director received update from TPW (Travis Tidwell) regarding findings of his dead fish survey.

1713 Director updated City Attorney (Kathy Davis).

1729 Killeen Police Department (KPD) & KFD take over use of backhoe and dump truck to dispose of compromised air tanks.

1735 Traffic Employee (Carl Mafnus) was called out by David Olson to supply stop signs.

1736 Director updated EPA (Brandi Todd) as requested.

1757 ES staff moves to secondary staging area for air tank removal by McLennan County bomb squad.

1818 TPW (Travis Tidwell) notified Director that he estimated 1,000 dead fish in the affected area.

2024 CG leaves site and is scheduled to return the next day.

2103 Director called KFD Chief for situation update.

2130 Bomb squad loaded compromised air tanks into ES dump truck.

2150 ES staff loads remaining sand over compromised air tanks for transport to KPD firing range for detonation.

2205 ES Staff leaves secondary staging area. Response Team 1 was scheduled to return to the site at 9am the following day to meet with the EPA and CG Environmental.

2209 Traffic Employee (Carl Mafnus) was called out by David Olson to supply additional stop signs.

2220 Director leaves secondary staging area and turns site over to David Olson. David remained on site with Streets staff to install traffic control once the remaining containers were handled and the fire truck towed from the scene.

### **08/13/2016**

CG (Contractor) - Replaced booms. Replaced berm that had failed. Continued to remove contaminants and dead fish from the creek. Removal of contaminated soil complete. No contaminants or dead fish left the containment area despite the rain last night. Removal of diesel from dry utility manholes completed. Washed road at Twin Creek north crossing of VMB. During that time Twin Creek from VMB to Water Street was closed from ~2pm to ~4pm. The ROW area in front of the night club was cleaned and two of the driveways reopened.

Traffic employee (Carl Mafnus) and Street Division's on call team (Taitague & Arroyo) called out to set up traffic control devices and to assist with resetting lane drops. The lane drop was left in place until the new traffic control set up at the intersection can be re-evaluated. KPD originally instructed staff to place barricades on private property side of the row since the nightclub will be opening tonight. Barricades from streets were placed as instructed, however when cleaning was completed they were moved to the east side of the parking lot to surround the containers of contaminated material.

ES staff inspected creek then conducted normal storm response throughout the city. Nothing significant from the rain event to report. Staff met with EPA on site from ~10am to ~1pm. ES Staff left work at ~230pm. EPA confirmed conditions and responses are acceptable. Director remained on site until traffic control was reset and work within the row was completed.

### **08/14/2016**

CG Environmental - Pressure washed contaminated embankment and rocks. Visible contaminants on water surface recovered. Based on pressure washing results, CG left booms in place overnight as a precautionary measure and will skim the surface once more tomorrow. All dead fish were picked up and disposed of. Testing conducted. Road barricades will be removed in the morning. Site is visibly better and appears to be back to upstream baseline conditions.

Director communicated via phone and photos with EPA and CG today.

### **08/15/2016**

CG Environmental - Visually checked the booms and conducted a site assessment. They will inspect the site day to day pending test results and final decontamination of embankment and rocks. They will not be in the creek due to safety concerns as a result of the heavy rain. They did place additional booms as a precautionary measure. They have taken profile samples of the collected waste in order to get it approved & hauled off-site. That process will be on-going for the next couple of weeks. They have to take additional confirmation samples & run them in the lab to ensure the contaminated area has been excavated to proper standards. The turn-around time for the analytical results is normally 7-10 days.

They will be concentrating their efforts over the next few days to ensure the creek is taken care of and move forward from there.

### **08/24/16**

CG Environmental - Removed the booms from the watercourse and the creek appears to be back to its preexisting state. Analytical confirmation samples were taken on 08/23/16 for water and soil. Once the results are within regulatory requirements, they will schedule a day to backfill the areas where soil was removed. This will include removal of any remaining earthen berms.

We are still waiting on the liquid and soil profiles. Once those are received CG will be able to remove the storage containers off site and properly dispose of the material.

CG will be back on site to clean out the telephone manholes again. Since these manholes are not water tight they have been accumulating water as a result of recent rains. Since these manholes were originally contaminated, CG has been testing the water in the manholes. The levels are still relatively high, so CG will have to pump the contaminated water out again. In order to do this they will have to block off the northern intersection of Twin Creek and VMB. CG will coordinate with Transportation and our Police Department prior to shutting down the road next week. The closure will be similar to that which was done on Saturday 08/13/16 for approximately 2 hours.

### **09/23/16**

CG Environmental was on site this past week. They back filled the excavated area along VMB on the west side of the creek with topsoil and seed. The test results came in good, so the liquid waste containers were also removed this week from the site and disposed of properly.

### **09/29/16**

ES staff inspected the site and the grass appears to be taking well. Staff continues to work with CG on final reports and invoicing.

# 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:  
 2016-139905

Date Filed:  
 11/23/2016

Date Acknowledged:

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

The Cleaning Guys, LLC.  
 Fort Worth, 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.**

The 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.**

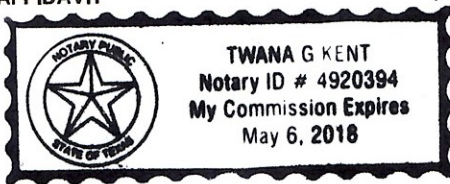
N/A  
 Environmental Remediation

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	The Cleaning Guys, LLC.	Fort Worth, 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.



Laura McCallum  
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Laura McCallum, this the 23rd day of Nov, 2016, to certify which, witness my hand and seal of office.

[Signature]  
 Signature of officer administering oath

Twana Kent  
 Printed name of officer administering oath

Notary Public  
 Title of officer administering oath



# City of Killeen

## Legislation Details

---

**File #:** PH-16-048B    **Version:** 1    **Name:** Budget Amendment - Drainage Utility  
**Type:** Ordinance/Public Hearing    **Status:** Public Hearings  
**File created:** 11/16/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** HOLD a public hearing and consider an ordinance amending the FY2017 Annual Budget and Plan of Municipal Services of the City of Killeen to increase an expense account for an emergency environmental response.  
**Sponsors:** Environmental Services, Finance Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Ordinance](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

Fiscal Year 2017 Drainage Utility Fund  
Budget Amendment

### ORIGINATING DEPARTMENT

Public Works - Environmental Services

### BACKGROUND INFORMATION

The City currently holds a Municipal Separate Storm Sewer System (MS4) permit with the Texas Commission on Environmental Quality (TCEQ). As part of that permit, the City is responsible for the water quality in our watercourses. That TCEQ permit and current city ordinances require the City to respond to, contain, and remediate any known point discharge not comprised entirely of storm water.

On the morning of Friday, August 12, 2016, the City responded to a gas fire at 4415 E. Veterans Memorial Boulevard. Due to the nature of the contamination, the City utilized CG Environmental - Cleaning Guys, LLC. to respond to the gas fire. Testing, final disposal and remediation were not completed until October 21, 2016.

### DISCUSSION/CONCLUSION

Staff coordinated emergency environmental response compliance with various regulatory agencies. The regulatory agencies included Environmental Protection Agency (EPA), U.S. Department of Transportation, TCEQ, and Texas Parks & Wildlife (TPW). The Fiscal Year 2016-2017 adopted budget (Ordinance #16-044) did not include funding for this magnitude of emergency environmental response.

### FISCAL IMPACT

The Fiscal Year 2017 budget will be revised to reflect the increase of \$214,199.02 in expense account 575-3476-432.47-99 (Professional Services - Special Services account). Funding is available in the 575 Drainage Utility Fund's fund balance. The adopted FY17 expenditures in the Drainage Utility are \$4,236,547.00. The impact to the Drainage Utility Fund's reserve account will be a reduction from a projected FY17 ending fund balance of \$4,102,671.00 to \$3,888,471.98.

### RECOMMENDATION

City staff recommends that the City Council approve the attached ordinance authorizing the additional expenditure of \$214,199.02 for the August 12, 2016, emergency environmental response.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, AMENDING THE FY 2017 ANNUAL BUDGET AND PLAN OF MUNICIPAL SERVICES OF THE CITY OF KILLEEN BY INCREASING A DRAINAGE UTILITY FUND EXPENSE ACCOUNT; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS** a budget for the City of Killeen Drainage Utility Fund Environmental Services for the Fiscal Year October 1, 2016, to September 30, 2017, has been adopted by City Council in accordance with the City Charter; and

**WHEREAS** the City of Killeen is required to respond to, contain and remediate any known point discharge not comprised entirely of storm water; and

**WHEREAS** the City of Killeen Drainage Utility Fund Environmental Services budget will be higher than expected; and

**WHEREAS** the need for the additional funds in the Drainage Utility Fund Environmental Services budget requires a budget amendment;

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

**SECTION I.** That Ordinance #16-044 adopting a budget for operating the municipal government of the City of Killeen for the Fiscal Year October 1, 2016, to September 30, 2017, be amended as to the portion of said budget as follows:

**Drainage Utility Fund**

<b>Account Number</b>	<b>Account Name</b>	<b>Original Budget</b>	<b>Budget Increase</b>	<b>Amended Budget</b>
575-3476-432.47-99	Professional Services – Special Services	\$10,000.00	\$214,199.02	\$224,199.02

**SECTION II.** That the City Council finds that the public notice and public hearing requirements of Section 56 of the City Charter have been complied with prior to the enactment of this ordinance.

**SECTION III.** That should any section or part of any section or paragraph of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

**SECTION IV.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**SECTION V.** That this ordinance shall be effective after its passage and publication according to the law.



**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 13th day of December, 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 #:** PH-16-049    **Version:** 1    **Name:** Zoning 16-22  
**Type:** Ordinance/Public Hearing    **Status:** Public Hearings  
**File created:** 11/21/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**

**Title:** HOLD a public hearing and consider an ordinance requested by Christian House of Prayer, Inc. (Case #Z16-22) to rezone Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Addition Phase 3, from "B-3" (Local Business District) to "B-4" (Business District). The property is located on the southwest corner of E. Stan Schlueter Loop (FM 3470) and Cunningham Road.

**Sponsors:** Planning & Development Dept

**Indexes:**

**Code sections:**

**Attachments:** [Council Memorandum](#)  
[Attachment to CCMO](#)  
[Minutes](#)  
[Ordinance](#)  
[Application](#)  
[Location map](#)  
[Buffer map](#)  
[Exhibit](#)  
[Considerations](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

### ZONING CASE #Z16-22 "B-3" (LOCAL BUSINESS DISTRICT) TO "B-4" (BUSINESS DISTRICT)

### ORIGINATING DEPARTMENT

### PLANNING & DEVELOPMENT SERVICES

This request is submitted by Christian House of Prayer, Inc. to rezone Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Addition Phase 3, from "B-3" (Local Business District) to "B-4" (Business District). The property is located on the southwest corner of E. Stan Schlueter Loop (FM 3470) and Cunningham Road. The properties are locally known as 2904 and 3300 Stan Schlueter Loop, Killeen, Texas. The property owners are rezoning the property to allow for trailer rental and sales.

#### **District Descriptions:**

A building or premises in a district "B-4" Business District shall be used only for the following purposes:

- (1) Any use permitted in the "B-3" district
- (2) Trailer rental and sales
- (3) Auto sales. Where the major business is the showroom display and sale of new automobiles by an authorized dealer and used car sales, repair work and storage facilities on the same premises shall be purely incidental; provided, that the area allowed for the repair and storage of cars shall not be nearer than twenty (20) feet from the required front line of the principal building
- (4) Auto sales. Used cars; no salvage, dismantling or wrecking on premises; no display of vehicles in required front yard; junked vehicles must be placed behind a screening device
- (5) Commercial parking (public garage or parking lot)
- (6) Auto upholstery or muffler shop
- (7) Auto repair (garage), with on-site junked vehicles being enclosed within a building
- (8) Cold storage plant (locker rental)
- (9) Building material or lumber sales (no outside storage)
- (10) Cleaning, pressing and dyeing:
  - a. No direct exterior exhaust from cleaning plant permitted
  - b. Dust must be controlled by either bag or filter and separator or precipitator so as to eliminate the exhausting of dust, odor, fumes or noise outside the plant.
- (11) Garden shop, greenhouse or nursery (retail)
- (12) Ballpark, stadium, athletic field (private)
- (13) Philanthropic institutions (not elsewhere listed)
- (14) Cabinet, upholstery, woodworking shop
- (15) Plumbing, electrical, air conditioning service shop (no outside storage)
- (16) Trade or business school
- (17) Garment manufacturing in a space of four thousand (4,000) square feet or less, with all loading and unloading off-street

## **Property Specifics**

**Applicant/Property Owner:** Christian House of Prayer, Inc.

**Property Location:** The property is located on the southwest corner of the intersection of E. Stan Schlueter Loop (FM 3470) and Cunningham Road. The properties are addressed as 2904 and 3300 E. Stan Schlueter Loop, Killeen, Texas.

**Legal Description:** Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Addition Phase 3, Plat Records of Bell County, Texas.

### **Zoning/ Plat Case History:**

- This property was zoned to "B-3" (Local Business District) on September 27, 2011, per Ordinance No. 11-87.
- The subject property is platted as Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Addition Phase 3.

## **Character of the Area**

**Existing Land Use(s) on the Property:** The subject site is currently the site of the Christian House of Prayer and associated retail/commercial uses (the Village Square). There are single-family and agricultural zoned properties to the west and south of this site. Those lots are acreage parcels with an average depth of 788 feet and 964 feet, as measured from Onion Road and Love Road, respectively.

**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: Water, sanitary sewer, and drainage utility services are available to the above subject property located within the City of Killeen municipal utility service area. Adequate potable water and sanitary sewer capacity are available, and in service, to the current businesses located on the property. Public storm drainage infrastructure is limited to public rights-of-way and detention of post development storm water run-off may be required if additional impervious surfaces are constructed within the existing subdivision. No extension of municipal infrastructure is required for this rezoning. Public Works personnel have performed only a basic assessment of publicly-dedicated water, sanitary sewer, and storm water 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: Stan Schlueter Loop (FM 3470) and Cunningham Road are classified (respectively) as a 110' principal arterial and a 90' minor arterial on the City's adopted Thoroughfare Plan. Ingress/egress for FM 3470 is controlled by the state and disciplined by TxDOT's access management policies; additional access is currently available to the tract from the abutting minor arterial to the east (Cunningham Road). The applicant is advised that ingress/egress to and from Cunningham Road will be disciplined through the policies of the City's Thoroughfare Development Manual when the property is developed/re-developed.

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

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

**Environmental Assessment**

**Topography/Regulated Floodplain/Floodway/Creek:** The property ranges in elevation from 856 feet to 880 feet in elevation. The northwest corner of the tract lies within a FEMA regulatory Special Flood Hazard Area (SFHA). There are no known wetlands on the parcel. Detention of post development storm water run-off would be required if the property is further developed. Public storm drainage infrastructure lies within the abutting rights-of-way of FM 3470, prior to entering an urbanized tributary (Little Nolan Creek) that flows to north into South Nolan Creek. A portion of the property drains southward and ultimately enters Trimmier Creek. Currently, there is no public drainage infrastructure along the southern boundary of the property. Little Nolan Creek and South Nolan Creek are currently listed on the TCEQ's 303(d) water quality list for impairment due to bacteria and concerns for near non-attainment for nutrients. Trimmier Creek currently listed on the TCEQ's 303(d) water quality list for concerns for near non-attainment for macrobenthic community.

**Land Use Analysis**

**Land Use Plan:** This area is designated as 'General Commercial' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

**Plan Recommendation:** The 'General Commercial' character encourages a wide range of commercial, retail and service uses, at varying scales and intensities depending on the site.

**Consistency:** This request is consistent with the Comprehensive Plan.

**Public Notification**

The staff notified forty-two (42) surrounding property owners regarding this request. Staff has received no protests.

## **Recommendation**

The Planning & Zoning Commission recommended approval of "B-4" (Business District) for approximately 47 acres, being all of Lot 1, Block 1, Christian House of Prayer Addition Phase 3 and the western 7.7 acres of Lot 1, Block 1, Christian House of Prayer Addition, by a vote of 6 to 0. The request is consistent with the Comprehensive Plan's Future Land Use Map (FLUM). The trailer rental and sales are a component of the Village Square land uses located on the site.

**Figure 1. Zoning Map**



**MINUTES  
PLANNING AND ZONING COMMISSION MEETING  
NOVEMBER 21, 2016**

**CASE #Z16-22  
B-3 to B-4**

**HOLD a public hearing and consider a request by Christian House of Prayer, Inc. to rezone Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Phase 3, from “B-3” (Local Business District) to “B-4” (Business District). The property is located on the south right-of-way of Stan Schlueter Loop, west of Cunningham Road. The property is locally known as 3300 E. Stan Schlueter Loop and 2904 E. Stan Schlueter Loop, Killeen, Texas.**

Chairman Frederick requested staff comments.

City Planner, Tony McIlwain, stated this request is submitted by Christian House of Prayer, Inc. to rezone Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Addition Phase 3, from “B-3” (Local Business District) to “B-4” (Business District). The property owners are rezoning the property to allow for trailer rental and sales.

The staff notified forty-two (42) surrounding property owners regarding this request. Staff has received no responses.

The subject site is currently the site of the Christian House of Prayer and associated commercial uses. There are single-family and agricultural zoned properties to the west and south of this site. Those lots are acreage parcels with an average depth of 788 feet and 964 feet.

Staff recommended approval of “B-4” (Business District) zoning for the site. The request is consistent with the Comprehensive Plan’s Future Land Use Map (FLUM). The trailer rental and sales are a component of the commercial land uses located on the site.

Mr. Joe Walker, 3217 Sabrina Lane, Copperas Cove, Texas, was present to represent this request.

Vice Chair Dorroh and Commissioner Purser had concerns changing the existing B-3 zoning to B-4. Vice Chair Dorroh asked Mr. Walker if he was amicable to only rezoning the property on the western side. Mr. Walker explained that their priority is ministry, but both lots have been used to park the U-Haul trucks.

After a lengthy discussion, the Commission and Mr. Walker came to an agreement to only rezone a portion of the parking lot of Lot 1, Block 1, Christian House of Prayer Addition and all of Lot 1, Block 1, Christian House Addition, Phase Three.



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

Chairman Frederick stated that the recommendation is to use the 4<sup>th</sup> entrance on the property west of Cunningham Road as a line to show what is being rezoned to B-4.

Vice Chair Dorroh motioned to recommend approval of the requested zoning with the recommendation. Commissioner McLaurin seconded the motion. The motion passed unanimously.

Chairman Frederick stated that this request 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 B-3 (LOCAL BUSINESS DISTRICT) TO B-4 (BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Christian House of Prayer, Inc. 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 Lot 1, Block 1, Christian House of Prayer Addition and Lot 1, Block 1, Christian House of Prayer Addition Phase 3, being locally known as 2904 and 3300 Stan Schlueter Loop, Killeen, Texas, from “B-3” (Local Business District) to “B-4” (Business District), said request having been duly presented and recommended for approval of “B-4” (Business District) for approximately 47 acres, being all of Lot 1, Block 1, Christian House of Prayer Addition Phase 3 and the western 7.7 acres of Lot, Block 1, Christian House of Prayer Addition, by the Planning and Zoning Commission of the City of Killeen on the 21st day of November 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 13th day of December 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 the majority opinion 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 B-3 (Local Business District) to B-4 (Business District) for approximately 47 acres, being all of Lot 1, Block 1, Christian House of Prayer Addition Phase 3 and the western 7.7 acres of Lot, Block 1, Christian House of Prayer Addition, being locally known as 2904 and 3300 Stan Schlueter Loop, 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 13th day of December 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 #16-22

Ord. #



Date Paid:	11/04/2016
Amount Paid:	\$ 300.00
Cash/MO #/Check #:	# 75913
Receipt #:	469

CASE #: Z16-22

## City of Killeen Zoning Change Application

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

Name(s) of Property Owner: Christian House of Prayer, Inc.  
 Current Address: 916 West Hwy 190  
 City: Copperas Cove State: TX Zip: 76522  
 Home Phone: ( ) \_\_\_\_\_ Business Phone: 254-578-7113 Cell Phone: 254-394-1937  
 Email: jwalker@chop.org  
 Name of Applicant: \_\_\_\_\_  
 (If different than Property Owner)

Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Phone: ( ) \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_ Cell Phone ( ) \_\_\_\_\_  
 Email: \_\_\_\_\_

Address/Location of property to be rezoned: 3300 E. Stan Schluter loop and 2904 E. Stan Schluter  
 Legal Description: Lot 1 Block 1 Christian House of Prayer Addition and

chop Phase Two Three Metes & Bounds or Lot(s) Block Subdivision  
Approx 38 Acres

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

Type of Ownership: \_\_\_\_\_ Sole Ownership \_\_\_\_\_ Partnership  Corporation \_\_\_\_\_ Other  
 Present Zoning: B3 Present Use: Church  
 Proposed Zoning: B4 Proposed Use: Church and Retail

Conditional Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated 97 NOV 18 and recorded in Volume 3703  
 Page 89, Instrument Number \_\_\_\_\_ of the Bell County Deed Records.  
 (Attached)

Is this the first rezoning application on a unilaterally annexed tract?  
 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: Joe L. Walker  
Mailing Address: 811 MLK Dr. Suite B  
City: Copperas Cove State: TX Zip: 76522  
Home Phone: ( ) \_\_\_\_\_ Business Phone: 254 547-1413 Email: jwalker@chop.org

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; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific zoning request.**

I understand that the City will deal only with a fully authorized agent. 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 <u>Joe Walker</u>	Title <u>Director</u>
Printed/Typed Name of Agent <u>Joe L. Walker</u>	Date <u>11-4-16</u>
Signature of Agent _____	Title _____
Printed/Typed Name of Agent _____	Date _____
Signature of Applicant _____	Title _____
Printed/Typed Name of Applicant _____	Date _____
Signature of Property Owner <u>Valerie Holcomb</u>	Title <u>Exec Admin</u>
Printed/Typed Name of Property Owner <u>Valerie Holcomb</u>	Date <u>11/4/16</u>
Signature of Property Owner <u>Joe Walker</u>	Title <u>Director</u>
Printed/Typed Name of Property Owner <u>Joe L. Walker</u>	Date <u>11-4-16</u>
Signature of Property Owner _____	Title _____
Printed/Typed Name of Property Owner _____	Date _____

\*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

Z16-22

**ZONING FROM:**

B-3 To B-4

**APPLICANT:**

CHRISTIAN HOUSE OF  
PRAYER, INC.


**PROPERTY OWNER:**

CHRISTIAN HOUSE OF  
PRAYER, INC.

**LEGAL DESCRIPTION:**

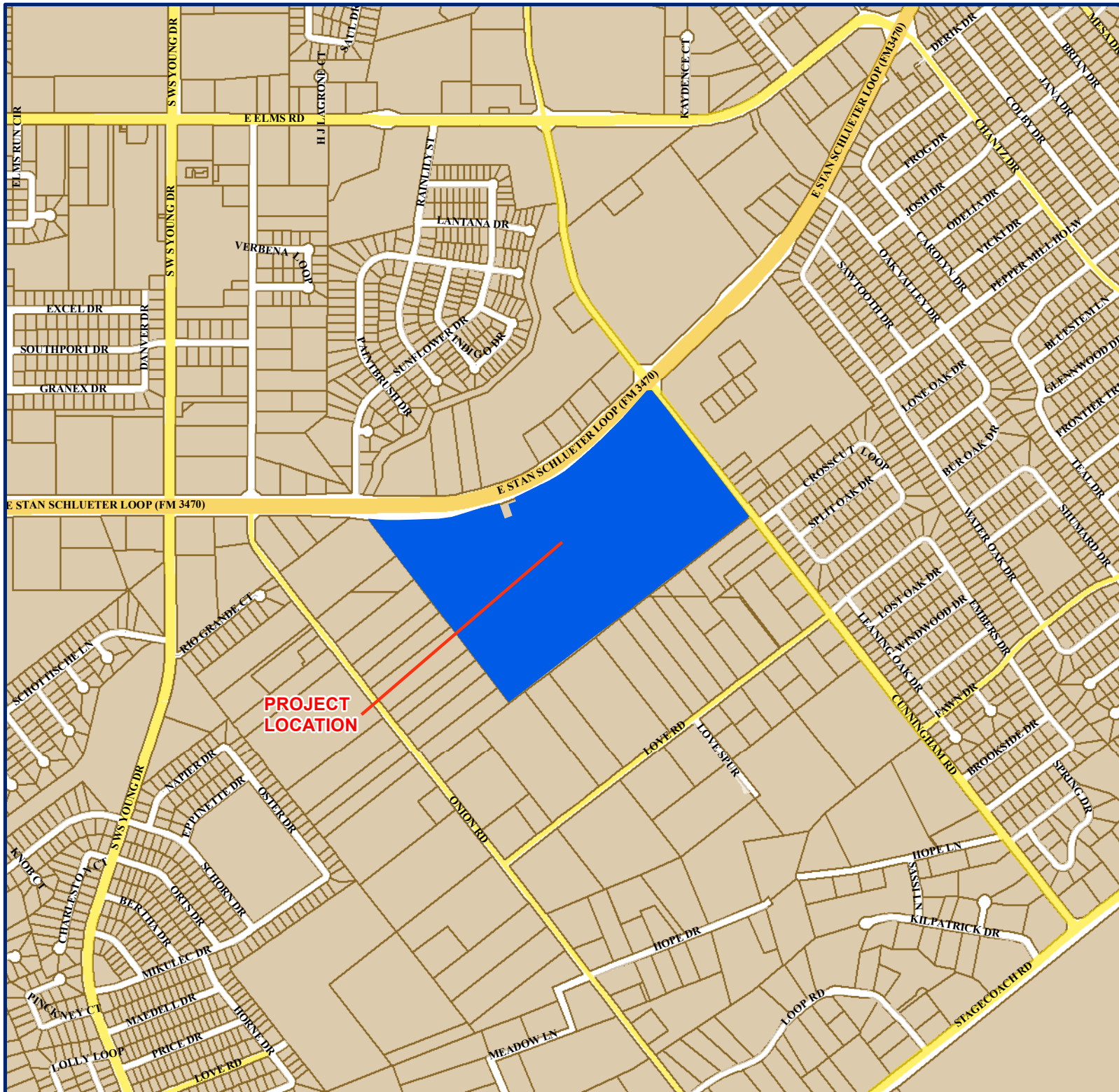
CHRISTIAN HOUSE OF PRAYER,  
BLOCK 001, LOT PT 1,  
ACRES 5.0 AND CHRISTIAN  
HOUSE OF PRAYER PHASE 3,  
BLOCK 001, LOT PT 1,  
(S PT OF 1), 20.996AC

**Legend**

-  Zoning Case
-  Parcel
-  City Limits



Date: 11/8/2016







**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

Z16-22

**ZONING FROM:**

B-3 To B-4

**APPLICANT:**

CHRISTIAN HOUSE  
OF PRAYER, INC.







**PROPERTY OWNER:**

CHRISTIAN HOUSE  
OF PRAYER, INC.

**LEGAL DESCRIPTION:**

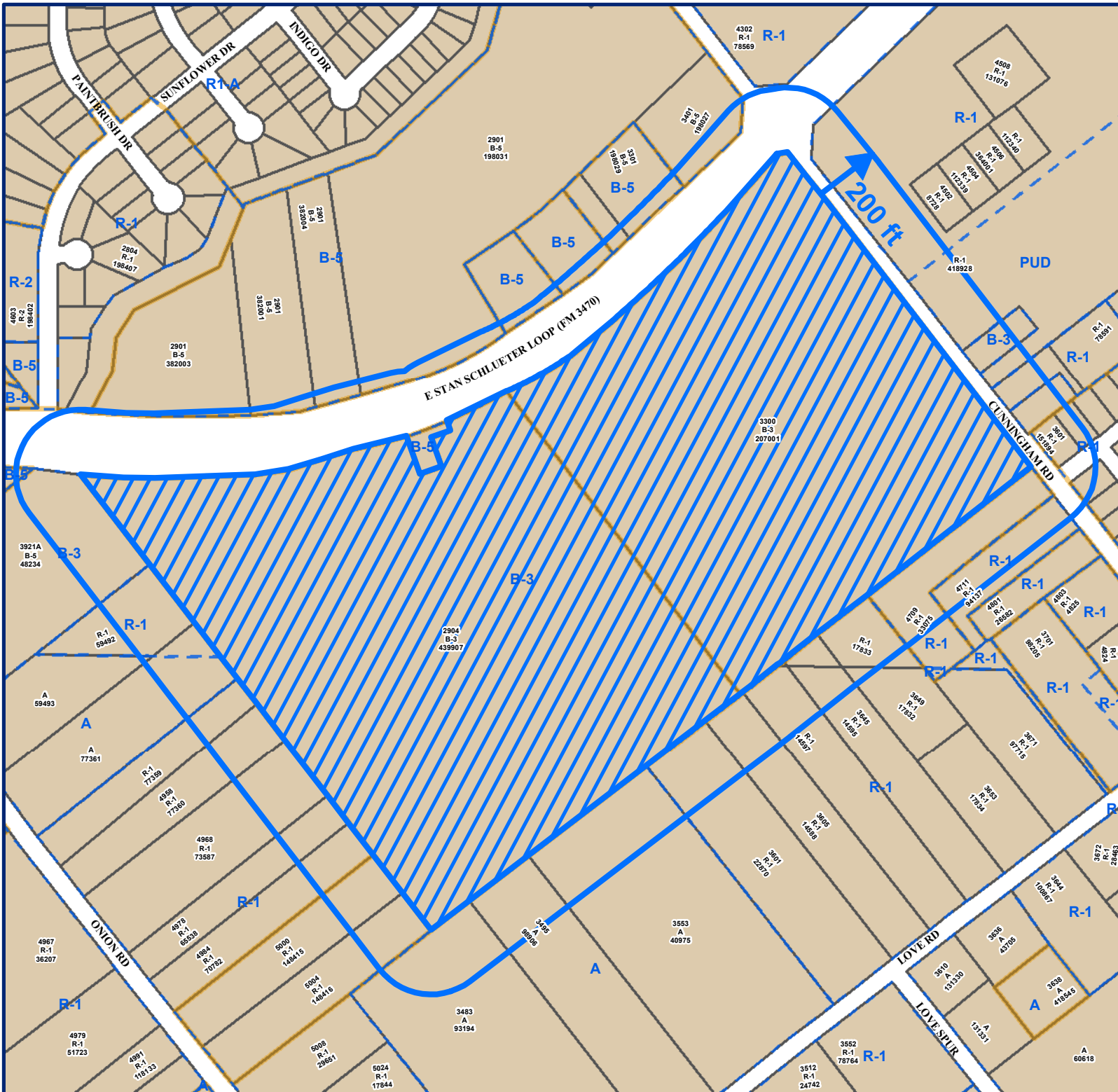
CHRISTIAN HOUSE OF PRAYER,  
BLOCK 001, LOT PT 1,  
ACRES 5.0 AND CHRISTIAN  
HOUSE OF PRAYER PHASE 3,  
BLOCK 001, LOT PT 1,  
(S PT OF 1), 20.996 AC

**LEGEND**

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



Date: 11/8/2016







**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**  
Z16-22







**ZONING FROM:**  
B-3 To B-4

**APPLICANT:**  
CHRISTIAN HOUSE  
OF PRAYER, INC.

**PROPERTY OWNER:**  
CHRISTIAN HOUSE  
OF PRAYER, INC.

**LEGAL DESCRIPTION:**  
CHRISTIAN HOUSE OF PRAYER,  
BLOCK 001, LOT PT 1,  
ACRES 5.0 AND CHRISTIAN  
HOUSE OF PRAYER PHASE 3,  
BLOCK 001, LOT PT 1,  
(S PT OF 1), 20.996 AC

**LEGEND**

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



Date: 11/22/2016



# CONSIDERATIONS

Texas Supreme Court in Pharr v. Tippitt, 616 S. W 2<sup>nd</sup> 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.



# City of Killeen

## Legislation Details

---

**File #:** OR-16-024    **Version:** 1    **Name:** Ordinance Amending Chapter 30 Water Meter Tap Fees

**Type:** Ordinance    **Status:** Ordinances

**File created:** 11/15/2016    **In control:** City Council Workshop

**On agenda:** 12/6/2016    **Final action:**

**Title:** Consider an ordinance amending Chapter 30, Article IV, Division 1, Sections 30-102 & 103 water meter and tap fees.

**Sponsors:** Water & Sewer

**Indexes:**

**Code sections:** Sec. 30-102. - Tap charges to be paid by applicant, Sec. 30-103. - Base charges for water and sewer taps

**Attachments:** [Council Memorandum](#)  
[Ordinance](#)  
[Water Tap Cost Analysis](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

### ORDINANCE AMENDING CHAPTER 30 PROVIDING FOR REVISIONS TO WATER METER AND TAP FEES

### ORIGINATING DEPARTMENT

Public Works - Water and Sewer

### BACKGROUND INFORMATION

Currently, a water service tap crew installs all the City's water services and meters at a cost to the builder of \$350 per service. Under this current policy, the City is losing \$184,000 per year. No neighboring or benchmark cities install their own water services. In these cities, the developers install the water services while the water line is being installed, and city employees install the water meters when the builder has paid the water meter fee. If a builder requests a water service and meter on a lot in an established neighborhood, the price in Killeen is also \$350 while in other cities the price ranges from \$600 to \$2400.

### DISCUSSION/CONCLUSION

After extensive analysis of the City's current water service policy, staff has concluded that the following revisions to this policy are necessary:

1. Developer installs all new water services per City standards.
2. City Public Works inspectors monitor installations.
3. City water crew installs water meter and meter box.
4. Builder pays a \$200 meter connect fee for each service.
5. In established subdivisions, City water crew installs water service and meter after the builder has paid an \$800 fee for a long service or a \$500 fee for a short service 3/4" meter and increased fees for larger meters

The water service policy revisions will mean the following intangible benefits:

1. City water crew will be freed up to achieve TCEQ-mandated monthly flushing of all dead-end mains (TAC 30 Chapter 290.46(I)).
2. City water crew will be freed up to achieve AWWA recommendations for annual fire hydrant maintenance and flow testing (AWWA C502 & M17).
3. Annual fire hydrant inspection and flow testing will support continued high ISO ratings.
4. If developers install water services prior to laying of curb and asphalt, we are less likely to have failures behind the curb.
5. Developers will be responsible when contractors damage services.
6. The City's water service policy will mirror neighboring and benchmark cities.

## **FISCAL IMPACT**

Water meter fees will be revised to reflect the charges in the attached ordinance amendment. These revisions will result in an approximate annual revenue reduction of \$150,000 but will also reduce annual expenses by \$206,000; therefore, the Water and Sewer budget will benefit by a net of \$56,000 per year and the current water service crew will now concentrate their efforts on the maintenance of the existing water infrastructure.

## **RECOMMENDATION**

Staff recommends that City Council approve the amendment of Chapter 30 of the Code of Ordinances providing for revisions to water meter and tap fees, effective three months after its passage and publication according to law.

**AN ORDINANCE AMENDING CHAPTER 30 WATER, SEWERS, AND SEWAGE DISPOSAL, ARTICLE IV, DIVISION 1, OF THE OFFICIAL CODE OF ORDINANCES OF THE CITY OF KILLEEN, TEXAS, PROVIDING FOR REVISIONS TO WATER METER AND TAP FEES; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Killeen, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

**WHEREAS**, water meter and tap fees need to be updated from time to time to account for changes in service and operational costs;

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

**SECTION 1:** That Chapter 30 of the Code of Ordinances of the City of Killeen is hereby amended to read as follows:

**Chapter 30**

**WATER, SEWERS AND SEWAGE DISPOSAL**

**ARTICLE IV. RATES AND CHARGES**

**DIVISION 1. - GENERALLY**

\*\*\*\*\*

Sec. 30-102. - Tap and water meter charges to be paid by applicant.

- (a) *When tap and water meter charges are due-* The water meter and ~~sewer~~-tap charges shall be paid by the applicant at the time the application is made for a building or finish out permit, whichever occurs first. In addition to the water meter and ~~sewer~~-tap charges, the meter deposit shall be required before a certificate of occupancy is issued. However, no application for water meter installation and/or ~~sewer~~-taps shall be accepted until construction plans have been approved by the department of public works.
- (b) *How water meter and tap charges are assessed-* Water meter and tTap charges shall be assessed per connection, based upon the following classifications:

- (1) Residence: one (1) connection.
- (2) Multifamily: one (1) connection for each living unit.
- (3) Commercial: one (1) connection for each certificate of occupancy issued or meter, whichever is greater.
- (4) Industrial: as authorized by the city council.
- (5) Mobile home park and manufactured home subdivisions: one (1) connection for each one (1) living unit.

(c) *Irrigation meters* . Regardless of the connection classification, irrigation meters are subject only to water ~~meter~~tap fee charges.

Sec. 30-103. - Base charges for water meter, water tap, and sewer taps.

(a) The following base charges shall be made for water meter, water tap and sewer taps:

- (1) Water ~~base tap~~meter charges when City installs meter and meter box onto existing water service line:
  - a. 3/4" ~~tap~~..... ~~\$350~~200.00
  - b. 1" ~~tap~~..... ~~\$477~~250.00
  - c. 1-1/2" ~~tap~~..... ~~\$862~~350.00
  - d. 2" ~~tap~~..... ~~\$1,375~~1,400.00
  - e. Construction tap, actual cost plus minimum rate of three hundred dollars (\$300.00) per month, with meter serviced by city every four (4) months.

(2) Water meter and tap charge when City installs water service line, meter, and box in an established subdivision:

	<u>Short Service</u>	<u>Long Service</u>
a. 3/4"	<u>\$500.00</u>	<u>\$800.00</u>
b. 1"	<u>\$650.00</u>	<u>\$950.00</u>
c. 1 1/2"	<u>\$1200.00</u>	<u>\$1500.00</u>
d. 2"	<u>\$2500.00</u>	<u>\$2800.00</u>

(3) The minimum size meter installation shall be three-quarters-inch service and three-quarters-inch by five-eighths-inch meter. All meter installation applications for meter and service larger than one (1) inch shall be sized by the water department. City will not install water lines or meters larger than 2". Applications for meters larger than one (1) inch shall be accompanied by information indicating fixtures by number and type to be serviced through each meter for proper meter sizing calculations.

(34) All sewer base tap charges shall be three hundred fifty dollars (\$350.00).

(54) Base tap charges for industrial establishments shall be determined by resolution of the city council.

(56) All applicants for water and sewer service located outside the city limits shall pay double the water meter and tap charges applicable within the city.

(b) Repealed by Ord. No. 97-13, § II, 2-11-97.

(c) In addition to tap charges, a meter deposit shall be required before certificate of occupancy.

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

**SECTION III.** That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

**SECTION IV.** That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

**SECTION V.** That this ordinance shall be effective three months 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 \_\_\_\_\_ day of \_\_\_\_\_, 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:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Dianne Morrow, CITY SECRETARY

\_\_\_\_\_  
Kathryn H. Davis, CITY ATTORNEY

ORD \_\_\_\_\_

Date: \_\_\_\_\_



**Killeen's Residential Water Service Policy (2015 Data)**

<b>Water Service Cost Structure</b>	<b>Belton</b>	<b>Copperas Cove</b>	<b>Harker Heights</b>	<b>Temple</b>	<b>Killeen (present)</b>	<b>Killeen (recommended)</b>
Installer of Water Service	Developer	Developer	Developer	Developer	City Crew	Developer
City's Charge for Installing Water Service	\$0.00	\$0.00	\$0.00	\$0.00	\$350.00	\$0.00
Installer of Water Meter	City Crew	City Crew	City Crew	City Crew	City Crew	City Crew
City's Charge for Installing Water Meter	\$400.00	\$250.00	\$275.00	\$195.00	\$0.00	\$200.00

<b>Cost Analysis Using Present Policy</b>	<b>Unit</b>	<b>Taps/year</b>	<b>Total</b>
Present Material Cost	\$235.00	1000	(\$235,000.00)
Present Labor & Equipment Cost	\$272.00	1000	(\$272,000.00)
Present Administration Cost	\$27.00	1000	(\$27,000.00)
Present Revenue from Tap Fee	\$350.00	1000	\$350,000.00
<b>Revenue from Present Policy</b>			<b>(\$184,000.00)</b>

<b>Cost Analysis Using Recommended Policy</b>	<b>Unit</b>	<b>Taps/year</b>	<b>Total</b>
Recommended Material Cost	\$99.00	1000	(\$99,000.00)
Recommended Labor & Equipment Cost	\$52.00	1000	(\$52,000.00)
Recommended Administration Cost	\$27.00	1000	(\$27,000.00)
Recommended Revenue from Meter Fee	\$200.00	1000	\$200,000.00
<b>Revenue from Recommended Policy</b>			<b>\$ 22,000.00</b>

**Difference Between Present Policy and Recommended Policy** **\$206,000.00**

**Budget Impact using Recommended Policy and Moving Tapping Crew to Fire Hydrant Maintenance and Flushing:**

Revenue Reduction	\$350,000 - \$200,000 =	(\$150,000.00)
Material Cost Reduction	\$235,000 - \$99,000 =	\$136,000.00
Labor & Equipment Cost Reduction	\$272,000 - \$150,000 - \$52,000 =	\$70,000.00
<b>Net Reduction to Budget</b>	<b>\$136,000 + \$70,000 - \$150,000 =</b>	<b>\$56,000.00</b>

Note: \$150,000 labor & equipment cost is for tapping crew who will now be doing fire hydrant maintenance and flushing

**Recommended Policy for New Subdivisions:**

1. Developer installs all new water services per City standards
2. City Public Works inspectors monitor installations
3. City crew installs water meters and meter boxes
4. Builder pays a \$200.00 meter connect fee for each service

**Recommended Policy for Established Subdivisions:**

1. City crew installs water service and meter
2. Owner pays a \$800.00 fee for a long service or a \$500.00 fee for a short service (3/4" meter)

**Intangible Benefits from Recommended Policy:**

1. Tap crew will be freed up to achieve TCEQ mandated monthly flushing of all dead-end mains (TAC 30 Chapter 290.46(l))
2. Tap crew will be freed up to achieve AWWA recommendations for annual fire hydrant maintenance and flow testing (AWWA C502 & M17)
3. High ISO ratings can continue through annual fire hydrant inspection and flow testing
2. If developers install water services prior to laying of curb and asphalt, less likely to have failures behind the curb
3. The cost for the developer to install water services is less than if the City installs them; therefore, cheaper for the home buyer
4. Developers will be responsible when contractors damage services
5. Killeen's water tap policy will mirror neighboring and benchmark cities



# City of Killeen

## Legislation Details

---

**File #:** OR-16-025    **Version:** 1    **Name:** Bartlett Franchise  
**Type:** Ordinance    **Status:** Ordinances  
**File created:** 11/21/2016    **In control:** City Council Workshop  
**On agenda:** 12/6/2016    **Final action:**  
**Title:** Consider an ordinance granting an electric franchise to Bartlett Electric Cooperative, Inc. (1st of 3 Readings)  
**Sponsors:** City Attorney Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Ordinance](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**An ordinance granting an electric franchise to Bartlett Electric Cooperative, Inc.**

### ORIGINATING DEPARTMENT

**City Attorney**

### BACKGROUND INFORMATION

The City Charter states that the City has ownership and right of control and use of streets, highways, alleys, parks, public places, and all other real property. It further provides that the City Council may grant a right of use of City property to others for the purpose of furnishing to the public any general public service through a franchise.

Bartlett Electric Cooperative, Inc. ("Bartlett") serves areas in the southern portions of the City that became part of the City through annexation. Bartlett has not previously had a franchise with the City. Some portions of Bartlett's service area are also served by Oncor.

### DISCUSSION/CONCLUSION

City staff has negotiated with Bartlett representatives to prepare the proposed franchise. The fee received by the City will be four percent (4%) of the gross receipts from the sale of electricity within the City limits, with payments made annually. Bartlett will add these fees to the bills of its customers, similar to the manner used by other franchisees to collect franchise fees. A conservative estimate of the annual fees to be collected is \$20,000.00.

The franchise term is proposed to expire on June 20, 2031, to match the City's other franchises. There is an automatic renewal term of three (3) months if not cancelled sixty (60) days before expiration.

The City Charter requires three (3) readings of a franchise ordinance, and the last reading must be not less than 30 days from the first. The three readings will be December 13, 2017; January 10, 2017; and January 24, 2017. A franchise does not take effect until 60 days after passage. It is proposed that this ordinance be effective March 25, 2017.

### FISCAL IMPACT

As this is a new franchise, staff is unable to provide historical data. According to preliminary estimates, the annual fee paid by Bartlett is anticipated to be approximately \$20,000.00.

### RECOMMENDATION

Recommend the City Council approve the proposed franchise ordinance.

**AN ORDINANCE GRANTING AN ELECTRIC LIGHT, HEAT AND POWER FRANCHISE TO BARTLETT ELECTRIC COOPERATIVE, INC.; PROVIDING FOR A FEE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES**

WHEREAS, Bartlett Electric Cooperative, Inc., a Texas non-profit electric cooperative corporation (“Grantee”), is in the business of supplying electricity for light, heat, power and other purposes, and has applied pursuant to Article XI of the City of Killeen’s Charter, Local Government Code Chapter 282, and Chapter 33 of the Texas Utilities Code for consent of the City of Killeen, Texas (“City”) to make use of its public ways for the purpose of providing such service within the City; and

WHEREAS, it is hereby found and determined by the City Council that it is in the best interests of the City that such consent be granted, subject to the terms and conditions provided herein; and

WHEREAS, the meeting at which this ordinance was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

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

**SECTION 1: *Findings.*** The City Council officially finds and declares that the facts and recitations set forth in the preamble to this ordinance are true and correct.

**SECTION 2: *Grant.*** Subject to the provisions of the City’s Code of Ordinances, as such may be amended from time to time, Grantee is hereby granted the right, privilege and franchise to construct, maintain, and operate in the present and future streets, alleys and public ways (“Public Rights-of-Way”) of the City of Killeen, Texas (including, to the extent allowed by law, any area subsequently annexed into the City during the term of this franchise), electric, light and power lines, with all necessary or desirable appurtenances (including underground conduit poles, wires, transmission lines and other structures and telephone wires for its own use) (the “System”) for the purpose of supplying electricity to the said City, the inhabitants thereof, and persons and corporations beyond the limits thereof, for light, heat, power and other purposes. This franchise does not confer upon Grantee the right, privilege or authority to provide data delivery service, cable television service, or telephone service, or to engage in any other business within the City other than the transmission and distribution of electric power as herein provided.

**SECTION 3: *Term.*** This franchise shall become effective upon the later of its passage and publication pursuant to the City’s Charter, and Grantee’s written acceptance as provided below, and unless sooner terminated as herein provided shall expire on June 30, 2031; provided that, unless either the City or Grantee gives written notice not less than sixty (60) days before the expiration of the term, the franchise shall be automatically renewed for an additional period of three (3) months from such expiration date, and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

**SECTION 4: *Non-Exclusivity.*** This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights and privileges to any other person, firm or corporation, provided that such grant does not unreasonably interfere with the rights granted herein.

## **SECTION 5: *Rights Reserved.***

- A. The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater, voice, video, data and other pipelines, cable, and conduits or other improvements, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, through or under Public Rights-of-Way occupied by Grantee. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, water or wastewater pipes, gas lines, storm sewers, drainage basins, drainage ditches, and the like. Upon request by City, Grantee shall relocate its facilities at Grantee's expense, to the extent provided by Section 37.101(c) of the Texas Utilities Code, or successor or similar legislation, as amended. When Grantee is required by City to remove or relocate its poles, towers, conduits, cables and other facilities to accommodate public right-of-way improvements, and Grantee is eligible under Federal, State, County, City or other local agencies or programs for reimbursement of costs and expenses incurred by Grantee as a result of such removal or relocation and such reimbursement is required to be handled through City, Grantee's costs and expenses shall be included in any application by City for reimbursement, if Grantee submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Grantee of the deadline for Grantee to submit documentation of the costs and expenses of such relocation to City. In the event of a conflict between this Franchise and an ordinance of the City addressing Public Rights-of-Way management, this Franchise shall control.
- B. If Grantee has spare ducts in its underground conduits or space on any of its poles not then necessary in the conduct of its business, it may permit the City to use one such duct in each conduit or reasonable communications space on poles, or both, for the City's police and fire alarm wires, traffic control wire or cable, fiber optic lines connecting City facilities or other similar, appropriate non-commercial, governmental use, and the City shall execute an attachment agreement with Grantee and pay Grantee a fair rental therefore. Upon notice by Grantee that such facilities have or will become necessary in the conduct of its business, the City shall cease its use of such facilities within ninety (90) days of such notice.
- C. If City abandons any public rights-of-way in which Grantee has facilities, such abandonment shall be conditioned on Grantee's right to maintain its use of the former public rights-of-way and on the obligation of the party to whom the public rights-of-way are abandoned to reimburse Grantee for all removal or relocation expenses if Grantee agrees to the removal or relocation of its facilities following abandonment of the public rights-of-way. If the party to whom the public rights-of-way are abandoned requests the Grantee to remove or relocate its facilities and Grantee agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another public right-of-way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.
- D. If the City requires the Grantee to adapt or conform its facilities, or in any manner to alter, relocate or change its property to enable any entity other than the City to use, or use with greater convenience, said public rights-of-way, the Grantee shall not be bound to make such changes until such other entity shall have undertaken, with good and sufficient bond, to reimburse the Grantee for any costs, loss or expense which will be caused by, or arises out of such change, alteration or relocation of Grantee's property or facilities.

- E. Grantee retains all of its lawful authority and rights under the Public Utility Regulatory Act (“PURA”) and any other applicable laws, rules and regulations.

**SECTION 6: *Service Standard.*** Service furnished hereunder to the City and its inhabitants shall be first class in all respects considering all circumstances, and shall be subject to such reasonable rules and regulations as the City may make from time to time. Grantee shall at all times comply with all applicable laws and regulations, and shall at its sole expense maintain all licenses, permits and certifications necessary or appropriate for the exercise of its rights hereunder. However, this Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under PURA, or other state and federal law, rules or regulations. Nothing herein shall be deemed a waiver, release or relinquishment of either party’s right to contest, appeal or file suit with respect to any action or decision of the other party, including ordinances adopted by the City that Grantee believes are contrary to any federal, state or local law, rules or regulations.

**SECTION 7: *Installation and Maintenance.*** All of Grantee’s poles, conduits, structures and other appurtenances shall be erected and maintained in good order and condition, and so as not to unreasonably interfere with traffic over Public Rights-of-Way, or present a danger to life or property. Grantee shall promptly restore any Public Rights-of-Way to at least the same condition as existed prior to any damage caused by the exercise of Grantee’s rights hereunder. Grantee shall obtain a permit from the City Manager or designee in compliance with the City’s Streets, Sidewalks and Miscellaneous Public Places Ordinance Sec. 25-52 prior to installation of any new facilities. If a permit is not issued by the City to Grantee within one (1) week of Grantee’s application for such permit, then the permit shall be deemed granted. The location of all poles, conduits, and other structures shall be subject to approval of the City’s Public Works Director, but not so as to unreasonably interfere with the proper operation of said lines. An approval by such Director, or any other agent of the City, of any part of Grantee’s performance shall not be construed to waive compliance with this franchise or to establish a standard of performance other than required by this franchise or by law. Pursuant to the City’s Streets, Sidewalks and Miscellaneous Public Places Ordinance Sec. 25-52, Grantee shall provide the Public Works Director once each calendar month electronic “as-built” files depicting new infrastructure installed in the City limits or its extraterritorial jurisdiction, and a report giving the location of each utility pole which Grantee has set in the right-of-way of any and all streets and alleys in the City during the preceding calendar month. In addition, each January Grantee shall provide the Public Works Director updated electronic files reflecting Grantee’s current infrastructure location maps. All electronic files shall be in PDF or other format reasonably acceptable to the City.

**SECTION 8: *Tree Pruning.*** Grantee shall have the right and privilege, insofar as the City is able to grant the same, in accordance with National Arborist Association standards, of the pruning of all trees which overhang the Public Rights-of-Way, in such a manner and to such extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its wires, poles and other fixtures and equipment.

**SECTION 9: *Books and Records.*** During the term of this franchise and for a minimum of two years thereafter, Grantee shall keep and maintain comprehensive records, accounts, and financial and operating reports in a manner that will allow the City to verify Grantee’s compliance with the terms of this franchise. The Finance Director shall, upon 15 days’ advance notice, have the right to inspect such records. In the event such Director determines that Grantee has not complied with any term or condition of this franchise, the Director shall have the right to use those records in any manner necessary to resolve Grantee’s noncompliance. If Grantee provides confidential or proprietary information to the City under this or any other provision of this franchise, Grantee shall be solely responsible for identifying such information with markings calculated to bring the City’s attention to the proprietary or confidential nature of the

information. The City agrees to maintain the confidentiality of any non-public information obtained from Grantee so designated to the extent allowed by law. City shall not be liable to Grantee for the release of any information the City is required to release by law, or that the City, after consultation with legal counsel, in good faith believes it is required by law to release. City shall endeavor to: (i) provide notice to Grantee of any request for release of information marked by Grantee as proprietary or confidential prior to releasing the information so as to allow Grantee adequate time to pursue available remedies for protection; and (ii) provide Grantee with a copy of any request the City submits to the Texas Attorney General seeking an opinion on the disclosure of such information.

**SECTION 10: *Franchise Fees.*** In consideration of the privilege and license granted by the City, Grantee agrees to pay and City agrees to accept franchise fees paid on an annual basis. Franchise fees shall be calculated as four percent (4%) of the gross receipts from the sale of electricity within the City limits for the calendar year January to December, in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general and special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements. The franchise fees hereunder shall be payable on or before the thirty first (31<sup>st</sup>) day of January following the year for which payment is made, beginning with the first such date following the Effective Date of this Franchise. However, the first such payment shall be prorated as necessary to reflect only those gross receipts received by the Grantee after the Effective Date of this Franchise. If any payment due date required herein falls on a weekend or bank holiday, payment shall be made on or before the close of business of the first working day after the payment due date. At the time such payment is delivered, Grantee shall file with the City a sworn report containing a detailed accounting of the calculated fee, together with such additional information as the City may reasonably require.

**SECTION 11: *Late Fees; Audit Fees.*** Grantee shall pay a late penalty calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas ("PUC") in accordance with Texas Utilities Code Section 183.003 as amended, for the time period involved on franchise fee payments (or portions thereof) that are not timely received by the City. In addition, if the results of any audit indicate Grantee underpaid the franchise fee by more than five percent (5%), then Grantee shall pay the reasonable costs of the audit.

**SECTION 12: *No Waiver.*** No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this franchise or for the performance of any other obligation hereunder. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded or offset against the next payment due from Grantee. Waiver of the City's rights hereunder may only be effected by a written instrument approved by the City Council. The provisions of this Section will survive termination or expiration of this franchise.

**SECTION 13: *Insurance.*** Upon acceptance of this franchise by Grantee and before Grantee shall have any rights hereunder, Grantee shall file with the City a certificate of insurance evidencing General Liability Insurance which covers claims for bodily injury, property damage and death. Such insurance shall have minimum limits of \$1,000,000 per occurrence and be written by insurance companies authorized to do business in Texas and having a minimum A.M. Best rating of "A" Class "VII." All insurance contracts and certificates of insurance will: (i) name the City as an "additional named insured;" (ii) state that coverage shall not be canceled, nonrenewed or materially changed except after 30 days written notice by certified mail to the City; (iii) waive subrogation against the City, its officers, employees

and elected representatives; and (iv) provide that such insurance is primary insurance with respect to the City, its officers, employees and elected representatives. Grantee shall continuously and without interruption maintain in force the insurance coverage and limits required by this Section.

**SECTION 14: *Release and Indemnity.*** The rights granted by this franchise shall not create any additional liability to the City. **GRANTEE HEREBY RELEASES AND DISCHARGES THE CITY FROM AND FURTHER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, OFFICIALS, LEGAL REPRESENTATIVES, EMPLOYEES, INSURERS AND ASSIGNS (COLLECTIVELY REFERRED TO IN THIS SECTION AS “THE CITY”) FROM ANY AND ALL FINES, DEMANDS, DAMAGES, INJURIES OR CLAIMS AND CAUSES OF ACTION ARISING BY REASON OF OR IN CONNECTION WITH: (i) THE ACTUAL OR ALLEGED ERRORS, INTENTIONAL ACTS, OMISSIONS OR NEGLIGENT ACTS OF GRANTEE (INCLUDING ITS OFFICERS, AGENTS, BONDING COMPANIES, EMPLOYEES AND ANY OTHER PARTY EMPLOYED OR CONTRACTED BY GRANTEE TO PERFORM UNDER THIS FRANCHISE) RELATING TO THIS FRANCHISE; AND (ii) ANY ACTION OR FAILURE TO ACT BY GRANTEE (INCLUDING ITS OFFICERS, AGENTS, BONDING COMPANIES, EMPLOYEES AND ANY OTHER PARTY EMPLOYED OR CONTRACTED BY GRANTEE) TO PERFORM UNDER THIS FRANCHISE IN CONNECTION WITH THE SYSTEM OR THIS FRANCHISE. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE CITY AND GRANTEE, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY OF THE DEFENSES OF THE PARTIES UNDER TEXAS LAW. FURTHER, IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE GRANTEE AND THE CITY, RESPONSIBILITY FOR ALL COSTS OF DEFENSE SHALL BE APPORTIONED BETWEEN THE CITY AND GRANTEE BASED UPON THE COMPARATIVE FAULT OF EACH.** This indemnity clause shall apply to Grantee whether Grantee is immune from liability or not. As to any matters arising under this indemnity provision for which Grantee has agreed to indemnify the City, Grantee shall have the right to select defense counsel, subject to City’s approval, which will not be unreasonably withheld. If Grantee fails to retain counsel within seven (7) business days of City’s written notice that City is invoking its right to indemnification under this franchise, City shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all reasonable defense costs incurred by City, except as provided above as to joint and concurrent negligence or fault. Grantee’s liability under this indemnity clause is separate from its duties under the insurance provisions of this franchise. This section is solely for the benefit of the City and does not create or grant any rights, contractual or otherwise, to any other person or entity. The City and Grantee shall promptly advise each other in writing of any known claim or demand against Grantee or City related to or arising out of the Grantee’s activities in the Public Rights-of-Way. The obligations of this Section will survive the expiration or termination of this franchise.

**SECTION 15: *Default and Remedies.*** The City will give Grantee not less than 30 days’ written notice of any alleged default hereunder, provided that if the nature of the alleged default is such that the giving of such notice is impractical due to a threat of harm to life or property then the City shall give such notice as may be reasonable under the circumstances. If Grantee remains in default beyond any period provided for cure thereof, the City may terminate this franchise unless Grantee has commenced a cure and is diligently pursuing such cure. Termination is final upon the effective date of City Council adoption of an ordinance ratifying the termination. Upon any termination of this franchise, all amounts owed by Grantee to the City shall immediately become due and payable and Grantee’s obligation to pay such sums shall survive the termination of this franchise. Alternatively, the City, at its sole option



and discretion and without waiving such uncured default, may determine to: (i) maintain this franchise in full force and effect and file suit against Grantee for damages, specific performance, injunctive relief, or some combination thereof; (ii) or pursue such other remedies as may be available to the City at law or in equity, or both. The City's rights and remedies herein shall be in addition to, and not in limitation of, any other rights or remedies provided by law, in equity, or by administrative proceeding before the PUC, Federal Energy Regulatory Commission, or respective successor or similar governmental agencies.

**SECTION 16: *Force Majeure.*** Except as may be expressly provided otherwise, Grantee shall not be liable to the City for any failure of performance hereunder due to causes beyond Grantee's control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Grantee shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Grantee shall promptly notify the City of any delay in performance under this Section and such failure's effect on performance required under this franchise.

**SECTION 17: *Successors and Assigns.*** The rights granted by this franchise inure to the benefit of Grantee and any entity controlling, controlled by, or under common control with Grantee. Upon any assignment such related entity assumes all obligations of Grantee hereunder and is bound to the same extent as Grantee hereunder. Grantee shall give City written notice within sixty (60) days of any such assignment. However, this provision is subject to, and nothing contained herein shall be interpreted to prevail over the rights of any lender to Grantee, including, but not limited to, the United States of America, acting through the Rural Utilities Service and/or the National Rural Utilities Cooperative Finance Corporation or their successors, by virtue of 7 U.S.C. §907, or any successor thereto, as amended from time to time.

**SECTION 18: *Entire Franchise; Amendment.*** This ordinance sets forth the entirety of the franchise granted hereby, and no other understandings or agreements exist with regard to such matters. This ordinance supersedes all prior franchises granted to Grantee or its predecessors. This franchise may be amended only by an ordinance duly adopted by the City Council and accepted by Grantee.

**SECTION 19: *Acceptance.*** In order to accept this franchise, Grantee shall file its written acceptance within sixty (60) days after its passage and approval, and if it fails to do so this franchise shall automatically expire without necessity for any further action by the City Council.

PASSED AND APPROVED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
Dianna Barker, City Secretary

\_\_\_\_\_  
Jose L. Segarra, Mayor

\_\_\_\_\_  
Kathryn H. Davis, City Attorney

**Acceptance of Franchise**

To the Honorable Mayor and City Council of the City of Killeen, Texas:

Bartlett Electric Cooperative, Inc., acting by and through the undersigned authorized officer, hereby accepts Ordinance No. \_\_\_\_\_ granting an electric light, heat and power franchise.

Bartlett Electric Cooperative, Inc.

By: \_\_\_\_\_

Bryan Lightfoot,  
General Manager / CEO

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary