



City of Killeen

Agenda City Council Workshop

Tuesday, June 16, 2015

5:00 PM

Utility Collections - Large Conference Room
210 West Avenue C
Killeen, Texas 76541

Items for Discussion at Workshop

- [DS-15-056](#) Discuss Agenda Items and Land Use Cases
- [DS-15-057](#) Receive a Briefing Regarding the Vision 2030 Strategic Plan and the Revision Process
- [DS-15-058](#) Receive Update Regarding Towing Ordinance Procedures
- [DS-15-059](#) Briefing - Youth Curfew Ordinance
- [DS-15-060](#) Receive Quarterly Financial Report
- [DS-15-061](#) Receive Update and Discuss Transportation and Infrastructure Funding Options, Including the Progress, Results and Next Steps Relating to Impact Fee and Transportation Utility Fee Studies

Items for Regular City Council Meeting of June 23, 2015

Minutes

- [MN-15-007](#) Consider minutes of Regular City Council Meeting of June 9, 2015.

Attachments: [Minutes](#)

Resolutions

- [RS-15-031](#) Consider a memorandum/resolution authorizing Contract Amendment No. 1 with Mitchell & Associates, Inc. for the Brookhaven Elementary School Sidewalk Project.
Attachments: [Council Memorandum Amendment No.1](#)
- [RS-15-032](#) Consider a memorandum/resolution authorizing the City Manager to execute an advanced funding agreement (AFA) with the Texas Department of Transportation (TxDOT) to construct an off-system shared-use trail to Brookhaven Elementary and Rancier Middle schools.
Attachments: [Council Memorandum Advanced Funding Agreement](#)

[RS-15-033](#) Consider a memorandum/resolution approving a lease agreement with the Texas State Technical College (TSTC) for hangar facilities at Skylark Field.

Attachments: [Council Memorandum](#)

[Lease](#)

[RS-15-034](#) Consider a memorandum/resolution approving the selection of Garver LLC for the performance of architectural, planning, and engineering services for the Killeen Fort Hood Regional Airport and Robert Gray Army Airfield.

Attachments: [Council Memorandum](#)

[Attachment 1](#)

[Attachment 2](#)

[RS-15-035](#) Consider a memorandum/resolution authorizing the award of Bid No. 15-17 for a construction contract to Bruce Flanigan Construction for the Bermuda/Ronstan Phase I Project.

Attachments: [Council Memorandum](#)

[Letter of Recommendation](#)

[RS-15-036](#) Consider a memorandum/resolution authorizing the award of Bid No. 15-20 to purchase motorcycles with emergency equipment installation for the Police Department.

Attachments: [Council Memorandum](#)

[Bid](#)

[RS-15-037](#) Consider a memorandum/resolution appointing a replacement Killeen Industrial Foundation representative to the Killeen Economic Development Corporation board.

Attachments: [Council Memorandum](#)

[KEDC Board](#)

[KEDC Letter of Recommendation](#)

Ordinances

[OR-15-011](#) Consider an ordinance extending the corporate city limits of the City of Killeen by annexing 32.757 acres located along the east right-of-way of Bunny Trail, approximately 2,460 feet south of W. Stan Schlueter Loop, Killeen, Texas.

Attachments: [Council Memorandum](#)

[Ordinance](#)

[Annexation Petition](#)

Public Hearings

[PH-15-023](#)

HOLD a public hearing and consider an ordinance requested by Fred and Linda Garvin (Case #Z15-09) to rezone Lot 5, Block 33, Crescent Manor, 2nd Extension, from "B-1" (Professional Business District) to "B-2" (Local Retail District). The property is locally known as 1507 South W.S. Young Drive, Killeen, Texas.

Attachments: [Council Memorandum](#)

[Attachment CCMO](#)

[Minutes](#)

[Ordinance](#)

[Application](#)

[Location Map](#)

[Buffer Map](#)

[Considerations](#)

[Support](#)

[Opposition](#)

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 June 12, 2015.

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.

Future Workshop Items

The following items have been scheduled for workshop discussion on the dates shown. The final scheduling of these items is dependent upon the presenters/interested parties being available on the dates projected.

Notice of Meetings

The Mayor and/or City Council have been invited to attend and/or participate in the following meetings/conferences/events. Although a quorum of the members of the City

Council may or may not be available to attend this meeting, this notice is being posted to meet the requirements of the Texas Open Meetings Act and subsequent opinions of the Texas Attorney General's Office.

- *Army Birthday Celebration, June 13, 2015, 9:00 a.m., Downtown Killeen*
- *Juneteenth Festivities, June 18-20, 2015, Killeen Arts and Activity Center - Downtown Killeen*

Dedicated Service -- Every Day, for Everyone!



City of Killeen

Legislation Details

File #: DS-15-056 **Version:** 1 **Name:** Discuss Agenda Items and Land Use Cases
Type: Discussion Items **Status:** Discussion Items
File created: 5/19/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **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

File #: DS-15-057 **Version:** 1 **Name:** Vision 2030 Briefing
Type: Discussion Items **Status:** Discussion Items
File created: 6/2/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Receive a Briefing Regarding the Vision 2030 Strategic Plan and the Revision Process
Sponsors: City Manager Department
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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City of Killeen

Legislation Details

File #: DS-15-058 **Version:** 1 **Name:** Towing Ordinance Procedures Briefing
Type: Discussion Items **Status:** Discussion Items
File created: 6/3/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Receive Update Regarding Towing Ordinance Procedures
Sponsors: City Manager Department
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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City of Killeen

Legislation Details

File #: DS-15-059 **Version:** 1 **Name:** Briefing - Youth Curfew Ordinance
Type: Discussion Items **Status:** Discussion Items
File created: 6/10/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Briefing - Youth Curfew Ordinance
Sponsors: Police Department, City Attorney Department
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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City of Killeen

Legislation Details

File #: DS-15-060 **Version:** 1 **Name:** Receive Quarterly Financial Report
Type: Discussion Items **Status:** Discussion Items
File created: 6/8/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Receive Quarterly Financial Report
Sponsors: Finance Department
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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City of Killeen

Legislation Details

File #: DS-15-061 **Version:** 1 **Name:** Update Transportation and Infrastructure Funding Options
Type: Discussion Items **Status:** Discussion Items
File created: 6/10/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Receive Update and Discuss Transportation and Infrastructure Funding Options, Including the Progress, Results and Next Steps Relating to Impact Fee and Transportation Utility Fee Studies
Sponsors: Public Works Department
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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City of Killeen

Legislation Details

File #: MN-15-007 **Version:** 1 **Name:** Minutes of Regular City Council Meeting of June 9, 2015
Type: Minutes **Status:** Minutes
File created: 6/9/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider minutes of Regular City Council Meeting of June 9, 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
June 9, 2015 at 5:00 p.m.

Presiding: Mayor Scott Cospier

Attending: Mayor Pro-Tem Jose Segarra, Council members Jim Kilpatrick, Shirley Fleming, Brockley Moore, Jonathan Okray

Absent: Juan Rivera and Elizabeth Blackstone

Also attending were City Manager Glenn Morrison, City Attorney Kathryn Davis, City Secretary Dianna Barker, and Sergeant-at-Arms McDaniel.

Councilmember Okray gave the invocation, and Mayor Pro-Tem Segarra led everyone in the pledge of allegiance.

Approval of Agenda

Motion was made by Mayor Pro-Tem Segarra to approve the agenda as written. Motion seconded by Councilmember Moore. The motion carried unanimously.

Minutes

Motion was made by Councilmember Kilpatrick to approve the minutes of the May 26th Regular City Council Meeting. Motion was seconded by Councilmember Okray. Motion carried unanimously.

Resolutions

RS-15-025 Consider a memorandum/resolution appointing an independent audit for the fiscal year ending September 30, 2015.

Staff comments: Amanda Wallace

City staff and the Audit Committee recommend that Weaver LLP be engaged to perform the annual independent audit for the City of Killeen for the fiscal year ending September 30, 2015, and that the City Manager be authorized to contract for professional services provided by Weaver LLP, to include the approval of any necessary change orders meeting state law and charter requirements.

Motion was made by Councilmember Moore to approve RS-025. Motion was seconded by Councilmember Fleming. Motion carried unanimously.

RS-15-026 Consider a memorandum/resolution authorizing the award of a professional services agreement to Kasberg, Patrick & Associates, LP, to design the Water Line Rehabilitation Phase 1 Project.

Staff comments: Steve Kana

Staff recommends that the City Council authorize the City Manager to enter into an agreement with KPA for a professional services agreement for the design and contract

administration of the Water Line Rehabilitation Phase 1 Project in the amount of \$149,060.00 and that the City Manager be expressly authorized to execute any and all change orders within the amounts set by state and local law.

Motion was made by Councilmember Fleming to approve RS-026. Motion was seconded by Mayor Pro-Tem Segarra. Motion carried unanimously.

RS-15-027 Consider a memorandum/resolution appointing Councilmembers to various boards and commissions.

Staff comments: Glenn Morrison

It is recommended that the City Council appoint the individuals listed below to fill vacancies.

One additional committee, The Audit Committee: Mayor Pro-Tem Segarra to replace Wayne Gilmore

Animal Advisory: Shirley Fleming to replace Wayne Gilmore

Killeen Sister Cities: Jonathan Okray to replace Steve Harris

KEDC: Juan Rivera to replace Terry Clark

Hill Country Transit: Jim Kilpatrick to replace Terry Clark

TIRZ#2: Brockley Moore to replace Wayne Gilmore and Jim Kilpatrick to replace Terry Clark

KVI: Jim Kilpatrick to replace Jose Segarra

Motion was made by Councilmember Okray to approve RS-027. Motion was seconded by Councilmember Kilpatrick. Motion carried unanimously.

RS-15-028 Consider a petition submitted by the Killeen Independent School District (KISD) requesting the extension of the corporate city limits of the City of Killeen, by annexing 32.757 acres located along the east right-of-way of Bunny Trail, approximately 2,460 feet south of W. Stan Schlueter Loop, Killeen, Texas.

Staff comments: Tony McIlwain

Staff recommends that the City Council approve the applicant's petition for the voluntary annexation of 32.757 acres into the corporate limits of the City of Killeen, and direct the City Manager to have an annexation ordinance prepared. If the petition is granted, it is requested that the City Council take action on an ordinance extending the corporate city limits at a regular meeting of June 23, 2015.

Motion was made by Mayor Pro-Tem Segarra to approve RS-028. Motion was seconded by Councilmember Moore. Motion carried unanimously.

RS-15-029 Consider a memorandum/resolution amending Exhibit F - Offsite Utility Plan included with the consent and development agreement between the City of Killeen, Bell County Municipal Utility District, No. 2, and WBW Land Investments, LP.

Staff comments: Scott Osburn

City staff recommends that City Council authorize amending the Agreement substituting the attached "Exhibit F - Offsite Utility" plan for the "Exhibit F - Offsite Utility" plan in the Agreement as the existing exhibit was based on displaying connectivity to the City's water and sanitary sewer system, rather than actual preliminary engineering analysis and that the City Manager be authorized to execute the same.

Motion was made by Councilmember Kilpatrick to approve RS-029. Motion was seconded by Councilmember Fleming. Motion carried 4 to 1 with Councilmember Okray in opposition.

RS-15-030 Consider a memorandum/resolution authorizing a purchase agreement with APAC Wheeler for Type B Hot Mix Asphalt through the TXSmartbuy Cooperative.

Staff comments: Scott Osburn

City staff recommends that the City Council award purchase contract to APAC Wheeler for the purchase of Type B Hot Mix Asphalt; authorize the City Manager to enter into a contract with the same; and, finally, authorize the City Manager to execute any and all change orders in the amounts established by state and local law.

Motion was made by Councilmember Okray to approve RS-030. Motion was seconded by Councilmember Kilpatrick. Motion carried unanimously.

Ordinances

OR-15-006 Consider an ordinance amending Chapter 28 of the Code of Ordinances of the City of Killeen exempting disabled veterans and certain military award recipients from parking fees at the Killeen-Fort Hood Regional Airport as allowed in Section 681.008(b) of the Texas Transportation Code.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; ADOPTING SECTION 681.008(b) OF THE TRANSPORTATION CODE; PROVIDING FOR EXEMPTIONS FOR CERTAIN VETERANS AND MILITARY AWARD RECIPIENTS FROM PARKING FEES; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

Staff comments: Matthew Van Valkenburgh

City staff recommends adoption of the proposed ordinance amending Chapter 28 of the Code of Ordinances of the City of Killeen, adopting the provisions of Section 681.008(b) of the Transportation Code and providing an exemption from parking fees at the Killeen-Fort Hood Regional Airport for certain veterans and military award recipients.

Citizen comment: John Evans, 612 Turtle Bend Dr. - spoke in favor of the ordinance.

Motion was made by Councilmember Kilpatrick to approve OR-006. Motion was seconded by Councilmember Moore. Motion carried 4 to 1 with Councilmember Okray in opposition.

OR-15-010 Consider an ordinance amending the Comprehensive Plan's Future Land Use Map (FLUM) for southeast Killeen and a portion of the extra-territorial jurisdiction (ETJ) south of Chaparral Road.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP FOR VARIOUS PROPERTIES LOCATED SOUTH OF STAGECOACH ROAD, EAST OF S. FORT HOOD STREET (S.H. 195), WEST OF THE KILLEEN EASTERN CITY LIMITS AND EXTENDING SOUTH OF CHAPARRAL ROAD INTO THE EXTRA-TERRITORIAL JURISDICTION (ETJ) OF THE CITY OF KILLEEN; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

Staff comments: Tony McIlwain

The Planning and Zoning Commission and joint City Council/ Planning and Zoning Commission subcommittee recommends amending the Future Land Use Map as detailed in Exhibit 'A'. This recommendation is consistent with the Planning and Zoning Commission's previous FLUM recommendation for the southeast quadrant of Killeen and its extra-territorial jurisdiction (ETJ).

Motion was made by Councilmember Okray to approve OR-010. Motion was seconded by Mayor Pro-Tem Segarra. Motion carried unanimously.

Public Hearings

PH-15-022 HOLD a public hearing and consider an ordinance authorizing the 2015-2019 Consolidated Strategic Plan submission and the 2015-2016 Annual Action Plan describing use of funds and authorizing application for and allocation of Community Development Block Grant (CDBG) and Home Investment Partnerships (HOME) program funds. (First of Two Public Hearings)

The City Secretary read the caption of the ordinance.

AN ORDINANCE AUTHORIZING SUBMITTAL OF THE 2015-2019 CONSOLIDATED STRATEGIC PLAN AND THE 2015-2016 ANNUAL ACTION PLAN DESCRIBING THE USE OF FUNDS AND AUTHORIZING THE APPLICATION FOR AND ALLOCATION OF \$932,745.00 IN FY 2015-16 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS AND THE USE OF PRIOR YEAR PROGRAM INCOME AND PRIOR YEAR REPROGRAMMABLE FUNDS FOR A TOTAL EXPENDITURE OF \$981,768.05 OF CDBG FUNDS; AND THE APPLICATION OF \$301,726.00 IN HOME INVESTMENT PARTNERSHIP (HOME) PROGRAM FUNDS AND THE USE OF PRIOR YEAR PROGRAM INCOME AND PRIOR YEAR REPROGRAMMABLE FUNDS FOR A TOTAL EXPENDITURE OF \$458,542.19 OF HOME FUNDS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Staff comments: Leslie Hinkle

Mr. Kosse presented the committees' recommendation of allocation of funds by program description.

Following the first public hearing, recommend approval of the 2015-2019 Consolidated Strategic Plan summary, allocation of funds under the proposed 2015-2016 Annual Action Plan, and the publishing of the proposed plans to solicit citizen comments and participation. Recommend approval of the final plans with revisions, as appropriate, based on citizen comments to be reviewed during the second public hearing on July 14, 2015.

Mayor Cospers opened the public hearing. With no one appearing the public hearing was closed.

Motion was made by Councilmember Moore to approve the first reading of PH-022. Motion was seconded by Councilmember Okray. Motion carried unanimously.

Adjournment

With no further business, upon motion being made by Councilmember Okray, seconded by Councilmember Fleming, and unanimously approved, the meeting was adjourned at 5:32 p.m.



City of Killeen

Legislation Details

File #: RS-15-031 **Version:** 1 **Name:** Brookhaven/Rancier Sidewalks - Amendment No. 1
Type: Resolution **Status:** Resolutions
File created: 5/18/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider a memorandum/resolution authorizing Contract Amendment No. 1 with Mitchell & Associates, Inc. for the Brookhaven Elementary School Sidewalk Project.
Sponsors: Public Works Department, Transportation Division
Indexes:
Code sections:
Attachments: [Council Memorandum Amendment No.1](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

**CONSIDER A MEMORANDUM/RESOLUTION
AUTHORIZING CONTRACT AMENDMENT NO.
1 WITH MITCHELL & ASSOCIATES, INC. FOR
THE BROOKHAVEN ELEMENTARY SCHOOL
SIDEWALK PROJECT**

ORIGINATING DEPARTMENT

**PUBLIC WORKS - TRANSPORTATION
DIVISION**

BACKGROUND INFORMATION

On June 26, 2013, the City Council authorized the City Manager to enter into a Professional Services Agreement with Mitchell & Associates, Inc. for surveying and engineering services necessary for sidewalk improvements associated with the Brookhaven Elementary School Sidewalks Project.

On August 1, 2014, the Killeen-Temple Metropolitan Planning Organization (KTMPO) issued a Call for Projects (CFP) to utilize federal funding available through the Transportation Alternatives Program (TAP). The TAP replaces several programs such as Transportation Enhancements (TE), Recreational Trails, Safe Routes to Schools and several other discretionary programs, wrapping them into a single funding source.

On October 7, 2014, the City Council authorized the City Manager to submit a TAP application for sidewalk projects (CCM/R 14-136R). On October 10, 2014, the City of Killeen submitted an application to the KTMPO requesting \$548,158 for the TAP Call for Projects. On February 26, 2015, the City of Killeen was awarded \$250,025 for the Brookhaven/Rancier Hike and Bike Trail.

DISCUSSION/CONCLUSION

On April 15, 2015, Mitchell & Associates submitted Contract Amendment No. 1 for the addition of engineering and surveying services necessary to design the hike and bike trail components to the Brookhaven Sidewalks Project to include a 10-foot wide shared-use path with landscaping, pedestrian creek crossing, and lighting features. This project will provide connectivity from the Brookhaven Subdivisions to both Brookhaven Elementary and Rancier Middle schools. The revised project scope is needed to provide for the additional services.

FISCAL IMPACT

The fiscal impact associated with this action is an increase of \$69,400 for a total contract amount of \$91,400. Funding is available in the Major Capital Outlay/Sidewalk Improvements Account 248-0000-434.60-50.

RECOMMENDATION

Recommend that the City Council authorize the City Manager to execute Contract Amendment No. 1 with Mitchell & Associates, Inc. for the Brookhaven Elementary School Sidewalks Project.

**CONTRACT AMENDMENT
NO. 1**

PROJECT

This Amendment shall be made a part of the City of Killeen Brookhaven/Rancier Hike and Bike Trail Project Professional Services Agreement. This Contract was entered into on June 26, 2013. The change in the fee structure is as follows:

JUSTIFICATION:

The scope of services is changed at the request of the City of Killeen. The City of Killeen has requested that Mitchell and Associates, Inc. add the work described in Attachment "A".

Scope of Service	Phase	Present Contract Amount	Proposed Amendment #1	Proposed Contract Amount (Original thru Amendment #1)
Preliminary Design Phase		\$5,000	\$9,000	\$14,000
Final Design Phase		\$9,000	\$22,600	\$31,600
Bidding and Negotiating Phase		\$1,000	\$1,400	\$2,400
Existing ROW Survey		\$2,000	\$3,400	\$5,400
Topographic Survey		\$5,000	\$2,000	\$7,000
Environmental Report/NEPA Clearance Coordination			\$6,000	\$6,000
CLOMR/LOMR and filing fees			\$25,000	\$25,000
	Total	\$22,000	\$69,400	\$91,400

Mitchell and Associates, Inc.

City of Killeen

By: 

By: _____ 

Title: VICE PRESIDENT

Title: CITY MANAGER

Date: 2-15-15

Date: _____

Attachment A

Provide Engineering and Surveying services in order to add Hike and Bile Trail portions to the Brookhaven Sidewalk Project to include up to 10-foot wide sidewalk, along with landscaping, lighting, and Park Benches. This agreement adds scope to the original contract.



City of Killeen

Legislation Details

File #: RS-15-032 **Version:** 1 **Name:** Advance Funding Agreement
Type: Resolution **Status:** Resolutions
File created: 5/19/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider a memorandum/resolution authorizing the City Manager to execute an advanced funding agreement (AFA) with the Texas Department of Transportation (TxDOT) to construct an off-system shared-use trail to Brookhaven Elementary and Rancier Middle schools.
Sponsors: Transportation Division, Public Works Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Advanced Funding 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 ADVANCED FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) TO CONSTRUCT AN OFF-SYSTEM SHARED-USE TRAIL TO BROOKHAVEN ELEMENTARY AND RANCIER MIDDLE SCHOOLS

ORIGINATING DEPARTMENT

PUBLIC WORKS - TRANSPORTATION DIVISION

BACKGROUND INFORMATION

On August 1, 2014, the Killeen-Temple Metropolitan Planning Organization (KTMPPO) issued a Call for Projects (CFP) to utilize federal funding available through the Transportation Alternatives Program (TAP). The TAP replaces several programs such as Transportation Enhancements (TE), Recreational Trails, Safe Routes to Schools and several other discretionary programs, wrapping them into a single funding source.

On October 7, 2014, the City Council authorized the City Manager to submit a TAP application for sidewalk projects (CCM/R 14-136R). On October 10, 2014, the City of Killeen submitted an application to the KTMPPO requesting \$548,158 for the TAP Call for Projects. On February 26, 2015, the City of Killeen was awarded \$250,025 for the Brookhaven/Rancier Hike and Bike Trail.

DISCUSSION/CONCLUSION

Currently, children who walk or bike to school often must travel in the street or across unimproved surfaces to arrive at school. To give children a safe route to school and to reduce the number of vehicles driving children to school, the City intends to construct a lighted 10-foot shared-use path that will provide pedestrian, bicycle, and handicapped trail connectivity as identified in the Killeen-Temple MPO Regional Thoroughfare and Pedestrian/Bicycle Plan. The proposed Brookhaven/Rancier Hike and Bike Trail will provide connectivity from the Brookhaven Subdivisions to Brookhaven Elementary and Rancier Middle schools.

By entering into an advanced funding agreement (AFA) with TxDOT, the City is agreeing to commit to the project's design, development, construction, maintenance, and funding. The City further agrees to provide a local match of 20%, or greater, of the total project cost, including being responsible for all non-federally funded items and 100% of all overruns. At this time, entering into the AFA requires payment of the Local Government's share of TxDOT's Direct & Indirect State Cost of \$9,375.

FISCAL IMPACT

The total fiscal impact associated with this impact is \$171,881, of which \$9,375 is due upon the execution of the AFA. Funding is available in the Major Capital Outlay/Sidewalk Improvements Account 248-0000-434.60-50.

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 Alternatives Program and issue payment in the amount of \$9,375 to the Texas Department of Transportation to move forward with the project.

STATE OF TEXAS §
COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT FOR A TRANSPORTATION ALTERNATIVES PROGRAM PROJECT

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 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 Construct Pedestrian Trail (“**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 114213 (“**MO**”) dated February 26, 2015 awarding funding for projects in the 2014 TAP Program Call of the TMA-MPO, including Project.

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

The governing body of Local Government has approved entering into this Agreement by resolution or ordinance dated October 7, 2014, 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.

- a. Non-Construction Projects.
 1. Performance Period begins with the issuance of Federal Project Authorization Agreement (“**FPA**A”) (i.e., the obligation of federal funds) by the Federal Highway Administration (“**FHWA**”).
 2. Performance Period ends on _____.
- b. Construction-Related Projects.
 1. Performance Period begins with the issuance of Construction FPA A by the FHWA.
 2. Performance Period ends three years following issuance of Construction FPA A.

2. Termination of the Agreement

2.1. The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of State under this Agreement and 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. A construction contract has not been awarded or construction has not been initiated within three years after the date Commission selected Project.
- e. State determines that federal funding may be lost due to Project not being implemented and completed.

- f. 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.
 - g. 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.
 - h. 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 120 days of Construction 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: Construction of 10 ft. wide shared use concrete paths connecting Brookhaven Elementary School and Rancier Middle School with the subdivisions adjacent to the schools. The Project will also provide continuous lighting and landscape appurtenances including benches and trash receptacles. .
- 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 in the name of Local Government to the real property required for development of Project. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local

Government shall be responsible for securing any additional real property required for completion of Project.

- 5.4.** Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.
- 5.5.** Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values.
- 5.6.** Local Government shall not use eminent domain or condemnation to acquire real property for this TAP Project.
- 5.7.** Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title.
- 5.8.** Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.
- 5.9.** If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment as outlined in 43 Tex. Admin. Code § 11.317. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.
- 5.10.** Local Government shall execute individually or produce a legal document as necessary to provide for Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- 5.11.** Local governments receiving federal funds must retain an inventory of funded items and monitor projects in accordance with 23 CFR Part 710 and 49 CFR § 18.82, and with the procedures provided in State's Local Government Project Procedures 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.

- a. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time.
- b. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.

5.12. 45 days prior to any construction contract let date, 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. Local Government will not be reimbursed with federal or state funds for the cost of required utility work, unless specified in the Transportation Alternatives Program Nomination Form ("**TAP Form**") and approved by State. 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: the activity is required to complete Project; the cost is incidental to Project, and 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.** 45 days prior to any construction contract let date, Local Government shall provide a certification to State that all environmental problems have been remediated. Additionally, 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. Architectural and Engineering Services are not eligible for TAP reimbursement in the Statewide TAP Program.

- 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 anytime 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 fully 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.
- 10.4.** Upon completion of Project, the party constructing Project will issue and sign a "Notification of Completion" acknowledging Project's construction completion.

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Not Research and Development

- 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.

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 TAP 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. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to project selection by the Texas Transportation Commission and approval by State to proceed 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 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 Trust Fund.” The warrant will

be deposited by State in an escrow account to be managed by State. Until the final Project accounting, funds in the escrow account 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, excess funds remain in the escrow account, 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:

Local Government	State
City Manager	Director of Contract Services Office
City of Killeen	Texas Department of Transportation
101 North College Street	125 E. 11 th 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.
- 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.

- 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

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FHWA CFDA #: 20.205
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2. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

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**

**Special 10-7-14
Item # CA-14-
CCM/R 14-136R**

CITY COUNCIL MEMORANDUM FOR RESOLUTION

AGENDA ITEM

**AUTHORIZE THE CITY MANAGER TO SUBMIT
A TRANSPORTATION ALTERNATIVES
PROGRAM APPLICATION TO THE TEXAS
DEPARTMENT OF TRANSPORTATION FOR
SIDEWALK PROJECTS**

ORIGINATING DEPARTMENT

**PUBLIC WORKS - TRANSPORTATION
DIVISION**

BACKGROUND INFORMATION

On August 1, 2014, the Killeen-Temple Metropolitan Planning Organization (KTMPPO) issued a Call for Projects (CFP) to utilize federal funding available through the Transportation Alternatives Program (TAP). The TAP replaces several programs such as Transportation Enhancements (TE), Recreational Trails, Safe Routes to Schools and several other discretionary programs, wrapping them into a single funding source.

Under the program, 80% of eligible project construction costs can be reimbursed with the nominating entity providing at least 20% of projects costs. The current CFP has \$624,000 in available funding. Cost-reimbursement programs require sponsors to pay for project costs up front with the funding agency providing reimbursement for costs throughout various stages of the project. Projects are awarded through a statewide competitive process with funds limited to those authorized in the TAP.

In the three previous TE project calls, the City of Killeen has secured funding for three (3) hike and bike trails. These projects have been extremely successful and a tremendous benefit to the residents of Killeen. In addition to providing an alternative to motorized travel, they serve the community's need for additional recreational and fitness venues.

DISCUSSION/CONCLUSION

In September 2009, the City of Killeen developed a Killeen Safe Routes to School plan. The plan identified the following barriers to walking and bicycling to school: missing or insufficient walkways (sidewalks and paths), no safe place to ride a bike to school, streets and intersections which are difficult or dangerous to cross, and walkways which are not accessible to students with disabilities.

On March 22, 2011, the City of Killeen entered into a professional services agreement with Half and Associates, Inc. to update the Safe Routes to School plan. The plan identified Brookhaven Elementary and Rancier Middle Schools as high priority projects to develop and enhance sidewalk connectivity. In order to provide connectivity for all of the children who were

potentially walking and/or biking, the plan identified three (3) significant sidewalk projects. The budget for constructing all of the sidewalks was estimated to be approximately \$685,000 (See attached Exhibit A for proposed sidewalks.).

On June 26, 2013, the City of Killeen executed a professional services agreement with Mitchell and Associates, Inc. The agreement provides for surveying and engineering services to develop construction plans for sidewalks near Brookhaven Elementary and Rancier Middle Schools.

On September 11, 2014, the City Manager submitted a letter to the Killeen Independent School District (KISD) requesting that KISD partner with the City by committing to contribute 10% of the project construction cost in the event that funds are awarded. Under the program rules, entities choosing to submit applications rank higher if they have a partnership. At the time of this memorandum's drafting, KISD was considering the request. If awarded, available funding for the CFP along with the City of Killeen's required match will complete all of the required sidewalks for these two (2) schools.

Project Components	City Participation	TAP Participation	KISD Participation	Cost
Engineering Fees	\$105,000			\$105,000
Environmental Fees	\$10,000			\$10,000
Construction Costs	\$68,519	\$548,158	\$68,519	\$685,198
Total Project Cost	\$183,519	\$548,158	\$68,519	\$800,198

FISCAL IMPACT

If KISD approves the City's request to become a partner, the fiscal impact associated with this action is \$183,519. If KISD rejects the City's request to become a partner, the fiscal impact associated with this action becomes \$252,039. In either event, funding will be available in the Child Safety Escrow Account 010-0000-202.16-00.

RECOMMENDATION

City staff recommends that the City Council authorize the submission of a TAP application to the KTMPO supporting funding this project as shown in the nomination budget (including the 20% local match) and committing to the project's development, implementation, construction, maintenance, management, and financing. The City of Killeen may enter into an agreement with Texas Department of Transportation by resolution or ordinance should the project receive funding.

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

That the above stated recommendation is hereby approved and authorized.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this the 7th day of October, 2014, 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 Cosper

Scott Cosper



Dianna Barker

Dianna Barker
CITY SECRETARY

APPROVED AS TO FORM:

Kathryn H. Davis

Kathryn H. Davis
CITY ATTORNEY

CSJ: 0909-36-151
Waco District (#9)
Code Chart 64#: 22300
Project: Construct Shared Use Trail
FHWA CFDA #: 20.205
Not Research and Development

ATTACHMENT B PROJECT LOCATION MAP



CSJ: 0909-36-151
Waco District (#9)
Code Chart 64#: 22300
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ATTACHMENT C
PROJECT ESTIMATE AND SOURCE OF FUNDS

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

Work Performed by Local Government ("LG")							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation <small>Includes additional percentage for TDC apportionment where applicable</small>		State Participation		Local Government (LG) Participation <small>Includes any EDC reduction where applicable</small>	
		%	Cost	%	Cost	%	Cost
Planning/Maps/Education/Non-CST	\$0	0%	\$0	0%	\$0	0%	\$0
Preliminary Engineering	\$85,000	0%	\$0	0%	\$0	100%	\$85,000
Environmental Cost	\$15,000	0%	\$0	0%	\$0	100%	\$15,000
Right of Way	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities	\$0	0%	\$0	0%	\$0	0%	\$0
Construction	\$312,531	80%	\$250,025	0%	\$0	20%	\$62,506
In-kind donation Value <small>(Add to Total Project Cost - 20% Maximum value)</small>	\$0	0%	\$0	0%	\$0	0%	\$0
Work by LG Subtotal	\$412,531		\$250,025		\$0		\$162,506
Work Performed by the State (Local Participation paid up front by LG to TxDOT)							
Preliminary Engineering ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way ³	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities ²	\$0	0%	\$0	0%	\$0	0%	\$0
Construction ²	\$0	0%	\$0	0%	\$0	0%	\$0
Work by State Subtotal	\$0		\$0		\$0		\$0

CSJ: 0909-36-151
Waco District (#9)
Code Chart 64#: 22300
Project: Construct Shared Use Trail
FHWA CFDA #: 20.205
Not Research and Development

Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation <small>Includes additional percentage for TDC apportionment where applicable</small>		State Participation		Local Government (LG) Participation <small>Includes any EDC reduction where applicable</small>	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering ¹	\$2,085	0%	\$0	0%	\$0	100%	\$2,085
Environmental Cost ¹	\$1,040	0%	\$0	0%	\$0	100%	\$1,040
Right of Way ³	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities ²	\$0	0%	\$0	0%	\$0	0%	\$0
Construction ¹	\$6,250	0%	\$0	0%	\$0	100%	\$6,250
Indirect State Costs	\$18,750	0%	\$0	100%	\$18,750	0%	\$0
Direct & Indirect State Cost Subtotal	\$28,125		\$0		\$18,750		\$9,375
TOTAL PARTICIPATION	\$440,656		\$250,025		\$18,750		\$171,881
In-kind Contribution Credit Applied						0%	\$0
TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION							\$171,881

The estimated total participation by Local Government is \$171,881, plus 100% of overruns.

Total estimated payment by Local Government to State is \$9,375.

¹First payment of \$9,375 is due to State within 30 days from execution of the AFA contract.

²Second payment of \$0 is due to State within 60 days prior to the Construction contract being advertised for bids.

³If 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 \$250,025.00.



City of Killeen

Legislation Details

File #: RS-15-033 **Version:** 1 **Name:** TSTC Lease Agreement-Skylark Field
Type: Resolution **Status:** Resolutions
File created: 5/27/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider a memorandum/resolution approving a lease agreement with the Texas State Technical College (TSTC) for hangar facilities at Skylark Field.
Sponsors: Aviation Department
Indexes:
Code sections:
Attachments: [Council Memorandum Lease](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

**Skylark Field Lease Agreement - Texas State
Technical College (TSTC)**

ORIGINATING DEPARTMENT

Department of Aviation

BACKGROUND INFORMATION

A 6,400 square-foot hangar designed to accommodate a variety of common corporate jets, turbo-prop aircraft, or helicopters and includes appropriate administrative space adaptable for office, classroom, shop space, restrooms, shower, kitchen, and related amenities has been available for lease at Skylark Field since December 31, 2014.

DISCUSSION/CONCLUSION

Staff has negotiated a lease agreement with TSTC for the lease of the hangar. TSTC is the only state-supported technical college system in Texas whose role and mission is "to efficiently and effectively help Texas meet the high-tech challenges of today's global economy in partnership with business and industry, government agencies, and other educational institutions." Through use of this facility, TSTC will bring a rotary-based curriculum and flight training program to Skylark and the Central Texas region and provide quality education and training for future rotary-wing pilots and aircrew.

The lease agreement is for an initial term of three (3) years beginning July 1, 2015, with two (2) successive automatic one-year extensions unless the tenant notifies the airport 60 days in advance of its intent not to renew the agreement. The tenant will pay the airport \$3,100 per month during the first year. Beginning on the first anniversary of the term and each anniversary thereafter, the base monthly rental amount will increase by an amount equal to the percentage of change in the Consumer Price Index (CPI) for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics. At the end of the five years, the tenant will have the option to renew the agreement under terms that would be renegotiated and approved by Council at that time.

FISCAL IMPACT

This lease agreement will provide for initial gross revenue of \$37,200 per year with CPI increases each year through years two to five of the lease. Additional revenue is expected through the sale of fuel for the aircraft. Revenues will be deposited in the Skylark Field Airport Enterprise Fund.

RECOMMENDATION

City Council approve the attached lease agreement with TSTC and authorize the City Manager to execute same and any subsequent amendments to the lease.

STATE OF TEXAS

COUNTY OF BELL

LEASE AGREEMENT

This lease agreement ("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 Texas State Technical College, an institution of higher education and an agency of the State of Texas, hereinafter referred to as "Tenant" or "TSTC."

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 on Skylark Field at 1503 Stonetree Drive, Killeen, Texas, 76543: A 6,400 sq. ft. hangar complete with internal office space, break room and related work areas as shown on Exhibit "A" attached hereto and incorporated herein.

ARTICLE II

Description of Concession Granted

1. The Airport grants Tenant the right to engage in the following activities:
 - a. Flight school operations including classroom lectures, flight training, simulator training, and academic instruction as part of a college aviation training program.
 - b. Maintenance of owned or leased aircraft, including major and minor maintenance.
 - c. Air transportation support services for Texas State Technical College staff in support of the business of the college and for which no payments are received.
 - d. Any other functions related to the forgoing activities which do not involve any commercial service ventures that are not part of a college aviation academic training program or the administrative support of college staff business travel.
2. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right for any aeronautical activities that is forbidden by Section 308 (A) of the Federal Aviation Act of 1958, as amended.

ARTICLE III
Obligations of the Airport

1. The Airport shall maintain and repair the non-leased portion of the areas surrounding the Leased Premises depicted on Exhibit "A."
2. The Airport shall provide adequate access to the Leased Premises so long as Airport, Transportation Security Administration, and pertinent Federal Aviation Regulation security practices are not violated.
3. Parking will be provided for Tenant's employees and customers in a designated parking lot or lots adjacent to or nearby the Leased Premises as depicted on Exhibit "A." Tenant understands and agrees that such parking is provided for the direct support of the activities authorized in Article II, Par. 1. herein and will not be utilized for the long term storages of vehicles or other items owned by employees or customers of the Tenant.
4. If the Leased Premises are destroyed or damaged by any means which are not fully the fault of the Tenant, 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 in writing and the Tenant will stand charged only with the rent specified in ARTICLE VI up to the time of such damage or destruction.
5. The Airport shall furnish keys, at no initial cost to Tenant, to the Tenant's designated Manager who shall be responsible for safekeeping of such keys. Lost key replacement will be charged to Tenant in accordance with the Rents and Fees Schedule depicted on Exhibit "B".
6. The Airport shall maintain and keep in repair the landing area of the airport. The Airport retains the right to reasonably direct and reasonably control all activities of the Tenant in this regard. The Airport shall make all reasonable efforts not to hinder the Tenant's efforts in the performance of Tenant's business functions or services.
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. The Airport will abate rent for affected tenant areas for periods in which closure for these reasons prevents the tenant from operating its facilities, if reasonable temporary facilities and/or arrangements cannot be made by the airport.
8. The Airport will provide, at no additional charge to the Tenant, the use of up to three (3) helicopter parking spots near the building specified in Article I for storage of aircraft owned, operated, or otherwise controlled by the Tenant (see Exhibit "A"). The exact location will be made by mutual agreement of the Airport's Executive Director of Aviation or his/her designated representative and Tenant's designated local manager prior to the effective date of this lease

agreement. It is acknowledged and understood that it may be required for the Airport to change these locations from time to time during the term of this Lease to accommodate pavement maintenance, construction, or other airport operational requirements.

9. The Airport will provide, at no additional charge to the Tenant, airside space not to exceed 300 square feet, adjacent to the building specified in Article I, for storage of ground support equipment necessary for the safe and efficient operation of a flight training operation. Such storage must be maintained in a neat and orderly manner, so as not to detract from the appearance of the airport. The exact location of this space will be mutually agreed to between the Airport's Executive Director of Aviation or his/her designated representative and the Tenant. The location of such space may change from time to time during the term of this Lease.
10. Except as indicated in Article IV, Par. 1 and 12, the Airport is responsible for the maintenance and repair of the exterior of the Leased Premises, the steel frame structure of the building, and all plumbing located underground or under the floor of the building.

ARTICLE IV **Obligations of the Tenant**

1. Tenant accepts the building identified in Article I of this Lease in "as is" condition, and assumes all responsibility and expense of maintaining the interior of the building in a safe, neat, attractive, and good physical condition. Tenant is responsible for the maintenance of exterior signage and any other item the Executive Director of Aviation may have authorized the Tenant to install on the exterior of the building. Tenant will promptly repair all damages at the Tenant's expense. Any damage caused by the Tenant's failure to repair the building or notify Airport in a timely manner is the sole responsibility of the Tenant. Appropriate representatives of the Airport and the Tenant will perform and document a joint facility inventory and condition inspection before Tenant occupies the Leased Premises. A record of this inspection will be maintained by both parties for the duration of the Tenant's occupancy of the facility.
2. Tenant agrees it will not assign this Lease or sublet the Leased Premises or any part thereof, without the prior written consent of the Killeen City Manager. It is further agreed consent will not be unreasonably withheld.
3. Tenant agrees to keep the Leased Premises clean and shall provide its own janitorial services and will be responsible for the removal of any exposed litter or unsafe materials which may accumulate in or about the building or properties.
4. Tenant shall be responsible for disposal of its own trash accumulations at its own expense.

5. Tenant agrees it shall not engage in any business or activity within the confines of Skylark Field other than those expressly authorized by this agreement. This provision does not prohibit or restrict Tenant from applying for and obtaining a separate business authorization agreement from the Airport.
6. Tenant shall operate the Leased Premises without cost to the Airport, and will maintain all equipment, appliances and furnishings therein.
7. Tenant agrees its employees, while performing the duties associated with the concession granted in ARTICLE II, will be neatly groomed and attired and conduct themselves in a courteous, professional, and businesslike manner.
8. Tenant and its staff shall conduct activities on the Leased Premises in accordance with all applicable laws and regulations.
9. 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.
10. Tenant shall, no later than ten (10) days after the beginning of the term of this Lease, provide the Airport with a report listing all aircraft operated by the tenant by aircraft model and FAA registration number that are based at Skylark Field. Tenant shall provide subsequent reports updating this information within thirty (30) days of any change of based aircraft.
11. Tenant shall be responsible for procuring its own utility services and shall be responsible for all utility charges.
12. Tenant shall be responsible for sewer clean outs that are not the result of a damaged sewer line.
13. Tenant shall be responsible for the regular servicing, to include clean out as necessary, of the oil/water separator connected to the leased premises.
14. Tenant agrees it will not store any equipment or supplies on the ramp area or any other area outside of the Leased Premises (to include the designated additional storage as specified in Article III, Section 9). Properly escorted vehicles and equipment may access the ramp area when necessary for maintenance support or passenger or cargo transfer to and from aircraft or the Leased Premises.
15. Tenant must, under a separate agreement with the Airport, rent an appropriate number of additional aircraft tie-down spaces for any aircraft owned, leased, operated, maintained, or otherwise consigned to the Tenant, that are not being stored within the leased premises, or the three helicopter parking spaces that are provided as part of this lease agreement as specified in Article III, Section 8.

16. Normal business hours and appropriate phone numbers to contact the Tenant when no employees are physically present in the leased premises must be prominently displayed at the building entrance.
17. Any signage to be installed on the exterior of the leased hangar must be approved by the Executive Director of Aviation before installation, such approval not to be unreasonably withheld.
18. Tenant alone is responsible for any loss or damage to, or damage caused by, Tenant-owned or operated property stored on the grounds of the Airport and agrees, to the extent allowed by the laws and the Constitution of the State of Texas, to indemnify and hold Airport and all of its officers, agents, servants, and employees harmless to the extent allowed by law from any loss, damage, liability or expense, including costs of court, expert witnesses' and consultants' fees, on account of damage to or loss of property and injuries, including death, to all persons, defend Airport in any suits or other proceedings brought against Airport and its officers, agents, servants and employees, or any of them on account thereof, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them, or any of them in connection herewithin.

ARTICLE V
Terms of Agreement

1. The Airport hereby grants unto the said Tenant, for a period of three (3) years beginning July 1, 2015 and ending June 30, 2018, the right to operate a college flight school, as previously described, at Skylark Field.
2. Any holding over by the Tenant on the expiration of the initial or any successive term of this Lease shall not constitute a renewal thereof but shall constitute only a tenancy on a month-to-month basis. Any such holding over may be allowed by the Executive Director of Aviation, if such holding over is in the best interest of the Airport and if the Tenant is otherwise in good standing with the Airport. The Tenant must request holding over in writing at least sixty (60) days prior to the expiration of the initial or any successive term of this Lease, as applicable, and must have received written authorization to hold over from the Executive Director of Aviation, prior to the expiration of the initial or any successive term of this Lease, as applicable. All other terms of this Lease shall continue to be binding upon the Tenant in holdover status.
3. 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 sum/s prescribed in ARTICLE VI, said sum/s payable without demand in monthly installments on or before the first day of each month and every month during the term of this Lease, beginning on the first day of the month following tenant's possession of the property. Alternatively, as long as the Airport continues to maintain an administrative office at Skylark Field, all payments may be made at either office by the dates prescribed above.

4. If Tenant is not in default of the terms hereunder, the initial term of the Lease Agreement shall automatically extend for two (2) successive one (1) year terms under the terms and fees established by this Lease Agreement, unless Tenant gives City notice of its option not to extend at least sixty (60) days prior to the expiration of the initial term or corresponding successive term, as applicable. Upon the expiration of five (5) years and provided Tenant is not in default of the terms hereunder, Tenant shall have the right to request approval by the City Council of the City of Killeen of a subsequent lease agreement under the then applicable terms and fees.

ARTICLE VI
Rentals, Fees, and Accounting Records

1. Beginning, July 1, 2015, Tenant shall pay to the Airport, \$3,100.00 per month for the Leased Premises in accordance with the fee schedule described in Exhibit "B" each and every month for the first twelve months the initial term of this Lease. Beginning on the 1st anniversary of the term and each anniversary thereafter, the base monthly rental amount will increase by an amount equal to the percentage of change in the Consumer Price Index (CPI) for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics (Non Seasonally Adjusted, All Items, Base Period 1982-84 = 100) for the most recently published twelve month period. The reference month for this purpose is January 2015 with an index number of 233.707. (Example: If the CPI index number for January 2016 is 237.806, beginning July 1, 2016, the basic rent will be adjusted from the initial \$3,100.00 per month to \$3,154.25 per month. $(237.806 - 233.707 = 4.099 \div 233.707 = .0175 \times \$3,100.00 = \$54.25 + \$3,100.00 = \$3,154.25)$). If the CPI calculation for any twelve month period results in a decrease, the rental rate will remain the same for the next twelve months and the subsequent year's calculation will include a twenty four month period. In the event that the Federal Government ends the calculation and publication of the Consumer Price Index, a replacement federally recognized index for the purpose of tracking inflation will be used. Sundry charges of the previous month will be in accordance with the fee schedule described in Exhibit "B". Sundry charges are subject to change on an annual basis. Airport will provide a revised Rents and Fees Schedule to Tenant at least thirty (30) days before the effective date of any changes to sundry charges.
2. Deleted.
3. 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 Airport to the Tenant to pay, the Airport shall, subject to Texas Government Code, §2009, 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 Leased 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.

4. If the Tenant holds over beyond the term of this Lease on a month-to-month basis, all basic rents, as listed in Exhibit "B", as modified by paragraph 1 above in respect to subsequent terms, if applicable, will increase by 15%. Beginning with the fourth month in a hold over status, basic rents will increase by 20%. Beginning with the seventh month in a hold over status, basic rents will increase by 25%. Sundry charges will be at the current rates in effect for that month.
5. Deleted.

ARTICLE VII
Rights of Inspection

The Airport reserves the right to inspect the Leased Premises, equipment, and services at any reasonable time for the purpose of assuring compliance with this Lease, public safety or welfare, or the Airport's general rights and duties as lessor.

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 if applicable by the provisions of the regulation, 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 if applicable by the provisions

of the regulation, it will require that its covered sub organizations provide assurances to the Airport that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required, by 14 CFR Part 152, Subpart E, to the same effect.

3. In the event of breach of any of the preceding nondiscrimination covenants, the Airport shall have the right to pursue dispute resolution pursuant to Chapter 2009 of the Texas Government Code.

ARTICLE IX
Indemnification and Insurance

1. 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 or its equivalent in the types and amounts as listed below.

TYPE	MINIMUM LIMITS
Workers Compensation	Statutory
Premises Liability	
Bodily Injury	\$ 300,000 per occurrence \$1,000,000 aggregate
Property Damage	\$ 300,000 per occurrence \$1,000,000 aggregate
Aviation Liability	
Bodily Injury	\$ 100,000 per passenger \$ 300,000 per occurrence
Single limit of liability	\$1,000,000

To the extent of the risks, liabilities and indemnities assumed by Tenant under this Lease, The "City of Killeen" (a) shall be included as additional insured; (b) shall be furnished with Certificate of Insurance coverage in the above minimum amounts with this signed Lease and at any time during the lease period that the Tenant may change or extend coverage; and (c) Tenant's insurers shall waive all rights of subrogation in respect to the City on the General Liability and Workers Compensation policies. Current period proof of coverage for all other types of insurance must be on file with the Airport at all times.

2. The Airport and the Tenant shall be liable for their own acts of negligence, and, to the extent allowed by the laws and the Constitution of the State of Texas, each agrees to indemnify the other for any losses, damages, costs or expenses, paid or sustained by reason of the sole negligence of the indemnifying party.
3. The Tenant shall, to the extent allowed by the laws and the Constitution of the State of Texas, hold the Executive Director of Aviation and all other Department of Aviation personnel, and the officers, elected officials and employees of the City

of Killeen 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 negligence during its tenancy and activities. Similarly, Airport 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 Airport's negligence related to the Airport's activities under this Lease, and shall pay all expenses in defending any such claims against the Tenant.

4. The Tenant shall, to the extent allowed by the laws and the Constitution of the State of Texas, be solely liable and responsible for civil penalties imposed upon the Airport as a result of the Tenant's 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 Airport 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 Airport which do not result from any violation of said regulations by the Tenant.
5. Special Environmental Compliance:

- a. Definitions. The term "Environmental Laws" means any one or all the following as the same are amended from time to time: (i) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., Section 9601, et seq.; (ii) the Toxic Substance Control Act, 15 U.S.C., Section 2601, et seq.; (iii) the Safe Drinking Water Act, 42 U.S.C., Section 300h, et seq.; (iv) the Clean Water Act, 33 U.S.C., Section 1251, et seq.; (v) the Clean Air Act, 42 U.S.C., Section 7401, et seq.; and (vi) the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted in connection with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including substrata land.

The term "Hazardous Material" includes: (i) those substances included within the definitions of hazardous substance, hazardous material, toxic substance, or solid waste in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C., Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901, et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801, et seq. And the regulations promulgated thereto: (ii) these substances listed in the United States Department of Transportation Table (49 C.F.R., Section 172.101 and amendments thereto) or by the Environmental Agency as hazardous substances (40 C.F.R., part 302, and amendments thereto; and, (iii) all substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any local, state or federal environmental law.

The term "release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

disposing, or dumping.

b. Compliance.

- (1) Tenant shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released on, under or about the Leased Premises, or transported to and from the Leased Premises, by Tenant, its agents, employees, contractors or invitees that enters the Leased Premises in violation of any Environmental Laws.
- (2) Tenant shall, to the extent allowed by the laws and the Constitution of the State of Texas, indemnify, defend and hold harmless Airport, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and investigation fees or costs (collectively, "Liability"), arising from or related to any claim or action for injury, liability, breach of warranty of representation, or damage to persons or property and any and all claims or actions brought by any person, entity or government body alleging or arising on connection with contamination of, or rule, regulation, judgment or order of any government or judicial entity, to the extent incurred or assessed as a result of any activity or operation on or discharge by, through or under Tenant from the Leased Premises during the term of this lease agreement. Notwithstanding the foregoing, Tenant shall not be responsible for, or indemnify Airport or any other person or entity for, any liability arising from (i) the presence, generation, use, manufacture or release of Hazardous Materials, or (ii) violation of any Environmental Laws, occurring or existing prior to the Effective Date or after this Lease agreement has terminated, provided Tenant's activities and operations were not the cause or source of the release of any Hazardous Materials or any contamination or violation of Environmental Laws. Airport shall indemnify, defend and hold harmless Tenant, its successors and assigns, its employees, agents and attorneys from and against any and all Liability arising from or related to any claim or action for injury, liability, breach of warranty of representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Laws or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity, to the extent incurred or assessed as a result of any activity or operation on or discharge from the Leased Premises occurring or existing prior to the Effective Date or after this Lease has terminated, provided Tenant's activities and operations were not the cause or source of the release of any Hazardous Material or any contamination or violation of Environmental Laws.

ARTICLE X
Storm Water Compliance

1. Acknowledgments:

- a. Notwithstanding any other provisions or terms of this Lease, Tenant acknowledges that the Airport is subject to federal storm water regulations, 40 CFR Part 122 and state storm water regulations (TPDES MSGP Permit number TXR050000), for vehicle maintenance, and equipment cleaning operations and/or deicing operations that occur at the Airport as defined in these regulations. Tenant further acknowledges that it is familiar with these storm water regulations; that it conducts vehicle maintenance, equipment cleaning operations and/or deicing activities as defined in the federal storm water regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.
- b. Notwithstanding any other provisions or terms of this Lease, Airport acknowledges that it has obtained a storm water discharge permit as required by the applicable regulations for the Airport, including the property occupied or operated by the Tenant.
- c. Notwithstanding any other provisions or terms of this Lease, including the Tenant's right to quiet enjoyment, Airport and Tenant both acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Tenant acknowledges that, as discussed more fully below, it may have to undertake to minimize the exposure of storm water (and snow melt) to "significant materials" generated, stored, handled, or otherwise used by the Tenant, as defined in applicable storm water regulations, by implementing and maintaining "Best Management Practices."
- d. The Airport's storm water discharge permit is incorporated by reference into this Lease and any subsequent renewals.

2. Permit Compliance:

- a. Airport will provide Tenant with written notice of those storm water discharge permit requirements, that are in the Airport's storm water permit, that Tenant will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges, preparation of storm water pollution prevention or similar plans, implementation of "good housekeeping" measures or Best Management Practices, and, maintenance of necessary records. Such written notice shall include applicable deadlines. Tenant, within fourteen (14) days of receipt of such written notice, shall notify Airport in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Tenant does not provide such timely notice, it is, to the extent allowed by

the laws and the Constitution of the State of Texas, deemed to assent to undertake such requirements. If Tenant provides Airport with timely written notice that it disputes such storm water discharge permit requirements, Airport and Tenant agree to negotiate a prompt resolution of their differences. Tenant warrants that it will not object to written notice from the Airport for purposes of delay or avoiding compliance.

- b. Unless otherwise agreed to in writing between Airport and Tenant or unless Tenant timely notifies Airport of its dispute as detailed above, Tenant agrees to undertake at its sole expense, those storm water discharge permit requirements for which it has received written notice from the Airport. Tenant warrants that it shall meet any and all deadlines that may be imposed on or agreed to by Airport and Tenant. Tenant acknowledges that time is of the essence.
- c. Airport agrees to provide Tenant, at its request, with any non-privileged information collected and submitted to any governmental entity(ies) pursuant to applicable storm water regulations.
- d. Deleted.
- e. Airport will give Tenant written notice of any breach by Tenant of the Airport's storm water discharge permit or the provisions of this section. Tenant agrees to cure promptly any breach. If such a breach is material, and, if of a continuing nature, Airport may seek to terminate this Lease pursuant to the terms of this Lease.
- f. Tenant agrees to participate in any Airport-organized task force or other work group established to coordinate storm water activities at the airport.

3. Indemnification:

- a. Notwithstanding any other provisions of this Lease, Airport agrees to indemnify and hold Tenant harmless from any and all claims, demands, costs (including attorneys fees), fees, fines, penalties, charges and demands by and liability directly or indirectly arising from Airport's actions or omissions, for failure to comply with Airport's obligations under the applicable storm water regulations and storm water discharge permit, unless the result of Tenant's sole negligence, acts, or omissions. This indemnification shall survive any termination or non-renewal of this Lease.
- b. Notwithstanding any other provisions of this Lease, Tenant agrees, to the extent allowed by the laws and the Constitution of the State of Texas, to indemnify and hold harmless Airport and other tenants from any and all claims, demands, costs, fees, fines, penalties, charges and demands by and liability directly or indirectly arising from Tenant's actions or omissions, for failure to comply with Tenant's obligations under this Article, the applicable storm water regulations, and storm water discharge permit,

unless the result of Airport's sole negligence, acts, or omissions. This indemnification shall survive any termination or non-renewal of this lease.

ARTICLE XI
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 this 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) Tenant or Airport fails to perform or observe any of its obligations under this Lease, and such failure is not cured within thirty (30) days after receipt of written notice by Tenant or Airport; (c) any statement, representation or warranty made by Tenant in this Lease 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 or Tenant may, at its option and subject to the laws and the Constitution of the State of Texas, and specifically subject to Chapter 2009 of the Texas Government Code, exercise any one or more of the following remedies:
 - a. Terminate, cancel or rescind this Lease;

 - b. 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 or Tenant may enforce any of Tenant's obligations under this Lease;

 - c. Omitted.

 - 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 Leased 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. If Airport re-enters the Leased Premises, Airport shall allow Tenant to recover any and all perishable or time-sensitive items (including log books) within a reasonable time period as to not allow any item to perish, expire or hinder Tenant's ability to perform necessary functions related to its aircraft of business.

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 XII

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 Airport 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.
2. Notices to the Airport shall be sufficient if sent by registered mail, postage paid, addressed to the Executive Director of Aviation, Killeen-Fort Hood Regional Airport, 8101 South Clear Creek Dr, Box C, Killeen, Texas 76549, and notices to the Tenant shall be sufficient if sent by registered mail, postage paid, addressed to Kevin Dorton, Vice President of Administrative Services, Texas State Technical College, 3801 Campus Drive, Waco, TX 76705. The parties may designate other addresses from time-to-time in writing. Tenant must provide a valid new address for notices to Tenant within ten (10) days if the above address becomes invalid.
3. 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.
4. 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 affecting the Tenant will be coordinated with Tenant.
5. Airport reserves the right to take action it considers necessary to protect the aerial approaches of the airport against obstructions, together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure, or the conduct of any activity, on the airport which, in the opinion of the Airport, would interfere with the operations of the airport or constitute a hazard to aircraft.
6. This Lease shall be subordinate to the current or future Airport rules, regulations and minimum standards, and City Ordinances, as well as all applicable State and Federal regulations and laws, as amended. It is herein agreed between the Airport and the Tenant that the Airport Rules and Regulations now in effect (Exhibit "C") and hereafter adopted or amended by the City shall not be altered or impaired in any respect by this Lease, but said rules and regulations shall remain

in effect and be applicable to the Tenant during the term of this Lease. Exception: Tenant's aircraft are allowed to perform practice touch-down auto-rotations to the paved surfaces of the runway and taxiways with helicopters weighing less than 3,000 pounds after coordination with the Airport's Executive Director of Aviation or his designated representative.

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 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 contracts, agreements, resolutions, laws, and regulations control.

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.

ARTICLE XIII **Additional State of Texas Terms**

1. Venue; Governing Law. McLennan County or Travis County, Texas will be the proper place of venue for suit on or in respect of the Agreement. The Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
2. Representations and Warranties by Airport. If Airport is a corporation or a limited liability company, Airport warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Airport has been duly authorized to act for and bind Airport.
3. Tax Certification. If Airport is a taxable entity as defined by Chapter 171, Texas Tax Code, then Airport certifies that it is not currently delinquent in the payment of any taxes due under such Chapter, or that Airport is exempt from the payment of those taxes, or that Airport is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
4. Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Airport agrees that any payments

owing to Airport under the Agreement may be applied directly toward any debt or delinquency that Airport owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

5. **Products and Materials Produced in Texas.** If Airport will provide services under the Agreement, Airport covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under the Agreement, Airport will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
6. **State Auditor's Office.** Airport understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), Texas Education Code. Airport agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested related this contract which do not contain confidential or privileged information. Airport will include this provision in all contracts with permitted subcontractors.
7. **Fees & Payment Terms.** Notwithstanding any term or condition in the Agreement to the contrary, all invoices shall be payable to Airport within thirty (30) days after TSTC's receipt of invoice and delivery of the Product or Services in accordance with the Texas Prompt Payment Act, currently codified in Section 2251.021(a), Texas Government Code. Interest shall be payable by TSTC on all past due amounts at the rate specified in Section 2251.025(b) of such Code. Notwithstanding anything to the contrary, Airport understands and acknowledges that TSTC's payment processes are stipulated by the Texas Prompt Payment Act, and nothing in the Agreement shall be construed to prevent or restrict TSTC from full compliance with such Act.
8. **Eligibility Certification.** Pursuant to Sections 2155.004 and 2155.006, Texas Government Code, Airport certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.
9. **Omitted.**
10. **Breach of Contract Claims.** TSTC and Airport agree to engage in Dispute Resolution pursuant to Texas Government Code, Chapter 2009.
11. **TSTC and Airport agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.**
12. **Limitations.** The Parties are aware that there may be constitutional and statutory limitations on the authority of TSTC (a state agency) to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on TSTC's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers,

disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on TSTC except to the extent authorized by the laws and Constitution of the State of Texas.

13. Texas Public Information Act. Notwithstanding any provisions of this Agreement to the contrary, the Airport understands that TSTC will comply with the Texas Public Information Act, Gov't Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. TSTC agrees to notify Airport of receipt of a request for information related to Airport's work under this Agreement. The Airport will cooperate with TSTC in the production of documents responsive to the request. The Airport may request that TSTC seek an opinion from the Attorney General of the State of Texas. However, TSTC will not honor Airport's request for an opinion if the request is not based upon a reasonable interpretation of the Texas Public Information Act. Additionally, the Airport will notify TSTC General Counsel of receipt of any third party requests for information that was provided by the State of Texas for use in conducting this Agreement. This Agreement and all data and other information generated or otherwise obtained in the performance of its responsibilities under this Agreement may be subject to the Texas Public Information Act. TSTC and Airport agree to maintain the confidentiality of information received from the other party during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Lease on this ____ day of _____, 2015.

ATTEST:

CITY OF KILLEEN:

Dianna Barker
City Secretary

Glenn Morrison
City Manager

ATTEST:

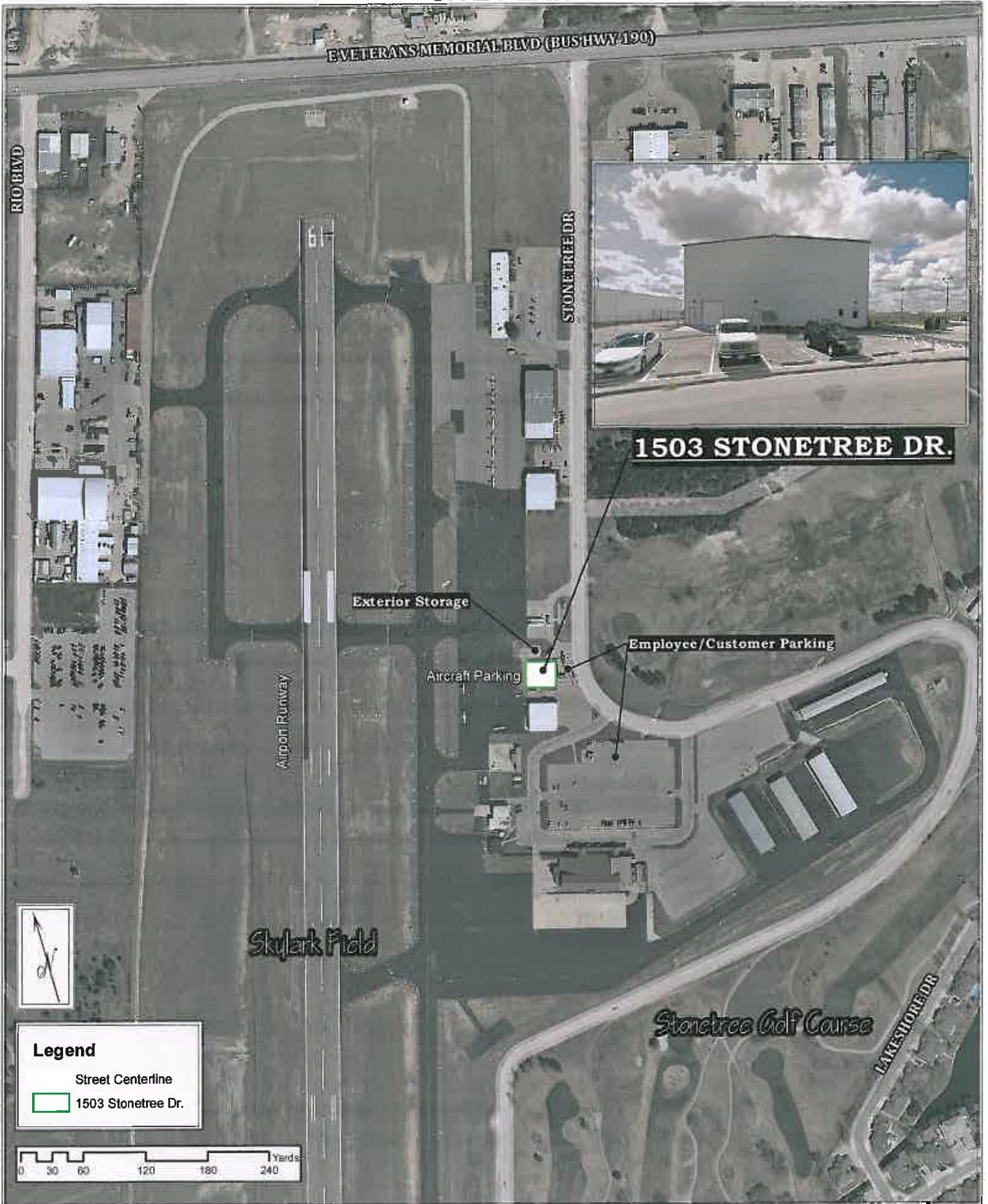
TENANT
Texas State Technical College

V. Carson Pearce
Aero Space Director

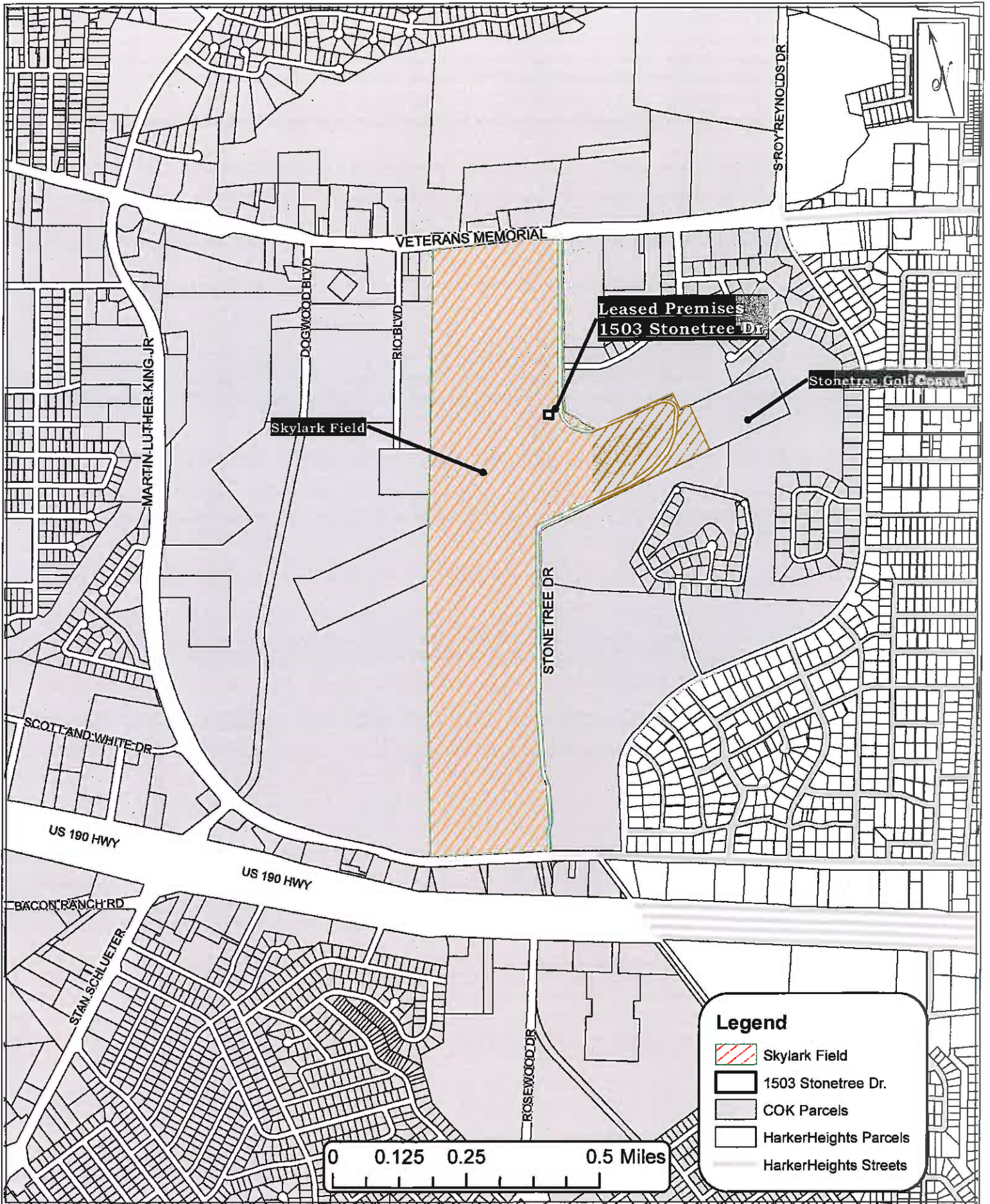
Kevin Dorton
Property Manager

TSTCLease05-28-15

SITE PLAN



SITE PLAN



City of Killeen and TSTC

Rents and Fees Schedule

BASIC RENT

Hangar (1503 Stonetree Dr) \$3,100.00 per month *

6,400 sq. ft. @ \$.4844 per sq. ft.

Total Basic Rent (Initial Term) \$3,100.00 per month *

SUNDRY CHARGES

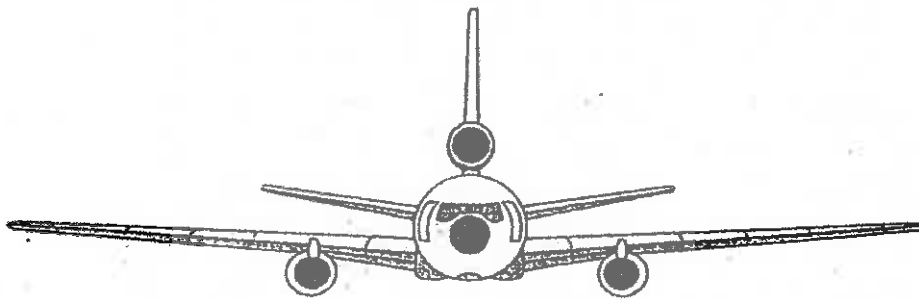
Key replacement ** \$15.00

Additional Aircraft Tie-down spaces ** \$25.00 per month

Municipal Airport



City of Killeen
KILLEEN, TEXAS 76541



**Rules
&
Regulations**

APPENDIX C

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KILLEEN MUNICIPAL AIRPORT

RULES AND REGULATIONS

ARTICLE I. GENERAL.

SECTION 1. AIRPORT ESTABLISHMENT.

There is hereby established the Killeen Municipal Airport for such purposes as to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police the Airport; including the construction, installation, equipment, maintenance and operation at the Airport of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers, and the purchase and sale of supplies, goods and commodities as an incident to the operation of the Airport properties. For such purposes, the City of Killeen may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein including easements in airport hazards or land outside the boundaries of the Airport, as are necessary to permit safe and efficient operation of the Airport or to permit the removal, elimination, obstruction lighting of airport hazards or to prevent the establishment of airport hazards.

SECTION 2. AVIATION DEPARTMENT.

There is hereby created an Aviation Department of the City government, which department shall provide for the safe operation of aircraft and aviation activities within the city and to maintain and operate the public airport, together with all improvements, appurtenances and facilities, including streets and roadways and other appurtenances which are used for municipal airport purposes.

SECTION 3. DIRECTOR OF AVIATION.

The affairs of the Aviation Department shall be administered by an official who shall have the title of Director of Aviation, and such Director shall be appointed by the City Manager and approved by the City Council; and he shall hold office for such period of time as may be determined by the City Manager. The Director shall serve as head of the department and administer, govern, superintend, and control aviation activities at the airport and within the City.

SECTION 4. AVIATION ENTERPRISE FUND.

There is hereby created an Aviation Enterprise Fund for the purpose of funding the Killeen Municipal Airport. All revenues generated by the airport, including rents, fuel flow fees, landing fees and other user fees, proceeds from the sale of any airport or portion thereof or air navigation facility property, and transfer from the general fund shall be deposited in the aviation enterprise fund and used solely for the operation of the airport.

SECTION 5. DEFINITIONS.

For the purpose of this Article 1 of Chapter 1½, the following words and phrases shall have the meanings respectively ascribed to them by this section.

- a. Active Runway shall mean any runway not closed to traffic by means of an official Notice to Airmen.
- b. Advisory Service shall mean a communications facility (UNICOM) which provides airport information to aircraft.
- c. Aerobatic Flying shall mean any operation of an aircraft or upon an aircraft in flight intended to alarm or excite others by reason of its apparent recklessness, showmanship, abrupt changes in altitude, abnormal altitude, speed, acceleration or difficulty when no emergency necessitating such spectacular feats or maneuvers exists.
- d. Air Carrier shall mean any aircraft operated for hire in which a pilot is provided, either for training purposes or passenger or cargo purposes, operated on scheduled or nonscheduled flights, including any aircraft operated or owned by an air transport line, air feeder line, air cargo line or charter service, and excluding any private aircraft or aircraft of an aircraft service operator engaged only in student flying activities or sightseeing flights.
- e. Aircraft shall mean any machine or device that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface, and used or intended to be used for flight in the air.
- f. Air Operations Area shall mean that portion of airport property designed and used for the landing, taking off, parking and surface maneuvering of airplanes including helicopter and general aviation operations, as well as the air carrier exclusive area on the passenger terminal ramp.
- g. Airport shall mean all properties and facilities owned, leased, or otherwise under the control of the City of Killeen, Texas, including all areas located within the confines of the established airport boundary, used for the purpose of loading, unloading, parking, storage, service, landing and taking off of aircraft; and those areas not used for aviation purposes.
- h. Airport Employee shall mean any person employed on the airport by the City of Killeen Department of Aviation.
- i. Airport Traffic Pattern shall mean the traffic flow prescribed for aircraft landing at, taxiing on, or taking off from the airport, including the upwind leg, crosswind leg, downwind leg, base leg, and final approach course.

- j. Contract shall mean any agreement or instrument of privilege and obligation entered into between the City and another party granting such other party the right and privilege to engage in activities at or appurtenant to the airport.
- k. Designated Area shall mean any area established by the Director of Aviation or his designee either in writing or by means of maps for any purpose specified by the Director or his designee.
- l. Emergency Vehicle shall mean any vehicle legitimately participating in an emergency response to include, but not limited to, crash/fire/rescue vehicles, authorized police vehicles, medical service vehicles, or tenant-operated vehicles.
- m. Fixed Base Operator shall mean any person, firm or corporation engaged in the demonstration of aircraft and aircraft parts, the retail or wholesale distribution of aircraft and aircraft parts, aircraft repairs, aircraft storage, aircraft servicing and fueling, student flight training, sightseeing by aircraft, aircraft rentals, charter service, or any other activity connected with aircraft maintenance, servicing, fueling, sales, storage, rentals or instruction for which a fee or service charge is assessed or received; and holding a valid contract with the City.
- n. Flight Line shall mean any area near hangars or terminals, including ramps and their adjacent taxiways and unpaved areas used for the parking, servicing and movement of aircraft.
- o. Free Lance Operator shall mean any person who acts independently without regard to authority and without contractual commitments to any one employer, and without a valid contract with the City of Killeen.
- p. Hazardous Cargo shall mean any substances, chemicals, ammunition, explosives, radio active materials, liquids or gases regulated by local, state or federal laws.
- q. Motor Vehicle shall mean any self-propelled vehicle, except an aircraft, designed to transport persons, property, cargo or equipment.
- r. Parachuting shall mean jumping from flying aircraft with use of parachutes, glide wings, hang gliders, auto-rotation wings, balloons, para-sails, or any other such device.
- s. Person shall mean any individual, firm, corporation, company, association or body politic and includes any trustee, receiver, assignee or other similar representative thereof.
- t. Public Aircraft Facilities shall mean all areas on the airport used for the purpose of landing, taking off and parking of aircraft; loading and unloading of passengers, freight, baggage, mail or other cargo to and from aircraft, performing operations

incidental to the immediate arrival and departure of aircraft, servicing aircraft with fuel, and for parking and maneuvering mobile equipment actively used in connection with the foregoing.

- u. Safety Area shall mean any graded area adjacent to a runway or taxiway or beyond the end of a runway, which area is free from obstructions and under normal conditions is capable of supporting fire fighting, rescue equipment and occasional passage of aircraft without causing major damage to the aircraft.
- v. Screening Point shall mean any area designated by the Director of Aviation as required by federal laws or regulations for the examination and screening of persons entering a sterile area.
- w. Sterile Area shall mean any area designated by the Director of Aviation with procedures and devices prescribed and in operation at each entrance to reasonably prevent the introduction of weapons into such area except as authorized by this Article 1 of Chapter 1½.
- x. Tenant shall mean any individual, firm, corporation, company or other similar entity having proprietary control over any area of the airport by virtue of a lease, contract or other formal arrangement with the City of Killeen.
- y. Traffic shall mean pedestrians, ridden or herded animals, vehicles, aircraft, and all other conveyances either singly or together while moving upon the ground upon airport property; or aircraft flying in the air.
- z. Ultralight Vehicle shall mean any slow flying powered machine or device which is designed for flight in the air, but which does not require pilot certification, vehicle certification or registration, and which generally has no radio communications equipment.

SECTION 6. LIMITATIONS ON DEFINITIONS.

Definitions in Section 5 of this Article are set forth for the purpose of enforcement of this Article 1 of Chapter 1½ and are not to be construed or applied to prosecutions or purposes outside the scope of this Article 1 of Chapter 1½.

ARTICLE II. DUTIES OF THE DIRECTOR OF AVIATION.

SECTION 1. THE DIRECTOR OF AVIATION SHALL HAVE THE FOLLOWING DUTIES:

- a. To take such action as necessary to safeguard the public in attendance at the airport.
- b. To suspend or restrict any or all air operations without regard to weather conditions whenever he believes such action to be necessary in the interest of public safety.

- c. Within the budgeted funds available for such purposes, to supervise the planned development, construction, enlargement, improvement, maintenance, equipment, administration, operations, regulation, protection and policing of the airport.
- d. In consultation with the City Manager and City Attorney, to supervise, direct, negotiate terms, and recommend the approval by the City Council of contracts for the use of the airport, including runways, taxiways, ramps, aprons, hangars, shops, administration and other buildings, and all other allied appurtenances and facilities and shall supervise the safe and orderly operation thereof and may direct the landing, take-off, taxiing or parking of aircraft and the vehicular and pedestrian circulation through and control of ground facilities, vehicles and pedestrian traffic in and upon the airport.

SECTION 2. DUTIES OF ASSISTANT DIRECTOR OF AVIATION.

RESERVED for future inclusion.

ARTICLE III. PUBLIC CONVENIENCE AND ORDER.

SECTION 1. SCOPE.

All persons on any part of the property comprising the airport shall be governed by the regulations prescribed herein and instructions of the Director of Aviation relative to the use of any part of the airport. These regulations are subject to amendment.

SECTION 2. PENALTIES.

The Director of Aviation may remove or evict from the airport premises any person who knowingly or willfully violates any rule or regulation prescribed herein, or any rule or regulation of the Federal Aviation Administration or the State of Texas, and may deny the use of the airport and its facilities to any such person if it is determined that such denial is in the public interest.

SECTION 3. ALCOHOLIC BEVERAGES.

No person shall consume alcoholic beverages upon any portion of the airport except in such places as shall be designated and approved by the City Council for dispensing and consumption of alcoholic beverages.

SECTION 4. UNAUTHORIZED ACTIVITIES.

Except as authorized by the Director, or covered by a valid contract, it shall be unlawful for any person to engage in the following activities on airport property:

- a. To sell or offer for sale any article of merchandise.
- b. To solicit any business or trade, including the carrying of baggage for hire.

- c. To post, distribute or circulate leaflets, advertisements or other written matter.
- d. To solicit funds, contributions, alms, or donations.
- e. To demonstrate, picket or hold a public gathering or public meeting.

SECTION 5. LOUD DEVICES.

No person within a terminal building or upon adjacent walks or streets shall operate or use any device which by its operation or use emits a sound of such nature or loudness as to interfere with the ordinary orderly conversation of others or which materially interferes with or overrides the audibility of public announcements made for the general benefit or safety of the public.

SECTION 6. TRASH AND REFUSE.

No person shall place, dispose or deposit in any manner, trash, garbage or refuse in or upon airport property or upon adjacent streets or rights-of-way except at such places and under such conditions as the Director may prescribe. No person shall keep uncovered trash containers. No vehicle used for hauling trash, dirt or any other material shall be operated on the airport unless such vehicle is constructed and loaded so as to prevent the contents thereof from dropping, sifting, leaking or otherwise escaping. Areas to be used for trash or garbage containers shall be designated by the Director, and no other areas shall be used. Such areas shall be kept clean and sanitary at all times.

SECTION 7. USE OF SHOP AREAS.

All shops, garages, and equipment facilities are for the conduct of the owner's or lessee's business and operations. No person other than employees of the owner or lessee shall make use of these facilities or loiter on such premises without permission of the owner or lessee. This section applies to all premises.

SECTION 8. CONDUCT OF BUSINESS OR COMMERCIAL ACTIVITY.

No person shall engage in any business or commercial activity on the airport without the approval of the City Council, upon recommendation of the Director.

SECTION 9. MAINTENANCE AND UPKEEP.

- a. All tenants shall maintain their leased property in a condition of repair, cleanliness and general maintenance in a manner agreeable to the Director, in accordance with their individual lease agreements and free from all fire hazards.
- b. All lessees on the airport shall keep the floors of the hangar areas, terminal apron and ramp areas leased by them or used in their operations clean and clear of all grease and other materials or stains except as may be provided in any specific leases or contracts.

SECTION 10. DAMAGES.

Tenants, lessees and grantees shall be fully responsible for all damages to buildings, equipment, real property and appurtenances owned or controlled by the City of Killeen caused by negligence, abuse or carelessness on the part of themselves, their employees, agents, customers, visitors, suppliers or persons with whom they do business.

SECTION 11. METERING.

Every tenant shall provide for their own utility services with meters for accurately measuring gas, water and electricity used by the tenant or pay a flat rate fee as prescribed by the Director or the utility.

SECTION 12. REMOVAL OF JUNKED AIRCRAFT AND EQUIPMENT.

- a. Junked, wrecked and unusable aircraft or portions thereof, and scrapped or unusable machinery, engines, vehicles, parts, drums and containers shall be removed from public view and placed in an inconspicuous or otherwise screened location on the airport; provided such location meets the approval of the Director.
- b. If, after a reasonable time limit not to exceed thirty (30) days, an operator or tenant has not removed junked, wrecked and unusable aircraft, or scrapped or unusable machinery, engines, vehicles, parts, drums and containers from public view, then a thirty (30) day written notice to remove shall be issued by the Director. If any person, tenants or operator refuses or fails to remove such material at the end of the written thirty (30) day notice, such material shall be removed by the City at the owner's or operator's expense and without liability which may result in the course of or after such removal.

SECTION 13. LOOSE ANIMALS.

No person shall enter a terminal building or air operations area with a dog or other animal, except any seeing-eye-dog escorting a blind or otherwise handicapped person, or an animal in the process of being shipped on an air carrier providing such animal is restrained by a leash or properly contained and is immediately delivered to the airline for shipment.

SECTION 14. LOST AND FOUND.

No person shall willfully abandon any property on the airport. Any person finding a lost article shall deposit such item with or report it to the office of the Director of Aviation. Any such articles or items not claimed in sixty (60) days will be disposed of as determined by the Director. Funds received from the sale of unclaimed articles shall be deposited in the airport enterprise fund.

SECTION 15. REMOVAL OF UNAUTHORIZED PROPERTY.

The Director or his authorized representative may remove from any area of the airport any property, including vehicles and aircraft, which is disabled, abandoned, parked in violation of this Article 1 of Chapter 1½ or which

presents an obstacle to the orderly operation of the airport. Such removal shall be at the operator's or owner's expense without liability for damages or inconveniences which may result in the course of such removal.

SECTION 16. LIABILITY.

The City of Killeen assumes no responsibility for loss, injury, or damage to persons or property by reason of fire, theft, vandalism, wind, flood, earthquake, collision, or civil disobedience, nor does it assume any liability for injury to persons while on the airport.

SECTION 17. ACCIDENT REPORTS.

All persons involved in any accident occurring on the premises of the airport shall make a report to the Director of Aviation or the Police Department as soon as possible, giving all pertinent information requested by the person in charge. (see Article V, Section 5)

SECTION 18. CONSTRUCTION, ALTERATION AND ELECTRICAL MODIFICATIONS.

No person shall engage in any construction, alteration or electrical wiring in or about any existing building or hangar on the airport without the permission of the Director of Aviation.

SECTION 19. BUILDINGS AND SIGNS.

No signs, buildings or equipment of any nature may be erected or installed at the airport unless specifically authorized by written contract with the City of Killeen or by special permission of the Director of Aviation.

SECTION 20. DISORDERLY CONDUCT.

No person shall be or become intoxicated, commit any disorderly, obscene or indecent act or commit any act of nuisance, or conduct or engage in any form of gambling on the airport.

SECTION 21. SANITATION.

No person shall dispose of garbage, papers, refuse or other material on the airport except in the receptacles provided for that purpose; nor use a comfort station other than in a clean and sanitary manner; or eat food or drink beverage in the terminal building lobby, nor expectorate on floors, walls, or other surfaces of any airport building.

SECTION 22. PRESERVATION OF PROPERTY.

No person shall destroy, injure, deface or disturb any building, sign, equipment, marker or other structure, trees, flowers, shrubs, lawn or other property, nor alter, make additions to or erect any buildings or signs or make any excavations; nor willfully abandon any personal property.

SECTION 23. LOITERING AND REFUSAL TO COMPLY.

No person shall loiter or loaf on any part of the airport or in any building on the airport; nor shall any person come upon or use the airport,

except while traveling through as a passenger on a bus or taxicab or while enplaning or deplaning as a passenger on an aircraft operating on the airport after such person has been denied the use of the airport by the Director. Any person who shall refuse to comply with these rules and regulations after request by the Director or other authorized representative shall be requested to leave the airport, and in the event of failure to comply with such request shall be regarded as a trespasser.

SECTION 24. ARMED GUARDS.

- a. Guards may be required. Whenever in his opinion such action is necessary in the interest of public safety, the Director of Aviation or his authorized representative may require any tenant, aircraft owner, or aircraft operator to provide and maintain security guards or police officers. Such guards or officers shall have the security duties and be required to perform the security functions specified by the Director or his designee in the instructions requiring such security to be established.
- b. Guards may be requested. Tenants, aircraft owners, aircraft operators or their agents may be authorized to post security guards or police officers subject to the approval of the Director of Aviation or his designee.
- c. Authorization required for guards. No person may function as a security guard on an airport except as authorized by the Director of Aviation or his designee.
- d. Authorization required for each event. Authorization to post a security guard or a police officer must be obtained for each separate event. The duties of security personnel shall be limited by the instructions of the official issuing the authorization subject to applicable laws and ordinances.

SECTION 25. FREE LANCE OPERATORS. Free lance operators are prohibited from performing aircraft maintenance and repairs of any type, flight instruction, aircraft sales and service, and sales of aircraft parts and accessories on the Killeen Municipal Airport, unless that operator is covered by a valid contract or lease agreement with the City of Killeen and is covered by appropriate property damage and products liability insurance as specified in the Minimum Standards for a Commercial Aeronautical Activity.

ARTICLE IV. VEHICLE OPERATIONS AND SAFETY.

SECTION 1. LICENSING AND REGISTRATION.

- a. No person shall operate motorized ground equipment of any kind on the airport without a valid State of Texas Motor Vehicle Operators License appropriate for the type of vehicle operated.
- b. No person shall operate any motor vehicle in the public aircraft facilities areas without first having registered the same with the Director of Aviation and obtained permission for the operation of such equipment.

- c. No motor vehicle, except fuel trucks, tugs and agricultural equipment, shall be operated on the airport without current State of Texas license plates and safety inspection stickers. Fuel delivery trucks shall have current fuel pump delivery meter calibration stickers, or company proof of calibration.

SECTION 2. RULES OF OPERATION.

- a. No person shall operate a motor vehicle of any kind on the airport in a reckless or negligent manner, or in excess of the speed limits prescribed by the Director of Aviation. Speed limits shall not exceed 15 miles per hour on the ramps, aprons, or in aircraft parking and hangar areas; except Crash-Fire-Rescue vehicles and emergency support vehicles.
- b. No person operating a motor vehicle on the airport shall fail to give proper signals or fail to observe the directions of posted traffic signs.
- c. No person under the influence of alcohol or narcotic drugs shall operate a motor vehicle on the airport.
- d. No person shall operate any motor vehicle which is overloaded or which is carrying more passengers than that for which the vehicle was designed. No person shall ride on the running board, stand up in the body of a moving vehicle, ride with arms or legs protruding from the body of the vehicle, or ride on the outside of the body of a vehicle.
- e. Motorcycles are prohibited from operating in the public aircraft facilities areas of the airport.
- f. No person shall operate a motor vehicle without exhausts protected by screens, baffles or spark arresters to prevent sparks or flame in any hangar on the airport.
- g. No person shall operate a motor vehicle within the safety areas of the runway or any taxiway without the express approval of the Director of Aviation.
- h. When parking adjacent to the runway for temporary maintenance, all vehicles must park parallel to the runway, facing in the opposite direction of arriving and departing aircraft, and at least 100 feet outside the runway lights.
- i. When parking adjacent to taxiways for temporary maintenance, all vehicles must park parallel to the taxiway, facing in the opposite direction of taxiing aircraft, and at least 20 feet outside the taxiway edge.
- j. All vehicles which are authorized to operate in the public aircraft facilities areas shall be painted chrome yellow or other distinctive color or shall display an orange and white checkered flag approximately 3 feet square on a mast attached to the outside of the vehicle. All vehicles operating on the airport between the

hours of sunset and sunrise shall have fully operating headlights and taillights. All fuel and service vehicles shall carry and operate an overhead 360° revolving amber beacon or FAA approved strobe light.

- k. No person shall drive a vehicle between an aircraft and a "follow me" vehicle, or between an aircraft and a ramp agent who is directing the aircraft.
- l. No person shall be upon any runway or taxiway, either on foot, in a vehicle, or by any other means of conveyance, except by permission of the Director of Aviation.
- m. Emergency conditions existing on the airport will not negate any existing regulations.

SECTION 3. RADIO EQUIPMENT.

- a. All vehicles operating in the public aircraft facilities areas must be equipped with functioning two-way radio and be in communication with any operating Advisory Service/Control Tower, with the exception of the following:
 - (1) Refueling vehicles and towing tugs while in the process of refueling, loading, or unloading of aircraft.
 - (2) Operational, agricultural and maintenance equipment not engaged in working on runways and taxiways will keep any operating Advisory Service/Control Tower informed of the general area in which they are working.
 - (3) Any vehicle not equipped with two-way radio shall not operate within the safety areas on the airport unless approval is received from the Director of Aviation.
 - (4) If accompanied by and under the control of another vehicle with such radio communications capabilities.
- b. The installation of two-way radio does not permit the operation of vehicles on the airport without permission from the Director of Aviation.

SECTION 4. EMERGENCY EQUIPMENT.

In the event of an emergency on the airport, only Fire Department or City employees are authorized to drive the crash-fire-rescue equipment to the scene of the emergency.

SECTION 5. REPAIR OF MOTOR VEHICLES.

No person shall clean, wash, or make any repairs to motor vehicles anywhere on the airport other than in designated areas, except those minor repairs necessary to remove such vehicle from the airport; nor shall any person move, interfere or tamper with any motor vehicle part, instrument, or tool

without the permission of the owner or satisfactory evidence of the right to do so duly presented to the Director.

SECTION 6. RIGHT-OF-WAY.

- a. Pedestrians and aircraft shall at all times have the right-of-way over vehicular traffic; except emergency vehicles operating during emergency conditions.
- b. Vehicles and aircraft shall have right-of-way in order of priority as listed below from the greatest to the least:
 - (1) Emergency vehicles operating during emergency conditions;
 - (2) Any aircraft moving under its own power or being towed;
 - (3) Emergency vehicles on routine movements;
 - (4) Maintenance and construction vehicles within a construction area designated by the Director;
 - (5) Fuel tenders;
 - (6) Vehicles operated in support of air carrier operations;
 - (7) Maintenance, administrative and construction vehicles.

SECTION 7. FLAGMAN.

No person shall fail or refuse to obey the signals of any airport employee or flagman posted by a tenant, contractor, airport official or other person authorized by the Director to regulate the movements of aircraft and vehicles upon ramps or aprons unless to obey would create a greater hazard than unregulated movement.

SECTION 8. SPECIAL MOVEMENT CONTROLLING DEVICES OR MARKINGS.

Unless otherwise authorized by the Director, every person operating an aircraft or vehicle or going on foot shall obey and conform to official walkways, hold-short lines, taxi lines, stop lines, turn lines, clearance lines, and any other marks or devices officially installed for the regulation or movement within the public aircraft facilities areas.

SECTION 9. PASSING ON APPROACHING COURSES.

Each vehicle or aircraft on approaching courses shall pass or veer to the right.

SECTION 10. PASSING WHILE OVERTAKING.

When overtaking another aircraft or vehicle, the overtaking aircraft or vehicle shall pass to the left of the aircraft or vehicle being overtaken.

SECTION 11. APPROACHING AIRCRAFT ON INTERSECTING COURSES.

Except for emergency vehicles operating under emergency conditions, all vehicles on intersecting courses with moving aircraft or vehicles moving across the probable paths of stopped aircraft shall pass to the rear of any aircraft with engine(s) running.

SECTION 12. UNSAFE MOVEMENTS.

When overtaking or passing an aircraft or vehicle or while being overtaken or passed, no operator or driver shall turn, stop, or swerve in such a proximity to the other as to create a hazard.

SECTION 13. VEHICLE EQUIPMENT SAFETY.

- a. Parking Brakes. No person shall operate or tow any vehicle, particularly a trailer or semi-trailer unless such vehicle shall have parking brakes so that when set, the brakes will prevent the vehicle's free rolling due to wind, jetblast, propwash, or wake turbulence.
- b. Unobstructed View. No person shall operate any vehicle unless such vehicle shall have clear visibility to the front, sides and rear from the driver's position.
- c. Unsafe Condition. No person may operate any vehicle if it is so constructed, equipped, loaded or in such a state of disrepair as to endanger persons or property.
- d. Failure to Stop Engine. No person shall park a vehicle upon the airport and fail or neglect to stop the engine, remove any ignition keys, and set parking brake.

SECTION 14. PARKING.

- a. No person shall park a motor vehicle for any purpose on the airport other than in the areas specifically established for parking and in the manner prescribed by signs, lines or other means. No person shall park a motor vehicle in a manner as to obstruct roadways or fire lanes, nor in the aircraft parking areas, or grassed areas.
- b. All employees of tenants engaged in business at the airport shall park only in areas designated for employee parking.

ARTICLE V. AIR TRAFFIC OPERATIONS AND SAFETY.

SECTION 1. AERONAUTICAL ACTIVITIES.

All aeronautical activities at the Airport shall be conducted in conformity with current regulations of the Federal Aviation Administration and the City of Killeen.

SECTION 2. FIXED BASE REGISTRATION.

Fixed Base Operators shall register their aircraft and all aircraft based at their facilities with the Director's office prior to beginning operations. Any change in the ownership will require a change in the registration.

SECTION 3. RADIO EQUIPMENT.

Any aircraft arriving, departing, or operating on the Airport shall be equipped with a functioning two-way radio capable of communicating with the Airport Advisory Service operator and other aircraft, unless prior arrangements have been made with the Director of Aviation, or an emergency condition exists.

SECTION 4. AIRCRAFT PILOT REQUIREMENTS.

- a. No person except properly authorized and assigned military personnel shall operate any aircraft within or over the corporate limits of the City of Killeen unless such person has in his possession a current, valid and applicable airman's certificate issued to him by the Federal Aviation Administration.
- b. No operator of an aircraft within the corporate limits of the City of Killeen shall fail or refuse to deliver his Federal Aviation Administration airman's certificate to any police officer upon demand for a reasonable period of time for purposes of identification, examination and investigation when such officer is engaged in an inquiry pertaining to a matter which he has a duty to investigate and which such officer has reason to believe may involve such operation of an aircraft.

SECTION 5. AIRCRAFT ACCIDENT REPORTS.

The operator of an aircraft involved in an accident on the Airport shall immediately, or by the most expeditious means available, notify the Director of Aviation and the Federal Aviation Administration. The report shall contain the following information: Location, date, time, aircraft make, model and registration number, name of operator, number of people involved, injuries to or fatalities of each person, weather conditions, and nature of the accident.

SECTION 6. REFUSAL OF CLEARANCE.

The Director of Aviation may delay or restrict the flight of any aircraft or any other operations at the Airport for any justifiable reason in the interest of public safety.

SECTION 7. ULTRALIGHT VEHICLES PROHIBITED.

In the interest of aviation safety, no person shall operate an ultralight vehicle on or over the Killeen Municipal Airport, except for an unplanned emergency landing.

SECTION 8. CLOSING THE AIRPORT.

In the event the Director of Aviation believes conditions of the Airport or any part thereof to be unsafe for landing or take-off, it shall be within his authority to close the entire Airport or any part thereof. A Notice to Airmen signed by the person ordering such closing shall be filed with the Federal Aviation Administration Flight Service Station. The same procedures shall be followed when the Airport is again usable.

SECTION 9. AIRPORT TRAFFIC PATTERNS AND RUNWAY RULES.

Every operator of an aircraft using the airport shall conform to the traffic patterns promulgated by the Director of Aviation.

- a. Unless otherwise advised, all aircraft will fly a right rectangular pattern when departing/arriving on Runway 01; and will fly a left rectangular pattern when departing/arriving on Runway 19, as indicated by the airport segmented circle.
- b. Landing aircraft shall maintain traffic pattern altitude until turning onto base leg prior to commencing the final approach.
- c. Light aircraft departing or making practice takeoffs and landings shall make their first turn at a point 1,000 ft. beyond the departure end of the runway and at an altitude of not less than 400 ft. above published airport elevation and continue to climb until an altitude of 800 ft. above published airport elevation is reached. The above described rectangular traffic pattern shall be used at all times except when instructed otherwise by an operating Control Tower or Gray AAF Approach Control.
- d. Aircraft shall depart traffic in accordance with prescribed procedures, or as directed by Gray AAF Departure Control.
- e. Runway 01 is designated as the calm wind runway when wind velocity is less than 6 knots (7 miles per hour).
- f. Unless otherwise indicated, aircraft will enter the traffic pattern at the altitude and direction described in current Federal Aviation Administration Advisory Circulars.
- g. No aircraft will fly directly over the airport at an altitude of less than 3,846 ft. MSL, unless landing or taking off, or during an emergency, unless otherwise advised by an operating Airport Advisory Service/Control Tower or Gray AAF Approach Control.
- h. Flight over populated areas, unless arriving, departing or operating in the airport traffic pattern, should be kept to a minimum in the interest of public safety and noise abatement.
- i. Rotorcraft shall not operate within 200 feet of any area where light aircraft are parked or operating, unless arriving/departing the airport helipad.

- j. Prior authorization is required from the Director before balloons, airships, dirigibles, motorless aircraft or aircraft with a total weight of 50,000 pounds or more land or take off.

SECTION 10. HELICOPTER SKIDS.

No operator of a helicopter with metal skids may practice touch-down auto rotations on any paved surfaces of the airport.

SECTION 11. HAZARDS TO AIR NAVIGATION.

No person within the corporate limits of the City of Killeen shall fail or refuse to immediately remove any hazard to air navigation such as a kite, balloon, model aircraft, radio controlled aircraft, or other such device or object when requested to do so by any City employee or police officer when such employee or officer is acting in accordance with a request by the Director of Aviation.

SECTION 12. STUNT FLYING AND AEROBATICS.

No operator of an aircraft shall engage in stunt flying or aerobatic flying except as part of a public display specifically authorized by the City Council and the Federal Aviation Administration; and monitored by the Federal Aviation Administration or its designee.

SECTION 13. DEMONSTRATIONS.

No experimental flight or ground demonstrations shall be conducted without the express approval of the Director.

SECTION 14. RECKLESS OPERATION OF AN AIRCRAFT.

No person shall operate an aircraft in a careless or reckless manner so as to endanger the lives or properties of others by swooping, buzzing, diving, looping or low altitude flying. Proof of low altitude flying shall constitute prima facie evidence of violation of this section.

SECTION 15. APPROACHES FOR LANDING OR UPON TAKEOFF.

No person in operation of an aircraft shall approach any field for landing, nor shall any such person accelerate and take off from any field unless such landing or take off can be made without creating an undue hazard, and unless such landing or take off can be made without unreasonably alarming other persons present in or near the path of flight due to the nearness of the aircraft to persons, vehicles, or structures in or near the path of flight. Any approach for landing or take off shall be held to be reasonable when done within the limits of a designated glide path promulgated by the appropriate federal agency and/or the Department of Aviation.

SECTION 16. DEBRIS FROM AIRCRAFT.

No person in any aircraft shall cause or permit to be thrown out, discharged, or dropped, any form of ballast, instruments, tools, baggage, equipment, containers, handbills, circulars, cards, or any other matter whatsoever.

SECTION 17. PARACHUTING.

No person shall parachute from any aircraft over the City of Killeen unless such jump shall be made during an emergency or unless an application for such jump accompanied by an appropriate certificate of waiver from a U. S. Government authority has been approved beforehand by the Director.

SECTION 18. AUTHORIZED LANDING AREA.

Except as during an emergency, no person shall land any aircraft within the City except upon an airport runway or helipad, or upon a field approved beforehand by the Director of Aviation.

SECTION 19. USE OF RUNWAY AND TAXIWAY PAVED SURFACES.

No person shall land an aircraft or take off on any areas of the airport other than the paved surface of the designated runway. No person shall taxi an aircraft on any areas of the airport other than the paved surfaces of the designated runway or taxiways.

SECTION 20. TAXIING OF AIRCRAFT.

Every person taxiing an aircraft or hovering a helicopter shall maintain due caution to avoid collisions with persons, objects, vehicles or other aircraft in the immediate area. Under no circumstances will an aircraft be taxied into or out of a hangar.

SECTION 21. UNSAFE TAXIING SPEED PROHIBITED.

Every aircraft shall be taxied at a safe and reasonable speed and in such a manner as to be at all times under the control of the operator. No aircraft upon a ramp or apron shall be taxied at a speed greater than 15 miles per hour.

SECTION 22. AIRCRAFT ENGINE RUNUP.

No person shall warm up, run up, test or accelerate the engine of any aircraft except in a place reasonable for such purpose. At no time will engines be ran up or accelerated when aircraft hangars, shops, buildings, persons, vehicles or other aircraft in the area are in the path of the propeller blast, jet exhaust, or wake turbulence of the aircraft being ran up. At no time will engines be ran up while parked on the passenger loading/unloading ramp of the passenger terminal building.

SECTION 23. UNSAFE AIRCRAFT.

a. Impounding.

Whenever necessary in the interest of public safety any police officer may impound any aircraft which, due to mechanical or equipment defect or deficiency, would be in violation of this Article 1 of Chapter 1 $\frac{1}{2}$ or otherwise manifestly unsafe in operation unless such aircraft is in the process of repair for the correction of such defect or deficiency.

b. Notification Required.

It is the duty of any officer impounding an aircraft to immediately notify the Director, and the owner or operator of the aircraft.

c. Release of Impounded Aircraft.

The Director of Aviation or a person authorized to act in his place may require correction of defects before the release of any aircraft from lawful impoundment. In all cases and circumstances the Director shall have authority to release or hold such aircraft for reasonable periods of time whenever in his opinion such action is necessary in the interest of public safety.

SECTION 24. FLYING CLUB AIRCRAFT.

Flying Club aircraft must be owned and operated by a non-profit partnership or non-profit corporation, and each club member must be a bona fide owner of a part of the aircraft or own a share in the corporation or partnership. The club may not derive greater revenue from the use of its aircraft than the amount necessary for the operation, maintenance and replacement of its aircraft and will file and keep up to date with the Director of Aviation a list of the membership. At any time the Director has reason to believe a club aircraft is being so operated that it falls under the "commercial" classification, or is being operated as a commercial aeronautical activity, he shall notify the club manager and levy fees necessary for the pertinent type of operation.

ARTICLE VI. HAZARDOUS MATERIALS, FUELS AND FLAMMABLES.

SECTION 1. STORAGE OF HAZARDOUS CARGO.

Except as otherwise provided, the only hazardous cargo stored at the airport shall be aircraft fuel in fuel trucks, tenders, and fuel storage tanks. No other hazardous articles or materials as defined in U. S. federal laws and regulations governing such matters shall be handled or stored except as specifically authorized by the Director of Aviation or by this Article 1 of Chapter 1½; and only upon the request of a City, state or federal official acting within the scope of his duties in pursuit of the ends of national defense, disaster relief, or public safety.

SECTION 2. UPON RECEIPT OF SHIPMENTS.

In the event a shipment of hazardous materials is received, the aircraft will be parked in a designated area as far as practicable from buildings or runways for all ground handling operations. The shipper or recipient shall provide assurance to the Director that the cargo can be handled safely including any special handling procedures required for safety.

SECTION 3. DELIVERY OF DANGEROUS SUBSTANCES.

Unless specifically authorized by the Director or by an applicable airline tariff, no person shall deliver for transport or attempt to deliver for

transport or knowingly participate in the transportation through the airport of any radioactive material, poison gas, explosives, ordnances or other dangerous substance or object. It is an affirmative defense to prosecution under this section that the substance or object was delivered and transported under conditions imposed by U. S. law and regulations governing such matters.

SECTION 4. REMOVAL AUTHORIZED.

In every instance the Director of Aviation, the Chief of the City Fire Department or the senior firefighter on duty may order removal, destruction, relocation or transportation of any hazardous cargo whenever such shall be in his judgment appropriate and necessary for the safety of persons or property.

SECTION 5. SMOKING AND FIRES RESTRICTED.

No person shall smoke, carry or possess a lighted cigarette, cigar, pipe, match, welding torch, flare pot or other burning object in or about any area, building, or appurtenance of the airport where signs prohibiting such have been posted; ignite or cause to be ignited any such burning or smoldering object within 100 feet of any aircraft upon which fueling or defueling operations are being conducted, or within 100 feet of fuel storage tanks.

SECTION 6. CLEANING OF AIRCRAFT.

No person shall use flammable, volatile liquids having a flash point of less than 100° F for any purpose, unless such operations are conducted in open air or in a room specifically set aside and approved for that purpose; which room must be properly fire-proofed and equipped with adequate and readily accessible fire extinguishing apparatus. No person shall wash or otherwise clean airframes except in designated areas.

SECTION 7. STORAGE.

- a. No person shall keep or store any flammable liquids, gases, signal flares or other similar material in the hangars or in any building on the airport; provided that such materials may be kept in an aircraft in the proper receptacles installed in the aircraft for such purpose or in rooms or areas specifically approved for such storage by the Director, or in Underwriters approved safety containers.
- b. No person shall keep or store lubricating or waste oils in or about the hangars; provided that such material may be kept in rooms specifically designed for oil storage; provided further, that no more than twelve (12) hours supply of lubricating oil may be kept in or about a hangar unless in sealed cans, containers or receptacles approved by insurance underwriters.
- c. Operators and tenants shall provide suitable metal receptacles with self-closing covers for the storage of waste, rags or other rubbish which shall be removed by the lessee daily or on regularly scheduled pick-ups, but not less than once each week.

SECTION 8. STORAGE IN APRON AREA.

Aviation fuel, oil, solvents and de-icing liquids shall not be stored on the apron and ramp areas in excess of the amount actually needed as current stock. Any material of this type that is kept will be enclosed in a manner that meets the approval of the Director, and in no case shall such material be kept within 100 ft. of passenger ingress/egress routes or walkways.

SECTION 9. REPORTING.

It shall be the direct responsibility of all airport tenants and operators to provide the airport crash-fire-rescue station with, and keep current, a complete list of hazardous materials, combustibles, oils, fuels, chemicals, paints, lacquers, varnishes, dope, preservatives, solvents, alloys and metallic coatings, cleaning agents, acids, and flammable liquids and gases stored or kept on hand for their particular operations. Such list shall include the chemical make-up, flash points in degrees Fahrenheit, and amount stored or kept on hand, as well as the exact location of such materials. This is necessary in order for firefighters to better determine the nature of a fire or explosion, or potential thereof; and will assist them in the proper types and application of extinguishing agents.

SECTION 10. DOPING AND PAINTING.

- a. Doping process shall be conducted only in properly designated, fire-proofed and ventilated rooms or buildings in which all illuminations, wiring, heating, ventilating equipment, switches, motors, outlets and fixtures are explosion-proof, spark-proof, and vapor-proof. All windows or doors shall open easily.
- b. Painting will not be permitted except in approved areas, and in no case will aircraft painting be permitted in the T-Hangars owned by the City of Killeen; nor shall spray painting be permitted in any area where residual spray will collect on or otherwise settle on other aircraft, vehicles, buildings or people.

SECTION 11. FUELING OPERATIONS.

- a. All aviation fuels shall be dispensed to the public only by vendors holding a valid contract with the City, and approved by the City Council.
- b. Individuals fueling their own aircraft with leaded automobile gasoline shall follow all safety precautions of fueling, using approved safety containers. Only enough such fuel shall be brought upon the airport as necessary to fill the aircraft fuel tanks, and no excess fuel shall remain on the airport.
- c. No aircraft shall be fueled or defueled while the engine in the aircraft is running or being warmed by applications of exterior heat or while such aircraft is in a hangar or enclosed space.
- d. No person shall operate any radio transmitter or receiver or switch electrical appliances on or off in an aircraft during fueling or defueling operations.

- e. Adequate fire extinguishers shall be within ready reach of all persons engaged in the fueling or defueling of aircraft.
- f. No person shall start the engine of any aircraft when there is any gasoline on the ground under such aircraft.
- g. Fueling hoses and equipment shall be maintained in a safe and sound non-leaking condition and shall be approved by applicable state and federal regulations.
- h. All hoses, funnels and apparatus used in fueling and defueling operations shall be equipped with a grounding device to prevent ignition of volatile liquids, by a static electrical spark.
- i. No aircraft shall be fueled or defueled while passengers are on board the aircraft unless a passenger loading ramp is in place at the cabin door of the aircraft, the aircraft door is open and a cabin attendant is present at or near the cabin door. Passenger loading ramps shall remain in loading position until all fuel transfer operations are completed.
- j. Fuel transfer operations shall not be performed on the main exit side of any aircraft containing passengers except when the owner or operator of such aircraft or a capable and qualified employee of such owner shall remain inside the aircraft to direct and assist the escape of such passengers through regular and emergency exits in the event a fire should occur.
- k. Persons engaged in the fueling, defueling or draining of aircraft shall exercise care to prevent overflow or spilling of fuel. Persons responsible will take proper measures to clean up volatile liquids which are spilled, and shall report all fuel spills to the airport crash-fire-rescue station as soon as possible.
- l. All fueling and defueling of aircraft shall be conducted in accordance with "NFPA 407", Aircraft Fuel Servicing 1985 or any changes and revisions thereto or as directed by the Fire Marshal of the City of Killeen.

SECTION 12. LIQUID DISPOSAL.

It shall be unlawful for any person to dump, discharge or pour any fuel, oil, grease, dope, paint, solvent, cleaning fluid, or acid on any part of the airport; nor dumped upon any street, highway, ramp, apron, runway, taxiway, drainage ditch, storm drain, channel, sanitary sewer, cesspit or septic tanks, or in trash receptacles on the airport. Disposal and removal from the airport of any such materials shall be accomplished in accordance with applicable state and federal disposal regulations.

ARTICLE VII. PUBLIC SAFETY, TRAFFIC AND PARKING.

SECTION 1. OBEDIENCE TO POLICE OFFICERS.

It shall be unlawful and an offense for any person to willfully fail or refuse to comply with any lawful order or direction of any police officer at the Airport.

SECTION 2. FIREARMS ON THE AIRPORT.

No person may possess any firearm upon the airport except:

- a. Peace officers certified by the State of Texas;
- b. Other police officers in the performance of their duties as provided by law;
- c. Federal law enforcement agents and police officers;
- d. Members of the U. S. Armed forces and other U. S. federal employees on official duty where such duty entails the carriage of firearms;
- e. Uniformed, licensed and bonded security guards commissioned by the State of Texas in performance of guard duty with prior approval of the Director of Aviation;
- f. Uniformed security personnel acting as money or valuable cargo couriers in service to or from an airport tenant;
- g. Any person in the process of shipping a firearm or receiving and transporting a firearm from shipment provided that the firearm is:
 - (1) Unloaded, both magazine and chambers;
 - (2) Fully encased in a carton, gun case, or box so that the firearm is not available for immediate use;
 - (3) Not brought to the screening point; and
 - (4) Not prohibited by federal or state law.

SECTION 3. FIREARMS DISCHARGE.

It shall be unlawful for any person, other than those listed in Article VII, Section 2, paragraphs "a" through "f" of this Article 1 of Chapter 1½, to fire or discharge firearms of any type on any portion of the airport, or in the close proximity of the airport which would endanger arriving and departing aircraft.

SECTION 4. TRAFFIC LAWS MADE APPLICABLE.

Except for definitions made more specific for the purposes of this Article 1 of Chapter 1½, the effect of state laws regulating pedestrians, vehicle operators, passengers, vehicles and their movements and all City of Killeen traffic ordinances shall have full force and effect on airport access roads.

SECTION 5. IMPROPER USE OF ROADWAYS AND WALKS.

No person shall travel on the airport other than on roadways, walks or places provided for the use of traffic, nor shall any person use the roads or walkways in such manner as to hinder or obstruct their proper use by others.

SECTION 6. DRIVING ACROSS OR PARKING IN PROHIBITED AREAS.

No person shall drive any vehicle across or park upon any lawn or grass area, sidewalk or curb except by permission of the Director of Aviation or as directed by a police officer on duty or except as necessary to service or maintain airport facilities.

SECTION 7. MISUSE OF TENANT PARKING.

No person may drive any vehicle into or upon any parking lot leased or controlled by or assigned to an airport tenant except in the cause of doing business with that tenant or in the course of duty as an employee or agent of that tenant or as necessary to service or patrol such facility or as necessary to gain access to any adjacent facility when no other reasonable access exists and such access has been authorized by such tenant.

SECTION 8. OBSTRUCTING DRIVEWAYS.

No person may stop, stand or park in such a manner as to block the entrance or exit of any parking lot or driveway.

SECTION 9. PARKING RESTRICTED.

No person shall park any vehicle nor shall any vehicle be parked in any public area of airport property except at a place and in a manner expressly authorized by the Director of Aviation or as directed by a police officer or by official posted signs or markings.

SECTION 10. HANDICAP PARKING AND WALKWAY AREAS.

No person shall park a vehicle in spaces reserved for handicapped parking which are properly marked and identified with posted signs, unless such vehicles have official handicap license plates and/or handicap stickers; nor shall any person park, stand or otherwise block the handicap curb cut-a-ways and pathways designed for wheelchair passage.

SECTION 11. PARKING IN FIRELANES.

No person shall park a vehicle in any properly marked and identified fire lanes, nor park so as to block access to fire hydrants.

SECTION 12. LOADING AND UNLOADING ZONES.

No person shall park a vehicle for any period of time in excess of the posted time limits at the loading and unloading parking spaces provided in front of the passenger terminal building for the loading and unloading of passengers, baggage and air freight.

SECTION 13. PAID PARKING LOT.

No person shall depart the airport paid parking lot in their vehicle without first having paid the proper amount of parking fees assessed for the length of time parked. No person shall willfully damage, force or tamper with parking lot gate mechanisms or equipment. No person shall remove vehicles from the paid parking lot without proper credentials and/or approval of the vehicle owner and without the approval of the Director of Aviation.

SECTION 14. OBSTRUCTING LAWFUL IMPOUNDMENT.

No person may by physical obstruction or the use of force interfere with the lawful process of impoundment of any aircraft or vehicle.

SECTION 15. TAMPERING WITH LAWFUL IMPOUNDMENT.

No person may be in, tamper with, damage, operate or open any vehicle or aircraft under lawful impoundment.

SECTION 16. TAMPERING WITH IMPOUNDMENT DEVICE.

No person may open, cut, damage, or tamper with any lock, chain, cable, fence or gate or other device used in the impoundment of vehicles or aircraft.

SECTION 17. IMPOUNDMENT FOR PARKING.

Any vehicle upon airport property parked in violation of this Article 1 of Chapter 1½ may be impounded and removed to a place of impoundment by any police officer.

SECTION 18. GROUND TRANSPORTATION.

No carriers for hire, buses or courtesy vehicles shall load or unload passengers at the airport at any places other than those designated by the Director of Aviation, or as posted on applicable signs.

**ARTICLE VIII. OBLIGATIONS AND PRIVILEGES OF FIRMS, COMPANIES,
CORPORATIONS OR INDIVIDUALS RENTING HANGARS, T-HANGARS,
TIE-DOWNS AND COVERED PARKING SPACES OWNED BY
THE CITY OF KILLEEN.**

SECTION 1. NECESSITY.

The City of Killeen has deemed it necessary to set certain standards, which shall be rigidly enforced, connected with the leasing of hangars, T-Hangars and tie-downs to firms, companies, corporations or individuals. These standards are not intended to inflict hardships on any lessee. T-Hangars and tie-down spaces are provided solely for airport users and tenants to shelter and park their aircraft. In the event of violation of any of these standards, the violator will be asked to correct the infractions immediately. Failure to correct any violations will result in requiring the lessee to vacate the leased premises within thirty (30) days of written notice from the Director of Aviation.

The following sections of privileges, obligations and prohibited operations have been adopted for the purpose of providing an orderly and sound growth of the airport, and for the security, safety and convenience of all concerned. These standards do not negate any other provisions of this Article 1 of Chapter 1½.

SECTION 2. PRIVILEGES.

Tenant may:

- a. Store, park, or tie down aircraft owned/operated/controlled by lessee only in a T-Hangar or tie-down space leased by the lessee for the aircraft specified in the lease agreement.
- b. Lubricate, drain oil and perform maintenance in their own T-Hangar, on their own aircraft which is specified in the lease agreement.
- c. Store lubricating oil in properly sealed containers for tenants' own use, but not for sale.
- d. Store minor tools and equipment incidental to maintenance of the aircraft for which the T-Hangar is leased.
- e. Polish or clean, but not wash, aircraft in a T-Hangar if solvents are not used.
- f. Park their automobiles inside T-Hangars, when not occupied by aircraft, when lessee is on an extended trip.
- g. Wash their aircraft at no charge to the tenant, but only in designated wash areas.

SECTION 3. OBLIGATIONS.

- a. Extinguish all lights and disconnect any electrical appliance when leaving a T-Hangar.
- b. Close and secure doors and gates when leaving the airport.
- c. Keep hangar in a clean condition and free of all fire hazards.
- d. Promptly report any malfunctioning doors or hangar equipment owned by the City of Killeen to the Director of Aviation.
- e. Be responsible for the placement of their aircraft in a T-Hangar or securing their aircraft at the tie-down spaces by setting the aircraft's brakes, chocking the main and nose wheels and properly tying down the aircraft at the wings and tail.

SECTION 4. PROHIBITIONS.

Tenants may not:

- a. Leave any portion of an unattended aircraft protruding from the hangars.
- b. Spray paints or cleaning liquids (except aerosol products), nor use sand blasters in T-Hangars or on T-Hangar access ramps.

- c. Use heating devices, oil warming devices, or permit unprotected light bulbs on drop cords in T-Hangars.
- d. Store waste oil, gasoline or other flammable materials except those materials contained in the aircraft fuel system.
- e. Build any additions or alter T-Hangars without receiving written permission from the Director, and making such alterations under the direct supervision of the Director or his designee.
- f. Sublet, loan, or permit joint-use operations on any portion of any leased T-Hangar or tie-down to any other party, without receiving written permission from the Director; and then only under the guideline approved by the City Council.
- g. Conduct or permit commercial activities of any kind in leased T-Hangars.
- h. Leave an unattended aircraft which blocks the taxiway and ramp access to the T-Hangar and tie-down areas.
- i. Run up or ground test any aircraft on the T-Hangar access ramps, nor situate any aircraft in a position which would direct wake turbulence into the T-Hangar, or start, run up or ground test any aircraft within a hangar.
- j. Store non-aviation products, goods, materials, junk or equipment in a T-Hangar.
- k. Store mobile homes, automobiles, boats or trailers in a T-Hangar.
- l. Keep any electrical appliance needing continuous electricity in a T-Hangar.

ARTICLE IX. AIR OPERATIONS SECURITY.

RESERVED for future inclusion.

ARTICLE X. SCHEDULE OF CHARGES.

SECTION 1. RATES SET BY CITY COUNCIL.

All fees and charges for space rental, hangars, improved and unimproved land use, fuel flow fees, landing fees, parking lot fees, tie-down fees and overnight aircraft parking fees shall be set by resolution of the City Council and reviewed periodically at its descretion.

SECTION 2. RATES SET BY DIRECTOR OF AVIATION.

The Director of Aviation is delegated authority to establish fees for advertisement signs, courtesy telephones, copy reproduction, employee parking stickers, and reimbursables for minor damages to airport property based on actual costs of replacement or repair.

SECTION 3. PAYMENT OF CHARGES.

- a. All billings are payable upon presentation unless otherwise noted thereon.
- b. All percentages of gross income charges are payable within thirty (30) days of the end of the accounting period unless otherwise stipulated in writing.
- c. Payments for space rental, hangars and land use are payable in advance, on or before the tenth (10th) day of each month in which due.
- d. Payments for landing fees are payable on or before the tenth (10th) day of the month following the month in which landings occur.

SECTION 4. LATE PAYMENT PENALTIES.

A late payment penalty of five percent (5%) of the billing statement shall be assessed on any payment made after the tenth (10th) day of the month in which due. This penalty shall increase to ten percent (10%) of the billing statement if payment is made after the last day of the month in which payment was due.

SECTION 5. DEFAULT OF PAYMENT.

Any default in the payment of rental fees and charges, or any part thereof, and such default shall continue for thirty (30) days after written notice by the Director of Aviation to the payor to pay, then the Director shall, without further notice, have the right to re-enter the leased premises to remove the defaulting payor and to repossess the premises.

SECTION 6. CHARGES FOR OFFBASE OPERATORS USING THE KILLEEN MUNICIPAL AIRPORT.

Operators located on private property adjacent to the airport who wish to gain ground access to and use of the airport in pursuit of their operations shall be charged rents and fees equal to that received from similar activities located on the airport, and in accordance with a contract approved by the City Council, and the Federal Aviation Administration.

ARTICLE XI. PENALTIES AND COMPLIANCE.

SECTION 1. DENIAL OF ACCESS.

In addition to penalties otherwise provided, any person in violation of this Article 1 of Chapter 1½ or otherwise refusing to comply therewith or who is committing or about to commit a breach of the peace may be promptly denied further use of the airport. It shall be unlawful and an offense for any such person to remain on airport property after receiving notice to vacate, orally or in writing, from any airport supervisory employee or any police officer.

SECTION 2. PENALTY PROVIDED.

Any person, firm, corporation, association or partnership who violates any of the provisions of the Killeen Municipal Airport Rules and Regulations, adopted and incorporated herein, shall be guilty of a misdemeanor and, upon conviction, shall be fined in an amount not less than \$1.00 nor more than \$200.00. Each violation shall be considered a separate offense and each day a violation continues shall constitute a separate and distinct offense and shall be punishable as such. Such penalty or penalties shall be cumulative rather than exclusive of any other remedy which the city may seek to use to enforce the provisions of this Article 1 of Chapter 1½.

ARTICLE XII. LAWS, ORDINANCES AND SEVERABILITY.

SECTION 1. CATCHLINES OF SECTIONS.

Catchlines of the sections of this Article 1 of Chapter 1½ are intended as mere catchwords to indicate the general contents of the sections, and for index and search convenience, and shall not be taken or deemed to be titles, nor shall same be construed as substantive parts of sections.

SECTION 2. SEVERABILITY.

This Article 1 of Chapter 1½ is not intended to contradict or inhibit the application of any provision of federal or state laws or regulations. If any section, paragraph, subdivision, clause, phrase, or provision of this Article 1 of Chapter 1½ shall be adjudged invalid or be held unconstitutional, the same shall not effect the validity of this Article 1 of Chapter 1½ as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.



City of Killeen

Legislation Details

File #: RS-15-034 **Version:** 1 **Name:** Garver LLC
Type: Resolution **Status:** Resolutions
File created: 5/29/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider a memorandum/resolution approving the selection of Garver LLC for the performance of architectural, planning, and engineering services for the Killeen Fort Hood Regional Airport and Robert Gray Army Airfield.
Sponsors: Aviation Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Attachment 1](#)
[Attachment 2](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

SELECTION OF A GENERAL ENGINEERING CONSULTANT FOR THE PERFORMANCE OF ARCHITECTURAL, PLANNING, AND ENGINEERING SERVICES FOR THE KILLEEN FORT HOOD REGIONAL AIRPORT AND ROBERT GRAY ARMY AIRFIELD

ORIGINATING DEPARTMENT

Aviation

BACKGROUND INFORMATION

FAA (Federal Aviation Administration) grant assurances require airports which receive FAA Airport Improvement Program (AIP) funding to conduct a Request for Qualifications (RFQ) at least every five years to select a firm to perform architectural, engineering, and planning consultant services for FAA or PFC (Passenger Facility Charges) funded professional services work. The previous five-year agreement has reached its limit; thus the process to evaluate and select a qualified consulting team was undertaken.

DISCUSSION/CONCLUSION

RFQ 15-13, to select the Airport's General Engineering Consultant (GEC), was issued by the City in February 2015 and subsequently advertised in the Killeen Daily Herald, on the City's web site, on the American Association of Airport Executives various websites, and on a Texas state procurement web site. Qualification packages were received on March 27, 2015, from five (5) firms, of which four were deemed responsible and qualified for further evaluation. Those firms were CP&Y, Inc., Garver LLC, Jacobs Engineering Group, Inc., and KSA Engineers, Inc.

The RFQ process was a two-part assessment performed by an evaluation team consisting of Airport and City of Killeen Staff, including City Public Works and City Planning, tasked to review the qualifications of the interested companies and make a recommendation to City Council. The first part of the GEC assessment was to review and analyze a written qualification package which specifically designed to ascertain the proposer's ability to concisely and completely present the requested material in a cogent and coherent document per the evaluation criteria in Attachment 1. This part of the assessment selected those firms which were most responsible and qualified to continue to the presentation stage of the assessment. The evaluation team then heard presentations and interviewed representatives from each GEC firm and evaluated and rated each firm based upon a pre-established set of criteria per Attachment 2; following each presentation, the team met to discuss the firm in detail. Following the final presentation, the evaluation team met and collectively discussed each GEC firm and analyzed their collective body of work, both the written submission and the presentation. The committee selected Garver LLC as the preferred GEC to perform the airport's engineering and professional services for up to five years.

FISCAL IMPACT

There is no fiscal impact at this time. Costs will be incurred only following City Council approval of specific contracts after staff negotiation.

RECOMMENDATION

City Council approve the selection of Garver LLC to perform architectural, planning, and engineering services for a period of up to five (5) years for Killeen-Fort Hood Regional Airport and Robert Gray Army Airfield.

APPENDIX A

GENERAL ENGINEERING CONSULTANT AND RELATED PROFESSIONAL SERVICES

RFQ 15-13
EVALUATION CRITERIA

Name of Firm: _____

Item	Criteria	Value	Score
1	<p>Team qualifications</p> <p>→ What is the relative strength of the team to provide the Services identified in Para 2 (5)</p> <p>→ Evaluation of the availability of the team leader and his professional background, availability, and caliber (5)</p>	10	
2	<p>Project Evaluation / Comparable Services</p> <p>→ From the list provided in Para 2.2, choose two different items and provide case histories which demonstrates your team's ability to respond to and successfully perform the general engineering services</p> <p>→ These case histories shall address the following elements: (i) concept, (ii) strategy (how and why the team decided to approach the project to reach the final result); (iii) supporting tactics used to ensure a successful project (e.g. traffic forecast, etc.); (iv) the final result of the project (was it on-time [or why not], within budget, required a number of change orders, etc.); and (v) provide a small representative sample (for each project) of the team's capability to produce quality written and graphic materials. The example projects must have been developed within the past three (3) years.</p> <p>→ Project 1 (i) _____ (ii) _____ (iii) _____ (iv) _____ (v) _____ (25)</p> <p>→ Project 2 (i) _____ (ii) _____ (iii) _____ (iv) _____ (v) _____ (25)</p>	50	
3	<p>Understanding of the project and approach to performing the required services.</p> <p>→ Discuss the major issues your team has identified on the projects listed in Para 2.2 and how your firm/team intends to approach those issues. Identify any technical innovations which may be incorporated and/or innovative approaches that will be used in executing the work. (25)</p> <p>→ Discuss the particular expertise your firm/ team offers and how you propose to use that expertise to benefit the City to add value to the projects. (25)</p>	50	
4	<p>Familiarity with the geographic area of the airport and demonstrated understanding of the Airport's potential problems and the sponsor's special concerns.</p> <p>→ Discuss your understanding of doing work in the Central Texas area. What are your impressions of the challenges facing engineers and contractors and doing projects or work in the area and on the Ft. Hood military reservation</p>	20	

5	Customer Service Philosophy →What is the demonstrated philosophy of the team toward customer service (5) →Will the team be available to work closely with the Airport whenever the need arises (5)	10	
6	Qualifications and experience of outside consultants regularly engaged by the primary consultant	10	
	Total Points Possible	150	

TOTAL SCORE _____

Rate each criteria item between 1 and the total value of the item based upon how well this firm meets the established criteria for that item. The total of all item scores for each firm will be used to determine the overall rank order of the firm by each member of the selection committee. The sum of the rank order of firms by each committee member will be used to determine the firm that will be selected for contract negotiations for the services requested in this RFQ.

Individual making evaluation: _____

Signature: _____ Date: _____

AIRPORT PLANNING, ENGINEERING, DESIGN, CONSTRUCTION MANAGEMENT, AND
RELATED PROFESSIONAL SERVICES
RFQ # 15-13
FINAL EVALUATION CRITERIA

Name of Firm: _____

Address: _____

Primary Point of Contact: _____

Item	Criteria	Value	Score
1	Presentation Quality → Did the presentation adequately: - Describe the team's qualifications pertaining KFHRA needs - Describe why this team is the "best fit" for KFHRA - Appear well coordinated and planned - Meet or exceed your expectations	50	
2	You have all visited with us and spent time looking at our airport: → Tell us what you believe are some of our challenges (both development & construction) (15) → How do we overcome the challenges and take advantage of the opportunities. (15)	30	
3	→ Can you give us an example of where you performed extra work under professional agreement with a client that you felt was not included in the scope, but the client thought differently and how you handled it (25)	25	
4	→ Knowing the City would like to develop / build a second runway, what do you see your role in the project? (25) (e.g., planning – 5, design - 5, secure funding – 5, environmental – 5, BRAC implications – 5)	25	
5	→ What does your Teams workload look like moving forward and how will multiple projects be handled if a conflict of priority arises? (10)	10	
6	→ Our Airport recently had its 10-year anniversary; what is your vision for what it could be in the next ten years?	10	
7	Why should we choose your firm? → What sets you apart from the others? → What do you for your clients that other firms might not do?	50	
	Total Points Possible	200	

TOTAL SCORE _____

Rate each criteria item between 1 and the total value of the item based upon how well this firm meets the established criteria for that item. The total of all item scores for each firm will be used to determine the overall rank order of the firm by each member of the selection committee. The sum of the rank order of firms by each committee member will be used to determine the firm that will be selected for contract negotiations for the services requested in this RFQ.

Individual making evaluation: _____

Signature: _____ Date: _____



City of Killeen

Legislation Details

File #: RS-15-035 **Version:** 1 **Name:** Award of Bid No. 15-17/Bermuda Ronstan Phase I Project
Type: Resolution **Status:** Resolutions
File created: 6/1/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider a memorandum/resolution authorizing the award of Bid No. 15-17 for a construction contract to Bruce Flanigan Construction for the Bermuda/Ronstan Phase I Project.
Sponsors: Environmental Services
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Letter of Recommendation](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

Authorize the award of a construction contract for Bid #15-17, Bermuda/Ronstan Phase I Project, to Bruce Flanigan Construction, Inc.

ORIGINATING DEPARTMENT

Public Works - Environmental Services

BACKGROUND INFORMATION

The City's adopted 2005 Drainage Master Plan identifies a Major Drainage CIP project along the Bermuda and Ronstan ditches that will repair and improve structural failure, street flooding, undersized structures, and erosion. The City entered into a professional services agreement on September 25, 2012, with Freese and Nichols, Inc. for professional engineering and surveying services for the final design of the Bermuda and Ronstan Major Drainage Capital Improvement Projects.

In August 2014, the City of Killeen advertised for bids for channel improvements to the Bermuda/Ronstan Creek Phase I Project with the intent to select a qualified contractor to perform construction improvements. On September 10, 2014, one (1) bid was received from SJ&J Construction, L.L.C. for a total of \$767,755.00. City Council rejected the bid on October 21, 2014, as recommended by the design engineer and Public Works staff due to the absence of acknowledgement and submission of the incorrect bid table.

DISCUSSION/CONCLUSION

The invitation to bid for the award of the construction contract for the Bermuda/Ronstan Creek Phase I Project was advertised for a second time on May 3, 2015, and May 10, 2015. A non-mandatory pre-bid meeting was held on May 14, 2015. On May 28, 2015, bids were received by the City of Killeen and publicly read aloud at 3:15 p.m. in Council Chambers. At the close of the meeting, one (1) bid was accepted from Bruce Flanigan Construction, Inc. for a total bid of \$722,722.00. The total amount of this bid is \$45,033.00 less than the previously rejected bid from SJ&J Construction, L.L.C.

Freese and Nichols, Inc. and Public Works staff have reviewed the bid for conformance with the contract documents and for bid balance. Based upon this evaluation and the contractor's solid reputation in performance of past City projects, staff recommends the award of the contract to Bruce Flanigan Construction, Inc. in the amount of \$722,722.00. Final completion of all work is projected to be achieved within 150 consecutive calendar days from the issuance of a notice to proceed.

FISCAL IMPACT

Funding in the amount of \$722,722.00 is available in the 2006 Drainage CO Bond Fund, account number 576-9591-495.63-19.

RECOMMENDATION

City staff recommends that the City Council authorize the City Manager to enter into a contract with Bruce Flanigan Construction, Inc. for \$722,722.00 for the Bermuda/Ronstan Creek Phase I Project and that the City Manager be expressly authorized to execute any and all change orders within the amounts set by state and local law.

June 1, 2015

Kristina M. Ramirez, P.E., CFM
Director of Environmental Services
City of Killeen, Texas

Re: Bermuda/Ronstan Drainage CIP (Killeen Bid Number 15-17)
Recommendation for Award

Dear Ms. Ramirez:

Listed below is the summary of bids for the Bermuda/Ronstan Drainage CIP. Only one bid was received on May 28, 2015. The bid received was from Bruce Flanigan Construction, Inc. in the amount of \$722,722.00. A copy of the bid tabulation is attached for your use and information.

Freese and Nichols recommends the City of Killeen award the construction contract for this project to Bruce Flanigan Const. Inc. in the amount of \$722,722.00.

Although there was only one bid, the recommendation is based upon the following:

- The bid received was close to the engineers' estimate.
- There is a significant need for this project and rebidding will further delay the improvements.
- The contractor has a solid reputation regarding past performance on City projects.
- The contractor is local.

Please do not hesitate to call me at (512) 617-3115 if you have any questions or if you need additional information regarding our recommendation.

Very truly yours,

FREESE AND NICHOLS, INC.



Jerome (Jay) Scanlon III, P.E., CFM
Associate

Attachments

BID OPENING



Innovative approaches
Practical results
Outstanding service

4055 International Plaza, Suite 200 • Fort Worth, Texas 76109 • 817-735-7300 • fax 817-735-7491

www.freese.com

OWNER: City of Killeen
PROJECT: Major Drainage CIP – Burmuda/Ronstan
ENGINEER: Freese and Nichols, Inc.

PROJECT NO.: Bid No. 15-17
DATE: May 28, 2015

NAME OF BIDDER	BID GENERAL T&C	CONFLICT OF INTEREST	BID BOND ATTACHED	ADDENDA RECEIVED	BID PRICE	COMMENTS
Bruce Flanigan Const. Inc.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$722,722.00	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		



City of Killeen

Legislation Details

File #: RS-15-036 **Version:** 1 **Name:** Bid No 15-20 Purchase of Police Motorcycles with Emergency Equipment
Type: Resolution **Status:** Resolutions
File created: 6/2/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider a memorandum/resolution authorizing the award of Bid No. 15-20 to purchase motorcycles with emergency equipment installation for the Police Department.
Sponsors: Fleet Services, Police Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Bid](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

Purchase of Police Motorcycles

ORIGINATING DEPARTMENT

Fleet Services / Police Department

BACKGROUND INFORMATION

The Police Department requires eight (8) reliable motorcycles in the patrol fleet to assist in assuring public safety. Four (4) were procured in FY 14, and four (4) more are needed at this time to replace existing units that have exceeded their useful life. In order to operate at the least cost of ownership and provide reliable equipment, the department reinitiated a rolling replacement plan beginning in FY14.

DISCUSSION/CONCLUSION

As per Texas Local Government Code Sec. 252.021, and the City's purchasing policy, an invitation for bids to acquire four (4) Police Motorcycles with installation of emergency equipment was advertised. As a result of the invitation for bids, one bid was received from Fort Hood Harley-Davidson and is referenced below.

Total Bid Price: \$79,862.12 (4 units at \$19,965.53)

Buy-Back Option 1: At 24 months with a maximum of 25,000 miles for \$11,000 per unit

Buy-Back Option 2: At 36 months with a maximum of 50,000 miles for \$10,000 per unit

Standard Warranty Applies: Yes

Installation of Emergency Equipment Included: Yes.

The buyback agreement option will be funded through the Police Department annual budget as the unit replacements become available. The four units that are being disposed of will be sold through an online auction site commonly used by the Police Department.

FISCAL IMPACT

Adequate funding is available in the Police Department motor vehicles account: 010-6000-441.61-10.

INVITATION FOR BIDS

BID FORM

Bid No. 15-20, 2015 or Newer Model Police Motorcycles with Emergency Equipment Installation

Notice to Bidders:

This is your notice that sealed bids, in duplicate, for Bid No. 15-20, 2015 or Newer Model Police Motorcycles with Emergency Equipment Installation, subject to the Terms & Conditions of this Invitation for Bids, Terms and Conditions (Appendix A, attached hereto), Specifications (Appendix B), such other contract provisions, or other data as attached to the Invitation for Bid (known as the Bid Packet), shall be received at the Purchasing Office, 207 A. West Ave D Killeen, TX, 76541, until the hour of 2:00 p.m., May 18, 2015, and will be subsequently opened at 2:15 p.m. at the City Hall Council Chambers located at 101 North College Street, Killeen, TX 76541, 1st floor.

In the case of inclement weather or any other unforeseen event causing the City to close for business or delay opening, bids shall be received and opened the following business day at the designated time stated herein. For example, if bids are due on Wednesday at 1:00 p.m. and the City closes on Wednesday for bad weather or an unforeseen event, the bids shall be accepted until Thursday, 1:00 p.m. If bids are due at 1:00 p.m. on Wednesday, but the City delayed opening until 10:00 a.m. for that business day due to bad weather or an unforeseen event, then bids shall be accepted until Thursday, 1:00 p.m.

Two signed copies of the Invitation for Bid form, including Appendices A, B, and C, a listing of references, and the Conflict of Interest Form, must be submitted prior to the bid opening date and time. All pages must be initialed by bidder where listed. Failure to fully complete any section or initial any page may make the vendors bid non-responsive.

Bidders shall submit at least three (3) businesses as references of the proposed unit with addresses, telephone numbers and contact persons.

Any questions or requests for clarification must be submitted to the Purchasing Office, in writing, prior to 2:00 p.m. on May 1, 2015 via email, addressed to Karlene Jessie, Purchasing Manager at kjessie@killeentexas.gov including the bid number in the subject line. There shall be no exceptions. All responses to the questions will be addressed in Addendum form and published on the City of Killeen website, www.killeentexas.gov/purchasing, DemandStar, Electronic State Business Daily and Ionwave Bidding System, https://killeentx.ionwave.net/login.aspx.

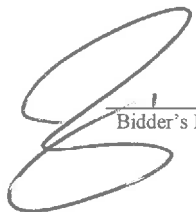
Bids must be plainly marked on the outside of the envelope as follows: Bid 15-20, 2015 or Newer Model Police Motorcycles with Emergency Equipment Installation, Due: May 18, 2015 @ 2:00 p.m. The City reserves the right to reject any or all bids. The City reserves the right to evaluate any or all supplies prior to bid award.

The bids shall be valid for a period of ninety (90) days after the bid opening. Bid shall be awarded on a "per item" basis.

Bid prices shall include all fees, and shall be F.O.B. Destination to the City of Killeen, Fleet Services, 2003 Little Nolan Rd. Killeen, Texas 76542. Delivery shall be made Monday through Friday, 8:00 a.m. to 5:00 p.m. excluding Holidays as signified on the attached Appendix C.

	Qty	Make/Model	Bid Price
Motorcycles, with Emergency Equipment as specified in Appendix B	4	HD FLHTP	\$ 79862.12
Trade in value			
Trade in value			

Estimated delivery time after receipt of order: 10 WEEKS


Bidder's Initials

COMPANY NAME: FORT HOOD HANLEY - DAVERSON
ADDRESS: 875 W. CENTRAL TX EXPWY HANNAH KENNEDY TX 76548
SIGNATURE: [Signature] DATE: 05-15-2015
PRINT: BUTCH GANTER PHONE: 254-680-4747
TITLE: GSM FAX: 254-680 4764

Payment will be made within 30 days of receipt and acceptance of product or service.

Bid documents must be complete when received by the Purchasing Office. Name, address, telephone number, and estimated delivery date must be provided.

Attachments:

[Signature]
Bidder's Initials
Page 2 of 15

APPENDIX A
CITY OF KILLEEN
GENERAL TERMS AND CONDITIONS FOR BIDS

1. General Conditions

Bidders are required to submit their Bid upon the following express conditions:

- (a) Bidders shall make all investigation necessary to thoroughly inform themselves regarding plant and facilities for delivery of fuel and equipment as required by the Bid conditions. No plea of ignorance by the bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the bidder.
- (b) Unless specifically stated otherwise in the specifications, only new products or equipment will be acceptable.

2. Preparation of Bid

Bid will be prepared in accordance with the following:

- (a) All information required by the Bid shall be furnished. The bidder shall print or type his/her name and manually sign the Bid and each continuation sheet on which an entry is made.
- (b) Unit prices shall be shown and where there is an error in extension of the price, the unit price shall govern.
- (c) Alternate Bids will not be considered unless authorized by the City.
- (d) Proposed delivery time must be shown and shall include weekends and holidays if requested by the City.
- (e) The City qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provision of Article 20.04(f) of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rental and lease of materials, supplies and equipment used or consumed in performance of the Contract may be exempted by issuing to suppliers an exemption certificate in lieu of tax. Exemption certificates comply with State Comptroller of Public Accounts Ruling No. 95-0.07. Any such exemption certificate issued in lieu of tax shall be subject to State Comptroller of Public Accounts Ruling No. 95-0.09, as amended. Failure by the Bidder or the bidder's Subcontractors to take advantage of the City's exemption and to obtain such exemption certificate shall make him responsible for paying taxes incurred on materials furnished on the Project without additional cost to or reimbursement by the City.

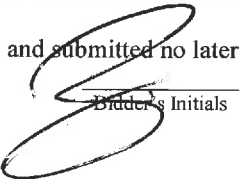
3. Description of Supplies

Any catalog of manufacturer's reference used in describing an item is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Bidders are required to state exactly what they intend to furnish; otherwise they will be required to furnish the item as specified.

4. Submission of Bid

By submitting your Bid, you acknowledge that the City of Killeen will not accept any Bid, or execute any submitted contract in conjunction with a Bid that requires the City to agree to any of the following:

- Governing law other than the law of the State of Texas
 - Venue other than Bell County
 - Mandatory arbitration
 - Artificial limitation of liability
 - Artificial statute of limitation
 - Waiver of trial by jury
- (a) Bid and changes thereto shall be enclosed in a sealed envelope addressed to the Purchasing Office, City of Killeen. The names and address of Bidder, the date and hour of the Bid opening and the Bid number shall be placed on the outside of the envelope.
 - (b) Bids must be submitted on the forms furnished. Telegraphic Bids will not be considered. However, Bids may be modified by written notice provided such notice is received prior to the time and date set for the Bid opening.
 - (c) All Bid documents shall be sealed and submitted no later than the specified date and hour of the Bid opening to:


Bidder's Initials

Delivery Address:
City of Killeen
Attn: Purchasing Division
207A W. Avenue D
Killeen, TX 76541

5. Rejection of Bid

- (a) The City may reject a Bid if:
1. The Bidder misstates or conceals any material fact in the Bid, or if
 2. The Bid does not strictly conform to law or the requirements of the Bid, or if
 3. The Bid is conditional, except that the Bidder may qualify his Bid for acceptance by the City as an "All or None" basis.
- (b) The City may, however, reject all Bids whenever it is deemed in the best interest of the City to do so, and may reject any part of a Bid unless the Bid has been qualified as provided in section 5(a) 3 above.

6. Withdrawal of Bid

Bid may not be withdrawn for up to ninety (90) days after the time set for the Bid opening, unless otherwise stated in the Bid.

7. Late Bid or Modifications

Bid and modifications received after the time set for the Bid opening will not be considered.

8. Clarification or Objection to Bid Specifications

If any person contemplating submitting a Bid for this contract is in doubt as to the true meaning of the specifications, or other Bid documents, or any part thereof, he may submit to Purchasing, a request for clarification by the deadline established in the Bid. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the Bid, if made, will be made only by an addendum duly issued. A copy of such addendum will be distributed to all known bidders who have expressed an interest in this bid. The City will not be responsible for any other explanation or interpretation of the proposed Bid made or given prior to the award of the contract. Any objection to the specifications and requirements, as set forth in the Bid documents must be filed in writing with the Purchasing Division by the deadline established in the Bid.

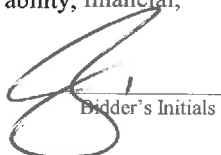
9. Discounts

- (a) Prompt payment discounts will be considered in making the award provided the period of the discount offered is sufficient to permit payment within such period in the regular course of business.
- (b) In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.

10. Award of the Contract

- (a) The contract will be awarded to the lowest responsible bidder or, if applicable, the responsible bidder who provides goods or services at the best value for the municipality based on, but not limited to, the following factors:

- | | |
|---|---|
| * Unit price | * Bidder's past performance |
| * Total Bid price | * Demurrage charges, freight costs and mileage |
| * Terms and discounts | * Estimated costs of supplies, maintenance, etc. |
| * Delivery date | * Estimated surplus value, life expectancy |
| * Product warranty | * Results of testing samples |
| * Special needs and requirements of City | * Conformity to specifications |
| * Past experience with product/service | * Training requirements, location, etc. |
| * City's evaluation of the bidder's ability, financial, strength, and ethical standards | * Location of maintenance facility/service person; ability to provide for minimum down time |


Bidder's Initials

- * Quality of the bidder's goods or services
- * The extent to which the goods or services meet the municipality's needs
- * The total long-term cost to the municipality to acquire the bidder's goods or services

- (b) The City reserves the right to accept any item or group of items of this Bid, unless the Bidder qualifies his Bid by specific limitation. Reference section 5(a) 3 above.
- (c) A written award of acceptance mailed or otherwise furnished to the successful Bidder will follow council approval. A contract, for review by the City's legal team, shall follow receipt.
- (d) Prices must be quoted "F.O.B. Destination (Killeen) with all transportation charges prepaid," unless otherwise specified in the Bid.
- (e) If identical Bids are received from two or more bidders and those Bids are the lowest and best Bid, the tie shall be broken in accordance with provisions in Section 271.901 of the Texas Local Government Code.
- (f) As stated in Section 271.905 of the Texas Local Government Code, "In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more competitive sealed Bid from a bidder whose principal place of business is in the local government and whose Bid is within three percent of the lowest Bid price received by the local government from a bidder who is not a resident of the municipality, the local government may enter into a contract with: (1) the lowest bidder; or (2) the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government."
- (f) As stated in Section 271.9051(b) of the Texas Local Government Code, "In purchasing real property or personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed Bid from a bidder whose principal place of business is in the municipality and whose Bid is within five percent of the lowest Bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for an expenditure of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with: (1) the lowest bidder; or (2) the bidder whose principal place of business is in the municipality if the governing body of the local government determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality."

11. Bid Protest

Any bidder wishing to file a protest concerning alleged improprieties with this solicitation must submit the protest in written format to the Purchasing Division within 5 business days after the specified time of the Bid opening. The formal written protest must identify the name of the bidder contesting the solicitation, the project name and number, and the specific grounds for the protest with all supporting documentation. A response to the protest will be prepared by Purchasing within 10 business days of receipt of the protest. All determinations made by the City are final.

12. Termination for Governmental Non-Appropriations

A contract is a commitment of the City's current revenues only. Should the terms of the Bid require payment of funds over more than the current fiscal year ending September 30, the following shall apply:

- (a) For each lease, City represents and warrants: that it has appropriated and budgeted the necessary fund to make all rent payments required pursuant to such lease for the remainder of the fiscal year in which the payment term commences; and that it currently intends to make rent payments for the full lease term as scheduled in the applicable payment schedule if funds are appropriated for the rent payment in each succeeding fiscal year by its governing body. Without contractually committing itself to do so, City reasonably believes that monies in an amount sufficient to make all rent payments can and will lawfully be appropriated; therefore, City agrees to budget requests to include the rent payments payable during each fiscal year in the budget requests presented to City's governing body for each fiscal year; provided, that City's governing body retains authority to approve or reject any such budget request. All rent payments shall be payable out of the general funds of City or out of other funds legally appropriated therefore. Lessor agrees that no lease will be a general obligation of City and no lease shall constitute a pledge of either the full faith and credit of City or the taxing power of City.
- (b) If City's governing body fails to appropriate sufficient funds in any fiscal year for rent property or other payments due under a lease and if other funds are not legally appropriated for such payment, then a non-appropriation event

Bidder's Initials

shall be deemed to have occurred. If a non-appropriation event occurs, then: (1) City shall give lessor immediate notice of such non-appropriation event and provide written evidence of such failure by City's governing body; (2) on the return date, City shall return to Lessor all of the equipment covered by the affected lease, at City's sole expense; (3) the affected lease shall terminate on the return date without penalty to City; (4) return date means the last day of the fiscal year for which appropriations were made for the rent payments due under a lease.

13. Termination of Contract

Any contract pursuant after to this bid packet shall remain in effect until the contract expires, delivery/completion and acceptance of products and/or performance of services ordered or until terminated by either party with a thirty (30) day written notice prior to any cancellation. The City reserves the right to award a contract to next best bidder it deems to be in the best interest of the City, should a contract be awarded and subsequently cancelled.

14. Assurance of Compliance

For Equal Employment Opportunity and Small and/or Minority Business Enterprise Requirements the bidder agrees that if this Bid is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

15. Conflict of Interest Disclosure Questionnaire

The Bidder agrees that if a member of the City Council or a councilmember's close relative or any officer or employee of the City has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the City, or is financially interested, directly or indirectly, in the sale to the City any land, materials, supplies or services except on behalf of the City, as an officer or employee, the official shall file before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

- (a) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
- (b) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the City of Killeen, including affiliations and business and financial relationships such persons may have with the City of Killeen. An explanation of the requirements of Chapter 176 and complete text of the new law are available at:

http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm

16. Venue for Legal Action

The standard form of agreement later referenced in this bid packet (page 20) shall be governed and construed according to the laws of the State of Texas. Venue for purposes of any and all lawsuits, causes of actions, claims or disputes shall be in Bell County, Texas.

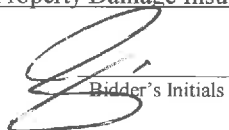
17. Conflicts in Terms and Conditions for Bids

If any conflicts exist between the Terms and Conditions for Bids and the standard form of agreement between the owner and Bidder, the standard form of agreement between the owner and bidder shall prevail.

18. Insurance

All bidders shall have the appropriate amount of insurance while delivering the items once awarded. This coverage shall be present as to cover all losses, until the City accepts the items in writing.

A. Comprehensive General Liability and Property Damage Insurance.


Bidder's Initials

The bidder shall take out and maintain during the life of this Contract such Comprehensive General Liability and Property Damage Insurance as shall protect the City from claims for damages or personal injury, including accidental death, as well as from claims for property damages which may arise from delivering the item under this contract, whether such operations be by himself or by a subcontractor or by anyone directly or indirectly employed by either of them, and the minimum amounts of such insurance shall be as follows:

Bodily Injury.

- (1) Each Occurrence - \$1,000,000
- (2) Annual Aggregate - \$2,000,000
- (3)

Property Damage Insurance.

- (1) Each Occurrence - \$1,000,000
- (2) Annual Aggregate - \$2,000,000

B. Comprehensive Automobile Liability.

Bodily Injury

- (1) Each Person - \$500,000
- (2) Each Accident - \$1,000,000

Property Damage

- (1) Each Occurrence - \$1,000,000

19. **Acknowledgement**

Each bidder, by their signature, represents that they have read the "Terms and Conditions for Bids", and will comply with these terms and conditions.

SIGNATURE: _____

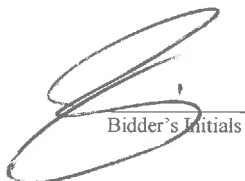
DATE: 05-15-2015

PRINT NAME: BURCH CARTER

COMPANY NAME: PORT HARBOR HARLEY-DAVIDSON

ADDRESS: 775 W. CENTRAL TX EXPY HARPER HILLS TX

CITY/STATE/ZIP: 76548


Bidder's Initials

**APPENDIX B
CITY OF KILLEEN**

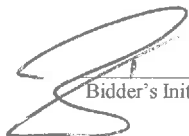
Specifications for 2015 or Newer Model Police Motorcycles with Emergency Equipment Installation

1.0 SCOPE

This specification covers the minimum requirements for four (4) 2015 or newer model patrol motorcycles with the installation of emergency equipment only. Space is provided for bidders comments in section 2.0-13.0. Failure to complete these sections may be considered as a non – responsive bidder.

2.0 ENGINE, TRANSMISSION, BODY

- | | | |
|------|--|-----------|
| 2.1 | The engine shall be two (2) cylinder, water or air-cooled, with overhead valves and electric fuel injection system. | YES _____ |
| 2.3 | Windshield shall be frame mounted, constructed of lexan on a frame or fork mount. Shall not cause high speed wobble. | YES _____ |
| 2.4 | Battery shall be 12 volt, maintenance free and heavy duty with adequate amp capacity to support running lights, emergency lights, radio and electric siren operating simultaneously with engine running. | YES _____ |
| 2.5 | Starter shall be 12 volt heavy duty and electric. | YES _____ |
| 2.6 | Alternator shall be of heavy duty quality with a minimum of 45 amp output and neutral safety switch shall prevent the engine from starting with the transmission in gear unless the clutch is engaged. | YES _____ |
| 2.8 | Fuel tank shall be a minimum of 5 gallons. | YES _____ |
| 2.9 | The drive shall be either enclosed drive shaft or reinforced toothed belt drive. | YES _____ |
| 2.10 | Brake system shall be equipped with ABS (Anti-Lock braking system) front and rear disc brakes. | YES _____ |


Bidder's Initials

2.11 Suspension shall include front and rear springs or shock absorbers designed or modified for heavy-duty police service. YES

2.12 Handlebars shall be manufacturers' standard style in chrome with black handgrips. There shall be a rearview mirror attached to either side of handlebars. YES

2.13 Safety bars shall be heavy duty, mounted on front and rear, shall be chrome plated and wider than necessary to protect the saddlebags. YES

3.0 TIRES AND RIMS

3.1 Rims shall be cast aluminum or alloy designed to retain a deflated tire, and shall be compatible with required tubeless tires. YES

3.2 Tires shall be a minimum 16" high quality tire. YES

3.3 The rim and tire assemblies shall be statically and dynamically balanced for law enforcement operational capabilities. YES

4.0 SEAT

4.1 The seat shall be a deluxe model police type, sponge rubber or neoprene cushion covered in black leather or heavy-duty black vinyl. YES

4.2 The material shall have no fringe. YES

4.3 The seat height shall not exceed 30" high. YES

5.0 STAND

5.1 The stand shall be a heavy duty side stand, designed and mounted to prevent folding while the weight of the motorcycle is on the stand. YES

5.2 Stand and optional center stand (if provided) should not rub or vibrate against any part of the motorcycle. YES

5.3 Foot boards shall be mounted to provide maximum rider comfort; rubber covered and will fold on contact. YES

6.0 SADDLEBAGS

6.1 Two (2) saddlebags shall be mounted, one on either side of the rear of the motorcycle and equipped with lock and key. YES


Bidder's Initials

6.2 They shall be made of metal, fiberglass or plastic and shall be a minimum of 9" high.

YES

7.0 INSTRUMENTS AND GAUGES

7.1 The following list of instruments and/or indicators shall be mounted:

- a) Police special calibrated 1-120 mph speedometer
- b) Low oil pressure, and fuel warning lights
- c) Neutral gear light
- d) High beam indicator
- e) Turn signal indicator
- f) Flashers; front and rear
- g) Fuel level gauge
- h) Tachometer
- i) Odometer, calibrated, cumulative
- j) Pursuit indicator lamp
- k) Engine diagnostic light

YES

8.0 PAINT

8.1 The paint shall be of high quality and purest black color.

YES

8.2 The frame shall be painted, black.

YES

8.3 The front and rear fenders shall be painted black.

YES

8.4 The gas tank, saddlebags, radio console and side panels shall be painted black.

YES

9.0 MANUALS AND/OR CD

9.1 The owners' manuals shall provide complete operating instructions, routine lubricating, and servicing instructions normally expected of the operator.

YES

10.0 SAFETY INSPECTION

10.1 The units shall be delivered complete and shall be furnished with a motor vehicle safety inspection from the state of Texas, at the time of delivery.

YES

10.2 All lights, warning lights, warning devices required to pass such inspection are required on all units.

YES

11.0 BUY BACK PROGRAM / WARRANTIES

11.1 The bidder must be willing to enter into an agreement to buy back the units at the end of a 24 to 36 month period of use.

YES


Bidder's Initials

11.2 The bidder shall provide the identity of the vendor who will perform and the list of options for warranty claims, service requirements and maintenance service.

HARLEY-DAVISON YES

12.0 INSTALLMENT OF EMERGENCY EQUIPMENT

YES

12.1 City of Killeen police department will provide the additional emergency equipment for installment.

YES

COMPANY: FORT HOOD HARLEY-DAVISON

ADDRESS: 875. W. CENTRAL TX EXPOLY MARLTON HOUSTON TX 76548

SIGNATURE:  PRINT: Bruce Lanier


Bidder's Initials

REFERENCES

Include below three references:

Reference #1

Company Name HARRISON HIGGINS PD
Address 402 FORDEN TR
HARRISON HIGGINS TX 76548
Type of Business Police Bids & Service
Contact Person LT. LORETT FOX
Telephone and Fax #'s 254-654-7600 254-953-5414

Reference #2

Company Name COPPING COV. PD
Address 303 G. AVE. E.
COPPING COV. TX 76532
Type of Business Police Bids & Service
Contact Person OFFICER WELLS
Telephone and Fax #'s 254-547-8222 254-547-3230

Reference #3

Company Name WILLIAMSON County Sheriff's Dept.
Address 503 S. BORN ST
GEORGETOWN TX 78626
Type of Business Police Bids & Service
Contact Person OFFICER BAXTER
Telephone and Fax #'s 512-943-1347 512-943-1343


Bidder's Initials

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor or other person doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 178, Local Government Code by a person who has a business relationship as defined by Section 178.001(1-a) with a local governmental entity and the person meets requirements under Section 178.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 178.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 178.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

NONE

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

NONE

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 178.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

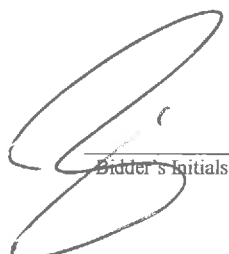
Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4 
Signature of person doing business with the governmental entity

05/15/2015
Date

Adopted 06/29/2007


Bidder's Initials

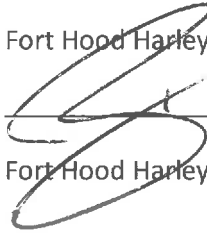
Fort Hood Harley-Davidson
Conditional Buy-Back Agreement

Fort Hood Harley-Davidson agrees to the conditional repurchase of the 2016 FLHTP referenced in the proposal dated 05/15/2015 with the following conditions:

- Motorcycle is returned to Fort Hood Harley-Davidson for the repurchase within 24 months with a maximum mileage not to exceed 25,000 miles, for the amount of \$11000.00
- Motorcycle is returned to Fort Hood Harley-Davidson for repurchase within 36 months with a maximum mileage not to exceed 50,000 miles, for the amount of \$10000.00
- Motorcycle and all switches, controls, indicators, etc., are in good operating condition without any major damage and passes a certified State inspection.
- Any necessary repairs needed to meet the above conditions are the responsibility of the City of Killeen
- Required Scheduled Services are maintained at Fort Hood Harley-Davidson and paid by the City of Killeen

Butch Carter _____

Fort Hood Harley-Davidson (printed)



Fort Hood Harley-Davidson (signed)

Date 05/15/2015

City of Killeen (printed)

City of Killeen

(signed)

Date 05/15/2015



City of Killeen

Legislation Details

File #: RS-15-037 **Version:** 1 **Name:** KEDC Member Replacement
Type: Resolution **Status:** Resolutions
File created: 6/10/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider a memorandum/resolution appointing a replacement Killeen Industrial Foundation representative to the Killeen Economic Development Corporation board.
Sponsors: City Secretary
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[KEDC Board](#)
[KEDC Letter of Recommendation](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

**Boards, Commissions, and Committees
Appointments**

ORIGINATING DEPARTMENT

City Attorney/City Secretary

BACKGROUND INFORMATION

The City of Killeen makes annual appointments to boards, commissions, and committees throughout the year as vacancies occur.

DISCUSSION/CONCLUSION

In order to ensure a quorum at upcoming future meetings, it is necessary to fill a vacancy on Killeen Economic Development Corporation board. City Council action is required.

KEDC (Killeen Economic Development Corp) (All Council)

Current Member	Status	New Member	Comments
Steve Hanik	Resigned	Karl Green	Member-at-Large

RECOMMENDATION

It is recommended that the City Council appoint Karl Green to replace Steve Hanik.

KILLEEN ECONOMIC DEVELOPMENT CORPORATION

Name	Address	Phone-W Phone-H	Initial Appt.	Term Length - 3 Years -
Karl Green * KIF Representative			June 2015	2014-17
John Gilmore KIF Representative	P O Box 85 Killeen 76540	634-5421	2013	2013-16
Charlie Watts Chamber Representative	PO Box 996 Killeen 76540	699-7100	2013	2013-16
Carlyle Walton Chamber Representative	Metroplex 2201 S. Clear Creek Rd Killeen 76549	519-8165	2009	2012-15
Jim Foster KIF Representative	3701 E Central Texas Expy Killeen 76543	634-2224	2012	2012-15
Elizabeth Blackstone City Representative	601 Illinois Killeen 76541	251-7136	2012	2014-16
Curt Gaines Chamber Representative	P O Box 790 Killeen 76540	200-7756	2011	2014-17
Scott Cospser City Representative	2110 Southport Dr Killeen 76542	290-1042	2014	2013-16
Juan Rivera City Representative	4909 Bending Trail Killeen, TX. 76542	251-7149	June 2015	2012-15

*Filled unexpired term

Membership: The Killeen Economic Development Corporation shall consist of nine members who shall be appointed by the City Council. There shall be three directors nominated by and representing each of the following organizations: three from the City of Killeen Mayor and City Council, three from the Greater Killeen Chamber of Commerce, and three from the Killeen Industrial Foundation. The nine directors shall initially serve for staggered terms: one director from each represented organization for one year, one director from each represented organization for two years, and one director from each represented organization for three years. Subsequent Directors shall serve for a term of three years or until his/her successor is duly elected and qualified. No director shall serve more than two consecutive terms. Advisory directors may be appointed by the governing body as ex-officio members of the Board of Directors. Advisory directors shall be non-voting members of the Board and shall serve at the pleasure of the governing body for a term not less than one year nor more than three years.

Duties: The corporation is organized exclusively and may issue bonds for the purposes of accomplishing public purposes and acting on behalf of the City; and the specific purposes for which the corporation is organized and may issue bonds for the promotion and development of commercial, industrial, manufacturing enterprises to promote and encourage employment and the public welfare.

Source: Development Corp Act 1979; Texas Local Government Code, Chapter 501; Resolution #90-65 (08-14-90)

Term of Office: 3 Year Terms, staggered

Meetings: As needed

Appointing Body: City Council

Appointments Sub-committee: All Council

Department Responsible: Chamber of Commerce

May 29, 2015

Glenn Morrison
Killeen City Manager
PO Box 1329
Killeen, TX 76540

Dear Glenn,

We received a resignation notice from Steve Hanik, CenturyLink.

As President of KIF, I would like to nominate Karl Green, Oncor, to serve as the replacement to Mr. Hanik on the Killeen Economic Development Corporation.

We request approval of this nomination.

If you have any questions, please contact Phyllis Gogue at the Greater Killeen Chamber of Commerce at 254-526-9551.

Sincerely,



John Gilmore
President





City of Killeen

Legislation Details

File #: OR-15-011 **Version:** 1 **Name:** KISD Annexation
Type: Ordinance **Status:** Ordinances
File created: 6/10/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**
Title: Consider an ordinance extending the corporate city limits of the City of Killeen by annexing 32.757 acres located along the east right-of-way of Bunny Trail, approximately 2,460 feet south of W. Stan Schlueter Loop, Killeen, Texas.
Sponsors: Planning & Development Dept
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Ordinance](#)
[Annexation Petition](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

CONSIDER AN ORDINANCE EXTENDING THE CORPORATE CITY LIMITS OF THE CITY OF KILLEEN BY ANNEXING APPROXIMATELY 32.757 ACRES LOCATED ALONG THE EAST RIGHT-OF-WAY OF BUNNY TRAIL, APPROXIMATELY 2,460 FEET SOUTH OF W. STAN SCHLUETER LOOP (FM 3470)

ORIGINATING DEPARTMENT

Planning & Development Services

BACKGROUND INFORMATION

Nature of the Request

The City of Killeen is permitted by the Local Government Code §43.028 to accept and act on petitions for voluntary annexation. The Killeen Independent School District, the petitioner, submitted a petition to the City on May 13, 2015, requesting that the City annex approximately 32.757 acres, being out of the Eugene LaSere Survey, Abstract No. 527, Bell County, Texas. The property is located on the east right-of-way of Bunny Trail, approximately 2,460 feet south of W. Stan Schlueter Loop (FM 3470). The property will be developed as a public school site.

DISCUSSION/CONCLUSION

The Local Government Code requires that the governing body hear the petition and hear arguments for and against, and grant or refuse the petition after the 5th day, but before the 30th day, after the petition is filed. The City Council granted the petition at the regular meeting of June 9, 2015. Following annexation, the approximate 32.757 acres parcel will initially be zoned "A" (Agricultural District) as per Killeen Code of Ordinances Section 31-124. The property will have to be rezoned accordingly to accommodate a public school.

FISCAL IMPACT

There is no fiscal impact associated with this action.

RECOMMENDATION

Staff recommends that the City Council approve the annexation ordinance for the voluntary annexation of 32.757 acres into the corporate limits of the City of Killeen.

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS TO INCLUDE LAND LYING ADJACENT TO THE PRESENT CITY LIMITS; DECLARING SAID LAND TO BE A PART OF SAID CITY; DECLARING SAID LAND AND PRESENT AND FUTURE INHABITANTS OF SAID LAND TO BE ENTITLED TO ALL THE RIGHTS AND PRIVILEGES OF OTHER LANDS AND CITIZENS OF THE CITY AND TO BE BOUND BY THE ACTS AND ORDINANCES OF THE CITY; EXTENDING THE BOUNDARY OF DISTRICT 4; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; ESTABLISHING AN EFFECTIVE DATE.

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

SECTION I: That on and after the date of passage of this ordinance, the City of Killeen grants the petition for voluntary annexation, and the City Limits of the City of Killeen, Texas, shall be and they are hereby extended to include certain lands lying adjacent and contiguous to the City Limits of said City of Killeen as they existed prior to the passage of this ordinance; such land being more particularly described in Exhibit 'A', and represented on map Exhibit 'B', which are attached hereto and incorporated herein for all purposes.

SECTION II: It is declared that the land hereby annexed and described in Section I hereof is and shall hereafter be a part of the City of Killeen, Bell County, Texas, and it is hereby further declared that said land and the present and future inhabitants thereof are hereafter entitled to all the rights and privileges as other lands and other citizens of the City of Killeen which are similarly situated and shall be bound by the acts and ordinances of the City of Killeen, Texas.

SECTION III: It is further declared that, in accordance with state law, the above described property shall be zoned "A: (Agricultural District) on the effective date of this ordinance, pursuant to Chapter 31, Section 124, paragraph (a) of the Code of Ordinances of the City of Killeen.

SECTION IV: It is further declared that the boundary of District 4 be extended to include the land being more particularly described and represented in Exhibit 'A' and Exhibit 'B'.

SECTION V: 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 VI: 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 VII: That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a special meeting of the City Council of the City of Killeen, Texas, this 23rd day of June 2015, at which meeting a quorum was present, held in accordance with the provisions of Texas Government Code, Chapter 551.001, *et seq.*

APPROVED:

Scott Cospers
MAYOR

APPROVED AS TO FORM

ATTEST:

Kathryn H. Davis
CITY ATTORNEY

Dianna Barker
CITY SECRETARY

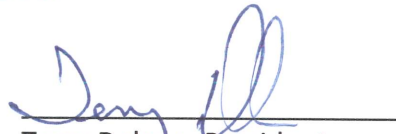
Attachments: Exhibit A – Field Notes
Exhibit B - Maps

TO THE MAYOR AND GOVERNING BODY OF THE CITY OF KILLEEN, TEXAS, A HOME RULE MUNICIPALITY:

The undersigned owner of the hereinafter described tract of land, which is vacant and without residents, hereby petitions your Honorable Body to extend the present city limits so as to include as part of the City of Killeen, Texas (Local Government Code §43.028) the following described territory, to wit:

See attached Exhibits A and B

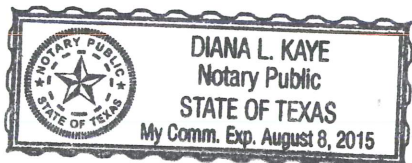
The undersigned certifies that the above described land is contiguous and adjacent to the City of Killeen, is not more than one-half (1/2) mile in width, is vacant and without residents and on which fewer than three qualified voters reside.


Terry Delano, President
Killeen ISD Board of Trustees

THE STATE OF TEXAS §
 §
COUNTY OF BELL §

Before me, the undersigned authority, on this day personally appeared Terry Delano, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 12TH day of MAY 2015.




Notary Public in and for the
State of Texas

Printed Name: Diana L. Kaye

Commission Expires: August 8, 2015

FIELD NOTES for a 1.522 acre tract of land in Bell County, Texas, being part of the Eugene Lasere Survey, Abstract No. 527, and the land herein described being part of a called 110 acre tract conveyed to Ace Turland, of record in Volume 4484, Page 267, Official Public Records of Real Property, Bell County, Texas (O.P..R.R.P.B.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2" iron rod with cap stamped "M&A" set on the present east right-of-way line of Bunny Trail (90' R.O.W.), for the southwest corner of this tract, whence the intersection of the south line of said 110 acre tract with the present east right-of-way line of Bunny Trail bears S. 17° 04' 06" W., 1066.41 feet;

THENCE N. 17° 04' 06" E., 70.00 feet, with the east right-of-way line of said Bunny Trail, to a 1/2" iron rod with cap stamped "M&A" set for the northwest corner of this tract;

THENCE over and across said 110 acre tract, the following three (3) calls:

1. S. 72° 55' 54" E., 831.30 feet, to a 1/2" iron rod with cap stamped "M&A" set at the beginning of a curve to the right, for a corner of this tract;
2. Along said curve to the right, having a radius of 50.00 feet, an arc length of 225.55 feet and a long chord bearing S. 16° 08' 33" E., 83.67 feet, to a 1/2" iron rod with cap stamped "M&A" set for a corner of this tract;
3. N. 72° 55' 54" W., 877.13 feet, to the POINT OF BEGINNING and containing 1.522 acres of land.

The bearings for the above description are based on the Texas Plane Coordinate System, Central Zone, NAD 83 (CORS 96), per Leica Texas SmartNet GPS observations.

See accompanying drawing.
Revised April 16, 2015 (date)

STATE OF TEXAS

COUNTY OF BELL

KNOW ALL MEN BY THESE PRESENTS, that I, Rex D. Haas, Registered Professional Land Surveyor, do hereby certify that I did cause to be surveyed on the ground, the above described tract and that this description is true and correct to the best of my knowledge and belief. Survey completed on the ground January 14, 2015.

IN WITNESS THEREOF, my hand and seal this the 16th day of January 2015.


Rex D. Haas
Registered Professional
Land Surveyor, No. 4378



FIELD NOTES for a 31.235 acre tract of land in Bell County, Texas, being part of the Eugene Lasere Survey, Abstract No. 527, and the land herein described being part of a called 110 acre tract conveyed to Ace Turland, of record in Volume 4484, Page 267, Official Public Records of Real Property, Bell County, Texas (O.P..R.R.P.B.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2" iron rod with cap stamped "M&A" set on the south line of said 110 acre tract and the north line of Goodnight Ranch Addition Phase Six, of record in Cabinet D, Slide 252-C & 253-A, Plat Records of Bell County, Texas, being at the northwest corner of Lot 10, Block 5, said Goodnight Ranch Phase Six, for the southwest corner of this tract, whence the intersection of the south line of said 110 acre tract with the present east right-of-way line of Bunny Trail bears N. 73° 55' 29" W., 376.97 feet;

THENCE over and across said 110 acre tract, the following seven (7) calls:

1. N. 06° 21' 22" E., 235.45 feet, to a 1/2" iron rod with cap stamped "M&A" set for a corner of this tract;
2. N. 52° 13' 34" E., 455.40 feet, to a 1/2" iron rod with cap stamped "M&A" set for a corner of this tract;
3. N. 27° 13' 34" E., 463.47 feet, to a 1/2" iron rod with cap stamped "M&A" set for a corner of this tract;
4. S. 72° 55' 54" E., 418.38 feet, to a 1/2" iron rod with cap stamped "M&A" set for a corner of this tract;
5. S. 55° 06' 24" E., 891.45 feet, to a 1/2" iron rod with cap stamped "M&A" set for the northeast corner of this tract;
6. S. 16° 04' 31" W., 493.54 feet, to a 1/2" iron rod with cap stamped "M&A" set for a corner of this tract;
7. S. 48° 38' 02" W., 315.80 feet, to a 1/2" iron rod with cap stamped "M&A" found on the south line of said 110 acre tract at the north mutual corner of Lots 17 and 18, Block 12, said Goodnight Ranch Phase Six, for the southeast corner of this tract;

THENCE N. 73° 55' 29" W., 1410.70 feet, with the south line of said 110 acre tract and the north line of said Goodnight Ranch Phase Six, to the POINT OF BEGINNING and containing 31.235 acres of land.

The bearings for the above description are based on the Texas Plane Coordinate System, Central Zone, NAD 83 (CORS 96), per Leica Texas SmartNet GPS observations.

See accompanying drawing.
Revised April 16, 2015 (date)

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS, that I, Rex D. Haas, Registered Professional Land Surveyor, do hereby certify that I did cause to be surveyed on the ground, the above described tract and that this description is true and correct to the best of my knowledge and belief. Survey completed on the ground January 14, 2015.

COUNTY OF BELL

IN WITNESS THEREOF, my hand and seal this the 16th day of January 2015.

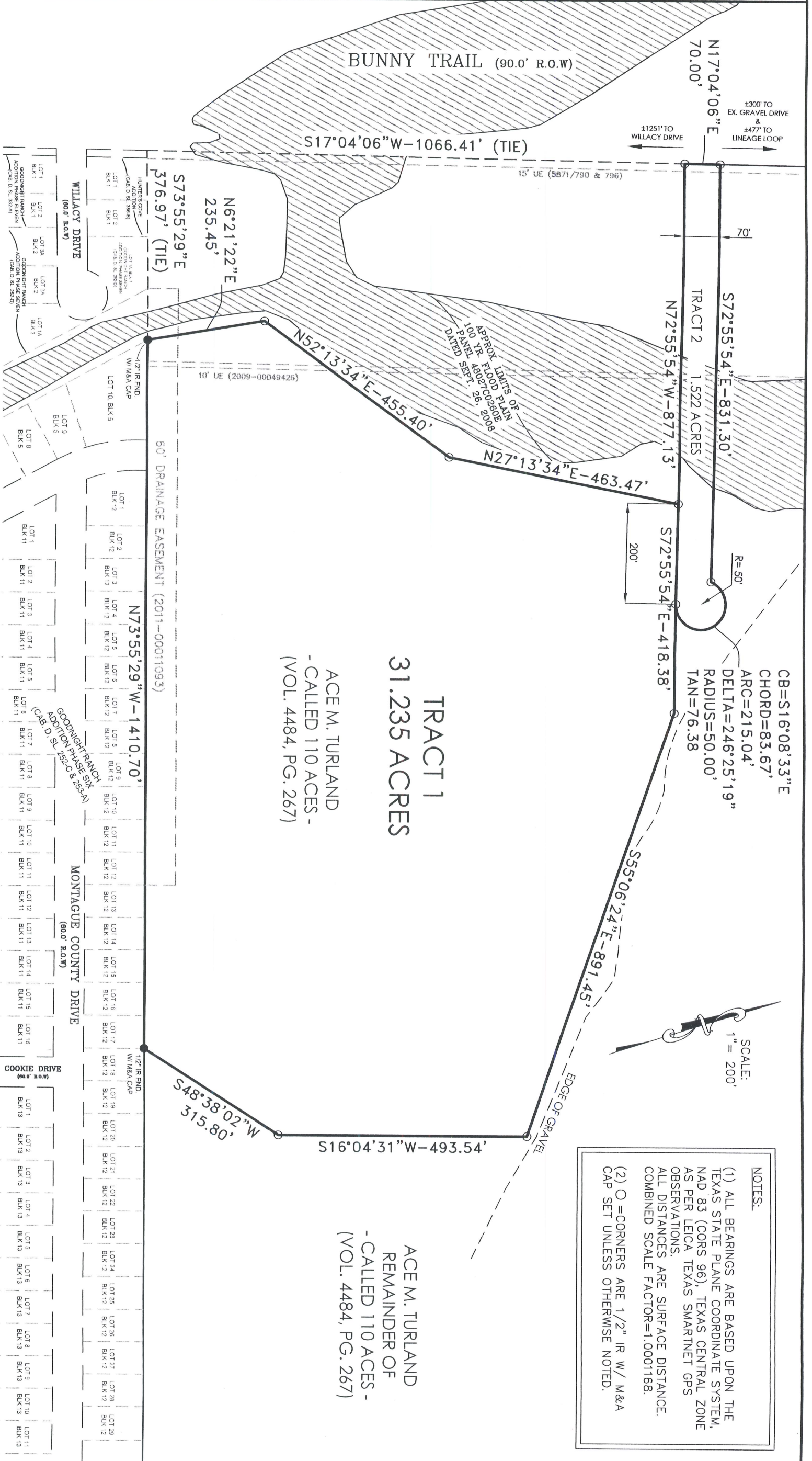

Rex D. Haas
Registered Professional
Land Surveyor, No. 4378





MITCHELL & ASSOCIATES, INC.
 ENGINEERING & SURVEYING
 102 N. COLLEGE, KILLEEN, TEXAS (254) 634-5541
 T. B. P. L. S. FIRM REGISTRATION NO. 100204-00

Revised: 04/07/15 (TITLE COMMITMENT)



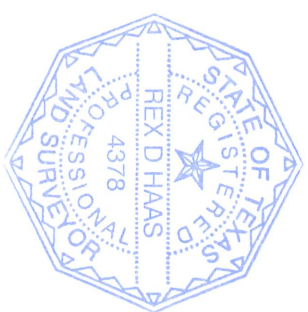
TRACT 1 (31.235 ACRES) & TRACT 2 (1.522 ACRES)
 OUT OF THE EUGENE LASERE SURVEY, ABSTRACT NO. 527
 KILLEEN, BELL COUNTY, TEXAS

*** SEE FIELD NOTES ***

TRACT 1
 31.235 ACRES
 ACE M. TURLAND
 - CALLED 110 ACES -
 (VOL. 4484, PG. 267)

ACE M. TURLAND
 REMAINDER OF
 - CALLED 110 ACES -
 (VOL. 4484, PG. 267)

- NOTES:
- (1) ALL BEARINGS ARE BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83 (CORS 96), TEXAS CENTRAL ZONE AS PER LEICA TEXAS SMARTNET GPS OBSERVATIONS. ALL DISTANCES ARE SURFACE DISTANCE. COMBINED SCALE FACTOR=1.0001168.
 - (2) O=CORNERS ARE 1/2" IR W/ M&A CAP SET UNLESS OTHERWISE NOTED.



Rex D. Haas
 Rex D. Haas
 Registered Professional
 Land Surveyor, No. 4378

STATE OF TEXAS
 COUNTY OF BELL

KNOW ALL MEN BY THESE PRESENTS, That I, Rex D. Haas, Registered Professional Land Surveyor, do hereby certify that I did cause to be surveyed on the ground the above described tract of land and to the best of my knowledge and belief, the said description is true and correct.

Survey completed on the ground on January 14th, 2015.

IN WITNESS THEREOF, My hand and seal this the 16th day of January, 2015.

DRAWING NO. 14-341-B-V



City of Killeen

Legislation Details

File #: PH-15-023 **Version:** 1 **Name:** Zoning 15-09
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/2/2015 **In control:** City Council Workshop
On agenda: 6/16/2015 **Final action:**

Title: HOLD a public hearing and consider an ordinance requested by Fred and Linda Garvin (Case #Z15-09) to rezone Lot 5, Block 33, Crescent Manor, 2nd Extension, from "B-1" (Professional Business District) to "B-2" (Local Retail District). The property is locally known as 1507 South W.S. Young Drive, Killeen, Texas.

Sponsors: Planning & Development Dept

Indexes:

Code sections:

Attachments: [Council Memorandum](#)
[Attachment CCMO](#)
[Minutes](#)
[Ordinance](#)
[Application](#)
[Location Map](#)
[Buffer Map](#)
[Considerations](#)
[Support](#)
[Opposition](#)

Date	Ver.	Action By	Action	Result
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CITY COUNCIL MEMORANDUM

AGENDA ITEM

**ZONING CASE #Z15-09 "B-1"
(PROFESSIONAL BUSINESS DISTRICT) TO
"B-2" (LOCAL RETAIL DISTRICT)**

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Nature of the Request

This request is to rezone Lot 5, Block 33, Crescent Manor, 2nd Extension, from "B-1" (Professional Business District) to "B-2" (Local Retail District) for a prospective photography studio. The property is locally known as 1507 South W.S. Young Drive, Killeen, Texas.

A building or premises in the "B-2" Local Retail District shall be used only for the following purposes:

- (1) Any use permitted in district "B-1" or "B-DC."
- (2) Appliance (household) sales.
- (3) Bakery shop (retail sales only).
- (4) Barbershop, beauty shop, to include permanent cosmetics (licensed per Texas Health and Safety Code, chapter 146, as amended).
- (5) Construction field office and yard: on the job site; for duration of construction only.
- (6) Cleaning or laundry (pick-up station).
- (7) Cleaning or laundry (self-service) using fully automatic equipment, as follows:
 - a. Washers, capacity of not more than forty (40) pounds.
 - b. Dryers or extractors, capacity of not more than sixty (60) pounds.
 - c. Dry cleaning machines.
- (8) Custom personal service shops, such as a health studio (to include massage establishments as defined in Texas Occupations Code section 455, as amended), answering service, typing service, tailor, employment agency, FM piped music, income tax service, letter or mailing service, marriage counselor, secretarial service or shoe repair.
- (9) Drugstore or pharmacy.
- (10) Electric utility substation.
- (11) Florist (retail): retail sales of flowers and small plants. No flower or plant raising or outside display or storage.
- (12) Grocery store (drive-in).
- (13) Home for the aged.
- (14) Registered public surveyor.
- (15) Restaurant, coffee shop, or café (no drive-in service).
- (16) Retail stores, (other than listed): offering all types of personal consumer goods for retail sales.
- (17) Studio for photography, interior decoration, fine arts instruction, or sale of art objects.
- (18) Telephone exchange building.
- (19) A customarily incidental use.
- (20) Drop-in care centers.

Property Specifics

Applicant/Property Owner: Fred and Linda Garvin

Property Location: The property is located south of the t-intersection of South W.S. Young Drive and Jerry Road, and is locally known as 1507 South W.S. Young Drive, Killeen, Texas.

Legal Description: Lot 5, Block 33, Crescent Manor, 2nd Extension.

Zoning/Plat Case History:

The property was rezoned from "R-1" (Single-Family Residential District) to "B-1" (Professional Business District) for use as an appraisal office on September 27, 2005, per ordinance # 05-88.

The property is platted as Lot 5, Block 33, Crescent Manor, 2nd Extension, which was filed for record on May 27, 1964, in Plat Book 898, Page 166, Deed Records of Bell County, Texas.

Character of the Area

Existing Land Uses(s) on the Property: There is an existing commercial enterprise on the property.

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 above subject tract located within the City of Killeen municipal utility service area. Adequate potable water and sanitary sewer capacity is currently available to the current structure on the property. Public storm drainage infrastructure lies within the abutting right-of-way.

Transportation:

Existing conditions: South W.S. Young Drive is classified as a 110' principal arterial on the City's Thoroughfare Plan. Jerry Road is a 60' local street. Ingress/ Egress to the property would be limited to the single point of existing access on South W. S. Young Drive.

Proposed Improvements: There are none at this time.

Projected Traffic Generation: Minimal.

Environmental Assessment

Topography: The property is relatively flat.

Regulated Floodplain/Floodway/Creek: The tract does not lie within a FEMA regulatory Special Flood Hazard Area (SFHA). This parcel was platted in 1964 and was subject to the City's 1963 drainage criteria. Storm water runoff from this residential parcel primarily travels southeast into the western curb line of South W.S. Young Drive, and travels southbound until it ultimately reaches the Little Nolan Creek tributary of Nolan Creek. Little Nolan Creek flows into Nolan Creek prior to leaving the City. Both Little Nolan Creek and Nolan Creek are currently listed on the TCEQ's current 303(d) water quality list for impairment due to bacteria and concerns for near non-attainment for nutrients.

Land Use Analysis

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

Plan Recommendation: The 'General Residential' character encourages detached residential dwellings as the primary focus, attached housing types subject to compatibility and open space standards, planned developments (with a mix of housing types) subject to compatibility and open space standards, public/institutional, parks, and other public spaces. The characteristics of this designation include:

Predominantly "R-1" zoning district with less openness and separation between dwellings compared to 'Suburban Residential' areas.

Auto-oriented character that can be offset with architectural standards, landscaping, and limited uniform subdivision designs.

Neighborhood-scale commercial uses emerging over time for well-suited areas.

Consistency: Consistent.

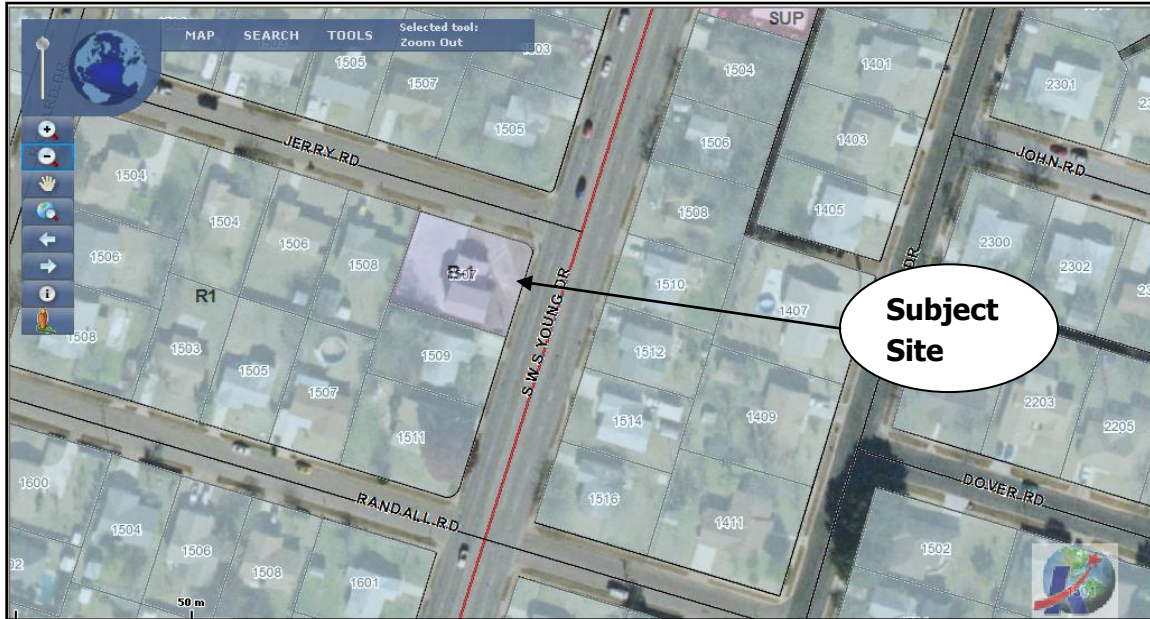
Public Notification

Staff notified twenty-six (26) surrounding property owners within the 200' notification area. Staff has received four (4) responses, which includes a protest from John W. Hughes, the owner of 1514 South W. S. Young Drive.

Recommendation

After hearing comments from the staff and the applicant regarding the intended use of the subject property, the Planning and Zoning Commission recommended approval of "B-2" (Local Retail District) zoning by a vote of 6 to 0 (with Commissioner Cooper abstaining).

Figure 1, Zoning Map



**MINUTES
PLANNING AND ZONING COMMISSION MEETING
JUNE 1, 2015**

**CASE #Z15-09
B-1 TO B-2**

HOLD a public hearing and consider a request by Fred and Linda Garvin (Case #Z15-09) to rezone Lot 5, Block 33, Crescent Manor, 2nd Extension, from B-1 (Professional Business District) to B-2 (Local Retail District). The property is locally known as 1507 S. W.S. Young Drive, Killeen Texas.

Chairman Frederick requested staff comments.

Commissioner Cooper stepped down.

City Planner Tony McIlwain stated that this request was submitted by Mr. Garvin to rezone from “B-1” (Professional Business District) to “B-2” (Local Retail District) for a prospective photography studio. The property was last rezoned from “R-1” to “B-1” on September 27, 2005. Water, sanitary sewer, and drainage utility services are readily accessible to the subject property. South W.S. Young Drive is classified as a 110’ principal arterial on the City’s Thoroughfare Plan. The property is designated as ‘General Residential’ on the Comprehensive Plan’s Future Land Use Map (FLUM).

Staff notified twenty-six (26) surrounding property owners within the 200’ notification area and received four responses with one protesting the rezoning.

Staff supports the applicant’s “B-2” (Professional Business District).

Mr. Fred D. Garvin Sr., 2859 Stagecoach Road, Killeen, Texas, and Mr. Tom Shuttleworth, Belton, Texas, were present to represent this request.

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

Commissioner Butler motioned to recommend approval of the “B-2” request. Vice Chair Dorroh seconded the motion. The motion passed 6–0 (Commissioner Cooper abstained from voting).

Chairman Frederick stated that the zoning case will be forwarded to City Council on June 23, 2015, with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM B-1 (PROFESSIONAL BUSINESS DISTRICT) TO B-2 (LOCAL RETAIL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Fred and Linda Garvin 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 1507 South W. S. Young Drive, being Lot 5, Block 33, Crescent Manor, 2nd Extension, from B-1 (Professional Business District) to B-2 (Local Retail District), said request having been duly presented and recommended for approval of B-2 (Local Retail District) zoning by the Planning and Zoning Commission of the City of Killeen on the 1st day of June 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 23rd day of June 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 B-1 (Professional Business District) to B-2 (Local Retail District) for Lot

5, Block 33, Crescent Manor, 2nd Extension, being 1507 South W. S. Young 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 23rd day of June 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:

Diana Barker, CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis, City Attorney

Case #15-09
Ord #15-__



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

CASE #: 215-09

City of Killeen Zoning Change Application

General Zoning Change [] Conditional Use Permit

Name(s) of Property Owner: Fred and Linda Garvin

Current Address: 1507 S WS Young dr

City: Killeen State: Tx Zip: 76541

Home Phone: 254 289-2177 Business Phone: 254 680-4668 Cell Phone: () _____

Email: appraisal-3@waco.twcbc.com / 6appraisals@waco.twcbc.com

Name of Applicant: Fred Garvin
(If different than Property Owner)

Address: 2859 Stagecoach Rd

City: Killeen State: Tx Zip: 76542

Home Phone: 254 289-2177 Business Phone: 254 680-4668 Cell Phone: () _____

Email: /

Address/Location of property to be rezoned: 1507 S WS Young dr Killeen Tx

Legal Description: Lot 5, Blk 33, Crescent Manor 2nd ext.

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: B-1 Present Use: Office

Proposed Zoning: B-2 Proposed Use: Office - (Photography etc.)

Conditional Use Permit for: _____

This property was conveyed to owner by deed dated 8/4/05 and recorded in Volume 5791, Page 336, Instrument Number 2009004186 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: Tom Shuttleworth
 Mailing Address: 1507 SWS Young Dr
 City: Killeen State: Tx Zip: 76541
 Home Phone: 254-291-9245 Business Phone: 254-680-4663 Email: appraisal-3(a)@nacb.com
Twcbe.com

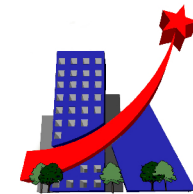
I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

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 my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

Signature of Agent <u>[Signature]</u>	Title _____
Printed/Typed Name of Agent _____	Date _____
Signature of Applicant <u>[Signature]</u>	Title _____
Printed/Typed Name of Applicant _____	Date _____
Signature of Property Owner <u>[Signature]</u>	Title _____
Printed/Typed Name of Property Owner _____	Date _____
Signature of Property Owner _____	Title _____
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:

#Z15-09

ZONING FROM:

B-1 to B-2

APPLICANT:

FRED GARVIN

**ADDRESS TO
BE REZONED:**

1507 S WS YOUNG






PROPERTY OWNER:

FRED AND LINDA GARVIN

LEGAL DESCRIPTION:

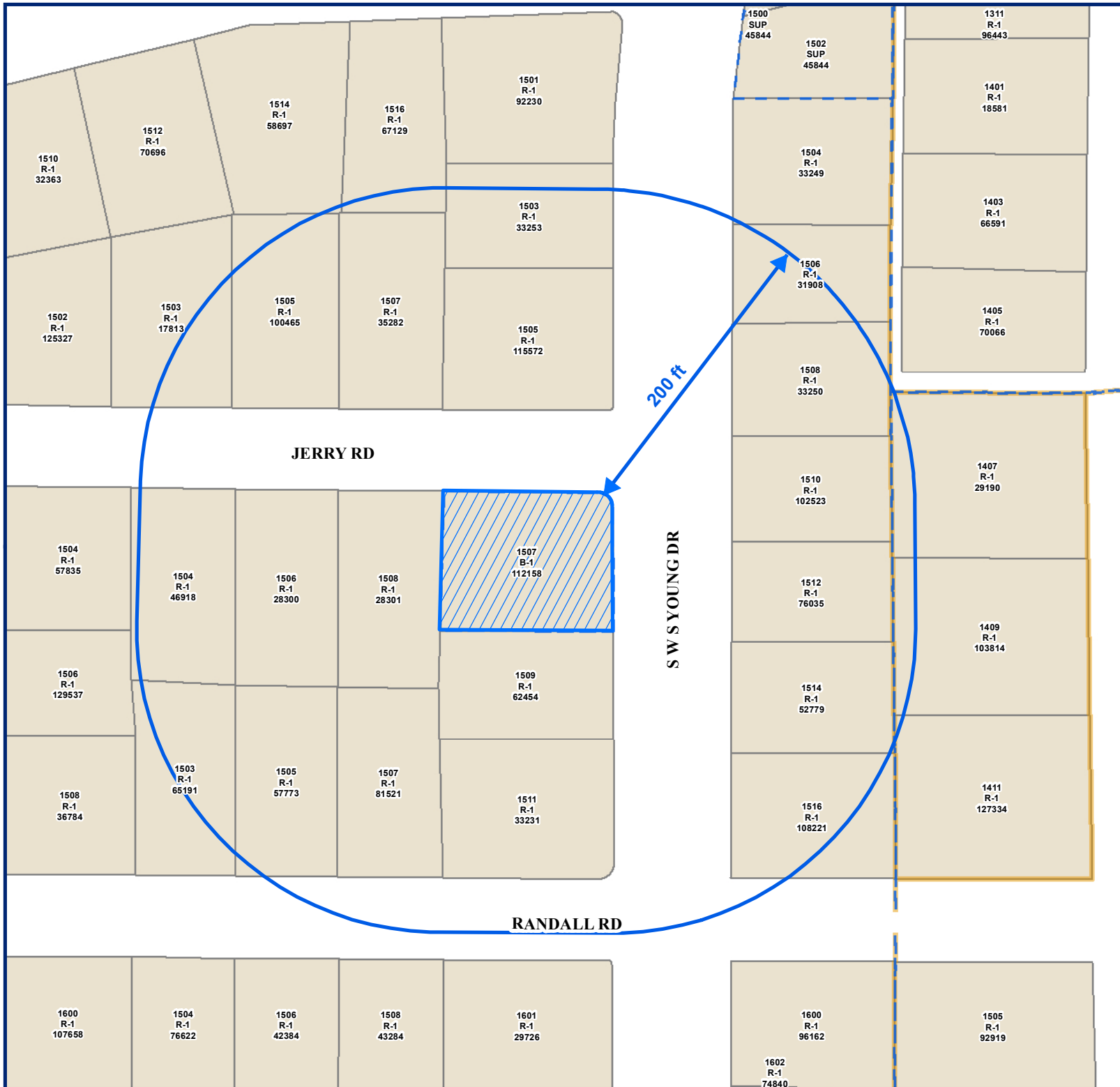
**LOT5,BLK 33,
CRESENT MANOR
2ND EXT.**

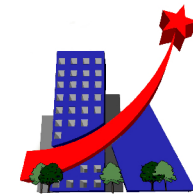
LEGEND

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



Date: 5/11/2015





**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

#Z15-09

ZONING FROM:

B-1 to B-2

APPLICANT:

FRED GARVIN

**ADDRESS TO
BE REZONED:**

1507 S WS YOUNG






PROPERTY OWNER:

FRED AND LINDA GARVIN

LEGAL DESCRIPTION:

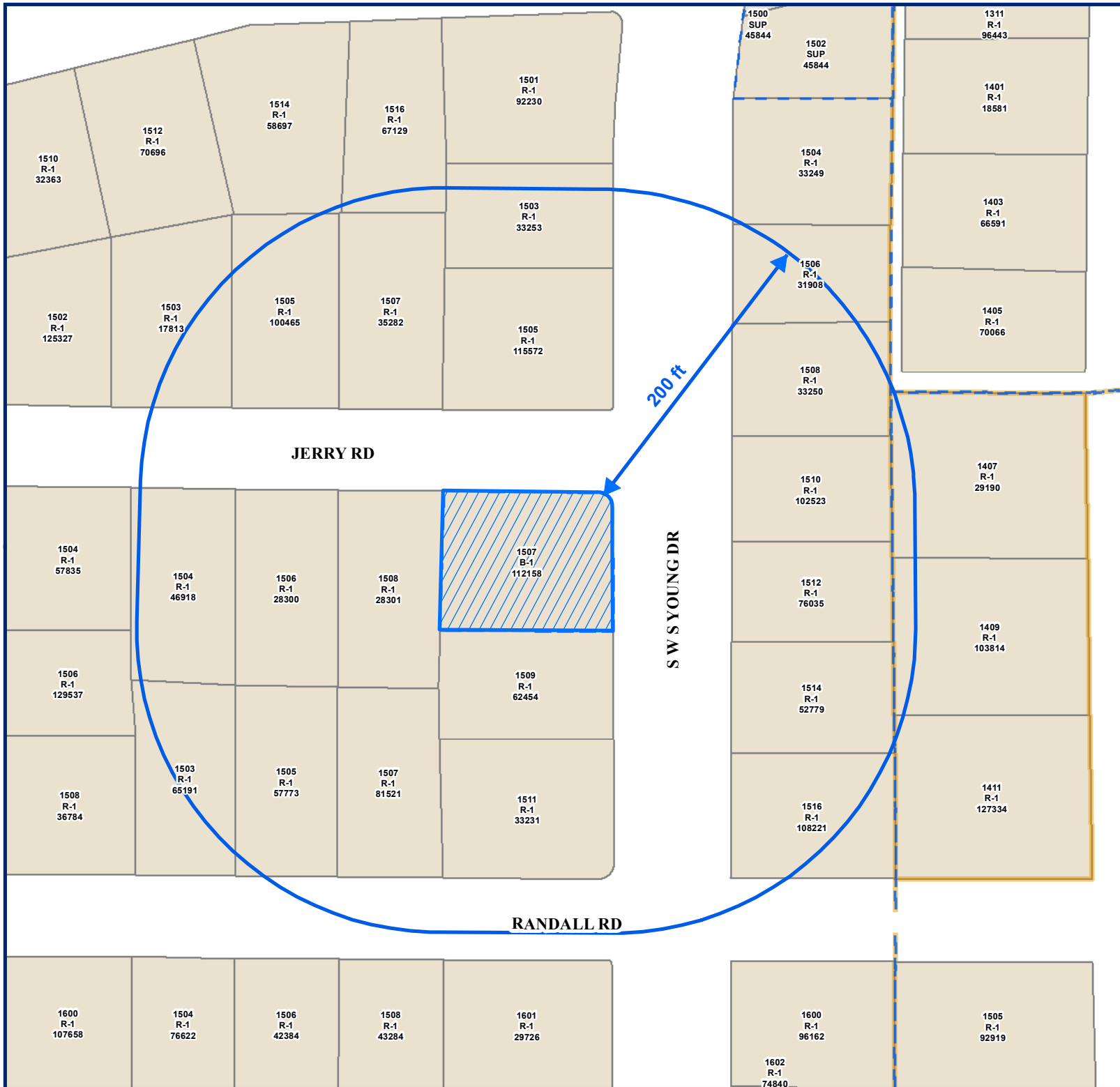
**LOT5,BLK 33,
CRESENT MANOR
2ND EXT.**

LEGEND

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



Date: 5/11/2015



CONSIDERATIONS

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

A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

B. Conditional Use Permit (if applicable)

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

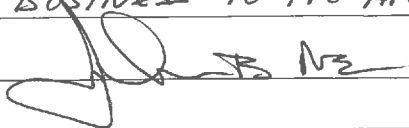
C. Conditions to Consider

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

YOUR NAME: <i>Ted Smith</i>	PHONE NUMBER:
CURRENT ADDRESS: <i>660 Fm 2410 Harler Heights TX</i>	
ADDRESS OF PROPERTY OWNED: <i>1516 SWS young Killeen</i>	
COMMENTS:	B-1 to B-2
<i>Excellent Idea</i>	
<i>ALL "FOR" IT</i>	
RECEIVED	
MAY 28 2015	
PLANNING	
SIGNATURE: <i>[Signature]</i>	SPO #Z15-09/18

YOUR NAME: <i>Koger Se GAC</i>	PHONE NUMBER:
CURRENT ADDRESS: <i>2005 EIKTRAIL H.H.</i>	
ADDRESS OF PROPERTY OWNED: <i>1511 SWS young Killeen</i>	
COMMENTS:	B-1 to B-2
<i>YES!!</i>	
<i>B-2 is GREAT</i>	
RECEIVED	
MAY 28 2015	
PLANNING	
SIGNATURE: <i>[Signature]</i>	SPO #Z15-09/17

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

YOUR NAME: John B. Roe	PHONE NUMBER: 254-690-8642
CURRENT ADDRESS: 1505 Jerry Rd Killeen TX 76541	
ADDRESS OF PROPERTY OWNED: 1505 Jerry Rd Killeen TX 76541	
COMMENTS:	B-1 to B-2
I am opposed to any more rezoning in this area. For one individual	
If city wants to rezone try rezoning all of W.S. Young in this area. Not spot rezoning!	
I believe this would benefit the city more by bringing real business to the area	
SIGNATURE: THANK YOU 	SPO #Z15-09/04

RECEIVED

JUN 2 2015

PLANNING

CUT HERE

YOUR NAME:	Nicole J. CARON	PHONE NUMBER:	254-392 0426
CURRENT ADDRESS:	1519 Hazelnut DR	Clarker Heights TX	76548
ADDRESS OF PROPERTY OWNED:	1512 S. WS YOUNG DR.	Killeen	76543
COMMENTS:	B-1 to B-2		
what kind of Business are we looking at?			
			RECEIVED
			MAY 28 2015
			PLANNING
SIGNATURE:	[Signature]		SPO #Z15-09/13

YOUR NAME:	HUGHES, JOHN W.	PHONE NUMBER:	
CURRENT ADDRESS:	1514 So. W.S. YOUNG DR	254.690.6409	
ADDRESS OF PROPERTY OWNED:			
COMMENTS:	B-1 to B-2		
I BOUGHT MY HOME NOW AT 1514 SO WS YOUNG.			
			RECEIVED
IT WAS A RESIDENTIAL NOT COMMERCIAL			MAY 28 2015
LET IT ALONE OR MAKE ALL OF			PLANNING
S. W.S. YOUNG COMMERCIAL (THIS HAS BEEN MY HOME FOR 45 YRS COME 9-9-2015.			
I VOTE TO DISAPPROVE THE RETAINING.			
			1514 SO WS YOUNG DR
			76543
SIGNATURE:	John W Hughes		SPO #Z15-09/15
5-23-2015			