



City of Killeen

Agenda - Final-Revised

City Council

Tuesday, August 24, 2021

5:00 PM

City Hall
Council Chambers
101 N. College Street
Killeen, Texas 76541

Call to Order and Roll Call

___ Jose Segarra, Mayor	___ Nina Cobb
___ Debbie Nash-King	___ Jessica Gonzalez
___ Michael Boyd	___ Ken Wilkerson
___ Mellisa Brown	___ Rick Williams

Invocation

Pledge of Allegiance

Approval of Agenda

Citizen Comments

This section allows members of the public to address the Council regarding any item(s), other than a public hearing item, on the agenda for Council's consideration. Each person shall sign up in advance, may speak only one time, and such address shall be limited to three (3) minutes. The Presiding Officer may allow a one (1) minute extension, if requested at the end of the original three (3) minute period. No other extensions will be allowed.

Consent Agenda

1. [MN-21-019](#) Consider Minutes of Special City Council Meeting of August 3, 2021.
Attachments: [Minutes](#)
2. [MN-21-020](#) Consider Minutes of Regular City Council Meeting of August 10, 2021.
Attachments: [Minutes](#)
3. [RS-21-115](#) Consider a memorandum/resolution accepting an American Rescue Plan Act (ARPA) Airport Grant.
Attachments: [Staff Report](#)
[Grant Offer](#)
[Presentation](#)
4. [RS-21-116](#) Consider a memorandum/resolution authorizing the execution of

Amendment No. 1 to the Professional Services Agreement with Halff Associates, Inc., in the amount of \$6,650 for the Retaining Wall Repair of Bermuda Ditch Project.

Attachments: [Staff Report](#)

[Agreement](#)

[Amendment No. 1](#)

[Supplemental Services Proposal](#)

[Certificate of Interested Parties](#)

[Presentation](#)

5. [RS-21-117](#) Consider a memorandum/resolution rejecting all bids for Bid 21-16 Valley Ditch Phase 1 - B.N.S.F. Railroad Drainage Improvements Project.

Attachments: [Staff Report](#)

[Bid Tabulation](#)

[Presentation](#)

6. [RS-21-118](#) Consider a memorandum/resolution approving a negotiated settlement between the Atmos Cities Steering Committee and Atmos Energy Corp, Mid-Tex Division regarding the 2021 Atmos Rate Review Mechanism Filing.

Attachments: [Staff Report](#)

[Resolution](#)

[FAQ](#)

[Presentation](#)

Resolutions

7. [RS-21-119](#) Consider a memorandum/resolution consenting to the continuation of the Declaration of Local State of Disaster for a Public Health Emergency.

Attachments: [Staff Report](#)

[Declaration](#)

[Presentation](#)

Public Hearings

8. [PH-21-030](#) HOLD a public hearing and consider an ordinance granting Atmos Energy a .202 acre temporary construction easement to be located on Lot 16, Block 1, Hunter's Chase Subdivision (Hunt Neighborhood Park), Killeen, Texas. (3rd of 3 readings)

Attachments: [Staff Report](#)

[Maps](#)

[Ordinance](#)

[Presentation](#)

9. [PH-21-043](#) HOLD a public hearing and consider an ordinance granting easements to Atmos Energy for approximately 0.221 acre consisting of a surface site easement, temporary workspace easement and access easement to be located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive, Killeen TX. (2nd of 3 readings)

Attachments: [Staff Report](#)

[Maps](#)

[Exhibit](#)

[Offer Letter](#)

[Ordinance](#)

[Presentation](#)

10. [PH-21-044](#) HOLD a public hearing and consider an ordinance requested by Joshua Welch on behalf of EAS Investments (Case #FLUM21-05) to amend the Comprehensive Plan's Future Land Use Map (FLUM) for approximately 72.359 acres out of the V. L. Evans Survey, Abstract 288, from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation. The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.

Attachments: [Staff Report](#)

[Maps](#)

[Minutes](#)

[Ordinance](#)

[Presentation](#)

11. [PH-21-045](#) HOLD a public hearing and consider an ordinance requested by Joshua Welch on behalf of EAS Investments (Case #Z21-24) to rezone approximately 92.435 acres out of the V. L. Evans Survey, Abstract 288, from "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multi-Family Residential District), and "B-5" (Business District) to "R-2" (Two-Family Residential District), "SF-2" (Single-Family Residential District), and "B-5" (Business District). The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.

Attachments: [Staff Report](#)

[Maps](#)

[Minutes](#)

[Ordinance](#)

[Responses](#)

[Considerations](#)

[Presentation](#)

12. [PH-21-046](#) HOLD a public hearing and consider an ordinance requested by Ian Paulin

on behalf of Killeen Square Inc. (Case #Z21-25) to rezone approximately 0.065 acre out of Lot 12, Block 1, of the Killeen Mall Subdivision Replat, from "RC-1" (Restaurant and Alcohol Sales District) to "B-C-1" (General Business and Alcohol Sales District). The property is locally addressed as 2301 East Central Texas Expressway, Suite 105, Killeen, Texas.

Attachments: [Staff Report](#)
[Maps](#)
[Minutes](#)
[Ordinance](#)
[Considerations](#)
[Presentation](#)

13. [PH-21-047](#) HOLD a public hearing and consider an ordinance approving a written service agreement and the annexation of approximately 7.40 acres of land out of the W.L. Harris Survey, Abstract No. 1155, lying contiguous to the existing city limits, being located south of West Stan Schlueter Loop and east of the Eagle Valley Subdivision, Killeen, Texas.

Attachments: [Staff Report](#)
[Service Agreement](#)
[Ordinance](#)
[Maps](#)
[Annexation Exhibit](#)
[Field Notes](#)
[Presentation](#)

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 August 20, 2021.

Lucy C. Aldrich, City Secretary

The public is hereby informed that notices for City of Killeen meetings will no longer distinguish between matters to be discussed in open or closed session of a meeting. This practice is in accordance with rulings by the Texas Attorney General that, under the Texas Open Meetings Act, the City Council may convene a closed session to discuss any matter listed on the agenda, without prior or further notice, if the matter is one that the Open Meetings Act allows to be discussed in a closed session.

This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in

accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7700, City Manager's Office, or TDD 1-800-734-2989.

Notice of Meetings

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

- *TML Annual Conference, October 6-8, 2021, Houston, Texas*
- *AUSA Annual Meeting, October 9-13, 2021, Washington, DC*

Dedicated Service -- Every Day, for Everyone!



City of Killeen

Legislation Details

File #: MN-21-019 **Version:** 1 **Name:** Minutes of Special City Council Meeting August 3, 2021
Type: Minutes **Status:** Minutes
File created: 7/30/2021 **In control:** City Council
On agenda: 8/24/2021 **Final action:**
Title: Consider Minutes of Special City Council Meeting of August 3, 2021.
Sponsors: City Secretary
Indexes:
Code sections:
Attachments: [Minutes](#)

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		

City of Killeen
Regular City Council Meeting
Killeen City Hall
August 3, 2021 at 5:00 p.m.

Presiding: Mayor Jose Segarra

Attending: Mayor Pro Tem Debbie Nash-King, Councilmembers Jessica Gonzalez, Nina Cobb, Michael Boyd, Ken Wilkerson, Rick Williams and Mellisa Brown.

Also attending were City Manager Kent Cagle, City Attorney Traci Briggs, City Secretary Lucy Aldrich, and Sergeant-at-Arms Ache.

Approval of Agenda

Motion was made by Mayor Pro Tem Nash-King to approve the agenda as written. Motion was seconded by Councilmember Wilkerson. The motion carried 5 to 0 with Councilmember Cobb and Councilmember Williams not present at the time of the vote.

Citizen Comments

No one signed up to speak.

Resolutions

RS-21-106 Consider a memorandum/resolution setting the preliminary tax rate for the FY 2022 Annual Budget and setting the date to hold a public hearing.

Staff Comments: Jon Locke, Executive Director of Finance

Mr. Locke presented City Council a historic view of property tax rates identifying changes to the rate being made in 2011, 2015, and 2021. Mr. Locke further explained the different rates: the current tax rate being 0.7330; the budgeted rate used to prepare the FY 2022 proposed budget of 0.7056; the no-new-revenue rate of 0.6713 and the voter-approval rate of 0.8357. Staff recommends that City Council set the preliminary tax rate at \$0.7056.

Motion was made by Mayor Pro Tem Nash-King who stated, "I move to set the preliminary tax rate at 0.7056 and to set the date of September 14, 2021 to hold a public hearing on the tax rate with the meeting being held at 5:00 p.m. at 101 N. College Street, Killeen, Texas." Without a second the motion died. Motion was made by Councilmember Boyd Motion who stated, "I move to set the preliminary tax rate at 0.7169 and to set the date of September 14, 2021 to hold a public hearing on the tax rate with the meeting being held at 5:00 p.m. at 101 N. College Street, Killeen, Texas." Motion was seconded by Councilmember Williams. Councilmember Brown made a motion to amend to approve by setting the preliminary tax rate at 0.7056 and setting the date of September 14, 2021 to hold a public hearing on the tax rate with the meeting being held at 5:00 p.m. at 101 N. College Street, Killeen, Texas. Without a second the amended motion died.

The City Secretary called for a record vote:

*Mayor Pro Tem Nash-King - Aye
Councilmember Gonzalez - Aye
Councilmember Cobb - Aye*

Special City Council Meeting
August 3, 2021 – Page 2

Councilmember Boyd - Aye
Councilmember Wilkerson - Aye
Councilmember Williams - Aye
Councilmember Brown - Nay

Motion carried 6 to 1 with Councilmember Brown in opposition.

Adjournment

With no further business, upon motion being made by Mayor Pro Tem Nash-King, seconded by Councilmember Gonzalez, and unanimously approved, the meeting was adjourned at 5:38 p.m.



City of Killeen

Legislation Details

File #: MN-21-020 **Version:** 1 **Name:** Minutes of Regular Meeting August 10, 2021
Type: Minutes **Status:** Minutes
File created: 7/30/2021 **In control:** City Council
On agenda: 8/24/2021 **Final action:**
Title: Consider Minutes of Regular City Council Meeting of August 10, 2021.
Sponsors: City Secretary
Indexes:
Code sections:
Attachments: [Minutes](#)

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		

City of Killeen
City Council Meeting
Killeen City Hall
August 10, 2021 at 5:00 p.m.

Presiding: Mayor Jose Segarra

Attending: Mayor Pro Tem Debbie Nash-King, Councilmembers Jessica Gonzalez, Nina Cobb, Michael Boyd, Ken Wilkerson, Rick Williams, and Mellisa Brown (via video conference).

Also attending were City Manager Kent Cagle, Deputy City Attorney Holli Clements, City Secretary Lucy Aldrich, and Sergeant-at-Arms Ache.

Councilmember Williams gave the invocation. Councilmember Gonzalez led everyone in the Pledge of Allegiance.

Approval of Agenda

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

Presentations

PR-21-005 Killeen Star Award Presentation
Mayor Segarra and Councilmember Williams recognized Killeen citizen Janice Taylor for being an outstanding community member.

Citizen Comments

No one signed up to speak.

Consent Agenda

MN-21-018 Consider Minutes of Regular City Council Meeting of July 27, 2021.

RS-21-094 Consider a memorandum/resolution terminating the Winter Storm Uri state of disaster.

RS-21-107 Consider a memorandum/resolution authorizing maintenance and repair of HVAC equipment by The Brandt Companies, LLC in an amount not to exceed \$80,500 in Fiscal Year 2021.

RS-21-108 Consider a memorandum/resolution authorizing the award of Bid No. 21-21 for a thermoplastic applicator to Striping Service and Supply, Inc. in an amount not to exceed \$104,617.44.

RS-21-109 Consider a memorandum/resolution authorizing the award of Bid No. 21-31, Water Meters to Aqua Metric Sales Company in an amount not to exceed \$500,000 in Fiscal Year 2021.

- RS-21-110** Consider a memorandum/resolution authorizing the award of Bid No. 21-32, Chaparral Elevated Storage Tank Project to Landmark Structures in the amount of \$5,253,000.
- RS-21-111** Consider a memorandum/resolution authorizing the award of a Professional Services Agreement with Kimley Horn and Associates for the Highway 195 Water Line and Tank Project in the amount of \$908,088.
- RS-21-112** Consider a memorandum/resolution authorizing emergency purchase of turf for Stonetree Golf Course in the amount of \$124,265.75.
- RS-21-113** Consider a memorandum/resolution authorizing the procurement of replacement mobile data terminals (MDT) for the Police Department from GTS Technology Solutions in an amount not to exceed \$86,929.
- RS-21-114** Consider a memorandum/resolution rescheduling the City Council meetings for October, November, and December 2021.

Motion was made by Mayor Debbie Nash-King to approve the consent agenda. Motion was seconded by Councilmember Boyd. Motion carried unanimously.

Public Hearings

- PH-21-037** **HOLD** a public hearing and consider an ordinance requested by Johnson-Bell Investments, L.L.C., (**Case #FLUM21-04**) to amend the Comprehensive Plan's Future Land Use Map (FLUM) from a 'General Residential' (GR) designation to a 'General Commercial' (GC) designation for approximately 0.53 acre, being Lot 1, Block 1, Lee Residential Addition. The property is locally addressed as 5102 Cinch Drive, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO CHANGE LOT 1, BLOCK 1, LEE RESIDENTIAL ADDITION, FROM A 'GENERAL RESIDENTIAL' DESIGNATION TO A 'GENERAL COMMERCIAL' DESIGNATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

Staff Comments: Tony McIlwain, Executive Director of Development Services. The subject property is designated as General Residential on the Future Land Use Map of the Comprehensive Plan. Staff mailed courtesy notices to twenty-seven (27) surrounding property owners regarding this request. Staff finds that the request to amend the FLUM from 'General Residential' (GR) to 'General Commercial' (GC) is appropriate at this location. The Planning & Zoning Commission recommended approval by a vote of 5 to 0.

Mayor Segarra invited the applicant to speak.

The applicant, Ms. Stacey Bell, appeared before city council to provide additional

information and answer questions.

Mayor Segarra opened the public hearing.

Mr. Louie Minor spoke in support of agenda item.

With no one else appearing, the public hearing was closed.

Motion was made by Mayor Pro Tem Nash-King to approve PH-21-037. Motion was seconded by Councilmember Boyd. Motion carried 6 to 1 with Councilmember Brown in opposition.

PH-21-038 HOLD a public hearing and consider an ordinance requested by Johnson-Bell Investments, L.L.C. (**Case #Z21-20**) to rezone approximately 0.53 acre from "R1-A" (Single-Family Garden Home Residential District) to "B-3" (Local Business District), being Lot 1, Block 1, Lee Residential Addition. The property is locally addressed as 5102 Cinch Drive, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF LOT 1, BLOCK 1, LEE RESIDENTIAL ADDITION, FROM "R-1A" (SINGLE-FAMILY GARDEN HOME RESIDENTIAL DISTRICT) TO "B-3" (LOCAL BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Comments: Tony McIlwain, Executive Director of Development Services. This property is designated as 'General Residential' (GR) on the Future Land Use Map (FLUM) of the Comprehensive Plan. This request is inconsistent with the Future Land Use Map (FLUM) of the Comprehensive Plan. However, a concurrent FLUM amendment request has been submitted. The surrounding area is made up of a mix of residential and commercial properties. Staff notified twenty-seven (27) surrounding property owners regarding this request. As of the date of this staff report, staff has received one (1) written response in opposition to the request. Staff recommends approval of the applicant's request to rezone the property. The Planning & Zoning Commission recommended approval by a vote of 4 to 1.

Mayor Segarra invited the applicant to speak.

The applicant, Ms. Stacey Bell, appeared before city council to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

Ms. Sandra Blankenship spoke in support of agenda item.

With no one else appearing, the public hearing was closed.

Motion was made by Mayor Pro Tem Nash-King to approve PH-21-038. Motion was seconded by Councilmember Boyd. Motion carried 6 to 1 with Councilmember Brown in opposition.

PH-21-039 HOLD a public hearing and consider an ordinance requested by Dong Kim, on behalf of Willie J & OK Roberts (**Case #Z21-18**) to rezone approximately 0.44 acre from "B-5" (Business District) to "B-C-1" (General Business and Alcohol Sales District), being Lot 2A, Block 1, J. W. Norman Subdivision Amendment. The property is locally addressed as 810 West Rancier Avenue, Suite 600, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF LOT 2A, BLOCK 1, J. W. NORMAN SUBDIVISION AMENDMENT FROM "B-5" (BUSINESS DISTRICT) TO "B-C-1" (GENERAL BUSINESS AND ALCOHOL SALES DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Comments: Tony McIlwain, Executive Director of Development Services.

This property is designated as 'General Commercial' (GC) on the Future Land Use Map (FLUM) of the Comprehensive Plan. This request is consistent with the Future Land Use Map (FLUM) of the Comprehensive Plan for the proposed "B-C-1" (General Business and Alcohol Sales District). Staff notified forty-six (46) surrounding property owners within 400' of the property. To date, staff has received no responses. Staff recommends approval of the applicant's zoning request. The Planning & Zoning Commission recommended approval by a vote of 4 to 1.

Mayor Segarra invited the applicant to speak.

The applicant was in the audience but did not speak.

Mayor Segarra opened the public hearing.

With no one appearing, the public hearing was closed.

Motion was made by Mayor Pro Tem Nash-King to disapprove PH-21-039. Motion was seconded by Councilmember Brown. Motion carried unanimously.

PH-21-040 HOLD a public hearing and consider an ordinance requested by Cactus Jack Development, Inc. on behalf of Charles R. and Ira Boggs (**Case #Z21-21**) to rezone approximately 128.82 acres from "A-R1" (Agricultural Single-Family Residential District), "B-5" (Business District), and "A" (Agricultural District) to a Planned Unit Development (PUD) with "R-1" (Single-Family Residential), "SF-2" (Single-Family Residential), "R-2" (Two-Family Residential), and "B-3" (Local Business District) uses, being out of the WL Harris Survey, Abstract No. 1155 and S.P.R.R. Co. Survey, Abstract No. 794. The property is locally addressed as 5901 South Fort Hood Street, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 128.82 ACRES OUT OF THE WL HARRIS SURVEY, ABSTRACT NO. 1155 AND S.P.R.R. CO. SURVEY, ABSTRACT NO. 794, FROM "A-R1" (AGRICULTURAL SINGLE-FAMILY RESIDENTIAL DISTRICT), "B-5" (BUSINESS DISTRICT), AND "A" (AGRICULTURAL DISTRICT) TO PLANNED UNIT DEVELOPMENT (PUD) WITH "R-1" (SINGLE-FAMILY RESIDENTIAL), "SF-2" (SINGLE-FAMILY RESIDENTIAL), "R-2" (TWO-FAMILY RESIDENTIAL), AND "B-3" (LOCAL BUSINESS DISTRICT) USES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Comments: Tony McIlwain, Executive Director of Development Services. This property is designated as 'General Residential' (GR) and 'Suburban Residential' (SR) on the Future Land Use Map (FLUM) of the Comprehensive Plan. This request is consistent with the Future Land Use Map (FLUM) of the Comprehensive. Staff notified twenty (20) surrounding property owners within 400' of the property. Staff has received two (2) written responses regarding this request - one (1) in support and one (1) in opposition. Staff recommends approval of the applicant's zoning request. The Planning & Zoning Commission recommended approval by a vote of 5 to 0.

Mayor Segarra invited the applicant to speak.

The applicant, Mr. Joseph Theriot, appeared before city council to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

Mr. Louie Minor spoke in support of agenda item.

With no one else appearing, the public hearing was closed.

During discussions, Councilmember Cobb called for the vote. Mayor Pro Tem seconded the call for the vote. Call for the vote carried unanimously. Motion was made by Councilmember Boyd to approve PH-21-040. Motion was seconded by Mayor Pro Tem Nash-King. Motion carried 6 to 1 with Councilmember Brown in opposition.

PH-21-041 HOLD a public hearing and consider an ordinance requested by Mitchell & Associates on behalf of Twin Creek Joint Venture II (**Case #Z21-22**) to rezone approximately 2.27 acres from "B-5" (Business District) to "R-2" (Two-Family Residential District), being Lot 6, Block 2, Twin Creek Addition Section Two. The property is locally addressed as 4202 Water Street, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 2.27 ACRES BEING LOT 6,

BLOCK 2, TWIN CREEK ADDITION SECTION TWO, FROM "B-5" (BUSINESS DISTRICT) TO "R-2" (TWO-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Comments: Tony McIlwain, Executive Director of Development Services. This property is designated as 'General Residential' (GR) on the Future Land Use Map (FLUM) of the Comprehensive Plan. This request is consistent with the Future Land Use Map (FLUM) of the Comprehensive. Staff notified forty-two (42) surrounding property owners within 400' of the property. Staff has not received any responses regarding this request. Staff recommends approval of the applicant's zoning request. The Planning & Zoning Commission recommended approval by a vote of 5 to 0.

Mayor Segarra invited the applicant to speak.

The applicant was in the audience but did not speak.

Mayor Segarra opened the public hearing.

With no one appearing, the public hearing was closed.

Motion was made by Councilmember Brown to approve PH-21-041. Motion was seconded by Councilmember Boyd. Motion carried unanimously.

PH-21-042 HOLD a public hearing and consider an ordinance requested by Mitchell & Associates on behalf of Fameco-Texas, L.L.C. (**Case #Z21-23**) to rezone approximately 0.237 acre from "R-MH" (Residential Mobile Home District) to "R-2" (Two-Family Residential District). The property is locally addressed as 413 E. Dunn Avenue, Killeen, Texas.

The City Secretary read the caption of the ordinance.
AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 0.237 ACRES, BEING 413 E. DUNN AVENUE, FROM "R-MH" (RESIDENTIAL MOBILE HOME DISTRICT) TO "R-2" (TWO-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Comments: Tony McIlwain, Executive Director of Development Services. This property is designated as 'Residential-Commercial Mix' (RC-Mix) on the Future Land Use Map (FLUM) of the Comprehensive Plan. This request is consistent with the Future Land Use Map (FLUM) of the Comprehensive. Staff notified fifty-eight (58) surrounding property owners within 400' of the property. Staff has not received any responses regarding this request. Staff recommends approval of the applicant's zoning request. The Planning & Zoning Commission recommended approval by a vote of 5 to 0.

Mayor Segarra invited the applicant to speak.

The applicant was not in attendance.

Mayor Segarra opened the public hearing.

With no one appearing, the public hearing was closed.

Motion was made by Councilmember Wilkerson to approve PH-21-042. Motion was seconded by Councilmember Williams. Motion carried unanimously.

PH-21-043 HOLD a public hearing and consider an ordinance granting easements to Atmos Energy for approximately 0.221 acre consisting of a surface site easement, temporary workspace easement and access easement to be located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive, Killeen, TX, 76543. (1st of 3 readings)

The City Secretary read the caption of the ordinance.

AN ORDINANCE GRANTING EASEMENTS TO ATMOS ENERGY CORPORATION FOR APPROXIMATELY .221 ACRE CONSISTING OF A SURFACE SITE EASEMENT, TEMPORARY WORKSPACE EASEMENT, AND ACCESS EASEMENT LOCATED AT THE TERMINUS OF PERSIMMON DRIVE, ADJACENT TO 3008 PERSIMMON DRIVE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Comments: Tony McIlwain, Executive Director of Development Services Atmos Energy Corporation is requesting a 0.221 acre area in conjunction with a pipeline replacement. The surface site easement and access easement are permanent easements and Atmos Energy has submitted an initial offer of \$2,500 as compensation for the acreage within the site and any applicable damage to the remainder of the property. The temporary workspace easement shall automatically terminate on the date on which initial construction of the easement facilities has been completed and placed into service. City staff recommends that the first of three public hearings be held with the second being scheduled for August 24th and the third and final scheduled for September 28th.

Mayor Segarra opened the public hearing.

With no one appearing, the public hearing was closed.

Adjournment

With no further business, upon motion being made by Councilmember Williams, seconded by Councilmember Gonzalez, and unanimously approved, the meeting was adjourned at 6:31 p.m.



City of Killeen

Legislation Details

File #: RS-21-115 **Version:** 1 **Name:** Grant Offer
Type: Resolution **Status:** Resolutions
File created: 7/30/2021 **In control:** City Council
On agenda: 8/24/2021 **Final action:**
Title: Consider a memorandum/resolution accepting an American Rescue Plan Act (ARPA) Airport Grant.
Sponsors: Aviation Department
Indexes:
Code sections:
Attachments: [Staff Report](#)
[Grant Offer](#)
[Presentation](#)

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2021
TO: Kent Cagle, City Manager
FROM: Mike Wilson, Executive Director of Aviation
SUBJECT: American Rescue Plan Airport Grant

BACKGROUND AND FINDINGS:

The American Rescue Plan Act (ARPA), Public Law 117- 2, signed into law by the President on March 11, 2021, includes approximately \$8 Billion in economic relief to airports to prevent, prepare for, and respond to the COVID-19 pandemic.

The FAA has offered the City an ARPA Airport Grant in the amount of \$2,569,026 for the Killeen-Fort Hood Regional Airport. This grant can only be used for costs related to operations, personnel, cleaning, sanitization, janitorial services, and any other expenses relating to combating the spread of pathogens, and debt service payments.

THE ALTERNATIVES CONSIDERED:

Alternatives considered: (1) reject the grant; (2) accept the grant.

Which alternative is recommended? Why?

Alternative 2 is recommended. There are no available, reasonable alternative funding sources.

CONFORMITY TO CITY POLICY:

Yes

FINANCIAL IMPACT:

Acceptance of this grant will provide revenue of up to \$2,569,026 in account number 525-0000-332.15-02.

What is the amount of the expenditure in the current fiscal year? For future years?

N/A

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

City Council accept the ARPA Airport Grant and authorize the City Manager or designee to execute all necessary grant documents and any and all amendments within the amounts set by Federal, State and local law.

DEPARTMENTAL CLEARANCES:

Finance

Legal

ATTACHED SUPPORTING DOCUMENTS:

Grant Offer



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Southwest Region
Texas

FAA ASW-650
10101 Hillwood Parkway
Fort Worth, TX 76177

Airport Rescue Grant Transmittal Letter

July 30, 2021

Kent Cagle
City of Killeen
101 N. College Street
Killeen, TX 76541

Dear Mr. Cagle:

Please find the following electronic Airport Rescue Grant Offer, Grant No. 3-48-0361-046-2021 for Robert Gray AAF Airport. This letter outlines expectations for success. Please read and follow the instructions carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than **August 25, 2021** in order for the grant to be valid.
- c. You may not make any modification to the text, terms or conditions of the grant offer.
- d. The grant offer must be digitally signed by the sponsor's legal signatory authority and then routed via email to the sponsor's attorney. Once the attorney has digitally attested to the grant, an email with the executed grant will be sent to all parties.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System. The terms and conditions of this agreement require you draw down and expend these funds within four years.

An airport sponsor may use these funds for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. Please refer to the [Airport Rescue Grants Frequently Asked Questions](#) for further information.

With each payment request you are required to upload an invoice summary directly to Delphi. The invoice summary should include enough detail to permit FAA to verify compliance with the American Rescue Plan Act (Public Law 117-2). Additional details or invoices may be requested by FAA during the review of your payment requests.

As part of your final payment request, you are required to include in Delphi:

- A signed SF-425, *Federal Financial Report*
- A signed closeout report (a sample report is available [here](#)).

Until the grant is completed and closed, you are responsible for submitting a signed and dated SF-425 annually, due 90 days after the end of each Federal fiscal year in which this grant is open (due December 31 of each year this grant is open).

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

I am readily available to assist you and your designated representative with the requirements stated herein. The FAA sincerely values your cooperation in these efforts.

Sincerely,


Jesse Carriger (Jul 30, 2021 14:08 CDT)

Jesse Carriger
Manager, Texas
Airport District Office



U.S. Department
of Transportation
Federal Aviation
Administration

AIRPORT RESCUE GRANT

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date July 30, 2021

Airport/Planning Area Robert Gray AAF Airport

Airport Rescue Grant No. 3-48-0361-046-2021

Unique Entity Identifier 614829344

TO: City of Killeen

(herein called the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA an Airport Rescue Grant Application dated July 1, 2021, for a grant of Federal funds at or associated with the Robert Gray AAF Airport, which is included as part of this Airport Rescue Grant Agreement;

WHEREAS, the Sponsor has accepted the terms of FAA's Airport Rescue Grant offer;

WHEREAS, in consideration of the promises, representations and assurances provided by the Sponsor, the FAA has approved the Airport Rescue Grant Application for the Robert Gray AAF Airport, (herein called the "Grant" or "Airport Rescue Grant") consisting of the following:

WHEREAS, this Airport Rescue Grant is provided in accordance with the American Rescue Plan Act ("ARP Act", or "the Act"), Public Law 117-2, as described below, to provide eligible Sponsors with funding for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. Airport Rescue Grant amounts to specific airports are derived by legislative formula (See Section 7102 of the Act).

WHEREAS, the purpose of this Airport Rescue Grant is to prevent, prepare for, and respond to the coronavirus pandemic. Funds provided under this Airport Rescue Grant Agreement must be used only for purposes directly related to the airport. Such purposes can include the reimbursement of an airport's operational expenses or debt service payments in accordance with the limitations prescribed in the Act.

Airport Rescue Grants may be used to reimburse airport operational expenses directly related to Robert Gray AAF incurred no earlier than January 20, 2020.

Airport Rescue Grants also may be used to reimburse a Sponsor's payment of debt service where such payments occur on or after March 11, 2021. Funds provided under this Airport Rescue Grant Agreement will be governed by the same principles that govern "airport revenue." New airport development projects not directly related to combating the spread of pathogens may not be funded with this Grant. Funding under this Grant for airport development projects to combat the spread of pathogens will be reallocated using an addendum to this Agreement for identified and approved projects.

NOW THEREFORE, in accordance with the applicable provisions of the ARP Act, Public Law 117-2, the representations contained in the Grant Application, and in consideration of (a) the Sponsor's acceptance of this Offer; and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant and in compliance with the conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% percent of the allowable costs incurred as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$2,569,026, allocated as follows:
 \$2,569,026 ARPA KV2021
2. **Grant Performance.** This Airport Rescue Grant Agreement is subject to the following Federal award requirements:
 - a. The Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this agreement, and is the date signed by the last Sponsor signatory to the agreement. The end date of the period of performance is 4 years (1,460 calendar days) from the date of acceptance. The period of performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. (2 Code of Federal Regulations (CFR) § 200.1)
 - b. The Budget Period:
 1. For this Airport Rescue Grant is 4 years (1,460 calendar days). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the budget period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
 - c. Close out and Termination.

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the Grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344)
2. The FAA may terminate this Airport Rescue Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Unallowable Costs.** The Sponsor shall not seek reimbursement for any costs that the FAA has determined to be unallowable under the ARP Act.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the Grant Application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages only.
5. **Final Federal Share of Costs.** The United States' share of allowable Grant costs is 100%.
6. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the Grant without undue delays and in accordance with this Airport Rescue Grant Agreement, the ARP Act, and the regulations, policies, standards, and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from funding eligible expenses under the Grant that exceeds three months or a 25 percent reduction in time devoted to the Grant, and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this agreement and any addendum that may be attached hereto at a later date by mutual consent.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs unless this offer has been accepted by the Sponsor on or before August 25, 2021, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Airport Rescue Grant Agreement, the ARP Act, or other provision of applicable law. For the purposes of this Airport Rescue Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or relate to this Airport Rescue

Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Airport Rescue Grant Agreement.

11. System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.

12. Electronic Grant Payment(s). Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. Air and Water Quality. The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Agreement.

14. Financial Reporting and Payment Requirements. The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

15. Buy American. Unless otherwise approved in advance by the FAA, in accordance with 49 United States Code (U.S.C.) § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

16. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

17. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting the entity is not excluded or disqualified from participating; or

3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g., subcontracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debar a contractor, person, or entity.

18. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Airport Rescue Grant or subgrant funded by this Grant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - A. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - B. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded by this Airport Rescue Grant.

19. Trafficking in Persons.

- a. You as the recipient, your employees, subrecipients under this Airport Rescue Grant, and subrecipients' employees may not –
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the Airport Rescue Grant.
- b. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 1. Is determined to have violated a prohibition in paragraph a. of this Airport Rescue Grant Agreement term; or
 2. Has an employee who is determined by the agency official authorized to terminate the Airport Rescue Grant Agreement to have violated a prohibition in paragraph a. of this Airport Rescue Grant term through conduct that is either –
 - A. Associated with performance under this Airport Rescue Grant; or

- B. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 2 CFR Part 1200.
- c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this Grant condition during this Airport Rescue Grant Agreement.
- d. Our right to terminate unilaterally that is described in paragraph a. of this Grant condition:
 - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - 2. Is in addition to all other remedies for noncompliance that are available to the FAA under this Airport Rescue Grant.

20. Employee Protection from Reprisal.

- a. Prohibition of Reprisals —
 - 1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) of this Grant condition, information that the employee reasonably believes is evidence of:
 - a. Gross mismanagement of a Federal grant;
 - b. Gross waste of Federal funds;
 - c. An abuse of authority relating to implementation or use of Federal funds;
 - d. A substantial and specific danger to public health or safety; or
 - e. A violation of law, rule, or regulation related to a Federal grant.
 - 2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Federal employee responsible for oversight or management of a grant program at the relevant agency;
 - e. A court or grand jury;
 - f. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - g. An authorized official of the Department of Justice or other law enforcement agency.
 - 3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a. of this Airport Rescue Grant Agreement may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 - 4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
21. **Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Airport Rescue Grant Agreement.
22. **Face Coverings Policy.** The sponsor agrees to implement a face-covering (mask) policy to combat the spread of pathogens. This policy must include a requirement that all persons wear a mask, in accordance with Centers for Disease Control (CDC) and Transportation Security Administration (TSA) requirements, as applicable, at all times while in all public areas of the airport property, except to the extent exempted under those requirements. This special condition requires the airport sponsor continue to require masks until [Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel](#), is no longer effective.

SPECIAL CONDITIONS FOR USE OF AIRPORT RESCUE GRANT FUNDS

CONDITIONS FOR EQUIPMENT -

1. **Equipment or Vehicle Replacement.** The Sponsor agrees that when using funds provided by this Grant to replace equipment, the proceeds from the trade-in or sale of such replaced equipment shall be classified and used as airport revenue.
2. **Equipment Acquisition.** The Sponsor agrees that for any equipment acquired with funds provided by this Grant, such equipment shall be used solely for purposes directly related to combating the spread of pathogens at the airport.
3. **Low Emission Systems.** The Sponsor agrees that vehicles and equipment acquired with funds provided in this Grant:
 - a. Will be maintained and used at the airport for which they were purchased; and
 - b. Will not be transferred, relocated, or used at another airport without the advance consent of the FAA.

The Sponsor further agrees that it will maintain annual records on individual vehicles and equipment, project expenditures, cost effectiveness, and emission reductions.

CONDITIONS FOR UTILITIES AND LAND -

4. **Utilities Proration.** For purposes of computing the United States' share of the allowable airport operations and maintenance costs, the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport.
5. **Utility Relocation in Grant.** The Sponsor understands and agrees that:
 - a. The United States will not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs;

- b. FAA participation is limited to those utilities located on-airport or off-airport only where the Sponsor has an easement for the utility; and
- c. The utilities must serve a purpose directly related to the Airport.

The Sponsor's acceptance of this Offer and ratification and adoption of the Airport Rescue Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor. The Offer and Acceptance shall comprise an Airport Rescue Grant Agreement, as provided by the ARP Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to this Grant. The effective date of this Airport Rescue Grant Agreement is the date of the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated July 30, 2021

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**



Jesse Carriger (Jul 30, 2021 14:08 CDT)

(Signature)

Jesse Carriger

(Typed Name)

Manager, Texas ADO

(Title of FAA Official)

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Airport Rescue Grant Application and incorporated materials referred to in the foregoing Offer under Part I of this Airport Rescue Grant Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Airport Rescue Grant Application and all applicable terms and conditions provided for in the ARP Act and other applicable provisions of Federal law.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct. ¹

Dated

City of Killeen

(Name of Sponsor)

(Signature of Sponsor's Designative Official/Representative)

By:

(Type Name of Sponsor's Designative Official/Representative)

Title:

(Title of Sponsor's Designative Official/Representative)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Texas. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the ARP Act. The Sponsor understands funding made available under this Grant Agreement may only be used for costs related to operations, personnel, cleaning, sanitization, janitorial services, and combating the spread of pathogens at the airport incurred on or after January 20, 2020, or for debt service payments that are due on or after March 11, 2021. Further, it is my opinion the foregoing Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated at _____

By: _____

(Signature of Sponsor's Attorney)

AIRPORT RESCUE GRANT ASSURANCES

AIRPORT SPONSORS

A. General.

1. These Airport Rescue Grant Assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the American Rescue Plan Act of 2021 ("ARP Act," or "the Act"), Public Law 117-2. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Airport Rescue Grant offer by the sponsor, these assurances are incorporated into and become part of this Airport Rescue Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Airport Rescue Grant that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Airport Rescue Grant including but not limited to the following:

FEDERAL LEGISLATION

- a. 49 U.S.C. Chapter 471, as applicable
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et. seq.
- c. Federal Fair Labor Standards Act — 29 U.S.C. 201, et. seq.
- d. Hatch Act — 5 U.S.C. 1501, et. seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et. seq.
- f. National Historic Preservation Act of 1966 — Section 106 — 16 U.S.C. 470(f).
- g. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.
- h. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et. seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 — Section 102(a) — 42 U.S.C. 4012a.
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 — 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et. seq.

- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et. seq.
- s. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.
- t. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et. seq.
- u. Copeland Anti-kickback Act — 18 U.S.C. 874.1.
- v. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et. seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 — 31 U.S.C. 7501, et. seq.²
- y. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 14005 – Ensuring the Future Is Made in All of America by All of America's Workers.

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.^{3,4}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- f. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹

- h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).¹
- j. 49 CFR Part 20 – New restrictions on lobbying.
- k. 49 CFR Part 21 – Nondiscrimination in Federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- l. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program.
- n. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- r. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- s. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

FOOTNOTES TO AIRPORT RESCUE GRANT ASSURANCE B

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ Cost principles established in 2 CFR Part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁴ Audit requirements established in 2 CFR Part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. Purpose Directly Related to the Airport

It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; that an official decision has been made by the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing

and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Good Title.

It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.
- c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. Consistency with Local Plans.

Any project undertaken by this Grant Agreement is reasonably consistent with plans (existing at the time of submission of the Airport Rescue Grant application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

6. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where any project undertaken by this Grant Agreement may be located.

7. Consultation with Users.

In making a decision to undertake any airport development project undertaken by this Grant Agreement, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

8. Pavement Preventative Maintenance.

With respect to a project undertaken by this Grant Agreement for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport, including Airport Rescue Grant funds provided under this Grant Agreement. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

9. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

10. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on the airport funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

11. Veteran's Preference.

It shall include in all contracts for work on any airport development project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

12. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and

operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;
 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

13. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

14. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

15. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

- a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and
- b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

16. Airport Revenues.

- a. This Grant shall be available for any purpose for which airport revenues may lawfully be used to prevent, prepare for, and respond to coronavirus. Funds provided under this Airport Rescue Grant Agreement will only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s) subject to this agreement and all applicable addendums for costs

related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments as prescribed in the Act.

- b. For airport development, 49 U.S.C. § 47133 applies.

17. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

18. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

19. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 - 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 - 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 - 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan

as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

20. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 - 1. Programs and Activities. If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2. Facilities. Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 - 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

- c. Duration

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2. So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language

It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

"The City of Killeen, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT Acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, or program; and
 - B. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, grant, or program.
 - C. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
 - D. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

21. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

22. Policies, Standards and Specifications.

It will carry out any project funded under an Airport Rescue Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects, as of July 1, 2021.

23. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

24. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

25. Acquisition Thresholds.

The FAA deems equipment to mean tangible personal property having a useful life greater than one year and a per-unit acquisition cost equal to or greater than \$5,000. Procurements by micro-purchase means the acquisition of goods or services for which the aggregate dollar amount does not exceed \$10,000, unless authorized in accordance with 2 CFR § 200.320. Procurement by small purchase procedures means those relatively simple and informal procurement methods for securing goods or services that do not exceed the \$250,000 threshold for simplified acquisitions.

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current Series 150 Advisory Circulars (ACs) for Airport Projects at
http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars



FEDERAL AVIATION ADMINISTRATION
AMERICAN RESCUE PLAN ACT (ARPA)
AIRPORT GRANT

RS-21-115

August 17, 2021

Background

2

- The American Rescue Plan Act (ARPA) was signed into law on March 11, 2021
- \$8 Billion awarded to U.S. Airports
- FAA has offered the City a \$2,569,026 grant to prevent, prepare for, and respond to the COVID-19 pandemic at Killeen-Fort Hood Regional Airport (KFHRA)

Discussion

3

- ARPA Airport Grant can only be used for costs related to operations, personnel, cleaning, sanitization, janitorial services, and other expenses related to combating the spread of pathogens, and debt service payments

Alternatives

4

- ☐ Do not accept the grant
- ☐ Accept the grant

Recommendation

5

- City Council accept the ARPA Airport Grant and authorize the City Manager or designee to execute all necessary grant documents and any and all amendments within the amounts set by Federal, State and local law



City of Killeen

Legislation Details

File #:	RS-21-116	Version:	1	Name:	Bermuda Ditch Retaining Wall Repair Amendment No. 1
Type:	Resolution	Status:		Status:	Resolutions
File created:	8/2/2021	In control:		In control:	City Council
On agenda:	8/24/2021	Final action:		Final action:	
Title:	Consider a memorandum/resolution authorizing the execution of Amendment No. 1 to the Professional Services Agreement with Halff Associates, Inc., in the amount of \$6,650 for the Retaining Wall Repair of Bermuda Ditch Project.				
Sponsors:	Development Services, Finance Department, City Attorney Department				
Indexes:					
Code sections:					
Attachments:	Staff Report Agreement Amendment No. 1 Supplemental Services Proposal Certificate of Interested Parties Presentation				

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2021

TO: Kent Cagle, City Manager

FROM: Tony McIlwain, Executive Director of Development Services

SUBJECT: Authorize the execution of Amendment No. 1 to the Professional Services Agreement with Halff Associates, Inc., in the amount of \$6,650 for the Retaining Wall Repair of Bermuda Ditch Project.

BACKGROUND AND FINDINGS:

City staff received a call from the property owner of 1124 Goodhue Drive notifying us about a failing retaining wall located at their rear property line. Upon inspection of the site, staff noticed that the retaining wall adjoining the opposite side of Bermuda Ditch, adjacent to the property located at 1127 Meadow Drive, is also failing. The retaining wall was built in conjunction with concrete-lined segments of Bermuda Ditch, and is an integral part of the manmade improvements. The concrete-lined portion of Bermuda Ditch runs in-between Goodhue Dr. and Meadow Dr. The retaining wall provides support to the ditch and to the backyards of multiple properties. It will be necessary to have engineered design plans prepared for the failing retaining wall. As such, the City contracted with a design firm to complete the project. Fixing the retaining wall is important for these property owners and is a preventive maintenance type project that will provide long-term benefits for the residents and for the City.

On June 7, 2021, a Professional Services Agreement (PSA) was executed with Halff Associates, Inc., for a not-to-exceed amount of \$48,950. The scope included complete survey and design for the replacement and reconstruction of the retaining wall on the west of the ditch. (A detailed scope of services is listed in the attached agreement.) However, later in June, due to the heavy rainfall, the retaining wall behind 1124 Goodhue Dr. collapsed and the retaining wall on the opposite side of Bermuda Ditch is in danger of falling. City staff installed concrete blocks to control further erosion of the backyard at Goodhue Drive. Consequently, staff requested the designers to continue their design for the east wall adjacent to 1127 Meadow Dr, which triggered Amendment No. 1 to the existing Professional Services Agreement for an amount of \$6,650, bringing the total contract amount to \$55,600. Funding for the design of this project is available in the current fiscal year. Funding for construction of this project is proposed in FY22 CIP Budget.

This professional service agreement amendment will allow Halff Associates, Inc., to produce design plans and specifications for the repair of the existing Bermuda Ditch wall segment from 1121 Meadow Drive to Wheeler Avenue, approximately 200 linear feet.

THE ALTERNATIVES CONSIDERED:

Alternative 1 - Do not approve this amendment. Doing so will continue to pose a threat as the fall of retaining wall is imminent. Fixing the problem at a later date will cost the city more money.

Alternative 2 - Approve Amendment No. 1 to the Agreement with Halff Associates, Inc. They have already begun the Engineering Report and site analysis.

Recommendation - City staff recommends that **Alternative 2** be pursued. This is the most expeditious plan to eliminate collapse of wall on the East side of Bermuda Ditch.

CONFORMITY TO CITY POLICY:

This item conforms to state, city, and local purchasing policies and regulations. Amendment No. 1 would bring the total contract amount to over \$50,000 which requires City Council approval.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The amendment amount is \$6,650.

Is this a one-time or recurring expenditure?

This is a one-time expenditure.

Is this expenditure budgeted?

Yes, funding for this project is available in the Drainage CIP Fund, account 375-8934-493.69-01 in the current fiscal year.

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes.

RECOMMENDATION:

Staff recommends that the City Council authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with Halff Associates, Inc., in the amount of \$6,650 for the Retaining Wall Repair of Bermuda Ditch Project, and that the City Manager is expressly authorized to execute any and all change orders within the amounts set by the state and local law.

DEPARTMENTAL CLEARANCES:

Development Services
Finance
City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Agreement

Amendment No. 1

Supplemental Services Proposal

Certificate of Interested Parties

LETTER OF AGREEMENT

This is a Letter of Agreement ("Agreement") between the **City of Killeen** (referred to herein as "City") and **Halff Associates, Inc.** (referred to herein as "Contractor"), collectively the "Parties". This Agreement is made this 7 day of June 2021.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

Scope of Agreement. The purpose of this Agreement is to enlist the professional services of Contractor to:

Surveying and engineering services associated with the Bermuda Ditch Retaining Wall repair / reconstruction improvements (the "Project"). A further defined scope of services is included in Exhibit A of this agreement.

Term of Agreement. This Agreement shall commence on the 7 day of June 2021, and terminate 365 calendar days after commencement of work on the Project.

Consideration. Contractor agrees to provide the services stated above:

 at the rate of \$ per hour; or

x for the lump sum payment not to exceed \$48,950.00. To be billed monthly.

Independent Contractor. Contractor shall act as an Independent Contractor. Under no circumstances shall Contractor be deemed an employee or partner of City.

Applicable Laws: Contractor shall follow all applicable local, State, and Federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If any unusual substances or extraordinary amounts of the aforementioned substances are encountered, the Contractor will contact the City to contact the State and the relevant agency with authority for regulation of the substance.

Standard of Care. The standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the Contractor's profession practicing under similar circumstances at the same time and in the same locality.

Insurance. Contractor shall procure and maintain insurance in the following amounts:

Worker's Compensation	Statutory
Automobile Liability	\$500,000 Combined single Limit for each accident (Bodily injury and property damage).
General Liability	\$1,000,000 each occurrence (Bodily injury and property damage).
Professional Liability	\$1,000,000 per claim/ annual aggregate.

On all policies, except Worker's Compensation and Professional Liability, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work on the Project.

Subcontracts and Assignments. Contractor's rights and obligations hereunder may not be transferred or assigned without prior written approval by City. Assignments without prior approval shall be void and of no effect.

Indemnification. To the fullest extent permitted by law, City or Contractor, as applicable, shall indemnify and hold harmless the other party, and the other party's officers, directors, partners and employees from and against reasonable costs in proportion to Party's liability, losses and damages (including, without limitation, reasonable attorney's and other professionals' fees, and all court costs) directly caused by the negligent acts or omissions of the City or Contractor, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement or the Project.

Termination. This Agreement may be terminated by either party for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period. City may terminate this Agreement for convenience effective upon receipt of written notice declaring the same and Contractor shall be compensated for all work completed at that time in accordance with this Agreement.

Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

Severability. If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

Survival. Any provision of this Agreement providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Agreement shall continue in full force and effect until such a time as all duties have been fully performed.

Non-waiver. Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Agreement.

Entire Agreement. This Agreement shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

By signing this contract, Contractor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

SIGNED, ACCEPTED AND AGREED TO this ____ day of _____, 2021, by the undersigned Parties who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

City
**Danielle
Singh**

Kent Cagle, City Manager
City of Killeen

Digitally signed by
Danielle Singh
Date: 2021.06.07
12:02:09 -05'00'

Tony D.
Molinaro, AICP,
CFM
Hilli
Clements

Contractor (Halff Associates, Inc.)



Printed: Dan Franz
Title: Director of Public Works

EXHIBIT A
PROPOSED PROJECT DESCRIPTION/SCOPE OF SERVICES
FOR CITY OF KILLEEN
BERMUDA DITCH IMPROVEMENTS
CITY OF KILLEEN, TEXAS

PROJECT DESCRIPTION

The proposed Scope of Services delineates the items that Halff Associates, Inc. (Engineer) will provide to the City of Killen (City) for design of the failed concrete lined Bermuda ditch and adjacent retaining wall for the segment from 1110 Goodhue Dr to Wheeler Ave . The Bermuda ditch runs along the alley of Goodhue Dr and Meadow Dr from 1305 Meadow Dr to I-14. The Engineer will prepare Construction Plans, Specifications and Estimates (PS&E) for bidding and construction of the project. The design services are separated into the following Tasks and described in more detail below:

- Task 1: Project Management and Coordination
- Task 2: Survey
- Task 3: Plans, Specifications & Estimates (PS&E)

TASK 1: PROJECT MANAGEMENT & COORDINATION

1.1 Progress Meetings, Reports, and Monthly Invoicing

For the work performed, Engineer will prepare Monthly Invoices billed as a percentage complete per task and Progress Reports. These Reports will include:

- Tasks completed during the reporting period & planned for upcoming periods.
- Issues encountered and recommended actions to address them.
- Engineer will account for (2) two site visits for the overall project and coordination
- Overall Project status and development progress, including a tabulation of tasks showing percentage complete, and supporting documentation

1.2 Coordination and administration of work products

- Coordination - Engineer shall designate one Texas Registered Professional Engineer as the Project Manager responsible for Project management, coordination, and communications.
- Administration - Engineer will manage Project activities (including subconsultants), direct the project team/staff, attend meetings with City staff, handle deliverables, and keep records of project communications / files.

TASK 2: SURVEY

The limits of the survey shall include the area of the drainage channel where the concrete wall is failing and extend 50-feet to the north and south, along the drainage channel (approximately 200 linear feet total). In addition, the design limits will extend 10-feet beyond the top of wall, into private property, on both sides of the channel.

Deliverables for this task will include a MicroStation drawing of the design survey, along with associated files (GPK, tin, dat).

The Following Surveying Services Tasks are included in this Scope of Services:

- This survey will be based on the State Plane Coordinate System, Texas Central Zone, NAD83.
 - Obtain field data sufficient to produce contours at 1-foot intervals.
 - Locate above ground visible improvements (i.e. edges of pavement, curbs and gutter, sidewalks, building corners etc.).
 - Locate visible utilities either found by our surveyors or located for us by utility companies and/or other agencies.
 - Field tie existing trees 8-inches diameter and greater.
 - Perform quality control for survey requirements.

This Project is Subject to the Following Assumptions:

- Right-of-entry for all surveying work performed in private property will be provided by the client.
- This scope does not provide for depicting boundary lines, or for performing any boundary related surveying services.
- This scope does not provide for locating subsurface utilities.
- This scope does not provide for the production of “hard copy” paper deliverables.

TASK 3: PLANS, SPECIFICATIONS AND ESTIMATES (PS&E)

3.1 Construction Plans - Produce design plans and specifications for repair of the existing Bermuda ditch wall. The general construction plans are expected to include:

- Cover Sheet
- General notes
- Project Layout
- Traffic Control Plan
- Structural Plans and Details
- Erosion Control Plan and Details

- Civil Details

Engineer will submit 90% plans to the City for review and comment. Plans and specifications will be completed (100%) based on City comments and submitted to City for a final review before issuance for bid.

3.2 Engineer will prepare an Opinion of Probable Construction Cost (OPCC) for the Project. The OPCC will be provided to the City as part of the 90% and 100% deliverable.

COMPENSATION

Compensation for services identified in Tasks 1-3 shall be paid by the City to the Engineer for all services required for work stated as lump sum amounts. A breakdown of the estimated effort for all Tasks is provided with this proposal. Any additional scope of work not identified in Tasks 1-3 which may be requested by the City or required for the project will be authorized through a Supplemental design agreement.

ITEMS EXCLUDED FROM THE SCOPE OF SERVICES

1. Public meetings other than those specified in this proposal.
2. Design of roadway improvements
3. Geotechnical Engineering
4. Formal Design of landscaping, irrigation, or hardscape (enhanced flatwork) facilities
5. Environmental services or permitting
6. Bid and Construction Phase services
7. Preparation of a Project Manual or any technical specifications
8. Design of noise abatement facilities
9. Design of public and franchised utility relocations
10. Preparing/submitting a Stormwater Pollution Prevention Plan (SWPPP)
11. Preparing property parcels for acquisition
12. Property acquisition or negotiations
13. Filing fees, permit fees
14. Investigation and preparation of any grant or funding agreements
15. Jurisdictional permitting of any kind
16. Coordination with FEMA, TCEQ, TxDOT, or Bell County other than items currently included in this proposal.
17. Preparation of an Environmental Assessment (EA).
18. Preparation of an Environmental Impact Statement (EIS).
19. Preparation, submission, and attendance of a Design Summary Report (DSR) and Design Concept Conference.
20. Preparation of any Utility Conflict Analysis and documentation of existing private utility ownership.
21. Coordination with any private utility company.

Any additional services required beyond those specifically identified in this proposal are excluded from the scope of services to be provided under this agreement. A scope and commensurate fee for any required additional services would be negotiated and provided under a separate supplemental agreement.

Exhibit B – Bermuda Ditch Fee Summary

PROJECT TASK	PROJECT MANAGER	PROJECT ENGR III (PE)	STRUCTURAL ENGR (PE)	ET II	CADD/GIS TECH I	CONTRACT ADMIN	EXPENSES	TOTALS
BERMUDA DITCH REPAIR IMPROVEMENTS								
PROJECT MANAGEMENT								
Progress meetings, Reports, and Monthly Invoicing	10					2		\$2,490
Coordination and administration of work products	6							\$1,410
								\$0
Subtotal	16	0	0	0	0	2	\$ -	\$3,900
FIELD SURVEY								
Topo Survey							\$ 5,500.00	\$5,500
Subtotal	0	0	0	0	0	0	\$ 5,500.00	\$5,500
PS&E								
90% Plan Preparation	3			22	44			\$9,255
100% Plan Preparation	3			8	12			\$2,765
Structural Design			40	80	60		\$ 2,000.00	\$25,300
Cost Estimates (90%)	3	3						\$1,290
								\$0
Subtotal	9	3	40	110	116	0	\$ 2,000.00	\$38,610
TOTAL HOURS	29	3	40	110	116	2	316	
PERCENT OF TOTAL LABOR (hours)	9%	1%	13%	35%	37%	1%	100%	
TOTAL ESTIMATED FEE	\$ 6,815.00	\$ 585.00	\$ 8,400.00	\$ 12,650.00	\$ 11,020.00	\$ 140.00	\$ 7,500.00	\$48,950

CITY OF KILLEEN

PROJECT: BERMUDA DITCH IMPROVEMENTS -PRELIMINARY SCHEDULE

	2021				
	May	June	July	Aug	Sept
PROJECT TASKS					
SCOPE & FEE					
NTP					
PROJECT MANAGEMENT					
SURVEY					
STRUCTURAL ASSESSMENT					
PS&E PREPARATION					
QUANTITIES AND COST ESTIMATE					
INTERNAL QAQC					
CITY REVIEW (90% PS&E)					
ADDRESS CITY COMMENTS					
DELIVERABLE TO CITY					

CONTRACT AMENDMENT
NO. 1
Retaining Wall Repair of Bermuda Ditch Project

This Amendment shall be made a part of the City of Killeen Bermuda Ditch Retaining Wall Repair Project Professional Services Agreement. This Contract was entered into on June 7, 2021. The change in the fee structure is as follows:

JUSTIFICATION:

On June 7, 2021, a Professional Services Agreement was executed with Halff Associates, Inc., for a not to exceed amount of \$48,950. The scope included complete survey and design for the replacement and reconstruction of the retaining wall on the west side of the ditch. Due to heavy rainfall during the month of June 2021, the retaining wall behind 1124 Goodhue Dr. collapsed and the other side (east) is imminent to fall. The City's Drainage Maintenance team installed concrete blocks to control further erosion of the backyard of 1124 Goodhue. Alternatively, staff requested the designers to continue their design for the east wall adjacent to 1127 Meadow Dr. Hence, this required an amendment to the existing Professional Services Agreement, Supplemental Services #1, for an amount of \$6,650.

Scope of Services	Phase	Present Contract Amount	Proposed Amendment	Proposed Contract Amount (Original thru Amendment)
Lump Sum fee proposed	-	\$48,950.00		\$48,950.00
Additional Services	-		\$6,650.00	\$6,650.00
	Total	\$55,600.00	\$6,650.00	\$55,600.00

Halff Associates, Inc.

By: Dan Franz, PE, CFM

Signature: 

Title: Director of Public Works

Date: 8/2/21

City of Killeen

By: Kent Cagle

Signature: _____

Title: City Manager

Date: _____



July 20, 2021

Mr. Kent Cagle
City Manager
City of Killeen
101 N. College Street
Killeen, TX 76541

Re: Supplemental Services #1 for the City of Killeen Bermuda Ditch Improvements

Dear Mr. Cagle

Enclosed is Supplement #1 for requested Scope of Services for the Bermuda Ditch Improvements Project in the City of Killeen. The terms of Supplement #1 will adhere to the original executed contract dated June 7, 2021. As part of this Supplement #1, the Engineer will provide Plans, Specification, and Estimates (PS&E) Construction documents in accordance with the attached Exhibit A Scope of Services. If this proposal for additional work is acceptable, as confirmation of adding an estimated \$6,650 to the contract, please sign below and return.

If you have any questions, please feel free to call me at (512) 777-4606.

Sincerely,

HALFF ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "Dan Franz", is written over a light blue circular stamp.

Dan Franz, P.E., CFM
Director of Public Works

ADDITIONAL SERVICES CONFIRMATION

By: _____
(Signature)

Title: City Manager

Date: _____

Attachment: Exhibit A Scope of Services for Supplemental #1

EXHIBIT A
PROPOSED SUPPLEMENT #1 SCOPE OF SERVICES FOR
CITY OF KILLEEN
BERMUDA DITCH IMPROVEMENTS
CITY OF KILLEEN, TEXAS

PROJECT DESCRIPTION

The proposed Supplemental #1 Scope of Services is being submitted for the Engineering services associated with the Bermuda Ditch Improvement Project. The previously executed contract between the City of Killeen (City) and Halff Associates, Inc. (Engineer) included design of the failed concrete lined Bermuda ditch and adjacent retaining wall for the segment from 1110 Goodhue Dr to Wheeler Ave (West side of ditch, approx.. 80-linear feet). The Bermuda ditch runs along the alley of Goodhue Dr and Meadow Dr from 1305 Meadow Dr to I-14.

The proposed scope will include design of the failed concrete lined Bermuda ditch and adjacent retaining wall section from 1121 Meadow Dr. to Wheeler Ave (Approx. 200 linear feet along the eastern portion opposite to the existing stacked block retaining wall). The City recently completed mitigation efforts consisting of stacked limestone block for the failed western portion of the channel. The Engineer provided correspondence to the City for review for ultimate repair of the western portion of the channel. Per the City request, proposed design and improvements shall be proposed for the eastern portion of the existing ditch while stacked block retaining wall conducted by the City shall remain intact. The Engineer will prepare Construction Plans, Specifications, and Estimates (PS&E) for bidding and construction of the project. The proposed Scope of Services are separated into the following Tasks and described in more detail below:

TASK 3: PLANS, SPECIFICATIONS AND ESTIMATES (PS&E)

3.1 Construction Plans - Produce design plans and specifications for repair of the existing Bermuda ditch wall segment from 1121 Meadow Dr. to Wheeler Ave (Approx. 200 linear feet). The general construction plans are expected to include:

- Structural Plans and Details

SUPPLEMENT TERMS AND CONDITIONS

All terms and conditions of this Supplement #1 shall be in accordance with the primary agreement for Killeen Bermuda Ditch Improvement dated June 7, 2021.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 2

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

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Halff Associates, Inc.
Austin, TX United States

Certificate Number:
2021-783717

Date Filed:
07/27/2021

Date Acknowledged:

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

City of Killeen

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

n/a
Killeen Bermuda Ditch Mitigation Design Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Baker, Jessica	Richardson, TX United States	X	
	Bertram, Shawn	Austin, TX United States	X	
	Edwards, Mark	Richardson, TX United States	X	
	Ickert, Andrew	Fort Worth, TX United States	X	
	Jackson, Todd	Austin, TX United States	X	
	Killen, Russell	Richardson, TX United States	X	
	Llewellyn Sr., Mark	Tallahassee, FL United States	X	
	Miller, Steve	Austin, TX United States	X	
	Moya, Michael	Austin, TX United States	X	
	Murray, Menton	McAllen, TX United States	X	
	Pylant, Ben	Fort Worth, TX United States	X	
	Sagel, Joseph	Richardson, TX United States	X	
	Tanksley, Dan	Richardson, TX United States	X	
	Zapalac, Russell	Austin, TX United States	X	

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

2 of 2

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

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Halff Associates, Inc.
Austin, TX United States

Certificate Number:
2021-783717

Date Filed:
07/27/2021

Date Acknowledged:

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

City of Killeen

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

n/a
Killeen Bermuda Ditch Mitigation Design Services

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

5 Check only if there is NO Interested Party.

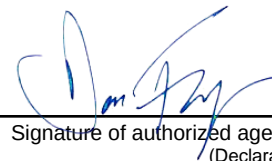
☐**6 UNSWORN DECLARATION**

My name is Dan Franz, and my date of birth is 7-28-1977.

My address is 9500 Amberglen Blvd., Suite 125, Austin, TX, 78729, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Williamson County, State of Texas, on the 27 day of July, 20 21.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)



RETAINING WALL REPAIR OF BERMUDA DITCH AMENDMENT NO.1 TO PSA

RS-21-116

August 17, 2021

Background

2

- On June 7, 2021, a Professional Services Agreement was executed with Halff Associates, Inc., for a not-to-exceed amount of \$48,950. The scope included a complete survey and design for the replacement and reconstruction of the retaining wall on the west side of Bermuda ditch.
- After heavy rainfall, the west retaining wall behind 1124 Goodhue Dr. collapsed and now, the east side is imminent to fall. Staff performed emergency repair to the west retaining wall.
- Staff requested the designers to redirect their design for the east wall adjacent to 1127 Meadow Drive. This required an amendment to the existing Professional Services Agreement, Supplemental Services #1 Exhibit B, for an amount of \$6,650.

Jun 7, 2021 12:05:32 PM



Exhibit shows Bermuda
Ditch (West) area
retaining wall collapse.

Alternatives

4

- Do not approve this amendment. However, doing so will continue to pose a threat as the fall of east Bermuda Ditch retaining wall is imminent. Fixing the problem at time of failure costs the City more money.
- Amend the Agreement with Halff Associates, Inc. for the additional \$6,650 to complete the design of (East) Bermuda Ditch Retaining wall repair.

Recommendation

5

- Authorize the City Manager to execute Amendment #1 of the Professional Services Agreement with Halff Associates, Inc., in the amount of \$6,650 for the east retaining wall repair of the Bermuda Ditch Project, and that the City Manager is expressly authorized to execute any and all changes within the amounts set by the state and local law.
- Funding for this project is available in Account No. 375-8934-493.69-01 in the current fiscal year.



City of Killeen

Legislation Details

File #: RS-21-117 **Version:** 1 **Name:** Rejection of All Bids for Bid 21-16 Valley Ditch Phase I

Type: Resolution **Status:** Resolutions

File created: 8/2/2021 **In control:** City Council

On agenda: 8/24/2021 **Final action:**

Title: Consider a memorandum/resolution rejecting all bids for Bid 21-16 Valley Ditch Phase 1 - B.N.S.F. Railroad Drainage Improvements Project.

Sponsors: Development Services, Finance Department, City Attorney Department

Indexes:

Code sections:

Attachments: [Staff Report](#)
[Bid Tabulation](#)
[Presentation](#)

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2021

TO: Kent Cagle, City Manager

FROM: Tony McIlwain, Executive Director of Development Services

SUBJECT: Authorize the rejection of all bids for Bid 21-16 Valley Ditch Phase 1 - B.N.S.F. Railroad Drainage Improvements Project.

BACKGROUND AND FINDINGS:

The City published the bid for Valley Ditch Phase 1 - B.N.S.F. Railroad Drainage Improvements project on April 25, 2021, with Addendums #1 & 2, and the City received competitive bids from three contractors. The bids, opened and read aloud through zoom online video conferencing on July 9, 2021, are as follow:

Bidders	Total Bid Amount
Jerdon Enterprise, LP	\$1,439,338.00
Digg Commercial, LLC	\$1,248,444.00
Anderzack - Pitzen Construction	\$1,565,980.00

Engineer's estimated probable costs were \$852,500.

THE ALTERNATIVES CONSIDERED:

1. Reject all Bids and do not move forward with the construction of Valley Ditch Phase 1 - B.N.S.F. Railroad Drainage Improvements Project at this time.
2. Award a construction contract to lowest responsible bidder, Digg Commercial, LLC, for the construction of Valley Ditch Phase 1 - B.N.S.F. Railroad Drainage Improvements Project.

Which alternative is recommended? Why?

Alternative "1" is recommended because:

- a. Although Digg Commercial appears to be the lowest responsible bidder, their proposal was over the Engineers Probable Cost Budget.
- b. Walker Partners, L.L.C., the design engineering firm on this project, recommended the contract be awarded to Anderzack-Pitzen Construction because of their specialized experience with construction on BNSF railroads. Anderzack- Pitzen Construction, was the highest bidder.
- c. Staff recommends all bids be rejected due to budget constraints and fluctuating market conditions of the materials. The bid documents allow the City to reject all or any part of the bid proposals.

CONFORMITY TO CITY POLICY:

This resolution conforms to city policies and Texas Local Government Code, Section 252.043.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There is no fiscal impact associated with this action.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

There isn't a sufficient amount of funding in the line item account to support this expenditure at this time.

RECOMMENDATION:

City Staff recommends that the City Council reject all bids for Bid 21-16 Valley Ditch Phase 1 - B.N.S.F. Railroad Drainage Improvements Project.

DEPARTMENTAL CLEARANCES:

Finance
City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Bid Tabulation

**Walker Partners, LLC
Bid Tabulation**

**City of Killeen
Valley Ditch Phase 1 - BNSF Railroad Drainage Improvements
Project No.: 2-01492.02 | Bid No.: 21-16
July 9, 2021 | 2:00 PM**

Bidders

				Jerdon Enterprise, LP		DIGG Commercial, LLC		Anderzack-Pitzen Construction	
Item No.	Bid Item Description	Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
BASE BID									
1.00	General Conditions								
1.01	Site Preparation	1	LS	29,500.00	29,500.00	25,699.00	25,699.00	25,000.00	25,000.00
1.02	Storm Water Pollution Prevention & Implementation	1	LS	9,500.00	9,500.00	12,895.00	12,895.00	2,500.00	2,500.00
1.03	Trench Safety/Shoring Design Plan & Implementation	1	LS	105,500.00	105,500.00	16,119.00	16,119.00	2,500.00	2,500.00
1.04	Mobilization & Bonds	1	LS	160,800.00	160,800.00	50,000.00	50,000.00	60,000.00	60,000.00
1.05	BNSF Flaggers & Inspection	1	LS	337,500.00	337,500.00	81,000.00	81,000.00	35,000.00	35,000.00
	Subtotal General Conditions				642,800.00		185,713.00		125,000.00
2.00	Drainage Improvements								
2.01	Excavation (Channel)	430	CY	37.00	15,910.00	58.00	24,940.00	75.00	32,250.00
2.02	Embankment (Channel)	15	CY	12.00	180.00	67.00	1,005.00	75.00	1,125.00
2.03	Pipe Jacking, Boring, and Tunneling (2-84" RCP Class V Culverts)	54	LF	4,121.00	222,534.00	11,100.00	599,400.00	5,000.00	270,000.00
2.04	Concrete Headwall for 84" RCP Culverts	2	EA	72,800.00	145,600.00	166,000.00	332,000.00	375,000.00	750,000.00
2.05	Concrete Riprap Channel Lining (Including Concrete Flume)	300	SY	116.00	34,800.00	145.00	43,500.00	85.00	25,500.00
2.06	Topsoil, Seeding, and Soil Retention Blanket (TY F)	203	SY	8.00	1,624.00	40.00	8,120.00	35.00	7,105.00
2.07	Project Sign & Supports (Installed)	1	LS	1,330.00	1,330.00	1,500.00	1,500.00	5,000.00	5,000.00
2.08	Traffic Railing (per BNSF Specifications)	80	LF	140.00	11,200.00	300.00	24,000.00	1,000.00	80,000.00
	Subtotal Drainage Improvements				433,178.00		1,034,465.00		1,170,980.00
	TOTAL BASE BID				1,075,978.00		1,220,178.00		1,295,980.00
BID ALTERNATE									
A2.03	Pipe Jacking, Boring, and Tunneling (2-6'x6' Reinforced Concrete Box Culverts)	54	LF	4,140.00	223,560.00	523.00	28,242.00	10,000.00	540,000.00
A2.04	Reinforced Concrete Headwall for 6'x6' Box Culvert	2	EA	69,900.00	139,800.00	12.00	24.00	375,000.00	750,000.00
	TOTAL ALTERNATE BID				363,360.00		28,266.00		1,290,000.00
	TOTAL BID (INCLUDING BID ALTERNATE)				1,071,204.00		317,044.00		1,565,980.00

1 Jerdon amount=\$1,439,338.00 1 DIGG amount=\$1,248,444.00



VALLEY DITCH PHASE 1-B.N.S.F. RAILROAD DRAINAGE IMPROVEMENTS BID REJECTION

RS-21-117

August 17, 2021

Background, Scope of Services, and Funding

- The Valley Ditch project was included in the approved Capital Improvement Program last fiscal year. The necessity of improvements to the existing Railroad culvert was mentioned in the 2005 and 2012 Drainage Master Plans. The drainage study and design that was completed in the past became obsolete and inadequate due to new development within Fort Hood.
- Walker Partners, L.L.C. completed a drainage study, prepared construction documents and assisted the City in securing the necessary permits and performed construction administration of this project.

Background, Scope of Services, and Funding

3

- On July 9, 2021, bids for Valley Ditch Phase 1 – B.N.S.F. Railroad Drainage Improvements were opened and read aloud through a zoom online video conferencing. Three (3) contractors submitted bids on the project. The bids are as follows:

Bidders	Total Bid Amount
Jerdon Enterprise, LP	\$1,439,338.00
Digg Commercial, LLC	\$1,248,444.00
Anderzack – Pitzen Construction	\$1,565,980.00

- Walkers Partner's estimated probable costs were \$852,500 and these bids are far greater than anticipated for the project.

Alternatives

4

- ❑ Reject all Bids and do not move forward with the construction of Valley Ditch Phase 1 – B.N.S.F. Railroad Drainage Improvements Project. Re-publish project for bid in the next six (6) months in hopes of a construction cost decrease in the future.
- ❑ Authorize the award of a construction contract to lowest responsible bidder, Digg Commercial, L.L.C. for the construction of Valley Ditch Phase 1 – B.N.S.F. Railroad Drainage Improvements Project in the amount of \$1,248,444.

Recommendation

5

- ❑ Staff recommends that the City Council reject all bids due to budget constraints and fluctuating market conditions of material costs.
- ❑ The bid documents allow the City to reject all or any part of the bid proposals.



City of Killeen

Legislation Details

File #: RS-21-118 **Version:** 1 **Name:** Atmos RRM Settlement
Type: Resolution **Status:** Resolutions
File created: 8/2/2021 **In control:** City Council
On agenda: 8/24/2021 **Final action:**
Title: Consider a memorandum/resolution approving a negotiated settlement between the Atmos Cities Steering Committee and Atmos Energy Corp, Mid-Tex Division regarding the 2021 Atmos Rate Review Mechanism Filing.
Sponsors: City Attorney Department
Indexes:
Code sections:
Attachments: [Staff Report](#)
[Resolution](#)
[FAQ](#)
[Presentation](#)

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2021

TO: Kent Cagle, City Manager

FROM: Traci Briggs, City Attorney

SUBJECT: Approving a negotiated settlement between the Atmos Cities Steering Committee and Atmos Energy regarding the 2021 Atmos Rate Review Mechanism

BACKGROUND AND FINDINGS:

The City, along with 171 other cities served by Atmos, Mid-Tex Division (Atmos), is a member of the Atmos Cities Steering Committee (ACSC). In 2007, ACSC and Atmos settled a rate application filed by the company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as a GRIP filing (arising out of the Gas Reliability Infrastructure Program legislation). That settlement created an alternate rate review process, referred to as Rate Review Mechanism (RRM), as a substitute for future filings under the GRIP statute. Attached to the staff report for additional background is a frequently asked questions document prepared by attorneys with Lloyd Gosselink, the law firm that represents ACSC.

On or about April 1, 2021, Atmos filed a rate request pursuant to the RRM Tariff adopted by ACSC members. Atmos claimed that its cost-of-service in a test year ending December 31, 2020, entitled it to additional system-wide revenues of \$43.4 million. Application of the standards set forth in ACSC's RRM Tariff reduces Atmos' request to \$40.5 million, \$29.3 million of which would be applicable to ACSC members. ACSC's consultants concluded that the system-wide deficiency under the RRM regime should be \$22.34 million instead of the claimed \$40.5 million. The amount of the \$22.34 million deficiency applicable to ACSC members would be \$16.8 million.

After Atmos reviewed ACSC's consultants' report, ACSC's Executive Committee and Atmos negotiated a settlement whereby Atmos would receive an increase of \$22.78 million from ACSC Cities, but with a two-month delay in the Effective Date until December 1, 2021. This should save ACSC cities approximately \$3.8 million. The impact of the settlement on average residential rates is an increase of \$1.28 on a monthly basis or 2.2 percent. The increase for average commercial usage will be \$4.03 or 1.61 percent.

The Executive Committee recommends a settlement at \$22.78 million. The effective date for new rates is December 1, 2021.

THE ALTERNATIVES CONSIDERED:

The alternatives are to disapprove the negotiated settlement or approve the negotiated settlement.

Which alternative is recommended? Why?

The ACSC Executive Committee recommends approving the negotiated settlement as fair and reasonable.

CONFORMITY TO CITY POLICY:

The item conforms to law and policy.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There is no fiscal impact to the city, other than as a rate payer.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

Staff and the Executive Committee of the ACSC recommend approving the negotiated settlement between ACSC and Atmos Energy, Mid-Tex Division regarding the 2021 RRM filing.

DEPARTMENTAL CLEARANCES:

City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Resolution

Exhibits

FAQ

RESOLUTION NO. RS-21-115R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2021 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHED EXHIBIT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; APPROVING AN ATTACHED EXHIBIT REGARDING AMORTIZATION OF REGULATORY LIABILITY; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.

WHEREAS, the City of Killeen, Texas (“City”) is a gas utility customer of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), and a regulatory authority with an interest in the rates, charges, and services of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee (“ACSC”), a coalition of similarly-situated cities served by Atmos Mid-Tex (“ACSC Cities”) that have joined together to facilitate the review of, and response to, natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

WHEREAS, ACSC and the Company worked collaboratively to develop a Rate Review Mechanism (“RRM”) tariff that allows for an expedited rate review process by ACSC Cities as a substitute to the Gas Reliability Infrastructure Program (“GRIP”) process instituted by the

Legislature, and that will establish rates for the ACSC Cities based on the system-wide cost of serving the Atmos Mid-Tex Division; and

WHEREAS, the current RRM tariff was adopted by the City in a rate ordinance in 2018; and

WHEREAS, on about April 1, 2021, Atmos Mid-Tex filed its 2021 RRM rate request with ACSC Cities based on a test year ending December 31, 2020; and

WHEREAS, ACSC coordinated its review of the Atmos Mid-Tex 2021 RRM filing through its Executive Committee, assisted by ACSC's attorneys and consultants, to resolve issues identified in the Company's RRM filing; and

WHEREAS, the Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities approve an increase in base rates for Atmos Mid-Tex of \$22.78 million applicable to ACSC Cities with an Effective Date of December 1, 2021; and

WHEREAS, ACSC agrees that Atmos' plant-in-service is reasonable; and

WHEREAS, with the exception of approved plant-in-service, ACSC is not foreclosed from future reasonableness evaluation of costs associated with incidents related to gas leaks; and

WHEREAS, the two month delayed Effective Date from October 1 to December 1 will save ACSC ratepayers approximately \$3.8 million off new rates imposed by the attached tariffs (Exhibit A); and

WHEREAS, the attached tariffs (Exhibit A) implementing new rates are consistent with the recommendation of the ACSC Executive Committee, are agreed to by the Company, and are just, reasonable, and in the public interest; and

WHEREAS, the settlement agreement sets a new benchmark for pensions and retiree medical benefits (Exhibit B); and

WHEREAS, the settlement agreement establishes an amortization schedule for regulatory liability prepared by Atmos Mid-Tex (Exhibit C); and

WHEREAS, the RRM Tariff contemplates reimbursement of ACSC's reasonable expenses associated with RRM applications;

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

Section 1. That the findings set forth in this Resolution are hereby in all things approved.

Section 2. That, without prejudice to future litigation of any issue identified by ACSC, the City Council finds that the settled amount of an increase in revenues of \$22.78 million for ACSC Cities represents a comprehensive settlement of gas utility rate issues affecting the rates, operations, and services offered by Atmos Mid-Tex within the municipal limits arising from Atmos Mid-Tex's 2021 RRM filing, is in the public interest, and is consistent with the City's authority under Section 103.001 of the Texas Utilities Code.

Section 3. That despite finding Atmos Mid-Tex's plant-in-service to be reasonable, ACSC is not foreclosed in future cases from evaluating the reasonableness of costs associated with incidents involving leaks of natural gas.

Section 4. That the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable. The new tariffs attached hereto and incorporated herein as Exhibit A, are just and reasonable, and are designed to allow Atmos Mid-Tex to recover annually an additional \$22.78 million from customers in ACSC Cities, over the amount allowed under currently approved rates. Such tariffs are hereby adopted.

Section 5. That the ratemaking treatment for pensions and retiree medical benefits in Atmos Mid-Tex's next RRM filing shall be as set forth on Exhibit B, attached hereto and incorporated herein.

Section 6. That subject to any future settlement or decision regarding the balance of Excess Deferred Income Tax to be refunded to ratepayers, the amortization of regulatory liability shall be consistent with the schedule found in Exhibit C, attached hereto and incorporated herein.

Section 7. That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC in processing the Company's 2021 RRM filing.

Section 8. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Resolution, it is hereby repealed.

Section 9. That the meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 10. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution, and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 11. That consistent with the City Ordinance that established the RRM process, this Resolution shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after December 1, 2021.

Section 12. That a copy of this Resolution shall be sent to Atmos Mid-Tex, care of Chris Felan, Vice President of Rates and Regulatory Affairs Mid-Tex Division, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Thomas Brocato,

General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue,
Suite 1900, Austin, Texas 78701.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
KILLEEN, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE _____ DAY OF
AUGUST, 2021.

Jose L. Segarra, Mayor

ATTEST:

Lucy C. Aldrich, City Secretary

APPROVED AS TO FORM:

Traci S. Briggs, City Attorney

FREQUENTLY ASKED QUESTIONS REGARDING ACSC HISTORY AND THE RRM RATEMAKING PROCESS

What is the role of Cities in ratemaking?

Cities have historically exercised original jurisdiction over the level of gas rates charged within their boundaries. Generally, gas distribution utilities have filed rate cases at the City level and have only gone to the Railroad Commission of Texas (“RCT” or “Commission”) with an appeal of City action or when they could not reach a settlement with Cities. If a utility and Cities reach an agreement, the utility may then file a case at the RCT to implement the same rates approved by Cities in areas outside municipal boundaries.

Once a case is at the RCT, the Commission Staff generally expects Cities to intervene and do most of the discovery, cross-examination, briefing, and sponsor opposing witnesses. There is no consumer advocate at the RCT. If Cities do not participate in hearings at the RCT, the request of a regulated utility is likely to be rubber-stamped.

How and why was the Atmos Cities Steering Committee created?

The Atmos pipeline and distribution systems were built, owned, and operated by Lone Star Gas (“LSG”), which maintained over 200 rate jurisdictions until it sold its assets to Texas Utilities (“TXU”) in the late 1990’s. That meant that many Cities had their own unique distribution rates and that individual Cities had to process rate cases at the local level. LSG-Pipeline served all 200-plus distribution systems, and pipeline rates were set by the RCT.

From the early 1980’s through the late 1990’s, LSG filed no pipeline or system-wide rate cases at the RCT. When LSG was finally brought before the RCT to show cause why its rates should not be reduced, approximately 80 Cities intervened and created an *ad hoc* group known as the Steering Committee of Cities Served by Lone Star. In Gas Utilities Division (“GUD”) docket number 8664, three separate groups of Cities and a number of independent Cities (jointly the “Aligned Cities”) participated and coordinated their efforts to oppose the rate increase.

TXU purchased the LSG assets in the late 1990’s and immediately commenced consolidating 200-plus ratemaking jurisdictions into regions. As regional cases were filed, Cities within each region created an *ad hoc* committee to form a common strategy and negotiating position. Once TXU had aggregated the Cities into five or six jurisdictions, each with a different rate, Texas Utilities Gas Company filed a system-wide case to bring all of the old LSG territory under one common rate. The different City regional committees then united and formed the Allied Coalition of Cities (“ACC”). While the gas utility assets were owned and controlled by TXU, the coalition transformed itself from an *ad hoc* group that came together only in response to rate filings by the utility into a permanent standing coalition.

In Gas Utilities Docket (“GUD”) No. 9400 in 2004, TXU’s request for a \$61.6 million system-wide increase was aggressively opposed by ACC. Cities achieved disallowances of \$42.9 million of a regulatory asset and \$87.8 million of capitalized gas utility plant. The company received only a \$2.01 million increase. Unhappy with that result, TXU decided that owning a gas system was neither as fun nor as profitable as the deregulated electric system, and they sold the system to Atmos Energy Corporation (“Atmos” or “Company”). ACC was then transformed into the Steering Committee of

Cities Served by Atmos and then renamed Atmos Cities Steering Committee to obtain an easy to remember acronym, “ACSC.”

What is the Atmos Cities Steering Committee?

ACSC is a coalition of 175 Cities that unite in common purpose to address gas utility rate and franchise issues related to Atmos Energy Corporation. Its objectives are to: (1) ensure that gas utility rates charged to Cities and their residents are fair and reasonable; (2) maintain safe and reliable gas utility service; (3) protect cities’ original jurisdiction over rates and services; (4) maintain reasonable franchise revenue for cities; and (5) promote sound ratemaking policies in the public interest.

Cities join the permanent standing committee by passing a resolution and agreeing to support the work of ACSC through modest occasional *per capita* assessments that support ongoing administrative and legislative advocacy and all expenses where Cities are not entitled to reimbursement. Each member City designates a representative to ACSC. Member representatives may volunteer to serve on the ACSC Executive Committee. The Executive Committee sets policy, hires legal counsel and consultants, directs litigation, establishes a legislative agenda, sets assessments on members as needed, and meets quarterly with Atmos executives. The Settlement Committee is directly involved in negotiating resolution of contested matters with Atmos executives. The list of current members is attached.

What is the benefit of membership in ACSC?

One hundred seventy Cities speaking as one voice is much more effective in advocacy before the Railroad Commission and legislature than any one City or multiple small groups of Cities.

The legislature has given gas utilities a right to an annual increase in rates. Resources (both financial and human) of individual Cities are conserved by membership in ACSC. Additionally, membership enhances institutional memory of ratemaking issues, public policy debates, and right-of-way and franchise fee battles.

What has ACSC accomplished?

ACSC has been instrumental in saving consumers from paying hundreds of millions of unreasonable gas utility costs. This advocacy helps taxpayers and the Texas economy.

ACSC is involved in the legislative process to make sure consumers and taxpayers are represented on gas utility matters. ACSC advocates for reasonable rates and safe and reliable service. ACSC has maintained a watchful eye on the process to ensure that provisions that could harm the interest of gas utility ratepayers are excluded from the legislation.

ACSC has also resolved a major issue involving franchise fees. In 2010, Atmos unilaterally, without notice, ceased inclusion of franchise fees in the calculations of gross receipts regardless of whether specific franchises included such payments. Several Cities were willing to pursue the matter through litigation. However, counsel for ACSC was able to negotiate a resolution that allowed each member City to determine whether it desired an increase in franchise fee payments based on inclusion of franchise fees in the calculation of gross receipts. If a City opted for inclusion of fee-on-fee revenues, it had the further option of retroactive payments back to the point in time that Atmos decided to curtail fee-on-fee payments. Each member had these options regardless of the wording of the then-

valid franchise agreement. This resolution spared significant litigation costs and anxiety and was only possible because of the clout of the ACSC membership.

One of the most significant accomplishments of ACSC occurred in 2007 via a settlement of the then-pending, system-wide rate case. Approximately 50 ACSC City representatives showed up in Arlington for a meeting with Atmos executives who were shocked at the vocal opposition to Atmos' practices, the unfairness of annual Gas Reliability Infrastructure Program ("GRIP") rate filings that precluded City and citizen review, and the Company's lack of coordination with Cities. That meeting led to the creation of the Rate Review Mechanism ("RRM") process and improved ongoing communications between the Company and ACSC.

In 2010, these improved communications between ACSC and the Company led to a workable solution to the need to replace steel service lines in a manner that accommodated Cities' needs to control their rights-of-way, while moderating the rate impact and focusing first on the riskiest service lines based on leak repair histories. This compromise precluded a more onerous (from a City and consumer perspective) program threatened by the RCT.

What is an RRM case?

The concept of an RRM proceeding emerged as a three-year experimental substitute for GRIP cases as part of the settlement of Atmos Mid-Tex's 2007 system-wide rate case. In 2003, the Texas Legislature added Section 104.301, Interim Adjustment for Changes in Investment, to the Gas Utility Regulatory Act. While not identified as such in the law, § 104.301 was referred to as the Gas Reliability Infrastructure Program or GRIP. The GRIP adjustments allowed gas companies to recover changes to invested capital without a review of whether increased revenues or declining expenses offset the invested capital costs. Both Atmos Pipeline and Atmos Mid-Tex filed GRIP cases as soon as the RCT adopted rules to implement the interim adjustments. As explained below, it quickly became apparent that the GRIP adjustments were terrible public policy.

As an alternative to GRIP, ACSC entered into a negotiated agreement with Atmos in 2007 to establish the RRM process. Unlike GRIP, the RRM provided for an annual review of all portions of Mid-Tex's cost of service. It fixed an authorized rate of return on equity for the three-year period at 9.6% (which was less than what the RCT would have authorized) and set caps on the extent to which expenses or investments could increase from one year to the next. More importantly, it allowed Cities to make a comprehensive evaluation of all aspects of the utility's business—investment, operation and maintenance expenses, and revenues—unlike GRIP that only allows consideration of changes to invested capital.

Why is RRM superior to GRIP?

GRIP cases guarantee a one-sided, rubber-stamp approval of the utility's rate request. ACSC attempted to participate in the first two GRIP proceedings filed by both Atmos Pipeline and Atmos Mid-Tex at the RCT. Not only were Cities' motions to intervene denied, but also, ACSC's comments were ignored. At the City level, ACSC consultants determined that Atmos was not only including items such as artwork, chairs, computers, and meals in interim rate adjustments that were allegedly intended to promote pipeline safety, but the Company was also over-earning its previously authorized rate of return. ACSC attacked the Commission's rule in court because it denied City participation, denied a hearing on a contested matter, and denied Cities' recovery of any expenses associated with

resisting GRIP rate increases. In 2011, the Texas Supreme Court upheld the Commission's rule implementing the GRIP statute.

Cities have contended that the GRIP process is terrible public policy since it authorizes what would, from the perspective of a history of public interest regulation, be regarded as unlawful—piecemeal ratemaking. GRIP allows rates to increase if the utility's invested capital net of depreciation increases year-over-year. An increase in rates is mandated under GRIP if investment increases, even if increasing revenues and declining expenses more than offset the costs associated with increased investment.

The RRM process negotiated by ACSC solves the piecemeal ratemaking problem by providing for a comprehensive review of Atmos' expenses and revenues. Furthermore, the RRM process benefitted ACSC by: (1) allowing Cities' participation that would be denied under GRIP; (2) allowing Cities to recover, at utility shareholders' expense, all their ratemaking costs; and (3) avoiding both litigation and RCT jurisdiction.

The legislature has functionally authorized annual increases in gas utility rates through the GRIP process. Since consumers are otherwise stuck with annual rate increases, it is better to have Cities participate in the comprehensive RRM process than be unable to participate in a piecemeal process.

What has been the history of the RRM efforts?

A total of thirteen RRM filings have been made by the Company. These filings all resulted in settlements at the City level, except for the 2014 filing, which the ACSC Cities denied. The Company appealed the denial to the RCT, and ACSC was ultimately able to settle that proceeding before it reached the stage of a final RCT order. The results of these filings from a system-wide perspective are as follows (continued on next page):

RRM Filing	Year	Atmos Request	ACSC Settlement
#1	2008	\$33.5 million	\$20 million
#2	2009	\$20.2 million	\$2.6 million
#3	2010	\$70.2 million	\$27 million
#4	2011	\$15.7 million	\$6.6 million
#5	2013	\$22.7 million	\$16.6 million
#6	2014	\$45.7 million	\$43.8 million
#7	2015	\$28.8 million	\$22.8 million
#8	2016	\$35.4 million	\$29.6 million
#9	2017	\$7.4 million	\$48 million
#10	2018	\$27.4 million	\$24.9 million
#11	2019	\$54.1 million	\$48.7 million
#12	2020	\$136.3 million	\$124.3 million
#13	2021	\$40.5 million	\$31.5 million

Unable to reach agreement to perpetuate the original RRM terms, Atmos filed a traditional rate case with Cities in 2012 (GUD No. 10170), which was then appealed to the Railroad Commission. A final order in that case was entered in December 2012. The ratemaking decisions of the Commission then became the basis of renewal negotiations on the RRM process. The renewed RRM included some modifications that enhanced the original RRM process. Among these modifications were:

- A limit on the percentage of increase to be included in the monthly customer charge;
- A prohibition against capital post-test year adjustments;
- A time limit for known and measurable adjustments to operating and maintenance expenses;
- A guaranteed reduction in the Company's requested increase of at least \$3 million annually; and
- A limitation on the amount of equity in the Company's capital structure.

Changes to the RRM process

As noted in a communication to ACSC in May 2017, the rate of return on equity ("ROE") embedded in the RRM process between 2013 and 2017 of 10.5% is excessive by at least 100 basis points, based upon a reasonable rate of return that reflects the market conditions in which the Company, and its parent Atmos Energy, operates. Because this ROE cannot be altered except by (1) changing the terms of the RRM tariff, or (2) a Commission order coming out of a new rate case, ACSC informed the Company that the 2017 RRM will be the last filing by the Company under the current tariff. Atmos agreed to renegotiate the terms and conditions of a revised RRM tariff in 2017.

In February and March 2018, ACSC adopted a new RRM tariff ordinance that implemented new procedures and criteria for the RRM process. The revised RRM tariff reduced the allowed ROE from 10.5% to 9.8% and captured the reduced federal income tax rate of 21%. The new tariff expanded Cities' review period from three months to five months. It also required Atmos Mid-Tex to accept ACSC's position regarding incentive compensation related to Atmos' Shared Services Unit. The 2019 RRM filing is the second under the new tariff.

When must Cities approve new rates?

ACSC's Tariff Ordinance adopted around March 2018 declares that new rates become effective October 1st of each year. Due to Covid the rate increases were delayed in 2020 and 2021 until December 1 of each year. The deadline for city action remained at October 1 under the RRM tariff in those years. While it is preferable that ordinances or resolutions adopting new tariffs are passed before the end of September, there is no adverse consequence if final action cannot take place until sometime in October. The only thing that will frustrate new rates becoming effective on October 1 (or December 1 in 2020 and 2021) is City action that specifically denies the increase.

What would happen if a City Council denies the RRM rate increase?

Atmos would either appeal the denial to the Railroad Commission or initiate imposition of GRIP rates or both. Rates for residents of that City would be higher than rates of other ACSC member residents. Rate case expenses (both the City and Company) associated with litigation at the Railroad Commission would likely be surcharged back to the City that denied the increase.

If you have other questions please contact Thomas Brocato at (512) 322-5857 and/or tbrocato@lglawfirm.com (512) 322-5832.



NEGOTIATED SETTLEMENT ON ATMOS RRM FILING

RS-21-118

August 17, 2021

Background

2

- ❑ Cities exercise original jurisdiction over the level of gas rates charged within their boundaries
- ❑ Killeen is a member of the Atmos Cities Steering Committee (ACSC) along with 171 other cities served by Atmos Mid-Tex
- ❑ Since 2007, Atmos and ACSC have worked under an alternate rate review process referred to as the Rate Review Mechanism (RRM), as opposed to the statutory Gas Reliability Infrastructure Program

Atmos RRM Filing

3

- ❑ Atmos filed a rate request on April 1, 2021 claiming it is entitled to additional system-wide revenues of \$43.4 million for the year ending December 3, 2020
- ❑ Applying the agreed RRM tariffs, the Atmos request reduces to \$40.5 million, \$29.3 million of which applicable to the ACSC members
- ❑ ACSC consultants analyzed the filing and determined the request should be reduced to \$22.34 million, \$16.8 million applicable to ACSC cities

Negotiated Settlement

4

- The ACSC Executive Committee and Atmos negotiated a settlement
 - ▣ Atmos would receive an increase of \$22.78 million from ACSC cities
 - ▣ The effective date is delayed until December 1, 2021, saving cities \$3.8 million
 - ▣ The average residential increase is \$1.28 per month or 2.2%
 - ▣ The average commercial usage increase is \$4.03 per month or 1.61%

Alternatives

5

- The alternatives are to:
 - ▣ Disapprove the negotiated settlement
 - ▣ Approve the negotiated settlement

Recommendation

6

- Staff and the Executive Committee of the ACSC recommend approving the negotiated settlement between ASCS and Atmos Energy, Mid-Tex Division regarding the 2021 RRM filing.



City of Killeen

Legislation Details

File #:	RS-21-119	Version:	1	Name:	COVID Declaration 2021
Type:	Resolution	Status:		Status:	Resolutions
File created:	8/11/2021	In control:		In control:	City Council
On agenda:	8/24/2021	Final action:		Final action:	
Title:	Consider a memorandum/resolution consenting to the continuation of the Declaration of Local State of Disaster for a Public Health Emergency.				
Sponsors:	Fire Department, City Manager Department				
Indexes:	Emergency Management				
Code sections:	Sec. 10-30. - Powers and duties of director generally, Sec. 10-31. - Duties responsibilities of director enumerated				
Attachments:	Staff Report Declaration Presentation				

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



STAFF REPORT

DATE: August 17, 2021

TO: Kent Cagle, City Manager

FROM: Peter C. Perez, Emergency Management Coordinator

SUBJECT: Public Health Emergency Disaster Declaration

BACKGROUND AND FINDINGS:

On March 18, 2020, Mayor Jose Segarra issued a Declaration of Local State of Disaster for Public Health Emergency in an effort to prevent the spread of COVID-19 in the community. Texas Government Code Section 418.108(a) authorizes the Mayor, as the Director of Emergency Management, to declare a local state of disaster. Pursuant to Section 418.108(b), on March 24, 2020, the City Council extended the state of disaster for a Public Health Emergency until the similar Bell County declaration ended. On June 1, 2021, Bell County terminated its declaration, thus ending Killeen's declaration.

During July 2021, active cases and hospitalization rates have risen significantly. On August 5, 2021, Bell County Public Health District raised the County COVID-19 threat level to Level 1: Severe Uncontrolled Community Transmission. In order to ensure that the City is able to request needed resources from the State of Texas and coordinate the local response, Mayor Segarra recently issued a new Declaration of Local State of Disaster for a Public Health Emergency.

The Stafford Act requires local jurisdictions to issue a Disaster Declaration in order to request resources outside of its jurisdiction and only allows emergency costs to be submitted for reimbursement that have occurred while under a Disaster Declaration.

THE ALTERNATIVES CONSIDERED:

The City Council may:

1. Not continue the Mayor's declaration;
2. Consent to continue the Mayor's declaration for a defined time; or
3. Consent to continue the Mayor's declaration indefinitely until terminated by the Mayor.

Which alternative is recommended? Why?

Due to rising active cases, the need to continue coordinating resources, and to adhere to Stafford Act declaration requirements, Staff recommends that the Mayor's declaration be extended indefinitely until terminated by the Mayor.

CONFORMITY TO CITY POLICY:

This action conforms to Chapter 418 of the Texas Government Code and City of Killeen Ordinance Chapter 10.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

No fiscal impact is associated with this action.

Is this a one-time or recurring expenditure?

n/a

Is this expenditure budgeted?

n/a

If not, where will the money come from?

n/a

Is there a sufficient amount in the budgeted line-item for this expenditure?

n/a

RECOMMENDATION:

Due to rising active cases, the need to continue coordinating resources, and to adhere to Stafford Act declaration requirements, Staff recommends that the Mayor's declaration be extended indefinitely until terminated by the Mayor.

DEPARTMENTAL CLEARANCES:

Emergency Management/Fire
Legal

ATTACHED SUPPORTING DOCUMENTS:

Declaration



CITY OF KILLEEN
OFFICE OF THE MAYOR

DECLARATION OF LOCAL STATE OF DISASTER FOR
A PUBLIC HEALTH EMERGENCY

WHEREAS, beginning December 2019, a novel coronavirus, now designated COVID-19, was detected in Wuhan City, Hubei Province, China, and has since spread throughout the world; and

WHEREAS, symptoms of COVID-19 include fever, coughing, shortness of breath, and loss of taste or smell. In some cases, the virus has caused death; and

WHEREAS, extraordinary measures must be taken to contain COVID-19 and prevent its spread throughout the City of Killeen, including the quarantine of individuals, groups of individuals, and property and, additionally, including promoting individuals, groups of individuals, or property to undergo additional health measures that prevent or control the spread of disease; and

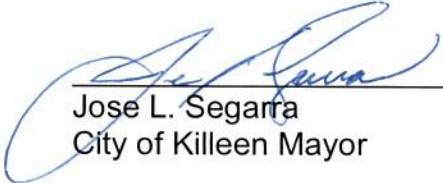
WHEREAS, the Killeen area has seen a significant increase in active COVID-19 cases to include a rise in hospitalized cases increasing the need for personal protective equipment (PPE),

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

1. That a local state of disaster for public health emergency is hereby declared for the City of Killeen, Texas pursuant to section 418.108(a) of the Texas Government Code.
2. That pursuant to section 418.108(b) of the Government Code, the state of disaster for public health emergency shall continue for a period of not more than seven (7) days from the date of this declaration, unless extended by the City Council of Killeen, Texas.
3. That pursuant to section 418.108(c) of the Government Code, this declaration of a local disaster for public health emergency shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
4. That pursuant to section 418.108(d) of the Government Code, this declaration of a local state of disaster activates the City of Killen emergency management plan and authorizes the furnishing of aid and assistance under this declaration.
5. That this declaration authorizes the City to take any actions necessary to promote health and suppress the virus, including, but not limited to, the quarantine of persons and occupied structures, establishment of quarantine stations, testing stations, vaccination stations, emergency hospitals, and insuring compliance for those who do not comply with the City's rules and directives.

6. That this declaration hereby authorizes the use of all lawfully available enforcement tools.
7. That this declaration shall take effect immediately from and after its issuance, and upon approval of the City Council, shall continue in effect until terminated by the Mayor. Pursuant to the declaration, additional directives may be issued by the Mayor at any time as deemed necessary.

DECLARED this the 19th day of August, 2021



Jose L. Segarra
City of Killeen Mayor

Filed with me, the City Secretary of the City of Killeen, on this 19th day of August, 2021, by Mayor Jose L. Segarra.



for Lucy C. Aldrich
City Secretary





PUBLIC HEALTH EMERGENCY DECLARATION – COVID19

RS-21-119

August 24, 2021

Background and Findings

2

- ❑ On March 18, 2020, Mayor Jose Segarra issued a Declaration of Local State of Disaster for a Public Health Emergency
- ❑ On March 24, 2020, the City Council extended the Local State of Disaster for a Public Health Emergency until Bell County ends theirs
- ❑ On June 1, 2021, Bell County terminated their declaration, thus terminating Killeen's
- ❑ During July 2021 active cases and hospitalization rates have risen significantly
- ❑ On August 5, 2021, Bell County Public Health District raised the County COVID-19 threat level to Level 1: Severe Uncontrolled Community Transmission

Background and Findings

3

- Stafford Act requires
 - ▣ Local jurisdictions to have a Disaster Declaration in place in order to request resources during a disaster
 - ▣ Emergency costs submitted for reimbursement under FEMA's Public Assistance program to be made while under a disaster declaration

Alternatives

4

- ❑ Not continue the Mayor's declaration;
- ❑ Consent to continue the Mayor's declaration for a defined time; or
- ❑ Consent to continue the Mayor's declaration indefinitely until terminated by the Mayor.

Recommendation

5

- Due to rising cases, the need to continue coordinating resources, and to adhere to Stafford Act declaration requirements; Staff recommends that the Mayor's declaration be extended indefinitely until terminated by the Mayor.



City of Killeen

Legislation Details

File #: PH-21-030 **Version:** 1 **Name:** Atmos Energy Temporary Construction Easement
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/22/2021 **In control:** City Council
On agenda: 8/24/2021 **Final action:**
Title: HOLD a public hearing and consider an ordinance granting Atmos Energy a .202 acre temporary construction easement to be located on Lot 16, Block 1, Hunter's Chase Subdivision (Hunt Neighborhood Park), Killeen, Texas. (3rd of 3 readings)
Sponsors: Development Services
Indexes:
Code sections:
Attachments: [Staff Report](#)
[Maps](#)
[Ordinance](#)
[Presentation](#)

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		
7/27/2021	1	City Council	Approved on Second Reading	
7/20/2021	1	City Council Workshop		
7/13/2021	1	City Council	Approved on First Reading	
7/6/2021	1	City Council Workshop		



STAFF REPORT

DATE: July 6, 2021

TO: Kent Cagle, City Manager

FROM: Tony McIlwain, Executive Director of Development Services

SUBJECT: Case #21-02AB: Grant Atmos Energy a .202 acre temporary construction easement to be located on Lot 16, Block 1, Hunter's Chase Subdivision (Hunt Neighborhood Park)

BACKGROUND AND FINDINGS:

Atmos Energy Corporation submits this request for the grant of a .202 acre temporary construction easement to be located at 2301 Hunt Drive. The site of the .202 acre temporary construction easement is platted as Lot 16, Block 1, Hunter's Chase Subdivision and is the current location of Hunt Neighborhood Park. Atmos Energy intends to use the approximate 30' by 292' feet area as a temporary workspace during a pipeline replacement effort. (see Exhibit "A" of the ordinance). The attached Exhibit "A" illustrates the location of the easement that will encompass the park's basketball court and a portion of its playground and sidewalk.

Article XI, Section 119, of the City Charter authorizes the City Council to approve this easement request. The Charter states that, *"the ownership, right of control and use of streets, highways, alleys, parks, public places and all other real property of the City of Killeen is hereby declared to be inalienable to said City, except by ordinances passed by vote of the majority of the governing body of the city, as hereinafter provided; and no franchise or easement involving the right to use same, either along, across, over or under the same, shall ever be valid unless expressly granted and exercised in compliance with the terms hereof, and of the ordinances granting the same. No act or omission of the city, its governing body, officers or agents shall be construed to confer or extend by estoppel or indirection, any right, franchise or easement not expressly granted by ordinance."* The Charter also requires three (3) readings of an ordinance granting an easement at three separate regular meetings of the City Council, the last of which shall take place not less than thirty days from the first.

The .202 acre temporary easement shall automatically terminate on the earlier of: (a) the date on which Atmos Energy's activities are completed, or (b): eighteen months from the date of approval of the ordinance. Recreation Services staff will invoice Atmos Energy for the replacement costs of the park areas affected by the construction easement.

THE ALTERNATIVES CONSIDERED:

The City Council has two (2) alternatives. The Council may:

- Disapprove the ordinance granting Atmos Energy's request for an easement; or
- Approve the ordinance granting Atmos Energy's request for an easement.

Which alternative is recommended? Why?

Staff recommends that the City Council approve the ordinance after the third reading. The easement is necessary for the pipeline replacement.

CONFORMITY TO CITY POLICY:

This item conforms to state and local policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This easement request does not involve the expenditure of city funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

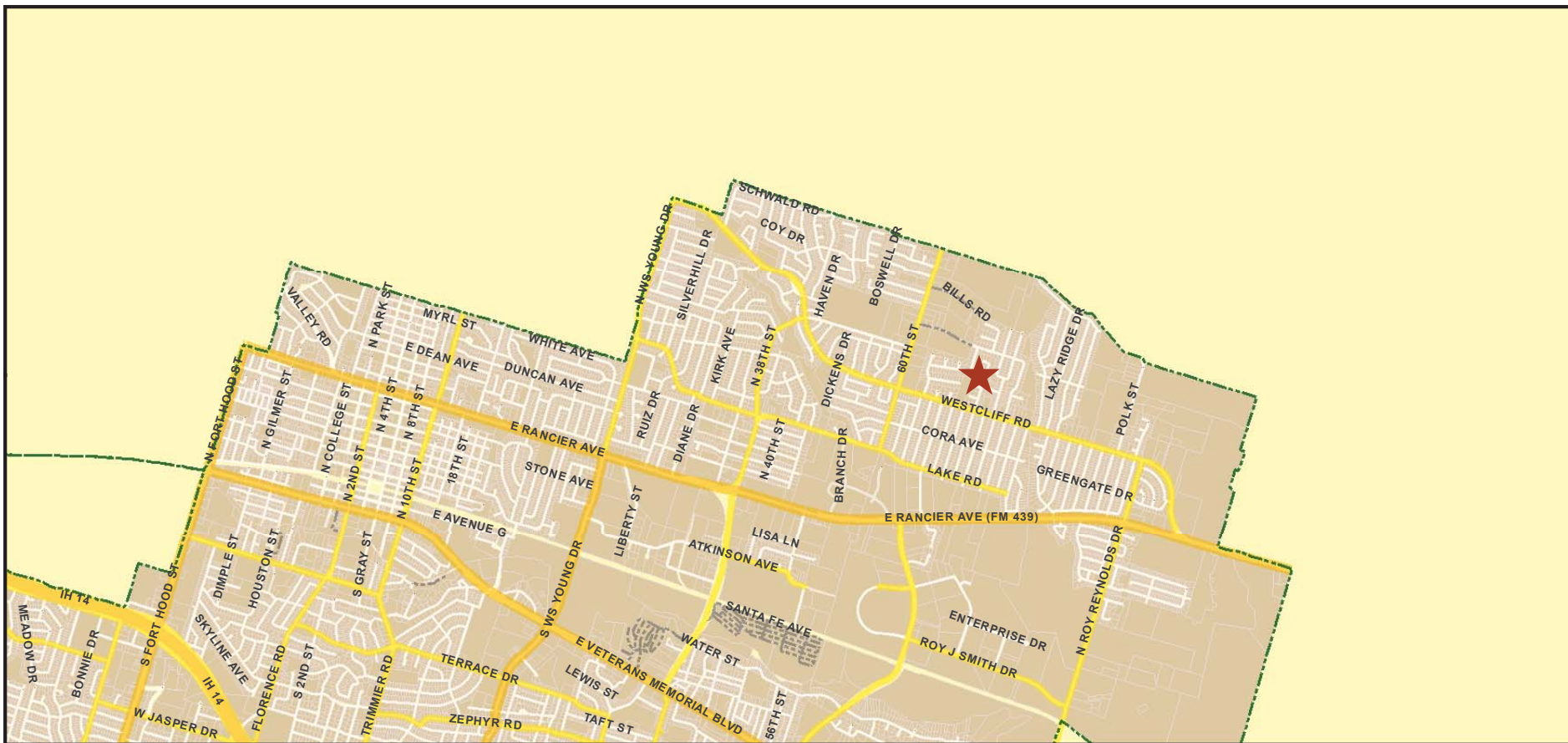
Staff recommends that the City Council approve the ordinance granting Atmos Energy's request for an easement after the third reading.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning and Legal staff.

ATTACHED SUPPORTING DOCUMENTS:

Maps
Ordinance



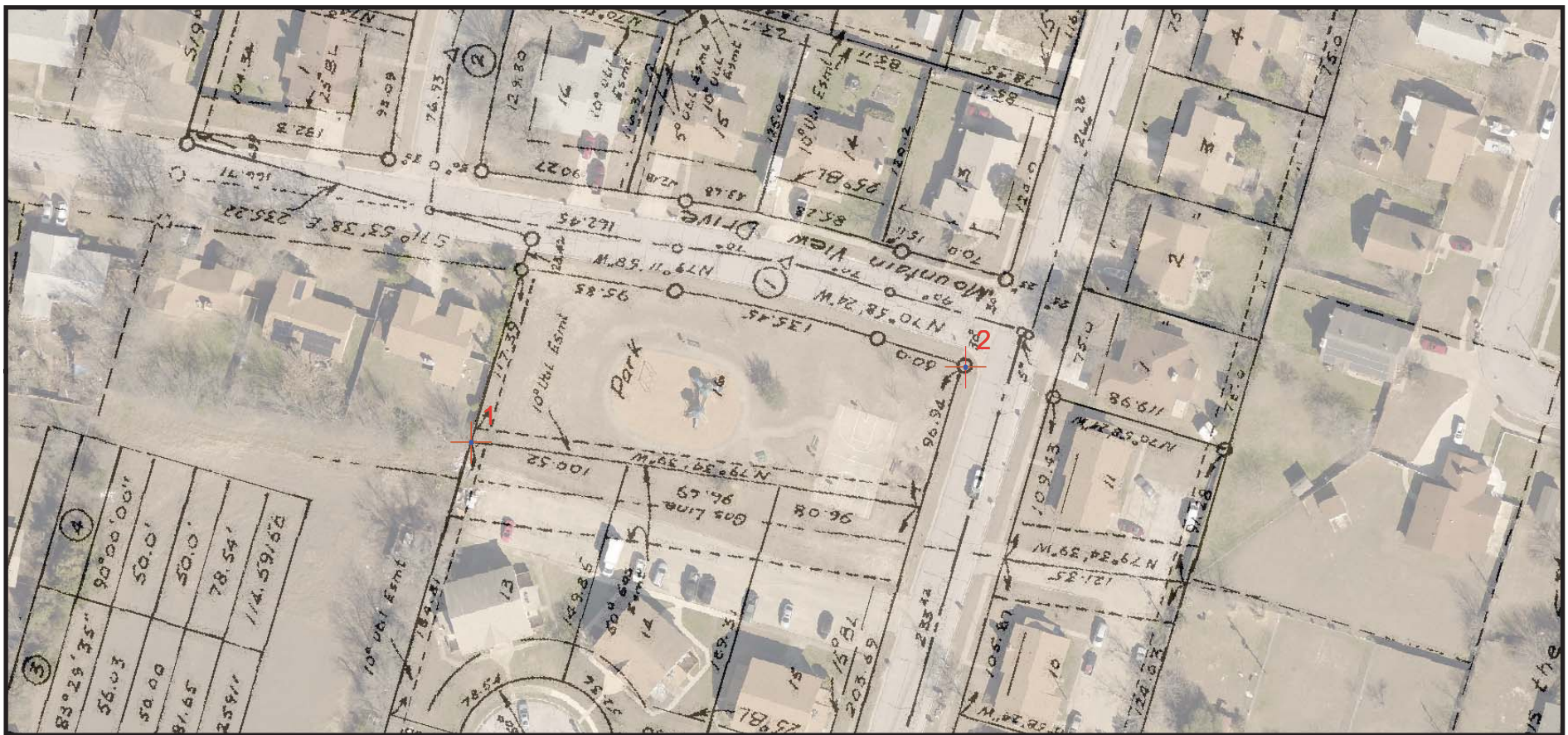
Case: 2021-02AB

Council District: 1

Subject Property Legal Description: HUNTER'S CHASE SUBDIVISION, BLOCK 001, LOT 0016, PARK



1 inch = 4,250 feet



CASE #
2021-02AB

Council District: 1

Subject Property Legal Description: HUNTER'S CHASE SUBDIVISION, BLOCK 001, LOT 0016, PARK

Legend

-  Killeen City Limits
-  Bell County Area



1 inch = 103 feet

Date: 6/22/2021

AN ORDINANCE GRANTING EASEMENTS TO ATMOS ENERGY CORPORATION FOR APPROXIMATELY .202 ACRE OUT OF LOT 16, BLOCK 1, HUNTER'S CHASE SUBDIVISION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Atmos Energy Corporation has presented to the City of Killeen, a request for a temporary construction easement being .202 acre out of Lot 16, Block 1, Hunter's Chase Subdivision, for property being locally known as 2301 Hunt Drive, Killeen, Texas;

WHEREAS, the City Council, after three readings at three separate Council meetings, duly considered said request and the evidence in support thereof, and the City Council being of the majority opinion that the Atmos Energy's easement request should be approved;

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

THIS TEMPORARY CONSTRUCTION EASEMENT is granted as of the 24th day of August, 2021, by CITY OF KILLEEN ("Grantor") to Atmos Energy Corporation, a Texas and Virginia corporation ("Atmos Energy").

NOW, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration, Grantor and Atmos Energy agree as follows:

1. Grant of Easement. Grantor does hereby grant unto Atmos Energy a temporary construction easement (the "Easement") on, over, across, under and upon that certain tract of land more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Easement Area"), for the following purposes related to Atmos Energy's construction, maintenance, repair, replacement, inspection and operation of one or more natural gas pipelines

and related appurtenances (collectively, the “Activities”): clearing, leveling and grading of the Easement Area; use as temporary construction workspace; boring activities; ingress and egress for equipment and machinery; staging and storage of materials, equipment, and machinery; and all other activities and uses reasonably related to the Activities.

2. Duration. The Easement shall automatically terminate on the earlier of: (a) the date on which Atmos Energy’s Activities are completed, or (b) eighteen (18) months from the date hereof.

3. Rights and Obligations of Parties. Upon termination of the Easement, Atmos Energy shall return the Easement Area to Grantor in a condition as near as practicable to its prior condition, ordinary wear and tear excepted, except that Atmos Energy shall not be required to restore shrubs or any vegetation cleared from the surface of the Easement Area, and Grantor acknowledges that the consideration paid for the Easement includes any and all damages to trees, shrubs, growing crops and grasses within the Easement Area. Atmos Energy shall keep the Easement Area free and clear from any liens arising out of any work performed, materials furnished, or obligations incurred by Atmos Energy.

4. Miscellaneous.

(a) This Ordinance constitutes the entire agreement between Grantor and Atmos Energy with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between Grantor and Atmos Energy with respect to the subject matter hereof.

(b) All notices related to this Ordinance shall be in writing and shall be sufficient in all respects if delivered by hand or mailed by certified mail, postage prepaid, as follows:

If to Atmos Energy: Atmos Energy Corporation
PO Box 650206
Dallas, TX 75265-0205
Attn: Right of Way Department

If to Grantor: City of
Killeen
PO Box
1329
Killeen, TX 76540-1329
Phone 254-501-7700

Any notice given in any manner described above shall be deemed effective upon actual receipt by the party to whom such notice is sent. Addresses may be changed on notice to the other party.

(c) The Easement and obligations contained in this Ordinance shall run with the land, are binding upon and inure to the benefit of Grantor, Atmos Energy, and their respective successors and assigns;

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 24th day of August 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Lucy C. Aldrich, CITY SECRETARY

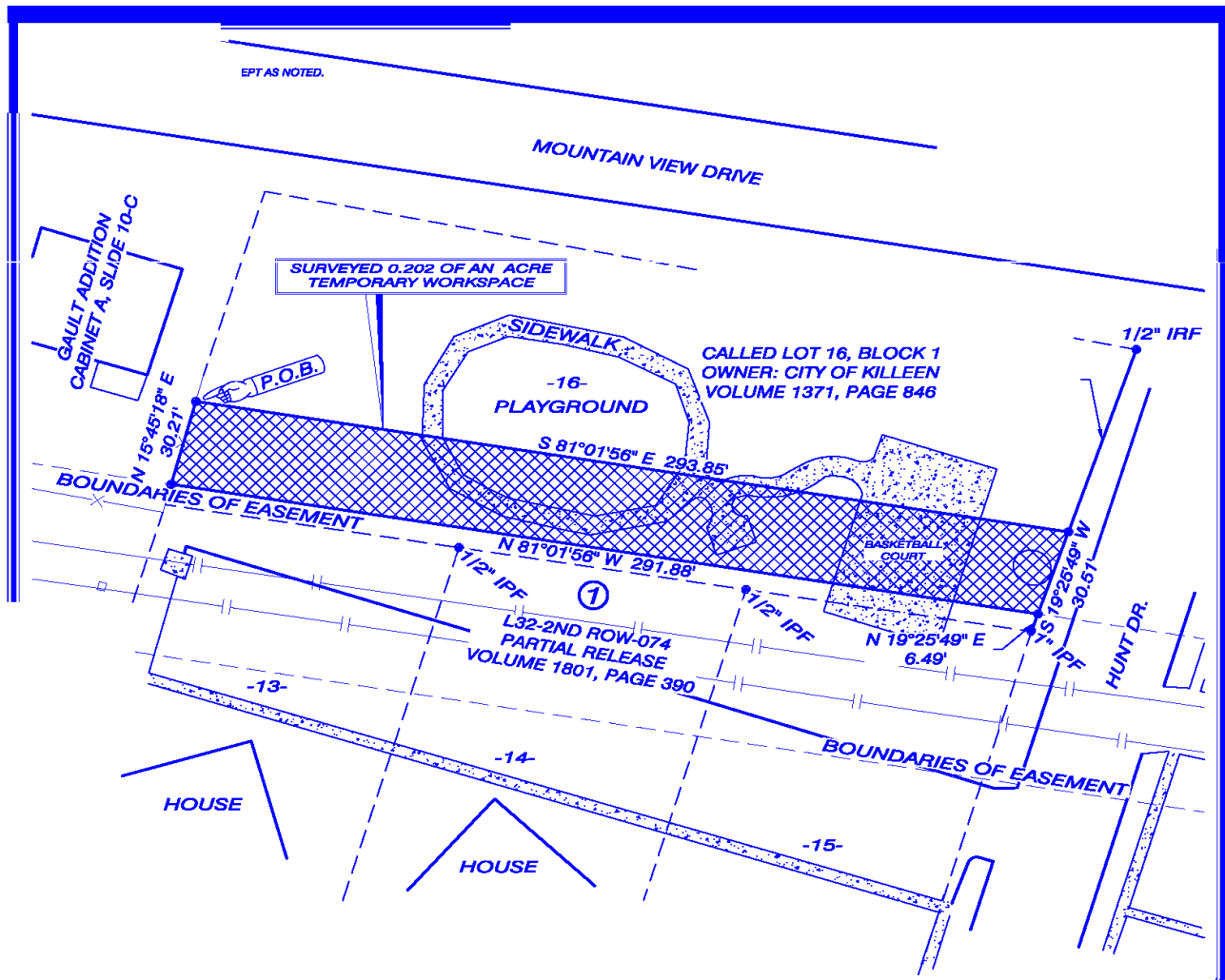
APPROVED AS TO FORM




Traci S. Briggs, CITY ATTORNEY

Case #21-02AB

Ord. #21-____

Exhibit “A



 REVISIONS		



CONSIDER AN ORDINANCE GRANTING
ATMOS ENERGY A TEMPORARY
CONSTRUCTION EASEMENT

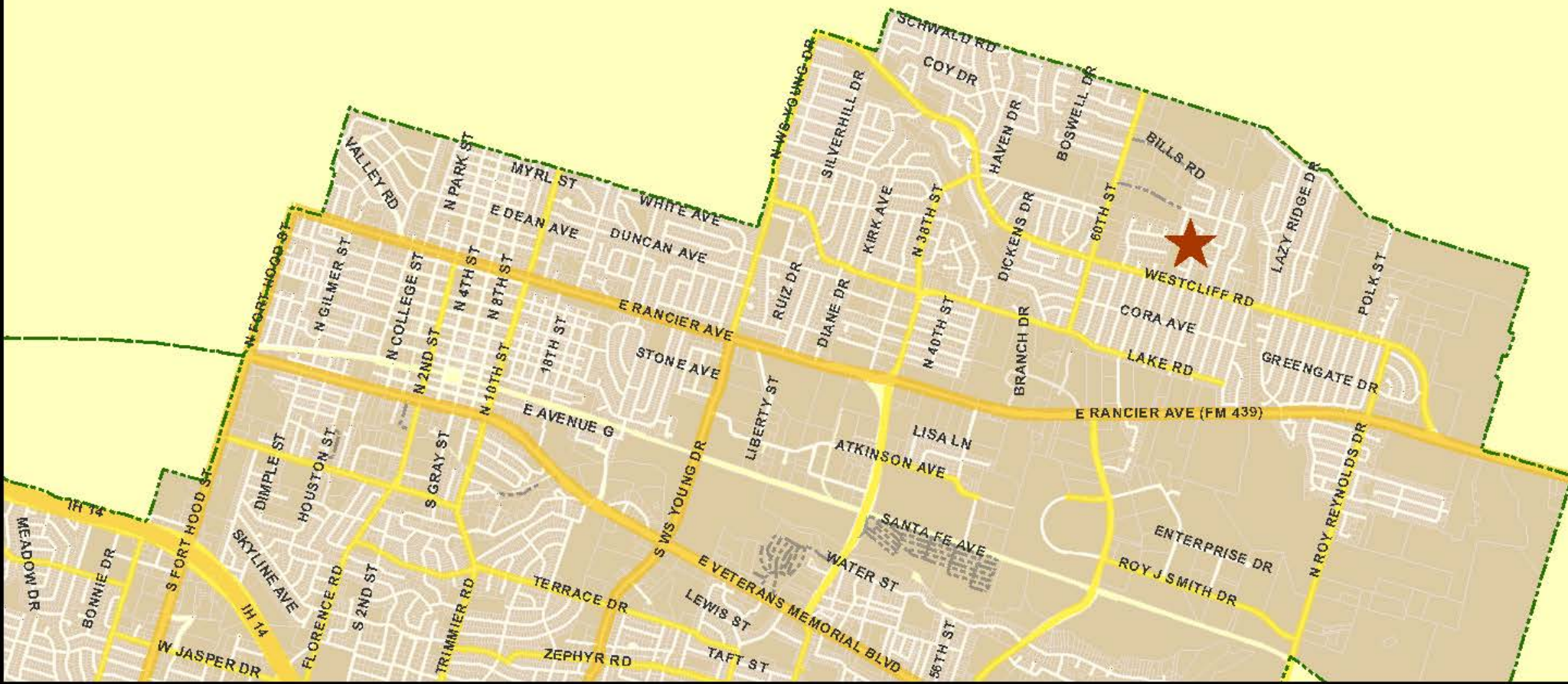
PH-21-030

July 6, 2021

Atmos Energy Easement

2

- Atmos Energy Corporation is requesting grant of a .202-acre temporary construction easement, to be located at 2301 Hunt Drive.
- The easement is necessary to facilitate a pipeline replacement effort.
- The location is the site of the Hunt Neighborhood Park. As proposed, the easement measures 30' x 292' and will encompass the basketball court and a portion of the playground and sidewalk.



Case: 2021-02AB

Council District: 1

Subject Property Legal Description: HUNTER'S CHASE SUBDIVISION, BLOCK 001, LOT 0016, PARK

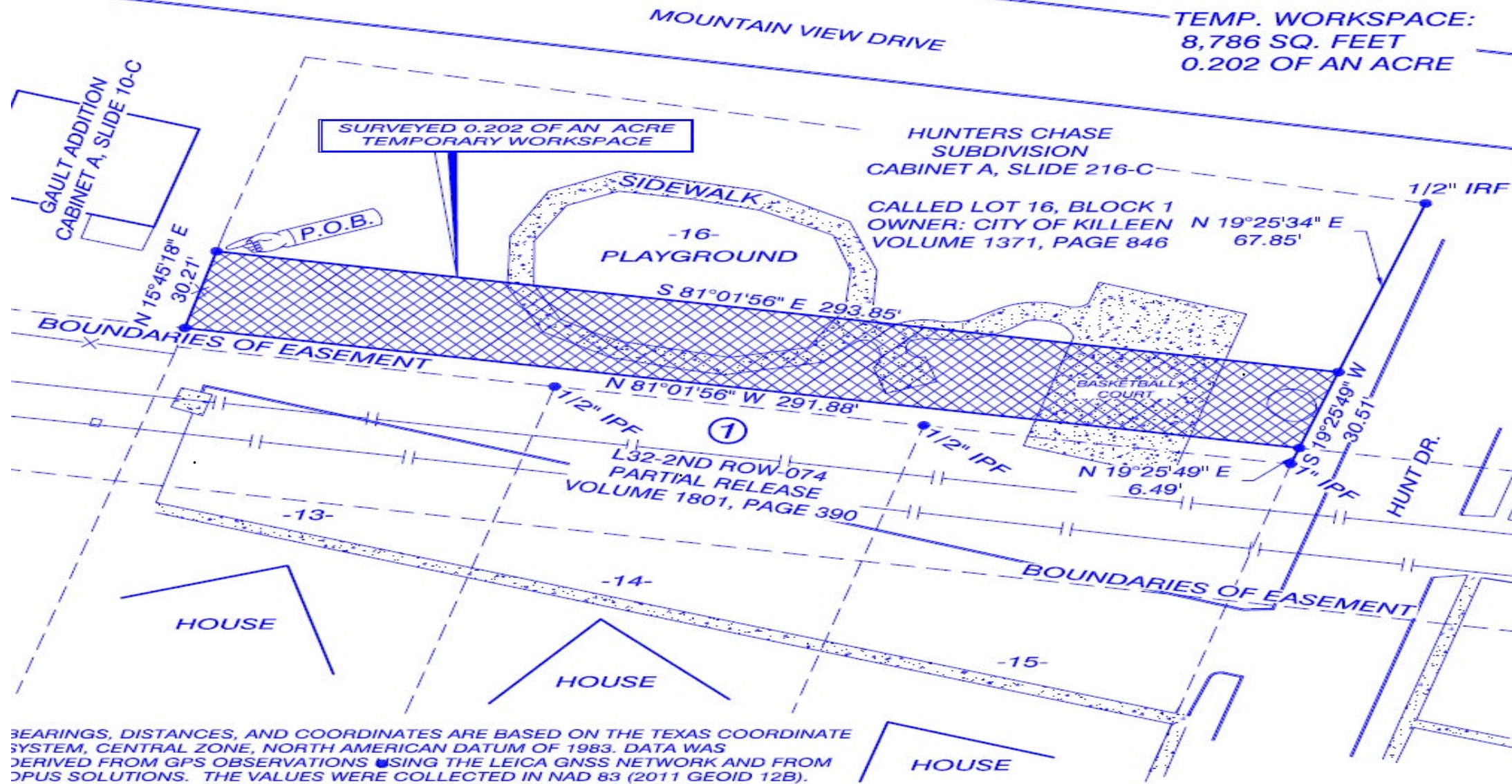


1 inch = 4,250 feet

DENOTES 1/2" IRON ROD (SET), EXCEPT AS NOTED.

LEGEND

TEMP. WORKSPACE:
8,786 SQ. FEET
0.202 OF AN ACRE



BEARINGS, DISTANCES, AND COORDINATES ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. DATA WAS DERIVED FROM GPS OBSERVATIONS USING THE LEICA GNSS NETWORK AND FROM DPUS SOLUTIONS. THE VALUES WERE COLLECTED IN NAD 83 (2011 GEOID 12B).

Atmos Energy Easement

5

- The City Council is authorized to grant the temporary construction easement (via an ordinance) per Article XI, Section 119, of the City Charter.
- If approved, the easement shall automatically terminate the earlier of: (a) the date on which Atmos Energy's activities are completed, or (b): eighteen months from the date of approval of the ordinance.
- Recreation Services staff will invoice Atmos Energy for the replacement costs of the park areas affected by the construction easement.

Alternatives

6

- ❑ The City Council has two (2) alternatives. The Council may:
 - ❑ Disapprove the ordinance granting Atmos Energy a temporary construction easement; or
 - ❑ Approve the ordinance granting Atmos Energy a temporary construction easement.

Recommendation

7

- Staff recommends that the City Council approve the ordinance granting a .202-acre temporary construction easement to Atmos Energy for the pipeline project.



City of Killeen

Legislation Details

File #: PH-21-043 **Version:** 1 **Name:** Atmos Energy Temporary Construction Easement
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 7/20/2021 **In control:** City Council
On agenda: 8/24/2021 **Final action:**
Title: HOLD a public hearing and consider an ordinance granting easements to Atmos Energy for approximately 0.221 acre consisting of a surface site easement, temporary workspace easement and access easement to be located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive, Killeen TX. (2nd of 3 readings)
Sponsors: Development Services
Indexes:
Code sections:
Attachments: [Staff Report](#)
[Maps](#)
[Exhibit](#)
[Offer Letter](#)
[Ordinance](#)
[Presentation](#)

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		
8/10/2021	1	City Council		
8/3/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 3, 2021

TO: Kent Cagle, City Manager

FROM: Tony McIlwain, Executive Director of Development Services

SUBJECT: Grant Atmos Energy easements for .221 acre consisting of a surface site easement, temporary workspace easement and access easement to be located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive

BACKGROUND AND FINDINGS:

Atmos Energy Corporation submits this request for the grant of a easements for approximately .221 acre consisting of a surface site easement, temporary workspace easement and access easement to be located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive. The subject property is located on a 7.28 acre site that was conveyed to the City of Killeen in 2015 for drainage purposes (the site has been identified as a regional detention pond in the 2005 and 2012 Drainage Master Plans). The proposed location of the .221 acre easement area will not affect the City's ability to further improve the property for drainage purposes. The Appraisal District of Bell County has placed a market value of \$500 on the entirety of the 7.28 acre site. Owing to this appraised value is Long Branch Ditch, which accounts for approximately 4 acres of floodplain on the land. The surface site easement and access easement are permanent easements and Atmos Energy has submitted an initial offer of \$2,500 as compensation for the acreage within the site and any applicable damage to the remainder of the property. Staff's determination is that the initial offer is adequate and fair. Atmos Energy intends to use the property during a pipeline replacement effort. The temporary workspace easement shall automatically terminate on the date on which initial construction of the easement facilities has been completed and placed into service. The attached Exhibit illustrates the location of the respective easements.

Article XI, Section 119, of the City Charter authorizes the City Council to approve this easement request and states, "*The ownership, right of control and use of streets, highways, alleys, parks, public places and all other real property of the City of Killeen is hereby declared to be inalienable to said City, except by ordinances passed by vote of the majority of the governing body of the city, as hereinafter provided; and no franchise or easement involving the right to use same, either along, across, over or under the same, shall ever be valid unless expressly granted and exercised in compliance with the terms hereof, and of the ordinances granting the same. No act or omission of the city, its governing body, officers or agents shall be construed to confer or extend by estoppel or indirection, any right, franchise or easement not expressly granted by ordinance.*"

THE ALTERNATIVES CONSIDERED:

The City Council has two (2) alternatives. The Council may:

- Disapprove the ordinance granting Atmos Energy the requested easements consisting of .221 acre and the compensation offer of \$2,500; or
- Approve the ordinance granting Atmos Energy the requested easements consisting of .221 acre and the compensation offer of \$2,500.

Which alternative is recommended? Why?

Staff recommends that the City Council approve the ordinance and accept the compensation offer. The easements consisting of .221 acre are necessary for the pipeline replacement.

CONFORMITY TO CITY POLICY:

This item conforms to state and local policies.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This easement request does not involve the expenditure of city funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

Staff recommends that the City Council approve the ordinance granting Atmos Energy the requested easements after three readings.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning and Legal staff.

ATTACHED SUPPORTING DOCUMENTS:

Maps
Exhibit
Initial offer letter
Ordinance



PAVED FLY DATE:
FROM 2003 (SET), EXCEPT AS NOTED.

FACE SITE

WORKSPACE

CESS EASEMENT

IRF

WILLOWBEND NORTH
BLOCK 1
CABINET A, SLIDE 32-B

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

IRF

A. DICKSON SURVEY A-288

CALLED 7.28 ACRES
CHARLOTTE R. CHAFFIN
TO
CITY OF KILLEEN
INST. NO. 201500014225

SURVEYED 0.058 OF AN ACRE
ACCESS EASEMENT

SURVEYED 0.108 OF AN ACRE
TEMPORARY WORKSPACE

L32-2ND ROW 078
BLANKET
VOLUME 498, PAGE 440

LINE	BEARING	DISTANCE
L1	N 16°29'38" E	50.00'
L2	S 73°30'22" E	60.00'
L3	S 16°29'38" W	60.00'
L4	N 73°30'22" W	60.00'
L5	S 16°29'38" W	34.61'
L6	N 16°29'38" E	25.00'
L7	S 73°30'22" E	60.00'
L8	N 16°29'38" E	60.00'
L9	N 73°30'22" W	35.00'
L10	N 16°29'38" E	25.00'
L11	S 16°29'38" W	9.61'
L12	S 73°30'22" E	16.00'
L13	N 73°30'22" W	15.00'
L15	S 16°29'38" W	84.61'

SURFACE SITE:
2,500 SQ. FEET
0.057 OF AN ACRE

TEMPORARY WORKSPACE:
186 LN. FEET
4,625 SQ. FEET
0.108 OF AN ACRE

ACCESS EASEMENT:
168 LN. FEET
2,515 SQ. FEET
0.058 OF AN ACRE

BEARINGS, DISTANCES, AND COORDINATES ARE BASED ON THE TEXAS COORDINATE
SYSTEM, CENTRAL PLAINS, NORTH AMERICAN DATUM OF 1983. DATA WAS
DERIVED FROM GPS OBSERVATIONS USING THE LEICA GNSS NETWORK AND FROM
OPUS SOLUTIONS. THE VALUES WERE COLLECTED IN NAD 83 (2011 GEOID 12M).

Case Number:

21-03 AB

Zoning:

R-1

Legal Description:

A0265 BC A DICKSON,
16-1, ACRES 7.28

Council District:

01

Legend

Utility Easements

City Limits

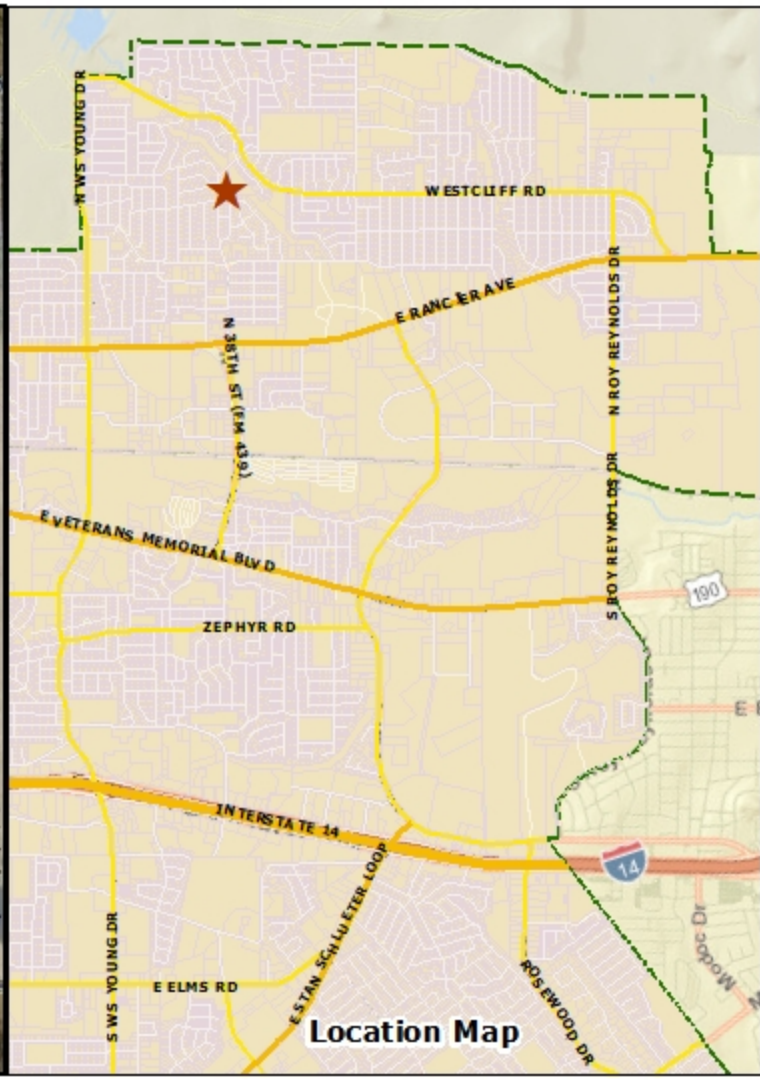
EASEMENT LOCATION



1 inch = 83 feet



Date: 6/29/2021



Location Map

SEE NOTES PREPARED EVEN DATE.
DENOTES 1/2" IRON ROD (SET), EXCEPT AS NOTED.

LEGEND

- SURFACE SITE
- TEMP. WORKSPACE
- ACCESS EASEMENT

**A. DICKSON SURVEY
A-266**

LINE	BEARING	DISTANCE
L1	N 16°29'38" E	50.00'
L2	S 73°30'22" E	50.00'
L3	S 16°29'38" W	50.00'
L4	N 73°30'22" W	50.00'
L5	S 16°29'38" W	34.61'
L6	N 16°29'38" E	25.00'
L7	S 73°30'22" E	50.00'
L8	N 16°29'38" E	50.00'
L9	N 73°30'22" W	35.00'
L10	N 16°29'38" E	25.00'
L11	S 16°29'38" W	9.61'
L12	S 73°30'22" E	15.00'
L13	N 73°30'22" W	15.00'
L15	S 16°29'38" W	84.61'

CALLED 7.28 ACRES
CHARLOTTE R. CHAFFIN
TO
CITY OF KILLEEN
INST. NO. 201500014225

SURVEYED 0.058 OF AN ACRE
ACCESS EASEMENT

SURVEYED 0.106 OF AN ACRE
TEMPORARY WORKSPACE

SURVEYED 0.057 OF AN ACRE
SURFACE SITE

L32-2ND ROW 078
BLANKET
VOLUME 496, PAGE 440

SURFACE SITE:
2,500 SQ. FEET
0.057 OF AN ACRE

TEMPORARY WORKSPACE:
185 LN. FEET
4,625 SQ. FEET
0.106 OF AN ACRE

ACCESS EASEMENT:
168 LN. FEET
2,515 SQ. FEET
0.058 OF AN ACRE

BEARINGS, DISTANCES, AND COORDINATES ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. DATA WAS DERIVED FROM GPS OBSERVATIONS USING THE LEICA GNSS NETWORK AND FROM OPUS SOLUTIONS. THE VALUES WERE COLLECTED IN NAD 83 (2011 GEOID 12B).

PLAT LEGEND

- MONUMENTATION
- FENCE
- SURVEY LINE
- TRACT BOUNDARY
- PROP. SURFACE SITE
- OVER HEAD POWER
- ROAD - PUBLIC
- EXISTING PIPELINE

I, the undersigned, do hereby certify that this plat is true and correct to the best of my knowledge and belief.

BY: **FEBRUARY 3, 2021**



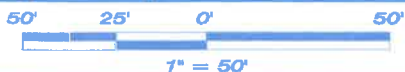
GRID NORTH
TEXAS CENTRAL
NAD 1983

**RMC
SURVEYING**

13621 HWY. 110 S.
TYLER, TX. 75707
(903) 939-8860
FIRM ID 10122800

REVISIONS

NO.	DATE	DESCRIPTION
A	02/03/2021	ISSUED FOR REVIEW



ACREAGE

SURFACE SITE
60 X 60 LN. FEET
2,500 SQ. FEET
0.057 OF AN ACRE
TEMP. WORKSPACE
185 LN. FEET
4,625 SQ. FEET
0.106 OF AN ACRE
ACCESS EASEMENT
168 LN. FEET
2,515 SQ. FEET
0.058 OF AN ACRE
TOTAL ACREAGE
0.221 OF AN ACRE

ATMOS ENERGY CORPORATION
EXHIBIT PLAT
SHOWING
SURFACE SITE, TEMP. WORKSPACE
& ACCESS EASEMENT
A. DICKSON SURVEY, A-266
BELL COUNTY, TEXAS

OWNER

**CITY OF
KILLEEN**

REV.

A



INITIAL OFFER LETTER

06.21.2021

City of Killeen
PO Box 1329
Killeen, TX 76540-1329

Via CMRRR# 7020 0090 0000 8929 8479

City of Killeen
101 North College
Killeen, Texas 76541

Via CMRRR# 7020 0090 0000 8929 8486

RE: Atmos Energy Pipeline – Line P25 (L32)
Bell County, Texas

Dear Landowner:

Atmos Energy Corporation (“Atmos Energy”) is a Texas-based company that transports and delivers natural gas to residential, commercial, industrial and municipal customers. In order to safely and reliably provide our customers with these services, Atmos Energy must from time to time install new pipelines and related facilities. In connection therewith, Atmos Energy has determined there is a public necessity to acquire a new surface site location over your property in Bell County, which is more particularly described in the easement enclosed herewith.

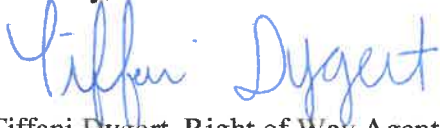
Atmos Energy has investigated property values in your area in order to assess the amount of just compensation due as a result of this acquisition and determined that **\$2,500.00** is appropriate compensation for the acreage within the site and any applicable damage to the remainder of your property. You have the right to discuss with others this offer or any agreement made with Atmos Energy, or you have the right to keep this offer or any agreement confidential.

Copies of the proposed easement and a plat showing the location of the easement on your property are enclosed. Please feel free to call me to discuss these documents.

Atmos Energy has the power of eminent domain in acquiring the easement being sought because it is for a public use and purpose. However, Atmos Energy prefers to acquire property rights through open market negotiation. In the event Atmos Energy cannot acquire the easement by voluntary acquisition, the condemnation process will have to be used. Enclosed for your convenience and reference is a copy of *The State of Texas Landowner's Bill of Rights*, which discusses the condemnation process.

If you wish to discuss this offer with Atmos Energy, please contact me at (214) 206-2913 or via email at tiffani.dygert@atmosenergy.com or our right-of-way agent, Mike Russell with Percheron LLC, at (956) 330-4758. We look forward to discussing this matter with you.

Sincerely,



Tiffani Dygert, Right of Way Agent II
Atmos Energy Corporation
5420 LBJ Freeway, Suite 1700
Dallas, Texas 75240

Enclosures: Easement
Survey plat
Landowner's Bill of Rights

AN ORDINANCE GRANTING EASEMENTS TO ATMOS ENERGY CORPORATION FOR APPROXIMATELY .221 ACRE CONSISTING OF A SURFACE SITE EASEMENT, TEMPORARY WORKSPACE EASEMENT, AND ACCESS EASEMENT LOCATED AT THE TERMINUS OF PERSIMMON DRIVE, ADJACENT TO 3008 PERSIMMON DRIVE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Atmos Energy Corporation has presented to the City of Killeen, a request for easements for approximately .221 acre consisting of a surface site easement, temporary workspace easement and access easement, for property located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive, Killeen, Texas;

WHEREAS, the City Council, after three readings at three separate Council meetings, duly considered said request and the evidence in support thereof, and the City Council being of the majority opinion that the Atmos Energy's easement request should be approved;

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

That for and in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration paid by Atmos Energy Corporation, a Texas and Virginia corporation with its principal office at 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, together with its successors and assigns (said entity and its successors and assigns are herein collectively called "Grantee"), the receipt of which is hereby acknowledged, the undersigned, (herein called "Grantor" whether one or more), hereby grants, sells and conveys unto Grantee, a free and unobstructed right of way and exclusive easement for the purposes of:

(i) laying, constructing, operating, maintaining, inspecting, repairing, replacing, changing the size of, relocating and changing the route or routes of, abandoning in place and removing at will, in whole or in part, aboveground and underground pipeline or pipelines and the appurtenances thereto, including, without limitation, valves, fittings, metering facilities, pigging facilities, pressure regulating facilities, cathodic protection equipment, communication facilities, barricades and fencing, the right to construct and install gravel, asphalt or concrete upon the surface of the Facilities Easement Area (as defined herein), aerial markers, and other appurtenances as may be necessary or convenient in the operation of said facilities (collectively, the "Aboveground Facilities"), over, across, under and upon the lands more particularly described, and labeled as "Surface Site" on Exhibit " A" attached hereto and made a part hereof for all purposes (collectively, the "Facilities Easement Area"); and

(ii) vehicular and pedestrian ingress to and egress from the Facilities Easement Area along and

upon the land more particularly described as the "Access Easement" on Exhibit "A" attached hereto and made a part hereof (the "Access Easement Area").

Grantee's Aboveground Facilities and any improvements to the Access Easement Area are collectively referred to as Grantee's "Easement Facilities." The areas comprising the Facilities Easement Area and the Access Easement Area are collectively referred to as the "Easement Area."

Grantee shall also be entitled to use temporary workspace as described in Exhibit "A" (the "Temporary Workspace") to carry out the initial construction of the Easement Facilities, which rights shall include, but not be limited to, boring activities, clearing, leveling, temporary storage, and staging equipment and materials. Grantee's right to utilize this Temporary Workspace will terminate and cease on the date on which initial construction of the Easement Facilities has been completed and the same are placed into service.

It is further agreed as follows:

1. Grantee shall have the right to select the exact location of its Aboveground Facilities within the Facilities Easement Area, and to do whatever may be requisite for the use and enjoyment of the rights herein granted, including the right of ingress and egress over Grantor's adjacent or additional lands to or from the Facilities Easement Area in the event that Grantee cannot, within its sole discretion, reasonably access the Facilities Easement Area by staying within the boundaries of the Access Easement Area.
2. Grantor shall have no access rights on, under, or over the Facilities Easement Area. Further, Grantor shall not obstruct Grantee's use of the Access Easement Area.
3. Grantor further agrees not to change the grade, remove dirt from the surface of the Easement Area or impound water over the Easement Area without the prior written approval of Grantee.
4. The aforesaid consideration includes any and all damages that may be sustained by the original construction of the Easement Facilities, including without limitation, cutting trees and damages to land, trees, buildings, fences, growing crops and grasses; however, after the original construction Grantee will pay to the owner of the land and, if leased, to his tenant, as they may be respectively entitled, actual damages done to fences and growing crops by reason of entry to repair, maintain and remove the Easement Facilities. Further, the aforesaid consideration includes the right of Grantee to install additional, future appurtenances as Grantee, in its sole discretion, may determine to be necessary or convenient.
5. Grantee has the right to trim, cut down or eliminate trees or shrubbery to the extent, in the sole judgment of Grantee as may be necessary to prevent possible present or future interference with the convenient operation or convenient inspection of the Easement Facilities and to remove possible present or future hazards to the Easement Facilities, and the right to remove or prevent the construction of any and all buildings, structures, reservoirs, or other obstructions on the Easement Area and to prevent activities on the Easement Area, any of which, in the sole judgment of the Grantee may presently or in the future endanger or interfere with the efficiency, safety, convenient operation or convenient inspection of the Easement Facilities.
6. If Grantee should abandon the rights granted herein and if such abandonment should continue for a continuous period of ten years, all rights of Grantee herein shall ipso facto terminate and revert to Grantor, his heirs, legal representatives, and assigns.

7. Grantor and Grantee agree that the failure to assert any right under this Aboveground Facilities Easement shall not constitute a waiver of any other right hereunder. Further, it is hereby agreed that any delay by Grantee in asserting any right granted it in this Aboveground Facilities Easement, regardless of the length of any such delay, shall not prevent Grantee from later asserting or otherwise enforcing that same right, including but not limited to the right to prevent or remove any encroachments within the Easement Area as provided in Paragraph 5 above.

8. Both Grantor and Grantee hereby represent and warrant that they have read and have fully understood the terms of this Aboveground Facilities Easement, that they have had the opportunity to have same reviewed by an attorney, and that in entering into this Aboveground Facilities Easement they are relying solely upon their independent review and the advice of their respective counsel. Further, Grantor and Grantee acknowledge that this Aboveground Facilities Easement has been negotiated by the parties, and this Aboveground Facilities Easement shall be construed as one prepared by the joint efforts of Grantor and Grantee and shall not be construed against either party as the drafter.

TO HAVE AND TO HOLD the above-described easements and rights unto the said Grantee, and Grantee's successors and assigns, until abandoned as provided for herein.

This instrument and covenants and agreements herein contained shall constitute covenants running with the land, binding upon Grantor, his heirs, legal representatives, successors and assigns, for the benefit of Grantee, and Grantee's successors and assigns.

Grantor hereby binds himself, his heirs, legal representatives and assigns to warrant and forever defend all and singular the above-described easements and rights, unto the said Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

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 14th day of September 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:

Jose L. Segarra, MAYOR

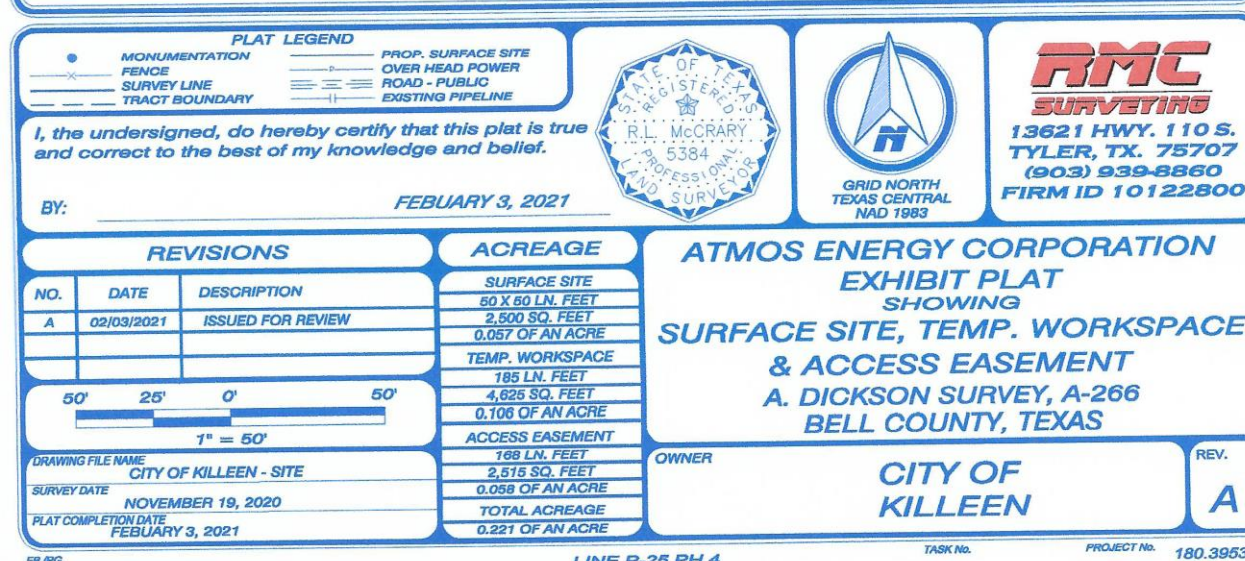
ATTEST:

Lucy C. Aldrich, CITY SECRETARY

APPROVED AS TO FORM

Traci S. Briggs, CITY ATTORNEY
Case #21-03AB
Ord. #21-____

EXHIBIT "A"
Page 4 of 4



This page intentionally left blank.



CONSIDER AN ORDINANCE GRANTING ATMOS
ENERGY A .221 ACRE SURFACE SITE, TEMPORARY
WORKSPACE AND ACCESS EASEMENT

PH-21-043

August 3, 2021

Atmos Energy Easements

2

- Atmos Energy Corporation is requesting a .221 acre area consisting of a surface site easement, temporary workspace easement and access easement in conjunction with a pipeline replacement. Atmos has submitted an initial offer letter of \$2,500 for use of the property.
- The subject property is located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive.
- The undeveloped property is 7.28 acres that contains approximately four acres of Long Branch Ditch floodplain.



Location Map

Atmos Energy Easements

4

- The City Council is authorized to grant the easements (via an ordinance) per Article XI, Section 119, of the City Charter. Three readings of the request is required.
- The temporary workspace easement will terminate and cease on the date on which the initial construction of the easement facilities has been completed and placed into service.

Alternatives

5

- ❑ The City Council has two (2) alternatives. The Council may:
 - ▣ Disapprove the ordinance granting Atmos Energy's easement request and \$2,500 compensation offer; or
 - ▣ Approve the ordinance granting Atmos Energy's easement request and \$2,500 compensation offer.

Recommendation

6

- Staff recommends that the City Council approve an granting Atmos Energy the requested .221 acre easement(s) for the pipeline replacement project.



City of Killeen

Legislation Details

File #:	PH-21-044	Version:	1	Name:	FLUM21-05
Type:	Ordinance/Public Hearing		Status:	Public Hearings	
File created:	7/27/2021		In control:	City Council	
On agenda:	8/24/2021		Final action:		
Title:	HOLD a public hearing and consider an ordinance requested by Joshua Welch on behalf of EAS Investments (Case #FLUM21-05) to amend the Comprehensive Plan's Future Land Use Map (FLUM) for approximately 72.359 acres out of the V. L. Evans Survey, Abstract 288, from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation. The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.				
Sponsors:	Development Services				
Indexes:					
Code sections:					
Attachments:	Staff Report Maps Minutes Ordinance Presentation				

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2021

TO: Kent Cagle, City Manager

FROM: Tony McIlwain, Exec. Dir. of Development Services

SUBJECT: FLUM CASE #21-05: 'Suburban Residential' (SR) to 'General Residential' (GR)

BACKGROUND AND FINDINGS:

Summary of Request:

This request, submitted by Joshua Welch on behalf of EAS Investments, (Case #FLUM21-05) is to amend the Comprehensive Plan's Future Land Use Map (FLUM) from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation for approximately 72.359 acre. If approved, the applicant intends to develop the property with a mix of "SF-2" (Single-Family Residential District), "R-2" (Two-Family Residential District), and "B-5" (Business District) uses.

Zoning / Plat Case History:

The western portion of the property was annexed into the City on October 9, 1972, via Ordinance No. 72-59. The eastern portion of the property was annexed into the City on May 24, 1994, via Ordinance No. 94-40. On November 8, 2005, approximately 62.66 acres was rezoned from "R-1" (Single Family Residential District) to "R-2" (Two-Family Residential District) and "R-3" (Multi-Family Residential District) via Ordinance No. 05-105. On December 20, 2005, approximately 6.792 acres was rezoned from "R-2" (Two-Family Residential District) to "R-3" (Multi-Family Residential District) via Ordinance No. 05-125. On December 12, 2006, approximately 11.381 acres was rezoned from "R-1" (Single Family Residential District), "R-2" (Two-Family Residential District) and "R-3" (Multi-Family Residential District) to "B-5" (Business District). The property is currently unplatted.

Character of the Area:

The surrounding area is made up of a mix of residential and commercial properties. Adjacent land uses are as follows:

North: Undeveloped property on the opposite side of East Rancier Avenue, which is located outside the City limits;

East: Undeveloped property zoned "R-1" (Single-Family Residential District);

South: Undeveloped property zoned "R-1" (Single-Family Residential District); and an existing auto salvage facility zoned "M-2" (Heavy Manufacturing District);

West: Existing single-family and two-family residential subdivision zoned "PUD" (Planned Unit Development) with underlying "R-2" (Two-Family Residential) and "SF-2" (Single-Family

Residential) uses; an existing manufactured home park zoned "R-MH" (Residential Mobile Home District); and undeveloped property zoned "R-2" (Two-Family Residential).

Future Land Use Map Analysis:

This property is designated as 'Suburban Residential (SR) on the Future Land Use Map (FLUM) of the Comprehensive Plan.

The current 'Suburban Residential' (SR) designation encourages the following development types:

- Detached residential dwellings;
- Planned developments to provide for other housing types (e.g., townhouse, patio) in a Suburban character setting;
- Public/ institutional; and
- Parks and public spaces.

If approved, the 'General Residential' (GR) designation encourages the following development types:

- Detached residential dwellings the primary focus;
- Attached housing types subject to compatibility and open space standards (e.g., duplexes, townhomes, patio homes);
- Planned developments, potentially with a mix of housing types and varying densities, subject to compatibility and open space standards;
- Public/institutional; and
- Parks and public spaces.

A concurrent zoning application has been submitted by the applicant to rezone the property from "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multi-Family Residential District), and "B-5" (Business District) to "R-2" (Two-Family Residential District), "SF-2" (Single-Family Residential District), and "B-5" (Business District).

Staff Findings:

The subject property is identified on the Future Land Use Map (FLUM) as being intended for 'Suburban Residential' (SR) development. The suburban residential district encourages large suburban style lots having a minimum width of seventy (70) feet, and a minimum area of eight thousand four hundred (8,400) square feet.

The current zoning of the subject property is a mix of "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multi-Family Residential District), and "B-5" (Business District). The current uses of the areas abutting the subject property include an existing mobile home park, a single-family and two-family subdivision zoned "PUD" with underlying "R-2" (Two-Family Residential) and "SF-2" (Single-Family Residential) uses, and an auto salvage yard, which is zoned "M-2" (Heavy Manufacturing District).

In addition, portions of the property owned by the applicant are already zoned "R-2" (Two-Family Residential District) and "R-3" (Multi-Family Residential District). Therefore, these areas can be developed based upon their current zoning, which allows for greater density than contemplated by the 'Suburban Residential' (SR) land use designation.

Staff finds that it is unlikely that the subject property will be developed with large suburban lots in accordance with the Future Land Use Map (FLUM). Based on the adjacent land uses and current zoning in this area, staff is of the determination that the subject property would be better suited for smaller residential lots, as proposed by the applicant. Therefore, staff is of the determination that the 'General Residential' (GR) land use designation is appropriate in this location.

Public Notification:

Staff mailed courtesy notices to seventy-eight (78) surrounding property owners regarding this request. Of those property owners notified, fourteen (14) reside outside of Killeen.

THE ALTERNATIVES CONSIDERED:

The City Council has two (2) alternatives. The Council may:

- Disapprove the applicant's FLUM amendment request; or
- Approve the applicant's FLUM amendment request.

Which alternative is recommended? Staff recommends approval of the applicant's FLUM amendment request as presented.

Why? Staff finds that the request to amend the FLUM from 'Suburban Residential' (SR) to 'General Residential' (GR) is appropriate in this location. Based on the adjacent land uses and current zoning in this area, staff finds that it is unlikely that this area will be developed in accordance with the current Future Land Use Map (FLUM) designation.

CONFORMITY TO CITY POLICY:

This request conforms to the City's policy and procedures as detailed in Chapter 31 of the City of Killeen Code of Ordinances.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The proposed FLUM amendment does not involve the expenditure of City funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

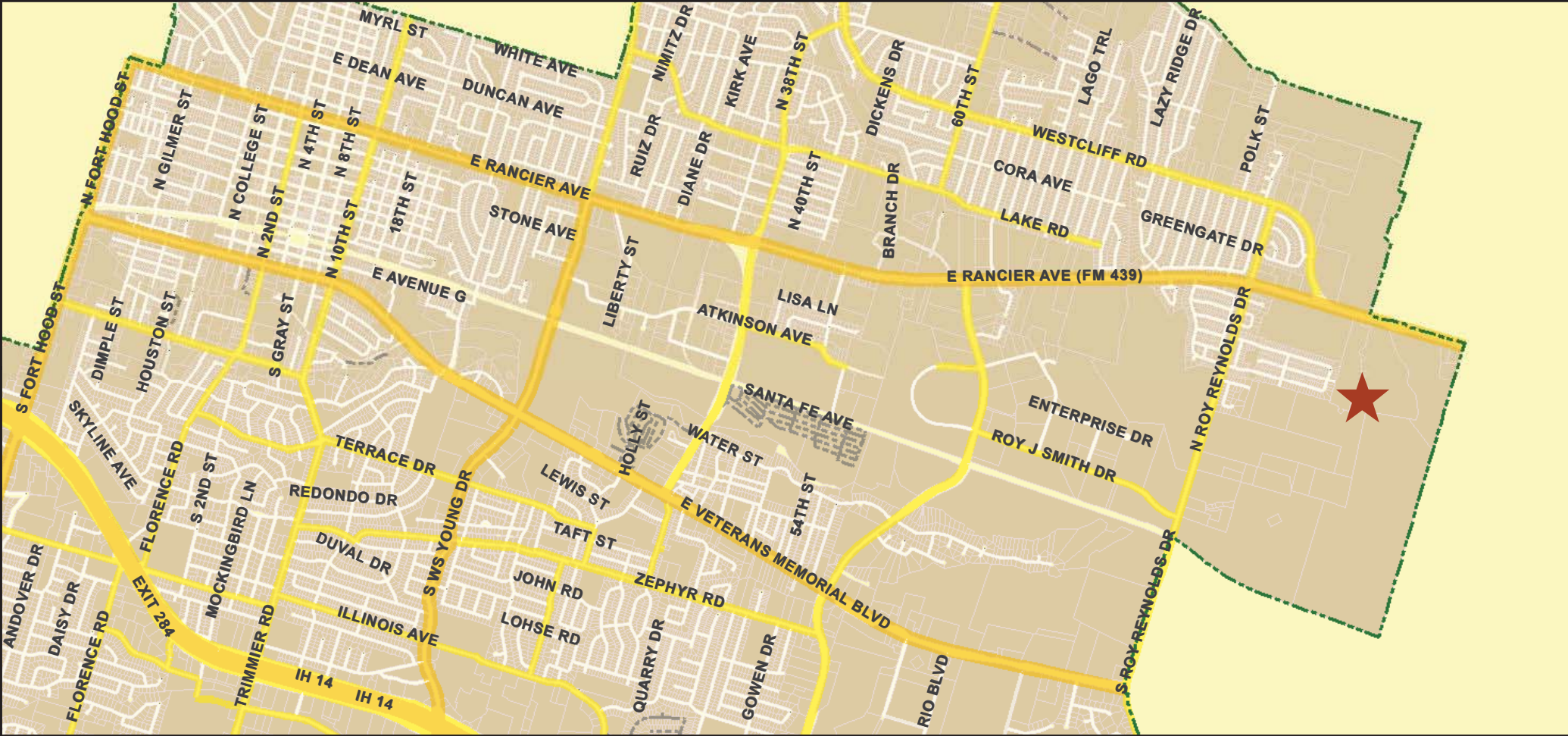
At their regular meeting on August 2, 2021, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 5 to 0.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning and Legal staff.

ATTACHED SUPPORTING DOCUMENTS:

Maps
Minutes
Ordinance



Case: FLUM AMENDMENT 2021-05

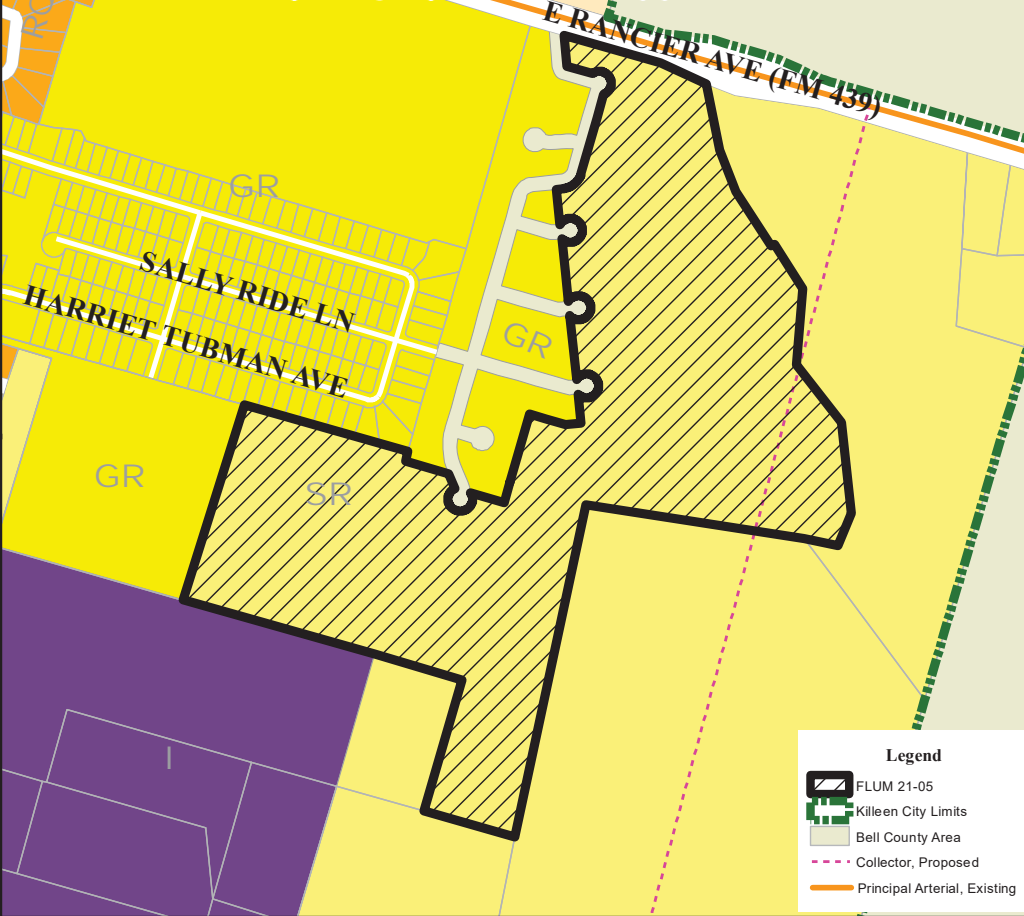
Council District: 1
FROM SR TO GR
Subject Property Legal Description: A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.19

 FLUM LOCATION

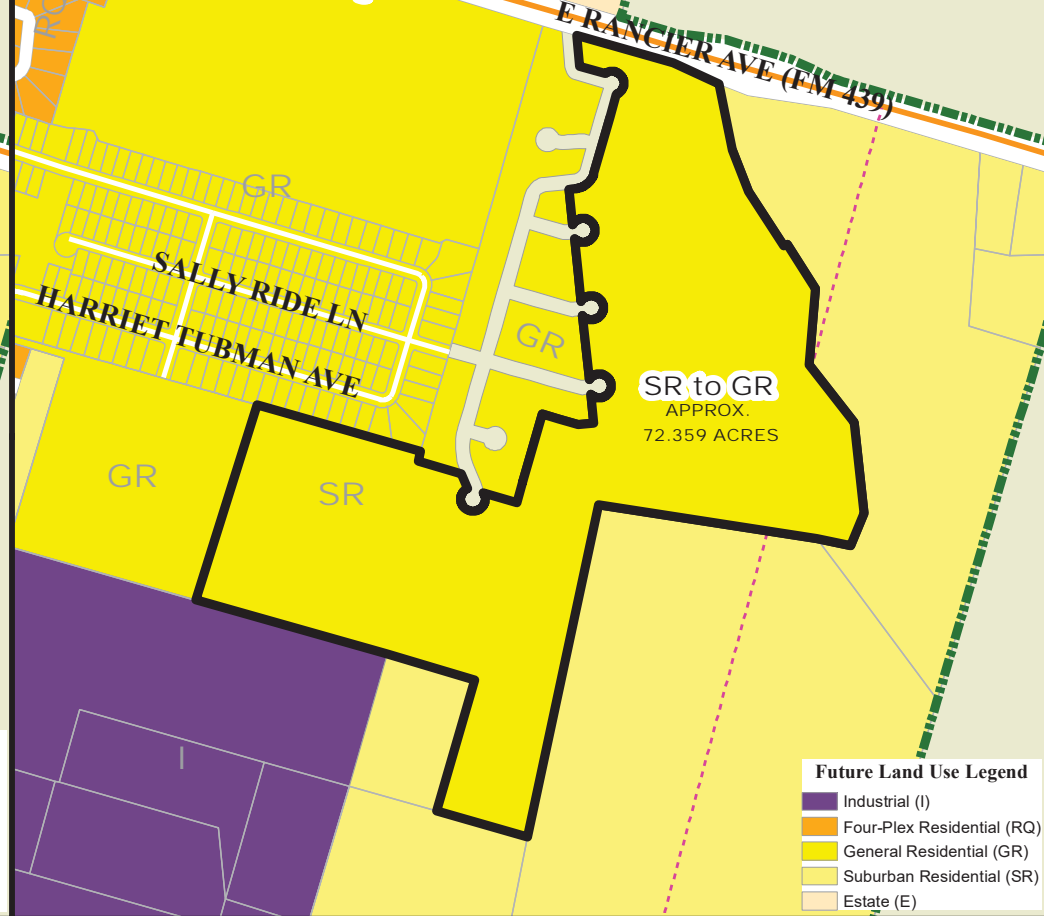


1 inch = 3,333 feet

EXISTING FUTURE LANDUSE MAP



REQUESTED FUTURE LANDUSE MAP



FUTURE LAND USE MAP

Case: FLUM AMENDMENT 2021-05

Council District: 1

FROM SR TO GR

Subject Property Legal Description: 72.359 ACRES OUT OF A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.19



1 inch = 875 feet

Date: 7/23/202

**MINUTES
PLANNING AND ZONING COMMISSION MEETING
AUGUST 2, 2021**

**CASE #FLUM21-05
'SR' to 'GR'**

HOLD a public hearing and consider a request submitted by Joshua Welch on behalf of EAS Investments (**Case #FLUM21-05**) to amend the Comprehensive Plan's Future Land Use Map (FLUM) for approximately 72.359 acres out of the V. L. Evans Survey, Abstract 288, from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation. The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.

Ms. Wallis Meshier briefed the Commission regarding the applicant's request. She stated that staff recommended approval of the request as presented.

The applicant, Mr. Josh Welch, was present to represent the case.

Chairman Latham opened the public hearing. With no one wishing to speak, the public hearing was closed.

Commissioner Alvarez made a motion to approve the applicant's request. Commissioner Hodges seconded, and the motion passed by a vote of 5 to 0.

ORDINANCE _____

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO CHANGE APPROXIMATELY 72.359 ACRES OUT OF THE V. L. EVANS SURVEY, ABSTRACT 288, FROM A 'SUBURBAN RESIDENTIAL' (SR) DESIGNATION TO A 'GENERAL RESIDENTIAL' (GR) DESIGNATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Killeen finds that Chapter 213.003 of the Local Government Code enables municipalities to adopt and amend comprehensive plans in the interest of coordinating long-range development of the municipality.

WHEREAS, the Planning and Zoning Commission has received a request from Joshua Welch on behalf of EAS Investments for a revision to the Future Land Use Map (FLUM) of the Comprehensive Plan, to change the 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation, said property being legally described as being approximately 72.359 acres out of the V. L. Evans Survey, Abstract 288; said revision having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 2nd day of August 2021, 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 24th day of August 2021, 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 amendment should be approved;

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

SECTION I: That the future land use designation of approximately 72.359 acres out of the V. L. Evans Survey, Abstract 288, be amended from a ‘Suburban Residential’ (SR) designation to a ‘General Residential’ (GR) designation.

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 24th day of August 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Lucy C. Aldrich, CITY SECRETARY

APPROVED AS TO FORM

Traci S. Briggs, City Attorney

Case #: FLUM 21-05

Ord#: 21-____



FLUM CASE #21-05: 'SR' TO 'GR'

PH-21-044

August 17, 2021

FLUM Case #21-05: 'SR' to 'GR'

- ❑ **HOLD** a public hearing and consider a request submitted by Joshua Welch on behalf of EAS Investments (**Case #FLUM21-05**) to amend the Comprehensive Plan's Future Land Use Map (FLUM) for approximately 72.359 acres out of the V. L. Evans Survey, Abstract 288, from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation. The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.

FLUM Case #21-05: 'SR' to 'GR'

- ❑ This request is to amend approximately 72.359 acres on the Future Land Use Map (FLUM) from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation.
- ❑ The property is located on the south side of East Rancier Avenue, east of the Patriot's Ridge subdivision.

FLUM Case #21-05: 'SR' to 'GR'

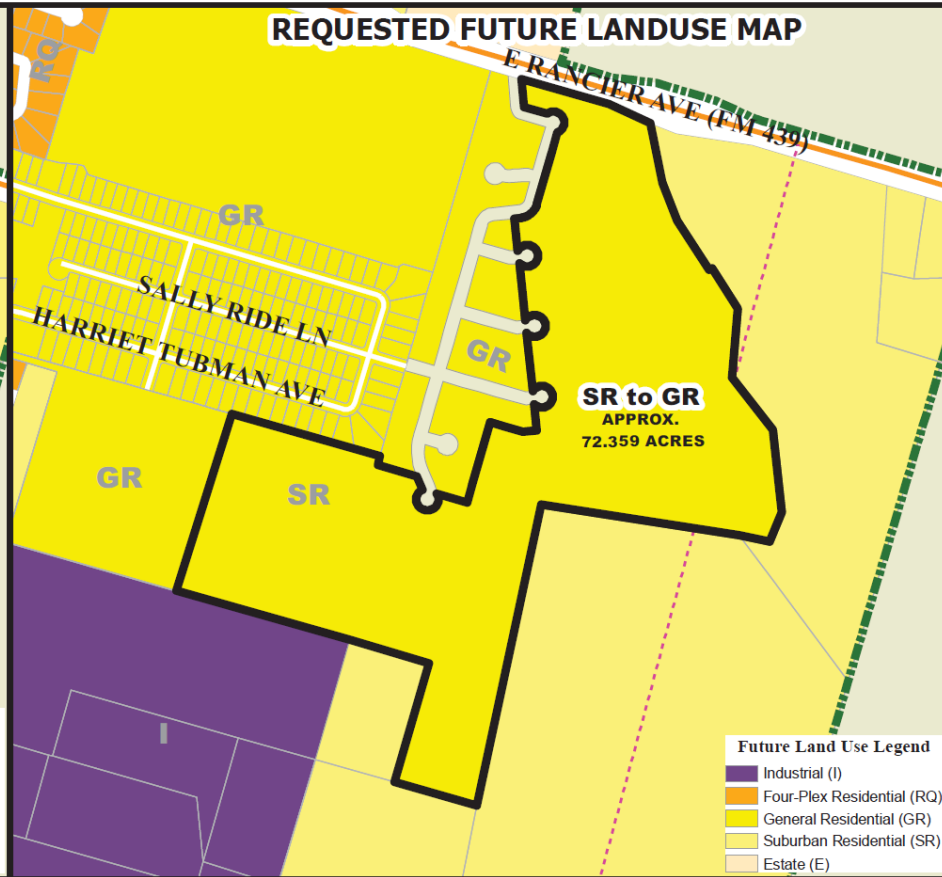
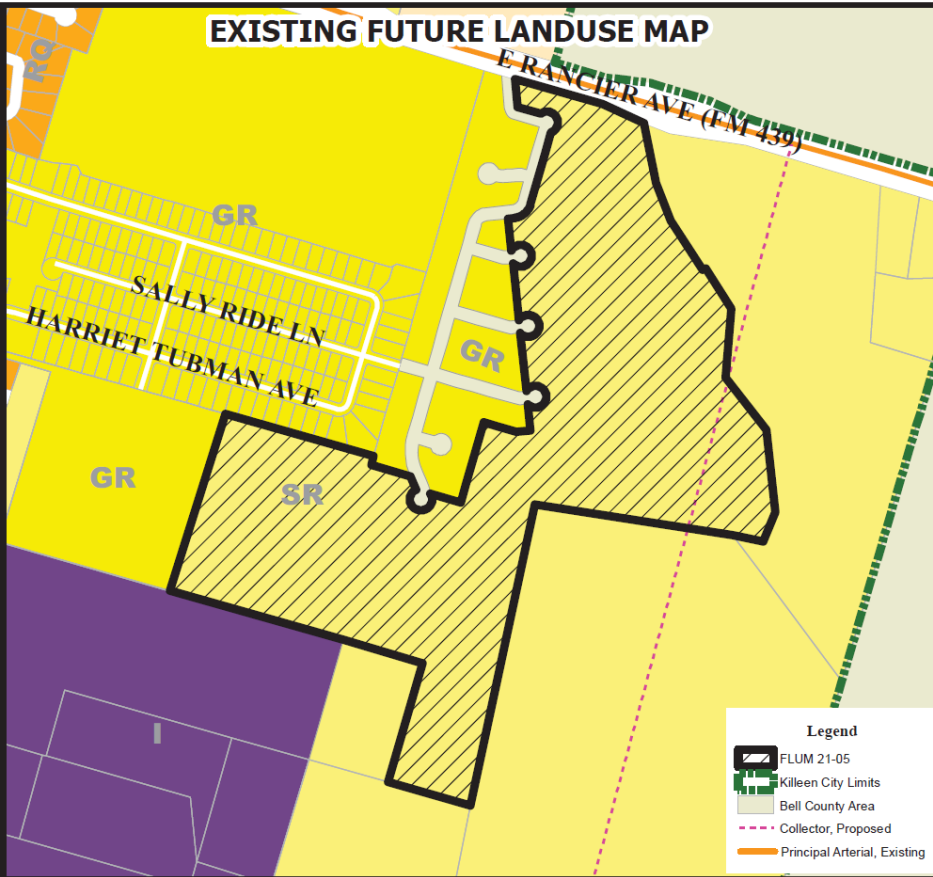
5

- The property is currently undeveloped.
- If approved, the applicant intends to develop a single-family and two-family residential development with fifty (50) to sixty (60) foot wide lots.



EXISTING FUTURE LANDUSE MAP

REQUESTED FUTURE LANDUSE MAP



FUTURE LAND USE MAP

Case: FLUM AMENDMENT 2021-05

Council District: 1

FROM SR TO GR

Subject Property Legal Description: 72.359 ACRES OUT OF A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.19



1 inch = 875 feet

Date: 7/23/202

FLUM Case #21-05: 'SR' to 'GR'

8

- This property is currently designated as 'Suburban Residential' (SR) on the Future Land Use Map (FLUM) of the Comprehensive Plan.
- The 'Suburban Residential' (SR) designation encourages the following development types:
 - ▣ Detached residential dwellings;
 - ▣ Planned developments to provide for other housing types (e.g., townhouse, patio) in a Suburban character setting;
 - ▣ Public/ institutional; and
 - ▣ Parks and public spaces.

FLUM Case #21-05: 'SR' to 'GR'

9

- If approved, the 'General Residential' (GR) designation encourages the following development types:
 - ▣ Detached residential dwellings as a primary focus;
 - ▣ Attached housing types subject to compatibility and open space standards (e.g., duplexes, townhomes, patio homes);
 - ▣ Planned developments, potentially with a mix of housing types and varying densities, subject to compatibility and open space standards;
 - ▣ Public/ institutional; and
 - ▣ Parks and public spaces.

Staff Findings

10

- The current zoning of the property is a mix of “R-1” (Single-Family Residential District), “R-2” (Two-Family Residential District), “R-3” (Multi-Family Residential District), and “B-5” (Business District).
- To the west of the property is an existing mobile home park, and the Patriot’s Ridge subdivision, which includes single-family and two-family homes. To the southwest is an existing auto salvage yard, which is zoned “M-2” (Heavy Manufacturing District).

Public Notification

11

- Staff sent courtesy notices to seventy-eight (78) surrounding property owners within 400 feet of the subject property regarding this request.

Alternatives

12

- ❑ The City Council has two (2) alternatives:
 - ❑ Disapprove the applicant's FLUM amendment request; or
 - ❑ Approve the applicant's FLUM amendment request.

Staff Recommendation

13

- Staff recommends approval of the applicant's FLUM amendment request as presented.
- Based on the adjacent land uses and current zoning in this area, staff finds that it is unlikely that this area will be developed in accordance with the current Future Land Use Map (FLUM) designation. Staff finds that the requested 'General Residential' (GR) designation is more appropriate in this area.

Commission Recommendation

14

- At their regular meeting on August 2, 2021, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 5 to 0.



City of Killeen

Legislation Details

File #:	PH-21-045	Version:	1	Name:	Zoning 21-24
Type:	Ordinance/Public Hearing		Status:	Public Hearings	
File created:	7/27/2021		In control:	City Council	
On agenda:	8/24/2021		Final action:		
Title:	HOLD a public hearing and consider an ordinance requested by Joshua Welch on behalf of EAS Investments (Case #Z21-24) to rezone approximately 92.435 acres out of the V. L. Evans Survey, Abstract 288, from "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multi-Family Residential District), and "B-5" (Business District) to "R-2" (Two-Family Residential District), "SF-2" (Single-Family Residential District), and "B-5" (Business District). The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.				
Sponsors:	Development Services				
Indexes:					
Code sections:					
Attachments:	Staff Report Maps Minutes Ordinance Responses Considerations Presentation				

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2021

TO: Kent Cagle, City Manager

FROM: Tony McIlwain, Exec. Dir. of Development Services

SUBJECT: **ZONING CASE #Z21-24: From "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multi-Family Residential District), and "B-5" (Business District) to "R-2" (Two-Family Residential District), "SF-2" (Single-Family Residential District), and "B-5" (Business District)**

BACKGROUND AND FINDINGS:

Summary of Request:

This request, submitted by Joshua Welch on behalf of EAS Investments (**Case #Z21-24**), is to rezone approximately 92.435 acres from "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multi-Family Residential District), and "B-5" (Business District) to "R-2" (Two-Family Residential District), "SF-2" (Single-Family Residential District), and "B-5" (Business District).

The applicant has proposed to rezone the property as follows:

- Approximately 34.229 acres to "R-2" (Two-Family Residential);
- Approximately 52.729 acres to "SF-2" (Single-Family Residential); and
- Approximately 5.446 acres of "B-5" (Business District).

Zoning / Plat Case History:

The western portion of the property was annexed into the City on October 9, 1972 via Ordinance No. 72-59. The eastern portion of the property was annexed into the City on May 24, 1994 via Ordinance No. 94-40. On November 8, 2005, approximately 62.66 acres was rezoned from "R-1" (Single Family Residential District) to "R-2" (Two-Family Residential District) and "R-3" (Multi-Family Residential District) via Ordinance No. 05-105. On December 20, 2005, approximately 6.792 acres was rezoned from "R-2" (Two-Family Residential District) to "R-3" (Multi-Family Residential District) via Ordinance No. 05-125. On December 12, 2006, approximately 11.381 acres was rezoned from "R-1" (Single Family Residential District), "R-2" (Two-Family Residential District) and "R-3" (Multi-Family Residential District) to "B-5" (Business District). The property is currently unplatted.

Surrounding Land Use and Zoning:

North: Undeveloped property on the opposite side of East Rancier Avenue, which is located outside the City limits

East: Undeveloped property zoned "R-1" (Single-Family Residential District)

South: Undeveloped property zoned "R-1" (Single-Family Residential District); and an existing auto salvage facility "M-2" (Heavy Manufacturing District)

West: Existing single-family and two-family residential subdivision zoned "PUD" (Planned Unit Development) with underlying "R-2" (Two-Family Residential) and "SF-2" (Single-Family Residential) uses; an existing manufactured home park zoned "R-MH" (Residential Mobile Home District); and undeveloped property zoned "R-2" (Two-Family Residential)

Future Land Use Map Analysis:

This property is designated as 'Suburban Residential (SR) on the Future Land Use Map (FLUM) of the Comprehensive Plan. The current 'Suburban Residential' (SR) designation encourages the following development types:

- Detached residential dwellings;
- Planned developments to provide for other housing types (e.g., townhouse, patio) in a Suburban character setting;
- Public/ institutional; and
- Parks and public spaces.

Staff finds that the zoning request is not consistent with the Future Land Use Map (FLUM) designation. However, a concurrent request to amend the FLUM from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation has been submitted by the applicant.

Water, Sewer and Drainage Services

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: Water, sanitary sewer and drainage utility service is located within the City of Killeen municipal utility service area and available to the subject tract.

Transportation and Thoroughfare Plan:

Ingress and egress to the property is from Rancier Avenue, which is classified as 120' wide Principal Arterial on the City of Killeen Thoroughfare Plan.

Public Notification:

Staff notified seventy-seven (77) surrounding property owners regarding this request. As of the date of this staff report, staff has received two (2) written responses in support of this request.

Of those property owners notified, thirty-five (35) reside outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and fifteen (15) reside outside of Killeen.

Environmental Assessment:

There are known environmental constraints for this tract. The portions of the eastern side of the tract is located within a FEMA regulatory Special Flood Hazard Area (SFHA) which may include riverine habitat. The National Wetlands Mapper also identifies two freshwater ponds (PUBFh) in the northeastern area of the tract.

At the time of development, the current drainage design manual and infrastructure design and development standards will be applicable to this site. The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property

are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for the subject property, shall coordinate tie-in to all publicly dedicated infrastructure with the Public Works Department.

Staff Findings:

The subject property is bounded on the west by an existing mobile home park and a new residential development that includes single-family homes on 50-foot lots and two-family homes. The property is bounded on the south by an existing auto salvage yard.

Based on the adjacent land uses and current zoning in this area, staff is of the determination that this area is not well suited to large single-family lots. Rather, staff finds that the property is better suited to a mix of smaller single-family lots and two-family dwellings. Staff finds that the proposed zoning districts are compatible with the existing land uses in the vicinity and are appropriate in this location.

Additionally, portions of the property are currently zoned "R-3" (Multi-Family Residential District), which allows for multifamily dwellings (i.e. triplexes, quadplexes, and apartments). Staff finds that the applicant's requested zoning will result in a density that is similar or less than the density that is permitted by the current zoning designations of the property.

Further, staff finds that the applicant's request to modify the zoning districts in this area will encourage new investment in North Killeen.

THE ALTERNATIVES CONSIDERED:

The City Council has three (3) alternatives. The Council may:

- Disapprove the applicant's request;
- Approve a more restrictive zoning district than requested by the applicant; or
- Approve the applicant's request as presented.

Which alternative is recommended?

Staff recommends approval of the applicant's request as presented.

Why?

Staff finds that the applicant's proposed zoning request is consistent with the surrounding property uses and is compatible with the existing land uses and prevailing community character.

CONFORMITY TO CITY POLICY:

This zoning request conforms to the City's policy and procedures as detailed in Chapter 31 of the City of Killeen Code of Ordinances.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This zoning request does not involve the expenditure of City funds. However, long-term maintenance of all proposed municipal infrastructure will be the City's responsibility.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

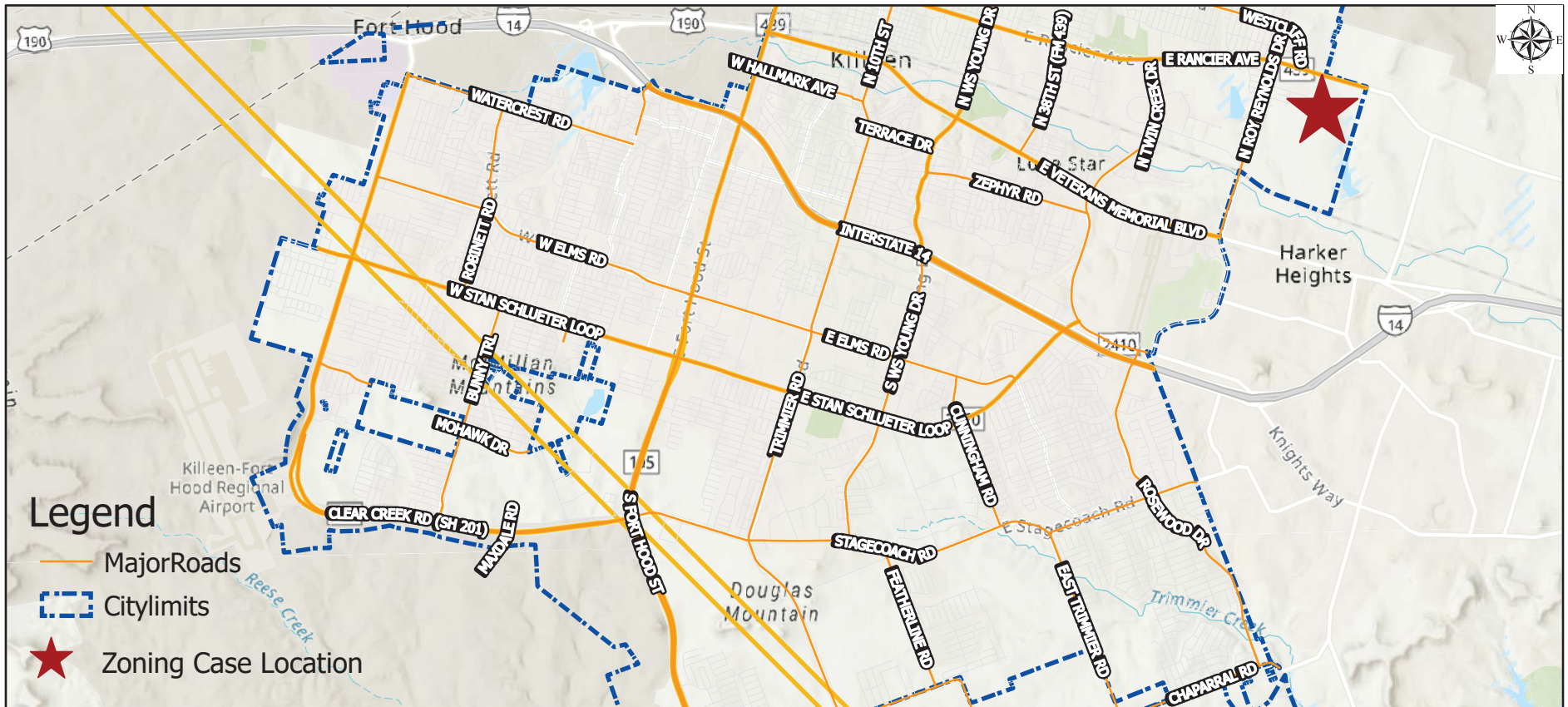
At their regular meeting on August 2, 2021, the Planning & Zoning Commission recommended approval of the applicant's request to rezone the property from "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multi-Family Residential District), and "B-5" (Business District) to "R-2" (Two-Family Residential District), "SF-2" (Single-Family Residential District), and "B-5" (Business District) by a vote of 5 to 0.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning and Legal staff.

ATTACHED SUPPORTING DOCUMENTS:

Maps
Minutes
Ordinance
Responses
Considerations



Attachment #1

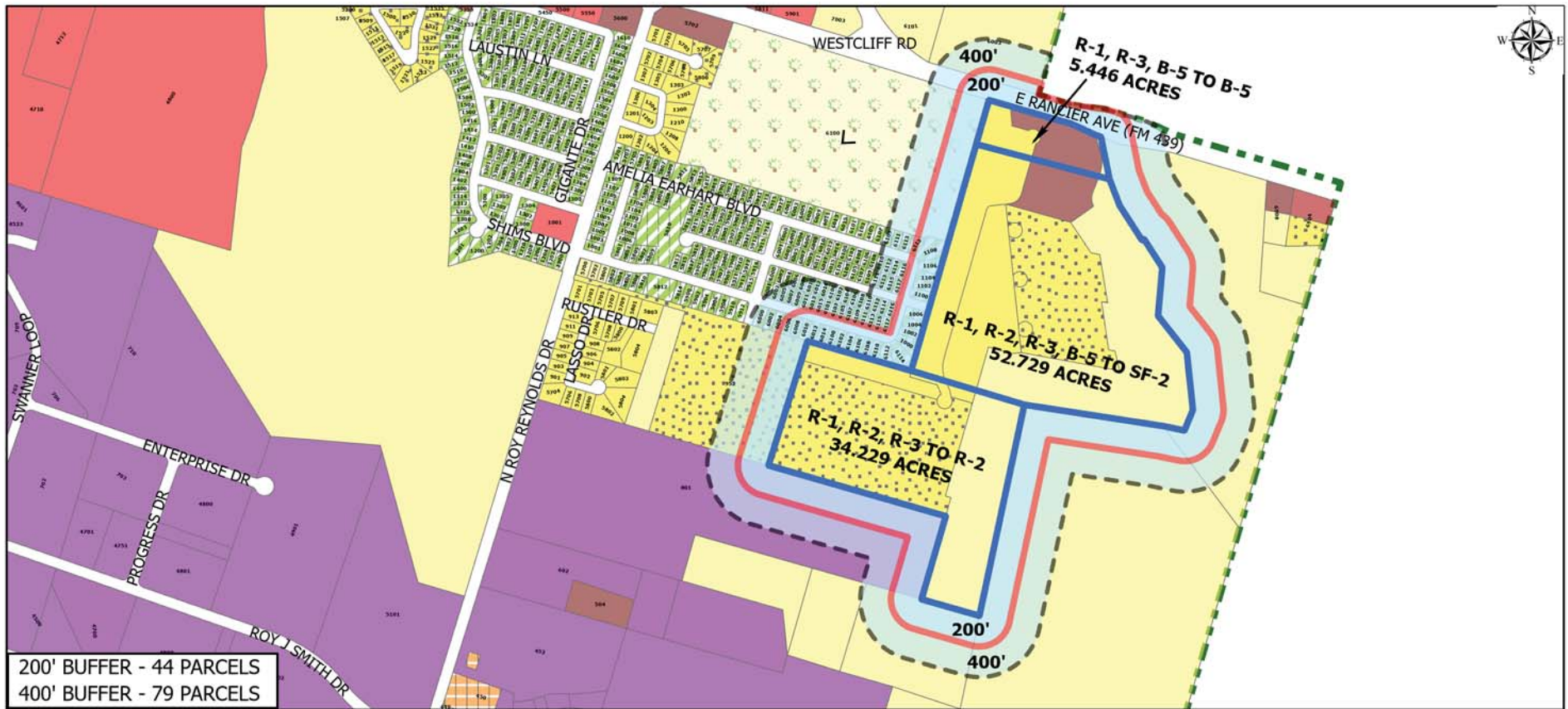
Council District: 1

1 inch = 7,674 feet

Subject Property Legal Description: A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.196

Zoning Map

Zoning Case 2021-24



Attachment #1

Council District: 1

1 inch = 1,043 feet

Subject Property Legal Description: A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.196

Zoning Map Zoning Case 2021-24

Legend	Current Zoning	
	B-3	B-C-1
	B-4	M-1
	B-5	M-2
		PUD
		R-1
		R-2
		R-3
		RMH



Attachment #3

Council District: 1

1 inch = 1,012 feet

Subject Property Legal Description: A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.196

Zoning Map

Zoning Case 2021-24

Legend

 Citylimits

 Z21-24

**MINUTES
PLANNING AND ZONING COMMISSION MEETING
AUGUST 2, 2021**

**CASE #Z21-24
“R-1”, “R-2”, “R-3” & “B-5 to “R-2”, “SF-2” & “B-5”**

HOLD a public hearing and consider a request submitted by Joshua Welch on behalf of EAS Investments (**Case #Z21-24**) to rezone approximately 92.435 acres out of the V. L. Evans Survey, Abstract 288, from “R-1” (Single-Family Residential District), “R-2” (Two-Family Residential District), “R-3” (Multi-Family Residential District), and “B-5” (Business District) to “R-2” (Two-Family Residential District), “SF-2” (Single-Family Residential District), and “B-5” (Business District). The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.

Ms. Wallis Meshier briefed the Commission regarding the applicant’s request. She stated that staff recommended approval of the request as presented.

The applicant, Mr. Josh Welch, was present to represent the case.

Chairman Latham opened the public hearing. With no one wishing to speak, the public hearing was closed.

Commissioner Adams made a motion to approve the applicant’s request as presented. Commissioner Alvarez seconded, and the motion passed by a vote of 5 to 0.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 92.435 ACRES OUT OF THE V. L. EVANS SURVEY, ABSTRACT 288, FROM “R-1” (SINGLE-FAMILY RESIDENTIAL DISTRICT), “R-2” (TWO-FAMILY RESIDENTIAL DISTRICT), “R-3” (MULTI-FAMILY RESIDENTIAL DISTRICT), AND “B-5” (BUSINESS DISTRICT) TO “R-2” (TWO-FAMILY RESIDENTIAL DISTRICT), “SF-2” (SINGLE-FAMILY RESIDENTIAL DISTRICT), AND “B-5” (BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Joshua Welch, on behalf of EAS Investments, has presented to the City of Killeen a request for amendment of the zoning ordinance of the City of Killeen by changing the classification of approximately 92.435 acres out of the V. L. Evans Survey, Abstract 288 from “R-1” (Single-Family Residential District), “R-2” (Two-Family Residential District), “R-3” (Multi-Family Residential District), and “B-5” (Business District) to “R-2” (Two-Family Residential District), “SF-2” (Single-Family Residential District), and “B-5” (Business District), said request having been duly recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 2nd day of August 2021, 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 24th day of August 2021, at the City Hall, City of Killeen;

WHEREAS, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission, and the evidence in support thereof, and the City Council being of the majority opinion that the applicant’s zoning request should be approved as recommended by the Planning and Zoning Commission;

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

SECTION I. That the zoning classification of approximately 92.435 acres out of the V. L. Evans Survey, Abstract 288 be changed from “R-1” (Single-Family Residential District),

“R-2” (Two-Family Residential District), “R-3” (Multi-Family Residential District), and “B-5” (Business District) to “R-2” (Two-Family Residential District), “SF-2” (Single-Family Residential District), and “B-5” (Business District), for the property generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.

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

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

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

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 24th day of August 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Lucy C. Aldrich, CITY SECRETARY

APPROVED AS TO FORM

Traci S. Briggs, City Attorney
Case #21-24
Ord. #21-____



CITY OF KILLEEN
PLANNING & DEVELOPMENT SERVICES

July 21, 2021

RE: Case# Z21-24

HOLD a public hearing and consider a request submitted by Joshua Welch on behalf of EAS Investments (Case #Z21-24) to rezone approximately 92.435 acres from "R-1" (Single-Family Residential District), "R-2" (Two-Family Residential District), "R-3" (Multifamily Residential District) and "B-5" (Business District) to SF-2 (Single-Family Residential District), "R-2" (Two-Family Residential District) and "B-5" (Business District) being out of the VL Evans Survey located south of E Rancier Ave and County Meadows and Southwest of Clover Rd.

Dear Property Owner:

The enclosed map shows the property to be rezoned. This property is marked by diagonal lines, and the circular line indicates those properties within the four hundred (400) foot radius. We are required to notify you since you own property within the 400' notification boundary.

The City of Killeen Planning and Zoning Commission has scheduled a public hearing for this request on **August 02nd, 2021, 5:00 p.m.** in the Utility Collections Conference Room, which is located at 210 W. Avenue C. The Utility Collections Conference Room is located at the northwest corner of the building. You are invited to attend this hearing to present any facts, which you feel the Planning and Zoning Commission should consider in evaluating this request.

You may also indicate your support or opposition to this request, by filling out the bottom portion of this letter and sending it to: **City of Killeen, Planning & Development Services, 200 E. Avenue D, Suite 6, Killeen, Texas 76541.** To be considered a protest under Sec. 211.006 (d) of the Texas Local Government Code, the protest must be written and signed by the owner of property located within 200 feet of the notification area. Any petition, whether in support of or opposition to this request, must be received by the Planning Department no later than **4:00 p.m., August 02nd, 2021.** After the Planning and Zoning meeting, this matter will be forwarded to the City Council on **August 24, 2021, at 5:00 p.m. in Council Chambers, at City Hall, 101 North College Street., Killeen Texas,** where you may also appear and speak. If you desire additional information relative to this matter, please call (254) 501-7631.

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

YOUR NAME:	<i>Donie R. Renegar</i>	PHONE NUMBER:	
CURRENT ADDRESS:	<i>4110 Jago Vista Dr Belton TX 76513</i>		
ADDRESS OF PROPERTY OWNED:	<i>952 N. Ray Reynolds</i>		
COMMENTS:			
	<i>I'm in full support of this development</i>		
	<i>the</i>		
SIGNATURE:	REQUEST: "R-1"/"R-2"/"R-3"/"B-5" to "SF-2"/"R-2"/"B-5" SPO #Z21-24/ <i>03</i>		

From: [Jimmie Aycok](#)
To: [Wallis W. Meshier](#)
Subject: Rezone request
Date: Wednesday, July 28, 2021 7:50:06 PM

I have received the notice for the property rezone near Rancier requested by Josh Welch. I support the request and look forward to continued growth in northeast Killeen.

Sent from my iPhone

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.



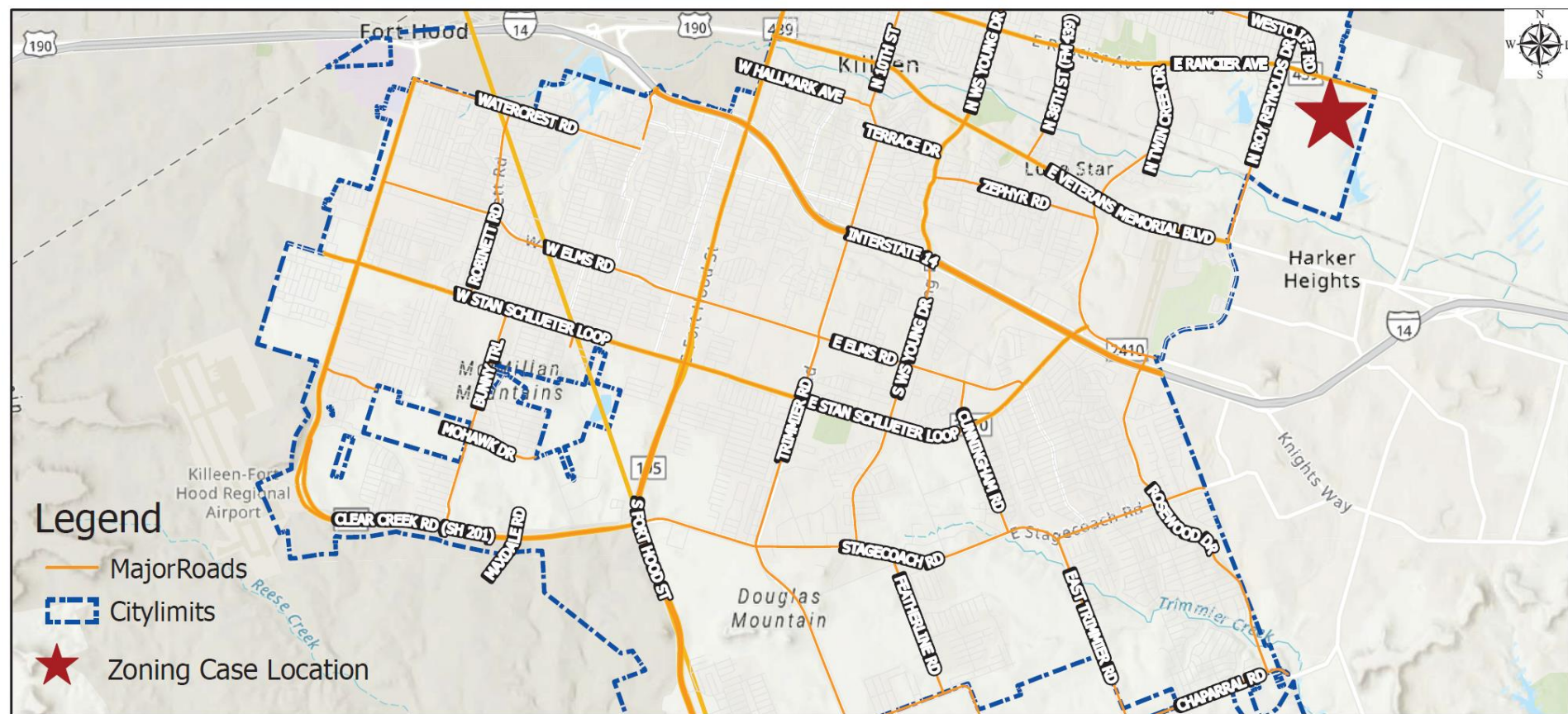
ZONING CASE #Z21-24: “R-1”, “R-2”,
“R-3”, & “B-5” TO “SF-2”, “R-2”, & “B-5”

PH-21-045

August 17, 2021

Case #Z21-24: “R-2,” “SF-2” & “B-5”

- ❑ **HOLD** a public hearing and consider a request submitted by Joshua Welch on behalf of EAS Investments (Case #Z21-24) to rezone approximately 92.435 acres out of the V. L. Evans Survey, Abstract 288, from “R-1” (Single-Family Residential District), “R-2” (Two-Family Residential District), “R-3” (Multi-Family Residential District), and “B-5” (Business District) to “R-2” (Two-Family Residential District), “SF-2” (Single-Family Residential District), and “B-5” (Business District). The property is generally located on the south side of East Rancier Avenue, east of the terminus of Sally Ride Lane, Killeen, Texas.



Attachment #1

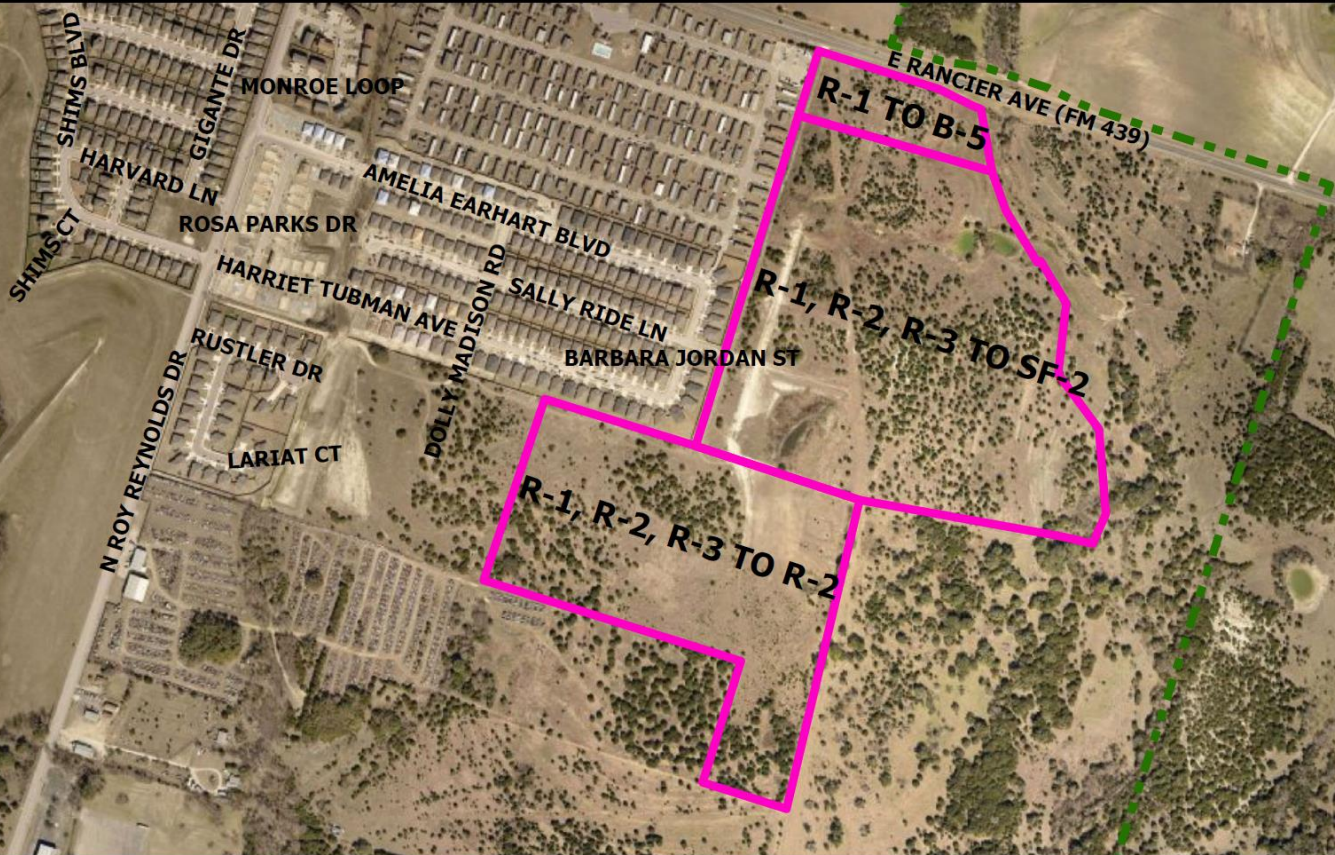
Council District: 1

1 inch = 7,674 feet

Subject Property Legal Description: A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.196

Zoning Map

Zoning Case 2021-24



Attachment #3
Council District: 1
1 inch = 1,012 feet
Subject Property Legal Description: A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.196

Zoning Map
Zoning Case 2021-24

Legend

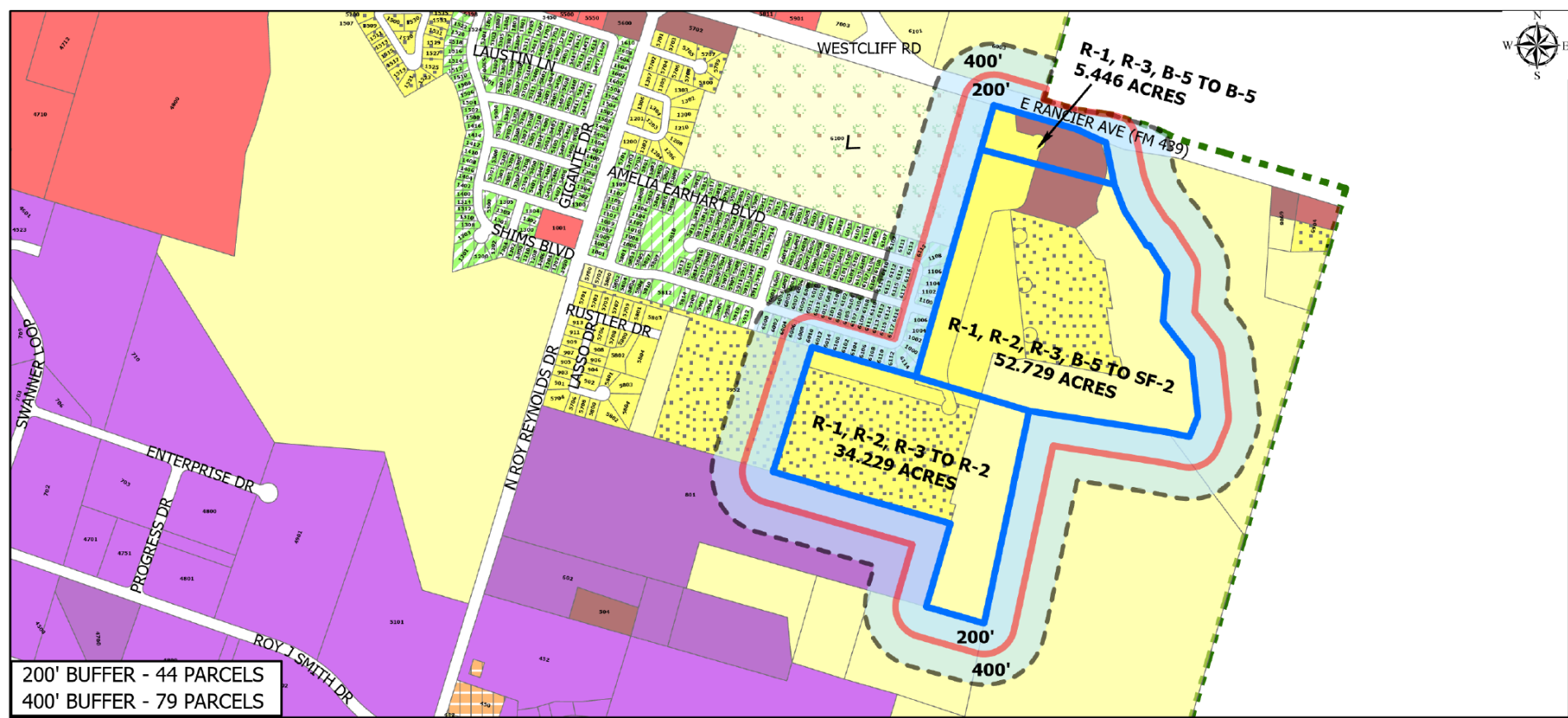
 Citylimits

 Z21-24

Case #Z21-24: “R-2,” “SF-2” & “B-5”

5

- ❑ The subject property is designated as ‘Suburban Residential (SR) on the Future Land Use Map (FLUM) of the Comprehensive Plan.
- ❑ The ‘Suburban Residential’ (SR) character encourages detached residential dwellings as the primary focus.
- ❑ The applicant’s request is not consistent with the Future Land Use Map (FLUM), but a concurrent FLUM amendment request has been submitted.
- ❑ If approved, the applicant intends to develop a single-family and two-family residential subdivision.



Attachment #1

Council District: 1

1 inch = 1,043 feet

Subject Property Legal Description: A0288BC V L EVANS, ACRES 19.208, A0288BC V L EVANS, ACRES 73.196

Zoning Map

Zoning Case 2021-24

Legend	CurrentZoning		B-C-1	R-1
	■ B-3	■ M-1	■	■ R-2
	■ B-4	■ M-2		■ R-3
	■ B-5	■ PUD		■ RMH

Staff Findings

7

- ❑ To the west of the property is an existing mobile home park, and the Patriot's Ridge subdivision, which includes both two-family and single-family homes. To the southwest is an existing auto salvage yard, which is zoned "M-2" (Heavy Manufacturing District).
- ❑ A portion of the property is currently zoned "R-3" (Multi-Family Residential District), which allows for multifamily dwellings (i.e. triplexes, quadplexes, and apartments). The requested zoning will result in a density that is similar or less than the density that is permitted by the current zoning designations.

Public Notification

8

- ❑ Staff notified seventy-seven (77) surrounding property owners within 400 feet of the subject property regarding this request.
- ❑ To date, staff has received two (2) written responses in support of this request.

Alternatives

9

- ❑ The City Council has three (3) alternatives:
 - ❑ Disapprove the applicant's zoning request;
 - ❑ Approve a more restrictive zoning district than requested by the applicant; or
 - ❑ Approve the applicant's zoning request as presented.

Staff Recommendation

10

- Staff recommends approval of the applicant's request as presented.
- Based on the adjacent land uses and current zoning, staff is of the determination that the property is better suited to a mix of smaller single-family lots and two-family dwellings, as proposed by the applicant.

Commission Recommendation

11

- At their regular meeting on August 2, 2021, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 5 to 0.



City of Killeen

Legislation Details

File #:	PH-21-046	Version:	1	Name:	Zoning 21-25
Type:	Ordinance/Public Hearing		Status:	Public Hearings	
File created:	7/27/2021		In control:	City Council	
On agenda:	8/24/2021		Final action:		
Title:	HOLD a public hearing and consider an ordinance requested by Ian Paulin on behalf of Killeen Square Inc. (Case #Z21-25) to rezone approximately 0.065 acre out of Lot 12, Block 1, of the Killeen Mall Subdivision Replat, from "RC-1" (Restaurant and Alcohol Sales District) to "B-C-1" (General Business and Alcohol Sales District). The property is locally addressed as 2301 East Central Texas Expressway, Suite 105, Killeen, Texas.				
Sponsors:	Development Services				
Indexes:					
Code sections:					
Attachments:	Staff Report Maps Minutes Ordinance Considerations Presentation				

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2021

TO: Kent Cagle, City Manager

FROM: Tony McIlwain, Exec. Dir. of Development Services

SUBJECT: ZONING CASE #Z21-25 from "RC-1" (Restaurant and Alcohol Sales District) to "B-C-1" (General Business and Alcohol Sales District).

BACKGROUND AND FINDINGS:

Summary of Request:

This request, submitted by Ian Paulin on behalf of Killeen Square Inc., is to rezone approximately 0.065 acre out of Lot 12, Block 1, of the Killeen Mall Subdivision Replat, from "RC-1" (Restaurant and Alcohol Sales District) to "B-C-1" (General Business and Alcohol Sales District). If approved, the applicant intends to open a daiquiri shop of approximately 2,380 square feet for on-premise consumption and to-go sales of daiquiris.

The requested "B-C-1" (General Business and Alcohol Sales District) zoning district allows for the on-premise consumption of alcohol without a Food and Beverage Certificate and shall follow the rules and regulations established under the Texas Alcoholic Beverage Code (TABC) and/or promulgated by the Texas Alcoholic Beverage Commission, as amended.

Zoning / Plat Case History:

The property was platted as Lot 12, Block 1, of the Killeen Mall Subdivision Replat, on January 30, 1981. The property was rezoned from "B-5" (Business District) to "RC-1" (Restaurant and Alcohol Sales District) on November 10, 1981, via Ordinance No. 81-60.

Character of the Area:

The surrounding area is made up of commercial properties. Adjacent land uses are as follows:

- North: Killeen Mall parking lot, zoned "B-5" (Business District)
- South: Commercial property zoned "B-5" (Business District) and "RC-1" (Restaurant and Alcohol Sales District) across Interstate Highway 14
- East: Existing commercial development zoned "B-5" (Business District) and "RC-1" (Restaurant and Alcohol Sales District)
- West: Existing commercial development zoned "B-5" (Business District)

Future Land Use Map Analysis:

This property is designated as 'General Commercial' (GC) on the Future Land Use Map (FLUM) of the Comprehensive Plan. The 'General Commercial' (GC) designation encompasses a range of commercial, retail, and service uses at varying scales and intensities depending on the site. Characteristics of this designation are auto-oriented character, which can be offset by enhanced building design, landscaping, reduced site coverage and well-designated signage.

The 'General Commercial' (GC) future land use and character recommends the following development types:

- Wide range of commercial, retail and service uses at varying scales and intensities depending on the site;
- Office (both large and/ or multi-story buildings and small-scale office uses depending on the site);
- Public and institutional uses; and
- Parks and public spaces.

This request is consistent with the Future Land Use Map (FLUM) of the Comprehensive Plan for the proposed "B-C-1" (General Business and Alcohol Sales District).

Water, Sewer and Drainage Services

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: Water, sanitary sewer and utility services are located within the City of Killeen municipal utility service area and available to the subject tract.

Transportation and Thoroughfare Plan:

Ingress and egress to the property from the west bound frontage of E. Central Texas Expressway, which is classified as 70' wide Collector street on the City of Killeen Thoroughfare Plan.

Public Notification:

Staff notified seven (7) surrounding property owners regarding this request. As of the date of this staff report, no responses have been received regarding this request.

Of those property owners notified, four (4) reside outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and six (6) reside outside of Killeen.

Staff Findings:

Staff finds that the applicant's request is consistent with the surrounding property uses and is compatible with the prevailing community character. Staff also finds that the request is consistent with the Future Land Use Map (FLUM) of the Comprehensive Plan.

There are no known environmental constraints for this tract. The tract is not located within any FEMA regulatory Special Flood Hazard Area (SFHA) although the tract is adjacent to the SFHA of the Trimmier Road Ditch. The Trimmier Road Ditch is also identified as a riverine habitat on the National Wetlands Mapper.

THE ALTERNATIVES CONSIDERED:

The City Council has two (2) alternatives. The Council may:

- Disapprove the applicant's request for "B-C-1" (General Business and Alcohol Sales District); or
- Approve the applicant's requested "B-C-1" (General Business and Alcohol Sales District).

Which alternative is recommended?

Staff recommends approval of the applicant's request to rezone the property from "RC-1" (Restaurant and Alcohol Sales District) to "B-C-1" (General Business and Alcohol Sales District).

Why?

Staff finds that the applicant's request is consistent with the surrounding property uses and is compatible with the existing land uses and prevailing community character.

CONFORMITY TO CITY POLICY:

This zoning request conforms to the City's policy and procedures as detailed in Chapter 31 of the City of Killeen Code of Ordinances.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This zoning request does not involve the expenditure of city funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

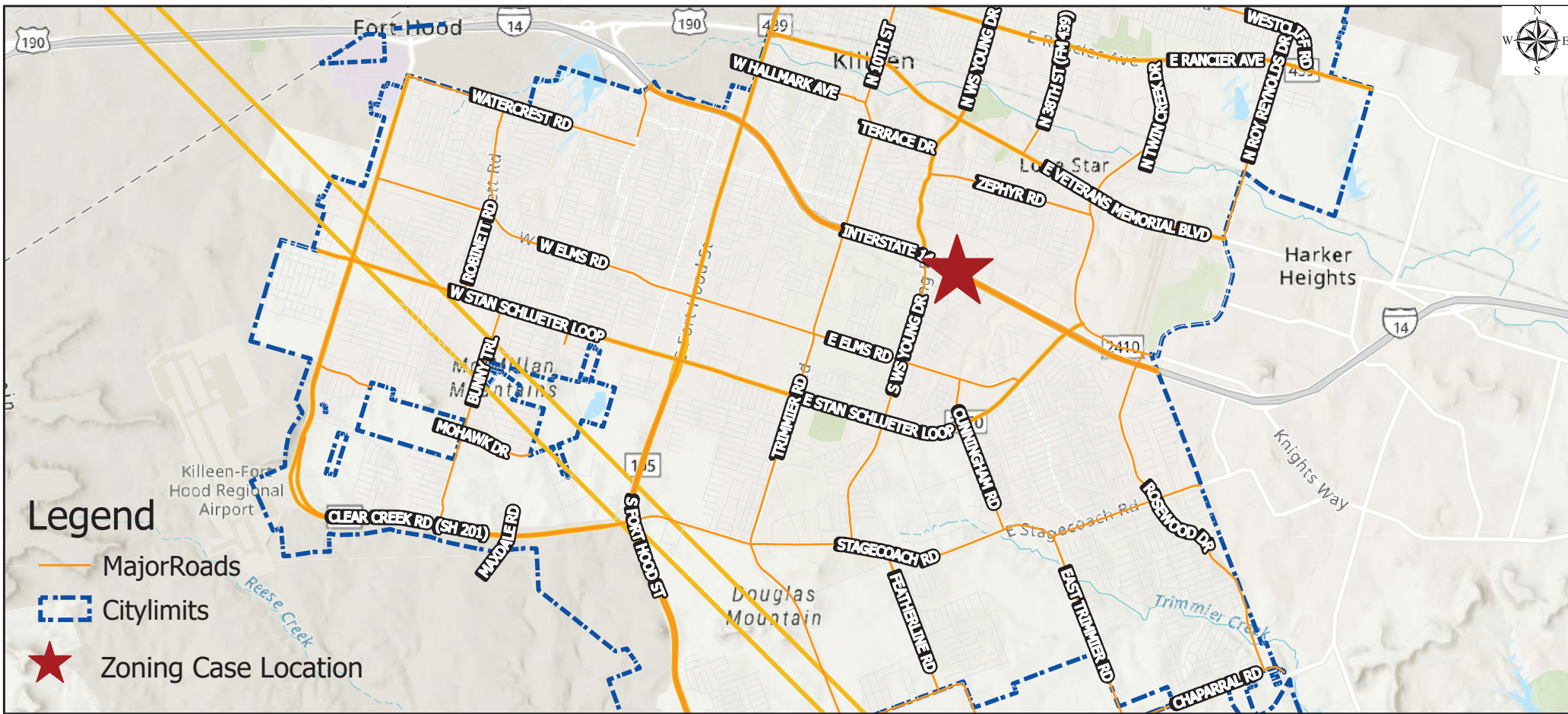
At their regular meeting on August 2, 2021, the Planning and Zoning Commission recommended approval of the applicant's request to rezone the property from "RC-1" (Restaurant and Alcohol Sales District) to "B-C-1" (General Business and Alcohol Sales District) by a vote to 5 to 0.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning and Legal staff.

ATTACHED SUPPORTING DOCUMENTS:

Maps
Minutes
Ordinance
Considerations



Attachment #1

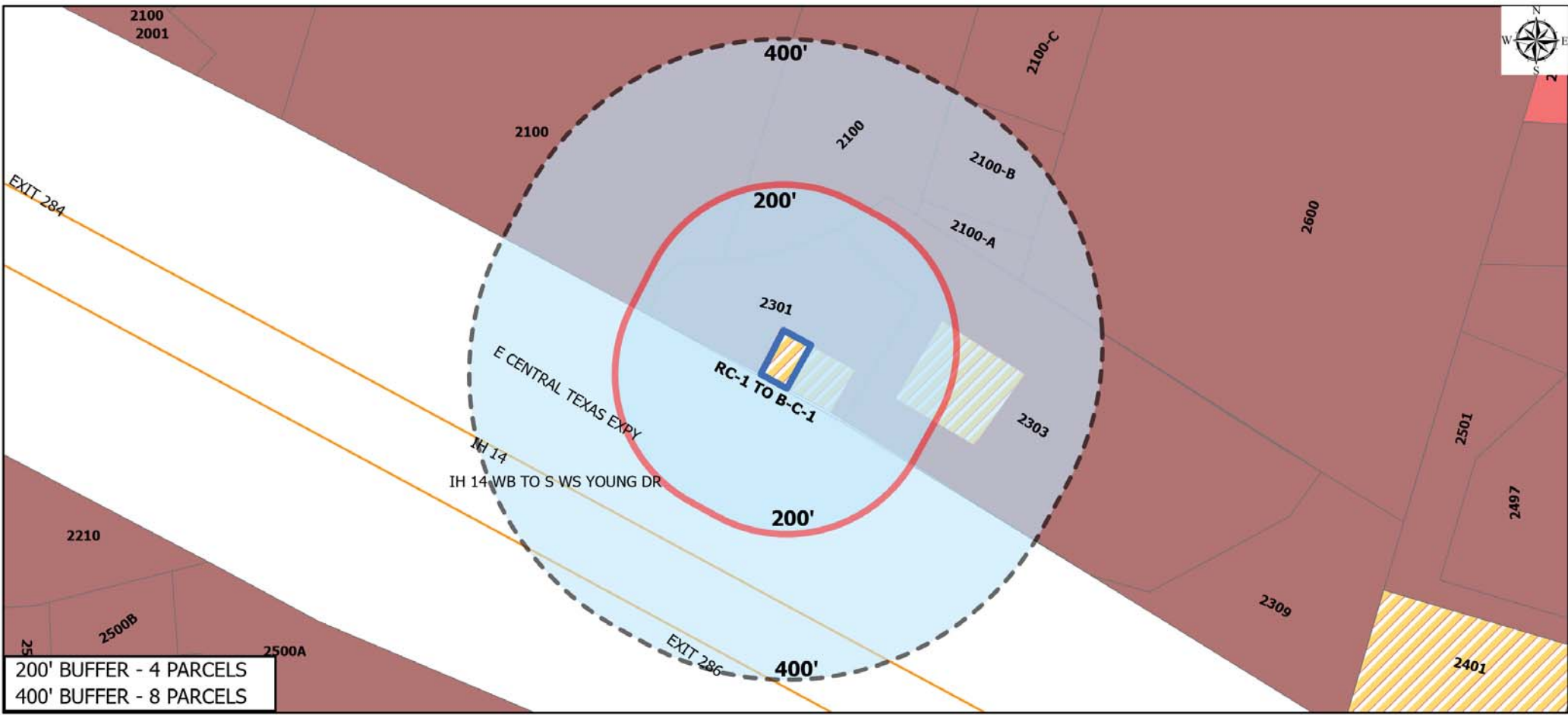
Council District: 2

1 inch = 7,674 feet

Subject Property Legal Description: 2301 E. CENTRAL TEXAS EXPRESSWAY SUITE 105

Zoning Map

Zoning Case 2021-25



Attachment #1

Council District: 2

1 inch = 220 feet

Subject Property Legal Description: 2301 E. CENTRAL TEXAS EXPRESSWAY SUITE 105

Zoning Map

Zoning Case 2021-25

Legend

CurrentZoning	
	B-3
	B-5
	RC-1



Attachment #3

Council District: 2

1 inch = 59 feet

Subject Property Legal Description: 2301 E. CENTRAL TEXAS EXPRESSWAY SUITE 105

Zoning Map

Zoning Case 2021-25

Legend

 Citylimits

 21-25Z

**MINUTES
PLANNING AND ZONING COMMISSION MEETING
AUGUST 2, 2021**

**CASE #Z21-25
“R-C1” to “B-C-1”**

HOLD a public hearing and consider a request submitted by Ian Paulin on behalf of Killeen Square Inc. (**Case #Z21-25**) to rezone approximately 0.065 acre out of Lot 12, Block 1 of the Killeen Mall Subdivision Replat from “RC-1” (Restaurant and Alcohol Sales District) to “B-C-1” (General Business and Alcohol Sales District). The property is locally addressed as 2301 East Central Texas Expressway, Suite 105, Killeen, Texas.

Ms. Wynstan Larsen briefed the Commission regarding the applicant’s request. She stated that staff recommended approval of the request.

The applicant, Mr. Albert Flakes, as was present to represent the case.

Chairman Latham opened the public hearing. With no one wishing to speak, the public hearing was closed.

Commissioner Adams made a motion to approve the applicant’s request. Commissioner Hodges seconded, and the motion passed by a vote of 5 to 0.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 0.065 ACRE OUT OF LOT 12, BLOCK 1, OF THE KILLEEN MALL SUBDIVISION REPLAT, FROM “RC-1” (RESTAURANT AND ALCOHOL SALES DISTRICT) TO “B-C-1” (GENERAL BUSINESS AND ALCOHOL SALES DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ian Paulin, on behalf of Killeen Square, Inc has presented to the City of Killeen, a request for amendment of the zoning ordinance of the City of Killeen by changing the classification of approximately 0.065 acre out of Lot 12, Block 1, of the Killeen Mall Subdivision Replat, from “RC-1” (Restaurant and Alcohol Sales District) to “B-C-1” (General Business and Alcohol Sales District), said request having been duly recommended for approval of “B-C-1” (General Business and Alcohol Sales District) by the Planning and Zoning Commission of the City of Killeen on the 2nd day of August 2021, 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 24th day of August 2021, at the City Hall, City of Killeen;

WHEREAS, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission and the evidence in support thereof, and the City Council being of the majority opinion that the applicant’s zoning request should be approved as recommended by the Planning and Zoning Commission;

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

SECTION I. That the zoning classification of approximately 0.065 acre out of Lot 12, Block 1, of the Killeen Mall Subdivision Replat, be changed from “RC-1” (Restaurant and Alcohol Sales District) to “B-C-1” (General Business and Alcohol Sales District), said request

having been duly recommended for approval of “B-C-1” (General Business and Alcohol Sales District), for the property locally addressed as 2301 East Central Texas Expressway, Suite 105, 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 24th day of August 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Lucy C. Aldrich, CITY SECRETARY

APPROVED AS TO FORM

Traci S. Briggs, City Attorney

Case #21-25

Ord. #21-____

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.



ZONING CASE #Z21-25:
“RC-1” TO “B-C-1”

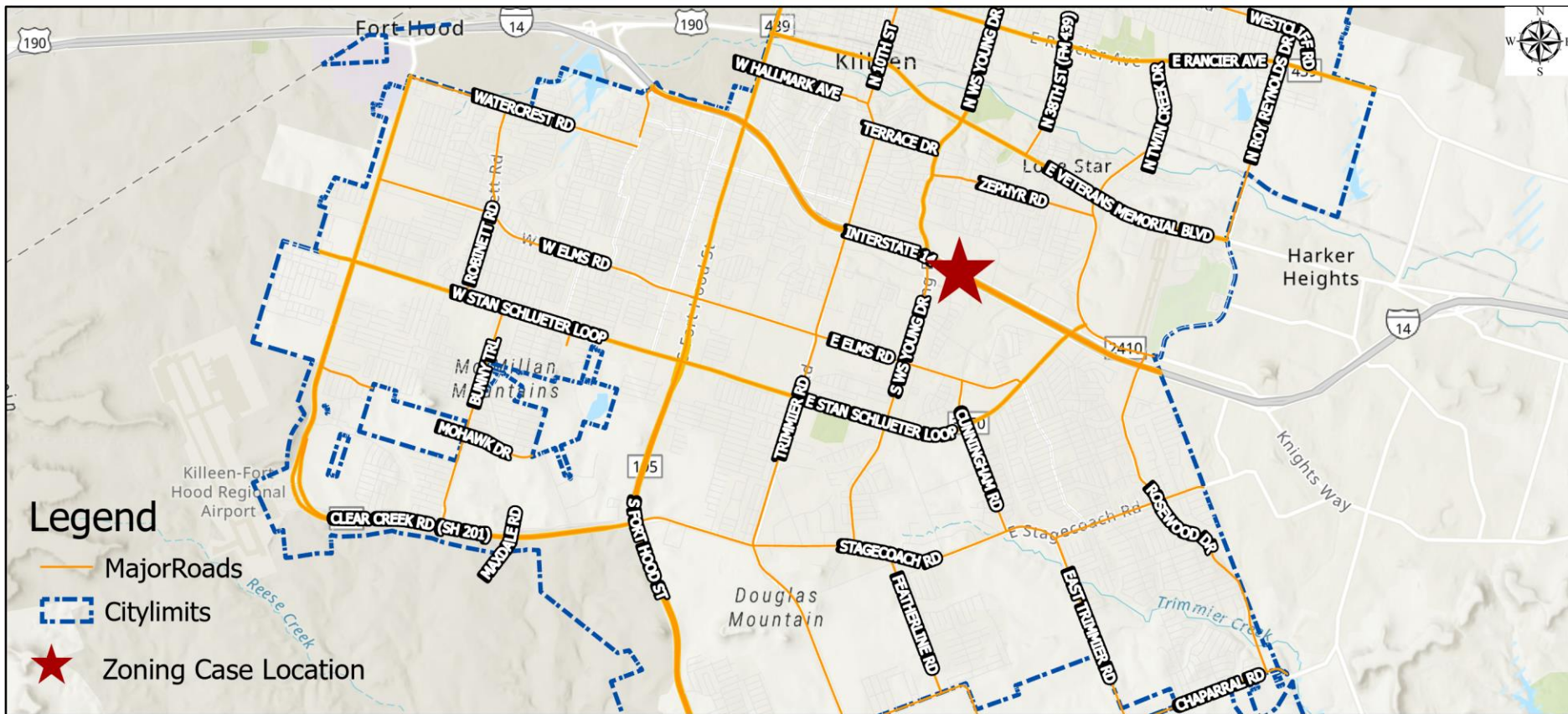
PH-21-046

August 17, 2021

Case #Z21-25: “RC-1” to “B-C-1”

2

- ❑ **HOLD** a public hearing and consider a request submitted by Ian Paulin on behalf of Killeen Square Inc. (Case #Z21-25) to rezone approximately 0.065 acre out of Lot 12, Block 1 of the Killeen Mall Subdivision Replat from “RC-1” (Restaurant and Alcohol Sales District) to “B-C-1” (General Business and Alcohol Sales District). The property is locally addressed as 2301 East Central Texas Expressway, Suite 105, Killeen, Texas.



Attachment #1

Council District: 2

1 inch = 7,674 feet

Subject Property Legal Description: 2301 E. CENTRAL TEXAS EXPRESSWAY SUITE 105

Zoning Map

Zoning Case 2021-25



Attachment #3

Council District: 2

1 inch = 59 feet

Subject Property Legal Description: 2301 E. CENTRAL TEXAS EXPRESSWAY SUITE 105

Zoning Map

Zoning Case 2021-25

Legend

 Citylimits

 21-25Z

Case #Z21-25: “RC-1” to “B-C-1”

5

- If approved, the applicant intends to open a daiquiri shop of approximately 2,380 square feet for on-premise consumption of daiquiris.
- The requested “B-C-1” (General Business and Alcohol Sales District) zoning district allows for the on-premise consumption of alcohol in accordance with TABC rules and regulations.

Case #Z21-25: “RC-1” to “B-C-1”

6

Subject property looking north:



Case #Z21-25: “RC-1” to “B-C-1”

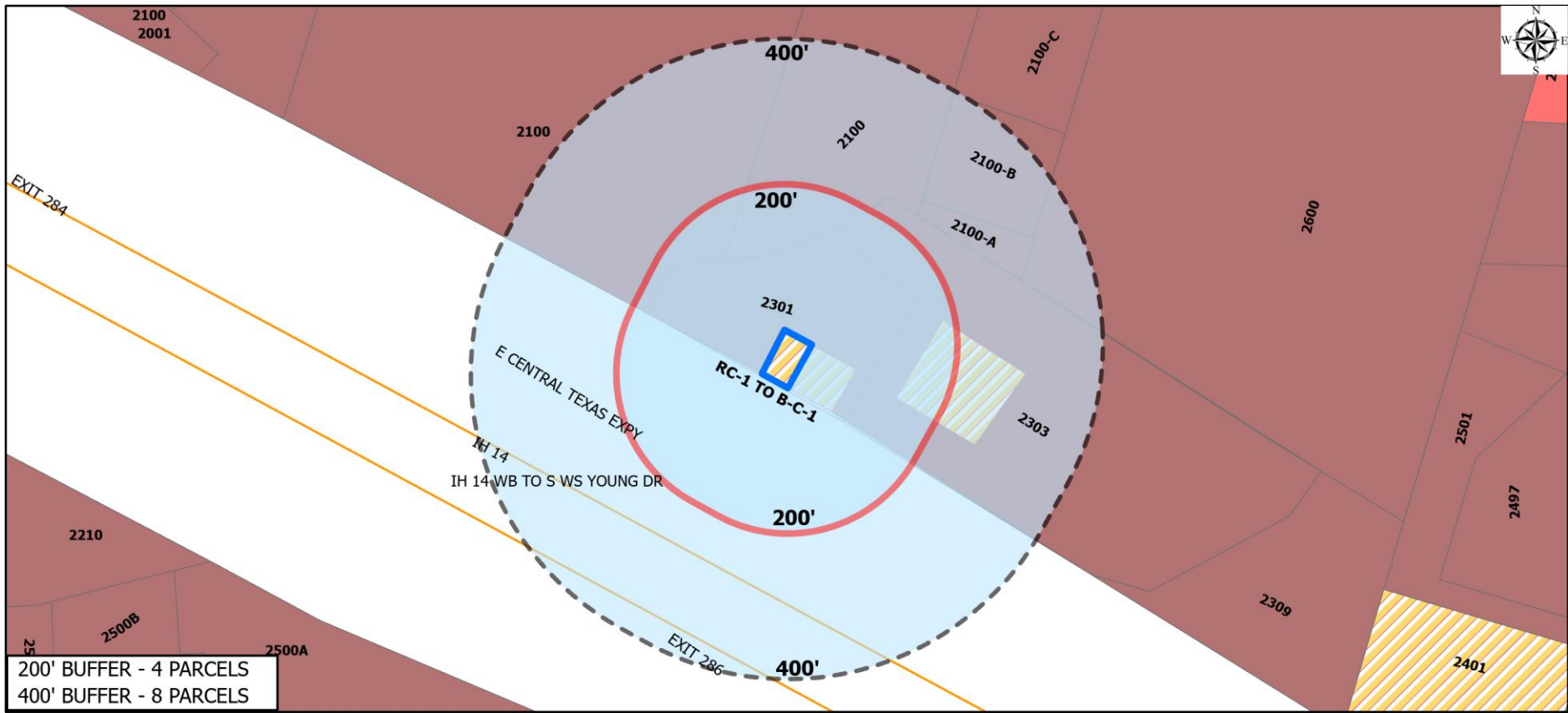
7

- The ‘General Commercial’ (GC) future land use and character recommends the following development types:
 - ▣ Wide range of commercial, retail and service uses at varying scales and intensities depending on the site;
 - ▣ Office (both large and/or multi-story buildings and small-scale office uses depending on the site);
 - ▣ Public and institutional uses; and
 - ▣ Parks and public spaces.
- This request is consistent with the Future Land Use Map (FLUM) of the Comprehensive Plan.

Case #Z21-25: “RC-1” to “B-C-1”

8

- ❑ Staff notified seven (7) surrounding property owners within 400 feet regarding this request.
- ❑ As of the date of this staff report, no written responses have been received regarding this request.



Attachment #1

Council District: 2

1 inch = 220 feet

Subject Property Legal Description: 2301 E. CENTRAL TEXAS EXPRESSWAY SUITE 105

Zoning Map

Zoning Case 2021-25

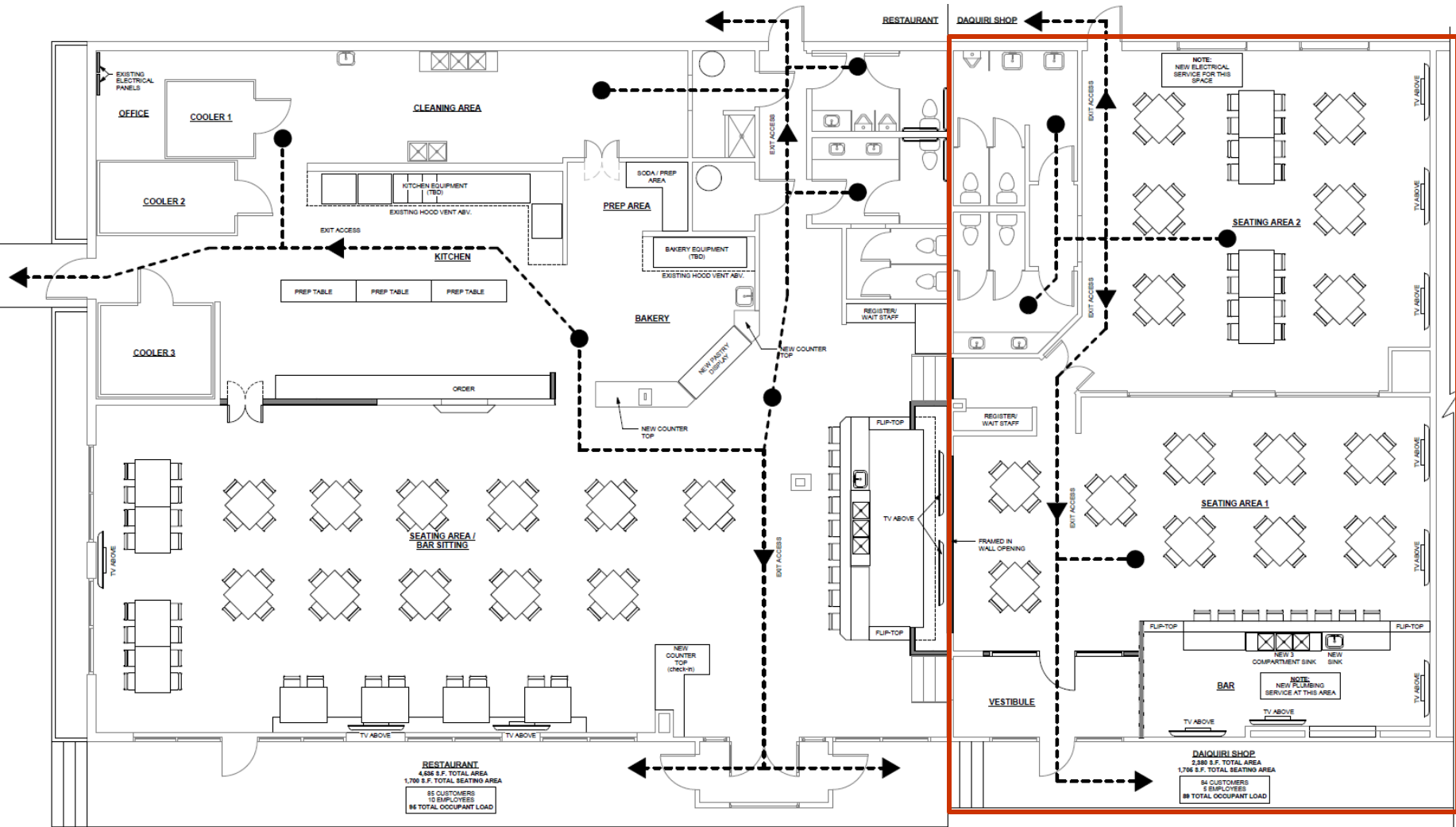
Legend

Current Zoning

B-3

B-5

RC-1



Alternatives

11

- ❑ The City Council has two (2) alternatives:
 - ▣ Approve the applicant's request; or
 - ▣ Disapprove the applicant's request.

Staff Recommendation

12

- ❑ Staff recommends approval of the applicant's request.
- ❑ Staff finds that the applicant's request is consistent with the surrounding property uses and is compatible with the existing land uses and prevailing community character as well as being consistent with the Future Land Use Map (FLUM) of the Comprehensive Plan.

Commission Recommendation

13

- At their regular meeting on August 2, 2021, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 5 to 0.



City of Killeen

Legislation Details

File #:	PH-21-047	Version:	1	Name:	VA 21-01
Type:	Ordinance/Public Hearing		Status:	Public Hearings	
File created:	8/2/2021		In control:	City Council	
On agenda:	8/24/2021		Final action:		
Title:	HOLD a public hearing and consider an ordinance approving a written service agreement and the annexation of approximately 7.40 acres of land out of the W.L. Harris Survey, Abstract No. 1155, lying contiguous to the existing city limits, being located south of West Stan Schlueter Loop and east of the Eagle Valley Subdivision, Killeen, Texas.				
Sponsors:	Development Services				
Indexes:					
Code sections:					
Attachments:	Staff Report Service Agreement Ordinance Maps Annexation Exhibit Field Notes Presentation				

Date	Ver.	Action By	Action	Result
8/17/2021	1	City Council Workshop		



STAFF REPORT

DATE: August 17, 2020

TO: Kent Cagle, City Manager

FROM: Tony D. McIlwain, AICP, CFM, Executive Director of Development Services

SUBJECT: Consider an ordinance approving a written service agreement and the annexation of approximately 7.40 acres of land lying contiguous to the existing city limits, located south of West Stan Schlueter Loop and east of the Eagle Valley Subdivision, Killeen, Texas.

BACKGROUND AND FINDINGS:

On May 21, 2021, the Development Services Department received a petition for voluntary annexation from Ms. Terra Campbell, represented by Quintero Engineering, L.L.C. The subject tract is comprised of 7.40 acres and is located contiguous to the existing city limits south of West Stan Schlueter Loop and east of the Eagle Valley Subdivision, Killeen, Texas. The owner is making the request to have the property annexed into the corporate limits of Killeen. At the July 20th City Council meeting, the Council directed the City Manager to negotiate a written service agreement for the provisions of municipal services in the area.

Annexation Process:

Sec. 43.0672 of the Texas Local Government Code: The City Council must enter into a written agreement with the owners of land in the area for the provision of services in the area. The agreement must include a list of each service the municipality will provide on the effective date of the annexation, and a schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation. The City is not required to provide services that are not included in the agreement. [Note: there is no statutory time period in which to complete this action.]

Sec. 43.0673 of the Texas Local Government Code: Before a municipality may adopt an ordinance annexing an area under this subchapter, the City Council must conduct one public hearing. Notice of the public hearing must be published in the newspaper on or after the 20th day, but before the 10th day before the date of the public hearing, and posted on the City's website on or after the 20th day but before the 10th day before the date of the hearing, and must remain posted until the date of the hearing.

Notice of the Public Hearing was published in the Killeen Daily Herald on August 8, 2021 and posted on the City's website on August 4, 2021.

Sec. 43.905 of the Texas Local Government Code: The City must provide written notice of the proposed annexation to the Killeen Independent School District during the notification period.

The notice to the School District must contain a description of the area within the District proposed for annexation; any financial impact on the district resulting from the annexation, including any changes in utility costs; and any proposal the City has to abate, reduce, or limit any financial impact on the district.

Written notice to the Killeen Independent School District was provided in accordance with these requirements on August 5, 2021.

Sec. 43.9051 of the Texas Local Government Code: The City must provide written notice of the proposed annexation to each public entity that provides services to the area proposed for annexation during the notification period. "Public entity" includes Bell County, fire protection service providers, volunteer fire departments, emergency medical services providers, or special districts.

Written notice was provided to Bell County on August 5, 2021 in accordance with this requirement.

THE ALTERNATIVES CONSIDERED:

The City Council may approve or disapprove the written service agreement and annexation ordinance.

Which alternative is recommended? Why?

Staff recommends approval of the written service agreement and the annexation ordinance. The annexation request is minor in size and anticipated scale of development.

CONFORMITY TO CITY POLICY:

The request for voluntary annexation conforms with current state law.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There are no expenditures expected in the current fiscal year. Based on the size of the tract, municipal expenditures will be minimal for the 7.40 acre area.

Is this a one-time or recurring expenditure?

Municipal expenditures would be a recurring cost.

Is this expenditure budgeted?

It is not budgeted within the current fiscal year.

If not, where will the money come from?

Future expenditures will come from the General Fund, Water & Sewer, Solid Waste, Drainage and Street Maintenance funding sources as necessary.

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes.

RECOMMENDATION:

Staff recommends that the City Council approve the written service agreement and annexation ordinance.

DEPARTMENTAL CLEARANCES:

City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Service Agreement
Ordinance
Maps
Annexation Exhibit
Field Notes

**MUNICIPAL SERVICES AGREEMENT
BETWEEN THE CITY OF KILLEEN, TEXAS AND
TERRA CAMPBELL**

This Municipal Services Agreement ("Agreement") is entered into on the 24th day of August, 2021, by and between the City of Killeen, Texas, a home-rule municipality of the State of Texas, ("City") and Terra Campbell, ("Owner").

RECITALS

The parties agree that the following recitals are true and correct and form the basis upon which the parties have entered into this Agreement.

WHEREAS, Section 43.0671 of the LGC ("LGC") permits the City to annex an area if each owner of land in an area requests the annexation;

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, Owner owns certain parcels of land situated in Bell County, Texas, which consists of approximately 7.40 acres of land in the City's extraterritorial jurisdiction, such property being more particularly described and set forth in Exhibit A attached and incorporated herein by reference ("Property");

WHEREAS, Owner has filed a written request with the City for full-purpose annexation of the Property, identified as Annexation Case No. VA-21-01 ("Annexation Case");

WHEREAS, City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the Annexation Case and execution of this Agreement are subject to approval by the Killeen City Council; and

NOW THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:

- 1. PROPERTY.** This Agreement is only applicable to the Property, which is the subject of the Annexation Case. The property is proposed to consist of thirty-one (31) residential lots.
- 2. INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.

3. MUNICIPAL SERVICES. Commencing on the effective date of annexation, the City will provide the municipal services set forth below. As used in this Agreement, “providing services” includes having services provided by any method or means by which the City may extend municipal services to any other area of the City, including the City’s infrastructure extension policies and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

Fire Protection – The City’s Fire Department will provide emergency and fire protection services in the annexation area, commencing on the effective date of the annexation. These services include:

- fire suppression and rescue;
- emergency medical services;
- hazardous materials mitigation and regulation;
- emergency prevention and public education services;
- construction plan review;
- inspections; and
- emergency management planning.

These services are provided on a citywide basis and the Killeen Fire Department will provide fire protection and prevention services to the annexation area with the same level of service being provided to other comparable areas of the City. The National Fire Protection Association creates and maintains private, copyrighted standards and codes for usage and adoption by local governments. Standards pertinent to the referenced annexations are as follows:

Standard 1710

5.2.4.1: Initial Arriving Company:

“The fire department’s fire suppression resources shall be deployed to provide for the arrival of an engine company within a 240-second travel time to 90 percent of the incidents as established in Chapter 4.”

5.2.4.2: Initial Full Alarm Assignment Capability:

“The fire department shall have the capability to deploy an initial full alarm assignment within a 480-second travel time to 90 percent of the incidents as established in Chapter 4.”

The annexation area will fall within the response area of Station 8 which is located at 7252 East Trimmier Road and houses one EMS unit, one paramedic equipped fire pumper and Battalion 2 Command unit. With response from a Station 8 unit, the estimated response time to the entry of the annexed property would be 4 minutes. Should an in-house unit be on another call, a secondary unit will be dispatched from another fire station with an average estimated arrival time of 2 minutes after dispatch from Harker Heights Station 2 in accordance with the signed Automatic Aid Agreement.

Deleted:

Police Protection – The City’s Police Department will provide protection and law enforcement services in the annexation area, commencing on the effective date of annexation. These services include:

- normal patrols and responses;
- handling of complaints and incident reports; and
- special units, such as traffic enforcement, criminal investigations, narcotics and gang suppression, and special weapons tactics team.

The City’s Police Department will provide service to the annexation area with the same level of service now being provided to other comparable areas of the City. The Department anticipates that there would be very minimal impact on patrol calls for service, criminal investigations, etc. During the building process, there would be a minor increase in patrols, a minimal increased use of fuel, and possibly calls for property crime investigations.

Development Services – The City’s Development Services Department will provide comprehensive planning, land use and development, building permit review and inspection services, and code enforcement services in accordance with all applicable laws, rules, and regulations.

Publicly Owned Parks, Facilities, and Buildings – Residents of the Property will be permitted to utilize all existing publicly-owned and available parks, facilities (including, community service facilities, libraries, swimming pools, etc.), and buildings throughout the City. Any private parks, facilities, and buildings will be unaffected by the annexation; provided, however, that the City will provide for maintenance and operation of the same upon acceptance of legal title thereto by the City and appropriations therefor. In the event the City acquires any other parks, facilities, or buildings necessary for City services within the Property, the appropriate City department will provide maintenance and operations of the same.

Drainage Utility Services – Drainage utility services provided by the City of Killeen’s Public Works Department will begin immediately upon annexation for developed parcels and after platting for undeveloped parcels. The drainage utility services provided to the annexation area will be equal to the service being provided to other areas of the City. The annexation area will be provided maintenance service for public rights of ways, public drainage easements and public drainage tracts at the same frequency of service as other areas of the City.

Drainage Utility services shall be provided in accordance with the City of Killeen Code of Ordinances, Chapter 32, for drainage utility customers:

- drainage maintenance – in accordance with City of Killeen’s Drainage Master Plan and Chapters 8 and 32 of the Killeen Code of Ordinances;
- inspection and permit previews – in accordance with City of Killeen’s Drainage Design Manual (DDM), Infrastructure Design and Development Standards Manual (IDDSM) and Chapters 26, 31, and 32 of the Killeen Code of Ordinances;

- public education and outreach – in accordance with the City of Killeen’s Municipal Separate Storm Sewer (MS4) Permit;
- emergency response – in accordance with City of Killeen’s Drainage Master Plan and Chapter 32 of the Killeen Code of Ordinances; and
- right-of-way (R-O-W) Maintenance to include Street Sweeping within public rights-of-way – in accordance with Chapter 8 of the Killeen Code of Ordinances and the City of Killeen’s MS4.

Street Services – The Street Operations Division of the Public Works Department will maintain public streets over which the City has jurisdiction. These services include:

- emergency pavement repair;
- ice and snow monitoring of major thoroughfares;
- repair maintenance of public streets on an as-needed basis;
- traffic control signals; and
- right-of-way maintenance.

Public roads and streets in the annexation area will be included in the City’s preventive maintenance program. Preventive maintenance projects are prioritized on a citywide basis and scheduled based on a variety of factors, including surface condition, age, traffic volume, functional classification, and available funding. The Streets Operations Division will also provide regulatory traffic signage. Engineering studies to determine if traffic control devices are warranted will be conducted as needed, in conjunction with growth and increased traffic volumes. Anticipated future development within the annexation area will generate the requirement to construct streets in compliance with the City of Killeen development standards and requirements published in the Killeen Code of Ordinances and Public Works Department practices, as may be amended. Street lighting will be installed by property developers as development in the area warrants. Upon development of the annexation area, street maintenance fees will be charged in accordance with City of Killeen Code of Ordinances Chapter 25.

Water and Wastewater Services – The City of Killeen strives to provide comparable levels of service in all areas of the City, allowing for differences in population density, land use, and topography. The annexed area is vacant; however, depending on future zoning requests for the property, the development of the property may include at least thirty-one (31) residential lots. As the population density increases and land use patterns change, the City will provide comparable water and sewer services as in other comparable areas of the City.

Water and wastewater utility availability addresses the accessibility to a sufficient supply of water and the capacity of the wastewater system to accept and treat wastewater. The extension of utilities to any area of the City, to include the annexation area, is based on the Water and Wastewater Master Plan and the utility extension policy contained in Chapter 26, Article IV, Division 3, Section 26-111, of the Killeen Code of Ordinances as amended. Developers of property in the annexation area will be required to extend necessary utilities to support their development in accordance with the Killeen Code of Ordinances and Public Works Department practices, as may be amended.

The following is a summary of the City of Killeen Water and Wastewater Utility Service Extension Policy.

1. The intent and purpose of the water and wastewater extension policy is to provide equitable charges for water and sewer connections as a proportionate distribution of the cost of the water and sewer main extensions to serve property within the city.
2. If the existing city utility facilities are not within or adjacent to the development, the developer shall construct the necessary extension of water and sewer mains, force mains, and lift stations, including all valves, manholes, and piping necessary to serve any future development of abutting property.
3. The developer's engineer shall prepare a proposed plan of service for the subdivision and property along the extension, which shall be reviewed by the plat review committee. These facilities shall be constructed in accordance with the Water and Wastewater Master Plan (as amended).
4. It is the general policy of the city that water and sewer mains should be large enough to serve all the lots platted and, should the city determine oversizing is necessary, the city may participate in those lines greater than 8" for water and greater than 10" for sewer.
5. All utilities shall be required to extend across the full width of the last lot platted on each street proposed within the development, in such an alignment that it can be extended to the next property in accordance with the master sewer and water plans for the city, provided such plan(s) exist.
6. Properties already served by water and sewer shall not be required to install additional facilities unless, the current lines are not of adequate capacity to serve the proposed development; in which case the applicant will be required to install adequate facilities.
7. Every lot of a plat shall have direct access to the water and sewer system. Utility service shall be from a water/sewer main located in an abutting right-of-way or through easements from the lot to a water/sewer main.
8. The City provides a "pro rata" program that in some instances allows a person to recover some costs of extending a line from the point of availability to the person's property, thereby reducing the economic impact on the person constructing the line.

Under limited circumstances, the City of Killeen Executive Director of Public Works may allow the continued use of or the establishment of an on-site sewage facility in locations where sanitary sewer service is not readily available. Such on-site sewage facilities must be permitted by the Bell County Health Department. Generally, sewer service shall be considered available when City owned infrastructure is located at a distance not to exceed 1,000 feet that can accept gravity flow.

Water Utilities – It is the intent of the City of Killeen to provide water utility services to the annexation area in an expedient and orderly manner. This plan provides continued quality service while minimizing the utility rate impact to both the newly acquired citizens as well as the existing customers of the City’s utility system.

There is a 20-inch water main approximately 540 feet to the north that can adequately serve this property. Another option for water availability is an 8-inch water main located approximately 400 feet west of the property along Screaming Eagle Circle. The annexed area is located in the Upper Pressure Plane, which has an overflow elevation of 1,123 feet.

Sewer Utilities – It is the intent of the City of Killeen to provide sewer utility services to the annexation area in an expedient and orderly manner. This plan provides continued quality service while minimizing the utility rate impact to both the newly acquired citizens as well as the existing customers of the City’s utility system.

There is a 12-inch sewer main approximately 700 feet to the southwest that can adequately serve this property.

Solid Waste Services – Solid Waste services provided by the City of Killeen’s Solid Waste Services Department will begin immediately upon annexation. The solid waste collection and disposal services provided to the annexation area will be equal to the service being provided to other areas of the City. The annexation area will be provided collection service at the same frequency of service as other areas of the City.

Services shall be provided in accordance with the City of Killeen Code of Ordinances, Chapter 24, for residential and commercial customers:

- garbage collection – in accordance with City of Killeen “pay-as-you-throw” guidelines and Chapter 24 of the Killeen Code of Ordinances;
- recycling – access to City of Killeen Recycling Center;
- yard waste and brush collection;
- special collection services;
- commercial service is provided on subscription basis from the City.

Other Services – The City of Killeen will provide other City Services to the annexation area, such as animal services, library, municipal court and general administration services at the same level of service now being provided to other areas of the City with similar population density and land use. It is understood and agreed that the City is not required to provide a service that is not included in this Agreement. Owner understands and acknowledges that the City departments listed above may change names or be re-organized by the City Manager. Any reference to a specific department also includes any subsequent City department that will provide the same or similar services.

- 4. AUTHORITY.** City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledges that approval of the Annexation Case is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.
- 5. SEVERABILITY.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.
- 6. INTERPRETATION.** The parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The parties acknowledge that they are of equal bargaining power and that each of them was represented by legal counsel in the negotiation and drafting of this Agreement.
- 7. GOVERNING LAW AND VENUE.** Venue shall be in the state courts located in Bell County, Texas or the United States District Court for the Western District of Texas, Waco Division and construed in conformity with the provisions of Texas Local Government Code Chapter 43.
- 8. NO WAIVER.** The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.
- 9. GOVERNMENTAL POWERS.** It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.
- 10. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 11. CAPTIONS.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 12. AGREEMENT BINDS SUCCESSORS AND RUNS WITH THE LAND.** This Agreement is binding on and inures to the benefit of the parties, their successors, and assigns. The term of this Agreement constitutes covenants running with the land comprising the Property and is binding on the Owner.
- 13. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between said parties. This Agreement shall not be amended unless executed in writing by both parties.

Executed as of the day and year first above written to be effective on the effective date of annexation of the Property.

CITY OF KILLEEN

TERRA CAMPBELL

By: _____
Kent Cagle
City Manager

By: _____

Approved as to Form and Legality:

Traci S. Briggs
City Attorney

Ordinance No. _____

State of Texas §
County of Bell §

This instrument was acknowledged before me on the _____ day of _____, 2021,
by Kent Cagle, City Manager of the City of Killeen, a Texas municipal corporation, on behalf of
said corporation.

By: _____

Notary Public, State of Texas

State of Texas §
County of Bell §

This instrument was acknowledged before me on the _____ day of _____, 2021,
by _____ on behalf of said _____
_____.

By: _____

Notary Public, State of Texas

After Recording Return to:
City Secretary
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

EXHIBIT A - SURVEY

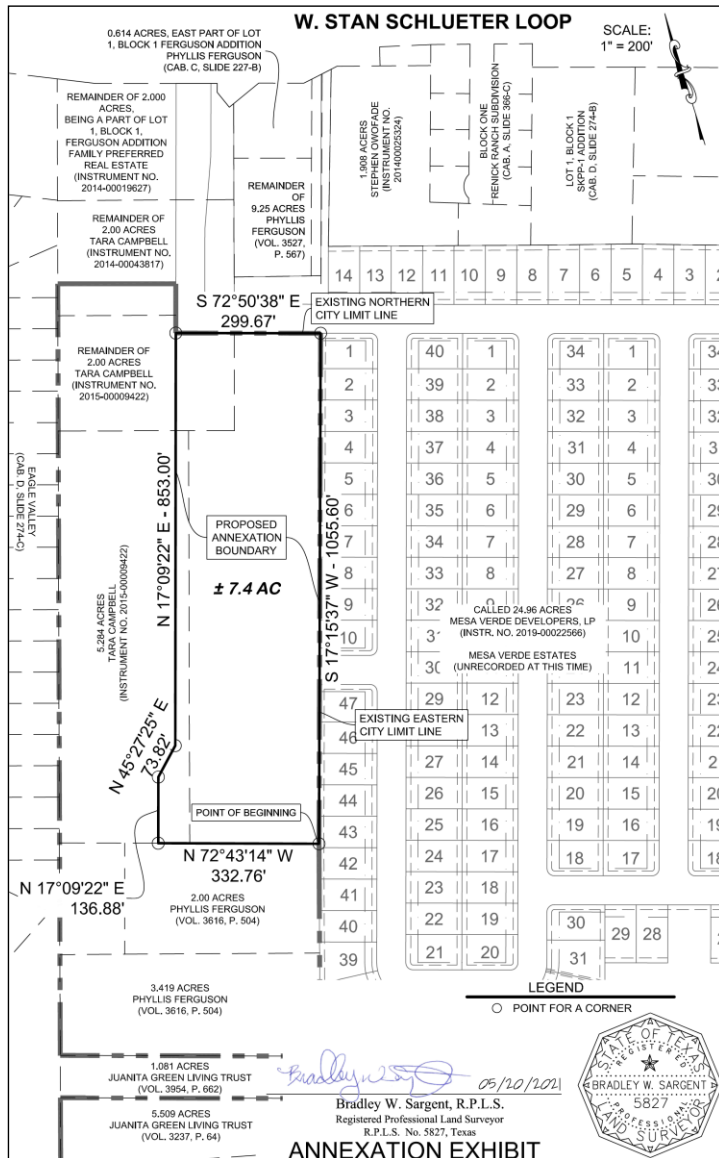


EXHIBIT B – FIELD NOTES

FIELD NOTES 7.4 ACRES BELL COUNTY, TEXAS

BEING all that certain 7.4 acre tract of land situated in the W.L. Harris Survey, Abstract No. 1155, being all of the remainder of the called 6.601 acre tract described in a deed to Tara Campbell, recorded in Instrument No. 2017-00017620, Deed Records of Bell County, Texas, a portion of that called 5.284 acre tract described in a deed to Tara Campbell, recorded in Instrument No. 2015-00009422, Deed Records of Bell County, Texas, and a portion of the remainder of a called 2.00 acre tract as described in a deed to Tara Campbell, recorded in Instrument No. 2015-00009422, Deed Records of Bell County, Texas, being more particularly described as follows:

BEGINNING at the Northwest corner of the called 2.00 acre tract as described in a deed to Phyllis Ferguson, recorded in Volume 3616, Page 504, Deed Records of Bell County, Texas, at a point in the West line of the called 24.96 acre tract described in a deed to Mesa Verde Developers, LP, recorded in Instrument No. 2019-00022566, Deed Records of Bell County, Texas, and at the Southeast corner of the said remainder of a called 6.601 acre tract, for the Southeast corner of the herein described tract;

THENCE, N 72° 43' 14" W, 332.76 feet, along a North line of the said 2.00 acre Ferguson tract to a point in the South line of the said 5.284 acre tract, for the Southwest corner of the herein described tract;

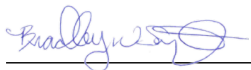
THENCE, along the West line of the herein described tract, crossing the said 5.284 acre tract, in part, and the said 2.00 acre Campbell tract for the following 3 courses and distances;

1. N 17° 09' 22" E, 136.88 feet, to a point;
2. N 45° 27' 25" E, 73.82 feet, to a point;
3. N 17° 09' 22" E, 853.00 feet, to a point, being a corner of the current City Limits line as recorded in Ordinance No. 19-053, for the Northwest corner of the herein described tract;

THENCE, S 72° 50' 38" E, 299.67 feet, along the South line of the said City Limits line to a point in the West line of the said 24.96 line, at a corner of the said City Limits line, for the Northeast corner of the herein described tract;

THENCE, S 17° 15' 37" W, 1055.60 feet, along the East line of the herein described tract and the West line of the said 24.96 acre tract, and the City Limits line, to the **POINT OF BEGINNING**, containing 7.4 acres of land, more or less.

The bearings for this description are based upon the Texas State Plane Coordinate System, Central Zone, NAD 83, per Leica Texas Smart Net GPS observations, as surveyed on the ground May 19, 2021 by Quintero Engineering, LLC.



05/20/2021

Bradley W. Sargent, R.P.L.S.
Registered Professional Land Surveyor
No. 5827, Texas



AN ORDINANCE OF THE CITY OF KILLEEN EXTENDING THE CORPORATE LIMITS OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, TO INCLUDE LAND LYING ADJACENT TO THE PRESENT CITY LIMITS, BEING APPROXIMATELY 7.40 ACRES OF LAND OUT OF THE W.L. HARRIS SURVEY, ABSTRACT NO. 1155; DECLARING SAID LAND TO BE A PART OF SAID CITY; DECLARING SAID LAND AND ITS INHABITANTS AND ANY 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; PROVIDING FOR WAIVER OF CERTAIN FEES DURING THE FIRST YEAR OF INCORPORATION; EXTENDING DISTRICT BOUNDARIES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the City Council of the City of Killeen, pursuant to Article II, Section 7 of the Charter, is authorized to extend the boundary lines of the City and annex additional territory adjacent to the City of Killeen upon petition; and

WHEREAS, the City has received a petition for voluntary annexation for an area being approximately 7.40 acres in size lying contiguous to the existing city limits, located south of West Stan Schlueter Loop and east of the Eagle Valley Subdivision, Killeen, Texas; and

WHEREAS, the area to be annexed, as described in this ordinance, is within the extraterritorial jurisdiction of the City of Killeen; and is either adjacent to and contiguous with the existing boundary limits; and

WHEREAS, in compliance with the Local Government Code §43.0672 and 43.0673, a written service agreement has been approved, required publications have been given, and public hearing conducted;

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

SECTION I: That on and after the effective date of this ordinance, 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 effective date of this ordinance; such land being more particularly described as approximately 7.40 acres out of the W.L. Harris Survey, Abstract, No. 1155, lying contiguous to the existing city limits, and generally located south of West Stan Schlueter Loop and east of the Eagle Valley Subdivision, Killeen, Texas.

SECTION II: It is declared that the lands thereby annexed and described in Section I hereof are and shall hereafter be a part of the City of Killeen, Bell County, Texas and it is hereby further declared that said lands 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 Killen, Texas.

SECTION III: It is further declared that the above described properties shall be zoned “A” Agriculture on the effective date of this ordinance, pursuant to Section 31-124(a) of the Code of Ordinances of the City.

SECTION IV: That the written service plan for the annexed area is hereby adopted as a part of this ordinance.

SECTION V: It is further declared that the boundary of the City of Killeen City Council District 2 be extended by the land contained within the annexation tract.

SECTION VI: That all ordinances or resolutions or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict or amended as specified herein to the extent of any conflict.

SECTION VII: That should any section or part of any paragraph of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force, or effect of any section or part of a section or paragraph of this ordinance.

SECTION VIII: That the ordinances and resolutions of the City of Killeen, Texas, and the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION IX: That this ordinance shall be effective on August 24, 2021, after its passage and publication according to the Killeen City Charter and State Law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 24th day of August 2021, at which meeting a quorum was present, held in accordance with the provisions of the Texas Open Meetings Act, Texas Government Code Chapter 551, as amended.

APPROVED:

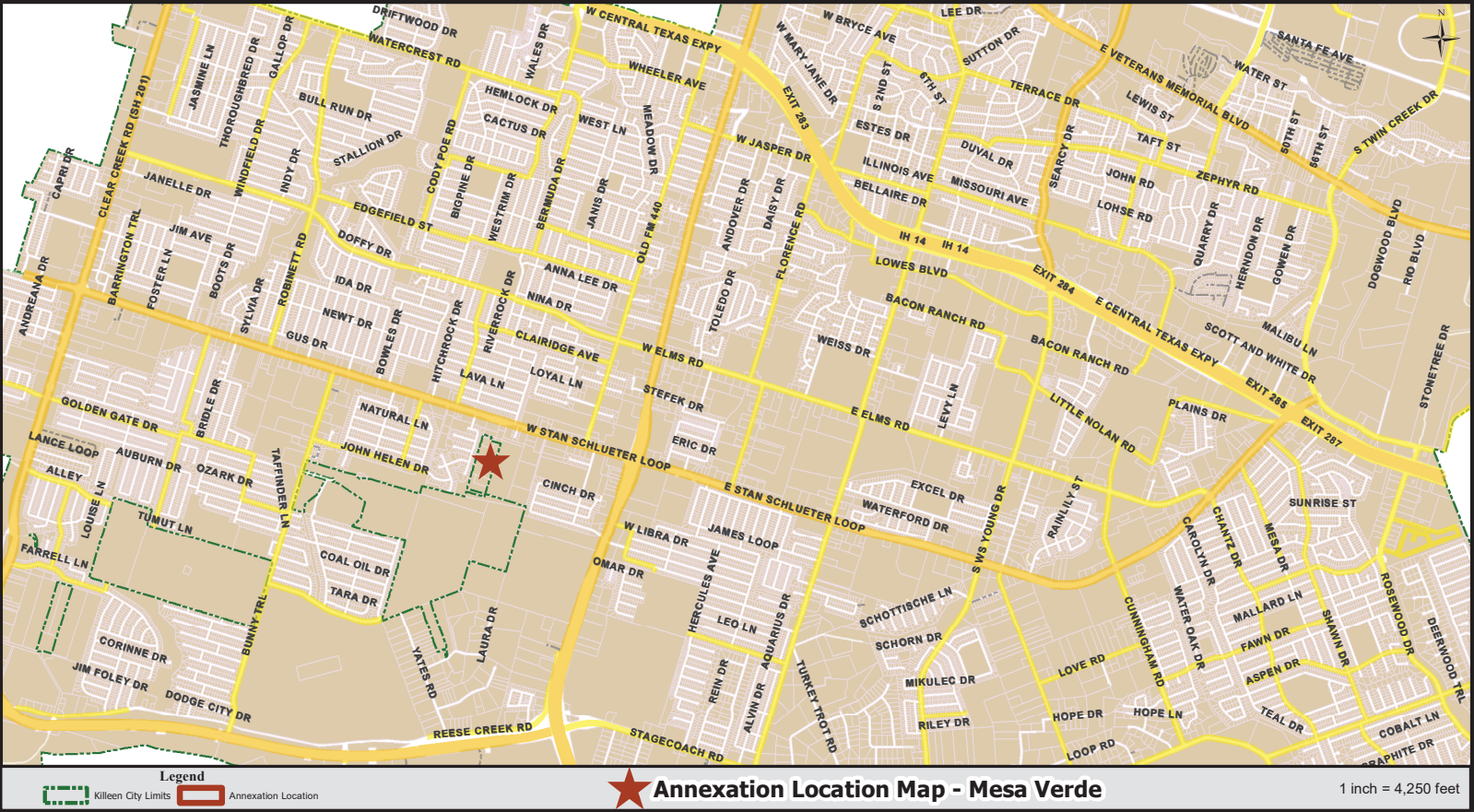
Jose L. Segarra, MAYOR

ATTEST:

Lucy C. Aldrich, CITY SECRETARY

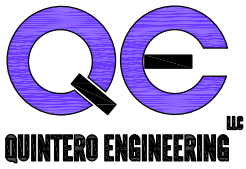
APPROVED AS TO FORM

Traci S. Briggs, CITY ATTORNEY









QUINTERO ENGINEERING, LLC

CIVIL ENGINEERING • LAND SURVEYING • PLANNING • CONSTRUCTION MANAGEMENT

1501 W. STAN SCHLUETER LP., KILLEEN, TEXAS (254) 493-9962

T.B.P.E. FIRM REGISTRATION NO. 14709

T.B.P.L.S. REGISTRATION NO. 10194110

W. STAN SCHLUETER LOOP

SCALE:
1" = 200'



0.614 ACRES, EAST PART OF LOT
1, BLOCK 1 FERGUSON ADDITION
PHYLLIS FERGUSON
(CAB. C, SLIDE 227-B)

REMAINDER OF 2.000
ACRES,
BEING A PART OF LOT
1, BLOCK 1,
FERGUSON ADDITION
FAMILY PREFERRED
REAL ESTATE
(INSTRUMENT NO.
2014-00019627)

REMAINDER OF
2.00 ACRES
TARA CAMPBELL
(INSTRUMENT NO.
2014-00043817)

REMAINDER
OF
9.25 ACRES
PHYLLIS
FERGUSON
(VOL. 3527,
P. 567)

1.908 ACERS
STEPHEN OWOFADÉ
(INSTRUMENT NO.
201400025324)

BLOCK ONE
RENICK RANCH SUBDIVISION
(CAB. A, SLIDE 366-C)

LOT 1, BLOCK 1
SKPP-1 ADDITION
(CAB. D, SLIDE 274-B)

14 13 12 11 10 9 8 7 6 5 4 3 2

S 72°50'38" E
299.67'

EXISTING NORTHERN
CITY LIMIT LINE

REMAINDER OF
2.00 ACRES
TARA CAMPBELL
(INSTRUMENT NO.
2015-00009422)

5.284 ACRES
TARA CAMPBELL
(INSTRUMENT NO. 2015-00009422)

N 17°09'22" E - 853.00'

PROPOSED
ANNEXATION
BOUNDARY

± 7.4 AC

S 17°15'37" W - 1055.60'

EXISTING EASTERN
CITY LIMIT LINE

POINT OF BEGINNING

N 72°43'14" W
332.76'

2.00 ACRES
PHYLLIS FERGUSON
(VOL. 3616, P. 504)

N 17°09'22" E
136.88'

3.419 ACRES
PHYLLIS FERGUSON
(VOL. 3616, P. 504)

1.081 ACRES
JUANITA GREEN LIVING TRUST
(VOL. 3954, P. 662)

5.509 ACRES
JUANITA GREEN LIVING TRUST
(VOL. 3237, P. 64)

CALLLED 24.96 ACRES
MESA VERDE DEVELOPERS, LP
(INSTR. NO. 2019-00022566)

MESA VERDE ESTATES
(UNRECORDED AT THIS TIME)

LEGEND

○ POINT FOR A CORNER

Bradley W. Sargent

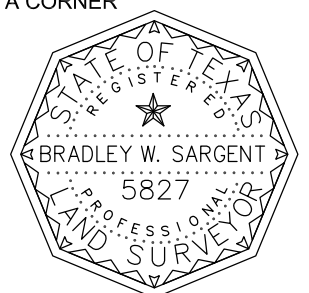
05/20/2021

Bradley W. Sargent, R.P.L.S.

Registered Professional Land Surveyor

R.P.L.S. No. 5827, Texas

ANNEXATION EXHIBIT





QUINTERO ENGINEERING, LLC

CIVIL ENGINEERING • LAND SURVEYING • PLANNING • CONSTRUCTION MANAGEMENT

1501 W. STAN SCHLUETER LP., KILLEEN TEXAS (254) 493-9962

T.B.P.E. FIRM REGISTRATION NO.: 14709

T.B.P.L.S. FIRM REGISTRATION NO.: 10194110

FIELD NOTES 7.4 ACRES BELL COUNTY, TEXAS

BEING all that certain 7.4 acre tract of land situated in the W.L. Harris Survey, Abstract No. 1155, being all of the remainder of the called 6.601 acre tract described in a deed to Tara Campbell, recorded in Instrument No. 2017-00017620, Deed Records of Bell County, Texas, a portion of that called 5.284 acre tract described in a deed to Tara Campbell, recorded in Instrument No. 2015-00009422, Deed Records of Bell County, Texas, and a portion of the remainder of a called 2.00 acre tract as described in a deed to Tara Campbell, recorded in Instrument No. 2015-00009422, Deed Records of Bell County, Texas, being more particularly described as follows:

BEGINNING at the Northwest corner of the called 2.00 acre tract as described in a deed to Phyllis Ferguson, recorded in Volume 3616, Page 504, Deed Records of Bell County, Texas, at a point in the West line of the called 24.96 acre tract described in a deed to Mesa Verde Developers, LP, recorded in Instrument No. 2019-00022566, Deed Records of Bell County, Texas, and at the Southeast corner of the said remainder of a called 6.601 acre tract, for the Southeast corner of the herein described tract;

THENCE, N 72° 43' 14" W, 332.76 feet, along a North line of the said 2.00 acre Ferguson tract to a point in the South line of the said 5.284 acre tract, for the Southwest corner of the herein described tract;

THENCE, along the West line of the herein described tract, crossing the said 5.284 acre tract, in part, and the said 2.00 acre Campbell tract for the following 3 courses and distances;

1. N 17° 09' 22" E, 136.88 feet, to a point;
2. N 45° 27' 25" E, 73.82 feet, to a point;
3. N 17° 09' 22" E, 853.00 feet, to a point, being a corner of the current City Limits line as recorded in Ordinance No. 19-053, for the Northwest corner of the herein described tract;

THENCE, S 72° 50' 38" E, 299.67 feet, along the South line of the said City Limits line to a point in the West line of the said 24.96 line, at a corner of the said City Limits line, for the Northeast corner of the herein described tract;

THENCE, S 17° 15' 37" W, 1055.60 feet, along the East line of the herein described tract and the West line of the said 24.96 acre tract, and the City Limits line, to the **POINT OF BEGINNING**, containing 7.4 acres of land, more or less.

The bearings for this description are based upon the Texas State Plane Coordinate System, Central Zone, NAD 83, per Leica Texas Smart Net GPS observations, as surveyed on the ground May 19, 2021 by Quintero Engineering, LLC.

05/20/2021

Bradley W. Sargent, R.P.L.S.
Registered Professional Land Surveyor
No. 5827, Texas





VOLUNTARY ANNEXATION PETITION – MESA VERDE

PH-21-047

August 17, 2021

Voluntary Annexation Petition

2

- **HOLD** a public hearing and consider an ordinance approving a written service agreement and the annexation of approximately 7.40 acres of land out of the W.L. Harris Survey, Abstract No. 1155, lying contiguous to the existing city limits, being located south of West Stan Schlueter Loop and east of the Eagle Valley Subdivision, Killeen, Texas.

Voluntary Annexation Petition

3

- On May 21, 2021, staff received a petition for voluntary annexation from Quintero Engineering, LLC on behalf of Ms. Terra Campbell for 7.40 acres of land lying contiguous to the existing city limits, generally located south of West Stan Schlueter Loop and approximately 260 feet east of the Eagle Valley subdivision.



110

10

 Annexation Location



1 inch = 4,250 feet

1 inch = 4,250 feet



Legend



Killeen City Limits

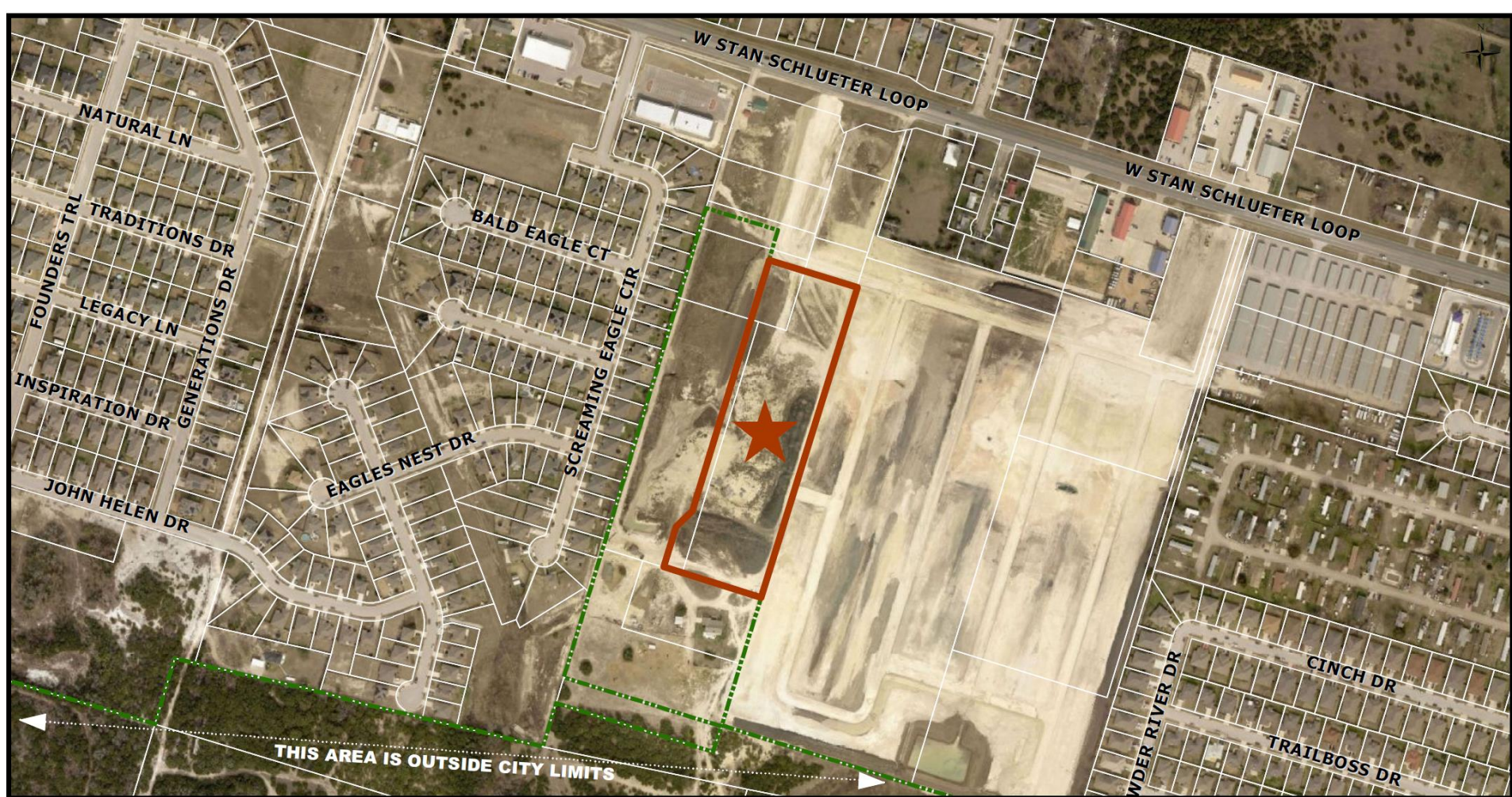


Annexation Location



Annexation Map - Mesa Verde

1 inch = 500 feet



Legend



Killeen City Limits



Annexation Location



Annexation Map - Mesa Verde

1 inch = 500 feet

Voluntary Annexation Process

7

- In accordance with LGC 43.0672, the written service agreement includes:
 - 1) A list of each service the municipality will provide on the effective date of the annexation; and
 - 2) A schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation.

Voluntary Annexation Process

8

- ❑ In accordance with Chapter 43 of the LGC, the Council must conduct one public hearing.
- ❑ At least 10 days and no more than 20 days in advance of the public hearing, the City must publish notice in the newspaper, post on the City's website, and send notice to the school district and each public entity that provides service to the area.
- ❑ All public notification requirements have been met.
- ❑ The City Council may adopt an annexation ordinance at the conclusion of the public hearing.

Alternatives

9

- The City Council has two alternatives:
 - ▣ Disapprove the written service agreement and the annexation ordinance; or
 - ▣ Approve the written service agreement and the annexation ordinance.

Recommendation

10

- Staff recommends that the City Council approve the written service agreement and the annexation ordinance as presented.