



# City of Killeen

## Agenda City Council Workshop

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Tuesday, December 8, 2015

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

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### IMMEDIATELY FOLLOWING REGULAR CITY COUNCIL MEETING

#### Items for Discussion at Workshop

[DS-15-096](#) Discuss Agenda Items and Land Use Cases

[DS-15-097](#) Receive Briefing - Free Mega Clinic

#### Items for Regular City Council Meeting of December 15, 2015

##### Minutes

[MN-15-022](#) Consider minutes of Regular City Council Meeting of December 8, 2015.

*Attachments:* [Minutes](#)

##### Resolutions

[RS-15-098](#) Consider a memorandum/resolution authorizing the City Manager to execute an Advance Funding Agreement with the Texas Department of Transportation (TxDOT) to construct Segment 4 of the Heritage Oaks Hike and Bike Trail.

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

[RS-15-099](#) Consider a memorandum/resolution approving a retail concession lease agreement with Bynemns Ltd.

*Attachments:* [Council Memorandum Lease Agreement](#)

[RS-15-100](#) Consider a memorandum/resolution for JC Communications to install fiber in select city locations utilizing the current Bell County IT interlocal agreement.

*Attachments:* [Council Memorandum Fiber Installation Project](#)

[RS-15-101](#) Consider a memorandum/resolution awarding Bid No. 16-07 for Onion

Road Waterline Improvements Project to Nelson Lewis, Inc.

**Attachments:** [Council Memorandum](#)  
[Bid Recommendation](#)

[RS-15-102](#) Consider a memorandum/resolution authorizing the award of a professional services agreement with Pipeline Analysis, LLC, for the Phase 4 Sewer Line Sanitary Sewer Evaluation Survey.

**Attachments:** [Council Memorandum](#)  
[Pipeline Analysis Proposal](#)

[RS-15-103](#) Consider a memorandum/resolution authorizing a revised contract for the Surface Water Quality Assessment Clean Water Act §319(h) Grant Project.

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

## Public Hearings

[PH-15-059](#) HOLD a public hearing and consider an ordinance requested by LIBSQ II, L.P. (Case #Z15-28) to rezone Lot 10, Block 1, Bellaire Addition Section I, from "R-1" (Single-Family Residential District) to "B-3" (Local Business District). The property is locally known as 908 Jasper Drive, Killeen, Texas.

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

[PH-15-060](#) HOLD a public hearing and consider an ordinance by Abdul Khan (Case #Z15-29) to rezone Lot 1, Block 1, Wassay Addition, from "CD" (Cemetery District) with a Conditional Use Permit (CUP) to "CD" (Cemetery District) with a Conditional Use Permit (CUP) for a retail store. The property is locally known as 10752 S. Fort Hood Street, Killeen, Texas.

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

[PH-15-061](#) HOLD a public hearing and consider an ordinance requested by Steven Swartz and Gerald Nunn (Case #Z15-30) to rezone Lot 1, Block 2, Esposito Addition West from “B-2” (Local Business District) to “R-2” (Two-Family Residential District). The property is locally known as 100 Kings Court, Killeen, Texas.

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

[PH-15-062](#) HOLD a public hearing and consider an ordinance requested by Steven Swartz and Gerald Nunn (Case #Z15-31) to rezone Lot 1, Block 1, Esposito Addition West from “B-2” (Local Retail District) to “R-2” (Two-Family Residential District). The property is locally known as 101 Kings Court, Killeen, Texas.

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

## 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 4, 2015.*

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*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.*

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# City of Killeen

## Legislation Details

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**File #:** DS-15-096    **Version:** 1    **Name:** Discuss Agenda Items and Land Use Cases  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 12/2/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Discuss Agenda Items and Land Use Cases  
**Sponsors:** City Manager Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** DS-15-097    **Version:** 1    **Name:** Receive Briefing - Free Mega Clinic  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 12/2/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Receive Briefing - Free Mega Clinic  
**Sponsors:** City Manager Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** MN-15-022    **Version:** 1    **Name:** Minutes of Regular City Council Meeting of December 8, 2015  
**Type:** Minutes    **Status:** Minutes  
**File created:** 11/30/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Consider minutes of Regular City Council Meeting of December 8, 2015.  
**Sponsors:** City Secretary  
**Indexes:**  
**Code sections:**  
**Attachments:** [Minutes](#)

Date	Ver.	Action By	Action	Result
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**City of Killeen**  
Regular City Council Meeting  
Killeen City Hall  
December 8, 2015 at 5:00 p.m.

Minutes of the December 8, 2015 Regular City Council Meeting  
will be provided in the December 15, 2015 Regular City Council  
Meeting Agenda Packet.



# City of Killeen

## Legislation Details

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**File #:** RS-15-098    **Version:** 1    **Name:** Heritage Oaks Hike and Bike Trail AFA  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/23/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **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 Segment 4 of the Heritage Oaks Hike and Bike Trail.  
**Sponsors:** Public Works Department, Transportation Division  
**Indexes:** Hike & Bike Trail  
**Code sections:**  
**Attachments:** [Council Memorandum Agreement](#)

Date	Ver.	Action By	Action	Result
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## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**CONSIDER A MEMORANDUM/RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) TO CONSTRUCT SEGMENT 4 OF THE HERITAGE OAKS HIKE AND BIKE TRAIL**

### ORIGINATING DEPARTMENT

**Public Works - Transportation Division**

### BACKGROUND INFORMATION

On January 16, 2015, the Texas Department of Transportation (TxDOT), in cooperation with the Federal Highway Administration, issued a 2015 Call for Project nominations for the statewide Transportation Alternative Program (TAP). 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 January 20, 2015, a special Council workshop was held to present the proposed Heritage Oaks Hike and Bike Trail. The City Council indicated a consensus for the allocation of \$1,300,000 for the Heritage Oaks Park project. City Council also authorized staff to enter into negotiation for the design of the proposed hike and bike trail portion of the project. Finally, City Council supported the submission of an application for the TxDOT 2015 TAP Call for Projects.

On April 28, 2015, the City Council authorized the City Manager to submit a TAP application for Segment 4 of the Heritage Oaks Hike and Bike Trail (CCM/R 15-044R). On May 4, 2015, the City of Killeen submitted an application to TxDOT requesting \$2,448,282 for the 2015 TAP Call for Projects. On September 24, 2015, the City of Killeen was awarded \$2,448,281 for Segment 4 of the Heritage Oaks Hike and Bike Trail. The Heritage Oaks Hike and Bike Trail plan ultimately provides for over 6.5 miles of multi-use trail connecting the following: Central Texas Expressway/US 190 in Killeen, TX, Purser Family Park in Harker Heights, TX, the Heritage Oaks park area in Killeen, TX, a Killeen Independent School District (KISD) Elementary School, and Stillhouse Hollow Lake.

### DISCUSSION/CONCLUSION

As proposed, Heritage Oaks Hike and Bike Trail, Segment 4, consists of a 1.5 mile segment of the ultimate multi-use trail and will connect the future residential KISD elementary school location south to US government property in Bell County. The trail construction will provide a total width of 12 foot shared use path. All trail sections will be constructed of concrete with several low water crossings and neighborhood connections, along with appropriate pedestrian ramps, striping, signage, and street crossings. In addition, the following trail amenities will be provided: a trail head, bicycle racks, emergency call boxes, pet waste stations, trash receptacles, gateway signage, seating areas, and trail lighting. The project will also include

multiple pedestrian bridges that will spur neighborhood connections and provide significantly increased access across the creek. This will encourage more children to walk or bike to school without being deterred by travel distances to any of the limited roadway crossings.

By entering into an Advance Funding Agreement (AFA) with TxDOT (attached), 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 15% administrative costs, 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.

### **FISCAL IMPACT**

The total fiscal impact associated with this agreement is \$48,444, of which \$13,242 is due upon the execution of the AFA with the remaining amount being due within 60 days prior to construction bid advertising. Funding is available in the account 348-3490-800.58-80.

### **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 \$13,242 and subsequent payment in the amount of \$35,202 prior to bid advertising to the Texas Department of Transportation to accept the grant funds and move forward with the project.

CSJ: 0909-36-152 Fed. # STP: {enter STP}  
District #: 9 (Waco)  
Code Chart 64#: 22300  
Project: Heritage Oaks Hike and Bike Trail,  
Segment 4  
FHWA CFDA #: 20.205  
Not Research and Development

STATE OF TEXAS §  
COUNTY OF TRAVIS §

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

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

**BACKGROUND**

Local Government prepared and submitted to State a nomination form for consideration under the Transportation Alternatives Program (“**TAP**”) for the project, which is briefly described as Heritage Oaks Hike and Bike Trail, Segment 4 (“**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 metropolitan planning organizations 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 114365 (“**MO**”) dated September 24, 2015 awarding funding for projects in the 2015 TAP Program Call of the State, 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 {select date}, 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. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.
- 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 (“FPAA”) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (“SLOA”) for that phase of work.
  2. The Performance Period for each phase of work ends on the date specified in the FPAA 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 as 43 Tex. Admin. Code Subchapter 11.F.
  - b. The implementation of Project would involve significant deviation from the activities as proposed in the nomination form and approved by the Texas Transportation Commission.
  - 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.

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Segment 4  
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Not Research and Development

- 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**

This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

### **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 a twelve (12) ft. wide shared-use path in the City of Killeen from Killeen ISD's Elementary School to the US Army Corp of Engineers property located in Bell County for a total distance of one and one-half (1.5) miles. The purpose of this TAP project is to provide residents in the area a lighted off-street shared-use path that can offer safer transportation accommodations for children and adults.
- 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, 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 of 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.** 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.

CSJ: 0909-36-152 Fed. # STP: {enter STP}  
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Project: Heritage Oaks Hike and Bike Trail,  
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Not Research and Development

- 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.
- 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. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of Project subject to this Agreement are in compliance with the Texas Accessibility Standards ("TAS") issued by the Texas Department of Licensing and Regulation, under Tex. Gov't Code § 469.052. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) ("ADA").

## 9. 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.

- 9.1. 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.
- 9.2. 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.
- 9.3. 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.

## 10. Construction Responsibilities

- 10.1. 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.
- 10.2. 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.
- 10.3. All contract change order review and approval procedures must be approved by State prior to start of construction.

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Not Research and Development

- 10.4. Upon completion of Project, the party constructing Project will issue and sign a “Notification of Completion” acknowledging Project’s construction completion.
- 10.5. 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.
- 10.6. 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.

## 11. Project Maintenance

- 11.1. 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.
- 11.2. 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.
- 11.3. 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.
- 11.4. 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.



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## 12. Local Project Sources and Uses of Funds

- 12.1. 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. 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.
- 12.2. 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.
- 12.3. 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 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.
- 12.4. 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.
- 12.5. 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.
- 12.6. 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.
- 12.7. 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

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above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State's written notification.

- 12.8.** 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.
- 12.9.** 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.
- 12.10.** 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.
- 12.11.** 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.
- 12.12.** 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.
- 12.13.** State will not pay interest on any funds provided by Local Government.
- 12.14.** 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.
- 12.15.** 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.
- 12.16.** 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.



**13. Notices**

**13.1.** 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	Director of Contract Services Office
City of Killeen	Texas Department of Transportation
101 N. College Street	125 E. 11 <sup>th</sup> Street
Killeen, Texas 76541	Austin, TX 78701-2483

**13.2.** 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.

**14. Legal Construction**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

**15. Responsibilities of the Parties**

Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**16. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

**17. 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.

**18. 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 agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

**19. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**20. Cost Principles**

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

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in 2 CFR Part 200 and with the property management standard established in 2 CFR Part 200.

**22. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to State, Local Government, and, if federally funded, the FHWA, and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the Agreement period and for four years from the date of completion of work defined under this Agreement or until any impending litigation or claims are resolved. Additionally, State, Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**23. Civil Rights Compliance**

Local Government shall comply with the regulations of the U. S. Department of Transportation ("DOT") as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**24. Disadvantaged Business Enterprise Program Requirements**

- 24.1.** The parties shall comply with the Disadvantaged Business Enterprise ("DBE") Program requirements established in 49 CFR Part 26.
- 24.2.** Local Government shall adopt, in its totality, State's federally approved DBE program.
- 24.3.** 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.
- 24.4.** 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).

**24.5.** 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.).

**24.6.** 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.*

## **25. 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.

## **26. Lobbying Certification**

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

- 26.1.** 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.
- 26.2.** 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.

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**26.3.** 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.

## **27. Insurance**

**27.1.** 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.

**27.2.** 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.

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

**28.1.** 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>.

**28.2.** 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.

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**29. Single Audit Report**

- 29.1. 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.
- 29.2. If threshold expenditures are met during Local Government's fiscal year, 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>. The expenditure threshold for fiscal years beginning prior to December 31, 2014 is \$500,000; the expenditure threshold for fiscal years beginning on or after December 31, 2014 is \$750,000.
- 29.3. 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 \_\_\_\_\_.*
- 29.4. 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.

**30. Signatory Warranty**

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: \_\_\_\_\_

Glenn Morrison  
City Manager

**THE STATE OF TEXAS**

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

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

Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation

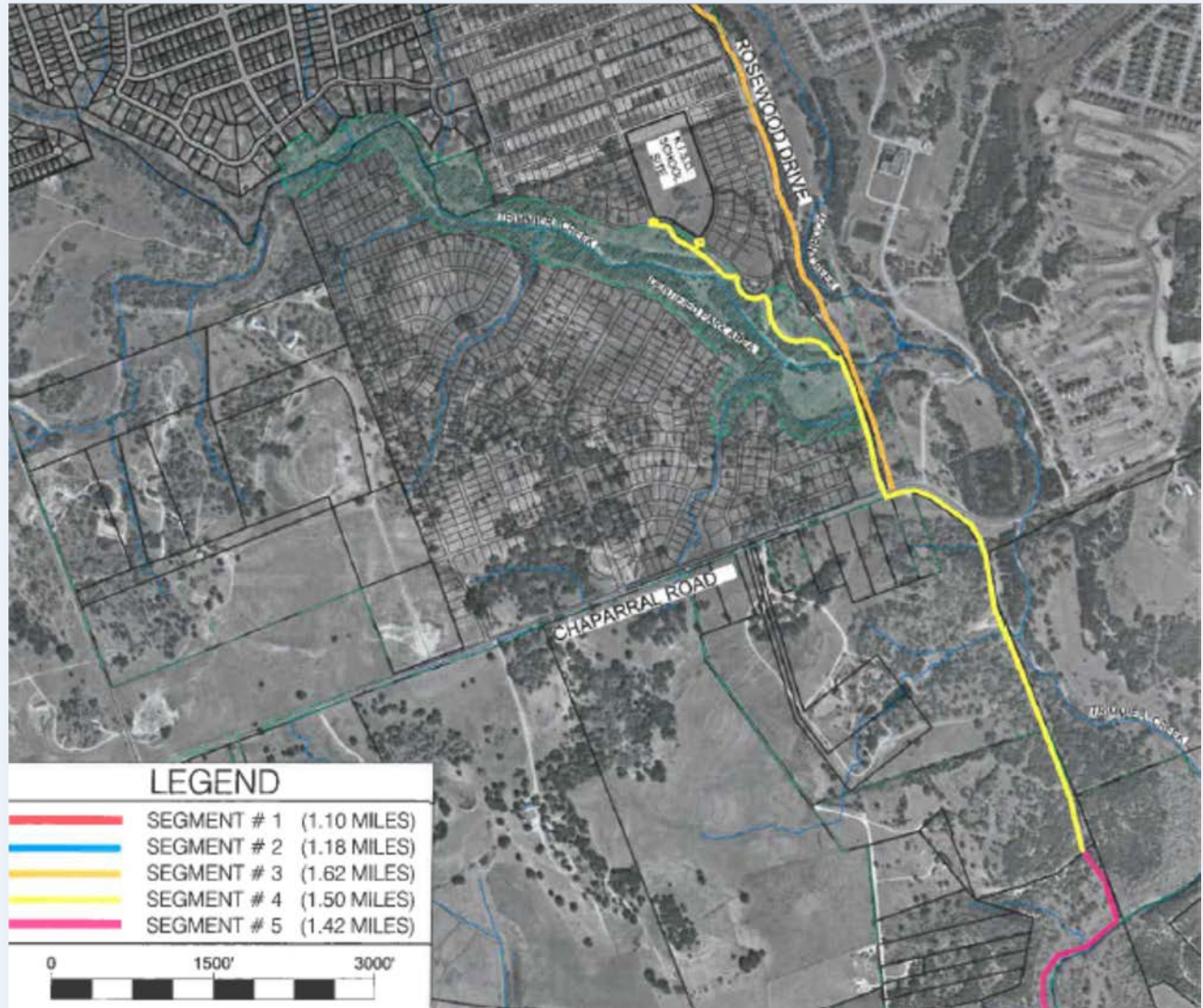
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**ATTACHMENT A**  
**RESOLUTION OF LOCAL GOVERNMENT**



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## ATTACHMENT B PROJECT LOCATION MAP



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

LG Performs PE Work or Hires Consultant / LG Lets Project to Construction

<b>Work Performed by Local Government ("LG")</b>							
<b>Description of Project Costs to be Incurred</b>	<b>Total Project Cost Estimate</b>	<b>Federal Participation</b> <small>Includes additional percentage for TDC apportionment where applicable</small>		<b>State Participation</b>		<b>Local Government (LG) Participation</b> <small>Includes any EDC reduction where applicable</small>	
		<b>%</b>	<b>Cost</b>	<b>%</b>	<b>Cost</b>	<b>%</b>	<b>Cost</b>
Planning/Maps/Education/Non-CST	\$0	0%	\$0	0%	\$0	100%	\$0
Preliminary Engineering	\$750,000	0%	\$0	0%	\$0	100%	\$750,000
Environmental Cost	\$15,000	0%	\$0	0%	\$0	100%	\$15,000
Right of Way	\$1	0%	\$0	0%	\$0	100%	\$1
Utilities	\$1	0%	\$0	0%	\$0	100%	\$1
Construction	\$3,281,234	71%	\$2,329,676	0%	\$0	29%	\$951,558
In-kind donation Value <small>(Add to Total Project Cost - 20% Maximum value)</small>	\$0	N/A	\$0	N/A	\$0	N/A	\$0
<b>Work by LG Subtotal</b>	<b>\$4,046,236</b>		<b>\$2,329,676</b>		<b>\$0</b>		<b>\$1,716,560</b>
<b>Work Performed by the State (Local Participation paid up front by LG to TxDOT)</b>							
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>



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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 (Est. @ 1%) <sup>1</sup>	\$40,462	71%	\$28,728	0%	\$0	29%	\$11,734
Environmental Cost <sup>1</sup>	\$5,000	71%	\$3,550	0%	\$0	29%	\$1,450
Right of Way <sup>3</sup>	\$100	71%	\$71	0%	\$0	29%	\$29
Utilities <sup>2</sup>	\$100	71%	\$71	0%	\$0	29%	\$29
Construction (Est. @ 3%) <sup>2</sup>	\$121,387	71%	\$86,185	0%	\$0	29%	\$35,202
Direct State Cost Subtotal	\$167,049	71%	\$118,605	0%	\$0	29%	\$48,444
Indirect State Costs (Est. @ 5%) <sup>2</sup>	\$202,312	0%	\$0	100%	\$202,312	0%	\$0
<b>TOTAL PARTICIPATION</b>	<b>\$4,415,597</b>		<b>\$2,448,281</b>		<b>\$202,312</b>		<b>\$1,765,004</b>
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 **\$1,765,004**, plus 100% of overruns.

Total estimated payment by Local Government to State is **\$48,444**.

<sup>1</sup>First payment of **\$13,242** is due to State within 30 days from execution of the AFA contract.

<sup>2</sup>Second payment of **\$35,202** 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 **\$2,448,281**.



# City of Killeen

## Legislation Details

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**File #:** RS-15-099    **Version:** 1    **Name:** Lease Agreement with Bynemns Ltd.  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/25/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Consider a memorandum/resolution approving a retail concession lease agreement with Bynemns Ltd.  
**Sponsors:** Aviation Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Lease Agreement](#)

Date	Ver.	Action By	Action	Result
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## CITY COUNCIL MEMORANDUM

<b>AGENDA ITEM</b>	<b>Bynemns Ltd. Retail Concession Lease Agreement</b>
<b>ORIGINATING DEPARTMENT</b>	<b>Aviation</b>

### **BACKGROUND INFORMATION**

Representatives of Bynemns Ltd, Killeen, TX have approached staff with a request to operate a retail sales business in the terminal building at Killeen-Fort Hood Regional Airport offering discount club memberships with various retail businesses in the central Texas area.

### **DISCUSSION/CONCLUSION**

Staff has negotiated a concession lease agreement with Bynemns Ltd., d/b/a Bynemns Independent Solutions, for the operation of a retail discount membership business at the Killeen-Fort Hood Regional Airport with a term of January 1, 2016 through September 30, 2016. The tenant will have the option to extend the term on a month-to-month basis for up to twelve additional months. Tenant will pay minimum basic rents and fees of \$579.31 plus 10% of monthly gross revenues over \$2,400.

### **FISCAL IMPACT**

This agreement is expected to generate approximately \$7,000 in annual revenue to the airport enterprise fund account #525-0000-324.05-00 (Airport Rent & Concession).

### **RECOMMENDATION**

City Council approve the attached concession lease agreement with Bynemns Ltd. to be effective January 1, 2016, and to authorize the City Manager to execute same.

**STATE OF TEXAS**

**COUNTY OF BELL**

**RETAIL CONCESSION LEASE AGREEMENT**

This lease is made and entered into by and between the City of Killeen, a municipal corporation of Bell County, Texas, hereinafter referred to as "Airport"; and Bynemns Ltd. Co, d.b.a. Bynemns Independent Solutions, hereinafter referred to as "Tenant".

**ARTICLE I**

**Description of Leased Premises**

The Airport, in consideration of the rents and covenants herein to be performed by the Tenant, does hereby lease and let unto Tenant the following described property, hereinafter referred to as "Leased Premises", located in the Ted C. Connell Terminal Building at the Killeen-Fort Hood Regional Airport, 8101 S. Clear Creek Rd, Killeen, Texas 76549:

1. Room A135, 146 sq. ft., as depicted in Exhibit "A".
2. Room A136, 178 sq. ft., as depicted in Exhibit "A".

**ARTICLE II**

**Description of Concession Granted**

1. The Airport grants Tenant the right to engage in the activities of retail sales of discount club memberships and the administration of the company's executive offices and training center. This concession agreement does not allow the sale of drinks, food items, over-the-counter medicines, newspapers, books and magazines, maps, clothing, jewelry, luggage, toilet articles, film, tobacco products or the use of vending or game machines for the sale of services, products, or entertainment without the prior written approval of the Airport's Executive Director of Aviation.
2. Tenant agrees and understands that the concession granted by this agreement is not an exclusive concession. The Airport shall have the right to deal with and perfect arrangements with any other individual, company, or corporation for engaging in like activity on the airport premises subject to the same conditions, prerequisites, and terms binding Tenant herein.

**ARTICLE III**

**Obligations of the Airport**

1. The Airport shall maintain and repair the non-leased portion of the areas surrounding the Leased Premises.

2. The Airport shall provide adequate access to the Leased Premises so long as Airport, Transportation Security Administration, Federal Aviation Administration, U.S. Army and other pertinent regulations are not violated. This access includes the terminal ingress/egress routes during times when the terminal building is open to the public.
3. The Airport will keep the terminal building open to the public at least one hour before the first scheduled flight of the day until at least 30 minutes after the arrival of the last scheduled flight of the day.
4. Parking will be provided for Tenant's employees in an area designated by the Airport. Parking will be at no additional cost to the employee or the tenant while the employee is on business of the tenant as long as the employee has registered his/her vehicle with the Airport's parking lot management company and possesses the electronic access media issued and controlled by that company. This provision applies only to employees of the tenant whose duty assignment is at the Killeen-Fort Hood Regional Airport. Senior company officials and other employees who have occasional official duties at the airport may obtain a daily pass from the airport administration office to accommodate their requirements.
5. If the Leased Premises are destroyed, damaged, or otherwise made unavailable by any means which are not fully the fault of the Tenant due to fire, flood, explosion, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority, to the extent that the Tenant will be unable to conduct any substantial portion/s of the business contemplated by this lease, either party may cancel this lease and the Tenant will stand charged only with the rent specified in ARTICLE VI up to the time of such damage, destruction, or other non-availability. If the repair of the damage can be reasonably accomplished by the Airport in less than ninety (90) days, the Airport shall make such repairs with the rental to be abated in proportion to the space usable to the Tenant during the repair period. All repair work shall be done in a good and workmanlike manner, which is in concert with the City of Killeen requirements.
6. The Airport shall provide electricity, heating and air conditioning in all leased areas of the terminal building. The Airport will provide general lighting over the leased premises and maintain said lighting. Light/sign fixtures used solely for premise enhancement/ advertisement shall be maintained by the Tenant.
7. After reasonable notice to Tenant (when practical), the Airport reserves the right to temporarily close the airport or any other facilities thereon for maintenance, improvements, or for the safety of the public only for the period of time reasonable necessary.

**ARTICLE IV**  
**Obligations of the Tenant**

1. Tenant agrees that it will not assign this lease or sublet the Leased Premises or any part thereof, without prior written consent of the Killeen City Manager.
2. Tenant shall be responsible for disposal of its own trash accumulations by depositing it in the nearest exterior trash dumpster on a daily basis. Trash receptacles inside the terminal building are for customer use only. Tenant also agrees to participate in the City of Killeen's recycling program by depositing all recyclable products in the appropriate outside recycling container in lieu of the trash dumpster.
3. Tenant agrees that it shall not engage in any business or activity within the confines of the Killeen-Fort Hood Regional Airport other than those permitted herein or such other activities as may be expressly authorized in writing by the Airport.
4. Tenant shall operate the Leased Premises without cost to the City of Killeen.
5. Tenant agrees to keep clean, maintain and repair all Tenant owned furnishings utilized in the public areas to include cabinets, display cases, signage, etc.
6. Tenant agrees that its employees, while performing the duties associated with the concession granted in ARTICLE II, will be neatly groomed and attired, and will conduct themselves in a courteous, professional, and businesslike manner while providing service to the public.
7. Tenant shall provide and maintain an adequate staff of employees with skills, licenses, and certificates appropriate to the activities conducted.
8. Upon vacating, Tenant shall leave the Leased Premises in as good condition and substantially as they were before removal; ordinary wear and tear excepted. Tenant shall make no structural changes, additions or improvements to the Leased Premises without prior written consent of the Executive Director of Aviation, and appropriate building permits obtained from the City of Killeen Building and Developments Services Department. Any such structural changes / improvements become property of the Airport, unless otherwise agreed upon in writing before such work begins. The foregoing notwithstanding, Tenant shall not be liable for damage caused by other tenants and other users, or their employees, representatives or invitees, and shall be liable only for its proportionate share of wear and tear in the leased premises.
9. Tenant's employees shall observe and comply with all posted restrictions on parking or standing vehicles, speed limits, and traffic rules on the airport properties.
10. Tenant shall, not later than ten (10) days after the end of each month, provide a report reflecting the following for the completed month: (a) a Gross Receipts statement reporting the amount of total gross revenue received; (b) a listing of the

amount of excluded receipts in accordance with Article VI, paragraph 2.b; and (c) amounts previously paid to the Airport or included with the report for that month. Such report will be signed by the Tenant's designated manager or other representative designated by the Tenant.

11. Tenant, or its designated station manager, is responsible to notify the manager of the Airport's parking lot management company with the names of its employees who will be working at the airport to facilitate the registration of employee vehicles and issuance of applicable parking lot access/exit media.
12. Tenant may advertise only within the leased premises of the terminal building. Installation and operation of appropriate identifying signs will be allowed within the leased premises, subject to the approval of the Executive Director of Aviation, or his designated representative. The Tenant may coordinate with the Airport's advertisement concession, as appropriate, for advertising/promotional material in other areas of the building.
13. As a minimum, Tenant shall provide the service described in Article II from at least 8:00 AM until 5:00 PM each day during the term of this lease agreement. The Executive Director of Aviation may approve exceptions to these minimum operation hours for Federal holidays or other reasonable occasions. Tenant may remain open to the public for the duration of the time the terminal building is open to the public (Art. III, Par. 3.) and may extend its operating hours to meet public demand. Normal hours of operation will be posted on the leased premises.
14. Tenant is responsible to obtain any permits or licenses that may be required for its operation and will meet all code and regulatory requirements that apply to its operation in the Leased Premises.
15. Tenant is responsible to ensure that every employee that has regular duty at the airport is submitted for airport electronic access cards appropriate for that employee and that all employee data remains current. The tenant will notify the appropriate representative of the Airport by telephone or other appropriate means as soon as possible following the termination of any employee, but will do so in writing no later than the end of the next working day after the employee's last day of employment at the airport. The Tenant is further responsible for returning the employee's electronic access cards no later than three working days after the last day of employment at the airport. Any lost electronic access cards must be reported in writing to the airport's representative as soon as possible, but no later than the end of the next working day from the date of the loss. Tenant is responsible for any charges or damages incurred by the use of electronic access cards issued to its employees unless more than 24 hours have passed from the time the Tenant provides written notification to the Airport's representative to cancel any access these electronic access cards allow. A monthly fee will be charged for active employee electronic access cards and for lost cards as indicated in Exhibit "B".

**ARTICLE V**  
**Terms of Agreement**

1. The Airport hereby grants unto the said Tenant for a period of nine months, beginning January 1, 2016 and ending September 30, 2016, the right to operate a discount club membership concession, as previously described, at the Killeen-Fort Hood Regional Airport.
2. If Tenant is not in default of the terms hereunder, Tenant will have the option to extend this agreement on a month-to-month basis under the same terms for up to twelve (12) additional months, providing it gives notice of its option at least thirty (30) days prior to the termination date hereof, unless the Airport has previously provided written notice to Tenant that the agreement will not be extended.
3. At the expiration of the term of this lease, the Tenant will immediately vacate the leased premises unless the Tenant has provided notice of its option to extend as provided for in Paragraph 2 above.
4. As consideration for this lease, Tenant promises to pay to the Airport, at the office of the Executive Director of Aviation in Killeen, Bell County, Texas, the Basic Rent and Fees as well as sundry charges described in ARTICLE VI and Exhibit "B". The basic rents prescribed in ARTICLE VI, Par. 1, are payable without demand in monthly installments in advance on or before first day of each and every month during the term of this lease. Other sundry charges and fees will be due and payable as prescribed in ARTICLE VI, Paragraph 2, 3, 4, and Exhibit "B".

**ARTICLE VI**  
**Rentals, Fees, and Accounting Records**

1. Tenant shall pay to the Airport, \$579.31 per month as described in Exhibit "B" as Basic Rent. Basic Rent is payable without demand in monthly installments in advance on or before the first day of each and every month during the term of this lease.
2. Tenant shall pay a retail concession fee to the Airport of ten percent (10%) of its monthly gross receipts collected in excess of \$2,400.00. This payment shall be made no later than the first day of the second month following the month of its collection. (Example: Tenant has previously paid \$579.31 for January rent no later than January 1 per Paragraph 1 above. Tenant collects \$3,500.00 in gross receipts from its customers during the month of January. Tenant must pay Airport an additional \$110.00 no later than March 1. ( $\$3,500.00 - \$2,400.00 = \$1,100.00$  10% of  $\$1,100.00 = \$110.00$ . Total Basic Rent and fees for January equal \$689.31, \$579.31 paid in January and \$110.00 paid in March.) )
  - a. "Gross Receipts" shall include all receipts, whether by coin or currency, on account, by check or credit card, collected or uncollected, whether conducted on or off airport, derived by the Tenant as a result of its operation of the concession



rights herein granted, without exclusion, except those expressly permitted in paragraph 2.b. below. Gross receipts shall include the total amount actually charged to the customer by the Tenant for, or in connection with, products sold, or delivered from the Tenant's Leased Premises at the Killeen-Fort Hood Regional Airport, regardless of where or by whom the payment is made.

- b. Gross Receipts shall exclude receipts from the following:
- (1) Federal, State, City or municipal sales taxes now in effect or hereinafter levied which are separately stated and collected from customers of the Tenant.
  - (2) The value of any goods exchanged or transferred from or to other business locations of the Tenant, where such exchanges or transfers are not made for the purpose of avoiding a sale or service fee by the Tenant that would otherwise be made from or at the Killeen-Fort Hood Regional Airport.
  - (3) Refunds to customers. Receipts with respect to any refunds made to Tenant's customers, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit, providing the refund and reason therefore is documented along with the name and address of the person receiving the refund.
  - (4) Documented discounts and rebates to customers.
3. Tenant shall pay the sundry charges and other variable fees based upon activity to the Airport as described in Exhibit "B", no later than thirty (30) days after the invoice for that period is provided to the Tenant. For purposes of this provision, Tenant may designate either it's local representative or a corporate office to receive the official copy of this invoice.
4. A late fee of five percent (5%) of the total amount due will be assessed to the Tenant if payments prescribed in Paragraphs 1, 2, or 3, above are not received in the administrative offices of the Director of Aviation by the dates prescribed therein. An additional five percent (5%) of the outstanding amount will be assessed each month that all or a portion of the Tenant's obligations remain unpaid. Obligations unpaid more than sixty days after the prescribed due dates will be cause of considering the payment(s) in default of the lease agreement.
5. If Tenant defaults in the payment of rent, fees, or any part thereof, and such default shall continue for thirty (30) days after written notice by the City of Killeen to the Tenant to pay, the Airport shall, without further notice, have the right to re-enter the Leased Premises to remove the Tenant and all persons holding over it and to terminate this lease and repossess the premises. Such repossession shall not constitute a waiver by the Airport for any other rights it may have to enforce

collection of rents for the balance of the term or to recover damages from the Tenant for default in payment of rents.

6. Tenant shall maintain a performance bond, cash deposit, or other financial assurance acceptable to the Airport in the amount of \$600.00 for the term of this retail concession lease agreement. Tenant shall forfeit said assurance if it fails to perform all the terms and conditions of this agreement.

## **ARTICLE VII**

### **Rights of Inspection**

1. The Airport reserves the right to inspect the Leased Premises, equipment, and services at any reasonable time and with reasonable notice for the purpose of assuring compliance with this lease, public safety or welfare, or the Airport's general rights and duties as lessor. The Airport also reserves the right to inspect and audit any records necessary to verify the correct reporting of data used to compute fees described in Exhibit "B".
2. Upon at least fifteen (15) days written notice, Airport auditors or other authorized representatives shall, at any time during the term of this lease agreement, within one year after the end of this agreement, or within one year of any extension to it, have access to, and the right to audit, examine, or reproduce any and all records of the Tenant related to the most recent twelve (12) months performance under this lease agreement. Tenant shall retain all records associated with transactions at the Killeen-Fort Hood Regional Airport within the Leased Premises or at another a mutually acceptable location in Killeen, Texas for the longer of the most recent twelve (12) months or until completion of any pending audit or litigation action between the parties.
3. If the audit reveals that additional fees are due the Airport, Tenant shall, upon written notice by the Airport pay such additional fees, plus interest and penalties, within ten (10) days of written notice. Interest will be calculated at one and one-half percent (1 ½%) per month for each month after the day the additional amount should have originally been paid. If the audit reveals an underpayment of more than five percent (5%), the penalty will be twenty percent (20%) of the total of the additional fees due (not including interest). If the audit reveals that the Tenant has overpaid the fees due the Airport, such overpayment shall be credited to the Tenant's account, or refunded if the term of the lease agreement has expired and all other obligations by the Tenant have been satisfied. If the audit reveals an underpayment of more than five percent (5%), the cost of the audit shall be borne by the Tenant.
4. In addition to the interest and penalty payments as stated in Paragraph 3 above, any deliberate attempts to misrepresent gross receipt amounts, attempts to divert airport earned revenue to an off-airport site will be cause for default of the lease agreement.

**ARTICLE VIII**  
**Non-Discrimination Covenants**

1. The Tenant for itself, its personal and legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agrees as a covenant running with the land that:
  - a. No persons on the grounds of race, color, religion, sex, age, disability, or national origin shall be unlawfully excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities and the privileges provided herein.
  - b. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, age, disability, or national origin shall be unlawfully excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
  - c. That the Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Department of Transportation, Subtitle A, Office of the Secretary, Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
2. Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability, or sex be unlawfully excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Tenant assures that no person shall be unlawfully excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. The Tenant assures that it will require that its covered suborganizations provide assurances to the Airport that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required, by 14 CFR Part 152, Subpart E, to the same effect.
3. That in the event of breach of any of the preceding nondiscrimination covenants, the Airport shall have the right to terminate this lease and the privileges herein, and hold the same as if said lease had never been made or issued.
4. Tenant in the conduct of its authorized business activities on said Leased Premises and on said Airport shall furnish good, prompt, and efficient service adequate to meet the demands for its services at the airport and shall furnish such services on a fair, equal, and non-discriminatory price for each service.
5. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Tenant agrees that it will not discriminate against any business owner because of the owner's race, color,

national origin, or sex in connection with the award or performance of any concession agreement, management contract, purchase or lease agreement, or other agreement covered by CFR Part 23.

6. Tenant agrees to include the statement in Paragraph 5 above in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those business to similarly include the statements in further agreements.

**ARTICLE IX**  
**Indemnification and Insurance**

1. Without limiting Tenant's obligation to indemnify the Airport, Tenant shall provide, pay for, and maintain in full force at all times during the term of the agreement insurance coverage from an insurance carrier admitted to do business in the State of Texas that has at least an "A" rating with AM Best Company in the types and amounts as listed below:

TYPE	MINIMUM AMOUNTS
WORKERS COMPENSATION	Statutory
COMMERCIAL GENERAL LIABILITY	
Each Occurrence	\$1,000,000
Damage to rented premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$1,000,000
Products-Comp/Op Agg	\$1,000,000

The "City of Killeen" shall be named as additional insured and shall be furnished with Certificate of Insurance coverage in the above minimum amounts with the signed lease and at any time during the lease period that the Tenant may change or extend coverage. Current period proof of coverage must be on file with the Airport at all times.

The Airport and the Tenant shall be liable for their own acts of negligence, and each agrees to indemnify the other to the fullest extent allowed by law for any losses, damages, costs or expenses, including attorney fees and litigation expenses, paid or sustained by reason of the sole negligence of the indemnifying party.

2. The Tenant shall hold the Executive Director of Aviation and all other Department of Aviation personnel, and the officers, elected officials and employees of the city harmless from and against all suits, claims, demands, damages, actions, and/or causes of action of any kind or nature in any way arising out of, or resulting from its tenancy and activities, and shall pay all expenses in defending any such claims against the City. Similarly, the City shall hold Tenant harmless from and against all suits, claims, demands, damages, actions, and/or causes of action of any kind or nature in any way arising out of the City's activities under this lease, and shall pay

all expenses in defending any such claims against the Tenant. The indemnification provided for in this agreement shall not apply to the extent of the indemnified party's gross negligence or willful misconduct.

3. The Tenant shall be solely liable and responsible for civil penalties imposed upon the Airport as a result of negligent acts and/or violations of Federal, State or Local Regulations or laws by the Tenant, especially when the Airport has made good faith efforts to establish rules and procedures for compliance with such regulations. Similarly, the City shall be solely liable and responsible for civil penalties imposed upon the Tenant as a result of negligent acts and/or violations of Federal, State or Local Regulations or laws by the City which do not result from any violation of said regulations by the Tenant.

## **ARTICLE X**

### **Events of Default and Remedies Upon Default**

1. "Event of Default" means the occurrence of any one or more of the following events as they may relate to such lease: (a) Tenant fails to make any Rent payment (or any other payment) as it becomes due in accordance with the terms of this agreement, and any such failure continues for thirty (30) days after written notice by the Airport to the Tenant to pay; (b) Lessee fails to perform or observe any of its obligations under this agreement, and such failure is not cured within thirty (30) days after receipt of written notice by Airport; (c) any statement, representation or warranty made by Tenant in the agreement or in any writing delivered by Tenant pursuant thereto or in connection therewith proves at any time to be false, misleading or erroneous in any material respect as of the time when made; (d) Tenant applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Tenant or of all or a substantial part of its assets, or a petition for relief is filed by Tenant under any federal or state bankruptcy, insolvency or similar law, or a petition in a proceeding under any federal or state bankruptcy, insolvency or similar law is filed against Lessee and is not dismissed within sixty (60) days thereafter.
2. If any Event of Default occurs, then Airport may, at its option, exercise any one or more of the following remedies:
  - (a) Airport may terminate, cancel or rescind this agreement;
  - (b) Airport may exercise any other right, remedy or privilege which may be available to Airport under applicable law or, by appropriate court action at law or in equity, Airport may enforce any of Tenant's obligations under this agreement;
  - (c) Airport may require Tenant to pay (and Tenant agrees that it shall pay) all out-of-pocket costs and expenses incurred by Airport as a result (directly or indirectly) of the Event of Default and/or of Tenant's actions under this section, including, without limitation, any attorney fees and expenses and

any costs related to the repossession, repair, reconditioning or disposition of the leased premises and any equipment associated with such agreement;

- (d) Airport may re-enter the Leased Premises to remove the Tenant and all persons holding over it and to terminate this lease and repossess the premises. Such repossession shall not constitute a waiver by the Airport for any other rights it may have to enforce collection of rents for the balance of the term or to recover damages from the Tenant for default in payment of rents.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Airport. Airport's exercise of one or more remedies shall not preclude its exercise of any other remedy. No delay or failure on the part of Airport to exercise any remedy under any agreement shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

## **ARTICLE XI**

### **General Provisions**

1. Neither the failure of the Airport to strictly enforce all of the terms of this lease nor the acceptance of rent by the Airport after any breach by the Tenant nor any delay on the part of the City to strictly enforce the provisions hereof shall operate or be deemed a waiver of any rights or remedies accruing to the Airport by reasons of any subsequent breach. In any legal proceedings under this lease, the successful party shall be reimbursed by the other party for costs, expenses and reasonable attorney's fees, which shall be incurred in such proceedings.
2. Notices to the Airport shall be sufficient if sent by registered mail, postage paid, addressed to the Director of Aviation, Killeen-Fort Hood Regional Airport, 8101 S. Clear Creek Rd, Box C, Killeen, Texas 76549, and notices to the Tenant shall be sufficient if sent by registered mail, postage paid, addressed to Bynemns Ltd. Co., 2100 S WS Young Dr., Killeen, TX 76543. The parties may designate other addresses from time to time in writing.
3. This lease is made upon the express condition that if Tenant fails to keep and perform any of the covenants or agreements contained in this indenture, then this lease shall become void at the option of the City provided, the City shall first give the Tenant at least thirty (30) days written notice of intention to forfeit this lease, and shall set forth therein the specific breach of lease and of City of Killeen's intention to re-enter the Leased Premises and declare this lease forfeited, if such breach be continued. Such notice shall be served in the manner heretofore provided and after the expiration of said thirty (30) days notice this lease shall be void, provided the Tenant is then in default and the City shall then be entitled to the possession of the Leased Premises.

4. In the event of the appointment of a Trustee due to a voluntary or involuntary bankruptcy on the part of Tenant, or the appointment of a receiver for the Tenant, or a voluntary assignment for creditors by the Tenant, or if this lease shall, by operation of law or otherwise, devolve upon or pass to a person or corporation other than the Tenant, then in no case shall the Leased Premises be used for any purpose other than those contained in Article II, herein. However, Lessor retains the right to consider such action to be a default under Article X, Par. 1.
5. The Airport reserves the right to further develop or improve the airport as it sees fit, regardless of the desires or views of Tenant and without interference or hindrance by Tenant; however, all developments and improvements of the airport will be coordinated with Tenant.
6. This lease agreement shall be subordinate to the current or future reasonable airport rules, regulations and standards, and City Ordinances, as well as all applicable State and Federal regulations and laws. It is herein agreed between the Airport and the Tenant that the Airport Rules and Regulations now in effect and hereafter adopted or amended by the City of Killeen shall not be altered or impaired in any respect by this lease agreement, but said rules and regulations shall remain in effect and be applicable to the Tenant during the term of this lease.

It is expressly understood and agreed that this lease is subject to and subordinate to and controlled by provisions, stipulations, covenants, and agreements contained in those certain contracts, agreements, resolutions, and actions of the City of Killeen, Texas, constituting agreements between the City and the United States of America and its agents including, but not limited to, the United States Army, the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), and all regulations now and hereafter imposed upon the City and that the Airport shall not be liable to Tenant on account of any of the foregoing matters and all of such contracts, agreements, resolutions, laws, and regulations are incorporated herein by reference, and if any provision of this lease is determined to be at variance with same, such provision is unilaterally reformable at the Airport's option.

7. The Tenant, its successors, and assigns will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the airport, or otherwise constitute an airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust, or glaring or misleading lights.
8. Airport warrants and represents that it has the right to Lease the Premises, and covenants and agrees that while performing its obligations hereunder, Tenant shall enjoy, and Airport will defend and uphold its right to quiet and peaceful possession of the Premises, and all rights and privileges granted herein.
9. This agreement is governed by the laws of the State of Texas, and venue shall be in Bell County.
10. In addition to any rights of termination provided elsewhere, Tenant shall have the right to terminate this Retail Concession Lease Agreement between the fourth (4<sup>th</sup>)

and seventh (7<sup>th</sup>) month of the initial term of the agreement upon the giving of at least forty five (45) days advanced written notice to the Airport. Tenant will forfeit the financial assurance provided for in Article VI, Par. 6, if it terminates according to this provision.

IN WITNESS WHEREOF, the parties have executed this lease in duplicate on this \_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

CITY OF KILLEEN:

\_\_\_\_\_  
Dianna Barker  
City Secretary

\_\_\_\_\_  
Glenn Morrison *JL*  
City Manager

ATTEST:

BYNEMNS LTD CO.  
d/b/a Bynemns Independent Solutions

\_\_\_\_\_

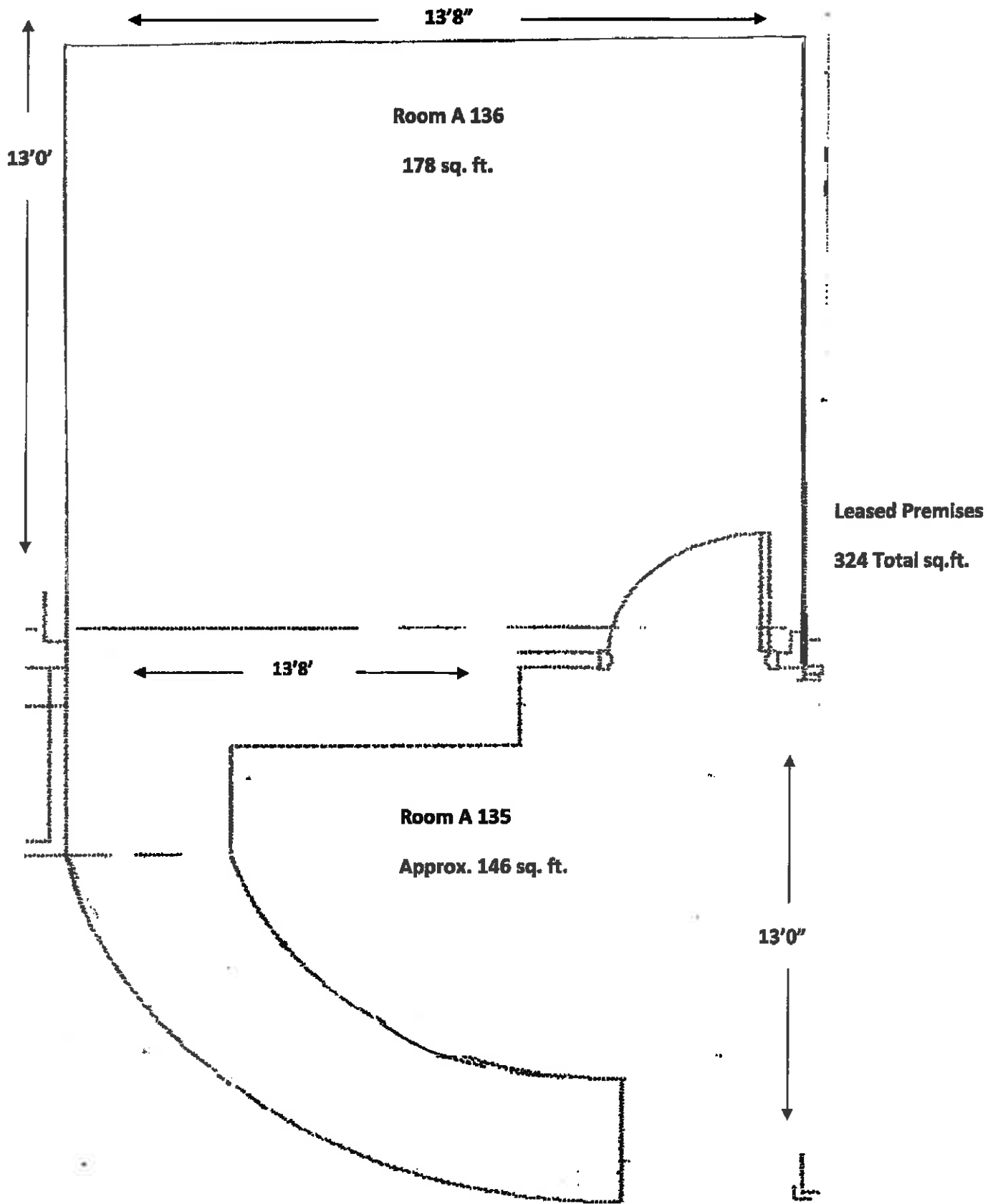
\_\_\_\_\_  
Anthony L. Johnson  
Sales & Marketing Director

BynemnsLtd



**Killen-Fort Hood Regional Airport - Site Plan**

**1<sup>st</sup> Floor – Ted C. Connell Terminal Building**



**Exhibit A**

**City of Killeen  
and  
Bynemns Ltd. Co., d.b.a. Bynemns Independent Solutions**

**Rents and Fees Schedule**

**BASIC RENT and FEES**

Room A135 (counter area) 178 sq. ft. @ \$1.788 per sq. ft. per month =	<b>\$318.26</b>
Room A136 (office) 146 sq. ft. @ \$1.788 per sq. ft. per month =	<b>\$261.05</b>
Additional Retail Concession Fees Monthly Gross Receipts of:	
Less than \$2,400.00	None
Over \$2,400.00	10% of gross revenue
<b>TOTAL MINIMUM RENT AND FEES</b>	<b>\$579.31 per month</b>

**SUNDRY CHARGES**

Electronic access cards	\$7.00 per month per card
Replacement of lost access cards or keys	\$15.00 each
Light bulb replacement	\$6.00 each
Telephone Service	
Local Service	\$23.50 per line per month *
Voice mail	\$ 4.25 per line per month
Phone rental	\$ 6.00 per phone per month
Maintenance fee	\$15.50 per line per month
Internet access via T-1	\$64.00 per connection per month *

\* Plus applicable federal / state taxes and surcharges

**EXHIBIT "B"**



# City of Killeen

## Legislation Details

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**File #:** RS-15-100    **Version:** 1    **Name:** City of Killeen Fiber Instalaltion Project  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/25/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Consider a memorandum/resolution for JC Communications to install fiber in select city locations utilizing the current Bell County IT interlocal agreement.  
**Sponsors:** Information Technology Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Fiber Installation Project](#)

Date	Ver.	Action By	Action	Result
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## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

City of Killeen Fiber Installation Project

### ORIGINATING DEPARTMENT

Information Technology Services

### BACKGROUND INFORMATION

The Information Technology Services Department (ITS) and Bell County IT solidified an interlocal agreement for fiber installation projects on April 20, 2014 (CCMR 14-043R). Bell County IT has a contract with JC Communications through September 2017 for fiber installation. The interlocal agreement allows the city to purchase fiber installation and maintenance services from JC Communications at the same pricing offered to Bell County and satisfies the city's bidding requirements pursuant to Texas Government Code section 791.025. Fiber installation from CTC to TAMU-CT (Phase 1) and TAMU-CT to Killeen PD Headquarters on Community Blvd (Phase 2) was completed through utilization of this JC Communications contract.

### DISCUSSION/CONCLUSION

The ITS Department is seeking approval to utilize the contract with JC Communications to install fiber at selected buildings in the city. The attached table shows Phases 3 through 5 and the buildings where fiber will be installed. In Phase 3, the initial work is to document the current status of the fiber within the city. Phase 4 will provide fiber to the buildings along the WS Young corridor. Phase 5 adds the Animal Control building to the north fiber run along the railroad.

### FISCAL IMPACT

Funding for this FY 16 fiber project is provided in the ITS budget. The total cost for the entire FY 16 phases of the project is \$184,859. Of this, \$28,000 is from the Cornerstone funding and the remaining \$156,859 is from the IT Services Major Computer equipment funds per the table below.

<b>Account</b>	<b>Funds</b>
010-2705-419.61-40	\$87,755
214-9508-457.61-40	\$ 5,759
525-9508-521.61-40	\$ 5,759
540-9508-439.61-40	\$11,517
550-2705-419.61-40	\$40,310
575-9508-492.61-40	\$ 5,759
<b>Total</b>	<b>\$156,859</b>
010-2705-419.61-95	\$ 28,000
<b>Grand Total</b>	<b>\$184,859</b>

## **RECOMMENDATION**

The ITS Department staff recommends that the City Council authorize the City Manager to use the JC Communications contract through the Bell County IT interlocal agreement for the completion of Phases 3,4 and 5 of the City of Killeen fiber project in an amount not to exceed \$184,859.





# City of Killeen

## Legislation Details

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**File #:** RS-15-101    **Version:** 1    **Name:** Onion Road Waterline Improvements Project  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/30/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Consider a memorandum/resolution awarding Bid No. 16-07 for Onion Road Waterline Improvements Project to Nelson Lewis, Inc.  
**Sponsors:** Water & Sewer, Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Bid Recommendation](#)

Date	Ver.	Action By	Action	Result
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**CITY COUNCIL MEMORANDUM**

**AGENDA ITEM**

**Bid Recommendation - Bid No. 16-07 for the  
Onion Road Waterline Improvements**

**ORIGINATING DEPARTMENT**

**Public Works/Water and Sewer Division**

**BACKGROUND INFORMATION**

On Tuesday May 26, 2015, the City executed an agreement for professional engineering and surveying services with Kasberg, Patrick & Associates, LP (KPA) for the design of the Onion Road Waterline Improvements Project. On Wednesday, November 25, 2015, bids were opened and read aloud for the construction portion of the Onion Road Waterline Improvements Project. This project consists of approximately 5,800 feet of 8-inch waterline and approximately 5,400 feet of 6-inch waterline along Onion Road, Loop Road, and Love Road.

**DISCUSSION/CONCLUSION**

Eight contractors submitted qualified bids on this project. The four lowest bids were as follows:

Bidders	Bid
Nelson Lewis, Inc.	\$544,250.50
TTG Utilities, LP	\$603,689.25
Oro Mex Construction Company, Inc.	\$663,573.00
Wolff Construction, LP	\$777,777.00

KPA and City staff has reviewed each bid for conformance with the contract documents and for bid balance. Based upon this evaluation and past work experience, City staff and KPA recommend the award of bid contract to Nelson Lewis, Inc.

**FISCAL IMPACT**

Funding for this project is available in the amount of \$544,250.50 through Account Number 386-3495-800.54-84 of the 2013 Water and Sewer Bond.

**RECOMMENDATION**

City staff recommends that the City Council authorize the City Manager to enter into a contract with Nelson Lewis, Inc., in the amount of \$544,250.50 to construct the Onion Road Waterline Improvements Project. City staff also recommends that the City Manager be expressly authorized to execute any and all change orders within the amounts set by state and local law.





**KASBERG, PATRICK & ASSOCIATES, LP**  
 CONSULTING ENGINEERS  
 Texas Firm F-510

Temple  
 One South Main Street  
 Temple, Texas 76501  
 (254) 773-3731

RICK N. KASBERG, P.E.  
 R. DAVID PATRICK, P.E., CFM  
 THOMAS D. VALLE, P.E.  
 GINGER R. TOLBERT, P.E.  
 ALVIN R. "TRAE" SUTTON, III, P.E., CFM

Georgetown  
 1008 South Main Street  
 Georgetown, Texas 78626  
 (512) 819-9478

November 30, 2015

Mr. Steve Kana, P.E.  
 Director of Water & Sewer Utilities  
 City of Killeen  
 805 West Jasper  
 Killeen, Texas 76542

RE: City of Killeen  
 Onion Road Waterline Improvements

Dear Mr. Kana:

On November 25, 2015 the City of Killeen received competitive bids from eight contractors for the Onion Road Waterline Improvements. This project consists of approximately 5,800 feet of 8" Waterline and approximately 5,400 feet of 6" Waterline along Onion Road, Loop Road and Love Road.

The Bid Tabulation shows Nelson Lewis, Inc. of Marble Falls, Texas as the low bidder with a total bid of \$544,250.50. The bids ranged from this low bid to \$928,459.35. Our Opinion of Probable Construction Cost for this project was \$1,040,000.00

<u>Contractor</u>	<u>Total Bid</u>
Nelson Lewis, Inc.	\$ 544,250.50
TTG Utilities, LP	\$ 603,689.25
Qro Mex Construction Company, Inc.	\$ 663,573.00
Wolff Construction, LP	\$ 777,777.00
McLean Construction, Inc.	\$ 797,000.00
Bell Contractors, Inc.	\$ 816,986.60
Royal Vista, Inc.	\$ 875,117.00
Gary W. Purser Construction, Ltd.	\$ 928,459.35

Nelson Lewis, Inc. successfully completed the Trimmier Road Waterline Project in 2014 and are well qualified to perform the work. Therefore, we recommend that a contract be awarded to Nelson Lewis, Inc. for the Onion Road Waterline Improvements in the amount of \$544,250.50.

Sincerely,

Ginger R. Tolbert, P.E.

GRT/

xc: 2015-122-40



# City of Killeen

## Legislation Details

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**File #:** RS-15-102    **Version:** 1    **Name:** Sewer Line SSES Ph 4  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/30/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Consider a memorandum/resolution authorizing the award of a professional services agreement with Pipeline Analysis, LLC, for the Phase 4 Sewer Line Sanitary Sewer Evaluation Survey.  
**Sponsors:** Water & Sewer, Engineering, Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Pipeline Analysis Proposal](#)

Date	Ver.	Action By	Action	Result
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## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**Authorize the Award of a Professional Services Agreement with Pipeline Analysis, LLC, for the Phase 4 Sewer Line Sanitary Sewer Evaluation Survey**

### ORIGINATING DEPARTMENT

**Public Works/Water and Sewer Division**

### BACKGROUND INFORMATION

On November 14, 2011, the City of Killeen was officially accepted into the Texas Commission on Environmental Quality (TCEQ) Sanitary Sewer Overflow (SSO) Initiative Program. The agreement with the TCEQ requires the City to follow an SSO Initiative Action Plan in which the City's entire sanitary sewer collection system is evaluated and defects are rehabilitated over a 10-year period.

Pipeline Analysis has completed the Manhole Inspection Phases 1-3 of the City's SSO Initiative Action Plan. Defects were found in 2,727 manholes and cleanouts. The manhole rehabilitation work for Phases 1-3 is now complete. The surveyed data from the manhole inspections has been interfaced with the City's GIS maps. Pipeline Analysis has also completed Phases 1-3 of the Sewer Line Sanitary Sewer Evaluation Survey (SSES) which included the evaluation of 1,440,862 feet of sewer line.

### DISCUSSION/CONCLUSION

The TCEQ SSO Initiative Action Plan requires the implementation of Sewer Line SSES Phase 4 in the fourth quarter of 2015. The Action Plan includes five phases of Sewer Line SSES. Due to the many benefits gained from the sewer line evaluations in Phases 1-3 of Pipeline Analysis's SSES work, City GIS and Engineering staff recommend retaining Pipeline Analysis for the evaluation of 533,639 feet of sewer line that is located in the seven sanitary sewer basins that make up Phase 4. Pipeline Analysis has submitted a proposal for \$369,389.30 to complete Phase 4 of the City's Sewer Line SSES. The major tasks of this work include:

- Mobilization -- Engineering review of all relevant previous reports and preparation of study area field inspection maps;
- Smoke testing of study area -- 533,639 feet of sewer pipe will be smoke tested to provide detailed information on wet weather inflow sources;
- Dye water testing -- up to 20 locations will be dye-water tested to assist in the location and quantifying of specific defects;
- CCTV -- approximately 80,046 feet of sanitary sewer pipe will be CCTV inspected in order to develop least cost alternatives for subsequent repairs;
- Defect analysis and rehabilitation recommendations -- Using industry standard descriptions of source defects, Pipeline Analysis will prioritize defects and recommend rehabilitation; and

- Rehabilitation plan report -- Preparation of an engineering report that will summarize all data found and provide recommendations and cost estimates for private and public sector repairs.

Pipeline Analysis will also guide City staff with the preparation of bid packages and implementation of prioritized sewer line rehabilitation projects.

Because the proposed agreement with Pipeline Analysis is a contract for professional services, competitive bidding requirements do not apply.

### **FISCAL IMPACT**

Funding for this project is available in the amount of \$369,389.30 through Account Number 386-3495-800.58-46 of the 2013 Water & Sewer Bond.

### **RECOMMENDATION**

City staff recommends that the City Council authorize the City Manager to enter into an agreement with Pipeline Analysis, LLC., for a professional services agreement to complete Phase 4 of the Sewer Line SSES in the amount of \$369,389.30, and that the City Manager be expressly authorized to execute any and all change orders within the amounts set by state and local law.

**TCEQ SSO INITIATIVE  
ON-GOING INFILTRATION/INFLOW  
REDUCTION PROGRAM**

**Sewer Line SSES Phase 4  
Basins 19,21,23,23A,26,33 and 35**

**Technical Proposal**



**CITY OF KILLEEN, TEXAS**



**Pipeline Analysis, LLC  
1115 Main Street  
Garland, Texas 75040**

**November 24, 2015**

## CITY OF KILLEEN

# TCEQ SSO INITIATIVE ON-GOING INFILTRATION/INFLOW REDUCTION PROGRAM – SEWER LINE SSES PHASE 4 OF BASINS 19,21,23,23A,26,33 and 35

### Project Background

The Project Approach to the Killeen Sewer System Evaluation is organized around the objectives for this project:

- Regulatory compliance
- Attainment of long-term I/I solutions
- Customer satisfaction
- Cost control

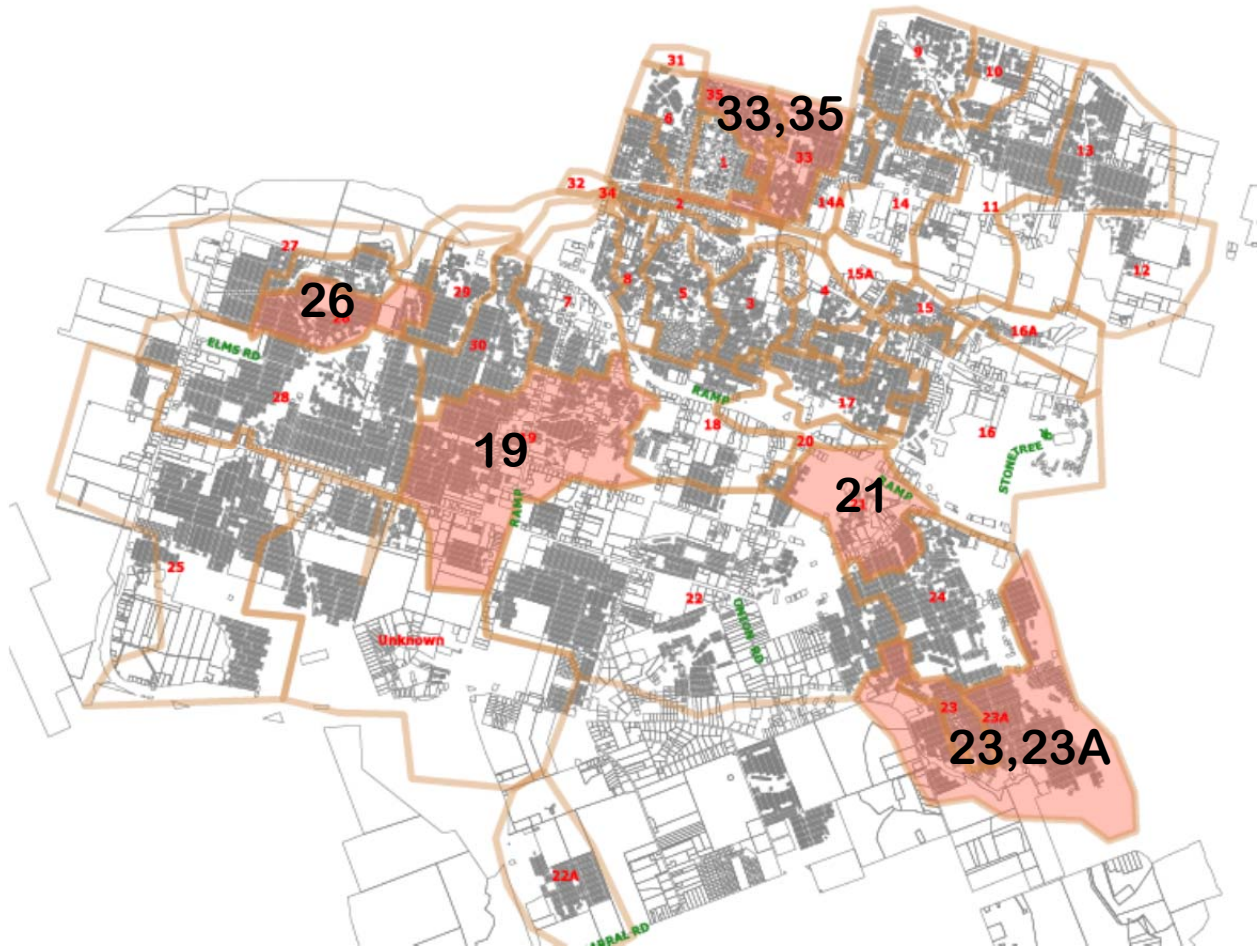
The goal of the City and TCEQ is to develop long-term solutions to infiltration/inflow (I/I) and sanitary sewer overflows (SSO's). The first step in achieving this goal is to establish the magnitude and location of the problem. City-wide temporary flow monitoring was completed in March 2009. This flow analysis established dry and wet weather flows at key locations across the city. In addition, flow meters isolated the areas of the collection system that contribute to excessive rainfall dependent infiltration/inflow (RDII) that enters through poor fitting manhole castings, vented manhole covers in ponding areas, holes in pipes, open or defective cleanouts, yard drains, storm sewer cross connections, etc. The results of this field testing provided a ranking of basins by priority. This scope of work builds on the previous flow monitoring and master plan efforts and is the next phase of field testing to locate defects, establish least cost repair cost estimates and prepare a collection system rehabilitation report.

The Killeen collection system consists of approximately 530 miles of mainline gravity sewer and 334 miles of private service laterals. These assets have a replacement value of approximately \$280 million. Stretched end to end, the collection system would connect Killeen with Atlanta, Georgia. The purpose of this project is to initiate field testing to locate defects in high priority areas of the city. With a design life of 75 to 100 years, some of the Killeen system has reached its design life. Infiltration/inflow is a symptom of aging collection systems. We must identify specifically where the deterioration is occurring and develop a plan to locate and repair these City assets. The City of Killeen (like all municipalities) cannot afford to wait for system failure and replace the collection system. The least cost strategy will be to locate system defects early while trenchless repair methods can be used.

The City of Killeen was invited to join the TCEQ SSO Initiative and the City responded with an acceptance letter to voluntarily participate in the program. TCEQ has officially notified the City of its acceptance into the program and the City is currently implementing the approved comprehensive plan and schedule. This project is identified in the TCEQ SSO Initiative.

This project will use smoke testing to locate wastewater collection system defects that allow rainfall to enter on both public and private sewers. Smoke testing data will be collected to identify sources of wet weather inflow that enters the collection system and prepare remedial measures and estimated repair costs for defects identified on public mains and private laterals. Crews will perform inspections and testing of all sanitary sewer pipes within the study areas shown in Figure 1 and identified as Basins 19, 21, 23, 23A, 26, 33 and 35.

**Figure 1**  
Study Area Map  
Sewer Line SSES Phase 4  
Basins 19,21,23,23A,26,33 and 35



## **TASK 100 MOBILIZATION**

Mobilize project team and coordinate startup. Establish personnel assignments and responsibilities. Inventory equipment needs and order expendable supplies. Pipeline Analysis, LLC (PA) will review all relevant existing materials developed for or by the City of Killeen concerning this project, including, but not limited to, the following:

1. Previous studies for the service areas to be investigated
2. Prepare study area field inspection maps

### *Deliverable:*

1. Delivery of equipment and personnel
2. Work maps with delineated boundaries
3. Status report on collection and review of materials supplied

### *To Be Provided by City:*

- Access for placement of equipment and personnel
- Copies of all applicable reports, maps and historical data for the study area at no cost to ENGINEER
- As-built drawings, sewer key maps, street plans, electronic aerial photographs if available and if requested at no cost to ENGINEER

### *Deliverables:*

1. Inclusion in final report of findings from this work task

### *Measurement of Payment:*

Mobilization will be charged as a lump sum.

## **TASK 200 SMOKE TESTING OF STUDY AREA**

Smoke testing will provide detailed information on wet weather inflow sources for the study area. In order to identify defects in the lines, a non-toxic smoke will be forced into the sewer by high capacity blowers. Data documentation includes measurements from two permanent points and will be sufficient to establish the location of each defect and determine the best repair method and priority. In addition, sub-meter GPS coordinates are obtained for smoke defects. Color digital photographs will be taken to document each defect during the smoke test.

Forty-eight (48) hours prior to testing, door hangers will be used to notify residents. A local telephone number will be provided for those individuals with questions or for anyone requiring special assistance. Each day the fire department will be notified of the crew location since smoke may enter homes through defective plumbing. Pipeline Analysis will be responsible for public awareness, distribution of smoke notices, field questions from residents, coordinating with City staff for residents requiring special assistance and mapping associated with this phase of field testing.



*To Be Provided by City:*

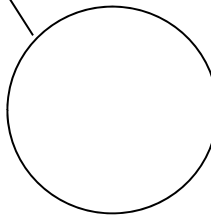
- Review and approval of Notice to Residents
- Letter of introduction to be carried by field crews (Example to be supplied by Pipeline Analysis)

*Deliverables:*

- Defects listing and spreadsheets
- Defect location sketches
- Digital photographs
- Smoke Notification Flyers and Notification of Residents

*Measurement of Payment:*

Payment for this work task shall be a unit price for each linear foot of mainline sewer smoke tested. A summary listing of the database for line segments smoke tested will serve as the basis for the periodic partial payment requests.



***Draft Copy***

## SMOKE TESTING NOTICE TO RESIDENT

For the next few days, inspection crews will conduct a physical survey of the wastewater collection system. Pipeline Analysis will perform this study, which involves opening manholes in the streets and backyard utility easements. Information gained from this study will be used to repair and improve the wastewater collection system.

One important task of the survey will be **smoke testing** of sewer lines to locate breaks and defects in the system. During this testing, white smoke will exit through vent pipes on the roofs of homes and through sewer line breaks. **The smoke is non-toxic, leaves no residue, and creates no fire hazard.** The smoke should not enter your home unless defective plumbing exists or drain traps are dry.

If you have seldom-used drains, please pour a gallon of water in the drain to fill the drain trap. This procedure will help prevent the possibility of smoke entering your living areas through those drains.

Field crews will perform testing of all sewers in the area. **At no time will field crews have to enter your business or residence.**

Your cooperation is appreciated. Should you have any additional questions concerning this study or if you desire special assistance, please phone:

**800-637-0164**



### **TASK 300     DYE FLOODING**

Dye water testing can be anticipated to assist in the location and quantifying of specific defects during the evaluation. Non-toxic dye will be introduced as a powder or liquid. Cross-connections, roof drains and area drains that are suspected of being connected to the sanitary sewer will be positively identified using the dye tracer procedure. Field documentation and photographs will be used to record all findings. Internal inspection will determine the exact source of the 'cross-connection' and establish the best repair option (i.e., point repair, direct connection, etc.).

*To Be Provided by City:*

- Water for dye flooding at no cost to ENGINEER

*Measurement of Payment:*

Payment for this work task shall be a unit price for each dye flood test site. Dye test records that document the dye test location and results will serve as the basis for the periodic partial payment requests.

### **TASK 400     PREPARATORY CLEANING** **TASK 500     CLOSED CIRCUIT TV INSPECTION (CCTV)** **TASK 501     ZOOM CAMERA CCTV**

Preparatory cleaning shall consist of hydraulic jet cleaning to facilitate the internal CCTV inspection. The City of Killeen will have the option to perform this phase of the work in close coordination with the CCTV operator. Debris will be removed from the line and transported for disposal. CCTV investigation is critical in establishing best practical repair methods. Knowing the conditions, locations of services, degree of pipe deterioration, etc. is paramount in developing the least cost alternatives for subsequent repairs. Where right of way will not permit placement of cleaning and/or CCTV equipment, the Engineer may utilize a portable zoom camera (Task 501) to inspect mainline sewers recommended for CCTV. The portable self-contained zoom camera will record digital video to obtain as much information as possible on the condition of the pipeline being inspected. Recorded data will be reviewed and recommendations on the rehabilitation method(s) will be determined where possible. The following information will be provided:

1. Field forms, equipment, supplies and oversight QA/QC
2. Document findings. Data to include:
  - a. Date inspected
  - b. Line segment being inspected
  - c. Project name
  - d. Location (Address)
  - e. Footage location from manhole
  - f. Defect code and/or type and severity rating using the national Pipeline Assessment Certification Program (PACP) codes
  - g. Pipeline surface cover
3. Review video and logs
4. Provide reports on disk (CD, DVD or hard drive) of segments televised

5. Summary of line segments cleaned and CCTV'd
6. Results of TV inspection provided on printed logs
7. Prepare prioritized mainline rehabilitation plan

*To Be Provided by City:*

- Hydraulic jet cleaning (at City of Killeen option) of line segments designated by Pipeline Analysis in preparation of internal closed circuit television inspection
- Access to site of work for placement of equipment and personnel
- Disposal of any debris removed from the sewer system
- Water for cleaning and dye testing at the nearest hydrant at no charge to ENGINEER
- Water meter (if required) for recording volume of water used at no charge to ENGINEER
- City will provide at no cost to ENGINEER removal and site restoration of any camera or cleaning equipment that becomes lodged in the sewer, provided it can be determined that ENGINEER has exercised reasonable caution.

*Measurement of Payment:*

The City may elect to perform preparatory cleaning ahead of the CCTV inspection. Should the City elect not to perform the preparatory cleaning, then Pipeline Analysis will invoice for the actual linear feet of sewer cleaned per the unit price specified in Exhibit C. In the case of CCTV, should the camera not be able to pass the entire length of the segment (due to protruding taps, roots, dropped joints, etc.), then an attempt will be made from the opposite direction (if possible). Where a reverse setup was attempted, then the entire segment length will be billed at the unit price specified. If a reverse setup cannot be performed, then the actual segment footage CCTV'd will be billed. Where access will not allow placement of cleaning or CCTV equipment, Engineer may utilize a zoom portable camera to inspect the sewer. Payment for use of the zoom camera will be on a per set up basis. Summary listings of the database with field logs will serve as the basis for the periodic partial payment requests.

## **TASK 600      ADMINISTRATION AND PROJECT MANAGEMENT**

This task includes internal project administration and oversight including scheduling, budget, quality assurance and control meetings and reporting. The project schedule will be reviewed and milestones for the completion of each task will be assigned. The project schedule will be reviewed and updated monthly to ensure that all tasks are completed in a timely and organized fashion.

Management work items include:

1. Field crew supervision and project planning
2. Obtain initial maps for field use and verification
3. Prepare monthly billings
4. Schedule equipment and order supplies
5. Monthly meetings and progress reports

Major system deficiencies that are identified during the field inspections that, if corrected, would result in significant reduction in I/I or is deemed to be of a safety concern will be recorded and forwarded as soon as

possible to City's designated project manager. Likewise, should City undertake a major repair within the study area, they will immediately notify ENGINEER to determine the impact on data analysis.

*Deliverables:*

1. Monthly invoice
2. Status reports
3. Project schedule and updates
4. Project meetings and presentations

*To Be Provided by City:*

- All reports or materials deemed necessary by ENGINEER and identified during the course of the project that is not specifically stated above will be provided at no additional cost to the ENGINEER

*Measurement of Payment:*

Payment for this work task shall be a lump sum and billed based on the percentage completion of the work task.

## **TASK 700      DEFECT ANALYSIS/ REHABILITATION**

This project will generate a considerable amount of data that will require proper entry and quality control. Pipeline Analysis has developed a system to enter smoke test data using a pen-based computer system that has the computing power to perform quality control checks in the field while data is being entered. Data collection will include the following:

1. Defect data will be presented graphically (data visualization) within the City GIS system.
2. Using industry standard descriptions of source defects, Pipeline Analysis staff will prioritize defects and recommend rehabilitation
3. Evaluate the various rehabilitation options (including trenchless methods) based on the soils, line cover, pipe depth, easement restrictions, pipe material and defects identified.
4. Since private sector defects can contribute to excessive inflow, proper documentation for subsequent repair is important. Property owner address, photograph and sufficient information to document the defect will be recorded. Private sector defects will be prioritized and repair methods/costs established.
5. Rehabilitation recommendations will consider the best repair for the particular asset being rehabilitated.
6. Estimated cost to make both public and private sector repairs.

*To Be Provided by City:*

- Complaint records for past 12 months and SSO database for past 12 months.
- Review and comments on rehabilitation methods, cost estimates, and alternatives
- Pipeline Analysis will provide electronic files of the City corrected GIS maps in ArcGIS. The City will have the final authority to accept the changes and update their master GIS map files.

*Measurement of Payment:*

Payment for this work task shall be a lump sum and billed based on the percentage completion of the work task.

## **TASK 800 FINAL REHABILITATION PLAN REPORT**

Prepare and submit five (5) Final Rehabilitation Plan Reports that includes the following:

- Executive Summary
- Description of all tasks
- Pipeline defect summary and preliminary rehabilitations
- Data visualization rehabilitation maps
- Service lateral defect summary
- Smoke defect photos (jpg format)
- Smoke defect sketches (pdf format)
- Recommendations and Cost Estimates for Private and Public sector repairs
- Provide Geodatabase ArcMap version 10.0 with the following feature classes: Main (to include PA pipe ID & City of Killeen unique ID), manhole, and cleanout feature classes. These feature classes will contain updated attribution, smoke test data plus the following columns:
  1. USMH
  2. DSMH
  3. PAPipeID
  4. Location
  5. Type of Defect
  6. Inflow Potential
  7. Surface Cover
  8. Address
  9. Defect GPS Latitude (where possible)
  10. Defect GPS Longitude (where possible)
  11. Defect Photo file name

*To Be Provided by City:*

- None

*Measurement of Payment:*

Payment for this work task shall be a lump sum and billed based on the percentage completion of the work task.

*To Be Provided by City of Killeen:*

Task 100 Mobilization

- Access for placement of equipment and personnel
- Copies of all applicable reports, maps and historical data for the study area at no cost to ENGINEER
- As-built drawings, sewer key maps, street plans, electronic aerial photographs if available and if requested at no cost to ENGINEER

Task 200 Smoke Testing

- Current collection system map in electronic format
- Access (if requested) to manholes that are buried or could not be opened.
- Assistance in locating assets (if requested)
- Coordination with Fire Department
- GIS Coordination

Task 300 Administration/Project Management

- Provide contact person for coordination of database deliverable
- Review format for data delivery

Task 400 Defect Analysis and Rehabilitation

- Review and comments on rehabilitation methods, cost estimates, and alternatives

Task 500 Final Report

- Review comments on Draft Final Report

PROJECT SCHEDULE

Task	Task Description	Month								
		1	2	3	4	5	6	7	8	9
100	Mobilization									
200	Smoke Testing									
300	Dye Water Flooding									
400	Preparatory Cleaning 15%									
500	Closed Circuit TV Insp. 15%									
501	Zoom Camera Inspection									
600	Admin. Project Mgmt.									
700	Defect Analysis/ Rehab. Est.									
800	Final Report.									

COMPENSATION SUMMARY (TOTAL NOT TO EXCEED)

Task	Task Description	Contract Quantity	Unit Price	Contract Amount
100	Mobilization	Lump Sum	Lump Sum	\$3,880.00
200	Smoke Testing	533639	\$0.41	\$218,791.99
300	Dye Water Flooding	20	\$215.00	\$4,300.00
400	Preparatory Cleaning 15% **	80,046	\$1.95	\$0.00
500	Closed Circuit TV Insp. 15%	80,046	\$1.25	\$100,057.31
501	Zoom Camera Inspection	0	\$150.00	\$0.00
600	Admin./ Project Mgmt.	Lump Sum	Lump Sum	\$3,915.00
700	Defect Analysis/ Rehab. Est.	Lump Sum	Lump Sum	\$9,645.00
800	Final Report.	Lump Sum	Lump Sum	\$28,800.00
<b>TOTAL</b>				<b>\$369,389.30</b>

\*\* City to Perform line cleaning



# City of Killeen

## Legislation Details

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**File #:** RS-15-103    **Version:** 1    **Name:** 319(h) Grant Revised Contract  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 11/30/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** Consider a memorandum/resolution authorizing a revised contract for the Surface Water Quality Assessment Clean Water Act §319(h) Grant Project.  
**Sponsors:** Environmental Services, Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Contract](#)

Date	Ver.	Action By	Action	Result
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## **CITY COUNCIL MEMORANDUM**

**AGENDA ITEM**

**Authorize A Revised Contract For The Surface  
Water Quality Assessment Clean Water Act  
§319(h) Grant Project**

**ORIGINATING DEPARTMENT**

**Public Works - Environmental Services**

**BACKGROUND INFORMATION**

The Texas Commission on Environmental Quality (TCEQ) Non-Point Source Program (NSP) administers Clean Water Act (CWA) Section 319(h) grant funding for the U.S Environmental Protection Agency (EPA) in the state of Texas. The TCEQ NSP supports two types of surface water quality improvement grant project activities; assessment and implementation. Eligible assessment activities typically involve the collection and analysis of information about non-profit source pollution, its effect on surface water quality, and the results of best management practices (BMPs) used to reduce such pollution.

In October of 2009, the City Council authorized the City Manager to submit a letter of support for the City's participation in the Nolan Creek/South Nolan Creek Watershed Protection Plan Fiscal Year 2010 §319(h) grant application. The City was not selected for Fiscal Year 2010. Based on the above, the City Manager submitted a letter of support for the City's participation in the Fiscal Year 2011 §319(h) grant application in conjunction with the Texas Institute for Applied Environmental Research (TIAER) at Tarleton State University.

The City received notice from the TCEQ on October 24, 2011, that the EPA had selected TIAER's submitted project for funding. On September 21, 2012, the City of Killeen received notice from TIAER that the TCEQ had executed the contract with TIAER. On November 13, 2012, the City of Killeen City Council authorized participation in the Surface Water Quality Assessment Clean Water Act §319(h) Project Grant for the performance period through the City's Fiscal Year 2015-2016.

The original contract with TIAER stipulated that the City of Killeen provide \$53,300 of in-kind services and professional service agreements over a three-year grant period beginning in Fiscal Year 2012-2013. City staff currently performs 31% of the requested support services included in the Proposal as part of the best management practices outlined in the adopted Drainage Master Plan, Drainage Maintenance Plan, and the MS4 Permit. The City funds the remaining \$36,776 (69%) through professional services support from Jacobs Engineering for this grant. As part of the grant program, the City was to be reimbursed \$31,980 by the State for the combined in-kind services and professional agreements associated with the contract; however, the original contract expired on August 31, 2015.

**DISCUSSION/CONCLUSION**

As part of the contract that has now expired, the City of Killeen continues to provide support to TIAER in the form of a local match through in-kind services and professional services

agreements. The original scope of work required that City personnel commit to the following: attend and host selected stakeholder and research meetings; participate in project conference calls; support grant tracking and reporting; provide copies of reports on sanitary sewer overflows; support public outreach; provide copies of illicit discharge investigation reports and historic data; and perform GIS inventory activities and ground truthing, and assist with development of Load Duration Curves. The matching cost share for the City of Killeen involved personnel, maintenance, and professional services costs that are part of the Drainage Utility base program budget.

Due to unforeseen delays, deliverables were not completed timely before expiration of the original contract. In order to successfully complete the project grant, an agreement was reached between City Staff and TIAER to create a new contract to replace the expired contract rather than submit a contract amendment. The proposed contract extends the end-date of the original contract from August 31, 2015, to December 31, 2015, and reduces the work for tasks associated with the City's in-kind services.

### **FISCAL IMPACT**

The remaining expenditures associated with this agreement were budgeted with the original contract and funds were previously encumbered for those allocated expenses. A reduction in the work for tasks associated with the City's in-kind services and professional services agreements reduces the contract reimbursable amount from the State to the City from \$31,980 to \$26,431 which is \$5,549 less than the original contract. The revenue will be reflected in the Fiscal Year 2016 Drainage Utility Fund, TCEQ EPA 319(h) Grant - Account Number 575-0000-382.56-03.

### **RECOMMENDATION**

That the City Council authorize the City Manager to enter into an agreement with TIAER for completion of the Clean Water Act Section 319(h) Grant Project, and that the City Manager is expressly authorized to execute any and all change orders within the amounts set by federal, state and local law.

THE STATE OF TEXAS  
COUNTY OF ERATH

**INTERAGENCY COOPERATION AGREEMENT  
BETWEEN  
TARLETON STATE UNIVERSITY  
AND  
CITY OF KILLEEN**

THIS INTERAGENCY COOPERATION AGREEMENT is entered into by and between the parties shown below as Contracting Parties:

**I. CONTRACTING PARTIES:**

The Receiving Party: Tarleton State University, a member of The Texas A&M University System, an agency of the State of Texas, with its primary offices located in Stephenville, Texas, for the benefit of the Texas Institute for Applied Environmental Research, is written under Contract number 582-13-30061 between the Texas Institute for Applied Environmental Research, Tarleton State University, and the Texas Commission on Environmental Quality (TCEQ).

The Receiving Party: Texas Institute for Applied Environmental Research (TIAER)

The Performing Party: City of Killeen (COK)

**II. STATEMENT OF SERVICES TO BE PERFORMED:**

The Performing Party agrees to perform the research tasks set forth in the Scope of Services which is attached and incorporated as **Exhibit A**. The scope of services shall not be changed except by written amendment to this Agreement signed by both parties.

**III. BASES FOR CALCULATING REIMBURSABLE COSTS:**

Transfers between budget categories are not allowable without prior approval from TIAER. See detailed budget which is attached and incorporated in **Exhibit A**.

**IV. CONTRACT AMOUNT:**

The total amount to be expended pursuant to this contract shall not exceed \$26,431.00 (twenty-six thousand and four hundred and thirty-one dollars).

**V. PAYMENT FOR SERVICES:**

TIAER shall pay for the Services from appropriation items or accounts of TIAER from which like expenditures would normally be paid, based upon special vouchers drawn by TIAER, or through electronic transactions, payable to Performing Party.

Payments received by Performing Party shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.

See **General Terms and Conditions** which is attached and incorporated as **Exhibit B** for invoice requirements and other terms and conditions.

**VI. TERMS OF CONTRACT:**

This contract shall be effective from November 1, 2012 and shall terminate on December 31, 2015.

**VIII. ENTIRE AGREEMENT:**

This document contains the entire agreement of the parties and no other promises or conditions are made, whether written or oral. This agreement supersedes any prior written or oral agreements between the parties.

**IX. AMENDMENT:**

This agreement may be modified or amended if such amendment is made in writing and is signed by both parties.

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that: (1) the services specified above are necessary and authorized for activities that are properly within the statutory functions and programs of the affected agencies of State Government, and (2) the services, materials, or equipment contracted for are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

RECEIVING PARTY further certifies that it has the authority to agree to the above services by authority granted in the Texas Education Code Title III (D) Chapter 88 (C).

PERFORMING PARTY further certifies that it has the authority to perform the services agreed to by authority granted in Chapter 791, Texas Government Code, as amended.

The undersigned parties bind themselves to the faithful performance of this agreement.

RECEIVING PARTY

PERFORMING PARTY

**Texas A&M University**

**City of Killeen**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Jane Zuber, Director Contracts and Grants

\_\_\_\_\_  
Name, Title

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

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

# **Exhibit A**

## **City of Killeen Nolan Creek Watershed FY2012 319 Grant Support**

### **Scope of Services**

#### **TASK 1: PROJECT ADMINISTRATION**

Objective: To administer, coordinate, and monitor all work performed under this project including technical and financial supervision.

Subtask 1.2: Quarterly Progress Reports (QPR) – COK will submit QPRs to TIAER by the 7th of the month following each state fiscal quarter for incorporation by TCEQ into the Grant Reporting and Tracking System (GRTS). The QPRs are to include the following:

- An invoice in accordance with the reporting requirements;
- A status of deliverables for each task; and
- A brief narrative description in QPR format.

Subtask 1.4: Project Annual Report Article – COK will provide information for articles in the Nonpoint Source Annual Report upon request by TIAER. The article will include a brief summary of the project and describe the activities of the past fiscal year.

Task 1 Deliverables:

- QPRs; and
- An Annual Report Article

#### **TASK 2: QUALITY ASSURANCE (QA)**

Objective: Refine and document data quality objectives (DQOs) and QA/quality control (QC) activities that ensure data of known and acceptable quality are generated by this project.

Subtask 2.1: Quality Assurance Project Plan (QAPP) Planning Meeting – COK will participate in the scheduled QAPP planning meeting with the TIAER, the TCEQ Project Manager, QA staff, technical staff, management, and contractors, to implement a systematic planning process based on the elements in the TCEQ NPS QAPP shell. The information developed during this meeting will be incorporated into a QAPP. The storage location of data records, and how data should be coded, will also be determined during these meetings. Participate in additional meetings with TIAER to determine whether changes to an existing QAPP are needed.

Subtask 2.2: QAPP – COK will assist in the development of, review and provide comments on the Monitoring QAPP that TIAER will submit to the TCEQ for approval.

- Project Activities covered under this QAPP:

- o Data Acquisition;
- o GIS and Map Development; and
- o Data Collection.
- Tasks/Subtasks covered under this QAPP:
  - o Tasks 2, 4, 5, and 8.

Subtask 2.3: QAPP for Modeling – COK will assist in the development of, review and provide comment on the QAPP for Modeling that TIAER will submit to the TCEQ for approval.

Activities covered under this QAPP:

- Data Acquisition;
- GIS and Map Development; and
- Modeling

Tasks/Subtasks covered under this QAPP:

- Tasks 2, 6, and 8.

Subtask 2.4: QAPP Annual Update – COK will assist in the development of, review and provide comment on annual QAPP revisions no less than 70 days prior to the end of the effective period of the QAPP.

Subtask 2.5: QAPP Amendments – COK will assist in the development of, review and provide comment on Amendments to revise the QAPP within 15 days of receipt from TIAER.

Task 2 Deliverables:

- A QAPP Planning Meeting;
- Comments on Draft and Final QAPPs;
- Comments on Draft and Final QAPP Annual Updates; and
- Comments on Draft and Final QAPP Amendments

### **TASK 3: BUILDING PARTNERSHIPS - ELEMENT E, PART A**

Objective: Satisfy a portion of Element E of the EPA 2004 Guidelines; and conduct Step 1, and the stakeholder portions of Steps 2 through 4 of the Watershed Planning and Implementation Process as outlined in the EPA Handbook.

Subtask 3.1: Public Participation Plan (PPP) - COK will prepare a draft and final PPP prior to initial Stakeholder Group development. The PPP will support public outreach throughout the entire watershed area to include stakeholders from Killeen, Harker Heights, Nolanville, Belton, and Fort Hood, as well as, throughout the rural areas of Bell County. The PPP will establish Stakeholder Group membership, the ground rules for meetings, and public participation in the project beyond the Stakeholder Group. The PPP must be approved by the TCEQ Project Manager and be presented to stakeholders for feedback.

Subtask 3.2: Stakeholder Group Development - COK, with assistance from TIAER, will develop a Stakeholder Group, which includes representatives of local, state and federal government; landowners and facility operators in all major land use categories present in the watershed; environmental groups, developers and other special interest groups active in the watershed; and other local residents. In accordance with the City's MS4 permit, the COK will participate in this subtask at no cost to TIAER.

Subtask 3.3: Stakeholder Group Activities - COK, with assistance from TIAER, will ensure facilitation of the Stakeholder Group's work in accordance with the PPP, including:

- Formation of the Stakeholder Group;
- Meetings;
- Identification of issues of concern and address significant issues where possible;
- Presentation and solicitation of feedback of all deliverable reports; and
- Gaining community acceptance of the project.

In accordance with the City's MS4 permit, the COK will assist with this subtask at no cost to TIAER.

Subtask 3.4: Stakeholder Group Meetings – TIAER will conduct stakeholder group meetings to establish priorities and focus work efforts. Meetings will be held on a regular basis to provide status of work progress to the group and obtain input on subsequent steps. Meeting agenda and minutes will be submitted to the TCEQ Project Manager for approval before distribution by TIAER. In accordance with the City's MS4 permit, the COK will participate in this subtask and host no more than four meetings a year at no cost to TIAER.

Subtask 3.5: Dissemination of Project Information – COK will post project information on their website, and TIAER will use Stakeholder Group meetings and the City's to disseminate project information in accordance with the PPP. Project information will be submitted to the TCEQ Project Manager for approval before dissemination. Activities will include:

- Presentation of all deliverable reports:
  - Solicit input from stakeholders upon initiation of Task activities;
  - Present draft reports to stakeholders;
  - Solicit input/comments from stakeholders regarding each draft report;
  - hosting a Project webpage during the project and the retention period;
  - Track input/comments provided by stakeholders and the responses by the project team to comments; and
  - Present final report to stakeholders.
- Additional activities may include:
  - Communicating via media sources;
  - Texas Watershed Steward training;
  - Texas Stream Team education events and trainings;
  - Conducting a LID Workshop; and
  - Holding and/or participating in public education and outreach events

In accordance with the City's MS4 permit, the COK will assist in this subtask at no cost to TIAER.

Subtask 3.6: PPP Progress Reports – COK will prepare and submit biannual updates and a final report documenting the status of:

- Completion of objectives and tasks of the PPP;
- Strategy for achieving the remaining objectives and goals of the PPP through the completion of the project; and
- Activities and input provided by the Stakeholder Group

Task 3 Deliverables:

- Draft and Final PPPs;
- Provide a Project webpage on the City's website;
- Assist with developing materials and participate in stakeholder group and public meetings; and
- Draft and Final Building Partnerships Report.

## TASK 4: WATERSHED CHARACTERIZATION – ELEMENT A – PHASE 1: DATA INVENTORY

Objective: COK will satisfy a portion of Element A of the EPA Handbook by developing a comprehensive GIS inventory for the study area that will include classifying current land use for the watershed.

Subtask 4.1: Summarize Existing Data and Create a Watershed Inventory – COK with assistance from TIAER will develop a summary of available data on physical and natural features, land use and population characteristics, water body and watershed conditions and pollutant sources, and water body monitoring data into a comprehensive inventory for the watershed. The data summary will be updated during the course of the watershed planning effort so that a complete summary is available to stakeholders. The data inventory will include, though is not limited to, information relevant to the watershed regarding the following topics from existing sources:

- Physical and Natural Features;
- Watershed Boundaries;
- Hydrology (Stream Networks and Reservoirs);
- Topography;
- Soils;
- Climate;
- Eco-region;
- Wildlife;
- Land Use and Population Characteristics;
- Land Use and Land Cover;
- Existing Land Management Practices;
- Water Body and Watershed Conditions;
  - o 305(b) Report
  - o 303(d) List
  - o Existing TMDL Reports
  - o Source Water Assessments (if applicable)
- Point Sources;
- NPS Sources;
- Water Body Monitoring Data;
  - o Water Quality and Flow
- Septic Tank Locations (where available);
- Municipalities;
- Surface Water Quality Monitoring (SWQM) Stations;
- U.S. Geological Survey (USGS) Gages;
- Floodwater Retarding Structures;
- Wetlands;
- Roads;
- Public Parks;
- Texas Pollutant Discharge Elimination System (TPDES) Permittees (Including Concentrated Animal Feeding Operations (CAFOs), Waste Water Treatment Facilities (WWTF) and Municipal Separate Storm Sewer Systems (MS4s)); and
- Sites Permitted for Land Application of Sewage Sludge and Septic.

Subtask 4.2: Geographic Representation – COK will develop a compilation of data from Task 4.1 to characterize the watershed to the sub watershed level using GIS software and existing data to:

- Create maps for hydrology, soils and land use data;



- Create data tables providing statistics and other relevant information including hydrologic, soils and land use data;
- Create maps that display general locations of point sources and potential NPS of pollution by groups; and
- Create tables of data detailing point sources and potential NPS of pollution. The tables will provide statistics on sources of pollution and water quality parameters affected.

Subtask 4.3: Watershed Characterization - Element A - Phase 1: Data Inventory Report – COK will provide review and comment on a Data Inventory Report. The report will include data inventory, land use surveys, maps, and modeling recommendations for stakeholders. The document will identify spatial, temporal, and other data gaps that need to be filled for modeling to be conducted and the completion of the Watershed Characterization.

Task 4 Deliverables:

- Comments on Draft and aid with response to comments from TCEQ for Final Watershed Characterization - Element A - Phase 1: Data Inventory Reports; and
- GIS data for the watershed in shape file or ArcGIS grid format.

#### **TASK 5: ELEMENT A: WATERSHED CHARACTERIZATION - PHASE 2: DATA COLLECTION AND ANALYSIS**

Objective: TIAER will provide baseline information to aid in determining the spatial distribution of existing nonpoint and point source contributions of bacteria and nutrients to better assess the bacterial impairments and nutrient concerns currently noted in the 2010 Texas Water Quality Inventory, and to provide monitoring data to allow a spatial characterization of potential sources of bacteria and nutrients in conjunction with the comprehensive GIS inventory conducted under Task 4 and modeling activities under Task 6. By meeting these DQOs, stakeholders within the watershed will be in a position to determine the next phase for addressing these impairments or concerns through a WPP or a TMDL.

Subtask 5.3: Source Survey Development – COK will participate in and assist TIAER in facilitating a meeting of local stakeholders and technical experts to design and apply a source survey to better characterize possible sources of bacteria and nutrient loadings in the watershed. The source survey should consider sources such as WWTFs, central sewage collection systems, on-site sewage facilities (OSSFs), and MS4s. TPDES compliance issues should be examined. Wildlife, livestock and non-domestic animal populations should be considered. Technical experts to be surveyed should include at least one representative, as appropriate to their jurisdiction and interest, from Texas Parks and Wildlife Department, Texas Department of Agriculture, TCEQ, Texas AgriLife Extension Service, Texas Forest Service, U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), Texas Wildlife Services, USGS, U.S. Fish and Wildlife Service, USDA Natural Resources Conservation Service, USDA Agricultural Research Service, U.S. Army Corps of Engineers, affected municipalities, counties, Groundwater Conservation Districts (GCDs) and Soil and Water Conservation Districts (SWCDs).

Subtask 5.4: Data Collection – COK will assist TIAER in developing a monitoring program as outlined in the QAPP, to achieve DQOs. The specific location of routine and storm monitoring stations will be developed with input from TCEQ, selected stakeholders, and the project partners as the monitoring plan for the QAPP is developed.

Subtask 5.5: Watershed Characterization - Phase 2: Data Collection and Analysis Report – COK will assist TIAER in preparing and provide review and comment on a report that describes the results of sampling activities, and recommendation for future monitoring efforts to TCEQ and stakeholders.

Task 5 Deliverables:

- Comments on Draft and Final Sampling Plans, including DQOs and data review;
- Comments on the Technical Report describing results from the source survey; and
- Comments on the Draft and aid with response to comments from TCEQ for Final Watershed Characterization - Phase 2: Data Collection and Analysis Reports.

**TASK 6: ELEMENT A: WATERSHED CHARACTERIZATION - PHASE 3: IDENTIFICATION OF CAUSES, SOURCES OF POLLUTION, ESTIMATION OF POLLUTANT LOADS AND PARTS OF ELEMENT B: ESTIMATE LOAD REDUCTIONS**

Objective: TIAER will identify the causes and sources of pollution, or groups of similar sources. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they are present in the watershed.

Subtask 6.2: Geographic Representation – COK will provide maps of the watershed and sub watersheds that identify the major causes and source of the water quality problems utilizing data provided by TIAER, as needed, from subtasks 5.3, 5.4, 6.1 and 6.4.

Subtask 6.3: Load Duration Curves (LDC) Analysis – COK will review TIAER’s LDC analysis for bacteria for at least four sites within the project area. LDCs shall be consistent with 1) EPA’s An Approach for Using Load Duration Curves in the Development of TMDLs, 2) EPA’s Options for Expressing Daily Loads in TMDLs, and 3) EPA’s Development of Duration-Curve Based Methods for Quantifying Variability and Change in Watershed Hydrology and Water Quality. LDC development will be completed using a drainage area ratio approach. Data collected under Task 5.4, where appropriate, will be integrated into the LDCs. LDCs will be used to help estimate load reductions under varying flow regimes.

Subtask 6.4: Spatially Explicit Load Enrichment Calculation Tool (SELECT) Modeling – COK will assist in development of and review TIAER’s watershed modeling for the study area. Utilizing information from the watershed inventory (subtask 4.1), the GIS inventory (subtask 4.2) and the source survey (subtask 5.4), TIAER will develop a spatially explicit model, such as SELECT, for the study area. Modeling will be conducted on Nolan Creek/South Nolan Creek watershed to estimate loadings from various sources, and to identify critical loading areas within the watershed.

Subtask 6.5: Watershed Characterization – Phase 3 Identification of Causes and Sources of Pollutant Loads Report including parts of Element B addressing load reductions: COK will assist TIAER in development and review of a report using data developed in this phase to identify causes and sources of pollutions that need to be controlled.

Task 6 Deliverables:

- Watershed Maps, as needed, that identify potential causes and sources of water quality problems; and
- Provide review of LDCs and SELECT modeling.
- Provide development support, review and comment on Phase 3 Identification of Causes and Sources of Pollutant Loads Report

## TASK 7: INFORMATION AND EDUCATION COMPONENT - ELEMENT E, PART B

Objective: TIAER will satisfy a portion of Element E of the EPA 2004 Guidelines by conducting portions of Steps 1 and 4 in the Watershed Planning and Implementation Process as outlined in the EPA Handbook.

Subtask 7.1: Define Education and Outreach Goals and Objectives – TIAER, with input from project partners, will identify education and outreach goals for the "Assessment of Water Quality and Watershed Based Planning for the Nolan Creek/South Nolan Creek" project. The outreach goals will be specific, measurable, action-oriented, and time-focused by:

- developing general strategies to reach targeted audiences that include specific outreach activities, workshops, trainings and social marketing techniques; and
- developing an evaluation component that measures success qualitatively and quantitatively to ensure the needed impact is generated through the education and outreach program, and that the education and outreach goals of the project are met.

In accordance with the City's MS4 permit, the COK will assist in this subtask at no cost to TIAER.

Subtask 7.2: Identify and Analyze the Target Audience – COK will identify the audience which needs to be reached in order to meet the goals and objectives identified in Task 7.1.

In accordance with the City's MS4 permit, the COK will assist in this subtask at no cost to TIAER.

Subtask 7.3: Design the Education and Outreach Implementation Measures – An effective plan will be created by COK, with cooperation from TIAER, to reach the target audiences with specific information and social marketing solutions that will inform the public, garner support, and change behaviors throughout the watershed. Project information will be submitted to the TCEQ Project Manager for approval before dissemination.

Activities may include:

- Partnerships with schools to conduct outreach water quality education;
- Campaigns to distribute water protection brochures and market the outreach plan;
- Urban growth workshops;
- Septic system workshops ;
- Campaigns regarding illegal dumping and litter; and
- Agricultural waste collection days.

In accordance with the City's MS4 permit, the COK will assist in this subtask at no cost to TIAER.

Subtask 7.4: Evaluate the Education and Outreach Program – An evaluation component will be developed by COK, with cooperation from TIAER, in the plan that measures success qualitatively and quantitatively to ensure the needed impact is generated through the education and outreach program and that the education and outreach goals of the project are met. In accordance with the City's MS4 permit, the COK will assist in this subtask at no cost to TIAER.

Subtask 7.5: Information and Education Plan Report – Element E, Part B Report – COK will develop a report summarizing information developed under Task 7. The report will satisfy portions of Element E pertaining to the information/education component used to enhance public understanding of the project and encourage their continued participation throughout the project. The report will be approved by the TCEQ Project Manager and be presented to stakeholders for feedback.

Task 7 Deliverables:

- Comments on Draft and Final Information and Education Component – Element E Reports.

**TASK 8: PROJECT REPORT**

Objective: TIAER will produce a Project Report that summarizes all activities completed, and conclusions reached, during the project. The Project Report must summarize all the Task Reports in either the text or as appendixes.

Subtask 8.1: Draft Project Report – COK will review and provide comment on TIAER’s Draft Project Report summarizing all project activities, findings, and the contents of all previous deliverables, referencing and/or attaching them as web links or appendices. This comprehensive, technical report will provide analysis of all Grant Activities and Deliverables under this Scope of Work. The Draft Project Report should be structured per the following outline:

- Title;
- Table of Contents;
- Executive Summary;
- Introduction;
- Project Significance and Background;
- Methods;
- Results and Observations;
- Discussion;
- Summary;
- References;
- Appendixes;

Subtask 8.2: Final Project Report – COK will review and provide comment on TIAER’s Draft Project Report to address comments provided by the TCEQ Project Manager and EPA, and will submit the Final Project Report to the TCEQ Project Manager, who will subsequently submit it to EPA. The Final Project Report must describe project activities, and identify and discuss the extent to which project goals and purposes have been achieved, and the amount of funds actually spent on the project. The Final Project Report should emphasize successes, failures, lessons learned, and should include specific water quality data demonstrating water quality improvements. The Final Project Report should address how TIAER will utilize the information in future endeavors.

Task 8 Deliverables:

- Review and provide comments on the Draft Final Project Report.

SCHEDULE OF COK DELIVERABLES - BASED ON DATE OF CONTRACT  
(Nov. 2012 represents Month 1 and Dec. 2015 represents Month 38)

Task No.	Deliverable	Due Date
1.1	Project oversight status	With QPR's
1.2	QPRs	The 7th of the month following each state fiscal quarter
1.3	Post Award Meeting	Within 30 days of contract execution
1.4	Project Annual Report Article	Upon TIAER's Request
2.1	QAPP Planning Meeting	Within 30 days of contract execution
2.2	Comments on Draft QAPP	Within 15 days of receipt from TIAER
2.3	Assist with and comment on Draft QAPP for Modeling	Within 15 days of receipt from TIAER
2.4	Comment on QAPP - Annual Updates	No less than 70 days prior to the end of the effective period
2.5	Comment on QAPP Amendments	Within 15 days of receipt from TIAER
3.1	Draft PPP	Within 2 months of contract execution
3.1	Final PPP	Within 5 months of contract execution
3.4	Stakeholder Group and Public meetings	Within 5 months of contract execution until project completion
3.5	Project webpage and updates	Within 2 months of contract execution, updated as necessary
3.6	Draft and Final Building Partnerships – Element E, Part A Report	Within 32 months of contract execution, updated twice annually
4.2	GIS data for the watershed in shape file or ArcGIS grid format	Within 27 months of contract execution
4.3	Comment on Draft Watershed Characterization -	Within 27 months of contract execution
4.3	Comment on Final Watershed Characterization -	Within 32 months of contract execution
5.3	Comment on Technical Report describing results from the source survey	Within 26 months of contract execution
5.5	Comment on Draft Watershed Characterization -	Within 35 months of contract execution
5.5	Comment on Final Watershed Characterization -	Within 37 months of contract execution
6.2	Watershed Maps that identify potential causes	Within 34 months of contract execution
6.3	Review of LDC	Within 35 months of contract execution
6.4	Review of SELECT Model	Within 35 months of contract execution
6.5	Review of Watershed Characterization	Within 36 months of contract execution
7.5	Comment on Draft Information and Education	Within 36 months of contract execution
7.5	Comment on Final Information and Education	Within 37 months of contract execution
8.1	Draft Project Report	Within 38 months of contract execution

# EXHIBIT B

## GENERAL TERMS AND CONDITIONS

### 1. *Contract Period*

1.1 **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Signature Page of this Contract (Contract Period). If no Effective Date is provided, the Effective Date of the Contract is the date of the last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the same Fiscal Year in which the Contract is signed.

1.2 **Extension Period.** This Contract may be extended by written notice from TIAER for ninety (90) days beyond expiration of a Contract Period during which the Parties may agree on a written Amendment to extend the Contract for a longer period. Extensions do not extend any other deadlines or due dates other than the expiration of the Contract Period.

1.2.1 This Contract is not subject to competitive procurement requirements and may be amended as needed.

1.3 The reporting requirements will survive the expiration or termination of this Contract.

### 2. *Authorization*

A Notice to Proceed is not required to begin the Grant Activities. COK is authorized to begin work upon the effective date of the Contract. Any performance of Grant Activities prior to the effective date of the Contract is not reimbursable.

### 3. *Funds*

3.1 **Availability of Funds.** This Contract and all claims, suits or obligations arising under, or related to, this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature and the U.S. Government for the purposes of this Contract or the respective claim, suit or obligation, as applicable.

3.1.1 COK will ensure that Paragraph 3.1 is included in any subcontract it awards.

3.2 **Amount Limits on Funds.** The total amount of funds provided by TIAER will not exceed the amount of the Contract Amount as shown on the Contract Signature Page unless the amount is amended by a written agreement of the Parties.

3.3 **Grants.** If this Contract was entered under the TCEQ's authority to award grants, TCEQ is providing financial assistance to TIAER to undertake its own project.

### 4. *Allowable Costs*

4.1 **Conforming Activities.** Subject to any requirements for cost sharing/matching funds which may be specified in the Special Terms and Conditions, TIAER will reimburse COK for Grant Activity Allowable Costs. Grant Activity Allowable Costs are reasonable and necessary costs that are actually incurred and paid by COK in performance of conforming Grant Activities. Allowable Costs must be authorized by this Contract to be eligible for reimbursement.

4.2 Allowable Costs are restricted to costs that comply with the requirements of this Contract, the requirements contained in UGMS, and applicable state and federal rules and law. The text of UGMS is available online at the Governor's Website. (The link is <http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc>.) The Parties agree that all the requirements of UGMS apply to this Contract, including the criteria for Allowable Costs.

4.2.1 For Contracts funded in whole or in part with federal funds, the following requirements apply: Office of Management and Budget(OMB) Circular A-133, 2 CFR Parts 215, 220, 225, 230, and 1532 and 1536; and 40 CFR Parts 30, 31, and 33 through 35 (including appendices, supplements, changes and updates in existence when the cost was incurred).

## 5. *Reimbursement*

5.1 **Reimbursement Requests.** COK will invoice TIAER to request reimbursement for its Allowable Costs for performing the Grant Activities. COK's invoice will conform to TCEQ's reimbursement requirements.

5.2 **Reimbursement Request Deadlines.** COK will submit the reimbursement request documents within 30 days after the close of each State of Texas fiscal quarter (September-November, December-February, March-May, and June-August).

5.3 **Travel Costs.** Travel costs, including per diem, will be reimbursed only in the amount of actual costs, up to the maximum allowed by law for employees of the State of Texas at the time the cost is incurred. Any travel outside the scope of the Grant Activities must be specifically authorized by TIAER in advance of the travel.

5.4 **Supporting Records.** COK will submit records and documentation to TIAER as appropriate for the review and approval of reimbursing costs. At a minimum, COK will submit supporting records with its invoices. TIAER may reject invoices without appropriate supporting documentation. TIAER has the right to request additional documentation. COK will maintain records subject to the terms of this Contract.

5.5 **Conditional Payments.** Reimbursements are conditioned on the Grant Activities being performed in compliance with the Contract and authorized by the Budget. COK will return payment to TIAER for either overpayment or activities undertaken that are not compliant with the Grant Activities. This does not limit or waive any other TIAER remedy.

5.6 **Availability of Funds.** Availability of federal funds for payment is subject to federal grant requirements which may vary from grant to grant. Under Texas Government Code Chapter 403, all reimbursement requests must be submitted to TIAER, approved by TIAER, and presented to the Comptroller prior to the end of the two fiscal years subsequent to the appropriation. TIAER is under no obligation to offer deadline extensions which extend to the maximum availability of its funds or to pay reimbursement requests submitted past the Contract deadlines.

## 6. *Financial Records, Access And Audits*

6.1 **Audit of Funds.** COK understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. COK further agrees to fully cooperate with the State Auditor's Office or its successor in the conduction of the audit or investigation, including providing all records requested.

6.1.1 COK will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through COK and the requirement to cooperate is included in any subcontract it awards.

6.2 **Financial Records.** COK will establish and maintain financial records, including records of costs of the Grant Activities, in accordance with generally accepted accounting practices. Upon request, COK will submit records in support of reimbursement requests. COK will allow access to its financial records by TIAER and other state agencies for the purpose of inspection and audit during business hours. Records will be maintained for a minimum of three years beyond the expiration or earlier termination of this Contract, and three years after the end of any litigation or claims process, including appeals.

## 7. *Amendments*

Changes to the Contract are only effective when made by a formal written Contract Amendment, signed and agreed to with the authorized signatures of the Parties, except for minor changes as described in Article 8, Contract Interpretation.

## 8. *Contract Interpretation*

8.1 **Interpretation of Time.** All days are calendar days, unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday, or a state or federal holiday, it is omitted from the computation.

8.2 **State, Federal Law.** This Contract is governed by, and interpreted under, the laws of the State of Texas, as well as, applicable federal law.

8.3 **Severability.** If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it will be deemed severable (to the extent of such illegality, invalidity or unenforceability) and the remaining part of the provision and the rest of the provisions of this Contract will continue in full force and effect. If possible, the severed provision will be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.

8.4 **Definitions.** The word “include” and all forms such as “including” mean “including, but not limited to” in the Contract Documents and other documents issued in accordance with the Contract, such as Work Orders and Proposals for Grant Activities.

### 8.5 **Contract Manager Authority.**

8.5.1 The TIAER Contract Manager has the authority, without a formal Amendment, to make written Contract Interpretations and agree in writing to minor, non-material changes to requirements in the following specific Contract documents: the Grant Activities, and the Budget for Actual Cost Reimbursement (Budget) including:

- Changes to the schedule in the Grant Activities including an extension of a Deliverable due date;
- Changes to the individual tasks in the Grant Activities that do not substantially change the obligations of the Parties relative to those tasks; and
- Transfers between the authorized amounts of expenditures in the Budget categories which do not exceed 10% of the total Budget.

8.5.2 To be effective, the Contract changes agreed to by the TIAER Contract Manager must be in writing and must also be agreed to by an authorized Representative of COK. A copy of the agreed change must be retained in the appropriate file of both TIAER and COK.

8.5.3 The TIAER Contract Manager is prohibited from agreeing on behalf of TIAER to changes to the substantive obligations of TIAER or COK, including the following:

- Changes in the total amount of funds in the Budget or the Contract;
- Contract Amendments;
- Changes to the Grant Activities that affect TIAER obligations in this Contract and in other Agreements with the funding source such as EPA, and obligations to another



state or federal agency or the Texas Legislature; and

- Changes that affect the material obligations of COK in this Contract.

8.5.4 It is the responsibility of COK to request extensions to the Deliverable Schedule and to request other changes that are within the authority of the TIAER Contract Manager.

## **9. *COK'S Responsibilities***

9.1 **COK's Responsibility for the Grant Activities.** COK undertakes performance of the Grant Activities as its own project and does not act in any capacity on behalf of TIAER, nor as a TIAER agent, employee or vendor of goods or services. COK agrees that the Grant Activities are furnished and performed at COK's sole risk as to the means, methods, design, processes, procedures and performance of the Grant Activities.

9.2 **Independent Contractor.** Nothing in this Contract will create an employee-employer relationship between COK and TIAER. Nothing in this Contract will create a joint venture between TIAER and COK. The Parties agree that COK is an independent contractor.

9.3 **COK's Responsibility for Subcontractors.** All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Grant Activities under a direct or indirect Contract with COK will be considered to be the acts and omissions of COK.

9.4 **No Third Party Beneficiary.** TIAER does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract will create a contractual relationship between TIAER and any of COK's subcontractors, suppliers or other persons or organizations with a contractual relationship with COK.

## **10. *COK Performance Evaluation***

Performance evaluations are a part of the TIAER's review of COK and may be a factor in the selection of future Contracts. TIAER may provide this information to state agencies and, upon request, to others. COK consents to the disclosure of any information or opinion contained in the evaluations.

## **11. *Conflict of Interest***

COK will timely notify TIAER in writing of any actual, apparent, or potential conflict of interest regarding COK or any related entity or individual. No entity or individual with a significant, actual, apparent, or potential conflict of interest will take part in the performance of any portion of the Grant Activities, nor have access to information regarding any portion of the Grant Activities. COK agrees that TIAER has sole discretion to determine whether a significant conflict exists, and that a conflict of interest is grounds for termination for cause.

## **12. *Intellectual Property***

12.1 **Third Party Intellectual Property.** Unless specifically waived, COK must obtain all Intellectual Property licenses expressly required in the Grant Activities, or incident to the use or possession of the Intellectual Property. COK will obtain and furnish documentation on the use of such Intellectual Property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such Intellectual Property and associated user documentation, and to authorize others to reproduce, publish, otherwise use, or modify such Intellectual Property for TIAER non-commercial purposes, and other purposes of the State of Texas to TIAER.

12.2 **Grant of License.** Grant of License. COK grants a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, modify or otherwise use for any non-commercial TIAER purpose any Intellectual Property created under this Contract, and associated user documentation to TIAER.”

### **13. *Time Delays***

- 13.1 **Time is of the Essence.** COK's timely performance is a material term of this Contract.
- 13.2 **Delays.** Where COK's performance is delayed without an agreed change in the due date, except by Force Majeure or act of TIAER, TIAER may withhold or suspend reimbursement, terminate the Contract, or enforce any of its other rights.

### **14. *Termination***

- 14.1 **Termination for Cause.** TIAER may, upon 10 days written notice and the opportunity to cure, terminate this Contract for cause if COK materially fails to comply with the Contract including any one or more of the following acts or omissions: nonconforming Grant Activities, existence of a conflict of interest, or failure to provide evidence of required insurance coverage. Termination for cause does not prejudice TIAER's other remedies authorized by this Contract or by law.
- 14.2 **Termination for Convenience.** TIAER may, upon 10 days written notice, terminate this Contract for convenience. Termination will not prejudice any other right or remedy of TIAER or COK. COK may request reimbursement for conforming Grant Activities and timely, reasonable costs directly attributable to termination. COK will not be paid for work not performed, loss of anticipated profits or revenue, consequential damages, or other economic loss arising out of, or resulting from, the termination.
- 14.3 If, after termination for cause by TIAER, it is determined that COK had not materially failed to comply with the Contract, the termination will be deemed to have been for the convenience of TIAER.

### **15. *Insurance and Indemnification***

- 15.1 **Insurance.** Unless prohibited by law, COK will require its contractors and suppliers to obtain and maintain adequate insurance coverage sufficient to protect COK and TIAER from all claims and liability for injury to persons and for damage to property arising from the Contract during the Contract Period. Unless specifically waived by TIAER, sufficient coverage includes Workers Compensation, Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.
- 15.2 **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, COK WILL REQUIRE ALL CONTRACTORS PERFORMING GRANT ACTIVITIES ON BEHALF OF COK TO INDEMNIFY, DEFEND, AND HOLD HARMLESS TCEQ AND TIAER AND COK AND THEIR OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF GRANT ACTIVITIES BY THE CONTRACTOR OR ITS CONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM A DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS OR DIRECTIVES. THE DEFENSE OF TIAER WILL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

### **16. *Disputes, Claims and Remedies***

- 16.1 **Payment Not a Release.** Neither payment by TIAER, nor any other act or omission other than an explicit written release, constitutes a release of COK from liability under this Contract.

16.2 **Schedule of Remedies Available to TIAER.** In accordance with Texas Government Code Chapter 2261 the following Schedule of Remedies applies to this Contract. In the event of COK's nonconformance, TIAER may do any combination of the following:

- 16.2.1 Issue a notice of nonconforming performance;
- 16.2.2 Reject nonconforming performance and request corrections without charge to TIAER;
- 16.2.3 Reject a reimbursement request or suspend further payments, or both, pending an accepted revision of the nonconformity;
- 16.2.4 Suspend all or part of the Grant Activities or payments, or both, pending an accepted revision of the nonconformity;
- 16.2.5 Demand restitution and recover previous payments where performance is subsequently determined nonconforming; or
- 16.2.6 Terminate the Contract without further obligation for pending or further payment by TIAER and receive restitution of previous payments.

16.3 **Opportunity to Cure.** COK will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.

16.4 **Cumulative Remedies.** Rights and remedies in this Contract are in addition to, and are not in any way a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

## 17. *Sovereign Immunity*

The Parties agree that this Contract does not waive sovereign immunity relating to suit, liability, or payment of damages.

## 18. *Miscellaneous*

18.1 **Assignment.** No delegation of the obligations, rights, or interests in this Contract, and no assignment of payments by COK, will be binding on TIAER without its written consent, except as restricted by law. No Assignment will release or discharge COK from any duty or responsibility under this Contract.

18.2 **Venue.** COK agrees that this Contract is being performed in Erath County, Texas, as this Contract has been performed, administered, or both, in Erath County, Texas. COK agrees that any cause of action involving this Contract arises solely in Erath County, Texas.

18.3 **Publication.** COK agrees to notify TIAER five days prior to the publication or advertisement of information related to this Contract. COK agrees not to use the TIAER logo or a TIAER graphic as an advertisement or endorsement without written permission signed by the appropriate TIAER authority.

18.4 **Waiver.** With the exception of an express, written document signed with authority by TIAER, no act or omission will constitute a waiver or release of COK's obligation to perform conforming Grant Activities. No waiver on one occasion, whether expressed or implied, will be construed as a waiver on any other occasion.

18.5 **Legal Requirements.** TIAER relies on COK to perform all Grant Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.

18.6 **Survival of Obligations.** Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by, or given in accordance with this Contract, as well as, all continuing obligations indicated in this Contract, survive for four years beyond the termination or completion of this Contract, or after the end of a proceeding which was brought under this Contract, or if TIAER has notified COK of an on-going proceeding. A proceeding includes any litigation, legal proceeding, permit application, State Office of Administrative Hearings proceeding, or similar activity listed in a TIAER notice to COK.

- 18.7 **Headings.** The headings of the sections contained in this Contract are for convenience only and do not control or affect the meaning or construction of any provision of this Contract.
- 18.8 **Release of Claims.** As a condition to final payment, settlement, or both, COK will execute and deliver a Release of Claims form for payment under this Contract to TIAER.
- 18.9 **Counterparts.** This Contract may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Contract.

## 19. Project Representatives and Records Location

- 19.1 **TIAER Project Representative (Project Manager).** The individual named below is the TIAER Project Representative who is authorized to give and receive communications and directions on behalf of TIAER, and to authorize changes to the schedule in the Grant Activities including an extension of a Deliverable due date, not to exceed the expiration date of the Contract.

Anne McFarland Telephone No.: (254) 968-9581  
Senior Research Scientist Facsimile No.: (254) 968-9336  
(Title)  
Texas Institute for Applied Environmental Research Email mcfarla@tiaer.tarleton.edu  
T-0410  
Stephenville, Texas 76402

- 19.2 **TIAER Contract Manager.** The individual named below is the TIAER Contract Manager who is authorized to give and receive communications regarding the terms of the Contract, invoices, and reimbursements.

Jane Zuber Telephone No.: (979) 845-8615  
Director, Contracts & Grants Facsimile No.: (979) 862-3250  
(Title)  
Sponsored Research Services (SRS)  
Email: [jzuber@tamu.edu](mailto:jzuber@tamu.edu)  
3578 TAMUS  
College Station, TX 77845-4375

- 19.3 **COK Project Representative.** The individual named below is the COK's Project Representative, who is authorized to give and receive communications and directions on behalf of COK. All communications to COK will be addressed to the COK Project Representative or his or her designee.

Kristina Ramirez Telephone No.: (254) 968-1902  
Director of Environmental Services Facsimile No.: (254) 968-9336  
(Title)  
City of Killeen, PW-Environmental P.O. Box 1329 Email: [KRamirez@killeentexas.gov](mailto:KRamirez@killeentexas.gov)  
(Mailing Address)  
Killeen Texas 76540  
(City) (State) (Zip Code)

- 19.4 **Submittal of Payment Requests.** Payment requests must be submitted to the TIAER Contract Manager. (See 19.2 above.)

**19.5 Designated Location for Records Access and Review.** COK designates the physical location indicated below for record access and review pursuant to any applicable provision of this Contract.

City of Killeen, PW  
 200 E. Avenue D, 2<sup>nd</sup> Floor  
 (Physical Address)  
 Killeen Texas 76541  
 (City) (State) (Zip Code)

**20. Contract Budget**

20.1 **Budget.** Authorized budgeted actual expenditures for Grant Activities are as follows:

<b>Budget Item</b>	<b>Total Costs</b>
Personnel /Salary	\$ 7,276
Fringe Benefits (25.2%)	\$ 0
Travel	\$ 0
Supplies	\$ 0
Equipment	\$ 0
Contractual	\$ 36,776
Construction	\$ 0
Other **	\$ 0
<b>Total Direct Cost</b>	<b>\$44,052</b>
Indirect Costs (0% of salaries)	\$ 0
Other In-kind Contributions	\$ 0
<b>TOTAL CONTRACT COST</b>	<b>\$44,052</b>
<b>Killeen Cost Share (40%)</b>	<b>\$17,621</b>
<b>Reimbursement Amount (60%)</b>	<b>\$26,431</b>

\*Cost Share is rounded to the nearest dollar

20.2 **Other.** If Budget Category “Other” is greater than \$25,000 and more than 10% of budget total, COK will identify the main constituents.

- 20.3 **Budget Control and Transfers.** Cumulative transfers among the budgeted direct cost categories must not exceed ten percent (10%) of the current Total Contract Budget.
- 20.4 **Fringe Benefit Rate.** The maximum fringe benefit rate of COK for this Contract is 25.2% under this Contract.
- 20.4.1 The fringe benefit rate stated above must be less than, or equal to, a fringe benefit rate authorized under UGMS.
- 20.4.2 If the maximum fringe benefit rate is lower than COK's actual fringe benefit costs, COK is contributing its unreimbursed costs to the successful performance of this Contract, or if this Contract requires a match, COK may claim the difference in the resulting amount as a matching contribution. COK waives any right it may have to reimbursement of those costs beyond what is represented in the Budget.
- 20.4.3 Because TIAER may have fully obligated or expended its appropriation, TIAER is under no obligation to make adjustments to the actual amounts paid by TIAER because of a change in the fringe benefit rate during the life of the Contract. The maximum fringe benefit rate shown in the Budget of this Contract is intended to be final and is not subject to change during the Contract term, including renewals and extensions, except with written approval from the TIAER Contract Manager. The Parties agree they waive, and will not seek, additional fringe benefit costs after the Contract has expired.
- 20.5 **Indirect Cost Rate.**
- 20.5.1 The indirect rate of COK for this Contract is 0% of the personnel/ salaries.
- 20.5.2 If no reimbursable rate is shown above, indirect costs are not reimbursable under this Contract.
- 20.5.3 The indirect cost rate must be less than, or equal to, a rate authorized under UGMS as follows:
- a rate that has been determined by a federal cognizant agency or by a state coordinating agency;
  - a rate negotiated and agreed on by the Parties; or
  - a default amount equal to 10 percent of personnel/salaries.
- 20.5.4 Upon request of TIAER, COK will provide documentation of a federal or state agency cost rate determination.
- 20.5.5 If the indirect rate is lower than COK's actual indirect costs, COK is contributing its unreimbursed indirect costs to the successful performance of this Contract, or if this Contract requires a match, COK may claim the difference in the resulting amount as a matching contribution. COK waives any right it may have to reimbursement of those costs beyond what is represented in the Budget.
- 20.5.6 Because TIAER may have fully obligated or expended its appropriation, TIAER is under no obligation to make adjustments to the actual amounts paid by TIAER because of a difference between the negotiated predetermined final rate and the federal or state agency determined rate. The indirect cost rate shown in the Budget of this Contract is intended to be final and is not subject to change during the Contract term, including renewals and extensions, except with written approval from the TIAER Contract Manager. The Parties agree they waive, and will not seek, additional indirect costs after the Contract has expired.

# Attachment A

## FINANCIAL STATUS REPORT

1. STATE AGENCY TO WHICH REPORT IS SUBMITTED: <b>Texas Commission on Environmental Quality</b>				
2. GRANT/AGREEMENT TITLE: Assessment of Water Quality and Watershed Based Planning for Nolan Creek/South Nolan Creek				
3. PAYEE IDENTIFICATION NUMBER:	4. RECIPIENT ORGANIZATION (NAME AND COMPLETE ADDRESS, INCLUDING ZIP CODE):			
5. TCEQ AGREEMENT NUMBER: 582-13-30061				
6. FINAL REPORT: <input type="checkbox"/> YES <input type="checkbox"/> NO				
7. ACCOUNTING BASIS: <input type="checkbox"/> CASH <input type="checkbox"/> ACCRUAL				
8. TOTAL PROJECT/GRANT PERIOD: FROM 9/1/2012 TO 8/31/2015	9. PERIOD COVERED BY THIS REPORT: FROM TO			
10. BUDGET CATEGORIES:	Approved Budget	Project Cost This Report	Cumulative Project Cost	Balance **
a. Personnel/Salary				
b. Fringe Benefits (not to exceed 25.2% of Personnel/Salary)				
c. Travel				
d. Supplies				
e. Equipment				
f. Contractual				
g. Construction				
h. Other				
i. Total Direct Costs (Sum a – h)				
j. Indirect Costs (0% of Personnel/Salary)				
k. Other - In-kind or third party contributions ***				
l. Total Project Costs (Sum of k & l)				
m. Recipient Cost Share (40%)				
n. Total Reimbursable Costs (60%)				
<p>* List (Itemize) on the appropriate supplemental form all component expenses comprising the total for each of these categories. Please attach receipts, as required, in accordance with the Cost and Payment terms of the Agreement.</p> <p>** Negative balances in any of the budget categories should be explained in a brief accompanying narrative.</p> <p>*** The value of third party in-kind contributions (e.g. volunteer hours) must be pre-approved and cannot exceed the recipient's cost share.</p>				
11. CERTIFICATION I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award document.				
Signature of Authorized Certifying Official _____				
Typed or Printed Name and Title _____				
Telephone (Area code, number and ext.) _____			Date Submitted _____	



# Attachment A (continued)

## ITEMIZATION OF PERSONNEL/SALARY AND TRAVEL COSTS

### PERSONNEL / SALARY EXPENDITURES (during this report period)

EMPLOYEE(S)	TITLE/POSITION	SALARY (THIS PERIOD)	TASKS
A. PERSONNEL/SALARY			
All Employees listed on current PEL? __ Yes __ No			
B. FRINGE Rate = Not to Exceed 25.2%			
Total for the reporting period =			
(Do not include fringe in total at right)			
TOTAL TRAVEL EXPENDITURES (must agree with line 10c on Form 20248)			\$

### TRAVEL EXPENDITURES (during this report period)

EMPLOYEE(S)	DATE(S) OF TRAVEL	DESTINATION & PURPOSE OF TRAVEL	MEALS	LODGING	TRANSPORTATION (Miles X Rate)	TASKS
TOTAL TRAVEL EXPENDITURES (must agree with line 10c on Form 20248)						\$

\* SUPPLEMENTAL DOCUMENTATION (time sheets, travel receipts, etc.) IS NOT REQUIRED TO BE ATTACHED TO THIS FORM; however each traveler's costs must be itemized to show costs for meals, lodging and transportation (itemization may be attached).

**Attachment A (continued)**  
**ITEMIZATION OF SUPPLY AND OTHER COSTS**

**SUPPLIES PURCHASED (during this report period)**

NUMBER PURCHASED	ITEM DESCRIPTION (Should match description provided for approval)	UNIT COST	TOTAL COST	TASKS
TOTAL SUPPLIES PURCHASED (must agree with line 10d on Form 20248)			\$	

**OTHER EXPENDITURES (during this report period)**

NUMBER PURCHASED	DESCRIPTION	UNIT COST	TOTAL COST	TASKS
TOTAL OTHER EXPENDITURES (must agree with line 10h on Form 20248)			\$	

## Attachment A (continued)

### ITEMIZATION OF EQUIPMENT & CONTRACTUAL EXPENDITURES

EQUIPMENT PURCHASES (during this report period)

NUMBER PURCHASED	ITEM DESCRIPTION (Should match description provided for approval)	UNIT COST	TOTAL COST	TASKS
TOTAL EQUIPMENT EXPENDITURES (must agree with line 10e on Form 20248)			\$	

CONTRACTUAL EXPENDITURES (during this report period)

SUBCONTRACTOR (NAME)	FOR	COST (THIS PERIOD)	TASKS
TOTAL EQUIPMENT EXPENDITURES (must agree with line 10f on Form 20248)		\$	

# Attachment A (continued)

## ITEMIZATION OF CONSTRUCTION COSTS and COST SHARE

### CONSTRUCTION COSTS (during this report period)

DESCRIPTION	PURPOSE	COST (THIS PERIOD)	TASKS
TOTAL CONSTRUCTION EXPENDITURES (must agree with line 10g on Form 20248)		\$	

\* LEGIBLE RECEIPTS MUST BE ATTACHED FOR ALL LISTED EXPENDITURES

### OTHER IN-KIND or THIRD PARTY CONTRIBUTIONS (during this report period)

DESCRIPTION	PURPOSE	COST (THIS PERIOD)	TASKS
TOTAL IN-KIND CONTRIBUTIONS (must agree with line 10l on Form 20248)		\$	

\* DOCUMENTATION MUST BE ATTACHED FOR IN-KING CONTRIBUTIONS – In Kind Contributions in excess of Required Cost Share CANNOT be reimbursed.

### COST SHARE (Matching costs during this report period)

DESCRIPTION	CALCULATION OF MATCH REQUIRED	MATCH (THIS PERIOD)	TASKS
Total Costs minus 40%	\$ ____ x 40%		All
TOTAL COSTS SHARED by Recipient (must agree with line 10n on Form 20248)		\$	

# Attachment B

## GRANTEE PERFORMANCE EVALUATION REPORT

Final Report (Check only if the Agreement has ended and this is the last Performance Report) Today's Date: \_\_\_\_\_

Report No. \_\_\_\_\_ of \_\_\_\_\_  
 Grantee: \_\_\_\_\_  
 Project Name (if applicable) \_\_\_\_\_  
 Date of Last Report: \_\_\_\_\_

Evaluation Period: From \_\_\_\_\_ to \_\_\_\_\_  
 Contract No./ Purchase Order No.: \_\_\_\_\_  
 Phase (if applicable) \_\_\_\_\_  
 Date of Program's Last Site Visit: (if applicable) \_\_\_\_\_

Brief Description of Work / Services (optional): \_\_\_\_\_

Performance Category	Ratings				Comments
	Exceeds Expectations Score=3	Satisfactory Performance Score=2	Marginal Performance Score=1	Unsatisfactory Performance Score=0	
					Please provide a narrative description for ratings of <u>one</u> or below (attachments are acceptable)
<b>Quality &amp; Accuracy</b>					
<b>Timeliness</b>					
<b>Reports</b>					
<b>HUB (for Quarterly Reporting, complete this portion only and return)</b>					
<b>Communication</b>					
<b>Cost Control</b>					
<b>Technology</b>					
<b>Other (describe)<sup>1</sup></b>					

Evaluator's Name \_\_\_\_\_  
 (Printed or Typed)

Signature \_\_\_\_\_

Division \_\_\_\_\_

Section: \_\_\_\_\_

**NOTE: Please see reverse side for specific definitions for each performance category and an explanation for each score.**

<sup>1</sup> Requires an attachment describing category and rating description which corresponds.

## Attachment B (continued)

### GRANTEE'S PERFORMANCE EVALUATION REPORT – Category Description

PERFORMANCE CATEGORY	EXCEEDS EXPECTATIONS (Score=3)	SATISFACTORY PERFORMANCE (Score=2)	MARGINAL PERFORMANCE (Score=1)	UNSATISFACTORY PERFORMANCE (Score=0)
<b>1. Quality and Accuracy</b> Quality, sufficiency, and accuracy of contract-required work, including work or tasks performed by subcontractors.	Work product always, with rare exceptions, of excellent quality. Revisions rarely or never required.	Work product of satisfactory quality with only typical errors and omissions, which were corrected upon request.	Work product is acceptable, although many errors and/or omissions had to be corrected prior to product being acceptable.	Work product not acceptable or of very low quality, with many errors and omissions noted. Not all errors and omissions corrected.
<b>2. Timeliness</b> Timeliness with respect to completing contract-required work and/or work-related tasks, including work performed by subcontractors.	All tasks and contract deliverables on time or ahead of schedule. Quality of work did not suffer as a result of the time line.	Some intermediate task delays, not expected to cause major deadlines to be missed or to require contract extension. Prior approval granted for any other delays.	Some major work performance delays caused (or expected to cause) delivery schedules to be missed.	Required work product not completed on time, due to factors that should have been under contractor's control.
<b>3. Reports</b> Accuracy, adequacy, and timeliness of contract-required activity/progress reports, notifications, financial reports, invoices, pay requests and other required documents, excluding HUB reports	All reports accurate and complete, as well as on time. No rewrites or additional information required.	Reports satisfactory with respect to both quality and timeliness. Contractor responded quickly and appropriately to questions or comments raised.	Numerous errors and/or omissions corrected prior to reports being acceptable (or reminders of reports due were required to be sent). Reports not later than 5 working days.	Reports consistently of poor quality and/or late. Contents inadequate to permit interpretation or analysis. Reports more than 5 working days late.
<b>FOR HUB PROGRAM USE ONLY:</b> <b>4. HUB and/or DBE/MBE/WBE<sup>2</sup></b> Contractor's achievement of (or continued responsiveness toward) contract-contained HUB Subcontracting Plan (HSP) and/or Good Faith Effort (GFE) requirements, including timely and accurate submittal of contract-required HUB related reports.	Contractor consistently meets or exceeds the HSP and/or GFE requirements. All reports accurate and complete, as well as on time. No rewrites or additional information required.	Contractor satisfactorily meets the HSP and/or GFE requirements. Reports satisfactory with respect to both quality and timeliness. Contractor responded quickly and appropriately to questions or comments raised.	Contractor marginally meets the HSP and/or GFE requirements. Numerous errors and/or omissions corrected prior to reports being acceptable (or reminders of reports due were required to be sent). Reports frequently late.	Contractor did not adequately meet the HSP and/or GFE requirements. Reports consistently of poor quality and/or late. Contents inadequate to permit interpretation or analysis. Reports habitually late.

<sup>2</sup> When the term HUB is used, include evaluation of Contractor's performance of DBE/MBE/WBE.

**Attachment B (continued)**

<p><b>5. Communication</b> Contractor's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the Contract Manager; plus contractor's demonstrated relationship with subcontractors.</p>	<p>Contractor consistently maintains excellent standing with subcontractors, including timely payments. Works as a team member and is flexible and responsive to changes in circumstances or scope of work.</p>	<p>Contractor is usually flexible and responsive to changes in circumstances or scope of work. Generally maintains good standing with subs, and ensures that they are paid promptly.</p>	<p>Contractor is only intermittently responsive to changes in contract scope or other circumstances. Marginal team player. Failed to make timely payments to subs on one or two occasions.</p>	<p>Not flexible to changes in scope or other circumstances. Not cooperative or accessible. Failed to maintain good standing with subs and failed to make payments on more than two occasions.</p>
<p><b>6. Cost Control</b><sup>3</sup> Contractor's ability to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget.</p>	<p>Contractor took strong initiative to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget.</p>	<p>Contractor observed current cost levels; compared them with Contract or Work Order budget, as applicable; and instituted corrective action to keep cost within budget.</p>	<p>Contractor sometimes failed to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget.</p>	<p>Contractor failed to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget.</p>
<p><b>7. Technology</b> Contractor's demonstrated technical competence and/or expertise (including competence and expertise of subcontractors); plus contractor's innovativeness and willingness to apply, within the limitations of the contract, new techniques or technologies.</p>	<p>Contractor is comfortable with and applies current proven technology. But is familiar with, and willing to use, latest techniques and solutions where such are appropriate.</p>	<p>Contractor is capable of applying current proven technology. Is aware of, but not experienced in the use of latest techniques and solutions.</p>	<p>Contractor usually uses more basic technology to solve contract problems. Is aware of, but has little or no experience in the use of more current proven techniques and solutions.</p>	<p>Contractor can only apply basic technology to tasks. Requires direction concerning appropriate technology and solutions.</p>
<p><b>8. Other.</b> DESCRIBE</p>	<p>DESCRIBE</p>	<p>DESCRIBE</p>	<p>DESCRIBE</p>	<p>DESCRIBE</p>

<sup>3</sup> Do not include consideration of Contract or Work Order budget amount changes requested or caused by TCEQ

# Attachment C

## City of Killeen

### Release of Claims

City of Killeen hereby releases the Texas Institute for Applied Environmental Research (TIAER), its officers, agents, and employees from any and all future claims arising under or by virtue of Contract Number 582-13-30061-COK.

This Release of Claims further certifies that all subcontractors, suppliers, employees and any party which has performed or provided service for this Contract has been paid in full and satisfied.

All services and tasks required to be completed under the referenced Contract have been completed.

Prompt payment, therefore, of any and all funds which may have been "retained" by TIAER in accordance with said Contract is requested.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name, typed or printed)

\_\_\_\_\_  
(title)



# Attachment D

## PERSONNEL ELIGIBILITY LIST

Contractor: City of Killeen

Date: 10/26/15

Staff Name or Vacant	Position or Title	Date Added to PEL	Date Removed from PEL	% Time to Contract	Annual Salary	Annual Benefits	Total Annual Salary	Average Cost Each Fiscal Year
Kristina Ramirez	Director of Environmental Services	09/21/12		4	103,187	16,880	120,067	4,600
Hilary Shine	Executive Director of Public Information	09/21/12		1	107,093	21,497	128,591	
Holli Clements	Deputy City Attorney – Public Works	09/01/15		1	107,486	20,886	128,372	
<b>Wages – Hourly Employees</b>								
Joan Rivera	Principal Administrator	09/21/12		0.02	27,160	8,789	35,949	50
Ramon Alvarez	Environmental Specialist	09/21/12		0	42,904	11,154	54,059	0
Israel Garza	Project Manager	02/25/13		1.6	53,327	13,673	67,001	973
Melissa Russell	Contract Specialist	01/12/15		2.5	46,530	7,761	54,291	1,298
Frank Romero	Storm Water Drainage Technician	02/06/15		3.6	42,567	12,377	54,945	1,722
<b>Total Average Annual Cost (Personnel - Salaries)</b>								

\* Annual salary is based on the initial fiscal year of the project assuming a 3% salary increase each fiscal year for the project's duration.

\*\* Cost each Fiscal Year is an average of annual personnel cost for project duration



# City of Killeen

## Legislation Details

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**File #:** PH-15-059    **Version:** 1    **Name:** Zoning 15-28  
**Type:** Ordinance/Public Hearing    **Status:** Public Hearings  
**File created:** 11/24/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** HOLD a public hearing and consider an ordinance requested by LIBSQ II, L.P. (Case #Z15-28) to rezone Lot 10, Block 1, Bellaire Addition Section I, from "R-1" (Single-Family Residential District) to "B-3" (Local Business District). The property is locally known as 908 Jasper Drive, Killeen, Texas.  
**Sponsors:** Planning & Development Dept  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Attachment to Council Memorandum](#)  
[Ordinance](#)  
[Application](#)  
[Location map](#)  
[Buffer map](#)  
[Considerations](#)

Date	Ver.	Action By	Action	Result
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## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**ZONING CASE #Z15-28 "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO "B-3" (LOCAL BUSINESS DISTRICT)**

### ORIGINATING DEPARTMENT

**PLANNING & DEVELOPMENT SERVICES**

### Nature of the Request

This request is to rezone Lot 10, Block 1, Bellaire Addition Section I, from "R-1" (Single-Family Residential District) to "B-3" (Local Business District). The property is located at the southwest corner of the T-intersection of Jasper Drive and Trimmier Road and is locally known as 908 Jasper Drive. The applicant has listed office use as the desired land use for the zoning request.

### **District Descriptions:**

A building or premises in the district "B-3" Local Business District shall be used only for the following purposes:

- (1) Any use permitted in the "B-2" district.
- (2) Bank, savings and loan or other financial institution.
- (3) Day camp.
- (4) Hospital, home or center for the acute or chronic ill.
- (5) Mortuary or funeral chapel.
- (6) Appliance (household) sales and repair service.
- (7) Bakery or confectionery: engaged in preparation, baking, cooking and selling of products at retail on the premises, with six (6) or less employees.
- (8) Boat and accessory sales, rental and service.
- (9) Bowling alleys.
- (10) Cleaning or laundry (self-service).
- (11) Cleaning, pressing and dyeing: with six (6) or less employees.
- (12) Florist, garden shop, greenhouse or nursery office (retail): no growing of plants, shrubs or trees out-of-doors on premises; no outside display or storage unless behind the required front yard or the actual setback of the principal building, whichever is greater.
- (13) General food products, retail sales, such as supermarkets, butcher shops, dairy stores, seafood sales or health food sales.
- (14) Cafeteria or catering service.
- (15) Marine supplies, sales and service.
- (16) Office, general business.
- (17) Restaurant or café permitted to offer alcoholic beverages for sale operating under the rules and regulations promulgated by the Texas Alcoholic Beverage Commission, as amended, all of which are adopted hereby and made a part hereof for all purposes. No restaurant will be permitted to dispense any type of alcoholic beverage through any "drive-through" facility or window.
- (18) Tennis or swim club.
- (19) Small animal clinic or pet grooming shop.
- (20) Hotel or motel.

- (21) Job printing. Not more than seventeen (17) inches by twenty-five (25) inches page size.
- (22) Gasoline service station, auto laundry or car wash.
- (23) Auto parts sales, new, at retail.
- (24) A customarily incidental use: sale of beer and/or wine only for off-premises consumption only shall be considered a customarily incidental use in this district, but not in any residential district or any more restrictive business district.
- (25) Theaters of general release.
- (26) Mini/self storage facilities - a building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual compartmentalized and controlled access stalls or lockers for the storage of customer's goods or wares. No outside storage, sales, service, or repair activities, other than the rental of storage units shall be permitted on premises.

Sec. 31-306.1 Supplemental standards for restaurants engaged in the on-premises sale and consumption of alcohol.

- (a) During any consecutive twelve-month period, a restaurant shall not obtain more than fifty (50) percent of its gross receipts from the on-premises sale of alcoholic beverages. In conjunction with renewal of TABC licensing, it shall be required to provide the most recent comptroller's certification of sales receipts to the planning and development services department prior to the city's approval of the permit renewal.
- (b) Restaurants may not be within three hundred (300) feet of a church, public or private school or public or private hospital. The measurement of the distance between the place of business where alcoholic beverages are sold and the church, public or private school, or public or private hospital shall be as prescribed by the Texas Alcoholic Beverage Code § 109.33, as amended.

### **Property Specifics**

**Applicant/Property Owner:** LIBSQ II, L.P.

**Property Location:** The property is located at 908 Jasper Road, Killeen, Texas.

**Legal Description:** Lot 10, Block 1, Bellaire Addition Section I, Killeen, Texas.

### **Zoning/ Plat Case History:**

There has been no recent zoning activity for this property.

The property is platted as Lot 10, Block 1, Bellaire Addition Section I, which was filed for record on December 16, 1964, in Plat Book 918, Page 397, Deed Records of Bell County, Texas.

### **Character of the Area**

**Existing Land Use(s) on the Property:** There is an existing residential structure on this corner property. It is part of a block that is zoned "R-1" within its entirety. The property fronts onto Jasper Drive and faces another single-family home to the north. The property abuts single-family homes to the west and south. The eastern boundary is located adjacent to

Trimmier Road and is across the street from an existing "B-2" (Local Retail District) zoned office park.

### **Figure 1. Zoning Map**

See Attachment

**Historic Properties:** None

### **Infrastructure and Community Facilities**

#### **Emergency Response**

Fire District: 5

Fire Response Zone: 5-3

Miles from Fire Station: Approximately 1.77 miles from Fire Station No. 5, which is located at 905 W. Jasper Road.

#### **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 readily accessible to the subject property located within the City of Killeen municipal utility service area. Adequate potable water and sanitary sewer capacity are available to the current residence on the property. Public storm drainage infrastructure lies within the abutting right-of-way. Detention of post development storm water run-off may be required if the property is converted to commercial use and inadequate capacity remains within existing drainage infrastructure. Public Works personnel have performed only a basic assessment of publicly-dedicated water and sanitary sewer infrastructure that would serve this property. The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for re-development of the subject property, shall coordinate tie in to all publicly dedicated infrastructure with the Public Works Department.

#### **Transportation:**

Existing conditions: The property is located at the southwest corner of the signalized T-intersection of Jasper Drive and Trimmier Road. Jasper Drive and Trimmier Road are respectively classified as a 70' collector and 90' minor arterial on the City's adopted Thoroughfare Plan. The Trimmier Road Improvements CIP is currently under construction, which includes mobility enhancements as a part of the future project. A right-of-way taking may affect the property. Ingress/egress to the property would be limited to the single point of existing ingress/egress to Jasper Road. A discrete drive to Trimmier Road would not be allowed.

Proposed Improvements: None proposed as part of this development.

Projected Traffic Generation: The traffic impact will be minimal.

## **Environmental Assessment**

**Topography:** The property has an elevation of 906'. The soils for the site are classified as follows: approximately 32 percent Topsey clay loam with 3 to 8 percent slopes (BtC2) and approximately 68 percent Denton silty clay with 1 to 3 percent slopes (DeB). There are no known wetlands on this parcel. The 1964 Drainage requirements will apply to any new development on this parcel.

Currently sheet flow runoff on this development flows from the rear of the parcel to the adjacent parcel to the south and then into Trimmier Road and other rights-of-ways prior to entering Trimmier Road Ditch. The runoff then flows from Trimmier Road Ditch into Little Nolan Creek. Little Nolan Creek flows into Nolan Creek prior to leaving the City. Little Nolan Creek and Nolan Creek are currently listed on the TCEQ's 2012 303(d) water quality list for impairment due to bacteria and concerns for near non-attainment for nutrients.

**Regulated Floodplain/Floodway/Creek:** The proposed development is not within any FEMA regulatory Special Flood Hazard Area (SFHA).

## **Land Use Analysis**

**Land Use Plan:** The property is designated as 'General Residential' on the Future Land Use Map (FLUM) a component of the Comprehensive Plan.

**Plan Recommendation:** The Comprehensive Plan considers 'General Residential' to be of a medium intensity category/character that encompasses detached residential dwelling units, attached housing types, planned developments, as well as parks and public/institutional places. Neighborhood-scale commercial uses are expected to emerge over time and should be encouraged on sites, and in locations, within or near the edge of "General Residential" areas.

**Consistency:** The rezone request is consistent with the Comprehensive Plan.

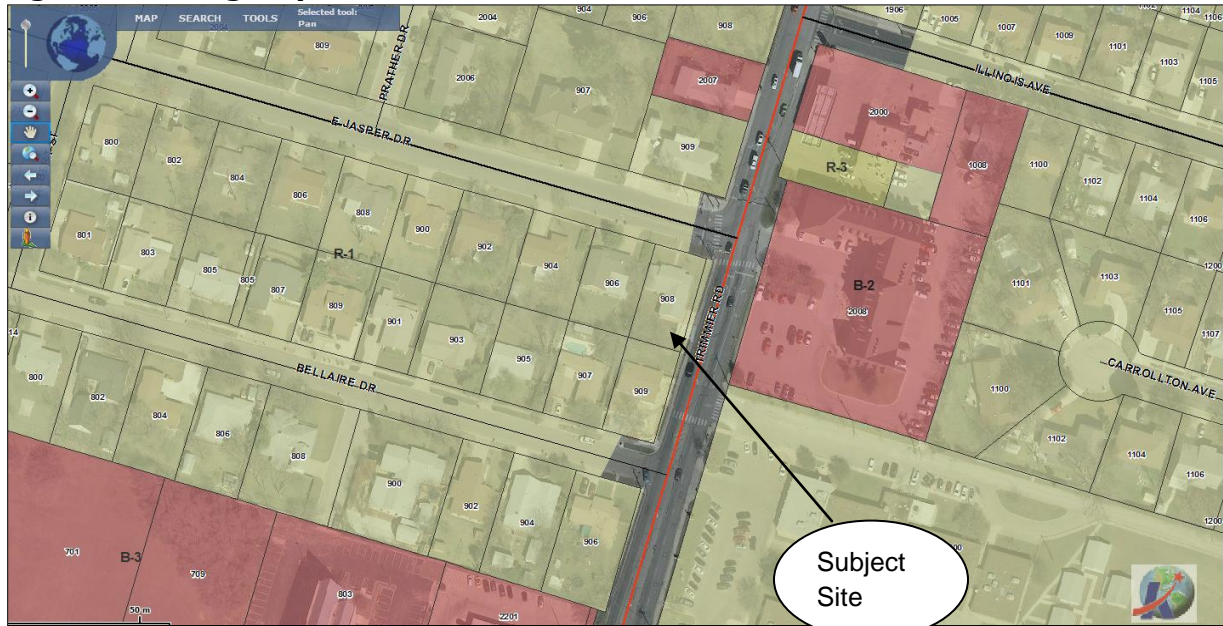
## **Public Notification**

Staff notified sixteen (16) surrounding property owners within the 200' notification area. Staff has received no protests.

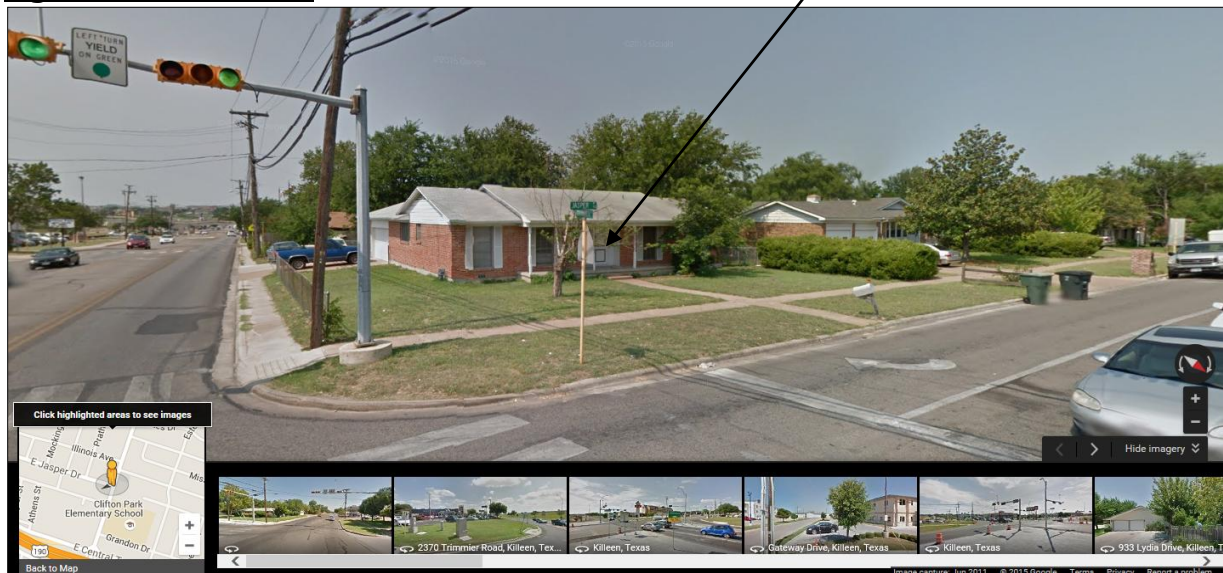
## **Recommendation:**

The Planning and Zoning Committee will hear this rezoning request at the December 7, 2015 Planning & Zoning Committee meeting. The Planning & Zoning Committee recommendation will be provided at the December 8, 2015 City Council Workshop.

**Figure 1. Zoning Map**



**Figure 2. Street View**



**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 R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO B-3 (LOCAL BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, LIBSQ II, L.P. submits this request for an amendment of the zoning ordinance of the City of Killeen by changing the classification of 908 Jasper Drive, from R-1 (Single-Family Residential District) to B-3 (Local Business District), said request having been duly presented and recommended for approval of B-3 (Local Business District) zoning by the Planning and Zoning Commission of the City of Killeen on the 7th day of December 2015, 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 15th day of December 2015, 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 City Council has determined that the zoning classification of the following described tract be changed from R-1 (Single-Family Residential District) to B-3 (Local Business District) zoning for 908 Jasper Drive, 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 15th day of December 2015, 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:**

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**Scott Cospers, MAYOR**

**ATTEST:**

---

**Dianna Barker, CITY SECRETARY**

**APPROVED AS TO FORM**

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**Kathryn H. Davis, City Attorney**

Case #15-28

Ord. #15-\_\_\_



Date Paid:	10/28/15
Amount Paid:	\$ 300
Cash/MO #/Check #:	# 1847
Receipt #:	310

CASE #: 215-28

## City of Killeen Zoning Change Application

General Zoning Change [ ] Conditional Use Permit

Name(s) of Property Owner: LIBS Q II L.P.

Current Address: P.O. Box 996

City: Killeen State: Texas Zip: 76540 - 0996

Home Phone: ( ) \_\_\_\_\_ Business Phone:  2546997704 Cell Phone: ( ) \_\_\_\_\_

Email: Killeen@bkew.com

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: 908 Jasper

Legal Description: Bellaire Addition Section 1 Block 001 Lot 0010

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO

Type of Ownership: \_\_\_\_\_ Sole Ownership  Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Other \_\_\_\_\_

Present Zoning: R-1 Present Use: Tenant dwelling

Proposed Zoning: B3 Proposed Use: Offices

Conditional Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated \_\_\_\_\_ and recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, Instrument Number \_\_\_\_\_ of the Bell County Deed Records. (Attached)

NOT RECORDED YET

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: William P. Kiewer

Mailing Address: P.O. Box 996

City: Killeen State: TX Zip: 76540 - 0996

Home Phone: ( ) \_\_\_\_\_ Business Phone: (254) 699-7100 Email: Kiewer@6kew.com

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 ace, 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 may 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 William P. Kiewer Title MGR

Printed/Typed Name of Agent William P. Kiewer Date 10-28-15

Signature of Applicant William P. Kiewer Title MGR

Printed/Typed Name of Applicant LIBSA II L.P. Date 10-28-15

Signature of Property Owner William P. Kiewer Title MGR

Printed/Typed Name of Property Owner LIBSA II L.P. Date 10-28-15

Signature of Property Owner William P. Kiewer Title MGR

Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_

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:**

Z15-28

**ZONING FROM:**

R-1 to B-3

**APPLICANT:**

LIBSQ IL, LP




**PROPERTY OWNER:**

N ELLIS FAMILY LTD

**LEGAL DESCRIPTION:**

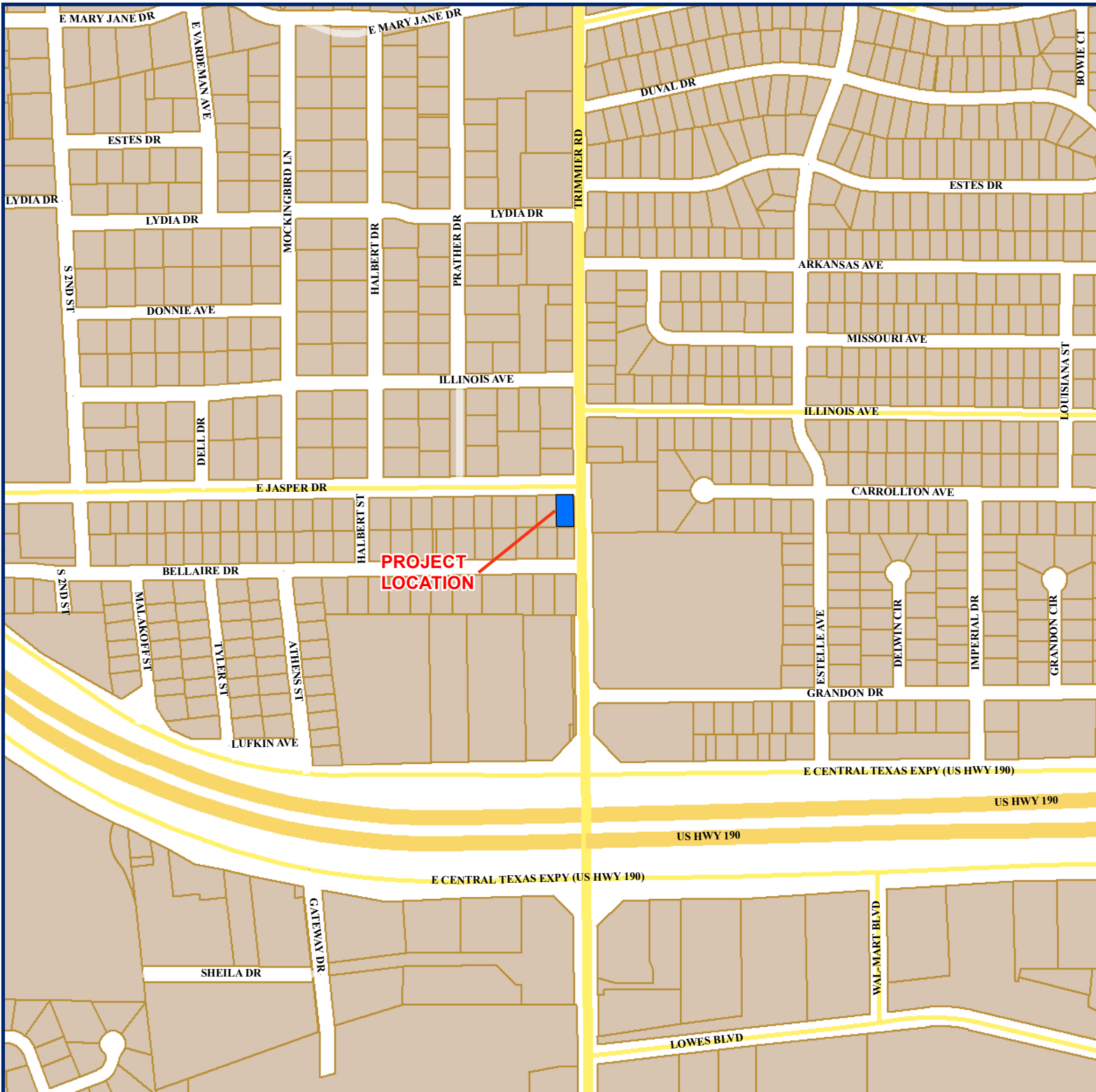
BELLAIRE ADDITION  
SECTION 1 BLOCK 001  
LOT 0010

**LEGEND**

-  Zoning Case
-  Parcel
-  City Limits



Date: 11/10/2015





**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

**Z15-28**

**ZONING FROM:**

**R-1 to B-3**

**APPLICANT:**

**LIBSQ IL, LP**






**PROPERTY OWNER:**

**NELLIS FAMILY LTD.**

**LEGAL DESCRIPTION:**

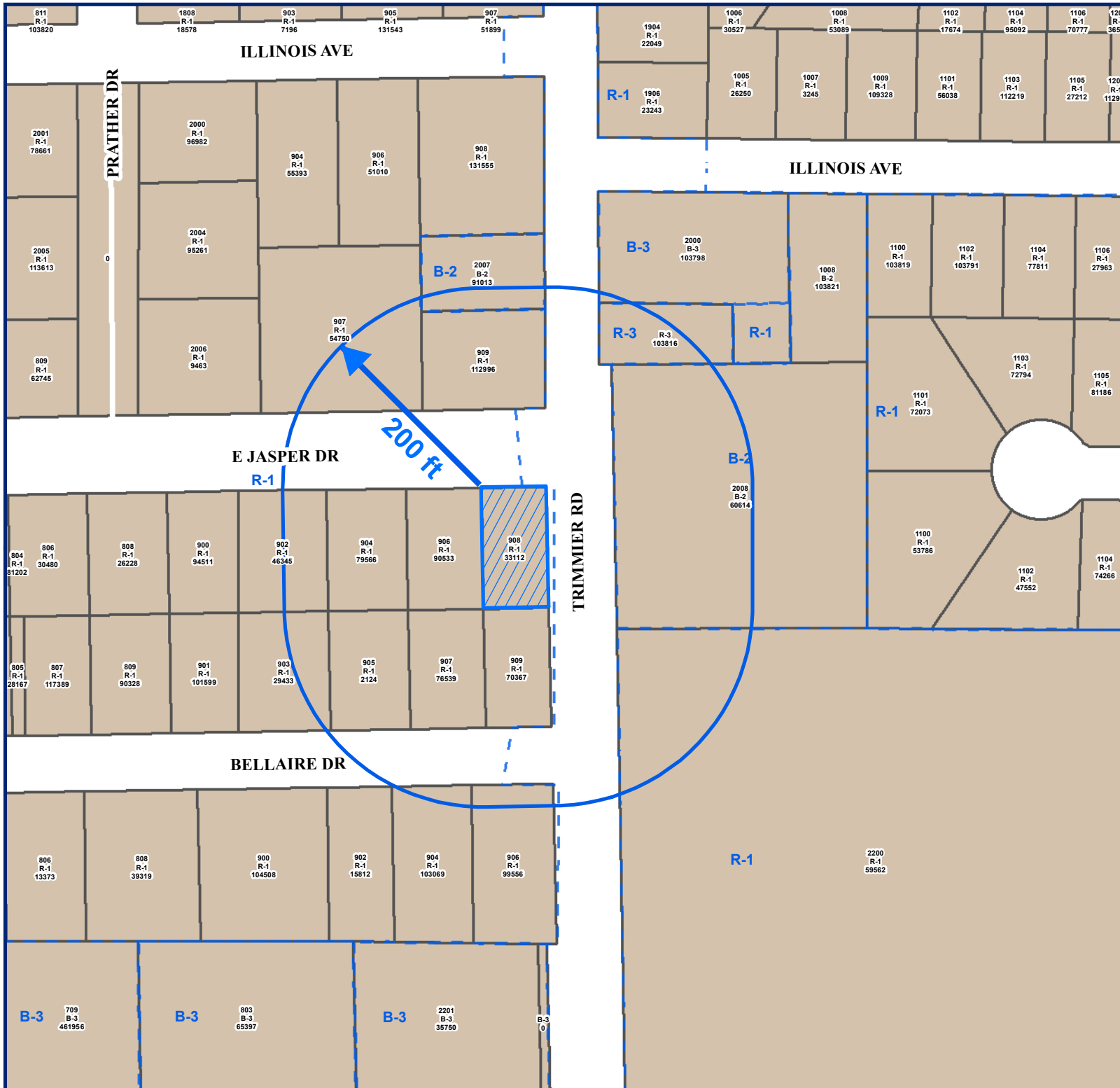
**BELLAIRE ADDITION  
SECTION 1 BLOCK 001  
LOT 0010**

**LEGEND**

-  200 Ft Buffer
-  Zoning Case
-  Current Zoning
-  Parcel
-  City Limits



Date: 11/10/2015



# 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

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**File #:** PH-15-060    **Version:** 1    **Name:** Zoning 15-29  
**Type:** Ordinance/Public Hearing    **Status:** Public Hearings  
**File created:** 11/24/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** HOLD a public hearing and consider an ordinance by Abdul Khan (Case #Z15-29) to rezone Lot 1, Block 1, Wassay Addition, from "CD" (Cemetery District) with a Conditional Use Permit (CUP) to "CD" (Cemetery District) with a Conditional Use Permit (CUP) for a retail store. The property is locally known as 10752 S. Fort Hood Street, Killeen, Texas.  
**Sponsors:** Planning & Development Dept  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Attachment to Council Memorandum](#)  
[Ordinance](#)  
[Application](#)  
[Location map](#)  
[Buffer map](#)  
[Considerations](#)

Date	Ver.	Action By	Action	Result
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## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**ZONING CASE #Z15-29 "CD" (CEMETERY DISTRICT) WITH A CONDITIONAL USE PERMIT (CUP) TO "CD" (CEMETERY DISTRICT) WITH A CONDITIONAL USE PERMIT (CUP)**

### ORIGINATING DEPARTMENT

**PLANNING & DEVELOPMENT SERVICES**

### Nature of the Request

This request is submitted by Abdul Khan to rezone Lot 1, Block 1, Wassay Addition, from "CD" (Cemetery District) with a Conditional Use Permit (CUP) to "CD" (Cemetery District) with a Conditional Use Permit (CUP) to allow for a 9,100 square feet retail store. The property is locally known as 10752 S. Fort Hood Street, Killeen, Texas.

**A building or premises in the "CD" Cemetery District shall be used only for the following purposes:**

- (a) Building on premises in "CD" district shall be used only for the following purposes:
  - (1) Offices of practitioners of the recognized professions, as herein defined:
    - a. Professional building. Any structure used solely for the housing of professional offices of recognized professions.
    - b. Professions, recognized. Members of a recognized profession include those persons and customary staff normally considered as professional, and shall be deemed to include doctors, dentists, lawyers, architects, certified public accountants, registered engineers and related professions.
  - (2) Uses customarily incidental to the primary use, as hereinafter provided, subject to the special conditions contained in section 31-276(3).
    - a. Physical therapy clinic.
    - b. Chemical or X-ray laboratory.
    - c. Dispensing optician.
    - d. Dental laboratory.
  - (3) Buildings may be used for one or more of the uses prescribed in section (2) only under the following conditions:
    - a. Public access to such incidental uses shall be from the interior of the building.
    - b. No parking space shall occupy any part of the required front yard, except as provided in article V, division 3.
    - c. Sign standards for this district shall apply to both primary and incidental uses.
    - d. No building in this district shall be constructed or altered to produce a storefront, show, window or display window, and there shall be no merchandise visible from the exterior of the building.
    - e. No outside storage shall be permitted in this district.
  - (4) Office, general business.



- (5) An on-premises residential use or living quarters may be included in one structure in a commercial land use district when the main use of the structure is commercial, provided both uses are in compliance with appropriate building codes and the proprietor or an employee of the commercial activity is a resident in the living quarters.
  - (6) Business day care.
  - (7) Bakery shop (retail sales only).
  - (8) Barbershop, beauty shop to include permanent cosmetics (licensed per Texas Health and Safety Code, chapter 146 amended).
  - (9) Construction field office and yard: on the job site; for duration of construction only.
  - (10) Mortuary or funeral chapel.
  - (11) Drugstore or pharmacy.
  - (12) Florist (retail) retail sales of flowers and small plants. No flowers or plant raising or outside display or storage.
  - (13) Cafeteria or catering service.
  - (14) Restaurant or café (dine in service).
  - (15) Tennis, swim club, health club or gym.
  - (16) Hotel or motel.
  - (17) Art gallery, bookstore or library.
  - (18) Mixed-use development, being located nine hundred and fifty (950) feet to fifteen hundred (1,500) feet east of the east right-of-way of State Highway 195, for the commercial and residential use of a building, set of buildings, or neighborhood, where the first floor is designed, constructed and used for commercial use only while allowing access to residential uses.
- (b) Any conflict between this district and the districts incorporated herein, or the regulations provided by the other districts, shall be resolved so that the most stringent provision shall control.

### **Conditional Use Permit.**

The City Council by an affirmative majority vote may by ordinance grant a Conditional Use Permit as provided in section 31-456 of this chapter for any residential or business land use for a specific parcel in the overlay district and may impose appropriate conditions and safeguards to assure that these land uses are compatible with and appropriate for locations around the Veterans Cemetery. Conditional Use Permits granted shall be considered permanent provided the property owner remains in continuous compliance with any conditions or safeguards imposed.

### **Property Specifics**

**Applicant/Property Owner:** Abdul Khan

**Property Location:** The property is located at the intersection of S. H. 195 and Splawn Ranch Road and is addressed as 10752 S. Fort Hood Street, Killeen, Texas.

**Legal Description:** Lot 1, Block 1, Wassay Addition.

**Zoning/ Plat Case History:**

- This property was last rezoned on June 28, 2011 (per Ordinance No. 11-048) to allow for a 5,000 square feet convenience store and gas station.
- The property is platted as part of Lot 1, Block 1, Wassay Addition, which was filed for record on August 4, 2011 in Cabinet D, Slide 330-B, Plat records of Bell County, Texas.

### **Character of the Area**

**Existing Land Use(s) on the Property:** Vacant parcel.

### **Figure 1. Zoning Map**

See Attachment

**Historic Properties:** None

### **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 subject property. A gravity sanitary sewer extends just south of the platted subdivision (Wassay Addition) and ties into a public lift station.

#### **Transportation**

Existing conditions: The proposed subdivision abuts S. H. 195, which is classified as a 110' principal arterial on the City's Thoroughfare Plan. Splawn Ranch Drive is a 60' local street. Access to S. H. 195 is prohibited by a platted non-access easement along the entire western lot line. It shall be noted that access to S. H. 195 is controlled by the State and is disciplined through TxDOT's Access Management Policy. Based upon the location of existing public streets and private drive approaches, the regulatory speed of this section of S. H. 195 (70 mph) and the inherent topographic constraints along this corridor, a discrete driveway to S. H. 195 would not be granted if petitioned by the applicant. Such point of connection would create an unsafe traffic conflict that cannot be supported by AAHTO design standards. The tract has adequate and viable access to Splawn Ranch Drive with high visibility from S. H. 195. Future access to S. H. 195 could be supported through mutual access to a common improved existing drive south of the tract. It should be noted that staff has discussed a marginal access (backage road) concept with the Splawn Ranch Partnership to support coordinated mutual access to future development along the entire S. H. 195 frontage.

Proposed Improvements: None are being proposed at this time.

Projected Traffic Generation: Moderate.

### **Environmental Assessment**

**Topography:** The property is relatively flat with an elevation rise of 896 feet to 912 feet. Unless replatted, the 1993 drainage requirements will apply to any new development on this site. Currently runoff on this development flows from the rear of the parcel into the S. H. 195 right-of-way prior to entering an unnamed tributary of North Reece Creek. The runoff then flows from North Reece Creek into Reece Creek and finally into the Lampasas River prior to leaving

the City. None of these water bodies are listed on the TCEQ's 2012 303(d) water quality list for impairment.

**Regulated Floodplain/Floodway/Creek:** This property is not located within any FEMA regulatory Special Flood Hazard Area (SFHA).

### **Land Use Analysis**

**Land Use Plan:** This area is designated as 'Suburban Commercial' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

**Plan Recommendation:** The 'Suburban Commercial' character allows for a range of commercial retail and service uses, at varying scales and intensities depending on the site. This includes the following development types:

- Office (both large and/or multi-story buildings and small-scale office uses depending on the site).
- Planned development to accommodate custom site designs or mixing of uses in suburban character setting
- Public/ institutional
- Parks and public spaces

**Consistency:** The proposal is consistent with the Comprehensive Plan.

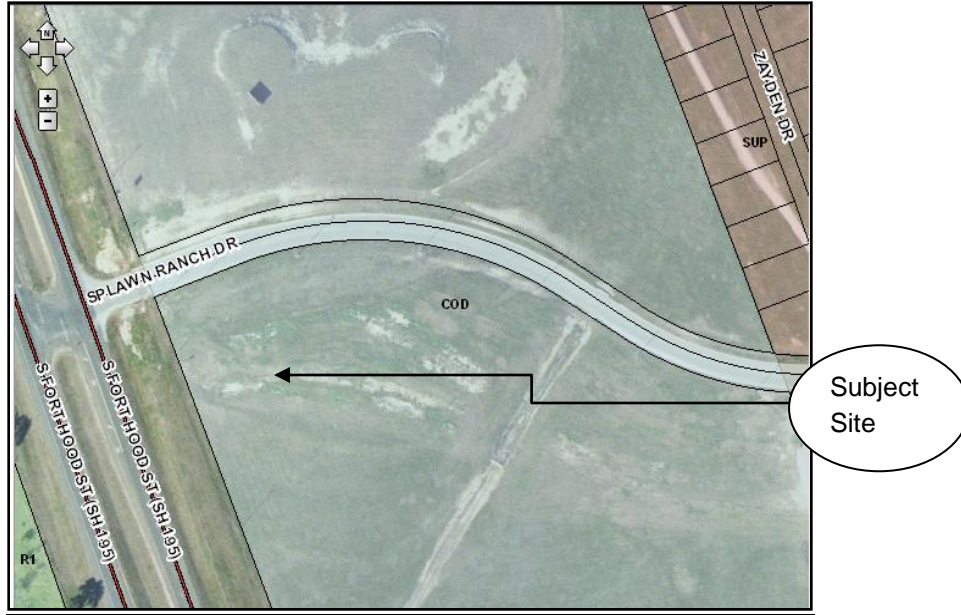
### **Public Notification**

The staff notified three (3) surrounding property owners within a 200' notification boundary. Staff has received no protests.

### **Recommendation**

The Planning and Zoning Committee will hear this rezoning request at the December 7, 2015 Planning & Zoning Committee meeting. The Planning & Zoning Committee recommendation will be provided at the December 8, 2015 City Council Workshop.

**Figure 1. Zoning Map**



**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 CD (CEMETERY DISTRICT) TO CD WITH A CONDITIONAL USE PERMIT (CUP) TO CD (CEMETERY DISTRICT) WITH A CONDITIONAL USE PERMIT (CUP); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Abdul Khan 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, Wassay Addition, from CD (Cemetery District) with a Conditional Use Permit (CUP) to CD with a Conditional Use Permit (CUP) to allow for a 9,100 square feet retail store, said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 7th day of December 2015, 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 15th day of December 2015, 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 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 CD (Cemetery District) with a Conditional Use Permit (CUP) to CD with a

Conditional Use Permit (CUP) to allow for a 9,100 square feet retail store, for Lot 1, Block 1, Wassay Addition, 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 15th day of December 2015, 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 Cospers, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Dianna Barker, CITY SECRETARY**

**APPROVED AS TO FORM**

\_\_\_\_\_  
**Kathryn H. Davis, City Attorney**

Case #15-29  
Ord #15-\_\_\_



Date Paid:	<u>11/5/15</u>
Amount Paid:	\$ <u>500</u>
Cash/MO #/Check #:	# <u>17786</u>
Receipt #:	<u>321</u>

CASE #: Z15-29

## City of Killeen Zoning Change Application

[ ] General Zoning Change [X] Conditional Use Permit

**Name(s) of Property Owner:** Abdul Khan

Current Address: 507 Osman Drive

City: Killeen State: TX Zip: 76542 - \_\_\_\_\_

Home Phone: ( ) \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_ Cell Phone: (254) 681-7216

Email: \_\_\_\_\_

**Name of Applicant:** Jason Horowitz, Killeen DTP, LLC  
(If different than Property Owner)

Address: 9010 Overlook Boulevard

City: Brentwood State: TN Zip: 37027

Home Phone: ( ) \_\_\_\_\_ Business Phone: (615) 370-0670 Cell Phone: ( ) \_\_\_\_\_

Email: jhorowitz@gbtrealty.com

Address/Location of property to be rezoned: 10752 S. Ft. Hood Street

Legal Description: Lot 1, Block 1, Wassey Addition, 1.297 acres

Metes & Bounds or Lot(s) 1 Block 1 Subdivision Wassey

Is the rezone request consistent with the Comprehensive Plan?  YES  NO

Type of Ownership: \_\_\_\_\_ Sole Ownership  Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Other

Present Zoning: CD/CUP Present Use: Vacant - Conditional Use Permit for 5,000 sf Convenience Store

Proposed Zoning: CD/CUP Proposed Use: 9,100 sf Retail Store

Conditional Use Permit for: 9,100 sf Retail Store

This property was conveyed to owner by deed dated 9-23-2011 and recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, Instrument Number 201100033659 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: Jason Horowitz, Killeen DTP, LLC c/o GBNT Realty Corporation

Mailing Address: 9010 Overlook Boulevard

City: Brentwood State: TN Zip: 37027 - \_\_\_\_\_

Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (615) 370-0670 Email: \_\_\_\_\_

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 _____	Title <u>Authorized Agent</u>
Printed/Typed Name of Agent <u>Jason Horowitz</u>	Date <u>11-3-15</u>
Signature of Applicant _____	Title <u>Authorized Agent</u>
Printed/Typed Name of Applicant <u>Jason Horowitz</u>	Date <u>11-3-15</u>
Signature of Property Owner _____	Title <u>Partner</u>
Printed/Typed Name of Property Owner <u>ABDUL KHAN</u>	Date <u>10-29-15</u>
Signature of Property Owner _____	Title <u>Partner</u>
Printed/Typed Name of Property Owner <u>PERVEEN KHAN</u>	Date <u>10-29-15</u>
Signature of Property Owner _____	Title <u>Partner</u>
Printed/Typed Name of Property Owner <u>Babu Saleem</u>	Date <u>10-29-15</u>

\*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:**

Z15-29

**ZONING FROM:**

CD to CD with a CUP

**APPLICANT:**

JASON HOROWITZ  
KILLEEN DTP, LLC.




**PROPERTY OWNER:**

ABDUL KHAN

**LEGAL DESCRIPTION:**

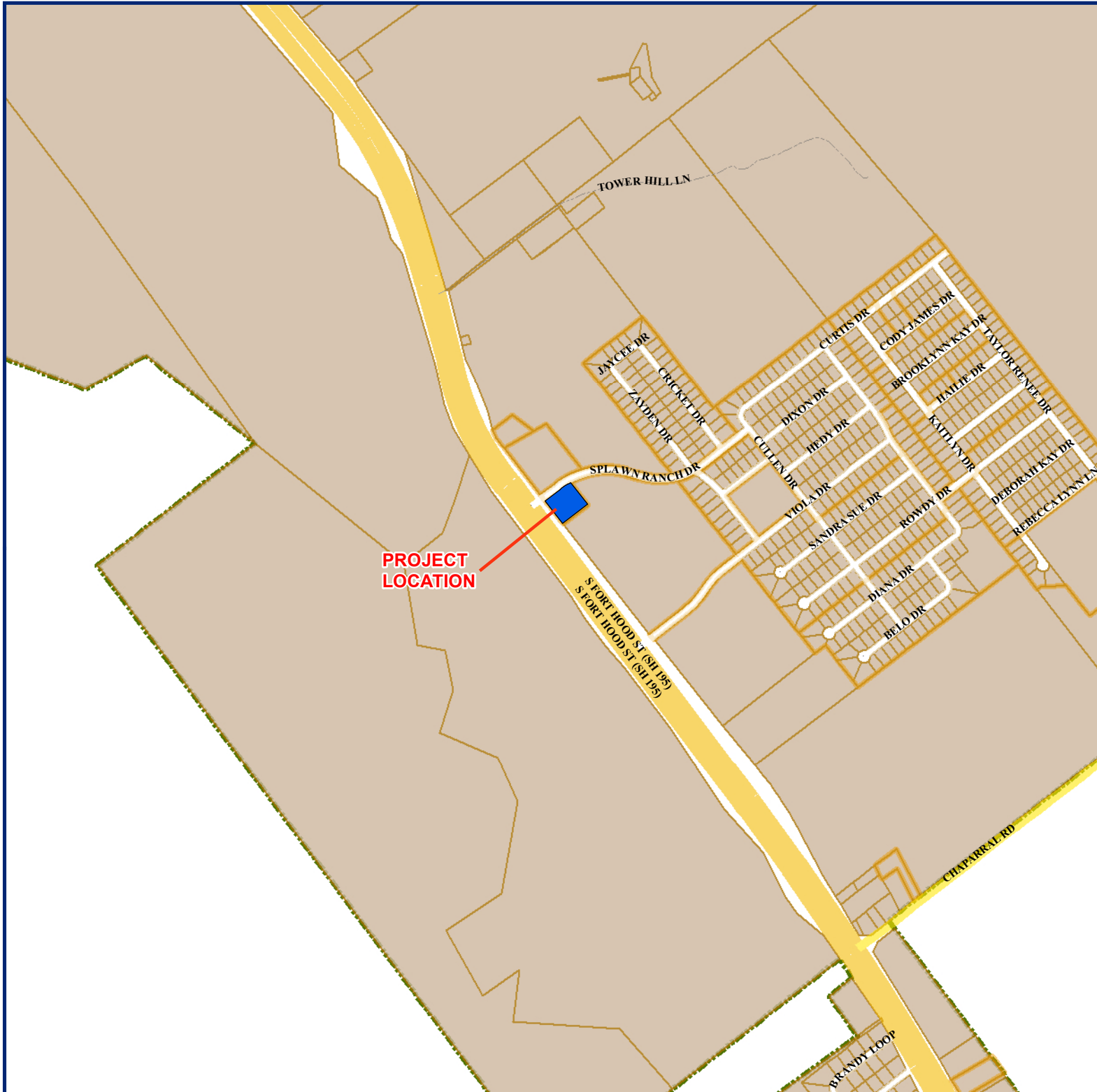
LOT 1 BLOCK 1  
WASSEY ADDITION  
1.297 ACRES

**LEGEND**

-  Zoning Case
-  Parcel
-  City Limits



Date: 11/9/2015





**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

**Z15-29**

**ZONING FROM:**

**CD to CD with a CUP**

**APPLICANT:**

**JASON HOROWITZ  
KILLEEN DTP, LLC.**






**PROPERTY OWNER:**

**ABDUL KHAN**

**LEGAL DESCRIPTION:**

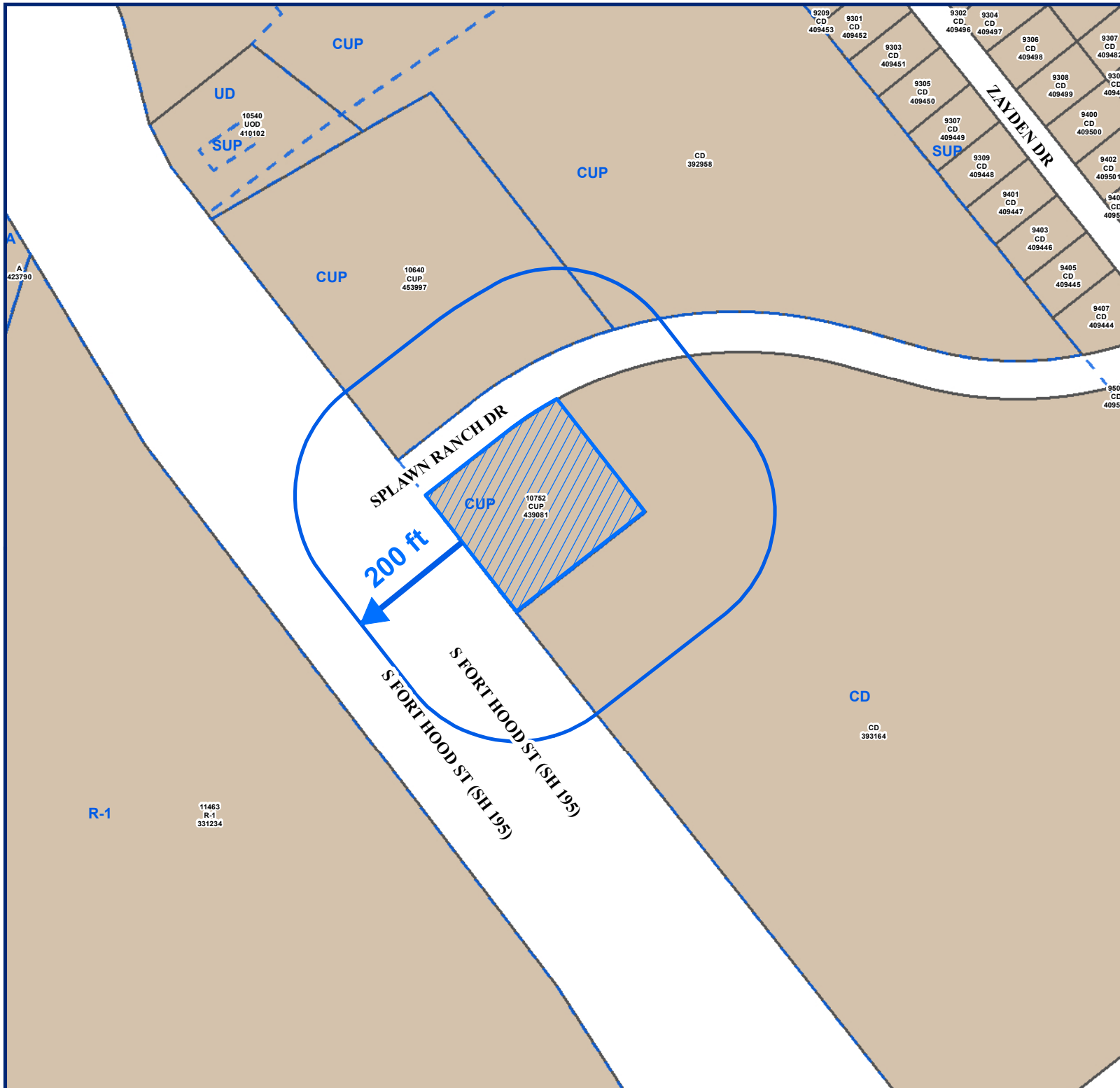
**LOT 1 BLOCK 1  
WASSEY ADDITION  
1.297 ACRES**

**LEGEND**

-  200 Ft Buffer
-  Zoning Case
-  Current Zoning
-  Parcel
-  City Limits



Date: 11/9/2015



# 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

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**File #:** PH-15-061    **Version:** 1    **Name:** Zoning 15-30  
**Type:** Ordinance/Public Hearing    **Status:** Public Hearings  
**File created:** 11/24/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** HOLD a public hearing and consider an ordinance requested by Steven Swartz and Gerald Nunn (Case #Z15-30) to rezone Lot 1, Block 2, Esposito Addition West from "B-2" (Local Business District) to "R-2" (Two-Family Residential District). The property is locally known as 100 Kings Court, Killeen, Texas.  
**Sponsors:** Planning & Development Dept  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Attachment to Council Memorandum](#)  
[Ordinance](#)  
[Application](#)  
[Location map](#)  
[Buffer map](#)  
[Considerations](#)

Date	Ver.	Action By	Action	Result
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## CITY COUNCIL MEMORANDUM

**AGENDA ITEM**

**ZONING CASE #Z15-30 "B-2" (LOCAL BUSINESS DISTRICT) TO "R-2" (TWO-FAMILY RESIDENTIAL DISTRICT)**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT SERVICES**

### **Nature of the Request**

This request is to rezone 100 King's Court being Lot 1, Block 2, Esposito Addition West, from "B-2" (Local Retail District) to "R-2" (Two-Family Residential District). The applicant is rezoning the property to develop for duplex use. The property is located along the east side of Florence Road, north of Granada Drive Killeen, Texas.

### **District Descriptions:**

A building or premises in a district "R-2" Two-Family Residential District shall be used only for the following purposes:

- (1) Any use permitted in district "R-1."
- (2) Two-family dwellings.

### **Property Specifics**

**Applicant/Property Owner:** Steven Swartz and Gerald Nunn

**Property Location:** The property is located along the east side of Florence Road, north of Granada Drive Killeen, Texas.

**Legal Description:** Lot 1, Block 2, Esposito Addition West.

### **Zoning/ Plat Case History:**

This property was rezoned from "R-3" (Multi-Family Residential District) to "B-2" (Local Retail District) on November 23, 2010, per Ordinance No. 10-068.

### **Character of the Area**

**Existing Land Use(s) on the Property:** Undeveloped and vacant. This location is surrounded by a mixture of residential uses from "R-1" (Single-Family Residential) to "R-3" (Multi-Family Residential).

### **Figure 1. Zoning Map**

See Attachment

**Historic Properties:** None

## **Infrastructure and Community Facilities**

### **Water, Sewer and Drainage Services:**

Provider: City of Killeen

Within Service Area: Yes

Water, sanitary sewer, and drainage utility services are readily accessible to the subject property.

### **Transportation:**

Existing conditions: Florence Road is designated as a 70' collector on the City's adopted Thoroughfare Plan. Ingress/egress to the property would be limited to the single point of existing access.

Proposed improvements: None.

Projected Traffic Generation: The traffic impact will be minimal.

## **Environmental Assessment**

**Topography:** This property is relatively flat. Currently runoff on this development flows through the Kings Court right-of-way prior to entering Florence Ditch. The runoff then flows from Florence Ditch into Trimmier Road Ditch, then into Little Nolan Creek and finally into Nolan Creek prior to leaving the City. Little Nolan Creek and Nolan Creek are currently listed on the TCEQ's 2012 303(d) water quality list for impairment due to bacteria and concerns for near non-attainment for nutrients.

**Regulated Floodplain/Floodway/Creek:** The proposed development is not within any FEMA regulatory Special Flood Hazard Area (SFHA).

## **Land Use Analysis**

**Land Use Plan:** The property is designated as 'General Residential' on the Future Land Use Map (FLUM), a component of the Comprehensive Plan.

**Plan Recommendation:** The Comprehensive Plan considers 'General Residential' to be of a medium intensity category/character that encompasses detached residential dwelling units, attached housing types, planned developments, as well as parks and public/institutional places. Neighborhood-scale commercial uses are expected to emerge over time and should be encouraged on sites, and in locations, within or near the edge of 'General Residential' areas.

**Consistency:** The rezone request is consistent with the Comprehensive Plan.

## **Public Notification**

Staff notified 15 surrounding property owners within the 200' notification area. Staff has received no protests.

## **Recommendation**

The Planning and Zoning Committee will hear this rezoning request at the December 7, 2015 Planning & Zoning Committee meeting. The Planning & Zoning Committee recommendation will be provided at the December 8, 2015 City Council Workshop.

**Figure 1. Zoning Map**





**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-2 (LOCAL RETAIL DISTRICT) TO R-2 (TWO-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Steven Schwartz and Gerald Nunn have 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 2, Esposito Addition West from B-2 (Local Retail District) to R-2 (Two-family Residential District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 7th day of December 2015, 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 15th day of December 2015, 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-2 (Local Retail District) to R-2 (Two-family Residential District) for Lot 1, Block 2, Esposito Addition West, and being locally known as 100 King’s Court, 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 15th day of December 2015, 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 Cospers, MAYOR**

**ATTEST:**

---

**Dianna Barker, CITY SECRETARY**

**APPROVED AS TO FORM**

---

**Kathryn H. Davis, City Attorney**

Case #15-30

Ord #



Date Paid: \_\_\_\_\_  
 Amount Paid: \$ \_\_\_\_\_  
 Cash/MO #/Check #: # \_\_\_\_\_  
 Receipt #: \_\_\_\_\_

CASE #: Z15-30

## City of Killeen Zoning Change Application

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

Name(s) of Property Owner: STEVEN SWARTZ & GERALD NUNN

Current Address: 1502 HARVEST DR.

City: NOLANVILLE State: TX Zip: 76559

Home Phone: ( 254 ) 698-3880 Business Phone: ( ) Cell Phone: ( 254 ) 702-0130

Email: SASWT2@AOL.COM

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: 100 KING'S COURT

Legal Description: LOT 1 BLOCK 2 ESPOSITO ADDITION WEST

Metes & Bounds    or    Lot(s) Block    Subdivision

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: B2 Present Use: NONE

Proposed Zoning: R2 Proposed Use: \_\_\_\_\_

Conditional Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated Nov 2 2015 and recorded in Volume 9450  
 Page 777 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: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ - \_\_\_\_\_

Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

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 \_\_\_\_\_ Title \_\_\_\_\_

Printed/Typed Name of Agent \_\_\_\_\_ Date \_\_\_\_\_

Signature of Agent \_\_\_\_\_ Title \_\_\_\_\_

Printed/Typed Name of Agent \_\_\_\_\_ Date \_\_\_\_\_

Signature of Applicant Steven Swartz Title OWNER

Printed/Typed Name of Applicant STEVEN SWARTZ Date 11-6-15

Signature of Property Owner Steven Swartz Title OWNER

Printed/Typed Name of Property Owner STEVEN SWARTZ Date 11-6-15

Signature of Property Owner [Signature] Title Owner

Printed/Typed Name of Property Owner Gerald Nunn Date 11-6-15

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:**

Z15-30

**ZONING FROM:**

B -2 To R-2

**APPLICANT:**

STEVEN SWARTZ &  
GERALD NUNN




**PROPERTY OWNER:**

STEVEN SWARTZ &  
GERALD NUNN

**LEGAL DESCRIPTION:**

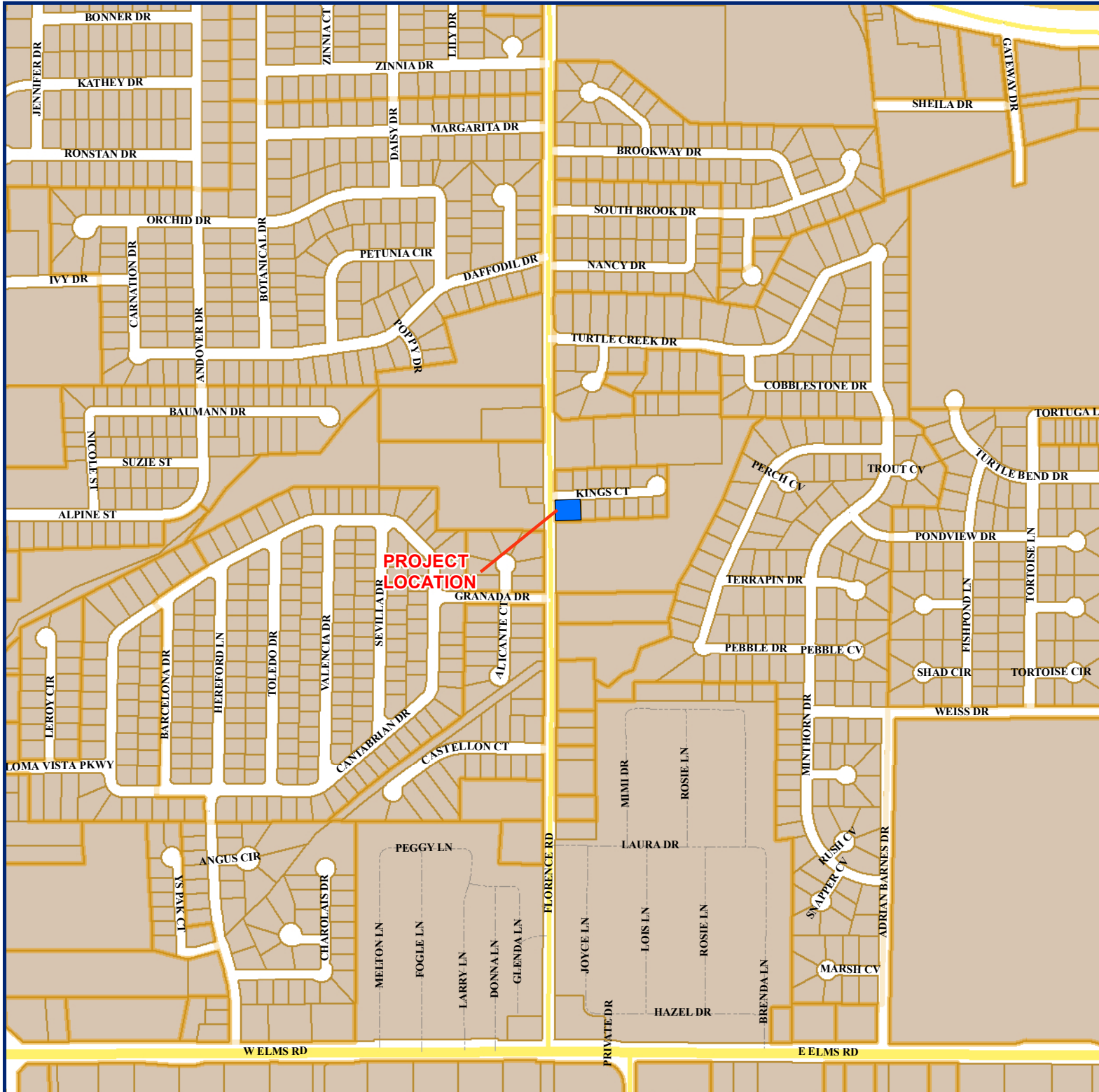
LOT 1 BLOCK 2  
ESPOSITO ADDITION WEST

**LEGEND**

-  Zoning Case
-  Parcel
-  City Limits



Date: 11/10/2015





**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

**Z15-30**

**ZONING FROM:**

**B -2 To R-2**

**APPLICANT:**

**STEVEN SWARTZ &  
GERALD NUNN**






**PROPERTY OWNER:**

**STEVEN SWARTZ &  
GERALD NUNN**

**LEGAL DESCRIPTION:**

**LOT 1 BLOCK 2  
ESPOSITO ADDITION WEST**

**LEGEND**

-  200 Ft Buffer
-  Zoning Case
-  Current Zoning
-  Parcel
-  City Limits



Date: 11/10/2015



# 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

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**File #:** PH-15-062    **Version:** 1    **Name:** Zoning 15-31  
**Type:** Ordinance/Public Hearing    **Status:** Public Hearings  
**File created:** 11/24/2015    **In control:** City Council Workshop  
**On agenda:** 12/8/2015    **Final action:**  
**Title:** HOLD a public hearing and consider an ordinance requested by Steven Swartz and Gerald Nunn (Case #Z15-31) to rezone Lot 1, Block 1, Esposito Addition West from "B-2" (Local Retail District) to "R-2" (Two-Family Residential District). The property is locally known as 101 Kings Court, Killeen, Texas.  
**Sponsors:** Planning & Development Dept  
**Indexes:**  
**Code sections:**  
**Attachments:** [Council Memorandum](#)  
[Attachment to Council Memorandum](#)  
[Ordinance](#)  
[Application](#)  
[Location map](#)  
[Buffer map](#)  
[Considerations](#)

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



## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**ZONING CASE #Z15-31 "B-2" (LOCAL RETAIL DISTRICT) TO "R-2" (TWO-FAMILY RESIDENTIAL DISTRICT)**

### ORIGINATING DEPARTMENT

**PLANNING & DEVELOPMENT SERVICES**

### Nature of the Request

This request is to rezone 101 Kings Court being Lot 1, Block 1, Esposito Addition West, from "B-2" (Local Retail District) to "R-2" (Two-Family Residential District). The applicant is rezoning the property to develop for duplex use. The property is located along the east side of Florence Road, north of Granada Drive Killeen, Texas.

### **District Descriptions:**

A building or premises in a district "R-2" Two-Family Residential District shall be used only for the following purposes:

- (1) Any use permitted in district "R-1."
- (2) Two-family dwellings.

### Property Specifics

**Applicant/Property Owner:** Steven Swartz and Gerald Nunn

**Property Location:** The property is located along the east side of Florence Road, north of Granada Drive Killeen, Texas.

**Legal Description:** Lot 1, Block 1, Esposito Addition West.

### **Zoning/ Plat Case History:**

This property was rezoned from "R-3" (Multi-Family Residential District) to "B-2" (Local Retail District) on November 23, 2010, per Ordinance No. 10-068.

### Character of the Area

**Existing Land Use(s) on the Property:** Undeveloped and vacant. This location is surrounded by a mixture of residential uses from "R-1" (Single-Family Residential) to "R-3" (Multi-Family Residential).

### **Figure 1. Zoning Map**

See Attachment

**Historic Properties:** None

## **Infrastructure and Community Facilities**

### **Water, Sewer and Drainage Services:**

Provider: City of Killeen

Within Service Area: Yes

Water, sanitary sewer, and drainage utility services are readily accessible to the subject property.

### **Transportation:**

Existing conditions: Florence Road is designated as a 70' collector on the City's Thoroughfare Plan. Ingress/egress to the property would be limited to the single point of existing access.

Proposed improvements: None.

Projected Traffic Generation: The traffic impact will be minimal.

## **Environmental Assessment**

**Topography:** This property is relatively flat. Currently runoff on this development flows through the Kings Court right-of-way prior to entering Florence Ditch. The runoff then flows from Florence Ditch into Trimmier Road Ditch, then into Little Nolan creek and finally into Nolan Creek prior to leaving the City. Little Nolan Creek and Nolan Creek are currently listed on the TCEQ's 2012 303(d) water quality list for impairment due to bacteria and concerns for near non-attainment for nutrients.

**Regulated Floodplain/Floodway/Creek:** The proposed development is not within any FEMA regulatory Special Flood Hazard Area (SFHA).

## **Land Use Analysis**

**Land Use Plan:** The property is designated as 'General Residential' on the Future Land Use Map (FLUM) a component of the Comprehensive Plan.

**Plan Recommendation:** The Comprehensive Plan considers 'General Residential' to be of a medium intensity category/character that encompasses detached residential dwelling units, attached housing types, planned developments, as well as parks and public/institutional places. Neighborhood-scale commercial uses are expected to emerge over time and should be encouraged on sites, and in locations, within or near the edge of "General Residential" areas.

**Consistency:** The rezone request is consistent with the Comprehensive Plan.

## **Public Notification**

Staff notified 13 surrounding property owners within the 200' notification area. Staff has received no protests.

## **Recommendation**

The Planning and Zoning Committee will hear this rezoning request at the December 7, 2015 Planning & Zoning Committee meeting. The Planning & Zoning Committee recommendation will be provided at the December 8, 2015 City Council Workshop.

**Figure 1. Zoning Map**



**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-2 (LOCAL RETAIL DISTRICT) TO R-2 (TWO-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Steven Schwartz and Gerald Nunn have 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, Esposito Addition West from B-2 (Local Retail District) to R-2 (Two-family Residential District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 7th day of December 2015, 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 15th day of December 2015, 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-2 (Local Retail District) to R-2 (Two-family Residential District) for Lot 1, Block 1, Esposito Addition West, and being locally known as 101 King’s Court, 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 15th day of December 2015, 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:**

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**Scott Cospers, MAYOR**

**ATTEST:**

---

**Dianna Barker, CITY SECRETARY**

**APPROVED AS TO FORM**

---

**Kathryn H. Davis, City Attorney**

Case #15-31  
Ord #



Date Paid:	_____
Amount Paid:	\$ _____
Cash/MO #/Check #:	# _____
Receipt #:	_____

CASE # 15-31

## City of Killeen Zoning Change Application

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

Name(s) of Property Owner: STEVEN SWARTZ & GERALD NANN  
 Current Address: 1502 HARVEST DR  
 City: NOLANVILLE State: TX Zip: 76559  
 Home Phone: (254) 698-3800 Business Phone: ( ) \_\_\_\_\_ Cell Phone: (254) 702-0130  
 Email: SASWTZ@AOL.COM

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: 101 KING'S COURT  
 Legal Description: LOT 1 BLOCK 1 ESPOSITO ADDITION WEST

Metes & Bounds or Lot(s) Block Subdivision

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: B2 Present Use: NONE

Proposed Zoning: R2 Proposed Use: \_\_\_\_\_

Conditional Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated Nov 2 2015 and recorded in Volume 9450  
 Page 277, 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: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ - \_\_\_\_\_

Home Phone: (\_\_\_\_) \_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

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 \_\_\_\_\_ Title \_\_\_\_\_

Printed/Typed Name of Agent \_\_\_\_\_ Date \_\_\_\_\_

Signature of Agent \_\_\_\_\_ Title \_\_\_\_\_

Printed/Typed Name of Agent \_\_\_\_\_ Date \_\_\_\_\_

Signature of Applicant Steven Swartz Title OWNER

Printed/Typed Name of Applicant STEVEN SWARTZ Date 11-6-15

Signature of Property Owner Steven Swartz Title OWNER

Printed/Typed Name of Property Owner STEVEN SWARTZ Date 11-6-15

Signature of Property Owner Gerald Nunn Title owner

Printed/Typed Name of Property Owner Gerald Nunn Date 11-6-15

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:**

Z15-31

**ZONING FROM:**

B -2 To R-2

**APPLICANT:**

STEVEN SWARTZ &  
GERALD NUNN




**PROPERTY OWNER:**

STEVEN SWARTZ &  
GERALD NUNN

**LEGAL DESCRIPTION:**

LOT 1 BLOCK 1  
ESPOSITO ADDITION WEST

**LEGEND**

-  Zoning Case
-  Parcel
-  City Limits



Date: 11/9/2015







**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

**Z15-31**

**ZONING FROM:**

**B -2 To R-2**

**APPLICANT:**

**STEVEN SWARTZ &  
GERALD NUNN**







**PROPERTY OWNER:**

**STEVEN SWARTZ &  
GERALD NUNN**

**LEGAL DESCRIPTION:**

**LOT 1 BLOCK 1  
ESPOSITO ADDITION WEST**

**LEGEND**

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-  Subdivision
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Date: 11/10/2015



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